THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

VICTORIA HALTER, individually, on behalf of the Providence Health & Services 401(k) Savings Plan and on Behalf of all similarly situated participants and beneficiaries of the Plan,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES; PROVIDENCE HEALTH & SERVICES TOTAL REWARDS MANAGEMENT COMMITTEE; John and Jane Does 1-30 in their capacities as members of the Administrative Committee,

Defendants.

NO. 2:25-cv-00210-JNW

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND A SERVICE AWARD

<u>NOTED FOR CONSIDERATION</u>:
10/20/2026

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

TABLE OF CONTENTS

Page

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

I. INTRODUCTION

Plaintiff Victoria Halter and Class Counsel efficiently negotiated a class-wide settlement in this ERISA class action after less than two years of active litigation by diligently obtaining the information they needed from Defendants, skillfully analyzing that data to craft a settlement demand, and then retaining a mediator well versed in the nuances of ERISA to help them reach a deal. If the Court approves the settlement, Providence will pay approximately $42,724,532 in non-reversionary benefits to approximately 213,558 Class Members.

Each Class Member will receive—without filing a claim form—an equal share of $21,424,532.72 to reimburse them for expenses that Halter alleges were improperly deducted from their individual 401(k) accounts. Providence also will pay in years 2026, 2027, and 2028 approximately $15,300,000 for expenses that otherwise would have been deducted from the Plan participants' individual accounts. And Defendants will pay an additional $6,000,000 for settlement administration, any court-awarded attorneys' fees, costs, any court-awarded service award, and for an independent fiduciary to review the settlement. This is an excellent result for the Class, providing between 80% to 100% of what the Class could have obtained at trial.

Because the benefits could not have been achieved without the estimable work of Class Counsel and the dedication of Halter, Class Counsel request that the Court award them reasonable attorneys' fees of $5,880,539, allow reimbursement of $24,461 in out-of-pocket litigation costs, approve a $5,000 service award to Halter, and authorize payment of administration expenses estimated to be $36,796, and $15,000 to the independent fiduciary. The requested fees account for approximately 13.8% of the common fund—well below the Ninth Circuit's 25-30% benchmark for a reasonable fee—and the expenses were necessary to secure the resolution of this litigation. The service award is comparable to (or lower than) those approved in other similar cases. Halter therefore requests the Court grant her motion.

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

II. BACKGROUND

A. Class Counsel litigated this case efficiently by engaging in targeted discovery.

Halter filed this action in the United States District Court for the District of Oregon on October 31, 2024, alleging that Defendants breached their fiduciary duties and violated ERISA by improperly using funds forfeited by Providence 401(k) Plan participants to offset Defendants' future contributions to the Plan rather than to pay recordkeeping and administrative expenses as the Plan documents require. Dkt. 1. The case was transferred to this Court on February 3, 2025. Dkt. 14-16. Halter amended her complaint which Defendants answered. *See* Dkt. 25, 27. Defendants then filed a motion for judgment on the pleadings, and the parties held a discovery conference under Fed. R. Civ. P. 26(f). After the Rule 26(f) conference and before Halter filed her opposition to Defendants' pending motion, the parties agreed to private mediation and to stay the case pending the mediation's outcome. Dkt. 38-39.

Class Counsel negotiated a pre-mediation production of Defendants' documents and data that, together with Defendants' Form 5500 filings, shows the amount of Plan expenses Defendants required Plan participants to pay during the proposed class period that Defendants could have paid using forfeited Plan assets. Dkt. 54 (Murray Decl.) ¶7; Dkt. 68 (Geist Supp. Decl.) ¶¶10-14. Class Counsel used this information to make a settlement demand. Dkt. 68 ¶14.

The parties mediated on October 14, 2025, with Robert Meyer. Dkt. 54 ¶8. The parties did not reach an agreement that day, but Meyer continued to work with the parties' counsel. On November 6, 2025, the parties accepted Meyer's mediator's proposal. *Id.* The parties executed the final Settlement Agreement on February 13, 2026. *Id.* The Court granted preliminary approval on June 4, 2026. *See* Dkt. 62.

B. Class Counsel negotiated a settlement that provides significant monetary relief and valuable prospective relief.

The settlement requires Defendants to pay approximately $42,724,532 for the benefit of the Class Members (Gross Settlement Amount). Dkt. 54-1 (Settlement Agreement) ¶4.1. The Gross Settlement Amount consists of three elements:

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

First, the Gross Settlement Amount consists of $21,424,532.72 that Defendants are currently holding in reserve in the Plan's Forfeiture and Special Unallocated Accounts (together "Unallocated Plan Assets"). *Id.* ¶4.3. Each Class Member will automatically receive a per capita payment—estimated to be $100.50—into their individual 401(k) accounts from the Unallocated Plan Assets and from any amount remaining in the Cash Fund after all settlement expenses have been paid. *Id.* ¶5.5.

Second, the Gross Settlement Amount includes approximately $15,300,000 that Defendants will pay for Plan Recordkeeping and Administrative Expenses in calendar years 2026-2028 without deducting those expenses from individual Plan accounts. *Id.*¶4.4. Assuming there are 137,838 "current" Plan participants, the per-participant amount is approximately $118 ($15,300,000/137,838 Class Members = $117.69). Dkt. 68 (Geist Supp. Decl.) ¶11.

Third, the Gross Settlement Amount includes $6,000,000, which Defendants will pay for: (1) any court-awarded Attorneys' Fees and Costs, (2) any court-awarded Class Representative Service Award, (3) any Settlement Administration Expenses, and (4) expenses estimated to be $15,000 for an independent fiduciary to review the settlement. Dkt. 54-1 (Settlement Agreement) ¶4.2. The Settlement Administrator estimates administration costs to be $36,796. Dkt. 69 (Analytics Decl.) ¶17. This $6,000,000 is above and beyond the $21,424,532.72 and $15,300,000 settlement benefits described above.

C. Halter's participation made this settlement possible.

Halter's willingness to serve as a named plaintiff resulted in the excellent settlement for Class Members. She also actively participated in this case. She gathered and provided relevant documents to Class Counsel. Dkt. 57 (Halter Decl.) ¶6. She spent significant time reviewing documents and written updates drafted by Class Counsel, and she has participated in discussions with Class Counsel regarding settlement negotiations, mediation, and proposed settlement. *Id.* ¶7. Had the case continued, Halter was prepared to sit for a deposition and testify at trial. *Id.*

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

III. ARGUMENT

This motion addresses only Halter and Class Counsel's request that the Court approve an attorneys' fee award of $5,880,539, which is 13.8% of the Settlement Fund, reimbursement of $24,261 in litigation costs, and a Class Representative service award of $5,000 for Halter. A separate motion for final approval of the settlement has already been filed. *See* Dkt. 65.

A. A fee award of 13.8% of the Settlement Fund is reasonable and appropriate.

Where a settlement produces a common fund for the benefit of the entire class, courts in the Ninth Circuit may award attorneys' fees using either the percentage-of-the-fund or lodestar method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The method a district court chooses to use, and its application of that method, must achieve a reasonable result. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

The percentage-of-the-fund method is appropriate for calculating fees when counsel's effort has created a common fund. *See Bluetooth,* 654 F.3d at 942 ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar."); *Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x 452, 457 (9th Cir. 2009) ("Ninth Circuit jurisprudence . . . permits the application of common fund principles where . . . the class of beneficiaries is identifiable and the benefits can be traced in order to allocate the fees to the class.").

The percentage-of-the-fund method is appropriate in this case because the settlement benefits are quantifiable. When calculating the total value of a settlement, courts consider not only the "total amount defendants were willing to spend to settle the case" but also the "total benefits being made available to class members." *Chinitz v. Intero Real Est. Servs.*, 2022 WL 16528137, at *6 (N.D. Cal. Oct. 28, 2022) (citations omitted) (using administration costs, attorneys' fees and costs, the cash value being paid, and the value of injunctive relief to calculate the fund value). Class Counsel's efforts resulted in settlement relief of approximately $42.7 million, comprised of $21,424,532.72 to be allocated to Class Members' individual 401(k)

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

accounts, prospective relief worth approximately $15,300,000 to current Plan members, and, above and beyond those amounts, $6,000,000 for administration costs, fiduciary review costs, attorneys' fees and costs, and a service award.

Fees in common fund settlements generally "range from 20% to 30% of the fund created," and Ninth Circuit courts recognize that 25% "has been a proper benchmark figure." *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) (citation omitted)). Any departure from the benchmark up or down must be supported with "an adequate explanation" of "any special circumstances justifying a departure." *Bluetooth*, 654 F.3d at 942 (quotation and internal marks omitted).

To determine whether a fee requested from a common fund is reasonable, courts consider several factors including: (1) the results obtained by counsel; (2) the risks and complexity of issues in the case; (3) whether the attorneys' fees were entirely contingent upon success and whether counsel risked time and effort and advanced costs with no guarantee of compensation; (4) whether awards in similar cases justify the requested fee; and (5) whether the class was notified of the requested fee and had an opportunity to object. *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.,* 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019).

Consideration of these factors shows that Class Counsel's request for $5,880,539 in attorneys' fees—which is a **downward** departure from the benchmark—is reasonable.

1. <u>Class Counsel achieved an excellent settlement for the Class.</u>

"[T]he benefits obtained for the class" is "foremost among [the] considerations" when determining the reasonableness of attorneys' fees in a class action. *Bluetooth*, 654 F.3d at 942; *see also Vizcaino*, 290 F.3d at 1048 (considering the "exceptional results for the class").

Class Counsel negotiated and achieved a significant and certain cash settlement for the benefit of the Class without the substantial risk, delay, expense, and uncertainty of continued litigation, trial, and inevitable appeals.

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

a. The settlement relief provides valuable benefits to Class Members.

The $42,724,532 Gross Settlement Amount is exceptional because it represents approximately 85%-107% of the estimated losses Class Members realistically could have recovered at trial. *See* Dkt. 56 (Geist Decl.) ¶11. Of the $42,724,532 Gross Settlement Amount, $21,424,533 will compensate Class Members for 81% of the amounts billed to them as Plan expenses that Halter alleges Defendants should have paid using forfeitures:

Total Plan Expenses	**$27,990,410**
Recordkeeping	$19,335,139
Administrative	$8,655,271
Forfeitures used to defray Plan expenses	$1,683,917
Actual Damages	**$26,306,493**
Unallocated Assets for Settlement	$21,424,533
% of damages settlement pays	81%

Dkt. 68 (Geist Supp. Decl.) ¶12. The percentage damages that this settlement pays vastly exceeds other ERISA settlements courts have approved in this Circuit. *See, e.g.*, *Foster v. Adams & Assocs., Inc.*, 2022 WL 425559, at *5 (N.D. Cal. Feb. 11, 2022) (listing ERISA cases approving settlement amounts ranging from 3.2% to 30% of estimated damages); *Marshall v. Northrop Gruman Corp.*, 2020 WL 5668935, at *2 (C.D. Cal. Sept. 18, 2020) (finding $12.275 million settlement fund represented "approximately 29% of plaintiffs' claimed damages at trial," and is "an exceptional result for the Class."); *Johnson v. Fujitsu Tech. & Business of Am. Inc.*, 2018 WL 2183253, at *6-7 (N.D. Cal. May 11, 2018) (approving ERISA 401(k) settlement that represented "just under 10% of the Plaintiffs' most aggressive 'all in' measure of damages").

The settlement also provides current Plan participants with significant prospective relief— estimated to be $15,300,000—that Defendants will pay in recordkeeping and administrative expenses over the next three years. Dkt. 54-1 (Settlement Agreement) ¶4.4. Defendants likely would have deducted those expenses from Class Members' individual accounts, and therefore the prospective relief provides money Class Members would not have received absent this settlement. *See* Dkt. 68 (Geist Supp. Decl.) ¶11. All administrative

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

expenses, court-awarded attorneys' fees and litigation costs, fiduciary review expenses, and any court-awarded service awards also will be paid from the Gross Settlement Amount, providing additional value.

No claim forms are required. Cash payments will be automatically deposited into Class Members' 401(k) accounts after all settlement expenses have been paid. Any administrative expenses, attorneys' fees, litigation costs, or portions of the service award not approved by the Court will be divided amongst the Class Members on a per capita basis; none of the settlement funds will revert to Defendants.

b. Early settlement provides additional valuable benefits.

Significant and valuable benefits flow from early settlement of ERISA class actions, especially because the class members can immediately add the settlement funds to their investment accounts:

> First, the class will receive compensation and be able to invest those funds immediately, rather than having to wait as long as a decade as other classes in similar 401(k) cases have had to do . . . . Second, the affirmative relief . . . will go into effect now, as opposed to several years from now, which allows a class to achieve substantial savings and be able to invest those savings immediately—enjoying years' worth of returns that would not otherwise be available.

Kruger v. Novant Health, Inc., 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (internal citations omitted).

Early settlement prior to formal discovery also avoids the inherent and significant risks and costs involved with prolonged litigation of complex ERISA claims. *See Nguyen v. Westlake Servs. Holding Co.*, 2025 WL 2087575, at *5 (C.D. Cal. Jan. 27, 2025) (finding "[b]ecause this case is in the beginning stages, substantial litigation costs would be required to take this case to trial," and "[t]hese considerations are even more acute in [an] ERISA case" given the complexity and difficult and novel legal theories at issue) (internal citations omitted); *see also Farrar v. Workhorse Grp., Inc.*, 2023 WL 5505981, at *7 (C.D. Cal. July 24, 2023) (finding elimination of costs and risk support

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

settlement considering, "[n]umerous depositions and document and other written discovery," and "[e]xtensive and expensive expert discovery would also be necessary").

Class Counsel have incurred over $24,461 in costs. Dkt. 66 (Murray Supp. Decl.) ¶¶18, 20; Dkt. 67 (Sharman Supp. Decl.) ¶18; Dkt. 68 (Geist Supp. Decl.) ¶18. By contrast, in *Spano v. Boeing Company*, an ERISA case that settled after nine years of litigation, Class Counsel incurred over $1.8 million in litigation costs that were ultimately reimbursed from the settlement fund of around $57 million. *Spano*, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016). The early, valuable settlement avoids these costs.

This factor favors approval of Class Counsel's fee request.

2. <u>A 13.8% fee is justified by the significant risk borne by Class Counsel.</u>

"The risk that further litigation might result in [p]laintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1046-47 (N.D. Cal. 2008); *accord In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding fee award of 33% of common fund was justified "because of the complexity of the issues and the risks"). Class Counsel faced real risks in pursuing this case, not the least of which was the possibility of early dismissal. Defendants argued in their motion for judgment on the pleadings that the Tax Code and Treasury Regulations authorize using forfeitures to offset employer contributions to 401(k) plans. *See* Dkt. 35 at 11-14. While Plaintiff is confident this argument would not prevail because the Providence Plan requires Plan fiduciaries to use forfeitures to pay Plan expenses first, similar arguments have gained traction and resulted in dismissal of other forfeiture cases, including cases in this district. *See, e.g.*, *Curtis v. Amazon Servs.*, *LLC*, 2026 WL 124323, at *2 (W.D. Wash. Jan. 16, 2026) (granting defendants' motion to dismiss and noting that Congress and the Treasury have historically allowed the use of forfeitures to reduce employer contributions); *McWashington v. Nordstrom, Inc.*, 2025 WL 1736765, at *14 (W.D. Wash. June 23, 2025) (granting motion to dismiss and noting "long history" of using forfeitures to reduce employer contributions). Providence also argued that the Plan document gives them discretion

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

to determine the meaning of "Plan expenses" and Plaintiff had interpreted the term too broadly. Dkt. 35 at 9:10-22. Halter disagrees, but this Court could have agreed with Providence.

A court also "considers the skill required to litigate the action, and Class Counsel's overall performance." *Imber v. Lackey*, 2025 WL 3761593, at *14 (E.D. Cal. Dec. 23, 2025) (citing *In re Omnivision*, 559 F. Supp. 2d. at 1047). Many courts have recognized not only the complexity involved in ERISA litigation but also that this complexity requires counsel with specialized skill and legal expertise. *See, e.g.*, *id.* (finding "the complexity of ERISA actions requires counsel with specialized skills and expertise regarding industry practices," so class counsel's familiarity with the issues "was likely valuable during negotiation and finalizing a complex settlement"); *Karpik v. Huntington Bancshares Inc.*, 2021 WL 757123, at *9 (S.D. Ohio Feb. 18, 2021) ("It is well known that ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation.") (internal citation omitted)); *Clevenger v. Dillards, Inc.*, 2007 WL 764291, at *1 (S.D. Ohio Mar. 9, 2007) ("The Court's own review of the case confirms that the issues presented were highly complex and required a level of sophistication and expertise in ERISA pension matters that few lawyers possess.").

Class Counsel drew on their experience with class actions, ERISA litigation, and the retirement fund industry to obtain the information they needed from Defendants for a settlement demand, digest that information, and structure it in a way that convinced Defendants they should settle the case. *See* Dkt. 67 (Sharman Supp. Decl.) ¶¶3-6, 15 (describing substantial ERISA litigation experience); Dkt. 68 (Geist Supp. Decl.) ¶¶2-7, 14 (describing substantial retirement fund industry experience); Dkt. 66 (Murray Supp. Decl.) ¶¶1-11 (describing substantial class action experience). Put differently, this is not a case where the amount of the settlement is "merely a factor of the size of the classes." *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *7. Instead, the nearly $43 million Gross Settlement Amount is "directly related to the efforts of [Class Counsel], who achieved exceptional" results. *Id.*

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

3. <u>A 13.8% fee is justified by the contingent nature of the representation and the efforts and costs expended by Class Counsel.</u>

"Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing for their work." *In re Wash. Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). "And because contingent fees are almost always determined as a percentage of the client's recovery, such fees are necessarily aligned with and proportional to the results achieved for that client—in short, the client only pays for it gets." *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *4.

The 13.8% fee Class Counsel requests is more than fair "because the fees requested represent a small percentage of the benefits that settlement class members will receive." *In re College Athlete NIL Litig.*, 803 F. Supp. 3d 959, 990 (N.D. Cal. June 6, 2025). The 13.8% requested fee is therefore unlike other settlements where the fees requested exceeded the relief paid to the class members. *Cf. Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 991 (9th Cir. 2023) ("The district court's fee award is not reasonable under Rule 23, given that the $1.7 million fee award is more than thirty times larger than the amount paid to class members").

Furthermore, although the settlement was reached early in the litigation, Class Counsel already had invested over 1,076 hours and paid over $24,461 in expenses with more work to come. Dkt. 66 (Murray Supp. Decl.) ¶19-20. Halter has yet to defeat the pending motion for judgment on the pleadings and the inevitable appeal of the Court's decision on that motion, engage in fact and expert discovery, obtain and maintain class certification, defeat summary judgment and likely a subsequent dispositive motion, and retain a favorable judgment on appeal. The settlement that Class Counsel negotiated avoids these risks. *See Imber*, 2025 WL 3761593, at *9 (finding that with settlement in an ERISA class action case, "class members are ensured a definitive recovery, as opposed to prolonged litigation and uncertain recovery").

Because Class Counsel committed substantial resources on a contingency basis for the benefit of the class, this factor weighs in favor of Class Counsel's fee request.

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

4. <u>Awards in similar cases show the requested fee is reasonable.</u>

In determining a reasonable fee award, courts often consider fee awards in similar cases. *See Vizcaino*, 290 F.3d at 1050. Class Counsel's request for 13.8% of the Gross Settlement Amount is far lower than both the Ninth Circuit benchmark and awards in similar cases. *See Foster*, 2022 WL 425559, at *10 (finding "a 33.3% recovery is on par with settlements in other complex ERISA class actions"); *Marshall*, 2020 WL 5668935, at *9 (finding one third of the settlement fund of $12,375,000 "to be a reasonable percentage award" citing at least seventeen other awards "in similar ERISA fiduciary breach class actions" that awarded one third of the settlement fund); *Schwartz v. Cook*, 2017 WL 2834115, at *5 (N.D. Cal. June 30, 2017) (finding the amount requested representing 33% of the settlement fund to be "quite reasonable" even if at the "high end of the range normally awarded" in the Ninth Circuit).

No further departure from the benchmark is warranted and this factor supports Class Counsel's fee request.

5. <u>The Class has been notified of Class Counsel's fee request.</u>

The Settlement Administrator sent the Class notices that informed Class Members of the approximate amount that Class Counsel would seek from the Gross Settlement Amount in legal fees. Dkt. 69 (Analytics Decl.) ¶8, Exs. 1-3. The notices informed Class Members that they each would receive a payment into their individual 401(k) accounts of approximately $106. *Id.*, Exs. 1-2. The deadline to submit objections to the settlement or to Class Counsel's fee has not expired. Once it does, Class Counsel will supplement this motion to address any concerns Class Members may have with the fee request. Dkt. 66 (Supp. Murray Decl.) ¶21.

6. <u>A lodestar crosscheck confirms the reasonableness of this fee award.</u>

While not required, a lodestar crosscheck supports the requested fee. *See Farrell v. Bank of Am.*, 827 F. App'x 628, 630 (9th Cir. 2020) ("This Court has consistently refused to adopt a crosscheck requirement, and we do so once more."); *see also Glass*, 331 F. App'x at 456-57 (affirming fee award of 25% of settlement fund with an "informal" lodestar crosscheck and despite "the relatively low time-commitment by plaintiff's counsel" because "the district court

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

did not abuse its discretion in giving weight to other factors, such as the results achieved for the class and the favorable timing of the settlement"). Courts calculate the lodestar by multiplying the number of hours reasonably expended by a reasonable rate and then consider adjusting the lodestar to account for factors like the benefit obtained for the class, risk of nonpayment, complexity and novelty of the issues presented, and awards in similar cases. *Bluetooth*, 654 F.3d at 941-42.

Class Counsel's combined lodestar is $865,397.50. Dkt. 66 (Supp. Murray Decl.). Class Counsel's fee request of $5,880,539 represents a multiplier of 6.8, which is within the range of multipliers approved in this Circuit. *See Vizcaino*, 290 F.3d at 1051, n.6 (describing lodestar multipliers in the range of .6 to 19.6). Courts routinely find higher multipliers appropriate when using the lodestar method as a crosscheck. *See, e.g., Steiner v. Am. Broadcasting Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding the lodestar multiplier of approximately 6.85 "still falls well within the range of multipliers that courts have allowed."); *Aguilar Auto Repair, Inc. v. Wells Fargo Bank, N.A.*, 2025 WL 1753509, at *10 (N.D. Cal. May 23, 2025) (awarding fee equal to 33% of the settlement fund, resulting in a multiplier of 6.99); *Lloyd v. Navy Fed. Credit Union*, 2019 WL 2269958, at *13 (S.D. Cal. May 28, 2019) (awarding fee equal to 25% of the settlement value, resulting in multiplier of around 10.96); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (15.6 multiplier). A higher multiplier is especially appropriate where, as here, the settlement was reached early and resulted in outstanding relief for the class. *See Aguilar Auto Repair*, 2025 WL 1753509, at *10 (observing class counsel secured the settlement "[i]n large part because of their diligence and experience . . . with focused efforts at the investigative and early stages of the litigation" and concluding that "[r]educing their award because Class counsel settled quickly would punish counsel for their strong and efficient result").

Class Counsel's lodestar was calculated based on reasonable hourly rates. In determining a reasonable hourly rate, courts look to the prevailing market rates in the forum in which the district court sits. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013).

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

Class Counsel's hourly rates of $500-$1,150 are consistent with the prevailing market rates in this district. *See, e.g., Montano v. Dep't of Health*, 2025 WL 1437896, at *1 (W.D. Wash. May 19, 2025) (awarding $1,000 and $650 per hour to Davis Wright Tremaine attorneys and noting the rates were "generally at or below the median of the range of 19 other large firms with litigation practices and either headquarters or branch offices in Seattle and reflective of rates that are localized to the Puget Sound legal market"); *Bottoms v. Block, Inc.*, 2025 WL 3458577 (W.D. Wash. Dec. 2, 2025) (approving fee of 25% of fund) & Dkt. 66 ¶15 (noting counsel submitted declaration with rates of $1,150 for Ms. Terrell and $950 for Ms. Murray); *Davis v. Symetra Life Ins. Co.*, 2025 WL 1434727, at *4 (W.D. Wash. May 19, 2025) (approving fee of 33 1/3% of common fund supported by lodestar crosscheck using hourly rates of $1,025-$1,425 for partners, $875 for senior counsel, $675-$875 for associates, $400 for paralegals, and $250-$375 for legal assistants); *Washburn v. Porsche Cars N. Am., Inc.*, 2025 WL 1017983, at *9-10 (W.D. Wash. Apr. 4, 2025) (approving lodestar fee award using hourly rates of $880-$1,125 for partners and $300-$350 for paralegals); *Dunne v. Quantum Residential Inc.*, 2025 WL 896741, at *2 (W.D. Wash. Mar. 24, 2025) (awarding fee equal to 40% of settlement fund in FLSA case based on lodestar calculation using hourly rates of $800-$975 for partners, $500 for associate, and $300 for paralegals).

The rates reflect Class Counsel's extensive experience in class actions and complex litigation involving similar claims. Class Counsel are well-regarded members of the Bar and have provided the Court with declarations describing their background and experience. Dkt. 66 (Murray Supp. Decl.) ¶¶1-8, 12 & Dkt. 54; Dkt. 67 (Sharman Supp. Decl.) ¶¶3-7 & Dkt. 55; Dkt. 68 (Geist Supp. Decl.) ¶¶2-9 & Dkt. 56. Class Counsel set their rates for attorneys and staff members based on several factors, including the experience, skill, and sophistication required for the legal services performed, the rates customarily charged in the markets where legal services are typically performed, and the experience, reputation, and ability of the attorneys and staff members. Dkt. 66 (Murray Supp. Decl.) ¶14.

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

Class Counsel's lodestar was calculated based on the reasonable number of hours Class Counsel dedicated to this case from its inception. Class Counsel have dedicated over 1,076 hours to the litigation. Dkt. 66 (Murray Supp. Decl.) ¶¶12, 19, Ex. 1; Dkt. 67 (Sharman Supp. Decl.) ¶16, Ex. 1; Dkt. 68 (Geist Supp. Decl.) ¶16, Ex. 1. Class Counsel will spend additional hours seeing this case through to resolution, including responding to objections, attending the final approval hearing, and ensuring the settlement administration process is properly carried out.

For these reasons, a lodestar crosscheck supports the requested fee award.

B. Class Counsel's litigation costs were necessarily and reasonably incurred.

"There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014).

Class Counsel incurred over $24,461 in costs, including filing and service fees, mediation fees, and travel expenses. Dkt. 66 (Murray Supp. Decl.) ¶18; Dkt. 67 (Sharman Supp. Decl.) ¶18; Dkt. 68 (Geist Supp. Decl.) ¶18. These and other costs incurred by Class Counsel were reasonable and necessary to this litigation and are the types of costs normally charged to paying clients. *See id.* Courts routinely reimburse these types of costs. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client."); *Corson v. Toyota Motor Sales U.S.A., Inc.*, 2016 WL 1375838, at *9 (C.D. Cal. Apr. 4, 2016) ("Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable.").

C. The requested Class Representative Service Award is appropriate.

Service awards "are fairly typical in class action cases." *Rodriguez v. W. Publishing*, 563 F.3d 948, 958-59 (9th Cir. 2009). They recognize class representatives' efforts and "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing an action, and, sometimes, to recognize

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

their willingness to act as private attorney general." *Id.* Service awards are typically approved if they are reasonable and do not undermine the class representative's adequacy. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir. 2013). "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." *Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 577 (D.C.S. 2015).

Halter actively participated in the litigation of this case, representing the interests of members of the Class. Dkt. 57 (Halter Decl.) ¶6. She gathered and provided relevant documents to Class Counsel throughout the litigation. *Id.* ¶7. She reviewed the documents and written updates drafted by Class Counsel, and she has participated in discussions with Class Counsel regarding settlement negotiations, mediation, and proposed settlement. *Id.* She has continued to discuss the proposed settlement with Class Counsel as the case proceeded through the approval process. *Id.* Had the case continued, Halter was prepared to sit for a deposition and appear at trial as necessary. *Id.*

Halter requests a service award of $5,000, which courts have recognized as presumptively reasonable both generally and in ERISA cases specifically. *See Harris v. Vector Mktg. Corp.*, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012) (collecting cases); *Imber*, 2025 WL 3761593, at *17 (finding "that the 'presumptively reasonable' service award of $5,000.00 to Plaintiff . . . is fair and reasonable" in an ERISA class action case). Given Halter's dedication to the Class here, her request should be approved.

IV. CONCLUSION

For these reasons, Halter requests the Court award attorneys' fees of $5,880,539, costs of $24,461 to Class Counsel, and $5,000 for her service as Class Representative.

TERRELL MARSHALL LAW GROUP PLLC
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

RESPECTFULLY SUBMITTED AND DATED this 1st day of September, 2026.

TERRELL MARSHALL LAW GROUP PLLC

I certify that this memorandum contains 5,192 words, in compliance with the Court's Order Granting Leave to File Overlength Brief at Dkt. 64.

By: */s/ Jennifer Rust Murray*

Beth E. Terrell, WSBA No. 26759
Email: bterrell@terrellmarshall.com
Jennifer Rust Murray, WSBA No. 36983
Email: jmurray@terrellmarshall.com
1700 Westlake Avenue North, Suite 300
Seattle, Washington 98109
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Paul J. Sharman, *Admitted Pro Hac Vice*
Email: paul@sharman-law.com
THE SHARMAN LAW FIRM LLC
11175 Cicero Drive, Suite 100
Alpharetta, Georgia 30022
Telephone: (678) 242-5297
Facsimile: (678) 802-2129

Michael J. Geist, *Admitted Pro Hac Vice*
Email: mjg@geistlawgroup.com
GEIST LAW GROUP LLC
5 Fairfield Drive
Catonsville, Maryland 21228
Telephone: (443) 834-6850

Attorneys for Plaintiffs