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8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN (SANTA ANA) DIVISION**

12 ANTONIO HURTADO, et al.,) Case No.: 8:17-cv-01605-JLS-DFM
13)
14 *Plaintiffs,*) *Assigned to Hon. Josephine L. Staton*
15)

16 v.)

17 RAINBOW DISPOSAL CO., INC.) **CLASS COUNSEL’S**
18 EMPLOYEE STOCK) **MEMORANDUM OF LAW IN**
19 OWNERSHIP PLAN) **SUPPORT OF MOTION FOR**
20 COMMITTEE, et al.,) **ATTORNEYS’ FEES AND**
21) **LITIGATION EXPENSES**
22) **(Per ECF No. 214)**

23 *Defendants*) Date: May 21, 2021
24) Time: 10:30 a.m.
25) Courtroom: 10A
26)

27 RAINBOW DISPOSAL CO., INC.)
28 EMPLOYEE STOCK)
OWNERSHIP PLAN,)
Nominal Defendant.)

HURTADO, et al., v. RAINBOW DISPOSAL CO., INC. EMPLOYEE STOCK OWNERSHIP PLAN COMMITTEE, et al., Case No. 17-cv-1605-JLS-DFM Class Counsel’s Memo. ISO Motion for Attorneys’ Fees

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2 Declaration of R. Joseph Barton with the following attachments:

3 Exhibit A: *Wilcox v. Swapp*, No. 17-cv-275, Order Granting Final
4 Approval of Class Action Settlement (E.D. Wa. July 23, 2020)

5 Exhibit B: Valeo Partners, Valeo 2018 Attorney Hourly Rate Report,
6 *Karpik v. Huntington Bancshares Inc.*, No. 17-cv-1153 (S.D.
7 Ohio January 5, 2021) (ECF No. 72-4)

8 Exhibit C: Itemized time entries for professionals affiliated with Block &
9 Leviton LLP calculated at historical rates;

10 Exhibit D: Itemized time entries for professionals affiliated with Block &
11 Leviton LLP calculated at current rates.

12 Declaration of Joseph A. Creitz with the following attachments:

13 Exhibit A: Creitz & Serebin LLP Time Report

14 Exhibit B: Creitz & Serebin LLP Expense Report

15 Declaration of Richard Donahoo

16 Declaration of Daniel Feinberg

17 Declaration of Glenn Kantor

18 Declaration of Gregory Porter

19 Declaration of Karen Handorf

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SUMMARY OF CLASS COUNSEL’S RATES, HOURS, AND EXPENSES

Name	2017 Rate	2018 Rate	2019 Rate	2020 Rate	2021 Rate	Hours	Total (current rates)	Total (historical rates)
Joseph Barton (Partner)	\$710	\$750	\$825	\$875	\$900	1,132.60	\$1,019,340.00	\$890,017.00
Vincent Cheng (Associate, JD ‘03)	\$495	\$510	\$550	\$575	\$600	521.60	\$312,960.00	\$277,649.50
Matt Smith (Associate, J.D. ’11)	N/A	N/A	\$650	N/A	N/A	2.30	\$1,495.00	\$1,495.00
Colin Downes (Associate, J.D. ’15)	N/A	\$425	\$450	\$475	\$520	798.30	\$415,116.00	\$360,447.00
Ming Siegel (Paralegal, B.A. ’16)	\$225	\$235	\$250	\$265	\$275	719.65	\$197,903.75	\$175,500.75
Rachel Murphy (Paralegal, B.A. ’19)	N/A	N/A	N/A	N/A	\$260	15.61	\$4,058.60	\$4,058.60
Subtotal						3,190.06	\$1,950,873.35	\$1,709,167.85
Joseph Creitz	\$750	\$750	\$800	\$800	\$800	337.4	\$269,920.00	\$261,490.00
Total						3,527.46	\$2,220,793.35	\$1,970,657.85

1 **INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel hereby
3 moves the Court for an order awarding Plaintiff’s counsel up to \$2,370,000 in
4 attorney’s fees (or 30% of the common fund) and reimbursement of both
5 \$200,644.83 for litigation expenses incurred and \$11,500 in settlement
6 administration costs.

7 **BACKGROUND**

8 **I. Procedural History**

9 This litigation was filed in September 2017; however, Class Counsel began
10 investigating this case in the fall of 2014. Barton Decl. ¶ 6. This case was initiated
11 by the employees of Rainbow who contacted Class Counsel regarding their
12 concerns about a potential sale transaction involving their ESOP, potential self-
13 dealing transactions both before and in connection with the sale and the lack of
14 disclosure to or vote by ESOP participants. *See id.*

15 The majority of litigation involving a ESOP holding privately held stock
16 challenges the ESOP purchasing stock usually from existing corporate owners
17 and/or insiders. *Id.* ¶ 5. Class Counsel understood that litigation challenging a sale
18 by an ESOP to a third-party would prove to be more challenging and more risky.
19 *Id.* ¶ 6. In addition, Class Counsel recognized that certain claims – such as the
20 voting claim, the claims challenging prior corporate self-dealing and even the self-
21 dealing claims concerning executive compensation – would be supported only by
22 some but not a lot of law, because there had not been much litigation raising these
23 issues. *Id.* ¶ 5. Based on Class Counsel’s experience, Class Counsel expected that a
24 transaction involving a large corporation like Republic Services meant that (a) the
25 transaction included counsel with knowledge about ERISA and ESOPs, (b) there
26 would likely be sophisticated litigation defense counsel with knowledge about and

1 experience in ERISA and ESOPs specifically, and (c) proving liability would be
2 expensive and likely require retention of multiple experts. *Id.* ¶ 7.

3 As a result, Class Counsel engaged in a thorough factual investigation about
4 Rainbow and the transaction. That process included (1) reviewing documents
5 publicly filed by Rainbow, the Rainbow ESOP or Republic services or documents
6 that could be obtain by participants upon request; (2) interviewing and meeting
7 with various Rainbow ESOP participants, both in-persona and by telephone; (3)
8 interviewing a number of current and former Rainbow executives and former
9 business partners of Rainbow who had knowledge about the financial affairs and
10 business of Rainbow prior to the ESOP Transaction (4) investigating and obtaining
11 court filings and deposition transcripts in litigation filed against Rainbow and/or its
12 executives. *Id.* ¶ 10. In addition, Class Counsel thoroughly researched the claims
13 to be able to present the facts and the legal theories in a thorough manner. *Id.* ¶ 11.

14 Following a significant investigation that began in 2014, Barton Decl. ¶ 6,
15 Plaintiffs filed their initial Complaint on September 15, 2017, alleging fourteen
16 claims for relief, arising under ERISA against the following Defendants the Plan
17 Committee, Moffatt, Snow, Range, Jon Black, Catharine Ellingsen, Bill Eggleston,
18 GreatBanc, and Republic. ECF No. 1. The ESOP was named only as a nominal
19 defendant. *Id.*

20 Plaintiffs amended their Complaint on February 28, 2018, including adding
21 as Defendants persons who had served as directors of Rainbow following the
22 October 1, 2014 Transaction: Mark R. Clatt, Brian M. DelGhiaccio, Steven J.
23 Eddleblute, and Brian A. Goebel (the “New Director Defendants”). ECF No. 57.
24 All Defendants moved to dismiss on March 21, 2018. Plaintiffs and the New
25 Director Defendants entered into a Tolling Agreement to which claims against the
26 New Director Defendants were voluntarily dismissed without prejudice on May 18,

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1 2018. *See* ECF No. 91.

2 The Court denied the remaining Defendants motions to dismiss on July 7,
3 2018. ECF No. 110. Plaintiffs moved for certification of this case as a class action
4 on December 14, 2018, and over Defendants' opposition this court granted class
5 certification, appointed Plaintiffs as Class Representatives, and appointed R.
6 Joseph Barton of Block & Leviton LLP and Joseph A. Creitz of Creitz & Serebin
7 LLP as Class Counsel on April 22, 2019. ECF No. 177 at 20. Plaintiffs further
8 amended the Complaint on February 6, 2019, adding Defendants Myndi Kort and
9 Michael Huycke. ECF No. 153.

10 The pace of discovery intensified following this Court's grant of class
11 certification. Over the course of this litigation, Plaintiffs served more than 72
12 individual requests for production of documents and directed more than 20
13 interrogatories to each Defendant. ECF No. 209-2 ¶¶ 2-10. Plaintiffs also served
14 more than 20 document subpoenas on non-parties to this case. *Id.* ¶ 12. Defendants
15 collectively produced more than 150,000 pages of documents, and nonparties
16 produced more than 100,000 pages. *Id.* ¶¶ 11-12. By stipulation and in light of the
17 complexity of this case, the parties agreed to increase the number of depositions
18 each side was permitted to take beyond the presumptive limit of 10. *See* ECF No.
19 180. Class Counsel took 13 depositions, including the depositions of Defendants
20 Jon Black, Catharine Ellingsen, Bill Eggleston, Myndi Kort, and Michael Huycke.
21 ECF No. 209-2 ¶ 13.

22 This extensive discovery followed multiple, independent lines of inquiry
23 given the number of claims and defendants involved in this case. Plaintiffs sought
24 discovery from the named Defendants and their legal and financial advisors related
25 to the October 2014 Transaction, seeking to develop the record of how Rainbow's
26 principals and the ESOP's fiduciaries had elected to sell the company to Republic
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1 instead of accepting other, competing offers, how the price had been negotiated,
2 and how the transaction was evaluated by the ESOP's trustee (including the
3 diligence process undertaken by its legal and financial advisors). ECF No. 219-2 ¶
4 3. Plaintiffs engaged an expert in fiduciary process and ESOP industry standards to
5 evaluate the processes that were employed by the ESOP's fiduciaries and an expert
6 in finance and business valuation to determine what the fair market value of the
7 Company was at the time of the transaction. *Id.* ¶ 5. In separate streams, Plaintiff
8 also investigated pre-transaction self-dealing by Rainbow's principals, with an eye
9 to how potential claims for such self-dealing should have been taken into account
10 in determining the fair market value of Rainbow. *Id.* ¶ 4. Plaintiffs had the benefit
11 of deposition testimony of Rainbow principals from other litigation involving
12 Rainbow's ill-fated investments in other markets, and was able to use that
13 testimony to frame the scope of further discovery. *Id.* Class Counsel also
14 conducted informal interviews outside the discovery process with witnesses –
15 former Rainbow employees and former business partners -- who had knowledge of
16 Defendants business dealings. *Id.* ¶ 6. With respect to the post-transaction
17 investment claims, Plaintiffs also engaged an investment expert to perform
18 historical analysis regarding what would have been a prudent investment for the
19 ESOP. *Id.* ¶ 5. This was provided to Defendants' financial expert to in turn form
20 the basis of a loss analysis that covered all the claims in this case. *Id.*

21 **II. Settlement Negotiations and the Settlement Agreement**

22 Near the close of fact discovery, the parties agreed to conduct an in-person
23 mediation facilitated by Robert Meyer of JAMS on December 12, 2019, in Irvine,
24 California. ECF No. 193-1 ¶ 3. While an agreement regarding settlement was not
25 reached at this mediation, the parties made substantial progress, and stipulated to
26 an extension of certain deadlines in this case to prevent the erosion of insurance

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1 monies available for a potential settlement while the parties negotiated. ECF 193 at
2 8-9. The parties met for a second in-person mediation on January 15, 2020. ECF
3 No. 198 ¶ 4. The second mediation concluded with the mediator issuing a
4 mediator’s proposal, that all Class Representatives accepted on January 15, 2020,
5 and that all of the Defendants accepted by January 18, 2020, subject to allocation
6 and funding. *Id.* Following confirmation of an agreement as to funding and
7 allocation by the Defendants, the parties executed a term sheet to memorialize the
8 settlement on March 6, 2020. ECF No. 209-2 ¶ 20. The parties subsequently
9 entered into the formal Settlement Agreement on July 23, 2020. The Court
10 preliminarily approved the Settlement on January 4, 2021. ECF No. 214.

11 The terms of the proposed Settlement are set forth in the Settlement
12 Agreement. ECF No. 209-3 (“Agmt”). In short, the Settlement Agreement provides
13 for a payment of \$7.9 million (with \$7.5 million to be paid by the Republic
14 Defendants and \$400,000 to be paid by GreatBanc), inclusive of payments to the
15 Class, Class Counsel’s attorneys’ fees and litigation expenses, and incentive
16 awards to the Class Representatives. *Id.* §§ III.1, VII.1. Defendants will pay \$7.9
17 million into the Settlement Fund within 30 days of preliminary approval. *Id.* §
18 III.1. In addition to the settlement payment, Republic will pay any costs associated
19 with distributions from the Republic 401(k) Plan once funds are deposited into the
20 Republic 401(k) Plan, as well as the cost of an independent fiduciary. *Id.* §§ IV.6-
21 7, IX. Republic will not pay any costs related to the administration of the Republic
22 401(k) Plan (aside from distributions). *Id.* § IV.7.

23 In exchange, the Class will dismiss the claims asserted in the Second
24 Amended Complaint with prejudice and release Defendants from any and all
25 claims that the Class asserted or could have asserted that relate to or arise out of
26 the facts alleged or the claims set forth in the Second Amended Complaint,

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1 including: (a) Defendant Rainbow Disposal Co., Inc.’s investments before October
2 1, 2014, including but not limited to the Southeast Renewables, LLC, Rainbow
3 West Florida, LLC, and/or the West Florida Recycling, LLC ventures, (b) the 2009
4 Summary Plan Description for the ESOP, (c) the 2014 ESOP Transaction, (d) the
5 negotiation and resolution by GreatBanc on behalf of the ESOP regarding disputes
6 with Republic related to the Holdback Escrow Funds, (e) the investment of the
7 ESOP funds post-transaction through January 15, 2020, (f) disclosures or alleged
8 failure to disclose by Defendants relating to the 2014 ESOP Transaction or the
9 investment of the ESOP funds post-transaction through January 15, 2020, and (g)
10 any alleged action or alleged inaction taken by the ESOP’s trustee based on facts
11 or events alleged in Plaintiffs’ Second Amended Complaint. Agmt. § XIII.1.

12 **ARGUMENT**

13 **I. Class Counsel are Entitled to a Fee Award of 30% of the Common**
14 **Fund.**

15 Rule 23 permits a court to award “reasonable attorneys’ fees ... that are
16 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Attorneys’
17 fees provisions included in proposed class action settlement agreements are, like
18 every other aspect of such agreements, subject to the determination of whether the
19 settlement is ‘fundamentally fair, adequate, and reasonable.’” *Staton v. Boeing Co.*,
20 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). Rule 23(h)
21 “requires that any class member be allowed an opportunity to object to the fee
22 ‘motion’ itself.” *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-994
23 (9th Cir. 2010). The Court’s Preliminary Approval Order set the date for
24 submission of the fee motion before the deadline for objections, consistent with
25 that requirement. ECF No. 214 at 13.

26 “In the Ninth Circuit, the benchmark for a fee award in common fund cases

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1 is 25% of the recovery obtained.” *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*,
2 No. 8:15-cv-01614 JLS-JCG, 2018 WL 8334858, *5 (C.D. Cal. July 30, 2018)
3 (Staton, J.) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
4 (9th Cir. 2011)). Courts must “justify any increase or decrease from this amount
5 based on circumstances in the record.” *Monterrubio v. Best Buy Stores, L.P.*, 291
6 F.R.D. 443, 455 (E.D. Cal. 2013) (citing *Six (6) Mexican Workers v. Ariz. Citrus*
7 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). However, in practice, “in most
8 common fund cases, the award exceeds that benchmark.” *In re Omnivision Techs.,*
9 *Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *In re Activision Sec. Litig.*, 723
10 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (surveying cases and stating “[t]his
11 court’s review of recent reported cases discloses that nearly all common fund
12 awards range around 30%”); *Vedachalam v. Tata Consultancy Servs., Ltd.*, No. 06
13 CV 963, 2013 WL 3941319, *2 (N.D. Cal. July 18, 2013) (collecting cases
14 awarding 30% or more and describing a 30% fee as “well within the usual range of
15 percentages awarded”); *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113,
16 1125 (C.D. Cal. 2008) (noting that “25% is substantially below the average class
17 fund fee nationally”). In this case, Class Counsel has requested a fee award of 30%
18 of the common fund, in line with the norm for common fund fee awards in this
19 Circuit.

20 The Ninth Circuit has identified a number of factors that the Court may
21 consider in assessing whether an award is reasonable, including: (1) the results
22 achieved, (2) the risk of litigation, (3) the skill required and quality of work, and
23 (4) the contingent nature of the fee and the financial burden carried by the
24 plaintiffs. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir.
25 2002). These factors all support the reasonableness of Class Counsel’s requested
26 fee award and the appropriateness of a modest upward departure from the Ninth
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1 Circuit’s 25% benchmark.

2 **A. The Results Achieved Weigh in Favor of Class Counsel’s**
3 **Requested Fees.**

4 Class Counsel achieved a settlement providing gross monetary relief of \$7.9
5 million to the Class, in addition to certain non-monetary provisions that also
6 provide substantial benefits to the Class. This Court previously found this
7 represents between approximately 23.4% and 34.0% of the maximum amount that
8 the Class Members could recover if the liability were successfully litigated through
9 trial on all counts, the trier of fact agreed with Plaintiffs on the proper measure of
10 recovery, and the resulting judgment could be collected. ECF No. 214 at 8. The
11 specific amount of relief for each class member varies based on the number of
12 shares held as of the October 2014 Transaction, but after deducting an estimated
13 30% for attorneys fees will provide an average payout of \$11,969 per participant,
14 with some participants receiving as much as \$180,000.

15 On final approval of the settlement of the ERISA fiduciary breach class
16 action, where the “settlement fund represent[ed] approximately 29% of Plaintiffs’
17 claimed damages at trial,” another Court in this District concluded that the
18 settlement was “an exceptional result” that “justifie[d] an attorney fee award of
19 one-third of the settlement fund.” *Marshall v. Northrop Grumman Corp.*, 16-CV-
20 6794 AB (JCX), 2020 WL 5668935, *2-3 (C.D. Cal. Sept. 18, 2020). This result
21 compares favorably with other court-approved settlements in ERISA class actions.
22 *See E.g. Stevens v. SEI Invs. Co.*, No. CV 18-4205, 2020 WL 996418, *6 (E.D. Pa.
23 Feb. 28, 2020) (awarding one-third of common fund in attorneys’ fees where
24 recovery reflected 31% of maximum recovery); *Sims v. BB&T Corp.*, No. 1:15-
25 CV-732, 2019 WL 1993519, *2 (M.D.N.C. May 6, 2019) (awarding one-third of
26 common fund in attorneys’ fees where recovery reflected 19% of maximum

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1 recovery); *see also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D.
2 Pa. 2001) (noting that since 1995, class action settlements have typically
3 “recovered between 5.5% and 6.2% of the class members’ estimated losses”).

4 The recovery here is also greater – both in absolute terms and as a
5 proportional share of the maximum potential recovery – than recoveries in other
6 cases where attorneys’ fees of 30% more of the common fund were awarded. *See*
7 *Dawson v. Hitco Carbon Composites, Inc.*, No. CV16-07337-PSGF (FMx), 2019
8 WL 7842550, at *6 (C.D. Cal. Nov. 25, 2019) (\$1.1 million settlement or 22% of
9 potential maximum recovery; 35% fee award); *Jiangchen v. Rentech, Inc.*, No. 17-
10 1490-GW, 2019 WL 5173771, *7 (C.D. Cal. Oct. 10, 2019) (\$2.05 million
11 settlement or 10% of maximum damages; 33.3% fee award); *Bravo v. Gale*
12 *Triangle, Inc.*, No. CV16-03347 BRO (GJSx), 2017 WL 708766, *14 (C.D. Cal.
13 Feb. 16, 2017) (\$375,000 settlement or 14% of maximum damages; 30% fee
14 award); *Deaver v. Compass Bank*, No. 13-cv-222-JSC, 2015 WL 8526982,
15 *7 (N.D. Cal. December 11, 2015) (\$500,000 settlement or 14.2% of “potential
16 liability”; 33% fee award).

17 When Class Counsel secures non-monetary relief, that is additional factor in
18 the results achieved. *Urakhchin*, 2018 WL 8334858 at *5; *Pfeifer v. Wawa, Inc.*,
19 No. CV 16-497, 2018 WL 4203880, *13 (E.D. Pa. Aug. 31, 2018) (holding that
20 “innovative” structure of settlement that “allows Class Members to roll over the
21 payment into another plan and thus take advantage of the tax benefits of a tax-
22 qualified retirement plan” supported attorney fee award); *see Spann v. J.C. Penney*
23 *Corp.*, 211 F. Supp. 3d 1244, 1263 (C.D. Cal. 2016) (non-monetary relief secured
24 weighs in favor of fairness of attorneys’ fees). Even though the Rainbow ESOP
25 itself had been terminated, Class Counsel secured significant nonmonetary relief
26 for the Class by structuring the settlement in such a way that it would be paid

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1 through a 401k plan, preserving the tax advantaged character that Plaintiffs would
2 have enjoyed in their ESOP allocations. ECF No. 209-3 § 5(a)-(b), (d) (“Agmt.”).
3 The net settlement amount is paid into the Plan without any Class member having
4 to complete a claim form. *See id.* The Settlement also ensures for Class members
5 who either are not entitled to an immediate distribution (under the IRS rules) or do
6 not make an investment election will have their settlement monies appropriately
7 invested. *Id.* § 5(c). The Settlement also ensures that whenever a Class member
8 elects a distribution from the Plan (whenever that may be), the Class member will
9 never be charged any costs to receive their settlement monies (even if the Plan
10 otherwise has charges for distribution, as is common under 401(k) Plans. *Id.* § 6, 7.
11 These are important provisions that ensure every participant will receive their
12 monies, in a tax-favored status and without cost.

13 The Settlement also provides that Republic Defendants and not the Class (or
14 Settlement Fund) will pay for any administration expenses (other than class notice)
15 including distribution of the settlement monies. *Id.* § 6. The Republic Defendants
16 are also paying for the costs of the Independent Fiduciary. Agmt. § XI. This
17 differs from other ERISA settlements where costs of administration and the
18 independent fiduciary are paid out of the settlement fund. *See, e.g. Urakhchin,*
19 *2018 WL 8334858 at *5* (seeking \$22,000 for administration including distribution
20 and \$40,000 for the Independent Fiduciary to be paid out of the Settlement Fund).

21 This factor thus weighs in favor of Class Counsel’s requested award of 30%
22 of the common fund.

23 **B. The Risks of Litigation Weigh in Favor of Class Counsel’s**
24 **Requested Fees.**

25 Plaintiffs have previously outlined the risks involved in litigating this case.
26 ECF No. 212 at 1-3. As this Court observed at preliminary approval, “even if

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1 [Plaintiffs] prevail on all claims, the potential range of recovery could vary widely
2 depending on this Court’s determination of the appropriate measure of loss and
3 that Plaintiffs, and the Class, face the risk of protracted and costly litigation with
4 no certainty as to the potential recovery if they prevail.” ECF No. 214 at 7. If
5 litigation had continued, Defendants would almost certainly have brought motions
6 for summary judgment on most or all of the claims. In one recent ERISA breach of
7 fiduciary duty case where only one claim survived after summary judgment
8 motions, the parties reached a settlement on the sole remaining claim for just
9 \$225,000 (for a class of 28,000 class members). *See Cunningham v. Cornell U.*,
10 16-CV-6525-PKC, 2020 WL 8212936, *2 (S.D.N.Y. Dec. 22, 2020) (approving
11 \$225,000 as fair, reasonable and adequate given the circumstances). Moreover, as
12 this Court has recognized “in any case, there is a substantial risk of losing at trial.”
13 *Munday v. Navy Fed. Credit Union*, No. SACV151629, 2016 WL 7655807, *8
14 (C.D. Cal. Sept. 15, 2016) (Staton, J.). Several defense verdicts entered by courts
15 after trial in
16 in a complex ERISA fiduciary breach class actions illustrate those risks. *E.g. Romo*
17 *v. Principal Life Ins. Co.*, Opinion and Order on Merits Following Trial (D. Iowa
18 April 8, 2021) (ECF No. 219-2) (entering a defense verdict in an ERISA fiduciary
19 breach class action following a six-day trial); *Wildman v. Am. Cent. Servs., LLC*,
20 362 F. Supp. 3d 685 (W.D. Mo. 2019) (defense verdict in ERISA fiduciary breach
21 class action following 11 day trial); *Sacerdote v. N.Y. Univ.*, 328 F. Supp. 3d 273,
22 281 (S.D.N.Y. 2018) (entering defense verdict in ERISA class action following
23 eight day trial). In a case alleging breach of fiduciary duties involving an ESOP
24 invested in privately held stock, a court found in favor of the defendants on all
25 claims after 34 trial days. *Fish v. Greatbanc Tr. Co.*, 09 C 1668, 2016 WL
26 5923448, *1, *68 (N.D. Ill. Sept. 1, 2016). While both Co-Lead Class Counsel
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1 have successfully tried ERISA cases and do not shy away from trial, they fully
2 appreciate the risks involved.

3 Even if Plaintiffs had prevailed at trial, Defendants would likely have
4 appealed any judgment in Plaintiffs' favor. There have been multiple high-profile
5 class actions where plaintiffs prevailed at trial and subsequently had such verdicts
6 reversed on appeal. For example, following a non-jury trial, the Ninth Circuit
7 affirmed in part and reversed in part the judgment rendered in favor of the certified
8 class, vacated the \$203 million restitution award, and remanded the case for further
9 proceedings. *Gutierrez v Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012).
10 *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing
11 \$81 million jury verdict and dismissing case with prejudice in securities action).
12 *Anixter v. Home–Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning
13 plaintiffs' verdict obtained after two decades of litigation).

14 In addition to the risks of reversal on appeal that attach any complex
15 litigation of this kind, there were also *collection* risks unique to this case, including
16 the risks that the Defendants against whom Class Counsel viewed as having the
17 strongest claims—Defendants Moffatt and Snow—would exhaust their wasting
18 insurance policies litigating this case, leaving them with minimal assets to satisfy a
19 judgment. ECF No. 212-2 ¶ 7. As Class Counsel is well aware, even when there is
20 a successful judgment that survives appeal, it can take significant time to collect
21 the judgment—particularly from individual defendants.

22 Certain other risks are now smaller than before the litigation began as
23 Plaintiffs have now survived motions to dismiss and achieved class certification
24 (though class certification could be reviewed on appeal). Not only did Plaintiffs
25 face significant uncertainty at both of these critical stages of this case, and
26 vigorousness by which Defendants counsel litigated their Rule 12 motions and
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1 opposed class certification illustrate that they would have vigorously continued to
2 defend the case including at summary judgment, trial and appeal. The risk of
3 litigation thus weighs in favor of the reasonableness of Class Counsel’s requested
4 fee award.

5 **C. The Skill Required and Quality of Work Weigh in Favor of Class**
6 **Counsel’s Requested Fees.**

7 ERISA class actions are “complex” and require counsel with “specialized
8 skills.” *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL
9 757123, *9 (S.D. Ohio Feb. 18, 2021). “Very few plaintiffs’ firms possess the skill
10 set or requisite knowledge base to litigate ... class-wide, statutorily-based claims
11 for pension benefits.” *Savani v. URS Prof. Sols. LLC*, 121 F. Supp. 3d 564, 573
12 (D.S.C. 2015). In addition to legal expertise, counsel in ERISA cases must possess
13 “expertise regarding industry practices.” *Kruger v. Novant Health*, No.
14 1:14CV208, 2016 WL 6769066, *3 (M.D.N.C. Sept. 29, 2016). Even among the
15 “notoriously complex” set of ERISA class actions, “ESOP cases are often cited as
16 the most complex of ERISA cases.” *Pfeifer*, 2018 WL 4203880, at *7. Another
17 court in this District has specifically held that “The skill and labor required to
18 adequately address complex issues of ERISA law weigh in favor of approving [a]
19 30% fee.” *Downey Surgical Clinic, Inc. v. Ingenix, Inc.*, No. CV09-5457 PSG
20 (JCX), 2015 WL 12645755, *13 (C.D. Cal. Nov. 10, 2015). Other recent cases
21 from this District illustrate that the complexity of ERISA class actions often result
22 in a 30% common fund fee award (or more). *Marshall*, 2020 WL 5668935 at *9
23 (awarding attorneys’ fees of 1/3 of settlement fund of \$12.3 million in ERISA
24 action); *Tom v. Com Dev USA, LLC*, 16-CV-1363 PSG (GJSx), 2017 WL
25 10378629, *6 (C.D. Cal. Dec. 4, 2017) (awarding attorneys’ fees of 30% in ERISA
26 action). Class Counsel are among the small number of firms with the skills

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1 required to litigate cases like this one. Porter Decl. ¶ 7; Feinberg Decl. ¶ 10; Kantor
2 Decl. ¶ 14.

3 This case involved precisely the issues that make litigation of this sort
4 notoriously complex and specialized. It required Class Counsel to hire three
5 different experts – in fiduciary industry standards, business valuation, and
6 investment. ECF No. 209-2 ¶ 17. Class Counsel frequently consulted with those
7 experts – particularly the business valuation experts. *Id.* Due to the number of the
8 claims and the parties, the claims required Class Counsel to obtain voluminous
9 discovery from five groups of separately represented Defendants and 20 non-
10 parties, including dozens of document requests and interrogatories, the review of
11 hundreds of thousands of documents, 13 depositions, and repeated rounds of
12 conferences of counsel in an effort to resolve discovery disputes without the
13 involvement of the Court. ECF No. 209-2 ¶¶ 2-16.

14 “The quality of Class Counsel's work is further evidenced by the favorable
15 settlement achieved,” on behalf of the Class. *Urakhchin*, 2018 WL 8334858 at *6.
16 The specialized skill brought to bear by Class Counsel on this complex case thus
17 weigh in favor of a modest upward departure from the Ninth Circuit benchmark
18 and support the reasonableness of Class Counsel’s requested fee award.

19 **D. The Contingent Nature of the Fee and Financial Burden Carried**
20 **Weigh in Favor of Class Counsel’s Requested Fees.**

21 “Courts have long recognized that the attorneys’ contingent risk is an
22 important factor in determining the fee award and may justify awarding a premium
23 over an attorney's normal hourly rates.” *Urakhchin*, 2018 WL 8334858 at *6
24 (quoting *Monterrubio*, 291 F.R.D. at 457). The Court acknowledged on
25 preliminary approval the “costly and protracted” character of expert discovery in
26 cases like this one. *Hurtado v. Rainbow Disposal Co.*, No. 817CV01605JLSDFM,

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1 2021 WL 79350, *4 (C.D. Cal. Jan. 4, 2021).

2 Class Counsel took this case on a contingent basis. Barton Decl. ¶ 14; Creitz
3 Decl. ¶ 14. To date, Class Counsel have invested 3,527.46 hours prosecuting this
4 case. Barton Decl. ¶ 14; Creitz Decl. ¶ 14. Class Counsel have received no
5 compensation for any efforts in this case since they were engaged by Plaintiffs.
6 Barton Decl. ¶ 26; Creitz Decl. ¶ 14. Class Counsel undertook this representation
7 despite the substantial risk that none of their expenses on behalf of the class—
8 including not just attorney time, but \$206,270.02 in litigation costs—would be
9 recouped. Barton Decl. ¶¶ 25, 26; Creitz Decl. ¶ 15.

10 Class Counsel assumed the financial risks associated with this essential
11 aspect of the case. Based on Class Counsel’s prior trial experience of ESOP cases,
12 Class Counsel anticipated paying as much as double the amounts already expended
13 for experts had the case proceeded through expert reports and depositions, and as
14 much as triple had it proceeded through trial. Barton Decl. ¶ 22. The significant
15 contingent risks and financial burden assumed by Class Counsel in litigating this
16 case thus weighs in favor of the reasonableness of the requested fees.

17 **II. The Lodestar Cross-Check Confirms the Reasonableness of Class**
18 **Counsel’s Requested Fee Award.**

19 Counsel's lodestar may also “provide a useful perspective on the
20 reasonableness of a given percentage award.” *Vizcaino*, 290 F.3d at 1050. The
21 lodestar method consists of two steps. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th
22 Cir. 2016). *First*, a court multiplies a reasonable number of hours expended on the
23 litigation by a reasonable hourly rate to arrive at a lodestar figure. *Stanger v. China*
24 *Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th Cir. 2016); *Kelly*, 822 F.3d at 1099.
25 *Second*, the court determines whether to adjust the lodestar figure upward or
26 downward using a multiplier based on factors not subsumed in the lodestar

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1 calculation. *Id.*; *Van Gerwen v. Guar. Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir.
2 2000). Among those factors, “the degree of success obtained is the most critical
3 factor in determining the reasonableness of a fee award.” *Bravo v. City of Santa*
4 *Maria*, 810 F.3d 659, 666 (9th Cir. 2016); *In re Bluetooth Headset Prods. Liab.*
5 *Litig.*, 654 F.3d at 942 (the most crucial factor is “the benefit obtained for the
6 class”).

7 **A. Class Counsel’s Hourly Rates are Reasonable Given the**
8 **Experience, Skill, and Expertise Required to Litigate a Complex**
9 **ERISA Case.**

10 The established standard for determining a reasonable hourly rate is the rate
11 “prevailing in the community for similar services of lawyers of reasonably
12 comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895
13 n.11 (1984); *Camacho v. Bridgeport Fin. Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).
14 “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees
15 in the community, and rate determinations in other cases, particularly those setting
16 a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market
17 rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th
18 Cir. 1990); *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110 (9th Cir. 2014).
19 “Complex ERISA cases, such as this, ‘involve a national standard, and attorneys
20 practicing ERISA law in the Ninth Circuit tend to practice in different districts.’”
21 *Marshall*, 2020 WL 5668935, at *6 (quoting *Mogck v. Unum Life Ins. Co. of Am.*,
22 289 F. Supp. 2d 1181, 1191 (S.D. Cal. 2003)). The “relevant hourly rate for Class
23 Counsel’s work” is thus “the ‘nationwide market rate.’” *Id.*

24 Here, the hourly rates charged by Plaintiff counsel are based on each
25 professional’s position, experience, and expertise. Block & Leviton LLP’s rates
26 fall between \$225 and \$900. Barton Decl. ¶ 14. These rates represent the
27 customary billing rates for the firm’s professionals and the level of skill required in
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1 a complex class action case of this type. Barton Decl. ¶ 15. Historical rates for all
2 years in which professionals billed time to this case are provided along with
3 current rates for all professionals still employed by Block & Leviton LLP. A
4 “district court has discretion to compensate delay in payment in one of two ways:
5 (1) by applying the attorneys' current rates to all hours billed during the course of
6 the litigation; or (2) by using the attorneys’ historical rates and adding a prime rate
7 enhancement.” *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
8 1305 (9th Cir. 1994).

9 Courts have recognized Block & Leviton’s and specifically Mr. Barton’s
10 significant experience with complex class action litigation and approved their
11 customary rates in other cases. Barton Decl. ¶ 21. A court of this District recently
12 approved of Block & Leviton’s rates – including those of all the attorneys in this
13 case -- in awarding fees for its successful representation of an objector to an
14 ERISA class action settlement (where the objector successfully challenged and
15 overbroad release), holding that that Block & Leviton’s rates “were within the
16 range of prevailing rates within the community.” *Marshall*, 2020 WL 5668963, at
17 *4. Similarly, another court of this Circuit approved of Block & Leviton’s rates as
18 of 2020 – which included the attorney rates of Joseph Barton, Colin Downes and
19 paralegal Ming Siegel – in awarding fees in a complex data privacy class action.
20 Barton Decl. Ex. A. Private clients also pay these rates. For example, a Fortune
21 100 company paid the firms’ customary rates where Mr. Barton and Block &
22 Leviton was counsel to the Independent Fiduciary for purpose of analyzing claims
23 and negotiating a settlement of ERISA fiduciary breach claims. Barton Decl. ¶ 20.

24 Joe Creitz, an ERISA litigation specialist who has tried multiple ERISA
25 cases, including an ESOP case, and has twenty-five years of ERISA experience,
26 has an hourly rate of \$800, representing his customary billing rate. Creitz Decl. ¶

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1 13-14. This is that rate that Creitz & Serebin LLP currently charges to and is paid
2 by its hourly clients. *Id.* Courts in California have approved fee awards for Mr.
3 Creitz at this rate. Creitz Decl. ¶ 12. In 2019 years ago, the United States District
4 Court for the District of Arizona approved a class action fee award based on Mr.
5 Creitz’s 2017 rate of \$750 per hour, Creitz Decl. ¶ 11.

6 These rates are also in line with rates approved by comparably skilled and
7 specialized lawyers in similar litigation. Three years ago, in 2018 in an ERISA
8 breach of fiduciary duty class action, this Court found that billing rates of up to
9 \$825 per hour for attorneys with more than ten years of experience, \$575 for those
10 with 10 years or fewer years of experience, and \$250 for paralegals were
11 reasonable “in light of counsel’s experience and the complexity of ERISA law.”
12 *Urakhchin*, 2018 WL 8334858, at *6. In 2018, Mr. Barton’s rate and the rates for
13 his associates and paralegals were within those ranges (or lower). Barton Decl. ¶
14 14. In another ERISA class action in this district just last year, a court approved
15 rates of up to \$900 per hour for attorneys with 14-25 years of experience and up to
16 \$650 per hour for attorneys with 5-14 years of experience in its lodestar
17 calculation. *Marshall*, 2020 WL 5668935 at *7; *see also Philips v. Munchery Inc.*,
18 No. 19-CV-00469-JSC, 2021 WL 326924, at *10 (N.D. Cal. Feb. 1, 2021)
19 (approving rates of up to \$950 per hour for class counsel with 15-30 years
20 experience). These cases demonstrate that Class Counsel’s rates are in line with
21 other attorneys of similar experience and skill handling complex ERISA litigation.

22 “The rates charged by the defendant’s attorneys provide a useful guide to
23 rates customarily charged in this type of case” particularly when “defendant has
24 hired expensive, out of town counsel, the plaintiffs seem justified in saying that the
25 nature of the case required the skills of out of town specialists.” *Chrapliwy v.*

26 *Uniroyal, Inc.*, 670 F.2d 760, 768 n.18 (7th Cir. 1982); *Spell v. McDaniel*, 616 F.

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1 Supp. 1069, 1092 (E.D.N.C. 1985) (rejecting attempt by “defendants ... to invoke
2 a double standard for this fee litigation—one set of rules governing payment of
3 defense counsel and quite another for plaintiff’s counsel.”). Both sides in this
4 litigation recognized this case was complex and sought specialized counsel from
5 outside the jurisdiction. The Republic Defendants’ primary attorneys in this
6 litigation were attorneys from the D.C. office of the international law firm Steptoe
7 & Johnson. As of 2018, Steptoe’s rates in their ERISA practice were \$953 for
8 senior partners and \$700 for senior associates. Barton Decl. Ex. B. These now
9 three-year-old rates are higher than the customary rates charged by Class Counsel’s
10 similarly experienced professionals today. Barton Decl. ¶ 14; Creitz Decl. ¶¶ 12-
11 14. Thus, the rates charged by Defendants’ attorneys also support the
12 reasonableness of Class Counsel’s fees.

13 Finally, Class Counsel’s rates are supported by declarations from multiple
14 attorneys familiar with the prevailing rates, both in the nationwide market for class
15 action ERISA litigation services and for complex class action litigation in the local
16 geographic area. Gregory Porter of Bailey Glasser and Daniel Feinberg of
17 Feinberg Jackson Worthman & Wasow LLP are two of the handful of other
18 attorneys who regularly handle ESOP litigation for employees as well as other
19 complex ERISA class action litigation. Porter Decl. ¶ 7; Feinberg Decl. ¶ 9. Mr.
20 Porter and Mr. Feinberg both attest and illustrate the comparability of their rates to
21 the rates of Class Counsel. Porter Decl. ¶ 4; Feinberg Decl. ¶ 8. Richard Donahoo
22 of Donahoo & Associates, PC in Tustin and Glen Kantor of Kantor & Kantor LLP
23 handle complex litigation in Southern California. Donahoo Decl. ¶ 8; Kantor Decl.
24 ¶ 6. Both of these lawyers all attest that Class Counsel’s rates are consistent with
25 the prevailing rates in this geographic market for these types of complex cases.
26 Donahoo Decl. ¶¶ 12-13; Kantor Decl. ¶ 15.

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B. The Hours Expended by Class Counsel are Reasonable.

A reasonable number of hours expended by a party’s counsel “is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Counsel are expected to “make a good faith effort to exclude . . . hours that are excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). For a district court to “reduce the number of hours worked,” for purposes of the lodestar calculation “it must appear that the time claimed is obviously and convincingly excessive under the circumstances.” *Charlebois v. Angels Baseball LP*, 993 F. Supp. 2d 1109, 1123 (C.D. Cal. 2012). In assessing the reasonableness of the hours expended, courts have taken into account the fact that the amount of time billed by a plaintiff’s counsel “is in large part a result of [a defendant’s] aggressive defense strategy.” *Wren v. RGIS Inventory Specialists*, No. 06 CV 5778, 2011 WL 1230826, at *26 (N.D. Cal. Apr. 1, 2011).

Class Counsel performed significant work to litigate this case vigorously and efficiently. For purposes of preparing the Complaint, Amended Complaint, and Second Amended Complaint, Class Counsel conducted extensive factual and legal investigations of the process by which Rainbow Disposal Co., Inc. was sold to Republic Services, Inc., as well as the business dealings of Rainbow’s lead executives. Barton Decl. ¶¶ 8-10. During the course of this contentious and complex case, Class Counsel filed briefs in opposition to four separate motions to dismiss, ECF No. 95, brought by different groups of Defendants. *See* ECF Nos. 73, 75, 78, 83. After defeating Defendants Rule 12 motions, ECF No. 110, Class Counsel briefed, argued, and secured certification of the Class over Defendants’ opposition. *See* ECF No. 177.

Class Counsel also engaged in extensive discovery. Plaintiffs issued more *HURTADO, et al., v. RAINBOW DISPOSAL CO., INC. EMPLOYEE STOCK OWNERSHIP PLAN COMMITTEE, et al.*, Case No. 17-cv-1605-JLS-DFM Class Counsel’s Memo. ISO Motion for Attorneys’ Fees

1 than 100 interrogatories and 67 document requests to Defendants. ECF No. 209-2
2 ¶¶ 2-10. Class Counsel reviewed more than 250,000 pages produced by Defendants
3 and non-parties in discovery. *Id.* at 11-12. Plaintiff’s counsel took 13 depositions,
4 including those of Defendants Jon Black, Catharine Ellingsen, Bill Eggleston,
5 Myndi Kort, and Michael Huycke. Class Counsel also took the depositions of non-
6 parties Al Malagiere, Brad Hileman, Bruce Andelson, Bryan Ward, a Rule 30(b)(6)
7 deposition of CR&R, Inc., ESOP Law Group, and Morris Aaron. *Id.* ¶ 16. Class
8 Counsel also obtained documents from and interviewed a number of former
9 employees and former business partners of Rainbow. ECF No. ¶ 6. Some of these
10 cooperating witnesses had relevant direct knowledge and others had indirect
11 knowledge that proved helpful in pointing to sources of information. *Id.*

12 To litigate this case efficiently, Class Counsel assigned work to junior
13 attorneys and paralegals with lower hourly rates as appropriate. Barton Decl. ¶ 13.
14 Co-Lead Class Counsel coordinated their work to avoid unnecessary duplication of
15 effort. *Id.*; Creitz Decl. ¶ 14. Prior to filing their motion for attorneys’ fees, counsel
16 from each firm reviewed time entries, and, just as counsel would prior to sending
17 bills to paying clients, removed time entries for duplicative or unnecessary work
18 that ordinarily would not be billed client. Barton Decl. ¶ 18; Handorf Decl. ¶ 11.
19 The lodestar figure submitted by Class Counsel in support of their request for fees
20 reflects these adjustments. Consistent with this Court’s procedures, Class Counsel
21 has submitted with this motion detailed itemizations of the billable tasks performed
22 by their professionals in this case. Creitz Decl. Ex. A; Barton Decl. Ex. D; Handorf
23 Decl. Ex. B. In light of efforts by Plaintiff’s counsel to litigate this case efficiently,
24 as well as the significant work performed over the past four years, the complexity
25 of the legal issues presented, and Defendants’ aggressive defense, the 3,527.46
26

1 hours expended by Co-Lead Class Counsel to date are reasonable.¹

2 **C. Class Counsel’s Requested Fees Reflect Only a Modest Multiplier**
3 **Over Lodestar.**

4 A court may adjust a lodestar figure upward or downward by considering
5 “the benefit obtained for the class.” *In re Bluetooth Headset Prods. Liab. Litig.*,
6 654 F.3d at 942; *Bravo*, 810 F.3d at 666 (“the degree of success obtained is the
7 most critical factor”). In part, “[t]he purpose of granting plaintiffs’ attorneys a
8 multiplier in a class action settlement is to reflect the risk that they assume in
9 bringing a lawsuit.” *Etter v. Thetford Corp.*, No. SACV1300081JLSRNB, 2017
10 WL 1433312, at *4 (C.D. Cal. Apr. 14, 2017) (Staton, J.). The majority of fee
11 awards are 1.5 to 3 times higher than lodestar. *Vizcaino*, 290 F.3d at 1051 & n.6
12 (affirming multiplier of 3.65 and reporting multipliers of up to 19.6). By contrast,
13 Co-Lead Class Counsel’s requested fee award represents only a 1.06 multiplier
14 over lodestar fees of Co-Lead Class Counsel, lower than the multiplier in the
15 majority of cases.² This Court has held that a lodestar multiplier of 1.69 falls “well
16 within the range of reasonableness.” *Etter*, 2017 WL 1433312 at *7; *Urakchin*,
17 2018 WL 8334858 at *7 (approving multiplier of 1.6 in ERISA class action). This
18 small multiplier here is modest in light of the complexity of the case, the excellent
19 result achieved for the Class, and compared to other awards in this Circuit. The
20 lodestar cross-check thus confirms that Class Counsel’s requested fees are
21 reasonable and supports their approval.
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24 ¹ These hours do not include the hours of Cohen Milstein Sellers & Toll PLLC,
25 with which Mr. Barton was formerly affiliated.

26 ² This amount is calculated without including the time expended by Cohen
27 Milstein. Taking into account that time makes an award of 30% less than lodestar.
28 *HURTADO, et al., v. RAINBOW DISPOSAL CO., INC. EMPLOYEE STOCK OWNERSHIP PLAN COMMITTEE, et al.*, Case No. 17-cv-1605-JLS-DFM
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1 **III. Class Counsel are Entitled to Reimbursement of Litigation and**
2 **Settlement Administration Expenses.**

3 “Attorneys may recover their reasonable expenses that would typically be
4 billed to paying clients in non-contingency matters.” *Urakhchin*, 2018 WL
5 8334858, at *7. Reasonable out-of-pocket litigation expenses are those that “would
6 normally be charged to a fee paying client.” *Trs. of the Const. Indus. and Laborers*
7 *Health and Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006).

8 Class Counsel requests reimbursement of a total of \$200,644.83 in expenses,
9 which includes the following charges, all of which are recoverable in this Circuit:
10 court fees, deposition costs, electronic research costs, electronic discovery
11 expenses, process server fees, expert fees, postage and courier fees, printing costs,
12 conference call costs and travel/lodging. Barton Decl. ¶¶ 25; Creitz Decl. ¶ 15;
13 Handorf Decl. ¶ 15. Each of these categories of expenses are recoverable. *Harris v.*
14 *Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994) (holding that “expenses related to
15 discovery” are recoverable expenses); *Davis v. City & County of S.F.*, 976 F.2d
16 1536, 1556 (9th Cir. 1992) (affirming that “out-of-pocket” expenses such as
17 “travel, courier and copying costs” are reimbursable), *vacated in other part by* 984
18 F.2d 345, 345 (9th Cir. 1993); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No.
19 07 CV 5944, 2016 WL 4126533, at *11 (N.D. Cal. Aug. 3, 2016) (approving
20 recovery of costs including conference call expenses); *Trs. of Const. Indus. &*
21 *Laborers Health & Welfare Tr.*, 460 F.3d at 1259 (holding that “reasonable
22 charges for computerized research may be recovered”); *Marshall*, 2020 WL
23 5668935 at *9 (approving payment of consulting and expert witness fees in ERISA
24 class action settlement). Class Counsel also requests reimbursement of the
25 Settlement Administrator’s fees in the amount of \$11,500.00. Barton Decl. at ¶ 27;
26 *see Francisco v. Emeritus Corp.*, No. 217CV02871VAPSSX, 2019 WL 7856768,
27 at *8 (C.D. Cal. Sept. 24, 2019) (approving settlement administration costs of
28 *HURTADO, et al., v. RAINBOW DISPOSAL CO., INC. EMPLOYEE STOCK*
OWNERSHIP PLAN COMMITTEE, et al., Case No. 17-cv-1605-JLS-DFM
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1 \$21,552 as reasonable in \$250,000 settlement); *see also Antonio Hurtado v.*
2 *Rainbow Disposal Co.*, No. 817CV01605JLSDFM, 2021 WL 79350, at *5 (C.D.
3 Cal. Jan. 4, 2021) (appointing CPT Group as Settlement Administrator and citing
4 favorable discounted rate of \$11,500).

5 These costs are substantially less than those reimbursed to plaintiffs' lawyers
6 in similar ERISA fiduciary breach settlements. *Waldbuesser v. Northrop Grumman*
7 *Corp.*, No. CV 06-6213-AB (JCX), 2017 WL 9614818, *1 (C.D. Cal. Oct. 24,
8 2017) (awarding \$1.2 in litigation expenses); *Kanawi v. Bechtel Corp.*, No. C 06-
9 05566 CRB, 2011 WL 782244, *1 (N.D. Cal. Mar. 1, 2011) (awarding \$1.6 million
10 in litigation expenses); *Urakhchin*, 2018 WL 8334858, at *7 (awarding \$600,000
11 in litigation expenses). These expenses are necessary to the successful prosecution
12 of the case, and Plaintiff's counsel advanced them without any guarantee they
13 would be recovered. Barton Decl. ¶ 26; Creitz Decl. ¶ 14-15; Handorf Decl. ¶ 16.
14 These expenses are thus reasonable and appropriate for reimbursement.

15 **CONCLUSION**

16 For the forgoing reasons, the Court should grant Class Counsel's Motion for
17 Attorneys' Fees and Litigation Expenses.

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1 DATED: April 15, 2021

Respectfully submitted,

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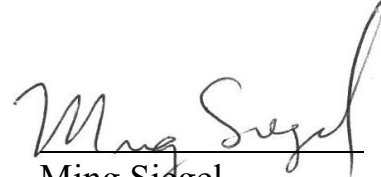
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CERTIFICATE OF SERVICE

I, Ming Siegel, hereby certify that on April 15, 2021, a copy of the foregoing Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement was served on the following counsel of record via the CM/ECF system:

Dated this 15th day of April 2021.


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