UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nicholas Smith and Derik George, individually and on behalf of all others similarly situated, Plaintiffs, v. Sun Country, Inc., The Board of Trustees of the Sun Country, Inc. 401(k) Profit Sharing Plan, John Does and Jane Does 1-50, Defendants. The Sun Country, Inc. 401(k) Profit Sharing Plan, Nominal Defendant.	No. 24-cv-619-KMM-EMB Hon. Kate M. Menendez Magistrate Judge Elsa M. Bullard

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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SUMMARY OF CLASS COUNSEL'S LODESTAR

Timekeeper	Hours	Rate	Total
The Barton Firm LLP's Lodestar			
Joseph Barton (Partner, J.D. 2000)	277.60	$995	$276,212.00
Marie-Lise Baroutjian (Associate, J.D. 2025)	8.00	$425	$3,400.00
Ming Siegel (Paralegal for 10 years, B.A. 2016)	95.60	$290	$27,724.00
Total	**321.20**		**$307,336.00**
Law Office of Thomas G. Jarrard PLLC's Lodestar			
T. Jarrard (JD 2007)	206.00	$650	$133,900.00
B. Doucette (Asst.)	65.00	$100	$6,500.00
Total	**271.00**		**$140,400.00**
Siri & Glimstad LLP's Lodestar			
Kent M. Williams	18.60	$1,230	$22,878.00
Gloria Martinez	12.60	$325	$4,095.00
Total	**31.20**		**$26,973.00**
Class Counsel's Total Lodestar	**623.40**		**$474,709.00**

SUMMARY OF CLASS COUNSEL'S EXPENSES

Type of Expense	Amount
The Barton Firm LLP's Expenses	
Expert	$32,188.25
Pacer	$82.10
Shipping	$46.27
Travel	$2,855.85
Total	**$35,172.47**
Law Office of Thomas G. Jarrard PLLC's Expenses	
Expert	$31,216.25
Travel	$2,856.33
Total	**$34,047.58**
Class Counsel's Total Expenses	**$69,220.05**

I. INTRODUCTION

Plaintiffs and Class Counsel have obtained an outstanding result for the Class. After filing this litigation over two and a half years ago, Plaintiffs and Class Counsel secured a settlement for the Class which requires payment of $1.55 million settlement plus disclosures of the methodology by which Sun Country has been calculating pension contributions for military leave. As a result of securing these benefits, Class Counsel request that the Court award one-third of the Settlement Fund as fees, reimbursement of $69,220.05 in costs and expenses incurred by Class Counsel and authorization to pay up to $12,000 in additional expenses for the expert to update the calculations and allocate the amounts to the Class.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Class Counsel's Pre-Litigation Investigation

After Plaintiff Smith discovered in October 2022 that Defendant Sun Country Airlines was not properly providing employer contributions to the Plan for periods of military service as required by USERRA, he raised the issue with Sun Country. Compl. ¶ 74. After not receiving a resolution for more than 14 months, Plaintiffs Smith and George contacted Class Counsel in December 2023. Compl. ¶¶ 74-77; Barton Decl. ¶ 22. After being retained by Plaintiffs, Class Counsel reviewed Plaintiffs' communications with Sun Country and documents related to

the Plan. *Id.* In December 2023, Class Counsel assisted Plaintiff Smith in sending a written request for documents about the Plan to which he was entitled under ERISA § 104(b)(4). *Id.* After Sun Country failed to provide all of the requested documents in January 2024, Class Counsel also assisted Plaintiff Smith in sending an additional written request. *Id.* After reviewing the documents received in response to Plaintiff Smith's request, Class Counsel began reviewing those documents and other documents provided by Plaintiffs. *Id.* Class Counsel finished drafting 39-page Complaint with six counts, which was filed on February 27, 2024.

B. The Parties' Settlement Negotiations

Shortly after the Complaint was filed, the parties began discussing the possibility of an early settlement. ECF No. 11 ¶ 3. Based on their experience litigating similar cases, Class Counsel provided Defendants' counsel a detailed request for documents, data and information pertaining to class member military leave, and Plan contributions, investments and performance, which Defendants agreed to produce. ECF No. 89-1 ("Agmt.") § II.2. After Defendants agreed to provide such documents and information, the parties then requested litigation to be stayed. ECF No. 22. Class Counsel then hired an expert to assist with the analysis of Defendants' data and to calculate the amount of pension contributions that Plaintiffs contended were owed and the amount of earnings lost from the missed pension contributions. ECF No. 80 ¶ 20; ECF No. 89 ¶ 4.

C. The Settlement

The Parties engaged in arm's length settlement negotiations which included two in-person settlement conferences with Magistrate Judge Elsa M. Bullard on August 22, 2025 and June 10, 2026 and additional written and telephonic negotiations. Agmt. § II.3. After the first settlement conference in August 2025, Sun Country notified Plaintiffs' counsel and the Court in September 2025 that its payroll department had not calculated employer pension contributions for pilots returning from qualified military service consistent with the methodology that Sun Country had intended to apply. *Id.* § II.4. As of October 1, 2025, Sun Country has represented that it has implemented a revised methodology consistent with USERRA, ERISA and the terms of the Plan. *Id.* § II.5.

At the second in-person settlement conference before Magistrate Judge Bullard on June 10, 2026, which lasted approximately 15 hours, the Parties executed a formal settlement agreement along with the agreed forms of disclosures that Sun Country would make to class members about the policies and calculations for employer pension contributions for military leaves. ECF No. 89 ¶ 6. Pursuant to the Settlement, Sun Country has agreed to pay and has paid $1,550,000.00 into a Qualified Settlement Fund in order to settle the class claims. *See* Agmt. § VI.1. After deductions of (a) any taxes on the income or earnings of the Settlement Fund, (b) any expenses incurred including escrow account fees, (c) any Court-approved

attorneys' fees and expenses, and (d) any Court-approved Class Representative service awards, the Net Settlement Fund will be distributed to the Class. *Id.* § VIII.3-4.

As part of the Settlement, Sun Country has agreed to provide a written explanation of its methodology for calculating employer pension contributions for pilots following periods of qualified military service and provide an individualized written explanation to each pilot returning from qualified military service. *Id*. § VI.3(a)-(b). After the August 2025 settlement conference, Defendants produced data from October 1, 2025 to December 31, 2025 that allowed Plaintiffs' counsel and Plaintiffs' expert to asses the contributions made after October 1, 2025 date on which Sun Country represented it implemented a revised methodology consistent with USERRA, ERISA and the terms of the Plan. ECF No. 89 ¶ 9. As a result of that representation and the analysis of that data, Plaintiffs did not seek prospective relief beyond the disclosures. *Id.*

The attorneys' fees and reimbursement of expenses requested were described in the Class Notice and the Class Notice sent by electronic mail. ECF No. 101 ("Flynn Decl.") Ex. A at 14. A copy of the Class Notice is also available through the settlement website. https://www.suncountryuserra.com/. To date, only one person has submitted an objection, which contests only that he is not part of the Class. ECF No. 100.

D. Additional Work to Be Performed

Through the work described above, Class Counsel successfully positioned Plaintiffs' case so that the Class members could receive the benefits of the Settlement. But Class Counsel's work is not yet complete. In addition to the instant motion, Class Counsel will prepare and file a Motion for Final Approval, and prepare for and attend the Fairness Hearing and respond to any objections. Barton Decl. ¶ 24. If the Court grants final approval, Class Counsel will supervise the allocation and distribution of the Net Settlement Fund to eligible Class members. *Id.* ¶ 25. To do so, Plaintiffs' expert will need to update the lost earnings calculations and perform calculations to allocate the Net Settlement Amount. *Id.* ¶ 33. Plaintiffs' expert has estimated that it will take between 10-20 hours to complete that work at a cost of $6,000 to $12,000. *Id.* Class Counsel will also need to oversee the allocations and distributions and finalize the Settlement. *Id.* ¶ 25.

III. A FEE AWARD OF ONE-THIRD IS APPROPRIATE UNDER THE PERCENTAGE OF THE FUND METHOD.

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Under the "common fund" doctrine, class counsel who obtain a recovery for the benefit of a class are entitled to an award of reasonable attorneys' fees from the settlement proceeds. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). When calculating attorneys' fees under the common fund doctrine, "a

reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 456 U.S. 886, 900 n.16 (1984). "In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.'" *Stotesbery v. MUY Pizza-Tejas, LLC,* No. 0:22-cv-01622-KMM-TNL, 2025 WL 752507, at *1 (D. Minn. Feb. 26, 2025) (Menendez, J.). The percentage of the common fund is the dominant and preferred method in the Eighth Circuit when evaluating attorneys' fees in common-fund settlements. *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002); *Petrovic v. Amoco Oil Co*., 200 F.3d 1140, 1157 (8th Cir. 1999); *In re Xcel Energy, Inc., Sec. Derivative & ERISA Litig*., 364 F.Supp.2d 980, 991 (D. Minn. 2005) (describing the percentage method "well established").

A. A Fee of One-Third Is the Market Rate For Common Fund Class Actions.

Courts in this Circuit and this District have recognized as the market rate, and frequently awarded attorneys' fees of one-third or more of a common fund in class actions. *In re U.S. Bancorp Litig*., 291 F.3d 1035, 1038 (8th Cir. 2022) (upholding a fee award of about 36% of settlement fund); *In re Pork Antitrust Litig*., No. 18-1776-JRT-JFD, 2023 WL 11892593, at *1, 3 (D. Minn. Apr. 11, 2023) (awarding fees equal to 33.3% of a $75 million common fund); *Carlson v. C.H. Robinson Worldwide, Inc*., No. CIV 02–3780-JNE-JJG, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (awarding fees equal to 35.5% of the settlement

fund). Indeed, this Court has awarded one third of the settlement in cases involving similarly sized settlements. *E.g. Stotesbery v. Ayvaz Pizza*, LLC, No. 0:22-cv-01622-KMM-DLM, 2026 WL 412643, at *1 (D. Minn. Feb. 13, 2026) (approving "attorneys' fees in the amount of one-third of the settlement fund, or $333,333.33"); *Stotesbery*, 2025 WL 752507, at *2 (approving attorneys' fees in the amount of one-third of the settlement fund, or $1,500,000).

B. The Seven Factors Applying the Percentage of the Fund Support a Fee of One-Third of the Cash Settlement Fund.

"When using the percentage-of-the-fund approach, the Court considers seven factors: (1) the benefit to the class; (2) the difficulty and novelty of the litigation; (3) the risks to plaintiffs' counsel; (4) the time and labor involved to bring the litigation; (5) the skill and experience of the attorneys representing the parties; (6) the reactions of class members; *and* (7) whether the award is consistent with awards in other cases." *In re Pork Antitrust Litig.*, 2023 WL 11892593, at *1 (emphasis original); *see Caligiuri v. Symantec Corp.,* 855 F.3d 860, 866 (8th Cir. 2017) (considering seven factors listed); *Krueger v. Ameriprise Fin., Inc.*, No. 11–CV–02781 (SRN/JSM), 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) (same); *Zilhaver v. UnitedHealth Grp., Inc.*, 646 F.Supp.2d 1075, 1082-83 (D. Minn. 2009) (same); *In re Xcel Energy*, 364 F.Supp.2d at 993 (same). Here, each factor supports Class Counsel's request.

1. The Settlement Substantially Benefits the Class.

It is the "rare class action settlement which provides complete relief for all alleged harms." *Messineo v. Ocwen Loan Servicing, LLC,* No. 15-cv-02076-BLF, 2017 WL 733219, at *9 (N.D. Cal. Feb. 24, 2017). Indeed, another court recently approved a $3.75 million settlement that "represent[ed] only 5.3% of the estimated total that could have been recovered." *Carew v. Lifecore Biomedical, Inc*., No. 24-cv-3028 (LMP/EMB), 2026 WL 2268568, at *8 (D. Minn. Aug. 6, 2026). Based on the data provided by Defendants and the calculation by Plaintiffs' expert, the $1.55 million cash amount represents, even after deduction of fees and expenses, a 100% recovery of amount of pension contributions owed and likely investment losses. Barton Decl. (ECF No. 89) ¶ 4. In other words, this represents the "rare class action" that provides complete relief (other than liquidated damages).

As this Court explained, the Court must "take[] into account the full value of the Settlement to Class Members in determining the percentage to award." *Kruger v. Lely N. Am., Inc.*, No. 0:20-cv-00629-KMM/DTS, 2023 WL 5665215, at *5 (D. Minn. Sept. 1, 2023). The "fee award should be based on the total economic benefit bestowed on the class." *Id. Tussey v. ABB*, Inc., No. 06-CV-04305-NKL, 2019 WL 3859763, at *3 (W.D. Mo. Aug. 16, 2019) (recognizing the same). Here, the Settlement provides several additional benefits beyond the $1.55 million. First, the Settlement provides additional benefit by offering the option of tax-deferred

payment method: Current Plan participants will receive distributions directly into their Plan account tax-deferred, while former participants will receive a check subject to tax withholding. Agmt. § VIII.4. As other courts have recognized in approving settlements with similar structures, payment to class members "through a tax-qualified retirement plan for income tax purposes provide an additional benefit to the Class." *Bennett v. Schnader Harrison Segal & Lewis LLP*, No. 2:24-cv-00592-JMY, 2026 WL 202548, at *4 (E.D. Pa. Jan. 22, 2026); *Tussey*, 2019 WL 3859763, at *2 (finding a settlement which allowed current participants to "receive their distributions directly into their Plan account tax deferred" provided a value of more than the cash settlement amount). As "not every ERISA class settlement includes such provisions," this "tax-favored structure is an additional benefit that provides real monetary benefits to Class Members (who are likely all high-income individuals)." *Bennett,* 2026 WL 202548, at *4. In *Hurtado v. Rainbow Disposal Co., Inc.,* No. 8:17-cv-01605-JLS-DFM, 2021 WL 2327858 (C.D. Cal. May 21, 2021), the court found that Class Counsel negotiation of terms – like the ones here that "preserv[ed] the tax advantages" for Class Members and "ensure[d] that Class Members do not bear the costs of receiving their distributions" supported an enhancement to the award of attorneys' fees. *Id.* at *4.

Second, the Settlement requires disclosure of the methodology that Sun Country uses to calculate its pension contributions. Agmt § VI.3(a)-(b). Third, and

perhaps most importantly, the fact that Sun Country only finally began to make pension contributions well-after this lawsuit was filed suggests that this litigation was the catalyst for changing Sun Country's policy and practices. Agmt § II.5. Finally, Class Counsel also negotiated that Defendants would pay for all of the costs of settlement administration. Agmt § VI.2. That such costs would not be deducted from the Settlement Fund also provides an added benefit to the Class.

Consequently, "the actual value to the class for the monetary part of the settlement is more than" the cash payment amount. *Tussey*, 2019 WL 3859763, at *2. This Settlement is especially positive for the Class when "weighed against the inherent risks of trial" and lengthy appeal, and "provides a substantial and immediate benefit to the class." *Khoday v. Symantec Corp.*, No. 11–cv–180 (JRT/TNL), 2016 WL 1637039, at *9 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, 2016 WL 1626836 (D. Minn. Apr. 22, 2016), *aff'd sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017). The substantial benefit to the Class weighs strongly in favor of the requested fee, as does the extensive and arms-length negotiations undertaken by experienced USERRA and ERISA class action attorneys.

Thus, this factor supports the approval of the requested attorneys' fees.

2. Class Counsel Undertook Significant Risk.

"The risks plaintiffs' counsel faced must be assessed as they existed in the

morning of the action, not in light of the settlement ultimately achieved at the end of the day[,]" and "[c]ourts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *In re Xcel Energy*, 364 F.Supp.2d at 994. When Class Counsel "litigat[es a] case on a contingency basis," they "assumed an appreciable risk this case would "produce no fee." *Carew*, 2026 WL 2268568, at *9 (quoting *Brissette v. Heckler*, 784 F.2d 864, 865–66 (8th Cir. 1986)). "Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy*, 364 F.Supp.2d at 994. Class Counsel explained the risks of this case on preliminary approval. ECF No. 88 at 14-15. "[E]ven if Plaintiffs prevailed before this Court, lengthy appeals (and a potential reversal) would no doubt have followed." *Carew*, 2026 WL 2268568, at *9; *Tussey*, 2019 WL 3859763, at *1. Even if not reversed on appeal, the case would still be tied up for years with post-trial appeals. *Krueger*, 2015 WL 4246879, at *1 (recognizing the risk of lengthy litigation post-trial in an ERISA class action). Class Counsel detailed numerous examples of cases where plaintiffs in employee benefits cases lost at trial, proved a violation but received no monetary relief or plaintiffs succeeded at trial but had the trial result reversed on appeal. ECF No. 88 at 15.

Class Counsel also cited the example of another USERRA case in which

plaintiffs reached a settlement only after six years of litigation and appeals. ECF No. 88 at 13 (discussing *Clarkson v. Alaska Airlines*). The same is true for the ERISA fiduciary claims which can drag on for a decade or more. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951, 955-56, 962 (8th Cir. 2017) (remanding for a second time a case filed in 2006); *Tibble v. Edison Int'l*, 575 U.S. 523, 525, 531 (2015) (vacating judgment and remanding case filed in 2007); *Anderson v. Intel Corp. Inv.*, No. 25-498, 2026 WL 120679 (U.S. Jan. 16, 2026) (grant of *petition for certiorari* for second Supreme Court review of case filed in 2015).

Despite these uncertainties regarding the outcome of the case, Class Counsel took the case on a contingent basis and devoted hundreds of hours and substantial out-of-pocket dollars, time and resources to the case that prevented Class Counsel from taking on other work. Barton Decl. ¶¶ 20, 29; Jarrard Decl. ¶¶ 23, 25. If the risks undertaken by Class Counsel are not "compensated with a commensurate award, no firm, no matter how large or well-financed, will have the incentive to consider pursuing a case such as this." *Tussey*, 2019 WL 3859763, at *3. Thus, this factor supports the approval of the requested attorneys' fees.

3. The Case Presents Complex Factual and Legal Issues.

The "novelty of USERRA cases, combined with the fact an attorney may not get paid at all for taking such a case, makes such cases 'undesirable' from the standpoint of attorney profitability." *Quiles v. Union Pac. R.R. Co., Inc.*, No.

8:16CV330, 2020 WL 1275783, at *6 (D. Neb. Mar. 17, 2020) (citing *Mace v. Willis*, No. 4:16-CV-04150-VLD, 2018 WL 4658224, at *5 (D.S.D. Sept. 28, 2018)). Indeed, the scheme under USERRA makes it different from other employment statutes. *Id.* In this case, there were also claims under ERISA, which is often recognized as "a complex field that involves difficult and novel legal theories and often leads to lengthy litigation." *Krueger*, 2015 WL 4246879, at *1. While USERRA § 4318 appears to require a relatively simple principle that returning servicemembers must be provided with employer contributions, the application of that principle has a number of open questions when addressing employees whose compensation is not reasonably certain and in particular for pilots who have an unusual bidding schedule and often frequent military service obligations. For example, while USERRA § 4318 requires using a 12-month average when the compensation is not reasonably certain, there are potential issues about (1) how that applies to a pilot who drops a trip for military service after his schedule was set, (2) whether 12-month average include months where the pilot takes some days of military service and (3) if there are no 12 months without military service, how is the 12-month average calculated? These open issues and the complexity of the calculation of damages and investment losses presented complicated issues and required counsel with experience and expertise in this area.

4. Class Counsel are Skilled in Both USERRA and ERISA.

"Very few plaintiffs' firms possess the skill set or requisite knowledge base to litigate" successfully "class-wide, statutorily-based claims for pension benefits." *Savani v. URS Pro. Sols. LLC*, 121 F.Supp.3d 564, 573 (D.S.C. 2015). As another court recognized in a case involving similar claims brought by these same counsel, "[c]ounsel has significant experience in class actions, employee benefits cases, and USERRA cases." *Tuten v. United Airlines, Inc.,* No. 12–cv–1561–WJM–MEH, 2013 WL 8480458, at *2 (D. Colo. Oct. 31, 2013). Courts across the country have recognized that Mr. Barton and Mr. Jarrard "have significant experience litigating class action and USERRA cases." *Clarkson v. Alaska Airlines Inc.*, No. 2:19-CV-0005-TOR, 2020 WL 4495278, at *5 (E.D. Wash. Aug. 4, 2020); *Anderson v. City and Cnty. of San Francisco*, No. 4:20-cv-01149-DMR, 2025 WL 3785958, at *3 (N.D. Cal. Dec. 18, 2025) (recognizing that Mr. Barton has "significant experience litigating USERRA class actions, as well as other employment and employee benefits class actions"); *Quiles v. Union Pac. R.R. Co*, 2020 WL 1275783, at *6 ("Mr. Jarrard … clearly ha[s] substantial experience in USERRA matters"). Courts have also recognized that Mr. Barton has "many years of experience litigating complex ERISA actions involving breaches of fiduciary duties and also "trying complex ERISA class actions." *Paszkiet v. Animal Doctor, Ltd*., No. 1:24-cv-8403, 2026 WL 2620412, at *2 (N.D. Ill. Aug. 27, 2026); *Imber v. Lackey,* No. 1:22-cv-

00004-HBK, 2025 WL 2687358, at *10 (E.D. Cal. Sept. 19, 2025) (recognizing Mr. Barton "has extensive experience in employee benefits class actions, including numerous ERISA class actions"). In short, Class Counsel have decades of specialized experience litigating both USERRA and ERISA class actions. Barton Decl. ¶¶ 2, 4-5; Jarrard Decl. ¶ 5. Not only do Mr. Barton and Mr. Jarrard have significant USERRA and/or ERISA class action experience, but they have been class counsel in numerous cases involving airline pilots. Barton Decl. ¶ 4; Jarrard Decl. ¶¶ 6-11. Here, they deployed their expertise to effectively and efficiently investigate, litigate, and settle this matter. Thus, this factor also supports the requested fee.

5. Class Counsel Spent Significant Time and Effort.

In evaluating this factor, courts consider not only the number of hours, but whether "Class Counsel's claimed work was duplicative or unnecessary." *Carew*, 2026 WL 2268568, at *9. In cases where the litigation was settled after two years, courts in this district have found that spending 1,000 to 1,500 hours was "a fairly efficient use of attorney resources." *Id.* (finding 1,5000 hours over two years to achieve a $3.75 million settlement which was 5.3% of maximum recovery was efficient); *In re Xcel Energy*, 364 F.Supp.2d at 996 (finding plaintiffs' counsel "moved the case along expeditiously," where the attorneys spent 1,082 hours). Here, Class Counsel has diligently investigated and prosecuted this case since

2023, by investigating, litigating, and then negotiating a resolution. Barton Decl. ¶ 22; Jarrard Decl. ¶ 37. As of October 2026, Class Counsel's lawyers and staff collectively have expended over 600 hours in prosecuting this action on behalf of the Class. Barton Decl. ¶ 20; Jarrard Decl. ¶ 41; Williams Decl. ¶ 8. Relying on their expertise in the relevant areas of law, their prior experience litigating cases on behalf of pilots and similar cases, Class Counsel efficiently litigated and settled this case. Thus, this factor also supports the requested attorneys' fees.

6. The Reaction of the Class Favors the Requested Fee.

Where no class members have objected to class counsel's requested fees, that favors the requested fee. *Carew,* 2026 WL 2268568, at *9; *Randall v. GreatBanc Trust Co.*, No. 22-cv-2354 (LMP/DJF), 2026 WL 1068035, at *6 (D. Minn. Apr. 20, 2026). To date, no Class Members have objected to Class Counsel's requested fee. Barton Decl. ¶ 34. The only objection received to date is by a person who claims that he was misidentified as a Class member and should not be included in the Class. ECF No. 100; *see also* ECF No. 103.

7. The Percentage Requested is In-Line With Fee Awards in Similar Cases.

"A one-third fee is a common benchmark in private contingency fee cases," and "with high-risk and high-cost cases such as this, contingency fee arrangements are the 'key to the courthouse' for individuals taking on a large corporation." *Tussey*, 2019 WL3859763, at *4. In employee benefit class actions, "courts have

consistently awarded one-third contingent fees." *Krueger*, 2015 WL 4246879, at *1-3 (approving fee award of about one-third of a $27.5 million common fund in a 401(k) case); *Tussey*, 2019 WL 3859763, at *2-4, 6 (finding a "one-third fee is common in these cases" and awarding about one-third of the monetary settlement as fees); *Dennard v. Transamerica Corp.*, No. 15 cv 30 EJM, 2016 WL 6471254, at *1 (N.D. Iowa Oct. 28, 2016) (awarding about one-third of the cash settlement as fees). Thus, Class Counsel's requested fee of one-third of the Settlement Fund is well in-line with the standard for comparable class actions. And as the settlement includes other valuable benefits for the class, the true percentage of the total benefits is less than one-third. *Supra* III.B.1. Thus, this factor supports the approval of the requested attorneys' fees.

IV. A LODESTAR CROSS-CHECK CONFIRMS THAT THE REQUESTED FEE IS REASONABLE

The Eighth Circuit has confirmed the use of the "percentage of the fund" as the primary metric to determine a reasonable fee, but allows use of a lodestar approach to "double-check" the reasonableness of the percentage of the fund method. *Petrovic*, 200 F.3d at 1157. The lodestar method calculates the hours worked and multiplies them by a typical hourly rate. *Id.; Keil v. Lopez,* 862 F.3d 685, 701 (8th Cir. 2017) (explaining the lodestar approach calculates "the hours expended by an attorney are multiplied by a reasonable hourly rate of compensation"). Here, a lodestar cross-check confirms the reasonableness of the

amount sought.

A. Class Counsel's Hourly Rates Are Not Only Reasonable But Lower Than Hourly Rates Of Comparable Attorneys.

Another court in this District recently found that the following "hourly rates are generally in line for attorneys and paralegals involved in complex class-action litigation:" senior attorneys charging "between $1,120 and $1,500 per hour," associates charging "between $650 and $826 per hour, and legal support staff charg[ing] $450 per hour." *Carew*, 2026 WL 2268568, at *10.[1] Earlier this year, another court in this District approved the following rates for attorneys in an employee benefits class action: "senior Class Counsel charge between $1,000 and $1,375 per hour, associate Class Counsel charge between $525 and $750 per hour, and legal support staff charge between $325 and $400 per hour." *Randall*, 2026 WL 1068035, at *7. In making this finding, the *Randall* court relied in part on yet another employee benefits case approving similar rates: *Id.* (citing *Snyder v. UnitedHealth Grp., Inc.*, No. 21-cv-1049 (JRT/DJF), (D. Minn.) (finding hourly rates of $1,000 to $1,400 for partners, $500 to $725 for associates, and $325 for legal support staff to be "reasonable and consistent with rates" in employee

[1] The Supreme Court has recognized that where there is a delay in an award of fees, "[c]ompensation for this delay is generally made 'either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value.'" *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010); *White v. Martin,* 290 F.Supp.2d 986, 992 (D. Minn. 2003) (awarding fees based on current rates in an ERISA case).

benefits class-action litigation)).[2] By comparison, out-of-state Class Counsel's rates are much lower than those approved for other cases as their senior attorney rates are both under $1,000 per hour. Barton Decl. ¶ 20; Jarrard Decl. ¶¶ 35-36. Jennifer Lee at Engstrom Lee in Minneapolis, who litigates employee benefit class actions, confirms that Class Counsel's rates are in-line with comparable attorneys handling similar litigation. Lee Decl. ¶¶ 7-9. And local counsel Kent Williams, who has practiced in this District handling class action litigation, likely confirms these rates are in line with, if not lower than, the rates for complex class action such as this. Williams Decl. ¶ 7. Thus, Class Counsel's hourly rates are more than reasonable.

B. Class Counsel's Hours Are Reasonable.

As "the lodestar cross-check calculation need entail neither mathematical precision nor bean-counting," courts have held that a "district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *In re Rite Aid Corp. Sec. Litig.,* 396 F. 3d 294, 306-07 (3d Cir. 2005); *Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 50 (2d Cir. 2000) ("[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized

[2] This is also consistent with the rates used in other jurisdictions for complex employee benefit class actions. *Ford v. Takeda Pharm. U.S.A., Inc*., No. 1:21-cv-10090-WGY, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023) (approving as reasonable rates of $635 to $1,370 per hour for attorneys).

by the district court. . . . Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case"). As of October 15, 2026, Class Counsel has expended over 600 hours of attorney and staff time prosecuting this matter. Barton Decl. ¶ 20; Jarrard Decl. ¶ 41; Williams Decl. ¶¶ 8-9. These hours were spent investigating, drafting, and filing the Complaint, reviewing the materials provided by Defendants for purposes of settlement and consulting with Plaintiffs' expert, preparing for and appearing at two settlement conference sessions, negotiating the terms of the settlement, drafting and negotiating the Settlement Agreement, drafting the motion and brief for class certification, and drafting the motion and brief for preliminary approval. Barton Decl. ¶ 23; Jarrard Decl. ¶ 37; Williams Decl. ¶ 4. A more detailed breakdown of the hours devoted to this matter by professional is provided in the attached declarations from attorneys with each firm. *See* Barton Decl. ¶ 20; Jarrard Decl. ¶ 41; Williams Decl. ¶ 8. The requested fee is based on the time expended by four attorneys, as well as staff, who worked on this case on behalf of Plaintiffs, *see* Barton Decl. ¶ 20; Jarrard Decl. ¶ Jarrard Decl. ¶ 41; Williams Decl. ¶ 8. Unlike many class action cases, this case was brought and litigated by two small firms and by attorneys with substantial experience in this area so that the work was handled efficiently.

C. The Lodestar Multiplier Is Appropriate.

Courts recognize that, in light of the complexity of class actions and the risk

that class counsel assume in a case such as this one, lodestar multipliers are appropriate when assessing a reasonable fee. *Randall*, 2026 WL 1068035, at *7 (finding a 4.6 multiplier in an employee benefits class action "within the range of reasonableness for complex class action lawsuits"); *see Rawa v. Monsanto Co.*, 934 F.3d 862, 870-71 (8th Cir. 2019) (affirming the grant of a fee with a lodestar multiplier of 5.3). This Court found that multiplier of 3.15 times lodestar was "reasonable based on Eighth Circuit precedent." *Stotesbery,* 2025 WL 752507, at *2. Based on the hours recorded and their current hourly rates, Class Counsel's combined lodestar amount to date is $ 474,709.00. The fees requested represent a multiplier of about 1.09 when compared to Class Counsel's lodestar. Thus, a lodestar cross-check supports the award requested.

V. CLASS COUNSEL'S REQUEST FOR REIMBURSMENT OF LITIGATION COSTS AND EXPENSES SHOULD BE APPROVED

It is "well-established that '[r]easonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement.'" *Kruger v. Lely North America, Inc.,* 2023 WL 5665215, at *6 (D. Minn. 2023) (Menendez, J.) (quoting *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010)). In such cases, counsel "may recover those expenses that would normally be charged to a fee-paying client." *Tussey*, 2019 WL 3859763, at *5 (quoting *In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, No. MDL 05-1708,

2008 WL 682174, at *4 (D. Minn. Mar. 7, 2008)).

Expenses from a common fund include many litigation expenses beyond the "narrowly defined 'costs' recoverable from an opposing party under Rule 54(d)," and include "expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research." *Tussey*, 2019 WL 3859763, at *5 (citation omitted); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10–4038–MWB, 2011 WL 5547159, at *4 (N.D. Iowa) (approving reimbursement for expenses that include "expert fees, computerized research fees, document and data management costs, travel and lodging expenses, copying costs, the cost of court reporters and deposition transcripts, and filing fees"). Here, the overwhelming majority of the expenses were expenses related to Plaintiffs' expert to calculate the pension contributions and investment losses. *See* Barton Decl. ¶ 30; Jarrard Decl. ¶ 43. The second most significant expense was travel to the two settlement conferences. *Id.* Class Counsel have not sought reimbursement for Westlaw/Lexis or data management.

As "Class Counsel represented Plaintiffs on a contingent-fee basis, Class Counsel had a strong incentive to keep these expenses at a reasonable level." *Randall*, 2026 WL 1068035, at *8; *Tussey,* 2019 WL 3859763, at *5. "[R]educing [litigation expenses] because the district judge thinks costs too high in general is not" permissible. *Tussey,* 2019 WL 3859763, at *5 (quoting *In re Synthroid*

Marketing Litig., 264 F.3d 712, 722 (7th Cir. 2001)). As this Court has explained, "a summary by category of the costs and expenses incurred" is sufficient. *Kruger,* 2023 WL 5665215, at *6. Class Counsel has advanced $69,220.05 in case-related costs. Barton Decl. ¶ 30; Jarrard Decl. ¶ 43. Tables summarizing the types of expenses are provided in attached declarations. Barton Decl. ¶ 30; Jarrard Decl. ¶ 43. Here, Class Counsel's out-of-pocket litigation expenses were reasonably incurred and necessary for the prosecution of this case and are therefore properly recoverable.

Finally, Class Counsel requests authorization to expend up to $12,000 in addition expert expenses to update the damage calculations (as the amount of lost earnings was only performed through the settlement conference) and to have the expert assist with completing the allocations to the Class. To ensure that the settlement payments can be made into the Plan without jeopardizing the tax-qualified status of the Plan, Defendants' counsel has requested a year-by-year amount for both the pension contributions and the lost earnings by class member. Barton Decl. ¶ 33. Plaintiffs' expert estimates that it will take between 10-20 hours to complete that work. *Id*. As these are necessary expenses to have the allocation calculations performed, this amount should be approved as well.

VI. CONCLUSION

For the foregoing reasons, Class Counsel should be granted and Class

Counsel should be award one-third of the Settlement Fund in attorneys' fees, reimbursement of litigation expenses in the amount of $69,220.05 and authorized to expend up to an additional $12,000 in expert expenses to update the damage calculations and finalize the allocations to the Class.

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Respectfully submitted,



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