

1 Andrew Ferich (admitted *pro hac vice*)
2 *aferich@ahdootwolfson.com*
3 **AHDOOT & WOLFSON, PC**
4 201 King of Prussia Road, Suite 650
5 Radnor, Pennsylvania 19087
6 310.474.9111 (*telephone*)
7 310.474.8585 (*facsimile*)

8 Erich P. Schork (admitted *pro hac vice*)
9 *erichschork@robertslawfirm.us*
10 **ROBERTS LAW FIRM US, PC**
11 PO Box 31909
12 Chicago, IL 60631-9998
13 510.821.5575 (*telephone*)
14 510.821.4474 (*facsimile*)

15 *Co-Lead Class Counsel*

16 [Additional counsel appear on signature page]

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 NICKOLAS TSUI and WILLIAM LUGO,
20 individually and on behalf of all others
21 similarly situated,

22 Plaintiffs,

23 v.

24 UNIVERSAL SERVICES OF AMERICA,
25 LP, ALLIED UNIVERSAL TOPCO LLC,
26 ALLIED UNIVERSAL BENEFITS
27 COMMITTEE, and JOHN AND JANE
28 DOES 1-50,

Defendants.

Case No. 8:22-cv-01158-JWH-JDE
**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT AGREEMENT**

Hearing: September 23, 2026
Time: 10:00 a.m.
Judge: Hon. John W. Holcomb
Ctrm: 9D

[Concurrently filed Declaration of
Jeffrey Mitchell]

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. FACTUAL AND PROCEDURAL OVERVIEW 2

 A. Litigation History 2

 B. Mediation and the Settlement Negotiations 2

 C. The Court Granted Plaintiffs’ Motion for Preliminary Approval 3

III. THE TERMS OF THE SETTLEMENT 3

 A. The Settlement Class 3

 B. Settlement Consideration and Plan of Allocation 4

 C. Attorneys’ Fees and Costs and Class Representative Service Payments 5

 D. Settlement Administration and Notice Costs 5

 E. Review by Independent Fiduciary 5

 F. Release 6

 G. Notice Was Provided in Adherence With the Approved Notice Plan 6

IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT 7

 A. Legal Standards for Final Approval 7

 B. Settlement Class Certification Is Appropriate Under Fed. R. Civ. P. 23 7

 C. The Settlement Is Fair, Reasonable, and Adequate, and Warrants Final Approval from the Court 10

 1. The Strength of Plaintiffs’ Case 10

 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation ... 11

 3. The Risk of Maintaining Class Action Status Throughout Trial 11

 4. The Amount Offered in the Settlement 11

 5. The Extent of Discovery Completed and the Stage of the Proceedings 12

 6. The Experience and Views of Counsel 13

1 7. The Presence of a Governmental Participant..... 14
2 8. The Reaction of the Class Members 14
3 D. Other Considerations Support Final Approval From the Court 14
4 1. The Settlement Is the Product of Arm’s-Length Negotiations 14
5 2. The Approved Plan of Allocation Is Highly Effective 15
6 3. The Proposed Attorneys’ Fees and Costs and Class Representative Service
7 Payments Are Reasonable..... 16
8 V. CONCLUSION..... 17
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

1

2 **Cases**

3 *Adoma v. Univ. of Phoenix, Inc.*,

4 913 F. Supp. 2d 964 (E.D. Cal. 2012) 7

5 *Amchem Prods., Inc. v. Windsor*,

6 521 U.S. 591 (1997) 7

7 *Boyd v. Bechtel Corp.*,

8 485 F. Supp. 610 (N.D. Cal. 1979)..... 13

9 *Churchill Vill., LLC v. Gen. Elec.*,

10 361 F.3d 566 (9th Cir. 2004) 10, 11, 14

11 *Frazier v. Honeywell Savings and Pension Plan*,

12 No. 2:10-cv-1618 (D. Ariz. Nov. 20, 2012) 8

13 *G. F. v. Contra Costa Cnty.*,

14 No. 13-cv-03667, 2015 WL 4606078 (N.D. Cal. July 30, 2015) 14

15 *Humphrey v. United Way*,

16 No. H-05-0758, 2007 WL 2330933 (S.D. Tex. Aug. 14, 2007)..... 9

17 *In re Bluetooth Headset Prods. Liab. Litig.*,

18 654 F.3d 935 (9th Cir. 2011) 14, 15

19 *In re Checking Account Overdraft Litig.*,

20 830 F. Supp. 2d 1330 (S.D. Fla. 2011) 12

21 *In re Citigroup Pension Plan ERISA Litig.*,

22 241 F.R.D. 172 (S.D.N.Y. 2006) 9

23 *In re Fleet/Norstar Sec. Litig.*,

24 935 F. Supp. 99 (D.R.I. 1996) 14

25 *In re Online DVD-Rental Antitrust Litig.*,

26 779 F.3d 934 (9th Cir. 2015) 10

27 *In re Pacific Enterprises Securities Litig.*,

28 47 F.3d 373 (9th Cir. 1995) 13

In re Rite Aid Corp. Sec. Litig.,

146 F. Supp. 2d 706 (E.D. Pa. 2001) 12

1 *In re Toys R Us-Delaware, Inc. Fair & Accurate Credit Transactions Act*
 2 *(FACTA) Litig.*,
 295 F.R.D. 438 (C.D. Cal. 2014)..... 11, 13

3 *Kanawi v. Bechtel Corp.*,
 4 254 F.R.D. 102 (N.D. Cal. 2008) 8, 9

5 *McKenzie v. Fed. Exp. Corp.*,
 6 No. 10-cv-02420, 2012 WL 2930201 (C.D. Cal. July 2, 2012) 11

7 *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*,
 8 221 F.R.D. 523 (C.D. Cal. 2004)..... 11, 14

9 *Peel v. Brooksamerica Mortg. Corp.*,
 10 No. SACV 11-00079, 2014 WL 12589317 (C.D. Cal. Nov. 13, 2014) 12

11 *Rodriguez v. W. Publ’g Corp.*,
 12 563 F.3d 948 (9th Cir. 2009) 10

13 *Stott v. Capital Fin. Servs., Inc.*,
 277 F.R.D. 316 (N.D. Tex. 2011)..... 12

14 *Tom v. Com Dev USA, LLC*,
 15 No. CV 16-1363, 2017 WL 8236268 (C.D. Cal. Sept. 18, 2017) 7, 9

16 *Van Bronkhorst v. Safeco Corp.*,
 17 529 F.2d 943 (9th Cir. 1976) 11

18 *Wal-Mart Stores, Inc. v. Dukes*,
 19 564 U.S. 338 (2011) 7

20 *Wang v. Chinese Daily News, Inc.*,
 21 737 F.3d 538 (9th Cir. 2013) 7

22 *Wildman v. Am. Century Servs., LLC*,
 No. 4:16-cv-00737, 2017 WL 6045487 (W.D. Mo. Dec. 6, 2017) 9

23 **Statutes**

24 29 U.S.C. § 1109(a) 8

25 29 U.S.C. §§ 1001-1461 2

26

27 **Other Authorities**

28 68 Fed. Reg. 75,632 5

1 Fed. R. Civ P. 23(a) 7, 8

2 Fed. R. Civ P. 23(a)(1)..... 8

3 Fed. R. Civ P. 23(a)(2)..... 8

4 Fed. R. Civ P. 23(a)(3)..... 8

5 Fed. R. Civ P. 23(a)(4)..... 8

6 Fed. R. Civ P. 23(a)(4)..... 8

7 Fed. R. Civ P. 23(b) 7, 8

8 Fed. R. Civ P. 23(b)(1) 8, 9

9 Fed. R. Civ P. 23(b)(1)(A)..... 9

10 Fed. R. Civ P. 23(b)(1)(B) 9

11 Fed. R. Civ P. 23(b)(1)(B) 9

12 Fed. R. Civ P. 23(e) 10, 15, 16

13 Fed. R. Civ. P. 23(e)(2)..... 2, 7

14 Fed. R. Civ P. 23(e)(2)(C)(ii) 15

15 Fed. R. Civ P. 26(f)..... 11

16

17 2 William B. Rubenstein, *Newberg on Class Actions* § 4:7
(5th ed., June 2018 update)..... 9

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 Plaintiffs¹ Nickolas Tsui and William Lugo, by and through Class Counsel, hereby
3 move for final approval of the Class Action Settlement Agreement (the “Settlement” or
4 “SA”)² with Defendants Universal Services of America, LP, Allied Universal Topco
5 LLC, Allied Universal Benefits Committee (together, “Allied Universal” or
6 “Defendants”) (collectively with Plaintiffs, the “Parties”).

7 In this lawsuit, Plaintiffs allege that Defendants breached fiduciary duties owed to
8 Plaintiffs and other Class Members in violation of the Employee Retirement Income
9 Security Act of 1974, as amended (“ERISA”), resulting in Plaintiffs and Class Members
10 paying excessive recordkeeping and administrative (“RK&A”) fees. Plaintiffs allege
11 these breaches cost Class Members millions of dollars in excessive fees, costs, and lost
12 investment opportunity. Defendants denied the allegations and denied that they bear any
13 liability.

14 The Settlement creates a non-reversionary common fund of \$1,400,000 to resolve
15 Plaintiffs’ allegations. The parties reached the Settlement after extensive, arm’s-length
16 negotiations between experienced class action counsel, with the assistance of David
17 Geronemus of JAMS, a highly experienced mediator in ERISA class action cases. The
18 Settlement was reached following an all-day mediation session with Mr. Geronemus on
19 October 23, 2024, and negotiations continued in the weeks after to finalize the terms of
20 the Settlement. Mr. Geronemus’s participation in and facilitation of settlement
21 negotiations confirms the fairness of the result reached on behalf of the Settlement Class.

22 To date, Class Counsel has received no objection to the Settlement from any Class
23 Member, further confirming the fairness and excellence of outcome achieved by Class
24

25 _____
26 ¹ Unless otherwise noted, all capitalized terms not separately defined here have the
27 meaning ascribed to them in the Settlement Agreement.

28 ² The Settlement Agreement was attached as Exhibit 1 to the granted Memorandum of
Points and Authorities in Support of Unopposed Motion for Preliminary Approval, ECF
No. 83-1 (“Motion for Preliminary Approval”).

1 Counsel for Class Members. The Settlement delivers tangible and immediate benefits to
2 Class Members that address the alleged harms in this case without protracted litigation
3 and the inherent risks of class action litigation. It delivers a fair, adequate, and reasonable
4 resolution for the Class, and merits final approval. Fed. R. Civ. P. 23(e)(2).

5 **II. FACTUAL AND PROCEDURAL OVERVIEW**

6 **A. Litigation History**

7 In this class action lawsuit, Plaintiffs claim that Defendants breached fiduciary
8 duties in violation of ERISA, 29 U.S.C. §§ 1001-1461. Specifically, Plaintiffs allege that,
9 as the sponsors and administrators of the Plan, Defendants were responsible for selecting,
10 monitoring, and retaining third parties to provide recordkeeping and other administrative
11 services, and that Defendants were responsible for monitoring Plan costs—namely
12 RK&A costs—to ensure those charges were fair, reasonable, and appropriate, but failed
13 to do so.

14 Plaintiffs filed this class action lawsuit on June 13, 2022. ECF No. 1. On August
15 8, 2022, Defendants moved to dismiss this litigation in its entirety. ECF No. 35. Plaintiffs
16 opposed the motion to dismiss. ECF No. 46. On February 1, 2024, the Court denied the
17 motion to dismiss in its entirety. ECF No. 54. On April 30, 2024, Defendants answered
18 the Complaint. ECF No. 69. Defendants denied the allegations and denied that they bear
19 any liability.

20 **B. Mediation and the Settlement Negotiations**

21 In June 2024, the parties discussed the prospect of early resolution. Previously
22 submitted Declaration of Erich P. Schork (“Schork Prelim. Decl.”), ECF No. 83-3, at ¶
23 13. As a result of this discussion, the Parties mutually agreed to mediate this matter. *Id.*
24 An all-day mediation session was reserved with David Geronemus of JAMS for October
25 23, 2024. *Id.* ¶ 14. In the meantime, the Parties began engaging in settlement negotiations
26 and preparing for the October 23, 2024 mediation. *Id.* ¶¶ 15-16.

27 On October 23, 2024, the Parties participated in a full-day mediation session with
28 Mr. Geronemus. *Id.* ¶ 17. With Mr. Geronemus’s guidance, the Parties had a productive

1 mediation session. *Id.* However, the Parties did not reach an agreement to settle the
2 litigation on that day. *Id.* ¶ 18. After weeks of continued negotiations, on November 11,
3 2024, the Parties tentatively agreed to a settlement providing for the creation of a
4 Qualified Settlement Fund consisting of a Gross Settlement Amount of \$1,400,000. *Id.*

5 For many weeks following the mediation, the Parties engaged in extensive
6 subsequent discussions to finalize the Settlement’s terms. *Id.* ¶ 20. During negotiations,
7 the Parties deferred discussions concerning the maximum Service Payments to be sought
8 on behalf of the proposed Class Representatives and the amount of Attorneys’ Fees and
9 Costs to be sought by Plaintiffs’ counsel until after reaching an agreement on all material
10 terms of the Settlement. *Id.* ¶ 19. Negotiations regarding the Settlement have been
11 conducted at arm’s length, in good faith, and under the supervision of Mr. Geronemus.
12 *Id.* ¶ 17. After comprehensive negotiations and diligent efforts, Plaintiffs and Allied
13 Universal finalized the terms of and executed the Settlement. *Id.* ¶ 23.

14 **C. The Court Granted Plaintiffs’ Motion for Preliminary Approval**

15 On January 31, 2025, Plaintiffs filed their unopposed Motion for Preliminary
16 Approval. ECF Nos. 82, 83. The Court vacated the previously scheduled hearing for the
17 Motion for Preliminary Approval set for February 25, 2025. ECF No. 86. On December
18 12, 2025, the Court entered the Order granting the unopposed Motion for Preliminary
19 Approval, establishing Settlement deadlines and setting the Final Approval Hearing for
20 September 23, 2026. ECF No. 87.

21 **III. THE TERMS OF THE SETTLEMENT**

22 **A. The Settlement Class**

23 The Settlement Class is defined as follows: “All persons who participated in the
24 Plan with account balances at any time during the period from June 13, 2016 through
25 January 1, 2025 (“Class Period”), including any Beneficiary of a deceased Person who
26 participated in the Plan and had an account balance at any time during the Class Period,
27 and any Alternate Payee of a Person subject to a QDRO who participated in the Plan and
28 had an account balance at any time during the Class Period.” SA ¶ 1.44. Excluded from

1 the Settlement Class are Defendants and their Beneficiaries, any Plan fiduciaries, and the
2 Judges assigned to this case. *Id.*

3 **B. Settlement Consideration and Plan of Allocation**

4 The Settlement provides significant monetary benefits to the Class. It establishes a
5 non-reversionary Qualified Settlement Fund in the amount of \$1,400,000. SA ¶ 1.24.

6 The Settlement provides payments to all Class Members under a Plan of
7 Allocation. *Id.* ¶ 5.3 and at Exhibit B. The amount proposed to be paid to each Class
8 Member from the Net Settlement Amount is based upon the following plan: 1) Calculate
9 the sum of each Class Member’s account balances for each year of the Class Period based
10 on the data as of the dates above. This amount shall be that Class Member’s “Balance”;
11 2) Sum the Balance for all Class Members; 3) Allocate each Class Member a share of the
12 Net Settlement Amount in proportion to the sum of that Class Member’s Balance as
13 compared to the sum of the Balance for all Class Members, i.e., where the numerator is
14 the Class Member’s Balance and the denominator is the sum of all Class Members’
15 Balances. *Id.* at Exhibit B.

16 The amounts resulting from this initial calculation shall be known as the
17 “Preliminary Entitlement Amount.” Class Members who are entitled to a distribution of
18 less than \$10.00 will receive a distribution of \$10.00 (the “De Minimis Amount”) from
19 the Net Settlement Amount. The Settlement Administrator shall progressively increase
20 Class Members’ awards falling below the De Minimis Amount until the lowest
21 participating Class Member award is the De Minimis Amount, i.e., \$10.00. The resulting
22 calculation shall be the “Final Entitlement Amount” for each Settlement Class Member.
23 The sum of the Final Entitlement Amount for each remaining Settlement Class Member
24 must equal the dollar amount of the Net Settlement Amount. *Id.*

25 Class Members who have an individual investment account in the Plan with a
26 balance greater than \$0 as of January 1, 2025 (“Active Account”) will receive their
27 Settlement payment via a direct deposit into their Plan account by the Recordkeeper. SA
28 at Exhibit B. Class Members without an Active Account will be paid directly by the

1 Settlement Administrator by check. *Id.* Checks issued to Former Participants under the
2 terms of the Settlement will be valid for 180 days from the date of issue. *Id.*

3 **C. Attorneys’ Fees and Costs and Class Representative Service Payments**

4 The Settlement provides for payment of any Attorneys’ Fees and Costs, and Class
5 Representative Service Payments awarded by the Court, to be paid from the Qualified
6 Settlement Fund. SA ¶¶ 1.4, 5.1, 6.1. Plaintiffs are filing a separate, concurrent motion
7 for Attorneys’ Fees and Costs, and Class Representatives’ Service Payments. *Id.* ¶ 6.2.
8 Any awarded amounts for attorneys’ fees or, separately, litigation costs and expenses,
9 will be paid from the Qualified Settlement Fund. *Id.* ¶¶ 1.4, 6.1.

10 Class Counsel are also seeking an award of \$3,000 as Service Payments to the two
11 named Class Representatives, for a total of \$6,000. SA ¶¶ 1.39, 6.1. These payments, if
12 awarded, will also be paid from the Qualified Settlement Fund. SA ¶¶ 1.39, 5.1, 6.1.

13 **D. Settlement Administration and Notice Costs**

14 Administrative Expenses also will be paid from the Qualified Settlement Fund. *Id.*
15 ¶¶ 1.2, 5.1. The Parties negotiated an agreement with Analytics Consulting to serve as
16 the Settlement Administrator. Schork Prelim. Decl. ¶ 21. Analytics Consulting estimated
17 that the total administration and notice charges in this matter will be approximately
18 \$95,000. Previously submitted Declaration of Richard W. Simmons (“Simmons Prelim.
19 Decl.”), ECF No. 83-4, at ¶ 21. This estimate included all costs associated with providing
20 direct notice, class member data management, CAFA notification, telephone support,
21 claims administration, creation and management of the Settlement website,
22 disbursements and tax reporting, and postage.

23 **E. Review by Independent Fiduciary**

24 The Settlement will also be subject to review by the Independent Fiduciary. SA,
25 Article 2. The Independent Fiduciary shall comply with all relevant conditions set forth
26 in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions
27 of Credit in Connection with Litigation,” issued December 31, 2003, by the United States
28 Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its

1 determination. SA ¶ 2.1.1. The recommendation of the Independent Fiduciary shall be
2 made to Defendants no later than 30 days before the Final Approval Hearing. *Id.* ¶ 2.1.2.

3 **F. Release**

4 In exchange for the above-described Settlement benefits, all Class Members and
5 the Plan, subject to Independent Fiduciary approval, will release the Released Parties
6 from the Released Claims. SA ¶¶ 1.35, 1.36, Article 7. Each Class Member will also
7 release Defendants, “Defense Counsel, and Class Counsel from any claims, liabilities,
8 and attorneys’ fees and expenses arising from the allocation of the Gross Settlement
9 Amount or Net Settlement Amount and for all tax liability and associated penalties and
10 interest as well as related attorneys’ fees and expenses.” *Id.* ¶ 3.1.6.

11 **G. Notice Was Provided in Adherence With the Approved Notice Plan**

12 Notice was successful in this Settlement. *See generally* Declaration of Settlement
13 Administrator in Support of Plaintiffs’ Motion for Final Approval of Class Action
14 Settlement (“Mitchell Decl.”), submitted as **Exhibit 1**. On or about December 18, 2025,
15 Defendants provided Settlement Administrator with the class data. *Id.* ¶ 6. In adherence
16 with the Preliminary Approval Order, the Settlement Administrator mailed the Settlement
17 Notice on February 2, 2026. *Id.* ¶ 8.

18 The Settlement Notice advised Class Members that they may object to the
19 Settlement by filing an objection and any supporting documents by August 24, 2026. SA
20 ¶ 2.2.7. The Settlement Administrator established and is operating a Settlement website
21 (www.AlliedERISAsettlement.com). Mitchell Decl. ¶ 11; SA at Exhibit A. The
22 Settlement Administrator posted a copy of the Settlement Notices on the Settlement
23 website. Mitchell Decl. ¶ 11. The Settlement website also includes copies of the
24 Settlement Agreement and its exhibits (inclusive of the Proposed Final Approval Order
25 and Judgment), and the Preliminary Approval Order. *Id.* Plaintiffs’ Motion for Final
26 Approval and the Motion for Attorneys’ Fees and Costs and Class Representative Service
27 Payments will also be posted to the Settlement website.

1 **IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

2 **A. Legal Standards for Final Approval**

3 Final approval is a multi-step inquiry: first, the Court must certify the proposed
4 settlement class; second, it must determine that the settlement proposal is “fair,
5 reasonable, and adequate”; and third, it must assess whether notice has been provided in
6 a manner consistent with Rule 23 and due process. Fed. R. Civ. P. 23(e)(2); *Adoma v.*
7 *Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). These procedures
8 safeguard class members’ due process rights and enable the Court to fulfill its role as the
9 guardian of class interests. The Settlement satisfies each of these requirements.

10 **B. Settlement Class Certification Is Appropriate Under Fed. R. Civ. P. 23**

11 Class certification under Rule 23 is a two-step process. First, the plaintiff must
12 demonstrate that numerosity, commonality, typicality, and adequacy are met. Fed. R. Civ
13 P. 23(a). “Class certification is proper only if the trial court has concluded, after a
14 ‘rigorous analysis,’ that Rule 23(a) has been satisfied.” *Wang v. Chinese Daily News,*
15 *Inc.*, 737 F.3d 538, 542-43 (9th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564
16 U.S. 338, 351 (2011)). A plaintiff must then establish that one of the bases for
17 certification in Rule 23(b) is met. *Tom v. Com Dev USA, LLC*, No. CV 16-1363, 2017
18 WL 8236268, *2 (C.D. Cal. Sept. 18, 2017) (citing *Amchem Prods., Inc. v. Windsor*, 521
19 U.S. 591, 613-14 (1997)).

20 On December 12, 2025, the Court preliminarily certified the following Class
21 definition:

22 All persons who participated in the Plan with account balances at any time
23 during the period from June 13, 2016 through January 1, 2025 (“Class
24 Period”), including any Beneficiary of a deceased Person who participated in
25 the Plan and had an account balance at any time during the Class Period, and
26 any Alternate Payee of a Person subject to a QDRO who participated in the
27 Plan and had an account balance at any time during the Class Period. Excluded
from the Settlement Class are Defendants and their Beneficiaries, any Plan
fiduciaries, and the Judges assigned to this case.

28 ECF No. 87, at 3.

1 Nothing has occurred that would change the Court’s previous determination that
2 Plaintiffs and the Settlement satisfy the requirements under Rule 23(a). First, pursuant to
3 Rule 23(a)(1), there can be no doubt that numerosity is satisfied, as it is undisputed that
4 the class consists of approximately 53,000 Class Members. Under Rule 23(a)(2), there
5 are questions of law or fact common to the class, including: which Plan fiduciaries are
6 liable for the remedies provided by 29 U.S.C. § 1109(a); whether the Plan fiduciaries
7 breached their fiduciary duties to the Plan; and what losses the Plan suffered as a result
8 of each breach of fiduciary duty.

9 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are
10 typical of the claims or defenses of the class.” Here, the claims of the named Plaintiffs
11 are typical of the claims of the Settlement Class. Plaintiffs are former Plan participants;
12 the Class Members are former Plan participants. Plaintiffs’ and Class Members’ claims
13 arise from the same nucleus of facts, pertain to common Defendants, and are based on
14 the same legal theories. Finally, under Rule 23(a)(4), Plaintiffs and their counsel do not
15 have any conflicts of interest with other Class Members and have demonstrated their
16 commitment to prosecute the action vigorously on behalf of the Class.

17 The requirements under Rule 23(b) are also satisfied. Plaintiffs seek certification
18 under Rule 23(b)(1), which provides for class treatment where “(1) prosecuting separate
19 actions by or against individual class members would create a risk of: (A) inconsistent or
20 varying adjudications with respect to individual class members that would establish
21 incompatible standards of conduct for the party opposing the class; or (B) adjudications
22 with respect to individual class members that, as a practical matter, would be dispositive
23 of the interests of the other members not parties to the individual adjudications or would
24 substantially impair or impede their ability to protect their interests.” Fed. R. Civ. P.
25 23(b)(1). “Most ERISA class action cases are certified under Rule 23(b)(1).” *Kanawi v.*
26 *Bechtel Corp.*, 254 F.R.D. 102, 111 (N.D. Cal. 2008). This is because issues concerning
27 plan interpretation make individual litigation by class members unwieldy. *See Frazier v.*
28 *Honeywell Savings and Pension Plan*, No. 2:10-cv-1618, Doc. No. 165, at p. 12 (D. Ariz.

1 Nov. 20, 2012) (granting class certification in ERISA action under Rule 23(b)(1)(A));
2 *Humphrey v. United Way*, No. H-05-0758, 2007 WL 2330933 at *10 (S.D. Tex. Aug. 14,
3 2007) (certifying class of ERISA plan participants challenging the validity of a plan
4 amendment pursuant to Rule 23(b)(1) because “[i]ndividual suits might lead to
5 conflicting orders on the interpretation of the [. . .] Plan”); *In re Citigroup Pension Plan*
6 *ERISA Litig.*, 241 F.R.D. 172, 180 (S.D.N.Y. 2006) (certifying under Rule 23(b)(1) a
7 claim seeking reformation of an ERISA plan “because . . . inconsistent dispositions of
8 these claims by different courts could create an untenable situation.”) (internal quotation
9 omitted).

10 Here, there are approximately 53,000 Class Members who, absent class treatment,
11 “could individually file suit for damages arising from the same conduct.” *Kanawi*, 254
12 F.R.D. at 111. “This would create a risk of ‘inconsistent and varying’ adjudications,
13 resulting in ‘incompatible standards of conduct’ for Defendants.” *Id.* Thus, for example,
14 Defendants “could face differing adjudications regarding the prudent process for
15 determining reasonable recordkeeping fees.” *Wildman v. Am. Century Servs., LLC*, No.
16 4:16-cv-00737, 2017 WL 6045487, at *6 (W.D. Mo. Dec. 6, 2017). Therefore “ERISA
17 cases have become a primary form of Rule 23(b)(1)(A) class actions.” 2 William B.
18 Rubenstein, *Newberg on Class Actions* § 4:7 (5th ed., June 2018 update). Certification
19 under Rule 23(b)(1)(A) is appropriate because the primary issues presented here hinge
20 on proper interpretation of the Plan. There is a risk that the prosecution of separate actions
21 would result in inconsistent outcomes resulting from incompatible interpretations of the
22 Plan. Inconsistent interpretations of the Plan in multiple individual actions could and
23 would lead to an unclear set of standards of conduct.

24 Certification is also appropriate under Rule 23(b)(1)(B) because the Court’s
25 adjudication of issues related to interpretation of the Plan and ERISA requirements in
26 Plaintiffs’ case would necessarily affect and be dispositive of the interests of other
27 similarly situated litigants. Certification is thus appropriate under Rule 23(b)(1)(A) and
28 (B). *Tom*, 2017 WL 8236268, at *5.

C. The Settlement Is Fair, Reasonable, and Adequate, and Warrants Final Approval from the Court

Rule 23(e) requires the district court to determine whether a proposed settlement is “fair, reasonable, and adequate.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015). To assess the fairness of a class settlement, Ninth Circuit courts consider a number of factors, including: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of future litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 944 (citing *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). Each of these “*Churchill*” factors weigh in favor of final approval.

1. The Strength of Plaintiffs’ Case

When evaluating the strength of a plaintiffs’ case, district courts assess the likelihood of success on the merits and the range of possible recovery. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 964-65 (9th Cir. 2009). While Plaintiffs believe in the strength of their case, Defendants would vigorously dispute that they breached their fiduciary duties and vigorously dispute that Plaintiffs suffered any damages and that Plan RK&A fees were unreasonable, such that no breaches of fiduciary duty occurred. There would be substantial risk in litigating this case through trial and appeal, which is a process that could take years. Thus, there is far from any guarantee that Plaintiffs and the Class ultimately would have prevailed in this case, which favors approving the Settlement.

The Settlement is a prudent course in view of the risk of continued litigation. Given that all Class Members will be eligible to receive payment under the Court-approved Plan of Allocation, the Settlement provides benefits that address all claimed harms without the substantial risk of continued litigation, which includes the risk of dismissal or judgment against Plaintiffs. Accordingly, this factor favors final approval.

1 **2. The Risk, Expense, Complexity, and Likely Duration of Further**
2 **Litigation**

3 The risk, expense, complexity, and likely duration of further litigation all weigh in
4 favor of approving the Settlement. Generally, “unless the settlement is clearly inadequate,
5 its acceptance and approval are preferable to lengthy and expensive litigation with
6 uncertain results.” *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526
7 (C.D. Cal. 2004). Settlements are encouraged in class actions where possible. *See Van*
8 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (“It hardly seems necessary
9 to point out that there is an overriding public interest in settling and quieting litigation.”).
10 Here, Plaintiffs and the Class faced a risk of losing on liability. Continued litigation would
11 have been expensive and lengthy. The Settlement provides immediate relief for Plan
12 participants, and avoids these risks. This factor weighs in favor of final settlement
13 approval.

14 **3. The Risk of Maintaining Class Action Status Throughout Trial**

15 Plaintiffs strongly believe this action is well-suited for certification of a litigation
16 class. However, Defendants could have sought to appeal a certification ruling under Rule
17 26(f) and/or seek to decertify the Class. Assuming Plaintiffs were able to obtain
18 certification in the first instance, the risk of maintaining class action status through trial
19 weighs in favor of approving the Settlement. *See, e.g., In re Toys R Us-Delaware, Inc.*
20 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 452 (C.D. Cal.
21 2014) (“Avoiding the risk of decertification, especially where there are doubts concerning
22 the viability of the class, favors approval of the settlement.”). *Churchill* factor 3 weighs
23 in favor of final approval. *See McKenzie v. Fed. Exp. Corp.*, No. 10-cv-02420, 2012 WL
24 2930201, at *4 (C.D. Cal. July 2, 2012) (“[S]ettlement avoids all possible risk [of
25 decertification]. This factor therefore weighs in favor of final approval of the
26 settlement.”).

27 **4. The Amount Offered in the Settlement**

28 The value attained in the settlement weighs in favor of final settlement approval.
The \$1.4 million Qualified Settlement Fund is an excellent result for the Settlement Class

1 and was the product of hard-fought settlement negotiations between the Parties. With this
2 fund, all Class Members will receive compensation based upon the approved Plan of
3 Allocation. SA ¶ 5.3 and at Exhibit B. The Qualified Settlement Fund will be applied to
4 pay all Administrative Expenses (including fees and expenses associated with the
5 Independent Fiduciary determination, up to \$20,000), notice, the taxes to the Qualified
6 Settlement Fund, any Service Payments, and any payment of Attorneys’ Fees and Costs.
7 *Id.* ¶¶ 1.2, 1.4, 1.39, 2.1.3.

8 As previously discussed, the negotiated \$1.4 million recovery represents
9 approximately 23% of the total estimated losses to the Plan. This recovery is at the high
10 end of the “range of possible approval.” *Peel v. Brooksamerica Mortg. Corp.*, No. SACV
11 11-00079, 2014 WL 12589317, at *4 (C.D. Cal. Nov. 13, 2014); *see generally In re Rite*
12 *Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995,
13 class action settlements have typically “recovered between 5.5% and 6.2% of the class
14 members’ estimated losses”); *Stott v. Capital Fin. Servs., Inc.*, 277 F.R.D. 316, 345 n.19
15 (N.D. Tex. 2011) (approving class settlement “estimated at about 2 to 3 percent of the
16 each individual class member’s total losses” based on the “risks involved in the
17 litigation”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1350 (S.D.
18 Fla. 2011) (recovery of 9 percent was reasonable).

19 The Settlement Agreement and the \$1.4 million Settlement amount confer a
20 substantial benefit on the Class Members who would otherwise face a significant risk of
21 obtaining no recovery at all if forced to proceed with litigation. This factor thus also
22 weighs in favor of final settlement approval.

23 **5. The Extent of Discovery Completed and the Stage of the**
24 **Proceedings**

25 The extent of discovery and the stage of the proceedings are also factors that weigh
26 in favor of final approval. While this matter is still in its early stages, Plaintiffs vigorously
27 developed the facts and legal claims in this case. The Parties had begun discovery, and
28 though class certification had not yet been briefed, the discovery conducted was sufficient

1 to convince Defendants to settle for a substantial amount. Plaintiffs received and analyzed
2 mediation-related discovery and informational productions from Defendants to verify not
3 only the details about the Plan and its administration, but also the fairness of the
4 Settlement and related negotiations. Schork Prelim. Decl. ¶¶ 15, 28.

5 Class Counsel’s knowledge of facts of this case and of the practice area more
6 broadly informed Plaintiffs’ clear view of the strengths and weaknesses of the case, the
7 decision to go to mediation with Defendants, and the decision to recommend that the Court
8 approve the Settlement. This factor also favors final approval.

9 **6. The Experience and Views of Counsel**

10 The experience and views of Class Counsel also favor approval of the settlement.
11 Class Counsel are highly experienced in class action litigation, and their firms
12 collectively have many decades of substantial experience in complex litigation. *See*
13 Schork Prelim. Decl. ¶¶ 35-39 and Exhibit 1 (Roberts Law Firm resume); previously
14 submitted Declaration of Andrew W. Ferich (“Ferich Prelim. Decl.”), ECF No. 83-2, ¶¶
15 37-41 and Exhibit 1 (Ahdoot & Wolfson, PC firm resume). Class Counsel believe the
16 settlement is fair, reasonable, and adequate, and an excellent result for Plaintiffs and the
17 Class. Schork Prelim. Decl. ¶ 6; Ferich Prelim. Decl. ¶ 6. As the Ninth Circuit observed,
18 “[p]arties represented by competent counsel are better positioned than courts to produce
19 a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
20 *Enterprises Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). For this reason, courts find
21 “[t]he recommendations of plaintiffs’ counsel should be given a presumption of
22 reasonableness.” *In re Toys R Us-Delaware*, 295 F.R.D. at 455 (quoting *Boyd v. Bechtel*
23 *Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)). Class Counsel fully endorse the
24 Settlement as fair, reasonable, and adequate, and do so without reservation. Schork
25 Prelim. Decl. ¶ 6; Ferich Prelim. Decl. ¶ 6. Accordingly, this factor strongly favors final
26 settlement approval.

27 //

28 //

1 **7. The Presence of a Governmental Participant**

2 The presence of a governmental participant factor “does not apply because no
3 government entity participated in the case.” *In re Toys R Us-Delaware*, 295 F.R.D. at
4 455. This factor is neutral and does not impact the Court’s analysis.

5 **8. The Reaction of the Class Members**

6 The final factor considers the reaction of the Class Members to the Settlement. The
7 Settlement’s notice plan was designed to reach all of the approximately 53,000 Class
8 Members, and as of this filing, there have been no objections to the Settlement. “It is
9 established that the absence of a large number of objections to a proposed class action
10 settlement raises a strong presumption that the terms of a proposed class action are
11 favorable to the class members.” *Nat’l Rural Telecomm. Coop.*, 221 F.R.D. at 529
12 (collecting cases); *see also In re Fleet/Norstar Sec. Litig.*, 935 F. Supp. 99, 107 (D.R.I.
13 1996). This factor favors final approval, and taken as a whole, the *Churchill* factors
14 demonstrate the Settlement should receive final approval.

15 **D. Other Considerations Support Final Approval from the Court**

16 **1. The Settlement Is the Product of Arm’s-Length Negotiations**

17 The Court must be satisfied that “the settlement is not the product of collusion
18 among the negotiating parties.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
19 946-47 (9th Cir. 2011). Plaintiffs achieved the Settlement in contested litigation and
20 through many weeks of arm’s-length negotiations. In this case, Plaintiffs undertook
21 substantial investigation of the underlying facts, causes of action, and potential defenses.
22 Schork Prelim. Decl. ¶¶ 7-12.

23 When settlement negotiations began, Plaintiffs and their counsel had a clear view
24 of the strengths and weaknesses of their case and were in a strong position to make an
25 informed decision regarding the reasonableness of a potential settlement. The Parties
26 engaged in extensive arm’s-length negotiations, including a full-day mediation before a
27 mutually agreed upon mediator, David Geronemus of JAMS. *Id.* ¶¶ 13-14.

28 Mr. Geronemus, a highly respected and experienced mediator, has extensive

1 experience with and is well-versed in class action litigation as a result of mediating many
2 class actions, including ERISA class action cases. Mr. Geronemus’s assistance in the
3 settlement process here further confirms the absence of collusion. *See G. F. v. Contra*
4 *Costa Cnty.*, No. 13-cv-03667, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015)
5 (“[T]he assistance of an experienced mediator in the settlement process confirms that the
6 settlement is non-collusive.”) (internal quotation marks and citation omitted).

7 *Bluetooth* identified three “signs” of possible collusion: (1) “when counsel
8 receive[s] a disproportionate distribution of the settlement”; (2) “when the parties
9 negotiate a ‘clear sailing arrangement,’” under which the defendant agrees not to
10 challenge a request for an agreed-upon attorneys’ fee; and (3) when the agreement
11 contains a “kicker” or “reverter” clause that returns unawarded fees to the defendant,
12 rather than the class. *Bluetooth*, 654 F.3d at 947.

13 None of the *Bluetooth* signs are present here. There is no “clear sailing provision.”
14 SA ¶¶ 6.1-6.2. There is no reversion of the Qualified Settlement Fund (*id.* ¶ 1.24), but
15 rather the Settlement seeks to distribute all monies to the Class (*id.*, Article 5). Any
16 Attorneys’ Fees and Costs (as well as litigation expenses) awarded will be paid from the
17 non-reversionary Qualified Settlement Fund (*id.* ¶ 1.4), such that there was every
18 incentive to secure the largest fund possible.

19 There is no indication of collusion in the settlement negotiations and the
20 Settlement that is being presented to the Court, and none exists.

21 **2. The Approved Plan of Allocation Is Highly Effective**

22 Rule 23(e)(2)(C)(ii) requires consideration of “the effectiveness of any proposed
23 method of distributing relief to the class, including the method of processing class-
24 member claims.” Fed. R. Civ. P. 23(e). Here, there is no claims process. All Class
25 Members will receive payment under the Settlement consistent with the Court-approved
26 Plan of Allocation. SA ¶ 5.3 and at Exhibit B. The exact amount proposed to be paid to
27 each Class Member from the Net Settlement Amount is based upon the formula set forth
28 in the Plan of Allocation. *Id.* at Exhibit B.

1 The amounts resulting from the initial calculation are the “Preliminary Entitlement
2 Amount.” Class Members who are entitled to a distribution of less than \$10.00 will
3 receive a distribution of \$10.00 (the “De Minimis Amount”) from the Net Settlement
4 Amount. The Settlement Administrator shall progressively increase Class Members’
5 payments falling below the De Minimis Amount until the lowest participating Class
6 Member award is the De Minimis Amount, i.e., \$10.00. The resulting calculation shall
7 be the “Final Entitlement Amount” for each Settlement Class Member. The sum of the
8 Final Entitlement Amount for each remaining Settlement Class Member must equal the
9 dollar amount of the Net Settlement Amount. *Id.*

10 Class Members who have an individual investment account in the Plan with a
11 balance greater than \$0 as of January 1, 2025 (“Active Account”) will receive their
12 Settlement payment via a direct deposit into their Plan account by the Recordkeeper. SA
13 at Exhibit B. Class Members without an Active Account will be paid directly by the
14 Settlement Administrator by check. *Id.* This method of distributing relief to Class
15 Members is reasonable and effective and has already been approved. ECF Nos. 87, at 19.

16 **3. The Proposed Attorneys’ Fees and Costs and Class**
17 **Representative Service Payments Are Reasonable**

18 The Settlement provides for payment of any Attorneys’ Fees and Costs, and Class
19 Representative Service Payments awarded by the Court, to be paid from the Qualified
20 Settlement Fund. SA ¶¶ 1.4, 5.1, 6.1. Plaintiffs are filing a concurrent, separate motion
21 for an award of Attorneys’ Fees and Costs, and Class Representative Service Payments.
22 *Id.* ¶ 6.2.

23 Class Counsel also will seek an award of \$3,000 as Service Payments to each of
24 the two named Class Representatives, for a total of \$6,000. SA ¶¶ 1.39, 6.1, 6.2. The
25 Settlement would not have been possible without the Class Representatives’ participation
26 in and attention to this matter. Schork Prelim. Decl. ¶ 34. These payments, if awarded,
27 will also be paid from the Qualified Settlement Fund. SA ¶¶ 1.39, 5.1, 6.1. Plaintiffs
28 incorporate by reference all arguments in the forthcoming motion for attorneys’ fees,

1 litigation expenses and costs, and Service Payments.

2 **V. CONCLUSION**

3 Plaintiffs Nickolas Tsui and William Lugo request that this motion be granted and
4 that the Court enter an order: (1) granting final certification of the Settlement Class for
5 settlement purposes; (2) granting final approval of the class action Settlement
6 Agreement; (3) finding that notice has been conducted in accordance with the Court-
7 approved notice plan and due process; (4) dismissing with prejudice Plaintiffs' and
8 Class Members' claims against Defendants; and (5) entering a final judgment.

9
10 Dated: March 27, 2026

Respectfully submitted,

11 /s/ Andrew W. Ferich
12 Andrew Ferich (admitted *pro hac vice*)
13 *aferich@ahdootwolfson.com*
14 **AHDOOT & WOLFSON, PC**
15 201 King of Prussia Road, Suite 650
16 Radnor, Pennsylvania 19087
17 310.474.9111 (*telephone*)
18 310.474.8585 (*facsimile*)

19 Robert R. Ahdoot (SBN 172098)
20 *rahdoot@ahdootwolfson.com*
21 **AHDOOT & WOLFSON, PC**
22 2600 W. Olive Avenue, Suite 500
23 Burbank, California 91505
24 310.474.9111 (*telephone*)
25 310.474.8585 (*facsimile*)

26 Erich P. Schork (admitted *pro hac vice*)
27 *erichschork@robertslawfirm.us*
28 **ROBERTS LAW FIRM US, PC**
PO Box 31909
Chicago, IL 60631-9998
510.821.5575 (*telephone*)
510.821.4474 (*facsimile*)

Co-Lead Class Counsel

CERTIFICATE OF COMPLIANCE PURSUANT TO L.R. 11-6.2

The undersigned, counsel of record for Plaintiffs certifies that this brief contains 5,491 words, excluding caption, the table of contents, the table of authorities, the signature block, and this certification, which complies with the word limit of L.R. 11-6.1.

/s/ Andrew W. Ferich
Andrew W. Ferich

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28