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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELLE NGUYEN, ARDAVAN MOVASSAGHI, and ETIENNE BERNSTEIN, individually and on behalf of all others similarly situated, Plaintiffs, v. BANK OF AMERICA, N.A., Defendant.	**Case No. 5:23-cv-04999-PCP** **PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES** Judge: Hon. P. Casey Pitts Date: January 28, 2027 Time: 10:00 a.m. Place: Courtroom 8, 4th Floor

NOTICE OF MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 28, 2027, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 8, 4th Floor, United States District Court for the Northern District of California, San Jose Courthouse, 280 South First Street, San Jose, California 95113, Plaintiffs Elle Nguyen, Ardavan Movassaghi, and Etienne Bernstein ("named Plaintiffs") will and

hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23(h) for: (1) an award of $1,070,000 in attorneys' fees, equal to 25% of the $4,280,000 common fund; (2) reimbursement of reasonable litigation expenses in an amount not to exceed $25,000; and (3) service awards of $10,000 each to named Plaintiffs Elle Nguyen, Ardavan Movassaghi, and Etienne Bernstein.

The motion is based on this Notice, the Memorandum of Points and Authorities, the Declarations of George A. Hanson and Jason S. Hartley filed herewith and attached as Exhibit 1 and Exhibit 2 respectively, the Court's record in this action, and any evidence or argument as the Court may consider at the hearing of this motion. Under the Settlement Agreement, Bank of America agreed not to oppose fee, expense, and service-award requests within the disclosed caps. The requested fee is below the one-third permitted by the Settlement.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This settlement will distribute the entire net common fund to approximately 3,003 former Bank of America employees. No Class Member must submit a claim. Every member who does not opt out will automatically receive a check calculated from the Bank's own payroll records. No money will revert to the Bank: unawarded fees, expenses, or service awards return to the Class, and uncashed checks will be held in Class Members' names through state unclaimed-property programs. Having accomplished those benefits on behalf of the Class, Plaintiffs' Counsel ("Counsel") now requests a 25% fee totaling $1,070,000. Although the parties' Joint Stipulation of Settlement and Release permits counsel to seek up to one-third of the settlement amount, counsel elects to limit their request to 25% of the common fund, the Ninth Circuit's benchmark, so that a greater share of the settlement proceeds goes directly to Class Members.

The request is reasonable under both the percentage method and a lodestar cross-check. The Ninth Circuit has long recognized that, in class actions resulting in a common fund, a percentage-based award is appropriate, and an award of 25% of the settlement amount is the "benchmark", or reasonable starting point, in considering such an award. Here, the requested 25% fee represents a modest negative multiplier on counsel's current lodestar, even without accounting for the substantial work that remains. *See also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051–52, 1051 n.6 (9th Cir. 2002) (when lodestar is used as a cross-check, "most" multipliers are in the range of 1 to 4, while also citing numerous examples of higher multipliers); *Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC, 2016 WL 537946, at *21–22 (N.D. Cal. Feb. 11, 2016) (awarding 25% of $23 million settlement, and noting that the resulting 1.7 multiplier was "towards the ***lower*** end of the Ninth Circuit's scale") (emphasis added). This Court's own recent precedent illustrates the reasonableness of counsel's 25% request. In *Oliveira v. Language Line Services, Inc.*, 767 F. Supp. 3d 984, 1006–07 (N.D. Cal. 2025), this Court awarded 30% of a $3,725,000 settlement in a wage-and-hour case, explaining that the 30% rate sat just above the Ninth Circuit's 25% benchmark and just below California's 33% norm, which fit a settlement that resolved both federal and state claims. A lodestar cross-check showing a multiplier of about 2.0 on a $558,789.50 lodestar confirmed the

award's reasonableness, since Ninth Circuit multipliers generally range from 1 to 4. *Id.* at 1007. Here, the multiplier is materially lower, the settlement distribution is automatic and non-reversionary, and counsel faced a demonstrated certification risk.

Plaintiffs also seek reimbursement of modest, documented expenses capped at $25,000, and $10,000 service awards for each named Plaintiff. Although the service requests are at the top of the common range in this District, the record supports them. All three Plaintiffs in this case have worked closely with Counsel throughout their time as named Plaintiffs, each faced risk by suing their current or former employer while still working in the field, and all were required to sign a broader general release than the other putative class members as part of the settlement agreement. Although the Court did not appoint Ms. Nguyen as a settlement class representative, the approved class definition expressly includes every named Plaintiff. Her request rests on her substantial documented work for the Class, not on representative status alone.

II. BACKGROUND

A. Counsel Developed a Records-Based Case Through Discovery and Contested Certification

Ms. Nguyen filed this action on September 28, 2023, alleging that the Bank failed to honor its written promise to pay departing employees for accrued but unused vacation. The Bank denied liability and disputed whether its vacation-balance records reliably established eligibility, accrual, or nonpayment. Dkt. 77; Hanson Decl. ¶ 2.

Counsel obtained the Bank's vacation policies, HR Connect materials, termination-processing documents, and payroll spreadsheets covering a majority of the class period. Those spreadsheets identify terminated employees with positive recorded balances who received no vacation payout and include accrual, carryover, usage, rate, work-state, and payout fields. Counsel deposed the Bank's corporate designee regarding the policy, Workday records, and termination process; defended Ms. Nguyen's deposition; retained a data analyst; and built a class-wide damages model from the Bank's own data. Hanson Decl. ¶¶ 3, 4, 6, 7, 28.

The first certification motion was fully briefed and argued. The Court denied it without prejudice because Ms. Nguyen may not have been eligible to accrue vacation under the Bank's

policy, expressly permitting a renewed motion by a different representative. Dkt. 65 at 5, 7. Plaintiffs amended adding Ardavan Movassaghi and Etienne Bernstein, whose payroll records showed 153.35 and 40 hours of unpaid accrued vacation, respectively. Dkt. 77 ¶¶ 21–24. The Bank stated it would oppose renewed certification by challenging the reliability of the records, commissioned employees' eligibility, and multistate manageability. Hanson Decl. ¶ 5.

B. Arm's-Length Negotiations Produced a $4.28 Million Non-Reversionary Fund

After data-informed negotiations, the parties mediated in person on January 20, 2026, before the Honorable Vedica Puri (Ret.). They reached impasse that day but later accepted a double-blind mediator's proposal for a $4,280,000 settlement covering former employees in California, New York, and Illinois who received no payout for a positive vacation balance, together with any named plaintiff not otherwise included. Hanson Decl. ¶ 14.

The Court granted preliminary approval on September 1, 2026. Dkt. 95. Notice mailed on October 13, 2026. Dkt. 96. Under the modified schedule, this motion is due November 13, 2026; objections are due January 7, 2027; and the final-approval hearing is January 28, 2027. Dkt. 97.

III. THE REQUESTED 25% FEE IS REASONABLE

A. The Percentage Method, Confirmed by a Lodestar Cross-Check, Fits This Common Fund

Rule 23(h) authorizes a reasonable fee award. When a settlement creates a quantified common fund, a court may use either the percentage-of-recovery method or the lodestar method. *In re Bluetooth Headset Products Liability Litigation,* 654 F.3d 935, 941–42 (9th Cir. 2011). The percentage method aligns compensation with the benefit created, while the lodestar provides a useful cross-check. *Vizcaino v. Microsoft Corp.*, 290 F.3d at 1047–50.

In the Ninth Circuit, the "benchmark for an attorneys' fee award in a successful class action is twenty-five percent of the entire common fund." *Williams v. MGM-Pathe Commc'ns Co.,* 129 F.3d 1026, 1027 (9th Cir. 1997). This benchmark is treated as a starting place, not a cap. Courts in the Ninth Circuit have the inherent power to adjust a percentage fee based on the circumstances of a particular case, including the results achieved, the risks of litigation, the skill required and quality of work, and whether the representation was undertaken on a contingency basis. *Vizcaino,* 290

F.3d at 1048–50. "[I]n most common fund cases, the award exceeds that benchmark" percentage. *Knight v. Red Door Salons, Inc.*, No. 08–01520 SC, 2009 WL 248367, at *3 (N.D. Cal. Feb. 2, 2009); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) ("nearly all common fund awards range around 30%"). Where state law provides the basis for awarding fees, courts in the Ninth Circuit generally apply state law in making that determination. *Beaver v. Tarsadia Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707 (S.D. Cal. Sept. 28, 2017).

Although the parties' Joint Stipulation of Settlement and Release permits counsel to seek up to one-third of the settlement amount, counsel, in its discretion, has chosen to request only the 25% benchmark as compensation—giving up a larger fee it was entitled to seek so that more of the recovery reaches the Class Members whose claims produced it. *See* Dkt. 87-1, Ex. 1. As discussed below, Counsel respectfully submits that the requested fee is warranted and reasonable in this case given the results achieved, the difficulty and complexity of the claims, the obstacles and challenges faced, and the extensive time and labor dedicated by counsel.

B. Analysis Under the *Vizcaino* Factors Support a Fee Award of 25%

1. The settlement delivers substantial, automatic, non-reversionary relief.

The result is both substantial and practical. The $4.28 million fund is approximately 25% of the calculated unpaid-vacation value. The Class is not burdened with a claims process; roughly 3,003 members will receive checks automatically. The fund has no reversion or cy pres component. These features matter because the benefit actually delivered to the class is the touchstone of a common-fund award. *See Lowery v. Rhapsody International, Inc.*, 75 F.4th 985, 992–94 (9th Cir. 2023).

2. Counsel faced genuine certification and merits risk.

From the outset, Counsel litigated this case in the face of significant risk of non-payment by taking the case on a pure contingency basis and risked receiving zero compensation for their years of work and out-of-pocket costs. Further, counsel confronted a number of significant legal and factual challenges during the course of litigation. Plaintiffs' first certification motion was denied. Counsel cured the identified typicality defect, but renewed certification still faced challenges to record reliability, employee eligibility, and multistate manageability. *See Acosta v.*

Trans Union, LLC, 243 F.R.D. 377, 392 (C.D. Cal. 2007) ("The value of a class action 'depends largely on the certification of the class,' and ... class certification undeniably represents a serious risk for plaintiffs in any class action lawsuit."). Even after certification, counsel faced Rule 23(f) review, summary judgment, trial, and appeal. Counsel undertook those risks on a fully contingent basis and have received no compensation to date. Hanson Decl. ¶ 11.

3. Counsel's skill and efficiency produced the fund.

Counsel converted multiple years of payroll data and testimony about the Bank's termination process into a records-based liability and allocation model. Hanson Decl. ¶ 7. When the Court identified a representative-specific problem, counsel added two plaintiffs with documented balances and positioned the case for renewed certification. Hanson Decl. ¶¶ 8–10. The same model informed mediation and now determines each member's allocation.

4. The contingent commitment and remaining work support the request.

As of this filing, Stueve Siegel Hanson has devoted 1,166.90 hours without payment and advanced all expenses. Hanson Decl. ¶ 16. Hartley LLP worked an additional 16 hours without payment. Hartley Decl. ¶ 4. Counsel must still address potential objections, prepare the reply and notice-status record, prepare for and attend the final-approval hearing, supervise implementation, and answer class-member and administrator issues as necessary. Those significant hours will necessarily reduce the cross-check multiplier. Hanson Decl. ¶ 19.

5. The requested percentage is consistent with this Court's prior practice and the governing state-law backdrop.

A review of attorney fee awards in the Ninth Circuit, California, New York, and Illinois illustrate that an award of 25% here would be justified and reasonable.

District courts in this circuit have routinely awarded fees of one-third of the common fund or higher. *See, e.g., Taylor v. Shippers Transp. Express, Inc.*, 2015 WL 12658458, at *17 (C.D. Cal. 2015) (holding that 33% was reasonable in a in a wage and hour class action given the result, the risk, and counsel's time investment); *Campbell v. Best Buy Stores, L.P., No*. LA CV12-07794 JAK JEMX, 2016 WL 6662719, at *10 (C.D. Cal. Apr. 5, 2016) (approving a fee of one-third of the common fund); *Millan v. Cascade Water Services*, No. 1:12-CV-01821-AWI-GSA, 2016 WL

3077710, at *11–12 (E.D. Cal. 2016) (approving an award of 33% of the common fund); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (awarding one-third of the settlement fund); *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116- IEG WMC, 2013 WL 163293, at *5 (S.D. Cal. Jan. 14, 2013) (awarding one-third of the $2,625,000 total settlement fund in a wage and hour class action). The Ninth Circuit has also upheld awards of one-third of a common fund. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming an award of one-third of total recovery); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming an award of one-third of a $12 million common fund).

Governing state-law also supports the requested 25% fee. In California state court, the typical award of attorneys' fees is approximately one-third of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11, 75 Cal.Rptr.3d 413 (Cal. Ct. App. 2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, at *5 ("Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent."). Similarly, 25% of the settlement fund (as requested here) falls well within the normal range of percentage fees awarded by New York state courts. *See, e.g., Flemming v. Barnwell Nursing Home & Health Facilities, Inc.*, 56 A.D.3d 162, 165–66 (N.Y. App. Div. 2008) (approving approved a class fee greater than one-third where it remained below the lodestar); *Mark Fabrics Inc. v. GMAC Commercial Credit LLC*, 2005 WL 6216029, at *5 (Sup. Ct. N.Y. Cnty. Dec. 22, 2005) (awarding approximately 30% of $850,000 monetary recovery). Like California and New York, Illinois courts also routinely authorize percentage awards in excess of 25%. *See, e.g., In re Broiler Chicken Antitrust Litigation*, No. 16 C 8637, 2021 WL 5709250, at *4 (N.D. Ill. Dec. 1, 2021) (awarding one-third of the common fund as attorneys' fees); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 52 N.E.3d 427, 436 (Ill. App. Ct. 2d Dist. 2016) (affirming use of "the-third percentage-of-the-award method"); *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 926 (Ill. App. Ct. 1st Dist. 1995) (affirming award of attorneys' fees in the amount of 33 1/3% of the settlement fund); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019) (awarding 40% of

common fund). *See also* Alba Conte et al., *Newberg on Class Actions* § 14.6 (4th ed. 2002) ("[F]ee awards in class actions average around one-third of the recovery[.]").

A 25% award is thus reasonable relative to the one-third percentage accepted in each relevant state's common-fund practice.

C. The Lodestar Cross-Check Confirms Reasonableness

The requested fee is also justified under a lodestar cross-check. Courts frequently cross-check a percentage fee request with the lodestar analysis. *See, e.g., Vizcaino*, 290 F.3d at 1050 (finding that "the lodestar may provide a useful perspective on the reasonableness of a given percentage award"); *Bond v. Ferguson Enters., Inc.*, No. 1:09-CV-1662 OWW MJS, 2011 WL 2648879, at *11 (E.D. Cal. June 30, 2011) (finding that "[c]alculation of the lodestar amount may be used as a cross-check to assess the reasonableness of the percentage award"). "In conducting a lodestar cross-check, the court must first determine the dollar value of the proposed percentage-based fee award." *In re Portal Software, Inc. Sec. Litig.*, No. C–03–5138 VRW, 2007 WL 4171201, at *14 (N.D. Cal. Nov. 26, 2007). Here, the requested award is $1,070,000, which represents a requested fee of 25% of the $4,280,000 common fund. Next, courts cross-check the proposed percentage fee against the lodestar. *Id.* "Three figures are salient in a lodestar calculation: (1) counsel's reasonable hours, (2) counsel's reasonable hourly rate and (3) a multiplier thought to compensate for various factors (including unusual skill or experience of counsel, or the ex ante risk of nonrecovery in the litigation)." *In re HPL Tech., Inc. Sec. Litig.*, 366 F.Supp.2d 912, 919 (N.D. Cal. 2005). Multipliers ranging from 1.0 to 4.0 are commonly applied in common-fund cases. *See, e.g., Kulik v. NMCI Med. Clinic Inc.*, No. 21-CV-03495-BLF, 2023 WL 2503539, at *9 (N.D. Cal. Mar. 13, 2023) (applying a multiplier of 1.83); *Uschold v. NSMG Shared Servs., LLC*, No. 18-cv-01039-JSC, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying a multiplier of 4); *Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975, 999 (N.D. Cal. 2017) (applying a multiplier of 2.0). Although a lodestar cross-check relies on the number of hours as a starting point, it does not require "'mathematical precision nor bean-counting'" since the aim is to "'do rough justice, not to achieve auditing perfection.'" *In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2021 WL 1022866, at *7 (N.D. Cal. Mar. 17, 2021); *see also In re*

Immune Response Sec. Litig., 497 F. Supp. 2d 1166, 1176 (S.D. Cal. 2007) ("Although counsel have not provided a detailed cataloging of hours spent, the Court finds the information provided to be sufficient for purposes of lodestar cross-check.").

Here, Class Counsel's lodestar through November 13, 2026 is $1,176,372.50, reflecting 1,166.90 hours of professional time devoted to this case thus far. Hanson Decl. ¶¶ 17. The lodestar is based on Stueve Siegel Hanson hourly rates as of 2025, which range from $375 to $1,425 and reflect the timekeepers' roles, experience, and work performed. Hanson Decl. ¶ 18. These rates are the customary professional rates for Class Counsel. Hanson Decl. ¶ 18. Hartley LLP's lodestar through November 13, 2026 is $12,696, reflecting an additional 16 hours of professional time devoted to this case by Plaintiffs' local counsel. Hartley Decl. ¶ 4.

Firm	Hours through cut-off	Lodestar
Stueve Siegel Hanson LLP	1,166.90	$1,176,372.50
Hartley LLP	16.00	$12,696.00
Total	1,182.90	$1,189,068.50

The requested $1,070,000 falls below counsel's current lodestar, and currently represents a modest negative multiplier of approximately 0.9. That does not take into account any of the additional time spent by counsel preparing this motion, drafting the motion for final approval, preparing for and attending the final approval hearing, and completing the administration process, including responding to inquiries from Class Members, coordinating with the Settlement Administrator and defense counsel, and the post-distribution accounting, all of which is likely to require meaningful additional hours. Hanson Decl. ¶ 20. That additional time will effectively reduce the small multiplier presently embodied in the fee request. Thus, a lodestar cross-check confirms that 25% is not a windfall.

IV. THE COURT SHOULD REIMBURSE REASONABLE LITIGATION EXPENSES UP TO $25,000

Counsel may recover reasonable expenses that would normally be charged to a paying client. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769-70 (9th Cir. 1977). To date, counsel's expenses are as follows:

Category	Amount
Internal printing and copying	$296.00
Meals	$394.36
Court fees	$634.00
Transcripts and video	$4,708.80
Mediation	$5,450.00
Miscellaneous	$70.00
PACER	$55.90
Westlaw research	$3,204.60
Hosting and data storage	$325.70
Airfare	$4,974.72
Ground transportation	$738.61
Lodging	$6,803.30
Stueve Siegel Hanson Total	$27,655.99
Hartley LLP Total	$406.80
Overall Total	$28,062.79

These costs were reasonably incurred to obtain transcripts, research the claims, analyze and host data, mediate, and travel for case events. Although the Notice estimated approximately

$25,000 in expenses (Dkt. 87-1, Ex. A), actual expenses now stand at $28,062.79, before final-approval hearing travel. Hanson Decl. ¶ 21; Hartley Decl. ¶ 5. Plaintiffs therefore request no more than $25,000 in the aggregate. Counsel will absorb any amount above that cap. This limited request is efficient in absolute terms and represents only a small fraction of the common fund.

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE

It is customary and appropriate to provide a service award to a named plaintiff in recognition of his or her services to the class. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) ("Incentive awards are fairly typical in class action cases."); *Eddings v. Health Net, Inc.*, No. CV 10-1744-JST (RZX), 2013 WL 3013867, at *7 (C.D. Cal. 2013) ("Courts have the discretion to award incentive payments to named plaintiffs as compensation for their actions taken on behalf of the class."). Within the Ninth Circuit, service awards of $5,000 are presumptively reasonable. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-67 (N.D. Cal. 2015); *Oliveira v. Language Line Services, Inc.*, 767 F. Supp. 3d at 1008 (granting service awards of $5,000). Courts routinely grant awards exceeding $5,000 when warranted by the circumstances. *See, e.g., Hamilton v. Juul Labs, Inc.*, No. 20-CV-03710-EMC, 2021 WL 5331451, at *14 (N.D. Cal. Nov. 16, 2021) (granting service awards of $10,000 each to two individuals); *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393–95 (2010) (affirming awards of $10,000 each to four plaintiffs). When considering the amount of a service award, courts may consider "the risk to the class representative in commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered by the class representative; the amount of time and effort spent by the class representative; the duration of the litigation; and the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Congdon v. Uber Techs., Inc.*, No. 16-CV-02499-YGR, 2019 WL 2327922, at *9 (N.D. Cal. May 31, 2019) (citations omitted). Other considerations can include "'the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment,'" as well as the complexity of the litigation. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 948-49, 976-77 (9th Cir. 2003)). Accordingly, awards of $10,000 are not uncommon in this district in the proper circumstances,

even from common funds less than the $4.38 common fund generated in this case. *See, e.g.*, *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 WL 5700403, at *6 (N.D. Cal. Oct. 18, 2013) ($10,000 incentive award, out of $1.7 million common fund); *Schulken v. Washington Mut. Bank*, No. 09-CV-2708-LHK, 2012 WL 12921069, at *3 (N.D. Cal. Nov. 13, 2012) ($10,000 incentive award, out of $2.56 million common fund); *Navarro v. Servisair*, No. C 08-02716 MHP, 2010 WL 1729538, at *4 (N.D. Cal. Apr. 27, 2010) (due to "active participation, an incentive award of $10,000 is reasonable," out of $900,000 settlement fund).

Here, the Court should approve service awards of $10,000 for each Plaintiff. As an initial matter, at a combined total of $30,000, these awards would constitute just 0.7% of the common fund. For comparison, in *Congdon v. Uber Techs., Inc.*, No. 16-CV-02499-YGR, 2019 WL 2327922, at *27–28 (N.D. Cal. May 31, 2019), the $20,000 total award ($5,000 to each of four plaintiffs) represented 1.08% of the common fund. In *Boring v. Bed Bath & Beyond of California Ltd. Liab. Co.*, No. 12-CV-05259-JST, 2014 WL 2967474, at *3 (N.D. Cal. June 30, 2014), the court held that a $7,500 incentive award (representing 1.8% of the $415,000 gross settlement amount) was "reasonable to reflect the time and energy Plaintiff [] expended in bringing this action and the risks taken on behalf of his fellow employees and class members." As a percentage of the recovery, the requested awards are modest. Further, the requested awards were disclosed in the Notice and are severable from settlement approval. Dkt. 87-1, Ex. A at 37.

Additionally, each named Plaintiff, as a condition of the settlement and in exchange for their receipt of service awards, was required to sign a general release of all claims. Dkt. 87-1, Ex. 1 at ¶ 54. This general release is broader than the release applicable to Class Members, the latter of which is a limited release pertaining only to claims that were or could have been asserted in this litigation. Dkt. 87-1, Ex. 1 at ¶ 51–53. The parties' Joint Stipulation of Settlement and Release specifically includes a section entitled "Release By Named Plaintiffs Receiving Service Payments," which provides that each named Plaintiff "in addition to any releases provided by virtue of being a Putative Class Member" would provide a general release of all claims "[i]n exchange for the consideration, undertakings, and covenants undertaken by Bank of America in this Agreement, as well as their receipt and acceptance of their service awards, provided that the

amount awarded to them is not less than Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00)…" Dkt. 87-1, Ex. 1 at ¶ 54 (emphasis added). The broader release required of Mr. Movassaghi, Mr. Bernstein, and Ms. Nguyen is an additional factor supporting the requested service awards. Hanson Decl. ¶ 31

The requested service awards are also appropriate in view of the time devoted to this litigation and assistance rendered to Counsel. As described in greater detail below, each Plaintiff assisted the investigation and pleadings, provided documents, explained employer practices, remained available to counsel over the span of the litigation, participated in the settlement process, and placed a name and professional reputation behind the litigation.

A. Mr. Movassaghi and Mr. Bernstein Stepped Forward at Personal and Professional Risk to Keep the Class Alive, Warranting Service Awards of $10,000 Each

Mr. Movassaghi and Mr. Bernstein stepped forward at a critical point in this case. After the Court's first certification ruling, they gave Counsel documentation of their unpaid vacation balances, which allowed the case to move toward renewed certification and, ultimately, settlement. Hanson Decl. ¶¶ 9, 22. Had they not agreed to join as class representatives, the Classes risked never being certified. Hanson Decl. ¶ 9. They then worked with Counsel to amend the complaint, participated in discovery and provided documents, and took part in mediation and the settlement process. Hanson Decl. ¶¶ 22, 31. Counsel relied on their insight and guidance throughout discovery, mediation, and settlement. Hanson Decl. ¶ 32. Since the Amended Complaint was filed on October 30, 2025 (Dkt. 77), Mr. Movassaghi has devoted approximately 25 hours and Mr. Bernstein approximately 25 hours to this case. That time went to communicating with counsel, gathering and reviewing documents, reviewing the amended complaint, working on discovery, and preparing for and participating in mediation. Hanson Decl. ¶ 22.

Both men believed they faced reputational risk and feared potential workplace retaliation. Bank of America is one of the largest financial institutions in the country and has enormous influence across the financial services industry. By putting their names on a public lawsuit against the Bank, Mr. Movassaghi and Mr. Bernstein permanently tied themselves to litigation against an

employer. Hanson Decl. ¶ 23. When Mr. Bernstein connected with Counsel, he was still employed by the Bank but he agreed to represent the New York Class as a named Plaintiff, he took significant risk in stepping forward to assist in service to the benefit of the Class. Hanson Decl. ¶ 24. Mr. Movassaghi continues to work in the financial industry, where Bank of America is a dominant presence, and he likewise believes he risked his professional reputation to represent the Class. Hanson Decl. ¶ 25. Their time, their commitment, and the risks they took on behalf of the Class each justify a service award of $10,000.

B. Ms. Nguyen Originated This Action and Stayed Committed Through Settlement, Warranting a $10,000 Service Award

Ms. Nguyen's contribution was distinct. Ms. Nguyen devoted at least 80 hours to the case. Hanson Decl. ¶ 26. She has been actively involved from investigation and reviewing the complaint on September 28, 2023 through the settling of the action. Hanson Decl. ¶ 26. Ms. Nguyen was in frequent communication with counsel and heavily participated in discovery, including gathering and producing documents, preparing for and sitting for her deposition. Hanson Decl. ¶ 27. She originated the action, worked closely with counsel, supplied information and documents, participated in discovery, prepared for and sat for deposition, and continued assisting even after the Court held that she might not independently satisfy the vacation-eligibility criteria. Hanson Decl. ¶¶ 28–29. Ms. Nguyen believes her professional risk was also great. She still works in the banking industry yet chose to raise the unpaid vacation accrual issue on behalf of the Class against one of the largest banking institutions in the country. Hanson Decl. ¶ 30.

Although Mr. Movassaghi and Mr. Bernstein were appointed as the settlement class representatives, Ms. Nguyen is still eligible to receive a service award as a settlement Class Member and named Plaintiff. The Settlement Class definition expressly includes "any Named Plaintiff to the extent otherwise not included." Dkt. 95 ¶ 3. More fundamentally, Ms. Nguyen's award compensates work that benefitted the Class; it does not depend on the value of her individual claim[1] or on the title "class representative." *See, e.g., Oliveira,* 767 F. Supp. 3d at 1008-09

[1] Notably, Ms. Nguyen will receive only $200 under the settlement formula, the minimum amount allocated to each participant. Hanson Decl. ¶ 15.

(approving awards to early opt-in plaintiffs based on risk and contributions). The Class benefitted from the commitment of Ms. Nguyen as this case would not have been filed, and this settlement would not have been reached without her continued commitment to representing the interest of the Class.

The significant contributions of Mr. Movassaghi, Mr. Bernstein, and Ms. Nguyen to the Class support their service award request of $10,000 each.

VI. NOTICE AND THE MODIFIED SCHEDULE PROTECT THE CLASS

The Class Notice disclosed that counsel would seek up to one-third of the fund, approximately $25,000 in expenses, and up to $10,000 for each named Plaintiff. Dkt. 87-1, Ex. A. This motion narrows the fee to 25%, caps expenses at $25,000, and requests the disclosed service awards. Under Dkt. 97, the motion will be posted when filed and objections are not due until January 7, 2027. Plaintiffs will report the final reaction of the Class in the January 11 notice-status declaration.

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court award $1,070,000 in attorneys' fees, reimburse reasonable litigation expenses in an aggregate amount not to exceed $25,000, and approve service awards of $10,000 each for Elle Nguyen, Ardavan Movassaghi, and Etienne Bernstein. A proposed order is submitted herewith.

Dated: November 13, 2026

Respectfully submitted,

/s/ George A. Hanson

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELLE NGUYEN, ARDAVAN MOVASSAGHI, and ETIENNE BERNSTEIN, individually and on behalf of all others similarly situated, Plaintiffs, v. BANK OF AMERICA, N.A., Defendant.	**Case No. 5:23-cv-04999-PCP** **GEORGE A. HANSON DECLARATION IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS** Judge: Hon. P. Casey Pitts Date: January 28, 2027 Time: 10:00 a.m. Place: Courtroom 8, 4th Floor

I, George A. Hanson, declare and state as follows:

1. I am a partner with the Kansas City-based law firm Stueve Siegel Hanson LLP ("SSH"). I am lead counsel for Plaintiffs in the above-captioned matter, admitted *pro hac vice*. I submit this Declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards (the "Motion"). I have personal knowledge of the facts declared herein and would competently testify to them if called to do so.

2. Plaintiff Elle Nguyen filed this action on September 28, 2023, asserting claims for violations of state wage payment statutes, breach of contract, and violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* The Bank has denied the claims throughout, has contended that its policies and practices comply with all applicable laws, and has disputed that its internal vacation-balance records reliably establish that any amounts were owed. Dkt. 77.

3. The parties proceeded to discovery, which was substantial. The Bank produced its employee handbook vacation policies, HR Connect materials, and its internal "Terminate an Employee" termination-processing materials. Critically, the Bank also produced Excel spreadsheets of payroll data covering the years 2019 through 2024 identifying each terminated employee with a positive accrual balance who received no vacation payout, including fields for annual accrual, carryover, vacation used, hourly rate of pay, and work state.

4. Plaintiffs deposed the Bank's corporate designee, Patricia Johnson, regarding the Bank's vacation policy, the Workday tracking system, and the termination payout process, and relied on that testimony and the Bank's document productions in briefing class certification.

5. The Bank stated it would oppose renewed certification by challenging the reliability of the records, commissioned employees' eligibility, and multistate manageability.

6. Plaintiffs retained a data analyst to process the Bank's payroll data productions and to model class-wide damages from the Bank's own records.

7. Counsel converted multiple years of payroll data and testimony about the Bank's termination process into a records-based liability and allocation model.

8. Following that discovery, Ms. Nguyen moved for certification of multistate statutory and contract classes and a California subclass. The motion was fully briefed and argued to the Court. The Court denied the motion but did so expressly "without prejudice to any future motion to certify a class that might be filed by a different class representative," holding that Ms. Nguyen could not satisfy Rule 23(a)'s typicality requirement because, "[u]nlike other members of the putative class, [] Nguyen may not have been eligible to accrue vacation time" under the Bank's written policies. Dkt. 65 at 5, 7.

9. Ardavan Movassaghi, who, per the Bank's employment and payroll records, separated from the company with 153.35 hours of accrued but unused vacation time for which he was not paid, and Etienne Bernstein, who separated with 40 hours of accrued but unused vacation time for which he was not paid had several conversations with myself and my associates, provided written records from their employment with the Bank and agreed to serve as class representatives in the case. Had they not agreed to join as class representatives, the classes risked never being certified.

10. When the Court identified a representative-specific problem, Counsel promptly addressed the Court's ruling by filing the operative First Amended Complaint, Dkt. 77, adding Mr. Movassaghi and Mr. Bernstein who had documented balances and positioned the case for renewed certification.

11. The litigation was thus poised for renewed class certification briefing when the parties reached the Settlement. The Bank made clear that it would vigorously oppose any renewed certification motion, including by questioning the reliability of Workday vacation-balance records, disputing the vacation-accrual eligibility of commissioned employees, and contesting the manageability of multistate claims. Had litigation continued, Plaintiffs also faced a potential petition under Rule 23(f), summary judgment, trial, and appeal, and the class would have waited years for any recovery.

12. Plaintiffs had substantial responses to those arguments, but the absence of automated records and a uniform recordkeeping policy nevertheless presented meaningful risks both to certification and to Plaintiffs' ability to prove liability and damages on a class wide basis.

13. Counsel undertook those risks on a fully contingent basis and have received no compensation to date.

14. After data-informed negotiations, the parties mediated in person on January 20, 2026, before the Honorable Vedica Puri (Ret.). They reached impasse that day but later accepted a double-blind mediator's proposal for a $4,280,000 settlement covering former employees in California, New York, and Illinois who received no payout for a positive vacation balance, together with any named Plaintiff not otherwise included.

15. Each non-excluded class member receives a payment automatically, with a minimum amount of $200. Notably, Ms. Nguyen will receive only $200 under the settlement formula, the minimum amount allocated to each participant.

16. Stueve Siegel Hanson has devoted 1,166.90 hours without payment and advanced all expenses.

17. Stueve Siegel Hanson's lodestar through November 13, 2026, is $1,176,372.50, reflecting 1,166.90 hours of professional time devoted to this case thus far.

18. The lodestar is based on Stueve Siegel Hanson hourly rates as of 2025, which range from $375 to $1,425 and reflect the timekeepers' roles, experience, and work performed. These rates are the customary professional rates for Class Counsel.

19. Counsel must still address potential objections, prepare the reply and notice-status record, prepare for and attend the final-approval hearing, supervise implementation, and answer class-member and administrator issues as necessary. Those significant hours will necessarily reduce the cross-check multiplier.

20. The requested $1,070,000 falls below Counsel's current lodestar, and currently represents a modest negative multiplier of approximately 0.9. That does not take into account any of the additional time spent by Counsel preparing this motion, drafting the motion for final approval, preparing for and attending the final approval hearing, and completing the administration process, including responding to inquiries from class members, coordinating with the Settlement Administrator and defense counsel, and the post-distribution accounting, all of which is likely to require meaningful additional hours.

21. My firm incurred costs to obtain transcripts, research the claims, analyze and host data, mediate, and travel for case events. The Notice estimated approximately $25,000 in expenses (Dkt. 87-1, Ex. A), actual expenses now stand at $28,062.79, before final-approval hearing travel.

NAMED PLAINTIFFS EFFORTS IN THE LITIGATION

22. Since the Amended Complaint was filed on October 31, 2025, Mr. Movassaghi has devoted approximately 25 hours and Mr. Bernstein approximately 25 hours to this case. That time

went to communicating with Counsel, gathering and reviewing documents, reviewing the amended complaint, and working on discovery.

23. Mr. Movassaghi and Mr. Bernstein both believed they faced reputational risk and feared potential workplace retaliation. Bank of America is one of the largest financial institutions in the country and has enormous influence across the financial services industry. By putting their names on a public lawsuit against the Bank, Mr. Movassaghi and Mr. Bernstein permanently tied themselves to litigation against an employer.

24. When Mr. Bernstein connected with Counsel, he was still employed by the Bank but he agreed to represent the New York class as a named Plaintiff and believes he took significant risk in stepping forward to assist in service to the benefit of the class.

25. Mr. Movassaghi continues to work in the financial industry, where Bank of America is a dominant presence, and he likewise believes he risked his professional reputation to represent the class.

26. Ms. Nguyen devoted at least 80 hours to the case. She has been actively involved from investigation and reviewing the complaint on September 28, 2023 through the settling of the action.

27. Ms. Nguyen was in frequent communication with Counsel and heavily participated in discovery, including gathering and producing documents, preparing for and sitting for her deposition.

28. Ms. Nguyen prepared and met with Counsel for many hours in advance of her deposition and appeared for her deposition on April 17, 2025 in Newport Beach, California, which I defended.

29. Ms. Nguyen originated the action, worked closely with Counsel, supplied information and documents, participated in discovery, prepared for and sat for deposition, and continued assisting even after the Court held that she might not independently satisfy the vacation-eligibility criteria.

30. Ms. Nguyen believes her professional risk was also great. She still works in the banking industry yet chose to raise the unpaid vacation accrual issue on behalf of the class against one of the largest banking institutions in the country.

31. All three named Plaintiffs assisted Counsel in preparing for the mediation, deciding to settle on behalf of the class, and signed the Joint Stipulation of Settlement and the broader General Release within the agreement.

32. Counsel relied on All three named Plaintiffs' insight and guidance during discovery, mediation, and settlement.

33. I am aware of no conflicts of interest between any of the Plaintiffs and the other members of the Settlement Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed November 13, 2026, in Kansas City, Missouri.



George A. Hanson

EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELLE NGUYEN, ARDAVAN MOVASSAGHI, and ETIENNE BERNSTEIN, individually and on behalf of all others similarly situated, Plaintiffs, v. BANK OF AMERICA, N.A., Defendant.	**Case No. 5:23-cv-04999-PCP** **DECLARATION OF JASON HARTLEY IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS** Judge: Hon. P. Casey Pitts Date: January 28, 2027 Time: 10:00 a.m. Place: Courtroom 8, 4th Floor

I, Jason S. Hartley, declare and state as follows:

1. I am a partner with Hartley LLP, local counsel for Plaintiffs in the above-captioned matter. I submit this Declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards (the "Motion"). I have personal knowledge of the facts declared herein and would competently testify to them if called to do so.

2. Hartley LLP worked alongside lead counsel, Stueve Siegel Hanson LLP to find adequate class representatives to address the Court's concerns and interviewed potential class members who would meet the typicality requirement and had accrued and unused vacation time that they were not paid. My firm then filed the complaint in this action on behalf of Plaintiff Nguyen.

3. Hartley LLP took on the risks of litigating this action on a fully contingent basis and has received no compensation to date.

4. Hartley LLP has spent 16.00 hours in litigation this action, resulting in a total lodestar of $12,696.00. The lodestar is based on Hartley LLP's hourly rates, which range from $295 to $1100 and reflect the timekeepers' roles, experience, and work performed. These rates are customary professional rates for Class Counsel.

5. Hartley LLP has also advanced expenses in an amount of $406.80. My firm incurred costs to file the original complaint on behalf of Plaintiff Nguyen, and for online research.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of November, 2026 at San Diego, California.

s/Jason S. Hartley
Jason S. Hartley

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ELLE NGUYEN, ARDAVAN MOVASSAGHI, and ETIENNE BERNSTEIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 5:23-cv-04999-PCP

[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

Pending before the Court is the Unopposed Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards by Plaintiffs ("Motion") relating to the class action settlement of the above-captioned matter.

WHEREAS on September 1, 2026, this Court entered its Order Granting Preliminary Approval to the Proposed Class Action Settlement Agreement (Dkt. No. 95) ("Preliminary Approval Order"), preliminarily approving the parties' Joint Stipulation of Settlement Agreement and Release (Dkt. No. 87-1, Ex. 1), which sets forth the terms and conditions of the Settlement;

WHEREAS, due and adequate notice of the Settlement has been given to the Class Members pursuant to the Preliminary Approval Order, including notice of the requested attorneys' fees, litigation expenses, and service awards; and

WHEREAS, counsel for the parties appeared before this Court on January 28, 2027, at which time Plaintiffs' Counsel ("Counsel") requested the attorneys' fees, litigation expenses, and service awards as set forth in the Motion,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Having read and considered the papers filed related to this Motion, the court record in this action, and the argument of counsel presented at the hearing, and finding good cause, the Court finds and orders as follows:

1. All terms and phrases in this Order shall have the same meaning ascribed to them in the parties' Joint Stipulation of Settlement Agreement and Release ("Settlement Agreement") (Dkt. No. 87-1, Ex. 1), unless otherwise specified.

2. Based upon the Court's review of the Settlement Agreement, the Motion, Plaintiffs' Motion for Final Approval, and the entire record, the Unopposed Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards is GRANTED.

3. The Court awards Plaintiffs' attorneys' fees in the amount of $1,070,000. The fee award is warranted in light of the results achieved while facing vigorous opposition by experienced counsel, the risks of litigation, the skill and quality of work, the contingent nature of the representation, and the substantial time counsel devoted to the action. The Settlement Administrator shall pay the fee award to Plaintiffs' counsel from the Settlement Amount as soon as practicable following the Effective Date of the Settlement.

4. The Court awards reimbursement of litigation expenses in the amount of $25,000.00, which the Court finds were reasonably incurred in the prosecution of the action. The Settlement Administrator shall pay the expense amount to Plaintiffs' counsel from the Settlement Amount as soon as practicable following the Effective Date of the Settlement.

5. The Court grants service awards to Elle Nguyen, Ardavan Movassaghi, and Etienne Bernstein in the amount of $10,000 each. The Court finds that these awards are justified in light of the time and effort devoted to the action, the risk undertaken, and the recovery obtained on behalf of the Class. The Settlement Administrator shall pay these service awards from the Settlement Amount as soon as practicable following the Effective Date of the Settlement.

IT IS SO ORDERED.

Dated: _____

_____
The Honorable P. Casey Pitts
United States District Court Judge