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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re J&J Investment Litigation

Case No.: 2:22-cv-00529-CDS-NJK

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

Judge: Hon. Cristina D. Silva
Hon. Nancy J. Koppe

1 Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service
 2 Awards came on for hearing before this Court on November 12, 2026. Having considered the
 3 motion and related briefing, the Court **GRANTS** the motion.

4 Plaintiffs' Counsel¹ seek an award of attorneys' fees equal to 31.25% of the \$50 million
 5 settlement fund, to be divided between Class Counsel and Receiver Counsel, reimbursement of
 6 litigation expenses in the amount of \$900,000, as well as \$10,000 service award to each of Plaintiffs
 7 Allan Carso, Barrett Henzel, Bryce Kelly, Joshua Luekenga, Gary W. Lundin, Clint McDaniel, Dan
 8 McDaniel, and Craig Rodney Michaelis (the "Class Representatives").²

9 **I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE**

10 Counsel "who recovers a common fund for the benefit of persons other than himself or his
 11 client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van*
 12 *Gemert*, 444 U.S. 472, 478 (1980). In the Ninth Circuit, there are two ways of assessing requests for
 13 attorneys' fees in common fund cases: the percentage-of-the-recovery method (where the fee is
 14 evaluated as a percentage of the common fund) and the lodestar method (where the fee is evaluated
 15 by reference to counsel's lodestar). *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784
 16 (9th Cir. 2022); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In*
 17 *re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994)).

18 Because the benefit to the class in this case is a fixed common fund that is "easily
 19 quantified," the Court here determines fees using the percentage method while applying a lodestar
 20 cross-check. *Wear v. Sprint Commc'ns Co. L.P.*, 2013 WL 3108312, at *2 (D. Nev. June 18, 2013)

21 _____
 22 ¹ Plaintiffs' Counsel includes Class Counsel, Girard Sharp LLP, Gibbs Mura LLP, and the Law
 23 Offices of Robert L. Brace, and counsel for the Receiver Geoff Winkler, Levine Kellogg Lehman
 24 Schneider + Grossman LLP.

25 ² The fee request is based on the weighted average of Plaintiffs' Counsel's respective lodestar
 26 contributions. Receiver Counsel contributed approximately 25.9% of the lodestar of all Plaintiffs'
 27 counsel. Plaintiffs' Counsel have rounded Receiver Counsel's contribution to 25% and deducted
 attorneys' fees of 25% from the quarter of the settlement fund attributable to Receiver Counsel's
 contributions (\$12.5 million), which equates to attorneys' fees of \$3.125 million. Deducting
 attorneys' fees of 33.33% from the remaining \$37.5 million of the settlement fund yields additional
 fees of \$12,498,750, for total attorneys' fees of \$15,623,750, or 31.24750%, which counsel have
 rounded to 31.25%. Joint Declaration of Counsel ("Joint Decl."), attached as Exhibit 1, ¶ 9.

(quotation omitted); *see Acuna v. So. Nev. T.B.A. Supply Co.*, 324 F.R.D. 367, 384 (D. Nev. 2018).
As set forth below, the Court finds that an award of 31.25% of the Settlement Fund is reasonable.

A. The Percentage-of-the-Recovery Method Supports the Requested Fees

When using the percentage-of-the-recovery method, “courts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). “The benchmark percentage should be adjusted . . . when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors.” *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The factors courts consider when determining whether to depart from the 25% benchmark are: (1) the result achieved; (2) the risk involved in the litigation; (3) the skill required and quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made in similar cases. *Vizcaino*, 290 F.3d at 1048-50.

Plaintiffs’ Counsel requests a fee enhancement to 31.25% of the settlement fund. The Court finds an upward adjustment from the benchmark is warranted under each of the *Vizcaino* factors.

1. Plaintiffs’ Counsel Achieved a Highly Favorable Result for the Class

The Court finds that the most important factor—the results achieved for the class—strongly supports an upwards departure from the benchmark because Plaintiffs’ Counsel overcame significant risks to obtain a recovery that exceeds recoveries in similar cases and other class actions. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (noting “the most critical factor is the degree of success obtained”); *see In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at *4 (N.D. Cal. Aug. 3, 2016).

The \$50 million recovery represents roughly 41% of the best-case damages J&J investors stood to recover at trial (\$121.95 million). ECF No. 286-2, Ex. 2, Joint Declaration of Counsel, ¶ 27. The recovery here as a percentage of the class’s recoverable net losses exceeds that of many similar aiding and abetting cases against banks. *See, e.g., Chang v. Wells Fargo Bank*, No. 19-CV-

01973-HSG, ECF No. 129 at 10-11 (N.D. Cal.) (4-13%); *Jenson v. First Trust Corp.*, 2008 WL 11338161, at *1 n.2, *8 (C.D. Cal. June 9, 2008) (9%); *McNamara v. Wells Fargo Bank*, No. 21-cv-1245-TWR, ECF No. 383 at 25 & n.19 (S.D. Cal.) (11%) *Neilson v. Union Bank*, No. 02-cv-06942-MMM, ECF No. 308 at 26 (C.D. Cal.) (13%); *Gonzalez v. Lloyds TSB Bank*, No. 06-cv-01433-VBF, ECF No. 189 at 5-6, *adopted by* ECF No. 197 (C.D. Cal.) (19%); *Evans v. ZB, N.A.*, No. 2:17-cv-01123, ECF No. 105 at 10 (E.D. Cal.) (25%); *Camenisch v. Umpqua Bank*, No. 20-cv-5905-PCP, ECF No. 472 at 9-10, 14-15 (N.D. Cal.) (37%). The Court notes that the estimated 41% recovery is likely conservative since the Receivership’s accountant calculated damages in his expert report based on the most probable liability period at around \$67 million, subject to reductions for other receivership assets and recoveries, making the recovery here closer to 75%. Joint Decl. ¶ 4.

Either estimate demonstrates that the recovery in this case significantly exceeds the recovery in most other class actions, including in analogous aiding and abetting cases. *See Jenson*, 2008 WL 11338161, at *12 (single digit recovery in aiding and abetting case was an “excellent result” and “highly-favorable outcome” that supported the 33% fee request); *Gevaerts v. TD Bank*, 2015 WL 6751061, at *7 (S.D. Fla. Nov. 5, 2015) (“Approximately ten percent (10%) of the most probable sum Plaintiffs anticipated recovering at trial, which is being paid by one defendant on aiding and abetting claims and who did not initiate the scheme, constitutes a very fair settlement.”); *see also*, e.g., *Int’l Bhd. of Elec. Workers Loc. 697 Pension Fund v. Int’l Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (3.5% recovery of “maximum damages that Plaintiffs believe could be recovered at trial”); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at *4 n.5 (N.D. Cal. Sept. 2, 2015) (collecting cases where courts approved settlements representing recoveries in the low single digits of total possible damages).

This meaningful recovery on behalf of the Class weighs in favor of a 31.25% fee award. *See In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2-3 (N.D. Cal. Sept. 20, 2018) (finding that “[t]he size of the recovery here—whether measured in dollars or by reference to percentage-of-damages recovery” warranted a 33% fee award and lodestar multiplier).

2. Plaintiffs' Counsel Took on Significant Risks in this Case

The substantial recovery Plaintiffs' Counsel obtained also occurred against the backdrop of significant risks. *See Greene v. Jacob Transp. Servs., LLC*, 2018 WL 11424176, at *2 (D. Nev. Aug. 29, 2018) (recommending approval of attorney fees, in part, because "counsel undertook a substantial risk").

Aiding and abetting cases against banks are risky, because plaintiffs must prove the bank's "actual knowledge" of the primary actor's tortious conduct. *See, e.g., Casey v. U.S. Bank Nat. Ass'n*, 127 Cal. App. 4th 1138, 1148 (2005); *Chance World Trading E.C. v. Heritage Bank of Com.*, 438 F. Supp. 2d 1081, 1085-87 (N.D. Cal. 2005) (granting summary judgment for the bank because there was no evidence it was aware of underlying fraud); *Paskenta Band of Nomlaki Indians v. Crosby*, 2016 WL 6094468, at *7 (E.D. Cal. Oct. 19, 2016) (existence of "large withdrawals that triggered heightened scrutiny" did not mean the bank "had knowledge of any wrongdoing").

Given these and other considerations, including the risks of prevailing at class certification, trial, and an appeal, the Court finds that this factor weighs in favor of the requested fee. *See Evans v. Zions Bancorporation, N.A.*, 2022 WL 16815301, at *4 (E.D. Cal. Nov. 8, 2022) (noting the risk of no recovery because evidence of the bank's actual knowledge was "inconclusive and subject to alternate interpretation"); *Gevaerts*, 2015 WL 6751061, at *12 (the "high standard required to prove that TD Bank had actual knowledge of a fraud" constituted a "significant risk" class counsel successfully overcame).

3. The Settlement Reflects the High Quality of Work by Plaintiffs' Counsel

Plaintiffs' Counsel are experienced litigators who have previously represented investors in Ponzi scheme cases, with decades of experience in litigating against sophisticated institutions. *See* ECF No. 286-2, Ex. 2. Among other work benefiting Plaintiffs and Class Members, Plaintiffs' Counsel displayed their skill and experience in: (a) opposing Wells Fargo's motion to dismiss; (b) coordinating with the federal receiver; (c) engaging in thorough expert and fact discovery, including production and review of documents, comprehensive written discovery, and 26 depositions; (d)

1 addressing complex attorney-client issues and insolvency dynamics; (e) moving for class
 2 certification; (f) opposing Wells Fargo’s motion for summary judgment; (g) negotiating a
 3 reasonable settlement; and (h) moving for and securing approval of the settlement. *Id.* ¶¶ 6-20.
 4 Throughout the litigation, Plaintiffs’ Counsel were opposed by sophisticated and experienced
 5 defense counsel. *See In re Am. Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at *22 (C.D. Cal.
 6 July 28, 2014) (considering “the quality of opposing counsel as a measure of the skill required to
 7 litigate the case successfully” as a factor).

8 The complex factual and legal nature of this case, and the quality of work needed to meet
 9 those challenges, weighs in favor of an upward adjustment from the 25% benchmark.

10 **4. The Contingent Nature of the Fee Supports the Fee Request**

11 Plaintiffs’ Counsel litigated this case on an entirely contingent basis for four years, investing
 12 over 19,000 hours and advancing over \$977,000 in expenses, with no assurances of recovery. *See In*
 13 *re Washington Pub. Power Supply*, 19 F.3d at 1299 (“It is an established practice in the private legal
 14 market to reward attorneys for taking the risk of non-payment by paying them a premium over their
 15 normal hourly rates for winning contingency cases.”); *see also Brown v. 22nd Dist. Agric. Ass’n*,
 16 2017 WL 3131557, at *8 (S.D. Cal. July 24, 2017) (recognizing that “class counsel was forced to
 17 forgo other employment in order to devote necessary time to this litigation” and concluding that the
 18 substantial risk associated with taking the matter on a contingent basis warranted “an upward
 19 adjustment to the fee award”).

20 A 31.25% fee is also less than the percentage fee provided for in a standard contingency
 21 agreement, and “when deciding on appropriate fee levels in common-fund cases, courts must do
 22 their best to award counsel the market price for legal services, in light of the risk of nonpayment and
 23 the normal rate of compensation” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir.
 24 2001); *see Blum v. Stenson*, 465 U.S. 886, 904 (1984) (Brennan, J., concurring) (noting that “[i]n
 25 tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers.”); *In re*
 26 *Ocean Power Techs., Inc.*, 2016 WL 6778218, at *29 (D.N.J. Nov. 15, 2016) (“If this were an
 27

individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery.”); Robinson, *An Empirical Study of Settlement Conference Nuts and Bolts*, 17 Harv. Negot. L. Rev. 97, 112 (2012) (“In many instances, the attorney’s fee would be 33% of a settlement, but 40% if it goes to trial.”).

“In the private marketplace, [skilled counsel] commands a significant premium. So too should it here.” *Gevaerts*, 2015 WL 6751061, at *12. This factor supports the requested fee.

5. The Requested Fee is Consistent with Fee Awards in Similar Cases

The Court also finds that the 31.25% requested fee is consistent with fee awards in other recent class action settlements in the Ninth Circuit. *See Barrett v. Apple Inc.*, 2025 WL 1002786, at *2 (N.D. Cal. Apr. 3, 2025) (“The Court also notes that an award of this percentage [33.33%] is consistent with other awards in the Ninth Circuit”); *Martinelli v. Johnson & Johnson*, 2022 WL 4123874, at *9 (E.D. Cal. Sept. 9, 2022) (“[A] comparison to awards typically made in common fund cases suggests that an award amounting to one-third of the settlement amount is appropriate here.”); *see, e.g., McNamara v. Wells Fargo & Co.*, 2026 WL 836680, at *2 (S.D. Cal. Mar. 26, 2026) (award of 33.33%); *In re Silvergate Cap. Corp.*, 2026 WL 973368, at *4-5 (S.D. Cal. Feb. 10, 2026) (same); *Jenson*, 2008 WL 11338161, at *11-15 (award of 33%); *In re Eureka Casino Breach Litig.*, 2026 WL 1715287, at *3 (D. Nev. June 12, 2026) (awarding 33.33% of settlement fund); *Small v. Univ. Med. Ctr. of S. Nev.*, 2019 WL 3063509, at *2 (D. Nev. May 29, 2019) (approving a 33% fee award); *Davis v. Symetra Life Ins. Co.*, 2025 WL 1434727, at *5-6 (W.D. Wash. May 19, 2025) (awarding one-third of settlement fund); *Hod v. Medtronic MiniMed, Inc.*, 2025 WL 2934516, at *8 (C.D. Cal. Sept. 18, 2025) (same); *Aguilar Auto Repair, Inc. v. Wells Fargo Bank, N.A.*, 2025 WL 1753509, at *9-10 (N.D. Cal. May 23, 2025) (same); *Durham v. Sachs Elec. Co.*, 2022 WL 2307202, at *8 (N.D. Cal. June 27, 2022) (same); *In re Telescopes Antitrust Litig.*, 2025 WL 1093248, at *10 (N.D. Cal. Apr. 11, 2025) (same).

B. A Lodestar Crosscheck Confirms that the Requested Fees Are Reasonable

The Ninth Circuit has explained that courts may consider class counsel’s lodestar to “provide[] a check on the reasonableness of the percentage award.” *Vizcaino*, 290 F.3d at 1050. “There is a strong presumption that the lodestar is a reasonable fee.” *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016). The lodestar is calculated by multiplying the hours reasonably spent by reasonable hourly rates. *Bluetooth*, 654 F.3d at 941.

Plaintiffs’ Counsel spent 18,915.5 hours prosecuting this litigation with a resulting lodestar of \$15,570,926.00. The number of hours spent in this complex case is reasonable. The case was heavily litigated for four years and Wells Fargo vigorously defended itself throughout. There was significant motion practice, including a motion to dismiss and a motion for summary judgment, reciprocal *Daubert* motions, and Plaintiffs moved for class certification. Plaintiffs’ Counsel also undertook significant discovery, including document discovery, motion practice before the Magistrate Judge, taking or defending 26 depositions, and coordination with the federal receiver.

Plaintiffs’ Counsel’s hourly rates range from \$365 to \$1,400 for attorneys and \$250 to \$400 for all litigation staff. These rates are consistent with rates recently approved by courts in the Ninth Circuit and are reasonable. *See Joyce R. v. Kijakazi*, 2023 WL 4532829, at *2 (D. Nev. July 12, 2023) (finding an “effective hourly rate of \$1,400” reasonable); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (9th Cir. Dec. 18, 2018) (rates ranging from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates, and \$245 to \$350 for paralegals were reasonable); *see also Wakefield v. Wells Fargo & Co.*, 2015 WL 3430240, at *5 (N.D. Cal. May 28, 2015) (noting that a court may utilize counsel’s current rates to compensate for delay in payment).

Counsel’s current lodestar results in a negligible multiplier of approximately 1.003, which is well within the typical range in class actions. *Milburn v. PetSmart, Inc.*, 2019 WL 5566313, at *8 (E.D. Cal. Oct. 29, 2019) (noting that multipliers “in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation”); *Vizcaino*, 290 F.3d at 1052 (collecting sampling of published, common fund settlements, with multipliers spanning from 0.6 to 8.5); *see also Lee v.*

1 *Enter. Leasing Co.-W.*, 2015 WL 2345540, at *8 (D. Nev. May 15, 2015) (approving a 2.07
 2 multiplier and noting with favor the *Vizcaino* multiplier of 3.65). The Court recognizes that the
 3 multiplier will further decline because Plaintiffs' Counsel will continue to perform work in this case
 4 to secure the Settlement for distribution.

5 A lodestar crosscheck supports the reasonableness of the request.

6 **II. THE REQUESTED EXPENSES ARE REASONABLE**

7 Plaintiffs' Counsel have incurred \$977,784.24 in litigation expenses but limit their request
 8 for reimbursement to \$900,000 as set forth in the Class Notice. In common fund cases "[c]lass
 9 counsel is entitled to reimbursement of reasonable expenses." *Lidoderm*, 2018 WL 4620695, at *4
 10 (quotation omitted); *see also In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D.
 11 Cal. Sept. 2, 2015) ("In common fund cases, the Ninth Circuit has stated that the reasonable
 12 expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense." (citing
 13 *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977))).

14 The expenses are reasonable for this case and the "categories of expenses . . . are the type
 15 routinely charged to clients, and should be reimbursed." *Lidoderm*, 2018 WL 4620695, at *4; *see*
 16 *also High-Tech*, 2015 WL 5158730, at *16 (awarding costs for (1) expert witness fees; (2)
 17 mediators' fees; (3) document review; (4) court reporting and videographer services; (5) electronic
 18 research; (6) copying, mailing, and serving documents; and (7) case-related travel for plaintiffs,
 19 witnesses, experts, and counsel).

20 **III. THE REQUESTED SERVICE AWARDS ARE REASONABLE**

21 "The purpose of a service award is to 'compensate class representatives for work done on
 22 behalf of the class, to make up for financial or reputational risk undertaking in bringing the action,
 23 and, sometimes, to recognize their willingness to act as a private attorney general.'" *Daniels v. Aria*
 24 *Resort & Casino, LLC*, 2023 WL 2634613, at *5 (D. Nev. Mar. 23, 2023) (quoting *Rodriguez v. W.*
 25 *Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)).

Plaintiffs' Counsel requests a service award of \$10,000 to each of the Class Representatives. The requested service awards are reasonable, representing approximately 0.1% of the total settlement, and are consistent with Ninth Circuit practice. *See e.g., Coyne v. Las Vegas Metro. Police Dep't*, 2026 WL 1346623, at *3 (D. Nev. May 13, 2026) (awarding services awards of \$12,5000 and \$20,000); *Lee*, 2015 WL 2345540, at *11 (approving \$10,000 service award); *Cunningham v. Leslie's Poolmart, Inc.*, 2016 WL 7173806, at *2 (C.D Cal. Apr. 18, 2016) (same); *Negrete v. Allianz Life Ins. Co. of N. Am.*, 2015 WL 12592726, at *15 (C.D. Cal. Mar. 17, 2015) (same); *Quezada v. Schneider Logistics Transloading & Distrib., Inc.*, 2014 WL 12584436, at *12 (C.D. Cal. May 12, 2014) (explaining that "other courts have found that service awards of \$10,000 to named plaintiffs are reasonable" and collecting cases).

Each of the Class Representatives spent substantial time and energy participating in this lawsuit, including assisting counsel in their pretrial investigation, reviewing the complaint, monitoring and communicating with counsel about case developments, gathering and producing documents, responding to written discovery, preparing and appearing for depositions, and evaluating settlement proposals. The requested service awards are thus reasonable and consistent with the practice in the Ninth Circuit.

IV. CONCLUSION

For the foregoing reasons, the Court grants Plaintiffs' Counsel's request for an award of attorneys' fees equal to 31.25% of the Settlement Fund. Plaintiffs' Counsel is also awarded \$900,000 in litigation expenses. The Court awards service awards in the amount of \$10,000 to each of Plaintiffs Allan Carso, Barrett Henzel, Bryce Kelly, Joshua Luekenga, Gary W. Lundin, Clint McDaniel, Dan McDaniel, and Craig Rodney Michaelis.

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1 **IT IS SO ORDERED.**

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3 Date: _____

4 HON. CRISTINA D. SILVA
5 UNITED STATES DISTRICT JUDGE
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