

SEMENZA RICKARD LAW
Jarrod L. Rickard, Bar No. 10203
Email: jlr@semenzarickard.com
Katie L. Cannata, Bar No. 14848
Email: klc@semenzarickard.com
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803
Facsimile: (702) 920-8669

Attorneys for Receiver Geoff Winkler

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

In re J&J Investment Litigation

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

Judge: Hon. Cristina D. Silva

**RECEIVER'S RESPONSE TO MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES AND SERVICE AWARDS
BY PLAINTIFFS**

I. INTRODUCTION

Receiver Geoff Winkler (the "Receiver"), the federal equity receiver appointed by this Court in the matter styled *SEC v. Beasley, et al.*, Case No. 2:22-cv-00612-CDS-EJY (the "Receivership Case"), respectfully submits this response to Plaintiffs' *Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards* (the "Motion") [ECF No. 301]. The Receiver recognizes and appreciates that Plaintiffs' Counsel¹ performed valuable and effective work in this litigation, which should result in a significant recovery for investors injured by the Ponzi-style investment scheme alleged here, and in the Receivership Case. Nonetheless, the Receiver respectfully opposes a fee award of 31.25% of the \$50 million settlement fund (the "Settlement Fund"), which percentage exceeds the Ninth Circuit's well-established 25% benchmark for attorneys' fees in common fund cases. The Receiver submits that the Court should award

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Motion.

1 attorneys' fees at the 25% benchmark rate, which remains consistent with the agreement between
2 the Receiver and Receiver's Counsel, and which would maximize recovery for defrauded investors.

3 **II. ARGUMENT**

4 **A. The Fee Request Is Inconsistent With The Receiver's Preexisting Agreement.**

5 As Class Counsel acknowledge, Receiver's Counsel agreed to a fee of 25% of any recovery,
6 subject to Court approval. (ECF No. 301 at 10–11.) Under the agreement between Plaintiffs'
7 Counsel and the Receiver (the "Joint Prosecution Agreement"), Plaintiffs' Counsel agreed to "first
8 ask the Receiver for its support" before seeking more than 25%, and the Receiver, "despite good
9 faith discussions, [...] reserved his position." (*Id.* at 10.) The Receiver respectfully exercises that
10 reservation in this response.

11 Courts give substantial weight to fee agreements negotiated at the outset of litigation, as
12 such arrangements reflect a market-based assessment of reasonable value before the outcome is
13 known. *See In re Oracle Sec. Litig.*, 131 F.R.D. 688, 692 (N.D. Cal. 1990) ("[A]ttorney
14 compensation set retrospectively by a judge can never accurately approximate an arrangement
15 which the class and counsel would have made at the outset.").

16 The Joint Prosecution Agreement is precisely this type of *ex ante* arrangement: a 25%
17 contingency fee negotiated by sophisticated parties with strong incentives to agree on a fee that
18 accurately accounted for the risks and rewards of the case.

19 The Receiver owes fiduciary duties to the receivership estate and its beneficiaries, including
20 defrauded investors who suffered significant financial losses as a result of their investment in a
21 Ponzi scheme. In exercising his business judgment, the Receiver determined that a 25% fee
22 appropriately balanced the need for competent counsel against the imperative to maximize recovery
23 for victims. Applying a 25% rate to the entire Settlement Fund would yield total attorneys' fees of
24 \$12.5 million. Applying the blended 31.25% rate sought by Plaintiffs yields \$15,623,750, a
25 difference of more than \$3.1 million that could otherwise be available for distribution by the
26 Receiver. Accordingly, the Receiver respectfully submits that the Court should give effect to the
27 parties' bargain.
28

1 **B. The Court's Role In Reviewing Fee Requests.**

2 At the fee-setting stage, the interests of class counsel diverge from those of the class and
 3 the receivership estate's beneficiaries. The Ninth Circuit has stressed that "in common fund cases
 4 the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage," and
 5 accordingly "the district court must assume the role of fiduciary for the class plaintiffs." *Staton v.*
 6 *Boeing Co.*, 327 F.3d 938, 970 (9th Cir. 2003) (quoting *In re Wash. Pub. Power Supply Sys. Sec.*
 7 *Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994) and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052
 8 (9th Cir. 2002)); see also *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922 (9th Cir.
 9 2020) (reaffirming that courts assume a "fiduciary role that requires close scrutiny of class counsel's
 10 requests for fees"). As the Ninth Circuit emphasized in *Staton*, "[i]n a common fund case, the judge
 11 must look out for the interests of the beneficiaries, to make sure that they obtain sufficient financial
 12 benefit after the lawyers are paid." *Staton*, 327 F.3d at 970 (quoting *In re Coordinated Pretrial*
 13 *Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 608 (9th Cir. 1997)). "[R]ubber-
 14 stamp approval, even in the absence of objections, is improper." *Vizcaino*, 290 F.3d at 1052.

15 This consideration is particularly relevant here. The beneficiaries of the Settlement Fund
 16 are victims of a Ponzi scheme who have suffered significant financial losses. The Receiver, charged
 17 with maximizing recovery for the benefit of all victims (Receivership Case, ECF No. 373),
 18 respectfully asks the Court to carefully evaluate whether the requested fee premium is warranted
 19 under the circumstances.

20 **C. The 25% Benchmark Should Apply, And The Vizcaino Factors Support The**
 21 **Benchmark Rate.**

22 The Ninth Circuit has "established 25 percent of the fund as the 'benchmark' award that
 23 should be given in common fund cases." *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904
 24 F.2d 1301, 1311 (9th Cir. 1990); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
 25 (9th Cir. 2011). While the benchmark may be adjusted upward or downward based on the
 26 circumstances, any departure "must be supported by findings that take into account all of the
 27 circumstances of the case." *Vizcaino*, 290 F.3d at 1048. Here, the relevant *Vizcaino* factors weigh
 28 in favor of the benchmark rate, not a departure above it.

1 1. The Results Achieved Reflect Collaborative Efforts.

2 Plaintiffs' Counsel note that the \$50 million settlement represents 41% of their estimate of
3 best-case damages, and potentially 75% under a more realistic liability-period analysis. (ECF
4 No. 301 at 4,6.) This is a favorable outcome that reflects the collaborative efforts of multiple
5 interested parties, including Plaintiffs' Counsel, Receiver's Counsel, and the Receiver. The
6 Receiver's forensic accountant served as Plaintiffs' expert, calculated damages, and prepared an
7 expert report that provided important evidentiary support for the settlement. The Receiver's
8 forensic accounting work was, as the Receiver previously represented to this Court, "of significant
9 value in assessing and prosecuting claims" and "likely to result in cost savings" for the litigation.
10 (Receivership Case, ECF No. 457 at 6.) Such has indeed been the case. Accordingly, in the
11 Receiver's view, a deviation from the 25% benchmark in favor of Plaintiffs' Counsel risks
12 overcompensating Plaintiffs' Counsel for results obtained by multiple parties, including the
13 Receiver, who is not participating in any contingency fee recovery. The Receiver respectfully
14 submits that this collaborative effort supports applying the benchmark rate, rather than a premium
15 above it.

16 2. Litigation Risk Is Adequately Accounted for in the Benchmark.

17 In their Motion, Plaintiffs' Counsel rely significantly on the argument that the difficulty in
18 establishing Wells Fargo's "actual knowledge" of the underlying fraud significantly increased the
19 risk of recovery to contingency fee professionals. (ECF No. 301 at 1–2.) The Receiver
20 acknowledges that aiding and abetting claims against banks carry meaningful risk. That said, the
21 Ninth Circuit's 25% benchmark is itself predicated upon the recognition of such risk, meaning that
22 it already accounts for "a genuine degree of risk." *In re Quantum Health Res., Inc.*, 962 F. Supp.
23 1254, 1258 (C.D. Cal. 1997). Moreover, where, as here, Plaintiffs acknowledge that the settlement
24 amount delivers a recovery of between 41% and 75% of triable damages, the Receiver respectfully
25 submits that a fee of 25% of a \$50 million fund, or \$12.5 million, fairly and adequately compensates
26 counsel for the risk undertaken.

27 The Ninth Circuit held that “[j]ust as the lodestar method can ‘confirm that a percentage of
28 recovery amount does not award counsel an exorbitant hourly rate,’ the percentage-of-recovery

method can likewise ‘be used to assure that counsel’s fee does not dwarf class recovery.’” *In re Bluetooth Headset*, 654 F.3d at 945. Here, the lodestar cross-check further supports the Receiver’s position that the 25% benchmark rate is appropriate.

D. A Lodestar Cross-Check Confirms The Benchmark Rate Is Appropriate.

Plaintiffs’ Counsel report a lodestar of \$15.57 million based on 18,915.5 hours of work. (ECF No. 301 at 11.) This implies a blended hourly rate of approximately \$823 per hour. Critically, the blended hourly rate implied by Plaintiffs’ Counsel’s lodestar, approximately \$800 per hour, exceeds the rates charged by the Receiver and his professionals in the Receivership Case.

The blended rate also significantly exceeds rates recently approved by courts in the District of Nevada. *See WSOU Investments, LLC v. Salesforce, Inc.*, 2024 WL 307617 (D. Nev. Jan. 26, 2024). In *Salesforce*, the court conducted an extensive survey of reasonable hourly rates in this District. The court found that “[h]ourly rates of \$550 to \$750 have recently been found reasonable for attorneys with 38 or more years of experience [...] rates of \$500 to \$641 have recently been approved for attorneys with between 17 and 38 years of experience [...] [r]ates of between \$400 to \$500 per hour have been approved for attorneys with 13 to 17 years of experience [...] [and] [r]ates of \$300 to \$365 per hour have recently been awarded for attorneys with five to ten years of experience.” *Salesforce*, 2024 WL 307617, at *4–5.

At a blended rate of \$800 per hour (Plaintiffs’ Counsel’s assumption), the lodestar is approximately \$15.1 million. At a blended rate of approximately \$650 per hour, the lodestar would be approximately \$12.3 million, essentially equal to the 25% benchmark rate of \$12.5 million agreed to by the parties. When measured against rates actually approved in the District of Nevada, the requested fee would provide a substantial windfall. The Receiver respectfully submits that this analysis further supports the 25% benchmark rate in the preexisting agreement between the parties.

E. The Court Should Award Fees At The 25% Benchmark.

The Receiver respectfully submits that the 25% benchmark rate is the appropriate fee in this case. The *Vizcaino* factors support this conclusion: the favorable result reflects collaborative efforts between Plaintiffs’ Counsel, Receiver’s Counsel, and the Receiver; the litigation risk, while meaningful, is the type of contingency risk that the benchmark already accounts for; the lodestar

1 cross-check, when conducted using rates actually approved in this District, confirms that the
2 benchmark fee provides substantial compensation; and the Receiver, consistent with the terms of
3 the Joint Prosecution Agreement, has respectfully reserved his position on fees above 25%.

4 A 25% fee of \$12.5 million represents substantial compensation for four years of valuable
5 work, while also maximizing the recovery available to defrauded investors, consistent with this
6 Court's appointment of the Receiver and the fundamental purpose of the receivership.

7 **III. CONCLUSION**

8 For the foregoing reasons, the Receiver respectfully requests that the Court award Plaintiffs'
9 Counsel attorneys' fees in an amount not to exceed 25% of the \$50 million Settlement Fund, and
10 that the Court deny Plaintiffs' request for a fee above the Ninth Circuit benchmark.

11 DATED this 22nd day of September 2026.

12 /s/ Jarrod L. Rickard

13 **SEMENZA RICKARD LAW**

14 Jarrod L. Rickard, Bar No. 10203

15 Katie L. Cannata, Bar No. 14848

16 10161 Park Run Drive, Suite 150

17 Las Vegas, Nevada 89145

18 *Attorneys for Receiver Geoff Winkler*

CERTIFICATE OF SERVICE

I am employed by the law firm of Semenza Rickard Law in Clark County, Nevada. I am over the age of 18 and not a party to this action. The business address is 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

I hereby certify that on the 22nd day of September, 2026, I served the document(s), described as:

**RECEIVER'S RESPONSE TO MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES AND SERVICE AWARDS
BY PLAINTIFFS**

☒ by placing the ☐ original ☒ a true copy thereof enclosed/attached and delivered:

☒ a. via **ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)

Adam E. Polk apolk@girardsharp.com, 3768906420@filings.docketbird.com,
avongoetz@girardsharp.com

Alicia Baiardo abaiardo@mcguirewoods.com, JTabisaura@mcguirewoods.com

Amy M. Zeman amz@classlawgroup.com

Anthony Q. Le ale@mcguirewoods.com, shicks@mcguirewoods.com

Brad M. Johnston bjohnston@shjneveda.com, cjones@shjneveda.com

Daniel C. Girard dgirard@girardsharp.com, 5804895420@filings.docketbird.com,
avongoetz@girardsharp.com

Daniel Reed Ormsby dormsby@albrightstoddard.com, abrebbia@albrightstoddard.com,
gma@albrightstoddard.com, icrosby@albrightstoddard.com, kfenton@albrightstoddard.com,
kmonks@albrightstoddard.com, lisa@albrightstoddard.com, thansen@albrightstoddard.com

David K Stein ds@classlawgroup.com, 7316370420@filings.docketbird.com,
ecf@classlawgroup.com

David R. Chase david@davidchaselaw.com, admin@davidchaselaw.com

Emily Elizabeth Beale eb@classlawgroup.com

Eric H. Gibbs ehg@classlawgroup.com

James Allen Beckstrom, II jb@beckstromlaw.com, jt@beckstromlaw.com,
sb@beckstromlaw.com

1 Jordan Elias jelias@girardsharp.com, 5261237420@filings.docketbird.com,
2 avongoetz@girardsharp.com

3 Jordan Nadine Isern jisern@girardsharp.com

4 Joseph G. Went jgwent@hollandhart.com, Intaketeam@hollandhart.com,
5 krcole@hollandhart.com, vlarsen@hollandhart.com

6 K. Issac deVyver kdevyver@mcguirewoods.com, hharding@mcguirewoods.com,
7 kfox@mcguirewoods.com, mkrizan@mcguirewoods.com

8 Katelyn M, Fox kfox@mcguirewoods.com

9 Lance A Maningo lance@maningolaw.com, kelly@maningolaw.com,
10 yasmin@maningolaw.com

11 Maria F. Elosu mariaelosulaw@gmail.com

12 Michael R. Ayers michael.ayers@qpwbllaw.com, brandylin.trimble@qpwbllaw.com,
13 christine.miller@qpwbllaw.com

14 Miles N Clark miles@milesclarklaw.com, lucille.chiusano@ecf.courtdrive.com

15 Molly M White mwhite@mcguirewoods.com, shicks@mcguirewoods.com

16 Robert L. Brace rlbrace@rusty.lawyer

17 Samuel A Schwartz saschwartz@nvfirm.com, ecf@nvfirm.com

18 Scott L Silver ssilver@silverlaw.com, rfeinberg@silverlaw.com, rschwamm@silverlaw.com

19 Spencer S. Hughes shughes@classlawgroup.com

20 Sydney Gambiae srgambiae@hollandhart.com, intaketeam@hollandhart.com,
21 jeheilich@hollandhart.com, krcole@hollandhart.com, pmostlie@hollandhart.com,
22 vllarsen@hollandhart.com

23 Thomas Watts tomw@girardsharp.com, 1294822420@filings.docketbird.com,
24 avongoetz@girardsharp.com

25 ☐ b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The
26 envelope(s) were mailed with postage thereon fully prepaid. I am readily familiar with
27 Semenza Rickard Law's practice of collection and processing correspondence for mailing.
28 Under that practice, documents are deposited with the U.S. Postal Service on the same day
which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in
the ordinary course of business. I am aware that on motion of party served, service is
presumed invalid if the postal cancellation date or postage meter date is more than one day
after the date stated in this proof of service.

1
2 ☐ c. **BY PERSONAL SERVICE.**

3 ☐ d. **BY DIRECT EMAIL**

4 ☐ e. **BY FACSIMILE TRANSMISSION.**

5 I declare under penalty of perjury that the foregoing is true and correct.

6 /s/ Olivia A. Kelly

7 An Employee of Semenza Rickard Law