

1 Richard Kellner, CA Bar No. 171416
rlk@kellnerlaw.com
2 KELLNER LAW GROUP PC
315 S. Beverly Dr., Ste 504
3 Beverly Hills, CA 90212-4316
Telephone: 310-780-6759
4 Facsimile: 310-277-0635

5 Paul J. Lukas, MN Bar No. 22084X*
lukas@nka.com
6 Brock J. Specht, MN Bar No. 0388343*
bspecht@nka.com
7 Benjamin J. Bauer, MN Bar No. 0398853*
bbauer@nka.com
8 NICHOLS KASTER, PLLP
4700 IDS Center
9 80 S 8th Street
Minneapolis, MN 55402
10 Telephone: 612-256-3200
Facsimile: 612-338-4878
11 * admitted *pro hac vice*

12 ATTORNEYS FOR PLAINTIFFS AND THE
13 PROPOSED CLASS

14 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 Chad Rocke, et al.,

16 Plaintiffs,

17 v.

18 Allianz Asset Management of America
19 LLC, et al.,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 8:23-cv-00098-CJC-KES

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 18, 2023
Time: 1:30 p.m.
Courtroom: 9B
Judge: Hon. Cormac J. Carney

TABLE OF CONTENTS

1

2 INTRODUCTION 1

3 BACKGROUND 2

4 I. THE PLEADINGS AND MOTIONS TO DISMISS 2

5 II. INFORMAL DISCOVERY AND SETTLEMENT 3

6 III. OVERVIEW OF SETTLEMENT TERMS 3

7 A. The Settlement Class 3

8 B. Monetary Relief 4

9 C. Prospective Relief 5

10 D. Release of Claims 5

11 E. Class Notice and Settlement Administration 6

12 F. Attorneys’ Fees and Administrative Expenses 6

13 G. Review by Independent Fiduciary 7

14 ARGUMENT 7

15 I. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT 8

16 A. The Settlement Was Obtained Through Targeted Discovery And
17 Serious, Informed, Non-Collusive Negotiations 8

18 B. The Settlement Provides for Significant Monetary and Prospective
19 Relief and Falls within the Range of Possible Approval 9

20 C. Plaintiffs’ Case Faced Risks and Significant Expenses with Further
21 Litigation 11

22 D. The Terms of the Attorney’s Fee Award and Class Representatives
23 Service Awards are Reasonable and Warrant Preliminary
24 Approval 13

25 E. The Settlement Treats All Class Members Fairly and Equitably 15

26 II. THE CLASS NOTICE PLAN IS REASONABLE AND SHOULD BE APPROVED 15

27 III. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES
28 16

A. The Proposed Settlement Class Satisfies Rule 23(a) 17

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

1. Numerosity..... 17

2. Commonality 17

3. Typicality 18

4. Adequacy 19

B. The Proposed Class Satisfies Rule 23(b)(1) 19

1. Rule 23(b)(1)(A)..... 20

2. Rule 23(b)(1)(B) 20

CONCLUSION..... 21

TABLE OF AUTHORITIES

Cases

1

2

3 *Abbott v. Lockheed Martin Corp.*,
2015 WL 4398475 (S.D. Ill. July 17, 2015)..... 13

4

5 *Almanzar v. Home Depot U.S.A. Inc.*,
2023 WL 4373979 (E.D. Cal. July 6, 2023) 10

6 *Alvidres v. Countrywide Fin. Corp.*,
2008 WL 1766927 (C.D.C.A. 2008)..... 20

7

8 *Amchem Prods. Inc. v. Windsor*,
521 U.S. (1997) 17

9 *Balderas v. Massage Envy Franchising, LLC*,
2014 WL 3610945 (N.D. Cal. July 21, 2014)..... 10

10

11 *Beach v. JPMorgan Chase Bank, Nat’l Ass’n*,
2019 WL 2428631 (S.D.N.Y. June 11, 2019)..... 21

12 *Beach v. JPMorgan Chase Bank, Nat’l Ass’n*,
No. 17-cv-00563, ECF No. 211 (S.D.N.Y. May 20, 2020) 10

13

14 *Beach v. JPMorgan Chase Bank, Nat’l Ass’n*,
No. 17-cv-00563, 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020)..... 11

15 *Becker v. LISI, LLC*,
2023 WL 3668526 (N.D. Cal. May 25, 2023) 9

16

17 *Bowdle v. King’s Seafood Co., LLC*,
2022 WL 19235264 (C.D. Cal. Oct. 19, 2022) 9, 13, 14, 19

18 *Bravo v. Gale Triangle, Inc.*,
2017 WL 708766 (C.D. Cal. Feb. 16, 2017)..... 7, 18

19

20 *Brightk Consulting Inc., BMW of N. Am., LLC*,
2023 WL 2347446 (C.D. Cal. Jan. 3, 2023) 14

21 *Briseno v. ConAgra Foods, Inc.*,
998 F.3d 1014 (9th Cir. 2021)..... 13

22

23 *Brotherston v. Putnam Invs., LLC*,
907 F.3d 17 (1st Cir. 2018) 19

24 *Cassell v. Vanderbilt Univ.*,
2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018) 21

25

26 *Cates v. The Trustees of Columbia University in the City of New York et al*,
1:16-cv-06524, ECF No. 210 (S.D.N.Y. Nov. 13, 2018) 21

27 *Chao v. Aurora Loan Servs., LLC*,
2014 WL 4421308 (N.D. Cal. Sept. 5, 2014) 16

28

1 *Churchill Village, L.L.C. v. Gen. Elec.*,
 2 361 F.3d 566 (9th Cir. 2004)..... 16
 3
 4 *Class Plaintiffs v. City of Seattle*,
 5 955 F.2d 1268 (9th Cir. 1992)7..... 7
 6
 7 *Cotter v. Lyft, Inc.*,
 8 176 F. Supp. 3d 930 (N.D. Cal. 2016) 9
 9
 10 *Cunningham v. Cornell Univ.*,
 11 1:16-cv-6525, ECF No. 219 (S.D.N.Y. Jan. 22, 2019)..... 21
 12
 13 *Diaz v. United Parcel Serv., Inc.*,
 14 2023 WL 3624779 (E.D. Cal. May 24, 2023)..... 15
 15
 16 *Gen. Tel. Co. of the S.W. v. Falcon*,
 17 457 U.S. 147 (1982) 18
 18
 19 *Glass v. UBS Fin. Servs., Inc.*,
 20 2007 WL 221862 (N.D. Cal. Jan. 26, 2007) 9
 21
 22 *Griffin v. Consol. Commc’ns*,
 23 2023 WL 3853643 (E.D. Cal. June 6, 2023)..... 7
 24
 25 *Gutierrez v. Amplify Energy Corp.*,
 26 2023 WL 3071198 (C.D. Cal. Apr. 24, 2023)..... 14, 15
 27
 28 *Hanlon v. Chrysler Corp.*,
 150 F.3d 1011 (9th Cir. 1998)..... 10
Hanon v. Dataproducts Corp.,
 976 F.2d 497 (9th Cir. 1992)..... 18
Haralson v. U.S. Aviation Servs. Corp.,
 383 F. Supp. 3d 959 (N.D. Cal. 2019) 9
Hochstadt v. Boston Scientific Corp.,
 708 F. Supp. 2d 95 (D. Mass. 2010) 20
In re Endosurgical Prod. Direct Purchaser Antitrust Litig.,
 2008 WL 11504857 (C.D. Cal. Dec. 31, 2008) 12
In re Glob. Crossing Sec. & ERISA Litig.,
 225 F.R.D. 436 (S.D.N.Y. 2004)..... 20
In re Google Referrer Header Privacy Litig.,
 87 F. Supp. 3d 1122 (N.D. Cal. 2015) 9
In re Marsh ERISA Litig.,
 265 F.R.D. 128 (S.D.N.Y. 2010)..... 16
In re Mego Fin. Corp. Sec. Litig.,
 213 F.3d 454, 459 (9th Cir. 2000)..... 10

1 *In re Northrop Grumman Corp. ERISA Litig.*,
 2011 WL 3505264 (C.D. Cal. Mar. 29, 2011) 18

2 *In re Rite Aid Corp. Sec. Litig.*,
 3 146 F. Supp. 2d 706 (E.D. Pa. 2001) 10

4 *In re Toys R. Us-Delaware, Inc. – Fair & Accurate Credit Transactions ACT*
 5 *(FACTA) Litigation.*,
 295 F.R.D. 438 (C.D. Cal. 2014) 11

6 *In re Uber FCRA Litig.*,
 2017 WL 2806698 (N.D. Cal. 2017)..... 10

7 *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*,
 8 2018 WL 2183253 (N.D. Cal. May 11, 2018) 11

9 *Kanawi v. Bechtel Corp.*,
 254 F.R.D. 102 (N.D.C.A. 2008) 18, 20

10 *Karg v. Transamerica Corp.*,
 11 2020 WL 3400199 (N.D. Iowa Mar. 25, 2020) 21

12 *Karpik v. Huntington Bancshares Inc.*,
 2021 WL 757123 (S.D. Ohio Feb. 18, 2021)..... 8

13 *Koenig v. Lime Crime, Inc.*,
 14 2018 WL 11358228 (C.D. Cal. Apr. 2, 2018)..... 8

15 *Krueger v. Ameriprise Fin.*,
 304 F.R.D. 559 (D. Minn. 2014)..... 20

16 *Krueger v. Ameriprise Fin., Inc.*,
 17 2015 WL 4246879 (D. Minn. July 13, 2015)..... 12, 15

18 *Kruger v. Novant Health, Inc.*,
 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016)..... 13

19 *Mckenzie v. Fed. Express Corp.*,
 20 2012 WL 2930201 (C.D. Cal. July 2, 2012) 7

21 *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*,
 311 F.R.D. 590 (C.D. Cal. 2015) 17

22 *Morales v. Stevco, Inc.*,
 23 2012 WL 1790371 (E.D. Cal. May 16, 2012)..... 15

24 *Munro v. Univ. of S.C.A.*,
 2019 WL 7842551 (C.D.C.A. 2019)..... 18, 20, 21

25 *Nat’l Rural Telecomm’s Coop. v. DIRECTV*,
 26 221 F.R.D. 523 (C.D. Cal. 2004) 7, 12

27 *Peel v. Brooksameric Mortg. Corp.*,
 2014 WL 12589317 (C.D. Cal. Nov. 13, 2014)..... 8

28

1 *Perkins v. LinkedIn Corp.*,
 2016 WL 613255 (N.D. Cal. Feb. 16, 2016)..... 11, 13, 16

2 *Phillips Petroleum Co. v. Shutts*,
 3 472 U.S. 797 (1985) 16

4 *Price v. Eaton Vance Corp.*,
 No. 18-12098, ECF No. 32 (D. Mass. May 6, 2019) 11

5 *Price v. Eaton Vance Corp.*,
 6 No. 18-12098, ECF No. 57 (D. Mass. Sept. 24, 2019) 11

7 *Raziano v. Albertson’s LLC*,
 2021 WL 3473575 (C.D. Cal. Feb. 8, 2021)..... 11

8 *Reetz v. Lowe’s Companies, Inc.*,
 9 2021 WL 4771535 (W.D.N.C. Oct. 12, 2021) 12

10 *Rodriguez v. W. Publ’g Corp.*,
 563 F.3d 948,(9th Cir. 2009)..... 7, 12

11 *Rozo v. Principal Life Ins. Co.*,
 12 2021 WL 1837539 (S.D. Iowa Apr. 8, 2021)..... 12

13 *Sacerdote v. New York Univ.*,
 328 F. Supp. 3d 273 (S.D.N.Y. 2018)..... 12

14 *Sims v. BB&T Corp.*,
 15 2019 WL 1995314 (M.D.N.C. May 6, 2019)..... 11

16 *Sims v. BB&T Corp.*,
 2019 WL 1993519 (M.D.N.C. May 6, 2019)..... 15

17 *Spann v. J.C. Penney Corp.*,
 18 314 F.R.D. 312 (C.D. Cal. 2016) 16

19 *Staton v. Boeing Co.*,
 327 F.3d 938 (9th Cir. 2003)..... 8

20 *Stevens v. SEI Investments Co.*,
 21 No. 2:18-cv-04205-NIQA, ECF No. 40 (E.D. Pa. July 31, 2019) 21

22 *Sypherd v. Lazy Dog Restaurants, LLC*,
 2022 WL 19076640 (C.D. Cal. Aug. 29, 2022) 17

23 *Tibble v. Edison Int’l*,
 24 2017 WL 3523737 (C.D. Cal. Aug. 16, 2017) 13

25 *Toomey v. Demoulas Super Markets, Inc.*,
 No. 1:19-cv-11633, ECF No. 95 (D. Mass. Mar. 24, 2021) 10, 14

26 *Toomey v. Demoulas Super Markets, Inc.*,
 27 No. 1:19-cv-11633, ECF No. 99 (D. Mass. Apr.7, 2021)..... 14

28

1 *Toomey v. Demoulas Super Markets, Inc.*,
 No. 1:19-cv-11633, ECF No. 100 (D. Mass. Apr. 7, 2021)..... 10

2

3 *Tracey v. MIT*,
 2018 WL 5114167 (D. Mass. Oct. 19, 2018)..... 21

4 *Tracey v. MIT*,
 No. 1:16-cv-11620, ECF No. 317 (D. Mass. May 29, 2020)..... 15

5

6 *Tussey v. ABB Inc.*,
 2019 WL 3859763 (W.D. Mo. Dec. 12, 2017) 15

7 *Tussey v. ABB, Inc.*,
 850 F.3d 951 (8th Cir. 2017)..... 13

8

9 *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*,
 2017 WL 2655678 (C.D. Cal. June 15, 2017) 17, 18, 21

10 *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*,
 No. 8:15-cv-1614-JLS-JCG, ECF No. 174-2 (C.D. Cal. Dec. 26, 2017) 9

11

12 *Urakhchin v. Allianz Asset Mgmt. of Am. L.P.*,
 2018 WL 3000490 (C.D. Cal. Feb. 6, 2018)..... 10

13 *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*,
 2018 WL 8334858 (C.D. Cal. July 30, 2018) 1, 13

14

15 *Velazquez v. Mass. Fin. Services Co.*,
 No. 17-cv-11249, ECF No. 108 (D. Mass. Dec. 5, 2019)..... 15

16 *Vellali v. Yale Univ.*,
 333 F.R.D. 10 (D. Conn. Sept. 24, 2019)..... 21

17

18 *Vellali v. Yale Univ.*,
 No. 3:16-cv-1345-AWT, Dkt. 622 (D. Conn. July 13, 2023)..... 12

19 *Viceral v. Mistras Grp., Inc.*,
 2016 WL 5907869 (N.D. Cal. Oct. 11, 2016)..... 10

20

21 *Wal-Mart Stores, Inc. v. Dukes*,
 564 U.S. 338 (2011) 16

22 *Wildman v. Am. Century Servs., LLC*,
 362 F. Supp. 3d 685 (W.D. Mo. 2019)..... 12

23

24 **Rules, Regulations, and Statutes**

25 29 U.S.C. § 1104(a) 20

26 Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75
 Fed. Reg. 33830..... 7

27

28 Fed. R. Civ. P. 23(a)(1)..... 17

1 Fed. R. Civ. P. 23(a)(4)..... 19
2 Fed. R. Civ. P. 23(b)(1) 20
3 Fed. R. Civ. P. 23(c)(2)(B) 15
4 Fed. R. Civ. P. 23(e)(1)..... 15
5 Fed. R. Civ. P. 23, Advisory Committee Note (1966) 21

6 **Other Authorities**

7 Restatement (Third) of Trusts, § 100 cmt. b(1)..... 12

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **INTRODUCTION**

2 Plaintiffs Chad Rocke, Christopher Collins, and Emily Liu submit this
3 Memorandum in support of their Motion for Preliminary Approval of the class action
4 settlement with Defendants Allianz Asset Management of America LLC, (“AAM”)
5 and the Investment Committee of the Allianz Asset Management of America 401(k)
6 Savings and Retirement Plan (“Committee”) relating to the management of the
7 Allianz Asset Management of America 401(k) Savings and Retirement Plan (“Plan”).¹

8 Under the proposed Settlement’s terms, AAM will pay a Gross Settlement
9 Amount of \$7,500,000 into a common fund for the Settlement Class’s benefit. This is
10 a significant recovery for the Settlement Class, and it falls well within the range of
11 negotiated settlements in similar ERISA cases. Indeed, as discussed *infra*, it compares
12 favorably to the settlement achieved in the previous case against AAM alleging
13 similar conduct. *See Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL
14 8334858 (C.D. Cal. July 30, 2018) (“*Allianz P*”) (approving final settlement).

15 The Settlement also provides for meaningful prospective relief, as for a period
16 of no less than three years Defendants will retain an unaffiliated investment consultant
17 to provide: (1) an evaluation as to the suitability of the Plan’s investment structure,
18 including the number of investments, asset classes, and investment styles (passive vs.
19 active) offered; (2) an annual evaluation of each of the Plan’s investments, including
20 each investment’s fees and performance compared to a suitable peer group and
21 specific, unaffiliated options in the same asset class; and (3) an evaluation of the
22 suitability of replacing the Plan’s current capital preservation option with a Stable
23 Value Fund.

24 For the reasons set forth below, the Settlement is fair, reasonable, and adequate,
25 and merits preliminary approval so that notice may be sent to the Settlement Class.

26 _____
27 ¹ A copy of the Class Action Settlement Agreement (“Settlement” or “Settlement
28 Agreement”) is attached as Exhibit A to the accompanying Declaration of Brock J. Specht (“Specht Decl.”). Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article 2 of the Settlement Agreement.

1 Among other things supporting preliminary approval:

- 2 • The Settlement was negotiated at arm’s length by experienced and capable
3 counsel, after Defendants produced documents requested by Plaintiffs
4 related to the Plan’s investment policies and Defendants’ compliance with
5 the terms of the *Allianz I* settlement;
- 6 • The Settlement provides for significant monetary relief and an equitable
7 method of distribution;
- 8 • The Settlement provides for automatic distribution of the settlement
9 proceeds to the accounts of Current Participant Class Members, and
10 Former Participant Class Members who no longer have active accounts
11 may receive a distribution via check or a tax-qualified rollover to an
12 individual retirement account or other eligible employer plan;
- 13 • The Settlement provides for meaningful prospective relief;
- 14 • The proposed Settlement Class is consistent with the requirements of Rule
15 23;
- 16 • The release is appropriately tailored to the claims that were asserted in the
17 action;
- 18 • The proposed Settlement Notices adequately inform Class Members about
19 the important details of the Settlement; and
- 20 • The Settlement provides Class Members the opportunity to raise any
21 objections and to appear at the final approval hearing.

22 Accordingly, Plaintiffs respectfully request that the Court enter an order: (1)
23 preliminarily approving the Settlement; (2) approving the proposed Notices and
24 authorizing their distribution to the Settlement Class; (3) certifying the proposed
25 Settlement Class; (4) scheduling a final approval hearing; and (5) granting such other
26 relief as set forth in the accompanying proposed Preliminary Approval Order.

27 **BACKGROUND**

28 **I. THE PLEADINGS AND MOTIONS TO DISMISS**

On January 17, 2023, Plaintiffs Rocke and Collins filed this action alleging that
AAM breached its ERISA fiduciary duties by applying an imprudent and disloyal
process for managing the Plan, resulting in an unwarranted preference for overpriced
and poorly performing investments affiliated with AAM. *ECF No. 1*. The Complaint
referenced *Allianz I* and the alleged continued use of AAM-affiliated funds in the Plan
after the previous settlement. *See, e.g., id* ¶¶ 4-8. Defendants moved to dismiss the

1 Complaint on April 10, 2023. *ECF No. 32*. Plaintiffs then filed an amended complaint
2 adding Plaintiff Liu and additional information supporting their allegations. *ECF No.*
3 *41*.

4 **II. INFORMAL DISCOVERY AND SETTLEMENT**

5 After Plaintiffs filed their amended complaint, the parties met and conferred
6 regarding the potential for a negotiated resolution of this matter, and subsequently
7 filed a joint request for a stay to allow for targeted discovery and time to engage in
8 settlement negotiations before continuing the litigation. *ECF No. 49*. The Court
9 granted the request for a 60-day stay on May 18, 2023. *ECF No. 50*.

10 Defendants then produced several documents requested by Plaintiffs, including
11 the Plan’s Investment Policy Statement, the Plan’s contract with a third-party advisor,
12 and documents related to revenue sharing rebates secured by the Plan. *Declaration of*
13 *Brock J. Specht in Support of Plaintiffs’ Motion for Preliminary Approval (“Specht*
14 *Decl.”)* ¶ 13. The Parties then engaged in arms-length settlement negotiations. *Id.* As
15 a result of that discovery and the parties’ continued negotiations, the parties reached
16 an agreement in principle to resolve the case on a class-wide basis, and subsequently
17 drafted the comprehensive Settlement Agreement that is the subject of this motion.
18 *Id.* ¶ 14.

19 **III. OVERVIEW OF SETTLEMENT TERMS**

20 **A. The Settlement Class**

21 The Settlement Agreement applies to the following Settlement Class:

22 All participants and beneficiaries of the Allianz Asset Management of
23 America 401(k) Savings and Retirement at any time on or after
24 December 27, 2017, through the date the Court enters the Preliminary
Approval Order, excluding any persons with responsibility for the Plan’s
administrative functions or investments.

25 *Settlement* ¶¶ 2.13, 2.45. This Settlement Class is consistent with certified classes in
26 several similar ERISA suits in this circuit and across the country, as it includes all
27 participants in the Plan during the Class Period except those with fiduciary
28 responsibilities relating to the Plan. Based on the information provided by

1 Defendants, there are approximately 5,139 Class Members. *Specht Decl.* ¶ 3.

2 **B. Monetary Relief**

3 Under the Settlement, Defendants will pay a Gross Settlement Amount of seven
4 million, five-hundred-thousand dollars (\$7,500,000) to a common Settlement Fund.
5 *Settlement* ¶ 2.31. After accounting for any Attorneys' Fees and Costs, Administrative
6 Expenses, and Class Representative service awards approved by the Court, the Net
7 Settlement Amount will be distributed to eligible Class Members in accordance with
8 the specified Plan of Allocation. *Id.* ¶¶ 6.1-6.13.

9 The Plan of Allocation provides an equitable allocation of the settlement
10 proceeds among Class Members. Specifically, for each Current Participant and
11 Authorized Former Participant, the Settlement Administrator shall determine an
12 Average Qualifying Account Balance, defined as follows:

13 Each participant's average, aggregate quarter-ending account
14 balance invested in the Plan for the period from December 27,
2017 through July 31, 2023.²

15 *Id.* ¶ 6.4. The Settlement Administrator shall then determine each Class Member's
16 Investment Claim Entitlement Amount by calculating each individual's pro rata
17 share of the Net Settlement Amount, based on their Average Qualifying Account
18 Balance compared to the sum of all Class Members' Average Qualifying Account
19 Balances. *Id.*

20 Current Participants will have their Plan accounts automatically credited with
21 their share of the Settlement Fund. *Id.* ¶ 6.5. Authorized Former Participants will

22 ² Mathematically stated, the *Average Account Balance* shall be calculated as follows:
23 (Q4 2017 Account Balance * 5/92) + (Q1 2018 Account Balance) + (Q2 2018
24 Account Balance) + (Q3 2018 Account Balance) + (Q4 2018 Account Balance) + (Q1
25 2019 Account Balance) + (Q2 2019 Account Balance) + (Q3 2019 Account Balance)
26 + (Q4 2019 Account Balance) + (Q1 2020 Account Balance) + (Q2 2020 Account
27 Balance) + (Q3 2020 Account Balance) + (Q4 2020 Account Balance) + (Q1 2021
28 Account Balance) + (Q2 2021 Account Balance) + (Q3 2021 Account Balance) + (Q4
2021 Account Balance) + (Q1 2022 Account Balance) + (Q2 2022 Account Balance)
+ (Q3 2022 Account Balance) + (Q4 2022 Account Balance) + (Q1 2023 Account
Balance) + (Q2 2023 Account Balance) + (July 31, 2023 Account Balance * 31/92)
Divided by
22.20 quarters during the Class Period.

1 receive a direct payment by check or may elect to have their distribution rolled over
2 to an individual retirement account or eligible employer plan by submitting a Former
3 Participant Claim Form. *Id.* ¶ 6.6.

4 Under no circumstances will any monies revert to Defendants. *Id.* ¶ 6.12. Any
5 uncashed checks will be paid to the Plan and used to defray administrative fees and
6 expenses of the Plan. *Id.*

7 **C. Prospective Relief**

8 The Settlement also provides for meaningful prospective relief. Specifically,
9 for a period of no less than three years Defendants will retain the services of an
10 unaffiliated investment consultant to provide: (1) an evaluation as to the suitability of
11 the Plan’s investment structure, including the number of investments, asset classes,
12 and investment styles (passive vs. active) offered; (2) an annual evaluation of each of
13 the Plan’s investments, including each investment’s fees and performance compared
14 to a suitable peer group and specific, unaffiliated options in the same asset class; and
15 (3) an evaluation of the suitability of replacing the Plan’s current capital preservation
16 option with a Stable Value Fund. *Id.* ¶ 7.1.

17 **D. Release of Claims**

18 In exchange for the relief provided by the Settlement, the Settlement Class will
19 release Defendants and affiliated persons and entities (“Released Parties”) from all
20 claims:

- 21 • That were based on any of the allegations in the Complaint or Amended
22 Complaint or that arise out of the institution, prosecution, or settlement of the
23 Action;³ or
24 • That would be barred by *res judicata* based on entry by the Court of the Final
25 Approval Order; or
26 • That relate to the direction to calculate, the calculation of, and/or the method or
27 manner of the allocation of the Qualified Settlement Fund under the Plan of

27 ³ The release language goes on to provide certain examples that are not repeated here
28 due to space limitations. The full release language, incorporated by reference, is in
the Settlement Agreement, ¶ 2.41.

1 Allocation or to any action taken or not taken by the Settlement Administrator
2 in the course of administering the Settlement; or

- 3 • That relate to the approval by the Independent Fiduciary of the Settlement
4 unless brought against the Independent Fiduciary alone.

5 *Id.* ¶ 2.41. The Released Claims do not include claims to enforce the Settlement
6 Agreement. *Id.* ¶ 9.2.

7 **E. Class Notice and Settlement Administration**

8 All Class Members will receive notice of the settlement. Settlement Notices
9 will be sent to Current Participants via the email address on file with the Plan's
10 recordkeeper, and to Former Participants via first-class U.S. Mail. *Id.* ¶ 3.2; *Exs. 3 &*
11 *4.* The Settlement Notices provide information to the Settlement Class regarding,
12 among other things: (1) the nature of the claims; (2) the scope of the Settlement Class;
13 (3) the terms of the Settlement; (4) Class Members' right to object to the Settlement
14 and the deadline for doing so; (5) the class release; (6) the identity of Class Counsel
15 and the amount of compensation they will seek in connection with the Settlement; (7)
16 the amount of the proposed Class Representative's Compensation; (8) the date, time,
17 and location of the final approval hearing; and (9) Class Members' right to appear at
18 the final approval hearing. *Exs. 3 & 4.*

19 To the extent that Class Members seek more information, the Settlement
20 Administrator will establish a Settlement Website on which it will post the Settlement
21 Agreement, Notices, and relevant case documents. *Settlement* ¶ 12.1. The Settlement
22 Administrator also will establish a toll-free telephone line with the option of speaking
23 to a live operator if callers have questions. *Id.* ¶ 12.2.

24 **F. Attorneys' Fees and Administrative Expenses**

25 The Settlement requires that Class Counsel file their motion for Attorneys' Fees
26 and Costs at least 30 days before the deadline for objections to the proposed
27 Settlement. *Id.* ¶ 8.1. In addition, the Settlement provides for recovery of
28 Administrative Expenses related to the Settlement, and for service awards up to
\$7,500 per Class Representative. *Id.* The Settlement is not conditioned on the award

1 of any such amounts, and the denial of any of these awards shall not prevent the
2 Settlement Agreement from becoming effective, nor shall it be grounds for
3 termination of the Settlement. *Id.* ¶ 11.3.

4 **G. Review by Independent Fiduciary**

5 As required under ERISA, Defendants will retain an Independent Fiduciary to
6 review and authorize the Settlement on behalf of the Plan. *Id.* ¶ 3.1; *see also*
7 Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed.
8 Reg. 33830. The Independent Fiduciary will issue its report at least 30 days before
9 the final Fairness Hearing, so it may be considered by the Court. *Id.* ¶ 3.1.2.

10 **ARGUMENT**

11 “The Ninth Circuit has declared a strong judicial policy favoring settlement of
12 class actions.” *Griffin v. Consol. Commc’ns*, 2023 WL 3853643, at *1 (E.D. Cal. June
13 6, 2023) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992);
14 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Because it has been
15 held “proper to take the bird in hand instead of a prospective flock in the bush... unless
16 the settlement is clearly inadequate, its acceptance and approval are preferable to
17 lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecomm’s*
18 *Coop. v. DIRECTV*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation and quotation
19 marks omitted).

20 In determining whether to approve a settlement, district courts follow a two-
21 step process. “First, the court must determine whether the proposed settlement
22 deserves preliminary approval.” *Mckenzie v. Fed. Express Corp.*, 2012 WL 2930201,
23 at *2 (C.D. Cal. July 2, 2012) (citi’g *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at
24 525). Second, after the class members have received notice of the proposed
25 settlement, the court holds a fairness hearing and determines whether final approval
26 is warranted. *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *3 (C.D. Cal. Feb.
27 16, 2017).

28

1 **I. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

2 The Settlement is within the range of possible approval and warrants
3 preliminary approval and sending notice to Class Members.

4 Preliminary approval is appropriate where (1) the proposed settlement appears
5 to be the product of serious, informed, non-collusive negotiations, (2) has no obvious
6 deficiencies, (3) does not improperly grant preferential treatment to class
7 representatives or segments of the class, and (4) falls within the range of possible
8 approval. *Peel v. Brooksamerica Mortg. Corp.*, 2014 WL 12589317, at *4 (C.D. Cal.
9 Nov. 13, 2014).

10 In analyzing preliminary approval, the Court “ultimately consider[s] a number
11 of factors, including: the strength of plaintiffs’ case; the risk, expense, complexity,
12 and likely duration of further litigation; the risk of maintaining class action status
13 throughout the trial; the amount offered in settlement; the extent of discovery
14 completed, and the stage of the proceedings; [and] the experience and views of
15 counsel[.]” *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003)).

16 **A. The Settlement Was Obtained Through Targeted Discovery And**
17 **Serious, Informed, Non-Collusive Negotiations**

18 The Settlement was obtained through arms-length negotiations with counsel
19 experienced in ERISA class action litigation. *Specht Decl.* ¶¶ 13-19. Indeed, Class
20 Counsel “is one of the relatively few firms in the country that has the experience and
21 skills necessary to successfully litigate a complex ERISA action such as this.” *Karpik*
22 *v. Huntington Bancshares Inc.*, 2021 WL 757123, at *9 (S.D. Ohio Feb. 18, 2021).
23 Class Counsel is also especially familiar with the claims here, as they litigated *Allianz*
24 *I* through summary judgment and ultimately a favorable settlement. *Id.* ¶ 18. That
25 familiarity assisted in appropriately evaluating these claims.

26 “Although formal discovery had not commenced, Plaintiffs conducted informal
27 discovery” targeted to learn new information about Defendants’ process for managing
28 Plan. *Koenig v. Lime Crime, Inc.*, 2018 WL 11358228, at *4-5 (C.D. Cal. Apr. 2,

1 2018) (citing *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *5 (N.D. Cal. Jan.
2 26, 2007) (informal discovery supports settlement approval). This built upon the
3 significant formal discovery taken in *Allianz I*, which included over 160,000 pages of
4 documents and 17 depositions, including 7 expert depositions. *See* No. 8:15-cv-1614-
5 JLS-JCG, ECF No. 174-2 ¶¶ 11-15 (C.D. Cal Dec. 26, 2017). Additionally, “Class
6 Counsel has conducted significant pre-litigation research, including reviewing”
7 publicly available information regarding the Plan, its investments, AAM’s business,
8 and documents provided by the Named Plaintiffs. *Bowdle v. King’s Seafood Co., LLC*,
9 2022 WL 19235264, at *6 (C.D. Cal. Oct. 19, 2022) (Carney, J.). This research led to
10 a detailed, 37-page complaint. *See ECF No. 41*. That “prelitigation research,
11 combined with Class Counsel’s extensive experience litigating [ERISA] class
12 actions” plus “the benefit of Defendants’ motion to dismiss [informed] settlement
13 discussions” here. *Bowdle*, 2022 WL 19235264, at *6.

14 Accordingly, this factor weighs strongly in favor of approval, as there is no
15 evidence of any fraud or collusion.

16 **B. The Settlement Provides for Significant Monetary and Prospective**
17 **Relief and Falls within the Range of Possible Approval.**

18 The relief secured here confers substantial benefits to Class Members.
19 “Balancing the class's potential recovery against the amount offered in settlement is
20 ‘perhaps the most important factor to consider’ in preliminary approval.” *Becker v.*
21 *LISI, LLC*, 2023 WL 3668526, at *3 (N.D. Cal. May 25, 2023) (quoting *Haralson v.*
22 *U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 970 (N.D. Cal. 2019) (quoting *Cotter*
23 *v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016))). In evaluating the terms of
24 the settlement, “[t]he court’s role is not to advocate for any particular relief, but
25 instead to determine whether the settlement terms fall within a reasonable range of
26 possible settlements, giving ‘proper deference to the private consensual decision of
27 the parties’ to reach an agreement rather than to continue litigating.” *In re Google*
28 *Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1133 (N.D. Cal. 2015), *aff’d*,

1 869 F.3d 737 (9th Cir. 2017) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027
2 (9th Cir. 1998)).

3 Here, the \$7,500,000 recovery amount is significant in its own right,
4 representing roughly \$1,459 per participant on a gross basis, and well over \$1,000 on
5 a net basis if all requested fees and expenses are approved. *See Specht Decl.* ¶ 4. The
6 recovery also represents roughly 28% of Plaintiff’s maximum measure of damages,
7 which compares favorably to the settlement in *Allianz I.* *See Urakhchin v. Allianz*
8 *Asset Mgmt. of Am. L.P.*, 2018 WL 3000490, at *4 (C.D. Cal. Feb. 6, 2018)
9 (preliminarily approving \$12 million settlement representing “approximately 25.5%”
10 of damages using a similar index-fund damages model); *see also Specht Decl.* ¶ 5.

11 The 28% recovery also compares very favorably to other class actions and falls
12 well within the range of possible approval. *See generally In re Rite Aid Corp. Sec.*
13 *Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action
14 settlements have typically “recovered between 5.5% and 6.2% of the class members’
15 estimated losses”); *In re Uber FCRA Litig.*, 2017 WL 2806698, *7 (N.D. Cal. 2017)
16 (granting preliminary approval of settlement worth 7.5% or less of the expected
17 value); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869, at *8-9 (N.D. Cal. Oct. 11,
18 2016) (preliminarily approving settlement representing 8.1% of total damages);
19 *Balderas v. Massage Envy Franchising, LLC*, 2014 WL 3610945, at *5 (N.D. Cal.
20 July 21, 2014) (representing 5% of maximum recovery); *Almanzar v. Home Depot*
21 *U.S.A. Inc.*, 2023 WL 4373979, at *5 (E.D. Cal. July 6, 2023) (6% of maximum
22 recovery); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (16%).

23 The 28% recovery also compares well with numerous other ERISA class action
24 settlements that have been approved across the country. *See, e.g., Toomey v.*
25 *Demoulas Super Markets, Inc.*, No. 1:19-cv-11633, ECF No. 95 at 10 (D. Mass. Mar.
26 24, 2021), *approved* ECF No. 100 (D. Mass. Apr. 7, 2021) (approving settlement
27 representing approximately 15–20% of alleged losses); *Beach v. JPMorgan Chase*
28 *Bank, Nat’l Ass’n*, No. 17-cv-00563, ECF No. 211 (S.D.N.Y. May 20, 2020),

1 approved 2020 WL 6114545, at *1 (S.D.N.Y. Oct. 7, 2020) (16%); *Price v. Eaton*
2 *Vance Corp.*, No. 18-12098, ECF No. 32 at 12 (D. Mass. May 6, 2019), approved
3 ECF No. 57 (D. Mass. Sept. 24, 2019) (23%); *Sims v. BB&T Corp.*, 2019 WL
4 1995314, at *5 (M.D.N.C. May 6, 2019) (19%); *Johnson v. Fujitsu Tech. & Bus. of*
5 *Am., Inc.*, 2018 WL 2183253, at *6–7 (N.D. Cal. May 11, 2018) (10% of highest
6 measure of damages).

7 Moreover, in addition to \$7,500,000 million in monetary relief, the Settlement
8 also provides substantial prospective relief. As explained above, AAM will retain an
9 independent investment consultant to evaluate the suitability of passive investment
10 options, a stable value fund, and analyze the Plan’s lineup compared to peer groups
11 and specific nonproprietary alternatives. *See Settlement Agreement* ¶ 7.1. This relief
12 directly addresses the allegations in the Amended Complaint and compares favorably
13 to the prospective relief secured in *Allianz I* by requiring the evaluation and suitability
14 of specific alternative investments. This additional “non-monetary relief weighs in
15 favor of [preliminary] approval.” *Perkins v. LinkedIn Corp.*, 2016 WL 613255, at *2
16 (N.D. Cal. Feb. 16, 2016).

17 **C. Plaintiffs’ Case Faced Risks and Significant Expenses with Further**
18 **Litigation**

19 The risks and costs of continuing litigation are significant. “Estimates of a fair
20 settlement figure are tempered by factors such as the risk of losing at trial, the expense
21 of litigating the case, and the expected delay in recovery (often measured in years).”
22 *Raziano v. Albertson’s LLC*, 2021 WL 3473575, at *11 (C.D. Cal. Feb. 8, 2021)
23 (quoting *In re Toys R. Us-Delaware, Inc. – Fair & Accurate Credit Transactions ACT*
24 *(FACTA) Litigation.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014)). The negotiated relief
25 represents a reasonable compromise in light of the risks of continuing the litigation.

26 While Plaintiffs are confident that they would have prevailed, there was a risk
27 that the Court might have dismissed the claims, either on the pleadings or later on a
28 motion for summary judgment. Before even reaching summary judgment, “Class

1 Counsel would have to litigate class certification, complete merits discovery, retain
2 experts and serve expert reports, and so forth, expending substantial time, resources,
3 and effort. Therefore, the timing of the settlement supports preliminary approval[.]”
4 *In re Endosurgical Prod. Direct Purchaser Antitrust Litig.*, 2008 WL 11504857, at
5 *7 (C.D. Cal. Dec. 31, 2008) (citing *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at
6 527).

7 Even if Plaintiffs defeated Defendants’ motion to dismiss, completed all
8 discovery, and defeated a potential motion for summary judgment, “successfully
9 opposing [Defendants’] motion for summary judgment [would] not mean that the
10 class had established liability or would obtain a favorable . . . verdict.” *Rodriguez*,
11 563 F.3d at 964. If the case did proceed to trial, which could still be years away,
12 Defendants could still prevail. Indeed, several recent ERISA class action trials have
13 delivered verdicts in favor of defendants.⁴ And even if Plaintiffs prevailed on liability
14 at trial, issues regarding proof of loss would have remained. *See* Restatement (Third)
15 of Trusts, § 100 cmt. b(1) (determination of losses in breach of fiduciary duty cases
16 is “difficult”); *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273, 280 (S.D.N.Y.
17 2018), *aff'd*, 9 F.4th 95 (2d Cir. 2021) (finding that the defendants breached their
18 fiduciary duties but “plaintiffs have not proven that . . . the Plans suffered losses as a
19 result.”).

20 Plaintiffs are confident in their claims, but continuing the litigation would still
21 have resulted in complex and costly proceedings and delayed relief to the Class, even
22 if Plaintiffs ultimately prevailed. ERISA 401(k) cases such as this “often lead[] to
23 lengthy litigation.” *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *1 (D.
24 Minn. July 13, 2015). Similar ERISA cases have extended for a decade before final

25 ⁴ *See, e.g., Vellali v. Yale Univ.*, No. 3:16-cv-1345-AWT, Dkt. 622 (D. Conn. July 13,
26 2023); *Reetz v. Lowe's Companies, Inc.*, 2021 WL 4771535, at *1 (W.D.N.C. Oct. 12,
27 2021), *aff'd sub nom. Reetz v. Aon Hewitt Inv. Consulting, Inc.*, 2023 WL 4552593
28 (4th Cir. July 17, 2023); *Rozo v. Principal Life Ins. Co.*, 2021 WL 1837539 (S.D.
Iowa Apr. 8, 2021); *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273 (S.D.N.Y.
2018), *aff'd in part, rev'd in part*, 9 F.4th 95 (2d Cir. 2021); *Wildman v. Am. Century
Servs., LLC*, 362 F. Supp. 3d 685 (W.D. Mo. 2019).

1 resolution, sometimes going through multiple appeals. *See, e.g., Tussey v. ABB, Inc.*,
2 850 F.3d 951, 954–56 (8th Cir. 2017) (recounting procedural history of case filed in
3 2006, and remanding to district court a second time); *Tibble v. Edison Int’l*, 2017 WL
4 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after
5 suit was filed). The duration of these cases is, in part, a function of their complexity,
6 which further weighs in favor of the Settlement. *See Abbott v. Lockheed Martin Corp.*,
7 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015) (noting that ERISA cases such as
8 this are “particularly complex”);

9 “By contrast, the Settlement provides the Class with timely and certain
10 recovery.” *Perkins*, 2016 WL 613255, at *2; *see also Kruger v. Novant Health, Inc.*,
11 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (“[S]ettlement of a 401(k)
12 excessive fee case benefits the employees and retirees in multiple ways”). Further, the
13 early settlement means that the litigation expenses sought from the Settlement Fund
14 will be far below the expenses sought at a later stage. *See, e.g., Urakhchin*, 2018 WL
15 8334858, at *8 (awarding \$591,504.69 in litigation expenses). Given the risks, costs,
16 and delays in even the best-case scenario, it is reasonable and appropriate for Plaintiffs
17 to reach an early settlement on the negotiated terms.

18 **D. The Terms of the Attorney’s Fee Award and Class Representatives**
19 **Service Awards are Reasonable and Warrant Preliminary**
20 **Approval.**

21 The terms of the fee and service awards are consistent with other settlements
22 in this district and warrant preliminary approval.

23 In considering the proposed fee award, “the Court must scrutinize the
24 Settlement Agreement for three factors that tend to show collusion: (1) when counsel
25 receives a disproportionate distribution of the settlement, (2) when the parties
26 negotiate a ‘clear sailing arrangement,’ under which the defendant agrees not to
27 challenge a request for agreed-upon attorney fees, and (3) when the agreement
28 contains a ‘kicker’ or ‘reverter’ clause that returns unawarded fees to the defendant,
rather than the class.” *Bowdle*, 2022 WL 19235264, at *8 (citing *Briseno v. ConAgra*

1 *Foods, Inc.*, 998 F.3d 1014, 1022 (9th Cir. 2021)). None of these factors suggests
2 collusion here.

3 First, Class Counsel’s request for 25% of the fund represents the “benchmark
4 for a reasonable fee award, and courts must provide adequate explanation in the record
5 of any ‘special circumstances’ to justify departure from this benchmark.” *Bowdle*,
6 2022 WL 19235264, at *9. There are no special circumstances here, and the 25%
7 benchmark is not a “disproportionate distribution” of the settlement, particularly
8 given the monetary and nonmonetary relief to the class secured here.⁵

9 Second, although there is a clear-sailing agreement, “[t]his is not a death knell
10 for approval[.]” *Brightk Consulting Inc., BMW of N. Am., LLC*, 2023 WL 2347446,
11 at *7 (C.D. Cal. Jan. 3, 2023) (Carney, J.). This is especially so where the fee request
12 is within the benchmark and there are no signs of collusion. Absent those signs, the
13 existence of a clear-sailing agreement does not render the fee request unreasonable.

14 Finally, the agreement explicitly prevents any settlement monies from reverting
15 to Defendants. Instead, all payments will either be deposited directly into participant
16 accounts or sent directly to participants via check, and the monies from any uncashed
17 checks will be paid to the Plan to defray the cost of the Plan’s administrative expenses.
18 This weighs in favor of preliminary approval.

19 Similarly, service awards of \$7,500 “or larger are ‘fairly typical in class action
20 cases,’ and should be approved here.” *Gutierrez v. Amplify Energy Corp.*, 2023 WL
21 3071198, at *7 (C.D. Cal. Apr. 24, 2023) (awarding 17 plaintiffs \$10,000 each and
22 collecting cases of similar or higher awards). Indeed, the \$7,500 service awards are
23 modest compared to awards in similar complex ERISA class actions, even in early
24 settlements. *See e.g., Toomey*, No. 1:19-cv-11633-LTS, ECF No. 95 at 1-295 (D.
25 Mass. Mar. 24, 2021) (outlining procedural history), *approved at* ECF No. 99 (D.
26 Mass. Apr. 7, 2021) (approving \$10,000 service awards to each of three named

27 _____
28 ⁵ Class Counsel will be prepared to further support the amount of the proposed fee
award in their motion for fees and expenses.

1 plaintiffs where case settled early after targeted discovery); *see also Tracey v. MIT*,
2 No. 1:16-cv-11620, ECF No. 317 (D. Mass. May 29, 2020) (approving \$25,000
3 service awards); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *3 (D. Minn.
4 July 13, 2015) (\$25,000); *Tussey v. ABB Inc.*, 2019 WL 3859763, at *6 (W.D. Mo.
5 Dec. 12, 2017) (\$25,000); *Sims v. BB&T Corp.*, 2019 WL 1993519, at *4-5
6 (M.D.N.C. May 6, 2019) (\$20,000); *Velazquez v. Mass. Fin. Services Co.*, No. 17-cv-
7 11249, ECF No. 108 (D. Mass. Dec. 5, 2019) (\$10,000)

8 Moreover, the combined \$22,500 in service awards represents only .3% of the
9 total settlement fund. Courts often grant service awards that represent a much higher
10 percent of the total settlement. *See Diaz v. United Parcel Serv., Inc.*, 2023 WL
11 3624779, at *7 (E.D. Cal. May 24, 2023) (granting preliminary approval where
12 combined service awards represented “just under” 1% of gross settlement amount)
13 (citing *Morales v. Steveco, Inc.*, 2012 WL 1790371, at *19 (E.D. Cal. May 19, 2012)
14 (combined incentive payments did not exceed .81% of settlement fund)); *Gutierrez*,
15 2023 WL 3071198, at *7 (awards of “less than .4% of the gross Settlement amount”
16 are “well within the range the Ninth Circuit has found reasonable.”) (citation omitted).

17 **E. The Settlement Treats All Class Members Fairly and Equitably.**

18 Finally, the Settlement treats all Class Members fairly. As noted above,
19 according to the Plan of Allocation, all eligible Settlement Class Members will receive
20 a pro rata share of the Qualified Settlement Fund based on their average account
21 balance. *See supra at 4*. This ensures that Class Members receive settlement payments
22 proportionate to their level of investment in the Plan relative to all eligible Class
23 Members. *Id.*

24 **II. THE CLASS NOTICE PLAN IS REASONABLE AND SHOULD BE APPROVED**

25 In addition, the Court must ensure that notice is sent in a reasonable manner to
26 all Class Members who would be bound by the proposed settlement. Fed. R. Civ. P.
27 23(e)(1). The “best notice” practicable under the circumstances includes individual
28 notice to all class members who can be identified through reasonable effort. Fed. R.

1 Civ. P. 23(c)(2)(B). That is precisely the type of notice proposed here.

2 The Settlement Agreement provides that the Settlement Administrator will
3 provide direct notice of the Settlement via first-class mail or email. *Settlement*
4 *Agreement* ¶ 3.2. This type of notice is presumptively reasonable. *See Phillips*
5 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *see also Perkins*, 2016 WL
6 613255, at *7 (approving direct notice by email). The content of the Settlement
7 Notices is also reasonable, as it “generally describes the terms of the settlement in
8 sufficient detail to alert those with adverse viewpoints to investigate and to come
9 forward and be heard.” *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 330 (C.D. Cal.
10 2016) (quoting *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
11 2004)). Specifically, the Settlement Notices “describe[] the nature of the action,
12 summarize[] the terms of the settlement, identif[y] the ... class[] and provide[]
13 instruction on how to . . . object, and the proposed fees and expenses to be paid to
14 Plaintiffs’ counsel . . . among others.” *Chao v. Aurora Loan Servs., LLC*, 2014 WL
15 4421308, at *6 (N.D. Cal. Sept. 5, 2014). To the extent that Class Members have any
16 questions, they may obtain additional information through the settlement website or
17 telephone support line. *See Settlement Agreement* ¶¶ 12.1, 12.2. This notice program
18 is more than sufficient to meet the requirements of Fed. R. Civ. P. 23 and should be
19 approved.

20 **III. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.**

21 In addition to approving the Settlement and authorizing distribution of the
22 Notices, this Court should certify the Settlement Class for settlement purposes. To
23 certify the class, Plaintiffs must satisfy the requirements of Rule 23(a) and meet one
24 of the prerequisites of Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345-
25 46 (2011). In this context, “ERISA breach of fiduciary duty claims are particularly
26 appropriate for class certification” under Rule 23(b) because these claims are “brought
27 in a representative capacity on behalf of the plan as a whole.” *In re Marsh ERISA*
28 *Litig.*, 265 F.R.D. 128, 142 (S.D.N.Y. 2010) (quotation omitted). That is precisely the

1 nature of this action. *See ECF No. 41 ¶ 10, 96* (citing 29 U.S.C. §§ 1109, 1132(a)(2)).
2 Indeed, a similar proposed class was certified before the settlement in *Allianz I.*
3 *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2017 WL 2655678, at *4 (C.D. Cal.
4 June 15, 2017).

5 Here, all of the requirements of Rules 23(a) and 23(b)(1) are easily met.

6 **A. The Proposed Settlement Class Satisfies Rule 23(a).**

7 Rule 23(a) of the Federal Rules of Civil Procedure sets forth four requirements
8 applicable to all class actions: (1) numerosity; (2) commonality; (3) typicality; and (4)
9 adequacy of representation. *Amchem Prods. Inc. v. Windsor*, 521 U.S. at 620 (1997).
10 Each of these requirements is met here.

11 **1. Numerosity**

12 Numerosity requires that the number of persons in the proposed class is so
13 numerous that joinder of all class members would be impracticable. Fed. R. Civ. P.
14 23(a)(1). This standard is easily met for the Settlement Class, which includes
15 approximately 5,139 Class Members. *See supra* at 4; *see also Moore v. Ulta Salon,*
16 *Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 602-03 (C.D. Cal. 2015) (numerosity
17 presumed at 40 members) (citations omitted).

18 **2. Commonality**

19 Commonality requires the existence of “questions of law or fact common to the
20 class.” Fed. R. Civ. P. 23(a)(1). The commonality requirement is “minimal and only
21 requires a single significant question of law or fact common to putative class
22 members.” *Sypherd v. Lazy Dog Restaurants, LLC*, 2022 WL 19076640, at *4 (C.D.
23 Cal. Aug. 29, 2022). This limited burden is easily satisfied by the common questions
24 that predominate ERISA suits where Defendants manage a single plan and each
25 participant is offered the same investment options. *See, e.g., Urakhchin*, 2017 WL
26 2655678, at *4 (“the common focus is on the conduct of Defendants...Plaintiffs’
27 claims do not focus on injuries caused to each individual account, but rather on how
28 the Defendants’ conduct affected the pool of assets that make up the [Plan].” (quoting

1 *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102, 109 (N.D.C.A. 2008)); *see also* *Munro v.*
2 *Univ. of S.C.A.*, 2019 WL 7842551 (C.D.C.A. 2019); *In re Northrop Grumman Corp.*
3 *ERISA Litig.*, 2011 WL 3505264 (C.D Cal. Mar. 29, 2011).

4 This case is no exception. Plaintiffs raise numerous common questions,
5 including: (1) Whether Defendants are Plan fiduciaries; (2) Whether Defendants
6 breached their fiduciary duties by selecting and retaining excessively expensive and
7 poorly performing proprietary funds in the Plan; (3) The proper form of equitable and
8 injunctive relief; and (4) The proper calculation of monetary relief. Accordingly,
9 commonality is satisfied.

10 **3. Typicality**

11 The typicality requirement “tend[s] to merge” with the commonality
12 requirement. *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). “The
13 test of typicality is whether other members have the same or similar injury, whether
14 the action is based on conduct which is not unique to the named plaintiffs, and whether
15 other class members have been injured by the same course of conduct.” *Bravo*, 2017
16 WL 708766, at *6 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th
17 Cir. 1992)).

18 ERISA suits alleging breach of fiduciary duty present questions that are highly
19 likely to satisfy the typicality requirement. As such, “Courts within the Ninth Circuit
20 have repeatedly concluded that the typicality requirement was satisfied in [401k]
21 cases despite the fact that ‘participants have individual accounts and select their
22 investment fund from a variety of available options.’” *Urakhchin*, 2017 WL 2655678,
23 at *5 (quoting *In Re Northrop Grumman Corp., ERISA Litig.*, 2011 WL 3505264, at
24 *10 (citing cases). Here, Plaintiffs’ claims are consistent with those of other Class
25 Members who participated in the Plan, as all stem from Defendants’ process for
26 selecting and retaining AAM-affiliated funds. Plaintiffs do not have any unique
27 claims against Defendants, so their claims are typical of the Settlement Class. *Bowdle*,
28 2022 WL 19235264, at *3 (claims are typical if “reasonably coextensive” with those

1 of the class even if not identical).

2 **4. Adequacy**

3 Rule 23(a)(4) requires that “the representative parties will fairly and adequately
4 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “This factor requires (1) a
5 lack of conflicts of interest between the proposed class and the proposed
6 representative plaintiffs, and (2) representation by qualified and competent counsel
7 that will prosecute the action vigorously on behalf of the class.” *Bowdle*, 2022 WL
8 19235264, at *4 (citation omitted).

9 Here, the Named Plaintiffs have signed declarations stating that they are
10 unaware of any conflicts with the class. *See Rocke Decl., Collins Decl. and Liu Decl.*
11 Additionally, Class Counsel are experienced ERISA litigators with a proven track
12 record. *See Specht Decl.* ¶¶ 15-23. As detailed in the accompanying declaration,
13 Nichols Kaster has (1) won favorable rulings on dispositive motions and/or class
14 certification in over a dozen ERISA cases; (2) recently tried three ERISA class
15 actions; (3) successfully litigated an appeal before the First Circuit in *Brotherston v.*
16 *Putnam Invs., LLC*, 907 F.3d 17 (1st Cir. 2018); and (4) negotiated numerous ERISA
17 class action settlements in addition to the present settlement. *Id.* Other courts have
18 explicitly recognized the benefit of Nichols Kaster’s uncommon expertise in ERISA
19 litigation. *See supra* at 8. Given this, Class Counsel are more than adequate to
20 represent the proposed Settlement Class.

21 **B. The Proposed Class Satisfies Rule 23(b)(1).**

22 In addition to meeting the requirements of Rule 23(a), the proposed Class
23 satisfies Rule 23(b)(1). Under Rule 23(b)(1), a class may be certified if prosecution
24 of separate actions by individual class members would create a risk of:

- 25 (A) inconsistent or varying adjudications with respect to individual
26 class members that would establish incompatible standards of
27 conduct for the party opposing the class; or
28 (B) adjudications with respect to individual class members that, as a
practical matter, would be dispositive of the interests of the other
members not parties to the individual adjudications or would

1 substantially impair or impede their ability to protect their
2 interests[.]
3 Fed. R. Civ. P. 23(b)(1). “Because of ERISA’s distinctive representative capacity and
4 remedial provisions, ERISA litigation of this nature presents a paradigmatic example
5 of a (b)(1) class.” *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 453
6 (S.D.N.Y. 2004) (quotation omitted).⁶ Here, the proposed Settlement Class easily
7 satisfies both prongs.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. **Rule 23(b)(1)(A)**

Certification of the class under Rule 23(b)(1)(A) is proper because prosecution of individual actions would create incompatible standards of conduct for Defendants. The fiduciary duties imposed by ERISA are “duties with respect to a plan” that are intended to protect the “interest of the participants and beneficiaries” collectively. 29 U.S.C. § 1104(a). Accordingly, “separate lawsuits by various individual Plan participants to vindicate the rights of the Plan could establish incompatible standards to govern Defendants’ conduct, such as ... determinations of differing ‘prudent alternatives’ against which to measure the proprietary investments, or an order that Defendants be removed as fiduciaries.” *Krueger v. Ameriprise Fin.*, 304 F.R.D. 559, 577 (D. Minn. 2014); *see also, e.g., Munro*, 2019 WL 7842551 at *8 (finding that ERISA suits are often eligible for 23(b)(1)(A) certification because “the nature of a defined contribution plan means a fiduciary must treat participants uniformly”); *Kanawi*, 254 F.R.D. at 111 (citing *Alvidres v. Countrywide Fin. Corp.*, 2008 WL 1766927 (C.D.C.A. 2008)).

2. **Rule 23(b)(1)(B)**

Likewise, because an adjudication on behalf of one Plan participant would effectively be dispositive of the claims of the other class members, class certification

⁶ *See also Hochstadt v. Boston Scientific Corp.*, 708 F. Supp. 2d 95, 105 (D. Mass. 2010) (“[I]n light of the derivative nature of ERISA § 502(a)(2) claims, breach of fiduciary duty claims brought under § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class, as numerous courts have held.” (quotation omitted)).

1 is also appropriate under Rule 23(b)(1)(B). The Advisory Committee Notes to Rule
2 23 expressly recognize that class certification is appropriate under Rule 23(b)(1)(B)
3 in “an action which charges a breach of trust by an indenture trustee or other fiduciary
4 similarly affecting the members of a large class of security holders or other
5 beneficiaries, and which requires an accounting or like measures to restore the subject
6 of the trust.” Fed. R. Civ. P. 23, Advisory Committee Note (1966). This case falls
7 squarely within the meaning articulated by the Advisory Committee because Plaintiffs
8 allege breaches of fiduciary duties affecting the Plan and the thousands of participants
9 in the Plan. *See Munro* 2019 WL 7842551, at *9 (“Courts in the Ninth Circuit also
10 routinely certify ERISA class actions under Rule 23(b)(1)(B).”) (citation omitted);
11 *Urakhchin*, 2017 WL 2655678, at *8. Numerous courts have granted certification
12 under Rule 23(b)(1)(B) in similar cases.⁷

13 CONCLUSION

14 For the foregoing reasons, Plaintiffs respectfully request the Court to enter an
15 order: (1) preliminarily approving the parties’ Class Action Settlement Agreement,
16 (2) approving the proposed Settlement Notices and authorizing distribution of the
17 Notices by Analytics Consulting, LLC, (3) certifying the proposed Settlement Class,
18 (4) scheduling a final approval hearing, and (5) granting such other relief as set forth
19 in Plaintiffs’ proposed Preliminary Approval Order submitted herewith.

20 Dated: August 18, 2023

NICHOLS KASTER, PLLP

21 By: /s/ Brock J. Specht

22 Paul J. Lukas, MN Bar No. 22084X*

23 Brock J. Specht, MN Bar No. 0388343*

Benjamin J. Bauer, MN Bar No. 0398853*

24 ⁷ *See, e.g., Karg v. Transamerica Corp.*, 2020 WL 3400199 (N.D. Iowa Mar. 25,
25 2020); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. Sept. 24, 2019); *Stevens v. SEI*
26 *Investments Co.*, No. 2:18-cv-04205-NIQA, ECF No. 40 (E.D. Pa. July 31, 2019);
27 *Beach v. JPMorgan Chase Bank, Nat’l Ass’n*, 2019 WL 2428631 (S.D.N.Y. June 11,
28 2019); *Cunningham v. Cornell Univ.*, 1:16-cv-6525, ECF No. 219 (S.D.N.Y. Jan. 22,
2019); *Cates v. The Trustees of Columbia University in the City of New York et al.*,
1:16-cv-06524, ECF No. 210 (S.D.N.Y. Nov. 13, 2018); *Cassell v. Vanderbilt Univ.*,
2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018); *Tracey v. MIT*, 2018 WL 5114167
(D. Mass. Oct. 19, 2018).

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

* admitted *pro hac vice*
4700 IDS Center
80 S 8th Street
Minneapolis, MN 55402
Telephone: 612-256-3200
Facsimile: 612-338-4878
lukas@nka.com
bspecht@nka.com
bbauer@nka.com

KELLNER LAW GROUP PC
Richard L. Kellner, CA Bar No. 171416
315 Beverly Dr., Ste 504
Beverly Hills, CA 90212-4316
Telephone: 310-780-6759
Facsimile: 310-277-0635
rlk@kellnerlaw.com

ATTORNEYS FOR PLAINTIFFS

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

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff, certifies that this brief contains 6,982 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 18, 2023

Respectfully submitted,

/s/ Brock J. Specht
Brock J. Specht
NICHOLS KASTER, PLLP