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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRIAN REICHERT, DEREK DEVINY individually, and as representatives of a Class of Participants and Beneficiaries of the Juniper Networks, Inc. 401(k) Plan,

Plaintiffs,

v.

JUNIPER NETWORKS, INC.,

BOARD OF DIRECTORS OF JUNIPER NETWORKS, INC., and

INVESTMENT COMMITTEE OF JUNIPER NETWORKS, INC.

Defendants.

Case No: 3:21-cv-06213-JD

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' REVISED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Complaint Filed: Aug. 11, 2021

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INTRODUCTION

Plaintiffs Brian Reichert and Derek Deviny ("Plaintiffs") submit, in accordance with the Northern District of California's Procedural Guidance for Class Action Settlements and the Court's Order of January 9, 2023 (Dkt. 65), this Memorandum in Support of their Revised Motion for Preliminary Approval of their Class Action Settlement with Defendants Juniper Networks, Inc., the Board of Directors of the Juniper Networks, Inc., and the Investment Committee of Juniper Networks, Inc. ("Defendants"), relating to the management and administration of the Juniper Networks, Inc. 401(k) Plan ("Juniper Plan").[1]

Under the terms of the proposed Settlement, a Gross Settlement Amount of $3.0 million will be paid to resolve the claims of Settlement Class Members who participated in the Plan during the subject period. This is a significant recovery for the Class in relation to the claims that were alleged and falls well within the range of negotiated settlements in similar ERISA cases. There are no other cases that will be affected by this Settlement.

For the reasons set forth below, the Settlement is fair, reasonable, and adequate, and merits preliminary approval so that notice may be disseminated to the class. Among other things:

- The Settlement was negotiated at arm's length;
- The Settlement provides for significant monetary relief that is on par with other settlements;
- The Settlement conveniently provides for automatic distribution of the settlement proceeds to the accounts of current participants in the Plan, while former participants will receive their distribution automatically via check;
- The Released Claims are tailored to the claims that were asserted in the action or could have been asserted based on the same factual predicate;
- The proposed Settlement Class is consistent with Rule 23(a) and Rules 23(b)(1);
- The proposed Settlement Notices provide substantial information to Class Members about the Settlement, and will be distributed via first-class mail; and
- The Settlement provides Class Members the opportunity to raise any objections they may have

[1] A copy of the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") is attached as **Exhibit A** to the accompanying Declaration of Paul M. Secunda ("Secunda Decl.").

to the Settlement and to appear at the final approval hearing.

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

BACKGROUND

I. THE PLEADINGS

Plaintiffs Brian Reichert and Derek Deviny filed this action on August 11, 2021. Dkt. 1. In their Amended Complaint (Dkt. 38), Plaintiffs allege that during the putative Class Period (August 11, 2015 through the date of judgment), Defendants, as fiduciaries of the Plan, breached the duties they owed to the Plan, to Plaintiffs, and to the other Participants of the Plan by paying: (1) excessive recordkeeping and administrative service ("RKA") fees; (2) imprudent investment fees; (3) share class fees; and (4) managed account service fees.[2]

After comprehensive briefing of Defendants' motion to dismiss the Amended Complaint, on April 27, 2022, the Court denied Defendants' motion. Dkt. 47.

II. ANSWER, DISCOVERY, NEGOTIATIONS, AND SETTLEMENT

Defendants answered the Amended Complaint (Dkt. 52), and the parties commenced discovery and served on one another a First Set of Interrogatories and Document Requests in July 2022. At the same time, the parties engaged in extensive arms-length negotiations to resolve the case. Although the parties had prepared answers and documents in response to one another's First Set of Discovery, on September 15, 2022, the parties filed a joint notice of settlement, Dkt. 57, and the Court ordered Plaintiffs to file a motion for preliminary approval of the class action settlement by November 11, 2022. Dkt. 58. After a virtual hearing, the Court denied without prejudice the initial motion for preliminary approval of the class settlement on January 9, 2023. Dkt. 65. Pursuant to the Court's direction, Plaintiffs now file a revised motion for preliminary approval of the class action settlement

[2] Plaintiffs did not pursue an additional failure to disclose claim during settlement negotiations, as this claim did not have a separate monetary value associated with it.

addressing in more detail the issues identified by the Court in its Order.

III. OVERVIEW OF SETTLEMENT TERMS

A. The Settlement Class

The Settlement applies to the following Settlement Class:

> All participants and beneficiaries of the Juniper Networks, Inc. 401(k) Plan beginning August 11, 2015, and running through the date of preliminary approval of the settlement.

Settlement ¶ *E.* Pursuant to the District's Procedural Guidance for Class Action Settlements ("Procedural Guidance"), no material differences exist between this Class and the Class proposed. Dkt. 38, ¶ 249. There are approximately 11,000 class members, made up of approximately 7,632 current participants with balances, and 3305 former participants. *Secunda Decl.* ¶ 3.

B. Monetary Relief

Under the Settlement, Juniper Networks will contribute $3.0 million to a common settlement fund. Settlement ¶ 12. After accounting for any attorneys' fees and costs, administrative expenses, independent fiduciary fees, and case contribution awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members. *Id.* ¶ 7. Pursuant to the Procedural Guidance, Plaintiffs have attached the proposed Plan of Allocation as **Exhibit B** to the Secunda Declaration.

After the Court approves this Settlement, Analytics will calculate the amounts payable to Settlement Class Members. Secunda Decl., ¶ 11. For those Settlement Class Members who have an account in the Plan as of the date of entry of the Final Approval Order (the "Account Members"), the distribution will be made into his or her account in the Plan without need of a claim form. *Id.* This is essentially a form of "direct deposit" for individuals who still have an account. For those Settlement Class Members who no longer have an account in the Plan at the time of the distribution of the share amounts owed to Class Members (the "Non-Account Members"), the distribution will be made in the form of a check automatically from the Settlement Fund by the Settlement Administrator without there being need of a claim form. *Id.* If Class Members who receive a check do not timely cash the check, the Settlement provides that the unclaimed funds will revert the Plan to defray administrative expenses and benefit class member Plan participants, along with the Plan as a whole. *Id.*, ¶ 33. The

parties agreed to this because, practically speaking, the amount of the Settlement Fund that reverts due to uncashed checks is typically so small that dividing it *pro rata* among Class Members is not administratively feasible. Accordingly, since the Class Members sued on behalf of the Plan, the Settlement calls for the funds to revert simply to and be used to administer the Plan. *Id.*

C. Release of Claims

In exchange for the foregoing relief, upon Complete Settlement Approval, Plaintiffs, the Settlement Class Members, and the Plan (by and through the Independent Fiduciary) shall release Defendants and affiliated persons and entities from all claims as described in the Settlement Agreement. *Settlement,* ¶ 7. The Released Claims do not include claims to enforce the Settlement Agreement. *Id.* ¶¶ 10-11. Pursuant to the Procedural Guidance, no difference exists between the released claims and the claims in the Amended Complaint.

D. Settlement Administrator Selection

In accordance with the Procedural Guidance, Plaintiffs obtained multiple competing bids from potential settlement administrators, including from Analytics Consulting LLC, KKC LLC, and Kroll Settlement Administration. *Secunda Decl.*, ¶ 8. Each bidder was asked to provide an estimate of cost considering the same criteria, including: (1) the class size; (2) the use of mailed notice to class members; (3) the need for skip-tracing on returned mail; (4) the lack of claims forms or rollover forms; (5) the need for a toll-free number for class participants in the form of an IVR; and (6) CAFA notice being completed by Defendants. *Id.*[3]

After considering the bids, Analytics Consulting LLC ("Analytics") was retained because it had the lowest cost for the materially same settlement administration services and had much more experience with these types of ERISA fee cases than the other two bidders.[4] Additionally, over the

[3] Pursuant to the Procedural Guidance, the Declaration of Howard Shapiro, one of Defendants' attorneys, establishes that the parties, "address whether CAFA notice is required and, if so, when it will be given. In addition, the parties . . . . address substantive compliance with CAFA." Declaration of Howard Shapiro attached hereto as **Exhibit 1.**

[4] Analytics Consulting, LLC has extensive experience administering similar ERISA class action settlements. *Secunda Decl.* ¶ 33 & *Ex.* C.

last two years, Plaintiffs' counsel have used Analytics for six other ERISA class settlements and have been highly satisfied with their services and professionalism. *Id.*, ¶ 9.

E. Attorneys' Fees, Administrative Expenses, and Service Awards

Pursuant to the Procedural Guidance, and the Settlement Agreement, Class Counsel and Local Counsel will file with the Court their request for attorneys' fees and cost, settlement administrative expenses, and case contribution awards fourteen days prior to the objection deadline or forty-nine (49) days before the Fairness Hearing. Also consistent with the Procedural Guidance, Class members will file objections at least thirty-five (35) days before the Fairness Hearing. *Settlement* ¶ 25 & Ex. 2.

Under the Settlement, the requested fees may not exceed one-third of the Gross Settlement Amount and costs may not exceed $50,000. *Id.*, ¶ 22. Pursuant to the Procedural Guidance, although attorneys' fee requests will not be approved until the final approval hearing, class counsel has attached information about the fees and costs they intend to request, their lodestar calculation (including total hours), and resulting multiplier as **Exhibit 2** to this memorandum of law.

In addition, the Settlement provides for a combined case contribution award for the two class representatives of up to $15,000, at the Court's discretion. *Id.* ¶ 26. Plaintiffs have expended significant time and effort in assisting the prosecution of the litigation, including assisting their Counsel in helping to respond to discovery requests, have incurred the risks of becoming and continuing as a litigant, and have assumed the risk that future employers may look unfavorably upon them because they filed suit against their employer. *See Reichert Decl.* ¶¶ 2–3; *Deviny Decl.* ¶¶ 2–3.

Additionally, pursuant to the Procedural Guidance, although service award requests will not be approved until the final approval hearing, Under these circumstances, the requested $7,500 case contribution awards for each Plaintiff is consistent with those approved by this Court and other Courts in this District. *See, e.g., Siddle v. Duracell Co.*, 2021 WL 6332775, at *4 (N.D. Cal. Apr. 19, 2021); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL 2183253, at *8 (N.D. Cal. May 11, 2018) ($7500 service awards). No conditions have been placed on these case contribution awards which would undermine the adequacy of the class representatives. Finally, the Settlement provides for payment of settlement administrative expenses from the Settlement Fund. *Settlement* ¶¶ 19-20.

F. Review by Independent Fiduciary

As required under ERISA, Defendants have retained an Independent Fiduciary to review and authorize the Settlement on behalf of the Plan. *Settlement*, ¶¶ 21, 35(c); *see also* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830. The Independent Fiduciary will issue its report at least 14 calendar days before the final fairness hearing, Settlement ¶ 35(c), so it may be considered by the Court. All costs of the Independent Fiduciary are paid from the Settlement Fund. *Id.* ¶ 21.

ARGUMENT

I. STANDARD OF REVIEW

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any settlement agreement that will bind absent class members. This involves a two-step process. *See* MANUAL FOR COMPLEX LITIGATION §§ 21.61–.63, at 308–23 (4th ed. 2004). First, counsel submit the proposed settlement terms to the court, and the court makes a preliminary fairness evaluation. *Id.* § 21.632. Second, following preliminary approval, class members are provided notice of a fairness hearing, at which time arguments and evidence may be presented in support of, or opposition to, the settlement. *Id.* §§ 21.633–.634. Settlement of a class action requires approval of the Court, which may be granted "only after a hearing and on finding that [the settlement] is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Briseño v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021); Fed. R. Civ. P. 23(e)(2).

Rule 23(e)(2) now directs the Court to consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The Ninth Circuit determined this revision to Rule 23 requires courts "to go beyond [its] precedent."

Briseño, 998 F.3d at 1026. For the reasons that follow, preliminary approval of the Settlement should be granted and noticed authorized to the Class.

II. SETTLEMENT MEETS THE STANDARD FOR PRELIMINARY APPROVAL

A. The Class Is Adequately Represented

The record reflects that the Settlement Class is adequately represented. Class Counsel are experienced ERISA litigators with a proven track record. *See Secunda Decl.* ¶¶ 17–32. The named Plaintiffs are also adequate class representatives, who have diligently pursued this action on behalf of the Class after acknowledging their duties as class representatives and providing substantial assistance to Class Counsel in prosecuting this litigation at significant possible reputation harm to themselves. *See Reichert Decl.* ¶¶ 2–3; *Deviny Decl.* ¶¶ 2–3. Thus, the interests of the named Plaintiffs are "aligned with the interests of the Class Members." *See Cottle v. Plaid Inc.*, 240 F.R.D. 356, 376 (N.D. Cal. 2021).

B. The Proposal Was Negotiated at Arm's-Length

The Ninth Circuit "put[s] a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution" in evaluating a proposed class action settlement." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009). Therefore, the Court must consider whether the process by which the parties arrived at their settlement is truly the product of arm's length bargaining or the product of collusion or fraud. *See Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 613 (E.D. Cal. 2015).

Here, there is no evidence of collusion under the factors announced by the Ninth Circuit. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 940 (9th Cir. 2011). First, there is no evidence of class counsel receiving a disproportionate distribution of the Settlement, as Class Counsel is seeking up to one-third of the Settlement Fund consistent with the norm for these types of ERISA cases and with their own contingency agreement with named Plaintiffs. *See Foster v. Adams & Assocs., Inc.*, 2022 WL 425559, at *10 (N.D. Cal. Feb. 11, 2022) ("33.3% recovery is on par with settlements in other complex ERISA class actions.") (collecting cases).

In addition, although Defendants are not objecting to this preliminary motion for class action settlement approval, this settlement is not a settlement under which a clear sailing agreement may be

seen as collusive because it is not a claims-made settlement. *See Millan*, 310 F.R.D. at 612. The settlement funds are either credited automatically to current participant's accounts or are sent to former participants automatically by check, without any need to file a claim. *Settlement*, ¶¶ 31-32. Thus any reversion is limited to uncashed checks. Further, the unclaimed funds revert to the Plan itself for use in administering the Plan.

C. The Settlement Terms Are Fair and Adequate

1. The Monetary Relief Is Significant

The proposed Settlement Amount is $3,000,000. *Settlement* ¶ 12. Class counsel secured this amount through serious and informed negotiations which led to a Settlement that provides significant benefits to the Class. Based on Plaintiffs' initial estimates, they valued the claims as:

1) Excessive RKA fee claim: $2,993,655
2) Failure to Select Prudent Share Class claim: $1,894,833
3) Excessive Managed Account fees claim: $2,031,129
4) Failure to Consider Passive Funds claim: $21,607,734

Thus, around March 2022, Plaintiffs total estimated loss was $28,527,351 (in Amended Complaint, the estimated losses were estimated to be approximately $26,000,000). *See Secunda Decl.*, ¶4.

Plaintiffs' estimated losses declined significantly in the Ninth Circuit for this type of ERISA excessive fee case in April 2022, when the Ninth Circuit held that plaintiffs do not state a plausible claim for breach of "the duty of prudence by failing to adequately consider passively managed mutual fund alternatives to the actively managed funds offered by the plan." *Davis v. Salesforce.com, Inc.*, 2022 WL 1055557, at *2 n.1 (9th Cir. Apr. 8, 2022). Plaintiffs had pled a materially identical active versus passive investment claim to that in *Davis* in this case.[5] *See Secunda Decl.*, ¶5, Dkt. 38, ¶¶ 190-213. Without the prudent investment claim after *Davis*, Plaintiffs' potential losses were reduced significantly to $6,859,617 for the remaining RKA, share class, and managed account claims. Consequently, the

[5] Additionally, defendant-friendly developments with regard to these excessive fee ERISA cases in the Sixth and Seventh Circuit during the summer of 2022 made it much more difficult for plaintiffs to come to successful settlement outcomes and substantially diminished the value of their case. *See Albert v. Oshkosh Corp.,* 47 F.4th 570 (7th Cir. 2022) (affirming dismissal of **all** claims in a nearly identical complaint); *Forman v. TriHealth, Inc.*, 40 F.4th 443 (6th Cir. 2022) (affirming that there is no claim based on failure to select passive funds); *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022) (same).

$3,000,000 settlement amount represents a substantial 44% of the total estimated losses. Indeed, this percentage is better than most similarly settled ERISA class actions alleging similar claim.[6]

Pursuant to the Procedural Guidance, Plaintiffs provide "information about comparable cases, including settlements and litigation outcomes" in **Exhibit 3** (Comparable Outcomes) and **Exhibit 4** (ERISA Fees Cases Litigation Tracker), both attached to this Memorandum of Law. Both of these Exhibits further establish the reasonableness, fairness, and adequacy of the settlement amount.

2. The Risks, Costs, and Delay of Further Litigation Were Significant

In the absence of a settlement, Plaintiffs would have faced potential risks. At the time of settlement, the parties were planning to start a long, arduous, and expensive discovery process. At the of discovery, there was a risk that the Court might have dismissed the claims on summary judgment. If the case proceeded to trial, Defendants still might have prevailed at trial or on appeal.[7] Finally, even if Plaintiffs prevailed on liability, issues regarding loss would have remained.

At a minimum, continuing the litigation would have resulted in complex and costly proceedings, and significantly delayed any relief to the Class. ERISA cases such as this can extend up to a decade before final resolution, sometimes going through multiple appeals.[8] The duration of these cases is, in part, a function of their complexity, which further weighs in favor of the Settlement. None of this is to say that Plaintiffs lacked confidence in their claims. However, given the risks and costs of

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[6] *See, e.g.*, *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633, Dkt. 95 at 10 (Mar. 24, 2021), *approved* Dkt. 100 (D. Mass. Apr. 7, 2021) (approving settlement that represented approximately 15–20% of alleged losses); *Beach v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 17-cv-00563, Dkt. 211 (May 20, 2020), *approved* 2020 WL 6114545, at *1 (S.D.N.Y. Oct. 7, 2020) (16% of alleged losses); *Price v. Eaton Vance Corp.*, No. 18-12098, Dkt. 32 at 12 (May 6, 2019), *approved* Dkt. 57 (D. Mass. Sept. 24, 2019) (23% alleged losses); *Sims v. BB&T Corp.*, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (19% of estimated losses).

[7] Per the Procedural Guidance, the following cases in this and the next footnote provide evidence of litigation outcomes in comparable cases. *See, e.g.*, *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*, 9 F.4th 95 (2d Cir. 2021); *Wildman v. Am. Century Servs., LLC*, 362 F. Supp. 3d 685 (W.D. Mo. 2019).

[8] *See, e.g.*, *Spano v. Boeing Co.*, 2016 WL 3791123, at *1, 4 (N.D. Ill. Mar. 31, 2016) (9 years); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *1 (S.D. Ill. July 17, 2015) (8.5 years); *Beesley v. Int'l Paper Co.*, No. 3:06-cv-00703, Dkt. 559 (S.D. Ill. Jan. 31, 2014) (more than 7 years).

litigation, it was reasonable for Plaintiffs to reach a settlement on these terms, especially when the settlement amounted to 44% of their estimated losses.

3. The Proposed Method of Distributing Relief to The Class Is Effective

Consistent with numerous other ERISA settlements that have received court approval,[9] current Participants will have their Plan accounts automatically credited with their share of the Settlement, and former Participants will receive their share by check. *See supra* at 3-4. Indeed, the $3 million Settlement is structured such that the funds will be paid for current participants through the Plan, preserving the tax advantages and without any class member having to complete a claim form, *accord Foster*, 2022 WL 425559, at *10, making this method of distribution efficient.

4. The Settlement Imposes a Reasonable Limitation on Attorney's Fees

The amount of any fee award is reserved to the Court in its discretion. *Settlement* ¶ 22. As discussed above, Class Counsel have agreed to limit their request to no more than one-third of the settlement amount and such amount is supported by their lodestar calculation. *Ex.* 2.

5. No Separate Agreements Bear on the Adequacy of Relief to the Class

There are no side agreements relating to the Settlement. *Settlement* ¶ 43.

D. The Settlement Treats Class Members Equitably

Finally, the Settlement treats Class members equitably. As noted above, the Settlement Amount will be allocated among eligible Class Members on a *pro rata* basis, the same allocation formula is used to calculate settlement payments for all eligible Class Members, former and current, and that formula is tailored to the claims asserted in the case. Such an approach has been approved in similar circumstances, *see, e.g., Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL 3000490, at *5 (C.D. Cal. Feb. 6, 2018), and the proportionate distribution of Settlement payments does not grant preferential treatment to the class representatives.

[9] *See, e.g.*, *Kinder v. Koch Indus., Inc.*, 2021 WL 3360130, at *1–2 (N.D. Ga. July 30, 2021); *Karpik v. Huntington Bancshares Inc.*, 2021 WL 757123, at *2 (S.D. Ohio Feb. 18, 2021); *Dolins v. Cont'l Cas. Co.*, No. 1:16-cv-08898, Dkt. 122-1 § 9 (N.D. Ill. Aug. 6, 2018).

III. The Class Notice Plan is Reasonable and Should be Approved

The Court also must ensure that Notice is sent in a reasonable manner to all Settlement Class Members who would be bound by the settlement. Fed. R. Civ. P. 23(e)(1). The "best notice" practicable under the circumstances includes individual notice to all class members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B).

That is precisely the type of Notice proposed here, as set out in comprehensive detail by Mr. Simmons in his Declaration in support of the Notice Program. *See* Declaration of Richard Simmons of Analytics in Support of Notice Program, ¶¶ 19-37. The individually mailed Settlement Notices are a presumptively-reasonable method. *See Phillips Petrol. Co. v. Shutts,* 472 U.S. 797, 812 (1985). Moreover, the content of the Notice is reasonable, as it contains information regarding the terms of the Settlement, the claims asserted in the action, the definition of the class, the scope of the class release, the process for making an objection, Class members' right to appear at the fairness hearing, and the proposed attorneys' fees, expenses, and service awards. *Simmons Decl.*, ¶¶ 19-37; Ex. 2 to Settlement Agreement (Proposed Class Notice). Analytics' procedures for securely handling class member data (including technical, administrative, and physical controls; retention; destruction; audits; and crisis response) more than meets the criteria set out by the Settlement Administration Data Protection Checklist established by the Northern District of California. *Id.*, ¶¶ 39-45; *Ex.* 2 to Simmons Decl. In short, the parties have an effective distribution plan considering the recommendations in the Procedural Guidance and have a Notice that has all of the model language recommended by the Procedural Guidance.

IV. The Proposed Class Should be Certified for Settlement Purposes

Finally, this Court should certify the Settlement Class for settlement purposes.[10] ERISA class actions are commonly certified under Rule 23 because ERISA breach of fiduciary duty claims are brought on behalf of the plan as a whole. *Neil v. Zell*, 275 F.R.D. 256, 267 (N.D. Ill. 2011).

[10] In the context of a settlement, class certification is more easily attained because the court need not inquire whether a trial of the action would be manageable on a class-wide basis. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

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

Rule 23(a) of the Federal Rules of Civil Procedure sets forth four requirements applicable to all class actions: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Amchem*, 521 U.S. at 620.

Numerosity. As noted above, there are approximately 11,000 Settlement Class Members, made up of approximately 7632 current participants with balances, and 3305 former participants during the Class Period. *Secunda Decl.* ¶ *3*. This far exceeds the threshold for numerosity.

Commonality. The commonality requirement is met where class proceedings would answer questions common to all class members regarding the centralized administration of the plan. *See Munro v. Univ. of S. California*, 2019 WL 7842551, at *4 (C.D. Cal. Dec. 20, 2019). Here, as in other ERISA cases, common questions exist involving (1) whether the Plan's RPS/RKA fees and managed account fees were excessive; (2) whether it was prudent to retain certain share classes in the Plan; (3) whether Defendants breached their fiduciary duties to the Plan; and (4) whether the Plan suffered losses from the fiduciary breaches. Accordingly, commonality is satisfied. *See Munro*, 2019 WL 7842551, at *4.

Typicality. The typicality requirement "tend[s] to merge" with commonality. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent members; they need not be substantially identical." *Munro*, 2019 WL 7842551, at *4. Typicality is satisfied, as one course of conduct occurred: Defendants' management of Plan. *Munro*, 2019 WL 7842551, at *5.

Adequacy. The adequate representation inquiry considers the adequacy of the named plaintiffs and class counsel. The adequacy of representation requirement set forth in Rule 23(a)(4) involves a two-part inquiry: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co.,* 327 F.3d 938, 957 (9th Cir. 2003). Class representatives and class counsel are adequate for reasons already elaborated upon above.

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

Pursuant to the Court's Order of January 9, 2023, Dkt. 65, Plaintiffs maintain that certification

of the proposed Settlement Class under Federal Rule of Civil Procedure 23(b)(1) is appropriate. Under Rule 23(b)(1), a class may be certified if prosecution of separate actions by individual class members would create a risk of:

> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (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 substantially impair or impede their ability to protect their interests[.]

Fed. R. Civ. P. 23(b)(1). Satisfaction of either prong makes certification under the Rule proper.

"Rule 23(b)(1)(A) considers possible prejudice to a defendant, while 23(b)(1)(B) looks to prejudice to the putative class members." *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102, 111 (N.D. Cal 2008). Rule 23(b)(1)(A) is met because Plaintiffs allege that more than 11,000 individuals are participants of the Juniper Plan. *Secunda Decl., ¶ 3.* If each individual participant filed suit against Defendants based on the same alleged misconduct, this would create a high risk of "incompatible standards of conduct" for Defendants absent certification. *See Kanawi*, 254 F.R.D. at 111. As an example, consider Plaintiffs' RKA claim. Every Class Member paid a recordkeeping fee, so each one would have the same claim. Without certification of a non-opt out class, Defendants could face hundreds or possibly over a thousand identical, single plaintiff lawsuits with each being adjudicated in different forums be different jurists.

Certification under Rule 23(b)(1)(B) is equally appropriate. The legal conclusions and remedies awarded (if any) in claims such as those at the bar affect the entire Plan. Looking again at the RKA claim example, if the Court held that the fee was excessive and must be lowered Defendants would be required to take those remedial actions for all participants and their beneficiaries, not just the named Plaintiffs. This fits squarely within the "'[c]lassic example' of a Rule 23(b)(1)(B) action," as it "charg[es]

a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of beneficiaries." *Grabek v. Northrop Grumman Corp.*, 346 F. App'x 151, 153 (9th Cir. 2009).[11]

Because of this dynamic, certification under both prongs of Rule 23(b)(1) is appropriate in this case because ERISA fiduciaries are being alleged to have failed to provide reasonable, uniform standards to a large number of beneficiaries which could lead either to inconsistent adjudications or prejudice to the Defendants. *See Schuman v. Microchip Tech. Inc.*, 2020 WL 887944, at *9 (N.D. Cal. Feb. 24, 2020); *see also Foster*, 2019 WL 4305538, at *2 ("Certification under 23(b)(1) is typical for ERISA class actions.") (citing *Harris v. Amgen, Inc.*, 2016 WL 7626161, at *4 (C.D. Cal. Nov. 29, 2016); *Kanawi.*, 254 F.R.D. at 111). The Court should, therefore, certify this case under Rule 23(b)(1).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) preliminarily approve the parties' Class Action Settlement Agreement; (2) approve the proposed Settlement Notices and authorize distribution of the Notices to the Settlement Class; (3) preliminarily certify the Settlement Class for settlement purposes; (4) schedule a final approval hearing; and (5) enter the accompanying Preliminary Approval Order.

Dated this 30th day of January, 2023

WALCHESKE & LUZI, LLC
s/ Paul M. Secunda
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* admitted pro hac vice
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[11] Certification under Rule 23(b)(3) is inappropriate because it is a class device reserved for individualized *monetary* relief, and, in this case, only appropriate *equitable* relief is sought under ERISA Section 502(a)(2). *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362–63 (2011) ("[W]e think it clear that individualized monetary claims belong in Rule 23(b)(3) . . . . When a class seeks an indivisible injunction benefiting all its members at once, there is no reason to undertake a case-specific inquiry into whether class issues predominate or whether class action is a superior method of adjudicating the dispute.").

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: January 30, 2023

/s/ Paul M. Secunda
Paul M. Secunda

Exhibit 1

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRIAN REICHERT, DEREK DEVINY individually, and as representatives of a Class of Participants and Beneficiaries of the Juniper Networks, Inc. 401(k) Plan,

Plaintiffs,

v.

JUNIPER NETWORKS, INC.,

BOARD OF DIRECTORS OF JUNIPER NETWORKS, INC., and

INVESTMENT COMMITTEE OF JUNIPER NETWORKS, INC.

Defendants.

Case No: 3:21-cv-06213-JD

DECLARATION OF HOWARD SHAPIRO REGARDING DEFENDANTS' CAFA COMPLIANCE

Complaint Filed: Aug. 11, 2021

DECLARATION OF HOWARD SHAPIRO

Pursuant to 28 U.S.C. § 1746, I, HOWARD SHAPIRO, declare as follows:

1. I am a Principal at the law firm of Jackson Lewis P.C., counsel to Defendants Juniper Networks, Inc., the Board of Directors of the Juniper Networks, Inc., and the Investment Committee of Juniper Networks, Inc. (collectively, "Defendants"), in the above-captioned matter.

2. I submit this Declaration detailing Defendants' compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq*. ("CAFA").

3. Attached hereto as Exhibit 1 is a true and correct copy of the letter sent by certified mail pursuant to CAFA ("CAFA Notice") on November 21, 2022, to the United States Attorney General. *See* 28 U.S.C. § 1715(a)-(b). A substantially similar letter was sent to the Attorneys General for all United States and United States Territories on the same day. *See* 28 U.S.C. § 1715(b).

4. The CAFA Notice provided the definition of the Settlement Class and a reasonable estimate of the number of class members in each state. Enclosed with the CAFA Notice was a CD-ROM containing electronic copies in PDF format of: (i) the Class Action Complaint; (ii) the Amended Class Action Complaint; (iii) Plaintiffs' Motion for Preliminary Approval of Class Action Settlement; (iv) the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement; and (v) the Declaration of Paul Secunda in Support of the Motion for Preliminary Approval of Class Action Settlement attaching the Settlement Agreement and exhibits thereto, including the Proposed Class Action Settlement Agreement, as Exhibit A, (vi) the Declaration of Derek Deviny in Support of the Motion for Preliminary Approval of Class Action Settlement, and

(vii) the Declaration of Brian Reichert in Support of the Motion for Preliminary Approval of Class Action Settlement. Also enclosed was a table providing a reasonable estimate of the number of class members residing in each state.

5. To the best of my knowledge, based on the tracking numbers associated with the mailings, all CAFA notices were delivered. By e-mail, on November 29, 2022, the Washington State Attorney General's Office acknowledged receipt of the letter sent to it. Otherwise, to the best of my knowledge, Jackson Lewis P.C. has not received any communications from the recipients of the CAFA Notice.

6. To the best of my knowledge, Defendants have fully complied with CAFA and have satisfied all their obligations thereunder.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: January 30, 2023

New Orleans, Louisiana

/s/ Howard Shapiro
HOWARD SHAPIRO

Exhibit 2

Reichert et al. v. Juniper Networks, Inc., et al.
Case No: 3:21-cv-06213-JD
(August 1, 2021 – January 27, 2023)

Lodestar by Walcheske & Luzi, LLC Time Keeper:

Partners:

Name	Years of Experience	Billing Rate Per Hour	Hours	Charges
Paul Secunda	25	$650	173.6	$112,840.00
Scott Luzi	12	$450	23.2	$10,440.00
James Walcheske	16	$450	5.5	$2,475.00
David Potteiger	12	$450	9.4	$4,230.00
Kirsten Hendra	5	$350	43.7	$15,295.00

Walcheske & Luzi, LLC Total Hours (Attorneys): 255.4

Creitz & Serebin LLP Total Hours (Attorneys and Support Staff): 11.8

GRAND TOTAL HOURS (ALL COUNSEL): 267.2

Walcheske & Luzi, LLC Lodestar Total (Attorneys): $145,280.00

Creitz & Serebin LLP Total (Attorneys and Support Staff): $10,070.80

GRAND TOTAL LODESTAR (ALL COUNSEL CURRENT): $155,350.80

Current Multiplier: 6.44

EXPECTED ADDITIONAL WORK TO BE COMPLETED: 50 hours (Attorney Secunda)

$650/hr. x. 50 hours = $32,500.00

GRAND TOTAL LODESTAR (ALL COUNSEL CURRENT & EXPECTED): $187,850.80

Expected Multiplier: 5.32

See, e.g., Steiner v. Am. Broad. Co., 248 Fed. App'x. 780, 783 (9th Cir. 2007) (multiplier of 6.85 "falls well within the range of multipliers that courts have allowed"); *Stevens v. SEI Investments Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving one-third fee to Nichols Kaster, PLLP that yielded 6.16 multiplier); *In re Rite Aid Sec. Litig.*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005) (approving a 6.96 multiplier); *Viafara v. MCIZ Corp.*, 2014 WL 1777438, at *14 (S.D.N.Y. May 1, 2014) ("Courts award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.")

CASE LITIGATION COSTS TO DATE

In connection with the action, Class Counsel advanced all costs of litigation. Because Class Counsel handled this action on a contingent basis, they have not yet received reimbursement for any of these expenses.

As of the date of this Motion, Walcheske Luzi has incurred $35,820.73 in litigation-related costs in connection with this matter. These expenses are broken down below:

Category	Cost
Expert Consultant Charges	$32,590.00
Travel Expenses	$2,593.73
Court Fees	$637.00
TOTAL	$35,820.73

Exhibit 3

Comparable Outcomes

Pursuant to the Procedural Guidance on Class Settlements of the Northern District of California, the following chart compares this case to a recently settled ERISA fees class action settlement involving the same type of claims, similar parties, and materially similar issues:

Case Name	Type of Claim	Parties	Issues	Settlement Amount
Gleason et al. v. Bronson Healthcare, No. 1:21-cv-00379 (W.D. Mich. 2022)	Claims under ERISA Section 502(a)(2) for breach of fiduciary duty	Plan participants versus Plan fiduciaries	Excessive RKA and investment fees being charged to Plan participants	$3,000,000
Reichert v. Juniper Networks, Case No. 3:21-cv-06213-JD (N.D. Cal. 2023)	Claims under ERISA Section 502(a)(2) for breach of fiduciary duty	Plan participants versus Plan fiduciaries	Excessive RKA, investment, and managed account fees being charged to Plan participants	$3,000,000

The two cases above have the exact same types of claims being released, the same total settlement fund, the similar total number of class members, the similar number of notices sent to class members, similar method of notice distribution by first class mail, similarity in lack of claim forms, no amounts distributed to cy pres recipients, similar administrative costs in the range of $40,000 to $50,000, similar requested attorneys' fees of $1,000,000 and similar requested costs of around $50,000, identical service award requests of $7,500 per class representative, and comparable degrees of total exposure if the plaintiffs had prevailed on every claim with Bronson at approximately $16 million dollars and this case at approximately $7 million.

Non-monetary relief did not exist in either case. In all, the comparison of this case to the Bronson helps to establish that the settlement in this case is fair, adequate, and reasonable.

Exhibit 4 - ERISA Fee Cases Litigation Tracker

Circuit	District Court	Case Name & Number	Settlement Amount
7	E.D. Wis.	Woznicki v. Aurora Health Care, Inc., No. 20-cv-1246	$2.6 million
8	W.D. Mich.	Traczyk v. Aspirus, Inc., 21-cv-77	$1,500,000.00
7	E.D. Wis.	Walter v. Kerry, Inc., No. 21-539	$900,000.00
6	W.D. Mich.	Gleason v. Bronson Healthcare Group, Inc., No. 21-cv-379	$3,000,000.00

Circuit	District Court	Case Name & Number	Settlement Amount
8	D. Minn.	Larson v. Allina Health System, No. 17-cv-03835	$2,425,000.00
9	W.D. Wash.	Johnson v. Providence Health & Services, No. 17-cv-1779	$2,250,000.00
3	E.D. Pa.	Diaz v. BTG International Inc., No. 19-cv-1664	$560,000
3	E.D. Pa.	Pinnell v. Teva Pharmaceuticals USA, Inc., No. 19-5738	$2,550,000.00
3	E.D. Pa.	Buescher v. Brenntag North America, Inc., No. 20-cv-147	$2,300,000.00
4	E.D.N.C.	Kendall v. Pharmaceutical Product Development, No. 20-cv-71	$775,000.00
8	D. Minn.	Parmer v. Land O'Lakes, No. 20-1253	$1,800,000.00
5	W.D. Tex.	Blackmon v. Zachry Holdings, Inc., No. 20-cv-988	$1,875,000.00
1	D. Mass.	Khan v. PTC Inc., No. 20-cv-11710	$1,725,000.00
3	D.N.J.	McGowan v. Barnabas Health, No. 20-cv-13119	$1,725,000.00

1	D. Mass.	Harding v. Southcoast Hospitals Group, Inc., No. 20-cv-12216	$2,000,000.00
4	E.D. Va.	Gerken v. ManTech International Corporation, No. 20-cv-1536	$1,200,000.00
10	W.D. Okla.	Loomis v. Nextep, Inc. , No. 5:21-cv-00199	$1,100,000.00
3	E.D. Pa.	Nesbeth v. Icon Clinical Research, No. 21-1444	$950,000
4	E.D.N.C.	Conte v. WakeMed, No. 21-190	$975,000
7	N.D. Ill.	Barcenas et al. v. Rush University Medial Center et al.; No.: 1:22-cv-00366	$2,950,000.00
1	D. Mass.	Clark v. Beth Israel Deaconess Medical Center, No. 22-cv-10068	$2,900,000.00