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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL BOUVY,

Plaintiff,

v.

ANALOG DEVICES, INC., a Massachusetts company, as successor to LINEAR TECHNOLOGY CORPORATION; LINEAR TECHNOLOGY LLC, a Delaware company; LINEAR TECHNOLOGY ADMINISTRATIVE COMMITTEE; and DOE DEFENDANTS 1-20,

Defendants.

Case No. 19-cv-00881-DMS BLM

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND A SERVICE AWARD

Judge: Hon. Dana M. Sabraw
Date: July 15, 2022
Time: 1:30 p.m.
Room: Courtroom 13A

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

PLEASE TAKE NOTICE that on July 15, 2022, at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Dana M. Sabraw, in Courtroom 13A of the above-entitled court, located at the James M. Carter and Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, CA 92101, Plaintiff will move, and hereby does move, for an order (1) awarding attorneys' fees in the amount of $375,000, and (2) issuing a service award in the amount of $7,500 to Plaintiff Michael Bouvy.

Plaintiff's Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points & Authorities, and upon such further evidence, pleadings, and argument of counsel as may be presented in connection with the Motion.

Respectfully submitted,

MICHAEL BOUVY, individually and on behalf of all others similarly situated,

Dated: June 1, 2022

By: /s/ Rafey S. Balabanian
One of Plaintiff's Attorneys

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL BOUVY, Plaintiff, v. ANALOG DEVICES, INC., a Massachusetts company, as successor to LINEAR TECHNOLOGY CORPORATION; LINEAR TECHNOLOGY LLC, a Delaware company; LINEAR TECHNOLOGY ADMINISTRATIVE COMMITTEE; and DOE DEFENDANTS 1 – 20; Defendants.	Case No.: 19-cv-00881-DMS **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND A SERVICE AWARD** **Judge:** Hon. Dana M. Sabraw **Date:** July 15, 2022 **Time:** 1:30 p.m. **Room:** Courtroom 13A

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Kinder v. Woodbolt Distrib., LLC,
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I. Introduction

In this action alleging a breach of the fiduciary duties owed to a retirement plan under ERISA by permitting the assessment of excessive recordkeeping fees, Class Counsel secured a settlement that returns a meaningful portion of those fees automatically from a $1.5 million Settlement Fund. For these efforts, Class Counsel seek an award of fees of 25% of that Settlement Fund, the benchmark award in this Circuit. That award amounts to just over half of counsel's lodestar and is amply justified by the work counsel has performed in this case. Class Counsel also seek a $7500 service award for Mr. Bouvy for his efforts in securing this settlement for the benefit of the class.

The underlying claim here is that the fiduciaries of the Linear Technology 401(k) Plan (or "Plan") failed to monitor administrative fees incurred by the Plan, causing Plan participants to incur unreasonably high fees, and engaged in a flawed decision-making process with respect to the retention of Transamerica as the Plan's Recordkeeper. Given the size of the Plan and its concomitant bargaining power, Plaintiff Michael Bouvy estimated that Plan participants should have been expected to incur no more than about $50 in recordkeeping fees per year. (SAC ¶ 138.) But in fact, Plan participants incurred much higher fees.

After evaluating thousands of pages of discovery and reviewing dozens of forms filed by the Plan with the IRS, Class Counsel moved for class certification and was prepared to present this case to a jury on behalf of all Plan Participants from a roughly six-year period. But such an approach would have entailed great risk, as similar claims have failed at trial or dragged out for years through multiple rounds of appeals. Thus, Class Counsel, following a day-long mediation presided over by Magistrate Judge Barbara Lynn Major, and months of subsequent wrangling over details, negotiated this Settlement on behalf of the Settlement Class. The Settlement is a superb result for the Settlement Class. Settlement Class Members will receive their proportionate share of the Settlement Fund, based on recordkeeping fees paid in

excess of $50 per year, and will receive their money from the Fund without having to file a claim. This valuable, immediate relief is far preferable to the years of uncertainty that lay ahead in this litigation.

An award of 25% of the Settlement Fund (or $375,000) fairly compensates Class Counsel for the work they have done in this case and the excellent settlement they achieved. The requested award is the "benchmark" in this Circuit, is comparable to, or even below, awards obtained in similar cases.

The Court also should issue a $7500 service award to Mr. Bouvy. Mr. Bouvy's work in participating in the litigation, discovery, and the settlement would amply justify the award on its own, but courts have also recognized that when plaintiffs sue their employers, they take on unusual risk even relative to other class representatives, justifying even greater awards. A $7500 award is in line with, or even below, awards issued for similar work done by class representatives in other cases and is perfectly reasonable here.

The Court should grant the motion for fees and a service award.

II. The Work Performed for the Benefit of the Class

ERISA cases are notoriously complex and fact-heavy, and although this case never proceeded past class certification, the history of this case before preliminary approval demonstrates that this one was no different. A brief review of the work done by counsel helps demonstrate the reasonableness of Class Counsel's fee request.

On Mr. Bouvy's behalf, Class Counsel filed the original complaint in this case in May 2019. The process of drafting the complaint itself involved intense review of disclosures made on behalf of the Plan to Plan participants, as well as of the Form 5500s filed by the Plan with the IRS. Even still, after the initial complaint was filed, the defendants tendered some informal discovery that, they believed, disproved some of the complaint's allegations. To evaluate these documents, counsel engaged the services of an expert consultant, with whom they evaluated this informal discovery, before concluding that substantial questions of fact remained.

When Defendants moved to dismiss the complaint, their motion raised a litany of complicated legal issues requiring, among other things, argument concerning the appropriate interpretation of recent Supreme Court and Ninth Circuit precedent. In fact, even after the parties had thoroughly briefed many of these issues, the parties filed supplemental briefs on the impact of the Supreme Court's decision in *Intel Corp. Investment Policy Committee v. Sulyma*, 140 S. Ct. 768 (2020), on this case. (Dkts. 28, 29, 30.) The district court largely denied Defendants' motion on June 24, 2020, explaining, among other things, that Mr. Bouvy's allegations raised a plausible inference that Plan fiduciaries engaged in a flawed decision-making process with respect to the retention of Transamerica as Plan recordkeeper. (Dkt. 32.) Counsel then litigated and won a motion to reconsider filed by Defendants with respect to a portion of the Court's order. (Dkts. 37, 42.)

After the motion to reconsider was denied, Counsel and the parties attended a half-day Early Neutral Evaluation (conducted, as so many things were in 2020, via Zoom) presided over by Magistrate Judge Barbara Lynn Major. In advance of this ENE, Class Counsel prepared a detailed brief outlining our theory of liability and setting forth a fulsome damages assessment. Despite everyone's best efforts, at that stage of the case, the parties' liability estimates were too divergent to permit fruitful settlement negotiations.

The parties then dove into discovery, though the process was slower than normal due to the COVID-19 pandemic. While Defendants were able to prepare objections and written responses to Plaintiff's interrogatories, pandemic-related restrictions complicated the process of collecting and reviewing ESI. (Dkt. 56-1) Class Counsel worked closely during this process with Defendants' Counsel to ensure that Plaintiff had all of the documents necessary to move for class certification.

Class Counsel also engaged in an extended back-and-forth regarding search terms in order to build the strongest case for the Class. After reviewing the first five volumes of documents produced by Defendants, Class Counsel proposed

approximately 60 additional search terms, leading to extensive negotiations about which of those terms Defendants would search for. The parties also engaged in extensive discussions about whether to have a protocol to deal with disputed search terms and what form that protocol would take.

Ultimately, Defendants produced seven volumes of documents, totaling 47,462 pages, which Class Counsel thoroughly reviewed.

Together with Class Counsel, Mr. Bouvy also extensively searched his own files. Based on a list of search terms proposed by Defendants, Bouvy and Settlement Class Counsel reviewed 4,678 pages of documents and ultimately produced about 100 documents deemed to be responsive.

Plaintiff filed his class certification motion amidst this ongoing discovery process. This thoroughly briefed motion was amply supported by documentary evidence from the record. Before Defendants responded, however, the parties participated in a second settlement conference with Magistrate Judge Major. Again, the parties provided thorough submissions detailing their respective positions as well as specific estimates of liability. After a full day of negotiations, Magistrate Judge Major made a mediator's proposal, which the parties accepted.

But Class Counsel's work was not finished. Although the mediator's proposal had resulted in an agreement on the broad outlines of a settlement, much work remained to hammer out the details. (*See, e.g.*, Dkt. 77.) More than that, Class Counsel also was determined to craft the most equitable plan of allocation here, which required detailed participant data showing how much each Settlement Class Member paid in recordkeeping fees.

The resulting settlement, which the Court already has preliminarily approved, is an outstanding result for the Settlement Class. As explained in Plaintiff's Motion for Preliminary Approval, the instant Settlement improves upon other settlements in this space to ensure that Settlement Class Members receive relief in proportion to the recordkeeping fees they paid, rather than in proportion to their quarterly retirement

account balances. While the latter approach does rough justice, Class Counsel here went the extra step of calculating how much each Settlement Class Member paid in recordkeeping fees in order to ensure the most equitable plan of allocation. Moreover, the plan of allocation is based on the assumption that a reasonable recordkeeping fee would amount to $50 per year, approximately the level alleged in the complaint. And the cherry on top of all of this is that Settlement Class Members don't need to do anything in order receive a distribution from the Settlement Fund. Current employees' settlement payments will be credited to their accounts and former employees can submit a rollover form to have their share of the Fund wired into their new account, but even if former employees do nothing, they will receive a check in the mail. All in all, this is an outstanding settlement that is the product of Settlement Class Counsel's tireless and diligent work on behalf of the Settlement Class.

III. A 25% fee award is appropriate here.

Class Counsel seek an award of 25% (or $375,000) of the non-reversionary Settlement Fund they have secured for the Settlement Class. Under Ninth Circuit precedent, a court has discretion to calculate and award attorneys' fees using either the lodestar method or the percentage-of-the-fund method. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The percentage method is used more often when a settlement creates a common fund for the benefit of the class. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). "Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result." *Id.* When assessing a request for attorneys' fees, courts in this Circuit typically consider some combination of the following non-exhaustive list of factors: "(1) the extent to which class counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether counsel's performance generated benefits beyond the cash settlement fund; (4) the market rate for the particular field of law; (5) the burdens class counsel experienced while litigating the case; (6) and whether the case was

1 handled on a contingency basis." *See In re Optical Disk Drive Prods. Antitrust Litig.*,
2 959 F.3d 922, 930 (9th Cir. 2020). These factors demonstrate the reasonableness of
3 Class Counsel's fee request.
4
5 **A. The Settlement here is a first-rate result for the Settlement Class, achieved in the face of significant risk.**
6
7 First, Class Counsel achieved exceptional results for the Settlement Class. The
8 Settlement here secures $1.5 million in immediate relief for the Settlement Class,
9 money which will be deposited directly into the retirement accounts for Current Plan
10 Participants and former participants can have their money rolled over into their
11 current plan or will get a check in the mail, at their election. This number represents
12 approximately 49% of Class Counsel's estimate of the maximum damages available
13 after a trial on this claim. Such a recovery compares favorably to other settlements in
14 this space. *See Diaz v. BTG Int'l, Inc.*, No. 19-cv-1664-JMY, 2021 WL 2414580, at
15 *7 (E.D. Pa. June 14, 2021) (approving settlement securing approximately 37% of
16 high-end estimate of excessive fees incurred by ERISA plan participants); *Johnson v.*
17 *Fujitsu Tech. & Business of America, Inc.*, No. 16-cv-3698-NC, 2018 WL 2183253,
18 at *5 (N.D. Cal. May 11, 2018) (approving settlement securing "nearly 40%" of
19 estimated excessive fees); *see also Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL
20 1995314, at *5 (M.D.N.C. May 6, 2019) (approving settlement in ERISA case
21 representing 19% of potential damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
22 454, 459 (9th Cir. 2000) (noting that it is "well-settled law that a cash settlement
23 amounting to only a fraction of the potential recovery does not per se render the
24 settlement inadequate or unfair"). And, on average, this works out to around $380
25 back into the retirement accounts of Settlement Class Members.
26 As explained in more detail in Plaintiff's Motion for Preliminary Approval, this
27 strong recovery is especially remarkable in light of the risks that lay ahead for the
28 Settlement Class on the merits. While Class Counsel are confident that the Court

would have granted class certification, on the merits this document-heavy case could have faltered on any number of grounds.

Indeed, given the fact-intensive nature of the claims here, a resolution was highly unlikely prior to trial. *See Terraza v. Safeway, Inc.*, 241 F. Supp. 3d 1057, 1078 (N.D. Cal. 2017) (noting that "the prudence inquiry is 'fact intensive'" and "rarely will such a determination be appropriate on a motion for summary judgment"). Thus, without the Settlement, Class Members and Class Counsel would have been forced to wait for years for any relief. And of course success on the merits was not a slam dunk. A fiduciary-duty claim is a deeply fact-specific claim that would have required analyzing Defendants' decision-making processes over a significant period of time. And even if Plaintiff had prevailed on the merits, similar claims have foundered on the inability to measure damages with sufficient precision. *See Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273, 280, 306-07 (S.D.N.Y. 2018); *Wildman v. American Century Servs., LLC*, 362 F. Supp. 3d 685, 710 (W.D. Mo. 2019).

Thus, the relief secured by the Settlement, which is the product of Class Counsel's advocacy, demonstrates the reasonableness of Class Counsel's fee request.

B. Class Counsel bore significant risk in litigating this case.

For many of the same reasons that this Settlement represents excellent value for the Settlement Class, Class Counsel bore significant risk in litigating this case. Right from the get-go, even the process of drafting the complaint involved intense document review, all of which could have been for naught given the complexity of the legal landscape involved here. And moving past that stage, any trial would have been extraordinarily complex and time-consuming. Class action trials are notoriously complex. *See, e.g.*, *Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011). "The complexity inherent in class actions is amplified in ERISA class actions." *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, at *4 (S.D. Ohio Feb. 18, 2021). "In fact, it is not unusual for ERISA 401(k) cases to

1 extend for a decade or longer before final resolution." *Id.* Furthermore, during the
2 pendency of this litigation the Supreme Court took up a case to determine whether
3 allegations like those made here could state a claim for breach of fiduciary duty under
4 ERISA. *Hughes v. Nw. Univ.*, 142 S. Ct. 737 (2022).

5 Thus, Class Counsel, who litigated this case on contingency, were faced with
6 the real probability of litigating this case for years, investing significant time and
7 resources into its prosecution, and receiving no compensation whatsoever. The
8 substantial risk of nonpayment here supports the requested fee award. *See Cox v.*
9 *Ametek, Inc.*, No. 3:17-cv-00597-GPC-AGS, 2020 WL 7353425, at *9 (S.D. Cal.
10 Dec. 15, 2020) (citing heightened risk of non-payment as factor confirming
11 reasonableness of fee award); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244,
12 1264 (C.D. Cal. 2016) ("The contingent nature of the work performed by class
13 counsel here, including the risk they took in advancing costs, also weighs in favor of
14 granting the fee request.").

15 **C. The market supports the requested fee.**

16 Finally, courts consider the market for fees in similar cases. Here, market data
17 shows that the requested fee award is reasonable.

18 First, consider fee awards in similar so-called "excessive fee" ERISA cases.
19 Fee awards in many cases in this space are generally around 33% of a common fund.
20 *See Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at *8
21 (D. Md. Jan. 28, 2020) (awarding 1/3 of common fund); *Abbott v. Lockheed Martin*
22 *Corp.*, No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2017)
23 (awarding 1/3 of common fund); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-2781
24 (SRN/JSM), 2015 WL 4246879, at *4 (D. Minn. July 13, 2015) (awarding 1/3 of the
25 common fund); *Sims*, 2019 WL 1993519, at *5 (awarding 1/3 of the common fund);
26 *Walbuesser v. Northrop Grumman Corp.*, No. CV 06-6213-AB (JCx), 2017 WL
27 9614818, at *8 (C.D. Cal. Oct. 24, 2017) (awarding 1/3 of the common fund). Here,
28 of course, Class Counsel seeks a lower amount, despite the established market in this

1 subject area, and even though the results achieved here are on par with, or better than,
2 those achieved in similar cases. The market established by these similar cases
3 therefore demonstrates that a 25% fee award is reasonable here.
4 The market for fees in consumer class actions generally also supports
5 Settlement Class Counsel's fee request. The fee request of 25% of the Settlement
6 Fund is in line with the "benchmark" award in this Circuit. *See Vizcaino*, 290 F.3d at
7 1047. The Ninth Circuit long ago noted that awards in consumer cases tend to range
8 from 20 to 30% of the fund created. *See Paul, Johnson, Alston & Hunt v. Graulty*,
9 886 F.2d 268, 272 (9th Cir. 1989). Recent caselaw confirms that the 25% benchmark
10 remains viable, at least in cases of this size. *See In re Nat'l Collegiate Athletic Ass'n*
11 *Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x 651, 653 (9th Cir. 2018) ("We have
12 permitted awards of attorneys' fees ranging from 20 to 30 percent of settlement
13 funds, with 25 percent as the benchmark award."). In other words, Settlement Class
14 Counsel's fee request is right in line with fee awards in other consumer cases.
15 Finally, a discretionary cross-check of Class Counsel's lodestar confirms the
16 reasonableness of the percentage requested. *See Farrell v. Bank of Am. Corp., N.A.*,
17 827 F. App'x 628, 630 (9th Cir. 2020) ("This Court has consistently refused to adopt
18 a crosscheck requirement, and we do so once more.) "Under the lodestar method,
19 courts 'calculate the fee award by multiplying the number of hours reasonably spent
20 by a reasonable hourly rate and then enhancing that figure, if necessary, to account
21 for the risks associated with the representation.'" *Cheng Jiangchen v. Rentech, Inc.*,
22 No. CV 17-1490-GW(FFMX), 2019 WL 5173771, at *10 (C.D. Cal. Oct. 10, 2019)
23 (quoting *Paul, Johnson, Alston & Hunt*, 886 F.2d at 272). The lodestar figure is a
24 "presumptively reasonable" fee award. *Kim v. Allison*, 8 F.4th 1170, 1180 (9th Cir.
25 2021). When fees are awarded as a percentage of the fund, the lodestar method can
26 provide a "cross-check" to confirm the reasonableness of the percentage award.
27 When a court decides to conduct a lodestar crosscheck, the "calculation need entail
28

neither mathematical precision nor bean counting." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015).

Here, Class Counsel's lodestar is $722,483.00 based on 1,431 hours worked, for a blended rate of $504.88 per hour. Class Counsel have also incurred $2,542.82 in expenses for which they are not seeking separate reimbursement. Edelson PC's hourly rates have been approved as reasonable in many cases. *See, e.g.*, *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021) *aff'd,* No. 21-15553, 2022 WL 822923 (9th Cir. Mar. 17, 2022); *Dickey v. Advanced Micro Devices, Inc.*, No. 15-CV-04922-HSG, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020); *Moreno v. Bay Area Rapid Transit Dist.*, No. 17-cv-2911-JSC, 2019 WL 343472, at *6 (N.D. Cal. Jan. 28, 2019); *Barnes v. Arzyta, LLC*, No. 1:17-cv-07358, 2019 WL 277716, at *4 (N.D. Ill. 2019) (finding Edelson PC's rates "reasonable given the market rate that hourly clients are willing to pay, judicial approval of their rates, and their level of reputation and expertise in the area"). Furthermore, a blended rate of around $500 per hour is well within the range of hourly rates charged by attorneys in this district. *See, e.g.*, *Michelle H. v. Berryhill*, No. 18-cv-2328 JLS (RNB), 2022 WL 1138146, at *3 (S.D. Cal. Apr. 18, 2022) (collecting cases and observing that in social security cases blended rates as high as $1,990 per hour have been found reasonable); *Kinder v. Woodbolt Distrib., LLC*, No. 3:18-cv-2713-DMS-AGS, 2021 WL 1226444, at *3 (S.D. Cal. Apr. 1, 2021) (finding blended rate of approximately $614 per hour to be consistent with the prevailing hourly rates in this District); *In re Easysaver Rewards Litig.*, No. 09-cv-02094-BAS-WVG, 2020 WL 2097616, at *16 (S.D. Cal. May 1, 2020) (rejecting argument that blended rate of $668/hour is excessive). The low blended rate also indicates that Class Counsel worked efficiently on this case, assigning tasks to younger attorneys consistent with their ability to handle the work. The hours expended by Class Counsel also are reasonable for such a document-heavy case that, prior to settlement, involved the preparation of two complex motions filings, and two separate settlement briefs.

This lodestar figure is well above the fee award Class Counsel requests. Indeed, despite the existence of significant risk here, which would ordinarily justify a lodestar multiplier of 2 or higher, Counsel's request for 25% of the common fund works out to a multiplier of approximately 0.5. This is well below the types of multipliers ordinarily awarded in ERISA cases. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (approving a fee award with a multiplier of 5 and finding in a review of 96 ERISA cases that "the implied multiplier ranged from less than one to eight times the lodestar"). In other words, this is further evidence that the market would support a substantially higher fee, and again underscores the overall reasonableness of the 25% award Counsel seeks.

In sum, Settlement Class Counsel achieved a superb result in the face of substantial risks and seek a below-market fee as compensation. The 25% award Counsel seeks is plainly reasonable, and the Court should approve Counsel's fee request.

IV. The Court should issue a service award of $7500 to Bouvy.

Finally, Plaintiff requests a service award of $7,500. "[I]ncentive awards that are intended to compensate class representatives for work undertaken on behalf of a class are fairly typical in class action cases." *In re Online DVD- Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (internal quotation omitted). Such awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Courts' main concern in approving incentive awards is to make sure that "they do not undermine the adequacy of the class representatives." *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). In evaluating whether class representatives are entitled to reasonable service awards, district courts "must evaluate their awards individually, using 'relevant factors includ[ing] the actions the plaintiff has taken to

1 protect the interests of the class, the degree to which the class has benefitted from
2 those actions, ... the amount of time and effort the plaintiff expended in pursuing the
3 litigation ... and reasonabl[e] fear[s of] workplace retaliation.'" *Staton v. Boeing Co.*,
4 327 F.3d 938, 977 (9th Cir. 2003) (alterations in original) (quoting *Cook v. Niedert*,
5 142 F.3d 1004, 1016 (7th Cir. 1998)) "Courts have generally found that $7,500
6 incentive payments are reasonable" where that figure constitutes only a small
7 percentage of the total recovery. *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D.
8 443, 462 (E.D. Cal. 2013). Courts have also recognized that class representatives who
9 champion litigation against their employer incur additional risk by placing themselves
10 at risk of retaliation by firms in their field, being labeled as a "troublemaker," or
11 similar badge of dishonor. *See In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-
12 2509-LHK, 2015 WL 5158730, at *17 (N.D. Cal. Sept. 2, 2015); *Roberts v. Texaco,*
13 *Inc.*, 979 F. Supp. 185, 201 (S.D.N.Y. 1997) (recognizing that in an employment
14 case, "the plaintiff is frequently a present or past employee whose present position or
15 employment credentials or recommendation may be at risk by reason of having
16 prosecuted the suit, who therefore lends his or her name and efforts to the prosecution
17 of litigation at some personal peril").[1]

18 A $7500 award is eminently reasonable here. Mr. Bouvy carefully monitored
19 Class Counsel, and actively participated in discovery. Mr. Bouvy remained in regular
20 contact with his attorneys over the course of the litigation. (Declaration of Michael
21 Bouvy ("Bouvy Decl.") ¶¶ 2-3, 7.) He also was heavily involved in discovery,
22 helping Settlement Class Counsel respond to written requests, and exhaustively
23 searching his own files for documents potentially responsive to Defendants'
24 discovery requests. (*Id.* ¶¶ 7-9.) Mr. Bouvy also attended both mediation sessions in
25

26 [1] A recent Eleventh Circuit decision, *Johnson v. NPAS Solutions, LLC*, 975 F.3d
27 1244 (11th Cir. 2020), held that service awards are barred by Supreme Court
precedent. But the Ninth Circuit has more recently made clear that service awards
28 remain permissible in this Circuit. *See In re Facebook Biometric Privacy Litig.*, No.
21-15553, 2022 WL 822923, at *2 (9th Cir. Mar. 17, 2022).

1 this case. (*Id.* ¶ 7) And he was preparing to be deposed when the parties settled. (*Id.*)
2 All in all, Mr. Bouvy estimates that he has spent between 90 and 100 hours on this
3 litigation. (*Id.* ¶ 6)
4 These considerations on their own justify a $7500 service award. *See, e.g.*,
5 *Covillo v. Specialtys Café*, No. C-11-00594 DMR, 2014 WL 954516, at *8 (N.D. Cal.
6 Mar. 6, 2014) (approving $8,000 awards for plaintiffs who estimated they spent
7 around 40 hours monitoring counsel and participating in discovery); *Smith v. CSRT*
8 *Van Expedited, Inc.*, No. 10-cv-1116-IEG (WMC), 2013 WL 163293, at *6 (S.D. Cal.
9 Jan. 14, 2013) (approving $15,000 awards for plaintiffs who developed a "record of
10 active involvement" in the litigation by participating in discovery and attending a
11 settlement conference); *Singer v. Becton, Dickinson & Co.*, No. 08-CV-821-IEG
12 (BLM), 2010 WL 2196104, at *9 (S.D. Cal. June 1, 2010) (approving $25,000 award
13 for plaintiffs who invested 165 hours into litigation); *Martin v. AmeriPride Servs.,*
14 *Inc.*, No. 08cv440-MMA (JMA), 2011 WL 2313604, at *9 (S.D. Cal. June 9, 2011)
15 (approving $18,500 for plaintiffs who assisted in the preparation of written discovery
16 responses and initial disclosures, participated in a deposition, and attended
17 mediation). Moreover, by commencing suit against his employer, Bouvy incurred real
18 reputational risk. *See In re High-Tech Emp.*, 2015 WL 5158370, at *17; *Smith*, 2013
19 WL 163293, at *6. Thus, a $7500 service award for Plaintiff Bouvy is reasonable.
20 Moreover, none of the red flags courts often spot with respect to service awards
21 are present here. Bouvy was not promised an award in order to induce his
22 participation in this lawsuit. (Bouvy Decl. ¶ 4.) Nor is he guaranteed an award by the
23 Settlement, as any award is subject to Court approval. (Dkt. 85-3 (Settlement), ¶ 9.2.)
24 And as many Settlement Class Members are expected to receive thousands of dollars
25 in their retirement accounts through this Settlement, a $7500 award is not
26 disproportionate to class member recovery. *Cf. Roes, 1-2 v. SFBSC Mgmt., LLC*, 944
27 F.3d 1035, 1058 (9th Cir. 2019) (raising concerns about $20,000 incentive payments
28 when class members received between $650 and $1500). The award Bouvy seeks, by

1 contrast, is in line with class member recovery, and reflective of the value he
2 provided to the Settlement Class, by agreeing to serve as their champion and
3 facilitating the litigation and settlement. *See, e.g.*, *In re Lenovo Adware Litig.*, No.
4 15-md-02624-HSG, 2019 WL 1791420, at *10 (N.D. Cal. Apr. 24, 2019) (finding
5 that a $5000 service award "is not unduly disproportionate to Class Members'
6 anticipated recovery" when class members stood to recover between $45 and $750).

7 **V. CONCLUSION**

8 The Court should approve Settlement Class Counsel's request for 25% of the
9 Settlement Fund (or $375,000) and should approve a $7500 service award to Mr.
10 Bouvy as Class Representative.

11

12 Respectfully submitted,

13 **MICHAEL BOUVY**, individually and on
14 behalf of all others similarly situated,

15 Dated: June 1, 2022

By: /s/ Rafey S. Balabanian
16 *One of Plaintiff's Attorneys*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL BOUVY,

Plaintiff,

v.

ANALOG DEVICES, INC., a Massachusetts company, as successor to LINEAR TECHNOLOGY CORPORATION; LINEAR TECHNOLOGY LLC, a Delaware company; LINEAR TECHNOLOGY ADMINISTRATIVE COMMITTEE; and DOE DEFENDANTS 1-20,

Defendants.

Case No. 19-cv-00881-DMS BLM

DECLARATION OF RAFEY S. BALABANIAN IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

Pursuant to 28 U.S.C. § 1746, I, Rafey S. Balabanian, hereby declare and state as follows:

1. I am an attorney admitted to practice before the Supreme Court of the State of California, as well as this Court, and have appeared before this Court in the above-captioned case. I am over the age of 18 and fully competent to make this Declaration. I am entering this Declaration in support of Plaintiff's Motion for Attorneys' Fees and a Service Award. This Declaration is based upon my personal knowledge, except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. I am the Global Managing Partner of Edelson PC. My Firm has been retained to represent Plaintiff Michael Bouvy in the above-captioned case and to act as proposed class counsel on behalf of the putative class. I was appointed Class Counsel by this Court. (Dkt. 87 ¶ 6.)

3. My Firm began investigating this case in February 2019. We exhaustively reviewed available documentation, thoroughly vetting our allegations, before filing suit. We agreed to litigate this case on contingency, at great risk of non-payment, and have diligently prosecuted this case during the last three years.

4. After litigating (and defeating) an unusually complicated motion to dismiss, we engaged in substantial class and merits discovery. We reviewed the documents produced by Defendants with care, and actively worked to protect the putative class's interests during the discovery period that preceded settlement of this action. This included reviewing approximately 48,000 pages of documents produced by Defendants and negotiating with Defendants to search their files for documents containing additional search terms. We also reviewed a report from, and prepared to depose, Defendants' expert. And we worked extensively with Michael Bouvy to search his own files for documents responsive to Defendants' discovery requests, which we reviewed and produced, and were beginning the process of preparing him for his own deposition when this matter settled.

5. We further engaged in two good-faith attempts to settle this matter, each presided over by Magistrate Judge Barbara Lynn Major. Each time we produced a detailed written submission memorializing our position. The first, conducted shortly after the Court denied the Defendants' motion to dismiss, demonstrated that the main impediment to settlement here was the parties' disparate valuations of the claims at issue. But the second, day-long attempt at settlement was conducted with the benefit of a developed factual record, and both parties came to the table with a realistic view of the risks of further litigation.

Ultimately, the parties accepted a mediator's proposal of $1.5 million from Magistrate Judge Major.

6. Our work was not finished, however. Although during the mediation we had negotiated the broad outlines of a settlement, it took months to hammer out the fine details and reach the settlement that has been preliminarily approved by the Court. One principal issue was obtaining transaction data from the Plan's third-party recordkeeper. We determined that the fairest way to allocate the common fund among class members was as a proportional share of recordkeeping fees paid in excess of $50/year. But to effectuate that plan, we needed detailed data from the recordkeeper.

7. Although it is my belief that the instant Settlement is in the best interests of the Settlement Class, Edelson PC was prepared to take this case to trial. We estimated that at a trial of our claim regarding excessive recordkeeping fees incurred by the Linear Technology 401(k) Plan, we stood to recover between $2,381,328 and $3,058,969, should all of our arguments regarding liability and damages be accepted by the factfinder. This estimate is based on our review of the voluminous discovery produced by Defendants, as well as public filings. I believe that the Settlement, which recovers between 49 and 63% of what we deemed to be full recovery, is fair and reasonable, particularly in light of the risks that remained in the case, which were outlined in detail in Plaintiff's Memorandum in Support of Preliminary Approval (Dkt. 85-1) and my supporting declaration (Dkt. 85-2).

8. I believe that Michael Bouvy dutifully represented the interests of the putative class in the case. Bouvy remained in regular contact with attorneys at the Firm, providing input and guidance, undertook his discovery obligations with care, and was fully prepared to be deposed in this matter. He has remained actively engaged with the litigation to this day. Were it not for his efforts, the Settlement Class would not have obtained the substantial benefits conferred by the Settlement.

9. The information in this declaration and accompanying exhibits regarding the Firm's time and expenses is taken from time and expense reports and supporting documentation prepared/maintained by the Firm in the ordinary course of business. These reports (and backup documentation where necessary or appropriate) were reviewed by me and under my direction in connection with the preparation of this declaration. Based on my review, I believe the time and expenses reflected in the Firm's lodestar calculation are reasonable and necessary for the effective prosecution of this lawsuit. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in private litigation.

10. As detailed in the below chart, attorneys, paralegals, and law clerks at my firm have logged 1,431 hours in uncompensated time to achieve the instant Settlement. This does not include additional work that will be required through final approval. The lodestar amount for attorney/paralegal/law clerk time is $722,483.00.

11. It is our Firm's policy that each attorney is responsible for keeping track of his or her billable time by, at least, the tenth of an hour in a billing management software program.

12. The rates and hours that each attorney, summer associate, and paralegal at our Firm has worked on this matter, as recorded in that software are incorporated into the chart below:

EDELSON PC				
ATTORNEY	YEAR	HOURS	HOURLY RATE	LODESTAR
Rafey S. Balabanian	17	52.0	$950.00	$49,400
Ryan D. Andrews	17	69.7	$775.00	$54,017.50
Christopher Dore	13	15.9	$750.00	$11,925.00
Benjamin S. Thomassen	11	17.2	$700.00	$12,040.00

Aaron Lawson	9	64.3	$685.00	$44,045.50
Chris Busey	10	48.9	$650.00	$31,785.00
Lily Hough	5	902.0	$500.00	$451,000.00
STAFF MEMBER		HOURS	HOURLY RATE	LODESTAR
Chris Campbell	--	48.3	$275.00	$13,282.50
Shawn Davis	--	12.5	$395.00	$4,937.50
Austin Prather	--	106.4	$250.00	$26,600.00
Saba Chinian	--	93.8	$250.00	$23,450.00
TOTALS		**1431.0**		**$722,483.00**

13. Class Counsel have also fronted $2,542.82 in unreimbursed expenses, for which they are not seeking separate reimbursement.

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

Executed this 1st day of June 2022, at San Rafael, California.

By: /s/ Rafey S. Balabanian

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Attorneys for Plaintiff MICHAEL BOUVY
and the Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL BOUVY,

Plaintiff,

v.

ANALOG DEVICES, INC., a Massachusetts company, as successor to LINEAR TECHNOLOGY CORPORATION; LINEAR TECHNOLOGY LLC, a Delaware company; LINEAR TECHNOLOGY ADMINISTRATIVE COMMITTEE; and DOE DEFENDANTS 1-20,

Defendants.

Case No. 19-cv-881-DMS BLM

DECLARATION OF MICHAEL BOUVY IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEY'S FEES, COSTS, AND SERVICE AWARD

Pursuant to 18 U.S.C. § 1746, I, Michael Bouvy, hereby declare and state as follows:

1. My name is Michael Bouvy. I am the named plaintiff and class representative in this case. I make this statement on the basis of my personal knowledge. If called as a witness, I could and would testify as to its contents.

2. After retaining my attorneys to file this lawsuit on my behalf and on behalf of a proposed class, my attorneys regularly updated me regarding the status of the case. They also consulted me throughout the litigation on a variety of issues, including discovery matters and settlement efforts.

3. Throughout this case, I have understood and carried out my duties as a class representative. I have been actively involved in the litigation of the case, as explained below. Many times, I gave my attorneys my input, advice, as well as evidence that could support the case and the settlement efforts. I did my best to obtain a positive and fair outcome for the class.

4. I was not promised any money to be a class representative or to support this settlement. My approval of the settlement is based on my view that it is in the best interests of all class members. I believe it is fair, reasonable, and adequate, and that my attorneys worked diligently to secure it because it was in the best interests of the class.

5. In my role as the only named plaintiff and class representative, I have spent a substantial amount of time and a lot of effort to benefit the class and to make this settlement possible.

6. I estimate that, since retaining my attorneys, I have spent 90-100 hours participating in this case. This included helping with the investigation, litigation strategy, discovery, mediation, and settlement negotiations.

7. For example, I met and spoke with my attorneys on several occasions at all stages of the case. I reviewed the complaint, gathered documents and other potential evidence to support the case, prepared for and personally attended two mediation sessions, and participated in regular conversations and meetings with my attorneys. I was also prepared to sit for a deposition, which Defendants had scheduled. I helped my attorneys respond to Defendants' written discovery requests. I spent time contacting Transamerica to obtain access to my plan statements and other plan documents, and searched my personal files for relevant documents.

8. Many of my meetings with my attorneys took up a lot of my time. For example, on one occasion, I met with my attorney from approximately 3pm until midnight to run extensive searches of my personal e-mail accounts and

computer in response to Defendants' discovery requests, including running 57 search terms that turned up nearly 1,400 documents that I then had to review with my lawyers to determine whether they needed to be produced. These kinds of tasks took a lot out of me, especially because I was on crutches after suffering an injury during a lot of the case.

9. Being a class representative is burdensome. I had to open up my life to my lawyers and the Defendants for the case, by providing my attorneys access to my laptop and e-mail accounts for discovery searches. This felt invasive and like I had to give up my privacy in order to help the class, but I felt like I had to do it to stand up for the class members' rights.

10. When I was deciding whether to file this lawsuit, I was very worried that I would face retaliation. Although I was no longer working for the Defendants when I filed the lawsuit, I was worried that the lawsuit would haunt me whenever I had to apply for other jobs. A lot of companies in my industry ask job applicants if they have ever been involved in a lawsuit with prior employers. If you say yes, then they may not be interested in hiring you anymore.

11. Although I am not currently working for medical reasons, I was still employed when I filed this lawsuit so I was worried that my employability would be affected if I got involved in a case against an employer. My name is publicly associated with this lawsuit, including on the Internet, and anybody can see it. Even though I obtained a benefit for every class member, I am the only one who will be connected to the lawsuit in the future if prospective employers look me up.

12. I am also the only class representative and plaintiff in this case. If I had not come forward, then the case would not have been filed. After the settlement became public, some people contacted me to thank me for helping them in this way. But even though a lot of employees were affected and are now benefiting, no one else came forward to help the class.

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

Executed this day of 5/27/2022, at Denison, Texas.

By: Michael Bouvy
Michael Bouvy