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Counsel for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHELA CAMENISCH, et al.

Plaintiffs,

v.

UMPQUA BANK,

Defendant.

Case No. 5:20-cv-5905-PCP

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Date: September 11, 2025
Time: 10:00 a.m.
Place: Courtroom 8, 4th Floor

NOTICE OF MOTION

PLEASE TAKE NOTICE that at 10:00 a.m. on September 11, 2025, at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 8, 4th Floor, 280 South First Street, San Jose, CA 95113, before the Honorable P. Casey Pitts, Plaintiffs and Class Counsel will and hereby do move the Court for attorneys' fees, costs, and service awards.

Pursuant to Rules 23(h) and 54(d)(2), Plaintiffs and Class Counsel request an order awarding (i) $13.75 million in attorneys' fees to Class Counsel (representing 25% of the $55 million settlement fund), (ii) reimbursement of $1,261,622 in litigation expenses to Class Counsel, and (iii) $5,000 service awards to each of the four class representatives, with all amounts to be paid by the Settlement Administrator from the settlement fund pursuant to the parties' settlement agreement.

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I. INTRODUCTION

The Court recently granted preliminary approval to a classwide settlement that requires Umpqua to establish a $55 million fund. (Dkt. 476.) Pursuant to the settlement's terms and the common fund doctrine, Plaintiffs now ask that 25% of the fund ($13.75 million) be allocated to pay the class's attorneys for their professional services, $1,261,622 be allocated to reimburse the class's attorneys for litigation expenses they previously advanced for the class's benefit, and $5,000 be allocated to each of the four named plaintiffs to recognize them for their efforts as class representatives.

The requested fee award aligns with the Ninth Circuit's 25% benchmark and is significantly smaller than the 33% share typically awarded by California state courts. It also falls comfortably within the range of percentages awarded in prior aiding-and-abetting cases against banks—even though the length and complexity of this particular case could justify a larger award. When compared to prior cases that granted 25-33% awards to class counsel, Class Counsel achieved a superior result after advancing the class's case further and taking on more contingency risk. A lodestar cross-check confirms that a 25% fee award is reasonable under the circumstances, and in fact, will pay Class Counsel significantly less than the lodestar value of the legal services they provided to the class over the past four-and-a-half years.

The expense reimbursements and service awards that Plaintiffs seek are also consistent with awards in prior cases. Plaintiffs accordingly request that, as part of an order finally approving the class settlement, the Court also grant Plaintiffs' motion for fees, costs, and service awards.

II. ARGUMENT

A. Class Counsel's fee request is reasonable and consistent with prior fee awards.

1. The fee request is consistent with the Ninth Circuit's 25% benchmark and falls below California's 33% norm.

Class Counsel's efforts in this litigation generated $55 million in additional compensation for victims of the PFI Ponzi scheme. Class Counsel are now entitled to reasonable compensation for their professional services, which under the terms of the parties' settlement and the common fund doctrine, is to be paid from the classwide settlement fund. *See Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) ("the common fund doctrine ensures that each member of the winning party contributes

proportionately to the payment of attorneys' fees").

The Court is vested with considerable discretion when determining the precise amount of reasonable compensation that should be paid to Class Counsel, but most courts choose to award Class Counsel a fixed percentage of the common fund. *See, e.g., Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1050 (9th Cir. 2002) ("the primary basis of the fee award remains the percentage method"); *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018) ("the percentage-of-the-fund method is preferred when counsel's efforts have created a common fund for the benefit of the class"); *Roman v. Jan-Pro Franchising Int'l, Inc*., No. 3:16-CV-05961-WHA, 2024 WL 2412387, at *4 (N.D. Cal. May 23, 2024) ("This order follows the majority of courts in applying the percentage-of-recovery method.").

When employing the percentage-of-recovery method, "it is well established that 25% of a common fund is a presumptively reasonable amount of attorneys' fees." *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *4 (N.D. Cal. Aug. 17, 2018). That is precisely what Class Counsel are requesting here: 25% of the common fund generated by their efforts. Class Counsel's request is accordingly consistent with the benchmark fee award set forth by the Ninth Circuit over 25 years ago. *See Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). And it is significantly smaller than the 33% share typically awarded to attorneys by California state courts—a relevant consideration since this is a diversity action that was tried using California substantive law. *See Oliveira v. Language Line Servs., Inc.*, 767 F. Supp. 3d 984, 1001, 1006-7 (N.D. Cal. 2025).

2. There are no special circumstances that would justify decreasing Class Counsel's fee; in fact, the circumstances could support a larger fee award.

Class Counsel's request for 25% of the common fund is facially reasonable, whether measured against the Ninth Circuit's 25% benchmark or California's 33% norm. But the Court has discretion to depart from the typical percentage award when "special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers*, 904 F.2d at 1311. In evaluating whether special circumstances would justify an upward or downward adjustment from the norm, courts typically

consider several factors, including the results achieved by counsel's efforts; the risks posed by the litigation; the skill required and the quality of counsel's work; the contingent nature of the fee and the financial burden carried by counsel; and awards made in similar cases. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002).

This case did indeed feature special circumstances, but they are of the type that would justify an upward departure from a 25% award—not a downward departure. The result Class Counsel achieved for PFI investors was exceptional, and it required Class Counsel to devote nearly 22,000 hours of professional time, advance over $1.26 million in litigation expenses, and surmount a number of tricky procedural and evidentiary obstacles over the course of four-and-a-half years of risky litigation—all with no guarantee that Class Counsel would ever be compensated for their efforts. As the Court knows from presiding over trial proceedings, and as discussed in the parties' settlement approval papers, California law does not make it easy to hold a bank secondarily liable for fraud perpetrated by one of its customers. It is not enough to show that the bank knew something was amiss, was in strong position to detect and stop a widespread and long-lasting fraud, or otherwise should have known about its customer's financial misconduct. To hold a financial institution liable under an aiding-and-abetting theory, the evidence must be sufficiently compelling that jurors could reasonably conclude that the bank possessed actual knowledge of a specific wrong—and made a conscious decision to participate in or otherwise assist that wrong. Many such cases have foundered on California' rigorous actual-knowledge requirement. *See, e.g., Casey v. U.S. Bank Nat. Assn.*, 127 Cal. App. 4th 1138, 1148 (2005); *Chance World Trading E.C. v. Heritage Bank of Com.*, 438 F. Supp. 2d 1081 (N.D. Cal. 2005); *Das v. Bank of Am., N.A.*, 186 Cal. App. 4th 727, 745 (2010); *Paskenta Band of Nomlaki Indians v. Crosby*, No. 2:15-cv-00538-MCE-CMK, 2016 WL 6094468, at *7 (E.D. Cal. Oct. 19, 2016); *In re Mortg. Fund '08 LLC*, 527 B.R. 351, 365 (N.D. Cal. 2015); *Hurtado Lucero v. IRA Servs., Inc.*, No. 18-CV-05395-LB, 2020 WL 553941, at *6 (N.D. Cal. Feb. 3, 2020).

When aiding-and-abetting cases against banks have succeeded in generating additional compensation for a class of Ponzi scheme victims, courts have expressed little hesitation in awarding class counsel between 25% and 33% of the common fund generated by their efforts. At the preliminary approval stage, Plaintiffs presented the Court with a summary of six comparable aiding-and-abetting

class actions that were successfully prosecuted against financial institutions. Class counsel in three of those cases were awarded 25% of the settlement fund to compensate them for their professional services. *See In re Woodbridge Investments Litigation*, No. 18-cv-00103-DMG, Dkt. 207 at 5 (C.D. Cal. Dec. 17, 2021); *Chang v. Wells Fargo Bank, N.A.*, No. 19-CV-01973-HSG, 2023 WL 6961555, at *7-9 (N.D. Cal. Oct. 19, 2023); *Gonzalez v. Lloyds TSB Bank*, No. 06-cv-01433-VBF, Dkt. 189 at 14-16 (C.D. Cal. Oct. 29, 2007), *adopted by* Dkt. 197. Class counsel in one case was awarded 30% of the settlement fund. *Evans v. Zions Bancorporation, N.A.*, No. 2:17-CV-01123 WBS DB, 2022 WL 16815301, at *6-7 (E.D. Cal. Nov. 8, 2022). And class counsel in another case was awarded 33% of the settlement fund. *Jenson, v. First Tr. Corp.*, No. CV 05–3124 ABC (CTX), 2008 WL 11338161, at *12-15 (C.D. Cal. June 9, 2008). The only outlier was *Neilson v. Union Bank*, which involved highly unusual circumstances: class certification was initially denied due to a conflict between the putative class and its counsel; the disqualified counsel continued to lead the case, but did so on behalf of individual plaintiffs (who received the majority of the settlement fund); and the remaining class was represented by new counsel, who limited their fee request to 15% in light of their limited role. *See Neilson v. Union Bank*, No. 02-cv-06942-MMM, Dkt. 308 at 3-6, 34-40.

No similar extraordinary circumstances are present here. To the contrary, the factors that courts consider when assessing fee applications could support a *larger* award than the 25-33% typically awarded to counsel in aiding-and-abetting cases. Class Counsel achieved a better result: prior cases returned about 10-25% of the class's remaining net losses, but Class Counsel was able to generate a 37% recovery. *See Jenson,* 2008 WL 11338161 at *12 (characterizing recovery of 9.3% of the class's remaining loss as a "highly-favorable outcome"). Class Counsel also took on substantially more risk to generate that enhanced return for the class. Two of the prior aiding-and-abetting cases settled prior to moving for class certification, two after moving for class certification but before the motion was decided, and two after class certification was granted but prior to summary judgment. Class Counsel, in contrast, successfully prosecuted this case through class certification, two motions for summary judgment, several *Daubert* motions, numerous high-leverage evidentiary motions, and an initial jury trial on the merits. The degree of difficulty and amount of work involved in advancing the class's aiding-and-abetting claims so far was considerable, and as a result, Class Counsel devoted significantly

more professional time on behalf of their class of Ponzi scheme victims. *Compare* Zeman Decl., ¶¶ 3, 7 (21,986 hours), *with*, *e.g.*, *In re Woodbridge*, Dkt. 201 at 17 (15,500 hours); *Jenson,* 2008 WL 11338161 at *13 (13,000 hours). Class Counsel also advanced considerably more of their own money to fund the litigation for the class's benefit. *Compare* Zeman Decl., ¶ 25 ($1,261,622), *with*, *e.g.*, *Woodbridge*, Dkt. 201 at 17 ($409,611); *Jenson*, 2008 WL 11338161 at *15 ($483,800). And they carried that contingency risk longer than any of the prior aiding-and-abetting cases, which typically settled within two or three years. *See Jenson*, 2008 WL 11338161 at *12 ("the risks assumed by Counsel, particularly the risk of non-payment or reimbursement of expenses, is important to determining a proper fee award"). In all, Class Counsel have demonstrated the sort of commitment to the class's interests and delivered the type of result that warrants a fee award at or above the 25%-33% standard typically awarded in aiding-and-abetting class actions against financial institutions.

3. A lodestar cross-check indicates that Class Counsel is receiving *less* than the reasonable value of their services—confirming that a 25% award is not excessive.

To ensure that a 25% percent award is reasonable, courts often cross-check that fee against the lodestar value of class counsel's services. *See Vizcaino*, 290 F.3d at 1050. The lodestar value is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Id.* To account for the contingency risk associated with prosecuting class actions, the fees awarded to class counsel generally exceed the lodestar value. But if the cross-check indicates that a 25% fee would exceed the lodestar value of class counsel's services by many multiples, a lower percentage might be warranted. *See id.* at 1050-51 & n.6 (noting that lodestar multipliers generally range from 1 to 4, and affirming 28% fee award with an implied multiplier of 3.65).

Here, the lodestar value of Class Counsel's services is significantly *higher* than 25% of the common fund. Class Counsel devoted 21,986 hours, at an average hourly rate of $762, for the class's benefit over the last four-and-a-half years. (Zeman Decl., ¶¶ 3, 7.) The approximate lodestar value of their services is $ $16,745,281. (*Id.*) And a 25% fee award would provide $13.75 million in compensation—or about 82% of the lodestar value of Class Counsel's professional services. This is a strong indication that awarding fees at the benchmark percentage would not overcompensate Class Counsel. To the contrary, it indicates that the length and complexity of the litigation might otherwise

justify an award of attorneys' fees that exceeds 25% of the common fund. *Vizcaino*, 290 F.3d at 1050; *see also*, *e.g., Jenson*, 2008 WL 11338161 at *15 ("That Counsel's requested fees here are *lower* than its lodestar, despite the presence of factors favoring an *upward* adjustment of its lodestar, indicates that the fee request is highly reasonable."); *Rosado v. Ebay Inc.*, No. 5:12-CV-04005-EJD, 2016 WL 3401987, at *8 (N.D. Cal. June 21, 2016) (a lodestar crosscheck that implies a negative multiplier "strongly suggests the reasonableness of the negotiated fee").

In conducting a lodestar crosscheck, the Court should review Class Counsel's lodestar calculations and ensure that their reported hours and rates are reasonable. But "it is well established that the lodestar cross-check calculation need entail neither mathematical precision nor bean counting," and that "courts may rely on summaries submitted by the attorneys and need not review actual billing records." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015) (cleaned up). A "rough calculation with a less exhaustive cataloging and review of counsel's hours" is usually sufficient to assess whether a benchmark award would overcompensate class counsel. *Senne v. Kansas City Royals Baseball Corp.*, No. 14-CV-00608 JCS, 2023 WL 2699972, at *15 (N.D. Cal. Mar. 29, 2023). That is particularly true when a rough lodestar calculation yields a total that is *less* than the fee calculated using the percentage method. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015) (endorsing "quick cross-check" where the lodestar was three times the benchmark). In this case, for instance, even if the Court were to determine—following a full-scale audit of each of Class Counsel's 15,000 billing entries—that the lodestar value of Class Counsel's services was actually closer to the $8.8 million lodestar value calculated in the shorter *Woodbridge* case, a 25% fee would still represent only a 1.6 multiplier—well within the 1-4 range generally viewed as reasonable in the Ninth Circuit. *See id.* ("The district judge noted that while she frequently reduces a lodestar request, she has never reduced one by half").

To assist the Court in conducting its lodestar crosscheck, Class Counsel have reviewed their billing records and prepared a detailed summary of the time they devoted to this litigation over the past four-and-a-half years. (*See* Zeman Decl., ¶¶ 12-24.) The supporting declaration breaks the litigation into 11 phases and, for each phase, discusses the primary tasks conducted during that portion of the litigation. Tables showing the total number of hours billed during each phase of the case and the hours

billed by each of the attorneys and paralegals who worked on the case are also included. In all, Class Counsel attests they reasonably spent 21,986 hours prosecuting the class's aiding-and-abetting case against Umpqua. (*Id.*, ¶¶ 3, 13.) For purposes of comparison, class counsel in *Woodbridge* spent approximately 15,500 hours and class counsel in *Jenson* spent approximately 13,000 hours. *In re Woodbridge*, Dkt. 201 at 17; *Jenson,* 2008 WL 11338161 at *13. Both of those cases settled at the class certification phase (*Woodbridge* settled after full briefing but prior to an order, and *Jenson* settled after a certification order was issued and affirmed on appeal). This case also involved summary judgment proceedings, a second round of discovery, expert discovery and *Daubert* motions, numerous evidentiary motions, and a four-week jury trial. The time reported by class counsel in *Woodbridge* and *Jenson* was deemed reasonable for crosscheck purposes, and given the greater length and complexity of this case, Plaintiffs respectfully submit that their reported time should likewise be accepted as reasonably spent for the class's benefit.

Class Counsel's supporting declaration also discusses their hourly rates, which range from $765 to $1,150 for partners and counsel, $365 to $690 for associates, and $240 to $350 for paralegals and law clerks. These rates are based on Class Counsel's knowledge of the legal market for complex litigation, which is informed by regular review of the hourly rates used by courts in lodestar calculations and published surveys of hourly rates charged by firms who represent clients in complex class litigation. (Zeman Decl., ¶ 9.) Class Counsel have affirmed that these hourly rates are commensurate with the rates charged by attorneys of similar skill and experience for noncontingent litigation of the same type. *See In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 461 (C.D. Cal. 2014) ("Declarations regarding the prevailing market rate in the relevant community suffice to establish a reasonable hourly rate"). Class Counsel's rates have been evaluated and approved by courts in this district on a number of prior occasions. (*See* Zeman Decl., ¶ 10.) And a review of the hourly rates charged by class counsel in other recent aiding-and-abetting cases confirms that Class Counsel's current hourly rates reflect the commercial value of their work. *See, e.g., Chang*, 2023 WL 6961555 at *8 & n.5 (approving 2023 rates ranging from $725 to $1275 for partners, $300 to $700 for associates, and $205-$325 for paralegals); *In re Woodbridge*, Dkt. 201-2 (2021 rates ranging from $650-975 for partners, $385-$575 for associates, $200-225 for

paralegals); *Evans*, Dkt. 102-1, ¶ 44 (2022 attorney rates ranging from $750 to $1000); *see also Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002) (to compensate for delay in payment, lodestar may be calculated using the current year's rates or using historical rates with a prime rate enhancement).

B. Class Counsel advanced litigation expenses that should be repaid from the common fund.

Having created a common fund for the benefit of the class, Class Counsel is also entitled to reimbursement of reasonable litigation costs from that fund. *Oliveira,* 767 F. Supp. 3d at 1002 (citing *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)). Class Counsel advanced over $1.26 million to litigate the class's claims through an initial trial—including $845,041 in expert fees; $146,895 for deposition videos and transcription services; and $124,338 for document management, trial technology, and other litigation support services. (*See* Zeman Decl., ¶ 25 (listing expenses by category and total advanced for each category).) Class Counsel also expect to incur roughly $30,000 in additional expenses and the Settlement Administrator currently estimates that it will charge $26,344 in settlement administration expenses. (*See id.*, ¶¶ 26-27.) Expenses like these are typical for this type of class litigation, they were reasonably incurred in pursuit of the class's aiding-and-abetting claims, and they should now be reimbursed from the common fund they helped to create. *See, e.g. Chang*, 2023 WL 6961555 at *9; *Evans*, 2022 WL 16815301 at *8; *Jenson*, 2008 WL 11338161 at *15 (granting reimbursement request for similar categories of expenses, including expert fees, deposition expenses, and document management).

C. Plaintiffs' requested service awards are reasonable.

The class could not have pursued their aiding-and-abetting claims on a class-wide basis without representative plaintiffs. *See* Fed. R. Civ. P. 23(a). In recognition of the time and effort that the four representative plaintiffs in this case devoted to the class's case, Class Counsel is requesting that Shela Camenisch, Dale Dean, Eva King, and Luna Baron each be granted $5,000 service awards. Service awards of this size are considered presumptively reasonable in this district and in the Ninth Circuit as a whole. *Mobile Emergency Hous. Corp. v. HP Inc.*, No. 5:20-CV-09157-SVK, 2025 WL 844412, at *2 (N.D. Cal. Mar. 18, 2025) ("In the Ninth Circuit, $5,000 is a presumptively reasonable Service Award."). In fact, significantly larger service awards are often granted in cases like this one, where the

class representatives were required to devote significant portions of their lives to the litigation, and their efforts helped to generate a large settlement fund for the class. *See Oliveira*, 767 F. Supp. 3d at 1008. The four class representatives in this case each spent scores of hours responding to written discovery, searching for and producing private communications, sitting for depositions, testifying at trial, and participating in settlement discussions. (Zeman Decl., ¶ 28.) Their devotion to the class's interests has been steadfast and persistent, and although they have elected not to seek larger service awards (in a conscientious effort to maximize the portion of the common fund paid directly to class members), it is important that their contributions to this litigation be formally recognized.

III. CONCLUSION

For the reasons stated above, Plaintiffs and Class Counsel respectfully request that the Court grant their requests for attorneys' fees, expense reimbursements, and service awards.

Dated: June 16, 2025

Respectfully submitted,

By: */s/ Amy M. Zeman*

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