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

19 IN RE NORTHROP GRUMMAN
 20 CORPORATION ERISA
 LITIGATION

21 THIS DOCUMENT RELATES
 22 TO:

23 All Actions

Master File No. 06-CV-6213 AB (JCx)

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' UNOPPOSED MOTION
 TO MODIFY CLASS DEFINITION**

DATE: June 20, 2017
 TIME: 9:00 a.m.
 Courtroom 7B

Hon. André Birotte Jr.

1 Before the Court is Plaintiffs' Unopposed Motion to Modify the Class
2 Definition. Having considered the moving papers, arguments, and all other matters
3 presented to the Court, the Court finds that Plaintiffs have satisfied the
4 requirements of Rule 23(c) of the Federal Rules of Civil Procedure to modify the
5 class definition to effectuate the Settlement, for the same reasons discussed in the
6 Court's prior order granting certification of a nearly identical class on March 29,
7 2011 [Doc. 421]. For the reasons discussed below, the Court **GRANTS** the Motion.

8 **LEGAL STANDARD**

9 "An order that grants or denies class certification may be altered or amended
10 before final judgment." Fed.R.Civ.P. 23(c)(1)(C); *see also Armstrong v. Davis*, 275
11 F.3d 849, 871 n.28 (9th Cir. 2001)("[w]here appropriate, the district court may
12 redefine the class"). Modifying the class definition is particularly appropriate where
13 the motion is unopposed. *Ades v. Omni Hotels Mgmt. Corp.*, No. 13-2468-CAS
14 (MANx), 2015 U.S.Dist.LEXIS 126121, *5 (C.D.Cal. Sept. 21, 2015). "The
15 standard is the same" for modifying a class as it is certifying a class: "a district
16 court must be satisfied that the requirements of Rules 23(a) and (b) are met to allow
17 plaintiffs to maintain the action on a representative basis." *Negrete v. Allianz Life*
18 *Ins. Co. of N. Am.*, No. 05-6838-CAS (MANx), 2013 U.S.Dist.LEXIS 94030, *8
19 (C.D.Cal. July 3, 2013)(citing *Marlo v. UPS, Inc.* 639 F.3d 942, 947 (9th Cir.
20 2011)). To obtain class certification, Plaintiffs must demonstrate "that they have
21 met each of the four requirements of Federal Rule of Civil Procedure 23(a) and at
22 least one of the requirements of Rule 23(b)." *Ellis v. Costco Wholesale Corp.*, 657
23 F.3d 970, 979-80 (9th Cir. 2011).

24 On March 29, 2011, the Court certified the following Class under Rule 23(a)
25 and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure:

26 All persons, excluding defendants, the Committees and/or other
27 individuals who are or may be liable for the conduct described in the
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1 complaint, who within the period of the statute of limitations are or
2 were participants or beneficiaries of the Northrop Grumman Plans
3 who were, are, or may have been affected by the conduct set forth in
4 this Complaint, as well as those who will become participants or
5 beneficiaries of either Plan in the future.

6 Doc. 421 at 37.

7 In order to effectuate the Settlement, Plaintiffs seek, without opposition from
8 Defendants, to modify the Class definition as follows:

9 All persons, excluding Defendants, who were participants in or
10 beneficiaries of the Northrop Grumman Plans at any time between
11 September 28, 2000 and May 11, 2009.

12 For purposes of this Class definition, Defendants are defined as the Northrop
13 Grumman Administrative Committees for the Northrop Grumman Savings Plan and
14 Northrop Grumman Financial Security and Savings Program (“Administrative
15 Committees”), J. Michael Hateley, Ian Ziskin, and Dennis Wootan.

16 Plaintiffs request certification under Rule 23(b)(1)(B). The Court will first
17 analyze the Rule 23(a) requirements, and then proceed to analyze whether the
18 proposed Class satisfies at least one of the requirements of Rule 23(b).

19 **DISCUSSION**

20 The Rule 23(a) requirements are commonly known as numerosity, commonality,
21 typicality, and adequacy of representation. *Lozano v. AT&T Wireless Services, Inc.*,
22 504 F.3d 718, 730 (9th Cir. 2007); Fed.R.Civ.P. 23(a). The Court addresses each of
23 these in turn.

24 **A. Numerosity**

25 Rule 23(a)(1) requires a finding that the class members are “so numerous that
26 joinder of all members is impracticable.” Fed.R.Civ.P. 23(a). Generally, “classes of
27 40 or more” are sufficiently numerous. Doc. 421 at 15. That standard is easily
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1 satisfied, as the proposed Class has over 100,000 members. The Court finds that
2 this requirement is met.

3 **B. Commonality**

4 Commonality requires “questions of law or fact common to the class.”
5 Fed.R.Civ.P. 23(a)(2). Commonality concerns “the capacity of a classwide
6 proceeding to generate common *answers* apt to drive the resolution of the
7 litigation.” *Ellis*, 657 F.3d at 981 (emphasis in original, quoting *Wal-Mart Stores,*
8 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). “Even a single [common] question” is
9 sufficient to satisfy this requirement. *Emmons v. Quest Diagnostics Clinical Labs.,*
10 *Inc.* , No. 13-474, *11 (E.D.Cal. June 21, 2016)(quoting *Amchem Prods., Inc. v.*
11 *Windsor*, 521 U.S. 591, 623–24 (1997)).

12 Plaintiffs have identified multiple common questions of fact and law on which
13 all the proposed Class members’ claims depend, including:

14 whether each of the Defendants is a fiduciary to the Plans; the extent
15 and nature of the duties Defendants owed to the Plans; whether
16 Defendants breached those duties by paying out of Plan assets
17 excessive administrative and investment management fees; whether
18 the Plans’ fees and expenses are reasonable; each Defendant’s liability
19 for the breaches of other fiduciaries; the losses each Plan suffered
20 from Defendants’ breaches; whether Defendants’ must account for the
21 improper fees and expenses of he Plans; and whether Defendants
22 should be removed as fiduciaries of the Plans.

23 As the Court previously held, these types of questions are sufficient to satisfy
24 the commonality requirement. Doc. 421 at 17–19.

25 **C. Typicality**

26 Typicality requires that “the claims or defenses of the representative parties are
27 typical of the claims or defenses of the class.” Fed.R.Civ.P. 23(a)(3). “The
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1 commonality and typicality requirements of Rule 23(a) tend to merge.” *Dukes*, 564
2 U.S. at 349 n.5. “The test of typicality is whether other members have the same or
3 similar injury, whether the action is based on conduct which is not unique to the
4 named plaintiffs, and whether other class members have been injured by the same
5 course of conduct.” *Ellis*, 657 F.3d at 984 (internal quotation marks omitted).

6 Here, the named Plaintiffs’ claims are typical of the claims of the Class because
7 the claims described in the complaint concern a course of conduct by Defendants
8 that was directed to and affected the Plans as a whole. As this Court previously
9 observed, courts in similar ERISA fiduciary breach actions have routinely found the
10 typicality requirement satisfied. Doc. 421 at 20–21. The Court finds typicality
11 satisfied here.

12 **D. Adequacy of Representation**

13 Plaintiffs and their counsel must demonstrate that they “will fairly and
14 adequately protect the interests of the class.” Fed.R.Civ.P. 23(a)(4). In analyzing
15 the adequacy requirement, “courts must resolve two questions: ‘(1) do the named
16 plaintiffs and their counsel have any conflicts of interest with other class members
17 and (2) will the named plaintiffs and their counsel prosecute the action vigorously
18 on behalf of the class?’” *Ellis*, 657 F.3d at 985 (quoting *Hanlon v. Chrysler Corp.*,
19 150 F.3d 1011, 1020 (9th Cir. 1998)).

20 As to the first question, because Plaintiffs are pursuing claims on behalf of the
21 Plans and not individual claims, the Court finds there is no conflict between
22 Plaintiffs’ individual interests and the interests of the Class. Each of Plaintiffs has
23 demonstrated an understanding of their claims and a commitment to participating in
24 the litigation and representing the class. Second, Plaintiffs’ counsel, Schlichter,
25 Bogard & Denton, LLP has demonstrated throughout this case that the firm is a
26 more than adequate legal representative of the class. The Court thereby concludes
27 that Plaintiffs have satisfied the adequacy of representation requirement set forth in
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1 Rule 23(a)(4).

2 **E. Rule 23(b)**

3 Having found that Plaintiffs satisfy each requirement of Rule 23(a), the Court
4 turns to Rule 23(b). Plaintiffs request certification under Rule 23(b)(1), as the Court
5 previously ordered. Rule 23(b)(1) states that certification is appropriate if:

6 prosecuting separate actions by or against individual class members
7 would create a risk of: (A) inconsistent or varying adjudications with
8 respect to individual class members that would establish incompatible
9 standards of conduct for the party opposing the class; *or* (B)
10 adjudications with respect to individual class members that, as a
11 practical matter, would be dispositive of the interests of the other
12 members not parties to the individual adjudications or would
13 substantially impair or impede their ability to protect their interests[.]

14 Fed.R.Civ.P. 23(b)(1)(emphasis added).

15 ERISA fiduciary breach claims are “paradigmatic” Rule 23(b)(1) class actions.
16 Doc. 421 at 31–32. Typical Rule 23(b)(1)(B) actions include those “which charges
17 a breach of trust by an indenture trustee or other fiduciary similarly affecting the
18 members of a large class of security holders or beneficiaries, and which requires an
19 accounting or like measures to restore the subject of the trust.” Fed.R.Civ.P. 23,
20 Adv. Comm. Note, 1966 amend., sub. (b)(1)(B); *Ortiz v. Fibreboard Corp.*, 527
21 U.S. 815, 834 (1999) (quoting same). The Court agrees that if one Plan participant
22 were to pursue these claims, the outcome “would be dispositive of the interests” of
23 the other participants and class members because the claims involve the same
24 conduct, damages, and fiduciary duties owed to the Plans. Fed.R.Civ.P.
25 23(b)(1)(B). The Court finds that Plaintiffs have also satisfied Rule 23(b)(1)(B).

26 **CONCLUSION**

27 For the foregoing reasons, the Court **GRANTS** Plaintiffs’ Unopposed Motion
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1 to Modify the Class Definition under Rule 23(c) of the Federal Rules of Civil
2 Procedure. The Court certifies the following Class for purposes of the Settlement
3 under Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure:

4 All persons, excluding Defendants, who were participants in or
5 beneficiaries of the Northrop Grumman Plans at any time between
6 September 28, 2000 and May 11, 2009.

7 Defendants are defined as the Northrop Grumman Administrative Committees for
8 the Northrop Grumman Savings Plan and Northrop Grumman Financial Security
9 and Savings Security Program, J. Michael Hateley, Ian Ziskin, and Dennis Wootan.

10 In entering this Order, the Court acknowledges that Defendants' agreement to class
11 certification is for the exclusive purpose of effectuating a settlement of this action,
12 and nothing herein shall be deemed a waiver of their right to oppose class
13 certification in any other action.

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15 **IT IS SO ORDERED.**

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17 Dated: June 23, 2017



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Hon. André Birotte Jr.
United States District Judge
Central District of California