

1 JEROME J. SCHLICHTER (SBN 054513)
 jschlichter@uselaws.com
 2 MICHAEL A. WOLFF (admitted *pro hac vice*)
 mwolff@uselaws.com
 3 KURT C. STRUCKHOFF (admitted *pro hac vice*)
 kstruckhoff@uselaws.com
 4 STEPHEN M. HOEPLINGER (admitted *pro hac vice*)
 shoeplinger@uselaws.com
 5 SCHLICHTER, BOGARD & DENTON
 100 South Fourth Street, Suite 1200
 St. Louis, MO 63102
 6 Telephone: (314) 621-6115
 Facsimile: (314) 621-5934
 7 *Class Counsel for All Plaintiffs*

8 MARY ELLEN SIGNORILLE (admitted *pro hac vice*)
 msignorille@aarp.org
 9 AARP Foundation Litigation
 601 E Street NW
 10 Washington, DC 20049
 Telephone: (202) 434-2060
 11 *Co-Counsel for Plaintiffs*

12 WILLIAM A. WHITE (SBN 121681)
 wwhite@hillfarrer.com
 13 HILL, FARRER & BURRILL LLP
 One California Plaza, 37th Floor
 14 300 South Grand Avenue
 Los Angeles, CA 90071-3147
 15 Telephone: (213) 620-0460
 Facsimile: (213) 620-4840
 16 *Local Counsel for Grabek Plaintiffs*

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

19 IN RE NORTHROP GRUMMAN
 20 CORPORATION ERISA
 21 LITIGATION.

22 THIS DOCUMENT RELATES
 23 TO:

24 All Actions

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

**PLAINTIFFS' RESPONSE TO
 OBJECTORS**

Hon. André Birotte Jr.

Final approval hearing:
 October 23, 2017, at 10:00 a.m.

Courtroom 7B

25
 26
 27
 28

1 Only four class members, out of the over 209 thousand who were provided
2 notice of the proposed settlement, have filed objections to the proposed settlement
3 in this case. None of those objections provide any reason to reject any aspect of the
4 proposed settlement, for the following reasons.¹

5 On June 23, 2017, this Court granted preliminary approval and ordered
6 individual notice of the proposed settlement to be sent to all class members, as well
7 as published on the settlement's website. Doc. 772. The Settlement Administrator²
8 mailed 215,184 individual class notices on August 15, 2017 which, among other
9 things, informed class members of their ability to file with the Court an objection to
10 the settlement on or before September 22, 2017. Ex. 1 ¶¶5–6, and at 11, 17. Notices
11 were also mailed to the Attorney General of the United States and the Attorneys
12 General or similar authority for all fifty states, the District of Columbia and Puerto
13 Rico. *Id.* ¶3. For each individual class notice returned as undeliverable, the
14 settlement administrator attempted to trace the individual's last known address and
15 then re-mailed the notices. *See id.* ¶9. Of the 22,597 notices returned as
16 undeliverable, the Settlement Administrator, using commercially-available data
17 sources, located new addresses for 16,439 of the class members (72.7%). *Id.* In this
18 way, virtually all eligible class members received a personal notice of the
19 settlement and their right to object. Additionally, the settlement website maintained

21 ¹ In addition to objection letters, Plaintiffs received three other letters from class
22 members that contain no objection. One such letter was from Mr. Nicholas
23 Williams. Mr. Williams stated that the settlement “seem[s] to be fair in some
24 ways,” requested the right to speak “at [his] own Hearing,” and described various
25 medical issues. Ex. 3. He also wrote: “P.S. FAR should pay everything,” but
26 Plaintiffs do not know what “FAR” refers to. Plaintiffs also received a letter from
27 Ms. Carlyn Fullington. Ms. Fullington's letter concerned a single life annuity she
28 had through the Northrop Grumman Pension Plan. Ex. 4. A member of class
counsel's office spoke with Ms. Fullington and explained that annuities are not
affected by this case or the settlement, which addressed her concern. Declaration of
Rebekah Freisinger ¶5. Another class member sent the Court his claim form, but no
letter containing an objection or otherwise. October 13, 2017 declaration of Stephen
M. Hoepflinger (“Hoepflinger Declaration”). ¶10. All “Ex.” references herein are to
exhibits to the Hoepflinger Declaration.

² Capitalized terms not otherwise defined herein have the meanings set forth in the
Settlement Agreement, as amended, which was filed with the Court as Doc. 788-1.

1 by class counsel, www.northrop401ksettlement.com, contained copies of the
2 settlement notices that were available to all class members and the general public.
3 *Id.* ¶6.

4 The reaction of the class members is one factor the Court should consider when
5 addressing whether to grant final approval of a settlement. *In re Online DVD-Rental*
6 *Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015). Class counsel have received
7 many phone calls from class members. Of the more than 400 telephone calls
8 received by Class Counsel since notice was sent to the class, the overwhelming
9 majority reacted positively to the settlement. Declaration of Rebekah Freisinger,
10 ¶¶3–4. Only four class members, out of the more than 209 thousand to whom the
11 Settlement Administrator was successfully able to mail notices, filed objections
12 with the Court. Thus, only 0.00186% of the 215 thousand member Settlement
13 Class—one out of every nearly 54 thousand class members—registered any
14 objection to the settlement.³ The fact that over 99.998% of the class did not object
15 “indicate[s] a favorable reaction by class members and their overall satisfaction
16 with the [s]ettlement.” *Noll v. eBay, Inc.*, 309 F.R.D. 593, 608 (N.D.Cal. 2015)
17 (approving settlement with objection rate of 0.00025%); *see also* Plaintiffs’
18 memorandum in support of motion for final approval of class settlement (filed
19 concurrently herewith) at 15–16.

20 **A. Objector concerned about overall number of lawsuits nationwide.**

21 Mr. Roger B. Sterk stated that he did not feel wronged by Northrop Grumman
22 (or its predecessor company, Westinghouse Electric Corp.). Ex. 5. He expressed
23 “disgust[.]” with “all of the lawsuits which occur in our society today.” *Id.* He
24 further stated that he “did not bring about this suit,” and “want[ed] no part of any
25 settlement which reached the beneficiaries.” *Id.* He did not express any

26
27 ³ To put this number in perspective, if 99% of the class approved and 1%
28 objected, that would be 2,152 objectors. If 0.1% of the class objected, that would be
215 objectors. If 0.01% of the class objected, that would be twenty-two objectors.
The actual number of 4 is less than one-fifth of that number.

1 dissatisfaction with the settlement itself or any specific terms, including the amount
2 of the class' recovery. *Id.*

3 This is not an objection to any aspect of the proposed settlement. Mr. Sterk can
4 communicate to the Settlement Administrator his disclaimer of any share of the
5 final settlement amount for allocation among the other class members, if that truly
6 is what he wants.

7 Mr. Sterk's concern about the overall number of lawsuits filed in this country as
8 a general matter is not relevant to the merits of this case specifically and is not a
9 basis for rejecting the proposed settlement.

10 **B. Objector concerned over amount each participant will receive.**

11 Ms. Vidma A. Peyton objects to the settlement because it "will net to the class
12 participants less than \$100.00 per person." Ex. 6 at 1. She asserts that between
13 January 14, 2008 and March 31, 2009, her retirement account balance declined by
14 over \$28,000, and the settlement would not provide her with reasonable
15 compensation for her losses. *Id.* There is nothing to indicate that those losses were
16 connected to the conduct at issue in this case, however.

17 Class counsel understands and shares Ms. Peyton's desire to see the class made
18 whole for their losses. But given that the settlement is 70% of the \$24 million
19 Plaintiffs claimed was improperly taken from the Plans, and 160% of what
20 Defendants contended was their maximum exposure, the settlement is well within
21 the range courts consider fair and reasonable. *See* Plaintiffs' memorandum in
22 support of final approval of class settlement (filed concurrently herewith) at 13.
23 Deciding whether or not to settle requires consideration of not only the maximum
24 possible recovery but also the possibility the class would receive nothing. Class
25 counsel believes that in light of the risks this case presented, the settlement is in the
26 best interest of the class. *See Officers for Justice v. Civil Service Comm'n*, 688 F.2d
27 615, 625 (9th Cir. 1982)(a settlement "is not to be judged against a hypothetical or
28 speculative measure of what *might* have been achieved" for the class)(emphasis in

1 original, citations omitted); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
2 F.R.D. 523, 527 (C.D.Cal. 2004)(Baird, J., “[I]t is well-settled law that a proposed
3 settlement may be acceptable even though it amounts to only a fraction of the
4 potential recovery that might be available to the class members at trial.”).

5 Moreover, an independent fiduciary to the Plan under 29 U.S.C. §1102—
6 Gallagher Fiduciary Advisors, LLC—thoroughly reviewed the settlement,
7 including an extensive review of the docket and interviews with counsel for the
8 parties, and concluded that it is a reasonable settlement of the Plan’s claims. Ex. 2
9 at 2–3. Despite Ms. Peyton’s objection, this settlement is reasonable and in the best
10 interest of the Plan and the class members as a whole.

11 **C. Objectors concerned with class counsel’s requested fee.**

12 Only two class members have objected to class counsel’s requested fee. Ms.
13 Holly Gulvas and Mr. Martin Piccus object to class counsel’s requested attorneys’
14 fees. Ms. Gulvas had “no objection” to class counsel’s request for reimbursement of
15 expenses, which she stated “seems reasonable.” Ex. 7. However, she believes that
16 class counsel’s requested fee of \$5,583,333 is too high, and proposes a fee of
17 \$1,000,000. *Id.* Mr. Piccus wrote that he is “receiving pennies on the dollar based
18 on the damages estimated by defense counsel⁴ at the beginning of this litigation,”
19 and “believe[s] that a more equitable distribution of the settlement distribution
20 would be to reimburse Attorney fees at the same percentage that members of their
21 class are being reimbursed.” Ex. 8.

22 Plaintiffs are uncertain what “damages estimate” Mr. Piccus refers to, but this
23 case began with more claims than what were ultimately tried. The settlement
24 amount necessarily takes into account the fact that several claims Plaintiffs had
25 initially raised were dismissed by the Court. And the reasonableness of class
26 counsel’s fee has already been addressed in Plaintiffs’ memorandum in support of
27 motion for attorneys’ fees, reimbursement of expenses, and incentive awards for

28 ⁴ Plaintiffs assume that Mr. Piccus meant class counsel.

1 class representatives. Doc. 783-1. The Independent Fiduciary likewise has found
2 “the amount of the requested attorney’s fee award and other sums to be paid from
3 the recoveries” to be reasonable. Ex. 2 at 3.⁵

4 While Ms. Gulvas suggests a fee of \$1,000,000, she does not offer any
5 explanation for why that amount is appropriate. As to Mr. Piccus’ suggestion that
6 class counsel should receive only a fraction of what their time is worth, class
7 counsel’s requested fee is just a fraction of the lodestar. Class counsel’s lodestar for
8 its work for the last eleven years is over \$16 million. Doc. 783-1 at 31 (Mem. 23).
9 The requested \$5,583,333 fee is just 35% of that, and does not even include
10 reimbursement for local counsel’s or co-counsel the AARP’s time on this case. *See*
11 Doc. 783-1 at 9 (Mem. 1 n.1). And the \$16.75 million settlement is approximately
12 70% of the \$24 million Plaintiffs contended was improperly taken from the Plans,
13 meaning that class counsel’s request is for a lower percentage than the class will
14 receive.⁶ As this Court previously has observed, a fee request “for substantially less
15 recovery [than the lodestar value] is indicia that the fee amount requested is
16 reasonable.” *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, *73. These figures do not
17 even take into account a lodestar multiplier, which is standard in litigation like this.
18 As the Ninth Circuit has recognized, “[i]t is an established practice in the private
19 legal market to reward attorneys for taking the risk of non-payment by paying them a
20 premium over their normal hourly rates for winning contingency cases.” *In re Wash.*
21 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299–1300 (9th Cir. 1994)(citation
22 omitted). If a multiplier of 2.0 were used, for example, the requested fee would be
23 just 17% of the lodestar. The \$5.5 million requested fee thus does not even come
24 close to reimbursing class counsel in light of the vast amounts of time they have

25 _____
26 ⁵ No class members have objected to the requested incentive awards for class
representatives.

27 ⁶ Even when the requested attorneys’ fees and costs are taken into account, the net
28 settlement amount (approximately \$10 million) is approximately 40% of the \$24
million estimated damages, and thus is still a greater percentage than the 35% of the
lodestar class counsel is requesting.

1 devoted to this case over the last eleven years, the expenses they have borne for more
2 than a decade without reimbursement, and the risk of non-payment. Indeed, it does
3 not reimburse them for even half their time.

4 **CONCLUSION**

5 The Court should overrule the objections filed by four class members in this
6 case and provide final approval of the proposed settlement.

7

8 DATED: October 13, 2017

Respectfully submitted,

9

By: /s/ Jerome J. Schlichter

10

Jerome J. Schlichter (SBN 054513)

11

Michael A. Wolff (admitted *pro hac vice*)

12

Kurt C. Struckhoff (admitted *pro hac vice*)

13

Stephen M. Hoepfner (admitted *pro hac vice*)
SCHLICHTER BOGARD & DENTON LLP

14

Class Counsel

15

Proof of Service

16

I, Jerome J. Schlichter, declare:

17

I am a resident of the state of Missouri and over the age of eighteen years,
and not a party to the within action; my business address is Schlichter, Bogard &
Denton, 100 South Fourth Street, Suite 1200, St. Louis, MO 63102. On October
13, 2017, I served the within document:

20

Plaintiffs' Response to Objectors

21

By transmitting via U.S.P.S to the following individuals:

22

Martin E. Piccus; Roger Sterk; Carlyn Fullington, Vidma Peyton, Holly

23

Gulvas, and Nicholas Williams

24

I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

26

Executed on October 13, 2017, at St. Louis, Missouri.

27

28

/s/ Jerome J. Schlichter
Jerome J. Schlichter

1 JEROME J. SCHLICHTER (SBN 054513)
 jschlichter@uselaws.com
 2 MICHAEL A. WOLFF (admitted *pro hac vice*)
 mwolff@uselaws.com
 3 STEPHEN M. HOEPLINGER (admitted *pro hac vice*)
 shoeplinger@uselaws.com
 4 KURT C. STRUCKHOFF (admitted *pro hac vice*)
 kstruckhoff@uselaws.com
 SCHLICHTER, BOGARD & DENTON LLP
 5 100 South Fourth Street, Suite 1200
 St. Louis, MO 63102
 6 Telephone: (314) 621-6115
 Facsimile: (314) 621-5934
 7 *Class Counsel for All Plaintiffs*

8 MARY ELLEN SIGNORILLE (admitted *pro hac vice*)
 msignorille@aarp.org
 9 AARP Foundation Litigation
 601 E Street NW
 10 Washington, DC 20049
 Telephone: (202) 434-2060
 11 *Co-Counsel for Plaintiffs*

12 WILLIAM A. WHITE (SBN 121681)
 wwhite@hillfarrer.com
 13 HILL, FARRER & BURRILL LLP
 One California Plaza, 37th Floor
 14 300 South Grand Avenue
 Los Angeles, CA 90071-3147
 15 Telephone: (213) 620-0460
 Facsimile: (213) 620-4840
 16 *Local Counsel for Grabek Plaintiffs*

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

19 IN RE NORTHROP GRUMMAN
 20 CORP. ERISA LITIGATION

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

**DECLARATION OF REBEKAH
 FREISINGER**

21 This document applies to:
 22 ALL ACTIONS

DATE: October 23, 2017
 TIME: 10:00 a.m.
 Courtroom 7B – 7th floor

Hon. André Birotte Jr.

23
 24
 25
 26
 27
 28

1 I, Rebekah Freisinger, under penalty of perjury pursuant to 28 U.S.C. §1746,
2 declare as follows:

3 1. I am a paralegal at the firm of Schlichter, Bogard & Denton LLP, and
4 am over the age of 18. This declaration is based upon personal knowledge and if
5 called as a witness, I could competently testify to the matters stated herein. I make
6 this declaration in support of Plaintiffs' Response to Objectors.

7 2. As the paralegal assigned on this matter I am responsible for
8 managing the care of absent class member telephone calls and e-mails in response
9 to the notices they received regarding the class settlement.

10 3. Since August 2017 we have received over 400 calls and e-mails from
11 class members in regards to the settlement.

12 4. The overwhelming majority of class members have been very positive
13 to the settlement during their inquiry.

14 5. In response to the letter sent to the Court by Carlyn Fullington, I
15 called Ms. Fullington and spoke to her regarding her Single Life Annuity. She said
16 she sent the letter to the Court because she was concerned that this settlement
17 would cancel out her annuity payments. I informed her that the Settlement did not
18 relate to and would have no effect on her Annuity payments. That addressed her
19 concern.

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

22 Executed on October 13, 2017.

23

24

/s/ Rebekah Freisinger

25

Rebekah Freisinger

26

27

28