**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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|---|---|
| CALVIN McCUTCHAN,<br><br>Plaintiff,<br><br>vs.<br><br>CORIANT OPERATIONS, INC., INFINERA CORPORATION, CORIANT 401(k) PLAN, and DOES 1-20,<br><br>Defendants. | Case No. 1:20-cv-00561 (CPK) |

**PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEY'S FEES AND EXPENSES, SETTLEMENT ADMISTRATION COSTS, AND CASE CONTRIBUTION AWARD**

Plaintiff Calvin McCutchan ("Plaintiff" or "Class Representative") by and through his attorneys, respectfully move the Court for an Order: (1) approving awards of Attorney's Fees and Expenses to his attorneys at Rosca Scarlato LLC and McCarthy, Lebit, Crystal & Liffman Co., L.P.A (together, "Class Counsel") and for settlement administration; and (2) granting a Case Contribution Award to himself, as class representative.[1][2] Defendant does not oppose the relief sought herein. For the reasons set forth in the accompanying Memorandum, and based on the accompanying Joint Declaration of Hugh Berkson and Alan Rosca in Support of (1) Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement (2) Plaintiff's Unopposed Motion for Certification of Settlement Class; and (3) Plaintiff's Unopposed Motion for Award of

[1] Plaintiff files the instant Motion contemporaneously with their Unopposed Motion for Final Approval of Settlement and Unopposed Motion for Certification of the Settlement Class.
[2] A copy of the Settlement Agreement is attached as Exhibit A to the Joint Dec. Capitalized terms not otherwise defined herein have the same meaning as in the Settlement Agreement.

Attorneys' Fees and Expenses, and for Case Contribution Award; Declaration of Cornelia Vieira Regarding Notice and Settlement Administration; Declaration of Calvin McCutchan; and all of the files and records in this action, Plaintiff asks that the Court grant this motion. As more fully detailed in the accompanying memorandum in support of this Motion, Plaintiff respectfully moves this court for an Order finally approving an award of (1) Attorneys' Fees in the amount of one-third (33 1/3%) of the Settlement Amount (2) reimbursement of Expenses, and (3) a Case Contribution Award of $5,000.00 to the Class Representative.

DATED this 9th day of January 2023.

Respectfully submitted,

**MCCARTHY, LEBIT, CRYSTAL & LIFFMAN CO., L.P.A.**

*/s/ Hugh D. Berkson*
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***Local Counsel for the Class***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of January 2023, a copy of the foregoing was filed electronically with the Court. Notice of this filing will be sent to all parties registered for electronic service by operation of the Court's electronic filing system. The parties may access the filing through the Court's system.

Respectfully submitted,

*/s/ Hugh D. Berkson*
Hugh D. Berkson (OH 0063997)

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| CALVIN McCUTCHAN,<br><br>Plaintiff,<br><br>vs.<br><br>CORIANT OPERATIONS, INC., INFINERA CORPORATION, CORIANT 401(k) PLAN, and DOES 1-20,<br><br>Defendants. | Case No. 1:20-cv-00561 (CPK) |

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEY'S FEES AND EXPENSES, SETTLEMENT ADMINISTRATION COSTS, AND CASE CONTRIBUTION AWARD**

## I. INTRODUCTION

Following hard-fought litigation that encompassed extensive investigation, motion practice, certain discovery, mediation, and contentious settlement negotiations, the Parties have settled this ERISA fiduciary breach class action for a cash payment of $1,000,000. This Settlement was achieved through the dedicated efforts of Class Counsel and Plaintiff working diligently to represent the 401(k) Plus Plan ("Plan") participants.

This memorandum addresses Class Counsel's request for: (i) an award of attorney's fees in the amount of one-third of the settlement ($333,333.33); (ii) reimbursement of case expenses of $13,938; (iii) approval of payment of the expenses of notice, independent fiduciary, and settlement

administration; and (iv) approval of a $5,000 Case Contribution Award to Class Representative Calvin McCutchan in recognition of his valuable service to the Class.[1]

As demonstrated below, the record in this case, and the case law in the Seventh Circuit and this Court fully support the requested fees, expenses, and Contribution Award.[2]

## II. BACKGROUND

Because the Final Approval Motion, and Class Certification Motion, and the Joint Declaration of Hugh Berkson and Alan Rosca ("Joint Dec.") filed herewith contain detailed discussions of this litigation's progress, risks, and ultimate success, Plaintiff asks the Court to consider these documents, which are incorporated by reference herein, in connection with this request.

## III. UNDER THE SEVENTH CIRCUIT PRECEDENT THE CONTINGENCY FEE REQUESTED IS REASONABLE

### A. ATTORNEYS' FEES SHOULD BE SET AS A PERCENTAGE OF THE COMMON FUND RECOVERY

It is well-established in this Circuit and elsewhere that attorneys whose efforts result in a "common fund" may, and should be, compensated by awarding them a percentage of the recovery. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (fee awards in common fund cases should be a percentage of the recovered fund). In common fund cases, courts have discretion to use one of two methods to determine whether the request is reasonable: (1) percentage of the fund; or (2) lodestar plus a risk multiplier. *See, e.g., Americana Art China, Co. v. Foxfire Printing & Packaging, Inc*., 743 F.3d 243, 247 (7th Cir. 2014). In this Circuit, the percentage-of-recovery approach is not only

[1] The concurrently-filed briefs, Plaintiff's Unopposed Motion for Final Approval of Settlement and Motion for Certification of Settlement Class ("Final Approval Motions") documents why the Settlement is an excellent result for the Class, the dedication of the Class Representative and Class Counsel to the litigation, and why both should be approved.

[2] Attached hereto as Exhibit A is a Proposed Order for Award of Fees and Expenses.

permitted; it is the preferred approach to determining attorneys' fees. *In re Continental Illinois Sec. Litig. ("Continental I"),* 962 F.2d 566, 572-73 (7th Cir. 1992) (expressing the Seventh Circuit's preference for the percentage method).[3] As the Seventh Circuit stated in a similar ERISA case where the settlement resulted in a common fund, "there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994).[4]

The Courts in this Circuit have expressed two practical and prudential reasons to prefer this approach: first, that percentage fees emulate the real-world market for contingent-fee attorneys, and second, that percentage fees are simpler and less prone to manipulation than other calculation methods. As to the first, "'attorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services.'" *In re Akorn, Inc. Sec. Litig.*, 2018 WL 2688877, at *1 (quoting *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957 (7th Cir. 2013)). The Seventh Circuit has stated repeatedly that courts should look to the "market" to

[3] Should the Court prefer to determine whether Class Counsel's request for fees is reasonable under the alternative lodestar method, Class Counsel has submitted their respective lodestar in their fee declarations that are exhibits to the Counsel's Joint Declaration accompanying this Motion and can provide documentation to support that lodestar and also submit a supplemental brief to show that Class Counsel's request is reasonable under the lodestar method, too. Specifically, and as detailed in the attached declarations, Class Counsel's total lodestar is $492,857.10, or 148% of the requested fee of $333,333.33, for a negative multiplier of .67.

[4] *See also Williams v. General Elec. Capital Auto Lease,* No. 94 C 7410, 1995 WL 765266, at *9 (N.D. III. Dec. 26, 1995) ("the approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred on the class"); *Long v. Trans World Airlines, Inc.,* No. 86 C 7521, 1993 WL 121824, at *1 (N.D. III. Apr. 19, 1993) (same); *In re Capital One TCPA Litig.*, 80 F.Supp.3d 781, 795 (N.D. Ill. 2015) (percentage of the fund method "more likely to yield an accurate approximation of the market rate"); *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to establish market based contingency fee percentages than to "hassle over every item or category of hours and expense and what multiple to fix and so forth"); *Gaskill v. Gordon*, 942 F. Supp. 382, 386 (N.D. Ill. 1996) (percentage of fund method "provides a more effective way of determining whether the hours expended were reasonable."), *aff'd*, 160 F.3d 361 (7th Cir. 1998).

determine whether a requested fee is reasonable in relation to what counsel and the class would likely have negotiated at the outset of the case, had they been in a position to do so. As Judge Posner stated in *Continental I:*

> The object in awarding a reasonable attorneys' fee . . . is to simulate the market… The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis with a similar outcome, for a paying client.

*Id.,* 962 F.2d at 572.[5] This court has followed this reasoning. *See Gehrich*, 316 F.R.D. at 234-35; *In re Akorn, Inc. Sec. Litig.*, 2018 WL 36888777, at *1. Here, as discussed in Section B below, the sought-after attorney's fees are on par with that which would be derived by emulating the real-world market.

Not only do percentage-of-recovery fees emulate the marketplace, but they have the additional salutary effect of conserving judicial resources. Percentage fees are simple to calculate, are not subject to manipulation, and do not require the Court to "second-guess" each and every decision made by counsel in the course of a complex case. *See, e.g., Gaskill v. Gordon*, 942 F. Supp. 382, 386 (N.D. III. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998) (noting that the percentage method saves the Court's time by not requiring review of time records and provides an "effective way of determining whether the hours expended were reasonable").

### B. THE REQUESTED ATTORNEY'S FEES SHOULD BE AWARDED UNDER THE METHODOLOGY EMPLOYED IN THIS CIRCUIT AND ARE APPROPRIATE FOR THIS CASE

The requested fee accurately emulates the market for valuing legal services in a contingent fee setting and is in line with fee awards that have been found to be reasonable and appropriate. Many courts in this Circuit have awarded fees totaling one-third or higher of the settlement

[5] *See also Synthroid II*, 325 F.3d at 977; *In re Synthroid Mktg. Litig. ("Synthroid 1"),* 264 F.3d 712, 718 (7th Cir. 2001); *Montgomery v. Aetna Plywood, Inc.,* 231 F.3d 399, 408 (7th Cir. 2000).

amount.[6] In fact, higher fee percentages "make sense" in class action cases where the settlement is relatively lower. *Gehrich v. Chase Bank United States*, 316 F.R.D. 215, 236 (N.D. Ill. 2016) (collecting cases with settlements under $5 million that were awarded 33% or more) (citations omitted).

**1. "Synthroid I" Factors**

Based on the Seventh Circuit's clear directives, this Court's task is to determine what the plaintiff and his counsel would have negotiated as the fee prior to commencement of this litigation, had they been in a position to do so. In *Synthroid I,* the Court discussed several factors the Court may examine in determining the applicable market rate. These are: (1) the risk of nonpayment; (2) the quality of performance; (3) the amount of work necessary to resolve the litigation; and (4) the stakes in the case. *Id.,* 264 F.3d at 722.[7] Each of these factors supports the general wisdom of the

[6] *See, e.g., Allegretti v. Walgreen Co*., No. 1:19-cv-05392, 2022 U.S. Dist. LEXIS 31985, at *13-14 (N.D. Ill. Jan. 4, 2022) (awarding attorney fees of one-third of $13.75 million settlement); *First Impressions Salon, Inc. v. Nat'l Milk Producers Fed'n,* No. 3:13-CV-00454-NJR, 2020 U.S. Dist. LEXIS 94880, at *9 (S.D. Ill. Apr. 27, 2020) (awarding attorney fees of one-third of $220 million settlement); *Hale v. State Farm Mut. Auto. Ins. Co.,* No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at *35-40 (S.D. Ill. Dec. 13, 2018) (finding attorneys' fees of on-third of the common fund reasonable); *Spano*, 2016 U.S. Dist. LEXIS 161078, at *4 (awarding 33.33% of $57 million fund in addition to costs for a total of 36.51% of fund); *City of Greenville*, 904 F. Supp. 2d at 908-09 (awarding 33% of $105 million plus roughly $8.5 million in costs).

[7] The Court in *Synthroid I* also referred to certain "benchmarks" that may also be pertinent to the determination of the appropriate market rate in some cases: the actual agreement between the plaintiff and the attorney entered into before the litigation commenced, fee agreements entered into by large claimants in similar litigation, and auctions in securities disputes. 264 F.3d at 718-19. Unfortunately, none of these benchmarks are of use in this case. The retainer agreement between the Plaintiff and Plaintiff's Counsel specifies that counsel will not seek more than one-third of any recovery, which supports this application. However, the other two factors are difficult to apply outside of securities cases. While in such an action, the plaintiff may very well be a sophisticated large institution capable of understanding the legal issues in the case and with experience in retaining counsel, in an ERISA action, most plan participants will have a relatively small claim and a limited understanding of the legal principles that underlie their claim. In addition, Plaintiff's Counsel is unaware of any lead counsel "auctions" in an ERISA case.

market that a proper contingent fee in this case, negotiated at the outset of the litigation, would be at least as much as that sought by Class Counsel. Indeed, a "'33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs' firms' taking on large, complex cases." *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at *40-43 (S.D. Ill. Dec. 13, 2018), quoting *Young v. County of Cook*, No. 06 C 552, 2017 U.S. Dist. LEXIS 152466 (N.D. Ill. Sept. 20, 2017).

a. *Risk of Non-Payment*

Of primary importance in evaluating a percentage fee request are the risks undertaken by counsel because, as recognized by Judge Posner, "[t]he lawyers for the class receive no fee if the suit fails[.]" *Continental I*, 962 F.2d at 569. Counsel must be properly compensated for this risk, or else "systematic undercompensation" will undermine the viability of class action litigation. *Id*. The risk of litigation should be measured as it existed "at the outset of the litigation." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565 (7th Cir. 1994). This case involved substantial risks, both at its inception and throughout the case.

These included the following risk factors:

- Complex and novel legal theories. ERISA is a highly specialized and complex area of the law, and the type of claims brought here—breaches of duty and prohibited transactions by the Plan's fiduciaries—are based on rapidly evolving legal theories. There are many aspects of the law that are still developing, and there are significant conflicts between the approaches adopted by different trial courts and appellate courts. Even United States Supreme Court jurisprudence in this area is often unclear.

- Risk of an unforeseen change in the law. ERISA jurisprudence presents an ever-changing legal landscape, and there is a constant risk that the law will change before judgment. For example, in *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002), the Supreme Court reversed what had been thought for years to be settled law regarding the remedies available under ERISA's § 502(a)(3), 29 U.S.C. § 1132(a)(3) (2014), but then further changed that law in *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011). By way of further example, in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S.Ct. 2459 (2014), the Court overturned a long-standing presumption applied by several circuits in

breach of fiduciary duty claims involving employer stock, but at the same time imposed new and difficult-to-satisfy pleading requirements applying to fiduciary breach claims generally. There was no assurance a similar sea-change in the law would not have affected the claims in this lawsuit.

- Vigorous defense. Defendants were all represented by pre-eminent law firms and attorneys with many years of litigation and trial experience, including extensive ERISA class action experience, and had virtually unlimited resources with which to prepare and present their defenses.

- Risk of Appeal. Even if Plaintiff were to have won at trial, trial likely would have been followed by post-trial motions as well as an appeal to the Seventh Circuit and the possibility of petition for a writ of certiorari. Given the evolving legal landscape, appeal poses a particularly significant risk in ERISA cases.

- Risk of Delay. Plaintiff filed this case in 2020, discovery was in its early stages, further motions (i.e., for summary judgment) were likely, and it was not yet set for trial. At the very least, Plaintiff and Class Counsel reasonably anticipated a delay of at least another 2 years — and likely much longer — before any recovery was possible. During this time, Class Counsel would be responsible for advancing the costs of litigation and doing all the work necessary to protect the Class, without any interim payment or assurance of ever receiving compensation for the time and effort expended.

Thus, the evidence in this case clearly establishes the degree of risk assumed by Class Counsel when they undertook this litigation, risk that continued up until the execution of the Settlement Agreement. Given that degree of risk, and the skill required to prosecute a case such as this one, Class Counsel likely would have required a fee of at least 33% on a straight percentage basis to persuade them to undertake the case.

b. *Quality of Performance*

The requested fee award is appropriate because of the excellent results obtained. This case presented many risks, noted above, including the risk of a defense verdict. Despite these challenges, Class Counsel achieved an excellent result: the proposed $1 million settlement, or 41% of the total losses of the class members of $2.4 million. By any measure, this is an excellent result.

The quality of Counsel's performance is reflected not only by sheer numbers, but by qualitative factors. The attorneys of Rosca Scarlato LLC are national leaders in pursuing class action litigation and are experienced with ERISA type cases and other complex litigation. Joint Dec. ¶41. Likewise, McCarthy, Lebit, Crystal & Liffman Co., L.P.A.'s attorneys have ERISA litigation experience and have extensive litigation experience, including complex securities litigation. Joint Dec. ¶ 42. Together, these firms created an excellent legal team for the benefit of the Class. Examples of the high-quality work performed included:

- Preparation of the initial Complaint;
- Responding to Defendants' motions to dismiss, which encompassed multiple issues, and prevailing on virtually all issues;
- Propounding written discovery and otherwise setting the stage for mediation, to create conditions conducive to settlement;
- Negotiating the settlement; and
- Obtaining preliminary approval for the proposed settlement and attending to class notice and the final approval process in a professional and timely way.

Joint Dec. ¶¶ 14-21- 24-27, 29-30,32-33,35-38.

c. *Amount of Work Necessary to Resolve the Litigation*

This factor is not stressed in some recent decisions of the Seventh Circuit and this Court. *See, e.g., Gehrich*, 316 F.R.D. at 234-35; *Redman v. RadioShack Corp.*768 F.3d 622, 633 (7th Cir. 2014) ("the central consideration is what class counsel achieved for the members of the class rather than how much effort class counsel invested in the litigation"). Nevertheless, this case required quite a lot of very hard and very intensive work from Counsel. And to the extent it is a consideration, Class Counsel have devoted numerous hours to investigating, litigating, and settling this case. Joint Dec. ¶ Exs. B,C,D.

d. *Stakes in the Case*

Plaintiff and the Class had a great deal at stake. Each class member's loss is significant as each loss represented a meaningful portion of their retirement savings. The money that was lost had been hard-earned through each Class Member's work for Coriant. The loss of this money, individually and in the aggregate, is a serious matter, and one worth fighting for. Given the stakes in this case, it is reasonable to conclude that the Plaintiff would have willingly paid a premium to obtain well-qualified counsel with extensive experience in pursuing this type of case.[8]

In addition, Class Counsel had a great deal at stake. By taking this case, Class Counsel took on significant risk of non-payment, the significant burden of advancing litigation expenses, and the significant "opportunity cost" of having to turn down other potentially lucrative cases. Joint Dec. ¶¶ 29-30, Exs. B and C. These large risks strongly motivated Class Counsel to perform work of the highest *quality* and in appropriate *quantity* in order to fulfill the fiduciary commitment to our clients and to lessen the chances of a disastrous loss.

In short, class action cases such as this one are high-stakes propositions for each interested party: the defendants, the class members, and the lawyers for the class. In this case, the higher stakes justify the award of the requested fee to properly reflect the degree of difficulty presented.

## IV. THE COURT SHOULD AWARD THE REQUESTED EXPENSES

This Court may award reasonable expenses authorized by the parties' agreement. Fed. R. Civ. P. 23(h). The Court may determine what is reasonable based on an objective standard of reasonableness, *i.e.*, the prevailing market value of services rendered. *Blum*, 465 U.S. at 895. Here, based on the Joint Declaration filed contemporaneously herewith, Class Counsel requests

[8] Infinera Corporation (formally known as "Coriant Operations") is a large and wealthy company, but trial presented a significant risk to its reputation. The Defendants were strongly motivated to fight the case, and they did so.

reimbursement for common and routinely reimbursed litigation expenses incurred by Class Counsel in the amount of $13,938 (and for the fees and expenses to be paid to the Settlement Administrator out of the Settlement Fund).[9] Joint Dec. ¶¶ 35-39, Exs B-D. This request is reasonable and should be approved. *See, e.g.*, *In re Wheaton Franciscan ERISA Litig.*, No. 16-4232 (N.D. Ill. Jan. 16, 2018), Entered Judgment, ECF 107 (granting expenses incurred during litigation); *Butler v. Holy Cross Hosp.*, No. 16-5907 (N.D. Ill. June 29, 2017), Order and Final Judgment, ECF 52 (granting expenses incurred during litigation); *Spicer v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256-66 (N.D. Ill. 1993) (detailing and awarding various expenses incurred during litigation); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1040-41 (N.D. Ill. 2011) (awarding expenses incurred during litigation).

## V. THE COURT SHOULD AWARD THE CASE CONTRIBUTION AWARD

Class Counsel respectfully request that the Court approve a Case Contribution Award of $5,000 for the Plaintiff. It is well-recognized that "[p]laintiffs in class and collective actions play a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny." *Castillo v. Noodles & Co.*, No. 16-cv-03036, 2016 U.S. Dist. LEXIS 178977, at *4 (N.D. Ill. Dec. 23, 2016) (approving $10,000 awards to named plaintiffs in employment case where they had participated in investigation, provided important documents, and assisted plaintiff's counsel in analyzing documents).

This Court has stated that such '"awards are justified when necessary to induce individuals to become named representatives.'" *In re Akorn Inc. Sec. Litig.*, 2018 WL 2688877 at *4 (approving $10,000 awards). As Judge Wood has stated, the necessity for contribution awards "is

[9] *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at *43 (S.D. Ill. Dec. 13, 2018) ("Courts in this Circuit routinely award a percentage of the gross common fund without netting out separately awarded costs.") (collecting cases) (citations omitted).

especially true in employment litigation," where "the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers.'" *Castillo*, 2016 U.S. Dist. LEXIS 178977, at *4-5 (citation omitted).

Courts in this District, including this Court, consider three factors in their examination of the reasonableness of a requested incentive award: "(1) the actions the plaintiff has taken to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation." *In re Akorn Sec. Litig.*, 2018 WL 2688877, at *4 (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Here, Plaintiff Calvin McCutchan made substantial contributions to the litigation, including collecting and producing documents and information to counsel, maintaining regular contact with Class Counsel, reviewing and approving the Complaint and other major filings, staying abreast of the pleadings and motions, and participating in the mediation and the follow-up settlement-related discussions. Declaration of Calvin McCutchan ¶¶ 6-12, Joint Dec. Exhibit E. These actions provided great benefit to the members of the Settlement Class and thus, the requested Case Contribution Award to the Plaintiff is appropriate.

## VI. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant Plaintiff's Unopposed Motion for Award of Attorney' Fees and Expenses, Reimbursement of Administration Costs, and Case Contribution Award, together with such other and further relief the Court may deem just and proper.

DATED this 9th day of January 2023.

Respectfully submitted,

**MCCARTHY, LEBIT, CRYSTAL & LIFFMAN CO., L.P.A.**

*/s/ Hugh D. Berkson*
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Email: jburke@higginsandburke.com

***Local Counsel for the Class***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of January 2023, a copy of the foregoing was filed electronically with the Court. Notice of this filing will be sent to all parties registered for electronic service by operation of the Court's electronic filing system. The parties may access the filing through the Court's system.

Respectfully submitted,

*/s/ Hugh D. Berkson*
Hugh D. Berkson (OH 0063997)

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| CALVIN McCUTCHAN,<br><br>Plaintiff,<br><br>vs.<br><br>CORIANT OPERATIONS, INC., INFINERA CORPORATION, CORIANT 401(k) PLAN, and DOES 1-20,<br><br>Defendants. | Case No. 1:20-cv-00561 (CPK) |

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND EXPENSES, SETTLEMENT ADMINSTRATION COSTS, AND CASE CONTRIBUTION AWARD**

Having read and considered the papers filed and arguments made by counsel, and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECRED as follows:**

1. The Court hereby awards Class Counsel $ 333,333.33, which represents one-third of the Settlement Amount of the class action Settlement;

2. The Court hereby awards Class Representative Calvin McCutchan a Case Contribution Award in the amount of $5,000;

3. The Court awards Plaintiff's Counsel reimbursement of expenses in the amount of $ 13,938.51; and,

4. The Court awards the ongoing costs associated with the Settlement Administration and Independent Fiduciary Fees as required to effectuate the Settlement.

SO ORDERED in the Northern District of Illinois.

DATED this __day of _____ , 2023.

_____
Judge Charles P. Kocoras
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ILLINOIS