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JASON THOMAS, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

TD AMERITRADE, INC.,

Defendant.

Case No. C08-02397 WDB

CLASS ACTION

**ORDER AWARDING ATTORNEYS'
FEES AND COSTS TO CLASS COUNSEL
AND A SERVICE FEE TO CLASS
REPRESENTATIVE, JASON THOMAS**

This matter having come before the Court on September 25, 2009, for a hearing on Plaintiff Jason Thomas' Motion for (1) Final Approval of Class Action Settlement, (2) Award of Attorneys' Fees and Costs to Class Counsel, and (3) Award of Service Fee to Representative Plaintiff Jason Thomas, the Court having considered all papers filed and proceedings had herein and otherwise being fully informed and good cause appearing therefore,

1 **THE COURT HEREBY FINDS:**

2 The Ninth Circuit has established a baseline benchmark of 25% in common fund cases.
3 See e.g., *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (1990); *Johnson,*
4 *Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Williams v. MGM-Pathe Comm.Co.,*
5 129 F.3d 1026, 1027 (9th Cir. 1997); *In re Omnivision Tech., Inc.*, 559 F.Supp.2d 1036, 1047
6 (2008); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). While the Court has authority to
7 adjust the benchmark upward, and although the Settlement allows Class Counsel to request up to
8 one-third of the common fund, subject to Court approval, the law only allows such an upward
9 adjustment in unusual circumstances. Such circumstances do not exist here, and the 25%
10 benchmark is an appropriate basis for Class Counsel's fee award in the instant case. Accordingly,
11 the award of attorneys' fees granted to counsel for the Thomas Plaintiffs is \$625,000.00, 25% of
12 the total value of the common benefit created for the Class of \$2,500,000 (i.e., "Gross Fund
13 Value").

14 In addition, Class Counsel has already incurred costs in the amount of \$3514.24. These
15 costs also will increase based on future work that will need to be performed, e.g, overseeing the
16 distribution of funds to class members, responding to their inquiries, resolving disputed claims
17 and paying for postage and photocopy charges, all for the benefit of the Class. The Court notes
18 that the types of costs class Counsel has reported are appropriate for reimbursement and are
19 included in the \$625,000.00 fee award pursuant to the settlement agreement and not requested
20 separately.

21 The Court also finds that Mr. Thomas has contributed significantly to the resolution of this
22 case. Among other efforts, Mr. Thomas produced documents and provided detailed background
23 information to Class Counsel about the organizational structure of the company and the job duties
24 performed by class members, reviewed documents produced by TD Ameritrade, maintained
25 regular contact with Class Counsel and acted as a conduit of information to the class members. In
26 addition, Mr. Thomas' continued employment in the financial industry puts him at risk of
27 retaliation from future employers. The Court notes that none of the class members have objected
28 to the fee award requested by Mr. Thomas and that the award will not significantly reduce the

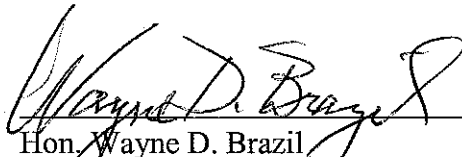
1 amount of settlement funds available to the class.

2 **IT IS HEREBY ORDERED THAT:**

3 Within twenty-one days of the entry of this Order, (1) an award of attorneys' fees in the
4 amount of **\$625,000.00** shall be paid to Thomas Plaintiffs' Class Counsel, Scott Cole &
5 Associates, APC from the Gross Settlement Fund, and (2) an award in the amount of **\$15,000.00**
6 shall be paid to representative plaintiff Jason Thomas from the Gross Settlement Fund for his
7 service to the class as a suitable and active representative.

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9 **IT IS SO ORDERED.**

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11 DATED: 9-28-, 2009

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13 Hon. Wayne D. Brazil
14 United States Magistrate Judge
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