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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA

15 MATT WOLTHER, Individually and on
16 Behalf of All Others Similarly Situated,
17 Plaintiff,

18 vs.

19 SHUBHAM MAHESHWARI, et al.,
20 Defendants.

) Lead Case No. 18CV329690
) (Consolidated with No. 18CV332463 and
) No. 18CV332644)

) CLASS ACTION

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PLAINTIFFS’ COUNSEL’S MOTION FOR
) AN AWARD OF ATTORNEYS’ FEES AND
) EXPENSES AND AWARDS TO CLASS
) REPRESENTATIVES PURSUANT TO 15
) U.S.C. §77z-1(a)(4)

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1 **I. INTRODUCTION**

2 Before this Court for approval is an all-cash settlement of \$15,000,000 for the benefit of the Class.¹
3 This is a very good recovery obtained in the face of substantial risk and is the product of hard-fought
4 litigation and arm's-length settlement negotiations. Plaintiffs' Counsel now respectfully move this Court
5 for an award of attorneys' fees in the amount of one-third of the Settlement Amount, as well as payment of
6 the litigation expenses incurred in prosecuting the Action in the amount of \$127,985.56. Finally, Plaintiffs
7 and Class Representatives Construction Workers Pension Trust Fund – Lake County and Vicinity and Iron
8 Workers District Council of New England Pension Fund (“Class Representatives”) seek awards of \$9,800
9 and \$9,000, respectively, in connection with their representation of the Class pursuant to 15 U.S.C. §77z-
10 1(a)(4). To date, there have been no objections lodged to any of these requests.

11 As explained below, and in the Memorandum of Points and Authorities in Support of Class
12 Representatives' Motion for Final Approval of Class Action Settlement and Approval of Plan of
13 Allocation (“Settlement Memorandum”), submitted herewith, as well as in the Joint Declaration, and in
14 the entire record, this Settlement represents a solid recovery for the Class, particularly in light of the risks,
15 costs, and duration of continued litigation. The Court agrees. “The Court agrees that this is a good result
16 for the class.” Order Concerning Class Representatives' Unopposed Motion for Preliminary Approval of
17 Class Action Settlement, at 9 (Dec. 7, 2021). Absent settlement, this litigation would likely have
18 continued for years, through the completion of fact discovery, expert discovery, summary judgment, trial,
19 and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving liability and
20 damages, yet nevertheless reached a timely and substantial resolution for the Class. The requested fee is
21 fair and reasonable under the applicable standards and is well within the range of fees approved by
22 California courts in similar Securities Act cases and in other class actions. For instance, on August 11,
23 2016, the California Supreme Court affirmed a one-third percentage-based fee award to class counsel in
24 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480 (2016). *See also Snap Inc. Securities Cases*, No. JCCP

25
26 ¹ Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the
27 Amended Stipulation of Settlement, dated November 30, 2021 (“Stipulation” or “Settlement”), or in the
28 previously-filed Joint Declaration of James I. Jaconette and Francis A. Bottini Jr. in Support of Class
Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement, dated
October 26, 2021 (“Joint Decl.”).

1 4960, slip op. at 6 (Los Angeles Super. Ct. Apr. 14, 2021) (one-third fee award on \$32,812,500 recovery);
2 *Beaver Cnty. Empls. Ret. Fund v. Cyan, Inc.*, No. CGC-14-538355, slip op. at 3 (San Francisco Super. Ct.
3 Aug. 8, 2019) (one-third fee award on \$15 million recovery); *In re Avalanche Biotechnologies, Inc.*
4 *S’holder Litig.*, No. CIV536488, slip op. at 7 (San Mateo Super. Ct. Jan. 19, 2018) (33% fee award on \$13
5 million recovery).²

6 In awarding fees, courts consider several factors, including the quality and quantity of work as
7 reflected in the results obtained. Here, as set forth in each firms’ declaration, Plaintiffs’ Counsel
8 devoted over 5,200 hours without pay in order to obtain a very favorable settlement for the Class. The
9 Settlement represents a recovery of between 15.63% and 18.75% of Plaintiffs’ estimate of damages,
10 which is many times greater than the typical recovery in similar cases.³ Joint Decl., ¶¶17-18. The
11 \$15,000,000 all-cash recovery was achieved through the skill, experience, and effective advocacy of
12 Plaintiffs’ Counsel whose efforts to date have been without compensation of any kind and the fee has
13 been wholly contingent upon the result achieved. Since fee awards are designed to encourage counsel
14 to get the best possible result for the class, the amount requested in this case is warranted given the
15 exceptional recovery obtained and the significant obstacles and risks Plaintiffs’ Counsel faced in
16 bringing and prosecuting this case.

17 Further, the Court should consider the Class’ reaction to the attorneys’ fees and expenses sought.
18 Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice (the “Notice
19 Order”), over 20,400 copies of the Notice of Proposed Settlement of Class Action (“Notice”) and Proof of
20 Claim and Release form, in the form approved by the Court, have been mailed to potential Class
21 Members and their nominees.⁴ In addition, the Notice advises Class Members that Plaintiffs’ Counsel
22 will apply to the Court for an award of attorneys’ fees in the amount of up to one-third of the Settlement
23 Amount, plus expenses not to exceed \$175,000. While the February 21, 2022 deadline for objecting to

24 _____
25 ² All unreported authorities cited herein are attached to the Declaration of Ellen Gusikoff Stewart in
26 Support of Plaintiffs’ Counsel’s Motion for an Award of Attorneys’ Fees and Expenses and Awards to
27 Class Representatives Pursuant to 15 U.S.C. §77z-1(a)(4) (“Stewart Decl.”), submitted herewith.

28 ³ Not surprisingly, Defendants’ estimate of recoverable damages was much lower.

⁴ See Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for
Exclusion Received to Date (“Murray Decl.”), ¶11, submitted herewith.

1 the requested attorneys' fees and expenses has not passed, to date, not a single objection to Plaintiffs'
2 Counsel's fee and expense request has been received. In addition, no objections have been received to
3 Class Representatives' requests for awards of up to \$10,000 each in connection with their representation
4 of the Class, which amount was also set forth in the Notice.

5 For their diligence and unwavering efforts in obtaining this outstanding recovery on behalf of the
6 Class, Plaintiffs' Counsel's request for an award of attorneys' fees is reasonable. Plaintiffs' Counsel's
7 expenses in the amount of \$127,985.56 are likewise reasonable in amount and were necessarily incurred
8 in the successful prosecution of the Action. Finally, the payments to Class Representatives are reasonable
9 and supported by declarations from each Class Representative.⁵

10 **II. THE COURT SHOULD AWARD ATTORNEYS' FEES USING THE**
11 **PERCENTAGE METHOD**

12 **A. The Common Fund Doctrine Allows Courts to Assess the Beneficiaries of**
13 **the Fund with the Costs of Creating that Fund**

14 Where, as here, litigation has created a common fund for the benefit of the named plaintiffs as
15 well as others, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and
16 expenses out of the fund created. The California Supreme Court has expressly affirmed "the historic
17 power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in addition
18 to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly
19 from the other parties enjoying the benefit." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977).⁶

20 The common fund doctrine rests on two premises. The first one is the prevention of unjust
21 enrichment – "that all who will participate in the fund should pay the cost of its creation or protection and
22 that this is best achieved by taxing the fund itself for attorney's fees." *Id.* at 35 n.5; *see also Lealao v.*
23 *Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 27 (2000). The second is a "salvage" rationale –
24 "encouragement of the attorney for the successful litigant, who will be more willing to undertake and
25 diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will

26 ⁵ See Declaration of Virginia Geraci in Support of Class Representatives' Motion for Approval of
27 Settlement, ¶¶2-6; Declaration of Veronica Dyer in Support of Class Representatives' Motion for
Approval of Settlement, ¶¶2-6, previously filed with the Court.

28 ⁶ Unless otherwise noted, citations are omitted and emphasis is added throughout.

1 be promptly and directly compensated should his efforts be successful.” *In re Estate of Stauffer*, 53 Cal.
2 2d 124, 132 (1959). The salvage purpose requires ““a flavor of generosity . . . in order that an appetite for
3 efforts may be stimulated.”” *Melendres v. City of Los Angeles*, 45 Cal. App. 3d 267, 273 (1975).

4 While “[c]ourts recognize two methods for calculating attorney fees in civil class actions: the
5 lodestar/multiplier method and the percentage of recovery method,” *Wershba v. Apple Comput., Inc.*, 91
6 Cal. App. 4th 224, 254 (2001), *overruled on other grounds by Hernandez v. Restoration Hardware,*
7 *Inc.*, 4 Cal. 5th 260 (2018), the United States Supreme Court has consistently held that where a common
8 fund has been created for the benefit of a class as a result of counsel’s efforts, the award of counsel’s
9 fee should be determined on a percentage-of-the-fund basis. *See, e.g., Boeing Co. v. Van Gemert*, 444
10 U.S. 472, 478-79 (1980). California courts have long accepted the percentage approach for awarding
11 fees in common fund cases as well.

12 If there was any doubt that the percentage method of awarding attorneys’ fees in a common fund
13 case in California courts was proper, the Supreme Court of California recently clarified

14 that use of the percentage method to calculate a fee in a common fund case, where the
15 award serves to spread the attorney fee among all the beneficiaries of the fund, does not in
16 itself constitute an abuse of discretion. We join the overwhelming majority of federal and
17 state courts in holding that when class action litigation establishes a monetary fund for the
benefit of the class members, and the trial court in its equitable powers awards class
counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
choosing an appropriate percentage of the fund created.

18 *Laffitte*, 1 Cal. 5th at 503. In so doing, the Supreme Court recognized the advantages of using the
19 percentage method of awarding attorneys’ fees as a percentage of the common fund, including the
20 “relative ease of calculation, alignment of incentives between counsel and the class, a better
21 approximation of market conditions in a contingency case, and the encouragement it provides counsel to
22 seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.*

23 The *Laffitte* ruling is consistent with the United States Supreme Court’s decision in *Blum v.*
24 *Stenson*, 465 U.S. 886 (1984), where the Supreme Court recognized that under the common fund doctrine
25 a reasonable fee may be based “on a percentage of the fund bestowed on the class.” *Id.* at 900 n.16. In
26 the Ninth Circuit, the district court has discretion to award fees in common fund cases based on either the
27 percentage-of-the-fund method or the so-called lodestar/multiplier method. *In re Wash. Pub. Power*
28 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994). The Ninth Circuit has expressly and

1 repeatedly approved the use of the percentage method in common fund cases. *Paul, Johnson, Alston &*
2 *Hunt v. Graulity*, 886 F.2d 268 (9th Cir. 1989); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d
3 1301 (9th Cir. 1990); *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993); and *Vizcaino v.*
4 *Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).⁷ Indeed, the *Laffitte* court recognized that “[c]urrently,
5 all the circuit courts either mandate or allow their district courts to use the percentage method in common
6 fund cases; none require sole use of the lodestar method [and] [m]ost state courts to consider the question
7 in recent decades have also concluded the percentage method of calculating a fee award is either preferred
8 or within the trial court’s discretion in a common fund case.” *Laffitte*, 1 Cal. 5th at 493-94. As a result,
9 Plaintiffs’ Counsel respectfully submit that an award should be made here on a percentage basis.

10 **B. The Requested Fee Is Reasonable in This Case**

11 The California Court of Appeals has observed that “the trial court’s use of a percentage of 33-1/3
12 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
13 *Laffitte v. Robert Half Int’l Inc.*, 231 Cal. App. 4th 860, 878 (2014), *aff’d*, 1 Cal. 5th 480 (2016). That
14 court also quoted authority noting that “[e]mpirical studies show that, regardless whether the percentage
15 method or the lodestar method is used, fee awards in class actions average around one-third of the
16 recovery.” *Id.* The requested fee here is consistent with that “average” (*id.*) and is an appropriate fee in
17 this case under the circumstances.

18 In determining the reasonableness of a fee request, California courts typically consider the following
19 “basic factors”: (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the
20 contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of
21 the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the
22 attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity
23 and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *See, e.g.*,
24 *Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996).

25 _____
26 ⁷ Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly shifted
27 to the percentage method in awarding fees in common fund representative actions. *See, e.g., In re Apollo*
28 *Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *6 (D. Ariz. Apr. 0, 2012)
 (““Because the benefit to the class is easily quantified in common-fund settlements,’ courts can award
 attorneys a percentage of the common fund ‘in lieu of the often more time-consuming task of calculating
 the lodestar.’”) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

1 “However, no rigid formula applies and each factor should be considered only ‘where
2 appropriate.’” *Nat. Gas Anti-Trust Cases*, No. 4221, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec.
3 11, 2006); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (“The
4 Ninth Circuit has approved a number of factors which may be relevant to the district court’s
5 determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases.”); *In re Heritage*
6 *Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (reaction of the
7 class is a factor to be considered). An analysis of the relevant factors supports the requested fee award.

8 **1. The Result Achieved**

9 Courts have consistently recognized that the result achieved is an important factor to be considered
10 in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor is the degree
11 of success obtained”); *Omnivision*, 559 F. Supp. 2d at 1046 (“The overall result and benefit to the class
12 from the litigation is the most critical factor in granting a fee award.”).

13 Here, the \$15,000,000 Settlement Amount recovered for the Class solely through the efforts of
14 Plaintiffs’ Counsel is significant given the risks of proving liability, causation, and damages, and the
15 similarly vigorous efforts of Defendants. It provides an immediate and certain recovery for Class
16 Members without the risk, expense, and delay of the completion of discovery, summary judgment, trial,
17 and appeals. Moreover, it represents approximately 16%-19% of estimated recoverable damages – well
18 above the median recovery in similar §11 actions between 2011 and 2020. *See* Laarni T. Bulan &
19 Laura E. Simmons, *Securities Class Action Settlements – 2020 Review and Analysis* at 7, Fig. 6
20 (Cornerstone Research 2021) (analyzing 77 class action settlements asserting §§11 and/or 12(a)(2)
21 claims filed between 2011 and 2020, and finding the median settlement as a percentage of “simplified
22 statutory damages” was 7.4%).⁸

23 **2. The Time and Effort Required**

24 Plaintiffs’ Counsel vigorously investigated and prosecuted this litigation for more than three years,
25 and counsel, among other things:

- 26 • conducted an extensive investigation of the claims and the underlying events and
27 transactions;

28 ⁸ *See* Stewart Decl., Ex. A.

- 1 • engaged in significant motion practice, including opposing Defendants’ demurrer and
2 litigating Plaintiffs’ class certification motion, including conducting document and
3 expert discovery;
- 4 • undertook significant merits discovery, including the review and analysis of over
5 182,000 pages of documents;
- 6 • retained and worked with an expert to analyze damages; and
- 7 • prepared detailed mediation materials in advance of the mediation sessions before
8 Magistrate Judge Gandhi, and participated in formal mediation sessions in 2020 and
9 2021.

10 Joint Decl., ¶¶9-10. This was all time well spent, as the \$15 million Settlement could not be secured but
11 for these efforts.

12 Although Plaintiffs’ Counsel make this application on a percentage-of-recovery basis, using the
13 lodestar approach as a cross-check (although not required by the California Supreme Court per *Laffitte*) on
14 the reasonableness of the requested fee further demonstrates that it is fair and should be awarded.
15 Lodestar is determined by multiplying the number of hours worked by the hourly rates of the attorneys
16 and paraprofessionals. *Serrano*, 20 Cal. 3d at 48-49. An appropriate fee award will generally be a
17 multiple (*i.e.*, a ratio greater than one) of counsel’s lodestar because “the unadorned lodestar reflects the
18 general local hourly rate for a fee-bearing case; it does not include any compensation for contingent
19 risk, extraordinary skill, or any other factors a trial court may consider.” *Ketchum v. Moses*, 24 Cal. 4th
20 1122, 1138 (2001); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 61 (2008) (“[A] lodestar enhancement
21 based on ‘quality of representation’ by definition involves consideration not captured by counsel’s hourly
22 rates.”). In total, Plaintiffs’ Counsel and their paraprofessionals expended 5,243.91 hours in the
23 prosecution of this Action, resulting in a combined lodestar of \$3,475,221.15.⁹ The requested one-third
24 fee (or \$5,000,000) represents a modest multiplier of approximately 1.4. A “lodestar cross-check . . .
25 provides a mechanism for bringing an objective measure of the work performed into the calculation of a

26 ⁹ The time and expenses devoted to the Action are set forth in the accompanying Declaration of
27 James I. Jaconette Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application
28 for Award of Attorneys’ Fees and Expenses, Declaration of Francis A. Bottini, Jr. Filed on Behalf of
Bottini & Bottini, Inc. in Support of Application for Award of Attorneys’ Fees and Expenses,
Declaration of David W. Hall Filed on Behalf of Hedin Hall LLP in Support of Application for Award
of Attorneys’ Fees and Expenses, and Declaration of Guillaume Buell Filed on Behalf of Thornton Law
Firm LLP in Support of Application for Award of Attorneys’ Fees and Expenses (collectively,
“Counsel’s Declarations”).

1 reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an
2 imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for
3 their services at an extraordinary rate even accounting for the factors customarily used to enhance a
4 lodestar fee, the trial court will have reason to reexamine its choice of a percentage.” *Laffitte*, 1 Cal. 5th at
5 504.¹⁰ That is not the case here. The requested fee results in a modest multiplier that is well within the
6 range of multipliers that have been deemed reasonable by courts in California and nationwide.

7 “Multipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal. App. 4th at 255; *see*
8 *Chavez*, 162 Cal. App. 4th at 66 (approving 2.5 multiplier). Indeed, “numerous cases have applied
9 multipliers of between 4 and 12 to counsel’s lodestar in awarding fees.” *Nat. Gas Anti-Trust Cases*, 2006
10 WL 5377849, at *4; *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar
11 enhancement of “two, three, four or otherwise”). In *Lealao*, the court held that a trial court’s refusal to
12 enhance the lodestar as a part of a fee award was an abuse of discretion, opining that a multiplier in excess
13 of 3.5 was reasonable and not ruling out class counsel’s original request for a multiplier of 8. 82 Cal.
14 App. 4th at 24, 52.

15 Accordingly, the lodestar and multiplier here strongly reinforces the fairness of the requested fee
16 award.

17 3. The Contingent Nature of the Case, Risk of Loss, and the Delay in 18 Payment to Plaintiffs’ Counsel

19 Plaintiffs’ Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk
20 that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for
21 Defendants, who are ordinarily paid an hourly rate and paid for their expenses on a regular basis,
22 Plaintiffs’ Counsel have not been compensated for any time or expense since this case began in June
23 2018. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor

24 ¹⁰ In *Laffitte*, the Court observed: “With regard to expenditure of judicial resources, we note that trial
25 courts conducting lodestar cross-checks have generally not been required to closely scrutinize each
26 claimed attorney-hour, but instead have used information on attorney time to ‘focus on the general
27 question of whether the fee award appropriately reflects the degree of time and effort expended by the
28 attorneys.’ . . . The trial court in the present case exercised its discretion in this manner, performing the
cross-check using counsel declarations summarizing overall time spent, rather than demanding and
scrutinizing daily time sheets in which the work performed was broken down by individual task.” *Id.* at
505.

1 in considering an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d
2 Cir. 2000) (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering
3 the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who
4 takes a case on contingency reasonably expects a higher fee than an attorney who is paid as the case goes
5 along, win or lose. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v.*
6 *Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) ("'riskiness,' difficulty or contingent nature of
7 the litigation is a relevant factor in determining a reasonable attorney fee award"). As the Court of
8 Appeals explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

9 In addition to compensation for the legal services rendered, there is the *raison*
10 *d'être* for the contingent fee: the contingency. The lawyer on a contingent fee contract
11 receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee
in a case with a 50 percent chance of success should be twice the amount of a
noncontingent fee for the same case. . . .

12 Finally, even putting aside the contingent nature of the fee, the lawyer under such
13 an arrangement agrees to delay receiving his fee until the conclusion of the case, which is
14 often years in the future. The lawyer in effect finances the case for the client during the
pendency of the lawsuit. If a lawyer was forced to borrow against the legal services
already performed on a case which took five years to complete, the cost of such a
financing arrangement could be significant.

15 *Id.* at 288.

16 As discussed in more detail in the Settlement Memorandum and the Joint Declaration, Plaintiffs
17 faced significant risk concerning their ability to establish both liability and damages. While Plaintiffs
18 believe they could have proven their claims, success at trial was far from certain. Defendants likely
19 would have vigorously argued that Plaintiffs cannot demonstrate the falsity or materiality of the
20 challenged statements made in connection and omissions from the Offering Documents issued in
21 connection with the Merger.

22 Moreover, even assuming that Plaintiffs demonstrated liability, there was no guarantee they would
23 prevail on the issues of loss causation and damages. At summary judgment and trial, Defendants' experts
24 would likely assert a negative causation defense and contend that all of the losses sustained by the Class
25 were due to factors completely unrelated to Defendants' alleged false and misleading statements in the
26 Offering Documents, thereby eliminating any potential recovery. There was a substantial risk that the
27 finder of fact could agree with Defendants' contention that no damages could be linked to Defendants'
28

1 statements or omissions at issue, or that damages were substantially less than the amount Plaintiffs have
2 asserted. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) (“it is
3 virtually impossible to predict with any certainty which testimony would be credited, and ultimately,
4 which damages would be found to have been caused by actionable, rather than the myriad nonactionable
5 factors such as general market conditions”), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

6 Notwithstanding these significant risks, Plaintiffs’ Counsel committed the time and resources
7 necessary to successfully take the case to trial. Indeed, more than 5,200 hours of attorney and
8 paraprofessional time and more than \$127,900 in expenses have been incurred. This was time and money
9 well spent. While Plaintiffs and their counsel believe that the Class would prevail at trial, the complexity
10 of this case made the outcome at trial uncertain. The contingent nature of counsel’s representation and the
11 sizable financial risks borne by Plaintiffs’ Counsel support the percentage fee requested. As the court in
12 *Xcel Energy* recognized, “[p]recedent is replete with situations in which attorneys representing a class
13 have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their
14 advocacy.” *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn.
15 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming ruling
16 that granted defendants’ post-trial motion for summary judgment as a matter of law based on failure to
17 prove loss causation, thereby overturning a jury verdict in plaintiff’s favor).

18 4. Awards Made in Similar Cases

19 Plaintiffs’ Counsel’s request for a fee award of one-third of the Settlement Amount falls squarely
20 within the parameters of percentage fees awarded in other class action litigation in California, including in
21 similar Securities Act cases. ““Empirical studies show that, regardless whether the percentage method or
22 the lodestar method is used, fee awards in class actions average around one-third of the recovery.””
23 *Chavez*, 162 Cal. App. 4th at 66 n.11.

24 While the California Supreme Court affirmed a one-third fee award to class counsel in *Laffitte*, 1
25 Cal. 5th 480, several courts have awarded one-third fees in securities and other complex litigations such
26 as this. *See, e.g., Snap*, slip op. at 6 (one-third fee award on \$32,812,500 recovery); *In re Menlo*
27 *Therapeutics Inc. Sec. Litig.*, No. 18CIV06049, slip op. at 6 (San Mateo Super Ct. Aug. 14, 2020) (one-
28 third fee award on \$9.5 million recovery); *In re Sunrun Inc. S’holder Litig.*, No. CIV538215, slip op. at 6

1 (San Mateo Super. Ct. Dec. 14, 2018) (awarding 33-1/3% fee on \$32 million recovery); *Beaver Cnty.*
2 *Empls.*, slip op. at 3 (one-third fee award on \$15 million recovery); *Avalanche Biotechnologies*, slip op. at
3 7 (33% fee award on \$13 million recovery); *Brooks v. Capitol Valley Elec. Inc.*, No. CIV 536903, slip op.
4 at 2 (San Mateo Super. Ct. Mar. 7, 2017) (awarding 33% fee award); *W. Palm Beach Police Pension*
5 *Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. at 7 (San Diego Super. Ct. June
6 28, 2012) (approving 33-1/3% fee award); *Lezin v. Minimed, Inc.*, No. BC251832, slip op. at 1 (Los
7 Angeles Super. Ct. Aug. 10, 2004) (approving one-third fee award); *see also Lou v. Zenith*, No.
8 BC015017, slip op. at 1 (Los Angeles Super Ct. Sept. 17, 1993) (approving 35% fee award); *Goldman*
9 *v. FarWest Fin. Corp.*, No. C-754698, slip op. at 6 (Los Angeles Super. Ct. Nov. 30, 1993) (same). The
10 fee requested is, therefore, consistent with the fees awarded in other shareholder class actions.

11 **5. Experience, Reputation, Ability, and Quality of Counsel, and the**
12 **Skill They Displayed in Litigation**

13 The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also
14 support the requested fee award. Plaintiffs' Counsel have earned reputations for excellence through many
15 years of litigating complex civil actions, particularly the prosecution of securities class actions. As set
16 forth in the firm résumés attached to Counsel's Declarations, Plaintiffs' Counsel's experience, resources,
17 and high-quality attorneys have allowed them to obtain significant recoveries throughout the country on
18 behalf of their clients.

19 The quality of opposing counsel is also important in evaluating the quality of the work done by
20 Plaintiffs' Counsel. *See, e.g., In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337
21 (C.D. Cal. 1977). Counsel were opposed in this litigation by experienced and skilled counsel from
22 O'Melveny & Myers LLP, a prominent law firm with a well-deserved reputation for vigorous advocacy
23 on behalf of their clients. In the face of such knowledgeable and experienced opposition, counsel were
24 able to develop a case that was sufficiently strong to persuade Defendants to settle for an amount that
25 counsel believe is highly favorable to the Class. As a result, this factor weighs strongly in favor of the
26 requested fee.

1 **6. Continuing Obligations of Plaintiffs’ Counsel**

2 Plaintiffs’ Counsel’s work does not end with the approval of the Settlement. Continuing work will
3 include supervising the claims process, answering shareholder calls and, if necessary, litigating appeals.

4 **7. The Reaction of the Class**

5 While the February 21, 2022 deadline for objecting to counsel’s fee and expenses has not passed,
6 to date, Plaintiffs’ Counsel are not aware of a single Class Member who has objected to the fee and
7 expense request and no opt-outs have been received. *See Murray Decl.*, ¶16. “The absence of objections
8 or disapproval by class members to Class Counsel’s fee request further supports finding the fee request
9 reasonable.” *Heritage Bond*, 2005 WL 1594403, at *21.¹¹

10 **III. PLAINTIFFS’ COUNSEL’S LITIGATION EXPENSES ARE REASONABLE**
11 **AND SHOULD BE APPROVED**

12 Attorneys who create a common fund for the benefit of a class are entitled to payment from the
13 fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
14 counsel’s incurred expenses because those who benefit from their effort should share in the cost. *See*
15 *Laffitte*, 231 Cal. App. 4th at 871; *Rider v. Cnty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992).
16 The appropriate analysis in making a determination if particular costs are compensable is whether the
17 costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*
18 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

19 Here, Plaintiffs’ Counsel are seeking payment of expenses and charges in an aggregate amount of
20 \$127,985.56. As itemized and explained in Counsel’s Declarations, counsel’s expenses include: (1)
21 consultant fees; (2) mediator’s fees; (3) on-line legal and financial research; (4) transportation, meals, and
22 hotels; (5) photocopying; and (6) eDiscovery database hosting. The expenses for which Plaintiffs’
23 Counsel seek payment are those which are normally charged to paying clients, over and above hourly
24 fees. *Harris*, 24 F.3d at 19 (“Harris may recover as part of the award of attorney’s fees those out-of-
25 pocket expenses that ‘would normally be charged to a fee paying client.’”). Further, the expenses which
26 have been incurred and for which payment is sought were necessary for the successful prosecution of the

27 _____
28 ¹¹ Plaintiffs’ Counsel will address any objections in their reply memorandum, which will be filed on or
before April 14, 2022, in accordance with this Court’s Notice Order.

1 litigation, are reasonable in amount, and thus should be paid. *See Vincent v. Reser*, No. 11-03572 CRB,
2 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013) (“Attorneys who create a common fund are entitled to
3 the reimbursement of expenses they advanced for the benefit of the class.”).

4 **IV. THE AWARDS TO CLASS REPRESENTATIVES PURSUANT TO 15 U.S.C.**
5 **§77z-1(a)(4) ARE REASONABLE**

6 Class Representatives Construction Workers Pension Trust Fund – Lake County and Vicinity
7 and Iron Workers District Council of New England Pension Fund seek awards of \$9,800 and \$9,000,
8 respectively, pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Class.
9 Such awards are reasonable and merited in this case. Class Representatives were dedicated to the
10 prosecution of this Action and their staff devoted time to the prosecution of the Action. Class
11 Representatives’ participation in the litigation are set forth in their respective declarations which were
12 filed in connection with preliminary approval, including, for example, their participation in the review of
13 pleadings and Court orders, responding to discovery, providing deposition testimony, and discussing
14 settlement negotiations with Plaintiffs’ Counsel. *See Geraci Decl.*, ¶¶2-4; *Dyer Decl.*, ¶¶2-4. Class
15 Representatives performed a public service through their willingness to step forward, remain in the case,
16 and represent the Class. Courts routinely grant awards to plaintiffs who, through their efforts, brought a
17 case and pursued it to a successful conclusion for the benefit of others. *Snap*, slip op. at 7 (awarding each
18 plaintiff \$5,000); *In re McAfee, Inc. S’holder Litig.*, No. 1:10-cv-180413, slip op. at 4-5 (Santa Clara
19 Super. Ct. Oct. 17, 2019) (awarding plaintiff \$5,000). Approval of these awards is appropriate under
20 applicable precedents and reasonable in light of Plaintiffs’ participation in this Action. *Sunrun*, slip op. at
21 6 (awarding plaintiffs \$16,000 and \$15,000); *In re Ooma, Inc. S’holder Litig.*, No. CIV536959, slip op. at
22 6 (San Mateo Super. Ct. Oct. 18, 2019) (awarding plaintiff \$10,000); *Chicago Laborers Pension Fund v.*
23 *Alibaba Grp. Holding Ltd.*, No. CIV535692, slip op. at 6 (San Mateo Super. Ct. May 17, 2019) (awarding
24 plaintiffs \$12,000 and \$20,000). There are no objections to these requests.

25 **V. CONCLUSION**

26 For the reasons set forth herein, in the Settlement Memorandum and all documents filed in
27 support thereof and in connection with preliminary approval, Plaintiffs’ Counsel respectfully submit
28 that their requested attorneys’ fees and expenses are fair, reasonable, and appropriate under all the

1 circumstances of this case and should be granted. Additionally, the awards to Class Representatives in
2 connection with their representation of the Class are reasonable and supported by declarations, and
3 should be approved in their entirety.

4 DATED: February 7, 2022

Respectfully submitted,

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7 I declare under penalty of perjury that the foregoing is true and correct. Executed on February
8 7, 2022, at San Diego, California.

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10 _____
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