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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA

18 PURPLE MOUNTAIN TRUST, Individually )	Case No. 3:18-cv-03948-JD
19 and on Behalf of All Others Similarly Situated, )	
20 Plaintiff, )	<u>CLASS ACTION</u>
21 vs. )	LEAD COUNSEL’S NOTICE OF MOTION,
22 WELLS FARGO & COMPANY, et al., )	MOTION FOR AN AWARD OF
23 Defendants. )	ATTORNEYS’ FEES AND EXPENSES,
24 _____ )	AND AWARD TO CLASS
	REPRESENTATIVE PURSUANT TO 15
	U.S.C. §78u-4(a)(4), AND MEMORANDUM
	OF POINTS AND AUTHORITIES IN
	SUPPORT THEREOF

25 DATE: August 17, 2023  
 26 TIME: 10:00 a.m.  
 27 CTRM: 11, 19th Floor  
 28 JUDGE: Honorable James Donato

**TABLE OF CONTENTS**

1			
2			<b>Page</b>
3	I.	INTRODUCTION .....	1
4	II.	PROCEDURAL AND FACTUAL BACKGROUND.....	3
5	III.	THE REQUESTED FEE IS FAIR AND REASONABLE.....	4
6	A.	A Reasonable Percentage of the Fund Is the Appropriate Method for Awarding Attorneys’ Fees in Common Fund Cases.....	4
7			
8	B.	The Requested Fee Is Consistent with the Benchmark in the Ninth Circuit and Warrants Approval .....	5
9		1. Lead Counsel Achieved an Excellent Result for the Class.....	6
10		2. The Litigation Was Uncertain and Highly Complex .....	7
11		3. The Skill Required and Quality of Work.....	9
12		4. The Contingent Nature of the Fee and the Financial Burden Carried by Lead Counsel .....	10
13			
14		5. Awards Made in Similar Cases Support the Fee Request.....	11
15		6. The Class’s Reaction to Date Supports the Fee Request .....	11
16		7. A Lodestar Crosscheck Confirms that the Requested Fee Is Reasonable .....	12
17	IV.	LEAD COUNSEL’S EXPENSES ARE REASONABLE AND SHOULD BE APPROVED .....	14
18			
19	V.	CLASS REPRESENTATIVE’S REQUEST FOR AN AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4) IS REASONABLE .....	15
20	VI.	CONCLUSION.....	15

21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

1				<b>Page</b>
2				
3	<b>CASES</b>			
4	<i>Alaska Elec. Pension Fund v. Flowserve Corp.</i> ,			
5	572 F.3d 221 (5th Cir. 2009) .....			7
6	<i>Andrews v. Plains All Am. Pipeline L.P.</i> ,			
7	2022 WL 4453864 (C.D. Cal. Sept. 20, 2022) .....			6, 11
8	<i>Baird v. BlackRock Institutional Tr. Co.</i> ,			
9	2021 WL 5113030 (N.D. Cal. Nov. 3, 2021) .....			5
10	<i>Barbosa v. Cargill Meat Sols. Corp.</i> ,			
11	297 F.R.D. 431 (E.D. Cal. 2013) .....			15
12	<i>Boeing Co. v. Van Gemert</i> ,			
13	444 U.S. 472 (1980).....			4
14	<i>Cheng Jiangchen v. Rentech, Inc.</i> ,			
15	2019 WL 5173771 (C.D. Cal. Oct. 10, 2019).....			7, 13
16	<i>Farrell v. Bank of Am. Corp., N.A.</i> ,			
17	827 F. App’x 628 (9th Cir. 2020),			
18	<i>cert. denied sub nom. Threatt v. Farrel</i> ,			
19	__ U.S. __, 142 S. Ct. 71 (2021).....			12
20	<i>Fleming v. Impax Laby’s Inc.</i> ,			
21	2022 WL 2789496 (N.D. Cal. July 15, 2022).....			13, 15
22	<i>Franco v. Ruiz Food Prods., Inc.</i> ,			
23	2012 WL 5941801 (E.D. Cal. Nov. 27, 2012).....			14
24	<i>Hatamian v. Advanced Micro Devices, Inc.</i> ,			
25	2018 WL 8950656 (N.D. Cal. Mar. 2, 2018).....			12
26	<i>Hefler v. Wells Fargo &amp; Co.</i> ,			
27	2018 WL 6619983 (N.D. Cal. Dec. 18, 2018),			
28	<i>aff’d sub nom. Hefler v. Pekoc</i> , 802 F. App’x 285 (9th Cir. 2020) .....			<i>passim</i>
29	<i>Hensley v. Eckerhart</i> ,			
30	461 U.S. 424 (1983).....			6
31	<i>In re Am.-Apparel, Inc. S’holder Litig.</i> ,			
32	2014 WL 10212865 (C.D. Cal. July 28, 2014).....			5
33	<i>In re Amgen Inc. Sec. Litig.</i> ,			
34	2016 WL 10571773 (C.D. Cal. Oct. 25, 2016).....			12

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**Page**

*In re Amkor Tech. Inc. Sec. Litig.*,  
2009 WL 10708030 (D. Ariz. Nov. 19, 2009).....4, 9

*In re Apollo Grp., Inc. Sec. Litig.*,  
2008 WL 3072731 (D. Ariz. Aug. 4, 2008).....8

*In re Apple Inc. Device Performance Litig.*,  
2023 WL 2090981 (N.D. Cal. Feb 17, 2023) .....6

*In re Bluetooth Headset Prods. Liab. Litig.*,  
654 F.3d 935 (9th Cir. 2011) .....4, 5

*In re Broadcom Corp. Sec. Litig.*,  
2005 WL 8153006 (C.D. Cal. Sept. 12, 2005) .....6

*In re Broiler Chicken Antitrust Litig.*,  
2021 WL 5709250 (N.D. Ill. Dec. 1, 2021).....6

*In re Capacitors Antitrust Litig.*,  
2017 WL 9613950 (N.D. Cal. June 27, 2017).....4, 5, 13

*In re Capacitors Antitrust Litig.*,  
2023 WL 2396782 (N.D. Cal. Mar. 6, 2023).....6

*In re: Cathode Ray Tube (CRT) Antitrust Litig.*,  
2016 WL 4126533 (N.D. Cal. Aug. 3, 2016) .....6

*In re Facebook Biometric Info. Priv. Litig.*,  
522 F. Supp. 3d 617 (N.D. Cal. 2021),  
*aff'd*, 2022 WL 822923 (9th Cir. Mar. 17, 2022) .....13

*In re HP Inkjet Printer Litig.*,  
716 F.3d 1173 (9th Cir. 2013) .....5

*In re Immune Response Sec. Litig.*,  
497 F. Supp. 2d 1166 (S.D. Cal. 2007).....8

*In re JDS Uniphase Corp. Sec. Litig.*,  
2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) .....10

*In re Lidoderm Antitrust Litig.*,  
2018 WL 4620695 (N.D. Cal. Sept. 20, 2018) .....6

1		
2		<b>Page</b>
3		
4	<i>In re N.C.A.A. Athletic Grant-in-Aid Cap Antitrust Litig.</i> ,	
5	2017 WL 6040065 (N.D. Cal. Dec. 6, 2017),	
6	<i>aff'd</i> , 768 F. App'x 651 (9th Cir. 2019).....	13
7		
8	<i>In re Nat'l Collegiate Athletic Ass'n Grant-in-Aid Cap Antitrust Litig.</i> ,	
9	768 F. App'x. 651 (9th Cir. 2019) .....	4
10		
11	<i>In re Omnivision Techs., Inc.</i> ,	
12	559 F. Supp. 2d 1036 (N.D. Cal. 2008) .....	4, 6, 7
13		
14	<i>In re Oracle Corp. Sec. Litig.</i> ,	
15	2009 WL 1709050 (N.D. Cal. June 19, 2009),	
16	<i>aff'd</i> , 627 F.3d 376 (9th Cir. 2010).....	10
17		
18	<i>In re Pac. Enters. Sec. Litig.</i> ,	
19	47 F.3d 373 (9th Cir. 1995) .....	7
20		
21	<i>In re Rite Aid Corp. Sec. Litig.</i> ,	
22	396 F.3d 294 (3d Cir. 2005).....	5
23		
24	<i>In re Tesla, Inc. Sec. Litig.</i> ,	
25	2022 WL 1497559 (N.D. Cal. Apr. 1, 2022) .....	10
26		
27	<i>In re Tyco Int'l, Ltd. Multidistrict Litig.</i> ,	
28	535 F. Supp. 2d 249 (D.N.H. 2007).....	12
	<i>In re Verifone Holdings, Inc. Sec. Litig.</i> ,	
	2014 WL 12646027 (N.D. Cal. Feb. 18, 2014) .....	14
	<i>In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., &amp; Prods. Liab. Litig.</i> ,	
	2017 WL 1047834 (N.D. Cal. Mar. 17, 2017).....	<i>passim</i>
	<i>In re Wash. Mut., Inc. Sec. Litig.</i> ,	
	2011 WL 8190466 (W.D. Wash. Nov. 4, 2011).....	11
	<i>Lopez v. Youngblood</i> ,	
	2011 WL 10483569 (E.D. Cal. Sept. 2, 2011).....	5
	<i>McPhail v. First Command Fin. Plan., Inc.</i> ,	
	2009 WL 839841 (S.D. Cal. Mar. 30, 2009) .....	15
	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
	221 F.R.D. 523 (C.D. Cal. 2004).....	11

1		
2		<b>Page</b>
3		
4	<i>Ontiveros v. Zamora</i> ,	
	303 F.R.D. 356 (E.D. Cal. 2014) .....	14
5	<i>Paul, Johnson, Alston &amp; Hunt v. Grauly</i> ,	
6	886 F.2d 268 (9th Cir. 1989) .....	13
7	<i>Redwen v. Sino Clean Energy, Inc.</i> ,	
	2013 WL 12303367 (C.D. Cal. July 9, 2013) .....	14
8	<i>Savani v. URS Pro. Sols. LLC</i> ,	
9	2014 WL 172503 (D.S.C. Jan. 15, 2014) .....	10
10	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
11	812 F.3d 734 (9th Cir. 2016) .....	10
12	<i>Staton v. Boeing Co.</i> ,	
	327 F.3d 938 (9th Cir. 2003) .....	15
13	<i>Vataj v. Johnson</i> ,	
14	2021 WL 5161927 (N.D. Cal. Nov. 5, 2021) .....	5
15	<i>Vincent v. Hughes Air W., Inc.</i> ,	
16	557 F.2d 759 (9th Cir. 1977) .....	4
17	<i>Vincent v. Reser</i> ,	
	2013 WL 621865 (N.D. Cal. Feb. 19, 2013) .....	14
18	<i>Vinh Nguyen v. Radient Pharms. Corp.</i> ,	
19	2014 WL 1802293 (C.D. Cal. May 6, 2014) .....	8
20	<i>Vizcaino v. Microsoft Corp.</i> ,	
21	290 F.3d 1043 (9th Cir. 2002) .....	<i>passim</i>
22	<i>Wing v. Asarco Inc.</i> ,	
	114 F.3d 986 (9th Cir. 1997) .....	9
23	<b>STATUTES, RULES AND REGULATIONS</b>	
24	15 U.S.C.	
25	§78u-4(a)(4) .....	3, 15
26	§78u-4(a)(6) .....	5
27	17 C.F.R.	
	§240.10b-5 .....	7
28		

1  
2  
3  
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**Page**

**SECONDARY AUTHORITIES**

Janeen McIntosh, Svetlana Starykh, and Edward Flores,  
*Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review*  
 (NERA Jan. 24, 2023).....7

Laarni T. Bulan & Laura E. Simmons,  
*Securities Class Action Settlements: 2022 Review and Analysis*  
 (Cornerstone Research 2023).....7

*Manual for Complex Litigation* (4th ed. 2004)  
 §14.121.....5

**NOTICE OF MOTION AND MOTION**

1  
2 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

3 PLEASE TAKE NOTICE that at 10:00 a.m. on August 17, 2023, in the courtroom of the  
4 Honorable James Donato, at the United States District Court, Northern District of California, Phillip  
5 Burton Federal Building & U.S. Courthouse, Courtroom 11, 19th floor, 450 Golden Gate Avenue,  
6 San Francisco, CA 94102, Lead Counsel Robbins Geller Rudman & Dowd LLP (“Robbins Geller”)  
7 will and hereby does respectfully move the Court for an Order awarding attorneys’ fees and  
8 providing for payment of litigation expenses and an award to Lead Plaintiff Construction Laborers  
9 Pension Trust for Southern California.

10 This Motion is based on the following Memorandum of Points and Authorities, as well as the  
11 accompanying Declaration of Scott H. Saham in Support of: (1) Lead Plaintiff’s Motion for Final  
12 Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) Lead Counsel’s  
13 Motion for an Award of Attorneys’ Fees and Expenses, and Award to Class Representative Pursuant  
14 to 15 U.S.C. §78u-4(a)(4) and its exhibits (“Saham Declaration” or “Saham Decl.”), the Declaration  
15 of Spencer A. Burkholz Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of  
16 Application for Award of Attorneys’ Fees and Expenses/Charges (“Class Counsel Decl.”), all prior  
17 pleadings and papers in this Action, the arguments of counsel, and such additional information or  
18 argument as may be required by the Court.

19 A proposed Order will be submitted with Lead Counsel’s reply submission on August 10,  
20 2023, after the July 27, 2023 deadline for Class Members to object to the motion for fees and  
21 expenses has passed.



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**STATEMENT OF ISSUES TO BE DECIDED**

1. Whether the Court should approve as fair and reasonable Lead Counsel’s application for an attorneys’ fee award to Lead Counsel in the amount of 25% of the Settlement Amount, plus all interest accrued thereon.

2. Whether the Court should approve Lead Counsel’s request for payment of \$1,965,687.14 in litigation expenses and charges incurred by Lead Counsel in the Action, plus all interest accrued thereon.

3. Whether the Court should award Lead Plaintiff Construction Laborers Pension Trust for Southern California \$9,794.98 pursuant to 15 U.S.C. §78u-4(a)(4) for its time and expenses incurred in its representation of the Class.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On the eve of trial, and after nearly five years of hard-fought litigation, Lead Counsel secured  
 4 a remarkable settlement of \$300,000,000 on behalf of the Class (the “Settlement”). The all-cash  
 5 Settlement represents an exceptional recovery – approximately 31%-47% of the estimate of damages  
 6 recoverable at trial – and will likely rank within the top 100 largest settlements obtained to date in a  
 7 securities fraud class action,<sup>1</sup> and is many times greater (on a percentage recovery basis) than the  
 8 median recoveries generally obtained in securities class action cases.

9 At all times, Lead Counsel remained dedicated to achieving a result in the Class’s best  
 10 interest – and the Settlement would not have been achieved without Lead Counsel’s tireless pursuit,  
 11 skill, and relentless advocacy on behalf of the Class.<sup>2</sup> In litigating this case, Lead Counsel expended  
 12 substantial resources – over 43,350 hours in professional time and over \$1.9 million in expenses – all  
 13 without any assurance of recovery. As compensation for its efforts, Lead Counsel requests that the  
 14 Court award attorneys’ fees consistent with the Ninth Circuit’s fee percentage benchmark of 25% of  
 15 the Settlement Amount, plus the interest earned thereon.

16 Lead Counsel’s fee request is reasonable, particularly considering the extent of counsel’s  
 17 efforts and the *ex-ante* risks of this case. *See generally* Saham Decl. In particular, Lead Counsel  
 18 conducted a thorough investigation, drafted the Complaint, and ultimately defeated, in part,  
 19 Defendants’ motion to dismiss, paving the way for nearly three years of exhaustive fact discovery  
 20 efforts, including numerous fiercely contested discovery disputes which were oftentimes litigated in  
 21 parallel with substantive and dispositive motions. Lead Counsel, among other things, conducted the  
 22 review and analysis of more than a half million pages of documents from over 40 Wells Fargo  
 23 custodians, and issued over 35 subpoenas to third-parties, which culminated in the receipt and

24 <sup>1</sup> As measured by ISS Securities Class Action Services. *See* Saham Decl., Ex. E (The Top 100  
 25 U.S. Class Action Settlements of All Time (as of December 31, 2022) (ISS Sec. Class Action Servs.  
 2023)).

26 <sup>2</sup> All capitalized terms not defined herein shall have the same meaning set forth in the Stipulation  
 27 of Settlement dated February 6, 2023 (ECF 220-2) and in Lead Plaintiff’s Memorandum of Points  
 28 and Authorities in Support of Final Approval of Class Action Settlement and Approval of Plan of  
 Allocation (“Final Approval Memorandum”), filed herewith.

1 review of over half a million additional documents (approximately 3.7 million pages). Lead Counsel  
2 also conducted complex expert discovery on a variety of issues (loss causation, damages, insurance  
3 practices, Congressional investigations, and corporate disclosure requirements and processes),  
4 including the exchange of expert reports from six experts. During the course of the litigation, Lead  
5 Counsel spent many hours preparing for and taking (or defending) 26 depositions. Lead Counsel  
6 also successfully moved for class certification and briefed oppositions to Defendants' motion for  
7 summary judgment and motions to exclude or strike the opinions of all three of Lead Plaintiff's  
8 experts.

9         Lead Counsel was prepared to try this case, and with the Settlement achieved just weeks  
10 before the scheduled trial date, trial preparation work was well underway. In preparation for trial,  
11 Lead Counsel, *inter alia*: (a) analyzed thousands of documents in order to select 350 preliminary  
12 trial exhibits; (b) reviewed 90 hours of deposition testimony and prepared deposition designations;  
13 (c) identified and subpoenaed Lead Counsel's trial witnesses; (d) analyzed and drafted objections to  
14 Defendants' preliminary exhibit list; (e) researched and drafted proposed jury instructions and a  
15 verdict form; (f) compiled witness files; (g) created trial demonstratives; (h) prepared opening  
16 statement; (i) researched and drafted numerous motions *in limine*; and (j) drafted an initial joint  
17 pretrial statement and statement of undisputed facts. At all stages of the Action, Lead Counsel  
18 exhibited diligence, hard work, and skill.

19         Lead Counsel's request for a fee award that is consistent with the Ninth Circuit's 25% fee  
20 benchmark in common-fund litigation is warranted here because of the excellent recovery obtained  
21 for the Class in light of the risks that Lead Counsel faced in the Action. *See* Saham Decl., ¶¶58-63.  
22 A lodestar cross-check also confirms the reasonableness of the requested fee. The lodestar multiplier  
23 of approximately 2.5 of Lead Counsel's time falls well within the range of multipliers awarded in the  
24 Ninth Circuit. The fee request is also supported by Lead Plaintiff, a sophisticated institution, a fact  
25 that is afforded significant weight in the analysis. *See* §III.B.6, *infra*; Declaration of Robert O. Glaza  
26 ("Fund Decl."), ¶¶8-9. Likewise, Lead Counsel's litigation expenses and charges of \$1,965,687.14  
27 (plus interest accrued thereon) should be awarded in full, as they were reasonably and necessarily  
28 incurred in the prosecution of the Action. Class Counsel Decl., Ex. C. Finally, the Class

1 Representative should also be awarded its modest time and expenses as provided by the Private  
2 Securities Litigation Reform Act of 1995 (“PSLRA”), in connection with its representation of the  
3 Class and its significant contribution to the result. 15 U.S.C. §78u-4(a)(4).

4 An estimated 1,101,665 Postcard Notices and 375 Claim Packages were provided to potential  
5 Class Members in accordance with the Preliminary Approval Order. *See* Declaration of Ross D.  
6 Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date  
7 (“Murray Decl.”), ¶12, attached as Ex. B to the Saham Declaration. The Notice advised potential  
8 Class Members that Lead Counsel would apply for an award of attorneys’ fees in an amount not to  
9 exceed 25% of the Settlement Amount, payment of litigation expenses in an amount not to exceed  
10 \$2,000,000, and a PSLRA award to the Class Representative not to exceed \$15,000. *See* Murray  
11 Decl., Ex. B, Notice at ¶5. The deadline set by the Court to object to the requested attorneys’ fees  
12 and expenses has not yet passed, but, to date, no objections have been received. Saham Decl., ¶¶11,  
13 92-93.<sup>3</sup> Lead Counsel respectfully submits that the requested fee is fair and reasonable and that it  
14 should therefore be granted.

## 15 **II. PROCEDURAL AND FACTUAL BACKGROUND**

16 Lead Counsel has invested substantial time and resources in the prosecution of the Action,  
17 including investigating background facts, interviewing witnesses, drafting the Complaint, briefing  
18 dispositive motions, conducting discovery, reviewing documents, working with experts, preparing  
19 for, taking and defending fact and expert depositions, and preparing for trial, all in furtherance of,  
20 and resulting in, the Settlement now before this Court. Consistent with this District’s Procedural  
21 Guidance for Class Action Settlements (“Northern District Guidelines”), relevant history and facts  
22 are set out in Lead Plaintiff’s Final Approval Memorandum and the Saham Declaration and are not  
23 repeated here. *See* Northern District Guidelines, Final Approval, §2 (“If the plaintiffs choose to file  
24 two separate motions, they should not repeat the case history and background facts in both motions.  
25 The motion for attorneys’ fees should refer to the history and facts set out in the motion for final  
26 approval.”).

27 <sup>3</sup> The deadline for the filing of objections is July 27, 2023. Should any objections be received,  
28 Lead Counsel will address them in its reply papers, due on August 10, 2023.

1 **III. THE REQUESTED FEE IS FAIR AND REASONABLE**

2 **A. A Reasonable Percentage of the Fund Is the Appropriate Method for**  
 3 **Awarding Attorneys' Fees in Common Fund Cases**

4 The Supreme Court has long recognized that “a litigant or a lawyer who recovers a common  
 5 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s  
 6 fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).<sup>4</sup> Under the  
 7 common fund doctrine, “a private plaintiff, or his attorney, whose efforts create, discover, increase  
 8 or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of  
 9 his litigation, including attorneys’ fees.” *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir.  
 10 1977); accord *In re Nat’l Collegiate Athletic Ass’n Grant-in-Aid Cap Antitrust Litig.*, 768 F. App’x.  
 11 651, 653 (9th Cir. 2019). “The use of the percentage-of-the-fund method in common-fund cases is  
 12 the prevailing practice in the Ninth Circuit for awarding attorneys’ fees and permits the Court to  
 13 focus on a showing that a fund conferring benefits on a class was created through the efforts of  
 14 plaintiffs’ counsel.” *In re Capacitors Antitrust Litig.*, 2017 WL 9613950, at \*2 (N.D. Cal. June 27,  
 15 2017) (Donato, J.).

16 Although courts have discretion to employ either the percentage of recovery or lodestar  
 17 method (*In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)), the Ninth  
 18 Circuit has expressly and consistently approved the use of the percentage method in common fund  
 19 cases. See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002); see also *In re*  
 20 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (“use of the percentage  
 21 method in common fund cases appears to be dominant”); *In re Capacitors Antitrust Litig.*, 2017 WL  
 22 9613950, at \*2 (“The percentage-of-the-fund method is preferred when counsel’s efforts have  
 23 created a common fund for the benefit of the class.”); see also *In re Amkor Tech. Inc. Sec. Litig.*,  
 24 2009 WL 10708030, at \*1 (D. Ariz. Nov. 19, 2009) (stating percentage-of-recovery method most  
 25 appropriate to award attorneys’ fees in securities class action).

26 The PSLRA also contemplates that fees be awarded on a percentage basis, authorizing  
 27 attorneys’ fees and expenses to counsel that do not exceed “a reasonable percentage of the amount of

28 <sup>4</sup> Citations are omitted and emphasis is added throughout unless otherwise indicated.

1 any damages and prejudgment interest actually paid to the class.” 15 U.S.C. §78u-4(a)(6); *see also*  
 2 *In re Am.-Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at \*20 (C.D. Cal. July 28, 2014)  
 3 (“Congress plainly contemplated that percentage-of-recovery would be the primary measure of  
 4 attorneys’ fees awards in federal securities class actions.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d  
 5 294, 300 (3d Cir. 2005) (“[T]he percentage-of-recovery method was incorporated in the [PSLRA].”).

6 The rationale for compensating counsel on a percentage basis in common fund cases is  
 7 sound. “[C]ourts try to . . . [tie] together the interests of class members and class counsel” by  
 8 “tether[ing] the value of an attorneys’ fees award to the value of the class recovery . . . [t]he more  
 9 valuable the class recovery, the greater the fees award . . . [a]nd vice versa.” *In re HP Inkjet Printer*  
 10 *Litig.*, 716 F.3d 1173, 1178 (9th Cir. 2013).

11 Use of the percentage-of-recovery method is particularly appropriate in common fund cases  
 12 like this because “the benefit to the class is easily quantified.” *Bluetooth*, 654 F.3d at 942; *Baird v.*  
 13 *BlackRock Institutional Tr. Co.*, 2021 WL 5113030, at \*6-\*7 (N.D. Cal. Nov. 3, 2021) (applying  
 14 percentage of the fund method and lodestar crosscheck); *Vataj v. Johnson*, 2021 WL 5161927, at \*8  
 15 (N.D. Cal. Nov. 5, 2021) (same). Conversely, the Ninth Circuit has recognized that the lodestar  
 16 method creates the perverse incentive for counsel to “expend more hours than may be necessary on  
 17 litigating a case.” *Vizcaino*, 290 F.3d at 1050 n.5; *see also Bluetooth*, 654 F.3d at 942; *Lopez v.*  
 18 *Youngblood*, 2011 WL 10483569, at \*4 (E.D. Cal. Sept. 2, 2011) (“[I]n practice, the lodestar  
 19 method is difficult to apply [and] time consuming to administer.”) (quoting *Manual for Complex*  
 20 *Litigation* §14.121 (4th ed. 2004)).

21 **B. The Requested Fee Is Consistent with the Benchmark in the Ninth**  
 22 **Circuit and Warrants Approval**

23 Consistent with the Ninth Circuit’s “benchmark” in common fund cases, Lead Counsel seeks  
 24 a fee of 25% of the Settlement Fund. *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., &*  
 25 *Prods. Liab. Litig.*, 2017 WL 1047834, at \*1 (N.D. Cal. Mar. 17, 2017) (“*Volkswagen Fee Order*”).  
 26 *In re Capacitors Antitrust Litig.*, 2017 WL 9613950, at \*3 (“Courts in the Ninth Circuit applying the  
 27 ‘percentage of the fund’ approach use a twenty-five percent benchmark.”). Adjustments to the Ninth  
 28 Circuit benchmark may be made upon consideration of the following factors:

1 (1) the results achieved; (2) the risks of litigation; (3) whether there are benefits to  
 2 the class beyond the immediate generation of a cash fund; (4) whether the percentage  
 3 rate is above or below the market rate; (5) the contingent nature of the representation  
 and the opportunity cost of bringing the suit; (6) reactions from the class; and (7) a  
 lodestar cross-check.

4 *Volkswagen*, 2017 WL 1047834, at \*1 (citing *Vizcaino*, 290 F.3d at 1048-52).

5 Though the benchmark 25% is the starting point, in fact, “in most common fund cases, the  
 6 award exceeds that benchmark.” *Omnivision*, 559 F. Supp. 2d at 1047. Lead Counsel’s 25% fee  
 7 request is well within the range of (or indeed, below) percentage fees that courts in this Circuit have  
 8 awarded in other complex class actions. *See, e.g., In re Capacitors Antitrust Litig.*, 2023 WL  
 9 2396782, at \*1-\*2 (N.D. Cal. Mar. 6, 2023) (Donato, J.) (awarding 40% of \$165,000,000 partial  
 10 settlement, resulting in cumulative 31% award of total \$604,550,000 settlement); *In re Apple Inc.*  
 11 *Device Performance Litig.*, 2023 WL 2090981, at \*16 (N.D. Cal. Feb 17, 2023) (awarding 26% fee  
 12 in \$310 million settlement); *Andrews v. Plains All Am. Pipeline L.P.*, 2022 WL 4453864, at \*4 (C.D.  
 13 Cal. Sept. 20, 2022) (awarding 32% of \$230 million settlement); *In re Lidoderm Antitrust Litig.*,  
 14 2018 WL 4620695, at \*1-\*3 (N.D. Cal. Sept. 20, 2018) (awarding 33% of \$104.75 million  
 15 settlement); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at \*1 (N.D. Cal.  
 16 Aug. 3, 2016) (awarding 27.5% of \$576 million settlement); *In re Broadcom Corp. Sec. Litig.*, 2005  
 17 WL 8153006, at \*5 (C.D. Cal. Sept. 12, 2005) (awarding 25% of \$150 million settlement). As  
 18 discussed below, application of each of the enumerated factors confirms that the requested 25% fee  
 19 is fair and reasonable.

### 20 **1. Lead Counsel Achieved an Excellent Result for the Class**

21 Courts have consistently recognized that the result achieved is “the most critical factor” to  
 22 consider in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Hefler v. Wells*  
 23 *Fargo & Co.*, 2018 WL 6619983, at \*13 (N.D. Cal. Dec. 18, 2018), *aff’d sub nom. Hefler v. Pekoc*,  
 24 802 F. App’x 285 (9th Cir. 2020). In fact, clients care most about results and would willingly pay,  
 25 and are financially better off paying, a larger fee for a great result than a lower fee for a poor  
 26 outcome. *See In re Broiler Chicken Antitrust Litig.*, 2021 WL 5709250, at \*3 (N.D. Ill. Dec. 1,  
 27 2021) (“Clients generally want to incentivize their counsel to pursue every last settlement dollar.”).

1 Here, against substantial risks, Lead Counsel obtained an excellent recovery for the Class,  
 2 both in terms of overall amount (\$300,000,000) and as a percentage of the estimated recoverable  
 3 damages at trial (31%-47%). While “[a] 10% recovery of estimated damages is a favorable outcome  
 4 in light of the challenging nature of securities class action cases,” *Cheng Jiangchen v. Rentech, Inc.*,  
 5 2019 WL 5173771, at \*9 (C.D. Cal. Oct. 10, 2019), the Settlement goes well beyond that. Indeed,  
 6 this recovery is many times the median percentage recovery for cases settled with estimated damages  
 7 of between \$500 and \$999 million.<sup>5</sup> The outstanding result obtained for the Class here strongly  
 8 supports Lead Counsel’s fee request and merits an appropriate fee that encourages counsel to seek  
 9 excellent results.

## 10 2. The Litigation Was Uncertain and Highly Complex

11 The “complexity of the issues and the risks” undertaken are also important factors in  
 12 determining a fee award. *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995); *see also*  
 13 *Vizcaino*, 290 F.3d at 1048 (“Risk is a relevant circumstance.”). “[I]n general, securities actions are  
 14 highly complex and . . . securities class litigation is notably difficult and notoriously uncertain.”  
 15 *Hefler*, 2018 WL 6619983, at \*13; *Rentech, Inc.*, 2019 WL 5173771, at \*6 (“In general, securities  
 16 fraud class actions are complex cases that are time-consuming and difficult to prove.”). Indeed, “[t]o  
 17 be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and  
 18 smaller over the years by judicial decree and congressional action.” *Alaska Elec. Pension Fund v.*  
 19 *Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009). For these reasons, in securities class actions,  
 20 fee awards often exceed the 25% benchmark recognized in the Ninth Circuit. *Omnivision*, 559 F.  
 21 Supp. 2d at 1047.

22  
 23  
 24 <sup>5</sup> See Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2022 Review and*  
 25 *Analysis* (Cornerstone Research 2023) at 6, 14 (finding median settlements as a percentage of  
 26 estimated damages was 1.7% in 2022 for cases involving estimated damages of between \$500 and  
 27 \$999 million, and 5.9% for Rule 10b-5 cases settled after a ruling on a motion to dismiss but prior to  
 28 a ruling on a motion for summary judgment); Janeen McIntosh, Svetlana Starykh, and Edward  
 Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* at 17-18, Figs.  
 18 & 19 (NERA Jan. 24, 2023) (noting median ratio of settlements to investor losses was 1.8% in  
 2022 and 1.7% for settlements of actions with investor losses between \$600 and \$999 million),  
 attached as Exhibits C and D to the Saham Decl.



1           Lead Counsel assumed significant risk at every procedural step of the litigation. *See*  
2 *generally* Saham Decl. Twice Defendants sought outright dismissal of the Action. Plaintiffs  
3 prevailed on only two of 67 false statements at the motion to dismiss stage which set the stage for  
4 discovery and subsequent certification of the class, and Defendants urged the Court to dismiss the  
5 case at summary judgment, proffering novel defenses, and challenging Lead Plaintiff's expert's  
6 analysis, presenting contrary evidence (supported by expert declarations) to Lead Plaintiff's loss  
7 causation theory. Together with their motion for summary judgment, Defendants also moved to  
8 exclude or strike the testimony of all three of Lead Plaintiff's experts.

9           At trial, the case would have turned largely on expert testimony concerning highly technical  
10 economic issues, including loss causation and the credibility of fact witnesses – many of whom  
11 remained employed by Wells Fargo, retained relationships with one or more Defendants, were  
12 represented by Defendants' counsel, or in the case of Timothy Sloan, was a Defendant himself.  
13 Defendants needed only to defeat one element of Lead Plaintiff's claims to prevail, and there was a  
14 significant risk the jury would agree with Defendants' experts and find no liability, no damages, or  
15 award far less than Lead Plaintiff sought to recover. *See, e.g., Vinh Nguyen v. Radiant Pharms.*  
16 *Corp.*, 2014 WL 1802293, at \*2 (C.D. Cal. May 6, 2014) (noting, in securities class action, that  
17 “[p]roving and calculating damages required a complex analysis, requiring the jury to parse  
18 divergent positions of expert witnesses in a complex area of the law. The outcome of that analysis is  
19 inherently difficult to predict and risky”). Throughout the duration of the litigation, Defendants  
20 raised numerous challenges disputing the falsity of their alleged misstatements and vigorously  
21 disputed (and continue to dispute) their scienter. *See In re Immune Response Sec. Litig.*, 497 F.  
22 Supp. 2d 1166, 1172 (S.D. Cal. 2007) (“[T]he issue[] of scienter . . . [is] complex and difficult to  
23 establish at trial.”). And even if Lead Plaintiff survived summary judgment and obtained a favorable  
24 verdict at trial, it would *still* have faced the risk of partial or complete reversal in post-trial  
25 proceedings. *See, e.g., In re Apollo Grp., Inc. Sec. Litig.*, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008)  
26 (granting motion for a judgment as a matter of law, overturning \$277 million verdict in favor of  
27 plaintiffs based on insufficient evidence of loss causation). There existed a significant risk that  
28 class-wide recoverable damages would have been far less than \$300 million, including the risk of *no*

1 recovery at all. *Volkswagen Fee Order*, 2017 WL 1047834, at \*2 (“Class Counsel ‘recognize there  
2 are always uncertainties in litigation[.]’ It is possible that ‘a litigation Class would receive less or  
3 nothing at all, despite the compelling merit of its claims . . . .’”) (alteration in original). And any  
4 recovery absent the Settlement “‘would come years in the future and at far greater expense to the . . .  
5 Class.’” *Id.* The \$300 million Settlement, achieved in the face of these significant risks, amply  
6 supports the requested 25% fee award. *See, e.g., Amkor*, 2009 WL 10708030, at \*2 (approving fee  
7 award of 25% where class counsel had “borne all the ensuing risk – including the risk of affirmance  
8 on Plaintiffs’ appeal, surviving dispositive motions, obtaining class certification, proving liability,  
9 causation and damages, prevailing in a ‘battle of the experts,’ and litigating the Action through trial  
10 and possible appeals”).

### 11 **3. The Skill Required and Quality of Work**

12 The quality of Lead Counsel’s representation further supports the reasonableness of the  
13 requested fee. Lead Counsel successfully litigated the case through several potentially dispositive  
14 motions. Lead Counsel is a nationally recognized leader in securities class actions and complex  
15 litigation. *See Saham Decl.*, ¶57; *Class Counsel Decl.*, Ex. G. The firm has a track record of trying  
16 cases, or settling cases at a premium. Clients retain Lead Counsel to benefit from its experience and  
17 resources in order to obtain the largest possible recovery for the class in question. Here, Lead  
18 Counsel’s skill and experience brought about an exceptional result, further supporting the requested  
19 fee award.

20 The standing of opposing counsel should also be weighed because such standing reflects the  
21 challenge faced by Lead Counsel. *See, e.g., Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997).  
22 Defendants chose well-known and highly capable representation by a team of experienced attorneys  
23 from Sullivan & Cromwell LLP and Clarence Dyer & Cohen LLP, both well-regarded law firms.  
24 These firms spared no effort or expense on behalf of Defendants in their zealous defense. Lead  
25 Counsel’s ability to obtain a favorable result for the Class while litigating against these formidable  
26 defense firms and their well-financed clients further evidences the quality of Lead Counsel’s work  
27 and weighs in favor of awarding the requested fee.

1                   **4. The Contingent Nature of the Fee and the Financial Burden**  
2                   **Carried by Lead Counsel**

3                   “It is an established practice to reward attorneys who assume representation on a contingent  
4 basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all.”  
5 *Volkswagen Fee Order*, 2017 WL 1047834, at \*3. This “practice encourages the legal profession to  
6 assume such a risk and promotes competent representation for plaintiffs who could not otherwise  
7 hire an attorney.” *Id.* “This incentive is especially important in securities cases.” *Stanger v. China*  
8 *Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016).

9                   “The risk of no recovery in complex cases of this sort is not merely hypothetical.” *Savani v.*  
10 *URS Pro. Sols. LLC*, 2014 WL 172503, at \*5 (D.S.C. Jan. 15, 2014). There have been many class  
11 actions in which counsel for the plaintiffs took on the risk of pursuing claims on a contingency basis,  
12 expended thousands of hours and dollars, yet received no remuneration whatsoever despite their  
13 diligence and expertise. *Supra*, §III.B.2. For example, in *In re Oracle Corp. Sec. Litig.*, 2009 WL  
14 1709050 (N.D. Cal. June 19, 2009), *aff’d*, 627 F.3d 376 (9th Cir. 2010), a case that Robbins Geller  
15 prosecuted, the court granted summary judgment to defendants after eight years of litigation, during  
16 which plaintiff’s counsel incurred over \$7 million in out-of-pocket expenses and worked over  
17 100,000 hours, representing a lodestar of approximately \$40 million (in 2010 dollars). In another  
18 Ninth Circuit PSLRA case, after a lengthy trial involving securities claims against Tesla, the jury  
19 reached a verdict in defendants’ favor – despite the Court previously granting summary judgment on  
20 certain elements in the *plaintiff’s* favor, evincing the strength of the claims. *See In re Tesla, Inc.*  
21 *Sec. Litig.*, 2022 WL 1497559 (N.D. Cal. Apr. 1, 2022) and *Tesla*, No. 3:18-cv-04865-EMC, ECF  
22 671 (N.D. Cal. Feb. 3, 2023); *see also In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556  
23 (N.D. Cal. Nov. 27, 2007) (holding similarly).

24                   Here, Lead Counsel has received no compensation during the course of the Action and  
25 invested over 43,350 hours for a total lodestar of \$29,516,213 and incurred substantial expenses in  
26 prosecuting this case to successful resolution just weeks before trial. Additional (uncompensated)  
27 work in connection with the Settlement and claims administration already has been undertaken and  
28 will be required going forward. Any fee award has always been contingent on the result achieved

1 and on this Court’s discretion. Indeed, the only certainty was that there would be no fee without a  
 2 successful result. Lead Counsel committed significant resources of both time and money to  
 3 vigorously prosecute this Action, and successfully brought it to a highly favorable conclusion for the  
 4 Class’s benefit. *See generally* Saham Decl. The contingent nature of counsel’s representation thus  
 5 supports approval of the requested fee. *See Plains All Am.*, 2022 WL 4453864, at \*3 (in awarding  
 6 33% fee on \$165 million settlement in case “litigated . . . to the point of trial,” court found “the  
 7 substantial risks borne by Class Counsel in pursuing this class action for seven years with no  
 8 guarantee of recovering fees or litigation expenses also militates in favor of finding the requested fee  
 9 award reasonable”).

#### 10 **5. Awards Made in Similar Cases Support the Fee Request**

11 Lead Counsel’s fee request is also supported by awards made in similar cases. As discussed  
 12 in §III.B, the 25% benchmark fee request is within the range of fee percentages awarded in  
 13 comparable settlements. As further addressed in §III.B.7., the resulting multiplier of 2.5 on Lead  
 14 Counsel’s lodestar is also within the range of lodestar multipliers applied in cases of this nature.

#### 15 **6. The Class’s Reaction to Date Supports the Fee Request**

16 Courts within the Ninth Circuit also consider the reaction of the class when deciding whether  
 17 to award the requested fee. *See, e.g., Volkswagen Fee Order*, 2017 WL 1047834, at \*4 (considering  
 18 that “[o]nly four Class Members out of a class of approximately 475,000 objected to the proposed  
 19 fee award” to be “a strong, positive response from the class, supporting Class Counsel’s requested  
 20 fees”); *In re Wash. Mut., Inc. Sec. Litig.*, 2011 WL 8190466, at \*2 (W.D. Wash. Nov. 4, 2011)  
 21 (noting, in approving fee request, that “no substantive objections to the amount of fees and expenses  
 22 requested were filed”). While a certain number of objections are to be expected in a large class  
 23 action such as this, “the absence of a large number of objections to a proposed class action  
 24 settlement raises a strong presumption that the terms of a proposed class settlement action are  
 25 favorable to the class members.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,  
 26 529 (C.D. Cal. 2004); *Hefler*, 2018 WL 6619983, at \*15 (“As with the Settlement itself, the lack of  
 27 objections from institutional investors ‘who presumably had the means, the motive, and the  
 28 sophistication to raise objections’ [to the attorneys’ fee] weighs in favor of approval.”).

1 Class Members were informed in the Notice that Lead Counsel would move the Court for an  
 2 award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount and for payment  
 3 of litigation expenses not to exceed \$2,000,000. Class Members were also advised of their right to  
 4 object to the fee and expense request, and that such objections are to be filed with the Court no later  
 5 than July 27, 2023. While this deadline has not yet passed, to date, not a *single* objection has been  
 6 received. Should any objections be received, Lead Counsel will address them in its reply papers.  
 7 Finally, Lead Plaintiff has approved the percentage sought here. Fund Decl., ¶¶8-9. Lead Plaintiff's  
 8 approval supports granting the requested fee. See *Hatamian v. Advanced Micro Devices, Inc.*, 2018  
 9 WL 8950656, at \*2 (N.D. Cal. Mar. 2, 2018) (approving fee where request "reviewed and approved  
 10 as fair and reasonable by Class Representatives, sophisticated institutional investors").

11 **7. A Lodestar Crosscheck Confirms that the Requested Fee Is**  
 12 **Reasonable**

13 To assess the reasonableness of a fee awarded under the percentage-of-the-fund method,  
 14 courts may (but are not required to) cross check the proposed award against counsel's lodestar.  
 15 *Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 630 (9th Cir. 2020) (refusing to mandate "a  
 16 [cross-check] requirement"), *cert. denied sub nom. Threatt v. Farrel*, \_\_U.S.\_\_, 142 S. Ct. 71  
 17 (2021); *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at \*9 (C.D. Cal. Oct. 25, 2016) (noting that  
 18 "analysis of the lodestar is not required for an award of attorneys' fees in the Ninth Circuit"). When  
 19 the lodestar is used as a cross check, "the focus is not on the 'necessity and reasonableness of every  
 20 hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the  
 21 degree of time and effort expended by the attorneys." *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535  
 22 F. Supp. 2d 249, 270 (D.N.H. 2007); *accord Volkswagen Fee Order*, 2017 WL 1047834, at \*5 n.5  
 23 (overruling objection that "the information provided in support of Class Counsel's lodestar amount  
 24 as inadequate" because "it is well established that '[t]he lodestar cross-check calculation need entail  
 25 neither mathematical precision nor bean counting . . . [courts] may rely on summaries submitted by  
 26 the attorneys and need not review actual billing records") (alterations and ellipsis in original);  
 27 *Hefler*, 2018 WL 6619983, at \*14 (confirming that "trial courts need not, and indeed should not,

1 become green-eyeshade accountants” in context of lodestar cross check, and noting that “the Court  
2 seeks to ‘do rough justice, not to achieve auditing perfection’”).

3 “[C]ourts ‘calculate[] the fee award by multiplying the number of hours reasonably spent by  
4 a reasonable hourly rate and then enhancing that figure, if necessary, to account for the risks  
5 associated with the representation.’” *Rentech, Inc.*, 2019 WL 5173771, at \*10 (second alteration in  
6 original) (quoting *Paul, Johnson, Alston & Hunt v. Graultry*, 886 F.2d 268, 272 (9th Cir. 1989)). In  
7 this case, the lodestar method demonstrates the reasonableness of the requested fee. As detailed here  
8 and in the accompanying Class Counsel Decl., over 43,350 hours of attorney and paraprofessional  
9 time were expended prosecuting the Action for the benefit of the Class. The hours spent to obtain  
10 the results are more than reasonable. As detailed in the Saham Declaration, there is no question that  
11 the hours expended were necessary.

12 Lead Counsel’s hourly rates, too, are reasonable. In fact, Lead Counsel’s rates have recent  
13 judicial approval by Judge Gilliam. *See Fleming v. Impax Laby’s Inc.*, 2022 WL 2789496, at \*9  
14 (N.D. Cal. July 15, 2022) (approving hourly rates of \$760 to \$1,325 for partners, \$895 to \$1,150 for  
15 counsel, and \$175 to \$520 for associates, and finding Robbins Geller’s “billing rates in line with  
16 prevailing rates in this district for personnel of comparable experience, skill, and reputation”). Lead  
17 Counsel’s lodestar, derived by multiplying the hours spent on the Action by each attorney and  
18 litigation professional by their current hourly rates, is \$29,516,213.

19 The requested fee of 25% represents a multiplier of 2.5 on Lead Counsel’s lodestar, which is  
20 comfortably within the range of lodestar multipliers courts in this Circuit regularly approve. *See,*  
21 *e.g., In re Capacitors Antitrust Litig.*, 2017 WL 9613950, at \*6 (noting, “[i]n the Ninth Circuit, a  
22 lodestar multiplier of around 4 times has frequently been awarded in common fund cases”); *Hefler,*  
23 2018 WL 6619983, at \*14 (awarding fee representing a 3.22 multiplier); *In re Facebook Biometric*  
24 *Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021) (awarding fee in \$650 million common  
25 fund settlement representing 4.71 multiplier), *aff’d*, 2022 WL 822923 (9th Cir. Mar. 17, 2022); *In re*  
26 *N.C.A.A. Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at \*7-\*9 (N.D. Cal. Dec. 6,  
27 2017) (awarding fee representing a 3.66 multiplier), *aff’d*, 768 F. App’x 651 (9th Cir. 2019); *see*  
28 *generally Vizcaino*, 290 F.3d at 1050-52, 1051 n.6 (affirming 3.65 multiplier on appeal and finding

1 that multipliers ranged as high as 19.6, with the most common range from 1.0 to 4.0); *In re Verifone*  
 2 *Holdings, Inc. Sec. Litig.*, 2014 WL 12646027, at \*2 (N.D. Cal. Feb. 18, 2014) (noting “over 80% of  
 3 multipliers fall between 1.0 and 4.0” and awarding fee where multiplier was 4.3). As more fully  
 4 explained in the Saham Declaration, given the risk undertaken by Lead Counsel and the results  
 5 achieved for the Class, a multiplier of 2.5 is reasonable here. Each of the relevant factors supports  
 6 the award of attorneys’ fees of 25% of the Settlement Fund. Accordingly, this fee request is  
 7 reasonable and should be approved.

8 **IV. LEAD COUNSEL’S EXPENSES ARE REASONABLE AND SHOULD BE**  
 9 **APPROVED**

10 Lead Counsel further requests an award in the amount of \$1,965,687.14 from the common  
 11 fund for litigation expenses incurred in prosecuting and resolving the Action on behalf of the Class.<sup>6</sup>  
 12 *Vincent v. Reser*, 2013 WL 621865, at \*5 (N.D. Cal. Feb. 19, 2013) (“Attorneys who create a  
 13 common fund are entitled to the reimbursement of expenses they advanced for the benefit of the  
 14 class.”). The amount sought is less than the \$2 million amount published in the Notice, to which no  
 15 Class Member has objected to date. *See Murray Decl.*, Ex. B, Notice at ¶5. The expenses sought are  
 16 also of the type that are routinely charged to hourly paying clients and, therefore, are properly paid  
 17 out of the common fund. *Hefler*, 2018 WL 6619983, at \*16 (“An attorney is entitled to ‘recover as  
 18 part of the award of attorney’s fees those out-of-pocket expenses that would normally be charged to  
 19 a fee paying client.”); *Vincent*, 2013 WL 621865, at \*5 (granting award of costs and expenses for  
 20 “three experts and the mediator, photocopying and mailing expenses, travel expenses, and other  
 21 reasonable litigation related expenses”); *see also Redwen v. Sino Clean Energy, Inc.*, 2013 WL  
 22

23  
 24 <sup>6</sup> These include expenses associated with, among other things, experts and consultants, service of  
 25 process, online legal and factual research, travel, and mediation. A large component of Lead  
 26 Counsel’s expenses is for the costs of experts and consultants, all of whom were qualified and  
 27 necessary to litigate this Action. Courts in this Circuit regularly approve reimbursements for expert  
 28 fees. *See, e.g., Franco v. Ruiz Food Prods., Inc.*, 2012 WL 5941801, at \*22 (E.D. Cal. Nov. 27,  
 2012) (noting expert fees are among the “types of fees . . . routinely reimbursed”); *Ontiveros v.*  
*Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (granting expense reimbursement to class counsel  
 and noting “itemized costs relating to . . . expert fees” were “reasonable litigation expenses”).

1 12303367, at \*9-\*10 (C.D. Cal. July 9, 2013); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431,  
2 454 (E.D. Cal. 2013).

3 **V. CLASS REPRESENTATIVE’S REQUEST FOR AN AWARD PURSUANT**  
4 **TO 15 U.S.C. §78u-4(a)(4) IS REASONABLE**

5 Class Representative seeks an award of \$9,794.98 pursuant to 15 U.S.C. §78u-4(a)(4), in  
6 connection with its representation of the Class, as detailed in the Fund Decl. Under the PSLRA, a  
7 class representative may seek an award of reasonable costs and expenses directly relating to the  
8 representation of the class. *See* 15 U.S.C. §78u-4(a)(4); *see also* *Staton v. Boeing Co.*, 327 F.3d 938,  
9 977 (9th Cir. 2003) (holding that named plaintiffs are eligible for “reasonable” payments as part of a  
10 class action settlement). Factors to consider include, “the actions the plaintiff has taken to protect  
11 the interests of the class, the degree to which the class has benefitted from those actions, . . . the  
12 amount of time and effort the plaintiff expended in pursuing the litigation” among others. *Id.*  
13 (ellipse in original).

14 Consistent with the Northern District Guidelines, Class Representative has submitted a  
15 declaration herewith setting forth the time and effort it spent monitoring the Action and directing  
16 Lead Counsel, including discussing litigation strategy, collecting and reviewing materials for  
17 discovery, and discussing settlement negotiations and case filings with Lead Counsel. *See* Fund  
18 Decl., ¶¶4-6, 10. Class Representative was actively involved through every step of the Action, and  
19 accordingly, requests an award of \$9,794.98 pursuant to 15 U.S.C. §78u-4(a)(4), in connection with  
20 its representation of the Class. *Impax*, 2022 WL 2789496, at \*10 (approving awards for time spent  
21 working with counsel “reviewing documents, providing input into the case’s prosecution, and  
22 engaging in meetings, phone conferences, and correspondence with Lead Counsel”); *McPhail v.*  
23 *First Command Fin. Plan., Inc.*, 2009 WL 839841, at \*8 (S.D. Cal. Mar. 30, 2009) (noting  
24 “requested reimbursement is consistent with payments in similar securities cases”).

25 **VI. CONCLUSION**

26 Lead Counsel obtained an excellent result for the Class. Based on the foregoing, Class  
27 Representative and Lead Counsel respectfully request that the Court: (i) award Lead Counsel  
28 attorneys’ fees of 25% of the Settlement Amount and payment of \$1,965,687.14 in litigation



1 expenses, plus interest on both amounts at the same rate as earned by the Settlement Fund, and (ii)  
2 an award to Class Representative of \$9,794.98, as permitted by the PSLRA.

3 DATED: July 13, 2023

Respectfully submitted,

4 ROBBINS GELLER RUDMAN  
5 & DOWD LLP  
6 SPENCER A. BURKHOLZ  
7 JASON A. FORGE  
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 13, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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