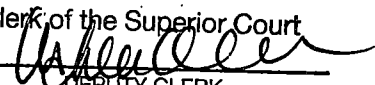


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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN MATEO

14 In re TINTRI, INC. SECURITIES)
15 LITIGATION)

) Lead Case No. 17-CIV-04312
) (Consolidated with Nos. 17-CIV-04321;
) 17-CIV-04618; and 20-CIV-00980)

16 _____)
17 This Document Relates To:)

) CLASS ACTION

18 ALL ACTIONS.)
19 _____)

) MEMORANDUM OF LAW IN SUPPORT OF
) PLAINTIFFS' COUNSEL'S MOTION FOR
) AN AWARD OF ATTORNEYS' FEES AND
) EXPENSES AND SERVICE AWARDS TO
) THE PLAINTIFFS

Date: August 22, 2024
Time: 9:00 a.m.
Judge: Honorable Susan L. Greenberg
Dept.: 3
Date Action Filed: 09/20/17

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1 **I. INTRODUCTION**

2 After seven years of hard-fought litigation, Plaintiffs' Counsel have achieved an exceptional
3 \$7,000,000 all-cash, non-reversionary Settlement for the benefit of the Class.¹ This is an outstanding
4 recovery – representing over 30% of the estimated recoverable damages. Based on their substantial
5 work and the significant risks they assumed and overcame during this case, Plaintiffs' Counsel
6 respectfully request that the Court award attorneys' fees of one-third of the Settlement Amount (or
7 \$2,333,333), as well as payment of litigation expenses advanced for the Class in the amount of
8 \$268,324.75, and interest on both amounts. Plaintiffs' Counsel also respectfully ask the Court to
9 approve service awards of \$15,000 for each of the Plaintiffs, Rustam Mustafin, Henrik Thørring, and
10 Laurence Clayton, for their efforts on behalf of the Class. To date, Plaintiffs' Counsel have received no
11 objections to the fee and expense request from Class Members.

12 The proposed Settlement is an exceptional result for the Class in view of Tintri's bankruptcy
13 filing during the litigation and in light of the risks, costs, and duration of continued litigation.² Absent
14 settlement, this litigation would likely have proceeded through summary judgment, trial, and potentially
15 multiple appeals. Plaintiffs and Plaintiffs' Counsel faced considerable obstacles in proving liability and
16 damages, yet nevertheless obtained a substantial monetary recovery for the Class. The requested fee is
17 fair and reasonable under relevant standards and is well within the range of fees awarded by California
18 Superior Courts and supported by California Supreme Court precedent. *See, e.g., Laffitte v. Robert Half*
19 *Int'l Inc.*, 1 Cal. 5th 480 (2016) (affirming a one-third percentage-based fee award to class counsel).

20 As detailed in the Joint Declaration, Plaintiffs' Counsel vigorously pursued the Class's claims
21 and staved off Defendants' relentless efforts to extinguish those claims. In the process, Plaintiffs'

22 _____
23 ¹ Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the
24 Stipulation of Settlement, dated July 17, 2023 ("Stipulation"), and the Joint Declaration of James I.
25 Jaconette and Yury A. Kolesnikov in Support of Plaintiffs' Unopposed Motion for Preliminary
26 Approval of Class Action Settlement, filed July 28, 2023 ("Joint Declaration").

27 ² Because many of the factors supporting final approval of settlement also buttress the requested
28 award of attorneys' fees and expenses, Plaintiffs' Counsel incorporate herein the concurrently-filed
Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement
and Approval of Plan of Allocation ("Final Approval Memorandum") submitted herewith, and the Joint
Declaration.

1 Counsel and their paraprofessionals spent over 6,200 hours prosecuting the Action, resulting in a
2 combined lodestar of \$4,516,763.00. Thus, the requested fee represents a *negative* multiplier of
3 approximately 0.52 times counsel’s lodestar.³ This multiplier is certainly reasonable. *Wershba v. Apple*
4 *Comput., Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even higher.”);
5 *see also In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007)
6 (“The resulting so-called negative multiplier suggests that the percentage-based amount is reasonable
7 and fair based on the time and effort expended by class counsel.”).⁴

8 Further, the Court should consider the Class’s reaction to Plaintiffs’ Counsel’s request for
9 attorneys’ fees and expenses. Pursuant to the Court’s Amended Order Preliminarily Approving
10 Settlement and Providing for Notice, filed January 17, 2024 (the “Notice Order”), 7,875 copies of the
11 Notice of Pendency and Proposed Settlement of Class Action (“Notice”), in the form approved by the
12 Court, have been mailed or emailed to potential Class Members and their nominees.⁵ In addition, the
13 Summary Notice of Proposed Settlement of Class Action was published once in the national edition of
14 *The Wall Street Journal* and transmitted once over *Business Wire*. *Id.*, ¶12. The Notice advised Class
15 Members that Plaintiffs’ Counsel will apply to the Court for an award of attorneys’ fees in an amount
16 not to exceed one-third of the Settlement Amount, plus expenses not to exceed \$350,000, and that the
17 three Plaintiffs could seek service awards of up to \$45,000 in the aggregate. In response, no objections

18 ³ Courts have recognized that “[m]ultipliers can range from 2 to 4 or even higher.” *Evans v. Zions*
19 *Bancorporation, N.A.*, 2022 WL 16815301, at *7 (E.D. Cal. Nov. 8, 2022); *accord Edwards v.*
20 *Chartwell Staffing Servs., Inc.*, 2018 WL 10455206, at *7 (C.D. Cal. Aug. 27, 2018) (same); *Willner v.*
21 *Manpower Inc.*, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (same); *Torres v. ABC Sec. Serv.,*
22 *Inc.*, 2008 WL 7025867 (Cal. Super. Ct., Alameda Cnty. Aug. 25, 2008) (same); *In re Vitamin Cases,*
2004 WL 5137597, at *14 (Cal. Super. Ct., S.F. Cnty. Apr. 12, 2004) (same); *Bertrand v. Pers.*
Protective Servs., Inc., 2011 WL 5901171 (Cal Super. Ct., Alameda Cnty. July 28, 2011) (same).
Emphasis is added and internal citations are omitted unless otherwise noted.

23 ⁴ While a lodestar cross-check fully supports the requested fee, a cross-check is not required. *Laffitte*,
24 1 Cal. 5th at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on
a percentage fee, as the court did here; they also retain the discretion to forego a lodestar cross-check
and use other means to evaluate the reasonableness of a requested percentage fee.”).

25 ⁵ *See Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for*
26 *Exclusion Received to Date (“Murray Declaration”),* ¶¶4-11, attached as Ex. 8 to the accompanying
27 *Declaration of James I. Jaconette in Support of Motions for: (1) Final Approval of Class Action*
Settlement and Approval of Plan of Allocation; and (2) an Award of Attorneys’ Fees and Expenses and
28 *Service Awards to the Plaintiffs (“Jaconette Declaration”).*

1 to the attorneys' fee and expense request or to the Plaintiffs' service awards request, and no exclusion
2 requests, were received, thus supporting the reasonableness of these requests.

3 For their diligence and efforts in obtaining this significant recovery on behalf of the Class,
4 Plaintiffs' Counsel respectfully request an award of attorneys' fees of one-third of the Settlement
5 Amount, plus interest. Plaintiffs' Counsel's request for the payment of expenses in the amount of
6 \$268,324.75, plus interest, is likewise reasonable in amount, and those expenses were necessarily
7 incurred to successfully prosecute this Action. Finally, the requested service awards are reasonable and
8 supported by declarations from each Plaintiff.⁶

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

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

13 The California Supreme Court has expressly affirmed "the historic power of equity to permit
14 . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his
15 costs, including his attorneys' fees, from the fund of property itself or directly from the other parties
16 enjoying the benefit." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). Thus, where, as here, litigation has
17 created a common fund for the benefit of a class, courts have the power to award plaintiffs' counsel
18 their reasonable attorneys' fees and expenses out of the fund created. The common fund doctrine rests
19 on two premises. The first one is the prevention of unjust enrichment — "that all who will participate
20 in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the
21 fund itself for attorney's fees." *Id.* at 35 n.5; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th
22 19, 27 (2000). The second is a "salvage" rationale — "encouragement of the attorney for the successful
23 litigant, who will be more willing to undertake and diligently prosecute proper litigation for the
24 protection or recovery of the fund if he is assured that he will be promptly and directly compensated

25 ⁶ See accompanying Declaration of Rustam Mustafin in Support of Plaintiffs' Motion for Final
26 Approval of Settlement and Award of Attorneys' Fees and Expenses ("Mustafin Declaration"),
27 Declaration of Henrik Thørring in Support of Plaintiffs' Motion for Final Approval of Settlement and
28 Award of Attorneys' Fees and Expenses ("Thørring Declaration"), and Declaration of Laurence Clayton
in Support of Plaintiffs' Motion for Final Approval of Settlement and Award of Attorneys' Fees and
Expenses ("Clayton Declaration"), attached as Exs. 1-3 to the Jaconette Declaration, respectively.

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

4 Moreover, though “[c]ourts recognize two methods for calculating attorney fees in civil class
5 actions: the lodestar/multiplier method and the percentage of recovery method” (*Laffitte*, 1 Cal. 5th at
6 502), most state and federal courts have “concluded [that] the percentage method of calculating a fee
7 award is either preferred or within the trial court’s discretion in a common fund case.” *Id.* at 493-94.
8 California courts also widely accept the percentage approach for awarding fees in common fund cases.

9 We join the overwhelming majority of federal and state courts in holding that when
10 class action litigation establishes a monetary fund for the benefit of the class members,
11 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
12 court may determine the amount of a reasonable fee by choosing an appropriate
13 percentage of the fund created.

14 *Id.* at 503. The California Supreme Court reached that conclusion because the percentage method
15 provides for “relative ease of calculation, alignment of incentives between counsel and the class, a
16 better approximation of market conditions in a contingency case, and the encouragement it provides
17 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.* The U.S.
18 Supreme Court has likewise consistently held that where a common fund has been created for the
19 benefit of a class owing to counsel’s efforts, the fee award should be determined on a percentage-of-the-
20 fund basis. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). As such, Plaintiffs’
21 Counsel respectfully submit that an award should be made on a percentage basis here.⁷

22 **B. The Requested Fee Is Reasonable**

23 In assessing the reasonableness of a fee request, California courts typically consider the
24 following factors: (1) the result class counsel obtained; (2) the time and labor required of the attorneys;
25 (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which
26 the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation,

27 ⁷ *See also Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (recognizing that under the common fund
28 doctrine, a reasonable fee may be based “on a percentage of the fund bestowed on the class”); *Vizcaino*
v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002) (approving the use of the percentage method in
common fund cases).

1 and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the
2 novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee
3 agreement. *See, e.g., Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810
4 n.21 (1996). “However, no rigid formula applies and each factor should be considered only ‘where
5 appropriate.’” *Nat. Gas Anti-Trust Cases I, II, III, IV*, 2006 WL 5377849, at *3 (Cal. Super. Ct., San
6 Diego Cnty. Dec. 11, 2006); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D.
7 Cal. 2008) (“The Ninth Circuit has approved a number of factors which may be relevant to the district
8 court’s determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases.”); *In re*
9 *Heritage Bond Litig.*, 2005 WL 1594403, at *18, *21 (C.D. Cal. June 10, 2005) (reaction of the class is
10 a factor to be considered).

11 The requested one-third fee here is consistent with the many cases approving such an award and
12 is warranted in light of the foregoing factors. Indeed, the Court of Appeals in *Laffitte v. Robert Half*
13 *Int’l Inc.* observed that “the trial court’s use of a percentage of 33-1/3 percent of the common fund is
14 consistent with, and in the range of, awards in other class action lawsuits.” 231 Cal. App. 4th 860, 878
15 (2014), *aff’d*, 1 Cal. 5th 480; *see also Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008)
16 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is
17 used, fee awards in class actions average around one-third of the recovery.”); *In re FireEye, Inc. Sec.*
18 *Litig.*, No. 2014-1-cv-266866, Order After Hearing on August 4, 2017 at 8 (Cal. Super. Ct., Santa Clara
19 Cnty. Aug. 7, 2017) (granting “one-third of the gross settlement” as “facially reasonable,” observing
20 that such an award “is not an uncommon contingency fee allocation”) (attached as Exhibit 1 to the
21 Appendix of Non-Westlaw Authorities in Support of Memorandum of Law in Support of Motion for an
22 Award of Attorneys’ Fees and Expenses and Service Awards to the Plaintiffs, submitted herewith).

23 **1. The Settlement Achieved Is an Outstanding Result for the Class**

24 The result achieved is an important, if not the most important, factor to be considered in making
25 a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor is the degree of
26 success obtained”); *Omnivision*, 559 F. Supp. 2d at 1046 (“The overall result and benefit to the class
27 from the litigation is the most critical factor in granting a fee award.”).

1 In this case, the \$7,000,000 Settlement Amount is an exceptional result. As detailed in the Final
2 Approval Memorandum (at 11), this represents a significant recovery for the Class and constitutes
3 approximately 32% of the estimated recoverable damages (without the excluded entities, who are not
4 part of the Settlement, and excluding pre-judgment interest). This is many times greater than the
5 median percentage recovery in securities class actions over the previous ten years. See Edward Flores
6 and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review* at
7 26, Fig. 22 (NERA Jan. 23, 2024)⁸ (the median recovery in 2023 in securities class action settlements
8 from January 2014 to December 2023 was 1.8% of estimated losses).

9 The significance of the Settlement is also demonstrated by the substantial obstacles that
10 Plaintiffs and their counsel overcame in order to achieve it – including defeating Defendants’ motion to
11 dismiss the action on the basis of *forum non conveniens* and motion to stay discovery under the Private
12 Securities Litigation Reform Act of 1995 (“PSLRA”). In addition, although the Court sustained the
13 venture capital defendants’ demurrer, the Court overruled the Tintri Defendants’ and the Underwriter
14 Defendants’ demurrers. Joint Declaration, ¶¶19-23. Moreover, in 2018, a year after the case was filed,
15 Tintri filed for bankruptcy. Plaintiffs’ Counsel were forced to retain bankruptcy counsel and navigate
16 the substantial risks posed by the bankruptcy proceedings. The extremely high percentage of damages
17 recovered by Plaintiffs’ Counsel here is all the more remarkable in light of such circumstances. Other
18 hurdles included the complexity of the claims and the considerable risks and costs that further litigation
19 would have entailed. *Id.*, ¶¶30-39. Given these risks, the \$7,000,000 recovery is an exceptional result.

20 2. Achieving the Settlement Required Significant Time and Labor

21 Over the course of almost seven years, Plaintiffs’ Counsel aggressively and diligently
22 prosecuted this Action, in order to secure the proposed Settlement for the Class. Achieving this result
23 entailed a significant amount of work, including:

24 (a) conducting an extensive factual investigation of the events underlying the June
25 30, 2017 IPO, including reviewing and analyzing the representations made by the Company in the

26
27 ⁸ Available at www.nera.com/content/dam/nera/publications/2024/PUB_2023_Full-Year_Sec_Trends_0123.pdf.

1 Registration Statement as well as industry reports, securities analyst reports, comprehensive news
2 reports, press releases, and other media files concerning the IPO;

3 (b) reviewing, analyzing, researching, and filing individual complaints and the
4 consolidated complaint;

5 (c) successfully briefing motions to remand to federal court;

6 (d) briefing, arguing, and eventually prevailing on Defendants' motion to dismiss on
7 the basis of *forum non conveniens*;

8 (e) briefing, arguing, and prevailing in response to the Tintri Defendants' and the
9 Underwriter Defendants' demurrers to Plaintiffs' §§11 and 15 claims;

10 (f) retaining Delaware bankruptcy counsel to advise and assist Plaintiffs' Counsel
11 with respect to protecting and pursuing the Class's claims in light of Tintri's July 9, 2018 filing of
12 Chapter 11 bankruptcy proceedings in Delaware;

13 (g) drafting and propounding requests for production of documents to all Defendants;

14 (h) meeting and conferring extensively with Defendants to resolve disputes about the
15 scope of Defendants' search for and production of responsive documents;

16 (i) obtaining, searching, reviewing and analyzing over 112,000 pages of documents
17 produced by Defendants;

18 (j) responding to discovery requests issued to Plaintiffs and reviewing and
19 producing documents on behalf of Plaintiffs;

20 (k) preparing Plaintiffs for, and defending Plaintiffs at, their depositions;

21 (l) fully briefing Plaintiffs' motion for class certification;

22 (m) preparing for and participating in two formal day-long mediation sessions, one
23 held on August 6, 2019 with Michelle Yoshida, Esq., and the other held on October 11, 2022 with the
24 Honorable Layn R. Phillips (U.S.D.J., ret.) of Phillips ADR, in addition to consulting with a damages
25 expert, submitting two detailed mediation statements (and exhibits thereto), and participating in follow-
26 up negotiations with the mediators culminating in the Settlement; and

27

28

1 (n) preparing the Settlement and preliminary approval papers, the final approval
2 papers, and overseeing the notice and claims process. See Joint Declaration, ¶125.

3 **3. A Lodestar Crosscheck Confirms the Reasonableness of the Fee**
4 **Request**

5 While Plaintiffs' Counsel make this fee request based on a percentage-of-recovery methodology,
6 using the lodestar approach as a cross-check confirms the reasonableness of the requested fee. *Laffitte*,
7 1 Cal. 5th at 504. In total, Plaintiffs' Counsel and their paraprofessionals expended 6,249.65 hours
8 prosecuting the Action, as described above, which resulted in a lodestar of \$4,516,763.00.⁹ The
9 requested one-third fee, or \$2,333,333, represents a *negative* (or fractional) multiplier of approximately
10 0.52. There is no question that this multiplier is reasonable, as, by comparison, "numerous cases have
11 applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees." *Nat. Gas*, 2006 WL
12 5377849, at *4; see also *Wershba*, 91 Cal. App. 4th at 255 ("Multipliers can range from 2 to 4 or even
13 higher."); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar
14 enhancement of "two, three, four or otherwise"); see also *Ross v. Trex Co.*, 2013 WL 12174133, at *1
15 (N.D. Cal. Dec. 16, 2013) ("Plaintiffs sought no extraordinary award of fees; to the contrary, they
16 sought less than their lodestar, which further supports the reasonableness of the fees requested and
17 awarded."); *In re Myford Touch Consumer Litig.*, 2019 WL 6877477, at *1 (N.D. Cal. Dec. 17, 2019)
18 ("[T]he negative multiplier . . . suggests the request is reasonable."). In fact, in *Lealao*, the court opined
19 that a multiplier in excess of 3.5 was reasonable. 82 Cal. App. 4th at 52.

20
21 ⁹ The time and expenses devoted to the Action are set forth in the accompanying (i) Declaration
22 of James I. Jaconette Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of
23 Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Declaration"); (ii)
24 Declaration of Francis A. Bottini, Jr. Filed on Behalf of Bottini & Bottini, Inc. in Support of
25 Application for Award of Attorneys' Fees and Expenses ("Bottini & Bottini Declaration"); (iii)
26 Declaration of Kara M. Wolke Filed on Behalf of Glancy Prongay & Murray LLP in Support of
27 Application for Award of Attorneys' Fees and Expenses ("Glancy Prongay Declaration"); and (iv)
28 Declaration of Christina D. Saler Filed on Behalf of Cohen Milstein Sellers & Toll PLLC in Support of
Application for Award of Attorneys' Fees and Expenses ("Cohen Milstein Declaration"), collectively,
with the Robbins Geller Declaration, the Bottini & Bottini Declaration, the Glancy Prongay Declaration
and the Cohen Milstein Declaration, "Plaintiffs' Counsel Declarations", attached as Exs. 4-7 to the
Jaconette Declaration.

1 **4. The Contingent Nature of the Case, Risk of Loss, and the Delay in**
2 **Payment to Plaintiffs' Counsel Favor the Requested Award**

3 Plaintiffs' Counsel prosecuted this Action on a *fully* contingent basis, assuming the significant
4 risk that the Action would not result in any recovery, that they would not receive any compensation for
5 the thousands of hours of time they spent litigating, and that they would not be reimbursed for the
6 hundreds of thousands of dollars in expenses incurred during the course of this complex action. To
7 date, Plaintiffs' Counsel have not been compensated for any time or expense since the Action's
8 inception, *in September 2017*. Courts regularly hold that the risk of receiving little or no compensation
9 is a prominent factor in assessing an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*,
10 209 F.3d 43, 54 (2d Cir. 2000). This is consistent with the legal marketplace, where an attorney who
11 takes a case on contingency expects a higher fee than an attorney who is paid as the case progresses,
12 win or lose. *See Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985).
13 The Court of Appeals summarized these points in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

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

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

25 *Id.* at 288.

26 As set forth in the Final Approval Memorandum (§IV), Plaintiffs' Counsel and Plaintiffs faced
27 significant risks regarding their ability to establish both liability and damages. While Plaintiffs'
28 Counsel and Plaintiffs believe they could have proven their claims, success at summary judgment and
trial (and on appeal) was far from certain. For example, with respect to liability, Defendants have
maintained that they did not make any untrue or misleading statements, that the alleged misstatements
were immaterial or otherwise inactionable, and that the allegedly omitted information was in fact
contained in the Registration Statement or was otherwise known in the market.

1 In light of these risks, as well as Defendants' efforts to stay and dismiss this case, Plaintiffs'
2 Counsel committed the time and resources necessary to successfully take the case through summary
3 judgment, trial, and likely appeal. Indeed, more than 6,200 hours of attorney and paraprofessional time
4 and more than \$268,300 in expenses have been incurred.

5 Ultimately, while Plaintiffs and their counsel believe that the Class would have prevailed at
6 summary judgment, trial, and appeal, the complexity of this case made the outcome at trial uncertain.
7 As the court in *In re Xcel Energy, Inc. Sec., Derivative "ERISA" Litig.* recognized, "[p]recedent is
8 replete with situations in which attorneys representing a class have devoted substantial resources in
9 terms of time and advanced costs yet have lost the case despite their advocacy." 364 F. Supp. 2d 980,
10 994 (D. Minn. 2005); *see also Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *13 (N.D. Cal. Dec.
11 18, 2018) (quoting *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 416
12 (S.D.N.Y. 2018), *aff'd*, 822 F. App'x 40 (2d Cir. 2020)) ("Courts have recognized that, in general,
13 securities actions are highly complex and that securities class litigation is notably difficult and
14 notoriously uncertain."), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020); *Hubbard v.*
15 *BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming ruling that granted defendants'
16 post-trial motion for summary judgment as a matter of law based on failure to prove loss causation,
17 thereby overturning a jury verdict in plaintiff's favor). Accordingly, the contingent nature of Plaintiffs'
18 Counsel's representation and the sizable financial risks borne by Plaintiffs' Counsel support the
19 percentage fee requested.

20 **5. The Requested Award Is in Line with Awards Made in Similar**
21 **Cases**

22 As noted above (*supra*, §II.B), California courts have regularly awarded one-third of the
23 common fund in class actions and securities cases similar to this one. Examples include: *In re Micro*
24 *Focus Int'l PLC Sec. Litig.*, No. 18CIV01549, Judgment and Order Granting Final Approval,
25 Approving Plan of Allocation, and Awarding Attorneys' Fees, Reimbursement of Expenses, and
26 Approving Service Awards (Cal. Super. Ct., San Mateo Cnty. July 27, 2023); *In re Eventbrite Sec.*
27 *Litig.*, No. 19CIV02798, Order Approving Award of Attorneys' Fees and Reimbursement of Expenses
28 to Class Counsel and Service Awards to Plaintiffs (Cal. Super. Ct., San Mateo Cnty. June 10, 2022);

1 *Plymouth Cnty. Contributory Ret. Sys. v. Adamas Pharms., Inc.*, No. RG19018715, Order Awarding
2 Attorneys' Fees, Payment of Litigation Expenses, and Reimbursement of Plaintiff's Time and Expenses
3 at 1 (Cal. Super. Ct., Alameda Cnty. Apr. 13, 2021); *In re Menlo Therapeutics Inc. Sec. Litig.*, No.
4 18CIV06049, Judgment and Order Granting Final Approval of Class Action Settlement at 6 (Cal.
5 Super. Ct., San Mateo Cnty. Aug. 14, 2020); *In re ProNAi S'holder Litig.*, No. 16-civ-02473, Judgment
6 and Order Granting Final Approval of Class Action Settlement at 5 (Cal. Super. Ct., San Mateo Cnty.
7 May 24, 2019); *In re Sunrun, Inc. S'holder Litig.*, No. CIV538215, Judgment and Order Granting Final
8 Approval of Class Action Settlement at 6 (Cal. Super. Ct., San Mateo Cnty. Dec. 14, 2018); *Brooks v.*
9 *Capitol Valley Elec. Inc.*, No. CIV536903, Judgment and Order Granting Final Approval to Class
10 Action Settlement and Awarding Attorney Fees, Litigation Costs, Service Award and Case
11 Administrators Fees at 2 (Cal. Super. Ct., San Mateo Cnty. Mar. 7, 2017); *Paton v. Advanced Micro*
12 *Devices, Inc.*, No. 1-07-cv-084838, Final Approval Order and Judgment at 5, 7 (Cal. Super. Ct., Santa
13 Clara Cnty. Aug. 22, 2014) (noting fee award of one-third "was not an uncommon contingency fee
14 percentage").¹⁰

15 The requested fee award is, therefore, not just merited by the circumstances of this proposed
16 Settlement, but it is also squarely in line with awards in similar cases.

17 **6. The Experience, Reputation, Ability, and Quality of Counsel, and**
18 **the Skill They Displayed in the Action, Favor the Requested**
19 **Award**

19 The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case
20 also support the requested fee award. Plaintiffs' Counsel, Robbins Geller Rudman & Dowd LLP,
21 Bottini & Bottini, Inc., Glancy Prongay & Murray LLP, and Cohen Milstein Sellers & Toll PLLC, have
22 earned national reputations for excellence through many years of litigating complex civil actions,
23 particularly securities class actions. As set forth in their firm résumés, Plaintiffs' Counsel's experience,
24 resources, and high-quality attorneys have allowed them to obtain significant recoveries throughout the
25 country on behalf of their clients. See Robbins Geller Declaration, Ex. D; Bottini & Bottini
26 Declaration, Ex. E; Glancy Prongay Declaration, Ex. E; Cohen Milstein Declaration, Ex. E.

27 ¹⁰ Attached as Exhibits 2-9 to the Appendix of Non-Westlaw Authorities.

1 The quality of opposing counsel is also important in evaluating the quality of the work done by
2 Plaintiffs' Counsel. *See, e.g., In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337
3 (C.D. Cal. 1977). Here, Plaintiffs' Counsel were opposed by experienced and skilled counsel from
4 Wilson Sonsini Goodrich & Rosati, P.C., Bergeson, LLP, and O'Melveny & Myers LLP – large law
5 firms with reputations for vigorous advocacy on behalf of their clients. In the face of such opposition,
6 Plaintiffs' Counsel were able to develop a case that was sufficiently strong to persuade Defendants to
7 settle the case for an amount that Plaintiffs' Counsel believe is highly favorable to the Class.
8 Accordingly, this factor weighs strongly in favor of the requested fee. *See In re Adelphia Commc'ns*
9 *Corp. Sec. & Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) (“The fact that the
10 settlements were obtained from defendants represented by ‘formidable opposing counsel from some of
11 the best defense firms in the country’ also evidences the high quality of lead counsels’ work.”), *aff'd*,
12 272 F. App'x 9 (2d Cir. 2008).

13 7. The Reaction of the Class Favors the Fee Request

14 Although Class Members have until July 25, 2024 to object to the Settlement, Plan of Allocation
15 or fee and expense request, and August 1, 2024 to exclude themselves from the Class, Plaintiffs'
16 Counsel are unaware of any objections whatsoever, and no requests for exclusion from the Class have
17 been received.¹¹ “The absence of objections or disapproval by class members to [Plaintiffs' Counsel's]
18 fee request further supports finding the fee request reasonable.” *Heritage*, 2005 WL 1594403, at *21.

19 8. Continuing Obligations of Plaintiffs' Counsel

20 Plaintiffs' Counsel's work does not end with the approval of the Settlement. Should the Court
21 approve the Settlement, Plaintiffs' Counsel will continue to work on behalf of the Class, including
22 supervising the claims process, answering Class Members' calls and, if necessary, litigating appeals.
23 That work is not accounted for in Plaintiffs' Counsel's current lodestar, but merits consideration when
24 evaluating Plaintiffs' Counsel's fee and expense request given that no additional compensation will be
25 sought for this work. *See Leach v. NBC Universal Media, LLC*, 2017 WL 10435878, at *49 (S.D.N.Y.

26
27 ¹¹ Plaintiffs' Counsel will respond to any objections in the reply papers and will produce a full tally of
objections and exclusions received.

1 Aug. 24, 2017) (“The fact that [Plaintiff’s] Counsel’s fee award will not only compensate them for time
2 and effort already expended, but for [the] time that they will be required to spend administering the
3 settlement going forward, also supports their fee request.”).

4 In sum, each of the foregoing factors strongly militate in favor of the reasonableness of
5 Plaintiffs’ Counsel’s fee request, and of granting that request.

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

7 As with fees, attorneys who create a common fund for the benefit of a class are entitled to
8 payment from the fund of reasonable litigation expenses. *See Vincent v. Reser*, 2013 WL 621865, at *5
9 (N.D. Cal. Feb. 19, 2013) (“Attorneys who create a common fund are entitled to the reimbursement of
10 expenses they advanced for the benefit of the class.”). The reason for this rule, once again, is that the
11 beneficiaries of the common fund should share in the cost of its creation. *See Rider v. Cnty. of San*
12 *Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). In determining whether particular costs are
13 compensable, courts consider whether they are of the type typically billed by attorneys to paying clients
14 in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

15 Here, there is no question that the expenses at issue fall into that category, and are examples of
16 the types of reasonable expenditures necessary to prosecute an action. As itemized in Plaintiffs’
17 Counsel’s Declarations, these expenses include: (1) Filing, Witness and Other Fees; (2) Transportation,
18 Hotels and Meals; (3) Telephone; (4) Postage; (5) Messenger, Overnight Delivery; (6) Court Hearing
19 Transcripts and Deposition Reporting, Transcripts and Videography; (7) Photocopies; and (8) Online
20 Legal and Financial Research. The total amount of these expenses is \$268,324.75, accrued over almost
21 seven years. Given that Plaintiffs’ Counsel have borne these necessary costs, and the risk of non-
22 payment, payment of these costs is fair and reasonable. Indeed, courts routinely approve similar
23 expense award requests. *See, e.g., In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78
24 (S.D. Cal. 2007) (approving counsel’s request for reimbursement “for 1) meals, hotels, and
25 transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and overnight
26 delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and investigators; and
27 9) mediation fees”).

1 **IV. PLAINTIFFS' AWARD REQUESTS ARE REASONABLE**

2 Plaintiffs' Counsel also seek service awards for Plaintiffs Rustam Mustafin, Henrik Thørring,
3 and Laurence Clayton of \$15,000 each, for their time and service in representing the Class. Such
4 awards are reasonable and merited in this case. The service and time devoted to the litigation by these
5 Plaintiffs are set forth in their concurrently filed declarations. *See* Mustafin Declaration; Thørring
6 Declaration; and Clayton Declaration. Courts routinely grant awards to those who, through their efforts
7 and commitment, pursue a case to a successful conclusion for the benefit of a class.

8 Here, Plaintiffs represented other investors without any promise of a successful resolution or
9 recovery of their losses. Among other things, they: (i) produced their trading records to their attorneys;
10 (ii) regularly communicated with counsel regarding the posture and progress of the case; (iii) reviewed
11 Court orders and significant pleadings and discussed them with their attorneys; (iv) provided documents
12 and written responses and objections in response to Defendants' requests for the production of
13 documents; (v) responded to interrogatories; (vi) prepared for deposition and were deposed; (vii) moved
14 for class certification and to be appointed as class representatives; (viii) consulted with counsel
15 regarding the mediations and Settlement Amount; and (ix) evaluated and approved the proposed
16 Settlement. *See id.* But for their "commitment to pursuing these claims, the successful recovery for the
17 Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL
18 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

19 Approval of these awards is warranted as a matter of public policy, and the amounts requested
20 are appropriate under applicable precedents. *Sunrun*, Judgment and Order Granting Final Approval of
21 Class Action Settlement at 6 (awarding two plaintiffs \$16,000 and \$15,000, respectively); *see also*
22 *Kirschenbaum v. Elec. Arts, Inc.*, 2006 WL 2613160 (Cal Super. Ct., San Mateo Cnty. Jan. 27, 2006)
23 (awarding one plaintiff \$30,000 and three other plaintiffs \$15,000 each).

24 **V. CONCLUSION**

25 For the reasons set forth herein and in the Final Approval Memorandum and all documents filed
26 in support of preliminary approval, Plaintiffs' Counsel respectfully submit that the request for an award
27 of attorneys' fees and expenses is fair, reasonable, and appropriate under all the circumstances of this
28

1 case and it should therefore be granted. Additionally, the service awards requested by Plaintiffs are
2 reasonable in amount and supported by declarations, and they should be approved in their entirety.

3 DATED: July 11, 2024

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on July 11, 2024, declarant caused to be served the foregoing document by email delivery to the email addresses listed below:

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17 I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11,
18 2024, at San Diego, California.

19 

20 Teresa Holindrake