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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re MENLO THERAPEUTICS INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Lead Case No. 18CIV06049 CLASS ACTION Assigned for All Purposes to Dept. 16 LEAD COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES Date: August 14, 2020 Time: 2:00 p.m. Judge: Honorable Richard H. DuBois Dept: 16 Date Action Filed: 11/08/18

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I. INTRODUCTION

Before this Court for approval is an all-cash settlement of $9,500,000 for the benefit of the Class.[1] This is a very good recovery obtained in the face of substantial risk and is the product of hard-fought litigation and arm's-length settlement negotiations. Lead Counsel now respectfully moves this Court for an award of attorneys' fees in the amount of one-third of the Settlement Amount (or $3,166,666), as well as payment of the litigation expenses incurred in prosecuting the Action in the amount of $52,421.52, and interest accrued on both amounts. Finally, Plaintiffs Pavel Silvestrov and Hugh McKay seek awards of $12,000, in the aggregate, in connection with their representation of the Class. To date, there have been no objections lodged to any of these requests.

As explained below, and in Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), submitted herewith,[2] as well as in the Jaconette Declaration, and in the entire record, this Settlement represents a solid recovery for the Class in view of the risks, costs, and duration of continued litigation. Absent settlement, this litigation would likely have continued for years, through the completion of fact discovery, expert discovery, summary judgment, trial, and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Class. The requested fee is fair and reasonable under the applicable standards and is well within the range of fees awarded by California Superior Courts in similar Securities Act cases and in other class actions. For instance, on August 11, 2016, the California Supreme Court affirmed a one-third percentage-based fee award to class counsel in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480 (2016); and on December 14, 2018, the Honorable Marie S. Weiner granted a one-third percentage-based fee award to class counsel. *See In re Sunrun, Inc. S'holder Litig.*, No. CIV538215, slip op. at 6 (San Mateo Super. Ct. Dec. 14, 2018); *see also Beaver Cty. Empls. Ret. Fund v. Cyan*, No. CGC-

[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement, dated March 26, 2020 ("Stipulation" or "Settlement"), or in the previously-filed Declaration of James I. Jaconette in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, dated March 27, 2020 ("Jaconette Decl.").

[2] Because many of the factors supporting final approval of the Settlement also buttress the requested award of attorneys' fees and expenses, Lead Counsel incorporates herein the concurrently filed Settlement Memorandum.

14-538355, slip op. at 3 (San Francisco Super. Ct. Aug. 8, 2019) (one-third fee award on $15 million recovery); *In re Avalanche Biotechnologies, Inc. S'holder Litig.*, No. CIV536488, slip op. at 7 (San Mateo Super. Ct. Jan. 19, 2018) (33% fee award on $13 million recovery).[3]

As detailed in the Jaconette Declaration, Plaintiffs' Counsel vigorously pursued the Class' claims and fought back against each of Defendants' relentless efforts to keep this litigation from reaching a successful conclusion. As a result, Plaintiffs' Counsel and their paraprofessionals spent approximately 2,100 hours prosecuting the Action, resulting in a combined lodestar of $1,421,837.00. Thus, the requested fee represents a slight multiplier of approximately 2.2 times counsel's lodestar. Such a multiplier is at the lower end of the range found acceptable by courts in California and is eminently reasonable. Courts have recognized that "[m]ultipliers can range from 2 to 4 or even higher." *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 255 (2001), *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018).[4]

Further, the Court should consider the Class' reaction to the attorneys' fees and expenses sought. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice (the "Notice Order"), over 10,900 copies of the Notice of Proposed Settlement of Class Action ("Notice"), in the form approved by the Court, have been mailed to potential Class Members and their nominees.[5] In addition, the Summary Notice was published once in *The Wall Street Journal* and transmitted once over *Business Wire*. Murray Decl., ¶12. The Notice advises Class Members that Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed one-third of the Settlement Amount, plus expenses not to exceed $100,000. While the July 24, 2020 deadline for objecting to the requested attorneys' fees and expenses has not passed, to date, not a single objection to Plaintiffs' Counsel's fee and expense request has been received. In addition, no objections have been received to awards to Plaintiffs

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[3] All unreported authorities cited herein are attached to the Declaration of Theodore J. Pintar in Support of Motion for an Award of Attorneys' Fees and Expenses, submitted herewith.

[4] While a lodestar cross-check fully supports the requested fee, a lodestar cross-check is not required. *Laffitte*, 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.").

[5] *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶11, submitted herewith.

of up to $12,000 in the aggregate in connection with their representation of the Class, which amount was also set forth in the Notice.

For their diligence and unwavering efforts in obtaining this outstanding recovery on behalf of the Class, Plaintiffs' Counsel respectfully request an award of attorneys' fees of one-third of the Settlement Amount and payment of expenses in the amount of $52,421.52, plus any accrued interest on both amounts. Plaintiffs' Counsel's expenses are likewise reasonable in amount, and were necessarily incurred in the successful prosecution of the Action. Finally, the payments to Plaintiffs are reasonable and supported by declarations from each Plaintiff.[6]

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

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

Where, as here, litigation has created a common fund for the benefit of the named plaintiffs as well as others, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and expenses out of the fund created. The California Supreme Court has expressly affirmed "'the historic power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit.'" *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977).[7]

The common fund doctrine rests on two premises. The first one is the prevention of unjust enrichment – "'that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees.'" *Id.* at 35 n.5; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 27 (2000). The second is a "salvage" rationale – "encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be promptly and directly compensated should his efforts be successful." *In re Estate of Stauffer*, 53 Cal.

[6] *See* accompanying Declarations of Pavel Silvestrov and Hugh McKay.

[7] Unless otherwise noted, citations are omitted and emphasis is added throughout.

2d 124, 132 (1959). The salvage purpose requires "'a flavor of generosity . . . in order that an appetite for efforts may be stimulated.'" *Melendres v. Los Angeles*, 45 Cal. App. 3d 267, 273 (1975).

While "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method," *Wershba*, 91 Cal. App. 4th at 254, the United States Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Internal Imp. Fund Trs. v. Greenough*, 105 U.S. 527, 532 (1881); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). California courts have long accepted the percentage approach for awarding fees in common fund cases as well.

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

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

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

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

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

B. The Requested Fee Is Reasonable in This Case

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

In determining the reasonableness of a fee request, California courts typically consider the following "basic factors": (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the

[8] Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly shifted to the percentage method in awarding fees in common fund representative actions. *See, e.g.*, *In re Apollo Grp. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *6 (D. Ariz. Apr. 20, 2012) ("'Because the benefit to the class is easily quantified in common-fund settlements,' courts can award attorneys a percentage of the common fund 'in lieu of the often more time-consuming task of calculating the lodestar.'") (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

clients to the fee agreement. *See, e.g.*, *Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996).

"However, no rigid formula applies and each factor should be considered only 'where appropriate.'" *Nat. Gas Anti-Trust Cases*, No. 4221, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) ("The Ninth Circuit has approved a number of factors which may be relevant to the district court's determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases."); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (reaction of the class is a factor to be considered). An analysis of the relevant factors supports the requested fee award.

1. The Result Achieved

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

Here, the $9,500,000 Settlement Amount recovered for the Class solely through the efforts of counsel for Plaintiffs is significant given the risks of proving liability, causation, and damages, and the similarly vigorous efforts of Defendants. It provides an immediate and certain recovery for Class Members without the risk, expense, and delay of the completion of discovery, summary judgment, trial, and appeals. Moreover, it represents approximately 13% of recoverable damages – well above the median recovery in similar §11 actions between 2010 and 2019. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2019 Review and Analysis* at 7, Fig. 6 (Cornerstone Research 2020) (analyzing 77 class action settlements asserting §§11 and/or 12(a)(2) claims filed between 2010 and 2019, and finding the median settlement as a percentage of "simplified statutory damages" was 7.4%).[9]

[9] The Cornerstone Research report is available online at: https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis.pdf.

2. The Time and Labor Required

Plaintiffs' Counsel vigorously investigated and prosecuted this litigation for years, and counsel, among other things:

(a) conducted an extensive factual investigation of the events underlying Menlo's January 29, 2018 IPO, including ongoing witness investigation and interviews, reviewing and analyzing the representations made by the Company in the Registration Statement, as well as subsequent U.S. Securities and Exchange Commission filings, and reviewing industry and securities analyst reports and comprehensive news reports, press releases and other media files concerning Menlo;

(b) drafted and filed the Complaint;

(c) briefed, argued, and successfully defeated Defendants' demurrers to the Complaint on the §11 claim;

(d) drafted and propounded document requests to all Defendants;

(e) met and conferred extensively with Defendants to resolve disputes about the scope of Defendants' search for and production of documents in response to the document requests, the custodians from whom documents would be produced, the relevant time period and the search terms to be utilized by Defendants to identify and produce relevant and responsive documents, and the collection and processing of attachments to hundreds of emails;

(f) obtained, searched, reviewed, and analyzed over 261,000 documents (over 2 million pages) produced by Defendants;

(g) retained and consulted with a forensic damages consultant regarding the calculation of damages under the Securities Act of 1933 ("Securities Act"); and

(h) analyzed, briefed and presented evidence in support of the claims of the Class at mediation.

Jaconette Decl., ¶15.

Although Plaintiffs' Counsel make this application on a percentage-of-recovery basis, using the lodestar approach as a cross-check (although not required by the California Supreme Court per *Laffitte*) on the reasonableness of the requested fee further demonstrates that it is fair and should be awarded. In total, Plaintiffs' Counsel and their paraprofessionals expended 2,102 hours in the prosecution of this Action, resulting in a combined lodestar of $1,421,837.00.[10] The requested one-third fee or $3,166,666, represents a modest multiplier of approximately 2.2. A "lodestar cross-check . . . provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage." *Laffitte*, 1 Cal. 5th at 504. That is not the case here. The requested fee results in a multiplier that is well within the range of multipliers that have been deemed reasonable by courts in California and nationwide.

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

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

Plaintiffs' Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for

[10] The time and expenses devoted to the Action are set forth in the accompanying Declaration of James I. Jaconette Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl.") and Declaration of David W. Hall Filed on Behalf of Hedin Hall LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Hedin Hall Decl.") (collectively, "Counsel's Declarations").

Defendants, who are ordinarily paid an hourly rate and paid for their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for any time or expense since this case began in November 2018. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who takes a case on contingency reasonably expects a higher fee than an attorney who is paid as the case goes along, win or lose. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) ("'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award"). As the Court of Appeals explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

> In addition to compensation for the legal services rendered, there is the raison d'etre for the contingent fee: the contingency. The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success should be twice the amount of a noncontingent fee for the same case. . . .
>
> Finally, even putting aside the contingent nature of the fee, the lawyer under such an arrangement agrees to delay receiving his fee until the conclusion of the case, which is often years in the future. The lawyer in effect finances the case for the client during the pendency of the lawsuit. If a lawyer was forced to borrow against the legal services already performed on a case which took five years to complete, the cost of such a financing arrangement could be significant.

Id. at 288.

As discussed in more detail in the Settlement Memorandum and the Jaconette Declaration, Plaintiffs faced significant risk concerning their ability to establish both liability and damages. While Plaintiffs believe they could have proven their claims, success at trial was far from certain. Defendants have vigorously argued that Plaintiffs cannot demonstrate the falsity or materiality of the challenged statements made in connection and omissions from the Registration Statement issued in connection with the Company's IPO.

Moreover, even assuming that Plaintiffs demonstrated liability, there was no guarantee they would prevail on the issues of loss causation and damages. At summary judgment and trial, Defendants' experts would likely assert a negative causation defense and contend that all of the losses sustained by the Class

were due to factors completely unrelated to Defendants' alleged false and misleading statements in the Registration Statement, thereby eliminating any potential recovery. There was, therefore, a substantial risk that the finder of fact could agree with Defendants' contention that no damages could be linked to the Defendants' statements or omissions at issue, or that damages were substantially less than the amount Plaintiffs have asserted. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) ("it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

In light of these risks, Plaintiffs' Counsel committed the time and resources necessary to successfully take the case to trial. Indeed, more than 2,100 hours of attorney and paraprofessional time and more than $52,400 in expenses have been incurred. This was time and money well spent. While Plaintiffs and their counsel believe that the Class would prevail at trial, the complexity of this case made the outcome at trial uncertain. The contingent nature of counsel's representation and the sizable financial risks borne by Plaintiffs' Counsel support the percentage fee requested. As the court in *Xcel Energy* recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming ruling that granted defendants' post-trial motion for summary judgment as a matter of law based on failure to prove loss causation, thereby overturning a jury verdict in plaintiff's favor).

4. Awards Made in Similar Cases

Plaintiffs' Counsel are applying for a fee award of one-third of the Settlement Amount. This request falls squarely within the parameters of percentage fees awarded in other class action litigation in California, including in similar Securities Act cases. "'Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

Courts have awarded one-third fees in complex litigations such as this. *See, e.g.*, *Sunrun*, slip op. at 6 (awarding 33-1/3% fee award); *Beaver Cty. Empls.*, slip op. at 3 (one-third fee award on $15 million recovery); *Avalanche Biotechnologies*, slip op. at 7 (33% fee award on $13 million recovery); *Brooks v. Capitol Valley Elec. Inc.*, No. CIV 536903, slip op. at 2 (San Mateo Super. Ct. Mar. 7, 2017) (awarding 33% fee award); *W. Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. at 7 (San Diego Super. Ct. June 28, 2012) (approving 33-1/3% fee award). The fee requested is, therefore, consistent with the fees awarded in other shareholder class actions.

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

The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also support the requested fee award. Lead Counsel Robbins Geller Rudman & Dowd LLP has earned a national reputation for excellence through many years of litigating complex civil actions, particularly the prosecution of securities class actions. As set forth in the firm résumé attached to the Robbins Geller Declaration, Lead Counsel's experience, resources, and high-quality attorneys have allowed it to obtain significant recoveries throughout the country on behalf of its clients. *See* Robbins Geller Decl., Ex. E.

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

6. Continuing Obligations of Lead Counsel

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

7. The Reaction of the Class

While the July 24, 2020 deadline for objecting to counsel's fee and expenses has not passed, to date, Lead Counsel is not aware of a single Class Member who has objected to the fee and expense

request and no opt-outs have been received. *See* Murray Decl., ¶16. "The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Heritage Bond*, 2005 WL 1594403, at *21.[11]

III. PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

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

Here, Plaintiffs' Counsel are seeking payment of expenses and charges in an aggregate amount of $52,421.52. As itemized in Counsel's Declarations, counsel's expenses include: (1) consultant fees; (2) investigators' fees; (3) mediator's fees; (4) on-line legal, financial, and factual research; (5) transportation, meals, and hotels; and (6) photocopying. The expenses for which Plaintiffs' Counsel seek payment are those which are normally charged to paying clients, over and above hourly fees. *Harris*, 24 F.3d at 19 ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'"). Further, the expenses which have been incurred and for which payment is sought were necessary for the successful prosecution of the litigation, are reasonable in amount, and thus should be paid. *See Vincent v. Reser*, No. 11-03572 CRB, 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013) ("Attorneys who create a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class.").

[11] Lead Counsel will address any objections in its reply memorandum, which will be filed on or before August 7, 2020, in accordance with this Court's Notice Order.

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

Plaintiffs Pavel Silvestrov ($9,500) and Hugh McKay ($2,500) seek awards pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Class. Such awards are reasonable and merited in this case. A description of the ways in which Plaintiffs participated in the litigation are set forth in their respective declarations which are being concurrently filed, including, for example, their participation in the review of pleadings and Court orders, and discussing settlement negotiations. *See* Silvestrov Decl., ¶3; McKay Decl., ¶3. Plaintiffs performed a public service through their willingness to step forward, remain in the case, and represent the Class. Courts routinely grant awards to plaintiffs who, through their efforts, brought a case and pursed it to a successful conclusion for the benefit of others. Approval of these awards is warranted as a matter of public policy and appropriate under applicable precedents. *Sunrun*, slip op. at 6 (awarding plaintiffs $16,000 and $15,000); *In re Onyx Pharms., Inc. S'holder Litig.*, No. CIV523789, slip op. at 7 (San Mateo Super. Ct. Nov. 18, 2016); *Wiley v. Envivio, Inc.*, No. CIV517185, slip op. at 6 (San Mateo Super. Ct. June 22, 2015); *In re Pac. Biosciences of Cal., Inc. Sec. Litig.*, No. CIV 509210, slip op. at 7 (San Mateo Super. Ct. Oct. 31, 2013) (awarding plaintiffs $5,943.36 and $2,540.00). There are no objections to these requests.

V. CONCLUSION

For the reasons set forth herein, in the Settlement Memorandum and all documents filed in support thereof and in connection with preliminary approval, Plaintiffs' Counsel respectfully submit that their requested attorneys' fees and expenses are fair, reasonable, and appropriate under all the circumstances of this case and should be granted. Additionally, the awards to Plaintiffs in connection with their representation of the Class are reasonable and supported by declarations, and should be approved in their entirety.

DATED: July 10, 2020

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL & EMAIL

I, June Ito, 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, and have a business address of 655 West Broadway, Suite 1900, San Diego, California 92101.

I hereby declare that on July 10, 2020, I served:

LEAD COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

on the parties in the within action by depositing a true and correct copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed below. I further certify that a copy was also emailed to the addresses below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on July 10, 2020, at San Diego, California.

JUNE ITO