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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES

17 Coordination Proceeding)
Special Title Rule (3.550))
18)
19 SNAP INC. SECURITIES CASES)
_____)
20 This Document Relates To:)
21 ALL ACTIONS.)
22 _____)

Case No. JCCP 4960
PLAINTIFFS' COUNSEL'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES AND
AWARD TO PLAINTIFFS PURSUANT TO
15 U.S.C. §77z-1(a)(4)
Judge: Honorable Elihu M. Berle
Dept: 6
Date: February 25, 2021
Time: 9:00 a.m.

Coordinated Actions:
Hsieh, et al. v. Snap Inc., et al., No. BC669394,
CA Super. Ct., Cnty. of Los Angeles
Iuso v. Snap Inc., et al., No. 17CIV03710,
CA Super. Ct., Cnty. of San Mateo

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1 **I. INTRODUCTION**

2 Before this Court for approval is an all-cash settlement of \$32,812,500 for the benefit of the
3 Settlement Class.¹ This is a very good recovery obtained in the face of substantial risk and is the product
4 of hard-fought litigation and arm’s-length settlement negotiations. Plaintiffs’ Counsel now respectfully
5 move this Court for an award of attorneys’ fees in the amount of one-third of the Settlement Amount, as
6 well as payment of the litigation expenses incurred in prosecuting the Action in the amount of \$243,511.08,
7 and interest accrued on both amounts. Finally, Plaintiffs Joseph Iuso, Chenghsin D. Hsieh and Wei C.
8 Hsieh each seek an award of \$5,000 in connection with their representation of the Settlement Class
9 pursuant to 15 U.S.C. §77z-1(a)(4). To date, there have been no objections lodged to any of these requests.

10 As explained below, and in Plaintiffs’ Memorandum of Points and Authorities in Support of
11 Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation (“Settlement
12 Memorandum”), submitted herewith, as well as in the Joint Declaration, and in the entire record, this
13 Settlement represents a solid recovery for the Settlement Class, particularly in light of the risks, costs, and
14 duration of continued litigation. Absent settlement, this litigation would likely have continued for years,
15 through the completion of fact discovery, expert discovery, summary judgment, trial, and likely appeals.
16 Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless
17 reached a timely and substantial resolution for the Settlement Class. The requested fee is fair and
18 reasonable under the applicable standards and is well within the range of fees approved by California
19 courts in similar Securities Act cases and in other class actions. For instance, on August 11, 2016, the
20 California Supreme Court affirmed a one-third percentage-based fee award to class counsel in *Laffitte v.*
21 *Robert Half Int’l Inc.*, 1 Cal. 5th 480 (2016), and on December 14, 2018, the Honorable Marie S. Weiner
22 granted a one-third percentage-based fee award to class counsel in a similar securities case. *In re Sunrun,*
23 *Inc. S’holder Litig.*, No. CIV538215, slip op. at 6 (San Mateo Super. Ct. Dec. 14, 2018); *see Beaver Cnty.*
24 *Emps. Ret. Fund v. Cyan*, No. CGC-14-538355, slip op. at 3 (San Francisco Super. Ct. Aug. 8, 2019)

25
26 _____
27 ¹ Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the
28 Amended Stipulation of Settlement, dated October 13, 2020 (“Stipulation” or “Settlement”), or in the
previously-filed Joint Declaration in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval
of Class Action Settlement, dated April 27, 2020 (“Joint Decl.”).

1 (one-third fee award on \$15 million recovery); *In re Avalanche Biotechnologies, Inc. S'holder Litig.*, No.
2 CIV536488, slip op. at 7 (San Mateo Super. Ct. Jan. 19, 2018) (33% fee award on \$13 million recovery).²

3 In awarding fees, courts consider several factors, including the quality and quantity of work as
4 reflected in the results obtained. Here, Lead Counsel devoted over 5,600 hours without pay in order to
5 obtain a very favorable Settlement for the Class. The Settlement represents a remarkable 20% of
6 estimated damages, which is many times greater than the typical recovery in similar cases. The
7 \$32,812,500 all-cash recovery was achieved through the skill, experience, and effective advocacy of
8 Plaintiffs' Counsel whose efforts to date have been without compensation of any kind and the fee has
9 been wholly contingent upon the result achieved. Since fee awards are designed to encourage counsel
10 to get the best possible result for the class, the amount requested in this case is warranted given the
11 exceptional recovery obtained and the significant obstacles and risks Plaintiffs' Counsel faced in
12 bringing and prosecuting this case.

13 Further, the Court should consider the Settlement Class' reaction to the attorneys' fees and
14 expenses sought. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for
15 Notice (the "Notice Order"), over 547,700 copies of the Postcard Notice, in the form approved by the
16 Court, have been mailed to potential Settlement Class Members and their nominees.³ In addition, the
17 Notice Ads attached to the Stipulation as Exhibit A-4 were disseminated over Google banner ads, Twitter
18 and LinkedIn for a period of 60 days. Segura Decl., ¶12. The long form Notice of Pendency and
19 Proposed Settlement of Class Action ("Notice") advises Settlement Class Members that Plaintiffs'
20 Counsel will apply to the Court for an award of attorneys' fees in the amount of one-third of the
21 Settlement Amount, plus expenses not to exceed \$400,000. While the January 25, 2021 deadline for
22 objecting to the requested attorneys' fees and expenses has not passed, to date, not a single objection to
23 Plaintiffs' Counsel's fee and expense request has been received. In addition, no objections have been

24 _____
25 ² All unreported authorities cited herein are attached to the Declaration of Theodore J. Pintar in
26 Support of Motion for an Award of Attorneys' Fees and Expenses and Award to Plaintiffs Pursuant to
27 15 U.S.C. §77z-1(a)(4), submitted herewith.

28 ³ See Declaration of Luiggy Segura Regarding (A) Dissemination of Postcard Notice, Notice and
Claim Form; (B) Establishment of Call Center Services and Settlement Website; (C) Posting of Notice
and Claim Form on Settlement Website; (D) Publication/Transmission of Summary Notice; and
(E) Report on Requests for Exclusion Received to Date ("Segura Decl."), ¶11, submitted herewith.

1 received to awards to Plaintiffs of up to \$5,000 each in connection with their representation of the
2 Settlement Class, which amount was also set forth in the Notice.

3 For their diligence and unwavering efforts in obtaining this outstanding recovery on behalf of the
4 Settlement Class, Plaintiffs' Counsel's request for an award of attorneys' fees is reasonable and supported
5 by each of the Plaintiffs.⁴ Plaintiffs' Counsel's expenses in the amount of \$243,511.08 are likewise
6 reasonable in amount and were necessarily incurred in the successful prosecution of the Action. Finally,
7 the payments to Plaintiffs are reasonable and supported by declarations from each Plaintiff.⁵

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

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

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

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

24 ⁴ See accompanying Declaration of Joseph Iuso in Support of Plaintiffs' Motion for Final Approval of
25 Settlement and Award of Attorneys' Fees and Expenses ("Iuso Decl."), ¶5, and Declaration of Wei C.
26 Hsieh and Chenghsin D. Hsieh in Support of Plaintiffs' Motion for Final Approval of Settlement and
27 Award of Attorneys' Fees and Expenses ("Hsieh Decl."), ¶4.

27 ⁵ Iuso Decl., ¶¶3, 6; Hsieh Decl., ¶¶2, 5.

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

1 2d 124, 132 (1959). The salvage purpose requires “a flavor of generosity . . . in order that an appetite for
2 efforts may be stimulated.” *Melendres v. City of Los Angeles*, 45 Cal. App. 3d 267, 273 (1975).

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

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

12 that use of the percentage method to calculate a fee in a common fund case, where the
13 award serves to spread the attorney fee among all the beneficiaries of the fund, does not in
14 itself constitute an abuse of discretion. We join the overwhelming majority of federal and
15 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.

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

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

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

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

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

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

24
25
26 ⁷ Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly shifted
27 to the percentage method in awarding fees in common fund representative actions. *See, e.g., In re Apollo*
28 *Grp. 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)).

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

8 **1. The Result Achieved**

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

13 Here, the \$32,812,500 Settlement Amount recovered for the Settlement Class solely through the
14 efforts of counsel for Plaintiffs is significant given the risks of proving liability, causation, and
15 damages, and the similarly vigorous efforts of Defendants. It provides an immediate and certain
16 recovery for Settlement Class Members without the risk, expense, and delay of the completion of
17 discovery, summary judgment, trial, and appeals. Moreover, it represents approximately 20% of
18 recoverable damages – well above the median recovery in similar §11 actions between 2010 and 2019.
19 *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2019 Review and*
20 *Analysis* at 7, Fig. 6 (Cornerstone Research 2020) (analyzing 77 class action settlements asserting §§11
21 and/or 12(a)(2) claims filed between 2010 and 2019, and finding the median settlement as a percentage
22 of “simplified statutory damages” was 7.4%).⁸

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

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

26
27
28 ⁸ The Cornerstone Research report is available online at: <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis.pdf>.

- 1 (a) conducted an extensive factual investigation of the events underlying Snap’s March 2,
2 2017 IPO, including ongoing witness investigation and interviews, reviewing and
3 analyzing the representations made by the Company in the Registration Statement, as
4 well as subsequent U.S. Securities and Exchange Commission filings, and reviewing
5 industry and securities analyst reports and comprehensive news reports, press releases
6 and other media files concerning Snap;
- 7 (b) litigated issues regarding class certification in the Federal Action to protect the rights of
8 the members of the class;
- 9 (c) conducted informal document discovery in connection with the mediation, receiving,
10 reviewing and analyzing over 1.9 million pages of documents;
- 11 (d) reviewed and analyzed four depositions from the Federal Action;
- 12 (e) retained and consulted with a forensic damages consultant regarding the calculation of
13 damages under the Securities Act; and
- 14 (f) analyzed, briefed and presented evidence in support of the claims of the Settlement
15 Class at mediation.

16 Joint Decl., ¶20.

17 Although Plaintiffs’ Counsel make this application on a percentage-of-recovery basis, using the
18 lodestar approach as a cross-check (although not required by the California Supreme Court per *Laffitte*) on
19 the reasonableness of the requested fee further demonstrates that it is fair and should be awarded. In total,
20 Plaintiffs’ Counsel and their paraprofessionals expended 5,686 hours in the prosecution of this Action,
21 resulting in a combined lodestar of \$3,722,685.50.⁹ The requested one-third fee or \$9,843,750, represents
22 a multiplier of approximately 2.6. A “lodestar cross-check . . . provides a mechanism for bringing an
23 objective measure of the work performed into the calculation of a reasonable attorney fee. If a

24 _____

25 ⁹ The time and expenses devoted to the Action are set forth in the accompanying Declaration of
26 James I. Jaconette Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application
27 for Award of Attorneys’ Fees and Expenses (“Robbins Geller Decl.”), Declaration of Francis A. Bottini,
28 Jr. Filed on Behalf of Bottini & Bottini, Inc. in Support of Application for Award of Attorneys’ Fees
and Expenses (“Bottini & Bottini Decl.”), and Declaration of Jacob A. Walker Filed on Behalf of Block
& Leviton LLP in Support of Application for Award of Attorneys’ Fees and Expenses (“Block &
Leviton Decl.”) (collectively, “Counsel’s Declarations”).

1 comparison between the percentage and lodestar calculations produces an imputed multiplier far outside
2 the normal range, indicating that the percentage fee will reward counsel for their services at an
3 extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial
4 court will have reason to reexamine its choice of a percentage.” *Laffitte*, 1 Cal. 5th at 504. That is not the
5 case here. The requested fee results in a multiplier that is well within the range of multipliers that have
6 been deemed reasonable by courts in California and nationwide.

7 “Multipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal. App. 4th at 255; *see Chavez*
8 *v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 (2008) (approving 2.5 multiplier). Indeed, “numerous cases
9 have applied multipliers of between 4 and 12 to counsel’s lodestar in awarding fees.” *Nat. Gas Anti-Trust*
10 *Cases*, 2006 WL 5377849, at *4; *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a
11 lodestar enhancement of “two, three, four or otherwise”). In *Lealao*, the court held that a trial court’s
12 refusal to enhance the lodestar as a part of a fee award was an abuse of discretion, opining that a multiplier
13 in excess of 3.5 was reasonable and not ruling out class counsel’s original request for a multiplier of 8.
14 82 Cal. App. 4th at 24, 52.

15 3. The Contingent Nature of the Case, Risk of Loss, and the Delay in 16 Payment to Plaintiffs’ Counsel

17 Plaintiffs’ Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk
18 that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for
19 Defendants, who are ordinarily paid an hourly rate and paid for their expenses on a regular basis,
20 Plaintiffs’ Counsel have not been compensated for any time or expense since this case began in July 2017.
21 Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in
22 considering an award of attorneys’ fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir.
23 2000) (the level of risk taken by plaintiff’s counsel is “perhaps the foremost’ factor” in considering the
24 appropriate percentage award). This makes sense because in the legal marketplace, an attorney who takes
25 a case on contingency reasonably expects a higher fee than an attorney who is paid as the case goes along,
26 win or lose. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial*
27 *Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) (“riskiness,’ difficulty or contingent nature of the
28

1 litigation is a relevant factor in determining a reasonable attorney fee award”). As the Court of Appeals
2 explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

3 In addition to compensation for the legal services rendered, there is the *raison*
4 *d’etre* for the contingent fee: the contingency. The lawyer on a contingent fee contract
5 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. . . .

6 Finally, even putting aside the contingent nature of the fee, the lawyer under such
7 an arrangement agrees to delay receiving his fee until the conclusion of the case, which is
8 often years in the future. The lawyer in effect finances the case for the client during the
9 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.

10 *Id.* at 288.

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

17 Moreover, even assuming that Plaintiffs demonstrated liability, there was no guarantee they would
18 prevail on the issues of loss causation and damages. At summary judgment and trial, Defendants’ experts
19 would likely assert a negative causation defense and contend that all of the losses sustained by the
20 Settlement Class were due to factors completely unrelated to Defendants’ alleged false and misleading
21 statements in the Registration Statement, thereby eliminating any potential recovery. There was a
22 substantial risk that the finder of fact could agree with Defendants’ contention that no damages could be
23 linked to Defendants’ statements or omissions at issue, or that damages were substantially less than the
24 amount Plaintiffs have asserted. *See In re Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735, 744-45
25 (S.D.N.Y. 1985) (“it is virtually impossible to predict with any certainty which testimony would be
26 credited, and ultimately, which damages would be found to have been caused by actionable, rather than
27 the myriad nonactionable factors such as general market conditions”), *aff’d*, 798 F.2d 35 (2d Cir. 1986).

1 Notwithstanding these significant risks, Plaintiffs' Counsel committed the time and resources
2 necessary to successfully take the case to trial. Indeed, more than 5,600 hours of attorney and
3 paraprofessional time and more than \$243,500 in expenses have been incurred. This was time and money
4 well spent. While Plaintiffs and their counsel believe that the Settlement Class would prevail at trial, the
5 complexity of this case made the outcome at trial uncertain. The contingent nature of counsel's
6 representation and the sizable financial risks borne by Plaintiffs' Counsel support the percentage fee
7 requested. As the court in *Xcel Energy* recognized, "[p]recedent is replete with situations in which
8 attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet
9 have lost the case despite their advocacy." *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F.
10 Supp. 2d 980, 994 (D. Minn. 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th
11 Cir. 2012) (affirming ruling that granted defendants' post-trial motion for summary judgment as a matter
12 of law based on failure to prove loss causation, thereby overturning a jury verdict in plaintiff's favor).

13 **4. Awards Made in Similar Cases**

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

19 While the California Supreme Court affirmed a one-third fee award to class counsel in *Laffitte*,
20 1 Cal. 5th 480 (2016), several courts have awarded one-third fees in securities and other complex
21 litigations such as this. *See, e.g., In re Menlo Therapeutics Inc. Sec. Litig.*, No. 18 CIV06049, slip op.
22 at 6 (San Mateo Super Ct. Aug. 14, 2020) (awarding one-third fee award on \$9.5 million recovery);
23 *Sunrun*, slip op. at 6 (awarding 33-1/3% fee award on \$32 million recovery); *Beaver Cnty. Empls.*, slip op.
24 at 3 (one-third fee award on \$15 million recovery); *Avalanche Biotechnologies*, slip op. at 7 (33% fee
25 award on \$13 million recovery); *Brooks v. Capitol Valley Elec. Inc.*, No. CIV 536903, slip op. at 2 (San
26 Mateo Super. Ct. Mar. 7, 2017) (awarding 33% fee award); *W. Palm Beach Police Pension Fund v.*
27 *CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. at 7 (San Diego Super. Ct. June 28, 2012)

1 (approving 33-1/3% fee award); *see also Lezin v. Minimed, Inc.*, No. BC251832, slip op. at 1 (Los
2 Angeles Super. Ct. Aug. 10, 2004) (approving 33% fee award); *Lou v. Zenith*, No. BC015017, slip op.
3 at 1 (Los Angeles Super Ct. Sept. 17, 1993) (approving 35% fee award); *Goldman v. FarWest Fin.*
4 *Corp.*, No. C-754698, slip op. at 6 (Los Angeles Super. Ct. Nov. 30, 1993) (same). The fee requested is,
5 therefore, consistent with the fees awarded in other shareholder class actions.

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

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

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

22 **6. Continuing Obligations of Plaintiffs' Counsel**

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

25 **7. The Reaction of the Settlement Class**

26 While the January 25, 2021 deadline for objecting to counsel's fee and expenses has not passed, to
27 date, Plaintiffs' Counsel are not aware of a single Settlement Class Member who has objected to the fee
28 and expense request and no opt-outs have been received. *See Segura Decl.*, ¶17. "The absence of

1 objections or disapproval by class members to Class Counsel’s fee request further supports finding the fee
2 request reasonable.” *Heritage Bond*, 2005 WL 1594403, at *21.¹⁰ In addition, each of the Plaintiffs
3 supports Plaintiffs’ Counsel’s fee request. Iuso Decl., ¶5; Hsieh Decl., ¶4.

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

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

13 Here, Plaintiffs’ Counsel are seeking payment of expenses and charges in an aggregate amount of
14 \$243,511.08. As itemized and explained in Counsel’s Declarations, counsel’s expenses include:
15 (1) consultant fees; (2) mediator’s fees; (3) on-line legal and financial research; (4) transportation, meals,
16 and hotels; (5) photocopying; and (6) eDiscovery database hosting. The expenses for which Plaintiffs’
17 Counsel seek payment are those which are normally charged to paying clients, over and above hourly
18 fees. *Harris*, 24 F.3d at 19 (“Harris may recover as part of the award of attorney’s fees those out-of-
19 pocket expenses that ‘would normally be charged to a fee paying client.’”). Further, the expenses which
20 have been incurred and for which payment is sought were necessary for the successful prosecution of the
21 litigation, are reasonable in amount, and thus should be paid. *See Vincent v. Reser*, No. 11-03572 CRB,
22 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013) (“Attorneys who create a common fund are entitled to
23 the reimbursement of expenses they advanced for the benefit of the class.”).

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

26 Plaintiffs Joseph Iuso, Chenghsin D. Hsieh and Wei C. Hsieh seek awards of \$5,000 each pursuant
27 to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Settlement Class. Such awards

28 ¹⁰ Plaintiffs’ Counsel will address any objections in their reply memorandum, which will be filed on or
before February 11, 2021, in accordance with this Court’s Notice Order.

1 are reasonable and merited in this case. A description of the ways in which Plaintiffs participated in the
2 litigation are set forth in their respective declarations which are being concurrently filed, including, for
3 example, their participation in the review of pleadings and Court orders, and discussing settlement
4 negotiations with Plaintiffs' Counsel. *See* Iuso Decl., ¶3; Hsieh Decl., ¶2. Plaintiffs performed a public
5 service through their willingness to step forward, remain in the case, and represent the Settlement Class.
6 Courts routinely grant awards to plaintiffs who, through their efforts, brought a case and pursued it to a
7 successful conclusion for the benefit of others. Approval of these awards is warranted under the PSLRA
8 (15 U.S.C. §77z-1(a)(4)), appropriate under applicable precedents and reasonable in light of Plaintiffs'
9 participation in this Action. *Sunrun*, slip op. at 6 (awarding plaintiffs \$16,000 and \$15,000); *In re Onyx*
10 *Pharms., Inc. S'holder Litig.*, No. CIV523789, slip op. at 7 (San Mateo Super. Ct. Nov. 18, 2016)
11 (awarding plaintiff \$3,000); *Wiley v. Envivio, Inc.*, No. CIV517185, slip op. at 6 (San Mateo Super. Ct.
12 June 22, 2015) (awarding plaintiff \$2,500); *In re Pac. Biosciences of Cal., Inc. Sec. Litig.*, No. CIV
13 509210, slip op. at 7 (San Mateo Super. Ct. Oct. 31, 2013) (awarding plaintiffs \$5,943.36 and \$2,540.00).
14 There are no objections to these requests.

15 **V. CONCLUSION**

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

22 DATED: December 24, 2020

Respectfully submitted,

23 ROBBINS GELLER RUDMAN
24 & DOWD LLP
25 THEODORE J. PINTAR
26 JAMES I. JACONETTE

27 s/ Theodore J. Pintar
28 THEODORE J. PINTAR

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Attorneys for Plaintiff Joseph Iuso

1 **PROOF OF SERVICE**

2 I, Katie Woods, declare:

3 I am employed in San Diego County, State of California. I am over the age of 18 years and not
4 a party to the within action. My business address is Robbins Geller Rudman & Dowd LLP, 655 West
5 Broadway, Suite 1900, San Diego, CA 92101.

6 On this date, I served:

- 7 • **NOTICE OF MOTION AND MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFFS PURSUANT TO 15 u.s.c. §77z-1(a)(4)**
- 8
- 9 • **PLAINTIFFS' COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4)**
- 10
- 11 • **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION**
- 12
- 13 • **DECLARATION OF THEODORE J. PINTAR IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4)**
- 14
- 15 • **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**
- 16
- 17
- 18 • **DECLARATION OF JACOB A. WALKER FILED ON BEHALF OF BLOCK & LEVITON LLP IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**
- 19
- 20 • **DECLARATION OF FRANCIS A. BOTTINI JR. FILED ON BEHALF OF BOTTINI & BOTTINI, INC. IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**
- 21
- 22 • **DECLARATION OF JOSEPH IUSO IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND EXPENSES**
- 23
- 24 • **DECLARATION OF WEI C. HSIESH AND CHENGSHIN D. HSIESH IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND EXPENSES**
- 25
- 26 • **DECLARATION OF LUIGGY SEGURA REGARDING (A) DISSEMINATION OF POSTCARD NOTICE, NOTICE AND CLAIM FORM; (B) ESTABLISHMENT OF CALL CENTER SERVICES AND SETTLEMENT WEBSITE; (C) POSTING OF NOTICE AND CLAIM FORM ON SETTLEMENT WEBSITE; (D)**
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PUBLICATION/TRANSMISSION OF SUMMARY NOTICE; AND (E) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

[X] By electronic transmission via Case Anywhere LLC to all parties on the electronic service list maintained for this case:

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I am readily familiar with Robbin Geller Rudman & Dowd LLP's practice for collection and processing of documents for delivery according to instructions indicated above. In the ordinary course of business, documents would be handled accordingly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of December, 2020, at San Diego, California.



KATIE WOODS