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Liaison and Lead Counsel for Plaintiffs and the Settlement Class

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARILYN EZZES, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. VINTAGE WINE ESTATES, INC., PATRICK RONEY, KATHERINE DEVILLERS, and KRISTINA JOHNSTON, Defendants.	Case No. 2:22-cv-01915-GMN-DJA **LEAD COUNSEL'S NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, AND MEMORANDUM OF LAW IN SUPPORT THEREOF** Hearing Date: September 22, 2026 Time: 10:00 a.m. Location: Courtroom 7-D Judge: Hon. Gloria M. Navarro

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NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and the Court's Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order," ECF No. 122), on September 22, 2026, at 10:00 a.m., before the Honorable Gloria M. Navarro, in Courtroom 7-D at the United States District Court for the District of Nevada, Lloyd D. George Courthouse, 333 Las Vegas Blvd. South, Las Vegas, NV 89101, lead counsel Glancy Prongay Wolke & Rotter LLP ("GPWR" or "Lead Counsel") will, and hereby, does move the Court for an Order awarding attorneys' fees and reimbursement of Litigation Expenses in the above-captioned securities class action (the "Action").[1]

This Motion is based on the following Memorandum of Law; the Sadler Declaration and exhibits thereto, including the Declaration of Josephine Bravata Concerning: (A) Mailing/Emailing of the Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections (Ex. 6, "Bravata Decl."); the Stipulation; all prior pleadings and papers in this Action; and such additional information or argument as may be required by the Court.[2]

A proposed order will be submitted with Lead Counsel's reply papers, after the deadline for objections has passed.

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[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated April 24, 2026 (ECF No. 119-2), or the concurrently filed Declaration of Casey E. Sadler in Support of (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Sadler Declaration" or "Sadler Decl."). Citations herein to "¶__" and "Ex. __" refer, respectively, to paragraphs in, and exhibits to, the Sadler Declaration.

[2] Defendants take no position with respect to this motion.

MEMORANDUM IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Lead Counsel, on behalf of all Plaintiffs' Counsel,[3] respectfully submits this memorandum of law in support of its Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

I. PRELIMINARY STATEMENT

Plaintiffs' Counsel have succeeded in obtaining a $7,500,000 non-reversionary, all cash, settlement for the benefit of the Settlement Class. This is an extremely favorable outcome in the face of substantial risks, and it is the result of Plaintiffs' Counsel's vigorous, persistent, and skilled efforts. Lead Counsel now respectfully moves this Court for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund (*i.e.*, $2,500,000, plus interest at the same rate as the Settlement Fund), and reimbursement of $227,118.98 in Litigation Expenses. The Litigation Expenses consist of $212,118.98 in out-of-pocket costs incurred by Plaintiffs' Counsel while prosecuting the Action, and an aggregate of $15,000 to Plaintiffs for reimbursement of the reasonable costs (including the cost of time spent) incurred in prosecuting the Action on behalf of the Settlement Class pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4).

Achieving the Settlement was not easy. Defendants were represented by highly skilled litigators, and Plaintiffs' Counsel faced numerous hurdles and risks from the outset, including the PSLRA's heightened pleading standards and automatic stay of discovery, the high cost of experts and investigators needed to litigate a complex securities fraud case, and a substantial risk of non-payment. *See* 15 U.S.C. §§ 78u-4(b)(1)-(b)(2)(A), and (b)(3)(B). These are not idle risks. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018) ("Plaintiffs' Counsel faced substantial risks in pursuing this litigation, given the inherent uncertainties of trying securities fraud cases and the demanding pleading standards of the PSLRA."); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *32 (N.D. Tex. Nov. 8, 2005) ("the risk of no recovery in complex [securities] cases of this type is very

[3] Plaintiffs' Counsel are Lead Counsel, liaison counsel Muehlbauer Law Office, Ltd. ("Muehlbauer") and Block & Leviton LLP ("Block").

real.").[4] As a result, a significant number of cases—***like this one***—are dismissed in whole or in part at the pleading stage. *See Ezzes v. Vintage Wine Estates, Inc.*, 2024 WL 895018, at *1 (D. Nev. March 1, 2024) (granting motion to dismiss Consolidated Amended Class Action Complaint with leave to amend).[5]

Nor do the risks end at the pleading stage. Even when a plaintiff is successful at trial, payment is far from guaranteed. *See In re Apple Computer Sec. Litig.*, 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).[6] There was, therefore, a strong possibility that the case would yield little or no recovery after many years of costly litigation. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (observing that "Defendants prevail outright in many securities suits."); *In re Ocean Power Tech., Inc., Sec. Litig.*, 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain.").

Despite facing long odds, Plaintiffs' Counsel vigorously pursued this case for more than three and a half years—working 5,341.45 hours and advancing $212,118.98 in out-of-pocket expenses, all on a fully contingent basis. *See* ¶¶86, 100 & Exs. 7, 8, & 9. As compensation for Plaintiffs' Counsel's considerable efforts on behalf of the Settlement Class, Lead Counsel respectfully requests a fee award

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[4] Unless otherwise noted, all internal citations and quotation marks are omitted and all emphasis is added.

[5] *See also* Ex. 5 (excerpt from Edward Flores, Svetlana Starykh, and Ivelina Velikova, *Recent Trends in Securities Class Action Litigation, 2025 Full-Year Review* (NERA, Jan. 21, 2026) ("NERA Report") at 18, Fig. 15 (motion to dismiss filed in 96% of the securities class action cases in the last ten years, and in cases where the motion was decided, 62% were granted with or without prejudice, 21% were partially granted, and only 17% denied in full)).

[6] *See also In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants after jury returned verdict for plaintiffs), *aff'd sub nom.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1235 (10th Cir. 1996) (overturning securities-fraud class-action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011), *aff'd*, 838 F.3d 223 (2d Cir. 2016) (after jury verdict for plaintiff, court significantly reduced scope of class by amending class definition to exclude purchasers of ordinary shares).

in the amount of 33⅓% of the Settlement Fund. The requested fee is consistent with fee awards in comparable class action settlements, whether considered as a percentage of the Settlement Fund or in relation to Plaintiffs' Counsel's lodestar. In fact, the requested fee represents a "negative" or fractional multiplier of 0.66 on Plaintiffs' Counsel's lodestar, which itself is a strong indication of the reasonableness of the requested fee. *See Ross v. Trex Co., Inc.*, 2013 WL 12174133, at *1 (N.D. Cal. Dec. 16, 2013) ("Plaintiffs sought no extraordinary award of fees; to the contrary, they sought less than their lodestar, which further supports the reasonableness of the fees requested and awarded."); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) ("The resulting so-called negative multiplier suggests that the percentage-based amount is reasonable and fair based on the time and effort expended by class counsel.").

Lead Counsel also seeks reimbursement of $212,118.98 in out-of-pocket litigation expenses incurred by Plaintiffs' Counsel in prosecuting this Action. *See* ¶100. This amount is below the $280,000 limit on Litigation Expenses disclosed in the Notice—which, by definition, included PSLRA awards to Plaintiffs. The expenses are reasonable in amount and were necessarily incurred in the successful prosecution of the Action. Accordingly, they should be approved.

Finally, Lead Counsel respectfully requests PSLRA awards in the aggregate amount of $15,000 to compensate Plaintiffs for the time and effort they expended on behalf of the Settlement Class. *See* Ex. 2 ("Ezzes Decl."); Ex. 3 ("Davies Decl."); Ex. 4 ("Salbenblatt Decl."). Plaintiffs took responsibility for, and were actively involved in, initiating, prosecuting and settling the Action. *See* Ex. 2 at ¶6; Ex. 3 at ¶5; Ex. 4 at ¶6. But for their "commitment to pursuing these claims, the successful recovery for the Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

For all the reasons set forth herein, and in the Sadler Declaration, Lead Counsel respectfully request that the Court award attorneys' fees equal to 33⅓% of the Settlement Fund, approve reimbursement of $212,118.98 in out-of-pocket litigation expenses incurred by Plaintiffs' Counsel, and grant PSLRA awards in the amount of $5,000 to each of the three Plaintiffs.

II. FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION

The Sadler Declaration is an integral part of this submission. For the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*, the history of the Action; the claims asserted; the mediation process and negotiations leading to the Settlement; the risks of continued litigation; the services Plaintiffs' Counsel provided; and additional information on the factors that support the fee and expense application, including the lodestar cross-check.

III. THE COURT SHOULD APPROVE LEAD COUNSEL'S FEE REQUEST

A. Plaintiffs' Counsel Are Entitled to an Award of Attorneys' Fees From the Common Fund

It is well settled that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Indeed, the Ninth Circuit has held that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) ("*WPPSS*") ("[T]hose who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it."); *accord Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016). This rule, known as the "common fund" doctrine, is "designed to prevent unjust enrichment by distributing the costs of litigation among those who benefit from the efforts of the litigants and their counsel." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal 2008).

B. The Court Should Calculate the Requested Fee as a Percentage of the Common Fund

District courts in the Ninth Circuit retain discretion to award attorneys' fees in common fund cases based upon either the percentage-of-the-fund method or the lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944-45 (9th Cir. 2011) (finding that when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method). Notwithstanding that discretion, where there is an easily quantifiable benefit to the class—such as a cash common fund—the percentage-of-the-fund approach is the prevailing method used. *See, e.g.*, *Ellison v. Steven Madden, Ltd.*, 2013 WL 12124432, at *8 (C.D. Cal. May 7, 2013) (finding "use of the percentage method" to be the "dominant approach in common fund cases"); *Omnivision*, 559 F. Supp. 2d at 1046 (same).

Most courts have found the percentage approach superior in cases with a common fund recovery because: it parallels the use of percentage-based contingency fee contracts, which are the norm in private litigation; aligns the lawyers' interests with that of the class in achieving the maximum possible recovery; and reduces the burden on the court by eliminating the detailed and time-consuming lodestar analysis. *See Omnivision*, 559 F. Supp. 2d at 1046; *Vinh Nguyen v. Radient Pharm. Corp.*, 2014 WL 1802293, at *9 (C.D. Cal. May 6, 2014) ("There are significant benefits to the percentage approach, including consistency with contingency fee calculations in the private market, aligning the lawyers' interests with achieving the highest award for the class members, and reducing the burden on the courts that a complex lodestar calculation requires."); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (lodestar/multiplier method "adds to the work load of already overworked district courts").

Moreover, application of the percentage-of-the-fund method is consistent with the PSLRA, which provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a ***reasonable percentage*** of the amount" recovered for the class. 15 U.S.C. § 78u-1(a)(6); *see also Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 643 (5th Cir. 2012) ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such a calculation."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005).

For these reasons, among others, Lead Counsel respectfully requests that the Court award attorneys' fees in this case on a percentage-of-the-fund basis, and use an informal lodestar cross-check to assess the reasonableness of the percentage award. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.5 (9th Cir. 2012) ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure …."); *Glass v. UBS Fin. Servs., Inc.*, 331 Fed. Appx. 452, 456 (9th Cir. 2009) ("the district court properly performed an informal lodestar cross-check").

C. The Requested Attorneys' Fee is Supported by the Factors Considered by Courts in the Ninth Circuit

Courts in the Ninth Circuit consider certain factors when determining whether a fee award is "reasonable under the circumstances." *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009). Those factors include: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; (5) the reaction of the Class; and (6) awards made in similar cases. *See Omnivision*, 559 F. Supp. 2d at 1046-48 (citing *Vizcaino*, 290 F.3d at 1048-51); *see also In re Charles Schwab Corp. Sec. Litig.*, 2011 WL 1481424, at *8 (N.D. Cal. Apr. 19, 2011). The Ninth Circuit has explained that these factors should not be used as a rigid checklist or weighed individually, but rather, should be evaluated in light of the totality of the circumstances. *Vizcaino*, 290 F.3d at 1048-50. As demonstrated below, each of these factors, along with the lodestar cross-check, militate in favor of approving the requested fee.

1. The Quality of the Result Achieved Supports the Fee Request

Courts have consistently acknowledged that the quality of the result achieved is the most important factor in determining an appropriate fee award. *See, e.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Bluetooth*, 654 F.3d at 942 ("Foremost among these considerations, however, is the benefit obtained for the class."); *Rodman v. Safeway*, 2018 WL 4030558, at *3 (N.D. Cal. Aug. 22, 2018); *Omnivision*, 559 F. Supp. 2d at 1046. Lead Counsel submits that the $7.5 million proposed Settlement is an excellent result for the Settlement Class given the many risks of continued litigation and the procedural posture of the case at the time of settlement.

Here, Plaintiffs' consulting damages expert estimates that ***if*** Plaintiffs had ***fully prevailed*** against Defendants' motion for summary judgment and after a jury trial, ***if*** the Court certified the same class period as the Settlement Class Period, and ***if*** the Court and jury accepted Plaintiffs' damages theory, including proof of loss causation as to each of the alleged corrective disclosure dates—*i.e.*, Plaintiffs' best case scenario—the total ***maximum potential aggregate damages*** would be approximately $25.64

million. ¶55.[7] Under such a scenario, the $7.5 million recovery represents approximately 29.2% of the total maximum damages potentially available, which is ***more than five (5) times*** the median recovery in securities class actions with similar damages. *See* Ex. 5 (NERA Report, at 27, Fig. 23 (between January 2016 and December 2025 the median settlement as a percentage of estimated losses was 5.2% for securities class actions with estimated losses between $20-$49 million)); *see also Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *5 (N.D. Ind. Sept. 18, 2020) (noting that a securities class action settlement recovering 8% of maximum damages was a "superb result for the class").

To fully appreciate the Settlement, however, it must be evaluated in light of the procedural and substantive hurdles that Plaintiffs overcame, and would have had to overcome, in order to prevail in this complex securities fraud litigation. *See In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 343 F.Supp.3d 394, 414 (S.D.N.Y. 2018) ("Because Plaintiffs face serious challenges to establishing liability, consideration of Plaintiffs' best possible recovery must be accompanied by the risk of non-recovery."). Obstacles included both the well-known general risks of complex securities litigation, as well as the specific risks inherent in this case. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) (noting that "[t]he difficulty of establishing liability is a common risk of securities litigation" and that "[t]he risk of establish damages [is] equally daunting.").

From the outset, there existed a very real possibility that the Court would dismiss the Action pursuant to the stringent pleading standards of the PSLRA, and that the PSLRA's automatic stay of discovery would prevent Plaintiffs from obtaining the evidence needed to successfully replead their claims. *See Jorling v. Anthem, Inc.*, 836 F. Supp. 2d 821, 831 (S.D. Ind. 2011) (discussing the PSLRA's "heightened pleading requirements, making it more difficult for plaintiffs to survive a motion to dismiss, and thus receive the keys to unlock the discovery process.").[8] In fact, "the court needs to look no further than its own order dismissing the shareholder … litigation to assess the risks involved." *See In re Xcel*

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[7] Plaintiff alleged that those corrective disclosures removed the artificial inflation from the price of Vintage Wine common stock on September 14, 2022 and February 9, 2023.

[8] *See also Bryant v. Avado Brands, Inc.*, 100 F. Supp. 2d 1368, 1377 (M.D. Ga. 2000) ("An unfortunate byproduct of the PSLRA is that potentially meritorious suits will be short-circuited by the heightened pleading standard."), *rev'd on other grounds sub nom. Bryant v. Dupree*, 252 F.3d 1161 (11th Cir. 2001).

Energy, Inc., Sec., Deriv. & "ERISA" Litig., 364 F. Supp. 2d 980, 1003 (D. Minn. 2005); *see also Ezzes v. Vintage Wine Estates, Inc.*, 2024 WL 895018, at *1 (D. Nev. March 1, 2024); *Cullen v. RYVYL Inc.*, 2025 WL 3731036, at *7 (S.D. Cal. Dec. 19, 2025) ("Plaintiffs' also face substantial risks should the litigation continue, as evidenced by the Court's two prior partial dismissals of Plaintiffs' action."). There was, therefore, a significant chance that this case would not progress past the pleading stage. *See In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 820 (S.D. Tex. 2012) ("The Court is acutely aware that federal legislation and authoritative precedents have created for plaintiffs in all securities actions formidable challenges to successful pleading.").[9]

Surviving the pleading stage did not, of course, guarantee a victory. Although Lead Counsel believed that the allegations of the Second Amended Complaint would ultimately translate into a strong case, they were also keenly aware that they faced numerous hurdles to ***proving*** liability and class-wide damages. With respect to liability, Defendants raised numerous defenses, including that Defendants did not act with the requisite fraudulent intent (*i.e.*, scienter). *See* ECF Nos. 39, 50. In support of this argument, Defendants asserted, among other things, that: (a) "the Individual Defendants sold no stock during this time, or otherwise benefitted, from the conduct claimed to be wrongful" (ECF 50 at 1; *see also* ECF No. 39 at 22 (similar)); (b) ***prior to the class period*** Vintage Wine publicly disclosed that "the Company identified a material weakness in its internal control over financial reporting relating to the process and controls surrounding inventory" (ECF 50 at 2; *see also* ECF 39 at 22); (c) Defendants reported the inventory related issues at the Company as soon as they were discovered, immediately sought to rectify them, and apprised the investment community of its efforts throughout the process (ECF No. 39 at 22; ECF 50 at 1-3;); (d) there was "no indicia—*zero*—of fraud" let alone direct evidence of fraud (*id*. at 1 (emphasis in the original)); (e) "a CEO and CFO intent on deceiving investors would not identify, disclose, investigate, and seek to remediate accounting problems" (ECF 39 at 22); and (f) a much more plausible and compelling narrative was that "[t]his case is about a young, fast-growing company's growing pains, not fraud." ECF No. 50 at 1. While Plaintiffs believe that they had strong responses, and that the evidence would ultimately support their counter-narrative, Defendants' story was

[9] *See also* Ex. 5 (NERA Report discussing dismissal statistics in PSLRA cases).

not frivolous, as demonstrated by this Court's holding on the first motion to dismiss. *Ezzes v. Vintage Wine Estates, Inc.*, 2024 WL 895018, at *15 (D. Nev. March 1, 2024) ("Plaintiffs' allegations tell the story of a newly public company attempting quick growth via an acquisition strategy that is simply unable to keep up with the procedural demands of their achieved growth."); *see also In re LJ Int'l, Inc. Sec. Litig.*, 2009 WL 10669955, at *5 (C.D. Cal. Oct. 19. 2009) ("It is very difficult to predict whether a jury would have believed Plaintiffs' claims regarding state of mind.").

Plaintiffs' burden to establish the propriety of class certification presented yet another risk. While Lead Counsel are confident that the Settlement Class meets the requirements for certification (*see* ECF No. 119, Preliminary Approval Motion, at § IV), the class had not yet been certified at the time of Settlement, and there was a risk that the Defendants could defeat class certification if the case continued to be litigated. For example, Defendants may have challenged Plaintiffs' adequacy as class representatives, or argued that their challenged statements did not impact the Company's stock price.[10] While Plaintiffs believe they had the better arguments on these issues, prevailing on class certification was far from certain. *See, e.g.*, *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc*., 77 F.4th 74, 81 (2d Cir. 2023) (de-certifying investor class and effectively ending the case—after approximately 13 years of litigation—based on 2021 Supreme Court decision allowing courts to consider certain price impact arguments at the class certification stage). Even if the Court certified the class, there would remain a risk that the class could be decertified at a later stage in the proceedings. *See, e.g.*, *Omnivision*, 559 F. Supp. 2d at 1041 (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class").

Additionally, Defendants would have asserted that Plaintiffs could not establish loss causation with respect to the two stock drops, and even if they could, the damages were minimal. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) ("a plaintiff [must] prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss."). For example, Defendants would have argued that the September 14, 2022, stock drop of more than 40% was

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[10] Questions about price impact are not ordinarily considered in the context of settlement. *In re American Intern. Group, Inc. Sec. Litig.*, 689 F.3d 229, 232 (2d Cir. 2012).

not the result of the revelation of the truth that constituted a corrective disclosure, but was instead due to disappointing revenue and earnings, challenging business conditions (such as decreased demand following the pandemic), or other non-fraud related causes. Similarly, with respect to the February 9, 2023, stock drop of approximately 28%, Defendants would have argued that price decline was not a response to the announced restatement, but was all, or partially, attributable to lackluster preliminary results, the announcement that Defendant Roney was transitioning from his role as CEO to Executive Chairman of the Board, and/or that the Company had retained a corporate strategy and acquisition integration advisor.

In order to prevail, Plaintiffs would have been required to show what portion of their loss was attributable to actionable issues versus non-actionable factors. *See In re Daou Sys., Inc.*, 411 F.3d 1006, 1025 (9th Cir. 2005) (other forces contributing to an investment's decline "will not bar recovery under the loss causation requirement but will play a role in determining recoverable damages."). This would not be an easy task, would rely heavily on expert testimony, and if Defendants' arguments were accepted by the Court or a jury, the Settlement Class's maximum potential damages would have been substantially reduced, if not completely eliminated. *See Destefano v. Zynga, Inc.*, 2016 WL 537946, at *10 (N.D. Cal. Feb. 11, 2016) ("[L]oss causation might have been particularly difficult for Lead Plaintiff to prove, as Defendants would have argued that Lead Plaintiff's expert could not apportion losses to Defendants' misstatements as opposed to other events and information available on the market …."); *In re Scientific Atl., Inc. Sec. Litig.*, 754 F. Supp. 2d 1339, 1379-80 (N.D. Ga. 2010) (granting motion for summary judgment because plaintiffs did not disentangle fraud-related and non-fraud-related portions of stock decline); *see also In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *6 (D.N.J. July 29, 2013) (noting "the inherent unpredictability and risk associated with damage assessments in the securities fraud class-action context").

While Plaintiffs believe they had meritorious arguments in response to Defendants' assertions, it simply cannot be disputed that the Parties held extremely disparate views on loss causation and damages, and had Defendants' arguments been accepted in whole or part, they would have dramatically limited or foreclosed any potential recovery. *See In re Cendant Corp. Litig*, 264 F.3d 201, 239 (3d Cir. 2001) ("[E]stablishing damages at trial would lead to a battle of experts with each side presenting its figures to the jury and with no guarantee whom the jury would believe."); C*hristine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *13 (S.D.N.Y. Oct. 16, 2019) ("While Plaintiffs proceeded as though they had the better arguments, the risk remained that Defendants could have defeated loss causation, or significantly diminished damages, for the one remaining alleged corrective disclosure date.").

Finally, this case presented very real risks relating to Defendants' ability to fund a judgment or settlement. Vintage Wine declared bankruptcy and liquidated through the Chapter 11 bankruptcy process. As such, not only are Plaintiffs' claims against Vintage Wine extinguished, but even if they were not, Vintage Wine has no assets from which Plaintiffs could potentially collect. When initially undertaking this litigation Lead Counsel had no knowledge of whether Defendants had Directors & Officers ("D&O") insurance coverage that might fund a settlement or judgment. Moreover, such policies are typically limited in amount, reduced by payment of litigation expenses, and potentially subject to competing claims from other litigation or governmental enforcement actions. It was also entirely possible that none of the Individual Defendants would have been able to satisfy a judgment in the full amount of Lead Counsel's estimate of $25.64 million in damages. As a result, there were very real collectability issues. *See Cullen v. Whitman Med. Corp*., 197 F.R.D. 136, 149 (E.D. Pa. 2000) (finding "[t]he risk of nonpayment in this case was acute" where, *inter alia*, the corporate defendant "lacked significant unencumbered hard assets against which plaintiffs could levy had a judgment been obtained" and there was "the risk that the wasting policy would run out by the time a trial was over").

Given the range of possible results in this litigation, ***including a strong possibility of no recovery whatsoever,*** there can be no question that the Settlement constitutes a considerable achievement and weighs heavily in favor of the requested fee. *See Ali v. Franklin Wireless Corp.*, 2024 WL 5179910, at *11 (S.D. Cal. Dec. 19, 2024) (where recovery "exceeds recent median recovery percentages both nationwide and in similar securities class action settlements approved by courts in this Circuit … the results achieved by Counsel weigh in favor of an upward adjustment from the 25% benchmark.").

2. The Substantial Risks of the Litigation Support the Fee Request

The second factor courts in this Circuit consider in awarding attorneys' fees is the "Risk of Litigation." *Omnivision*, 559 F. Supp. 2d at 1046-47; *see also Vizcaino*, 290 F.3d at 1048 (noting "[r]isk is a relevant circumstance" in awarding attorneys' fees). While courts have always recognized that securities class actions are complex and carry significant risks, post-PSLRA rulings make it clear that the risk of no recovery has increased significantly. *See Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J. (Ret.)) ("To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action."); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA.").[11] This Action was no exception; in fact, it was far riskier than the average securities fraud class action. *See City of Birmingham Ret. & Relief Sys. v. Credit Suisse Grp. AG*, 2020 WL 7413926, at *3 (S.D.N.Y. Dec. 17, 2020) ("[G]reater risks undertaken by counsel who accept a case on a contingent fee basis support a higher settlement percentage."); *Silverman,* 739 F.3d at 959 ("The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.").[12]

One proxy for assessing "the attorney's risk is whether a relevant government action was instituted against the defendant." *In re Bausch & Lomb, Inc. Sec. Litig.*, 183 F.R.D. 78, 87 (W.D.N.Y. Oct. 28,1998) (*citing City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 471 (2d Cir. 1974) (factors that comprise "risk of litigation" include whether "a relevant government action [has] been instituted or, perhaps, even successfully concluded against the defendant")). This is because "[t]he risk of nonpayment is even higher when a defendants' *prima facie* liability has not been established by the government in a criminal action." *See In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at

[11] *See also In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 2018 WL 6168013, at *15 (S.D.N.Y. Nov. 26, 2018) ("Courts have recognized that, in general, securities actions are highly complex and that securities class litigation is notably difficult and notoriously uncertain."); *In re ImmunityBio, Inc. Sec. Litig.*, 2025 WL 1686263, at *14 (S.D. Cal. June 16, 2025) ("Courts have consistently recognized that securities class actions are complex and risky.").

[12] "It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 55 (2d Cir. 2000); *see also In re NASDAQ Market-Makers Antrust. Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) ("Risk, of course, must be judged as it appeared to counsel at the outset of the case, when they committed their capital (human and otherwise)."); *In re Waste Management, Inc. Sec Litig.,* 2002 WL 35644013, at *28 (S.D. Tex. May 10, 2002) ("These risks must be assessed as they existed at the inception of the litigation, and not in light of the settlement achieved in the end.").

*5 (E.D. Pa. Jan. 3, 2008) (also finding that higher risk "warrants approval" of class counsel's one-third fee request); *In re Peanut Farmers Antitrust Litig.*, 2021 WL 9494033, at *3 (E.D. Va. Aug. 10, 2021) ("Class Counsel investigated this case from the ground up without the benefit of a government investigation, which significantly increased the risk of bringing this action.").

In the instant case, no civil or criminal charges have been filed by the SEC or the DOJ with respect to the conduct at issue in this case—even as of today. Indeed, "[t]his is not a case where plaintiffs' counsel can be cast as jackals to the government's lion, arriving on the scene after some enforcement or administrative agency has made the kill." *In re Gulf Oil/Cities Service Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992). Rather, "Plaintiffs' counsel (and their teams and experts) were truly the authors of the favorable outcome for the class." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015); *see also Peanut Farmers*, 2021 WL 9494033, at *3 (award of one-third of settlement fund supported by fact that "Class Counsel achieved this result without the benefit of a prior governmental investigation."); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (awarding one-third of settlement fund and noting that "[i]n this Action, Plaintiffs' Class Counsel did not 'piggy back' on any prior governmental action related to Del Global.").[13]

The case's riskiness was also heightened by a lack of insider trading. As defendants pointed out in their motion to dismiss papers, "none of the Individual Defendants is alleged to have sold any Vintage Wine stock during the Class Period." ECF No. 39 at 22; *see also* ECF 50 at 1 (similar). While the absence of insider trading was not fatal at the pleading stage, there can be no doubt that this would have been a strong fact for the defense at summary judgment and trial. *See Webb v. Solarcity Corp.*, 884 F.3d 844, 856 (9th Cir. 2018) ("a lack of stock sales can detract from a scienter finding."); *In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *11 (E.D.N.Y. Sept. 18, 2007) ("Establishing scienter is a difficult burden to meet and proving it will be especially challenging in this case where, apparently, neither the individual defendants nor any other Gilat executive profited from their Gilat investments.").

[13] *See also Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *3 (N.D. Ill. May 7, 2012) (fee request supported by fact that "there were no governmental investigations or prosecutions related to the alleged fraud upon which Class Counsel could rest their theory of the case. Rather, they investigated the facts and developed their theory of liability from scratch, involving significant time and expense.").

Additional risk was baked into the case by its subject matter. A trial would by necessity involve competing experts on complex issues such as accounting and auditing standards. "Since Lead Plaintiff bears the burden of proof, Defendants could win at summary judgment or trial through a *Daubert* motion and there would be an unpredictable battle of the experts." *ImmunityBio*, 2025 WL 1686263, at *8; *see also In re Bear Stearns Cos. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured.").

Finally, as noted, above, during the course of this litigation Vintage Wine declared bankruptcy and liquidated through the Chapter 11 bankruptcy process. This eliminated the proverbial "deep pocket" and substantially increased the risk of continued litigation. *See In re Safety Components, Inc. Sec. Litig.*, 166 F.Supp.2d 72, 100 (D.N.J. 2001) (finding "the risk of nonpayment as to the Defendants was substantial, and, therefore, this factor weighs overwhelmingly in favor of approval" of the attorneys' fee request where corporate defendant "was, at the time of negotiation, insolvent," ultimately filed for bankruptcy, and the D&O policy was "a wasting asset that could have been drastically depleted through continued litigation … [and] could have been further diminished by unrelated claims that may have arisen during the bankruptcy."); *Martin v. Foster Wheeler Energy Corp.*, 2008 WL 906472, at *4 (M.D. Pa. March 31, 2008) ("risk [of nonpayment] is high when a defendant is near insolvency.").

In sum, the risks were substantial, and they were present every step of the way. Accordingly, this factor strongly supports the requested attorneys' fee. *See In re Pac. Enters. Sec. Litig*., 47 F.3d 373, 379 (9th Cir. 1995) (finding attorneys' fees of 33% "justified because of the complexity of the issues and the risks"); *Ali v. Franklin Wireless Corp.*, 2024 WL 5179910, at *11 (S.D. Cal. Dec. 19, 2024) (upward adjustment of benchmark to 33.33% supported by contingent nature of litigation in complex securities case).

3. The Skill Required and the Quality of the Work

The third factor to consider in determining the reasonableness of a fee award is the skill required and the quality of the work performed. Courts have recognized that the "prosecution and management of a complex national class action requires unique legal skills and abilities" (*Omnivision*, 559 F. Supp. 2d at 1047), and that "[t]he experience of counsel is also a factor in determining the appropriate fee award." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *12 (C.D. Cal. June 10, 2005). "This is particularly true in securities cases because the [PSLRA] makes it much more difficult for securities plaintiffs to get past a motion to dismiss." *Omnivision*, 559 F. Supp. 2d at 1047.

Here, Plaintiffs' Counsel's attorneys are among the most experienced and skilled practitioners in the securities litigation field, and all of the firms have a long record of successfully prosecuting securities cases throughout the country, including within this Circuit. *See* Exs. 7-C, 8-C, 9-C (GPWR, Block and Muehlbauer firm résumés); *see also Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019) (GPWR lawyers "are highly experienced in securities litigation and have vigorously prosecuted the Settlement Class's claims"); *In re Lyft Inc. Sec. Litig.*, 2023 WL 5068504, at *9, *12 (N.D. Cal. Aug. 7, 2023) ("Block & Leviton LLP are highly experienced lawyers with expertise in securities class actions" and "litigated this case skillfully and professionally"). From the outset, Plaintiffs' Counsel aggressively sought to obtain the maximum recovery for the Settlement Class and, as detailed in the Sadler Declaration (¶¶11-32), expended considerable efforts in prosecuting this Action.[14] *See* ¶86 (Plaintiffs' Counsel's lodestar chart). Plaintiffs' Counsel respectfully submit that the quality of their efforts in the litigation, together with their substantial experience in securities class actions and commitment to this litigation, provided them with the leverage necessary to negotiate a favorable settlement. *See Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987) ("prosecution and management of a complex national class action requires unique legal skills and abilities.").

"[T]he quality of opposing counsel is [also] important in evaluating the quality of Plaintiffs' Counsel's work." *Heritage Bond*, 2005 WL 1594403, at *20; *In re Adelphia Commc'ns Corp. Sec. & Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Here, Defendants were represented by Snell & Wilmer and Jones Day, two extremely capable and highly respected national law firms, that vigorously defended the Action for over three and a half years. ¶92. Notwithstanding this formidable opposition, Plaintiffs' Counsel were able to obtain

[14] *See also* Exs. 7-A, 8-A & 9-A (charts categorizing Plaintiffs' Counsel hours).

a highly favorable recovery for the Settlement Class. Thus, this factor militates in favor of the requested fee. *See, e.g.*, *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977) ("plaintiffs' attorneys in this class action have been up against established and skillful defense lawyers, and should be compensated accordingly"); *Schwartz*, 2005 WL 3148350, at *30 ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation").

4. The Contingent Nature of the Fee and the Financial Burden Carried by Counsel Support the Fee Request

The fourth factor is the contingent nature of the representation. *WPPSS*, 19 F.3d at 1299. "[W]hen counsel takes on a contingency fee case and the litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award." *Zynga*, 2016 WL 537946, at *18. "This is especially true where, as here, class counsel has significant experience in the particular type of litigation at issue; indeed, in such contexts, courts have awarded an even higher 33 percent fee award." *Id.* (citing *Heritage Bond*, 2005 WL 1594403, at *19 (awarding attorneys' fees equal to 33% of settlement fund based on effort, skill, and experience of class counsel and collecting cases regarding same)).

Plaintiffs' Counsel have to date received no compensation, have invested 5,341.45 hours of work equating to a total lodestar of $3,762,465.00, and have incurred out-of-pocket expenses of $212,118.98 in prosecuting and resolving this Action. ¶¶86, 100. Additional work in implementing the Settlement and claims administration will also be required. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist [c]lass [m]embers in submitting their [p]roof[s] of [c]laim[], the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). Since the inception of this case, Plaintiffs' Counsel have borne the risk that any compensation and expense reimbursement would be contingent on the result achieved, as well as on this Court's discretion in awarding fees and expenses.

The risk of no recovery in complex cases like this one is very real. Lead Counsel know from personal experience that despite the most vigorous and competent of efforts, success in complex contingent litigation is never guaranteed. *See, e.g.*, *In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal. Dec. 17, 2018) (GPWR served as Co-Lead Counsel in case where, after more than five years of litigation, a plethora of foreign discovery, the expenditure of many millions of dollars in attorney time and hard costs, as well as a multi-week trial, the jury returned a verdict in favor of defendants alleged to have conspired to fix the prices of Korean ramen noodles).[15]

Lead Counsel is hardly alone. There are many other hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by members of the plaintiffs' bar produced no attorneys' fees for counsel. *See, e.g.*, *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 471-73 (S.D.N.Y. 2010) (after completing significant and expensive foreign discovery, 95% of plaintiffs' damages were eliminated by Supreme Court's reversal in *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010) after over 40-years of unbroken circuit court precedent). Indeed, "[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." *Xcel Energy*, 364 F. Supp. 2d at 994.[16] Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction in light of *Janus Cap. Grp., Inc. v. First Deriv. Traders*, 564 U.S. 135 (2011)), *reh'g denied* (July 1, 2015).[17]

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[15] *See also Gross v. GFI Group, Inc.*, 310 F. Supp. 3d 384, 399 (S.D.N.Y. 2018) (GPWR served as Co-Lead Counsel in case where the Court granted summary judgment for defendants following four years of litigation, discovery in the U.S. and U.K., and the expenditure of millions of dollars of attorney time and hard costs), *aff'd on other grounds* 784 Fed. Appx. 27, 29 (2d Cir. Sept. 13, 2019).

[16] *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 16, 2009), *aff'd* 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight years of litigation and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing lodestar of approximately $48 million); *In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants following lengthy trial).

[17] *See also Koger Props.*, 116 F.3d at 1441; *BankAtlantic*, 2011 WL 1585605; *Apple Computer*, 1991 WL 238298.

Here, because Plaintiffs' Counsel's fee was entirely contingent, the only certainties were there would be no fee without a successful result and such a result would only be realized after substantial amounts of time, effort, and expense were expended. Nevertheless, Plaintiffs' Counsel committed significant amounts of both time and money to prosecute this Action vigorously and successfully for the benefit of the Class. ¶¶11-32, 86, 100. Under such circumstances, "[t]he contingent nature of counsel's representation strongly favors approval of the requested fee." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998); *see also Ali v. Franklin Wireless Corp.*, 2024 WL 5179910, at *11 (S.D. Cal. Dec. 19, 2024) (upward adjustment of benchmark to 33.33% supported by contingent nature of litigation in complex securities case).

5. A 33⅓% Fee Award is Consistent With Fee Awards in Similar, Complex, Contingent Litigation

In *Paul, Johnson, Alston & Hunt v. Graulty*, the Ninth Circuit established 25% of the fund as the "benchmark" award for attorneys' fees. 886 F.2d 268, 272 (9th Cir. 1989); *see also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (reaffirming 25% benchmark). However, "a reasonable fee award is the hallmark of common fund cases" and the guiding principle in this Circuit is that a fee award be "reasonable under the circumstances." *WPPSS*, 19 F.3d at 1295 n.2.[18] As applied, this means that "in most common fund cases, the award exceeds that benchmark." *Omnivision*, 559 F. Supp. 2d at 1047; *see also Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *8 (C.D. Cal. Sept. 18, 2020) (awarding one-third of $12.375 million settlement fund, collecting cases and stating: "[a]n attorney fee of one third of the settlement fund is routinely found to be reasonable in class actions."); *Khoja v. Orexigen Therapeutics, Inc.*, 2021 WL 5632673, at *9 (S.D. Cal. Nov. 30, 2021) (awarding one-third of $4.8 million and stating "[d]istrict courts in this circuit have routinely awarded fees of one-third of the common fund or higher after considering the particular facts and circumstances of each case, and the Ninth Circuit has upheld such awards."). "This is particularly true in securities

[18] *See also Paul, Johnson*, 886 F.2d at 271 ("[I]t is well settled that the lawyer who creates a common fund is allowed an ***extra*** reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. The amount of such a reward is that which is deemed 'reasonable' under the circumstances."); *Vizcaino*, 290 F.3d at 1048 ("Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case.").

class actions such as this." *In re Am. Apparel Inc. S'holder Litig.*, 2014 WL 10212865, at *23 (C.D. Cal. Jul. 28, 2014); *see also Pac. Enters.*, 47 F.3d at 373 (affirming 33% award from $12 million common fund "because of the complexity of the issues and the risks").

In view of the result obtained, the contingent fee risk, the number of hours dedicated to this matter by Plaintiffs' Counsel, the financial commitment of Plaintiffs' Counsel, and the important public policy advanced by securities litigation such as this, it is respectfully submitted that an award of 33⅓% of the recovery obtained for the Settlement Class is appropriate. *See, e.g.*, *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) ("Risk multipliers incentivize attorneys to represent class clients, who might otherwise be denied access to counsel, on a contingency basis. This incentive is especially important in securities cases.").[19] Such an award would be consistent with attorneys' fee awards in similar complex, contingent litigation in the Ninth Circuit. *See In re Banc of California Sec. Litig.*, 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (awarding 33% of $19.75 million settlement fund); *Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 1997530, at *6 (S.D. Cal. June 6, 2022) (awarding 33⅓% of $12.75 million settlement fund); *In re Tezos Sec. Litig.*, 2020 WL 13699946, at *1 (N.D. Cal. Aug. 28, 2020) (awarding 33.33% of $25 million settlement fund); *Heritage Bond*, 2005 WL 1594403, at *23 (awarding fee of 33.33% of $27,783,000 settlement fund and noting that "courts in this circuit, as well as other circuits have awarded attorneys' fees of 30% or more in complex class actions"); *Davis v. Yelp, Inc.*, 2023 WL 3063823, at *2 (N.D. Cal. Jan. 27, 2023) (approving a fee of 33.3% of the $22.25 million settlement fund in securities class action); *Boyd v. Bank of America Corp.*, 2014 WL 6473804, at *9 (C.D. Cal. Nov. 18, 2014) (awarding one-third of the $5.8 million settlement fund).[20]

Accordingly, the fee request is in line with other comparable complex cases and should be approved. *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (affirming attorneys' fee award of 33% of a $14.8 million class action settlement); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming award of one-third of $1.725 million settlement).

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[19] *See also Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions "provide 'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'"); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007) (same).

[20] *See also* Ex. 1 (collecting Ninth Circuit cases with 33% or higher fee awards).

6. The Reaction of the Class Supports the Requested Fee

"The existence or absence of objectors to the requested attorneys' fee is a factor is [sic] determining the appropriate fee award." *Heritage Bond*, 2005 WL 1594403, at *21; *see also OmniVision*, 559 F. Supp. 2d at 1048. While the time to object to the requested fee and expenses does not expire until September 1, 2026, to date, not a single objection has been received by Lead Counsel or filed with the Court. *See* ¶73 & Ex. 6 (Bravata Decl.) at ¶16. Should any objections be received, they will be addressed in the reply papers. "The lack of objection from any Class Member supports the attorneys' fees award." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007); *Omnivision*, 559 F. Supp. 2d at 1048 (same); *see also Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *13 (C.D. Cal. 2008) (three members objected and 29 opted out, indicating favorable result and award of "generous fee").

D. A Lodestar Cross-Check Supports the Requested Fee

"Generally, a district court is not required to conduct a lodestar cross-check to assess the reasonableness of a fee award." *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *18 (N.D. Cal. Apr. 17, 2020); *see also In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 748 (9th Cir. 2017) ("Although ***not required to do so***, the district court took an extra step, cross-checking this result by using the lodestar method.") *vacated on other grounds sub nom. Frank v. Gaos*, 139 S. Ct. 1041 (2019); *Hageman v. AT & T Mobility LLC*, 2015 WL 9855925, at *4 (D. Mon. Feb. 11, 2015) (awarding 33.33% of the $45 million settlement fund as attorney's fees without conducting a lodestar cross-check). However, as "[a] final check on the reasonableness of the requested fees, courts often compare the fee counsel seeks as a percentage with what their hourly bills would amount to under the lodestar analysis." *Omnivision*, 559 F. Supp. 2d at 1048; *see also In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016) ("Although an analysis of the lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of the fee request with a lodestar amount can demonstrate the fee request's reasonableness."). When the lodestar is used as a cross-check, "the focus is not on the 'necessity and reasonableness of every hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007); *Glass v. UBS Fin. Servs.*, 331 F.

App'x. 452, 456 (9th Cir. 2009).[21]

"A lodestar cross-check first computes the plaintiffs' attorneys' reasonable hourly rate for the litigation and multiplies that rate by the number of hours dedicated to the case." *In re Stable Rd. Acquisition Corp.*, 2024 WL 3643393, at *15 (C.D. Cal. Apr. 23, 2024). In the second step of the analysis, a court adjusts the lodestar to take into account, *inter alia*, the time and labor required, the result achieved, the quality of representation, whether the fee is fixed or contingent, the novelty and difficulty of the questions involved, and awards in similar cases. *See Gonzalez v. City of Maywood*, 729 F.3d 1196, 1209, n.11 (9th Cir. 2013); *Vizcaino*, 290 F.3d at 1051-52 ("[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases."); *Heritage Bond*, 2005 WL 1594403, at *22 ("In securities class actions, it is common for a counsel's lodestar figure to be adjusted upward by some multiplier reflecting a variety of factors such as the effort expended by counsel, the complexity of the case, and the risks assumed by counsel.").

Plaintiffs' Counsel (including attorneys, paralegals, and professional support staff) collectively devoted a total of 5,341.45 hours to the prosecution of the Action. ¶86. As is customary when seeking a percentage-of-the-fund award in common fund cases and submitting data for a lodestar cross-check, Plaintiffs' Counsel are submitting declarations that include a schedule breaking down each firm's lodestar by individual, position, billing rate and hours billed.[22] ¶85; Exs. 7-A, 8-A & 9-A. Based on current hourly rates,[23] Plaintiffs' Counsel's lodestar is $3,762,465.00. ¶86.[24] Thus, the 33⅓% fee

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[21] *See also In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7 (D. Ariz. 2012) ("itemized statement" of legal services "not necessary" for lodestar cross-check); *Dakota Medical, Inc. v. RehabCare Group, Inc.*, 2017 WL 4180497, at *8 (E.D. Cal. Sept. 21, 2017) ("Where a lodestar is merely being used as a cross-check, the court may use a rough calculation of the lodestar.").

[22] *See In re Immune Response*, 497 F. Supp. 2d at 1176 ("Here, counsel have provided sworn declarations from attorneys attesting to the experience and qualifications of the attorneys who worked on the case, the hourly rates, and the hours expended."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306–07 (3d Cir. 2005) ("[t]he district courts [ ] may rely on summaries submitted by the attorneys and need not review actual billing records").

[23] Courts use current rather historic rates, to ensure that "[a]ttorneys in common fund cases [are] compensated for any delay in payment." *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002); *see also Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989).

[24] Plaintiffs' Counsel's rates range from $800-$1390 for partners, and $395-$1225 for non-partners (Exs. 7-A, 8-A & 9-A), and "are comparable to peer plaintiffs and defense-side law firms litigating

request (equal to $2,500,000, plus interest) yields a fractional or "negative" multiplier of 0.66. ¶98.

A "multiplier of less than one … suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class." *Chun–Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (requested fee award was not unreasonable when lodestar cross-check revealed a multiplier of 0.59); *see also In re Myford Touch Consumer Litig.*, 2019 WL 6877477, at *1 (N.D. Cal. Dec. 17, 2019) ("[T]he negative multiplier … suggests the request is reasonable."). Indeed, "an award exceeding 25 percent is reasonable where the total fee award is lower than the lodestar calculation." *Cabiness v. Educ. Fin. Sols., LLC*, 2019 WL 1369929, at *7 (N.D. Cal. Mar. 26, 2019). This is because, as is true here, "the requested award would not 'yield windfall profits for class counsel in light of the hours spent on the case.'" *Id.* (quoting *Bluetooth*, 654 F.3d at 942).

"The fact that [Plaintiff's] Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request." *Leach v. NBC Universal Media, LLC*, 2017 WL 10435878, at ¶49 (S.D.N.Y. Aug. 24, 2017); *see also Facebook*, 2015 WL 6971424, at *10. Among other things, Lead Counsel will oversee the claims administration process, respond to shareholder inquiries, and prepare and present a Motion for Distribution of the Net Settlement Fund to the Court. The multiplier will, therefore, diminish as the case moves forward because Lead Counsel will not seek any additional compensation for this work.

In sum, the requested fee award is reasonable, justified, and in line with what courts in this Circuit award in class actions such as this one, whether calculated as a percentage of the fund or as a multiple of counsel's lodestar. *See Jenson v. First Trust Corp.*, 2008 WL 11338161, at *15 (C.D. Cal. June 9, 2008) (awarding 33% of $8.5 million settlement fund and stating "[t]hat Counsel's requested fees here are *lower* than its lodestar, despite the presence of factors favoring an *upward* adjustment of its lodestar, indicates that the fee request is highly reasonable." (emphasis in the original)).

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matters of similar magnitude." *Lea v. TAL Educ. Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021) (approving GPM's 2021 rates of $600 to $995 for partners, and $500 to $750 for associates); *see also* Ex. 10 (chart of rates charged by peer plaintiff and defense counsel in complex litigation); *In re Stable Road,* 2024 WL 3643393, at *15 (applying GPM's 2024 rates in context of lodestar cross-check).

IV. PLAINTIFFS' COUNSEL'S EXPENSES SHOULD BE REIMBURSED

In addition to attorneys' fees, attorneys who create a common fund for the benefit of a class are also entitled to payment of reasonable litigation expenses and costs from the fund. *Omnivision*, 559 F. Supp. 2d at 1048. The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *See, e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("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.").

From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses and would not recover anything unless and until the Action was successfully resolved. ¶103. Plaintiffs' Counsel also understood that, even if the case was ultimately successful, an award of expenses would not compensate for the lost use of the funds advanced. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action. *Id.*

In the aggregate, Plaintiffs' Counsel have incurred expenses in the amount of $212,118.98 while prosecuting the Action, and these expenses are set forth in the Sadler Declaration, ¶100, and in each firm's individual supporting declaration. Exs. 7-B, 8-B & 9-B. The vast majority of expenses ($201,463.60, or approximately 95%) were for: an online document review platform ($48,485.50), the retention of a private investigation firm ($46,835.50), the mediator ($45,353.13), experts ($37,621.90), online legal and factual research ($14,953.08), and travel airfare ($8,214.49). Each of these expenses were critical to Plaintiffs' Counsel's success in achieving the Settlement and, like the other categories of expenses for which counsel seek reimbursement, are the types of expenses routinely charged to clients who pay hourly. They should, therefore, be reimbursed out of the common fund. *See In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) (approving reimbursement for similar fees expenses); *accord Immune Response*, 497 F. Supp. 2d at 1177-78.

V. PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER 15 U.S.C. §78u-4(a)(4)

In connection with Lead Counsel's request for reimbursement of Litigation Expenses, Plaintiffs respectfully request PSLRA awards in the aggregate amount of $15,000 (or $5,000 each) for time spent prosecuting the Action. 15 U.S.C. § 78u-4(a)(4). "Court[s] have found that the PSLRA permits courts to award lead plaintiffs in federal securities actions reimbursement for their time devoted to participating in and directing the litigation on behalf of the class." *In re Stable Road*, 2024 WL 3643393, at *16. Reimbursement of such costs "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000).

Here, Plaintiffs each took an active role in the litigation by, *inter alia*: (i) filing the original complaints in the Action (Ezzes and Salbenblatt); (ii) producing trading records to their attorneys; (ii) moving to serve as lead plaintiffs in the Action; (iii) reviewing all significant pleadings and briefs filed in the Action; (iv) regularly communicating with their attorneys regarding the posture and progress of the case; (v) reviewing Court orders and discussing them with their attorneys; (vi) consulting with counsel regarding settlement negotiations; and (vii) evaluating and approving the proposed Settlement. *See* Ex. 2 (Ezzes Decl.) at ¶6; Ex. 3 (Davies Decl.) at ¶5; Ex. 4 (Salbenblatt Decl.) at ¶6. "These are precisely the types of activities that support awarding reimbursement of expenses to class representatives" (*Stable Road*, 2024 WL 3643393, at *16), and the amounts requested are consistent with awards in other complex cases. *See Xcel Energy*, 364 F. Supp. 2d at 1000 (awarding eight lead plaintiffs a total of $100,000 pursuant to the PSLRA and noting "the important policy role [lead plaintiffs] play in the enforcement of the federal securities laws on behalf of persons other than themselves"); *Yelp*, 2023 WL 3063823, at *2 ($15,000 PSLRA award to lead plaintiff).[25]

VI. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court grant the fee and

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[25] *See also Immune Response*, 497 F. Supp. 2d at 1173-74 (awarding $40,000 to lead plaintiff pursuant to PSLRA); *In re QuantumScape Sec. Class Action*, 2025 WL 353556, at *6 (N.D. Cal. Jan. 22, 2025) (awarding lead plaintiff $12,500 and two other plaintiffs $5,000 each); *Todd v. STAAR Surgical Co.*, 2017 WL 4877417, at *6 (C.D. Cal. Oct. 24, 2017) ($10,000 award to lead plaintiff); *In re XL Fleet Corp. Sec. Litig.*, 2024 WL 1884483, at *2 (S.D.N.Y. April 30, 2024) (awarding lead plaintiff $25,000 and four other plaintiffs $15,000 each); *In re Qudian Inc. Sec. Litig.*, 2021 WL 2328437, at *2 (S.D.N.Y. June 8, 2021) (awarding lead plaintiff $25,000, and class representative $12,500, for "reasonable costs and expenses directly related to [their] representation of the Class").

expense application.

Dated: August 18, 2026

By: /s/ John C. Roberts, Jr.

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PROOF OF SERVICE

I hereby certify that on this 18th day of August, 2026, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

s/ John C. Roberts, Jr.
John C. Roberts, Jr.