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13
14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**
16

17
18 In re TAHOE RESOURCES, INC. SECURITIES
19 LITIGATION

Case No. 2:17-cv-01868-RFB-NJK

**U.S. PLAINTIFF’S COUNSEL’S
MOTION FOR AN AWARD OF
ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES,
AND AN AWARD TO U.S. PLAINTIFF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

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24 This Document Relates to: All Actions
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1 **MOTION**

2 Faruqi & Faruqi, LLP (the “Faruqi Firm” or “U.S. Plaintiff’s Counsel”),¹ respectfully
3 moves this Court for an Order pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure
4 and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4: (a) awarding
5 attorneys’ fees in the amount of 33% of the U.S. Settlement Fund, or \$6,435,000 plus accrued
6 interest; (b) reimbursing expenses in the amount of \$886,464.29, plus accrued interest; and (c)
7 authorizing an award for U.S. Plaintiff in the amount of \$10,000 pursuant to 15 U.S.C. § 78u-
8 4(a)(4).

9 This motion is based upon the memorandum of points and authorities set forth below; the
10 Wilson Declaration, with attached exhibits, filed herewith; the Declaration of Martin A. Muckleroy
11 (the “Muckleroy Declaration” or “Muckleroy Decl.”), filed herewith; the Sullivan Declaration,²
12 with attached exhibits, filed herewith; the pleadings and records on file in the above-captioned
13 action (the “U.S. Action”), and other such matters and argument as the U.S. Court may consider at
14 the hearing of this motion.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 U.S. Plaintiff’s Counsel respectfully submits this memorandum in support of its motion for
17 reimbursement of attorneys’ fees and expenses and an award for U.S. Plaintiff.

18 **INTRODUCTION**

19 As discussed in U.S. Plaintiff’s Unopposed Motion for Preliminary Approval of Class
20 Action Settlement (“U.S. Preliminary Approval Motion” or “U.S. PA Mot.”), ECF No. 243, U.S.

21
22 ¹ Unless otherwise noted, the following conventions are used herein: (a) all emphases are
23 added; (b) all internal citations and quotation marks are omitted; (c) all capitalized terms have the
24 meaning ascribed to them in the Joint Stipulation and Agreement of Global Settlement of Two
25 Related Securities Class Actions Pending in Different Jurisdictions dated May 25, 2023
26 (“Stipulation” or “Stip.”) (ECF No. 242); (d) “U.S. Settlement” refers to the settlement of the U.S.
27 Action set forth in the Stipulation; (e) U.S. Plaintiff refers to Lead Plaintiff Tiffany Huynh, as
28 executor for the estate of Kevin Nguyen; (f) all references to “Rule(s)” refers to the Federal Rules
of Civil Procedure; and (g) all references to Exhibits are to the exhibits annexed to the Declaration
of James M. Wilson, Jr. in support of this motion, filed concurrently herewith (the “Wilson
Declaration” or “Wilson Decl.”).

² The “Sullivan Declaration” or “Sullivan Decl.” refers to the Declaration of Owen F.
Sullivan Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary
Notice; and (C) Report on Requests for Exclusion.

1 Plaintiff, on behalf of herself and the proposed U.S. Settlement Class, as well as Defendants Tahoe
2 Resources, Inc., its successor 0799714 B.C. Ltd. (Tahoe Resources, Inc. and 0799714 B.C. Ltd.
3 referred to as “Tahoe” or the “Company”), Ronald W. Clayton, C. Kevin McArthur, Mark T.
4 Sadler, and Edie Hofmeister (collectively “Defendants”), have reached a proposed U.S. Settlement
5 for \$19,500,000 that, if given final approval, will resolve all claims in the U.S. Action. The U.S.
6 Settlement is the result of zealous prosecution by U.S. Plaintiff’s Counsel and U.S. Plaintiff. It is a
7 favorable result for the U.S. Settlement Class considering the risks that a smaller recovery, or no
8 recovery at all, might be achieved after further litigation.

9 In connection with the U.S. Settlement, U.S. Plaintiff’s Counsel respectfully seeks approval
10 of an award of attorneys’ fees in the amount of 33% of the U.S. Settlement Fund, and
11 reimbursement of \$886,464.29 in out-of-pocket expenses reasonably incurred during the course of
12 the U.S. Action, plus interest accrued on both amounts. Plaintiff’s Counsel is not requesting any
13 multiplier, and in fact its lodestar in this complex and protracted litigation exceeds the requested
14 33%.

15 As detailed below, the requested fee is fair and reasonable in light of the obstacles U.S.
16 Plaintiff’s Counsel has faced during prosecution of this action, U.S. Plaintiff’s Counsel’s skill and
17 expertise in litigating securities class actions, the favorable result obtained for the U.S. Settlement
18 Class, as well as the factors listed in Local Rule 54-14(a)(3). In recognition of the risks undertaken
19 and the effort expended by counsel in contingency fee cases, courts in this Circuit and throughout
20 the United States routinely award fees of this size in complex securities cases with comparable
21 recoveries. U.S. Plaintiff’s Counsel also requests that U.S. Plaintiff be granted an award of
22 \$10,000 pursuant to 15 U.S.C. § 78u-4(a)(4) for the time and effort that she and Mr. Nguyen
23 devoted to representing the U.S. Class in this Action.

24 Accordingly, U.S. Plaintiff’s Counsel respectfully submits that the requested attorneys’
25 fees, reimbursement of expenses, and award for U.S. Plaintiff should be granted.

26 This motion is based upon the memorandum of points and authorities set forth below; the
27 Wilson Declaration, with attached exhibits, filed herewith; the Muckleroy Declaration, with
28

1 attached exhibits, filed herewith; the pleadings and records on file in the above-captioned action
2 (the “Action”); and other such matters and argument as the Court may consider at the hearing of
3 this motion.

4 **FACTUAL AND PROCEDURAL BACKGROUND**

5 To avoid undue repetition, U.S. Plaintiff’s Counsel respectfully refers the Court to the
6 Wilson Declaration for a detailed description of U.S. Plaintiff’s claims and the prosecution of this
7 Action. *See* Wilson Decl. ¶¶ 11-50.

8 **ARGUMENT**

9 **I. THE REQUESTED FEE IS REASONABLE IN THIS CASE**

10 **A. Percentage Of The Fund Is The Preferred Method**

11 It is well established in the Ninth Circuit that, in a common fund case, the court has
12 discretion to apply either the percentage of the fund method or the lodestar method in calculating a
13 fee award. *See Fischel v. Equitable Life Assur. Soc’y of the U.S.*, 307 F.3d 997, 1006 (9th Cir.
14 2002); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294-95 (9th Cir.
15 1994) (“WPPSS”). However, “use of the percentage method in common fund cases appears to be
16 dominant” in this Circuit and its “advantages . . . have been described thoroughly by other courts.”
17 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). For example, in
18 addition to removing the burden on courts to calculate the attorneys’ lodestar, the percentage of the
19 fund method incentivizes attorneys to obtain the maximum possible recovery for the class in the
20 most efficient manner. *See Lopez v. Youngblood*, 2011 WL 10483569, at *3 (E.D. Cal. Sept. 2,
21 2011) (“[T]he percentage of the available fund analysis is the preferred approach in class action fee
22 requests because it more closely aligns the interests of the counsel and the class, *i.e.*, class counsel
23 directly benefit from increasing the size of the class fund and working in the most efficient
24 manner.”).

25 **B. The Requested Fee of 33% Is Reasonable**

26 “Under the percentage-of-recovery method, the attorneys’ fees equal some percentage of
27 the common settlement fund; in this circuit, the benchmark percentage is 25%.” *In re Online*
28

1 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015). However, because the ultimate
2 determination of the appropriate amount of attorneys’ fees to be awarded in each case rests within
3 the sound discretion of the district court, *see Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir.
4 2012), the “benchmark percentage should be adjusted, or replaced by a lodestar calculation, when
5 special circumstances indicate that the percentage recovery would be either too small or too large
6 in light of the hours devoted to the case or other relevant factors[.]” *Schroeder v. Envoy Air, Inc.*,
7 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019).

8 Courts in this Circuit frequently approve an upward adjustment from the benchmark after
9 weighing the six factors (listed below). *See, e.g., Davis v. Yelp, Inc.*, 2023 WL 3063823, at *2
10 (N.D. Cal. Jan. 27, 2023) (approving a fee of 33.3% of the settlement fund); *Johnson v. U.S. Bank*
11 *Nat’l Ass’n*, 2020 WL 13652583, at *3 (S.D. Cal. Aug. 20, 2020) (finding that an award of 33%
12 was reasonable in light of the circumstances); *In re Banc of Cal. Sec. Litig.*, 2020 WL 1283486, at
13 *1 (C.D. Cal. Mar. 16, 2020) (finding that an award of 33% was fair and reasonable); *Schroede*,
14 2019 WL 2000578, at *7 (approving a fee of 33% of the settlement fund).

15 “The Ninth Circuit has identified a number of factors that may be relevant in determining if
16 the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required
17 and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class
18 counsel; and (6) the awards made in similar cases.” *Martin v. Ameripride Servs., Inc.*, 2011 WL
19 2313604, at *8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–
20 50 (9th Cir. 2002)). The choice of the award “must be supported by findings that take into account
21 all of the circumstances of the case.” *Schroeder*, 2019 WL 2000578, at *7.

22 **1. U.S. Plaintiff’s Counsel Obtained a Favorable Result for the U.S.**
23 **Settlement Class**

24 “The overall result and benefit to the class from the litigation is the most critical factor in
25 granting a fee award.” *Omnivision*, 559 F. Supp. 2d at 1046; *In re Bluetooth Headset Prods. Liab.*
26 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“Foremost among these considerations . . . is the benefit
27 obtained for the class.”).
28

1 The recovery achieved for the U.S. Settlement Class, \$19,500,000 in cash, is a favorable
2 result that will provide the U.S. Settlement Class with an immediate and certain benefit. As
3 explained in the U.S. Preliminary Approval Motion, the U.S. Settlement Amount represents
4 approximately 5.7% of the maximum possible statutory damages estimated by U.S. Plaintiff’s
5 damages consultant as a result of Defendants’ wrongdoing. U.S. PA Mot. 13; *see also* Wilson
6 Decl. ¶ 85. This amount is well within the range of court-approved recoveries in complex
7 securities class actions such as this. *See, e.g., IBEW Local 697 Pension Fund v. Int’l Game Tech.,*
8 *Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving securities class action settlement
9 where recovery was “about 3.5% of the maximum damages that Plaintiffs believe could be
10 recovered at trial[.]”); *Vataj v. Johnson*, 2021 WL 5161927, at *6 (N.D. Cal. Nov. 5, 2021)
11 (approving settlement recovering approximately 2% of estimated damages as “consistent with the
12 2-3% average recovery that the parties identified in other securities class action settlements[.]”); *In*
13 *re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at *6 (S.D. Cal. Oct. 30, 2020)
14 (approving \$900,000 settlement representing 1.99% of total estimated damages and collecting
15 cases approving settlements amounting to 1.6-5% of estimated damages).

16 Furthermore, when negotiating the Settlement, U.S. Plaintiff’s Counsel carefully examined
17 the continued time and expense of additional litigation, U.S. Plaintiff’s likelihood of success on the
18 merits, the maximum provable damages, and the likelihood of obtaining a larger settlement after
19 continued litigation. *See* Wilson Decl. ¶¶ 57-58. U.S. Plaintiff’s Counsel determined that, in light
20 of these issues, the U.S. Settlement Amount was a favorable result for the U.S. Settlement Class.
21 *See id.* Specifically, the Stipulation was entered just as the parties were beginning the foreign
22 discovery phase of the litigation. Therefore, in order to continue to develop the claims in the
23 operative complaint, the fact discovery process would have required U.S. Plaintiff’s Counsel to,
24 among other things, continue serving and enforcing subpoenas in Guatemala and Peru and to
25 collect documents and take foreign-language depositions in those countries, which would be
26 particularly time consuming, particularly in light of the fact that initial attempts to serve three
27 foreign non-party witness (*e.g.* Alex Black in Peru and Gustavo Herrarte and Father Néstor Adolgo
28

1 Melgar Monterroso in Guatemala) have been unsuccessful. Even after putting in the considerable
2 time and incurring the additional expenses that foreign discovery would require, there is a chance
3 that U.S. Plaintiff's claims could be dismissed at summary judgment, or following an expensive
4 and resource-consuming trial. *See id.* ¶¶ 57-58.

5 Thus, "the result achieved for the Class—especially at this early stage—is favorable
6 considering the potential vulnerabilities of Lead Plaintiff's case." *DeStefano v. Zynga, Inc.*, 2016
7 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016).

8 **2. Litigation of this Action Involved Significant Risks**

9 "The risk that further litigation might result in Plaintiffs not recovering at all, particularly
10 [in] a case involving complicated legal issues, is a significant factor in the award of fees." *Wietzke*
11 *v. CoStar Realty Info., Inc.*, 2011 WL 817438, at *6 (S.D. Cal. Mar. 2, 2011).

12 U.S. Plaintiff and U.S. Plaintiff's Counsel continue to believe that the claims asserted in the
13 U.S. Action are meritorious and that the evidence developed to date supports those claims. While
14 U.S. Plaintiff believes that her claims would have survived summary judgment and trial, this result
15 was far from guaranteed. *See Wilson Decl.* ¶¶ 57-58. Defendants opposed certification of the
16 class and have raised numerous challenges and adamantly deny any wrongdoing. *See ECF No.*
17 *159; Stip.* ¶¶ Z.-AA. Additionally, class certification has not been granted in the U.S. action.
18 Further, even if the U.S. class was certified, Defendants' right to file a petition pursuant to Federal
19 Rule of Civil Procedure 23(f) for leave to appeal from the Court's decision and order creates
20 further uncertainty. Defendants have continued to aggressively pursue dismissal of the claims in
21 the AC and could be expected to continue to do so until the end of the litigation. *See Wilson Decl.*
22 ¶¶ 57-58. Thus, after investing more than five years of time litigating this Action and over
23 \$800,000 in expenses, U.S. Plaintiff's Counsel assumed the risk that they could be left with no
24 compensation at all for their efforts.

25 **3. U.S. Plaintiff's Counsel Provided Quality Representation**

26 "The prosecution and management of a complex national class action requires unique legal
27 skills and abilities." *Zynga*, 2016 WL 537946, at *17. The quality of the representation that U.S.
28

1 Plaintiff's Counsel provided supports the reasonableness of the requested fee. U.S. Plaintiff's
2 Counsel is a national law firm with extensive experience representing investors in complex
3 securities class actions. *See* Wilson Decl. ¶ 86; Ex. 2 (Faruqi Firm resume). Likewise, Muckleroy
4 Lunt, LLC (the "Muckleroy Firm") has substantial complex litigation experience and has served
5 the Class ably as Liaison Counsel. *See* Muckleroy Decl. ¶ 2 & the Muckleroy Firm Resume, ECF
6 No. 243-4 (Exhibit 2 to U.S. Pa. Mot.).

7 U.S. Plaintiff's Counsel's experience and skill were demonstrated by the zealous and
8 effective prosecution of this Action, especially in light of the fact that the events at issue in the
9 litigation primarily occurred in a foreign country. For example, U.S. Plaintiff's Counsel conducted
10 an extensive factual investigation and engaged in significant legal research in connection with,
11 *inter alia*, drafting the amended complaint; responding to Defendants' motion to dismiss;
12 preparing for and attending a contentious motion to dismiss hearing; responding to Defendants'
13 motions for interlocutory appeal; drafting extensive document requests, interrogatories, and third-
14 party subpoenas; engaging in numerous meet and confer sessions regarding the scope of discovery;
15 reviewing tens of thousands of discovery documents, many of which were in Spanish; deciphering
16 a privilege log with more than 100,000 entries; conducting more than a dozen fact and expert
17 depositions; drafting and working closely with a damages consultant in preparing U.S. Plaintiff's
18 motion for class certification; preparing for and attending a contentious motion for class
19 certification hearing; and filing seven motions for letters rogatory to serve document and
20 deposition subpoenas in Guatemala and Peru. Wilson Decl. ¶¶ 28, 51.

21 "In addition to the difficulty of the legal and factual issues raised, the court should also
22 consider the quality of opposing counsel as a measure of the skill required to litigate the case
23 successfully." *In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *22 (C.D. Cal. July
24 28, 2014). Defendants' counsel, Neal Gerber & Eisenberg, LLP and Fennemore Craig, P.C., are
25 skilled litigators. The attorneys who represented Defendants in this matter were formidable
26 opponents who zealously represented their clients and mounted strong defenses. *See id.* To match
27 defense counsel, U.S. Plaintiff's Counsel was required to litigate at a very high level of skill,
28

1 efficiency, and professionalism at every stage of the proceedings. *See id.*; *HCL Partners Ltd.*
2 *P'ship v. Lead Wireless Int'l, Inc.*, 2010 WL 4156342, at *2 (S.D. Cal. Oct. 15, 2010) (considering
3 the quality of opposing counsel in approving the requested attorneys' fees). Indeed, this litigation
4 was hard fought by both sides at every stage, as evidenced by the difficulties surrounding
5 discovery and class certification.

6 Despite the formidable opposition faced throughout the litigation, U.S. Plaintiff's Counsel
7 was able to reach an agreement with Defendants on terms favorable to the Class. *See Schroeder*,
8 2019 WL 2000578, at *7 (approving a fee of 33% when "Counsel exercised considerable skill in
9 the litigation of the motion for class certification, dispositive motions to dismiss, and substantial
10 discovery, and they did so against experienced, highly skilled opposing counsel and on an entirely
11 contingent basis."); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002)
12 ("A prompt and efficient attorney who achieves a fair settlement without litigation serves both his
13 client and the interests of justice.").

14 **4. U.S. Plaintiff's Counsel Took on a Financial Burden**

15 In addition to the risks associated with complex litigation, "the risk of non-payment or
16 reimbursement of expenses [in cases undertaken on a contingent basis] is a factor in determining
17 the appropriateness of counsel's fee award." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21
18 (C.D. Cal. June 10, 2005). Courts in this Circuit have found that "[t]he importance of assuring
19 adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies
20 providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they
21 were billing by the hour or on a flat fee." *Omnivision*, 559 F. Supp. 2d at 1047.

22 When U.S. Plaintiff's Counsel undertook representation of U.S. Plaintiff in this Action, it
23 was aware that it was embarking on a complex securities class action that posed a significant risk
24 of non-payment after many years of litigation. *See Wilson Decl.* ¶¶ 81, 84. Despite this risk, U.S.
25 Plaintiff's Counsel prosecuted this Action on a contingent fee basis and has not received any
26 compensation for its services or reimbursement for the expenses it has incurred. *Id.* In order to
27 reach the U.S. Settlement for the benefit of the U.S. Settlement Class, U.S. Plaintiff's Counsel has
28

1 had to work thoroughly and diligently, investing a significant amount of time and energy into the
2 litigation of this Action. Through these efforts, U.S. Plaintiff’s Counsel has incurred 12,198.05
3 hours of attorney and staff time and \$886,464.29 in expenses without reimbursement. *See id.* at ¶¶
4 91-92; Exs. 3-4; Muckleroy Decl. ¶¶ 4-5. “This type of substantial outlay, when there is a risk that
5 [no money] will be recovered, further supports the award of the requested fees.” *Am. Apparel*,
6 2014 WL 10212865, at *22; *see also Davis*, 2023 WL 3063823, at *2 (“larger award of 33% is
7 warranted because counsel risked significant amounts of their own funds and dedicated time and
8 effort to litigate through the” advanced stages of the case). Furthermore, although working on this
9 case did not outright preclude U.S. Plaintiff’s Counsel from taking on other matters, the time spent
10 litigating this matter is time that it could have devoted to working on other matters.

11 **5. The Fee Is in Line With the Customary Fees in Similar Actions**

12 An award of 33.33% for attorneys fees is sometimes warranted. *See In re Mego Fin. Corp.*
13 *Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming a fee award of 33.33% of the
14 settlement fund); *Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 1997530, at *6 (S.D. Cal. June
15 6, 2022) (“the proposed 33 1/3% of the Settlement Fund is a reasonable award in this case”). In
16 “[t]his circuit has established 25% of the common fund as a benchmark award for attorney fees[,]”
17 *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003), many courts have found that an upward
18 adjustment is appropriate under the circumstances of the litigation. For example, in *Khoja v.*
19 *Orexigen Therapeutics, Inc.*, 2021 WL 5632673, at *9 (S.D. Cal. Nov. 30, 2021), the court found
20 that “[c]onsidering the circumstances of this case, Lead Counsel’s departure from the 25 percent
21 benchmark and request for 33 percent of the [] Settlement Amount in attorneys’ fees . . . is
22 reasonable[,]” because “having taken this case purely on a contingency basis, Lead Counsel risked
23 incurring significant costs and devoted a substantial amount of time to this matter with no
24 guarantee of compensation. Counsel collectively spent over four thousand hours researching,
25 investigating, and prosecuting this case on behalf of the putative class and fronted \$100,529.65 in
26 costs and expenses, again, with no guarantee of recovery.” *Id.*

1 This case was especially complicated and protracted. As discussed below, Plaintiff's
2 counsel's lodestar is substantially more than the 33.33% fee requested. After six years of
3 litigation, U.S. Plaintiff's Counsel devoted more than 12,000 hours to the case and fronted more
4 than \$800,000 in costs and expenses to reach this positive result for the U.S. Settlement Class. *See*
5 *Wilson Decl.* ¶¶ 91-92; *see also In re K12 Inc. Sec. Litig.*, 2019 WL 3766420, at *1-2 (N.D. Cal.
6 July 10, 2019) (an award of 33% was "fair and reasonable and consistent with awards in similar
7 cases."); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at *8-10 (E.D. Cal. Oct. 31, 2012)
8 (awarding attorneys' fees equal to 33% of the common fund after concluding that the award was
9 reasonable based on the "overall success, the skill with which the case was prosecuted, the
10 substantial legal risks associated with Plaintiffs' claims, and the financial risks borne by Class
11 Counsel"). Indeed, the underlying operative events in the AC took place in Guatemala.
12 Developing a complete record would necessarily involve interviewing witnesses and reviewing
13 documents in a foreign language, navigating a foreign court system to obtain critical documents,
14 and consulting with Guatemalan and Peruvian counsel regarding local laws. *See Wilson Decl.* ¶¶
15 20, 57. Given the length of the class period and the number of individuals and entities involved in
16 the events at issue, discovery has already resulted in the production of more than 150,000
17 documents and a privilege log with more than 100,000 entries, the deposition of 12 fact witnesses,
18 and the preparation of seven letters rogatory. *See id.* at ¶¶ 28-31. As well, there was a parallel
19 securities class action pending in Canada which required coordination with local Canadian counsel
20 to protect the interests of the U.S. Settlement Class. *See id.* at ¶¶ 7, 53, 88.

21 Accordingly, it is respectfully submitted that the attorneys' fees requested here are well
22 within the range of fees awarded in this Circuit and in similarly complex securities class actions.

23 **6. The Requested Fee Is Reasonable Under the Lodestar Cross-Check**

24 The "lodestar, which measures the lawyers' investment of time in the litigation, provides a
25 check on the reasonableness of the percentage award." *In re Immune Response Sec. Litig.*, 497 F.
26 Supp. 2d 1166, 1176 (S.D. Cal. 2007). As the Court in *Vizcaino v. Microsoft Corp.* explained:

27 Where such investment [of time] is minimal, as in the case of an early settlement,
28 the lodestar calculation may convince a court that a lower percentage is

1 reasonable. Similarly, the lodestar calculation can be helpful in suggesting a
 2 higher percentage when litigation has been protracted. Thus, while the primary
 3 basis of the fee award remains the percentage method, the lodestar may provide a
 4 useful perspective on the reasonableness of a given percentage award.

5 290 F.3d 1043, 1050 (9th Cir. 2002). “The lodestar is calculated by multiplying the number of
 6 hours . . . reasonably expended on the litigation by a reasonable hourly rate.” *Zynga*, 2016 WL
 7 537946, at *18. “In securities class actions, it is common for a counsel’s lo[de]star figure to be
 8 adjusted upward by some multiplier reflecting a variety of factors such as the effort expended by
 9 counsel, the complexity of the case, and the risks assumed by counsel.” *Heritage*, 2005 WL
 10 1594403, at *22.

11 U.S. Plaintiff’s Counsel devoted a significant amount of time to the prosecution of this case
 12 to protect the U.S. Settlement Class’s interests. Much of this time was spent on discovery-related
 13 matters. *See* Wilson Decl., Ex. 3. As set forth in the time reports submitted herewith, U.S.
 14 Plaintiffs’ Counsel has expended 12,198.05 hours on this litigation (excluding time spent in
 15 connection with this fee motion). *See* Wilson Decl. ¶¶ 88, 91.

16 Partners’ rates are \$690 to \$1,050 per hour, associates’ rates range from \$400 to \$625 per
 17 hour, and paralegals’ rates range from \$275-450 per hour. *See* Wilson Decl. ¶ 78; Muckleroy
 18 Decl. at 1, 3. These are “reasonable hourly rate[s] for the region and for the experience of the
 19 lawyer[,]”³ *Bluetooth*, 654 F.3d at 941, and when multiplied by the number of hours expended,
 20 result in a lodestar of \$7,735,656.75. Wilson Decl. ¶ 76. When the lodestar is compared to the fee
 21 of approximately \$6,435,000 requested by U.S. Plaintiff’s Counsel, it results in a negative lodestar
 22 multiplier (also known as lodestar multiplier that is less than 1). *See id.* Courts in this Circuit

23 ³ *See, e.g., Greene v. Jacob Transp. Servs., LLC*, 2018 WL 11424176, at *2 (D. Nev. Aug.
 24 29, 2018) (finding attorneys’ hourly rates of \$390-\$800 reasonable); *In re Volkswagen “Clean
 25 Diesel” Marketing, Sales Practices, and Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal.
 26 Mar. 17, 2017) (finding lodestar cross-check supported the reasonableness of the requested fee
 27 award where “[t]he blended average hourly billing rate is \$529 per hour for all work performed
 28 and projected, with billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for
 associates, and \$80 to \$490 for paralegals[.]”); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at
 *14 (N.D. Cal. Dec. 18, 2018) (finding reasonable plaintiffs’ counsel’s rates that ranged from \$650
 to \$1,250 for partners or senior counsel, from \$400 to \$650 for associates, and from \$245 to \$350
 for paralegals).

1 regularly approve fees that result in positive lodestar multipliers “ranging between 1 and 4.”
2 *Omnivision*, 559 F. Supp. 2d at 1048; *Vizcaino*, 290 F.3d at 1050-51 (approving fee representing a
3 multiple of 3.65 times counsel’s lodestar); *In re Mercury Interactive Corp. Sec. Litig.*, 2011 WL
4 826797, at *2 (N.D. Cal. Mar. 3, 2011) (lodestar cross-check multiplier of 3.08 “is within the
5 acceptable range”).

6 Therefore, the negative lodestar multiplier in this case results in no windfall to U.S.
7 Plaintiff’s Counsel and shows that the requested fee is more than reasonable in light of the
8 substantial time and energy Lead Counsel has invested in this Action. Indeed, in *Schroeder*, 2019
9 WL 2000578, at *7-8, the court found that adjusting the fee up to 33% of the settlement fund was
10 appropriate when the lodestar of \$1,311,409 was larger than the requested fee of \$1,185,195. *See*
11 *also Davis*, 2023 WL 3063823, at *2 (finding that 33% of the fund was reasonable when the
12 amount “is actually less than plaintiffs’ counsel’s lodestar”); *Chun-Hoon v. McKee Foods Corp.*,
13 716 F. Supp. 2d 848, 853-54 (N.D. Cal. 2010) (same); *Schuchardt v. Law Office of Rory W. Clark*,
14 314 F.R.D. 673, 690 (N.D. Cal. 2016) (“courts view self-reduced fees” representing a negative
15 multiplier on the lodestar “favorably”); *Li v. Sushi To Go Cherry Hill, LLC*, 2023 WL 4958105, at
16 *5 (D.N.J. Aug. 3, 2023) (“A lodestar multiple of less than one reveals that the fee requested
17 constitutes only a fraction of the work that the attorneys billed and thus, is reasonable.”). U.S.
18 Plaintiff’s Counsel will also devote additional hours and resources to this Action on an ongoing
19 basis, including: preparing for and participating in the U.S. Final Approval Hearing; assisting
20 potential U.S. Settlement Class Members with the completion and submission of their U.S. Proof
21 of Claim forms; monitoring the claims process; corresponding with the U.S. Claims Administrator;
22 and supervising the distribution of the Net U.S. Settlement Fund to U.S. Settlement Class
23 Members.

24 Thus, there can be no question that the requested fee award is fair and reasonable under the
25 lodestar cross-check, as it represents less than the actual amount of time U.S. Plaintiff’s Counsel
26 devoted (and will continue to devote) to this Action.
27
28

7. **Information Required By Local Rule 54-14**

1 This District’s Local Rule 54-14 provides that certain information must be included in a
2 request for attorneys’ fees. U.S. Plaintiff’s Counsel respectfully submits that most of the
3 information required by Local Rule 54-14 is addressed above: the results obtained and the amount
4 involved; the time and labor required; the novelty and difficulty of the questions involved; the skill
5 requisite to perform the legal service properly; the customary fee; whether the fee is fixed or
6 contingent; the experience, reputation, and ability of the attorney(s); and awards in similar cases.
7 A reasonable itemization and description of the work performed and the costs incurred can be
8 found in the Wilson Declaration (at ¶¶ 51, 88, Ex. 3) and the Muckleroy Declaration (at ¶¶ 4-7).
9 The remaining information is provided below:

10 *The preclusion of other employment by the attorney due to acceptance of the case.* While
11 U.S. Plaintiff’s Counsel was not outright precluded from taking on any additional cases, the
12 amount of time this case required was something U.S. Plaintiff’s Counsel took into account when
13 considering whether to take on other work.

14 *The time limitations imposed by the client or the circumstances.* The time limitations in
15 this case were nothing out of the ordinary for securities litigation.

16 *The undesirability of the case, if any.* There was nothing undesirable about this case.

17 *The nature and length of the professional relationship with the client.* U.S. Plaintiff’s
18 Counsel had no professional relationship with the U.S. Plaintiff prior to this Action.

19 **II. THE LITIGATION EXPENSES ARE REASONABLE AND WERE NECESSARILY**
20 **INCURRED**

21 U.S. Plaintiff’s Counsel also respectfully requests reimbursement, on behalf of U.S.
22 Plaintiff’s Counsel, of \$882,681.29, plus accrued interest, for expenses reasonably incurred in
23 prosecuting this Action. *See* Wilson Decl. ¶ 102, Ex. 4. “There is no doubt that an attorney who
24 has created a common fund for the benefit of the class is entitled to reimbursement of reasonable
25 litigation expenses from that fund.” *Heritage*, 2005 WL 1594403, at *23. The appropriate
26 analysis to apply in deciding whether expenses are compensable in a common fund case is whether
27 the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.
28

1 *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award
2 of attorneys’ fees those out-of-pocket expenses that would normally be charged to a fee paying
3 client.”). “To that end, courts throughout the Ninth Circuit regularly award litigation costs and
4 expenses—including photocopying, printing, postage, court costs, research on online databases,
5 experts and consultants, and reasonable travel expenses—in securities class actions, as attorneys
6 routinely bill private clients for such expenses in non-contingent litigation.” *Zynga*, 2016 WL
7 537946, at *22 (approving expense request for, *inter alia*, “copying, court costs, computer
8 research, delivery fees, expert and investigator fees, mediation, telephone, and travel costs[]”);
9 *Police Ret. Sys. of St. Louis v. Granite Constr. Inc.*, 2022 WL 816473, at *12 (N.D. Cal. Mar. 17,
10 2022) (approving class counsel’s request for \$763,958 which encompassed “expenses for experts,
11 a discovery document database, filing fees, copying, postage, and other unsurprising line items”).
12 Courts often award interest on expense requests as well. *See In re Banc of Cal. Sec. Litig.*, 2020
13 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (awarding “expenses in the amount of
14 \$1,575,210.83, together with the interest earned . . . the same time period and at the same rate as
15 that earned on the Settlement Fund until paid.”); *In re Hewlett-Packard Co. Sec. Litig.*, 2014 WL
16 12656737, at *1 (C.D. Cal. Sept. 15, 2014) (similar).

17 U.S. Plaintiff’s Counsel has itemized the categories of expenses it incurred and attests to
18 their accuracy. *See* Wilson Decl. ¶¶ 92-102, Ex. 4. U.S. Plaintiff’s Counsel’s expenses include
19 investigator’s fees, damages consultant fees, outside counsel fees, court reporter fees, mediation
20 fees, filing fees, electronic research, eDiscovery storage, postage, travel, and meals, all of which
21 U.S. Plaintiff’s Counsel believes were reasonable and necessary to adequately prosecute the claims
22 in this Action. *See id.* Indeed, this Action involved extensive fact investigation and discovery in
23 foreign countries which necessitated the retention of a Spanish-speaking investigator to
24 communicate with the operative witnesses, as well as consultation with local law firms in
25 Guatemala, Canada, and Peru to assist with the litigation and discovery in those jurisdictions. *See*
26 Wilson Decl. ¶¶ 88.i, 88.n, 96, 100. U.S. Plaintiff also moved for class certification which
27 involved the preparation of a detailed market analysis report and deposition of U.S. Plaintiff’s
28

1 damages expert. *See* Wilson Decl. ¶¶ 32, 88.e. Thus, given the international scope, complexity,
2 and length of this litigation, U.S. Plaintiff’s Counsel respectfully requests an award of
3 \$886,464.29, plus accrued interest, for U.S. Plaintiff’s Counsel as reimbursement for these
4 reasonable expenses. *See Thomas v. MagnaChip Semiconductor Corp.*, 2018 WL 2234598, at *4
5 (N.D. Cal. May 15, 2018) (awarding expenses in the amount of \$795,401.42 when the action
6 involved “extensive discovery, including multiple depositions in another country”).

7 **III. THE REQUESTED AWARD FOR U.S. PLAINTIFF IS REASONABLE**

8 Finally, U.S. Plaintiff’s Counsel seeks an award in the amount of \$10,000 for the U.S.
9 Plaintiff’s reasonable costs and expenses pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4).

10 The PSLRA limits a class representative’s recovery to an amount “equal, on a per share
11 basis, to the portion of the final judgment or settlement awarded to all other members of the
12 class[,]” but explicitly provides that “[n]othing in this paragraph shall be construed to limit the
13 award of reasonable costs and expenses (including lost wages) directly relating to the
14 representation of the class to any representative party serving on behalf of a class.” 15 U.S.C. §
15 78u-4(a)(4). Congress acknowledged “that lead plaintiffs *should be* reimbursed for reasonable
16 costs and expenses associated with service as lead plaintiff, including lost wages, and grants the
17 courts discretion to award fees accordingly.” H.R. Conf. Rep. No. 369-104, at 35 (1995).

18 Many courts have construed 15 U.S.C. § 78u-4(a)(4) to include as compensable “costs” or
19 “expenses” the amount of time a lead plaintiff or class representative spent on the litigation. *See*
20 *Ramsey v. MRV Commc’ns Inc.*, 2010 WL 11596641, at *8-9 (C.D. Cal. Nov. 16, 2010) (applying
21 15 U.S.C. § 78u-4(a)(4) and awarding the lead plaintiff \$11,000 for 35.75 hours he spent working
22 on the case at the hourly rate of \$300 an hour); *Immune Response*, 497 F. Supp. 2d at 1173-74
23 (awarding lead plaintiff \$40,000 based on his hourly rate of \$200 as CEO); *In re CV Therapeutics,*
24 *Inc., Sec. Litig.*, 2007 WL 1033478, at *2 (N.D. Cal. Apr. 4, 2007) (“[P]ursuant to 15 U.S.C. §
25 78u-4(a)(4), the Court awards lead plaintiff [] the amount of \$26,000.00 for reimbursement of time
26 and expenses incurred in representing the class.”); *In re Amgen Inc. Sec. Litig.*, 2016 WL
27 10571773, at *10 (C.D. Cal. Oct. 25, 2016) (explaining that “courts have awarded reasonable
28

1 payments to compensate class representatives for the time, effort, and expenses devoted to
2 litigating on behalf of the class[]” and awarding the class representative, an institutional investor,
3 \$30,983.99 for “reimbursement for the time” spent on the litigation).

4 U.S. Plaintiff’s request here is justified for similar reasons. U.S. Plaintiff, and the former
5 Lead Plaintiff Kevin Nguyen, played integral roles in this action, complying with the numerous
6 demands on their time and attention that arose during the past six years of litigation. *See* Wilson
7 Decl. ¶¶ 104-05. As set forth in her declaration accompanying this motion, U.S. Plaintiff
8 conservatively estimates that she spent at least 15 hours of her time in work directly related to the
9 representation of the U.S. Settlement Class. Wilson Decl., Ex. 5 at ¶ 10; Wilson Decl. ¶¶ 104.
10 U.S. Plaintiff’s work on behalf of the U.S. Settlement Class included: (1) engaging in frequent
11 communications with U.S. Plaintiff’s Counsel, including multiple emails, phone calls, and an in-
12 person meeting; (2) reviewing documents filed and/or prepared in the U.S. Action; (3) engaging in
13 the process of being appointed as the executor of Mr. Nguyen’s estate, which was necessary to be
14 substituted as Lead Plaintiff with the consent of all parties; and (5) providing input on the
15 mediation and settlement negotiations and authorizing the Settlement. Wilson Decl., Ex. 5 at ¶ 7;
16 Wilson Decl. ¶ 104. U.S. Plaintiff submits that the time she and her husband, Mr. Nguyen,
17 devoted to this litigation should be valued at \$10,000. Wilson Decl., Ex. 5 at ¶ 10; Wilson Decl. ¶¶
18 104-05. This is time that Ms. Huynh and Mr. Nguyen would have devoted to their personal lives
19 or other business or investment endeavors and therefore represents a cost to her.

20 Accordingly, U.S. Plaintiff’s Counsel, on behalf of U.S. Plaintiff, respectfully submits that
21 \$10,000 is a reasonable valuation for U.S. Plaintiff’s time and requests that the Court reimburse
22 U.S. Plaintiff in the amount of \$10,000 pursuant to 15 U.S.C. § 78u-4(a)(4).

23 CONCLUSION

24 For the reasons stated above, U.S. Plaintiff’s Counsel respectfully requests that the Court
25 award: (a) attorneys’ fees of 33% of the Settlement Fund, or \$6,435,000 plus accrued interest; (b)
26 reimbursement of litigation expenses in the amount of \$886,464.29 plus accrued interest; and (c)
27 an award to U.S. Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4) in the amount of \$10,000.

1 Dated: December 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

By: /s/ James M. Wilson, Jr. _____
James M. Wilson, Jr.

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