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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

**DECLARATION OF JAMES M.  
WILSON, JR. IN SUPPORT OF U.S.  
PLAINTIFF’S MOTION FOR  
FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
U.S. PLAINTIFF’S COUNSEL’S  
MOTION FOR AN AWARD OF  
ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES,  
AND AN AWARD TO U.S. PLAINTIFF**

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25 This Document Relates to: All Actions  
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1 I, James M. Wilson, Jr., declare as follows:

2 1. I am a member in good standing of the bar of the State of New York and am  
3 admitted *pro hac vice* in this Court. I am a partner in the law firm of Faruqi & Faruqi, LLP (the  
4 “Faruqi Firm” or “U.S. Plaintiff’s Counsel”),<sup>1</sup> which represents U.S. Plaintiff Tiffany Huynh  
5 (“U.S. Plaintiff” or “Ms. Huynh”) and the putative U.S. Settlement Class in the above-captioned  
6 securities class action pending in this Court (the “U.S. Action” or “this Action”).<sup>2</sup> I have been  
7 actively involved in the prosecution of this U.S. Action and have personal knowledge of the  
8 matters set forth herein based upon my close supervision and participation in the U.S. Action. If  
9 called upon, I could and would competently testify that the following facts are true and correct to  
10 the best of my knowledge.

11 **I. PRELIMINARY STATEMENT**

12 2. I respectfully submit this Declaration in support of U.S. Plaintiff’s Motion for Final  
13 Approval of the Class Action Settlement (“U.S. Final Approval Motion” or “U.S. FA Mot.”), and  
14 U.S. Plaintiff’s Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses,  
15 and an Award to U.S. Plaintiff (“U.S. Fee Motion” or “U.S. Fee Mot.”). Both motions are filed  
16 concurrently herewith.

17 3. U.S. Plaintiff, on behalf of herself, and the putative U.S. Settlement Class, and  
18 Defendants Tahoe Resources, Inc., its successor 0799714 B.C. Ltd. (Tahoe Resources, Inc. and  
19 0799714 B.C. Ltd. are referred to as “Tahoe” or the “Company”), Ronald W. Clayton, C. Kevin  
20 McArthur, Mark T. Sadler, and Edie Hofmeister (collectively “Defendants”), have reached a  
21 proposed U.S. Settlement for \$19,500,000<sup>3</sup> that, if given final approval, will resolve all claims in  
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23 <sup>1</sup> U.S. Plaintiff’s Counsel includes Liaison Counsel, Muckleroy Lunt, LLC.

24 <sup>2</sup> Unless otherwise noted, the following conventions are used herein: (a) all emphases are  
25 added; (b) all internal citations and quotation marks are omitted; (c) all capitalized terms have the  
26 meaning ascribed to them in the Joint Stipulation and Agreement of Global Settlement of Two  
27 Related Securities Class Actions Pending in Different Jurisdictions dated May 25, 2023  
28 (“Stipulation” or “Stip.”) (ECF No. 242); (d) “U.S. Settlement” refers to the settlement of the U.S.  
Action set forth in the Stipulation; and (e) all references to “Rule(s)” refers to the Federal Rules of  
Civil Procedure.

<sup>3</sup> The total monetary consideration for the Settlement, resolving both the U.S. Action and the  
Canadian Action, is \$33,000,000 USD.

1 the U.S. Action.

2 4. The terms of the Settlement are set forth in the Stipulation. The U.S. Court  
3 preliminarily approved the Stipulation by its Order dated November 15, 2023 (“Preliminary  
4 Approval Order”), ECF No. 252, a true and correct copy of which is attached hereto as *Exhibit 1*.

5 5. This declaration sets forth the nature of the claims asserted, the procedural history  
6 of the U.S. Action, and the methods by which the U.S. Settlement Class was notified of the U.S.  
7 Settlement. It also demonstrates the reasons why the U.S. Settlement and the U.S. Plan of  
8 Allocation are fair, reasonable, and adequate, and why U.S. Plaintiff’s Counsel’s application for  
9 attorneys’ fees, reimbursement of expenses, and an award for U.S. Plaintiff should be approved.

10 6. While U.S. Plaintiff’s Counsel believes that the allegations in the U.S. Action have  
11 substantial merit, U.S. Plaintiff’s Counsel respectfully submits that the U.S. Settlement represents  
12 a favorable result for the U.S. Settlement Class.

13 7. The U.S. Settlement is the result of extensive arm’s length and contentious  
14 settlement negotiations among experienced and capable counsel with a comprehensive  
15 understanding of the merits and value of the claims asserted. With the assistance of an  
16 experienced mediator, counsel met for an all-day mediation session to vigorously debate the  
17 strengths and weaknesses of the claims and defenses in the U.S. Action and the Canadian Action,  
18 *Dyck v. Tahoe Resources Inc. and Ronald Wayne Clayton*, Court File No.: CV-18-00606411-00CP  
19 (“Canadian Action”). The parties came to an agreement in principle at the mediation session and  
20 thereafter agreed to the terms and procedures reflected in the Stipulation. U.S. Plaintiff’s  
21 Counsel’s ability to come to a compromise in light of the many complex issues present in this  
22 Action evidenced the skill of representation and the quality of the results.

23 8. Pursuant to the Preliminary Approval Order, beginning on November 17, 2023, the  
24 U.S. Notice of Pendency and Proposed Settlement of Class Action (“U.S. Notice”) and U.S. Proof  
25 of Claim and Release Form (“U.S. Claim Form”) (collectively, the “U.S. Notice Packet”) were  
26 mailed to 11,307 potential U.S. Settlement Class Members and nominees, and were made available  
27 on the designated settlement website, [www.USTahoeSettlement.com](http://www.USTahoeSettlement.com), along with the Stipulation  
28

1 and U.S. Preliminary Approval Order. *See* Sullivan Decl. ¶¶ 2-10. The U.S. Summary Notice was  
2 timely posted by *GlobeNewswire* and published in *Investor's Business Daily* on November 27,  
3 2023. *See id.* ¶ 12.

4 9. For over six years, U.S. Plaintiff's Counsel has successfully overcome the  
5 significant obstacles that the U.S. Action has presented and adeptly navigated the complicated  
6 issues of law and fact inherent to a securities class action. The U.S. Settlement provides an  
7 immediate and certain benefit to the U.S. Settlement Class considering the significant risks that a  
8 smaller recovery—or, indeed, no recovery at all—might be achieved after a trial and the likely  
9 appeals that would follow, which could prolong the U.S. Action for years and incur significant  
10 additional expenses. For these reasons, and those set forth more fully below, U.S. Plaintiff's  
11 Counsel respectfully submits that the U.S. Settlement is in the best interests of the U.S. Settlement  
12 Class and should be approved as fair, reasonable, and adequate.

13 10. U.S. Plaintiff's Counsel also respectfully requests that the U.S. Court approve the  
14 U.S. Plan of Allocation for the Settlement proceeds, the award of attorneys' fees in the amount of  
15 \$6,435,000, plus accrued interest, and reimbursement of expenses in the amount of \$886,464.29,  
16 plus accrued interest. The fee award constitutes 33% of the U.S. Settlement Fund, which is in line  
17 with the amount of attorneys' fees awarded by courts in this Circuit and is reasonable in light of  
18 the relevant factors, including the quality of the representation, the complexity of the U.S. Action,  
19 and the risks of representing the U.S. Settlement Class in this Action. The expenses incurred by  
20 U.S. Plaintiff's Counsel were reasonable and necessary to prosecute this Action and to reach this  
21 favorable result for the U.S. Settlement Class.

## 22 **II. SUMMARY OF U.S. PLAINTIFF'S CLAIMS**

23 11. This Action arises out of Defendants' allegedly misleading statements and  
24 omissions that are alleged to violate Sections 10(b) and 20(a) of the Securities Exchange Act of  
25 1934, 15 U.S.C. §§ 78j(b) and 78t(a), and U.S. Securities and Exchange Commission ("SEC")  
26 Rule 10b-5, 17 C.F.R. § 240.10b-5. *See, e.g.*, Consolidated Amended Class Action Complaint  
27 ("AC"), ECF No. 59.

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1           12.     Briefly, the AC alleges that Defendants made misleading statements and omissions  
2 concerning the Company’s Escobal mining project in Southeastern Guatemala, including the  
3 legality of the Company’s license to mine, and the presence of and consultation with the local  
4 indigenous population that was actively opposing the project. *See id.* at ¶¶ 149-85.

5           13.     The true facts began to leak out on July 5, 2017, when the Supreme Court of  
6 Guatemala suspended two of Tahoe’s mining licenses for the Escobal Project because the  
7 Guatemalan mining authority did not consult with the local indigenous population prior to granting  
8 the licenses. *See id.* at ¶¶ 144-45. Then, on August 24, 2017, Guatemala’s Constitutional Court,  
9 the highest Court in the land, upheld the Supreme Court’s decision to suspend the licenses. *See id.*  
10 at ¶ 147.

11           14.     Defendants have denied and continue to deny each and all of the claims alleged by  
12 U.S. Plaintiff and the U.S. Settlement Class in the U.S. Action. *See* Stip. 6.

### 13     **III.    PROCEDURAL HISTORY**

14           15.     The U.S. Action began on July 7, 2017, when the initial class action complaint was  
15 filed in the United States District Court for the District of Nevada. ECF No. 1.

16           16.     That day, two other related actions were filed in other jurisdictions in the United  
17 States. The action entitled *Cabrera v. Tahoe Resources, Inc., et al.*, No. 1:17-cv-05155-AT (the  
18 “*Cabrera Action*”), was filed in the U.S. District Court for the Southern District of New York, and  
19 *Sanders v. Tahoe Resources, Inc., et al.*, No. 1:17-cv-04052-NGG-RER (the “*Sanders Action*”),  
20 was filed in the U.S. District Court for the Eastern District of New York.

21           17.     On September 5, 2017, Kevin Nguyen (“Mr. Nguyen”) filed for Lead Plaintiff in all  
22 three actions. *See* ECF No. 10; *Cabrera Action* ECF No. 12 to 14; *Sanders Action* ECF No. 11 to  
23 12, 15. Because of the large amount of his losses in Tahoe stock in accounts held jointly with his  
24 wife, Mr. Nguyen was the presumptive lead plaintiff and on September 26, 2017, he was appointed  
25 as lead plaintiff in the *Cabrera Action*. *See Cabrera Action* ECF No. 18.

26           18.     Then, on November 6, 2017, Mr. Nguyen moved to transfer the *Cabrera Action* to  
27 this Court so that it could be consolidated with this Action. *See Cabrera Action* ECF No. 30 to 32.  
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1 The court in the *Cabrera* Action granted the motion to transfer on May 14, 2018, and transferred  
2 the action that day. *See Cabrera* Action ECF No. 35. On June 6, 2018, Mr. Nguyen and  
3 Defendants filed a stipulation in the *Sanders* Action to transfer that action to this Court. *Sanders*  
4 Action ECF No. 37. As a result, the *Sanders* Action was transferred to this Court on June 8, 2018.  
5 *Id.* at 38.

6 19. On July 13, 2018, this Court appointed Mr. Nguyen as the Lead Plaintiff in this  
7 Action. ECF No. 54. That day, U.S. Plaintiff and Defendants filed a stipulation to consolidate the  
8 transferred *Cabrera* Action and the *Sanders* Action into this Action. ECF No. 56. The Court  
9 granted the stipulation on July 17, 2018. ECF Nos. 57 to 58.

10 20. U.S. Plaintiff filed the AC on August 31, 2018, alleging that Defendants made false  
11 and misleading statements and omissions regarding the licenses for its Escobal mining project in  
12 violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5  
13 promulgated thereunder. AC ¶ 1. Since many of the operative events in the AC took place in  
14 Guatemala, drafting the AC entailed interviewing witnesses and analyzing documents in a foreign  
15 language, navigating a foreign court system in order to obtain critical documents, and consulting  
16 with both Guatemalan and Peruvian counsel regarding local laws.

17 21. On October 30, 2018, Defendants filed their motion to dismiss the AC and a request  
18 that the Court take judicial notice of several additional documents. *See* ECF No. 65. U.S. Plaintiff  
19 opposed the motion to dismiss and a motion to strike Defendants' additional documents. ECF No.  
20 68 to 69. The Court held a hearing on June 19, 2019, during which it heard oral argument from the  
21 parties and then ruled on the motion on the record. ECF No. 84. The Court denied the motion to  
22 dismiss in its entirety except as to individual defendant Elizabeth McGregor. ECF No. 83 at  
23 48:16-49:18.

24 22. In the motion to dismiss order, the Court instructed the parties to bifurcate  
25 discovery into two phases, conducting discovery in the United States in the first phase and  
26 international discovery in the second phase. *See* ECF No. 83 at 50:8-51:5.

27 23. On August 2, 2019, Defendants filed their answer and a motion to certify the  
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1 motion to dismiss order for interlocutory appeal. ECF Nos. 88 and 91. U.S. Plaintiff opposed the  
2 interlocutory appeal motion on August 16, 2019 (ECF No. 93) and Defendants filed a reply to U.S.  
3 Plaintiff's opposition on August 23, 2019 (ECF No. 94).

4 24. During that time, the parties also began the discovery process. On August 9, 2019,  
5 the parties exchanged initial disclosures. Then, on August 23, 2019, U.S. Plaintiff served his 79  
6 document requests on all Defendants and separate interrogatories on each Defendant.

7 25. After engaging in several meet and confer sessions to discuss the terms, on October  
8 7, 2019, the parties filed a stipulated protective order to govern discovery in the Action, which the  
9 Court granted the following day. ECF Nos. 99 to 100.

10 26. In October 2019, the parties engaged in several meet and confer discussions to  
11 negotiate the parameters of Defendants' responses to U.S. Plaintiff's discovery requests.  
12 Following these meet and confer sessions, in December 2019 Defendants produced their first set of  
13 discovery documents. Defendants continued to produce documents on a rolling basis for the  
14 remainder of 2019.

15 27. On March 23, 2020, the Court denied Defendants' motion to certify for  
16 interlocutory appeal the order denying Defendants' motion to dismiss. ECF No. 114.

17 28. In September 2020, Defendants made a large production of discovery documents,  
18 spanning more than 600,000 pages, and bringing the total production from Defendants to more  
19 than 150,000 documents, which constituted more than 900,000 pages. Many of these documents  
20 were written in Spanish. At this time, Defendants also produced a privilege log with 134,161  
21 entries.

22 29. In addition to the documents Defendants produced, over the course of the litigation  
23 U.S. Plaintiff's Counsel served non-party subpoenas for the production of documents from, and in  
24 certain cases the depositions of, key non-party witnesses. After meeting and conferring with both  
25 Defendants' counsel and counsel for non-parties regarding, *inter alia*, privilege issues, U.S.  
26 Plaintiff's Counsel received 90,000 additional documents.

27 30. Following Defendants' and non-parties' document productions, U.S. Plaintiff  
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1 engaged in the time-consuming and complicated process of organizing and analyzing the  
2 documents produced by Defendants and non-parties in preparation for depositions and in  
3 determining the adequacy of the privilege redactions. With respect to the privilege issue, over the  
4 course of the litigation the parties exchanged correspondence and met and conferred over  
5 numerous documents to which Defendants asserted claims of privilege. After considerable back-  
6 and-forth between the parties, Defendants agreed to produce 296 documents (constituting 1,292  
7 pages) in a supplemental document production, accompanied by a revised privilege log.

8 31. On May 4, 2021, U.S. Plaintiff conducted the first deposition in this case: an in-  
9 person deposition of a non-party witness who was a former Tahoe employee. Between May 2021  
10 and January 2022, U.S. Plaintiff took the fact depositions of five former Tahoe employees and  
11 three relevant non-parties, one of whom was a non-party who opposed the Escobal Mine.  
12 Additionally, in December 2022, U.S. Plaintiff conducted the in-person depositions of all four  
13 individual Defendants (described in further detail below). In all, these depositions constituted  
14 approximately 64 hours of questioning and utilized approximately 321 exhibits that were presented  
15 to the witnesses during their depositions.

16 32. On July 1, 2021, U.S. Plaintiff filed a motion for class certification, which was  
17 supported by the opinion of expert Dr. Zachary Nye, Ph.D., who submitted a detailed market  
18 analysis report. ECF No. 142. Subsequently, the parties engaged in additional class certification  
19 discovery.

20 33. On August 3, 2021, U.S. Plaintiff's Counsel defended the in-person deposition of  
21 Lead Plaintiff Mr. Nguyen in San Francisco, California. The following day, August 4, 2021, U.S.  
22 Plaintiff's Counsel defended the in-person deposition of U.S. Plaintiff's expert witness Dr.  
23 Zachary Nye, also held in San Francisco, California. Both depositions were conducted in  
24 connection with class certification discovery.

25 34. On September 29, 2021, Defendants served their opposition to U.S. Plaintiff's class  
26 certification motion. ECF No. 159.

27 35. On November 5, 2021, U.S. Plaintiff conducted the deposition of Defendants'  
28



1 damages expert, Dr. Paul A. Gompers, as part of class certification discovery.

2 36. On November 30, 2021, U.S. Plaintiff filed a Reply in further support of its class  
3 certification motion. ECF No. 162.

4 37. On January 14, 2022, U.S. Plaintiff conducted the remote deposition of Ouida  
5 Chichester, a corporate representative of Business for Social Responsibility (“BSR”), a consultant  
6 for Tahoe with respect to the Escobal Mine. In addition to conducting the deposition of BSR, U.S.  
7 Plaintiff also subpoenaed and obtained the production of relevant documents in BSR’s possession  
8 relating to the Escobal Mine, after a successful meet and confer with Defendants.

9 38. On February 8, 2022, the Court held a remote hearing regarding U.S. Plaintiff’s  
10 motion for class certification and instructed the parties to submit supplemental filings.  
11 Additionally, the Court instructed the parties that an evidentiary hearing would be held at which  
12 the parties’ respective expert witnesses would appear in person. During this hearing, the Court  
13 instructed U.S. Plaintiff and Defendants to determine the availability of their respective expert  
14 witnesses to attend a two-day evidentiary hearing. ECF No. 165. The hearing was scheduled to be  
15 held on April 27 and 28, 2022, but was postponed due to the parties’ motion to stay the case  
16 pending mediation. ECF Nos. 173, 184.

17 39. On April 1, 2022, U.S. Plaintiff informed the Court that Mr. Nguyen had passed  
18 away. *See* Suggestion of Death, ECF No. 174. Also on April 1st, U.S. Plaintiff moved for Tiffany  
19 Huynh (“Ms. Huynh”), Mr. Nguyen’s wife, the named executor in his will and co-owner of the  
20 couple’s Tahoe stock, to be substituted as Lead Plaintiff. Motion of Ms. Huynh for Substitution as  
21 Lead Plaintiff, ECF No. 175. On April 13, 2022, Defendants filed a Response to the Motion to  
22 Substitute. ECF No. 180. In their Response, Defendants argued that the motion was “premature”  
23 because Ms. Huynh had not yet “been appointed the legal representative of Mr. Nguyen’s estate as  
24 required by Federal Rule of Civil Procedure 25(a)(1).” ECF No. 180 at 1-2. On April 20, 2022,  
25 U.S. Plaintiff filed a Reply to the Response. ECF No. 182.

26 40. On April 20, 2022, a joint motion was filed to stay the case because of an  
27 anticipated global mediation. ECF No. 183. The Court granted this motion on April 22, 2022.  
28

1 ECF No. 184. The parties scheduled a mediation for July 28, 2022, and engaged Robert Meyer, a  
2 highly experienced securities litigation mediator with JAMS. The parties prepared mediation  
3 statements with exhibits in preparation and attended a pre-mediation conference on July 25, 2022.

4 41. On July 21, 2022, after Tiffany Huynh was appointed executor of the estate of  
5 Kevin Nguyen, U.S. Plaintiff filed an unopposed Motion to Temporarily Lift the Stay of Litigation  
6 for the Sole Purposes of Granting Tiffany Huynh’s Motion for Substitution as Lead Plaintiff. ECF  
7 No. 187. On July 25, 2022, the Court “temporarily lifted [the stay] for the sole purpose of deciding  
8 the Motion of [Ms.] Huynh for Substitution as Lead Plaintiff” and granted the motion. ECF No.  
9 189.

10 42. On July 29, 2022, the parties filed a Joint Status Report notifying the Court that  
11 mediation had failed, requesting that the Court reschedule the class certification evidentiary  
12 hearing, and “granti[ng] the Parties fourteen (14) days to propose a schedule for the resumption of  
13 Phase II fact discovery directed at witnesses outside the United States.” ECF No. 190 at 2.

14 43. On October 5, 2022, U.S. Plaintiff filed seven (7) letters rogatory motions seeking  
15 the depositions of the following non-party witnesses: Alex Black (former Tahoe CEO), Gustavo  
16 Herrarte (former Tahoe consultant), Javier Fortin (former Tahoe employee), Juan Jose Cabrera  
17 (former Tahoe employee), Guillermo Monroy (former Tahoe employee), Nestor Melgar  
18 (Guatemalan priest who resisted the Escobal Mine), and Quelvin Otoniel Jimenez Villalta (Xinka  
19 who resisted the Escobal Mine). ECF Nos. 195 to 215. U.S. Plaintiff had spent considerable time  
20 and resources researching the process for serving these non-party witnesses because they are  
21 located in Guatemala and Peru, countries that are not subject to the Hague Convention but rather to  
22 the Inter-American Convention on Letters Rogatory and the corresponding Organization of  
23 American States’ Additional Protocol to the Inter-American Convention on Letters Rogatory.  
24 Accordingly, rules specific to the Inter-American Convention had to be followed before filing the  
25 motions, including the completion of specific forms and translation of numerous documents and  
26 forms into Spanish. U.S. Plaintiff also worked with local counsel in Guatemala and Peru regarding  
27 the letters rogatory motions as well as the U.S. State Department.  
28

1           44.     On October 27, 2022, U.S. Plaintiff served Defendants with a second set of  
2 Requests For Production of Documents containing thirteen (13) additional demands, bringing the  
3 total number of Requests for Production of Documents served by U.S. Plaintiff on Defendants to  
4 92.

5           45.     On October 31, 2022, the Court granted the seven (7) letters rogatory motions  
6 sought by U.S. Plaintiff. ECF Nos. 222 to 228. Thereafter, U.S. Plaintiff commenced the  
7 complicated process through the U.S. State Department of having six (6) of the letters rogatory  
8 served on their corresponding witnesses in Guatemala, and one (1) of the letters rogatory served on  
9 Alex Black in Peru. Fulfilling all of the requirements for serving the letters rogatory required  
10 extensive communication with local counsel in both Guatemala and Peru.

11           46.     On November 28, 2022, Defendants responded to U.S. Plaintiff's second set of  
12 Requests for Production. With their responses, Defendants provided an additional document that  
13 was 74 pages long.

14           47.     On December 7, 2022, U.S. Plaintiff conducted the in-person deposition of  
15 individual defendant Ron Clayton in Reno, Nevada.

16           48.     On December 9, 2022, U.S. Plaintiff conducted the in-person deposition of  
17 individual defendant Edie Hofmeister in Oakland, California.

18           49.     On December 13, 2022, U.S. Plaintiff conducted the in-person deposition of  
19 individual defendant Kevin McArthur in Palm Desert, California.

20           50.     On December 20, 2022, U.S. Plaintiff conducted the in-person deposition of  
21 individual defendant Mark Sadler in Pocatello, Idaho.

## 22 **IV. THE SETTLEMENT**

### 23 **A. Settlement Negotiations**

24           51.     During the period leading up to the settlement, U.S. Plaintiff's Counsel spent a great  
25 deal of time evaluating the case by, *inter alia*, thoroughly investigating the relevant facts and law;  
26 drafting the AC; vigorously (and largely successfully) opposing Defendants' motion to dismiss and  
27 related briefing; serving discovery on Defendants and reviewing the thousands of discovery  
28

1 documents produced by Defendants; engaging in numerous meet and confers with Defendants  
2 regarding the parties' discovery obligations as well as regarding Defendants' privilege assertions;  
3 serving numerous third-party subpoenas for depositions and document productions; reviewing the  
4 thousands of discovery documents produced by the third-parties; conducting thirteen (13)  
5 depositions and defending two (2) depositions; fully briefing the class certification motion; and  
6 fully briefing numerous other motions, including the letters rogatory motions, which required  
7 extensive research and coordination regarding service in Guatemala and Peru.

8 52. With the benefit of this extensive investigation and comprehensive analysis of the  
9 factual and legal issues in the U.S. Action, all settling parties entered settlement negotiations well-  
10 informed of the strengths and weaknesses of the claims and defenses asserted in this Action. Even  
11 after the failed mediation in July 2022, the parties continued to communicate about a possible  
12 resolution of all claims and, as a result of these communications, were able to agree on certain  
13 threshold issues that had been an impediment to the first attempt to conduct a formal mediation.

14 53. On January 31, 2023, the parties in this case and the parties in the Canadian Case  
15 met in Los Angeles, California, for a formal arm's length, all-day mediation session with  
16 experienced mediator Robert Meyer. U.S. Plaintiff participated by phone and email. She was  
17 fully available to answer questions and make decisions with the advice of counsel. In advance of  
18 the mediation session, both parties in the U.S. Action submitted and exchanged supplementary  
19 mediation statements and exhibits.<sup>4</sup>

20 54. The parties came to an agreement in principle during the mediation. Further,  
21 following the mediation the parties negotiated a term sheet outlining the terms of the proposed  
22 settlement in principle. Over the ensuing months, the parties negotiated and drafted a definitive  
23 settlement stipulation and agreement and prepared the motion for preliminary approval of the  
24 proposed settlement, to be filed in the District of Nevada.

25 55. On March 6, 2023, the parties filed a Joint Status Report and Motion to Stay  
26 Discovery. ECF Nos. 236 to 237. On March 7, 2023, the Court granted the request to stay

27 <sup>4</sup> As stated above, the parties had previously sought to mediate the case in 2022 but were  
28 unable to due to difficulties presented by the Canadian Action.

1 discovery and the case management deadlines established in the scheduling order were suspended.  
2 ECF No. 238.

3 56. On May 25, 2023, U.S. Plaintiff filed her Unopposed Motion for Preliminary  
4 Approval of Class Action Settlement. ECF No. 243.

5 **B. Reasons for the Settlement**

6 57. U.S. Plaintiff's Counsel strongly believes that the claims asserted in this Action are  
7 meritorious and that the evidence developed to date supports those claims. That said, U.S.  
8 Plaintiff's Counsel recognizes that additional time and expense would be necessary in order to  
9 bring this case to trial. Remaining hurdles included, but were not limited to, a two-day evidentiary  
10 hearing with expert testimony regarding the class certification motion; effecting service upon, and  
11 doing further work in connection with, the seven (7) foreign non-party witnesses identified in the  
12 letters rogatory motions; travelling to Guatemala and Peru and engaging in the process of obtaining  
13 documents from the witnesses, deposing the witnesses; moving for additional letters rogatory;  
14 discovery from additional foreign witnesses based on testimony obtained; summary judgment  
15 motion briefing which would likely require additional expert discovery by the parties regarding  
16 damages; potential appeals regarding the class certification order or summary judgment order;  
17 further meet and confer sessions and correspondence regarding the ongoing privilege dispute;  
18 possible motion practice related to said privilege dispute; and preparing for and participation in  
19 trial. U.S. Plaintiff's Counsel is also mindful of the inherent difficulty of proving claims under the  
20 federal securities laws, as well as issues of proof regarding foreign law, and the possible defenses  
21 to the claims asserted in this Action.

22 58. U.S. Plaintiff's Counsel also acknowledges that, notwithstanding its ability to  
23 further develop factual support of the claims, there is a risk that the Court would rule in  
24 Defendants' favor on issues at the summary judgment stage that could be dispositive in favor of  
25 Defendants. If U.S. Plaintiff's claims were to survive summary judgment, there is no certainty of a  
26 favorable jury verdict, and even then, this case may present novel issues on appeal with an  
27 uncertain outcome.

1           59. To date, the available insurance funds have been reduced significantly in order to  
2 pay defense attorneys' fees both in this Action and in the Canadian Action, and further litigation  
3 and trial would only further deplete such funds. The Settlement, by contrast, represents an  
4 immediate and certain benefit for the U.S. Settlement Class. U.S. Plaintiff's Counsel, having  
5 evaluated the substantial risk, time, and expenses required to prosecute this Action through trial  
6 and any appeals, strongly believes that the Settlement is a favorable result for the U.S. Settlement  
7 Class.

8           **C. The Settlement Terms**

9           60. The U.S. Settlement, which the Court preliminarily approved, provides for the gross  
10 payment of \$19,500,000 to secure a settlement of the claims asserted in the U.S. Action against  
11 Defendants (the total monetary consideration for the Settlement, resolving both the U.S. Action  
12 and the Canadian Action, is \$33,000,000 USD). If approved, the U.S. Settlement will finally  
13 resolve U.S. Plaintiff's allegations against Defendants and release all Released U.S. Claims against  
14 them in this Action.

15           61. As part of the Settlement, Defendants have denied liability and any wrongdoing,  
16 and they vigorously maintain that they are not liable to the U.S. Settlement Class.

17           62. All eligible U.S. Settlement Class Members who timely submit a valid U.S. Claim  
18 Form and are eligible to receive at least \$10.00 will receive a distribution from the U.S. Net  
19 Settlement Fund, which is the U.S. Settlement Fund minus administration expenses, U.S.  
20 Plaintiff's Counsel's fees and expenses, any award to U.S. Plaintiff, and any Taxes and Tax  
21 Expenses.

22           63. The U.S. Settlement provides an immediate and favorable recovery to the U.S.  
23 Settlement Class, who faced the risk of a significantly smaller recovery or no recovery at all.  
24 Given the complexities of the issues involved in this Action, U.S. Plaintiff's entitlement to  
25 recovery would be correspondingly uncertain. Moreover, there is still a considerable dispute  
26 between the settling parties over whether Defendants violated the securities laws at all. This  
27 dispute could have resulted in further proceedings before the Court and would have required the  
28

1 expenditure of substantial additional judicial resources, time, and expenses. Given these and other  
2 difficulties facing the U.S. Settlement Class at this point in the litigation, the U.S. Settlement  
3 provides a favorable guaranteed recovery.

4 64. Based on this declaration and for the reasons set forth in the accompanying  
5 memoranda, U.S. Plaintiff respectfully submits that the terms of the U.S. Settlement and the U.S.  
6 Plan of Allocation are fair, reasonable, and adequate.

7 **V. THE COURT’S PRELIMINARY APPROVAL ORDER AND U.S. PLAINTIFF’S**  
8 **DISSEMINATION OF NOTICE**

9 **A. The U.S. Preliminary Approval Order**

10 65. On May 25, 2023, U.S. Plaintiff’s Counsel filed a Preliminary Approval Motion  
11 seeking preliminary approval of the \$19,500,000 Settlement, approving the form and manner of  
12 providing notice of the U.S. Settlement to the U.S. Settlement Class, certifying the U.S. Settlement  
13 Class for settlement purposes, appointing U.S. Plaintiff as Class Representative, Faruqi & Faruqi,  
14 LLP, as Class Counsel, and Muckleroy Lunt, LLC, as Liaison Class Counsel, for settlement  
15 purposes, and setting a hearing date for final approval of the U.S. Settlement, the proposed U.S.  
16 Plan of Allocation, and U.S. Plaintiff’s Counsel’s motion for an award of attorneys’ fees,  
17 reimbursement of litigation expenses, and an award for U.S. Plaintiff’s costs and expenses  
18 pursuant to 15 U.S.C. § 78u-4(a)(4). ECF No. 243.

19 66. On November 15, 2023, the Court issued an Order preliminarily approving the U.S.  
20 Settlement and providing for notice. ECF No. 252. The U.S. Preliminary Approval Order, *inter*  
21 *alia*:

- 22 a. Granted preliminary approval of the U.S. Settlement, subject to further  
23 consideration at the U.S. Settlement Hearing (*id.* at ¶ 1);
- 24 b. For purposes of settlement only, preliminarily certified the U.S. Action as a  
25 class action on behalf of all Persons who purchased or otherwise acquired  
26 Tahoe common stock in the United States or on the NYSE between April 3,  
27 2013, and August 24, 2017, inclusive, and who suffered damages thereby  
28

1 (id. at ¶ 2);

- 2 c. For purposes of settlement only, certified the U.S. Plaintiff as the Class  
3 Representative on behalf of the U.S. Settlement Class, appointed U.S.  
4 Plaintiff’s Counsel as Class Counsel, and appointed Liaison Counsel as  
5 Liaison Class Counsel (id. at ¶ 4);
- 6 d. Scheduled a Final Approval Hearing on February 9, 2024, at 8:30 a.m., at  
7 the United States District Court for the District of Nevada, Lloyd D. George  
8 Courthouse, 333 Las Vegas Blvd. South, Las Vegas, NV 89101, Courtroom  
9 7C, to determine whether (1) the proposed settlement of the U.S. Action on  
10 the terms and conditions provided for in the Stipulation is fair, reasonable,  
11 and adequate and should be approved by the Court; (2) whether a U.S.  
12 Judgment as provided in ¶ 1.nnn of the Stipulation should be entered; (3)  
13 whether the proposed U.S. Plan of Allocation is fair, reasonable, and  
14 adequate and should be approved; to determine (4) the amount of fees and  
15 expenses to be awarded to U.S. Plaintiff’s Counsel; and to determine (5) any  
16 award to U.S. Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4) (id. at ¶ 5);
- 17 e. Approved the form and content of the U.S. Notice of Pendency and  
18 Proposed Settlement of Class Action Lawsuit Pending in United States  
19 District Court for the District of Nevada and the U.S. Proof of Claim and  
20 Release Form, and that the mailing and distribution of the U.S. Notice  
21 substantially in the manner set forth in ¶¶ 11-12 of the Order met the  
22 requirements of FRCP Rule 23, the Private Securities Litigation Reform Act  
23 (PSLRA) of 1995, and due process, and is the best notice practicable under  
24 the circumstances and shall constitute due and sufficient notice to all  
25 Persons entitled thereto (id. at ¶ 6);
- 26 f. Approved Epiq Systems, Inc. (“Epiq”), as the U.S. Claims Administrator to  
27 supervise and administer the notice program as well as the processing of  
28



1 claims (*id.* at ¶ 7);

2 g. Approved the form of the Summary Notice of Pendency and Proposed  
3 Settlement of Class Action Lawsuit Pending in United States District Court  
4 for the District of Nevada, and directing the U.S. Claims Administrator to  
5 cause the U.S. Summary Notice to be published in *Investor's Business Daily*  
6 and transmitted over *GlobeNewswire* within fourteen (14) calendar days  
7 after the U.S. Notice Date (*id.* at ¶ 12);

8 h. Established procedures and deadlines for Class Members to submit Claim  
9 Forms or seek exclusion (*id.* at ¶ 15); and

10 i. Established procedures and deadlines for Class Members to object to the  
11 U.S. Settlement, the U.S. Plan of Allocation, and/or the application for an  
12 award of attorneys' fees, expenses, and an award to U.S. Plaintiff. *Id.* at ¶  
13 19.

14 **B. Notice**

15 67. Pursuant to the U.S. Preliminary Approval Order, U.S. Plaintiff's Counsel is serving  
16 on Defendants' Counsel and filing with the Court the Declaration of Owen F. Sullivan Regarding  
17 (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C)  
18 Report on Requests for Exclusion ("Sullivan Declaration"), concurrently herewith. The Sullivan  
19 Declaration sets forth the efforts undertaken by Epiq to mail the U.S. Notice and U.S. Claim Form  
20 to U.S. Settlement Class Members, to publish the U.S. Summary Notice, and to establish the  
21 website and toll-free telephone line.

22 68. As detailed in the Sullivan Declaration, beginning on November 17, 2023, Epiq  
23 mailed or caused to be mailed a total of 11,307 U.S. Notices and U.S. Claim Forms to potential  
24 U.S. Settlement Class Members and nominees. *See* Sullivan Decl. ¶¶ 2-10. The U.S. Summary  
25 Notice was posted by *Globe Newswire* and published in *Investors' Business Daily* on November  
26 27, 2023. *See id.* at ¶ 12.

27 69. Additionally, Epiq established a telephone helpline to accommodate potential U.S.  
28

1 Settlement Class Members who have questions about the U.S. Settlement. *See id.* at ¶¶ 13-14.

2 70. Epiq also set up the website, [www.USTahoeSettlement.com](http://www.USTahoeSettlement.com), to provide information  
3 about the proposed Settlement to U.S. Settlement Class Members and others. *See id.* at ¶ 15. The  
4 website makes available for viewing and downloading important documents, including the U.S.  
5 Notice, U.S. Claim Form, U.S. Preliminary Approval Order, the Joint Stipulation, and other case-  
6 related documents. *See id.* The website also lists the exclusion, objection, and claim filing  
7 deadlines for this Action as well as the date and time of the U.S. Final Approval Hearing. *See id.*

8 71. As required by FRCP Rule 23, due process, and the PSLRA, the U.S. Notice: (a)  
9 described the nature of the claims asserted in the Action; (b) included the case caption; (c) included  
10 a definition of the U.S. Settlement Class; (d) summarized the Settling Parties' reasons for entering  
11 into the Settlement; (e) listed the name, telephone number, and address for U.S. Plaintiff's  
12 Counsel; (f) disclosed that U.S. Plaintiff's Counsel intends to seek attorneys' fees of up to 33% of  
13 the U.S. Settlement Fund, and reimbursement of expenses not to exceed \$900,000.00, plus accrued  
14 interest, and an award to U.S. Plaintiff not to exceed \$10,000; (g) provided the date, time, and  
15 location of the U.S. Final Approval Hearing; (h) advised U.S. Settlement Class Members of their  
16 right to appear at the U.S. Final Approval Hearing and instructed them that the date may change;  
17 (i) advised U.S. Settlement Class Members of their right to exclude themselves from the U.S.  
18 Settlement Class and the binding effect of doing so; (j) provided the deadline and procedure for  
19 opting out of or opposing the U.S. Settlement, U.S. Plan of Allocation, or award of attorneys' fees  
20 and expenses to U.S. Plaintiff's Counsel; (k) explained the consequences of remaining in the U.S.  
21 Settlement Class; (l) provided the manner in which to obtain more information, including the  
22 address for the designated website; and (m) explained how to access the case docket at the  
23 courthouse or on PACER. *See Sullivan Decl., Ex. A.*

### 24 C. Reaction of the U.S. Settlement Class

25 72. The U.S. Notice provides that objections to the U.S. Settlement, U.S. Plan of  
26 Allocation, and/or the application for attorneys' fees, expenses, and award for U.S. Plaintiff must  
27 be received no later than January 18, 2024. *See Sullivan Decl., Ex. A, at 2, 9.*

28

1           73.     Although 11,307 Notices have been mailed to potential U.S. Settlement Class  
2 Members and nominees (*see* Sullivan Decl. ¶ 10), as of December 13, 2023, no requests for  
3 exclusion from or objection(s) to the U.S. Settlement have been received. No objection(s) to the  
4 U.S. Plan of Allocation, the attorneys' fee award, U.S. Plaintiff's award, and/or the requested  
5 reimbursement of expenses have been received. *See id.* at ¶¶ 16-18.

6           74.     If any objections or requests for exclusion are received, they will be addressed in  
7 U.S. Plaintiff's reply papers.

8           **D.     U.S. Plan of Allocation**

9           75.     Pursuant to the U.S. Preliminary Approval Order, and as explained in the U.S.  
10 Notice, all U.S. Settlement Class Members who wish to participate in the U.S. Settlement must  
11 submit a U.S. Claim Form with supporting documentation to Epiq so that it is postmarked or  
12 submitted electronically no later than February 1, 2024. *See* Sullivan Decl., Ex. A at 2, 6.

13           76.     As set forth in the U.S. Notice, all U.S. Settlement Class Members who timely file a  
14 valid U.S. Claim Form and whose *pro rata* share of the Net U.S. Settlement Fund amounts to  
15 \$10.00 or more will receive a distribution of the U.S. Settlement proceeds, after deduction of, *inter*  
16 *alia*, attorneys' fees and expenses and taxes incurred on the U.S. Settlement Fund. *See* Sullivan  
17 Decl., Ex. A at 11-15. The distribution will be made in accordance with the U.S. Plan of  
18 Allocation set forth and described in detail in the U.S. Notice. *See id.*

19           77.     The objective of the U.S. Plan of Allocation is to equitably distribute the Net U.S.  
20 Settlement Fund among Authorized U.S. Claimants who suffered economic loss as a result of  
21 Defendants' alleged misconduct as opposed to losses caused by market or industry factors not  
22 related to the alleged fraud. *See, e.g.,* Sullivan Decl., Ex. A at 11.

23           78.     Under the U.S. Plan of Allocation, the U.S. Claims Administrator will calculate  
24 each Authorized U.S. Claimant's Recognized Loss, as explained in the U.S. Notice. *See* Sullivan  
25 Decl., Ex. A at 11-15. The calculation of a Recognized Loss will depend on several factors,  
26 including when the shares of Tahoe common stock were purchased during the U.S. Settlement  
27 Class Period, and for what amounts, and whether such shares were sold, and if sold, when they  
28

1 were sold, and for what amounts. *See id.* at 11. In order to have a Recognized Loss under the U.S.  
2 Plan of Allocation, Authorized U.S. Claimants must have held through the date and time of either  
3 of the two corrective disclosures: July 6, 2017, or August 25, 2017. The U.S. Claims  
4 Administrator will use the Recognized Loss formula to determine each Authorized U.S. Claimant's  
5 *pro rata* share to proportionately allocate the Net U.S. Settlement Fund among the Authorized U.S.  
6 Claimants. *See id.*

7 79. The U.S. Plan of Allocation was formulated with the assistance of U.S. Plaintiff's  
8 Counsel's damages consultant, and it tracks the theory of damages alleged in the AC. It was also  
9 reviewed and approved by Epiq, a claims administrator with substantial experience in claims  
10 administration.

11 80. The terms of the U.S. Plan of Allocation were fully disclosed in the U.S. Notice  
12 which was mailed to thousands of potential U.S. Settlement Class Members and nominees and  
13 made available on this Action's designated website beginning on November 16, 2023. *See*  
14 Sullivan Decl. ¶ 15. To date, there have been zero objections to the U.S. Plan of Allocation.  
15 Sullivan Decl. ¶ 18. Therefore, U.S. Plaintiff respectfully submits that it is fair, reasonable, and  
16 adequate, and should be approved by the Court.

17 **VI. U.S. PLAINTIFF'S COUNSEL'S APPLICATION FOR AN AWARD OF**  
18 **ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

19 **A. Attorneys' Fees**

20 81. U.S. Plaintiff's Counsel has represented the U.S. Settlement Class on a wholly  
21 contingent basis for more than six years. To date, U.S. Plaintiff's Counsel has received no  
22 payment for its services or the expenses incurred in prosecuting this Action against Defendants and  
23 negotiating the Settlement. Throughout this time, U.S. Plaintiff's Counsel's dedication to  
24 recovering a favorable result for the U.S. Settlement Class has been expensive and challenging.

25 82. The U.S. Notice informed U.S. Settlement Class Members that U.S. Plaintiff's  
26 Counsel will apply for an award of attorneys' fees of up to 33% of the U.S. Settlement Fund and  
27 reimbursement of expenses not to exceed \$900,000.00, plus accrued interest.<sup>5</sup>

28 <sup>5</sup> U.S. Plaintiff's Counsel's request for interest accrued on the fee and expense amounts is

1           83.     U.S. Plaintiff's Counsel requests that the Court award a fee of 33% of the U.S.  
2 Settlement Fund, or \$6,435,000, plus accrued interest.

3           84.     As discussed in the U.S. Fee Motion, filed concurrently herewith, seeking an award  
4 of attorneys' fees in an amount of 33% of the U.S. Settlement Fund is in line with similar awards  
5 granted in this Circuit. In light of the favorable result achieved for the U.S. Settlement Class, the  
6 skill required, the quality of work performed, the risk of pursuing claims on a contingency basis,  
7 and the significant amount of time and resources U.S. Plaintiff's Counsel has dedicated to this  
8 Action, U.S. Plaintiff's Counsel respectfully submits that a fee of 33% of the U.S. Settlement Fund  
9 is justified and should be approved.

10          85.     According to U.S. Plaintiff's Counsel's consulting damages expert the \$19,500,000  
11 U.S. Settlement Amount will recover approximately 5.7% of the maximum potential damages  
12 available in the U.S. Action (assuming the proposed Class is certified and all claims and damages  
13 are proven), which is well within the range of court-approved recoveries in complex securities  
14 class actions such as this. Based on Defendants' adamant denials of any liability, as well as the  
15 substantial time and expense of continued litigation, this U.S. Settlement Amount represents a  
16 favorable recovery for the U.S. Settlement Class.

17          86.     U.S. Plaintiff's Counsel's expertise and persistence have been vital to obtaining this  
18 result for the U.S. Settlement Class. As set forth in its firm resume, attached as Exhibit 2 hereto,  
19 the Faruqi Firm is a nationally recognized class action firm with extensive experience litigating  
20 and negotiating settlements as lead or co-lead counsel in complex securities class actions.

21          87.     In order to reach a successful resolution of this Action, U.S. Plaintiff's Counsel was  
22 required to litigate the case zealously because Defendants were represented by the experienced  
23 firms Neal Gerber & Eisenberg, LLP, and Fennemore Craig, P.C., which defended the case  
24 vigorously.

25          88.     As evidenced by the Faruqi Time Report, a true and correct copy of which is

26 \_\_\_\_\_  
27 limited to the interest or income earned on those amounts between the time the U.S. Settlement  
28 Amount was deposited into the U.S. Escrow Account to the time the fees and expenses are  
permitted to be disbursed.

1 attached hereto as Exhibit 3, and the Declaration of Martin A. Muckleroy in Support of Lead  
2 Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses  
3 (“Muckleroy Declaration”), in over six years of litigation U.S. Plaintiff’s Counsel has committed  
4 over ten thousand hours to prosecuting this Action. Specifically, U.S. Plaintiff’s Counsel has  
5 devoted 12,198.05 hours to this Action, which includes time spent, *inter alia*:

- 6 a. Conducting an extensive investigation, as well as reviewing press releases,  
7 online and newspaper articles, SEC filings, conference call transcripts, and  
8 stock price movements;<sup>6</sup>
- 9 b. Preparing a detailed amended complaint;
- 10 c. Conducting complex legal research in connection with the amended  
11 complaint; motion to dismiss; request for judicial notice; motion for  
12 interlocutory appeal; privilege dispute; class certification motion; motion to  
13 substitute; and motions for the issuance of letters rogatory;
- 14 d. Drafting briefs in opposition to the motion to dismiss; in support of the class  
15 certification motion; in opposition to the motion for interlocutory appeal; in  
16 support of the motion to substitute; and in support of the motions for the  
17 issuance of letters rogatory;
- 18 e. Consulting with a damages expert;
- 19 f. Drafting discovery requests to Defendants;
- 20 g. Working with U.S. Plaintiff to respond to Defendants’ discovery requests;
- 21 h. Reviewing the discovery Defendants produced;
- 22 i. Working with local Guatemalan counsel to obtain court filings relevant to  
23 the Action in Guatemala;
- 24 j. Engaging in numerous meet and confer sessions with Defendants’ counsel  
25 regarding the parties’ discovery obligations, including the privilege dispute;
- 26 k. Drafting subpoenas for depositions of, and document productions from, non-

27  
28 <sup>6</sup> U.S. Plaintiff’s Counsel is excluding from its lodestar the time spent on this case prior to its  
appointment by this Court as Lead Counsel on July 13, 2018. ECF No. 54.

1 parties;

- 2 l. Engaging in numerous meet and confer sessions with non-parties regarding  
3 depositions and document productions;
- 4 m. Analyzing document productions from non-parties;
- 5 n. Engaging with local counsel in Guatemala and Peru regarding non-party  
6 witnesses and letters rogatory motions;
- 7 o. Preparing for and attending oral arguments on the motion to dismiss and  
8 class certification;
- 9 p. Communicating with U.S. Plaintiff throughout the U.S. Action;
- 10 q. Preparing for and conducting both in-person and remote depositions of party  
11 and non-party witnesses;
- 12 r. Coordinating with local Canadian counsel regarding the parallel Canadian  
13 Action in order to protect the interests of the U.S. Settlement Class;
- 14 s. Preparing for settlement negotiations, including drafting a detailed  
15 mediation statement and supplement to the mediation statement;
- 16 t. Engaging in a pre-mediation conference in July 2022;
- 17 u. Engaging in a mediation session in January 2023 and negotiating with  
18 Defendants thereafter to finalize the Stipulation;
- 19 v. Drafting the settlement stipulation, notice, and related materials; and
- 20 w. Drafting the preliminary approval motion papers.

21 89. Based upon the hours expended by U.S. Plaintiff's Counsel and the current billing  
22 rates for U.S. Plaintiff's Counsel's professionals, the total lodestar is \$7,735,656.75. The lodestar  
23 results in a negative multiplier where the fee requested by U.S. Plaintiff's Counsel in the amount of  
24 \$6,435,000 (plus accrued interest) is well over \$1 million less than U.S. Plaintiff's Counsel's  
25 lodestar.

26 90. The Faruqi Firm's time, set forth in *Exhibit 3*, is taken from daily time records  
27 regularly prepared and maintained by the Faruqi Firm in the ordinary course of business. I  
28

1 reviewed the firm's time records in connection with the preparation of this declaration. The  
2 purpose of this review was to confirm the accuracy, necessity for, and reasonableness of, the time  
3 committed to the litigation, and to make reductions where appropriate. As a result of this review, I  
4 believe that the time reflected in the Faruqi Firm's lodestar calculation is reasonable and was  
5 necessary for the effective and efficient prosecution and resolution of the litigation. The  
6 Muckleroy Firm's time is set forth in the Muckleroy Declaration.

7 91. The total number of hours reasonably and necessarily spent by the Faruqi Firm in  
8 this Action is 11,895.75 hours. The Faruqi Firm's hourly billing rates range from \$690 to \$1,050  
9 for partners, \$400 to \$625 for associates, and \$300 to \$450 for paralegals. The total lodestar  
10 amount for attorney and support staff time, based on the Faruqi Firm's current rates, is  
11 \$7,570,949.25. The hourly rates for attorneys and support staff in the Faruqi Firm, included in  
12 Exhibit 3, are reasonable for the region and the expertise of the attorneys.

13 92. A brief description of the qualifications and experience for each attorney of the  
14 Faruqi Firm for whom fees are claimed is set forth below. The case-related contributions of each  
15 attorney is illustrated on page 1 of Exhibit 3, as it sets forth how much time each attorney spent on  
16 each part of the litigation.

17 a. Nadeem Faruqi: Nadeem Faruqi is a Managing Partner of the Faruqi Firm and  
18 oversees all aspects of the firm's practice areas. He has over 30 years of experience in civil  
19 litigation, and has served as sole or co-lead counsel in many notable securities cases. Additional  
20 information about Mr. Faruqi's qualifications and experience is set forth in the Faruqi Firm  
21 Resume. See *Exhibit 2* at 13-14.

22 b. James M. Wilson, Jr.: Mr. Wilson is a Partner of the Faruqi Firm and Co-Chair of  
23 the firm's Securities Litigation Practice Group. He has over 20 years of experience in civil  
24 litigation and substantial experience representing investors in securities class actions in particular.  
25 Additional information about Mr. Wilson's qualifications and experience is set forth in the Faruqi  
26 Firm Resume. See *Exhibit 2* at 18.

27 c. Robert W. Killorin. Mr. Killorin is a Partner of the Faruqi Firm, Co-Chair of the  
28



1 firm's Securities Litigation Practice Group, and a member of the firm's Institutional Investor  
2 Practice Group. He has over 35 years of experience in civil litigation, and has focused much of his  
3 career representing investors in shareholder merger and securities litigation. Additional  
4 information about Mr. Killorin's qualifications and experience is set forth in the Faruqi Firm  
5 Resume. See *Exhibit 2* at 18-19.

6 d. Richard W. Gonnello: Mr. Gonnello was a Partner of the Faruqi Firm during this  
7 Action's pendency. He has over 20 years of experience litigating complex securities actions.

8 e. Megan M. Rimmel: Ms. Rimmel is a Partner of the Faruqi Firm. She has over 10  
9 years of experience representing investors in securities class action litigation. Additional  
10 information about Ms. Rimmel's qualifications and experience is set forth in the Faruqi Firm  
11 Resume. See *Exhibit 2* at 22-23.

12 f. Katherine M. Lenahan: Ms. Lenahan is a Partner of the Faruqi Firm. She has over  
13 9 years of experience representing investors in securities class action litigation. Additional  
14 information about Ms. Lenahan's qualifications and experience is set forth in the Faruqi Firm  
15 Resume. See *Exhibit 2* at 23.

16 g. Thomas Papain: Mr. Papain is an associate of the Faruqi Firm, where he focuses  
17 his practice on securities litigation. Mr. Papain has over 9 years of experience in civil litigation.  
18 Additional information about Mr. Papain's qualifications and experience is set forth in the Faruqi  
19 Firm Resume. See *Exhibit 2* at 27.

20 h. Daniel B. Weiss: Mr. Weiss was an associate of the Faruqi Firm during this  
21 Action's pendency. He earned his J.D. from Georgetown University in 2012. During his time at  
22 the Faruqi Firm, Mr. Weiss focused his practice on securities litigation.

23 i. Dylan B. Weeks: Mr. Weeks was an associate of the Faruqi Firm during this  
24 Action's pendency. He earned his J.D. from Brooklyn Law School. During his time at the Faruqi  
25 Firm, Mr. Weiss focused his practice on securities litigation.

26 j. Dillon Hagius: Mr. Hagius was an associate of the Faruqi Firm during this Action's  
27 pendency. He earned his J.D. from UCLA School of Law in 2016. During his time at the Faruqi  
28

1 Firm, Mr. Hagijs focused his practice on securities litigation.

2 k. Cristina Paneque: Ms. Paneque was an associate of the Faruqi Firm during this  
3 Action's pendency. She earned her J.D. from Boston College Law School in 2016. During her  
4 time at the Faruqi Firm, Ms. Paneque focused her practice on securities litigation.

5 l. Nicholas Stockton: Mr. Stockton was an associate of the Faruqi Firm during this  
6 Action's pendency. He earned his J.D. from Washington University School of Law in 2016.  
7 During his time at the Faruqi Firm, Mr. Stockton focused his practice on securities litigation.

8 m. Camilo Burr: Mr. Burr is an associate at the Faruqi Firm. He earned his J.D. from  
9 Brooklyn Law School in 2019. Additional information about Mr. Burr's qualifications and  
10 experience is set forth in the Faruqi Firm Resume. *See Exhibit 2* at 29.

11 n. David Calvello: Mr. Calvello is a partner at the Faruqi Firm. He earned his J.D.  
12 from Pace Law School in 2014. Additional information about Mr. Calvello's qualifications and  
13 experience is set forth in the Faruqi Firm Resume. *See Exhibit 2* at 24.

14 **B. Cost and Expenses**

15 93. The expenses incurred by U.S. Plaintiff's Counsel in the prosecution of the U.S.  
16 Action are set forth in the accompanying Expense Report from the Faruqi Firm, a true and correct  
17 copy of which is attached hereto as *Exhibit 4*. The expenses incurred by Liaison Counsel are set  
18 forth in the Muckleroy Declaration. *See* Muckleroy Decl. at ¶¶ 4-5. In total, U.S. Plaintiff's  
19 Counsel has incurred expenses in the amount of \$886,464.29.

20 94. The Faruqi Firm's Expense Report provides that it has incurred \$882,681.29 in  
21 expenses, which includes the estimated \$5,000.00 that it will incur in connection with the U.S.  
22 Final Approval Motion and \$17,000.00 it expects to incur in future probate expenses.<sup>7</sup> The  
23 Muckleroy Firm's expenses are set forth in the Muckleroy Declaration, which provides that it

24  
25 <sup>7</sup> U.S. Plaintiff's Counsel will devote additional hours and resources to this Action on an  
26 ongoing basis, including, inter alia: preparing for and participating in the U.S. Final Approval  
27 Hearing; assisting potential U.S. Settlement Class Members with the completion and submission of  
28 their U.S. Proof of Claim forms; monitoring the claims process; corresponding with the U.S.  
Claims Administrator; and supervising the distribution of the Net U.S. Settlement Fund to U.S.  
Settlement Class Members.

1 incurred \$3,783.00 in expenses.

2 95. The expenses in the Faruqi Firm's Expense Report are taken from the books and  
3 records of the Faruqi Firm maintained in the ordinary course of business. The books and records  
4 are prepared from expense vouchers, check records, and other such documents. I reviewed the  
5 Faruqi Firm's expense records in connection with the preparation of this declaration. The purpose  
6 of this review was to confirm the accuracy, necessity for, and reasonableness of the litigation  
7 expenses, and remove any expenses that did not meet these criteria. As a result of this review, I  
8 believe that the expenses reflected in the Faruqi Firm's Expense Report are reasonable and were  
9 necessary for the effective and efficient prosecution and resolution of the U.S. Action and are of  
10 the type that would normally be charged to a fee-paying client in the private legal marketplace.

11 96. Some of the largest expenditures were the \$468,890.00 in damages expert fees and  
12 the \$35,952.93 in expenses incurred by the private fact investigators and the damages consultant  
13 retained by U.S. Plaintiff's Counsel.

14 97. U.S. Plaintiff's Counsel hired the investigator to conduct a background fact  
15 investigation and to reach out to potential confidential witnesses who may have been able to  
16 provide more insight into what was happening at Tahoe during the Class Period, as well as to  
17 witnesses who opposed the Escobal Mine and/or otherwise supported the Xinka in their resistance  
18 to the Mine.

19 98. U.S. Plaintiff's Counsel also retained an economic consulting firm, Stanford  
20 Consulting Group, Inc., to prepare materials and provide testimony in support of the motion for  
21 class certification, consult on the damages and loss causation issues present in the U.S. Action, and  
22 to assist with the preparation of the Plan of Allocation.

23 99. U.S. Plaintiff's Counsel respectfully submits that fees paid to the mediator, fact  
24 investigator, and damages consulting expert were reasonable and necessary to prosecute the U.S.  
25 Action to the point at which it settled.

26 100. U.S. Plaintiff's Counsel also respectfully submits that fees paid to Gadzo Law P.C.  
27 in connection with their work in representing Ms. Huynh in the probate action entitled *In re Estate*  
28

1 of Kevin Nguyen, Also Known as Kevin Duc-Hai Nguyen, No. PES-22-305371 (Cal. Sup. Ct.  
2 2022), were reasonable and necessary to allow Ms. Huynh to be substituted as Lead Plaintiff in the  
3 place of her deceased husband. See Declaration of Alexandra Gadzo, Esq., at ¶¶ 1-5.  
4 Accordingly, on July 12, 2022, the court in the probate action issued Letters of Special  
5 Administration wherein Ms. Huynh was appointed the special administrator until July 20, 2022.  
6 *Id.* at ¶ 9. Subsequently, on July 21, 2022, the same court issued Letters Testamentary wherein  
7 Ms. Huynh was appointed the executor of the Nguyen Estate. *Id.* at ¶ 10. For the critical legal  
8 services the Gadzo Law, P.C. law firm rendered, wherein it devoted 107.82 hours and incurred  
9 \$621.70 in filing fees, court costs, and other expenses, U.S. Plaintiff’s Counsel’s remitted payment  
10 in the amount of \$37,349.80 to the Gadzo Law, P.C. *Id.* at ¶¶ 11-12. Gadzo Law, P.C. has since  
11 incurred \$5,879.40 in fees and expenses and also “estimate[s] that continued cooperation for the  
12 Litigation and closing probate will cost \$17,000.00 in firm time and court fees.” *Id.* at ¶ 13.

13 101. U.S. Plaintiff’s Counsel also incurred \$12,005.24 in costs for outside counsel in  
14 Canada, Guatemala, and Peru, which was necessary for the reasons explained above.

15 102. The remainder of U.S. Plaintiff’s Counsel expenses, \$301,820.92, reflect routine  
16 and typical expenditures incurred during litigation, including but not limited to legal filings, court  
17 reporting fees, electronic research, photocopying, postage, travel, and meals. All of these  
18 expenditures are the types of expenses incurred in similar class actions of this size and would be  
19 billed to a fee-paying client.

20 103. The total expenses, \$886,464.29, are less than the \$900,000.00 in potential expenses  
21 that the U.S. Notice informed the U.S. Settlement Class may be incurred. U.S. Plaintiff’s Counsel  
22 respectfully submits that these expenses are reasonable in light of the pace and duration of the U.S.  
23 Action and were necessarily incurred for its successful resolution. U.S. Plaintiff’s Counsel  
24 understood that it might not recover any expenses in the event that the U.S. Action was dismissed,  
25 and therefore took steps to minimize costs wherever possible without jeopardizing its duty to  
26 zealously represent the U.S. Settlement Class.

27 **C. Award for U.S. Plaintiff**

1           104. U.S. Plaintiff's Counsel also respectfully requests that the Court grant an award of  
2 \$10,000 to U.S. Plaintiff, Ms. Huynh, to reimburse her for her services as representative of the  
3 Class in the U.S. Action.

4           105. As set forth in the Declaration of Ms. Huynh, attached hereto as **Exhibit 5**, U.S.  
5 Plaintiff has taken her role as representative of the U.S. Settlement Class very seriously. Since  
6 being appointed the Lead Plaintiff on September 14, 2022, effective *nunc pro tunc* since July 25,  
7 2022, Ms. Huynh has dedicated at least 15 hours of her time to the U.S. Action by, *inter alia*:

- 8           a. Engaging in frequent telephone and email communications and meeting  
9           personally with U.S. Plaintiff's Counsel about this Action;
- 10           b. Reviewing documents filed and/or prepared in the probate action, which was  
11           initiated solely so that she could be appointed executor and be substituted as  
12           Lead Plaintiff in this Action with the consent of all parties;
- 13           c. Reviewing documents filed and/or prepared in the Action, including the  
14           motions for substitution as lead plaintiff, mediation documents, and the  
15           motion for preliminary approval of the Class Action Settlement; and
- 16           d. Providing input on the mediation and settlement negotiations and  
17           authorizing the Settlement.

18 *See Exhibit 5.*

19           106. Additionally, Ms. Huynh's husband, the former Lead Plaintiff in this action, Mr.  
20 Nguyen, took his role as representative of the U.S. Settlement Class very seriously in the  
21 approximately five years that he served as Lead Plaintiff. Based upon information from Mr.  
22 Nguyen's declaration in support of the class certification motion (ECF No. 142-4), his deposition  
23 testimony, and my firm's records, Mr. Nguyen dedicated a substantial amount of his time to the  
24 U.S. Action, including much of it during the height of the Covid-19 pandemic, by, *inter alia*:

- 25           a. Engaging in numerous telephone calls with U.S. Plaintiff's Counsel;
- 26           b. Engaging in routine email correspondence with U.S. Plaintiff's Counsel;
- 27           c. Attending in-person meetings with U.S. Plaintiff's Counsel that spanned  
28           over 8 hours in total;

- d. Gathering information concerning transactions and providing them to U.S. Plaintiff's Counsel;
- e. Reviewing documents prepared for and/or filed in this Action, such as the amended complaint and motion papers;
- f. Providing documents in preparation of written discovery responses and information in preparation of responses to interrogatories;
- g. Preparing for a deposition;
- h. Traveling to, attending, and answering questions for a full-day, 7 hour in-person deposition; and
- i. Discussing settlement and mediation with U.S. Plaintiff's Counsel.

107. The types of activities that Ms. Huynh engaged in to lead this litigation following Mr. Nguyen's passing are precisely the type of efforts that courts have found support an award to class representatives. Because Ms. Huynh played an integral role in the U.S. Action, U.S. Plaintiff's Counsel respectfully submits that U.S. Plaintiff should be reimbursed for the time and effort she devoted to actively representing the U.S. Settlement Class.

## VII. LIST OF EXHIBITS

108. Attached hereto as *Exhibit 1* is a true and correct copy of the Court's U.S. Preliminary Approval Order, dated November 15, 2023.

109. Attached hereto as *Exhibit 2* is a true and correct copy of the Faruqi Firm's resume.

110. Attached hereto as *Exhibit 3* is a true and correct copy of the Faruqi Firm's Time Report.

111. Attached hereto as *Exhibit 4* is a true and correct copy of the Faruqi Firm's Expense Report.

112. Attached hereto as *Exhibit 5* is a true and correct copy of the Declaration of Tiffany Huynh, Lead Plaintiff and executor for the estate of Mr. Nguyen.

## VIII. CONCLUSION

113. U.S. Plaintiff's Counsel respectfully submits that the Settlement should be approved

1 as fair, reasonable, and adequate, and that the U.S. Plan of Allocation should be approved as fair,  
2 reasonable, and adequate; that attorneys' fees in the amount of 33% of the U.S. Settlement Fund,  
3 or \$6,435,000, plus accrued interest, should be approved as fair and reasonable; that the expenses  
4 in the amount of \$886,464.29 plus accrued interest, should be reimbursed in full; and that U.S.  
5 Plaintiff should be granted an award in the amount of \$10,000 for the time and effort she, along  
6 with her late husband and former Lead Plaintiff, put forth in representing the putative class.

7 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
8 knowledge.

9 Executed this 14th day of December 2023, New York, NY.

10  
11 /s/ James M. Wilson, Jr.  
James M. Wilson, Jr.