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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

PETER FROUWS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ROBERT LYONS; DANIEL BONCEL; and STEPHEN CUMMING, Defendants.	No. 2:23-cv-00691-PHX-DJH <u>CLASS ACTION</u> **CO-LEAD COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES, AND AWARD**

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Co-Lead Counsel Scott+Scott Attorneys at Law LLP ("Scott+Scott") and Schall, Brown, & Schwartz LLP ("SBS" formerly The Schall Law Firm) respectfully submit this memorandum in support of their application for (a) an award of attorneys' fees in the amount of 27.5% of the $15 million Settlement Fund; (b) reimbursement of litigation expenses in the amount of $385,874.44; and (c) a PSLRA §78u-4(a)(4) award of $5,000 to plaintiff Peter Frouws ("Lead Plaintiff") (collectively, the "Fee and Expense Application").[1]

PRELIMINARY STATEMENT

It is well settled that attorneys who represent a class and are successful in recovering a common fund for the benefit of class members are entitled to a reasonable fee from the common fund as compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Ninth Circuit has long recognized that, in class actions that (as here) result in the creation of a common fund for the benefit of a plaintiff class, a percentage-based attorneys' fee award is appropriate, with an award of 27.5% of the settlement amount falling well within the range of what is considered fair and reasonable. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (affirming a 28% fee award as reasonable under the percentage method). Co-Lead Counsel respectfully submit that their hard work, skill, and superior results fully merit the requested 27.5% fee, particularly in light of the risk and complexity of the litigation and the collectability risk present here. Moreover, the requested 27.5% fee would equate to a 1.31 multiplier on Co-Lead Counsel's combined lodestar time, a level that is well within (and indeed at the low end of) the range of cross-check multipliers that courts routinely find acceptable. *See, e.g., Vizcaino* 290 F.3d at 1051-52, 1051 n.6 (cross-check multipliers are commonly in the range of 1 to 4, while also citing numerous examples of higher multipliers).

[1] All capitalized terms herein have the meanings given them in the Stipulation and Agreement of Settlement dated February 11, 2026 (Doc. 80-3) (the "Stipulation") at 6-13.

As discussed below and in the accompanying Joint Declaration of William C. Fredericks and Brian J. Schall ("Joint Decl."), each of the other factors that courts in this Circuit and District commonly consider—notably, (1) the results achieved, (2) the risks of litigation, (3) the skill required and the quality of work, (4) the contingent nature of the representation, (5) awards in similar cases (including a lodestar cross-check); and (6) the class's reaction—support the reasonableness and fairness of the requested fee. *Vizcaino*, 290 F.3d at 1048-50.

Moreover, as set forth in the accompanying Declaration of Ann Cavanaugh Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Cavanaugh Decl."), A.B. Data (the Court-approved Claims Administrator) has emailed or mailed a total of 28,550 of the Notice and Claim Form to potential Settlement Class Members and their nominees (at ¶11); to date, no objections to counsel's Fee and Expense Application (or to the proposed Settlement) have been received. The "reaction of the class" to date therefore provides further support for approval of the requested 27.5% fee.[2]

Co-Lead Counsel also seek reimbursement of $385,874.44 in litigation expenses. As discussed below, these expenses were reasonably incurred in investigating, prosecuting, and resolving this action and are of the type routinely approved for reimbursement in securities class actions.

Finally, the Court-appointed Lead Plaintiff seeks an award of $5,000 under 15 U.S.C. §78u-4(a)(4). As discussed below, and consistent with Ninth Circuit cases, Lead Plaintiff merits this relatively modest award for his service to the Settlement Class as their representative in this Action.

Accordingly, Co-Lead Counsel respectfully requests that the Court: (1) award them attorneys' fees of 27.5% of the $15 million Settlement Fund (2) award them reimbursement

[2] The August 28, 2026 deadline for filing objections has not yet passed. Should any objections ultimately be filed, Co-Lead Counsel will address them in their reply papers.

of their litigation expenses in the amount of $385,874.44, and (3) award Lead Plaintiff $5,000 under 15 U.S.C. §78u-4(a)(4).

ARGUMENT

I. ELIGIBILITY: CO-LEAD COUNSEL ARE ELIGIBLE FOR AN AWARD OF ATTORNEYS' FEES FROM THE SETTLEMENT FUND PURSUANT TO THE COMMON FUND DOCTRINE

Pursuant to Federal Rule of Civil Procedure 23(h), "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." FED. R. CIV. P. 23(h). It is well settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing*, 444 U.S. at 478. The Ninth Circuit has expressly reasoned that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of this rule, known as the "common fund doctrine," is to prevent unjust enrichment so that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig. (WPPSS)*, 19 F.3d 1291, 1300 (9th Cir. 1994).

Although courts within the Ninth Circuit have the discretion to employ either the lodestar or percentage method of calculating fees under the common fund doctrine, in *Vizcaino*, 290 F.3d at 1047-48, the Ninth Circuit expressly approved the use of the percentage method. *See also Glass v. UBS Fin. Servs. Inc.*, 331 F. App'x. 452, 456-57 (9th Cir. 2009) (affirming district court's use of percentage-of-recovery method to award fee). Additionally, the percentage-of-recovery method for awarding attorneys' fees is preferable in cases with a common-fund recovery as it "align[s] the lawyers' interests with achieving the highest award for class members, and reducing the burden on the courts that a complex lodestar calculation requires." *Tait v. BSH Home Appliances Corp.*, 2015 WL 4537463, at *11 (C.D. Cal. July 27, 2015); *see also In re Amkor Tech., Inc. Sec. Litig.*, 2009 WL 10708030, at *1 (D. Ariz. Nov. 19, 2009) (percentage-of-recovery method most appropriate to award attorneys' fees in securities class action). Further, the percentage-of-the-fund method is appropriate in common fund cases where "the benefit to the class is easily quantified." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *6 (D. Ariz. Apr. 20, 2012) (same). Indeed, "[t]he use of the percentage-of-the fund method in common-fund cases is the prevailing practice in the Ninth Circuit for awarding attorneys' fees and permits the Court to focus on showing that a fund conferring benefits on a class was created through the efforts of plaintiffs' counsel." *In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *12 (N.D. Cal. Feb. 17, 2023).

The use of the percentage-of-recovery method also comports with the language of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6). "By using this language, Congress plainly contemplated that percentage-of-recovery would be the primary measure of attorneys' fees awards in federal securities class actions." *In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *20 (C.D. Cal. July 28, 2014) (quotation omitted); *see also In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("[T]he percentage-of-recovery method was incorporated in the [PSLRA]").

Courts have recognized that, in addition to providing just compensation, awards of attorneys' fees in class actions encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons and to discourage future similar violations. *See Washington Pub. Power Supply Sys.*, 19 F.3d at 1299-300 ("A large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken."). The Supreme Court has emphasized that private securities actions, such as the instant action, provide an effective weapon in enforcing the securities laws. *See Tellabs, Inc., v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) ("This Court has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the [SEC].").

II. ENTITLEMENT AND REASONABLENESS OF REQUESTED FEE: THE NINTH CIRCUIT'S *VIZCAINO* FACTORS STRONGLY SUPPORT APPROVAL OF THE REQUESTED 27.5% FEE

Co-Lead Counsel seek a fee of 27.5% of the $15 million Settlement Fund for their efforts in creating a common fund benefit of the Settlement Class. As further described below, §II.E., the request is within the typical range of acceptable attorneys' fees. Under the percentage-of-the-fund method, 25% is considered the "benchmark" for a reasonable fee. *See, e.g., Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 1997530, at *6-7 (S.D. Cal. June 6, 2022) (noting 25% benchmark and awarding one-third of $12,750,000 securities class settlement). Whether the Court awards the benchmark amount or some other rate, the award must be supported by "findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048. The reasonableness of the requested 27.5% fee is confirmed by review of the *Vizcaino* factors that Ninth Circuit courts commonly consider, namely (1) the results achieved, (2) the risks of litigation, (3) the skill required and the quality of work, (4) the contingent nature of the representation, (5) awards in similar cases (including a lodestar cross-check); and (6) the class's reaction. *Vizcaino*, 290 F.3d at 1048-50.

A. Co-Lead Counsel Achieved an Exceptional Result

Courts consider the results achieved in assessing a fee award request. *See Vizcaino*, 290 F.3d at 1048 ("results are a relevant" factor in awarding attorneys' fees). For all the reasons already set forth in the accompanying Final Approval Brief and the Joint Declaration, Co-Lead Counsel respectfully submit that the $15 million, all-cash Settlement represents a decidedly superior result for the Class (especially when considered in light of the significant litigation risk, as further discussed in §II.B., below). Joint Decl., ¶4.

Lead Plaintiff's damages expert estimated that the range of reasonably recoverable damages in this case was roughly $150 million. Accordingly, the proposed $15 million recovery represents 10% of the maximum reasonably recoverable damages, more than three times the 3.2% median recovery that NERA reports for comparably sized cases (estimated losses of $100-200 million) over 2015-2025.[3] In addition, the $15 million recovery exceeds the reported median for all §10b-5 securities class action settlements in the Ninth Circuit over the last decade ($11 million) and also exceeds the median for all §10b-5 such settlements nationwide over the same period ($12.3 million), based on data collected between 2016 and 2025.[4] Accordingly, the quality of the result achieved here, whether viewed as a percentage of recoverable losses or compared to the median recovery in comparably sized cases, is superior based on objective published data. Joint Decl. at ¶45.

B. The Risks of Continued Litigation Were Many

Significantly, and as further discussed in the accompanying Joint Declaration (at ¶¶40-44) and Final Approval Brief (at §III.C.), the above-average settlement here was obtained in the face of substantial litigation risk. As a threshold matter, proving that Defendants' statements were false or misleading involved multiple challenges. Here, the challenged statements fell into three main categories: (1) statements about Edgio's

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[3] *See* E. Flores, S. Starykh & I. Velikova, *Recent Trends in Securities Class Actions Litigation: 2025 Full Year Review*, NERA, at 27 (2026), https://www.nera.com/insights/publications/2026/recent-trends-in-securities-class-action-litigation--2025-full-y.html?lang=en (last visited Aug. 13, 2026).

[4] *See* L. Bulan & E. Tam, *Securities Class Action Settlements, 2025 Review & Analysis*, CORNERSTONE RESEARCH, at 19, 21 (2026), https://www.cornerstone.com/insights/reports/interactive-securities-class-action-settlements-2025-review-and-analysis/ (last visited Aug. 13, 2026).

allegedly inflated performance, growth, and sales pipeline, and about the allegedly inflated success of its business strategy; (2) statements about Edgio's allegedly inadequate internal financial controls; and (3) statements about Edgio's allegedly inflated revenue. However, Defendants argued that most of the specific statements at issue were immunized from liability because they were either inactionable "puffery" or were forward-looking statements protected by the PSLRA's "safe harbor" provisions (Joint Declaration at ¶40; Final Approval Brief at §III.C.). Defendants further argued that such statements were, in any event, neither false nor misleading. Although Lead Plaintiff had prevailed on falsity issues overcoming the motion to dismiss, all the Court's rulings on such matters would have been subject to review at summary judgment based on a fully developed factual record—and proof of falsity is rarely certain in securities litigation. Furthermore, a number of the alleged misrepresentations were based on data reviewed by Edgio's outside auditor, which invariably makes it harder for a plaintiff to successfully challenge the accuracy of such statements, whether under Rule 56 or at trial before a jury. Joint Decl. at ¶40.

An even bigger challenge here, however, would have been proving that Defendants acted with scienter (*i.e.*, the requisite intent to defraud). Such proof is never assured in §10(b) cases. For example, although Co-Lead Counsel had identified certain witnesses who provided information indicating that the Individual Defendants likely knew that the Company was facing undisclosed sales pipeline issues, none of those witnesses had personally engaged in any conversations with the Individual Defendants on that subject, and there could be no assurance that a jury would find Lead Plaintiff's witnesses more credible than Defendants' witnesses on such matters. Defendants also argued that although they monitored Edgio's revenue closely, that did not mean that they knew (or recklessly disregarded) that information and data concerning Edgio's sales pipeline and revenue were being recorded incorrectly. In addition, unlike many other securities fraud cases, none of the Individual Defendants engaged in suspicious insider stock sales during the Class Period. While not dispositive, the lack of insider trading here would have made it more difficult to persuade a jury that Defendants had a motive to commit fraud, which in turn would have made it harder for Plaintiff to prove that Defendants acted with any intent to defraud. Joint Decl. at ¶41. Moreover, securities cases such as this frequently come down to inherently unpredictable "battles of the experts." The uncertain development of evidence in discovery and the complexity of the subject matter at issue further compounded the litigation risk. Joint Decl. at ¶42.

Most significantly, this case carried extreme collectability risk of a kind not present in the ordinary §10(b) action. Edgio was forced to file for bankruptcy in 2024, thereby taking the assets of the corporate defendant (which is normally the most deep-pocketed defendant in a §10(b) action) effectively off the table. In addition, Edgio's bankruptcy trustee and unsecured creditors committee also appeared to have valid claims (including claims for breach of fiduciary duty that would not have required proof of scienter) against some or all of the Individual Defendants here, and thus would have drawn on the same limited pool of D&O insurance and personal assets available to satisfy the Settlement Class's claims, which made the prospects of obtaining a meaningful recovery here even more uncertain. Joint Decl. at ¶44.

In sum, this case was no exception to the rule that §10(b) fraud cases involve very high risk. That Co-Lead Counsel was nonetheless able to secure a $15 million recovery in the face of significant litigation and collectability risks further strongly supports the requested 27.5% fee.

C. The Skill Required and Quality of Work Performed

"The experience of counsel is also a factor in determining the appropriate fee award." *In re Heritage Bond Litig.*, 2005 WL 1594389, at *12. Courts have long recognized that the "'prosecution and management of a complex national class action requires unique legal skills and abilities,'" particularly in securities cases "because the [PSLRA] makes it much more difficult for securities plaintiffs to get past a motion to dismiss." *Zynga, Inc.*, 2016 WL 537946, at *17 (quoting *Omnivision*, 559 F. Supp. 2d

1036, 1047 (N.D. Cal. 2008)). "The difficulty of securities litigation generally – particularly the challenges presented by the PSLRA's pleading requirements – requires skilled counsel familiar with the relevant statutes and case law." *In re Am. Apparel, Inc.*, 2014 WL 10212865, at *22.

Here, Co-Lead Counsel respectfully submit that they are experienced and skilled practitioners in the securities-litigation field, with established track records in successfully litigating securities class actions. Joint Decl., ¶36; Declaration of Daryl F. Scott in Support of Fee and Expense Application ("Scott Decl."), Ex. 4 (Scott+Scott firm resume); Declaration of Brian J. Schall in Support of Fee and Expense Application ("Schall Decl."), Ex. 4 (SBS firm resume). The quality of Co-Lead Counsel's work on this case is reflected in the recovery obtained under challenging and uncertain circumstances, as discussed in §II.B., above.

As set forth in the Joint Decl., Co-Lead Counsel respectfully submit that the superior result obtained here was the product of significant time, effort, and skill they expended on this case since it was first filed nearly three years ago. That work included (1) collecting and analyzing Edgio's SEC filings, press releases, and conference call transcripts (2) reviewing numerous analyst reports and news stories about the Company; (3) identifying, locating, and interviewing various former Edgio employees; (4) drafting, based on their extensive pre-filing investigative work, Lead Plaintiff's detailed Amended Complaint; (5) researching the relevant law and preparing Lead Plaintiff's comprehensive brief in opposition to the equally comprehensive papers filed in support of Defendants' motion to dismiss; which in turn led to (6) Lead Plaintiff's prevailing in full on Defendants' motion to dismiss on all disputed issues, as reflected in this Court's August 2025 Order. Co-Lead Counsel also (7) briefed the relevant facts and law, and consulted with their retained expert on damages and loss causation issues, in the context of preparing Lead Plaintiff's comprehensive mediation submissions, (8) reviewed and responded to Defendants' mediation submissions (including on matters of liability, damages, and collectability), and

(9) participated in a comprehensive face-to-face mediation session convened in New York under the auspices of a highly experienced mediator of securities class actions, David Murphy, Esq. Joint Decl., ¶¶6-24, 33-35. In sum, Co-Lead Counsel left no stone unturned to obtain factual support for the claims. After mounting a vigorous opposition to Defendants' motion to dismiss, Co-Lead Counsel also prepared for the discovery process while simultaneously engaging in complicated discussions and deftly negotiating the Settlement, maximizing the recovery for the Settlement Class.

Given the complexity of the issues presented in this Action, including material misrepresentations, scienter, loss causation, and damages, only skilled counsel working diligently could have obtained such a favorable recovery. Co-Lead Counsel continuously and aggressively pursued the claims before entry into an agreement in principle to settle. Courts have recognized that it is important to reward skilled counsel for pursuing difficult cases because "the stated goal in percentage fee-award cases [is] of ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (quotation omitted).

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Co-Lead Counsel. *See, e.g., In re Heritage Bond Litig.*, 2005 WL 1594403, at *20 (C.D. Cal. June 10, 2005) ("the quality of opposing counsel is important in evaluating the quality of Plaintiff's counsel's work"); *Fernandez v. CoreLogic Credco, LLC.*, 2024 WL 3209391, at *16 (S.D. Cal. June 24, 2024) (noting experienced and quality defense counsel). Here, Co-Lead Counsel were able to achieve a superior recovery despite being opposed throughout by skilled attorneys from Fried, Frank, Harris, Shriver & Jacobson with substantial experience in defending securities class actions, who vigorously defended this Action and provided top-tier legal services to their clients.

D. The Contingent Nature of the Representation and Financial Risk

The fully contingent nature of Co-Lead Counsel's representation, notably the risk of receiving nothing for the thousands of hours of attorney time on the case, and without even any assurance of having their litigation expenses reimbursed, is also relevant in determining counsel's fee award. *See In re Heritage Bond Litig.*, 2005 WL 1594389, at *14; *Omnivision*, 559 F. Supp. 2d at 1047 ("The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee."). Moreover, the Supreme Court has repeatedly emphasized that private securities actions, like this case, "provide a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action," *e.g. Tellabs*, 551 U.S. at 318-19 (cleaned up), and the efficacy of private enforcement depends heavily on ensuring that contingent-fee counsel are adequately compensated for the risks they assume in undertaking such representations.

As courts also recognize, the risk of non-payment is very real, as there have been numerous securities class actions where plaintiffs' counsel took on the risk of pursuing claims on a contingency basis, expending millions of dollars' worth of attorney time, yet received nothing despite their diligence and expertise. *See, e.g.*, *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 504 (2d Cir. 2010) (affirming summary judgment for defendant on loss-causation grounds after years of litigation); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050, at *34 (N.D. Cal. June 19, 2009) (granting summary judgment to defendants after eight years of litigation). Even plaintiffs who survive summary judgment and win at trial may find a judgment in their favor overturned on appeal or on post-trial motions. *See, e.g.*, *Robbins v. Koger Properties, Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs); *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605, at *38 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment following plaintiffs' verdict); *see also* Joint Decl. at ¶43.

The contingent nature of the fee here supports a 27.5% award. Co-Lead Counsel made substantial outlays of both time and money in this case, resources that could have been devoted to other matters, prosecuting this Action vigorously and successfully for the benefit of the Settlement Class while facing the very real risk of recovering nothing. Co-Lead Counsel has received no compensation since this Action was filed (roughly 36 months ago) and has incurred significant litigation expenses for the benefit of the Settlement Class, all while knowing that, absent a successful result, they would receive nothing for their efforts. Joint Decl. at ¶52-54.

Likewise, although reimbursement was not assured, Co-Lead Counsel advanced $385,874.44 in expenses for the benefit of the Settlement Class. *See* §III., below. Any fee award or expense reimbursement to Co-Lead Counsel has always been at risk and completely contingent on both the result achieved and this Court's decision to grant any award. Thus, this factor militates in favor of the Court granting Co-Lead Counsel's requested award of attorneys' fees and reimbursement of out-of-pocket expenses.

E. A 27.5% Fee Aligns with Comparable Common Fund Awards

The Settlement Fund consists of $15,000,000 in cash. The instant request for a 27.5% attorneys' fee is firmly in line with the fee percentages awarded by judges in this Circuit in comparably sized securities class action settlements. *See, e.g., Kendall*, 2022 WL 1997530, at *6-7 (awarding one-third of $12,750,000 securities class settlement); *In re ImmunityBio, Inc. Sec. Litig.*, 2025 WL 1686263, *13 (S.D. Cal. June 16, 2025) (awarding 30% of $10,500,000 securities class action settlement); *Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *11 (N.D. Cal. July 15, 2022) (awarding 30% of $33 million securities class action settlement); *In re Merit Medical Systems Inc., Securities Litig.*, No. 8:19-cv-02326, ECF No. 118, ¶¶4-5 (C.D. Cal. April 15, 2022) (awarding 30% of $18,250,000 securities class action settlement); *Donley v. Live Nation Ent., Inc.*, 2025 WL 2490531, at *1 (C.D. Cal. Aug. 28, 2025) (awarding 30% of $20,000,000 securities class action settlement).

It is also consistent with awards in comparably complex, non-securities class action lawsuits resolved in this Circuit. *See, e.g., Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (affirming attorneys' fee award of 33% of a $14.8 million consumer class action settlement); *Barrett v. Apple Inc.*, 2025 WL 1002786, at *2 (N.D. Cal. Apr. 3, 2025) (awarding one-third of $35 million consumer data privacy settlement); *Tawfilis v. Allergan, Inc.*, 2018 WL 4849716, at *7 (C.D. Cal. Aug. 27, 2018) (awarding one-third of $13.45 million antitrust class action settlement). Given that all the relevant factors support the requested fee percentage, this common fund case should be treated similarly to past complex class action cases, and the 27.5% fee request should be approved.

F. The Positive Reaction of the Settlement Class

The Settlement Class's reaction to the proposed Settlement and the Fee and Expense Application also supports approval of the fee request. *See Heritage Bond*, 2005 WL 1594403, at *21 ("The existence or absence of objectors to the requested attorneys' fee is a factor i[n] determining the appropriate fee award."). Here, A.B. Data has emailed or mailed a total of 28,550 of the Notice and Claim Form to potential Settlement Class Members and their nominees, and the Court-approved Summary Notice was published in *PRNewswire*. Cavanaugh Decl., ¶¶11, 13. In addition, one institution advised A.B. Data that they have sent electronic copies of the Notice and Claim Form via email to 28,503 potential Settlement Class Members. *Id.*, ¶12. The Notice informed potential Class Members that Co-Lead Counsel would apply for: (1) an award of attorneys' fees of up to 33-1/3% of the Settlement Fund; (2) reimbursement of litigation expenses not to exceed $431,000; (3) an award of up to $5,000 for Lead Plaintiff's time and effort in representing the Settlement Class; and that (4) Class Members had the right to object to that request. Cavanaugh Decl., Ex. A (Notice), at pp. 7-8, 13. Although the deadline for filing objections does not expire until August 28, 2026, to date, no Class Member has objected to the 33-1/3% figure that appeared in the Notice (a figure that is substantially larger than the 27.5% fee that Co-Lead Counsel now actually seek). *See* Cavanaugh Decl., ¶18.

Should any objections be filed or received before the Settlement Hearing, Co-Lead Counsel will address them in reply papers, but to date, this factor also supports approval of a 27.5% fee. *See In re Heritage Bond Litig.*, 2005 WL 1594389, at *15-16 (holding that "the lack of significant objections to the requested fees justifies an award of one-third of the Settlement Fund[,]" particularly where the number of objections to the fee was "remarkably small given the wide dissemination of notice").

G. A Lodestar Cross-Check Verifies Reasonableness

As a "cross-check" on the reasonableness of a requested fee award, courts often compare counsel's "lodestar" (a compilation of the hours performed at the various rates charged for the professionals providing the services) with the fee request made under the percentage-of-the-fund method. *See, e.g.*, *Vizcaino*, 290 F.3d at 1050. Moreover, although application of a "lodestar cross-check" is not required when awarding attorneys' fees in the Ninth Circuit, "a cross-check of the fee request with a lodestar amount can demonstrate the fee request's reasonableness." *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016); *see also HCL Partners Ltd. P'ship v. Leap Wireless Int'l, Inc.*, 2010 WL 4156342, at *2 (S.D. Cal. Oct. 15, 2010) (a lodestar cross-check is "not necessary when the requested fee is within the accepted benchmark," but may still be useful in assessing reasonableness).[5] And in assessing the reasonableness of requested percentage-based fees in cases where lead counsel have served on a fully contingent fee basis, courts routinely approve multipliers on counsel's lodestar to account for the risk of non-payment. *See, e.g.*, *Rihn v. Acadia Pharms. Inc.*, 2018 WL 513448, at *6 (S.D. Cal. Jan. 22, 2018) (courts have "routinely enhanced the lodestar to reflect the risk of non-payment

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[5] When lodestar is used as a cross-check, the "focus is not on the 'necessity and reasonableness of every [lodestar] hour' . . . . but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007); *In re Am. Apparel, Inc.*, 2014 WL 10212865, at *23, ("'In contrast to the use of the lodestar method as a primary tool for setting a fee award, the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel's hours.'"); *Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x 452, 456-57 (9th Cir. 2009) (affirming award when "the district court properly performed an informal lodestar cross-check"); *Rite Aid Corp.*, 396 F.3d at 306 ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.").

in common fund cases" because doing so provides a "financial incentive to accept contingent-fee cases which may produce nothing") (internal citations omitted).

Courts typically award fees involving multipliers on counsel's lodestar in the 1x to 4x range. *See Vizcaino*, 290 F.3d at 1051-52 & n.6 (affirming 28% fee award equating to 3.65x multiplier, and noting that courts have "routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases," such that "most" cross-check multipliers ranged between one and four); *see also Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013) ("Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases."); *Buccellato v. AT&T Operations, Inc.*, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (awarding fee representing 4.3 multiplier).

Here, a lodestar cross-check only further confirms the reasonableness of the requested 27.5% fee. Specifically, Co-Lead Counsel spent 3,249.6 hours of attorney and other professional time prosecuting this matter from its inception in 2023 through the Court's issuance of its Preliminary Approval Order on June 15, 2026, resulting in a total combined lodestar of $3,147,924 based on counsel's current hourly rates.[6] *See* Joint Decl. ¶55; Scott Decl., at Ex. 1 (firm lodestar report by timekeeper); Schall Decl., at Ex. 1 (firm lodestar report by timekeeper). The requested fee of 27.5% of the Settlement Fund (equal to $4,125,000, plus any modest interest earned thereon from the date the settlement proceeds were deposited into escrow last month) represents a multiplier of 1.31 on Co-Lead Counsel's combined total lodestar. Joint Decl. ¶56. Such a multiplier is unexceptional and is, if anything, at the low end of the customary range of 1x to 4x

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[6] It is well established that courts should base counsel's lodestar on current (rather than historical) rates in order to compensate counsel for the often lengthy delay in being paid for the work they performed, including the loss of interest (or any other economic return) on the value of the attorney time that they had effectively advanced for the benefit of the Class. *See, e.g.*, *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 284 (1989); *Washington Pub. Power*, 19 F.3d at 1305; *In re Apollo Grp. Inc.*, 2012 WL 1378677, at *7 n.2. Here, moreover, the hourly rates used to perform the lodestar cross-check ($910 to $1,900 for partners, $640 to $960 for associates, and $415 to $565 for paralegals and certain professional investigative and support staff) are also reasonable. *See* Scott Decl., ¶7 (citing cases approving rates); Schall Decl., ¶7 (citing cases approving rates).

multipliers that are commonly awarded in cases involving successful recoveries. *See, e.g.*, *Vizcaino*, 290 F.3d at 1051 (approving 3.65x multiplier as "within the range" of 1x to 4x multipliers that are approved in "most" common fund cases and noting that the "majority of fee awards … in the Ninth Circuit are 1.5 to 3 times higher than lodestar"); *see also In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) (multipliers "of around 4" have "frequently been awarded").

III. CO-LEAD COUNSEL'S REQUESTED EXPENSE AWARD IS REASONABLE AND SHOULD BE APPROVED

"An attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation costs from that fund." *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1023 (E.D. Cal. 2019); *see also See In re Omnivision Techs.*, 559 F. Supp. 2d at 1048 (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)). In assessing whether counsel's expenses are compensable in such a case, courts look to whether the particular costs are of the type typically billed by attorneys to paying clients in non-contingent matters. *Carlin*, 380 F. Supp. At 1023. The standard of reasonableness of costs "is to be given a liberal interpretation." *Media Vision*, 913 F. Supp. at 1368.

Co-Lead Counsel incurred $385,874.44 in litigation expenses of the type that are routinely charged to clients in non-contingent litigation, and which were reasonably incurred to successfully prosecute the case. Joint Decl., ¶58; Scott Decl. at Ex. 3 (firm expenses report); Schall Decl. at Ex. 3 (firm expenses report). These expenses include the costs of experts and consultants ($134,224), professional fees ($183,021.80), mediator fees ($44,312.50), court costs and other filing fees ($1,566.69), document hosting and storage ($691.16), online legal research costs ($11,897.41), photocopies ($1,772.75), and out-of-town travel expenses (including for court appearances) ($8,388.13).[7] These expenses were separately incurred, are not duplicated in the Co-Lead Counsel's hourly rates, and are of a

[7] The requested expenses include an allowance for $1,000 expected to be incurred in connection with Co-Lead Counsel's upcoming travel to the required Settlement Hearing, which is currently scheduled to be held on September 14, 2026.

type that courts routinely approved for reimbursement. *See, e.g.*, *Carlin*, 380 F. Supp. At 1023-24 ("filing fees, copying, postage, document storage, depositions, travel, experts, transcripts, computer research, the cost of the mediator, and common-fund contributions."). *Vega v. Weatherford U.S., Ltd. P'ship*, 2016 WL 7116731, at *17 (E.D. Cal. Dec. 7, 2016) ("legal research expenses, copying costs, mediation fees, [delivery] charges, expert fees, . . . and travel expenses," among others, are all expense categories "routinely reimbursed" in class actions); *Zynga*, 2016 WL 537946, at *22 ("courts throughout the Ninth Circuit regularly award litigation costs and expenses – including photocopying, printing, postage, court costs, research on online databases, experts and consultants, and reasonable travel expenses – in securities class actions, as attorneys routinely bill private clients for such expenses in non-contingent litigation"). Joint Decl. at ¶58.

The consultant and expert costs identified above were incurred as follows. Co-Lead Counsel retained Crowninshield Financial Research, Inc. ($118,263.00) in connection with preparatory work on a market efficiency report (in contemplation of Lead Plaintiff's anticipated class certification motion) and to provide a preliminary damages analysis in connection with the parties' settlement discussions. That engagement was necessary to the prosecution of the Action because Co-Lead Counsel were then commencing discovery and preparing for the next stage of the litigation, class certification. Co-Lead Counsel also engaged Hemming Morse, LLC ($6,286.00) for their expert consulting services and advice to better understand the nature and significance of Defendants' alleged accounting violations and defective internal financial controls issues. Finally, Co-Lead Counsel retained ValueScope, Inc. to assist with the damages analyses required for mediation and the plan of allocation of the Net Settlement Fund. Joint Decl. at ¶59.

Co-Lead Counsel also seek reimbursement of professional fees from lawyers engaged as bankruptcy counsel ($182,381.80) and counsel for confidential witnesses ($640). These fees are likewise of the type typically billed by attorneys to paying clients in non-contingent matters. Moreover, a client paying by the hour does not expect its lead litigation firm to handle unexpected or unusual specialized legal roles in-house (as in the case, as here, where specialized bankruptcy advice was required); where a matter requires discrete expertise outside the scope of the primary engagement, the client is billed for the outside professional who supplies it. Bankruptcy counsel was necessary to protect the Class's claims in a separate proceeding governed by a distinct body of law. Joint Decl. at ¶¶18-19, 24, 60, 62. *See In re Packaged Ice Antitrust Litig.*, 2012 WL 5493613, at *8 (E.D. Mich. Nov. 13, 2012) (approving as "fair and reasonable" a litigation-expense award covering, among other costs, "outstanding invoices from three law firms who assisted in the bankruptcy proceedings but do not work on a contingency basis"). Additionally, separate counsel for confidential witnesses was reasonably necessary and appropriate, as a precautionary measure, to ensure that previously-contacted confidential witnesses were protected from potentially undue pressure by Defendants. *Cf. In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1367 (N.D. Cal. 1996) (granting request for investigator expenses incurred in "locating and contacting potential witnesses" because "[i]n a class action case . . . it often becomes essential to locate and contact potential witnesses and class members"). Joint Decl. at ¶61. Because a paying client in a non-contingent matter would have been billed for these same services, they are recoverable as "those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris*, 24 F.3d at 19.

From the outset, Co-Lead Counsel knew they would not recover any of their expenses unless the Action was successfully resolved (which was uncertain), and they also knew that even a successful result and subsequent award of expenses would still not compensate them for the lost use of the funds that they had advanced. Accordingly, Co-Lead Counsel were motivated to minimize expenses whenever practicable, consistent with their commitment to vigorously prosecute the Action. Joint Decl. at ¶63.

Finally, to date, there have been no objections to counsel's request for reimbursement of litigation expenses of $385,874.44, even though the Notice advised class members that Co-Lead Counsel might apply for a larger amount (of up to $431,000).

IV. LEAD PLAINTIFF FROUWS SHOULD BE AWARDED $5,000 FOR HIS SERVICE AS A CLASS REPRESENTATIVE

Lead Plaintiff, Mr. Peter Frouws, seeks an award of $5,000 under §78u-4(a)(4) of the PSLRA for the time he devoted to his representation of the Class. *See* 15 U.S.C. §78u-4(a)(4) (providing for "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class").

As set forth in his declaration, Mr. Frouws has always understood that, in bringing this action, he had a duty to do his best to represent not only his own interests, but also those of all other members of the proposed Class. Declaration of Peter Frouws in Support of Fee and Expense Application ("Frouws Decl."), ¶¶4-6. And his declaration shows that he has faithfully discharged his duties here by, *inter alia*, reviewing pleadings and other litigation papers (including Court orders) sent to him by counsel, and by consulting with his counsel at important junctures in the case (including in connection with the filing of various pleadings, the review of the Court's ruling denying Defendants' motion to dismiss, and settlement-related discussions). *Id.*, ¶¶4-5.

Moreover, similarly small §78u-4(a)(4) awards are commonly approved in this Circuit. *See, e.g., Int'l Bhd. of Elec. Workers Loc. 697 Pension Fund v. Int'l Game Tech., Inc.*, 2012 WL 5199742, at *5 (D. Nev. Oct. 19, 2012) (awarding two plaintiffs roughly $4,000 each for their work on behalf of the class, which included their review of pleadings and consultations with counsel); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *11 (N.D. Cal. July 22, 2019) (noting that $5,000 awards are "presumptively reasonable" in this circuit, including in PSLRA cases); *Alich v. Opendoor Techs. Inc.*, 2026 WL 44804, at *5 (D. Ariz. Jan. 7, 2026) (awarding three plaintiffs $9,300, $3,468.20, and $6,000 in PSLRA case).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Court should (1) approve Co-Lead Counsel's application for an award of attorneys' fees award equal to 27.5% of the Settlement Fund; (2) approve Co-Lead Counsel's application for reimbursement of their litigation expenses in the amount of $385,874.44; and (3) approve a §78u-4(a)(4) award to Lead Plaintiff Frouws in the amount of $5,000.

DATED: August 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/*s*/ William C. Fredericks
William C. Fredericks