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12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF NEVADA**

14  
15 JOHN V. FERRIS and JOANN M. FERRIS,  
16 Individually and on Behalf of All Others  
Similarly Situated,

17 Plaintiffs,

18 v.

19 WYNN RESORTS LIMITED, et al.,

20 Defendants.

Case No. 2:18-CV-00479-CDS-BNW

**LEAD COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES, LITIGATION  
EXPENSES, AND COMPENSATORY  
AWARDS TO PLAINTIFFS AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

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27 {00639125;20 }

28 **MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND COMPENSATORY  
AWARDS**

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28 MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND COMPENSATORY AWARDS

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1 Court-appointed Lead Counsel, Pomerantz LLP (“Pomerantz” or “Lead Counsel”),  
2 respectfully submits this memorandum of law in support of their motion for: (i) an award of  
3 attorneys’ fees for all Plaintiffs’ Counsel in the amount of 33 ⅓ % of the Settlement Fund, together  
4 with interest accrued thereon while in the Escrow Account; (ii) an award of \$1,104,277.42 in  
5 Litigation Expenses<sup>1</sup> reasonably and necessarily incurred by Plaintiffs’ Counsel in prosecuting and  
6 resolving this Action; and (iii) compensatory awards totaling \$80,000 to Class Representatives  
7 John V. Ferris, JoAnn M. Ferris, and Jeffrey Larsen (“Plaintiffs”) (\$30,000 to Mr. Ferris, \$30,000  
8 to Mrs. Ferris, and \$20,000 to Mr. Larsen) for costs incurred directly related to their representation  
9 of the Class, as authorized by the Private Securities Litigation Reform Act of 1995, 15 U.S.C.  
10 § 78u-4 (the “PSLRA”).

11 **PRELIMINARY STATEMENT**

12 After more than six years of vigorous litigation, Plaintiffs’ Counsel has achieved an  
13 excellent result in securing a \$70,000,000 Settlement for the benefit of the Class. The Settlement  
14 is a direct result of the skill, tenacity, and effective advocacy of Plaintiffs’ Counsel. Throughout  
15 this over six-year endeavor, Plaintiffs’ Counsel advanced over \$1 million in expenses and over  
16 \$11 million worth of time to litigate the Action, and, as is customary in contingency litigation, has  
17 not received any fees for their significant efforts to date.

18 Plaintiffs’ Counsel’s efforts included, *inter alia*, conducting a thorough investigation of  
19 potential claims against Defendants and drafting the complaint and amended complaints; defeating  
20 a motion to dismiss the operative complaint; obtaining certification of the Class; blocking  
21 Defendants’ efforts to prematurely move for partial summary judgment without having produced  
22 all the relevant evidence; successfully obtaining an order compelling Defendants to produce  
23 broader discovery than the limited scope they had agreed to produce; obtaining highly relevant

24 \_\_\_\_\_  
25 <sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the  
26 Stipulation and Agreement of Settlement dated September 16, 2024 (the “Stipulation”) (ECF No.  
27 422-2) and the Declaration of Murielle J. Steven Walsh (“MSW Decl.”) filed herewith. All  
28 citations and internal quotation marks are omitted, and all emphasis is added unless otherwise  
indicated.



1 documents from the Massachusetts Gaming Commission and the Nevada Gaming Control Board  
2 relating to their investigation of Wynn Resorts, as well as from financial analysts who followed  
3 and reported on Wynn Resorts securities; reviewing and analyzing thousands of documents;  
4 consulting with experts extensively on issues such as damages and loss causation; and engaging  
5 in extensive settlement negotiations, which included multiple mediation sessions with an  
6 experienced private mediator.

7 Through these efforts, Plaintiffs' Counsel secured substantial, certain, and immediate relief  
8 for the Class, and avoided potentially substantial litigation risks associated with proving  
9 Defendants' liability and establishing loss causation and damages.

10 As compensation for their efforts, Plaintiffs' Counsel is requesting an award of attorneys'  
11 fees in the amount of 33 ⅓ % of the Settlement Fund, together with interest accrued thereon while  
12 in the Escrow Account. This request is supported by the extensive amount of time that Plaintiffs'  
13 Counsel have devoted to this litigation as well as the quality of their work, the contingent nature  
14 of their right to recover attorneys' fees, and the substantial risk of nonpayment that they faced.  
15 Courts within the Ninth Circuit have routinely approved similar fee requests. The request is also  
16 reasonable under the lodestar cross-check because it amounts to a modest multiplier of 1.98 to  
17 Plaintiffs' Counsels' lodestar of \$11,780,820.20.

18 Plaintiffs' Counsel also seeks reimbursement of the out-of-pocket expenses they incurred  
19 in pursuing this Action, an amount totaling \$1,104,277.42. These expenses were reasonable,  
20 necessarily incurred, are the type of expenses that are routinely charged to clients who are billed  
21 hourly, and are regularly reimbursed by Courts within this Circuit.

22 In addition, Plaintiffs' Counsel request that Plaintiffs receive awards in the amount of  
23 \$30,000 for Mr. Ferris, \$30,000 for Mrs. Ferris, and \$20,000 for Mr. Larsen to compensate them  
24 for the time and effort that they dedicated to prosecuting this Litigation. These requests are in line  
25 with amounts approved both within this Circuit and courts nationwide.

1 Thus, for the reasons set forth herein, and in the accompanying MSW Decl. and all exhibits  
2 thereto, Lead Counsel respectfully requests that the Court approve the requested attorneys' fees,  
3 reimbursement of Litigation Expenses, and compensatory awards to Plaintiffs.

4 **ARGUMENT**

5 **I. PLAINTIFFS' COUNSEL ARE ENTITLED TO COMPENSATION FROM THE**  
6 **COMMON FUND**

7 "Under the common fund doctrine, a litigant or a lawyer who recovers a common fund for  
8 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from  
9 the fund as a whole." *In re Bard IVC Filters Prod. Liab. Litig.*, 81 F.4th 897, 904 n.8 (9th Cir.  
10 2023) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The doctrine "is intended  
11 to avoid the unjust enrichment that would result from allowing parties to obtain the benefit of a  
12 lawsuit without contributing to its cost." *Id.*

13 "Adequate fee awards in securities class actions encourage and support other prosecutions  
14 and thereby advance the goal of private securities law enforcement." *In re M.D.C. Holdings Sec.*  
15 *Litig.*, 1990 WL 454747, at \*6 (S.D. Cal. Aug. 30, 1990).

16 **II. THE REQUESTED FEE IS REASONABLE AND SHOULD BE APPROVED<sup>2</sup>**

17 **A. The Court Should Award a Reasonable Percentage of the Common Fund**

18 The Court should calculate Plaintiffs' Counsel's fees as a percentage of the common fund.  
19 There are two methods for calculating an attorney's fee award: (i) the lodestar method, under which  
20 the court "multiplies the number of hours the prevailing party reasonably spent on litigation by a  
21 reasonable hourly rate to determine a presumptively reasonable fee award" (*i.e.*, the lodestar); or  
22 (ii) the percentage of the recovery method, which "expresses fees as a percentage of a recovered  
23 common fund." *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022).

24  
25 \_\_\_\_\_  
26 <sup>2</sup> The Court has already signaled that the "proposed terms [of the Settlement] as it relates to  
27 attorney's fees is reasonable" given "the extensive litigation that has occurred during the course of  
28 this case." ECF No. 430 at 7:4-7.

1 Although the Court has the discretion to use either method for calculating fees,<sup>3</sup> “where  
 2 there is an easily quantifiable benefit to the class—such as a cash common fund—the percentage-  
 3 of-the-fund approach is the prevailing method.” *In re Stable Road Acquisition Corp.*, 2024 WL  
 4 3643393, at \*11 (C.D. Cal. Apr. 23, 2024); *See also Hashem v. NMC Health PLC*, 2022 WL  
 5 3573145, at \*2 (C.D. Cal. Apr. 8, 2022) (“Where the settlement involves a common fund, courts  
 6 typically award attorney’s fees based on a percentage of the settlement fund.”); *Ellison v. Steve*  
 7 *Madden, Ltd.*, 2013 WL 12124432, at \*8 (C.D. Cal. May 7, 2013) (“Although there is discretion,  
 8 use of the percentage method is the dominant approach in common fund cases.”). This approach  
 9 is “consistent with the PSLRA, which provides that total attorneys’ fees . . . awarded by the court  
 10 to counsel for the plaintiff class shall not exceed a **reasonable percentage** of the amount recovered  
 11 for the class.” *In re Stable Road Acquisition Corp.*, 2024 WL 3643393, at \*11 (emphasis in  
 12 original). Accordingly, the Court should utilize the percentage-of-recovery method to compensate  
 13 Plaintiffs’ Counsel in this litigation.

14 **B. The Requested Fee is Reasonable Under the Percentage-of-Recovery Method**

15 Plaintiffs’ Counsel have requested a reasonable percentage of the Settlement Fund. The  
 16 Ninth Circuit has “established twenty-five percent of the recovery as a benchmark for attorneys’  
 17 fees calculations under the percentage-of-recovery approach.” *Powers v. Eichen*, 229 F.3d 1249,  
 18 1256 (9th Cir. 2000); *Daniels v. Aria Resort & Casino, LLC*, 2023 WL 11910245, at \*2 (D. Nev.  
 19 July 31, 2023) (“The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent  
 20 to 33.3 percent of the total settlement value with 25 percent considered a benchmark percentage.”).  
 21 However, that benchmark can be “adjust[ed] upward or downward to account for the  
 22 circumstances in each case.” *IBEW Loc. 697 Pension Fund v. Int’l Game Tech, Inc.*, 2012 WL  
 23 5199742, at \*4 (D. Nev. Oct. 19, 2012). “[I]n most common fund cases, the award exceeds that  
 24 benchmark,” especially in “securities class actions.” *In re Stable Road Acquisition Corp.*, 2024  
 25 WL 3643393, at \*13-14. Nevertheless, the fee award must “be reasonable under the

26 \_\_\_\_\_  
 27 <sup>3</sup> *In re Apple Inc. Device Performance Litig.*, 50 F.4th at 784.

1 circumstances.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir.  
2 1994); *Howell v. JBI, Inc.*, 298 F.R.D. 649, 660 (D. Nev. 2014) (same).

3 To determine whether a requested fee is reasonable, the Court considers the following  
4 factors: “(1) the results achieved; (2) the risk of litigation; (3) the skill required and quality of  
5 counsel’s work; (4) the contingent nature of the fee and financial burden; (5) awards made in  
6 similar cases; (6) the reaction of the class; and (7) the lodestar cross-check.” *Mandalevy v. Boffl*  
7  *Holding, Inc.*, 2022 WL 4474263, at \*13 (S.D. Cal. Sept. 26, 2022). Each of these factors supports  
8 the requested fee award here.

### 9 1. The Results Achieved

10 Courts consistently recognize that the result achieved is a major factor to consider in  
11 evaluating a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“The most critical  
12 factor is the degree of success obtained.”); *In re Stable Road Acquisition Corp.*, 2024 WL 3643393,  
13 at \*12 (“[C]ourts have consistently recognized that the result achieved is a major factor be  
14 considered in making a fee award.”). Here, Lead Counsel achieved a considerable result in  
15 securing substantial, certain, and immediate relief for the Class in the form of a \$70,000,000 cash  
16 payment. This particular Settlement is also uniquely significant in that it is one of the few  
17 successful cases alleging § 10b-5 claims arising solely from #MeToo allegations.

18 Furthermore, the settlement is an excellent result when compared to the potential  
19 recoverable damages, which were highly contested throughout the litigation. Plaintiffs’ damages  
20 expert estimates that if Plaintiffs *fully prevailed* and the Court accepted Plaintiffs’ damages theory,  
21 the total *maximum* damages would be approximately \$926.7 million. MSW Decl. ¶ 45. The \$70  
22 million settlement amount represents roughly 7.6% of that amount. The median recovery in  
23 securities class actions asserting Section 10(b) claims with similar estimated damages was  
24 approximately 4.6% for the year 2023 and 3.3% for the years 2014-2022. *See* Laarni T. Bulan  
25 Laura E. Simmons, *Securities Class Action Settlements – 2023 Review and Analysis*, at 6  
26 (Cornerstone Research 2024), available at <https://www.cornerstone.com/wp->

1 content/uploads/2024/03/Securities-Class-Action-Settlements-2023-Review-and-Analysis.pdf  
 2 (reporting the median settlement, as a percentage of estimated damages recovery, was 4.6% for  
 3 the year 2023 and 3.3% for the years 2014-2022 in securities class actions asserting Section 10(b)  
 4 claims with estimated shareholder losses ranging between \$500 and \$999 million).<sup>4</sup> Thus, even  
 5 evaluating the recovery in relation to the *maximum* damages potentially available, the settlement  
 6 amount is above the average recovery in comparable securities class actions. It is also well within  
 7 the range of settlements approved by Courts within the Ninth Circuit. *See Hunt v. Bloom Energy*  
 8 *Corp.*, 2024 WL 1995840, at \*6 (N.D. Cal. May 6, 2024) (5.2% of the estimated maximum  
 9 damages potentially available), *appeal docketed sub nom. Hunt v. Pricewaterhousecoopers LLP*  
 10 *(Pwc)*, No. 24-3568 (9th Cir. June 6, 2024); *In re Aqua Metals, Inc. Sec. Litig.*, 2022 WL 612804,  
 11 at \*6 (N.D. Cal. Mar. 2, 2022) (7.3% of total estimated damages); *Int'l Game Tech.*, 2012 WL  
 12 5199742, at \*3 (3.5% of maximum damages that could be recovered at trial).

13 The Settlement fares even better when considering the real possibility that Defendants may  
 14 have prevailed on their second attempt to eliminate a large portion of damages by challenging the  
 15 claims related to the February 12, 2018 corrective disclosures. In that scenario, damages could  
 16 have been significantly reduced, to approximately \$158 million. MSW Decl. ¶ 45. The \$70 million  
 17 settlement represents 44% of these damages, an extraordinary result given the risks.

18 Thus, this factor weighs in favor of approving the requested fee award.

## 19 2. The Risks of Litigation

20 The Settlement achieved through Plaintiffs' Counsel's efforts is particularly favorable  
 21 when considered in light of the substantial litigation risks in the Action. *See* MSW Decl. ¶¶ 43-50.  
 22 "Securities class actions are complex, difficult to prove, and must surmount many hurdles . . . ."  
 23 *Mandalevy*, 2022 WL 4474263, at \*13; *See also In re Stable Road Acquisition Corp.*, 2024 WL  
 24 3643393, at \*12 ("[C]ourts have always recognized that securities class actions are complex and  
 25

26 <sup>4</sup> The report recognizes that "[l]arger cases . . . typically settle for a smaller percentage of  
 27 damages." *Id.*

1 carry significant risk, [but] post-PSLRA rulings and empirical studies make it clear that the risk of  
2 no recovery has increased significantly.”). Proving that Defendants acted with scienter “is complex  
3 and difficult to establish at trial.” *Hessefort v. Super Micro Comput., Inc.*, 2023 WL 7185778, at  
4 \*4 (N.D. Cal. May 5, 2023). Further, proving loss causation would have required the parties to  
5 present competing damages expert witnesses, and “in a battle of experts, the outcome cannot be  
6 guaranteed.” *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at \*3 (C.D. Cal. Oct. 25, 2016).

7 Here, the issues remained hotly contested up until the Settlement was reached. Shortly  
8 before the Settlement was reached, Plaintiffs filed a motion challenging the Company’s privilege  
9 designations, and the Court had appointed a special master to adjudicate any disputes related to  
10 the Company’s privilege log. MSW Decl. ¶ 47. There was no guarantee that Plaintiffs would  
11 succeed in their efforts to challenge the privilege designations and obtain the underlying  
12 documents, many of which Plaintiffs believe contain evidence of Defendants’ scienter. Further,  
13 Defendants had filed objections to the Magistrate Judge’s discovery order compelling them to  
14 produce additional discovery from a broader period and for additional custodians, which were still  
15 pending. MSW Decl. ¶ 46.

16 As noted earlier, Plaintiffs had thwarted Defendants’ premature bid for partial summary  
17 judgment regarding the February 12, 2018 corrective disclosures. However, Defendants would  
18 have had another opportunity, after the close of discovery, to raise their partial summary judgment  
19 arguments, which could have potentially eliminated a portion of the Class Period and substantially  
20 reduced the maximum possible recovery to the Class (*i.e.*, from \$926.7 million to \$158 million).  
21 MSW Decl. ¶ 45. The parties also had not yet begun expert discovery, which would have required  
22 the exchange of expert reports and depositions of the experts, and potentially culminated in  
23 *Daubert* motions seeking to exclude the opinions of certain experts.

24 Thus, while Plaintiffs and Lead Counsel are confident in the merits of Plaintiffs’ claims,  
25 success was not guaranteed, and the road to success remained long and arduous. Even if Plaintiffs  
26 prevailed, Defendants would likely have appealed to the Ninth Circuit, which could span several

1 years, and potentially include an *en banc* review from the Ninth Circuit and/or a writ of certiorari  
2 to the Supreme Court. During the appeals process, the Class would not receive any distributions,  
3 and they faced the risk that any award in their favor would be reversed. Accordingly, the Settlement  
4 provides the Class with certain, immediate recovery while avoiding these risks, further supporting  
5 the requested fee award.

### 6 3. The Skill Required and Quality of Counsel's Work

7 “[C]ourts have recognized that the prosecution and management of a complex national  
8 class action requires unique legal skills and abilities.” *In re Stable Road Acquisition Corp.*, 2024  
9 WL 3643393, at \*13. “This is particularly true in securities cases because the PSLRA makes it  
10 much more difficult for securities plaintiffs to get past a motion to dismiss.” *Id.*

11 Here, the record is replete with examples of the high quality of Plaintiffs’ Counsel’s work.  
12 Plaintiffs’ Counsel overcame critical hurdles in the case. After the Court granted Defendants’  
13 motion to dismiss the First Amended Complaint with leave to amend, Plaintiffs drafted a Second  
14 Amended Complaint that withstood Defendants’ second motion to dismiss. MSW Decl. ¶ 14.  
15 Plaintiffs also succeeded in their motion for class certification and soundly defeated Defendants’  
16 attempts to rebut the presumption of price impact based on the so-called “mismatch” argument  
17 (*i.e.*, that there was an insufficient match between the alleged misstatements and corrective  
18 disclosures to support price impact). MSW Decl. ¶ 21; ECF No. 283 at 18-23. Plaintiffs also  
19 prevailed in certifying the entire Class Period, even though Defendants had attempted to eliminate  
20 the second corrective disclosure to limit the Class Period and concomitant damages. *See* ECF No.  
21 251.

22 Plaintiffs’ Counsel were also faced with the unusual predicament of battling Defendants’  
23 premature partial summary judgment motion, even though the Defendants had failed to produce  
24 all the relevant evidence. Plaintiffs’ Counsel prevailed again, successfully arguing to the District  
25 Court that the motion should be denied pursuant to Fed. R. Civ. P. 56(d) because they needed  
26

1 additional discovery relevant to falsity and loss causation, which was essential for defending  
2 against the motion on the merits. MSW Decl. ¶ 32; ECF No. 375.

3 Lead Counsel also successfully litigated discovery motions, including a motion to compel  
4 Defendants to produce documents from a much longer time period and for numerous additional  
5 custodians than they were willing to agree to. The Court granted Plaintiff’s motion to compel in  
6 large part. MSW Decl. ¶ 31; ECF No. 373. Lead Counsel also procured and reviewed highly  
7 relevant documents supporting their claims from the Massachusetts Gaming Commission and the  
8 Nevada Gaming Control Board regarding their investigations of Wynn, as well as from numerous  
9 financial analysts that covered Wynn’s stock. MSW Decl. ¶ 23.

10 Moreover, this Court has also recognized Lead Counsel’s experience. *See* ECF No. 283 at  
11 26-27 (“Counsel is experienced in handling securities class actions and is familiar with applicable  
12 law, as shown by both their prior experience and their filings in this case.”); *See also* MSW Decl.  
13 Ex 1 at Ex. A. Courts around the country have similarly recognized Lead Counsel’s experience  
14 and competence. *See, e.g., Roofers’ Pension Fund v. Papa*, 333 F.R.D. 66, 76 (D.N.J. 2019)  
15 (“Upon review of the exhibits demonstrating [Pomerantz LLP’s] credentials, the Court is satisfied  
16 that counsel is qualified to represent the Classes.”); *Mauss v. NuVasive, Inc.*, 2017 WL 1080654,  
17 at \*3 (S.D. Cal. Mar. 22, 2017) (“[Pomerantz LLP] ha[s] extensive experience in the prosecution  
18 of federal securities class actions[,] . . . [is] knowledgeable about federal securities laws and ha[s]  
19 successfully prosecuted hundreds of class actions.”). Thus, this factor further supports the  
20 requested fee award.

21 **4. The Contingent Nature of the Fee and Financial Burden**

22 Plaintiffs’ Counsel undertook this Action on an entirely contingent fee basis, assuming the  
23 risk that the litigation would yield no or very little recovery and leave them uncompensated for  
24 their time, as well as for their out-of-pocket expenses. Plaintiffs’ Counsel’s devoted significant  
25 time (16,326.57 hours total) and resources over the several years they spent vigorously prosecuting  
26



1 this Action, advancing the cost of any litigation expenses (\$1,104,277.42) and receiving no  
2 compensation. MSW Decl. ¶ 65.

3 Plaintiffs' Counsel faced a considerable risk of nonpayment. Indeed, in many securities  
4 class actions, counsel working on a contingency basis assumed the same risk to their detriment,  
5 receiving no remuneration. *See, e.g., In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605, at \*1  
6 (S.D. Fla. Apr. 25, 2011) (granting securities class action defendants' motion for judgement as a  
7 matter of law after jury issued a verdict in plaintiffs' favor), *af'd on other grounds sub nom.*  
8 *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *Ward v. Succession of*  
9 *Freeman*, 854 F.2d 780 (5th Cir. 1988) (reversing plaintiffs' jury verdict for securities fraud);  
10 *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict  
11 and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir.  
12 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *see also In re Xcel*  
13 *Energy, Inc. Sec., Deriv. & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) ("Precedent  
14 is replete with situations in which attorneys representing a class have devoted substantial resources  
15 in terms of time and advanced costs yet have lost the case despite their advocacy.").

16 "[W]hen counsel takes on a contingency fee case and the litigation is protracted, the risk  
17 of non-payment after years of litigation justifies a significant fee award." *Destefano v. Zynga*, 2016  
18 WL 537946, at \*18 (N.D. Cal. Feb. 11, 2016); *See also In re Stanger v. China Electric Motor,*  
19 *Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) ("Risk multipliers incentivize attorneys to represent class  
20 clients, who might otherwise be denied access to counsel, on a contingency basis. . . . This  
21 incentive is especially important in securities cases."); *Wash. Pub. Power Supply Sys. Sec. Litig.*,  
22 19 F.3d 1291 at 1299 ("It is an established practice in the private legal market to reward attorneys  
23 for taking the risk of non-payment by paying them a premium over their normal hourly rates for  
24 winning contingency cases."); *In re Nuvelo, Inc. Sec. Litig.*, 2011 WL 2650592, at \*2 (N.D. Cal.  
25 July 6, 2011) ("It is an established practice to reward attorneys who assume representation on a  
26 contingent basis with an enhanced fee to compensate them for the risk that they might be paid

nothing at all.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (“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.”). Accordingly, the contingent nature of Plaintiffs’ Counsel’s fee supports the requested fee award.

### 5. Awards Made in Similar Cases

Plaintiffs’ Counsel are requesting a fee award in the amount of 33 ⅓ % of the \$70,000,000 Settlement Fund, or approximately \$23,333,333, together with interest accrued thereon while in the Escrow Account. This requested percentage is well within the range awarded in this Circuit. *See Perez v. Rash Curtis & Assocs.*, 2020 WL 1904533, at \*15 (N.D. Cal. Apr. 17, 2020) (awarding 33 ⅓ % of \$267,349,000 settlement amount); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at \*7 (D. Ariz. Apr. 20, 2012) (awarding 33.33% of \$145,000,000 settlement amount); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at \*4 (N.D. Cal. Sept. 20, 2018) (awarding 33 ⅓ % of \$104,750,000 settlement amount); *Meijer, Inc. v. Abbott Lab’ys*, 2011 WL 13392313, at \*2 (N.D. Cal. Aug. 11, 2011) (awarding 33⅓% of \$52,000,000 settlement amount); *Beaver v. Tarsadia Hotels*, 2017 WL 4310707, at \*12 (S.D. Cal. Sept. 28, 2017) (awarding 33⅓ % of \$51,150,000 settlement amount); *See also* MSW Decl. Ex. 5 (collecting Ninth Circuit cases with 33% or higher fee awards in complex, contingent litigation).

Given the results achieved, the number of hours dedicated to the matter by Plaintiffs’ Counsel, the costs Plaintiffs’ Counsel incurred in furtherance of the litigation and the resources expended, the contingent fee risk, the important public policy advanced by securities litigation such as this,<sup>5</sup> and the fact that Courts have routinely found similar awards reasonable, the requested fee award is reasonable.

<sup>5</sup> The Supreme Court has “repeatedly” emphasized that private securities actions such as this provide “a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action.” *Bateman Eicher, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985); *Tellabs, Inc. v. Makor Issues & Rts. Ltd.*, 551 U.S. 308, 313 (2007) (“This Court has long

1                   **6.       The Reaction of the Class**

2           The Claims Administrator, JND, has sent the Settlement Notice and Proof of Claim and  
3 Release Form (“Claim Form”) to over 50,000 Class potential Class Members and their nominees,  
4 and has sent over 194,000 Settlement Notice and Claim Forms to nominees who requested copies  
5 for mailing themselves. MSW Decl. Ex. 4 ¶ 4. The Settlement Notice provided a summary of the  
6 terms of the Settlement and stated that Lead Counsel would apply for an award of attorney’s fees  
7 in an amount not to exceed 33 ⅓ % of the Settlement Fund, including any interest earned thereon,  
8 and compensatory awards for Plaintiffs in an amount not to exceed \$100,000. MSW Decl. Ex. 4,  
9 Ex. A ¶ 5. The Settlement Notice also advised Class Members that they could object to the  
10 Settlement or fee request and explained the procedure for doing so. MSW Decl. Ex. 4, Ex. A ¶¶  
11 56-62. While the deadline to object to the fee and expense application is not until January 6, 2025,  
12 to date, not a single objection has been received. MSW Decl. ¶ 72. “[T]he lack of objection from  
13 any Class Member supports the attorneys’ fees award.” *In re Immune Response Sec. Litig.*, 497 F.  
14 Supp. 2d 1166, 1177 (S.D. Cal. 2007). Lead Counsel will address any objections in its reply papers.  
15 However, the lack of objection to the fees Lead Counsel notified the Class that Plaintiffs’ Counsel  
16 would be seeking further supports the requested fees.

17                   **7.       The Lodestar Cross-Check**

18           The Ninth Circuit “encourage[s]” a lodestar cross-check “when utilizing the percentage-  
19 of-recovery method.” *In re Apple Device Performance Litig.*, 50 F.4th at 784. “The lodestar  
20 method result may be compared with a fee request made under the percentage method as a ‘cross-  
21 check’ on the reasonableness of the requested fee.” *Int’l Game Tech.*, 2012 WL 5199742, at \*4.  
22 The Court “first computes the plaintiffs’ attorneys’ reasonable hour rate for the litigation and  
23 multiplies that rate by the number of hours dedicated to the case.” *In re Stable Road Acquisition*  
24 *Corp.*, 2024 WL 3643393, at \*15. Then, the Court “adjusts the lodestar to take into account, among  
25

26 \_\_\_\_\_  
27 recognized that meritorious private actions to enforce federal antifraud securities laws are an  
28 essential supplement to criminal prosecutions and civil enforcement actions . . .”).

1 other things, the time and labor required, the result achieved, the quality of representation, whether  
2 the fee is fixed or contingent, the novelty and difficulty of the questions involved, and awards in  
3 similar cases.” *Id.* “[D]istrict courts have discretion to use risk multipliers to enhance the lodestar  
4 in common fund cases.” *Wash. Public Power Supply Sys. Sec. Litig.*, 19 F.3d at 1301. The  
5 multiplier “is a number, such as 1.5 or 2, by which the base lodestar figure is multiplied in order  
6 to increase (or decrease) the award of attorneys’ fees on the basis of such factors as the risk  
7 involved and the length of the proceedings.” *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir.  
8 2003).

9 Plaintiffs’ Counsel’s current rates range from \$850 to \$1325 for partners, \$350 to \$700 for  
10 associates, and \$335 to \$375 for paralegals. MSW Decl. ¶ 68 & Exs. 1-3. These rates are in line  
11 with comparable Plaintiffs firms who perform similar work, as well as defense firms that handle  
12 complex litigation. *See* MSW Decl. Ex. 6 (chart of rates charged by peer plaintiff and defense  
13 counsel in complex litigation); *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods.*  
14 *Liab. Litig.*, 2017 WL 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (approving fee award following  
15 lodestar cross-check with billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for  
16 associates, and \$80 to \$490 for paralegals). Moreover, the Supreme Court and other courts have  
17 held that the use of current rates is proper since such rates compensate for inflation and the loss of  
18 use of funds. *See Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 283-84 (1989) (“[A]n appropriate  
19 adjustment for delay in payment – whether by the application of current rather than historic hourly  
20 rates or otherwise – is within the contemplation of the statute [authorizing fees.]”); *Patel v. Trans*  
21 *Union, LLC*, 2018 WL 1258194, at \*7 (N.D. Cal. Mar. 11, 2018) (current market rates were  
22 “appropriate given the deferred and contingent nature of counsel’s compensation”); *Rutti v. LoJack*  
23 *Corp.*, 2012 WL 3151077, at \*11 (C.D. Cal. July 31, 2012) (“[I]t is well-established that counsel  
24 is entitled to current, not historic, hourly rates.”); *In re Mattel, Inc. Sec. Litig.*, 2022 WL 2826448,  
25 at \*4-5 (C.D. Cal. May 18, 2022) (finding lodestar cross-check, calculated from current hourly  
26 rates, supported the requested fees).

1 Here, Plaintiffs' Counsel have expended 16,326.57 hours litigating this Action. MSW  
 2 Decl. ¶ 68. Plaintiffs' Counsel will also spend additional time preparing Plaintiffs' reply in support  
 3 of final approval, preparing for and attending the final approval hearing, directing the claims  
 4 administration process, and filing a motion for final distribution, for which Plaintiffs' Counsel will  
 5 not seek further compensation. *Id.* The cumulative time expended by Plaintiffs' Counsel,  
 6 multiplied by their current hourly rates, results in a lodestar of \$11,780,820.20, of which  
 7 \$8,517,200.20 is attributable to Lead Counsel, \$2,276,175 is attributable to The Rosen Law Firm  
 8 ("Rosen"), P.A., and \$987,445 is attributable to Muehlbauer Law Office, Ltd. ("Muehlbauer").  
 9 MSW Decl. ¶ 68 & Exs. 1-3. This amounts to a modest lodestar multiplier of approximately 1.98,  
 10 which is consistent with the range that Courts within this Circuit have found reasonable. *Patel v.*  
 11 *Facebook, Inc. (In re Facebook Biometric Info. Privacy Litig.)*, 2022 WL 822923, at \*1 (9th Cir.  
 12 Mar. 17, 2022) (affirming lodestar multiplier of 4.71); *In re Alphabet, Inc. Sec. Litig.*, 2024 WL  
 13 4354988, at \*7 (N.D. Cal. Sept. 30, 2024) (lodestar multiplier of approximately 4.58); *In re Apple*  
 14 *Sec. Litig.*, 2024 WL 4246282, at \*6 (N.D. Cal. Sept. 18, 2024) (3.88 lodestar multiplier); *Hunt*,  
 15 2024 WL 1995840, at \*9 ("In similar cases, courts, including this Court, have approved multipliers  
 16 ranging from 1.0 to 4.0."). Accordingly, the lodestar cross-check further supports the  
 17 reasonableness of Plaintiffs' Counsel's requested fee award.

18 **III. LEAD COUNSEL'S APPLICATION FOR PLAINTIFFS' COUNSEL'S**  
 19 **REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED**

20 Plaintiffs' Counsel are seeking reimbursement for the Litigation Expenses they reasonably  
 21 incurred in prosecuting this Action, which collectively total \$1,104,277.42. *See* MSW Decl. ¶ 69  
 22 (Lead Counsel incurred \$1,049,515.86 in expenses; Rosen incurred \$51,520.81 in expenses;  
 23 Muehlbauer incurred \$3,240.75 in expenses). "Attorneys may recover their reasonable expenses  
 24 that would typically be billed to paying clients in non-contingency matters." *In re Omnivision*, 559  
 25 F. Supp. 2d at 1048.

26 The Litigation Expenses for which Plaintiffs' Counsel are seeking reimbursement are the  
 27 types of expenses necessarily incurred in litigation and routinely charged to clients billed hourly,

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1 including, *inter alia*, expert fees, filing fees, electronic discovery database charges, online legal  
 2 research, photocopying, travel, and postage expenses. MSW Decl. ¶¶ 70-71. Courts routinely  
 3 approve reimbursement of similar expenses. *See In re Magsafe Apple Power Adapter Litig.*, 2015  
 4 WL 428105, at \*15 (N.D. Cal. Jan. 30, 2015) (approving request of \$100,000 in expenses that  
 5 included “cost of experts and consultants, computerized research such as the use of Lexis and  
 6 Westlaw, travel expenses such as airfare, meals, lodging and transportation, and costs such as  
 7 photocopies, postage, filing fees, and telephone charges”); *In re Hydroxycut Mktg. & Sales Pracs.*  
 8 *Litig.*, 2014 WL 6473044, at \*10 (S.D. Cal. Nov. 18, 2014) (stating costs for “filing fees,  
 9 photocopies, postage, telephone charges, computer research, mediation fees, and travel” were “the  
 10 types of expenses routinely charged to paying clients”); *Milligan v. Toyota Motor Sales, U.S.A.,*  
 11 *Inc.*, 2012 WL 10277179, at \*9 (N.D. Cal. Jan. 6, 2012) (granting request for expenses which  
 12 included filing fees; copying, mailing, faxing and serving documents; conducting computer  
 13 research; travel to hearings and expert fees).

14 Additionally, to date, there have been no objections to Class Counsel’s request for  
 15 reimbursement of Litigation Expenses, which supports approval. MSW Decl. ¶ 72; *See also In re*  
 16 *Tripath Tech., Inc., Sec. Litig.*, 2006 WL 1009228, at \*4-5 (N.D. Cal. Apr. 18, 2006) (finding that  
 17 no objections to counsel’s request for reimbursement of expenses supported approval).  
 18 Accordingly, the Court should approve Plaintiffs’ Counsels’ request for reimbursement of  
 19 \$1,104,277.42 in Litigation Expenses.

#### 20 **IV. THE REQUESTED AWARDS TO PLAINTIFFS SHOULD BE APPROVED**

21 In connection with their request for an award of Litigation Expenses, Plaintiffs’ Counsel  
 22 also request that the Court award Mr. Ferris \$30,000, Mrs. Ferris \$30,000, and Mr. Larsen \$20,000  
 23 for their representation of the Class. The PSLRA allows for reimbursements to representative  
 24 plaintiffs in securities class actions for “reasonable costs and expenses (including lost wages)  
 25 directly relating to the representation of the class.” 15 U.S.C. § 78u-4(a)(4). “Incentive awards are  
 26 fairly typical in class action cases,” and “are intended to compensate class representatives for work

1 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the  
 2 action, and, sometimes, to recognize their willingness to act as a private attorney general.”  
 3 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

4 As detailed in their declarations, Plaintiffs dedicated their personal time and effort to  
 5 prosecuting the Action. MSW Decl. Exs. 7-8 ¶ 7; MSW Decl. Ex. 9 ¶ 5. During the course of the  
 6 litigation, they dedicated a substantial number of hours by, *inter alia*, meeting and communicating  
 7 with Plaintiffs’ Counsel about case strategy and case developments; providing declarations in  
 8 support of Plaintiffs’ motion for class certification; searching for and producing documents in  
 9 response to Defendants’ requests; responding to interrogatories; reviewing and commenting on  
 10 pleadings filed in the Action; preparing for and sitting for depositions; meeting and consulting  
 11 with Plaintiffs’ Counsel regarding settlement negotiations; and approving the proposed Settlement.  
 12 MSW Decl. Exs. 7-8 ¶¶ 3-6; MSW Decl. Ex. 9 ¶¶ 3-4. They also undertook risks in pursuing these  
 13 claims by lending their name to the lawsuit and opening themselves up to public scrutiny. *See*,  
 14 *e.g.*, *Wehlage v. Evergreen at Arvin LLC*, 2012 WL 4755371, at \*5 (N.D. Cal. Oct. 4, 2012)  
 15 (finding award for plaintiffs was justified because they lent “their names to this case, and thus  
 16 subject[ed] themselves to public attention”); *In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020  
 17 WL 7133805, at \*13 (D. Minn. Dec. 4, 2020) (finding award justified because “[c]lass  
 18 [r]epresentatives participated and willingly took on the responsibility of prosecuting the case and  
 19 publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from  
 20 both the public and media”).

21 The requested compensatory awards are fair and reasonable and Courts within this Circuit  
 22 and around the country have granted similar, and even larger, reimbursements to class  
 23 representatives. *See Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at \*11 (S.D.N.Y. Sept. 29,  
 24 2022) (granting \$100,000 case contribution awards to individual lead plaintiffs); *Alaska Elec.*  
 25 *Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at \*4 (S.D.N.Y. Nov. 29, 2018) (awarding  
 26 \$50,000 and \$100,000 incentive awards); *Fankhouser v. XTO Energy, Inc.*, 2012 WL 4867715, at

\*3 (W.D. Okla. Oct. 12, 2012) (granting incentive awards up to \$40,000 to individual class representatives); *Ryskamp v. Looney*, 2012 WL 3397362, at \*6 (D. Colo. Aug. 14, 2012) (granting request for \$50,000 incentive award to individual who brought derivative suit); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at \*31 (S.D.N.Y. Nov. 8, 2010) (granting \$100,000 award to individual class representative); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d at 1173-74 (\$40,000 reimbursement to individual lead plaintiff); *Xcel Energy*, 364 F. Supp. 2d at 1000 (awarding \$100,000 collectively to be distributed among the entity and individual lead plaintiffs “in a manner that plaintiffs’ co-lead counsel shall determine in their discretion”); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (granting \$50,000 incentive award to individual class representative); *Arsam v. Salomon Bros., Inc. (In re Revco Sec. Litig.)*, 1993 WL 497208, at \*3 (N.D. Ohio Sept. 14, 1993) (awarding class representative \$50,000 supplemental award). Accordingly, the Court should grant the requested compensatory awards to Plaintiffs.

**CONCLUSION**

For the foregoing reasons, and the additional reasons set forth in the MSW Decl., Lead Counsel respectfully requests that the Court (i) award Plaintiffs’ Counsel attorneys’ fees in the amount of 33 ⅓ % of the Settlement Fund, together with interest accrued thereon while in the Escrow Account, and \$1,104,277.42 in litigation expenses reasonably and necessarily incurred by Plaintiffs’ Counsel in prosecuting and resolving this Action; and (ii) award Mr. Ferris a compensatory award in the amount of \$30,000, Mrs. Ferris a compensatory award in the amount of \$30,000, and Mr. Larsen a compensatory award in the amount of \$20,000.

Dated: December 23, 2024

**POMERANTZ LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2024, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court’s CM/ECF System.

/s/ Murielle J. Steven Walsh  
Murielle J. Steven Walsh