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Counsel for Lead Plaintiff
SEB Investment Management AB
and Lead Counsel for the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SEB INVESTMENT MANAGEMENT AB, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SYMANTEC CORPORATION and GREGORY S. CLARK,

Defendants.

Case No. 3:18-cv-02902-WHA

ECF CASE

LEAD COUNSEL' MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Dept.: Courtroom 12, 19th Floor
Judge: Honorable William Alsup
Date: February 10, 2022
Time: 11:00 a.m.

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and the Court's Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 411) (the "Preliminary Approval Order"), Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel" or "BLB&G") will and hereby does move the Court, before the Honorable William Alsup Rogers, on February 10, 2022, at 11:00 a.m. in Courtroom 12 of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or at such other location and time as set by the Court, for an Order awarding attorneys' fees and litigation expenses incurred in the above-captioned securities class action (the "Action").

This motion is based on the following Memorandum of Points and Authorities, the accompanying Declaration of Jeremy P. Robinson in Support of: (A) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Robinson Declaration" or "Robinson Decl.") and its exhibits, all other prior pleadings and papers in this Action, arguments of counsel, and such additional information or argument as may be required by the Court. A proposed Order will be submitted with Lead Counsel's reply submission.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should approve Lead Counsel's application for an award of attorneys' fees.

2. Whether the Court should approve Lead Counsel's application for payment of Litigation Expenses.

MEMORANDUM OF POINTS AND AUTHORITIES

Court-appointed Lead Counsel for the Class and for Lead Plaintiff SEB Investment Management AB ("SEB" or "Lead Plaintiff") respectfully submits this memorandum of law in support of its application for (a) an award of attorneys' fees in the amount of 19% of the Settlement Fund (plus interest); and (b) payment of its litigation expenses in the amount of $2,000,208.69.[1]

PRELIMINARY STATEMENT

Lead Counsel has vigorously litigated this securities class action over the last three years on a fully contingent basis, without receiving any compensation at all. The litigation was hard-fought and faced material risks. As such, Lead Counsel had to—and did—dedicate very substantial efforts to the Action from its outset. Indeed, Lead Counsel fought two heavily contested pleading motions and, after the Court initially dismissed the Action in its entirety, prevailed in getting securities fraud claims sustained against certain Defendants. Then, Lead Counsel was successful in getting a class certified over Defendants' vigorous opposition—and completed extensive fact and expert discovery, including a contested motion to compel, the review and analysis of 2.1 million pages of documents and a total of 29 depositions. Lead Counsel also fully briefed Defendants' extensive motion for summary judgment and engaged in preparations for trial.

It was due to Lead Counsel's massive and sustained litigation effort that the proposed $70 million Settlement was achieved for the benefit of Lead Plaintiff and the Class. The $70 million recovery represents an excellent result for the Class as it will provide meaningful and prompt compensation to Class members while avoiding the significant risks and delay of continued litigation, including the risk that there may be no recovery at all. Having achieved a significant monetary recovery after over three years of litigating this case without any payment at all, Lead Counsel seeks attorneys' fees in the amount of 19% of the Settlement Fund (plus interest at the same rate as the Settlement Fund), as well as payment

[1] Unless otherwise defined in this memorandum, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated June 8, 2021 (ECF No. 394-1) (the "Stipulation") or the Robinson Declaration. Citations to "¶ ___" in this memorandum refer to paragraphs in the Robinson Declaration and citations to "Ex. ___" refer to exhibits to the Robinson Declaration.

for the litigation expenses that it incurred in prosecuting the Action on behalf of Lead Plaintiff and the Class.

Lead Counsel respectfully submits that its hard work, skill, and persistence fully merit the requested 19% fee award here. As set forth herein, the requested 19% fee is significantly lower than the 25% "benchmark" accepted by the Ninth Circuit. It also represents a "negative multiplier" or a discount to Lead Counsel's total lodestar devoted to this Action.

First, the Ninth Circuit has long recognized that, in class actions resulting in a common fund like this one, a percentage award is appropriate and an award of 25% of the settlement amount is the "benchmark" or reasonable starting point in considering an award. Here, Lead Counsel's considerable efforts over the past three years, its success in securing a meaningful recovery for the Class, and the substantial risks in the Action are factors that could potentially support an *increase* from the benchmark. But, notwithstanding that reality, Lead Counsel requests a fee percentage of 19% of the Settlement Fund, which is substantially *less* than benchmark amount, which strongly supports approval. The fee percentage requested is based on the retainer agreement entered into between Lead Plaintiff SEB and Lead Counsel at the outset of the Action.

The requested fee percentage is also supported by the other factors considered by courts in determining the reasonableness of the fee, including the quality of the result achieved, the significant risks presented by this contingent fee litigation, the extent and quality of Lead Counsel's efforts, and the lodestar cross-check. Lead Counsel prosecuted the Action on a contingency-fee basis, facing numerous challenges to proving liability and damages that posed serious risks that counsel would receive no compensation for its efforts. As discussed in the Robinson Declaration, there were multiple significant risks inherent in the Action from the outset, which were enhanced by the elevated pleading standard required under the PSLRA. Indeed, these substantial risks were manifested when the Court initially dismissed the Complaint in its entirety. Even after Lead Plaintiff prevailed on its motion to amend the complaint and succeeded in certifying the Class, there remained meaningful risks that Defendants might prevail at summary judgment or trial if Lead Plaintiff and Lead Counsel were unable to prove all of the elements of the claims, including falsity, materiality, scienter, loss causation, and damages. Through

their diligence and efforts, Lead Counsel and Lead Plaintiff were able to overcome these hurdles and secure a meaningful recovery for the Class.

Second, as detailed in the accompanying Robinson Declaration, Lead Counsel dedicated a total of over 43,000 hours of attorney and other professional staff time over the last three years of litigation to bring the Action to this resolution. ¶ 25. In class actions like this one, which are prosecuted on a contingent-fee basis, courts often award fees representing a "multiplier" of counsel's lodestar (often two to four times the amount of their lodestar) to compensate counsel for taking the risks of non-recovery and other factors. Here, Lead Counsel's requested fee does not represent a *positive* multiple of its lodestar (as is often the case), but rather amounts to substantially less than its lodestar—or a "*negative*" lodestar multiplier of 0.66. *Id*. This means that, if awarded, the requested 19% fee will result in a discount—specifically a substantial 34% discount—on Lead Counsel's total lodestar, which further supports the reasonableness of the requested fee.

Third, Lead Counsel also seeks to recover the litigation expenses incurred in prosecuting and resolving this litigation, which totaled $2,000,208.69, during the three years of litigation. As discussed below, these expenses were reasonable and necessary for the prosecution and resolution of the litigation and are of the type that are routinely charged to clients in non-contingent litigation.

Finally, consistent with the Court's practices, Lead Counsel respectfully request that 50% of the attorney's fees and 100% of the Litigation Expenses be paid upon approval of the Court and then the remaining 50% of the fees be paid when the distribution of the Net Settlement Fund to Authorized Claimants has occurred.

For the reasons set forth herein, Lead Counsel respectfully requests that the Court award it attorneys' fees in the amount of 19% of the Settlement Fund (plus interest) and payment of its litigation expenses in the amount of $2,000,208.69.

ARGUMENT

I. Lead Counsel's Request for Attorneys' Fees of 19% of the Settlement Fund Is Substantially Less Than the 25% "Benchmark Percentage" In this Circuit

The Ninth Circuit has established that, in common-fund cases such as this one, the "benchmark" percentage attorney fee award is 25% of the settlement fund. *See, e.g.*, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) ("in this circuit, the benchmark percentage is 25%"); *In re Bluetooth Headset Prods. Liab. Litig.,* 654 F.3d 935, 942 (9th Cir. 2011) ("courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure"); *Fischel v. Equitable Life Assurance Soc'y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002) ("We have established a 25 percent "benchmark" in percentage-of-the-fund cases"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) ("we established 25 percent of the fund as the 'benchmark' award that should be given in common fund cases").

Courts in this District have found fee awards in the amount of the 25% benchmark to be "presumptively reasonable." *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *4 (N.D. Cal. Aug. 17, 2018) ("[I]t is well established that 25% of a common fund is a presumptively reasonable amount of attorneys' fees"); *Booth v. Strategic Realty Trust, Inc.*, 2015 WL 6002919, at *7 (N.D. Cal. Oct. 15, 2015) ("[T]he 25% award requested by Class Counsel is equal to the 'benchmark' percentage for a reasonable fee award in the Ninth Circuit. Such a fee award is 'presumptively reasonable.'") (citations omitted). Indeed, courts have found that, "in most common fund cases, the award *exceeds* that benchmark [of 25%]." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see also In re Allergan, Inc. Proxy Violation Derivatives Litig.*, 2018 WL 4959014, at *1 (C.D. Cal. Aug. 13, 2018) ("The Ninth Circuit uses a 25% benchmark in common fund class actions, and 'in most common fund cases, the award exceeds that benchmark,' with a 30% award the norm 'absent extraordinary circumstances that suggest reasons to lower or increase the percentage.'").

While the Ninth Circuit has counseled that the Court should consider adjustments to the 25% benchmark where a fee "would yield windfall profits for class counsel in light of the hours spent on the case," *see Bluetooth*, 654 F.3d at 942-43, no such concerns are present here. To start, the 19% fee requested here—which is the fee that Lead Counsel agreed to accept in this matter when it was retained by Lead Plaintiff—is already substantially below the 25% benchmark. Indeed, the requested 19% fee represents a meaningful reduction from that benchmark or, in absolute figures, $4.2 million below the amount that would be represented by a 25% fee. Moreover, as noted and discussed further below, the fact that the 19% fee results in a payment that is substantially *less* than the total lodestar value of Lead Counsel's time in this extensively litigated case eliminates any concern of "windfall profits" as articulated in *Bluetooth.*

The 19% fee requested here is also within, or well below, the range of percentage fees typically awarded in securities class actions and other complex class actions in the Ninth Circuit with recoveries comparable to the $70 million achieved here, including by this Court. *See, e.g.*, *Luna v. Marvell Tech. Grp.*, Case No. 3:15-cv-05447-WHA, slip op. at 6 (N.D. Cal. Apr. 20, 2018), ECF No. 235 (Alsup, J.) (awarding 18.8% of $72.5 million settlement, representing a 2.0 multiplier) (Ex. 14); *In re Snap Inc. Sec. Litig.*, Case No. 2:17-cv-03679-SVW-AGR, slip op. at 1-3 (C.D. Cal. Mar. 9, 2021), ECF No. 400 (awarding 25% of $154.7 million settlement, representing a 1.7 multiplier) (Ex. 15); *In re Volkswagen "Clean Diesel" Mktg, Sales Practices, and Prods. Liab. Litig.*, 2019 WL 2077847, at *4 (N.D. Cal. May 10, 2019) (awarding 25% of $48 million settlement, representing a 1.59 multiplier); *Anthem*, 2018 WL 3960068, at *16 (awarding 27% of $115 million settlement, representing a multiplier of slightly over 1.0); *In re Allergan, Inc. Proxy Violation Sec. Litig.*, No. 8:14-cv-02004-DOC-KES, slip op. at 2 (C.D. Cal. Aug. 14, 2018), ECF No. 637 (awarding 21% of $250 million settlement, representing a 0.8 multiplier) (Ex. 16); *Allergan Proxy Derivatives Litig.*, 2018 WL 4959014, at *1 (awarding 20% of $40 million settlement, representing a 1.77 multiplier); *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *3-7 (N.D. Cal. Dec. 6, 2017) (awarding 20% of $208.7 million settlement, representing a 3.66 multiplier); *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9-10 (C.D. Cal. Oct. 25, 2016) (awarding 25% of $95 million settlement, representing a 0.47 multiplier); *In re Int'l*

Rectifier Corp. Sec. Litig., No. 07-02544, slip op. at 1 (C.D. Cal. Feb. 8, 2010), ECF No. 316 (awarding 25% of $90 million settlement, representing a 2.35 multiplier) (Ex. 17); *In re Brocade Sec. Litig.*, No.: 3:05-CV-02042-CRB, slip op. at 13 (N.D. Cal. Jan. 26, 2009), ECF No. 496-1 (awarding 25% of $160 million settlement, representing a 3.5 multiplier) (Ex. 18); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153006, at *4-5 (C.D. Cal. Sept. 12, 2005) (awarding 25% of $150 million settlement, representing a 1.64 multiplier).

Fee awards in securities class actions in other circuits with comparable settlements also strongly support the reasonableness of the requested 19% fee. *See, e.g., In re Centurylink Sales Practices & Sec. Litig.*, 2021 WL 3080960, at *12 (D. Minn. July 21, 2021) (awarding 25% of $55 million settlement); *In re SunEdison, Inc. Sec. Litig.*, No. 1:16-md-2742-PKC, slip op. at 2 (S.D.N.Y. Oct. 25, 2019), ECF No. 672 (awarding 21% of $74 million settlement) (Ex. 19); *San Antonio Fire & Police Pension Fund v. Dole Food Co.*, No. 1:15-cv-1140-LPS, slip op. at 2 (D. Del. July 18, 2017), ECF No. 100 (awarding 25% of $74 million settlement) (Ex. 20); *In re Rayonier Inc. Sec. Litig.*, 2017 WL 4542852, at *3 (M.D. Fla. Oct. 5, 2017) (awarding 30% of $73 million settlement); *Local 703 v. Regions Fin. Corp.*, 2015 WL 5626414, at *1 (N.D. Ala. Sept. 14, 2015) (awarding 30% of $90 million settlement); *Minneapolis Firefighters Relief Ass'n v. Medtronic, Inc.,* 2012 WL 12903758, at *1 (D. Minn. Nov. 8, 2012) (awarding 25% of $85 million settlement); *Freudenberg v. E*Trade Fin. Corp.*, No. 07 Civ. 8538 (JPO) (MHD), slip op. at 6 (S.D.N.Y. Oct. 20, 2012), ECF No. 154 (awarding 28% of $79 million settlement) (Ex. 21); *In re Tremont Sec. Law, State Law & Ins. Litig.*, No. 08 Civ. 11117 (TPG), slip op. at 2 (S.D.N.Y. Aug. 19, 2011), ECF No. 603 (awarding 30% of $91.8 million settlement) (Ex. 22); *Billitteri v. Sec. Am., Inc.*, 2011 WL 3585983, at *9 (N.D. Tex. Aug. 4, 2011) (awarding 25% of $80 million settlement); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), slip op. at 2, 4 (S.D.N.Y. July 18, 2011), ECF No. 117 (awarding 27.5% of $70 million settlement, representing a 4.7 multiplier) (Ex. 23).

Similarly, a statistical review of all PSLRA settlements from 2011 to 2020 reveals that the median fee award in settlements ranging from $25 to $100 million is 25%, and, even in the higher range of settlements from $100 million to $500 million, the median fee award is 22.3%. *See* NERA ECONOMIC CONSULTING, RECENT TRENDS IN SECURITIES CLASS ACTION LITIGATION: 2020 FULL-YEAR REVIEW, at

23 (2021) (Ex. 12). Thus, the 19% fee requested here is on the lower end of the range of percentage fees awarded in comparable cases, and its reasonableness is only further confirmed by the fact that it represents a negative multiplier or discount on Lead Counsel's total lodestar devoted to the Action.

II. Additional Factors Considered By Courts Support Approval of the Requested Fee

The reasonableness of Lead Counsel's 19% fee request is further confirmed by additional factors considered by courts in this Circuit, including (1) the results achieved, (2) the risks of litigation, (3) the skill required and the quality of work, (4) the contingent nature of the fee and the financial burden carried by the plaintiffs, (5) awards made in similar cases, (6) the class's reaction, and (7) a lodestar cross-check. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002); *Omnivision*, 559 F. Supp. 2d at 1046-48.

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

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). Lead Counsel respectfully submits that the $70 million cash settlement is an excellent result for the Class, especially when considering the risk of a significantly lower recovery—or no recovery at all—if the case proceeded through a decision on summary judgment, trial, and the inevitable appeals.

To begin, in terms of sheer amount, the $70 million Settlement compares favorably to other securities fraud settlements. The Settlement is nearly ***ten times*** the size of the median securities class-action settlement in the Ninth Circuit between 2011 and 2020—*i.e.,* $7.3 million. *See* CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2020 REVIEW AND ANALYSIS, at 20 (2021) (Ex. 13).

In addition, the $70 million Settlement represents a recovery of approximately 6.9% to 10.2% of the Class's absolute maximum damages (depending on whether pre-Class Period gains are netted). ¶ 158. Importantly, this estimate of maximum damages assumes Lead Plaintiff would have complete success on *all* issues of falsity, materiality, scienter, and loss causation at summary judgment and trial, which was far from certain. Indeed, Defendants advanced serious arguments regarding all elements of liability, loss causation and damages that, if accepted, would have substantially lowered the maximum damages or

eliminated them entirely. Given the significant risks of establishing liability and loss causation here, Lead Counsel believes this level of recovery represents an excellent result for the Class. *See, e.g., In re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *4 (C.D. Cal. Oct. 13, 2015) (finding that settlement representing 8% of estimated damages "equals or surpasses the recovery in many other securities class actions"); *Omnivision*, 559 F. Supp. 2d at 1042 (finding settlement representing 9% of possible damages was fair and reasonable and "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"). Accordingly, Lead Counsel believes that the quality of the result achieved supports the fee requested.

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

"The risks assumed by Class Counsel, particularly the risk of non-payment or reimbursement of expenses, is a factor in determining counsel's proper fee award." *In re Heritage Bond Litig.*, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005); *see also, e.g.*, *In re Washington Pub. Power Supply Sys. Sec. Litig. ("WPPSS")*, 19 F.3d 1291, 1299-1301 (9th Cir. 1994); *Omnivision*, 559 F. Supp. 2d at 1047.

Lead Counsel faced significant risks in bringing this Action from the outset. As an initial matter, the application of the PSLRA to this litigation presented significant risks. Since Congress passed the PSLRA in 1995, courts in this Circuit and across the country have increasingly dismissed cases at the pleading stage in response to defendants' arguments that the complaints do not meet the PSLRA's heightened pleading standards. *See Johnson v. US Auto Parts Network, Inc.*, 2008 WL 11343481, at *3 (C.D. Cal. Oct. 9, 2008) (noting that "securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA").

As discussed in greater detail in the Robinson Declaration and the Settlement Memorandum, there were many substantial challenges to succeeding in this litigation. Indeed, throughout the litigation, Defendants vigorously asserted that their public statements were accurate, Symantec's accounting was consistent with GAAP and SEC guidance, any misstatements were not material, they had no intent to deceive investors, and that the price declines in Symantec stock could not be attributed to the correction of the alleged misstatements. ¶¶ 14-22.

The Court's initial dismissal of all claims in the Action on the grounds that Lead Plaintiff had

not adequately plead materiality and scienter illustrated some of the substantial risks existed in this case from the outset. *See SEB Inv. Mgmt. AB v. Symantec Corp.*, 2019 WL 2491935, at *3-7 (N.D. Cal., June 14, 2019). The Court dismissed Plaintiffs' revenue misstatement allegations, which centered on Symantec's disclosure that $12 million in revenue had been prematurely booked and had to be deferred. In doing so, the Court explained that "the deferral of only $12 million from the fourth quarter of fiscal year 2018 to the first quarter of fiscal year 2019" reduced Symantec's "fourth quarter revenues by less than one percent from $1.222 billion to $1.210 billion"—which was "insufficient to show materiality." *Id.* at *5. The Court also held that Plaintiffs' scienter allegations for the alleged misstatements about "Transition and Transformation" ("T&T") expenses "fail[ed] to raise an inference that is as compelling as the opposing inference that Symantec simply announced an investigation into, and then thoroughly investigated, a former employee's claims of improper accounting practices, later recommending control enhancements to address those concerns." *Id.* at *10.

After a fiercely contested motion for leave to amend, Lead Plaintiff and Lead Counsel were ultimately able to resurrect the revenue and T&T misstatement allegations against certain Defendants—while other alleged misstatements and former defendants were dismissed. Even then, however, the Court noted that, at trial or summary judgment, "we will have to decide whether the amounts alleged by plaintiff to have been improperly recognized are material." *SEB Inv. Mgmt. AB v. Symantec Corp.*, 2019 WL 4859099, at *3 (N.D. Cal. Oct. 2, 2019). As such, Defendants pointedly argued in their summary judgment papers that the amended complaint only "narrowly survived the pleading stage."

The issues that led the Court to initially dismiss the Action continued to present significant risk throughout the entire litigation. Indeed, Lead Counsel worked extensively with an expert accountant, but, except for the $12 million in prematurely booked revenue in Fiscal Year 2018, did not identify any other instances where Defendants improperly booked revenue. ¶ 17. As such, throughout the entire case, Defendants vehemently argued that the revenue misstatement allegations necessarily failed because no reasonable investor would find $12 million in prematurely booked revenues material to Symantec, which booked over $1 billion in revenue per quarter and over $4 billion per year. *Id.*

Defendants also vigorously disputed Lead Plaintiff's allegation that Defendants had manipulated

certain of Symantec's reported financial measures by misclassifying ordinary operating expenses as T&T expenses in order to meet executive compensation targets. ¶ 140. Defendants asserted that they did not misclassify any expenses at all. For example, in their summary judgment motion, Defendants argued that Symantec's accounting staff responsible for T&T classifications had "testified uniformly and unambiguously that th[e] classifications were proper." ¶ 18. Defendants also cited their accounting expert to argue that their accounting was consistent with GAAP and SEC guidance. *Id.*

Further, as explained in the Robinson Declaration, Lead Counsel worked extensively with an accounting expert to analyze Symantec's non-GAAP measures and T&T expenses. Based on a detailed review of the documents and testimony, Lead Plaintiff's expert identified as being improperly classified specific T&T projects totaling $6.275 million in Fiscal Year 2017 and $52.05 million in Fiscal Year 2018. However, Symantec's total reported non-GAAP operating income was approximately $1.2 billion in Fiscal Year 2017 and $1.7 billion in Fiscal Year 2018. ¶ 19. Thus, to obviate additional attacks on materiality grounds, Lead Plaintiff and Lead Counsel advanced the theory that all of Symantec's reported T&T expenses were misleading because, contrary to its public statements that these expenses facilitated comparison to its peers, none of Symantec's peers excluded similar T&T expenses. *Id.* Defendants and their experts vigorously disputed this assertion, arguing that Symantec fully disclosed that its non-GAAP methods may differ from other companies and, even if misleading, the peer disclosure was removed early in the Class Period. *Id.* It was impossible to predict with any certainty how a jury would decide this issue at trial, or even how the Court would have resolved it at summary judgment.

Further, Lead Plaintiff faced additional significant risks in proving scienter—*i.e.*, that Defendants knowingly or recklessly deceived investors. ¶¶ 20, 148-151. For example, Defendants argued that scienter could only be proved through Symantec's former CEO, Gregory Clark. According to Defendants, it was impossible for Plaintiffs to do so because Mr. Clark did not approve and was not aware of any misclassified T&T expenses, he relied on the Company's accounting staff to handle such matters and, when issues arose, he promptly tried to address them in good faith, including by hiring outside consultants. ¶¶ 20, 150. Defendants also argued that Symantec had robust processes and procedures to review T&T expenses, including Board-level review. Defendants further pointed to the

conclusion of a full Audit Committee investigation led by outside advisors that, according to Defendants, announced no restatement of historically filed financial statements and did not result in any employment actions against Symantec executives. ¶ 20. Thus, the possibility that the Court or a jury might side with Defendants was a significant risk.

Lead Plaintiff also faced significant risks to proving loss causation and damages. For example, Defendants contended that Lead Plaintiff could not establish a causal connection between the alleged misrepresentations and the loss allegedly suffered by investors. Indeed, Defendants argued that damages were *zero* because the alleged corrective disclosures on May 10, 2018 and August 2, 2018 merely discussed the *existence* of an investigation, without any admission of wrongdoing or correction of alleged misstatements. ¶ 21. Defendants also challenged the August 2018 disclosure specifically by contending that it revealed no "new" information about the alleged fraud—and, thus, the alleged fraud could not have caused the price decline that followed. *Id.* Finally, Defendants would also have raised a number of challenges to the amount of damages that could be proved, including that any gains that the Class Members received from their sale of pre-Class Period shares during the Class Period (while Symantec's stock price was alleged inflated) should offset (be "netted" against) the damages they suffered from the purchase of shares in the Class Period. *Id.*

These substantial risks faced in prosecuting the securities fraud claims at issue, which Lead Counsel did on a purely contingency fee basis without any payment for over three years, further support the requested fee.

C. The Skill Required and the Quality of the Work Performed Support The Fee Request

Courts have recognized that the "'prosecution and management of a complex national class action requires unique legal skills and abilities.'" *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016); *see also Vizcaino*, 290 F.3d at 1048. "'This is particularly true in securities cases because the Private Securities Litigation Reform Act makes it much more difficult for securities plaintiffs to get past a motion to dismiss.'" *Zynga*, 2016 WL 537946, at *17 (quoting *Omnivision*, 559 F. Supp. 2d at 1047). In considering this factor, courts also consider the quality and vigor of opposing 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"); *In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977) ("plaintiffs' attorneys in this class action have been up against established and skillful defense lawyers, and should be compensated accordingly").

Here, Lead Counsel is among the most experienced and skilled practitioners in the securities-litigation field, and the firm has a long and successful track record in securities cases throughout the country, including within this Circuit.[2] Lead Counsel is consistently ranked among the top plaintiffs' firms in the country. For example, the ISS/Securities Class Action Services' 2021 report on the "Top 100 U.S. Class Action Settlements of All Time" shows that BLB&G has been lead or co-lead counsel in more top recoveries than any other firm in history.

Lead Counsel's reputation as experienced counsel in complex securities cases facilitated Lead Counsel's ability to negotiate the Settlement, ultimately resulting in the $70 million recovery. Lead Counsel achieved this substantial recovery for the benefit of Lead Plaintiff and the Class, notwithstanding that they were opposed in this Action by multiple highly skilled and well-respected lawyers from Wilson Sonsini Goodrich & Rosati and Morgan, Lewis & Bockius LLP, who likewise vigorously advocated for their clients.

Lead Counsel's efforts over the past three years of litigation included (i) an extensive investigation of the claims at issue, which involved interviews with 155 former Symantec employees and the filing of two detailed amended complaints; (ii) vigorous litigation of Defendants' motions to dismiss,

[2] *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg, Sales Practices, and Prods. Liab. Litig.*, MDL No. 2672 CRB (JSC) (N.D. Cal.) (BLB&G, as Lead Counsel, obtained approval of $48 million settlement); *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479 (N.D. Cal.) (BLB&G, as Lead Counsel, obtained approval of $480 million settlement); *In re Allergan, Inc. Proxy Violation Sec. Litig.*, No. 8:14-cv-02004 (C.D. Cal.) (BLB&G, as Co-Lead Counsel, obtained approval of $250 million settlement); *In re Maxim Integrated Prods., Inc. Sec. Litig.*, No. 08-00832 (N.D. Cal.) (BLB&G, as Co-Lead Counsel, obtained approval of $173 million settlement); *In re New Century*, No. 07-cv-00931 (C.D. Cal.) (BLB&G, as Lead Counsel, obtained approval of $125 million settlement); *In re Int'l Rectifier Corp. Sec. Litig.*, No. 07-02544 (C.D. Cal.) (BLB&G, as Co-Lead Counsel, obtained approval of $90 million settlement); *see also* BLB&G Firm Resume (Ex. 6).

which initially resulted in the Court dismissing all of Lead Plaintiff's securities claims, and a hotly contested motion for leave to amend, which ultimately resurrected the principal securities fraud and insider trading claims against Defendants Symantec and Gregory S. Clark; (iii) successfully obtaining certification of the Class following a contested motion; (iv) conducting complete fact and expert discovery, which included reviewing more than 2.1 million pages of documents from Defendants and multiple third parties, a contested motion to compel production of documents, the submission of nine expert reports from a total of six experts, and taking or defending a total of 29 fact and expert depositions (together with class certification depositions); (v) fully briefing Lead Plaintiff's opposition to Defendants' motion for summary judgment, which included the submission and/or review of 130 pages of briefing and several thousands of pages of exhibits; (vi) trial preparations such as the drafting of jury instructions, witness lists, and exhibits lists; and (vii) extended settlement negotiations, including two settlement conferences with Magistrate Judge Ryu. ¶¶ 30-130.

In sum, it was Lead Counsel's extensive effort and skill in prosecuting this litigation that allowed the favorable $70 million proposed Settlement with Defendants to be achieved.

D. The Contingent Nature of the Fee Supports the Fee Request

It is well-recognized that a premium is appropriate where attorney fees are contingent in nature, as there is a risk that counsel will receive no compensation or less compensation for their efforts. *See WPPSS*, 19 F.3d at 1299 ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases."); *see also In re Apple Inc. Device Performance Litig.*, 2021 WL 1022866, at *6 (N.D. Cal. Mar. 17, 2021) ("When counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award."). The Supreme Court has emphasized that private securities actions, like this one, "provide 'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318 (2007).

As courts recognize, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingency basis, expending thousands of hours and millions of dollars, yet

received no remuneration whatsoever despite their diligence and expertise. *See, e.g.*, *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 504 (2d Cir. 2010) (affirming grant of summary judgment in favor of defendant on loss-causation grounds after years of litigation); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009) (granting summary judgment to defendants after eight years of litigation and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing lodestar of approximately $48 million). Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. *See, e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following plaintiffs' verdict).

Here, Lead Counsel committed significant resources, time, and money to prosecute this Action vigorously and successfully for the Class's benefit for over three years—without any payment or any guarantee of a fee. Lead Counsel's fee award and expense reimbursement in this Action has always been at risk and contingent on the result achieved and on this Court's discretion in awarding fees and expenses. If Lead Counsel had been unsuccessful in Lead Plaintiff's motion for leave to amend the complaint, had failed at certifying the Class, or had failed on the pending motion for summary judgment or at trial, Lead Counsel would have received nothing for its years of diligent prosecution of the claims for the benefit of the Class. The significant contingency-fee risks support the requested fee.

E. The Reaction of the Class to Date and the Approval of Lead Plaintiff Support the Fee Request

The reaction of the Class to the proposed Settlement and the fee motion 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."). To date, a total of 169,578 copies of the Settlement Notice and Claim Form have been sent to potential Class Members and their nominees, and the Court-approved Summary Settlement Notice was published in the *Financial Times* on October 5, 2021 and in *The Wall Street Journal* and transmitted over the *PR Newswire* on

October 8, 2021. *See* Miller Decl. (Ex. 2) at ¶¶ 5-6. The Settlement Notice informed potential Class Members that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 19% of the Settlement Fund. *See* Settlement Notice (Miller Decl. Ex. A) at ¶¶ 5, 76. The Settlement Notice further informed Class Members of their right to object to the request for attorneys' fees and expenses. *See id*. at p. 3 and ¶¶ 87-89. Although the deadline for filing any objections will not run until January 13, 2022, to date, no Class Member has filed an objection to the fees and expenses requested. Robinson Decl. ¶ 165.

In addition, Lead Plaintiff, which took an active role in the litigation and closely supervised the work of Lead Counsel, supports the approval of the requested fee based on the result obtained, the efforts of Lead Counsel and the risks in the Action. *See* Rifall Decl. (Ex. 1) at ¶¶ 7-8. Lead Plaintiff's endorsement of the fee request further supports its approval. *See, e.g.*, *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("Significantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fees and expenses request.").

While the decision on the appropriate fee is left to the sound discretion of the Court, the fact that the fee request is based on an *ex ante* fee agreement that Lead Plaintiff and Lead Counsel entered into at the outset of the Action provides support for the reasonableness of the request. Numerous courts have found that, in light of Congress's intent to empower lead plaintiffs under the PSLRA to select and supervise attorneys on behalf of the class, a fee agreement entered into by a PSLRA lead plaintiff and its counsel at the outset of the litigation weighs in favor of the reasonableness of the fee. *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001) (*ex ante* fee agreements in securities class actions should be given "a presumption of reasonableness"); *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("We expect . . . that district courts will give serious consideration to negotiated fees because PSLRA lead plaintiffs often have a significant financial stake in the settlement, providing a powerful incentive to ensure that any fees resulting from that settlement are reasonable.").

F. Lodestar Cross-Check Supports the Fee Request

"Although an analysis of the lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of the fee request with a lodestar amount can demonstrate the fee request's reasonableness." *Amgen*, 2016 WL 10571773, at *9; *see also HCL Partners Ltd. P'ship v. Leap Wireless Int'l, Inc.*, 2010 WL 4156342, at *2 (S.D. Cal. Oct. 15, 2010) ("Courts have found that a lodestar analysis is not necessary when the requested fee is within the accepted benchmark."). When the lodestar is used as a cross-check, the "focus is not on the 'necessity and reasonableness of every hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *In re Tyco Int'l, Ltd. Multi-Dist. Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007); *see Glass v. UBS Fin. Servs.*, 331 F. App'x 452, 456-57 (9th Cir. 2009).[3]

Fee awards in class actions with contingency risks, such as this one, routinely represent *positive multipliers* of counsel's lodestar to account for the possibility of non-payment. *See Rihn v. Acadia Pharm. 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 in common fund cases" because, in doing so, it provides a "financial incentive to accept contingent-fee cases which may produce nothing."). Courts award lodestar multipliers up to *four times* the counsel's lodestar, and sometimes even more. *See Vizcaino*, 290 F.3d at 1051-52 & n.6 (affirming 28% fee award representing 3.65 multiplier and finding that "courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases," and that, when the lodestar is used as a cross-check, "most" multipliers were in the range of 1 to 4, but citing numerous examples of higher multipliers); *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

[3] *See also In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *23 (C.D. Cal. July 28, 2014) ("'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.'"); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7 n.2 (D. Ariz. Apr. 20, 2012) ("an itemized statement of legal services is not necessary for an appropriate lodestar cross-check"); *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *9 (C.D. Cal. July 21, 2008) (same).

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, the lodestar cross-check further demonstrates the reasonableness of the requested fee percentage because the fee request is substantially below Lead Counsel's total lodestar. As detailed in the Robinson Declaration, Lead Counsel spent 43,240 hours of attorney and other professional time prosecuting the Action for the benefit of the Class through June 8, 2021. ¶ 184. Lead Counsel's lodestar, derived by multiplying the hours spent on the litigation by each attorney or other professional by his or her current hourly rate, is $20,028,151.25.[4]

The requested fee of 19% of the Settlement Fund, or $13.3 million (plus interest), is less than Lead Counsel's lodestar, representing a "negative" multiplier of 0.66 on Lead Counsel's lodestar, or in other words just 66% of the value of the time Lead Counsel dedicated to the Action. *Id.* The fact that Lead Counsel's requested fee in this case is substantially less than the lodestar strongly supports the reasonableness of the fee request. *See In re Lithium Ion Batteries Antitrust Litig.,* 2019 WL 3856413, at *8 (N.D. Cal. Aug. 16, 2019) (finding that the requested percentage fee was "particularly appropriate where the lodestar cross-check results in a negative multiplier"); *Amgen*, 2016 WL 10571773, at *9 ("courts have recognized that a percentage fee that falls below counsel's lodestar strongly supports the reasonableness of the award"); *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig*., 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (a negative multiplier was a "strong indication of the reasonableness of the [requested] fee").

Consistent with the Northern District of California Procedural Guidance for Class Action Settlements and the Court's prior jurisprudence in this area, the Robinson Declaration includes a detailed breakdown of the hours devoted to the litigation into 72 distinct projects undertaken over the course of the litigation. *See* ¶¶ 195-268 and Ex. 7. In addition, for each attorney whose time is included in Lead

[4] *See* Robinson Decl. ¶ 184. It is well established that it is appropriate to calculate counsel's lodestar based on current, rather than historical rates, as a method of compensating for the delay in payment and the loss of interest on the funds. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *WPPSS*, 19 F.3d at 1305; *Apollo*, 2012 WL 1378677, at *7 n.2.

Counsel's lodestar, a summary of the principal tasks that he or she worked on in the litigation has been provided, and their hourly rate. Moreover, Lead Counsel has not included in its fee application *any* time expended on (1) SEB's motion for appointment as Lead Plaintiff; (2) BLB&G's participation in SEB's process of selecting Lead Counsel and its related motion; or (3) the alleged conflict-of-interest issue raised by Robbins Geller Rudman & Dowd LLP. ¶ 186. Also excluded are (4) time devoted exclusively to travel; (5) time spent preparing Lead Counsel's motion for fees and expenses; and (6) all of the substantial time expended after the execution of the Stipulation and Agreement of Settlement on June 8, 2021. ¶¶ 186-187. In addition, Lead Counsel also made other significant reductions to its time in the interest of billing judgment, including, for example, removing timekeepers with few than 25 hours dedicated to the Action as well as other timekeepers and/or time. ¶¶ 186, 188.

Importantly, *even if* Lead Counsel's lodestar were *half* the amount that Lead Counsel has submitted in connection with this Motion (after the deductions discussed above), the resulting lodestar multiplier would still be comfortably within the range of multipliers awarded in cases like this with substantial contingency fee risks. *See, e.g., Vizcaino*, 290 F.3d at 1051 (a 3.65 multiplier was "within the range of multipliers applied in common fund cases"); *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) ("a lodestar multiplier of around 4 times has frequently been awarded in common fund cases"); *Petersen v. CJ Am., Inc.*, 2016 WL 5719823, at *1 (S.D. Cal. Sept. 30, 2016) ("[t]he majority of fee awards in the district courts in the Ninth Circuit are 1.5 to 3 times higher than lodestar"); *In re VeriFone Holdings, Inc. Sec. Litig.*, 2014 WL 12646027, at *2 (N.D. Cal. Feb. 18, 2014) (approving fee award 4.3 times lodestar). Indeed, if Lead Counsel's lodestar were halved—or only $10 million—the requested fee of 19% or $13.3 million plus interest would represent a multiplier of 1.33, which is still significantly lower than the multipliers commonly awarded by courts. *Id.*

The hourly rates used to calculate Lead Counsel's lodestar are reasonable. The hourly rates for Lead Counsel range from $775 to $1,300 for partners or senior counsel, from $475 to $700 for associates, and from $255 to $350 for paralegals. *See* Ex. 3. The rates of BLB&G's staff attorneys, who were integrally involved in the review of documents are $425 for Senior Staff Attorneys, and $350, $375, or $400 per hour for all other Staff Attorneys, depending on their number of years out of law school. The

blended hourly rate for all timekeepers in the application is $463. Lead Counsel believes these rates are within the range of reasonable fees for attorneys working on sophisticated class action litigation in this District. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (N. D. Cal. Dec. 17, 2018) (approving Lead Counsel's then-applicable 2018 rates, ranging from $650 to $1,250 for partners or senior counsel, $400 to $650 for associates, and $245 to $350 for paralegals, as reasonable for purposes of lodestar cross-check); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving fee award following lodestar cross-check where blended average hourly rate was $529 per hour, with hourly rates ranging up to $1,600 for partners and up to $790 for associates). Lead Counsel's rates are also reasonable in comparison to defense counsel's rates. *See In re Tonopah Solar Energy, LLC*, Application for Retention of Counsel, Case No. 20-11884 (KBO) (Bankr. D. Del. July 30, 2020), ECF No. 43 (in 2020 application for retention in a bankruptcy action, Wilson Sonsini noted that its partners' rates ranged from $975 to $1,750 and its associates' rates ranged from $510 to $920) (Ex. 24).

III. Lead Counsel's Expenses Are Reasonable and Should Be Approved

"Attorneys who create a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class." *Vincent v. Reser,* 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013). In assessing whether counsel's expenses are compensable in a common fund case, courts look to whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Omnivision*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.").

The expenses sought by Lead Counsel are of the type that are charged to hourly paying clients and were required to prosecute the litigation. These expense items were incurred separately by Lead Counsel and are not duplicated in the firm's hourly rates. From the beginning of the case, Lead Counsel was aware that it might not recover any of its expenses and would not recover anything unless and until the Action was successfully resolved. Lead Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate it for the lost use of the funds advanced to prosecute this Action. Thus, Lead Counsel was motivated to, and did, take significant steps

to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action. ¶ 283.

As discussed in detail in the Robinson Declaration, Lead Counsel incurred a total of $2,000,208.69 in litigation expenses in litigating the Action over the past three years. ¶ 282. The expenses for which payment is sought were reasonable and necessary for the prosecution and resolution of the litigation and are of the types that are routinely charged to clients in non-contingent litigation. These include expert fees, document-management costs, online research, service of process expenses, out-of-town travel expenses, court fees, copying costs, and postage expenses. *Id.* Of the total expenses, Lead Plaintiff incurred $1,656,966.55, or approximately 83% of the total litigation expenses, on experts and consultants in the areas of financial economics (including damages, loss causation, and market efficiency), forensic accounting, and executive compensation. ¶ 286. These experts were especially important in this Action, which concerned alleged accounting manipulations, violations of GAAP and SEC accounting guidance that were allegedly motivated by lucrative executive compensation targets. Likewise, damages and loss causation expertise was required here, as in virtually every securities fraud class action alleging that investors were harmed by class-wide misrepresentations revealed through alleged corrective disclosures.

The combined costs for online legal and factual research amounted to $86,072.61, or approximately 4% of the total expenses. ¶ 287. The other expenses are also the types of expenses that are necessarily incurred in litigation and routinely charged to clients. These expenses included court fees and costs for travel, service of process, long-distance telephone calls, copying and printing, and postage and express mail. A complete breakdown by category of the expenses incurred by Lead Counsel is presented in Exhibit 8 to the Robinson Declaration and further details about Lead Counsel's travel expenses and expert expenses are set forth in Exhibits 9 and 10. For the avoidance of any doubt, Lead Counsel is not seeking reimbursement for any expenses incurred in connection with the second notice program ordered by the Court in its April 20, 2021 order, s*ee* ECF No. 380, or for the costs of certain experts consulted in connection with the alleged conflict-of-interest issue raised by Robbins Geller.

Courts routinely approve litigation expenses such as these. *See, e.g.*, *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, postage, federal express charges, expert fees, . . . and travel expenses," among others, were all categories of expenses "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"); *see also In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 158 (D.N.J. 2013) (approving reimbursement for "fees for experts, costs associated with creating and maintaining electronic document databases, participating in mediation, travel and lodging expenses, and photocopying, mailing, telephone and deposition transcription costs").

The Settlement Notice provided to potential Class Members informed them that Lead Counsel intends to apply for the payment of litigation expenses incurred by Lead Counsel in an amount not to exceed $2.5 million. Settlement Notice ¶¶ 5, 76. The total amount of expenses now sought by Lead Counsel ($2,000,208.69) is substantially less than the amount stated in the Settlement Notice. The deadline for objecting to the fee and expense application is January 13, 2022. To date, there have been no objections to the request for attorneys' fees or litigation expenses.[5]

IV. The Proposed Timing of Payment

Lead Counsel respectfully request that, consistent with the Court's practices, 50% of the attorney's fees and 100% of the Litigation Expenses be paid upon approval of the Court and 50% of the fees be paid when the distribution of the Net Settlement Fund to Authorized Claimants has occurred.

CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees of 19% of the Settlement Fund (with 50% to be paid upon award and 50% to be paid upon the

[5] Lead Plaintiff SEB is not seeking any award under the PSLRA for reimbursement of the substantial time its employees dedicated to overseeing the Action.

distribution of the Net Settlement Fund to Authorized Claimants), and award Litigation Expenses in the amount of $2,000,208.69.

Dated: December 30, 2021

Respectfully Submitted,

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