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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

In re MOBILEIRON, INC. SHAREHOLDER LITIGATION This Document Relates To: ALL ACTIONS.	Lead Case No. 1-15-cv-284001 CLASS ACTION MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES Judge: Hon. Thomas E. Kuhnle Dept: 5 Date Action Filed: 08/05/15 Hearing Date: August 18, 2017 Hearing Time: 9:00 a.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

STATUTES, RULES AND REGULATIONS

I. INTRODUCTION

Lead Counsel have obtained an all-cash settlement of $7,500,000 for the benefit of the Class in this action alleging violations of §§11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Litigation").[1] This is a very good recovery obtained in the face of substantial risk and is the product of hard-fought litigation and arm's-length settlement negotiations. Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 33% of the Settlement Amount, as well as payment of the litigation expenses they incurred in prosecuting this Litigation in the amount of $118,859.20, and as shown herein, it is well within the range of reasonableness. Finally, each of the Plaintiffs seek awards of no more than $1,000 for their service to the Class.

As explained below, in the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), submitted herewith,[2] and in the previously filed Joint Declaration of James I. Jaconette and John T. Jasnoch in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, dated May 26, 2017 ("Joint Decl."), this Settlement represents a highly favorable recovery for the Class in view of the risks, costs, and duration of continued litigation. Absent settlement, this Litigation would likely have continued for years, through the completion of class certification, fact discovery, expert discovery, summary judgment, trial, and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Class.

Lead Counsel vigorously investigated and prosecuted this Litigation on behalf of the Class, as described below. As a result, Plaintiffs' Counsel and their paraprofessionals spent more than 2,700 hours prosecuting this Litigation, resulting in a lodestar of $1,602,845.00.

On June 9, 2017, the Court entered an Order Re: Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), pursuant to which the Settlement was preliminarily

[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement dated May 23, 2017 ("Stipulation" or "Settlement").

[2] Because many of the factors supporting final approval of the Settlement also buttress the requested award of attorneys' fees and expenses, Lead Counsel incorporate herein the concurrently filed Settlement Memorandum.

approved. The Preliminary Approval Order also approved the form and manner of notice to be given to the Class.

For their diligence and efforts in obtaining this favorable recovery on behalf of the Class, Lead Counsel respectfully request an award of attorneys' fees of 33% of the Settlement Amount, payment of expenses incurred in the prosecution of the Litigation in the amount of $118,859.20, and modest awards of no more than $1,000 to each to the Plaintiffs. The requested fee is fair and reasonable under the applicable standards and is well within the range of fees awarded by California Superior Courts and is supported by recent California Supreme Court precedent. On August 11, 2016, the California Supreme Court affirmed a one-third percentage-based fee award to class counsel in ***Laffitte v. Robert Half Int'l, Inc.***, 1 Cal. 5th 480 (2016) (wage and hour case, $19 million settlement). Plaintiffs' Counsel's costs and expenses are likewise reasonable in amount, and were necessarily incurred in the successful prosecution of the Litigation.[3]

II. THE COURT SHOULD AWARD ATTORNEYS' FEES USING THE PERCENTAGE METHOD

A. The Common Fund Doctrine Allows Courts to Assess the Beneficiaries of the Fund with the Costs of Creating that Fund

Where, as here, litigation has created a common fund for the benefit of the named plaintiffs as well as others, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and expenses out of the fund created. The California Supreme Court has expressly affirmed "'the historic power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or directly from the other parties enjoying the benefit.'" ***Serrano v. Priest***, 20 Cal. 3d 25, 35 (1977).[4]

The common fund doctrine rests on two premises. The first one is the prevention of unjust enrichment – "'that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees.'" ***Id.*** at 35 n.5; ***see also Lealao v. Beneficial Cal., Inc.***, 82 Cal. App. 4th 19, 27 (2000).

[3] Lead Counsel will address any objections to this fee and expense request in their reply memorandum, which will be filed on or before August 11, 2017.

[4] Unless otherwise noted, internal citations are omitted throughout.

The second is a "salvage" rationale – "encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be promptly and directly compensated should his efforts be successful." *Estate of Stauffer*, 53 Cal. 2d 124, 132 (1959). The salvage purpose requires "'a flavor of generosity . . . in order that an appetite for efforts may be stimulated.'" *Melendres v. Los Angeles*, 45 Cal. App. 3d 267, 273 (1975).

While "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method," *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 254 (2001), the United States Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Trs. v. Greenough*, 105 U.S. 527, 532 (1882); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). California courts have long accepted the percentage approach for awarding fees in common fund cases as well. *See, e.g.*, *Steiner v. Whittaker Corp.*, No. 000817, Transcript at 8:9-11 (Los Angeles Super. Ct. Mar. 23, 1989) (attached as Ex. 1 to Stewart Decl.).[5]

If there was any doubt that the percentage method of awarding attorneys' fees in a common fund case in California courts was proper, the Supreme Court of California recently

> clarif[ied] . . . that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

Laffitte, 1 Cal. 5th at 503. In so doing, the Supreme Court recognized the advantages of using the percentage method of awarding attorneys' fees as a percentage of the common fund, including the "relative ease of calculation, alignment of incentives between counsel and the class, a better

[5] All unreported authorities cited herein are attached to the Declaration of Ellen Gusikoff Stewart in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Stewart Decl."), submitted herewith.

approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id.*

The *Laffitte* ruling is consistent with the United States Supreme Court's decision in *Blum v. Stenson*, where the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class." 465 U.S. 886, 900 n.16 (1984). In the Ninth Circuit, the district court has discretion to award fees in common fund cases based on either the percentage-of-the-fund method or the so-called lodestar/multiplier method. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994). The Ninth Circuit has expressly and repeatedly approved the use of the percentage method in common fund cases: *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268 (9th Cir. 1989); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993); and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).[6] Indeed, the California Supreme Court recognized that "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method [and] [m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." *Laffitte*, 1 Cal. 5th at 493-94.

As a result, Lead Counsel respectfully submit that an award should be made here on a percentage basis.

B. The Requested Fee of 33% of the Fund Created Is Reasonable in This Case

The Court of Appeals in *Laffitte* observed that "the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 878 (2014). The court also quoted

[6] Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly shifted to the percentage method in awarding fees in common fund representative actions. *See, e.g.*, *In re Apollo Grp., Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 U.S. Dist. LEXIS 55622, at *20 (D. Ariz. Apr. 20, 2012) ("'Because the benefit to the class is easily quantified in common-fund settlements,' courts can award attorneys a percentage of the common fund 'in lieu of the more often time-consuming task of calculating the lodestar.'") (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

authority noting that "'[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Id.* The requested 33% fee here is consistent with that "average" (*id.*) and is reasonable when the result and the risks are considered. This Court also recognized that "33% of the common fund for attorneys' fees is generally considered reasonable." June 9, 2017 Tentative Ruling at 5.

In determining the reasonableness of a fee request, California courts typically consider the following "basic factors": (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, No. 960886, 1998 WL 1031494, at *3 (Alameda Super. Ct. Oct. 22, 1998); *see also Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996).

"However, no rigid formula applies and each factor should be considered only 'where appropriate.'" *Nat. Gas Anti-Trust Cases*, No. 4221, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) ("The Ninth Circuit has approved a number of factors which may be relevant to the district court's determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases."); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at *70-*71 (C.D. Cal. June 10, 2005) (reaction of the class is a factor to be considered).

An analysis of the relevant factors supports the requested fee award.

1. The Result Achieved

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Omnivision*, 559 F. Supp. 2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.").

In this case, a Settlement Amount of $7,500,000 in cash has been obtained solely through the efforts of Lead Counsel. As detailed in the Settlement Memorandum, this is a highly favorable result, representing nearly 20% of the maximum estimated damages, given the risks of proving liability, causation, and damages, and provides an immediate and certain recovery for Class Members without the risk, expense and delay of the completion of discovery, summary judgment, trial and appeals.

2. The Time and Labor Required

Lead Counsel vigorously investigated and prosecuted this Litigation, and their efforts, including: (a) an extensive factual investigation of the events underlying MobileIron's June 12, 2014 Initial Public Offering (the "Offering"); (b) reviewing and analyzing the representations made by the Company in the Registration Statement and Prospectus (the "Offering Materials"), as well as subsequent U.S. Securities and Exchange Commission ("SEC") filings; (c) reviewing and analyzing industry and securities analyst reports and comprehensive news reports, press releases and other media files concerning MobileIron; (d) researching and filing complaints; (e) opposing Defendants' removal of this Litigation to federal court; (f) briefing, arguing and prevailing on Plaintiffs' motion to remand this Litigation back to state court; (g) briefing, arguing and prevailing in part on Defendants' demurrer; (h) retaining and consulting with a damages consultant and an industry expert; (i) preparing for and participating in two day-long mediation sessions, first with Robert Meyer in 2016, and, following additional litigation, with the Hon. Layn R. Phillips (Ret.) in 2017; (j) preparing and submitting detailed mediation statements; (k) reviewing targeted internal documents produced by Defendants in connection with the mediation before Judge Phillips; and (l) post-mediation, continuing settlement negotiations, culminating in this Settlement, were well spent. *See generally* Joint Decl.

Although Lead Counsel make this application on a percentage-of-recovery basis, using the lodestar approach as a cross-check (although not required by the California Supreme Court in *Laffitte*) on the reasonableness of the requested fee further demonstrates that it is fair and should be awarded. In total, Plaintiffs' Counsel and their paraprofessionals expended 2,792.55 hours in the prosecution of this Litigation, resulting in a lodestar of $1,602,845.00.[7] The requested fee of 33%, or $2,475,000,

[7] The time and expenses devoted to the Litigation are set forth in the accompanying Declaration of James I. Jaconette Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application

represents a modest multiplier of 1.54. A "lodestar cross-check . . . provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage." *Laffitte*, 1 Cal. 5th at 504. That is not the case here. The requested fee results in a multiplier that is within the range of multipliers that have been deemed reasonable by courts in California and nationwide.

"Multipliers can range from 2 to 4 or even higher." *Wershba*, 91 Cal. App. 4th at 255.[8] Indeed, "numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees." *Nat. Gas Anti-Trust Cases*, 2006 WL 5377849, at *4; *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar enhancement of "two, three, four or otherwise"). In *Lealao*, the court held that a trial court's refusal to enhance the lodestar as a part of a fee award was an abuse of discretion, opining that a multiplier in excess of 3.5 was reasonable and not ruling out class counsel's original request for a multiplier of 8. *Lealao*, 82 Cal. App. 4th at 24, 52.

3. The Contingent Nature of the Case, Risk of Loss, and the Delay in Payment to Plaintiffs' Counsel

Counsel for Plaintiffs undertook this Litigation on a contingent-fee basis, assuming a significant risk that the Litigation would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for any time or expense since this case began in August 2015. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d

for Award of Attorneys' Fees and Expenses, the Declaration of Daryl F. Scott Filed on Behalf of Scott+Scott, Attorneys at Law, LLP in Support of Application for Award of Attorneys' Fees and Expenses, and the Declaration of George C. Aguilar Filed on Behalf of Robbins Arroyo LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Plaintiffs' Counsel's Declarations").

[8] While a lodestar cross-check fully supports the requested fee, a lodestar cross-check is not required, *Laffitte*, 1 Cal. 5th at 506 ("We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

Cir. 2000) (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who takes a case on contingency expects a higher fee than an attorney who is paid as the case goes along, win or lose. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) ("'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award"). As the Court of Appeals explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

> In addition to compensation for the legal services rendered, there is the raison d'etre for the contingent fee: the contingency. The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success should be twice the amount of a noncontingent fee for the same case. . . .
>
> Finally, even putting aside the contingent nature of the fee, the lawyer under such an arrangement agrees to delay receiving his fee until the conclusion of the case, which is often years in the future. The lawyer in effect finances the case for the client during the pendency of the lawsuit. If a lawyer was forced to borrow against the legal services already performed on a case which took five years to complete, the cost of such a financing arrangement could be significant.

Id. at 288.

Plaintiffs faced significant risk concerning their ability to establish both liability and damages. While Plaintiffs believe they could have proven their claims, success at trial was far from certain. Joint Decl., ¶26. Defendants have vigorously argued that Plaintiffs cannot demonstrate the falsity of the challenged statements made in, and omissions from, the Registration Statement issued in connection with the Company's Offering, and contended that certain statements (regarding the efficacy of MobileIron's products) were inactionable puffery. *Id.*, ¶27. Defendants also argued vigorously that Plaintiffs could not obtain class certification because individual issues of reliance would overwhelm any common issues. *Id.*, ¶28.

Moreover, even assuming that Plaintiffs demonstrated liability, there was no guarantee they would prevail on the issues of loss causation and damages. At summary judgment and trial, Defendants' experts would likely assert a negative causation defense and contend that all of the losses sustained by the Class were due to factors completely unrelated to Defendants' alleged false and misleading statements in the Offering Materials, thereby eliminating any potential recovery. More

specifically, although the price of MobileIron shares declined in response to the publication of its financial results for the first quarter of 2015, MobileIron aggressively argued that these disclosures had very little connection to the statements in the Offering Documents that Plaintiffs alleged were materially false and misleading. *Id.*, ¶29. There was, therefore, a substantial risk that the finder of fact could agree with Defendants' contention that no damages could be linked to the Defendants' statements or omissions at issue, or that damages were substantially less than the amount Plaintiffs have asserted. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) ("it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

In light of these risks, a quick settlement was not likely. Indeed, from the beginning of the case, it was clear that Defendants were prepared to litigate to judgment and through trial and appeals. Thus, from day one, Plaintiffs' Counsel needed to commit the time and resources necessary to successfully take the case to trial. Indeed, more than 2,700 hours of attorney and paraprofessional time and more than $118,000 in expenses have been incurred. While Plaintiffs and their counsel believe that the Class would prevail at trial, the complexity of this case made the outcome at trial uncertain. The contingent nature of counsel's representation and the sizable financial risks borne by Plaintiffs' Counsel support the percentage fee requested. As the court in *Xcel Energy* recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming ruling that granted defendants' post-trial motion for summary judgment as a matter of law based on failure to prove loss causation, thereby overturning a jury verdict in plaintiff's favor).

4. Awards Made in Similar Cases

Lead Counsel are applying for a fee award of 33% of the Settlement Amount. This request falls squarely within the parameters of percentage fees awarded in other class action litigation in California. *See Paton v. Advanced Micro Devices, Inc.*, No. 1-07-CV-084838, slip op. at 5 (Santa Clara Super. Ct. Aug. 22, 2014) (a fee award of 33-1/3% "was not an uncommon contingency fee percentage") (attached

as Ex. 2 to Stewart Decl.). "'Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008); *see also Lealao*, 82 Cal. App. 4th at 31 n.5 ("'whatever method is used and no matter what billing records are submitted . . ., the result is an award that almost always hovers around 30[%] of the fund created by the settlement'").

5. Experience, Reputation, Ability, and Quality of Counsel, and the Skill They Displayed in Litigation

The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also support the requested fee award. Plaintiffs' Counsel, Robbins Geller Rudman & Dowd LLP, Scott+Scott, Attorneys at Law, LLP and Robbins Arroyo LLP have earned national reputations for excellence through many years of litigating complex civil actions, particularly the prosecution of securities class actions. As set forth in the firm résumés filed concurrently herewith, Plaintiffs' Counsel's experience, resources, and high-quality attorneys have allowed them to obtain significant recoveries throughout the country on behalf of their clients. *See* Plaintiffs' Counsel's Declarations, filed herewith.

The quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiffs' Counsel. *See, e.g.*, *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Plaintiffs' Counsel were opposed in this Litigation by experienced and skilled counsel from Cooley LLP, an international law firm with a well-deserved reputation for vigorous advocacy on behalf of its clients. In the face of such knowledgeable and experienced opposition, Plaintiffs' Counsel were able to develop a case that was sufficiently strong to persuade Defendants to settle the case for an amount that Plaintiffs' Counsel believe is highly favorable to the Class. As a result, this factor weighs strongly in favor of the requested fee.

6. Continuing Obligations of Lead Counsel

Lead Counsel's work does not end with the approval of the Settlement. Continuing work will include supervising the claims process, answering shareholder calls and, if necessary, litigating appeals.

7. The Reaction of the Class

While the July 19, 2017 deadline for objecting to counsel's fee and expenses has not passed, to date, Lead Counsel are not aware of a single Class Member who has objected to the fee and expense request or opted-out of the Class. "The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *71.[9]

III. PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in making a determination if particular costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Here, Plaintiffs' Counsel are seeking payment of costs and expenses in an aggregate amount of $118,859.20. As itemized in Plaintiffs' Counsel's Declarations, these expenses include: (1) expert and consultants' fees; (2) mediation fees; (3) legal filing and process server fees; (4) on-line legal, financial, and factual research; (5) transportation, meals, and hotels; (6) photocopying; and (7) overnight delivery and messenger service fees. The expenses for which Plaintiffs' Counsel seek payment are those which are normally charged to paying clients, over and above hourly fees. *Harris*, 24 F.3d at 19. ("Harris may recover as part of the award of attorneys' fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'"). Further, the expenses which have been incurred and for which payment is sought were necessary for the successful prosecution of the Litigation, are reasonable in amount, and thus should be paid. *See Vincent v. Reser*, No. 11-03572 CRB, 2013 WL 621865, at *5

[9] Lead Counsel will address any objections in their reply memorandum, which will be filed on or before August 11, 2017, in accordance with this Court's Preliminary Approval Order.

(N.D. Cal. Feb. 19, 2013) ("Attorneys who create a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class.").

IV. THE REQUEST FOR PLAINTIFFS' TIME IS APPROPRIATE

Plaintiffs seek a modest award of no more than $1,000 each for their time incurred as a result of serving as Plaintiffs in this Litigation and ensuring that the Class was adequately represented. The service and time devoted to this Litigation by Plaintiffs are set forth in their declarations filed concurrently herewith. Courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890, at *30 (S.D.N.Y. Oct. 24, 2005). *See also In re A10 Networks, Inc. S'holder Litig.*, No. 1-15-CV-276207, slip op. at 6 (Santa Clara Super. Ct. Mar. 2, 2017) (awarding $1,000 to plaintiff); *In re CafePress Inc. S'holder Litig.*, No. CIV522744, slip op. at 6 (San Mateo Super. Ct. Aug. 11, 2015) (awarding $2,500 to each plaintiff); *In re Pacific Biosciences of Cal., Inc. Sec. Litig.*, No. CIV509210, slip op. at 7 (San Mateo Super. Ct. Oct. 31, 2013) (awarding plaintiffs $5,943.36 and $2,540.00); *Robinson v. Audience, Inc.*, No. 1:12-cv-232227, slip op. at 7 (Santa Clara Super. Ct. June 10, 2016) (awarding $2,500 to each class representative); *West Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. at 8 (San Diego Super. Ct. June 28, 2012) (awarding lead plaintiff $4,500 for costs and expenses), attached as Exhibits 3-7 to Stewart Decl.

V. CONCLUSION

For the reasons set forth herein, Lead Counsel respectfully submit that the motion for an award of attorneys' fees and expenses, including modest awards to each of the Plaintiffs, is fair, reasonable, and appropriate under all the circumstances of this case and it should, therefore, be granted.

DATED: July 5, 2017

Respectfully submitted,

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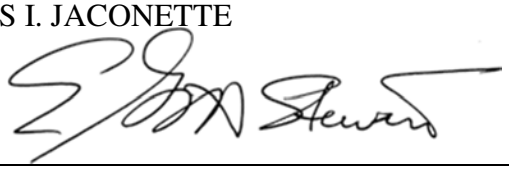
ELLEN GUSIKOFF STEWART
JAMES I. JACONETTE



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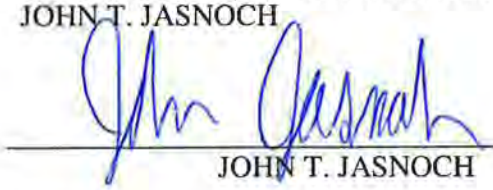

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on July 5, 2017, declarant served **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 5, 2017, at San Diego, California.

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