

1 Laurence M. Rosen, Esq. (SBN 219683)
2 **THE ROSEN LAW FIRM, P.A.**
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
5 Telephone: (213) 785-2610
6 Facsimile: (213) 226-4684
7 Email: lrosen@rosenlegal.com

8 *Attorneys for Plaintiff*
9 [Additional Counsel Appear on Signature Page]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JOHNNY HOSEY, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

RICHARD COSTOLO, MIKE GUPTA, LUCA
BARATTA, JACK DORSEY, PETER
CHERNIN, PETER CURRIE, PETER FENTON,
DAVID ROSENBLATT, EVAN WILLIAMS,
and TWITTER, INC.,

Defendants.

Case No. 16-CIV-02228

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION
AND UNOPPOSED MOTION FOR
AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

Hearing Date: August 16, 2018
Hearing Time: 9:00 a.m.
Hearing Judge: Hon. Marie S. Weiner
Hearing Dept: Dept. 2

Date Action Filed: Nov. 4, 2016
Trial Date: Not Set

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD
2 PLEASE TAKE NOTICE that on August 16, 2018, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, in the courtroom of the Honorable Marie S. Weiner in Department 2,
4 located at 400 County Center, Redwood City, California 94063, Plaintiff Johnny Hosey will, and
5 hereby does, move the Court, pursuant to Rule 3.769 of the California Rules of Court, for an order
6 granting Plaintiff's Counsel's application for (1) an award of attorneys' fees; (2) reimbursement
7 of fees and expenses; and (3) an award to Lead Plaintiff for services rendered to the Settlement
8 Class.

9
10 The above motion will be made and is based upon this Notice of Unopposed Motion;
11 Unopposed Motion, the attached Memorandum of Points and Authorities; the attached Joint
12 Declaration of Laurence Rosen and Ronen Sarraf, together with all exhibits thereto, including the
13 Declarations of Laurence Rosen, Ronen Sarraf, Sarah Evans, and Johnny Hosey, and all exhibits
14 attached thereto; all pleadings, records, and papers on file with the Court in this action; and any
15 further oral and documentary evidence that may be produced and oral argument that may be heard
16 at the hearing.

17
18 Plaintiff makes this motion following the conference of counsel conducted on June 28-29,
19 2018, during which Defendants' counsel advised that Defendants do not oppose this motion.

20 Dated: July 3, 2018

THE ROSEN LAW FIRM, P.A

21
22 By: 
23 Laurence M. Rosen, Esq. (SBN 219683)
24 355 South Grand Avenue, Suite 2450
25 Los Angeles, CA 90071
26 Tel.: (213) 785-2610
27 Fax: (213) 226-4684
28 Email: lrosen@rosenlegal.com

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Keith R. Lorenze (*pro hac vice*)
101 Greenwood Avenue, Suite 440
Jenkintown, PA 19046
Tel.: (215) 600-2815
Fax: (212) 202-3827
Email: kloreuze@rosenlegal.com

SARRAF GENTILE LLP
Ronen Sarraf (*pro hac vice*)
Joseph Gentile (*pro hac vice*)
14 Bond Street, Suite 212
Great Neck, New York
Tel.: (516) 699-8890
Fax: (516) 699-8968
Email: ronen@sarrafgentile.com
joseph@sarrafgentile.com

Attorneys for Plaintiff

1 Laurence M. Rosen, Esq. (SBN 219683)
2 **THE ROSEN LAW FIRM, P.A.**
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
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CLASS ACTION

**MEMORANDUM OF POINTS
& AUTHORITIES IN SUPPORT
OF PLAINTIFF'S UNOPPOSED
MOTION FOR AWARD OF
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15 U.S.C. § 78u-4(a)(4)16

1 **I. INTRODUCTION**

2 Plaintiff Johnny Hosey (“Plaintiff”), by and through his undersigned counsel, The Rosen
3 Law Firm, P.A. (“RLF”) and Sarraf Gentile LLP (“SG”) (collectively, “Plaintiff’s Counsel”),
4 respectfully submits this Memorandum of Points and Authorities in support of his unopposed
5 motion for an award of attorneys’ fees, reimbursement of litigation expenses, and an incentive
6 award for Plaintiff.¹

7 Having achieved an immediate and significant \$2.5 million cash benefit for the Class,
8 Plaintiff’s Counsel now seeks an award of attorneys’ fees in the amount of one-third of the
9 Settlement Amount, or \$833,333.33, which represents a negative 0.77 multiplier on Plaintiff’s
10 Counsel total lodestar of \$1,076,079 (based on 1,594.6 hours of attorney and paralegal work).²

11 Plaintiff’s Counsel also seeks reimbursement of out-of-pocket litigation expenses incurred
12 in connection with the prosecution of this action in the amount of \$99,813.25. Rosen Decl. ¶7;
13 Sarraf Decl. ¶6. These expenses were both reasonable and necessary for the successful
14 prosecution and resolution of the claims against Defendants. Plaintiff’s Counsel incurred these
15 expenses with the attendant risk of non-payment. Additionally, Lead Plaintiff Johnny Hosey seeks
16 an award of \$10,000 each to compensate him for his time spent and service to the Settlement
17 Class.³

18
19 _____
20 ¹ Unless otherwise set forth, this Memorandum incorporates by reference the definitions in the
21 Stipulation and Agreement of Settlement (the “Stipulation”), filed in connection with Plaintiff’s
Unopposed Motion for Preliminary Certification of Settlement Class and for Preliminary
Approval of Settlement.

22 ² See Joint Declaration of Laurence Rosen and Ronen Sarraf in Support of Final Approval of
23 Settlement (“Joint Decl.” or “Joint Declaration”), filed herewith, ¶68. See also Declaration of
24 Laurence Rosen on Behalf of The Rosen Law Firm, P.A. in Support of Final Approval of
25 Settlement and Reimbursement of Costs and Expenses (“Rosen Decl.” or “Rosen Declaration”)
26 (Ex. 1 to Joint Decl.), filed herewith, ¶5; Declaration of Ronen Sarraf on Behalf of Sarraf Gentile
LLP in Support of Final Approval of Settlement and Reimbursement of Costs and Expenses
27 (“Sarraf Decl.” or “Sarraf Declaration”) (Ex. 2 to Joint Decl.), filed herewith, ¶4.

28 ³ See Declaration of Johnny Hosey in Support of Final Approval of Settlement and
Reimbursement of Plaintiffs’ Time and Expenses (“Hosey Decl.” or “Hosey Declaration”) (Ex. 4
to Joint Decl.), filed herewith, ¶13.

1 In light of the risks faced, the complexity of the case, the quality of legal work performed,
2 the necessary expenses incurred, the amount of time and effort expended by Plaintiff’s Counsel,
3 and the size of the fee and expense request in relation to the Settlement achieved, the fee and
4 expense requests are both fair and reasonable, and warrant approval.

5 **II. THE COURT SHOULD GRANT PLAINTIFF’S COUNSEL’S REQUEST**
6 **FOR AN AWARD OF ATTORNEYS’ FEES IN THE AMOUNT OF ONE-**
7 **THIRD OF THE SETTLEMENT AMOUNT**

8 **A. This Court Should Award Attorneys’ Fees to Plaintiff’s Counsel By**
9 **Using the “Percentage of Recovery” Method**

10 Although California “[c]ourts recognize two methods for calculating attorney fees in civil
11 class actions: the lodestar/multiplier method and the percentage of recovery method,” *Wershba v.*
12 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, *disapproved of on other grounds by*
13 *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, the increasingly common trend
14 in this State favors the adoption of the “percentage of recovery” method. According to the
15 Supreme Court of California: “Currently, all the circuit courts either mandate or allow their district
16 courts to use the percentage method in common fund cases; none require sole use of the lodestar
17 method. Most state courts to consider the question in recent decades have also concluded the
18 percentage method of calculating a fee award is either preferred or within the trial court’s
19 discretion in a common fund case.” *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 493.

20 The case law sets forth the reasons for this emerging trend. Two rationales support the
21 common fund doctrine: (1) unjust enrichment—“that all who will participate in the fund should
22 pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for
23 attorney’s fees,” *see Serrano v. Priest* (1977) 20 Cal.3d 25, 35 n.5; and, (2) “salvage”—
24 “encouragement of the attorney for the successful litigant, who will be more willing to undertake
25 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
26 that he will be promptly and directly compensated should his efforts be successful,” *see Estate of*
27
28

1 *Stauffer* (1959) 53 Cal.2d 124, 132.⁴ Thus, the percentage method provides several advantages
2 over the lodestar method: “relative ease of calculation, alignment of incentives between counsel
3 and the class, a better approximation of market conditions in a contingency case, and the
4 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
5 the litigation.” *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.

6 On the other hand, courts have identified several drawbacks associated with the lodestar
7 method. As the First District Court of Appeal has observed, “the accepted practice of applying
8 the lodestar ... to common fund cases does not achieve the stated purposes of proportionality,
9 predictability and protection of the class. It encourages abuses such as unjustified work and
10 protracting the litigation. It adds to the work load of already overburdened district courts. In short,
11 it does not encourage efficiency, but rather, it adds inefficiency to the process.” *Lealao v.*
12 *Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 31 n.5 (citation omitted). Moreover, “[a]
13 complete lodestar analysis ... would ... likely require a ‘second major litigation,’ ” ... which
14 conflicts with the admonition of the Supreme Court ... that a request for attorney fees should not
15 result in a ‘second major litigation.’ ” *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th
16 19, 31 n.5 (citations omitted).

17 In short, this Court should join the emerging consensus of “federal and state courts alike”
18 that “have increasingly returned to the percent-of-fund approach [in common fund cases], either
19 endorsing it as the only approach to use, or agreeing that a court should have flexibility to choose
20 between it and a lodestar approach, depending on which method will result in the fairest
21 determination in the circumstances of a particular case.” *Laffitte v. Robert Half Int’l, Inc.* (2016)
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27 ⁴ See also, e.g., *Kirchoff v. Flynn*, 786 F.2d 320, 325-26 (7th Cir. 1986) (opining that contingent
28 fees “eliminate” a lawyer’s incentive to “settle for a lower recovery coupled with a payment for
more hours” by “align[ing] interests of lawyer and client,” while “ensur[ing] a reasonable
proportion between the recovery and the fees assessed to defendants”).

1 1 Cal.5th 480, 494. Regardless of which method this Court elects to use in this particular case,
2 however, the ultimate outcome is the same: that the requested fee is reasonable.

3 **B. Plaintiff’s Counsel’s Requested Fee of 33% of the Settlement Amount**
4 **is Reasonable**

5 “When class action litigation establishes a monetary fund for the benefit of class members,
6 and the trial court in its equitable powers awards class counsel a fee out of the fund, the court may
7 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
8 created.” *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. “Numerous California trial
9 courts have awarded attorneys’ fees calculated as a percentage of a common fund, many even
10 awarding a percentage greater than the thirty percent awarded here.” *In re California Indirect*
11 *Purchaser X-Ray Film Antitrust Litig.*, No. 960886, 1998 WL 103194, at *9 (Cal. Super. Ct.
12 Alameda Cty. Oct. 22, 1998) (collecting cases). Thus, “the percentage method for awarding
13 attorneys’ fees from fixed sum common funds is well-established by California law and practice,
14 and is appropriately used here.” *Id.* at *9.

15
16 The percentage method for awarding counsel fees is well established not only in California
17 law relating to class actions generally, but also in the specific context of federal securities class
18 actions. In federal securities class actions settled between 1996 and 2014, the median fee award
19 for cases with settlements of less than \$5 million, as here, has been one-third of the fund. *See Dr.*
20 *Renzo Comolli and Svetlana Starykh, Recent Trends in Securities Class Action Litigation: 2014*
21 *Full-Year Review*, at 34 (2015);⁵ *see also, e.g., In re Heritage Bond Litig.*, No. 02-ML-1475 DT,
22 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (awarding one-third of the fund, and
23 collecting cases awarding one-third of the fund). This is true even in the Ninth Circuit, where the
24 25 percent “benchmark” generally applies, *Paul, Johnson, Alston & Hunt v. Grauldy*, 886 F.2d
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28 ⁵ Available at:
<http://www.nera.com/content/dam/nera/publications/2015/PUB_2014_Trends_0115.pdf>

1 268, 272 (9th Cir. 1989), because “in most common fund cases, the award exceeds the
2 benchmark.” *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008).⁶

3 Consistent with these developments, this Court itself has awarded counsel fees of one-
4 third of the settlement amount in at least two recent prior securities class actions. *See In re*
5 *Avalanche Biotechnologies, Inc. Shareholder Litig.*, No. CIV536488, Judgment and Order
6 Granting Final Approval of Class Action Settlement (Jan. 19, 2018) (awarding Plaintiffs’ Counsel
7 \$4.29 million, or 33% of the settlement fund); *Hayden v. Worldwide Energy & Manufacturing*
8 *USA, Inc., et al.*, No. Civ. 518333, Final Order and Judgment (May 13, 2015) (awarding Plaintiffs’
9 Counsel \$538,333, or 33% of the settlement fund).

11 Therefore, an award of one-third of the Settlement Amount is reasonable.

12 **C. Using the Lodestar Method to “Cross-Check” the Fee Generated By**
13 **the “Percentage of Recovery” Method Confirms that the Requested**
14 **Fee is Reasonable**

15 The Supreme Court of California has held that “trial courts have discretion to conduct a
16 lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to
17 forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
18 percentage fee.” *Laffitte*, 1 Cal.5th at 506. A lodestar cross-check provides “a mechanism for
19 bringing an objective measure of the work performed into the calculation of a reasonable attorney
20 fee.” *Id.* at 504. If a comparison between the percentage and lodestar calculations produces an
21 imputed multiplier far outside the normal range, indicating that the percentage fee will reward
22 counsel for their services at an extraordinary rate even accounting for the factors customarily used
23

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27 ⁶ *See also, e.g., In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming
28 a one-third award in a case in which settlement fund was \$12 million); *In re Mego Finan. Corp.*,
213 F.3d 454, 463 (9th Cir. 2000) (affirming a one-third award in a case in which settlement fund
was \$1.725 million).

1 to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage.”
2 *Id.* at 504.

3 As shown below, performing a lodestar cross-check on the percentage fee requested above
4 produces an “imputed multiplier” that falls well within—indeed, below—the “normal range,”
5 confirming the reasonableness of the request. Thus, this Court’s analysis should be consistent with
6 the experience of most courts performing the lodestar cross-check: “ ‘Empirical studies show that,
7 regardless whether the percentage method or the lodestar method is used, fee awards in class
8 actions average around one-third of the recovery.’ ” *Laffitte v. Robert Half Int’l Inc.* (2014) 231
9 Cal.App.4th 860, 878.

11 **1. The Lodestar Calculation Yields a “Base Amount” That**
12 **Exceeds the Result Produced By the Percentage Method**

13 The lodestar method involves a straightforward initial calculation: “The lodestar (or
14 touchstone) is produced by multiplying the number of hours reasonably expended by counsel by
15 a reasonable hourly rate.” *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 26.
16 Billing rates are deemed appropriate if they are reasonable in light of rates in the relevant
17 community. In securities cases, courts determine whether plaintiffs’ counsel’s fees are reasonable
18 by comparison firms that defend securities class actions. *In re Telik, Inc. Sec. Litig.* 576 F. Supp.
19 2d 570, 588 (S.D.N.Y. 2008); *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM,
20 2014 WL 7323417, at *14 n.8 (S.D.N.Y. Dec. 19, 2014).

22 Declarations from counsel setting forth their firms’ respective lodestar calculations based
23 on counsel’s review of contemporaneous time records provide a sufficient basis for a fee award.
24 *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (“California case law
25 permits fee awards in the absence of detailed time sheets”); *id.* at 255 (“Here plaintiffs’ attorneys
26 submitted declarations evidencing the reasonable hourly rate for their services and establishing
27 the number of hours spent working on the case”); *see also Dunk v. Ford Motor Co.* (1996) 48
28

1 Cal.App.4th 1794, 1810 (stating that lodestar calculation could be based on counsel’s estimates
2 of time spent).

3 As set forth in the Rosen and Sarraf Declarations, Plaintiff’s Counsel expended 1,594.6
4 hours for an aggregate lodestar of \$1,076,079 in the litigation of this case. Rosen Decl. ¶5; Sarraf
5 Decl. ¶4. As a result, the composite billing rate for all attorneys representing Plaintiff in this action
6 was about \$674, which this Court should deem reasonable for securities class actions. *See, e.g.,*
7 *Roberti v. OSI Sys., Inc.*, No. CV-13-09174 MWF (MRW), 2015 WL 8329916, at *7 (C.D. Cal.
8 Dec. 8, 2015) (approving as reasonable lead counsel’s attorney rates ranging from \$525 to \$975,
9 “given that each has at least 15 years of litigation experience”).

11 2. The Lodestar “Base Amount” Should Be Enhanced

12 This Court’s lodestar analysis need not end with its initial calculation. The Court may adjust,
13 either upward or downward, its initial lodestar figure in consideration of several additional factors:
14 “[T]he lodestar formula does not limit consideration to hours expended and hourly rate, though
15 that is the foundation of the calculation. The base amount produced by multiplying hours spent
16 on the case by a reasonable hourly rate ‘may then be increased or reduced by application of a
17 ‘multiplier’ after the trial court has considered other factors concerning the lawsuit.’ ” *Lealao*, 82
18 Cal.App.4th at 40.

19 “California trial courts have considerably wider latitude than their federal counterparts in
20 the selection of factors that may be used to adjust the lodestar and that, therefore, ‘an upward or
21 downward adjustment from the lodestar figure will be far more common under California law
22 than under federal law.’ ” *Lealao*, 82 Cal.App.4th at 42. Specifically, “certain factors California
23 courts can use to enhance a lodestar award, such as the novelty and complexity of the issues, the
24 special skill and experience of counsel, and the contingent nature of the recovery, cannot be used
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1 to increase an award in federal courts because they are presumed to be already incorporated into
2 the lodestar figure.” *Id.* at 42.

3 “Whether relying on the percentage or lodestar method for determining a fee award,
4 California courts consider the same basic factors. Each factor is considered as appropriate.” *X-*
5 *Ray Film*, 1998 WL 103194, at *9. The relevant factors here include: “(1) the result Class Counsel
6 obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case
7 and the delay in payment to Class Counsel; (4) the extent to which the nature of the litigation
8 precluded other employment by Class Counsel; (5) the experience, reputation, and ability of the
9 attorneys who performed the services, the skill they displayed in the litigation, and the novelty,
10 complexity and difficulty of the case; and (6) the informed consent of the clients to the fee
11 agreement.” *Id.* at *9.

12
13 **The result obtained.** The Settlement Amount, when viewed as a percentage of the total
14 estimated damages from Plaintiff’s “best case” damages scenario, is approximately 5.8%, which
15 is well above the median percentage of investor losses recovered in securities class action
16 settlements. *See Omnivision*, 559 F. Supp. 2d at 1042 (approving 6% recovery of maximum
17 damages) (citing *Heritage Bond*, 2005 WL 1594403, at *8–9 (average recovery between 2% to
18 3% of maximum damages)). When viewed from Defendants’ “best case” damages scenario, of
19 course, the Settlement Amount fares even better. Assuming Plaintiff were able to establish all
20 elements of his claims, Defendants argued that, after adjusting for traceability being lost upon the
21 commingling of registered and unregistered shares, Plaintiff’s maximum damages would fall from
22 the roughly \$43.2 million to no more than \$11 million. From that \$11 million damages ceiling,
23 Defendants then argued that once their negative causation defense is taken into account, Plaintiff’s
24 damages are zero.

25
26
27 Thus, the result obtained here therefore favors an upward adjustment of the lodestar figure.
28

1 **The time and labor required.** “[N]umerous cases have applied multipliers of between 4
2 and 12 to counsel’s lodestar in awarding fees.” *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal.
3 Super. Ct., Dec. 11, 2006, 4221) 2006 WL 5377849, at *3; *see also Wershba*, 91 Cal.App.4th at
4 255 (“multipliers can range from 2 to 4 or even higher” and awarding a multiplier of 2.36);
5 *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 (remanding for a lodestar enhancement of
6 “two, three, four or otherwise”); *Glendora Community Redevelopment Agency v. Demeter* (1984)
7 155 Cal.App.3d 465 (affirming a 12-times multiplier of counsel’s hourly rate and expressly
8 rejecting the argument that the requested fee was exorbitant or unconscionable); *In re Sutter*
9 *Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (2.52 multiplier was “fair and
10 reasonable”) *In re Vitamin Cases* (Cal. Super. Ct. Apr. 12, 2004) 2004 WL 5137597, at *11, 14
11 (approving “low” multiplier of 1.99).
12

13 The requested fee here results in a negative multiplier of approximately 0.78, which is
14 considerably lower than multipliers that have been deemed reasonable by courts in California and
15 nationwide.
16

17 Additional hours and resources will necessarily be expended in assisting Settlement Class
18 Members with their Proofs of Claim, shepherding the claims process, and responding to
19 Settlement Class Members’ inquiries. *See In re BioScrip, Inc. Sec. Litig.*, No. 13-CV-6922 (AJN),
20 2017 WL 3208941, at *23 (S.D.N.Y. July 26, 2017) (considering lead counsel’s work that
21 remained to be done after order); *Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 CIV. 4825
22 JLC, 2013 WL 1364147, at *7 (S.D.N.Y. Apr. 2, 2013) (“The fact that Class Counsel’s fee award
23 will not only compensate them for time and effort already expended, but for time that they will
24 be required to spend administering the settlement going forward, also supports their fee request”).
25

26 The time and labor required therefore favors an upward adjustment of the lodestar figure.
27
28

1 **The contingent nature of this case and delay in payment.** By assuming the risk of his or
2 her client receiving little or no recovery, an attorney who takes a case on contingency expects a
3 higher fee than an attorney who is paid an hourly or flat fee, win or lose. *Rader v. Thrasher* (1962)
4 57 Cal.2d 244, 253; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d
5 914, 955. “A lawyer who both bears the risk of not being paid and provides legal services is not
6 receiving the fair market value of his work if he is paid only for the second of these functions. If
7 he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Ketchum v.*
8 *Moses* (2001) 24 Cal.4th 1122, 1133. Thus, courts have consistently recognized that the risk of
9 receiving little or no recovery is a major factor in considering an award of attorneys’ fees. *See*
10 *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (the level of risk taken by
11 plaintiff’s counsel is “ ‘perhaps the foremost’ factor” in considering the appropriate percentage
12 award).

13
14 Further, in accepting a contingency fee, “[t]he lawyer agrees to delay receiving his fee until
15 the conclusion of the case, which is often years in the future,” and “in effect finances the case for
16 the client during the pendency of the lawsuit.” *Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 288.
17 “The contingent fee compensates the lawyer not only for the legal services he renders but for the
18 loan of those services. The implicit interest rate on such a loan is higher because the risk of default
19 (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that
20 of conventional loans.” *Ketchum*, 24 Cal.4th at 1132-33.

21
22 The contingent nature of this case and the delay in receiving payment therefore favor an
23 upward adjustment of the lodestar figure.

24 **The extent to which this litigation precluded other employment by counsel.** This factor
25 is not applicable here because this action did not preclude other employment by Plaintiff’s
26 Counsel.
27
28

1 **Plaintiff’s Counsel’s skill, experience, reputation, and ability, and the novelty,**
2 **complexity, and difficulty of this case.** “Lead Counsel’s skill and efficiency is ‘measured by the
3 quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the
4 standing, experience and expertise of the counsel, the skill and professionalism with which
5 counsel prosecuted the case and the performance and quality of opposing counsel.’ ” *P. Van Hove*
6 *BVBA v. Universal Travel Grp., Inc.*, No. 11-2164, 2017 WL 2734714, at *11 (D.N.J. June 26,
7 2017).

8
9 Plaintiff’s Counsel has earned a national reputation for zealous representation in securities
10 cases. *See, e.g., Dartell v. Tibet Pharmaceuticals, Inc.*, No. 14-3620, 2017 WL 2815073, at *10
11 (D.N.J. June 29, 2017) (“Courts have recognized that the Rosen Firm “has
12 extensive experience navigating the particular complexities of litigation”) (citing *Khunt v.*
13 *Alibaba Grp. Holding Ltd.*, 102 F. Supp. 3d 523, 540 (S.D.N.Y. 2015)). *Nguyen v. Radiant Pharm.*
14 *Corp.*, No. SACV 11-00406 DOC, 2014 WL 1802293, at *9 (C.D. Cal. May 6, 2014) (noting that
15 The Rosen Law Firm “took on significant risk in this case, working thoroughly and
16 enthusiastically through extensive litigation that required significant expert involvement”); *Pace*
17 *v. Quintanilla*, No. SACV 14-2067-DOC, 2014 WL 4180766, at *3 (C.D. Cal. Aug. 19, 2014)
18 (“Indeed, The Rosen Law Firm has appeared before this Court several times before, and the Court
19 is confident that it has the necessary skill and knowledge to effectively prosecute this action”),
20 *Richardson v. TVIA, Inc.*, No. C 06 06304 RMW, 2007 WL 1129344, at *6 (N.D. Cal. Apr. 16,
21 2007) (describing The Rosen Law Firm as “highly qualified, experienced counsel”); *Bensley v.*
22 *FalconStor Software, Inc.*, 277 F.R.D. 231, 242 (E.D.N.Y. 2011) (“As the court in [another case]
23 concluded, based on the [Rosen Law] Firm’s experience, ‘the Rosen Law Firm is well-qualified
24 to serve as lead counsel in this matter’ ”)).
25
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1 Moreover, “the competence of opposing counsel demonstrates that Lead Counsel
2 prosecuted this case with skill and efficiency.” *P. Van Hove BVBA*, 2017 WL 2734714, at *11.
3 Throughout the litigation and settlement negotiations, Defendants have been represented by very
4 skilled and highly respected counsel, Simpson Thacher & Bartlett LLP, one of the largest and
5 most respected law firms in the world. Defendants’ counsel brought considerable experience and
6 expertise to bear and vigorously defended this Action.

7
8 Further, courts across the nation have recognized the amount of skill required and the
9 difficulties inherent in trying nationwide securities class actions, such as this case. *See, e.g.,*
10 *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987) (observing that “prosecution
11 and management of a complex national class action requires unique legal skills and abilities”); *In*
12 *re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02–CV–3400 (CM)(PED), 2010 WL 4537550, at
13 *15 (S.D.N.Y. Nov. 8, 2010) (“the courts recognize that “[s]ecurities class actions are
14 generally complex and expensive to prosecute”); *Beaver Cty. Emp’ees Ret. Fund v. Tile Shop*
15 *Holdings, Inc.*, No. 0:14–cv–00786–ADM–TNL, 2017 WL 2588950, at *2 (D. Minn. 2017)
16 (noting that “[s]ecurities claims proceeding as a class action present complex and novel issues,
17 and successfully prosecuting these types of actions has become more difficult with the adoption
18 of the Private Securities Litigation Reform Act”).

19
20 Plaintiff’s Counsel faced significant risks in establishing liability/damages and confronted
21 a variety of challenging issues in litigating this case. A discussion of these issues appears in the
22 Memorandum of Points & Authorities in Support of Plaintiff’s Unopposed Motion for Final
23 Approval of Settlement, which is incorporated herein by reference.

24
25 Based upon all of the applicable considerations, therefore, Plaintiff’s Counsel’s skill,
26 experience, reputation, and ability, and the novelty, complexity, and difficulty of this case weigh
27 in favor of an upward adjustment in the lodestar figure.

1 **The informed consent of the client to the fee agreement.** Under California law, it is
2 permissible to rely on this factor to award the plaintiff the exact fee provided in its contingency
3 fee agreement, so long as the court considers the other factors mandated by the test. *Glendora*
4 *Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465, 479.

5 In *Demeter*, plaintiffs’ counsel’s retainer with Pentwater acknowledged that counsel may
6 seek up to one-third of the fund, subject to the Court’s approval; given Pentwater’s interest and
7 sophistication, the retainer in *Demeter* was deemed presumptively reasonable. The Court should
8 reach a similar conclusion here. Plaintiff Hosey’s retainer agreement specifically states that “the
9 Client acknowledges that plaintiffs’ counsel may apply for a fee of up to 33⅓% of the recovery
10 plus disbursements, subject to court approval.” Considering Plaintiff Hosey’s demonstrated
11 interest in the prosecution of this case, as well as his level of sophistication, given his education
12 and occupation as a campaign finance and lobbying compliance professional at the San Francisco
13 Ethics Commission, Hosey Decl. at ¶4, this Court should deem Plaintiff Hosey’s retainer
14 agreement presumptively reasonable. The informed consent of Plaintiff Hosey to the fee request,
15 therefore, favors an upward adjustment of the lodestar figure.
16
17

18 Since all applicable factors support an upward adjustment of the lodestar figure, which even
19 without such an adjustment confirms that the requested fee is reasonable, the Court should award
20 Plaintiff’s Counsel their requested fee of one-third of the Settlement Amount.

21 **III. THE COURT SHOULD GRANT PLAINTIFF’S COUNSEL’S REQUEST**
22 **FOR REIMBURSEMENT OF EXPENSES REASONABLY INCURRED IN**
23 **CONNECTION WITH THIS ACTION**

24 The common fund doctrine also provides that a private plaintiff, or plaintiff’s attorney,
25 whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is
26 entitled to recover from the fund the costs of his litigation, including attorneys’ fees and
27 costs. *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). In California, the
28 common fund doctrine is “frequently applied in class actions when the efforts of the attorney for

1 the name representatives produce monetary benefits for the entire class,” as is the case here.
2 *Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387,
3 397.

4 Under the common fund doctrine, “class counsel is entitled to reimbursement of
5 all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and
6 settlement, including expenses incurred in connection with document production, consulting with
7 experts and consultants, travel and other litigation-related expenses.” *New England Health Care*
8 *Emp’ees Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 634-35 (W.D. Ky. 2006). In
9 determining whether the requested expenses are compensable, the Court considers “whether the
10 particular costs are the type routinely billed by attorneys to paying clients in similar cases.” *Id.*

12 The larger expenses incurred by Plaintiff’s Counsel in the prosecution of this action include,
13 among other things, fees and costs associated with the mediation, the retention of an expert
14 damages consultant, travel for hearings before this Court, filing fees, and electronic legal research
15 charges. *See* Rosen Decl. ¶7; Sarraf Decl. ¶6. These types of expenses are considered to be
16 “routinely billed by attorneys to paying clients in similar cases,” and therefore, compensable.⁷
17

18
19 ⁷ *See, e.g., New England Health Care*, 234 F.R.D. at 635 (finding the following categories of
20 expenses to be “routinely charged to hourly fee-paying clients and thus should be reimbursed out
21 of the settlement fund”: fees for “experts and consultants,” and costs “associated with maintaining
22 an electronic database; computerized research; travel and lodging expenses; photocopying cost;
23 filing and witness fees; postage and overnight delivery; and the cost of court reporters and
24 depositions”); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 364 (E.D.N.Y. 2010)
25 (approving reimbursement for expenses including, among other things, expert fees, electronic
26 research charges, long distance telephone and facsimile charges, postage and delivery expenses,
27 discovery costs, filing fees, photocopying, expenses associated with locating and interviewing
28 dozens of witnesses, and out-of-town travel expenses”); *In re Veeco Instruments, Inc. Sec. Litig.*,
No. 05 MDL 01695(CM), 2007 WL 4115808, at *10-12 (S.D.N.Y. Nov. 7, 2007) (approving
reimbursement for “consultant and expert fees, photocopying of documents, mediation fees, court
filing fees, deposition transcripts, fees for service of subpoenas to witnesses, on-line research,
creation of a document database, messenger service, postage and next day delivery, long distance
and facsimile expenses, transportation, travel and other expenses directly related to the
prosecution of this Action”); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1367-72
(N.D. Cal. 1996) (approving reimbursement for expert fees, investigator expenses, photocopying,
postage, telephone, travel, computerized legal research, filing fees, and a wide range of “other”
expenses).

1 Accordingly, this Court should approve Plaintiff’s Counsel’s request for reimbursement in
2 the amount of \$99,813.25 in litigation costs and expenses incurred in the prosecution of this
3 action.

4 **IV. THE COURT SHOULD GRANT PLAINTIFF’S REQUEST FOR A**
5 **COMPENSATORY/INCENTIVE PAYMENT**

6 Plaintiff Hosey may be compensated for his time and effort in overseeing the prosecution
7 of this case. The federal securities law that forms the basis of this action expressly allows for an
8 “award of the reasonable costs and expenses (including lost wages) directly relating to the
9 representation of the class” to “any representative party serving on behalf of a class.” 15 U.S.C.
10 § 78u-4(a)(4). Indeed, “[c]ourts ... routinely award such costs and expenses both to reimburse
11 the named plaintiffs for expenses incurred through their involvement with the action and lost
12 wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation
13 and to incur such expenses in the first place.” *New England Health Care*, 234 F.R.D. at 635; *see*
14 *also Nguyen*, 2014 WL 1802293, at *11 (stating that compensatory awards to named plaintiffs are
15 “intended to compensate class representatives for work done on behalf of the class, to make up
16 for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
17 their willingness to act as a private attorney general”).

18
19 Plaintiff’s requested award of \$10,000 is “in line with other incentive awards in this [Ninth]
20 Circuit, although perhaps somewhat on the high end of the acceptable range.” *Chu v. Wells Fargo*
21 *Investments, LLC*, Nos. C 05–4526 MHP, C 06–7924 MHP, 2011 WL 672645, at *5 (N.D. Cal.
22 Feb. 16, 2011) (awarding \$10,000 each to 2 plaintiffs who had been named plaintiffs since the
23 case’s inception). Plaintiff’s request also is consistent with incentive awards for plaintiffs granted
24 by courts in this State. *See, e.g., Paton v. Advanced Micro Devices, Inc.*, No. 1-07-CV-084838,
25
26
27

1 Final Approval Order and Judgment (Cal. Super. Ct., Santa Clara Cty., Aug. 22, 2014) (awarding
2 \$10,000 to lead plaintiff based on his “active[] involve[ment] in the class litigation and his
3 “expend[iture] [of] significant time and effort to assist in the prosecution”). Based upon Plaintiff’s
4 demonstrated commitment to and active participation in this case, *see* Hosey Decl. ¶¶7-13, this
5 Court should grant his requested award of \$10,000. Indeed, courts both in this State and elsewhere
6 have awarded similar or greater amounts to plaintiffs based on comparable or even less evidence
7 of demonstrated commitment to the case.⁸

8
9 Accordingly, Plaintiff requests an award of \$10,000 for the time he spent on this case.
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14 ⁸ *See, e.g., In re Magma Design Automation, Inc. Sec. Litig.*, No. C 05-02394 CRB, 2009 WL
15 10696109, at *3 (N.D. Cal. Mar. 27, 2009) (awarding lead plaintiff \$32,600 based on “lost wages
16 and hours spent in this matter. Weiler attended Court hearings, participated in his deposition,
17 reviewed pleadings, and committed his schedule to attend the scheduled trial”); *In re CV
18 Therapeutics, Inc. Sec. Litig.*, No. C 03-3709 SI, 2007 WL 1033478, at *2 (N.D. Cal. Apr. 4,
19 2007) (awarding lead plaintiff \$26,000 for “reimbursement of time and expenses incurred in
20 representing the class”); *Thieriot v. Celtic Ins. Co.*, No. 10-04462 LB, 2011 WL 1522385, at *8
21 (N.D. Cal. Apr. 21, 2011) (awarding plaintiff \$25,000 for her efforts in protecting a class of only
22 390 investors); *Johnson v. US Auto Parts Network, Inc.*, No. CV07-2030-GW(JCx), 2008 WL
23 11343481, at *5 (C.D. Cal. Oct. 9, 2008) (awarding lead plaintiff \$12,500 because she “fully
24 participated and performed many tasks in connection with this litigation”); *In re Xcel Energy, Inc.
25 Sec., Deriv. & ERISA Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding \$100,000 in
26 total to be divided among the eight lead plaintiffs in securities action because they were “actively
27 involved throughout the litigation,” having “communicated with counsel throughout the litigation,
28 reviewed counsels’ submissions, indicated a willingness to appear at trial, and were kept informed
of the settlement negotiations”); *Rausch v. Hartford Fin. Servs. Grp.*, No. 01-CV-1529-BR, 2007
WL 671334, at *3 (D. Or. Feb. 26, 2007) (awarding plaintiff \$10,000 in light of his “perseverance
in pursuing this matter to a successful outcome”); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d
546, 610 (D.N.J. July 30, 2010) (awarding each of the 9 class representatives \$10,000 because
they “were not in any sense figurehead plaintiffs as is sometimes the case in class action suits.
They were active clients”), *rev’d on other grounds, Dewey v. Volkswagen Aktiengesellschaft*, 681
F.3d 170 (3d Cir. 2012); *In re Giant Interactive Grp., Inc.*, 279 F.R.D. 151, 165-66 (S.D.N.Y.
2011) (awarding each of the lead plaintiffs \$10,000 each because they “devoted substantial effort
and time to this case, including reviewing filings, producing documents, and travelling to be
deposed, making these requests for awards reasonable”); *Williams, Inc. v. Kaiser Sand & Gravel
Co., Inc.*, No. C91-4028 MHP, 1995 WL 1781676, at *2 (N.D. Cal. Sept. 19, 1995) (awarding
class representative \$10,000 “as compensation for its time and effort expended in the case”);
Spicer v. Chicago Bd. Options Exchange, Inc., 844 F. Supp. 1226, 1268 (N.D. Ill. 1993) (awarding
each of the three class representatives \$10,000 because they “made substantial contributions to
the development of the case,” which “benefitted the class as a whole”).

1 **V. CONCLUSION**

2 For reasons set forth above and in the declarations submitted in conjunction with this
3 motion, the Court should grant Plaintiff’s Counsel’s application for an award of attorneys’ fees,
4 reimbursement of reasonable expenses, and an award to Lead Plaintiff for services rendered to
5 the Settlement Class.

6
7 Dated: July 3, 2018

THE ROSEN LAW FIRM, P.A

8
9 By: 

10 Laurence M. Rosen, Esq. (SBN 219683)
11 355 South Grand Avenue, Suite 2450
12 Los Angeles, CA 90071
13 Tel.: (213) 785-2610
14 Fax: (213) 226-4684
15 Email: lrosen@rosenlegal.com

16 Keith R. Lorenze (*pro hac vice*)
17 101 Greenwood Avenue, Suite 440
18 Jenkintown, PA 19046
19 Tel.: (215) 600-2815
20 Fax: (212) 202-3827
21 Email: klorenze@rosenlegal.com

22 **SARRAF GENTILE LLP**
23 Ronen Sarraf (*pro hac vice*)
24 Joseph Gentile (*pro hac vice*)
25 14 Bond Street, Suite 212
26 Great Neck, New York
27 Tel.: (516) 699-8890
28 Fax: (516) 699-8968
Email: ronen@sarrafgentile.com
joseph@sarrafgentile.com

Attorneys for Plaintiff