ROBERT V. PRONGAY (#270796)
rprongay@glancylaw.com
JOSEPH D. COHEN (#155601)
jcohen@glancylaw.com
GARTH SPENCER (#335424)
gspencer@glancylaw.com
GLANCY PRONGAY & MURRAY LLP
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150

Attorneys for Lead Plaintiffs and the Settlement Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE PROGENITY, INC. SECURITIES LITIGATION

Case No. 3:20-cv-01683-RBM-AHG

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Hon. Ruth Bermudez Montenegro

Hearing Date: February 23, 2026
Hearing Time: 10:00 a.m.
Location: 221 W. Broadway
Courtroom: 5B

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Court-appointed lead counsel Glancy Prongay & Murray LLP ("GPM" or "Lead Counsel") respectfully submit this memorandum of law in support of their request for attorneys' fees of 25% the Settlement Fund.[1] Lead Counsel also seek reimbursement of $79,409.10 in out-of-pocket expenses advanced by counsel, as well as $7,500 in total to the three Lead Plaintiffs, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 77z-1(a)(4).

I. PRELIMINARY STATEMENT

Lead Counsel have succeeded in obtaining a $1,000,000 non-reversionary, all cash, settlement (the "Settlement") for the benefit of the Settlement Class. This is an excellent outcome in the face of substantial risks and it is the result of Lead Counsel's vigorous, persistent, and skilled efforts. Achieving the Settlement was not easy. Defendants were represented by highly skilled litigators, and Lead Counsel faced numerous hurdles and risks from the outset, including the PSLRA's automatic stay of discovery, the high cost of experts and investigators needed to litigate a complex securities class action, and a substantial risk of non-payment. *See* 15 U.S.C. § 77z-1(b)(1). These are not idle risks. "To be successful, a securities class action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).[2] Indeed, a motion to dismiss was filed in 96% of the securities class action cases in the last ten years, and in cases where the motion was decided, 61% were granted with or without prejudice, 20% were partially granted, and only 19% denied in full. *See* Ex. 2, Excerpts from Edward Flores and Svetlana

[1] Unless otherwise defined herein, all capitalized terms are defined in the Stipulation and Agreement of Settlement dated May 7, 2025 (the "Stipulation"; ECF No. 91-3), or Declaration of Garth Spencer ("Spencer Declaration"), filed herewith. Citations to "¶ __" and "Ex. __" herein refer to paragraphs in and Exhibits to the Spencer Declaration unless otherwise specified.

[2] Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

Starykh, *Recent Trends In Securities Class Action Litigation: 2024 Full-Year Review* (NERA January 22, 2025) ("NERA Report") at p. 17. Further showing the risks inherent in this particular case, the Court dismissed Lead Plaintiffs' claims three times, most recently with prejudice. ECF Nos. 48, 63, 70.

Nor do the risks end at the pleading stage. Even if Plaintiffs prevailed on their pending appeal of dismissal, substantial risks would remain at class certification, summary judgment, trial, and post-trial appeals. Indeed, even when a plaintiff is successful at trial, payment is far from guaranteed.[3] There was, therefore, a very strong possibility that the case would yield little or no recovery after many years of costly litigation. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (observing that "Defendants prevail outright in many securities suits"); *In re Ocean Power Tech., Inc., Sec. Litig.*, 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain.").

Despite these risks, Lead Counsel has vigorously pursued this case for over five years—working 875.65 hours, and advancing $79,409.10 in expenses, all on a fully contingent basis. As compensation for GPM's significant efforts and achievements on behalf of the Settlement Class, Lead Counsel respectfully requests a fee award in the amount of 25% of the Settlement Fund. Lead Counsel believe that an award of 25% properly reflects the many significant risks taken by Lead Counsel, as well as the result achieved in a hard fought and difficult litigation. When examined under either the percentage-of-the-fund or lodestar methods for calculating attorneys' fees, the requested fee is reasonable, and well within the range of attorneys' fees awarded in similar complex, contingency cases. In fact, the requested fee represents a

[3] *See In re Apple Computer Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (overturning jury verdict 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).

fractional (or "negative") multiplier of 0.29 on Lead Counsel's lodestar, which is a strong indication of its reasonableness. *See Ross v. Trex Company, Inc.*, 2013 WL 12174133, at *1 (N.D. Cal. Dec. 16, 2013) ("Plaintiffs sought no extraordinary award of fees; to the contrary, they sought less than their lodestar, which further supports the reasonableness of the fees requested and awarded."); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) ("The resulting so-called negative multiplier suggests that the percentage-based amount is reasonable and fair based on the time and effort expended by class counsel.").

Lead Counsel also seek reimbursement of $79,409.10 in out-of-pocket litigation expenses, such as a private investigator, accounting and damages experts, and online legal research. The expenses are reasonable in amount, and were necessarily incurred in the successful prosecution of the Action.

Finally, Lead Counsel respectfully requests PSLRA awards totaling $7,500 ($2,500 to each of the three Lead Plaintiffs) to compensate Lead Plaintiffs for the time and effort they expended on behalf of the Settlement Class. Absent Lead Plaintiffs' "commitment to pursuing these claims, the successful recovery for the [Settlement] Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

For the reasons set forth herein and in the Spencer Declaration, Lead Counsel respectfully request the Court award fees of 25% of the Settlement Fund, approve reimbursement of $79,409.10 in Lead Counsel's out-of-pocket litigation expenses, and grant PSLRA awards totaling $7,500 to the three Lead Plaintiffs.

II. FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION

For the sake of brevity, the Court is respectfully referred to the Spencer Declaration for a discussion of, *inter alia*, the Action's history; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; a summary of the services Lead Counsel provided for the

benefit of the Settlement Class; and additional information on the factors that support the fee and expense application, including the lodestar cross-check.

III. THE COURT SHOULD APPROVE LEAD COUNSEL'S FEE REQUEST

A. Lead Counsel Is Entitled To A Common Fund Fee Award

It is well settled that attorneys who are successful in recovering a common fund for the benefit of class members are entitled to a reasonable fee from the common fund as compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *see also Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977) ("a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees.").

"Under Ninth Circuit law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method" when awarding attorneys' fees. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Where there is a quantifiable benefit to the class—such as a cash common fund—the percentage-of-the-fund approach is the prevailing method. *See Ellison v. Steven Madden, Ltd.*, 2013 WL 12124432, at *8 (C.D. Cal. May 7, 2013) (finding "use of the percentage method" to be the "dominant approach in common fund cases"); *Vinh Nguyen v. Radient Pharm. Corp.*, 2014 WL 1802293, at *9 (C.D. Cal. May 6, 2014) ("There are significant benefits to the percentage approach, including consistency with contingency fee calculations in the private market, aligning the lawyers' interests with achieving the highest award for the class members, and reducing the burden on the courts that a complex lodestar calculation requires.").

Moreover, application of the percentage-of-the-fund method is consistent with the PSLRA, which provides that "[t]otal attorneys' fees and expenses awarded by the

court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount" recovered for the class. 15 U.S.C. § 77z-1(a)(6); *see also Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 643 (5th Cir. 2012) ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such a calculation.").

As such, Lead Counsel respectfully requests that the Court award attorneys' fees in this case on a percentage-of-the-fund basis, and use an informal lodestar cross-check to assess the reasonableness of the percentage award. *See Vizcaino*, 290 F.3d at 1050, n.5 ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure"); *Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x 452, 456 (9th Cir. 2009) ("the district court properly performed an informal lodestar cross-check").

B. The Requested Attorneys' Fee Is Supported By The Factors Considered By Courts In The Ninth Circuit

In making an award under the common fund doctrine, "[t]he guiding principle is that attorneys' fees be reasonable under the circumstances." *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012). "Factors that courts have used to determine whether the requested percentage is fair and reasonable include: (1) the results achieved; (2) the risk 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) the reaction of the Settlement Class; and (6) awards made in similar cases." *In re Stable Road Acquisition Corp.*, 2024 WL 3643393, at *12 (C.D. Cal. April 23, 2024) (citing *Vizcaino*, 290 F.3d at 1048-50); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-47 (N.D. Cal. 2008) (same). "The Ninth Circuit has explained that these factors should not be used as a rigid checklist or weighed individually, but, rather, should be evaluated in light of the totality of the circumstances." *Stable Road*, 2024 WL 3643393 at *12. Each of these factors, along with the lodestar cross-check, militate in favor of approving the requested fee. Lead Counsel respectfully submits that these factors support an award of 25%, equal to the Ninth Circuit's benchmark

fee award, particularly in light of the result achieved, the significant risks to the Action, and Lead Counsel's skill in successfully achieving the Settlement.

1. The Quality Of The Result Supports The Fee Request

"Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award." *In re Heritage Bond Litig.,* 2005 WL 1594389, at *8 (C.D. Cal. June 10, 2005); *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re Bluetooth Headsets Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("Foremost among these considerations, however, is the benefit obtained for the class.").

Here, Lead Counsel has achieved a significant and certain cash payment of $1,000,000, plus interest, for the Settlement Class without the substantial risk, delay, expense, and uncertainty of continued litigation, trial and the inevitable appeals. Lead Counsel, in consultation with a damages expert, estimate that *if* Lead Plaintiffs prevailed on their appeal, *if* the Court certified the class, *if* Lead Plaintiffs survived summary judgment and also convinced a jury that liability was proven, *and if* the trier of fact accepted Lead Plaintiffs' damages theory (*i.e.*, Lead Plaintiffs' best-case scenario), estimated total class wide damages would be approximately $20.9 million. Under this best-case scenario, the $1 million Settlement Amount represents approximately 4.8% of class-wide damages. *See* ¶69; ECF No. 94-3 at ¶13 (Marek Declaration). This recovery is consistent with the median percentage recovery for securities class action cases of a similar magnitude. *See* Ex. 2, NERA Report, at p. 26 (Fig. 23) (median settlement recovery was 5.2% for securities class actions with NERA-Defined Investor Losses of $20-$49 million that were settled during January 2015-December 2024); *see, e.g.*, *In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at *6 (S.D. Cal. Oct. 30, 2020) (approving securities class action settlement where recovery of $900,00 was 1.99% of $45.2 million in maximum estimated damages); *In re LJ Int'l, Inc. Sec. Litig.*, 2009 WL 10669955, at *4 (C.D. Cal. Oct.

19, 2009) (approving securities class action settlement where $2 million recovery was 4.5% of $44 million maximum recovery).

This case was not, however, risk free and there were meaningful barriers to recovery. Obstacles included both the well-known general risks of complex securities litigation, as well as the specific risks inherent in this case. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) ("[t]he difficulty of establishing liability is a common risk of securities litigation" and "[t]he risk of establish damages [is] equally daunting.").

The substantial risks to Lead Plaintiffs' case are readily apparent from the Court's three orders dismissing their complaints. *See* ECF Nos. 48, 63, 70; *see also Xcel Energy*, 364 F. Supp. 2d at 1003 ("The court needs to look no further than its own order dismissing the shareholder [] litigation to assess the risks involved."). Although Lead Plaintiffs were appealing dismissal when the Settlement was reached, Defendants' appellate brief raised substantial arguments, including, *inter alia*, that: (i) Lead Plaintiffs' claims sounded in fraud and were subject to heightened pleading requirements of Rule 9(b); (ii) Lead Plaintiffs failed to plead an actionable misleading statement or omission relating to Progenity's billing practices; (iii) Progenity's billing practices were immaterial; (iv) Lead Plaintiffs failed to adequately plead Progenity's alleged illegal marketing practices; and (v) Lead Plaintiffs failed to plead any misstatement or omission relating to the alleged illegal marketing practices. *See* Ninth Circuit Case No. 23-55716, Dkt Entry 20 (Jan. 16, 2024). While Lead Counsel believed that their arguments on appeal were strong, they recognized that there was a substantial risk that the Ninth Circuit would agree with Defendants, and with the multiple decisions of this Court dismissing the case. Indeed, in 2024 the Ninth Circuit reversed in only 13.8% of private civil appeals.[4]

[4] *See* Statistical Tables for the Federal Judiciary - December 2024 (https://www.uscourts.gov/data-news/reports/statistical-reports/statistical-tables-federal-judiciary/statistical-tables-federal-judiciary-december-2024).

Even if Lead Plaintiffs prevailed on appeal, they would still have to *prove* that the statements and omissions in Progenity's IPO Registration Statement were actionable. *See* 15 U.S.C. § 77k(a). Defendants successfully argued in their motions to dismiss, and would undoubtedly continue to argue, that they made no material misrepresentations or omissions concerning *any* of Lead Plaintiffs' theories of liability. For example, Defendants forcefully argued, and would likely continue to maintain at summary judgment and trial, that: (i) "Progenity had no obligation to disclose the overbilling of some government payors until the existence and amount of the overbilling became known"; (ii) "the Offering Materials themselves . . . make clear that the Company's testing volumes and other financial metrics were declining and might not recover"; and (iii) "Plaintiffs plead no facts demonstrating how an alleged shift in the Company's marketing strategy created any false or misleading statement in the Offering Materials—which say nothing about historical marking practices." *See* ECF No. 52-1 (Defendants' motion to dismiss the SAC) at 1-2. Although Lead Plaintiffs believe they have strong arguments in response, Defendants' arguments nevertheless posed significant risks to establishing liability if the litigation continued. Moreover, there was no assurance that documents and testimony produced in discovery would support Lead Plaintiffs' theory, presenting further risk to Lead Plaintiffs' ability to *prove* that Defendants violated the Securities Act.

Even assuming Lead Plaintiffs prevailed on their appeal and overcame the above risks to successfully prove *prima facie* violations of the Securities Act, Lead Plaintiffs would have confronted considerable challenges in rebutting Defendants' anticipated negative causation defense. *See* 15 U.S.C. § 77k(e). As Defendants repeatedly argued in their motion to dismiss briefing, much of Progenity's "stock price decline occurred *before* any of the disclosures that Plaintiffs claim corrected the alleged misstatements in Progenity's Offering Materials." ECF No. 52-1 at 5; ECF No. 40-1 at 6 (similar); ECF No. 67-1 at 4 (similar). Defendants thus implicitly argued that the decline in Progenity's stock price was not caused by depreciation in

value resulting from disclosure of the allegedly concealed facts, foreshadowing the negative causation defense they would have almost certainly asserted at summary judgment and/or trial. To rebut that defense, Lead Plaintiffs would have to produce evidence, including expert testimony, and there is no guarantee that a jury would agree with Lead Plaintiffs' expert as opposed to the well qualified expert(s) Defendants would present. Had Defendants' arguments been accepted in whole or part they would have dramatically limited or foreclosed any potential recovery. ¶¶46-50; *see also In re Cendant Corp. Litig*, 264 F.3d 201, 239 (3d Cir. 2001) ("[E]stablishing damages at trial would lead to a battle of experts with each side presenting its figures to the jury and with no guarantee whom the jury would believe.").

Lead Counsel also expect that the Remaining Defendants would have presented a due diligence defense if the case proceeded to summary judgement and trial (*see* 15 U.S.C. §§ 77k(b)(3)), including substantial evidence of their investigation into the subjects of the alleged misrepresentations and omissions. ¶¶51-55. To rebut this evidence, Lead Plaintiffs likely would have needed to present further expert testimony about standard practices in the IPO process to attempt to prove that the Remaining Defendants' investigation was not reasonable under the circumstances. In addition, Lead Counsel expects that the Remaining Defendants would have testified that they believed the challenged statements were true and did not omit material facts. For instance, Defendants previously argued that some of the challenged statements were opinions, and that Lead Plaintiffs failed to plead that they "did not honestly hold the stated belief." ECF No. 52-1 at 14. Lead Plaintiffs thus would have had to present indirect evidence to try to prove that the Remaining Defendants subjectively did not believe the challenged statements to be accurate, which the finder of fact would then weigh against contradictory direct testimony from the Remaining Defendants as to their state of mind at the time of the IPO, which may well have been more persuasive than Lead Plaintiffs' indirect evidence.

Lead Plaintiffs' burden to establish the propriety of class certification presented yet another risk. While Lead Counsel are confident that the Settlement Class meets the requirements for certification (*see* ECF No. 91, Preliminary Approval Motion, at § IV.B), the class had not yet been certified at the time of Settlement, and there was a risk that the Remaining Defendants could defeat class certification if the case continued to be litigated. For example, the Remaining Defendants may have challenged Lead Plaintiffs' adequacy as class representatives, raised challenges as to class member standing based on the requirement that purchased shares be traceable to the Registration Statement, or argued that their negative causation defense shows damages could not be calculated on a class-wide basis. While Lead Plaintiffs believe they had the better arguments on these issues, prevailing on class certification and proving class-wide damages was far from certain. ¶¶56-58; *see, e.g.*, *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc*., 77 F.4th 74, 81 (2d Cir. 2023) (de-certifying investor class and effectively ending the case—after approximately 13 years of litigation—based on 2021 Supreme Court decision). Even if the Court certified the class, there would remain a risk that the class could be decertified at a later stage in the proceedings. *See, e.g.*, *Omnivision*, 559 F. Supp. 2d at 1041 (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class").

In sum, given the range of possible results, including no recovery at all, there can be no question that the Settlement constitutes a considerable achievement and weighs heavily in favor of the requested fee. *See Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 1997530, at *6 (S.D. Cal. June 6, 2022) (awarding 33⅓% of $12,750,000 gross settlement fund in securities class action where recovery was 3.49% of maximum damages).

2. The Substantial Litigation Risks Support The Fee Request

The second factor courts in this Circuit consider in awarding fees is "the risk of litigation." *Omnivision*, 559 F. Supp. 2d at 1046-47; *see also Vizcaino*, 290 F.3d

at 1048.[5] While courts have always recognized that securities class actions are complex and carry significant risks, post-PSLRA rulings and studies make it clear that the risk of no recovery has increased significantly. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018) ("Plaintiffs' Counsel faced substantial risks in pursuing this litigation, given the inherent uncertainties of trying securities fraud cases and the demanding pleading standards of the [PSLRA]."); *Schwartz v. TXU Corp*., 2005 WL 3148350, at *32 (N.D. Tex. Nov. 8, 2005) ("the risk of no recovery in complex [securities] cases of this type is very real.").[6]

One factor in assessing risk is "whether Class Counsel had the benefit of a prior judgment or decree in a case brought by the government." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 985 F. Supp. 410, 414 (S.D.N.Y. 1997); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 471 (2d Cir. 1974) (factors that comprise "risk of litigation" include whether "a relevant government action [has] been instituted or, perhaps, even successfully concluded against the defendant"). This is because the risk of nonpayment is higher in cases where there has been no government action. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) ("The risk of nonpayment is even higher when a defendants' *prima facie* liability has not been established by the government in a criminal action."). In the instant case, no civil or criminal charges have been filed by the SEC or DOJ. Rather, "Plaintiffs' counsel (and their teams and experts) were truly the authors of the favorable outcome for the class." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015); *see also Maley v. Del Global Techs. Corp.*, 186 F. Supp.

[5] "It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 55 (2d Cir. 2000); *see also In re NASDAQ Market-Makers Antitrust. Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) ("Risk, of course, must be judged as it appeared to counsel at the outset of the case, when they committed their capital (human and otherwise).").

[6] *See also* NERA Report at p. 17 (Fig. 15) (discussing dismissal statistics).

2d 358, 371 (S.D.N.Y. 2002) (awarding one-third of settlement fund and noting that "[i]n this Action, Plaintiffs' Class Counsel did not 'piggyback' on any prior governmental action related to Del Global.").

Another indicium of risk is the fact that, although Lead Plaintiffs argued that Progenity misleadingly issued financial statements that improperly recognized revenue and failed to disclose loss contingencies in violation of GAAP, the Company never issued an accounting restatement. *See In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 995 (D. Minn. 2005) (noting that one of the many hurdles plaintiffs faced was that the case did not involve a restatement of financials). When companies restate their financials, they admit to a material misstatement of their financial reporting. A case predicated on a restatement is, therefore, less risky because these elements of a securities claim are already met. *See TXU*, 2005 WL 3148350, at *29 ("From the outset, this post-PSLRA action was an especially difficult and highly uncertain securities case, which did not involve restatement of TXU's previously issued financial statements or any other acknowledgments of wrongdoing.")' *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *30 (D.N.J. Oct. 1, 2013) (similar).

This case also presented risks relating to Defendants' ability to fund a judgment or settlement. Progenity declared bankruptcy and liquidated through the Chapter 7 bankruptcy process. As such, not only are Lead Plaintiffs' claims against Progenity extinguished, but even if they were not, Progenity has no assets from which Lead Plaintiffs could potentially collect. When initially undertaking this litigation Lead Counsel had no knowledge of whether Defendants had Directors & Officers insurance coverage that might fund a settlement or judgment. While Lead Counsel understand that the Individual Defendants do have some D&O insurance, they do not know its terms or amount(s), and such policies are typically limited in amount, reduced by payment of litigation expenses, and potentially subject to competing claims from other litigation or governmental enforcement actions. It is also entirely possible that

none of the Individual Defendants would have been able to satisfy a judgment in the full amount of Lead Counsel's estimate of $20.9 million in damages. While Lead Counsel expect that the Underwriter Defendants would have sufficient assets to fund a judgment, some or all of them could escape liability based on the above-described due diligence defense, and Section 11 expressly limits an underwriter's liability to "the total price at which the securities underwritten by him and distributed to the public were offered to the public," subject to certain exceptions. *See* ¶¶62-67; 15 U.S.C. § 77k(e).

Accordingly, there was a very significant risk that the Action might yield a small recovery, or indeed no recovery at all, following many years of hard-fought litigation. *See* ¶¶59-61; *see also Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000) (finding "[t]he risk of nonpayment in this case was acute" where, *inter alia*, the corporate defendant "lacked significant unencumbered hard assets against which plaintiffs could levy had a judgment been obtained" and there was "the risk that the wasting policy would run out by the time a trial was over").

In sum, the risks posed by litigation were substantial, and they were present every step of the way, which supports Lead Counsel's fee request. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding attorneys' fees of 33% "justified because of the complexity of the issues and the risks").

3. The Skill Required And The Quality Of The Work

The third factor to considered in determining what fee to award is the skill required and the quality of the work performed. Courts have recognized that the "prosecution and management of a complex national class action requires unique legal skills and abilities" (*Omnivision*, 559 F. Supp. 2d at 1047), and that "[t]he experience of counsel is also a factor in determining the appropriate fee award." *Heritage Bond*, 2005 WL 1594403, at *12. "This is particularly true in securities cases because the [PSLRA] makes it much more difficult for securities plaintiffs to get past a motion to dismiss." *Omnivision*, 559 F. Supp. 2d at 1047.

As demonstrated by its firm résumé, GPM's attorneys have many years of experience litigating securities class actions. *See* Ex. 4. Lead Counsel's experience allowed them to obtain significant investigative materials despite the PSLRA's barriers to obtaining formal discovery, identify the complex issues involved in this case, to formulate strategies to effectively and efficiently prosecute the Action, and to negotiate a settlement favorable to the Settlement Class even while appealing the dismissal of Lead Plaintiffs' claims. Lead Counsel's skill and experience were major factors in obtaining the excellent result achieved by this Settlement. *See Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019) (GPM lawyers "are highly experienced in securities litigation and have vigorously prosecuted the Settlement Class's claims[.]"); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016) ("The prosecution and management of a complex national class action requires unique legal skills and abilities.").

In evaluating the quality of Lead Counsel's work, it is also important to consider the quality and vigor of opposing counsel. *See Heritage Bond*, 2005 WL 1594403, at *20. Defendants were represented in this Action by experienced, highly skilled counsel from Gibson, Dunn & Crutcher LLP and O'Melveny & Myers LLP. "The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation." *Schwartz*, 2005 WL 3148350, at *30.

4. The Contingent Nature Of The Fee And The Financial Burden Carried By Counsel Support The Fee Request

The fourth factor is the contingent nature of the fee. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) ("*WPPSS*"); *see also Zynga*, 2016 WL 537946, at *18 ("[W]hen counsel takes on a contingency fee case and the litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award."); *City of Birmingham Ret. & Relief Sys. v. Credit Suisse Grp. AG*, 2020 WL 7413926, at *3 (S.D.N.Y. Dec. 17, 2020) ("[G]reater risks

undertaken by counsel who accept a case on a contingent fee basis support a higher settlement percentage.").

Here, Lead Counsel has received no compensation to date, invested 875.65 hours of work equating to a total lodestar of $850,081.25, and advanced expenses of $79,409.10. ¶¶105, 120. Additional work in implementing the Settlement, including filing a distribution motion and overseeing claims administration, will also be required. Lead Counsel will not seek additional fees for this work. ¶106; *see also In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). Since the inception of this case, Lead Counsel has borne the risk that any compensation and expense reimbursement would be contingent on the result achieved, as well as on this Court's discretion in awarding fees and expenses.

The risk of no recovery in complex cases like this one is very real. Lead Counsel knows from experience that despite the most vigorous and competent of efforts, success in complex contingent litigation is never guaranteed. *See Gross v. GFI Group, Inc.*, 310 F. Supp. 3d 384, 399 (S.D.N.Y. 2018) (GPM served as Co-Lead Counsel in case where the Court granted summary judgment for defendants following four years of litigation, discovery in the U.S. and U.K., and the expenditure of millions of dollars of attorney time and hard costs), *aff'd on other grounds* 784 F. App'x 27 (2d Cir. Sept. 13, 2019); *In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal.) (GPM lost a six-week antitrust jury trial after five years of litigation, which included many overseas depositions, the expenditure of millions of dollars of attorney and paralegal time, and more than a million dollars in hard costs).

Furthermore, there are many other hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during

the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by members of the plaintiffs' bar produced no attorneys' fees for counsel. *See In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533-34 (S.D.N.Y. 2011), *aff'd*, 838 F.3d 223 (2d Cir. 2016) (after jury verdict for plaintiff, court significantly reduced scope of class by amending class definition to exclude purchasers of ordinary shares, based on Supreme Court's reversal in *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010), of over 40 years of unbroken circuit court precedent); *Omnivision*, 559 F. Supp. 2d at 1047 (noting in 2008 that "[n]ationwide, Plaintiffs have won only three of eleven [securities class action] cases to reach verdicts since 1996."). Indeed, "[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." *Xcel Energy*, 364 F. Supp. 2d at 994.[7] 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 Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction in light of 2011 Supreme Court decision).[8]

Here, because Lead Counsel's fee was entirely contingent, the only certainties were that there would be no fee or expense reimbursement without a successful result, and that such a result would only be realized after expending substantial time, effort, and costs. Nevertheless, Lead Counsel committed significant amounts of both time

[7] *See In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 16, 2009) (granting summary judgment to defendants after eight years of litigation), *aff'd* 627 F.3d 376 (9th Cir. 2010); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and directing entry or judgment for defendant).

[8] *See also supra* n.3.

and money to vigorously and successfully prosecute this Action. Under such circumstances, "[t]he contingent nature of counsel's representation strongly favors approval of the requested fee." *NASDAQ Market-Makers*, 187 F.R.D. at 488.

5. A 25% Fee Award Is Consistent With Fee Awards In Similar, Complex, Contingent Litigation

The Ninth Circuit established 25% of the fund as the "benchmark" award for attorneys' fees. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). However, "a reasonable fee award is the hallmark of common fund cases" and the guiding principle in this Circuit is that a fee award be "reasonable under the circumstances." *WPPSS*, 19 F.3d at 1295 n.2.[9] As applied, this means that "in most common fund cases, the award exceeds that benchmark." *Omnivision*, 559 F. Supp. 2d at 1047; *see also Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *8 (C.D. Cal. Sept. 18, 2020) (awarding one-third of $12.375 million settlement fund, collecting cases, and stating: "[a]n attorney fee of one third of the settlement fund is routinely found to be reasonable in class actions."); *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, 2009 WL 9100391, at *4 (C.D. Cal. June 24, 2009) (reviewing empirical research and stating: "[n]ationally, the average percentage of the fund award in class actions is approximately one-third.").

"This is particularly true in securities class actions such as this." *In re Am. Apparel Inc. S'holder Litig.*, 2014 WL 10212865, at *23 (C.D. Cal. Jul. 28, 2014); *see also Pac. Enters.*, 47 F.3d at 373 (affirming 33% award from $12 million common fund "because of the complexity of the issues and the risks"). Indeed, the median attorneys' fee awarded in securities class actions with settlements of a similar magnitude is 33%, which further supports Lead Counsel's fee request. *See* Ex. 2

[9] *See also Graulty*, 886 F.2d at 271 ("[I]t is well settled that the lawyer who creates a common fund is allowed an *extra* reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. The amount of such a reward is that which is deemed 'reasonable' under the circumstances.").

(NERA Report) at p. 30 (from 2015 to 2024, the median attorneys' fee award for settlements under $5 million was 33%)[10]; *see also Craft v. Cty, of San Bernardino*, 624 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008) ("Cases of under $10 million will often result in result in fees above 25%.").

The requested 25% fee is, therefore, well within the range of percentages courts in this Circuit and elsewhere have awarded in similarly complex cases. *See, e.g.*, *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (affirming attorneys' fee award of 33% of a $14.8 million cash class action settlement); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming award of one-third of $1.725 million settlement); *Yaron v. Intersect ENT, Inc.*, 2021 WL 5150051, at *1 (N.D. Cal. Nov. 5, 2021) (awarding one-third of $1.9 million settlement); *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *9 (C.D. Cal. Oct. 10, 2019) (awarding 33⅓% of $2,050,000 settlement fund); *In re K12 Inc. Sec. Litig.*, 2019 WL 3766420, at *1 (N.D. Cal. Oct. 10, 2019) (awarding 33% of $3.5 million settlement fund); *Zaidi v. Adamas Pharm., Inc.*, 2024 WL 4342186, at *1 (N.D. Cal. Sept. 27, 2024) (awarding one-third of $4,650,000 settlement fund); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (awarding of 33.3% of $1 million common fund); *In re Interlink Elec., Inc. Sec. Litig.*, No. 05-cv-08133, ECF No. 165 (C.D. Cal. June 1, 2009) (awarding 33⅓% of $5 million settlement fund), (Ex. 11); *In re 2TheMart.com, Inc. Sec. Litig.*, No. 99-cv-1127, ECF No. 161 (C.D. Cal. July 8, 2002) (awarding 33⅓% of $2.7 million settlement fund), (Ex. 12).[11]

[10] For securities class actions settled during 1996-2014, the median of plaintiffs' attorneys' fees as a percentage of gross settlement value under $5 million was 30%. NERA Report at p. 30. Thus, fee awards for settlements of this size have averaged 30% or more since the passage of the PSLRA in 1995.

[11] *See also* Ex. 5 (collecting Ninth Circuit cases awarding fees of 25% and above).

Therefore, this factor also weighs in favor of granting Lead Counsel's 25% fee request.

6. The Reaction Of The Settlement Class Supports The Requested Fee

"The existence or absence of objectors to the requested attorneys' fee is a factor is determining the appropriate fee award." *Heritage Bond*, 2005 WL 1594403, at *21. While the time to object to the requested fee and expenses does not expire until February 3, 2026, to date, no objections have been received by Lead Counsel. ¶85. Any objections that may be received will be addressed in the reply papers due to be filed by February 17, 2026. Additionally, to date there have been no requests for exclusion from the Settlement Class. ¶83. The lack of objections and exclusion requests, especially in comparison to the 13,609 potential Settlement Class Members to whom notice has been disseminated (Craig Decl, Ex. 1 at ¶12), support the fee request. *See Zynga*, 2016 WL 537946, at *13 ("By any standard, the lack of objection of the Settlement Class Members favors approval of the Settlement."); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) ("The lack of objection from any Class Member supports the attorneys' fees award."); *Omnivision*, 559 F. Supp. 2d at 1048 (same); *see also Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *13 (C.D. Cal. 2008) (3 members objected and 29 opted out, indicating favorable result and supporting award of a "generous fee").

C. A Lodestar Cross-Check Supports The Requested Fee

Although Lead Counsel seek approval of a fee based on a percentage of the fund, as "[a] final check on the reasonableness of the requested fees, courts often compare the fee counsel seeks as a percentage with what their hourly bills would amount to under the lodestar analysis." *Omnivision*, 559 F. Supp. 2d at 1048; *see also In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016) ("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").

"A lodestar cross-check first computes the plaintiffs' attorneys' reasonable hourly rate for the litigation and multiplies that rate by the number of hours dedicated to the case." *Stable Road*, 2024 WL 3643393, at *15. In the second step of the analysis, a court adjusts the lodestar to take into account, among other things, the time and labor required, the result achieved, the quality of representation, whether the fee is fixed or contingent, the novelty and difficulty of the questions involved, and awards in similar cases. *See Gonzalez v. City of Maywood*, 729 F.3d 1196, 1209, n.11 (9th Cir. 2013); *Vizcaino*, 290 F.3d at 1051-52 ("[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases."); *Heritage Bond*, 2005 WL 1594403, at *22 ("In securities class actions, it is common for a counsel's lodestar figure to be adjusted upward by some multiplier reflecting a variety of factors such as the effort expended by counsel, the complexity of the case, and the risks assumed by counsel.").

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. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007); *Glass*, 331 F. App'x at 456.[12] In this case, the lodestar method – whether used directly or as a "cross-check" on the percentage method – strongly demonstrates the reasonableness of the requested fee.

Here, Lead Counsel (including attorneys, paralegals, and professional support staff) collectively devoted a total of 875.65 hours to the prosecution of the Action.

[12] *See also In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7 (D. Ariz. 2012) ("an itemized statement of legal services is not necessary for an appropriate lodestar cross-check"); *In re Am. Apparel*, 2014 WL 10212865, at *23 ("the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel's hours.").

¶105. As is customary when seeking a percentage-of-the-fund award in common fund cases and submitting data for a lodestar cross-check, Lead Counsel is submitting a declaration that includes a schedule breaking down the firm's lodestar by individual, position, billing rate, and hours billed.[13] ¶101. Lead Counsel are also submitting a "table summarizing the amount of work each timekeeper performed at different stages of this litigation which is sufficient for purposes of performing a lodestar cross-check." *Martinez v. Univ. of San Diego*, 2025 WL 886970, at *11 (S.D. Cal. Mar. 21, 2025) (J. Montenegro) (cleaned up); *see also Testone v. Barlean's Organic Oils, LLC*, 2023 WL 2375246, at *7 (S.D. Cal. Mar. 6, 2023) (J. Montenegro) (same); ¶102 & Ex. 9. These tables were prepared from contemporaneous daily time records regularly prepared and maintained by Lead Counsel. ¶101. Based on GPM's 2025 hourly rates,[14] Lead Counsel's lodestar is $850,081.25. *Id.*[15] Thus, the 25% fee request (equal to $250,000 before interest), yields a multiplier of 0.29. ¶105.

A multiplier of 0.29, which represents a substantial discount to Lead Counsel's lodestar, is well within the range of multipliers commonly awarded in securities class

[13] *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1176 (S.D. Cal. 2007) ("Here, counsel have provided sworn declarations from attorneys attesting to the experience and qualifications of the attorneys who worked on the case, the hourly rates, and the hours expended.").

[14] Courts use current rather than historic rates, to ensure that "[a]ttorneys in common fund cases [are] compensated for any delay in payment." *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002).

[15] Lead Counsel's 2025 rates range from $875 to $1,225 for partners, and $350 to $400 for paralegals and support staff (¶101), and "are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude." *Lea v. TAL Educ. Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021) (approving GPM's 2021 rates); *Stable Road,* 2024 WL 3643393, at *15 (applying GPM's 2024 rates in context of lodestar cross-check); *see also* Ex. 3 (table of rates charged by peer plaintiff and defense counsel in complex litigation). At the outset of the case, two of the attorneys whose time is reported here were associates at GPM, and they became partners during the pendency of the Action. ¶104 n.6.

actions and other complex litigation. Indeed, "[a] lodestar cross-check that results in a fractional multiplier, as in this case, supports the reasonableness of the requested percentage award." *Martinez*, 2025 WL 886970, at *10;[16] *see also In re Myford Touch Consumer Litig.*, 2019 WL 6877477, at *1 (N.D. Cal. Dec. 17, 2019) ("[T]he negative multiplier … suggests the request is reasonable."); *Cabiness v. Educ. Fin. Sols., LLC*, 2019 WL 1369929, at *7 (N.D. Cal. Mar. 26, 2019) ("an award exceeding 25 percent is reasonable where the total fee award is lower than the lodestar calculation" because "the requested award would not 'yield windfall profits for class counsel in light of the hours spent on the case"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."); *Chun–Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (A "multiplier of less than one … suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class.").

This is because substantial "positive" multipliers are routinely awarded. *See Vizcaino*, 290 F.3d at 1051-52 (approving a 3.65 multiplier and finding 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 even higher multipliers); *Steiner v. Am. Broad Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (approving a percentage fee award that corresponded to a multiplier of 6.85); *Craft v. Cty. of San Bernardino*, 624 F. Supp.

[16] The authorities collected in *Martinez* further support the reasonableness of a fractional lodestar multiplier. *See, e.g.*, *In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at *7 (S.D. Cal. Oct. 30, 2020) (finding a 0.94 multiplier reasonable); *Khoja v. Orexigen Therapeutics, Inc.*, 2021 WL 5632673, at *10 (S.D. Cal. Nov. 30, 2021) (finding a 0.528 multiplier a "strong indication of reasonableness"); *Shannon v. Sherwood Mgmt. Co., Inc.*, 2020 WL 5891587, at *3 (S.D. Cal. Oct. 5, 2020) (finding a "negative multiplier" below 1.0 supports reasonableness of the fee request).

2d 1113, 1125 (C.D. Cal. 2008) (approving percentage fee award equal to multiplier of approximately 5.2, collecting cases and stating that "[w]hile this is a high end multiplier, there is ample authority for such awards resulting in multipliers in this range or higher."); *Del Global Techs.*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier, which was "well within range awarded by courts in this Circuit and courts throughout the country").

Moreover, "[t]he fact that [Lead] Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request." *Leach v. NBC Universal Media, LLC*, 2017 WL 10435878 at ¶49 (S.D.N.Y. Aug. 24, 2017). Lead Counsel will oversee the claims administration process, continue responding to shareholder inquiries, and prepare and present a Motion for Distribution of the Net Settlement Fund to the Court. ¶106. The multiplier will, therefore, diminish as the case moves forward.

In sum, Lead Counsel's fee request is well within the range of reasonableness in complex class actions such as this one, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar.

IV. LEAD COUNSEL'S EXPENSES SHOULD BE REIMBURSED

In addition to an award of attorneys' fees, attorneys who create a common fund for the benefit of a class are also entitled to payment of reasonable litigation expenses and costs from the fund. *Omnivision*, 559 F. Supp. 2d at 1048. The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular 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) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client.").

From the beginning of the case, Lead Counsel were aware that they might not recover any of their expenses and would not recover anything unless and until the

Action was successfully resolved. ¶121. Lead Counsel understood that, even if the case was ultimately successful, an award of expenses would not compensate for the lost use of the funds advanced. Thus, Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action. *Id*.

In the aggregate, Lead Counsel have incurred out-of-pocket expenses in the amount of $79,409.10 while prosecuting the Action. These expenses are summarized by category in the Spencer Declaration (¶122), and individually listed in Ex. 10. The substantial majority of expenses ($65,945.97, or approximately 83%) were for: a private investigation firm to identify and interview former Progenity employees ($27,665.98), the retention of damages and accounting experts ($22,424.00), and online legal research ($15,855.99). *Id.* Each of these expenses were critical to Lead Counsel's success in achieving the Settlement and, like the other categories of expenses for which counsel seek reimbursement (use of an online electronic discovery platform, fees for an appellate services firm to assist with formatting and printing, travel costs, *etc.*), are the types of expenses routinely charged to clients who pay hourly. They should, therefore, be reimbursed out of the common fund. *See Immune Response*, 497 F. Supp. 2d at 1177-78 (approving counsel's request for reimbursement for similar types of ordinary and necessary litigation expenses).[17]

V. THE COURT SHOULD GRANT LEAD PLAINTIFFS' PSLRA AWARD REQUESTS

In connection with Lead Counsel's request for payment of Litigation Expenses, Lead Plaintiffs respectfully request PSLRA awards in the amount of $2,500 each to reimburse them for their time spent prosecuting the Action. 15 U.S.C. § 77z-1(a)(4). "Court[s] have found that the PSLRA permits courts to award lead plaintiffs in federal

[17] Lead Counsel's requested reimbursement of $79,409.10 (plus PSLRA awards totaling $7,500 for Lead Plaintiffs) is substantially less than the $110,000 maximum amount of potential expenses set forth in the Notice. Ex. 1-D, ¶¶5, 76.

securities actions reimbursement for their time devoted to participating in and directing the litigation on behalf of the class." *Stable Road*, 2024 WL 3643393, at *16. Reimbursement of such costs are allowed because it "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000).

Here, each of the three Lead Plaintiffs took an active role in the litigation by, among other things: (i) moving to serve as Lead Plaintiffs in the Action; (ii) producing their trading records to their attorneys; (iii) communicating with their attorneys regarding the posture and progress of the case; (iv) reviewing significant documents filed in this Action; and (v) evaluating and approving the proposed Settlement. *See* Exs. 6-8 at ¶¶4-7. "These are precisely the types of activities that support awarding reimbursement of expenses to class representatives" (*Stable Road*, 2024 WL 3643393, at *16), and the amount requested is consistent with awards in other complex cases. *See Xcel Energy*, 364 F. Supp. 2d at 1000 (awarding eight lead plaintiffs a total of $100,000 pursuant to the PSLRA and noting "the important policy role [lead plaintiffs] play in the enforcement of the federal securities laws on behalf of persons other than themselves").[18]

VI. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court grant the fee and expense application. A proposed Order granting the requested relief will be submitted with Lead Counsel's reply papers after the deadline for objecting to the motion has passed.

[18] *See also Immune Response*, 497 F. Supp. 2d at 1173-74 (awarding $40,000 to lead plaintiff pursuant to PSLRA); *ImmunityBio*, 2025 WL 1686263, at *15-16 ($10,000 PSLRA award); *Davis v. Yelp, Inc.*, 2023 WL 3063823, at *2 (N.D. Cal. Jan. 27, 2023) ($15,000 PSLRA award); *Zaidi v. Adamas Pharm., Inc.*, 2024 WL 4342186, at *2 (N.D. Cal. Sept. 27, 2024) ($10,000 PSLRA award).

DATED: January 20, 2026

GLANCY PRONGAY & MURRAY LLP

By: *s/ Garth Spencer*

ROBERT V. PRONGAY (#270796)
rprongay@glancylaw.com
JOSEPH D. COHEN (#155601)
jcohen@glancylaw.com
GARTH SPENCER (#335424)
gspencer@glancylaw.com
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160

Attorneys for Lead Plaintiffs

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case and am over eighteen years old. On January 20, 2026, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 20, 2026, at Wilmington, North Carolina.

s/ Garth Spencer
Garth Spencer