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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

PLYMOUTH COUNTY RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MODEL N, INC., et al., Defendants.	Master Case No. CIV530291 (Consolidated with Case No. CIV532190) Assigned for all Purposes to The Hon. Marie S. Weiner, Dept. 2 CLASS ACTION DATE: April 4, 2016 TIME: 2:00 p.m. DEPT: 2 DATE ACTION FILED: 09/05/14

PLAINTIFFS' COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

BY FAX

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I. INTRODUCTION

Plaintiffs' Counsel have obtained an all-cash settlement of $8,550,000 for the benefit of the Class in this consolidated class action (the "Litigation").[1] This is a highly favorable recovery obtained in the face of substantial risk and is the result of Plaintiffs' Counsel's vigorous, persistent, and skilled efforts. Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 30% of the Settlement Fund, as well as payment of the litigation expenses they incurred in prosecuting this Litigation ($67,155.72) and interest on both amounts. Furthermore, plaintiffs Plymouth County Retirement System, James Small and Dwight Bucher (collectively, "Plaintiffs") respectfully request payment for the time spent while prosecuting this Litigation on behalf of the Class.

As explained below, and in Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds ("Settlement Memorandum"),[2] as well as in the accompanying Declaration of Christopher P. Seefer in Support of Motion for (1) Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds; and (2) an Award of Attorneys' Fees and Expenses ("Seefer Decl."), this Settlement represents an excellent recovery for the Class in view of the risks, costs and duration of continued litigation. Without a settlement, this Litigation would likely have continued for many years, through fact discovery, expert discovery, summary judgment, trial, and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Class.

Plaintiffs' Counsel vigorously pursued this Litigation for more than a year, and their efforts included: (1) an extensive investigation of Defendants' actions in connection with the March 20, 2013 initial public offering ("IPO") of Model N, Inc. ("Model N" or the "Company") and Defendants' preparation and filing of the Registration Statement and Prospectus (collectively, the "Registration Statement"), including a thorough review and analysis of all relevant U.S. Securities and Exchange

[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement dated November 20, 2015 ("Stipulation" or "Settlement").

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

Commission ("SEC") filings, press releases and analyst reports; (2) successfully moving to remand the Litigation to this Court after Defendants removed the Litigation to federal court; (3) the preparation of a consolidated amended complaint; (4) successfully opposing Defendants' demurrer to the complaint; (5) assisting Plaintiffs with their responses to Defendants' class certification discovery requests; (6) propounding document requests on Defendants; (7) reviewing documents produced by Defendants; (8) preparing document requests to various third parties; (9) fully evaluating the strengths and weaknesses of the case with the assistance of experts; and (10) preparing a detailed mediation statement prior to participating in a mediation with Robert A. Meyer, Esq., a well-respected attorney with extensive experience in the mediation of complex actions. The information gleaned from this process enabled Plaintiffs to set forth allegations with specificity, including identifying specific practices and conduct alleged to be false and misleading, and, ultimately, to resolve the case successfully for the Class. Notably, Plaintiffs' Counsel undertook all of these investigative and litigation efforts on a fully contingent basis.

On December 7, 2015, the Court entered the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), pursuant to which the Settlement was preliminarily approved. The Preliminary Approval Order also approved the form and manner of notice to be given to the Class.

For their diligence and efforts in obtaining this significant recovery on behalf of the Class, Plaintiffs' Counsel respectfully request an award of attorneys' fees of 30% of the Settlement Fund and payment of expenses incurred in the prosecution of the Litigation in the amount of $67,155.72, plus interest on both amounts. The requested fee is fair and reasonable under the applicable standards and is well within the range of fees awarded by California Superior Courts and courts nationwide. Plaintiffs' Counsel's costs and expenses are likewise reasonable in amount, and were necessarily incurred in the successful prosecution of the Litigation.

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

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

Where, as here, litigation has created a common fund for the benefit of the named plaintiffs as well as others, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and expenses out of the fund created. The California Supreme Court has expressly affirmed "'the historic power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or directly from the other parties enjoying the benefit.'" *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977);[3] *Glendale City Emps.' Ass'n, Inc. v. Glendale*, 15 Cal. 3d 328, 341 n.19 (1975).

The common fund doctrine rests on two premises. One is preventing unjust enrichment – "'that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees.'" *Serrano*, 20 Cal. 3d at 35 n.5; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 27 (2000).

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

While "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method," *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001), the U.S. Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g., Trustees v. Greenough*, 105 U.S. 527, 532 (1882); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). California courts have long

[3] Unless otherwise noted, citations are omitted throughout.

accepted the percentage approach for awarding fees in common fund cases as well. For instance, in 1989, Judge Eli Chernow awarded a fee of 35% of the recovery in a class action related to securities fraud, stating "35 percent certainly is not high compared to the kinds of contingent fee arrangements that the courts see all the time for plaintiffs' litigation." *Steiner v. Whittaker Corp*, No. CA 000817, Transcript, at 8:9-11 (Los Angeles Super. Ct. Mar. 23, 1989) (Seefer Decl., Ex. 1); *see also Glendale City Emps.' Ass'n*, 15 Cal. 3d at 328 (upholding fee award set at percentage of the common fund). This Court recently awarded a 30% fee. *In re CafePress Inc. S'holder Litig.*, No. CIV522744, slip op. (San Mateo Super. Ct. Aug. 11, 2015) (Weiner, J.) (Seefer Decl., Ex. 2); *In re Pac. Biosciences*, No. CIV509210, slip op. (San Mateo Super. Ct. Oct. 31, 2013) (29% fee) (Weiner, J.) (Seefer Decl., Ex. 3). Moreover, in the federal courts, where common fund fee awards are addressed frequently, the Ninth Circuit and at least six other circuits have endorsed, and in some cases mandated, use of the percentage-of-recovery method.

In *Blum v. Stenson*, the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class." 465 U.S. 886, 900 n.16 (1984). In the Ninth Circuit, the district court has discretion to award fees in common fund cases based on either the so-called lodestar/multiplier method or the percentage-of-the-fund method. *In re Wash. Pub. Power Supply Sys.*, 19 F.3d 1291, 1296 (9th Cir. 1994). In *Paul, Johnson Alston & Hunt v. Graulty*, 886 F.2d 268 (9th Cir. 1989); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993); and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002), the Ninth Circuit expressly approved the use of the percentage method in common fund cases. Moreover, supporting authority for the percentage method in other circuits is overwhelming.[4]

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[4] Courts in other circuits favor the percentage-of-recovery approach for the award of attorneys' fees in common fund cases. Two circuits have ruled that the ***percentage method is mandatory in common fund cases***. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991). Other circuits and commentators have expressly approved the use of the percentage method. *Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (citing *Blum*, 465 U.S. at 900 n.16) (recognizing both "implicitly" and "explicitly" that a percentage recovery is reasonable in common fund cases); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 254 (Oct. 8, 1985).

Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly shifted to the percentage method in awarding fees in common fund representative actions. The rationale for compensating counsel in common fund cases on a percentage basis is sound. First, it is consistent with the practice in the private marketplace, where contingent fee attorneys are customarily compensated by a percentage of the recovery. Second, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time. Indeed, one of the nation's leading scholars in the field of class actions and attorneys' fees, Professor Charles Silver of the University of Texas School of Law, has concluded that the percentage method of awarding fees is the only method of fee awards that is consistent with class members' due process rights. Professor Silver notes:

> The consensus that the contingent percentage approach creates a closer harmony of interests between class counsel and absent plaintiffs than the lodestar method is strikingly broad. It includes leading academics, researchers at the RAND Institute for Civil Justice, and many judges, including those who contributed to the Manual for Complex Litigation, the Report of the Federal Courts Study Committee, and the report of the Third Circuit Task Force. Indeed, it is difficult to find anyone who contends otherwise. No one writing in the field today is defending the lodestar on the ground that it minimizes conflicts between class counsel and absent claimants.
>
> In view of this, it is as clear as it possibly can be that judges should not apply the lodestar method in common fund class actions. The Due Process Clause requires them to minimize conflicts between absent claimants and their representatives. The contingent percentage approach accomplishes this.

Charles Silver, *Due Process and the Lodestar Method: You Can't Get There from Here*, 74 Tul. L. Rev. 1809, 1819-20 (June 2000).

Plaintiffs' Counsel respectfully submit that an award should be made here on a percentage basis. *See Court Awarded Attorneys' Fees*, 108 F.R.D. 237 (recommending that compensation in common fund cases be calculated on a percentage-of-the-fund basis).

B. An Award of 30% of the Settlement Fund Created Is Fair and Reasonable

Plaintiffs' Counsel are applying for a fee award of 30% of the Settlement Fund. This request falls squarely within the parameters of percentage fees awarded in other class action litigation in California. California courts have routinely awarded attorneys' fees of 30% of the settlement amount in class actions. Indeed, this Court recently awarded a 30% fee in *CafePress* and a 29% fee in *Pac.*

Biosciences (Seefer Decl., Exs. 2-3); *see also In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, No. 960886, 1998 WL 1031494, at *9 (Alameda Super. Ct. Oct. 22, 1998) (collecting cases awarding between 30% and 45%); *In re Epicor Software Corp. S'holder Litig.*, No. 30-2011-00465495-CU-BT-CXC, slip op. (Orange Super. Ct. Oct. 24, 2014) (awarding 30% fee) (Seefer Decl., Ex. 4); *Paton v. Advanced Micro Devices, Inc.*, No. 1-07-CV-084838, slip op. (Santa Clara Super. Ct. Aug. 22, 2014) (awarding a fee of 33-1/3%) (Seefer Decl., Ex. 5); *West Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. (San Diego Super. Ct. June 28, 2012) (approving 33-1/3% fee award) (Seefer Decl., Ex. 6); *Bonilla v. Regis Corp.*, No. 30-2009-00329724, 2010 WL 6509279, at *1 (Orange Super. Ct. Nov. 23, 2010) (same).[5] The requested fee was disclosed in the Notice and, to date, not a single Class Member has objected to the fee and it is also supported by federal case law.[6]

[5] *See also Haitz v. Meyer*, No. 572968-3, Transcript (Alameda Super. Ct. Aug. 20, 1990) (awarding 40% of $2.67 million settlement fund as fees) (Seefer Decl., Ex. 7); *Steiner*, Transcript, at 4 (35% of the recovery in a class action related to securities fraud) (Seefer Decl., Ex. 1); *Abzug v. Kerkorian*, No. CA000981, Transcript at 41:7-8 (Los Angeles Super. Ct. Nov. 19, 1990) (45% of the settlement fund) (Seefer Decl., Ex. 8); *Albert v. Walter Fletcher, Inc.*, No. BC136761, slip op. (Los Angeles Super. Ct. Mar. 22, 2001) (35% of a $15 million settlement plus $1,198,554.03 in expenses) (Seefer Decl., Ex. 9); *Ochoa v. Haralambos Beverage Co.*, No. BC319588, slip op. (Los Angeles Super. Ct. Feb. 1, 2007) (33-1/3% of the fund) (Seefer Decl., Ex. 10); *Terrell v. Ocean's 11 Casino, Inc.*, No. GIC795732, 2004 WL 5214496 (San Diego Super. Ct. Feb. 10, 2004) (same); *Jones v. Alliance Imaging, Inc.*, No. RG 05 210418, 2006 WL 5403115 (Alameda Super. Ct. Nov. 27, 2006) (same); *Garcia v. Save Mart Supermarkets*, No. 312026, 2004 WL 4964171 (Stanislaus Super. Ct. Aug. 3, 2004) (same); *Adams v. Blockbuster, Inc.*, No. 809069, slip op. (Orange Super. Ct. Feb. 28, 2002) (Seefer Decl., Ex. 11); *Elkin v. Six Flags, Inc.*, No. BC342633, slip op. (Los Angeles Super. Ct. Apr. 29, 2008) (same) (Seefer Decl., Ex. 12); *Miller v. de Rothschild*, No. 813144, slip op. (San Francisco Super. Ct. Oct. 14, 1988) (33-1/3% fee in a $3 million class action settlement) (Seefer Decl., Ex. 13); *Neptune Society Cases*, JCCP Nos. 1814 & 1817, slip op. (Sacramento Super. Ct. May 11, 1987) (awarding interim fee of 25%, and ultimately 33% of the fund) (Seefer Decl., Ex. 14).

[6] *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454 (9th Cir. 2000) (upholding award of 33.3% of $1.725 million settlement); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of $12 million common fund); *Taubenfeld v. Aon Corp.*, 415 F.3d 597 (7th Cir. 2005) (upholding award of one-third of $7.25 million settlement fund in securities class action); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at *89 (C.D. Cal. June 10, 2005) (awarding one-third of $27.783 million settlement); *In re Pub. Serv. Co.*, No. 91-0536M, 1992 U.S. Dist. LEXIS 16326, at *33 (S.D. Cal. July 28, 1992) (awarding one-third of common fund); *Kitson v. Bank of Edwardsville*, No. 08-507-GPM, 2010 U.S. Dist. LEXIS 5462, at *9-*10 (S.D. Ill. Jan. 25, 2010) (awarding 33% of $3,415,000 settlement fund); *Antonopulos v. N. Am. Thoroughbreds, Inc.*, No. 87-0979, 1991 U.S. Dist. LEXIS 12579, at *9 (S.D. Cal. May 6, 1991) (awarding one-third of common fund).

C. The Requested Fee of 30% of the Settlement Fund Created Is Reasonable in This Case

In determining the reasonableness of a fee request, California courts typically consider the following "basic factors": (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *Cal. Indirect Purchaser*, 1998 WL 1031494, at *3; *see also Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996); *Glendora Cnty. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 474 (1984). "However, no rigid formula applies and each factor should be considered only 'where appropriate.'" *Natural Gas Anti-Trust Cases I, II, III & IV*, No. 4221, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006); *see also In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) ("The Ninth Circuit has approved a number of factors which may be relevant to the district court's determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases."); *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *70-*71 (reaction of the class is a factor to be considered). An analysis of the relevant factors supports the requested fee award.

1. The Result Achieved

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client"). In this case, a Settlement Fund of at least $8,550,000 in cash has been obtained through the efforts of Plaintiffs' Counsel without the necessity and risk of summary judgment, trial, and appeals. This is an excellent result given the risks of proving liability, causation, and damages.

2. The Time and Labor Required

Plaintiffs' Counsel vigorously pursued this Litigation for more than a year. During the course of the Litigation, Plaintiffs' Counsel, among other things: (1) consulted with experts regarding liability and damages; (2) reviewed thousands of pages of analyst reports and Model N's public filings, including annual reports, quarterly reports, press releases, and other public statements; (3) prepared a consolidated amended complaint and successfully opposed Defendants' demurrer; (4) researched the applicable law with respect to the claims asserted in the Litigation and the potential defenses thereto; (5) engaged in extensive, and ultimately successful, motion practice concerning removal, remand and subject matter jurisdiction; (6) located and interviewed potential witnesses with the assistance of private investigators; (7) prepared and served written discovery; (8) prepared third-party discovery; (9) met and conferred with Defendants regarding discovery; (10) reviewed and analyzed numerous pages of documents produced in discovery; (11) assisted Plaintiffs with their responses to Defendants' class certification discovery requests; (12) drafted a comprehensive mediation brief; (13) engaged in hard-fought settlement negotiations, including mediation with Robert A. Meyer; and (14) drafted and negotiated the Stipulation and other settlement documents with Defendants. As a result, Plaintiffs' Counsel and their paraprofessionals spent over 3,280 hours prosecuting this Litigation with a resulting lodestar of $1,827,734.70. *See* Seefer Decl., ¶49.

An award of 30% of the Settlement Fund would yield an approximate multiplier of 1.4. Such a multiplier is eminently reasonable. Indeed, "numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees." *Nat. Gas Anti-Trust Cases*, 2006 WL 5377849, at *4; *see also Wershba*, 91 Cal. App. 4th at 255 ("[m]ultipliers can range from 2 to 4 or even higher"); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar enhancement of "two, three, four or otherwise"); *Glendora*, 155 Cal. App. 3d at 465 (affirming a 12-times multiplier of counsel's hourly rate and expressly rejecting the argument that the requested fee was exorbitant or unconscionable).[7]

[7] *See also* Logan, Moshman & Moore, *Attorneys' Fees Awards in Common Fund Class Actions*, 24 Class Action Reports 169 (2003) (average multiplier of the 64 cases sampled was 4.5); *Vizcaino*, 290 F.3d at 1052-54 (The Ninth Circuit listed 34 common-fund cases that were decided between 1996 and 2001 in which the fees were awarded as a percentage of the common fund. In 24 of these cases, a

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

Plaintiffs' Counsel undertook this Litigation on a contingent-fee basis, assuming a significant risk that the Litigation would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for any time or expense since this case began in September 2014. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Goldberger*, 209 F.3d at 54 (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who takes a case on contingency expects a higher fee than an attorney who is paid as the case goes along, win or lose. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) ("'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award"). As the Court of Appeals explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

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

Id. at 288.

Plaintiffs faced significant risk concerning their ability to establish both liability and damages. While Plaintiffs believe they could have proven their §§11, 12(a)(2) and 15 claims, success at trial was far from certain. Defendants have vigorously argued that Plaintiffs cannot demonstrate the falsity of the challenged statements made in connection with the Company's IPO in the Registration Statement.

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lodestar-times-multiplier analysis was also used. The multipliers in these 24 cases were as high as 19.6, and the average multiplier was 3.32).

Defendants also argued that purchasers of Model N stock knew the information Plaintiffs alleged was omitted from the Registration Statement.

Moreover, even assuming that Plaintiffs were able to demonstrate liability, there was no guarantee they would prevail on the issues of loss causation and damages. In fact, Defendants argued there were no damages because Model N's stock price did not fall below the $15.50 offering price after the sales execution challenges were publicly revealed on August 8, 2013. Seefer Decl., ¶45. At summary judgment and trial, Defendants' experts would also contend that all of the losses sustained by the Class were due to factors completely unrelated to Defendants' conduct, thereby eliminating any potential recovery. There was, therefore, a substantial risk that the finder of fact could agree with Defendants' contention that no damages could be linked to the Defendants' conduct, or that damages were substantially less than the amount Plaintiffs have asserted. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y 1985) ("it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986). In short, success was far from certain.

In light of these risks, a quick settlement was not likely. Indeed, from the beginning of the case, it was clear that Defendants were prepared to litigate to judgment and through trial and appeals. Thus, from day one, Plaintiffs' Counsel needed to commit the time and resources necessary to successfully take the case to trial. Thousands of hours of attorney and paraprofessional time and over $67,000 in expenses have been incurred. The risk of non-payment was substantial. While Plaintiffs and their counsel believe that the Class would prevail at trial, the complexity of this case made the outcome at trial extremely uncertain. The contingent nature of counsel's representation and the sizable financial risks borne by Plaintiffs' Counsel support the percentage fee requested. It simply cannot be disputed that the risk of no recovery in complex cases of this type is very real. As the court in *Xcel Energy* recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

4. Awards Made in Similar Cases

As set forth above, Plaintiffs' Counsel's fee request of 30% of the Settlement Fund falls within the range of reasonable attorneys' fee awards accepted by California courts. *See* §II.B., *supra.* Indeed, "'[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008); *see also Lealao*, 82 Cal. App. 4th at 31 n.5 ("'whatever method is used and no matter what billing records are submitted . . ., the result is an award that almost always hovers around 30[%] of the fund created by the settlement'").

The findings of the *Lealao* and *Chavez* courts also hold true for securities class actions. For example, a 1996 study conducted by the economic consulting firm National Economic Research Associates, Inc. ("NERA"), using data from 433 shareholder class actions, found that: "[r]egardless of case size, fees average approximately 32 percent of the settlement." Denise N. Martin, Vinita M. Juneja, Todd S. Foster & Frederick C. Dunbar, *Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions?* at 12-13 (NERA Nov. 1996). Likewise, a more recent study by NERA found that the median award of attorneys' fees as a percentage of the settlement amount for shareholder class actions that settled between $5 million and $10 million from 2011-2015 was 30%. Svetlana Starykh & Stefen Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review*, at 36 (NERA Jan. 20, 2015). The fee requested is, therefore, consistent with the fees awarded in other shareholder class actions.

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

The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also support the requested fee award. Robbins Geller Rudman & Dowd LLP, Labaton Sucharow LLP and Bottini & Bottini, Inc. have each earned a national reputation for excellence through many years of litigating complex civil actions, particularly the prosecution of securities and antitrust class actions. As set forth in the firm résumés filed concurrently herewith, Plaintiffs' Counsel's experience, resources, and high-quality attorneys have allowed them to obtain significant recoveries throughout the country on behalf of their clients. *See* Résumés attached to the Declarations of Christopher P. Seefer, David J.

Goldsmith and Francis A. Bottini, Jr. in Support of Application for Award of Attorneys' Fees and Expenses ("Plaintiffs' Counsel's Declarations"), filed herewith.

Here, Plaintiffs' Counsel's experience and resources allowed them to properly and efficiently investigate this Litigation, identify the complex issues involved, and to formulate strategies to prosecute it effectively. Plaintiffs' Counsel's experience also enabled them to assess whether a larger settlement could be recovered, and to see that, in light of the circumstances of the case, the proposed Settlement represents an excellent recovery for the Class. In short, the successful prosecution of these complex claims required the participation of highly skilled and specialized attorneys. *See, e.g., J. N. Futia Co. v. Phelps Dodge Indus., Inc.*, No. 78 Civ. 4547, 1982 U.S. Dist. LEXIS 15261 (S.D.N.Y. Sept. 17, 1982).

The quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiffs' Counsel. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Plaintiffs' Counsel were opposed in this Litigation by counsel from Fenwick & West LLP and Sidley Austin LLP, large law firms with well-deserved reputations for vigorous advocacy on behalf of their clients. Defense counsel challenged virtually every aspect of the case. It simply cannot be disputed that this factor weighs in favor of the requested fee.

6. Continuing Obligations of Plaintiffs' Counsel

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

7. The Reaction of the Class

While the date for objecting to counsel's fee and expenses has not passed, to date, Plaintiffs' Counsel are not aware of a single Class Member who has objected to the fee and expense request or opted-out of the Class. Seefer Decl., ¶42; Declaration of Carole K. Sylvester on Behalf of Gilardi & Co. LLC, ¶15 (Seefer Decl., Ex. 16). "The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *71.[8]

[8] Plaintiffs' Counsel will address any objections in their reply memorandum, which will be filed on or before March 28, 2016, in accordance with this Court's Preliminary Approval Order.

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

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. County of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992); *In re GNC S'holder Litig.*, 668 F. Supp. 450, 452 (W.D. Pa. 1987). The appropriate analysis in making a determination if particular costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Here, Plaintiffs' Counsel are seeking payment of costs and expenses in an aggregate amount of $67,155.72. As itemized in the Seefer Declaration, and in Plaintiffs' Counsel's Declarations, counsel's expenses include: (1) telephone, photocopying, and facsimile charges; (2) overnight delivery and messenger services; (3) legal filing, process server, and court reporter fees; (4) on-line legal, financial, and factual research; (5) transportation, meals, and hotels; (6) consultant, investigator, and expert fees; and (7) mediation fees. The expenses for which Plaintiffs' Counsel seek payment are those which are normally charged to paying clients, over and above hourly fees. Further, the expenses which have been incurred and for which payment is sought were necessary for the successful prosecution of the Litigation, are reasonable in amount, and thus should be paid. *See In re Am. Bus. Fin. Servs. Noteholders Litig.*, No. 05-232, 2008 U.S. Dist. LEXIS 95437, at *53-*54 (E.D. Pa. Nov. 21, 2008) (approving expenses for "delivery and freight, class notice costs, duplication costs, online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, transportation and press releases" based on declarations of counsel).

IV. REIMBURSEMENT FOR PLAINTIFFS' TIME AND EXPENSES IS APPROPRIATE

Plaintiffs in this case seek to recoup litigation costs (including lost wages). These costs were incurred as a result of their serving as Plaintiffs in this Litigation and ensuring that the Class was adequately represented. Reimbursement of such costs is allowed because it "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, No. 97 CIV. 6742 (DLC), 2000 U.S. Dist. LEXIS 16205, at *14 n.2 (S.D.N.Y. Nov. 8, 2000). Indeed, courts

"routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890, at *30 (S.D.N.Y. Oct. 24, 2005). This Court recently awarded such fees to the named plaintiffs. *Wiley v. Envivio, Inc.*, No. CIV517185, slip op. (San Mateo Super. Ct. June 22, 2015) (Weiner, J.). Seefer Decl., Ex. 15.

In this case, each Plaintiff respectfully requests reimbursement of costs and expenses in the amount of $2,500. *See* Seefer Decl., Exs. 17-19. Plaintiffs' requests are based on the estimated number of hours Plaintiffs spent working on the Litigation on behalf of the Class. As set forth in their declarations, Plaintiffs stepped forward to represent the Class and devoted many hours participating in this Litigation, including, *inter alia*, finding or choosing counsel to pursue the claims, collecting and producing documents to their counsel, reviewing pleadings and other Court filings, participating in many conference calls with counsel, reviewing mediation submissions, and discussing the proposed Settlement with counsel. *Id.* The amount requested is reasonable, was incurred in the course of representing the Class, and should, therefore, be approved. *See Pac. Biosciences*, slip op. at 7 (approving $5,943.36 and $2,540.00) (Seefer Decl., Ex. 3); *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 265 (E.D. Va. 2009) (awarding $42,000 to Class representative as reimbursement for expenses); *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694 (E.D. Mo. 2002) (approving award to class representative not to exceed $20,000); *Xcel Energy*, 364 F. Supp. 2d at 1000 ($100,000 collectively awarded to lead plaintiff group as reimbursement); *CardioNet*, slip op. at 8 (awarding lead plaintiff $4,500 for costs and expenses), Seefer Decl., Ex. 6.

V. CONCLUSION

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

DATED: February 26, 2016

Respectfully submitted,

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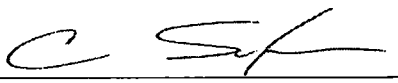

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

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

2. That on February 29, 2016, declarant served the PLAINTIFFS' COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 29, 2016, at San Diego, California.

DONNA S. SCOTT

MODEL N
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