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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN MATEO

13 In re CASTLIGHT HEALTH, INC.)
SHAREHOLDER LITIGATION)

Lead Case No. CIV533203

14 _____)

CLASS ACTION

15 This Document Relates To:)

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

17 ALL ACTIONS.)

Assigned for All Purposes to the
Honorable Marie S. Weiner

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1 **I. INTRODUCTION**

2 Plaintiffs' Counsel have obtained an all-cash settlement of \$9,500,000 for the benefit of the
3 Class in this consolidated class action (the "Litigation").¹ This is a highly favorable recovery obtained
4 in the face of substantial risk and is the product of hard-fought litigation and arm's-length settlement
5 negotiations. Counsel now respectfully move this Court for an award of attorneys' fees in the amount
6 of 30% of the Settlement Amount, as well as payment of the litigation expenses they incurred in
7 prosecuting this Litigation in the amount of \$116,476.01 and interest on both amounts. Furthermore,
8 certain Plaintiffs, Oklahoma Firefighters Pension and Retirement System ("Oklahoma Firefighters
9 Pension Fund"), Robert Spencer Wright, and Robert Kromphold, respectfully request payment for the
10 time spent while prosecuting this Litigation on behalf of the Class.

11 As explained below, and in Plaintiffs' Memorandum of Points and Authorities in Support of
12 Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds
13 ("Settlement Memorandum"), submitted herewith,² as well as in the accompanying Joint Declaration of
14 James I. Jaconette and Jonathan Gardner in Support of Motion for: (1) Final Approval of Class Action
15 Settlement and Plan of Allocation of Settlement Proceeds; and (2) an Award of Attorneys' Fees and
16 Expenses ("Joint Decl."), this Settlement represents a highly favorable recovery for the Class in view of
17 the risks, costs, and duration of continued litigation. Absent settlement, this Litigation would likely
18 have continued for years, through the completion of fact discovery, expert discovery, summary
19 judgment, trial, and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving
20 liability and damages, yet nevertheless reached a timely and substantial resolution for the Class.

21 Plaintiffs' Counsel vigorously investigated and prosecuted this Litigation on behalf of the Class.
22 These efforts included: (1) an extensive investigation of Defendants' actions in connection with the
23 March 14, 2014 initial public offering ("IPO") of Castlight Health, Inc. ("Castlight" or the "Company")
24 and Defendants' preparation and filing of the Registration Statement and Prospectus (collectively, the

25 ¹ Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the
26 Stipulation of Settlement dated June 2, 2016 ("Stipulation" or "Settlement").

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

1 “Registration Statement”), including a thorough review and analysis of all relevant U.S. Securities and
2 Exchange Commission (“SEC”) filings; (2) reviewing and analyzing stock trading data; (3) consulting
3 with an expert regarding causation and damages; (4) reviewing and analyzing Castlight’s Class Period
4 and post-Class Period press releases, conference call transcripts, and other public statements; (5)
5 collecting and reviewing a comprehensive compilation of analyst reports and major financial news
6 service reports on Castlight; (6) interviewing approximately 25 potential witnesses, including former
7 employees with the assistance of in-house and private investigators; (7) drafting initial and amended
8 complaints; (8) opposing Defendants’ two demurrers; (9) researching the applicable law with respect to
9 the claims asserted in the Litigation and the potential defenses thereto; (10) attending Court hearings
10 and conferences; (11) preparing and entering into a protective order; (12) preparing and serving detailed
11 document requests and interrogatories on the Defendants; (13) conferring continually with counsel for
12 Defendants regarding the scope and manner of production of documents and Defendants’ responses to
13 interrogatories; (14) reviewing and analyzing more than 55,000 pages of documents, representing more
14 than 6,000 documents produced by Defendants; (15) responding to Defendants’ discovery requests;
15 (16) certifying a class; (17) drafting a comprehensive mediation statement prior to participating in a
16 mediation session with the Honorable Layn R. Phillips (Ret.), a highly respected former federal district
17 court judge with extensive experience in the mediation of complex actions; (18) reviewing and
18 analyzing Defendants’ mediation statement which was provided to Plaintiffs’ Counsel prior to the
19 mediation; (19) engaging in hard-fought settlement negotiations, including an all-day mediation session
20 with Judge Phillips; and (20) drafting and negotiating the Stipulation and other settlement documents
21 with Defendants. Joint Decl., ¶¶31, 38. As a result, Plaintiffs’ Counsel and their paraprofessionals
22 spent over 2,300 hours prosecuting this Litigation with a resulting lodestar of \$1,408,943.75. See Joint
23 Decl., ¶56.

24 On July 13, 2016, the Court entered the Order Preliminarily Approving Settlement and
25 Providing for Notice (“Preliminary Approval Order”), pursuant to which the Settlement was
26 preliminarily approved. The Preliminary Approval Order also approved the form and manner of notice
27 to be given to the Class.

28

1 For their diligence and efforts in obtaining this favorable recovery on behalf of the Class,
2 Plaintiffs' Counsel respectfully request an award of attorneys' fees of 30% of the Settlement Amount
3 and payment of expenses incurred in the prosecution of the Litigation in the amount of \$116,476.01,
4 plus interest on both amounts. The requested fee is fair and reasonable under the applicable standards
5 and is well within the range of fees awarded by California Superior Courts and courts nationwide.
6 Plaintiffs' Counsel's costs and expenses are likewise reasonable in amount, and were necessarily
7 incurred in the successful prosecution of the Litigation.

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

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

12 Where, as here, litigation has created a common fund for the benefit of the named plaintiffs as
13 well as others, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and
14 expenses out of the fund created. The California Supreme Court has expressly affirmed "the historic
15 power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in
16 addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or
17 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).

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

22 The second is a "salvage" rationale – "encouragement of the attorney for the successful litigant,
23 who will be more willing to undertake and diligently prosecute proper litigation for the protection or
24 recovery of the fund if he is assured that he will be promptly and directly compensated should his
25 efforts be successful." *Estate of Stauffer*, 53 Cal. 2d 124, 132 (1959). The salvage purpose requires "a
26

27 _____
28 ³ Unless otherwise noted, citations are omitted throughout.

1 flavor of generosity . . . in order that an appetite for efforts may be stimulated.” *Melendres v. Los*
2 *Angeles*, 45 Cal. App. 3d 267, 273 (1975).

3 While “[c]ourts recognize two methods for calculating attorney fees in civil class actions: the
4 lodestar/multiplier method and the percentage of recovery method,” *Wershba v. Apple Computer, Inc.*,
5 91 Cal. App. 4th 224, 254 (2001), the U.S. Supreme Court has consistently held that where a common
6 fund has been created for the benefit of a class as a result of counsel’s efforts, the award of counsel’s
7 fee should be determined on a percentage-of-the-fund basis. *See, e.g., Trustees v. Greenough*, 105 U.S.
8 527, 532 (1882); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). California courts have long
9 accepted the percentage approach for awarding fees in common fund cases as well. This Court recently
10 awarded a 30% fee in similar cases. *See Plymouth Cnty. Ret. Sys. v. Model N, Inc.*, No. CIV530291,
11 slip op. (San Mateo Super. Ct. Apr. 4, 2016) (Weiner, J.) (“*Model N*”) (Joint Decl., Ex. 1); *In re*
12 *CafePress Inc. S’holder Litig.*, No. CIV522744, slip op. (San Mateo Super. Ct. Aug. 11, 2015) (Weiner,
13 J.) (“*CafePress*”) (Joint Decl., Ex. 2).

14 If there was any doubt that the percentage method of awarding attorneys’ fees in a common fund
15 case in California courts was proper, the Supreme Court of California recently “clarif[ied] . . . that use
16 of the percentage method to calculate a fee in a common fund case, where the award serves to spread
17 the attorney fee among all beneficiaries of the fund, does not in itself constitute an abuse of discretion.
18 We join the overwhelming majority of federal and state courts in holding that when class action
19 litigation establishes a monetary fund for the benefit of class members, and the trial court in its
20 equitable powers awards class counsel a fee out of the fund, the court may determine the amount of a
21 reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte v. Robert Half Int’l*
22 *Inc.*, 1 Cal. 5th 480, 503 (2016). In so doing, the California Supreme Court recognized the advantages
23 of using the percentage method of awarding attorneys’ fees as a percentage of the common fund,
24 including the “relative ease of calculation, alignment of incentives between counsel and the class, a
25 better approximation of market conditions in a contingency case, and the encouragement it provides
26 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.*

27 The California Supreme Court ruling is consistent with the United States Supreme Court’s
28 decision in *Blum v. Stenson*, where the Supreme Court recognized that under the common fund doctrine

1 a reasonable fee may be based “on a percentage of the fund bestowed on the class.” 465 U.S. 886, 900
2 n.16 (1984). In the Ninth Circuit, the district court has discretion to award fees in common fund cases
3 based on either the percentage-of-the-fund method or the so-called lodestar/multiplier method. *In re*
4 *Wash. Pub. Power Supply Sys.*, 19 F.3d 1291, 1296 (9th Cir. 1994). The Ninth Circuit has expressly
5 and repeatedly approved the use of the percentage method in common fund cases. *Paul, Johnson,*
6 *Alston & Hunt v. Grauly*, 886 F.2d 268 (9th Cir. 1989); *Six (6) Mexican Workers v. Ariz. Citrus*
7 *Growers*, 904 F.2d 1301 (9th Cir. 1990); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir.
8 1993); and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).⁴ Indeed, the California
9 Supreme Court recognized that “[c]urrently, all the circuit courts either mandate or allow their district
10 courts to use the percentage method in common fund cases; none require sole use of the lodestar
11 method [and] [m]ost state courts to consider the question in recent decades have also concluded the
12 percentage method of calculating a fee award is either preferred or within the trial court’s discretion in a
13 common fund case.” *Laffitte*, 1 Cal. 5th at 493-94.

14 One of the nation’s leading scholars in the field of class actions and attorneys’ fees, Professor
15 Charles Silver of the University of Texas School of Law, has concluded that the percentage method of
16 awarding fees is the only method of fee awards that is consistent with class members’ due process
17 rights. Professor Silver notes:

18 The consensus that the contingent percentage approach creates a closer harmony
19 of interests between class counsel and absent plaintiffs than the lodestar method is
20 strikingly broad. It includes leading academics, researchers at the RAND Institute for
21 Civil Justice, and many judges, including those who contributed to the Manual for
22 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.

23 In view of this, it is as clear as it possibly can be that judges should not apply the
24 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.

25 Charles Silver, *Due Process and the Lodestar Method: You Can’t Get There from Here*, 74 Tul. L. Rev.
26 1809, 1819-20 (June 2000).

27 ⁴ Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly
28 shifted to the percentage method in awarding fees in common fund representative actions.

1 As a result, Plaintiffs' Counsel respectfully submit that an award should be made here on a
2 percentage basis.

3 **B. The Requested Fee of 30% of the Settlement Fund Created Is**
4 **Reasonable in This Case**

5 In determining the reasonableness of a fee request, California courts typically consider the
6 following "basic factors": (1) the result class counsel obtained; (2) the time and labor required of the
7 attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent
8 to which the nature of the litigation precluded other employment by class counsel; (5) the experience,
9 reputation, and ability of the attorneys who performed the services, the skill they displayed in the
10 litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the
11 clients to the fee agreement. *In re Cal. Indirect Purchaser*, No. 960886, 1998 WL 1031494, at *3
12 (Alameda Super. Ct. Oct. 22, 1998); *see also Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48
13 Cal. App. 4th 1794, 1810 n.21 (1996); *Glendora Cmty. Redevelopment Agency v. Demeter*, 155 Cal.
14 App. 3d 465, 474 (1984). "However, no rigid formula applies and each factor should be considered
15 only 'where appropriate.'" *Natural Gas Anti-Trust Cases*, No. 4221, 2006 WL 5377849, at *3 (San
16 Diego Super. Ct. Dec. 11, 2006); *see also In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D.
17 Cal. 2007) ("The Ninth Circuit has approved a number of factors which may be relevant to the district
18 court's determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases."); *In re*
19 *Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at *70-*71 (C.D. Cal. June
20 10, 2005) (reaction of the class is a factor to be considered). An analysis of the relevant factors
21 supports the requested fee award.

22 **1. The Result Achieved**

23 Courts have consistently recognized that the result achieved is an important factor to be
24 considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical
25 factor is the degree of success obtained"); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D.
26 Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these
27 are the true benefit to the client"). In this case, a Settlement Amount of \$9,500,000 in cash has been
28 obtained through the efforts of Plaintiffs' Counsel. Plaintiffs' Counsel believe that at the time the

1 Settlement was reached, the Settlement was one of the largest recoveries for a Securities Act claim
2 prosecuted in California state court. This is a highly favorable result given the risks of proving liability,
3 causation, and damages, and provides an immediate and certain recovery for Class Members without
4 the risk, expense and delay of the completion of discovery, summary judgment, trial and appeals.

5 **2. The Time and Labor Required**

6 Plaintiffs' Counsel vigorously investigated and prosecuted this Litigation, and their efforts
7 included: (1) an extensive investigation of Defendants' actions in connection with Castlight's IPO,
8 including a thorough review and analysis of all relevant SEC filings; (2) reviewing and analyzing stock
9 trading data; (3) consulting with an expert regarding causation and damages; (4) reviewing and
10 analyzing Castlight's Class Period and post-Class Period press releases, conference call transcripts, and
11 other public statements; (5) collecting and reviewing a comprehensive compilation of analyst reports
12 and major financial news service reports on Castlight; (6) interviewing approximately 25 potential
13 witnesses, including former employees with the assistance of in-house and private investigators; (7)
14 drafting initial and amended complaints; (8) opposing Defendants' two demurrers; (9) researching the
15 applicable law with respect to the claims asserted in the Litigation and the potential defenses thereto;
16 (10) attending Court hearings and conferences; (11) preparing and entering into a protective order; (12)
17 preparing and serving detailed document requests and interrogatories on the Defendants; (13) conferring
18 continually with counsel for Defendants regarding the scope and manner of production of documents
19 and Defendants' responses to interrogatories; (14) reviewing and analyzing more than 55,000 pages of
20 documents, representing more than 6,000 documents produced by Defendants; (15) responding to
21 Defendants' discovery requests; (16) certifying a class; (17) drafting a comprehensive mediation
22 statement prior to participating in a mediation session with the Honorable Layn R. Phillips (Ret.), a
23 highly respected former federal district court judge with extensive experience in the mediation of
24 complex actions; (18) reviewing and analyzing Defendants' mediation statement which was provided to
25 Plaintiffs' Counsel prior to the mediation; (19) engaging in hard-fought settlement negotiations,
26 including an all-day mediation session with Judge Phillips; and (20) drafting and negotiating the
27 Stipulation and other settlement documents with Defendants. Joint Decl., ¶¶31, 38. As a result,

28

1 Plaintiffs' Counsel and their paraprofessionals spent over 2,300 hours prosecuting this Litigation with a
2 resulting lodestar of \$1,408,943.75. See Joint Decl., ¶56.

3 Using a lodestar cross-check, an award of 30% of the Settlement Fund would yield an
4 approximate multiplier of 2.02. Such a multiplier is eminently reasonable. Courts have recognized that
5 “[m]ultipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal. App. 4th at 255.⁵ Indeed,
6 “numerous cases have applied multipliers of between 4 and 12 to counsel’s lodestar in awarding fees.”
7 *Natural Gas Anti-Trust Cases*, 2006 WL 5377849, at *4; *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74,
8 76 (1986) (remanding for a lodestar enhancement of “two, three, four or otherwise”); *Glendora*, 155
9 Cal. App. 3d at 465 (affirming a 12-times multiplier of counsel’s hourly rate and expressly rejecting the
10 argument that the requested fee was exorbitant or unconscionable).⁶

11 3. The Contingent Nature of the Case, Risk of Loss, and the Delay in 12 Payment to Plaintiffs’ Counsel

13 Plaintiffs’ Counsel undertook this Litigation on a contingent-fee basis, assuming a significant
14 risk that the Litigation would yield no recovery and leave them uncompensated. Unlike counsel for
15 Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Plaintiffs’
16 Counsel have not been compensated for any time or expense since this case began in April 2015.
17 Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in
18 considering an award of attorneys’ fees. See *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d
19 Cir. 2000) (the level of risk taken by plaintiff’s counsel is “perhaps the foremost’ factor” in considering
20 the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who
21 takes a case on contingency expects a higher fee than an attorney who is paid as the case goes along,
22 win or lose. See *Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial*

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

27 ⁶ See also Logan, Moshman & Moore, *Attorney Fee Awards in Common Fund Class Actions*, 24
28 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
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).

1 *Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) (“‘riskiness,’ difficulty or contingent nature of the
2 litigation is a relevant factor in determining a reasonable attorney fee award”). As the Court of Appeals
3 explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

4 In addition to compensation for the legal services rendered, there is the *raison*
5 *d’etre* for the contingent fee: the contingency. The lawyer on a contingent fee contract
6 receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent
7 fee in a case with a 50 percent chance of success should be twice the amount of a
8 noncontingent fee for the same case. . . .

9 Finally, even putting aside the contingent nature of the fee, the lawyer under
10 such an arrangement agrees to delay receiving his fee until the conclusion of the case,
11 which is often years in the future. The lawyer in effect finances the case for the client
12 during the pendency of the lawsuit. If a lawyer was forced to borrow against the legal
13 services already performed on a case which took five years to complete, the cost of such
14 a financing arrangement could be significant.

15 *Id.* at 288.

16 Plaintiffs faced significant risk concerning their ability to establish both liability and damages.
17 While Plaintiffs believe they could have proven their §§11 and 15 claims, success at trial was far from
18 certain. Defendants have vigorously argued that Plaintiffs cannot demonstrate the falsity of the
19 challenged statements made in connection and omissions from the Registration Statement issued in
20 connection with the Company’s IPO. Defendants also argued that the Registration Statement contained
21 detailed risk disclosures sufficient to defeat Plaintiffs’ allegations.

22 Moreover, even assuming that Plaintiffs were able to demonstrate liability, there was no
23 guarantee they would prevail on the issues of loss causation and damages. At summary judgment and
24 trial, Defendants’ experts would likely assert a negative causation defense and contend that all of the
25 losses sustained by the Class were due to factors completely unrelated to Defendants’ alleged false and
26 misleading statements in the Registration Statement, thereby eliminating any potential recovery. There
27 was, therefore, a substantial risk that the finder of fact could agree with Defendants’ contention that no
28 damages could be linked to the Defendants’ statements or omissions at issue, or that damages were
substantially less than the amount Plaintiffs have asserted. *See In re Warner Commc’ns Sec. Litig.*, 618
F. Supp. 735, 744-45 (S.D.N.Y 1985) (“it is virtually impossible to predict with any certainty which
testimony would be credited, and ultimately, which damages would be found to have been caused by

1 actionable, rather than the myriad nonactionable factors such as general market conditions”), *aff’d*, 798
2 F.2d 35 (2d Cir. 1986). In short, success was far from certain.

3 In light of these risks, a quick settlement was not likely. Indeed, from the beginning of the case,
4 it was clear that Defendants were prepared to litigate to judgment and through trial and appeals. Thus,
5 from day one, Plaintiffs’ Counsel needed to commit the time and resources necessary to successfully
6 take the case to trial. Indeed, more than 2,300 hours of attorney and paraprofessional time and over
7 \$116,000 in expenses have been incurred. While Plaintiffs and their counsel believe that the Class
8 would prevail at trial, the complexity of this case made the outcome at trial extremely uncertain. The
9 contingent nature of counsel’s representation and the sizable financial risks borne by Plaintiffs’ Counsel
10 support the percentage fee requested. It simply cannot be disputed that the risk of no recovery in
11 complex cases of this type is very real. As the court in *Xcel Energy* recognized, “[p]recedent is replete
12 with situations in which attorneys representing a class have devoted substantial resources in terms of
13 time and advanced costs yet have lost the case despite their advocacy.” *In re Xcel Energy, Inc.*, 364 F.
14 Supp. 2d 980, 994 (D. Minn. 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713
15 (11th Cir. 2012) (the Eleventh Circuit Court of Appeals affirmed a lower court ruling which granted
16 defendants’ motion for summary judgment as a matter of law based on plaintiff’s failure to prove loss
17 causation, thereby overturning a jury verdict in plaintiff’s favor).

18 4. Awards Made in Similar Cases

19 Plaintiffs’ Counsel are applying for a fee award of 30% of the Settlement Fund. This request
20 falls squarely within the parameters of percentage fees awarded in other class action litigation in
21 California. California courts have routinely awarded attorneys’ fees of 30% of the settlement amount in
22 class actions. Indeed, “[e]mpirical studies show that, regardless whether the percentage method or the
23 lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez*
24 *v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008); *see also Lealao*, 82 Cal. App. 4th at 31 n.5
25 (“whatever method is used and no matter what billing records are submitted . . . , the result is an award
26 that almost always hovers around 30[%] of the fund created by the settlement”).

27 This Court, for example, was in company with other California judges when it recently awarded
28 a 30% fee in *Model N* and *CafePress* and a 29% fee in *In re Pacific Biosciences of California, Inc. Sec.*

1 *Litig.*, No. CIV509210, slip op. (San Mateo Super. Ct. Oct. 31, 2013) (Joint Decl., Exs. 1-3); *see also*
2 *Cal. Indirect Purchaser*, 1998 WL 1031494, at *9 (collecting cases awarding fees between 30% and
3 45%); *Robinson v. Audience, Inc.*, No. 1:12-cv-232227, slip op. (Santa Clara Super. Ct. June 10, 2016)
4 (awarding a fee of 30%) (Joint Decl., Ex. 4); *In re Epicor Software Corp. S'holder Litig.*, No. 30-2011-
5 00465495-CU-BT-CXC, slip op. (Orange Super. Ct. Oct. 24, 2014) (awarding 30% fee) (Joint Decl.,
6 Ex. 5); *Paton v. Advanced Micro Devices, Inc.*, No. 1-07-CV-084838, slip op. (Santa Clara Super. Ct.
7 Aug. 22, 2014) (awarding a fee of 33-1/3%) (Joint Decl., Ex. 6); *West Palm Beach Police Pension Fund*
8 *v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. (San Diego Super. Ct. June 28, 2012)
9 (“*CardioNet*”) (approving 33-1/3% fee award) (Joint Decl., Ex. 7); *Bonilla v. Regis Corp.*, No. 30-
10 2009-00329724, 2010 WL 6509279, at *1 (Orange Super. Ct. Nov. 23, 2010) (same).⁷ Percentage fees
11 in this range are also common in federal securities cases.⁸

12 Notably, for the past 20 years, fee awards have been in line with 30% of the common fund. For
13 example, a 1996 study conducted by the economic consulting firm National Economic Research
14 Associates, Inc. (“NERA”), using data from 433 shareholder class actions, found that: “[r]egardless of
15 case size, fees average approximately 32 percent of the settlement.” Denise N. Martin, Vinita M.
16 Juneja, Todd S. Foster & Frederick C. Dunbar, *Recent Trends IV: What Explains Filings and*
17 *Settlements in Shareholder Class Actions?* at 12-13 (NERA Nov. 1996). Likewise, a more recent study
18 by NERA found that the median award of attorneys’ fees as a percentage of the settlement amount for
19 shareholder class actions that settled between \$5 million and \$10 million from 1996-2015 was 30%.

20 ⁷ *See also Albert v. Walter Fletcher, Inc.*, No. BC136761, slip op. (Los Angeles Super. Ct. Mar. 22,
21 2001) (35% of a \$15 million settlement plus \$1,198,554.03 in expenses) (Joint Decl., Ex. 8); *Ochoa v.*
22 *Haralambos Beverage Co.*, No. BC319588, slip op. (Los Angeles Super. Ct. Feb. 1, 2007) (33-1/3% of
23 the fund) (Joint Decl., Ex. 9); *Terrell v. Ocean’s 11 Casino, Inc.*, No. GIC795732, 2004 WL 5214496
24 (San Diego Super. Ct. Feb. 10, 2004) (same); *Jones v. Alliance Imaging, Inc.*, No. RG 05 210418, 2006
25 WL 5403115 (Alameda Super. Ct. Nov. 27, 2006) (same); *Garcia v. Save Mart Supermarkets*, No.
26 312026, 2004 WL 4964171 (Stanislaus Super. Ct. Aug. 3, 2004) (same); *Adams v. Blockbuster, Inc.*,
27 No. 809069, slip op. (Orange Super. Ct. Feb. 28, 2002) (same) (Joint Decl., Ex. 10); *Elkin v. Six Flags,*
28 *Inc.*, No. BC342633, slip op. (Los Angeles Super. Ct. Apr. 29, 2008) (same) (Joint Decl., Ex. 11).

25 ⁸ *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454 (9th Cir. 2000) (upholding award of 33.3% of
26 \$1.725 million settlement); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming
27 award of 33% of \$12 million common fund); *Taubenfeld v. Aon Corp.*, 415 F.3d 597 (7th Cir. 2005)
28 (upholding award of one-third of \$7.25 million settlement fund in securities class action); *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).

1 Svetlana Starykh & Stefen Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-*
2 *Year Review*, at 36 (NERA Jan. 25, 2016). The fee requested is, therefore, consistent with the fees
3 awarded in other shareholder class actions.

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

6 The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case
7 also support the requested fee award. Class Counsel Robbins Geller Rudman & Dowd LLP and
8 Labaton Sucharow LLP have earned national reputations for excellence through many years of
9 litigating complex civil actions, particularly the prosecution of securities class actions. As set forth in
10 the firm résumés filed concurrently herewith, Plaintiffs' Counsel's experience, resources, and high-
11 quality attorneys have allowed them to obtain significant recoveries throughout the country on behalf of
12 their clients. *See* Résumés attached to the Declarations of James I. Jaconette, Jonathan Gardner, Francis
13 A. Bottini, Jr., and Ex Kano S. Sams II in Support of Application for Award of Attorneys' Fees and
14 Expenses ("Plaintiffs' Counsel's Declarations"), filed herewith.

15 The quality of opposing counsel is also important in evaluating the quality of the work done by
16 Class Counsel. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal.
17 1977). Class Counsel were opposed in this Litigation by experienced and skilled counsel from Gibson,
18 Dunn & Crutcher LLP and Fenwick & West LLP, large law firms with well-deserved reputations for
19 vigorous advocacy on behalf of their clients. In the face of such knowledgeable and experienced
20 opposition, Class Counsel were able to develop a case that was sufficiently strong to persuade
21 Defendants to settle the case for an amount that Class Counsel believe is highly favorable to the Class.
22 As a result, this factor weighs strongly in favor of the requested fee.

23 **6. Continuing Obligations of Class Counsel**

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

26 **7. The Reaction of the Class**

27 While the October 7, 2016 deadline for objecting to counsel's fee and expenses has not passed,
28 to date, Class Counsel are not aware of a single Class Member who has objected to the fee and expense

1 request or opted-out of the Class. Joint Decl., ¶6; Declaration of Carole K. Sylvester Regarding Notice
2 Dissemination, Publication, and Requests for Exclusion Received to Date, ¶15 (Joint Decl., Ex. 12).
3 “The absence of objections or disapproval by class members to Class Counsel’s fee request further
4 supports finding the fee request reasonable.” *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *71.⁹

5 **III. PLAINTIFFS’ COUNSEL’S LITIGATION EXPENSES ARE REASONABLE**
6 **AND SHOULD BE APPROVED**

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

14 Here, Plaintiffs’ Counsel are seeking payment of costs and expenses in an aggregate amount of
15 \$116,476.01. As itemized in Plaintiffs’ Counsel’s Declarations, counsel’s expenses include: (1) expert
16 and investigators’ fees; (2) mediation fees; (3) legal filing and process server fees; (4) on-line legal,
17 financial, and factual research; (5) transportation, meals, and hotels; (6) photocopying; and
18 (7) overnight delivery and messenger service fees. The expenses for which Plaintiffs’ Counsel seek
19 payment are those which are normally charged to paying clients, over and above hourly fees. Further,
20 the expenses which have been incurred and for which payment is sought were necessary for the
21 successful prosecution of the Litigation, are reasonable in amount, and thus should be paid. *See In re*
22 *Am. Bus. Fin. Servs. Noteholders Litig.*, No. 05-232, 2008 U.S. Dist. LEXIS 95437, at *53-*54 (E.D.
23 Pa. Nov. 21, 2008) (approving expenses for “delivery and freight, class notice costs, duplication costs,
24 online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger,
25 mediator, filing and court fees, service fees, transportation and press releases” based on declarations of
26 counsel).

27 ⁹ Plaintiffs’ Counsel will address any objections in their reply memorandum, which will be filed on or
28 before October 21, 2016, in accordance with this Court’s Preliminary Approval Order.

1 **IV. THE REQUEST FOR PLAINTIFFS' TIME AND EXPENSES IS**
2 **APPROPRIATE**

3 Plaintiffs in this case seek litigation costs and payment for their time that were incurred as a
4 result of their serving as Plaintiffs in this Litigation and ensuring that the Class was adequately
5 represented. Reimbursement of such costs is allowed because it “encourages participation of plaintiffs
6 in the active supervision of their counsel.” *Varljen v. H.J. Meyers & Co.*, No. 97 CIV. 6742 (DLC),
7 2000 U.S. Dist. LEXIS 16205, at *14 n.2 (S.D.N.Y. Nov. 8, 2000). Indeed, courts “routinely award
8 such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their
9 involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to
10 remain involved in the litigation and to incur such expenses in the first place.” *Hicks v. Morgan Stanley*
11 *& Co.*, No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890, at *30 (S.D.N.Y. Oct. 24, 2005).

12 In this case, each of the following Plaintiffs Oklahoma Firefighters Pension Fund, Robert
13 Spencer Wright, and Robert Kromphold, respectfully request payment of no more than \$2,500 for
14 representing the Class in this Litigation. *See* Joint Decl., Exs. 14-16. Plaintiffs’ requests are based on
15 the estimated number of hours Plaintiffs spent working on the Litigation on behalf of the Class. As set
16 forth in their declarations, Plaintiffs stepped forward to represent the Class and devoted many hours
17 participating in this Litigation, including, *inter alia*, finding or choosing counsel to pursue the claims,
18 collecting and producing documents to their counsel, reviewing pleadings and other Court filings,
19 participating in conference calls with counsel, reviewing mediation submissions, and discussing the
20 proposed Settlement with counsel. *Id.* The amounts requested are reasonable, were incurred in the
21 course of representing the Class, and should, therefore, be approved. *See In re Mills Corp. Sec. Litig.*,
22 265 F.R.D. 246, 265 (E.D. Va. 2009) (awarding \$42,000 to class representative as reimbursement for
23 expenses); *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694 (E.D. Mo. 2002) (approving award to
24 class representative not to exceed \$20,000); *Xcel Energy*, 364 F. Supp. 2d at 1000 (\$100,000
25 collectively awarded to lead plaintiff group as reimbursement); *Robinson*, slip op. at 3 (awarding \$2,500
26 to each of the class representatives), Joint Decl., Ex. 4; *Pacific Biosciences*, slip op. at 7 (awarding
27 plaintiffs \$5,943.36 and \$2,540.00), Joint Decl., Ex. 3; *CardioNet*, slip op. at 8 (awarding lead plaintiff
28 \$4,500 for costs and expenses), Joint Decl., Ex. 7.


1 **V. CONCLUSION**

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

5 DATED: September 23, 2016

Respectfully submitted,

6 ROBBINS GELLER RUDMAN
7 & DOWD LLP
8 JAMES I. JACONETTE
9 JEFFREY D. LIGHT



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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 September 23, 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 below:

COUNSEL FOR PLAINTIFFS

Attorney	Email Address	Party Name
Shawn A. Williams Robbins Geller Rudman & Dowd LLP Post Montgomery Center One Montgomery Street Suite 1800 San Francisco, CA 94104 Telephone: 415/288-4545 415/288-4534 (fax)	shawnw@rgrdlaw.com	Firerock Global Opportunity Fund LP
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Attorney	Email Address	Party Name
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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 September 23, 2016, at San Diego, California.



JACLYN STARK