

THE HONORABLE RICHARD A. JONES
(On Reference to the Honorable S. Kate Vaughn)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

CHRIS HUNICHEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ATONOMI LLC, a Delaware LLC, CENTRI
TECHNOLOGY, INC., a Delaware
Corporation, VAUGHAN EMERY, DAVID
FRAGALE, ROB STRICKLAND, DON
DELOACH, WAYNE WISEHART, WOODY
BENSON, MICHAEL MACKEY, and JAMES
SALTER,

Defendants.

No. 2:19-cv-00615-RAJ-SKV

CLASS REPRESENTATIVES' MOTION
FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION
EXPENSES

NOTING DATE: JUNE 28, 2024

ATONOMI LLC, a Delaware LLC,

Counterclaimant,

v.

CHRIS HUNICHEN,

Counter-Defendant.

ATONOMI LLC, a Delaware LLC,

Third Party Plaintiff,

v.

DAVID PATRICK PETERS, SEAN
GETZWILLER, DAVID CUTLER, CHANCE
KORNUTH, and DENNIS SAMUEL
BLIEDEN,

Counter-Defendants.

I. INTRODUCTION

Class Counsel¹ seek an award of attorneys' fees and reimbursement of out of pocket expenses incurred in the prosecution of this action. Specifically, they seek (a) reimbursement of \$2,211.24 in litigation expenses that were reasonably and necessarily incurred in the continuing effort to prosecuting the action against the defendants who did not settle in 2021, and in subsequently resolving this Action, and (b) an award of attorneys' fees in the amount of 30 percent of the net proceeds of the Settlement, the combined total not to exceed \$156,000.²

This present Settlement against the remaining Defendants in this class action lawsuit provides for an all cash, non-reversionary fund of \$520,000. This is a certain recovery, and in Class Counsel's informed view, after extensive due diligence, represents the maximum possible recovery against the Defendants. Combined with the earlier settlement against a subset of defendants, total recovery exceeds 20% of the U.S. Dollar value of the investments made by the Class at the time of the Atonomi ICO. This recovery was obtained through the skill, experience, and effective advocacy of Class Counsel in the face of considerable risk and opposition. Compensation for Class Counsel's efforts have been wholly contingent upon the result achieved.

Class Counsel's request an award of 33% of the common fund after payment of expenses. This is reasonable and appropriate here for at least three reasons:

First, to compensate Plaintiff's counsel for the quality of their legal work, which required the application of their significant experience litigating securities class actions under both federal and state law to a new and emerging area of law related to cryptocurrency.

¹ This Court appointed undersigned counsel as Class Counsel in its August 8, 2022 Order, Dkt. No. 246.

² Class Counsel's intention to seek up to 30% of the Settlement Fund was disclosed to Settlement Class Members in the Notice. *See* Long Form Notice, at 5 "Class Counsel will ask the Court to approve payment of a maximum of thirty percent of the Settlement Fund (\$156,000) for attorneys' fees and litigation expenses to be paid from the Settlement Fund."; <https://www.atonomisecuritiesclass.com/faq> at *How Will The Lawyers Be Paid?*

1 **A. Class Counsel’s Work Justify A Fee Award.**

2 Class Counsel vigorously pursued this litigation from its outset by conducting, among other
3 things: (i) an extensive investigation into the allegations surrounding Atonomi’s 2018 “Initial Coin
4 Offering” (“ICO”); (ii) a thorough review of public information such as interviews, videos,
5 Telegram chat channels, news articles, and Atonomi marketing materials to draft the complaint;
6 (iii) prevailing on defendants’ motion to dismiss seeking arbitration; (iv) prevailing against
7 defendants’ motion to bifurcate proceedings; (v) through written discovery, investigating and
8 pursuing claims against the Settling Defendants; (vi) engaging in a full day’s mediation followed
9 by weeks of subsequent settlement discussions, both facilitated by the mediator and between
10 counsel; (vii) prevailing on motions to secure preliminary approval of the Partial Settlement over
11 objections by the remaining defendants; (viii) extensive work to prepare the settlement class
12 notice; (ix) certifying a litigation class against the Non-Settling Defendants; (x) briefing summary
13 judgment against the Non-Settling Defendants on behalf of a significant portion of the Settlement
14 Class; (xi) continuing trial preparations after the Court’s rulings on summary judgment; and (xii)
15 careful due diligence on the financial ability of the defendants to pay any eventual judgment after
16 trial. The Settlement is the result counsel’s efforts and experience.

17 **B. The Common Fund Doctrine Applies Here**

18 The Supreme Court has long recognized the “common fund” exception to the general rule
19 that a litigant bears his or her own attorneys’ fees. *Trustees v. Greenough*, 105 U.S. 527 (1882). The
20 rationale for the common fund principle was explained in *Boeing Co. v. Van Gernert*, 444 U.S. 472,
21 478 (1980), as follows:

22 [T]his Court has recognized consistently that a litigant or a lawyer who recovers a
23 common fund for the benefit of persons other than himself or his client is entitled to a
24 reasonable attorney’s fee from the fund as a whole Jurisdiction over the fund involved
25 in the litigation allows a court to prevent . . . inequity by assessing attorney’s fees against
the entire fund, thus spreading fees proportionately among those benefited by the suit.

26 The purpose of this doctrine is to avoid unjust enrichment so that “those who benefit from the
27 creation of the fund should share the wealth with the lawyers whose skill and effort helped create

1 it.” *In re Wash Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). The Supreme
 2 Court has emphasized that private actions provide “‘a most effective weapon in the enforcement’
 3 of the securities laws and are ‘a necessary supplement to [Securities and Exchange] Commission
 4 action.’” *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I Case*
 5 *Co. v. Borak*, 377 U.S. 426,432 (1964)).

6 Federal courts therefore have long recognized that fee awards in successful cases, such this
 7 case, promote private enforcement of, and compliance with, important areas of law, including the
 8 securities laws. Fee awards, such as those requested here, encourage “capable attorneys, who
 9 otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-
 10 consuming cases for which they may never be paid.” *See, e.g., Armes v. Hot Pizzas, LLC*, 2017 U.S.
 11 Dist. LEXIS 89920, at *12-13 (D. Ariz. June 9, 2017).

12 C. The Court Should Award A Percentage Of The Recovery

13 The Supreme Court has consistently calculated attorneys’ fees in common fund cases on a
 14 percentage-of-the-fund basis. *See, e.g., See Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161, 165-67
 15 (1939); *Boeing*, 444 U.S. at 478-79; *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). Since *Blum*, in
 16 which the Supreme Court recognized that under the “common fund doctrine” a reasonable fee
 17 may be based “on a percentage of the fund bestowed on the class,” virtually every Circuit Court
 18 of Appeals has joined the Supreme Court in affirmatively endorsing the percentage of recovery
 19 method as an appropriate method for determining an amount of attorneys’ fees in common fund
 20 cases. In addition, the *Manual for Complex Litigation* also endorses the use of the percentage-of-
 21 the-fund method in awarding attorneys’ fees in common fund cases.³

22 It is well established in the Ninth Circuit that, in a common fund case, the court has
 23 discretion to apply the percentage of the fund method in calculating a fee award. *See Fischel v.*
 24 *Equitable Life Assurance Society of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *In re Wash Pub.*

26 ³ *See* MANUAL COMPLEX LITIG., Percentage-Fee Awards, § 14.121 (4th ed.) (stating that “the vast
 27 majority of courts of appeals now permit or direct district courts to use the percentage-fee method in
 common-fund cases”) (footnotes omitted); *see also* 32 *Moore’s Federal Practice - Civil* 14.1 (2020).

1 *Power Supply*, 19 F.3d 1291, 1295-96 (9th Cir. 1994); *In re Omnivision Technologies Inc.*, 559 F. Supp.
2 2d 1036, 1046 (N.D. Cal. 2008) (“use of the percentage method in common fund cases appears to
3 be dominant.”)

4 Compensating counsel in common fund cases based on a percentage makes good sense.
5 *First*, it is consistent with the private marketplace where contingent fee attorneys are customarily
6 compensated by a percentage of the recovery. *Second*, it more closely aligns the lawyers’ interest
7 in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in
8 the shortest amount of time. *Third*, use of the percentage method decreases the burden imposed
9 on the court by eliminating the detailed and time-consuming lodestar analysis while assuring that
10 the beneficiaries do not experience undue delay in receiving their share of the settlement. *Fourth*,
11 consistently applying the percentage-of-recovery method removes perverse negative incentives for
12 counsel to engage in unnecessary and inefficient work to “goose” lodestar numbers. *See In re*
13 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989).

14 **D. The Requested Fee is Reasonable.**

15 For their efforts in creating a common fund for the benefit of the Settlement Class, Class
16 Counsel seek a reasonable percentage of the fund recovered as attorneys’ fees. Class Counsel
17 request fees representing 30% of the Settlement Fund, after paying the necessary expenses incurred
18 by the settlement administrator and escrow bank, as well as the reasonably necessary expenses
19 Class Counsel incurred in the prosecution of this action. These requests are fair and reasonable
20 under the relevant standards.

21 Courts in this circuit have determined that 30 percent awards are common. *See In re Nexus*
22 *6P Prods. Liability Litig.*, 2019 WL 6622842, at *13 (quoting *In re Activision Sec. Litig.*, 723 F. Supp.
23 at 1377 (“This court’s review of recent reported cases discloses that nearly all common fund
24 awards range around 30% . . .”)); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19 & n.14 (C.D.
25 Cal. June 10, 2005) (noting that “courts in this circuit, as well as other circuits, have awarded
26 attorneys’ fees of 30% or more in complex class actions[,]” and granting fees of one-third of fund).

1 And, the Ninth Circuit has routinely affirmed 33% awards, as this court earlier did in this
2 same matter. *See In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee
3 award); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming a 33.33 percent
4 of the fund fee award).

5 When assessing the reasonableness of the percentage fee award, Ninth Circuit courts
6 typically consider the following factors: (1) the results achieved, (2) the risks of litigation, (3) the
7 skill required and the quality of work, (4) the contingent nature of the fee and the financial burden
8 carried by the plaintiffs, and (5) awards made in similar cases. *See Omnivision*, 559 F. Supp. 2d at
9 1046-48 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002)).

10 Here, as set forth below, Class Counsel achieved an excellent result, against significant
11 risks, by applying their skill and experience to a new and novel area of the law, on a completely
12 contingent basis. All factors support a 30% award.

13 **1. The Settlement Reflects An Outstanding Total Result.**

14 Courts in this Circuit have assigned the greatest weight to the benefit achieved in litigation.
15 *See Jenson v. First Trust Corp.*, No. 05-cv-3124 ABC, 2008 WL 11338161, at *12 (C.D. Cal. June 9,
16 2008) (awarding one-third fee request where counsel achieved “highly-favorable outcome”); *In re*
17 *Heritage Bond Litig.*, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (“significant results
18 achieved” weighed “strongly in favor” of one-third fee award); *In re Nexus 6P Prods. Liability*
19 *Litig.*, 2019 WL 6622842, at *12 (N.D. Cal. Nov. 12, 2019) (noting that the “most critical factor is
20 the results achieved for the class” and awarding 30% fee request); *Bickley v. Schneider Nat’l*
21 *Carriers, Inc.*, 2016 WL 6910261, at *4 (N.D. Cal. Oct. 13, 2016) (awarding one-third for attorneys’
22 fees for “substantial monetary recovery”); *Cathode Ray Tube*, 2016 WL 4126533 at *4 (granting
23 30% fee request where “[o]utstanding results merit a higher fee”); *Vedachalam v. Tata Consultancy*
24 *Services, Ltd.*, No. 06-cv-0963 CW, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) (30% fee
25 request warranted due to “excellent results obtained”).

26 The 2018 U.S. dollar value of the ETH tokens invested in the ICO is just over \$31.5 million,
27 as disclosed by defendants’ discovery responses. Thus, the total amount of the settlements amount

1 to a recovery of 21% of the 2018 value, makes the total recovery absolutely top of class. A recent
 2 analysis by NERA found the median recovery percentage in cases of this size was only 5.2%. *See*
 3 NERA, Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation:*
 4 *2021 Full-Year Review* (2022), at 23.⁴

5 **2. The Substantial Risks of the Litigation Support the Fee Request.**

6 The Ninth Circuit has also confirmed that a determination of a fair and reasonable fee must
 7 include consideration of the contingent nature of the fee and the obstacles surmounted:

8 Contingent fees that may far exceed the market value of the services if rendered on a
 9 non-contingent basis are accepted in the legal profession as a legitimate way of assuring
 10 competent representation for plaintiffs who could not afford to pay on an hourly basis
 11 regardless whether they win or lose.

11 *In re Wash Pub. Power Supply*, 19 F.3d at 1299; *see also Omnivision*, 559 F. Supp. 2d at 1047; *In re*
 12 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M:02-cv-01486-PJH, 2007 WL
 13 2416513, at *1 (N.D. Cal. Aug. 16, 2007).

14 Here, Class Counsel received no compensation until the partial settlement was approved
 15 in March 2023, four years into this litigation. The fee award from the partial settlement resulted in
 16 a negative lodestar multiplier, reflecting the risk of the litigation. Class Counsel nonetheless
 17 continued to pursue the remaining Defendants, although, of course, any further fee award and
 18 expense reimbursement would continue to be at risk and contingent on the result achieved, and on
 19 this Court's discretion in awarding fees and expenses. The continued risk of litigation is reflected
 20 in both this Court's orders on Motions for Summary Judgment, and in the result of the financial
 21 due diligence by Class Counsel that demonstrated that the current settlement is the maximum
 22 possible recovery.

23 **3. The Skill Required and Quality of Work Performed Support the Fee Request.**

24 "All else equal, litigation that is challenging and complex supports a higher fee award."
 25 *Activision*, 124 A.3d at 1072; *see also Omnivision*, 559 F. Supp. 2d at 1047 ("The 'prosecution and
 26

27 ⁴ [PUB 2021 Full-Year Trends 012022.pdf \(nera.com\)](#) (Last accessed December 10, 2022)

1 management of a complex national class action requires unique legal skills and abilities.”); *Ams.*
2 *Mining Corp. v. Theriault*, 51 A.3d 1213, 1256 (Del. 2012) (complexity of the case “supports a
3 substantial award of attorneys’ fees”).

4 Here, Class Counsel are experienced and skilled practitioners in the corporate and
5 securities litigation fields, as well as highly experienced and well regarded in complex litigation. *See*
6 *Curriculum Vitae*s of Class Counsel at Dkt. Nos. 309-1, 310-1, and 311-1. They raised new and
7 unique claims under Washington state law, as this case is the first-ever cryptocurrency litigation
8 under the Washington State Securities Act. Class Counsel’s persistent work is directly responsible
9 for the Partial Settlement result.

10 Class Counsel’s skills and experience first came into play early in this case, when they
11 successfully defeated a motion to compel arbitration filed by the Perkins Coie firm—a motion
12 based on a purported contractual obligation arising from offering documents created by Perkins
13 itself. Class Counsel pleaded the claims of the class in successive, detailed complaints, then
14 opposed Defendants’ motions to dismiss. Class Counsel engaged extensively in discovery,
15 including serving and responding to document requests and interrogatories, and combatted
16 Defendants in numerous discovery disputes. In addition to the extensive investigatory and
17 discovery efforts, the parties exchanged dozens of letters and had dozens of (formal and informal)
18 meet-and-confer exchanges. Class Counsel also successfully certified a litigation class, and filed
19 and defended cross motions for summary judgment.

20 Throughout, Class Counsel brought their significant experience to bear on a new and novel
21 area involving an “initial coin offering” of cryptocurrency. This is the first-ever Washington State
22 Securities Act case applied to the newly developed field of cryptocurrency. The novelty and
23 complexity of the case is reflected in the fact that this Court’s decisions in the matter now reflect
24 almost one third of published and unpublished decisions under the WSSA, and the only ones
25 concerning cryptocurrency offerings.

26 The quality and vigor of opposing counsel are also important in evaluating the caliber of
27 Plaintiff’s counsel’s work. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337

1 (C.D. Cal. 1977) (“plaintiffs’ attorneys in this class action have been up against established and
2 skillful defense lawyers, and should be compensated accordingly”); *Theriacault*, 51 A.3d at 1256
3 (noting Plaintiffs faced off “against major league, first-rate legal talent”). Defendants are each
4 represented by counsel who vigorously represented their clients.

5 **4. The Contingent Nature of the Fee Supports the Fee Request.**

6 Class Counsel undertook this litigation on a contingent fee basis, assuming a significant risk
7 that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for
8 Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Class
9 Counsel were not compensated for any time or expense for nearly five years, from commencing an
10 investigation into this case in 2018 until the partial settlement was finalized in 2023. That
11 settlement and fee, as the Court recognized, resulted in a negative lodestar multiplier, yet Class
12 Counsel continued to pursue the remaining defendants. And indeed, the risk was not diminished;
13 with continued out-of-pocket costs for class notice, the fee requested here, combined with the
14 Court’s award from the partial settlement, still returns a negative lodestar multiplier.

15 Courts have consistently recognized that the risk of receiving little or no recovery is a major
16 factor in considering an award of attorneys’ fees. For example, in awarding counsel’s attorneys’
17 fees in *Nat’l Fed’n of the Blind v. Target Corp.*, 2009 U.S. Dist. LEXIS 67139, at *21 (N.D. Cal.
18 Aug. 3, 2009), the court noted that counsel should be compensated for the risk taken:

19 Risk of non-payment is also an issue to be considered. A contingent fee must be
20 higher than a fee for the same legal services paid as they are performed. The
21 contingent fee compensates the lawyer not only for the legal services he renders but
22 for the loan of those services. The purpose of a fee enhancement, or so-called
23 multiplier, for contingent risk is to bring the financial incentives for attorneys
enforcing important constitutional rights into line with incentives they have to
undertake claims for which they are paid on a fee-for-services basis.

24 *Id.* (cleaned up).

25 The risk of no recovery in complex cases of this type is very real. A study of federal
26 securities class actions filed between 1997 and 2018 found that 43% of the cases filed were dismissed
27 in defendants’ favor. *See Securities Class Action Case Filings, 2019 Year in Review* at 16 (Cornerstone

1 Research 2020). Further, in 2019, about one-third of securities cases reached a settlement, but
2 dismissals outnumbered settlements over two to one. Janeen McIntosh and Svetlana Starykh,
3 *Recent Trends in Securities Class Action Litigation: 2019 Year-End Review* at 9 Figure 6 (NERA Feb.
4 2020). While these statistics are based on federal securities litigation under the PSLRA, typically
5 involving securities traded on the public markets, there were no state law precedents applying the
6 WSSA to cryptocurrency. This increased the risk to Class Counsel, who were paving new ground
7 in litigating this action.

8 There are numerous cases where plaintiffs' counsel in contingent cases such as this, after
9 the expenditure of thousands of hours, have received no compensation. Class Counsel are aware
10 of many hard-fought lawsuits where excellent professional efforts of the plaintiffs' counsel
11 produced no fee. Even plaintiffs who get past summary judgment and succeed at trial may find a
12 judgment in their favor overturned on appeal or on a post-trial motion.

13 Because the fee in this matter was entirely contingent, the only certainties were that there
14 would be no fee without a successful result and that such a result would be realized only after
15 considerable and difficult effort. Class Counsel committed enormous resources of both time and
16 money to the vigorous and successful prosecution of this litigation for the benefit of the Class. The
17 contingent nature of counsel's representation strongly favors approval of the requested fee.

18 **5. A 30% Fee Award Is Consistent or Below the Market Rate in Similar Complex,**
19 **Contingent Litigation.**

20 Courts often look to fees awarded in comparable cases to determine if the fee requested is
21 reasonable. *See Vizcaino*, 290 F.3d at 1050 n.4. A one-third fee has been repeatedly awarded by the
22 courts in this Circuit and District and in numerous other courts throughout the country. *See, e.g.,*
23 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (affirming award of one-third of the total recovery);
24 *In re Pac. Enterprises Sec. Litig.*, 47 F.3d at 379 (affirming 33% fee award); *Bickley*, 2016 WL 6910261,
25 at *4 (N.D. Cal. Oct. 13, 2016) (approving one-third fee award); *Jenson*, 2008 WL 11338161, at *11
26 (approving 33% fee award). Class Counsel's present fee request is therefore consistent with fee
27 award percentages routinely granted in this Circuit.

1 Moreover, if this were a non-representative litigation, the customary fee management
2 would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery. *See Scott*
3 *v. ZST Dig. Networks, Inc.*, No. CV 11-3531 GAF (JCx), 2013 U.S. Dist. LEXIS 197940, at *28
4 (C.D. Cal. Aug. 5, 2013) (“[i]n private contingent litigation, fee contracts have traditionally ranged
5 between 30 percent and 40 percent of the total recovery.”) (*quoting In re M.D.C. Holdings Sec.*
6 *Litig.*, Master File No. CV 89-0090 E (M), 1990 U.S. Dist. LEXIS 15488, at *22 (S.D. Cal. Aug.
7 30, 1990)).

8 **E. A Lodestar Crosscheck Confirms the Reasonableness of the Fees Sought.**

9 In cases where attorneys’ fees are sought based on a percent of the common fund, courts
10 in this Circuit frequently employ a lodestar crosscheck to assess the reasonableness of the fees
11 sought. *See, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains
12 the percentage method, the lodestar may provide a useful perspective on the reasonableness of a
13 given percentage award.”). In the Ninth Circuit, “multiples ranging from one to four are
14 frequently awarded in common fund cases when the lodestar method is applied.” *Id.* at 1050, n.6
15 (28% fee award represented a multiplier of 3.65); *see also Buccellato v. AT&T Operations, Inc.*, 2011
16 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (awarded 4.3 lodestar multiplier as part of a 25% fee
17 award); *In re Brocade Sec. Litig.*, No. 3:05-cv-02042-CRB, slip op. at 13 (N.D. Cal. Jan. 26, 2009)
18 (awarding 25% of \$160 million common fund, representing a 3.5 multiplier).

19 As set forth in the attached declarations, Plaintiff’s counsel has expended a total of 3,817.1
20 hours since 2018 for investigation, litigation, and negotiation of the two settlements. Class
21 Counsel’s lodestar, derived by multiplying the hours spent on the litigation by each attorney and
22 professional by their current hourly rates, has increased since the previous partial settlement to
23 \$2,682,474.20. Ard Decl., ¶¶ 5-6; Ni Decl., ¶¶ 4-5; Restis Decl., ¶¶ 3-4. Accordingly, the
24 requested fee of 30% of this cash recovery, net of expenses, *even when combined with the prior fee*
25 *award*, equates to approximately \$2.06 million, and therefore *still* represents a negative multiplier
26 of approximately .77—*i.e.*, it would not fully compensate counsel for their hourly rates, including
27 the amount of the earlier fee award. This is well below the multiplier range of one to three

1 frequently used as a crosscheck. Given the extraordinary results achieved in an untested and risky
 2 securities class action, Class Counsel’s 3,817.1 hours and multiplier less than one, support the
 3 reasonableness of the fee request.⁵

4 Class Counsel’s rates are between \$150 to \$425 for associates, \$595 to \$850 per hour for
 5 partners, and \$195 per hour for paralegal work. Ard Decl., ¶ 6; Ni Decl., ¶ 6; Restis Decl., ¶ 4.
 6 These are “reasonable hourly rate[s] for the region and for the experience of the lawyer[.]” *In re*
 7 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 932, 941 (9th Cir. 2011); *see also In re Volkswagen*
 8 *“Clean Diesel” Mktg., Sales Practices, and Prod. Liab. Litig.*, No. 3:15-md-02672-CRB, 2017 WL
 9 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (Iodestar cross-check supported the reasonableness of the
 10 requested fee award where “[t]he blended average hourly billing rate is \$529 per hour for all work
 11 performed and projected, with billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790
 12 for associates, and \$80 to \$490 for paralegals[.]”); *Roberti v. OSI Systems, Inc.*, 2015 WL 8329916,
 13 at *7 (C.D. Cal. Dec. 8, 2015) (“Lead Counsel’s attorney rates—between \$525 to \$975—are
 14 reasonable given that each has at least 15 years of litigation experience”).

15 **F. Plaintiff’s Counsels’ Reasonable Litigation Expenses Should Be Reimbursed.**

16 Since December 2022, Plaintiff’s Counsel incurred an additional and very modest
 17 \$2,211.24 in necessary litigation expenses, maintaining the extensive discovery record on hosting
 18 software for access for drafting Motions for Summary Judgment and during trial preparation. Ni
 19 Decl. ¶ 7. These very small and necessary litigation expense, required for the continued prosecution
 20 of the action, should be reimbursed. Again, as noted above, the total request for fees *and* expenses
 21 totals 30% of the settlement, a total which has previously been disclosed to the Class.

22 **G. Plaintiff’s Counsels’ Out-of-Pocket Payment Of Administration Expenses Should Be**
 23 **Reimbursed.**

24 The Settlement provides for up to \$50,000 to be paid for class notice and administration
 25 costs actually incurred. To date, Class Counsel have paid JND \$28,192.48 in administration
 26

27 ⁵ These Iodestar amounts do *not* include the time Class Counsel spent preparing this motion for fees.

1 expenses, primarily for the mandated notice to the class required by this Court’s certification of
2 the Class. Ard Decl. ¶ 7; Ni Decl. ¶ 8; Restis Decl. ¶ 6. A portion of that already-incurred expense
3 also accounts for beginning the process of giving notice of this Settlement. *Id.* JND is confident
4 that it will complete the notice and administration process for the amount specified in the
5 Settlement. Therefore, pursuant to the Settlement terms, the Court’s final approval of the
6 Settlement and administration costs should entail reimbursing already-incurred notice and
7 administration costs, and allocating the balance of the designated \$50,000 for JND to complete
8 administration of the Settlement and payment of the net settlement fund.

9 **III. CONCLUSION.**

10 The Court should approve the fee application and order an award of litigation expenses and
11 attorneys’ fees in the amount of 30 percent of the net proceeds of the Settlement, namely,
12 \$156,000, as well as reimbursement of already-incurred class notice and administration expenses,
13 as provided for by the Settlement.

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March 6, 2024.

ARD LAW GROUP PLLC

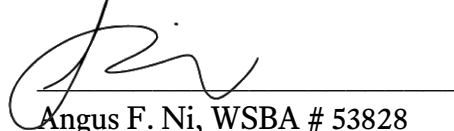
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