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15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 16 **SAN FRANCISCO DIVISION**

17 JULIA JUNGE and RICHARD JUNGE, on
 behalf of themselves and a class of similarly
 18 situated investors,

19 Plaintiffs,

20 v.

21 GERON CORPORATION and JOHN A.
 SCARLETT,

22 Defendants.

Case No. 3:20-cv-00547-WHA (DMR)

Class Action

(Consolidated with Case No. 3:20-cv-01163-WHA)

(Related to Case No. 3:20-cv-02823-WHA; 3:22-mc-80051-WHA)

NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES AND AWARDS TO LEAD PLAINTIFFS FOR LOST WAGES UNDER 15 U.S.C. § 78u-4(a)(4); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Hon. William H. Alsup
 Courtroom: 12, 19th Floor
 Date: March 30, 2023
 Time: 11:00 a.m.

NOTICE OF MOTION AND MOTION**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and the Court's October 13, 2022 Minute Entry for Proceedings (ECF No. 253) (the "Preliminary Approval Order"), Lead and Class Counsel Kaplan Fox & Kilsheimer LLP ("Lead Counsel" or "Kaplan Fox") will and hereby does move the Court, before the Honorable William Alsup, on March 30, 2023, at 11:00 a.m. in Courtroom 12 of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or at such other location and time as set by the Court, for an Order awarding attorneys' fees of 18% of the \$24 million Settlement Fund¹ and reimbursement of Litigation Expenses of \$1,086,353.27 incurred in the above-captioned certified securities class action (the "Action"), as well as granting an Award of \$10,000 to Lead Plaintiff Julia Junge and \$1,544.88 to Richard Junge (the "Lead Plaintiffs"), representing requests for reimbursement of lost wages under the Private Securities Litigation Reform Act of 1995's ("PSLRA") provision authorizing application for costs directly relating to the representation of the class in a particular action. *See* 15 U.S.C. § 78u-4(a)(4).

This motion is based on the September 2, 2022 Stipulation and Agreement of Settlement (ECF No. 247) and its exhibits (the "Stipulation" or "Settlement"), the Memorandum of Points and Authorities, the accompanying Declaration of Jeffrey P. Campisi in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Awards to Lead Plaintiffs for Lost Wages under 15 U.S.C. §78u-4(a)(4) ("Campisi Declaration" or "Campisi Decl.") and its exhibits, the filings in connection with the Preliminary Approval Motion (ECF No. 248), the Preliminary Approval Order (ECF No. 253), the Order Setting Schedule in Advance of March 30, 2023 Fairness Hearing (ECF No. 259), and all other prior pleadings and papers on

¹ All capitalized terms used herein have the same meaning as in the Stipulation, unless otherwise defined herein. All emphasis is added, and footnotes and quotations omitted, unless otherwise stated herein.

1 file in the Action, arguments of counsel, the proposed order in support thereof, and such additional
2 information or argument as may be required or permitted by the Court.

3 **STATEMENT OF ISSUES TO BE DECIDED**

4 1. Whether the Court should approve Lead Counsel’s application for an award of
5 attorneys’ fees of 18% of the \$24 million Settlement Fund.

6 2. Whether the Court should approve Lead Counsel’s application for reimbursement
7 of Litigation Expenses in the amount of \$1,086,353.27.

8 3. Whether the Court should approve the requested Awards of \$10,000 to Lead
9 Plaintiff Julia Junge and \$1,544.88 to Richard Junge for reimbursement of lost wages under the
10 PSLRA.

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MEMORANDUM OF POINTS AND AUTHORITIES

Lead Counsel for Lead Plaintiffs and the certified Class respectfully submits this memorandum of law in support of its application for (a) an award of attorneys' fees in the amount of 18% of the Settlement Fund; (b) reimbursement of Litigation Expenses in the amount of \$1,086,353.27; and (c) approval of an award of \$10,000 to Lead Plaintiff Julia Junge and \$1,544.88 to Richard Junge for reimbursement of lost wages under the PSLRA.

The Settlement Fund of \$24 million is comprised of \$17 million in cash plus interest² and \$7 million in Settlement Stock (Geron common stock) to be issued within 3 business days after the entry of judgment, and then sold by the Escrow Agent subject to the conditions set forth in the Stipulation. ECF No. 247, ¶9. Lead Counsel seeks an award of 18% of the \$17 million cash consideration, or \$3,060,000 plus interest, and 18% of the cash proceeds from the sale of the Settlement Stock.³ Geron has the option to pay some or all of the \$7 Settlement Stock in cash. *Id.* If Geron pays cash rather than issuing stock, Lead Counsel also seeks an award of 18% of that amount. Geron has not informed Lead Counsel whether it intends to exercise its option, and in the event it does, Lead Counsel would update the Court in its reply brief, or at the March 30, 2023 Settlement Fairness Hearing. The requested 18% fee award was negotiated with Lead Plaintiffs at the commencement of this litigation and is not only substantially below the 25% benchmark in the Ninth Circuit but as discussed hereafter, if approved by the Court, will result in a fee substantially below Lead Counsel's lodestar. The requested reimbursement of \$1,086,353.27 of expenses consist principally of necessary expert and consultant fees and are also reasonable.

PRELIMINARY STATEMENT

Lead Counsel vigorously litigated this securities class action for nearly three years on a fully contingent basis, without compensation and obtained an excellent result for the Class. Lead

² On or around November 17, 2022, Defendants caused \$17 million to be transferred to the Settlement Fund. Campisi Decl. ¶212, n.12. The funds were invested in U.S. Treasury bills and, as of January 31, 2023, the Settlement Fund has accrued approximately \$99,208.44 in interest. *Id.*

³ At the October 13, 2022 hearing concerning Lead Plaintiffs' Motion for Preliminary Approval, the Court indicated that it would provide for Lead Plaintiffs' attorneys' award fee to be funded from the proceeds of the sale of the Settlement Stock so that Lead Counsel would bear the risk of a decline in the value of the Settlement Stock at the time of sale. *See* ECF No. 257 (October 13, 2022 Tr.) at 12. Lead Counsel has no opposition to the Court's provision.

1 Counsel, as this Court noted at the Preliminary Approval Hearing, “did a lot of work,” and have
2 “done more work than the average lawyer does” in a securities case. ECF No. 257 (October 13,
3 2022 Tr.), at 13:20-22. The Court expressed that it did not have “any problem with” the Lead
4 Counsel having performed a substantial amount of work in the Action. *Id.* at 13:23.

5 Lead Counsel researched and drafted a comprehensive complaint and fought a hotly
6 contested motion to dismiss. After extensive briefing and oral argument, the Court sustained, in
7 part, claims alleged under Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the
8 “Exchange Act”) against Defendants Geron Corporation (“Geron”) and John A. Scarlett
9 (“Scarlett”) (collectively, “Defendants”). Campisi Decl. ¶¶25-38. Furthermore, Lead Counsel was
10 successful in securing certification of the Class over Defendants’ substantial challenges, which
11 effort included discovery, depositions and reports from experts concerning class certification
12 issues, and opposing Defendants’ arguments concerning loss causation and damages. *Id.* ¶¶141-
13 49. Lead Counsel completed extensive discovery, including taking 10 depositions of fact or expert
14 witnesses (including a deposition of each of the five members of Geron’s Executive Management
15 Committee, including Defendant Scarlett). *Id.* Section F and ¶81. Lead Counsel reviewed and
16 analyzed over 426,000 records (which included voluminous records produced in native format, *e.g.*,
17 PowerPoint and Microsoft Excel files that are multiple pages), and litigated numerous discovery
18 disputes, including successful motions to compel against Defendants and non-party Janssen
19 Biotech, Inc. (“Janssen”) to require the production of certain documents. *Id.* at Section F and ¶¶57-
20 58, 89-94, 106-34, 335. In addition, Lead Counsel prepared for and participated in two hard fought
21 settlement conferences before the Honorable Magistrate Judge Donna M. Ryu (“Ryu”). *Id.* ¶¶161-
22 71. At the time the proposed Settlement was executed, Lead Counsel was preparing several merits
23 expert reports and for trial. *Id.* ¶160.

24 It was due to Lead Counsel’s sustained litigation effort that the proposed \$24 million
25 Settlement was achieved for the benefit of Lead Plaintiffs and the Class. The \$24 million recovery
26 represents an excellent result for the Class as it will provide meaningful and prompt monetary
27 compensation to Class members while avoiding the significant risks and delay of continued
28 litigation, including the risk that there may be no recovery at all. Having achieved a significant

1 monetary recovery after nearly three years of litigating the Action on a contingent basis without
2 payment, Lead Counsel seeks attorneys' fees in the amount of 18% of the Settlement Fund, as well
3 as reimbursement for Litigation Expenses that it incurred in prosecuting the Action on behalf of
4 Lead Plaintiffs and the Class.⁴

5 The Ninth Circuit has long recognized that, in class actions resulting in a common fund like
6 this one, a percentage award is appropriate and an award of 25% of the settlement fund is the
7 "benchmark" or reasonable starting point in considering an award. Lead Counsel requests a fee of
8 18% of the Settlement Fund, which is substantially less than the benchmark, which strongly
9 supports approval. The fee percentage requested is based on the agreement between Lead Plaintiffs
10 and Lead Counsel under the Court's order that the Lead Plaintiffs engage in a bidding and due
11 diligence process to select Lead Counsel. ECF No. 85.

12 As detailed herein, Lead Counsel prosecuted the Action on a contingency-fee basis, facing
13 numerous challenges to proving liability and damages that posed serious risks that counsel would
14 receive no compensation for its efforts. Notably, there were multiple significant risks inherent in
15 the Action from the outset, which were enhanced by the elevated pleading standard required under
16 the PSLRA. Campisi Decl. ¶¶30-38, 245. Indeed, these substantial risks were manifested when the
17 Court dismissed certain factual claims supporting the counts in the Amended Complaint. *Junge v.*
18 *Geron Corporation*, No. C 20-000547 WHA, 2021 WL 1375960, at *8 (N.D. Cal. Apr. 12, 2021)
19 (granting dismissal as to claims based on statements about median OS, SVR and Scarlett's
20 derisking statement, and as to risk statements from March 2018 about SVR and median OS). Even
21 after Lead Plaintiffs succeeded in certifying the Class, there remained meaningful risks that
22 Defendants might prevail at summary judgment or trial if Lead Plaintiffs and Lead Counsel were
23 unable to prove all of the elements of the claims, including falsity, materiality, scienter, loss
24 causation, and damages. Through their diligence and efforts, Lead Counsel and Lead Plaintiffs were
25 able to overcome these hurdles and secure a meaningful recovery for the Class.

26
27 ⁴ The 18% fee award plus the requested reimbursement of expenses amount to approximately 22%
28 of the Settlement.

1 During the period July 27, 2020 (the date the Court appointed Kaplan Fox Lead Counsel)
2 through January 27, 2023, Lead Counsel has a total of 6,737.20 hours working on the Action, and
3 has a lodestar of \$4,951,210. Campisi Decl. Ex. R. For the time period before July 27, 2020,
4 attorneys and professionals dedicated over 500 hours working on this matter representing \$363,328
5 of attorney and professional time that has been excluded from Lead Counsel’s lodestar. Further,
6 for the period July 27, 2020 through January 27, 2023, Lead Counsel has not included in its lodestar
7 time expended on weekly team meetings, time for lawyers who served as second chair during
8 depositions, and time preparing the Fee Motion. Campisi Decl. Exs. R, S and ¶262. In class actions
9 like this one, which are prosecuted on a contingent-fee basis, courts often cross-check their
10 percentage fee awards with an examination of the attorneys’ lodestar. *See Police Ret. Sys. of St.*
11 *Louis v. Granite Constr. Inc.*, No. C 19-04744 WHA, 2022 WL 816473, at *9 (N.D. Cal. Mar. 17,
12 2022). The lodestar multiplies “the number of hours reasonably expended on the litigation (as
13 supported by adequate documentation) by the reasonable hourly rate for the region and experience
14 of the lawyer.” *Id.*

15 After determining the lodestar amount, the Court may award fees representing a
16 “multiplier” of counsel’s lodestar to compensate counsel for taking the risks of non-recovery and
17 other factors. Here, Lead Counsel’s requested fee of 18% of the Settlement Fund (or approximately
18 \$4,320,000 plus interest) is a “negative” lodestar multiplier of .87. *Id.* This means that, if awarded,
19 the requested 18% fee will result in a 13% discount on Lead Counsel’s total lodestar, a fact that
20 further supports the reasonableness of the requested fee.

21 Further, Lead Counsel seeks reimbursement of Litigation Expenses incurred in prosecuting
22 and resolving the Action, which totaled at least \$1,086,353.27, during nearly three years of
23 litigation. Campisi Decl., Ex. II(C) and ¶318. As discussed below, these expenses were reasonable
24 and necessary for the prosecution and resolution of the Action and are of the type that are routinely
25 charged to clients in non-contingent litigation.

26 As set forth in connection with the Preliminary Approval Motion (ECF No. 248) and
27 discussed with the Court during the October 13, 2022 hearing, the Settlement was negotiated only
28 after the Class was certified, there is no settlement class that varies from the certified Class, the

1 Settlement is non-reversionary, there are no “clear sailing” provisions on attorneys’ fees, the
 2 settlement releases are narrowly tailored, and the Settlement was the result of two arm’s length and
 3 aggressively negotiated settlement conferences before the Honorable Judge Ryu.

4 For the reasons set forth herein, Lead Counsel respectfully requests that the Court award
 5 Lead Counsel 18% of the Settlement Fund as an award of attorneys’ fees, reimburse Lead Counsel
 6 \$1,086,353.27 for its litigation expenses, and grant awards to the Lead Plaintiffs for their lost wages
 7 incurred as a direct result of their representation of the Class.

8 ARGUMENT

9 **I. Lead Counsel’s Request for Attorneys’ Fees of 18% of the Settlement Fund Is** 10 **Substantially Less Than the Ninth Circuit 25% “Benchmark Percentage”**

11 The Ninth Circuit has established that, in common-fund cases such as this one, the
 12 “benchmark” percentage attorney fee award is 25% of the settlement fund. *See, e.g., In re Online*
 13 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“in this circuit, the benchmark
 14 percentage is 25%”); *Luna v. Marvell Tech. Grp.*, Case No. 3:15-cv-05447-WHA, 2018 WL
 15 1900150, at *3 (N.D. Cal. Apr. 20, 2018) (citing 25% benchmark) (Alsup, J.); *In re LendingClub*
 16 *Sec. Litig.*, No. C 16-02627 WHA, 2018 WL 4586669, at *1 (N.D. Cal. Sept. 24, 2018) (same)
 17 (Alsup, J.). The attorneys’ fee request for 18% of the Settlement Fund is **28% below the**
 18 **benchmark**. The 18% fee requested was negotiated between Lead Counsel and Lead Plaintiffs in
 19 2020 under the Court-ordered selection of counsel process. ECF No. 85. Through Lead Plaintiffs
 20 negotiation to reduce the fee to 18%, they saved the Class \$1.68 million (25% of the Settlement
 21 Fund would be a fee of \$6,000,000). Moreover, the fact that the 18% fee would be substantially
 22 less than the total lodestar value of Lead Counsel’s time in this extensively litigated case eliminates
 23 any concern about collusion, and the Court and the Class can be assured that an award of 18%
 24 would not results in “windfall profits” to Lead Counsel. *In re Bluetooth Headset Products Liab.*
 25 *Litig.*, 654 F.3d 935, 942-43 (9th Cir. 2011) (providing for adjustments to attorneys’ fee percentage
 26 that would result in windfall).⁵

27 ⁵ The “so-called *Bluetooth* factors” courts use to scrutinize fee requests for collusion are not present
 28 here. *See Symantec Corp.*, 2022 WL 409702, at *8-*9 (citations omitted). As in *Symantec*, 2022

1 The 18% fee requested here is also within, or well below, the range of percentage fees
 2 typically awarded in securities class actions and other complex class actions in the Ninth Circuit.
 3 *See, e.g., Luna*, 2018 WL 1900150, at *3-*4 (awarding 18.8% of \$72.5 million settlement,
 4 representing a 2.0 multiplier); *In re Brocade Sec. Litig.*, No.: 3:05-CV-02042-CRB, slip op. at 13
 5 (N.D. Cal. Jan. 26, 2009), ECF No. 496-1 (awarding 25% of \$160 million settlement, representing
 6 a 3.5 multiplier) (Campisi Decl. Ex.V).

7 Similarly, a statistical review of securities class action settlements from 2013 to 2022 found
 8 that the median fee award (excluding expenses) in settlements ranging from \$10 to \$25 million is
 9 28%. NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2022*
 10 *Full-Year Review*, at 21 (2023) (the “NERA 2023 Report”). Campisi Decl. Ex. O. Thus, the 18%
 11 fee requested here is well below the median percentage fees awarded in comparable cases.

12 **II. Additional Factors Considered By Courts Support Approval of the Requested Fee**

13 The reasonableness of Lead Counsel’s 18% fee request is further confirmed by additional
 14 factors considered by courts in this District and courts in this Circuit, including (1) the results
 15 achieved, (2) the risks of litigation, (3) the skill required and the quality of work, (4) the contingent
 16 nature of the fee and the financial burden carried by the plaintiffs, (5) awards made in similar cases,
 17 (6) the class’s reaction, and (7) a lodestar cross-check. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
 18 1043, 1048-50 (9th Cir. 2002); *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1046-
 19 48 (N.D. Cal. 2008); *Granite*, 2022 WL 816473, at *6-*11.

20 **A. The Quality of the Result Achieved Supports the Fee Request**

21 Courts consider the results achieved in assessing a fee award request. *See Vizcaino*,
 22 290 F.3d at 1048 (“results are a relevant” factor in awarding attorneys’ fees). The \$24 million
 23 Settlement is an excellent result for the Class, especially when considering the risk of a significantly

24 _____
 25 WL 409702, at *8-*9, the Settlement does not provide for attorneys’ fees, the Settlement is not
 26 conditioned on an award of fees, and there is no reversion to Defendants, as noted elsewhere herein.
 27 ECF No. 247 at paragraphs 16-18. The Court also reviewed these factors in granting preliminary
 28 approval of the Settlement during the October 13, 2022 hearing. *See* ECF No. 257 (10/13/22 Tr.)
 at 22:2-19 (discussion between Lead Counsel and the Court confirming that Lead Plaintiffs’ support
 of the Settlement is not contingent on “these awards” —discussing the awards to the Lead Plaintiffs
 and that there is no reversion to the Defendants of the Settlement Fund).

1 lower recovery—or no recovery at all—if the case proceeded through a decision on summary
2 judgment, trial, and the inevitable appeals.

3 The \$24 million Settlement compares favorably to other securities fraud settlements. The
4 Settlement is more than three times the size of the median securities class action settlement during
5 the period 2012 and 2021 both in the Ninth Circuit (\$6.9 million) and nationwide (\$7.9 million).
6 See Cornerstone Research, Securities Class Action Settlements: 2021 Review and Analysis, at 7,
7 19 (March 2022) (the “Cornerstone Report”). See Campisi Decl. Ex. N, at 7 and 19. According to
8 the 2023 NERA Report, the Settlement is nearly twice the median securities class action settlement
9 value of \$13 million in 2022. Campisi Decl. Ex. O (NERA 2023 Report). These reports are
10 considered by courts when evaluating the fairness, reasonableness and adequacy of class action
11 settlements. See *Granite*, 2022 WL 816473, at *3.

12 In addition, the \$24 million Settlement represents a recovery of approximately 8.8% to
13 18.4% of the Class’s estimated recoverable damages, depending on certain variables and
14 assumptions. Campisi Decl. ¶230. Importantly, this estimate of maximum damages assumes Lead
15 Plaintiffs would prevail on issues of falsity, materiality, scienter, and loss causation at summary
16 judgment and trial, which was far from certain. Indeed, Defendants advanced serious arguments
17 regarding all elements of liability, loss causation and damages that, if accepted, would have
18 substantially lowered the maximum damages or eliminated them entirely. *Id.*

19 Given the significant risks of establishing liability and loss causation here, Lead Counsel
20 believes this level of recovery represents an excellent result for the Class. See, e.g., *Omnivision*,
21 559 F. Supp. 2d at 1042 (finding settlement representing 9% of the maximum potential recovery,
22 and in excess of 6% after fees and costs, was fair and reasonable and “higher than the median
23 percentage of investor losses recovered in recent shareholder class action settlements”); *Symantec*,
24 2022 WL 409702, at *6 (approving settlement where recovery was approximately 6.9% of the
25 “absolute maximum possible damages for all claims”).

26 According to the Cornerstone Report, the recovery of potential damages for Geron investors
27 exceeds the average 4.8% recovery of damages in cases alleging only fraud claims under the
28

1 Exchange Act during the period 2012 through 2021. Campisi Decl. at Ex. N (Cornerstone Report),
2 at 7. Accordingly, the quality of the result achieved supports the fee requested.

3 **III. The Substantial Risks of the Litigation Support the Fee Request**

4 “The risks assumed by Class Counsel, particularly the risk of non-payment or
5 reimbursement of expenses, is a factor in determining counsel’s proper fee award.” *In re Heritage*
6 *Bond Litig.*, No. 02-ML-1475-DT, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005). *See also*
7 *In re Washington Pub. Power Supply Sys. Sec. Litig.* (“WPPSS”), 19 F.3d 1291, 1299-1301 (9th
8 Cir. 1994); *SEB Inv. Mgmt. AB v. Symantec Corp.*, No. C 18-02902 WHA, 2022 WL 409702, at *6
9 (N.D. Cal. Feb. 10, 2022) (Alsup, J.) (noting in PSLRA action that “the great complexity and
10 expense that would result from further litigation of this securities class action . . . strongly supports
11 approval of the settlement.”); *Luna*, 2018 WL 1900150, at *3 (noting that continued prosecution of
12 claims in securities class action “through trial and subsequent appeals would involve risk, expense,
13 and delay to any potential recovery” and that the parties reached settlement after substantial motion
14 practice and discovery); *Omnivision*, 559 F. Supp. 2d at 1047-48. Lead Counsel faced significant
15 risks in bringing the Action from the outset. As an initial matter, the application of the PSLRA to
16 this litigation presented significant risks. Since Congress passed the PSLRA in 1995, courts in this
17 Circuit and across the country have increasingly dismissed cases at the pleading stage in response
18 to defendants’ arguments that the complaints do not meet the PSLRA’s heightened pleading
19 standards.

20 As discussed in greater detail in the Campisi Declaration and the Motion for Final Approval
21 filed contemporaneously herewith, there were many substantial challenges to succeeding in this
22 litigation. *See* Campisi Decl. ¶¶30-33, 35-38, 143, 146, 230, 232-40, 249, and Final Approval Brief,
23 at Section I(C). These substantial risks faced in prosecuting the securities fraud claims at issue,
24 which Lead Counsel did on a purely contingency fee basis without any payment for nearly three
25 years, further support the requested fee.

1 **A. The Skill Required and the Quality of the Work Performed Support the Fee Request**

2 Courts have recognized that the “prosecution and management of a complex national class
3 action requires unique legal skills and abilities.” *Destefano v. Zynga, Inc.*, Case No. 12-cv-04007-
4 JSC, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016); *see also Vizcaino*, 290 F.3d at 1048.
5 “This is particularly true in securities cases because the Private Securities Litigation Reform Act
6 makes it much more difficult for securities plaintiffs to get past a motion to dismiss.” *Zynga*, 2016
7 WL 537946, at *17 (*quoting Omnivision*, 559 F. Supp. 2d at 1047). In considering this factor,
8 courts also consider the quality and vigor of opposing counsel. *See, e.g., In re Heritage Bond Litig.*,
9 No. 02-ML-1475-DT, 2005 WL 1594403, at *20 (C.D. Cal. June 10, 2005) (“the quality of
10 opposing counsel is important in evaluating the quality of Plaintiff’s counsel’s work”).

11 Here, Lead Counsel is among the most experienced and skilled practitioners in the securities
12 litigation field, and the firm has a long and successful track record in securities cases throughout
13 the country, including within this District. Campisi Decl. Ex. P (Kaplan Fox firm resume). Lead
14 Counsel’s skill and experience in complex securities cases facilitated Lead Plaintiffs’ ability to
15 negotiate the Settlement, ultimately resulting in the \$24 million recovery. Lead Counsel achieved
16 this substantial recovery for the benefit of Lead Plaintiffs and the Class, notwithstanding that they
17 were opposed in this Action by multiple highly skilled and well-respected lawyers from Cooley
18 LLP, who likewise vigorously advocated for their clients. Campisi Decl. ¶¶222-31, 260.

19 Lead Counsel’s efforts during nearly three years of litigation included (i) an extensive
20 investigation of the claims at issue, which involved the filing of two detailed consolidated and/or
21 amended complaints; (ii) vigorous litigation of Defendants’ second motion to dismiss, which was
22 granted in part, and denied in part, by the Court after extensive oral argument; (iii) successfully
23 obtaining certification of the Class following contested motion practice and oral argument;
24 (iv) conducting substantial fact and expert discovery, which included reviewing more than 426,000
25 records from Defendants and multiple third parties; (v) taking a total of 10 depositions, many of
26 which exhausted or exceed the 7 hours limit provided by Rule 30(d) of the Federal Rules of Civil
27 Procedure; (vi) the preparation of three expert merits reports concerning loss causation and
28

1 damages, U.S. Food and Drug Administration (“FDA”) policies and procedures, and healthcare
 2 economics (vii) moving in the United States District Court for the Eastern District of Pennsylvania
 3 to compel the production of documents from non-party Janssen and protracted briefing and hearings
 4 before this Court in order to obtain additional records from Janssen, including documents withheld
 5 based on purported privileges; (viii) pursuing documents over the claim of privilege from
 6 Defendants; (ix) trial preparations such as developing jury instructions, disclosing issues on which
 7 experts would present testimony or reports, and developing proposed stipulations to the authenticity
 8 and/or admissibility of documents; and (xi) extended, arms-length settlement negotiations,
 9 including two settlement conferences with Magistrate Judge Ryu. Campisi Decl. Section I.

10 In sum, it was Lead Counsel’s extensive effort and skill in prosecuting the Action led to the
 11 favorable \$24 million Settlement with Defendants.

12 **B. The Contingent Nature of the Fee Supports the Fee Request**

13 Lead Counsel litigated the Action for nearly three years on a contingent basis under the risk
 14 that it could receive no compensation for its efforts and expenses. This fact strongly supports the
 15 requested fee of 18% of the Settlement Fund. *See WPPSS*, 19 F.3d at 1299 (“It is an established
 16 practice in the private legal market to reward attorneys for taking the risk of non-payment by paying
 17 them a premium over their normal hourly rates for winning contingency cases.”). The Supreme
 18 Court has emphasized that private securities actions, like this one, “provide ‘a most effective
 19 weapon in the enforcement’ of securities laws and are ‘a necessary supplement to [SEC] action.’”
 20 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318 (2007). Indeed, here the SEC
 21 conducted an investigation related to the claims in the Action (In the Matter of Geron Corp. (MSF-
 22 04375)), and it has taken no public action against Defendants. Campisi Decl. ¶¶247-48 and Ex. Q.

23 Lead Counsel committed significant resources, time, and money to prosecute this Action
 24 vigorously and successfully for the Class’s benefit for nearly three years—without any payment or
 25 any guarantee of a fee. *See* Campisi Decl. Sections I and II(B) and II(C), and ¶¶252-53. Lead
 26 Counsel’s fee award and expense reimbursement in the Action has always been at risk and
 27 contingent on the result achieved and on this Court’s discretion in awarding fees and expenses. *Id.*
 28 If Lead Counsel had been unsuccessful at any stage of the Action, Lead Counsel would have stood

1 to risk receiving nothing for its years of diligent prosecution of the claims for the benefit of the
2 Class. *Id.*

3 As courts recognize, there have been many class actions in which plaintiffs' counsel took
4 on the risk of pursuing claims on a contingency basis, expending thousands of hours and millions
5 of dollars, yet received no remuneration despite their diligence and expertise. For example, in a
6 PSLRA case in this District, after a lengthy trial involving securities claims against JDS Uniphase
7 Corporation, the jury reached a verdict in defendants' favor. *See In re JDS Uniphase Corp. Sec.*
8 *Litig.*, No. C-02-1486 CW (EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007); *see also, e.g., In*
9 *re Oracle Corp. Sec. Litig.*, No. C01-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009)
10 (granting summary judgment to defendants after eight years of litigation); *In re Oracle Corp. Sec.*
11 *Litig.*, No. C01-00988-SI (N.D. Cal.) at ECF No. 1623 (Declaration of Patrick E. Gibbs in Support
12 of Defendants' Bill of Costs) (seeking over \$1.1 million in costs from plaintiffs after obtaining
13 summary judgment) (Campisi Decl. Ex. X). Even plaintiffs who get past summary judgment and
14 succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion.
15 *See, e.g. In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07-61542-CIV, 2011 WL 1585605 (S.D.
16 Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following
17 plaintiffs' verdict).

18 The significant contingency-fee risks borne by Lead Counsel for nearly three years support
19 the requested fee.

20 **C. The Reaction of the Class to Date Supports the Fee Request**

21 To date, 21 members of the Class, in response to the Settlement Notice, have sought
22 exclusion—collectively representing 4,156 shares of Geron Common Stock purchased during the
23 Class Period. Campisi Decl. ¶255; and Ex. H (Mahn Decl.) ¶39. Moreover, to date, no objection
24 to the requested attorneys' fees, reimbursement of Litigation Expenses or awards to Lead Plaintiffs
25 has been received by Epiq or Lead Counsel. Campisi Decl. ¶¶256, 326 and Ex. H (Mahn Decl.)
26 ¶44. Accordingly, to date, the reaction of the Class to the Settlement and the fee motion supports
27 approval of the fee request. *See Symantec*, 2022 WL 409702, at *7 (noting small number of
28 individual class member opt outs, and absence of objections); *Luna*, 2018 WL 1900150, at *3

1 (noting lack of objections); *Heritage Bond*, 2005 WL 1594403, at *21 (“The existence or absence
2 of objectors to the requested attorneys’ fee is a factor i[n] determining the appropriate fee award.”).

3 As the deadline for requests for exclusion and objections (March 9, 2023) has not yet
4 passed, Lead Counsel will update the Court in its Reply brief, which is due to be filed on March 23,
5 2023.

6 **D. Lead Plaintiffs Negotiated the 18% Fee under the Court-Directed Lead**
7 **Counsel Selection Process, and They Support the Fee Request**

8 Lead Plaintiffs, who each took an active role in the litigation and closely supervised the
9 work of Lead Counsel, support the approval of the requested fee based on the result obtained, the
10 efforts of Lead Counsel and the risks in the Action. *See* Campisi Decl. at Ex. B (J. Junge Decl.)
11 ¶¶35-37, 39-40; Ex. C (R. Junge Decl.) ¶¶25-27, 29-30.⁶ Lead Plaintiffs’ endorsement of the fee
12 request further supports its approval. *See, e.g., Luna*, 2018 WL 1900150, at *3 (noting lead plaintiff
13 support of the settlement); *In re Charles Schwab Corp. Sec. Litig.*, No. C 08–01510 WHA, 2011
14 WL 1481424, at *6 (N.D. Cal. Apr. 19, 2011) (noting lead plaintiffs’ support of settlement).

15 While the decision on the appropriate fee is left to the sound discretion of the Court, the fact
16 that the fee request is based on a negotiated fee agreement between Lead Plaintiffs and Lead
17 Counsel provides support for the reasonableness of the request. The Court required Lead Plaintiffs
18 to conduct a period of due diligence to select and approve “class counsel”. ECF No. 85 at 8. The
19 Court directed that Lead Plaintiffs consider, among other things, the fee proposal of counsel. *See*
20 ECF No. 85 at 8-9. Lead Plaintiffs undertook that activity, and selected Kaplan Fox and negotiated
21 up front an 18% fee agreement, which was disclosed to the Court. Campisi Decl. ¶17 and at Ex. B
22 (J. Junge Decl.) ¶11; Ex. C (R. Junge Decl.) ¶11. As noted above, the 18% fee agreement is

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24 ⁶ As defined in the Campisi Declaration, Exhibit B is the Declaration of Julia Junge in Support of
25 Motion for Final Approval of Settlement and Plan of Allocation and in Support of Lead Counsel’s
26 Motion for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses and Awards to
27 Lead Plaintiffs for Lost Wages under 15 U.S.C. § 78u-4(a)(4) (the “J. Junge Decl.”), and Exhibit C
28 is the Declaration of Richard Junge in Support of Motion for Final Approval of Settlement and Plan
of Allocation and in Support of Lead Counsel’s Motion for an Award of Attorneys’ Fees,
Reimbursement of Litigation Expenses and Awards to Lead Plaintiffs for Lost Wages under
15 U.S.C. § 78u-4(a)(4) (the “R. Junge Decl.”). As used herein, Exhibits B and C are collectively
referred to as the “Lead Plaintiff Declarations.”

1 substantially below the Ninth Circuit’s 25% benchmark and resulted in a savings to the Class of
2 over \$1.6 million in attorneys’ fees.

3 This Court’s directive was in keeping with Congress’s intent to empower lead plaintiffs
4 under the PSLRA to select and supervise attorneys on behalf of the class, and as a result, a fee
5 agreement entered into by a PSLRA lead plaintiff and its counsel at the outset of the litigation
6 weighs in favor of the reasonableness of the fee. *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201,
7 282 (3d Cir. 2001) (ex ante fee agreements in securities class actions should be given “a
8 presumption of reasonableness”); *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d
9 Cir. 2008) (“We expect . . . that district courts will give serious consideration to negotiated fees
10 because PSLRA lead plaintiffs often have a significant financial stake in the settlement, providing
11 a powerful incentive to ensure that any fees resulting from that settlement are reasonable.”). Lead
12 Plaintiffs and Lead Counsel understand, of course, that the Court has reserved the decision on the
13 appropriate attorneys’ fee. *See* ECF 116, ¶7.

14 **E. Lodestar Cross-Check Supports the Fee Request**

15 “Although an analysis of the lodestar is not required for an award of attorneys’ fees in the
16 Ninth Circuit, a cross-check of the fee request with a lodestar amount can demonstrate the fee
17 request’s reasonableness.” *In re Amgen, Inc. Sec. Litig.*, Case No. CV 7-2536 PSG (PLAx), 2016
18 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016). Here, the lodestar cross-check further demonstrates
19 the reasonableness of the requested fee percentage because the fee request is substantially below
20 Lead Counsel’s total lodestar. As detailed in the Campisi Declaration, Lead Counsel’s lodestar of
21 \$4,951,210 reflects Lead Counsel’s attorney and professional time from the time of appointment
22 as Lead Counsel by the Court on July 27, 2020 through January 27, 2020 and was calculated
23 applying current hourly rates. Campisi Decl. Ex. R.

24 The requested fee of 18% of the Settlement Fund, or approximately \$4.32 million (plus
25 interest), is at least \$631,210 than Lead Counsel’s lodestar, representing a “negative” multiplier of
26 .87 on Lead Counsel’s lodestar, or in other words just 87% of the value of the time Lead Counsel
27 dedicated to the Action. *Id.* The fact that Lead Counsel’s requested fee in the Action is substantially
28 less than the lodestar strongly supports the reasonableness of the fee request. *See Amgen*, 2016 WL

1 10571773, at *9 (“courts have recognized that a percentage fee that falls below counsel’s lodestar
2 strongly supports the reasonableness of the award”).

3 Consistent with the Northern District of California Procedural Guidance for Class Action
4 Settlements (“Procedural Guidance”), the Campisi Declaration includes a detailed breakdown of
5 the hours devoted to the litigation into the category of activities undertaken over the course of the
6 litigation. *See* Campisi Decl. at Section II(B) and Exs. R, S. In addition, for each attorney whose
7 time is included in Lead Counsel’s lodestar, a summary of the principal tasks that he or she worked
8 on in the Action has been provided, and their hourly rate. *See* Campisi Decl. ¶¶278-313 and Ex. R.
9 While not required by the Procedural Guidance, Lead Counsel has made its detailed billing records
10 and expenses available to the Class and the Court. *See* Campisi Decl. ¶314 (providing link to hosted
11 website location to view records).

12 Moreover, the hourly rates used to calculate Lead Counsel’s requested lodestar are
13 reasonable. The hourly rates for Lead Counsel range from \$955 to \$1,300 for partners, \$1,000 for
14 Of Counsel, from \$485 to \$815 for associates, from \$230 to \$290 for law clerks, \$225 to \$380 for
15 paralegals, and \$380 for internal investigators. *See* Campisi Decl. at Ex. R. The blended hourly
16 rate for all timekeepers in the application is \$735. Calculating the lodestar based on current rates
17 is appropriate. *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (N. D. Cal. Dec. 17, 2018),
18 *aff’d sub nom. Hefler v. Pekoc*, 802 F. App’x 285 (9th Cir. 2020) (approving Lead Counsel’s then-
19 applicable 2018 rates, ranging from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for
20 associates, and \$245 to \$350 for paralegals, as reasonable for purposes of lodestar cross-check).

21 Lead Counsel’s rates are within the range of reasonable fees for attorneys working on
22 sophisticated class action litigation in this District. *See, e.g., Granite*, 2022 WL 816473, at *9
23 (approving as reasonable partner rates of \$950 to \$1,325, Of Counsel and Special Counsel at \$780,
24 associates ranging from \$175 to \$690, summer associates at \$175 to \$330, staff attorneys at \$390
25 to \$395, analyst staff at \$295 to \$750, paralegals at \$275 to \$350, support staff at \$350 to \$445,
26 document clerks at \$150 per hour, and a litigation support employee at \$150 per hour); *Symantec*,
27 2022 WL 409702, at *9 (approving application for \$13.3 million in attorneys’ fees); *SEB Inv.*
28 *Mgmt. AB v. Symantec Corp.*, No. C 18-02902 WHA, at ECF No. 415-3 (N.D. Cal.) (chart showing

1 requested rates of \$875 to \$1,300 for partners, \$775 to \$800 for Senior Counsel, \$425 to \$550 for
 2 Associates, \$425 for Senior Staff Attorneys, \$350 to \$400 for Staff Attorneys, \$300 to \$575 for
 3 Investigators, \$325 to \$350 for Case Managers and Paralegals, \$400 for Litigation Support and
 4 \$375 for Managing Clerk). Campisi Decl. Ex. W. Lead Counsel’s rates are also reasonable in
 5 comparison to defense counsel’s rates. See Campisi Decl. ¶¶269-74 and Exs. T & U.

6 **IV. Lead Counsel’s Litigation Expenses Are Reasonable and Should Be Reimbursed**

7 “Attorneys who create a common fund are entitled to the reimbursement of expenses they
 8 advanced for the benefit of the class.” *Vincent v. Reser*, No. C11-03572 CRB, 2013 WL 621865,
 9 at *5 (N.D. Cal. Feb. 19, 2013). In assessing whether counsel’s expenses are compensable in a
 10 common fund case, courts look to whether the particular costs are of the type typically billed by
 11 attorneys to paying clients in the marketplace. See *Omnivision*, 559 F. Supp. 2d at 1048 (“Attorneys
 12 may recover their reasonable expenses that would typically be billed to paying clients in non-
 13 contingency matters.”).

14 The expenses sought by Lead Counsel are of the type that are charged to hourly paying
 15 clients and were required to prosecute the litigation. These expense items were incurred separately
 16 by Lead Counsel and are not duplicated in the firm’s hourly rates. From the beginning of the Action,
 17 Lead Counsel was aware that it might not recover any of its expenses and would not recover
 18 anything unless and until the Action was successfully resolved. Lead Counsel also understood that,
 19 even assuming that the case was ultimately successful, an award of expenses would not compensate
 20 it for the lost use of the funds advanced to prosecute the Action. Campisi Decl. ¶¶252-53. Thus,
 21 Lead Counsel was motivated to, and did, take significant steps to minimize expenses without
 22 jeopardizing the vigorous prosecution of the Action. Campisi Decl. ¶¶252, 315.

23 Lead Counsel incurred a total of \$1,086,353.27 in unreimbursed Litigation Expenses over
 24 the past three years. Campisi Decl. ¶¶317-18. The expenses for which reimbursement is sought
 25 were reasonable and necessary for the prosecution and resolution of the litigation and are of the
 26 types that are routinely charged to clients in non-contingent litigation. *Id.* ¶¶314-42. Lead
 27 Counsel’s unreimbursed expenses include expert costs, deposition cost, document-management
 28

1 costs, online research, service of process expenses, out-of-town travel expenses, court fees, copying
2 costs, and postage expenses. *Id.*

3 Of the total expenses, Lead Plaintiffs incurred \$703,679.10, or approximately 65% of the
4 total litigation expenses, on experts and consultants in the areas of financial economics (including
5 damages, loss causation, and market efficiency), FDA regulations (policies and procedures,
6 including as to the nature, scope, design and evaluation of clinical studies) and analysis of the
7 IMbark study data results compared to other clinical trials for drugs indicated for the treatment of
8 MF. Campisi Decl. ¶¶318, 336-39. These experts were especially important in the Action, which
9 concerned allegations that Defendants made material misrepresentations and omissions concerning
10 the imetelstat Phase 2 study data results for IMbark. Campisi Decl. ¶¶141, 143, 146-49. Likewise,
11 damages and loss causation expertise was required here, as in virtually every securities fraud class
12 action alleging that investors were harmed by class-wide misrepresentations revealed through
13 alleged corrective disclosures. *See e.g.* Campisi Decl. ¶149.

14 A complete breakdown by category of the expenses incurred by Lead Counsel is presented
15 in the Campisi Declaration and further details about Lead Counsel’s litigation expenses for which
16 it seeks reimbursement are set forth in Section II(C) of the Campisi Decl.

17 Courts routinely approve litigation expenses such as these. *See, e.g., Vega v. Weatherford*
18 *U.S., Ltd. P’ship*, Case No. 1:14-cv-01790-JLT, 2016 WL 7116731, at *17 (E.D. Cal. Dec. 7, 2016)
19 (“filing fees, messenger fees, legal research expenses, copying costs, mediation fees, postage,
20 federal express charges, expert fees, . . . and travel expenses,” among others, were all categories of
21 expenses “routinely reimbursed” in class actions); *Zynga*, 2016 WL 537946, at *22 (“courts
22 throughout the Ninth Circuit regularly award litigation costs and expenses—including
23 photocopying, printing, postage, court costs, research on online databases, experts and consultants,
24 and reasonable travel expenses—in securities class actions, as attorneys routinely bill private clients
25 for such expenses in non-contingent litigation”); *Granite*, 2022 WL 816473, at *12 (finding
26 reasonable over \$763,000 in expenses, “[u]nderstandably” mostly being expert and litigation-
27 vendor support fees and noting lack of objections to expenses and support of expense application
28

1 by lead plaintiff); *Symantec*, 2022 WL 409702, at *9 (approving expenses of “\$2,000,208.69, to be
2 paid immediately”).

3 The Settlement Notice provided to potential Class Members informed them that Lead
4 Counsel intends to apply for an award of attorneys’ fees of 18% of the Settlement Fund, and the
5 reimbursement of Litigation Expenses incurred by Lead Counsel in an amount not to exceed
6 \$1.14 million. Campisi Decl. Exs. E & G (Settlement Notice, ¶5, and Summary Settlement Notice).
7 The total amount of Litigation Expenses now sought by Lead Counsel (\$1,086,353.27) is
8 approximately 5% or \$53,647 less than the \$1.14 amount stated in the Settlement Notice that Lead
9 Counsel could have sought. *Id.* ¶325. The deadline for objecting to the fee and expense application
10 is March 9, 2023. To date, there have been no objections to the request for attorneys’ fees or
11 reimbursement of Litigation Expenses.

12 **V. Lead Plaintiffs’ Request for Service Awards in the Form of Recovery of Lost Wages**
13 **under the PSLRA is Reasonable**

14 Lead Plaintiffs seek an award of \$10,000 for Julia Junge and \$1,544.88 for Richard Junge
15 under 15 U.S.C. §78u-4(a)(4), in connection with their representation of the Class, as detailed in
16 the accompanying Lead Plaintiff Declarations. Campisi Decl. Exs. B-C. Under the PSLRA, a class
17 representative may seek an award of reasonable costs and expenses directly relating to the
18 representation of the class. *See* 15 U.S.C. §78u-4(a)(4). Indeed, even outside of the context of the
19 PSLRA, reasonable incentive awards to class representatives are permitted in the Ninth Circuit.
20 *See also Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (holding that named plaintiffs are
21 eligible for “reasonable” payments as part of a class action settlement); *In re Apple Inc. Device*
22 *Performance Litig.*, 50 F.4th 769, 785 (9th Cir. 2022) (“We have repeatedly held that ‘reasonable
23 incentive awards’ to class representatives ‘are permitted,’ . . . and the Supreme Court recently
24 acknowledged that ‘[a] class representative might receive a share of class recovery above and
25 beyond her individual claim’ through an incentive award.”). When evaluating the reasonableness
26 of a lead plaintiff award, courts may consider factors such as “‘the actions the plaintiff has taken to
27 protect the interests of the class, the degree to which the class has benefitted from those actions, . . .

1 the amount of time and effort the plaintiff expended in pursuing the litigation” among others. *Id.*
2 (ellipse in original).

3 Moreover, the Procedural Guidance states that “[a]ll requests for service awards must be
4 supported by evidence of the value provided by the proposed awardees, the risks they undertook in
5 participating, the time they spent on the litigation, and any other justifications for the awards.”⁷ *See*
6 *also* ECF 116 at paragraph 9 (requiring incentive award be “clearly justified with a sworn record.”).
7 Lead Plaintiffs devoted extensive time and effort monitoring the Action and directing Lead
8 Counsel, including reviewing and commenting on the pleadings in the Action, providing input on
9 discovery, devoting considerable time and effort to collect materials responsive to Defendants’
10 requests for production of documents, sitting for deposition, attending the Court’s hearings on their
11 lead plaintiff motion, Defendants’ motion to dismiss and their motion for Class Certification, and
12 participating in the settlement conferences. Campisi Decl. Exs. B and C. Lead Plaintiff Julia Junge
13 lost approximately 156 hours of her employment time, and Richard Junge approximately 24 hours
14 in vacation time directly related to representing the Class in the Action. *Id.* Moreover, both Lead
15 Plaintiffs also undertook risks in pursuing these claims. *See, e.g., Wehlage v. Evergreen at Arvin*
16 *LLC*, No. 4:10-cv-05839-CW, 2012 WL 4755371, at *5 (N.D. Cal. Oct. 4, 2012) (finding award
17 justified for plaintiffs “lending their names to this case, and thus subjecting themselves to public
18 attention”).

19 Lead Plaintiffs were actively involved through every step of the Action, and under such
20 circumstances, courts have approved reasonable awards for class representatives that are
21 comparable to those requested here. *See Hatamian v. Advanced Micro Devices, Inc.*, Case
22 No. 4:14-cv-00226-YGR, 2018 WL 8950656, at *2 (N.D. Cal. Mar. 2, 2018) (Gonzalez Rogers, J.)
23 (granting award under PSLRA of \$14,875.00 for efforts devoted to the litigation). This Court has
24 granted reimbursement of costs and expenses directed related to the representation of the class on
25

26
27 ⁷ Northern District of California Procedural Guidance for Class Action Settlements (last modified
28 Aug. 4, 2022), <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-actionsettlements/> (last visited January 24, 2023).

1 prior occasions. *See e.g. Charles Schwab*, 2011 WL 1481424, at *11 (granting reduced awards of
2 \$5,000, \$6,250, \$7,500 and \$8,750 for lead plaintiffs).⁸

3 **CONCLUSION**

4 For all the foregoing reasons, Lead Counsel respectfully requests that the Court award
5 attorneys' fees of 18% of the Settlement Fund, reimbursement of Litigation Expenses in the amount
6 of \$1,086,353.27, and grant Julia Junge a \$10,000 award and a \$1,544.88 award to Richard Junge
7 as reimbursement for lost wages under the PSLRA.

8 DATED: February 2, 2023

Respectfully submitted,

9 **KAPLAN FOX & KILSHEIMER LLP**

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22 ⁸ During the hearing on the Motion for Preliminary Approval, the Court mentioned possible
23 Supreme Court review of a case involving so-called "incentive awards". Lead Counsel believes
24 the Court was referring to *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1255 (11th Cir. 2020) (a
25 proposed class action involving alleged violations of the Telephone Consumer Protection Act
26 (TCPA), holding that incentive awards are not permitted based on Supreme Court cases from the
27 1880s). On October 21, 2022, a petition for writ of certiorari was filed, and remains pending at the
28 Supreme Court. *See Johnson v. Dickenson*, Case No. 22-389 (Sup. Ct.). This decision does not
impact the requested awards herein for lost wages pursuant to the PSLRA. Moreover, even if the
Lead Plaintiffs were seeking incentive awards not tied to specific authorization in the PSLRA for
lost wages, the Ninth Circuit authorized reasonable incentive awards in a consumer class action in
2022, over objections that included citations to *Johnson* and the 1880s Supreme Court authority
cited therein. *See Apple*, 50 F.4th at 785-86.

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