

1 **LEVI & KORSINSKY, LLP**  
Adam M. Apton (SBN 316506)  
2 Email: aapton@zlk.com  
3 445 South Figueroa St., 31st Floor  
Los Angeles, CA 90071  
4 Tel: 213/985-7290  
5 Fax: 212/363-7171

6 *Attorneys for Plaintiffs and*  
7 *Lead Counsel for the Settlement Class*

8 [Additional Counsel listed on signature block.]  
9

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12  
13 **IN RE ILLUMINA, INC.**  
**SECURITIES LIGATION**

Master File No. 3:16-cv-03044-L-MSB

14 **NOTICE OF MOTION AND**  
15 **MOTION FOR ATTORNEYS’**  
16 **FEEES, REIMBURSEMENT OF**  
17 **EXPENSES, AND INCENTIVE**  
18 **AWARDS**

Hon. M. James Lorenz

19 Date: Monday, April 20, 2020

20 Time: 10:30 A.M.

21 Courtroom: 5B  
22  
23  
24  
25  
26  
27  
28

1           **PLEASE TAKE NOTICE** that, pursuant to an Order of the Court issued on  
2 December 18, 2019 (“Preliminary Approval Order”), on April 20, 2020, at 10:30  
3 a.m., at the United States Courthouse, Southern District of California, Courtroom  
4 5B, 5<sup>th</sup> Floor, 221 West Broadway, San Diego, California 92101, before the  
5 Honorable M. James Lorenz, Plaintiffs will move pursuant to Rules 23(h) and  
6 54(d)(2) of the Federal Rules of Civil Procedure for an order awarding attorneys’  
7 fees, reimbursement of litigation expenses, and incentive awards to Plaintiffs.

8           **PLEASE TAKE FURTHER NOTICE** that this motion is supported by the  
9 accompanying Memorandum of Points and Authorities; the Declaration of Adam M.  
10 Apton in Support of Plaintiffs’ Motion for Preliminary Approval of Settlement (ECF  
11 No. 95-3); the Supplemental Declaration of Adam M. Apton in Support of Plaintiffs’  
12 Motions for Final Approval of the Settlement and Attorneys’ Fees, Reimbursement  
13 of Expenses, and Incentive Awards (ECF No. 105-2); the Declarations of Anton  
14 Agoshkov, Braden Van Der Wall, and Steven Romanoff (ECF No. 105-7, 105-9,  
15 105-8); and the Declaration of Jack Ewashko (on behalf of JND Legal  
16 Administration) (ECF No. 105-4); and the amended Stipulation of Settlement  
17 (“Stipulation”) and the exhibits filed therewith (ECF No. 103-3).

18 Dated: March 2, 2020

Respectfully submitted,

21 *s/ Adam M. Apton*

22 **LEVI & KORSINSKY, LLP**  
23 Adam M. Apton (SBN 316506)  
24 445 South Figueroa Street, 31st Floor  
25 Los Angeles, CA 90071  
26 Tel: (213) 985-7290  
27 Fax: (212) 363-7171  
28 Email: aapton@zlk.com

-and-

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**LEVI & KORSINSKY, LLP**  
Nicholas I. Porritt (*admitted pro hac vice*)  
1101 30th Street NW, Suite 115  
Washington, DC 20007  
Tel: (202) 524-4290  
Fax: (212) 363-7171  
Email: nporritt@zlk.com

*Attorneys for Plaintiffs and  
Lead Counsel for the Settlement Class*

1 **LEVI & KORSINSKY, LLP**  
Adam M. Apton (SBN 316506)  
2 Email: aapton@zlk.com  
3 445 South Figueroa St., 31st Floor  
Los Angeles, CA 90071  
4 Tel: 213/985-7290  
5 Fax: 212/363-7171

6 *Attorneys for Plaintiffs and*  
7 *Lead Counsel for the Settlement Class*

8 [Additional Counsel listed on signature block.]

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 IN RE ILLUMINA, INC.  
13 SECURITIES LITIGATION

Master File No. 3:16-cv-03044-L-MSB

14 **MEMORANDUM OF POINTS AND**  
15 **AUTHORITIES IN SUPPORT OF**  
16 **MOTION PLAINTIFFS' MOTION**  
17 **FOR ATTORNEYS' FEES,**  
18 **REIMBURSEMENT OF**  
19 **EXPENSES, AND INCENTIVE**  
20 **AWARDS**

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION..... 1

3 II. ARGUMENT ..... 2

4 A. PLAINTIFFS’ COUNSEL DESERVES THE REQUESTED

5 AWARD OF ATTORNEYS’ FEES..... 2

6 1. Standard for Approval of Attorneys’ Fees in the Ninth Circuit. 2

7 2. An Award of 25% of the Settlement Fund is Reasonable..... 3

8 B. THE COURT SHOULD AWARD REIMBURSEMENT OF

9 PLAINTIFFS’ COUNSEL’S LITIGATION EXPENSES..... 8

10 C. PLAINTIFFS DESERVE THE REQUESTED INCENTIVE

11 AWARDS. .... 9

12 III. CONCLUSION ..... 11

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Cases**

*In re Activision Sec. Litig.*,  
723 F. Supp. 1373 (N.D. Cal. 1989) ..... 4

*In re Amgen Inc. Sec. Litig.*,  
No. CV 7-2536 PSG (PLAX), 2016 WL 10571773 (C.D. Cal. Oct. 25, 2016) ..... 8

*Behrens v. Wometco Enters., Inc.*,  
118 F.R.D. 534 (S.D. Fla. 1988)..... 6

*Blum v. Stenson*,  
465 U.S. 886 (1984)..... 4

*In re BP p.l.c. Sec. Litig.*,  
852 F. Supp. 2d 767 (S.D. Tex. 2012) ..... 4

*Destefano v. Zynga, Inc.*,  
No. 12 Civ. 4007, 2016 WL 537946 (N.D. Cal. Feb. 11, 2016)..... 9

*Detroit v. Grinnell Corp.*,  
495 F.2d 448 (2d Cir. 1974), *abrogated by Goldberger v. Integrated Res., Inc.*,  
209 F.3d 43 (2d Cir. 2000)..... 5

*Equ In re Equity Funding Corp. of Am. Sec. Litig.*,  
438 F. Supp. 1303 (C.D. Cal. 1977) ..... 6

*Fischel v. Equitable Life Assurance Soc’y of United States*,  
307 F.3d 997 (9th Cir. 2002)..... 8

*Harris v. Marhoefer*,  
24 F.3d 16 (9th Cir. 1994)..... 9

*Haynes v. MagnaChip Semiconductor Corp.*,  
No. 14 Civ. 1160, 2016 U.S. Dist. LEXIS 162120 (N.D. Cal. Nov. 21, 2016).... 10

*Hensley v. Eckerhart*,  
461 U.S. 424 (1983)..... 3

1 *In re Heritage Bond Litig.*,  
 2 No. 02 MDL 1475, 2005 WL 1594403 (June 10, 2005) ..... 3  
 3 *Immune Response Sec. Litig.*,  
 4 497 F. Supp. 2d 1166 (S.D. Cal. 2007)..... 7  
 5 *Kirchoff v. Flynn*,  
 6 786 F.2d 320 (7th Cir. 1986)..... 4  
 7 *Knight v. Red Door Salons, Inc.*,  
 8 No. 08 Civ. 1520, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009)..... 6  
 9 *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*,  
 10 540 F.2d 102 (3 C 76) ..... 5  
 11 *In re M.D.C. Holdings Sec. Litig.*,  
 12 No. CV89-0090 E (M), 1990 WL 454747 (S.D. Cal. Aug. 30, 1990) ..... 4  
 13 *Missouri v. Jenkins*,  
 14 491 U.S. 274 (1989)..... 3  
 15 *In re Omnivision Techs.*,  
 16 559 F. Supp. 2d 1036 (N.D. Cal. 2007) ..... 4  
 17 *Ontiveros v. Zamora*,  
 18 303 F.R.D. 356 (E.D. Cal. 2014) ..... 8  
 19 *Rite In re Rite Aid Corp. Sec. Litig.*,  
 20 396 F.3d 294 (3d Cir. 2005)..... 7  
 21 *Rodriguez v. West Publishing Corp.*,  
 22 563 F.3d 948 (9th Cir. 2009)..... 9  
 23 *Six (6) Mexican Workers v. Ariz. Citrus Growers*,  
 24 904 F.2d 1301 (9th Cir. 1990)..... 2  
 25 *Staton v. Boeing Co.*,  
 26 327 F.3d 938 (9th Cir. 2003)..... 10  
 27  
 28

1 *Vizcaino v. Microsoft Corp.*,

2 290 F.3d 1043 (9th Cir. 2002)..... passim

3 *In re Wash. Pub Power Supply Sys. Sec. Litig.*,

4 19 F.3d 1291 (9th Cir. 1994)..... 2

5 *Yedlowski v. Roka Bioscience, Inc.*,

6 No. 14-CV-8020-FLW-TJB, 2016 WL 6661336 (D.N.J. Nov. 10, 2016) ..... 4

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1 **I. INTRODUCTION**

2 Having successfully resolved this complex securities fraud litigation,  
3 Plaintiffs' Counsel now seeks an award of attorneys' fees and reimbursement of  
4 expenses. The Settlement, if approved, will result in a cash Settlement Fund of  
5 \$13,850,000. Plaintiffs' Counsel respectfully requests that the Court award them 25%  
6 of the fund as well as reimbursement of litigation expenses in the amount of  
7 \$169,727.62. The Court should grant Plaintiffs' Counsel's requests.

8 Plaintiffs' Counsel has been litigating this case for over three years without  
9 having received any compensation whatsoever. Though the case was risky from the  
10 start, Plaintiffs' Counsel agreed to litigate on a contingency basis. The litigation  
11 endured for years and required thousands of dollars in out-of-pocket expenses to  
12 effectively prosecute the matter. In total, Plaintiffs' Counsel invested over 3,936  
13 hours of attorney time in the matter which, based on counsels' current hourly rates,  
14 equates to a lodestar value of more than \$2.1 million. The requested fee of 25% of  
15 the Settlement Fund will compensate Plaintiffs' Counsel for their time, effort, and  
16 results. Not only is it fair, but it also falls squarely in line with the Ninth Circuit  
17 precedent concerning the "benchmark" fee award in complex class action litigation.

18 Plaintiffs' Counsel should also be reimbursed for the nearly \$170,000 in  
19 litigation expenses they incurred over the years. These expenses were all reasonable  
20 and necessary for the purposes of the litigation. They primarily included fees from  
21 expert witnesses as well as mediation and travel expenses. Without the expert  
22 witnesses retained by Plaintiffs' Counsel, it is unclear whether Plaintiffs would have  
23 secured the result they did.

24 Finally, Plaintiffs' Counsel also seeks incentive awards for Plaintiffs to reward  
25 them for the time and effort they spent participating in this action. Plaintiff Anton  
26 Agoshkov spent numerous hours on behalf of Lead Plaintiff Natissisa Enterprises,  
27 Ltd. assisting Plaintiffs' Counsel in this action. Mr. Agoshkov traveled from Moscow  
28

1 for a deposition as well as reviewed thousands of pages of case-related documents  
2 for discovery purposes. Plaintiffs Braden Van Der Wall and Steven Romanoff also  
3 devoted several hours of their time volunteering in this action and were ready, willing  
4 and able to serve as class representatives if Mr. Agoshkov's motion for certification  
5 was denied. To reward them for their efforts and encourage investors like them to  
6 participate in representative actions in the future, Plaintiffs' Counsel respectfully  
7 requests that they be awarded \$25,000, \$1,000, and \$1,000, respectively.

## 8 **II. ARGUMENT**

### 9 **A. PLAINTIFFS' COUNSEL DESERVES THE REQUESTED** 10 **AWARD OF ATTORNEYS' FEES.**

#### 11 1. Standard for Approval of Attorneys' Fees in the Ninth Circuit.

12 It is well-settled in the Ninth Circuit that district courts have the discretion to  
13 apply either the percentage-of-recovery method or the lodestar method in  
14 determining attorneys' fees in a common fund case. *In re Wash. Pub Power Supply*  
15 *Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) ("WPPSS"). In recent years, the  
16 percentage-of-recovery method has become the prevailing method for awarding fees  
17 in common fund cases in this Circuit and throughout the United States.<sup>1</sup> *Six (6)*  
18 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) ("a  
19 reasonable fee under the common fund doctrine is calculated as a percentage of the  
20 recovery"). Nevertheless, in employing the percentage-of-recovery method, courts  
21 often perform a lodestar cross-check on the reasonableness of the requested fee.  
22 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (affirming use of  
23 percentage method to calculate attorneys' fees and application of lodestar method as  
24

---

25 <sup>1</sup> The PSLRA has also indicated its preference for a percentage analysis when  
26 awarding attorneys' fees in securities class actions. *See* 15 U.S.C. § 78u-4(a)(6)  
27 ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff  
28 class shall not exceed a reasonable percentage of the amount of any damages and  
prejudgment interest actually paid to the class.").

1 cross-check). No matter which method is chosen, the fees awarded in common fund  
2 cases must be fair and reasonable under the circumstances of a particular case.  
3 *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989).

4 Courts in the Ninth Circuit have typically considered the following factors  
5 when reviewing a proposed fee award: 1) the results achieved; 2) awards made in  
6 similar cases; 3) the risk of litigation; 4) the skill required and the quality of the work;  
7 5) the contingent nature of the fee and the financial burden carried by the plaintiffs;  
8 6) the reaction of the class to the proposed fee and expense request; and 7) whether  
9 the percentage appears reasonable in light of a lodestar cross-check. *Vizcaino*, 290  
10 F.3d at 1048-50. As discussed below, each of these factors supports the requested  
11 award of attorneys' fees herein.

12 2. An Award of 25% of the Settlement Fund is Reasonable.

13 a. *Plaintiffs' Counsel achieved an excellent result for the*  
14 *Settlement Class.*

15 Courts have consistently recognized that the result achieved is an important  
16 factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424,  
17 436 (1983) ("the most critical factor is the degree of success obtained"); *In re*  
18 *Heritage Bond Litig.*, No. 02 MDL 1475, 2005 WL 1594403, at \*19 (June 10, 2005)  
19 ("The result achieved is a significant factor to be considered in making a fee award.").  
20 As further set out in the accompanying motion for final approval, filed concurrently  
21 herewith, this case was significantly more challenging than the typical securities class  
22 action. In spite of the challenge, Plaintiffs' Counsel successfully achieved a  
23 settlement of \$13,850,000, which amounts to approximately 4.5% of the Class's  
24 overall damages. Declaration of Adam M. Apton in Support of Plaintiffs' Motion for  
25 Preliminary Approval of Settlement (ECF No. 95-3) (the "Apton Decl."), ¶21. This  
26 percentage is above the median recovery in cases with similarly sized damages. *Id.*

1 Notably, Plaintiffs' Counsel obtained the recovery at hand in spite of the  
2 pleading burdens that initially confronted Plaintiffs when the case was first  
3 commenced; specifically, the Private Securities Litigation Reform Act of 1995. *In re*  
4 *BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 820 (S.D. Tex. 2012) ("The Court is acutely  
5 aware that federal legislation and authoritative precedents have created for plaintiffs  
6 in all securities actions formidable challenges to successful pleading."). This warrants  
7 a higher fee. *See Yedlowski v. Roka Bioscience, Inc.*, No. 14-CV-8020-FLW-TJB,  
8 2016 WL 6661336, at \*22 (D.N.J. Nov. 10, 2016) (taking into account pleading  
9 burdens imposed by PSLRA in awarding attorneys' fees).

10 b. *The award is in line with awards in similar cases.*

11 Plaintiffs' Counsel requests a fee of 25% of the Settlement. The Ninth Circuit  
12 has held that a fee award of 25% of the settlement fund is an appropriate starting point  
13 or benchmark for determining class action fees, though "in most common fund cases,  
14 the award exceeds that benchmark." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036,  
15 1047-48 (N.D. Cal. 2007); *see Vizcaino*, 290 F.3d at 1048-50.<sup>2</sup>

16 Further, if this were not a class action, the customary fee arrangement would  
17 be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery.  
18 *See, e.g., Blum v. Stenson*, 465 U.S. 886, 903 n.20 (1984) ("In tort suits, an attorney  
19 might receive one third of whatever amount the Plaintiff recovers. In those cases,  
20 therefore, the fee is directly proportional to the recovery"); *In re M.D.C. Holdings*  
21 *Sec. Litig.*, No. CV89-0090 E (M), 1990 WL 454747, at \*7 (S.D. Cal. Aug. 30, 1990)  
22 ("In private contingent litigation, fee contracts have traditionally ranged between  
23 30% and 40% of the total recovery"); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir.  
24 1986) (40% contractual award if case had gone to trial). Thus, as the customary

25 \_\_\_\_\_  
26 <sup>2</sup> *See also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-79 (N.D. Cal. 1989)  
27 (awarding 32.8% of the fund, and upon surveying securities cases nationwide noting,  
28 "This court's review of recent reported cases discloses that nearly all common fund  
awards range around 30%").

1 contingent fee in the private marketplace – 30% to 40% of the fund recovered – is  
2 even greater than the percentage-of-recovery fee requested in this case, Counsel’s  
3 request is quite reasonable.

4 Accordingly, Plaintiffs’ Counsel’s fee request is consistent with fee awards  
5 granted in similar actions in the Ninth Circuit and is warranted under the facts and  
6 circumstances of this case based upon the analysis presented herein.

7 c. *The risks in the litigation support the award.*

8 Numerous cases have recognized that the risks of litigation are important  
9 factors in determining a fee award. *See, e.g., WPPSS*, 19 F.3d at 1299-1300; *City of*  
10 *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974), *abrogated by Goldberger*  
11 *v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *Lindy Bros. Builders, Inc. of*  
12 *Phila. v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 117 (3d Cir. 1976).  
13 Indeed, the risk of litigation is an important, if not the foremost, factor in adjusting  
14 the attorneys’ benchmark percentage upward. *See Vizcaino*, 290 F.3d at 1048 (“[r]isk  
15 is a relevant circumstance”).

16 This case is plainly meritorious, or it would not have survived Defendants’  
17 motion to dismiss. Yet there are facts that make even strong cases risky, and this case  
18 has them. Specifically, Plaintiffs faced the real possibility of being dismissed on  
19 summary judgment because, among other things, the alleged misrepresentation was  
20 “forward looking” and therefore arguably subject to the safe harbor provision of the  
21 Securities Exchange Act of 1934. In addition, Plaintiffs also faced difficulties with  
22 respect to damages, as the price of Illumina’s stock varied during the course of the  
23 Class Period and did not provide clear evidence as to the damage actually caused by  
24 the alleged fraud. Apton Decl. at ¶¶22, 23.

25 Given these particular risks (in addition to others relating to class certification,  
26 credibility of experts, appeals, etc.), Plaintiffs faced and overcame challenges in the  
27 litigation that warrant approval of the requested fee.



1 legal market to reward attorneys for taking the risk of non-payment by paying them  
2 a premium over their normal hourly rates for winning contingency cases.” *WPPSS*,  
3 19 F.3d at 1299 (citing Richard Posner, *Economic Analysis of Law*, § 21.9, at 534-35  
4 (3d ed. 1986)). In fact, contingent fees that may far exceed the typical non-contingent  
5 market value of the services are accepted in the legal profession as a legitimate way  
6 of assuring competent representation for plaintiffs, who could not afford to pay on an  
7 hourly basis regardless of whether they win or lose. *Id.*

8 Plaintiffs’ Counsel has received no compensation for this Litigation, and  
9 incurred significant expenses for the benefit of the Class. Any fee award or expense  
10 payment to counsel has always been at risk and completely contingent on the result  
11 achieved.

12 f. *The reaction of the Settlement Class supports the requested*  
13 *award.*

14 Courts often consider the reaction of the class when deciding whether to award  
15 the requested fee. *See, e.g., Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177  
16 (S.D. Cal. 2007) (“[T]he lack of objection from any Class Member supports the  
17 attorneys’ fees award.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir.  
18 2005) (finding that a “low level of objection[s] is a rare phenomenon”).

19 Here, the reaction of the Settlement Class to date also supports the requested  
20 fee. The Claims Administrator mailed a total of 71,092 copies of the Notice and the  
21 Proof of Claim to potential Settlement Class Members and nominees informing them,  
22 *inter alia*, that: Plaintiffs’ Counsel would request that the Court approve attorneys’  
23 fees of 25% of the Settlement; reimbursement for expenses (exclusive of  
24 administration costs) of up to \$180,000 for their work litigating the case and  
25 negotiating the Settlement. *See* Declaration of Jack Ewashko, filed herewith, ¶12.  
26 Class Members were also advised of their right to object to Plaintiffs’ Counsel’s fee  
27 and expense request and, to date, no such objections have been received. *Id.*

1 g. *A lodestar cross-check shows the fee request is reasonable.*

2 As a “cross-check” on the reasonableness of a requested fee award, courts often  
3 compare counsel’s “lodestar” (a compilation of the hours performed at the various  
4 rates charged for the professionals providing the services herein) with the fee request  
5 made under the percentage-of-the-recovery method. *See, e.g., Vizcaino*, 290 F.3d at  
6 1050; *Fischel v. Equitable Life Assurance Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir.  
7 2002). Moreover, “the lodestar calculation can be helpful in suggesting a higher  
8 percentage when litigation has been protracted [and] may provide a useful  
9 perspective on the reasonableness of a given percentage award.” *Vizcaino*, 290 F.3d  
10 at 1050.

11 Plaintiffs’ Counsel’s lodestar of \$2,125,332.25 in billable time, which resulted  
12 in the requested fee representing a multiplier of less than 1.65x, supports the fee  
13 request. Supplemental Declaration of Adam M. Apton in Support of Plaintiffs’  
14 Motion for Final Approval of Settlement (“Supp. Apton Decl.”), filed herewith, ¶9.  
15 The hourly rates charged by Lead Counsel range from \$850 to \$1,025 for partners  
16 and \$350 to \$650 for associates, which is consistent with hourly rates approved in  
17 similar cases. *E.g. In re Amgen Inc. Sec. Litig.*, No. CV 7-2536 PSG (PLAX), 2016  
18 WL 10571773, at \*9 (C.D. Cal. Oct. 25, 2016) (approving rates of \$750-\$985 for  
19 partners and \$300-\$725 for associates).

20 **B. THE COURT SHOULD AWARD REIMBURSEMENT OF**  
21 **PLAINTIFFS’ COUNSEL’S LITIGATION EXPENSES.**

22 The Court should also approve payment of Plaintiffs’ Counsel’s expenses.  
23 “There is no doubt that an attorney who has created a common fund for the benefit  
24 of the class is entitled to reimbursement of reasonable litigation expenses from that  
25 fund.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (quotation marks  
26 and citations omitted). “To that end, courts throughout the Ninth Circuit regularly  
27 award litigation costs and expenses – including photocopying, printing, postage,  
28



1 court costs, research on online databases, experts and consultants, and reasonable  
2 travel expenses – in securities class actions, as attorneys routinely bill private clients  
3 for such expenses in non-contingent litigation.” *Destefano v. Zynga, Inc.*, No. 12 Civ.  
4 4007, 2016 WL 537946, at \*22 (N.D. Cal. Feb. 11, 2016) (citing *Harris v. Marhoefer*,  
5 24 F.3d 16, 19 (9th Cir. 1994) (noting that a prevailing plaintiff may be entitled to  
6 costs including, among other things, “postage, investigator, copying costs, hotel bills,  
7 meals,” and messenger services)).

8 To prosecute this action to Settlement, Lead Counsel has incurred reasonable  
9 and necessary costs and expenses in the amount of \$169,727.62 to date, which does  
10 not exceed the \$180,000 that was stated in the Notice and for which Plaintiffs’  
11 Counsel seek reimbursement. These expenses were incurred largely in conjunction  
12 with the engagement of experts, mediation, and outside vendors. Supp. Apton Decl.  
13 at ¶¶13-16. Details concerning Plaintiffs’ Counsel’s litigation expenses are included  
14 in the attached Supplemental Declaration of Adam M. Apton. *See id.*

15 **C. PLAINTIFFS DESERVE THE REQUESTED INCENTIVE**  
16 **AWARDS.**

17 Plaintiffs’ Counsel requests the Court award Plaintiffs incentive awards as  
18 follows: \$25,000 for Anton Agoshkov; \$1,000 for Braden Van Der Wall; and \$1,000  
19 for Steven Romanoff. In this Circuit, incentive awards “are discretionary . . . and are  
20 intended to compensate class representatives for work done on behalf of the class, to  
21 make up for financial or reputational risk undertaken in bringing the action, and,  
22 sometimes, to recognize their willingness to act as a private attorney general.”  
23 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009) (internal  
24 citation omitted). Courts evaluate incentive awards using “relevant factors including  
25 the actions the plaintiff has taken to protect the interests of the class, the degree to  
26 which the class has benefited from those actions, the amount of time and effort the  
27 plaintiff expended in pursuing the litigation and reasonable fears of workplace  
28 retaliation.” *Haynes v. MagnaChip Semiconductor Corp.*, No. 14 Civ. 1160, 2016

1 U.S. Dist. LEXIS 162120, at \*30 (N.D. Cal. Nov. 21, 2016); (citing *Staton v. Boeing*  
2 *Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (citation and internal quotations and alterations  
3 omitted)).

4 Here, the total request for \$27,000 for all Plaintiffs is reasonable because  
5 Plaintiffs diligently and completely fulfilled their obligations by: (1) reviewing the  
6 initial complaint and the amended complaint; (2); reviewing additional filings  
7 throughout the litigation; (3) and consulting with Plaintiffs' Counsel on key decisions  
8 including mediation and settlement. *See* Declarations of Anton Agoshkov, Braden  
9 Van Der Wall, and Steven Romanoff, filed herewith.

10 In the case of Mr. Agoshkov, the requested incentive award of \$25,000 is  
11 warranted given his high level of involvement throughout the litigation. He not only  
12 traveled from Moscow to New York City for a full-day deposition, but he also served  
13 an integral role during discovery on behalf of Natissisa Enterprises, Ltd. (which was  
14 a family-owned investment vehicle belonging to Mr. Agoshkov and his father). After  
15 Natissisa Enterprises voluntarily dissolved during the course of the litigation, Mr.  
16 Agoshkov aided Plaintiffs' Counsel in obtaining necessary records to demonstrate its  
17 dissolution and then continued to serve in the capacity of class representative through  
18 the remainder of the litigation. Importantly, Mr. Agoshkov also provided approval in  
19 terms of the plan of allocation and claims administrator, and intends to remain  
20 involved going forward to ensure timely distribution of the Settlement Fund. With  
21 respect to the Court's direction in the Conditional Order (ECF No. 102 at 12), Mr.  
22 Agoshkov is able to adequately represent absent class members because his interest  
23 is aligned with every other member of the class when it concerns the timely  
24 distribution of the Settlement Fund. Based on the size of his "Recognized Loss," Mr.  
25 Agoshkov possesses a substantial interest in facilitating the distribution in a timely  
26 and efficient manner.

1 **III. CONCLUSION**

2 For the reasons set forth above, Plaintiffs and Plaintiffs' Counsel respectfully  
3 request that the motion be granted in its entirety.

4  
5 Dated: March 2, 2020

Respectfully submitted,

6 s/ Adam M. Apton

7 **LEVI & KORSINSKY, LLP**

8 Adam M. Apton (SBN 316506)  
9 445 South Figueroa Street, 31st Floor

Los Angeles, CA 90071

10 Tel: (213) 985-7290

11 Fax: (212) 363-7171

Email: aapton@zlk.com

12 -and-

13  
14 **LEVI & KORSINSKY, LLP**

Nicholas I. Porritt (*admitted pro hac vice*)

15 1101 30th Street NW, Suite 115

16 Washington, DC 20007

17 Tel: (202) 524-4290

18 Fax: (212) 363-7171

Email: nporritt@zlk.com

19 *Attorneys for Plaintiffs and*

20 *Lead Counsel for the Settlement Class*