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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20  
21 IN RE AMGEN INC.  
SECURITIES LITIGATION  
22  
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27

**Case No. CV 07-2536 PSG (PLAx)**

**Honorable Philip S. Gutierrez**

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

**Date: October 25, 2016  
Time: 1:30 p.m.  
Courtroom: 880**

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1 Class Counsel Labaton Sucharow LLP (“Labaton Sucharow” or “Class  
2 Counsel”), on behalf of itself and the other firms that provided legal services to the  
3 Class at Class Counsel’s direction (together with Class Counsel, “Plaintiffs’  
4 Counsel”), respectfully submits this memorandum in support of its application for  
5 an award of attorneys’ fees and payment of litigation expenses.

6 Class Counsel also submits this memorandum in support of the application  
7 of Lead Plaintiff and Class Representative Connecticut Retirement Plans and Trust  
8 Funds (“Connecticut Retirement” or “Class Representative”) for an award of the  
9 expenses incurred by the Office of the Treasurer of the State of Connecticut (the  
10 “Treasurer’s Office”) and its statutory representatives in connection with the  
11 prosecution of the Action.<sup>1</sup>

12 **I. PRELIMINARY STATEMENT**

13 This settlement concludes one of the longest, most hard-fought securities  
14 class actions since the passage of the Private Securities Litigation Reform Act of  
15 1995 (“PSLRA”), an action that led to a landmark opinion by the United States  
16 Supreme Court and that only reached a settlement in principle with less than one  
17 month before a four-week trial was set to begin. Multiple defense firms fought  
18 tenaciously with Class Counsel for multiple years in this case, which has finally  
19 been resolved. As detailed in the Stipulation, Amgen Inc. (“Amgen” or the

20 \_\_\_\_\_  
21 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the same  
22 meanings as those set forth in the Stipulation and Agreement of Settlement, dated  
23 as of July 20, 2016 (the “Stipulation,” ECF No. 581-3). All exhibits referenced  
24 herein are annexed to the Declaration of Christopher J. McDonald in Support of (I)  
25 Class Representative’s Motion for Final Approval of Class Action Settlement and  
26 Plan of Allocation and (II) Class Counsel’s Motion for an Award of Attorneys’  
27 Fees and Payment of Litigation Expenses (“McDonald Declaration” or “McDonald  
28 Decl.”). The McDonald Declaration is an integral part of this motion and is  
incorporated herein by reference. For the sake of brevity, the Court is respectfully  
referred to the McDonald Declaration for, *inter alia*, more detailed descriptions of  
the allegations and claims, the procedural history of the Action, the risks faced by  
the Class in pursuing litigation, the negotiations that led to a settlement, and the  
services provided by Class Counsel. Citations to exhibits that themselves have  
attached exhibits will be referenced as “Ex. \_ - \_.” The first numerical reference  
refers to the designation of the entire exhibit attached to the McDonald Declaration  
and the second reference refers to the exhibit designation within the exhibit itself.

1 “Company”), Kevin W. Sharer, Roger M. Perlmutter, George J. Morrow, and  
2 Richard D. Nanula (collectively, the “Individual Defendants,” and together with  
3 Amgen, the “Defendants”) have agreed to pay, or caused to be paid, \$95 million to  
4 secure a settlement of the claims in this class action (the “Settlement”). This  
5 recovery is an excellent result for the Class when evaluated in light of all the  
6 relevant circumstances—most notably the complicated nature of the claims and the  
7 risks of pursuing the Action through trial. The Settlement was achieved following  
8 Class Counsel’s vigorous investigative efforts, two rounds of motions to dismiss,  
9 the completion of fact and expert discovery (involving the production of more than  
10 22 million pages of Amgen documents, 38 fact depositions and 14 depositions of  
11 experts (who collectively produced 36 expert reports)), full briefing of Defendants’  
12 two motions for partial summary judgment, and extensive preparations for trial  
13 (including filing motions *in limine*, exchanging exhibit lists, exchanging witness  
14 lists, and filing memoranda of contentions of fact and law). *See, e.g.*, McDonald  
15 Decl. ¶¶8-10. Indeed, only when the start of trial was less than a month away did  
16 the parties reach a settlement in principle, with both sides accepting the mediator’s  
17 recommendation to resolve the Action for \$95 million; the settlement term sheet  
18 was signed just nine days before summary judgment was to be argued and twenty-  
19 seven days before the start of trial. McDonald Decl. ¶¶10-11.

20 The Settlement also followed Class Counsel’s successful effort to defeat  
21 Amgen’s Rule 23(f) appeal of this Court’s 2009 order certifying the Class (ECF  
22 No. 246), which in 2013 resulted in a landmark decision by the United States  
23 Supreme Court. In *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*,  
24 133 S. Ct. 1184 (2013), “a solid majority of the Supreme Court held that proof of  
25 the materiality of alleged misstatements or omissions was neither necessary nor  
26 appropriate to certify a class action on behalf of investors who bought or sold  
27  
28

1 securities in the aftermath of the falsehoods.”<sup>2</sup> This victory for the Class also  
2 redounds to the benefit of all securities fraud class action plaintiffs by definitively  
3 resolving the issue and removing a hurdle that would have made the certification  
4 process even more difficult and expensive.

5 Over the course of its nine-year journey, this complex and protracted matter  
6 required Plaintiffs’ Counsel to dedicate more than 93,000 hours of billable time to  
7 the Action, resulting in a total lodestar of more than \$49 million. Plaintiffs’  
8 Counsel have not yet received any compensation during these nine years for their  
9 successful prosecution of this case. Determination of Plaintiffs’ Counsel’s fees is  
10 governed by Federal Rule of Civil Procedure 23(h), which authorizes the Court to  
11 “award reasonable attorney’s fees” in certified class actions. The Settlement  
12 Notice informed members of the Class that Class Counsel would ask the Court “to  
13 award attorneys’ fees of no more than 25% of the Settlement Fund, which will  
14 include accrued interest.” Ex. 3-B at 3. Accordingly, Class Counsel respectfully  
15 requests that the Court in its discretion award Plaintiffs’ Counsel a reasonable fee  
16 consistent with the “[t]wenty-five percent ... ‘benchmark’ that district courts  
17 should award in common fund cases” that has been established by the Ninth  
18 Circuit. *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995). *See also*,  
19 *e.g.*, *Rieckborn v. Velti PLC*, No. 13-CV-03889-WHO, 2015 WL 468329, at \*21-  
20 22 (N.D. Cal. Feb. 3, 2015) (“In common fund cases such as this one, the  
21 benchmark fee award is 25 percent of the settlement fund.”).<sup>3</sup>

22 \_\_\_\_\_  
23 <sup>2</sup> Donald C. Langevoort, *Judgment Day for Fraud-on-the-Market: Reflections*  
24 *on Amgen and the Second Coming of Halliburton*, 57 Ariz. L. Rev. 37, 38 (2015).

25 <sup>3</sup> To date, the Court-appointed Claims Administrator has mailed more than  
26 1,075,000 copies of the Settlement Notice to potential Class Members, pursuant to  
27 the Court’s Preliminary Approval Order. *See* Ex. 3 ¶9. The Settlement Notice  
28 informed Class members that Class Counsel and Class Representative originally  
negotiated a fee percentage “in 2007 at the start of the case” and that Class Counsel  
may seek fees “greater than the fee percentage originally negotiated with Class  
Representative in 2007.” Ex. 3-B at 3; *see also* McDonald Decl. ¶136 & n. 10  
(describing 2007 fee structure). However, the 2007 negotiations “did not involve  
the class and, because they were made precertification, are not binding on the  
class.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002). *See also*

1 In addition, the expenses incurred by Plaintiffs' Counsel and Class  
2 Representative in connection with the prosecution of the Action on behalf of the  
3 Class were both reasonable and necessary. Accordingly, the requested expenses  
4 should be awarded in full.

5 **II. CLASS COUNSEL'S REQUEST THAT THE COURT IN ITS**  
6 **DISCRETION AWARD A REASONABLE FEE CONSISTENT WITH**  
7 **THE NINTH CIRCUIT'S 25% BENCHMARK SHOULD BE**  
8 **APPROVED**

9 **A. Counsel are entitled to a fee award from the common fund.**

10 The Supreme Court has recognized that "a lawyer who recovers a common  
11 fund for the benefit of persons other than himself or his client is entitled to a  
12 reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*,  
13 444 U.S. 472, 478 (1980); *see also Vincent v. Reser*, No. C-11-03572 CRB, 2013  
14 WL 621865, at \*4 (N.D. Cal. Feb. 19, 2013). The Ninth Circuit has expressly  
15 reasoned that "a private plaintiff, or his attorney, whose efforts create, discover,  
16 increase or preserve a fund to which others also have a claim is entitled to recover  
17 from the fund the costs of his litigation, including attorneys' fees." *Vincent v.*  
18 *Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). This rule, known as the  
19 "common fund doctrine," is equitable in nature and prevents unjust enrichment:  
20 "those who benefit from the creation of the fund should share the wealth with the  
21 lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply*  
22 *Sys. Sec. Litig. (WPPSS)*, 19 F.3d 1291, 1300 (9th Cir. 1994), *aff'd in part, Class*  
23 *Plaintiffs v. Jaffe Schlesinger P.A.* 19 F.3d 1306 (9th Cir. 1994). A "district court

24 (continued)

25 *id.* at 1049-1050 ("Unlike commercial litigation where the fee is determined by  
26 application of the negotiated contingency percentage to the amount of the  
27 recovery, in class action litigation the fee is determined on the basis of what a court  
28 finds to be reasonable."). Instead, determination of Plaintiffs' Counsel's fees is  
governed by Federal Rule of Civil Procedure 23(h), which authorizes the Court to  
"award reasonable attorney's fees" in certified class actions. Accordingly, Class  
Counsel respectfully requests that the Court, in its discretion, award a reasonable  
fee consistent with the Ninth Circuit's 25% benchmark. Unless otherwise noted, all  
internal citations are omitted and all emphasis is added.

1 has broad authority over awards of attorneys’ fees in class actions’ . . . .” *Powers v.*  
2 *Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

3 **B. The appropriate method for awarding fees is to award a**  
4 **reasonable percentage of the “common fund” recovered.**

5 In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that  
6 under the common fund doctrine a reasonable fee may be based “on a percentage  
7 of the fund bestowed on the class. . . .” *Id.* at 900 n.16. In this Circuit, a district  
8 court has discretion to award fees in common fund cases based on either the so-  
9 called lodestar/multiplier method or the percentage-of-the-fund method. *WPPSS*,  
10 19 F.3d at 1296. However, the percentage-of-recovery method has become the  
11 prevailing method in the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d  
12 1043 (9th Cir. 2002). This is particularly appropriate in cases under the PSLRA,  
13 where Congress recognized the propriety of the percentage method of fee awards.  
14 *See* 15 U.S.C. § 78u-4(a)(6) (“Total attorneys’ fees and expenses awarded by the  
15 court to counsel for the plaintiff class shall not exceed a reasonable percentage of  
16 the amount of any damages and prejudgment interest actually paid to the class”).

17 **C. The Ninth Circuit benchmark in common fund cases is 25%.**

18 Recognizing the utility of the percentage-of-recovery method, the Ninth  
19 Circuit has stated that “[t]wenty-five percent is the ‘benchmark’ that district  
20 courts should award in common fund cases.” *Pac. Enters.*, 47 F.3d at 379;  
21 *Powers*, 229 F.3d at 1256 (“We have also established twenty-five percent of the  
22 recovery as a ‘benchmark’ for attorneys’ fees calculations under the percentage-of-  
23 recovery approach.”); *see also Evans v. Linden Research, Inc.*, No. C-11-01078  
24 (DMR), 2014 WL 1724891, at \*6 (N.D. Cal. Apr. 29, 2014) (“25% of the recovery  
25 obtained is the benchmark in the Ninth Circuit.”) (citing *Vizcaino*, 290 F.3d at  
26 1047); *Hightower, et al. v. JPMorgan Chase Bank, N.A.*, No. 11-1802, 2015 WL  
27 9664959, at \*10 (C.D. Cal. Aug. 4, 2015) (same); *DeStefano v. Zynga*, Case No.  
28 12-cv-04007-JSC, 2016 WL 537946, at \*18 (N.D. Cal. Feb. 11, 2016) (“several []

1 courts—including courts in this District—have concluded that a 25 percent award  
2 was appropriate in complex securities class actions.”)

3 The guiding principle in this Circuit is that a fee award be “reasonable under  
4 the circumstances.” *WPPSS*, 19 F.3d at 1304. Here, a fee consistent with the  
5 Ninth Circuit’s 25% benchmark would be reasonable when compared to fee  
6 awards in similarly-sized securities class action settlements from district courts  
7 within the Ninth Circuit. *See, e.g., In re Mattel, Inc.*, Case No. 99-cv-10368-MRP-  
8 CW, slip op. at 2 (C.D. Cal. Sept. 29, 2003) (J. Pfaelzer) (awarding fees of 27% of  
9 \$122 million settlement); *In re Brocade Sec. Litig.*, No. C-05-02042 CRB, slip op.  
10 at 1 (N.D. Cal. Jan. 26, 2009) (J. Breyer) (awarding fees of 25% of \$160,098,500  
11 settlement); *In re MGM Mirage Sec. Litig.*, Case No. 09-cv-01558-GMN-VCF, slip  
12 op. at 1 (D. Nev. Mar. 1, 2016) (J. Navarro) (awarding 25% of \$75 million  
13 settlement); *In re Hewlett-Packard Co. Sec. Litig.*, No. 8:11-cv-01404-AG-RNB,  
14 slip op. at 2-3 (C.D. Cal. Sept. 15, 2014) (J. Guilford) (awarding fees of 25% of  
15 \$57 million settlement); *In re Mercury Interactive Corp. Sec. Litig.*, 5:05-CV-  
16 03395-JF, 2011 WL 826797, at \*2 (N.D. Cal. Mar. 3, 2011) (J. Fogel) (awarding  
17 fees of 22% of \$117.5 million settlement); *In re Verisign, Inc. Sec. Litig.*, Case No.  
18 C-02-2270-JW (PVT), slip op. at 1 (N.D. Cal. Apr. 24, 2007) (J. Ware) (awarding  
19 fees of 25% of \$78 million settlement).<sup>4</sup>

20 Accordingly, it is respectfully submitted that a request for a fee consistent  
21 with the Ninth Circuit’s 25% benchmark is well within the range of fees awarded  
22 by district courts within the Ninth Circuit in comparable securities settlements.

23 **D. Analysis under the percentage method and the *Vizcaino* factors**  
24 **justifies a reasonable fee award consistent with the Ninth**  
**Circuit’s 25% benchmark in this case.**

25 Class Counsel’s request for a fee award consistent with the 25% benchmark  
26 is eminently reasonable. The fee request readily satisfies the five factors that are

27 \_\_\_\_\_  
28 <sup>4</sup> All unreported “slip” opinions cited herein are submitted in a compendium,  
attached as Exhibit 14 to the McDonald Declaration.

1 often used by courts in the Ninth Circuit to evaluate the reasonableness of a  
2 requested fee: (1) result achieved; (2) risk of litigation; (3) skill required and  
3 quality of the work; (4) awards made in similar cases; and (5) contingent nature of  
4 the fee and financial burden carried by counsel.<sup>5</sup> *Vizcaino*, 290 F.3d at 1048-50.  
5 The Ninth Circuit has explained that a fee request should be evaluated in light of  
6 the totality of the circumstances. *Id.* at 1048.

7 Factor number 4, awards made in similar cases, addressed in Section II.C.,  
8 above, strongly supports Class Counsel’s request. As set forth below, the other  
9 *Vizcaino* factors also strongly militate in favor of approving a fee of up to 25%.

10 **1. A reasonable fee consistent with the Ninth Circuit’s 25%  
11 benchmark is justified by the result achieved.**

12 Courts have consistently recognized that the result achieved is an important  
13 factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S.  
14 424, 436 (1983) (noting the “most critical factor is the degree of success  
15 obtained”); *Vizcaino*, 290 F.3d at 1048 n.7 (noting “[e]xceptional results are a  
16 relevant circumstance” in awarding attorneys’ fees). Class Counsel submits that  
17 the \$95 million proposed Settlement is a highly favorable result for the Class, both  
18 quantitatively and when considering the risk of a lesser (or no) recovery if the case  
19 proceeded to trial.

20 The \$95 million Settlement far exceeds both the average and median  
21 reported securities class action settlement amounts since the passage of the PSLRA  
22 in 1995, which have ranged from \$13 million and \$5.6 million in 1996 (adjusted  
23 for inflation), respectively, to \$52 million and \$7.3 million in 2015, respectively.  
24 *See* Svetlana Starykh and Stefan Boettrich, *Recent Trends in Securities Class*

25 <sup>5</sup> Although not articulated specifically in *Vizcaino*, district courts in the Ninth  
26 Circuit also consider the reaction of the class when deciding whether to award the  
27 requested fee. *See In re Heritage Bond Litig.*, Case No. 02-ML-1475-DT (RCX),  
28 2005 WL 1594389, at \*15 (C.D. Cal. June 10, 2005) (“The presence or absence of  
objections . . . is also a factor in determining the proper fee award.”). Class  
Counsel will report on the Class reaction in its reply papers, which will be filed on  
October 18, 2016, after the deadline for objections has passed.

1 *Action Litigation: 2015 Full-Year Review*, NERA Economic Consulting (Jan. 25,  
2 2016), McDonald Decl. Ex. 1 at 26, 28. *See also* McDonald Decl. ¶142 & Ex. 12  
3 at 6 (Cornerstone recently reporting that the median settlement amount in securities  
4 fraud cases in 2015 was \$6.1 million in Laarni T. Bulan, Ellen M. Ryan, and Laura  
5 E. Simmons, *Securities Class Action Settlements - 2015 Review and Analysis*  
6 (Cornerstone Research 2016)). Based on Class Counsel’s review of publicly  
7 available information concerning securities class action settlements, we also  
8 believe the Settlement is the second highest securities class action settlement in  
9 California over the past two years. McDonald Decl. ¶142.

10 **2. A reasonable fee consistent with the Ninth Circuit’s 25%  
11 benchmark is justified by the risks of litigation.**

12 The risk of further litigation is also an important factor in determining a fair  
13 fee award. *Vizcaino*, 290 F.3d at 1048 (noting “[r]isk is a relevant circumstance”  
14 in awarding attorneys’ fees); *Pac. Enters.*, 47 F.3d at 379 (finding that attorneys’  
15 fees were justified “because of the complexity of the issues and the risks”); *see*  
16 *also Destefano v. Zynga*, No. 12-cv-04007-JSC, 2016 WL 537946, at \*17 (N.D.  
17 Cal. Feb. 11, 2016 ) (approving requested fee and noting that “as to the second  
18 factor . . . the risks associated with the case were substantial given the challenges  
19 of obtaining class certification and establishing the falsity of the misrepresentations  
20 and loss causation”).

21 While courts have always recognized that securities class actions carry  
22 significant risks, post-PSLRA rulings make it clear that the risk of no recovery  
23 (and hence no fee) has increased exponentially. *See Redwen v. Sino Clean Energy,*  
24 *Inc.*, No. CV 11-3936 PA (SSx), 2013 U.S. Dist. LEXIS 100275, at \*19-20 (C.D.  
25 Cal. July 9, 2013) (“Courts experienced with securities fraud litigation, ‘routinely  
26 recognize that securities class actions present hurdles to proving liability that are  
27 difficult for plaintiffs to clear.’”); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194  
28

1 F.R.D. 166, 194 (E.D. Pa. 2000) (noting that “securities actions have become more  
2 difficult from a plaintiffs perspective in the wake of the PSLRA”).

3 As set forth in detail in Section VII.B. of the McDonald Declaration, there  
4 were substantial challenges and uncertainties in the Action that required the skill  
5 and focus of Class Counsel to bring this matter to a highly favorable resolution.  
6 Although Class Counsel believes that Connecticut Retirement has a strong case for  
7 liability, the claims against Defendants presented unique challenges given the  
8 highly technical and multifaceted nature of the alleged fraud.

9 Broadly speaking, Connecticut Retirement’s claims against Defendants fall  
10 into two categories: claims relating to the safety of Aranesp, and claims relating to  
11 the marketing of Aranesp. To prove its case with respect to its safety-related  
12 claims, Connecticut Retirement intended to show that Amgen clinicians,  
13 biostatisticians and/or members of senior management manipulated clinical trial  
14 data with post hoc analyses to hide an increased risk of death with Aranesp (Study  
15 161), failed to disclose the premature termination of a second Aranesp clinical trial  
16 (DAHANCA 10), minimized the significance of the negative results of a third  
17 Aranesp clinical trial (Study 103), overstated the so-called “neutral” results of a  
18 fourth Aranesp clinical trial that failed to meet its primary endpoint (Study 145),  
19 and touted the safety of Aranesp without adequate support. *See* McDonald Decl. ¶¶  
20 49-54. To prove its case with respect to its marketing-related claims, Connecticut  
21 Retirement intended to show that Amgen senior management hid from investors an  
22 illegal off-label marketing campaign that concealed a risk of decreased Aranesp  
23 sales. *See* McDonald Decl. ¶¶ 51-52.

24 These alleged violations, many related to the complex practices of  
25 conducting and interpreting clinical trials, might not be easily understood by a jury.  
26 Moreover, Defendants vigorously disputed the allegations and sought to offer  
27 plausible alternative explanations supported by experts and numerous exhibits,  
28 including challenging the element of falsity by asserting that Defendants conveyed

1 truthful and accurate information to the market in a timely way. *See* McDonald  
2 Decl. ¶¶106-111.

3       There was also a very real risk that a jury would conclude that Defendants  
4 did not act with the requisite scienter. For instance, the statistical analyses at the  
5 heart of Connecticut Retirement’s claims concerning Study 161 were conducted by  
6 employees of Amgen who were several steps removed from the senior officers of  
7 the Company; Class Counsel may have had to rely in part on circumstantial  
8 evidence to show that Defendants were aware that Aranesp demonstrated an  
9 increased risk, which evidence might not have been credited by the jury. *See*  
10 McDonald Decl. ¶¶108-109. The absence of an allegation “that the Run 4 data was  
11 specifically discussed” at a January 2004 meeting of Amgen’s Development  
12 Review Board was not an impediment at the pleading stage and did not “deracinate  
13 the strong, overarching inference that Defendant Morrow and Dr. Parkinson likely  
14 had access to and were ultimately put on notice of the Run 4 data,” ECF No. 447 at  
15 16, but at trial there would have been no guarantee that a jury would view the  
16 evidence the same way. Moreover, because Study 161-related allegations related to  
17 the entire Class Period, the risks that a jury would reject the allegations have added  
18 significance because of the larger potential impact on overall damages.

19       Additionally, there was a risk that Class Counsel would not be able to  
20 establish loss causation and damages with respect to all claims asserted against  
21 Defendants. This Court, in connection with Class Representative’s off-label  
22 marketing claims, upheld the claims at the motion to dismiss stage based on a  
23 “materialization of risk” loss causation theory. ECF No. 447. However, as the  
24 Court itself noted, “[T]he Ninth Circuit has only addressed the materialization of  
25 the risk approach in the abstract....” *Id.* at 31. The lack of certainty with respect to  
26 this issue raised the very real possibility that a verdict favorable to the Class would  
27 be the subject of a lengthy and expensive appeal, adding years to the case, and with  
28 no assurance that a plaintiff’s verdict would be upheld.

1 A key piece of evidence in connection with Connecticut Retirement’s off-  
2 label marketing claims was Amgen’s December 2012 plea of guilty to a criminal  
3 information charging the Company with misbranding in violation of the Food,  
4 Drug, and Cosmetics Act. Another risk Connecticut Retirement faced was the  
5 uncertainty as to whether or to what extent evidence concerning Amgen’s guilty  
6 plea would be admissible in light of Defendants’ motion in limine to exclude it.  
7 *See* McDonald Decl. ¶109. Class Representative also faced the risk that one of  
8 Defendants’ expert witnesses, former United States Deputy Attorney General Paul  
9 McNulty, could effectively minimize to the jury the time frame covered by the  
10 guilty plea, the geographic area covered by the guilty plea, and/or the commercial  
11 scope of the guilty plea such that a jury would consider it less likely that senior  
12 Amgen personnel were aware of off-label marketing being performed. *Id.*

13 Defendants also sought to eviscerate Connecticut Retirement’s case through  
14 the filing of Daubert motions seeking the exclusion of all or part of the testimony  
15 of Connecticut Retirement’s expert witnesses. *See, e.g.*, ECF Nos. 540-1, 546, 547,  
16 550, 553, and 555. Had Defendants prevailed in excluding this testimony, the  
17 presentation of many aspects of Connecticut Retirement’s case would have been  
18 extremely difficult. *See* McDonald Decl. ¶¶112-113.

19 Indeed, establishing Defendants’ liability and the Class’s damages would  
20 have been difficult regardless of the outcome of Defendants’ motions; complex  
21 nature of the Action required Connecticut Retirement to rely heavily on expert  
22 witnesses to present testimony on critical scientific, medical, statistical, regulatory,  
23 marketing, criminal procedure, loss causation and damages issues. Presenting  
24 complex technical evidence persuasively to a jury presented significant challenges  
25 in addition to the risks created by the “battle of the experts” that would have  
26 ensued. *See* McDonald Decl. ¶¶112-113; *see also In re Omnivision Techs. Inc.*,  
27 559 F. Supp. 2d at 1047 (N.D. Cal. Jan. 9, 2008) (noting that the risks of litigation,  
28 including the ability to prove loss causation and the risk that Defendants prevail on

1 damages, support the requested fee); *Nguyen v. Radiant Pharms. Corp.*, No. SACV  
2 11-00406 DOC (MLGx), 2014 WL 1802293, at \*2 (C.D. Cal. May 6, 2014)  
3 (approving requested attorneys' fee and noting the particular challenges of  
4 calculating damages).

5 Accordingly, Connecticut Retirement faced the significant possibility that  
6 the Court or a jury would agree with Defendants' experts and, regardless of who  
7 would ultimately be successful at trial, there is no doubt that both sides would have  
8 had to present complex and nuanced information to a jury with no certainty as to  
9 the outcome. If not settled, the Class in this case faced the considerable risk with  
10 no guarantee of a greater recovery. Class Counsel achieved a significant result for  
11 the Class in the face of very real risks. Under these circumstances, the requested  
12 fee is fully appropriate.

13 **3. A reasonable fee consistent with the Ninth Circuit's 25%**  
14 **benchmark is justified by the skill required and the quality**  
**of Class Counsel's work.**

15 Courts have recognized that the "prosecution and management of a complex  
16 national class action requires unique legal skills and abilities." *In re Heritage*  
17 *Bond Litig.*, No. 02-ML-1475 DT (RCX), 2005 WL 1594389, at \*12 (C.D. Cal.  
18 June 10, 2005); *see also Vizcaino*, 290 F.3d at 1048. "This is particularly true in  
19 securities cases because the Private Securities Litigation Reform Act makes it  
20 much more difficult for securities plaintiffs to get past a motion to dismiss."  
21 *Zynga*, 2016 WL 537946, at \*17 (quoting *Omnivision*, 559 F. Supp. 2d at 1047).

22 Class Counsel has extensive and significant experience in the highly  
23 specialized field of securities class action litigation and is a known leader in the  
24 field. *See, e.g., In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.)  
25 (representing the Ohio Public Employees Retirement System, State Teachers  
26 Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching  
27 settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1500 (N.D.  
28 Ala.) (representing the State of Michigan Retirement System, New Mexico State

1 Investment Council, and the New Mexico Educational Retirement Board and  
2 securing settlements of more than \$600 million); *In re Countrywide Sec. Litig.*, No.  
3 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension  
4 Funds and reaching settlements of more than \$600 million). *See* McDonald Decl.  
5 Ex. 5-C. Indeed, Class Counsel’s specialization is even more particularized given  
6 its extensive experience litigating securities and antitrust actions against  
7 pharmaceutical companies. *See In re Schering-Plough Corp. / ENHANCE*  
8 *Securities Litigation*, Civil Action No. 08-397 (D.N.J.) (representing  
9 Massachusetts Pension Reserves Investment Management Board and reaching a  
10 settlement of \$473 million); *In re Bristol-Myers Squibb Sec. Litig.*, Civil Action  
11 No. 00-1990 (D.N.J.) (representing Longview Collective Investment Fund and  
12 reaching a settlement that included \$185 million and significant corporate  
13 governance reforms); *In re TriCor Indirect Purchaser Antitrust Litig.*, Civ. No. 02-  
14 1512-SLR (D. Del.) (representing Vista Healthplan, Inc. and reaching a settlement  
15 of \$65.7 million). *Id.*

16 Here, Class Counsel brought its significant experience to bear by  
17 successfully navigating through nine years of litigation, which included defeating  
18 in significant part Defendants’ initial motion to dismiss (*see* ECF No. 137),  
19 successfully moving for class certification (*see* ECF No. 246, Order granting class  
20 certification) and defeating Defendants’ appeals to the Ninth Circuit (*see* 660 F. 3d  
21 1170 (9th Cir. 2011)) and United States Supreme Court (*see* 133 S. Ct. 1184  
22 (2013)), and defeating in significant part Defendants’ motion to dismiss the  
23 Corrected Second Consolidated Amended Class Action Complaint (*see* ECF No.  
24 447). Following significant fact and expert discovery (*see* McDonald Decl. ¶¶75-  
25 87), Class Counsel was also able to amass overwhelming evidence (including 356  
26 exhibits and 475 pages of disputed facts) demonstrating genuine disputes as to  
27 material facts in opposing Defendants’ two partial motions for summary judgment  
28 (*see* ECF Nos. 529-536), and challenge all or part of the testimony of six of

1 Defendants' seven expert witnesses in pre-trial motions *in limine* (see ECF Nos.  
2 563-567).

3 Class Counsel not only used its knowledge and skill from prior cases but  
4 also developed greater facility with the complex medical, scientific, statistical,  
5 regulatory, legal, and industry issues presented by the claims in this case. See  
6 McDonald Decl. ¶144. The excellent Settlement is attributable in substantial part  
7 to the diligence, determination, hard work, and skill of Class Counsel, who  
8 developed, litigated, and successfully negotiated the Settlement.

9 **4. A reasonable fee consistent with the Ninth Circuit's 25%  
10 benchmark is justified by the contingent nature of the fee  
and the financial burden carried by Class Counsel.**

11 There have been many class actions in which plaintiffs' counsel took on the  
12 risk of pursuing claims on a contingency basis, expended thousands of hours and  
13 dollars, yet received no remuneration whatsoever despite their diligence and  
14 expertise. See, e.g., *In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL  
15 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting  
16 summary judgment to defendants after eight years of litigation, and after plaintiff's  
17 counsel incurred more than \$6 million in expenses and worked over 100,000 hours,  
18 representing a lodestar of approximately \$48 million). Class Counsel is aware of  
19 many other hard-fought lawsuits where, because of the discovery of facts unknown  
20 when the case was commenced, changes in the law during the pendency of the  
21 case, or a decision of a judge or jury following a trial on the merits, excellent  
22 professional efforts by members of the plaintiff's bar produced no fee for counsel.  
23 See, e.g., *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing  
24 plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116  
25 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and dismissing case  
26 with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996)  
27 (overturning plaintiffs' verdict obtained after two decades of litigation); McDonald  
28 Decl. ¶¶146-149. As the court in *In re Xcel Energy, Inc. Securities, Derivative &*

1 *ERISA Litigation*, 364 F. Supp. 2d 980 (D. Minn. 2005) recognized, “[p]recedent is  
2 replete with situations in which attorneys representing a class have devoted  
3 substantial resources in terms of time and advanced costs yet have lost the case  
4 despite their advocacy.” *Id.* at 994. Even plaintiffs who get past summary  
5 judgment and succeed at trial may find a judgment in their favor overturned on  
6 appeal or on a post-trial motion. *See, e.g., Glickenhau & Co. v. Household Int’l,*  
7 *Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of \$2.46  
8 billion after 13 years of litigation on loss causation grounds and error in jury  
9 instruction under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct.  
10 2296 (2011)); *In re Bank Atlantic Bancorp, Inc.*, Case No. 07-61542, 2011 WL  
11 1585605, at \*20-22 (S.D. Fla. Apr. 25, 2011) (following jury verdict for plaintiffs  
12 on liability, district court granted defendants’ motion for judgment as a matter of  
13 law on basis of insufficient evidence of loss causation), *aff’d*, 688 F.3d 713 (11th  
14 Cir. 2012).

15 Accordingly, it has long been recognized that attorneys are entitled to a  
16 larger fee when their compensation is contingent in nature. *See Vizcaino*, 290 F.3d  
17 at 1048-50; *Omnivision*, 559 F. Supp. 2d at 1047 (“The importance of assuring  
18 adequate representation for plaintiffs who could not otherwise afford competent  
19 attorneys justifies providing those attorneys who do accept matters on a  
20 contingent-fee basis a larger fee than if they were billing by the hour or on a flat  
21 fee.”); *see also Zynga*, 2016 WL 537946, at \*18 (noting that “when counsel takes  
22 on a contingency fee case and the litigation is protracted, the risk of non-payment  
23 after years of litigation justifies a significant fee award”).<sup>6</sup>

24  
25  
26 <sup>6</sup> Vigorous private enforcement of the federal securities laws can only occur if  
27 private plaintiffs can obtain some semblance of parity in representation with that  
28 available to large corporate defendants. If this important public policy is to be  
carried out, courts should award fees that will adequately compensate private  
plaintiffs’ counsel, taking into account the enormous risks undertaken with a clear  
view of the economics of a securities class action.

1 Here, because Plaintiffs' Counsel's fee was entirely contingent, the only  
2 certainty was that there would be no fee without a successful result and that such  
3 result would only be realized after significant amounts of time, effort, and expense  
4 had been expended. Unlike counsel for securities class action defendants, who are  
5 typically paid substantial hourly rates and reimbursed for their out-of-pocket  
6 expenses on a current basis, Plaintiffs' Counsel have received no compensation for  
7 their efforts during the course of the Action. Indeed, absent this Settlement, there  
8 was a sizeable risk that, at the end of the day, Class Members, as well as their  
9 counsel, would obtain no recovery. Plaintiffs' Counsel have risked non-payment  
10 of \$6.5 million in expenses and \$49 million in time worked on this matter,  
11 knowing that if its efforts were not successful, no fee would be paid.

12 **E. A fee consistent with the Ninth Circuit's 25% benchmark is**  
13 **reasonable under a lodestar cross-check.**

14 Although an analysis of the lodestar is not required for an award of  
15 attorneys' fees in the Ninth Circuit, a cross-check of the fee request with Plaintiffs'  
16 Counsel's lodestar demonstrates its reasonableness. *See Vizcaino*, 290 F.3d at  
17 1048-50; *see also In re Coordinated Pretrial Proceedings in Petroleum Prods.*  
18 *Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) (comparing the lodestar fee to  
19 the percentage fee is an appropriate measure of a percentage fee's reasonableness).

20 Plaintiffs' Counsel's combined "lodestar" is \$49,633,060.25 through  
21 September 9, 2016, meaning that the requested fee represents a "negative  
22 multiplier" of 0.48, or 48% of legal fees, assuming an award of the 25%  
23 benchmark. *See* McDonald Decl. ¶¶137-139 & Exs. 5-A through 10-A, Ex. 11.  
24 The Ninth Circuit has recognized that attorneys in common fund cases are  
25 frequently awarded a *multiple* of their lodestar, rewarding them "for taking the risk  
26 of nonpayment by paying them a premium over their normal hourly rates for  
27 winning contingency cases." *Vizcaino*, 290 F.3d at 1051. For example, the district  
28 court in *Vizcaino* approved a fee that reflected a multiple of 3.65 times counsel's

1 lodestar.<sup>7</sup> *Id.* See also *Steiner v. Am. Broad. Co.*, 248 F. App'x. 780, 783 (9th Cir.  
2 2007) (“this multiplier [of 6.85] falls well within the range of multipliers that  
3 courts have allowed”).

4 Courts have noted that a percentage fee that falls below counsel’s lodestar  
5 strongly supports the reasonableness of the award. See, e.g., *In re Flag Telecom*  
6 *Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM), 2010 WL 4537550, at \*26  
7 (S.D.N.Y. Nov. 8, 2010) (“Lead Counsel’s request for a percentage fee  
8 representing a significant discount from their lodestar provides additional support  
9 for the reasonableness of the fee request.”). Moreover, a negative multiplier, like  
10 the negative multiplier here, means that Plaintiffs’ Counsel are seeking to be paid  
11 for only a portion of the hours expended on the Action. See *In re Initial Pub.*  
12 *Offering Sec. Litig.*, No. 21 MC 92(SAS), 2011 WL 2732563, at \*9 (S.D.N.Y. July  
13 8, 2011) (noting that, with a negative multiplier, “every firm was awarded a  
14 fraction of its requested fees and was thus compensated for a small fraction of the  
15 time spent on the case”, citing 671 F. Supp. 2d 467, 515-16 (S.D.N.Y. 2009)).

16 Plaintiffs’ Counsel’s “lodestar” represents 93,137.55 hours of work at their  
17 billing rates.<sup>8</sup> The vast majority of this lodestar (97%) is attributable to the work of  
18 Class Counsel. With respect to billing rates, Class Counsel’s rates range from \$750  
19 to \$985 per hour for partners, \$500 to \$800 per hour for “of counsels”/senior  
20

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21 <sup>7</sup> Furthermore, “[i]t is an established practice in the private legal market to  
22 reward attorneys for taking the risk of nonpayment by paying them a premium over  
23 their normal hourly rates for winning contingency cases.” *In re Wash. Pub. Power*  
24 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (citing Richard Posner,  
25 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986)). Contingent fees that  
26 may far exceed the market value of the services if rendered on a non-contingent  
27 basis are accepted in the legal profession as a legitimate way of assuring competent  
28 representation for plaintiffs who could not afford to pay on an hourly basis  
regardless whether they win or lose.” *WPPSS*, 19 F.3d at 1299.

<sup>8</sup> The Supreme Court and other courts have held that the use of current rates is  
proper since such rates compensate for inflation and the loss of use of funds. See  
*Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Rutti v. Lojack Corp. Inc.*, No.  
SACV 06-350 DOC JCX, 2012 WL 3151077, at \*11 (C.D. Cal. July 31, 2012) (“it  
is well-established that counsel is entitled to current, not historic, hourly rates”)  
(citing *Jenkins*, 491 U.S. at 284).

1 counsel, and \$300 to \$725 per hour for other attorneys, and are comparable or less  
2 than peer defense-side law firms litigating matters of similar magnitude. Sample  
3 defense firm billing rates in 2015, gathered by Labaton Sucharow from bankruptcy  
4 court filings nationwide, often exceed these rates. *See* Ex. 16.

5 Additional work will also be required of Class Counsel on an ongoing basis,  
6 including: preparation for, and participation in, the final approval hearing;  
7 responding to any objections; supervising the claims administration process being  
8 conducted by the Claims Administrator; moving for leave of the Court to distribute  
9 the Net Settlement Fund in accordance with the recommendation of the Claims  
10 Administrator; and supervising the distribution of the Net Settlement Fund to Class  
11 Members who have submitted valid proofs of claim. However, Class Counsel will  
12 not seek payment for this work.

13 **III. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND**  
14 **WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED**

15 Plaintiff's Counsel have incurred expenses in an aggregate amount of  
16 \$6,577,512.31 in prosecuting the Action. Ex. 11. These expenses are reported in  
17 counsel's declarations submitted to the Court concurrently herewith. Exs. 5-B  
18 through 10-B.

19 As the *Vincent* court noted, “[a]ttorneys who created a common fund are  
20 entitled to the reimbursement of expenses they advanced for the benefit of the  
21 class.” *Vincent v. Reser*, No. 11-03572 (CRB), 2013 WL 621865, at \*5 (N.D. Cal.  
22 Feb. 19, 2013). In assessing whether counsel's expenses are compensable in a  
23 common fund case, courts look to whether the particular costs are of the type  
24 typically billed by attorneys to paying clients in the marketplace. *Harris v.*  
25 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the  
26 award of attorney's fees those out-of-pocket expenses that ‘would normally be  
27 charged to a fee paying client.’”)  
28

1 Here, the expenses sought by Plaintiff’s Counsel are of the type that are  
2 charged to hourly paying clients and, therefore, should be paid out of the common  
3 fund. The main expense here relates to work performed by Class Representative’s  
4 experts and consultants (\$2,826,031 or approximately 43% of total expenses). Ex.  
5 5-B. With respect to expert expenses, some courts consider whether the expert’s  
6 work was “‘crucial or indispensable’ to the litigation at hand.” *In re Immune*  
7 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007). As discussed  
8 in the McDonald Declaration, the facts and complexity of this case required Class  
9 Representative to utilize experts in the fields of cancer, clinical trials, biostatistics,  
10 FDA regulations, pharmaceutical marketing, plea agreements, market efficiency,  
11 loss causation, and damages. McDonald Decl. ¶¶80-81. For instance, the expert  
12 retained on the issues of damages and loss causation performed extensive analyses  
13 in connection not only with preparing and responding to expert reports, but also in  
14 connection with the mediation and the Plan of Allocation. *Id.* ¶¶81, 121. Class  
15 Counsel also retained David Frederick of Kellogg, Huber, Hansen, Todd, Evans &  
16 Figel, P.L.L.C. as its Supreme Court specialist to assist with the presentations to  
17 the Supreme Court and to argue the appeal. *Id.* ¶40. *See In re Merck & Co., Inc.*  
18 *Sec. Derivative & “ERISA” Litig.*, MDL No. 1658, at 10-11 (D.N.J. June 28, 2016)  
19 (approving counsel’s expense request of \$9,473,356.02, which included fees of  
20 Supreme Court specialist Kellogg Huber in connection with interlocutory appeal to  
21 United States Supreme Court). Approximately \$300,000 was incurred in  
22 connection with trial consultants, as Class Counsel moved into preparations for the  
23 July trial. Ex. 5-B.

24 Courts also routinely approve expenses associated with mediation. *See, e.g.,*  
25 *Franco v. Ruiz Food Prods., Inc.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801, at  
26 \*22 (E.D. Cal. Nov. 27, 2012) (noting that mediation fees are among the “types of  
27 fees” that are “routinely reimbursed”); *Immune Response*, 497 F. Supp. 2d at 1178  
28 (approving mediation costs because they were “reasonable and necessary” and the

1 “case involved protracted litigation, which would not have come to an end prior to  
2 trial without the assistance of a mediator”). The work done by Judge Walker and  
3 Judge Tevrizan, which totaled \$20,513, was crucial to the resolution of the Action.  
4 *See* Ex. 5-B.

5 The expenses here also include the costs of factual and legal research  
6 (approximately \$200,000). These are the charges for primarily computerized  
7 factual and legal research services such as LEXIS/Nexis and Westlaw. It is  
8 standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in  
9 researching legal and factual issues and reimbursement is proper. *See Immune*  
10 *Response*, 497 F. Supp. 2d at 1178. In approving expenses for computerized  
11 research, the court in *Gottlieb v. Wiles*, 150 F.R.D. 174, 186 (D. Colo. 1993), *rev’d*  
12 *and remanded on other grounds sub nom, Gottlieb v. Barry*, 43 F.3d 474, 484  
13 (10th Cir. 1994), underscored the time-saving attributes of computerized research  
14 as a reason reimbursement should be encouraged. The court also noted that fee-  
15 paying clients reimburse counsel for computerized legal and factual research. *Id.*

16 Plaintiffs’ Counsel were also required to work after hours and travel in  
17 connection with court appearances, document discovery, depositions, mediations,  
18 and settlement-related hearings, and thus incurred the related costs of rail and  
19 airline tickets (any First-class rates have been reduced to Economy), late-night  
20 transportation, meals, and lodging. Such expenses total approximately \$400,000  
21 and are reimbursable. *See In re Immune Response*, 497 F. Supp. 2d at 1177  
22 (reimbursement for travel expenses . . . is within the broad discretion of the Court).

23 Plaintiffs’ Counsel also seek approximately \$2,400,000 (37% of total  
24 expenses) relating to litigation support expenses in connection with discovery, such  
25 as the costs associated with electronic discovery, deposition transcripts, and the  
26 representation of confidential witnesses by independent counsel. Ex. 5-B.

27 In sum, Plaintiffs’ Counsel’s aggregate expenses of \$6,577,512.31, were  
28 reasonable and necessary to the prosecution of the Action and should be approved.

1 **IV. CLASS REPRESENTATIVE IS ENTITLED TO PAYMENT OF**  
2 **REASONABLE EXPENSES**

3 The PSLRA, 15 U.S.C. § 78u-4(a)(4), limits a class representative’s  
4 recovery to an amount “equal, on a per share basis, to the portion of the final  
5 judgment or settlement awarded to all other members of the class,” but also  
6 provides that “[n]othing in this paragraph shall be construed to limit the award of  
7 reasonable costs and expenses (including lost wages) directly relating to the  
8 representation of the class to any representative party serving on behalf of a class.”  
9 Here, as detailed in its declaration, attached as Exhibit 13 to the McDonald  
10 Declaration, Connecticut Retirement is seeking \$30,983.99 in expenses related to  
11 its active participation in the Action.

12 Many cases have approved reasonable payments to compensate class  
13 representatives for the time, effort, and expenses devoted by them on behalf of a  
14 class. *See, e.g., In re Broadcom Corp. Class Action Litig.*, No. CV-06-5036-R  
15 (CWx) (C.D. Cal. Dec. 4, 2012), slip op. at 2 (awarding costs and expenses to class  
16 representative in the amount of \$21,087); *Dusek v. Mattel, Inc.*, No. CV-99-10864-  
17 MRP, slip op. at 2 (C.D. Ca. Sept. 29, 2003) (awarding \$117,426 to three lead  
18 plaintiffs “as reimbursement for their time and expenses incurred”); *see also In re*  
19 *Satyam Comput. Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ, slip op. at 3-4  
20 (S.D.N.Y. Sept. 13, 2011) (awarding \$193,111 to four institutional lead plaintiffs);  
21 *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. 04-374, 2008 WL 9447623, at \*29  
22 (D.N.J. Dec. 9, 2008) (awarding “\$150,000 to Lead Plaintiffs [Pennsylvania State  
23 Employees’ Retirement System and the Pennsylvania Public School Employees’  
24 Retirement System] to compensate them for their reasonable costs and expenses  
25 directly relating to their representation of the Class pursuant to 15 U.S.C. § 78u-  
26 4(a)(4)”); *In re Schering-Plough Corp./ENHANCE Sec. Litig.*, No. 08-397, slip op.  
27 at 2 (D.N.J. Oct. 1, 2013)(awarding \$102,447 to four institutional lead plaintiffs).  
28 As explained in one decision, courts “award such costs and expenses to both

1 reimburse named plaintiffs for expenses incurred through their involvement with  
2 the action and lost wages, as well as provide an incentive for such plaintiffs to  
3 remain involved in the litigation and incur such expenses in the first place.” *Hicks*  
4 *v. Stanley*, No. 01 Civ. 10071, 2005 WL 2757792, at \*10 (S.D.N.Y. Oct. 24, 2005).

5 Class Counsel and Connecticut Retirement respectfully submit that the  
6 amount sought here is eminently reasonable based on Connecticut Retirement’s  
7 active involvement in the Action from inception to settlement. As such, the  
8 request should be granted in its entirety.

9  
10 **V. CONCLUSION**

11 For the foregoing reasons, Class Counsel respectfully requests the Court, in  
12 light of its knowledge of the case and Class Counsel’s prosecution of the claims,  
13 award reasonable attorneys’ fees consistent with the Ninth Circuit’s 25%  
14 benchmark from the Settlement Fund and payment of litigation expenses in the  
15 amount of \$6,577,512.31, plus accrued interest at the same rate as is earned by the  
16 Settlement Fund. Class Counsel also requests payment of \$30,983.99, on behalf of  
17 Connecticut Retirement, for reasonable lost wages under the PSLRA.

18 Dated: September 20, 2016

**LABATON SUCHAROW LLP**

19  
20 By: /s/ Thomas A. Dubbs

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*Class*

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 20, 2016.

By: /s/ Thomas A. Dubbs  
Thomas A. Dubbs (*pro hac vice*)

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