

1 **LABATON KELLER SUCHAROW LLP**
Jonathan Gardner*
2 Alfred L. Fatale III*
Joseph Cotilletta*
3 Beth C. Khinchuk*
140 Broadway
4 New York, New York 10005
Telephone: (212) 907-0700
5 Facsimile: (212) 818-0477
jgardner@labaton.com
6 afatale@labaton.com
jcotilletta@labaton.com
7 bkhinchuk@labaton.com
8 *admitted *pro hac vice*

9 *Class Counsel for Class Representative*
Kathie Ng and the Class

THE SCHALL LAW FIRM
Brian Schall (State Bar No. 290685)
Rina Restaino (State Bar No. 285415)
2049 Century Park East, Suite 2406
Los Angeles, California 90067
Telephone: (310) 301-3335
Facsimile: (213) 519-5876
brian@schallfirm.com
rina@schallfirm.com

Liaison Counsel for Class
Representative Kathie Ng
and the Class

11
12 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

13
14 **IN RE THE HONEST COMPANY, INC.**
SECURITIES LITIGATION

Case No. 21-cv-07405-MCS-AS

15 **MEMORANDUM OF POINTS AND**
AUTHORITIES IN SUPPORT OF
16 **CLASS COUNSEL’S MOTION FOR**
17 **AN AWARD OF ATTORNEYS’**
18 **FEEES AND PAYMENT OF**
19 **LITIGATION EXPENSES**

Hearing Date: July 28, 2025
Time: 9:00 a.m.
Courtroom: 7C
Judge: Hon. Mark C. Scarsi

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1 Class Counsel, Labaton Keller Sucharow LLP, respectfully submits this
2 memorandum of points and authorities in support of its application, on behalf of
3 itself and Liaison Counsel The Schall Law Firm (together “Plaintiffs’ Counsel”),
4 for an Order, pursuant to Fed. R. Civ. P. 23(e) and 54(d): (i) awarding attorneys’
5 fees of 30% of the Settlement Fund; (ii) approving payment of Class Counsel’s
6 Litigation Expenses in the amount of \$1,677,604.36; and (iii) approving Class
7 Representative’s request for reimbursement related to her representation of the
8 Class, pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C.
9 § 77z-1(a)(4) (“PSLRA”), in amount of \$7,425.00.¹

10 PRELIMINARY STATEMENT

11 As detailed in the Stipulation and Agreement of Settlement, the proposed
12 Settlement, if approved by the Court, will resolve the Action in its entirety in
13 exchange for cash payments totaling \$27,500,000. This recovery represents an
14 excellent result for the Class and it provides substantial, near-term compensation to
15 Class Members while avoiding the risks associated with pursuing the Action
16 through summary judgment, trial and the inevitable appeals that would follow.

17 In order to achieve this significant recovery, Plaintiffs’ Counsel tenaciously
18 pursued the claims for more than three years. In litigating the Action, Class Counsel
19 worked tirelessly on behalf of the Class and expended extensive time (18,379 hours
20 in professional time) and resources to ensure the best possible recovery for Class
21 Members, all without any guarantee of a recovery and compensation. As detailed
22 in the Declaration of Alfred L. Fatale III, dated June 23, 2025 (“Fatale Declaration”
23 or “Fatale Decl.”),² filed herewith, Plaintiffs’ Counsel engaged in a thorough pre-

24
25 ¹ The terms of the Settlement are set forth in the Stipulation and Agreement of
26 Settlement (“Stipulation”). ECF No. 304-3. All capitalized terms used herein are
defined in the Stipulation and have the same meanings as set forth therein.

27 ² The Fatale Declaration is an integral part of this motion and is incorporated
28 herein by reference. For the sake of brevity, the Court is respectfully referred to it
for, *inter alia*, a detailed description of the allegations and claims, the procedural
history of the Action, the risks faced by the Class in pursuing the litigation, the

1 discovery investigation; drafted three detailed amended complaints; opposed three
2 extensive motions to dismiss and a motion for partial reconsideration; obtained class
3 certification; and built the case through extensive fact and expert discovery, which
4 included the review of more than approximately 75,000 documents (347,000 pages)
5 from the Honest Defendants, more than approximately 71,000 documents (300,000
6 pages) from the Underwriter Defendants, approximately 2,900 documents (40,000
7 pages) from the Catterton Defendants, and more than approximately 1,300
8 documents (13,000 pages) from third parties, and taking 19 depositions and
9 defending two. In connection with expert discovery, Class Representative
10 submitted six expert reports and rebuttal reports. The Parties exchanged extensive
11 mediation briefing and participated in two mediations.

12 For these efforts, Class Counsel respectfully requests an award of attorneys'
13 fees of 30% of the Settlement Fund, which includes accrued interest; Litigation
14 Expenses in the amount of \$1,677,604.36, plus accrued interest; and reimbursement
15 in the amount of \$7,425.00 to Class Representative, pursuant to the PSLRA, for her
16 efforts on behalf of the Class.

17 As discussed herein, as well as in the Fatale Declaration, it is respectfully
18 submitted that the requested fee, although greater than the 25% benchmark, would
19 be fair and reasonable under the circumstances of this case given the excellent
20 recovery obtained for the Class, the considerable litigation efforts undertaken by
21 Plaintiffs' Counsel here, and the risks and challenges presented by the complex
22 issues in this case. The negative lodestar "multiplier" of approximately 0.88 (at
23 historic rates) and 0.81 (at current rates) confirms that the fee would fairly
24 compensate counsel and is in line with their work on behalf of the Class. Moreover,
25 the requested fee and expenses have been approved by Class Representative Kathie
26

27 _____
28 efforts that led to a settlement, and a description of the services provided by Class
Counsel. Citations to "¶" in this motion refer to paragraphs of the Fatale
Declaration.

1 Ng. *See* Ex. 6 at ¶7.³ Accordingly, it is respectfully submitted that the requested
2 fees, Litigation Expenses, and PSLRA request should be awarded in full.

3 **ARGUMENT**

4 **I. CLASS COUNSEL’S REQUEST FOR ATTORNEYS’ FEES OF 30%**
5 **OF THE COMMON FUND WOULD BE FAIR AND REASONABLE**

6 **A. Class Counsel Is Entitled to an Award of Attorneys’ Fees**
7 **from the Common Fund**

8 It is well settled that attorneys who represent a class and achieve a benefit for
9 class members are entitled to a reasonable fee as compensation for their services.
10 The Supreme Court has recognized that “a lawyer who recovers a common fund for
11 the benefit of persons other than himself or his client is entitled to a reasonable
12 attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472,
13 478 (1980).⁴ *See also Vincent v. Reser*, 2013 WL 621865, at *4 (N.D. Cal. Feb. 19,
14 2013) (quoting *Boeing*, 444 U.S. at 478). Indeed, 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). The purpose of this rule,
19 known as the “common fund doctrine,” is to prevent unjust enrichment so that
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).

24 The Supreme Court has also emphasized that private securities actions, like
25 this Action, are “an essential supplement to criminal prosecutions and civil

26 ³ All exhibits referenced herein are annexed to the Fatale Declaration. For
27 clarity, citations to exhibits that themselves have attached exhibits, will be
28 referenced as “Ex. - .” The first numerical reference is to the designation of the
entire exhibit to the Fatale Declaration and the second alphabetical reference is to
the exhibit designation within the exhibit itself.

⁴ All internal quotations and citations are omitted unless otherwise noted.

1 enforcement actions” brought by the U.S. Securities and Exchange Commission
2 (“SEC”). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007);
3 *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985)
4 (private securities actions provide “a most effective weapon in the enforcement’ of
5 the securities laws and are ‘a necessary supplement to [SEC] action’”).

6 **B. A Reasonable Percentage of the Fund Recovered Is the**
7 **Appropriate Method for Awarding Attorneys’ Fees**
8 **in Common Fund Cases**

8 Although courts within the Ninth Circuit have discretion to employ either the
9 lodestar or percentage method of calculating fees, in *Vizcaino v. Microsoft Corp.*,
10 290 F.3d 1043, 1047-48 (9th Cir. 2002), the Ninth Circuit expressly approved the
11 use of the percentage method in common fund cases. *See also Glass v. UBS Fin.*
12 *Servs. Inc.*, 331 F. App’x. 452, 456-57 (9th Cir. 2009) (affirming district court’s use
13 of percentage of recovery method to award fee). The percentage-of-recovery
14 method for awarding attorneys’ fees is preferable in cases with a common-fund
15 recovery as it “align[s] the lawyers’ interests with achieving the highest award for
16 class members, and reducing the burden on the courts that a complex lodestar
17 calculation requires.” *Tait v. BSH Home Appliances Corp.*, 2015 WL 4537463, at
18 *11 (C.D. Cal. July 27, 2015); *Nguyen v. Radiant Pharms. Corp.*, 2014 WL
19 1802293, at *9 (C.D. Cal. May 6, 2014). Indeed, “the use of the percentage-of-the
20 fund method in common fund cases is the prevailing practice in the Ninth Circuit
21 for awarding attorneys’ fees and permits the Court to focus on showing that a fund
22 conferring benefits on a class was created through the efforts of plaintiffs’ counsel.”
23 *In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *12 (N.D. Cal.
24 Feb. 17, 2023).

25 Further, the percentage of the fund method is appropriate in common fund
26 cases where “the benefit to the class is easily quantified.” *In re Bluetooth Headset*
27 *Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *In re Stable Road Acquisition*
28

1 *Corp.*, 2024 WL 3643393, at *11 (C.D. Cal. Apr. 23, 2024) (“where there is an
2 easily quantifiable benefit to the class—such as a cash common fund—the
3 percentage-of-the-fund approach is the prevailing method”).

4 The use of the percentage-of-recovery method also comports with the
5 language of the PSLRA, which states that “[t]otal attorneys’ fees and expenses
6 awarded by the court to counsel for the plaintiff class shall not exceed a reasonable
7 percentage of the amount of any damages and prejudgment interest actually paid to
8 the class.” 15 U.S.C. § 78u-4(a)(6); *see Nguyen*, 2014 WL 1802293, at *9 (“[T]he
9 PSLRA has made percentage-of-recovery the standard for determining whether
10 attorney’s fees are reasonable.”).

11 **C. The Requested Attorneys’ Fees Would Be Reasonable**

12 “In applying the percentage of the fund method, the Ninth Circuit has
13 established 25% as a ‘benchmark’ percentage, which may be adjusted depending
14 on the circumstances of a case.” *Apple*, 2023 WL 2090981, at *12 (citing *Vizcaino*,
15 290 F.3d at 1047); *see also Bluetooth*, 654 F.3d at 942 (“Courts typically calculate
16 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate
17 explanation in the record of any ‘special circumstances’ justifying a departure”).
18 However, “a reasonable fee award is the hallmark of common fund cases” and, as
19 noted below, the guiding principle in this Circuit is that a fee award be “reasonable
20 under the circumstances.” *WPPSS*, 19 F.3d at 1296. Notably, “in most common
21 fund cases, the award exceeds [the] benchmark.” *In re Omnivision Techs., Inc.*, 559
22 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see also In re Nuvelo, Inc. Sec. Litig.*,
23 2011 WL 2650592, at *1 (N.D. Cal. July 6, 2011) (applying relevant factors and
24 finding that the settlement warrants an upward adjustment of the benchmark to
25 30%). “This is particularly true in securities class actions such as this.” *In re Stable*
26 *Road Acquisition Corp.*, 2024 WL 3643393, at *14; *see also Patel v. Trans Union*,
27 2018 WL 1258194, at *6 (N.D. Cal. Mar. 11, 2018) (“Courts diverge from the
28

1 benchmark based on a variety of factors, including ‘the results obtained, risk
2 undertaken by counsel, complexity of the issues, length of the professional
3 relationship, the market rate, and awards in similar cases.”); *EK Vathana v.*
4 *Everbank*, 2016 WL 3951334, at *2 (N.D. Cal. July 20, 2016) (“courts have the
5 power to award more or less than this starting point in “special circumstances”). It
6 is respectfully submitted that the benchmark should be adjusted when the
7 percentage recovery would be “either too small or too large in light of the hours
8 devoted to the case or other relevant factors.” *Six (6) Mexican Workers v. Arizona*
9 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

10 Fee awards of 30%, or more, have been awarded in district courts throughout
11 the Ninth Circuit in numerous common fund settlements with comparable, and
12 greater settlements (and many lesser ones). *See, e.g., In re Telescopes Antitrust*
13 *Litig.*, 2025 WL 1093248, at *10 (N.D. Cal. Apr. 11, 2025) (awarding approximately
14 33.33% of \$32 million settlement); *Barrett v. Apple Inc.*, 2025 WL 1002786, at *2
15 (N.D. Cal. Apr. 3, 2025) (awarding 33.33% of \$25 million settlement); *In re*
16 *MacBook Keyboard Litig.*, 2023 WL 3688452, at *13-14 (N.D. Cal. May 25, 2023)
17 (awarding 30% of \$50 million settlement); *Fleming v. Impax Lab’y Inc.*, 2022 WL
18 2789496, at *9 (N.D. Cal. July 15, 2022) (awarding 30% of \$33 million settlement);
19 *In re Silver Wheaton Corp. Sec. Litig.*, 2020 WL 4581642, at *4 (C.D. Cal. Aug. 6,
20 2020) (awarding 30% of \$41.5 million settlement); *In re Banc of Calif. Sec. Litig.*,
21 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (awarding 33% of \$19.75
22 million settlement); *In re Tezos Sec. Litig.*, No. 17-cv-06779-RS, slip op. at 2 (N.D.
23 Cal. Aug. 28, 2020) (awarding 33 1/3% of \$25 million settlement) (Ex. 5)⁵; *In re*
24 *Heritage Bond Litig.*, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005)
25 (awarding 33.33% of \$27,783,000 settlement and noting “courts in this circuit, as
26 well as other circuits have awarded attorneys’ fees of 30% or more in complex class
27

28 ⁵ All unreported “slip” opinions are annexed as Exhibit 5 to the Fatale Declaration.

1 actions”).⁶

2 As discussed below, Class Counsel respectfully submits that a fee greater
3 than the benchmark would be warranted in this case, given the results achieved, the
4 difficulty and complexity of the claims, the obstacles and challenges faced by Class
5 Counsel, and the extensive time and labor dedicated by counsel.

6 **D. Analysis Under the *Vizcaino* Factors Justifies a
7 Fee Award of 30% in this Case**

8 The guiding principle in the Ninth Circuit is that a fee award must be
9 “reasonable under the circumstances.” *WPPSS*, 19 F.3d at 1296; *In re Omnivision*
10 *Techs., Inc.*, 559 F. Supp. 2d at 1047. In assessing attorneys’ fees under the
11 percentage method, and whether a departure from the 25% benchmark is warranted,
12 the Court can consider the following factors: (1) the results achieved; (2) the risk of
13 litigation; (3) the skill required and quality of the work; (4) awards made in similar
14 cases; and (5) the contingent nature of the fee and financial burden carried by
15 counsel. *See Vizcaino*, 290 F.3d at 1048-50; *see also In re Online DVD-Rental*
16 *Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015).

17 The Ninth Circuit has explained that these factors should not be used as a
18 rigid checklist or weighed individually, but, rather, should be evaluated in light of
19 the totality of the circumstances. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029
20 (9th Cir. 1998); *see also Vizcaino*, 290 F.3d at 1048 (district courts must ensure that
21 fee awards are “supported by findings that take into account all of the circumstances
22 of the case”).
23
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26 ⁶ Awards of 30% or more have also been awarded in much larger class action
27 settlements in courts throughout the Ninth Circuit. *See, e.g., In re Capacitors*
28 *Antitrust Litig.*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 6, 2023) (awarding 40%
of \$165 million partial settlement); *Andrews v. Plains All Am. Pipeline L.P.*, 2022
WL 4453864, at *4 (C.D. Cal. Sept. 20, 2022) (awarding 32% of \$230 million
settlement).

1 **1. The Excellent Result Achieved**

2 Courts have consistently recognized that the result achieved is a key factor to
3 be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436
4 (1983) (noting “the most critical factor is the degree of success obtained”); *In re*
5 *Heritage Bond Litig.*, 2005 WL 1594403, at *19 (“The result achieved is a
6 significant factor to be considered in making a fee award.”). Significantly, “[t]he
7 law appropriately provides for some upward adjustment [from the federal
8 benchmark] where the results achieved are significantly better than the norm.”
9 *Andrews*, 2022 WL 4453864, at *5. Class Counsel respectfully submits that the
10 \$27.5 million proposed Settlement is an excellent result for the Class, both
11 quantitatively and when considering the risk of a lesser (or no) recovery if the case
12 proceeded through summary judgment, trial, and appellate challenges.

13 The \$27.5 million recovery is more than twice the median recovery of \$10.3
14 million in securities class actions settled in 2024 that, like this Action, alleged only
15 Securities Act claims. *See* Laarni T. Bulan and Eric Tam, *Securities Class Action*
16 *Settlements – 2024 Review and Analysis* (Cornerstone Research 2025), Ex. 1 at 8.
17 In fact, the median settlement for class actions that allege only Securities Act claims
18 *from 2015 to 2024* was also \$10.3 million. *Id.*

19 As discussed in the Fatale Declaration and Class Representative’s
20 Memorandum of Points and Authorities in Support of Class Representative’s
21 Motion for Final Approval of Class Action Settlement and Plan of Allocation
22 (“Settlement Memorandum”), according to analyses prepared by Class
23 Representative’s damages expert, estimated aggregate damages the Class could
24 have obtained at trial ranged from \$210 million to approximately \$36 million, based
25 on whether Defendants’ negative causation arguments were credited. ¶¶104-108.
26 Thus, the Settlement recovers at least 13% of maximum potential statutory damages
27 (\$210 million) and 76% of Class Representative’s experts’ lower bound of
28

1 estimated recoverable damages (\$36 million). ¶108; Settlement Memorandum at
2 §I.D.1.

3 In the sphere of securities class actions, this is an excellent outcome.
4 According to Cornerstone Research, for Securities Act cases with total estimated
5 damages of \$150 million or more, the median percentage of recovery from 2015 to
6 2024 was 5.7% of total estimated damages, and the median percentage of recovery
7 for all Securities Act cases from 2015 to 2024 was 7.1%. Ex. 1 at 9. See also, *Ali v.*
8 *Franklin Wireless Corp.*, 2024 WL 5179910, at *11 (S.D. Cal. Dec. 19, 2024)
9 (finding the results achieved by counsel supported an upward adjustment from the
10 benchmark where the settlement amount recovered 12.9% of maximum estimated
11 damages).

12 In sum, the very favorable recovery here supports approval of the fee request.

13 2. The Risks of Litigation

14 The risk involved in a litigation is also an important factor in determining a
15 fair fee award. *Vizcaino*, 290 F.3d at 1048 (noting “[r]isk is a relevant circumstance”
16 in awarding attorneys’ fees); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379, n.10
17 (9th Cir. 1995) (finding that attorneys’ fees were justified “because of the
18 complexity of the issues and the risks”); see also *In re Heritage Bond Litig.*, 2005
19 WL 1594389, at *14 (“The risks assumed by Class Counsel, particularly the risk of
20 non-payment or reimbursement of expenses, is a favor in determining counsel’s
21 proper fee award.”); *In re Omnivision Techs. Inc.*, 559 F. Supp. 2d at 1047 (noting
22 that the risk of litigation, including the ability to prove loss causation and the risk
23 that Defendants prevail on damages, support the requested fee). As set forth in
24 Section VI. of the Fatale Declaration, Plaintiffs’ Counsel confronted, and would
25 continue to do so if the litigation had continued, a number of significant legal and
26 factual challenges during the course of the litigation.

27 Establishing the fundamental elements of materiality and falsity of the
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1 alleged misstatements in the Offering Documents was a major undertaking. For
2 example, Defendants persistently maintained that disclosures within the Offering
3 Documents, and evidence developed in discovery, showed that there were simply
4 no false and misleading statements or omissions. In particular, Defendants pressed
5 the arguments, through complex factual and expert evidence, that Class
6 Representative could not prove that Defendants omitted information from the
7 Offering Documents about the launch of its new diaper product or the impact of
8 COVID-19. Regarding Honest's Clean Conscious Diaper, Defendants argued that
9 evidence shows that it was the Company's best diaper product ever, which increased
10 Honest's diaper sales and market share; and that any early consumer complaints
11 about the product were common among any new product introduced to the market,
12 and were quickly and completely resolved prior to the IPO. ¶¶97-99.

13 Defendants also marshalled complex evidence that relevant information and
14 reports about the impact of COVID-19 existed in the public domain. Defendants
15 would likely continue to argue that the Company was transparent about the impact
16 of COVID-19 on its business both prior to the IPO and in the Offering Documents.
17 These facts were a challenge for Class Counsel and, if accepted at trial, could
18 significantly assist Defendants in establishing a knowledge defense. ¶100.

19 Additionally, the Individual Defendants and the Underwriter Defendants
20 asserted nuanced due diligence defenses. While Class Counsel would have worked
21 extensively with a due diligence expert to show that these Defendants were
22 negligent in connection with the IPO, these Defendants would also have put forth
23 evidence, and in the case of the Underwriter Defendants, a well-qualified expert of
24 their own, showing that they conducted a reasonable investigation and had
25 reasonable grounds for their actions. The Catterton Defendants would also continue
26 to argue that they did not control Honest, asserting that their actions in connection
27 with the IPO were consistent with standard private equity practices. As with the
28

1 Underwriter Defendants’ due diligence defenses, the Catterton Defendants put
2 forward well-qualified experts to support the reasonableness of their actions, which
3 Class Counsel sought to counter with factual and expert evidence. ¶¶101-102.

4 A key challenge faced by Class Counsel was the difficulty of overcoming
5 Defendants’ negative causation defense, particularly the “disaggregation” of
6 confounding or unrelated information from the stock price declines. *See* 15 U.S.C
7 § 77k(e). This defense is extremely complex and expert driven, weighing intricate
8 factual and statistical elements. Defendants and their experts pursued several
9 credible arguments that any recoverable damages should be much lower than the
10 statutory \$210 million that Class Representative’s expert has estimated. Since most
11 of the Class’s statutory damages (approximately \$173 million) occurred on just two
12 dates, June 17, 2021 and August 13, 2021, Defendants focused on the price declines
13 on these two dates and argued that the declines cannot be recovered. ¶¶103-108.

14 There were also substantial risks that the Court or the jury might not agree
15 with Class Representative’s evidence with respect to these expert-driven issues,
16 resulting in no recovery for the Class and no attorneys’ fees for counsel. *See Brown*
17 *v. China Integrated Energy Inc.*, 2016 WL 11757878, at *11 (C.D. Cal. July 22,
18 2016) (“Plaintiffs acknowledge that much of their evidence would have been expert
19 witness testimony that may not have been credited by the factfinder ... and they may
20 have difficulty collecting any judgment they might obtain against Defendants”
21 meaning “the high risks associated with this litigation weigh in favor of awarding
22 Lead Counsel's requested fee.”).

23 Class Counsel worked diligently to achieve a significant result for the Class
24 in the face of these very real risks. Under these circumstances, the requested fee is
25 appropriate.
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1 **3. The Skill Required and the Quality of Work**

2 Courts have recognized that the “prosecution and management of a complex
3 national class action requires unique legal skills and abilities.” *In re Heritage Bond*
4 *Litig.*, 2005 WL 1594389, at *12 (C.D. Cal. June 10, 2005); *see also Vizcaino*, 290
5 F.3d at 1048. “This is particularly true in securities cases because the Private
6 Securities Litigation Reform Act makes it much more difficult for securities
7 plaintiffs to get past a motion to dismiss.” *Jiangchen v. Rentech, Inc.*, 2019 WL
8 5173771, at *10 (C.D. Cal. Oct. 10, 2019) (quoting *In re Omnivision Techs., Inc.*,
9 559 F. Supp. 2d at 1047).

10 Class Counsel—a firm that practices extensively in the highly challenging
11 field of securities litigation and has skillfully litigated these types of cases in courts
12 across the country through trial (*see* firm resume of Labaton Keller Sucharow LLP,
13 Ex. 3-F) – engaged in a rigorous and concerted effort to obtain the maximum
14 recovery for the Class. This case required a wide ranging and deep investigation, a
15 thorough understanding of intricate factual and legal issues, voluminous fact and
16 expert discovery, class certification efforts, and the skill to respond to the host of
17 challenges that Defendants raised during the litigation. *See generally* Fatale
18 Declaration. Counsel’s efforts have resulted in a notable result for the Class,
19 particularly in light of the risks of looming summary judgment motions and pre-
20 trial challenges.

21 Accordingly, the quality of the legal services provided over the course of this
22 case, together with Class Counsel’s substantial experience in complex class actions
23 and commitment to the litigation, enabled Plaintiffs’ Counsel to obtain the very
24 favorable Settlement, and support an upward adjustment of the benchmark. *See In*
25 *re Apple*, 2023 WL 2090981, at *14 (noting class counsel’s skill and quality of work
26 supported a fee above the benchmark where the case withstood two motions to
27 dismiss and where “class counsel diligently developed the facts, propounded

1 discovery, took depositions, and engaged a damages consultant, all of which was of
2 great benefit to the class”).

3 The quality of opposing counsel is also important in evaluating the quality of
4 the work done by Plaintiffs’ Counsel. *See, e.g., In re Heritage Bond*, 2005 WL
5 1594389, at *12. Here, Plaintiffs’ Counsel was opposed by very skilled and highly
6 respected lawyers at Cooley LLP, Allen Overy Shearman Sterling US LLP, and
7 Greenberg Traurig LLP, with well-deserved reputations for vigorous advocacy in
8 the defense of complex civil cases such as this. In the face of this opposition,
9 Plaintiffs’ Counsel was able to develop the case so as to obtain an excellent recovery
10 for the Class.

11 **4. The Contingent Nature of the Fee and the Financial**
12 **Burden Carried by Counsel**

13 It has long been recognized that attorneys are entitled to a larger fee when
14 their compensation is contingent in nature. *See Vizcaino*, 290 F.3d at 1048-50; *In re*
15 *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047 (“The importance of assuring
16 adequate representation for plaintiffs who could not otherwise afford competent
17 attorneys justifies providing those attorneys who do accept matters on a contingent-
18 fee basis a larger fee than if they were billing by the hour or on a flat fee.”); *see also*
19 *In re Stable Road Acquisition Corp.*, 2024 WL 3643393, at *13 (“the fact that Lead
20 Counsel took this case on a contingent basis supports the fee request”).

21 The Supreme Court has also emphasized that private securities actions such
22 as this provide “a necessary supplement to [SEC] action.” *Bateman Eichler, Hill*
23 *Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985); *Tellabs, Inc. v. Makor Issues &*
24 *Rights, Ltd.*, 551 U.S. 308, 319 (2007). Yet, vigorous private enforcement of the
25 federal securities laws can only occur if private plaintiffs can obtain some
26 semblance of parity in representation with that available to large corporate
27 defendants. If this important public policy is to be carried out, courts should award
28 fees that will adequately compensate private plaintiffs’ counsel, taking into account

1 the enormous risks undertaken with a clear view of the economics of a securities
2 class action.

3 Indeed, there have been many class actions in which plaintiffs' counsel took
4 on the risk of pursuing claims on a contingency basis, expended thousands of hours
5 and dollars, yet received no remuneration whatsoever despite their diligence and
6 expertise. For example, Class Counsel tried *In re JDS Uniphase Securities*
7 *Litigation*, Case No. C-02-1486 CW (EDL) (N.D. Cal. Nov. 27, 2007), through to
8 a disappointing verdict for the defendants, receiving no compensation and
9 expending millions of dollars in time and expenses. *See also In re Oracle Corp.*
10 *Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*,
11 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight
12 years of litigation, and after plaintiff's counsel incurred over \$6 million in expenses
13 and worked over 100,000 hours, representing a lodestar of approximately
14 \$48 million).

15 Class Counsel is aware of many other hard-fought lawsuits where excellent
16 professional efforts by members of the plaintiff's bar produced no fee for counsel.
17 *See, e.g., Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing
18 \$81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake*
19 *Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained
20 after two decades of litigation). As the court in *In re Xcel Energy, Inc. Sec.,*
21 *Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980 (D. Minn. 2005), recognized,
22 "[p]recedent is replete with situations in which attorneys representing a class have
23 devoted substantial resources in terms of time and advanced costs yet have lost the
24 case despite their advocacy." *Id.* at 994; *see also* ¶¶133-137.

25 Here, because Plaintiffs' Counsel's fee was entirely contingent, the only
26 certainty was that there would be no fee without a successful result and that such
27 result would only be realized after significant amounts of time, effort, and expense
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1 had been expended. Unlike counsel for defendants, who are paid and reimbursed
2 for their expenses on a current basis, Class Counsel has received no compensation
3 for its efforts during the course of the Action. In the face of very real uncertainties
4 regarding the outcome of the case, Plaintiffs' Counsel prosecuted this Action on a
5 wholly contingent basis, knowing that the litigation could last for years and would
6 require devotion of a substantial amount of time and a significant advance of
7 litigation expenses with no guarantee of compensation or reimbursement.

8 **5. Reaction of the Class to Date**

9 Although not articulated specifically in *Vizcaino*, district courts in the Ninth
10 Circuit also consider the reaction of the class when deciding whether to award the
11 requested fee. *See In re Heritage Bond*, 2005 WL 1594389, at *15 (“The presence
12 or absence of objections . . . is also a factor in determining the proper fee award.”);
13 *Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *6 (C.D. Cal. Sept.
14 18, 2020) (considering response from the class, including that there were very few
15 objections, as a factor weighing in favor of the requested fee).

16 Here, a total of 36,349 Settlement Postcards reporting the maximum amount
17 of the Fee and Expense Application have been sent to potential Class Members and
18 their brokers, banks, and other nominees. *See* Declaration of Alexander Villanova
19 Regarding (A) Mailing of the Settlement Postcard and (B) Publication of the
20 Summary Notice, dated June 20, 2025, Ex. 2 (“Mailing Decl.”) at ¶10. The long-
21 form Settlement Notice and Claim Form, along with the Stipulation and other
22 relevant documents, were made available on a website dedicated to the litigation.
23 *Id.* at ¶13. Additionally, the Court-approved Summary Notice was published in *The*
24 *Wall Street Journal* and transmitted over the internet using *PR Newswire*. *Id.* at ¶12.

1 Although the objection deadline will not run until July 7, 2025, to date no
2 objections to the requested amount of attorneys’ fees and expenses have been filed
3 with the Court or received by Class Counsel.⁷

4 **E. A Lodestar Cross-check Confirms that the Requested Fee**
5 **Would Be Reasonable**

6 Although an analysis of counsel’s lodestar is not required for an award of
7 attorneys’ fees in the Ninth Circuit, it is often considered in order to ensure that an
8 awarded fee would be reasonable. *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773,
9 at *9 (C.D. Cal. Oct. 25, 2016) (“Although an analysis of the lodestar is not required
10 for an award of attorneys’ fees in the Ninth Circuit, a cross-check of the fee request
11 with a lodestar amount can demonstrate the fee request’s reasonableness.”); *In re*
12 *Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *10 (N.D. Cal. July 22,
13 2019) (noting that “lodestar may provide a useful perspective on the reasonableness
14 of a given percentage award”).

15 “Under the lodestar approach, a court multiplies the number of hours
16 reasonably expended by the reasonable hourly rate.” *In re Apple*, 2023 WL
17 2090981, at *12. Class Counsel’s lodestar derived by multiplying the hours worked
18 on the litigation by each attorney and professional by their current hourly rates⁸ is
19 \$10,173,968.50 and \$9,390,860.00 using historical rates. *See* Declaration of Alfred
20 L. Fatale III on behalf of Labaton Keller Sucharow LLP, dated June 23, 2025
21 (“Labaton Fee and Expense Decl.”), Ex. 3-A.⁹ This lodestar is a function of the
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23

24 ⁷ Class Counsel will address any future objections in its reply papers, which will
25 be filed with the Court on or before July 21, 2025.

26 ⁸ The Supreme Court and other courts have held that the use of current rates is
27 proper since such rates compensate for inflation and the loss of use of funds. *See*
28 *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Rutti v. Lojack Corp. Inc.*, 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).

⁹ The Schall Law Firm, which has been Liaison Counsel in the Action and will
be compensated by Labaton from its fee award, is not filing its own declaration.

1 extensive and rigorous litigation of the case, as described in the Fatale Declaration.¹⁰
2 As detailed in the Fatale Declaration and in the accompanying Labaton Fee and
3 Expense Declaration, more than 18,000 hours of attorney and professional time
4 were expended for the benefit of the Class. Throughout the litigation, Class Counsel
5 implemented effective project management and sought to maintain an appropriate
6 level of staffing on all tasks. *Id.*

7 Class Counsel's rates ranged from \$800 to \$1,375 per hour for partners, \$725
8 to \$975 per hour for of counsels, \$275 to \$600 for associates, \$420 to \$455 for staff
9 attorneys, and \$200 to \$415 for paralegals. *See* Ex. 3-B. Class Counsel submits that
10 these rates are reasonable. *See, e.g., In re Apple Inc. Sec. Litig.*, 2024 WL 4246282,
11 at *5 fn. 3 (N.D. Cal. Sept. 18, 2024) (finding the rates charged by counsel,
12 including Labaton, "are reasonable and commensurate with those charged by
13 attorneys with similar experience in the market"). They are also comparable to or
14 less than those used by peer defense-side law firms litigating matters of similar
15 magnitude and complexity. Sample defense firm rates in 2024, gathered by Labaton
16 annually from bankruptcy court filings nationwide, often exceeded these rates.
17 ¶146; Ex. 4.

18 The substantial work of Class Counsel was necessary for the success of the
19 litigation. As set forth in the Fatale Declaration, Class Counsel: (i) drafted three
20 amended complaints; (ii) opposed three motions to dismiss and a motion for partial
21 reconsideration; (iii) obtained class certification and mailed Class Notice; (iv)
22 propounded and responded to document requests and interrogatories; (v) reviewed
23 more than approximately 150,200 documents (700,000 pages) produced by
24 Defendants and third parties; (vi) took 19 depositions and defended two; (vii)
25 litigated numerous discovery disputes; (viii) consulted with experts in the fields of
26

27 ¹⁰ Pursuant to the Court's Initial Standing Order for Civil Cases, breakdowns of
28 the work associated with the firm's lodestar, by task category, are provided in
Exhibit 3-B &-C. Exhibit 3-D is Labaton's standard task table. Copies of the tables
will be emailed to the Court in Excel format.

1 negative causation and damages, asset tracing, underwriter due diligence, private
2 equity investments and control person liability, and consumer packaged goods
3 industry standards during the COVID-19 pandemic; (ix) served six expert reports
4 and rebuttal reports; and (x) exchanged extensive mediation briefing and
5 participated in two mediations during the course of the litigation. *See generally*
6 *Fatale Decl.* at §§III-V. The substantial time devoted to the Action reflects the
7 dedicated effort needed to prosecute the claims and bring them to a favorable
8 resolution.

9 Here, the requested fee of 30%, if awarded, would represent a *negative*
10 “multiplier” of 0.81 of Class Counsel’s lodestar at current rates and 0.88 of Class
11 Counsel’s lodestar at historical rates, meaning Class Counsel is seeking 81% to 88%
12 of its fees in the case, rather than its full fees, or more. Ex. 3 - A. The Ninth Circuit
13 has recognized that attorneys in common fund cases are frequently awarded an
14 enhancement multiple of their lodestar, rewarding them “for taking the risk of
15 nonpayment by paying them a premium over their normal hourly rates for winning
16 contingency cases.” *Vizcaino*, 290 F.3d at 1051. In *Vizcaino*, the Ninth Circuit
17 affirmed a 3.65 multiplier, noting that a range of multiples from 1.0 to 4.0 are
18 frequently awarded. *Id.*; *see also In re Alphabet Inc. Sec. Litig.*, No. 18-cv-06245
19 (ECF No. 245 at 12) (N.D. Cal. Sept. 30, 2024) (approving fee in \$350 million
20 settlement representing 4.58 multiplier) (Ex. 5); *In re Twitter Inc. Sec. Litig.*, No.
21 4:16-cv-05314, ECF No. 661 at 2 (N.D. Cal. Oct. 13, 2022) and *Twitter*, ECF No.
22 670 (N.D. Cal. Nov. 21, 2022) (awarding fee in \$809.5 million settlement
23 representing a 4.14 multiplier) (Ex. 5).

24 With respect to a *negative* multiplier, courts have reasoned that a fee that falls
25 below counsel’s lodestar supports the reasonableness of the award. *See, e.g., In re*
26 *Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (finding the fee request
27 reasonable where the multiplier was negative); *In re Biolase, Inc. Sec. Litig.*, 2015
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1 WL 12720318, at *8 (C.D. Cal. Oct. 13, 2015) (“A negative multiplier in this
2 context ‘suggests that the percentage-based amount is reasonable and fair based on
3 the time and effort expended by class counsel.’”); *Hayden v. Portola Pharms. Inc.*,
4 2023 WL 2375242, at *3 (N.D. Cal. Mar. 6, 2023) (approving fee request and noting
5 that the negative lodestar multiplier “confirms the reasonableness of the requested
6 fee”).

7 Furthermore, additional work will be required of Class Counsel on an
8 ongoing basis, including: correspondence with Class Members; preparation for, and
9 participation in, the final approval hearing; supervising the claims administration
10 process being conducted by the Claims Administrator; and supervising the
11 distribution of the Net Settlement Fund to Class Members who have submitted valid
12 Claim Forms. However, Plaintiffs’ Counsel will not seek payment for this
13 additional work.

14 For the foregoing reasons, it is respectfully submitted that the lodestar cross-
15 check here confirms that the requested fee would be reasonable.

16 **II. CLASS COUNSEL’S EXPENSES ARE REASONABLE AND WERE**
17 **NECESSARY TO ACHIEVE THE BENEFIT OBTAINED**

18 Class Counsel’s application includes a request for payment of \$1,677,604.36
19 in Litigation Expenses, which were reasonably incurred and necessary to prosecute
20 the Action. *See* Ex. 3-E. These expenses are explained in Class Counsel’s individual
21 fee and expense declaration filed herewith. *Id.* This amount is below the \$1,725,000
22 maximum that the notices informed potential Class Members counsel may apply
23 for. To date, there has been no objection to this request.

24 “Attorneys who created[] a common fund are entitled to the reimbursement
25 of expenses they advanced for the benefit of the class.” *Vincent*, 2013 WL 621865,
26 at *5. In assessing whether counsel’s expenses are compensable in a common fund
27 case, courts look at whether the particular costs are of the type typically charged by
28 attorneys to paying clients in the non-contingent marketplace. *Harris v. Marhoefer*,

1 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of
2 attorney’s fees those out-of-pocket expenses that ‘would normally be charged to a
3 fee paying client.’”). The amount of Litigation Expenses here is consistent with the
4 stage of the litigation. Class Counsel incurred expenses related to, among other
5 things, expert fees, mediation fees, deposition discovery, and litigation support fees
6 related to electronic discovery.

7 The largest component of the expenses relates to the retention of Class
8 Representative’s experts. These costs total \$1,214,460.00, or approximately 72% of
9 the Class Counsel’s expenses. ¶152. Class Counsel retained experts to analyze
10 class-wide damages and to provide merits expert reports and opinion on the
11 elements of Class Representative’s claims (*i.e.*, damages and tracing), and to rebut
12 Defendants’ defenses (negative causation, corporate control, the COVID-19
13 pandemic, and due diligence). These experts were essential to the prosecution of
14 the Action. *Id.* Class Counsel also retained counsel for a confidential witness in the
15 case, who was deposed by Defendants, incurring costs that totaled \$6,835. ¶156.

16 Another substantial component of Class Counsel’s expenses (*i.e.*,
17 (\$114,199.00 or approximately 7% of total expenses) was the cost of court reporters
18 and videographers in connection with the 21 depositions and court hearings. ¶154.

19 The costs of electronic discovery totaled \$178,160.62 or approximately 11%
20 of total expenses. Class Counsel retained a third-party vendor to host Class
21 Representative’s production, Defendants’ productions, and third-party productions
22 in their sophisticated electronic database and litigation support platform. ¶153.

23 Class Counsel also incurred \$73,560.00 in connection with the extensive
24 mediation efforts of the Mediator, David M. Murphy, Esq. ¶155.

25 The other expenses for which Class Counsel seeks payment are the types of
26 expenses that are necessarily incurred in complex commercial litigation. These
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1 expenses include, among others, travel costs, duplicating costs, PACER,
2 Westlaw/Lexis, and service and court filing fees. *See* Ex. 3-E.

3 In sum, it is respectfully submitted that Class Counsel’s expenses, in the
4 amount of \$1,677,604.36, were reasonable and necessary to the litigation of the
5 Action and should be approved.

6 **III. CLASS REPRESENTATIVE’S REQUEST FOR REIMBURSEMENT**
7 **PURSUANT TO 15 U.S.C § 77Z-1(A)(4)**

8 The PSLRA, 15 U.S.C. § 77z-1(a)(4), permits an “award of reasonable costs
9 and expenses (including lost wages) directly relating to the representation of the
10 class to any representative party serving on behalf of a class.” Here, Class
11 Representative is seeking \$7,425 related to the 75 hours she dedicated to the Action.
12 *See* Ex. 6 ¶¶8-9. “Courts have the discretion to grant payments to class
13 representatives.” *Ferreira v. Funko, Inc.*, 2022 WL 22877154, at *12 (C.D. Cal.
14 Dec. 13. 2022) (citing *In re Heritage Bond Litig.*, 2005 WL 1594389, at *4).

15 As explained in her declaration, Class Representative was deposed and
16 engaged in discovery. She was in regular contact with counsel, reviewed court
17 filings and submitted declarations in support of motions, consulted with counsel
18 during the course of the lengthy mediation process and approved of the Settlement.
19 *Id.* Class Representative’s efforts required her to devote time and resources to this
20 Action that would otherwise have been devoted to her regular professional
21 endeavors as an escrow officer. Ex. 6.

22 Many cases have approved reasonable payments to compensate
23 representatives for the time, effort, and expenses they devoted on behalf of a class.
24 *See, e.g., In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *10 (reasoning that
25 “courts have awarded reasonable payments to compensate class representatives for
26 the time, effort, and expenses devoted to litigating on behalf of the class” and
27 awarding the State of Connecticut \$30,983.99); *In re Intuitive Surgical Sec. Litig.*,

1 Case No. 5:13-cv-01920, (ECF No. 317 at 4) (N.D. Cal. Dec. 20, 2018) (Ex. 5)
2 (awarding \$49,754.18 and \$9,100.00 to class representatives).

3 As explained in one decision, courts “award such costs and expenses to both
4 reimburse named plaintiffs for expenses incurred through their involvement with
5 the action and lost wages, as well as provide an incentive for such plaintiffs to
6 remain involved in the litigation and incur such expenses in the first place.” *Hicks*
7 *v. Stanley*, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005).

8 Class Counsel respectfully submits that the amount sought here is reasonable
9 based on Class Representative’s active involvement in the Action.

10 **CONCLUSION**

11 For all the foregoing reasons, Class Counsel respectfully requests that the
12 Court award: (i) attorneys’ fees of 30% of the Settlement Fund; (ii) Litigation
13 Expenses in the amount of \$1,677,604.36, plus accrued interest; and (iii) \$7,425.00
14 to Class Representative pursuant to the PSLRA. A proposed order is being
15 submitted herewith.

16 Dated: June 23, 2025

LABATON KELLER SUCHAROW LLP

17 By: /s/ Alfred L. Fatale III

18 Jonathan Gardner (*pro hac vice*)
19 Alfred L. Fatale III (*pro hac vice*)
20 Joseph N. Cotilletta (*pro hac vice*)
21 Beth C. Khinchuk (*pro hac vice*)
22 140 Broadway
23 New York, NY 10005
24 Telephone: (212) 907-0700
25 jgardner@labaton.com
26 afatale@labaton.com
27 jcotilletta@labaton.com
28 bkhinchuk@labaton.com

*Attorneys for Class Representative Kathie Ng
and the Class*

THE SCHALL LAW FIRM
Brian Schall (State Bar No. 290685)
Rina Restaino (State Bar No. 285415)
2049 Century Park East, Suite 2406
Los Angeles, California 90067
Telephone: (310) 301-3335
brian@schallfirm.com

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rina@schallfirm.com

*Liaison Counsel for Class Representative
Kathie Ng and the Class*

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CERTIFICATE OF WORD COUNT COMPLIANCE

I hereby certify that this memorandum of law contains 6,956 words, which complies with the word limit of L.R. 11-6.1.

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

Executed on June 23, 2025

/s/ Alfred L. Fatale III
Alfred L. Fatale III

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2025, 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 e-mail addresses denoted on the attached Electronic Mail Notice List served via ECF on all registered participants only.

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

Executed on June 23, 2025

/s/ Alfred L. Fatale III
Alfred L. Fatale III

1 **Mailing Information for a Case 2:21-cv-07405-MCS-AS Cody Dixon v. The**
2 **Honest Company, Inc. et al**

3 **Electronic Mail Notice List**

4 The following are those who are currently on the list to receive e-mail notices for
5 this case.

- 6 • Zeeshan A. Ahmedani
zeeshan.ahmedani@aoshearman.com,managing-attorney-
7 5081@ecf.pacerpro.com,courtalert@shearman.com,rcheatham@shearman.c
om,manattyoffice@shearman.com,an.ahmedani@aosherman.com
- 8 • Rachel A Berger
rberger@labaton.com
- 9 • Ryan E Blair
rblair@cooley.com,efilingnotice@cooley.com,efiling-
10 notice@ecf.pacerpro.com,chourani@cooley.com
- 11 • Thilini Chandrasekera
tchandrasekera@cooley.com,eFilingNotice@cooley.com,smartinez@coole
12 y.com,efiling-notice@ecf.pacerpro.com
- 13 • Joseph Cotilletta
jcotilletta@labaton.com,6904786420@filings.docketbird.com
- 14 • Xiaoyu Ding
15 christine.ding@aoshearman.com
- 16 • Alfred L. Fatale , III
afatale@labaton.com,8305947420@filings.docketbird.com,cfrasca@labato
17 n.com,electroniccasefiling@labaton.com
- 18 • Koji F Fukumura
kfukumura@cooley.com,efilingnotice@cooley.com,efiling-
19 notice@ecf.pacerpro.com,chourani@cooley.com
- 20 • Jonathan Gardner
jgardner@labaton.com,lpina@labaton.com,afatale@labaton.com,40279884
21 20@filings.docketbird.com,cfrasca@labaton.com,electroniccasefiling@lab
aton.com
- 22 • Patrick T. Hein
patrick.hein@aoshearman.com,managing-attorney-
23 5081@ecf.pacerpro.com,courtalert@shearman.com,rcheatham@shearman.c
24 om,manattyoffice@shearman.com
- 25 • Robert A Horowitz
horowitzr@gtlaw.com,gtcourtalert@gtlaw.com
- 26 • Beth C. Khinchuk
27 bkhinchuk@labaton.com

- 1 • Daniel H R Laguardia
2 daniel.laguardia@aoshearman.com,managing-attorney-
3 5081@ecf.pacerpro.com,CourtAlert@Shearman.com,Ron.Cheatham@aosh
4 earman.com,manattyoffice@shearman.com
- 5 • Grace J Lee
6 grace.lee@aoshearman.com
- 7 • Daniel Craig Lewis
8 daniel.lewis@aoshearman.com,managing-attorney-
9 5081@ecf.pacerpro.com,CourtAlert@Shearman.com,rcheatham@shearman
10 .com,manattyoffice@shearman.com
- 11 • Charles Henry Linehan
12 clinehan@glancylaw.com,charles-linehan-8383@ecf.pacerpro.com
- 13 • Alexander L Linhardt
14 linhardt@gtlaw.com,alexander-linhardt-
15 0600@ecf.pacerpro.com,gutierrezd@gtlaw.com
- 16 • Wesley A. Mann
17 wmann@labaton.com,1422309420@filings.docketbird.com,ElectronicCase
18 Filing@labaton.com
- 19 • Francis P. McConville
20 fmconville@labaton.com,HChang@labaton.com,drogers@labaton.com,98
21 49246420@filings.docketbird.com,electroniccasefiling@labaton.com
- 22 • Caitlin Bridget Munley
23 cmunley@cooley.com,efiling-notice@ecf.pacerpro.com,hector-gonzalez-
24 3380@ecf.pacerpro.com
- 25 • Nicholas Reddick Orr
26 norr@cooley.com,efilingnotice@cooley.com,efiling-
27 notice@ecf.pacerpro.com,jerry.gonzalez@cooley.com
- 28 • Jennifer Pafiti
jpfafiti@pomlaw.com,ahood@pomlaw.com,tsayre@pomlaw.com,egoodman
@pomlaw.com,tprzybylowski@pomlaw.com,jlopiano@pomlaw.com,disaa
cson@pomlaw.com,ashmatkova@pomlaw.com,mtjohnston@pomlaw.com,j
alieberman@pomlaw.com,abarbosa@pomlaw.com
- Robert Vincent Prongay
rprongay@glancylaw.com,CLinehan@glancylaw.com,info@glancylaw.co
m,robert-prongay-0232@ecf.pacerpro.com
- Pavithra Rajesh
prajesh@glancylaw.com,info@glancylaw.com,pavithra-rajesh-
9402@ecf.pacerpro.com
- Laurence M. Rosen
lrosen@rosenlegal.com,lrosen@ecf.courtdrive.com
- Robert S. Rowley
rrowley@labaton.com

- 1 • Brian J. Schall
brian@schallfirm.com,rina@schallfirm.com
- 2
- 3 • David J. Schwartz
dschwartz@labaton.com
- 4 • Elizabeth J Stewart
elizabeth.stewart@shearman.com
- 5
- 6 • Lisa Marie Strejlau
lstrejlau@labaton.com,2852082420@filings.docketbird.com,electroniccasefiling@labaton.com
- 7
- 8 • Daniel J Tyukody , Jr
tyukodyd@gtlaw.com,daniel-tyukody-2461@ecf.pacerpro.com,phieferd@gtlaw.com
- 9
- 10 • Elizabeth L Walk
lwalk@cooley.com
- 11 • Jonathan Widjaja
jonathan.widjaja@gtlaw.com,jonathan-widjaja-8912@ecf.pacerpro.com,jackie.wernick@gtlaw.com
- 12
- 13 • Charles Wood
cwood@labaton.com,7807213420@filings.docketbird.com
- 14
- 15 • Elizabeth M. Wright
ewright@cooley.com
- 16 • Nicole M Zeiss
NZeiss@labaton.com,5854006420@filings.docketbird.com,ElectronicCaseFiling@labaton.com,Settlementquestions@labaton.com,cboria@labaton.com,ERosenberg@labaton.com
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28