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

16 IN RE OKTA, INC. SECURITIES
LITIGATION
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CASE NO. 3:22-cv-02990-SI

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

Date: Nov. 8, 2024

Time: 10:00 a.m.

Judge: Hon. Susan Illston

Courtroom: 1, 17th Floor

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NOTICE OF MOTION

PLEASE TAKE NOTICE that Class Counsel Labaton Keller Sucharow LLP (“Class Counsel” or “Labaton”), on behalf of itself and all Plaintiffs’ Counsel, will move this Court on November 8, 2024 at 10:00 a.m., before the Honorable Susan Illston, for an Order, pursuant to Rules 23(h) and 54(d) of the Federal Rules of Civil Procedure: (i) awarding attorneys’ fees in the amount of 22% of the Settlement Fund; (ii) awarding Litigation Expenses in the amount of \$280,272.17, plus accrued interest; and (iii) approving Class Representatives’ requests for payment of their costs and expenses (including lost wages) related to their representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), §15 U.S.C. § 78u-4(a)(4).¹

The Motion is supported by the following Memorandum of Points and Authorities, and the accompanying Declaration of Michael P. Canty in Support of (I) Class Representatives’ Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Class Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses, dated October 3, 2024 (“Canty Declaration” or “Canty Decl.”), with annexed exhibits.

Pursuant to the Court’s Preliminary Approval Order (ECF No. 124), any objections to this Fee and Expense Application must be filed with the Court by October 18, 2024. A proposed order will be submitted with Class Counsel’s reply submission on or before November 1, 2024, after the deadline for objecting has passed.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should approve Class Counsel’s request, on behalf of Plaintiffs’ Counsel, for an award of attorneys’ fees in the amount of 22% of the Settlement Fund.
2. Whether the Court should approve Class Counsel’s request for payment of Litigation Expenses incurred by Class Counsel in the amount of \$280,272.17.

¹ All capitalized terms used herein are defined in the Stipulation and Agreement of Settlement, dated May 29, 2024 (“Stipulation”), and have the same meanings as set forth therein. ECF No. 119-2.

“Plaintiffs’ Counsel” refers collectively to Labaton Keller Sucharow LLP, Adamski Moroski Madden Cumberland & Green LLP, and O’Neill, Heinrich, Damkroger, Bergmeyer & Shultz, P.C., L.L.O.

1 Representatives. *See* Ex. 1 at ¶¶2, 7, 12; Ex. 2 at ¶¶2, 7, 12.³

2 As discussed herein, the requested 22% fee is *below* the Ninth Circuit’s “benchmark” for
 3 contingent fees in common fund cases and represents a great value for the Class considering the
 4 excellent recovery and the risks that Class Representatives and Class Counsel overcame and
 5 continued to face in the Action. The requested fee is also supported by the other factors considered
 6 by courts in the Ninth Circuit in determining the reasonableness of the fee, including the results
 7 achieved, the quality of Class Counsel’s efforts, awards in similar cases, and the lodestar cross
 8 check. Furthermore, the expenses requested are reasonable in amount and were necessarily
 9 incurred for the successful prosecution of the Action. Accordingly, it is respectfully submitted
 10 that the requested fees and expenses should be awarded in full.

11 ARGUMENT

12 **I. CLASS COUNSEL’S REQUEST FOR ATTORNEYS’ FEES OF 22% OF THE 13 COMMON FUND SHOULD BE APPROVED**

14 **A. Class Counsel Is Entitled to an Award of Attorneys’ Fees 15 from the Common Fund**

16 It is well settled that attorneys who represent a class and achieve a benefit for class
 17 members are entitled to a reasonable fee as compensation for their services. The Supreme Court
 18 has recognized that “a lawyer who recovers a common fund for the benefit of persons other than
 19 himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing*
 20 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Vincent v. Reser*, 2013 WL 621865, at *4
 21 (N.D. Cal. Feb. 19, 2013) (quoting *Boeing*, 444 U.S. at 478). Indeed, the Ninth Circuit has
 22 expressly reasoned that “a private plaintiff, or his attorney, whose efforts create, discover,

23 ³ All exhibits referenced herein are annexed to the Canty Declaration, filed herewith. For
 24 clarity, citations to exhibits that themselves have attached exhibits, will be referenced as “Ex. __ -
 25 __.” The first numerical reference is to the designation of the entire exhibit to the Canty
 Declaration and the second alphabetical reference is to the exhibit designation within the exhibit
 itself.

26 The Canty Declaration is an integral part of this motion and is incorporated herein by
 27 reference. For the sake of brevity, the Court is respectfully referred to it for, *inter alia*, a detailed
 28 description of the allegations and claims, the procedural history of the Action, the risks faced by
 the Class in pursuing litigation, the efforts that led to a settlement, and a description of the services
 provided by Class Counsel. Citations to “¶” in this motion refer to paragraphs in the Canty
 Declaration.

1 increase or preserve a fund to which others also have a claim is entitled to recover from the fund
2 the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d
3 759, 769 (9th Cir. 1977). The purpose of this rule, known as the "common fund doctrine," is to
4 prevent unjust enrichment so that "those who benefit from the creation of the fund should share
5 the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power*
6 *Supply Sys. Sec. Litig. (WPPSS)*, 19 F.3d 1291, 1300 (9th Cir. 1994), *aff'd in part, Class Plaintiffs*
7 *v. Jaffe Schlesinger, P.A.*, 19 F.3d 1306 (9th Cir. 1994).

8 The Supreme Court has also emphasized that private securities actions, like this Action,
9 are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by
10 the U.S. Securities and Exchange Commission ("SEC"). *Tellabs, Inc. v. Makor Issues & Rights,*
11 *Ltd.*, 551 U.S. 308, 313 (2007); *accord, Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S.
12 299, 310 (1985) (private securities actions provide "'a most effective weapon in the enforcement'
13 of the securities laws and are 'a necessary supplement to [SEC] action'").

14 **B. A Reasonable Percentage of the Fund Recovered Is the Appropriate**
15 **Method for Awarding Attorneys' Fees in Common Fund Cases**

16 Although courts within this Circuit have discretion to choose either the lodestar or
17 percentage method of calculating fees (*see WPPSS*, 19 F.3d at 1296), in *Vizcaino v. Microsoft*
18 *Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002), the Ninth Circuit expressly approved the use of
19 the percentage method in common fund cases. *See also Glass v. UBS Fin. Servs. Inc.*, 331 F.
20 App'x. 452, 456-57 (9th Cir. 2009) (affirming district court's use of percentage of recovery
21 method to award fee).

22 The percentage-of-recovery method for awarding attorneys' fees is preferable in cases
23 with a common-fund recovery as it "aligns the lawyers' interests with achieving the highest award
24 for class members, and reducing the burden on the courts that a complex lodestar calculation
25 requires." *In re Apple Inc. Device Performance Litig.*, 2021 WL 1022866, at *2 (N.D. Cal. Mar.
26 17, 2021). Indeed, "the use of the percentage-of-the fund method in common fund cases is the
27 prevailing practice in the Ninth Circuit for awarding attorneys' fees and permits the Court to focus
28 on showing that a fund conferring benefits on a class was created through the efforts of plaintiffs'

1 counsel.” *In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *12 (N.D. Cal. Feb.
2 17, 2023); *see also Glass v. UBS Fin. Servs., Inc.*, 331 F. App’x. 452, 456-57 (9th Cir. 2009)
3 (overruling objection based on use of percentage-of-the-fund approach); *Baird v. BlackRock*
4 *Institutional Tr. Co.*, 2021 WL 5113030, at *6-7 (N.D. Cal. Nov. 3, 2021) (applying percentage
5 of the fund method and lodestar crosscheck).

6 Further, the percentage of the fund method is appropriate in common fund cases because
7 “the benefit to the class is easily quantified.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d
8 935,942 (9th Cir. 2011); *Destefano v. Zynga Inc.*, 2016 WL 537946, at *16 (N.D. Cal. Feb. 11,
9 2016) (“Because this case involves a common settlement fund with an easily quantifiable benefit
10 to the Class, the Court will primarily determine attorneys’ fees using the percentage method. . .
11 ”).

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

19 **C. The Requested Attorneys’ Fees of 22% of the**
20 **Settlement Fund Is Lower than Comparable Fees**

21 In applying the percentage of the fund method, the Ninth Circuit has established 25% as
22 a “benchmark” percentage, which may be adjusted depending on the circumstances of a case.
23 *Bluetooth*, 654 F.3d at 942 (“courts typically calculate 25% of the fund as the benchmark for a
24 reasonable fee award, providing adequate explanation in the record of any special circumstances
25 justifying a departure”); *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1029 (9th Cir. 2998) (“This
26 circuit has established 25% of the common fund as a benchmark for attorneys’ fees.”); *In re*
27 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“Under the percentage of
28 recovery method, the attorneys’ fees equal some percentage of the common settlement fund; in

1 this circuit, the benchmark is 25%.); *see also In re Apple Inc. Device . Performance Litig.*, 2023
2 WL 2090981, at *12. “It is well established that 25% of a common fund is a presumptively
3 reasonable amount of attorneys’ fees.” *In re Anthem Inc. Data Breach Litig.*, 2018 WL 3960068,
4 at *4 (N.D. Cal. Aug. 17, 2018).

5 Here, the requested fee of 22% is, of course, *less than* the 25% benchmark. A review of
6 fee awards in district courts within the Ninth Circuit, and elsewhere, shows that an award of 22%
7 is on the lower end of percentage fees awarded in securities and other complex common fund
8 cases with comparable settlements. *See, e.g., In re MacBook Keyboard Litig.*, 2023 WL 3688452,
9 at *13-14 (N.D. Cal. May 25, 2023) (awarding 30% of \$50 million settlement); *In re Sandisk LLC*
10 *Sec. Litig.*, No. 3:15-cv-01455-VC, slip op. at 2 (N.D. Cal. Oct. 23, 2019) (Ex. 8)⁴ (awarding 25%
11 of \$50 million settlement); *In re Volkswagen “Clean Diesel” Mktg, Sales Pracs., and Prods.*
12 *Liab. Litig.*, 2019 WL 2077847, at *4 (N.D. Cal. May 10, 2019) (awarding 25% of \$48 million
13 settlement); *In re Silver Wheaton Corp. Sec. Litig.*, 2020 WL 4581642, at *4 (C.D. Cal. Aug. 6,
14 2020) (awarding 30% of \$41.5 million settlement); *In re Hewlett-Packard Co. Sec. Litig.*, No.
15 SACV 11-1404, slip op. at 2 (C.D. Cal. Sept. 15, 2014) (awarding 25% of \$57 million settlement)
16 (Ex. 8); *In re Verisign, Inc. Sec. Litig.*, No. C-02-2270-JWC(PVT), slip op. at 1 (N.D. Cal Apr.
17 24, 2007) (awarding 25% of \$78 million) (Ex. 8); *In re Titan, Inc. Sec. Litig.*, No. 04-CV-0676,
18 slip op. at 3 (S.D. Cal. Dec. 20, 2005) (awarding 25% of \$61.5 million settlement) (Ex. 8).⁵

19 Additionally, a recent analysis by NERA Economic Consulting of securities class action
20 settlements found that from 2014-2023, the median attorneys’ fee award for settlements of
21 between \$25 million and \$100 million was 25%. *See* Edward Flores and Svetlana Starykh, Recent
22

23
24 ⁴ All unreported slip opinions are submitted in a compendium of cases, attached as Ex.8 to
the Canty Declaration.

25 ⁵ Indeed, awards of more than 22% are frequently awarded within the Ninth Circuit in
26 substantially larger settlements as well. *See, e.g., In re Twitter Inc. Sec. Litig.*, No. 4:16-cv-05314,
27 slip op. at 2 (N.D. Cal. Nov. 21, 2022) (awarding 22.5% of \$809,500,000 settlement) (Ex. 8); *In*
28 *re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, slip op. at 1-3 (C.D. Cal. Mar. 9, 2021),
(awarding 25% of \$154.7 million settlement) (Ex. 8); *In re Amgen Inc. Sec. Litig.*, 2016 WL
10571773, at *9-10 (C.D. Cal. Oct. 25, 2016) (awarding 25% of \$95 million settlement); *In re*
Brocade Sec. Litig., No. 3:05-CV-02042- CRB, slip op. at 13 (N.D. Cal. Jan. 26, 2009) (awarding
25% of \$160 million settlement) (Ex. 8).

1 Trends in Securities Class Action Litigation: 2023 Full-Year Review (NERA 2024), Ex. 7 at 29.⁶

2 Accordingly, a 22% fee would be *lower than* numerous fee awards throughout the Ninth
3 Circuit and nationwide.

4 **D. Analysis Under the *Vizcaino* Factors Justifies a Fee Award of 22%
Under the Circumstances of this Case**

5 The guiding principle in this Circuit is that a fee award must be “reasonable under the
6 circumstances.” *WPPSS*, 19 F.3d at 1296; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
7 1047 (N.D. Cal. 2008).

8 In assessing attorneys’ fees under the percentage method, the Court can consider the
9 following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required and
10 quality of the work; (4) awards made in similar cases; and (5) the contingent nature of the fee and
11 financial burden carried by counsel. *See Vizcaino*, 290 F.3d at 1048-50; *see also In re Online
12 DVD- Rental Antitrust Litig.* 779 F. 3d 954-55 (“When using the percentage-of-recovery method,
13 courts consider a number of factors, including whether class counsel ‘achieved exceptional results
14 for the class,’ whether the case was risky for class counsel, whether counsel’s performance
15 ‘generated benefits beyond the cash settlement fund,’ the market rate for the particular field of
16 law (in some circumstances), the burdens class counsel experienced while litigating the case (*e.g.*,
17 cost, duration, foregoing other work), and whether the case was handled on a contingency basis.”).

18 The Ninth Circuit has explained that these factors should not be used as a rigid checklist
19 or weighed individually, but, rather, should be evaluated in light of the totality of the
20 circumstances. *Hanlon*, 150 F.3d at 1029; *see also Vizcaino*, 290 F.3d at 1048 (district courts
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23
24 ⁶ *See also In re Celebrex (Celecoxib) Antitrust Litig.*, 2018 WL 2382091 (E.D. Va. Apr. 18,
25 2018) (awarding 33% of \$94 million settlement fund); *In re Titanium Dioxide Antitrust Litig.*,
26 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding 33.33% of \$163.5 million settlement
27 fund); *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *20 (S.D.N.Y. Oct. 16, 2019)
28 (awarding 25% of \$250 million settlement); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL
4196468, at *15-16 (S.D.N.Y. July 21, 2020) (awarding 25% of \$240 million settlement); *City of
Pontiac Gen. Emps.’ Ret. Sys. v. Wal-Mart Stores*, 2019 WL 1529517, at *2 (W.D. Ark. Apr. 8,
2019) (awarding 30% of \$160 million settlement); *Peace Officers’ Annuity & Benefit Fund of Ga.
v. Davita, Inc.*, 2021 WL 2981970, at *4 (D. Colo. July 15, 2021) (awarding 30% of \$135 million
settlement).

1 must ensure that fee awards are “supported by findings that take into account all of the
2 circumstances of the case”).

3 1. The Results Achieved

4 Courts have consistently recognized that the result achieved is an important factor to be
5 considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (noting “the
6 most critical factor is the degree of success obtained”); *see also Hefler v. Wells Fargo & Co.*,
7 2018 WL 6619883, at *13 (N.D. Cal. Dec. 18, 2018), *aff’d sub nom, Hefler v. Pekoc*, 802 F.
8 App’x. 285 (9th Cir. 2020). Class Counsel submits that the \$60 million proposed Settlement is an
9 excellent result for the Class, both quantitatively and when considering the risk of a lesser (or no)
10 recovery if the case proceeded through summary judgment and trial.

11 As discussed in the Canty Declaration, the Settlement represents a very meaningful
12 portion of the Class’s reasonably recoverable damages, as estimated under various potential
13 scenarios analyzed by Class Representatives’ damages expert. If the Class’s claims survived
14 summary judgment, trial, post-trial motions, and appeals completely intact, then maximum
15 aggregate damages were estimated to be approximately \$1.036 billion, after netting out gains on
16 pre-Class Period purchases. However, Defendants would have likely sought to establish that their
17 maximum exposure, assuming liability was proven, was roughly \$600 million, based on
18 arguments that at least some of the stock price decline on the sole remaining allegedly corrective
19 disclosure was not attributable to the alleged fraud, because the market had already priced in at
20 least some risk about employee attrition and sales integration challenges before then. At
21 minimum, Class Representatives’ damages expert would have been required to reliably account
22 for this information, which could have significantly reduced the total amount of recoverable
23 damages. Accordingly, the Settlement recovers a range of approximately 5.8% to 10% of these
24 estimated damages. ¶¶9, 75, 76, 93. This excellent recovery supports approval of the fee. *See, e.g.*
25 *Cheng Jianghen v. Rentech, Inc.*, 2019 WL 5173771, at *9 (C.D. Cal. Oct. 10, 2019) (finding
26 settlement that represents approximately 10% of total maximum potential damages is a “favorable
27
28

1 outcome in light of the challenging nature of a securities class action cases” and supports the fee
2 award).

3 Significantly, the \$60 million Settlement Amount is four times the median recovery of
4 \$15 million in securities class action cases in 2023. ¶8; see Laarni T. Bulan and Laura E.
5 Simmons, *Securities Class Action Settlements – 2023 Review and Analysis* (Cornerstone Research
6 2024), Ex. 3 at 1. During the period from 2018 through 2022, the median settlement value was
7 \$11.7 million, and in 2022 it was \$13.5 million. *Id.* It is also well above the \$9 million median
8 recovery for securities class actions prosecuted and settled within the Ninth Circuit from 2014
9 through 2023, above the average securities settlement nationwide in 2023 of \$47.3 million, and
10 above the \$46.5 million average from 2018 to 2022. *Id.* at 1, 15. In terms of the percentage of
11 recovery achieved here, the Settlement recovers a greater percentage of estimated damages than
12 median settlements in similarly sized cases. According to Cornerstone Research, for cases with
13 total estimated damages (based on Cornerstone’s methodology) of more than \$1 billion, median
14 settlements in 2023 recovered 2.0% of total estimated damages, and from 2014 to 2022, median
15 settlements recovered 2.6% of damages. *Id.* at 6.

16 In sum, the Settlement provides an excellent recovery for the Class, which supports
17 approval of the requested fee.

18 **2. The Risks of Litigation**

19 The risk involved in a litigation is also an important factor in determining a fair fee award.
20 *Vizcaino*, 290 F.3d at 1048 (noting “[r]isk is a relevant circumstance” in awarding attorneys’
21 fees); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379, n.10 (9th Cir. 1995) (finding that attorneys’
22 fees were justified “because of the complexity of the issues and the risks”); see also *Zynga*, 2016
23 WL 537946, at *17 (approving requested fee and noting that “as to the second factor . . . the risks
24 associated with the case were substantial given the challenges of obtaining class certification and
25 establishing the falsity of the misrepresentations and loss causation”); *In re Omnivision Techs.*
26 *Inc.*, 559 F. Supp. 2d at 1047 (noting that the risk of litigation, including the ability to prove loss
27 causation and the risk that Defendants prevail on damages, support the requested fee). As set forth
28

1 in Section VI. of the Canty Declaration, Class Counsel confronted, and would continue to do so
2 if the litigation had continued, a number of significant legal and factual challenges during the
3 course of the litigation.

4 Principally, the Court had granted Defendants’ Motion to Dismiss, in part, dismissing all
5 allegations related to the data security incident in January 2022 and a majority of the alleged
6 misstatements related to the Auth0 integration. As a result, Class Representatives moved into
7 discovery with a significantly shorter Class Period (March 3, 2022 through August 31, 2022) and
8 more limited theory of fraud. For example, although the Court found that the two remaining
9 allegedly false and misleading statements were actionable, there was a substantial risk that the
10 Court could have changed course at summary judgment or at trial—especially given the potential
11 for evidence to develop that undercut the aspects of the statements (relating to training and the
12 timing of the integration plan) that the Court originally credited. For instance, Defendants would
13 likely argue in continued litigation that Class Representatives could not prove that Defendants
14 concealed any material negative information in the earnings calls about Okta’s integration plan
15 or the training provided to its combined sales force, presenting a real risk to establishing the theory
16 of fraud that the Court credited in upholding the March and June alleged misstatements. ¶¶65, 67-
17 69.

18 Class Counsel also faced significant challenges with respect to proving Defendants’
19 scienter. Defendants would have likely sought to establish, *inter alia*, that despite some
20 challenges, the attrition and sales integration issues did not begin to impact the Company’s
21 financial performance until after the June 2022 statements and that any integration challenges
22 faced by the Company before then were therefore routine. ¶¶70-71. Defendants likely would have
23 argued that, at best, Defendants had knowledge that Okta was going through some expected
24 integration challenges that would come along with any major acquisition, and that such challenges
25 did not raise to the level of severity requiring disclosure because, at that time, the integration
26 issues had yet to have any impact on the Company’s financial results or projections. Accordingly,
27 Defendants would likely seek to establish that they did not make the decision to revise Okta’s
28

1 FY23 guidance until late July 2022, nearly two months after the final alleged misstatements on
2 June 2, 2022, and thus, their general statements that the integration was going well—qualified
3 with other statements that there was still work to do—were not made with any fraudulent intent
4 to mislead investors at the time the statements were made. ¶¶72-73.

5 As mentioned above, even if Class Counsel was successful in proving falsity and scienter
6 with respect to the March 2 and June 2, 2022 alleged misstatements, the case presented significant
7 challenges and uncertainty with respect to proving loss causation and damages. Defendants were
8 likely to seek to establish that the August 31, 2022 alleged disclosure (the only allegedly
9 corrective disclosure remaining in the case) was not corrective because the market had already
10 priced in at least some risk about employee attrition and sales integration challenges before then.
11 At minimum, Class Representatives’ damages expert would have been required to reliably
12 account for this information, which could have significantly reduced the total amount of
13 recoverable damages. ¶¶74-75.

14 Regardless of who would ultimately be successful at trial, there is no doubt that both sides
15 were dealing with difficult challenges and preparing complex and nuanced information for the
16 Court, and in the future a jury, with no certainty as to the outcome. Class Counsel worked
17 diligently to achieve a significant result for the Class in the face of these very real risks. Under
18 these circumstances, the requested fee is fully appropriate.

19 3. The Skill Required and the Quality of Work

20 Courts have recognized that the “prosecution and management of a complex national class
21 action requires unique legal skills and abilities.” *In re Heritage Bond Litig.*, 2005 WL 1594389,
22 at *12 (C.D. Cal. June 10, 2005); *see also Vizcaino*, 290 F.3d at 1048. “This is particularly true
23 in securities cases because the Private Securities Litigation Reform Act makes it much more
24 difficult for securities plaintiffs to get past a motion to dismiss.” *Zynga*, 2016 WL 537946, at *17
25 (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047).

26 From the inception of the Action, Class Counsel—a firm that practices extensively in the
27 highly challenging field of complex securities litigation and has skillfully litigated these types of
28

1 actions in courts across the country through trial (*see* Ex. 5)—engaged in a rigorous and concerted
2 effort to obtain the maximum recovery for the Class. This case required an in-depth investigation,
3 a thorough understanding of complicated factual and legal issues, fact discovery, class
4 certification efforts, and the skill to respond to the host of challenges that Defendants raised during
5 the litigation. *See generally* Canty Declaration; Class Representatives’ Motion for Final Approval
6 of Proposed Class Action Settlement and Plan of Allocation (“Settlement Memorandum”). Class
7 Counsel’s efforts have resulted in an excellent result for the Class, particularly in light of the risks
8 and challenges of continued litigation, given the Court’s decision on the Motion to Dismiss
9 shortening the Class Period and limiting Class Representatives’ theory of fraud.

10 Defendants, however, strenuously maintained, and would continue to contend, that no
11 liability or damages could be proven at trial, and aggregate damages would vary depending on
12 the findings returned by a jury. *See generally* Canty Decl. at §VI. Accordingly, the quality of the
13 legal services provided by Class Counsel over the course of the Action, together with its
14 substantial experience in complex class actions and commitment to the litigation, enabled Class
15 Counsel to obtain the very favorable Settlement, and supports the requested fee award. *See, e.g.,*
16 *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *11 (N.D. Cal. July 22, 2019)
17 (approving requested fee and noting the “fine quality” of Labaton’s work as a factor weighing in
18 favor of approval of the fee request).

19 The quality of opposing counsel is also important in evaluating the quality of the work
20 done by Class Counsel. *See, e.g., In re Heritage Bond Litig.*, 2005 WL 1594389, at *12. Class
21 Counsel was opposed in this Action by very skilled and highly respected lawyers at Gibson, Dunn
22 & Crutcher LLP, a firm with a well-deserved reputation for vigorous advocacy in the defense of
23 complex civil cases such as this. ¶103. In the face of this opposition, Class Counsel was able to
24 develop the case so as to obtain a very favorable recovery for the Class.

25 **4. The Contingent Nature of the Fee and the Financial** 26 **Burden Carried by Counsel**

27 It has long been recognized that attorneys are entitled to a larger fee when their
28 compensation is contingent in nature. *See Vizcaino*, 290 F.3d at 1048-50; *In re Omnivision Techs.*,

1 *Inc.*, 559 F. Supp. 2d at 1047 (“The importance of assuring adequate representation for plaintiffs
2 who could not otherwise afford competent attorneys justifies providing those attorneys who do
3 accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a
4 flat fee.”); *see also Zynga*, 2016 WL 537946, at *18 (noting that “when counsel takes on a
5 contingency fee case and the litigation is protracted, the risk of non-payment after years of
6 litigation justifies a significant fee award”).

7 The Supreme Court has also emphasized that private securities actions such as this provide
8 “a necessary supplement to [SEC] action.” *Bateman Eichler, Hill Richards, Inc.*, 472 U.S. at 310;
9 *Tellabs, Inc.*, 551 U.S. at 319 (noting that the court has long recognized that meritorious private
10 actions to enforce federal antifraud securities laws are an essential supplement to criminal
11 prosecutions and civil enforcement actions). Yet, vigorous private enforcement of the federal
12 securities laws and state corporation laws can only occur if private plaintiffs can obtain some
13 semblance of parity in representation with that available to large corporate defendants. If this
14 important public policy is to be carried out, courts should award fees that will adequately
15 compensate private plaintiffs’ counsel, taking into account the enormous risks undertaken with a
16 clear view of the economics of a securities class action.

17 Indeed, there have been many class actions in which plaintiffs’ counsel took on the risk
18 of pursuing claims on a contingency basis, expended thousands of hours and dollars, yet received
19 no remuneration whatsoever despite their diligence and expertise. For example, Class Counsel
20 tried *In re JDS Uniphase Securities Litigation*, Case No. C-02-1486 CW (EDL) (N.D. Cal. Nov.
21 27, 2007), through to a disappointing verdict for the defendants, receiving no compensation and
22 expending millions of dollars in time and expenses. *See also In re Oracle Corp. Sec. Litig.*, 2009
23 WL 1709050 (N.D. Cal. June 19, 2009), *aff’d*, 627 F.3d 376 (9th Cir. 2010) (granting summary
24 judgment to defendants after eight years of litigation, and after plaintiff’s counsel incurred over
25 \$6 million in expenses and worked over 100,000 hours, representing a lodestar of approximately
26 \$48 million). *See also* ¶¶95-101.

1 Class Counsel is aware of many other hard-fought lawsuits where excellent professional
2 efforts by members of the plaintiff’s bar produced no fee for counsel. *See, e.g., Glickenhau &*
3 *Co. v. Household Int’l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict
4 of \$2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction
5 under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011)); *Robbins v.*
6 *Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and
7 dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996)
8 (overturning plaintiffs’ verdict obtained after two decades of litigation). As the court in *In re Xcel*
9 *Energy, Inc. Securities, Derivative & “ERISA” Litigation*, 364 F. Supp. 2d 980 (D. Minn. 2005)
10 recognized, “[p]recedent is replete with situations in which attorneys representing a class have
11 devoted substantial resources in terms of time and advanced costs yet have lost the case despite
12 their advocacy.” *Id.* at 994.

13 Here, because Class Counsel’s fee was entirely contingent, the only certainty was that
14 there would be no fee without a successful result and that such result would only be realized after
15 significant amounts of time, effort, and expense had been expended. Unlike counsel for
16 defendants, who are paid and reimbursed for their expenses on a current basis, Class Counsel
17 have received no compensation for their efforts during the course of the Action. In the face of
18 very real uncertainties regarding the outcome of the case, Class Counsel prosecuted this Action
19 on a wholly contingent basis, knowing that the litigation could last for years and would require
20 devotion of a substantial amount of attorney time and a significant advance of litigation expenses
21 with no guarantee of compensation or reimbursement.

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

23 Although not articulated specifically in *Vizcaino*, district courts in the Ninth Circuit also
24 consider the reaction of the class when deciding whether to award the requested fee. *See In re*
25 *Heritage Bond Litig.*, 2005 WL 1594389, at *15 (“The presence or absence of objections . . . is
26 also a factor in determining the proper fee award.”).

1 Here, a total of 61,665 Notices reporting the maximum amount of the Fee and Expense
2 Application have been sent to potential Class Members and their brokers, banks, and other
3 nominees, and the long-form notice was made available on a website dedicated to the Settlement.
4 See Declaration of Morgan Kimball Regarding Notice Mailing, dated October 2, 2024, Ex. 4
5 (“Mailing Decl.”), ¶¶5-12. Additionally, the Court-approved Summary Notice was published in
6 *The Wall Street Journal* and transmitted over the internet using *PR Newswire*. Ex. 4 at ¶14. In
7 addition, the Stipulation and Notice, among other documents, were posted to a website dedicated
8 to the Settlement. *Id.* at ¶16. Although the objection deadline will not run until October 18, 2024,
9 to date no objections to the requested amount of attorneys’ fees and expenses have been received.⁷

10 **E. Lodestar Cross-Check of the Fee Request**

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

19 The Ninth Circuit has recognized that attorneys in common fund cases are frequently
20 awarded a “multiple” of their lodestar, rewarding them “for taking the risk of nonpayment by
21 paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*,
22 290 F.3d at 1051. For example, the district court in *Vizcaino* approved a fee that reflected a
23 multiple of 3.65 times counsel’s lodestar. *Id.* The Ninth Circuit affirmed, holding that the district
24 court correctly considered the range of multiples applied in common fund cases. *Id.*

25 “Under the lodestar approach, a court multiplies the number of hours reasonably expended
26 by the reasonable hourly rate.” *In re Apple*, 2023 WL 2090981, at *12. Class Counsel’s “lodestar,”

27
28 ⁷ Class Counsel will address any future objections in its reply papers, which will be filed with
the Court on or before November 1, 2024.

1 derived by multiplying the hours worked on the litigation by each attorney and professional by
2 their current hourly rates, is \$2,882,615.50.⁸ See Ex. 5-A. This lodestar is a function of the
3 vigorous but efficient prosecution of the case, as described in the Canty Declaration. As detailed
4 in the Canty Declaration, and Labaton’s Fee and Expense Declaration, 4,618.80 hours of attorney
5 and professional time were expended litigating the Action for the benefit of the Class. *Id.*
6 Consistent with the Northern District of California Procedural Guidance for Class Action
7 Settlements, Labaton’s Declaration includes a table showing the firm’s time broken down into 13
8 different categories of work. Ex. 5-B.

9 The work of Class Counsel was necessary to the success of the litigation and as more fully
10 described in the Canty Declaration, Class Counsel: (i) conducted an extensive investigation of the
11 claims at issue, including interviews with approximately 19 former Okta employees (nine of
12 whom provided information for use in the Complaint); (ii) prepared and filed a detailed
13 Complaint, which expanded the scope of the initial complaint by adding particularized allegations
14 supporting claims that Defendants misled investors about the Auth0 integration; (iii) opposed
15 Defendants’ wide ranging motion to dismiss the Complaint through briefing and oral argument;
16 (iv) moved for and obtained class certification; (v) researched, drafted, and propounded discovery
17 requests on Defendants; (vi) reviewed nearly 4,000 documents in connection with the mediation
18 process; (vii) prepared for and participated in a formal mediation process, including drafting and
19 analyzing extensive mediation statements; and (viii) consulted with experts in the fields of
20 damages and loss causation. See generally Canty Decl. at §§III.-V. The substantial time devoted
21 to the Action reflects the dedicated effort needed to prosecute the claims and bring them to a
22 favorable and timely resolution.

23 Additionally, Class Counsel’s rates are reasonable and range from \$750 to \$1,275 for
24 partners, \$800 to \$925 for of counsels, and \$300 to \$650 for associates and staff attorneys. See
25

26 ⁸ The Supreme Court and other courts have held that the use of current rates is proper since
27 such rates compensate for inflation and the loss of use of funds. See *Missouri v. Jenkins*, 491 U.S.
28 274, 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).

1 Ex. 5-A. Class Counsel submits that these rates are comparable or less than those used by peer
2 defense-side law firms litigating matters of similar magnitude and complexity. Sample defense
3 firm rates in 2023, gathered by Labaton annually from bankruptcy court filings nationwide, often
4 exceeded these rates. ¶107; Ex. 6.

5 Here, the requested fee of 22%, if awarded, would represent a “multiplier” of
6 approximately 4.58 of Class Counsel’s lodestar. This lodestar multiplier is within the reasonable
7 range given, in particular, the significant result achieved and the efficiency of the litigation,
8 accordingly the lodestar cross-check supports the fee request. *See, e.g., In re Alphabet, Inc. Sec.*
9 *Litig.*, No. 18-cv-06245, slip op. at 12 (N.D. Cal. Sept. 30, 2024) (Ex. 8) (approving fee in \$350
10 million settlement representing 4.58 multiplier); *In re Verifone Holdings, Inc. Sec. Litig.*, 2014
11 WL 12646027, at *2 (N.D. Cal. Feb. 18, 2014) (awarding fee in \$95 million settlement with a 4.3
12 multiplier); *In re Twitter Inc. Sec. Litig.*, No. 4:16-cv-05314, ECF No. 661 at 9 (N.D. Cal. Oct.
13 13, 2022) (fee brief reporting multiplier of 4.14 to 4.33), and *Twitter*, slip op. at 2 No. 4:16-cv-
14 05314 (N.D. Cal. Nov. 21, 2022) (Ex. 8) (awarding fee in \$809.5 million settlement representing
15 a 4.14 multiplier); *Hefler*, 2018 WL 6619983, at *14 (awarding fee in \$480 million settlement
16 representing a 3.22 multiplier); *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617,
17 633 (N.D. Cal. 2021) (awarding fee in \$650 million common fund settlement representing 4.71
18 multiplier finding that “the results obtained and the risks at trial warrant a higher-end multiplier”),
19 *aff’d*, 2022 WL 822923 (9th Cir. Mar. 17, 2022). Given the risks undertaken by Class Counsel
20 and the excellent results achieved for the Class, a risk multiplier of approximately 4.58 is
21 reasonable here.

22 Furthermore, additional work will be required of Class Counsel on an ongoing basis,
23 including: correspondence with Class Members; preparation for, and participation in, the final
24 approval hearing; supervising the claims administration process being conducted by the Claims
25 Administrator; and supervising the distribution of the Net Settlement Fund to Class Members who
26 have submitted valid Claim Forms. However, Class Counsel will not seek payment for this
27 additional work.

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

3 Class Counsel has incurred expenses in the aggregate amount of \$280,272.17 to litigate
4 the Action and achieve a recovery for the Class. Ex. 5-C.

5 “Attorneys who create[] a common fund are entitled to the reimbursement of expenses
6 they advanced for the benefit of the class.” *Vincent*, 2013 WL 621865, at *5. In assessing whether
7 counsel’s expenses are compensable in a common fund case, courts look to whether the particular
8 costs are of the type typically billed by attorneys to paying clients in the non-contingent
9 marketplace. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of
10 the award of attorney’s fees those out-of-pocket expenses that ‘would normally be charged to a
11 fee paying client.’”).

12 The main expense here relates to work performed by Class Representatives’ experts and
13 other professionals (\$121,105.64 or approximately 43% of total expenses). The services of Class
14 Representatives’ consulting damages experts were necessary throughout the course of the
15 litigation to analyze loss causation and damages issues, prepare the motion for class certification,
16 engage in the mediated settlement discussions, and to prepare the Plan of Allocation. Class
17 Counsel also retained outside counsel for the representation of confidential witnesses identified
18 during the investigation of the claims. Class Counsel received crucial advice and assistance from
19 these professionals. ¶114.

20 Class Counsel also paid \$45,800 (or approximately 16% of total costs) in mediation fees
21 assessed by the mediator in this matter. ¶116.

22 Class Counsel was also required to travel and to work long hours. Work-related
23 transportation, lodging, and meal costs totaled \$15,830.01. ¶117. All airfare is at coach-equivalent
24 rates. *See In re Immune Response Sec. Litig*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007)
25 (“reimbursement for travel expenses . . . is within the broad discretion of the Court”).

26 A significant cost was the expense of electronic discovery, including retaining a database
27 provider to host and manage the data from the document productions obtained in the Action.
28 Those costs totaled \$65,453.40, or approximately 23% of the total expenses. ¶115.

1 Computerized research totals \$15,351.08. These are charges for computerized factual and
2 legal research services, such as PACER and Thomson one Research. These services allowed
3 counsel to perform media searches concerning the Company and Defendants, obtain analysts’
4 reports and financial data, and access court dockets. Charges for Westlaw and Lexis/Nexis have
5 not been included. ¶118.

6 The other expenses for which Class Counsel seeks payment are the types of expenses that
7 are necessarily incurred in litigation. These expenses include, among others, duplicating costs,
8 long distance telephone and conference call charges, and court filing fees. In sum, Class Counsel’s
9 expenses, in an aggregate amount of \$280,272.17, were reasonable and necessary to the
10 prosecution of the Action and should be approved.

11 **III. CLASS REPRESENTATIVES’ REQUESTS FOR REIMBURSEMENT**
12 **PURSUANT TO 15 U.S.C 77Z-1(A)(4) IS REASONABLE**

13 The PSLRA, 15 U.S.C. § 77z-1(a)(4), permits an “award of reasonable costs and expenses
14 (including lost wages) directly relating to the representation of the class to any representative
15 party serving on behalf of a class.” “Court[s] have found that the PSLRA permits courts to award
16 lead plaintiffs in federal securities actions reimbursement for their time devoted to participating
17 in and directing the litigation on behalf of the class.” *Guevoura Fund Ltd. v. Sillerman*, 2019 WL
18 6889901, at *22 (S.D.N.Y. Dec. 18, 2019); *see also In re Amgen Inc. Sec. Litig.*, 2016 WL
19 10571773, at *10 (reasoning that “courts have awarded reasonable payments to compensate class
20 representatives for the time, effort, and expenses devoted to litigating on behalf of the class” and
21 awarding State of Connecticut \$30,983.99 related to the time it dedicated to the case).

22 Here, Class Representatives, sophisticated institutional investors that took their
23 responsibilities on behalf of the Class very seriously, are seeking \$17,000 in total related to the
24 time they dedicated to the Action. *See* Exs. 1 and 2. Consistent with the Northern District
25 guidelines, Class Representatives have submitted declarations setting forth the time and effort
26 they dedicated to the Action, including conferring with counsel on the overall strategy for
27 prosecuting the Action; reviewing pleadings and court filings; evaluating regular status reports;
28 searching for and compiling documents for production to Defendants; reviewing interrogatory

1 and other discovery responses; preparing for and attending a full-day mediation in New York;
2 and analyzing and responding to Defendants' settlement proposals over the course of the
3 mediation. *See* Ex. 1 at ¶¶4, 10 and Ex. 2 at ¶¶4, 10.

4 Numerous cases have approved reasonable payments to compensate class representatives
5 for the time, effort, and expenses devoted by them on behalf of a class, which represent costs to
6 the representatives. *See, e.g., In re Intuitive Surgical Sec. Litig.*, No. 5:13-cv-01920, slip op. at 4
7 (N.D. Cal. Dec. 20, 2018) (awarding \$49,754.18 and \$9,100.00 to class representatives) (Ex. 8);
8 *Hatamian v. Advanced Micro Devices, Inc.*, No. 14-cv-00226-YGR, slip op. at 4 (N.D. Cal. Mar.
9 2, 2018) (awarding costs and expenses to two class representatives in the amount of \$8,348.25
10 and \$14,875.00) (Ex. 8); *In re Broadcom Corp. Class Action Litig.*, No. CV-06-5036-R (CWx),
11 slip op. at 2 (C.D. Cal. Dec. 4, 2012)(awarding costs and expenses to class representative in the
12 amount of \$21,087) (Ex. 8); *Schulein v. Petroleum Dev. Corp.*, 2015 WL 12698312, at *6 (C.D.
13 Cal. Mar. 16, 2015) (approving awards ranging from \$7,500 to \$10,000 to compensate named
14 plaintiffs for "the time they spent litigating the case"); *In re Omnivision Techs., Inc.*, 559 F. Supp.
15 2d at 1049 (awarding lead plaintiffs collectively \$29,913.80 for the time they dedicated to the
16 litigation); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d at 1173-74 (awarding \$40,000 to
17 lead plaintiff pursuant to PSLRA).

18 As explained in one decision, courts "award such costs and expenses to both reimburse
19 named plaintiffs for expenses incurred through their involvement with the action and lost wages,
20 as well as provide an incentive for such plaintiffs to remain involved in the litigation and incur
21 such expenses in the first place." *Hicks v. Stanley*, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24,
22 2005).

23 Class Counsel respectfully submits that the amounts sought here are reasonable based on
24 Class Representatives' active involvement in the Action from inception to settlement.

25 CONCLUSION

26 For all the foregoing reasons, Class Counsel respectfully requests that the Court award:
27 (i) attorneys' fees of 22% of the Settlement Fund; (ii) Litigation Expenses in the amount of
28

1 \$280,272.17; and (iii) \$17,000 to Class Representatives, pursuant to the PSLRA. A proposed
2 order will be submitted with Class Counsel's reply papers, after the deadline for objecting has
3 passed.

4 Dated: October 3, 2024

Respectfully submitted,

LABATON KELLER SUCHAROW LLP

6
7 By: /s/ Michael P. Canty
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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2024, 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 October 3, 2024

/s/ Michael P. Canty
Michael P. Canty