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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN FRANCISCO**

16 **JONATHAN SHOMRONI**, Individually and
on behalf of others similarly situated,

17 Plaintiff,

18 v.

19 **FEI LABS INC.**, a Delaware Corporation,
20 **JOSEPH SANTORO**, an Individual,
21 **BRIANNA MONTGOMERY**, an Individual,
SEBASTIAN DELGADO, an Individual, and
22 **DOES 1-10**.

23 Defendants,

Case No: CGC-22-598995

*Assigned for all purposes to
the Hon. Ethan P. Schulman, Dep't 304*

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AWARD OF
ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND SERVICE
AWARD**

Date: October 27, 2023

Time: 10:00 a.m.

Dept: 304

Judge: Hon. Ethan P. Schulman

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OTHER AUTHORITIES

28	Janeen McIntosh, Svetlana Starykh, and Edward Flores, <i>Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review</i> (NERA Jan. 24, 2023).....	4
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jonathan Shomroni and Plaintiff’s Counsel have achieved a Settlement¹ of
4 \$17,850,000.00 for the benefit of the Class. Plaintiff achieved this result through a hard-fought
5 litigation, which began in April 2022, and after over five months of negotiations with Defendants
6 Fei Labs Inc. (“Fei Labs”), Joseph Santoro, Brianna Montgomery and Sebastian Delgado (the
7 “Individual Defendants,” and together with Fei Labs, “Defendants”), facilitated by mediator
8 Michelle Yoshida of Phillips ADR Enterprises.

9 Plaintiff’s Counsel now respectfully moves this Court for an award of attorneys’ fees in the
10 amount of \$4,462,500, or twenty-five percent (25%) of the \$17,850,000 Settlement Amount.
11 Additionally, Plaintiff’s Counsel seeks costs of \$50,713.27 and a service award for Plaintiff in the
12 amount of \$10,000 for his attentive representation of the Class.

13 As set forth below, in Plaintiff’s Memorandum of Points and Authorities in Support of
14 Motion for Final Approval of Settlement, dated September 21, 2023 (“Final Approval Brief”) and
15 the accompanying Declaration of William R. Restis in Support of Plaintiff’s Motion for Final
16 Approval of Settlement, dated September 21, 2023 (“9/21/23 Restis Decl.”), and in the entire record,
17 the Settlement represents a highly favorable result for the Class given the novel and complex issues
18 inherent in applying the federal securities laws to a purportedly decentralized crypto project, the
19 resultant risks involved in establishing liability and damages, and the likelihood that Defendants’
20 remaining assets would be expended through protracted litigation and ultimately be unavailable to
21 satisfy any judgment.

22 As set forth in the 9/21/23 Restis Decl., Plaintiff’s counsel vigorously pursued the Class’s
23 claims by obtaining a decision overruling Defendants’ demurrer, engaging in extensive discovery,
24 and negotiating the Settlement for over five months with the assistance of mediator Michelle
25

26 ¹ Defined terms used herein have the meaning ascribed to them in the May 29, 2023 Amended
27 Stipulation of Settlement, attached as Exhibit I to the Supplemental Declaration of William R. Restis
28 in Support of Plaintiff’s Motion for Preliminary Approval, dated May 30, 2023 (“5/30/23 Restis
Decl.”).

1 Yoshida of the preeminent mediation firm, Phillips ADR Enterprises, and stewarding the Settlement
2 through approval.

3 Against this context, the requested fee is fair and reasonable, whether measured as a
4 percentage of the Settlement Fund or based on a lodestar cross-check. The requested 25% fee is well
5 within the range of fees awarded by California Superior Courts in similar Securities Act cases, and
6 in other class actions. Furthermore, Plaintiff’s Counsel and their paraprofessionals spent
7 approximately 2,235.4 hours prosecuting the Litigation, resulting in a combined lodestar of
8 \$1,863,795.40. Thus, the requested fee represents a multiplier of approximately 2.4. This multiplier
9 is well within the range found acceptable by courts in California.

10 The litigation expenses and costs advanced by Plaintiff’s Counsel should also be reimbursed.
11 The costs were appropriate and necessary to prosecute this action and achieve the Settlement. The
12 Class was fully informed of the requested fees, costs, and service award through the Court-approved
13 Notice informing them of the requests. To date, there have not been any objections to these requests.
14 Therefore, and as discussed herein, the Court should grant the requested fees, costs, and service
15 award.

16 **II. ARGUMENT**

17 **A. The Court Should Award Attorneys’ Fees Using The Percentage Method**

18 Where, as here, a lawsuit has created a common fund for the benefit of the named plaintiff
19 as well as others, courts may award plaintiff’s counsel their reasonable attorneys’ fees and expenses
20 out of the fund created. As the California Supreme Court has explained, “the historic power of equity
21 to permit... a party preserving or recovering a fund for the benefit of others in addition to himself,
22 to recover his costs, including his attorney fees, from the fund or property itself or directly from the
23 other parties enjoying the benefit.” *Serrano v. Priest*, (1977) 20 Cal. 3d 25, 35 (internal quotation
24 marks and citation omitted). Thus, by its nature, a common fund prevents unjust enrichment,
25 ensuring “that all who will participate in the fund should pay the cost of its creation or protection
26 and that this is best achieved by taxing the fund itself for attorney’s fees.” *Id.* at 35 n.5 (internal
27 quotation marks and citation omitted); *see also Lealao v. Beneficial California, Inc.* (2000) 82 Cal.
28

1 App. 4th 19, 27. Additionally, a common fund encourages “the attorney for the successful litigant,
2 who will be more willing to undertake and diligently prosecute proper litigation for the protection
3 or recovery of the fund if he is assured that he will be promptly and directly compensated should his
4 efforts be successful.” *In re Stauffer’s Est.* (1959) 53 Cal. 2d 124, 132.

5 The California Supreme Court has joined “the overwhelming majority of federal and state
6 courts in holding that when class action litigation establishes a monetary fund for the benefit of the
7 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
8 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of
9 the fund created.” *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 502. The California
10 Supreme Court reached that conclusion because the percentage method provides for “relative ease
11 of calculation, alignment of incentives between counsel and the class, a better approximation of
12 market conditions in a contingency case, and the encouragement it provides counsel to seek an early
13 settlement and avoid unnecessarily prolonging the litigation.” *Id.* This holding is consistent with the
14 U.S. Supreme Court, which has held that where a common fund has been created for the benefit of
15 a class owing to counsel’s efforts, the fee award should be determined on a percentage-of-the-fund
16 basis. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980).

17 **B. The Requested Fee of 25% of the Settlement Fund Is Reasonable**

18 In determining whether the requested fee is reasonable, courts consider several factors,
19 including: “(1) the results achieved; (2) the risk of further litigation; (3) the skill required of
20 plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; (4) the contingent nature
21 of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases.”
22 *Diaz v. Tak Communs. CA, Inc.*, 2021 Cal. Super. LEXIS 9291, at *23-24 (Cal. Super. Ct. Nov. 3,
23 2022). “However, no rigid formula applies and each factor should be considered only ‘where
24 appropriate.’” *In re Natural Gas Trust Cases Price Indexing*, 2006 Cal. Super. LEXIS 1302, at *8
25 (Cal. Super. Ct. Dec. 11, 2006) (quoting *Dept. of Transp. v. Yuki*, 31 Cal. App. 4th 1754, 1771
26 (1995)).

1 Applying these factors to this Litigation and Settlement, the requested 25% fee here is
2 reasonable.

3 **1. The Settlement Achieved Is an Excellent Result for the Class**

4 The result achieved is an important, if not the most important, factor to be considered in
5 making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor is the
6 degree of success obtained”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal.
7 2008) (“The overall result and benefit to the class from the litigation is the most critical factor in
8 granting a fee award.”).

9 Here, the Settlement Amount of \$17,850,000 represents a significant proportion, if not all,
10 of Class Members’ estimated damages, approximately 68% of Defendants’ collective corporate and
11 personal assets, net of liabilities, and approximately 86% of Fei Labs’s corporate assets, which
12 counsel confirmed through discovery. Final Approval Brief at 2; 9/21/23 Restis Decl., ¶¶ 29-30. As
13 described in detail in the Final Approval Brief, Plaintiff estimates that, including the profits that
14 Class Members may have made on sales of FEI, the Settlement Amount of \$17,850,000 million
15 represents a recovery of potentially nearly all of the Class’s estimated damages. If profits are
16 excluded, the Settlement would represent approximately 10% of the Class’s total estimated damages
17 of approximately \$171.6 million. Final Approval Brief at 10; 9/21/23 Restis Decl., ¶ 17. This 10%
18 amount is well within the boundaries of reasonableness. Indeed, it is significantly better than the
19 2.9% median percentage recovery for cases settled with estimated damages of between \$100 million
20 and \$199 million. *See Janeen McIntosh, Svetlana Starykh, and Edward Flores, Recent Trends in*
21 *Securities Class Action Litigation: 2022 Full-Year Review*, at 17, Fig. 18 (NERA Jan. 24, 2023)
22 (median ratio of settlements to investor losses was 2.9% for settlements of actions with investor
23 losses between \$100 and \$199 million from December 2011 to December 2022); *In re Newbridge*
24 *Networks Sec. Litig.*, 1998 U.S. Dist. LEXIS 23238, at *8 (D.D.C. Oct. 23, 1998) (“Courts have not
25 identified a precise numerical range within which a settlement must fall in order to be deemed
26 reasonable; but an agreement that secures roughly six to twelve percent of a *potential* trial recovery,
27 while preventing further expenditures and delays and eliminating the risk that no recovery at all will
28

1 be won, seems to be within the targeted range of reasonableness.”) (*italics in original*); *Vataj v.*
2 *Johnson*, 2021 U.S. Dist. LEXIS 214678, at *9 (N.D. Cal. Nov. 5, 2021) (recovery of 2% of
3 estimated damages “appears consistent with the 2-3% average recovery that the parties identified in
4 other securities class action settlements”); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices,*
5 *& Prod. Liab. Litig.*, 2019 U.S. Dist. LEXIS 79679, at *6 n.2 (N.D. Cal. May 10, 2019) (noting that
6 “the median settlement recovery from 2009 to 2017 was only five percent of damages in securities
7 class actions”). The outstanding result obtained for the Class strongly supports Plaintiff’s Counsel’s
8 fee request.

9 **2. The Litigation Was Uncertain and Highly Complex**

10 As explained in the Final Approval Brief, this Litigation presented novel and complex issues
11 concerning the application of the federal securities laws to a decentralized crypto project. Final
12 Approval Brief at 1-2. Continuing with this litigation would have posed a number of real and
13 substantial risks. For example, although there is precedent favorably applying federal securities laws
14 to “initial coin offerings,” the offering here in the Genesis Event was designed to have potentially
15 material distinctions, which had not been addressed by any previous case law. *Id.* at 7-8.
16 Additionally, Defendants challenged the applicability of the Securities Act to their conduct, arguing
17 they were not “sellers” as required for liability. Defendants relied upon *Jensen v. iShares Trust*
18 (2020) 44 Cal. App. 5th 618, 647, the only California precedent to address this issue. *Id.* at 8.

19 In addition, establishing and calculating damages was also a potential difficulty. *See* Final
20 Approval Brief at 8. Plaintiff’s expert Blocktrace analyzed damages and indicated potential profits
21 on sales of FEI that might offset damages. 9/21/23 Restis Decl., ¶¶ 14-20.

22 Moreover, there was also the risk of Defendants not having the ability to pay a significant
23 judgment. *Id.*, ¶¶ 28-30. As disclosed during the mediation, and verified through confirmatory
24 discovery, Defendants have net assets that are less than the maximum potential damages. *Id.*, ¶¶ 23,
25 28-30. Confirmatory discovery revealed that the Settlement Amount represents approximately 68%
26 of Defendants’ total personal and corporate assets net of current liabilities. *Id.*, ¶¶ 29-30. As such,
27 Plaintiff was confronted with the tradeoffs between continued litigation, where funds would be
28

1 quickly spent on top-tier defense counsel and experts, and preserving these assets for settlement. *Id.*,
2 ¶ 24.

3 Given these circumstances, along with Defendants' commitment to advocating their position
4 and the complexity of the novel claims in this Litigation, a resolution was never assured. Continuing
5 to litigate this case would have required continued and extensive resources to proceed through trial,
6 post-trial motions, and likely appeal. Final Approval Brief at 5.

7 **3. Achieving the Settlement Required Significant Time and Labor**

8 Plaintiff's Counsel, with the active and informed participation of Plaintiff, aggressively and
9 diligently prosecuted this Litigation to secure the Settlement for the Class. Specifically, Plaintiff's
10 Counsel: (a) researched, drafted and filed the class action complaint; (b) briefed, argued and
11 successfully defeated Defendants' demurrer to the Complaint; (c) drafted and propounded document
12 requests and interrogatories upon Defendants; (d) prepared a motion for preliminary injunction
13 against Defendants based on concerns about the potential dissipation of assets, which was not filed
14 as a result of the Settlement; (e) drafted and submitted multiple rounds of briefing for a mediation
15 before Ms. Yoshida; (f) in connection with the mediation, exchanged documents and data with
16 Defendants addressing issues such as class member transactions, damages, class member contact
17 information, the scope and certifiability of any potential class, and statutes of limitations; (g) retained
18 and consulted with the blockchain analysis firm Blocktrace to estimate class-wide damages; (h)
19 participated in an in-person, ten-hour whole-day mediation with Ms. Yoshida, a second half-day
20 mediation session, and additional follow-up settlement negotiations facilitated by Ms. Yoshida, all
21 of which occurred over five months; and (i) conducted the complex task of presenting the Settlement
22 to the Court and Class Members for both preliminary and final approval. *See 9/21/23 Restis Decl.*,
23 ¶¶ 3, 6-37.

24 Accordingly, the substantive work performed by Plaintiff's Counsel warrants the requested
25 fee award.

1 **4. Experience and Skill of Plaintiff’s Counsel**

2 As explained in the Final Approval Brief, Plaintiff’s Counsel are some of the most
3 experienced in the nation in securities class actions involving digital asset sales like the Genesis
4 Event. Final Approval Brief at 5-6. In addition to experience with securities class actions generally,
5 Plaintiff’s Counsel have been lead counsel in *In re Tezos Securities Litig.*, No. 17-cv-06779-RS
6 (N.D. Cal.) (Hon. Seeborg) and *Hunichen v. Atonomi LLC*, et al., No. 19-cv-00615-RAJ-MAT
7 (W.D. Wash.) (Hon. Jones), both of which resulted in substantial, approved settlements for class
8 members. *See* Final Approval Brief at 6.

9 Here, Plaintiff’s Counsel’s skill and quality of work contributed to the Settlement achieved.
10 Therefore, this factor also weighs in favor of granting the fee request.

11 **5. The Contingent Nature of the Litigation, and Delay in Payment to**
12 **Plaintiff’s Counsel Support Granting the Requested Award**

13 Plaintiffs’ Counsel prosecuted this Litigation on a contingent-fee basis, assuming a
14 significant risk that the Litigation would not result in any recovery and that they would not receive
15 any compensation. To date, Plaintiffs’ Counsel has not been compensated for any time or expense
16 since the Litigation’s inception. Courts regularly hold that the risk of receiving little or no
17 compensation is a prominent factor in assessing an award of attorneys’ fees. *See, e.g., In re NCAA*
18 *Ath. Grant-In-Aid Cap Antitrust Litig.*, 2017 U.S. Dist. LEXIS 201108, at *7 (N.D. Cal. Dec. 6,
19 2017) (“The risk that further litigation might result in plaintiffs not recovering at all, particularly a
20 case involving complicated legal issues, is a significant factor in the award of fees.”) (internal
21 quotation marks and citation omitted). This is consistent with the legal marketplace, where an
22 attorney who takes a case on contingency expects a higher fee than an attorney who is paid as the
23 case progresses, regardless of the outcome. *See Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*
24 (1985) 172 Cal. App. 3d 914, 955; *see also Cazares v. Saenz* (1989) 208 Cal. App. 3d 279, 288
25 (noting that “in theory, a contingent fee in a case with a 50 percent chance of success should be twice
26 the amount of a noncontingent fee for the same case” because, among other things, “[t]he lawyer in
27 effect finances the case for the client during the pendency of the lawsuit”).
28

1 Accordingly, the contingent nature of the representation of Plaintiff’s Counsel and the delay
2 in payment, especially under the foregoing circumstances, justifies the requested fee.

3 **6. The Requested Fee Is Consistent with Other Fee Awards in Similar Class**
4 **Action Settlements**

5 Under the percentage-of-recovery method, courts examine whether the requested percentage
6 matches “the amount of attorney fees typically negotiated in comparable litigation.” *Lealao*, 82 Cal.
7 App. 4th at 47. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 65 (the method chosen
8 should consistently use “percentage figures that accurately reflect the marketplace”); *In re Consumer*
9 *Privacy Cases* (2009) 175 Cal. App. 4th 545, 558 (same). This standard is readily met here.

10 Plaintiff’s Counsel’s request for 25% of the Settlement Fund is consistent with, and is
11 actually less than, the percentages awarded in other class action settlements. As multiple courts have
12 held, “[e]mpirical studies show that, regardless of whether the percentage method or the lodestar
13 method is used, fee awards in class actions average around one-third of the recovery.” *Chavez*, 162
14 Cal. App. 4th at 66 n.11. *See also Lealao*, 82 Cal. App. 4th at 31 n.5 (noting that regardless of the
15 method used, “the result is an award that almost always hovers around 30[%] of the fund created by
16 the settlement”) (internal quotation marks and citation omitted); *Laffitte*, 1 Cal. 5th 480 (affirming a
17 one-third percentage-based fee award to class counsel); *In re Sunrun, Inc. Sh’holder Litig*, No.
18 CIV538215, slip op. at 6 (San Mateo Super. Ct. Dec. 14, 2018) (granting a one-third percentage-
19 based fee award to class counsel), *In re Pivotal Software, Inc. Sec. Litig.*, No. CGC-19-576750, slip
20 op. at 2 (San Francisco Super. Ct. Jan. 30, 2023) (awarding one-third percentage-based fee to class
21 counsel); *In re Capacitors Antitrust Litig.*, 2023 U.S. Dist. LEXIS 37407, at *16-17 (N.D. Cal. Mar.
22 6, 2023) (awarding 40% of \$165,000,000 partial settlement, resulting in cumulative 31% award of
23 total \$604,550,000 settlement); *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS
24 172183, at *10 (C.D. Cal. Sept. 20, 2022) (awarding 32% of \$230 million settlement); *Fleming v.*
25 *Impax Lab’ys Inc.*, 2022 U.S. Dist. LEXIS 125595, at *33 (N.D. Cal. July 15, 2022) (awarding 30%
26 of \$33 million settlement); *In re Tezos Sec. Litig.*, 2020 U.S. Dist. LEXIS 269722 (N.D. Cal. Aug.
27 28, 2020) (awarding one-third of \$25 million recovery in a similar ICO case); *In re Banc of Cal.*

1 *Sec. Litig.*, 2020 U.S. Dist. LEXIS 48778, at *4-5 (C.D. Cal. Mar. 16, 2020) (awarding 33% of
2 \$19.75 million recovery); *In re Lidoderm Antitrust Litig.*, 2018 U.S. Dist. LEXIS 162425, at *31-32
3 (N.D. Cal. Sept. 20, 2018) (awarding 33% of \$104.75 million settlement). The average fee award
4 for most complex class actions is more than the award sought here. Accordingly, the requested fee
5 award of twenty-five percent of the Settlement Fund is reasonable and typical of other fees
6 negotiated in cases similar to this Litigation.

7 **7. There Have Been No Objections from the Class to the Requested Fee**

8 Finally, although Class Members have until October 1, 2023 to file claims and make
9 objections, the deadline for exclusion expired on September 6, 2023. Only one Class Member has
10 sought to exclude themselves from the Settlement. Final Approval Brief at 6. Further, as of the date
11 of this filing, Plaintiff's Counsel are not aware of a single Class Member who has objected to the
12 Settlement, or the fee and expense request. *Id.* "The absence of objections or disapproval by class
13 members to Class Counsel's fee request further supports finding the fee request reasonable." *In re*
14 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *71 (C.D. Cal. June 10, 2005).

15 **C. The Requested Fee is Reasonable Under a Lodestar Cross-Check**

16 Although an analysis of the lodestar is not required for an award of attorneys' fees in
17 California, (*see Lealao*, 82 Cal. App. 4th at 27), the California Supreme Court has recognized the
18 use of a lodestar "cross-check" as a mechanism for bringing an objective measure of the work
19 performed into the calculation of a reasonable attorney fee." *Laffitte*, 1 Cal. 5th at 504-05. When
20 conducting lodestar cross-checks, trial courts rely on counsel declarations summarizing the work
21 performed, billing rates and overall time spent. *Id.* at 505. "Once the court has fixed the lodestar, it
22 may increase or decrease that amount by applying a positive or negative 'multiplier' to take into
23 account a variety of other factors, including the quality of the representation, the novelty and
24 complexity of the issues, the results obtained, and the contingent risk presented." *Id.* at 489 (internal
25 quotation marks and citation omitted); *see also Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.
26 4th 553, 582 (same); *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1138.

1 Under the lodestar method, Plaintiff’s Counsel are entitled to their requested hourly rates if
2 they are “within the range of reasonable rates charged by and judicially awarded comparable
3 attorneys for comparable work.” *Children’s Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal. App. 4th
4 740, 783; *see also Ctr. For Biological Diversity v. County of San Bernardino* (2010) 188 Cal. App.
5 4th 603, 616 (generally, the reasonable hourly rate “is that prevailing in the community for similar
6 work”) (internal quotation marks and citation omitted. The reasonable market value of the attorneys’
7 services is the measure of a reasonable hourly rate and “applies regardless of whether the attorneys
8 claiming fees charge nothing for their services, charge at below-market or discounted rates, represent
9 the client on a straight contingent fee basis, or are in-house counsel.” *Ctr. For Biological Diversity*,
10 188 Cal. App. 4th at 619 (internal quotation marks and citation omitted). The rate determinations
11 from other cases and from the plaintiffs’ attorneys are satisfactory evidence of the prevailing market
12 rate. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

13 Counsel’s hourly rates are set forth in the supporting Declarations of William R. Restis,
14 Angus F. Ni and Hung G. Ta. *See* Restis Fee Decl.² Ex. A; Ni Fee Decl.³ Ex. A; Ta Fee Decl.⁴ Ex.
15 A. These rates are reasonable given the experience of Plaintiff’s Counsel in complex class actions
16 and securities litigation. *Id.* Other courts have previously approved Counsel’s hourly rates. *See, e.g.*,
17 *In re Tezos Securities Litig.*, No. 17-cv-06779-RS (N.D. Cal.) (Hon. Seeborg) and *Hunichen v.*
18 *Atonomi LLC, et al.*, No. 19-cv-00615-RAJ-MAT (W.D. Wash.) (Hon. Jones). Additionally, similar
19 hourly rates have been approved in other cases. *See, e.g.*, *In re Lyft Inc. Sec. Litig.*, 2023 U.S. Dist.
20 LEXIS 137198, at *12 (N.D. Cal. Aug. 7, 2023) (approving “Lead Counsel’s hourly rates rang[ing]
21 from \$900 to \$1,200 for partners, \$375 to \$605 for associates, and \$250 to \$300 for paralegals,
22 which is in line with prevailing rates in this district for personnel of comparable experience, skill,
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24 ² “Restis Fee Decl.” refers to the Declaration of William R. Restis in Support of Fee Application,
25 and is attached as Exhibit 1 to the 9/21/23 Restis Decl.

26 ³ “Ni Fee Decl.” refers to the Declaration of Angus F. Ni in Support of Fee Application, and is
27 attached as Exhibit 2 to the 9/21/23 Restis Decl.

28 ⁴ “Ta Fee Decl.” refers to the Declaration of Hung G. Ta in Support of Fee Application, and is
attached as Exhibit 3 to the 9/21/23 Restis Decl.

1 and reputation”); *Hefler v. Wells Fargo & Co.*, 2018 U.S. Dist. LEXIS 213045, at *14 (N.D. Cal.
2 Dec. 18, 2018) (finding rates ranging from \$650 to \$1,250 for partners or senior counsel and from
3 \$400 to \$650 for associates as reasonable); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices,
4 & Prods. Liab. Litig.*, 2017 U.S. Dist. LEXIS 39115, at *5 (N.D. Cal. Mar. 17, 2017) (finding rates
5 ranging from \$275 to \$1,600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals
6 reasonable).

7 The lodestar method fully supports the reasonableness of Plaintiff’s Counsel’s fee request.
8 Here, Plaintiff’s counsel incurred 2,235.4 hours, or \$1,863,795.40 in lodestar. *See Restis Fee Decl.*
9 ¶ 4, Ex. A; Ni Fee Decl. ¶ 4, Ex. A; Ta Fee Decl. ¶ 4, Ex. A. Accordingly, the fee request of
10 \$4,462,500 reflects a lodestar multiplier of approximately 2.4. This multiplier is well within the
11 range of what courts typically award. Indeed, California courts have recognized that “multipliers can
12 range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224,
13 255, *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018).
14 *See also In re Twitter Inc. Sec. Litig.*, 2022 U.S. Dist. LEXIS 217150, at *2 (N.D. Cal. Nov. 21,
15 2022) (awarding fee representing 4.14 multiplier); *In re Verifone Holdings, Inc. Sec. Litig.*, 2014
16 U.S. Dist. LEXIS 20044, at *11 (N.D. Cal. Feb. 18, 2014) (noting “over 80% of multipliers fall
17 between 1.0 and 4.0” and awarding fee where multiplier was 4.3).

18 The lodestar and multiplier here are therefore reasonable, and support the requested fee
19 award.

20 **D. The Requested Reimbursement for Costs Should Be Awarded**

21 As with fees, attorneys who create a common fund for the benefit of a class are entitled to
22 payment from the fund of reasonable litigation expenses. *See Vincent v. Reser*, 2013 U.S. Dist.
23 LEXIS 22341, at *14 (N.D. Cal. Feb. 19, 2013) (“Attorneys who create a common fund are entitled
24 to the reimbursement of expenses they advanced for the benefit of the class.”). The reason for this
25 rule is that the beneficiaries of the common fund should share in the costs of its creation. *See Rider*
26 *v. Cnty. of San Diego* (1992) 11 Cal. App. 4th 1410, 1423 n.6. In determining whether particular
27 costs are compensable, courts consider whether they are of the type typically billed by attorneys to
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1 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
2 *Hefler*, 2018 U.S. Dist. LEXIS 213045, at *44 (“An attorney is entitled to recover as part of the
3 award of attorney’s fees those out-of-pocket expenses that would normally be charged to a fee
4 paying client.”) (internal quotation marks and citation omitted); *Vincent*, 2013 U.S. Dist. LEXIS
5 22341, at *15 (granting award of expenses for “three experts and the mediator, photocopying and
6 mailing expenses, travel expenses, and other reasonable litigation related expenses”).

7 Here, there is no question that the expenses at issue fall into that category and are examples
8 of the types of reasonable expenditures necessary to prosecute a case. The expenses of Plaintiffs’
9 Counsel include: (1) court filing and process server fees; (2) messenger and delivery fees; (3) court
10 hearing transcript fees; (4) expert fees; (5) photocopying expenses; and (6) mediator fees. *See Restis*
11 *Fee Decl.* ¶¶ 5-6, Ex. B; *Ni Fee Decl.* ¶ 5, Ex. B; *Ta Fee Decl.* ¶¶ 5-6, Ex. B. The total amount of
12 these expenses is \$50,713.27. This is far less than the \$125,000 maximum costs disclosed to the
13 Class in the Notices. *See 5/30/23 Restis Decl.* Ex. L at 8. No objections were made to the larger cost
14 amount set forth in the Notices. *See Final Approval Brief* at 6.

15 Given that Plaintiffs’ Counsel has borne these necessary costs, and the risk of non-payment
16 since the commencement of this Litigation, they respectfully submit that reimbursement of the costs
17 is fair and reasonable.

18 **E. The Service Award for Plaintiff is Reasonable and Should be Awarded**

19 Courts “routinely award such costs and expenses both to reimburse the named plaintiffs for
20 expenses incurred through their involvement with the action and lost wages, as well as to provide an
21 incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the
22 first place.” *Hicks v. Morgan Stanley & Co.*, 2005 U.S. Dist. LEXIS 24890, at *30 (S.D.N.Y. Oct.
23 19, 2005). Here, Plaintiff seeks reimbursement of \$10,000 for his time and expenses incurred in
24 prosecuting this Litigation on behalf of the Class. As set forth in his declaration, Plaintiff undertook
25 tasks necessary to ensure the success of the Litigation and to represent the Class, including: working
26 closely with Plaintiff’s Counsel regarding the action and resolution of this Litigation; receiving
27 periodic status reports from Plaintiff’s Counsel on case developments; participating in regular
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1 discussions concerning the prosecution of the Litigation, the strengths and risks to the claims, and
2 potential settlement; reviewing filings and other key documents; providing extensive information
3 and materials concerning his investments; providing documents and information in response to
4 Defendants' discovery requests; consulting with Counsel regarding the settlement negotiations; and
5 evaluating and approving the Settlement. Declaration of Jonathan Shomroni, filed May 30, 2023, ¶¶
6 8-9.

7 Accordingly, Plaintiff respectfully submits that the Court should grant his request for a
8 \$10,000 award, which request is less than amounts that are routinely granted in other cases. *See,*
9 *e.g., Hatamian v. Advanced Micro Devices, Inc.*, 2018 U.S. Dist. LEXIS 226556, at *4 (N.D. Cal.
10 Mar. 2, 2018) (granting service award of \$14,875); *Buccellato v. AT&T Operations, Inc.*, 2011 U.S.
11 Dist. LEXIS 85699, at *6 (N.D. Cal. June 30, 2011) (\$20,000 award); *Glass v. UBS Financial*
12 *Services, Inc.*, 2007 U.S. Dist. LEXIS 8476, at *16-17 (N.D. Cal. Jan. 26, 2007) (\$25,000 each to
13 four class representatives); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal.
14 1995) (\$50,000 to one class representative); *Stevens v. Safeway, Inc.*, 2008 U.S. Dist. LEXIS 17119,
15 at *34-37 (C.D. Cal. Feb. 25, 2008) (\$20,000 and \$10,000 to two class representatives).

16 **III. CONCLUSION**

17 For the foregoing reasons, Plaintiff's Counsel respectfully requests that the Court grant their
18 motion awarding fees of \$4,462,500 and reimbursement of costs of \$50,713.27, as well as a \$10,000
19 service award to Plaintiff.

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Respectfully submitted,

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