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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SEAWORLD ENTERTAINMENT,
INC., *et al.*,

Defendants.

Case No.: 14-cv-02129-MMA-AGS

**ORDER GRANTING PLAINTIFF’S
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND PLAN OF ALLOCATION; AND**

[Doc. No. 521]

**GRANTING PLAINTIFF’S MOTION
FOR ATTORNEYS’ FEES AND
LITIGATION EXPENSES**

[Doc. No. 522]

Lead Plaintiffs Arkansas Public Employees Retirement System (“APERS”) and Pensionskassen for Børne-Og Ungdomspædagoger (“PBU”) (collectively, “Plaintiffs” or “Class Representatives”), on behalf of themselves and the Court-certified Class, move for final approval of the proposed class action settlement and plan of allocation, and for attorneys’ fees and litigation expenses. *See* Doc. No. 522. Defendants SeaWorld Entertainment, Inc. (“SeaWorld”), The Blackstone Group L.P. (“Blackstone”), James Atchison, James M. Heaney, and Marc Swanson (collectively, “Defendants”) do not oppose Plaintiff’s motions. The Court held a final approval hearing on these matters pursuant to Federal Rule of Civil Procedure 23(e)(2) and took Plaintiffs’ motions under submission. *See* Doc. No. 528. For the reasons set forth below, the Court **GRANTS**

1 Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation
2 (Doc. No. 521), and **GRANTS** Plaintiff's Motion for Attorneys' Fees and Litigation
3 Expenses (Doc. No. 522).

4 **BACKGROUND**

5 Plaintiffs bring this securities fraud class action against Defendants asserting
6 claims pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and
7 Rule 10b-5 promulgated under § 10(b). *See* Doc. No. 123 ("SAC"). Plaintiffs bring this
8 action on behalf of all individuals and entities who purchased or acquired common stock
9 of SeaWorld throughout the Class Period (August 29, 2013 to August 12, 2014).

10 SeaWorld is a theme park and entertainment company. During the Class Period,
11 SeaWorld owned and operated eleven theme parks in the United States: SeaWorld
12 Orlando, SeaWorld San Diego, SeaWorld San Antonio, Aquatica Orlando, Aquatica San
13 Diego, Discovery Cove, Busch Gardens Tampa, Busch Gardens Williamsburg,
14 Adventure Island, Water Country USA, and Sesame Place. SeaWorld's brand and
15 reputation are among the company's most important assets. SeaWorld has been
16 subjected to criticism related to captivity issues, even prior to the release of the 2013
17 documentary *Blackfish*.

18 Mr. Atchison served as SeaWorld's Chief Executive Officer ("CEO"), President,
19 and Director from before the start of the Class Period until January 2015. Mr. Heaney
20 has served as SeaWorld's Chief Financial Officer from before the start of the Class
21 Period to present. Mr. Swanson has served as SeaWorld's Chief Accounting Officer
22 from before the start of the Class Period to present.

23 Blackstone is a multinational private equity, investment banking, alternative asset
24 management, and financial services corporation based in New York, New York.

25 This case involves statements and omissions made by Defendants in the wake of
26 the 2013 documentary *Blackfish*. *Blackfish* tells the story of Tilikum, a 12,000-pound
27 bull orca implicated in the deaths of three people, and chronicles the cruelty of killer
28 whale capture methods, the dangers trainers face performing alongside killer whales

1 during SeaWorld's popular shows, and the physical and psychological strains killer
2 whales experience in captivity. Through interviews with former trainers, spectators,
3 employees of regulatory agencies, and scientists, *Blackfish* makes the case that keeping
4 killer whales in captivity for human entertainment is cruel, dangerous, and immoral.

5 In 2013 and throughout the Class Period, social media reaction to *Blackfish*
6 remained elevated. Consumers contacted SeaWorld and vowed never to visit its parks
7 because of *Blackfish*. Additionally, *Blackfish* publicity led partners and sponsors to end
8 or table partnerships and promotions with SeaWorld.

9 Company-wide attendance declined in 2013 and 2014. Specifically, as compared
10 to the prior year, attendance was down 9.5% in 2Q13, 3.6% in 3Q13, and 1.4% in 4Q13.
11 This resulted in a 4.1% decline in overall attendance for 2013. SeaWorld further reported
12 a 14% decline in attendance in 1Q14. SeaWorld's attendance was up 0.3% for 2Q14, but
13 SeaWorld's internal attendance analysis reflected a demand shortfall of 484,000 visitors,
14 largely attributable to SeaWorld Orlando (-265,000 visitors) and SeaWorld San Diego (-
15 271,000 visitors).

16 Plaintiffs challenge several statements made by SeaWorld executives as false
17 and/or misleading during the Class Period. On August 29, 2013, the *Los Angeles Times*
18 published an article quoting SeaWorld's Vice President of Communications, Fred Jacobs,
19 as stating, "*Blackfish* has had no attendance impact." *Bloomberg* also published an
20 article quoting Jacobs as stating that "[w]e can attribute no attendance impact at all to the
21 movie[.]" Jacobs testified at his deposition that he did not believe either statement was
22 true when he made it.

23 Beginning in July 2013, SeaWorld received survey results from the TNS omnibus
24 survey (the "Omnibus survey"). The survey inquired about awareness of the movie
25 *Blackfish*, whether respondents had seen, or intended to see the movie, and whether
26 respondents identified SeaWorld as the company the movie was about. SeaWorld's
27 Director of Budgeting and Forecasting, Joshua Powers, testified that he did not believe or
28 was not aware of any "specific assessment of whether publicity related to *Blackfish* had

1 affected attendance or revenue at the SeaWorld parks” from January 19, 2013 through
2 August 28, 2013. Further, Powers testified that from August 29, 2013 through November
3 13, 2013, aside from the Omnibus survey, he was not aware of any analysis SeaWorld
4 performed to specifically address whether *Blackfish* had affected attendance or revenue at
5 SeaWorld’s parks.

6 Plaintiffs further challenge three statements made during 4Q13. First, SeaWorld’s
7 earnings release for 3Q13, published on November 13, 2013, attributed a 3.6%
8 attendance decline in 3Q13 to only “adverse weather” and “planned strategies that
9 increased revenue but reduced low yielding and free attendance.” Second, on November
10 14, 2013, SeaWorld’s Chief Executive Officer, James Atchison, was quoted by the *Wall*
11 *Street Journal* as stating, “I scratch my head if there’s any notable impact from this film
12 at all, and I can’t attribute one to it. . . . Ironically, our attendance has improved since the
13 movie came out.” Third, on December 20, 2013, Atchison was quoted by the *Orlando*
14 *Sentinel* as stating, “As much data as we have and as much as we look, I can’t connect
15 anything really between the attention that the film has gotten and any effect on our
16 business.” From November 14, 2013 through December 20, 2013, Powers testified that
17 beyond the ongoing Omnibus research, he was not aware of any consolidated type of
18 effort to quantify whether publicity related to *Blackfish* had affected attendance or
19 revenue at SeaWorld parks.

20 On March 13, 2014, SeaWorld issued its earnings release for 4Q13 and fiscal year
21 2013. Defendants attributed SeaWorld’s attendance decline for 4Q13 and FY13 to
22 factors other than *Blackfish*, including weather and yield management strategies.
23 Additionally, during the earnings call, Atchison made the following statements: (a) “As
24 much as we’re asked it, we can see no noticeable impact on our business;” (b) “But our
25 surveys don’t reflect any shift in sentiment about intent to visit our parks;” (c) “A matter
26 of fact, the movie in some ways has actually made perhaps more interest in marine
27 mammal parks, and actually even about us;” and (d) “But we have seen no impact on the
28 business.” From December 21, 2013 through March 13, 2014, beyond the Goodwill

1 Memo that came out in January 2014, which assessed trends and attendance at SeaWorld,
2 Powers testified that he does not believe there was any other specific work done to try
3 and quantify whether publicity related to *Blackfish* had affected the revenue or attendance
4 at SeaWorld parks.

5 Lastly, in SeaWorld's May 14, 2014 earnings release for 1Q14, SeaWorld
6 attributed its 13% attendance decline for the quarter to weather and the shift in the Easter
7 holiday from 1Q14 to 2Q14. Powers testified that beyond an interim update to the
8 Goodwill Memo in April 2014, he does not believe the company conducted any specific
9 analysis to quantify whether publicity related to *Blackfish* had affected attendance or
10 revenue at SeaWorld parks from March 14, 2014 through May 14, 2014.

11 SeaWorld's Director of Research during the Class Period, Kelly Repass, agreed at
12 her deposition that to generate reliable data about why people did not visit SeaWorld
13 parks, the company would have to survey people who actually chose not to visit the park.
14 Repass testified that between the summer of 2013 and August 2014, SeaWorld did not
15 commission or perform any survey, study or other research that asked consumers why
16 they chose not to visit a SeaWorld park. While SeaWorld did commission a consumer
17 sentiment survey in March 2014, it did not attempt to measure why people had chosen
18 not to visit SeaWorld parks; thus SeaWorld "could not draw a conclusion" on the issue
19 between the summer of 2013 and August 2014.

20 SeaWorld reported its 2Q14 results in a Form 8-K filed with the SEC on August
21 13, 2014. While attendance was up 0.3% versus the prior year, SeaWorld explained that
22 this was "offset by lower attendance at its destination parks due to a combination of
23 factors." Specifically, attendance in the second quarter was impacted by factors
24 including, "a late start to summer for some schools in the Company's key source markets,
25 new attraction offerings at competitor destination parks, and a delay in the opening of one
26 of the Company's new attractions[.]" Moreover, "the Company believes attendance in
27 the quarter was impacted by demand pressures related to recent media attention
28 surrounding proposed legislation in the state of California." SeaWorld revised its

1 earnings estimates downward: “For the full year of 2014, the Company now expects full
2 years 2014 revenue and Adjusted EBITDA to be down in the range of 6-7% and 14-16%,
3 respectively, compared to the prior year.” SeaWorld’s common stock price dropped by
4 33%, or \$9.25 per share, following the announcement. Plaintiffs commenced the instant
5 action on September 9, 2014.

6 On May 19, 2017, Class Representatives filed their motion for class certification
7 (“Class Certification Motion”), seeking the Court’s certification of a class of all persons
8 and entities who purchased or otherwise acquired the publicly traded common stock of
9 SeaWorld between August 29, 2013 and August 12, 2014, inclusive, and who were
10 damaged thereby. Doc. Nos. 187, 188. On November 29, 2017, granted the Class
11 Certification Motion, certifying the Class, appointing Lead Plaintiffs APERS and PBU as
12 Class Representatives, and appointing Kessler Topaz Meltzer & Check, LLP and Nix
13 Patterson, LLP as Class Counsel. Doc. No. 259. Following the Ninth Circuit’s denial of
14 Defendants’ 23(f) petition, Class Representatives, on October 9, 2018, filed an
15 unopposed motion to approve the form and manner of notice to the Class and to appoint
16 Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator in connection
17 with the dissemination of Class Notice (“Class Notice Motion”). Doc. No. 324. The
18 Court granted the Class Notice Motion on December 6, 2018. Doc. No. 336. The Court
19 found the proposed Class Notice met the requirements of Rule 23 and due process and
20 constituted the best notice practicable under the circumstances. *Id.*

21 On April 15, 2019, Defendants filed their motion for summary judgment. Doc.
22 No. 359. On November 18, 2019, the Court denied Defendants’ motion for summary
23 judgment. Doc. No. 470. On February 11, 2020, Class Representatives filed a stipulation
24 and unopposed motion for preliminary approval of proposed settlement and authorization
25 to disseminate notice of the settlement to the Class. Doc. No. 516. On February 19,
26 2020, the Court entered the Preliminary Approval Order, scheduling the final hearing on
27 the proposed settlement and related matters for July 22, 2020 at 10:00 a.m. Doc. No.
28 518.

1 On June 17, 2020, Plaintiffs filed the instant motions for Final Approval of Class
2 Action Settlement and for Attorneys’ Fees and Litigation Expenses. Doc. Nos. 521, 522.
3 Defendants have not opposed or otherwise responded to Plaintiffs’ motions, nor have any
4 objections been filed to the proposed settlement.

5 **OVERVIEW OF THE SETTLEMENT**

6 **1. Settlement Class**

7 The Settlement Class is defined as all persons who have purchased or otherwise
8 acquired SeaWorld common stock during the Class Period and held those shares through
9 the alleged August 13, 2014 corrective disclosure. *See* Doc. No. 521-1 (“Mem.”) at 22
10 (citing Doc. No. 523 (“Jt. Decl.”), ¶ 105).

11 **2. Settlement Terms**

12 The proposed settlement (hereinafter “Settlement Agreement”) would resolve all
13 claims brought by Class Members against Defendants for alleged false and/or misleading
14 statements made by SeaWorld relating to *Blackfish*. Pursuant to the Settlement
15 Agreement, SeaWorld must pay a settlement amount of \$65,000,000 into an escrow
16 account, which thereafter will be used to pay any taxes, notice and administration costs,
17 litigation expenses, attorneys’ fees, and any other costs and fees awarded by the Court.
18 *See* Doc. No. 516-3, Settlement Agreement, ¶¶ 9-10. Thereafter, the remaining balance,
19 or net settlement fund, shall be distributed to authorized claimants pursuant to the Plan of
20 Allocation. *See id.*, ¶¶ 19-31.

21 Specifically, the claims administrator, Epiq Class Action & Claims Solutions, Inc.,
22 “shall administer the Settlement, including but not limited to the process of receiving,
23 reviewing, and approving or denying Claims, under Class Counsel’s supervision and
24 subject to the jurisdiction of the Court.” *Id.*, ¶ 19. In accordance with the Preliminary
25 Approval Order and March 16 Notice Order, to date, the claims administrator has,
26 through reasonable effort, “disseminated 16,597 Postcard Notices and 4,244 Notices to
27 prospective Class Members and Nominees.” Mem. at 24 (citing Doc. No. 523-3
28 (“Barrero Decl.”), ¶ 12. The claims administrator “will determine each Authorized

1 Claimant’s *pro rata* share of the Net Settlement Fund by dividing the Authorized
 2 Claimant’s Recognized Claim (i.e., the sum of the Claimant’s Recognized Loss Amounts
 3 as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants,
 4 multiplied by the total amount in the Net Settlement Fund. Class Representatives’ losses
 5 will be calculated in the same manner.” Jt. Decl., ¶ 106.

6 Once the claims administrator has processed all submitted claims and provided
 7 claimants with an opportunity to cure any deficiencies in their claims or challenge the
 8 claims administrator’s claim rejection, Class Counsel will file a motion for approval of
 9 the claims administrator’s “determinations with respect to all submitted Claims and
 10 authorization to distribute the Net Settlement Fund to Authorized Claimants.” *Id.*, ¶ 107.
 11 “[I]f nine months after the initial distribution, there is a balance remaining in the Net
 12 Settlement Fund . . . , and if it is cost-effective to do so, Class Counsel will conduct a re-
 13 distribution of the funds remaining after payment of any unpaid fees and expenses
 14 incurred in administering the Settlement . . . to Authorized Claimants who have cashed
 15 their initial distribution checks and would receive at least \$10.00 from such re-
 16 distribution.” *Id.* “Redistributions will be repeated until it is determined that re-
 17 distribution of the funds remaining in the Net Settlement Fund would no longer be cost
 18 effective. Thereafter, any remaining balance will be contributed to non-sectarian, not-for-
 19 profit organization(s), to be recommended by Class Counsel and approved by the Court.”
 20 *Id.*

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1. Legal Standard

23 “The court’s intrusion upon what is otherwise a private consensual agreement
 24 negotiated between the parties to a lawsuit must be limited to the extent necessary to
 25 reach a reasoned judgment that the agreement is not the product of fraud or overreaching
 26 by, or collusion between the negotiating parties, and that the settlement, taken as a whole,
 27 is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv.*
 28 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).

1 A court considers several factors in determining whether a Settlement Agreement
 2 is “fair, reasonable, and adequate” under Rule 23(e). The Rule provides that a court
 3 should consider whether: (1) the class representatives and class counsel have adequately
 4 represented the class; (2) the proposal was negotiated at arms-length; (3) the relief
 5 provided for the case is adequate, taking into consideration the risks associated with
 6 continued litigation and the effectiveness of proposed relief to the class; and (4) the
 7 proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).
 8 The Ninth Circuit has identified additional factors, including: (1) the strength of the case;
 9 (2) the risk, expense, complexity, and likely duration of further litigation and the risk of
 10 maintaining class action status throughout the trial; (3) the stage of the proceedings
 11 (investigation, discovery and research completed); (4) the settlement amount; (5) whether
 12 the class has been fairly and adequately represented during settlement negotiations; and
 13 (6) the reaction of the class to the Settlement Agreement. *Staton v. Boeing Co.*, 327 F.3d
 14 938, 959 (9th Cir. 2003). The Court need only consider some of these factors—namely,
 15 those designed to protect absentees. *See Molski v. Gleich*, 318 F.3d 937, 954 (9th Cir.
 16 2003), *overruled in part on other grounds by Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d
 17 571 (9th Cir. 2010).

18 Judicial policy favors settlement in class actions and other complex litigation
 19 where substantial resources can be conserved by avoiding the time, cost, and rigors of
 20 formal litigation. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379,
 21 1387 (D. Ariz. 1989) (“WPPSS”).

22 **2. Analysis**

23 **a. Adequate Representation**

24 First, Plaintiffs assert that the first Rule 23(e)(2) factor—whether Class
 25 Representatives and Class Counsel “have adequately represented the class”—favors
 26
 27
 28

1 approval of the Settlement.¹ Mem. at 7. Plaintiffs are correct.

2 As Plaintiffs point out, the Court previously found Class Representatives and Class
 3 Counsel had “shown that they will fairly and adequately protect the interests of the class,
 4 thereby satisfying the adequacy requirement of Rules 23(a)(4) and (g).” Mem. at 7
 5 (quoting Doc. No. 259 at 15-17, internal quotations omitted). Plaintiffs also correctly
 6 note that following the Court’s initial finding, “Class Representatives and Class Counsel
 7 further demonstrated their adequacy by prosecuting this Action to the brink of trial.” *Id.*
 8 Moreover, the Class Representatives are sophisticated institutional investors that
 9 Congress has deemed appropriate to lead securities class actions and have devoted much
 10 time and effort to the progress of this litigation. *See* Mem. at 7 (citing Jt. Decl., ¶ 132;
 11 *id.*, Ex. 1, ¶¶ 5-7; *id.*, Ex. 2, ¶¶ 1-5). And as the Court previously found, Class
 12 Representatives have no interests that conflict with the rest of the Class. *See* Doc. No.
 13 259 at 11-17. The Court also finds that Class Counsel have adequately represented the
 14 Class, as Class Counsel have invested great efforts into the litigation for more than five
 15 years, resulting in the Settlement Agreement capturing a \$65,000,000 recovery for the
 16 Class. *See* Mem. at 8 (citing Jt. Decl., ¶¶ 19-80, 118-21). Accordingly, this factor favors
 17 approval of the Settlement Agreement. *See Adoma v. Univ. of Phoenix, Inc.*, 913 F.
 18 Supp. 2d 964, 977 (E.D. Cal. 2012) (“Great weight is accorded to the recommendation of
 19 counsel, who are most closely acquainted with the facts of the underlying litigation.”)
 20 (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
 21 Cal. 2004)).

22 **b. Arm’s Length Negotiation**

23 Next, Plaintiffs submit that the Settlement Agreement “was achieved through
 24 protracted negotiations, including multiple mediation sessions facilitated by neutral and
 25

26
 27 ¹ “This analysis is ‘redundant of the requirements of Rule 23(a)(4) and Rule 23(g), respectively.’”
 28 *Hudson v. Libre Tech. Inc.*, No. 3:18-CV-1371, 2020 WL 2467060, at *5 (S.D. Cal. May 13, 2020)
 (quoting *Newberg on Class Actions* § 13:48 (5th ed.)).

1 experienced mediators.” Mem. at 8-9. “A settlement following sufficient discovery and
2 genuine arms-length negotiation is presumed fair.” *DIRECTV*, 221 F.R.D. at 528. The
3 Court finds that the Settlement Agreement followed the completion of discovery and
4 genuine arms-length negotiations, thus supporting the Court’s approval of the Settlement
5 Agreement. See Rule 23(e)(2)(B); *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th
6 Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive,
7 negotiated resolution”); see also *Roberti v. OSI Sys., Inc.*, No. 1309174, 2015 WL
8 8329916, at *3 (C.D. Cal. Dec. 8, 2015) (“The assistance of an experienced mediator in
9 the settlement process confirms that the settlement is noncollusive.”) (quoting *Satchell v.*
10 *Fed. Express Corp.*, No. 32878, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007). As
11 Plaintiffs discuss in detail, the Settlement Agreement was reached through intensive,
12 good-faith bargaining in several mediation sessions, first with Magistrate Judge Schopler,
13 then with Jed. D. Melnick, Esq. of JAMS and The Weinstein Melnick Team. See Mem.
14 at 8-10 (citing Jt. Decl., ¶¶ 73-77). These negotiations support approval of the Settlement
15 Agreement. See *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1122 (9th Cir. 2020) (the
16 fact that the settlement was “the result of four in-person, arms-length mediations before
17 two different mediators” supported final approval) (citations omitted). Accordingly, this
18 factor also weighs in favor of the Court’s final approval of the Settlement Agreement.

19 c. Adequate Relief

20 The remaining factors overlap and are generally focused on whether the Settlement
21 Agreement provides the Class with adequate relief, considering factors such as the costs,
22 risks, and delay of litigation, as well as the stage of the proceedings, Settlement
23 Agreement amount, and class reaction to the Settlement Agreement. To determine
24 whether the Settlement Agreement is fair, reasonable, and adequate, the Court must
25 balance the continuing risks of litigation (including the strengths and weaknesses of
26 Plaintiffs’ case), with the benefits afforded to members of the Class, and the immediacy
27 and certainty of a substantial recovery. See *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
28 454, 458 (9th Cir. 2000). In other words:

1
2 The Court shall consider the vagaries of litigation and compare the
3 significance of immediate recovery by way of the compromise to the mere
4 possibility of relief in the future, after protracted and expensive litigation. In
5 this respect, “It has been held proper to take the bird in hand instead of a
6 prospective flock in the bush.”

7 *DIRECTV*, 221 F.R.D. at 526 (citations omitted).

8 Plaintiffs claim that “the Settlement undoubtedly provides adequate relief for the
9 Class, especially when taking into account the costs, risks, and delay of further litigation,
10 and the other relevant factors.” Mem. at 10.

11 i. *The Amount Offered in Settlement*

12 Plaintiffs correctly identify the \$65,000,000 settlement amount as “significant by
13 any measure” and note that it “represents a meaningful percentage of the Class’s
14 maximum potentially recoverable aggregate damages.” Mem. at 11. It “is well-settled
15 law that a proposed settlement may be acceptable even though it amounts to only a
16 fraction of the potential recovery that might be available to the class members at trial.”
17 *Rodriguez v. Bumble Bee Foods, LLC*, No. 17-CV-2447, 2018 WL 1920256, at *4 (S.D.
18 Cal. Apr. 24, 2018). That is because a settlement “embodies a compromise; in exchange
19 for the saving of cost and elimination of risk, the parties each give up something they
20 might have won had they proceeded with litigation.” *Officers of Justice v. Civil Service*
21 *Com’n of City and Cty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982). Here, the
22 Settlement Agreement “provides an immediate and tangible cash benefit to the Class and
23 eliminates the substantial risk that the Class could recover less, or nothing, if the Action
24 continued.” Mem. at 11 (citing Jt. Decl., ¶¶ 7-10, 81-96, 113-17).

25 Moreover, the settlement amount represents a significant recovery in comparison
26 to the percentage of aggregate damages in similar cases and “to the typical recovery in
27 similar court-approved settlements by a considerable margin.” Mem. at 11 (citing Mem.
28 at n. 2). First, Plaintiffs point to “Cornerstone Research report[ing] that in 2019, the

1 median securities class action settlement amount was 4.8% of estimated damages for
 2 cases with estimated damages between \$250 - \$499 million, and over the prior decade
 3 (2010 through 2018), the median settlement amount for such cases was 3.9% of estimated
 4 damages.” *Id.* Here, the Settlement Agreement “represents approximately 14% of the
 5 maximum amount [of \$465 million] the Class potentially could have recovered upon total
 6 victory at trial and any appeal.” *Id.* (citing Jt. Decl., ¶¶ 11, 112). Second, Plaintiffs cite
 7 several cases approving settlements representing a lesser percentage of the maximum
 8 potential damages than the approximate 14% of the maximum recoverable amount in this
 9 case. *Id.* at n 9 (collecting cases). For example, in *In re Extreme Networks, Inc. Sec.*
 10 *Litig.*, the court approved a gross settlement amount representing a recovery of between
 11 5% and 9.5% of estimated maximum damages. No. 15-CV-04883, 2019 WL 3290770, at
 12 *9 (N.D. Cal. July 22, 2019). In sum, this factor – the amount offered in settlement –
 13 favors approval of the Settlement Agreement.²

14 ii. *The Risks of Continued Litigation*

15 “To determine whether the proposed settlement is fair, reasonable, and adequate,
 16 the Court must balance the continuing risks of litigation (including the strengths and
 17 weaknesses of the Plaintiffs’ case), with the benefits afforded to members of the Class,
 18 and the immediacy and certainty of a substantial recovery.” *Velazquez v. Int’l Marine &*
 19 *Indus. Applicators, LLC*, No. 16-CV-494, 2018 WL 828199, at *4 (S.D. Cal. Feb. 9,
 20 2018); Rule 23(e)(2)(C)(i); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th
 21 Cir. 2004).

22 Plaintiffs and Class Counsel acknowledge the “major challenges and considerable
 23 risks” associated with trying the case rather than settling. *See* Mem. at 12. That is, they
 24

25
 26 ² Additionally, Plaintiffs represent that “the current pandemic virtually eliminated the chance of
 27 obtaining a larger settlement or satisfying a larger verdict down the road.” Mem. at 12. This is because,
 28 due to the pandemic’s effects on its business, SeaWorld “suffered a massive loss of revenue shortly after
 the Settlement funded.” *Id.* This representation further supports that the proposed settlement represents
 adequate relief.

1 came to understand such risks after engaging jury consultants and conducting a two-day
2 mock jury trial and focus group in December 2019. *Id.* at 12-13. First, Plaintiffs “faced
3 challenges in establishing liability,” including the risk of failing to convince a jury with
4 “largely circumstantial evidence that Defendants knew or should have known of the
5 *Blackfish* impact . . .” *Id.* at 13. Second, because Plaintiffs’ ability to prove loss
6 causation and damages would “come down to an unpredictable battle of the experts,” the
7 jury could have decided in Defendants’ favor, resulting in Plaintiffs’ claims being
8 “severely reduced, or eliminated.” *Id.* at 14. Lastly, Plaintiffs faced other jury and trial
9 risks, including that “a single juror with entrenched sympathies toward SeaWorld or
10 antipathies toward other pertinent issues, like class action lawsuits, could have
11 singlehandedly defeated the Class.” Mem. at 15 (citing Jt. Decl., ¶¶ 95-96). Considering
12 these risks, this factor favors final approval of the Settlement Agreement.

13 iii. *The Complexity, Expense, and Duration of Continued Litigation*

14 In determining whether to approve a Settlement Agreement, the Court should also
15 consider the “expense, complexity and likely duration of further litigation” or “delay of
16 trial and appeal.” Rule 23(e)(2)(C)(i). “Generally, unless the settlement is clearly
17 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
18 with uncertain results.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D.
19 Cal. 2015).

20 The Court finds that these factors favor approval of the Settlement Agreement.
21 First, as Plaintiffs note, “[c]ourts consistently acknowledge that securities fraud class
22 actions are “notably complex, lengthy, and expensive cases to litigate[.]” Mem. at 16, n.
23 12 (citing *In re Par Pharm. Sec. Litig.*, No. 06-3226, 2013 WL 3930091, at *4 (D.N.J.
24 July 29, 2013) (citing examples)). Further, “[t]he expense involved with litigating the
25 Action for five-plus years was significant.” *Id.* at 16 (citing Jt. Decl., ¶¶ 125-30, detailing
26 litigation expenses in the amount of \$2,104,370.19). Surely proceeding to trial would
27 substantially increase the parties’ expenses. Similarly, Plaintiffs estimate that trial would
28 last approximately one month. *See* Doc. No. 512 at 7-8. If they would have succeeded,

1 Plaintiffs would have likely “faced vigorous post-trial motion practice, potential
 2 individual trials for Class Members whom Defendants challenged in the claims process,
 3 and likely appeals to the Ninth Circuit—delaying any recovery for years with the
 4 possibility of eliminating it entirely.” Mem. at 16-17 (citing Jt. Decl., ¶¶ 53-54).
 5 Accordingly, these factors weigh in favor of approval of the Settlement Agreement.

6 iv. *Class Reaction to the Settlement Agreement*

7 The Ninth Circuit has held that the number of class members who object to a
 8 Settlement Agreement is a factor to be considered. *Mandujano v. Basic Vegetable Prods.*
 9 *Inc.*, 541 F.2d 832, 837 (9th Cir. 1976). The absence of many objectors supports the
 10 fairness, reasonableness, and adequacy of the settlement. *See In re Austrian & German*
 11 *Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) (“If only a small number
 12 of objections are received, that fact can be viewed as indicative of the adequacy of the
 13 settlement.”) (citations omitted); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal.
 14 1979) (finding “persuasive” the fact that 84% of the class has filed no opposition).

15 Here, to date, no objection to the Settlement Agreement has been filed. *See* Jt.
 16 Decl., ¶¶ 12, 101. Additionally, Class Representatives support the Settlement
 17 Agreement. Mem. at 19 (citing Doc. No. 523-1 (“APERS Decl.”), ¶ 8; Doc. No. 523-2
 18 (“PBU Decl.”), ¶ 8). Therefore, this factor favors approval of the Settlement Agreement.

19 **3. Conclusion**

20 Because the factors outlined above favor approving the Settlement Agreement, the
 21 Court **GRANTS** the motion and finds that the settlement is “fair, reasonable, and
 22 adequate” pursuant to Rule 23(e).

23 **MOTION FOR AWARD OF ATTORNEYS’ FEES, COSTS, AND CLASS REPRESENTATIVE**

24 **AWARD OF COSTS**

25 Plaintiffs seek attorneys’ fees, litigation costs, and a class representative incentive
 26 award totaling \$16,474,939.20. *See* Doc. No. 522-1 at 22. Specifically, Plaintiffs seek
 27 attorneys’ fees in the amount of \$14,300,000, litigations costs in the amount of
 28 \$2,104,370.19, and a \$70,569 award of costs for Class Representatives (*i.e.*, \$10,569 to

1 APERS and \$60,000 to PBU). *Id.* Defendants do not oppose Plaintiffs’ motion for
2 attorneys’ fees, costs, and an award for Class Representatives’ costs.

3 **1. Attorneys’ Fees**

4 With respect to attorneys’ fees, Class Counsel seek approval of attorneys’ fees
5 under a percentage-of-recovery method of calculation. *See* Doc. No. 522-1 (“Fees Mot.”)
6 at 6-8. Class Counsel further argue that a cross-check to the lodestar method of
7 calculation demonstrates that the fee request is reasonable. *Id.* at 8-11.

8 **a. Legal Standard**

9 Rule 23(h) of the Federal Rules of Civil Procedure provides that, “[i]n a certified
10 class action, the court may award reasonable attorney’s fees and nontaxable costs that are
11 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The
12 reasonableness of any fee award must be considered against the backdrop of the
13 “American Rule,” which provides that courts generally are without discretion to award
14 attorneys’ fees to a prevailing plaintiff unless (1) fee-shifting is expressly authorized by
15 the governing statute; (2) the opponents acted in bad faith or willfully violated a court
16 order; or (3) “the successful litigants have created a common fund for recovery or
17 extended a substantial benefit to a class.” *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*,
18 421 U.S. 240, 275 (1975) (Brennan, J., dissenting); *accord Zambrano v. City of Tustin*,
19 885 F.2d 1473, 1481 & n. 25 (9th Cir. 1989).

20 Where a settlement produces a common fund, courts in this Circuit have discretion
21 to employ either the percentage-of-recovery method or the lodestar method in awarding
22 attorneys’ fees. *See WPPSS*, 19 F.3d at 1296; *Vizcaino v. Microsoft Corp.*, 290 F.3d
23 1043, 1047 (9th Cir. 2002). Because the benefit to the class is easily quantified in
24 common-fund settlements, the Ninth Circuit has allowed district courts within the Circuit
25 to award attorneys a percentage of the common fund in lieu of the often more time-
26 consuming task of calculating the lodestar. *See In re Bluetooth Headset Prod. Liab.*
27 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Applying this calculation method, courts
28 typically calculate 25% of the fund as the “benchmark” for a reasonable fee award,

1 providing adequate explanation in the record of any “special circumstances” justifying a
2 departure. *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th
3 Cir. 1990); *accord Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000); *Paul,*
4 *Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989). Courts have
5 found that a lodestar analysis is not necessary when the requested fee is within the
6 accepted benchmark. *See, e.g., Craft v. County of San Bernadino*, No. 05-CV-359, 2008
7 U.S. Dist. LEXIS 27526, at *24 (C.D. Cal. April 1, 2008) (“A lodestar crosscheck is not
8 required in this circuit.”). Under the percentage-of-recovery method, “the court simply
9 awards the attorneys a percentage of the fund sufficient to provide class counsel with a
10 reasonable fee.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

11 Alternatively, the lodestar figure is calculated by multiplying the number of hours
12 the prevailing party reasonably expended on the litigation (as supported by adequate
13 documentation) by a reasonable hourly rate for the region and for the experience of the
14 lawyer. *See Staton*, 327 F.3d at 965. Though the lodestar figure is “presumptively
15 reasonable,” *Cunningham v. Cnty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir.1988), the
16 court may adjust it upward or downward by an appropriate positive or negative multiplier
17 reflecting a host of “reasonableness” factors, “including the quality of representation, the
18 benefit obtained for the class, the complexity and novelty of the issues presented, and the
19 risk of nonpayment.” *Hanlon*, 150 F.3d at 1029 (citing *Kerr v. Screen Extras Guild, Inc.*,
20 526 F.2d 67, 70 (9th Cir. 1975)). Foremost among these considerations, however, is the
21 benefit obtained for the class. *See Hensley v. Eckerhart*, 461 U.S. 424, 434-36 (1983);
22 *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (ultimate
23 reasonableness of the fee “is determined primarily by reference to the level of success
24 achieved by the plaintiff”).

25 Though courts have discretion to choose which calculation method they use, their
26 discretion must be exercised to achieve a reasonable result. *See In re Coordinated*
27 *Pretrial Proceedings*, 109 F.3d 602, 607 (9th Cir. 1997) (citing *WPPSS*, 19 F.3d at 1294-
28 95, n. 2).

1 **b. Analysis**

2 Plaintiffs contend that a fee of 22% (or \$14,300,000) of the settlement fund is
3 reasonable under either the percentage-of-recovery method or lodestar method. *See Fees*
4 *Mot.* at 7-8. The Court is inclined to agree, given that the fee of 22% of the settlement
5 fund is below the benchmark of 25% for a fee award in common fund cases. Moreover,
6 Plaintiffs come forward with persuasive authority resulting in fee rewards derived from
7 comparable fee percentages in similar common fund cases. *See Fees Mot.* at 8 (collecting
8 cases). Regardless of whether the Court uses the percentage approach or the lodestar
9 method, the ultimate inquiry is whether the result is reasonable. *Powers*, 229 F.3d at
10 1258. As discussed below, the reasonableness of the fee percentage requested is
11 supported by Ninth Circuit case law and a lodestar cross-check.

12 i. *Factors Demonstrating Reasonableness*

13 The Ninth Circuit has identified a number of factors that may be relevant in
14 determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation;
15 (3) the skill required and the quality of work; (4) the burdens carried by class counsel;
16 and (5) the awards made in similar cases. *See Vizcaino*, 290 F.3d at 1048-50.

17 First, the Court considers the results achieved for the Class Members. *See In re*
18 *Bluetooth*, 654 F.3d at 942 (“Foremost among these considerations, however, is the
19 benefit obtained for the class.”). Here, the Settlement Agreement amount is \$65,000,000,
20 14% of the maximum amount the Class could have recovered. This percentage is higher
21 than “the typical recovery in similar court-approved settlements by considerable margin.”
22 *Mem.* at 11 & n. 9 (citing n. 2 and collecting cases). This amount was obtained after five
23 years of litigation, including vigorous disputes over the admissibility of expert testimony
24 and the propriety of summary disposition of the action. *See Mem.* at 1. Further, no
25 objections to the settlement have been made. *Jt. Decl.*, ¶¶ 12, 101. Additionally,
26 Plaintiffs assert the Settlement Agreement “delivers a clear benefit and excellent result
27 for the Class . . .” *Mem.* at 1. This factor favors the reasonableness of the requested fee
28 award.

1 Second, the Court considers the risks of the litigation. *Vizcaino*, 290 F.3d at 1048-
2 49. As discussed above, Plaintiffs and Class Counsel acknowledge the “major challenges
3 and considerable risks” associated with proceeding to trial. *See* Mem. at 12-15; *see also*
4 Fees Mot. at 13-15. Moreover, Class Counsel faced these risks in the course of
5 representing the Class on a contingent-fee basis, meaning Class Counsel expended a great
6 amount of resources with no guarantee of recoupment. *See* Doc. No. 523 at 48-49.
7 Accordingly, the second factor favors the reasonableness of the requested fees.

8 The third and fourth factors ask the Court to consider the skill required, the quality
9 of work, and the burdens carried by class counsel. *See Vizcaino*, 290 F.3d at 1049-50.
10 Plaintiffs assert that “experience and skill [of Class Counsel] was critical to the
11 prosecution of this Action for more than five years to a successful resolution.” Fees Mot.
12 at 15-16. Plaintiffs emphasize that even though Defendants prevailed entirely on their
13 first motion to dismiss, “Class Counsel amended their claims and defeated Defendants’
14 second motion to dismiss . . . , obtain[ed] certification of the Class, defeat[ed] Defendants’
15 motion for summary judgment in its entirety, and secure[d] a favorable recovery for the
16 Class.” *Id.* at 15-16. It is also noteworthy that Class Counsel faced a rigorous defense
17 mounted by “Simpson Thacher & Bartlett LLP and Katten Muchin Rosenman LLP, both
18 nationally prominent defense firms that spared no effort or cost in vigorously defending
19 their clients.” *Id.* at 16 (citing Jt. Decl., ¶ 123). As such, these factors weigh in favor of
20 finding the requested fees are reasonable.

21 Finally, the Court considers awards made in similar cases. *See Vizcaino*, 290 F.3d
22 at 1048-50. The 22% award requested in this case is commensurate with percentage-of-
23 the-fund awards made in securities class actions and other complex litigation in this
24 Circuit and this Court. *See, e.g., HCL Partners Ltd. P’ship v. Leap Wireless Int’l, Inc.*,
25 No. 07-CV-2245 MMA, 2010 WL 4156342, at *4 (S.D. Cal. Oct. 15, 2010) (“*HCL*
26 *Partners*”) (awarding 25% of \$13.75 million settlement fund); *In re Apollo Grp. Inc. Sec.*
27 *Litig.*, No. 04-2147, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (awarding 33.3%
28 of \$145 million settlement fund); *In re Mercury Interactive Corp. Sec. Litig.*, No. 05-CV-

1 03395, 2011 WL 826797, at *3 (N.D. Cal. Mar. 3, 2011) (awarding 22% of \$117.5
2 million settlement fund); *Vizcaino*, 290 F.3d at 1051 (affirming award of 28% of \$97
3 million settlement fund); *In re Amgen Inc. Sec. Litig.*, No. 07-CV-2536, 2016 WL
4 10571773, at *9 (C.D. Cal. Oct. 25, 2016) (“*Amgen*”) (awarding 25% of \$95 million
5 settlement fund); *In re Verisign, Inc. Sec. Litig.*, No. 02-CV-2270, Doc. No. 528 (N.D.
6 Cal. Apr. 24, 2007) (awarding 25% of \$78 million settlement fund); *In re Hewlett-*
7 *Packard Co. Sec. Litig.*, No. 11-CV-1404, Doc. No. 167 (C.D. Cal. Sept. 15, 2014)
8 (awarding 25% of \$57 million settlement fund); *In re: SanDisk LLC Secs. Litig.*, No. 15-
9 CV-01455, Doc. No. 284 (N.D. Cal. Oct. 23, 2019) (awarding 25% of \$50 million
10 settlement fund); *In re Questcor Secs. Litig.*, No. 8:12-CV-01623, Doc. No. 255 (C.D.
11 Cal. Sept. 21, 2015) (awarding 22% of \$38 million settlement fund); *Schulein, et al. v.*
12 *Petroleum Development Corp., et al.*, No. 11-CV-01891, Doc. No. 265 (C.D. Cal. Mar.
13 16, 2015) (awarding 30% of \$37.5 million settlement fund); *Franke v. Bridgeport*
14 *Education, Inc., et al.*, No. 12-CV-01737, Doc. No. 107 (S.D. Cal. April 27, 2016)
15 (awarding 25% of \$15.5 million settlement fund). Accordingly, the reasonableness
16 factors support Plaintiffs’ request for a 22% fee award from the settlement fund.

17 ii. *Lodestar Cross-Check*

18 District courts often conduct a lodestar cross-check to ensure that the percentage-
19 based fee is reasonable. *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th
20 Cir. 2016); *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 2009). The lodestar
21 method multiplies the number of hours reasonably expended by a reasonable hourly rate.
22 *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). Further, “[t]he
23 lodestar ‘cross-check’ need not be as exhaustive as a pure lodestar calculation” because it
24 only “serves as a point of comparison by which to assess the reasonableness of a
25 percentage award.” *Fernandez v. Victoria Secret Stores, LLC*, No. 06-CV-04149, 2008
26 WL 8150856, at *14 (C.D. Cal. July 21, 2008). Accordingly, “the lodestar can be
27 approximate and still serve its purpose.” *Id.*

28 A cross-check to the lodestar calculation of Plaintiffs’ attorneys’ fees corroborates

1 that the proposed fee of 22% of the settlement fund does not confer a windfall on Class
2 Counsel. “Plaintiffs’ Counsel’s lodestar, derived by multiplying the hours spent on the
3 Action by each attorney and professional support staff employee by their hourly rates, is
4 \$23,765,584.25.” Fees Mot. at 9. Thus, Class Counsel’s request for a percentage-based
5 fee award amounting to \$14,300,000 is \$9,465,584.25 less than the calculated lodestar
6 amount – or about 60% of the lodestar amount. Upon reviewing the underlying hourly
7 rates of the Plaintiffs’ attorneys, however, the Court observed that several exceed the
8 hourly rates of those previously found reasonable in this legal community. For example,
9 the hourly rates for several partners, associates, and paralegals at Kessler Topaz Meltzer
10 & Check, LLP exceed the hourly rates of partners in this legal community. *Compare*
11 *Doc. No. 523-4 at 5 with Dilts v. Penske Logistics, LLC*, No. 08-CV-318, 2017 WL
12 2620664, at *5 (S.D. Cal. June 16, 2017) (finding reasonable hourly rates of \$550 to \$750
13 for class counsel and \$170 to \$200 for paralegals); *Carr v. Tadin, Inc.*, 51 F. Supp. 3d
14 970, 978 (S.D. Cal. 2014) (finding reasonable hourly rates of \$650 for principal, \$335 to
15 \$375 for associates, and \$150 for paralegals); *Hartless v. Clorox Co.*, 273 F.R.D. 630,
16 644 (S.D. Cal. 2011) (finding hourly rates of \$795 for experienced partner and \$100 for
17 paralegal reasonable and collecting cases). Nevertheless, even after discounting the
18 hourly rates of Plaintiffs’ attorneys and legal support that exceed those charged in this
19 legal community, the Court finds the adjusted lodestar amount to be higher than the
20 requested fee based on the percentage-of-recovery method. As such, this favors approval
21 of the requested attorneys’ fees.

22 c. Conclusion

23 Accordingly, the Court finds attorneys’ fees in the amount of 22% of the
24 settlement fund – or \$14,300,000 – to be reasonable and **APPROVES** attorneys’ fees in
25 that amount.

26 2. Litigation Expenses

27 Plaintiffs’ Counsel also seek reimbursement for costs in the amount of
28 \$2,104,370.19 for expenses Plaintiffs’ Counsel reasonably incurred in initiating,

1 prosecuting, and resolving this case. *See* Fees Mot. at 19. Federal Rule of Civil
2 Procedure 23(h) provides that, “[i]n a certified class action, the court may award
3 reasonable attorneys’ fees and nontaxable costs that are authorized by law or by the
4 parties’ agreement.” Fed. R. Civ. P. 23(h). Class counsel are entitled to reimbursement
5 of the out-of-pocket costs they reasonably incurred investigating and prosecuting this
6 case. *See HCL Partners*, 2010 WL 4156342, at *2 (“Expenses are compensable in a
7 common fund case where the particular costs are of the type that ‘would normally be
8 charged to a fee paying client.’”) (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
9 1994)); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996)
10 (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970)).

11 Here, Class Counsel’s expenses include the costs of experts and consultants,
12 jury/trial consultants, travel, an outside vendor to host a document database, and similar
13 expenses that facilitated the prosecution of this action. *See* Fees Mot. at 19-21. The
14 largest components of the litigation costs are those associated with experts and
15 consultants, which assisted Plaintiffs in defeating a motion for summary judgment and
16 achieving a favorable settlement, as well as travel-related costs, such as those incurred in
17 connection with hearings, status conferences, depositions, and mediations. *See id.* at 19-
18 21. Further, “to date, no objections to the maximum expense request set forth in the
19 notices [to Class Members] have been filed.” *Id.* (citing Jt. Decl., ¶ 109).

20 Accordingly, the Court **APPROVES** Class Counsel’s litigation costs in the amount
21 of \$2,104,370.19.

22 **3. Class Representatives’ Costs**

23 The PSLRA provides that an “award of reasonable costs and expenses (including
24 lost wages) directly relating to the representation of the class” may be made to “any
25 representative party serving on behalf of a class.” 15 U.S.C. § 78u-4(a)(4). Class
26 Representatives APERS and PBU seek awards under this statute in amounts of
27 \$10,569.00 and \$60,000.00, respectively. *See* APERS Decl., ¶ 14; PBU Decl., ¶ 14.

28 Plaintiffs assert that “[t]hese requested awards are purely for the time and effort

1 Class Representatives devoted to representing the Class in this Action.” Fees Mot. at 21.
2 Plaintiffs provide sufficient support demonstrating their commitment and cooperation in
3 prosecuting this class action. “Class Representatives communicated regularly with
4 counsel regarding strategy and developments in the Action, reviewed important pleadings
5 and briefs filed in the Action, assisted Class Counsel in responding to voluminous
6 discovery requests, and prepared for, traveled to, and testified at, depositions in
7 connection with class certification.” Fees Mot. at 21 (citing APERS Decl., ¶¶ 5-7; PBU
8 Decl., ¶¶ 5-7). Class Representatives also “consulted with Class Counsel during the
9 course of the Parties’ settlement negotiations, including the Parties’ formal mediations
10 with Mr. Melnick.” *Id.*

11 Moreover, Plaintiffs cite persuasive authority supporting approval of the requested
12 awards “to compensate representative plaintiffs for the time and effort they spent on
13 behalf of a class.” Fees Mot. at 22 (citing *Amgen*, 2016 WL 10571773, at *10 (awarding
14 institutional class representative \$30,983.99 in expenses related to its participation in this
15 litigation, including reimbursement of time for General Counsel, Office of Treasury;
16 Solicitor General, and Assistant Attorney)); *In re Bank of Am. Corp. Sec. Litig.*, 772 F.3d
17 125, 133 (2d Cir. 2014) (affirming award of over \$450,000 to representative plaintiffs for
18 time spent by their employees on the action); *In re Cobalt Int’l Energy, Inc. Sec. Litig.*,
19 2019 WL 6043440, at *3 (S.D. Tex. Feb. 13, 2019) (awarding aggregate of over \$56,000
20 to four institutional plaintiffs); *In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at
21 *19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here, “the tasks
22 undertaken by employees of Lead Plaintiffs reduced the amount of time those employees
23 would have spent on other work and these tasks and rates appear reasonable to the
24 furtherance of the litigation”).

25 In sum, the Court finds that the Class Representatives have supported their requests
26 for awards under the PSLRA and accordingly **APPROVES** \$10,569.00 and \$60,000.00
27 awards for APERS and PBU, respectively.


28 ///

1 **CONCLUSION**

2 Based on the foregoing, the Court **GRANTS** Plaintiff’s Motion for Final Approval
3 of Class Action Settlement (Doc. No. 521), and **GRANTS** Plaintiff’s Motion for
4 Attorneys’ Fees and Litigation Expenses (Doc. No. 522). The Court finds the Settlement
5 Agreement of this class action appropriate for final approval pursuant to Federal Rule of
6 Civil Procedure 23(e). The Court finds that the Settlement Agreement appears to be the
7 product of serious, informed, arms-length negotiations, that the settlement was entered
8 into in good faith, and that Plaintiffs have satisfied the standards for final approval of a
9 class action settlement under federal law. Further, the Court finds attorneys’ fees in the
10 amount of \$14,300,000, costs in the amount of \$2,104,370.19, and an award of costs to
11 Class Representatives in the amount of \$70,569.00 (*i.e.*, \$10,569.00 to APERS and
12 \$60,000.00 to PBU) to be reasonable. The Court will enter a separate judgment and order
13 of dismissal in accordance herewith. *See* Fed. R. Civ. P. 58(a).

14 **IT IS SO ORDERED.**

15
16 DATE: July 24, 2020

17 
18 HON. MICHAEL M. ANELLO
19 United States District Judge