

ROBBINS GELLER RUDMAN  
& DOWD LLP  
DARREN J. ROBBINS (168593)  
ROBERT R. HENSSLER JR. (216165)  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)  
darrenr@rgrdlaw.com  
bhenssler@rgrdlaw.com

BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
DAVID R. STICKNEY (188574)  
BENJAMIN GALDSTON (211114)  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130  
Telephone: 858/793-0070  
858/793-0323 (fax)  
davids@blbglaw.com  
beng@blbglaw.com

Lead Counsel for Lead Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

In re QUALITY SYSTEMS, INC.  
SECURITIES LITIGATION

No. 8:13-cv-01818-CJC-JPR

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
LEAD COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEYS' FEES  
AND EXPENSES AND AWARD TO  
LEAD PLAINTIFFS PURSUANT TO  
15 U.S.C. §78u-4(a)(4)

DATE: November 19, 2018  
TIME: 1:30 p.m.  
CTRM: 7C  
JUDGE: Honorable Cormac J. Carney

# TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. THE REQUESTED FEE IS REASONABLE .....	5
A. A Reasonable Percentage of the Fund Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases .....	5
B. Factors Considered by Courts in the Ninth Circuit Support Approval of the Benchmark 25% Fee in This Case .....	7
1. The Results Achieved .....	7
2. The Risks of the Litigation .....	8
3. The Skill Required and Quality of Lead Counsel's Work Performed Support the Requested Fee .....	11
4. The Financial Burden Carried by Lead Counsel and the Contingent Nature of the Fee Support the Requested Fee .....	12
5. The Requested Fee Is Consistent with or Less than Awards Made in Similar Cases .....	14
6. The Reaction of the Class Supports the Requested Fee .....	15
7. A Lodestar Crosscheck Confirms that the Requested Fee Is Reasonable .....	16
III. LEAD COUNSEL'S LITIGATION EXPENSES ARE REASONABLE.....	18
IV. THE SECTION 78u-4(a)(4) AWARD REQUESTS ARE REASONABLE.....	19
V. CONCLUSION .....	21

# TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984) .....	5, 6
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980) .....	5
<i>Brody v. Transitional Hosps. Corp.</i> , 280 F.3d 997 (9th Cir. 2002) .....	10
<i>Brown v. Phillips Petroleum Co.</i> , 838 F.2d 451 (10th Cir. 1988) .....	6
<i>Buccellato v. AT&amp;T Operations, Inc.</i> , 2011 WL 3348055 (N.D. Cal. June 30, 2011) .....	18
<i>Buccellato v. AT&amp;T Operations, Inc.</i> , 2011 WL 4526673 (N.D. Cal. June 30, 2011) .....	20
<i>Buttonwood Tree Value Partners, L.P. v. Sweeney</i> , No. 8:10-CV-00537-CJC, slip op. (C.D. Cal. July 21, 2014) .....	14, 17
<i>Camden I Condo. Ass’n v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991) .....	6
<i>City of Providence v. Aeropostale, Inc.</i> , 2014 WL 1883494 (S.D.N.Y. May 9, 2014), <i>aff’d sub nom. Arbuthnot v. Pierson</i> , 607 F. App’x 73 (2d Cir. 2015) .....	14
<i>Destefano v. Zynga, Inc.</i> , 2016 WL 537946 (N.D. Cal. Feb. 11, 2016) .....	14
<i>Dusek v. Mattel, Inc.</i> , No. 99-cv-10864 MRP(CWx), slip op. (C.D. Cal. Sept. 29, 2003) .....	20
<i>Fernandez v. Victoria Secret Stores, LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008) .....	17

1		
2		<b>Page</b>
3		
4	<i>Glass v. UBS Fin. Servs.,</i>	
5	331 F. App'x 452 (9th Cir. 2009).....	6, 8, 17
6	<i>Goldberger v. Integrated Res., Inc.,</i>	
7	209 F.3d 43 (2d Cir. 2000) .....	6
8	<i>Gottlieb v. Barry,</i>	
9	43 F.3d 474 (10th Cir. 1994).....	6
10	<i>Hanlon v. Chrysler Corp.,</i>	
11	150 F.3d 1011 (9th Cir. 1998).....	7
12	<i>Harman v. Lyphomed, Inc.,</i>	
13	945 F.2d 969 (7th Cir. 1991).....	6
14	<i>Harr v. Ampio Pharm., Inc.,</i>	
15	No. 15-cv-03474-TJH-PJW, slip op.	
16	(C.D. Cal. Sept. 29, 2017) .....	14
17	<i>In re Activision Sec. Litig.,</i>	
18	723 F. Supp. 1373 (N.D. Cal. 1989).....	7
19	<i>In re Alstom SA Sec. Litig.,</i>	
20	741 F. Supp. 2d 469 (S.D.N.Y. 2010).....	13
21	<i>In re Am. Apparel, Inc. S'holder Litig.,</i>	
22	2014 WL 10212865 (C.D. Cal. July 28, 2014) .....	7, 14, 17
23	<i>In re Amgen Inc. Sec. Litig.,</i>	
24	2016 WL 10571773 (C.D. Cal. Oct. 25, 2016) .....	8, 14, 17
25	<i>In re Apollo Grp. Inc. Sec. Litig.,</i>	
26	2012 WL 1378677 (D. Ariz. Apr. 20, 2012).....	17
27	<i>In re Apple iPhone/iPod Warranty Litig.,</i>	
28	40 F. Supp. 3d 1176 (N.D. Cal. 2014) .....	7
	<i>In re Bluetooth Headset Prods. Liab. Litig.,</i>	
	654 F.3d 935 (9th Cir. 2011).....	5, 6, 7

1		
2		<b>Page</b>
3		
4	<i>In re Broadcom Corp. Class Action Litig.,</i>	
5	No. CV-06-5036-R, slip op.	
6	(C.D. Cal. Dec. 4, 2012).....	20
7	<i>In re: Cathode Ray Tube (CRT) Antitrust Litig.,</i>	
8	2016 WL 4126533 (N.D. Cal. Aug. 3, 2016).....	17
9	<i>In re Galena Biopharma, Inc. Sec. Litig.,</i>	
10	2016 WL 3457165 (D. Or. June 24, 2016).....	6
11	<i>In re Genworth Fin. Sec. Litig.,</i>	
12	210 F. Supp. 3d 837 (E.D. Va. 2016).....	16
13	<i>In re Global Crossing Sec. &amp; ERISA Litig.,</i>	
14	225 F.R.D. 436 (S.D.N.Y. 2004).....	9
15	<i>In re Heritage Bond Litig.,</i>	
16	2005 WL 1594389 (C.D. Cal. June 10, 2005).....	7, 8, 13, 15
17	<i>In re Hi-Crush Partners L.P. Sec. Litig.,</i>	
18	2014 U.S. Dist. LEXIS 177175 (S.D.N.Y. Dec. 19, 2014).....	12
19	<i>In re High-Tech Emp. Antitrust Litig.,</i>	
20	2015 WL 5158730 (N.D. Cal. Sept. 2, 2015).....	17
21	<i>In re Immune Response Sec. Litig.,</i>	
22	497 F. Supp. 2d 1166 (S.D. Cal. 2007) .....	16
23	<i>In re JDS Uniphase Corp. Sec. Litig.,</i>	
24	2007 WL 4788556 (N.D. Cal. Nov. 27, 2007).....	13
25	<i>In re Liboderm Antitrust Litig.,</i>	
26	No. 14-md-02521-WHO, slip op.	
27	(N.D. Cal. Sept. 20, 2018).....	17
28	<i>In re MGM Mirage Sec. Litig.,</i>	
	708 F. App'x 894 (9th Cir. 2017).....	7
	<i>In re Omnivision Techs.,</i>	
	559 F. Supp. 2d 1036 (N.D. Cal. 2008) .....	<i>passim</i>

1		
2		<b>Page</b>
3		
4	<i>In re Oracle Corp. Sec. Litig.,</i>	
5	2009 U.S. Dist. LEXIS 50995 (N.D. Cal. June 16, 2009),	
6	<i>aff'd</i> , 627 F.3d 376 (9th Cir. 2010) .....	13
7	<i>In re Oracle Corp. Sec. Litig.,</i>	
8	627 F.3d 376 (9th Cir. 2010) .....	10
9	<i>In re REMEC Inc. Sec. Litig.,</i>	
10	702 F. Supp. 2d 1202 (S.D. Cal. 2010) .....	10
11	<i>In re Rite Aid Corp. Sec. Litig.,</i>	
12	396 F.3d 294 (3d Cir. 2005) .....	6
13	<i>In re Telik, Inc. Sec. Litig.,</i>	
14	576 F. Supp. 2d 570 (S.D.N.Y. 2008) .....	6
15	<i>In re Tyco Int'l, Ltd.,</i>	
16	535 F. Supp. 2d 249 (D.N.H. 2007) .....	17
17	<i>In re VeriFone Holdings, Inc. Sec. Litig.,</i>	
18	704 F.3d 694 (9th Cir. 2012) .....	10
19	<i>In re Veritas Software Corp. Sec. Litig.,</i>	
20	396 F. App'x 815 (3d Cir. 2010) .....	20
21	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.,</i>	
22	19 F.3d 1291 (9th Cir. 1994) .....	9, 13
23	<i>In re Worlds of Wonder Sec. Litig.,</i>	
24	35 F.3d 1407 (9th Cir. 1994) .....	10
25	<i>In re Xcel Energy, Inc.,</i>	
26	364 F. Supp. 2d 980 (D. Minn. 2005) .....	20
27	<i>Kearney v. Hyundai Motor Am.,</i>	
28	2013 WL 3287996 (C.D. Cal. June 28, 2013) .....	17
	<i>Keith v. Volpe,</i>	
	501 F. Supp. 403 (C.D. Cal. 1980) .....	18

1		
2		<b>Page</b>
3		
4	<i>Kmiec v. Powerwave Techs.,</i>	
5	2016 WL 5938709 (C.D. Cal. July 11, 2016) .....	14, 15, 16
6	<i>Knight v. Red Door Salons, Inc.,</i>	
7	2009 WL 248367 (N.D. Cal. Feb. 2, 2009).....	19
8	<i>Morrison v. Nat’l Austl. Bank Ltd.,</i>	
9	561 U.S. 247 (2010) .....	14
10	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
11	221 F.R.D. 523 (C.D. Cal. 2004) .....	15
12	<i>Paul, Johnson, Alston &amp; Hunt v. Grauly,</i>	
13	886 F.2d 268 (9th Cir. 1989) .....	6
14	<i>Six (6) Mexican Workers v. Ariz. Citrus Growers,</i>	
15	904 F.2d 1301 (9th Cir. 1990) .....	6
16	<i>Staton v. Boeing Co.,</i>	
17	327 F.3d 938 (9th Cir. 2003) .....	20
18	<i>Swedish Hosp. Corp. v. Shalala,</i>	
19	1 F.3d 1261 (D.C. Cir. 1993) .....	6
20	<i>Tellabs, Inc. v. Makor Issues &amp; Rights, Ltd.,</i>	
21	551 U.S. 308 (2007) .....	5
22	<i>Todd v. STAAR Surgical Co.,</i>	
23	2017 WL 4877417 (C.D. Cal. Oct. 24, 2017) .....	11, 14, 20
24	<i>Torrisi v. Tucson Elec. Power Co.,</i>	
25	8 F.3d 1370 (9th Cir. 1993) .....	6
26	<i>Vincent v. Hughes Air West, Inc.,</i>	
27	557 F.2d 759 (9th Cir. 1977) .....	5
28	<i>Vincent v. Reser,</i>	
	2013 WL 621865 (N.D. Cal. Feb. 19, 2013).....	19

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

*Vizcaino v. Microsoft Corp.*,  
290 F.3d 1043 (9th Cir. 2002).....*passim*

*Weeks v. Kellogg Co.*,  
2013 WL 6531177 (C.D. Cal. Nov. 23, 2013)..... 16

*Wing v. Asarco Inc.*,  
114 F.3d 986 (9th Cir. 1997)..... 12

**STATUTES, RULES AND REGULATIONS**

15 U.S.C.  
§78u-4(a)(4).....*passim*  
§78u-4(a)(6)..... 6

Report of the Third Circuit Task Force,  
*Court Awarded Attorney Fees*,  
108 F.R.D. 237, 254 (Oct. 8, 1985)..... 6

**SECONDARY AUTHORITIES**

Stefan Boettlich & Svetlana Strykh, *Recent Trends in Securities*  
*Class Action Litigation: 2017 Full-Year Review*  
(NERA Jan. 29, 2018) ..... 8



1       Lead Counsel, Robbins Geller Rudman & Dowd LLP and Bernstein Litowitz  
2 Berger & Grossmann LLP, respectfully submit this memorandum in support of its  
3 motion on behalf of Plaintiffs' Counsel, for an award of attorneys' fees and litigation  
4 expenses that Plaintiffs' Counsel reasonably incurred in prosecuting and settling the  
5 action and the reimbursement of expenses incurred by Lead Plaintiffs pursuant to  
6 15 U.S.C. §78u-4(a)(4).<sup>1</sup>

7 **I. INTRODUCTION**

8       After five years of hard fought litigation, including dismissal of the action and  
9 appeal to the Ninth Circuit, Lead Counsel was able to negotiate a \$19 million cash  
10 settlement for the benefit of the Class. The Settlement, which is based on the parties'  
11 acceptance of a mediator's "double-blind" recommendation, is a highly favorable  
12 result for the Class in light of the significant challenges that Lead Plaintiffs faced in  
13 proving falsity, scienter, loss causation, and damages. Indeed, in prosecuting this  
14 Litigation Lead Counsel faced numerous issues that presented serious risks of a  
15 substantially lower recovery or no recovery at all.

16       This Litigation was prosecuted under the provisions of the Private Securities  
17 Litigation Reform Act of 1995 ("PSLRA") and, therefore, was extremely risky and  
18 difficult from the outset. The effect of the PSLRA is to make it harder for investors to  
19 bring and successfully conclude securities class actions. This was evident from the  
20 outset of the action, when Lead Plaintiffs' Amended Complaint for Violations of the  
21 Federal Securities Laws (ECF No. 26) ("Complaint") was dismissed with prejudice in  
22 October 2014. After winning a reversal in the Ninth Circuit, Defendants filed a  
23 petition which was pending when the mediator's proposal was accepted.

24       As discussed below and in the accompanying Joint Declaration of Robert R.  
25 Henssler Jr. and Benjamin Galdston in Support of: (A) Lead Plaintiffs' Motion for  
26

---

27 <sup>1</sup> Unless otherwise noted, capitalized terms are defined in the Stipulation of  
28 Settlement, dated July 16, 2018 (the "Stipulation") (ECF No. 95-2).

1 Final Approval of Settlement and Approval of Plan of Allocation, and (B) Lead  
2 Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to Lead  
3 Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Joint Decl."), all of the factors  
4 considered by courts within the Ninth Circuit support the request for attorneys' fees in  
5 the amount of 25%. The results obtained by Lead Counsel for the Class are  
6 exceptional, particularly considering the facts and circumstances of this action,  
7 including the case's procedural history and the litigation risk the Class faced going  
8 forward. Indeed, in light of Defendants' pending petition for writ of certiorari before  
9 the Supreme Court and the many hurdles Lead Plaintiffs faced at class certification,  
10 summary judgment and trial, the likelihood that the Class (and counsel) would obtain  
11 a lesser recovery or no recovery at all was very real.

12 Moreover, Lead Counsel vigorously litigated this case to achieve the best result  
13 possible for the Class. The \$19 million Settlement represents approximately 7%-13%  
14 of estimated damages and as much as 22% or more of estimated damages based on  
15 Defendants' loss causation and materiality arguments.

16 To reach this result, Lead Counsel dedicated substantial time and resources  
17 conducting an extensive factual investigation in order to draft a complaint that would  
18 satisfy the heightened pleading standards of the PSLRA. Among other things, Lead  
19 Counsel analyzed Defendants' public statements, transcripts of QSI investor  
20 conference calls, the Company's public filings and press releases, as well as analyst  
21 and media reports and commentary. Lead Counsel reviewed and analyzed documents  
22 and information disclosed in other related litigation against certain Defendants  
23 alleging fraud and related causes of action arising from the same statements and  
24 circumstances as this action. Lead Counsel also identified and interviewed numerous  
25 percipient witnesses, including former high-level QSI employees, who provided  
26 crucial detailed facts allegedly demonstrating the falsity of Defendants' statements  
27 and Defendants' knowledge of the fraud. Additionally, Lead Counsel conducted  
28 economic analyses in consultation with financial consultants of the historical

1 movement, pricing and trading data for QSI's publicly traded common stock. Once  
2 discovery commenced, the parties exchanged document requests, in response to which  
3 Defendants and non-parties produced over 350,000 pages of documents which were  
4 carefully reviewed and analyzed.

5       Lead Counsel's skill and expertise played a key role in prosecuting this action  
6 and resolving it successfully. The Court initially granted Defendants' motion to  
7 dismiss Lead Plaintiffs' 77-page Complaint with prejudice. Lead Counsel timely  
8 sought reconsideration of the Court's dismissal order, which the Court denied.  
9 However, Lead Counsel subsequently prevailed on appeal to the Ninth Circuit,  
10 securing reversal of the dismissal order and a decision sustaining almost entirely the  
11 Complaint's claims for violations of the federal securities laws.

12       Following reversal and remand, Lead Plaintiffs faced significant challenges to  
13 proving the elements of their claims, obtaining certification of a litigation class, and  
14 prevailing at summary judgment and trial, which further underscore the favorable  
15 result achieved through this Settlement. For example, Defendants contend that they  
16 did not make any materially false or misleading statement in violation of the federal  
17 securities laws. Defendants further maintained that even if Lead Plaintiffs could  
18 establish a material misstatement, Lead Plaintiffs could not prove that any Defendant  
19 acted with the requisite scienter. Defendants claimed that the alleged misstatements  
20 were not material or were protected under the PSLRA safe harbor provisions as  
21 "forward-looking" statements. In order to prove their claims, Lead Plaintiffs would  
22 have to rely largely on internal QSI documents, which could arguably be susceptible  
23 to multiple interpretations, and the memories of current and former QSI employees,  
24 which likely would have faded given the passage of time. Also, Defendants raised  
25 numerous technical challenges to loss causation, arguing, among other things, that  
26 certain of the alleged corrective disclosures did not reveal any new fraud-related  
27 information. Defendants similarly contended that certification of a litigation class was  
28 inappropriate due to purported individualized questions regarding materiality and

1 causation. Adding further risk and uncertainty, at the time the parties reached  
2 agreement to settle the action, Defendants' writ petition regarding the Ninth Circuit's  
3 decision was pending before the Supreme Court. Achieving a \$19 million settlement  
4 in the face of these and other challenges strongly supports the fee requested.

5 The requested fee's reasonableness is also supported by a "lodestar" cross-  
6 check. Lead Counsel devoted over 9,300 hours to the Litigation for a total lodestar of  
7 \$5,062,465, materially more than the requested fee of \$4,750,000. *See* Joint Decl.,  
8 ¶113.

9 Finally, the requested fee is supported by Lead Plaintiffs, each of which is a  
10 sophisticated institutional investor that was actively involved in the Litigation,  
11 monitored and directed counsel, and supervised the mediation that ultimately resulted  
12 in the Settlement. In addition, 61,245 copies of the Notice have been mailed to  
13 potential Class Members and their Nominees through October 12, 2018. *See*  
14 Declaration of Eric J. Miller Regarding Notice Dissemination, Publication, and Report  
15 on Requests for Exclusion Received to Date ("Miller Decl."), ¶9, submitted herewith.  
16 The Notice advised potential Class Members that Lead Counsel would apply for an  
17 award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount  
18 and litigation expenses (including the reimbursement of expenses to Lead Plaintiffs)  
19 in an amount not to exceed \$300,000. *Id.* at Ex. A. The fees and expenses sought by  
20 Lead Counsel and Lead Plaintiffs do not exceed the amounts set forth in the Notice.  
21 As of the date of this filing, not a single Class Member has objected to the Settlement  
22 or the requested fee and expense award.

23 Having recovered \$19 million for the benefit of the Class, Lead Counsel  
24 respectfully requests an award of attorneys' fees in the amount of 25% of the  
25 Settlement Amount, the benchmark percentage in the Ninth Circuit and an amount  
26 approved by Lead Plaintiffs. Lead Counsel also seeks \$159,715.35 in litigation  
27 expenses that were reasonably and necessarily incurred to prosecute the action and  
28

1 seeks an award to Lead Plaintiffs of \$4,119.26, in total, for their time incurred in  
2 representing the Class.

3 **II. THE REQUESTED FEE IS REASONABLE**

4 **A. A Reasonable Percentage of the Fund Is the Appropriate**  
5 **Method for Awarding Attorneys' Fees in Common Fund**  
6 **Cases**

7 For its efforts in creating a common fund for the benefit of the Class, Lead  
8 Counsel seeks a reasonable percentage of the fund recovered as attorneys' fees. The  
9 percentage method of awarding fees has become the prevailing method for awarding  
10 fees in common fund cases in this Circuit and throughout the United States.

11 The Supreme Court has recognized that "a litigant or a lawyer who recovers a  
12 common fund for the benefit of persons other than himself or his client is entitled to a  
13 reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444  
14 U.S. 472, 478 (1980).<sup>2</sup> Likewise, it has long been recognized in the Ninth Circuit that  
15 "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve  
16 a fund to which others also have a claim is entitled to recover from the fund the costs  
17 of his litigation, including attorneys' fees." *Vincent v. Hughes Air West, Inc.*, 557  
18 F.2d 759, 769 (9th Cir. 1977).

19 In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that  
20 under the common fund doctrine a reasonable fee may be based "on a percentage of  
21 the fund bestowed on the class." *Id.* at 900 n.16. While courts have discretion to  
22 employ either a percentage-of-recovery or lodestar method in determining an  
23 attorneys' fee award, *see In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,  
24 942-43 (9th Cir. 2011), the Ninth Circuit has expressly and consistently approved the  
25 use of the percentage method in common fund cases. *Vizcaino v. Microsoft Corp.*,

---

26 <sup>2</sup> The Supreme Court has emphasized that private securities actions, like this action,  
27 are "a most effective weapon" and "an essential supplement to criminal prosecutions  
28 & Rights, Ltd., 551 U.S. 308, 313, 318 (2007).

1 290 F.3d 1043, 1047-48 (9th Cir. 2002); *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d  
2 1370, 1376-77 (9th Cir. 1993); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904  
3 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d  
4 268, 272 (9th Cir. 1989). Other circuits are in accord.<sup>3</sup>

5 The PSLRA also authorizes courts to award attorneys' fees and expenses to  
6 counsel for the plaintiff class provided the award does not exceed "a reasonable  
7 percentage of the amount of any damages and prejudgment interest actually paid to  
8 the class." 15 U.S.C. §78u-4(a)(6); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp.  
9 2d 570, 586 (S.D.N.Y. 2008) ("Congress plainly contemplated that percentage-of-  
10 recovery would be the primary measure of attorneys' fees awards in federal securities  
11 class actions."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)  
12 ("[T]he percentage-of-recovery method was incorporated in the [PSLRA].").

13 The percentage-of-recovery method is particularly appropriate in common fund  
14 cases like this because "the benefit to the class is easily quantified." *Bluetooth*, 654  
15 F.3d at 942. *See, e.g., Glass v. UBS Fin. Servs.*, 331 F. App'x 452, 456-57 (9th Cir.  
16 2009) (unpubl.) (overruling objection based on use of percentage-of-the-fund  
17 approach); *In re Galena Biopharma, Inc. Sec. Litig.*, 2016 WL 3457165, at \*5 (D. Or.  
18 June 24, 2016) (percentage-of-recovery method preferred over lodestar method in  
19 cash settlement); *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal.  
20 2008) (recognizing that the "use of the percentage method in common fund cases

---

21  
22 <sup>3</sup> Courts in other circuits likewise favor the percentage-of-recovery approach for the  
23 award of attorneys' fees in common fund cases. Indeed, two circuits have mandated  
24 use of the percentage method in common fund cases. *Swedish Hosp. Corp. v. Shalala*,  
25 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774-  
26 75 (11th Cir. 1991). And Circuit courts and commentators in four additional circuits  
27 have expressly approved the use of the percentage method. *Gottlieb v. Barry*, 43 F.3d  
28 474 (10th Cir. 1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir.  
1988) (citing footnote 16 of *Blum* recognizing both "implicitly" and "explicitly" that a  
percentage recovery is reasonable in common fund cases); *Harman v. Lyphomed, Inc.*,  
945 F.2d 969, 975 (7th Cir. 1991); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43  
(2d Cir. 2000); Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*,  
108 F.R.D. 237, 254 (Oct. 8, 1985).



1 appears to be [the] dominant” method for determining attorneys’ fees). Among other  
2 benefits, the percentage-of-recovery method decreases the burden imposed on courts  
3 by eliminating a detailed and “more time-consuming” lodestar analysis. *Bluetooth*,  
4 654 F.3d at 942; *see also In re Apple iPhone/iPod Warranty Litig.*, 40 F. Supp. 3d  
5 1176, 1181 (N.D. Cal. 2014) (same); *In re Activision Sec. Litig.*, 723 F. Supp. 1373,  
6 1378-79 (N.D. Cal. 1989) (collecting authority and describing benefits of the  
7 percentage method over the lodestar method).

8 Lead Counsel requests an award of attorneys’ fees consistent with the Ninth  
9 Circuit benchmark of 25% of the Settlement Amount. *In re MGM Mirage Sec. Litig.*,  
10 708 F. App’x 894, 897 (9th Cir. 2017) (affirming 25% benchmark fee award); *Hanlon*  
11 *v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.1998); *Bluetooth*, 654 F.3d at 942-  
12 43; *see also In re Am. Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at \*21 (C.D.  
13 Cal. July 28, 2014) (“[T]he Ninth Circuit has established 25% of the common fund as  
14 a benchmark for an award of attorneys’ fees.”); *In re Heritage Bond Litig.*, 2005 WL  
15 1594389, at \*14 (C.D. Cal. June 10, 2005) (same).

16 **B. Factors Considered by Courts in the Ninth Circuit Support**  
17 **Approval of the Benchmark 25 % Fee in This Case**

18 Courts in this Circuit consider the following factors when determining whether  
19 a fee is fair and reasonable: (1) the results achieved; (2) the risks of litigation; (3) the  
20 skill required and quality of work; (4) the contingent nature of the fee and financial  
21 burden carried by the plaintiffs; (5) awards made in similar cases; (6) the reaction of  
22 the class; and (7) the amount of a lodestar cross-check. *See Omnivision*, 559 F. Supp.  
23 2d at 1046 (citing *Vizcaino*, 290 F.3d at 1048-50).

24 Application of each of these factors confirms that the requested fee of 25% is  
25 fair and reasonable.

26 **1. The Results Achieved**

27 Courts consistently recognize that the results achieved through the proposed  
28 settlement is an important factor to consider in determining an appropriate fee award.

1 *See, e.g., Omnivision*, 559 F. Supp. 2d at 1046; *Glass*, 331 F. App'x at 456-57;  
2 *Heritage Bond*, 2005 WL 1594389, at \*8. Lead Counsel succeeded in obtaining a  
3 \$19 million cash payment that will provide an immediate and substantial benefit to the  
4 Class and avoid the delay, further expense, and uncertainty of protracted litigation,  
5 including further appeals. This achievement was the result of Lead Counsel's  
6 vigorous prosecution, both at the trial court and appellate levels, and settlement  
7 negotiations in the face of formidable risks. Moreover, the \$19 million Settlement  
8 represents approximately 7%-13% of estimated damages as preliminarily assessed by  
9 Lead Counsel's expert, and as much as 22% or more of such estimated damages when  
10 taking into account Defendants' loss causation and materiality challenges. Joint Decl.,  
11 ¶110. The Settlement is also a very good recovery for the Class in the context of  
12 recoverable damages when compared to settlements in other securities class actions.  
13 For example, the median settlement in 2017 as a percentage of estimated damages was  
14 2.6% for securities class actions overall. *See* Stefan Boettrich & Svetlana Starykh,  
15 *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review* (NERA  
16 Jan. 29, 2018), Figure 29 at 38. Accordingly, the \$19 million Settlement Amount, in a  
17 case that was initially dismissed at the pleading stage, represents a substantial  
18 achievement that weighs in favor of granting a 25% fee. *See, e.g., In re Amgen Inc.*  
19 *Sec. Litig.*, 2016 WL 10571773, at \*9 (C.D. Cal. Oct. 25, 2016) (approving 25% fee  
20 where settlement exceeded "both the average and median reported securities class  
21 action litigation settlements since the passage of the PSLRA").

## 22                   **2.     The Risks of the Litigation**

23           The Settlement Amount is also outstanding considering the substantial risk of  
24 prevailing at the outset of the Litigation and the risk that continued litigation might  
25 result in the Class not receiving any recovery at all – and Lead Counsel not obtaining  
26 a fee award. Courts consider such risk another important factor in determining a fair  
27 fee award. *See, e.g., Heritage Bond*, 2005 WL 1594389, at \*14 ("The risks assumed  
28



1 by Class Counsel, particularly the risk of non-payment or reimbursement of expenses,  
2 is a factor in determining counsel's proper fee award."); *Omnivision*, 559 F. Supp. 2d  
3 at 1047; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* ("WPPSS"), 19 F.3d 1291,  
4 1299-301 (9th Cir. 1994); *Vizcaino*, 290 F.3d at 1048 ("Risk is a relevant  
5 circumstance" in assessing a fee award.). Here, the significant delay caused by  
6 motion practice and appeals to resolve Defendants' pleading challenges only  
7 heightened the risks that Lead Plaintiffs would be able to marshal the evidence  
8 necessary to survive summary judgment and prove their claims at trial, as the passage  
9 of time causes witnesses to disperse geographically and memories to fade.

10 While Lead Counsel believes that the Class' claims in this action are  
11 meritorious, Defendants raised numerous challenges that presented substantial risks to  
12 Lead Plaintiffs' likelihood of success in obtaining certification of the litigation class,  
13 or prevailing at summary judgment, trial and any appeal. Substantial risks were also  
14 present from the outset of this Litigation, as illustrated by the Court's October 20,  
15 2014 dismissal of the action with prejudice. *See, e.g., In re Global Crossing Sec. &*  
16 *ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (for purposes of evaluating  
17 attorneys' fees, "[l]itigation risk must be measured as of when the case is filed").<sup>4</sup>  
18 After obtaining reversal and remand from the Ninth Circuit, substantial risks existed  
19 here with respect to Lead Plaintiffs' ability to prove falsity, materiality, scienter, and  
20 loss causation, as well as establishing damages and other trial-related risks, as  
21 discussed in detail in the Joint Declaration. *See* Joint Decl., ¶¶85-95.

22 Even assuming the Supreme Court denied Defendants' petition for a writ of  
23 certiorari of the Ninth Circuit's decision, Defendants would have sought to  
24 significantly shorten the Class Period and substantially reduce the number of alleged  
25 actionable statements by at least seven. And to prevail on their claims, Lead Plaintiffs  
26 would have to develop evidence proving that Defendants' alleged misstatements

---

27  
28 <sup>4</sup> Citations are omitted throughout unless otherwise noted.

1 regarding QSI's revenue and earnings, the demand for QSI's products, and the  
2 condition of QSI's sales "pipeline" were materially false or misleading. This action  
3 involved mixed forward-looking and present factual statements. For a non-forward  
4 looking statement to be misleading, "it must affirmatively create an impression of a  
5 state of affairs that differs in a material way from the one that actually exists." *Brody*  
6 *v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002). Proof of such  
7 falsity would likely rely almost entirely on internal QSI records relating to current and  
8 forecasted sales, which were subject to judgment and interpretation. Furthermore, the  
9 evidence necessary to establish liability would include testimony from current and  
10 former QSI employees whose memories would have likely faded given the passage of  
11 time since the case was initiated five years ago.

12 Similarly, assuming falsity was established, Lead Plaintiffs would have faced  
13 further hurdles at summary judgment or trial in proving that Defendants acted with the  
14 requisite scienter. To meet their burden of proof for scienter, Lead Plaintiffs would  
15 need to show that "(1) the statement is not actually believed [by the speaker],  
16 (2) there is no reasonable basis for the belief, or (3) the speaker is aware of  
17 undisclosed facts tending seriously to undermine the statement's accuracy." *See In re*  
18 *Oracle Corp. Sec. Litig.*, 627 F.3d 376, 388 (9th Cir. 2010). "[D]eliberate  
19 recklessness" requires evidence of "highly unreasonable" conduct "involving not  
20 merely simple, or even inexcusable negligence, but an extreme departure from the  
21 standards of ordinary care." *In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d 694,  
22 702 (9th Cir. 2012). On summary judgment or at trial, Defendants would argue that  
23 Lead Plaintiffs could not rely on circumstantial evidence but must produce "direct  
24 evidence" that Defendants were "aware of and recklessly disregarded the slowdown in  
25 QSI's business." Complaint, ¶118; *see In re Worlds of Wonder Sec. Litig.*, 35 F.3d  
26 1407, 1425 (9th Cir. 1994) (affirming summary judgment for defendants where  
27 "plaintiffs produced no direct evidence of any scienter" and relied solely on  
28 speculative inferences that defendants rebutted); *see also In re REMEC Inc. Sec.*

1 *Litig.*, 702 F. Supp. 2d 1202, 1238 (S.D. Cal. 2010) (granting summary judgment for  
2 defendants on issue of scienter when plaintiffs' arguments were "not supported by the  
3 facts that were produced during an extensive and exhaustive discovery process").  
4 While Lead Plaintiffs believe the evidence presented would have satisfied this  
5 standard, this was a significant risk at summary judgment and trial.

6 Accordingly, the result here, a \$19 million recovery, was achieved in the face of  
7 significant risks. *See Todd v. STAAR Surgical Co.*, 2017 WL 4877417, at \*5 (C.D.  
8 Cal. Oct. 24, 2017) (approving 25% fee in \$7 million settlement where "the risks of an  
9 inferior award – if any – if the parties were to continue litigation are high"). Indeed,  
10 at the time the parties reached agreement to settle, Defendants' petition for writ of  
11 certiorari regarding the Ninth Circuit's decision was pending before the Supreme  
12 Court, raising the specter of termination of the action altogether.

13 **3. The Skill Required and Quality of Lead Counsel's**  
14 **Work Performed Support the Requested Fee**

15 The quality of the representation by Lead Counsel is another important factor  
16 that supports the reasonableness of the requested fee. Lead Counsel demonstrated its  
17 ability to effectively prosecute this action on behalf of Lead Plaintiffs and the Class at  
18 both the trial court and appellate levels. As the Court noted in granting preliminary  
19 approval, "Counsel have vigorously prosecuted this action, and have managed almost  
20 five years of motion practice and discovery, leading to the current settlement. Every  
21 indication is that they have done so capably and adequately." ECF No. 96 at 8.

22 Lead Counsel are nationally recognized leaders in securities class actions and  
23 complex litigation. The recovery obtained for the Class is the direct result of the  
24 significant efforts of highly skilled and specialized attorneys who possess substantial  
25 experience in prosecuting complex securities class actions. *See* [www.rgrdlaw.com](http://www.rgrdlaw.com);  
26 [www.blbgilaw.com](http://www.blbgilaw.com). Lead Counsel's reputations as law firms which will carry a  
27 meritorious case through trial and appeals, as well as their demonstrated ability to  
28 vigorously develop the evidence in this Litigation, enabled them to negotiate a

1 favorable recovery for the Class under difficult circumstances. Unlike those cases  
2 where plaintiffs' counsel were able to "free ride" on the work of others (such as the  
3 U.S. Securities and Exchange Commission or other governmental agency), here, Lead  
4 Counsel developed the case without the benefit of a governmental investigation. *See,*  
5 *e.g., In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 U.S. Dist. LEXIS 177175, at \*41  
6 (S.D.N.Y. Dec. 19, 2014) ("Lead Counsel did not have the benefit of a 'road map'  
7 established by a government investigation off which they could 'piggy back', but  
8 instead independently developed factual allegations and legal theories sufficient to  
9 survive the PSLRA's heightened pleading standards.").

10 Moreover, Lead Counsel faced formidable adversaries. Throughout this action,  
11 Defendants were capably represented by a preeminent national defense firm whose  
12 team included one of the country's preeminent class action defense lawyers. Courts  
13 recognize that the quality of opposing counsel should be considered in assessing the  
14 requested fee. *See, e.g., Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997)  
15 (affirming fee award and noting that the court's evaluation of class counsel's work  
16 considered "the quality of opposition counsel and [defendant's] record of success in  
17 this type of litigation"). Notwithstanding this formidable opposition, Lead Counsel's  
18 thorough investigation, written and oral trial court and appellate advocacy, and  
19 tenacious representation led to the significant cash recovery. Indeed, without Lead  
20 Counsel's success in obtaining reversal of this Court's decision granting Defendants'  
21 motion to dismiss with prejudice, there would be no recovery at all.

22 **4. The Financial Burden Carried by Lead Counsel and**  
23 **the Contingent Nature of the Fee Support the**  
24 **Requested Fee**

25 Courts have recognized that the risk of receiving little or no recovery – and  
26 consequently no fee or expense award in contingency fee representation – is a factor  
27 that should be considered.

28 It is an established practice in the private legal market to reward  
attorneys for taking the risk of non-payment by paying them a premium

1 over their normal hourly rates for winning contingency cases. *See*  
2 Richard Posner, *Economic Analysis of Law* §21.9, at 534-35 (3d ed.  
3 1986). Contingent fees that may far exceed the market value of the  
4 services if rendered on a non-contingent basis are accepted in the legal  
profession as a legitimate way of assuring competent representation for  
plaintiffs who could not afford to pay on an hourly basis regardless  
whether they win or lose.

5 *WPPSS*, 19 F.3d at 1299; *see also Heritage Bond*, 2005 WL 1594389, at \*14 (“The  
6 risks assumed by Class Counsel, particularly the risk of non-payment or  
7 reimbursement of expenses, is a factor in determining counsel’s proper fee award.”).

8 The risk of non-payment in contingency fee representation is even more  
9 pronounced in securities class actions, which are highly technical, expert-intensive, and  
10 often protracted. Contingent counsel must advance their time, expertise and work  
11 product and all expenses to subsidize litigation that faces a heightened pleading standard  
12 and numerous substantive challenges. Moreover, there are numerous class actions in  
13 which plaintiffs’ counsel undertakes this risk yet receives no remuneration whatsoever.

14 Indeed, the risk of no recovery in complex cases of this type is very real. There  
15 are numerous class actions in which plaintiffs’ counsel expended thousands of hours  
16 and yet received no remuneration whatsoever despite their diligence and expertise.  
17 For example, in *In re Oracle Corp. Sec. Litig.*, 2009 U.S. Dist. LEXIS 50995 (N.D.  
18 Cal. June 16, 2009), *aff’d*, 627 F.3d 376 (9th Cir. 2010), a securities class action that  
19 Robbins Geller Rudman & Dowd LLP prosecuted, the court granted summary  
20 judgment to defendants after eight years of litigation, and after plaintiff’s counsel  
21 incurred over \$6 million in expenses, and worked over 100,000 hours, representing a  
22 lodestar of approximately \$40 million. And, in a case against JDS Uniphase  
23 Corporation, after a lengthy trial involving securities claims, the jury reached a verdict  
24 in defendants’ favor. *See In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556  
25 (N.D. Cal. Nov. 27, 2007).

26 Similarly, even the most promising case can be eviscerated by a sudden change  
27 in the law after years of litigation. *See, e.g., In re Alstom SA Sec. Litig.*, 741 F. Supp.  
28 2d 469, 471-73 (S.D.N.Y. 2010) (after completing extensive (and expensive) foreign

1 discovery, 95% of plaintiffs' damages were eliminated by the Supreme Court's  
2 reversal of some 40 years of unbroken circuit court precedents in *Morrison v. Nat'l*  
3 *Austl. Bank Ltd.*, 561 U.S. 247 (2010)).

4 The risks in this case were no different and were apparent from the outset as the  
5 Court dismissed Lead Plaintiffs' claims with prejudice. Because Lead Counsel  
6 undertook its representation on an entirely contingent basis, the only certainty was that  
7 there would be no fee without a successful result. Here, Lead Counsel risked non-  
8 payment of \$159,715.35 in expenses and more than \$5 million in attorney and  
9 paraprofessional time. "This type of 'substantial outlay, when there is a risk that [no  
10 money] will be recovered, further supports the award of the requested fees.'" *Am.*  
11 *Apparel*, 2014 WL 10212865, at \*22; *see also City of Providence v. Aeropostale, Inc.*,  
12 2014 WL 1883494, at \*14 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v.*  
13 *Pierson*, 607 F. App'x 73 (2d Cir. 2015) ("[T]he financial burden on contingent-fee  
14 counsel is far greater than on a firm that is paid on an ongoing basis.").

15 **5. The Requested Fee Is Consistent with or Less than**  
16 **Awards Made in Similar Cases**

17 The fee award requested here is in line with the Ninth Circuit benchmark and is  
18 well within the range of percentages that courts in this Circuit have awarded in similar  
19 securities settlements. *See, e.g., Todd*, 2017 WL 4877417, at \*5 (awarding 25% fee in  
20 \$7 million settlement); *Harr v. Ampio Pharm., Inc.*, No. 15-cv-03474-TJH-PJW, slip  
21 op. at 1 (C.D. Cal. Sept. 29, 2017) (awarding 25% fee in \$3.4 million settlement);  
22 *Kmiec v. Powerwave Techs.*, 2016 WL 5938709, at \*7 (C.D. Cal. July 11, 2016)  
23 (awarding 25% fee in \$8.2 million settlement); *Amgen*, 2016 WL 10571773, at \*9-\*10  
24 (awarding 25% fee in \$95 million settlement); *Destefano v. Zynga, Inc.*, 2016 WL  
25 537946, at \*22 (N.D. Cal. Feb. 11, 2016) (awarding 25% fee in \$23 million  
26 settlement); *Buttonwood Tree Value Partners, L.P. v. Sweeney*, No. 8:10-CV-00537-  
27 CJC (MLGx), slip op. at 2 (C.D. Cal. July 21, 2014) (J. Carney) (awarding 33% fee in  
28 \$5.5 million settlement); *Am. Apparel*, 2014 WL 10212865, at \*27 (awarding 25% fee



1 in \$4.8 million settlement); *Omnivision*, 559 F. Supp. 2d at 1049 (awarding 28% fee in  
2 \$13.75 million settlement).

3 Accordingly, this factor weighs in favor of approval.

4 **6. The Reaction of the Class Supports the Requested Fee**

5 District courts in the Ninth Circuit also consider the reaction of the class when  
6 deciding whether to award the requested fee. *Heritage Bond*, 2005 WL 1594389, at  
7 \*15 (“The presence or absence of objections . . . is also a factor in determining the  
8 proper fee award.”).

9 While a certain number of objections are to be expected in a large class action  
10 such as this, “the absence of a large number of objections to a proposed class action  
11 settlement raises a strong presumption that the terms of a proposed class action  
12 settlement are favorable to the class members.” *Nat’l Rural Telecomms. Coop. v.*  
13 *DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); *see also Kmiec*, 2016 WL  
14 5938709, at \*4 (a “small number of objections and requests for exclusion supports  
15 final approval”).

16 To date, over 61,200 copies of the Notice were mailed to potential Class Members  
17 and nominees. *See* Miller Decl., ¶¶3-9. The Summary Notice was published in *The*  
18 *Wall Street Journal* and transmitted over *PR Newswire* on August 14, 2018. *Id.*, ¶10. In  
19 addition, the Stipulation, Notice, Proof of Claim, and Preliminary Approval Order were  
20 posted to a website dedicated to the Litigation ([www.QSISecuritiesSettlement.com](http://www.QSISecuritiesSettlement.com)). *Id.*,  
21 ¶12. Class Members were informed in the Notice that Lead Counsel would move the  
22 Court for an award of attorneys’ fees in an amount of 25% of the Settlement Amount  
23 and for payment of litigation expenses and for awards to Lead Plaintiffs in a combined  
24 amount not to exceed \$300,000. Class Members were also advised of their right to  
25 object to the fee and expense request and to Lead Plaintiffs’ request for reimbursement  
26 of their expenses, and that such objections are required to be filed with the Court and  
27 served on counsel no later than October 29, 2018.

1 While the time to object to the fee and expense application does not expire until  
2 October 29, 2018, to date, not a single objection has been received. Should any  
3 objections be received, Lead Counsel will address them in its reply papers. “The lack  
4 of objection from any Class Member supports the attorneys’ fees award.” *In re*  
5 *Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007). Finally,  
6 Lead Plaintiffs support Lead Counsel’s fee and expense request. *See* Declaration of  
7 Ornel N. Cotera in Support of: (A) Lead Plaintiffs’ Motion for Final Approval of  
8 Settlement; and (B) Lead Counsel’s Motion for an Award of Attorneys’ Fees and  
9 Expenses (“Cotera Decl.”), ¶5; Declaration of Arkansas Teacher Retirement Systems  
10 in Support of (A) Lead Plaintiffs’ Motion for Final Approval of Settlement; (B) Lead  
11 Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation  
12 Expenses; and (C) Lead Plaintiff Award (“ATRS Decl.”), ¶5, submitted herewith.

13 **7. A Lodestar Crosscheck Confirms that the Requested**  
14 **Fee Is Reasonable**

15 “Courts commonly – even after having decided to utilize the percentage-of-  
16 recovery method – perform a ‘lodestar cross-check’ by comparing the percentage-of-  
17 recovery figure with a ‘rough calculation of the lodestar . . . to assess the  
18 reasonableness of the percentage award.’” *Kmiec*, 2016 WL 5938709, at \*5 (quoting  
19 *Weeks v. Kellogg Co.*, 2013 WL 6531177, at \*25 (C.D. Cal. Nov. 23, 2013)); *see also*  
20 *Vizcaino*, 290 F.3d at 1050 (“while the primary basis of the fee award remains the  
21 percentage method, the lodestar may provide a useful perspective on the  
22 reasonableness of a given percentage award”). “A lodestar cross-check first computes  
23 the plaintiffs’ attorneys’ reasonable hourly rate for the litigation and multiplies that  
24 rate by the number of hours dedicated to the case. The cross-check then compares that  
25 figure with the attorneys’ fees award, typically resulting in a positive multiplier.” *In*  
26 *re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 845 (E.D. Va. 2016).

27 When the lodestar is used as a cross-check, “the focus is not on the ‘necessity  
28 and reasonableness of every hour’ of the lodestar, but on the broader question of



whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.” *In re Tyco Int’l, Ltd.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007); *Glass*, 331 F. App’x at 456.<sup>5</sup> In this case, the lodestar method demonstrates the reasonableness of the requested fee. Lead Counsel spent a total of 9,301.7 hours of professional and paraprofessional time prosecuting this action from its inception through September 2018.<sup>6</sup> Joint Decl., ¶113. Based on Lead Counsel’s current rates, its total lodestar for this period is \$5,062,465. *Id.*<sup>7</sup> The requested 25% fee amounts to a **negative** lodestar multiplier of 0.94. A “negative” multiplier further supports the reasonableness of Lead Counsel’s fee request. *See Amgen*, 2016 WL 10571773, at \*9 (“courts have recognized that a percentage fee that falls below counsel’s lodestar strongly supports the reasonableness of the award”); *Sweeney*, slip op. at 2-3 (finding

---

<sup>5</sup> *See also Am. Apparel*, 2014 WL 10212865, at \*23 (“In contrast to the use of the lodestar method as a primary tool for setting a fee award, the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel’s hours.”); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at \*7 n.2 (D. Ariz. Apr. 20, 2012) (“an itemized statement of legal services is not necessary for an appropriate lodestar cross-check”); *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at \*9 (C.D. Cal. July 21, 2008) (same).

<sup>6</sup> In addition to the time expended to date, Lead Counsel will expend additional time preparing Lead Plaintiffs’ reply in support of final approval, preparing for and attending the final approval hearing, and directing the claims administration process. Lead Counsel will not seek additional compensation for this work.

<sup>7</sup> Lead Counsel’s rates have been approved by other courts and are consistent with other attorneys engaged in similar litigation. *See* Joint Decl., ¶113; *see also In re Liboderm Antitrust Litig.*, No. 14-md-02521-WHO, slip op. at 3 (N.D. Cal. Sept. 20, 2018) (finding reasonable class counsel’s historic rates – which range from \$350 to \$1,050 for partners and senior counsel, \$300 to \$675 for associates, and \$100 to \$400 for paralegals and other litigation staff (including senior case managers)); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at \*9 (N.D. Cal. Sept. 2, 2015) (finding reasonable “billing rates for partners [that] range from about \$490 to \$975 . . . billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and staff attorneys, [that] range from about \$310 to \$800, with most under \$500 . . . [and] billing rates for paralegals, law clerks, and litigation support staff [that] range from about \$190 to \$430, with most in the \$300 range”); *Kearney v. Hyundai Motor Am.*, 2013 WL 3287996, \*8 (C.D. Cal. June 28, 2013) (approving 2013 hourly rates between \$650 and \$800 for class counsel in a consumer class action); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at \*7 (N.D. Cal. Aug. 3, 2016) (“billing rates between \$350 and \$875 are reasonable within this legal market for cases of this size, type, and complexity”).

33% fee award reasonable in part because class counsel's lodestar represented a negative lodestar multiple). Indeed, many courts have found that a positive multiplier between one and four to be reasonable. *See Vizcaino*, 290 F.3d at 1051 (approving 3.65 multiplier and finding that multipliers ranged as high as 19.6, though most run from 1.0 to 4.0); *see also Keith v. Volpe*, 501 F. Supp. 403, 414 (C.D. Cal. 1980) (multiplier of 3.5); *Buccellato v. AT&T Operations, Inc.*, 2011 WL 3348055, at \*1-\*2 (N.D. Cal. June 30, 2011) (awarding 25% fee; collecting cases and stating that a "multiplier of 4.3 is reasonable"). Accordingly, this fee request is reasonable and should be approved.

### **III. LEAD COUNSEL'S LITIGATION EXPENSES ARE REASONABLE**

Lead Counsel also requests an award of its litigation expenses in the amount of \$159,715.35 incurred in prosecuting and resolving the action on behalf of the Class. Attorneys who create a common fund for the benefit of a class are entitled to an award of their expenses incurred in creating the fund so long as the submitted expenses are reasonable, necessary and directly related to the prosecution of the action. *See Omnivision*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.").

From the outset, Lead Counsel was aware that it might not recover any of its expenses or, at the very least, would not recover anything until the action was successfully resolved. Lead Counsel also understood that, even if the case was ultimately successful, payment of its expenses would not compensate it for the lost use of funds advanced to prosecute the action. Thus, Lead Counsel was motivated to, and did, take significant steps to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of the action. *See Joint Decl.*, ¶¶ 112-117.

Lead Counsel's litigation expenses are detailed in the accompanying fee and expense declarations setting forth the specific category of expenses incurred and the

1 amount. These expenses were necessarily incurred in this Litigation and are the type  
2 of expenses routinely charged to clients billed by the hour. These include expenses  
3 associated with, among other things, experts and consultants, service of process,  
4 online legal and factual research, travel, and mediation. *See, e.g., Vincent v. Reser*,  
5 2013 WL 621865, at \*5 (N.D. Cal. Feb. 19, 2013) (granting award of costs and  
6 expenses for “three experts and the mediator, photocopying and mailing expenses,  
7 travel expenses, and other reasonable litigation related expenses”); *Knight v. Red*  
8 *Door Salons, Inc.*, 2009 WL 248367, at \*7 (N.D. Cal. Feb. 2, 2009) (granting award  
9 because “[a]ttorneys routinely bill clients for all of these expenses”).

10 A large component of Lead Counsel’s expenses is for the costs of experts and  
11 consultants, including the retention of Bjorn I. Steinholt, CFA, of Caliber Advisors,  
12 Inc. who has significant experience opining on damages, loss causation, and market  
13 efficiency in securities class actions. The Joint Declaration explains Mr. Steinholt’s  
14 qualifications and role in the Litigation. *See* Joint Decl., ¶¶78-80.

15 The expenses also include the costs of online research. These are the charges  
16 for computerized factual and legal research services such as *LexisNexis*, *Westlaw*, and  
17 PACER. It is standard practice for attorneys to use these resources to assist them in  
18 researching legal and factual issues, and, indeed, these tools create efficiencies in  
19 litigation and, ultimately, save clients and the class money. *See id.*, ¶11.

20 The Notice informed potential Class Members that Lead Counsel would apply  
21 for payment of litigation expenses in an amount not to exceed \$300,000. *See* Miller  
22 Decl., Ex. A. The amount of expenses for which payment is now sought,  
23 \$159,715.35, is significantly less than the maximum amount stated in the Notice. To  
24 date, no Class Member has objected.

25 **IV. THE SECTION 78u-4(a)(4) AWARD REQUESTS ARE**  
26 **REASONABLE**

27 Miami seeks an award of \$2,000 and ATRS seeks an award of \$2,119.26  
28 pursuant to §78u-4(a)(4) in connection with their representation of the Class, as

1 detailed in the accompanying Cotera Declaration, on behalf of Miami, and ATRS  
2 Declaration. Under the PSLRA, a class representative may seek an award of  
3 reasonable costs and expenses (including lost wages) directly relating to the  
4 representation of the class. *See* 15 U.S.C. §78u-4(a)(4); *see also Staton v. Boeing Co.*,  
5 327 F.3d 938, 977 (9th Cir. 2003) (holding that named plaintiffs are eligible for  
6 “reasonable” payments as part of a class action settlement). Thus, courts have  
7 awarded reasonable payments to compensate class representatives for the time, effort,  
8 and expenses devoted to litigating on behalf of the class. *See, e.g., In re Broadcom*  
9 *Corp. Class Action Litig.*, No. CV-06-5036-R (CWx), slip op. at 2 (C.D. Cal. Dec. 4,  
10 2012) (awarding costs and expenses to class representative in the amount of \$21,087);  
11 *Dusek v. Mattel, Inc.*, No. 99-cv-10864 MRP(CWx), slip op. at 2 (C.D. Cal. Sept. 29,  
12 2003) (awarding \$117,426 to three lead plaintiffs).

13 When evaluating the reasonableness of a lead plaintiff award, courts may  
14 consider factors such as “the actions the plaintiff has taken to protect the interests of  
15 the class, the degree to which the class has benefitted from those actions, . . . the  
16 amount of time and effort the plaintiff expended in pursuing the litigation” among  
17 others. *Staton*, 327 F.3d at 977. As detailed in the Cotera and ATRS Declarations,  
18 Miami and ATRS devoted substantial time and effort to monitoring the Litigation and  
19 directing Lead Counsel, including reviewing and commenting on case filings,  
20 providing input on litigation strategy in connection with discovery, the appellate  
21 process and the parties’ mediation. In addition, Lead Plaintiffs identified and  
22 provided relevant information during the discovery process. Under similar  
23 circumstances, courts have approved as reasonable awards for class representatives of  
24 \$10,000 or more. *See, e.g., Todd*, 2017 WL 4877417, at \*6 (awarding \$10,000  
25 award); *In re Veritas Software Corp. Sec. Litig.*, 396 F. App’x 815, 816 (3d Cir. 2010)  
26 (\$15,000 awarded to each lead plaintiff); *Buccellato v. AT&T Operations, Inc.*, 2011  
27 WL 4526673, at \*4 (N.D. Cal. June 30, 2011) (\$20,000 award); *In re Xcel Energy,*  
28 *Inc.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding \$100,000 to lead plaintiffs

1 because of “the important policy role [lead plaintiffs] play in the enforcement of the  
2 federal securities laws on behalf of persons other than themselves”). The requested  
3 \$4,119.26 total award is reasonable in light of the significant time and effort Lead  
4 Plaintiffs expended to support this Litigation and protect the interests of absent Class  
5 Members.

6 **V. CONCLUSION**

7 Lead Counsel respectfully requests that the Court award its attorneys’ fees in  
8 the amount of 25% of the Settlement Amount and its litigation expenses in the amount  
9 of \$159,715.35, plus interest earned at the same rate and for the same time period as  
10 the Settlement Fund, to be paid from the Settlement Fund, and the reimbursement of  
11 expenses to Lead Plaintiffs in the amount of \$4,119.26 pursuant to 15 U.S.C. §78u-  
12 4(a)(4).

13 For the Court’s convenience, Lead Counsel will submit with its reply papers a  
14 proposed Order awarding attorneys’ fees and litigation expenses.

15 DATED: October 15, 2018

Respectfully submitted,

16 ROBBINS GELLER RUDMAN  
17 & DOWD LLP

18 s/ Robert R. Henssler Jr.

19 ROBERT R. HENSSLER JR.

20 DARREN J. ROBBINS  
21 ROBERT R. HENSSLER JR.  
22 CHRISTOPHER D. STEWART  
23 AUSTIN P. BRANE  
24 MATTHEW J. BALOTTA  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

25 Lead Counsel for Lead Plaintiff City of  
26 Miami Fire Fighters’ and Police Officers’  
Retirement Trust

27 BERNSTEIN LITOWITZ BERGER  
28 & GROSSMANN LLP

s/ Benjamin Galdston

---

BENJAMIN GALDSTON

DAVID R. STICKNEY  
BENJAMIN GALDSTON  
LUCAS E. GILMORE  
BRANDON MARSH  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130  
Telephone: 858/793-0070  
858/793-0323 (fax)

– and –

GERALD SILK  
AVI JOSEFSON  
1285 Avenue of the Americas, 38th Floor  
New York, NY 10019  
Telephone: 212/554-1400  
212/554-1444 (fax)

Lead Counsel for Lead Plaintiff Arkansas  
Teacher Retirement System

CYPEN & CYPEN  
STEPHEN H. CYPEN  
975 Arthur Godfrey Road, Suite 500  
Miami Beach, FL 33140  
Telephone: 305/532-3200  
305/535-0050 (fax)

KLAUSNER, KAUFMAN, JENSEN  
& LEVINSON  
ROBERT D. KLAUSNER  
7080 NW 4th Street  
Plantation, FL 33317  
Telephone: 954/916-1202  
954/916-1232 (fax)

Additional Plaintiffs' Counsel

**CERTIFICATE PURSUANT TO LOCAL RULE 5-4.3.4**

I, Robert R. Henssler Jr., am the ECF User whose identification and password are being used to file the Memorandum of Points and Authorities in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4). In compliance with Local Rule 5-4.3.4(a)(2), I hereby attest that Benjamin Galdston has concurred in this filing.

DATED: October 15, 2018

s/ Robert R. Henssler Jr.  
ROBERT R. HENSSLER JR.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 15, 2018, 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 on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Robert R. Henssler Jr.

ROBERT R. HENSSLER JR.

ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-8498  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: [bhenssler@rgrdlaw.com](mailto:bhenssler@rgrdlaw.com)



## **Mailing Information for a Case 8:13-cv-01818-CJC-JPR In re Quality Systems, Inc. Securities Litigation**

### **Electronic Mail Notice List**

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

- **Matthew James Balotta**  
mbalotta@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,lmix@rgrdlaw.com
- **Austin P Brane**  
abrane@rgrdlaw.com
- **Benjamin Galdston**  
beng@blbglaw.com,denab@blbglaw.com,jessica.cuccurullo@blbglaw.com
- **Kathryn K George**  
kathryn.george@lw.com
- **Lucas E Gilmore**  
lucas.gilmore@blbglaw.com
- **Andrew Gray**  
andrew.gray@lw.com,andrew-gray-3541@ecf.pacerpro.com,#oecf@lw.com,khadijah-fields-2405@ecf.pacerpro.com,jana.roach@lw.com
- **Robert Russell Henssler , Jr**  
bhenssler@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,tjohnson@rgrdlaw.com
- **Michele D Johnson**  
michele.johnson@lw.com,michele-johnson-7426@ecf.pacerpro.com,#oecf@lw.com,khadijah-fields-2405@ecf.pacerpro.com,jana.roach@lw.com
- **Avi Josefson**  
avi@blbglaw.com
- **Brandon Marsh**  
Brandon.Marsh@blbglaw.com
- **Brian Oliver O'Mara**  
bomara@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Darren J Robbins**  
e\_file\_sd@rgrdlaw.com
- **Nicholas J Siciliano**  
nicholas.siciliano@lw.com,nicholas-siciliano-5932@ecf.pacerpro.com
- **Gerald H Silk**  
jerry@blbglaw.com

- **Christopher Dennis Stewart**  
CStewart@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,nhorstman@rgrdlaw.com,tjohnson@rgrdlaw.com
- **David R Stickney**  
davids@blbglaw.com,brandon.marsh@blbglaw.com
- **Jordanna G Thigpen**  
jthigpen@jjllplaw.com,vcassis@jjllplaw.com
- **Peter Allen Wald**  
peter.wald@lw.com,peter-wald-7073@ecf.pacerpro.com,#oecf@lw.com,#sflitigationservices@lw.com,andrew.gray@lw.com
- **Whitney Bruder Weber**  
whitney.weber@lw.com,whitney-weber-2642@ecf.pacerpro.com,#sflitigationservices@lw.com
- **Jeff S Westerman**  
jwesterman@jswlegal.com

## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

**Stephen**                      **H Cypen**  
Cypen and Cypen  
975 Arthur Godfrey Road     Suite 500  
Miami Beach, FL 33140