

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Gilberto Ferreira,  
Plaintiff(s),  
v.  
Funko, Inc., et al.,  
Defendant(s).

Case No. 2:20-cv-02319-VAP-MAAx

**Order GRANTING Motion for  
Settlement Approval and  
GRANTING Motion for  
Attorneys' Fees  
(Dkt. 196, 197)**

United States District Court  
Central District of California

Lead Plaintiffs Abdul Baker ("Baker"), Zhibin Zhang ("Zhang"), and Huaiyu Zheng ("Zheng") (collectively, "Lead Plaintiffs") filed an unopposed Motion for Final Approval of Settlement, Certification of Settlement Class, and Entry of Judgment ("Motion for Final Approval") (ECF No. 196) and an unopposed Motion for Attorneys' Fees, Expenses, and Reimbursement to Lead Plaintiffs ("Motion for Attorneys' Fees"). (ECF No. 197.)

After considering all the papers filed in support of the Motions, and the arguments advanced at the hearing, the Court **GRANTS** the Motion for Final Approval of the Settlement and the Motion for Attorneys' Fees, Litigation Costs, and Service Award.

**I. BACKGROUND**

Plaintiff Gilberto Ferreira filed a Class Action Complaint against Defendants on March 10, 2020. (ECF No. 1.) Plaintiffs Mohamed Nahas (“Nahas”) and Blahovest Y. Dachev (“Dachev”) filed similar actions against Defendants. *See Nahas v. Funko, Inc.*, No. 2-20-cv-03130 (C.D. Cal.) (the “Nahas Action”); *Dachev v. Funko, Inc.*, No. 2-20-cv-00544 (W.D. Wash.) (the “Dachev Action”). On June 11, 2020, the Court consolidated the *Ferreira* Action and the *Nahas* Action (“Action”). (ECF No. 58.) Plaintiff Dachev voluntarily dismissed the *Dachev* Action on June 24, 2020. (Settlement Motion at 2 n.4.) The Court appointed Abdul Baker, Zhibin Zhang, and Huaiyu Zheng as Lead Plaintiffs in this action. (ECF No. 58.)

Plaintiffs filed a First Consolidated Amended Complaint on July 31, 2020, (ECF No. 74), and a Second Consolidated Amended Complaint (“SAC”) on March 29, 2021. (ECF No. 142.) The SAC alleges that between August 8, 2019, and March 5, 2020 (the “Class Period”), Defendants issued false and misleading statements and omitted material adverse information about Funko Inc.’s (“Funko”) excess inventory and projected earnings for the 2019 fiscal year. (SAC ¶¶ 3, 7, 170.) According to Plaintiffs, Defendants knew Funko would not achieve its projections, but they publicly made misleading statements and omissions to the contrary. (*Id.* ¶ 7.) Additionally, Plaintiffs allege that Defendants misrepresented the state of Funko’s excess inventory to investors. (*Id.* ¶ 6.) Defendants’ misleading statements and omissions artificially inflated Funko’s stock price during the Class Period, and Defendants sold shares of Funko stock for personal benefit. (*Id.* ¶¶ 8, 171.) When Funko’s 2019 earnings and the state of its excess inventory

United States District Court  
Central District of California

1 were publicly disclosed on February 5, 2020, Funko’s stock price fell by 40  
 2 percent. (*Id.* ¶¶ 9-10.) According to Plaintiffs, the drop in Funko’s stock  
 3 price caused Funko investors, including Plaintiffs and Class members, to  
 4 lose hundreds of millions of dollars. (*Id.* ¶ 16.) Plaintiffs allege these  
 5 actions violated Sections 10(b), 20(a), and 20A of the Securities Exchange  
 6 Act of 1934, and Rule 10b-5 promulgated thereunder. (*Id.* ¶¶ 185-213.)

7  
 8 Defendants<sup>1</sup> filed motions to dismiss the SAC on May 7, 2021. (ECF  
 9 No. 149, 151.) On October 22, 2021, the Court dismissed with prejudice  
 10 Lead Plaintiffs’ Section 10(b) claims based on statements related to Funko’s  
 11 projected net sales guidance as protected by the safe harbor provision of  
 12 the Private Securities Litigation Reform Act of 1995 (the “PSLRA”). (ECF  
 13 No. 165.) The Court denied the motion to dismiss with respect to Funko’s  
 14 inventory risk disclosures issued on October 31, 2019 but granted the  
 15 motion with respect to the same warnings issued on August 8, 2019 for  
 16 failure to plead scienter. (*Id.* at 87.) The Court denied Defendant Brian  
 17 Mariotti’s (“Mariotti”) motion to dismiss Plaintiffs’ Section 20A claim based on  
 18 his sales of Funko shares in Funko’s Secondary Offering but dismissed  
 19 Lead Plaintiffs’ 20A claims against Defendant Perlmutter and the ACON  
 20 Defendants for lack of a predicate violation. (*Id.* at 88.) The Court also  
 21 denied Defendants’ motions to dismiss Lead Plaintiffs’ Section 20(a) control

22  
 23  
 24  
 25  
 26  


---

<sup>1</sup> Motions to dismiss (ECF No. 149, 151) were filed by two separate groups of De-  
 fendants. One was filed by Defendants Funko Inc., Brian Mariotti, Russell Nickel,  
 Andrew Perlmutter, Jennifer Fall Jung, Ken Brotman, Gino Dellomo, and Adam  
 Kriger (collectively, “Funko Defendants”). (ECF No. 149.) The other motion was  
 filed by Defendants ACON Investments, LLC, ACON Funko Manager, LLC, ACON  
 Funko Investors, LLC, ACON Funko Investors Holdings 1, LLC, ACON Funko In-  
 vestors Holdings 2, LLC, ACON Funko Investors Holdings 3, LLC, and ACON Eq-  
 uity GenPar, LLC (collectively, “ACON Defendants”). (ECF No. 151.)

1 person claims against Defendants Mariotti, Jung, Brotman, Dellomo, Kriger,  
2 and the ACON Defendants. (*Id.*) Thus, Lead Plaintiffs’ remaining 10(b) and  
3 20(a) claims are based entirely on one statement: Funko’s October 31, 2019  
4 inventory risk disclosure and their 20A claim remains only as to Defendant  
5 Mariotti. (*Id.*)  
6

7 The parties engaged in preliminary discovery and participated in one  
8 full-day mediation session before Michelle Yoshida of Phillips ADR, on April  
9 27, 2022, where the parties reached a settlement in principle. (ECF No. 196  
10 at 9.) A Memorandum of Understanding was executed on April 29, 2022,  
11 and the parties subsequently negotiated the terms of the Settlement  
12 Agreement as set forth in the Stipulation and Agreement of Settlement  
13 (“Settlement Agreement”). (“SA,” ECF No. 186-1.)  
14

15 On July 19, 2022, the Court granted Preliminary Approval of the Class  
16 Action Settlement (“Preliminary Approval Order”). (ECF No. 193.) Plaintiff  
17 now moves for Final Approval of Settlement (ECF No. 196) and for Approval  
18 of Attorneys’ Fees, Expenses, and Reimbursements to Lead Plaintiffs (ECF  
19 No. 197).  
20

21 **A. Settlement Class**

22 The Settlement Class, as defined in the Settlement Agreement,  
23 consists of:  
24

25 [A]ll persons and entities who or which purchased or otherwise  
26 acquired shares of Funko publicly traded common stock during the

1 period from August 8, 2019 through March 5, 2020, inclusive, and  
2 who were damaged thereby. The Settlement Class includes all  
3 persons or entities who purchased Funko common stock  
4 contemporaneously with sales of Funko common stock made by  
5 Defendant Mariotti during the Class Period.

6  
7 (SA ¶ 1(rr).) The class consists of investors who purchased Funko common  
8 stock during the Class Period. (*Id.*)

9  
10 **B. Settlement Terms**

11 The Settlement Agreement establishes a \$7,000,000 gross settlement  
12 fund. (SA ¶ 1(qq).) Strategic Claims Services (“Claims Administrator”) will  
13 serve as the Claims Administrator. (*Id.* ¶ 1(g).) Class members are to  
14 submit the Claim Form through the Settlement website or by hardcopy. (*Id.*  
15 ¶ 27(a).) The Claims Administrator will determine each claimant’s eligibility  
16 and calculate their respective claim. (*Id.* ¶ 23.) Claimants will be notified of  
17 any ineligibility and will have an opportunity to remedy deficiencies. (*Id.* ¶  
18 27(d).) The Claims Administrator will distribute payments to Authorized  
19 Claimants after the Settlement Agreement reaches its Effective Date and all  
20 applicable deadlines have passed. (*Id.* ¶¶ 29, 34.)

21  
22 The Effective Date is the date when all of the following conditions  
23 occur: the Court approves the Settlement Agreement; the Court approves  
24 the Preliminary Approval Order; the Settlement Amount is deposited into the  
25 Escrow Account; neither party terminates the Settlement Agreement; and  
26 when the Court enters final Judgment. (*Id.* ¶ 34.)

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

If a balance remains in the Net Settlement Fund after at least six months from the date of the initial distribution, and after payment of notice and administration expenses, taxes, and attorneys’ fees and expenses, any remaining funds will be re-distributed to Authorized Claimants who have cashed their checks and who would receive at least \$10.00 from such re-distribution. (*Id.* ¶ 32; ECF No. 196 at 16.) If a balance remains in the Net Settlement Fund six months after the re-distribution, the remaining funds will be contributed to the Investor Protection Trust. (ECF No. 196 at 16.)

Finally, Plaintiffs and Settlement Class Members release any future related claims against Defendants. (SA ¶ 5.)

**C. Notice Procedures**

On July 19, 2022, the Court authorized notice of the Settlement to the Settlement Class (the “Notice Date”). (ECF No. 193.) Since then, Lead Plaintiffs and the Claims Administrator have provided Notice to the Settlement Class pursuant to the Preliminary Order. (ECF No. 196 at 2.) The Claims Administrator has provided notice to the potential Settlement Class Members by: mailing or emailing the Postcard Notice; publishing the Summary Notice; establishing the Settlement Website; and posting the Internet Notice and Claim Form on the Settlement Website. (ECF No. 193 at 5-6.)

The Claims Administrator sent the Depository Trust Company the Internet Notice of Pendency and Proposed Settlement of Class Action

1 (“Notice”) and Proof of Claim and Release Form (“Claim Form”) (collectively,  
2 the “Notice and Claim”) for the Depository Trust Company to publish on its  
3 Legal Notice System on August 3, 2022. (Bravata Decl. ECF No. 198, Ex.  
4 4, ¶ 3.) The Legal Notice System allows the Depository Trust Company  
5 participants the ability to search and download legal notices as well as  
6 receive e-mail alerts based on specific notices once a legal notice is posted.  
7 (*Id.*) On August 3, 2022, Strategic Claims Services completed by mail or  
8 email the Postcard Notice to all potential Settlement Class Members. (*Id.* ¶¶  
9 4-6.) In total, 30,176 potential Settlement Class Members were notified  
10 either by mailed Postcard Notice or emailed a direct link to the Postcard  
11 Notice. (*Id.* ¶ 8.)  
12

13 The Claims Administrator had the Summary Notice of Pendency of  
14 Class Action, Proposed Settlement, Motion for Attorneys’ Fees and  
15 Expenses, and Settlement Fairness Hearing (“Summary Notice”)  
16 transmitted once over the *PR Newswire* on August 2, 2022. (*Id.* ¶ 9.) The  
17 Claims Administrator also had the Summary Notice published in *Investor’s*  
18 *Business Daily* on August 8, 2022. (*Id.*)  
19

20 On August 2, 2022, the Claims Administrator established a webpage  
21 for the Settlement on its website at [www.strategicclaims.net/Funko/](http://www.strategicclaims.net/Funko/). The  
22 webpage is accessible 24 hours a day and seven days a week. (*Id.* ¶ 11.)  
23 The webpage contains the updates and deadlines for the case; the online  
24 claim filing link; and pertinent documents including the Notice and Claim, the  
25 Postcard Notice, the Preliminary Approval Orders, and the Stipulation with  
26 exhibits. (*Id.*) The Claims Administrator also maintains a toll-free telephone

1 number for Settlement Class Members to call and obtain information about  
2 the Settlement and request a Notice and Claim. (*Id.* ¶ 10.)

3  
4 The Postcard Notice, Summary Notice, Notice, and the Settlement  
5 Webpage informs potential Settlement Class Members that written requests  
6 for exclusion are to be mailed to Strategic Claims Services no later than  
7 October 17, 2022. (*Id.* ¶ 12.) The Claims Administrator has been  
8 monitoring all mail delivered for this case. (*Id.*) The Settlement Class  
9 Members are also informed that anyone seeking to object to the Settlement  
10 or any of its terms, the proposed Plan of Allocation, or the Fee and Expense  
11 application, are required to submit their objection in writing to Lead Counsel  
12 and Defendants’ Counsel, and filed with the Clerk of the Court, no later than  
13 October 17, 2022. (*Id.* ¶ 13.)

14  
15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims,  
17 issues, or defenses of a certified class may be settled, voluntarily dismissed,  
18 or compromised only with the court’s approval.” “[S]trong judicial policy . . .  
19 favors settlements, particularly where complex class action litigation is  
20 concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
21 1992). “The purpose of Rule 23(e) is to protect the unnamed members of  
22 the class from unjust or unfair settlements affecting their rights.” *In re*  
23 *Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). The Court’s  
24 review of the settlement is meant to be “extremely limited” and should  
25 consider the settlement as a whole. *Hanlon v. Chrysler Corp.*, 150 F.3d  
26 1011, 1026 (9th Cir. 1998).



1  
2 A court must engage in a two-step process to approve a proposed  
3 class action settlement. First, the court must determine whether the  
4 proposed settlement deserves preliminary approval. *Nat'l Rural*  
5 *Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).  
6 Second, after notice is given to class members, the Court must determine  
7 whether final approval is warranted. (*Id.*) A court should approve a  
8 settlement pursuant to Rule 23(e) only if the settlement “is fundamentally  
9 fair, adequate and reasonable.” *Torrise v. Tucson Elec. Power Co.*, 8 F.3d  
10 1370, 1375 (9th Cir. 1993); *accord In re Mego Fin. Corp. Sec. Litig.*, 213  
11 F.3d 454, 458 (9th Cir. 2000) (*citing Hanlon v. Chrysler Corp.*, 150 F.3d  
12 1011, 1026 (9th Cir. 1998)).  
13

14 In the Ninth Circuit, courts must balance the following factors to  
15 determine whether a class action settlement is fair, adequate, and  
16 reasonable: (1) the strength of the plaintiffs’ case, (2) the risk, expense,  
17 complexity, and likely duration of further litigation, (3) the risk of maintaining  
18 class action status throughout the trial, (4) the amount offered in settlement,  
19 (5) the extent of discovery completed and the stage of the proceedings, (6)  
20 the experience and views of counsel, (7) the presence of a governmental  
21 participant, and (8) the reaction of the class members to the proposed  
22 settlement. *Torrise*, 8 F.3d at 1375; *accord Hanlon*, 150 F.3d at 1026. “In  
23 addition, the settlement may not be the product of collusion among the  
24 negotiating parties.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458.  
25  
26



1 half years. (ECF No. 196 at 2, 5.) Lead Plaintiffs and Lead Counsel have  
2 pursued this litigation by: completing an extensive pre-suit and ongoing  
3 investigation of the claims at issue, including interviews of several former  
4 Funko employees; preparing and filing the FAC; opposing Defendants’  
5 motions to dismiss the FAC; preparing and drafting the SAC, which revived  
6 the case after it had been dismissed in its entirety; serving and responding  
7 to discovery requests; engaging and consulting with experts concerning  
8 damages and loss causation; analyzing Funko’s mediation statement and  
9 exhibits; analyzing documents produced by Funko to confirm the fairness  
10 and reasonableness of the Settlement; and participating in a mediation with  
11 an experienced mediator. (*Id.* at 8-9). Thus, as the Court previously stated  
12 in its Preliminary Approval Order, “sufficient discovery has been taken or  
13 investigation completed to enable counsel and the court to act intelligently.”  
14 *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal.  
15 2013) (internal quotation marks omitted). Accordingly, this indicates a lack  
16 of collusion between the parties. *See In re Anthem, Inc. Data Breach Litig.*,  
17 327 F.R.D. 299, 320 (N.D. Cal. 2018) (“Extensive discovery is . . . indicative  
18 of a lack of collusion, as the parties have litigated the case in an adversarial  
19 manner”); *see also Hanlon*, 150 F.3d at 1026 (“the extent of discovery  
20 completed and the stage of the proceedings” is relevant to fairness of  
21 settlement).

22  
23 As previously found by this Court, the parties engaged in arm’s  
24 length, serious, informed, and non-collusive negotiations between  
25 experienced and knowledgeable counsel. (ECF No. 193 at 14-15.) The  
26 parties’ use of an experienced mediator is an “important factor” supporting a

1 finding that a proposed settlement is the “product of arms-length  
2 negotiations.” See *In re Banc of California Sec. Litig.*, 2019 WL 6605884, at  
3 \*2 (C.D. Cal. Dec. 4, 2019); see also *Todd v. STAAR Surgical Co.*, 2017 WL  
4 4877417, at \*2 (C.D. Cal. Oct. 24, 2017) (approving settlement that was “the  
5 outcome of an arms-length negotiation conducted with the help of  
6 experienced mediator Michelle Yoshida of Phillips ADR”). The parties  
7 reached a settlement in principle after a full-day mediation session  
8 conducted by Michelle Yoshida, of Phillips ADR on April 27, 2022. (ECF No.  
9 196 at 9.) The Mediator presented a mediator’s recommendation of \$7  
10 million, and thereafter the parties accepted. (*Id.* at 10.) The Settlement  
11 Agreement is therefore presumptively the product of a non-collusive, arms-  
12 length negotiation, see *Roe v. SFBSC Management, LLC*, No. 14-cv-03616-  
13 LB, 2017 WL 4073809, at \*9 (N.D. Cal. Sept. 14, 2017) (holding a  
14 settlement that is the product of an arms-length negotiation “conducted by  
15 capable and experienced counsel” is presumed to be fair and reasonable);  
16 *Satchell v. Fed. ExpressCorp.*, No. 03-cv-2878-SI, 2007 WL 1114010, at \*4  
17 (N.D. Cal. Apr. 13, 2007) (“The assistance of an experienced mediator in the  
18 settlement process confirms that the settlement is non-collusive.”).

19  
20 The Court further finds that none of the potential “subtle signs of  
21 collusion” identified by the Ninth Circuit are present in the Settlement  
22 Agreement. See *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,  
23 947 (9th Cir. 2011). These potential signs include: (1) “when counsel  
24 receive[s] a disproportionate distribution of the settlement, or when the class  
25 receives no monetary distribution but class counsel are amply rewarded”;  
26 (2) “when the parties negotiate a ‘clear sailing’ arrangement providing for the

1 payment of attorneys' fees separate and apart from class funds"; and (3)  
2 "when the parties arrange for fees not awarded to revert to defendants  
3 rather than be added to the class fund." *Id.* (internal quotation marks and  
4 citations omitted).

5  
6 Under the Settlement Agreement, the Court will consider and  
7 determine any applications for attorneys' fees or litigation expenses. (SA ¶  
8 25.) The Settlement Agreement does not contain the type of "clear sailing  
9 arrangement" that is cause for concern. Only "a clear sailing arrangement  
10 providing for the payment of attorneys' fees separate and apart from class  
11 funds" is potentially indicative of collusion. *In re Bluetooth*, 654 F.3d at 947.  
12 As set forth below, the Court is approving plaintiffs' attorneys' fees equal to  
13 25% of the Settlement Amount, which is consistent with the Ninth Circuit  
14 "benchmark" and not disproportionate to the class recovery. *See Hanlon*,  
15 150 F.3d at 1029. None of the factors that raise concerns of collusion are  
16 present here. The Court therefore finds that parties engaged in arm's  
17 length, serious, informed, and non-collusive negotiations. This factor  
18 weighs in favor of approval.

## 20 **2. Strength of Plaintiff's Case and Future Risk**

21 Plaintiffs' claims allege Violation of Section 10(b) of the Exchange Act  
22 and Rule 10b-5, Violation of Section 20(a) of the Exchange Act, and  
23 Violation of Section 20A of the Exchange Act. (SAC ¶ 185-213.) Lead  
24 Counsel point to the risks and the uncertainties regarding class certification  
25 if the settlement is not approved. (ECF No. 196 at 14.) As set forth in the  
26 Settlement Agreement and Lead Plaintiff's Motion, Defendants deny and will

1 continue to deny the claims alleged against them. (*Id.*; SA ¶¶ FF.) Lead  
2 Counsel further demonstrate the considerable risks of litigation in this case  
3 by describing the parties’ potential arguments concerning the amount of loss  
4 causation and damages (ECF No. 196 at 11), and Defendants’ arguments  
5 with respect to falsity and scienter. (*Id.* at 14.) Although Plaintiff’s claims  
6 survived a motion to dismiss, Lead Counsel assert that the outcome is still  
7 far from certain and that the case would likely require extensive continued  
8 litigation if a settlement were not approved. (*Id.* at 13.) The Court agrees.

9  
10 As it stands, the Settlement Agreement provides distributions to Class  
11 Members on a pro rata basis from the Settlement Fund. (ECF No. 196 at  
12 19.) Given the relative strength of Plaintiffs’ claims, and the risks and costs  
13 associated with future complex litigation, the Settlement Agreement’s terms  
14 appear to be reasonable. Accordingly, the avoidance of costs and future  
15 litigation risks in this case weigh in favor of settlement approval.

### 17 **3. Amount Offered in the Settlement**

18 The Settlement Agreement establishes a Settlement Fund of \$7  
19 million. (SA ¶ 1(qq).) Lead Counsel represent that this amount recovers  
20 approximately 8.7 percent of the approximately \$80 million in maximum  
21 estimated aggregated damages. (ECF No. 196 at 10.) Courts in this circuit  
22 have approved settlements that recovered similar percentages. *See, e.g.,*  
23 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)  
24 (finding settlement yielding 6 percent of potential damages was “higher than  
25 the median percentage of investor losses recovered in recent shareholder  
26 class action settlements”); *In re Snap Sec. Litig.*, No. 17-03679, 2021 WL

1 667590, at \*1 (C.D. Cal. Feb. 18, 2021) (approving settlement representing  
2 “approximately 7.8% of the class’s maximum potential aggregate damages,  
3 which is similar to the percent recovered in other court-approved securities  
4 settlements”); *In re Biolase, Inc. Sec. Litig.*, No. 13-1300, 2015 WL  
5 12720318, at \*4 (C.D. Cal. Oct. 13, 2015) (approving securities class action  
6 settlement representing “8% of the maximum recoverable damages”). Lead  
7 Counsel assert that this factor weighs in favor of approval here because the  
8 arguments concerning damages raised at trial could potentially reduce the  
9 total amount of Plaintiffs’ recovery. (*Id.* at 11-12.) In light of the future  
10 litigation risks in this action and the comparable settlements in this Circuit,  
11 the Court finds the amount for the Settlement Fund to be favorable.

12  
13 “[A] district court must carefully assess the reasonableness of a fee  
14 amount spelled out in a class action settlement agreement” because the  
15 amount offered is offset by fees. *Staton v. Boeing Co.*, 327 F.3d 938, 963  
16 (9th Cir. 2003). As discussed in more detail below, the Court finds the fees  
17 appropriate and therefore determines that the amount offered in settlement  
18 weighs in favor of approval.

19  
20 **a. Cy Pres Recipient**

21 “Federal courts have broad discretionary powers in shaping equitable  
22 decrees for distributing unclaimed class action funds.” *Six (6) Mexican*  
23 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990) (citing  
24 *Van Gemert v. Boeing Co.*, 739 F.2d 730, 737 (2d Cir.1984)). *Cy pres*  
25 distribution is “to put the unclaimed fund to the next best compensation use,  
26 e.g., for the aggregate, indirect, prospective benefit of the class.” *Masters v.*

1 *Wilhemina Model Agency, Inc.*, 472 F.3d 423, 436 (2d Cir. 2007) (citations  
2 omitted). Under the *cy pres* doctrine, the donors' or parties' intent must be  
3 followed "as nearly as possible." *In re Wells Fargo Secs. Litig.*, 991 F. Supp.  
4 1193, 1195 (N.D. Cal. Jan. 20, 1998) (citations omitted). "While the law  
5 generally favors distributing unclaimed funds for a purpose as near as  
6 possible to the legitimate objectives underlying the lawsuit, a direct nexus  
7 between the injured plaintiffs and the *cy pres* recipients is neither always  
8 feasible nor required." *Hopson v. Hanesbrands, Inc.*, No. 08-0844, 2009 WL  
9 928133, at \*9 (N.D. Cal. Apr. 3, 2009)

10  
11 In the Preliminary Approval Order, the Court declined to approve the  
12 Legal Aid Foundation of Los Angeles as the *cy pres* recipient. (ECF No. 193  
13 at 25-26.) The parties now designate the Investor Protection Trust as the *cy*  
14 *pres* recipient. (ECF No. 196 at 16.) Thus, the Settlement Agreement  
15 provides that "any balance that still remains in the Net Settlement Fund after  
16 re-distribution(s) and after payment of outstanding Notice and Administration  
17 Expenses, Taxes, and attorneys' fees and expenses, if any, shall be  
18 contributed to the Investor Protection Trust." (*Id.*)

19  
20 Investor Protection Trust is a nonprofit organization devoted to  
21 independent and unbiased investor education, research, and support of  
22 investor protection efforts. (*Id.* at 17.) Here, the claims arise from alleged  
23 violations of Section 10(b) of the Exchange Act and Rule 10b-5, Section  
24 20(a) of the Exchange Act, and Section 20A of the Exchange Act. (SAC ¶  
25 185-213.) The *cy pres* distribution to the Investor Protection Trust is  
26 appropriate because its objectives to educate and support investor



1 protection efforts are consistent with the objective underlying this action  
2 involving alleged securities fraud and benefit the interests of the silent class.  
3 *See Six (6) Mexican Workers*, 904 F.2d at 1307-08 (holding that *cy pres*  
4 distributions “should be guided by the objectives of the underlying statute  
5 and the interests of the silent class members” and cannot benefit a group  
6 “too remote from the plaintiff class”). The Investor Protection Trust also  
7 operates at both the state and national level to provide independent and  
8 objective investor education to enable the public to make informed  
9 investment decisions. (*Id.*) This further resolves the Court’s previous  
10 concern that the *cy pres* distribution to the Legal Aid Foundation in Los  
11 Angeles would fail to address the national character of this action. *See*  
12 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1040 (9th Cir. 2011) (reversing a *cy*  
13 *pres* distribution award because it did not account for the comprehensive  
14 geographic distribution of the plaintiff class); *See In re Airline Ticket Comm'n*  
15 *Antitrust Litig.*, 307 F.3d 679, 683 (reversing a district court’s *cy pres*  
16 distribution because it “failed to consider the full geographic scope of the  
17 case”). Accordingly, the Court finds that the *cy pres* distribution to Investor  
18 Protection Trust is appropriate for this Settlement.

19  
20 **4. Extent of Discovery Completed and Stage of the**  
21 **Proceedings**

22 This factor requires the Court to evaluate whether “the parties have  
23 sufficient information to make an informed decision about settlement.”  
24 *Linney v. Cellullar Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

1 As the Court previously noted, the parties have litigated diligently  
2 since the commencement of this action. (ECF No. 196 at 2-5.) Counsel for  
3 Plaintiffs have prepared and drafted the Complaint, the FAC, and the SAC.  
4 (ECF No. 1, 74, 142.) The parties have briefed two rounds of motions to  
5 dismiss, conducted formal discovery, produced and reviewed documents,  
6 and engaged in a full-day mediation. (ECF No. 196 at 2-5.) Accordingly, the  
7 Court finds this factor weighs in favor of approval. See *Linney*, 151 F.3d at  
8 1239.

9  
10 **5. Experience and Views of Counsel**

11 Lead Counsel have ample experience litigating class actions similar  
12 to this case and have demonstrated the ability to prosecute vigorously on  
13 behalf of the class members. (See Beige Decl., ECF No. 198, ¶¶ 68-75, Ex.  
14 6, Bernstein Decl., Exh 7, Pomerantz Decl.) Accordingly, the Court finds this  
15 factor weighs in favor of approval.

16  
17 **6. Presence of a Governmental Participant**

18 As there is no governmental participant in this action, this factor is  
19 irrelevant for the purposes of final approval.

20  
21 **7. The Reaction of the Class Members to the Proposed**  
22 **Settlement**

23 “[T]he absence of a large number of objections to a proposed class  
24 action settlement raises a strong presumption that the terms . . . are  
25 favorable to the class members.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D.  
26 at 529.

1  
2 Following preliminary approval of the settlement by the Court, the  
3 Claims Administrator distributed the approved class notice to the Class  
4 Members. (Bravata Decl., ECF No. 198, Ex. 4.) In response, the Claims  
5 Administrator has received 5,848 claims, no objections to the Settlement,  
6 and only one request for exclusion. (Suppl. Bravata Decl., ECF No. 199-4,  
7 ¶¶ 7-9.) Accordingly, this factor weighs in favor of approval.

8  
9 **8. Balancing the Factors**

10 As all of the relevant factors favor approval, the Court finds that the  
11 proposed Settlement Agreement is fair, reasonable, and adequate and  
12 **GRANTS** final approval of the Settlement Agreement.

13  
14 **B. Motion for Attorneys' Fees, Expenses, and Reimbursement to**  
15 **Lead Plaintiffs**

16 Lead Counsel seeks 25% of the Settlement Fund for attorneys' fees,  
17 \$141,142.47 for reimbursement of litigation expenses, and \$14,100 for Lead  
18 Plaintiff Zhibin Zhang and \$18,000 each for Lead Plaintiffs Huaiyu Zheng  
19 and Abdul Baker in connection with their representation of the Settlement  
20 Class. (ECF No. 196 at 17; ECF No. 197 at 1.) Lead Counsel additionally  
21 seeks reimbursement of \$53,610.21 to the Claims Administrator for the  
22 costs incurred to administer the notices. (ECF No. 199 at 6.)  
23

24 When evaluating attorneys' fees, "the district court has discretion in  
25 common fund cases to choose either the percentage-of-the-fund or the  
26 lodestar method." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.

1 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,  
2 1295–96 (9th Cir.1994)). When using the percentage-of-the-fund method,  
3 “courts typically set a benchmark of 25% of the fund as a reasonable fee  
4 award and justify any increase or decrease from this amount based on  
5 circumstances in the record.” *Monterrubio v. Best Buy Stores, L.P.*, 291  
6 F.R.D. 443, 455 (E.D. Cal. May 14, 2013); see *Paul, Johnson, Alston & Hunt*  
7 *v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). The percentage may be  
8 adjusted upward or downward based on: (1) the results achieved; (2) the  
9 risks of litigation; (3) the skill required and the quality of work; (4) the  
10 contingent nature of the fee; (5) the burdens carried by the class counsel;  
11 and (6) the awards made in similar cases. *Monterrubio*, 291 F.R.D. at 455  
12 (citing *Vizcaino*, 290 F.3d at 1048–50).

13  
14 Lead Counsel seeks 25% of the Settlement Fund for attorneys’ fees.  
15 (ECF No. 196 at 17; ECF No. 197 at 1.) This amount is consistent with the  
16 Ninth Circuit’s 25% “benchmark award for attorney[s]’ fees” and with fee  
17 awards approved in cases within the Ninth Circuit. *Hanlon*, 150 F.3d at  
18 1029. Further, none of the *Vizcaino* factors justify a downward departure  
19 from this benchmark.

## 20 21 **1. Results Achieved**

22 Lead Counsel achieved a favorable result of \$7 million for Settlement  
23 Class Members in light of the risks of litigation. (ECF No. 197 at 7-9.) The  
24 Settlement recovers approximately 8.7% of the approximately \$80 million in  
25 maximum aggregate damages. (*Id.*) This percentage is higher than the  
26 median settlement amount of approximately 5% in recent comparable

1 securities class action cases in the same procedural posture. (*Id.*; Beige  
2 Decl., Ex. 5.) As addressed above, this factor weighs in favor of approval,  
3 as proving loss causation and damages would have been subject to  
4 challenges if this case had proceeded to trial. (ECF No. 197 at 4-6.)  
5

## 6 **2. Risks of Litigation**

7 The requested fee is reasonable in light of the risks faced litigating  
8 this case to date and the risks and uncertainty of continued litigation. This  
9 action involves complex factual and legal issues and, in the absence of  
10 settlement, would involve lengthy challenges where the resolution would be  
11 uncertain. (*Id.* at 7-9.) The risk and uncertainties of litigation are  
12 demonstrated by the fact that the FAC was dismissed in its entirety. (ECF  
13 No. 141.) This is further demonstrated by the fact that the claims in the SAC  
14 were partially dismissed and narrowed. (ECF No. 165.)  
15

16 This action faced serious risks and uncertainties if it had proceeded to  
17 trial. As the case survived a motion to dismiss, the next step in this litigation  
18 was for Lead Plaintiffs to move for class certification. (ECF No. 174.) The  
19 class certification stage in securities litigation is challenging and often  
20 involves an excessive amount of additional litigation and substantial  
21 resources. If this case were to proceed to summary judgment or trial,  
22 Defendants would have contested the existence of the requisite falsity and  
23 scienter which would have also raised the risks and uncertainties of this  
24 case. (*Id.*) The parties would have further litigated the amount of loss  
25 causation and damages. (ECF No. 197 at 7.) Lead Counsel continue to  
26 assert Plaintiffs' claims have merit, but nevertheless recognize that

1 Defendants have several non-frivolous defenses. (*Id.* at 9.) Here, Lead  
2 Counsel have litigated diligently since the commencement of this action and  
3 achieved a favorable settlement avoiding a risky and uncertain result.  
4 Accordingly, this factor supports the approval of Lead Counsel’s requested  
5 attorneys’ fees.

### 6 7 **3. Skill Required and the Quality of Work**

8 Lead Counsel are skilled litigators who have extensive experience in  
9 securities class action litigation. (Bernstein Decl., Ex. A, ECF No. 198-6;  
10 Pomerantz Decl., Ex. A, ECF No. 198-7.) Courts have recognized that the  
11 “prosecution and management of a complex national class action requires  
12 unique legal skills and abilities.” *In re Heritage Bond Litig.*, 2005 WL  
13 1594389, at \*12 (C.D. Cal. June 10, 2005). “This is particularly true in  
14 securities cases because the Private Securities Litigation Reform Act makes  
15 it much more difficult for securities plaintiffs to get past a motion to dismiss.”  
16 *Destefano v. Zynga, Inc.*, 2016 WL 537946, at \*17 (N.D. Cal. Feb. 11, 2016)  
17 (quoting *Omnivision*, 559 F. Supp. 2d at 1047). Lead Counsel’s work in this  
18 complex securities case included, *inter alia*, discovery revealing the  
19 strengths and weaknesses of this action; drafting the initial Complaint, the  
20 FAC and the SAC; preparing the oppositions to two rounds of motions to  
21 dismiss; and a mediation resulting in a favorable settlement for the Plaintiff  
22 Class. The positive reaction by Settlement Class members demonstrated  
23 by the 5,848 claims, the lack of objections to the Settlement, and the sole  
24 request for exclusion also support Class Counsel’s fee request. (Suppl.  
25 Bravata Decl., ECF No. 199-4, ¶¶ 7-8.) Given the quality of the work  
26

1 performed by Lead Counsel, this factor weighs in favor of approving the  
2 attorneys' fees.

#### 4 **4. Contingent Nature of the Fee**

5 "It is an established practice in the private legal market to reward  
6 attorneys for taking the risk of non-payment by paying them a premium over  
7 their normal hourly rates for winning contingency cases." *In re Washington*  
8 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1299. Thus, whether  
9 Plaintiff's Counsel have taken the case on a contingency fee basis must be  
10 considered when deciding to vary from the 25% benchmark. *Monterrubio*,  
11 291 F.R.D. at 457. Here, Lead Counsel undertook the Action on a  
12 contingent basis and have received no compensation during the years the  
13 Action was litigated. (ECF No. 197 at 12.) Any fee and expense award has  
14 been contingent on the result achieved. (*Id.*) Thus, this factor weighs in  
15 favor of approving the requested attorneys' fees award.

#### 17 **5. Burdens Carried by Lead Counsel**

18 The Court recognizes that Lead Counsel bore a non-trivial burden in  
19 litigating this case, and a fee award of 25% is well within the range of  
20 awards made in similar cases. *See Six (6) Mexican Workers v. Arizona*  
21 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (noting that 20-30  
22 percent is the usual common fund award). Counsel undertook this litigation  
23 on a wholly contingent-fee basis, investing substantial time and money to  
24 prosecute a risky action with no guarantee of compensation for the  
25 investment of time and money the case would require. (Beige Decl. ¶¶ 51-  
26 61.) Since the Court's appointment of Lead Counsel on June 11, 2020 (ECF

1 No. 58), they have not been compensated for any time or expenses. (*Id.* ¶¶  
2 66-74.) Further, Lead Counsel would not have received any compensation  
3 had the parties not reached a settlement. Lead Counsel bore the expenses  
4 throughout the case and have risked non-payment of \$2,546,814.39 in time  
5 worked and over \$136,142.47 in expenses. (ECF No. 197 at 1,14; Berstein  
6 Decl., ECF No. 198-6, ¶¶ 6-7; Pomerantz Decl., ECF No. 198-7, ¶¶ 6-7.)  
7

### 8 **6. Awards Made in Similar Cases**

9 Lead Counsel's requested fee of attorneys' fees of 25% of the  
10 Settlement Fund is in line with the Ninth Circuit's "benchmark award for  
11 attorney[s]' fees." See *Hanlon*, 150 F.3d at 1029. Accordingly, this factor  
12 supports the requested 25% attorneys' fees.  
13

### 14 **7. Lodestar Cross-check**

15 Calculation of the lodestar, which measures the lawyers'  
16 investment of time in the litigation, provides a check on the reasonableness  
17 of the percentage award sought. Although an analysis of counsel's lodestar  
18 is not required for an award of attorneys' fees in the Ninth Circuit,  
19 "[c]alculation of the lodestar, which measures the lawyers' investment of  
20 time in the litigation, provides a check on the reasonableness of the  
21 percentage award." See *Vizcaino*, 290 F.3d at 1048-51; see also *In re*  
22 *Coordinated Pretrial Proceedings In Petroleum Prods. Antitrust Litig.*, 109  
23 F.3d 602, 607 (9th Cir. 1997) (comparing the lodestar fee to the percentage  
24 fee is an appropriate measure of a percentage fee's reasonableness).  
25  
26



1           Lead Counsel claim they collectively spent approximately 3,211 hours  
2 of work at their respective hourly rates in litigating this action with a  
3 combined lodestar amount of \$2,546,814.39. (ECF No. 197 at 15.) Co-  
4 Lead Counsel Bernstein Liebhard LLP (“Bernstein”) claims it spent a total of  
5 2,442.90 hours for a total fee of \$1,982,727.89. (Bernstein LLP Decl., ECF  
6 No. 198-6, ¶ 6.) Co-Lead Counsel Pomerantz LLP (“Pomerantz”) claims it  
7 spent a total of 768.10 hours for a total fee of \$564,086.50. (Pomerantz  
8 Decl., ECF No. 198-7, ¶ 6.) Neither Class Counsel’s lodestar amount  
9 includes hours billed after September 30, 2022, and the time spent  
10 preparing the motions for approval of attorneys’ fees and expenses request.  
11 (Bernstein Decl., ECF No. 198-6, ¶ 4-6; Pomerantz Decl., ECF No. 198-7,  
12 ¶¶ 4-6.) The Court has reviewed Lead Counsel’s declarations and finds the  
13 hourly rates to be reasonable. (*Id.* ¶ 6; *Id.* ¶ 6.). Based on Lead Counsel’s  
14 lodestar, the requested fee award represents a negative lodestar multiplier  
15 of 0.69 (ECF No. 197 at 15), and is within the range of attorney fee awards  
16 routinely granted by courts in this Circuit.

17  
18           Accordingly, the Court **GRANTS** the application for attorneys’ fees  
19 equal to 25% of the Settlement Fund (\$1,750,000).

### 20 21       **C. Litigation Costs and Expenses**

22           Lead Counsel seek reimbursement of \$141,142.47 in litigation  
23 expenses. (ECF No. 197 at 1.) “[T]he costs and expenses incurred by  
24 counsel are subject to a test of relevance and reasonableness in amount.”  
25 *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal.  
26 1996). A court must “balance the need to reimburse counsel for all

1 reasonable expenses and costs necessary” to the litigation while “protecting  
2 the interests of the class.” *Id.*

3  
4 In support of the Motion for Attorneys’ Fees and Expenses, both  
5 Pomerantz (Pomerantz Decl., ECF No. 198-7) and Bernstein (Bernstein  
6 Decl., ECF No. 198-6) submitted declarations including an itemized list of  
7 the litigation expenses. (Pomerantz Decl, ECF No. 198-7, ¶ 7; Bernstein  
8 Decl., ECF No. 198-6, ¶ 7.) Lead Counsel request for reimbursement of the  
9 following categories: experts, consultants and mediation; filing fees; work-  
10 related transportation, hotels and meals; online legal and factual research;  
11 fees for press releases and newswires; photocopying, postage, and clerical  
12 overtime; and overnight delivery and conference call fees. (See Beige  
13 Decl., ECF No. 198, ¶ 77; Bernstein Decl., ECF No. 198-6, ¶ 7-8;  
14 Pomerantz Decl., ECF No. 198-7, ¶ 7-8.)

15  
16 **Experts, Consultants, and Mediation**

17 Pomerantz seeks \$43,416.69 and Bernstein seeks \$44,412.56, for a  
18 total reimbursement of \$87,829.25 in expenses for experts, consultants, and  
19 investigators.<sup>2</sup> (Bernstein Decl., ECF No. 198-6, ¶ 7-8; Pomerantz Decl.,  
20 ECF No. 198-7, ¶ 7-8.) Pomerantz also claims an additional \$2,250.00 for  
21 mediator fees. (Pomerantz Decl., ¶ 7.) Lead Counsel explain that these  
22 expenses were used to retain experts in economics to assist with  
23 quantifying damages and causation issues, provide market analysis for the  
24

25  
26 <sup>2</sup> This category was initially listed as “experts, consultants, and mediation” in Lead  
Counsel’s Motion. At the Final Fairness hearing, Lead Counsel clarified that “me-  
diation” was a typographical error that should have stated “investigator.”

1 mediation, create a Plan of Allocation, investigate this action, and pay the  
2 mediator. (*Id.* ¶ 8(a); *Id.* ¶ 8(a).) The Court finds these costs reimbursable  
3 and approves \$45,666.69 to Pomerantz and \$44,412.56 to Bernstein.  
4

### 5 **Filing Fees**

6 Pomerantz seeks \$2,612.00 and Bernstein seeks \$20.00 for a total  
7 reimbursement of \$2,632.00 in filing fees. (Bernstein Decl., ECF No. 198-6,  
8 ¶ 7-8; Pomerantz Decl., ECF No. 198-7, ¶ 7-8.) Lead Counsel claim that  
9 this amount consists of expenses paid to courts in connection with  
10 certificates of good standing necessary for pro hac vice applications.  
11 (Bernstein Decl., ECF No. 198-6, ¶ 8(b); Pomerantz Decl., ECF No. 198-7, ¶  
12 8(b).) Lead Counsel clarified at the Final Fairness hearing that the amount  
13 also includes filing fees for the Complaint and the pro hac vice applications  
14 submitted in this action. The Court approves the amounts sought as they  
15 are reasonable and were necessarily incurred.  
16

### 17 **Online Legal and Factual Research**

18 Pomerantz seeks \$1,605.71 and Bernstein seeks \$32,026.10 for a  
19 total reimbursement of \$33,631.81 in online legal and factual research fees.  
20 (Bernstein Decl., ECF No. 198-6, ¶ 7-8; Pomerantz Decl., ECF No. 198-7, ¶  
21 7-8.) These expenses were used for legal and factual research conducted  
22 through databases by Westlaw, Lexis Nexis, Bloomberg and news services.  
23 (*Id.* ¶ 8(d); *Id.* ¶ 8(d).) These expenses are reasonable and necessary for  
24 Lead Counsel's effective representation, and Lead Counsel will be  
25 reimbursed \$33,631.81 in online legal and factual research costs.  
26

1 **Work-Related Transportation, Hotels & Meals**

2 Pomerantz seeks \$1,550.33 and Bernstein seeks \$2,950.43 for a total  
3 reimbursement of \$4,500.76<sup>3</sup> in expenses for work-related transportation,  
4 hotels and meals. (Suppl. Beige Decl., ECF No. 204-1, ¶ 5; Suppl. Wernke  
5 Decl., ECF No. 204-2, ¶ 5.) Reimbursement for transportation, hotels and  
6 meals is within the broad discretion of the court and may be reimbursed if  
7 they are “reasonable and necessary.” See *In re Media Vision Tech*, 913 F.  
8 Supp. at 1369. Based on Lead Counsel’s supplemental submission  
9 detailing the costs for meals, hotels, flights, and transportation (Suppl. Beige  
10 Decl., ECF No. 204-1, ¶ 7; Suppl. Wernke Decl., ECF No. 204-2, ¶ 7), the  
11 Court approves the reimbursement in the amount sought as they are  
12 reasonable and were necessarily incurred.

13  
14 **Other Costs**

15 Bernstein seeks \$891.60 in overnight delivery and conference call  
16 fees. (Bernstein Decl., ECF No. 198-6, ¶ 7-8.) Pomerantz seeks \$2,235.18  
17 for photocopying, postage, and clerical overtime, and \$2,171.87 for  
18 expenses on press releases and newswires. (Pomerantz Decl., ECF No.  
19 198-7, ¶ 7-8.) Courts routinely reimburse Lead Counsel for reasonable  
20 costs for photocopying, postage, telephone costs, and delivery costs. see  
21 *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal.

22  
23  
24 \_\_\_\_\_  
25 <sup>3</sup> This amount is adjusted to reflect the \$5,000 reduction in anticipated costs asso-  
26 ciated with appearances at the Final Fairness hearing on November 7, 2022. As  
the hearing was held remotely, Lead Counsel each reduced their original request  
by \$2,500.00. (Suppl. Beige Decl., ECF No. 204-1, ¶ 5; Suppl. Wernke Decl., ECF  
No. 204-2, ¶ 5.)

1 2007); *In re Media Vision Tech.*, 913 F. Supp. at 1367-69. The Court finds  
2 these costs reimbursable and approves the amounts.

#### 4 **Notice and Administration Costs**

5 Lead Counsel seek reimbursement of \$53,610.21 to the Claims  
6 Administrator, Strategic Claims Services, for the notice and administration  
7 costs associated with implementing the Notice program and administrating  
8 the settlement to date. (ECF No. 199 at 6.) The fees and expenses  
9 incurred by Strategic Claims Services are detailed in the Supplemental  
10 Declaration of Josephine Bravata. (Suppl. Bravata Decl. Ex. A, ECF No.  
11 199-4.) The Settlement Agreement permits reimbursements “from the  
12 Settlement Fund up to \$200,000, in Notice and Administration Costs actually  
13 incurred or paid. . .” (SA, ¶ 16.) The Settlement Class was informed of this  
14 provision in the Notice and given the opportunity to object, and no class  
15 member has objected to this payment. (Suppl. Bravata Decl., ECF No. 199-  
16 4, ¶ 8.) Accordingly, the Court approves of the reimbursement of fees and  
17 expenses to Strategic Claims Services in the amount of \$53,640.21.

18  
19 Based on the above, the Court therefore **APPROVES** the  
20 reimbursement of costs and expenses to Lead Counsel in the amount of  
21 \$136,142.47, and reimbursement of expenses to the Claims Administrator in  
22 the sum of \$53,640.21

#### 24 **D. Lead Plaintiffs' Costs and Expenses under the PSLRA**

25 Lead Counsel request for reimbursements in the amount of \$14,100  
26 to Lead Plaintiff Zhibin Zhang, and \$18,000 each for Lead Plaintiffs Huaiyu

1 Zheng and Abdul Baker in connection with their representation of the  
2 Settlement Class, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4). (ECF  
3 No. 197 at 21.) Under the Settlement Agreement, the parties accounted for  
4 such requests by defining any “Fee and Expense Application” to include  
5 “any expenses of Lead Plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4) of the  
6 Private Securities Litigation Reform Act of 1995 (“PSLRA”).” (SA ¶ 1(s); see  
7 SA ¶ 17.)

8  
9 The PSLRA at 15 U.S.C. § 78u-4(a)(4) provides in pertinent part, that  
10 while class representatives are required to share the recovery in the same  
11 proportion as all other members of the class, “[n]othing in this paragraph  
12 shall be construed to limit the award of reasonable costs and expenses  
13 (including lost wages) directly relating to the representation of the class to  
14 any representative party serving on behalf of a class.” 15 U.S.C. § 78u-  
15 4(a)(4). Courts have the discretion under PSLRA to grant payments to class  
16 representatives. *In re Heritage Bond Litig.*, 2005 WL 1594389, at \*4 (C.D.  
17 Cal. June 10, 2005). For lead plaintiff to recover fees under § 78u-4(a)(4),  
18 courts have determined that “the lead plaintiff must provide meaningful  
19 evidence demonstrating that the requested amounts represent actual costs  
20 and expenses incurred directly as result of the litigation.” *In re ESS Tech.*,  
21 2007 WL 3231729, at \*2.

22  
23 In its Preliminary Approval Order, the Court declined to rule on the  
24 reimbursements of costs and expenses because Lead Counsel did not  
25 provide any accounting of past costs or expenses. (ECF No. 193 at 20.)  
26 Lead Plaintiffs have now submitted declarations detailing their time and

1 efforts spent on this action. (Baker Decl, ECF No. 198-1; Zhang Decl, ECF  
2 No. 198-2; Zheng Decl., ECF No. 198-3.) In support of Baker’s request for  
3 \$18,000, Baker states that a total of 15 hours were spent pursuing this  
4 action which consisted of: monitoring news about Funko; communicating  
5 and corresponding with Lead Counsel regarding the litigation, mediation and  
6 settlement; reviewing the initial Complaint, the FAC and the SAC, as well as  
7 the briefings and orders in this action; reviewing discovery requests served  
8 by Defendants; gathering and producing information to Lead Counsel  
9 regarding his Funko investments in response to Defendants’ interrogatories  
10 and requests for production of documents. (Baker Decl., ECF No. 198-1, ¶¶  
11 2-7.) Baker is a board-certified fellowship-trained neurosurgeon who  
12 regularly charges \$1,500 per hour for his work. (Baker Decl., ECF No. 198-  
13 1, ¶ 6.)

14  
15 Zhang represents that a total of 94 hours were spent participating in  
16 this action. (Zhang Decl., ECF No. 198-2, ¶ 6.) Zhang provides a detailed  
17 breakdown of those hours as follows: 14 hours monitoring news about  
18 Funko; 21 hours reviewing the initial Complaint, FAC, SAC, briefing  
19 including supplemental briefing and orders; 15 hours communicating and  
20 corresponding with Lead Counsel; 28.5 hours gathering and producing  
21 information regarding Funko investments; and 15.5 hours reviewing the  
22 mediation statement, the settlement and noticed document, and motions  
23 regarding the settlement. (Id. ¶¶ 2-7.) Zhang is a Software Engineer who  
24 regularly charges \$150 per hour for his work. (Id. ¶ 6.)

1 Zheng represents that a total of 98 hours were spent pursuing the  
2 claims in this action. (Zheng Decl., ECF No. 198-3, ¶ 6.) Zheng also  
3 provides a detailed breakdown of those hours as follows: 10 hours  
4 monitoring news about Funko; 40 hours reviewing the initial Complaint,  
5 FAC, SAC, briefing including supplemental briefing and orders; 5 hours  
6 communicating and corresponding with Lead Counsel; 21 hours gathering  
7 and producing information regarding Funko investments; and 22 hours  
8 reviewing the mediation statement, the settlement and noticed document,  
9 and motions regarding the settlement. (Id. ¶¶ 2-7.) Zheng is a Supply  
10 Chain/Export Consultant who regularly charges \$185 per hour for his work.  
11 (Id. ¶ 6.)  
12

13 The Court finds that Lead Plaintiffs have provided reasonable and  
14 sufficient information to receive reimbursements of their costs and expenses  
15 spent for this litigation. Lead Plaintiffs' dedicated time and energy to this  
16 action that they would have otherwise devoted to their regular duties, which  
17 constituted a cost to Lead Plaintiffs. Lead Plaintiffs' representation of the  
18 hours spent on this complex securities litigation is also reasonable. Based  
19 on the fees that Lead Plaintiffs would ordinarily charge for their services and  
20 the hours expended on this litigation, the Court finds that the amounts  
21 requested are reasonable. See 15 U.S.C. § 78u-4(a)(4) (including potential  
22 lost wages as part of an award of reasonable costs and expenses). Further,  
23 the Court finds that the amounts requested are comparable to  
24 reimbursements in similar cases. See *In re Immune Response Sec. Litig.*,  
25 497 F. Supp. 2d 1166, 1173-74 (S.D. Cal. 2007) (finding that lead plaintiff's  
26 \$40,000 reimbursement request was "fair and reasonable").



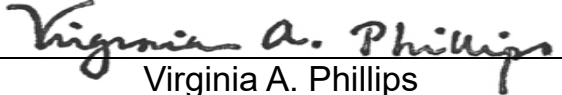
1  
2 Accordingly, the Court **APPROVES** reimbursements of costs of  
3 \$14,100 to Lead Plaintiff Zhibin Zhang, and \$18,000 each for Lead Plaintiffs  
4 Huaiyu Zheng and Abdul Baker.

5  
6 **IV. CONCLUSION**

7 For the reasons stated above, the Court **GRANTS** the Motion for Final  
8 Approval of the Settlement and **GRANTS** the Motion for Award of Attorneys'  
9 Fees, Expenses, and Reimbursement to Lead Plaintiffs. It awards  
10 attorneys' fees in the amount of 25% of the Settlement Fund (\$1,750,000),  
11 reimbursement of litigation costs to Lead Counsel in the amount of  
12 \$136,142.47, reimbursements of fees and expenses to Strategic Claims  
13 Services in the amount of \$53,610.21, and reimbursements of costs and  
14 expenses to Lead Plaintiffs in the amount of \$14,100 to Lead Plaintiff Zhibin  
15 Zhang, and \$18,000 each for Lead Plaintiffs Huaiyu Zheng and Abdul Baker.

16  
17 **IT IS SO ORDERED.**

18  
19 Dated: 12/13/22

  
Virginia A. Phillips  
Senior United States District Judge