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Co-Lead Counsel for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE MAXAR TECHNOLOGIES, INC. SHAREHOLDER LITIGATION	Case No. 19CV357070
	CLASS ACTION
This Document Relates To:	**PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES TO CO-LEAD COUNSEL AND SERVICE AWARD TO CLASS REPRESENTATIVE**
ALL ACTIONS	Date Action Filed: Oct. 21, 2019 Dept. 1 Judge: Hon. Sunil R. Kulkarni Hearing: Dec. 7, 2023, 1:30 p.m.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 7, 2023, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 1, the Courtroom of the Honorable Sunil R. Kulkarni, at the Superior Court of California, County of Santa Clara, 191 North First Street, San Jose, California, Plaintiff, by and through Co-Lead Counsel, will, and hereby does, move for entry of an order: (i) awarding attorneys' fees; (ii) awarding reimbursement of expenses incurred in prosecuting the Action; and (iii) awarding Plaintiff compensation for his time and service representing the Class in the Action. This motion is based upon the incorporated Memorandum of Points and Authorities in Support of Plaintiff's Motion for Award of Attorneys' Fees and Expenses to Co-Lead Counsel and Service Award to Class Representative; the Joint Declaration of Adam E. Polk and David W. Hall in Support of Motions for Final Approval of Settlement and Plan of Allocation, and for Award of Attorneys' Fees and Expenses to Co-Lead Counsel and Service Award to Class Representative, submitted herewith ("Joint Decl."); the Declaration of David W. Hall ("Hall Decl."); the Declaration of Adam E. Polk ("Polk Decl."); the Declaration of Eric Nordskog Regarding Settlement Notice Administration ("Nordskog Decl."); all other pleadings and matters of record; and such additional evidence or argument as may be presented in support of the motion.

DATED: August 14, 2023

Respectfully submitted,

By: */s/ Adam E. Polk*

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Co-Lead Counsel for Plaintiff and the Class

I. INTRODUCTION

The all-cash Settlement of $36,500,000 that Plaintiff and Co-Lead Counsel negotiated to resolve this complex securities class action against Maxar Technologies, Inc. and other Defendants is the product of extremely hard-fought and high-risk litigation, and represents an extraordinary result for the Class.[1] For over three and a half years, Plaintiff and Co-Lead Counsel relentlessly prosecuted this Action on behalf of the Class, overcoming numerous motions, securing class certification, conducting voluminous discovery—including, *inter alia*, 20 depositions, four informal discovery conferences, international letters rogatory, two motions to compel, a motion to quash intrusive discovery served on Co-Lead Counsel's law firms, and the exchange of complex expert reports—and engaging in lengthy and adversarial settlement negotiations that culminated in the Settlement before the Court for final approval. The $36.5 million Settlement constitutes approximately 40% to 65% of the Class's estimated recoverable damages, vastly exceeding recoveries in similar securities class actions. The risks, costs, and duration of continued litigation make this recovery especially favorable. Absent settlement, this litigation likely would have gone on for years and Defendants could well have prevailed. By any reasonable measure, the Settlement represents an exceptional recovery.

Plaintiff Michael McCurdy ("Plaintiff" or "Class Representative") now respectfully requests an award of $10,000 in recognition of his service on behalf of the Class. As detailed in his previously submitted declaration, without his efforts in bringing and assisting with the prosecution of this Action, the Settlement would not have been possible. *See* Declaration of Michael McCurdy in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("McCurdy Decl.").

Co-Lead Counsel respectfully request an award of attorneys' fees in the amount of $12,775,000 (35% of the Settlement Amount), as well as reimbursement of the litigation expenses they reasonably incurred in the amount of $754,467.91. Mindful of the Court's instruction in granting

[1] Unless otherwise defined, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement ("Settlement"), or in the Joint Declaration of Adam E. Polk and David W. Hall in Support of Motions for Final Approval of Settlement and Plan of Allocation, and for Award of Attorneys' Fees and Expenses to Co-Lead Counsel and Service Award to Class Representative, submitted herewith ("Joint Declaration" or "Joint Decl.").

preliminary approval that "Plaintiff's counsel can submit for the Court's review evidentiary support for a higher award than 30%," Co-Lead Counsel respectfully submit comprehensive declarations detailing the enormous (and atypical) amount of work performed to prosecute this Action and the significant risks of total non-recovery (and thus non-payment for their services) they faced at every turn, including, for example, hurdles in successfully proving liability, establishing damages to the Class, and overcoming Defendants' affirmative defenses regarding the statute of limitations and negative causation. As detailed in the Joint Declaration, Polk Declaration, and Hall Declaration, Co-Lead Counsel reasonably expended over 10,000 hours of attorney time (equating to a total lodestar value only slightly less than the requested fee award), as well as $754,467.91 in litigation expenses, without compensation. After over three-and-a-half years of difficult litigation, Co-Lead Counsel's efforts ultimately resulted in an outstanding $36.5 million Settlement that outperforms the vast majority of similar securities class action settlements. Notably, while the August 28, 2023 deadline for Class members to object to the requested awards has not yet passed, to date not a single Class Member has objected to the requested attorneys' fee and expense award or the requested service award (which were disclosed to all Class members in the Notice that each received).

The requested awards are reasonable under the applicable standards and fall within the range of awards approved by California courts in similar matters. Co-Lead Counsel submit that they are warranted under the circumstances of this case, as explained in greater detail below.

II. OVERVIEW OF CO-LEAD COUNSEL'S WORK

From the pre-suit investigation through settlement, this litigation posed significant risk and required substantial investments of attorney time to effectively prosecute. To say the Action was hard fought would be an understatement. Co-Lead Counsel, *inter alia*, overcame a motion to stay and a demurrer, defended Plaintiff's deposition, certified the Class, analyzed voluminous documents produced by Defendants and third parties, and performed complex expert work. Co-Lead Counsel engaged in countless meet-and-confers on discovery, participated in four informal discovery conferences with the Court, moved to compel twice, opposed Defendants' efforts to probe into Co-Lead Counsel's investigative files and work product, prepared for and took 20 depositions,

participated in three extensive mediation sessions, retained and consulted with highly regarded experts regarding an array of complex liability and damages issues, and exchanged expert reports with the Defendants. While the Joint Declaration provides greater detail, highlights of Co-Lead Counsel's work appear below:

- Thoroughly investigated the facts and circumstances giving rise to this litigation including by conducting an extensive pre-suit investigation of Defendants' conduct in connection with the Merger and the claims alleged in this Action and continued their investigation over the next five years. This included, *inter alia*, analyzing public filings, analyst reports, press releases, and media concerning Defendants and third parties and researching the applicable law with respect to potential claims against Defendants and the potential defenses thereto.
- Drafted a detailed initial complaint and a comprehensive amended complaint.
- Successfully opposed Defendants' motion to stay this action in favor of a distinct federal open-market fraud action, *Oregon Laborers Employers Pension Trust Fund et al v. Maxar Technologies Inc. et al.*, No. 1:19-cv-00124-WJM-SKC (D. Colo.) (the "Federal Action").
- Successfully opposed Defendants' demurrer to the operative Complaint.
- Aggressively pursued extensive discovery and reviewed hundreds of thousands of pages of documents and analyzed highly complex accounting guidance. Plaintiff crafted targeted written discovery requests resulting in Defendants producing over 584,000 pages of documents. Plaintiff sought and obtained written and deposition discovery from ten nonparties, including from foreign entities by means of letters rogatory, and those nonparties collectively produced over 41,000 pages of documents.
- Participated in four informal discovery conferences with the Court, filed two motions to compel, and successfully sought an order quashing an intrusive subpoena issued to Co-Lead Counsel's law firms.
- Researched and briefed an array of issues related to class certification, defended Plaintiff's deposition in July 2021, and secured an order certifying the class.
- Deposed 20 fact witnesses between April and September 2022.
- Retained expert consultants to analyze numerous issues, including but not limited to damages, causation, tracing, and IFRS accounting issues, served four opening expert reports, and researched the applicable law with respect to the claims of Plaintiff and the Class against Defendants and the potential defenses thereto.
- Researched and responded to the numerous and complex expert reports, exhibits, and arguments proffered formally and informally by Defendants, and researched and analyzed the applicable law with respect to the admissibility of Defendants' anticipated expert testimony, as well as the potential applicability of Defendants' expert opinions to the claims of Plaintiff and the Class against Defendants and the potential defenses thereto.
- Participated in three full-day mediations with the Honorable Layn R. Phillips (Ret.) and/or Gregory P. Lindstrom, and prepared detailed mediation statements and exhibits outlining Plaintiff's positions on issues of fact and law.

See Joint Decl., ¶¶ 6-7, 15-20, 25-35, 40-67, 72-73, 85-150, 152-53.

III. THE REQUESTED SERVICE AWARD SHOULD BE APPROVED

Class Representative Michael McCurdy respectfully seeks an award of $10,000 in recognition of his representation of the Class. Such an award is reasonable and well-deserved because he took the initiative to retain counsel and bring the Action, and then assisted his counsel and otherwise devoted considerable time to advancing and protecting the interests of the Class during the litigation. As set forth in his declaration, filed in connection with preliminary approval, Mr. McCurdy, for example, reviewed pleadings and Court orders, responded to discovery, provided deposition testimony, and discussed settlement negotiations with Co-Lead Counsel. McCurdy Decl., ¶¶ 3-4. Mr. McCurdy performed a public service by stepping forward and representing the Class over several years, and without his efforts the Settlement would not have been possible.

The requested service award of $10,000 is appropriate under applicable precedents and should be approved in this case. *See In re Sunrun Inc. S'holder Litig.*, No. CIV538215, slip op. at 6 (San Mateo Super. Ct. Dec. 14, 2018) (awarding plaintiffs $16,000 and $15,000); *In re Ooma, Inc. S'holder Litig.*, No. CIV536959, slip op. at 6 (San Mateo Super. Ct. Oct. 18, 2019) ($10,000); *Chicago Laborers Pension Fund v. Alibaba Grp. Holding Ltd.*, No. CIV535692, slip op. at 6 (San Mateo Super. Ct. May 17, 2019) ($12,000 and $20,000). There has been no objection to this request.

IV. THE REQUESTED ATTORNEYS' FEE AWARD TO CO-LEAD COUNSEL IS REASONABLE AND SHOULD BE APPROVED

A. The Court Should Award Fees Using the Percentage-of-the-Fund Method

When litigation results a common fund for the benefit of a plaintiff and others, to avoid unjust enrichment, the court may award plaintiff's counsel their reasonable fees and expenses out of the fund. The California Supreme Court has affirmed "the historic power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977); *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 27 (2000).[2] As the Court held:

[2] Unless otherwise noted, internal citations are omitted and emphasis is added throughout.

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

Laffitte v. Robert Half Int'l Inc., 1 Cal. 5th 480, 503 (2016). The Court in *Laffitte* recognized several advantages of using the percentage method, including the "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel . . . ." *Id.*

B. The Requested Fee of 35% of the Settlement Amount Is Reasonable

Empirical studies have shown that "fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (citation omitted). As explained below, the 35% fee requested here, though modestly above that one-third "average," is reasonable and appropriate in this case and should be awarded in the Court's discretion.

To determine the reasonableness of a fee request, California courts typically consider the following "basic factors": (1) the result obtained; (2) the time and labor required; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *See Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996). However, no rigid formula applies. *Natural Gas Anti-Trust Cases*, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006); *People ex rel. Dep't of Transp. v. Yuki*, 31 Cal. App. 4th 1754, 1771 (1995); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (reaction of the class also is a factor to be considered). Each of these factors firmly supports the requested fee award.

1. The Result Achieved

The result achieved is a key consideration in awarding a reasonable fee. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Omnivision*, 559

F. Supp. 2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award."). Here, the $36,500,000 Settlement Amount recovered for the Class by the efforts of Co-Lead Counsel is a significant accomplishment, particularly given the risks of proving liability and damages while overcoming a barrage of complex affirmative defenses, and the similarly vigorous efforts of Defendants, who were represented by highly capable counsel. The fund will deliver an immediate and certain recovery for Class Members without the risk, expense, and delay associated with completing expert discovery, summary judgment, trial, and appeals.

The Settlement is exceptional in comparison to the average securities class action settlement: the approximately 40% to 65% of estimated recoverable damages here far exceeds the median recovery of 8.7% found in a recent study of similar Securities Act settlements between 2013 and 2022. *See* Joint Decl., ¶ 158 & Ex. A at 8. The $36.5 million Settlement is also an exceptional result compared to the results achieved in related actions against Maxar in Canada and in the Federal Action. In Canada, the claim was dismissed in full and so those Canadian plaintiffs recovered nothing. *See* Joint Decl., ¶¶ 165-66. Additionally, the $36.5 million Settlement here compares favorably with the $27 million settlement obtained in the Federal Action against Maxar, *Oregon Laborers Employers Pension Trust Fund, et al. v. Maxar Technologies Inc.*, No. 1:19-cv-00124-WJM-SKC (D. Colo.). *See* Joint Decl., ¶¶ 165, 167. Not only is this Settlement 35% larger in its absolute amount, but the estimated 40% to 65% of recoverable damages far exceeds the estimated 13% to 15% of recoverable damages that Co-Lead Counsel believes were achieved in the federal settlement. *See* Joint Decl., ¶ 167. The comparative strength of the Settlement here is the product of Plaintiff and Co-Lead Counsel's refusal to settle early, their investment of the substantial time and money needed to overcome the complexities and more acute risks presented by later stages of litigation (to which most other similar cases do not progress prior to settling), and their performance of the all-consuming work necessary to best position the case for success at trial.

The $36.5 million settlement achieved here is also exceptional compared to the results achieved in similar stock-for-stock merger cases. For example, *Wolther v. Maheshwari (In re Veeco)*, Case No. 18CV329690 (Santa Clara Super. Ct.), was a similar Securities Act class action litigated

before this Court, and involving the same defense counsel. *See* Joint Decl., ¶ 168. That action settled shortly after class certification, without full discovery and no expert disclosures, for $15 million, which amounted to between 15.6% and 18.8% of estimated damages (which were greater than those at issue in this case). *See id*. Here, Co-Lead Counsel took on far more risk, and invested far more time and resources—and it paid off for the Class with not only a greater absolute recovery on lower estimated damages, but indeed by recovering a much higher 40% to 65% of estimated recoverable damages. By every metric, the results achieved by Plaintiff and Co-Lead Counsel far exceed the outcome in *Veeco*.

Similarly, the $36.5 million settlement is exceptional relative to securities settlements based on analyses conducted by Cornerstone Research. For example, in Securities Act cases generally, the average settlement in 2022 was $7.3 million. *See* Joint Decl., ¶ 159 & Ex. A at 7. Here, the Settlement that Plaintiff secured is five times larger. Cornerstone Research also estimated that the median settlement in securities cases generally in 2022 was $13 million—three times less than the consideration obtained for the Class in this case. *See* Joint Decl., ¶ 160 & Ex. A at 1. Of further significance, Cornerstone Research estimated that the median settlement in securities cases where plaintiff was not an institutional investor, such as a pension fund, was just $5 million. *See* Joint Decl., ¶ 161 & Ex. A at 12. Here, Plaintiff Michael McCurdy, an individual investor, secured a settlement seven times greater than the median securities settlement obtained by a non-institutional plaintiff. *Id*.

Accordingly, the result achieved by the Settlement weighs heavily in favor of the reasonableness of the 35% fee requested by Co-Lead Counsel.

2. The Time and Effort Required

The time and effort required to achieve the Settlement also confirms the reasonableness of the requested fee award. Following their pre-suit investigation, Co-Lead Counsel investigated and prosecuted this litigation for over three and a half years in the face of Defendants' strong defenses. Defendants have maintained throughout this case that Plaintiff's claims are without merit and time-barred. Indeed, Defendants have insisted that the financial statements in Maxar's Offering Materials were not materially false or misleading. As detailed above, Defendants' persistent defense included

a demurrer, a motion to stay, and expert reports. *See* Joint Decl., ¶¶ 26-35, 140. Discovery was not straightforward but instead involved hundreds of thousands of pages of documents and complex accounting materials, 20 fact depositions, and multiple non-parties across the country and internationally. Co-Lead Counsel held countless meet-and-confers concerning discovery matters. We also briefed or argued four informal discovery conferences with the Court, were forced to litigate numerous motions to compel (including an eleventh-hour defense motion to compel which was functionally a motion for summary judgment or motion in *limine*), and were forced to oppose enforcement of subpoenas seeking to invade Co-Lead Counsel's files. Further complicating discovery in this matter, Co-Lead Counsel undertook extensive efforts to coordinate with Plaintiff in the Federal Action. *See id*. at ¶¶ 30, 37, 56. Without Co-Lead Counsel's steadfast work on behalf of the Class, the $36.5 million Settlement could not have been secured.

Although not required, a lodestar cross-check further shows the requested fee is reasonable. Lodestar is determined by multiplying the appropriate number of hours worked by the reasonable hourly rates of the attorneys and other professionals. *Serrano*, 20 Cal. 3d at 48-49. An appropriate fee award will generally be a multiple (*i.e.*, a ratio greater than one) of counsel's lodestar because "the unadorned lodestar reflects the general local hourly rate for a fee bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001). "Multipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001), *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018); *see Chavez*, 162 Cal. App. 4th at 61 (2.5 multiplier; "lodestar enhancement based on 'quality of representation' by definition involves consideration not captured by counsel's hourly rates.").

Courts applying the lodestar approach consider whether rates are "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). Co-Lead Counsel's rates are typical in their prevailing markets for comparable legal services. *See Fleming v. Impax Labs. Inc.*, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (approving rates of up to $1,325 for partners); *Hope Med.*

Enters., Inc. v. Fagron Compounding Serv., LLC, 2022 WL 826903, at *3 (C.D. Cal. Mar. 14, 2022). Courts have consistently approved Co-Lead Counsel's rates, which are set based on conditions in the legal marketplace for comparable services. *See* Polk Decl., ¶¶ 5-6; Hall Decl., ¶ 4.

Reflecting the panoply of challenging tasks, Co-Lead Counsel reasonably expended a total of 13,675.60 hours prosecuting and resolving this Action. Based on the hourly rates reasonably charged for Co-Lead Counsel's services, Co-Lead Counsel's lodestar, *i.e.*, the value of the time expended by Co-Lead Counsel on the Action, is $9,826,881.50.[3] Thus, the requested fee represents a multiple of just **1.3 times** Co-Lead Counsel's lodestar, which is well within the range of multipliers that courts in California and nationwide have found reasonable. *See, e.g.*, *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar enhancement of "two, three, four or otherwise"); *Lealao*, 82 Cal. App. 4th at 24, 52 (finding trial court abused its discretion by refusing to enhance lodestar with multiplier when awarding fees, opining that a multiplier in excess of 3.5 was reasonable and not ruling out class counsel's original request for a multiplier of 8). Because the requested fee does not "produce[] an imputed multiplier far outside the normal range," and in fact produces a multiplier below the normal range, *Laffitte*, 1 Cal. 5th at 504,[4] the Court should not hesitate in finding the requested 35% fee reasonable.

Accordingly, the time and efforts required to achieve the Settlement weighs heavily in favor of the reasonableness of the 35% fee requested by Co-Lead Counsel.

3. The Contingent Nature of the Case, Risk of Loss, and Delay in Payment to Co-Lead Counsel

Co-Lead Counsel undertook this litigation on a fully contingent basis, assuming the risk that there would be no recovery, leaving them uncompensated. Unlike counsel for Defendants, who are

[3] A detailed summary of the time and expenses is set forth in the accompanying Joint Declaration.

[4] The Court also "note[d] that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but instead have used information on attorney time to 'focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.' . . . The trial court in the present case exercised its discretion in this manner, performing the cross-check using counsel declarations summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task." *Laffitte*, 1 Cal. 5th at 505.

ordinarily paid an hourly rate and reimbursed their expenses on a monthly basis, Co-Lead Counsel have not been compensated for any time or expense from the pre-investigation of this suit or since the initial complaint was filed in October 2019. And their efforts for the Class precluded other work.

Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (the level of risk taken by plaintiff's counsel is '"perhaps the foremost' factor" in determining what percentage is appropriate). This makes sense because in the legal marketplace, a lawyer who takes a case on contingency reasonably expects a higher fee than a lawyer who is paid, win or lose, as the case proceeds. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) ("'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award"). The court in *Cazares v. Saenz*, 208 Cal. App. 3d 279, 288 (1989), explained:

> In addition to compensation for the legal services rendered, there is the *raison d'etre* for the contingent fee: the contingency. The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success should be twice the amount of a noncontingent fee for the same case. . . . [¶] [E]ven putting aside the contingent nature of the fee, the lawyer under such an arrangement agrees to delay receiving his fee until the conclusion of the case, which is often years in the future. The lawyer in effect finances the case for the client during the pendency of the lawsuit.

As detailed further in the Joint Declaration, Plaintiff faced substantial risks related to establishing liability and damages and overcoming affirmative defenses, such as the statute of limitations and negative causation, as Defendants mounted a vigorous defense every step of the way. *See* Joint Decl., ¶¶ 169-81; *see also Martinelli v. Johnson & Johnson*, 2022 WL 4123874, at *9 (E.D. Cal. Sept. 9, 2022) (33.3% award justified based on contingent risk assumed by counsel in case involving "extensive discovery" and "contested motion practice"). While Plaintiff believes his claims have merit, success at trial and in a post-trial appeal was far from certain. Defendants would have challenged the falsity or materiality of the challenged statements, and even assuming a liability finding, there was no guarantee Plaintiff would prevail before a jury on the highly complex issues of

accounting, statute of limitations, negative causation, and damages. *See* Joint Decl., ¶¶ 170-83.

For example, at summary judgment and trial, Defendants' experts likely would have asserted a negative causation defense and argued that all of the losses sustained by the Class were due to factors unrelated to Defendants' alleged false and misleading statements in the Offering Documents, eliminating any potential recovery. These risks were particularly acute in this case, for unlike most Securities Act actions following a merger, here certain Defendants and related entities announced a go-private tender offer at near the same offering price as the Merger at the heart of this Litigation. While the Parties disputed the relevance and impact of these unusual developments upon liability and damages, Plaintiff were forced to properly assess the risk that these uncommon circumstances could offset, extinguish, or otherwise result in the Class receiving a much smaller recovery if litigation were to proceed. Joint Decl., ¶ 179. The parties also hotly contested to what extent a particular stock decline was or was not attributable to the alleged misrepresentations and omissions and to what extent, if any, confounding information in connection with certain dates and declines would need to be disaggregated. Joint Decl., ¶ 180. Plaintiff thus confronted a substantial risk that the finder of fact would agree with Defendants that no damages could be linked to the statements or omissions at issue, or that damages were much lower than what Plaintiff claimed. *See In re Tesla Inc., Sec. Litig.,* 2023 WL 4032010, at *10 (N.D. Cal. June 14, 2023) (rejecting motion for new trial given "substantial evidence from which the jury could have concluded that Plaintiff had not established loss causation."); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) ("[I]t is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986). When the Parties finally arrived at their Settlement, both Co-Lead Counsel and Defendants had retained renowned experts who would offer contradictory testimony regarding the possible causes for the price movement in Maxar's securities and the existence and amount of damages. Joint Decl., ¶ 181.

Even assuming Plaintiff were to overcome Defendants' intended motions for summary judgment or adjudication, and the case proceeded to trial, Plaintiff still would face severe risk that the

jury might be confused or not convinced by the complex accounting concepts and evidence that would have been central to the trial. *See, e.g.*, Corrected Final Judgment, *In re JDS Uniphase Corp. Sec. Litig.*, No. 02-cv-01486, Dkt. No. 1422 (N.D. Cal. Mar. 28, 2008) (case dismissed; judgment entered in favor of Defendants after jury rejected plaintiffs' claims of federal securities laws violations). Moreover, even if the Class were to prevail on any or all the alleged claims at summary judgment and trial, and were awarded full estimated recoverable damages, Defendants would almost certainly appeal any judgment. The appeals process could take years, during which time the Class would receive no distribution at all. Of course, any appeal also would raise a risk of reversal, in which case a victory at the trial court level could nonetheless result in no recovery. *See* Joint Decl., ¶¶ 184-86; *see also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 423 (7th Cir. 2015).

Notwithstanding these significant risks, Co-Lead Counsel committed the necessary time and resources to prosecute the case nearly to the point of trial, incurring more than 13,675.60 hours of attorney and other professional time and more than $754,467.91 in expenses. These resources were critical to the successful resolution of the case. While Plaintiff and his counsel believe that the Class would prevail at trial, the sheer complexity of this case made the outcome highly uncertain. The contingent nature of the representation and the sizable financial risks borne by Co-Lead Counsel support the percentage fee requested. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming ruling that granted defendants' post-trial motion based on failure to prove loss causation, thereby overturning a jury verdict in plaintiff's favor); *In re Xcel Energy, Inc. Sec., Deriv. & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) ("Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy.").

4. Awards in Similar Cases

Co-Lead Counsel's request for a fee award of 35% of the Settlement Amount falls within the parameters of percentage fees awarded in other class action litigation in California, including in Securities Act cases. Courts entering judgment in cases that achieved superior results have not hesitated to award 35% or a similar percentage in fees. *See, e.g.*, *Lou v. Zenith*, No. BC015017, slip

op. at 1 (L.A. Super. Ct. Sept. 17, 1993) (approving 35% fee award); *Goldman v. FarWest Fin. Corp.*, No. C-754698, slip op. at 6 (L.A. Super. Ct. Nov. 30, 1993) (35%); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999) (35.1%); *Gaskill v. Gordon*, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998) (finding that 33% is typical but awarding 38% of the fund); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (36%); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (33.8%).[5] Accordingly, the fees awarded in similar cases weigh heavily in favor of the reasonableness of the 35% fee requested by Co-Lead Counsel.

5. Experience, Reputation, Ability, and Quality of Counsel, and the Skill They Displayed in Litigation

The skill, experience, reputation, and ability of the attorneys who prosecuted this case further support the requested award. Given the challenges in proving Defendants' liability and consequent damages to the Class, the large Settlement recovery is the best indicator of counsel's skill. *See Zepada v. PayPal, Inc.*, 2017 WL 1113293, at *20 (N.D. Cal. Mar. 24, 2017) (class counsel's expertise allowed for a result that "would have been unlikely if entrusted to counsel of lesser experience or capability" given the "substantive and procedural complexities" and the "contentious nature" of the case); *Moreyra v. Fresenius Med. Care Holdings, Inc.*, 2013 WL 12248139, at *3 (C.D. Cal. Aug. 7, 2013) (the result obtained is "[t]he single clearest factor reflecting the quality of class counsels' services") (citation omitted). Co-Lead Counsel have earned reputations for excellence through many years of prosecuting complex civil actions, particularly securities class actions. As set forth in the firm resumes submitted with Plaintiff's preliminary approval motion (Co-Lead Counsel's law firm resumes are attached as exhibits to each firm's declaration in support of motion for an award of attorneys' fees and expenses), Co-Lead Counsel's application of experience, resources, tenacity, and

[5] California courts also routinely award percentage fees of one-third. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480 (2016); *Snap Inc. Sec. Cases*, No. JCCP 4960, slip op. at 6 (L.A. Super. Ct. Apr. 14, 2021); *Beaver Cnty. Emps. Ret. Fund v. Cyan, Inc.*, No. CGC-14-538355, slip op. at 3 (S.F. Super. Ct. Aug. 8, 2019); *In re Avalanche Biotechs., Inc. S'holder Litig.*, No. CIV536488, slip op. at 7 (San Mateo Super. Ct. Jan. 19, 2018); *In re Menlo Therapeutics Inc. Sec. Litig.*, No. 18CIV06049, slip op. at 6 (San Mateo Super Ct. Aug. 14, 2020); *In re Sunrun Inc. S'holder Litig.*, No. CIV538215, slip op. at 6 (San Mateo Super. Ct. Dec. 14, 2018); *W. Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. at 7 (San Diego Super. Ct. June 28, 2012).

talent has brought about significant recoveries throughout the country on behalf of their clients. *See* Joint Decl., ¶ 191.

The quality of opposing counsel is also relevant in assessing the quality of Co-Lead Counsel's work. *See, e.g.*, *Andrews v. Plains All Am. Pipeline L.P.*, 2022 WL 4453864, at *3 (C.D. Cal. Sept. 20, 2022) ("[E]specially when considering that Defendants were represented by a prominent litigation firm, Class Counsel's ability to get the case this far along evinces their high quality of work."); *Wing v. Asarco Inc.*, 114 F.3d 986, 988–89 (9th Cir. 1997) ("quality of the [defendant's] opposition" supported the fee award). Co-Lead Counsel faced experienced and skilled counsel, first from Latham & Watkins LLP and then from O'Melveny & Myers LLP, both prominent firms with well-deserved reputations for effective advocacy. Co-Lead Counsel rose to the challenge against these knowledgeable and experienced opposing counsel both in litigation and in settlement negotiations.

Thus, the experience, reputation, and performance of Co-Lead Counsel also weigh heavily in favor of the reasonableness of a 35% fee.

6. Continuing Obligations of Co-Lead Counsel

Co-Lead Counsel's work will not end with the approval of the Settlement. Continuing work will include supervising the claims process, answering shareholder calls and, if necessary, litigating appeals. *See Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1166 (C.D. Cal. 2010) (class counsel's ongoing work further supported reasonableness of fee). Accordingly, this factor also weights in favor of the reasonableness of the 35% fee requested by Co-Lead Counsel.

7. The Reaction of the Class

While the August 28, 2023 deadline for objecting to counsel's fee and expenses has not passed, to date, Co-Lead Counsel are not aware of a single Class Member who has objected to the fee and expense request and no opt-outs have been received. *See* Nordskog Decl., ¶¶ 13-14.[6] Only a single individual requested exclusion in response to the class certification notice. *Id.* at ¶ 13. "The

[6] To the extent any objections to the fee and expense award are received, Co-Lead Counsel will address them in their reply memorandum, which will be filed on or before November 30, 2023, in accordance with this Court's Preliminary Approval Order.

absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Heritage Bond*, 2005 WL 1594403, at *21.

In sum, the requested 35% fee here, while modestly above the one-third "average," *see Chavez*, 162 Cal. App. 4th at 66 n.11, is reasonable and appropriate given the high-risk nature of this litigation, the volume and quality of the work performed, and the strength of the Settlement's terms.

V. THE REQUESTED EXPENSE AWARD TO CO-LEAD COUNSEL IS REASONABLE AND SHOULD BE APPROVED

"Attorneys who create a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class." *Vincent v. Reser*, No. 11-03572 CRB, 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013); *see Laffitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 871 (2014), *aff'd*, 1 Cal. 5th 480 (2016); *Rider v. Cnty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). Costs are compensable if they are of the type typically billed by attorneys to paying clients. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Co-Lead Counsel here request reimbursement of expenses and charges in the amount of $754,467.91. As set forth in the Joint Declaration, counsel's expenses primarily include: (1) expert witness and consultant fees; (2) mediators' fees; (3) online legal and financial research; (4) legal fees for Canadian and out-of-state counsel who assisted with third-party discovery; (5) transportation, meals, and hotels; (6) photocopying; and (7) e-discovery database hosting. The expenses for which Co-Lead Counsel seek payment are those which are normally charged to paying clients in addition to hourly fees. *See Harris*, 24 F.3d at 19. These expenses were necessary to the successful prosecution of the litigation, are reasonable in amount, and hence should be reimbursed.

VI. CONCLUSION

For the foregoing reasons, the requested awards are reasonable and should be approved.

DATED: August 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2023, I served the foregoing document on all counsel on record through Class Action Research e-filing system.

/s/ Adam E. Polk