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22 *Co-Lead Counsel for Plaintiffs*

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA
25 WESTERN DIVISION

26 IN RE BANC OF CALIFORNIA,
27 INC. STOCKHOLDER
28 DERIVATIVE LITIGATION

) Lead Case No. 8:19-cv-621-DMG-DFMx
)
) (Consolidated with Case Nos. 19-cv-
) 1152 and 19-cv-05488)

29 This Document Relates To:

30 ALL ACTIONS.

) DECLARATION OF WILLEM F.
) JONCKHEER IN SUPPORT OF
) MOTION FOR FINAL APPROVAL OF
) DERIVATIVE SETTLEMENT AND
) FOR AN AWARD OF ATTORNEYS'
) FEES, REIMBURSEMENT OF
) EXPENSES, AND SERVICE AWARDS

31) Date: December 19, 2021
32) Time: 9:30 a.m.
33) Judge: Hon. Dolly M. Gee
34) Ctrm: 8C, 8th Floor

1 I, Willem F. Jonckheer, declare as follows:

2 1. I am a partner with Schubert Jonckheer & Kolbe LLP ("SJK"), Co-Lead
3 Counsel for plaintiffs Kristopher Gordon and Colleen Witmer. I am duly licensed to
4 practice law in the State of California and admitted to practice before this Court. I submit
5 this declaration in support of Plaintiffs' Motions for (a) Final Approval of Derivative
6 Settlement and (b) an Award of Attorneys' Fees, Reimbursement of Expenses and Service
7 Awards. I have personal knowledge of the matters stated herein and, should I be called
8 upon, I could and would testify competently thereto.

9 2. On September 27, 2021, the Court entered the Amended Preliminary
10 Approval Order preliminarily approving the Settlement and approving the form and
11 manner of the proposed Notice and Summary Notice to stockholders.¹ Pursuant to the terms
12 of the Stipulation, and in accordance with the Amended Preliminary Approval Order, (i)
13 on October 8, 2021, nominal defendant Banc of California, Inc. ("Banc") filed with the
14 U.S. Securities and Exchange Commission ("SEC") a Form 8-K stating that a settlement
15 of the Action had been reached and that the Court had granted preliminary approval thereof,
16 attaching a copy of the Amended Stipulation of Settlement and the Notice; (b) on or about
17 October 8, 2021, Banc published a copy of the Summary Notice with Investor's Business
18 Daily. As of the date below, no objections have been received by Plaintiffs' Counsel.

19 3. The Notice and Summary Notice set forth, *inter alia*, the date and location of
20 the final Settlement Hearing, the history of the litigation, the Parties' contentions, the
21 reasons for the Settlement, the claims that will be released if the Settlement is approved,
22 the anticipated motion for an award of attorneys' fees and reimbursement of expenses to be
23 filed by Co-Lead Counsel by October 29, 2021, the procedure for objecting to the
24

25 ¹ All capitalized terms used herein shall have the same meanings as set forth in the
26 Amended Corrected Stipulation and Agreement of Settlement dated September 27, 2021
27 (ECF No. 127) and Memorandum of Points and Authorities in Support of Plaintiffs' Motion
28 for Final Approval of Derivative Settlement ("Final Approval Memorandum"), filed
concurrently herewith.

1 Settlement, including the requested attorneys' fee award and reimbursement of expenses,
2 and the deadline to object to the Settlement and the requested attorneys' fee award.

3 4. As discussed below, and in the Final Approval Memorandum, the Settlement
4 is an excellent result for Banc. As a result of Plaintiffs' Counsel's litigation efforts and the
5 Settlement, Banc has adopted changes to its corporate governance, which Banc's Board
6 acknowledges constitute a substantial benefit to Banc and its stockholders. Central among
7 the improvements are Banc's acknowledgment that Plaintiffs' litigation efforts were
8 substantial and material factors contributing to ongoing changes to Board composition,
9 including the appointment of new independent directors James A. Barker and Andrew Thau
10 to the Board, and the adoption of a new stand-alone whistleblower policy at Banc.

11 5. These reforms will materially improve Banc's corporate governance and
12 strengthen transparency and independent oversight, and are designed to make Banc's
13 fiduciaries more effective representatives of the stockholders after a tumultuous time.

14 6. As further discussed below, and for the reasons explained in the memorandum
15 of law in support of an award of attorneys' fees and expenses and service award ("Fee and
16 Expense Memorandum"), for achieving these reforms, Plaintiffs' Counsel are entitled to an
17 award of attorneys' fees and reimbursement of expenses under the substantial benefit
18 doctrine, pursuant to the factors applied in the Ninth Circuit.

19 7. This declaration sets forth: (a) the nature of the claims asserted in the Action
20 and the various complaints that were filed; (b) the principal proceedings to date, including
21 in the consolidated action; (c) the legal services provided by Plaintiffs' Counsel; (d) the
22 negotiations leading to the Settlement; (e) a description of the terms of the Settlement and
23 the reasons why the Settlement is fair, reasonable, and adequate, and in the best interests
24 of Banc and its stockholders; (f) certain information concerning the lodestar and expenses
25 incurred by Plaintiffs' Counsel; and (g) the reasons why Plaintiffs' requested fee and
26 expense award in the amount of \$1.5 million is fair and reasonable and should be approved.

27

28

1 **A. Factual Background.**

2 8. On October 18, 2016, a blog post by "Aurelius" entitled "BANC: Extensive
3 Ties to Notorious Fraudster Jason Galanis Make Shares Un-Investible" alleged a web of
4 improper relationships between Jason Galanis ("Galanis"), a Los Angeles financier and
5 convicted fraudster, and Banc's then-current senior managers (the "Aurelius Blog").

6 9. Banc publicly responded to the Aurelius Blog the same day, stating in a press
7 release that "[t]he Company's Board of Directors has been aware of matters relating to
8 Jason Galanis including certain claims he had made suggesting an affiliation with members
9 of the Company, its Board, and/or its Executive team. The Board, acting through its
10 Disinterested Directors, immediately initiated a thorough independent investigation led by
11 Winston & Strawn, and has received regular reports including related to regulatory and
12 governmental communications over the past year." Banc's press release went on to discredit
13 the allegations in the Aurelius Blog.

14 10. On or about October 27, 2016, Banc received an inquiry from its independent
15 auditor, KPMG LLP, raising concerns about allegations of "inappropriate relationships
16 with third parties" and "potential undisclosed related party relationships. The Board created
17 a Special Committee to investigate those concerns.

18 11. On January 23, 2017, Banc reported the Special Committee's conclusion that
19 the Galanis allegations as they related to Banc were not true. The Special Committee also
20 reported that the October 18, 2016 press release contained inaccurate statements.

21 12. The SEC also commenced an investigation around this time, captioned *In the*
22 *Matter of Banc of California*, Case No. NY-09592.

23 13. On January 23, 2017, the securities fraud class action *In re Banc of California*
24 *Securities Litigation*, Case No. SACV 17-00118 (C.D. Cal.) (the "Securities Action") was
25 filed. The Securities Action alleged that Banc, former Banc Chief Executive Officer
26 Steven A. Sugarman and former Banc Chief Financial Officer James J. McKinney made
27 false and misleading statements to Banc investors in connection with the allegations
28 reported in the Aurelius Blog. The Securities Action was settled in 2020.

1 **B. The Gordon Demand Futility Action.**

2 14. On September 26, 2017, plaintiff Gordon filed a stockholder derivative action
3 captioned *Gordon v. Sznewajs, et al.*, Case No. 8:17-cv-1678 (C.D. Cal.), alleging certain
4 individuals—who constituted a majority of Banc's Board at the time—breached their
5 fiduciary duties in connection with, among other things, the Board's response to the
6 allegations made in the Aurelius Blog, and an alleged web among directors of improper
7 relationships and conflicts of interest, as detailed in a wrongful termination lawsuit filed
8 against Banc by former executive Jeffrey T. Seabold ("Seabold") (the "*Gordon Demand*
9 *Futility Action*").

10 15. Gordon alleged he was excused from making a pre-litigation stockholder
11 demand to investigate the wrongdoing described in the *Gordon Demand Futility Action*
12 because a majority of the Board was conflicted and faced substantial personal liability for
13 the conduct described in the *Gordon Demand Futility Action*. By Order dated June 13,
14 2018, the Court granted Defendants' motions to dismiss the *Gordon Demand Futility*
15 *Action*, with leave to amend. On June 22, 2018, Gordon filed a notice of voluntary
16 dismissal of the *Gordon Demand Futility Action*.

17 **C. Plaintiffs' Litigation Demands Pursuant to Maryland Law.**

18 16. Meanwhile, on November 17, 2017, Witmer sent a written demand to Banc's
19 Board demanding the Board investigate and, if appropriate, pursue litigation relating to
20 facts substantially similar to those alleged in the *Gordon Demand Futility Action*, including
21 undisclosed relationships between certain of then-current top executives at Banc and
22 Galanis, other undisclosed conflicts of interest and related party transactions involving
23 members of the Board, and alleged accounting manipulations (the "*Witmer Demand*").

24 17. On January 8, 2018, Banc responded to the *Witmer Demand*, stating that the
25 Company would not initiate any investigation in response until the related, then-pending
26 *Gordon Demand Futility Action* was resolved.

27 18. On February 12, 2018, Witmer filed the stockholder derivative action
28 captioned *Witmer v. Sugarman, et al.*, Case No. 8:18-cv-00246 (C.D. Cal.) ("*First Witmer*

1 Demand Refused Action") alleging wrongful refusal of the Witmer Demand. By Order
2 dated August 23, 2018, the Court granted Banc's motion to dismiss the First *Witmer*
3 Demand Refused Action.

4 19. On May 22, 2018, Donald Johnston sent a written demand to Banc's Board
5 demanding that the Board investigate, address, remedy and commence proceedings against
6 certain of the Company's current and former officers and directors for breach of fiduciary
7 duties, violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934 related
8 to the Company's internal controls and the alleged improper relationship between Banc's
9 then current top executives, its Board, and Galanis (the "Johnston Demand").

10 20. On July 3, 2018, after the *Gordon* Demand Futility Action was voluntarily
11 dismissed, Gordon sent a written demand to Banc's Board demanding that the Board
12 commence a good faith investigation into allegations of misconduct by certain current and
13 former officers and directors and requested the Board take appropriate steps to remedy the
14 identified breaches of fiduciary duty and remedy Banc's weak internal controls (the
15 "Gordon Demand").

16 21. On September 5, 2018, Johnston wrote to Banc requesting information
17 relating to the purported investigation by the Board into the stockholder demands.

18 22. On January 4, 2019, Banc responded separately to the Witmer Demand, the
19 Johnston Demand, and the Gordon Demand, and rejected each of them (the "Rejection
20 Letters"). The Rejection Letters stated that Banc had investigated the subject matters raised
21 in the demands and determined it would not be in the best interest of the Company to pursue
22 the claims alleged or implement any additional remedial measures at the time.

23 23. On January 24, 2019, Gordon wrote the Board requesting documents
24 demonstrating the Board's process and conclusions in reaching its decision to reject the
25 stockholders' demands. On February 25, 2019, Johnston wrote Banc similarly requesting
26 such books and records. Banc declined to produce the requested books and records.

1 **D. The Demand Refused Actions.**

2 24. On April 2, 2019, Gordon filed a stockholder derivative action in this Court
3 captioned *Gordon v. Bennett, et al.*, Case No. 8:19-cv-00621-DMG-DFM (the "*Gordon*
4 *Demand Refused Action*"), alleging Defendants violated their fiduciary duties in
5 connection with the misconduct described in the Gordon Demand and further alleging the
6 Board's decision to reject the demand was improper under Maryland law.

7 25. On June 10, 2019, Johnston also filed a stockholder derivative action in this
8 Court, captioned *Johnston v. Sznewajs, et al.*, Case No. 8:19-cv-01152-AG-DFMx,
9 similarly alleging breaches of fiduciary duty arising from substantially the same
10 misconduct as that alleged in the *Gordon Demand Refused Action* (the "*Johnston Demand*
11 *Refused Action*").

12 26. On June 24, 2019, Witmer filed a stockholder derivative action in this Court,
13 captioned *Witmer v. Sugarman, et al.*, Case No. 2:19-cv-05488-AG-DFMx, also alleging
14 misconduct substantially similar to that alleged in the *Gordon Demand Refused Action* and
15 the *Johnston Demand Refused Action* ("*Second Witmer Demand Refused Action*").

16 27. On September 23, 2019, Judge Andrew J. Guilford entered an order approving
17 the parties' stipulation to consolidate the *Gordon Demand Refused Action*, *Johnston*
18 *Demand Refused Action*, and the *Second Witmer Demand Refused Action* (the
19 consolidated action is referred to as the "*Action*"), and appointing Schubert Jonckheer &
20 Kolbe LLP and Robbins LLP as co-lead counsel. *See Gordon Demand Refused Action*,
21 ECF Nos. 56-57.

22 28. In or about October 2019, Plaintiffs' Counsel became aware of a lawsuit filed
23 on October 15, 2019 by former Banc CEO Sugarman and the Steven and Ainslee Sugarman
24 Living Trust against Banc and certain of its current and former officers and directors,
25 captioned *Sugarman, et al. v. Benett, et al.*, No. 19-STCV-36697 (Superior Court for the
26 County of Los Angeles). On November 15, 2019, Gordon, Johnston and Witmer
27 collectively sent another written litigation demand to Banc regarding additional potential
28 misconduct which had recently come to light in that lawsuit.

1 29. The November 15, 2019 litigation demand requested that the Board
2 investigate and take appropriate action to remedy, among other alleged wrongdoing,
3 potentially improper kickbacks, undisclosed conflicts of interest, and retaliation against
4 whistleblowers, and that when wrongdoing was directly reported internally to defendant
5 Karish, as a member of the Audit Committee, Karish failed to make any report or conduct
6 any follow up.

7 30. On November 22, 2019, Plaintiffs filed a Verified Consolidated Shareholder
8 Derivative Complaint ("Consolidated Complaint"). In the Consolidated Complaint,
9 Plaintiffs alleged that Banc's officers and directors made false and misleading statements
10 in connection with the Galanis allegations and Banc's related disclosures. Plaintiffs further
11 alleged that, based on Banc's own admissions in early 2017, Banc's internal controls
12 suffered from material weaknesses, which were the responsibility of the Board.

13 31. Based on the allegations made in wrongful termination lawsuits filed by
14 former executives of Banc, including Seabold and Heather Endresen, Plaintiffs further
15 alleged that Banc manipulated its financial disclosures, Banc's Board and management
16 suffered from undisclosed conflicts of interest, and there were improper workplace
17 activities at Banc. Plaintiffs alleged that their demands for Board action on these allegations
18 were wrongfully refused by the Board based on an insufficient and conflicted investigation.

19 32. On December 6, 2019, the parties submitted to the Court a stipulation (the
20 "December 6 Stipulation") that provided a briefing schedule for Defendants' anticipated
21 motions to dismiss the Action. On December 9, 2019, the Court entered an order approving
22 the December 6 Stipulation.

23 33. Shortly after the Court approved the December 6 Stipulation, the parties
24 commenced negotiations to settle the Action.

25 **E. The Settlement Negotiations.**

26 34. After the decision was made by the Parties to explore settlement, Plaintiffs'
27 Counsel requested from Banc and obtained Banc's confidential, internal policies reflecting
28 its relevant internal controls and policies. Plaintiffs' counsel thoroughly analyzed Banc's

1 corporate governance, reviewed industry best practices for similar financial institutions,
2 and then proposed a slate of thorough corporate governance reforms that could strengthen
3 the Company's internal controls and form a basis for a settlement of the Action.

4 35. The Parties thereafter engaged in extensive and protracted arm's-length
5 negotiations regarding the corporate governance reforms, which included numerous phone
6 calls and emails, and several settlement proposals and counterproposals over the course of
7 many months. As the negotiations progressed, the Parties regularly sought, and the Court
8 granted, extensions to the proposed briefing schedule regarding responses to the
9 Consolidated Complaint to accommodate the ongoing negotiations.

10 36. After significant and contentious arm's-length negotiations extending over
11 many months, the Parties reached agreement on the substantive corporate governance
12 terms of the proposed Settlement, which were memorialized in a Memorandum of
13 Understanding ("MOU") dated April 6, 2021.

14 37. After signing the MOU, the Parties commenced negotiations relating to the
15 attorneys' fees and expenses to be paid to Plaintiffs' Counsel in recognition of the benefits
16 conferred on Banc through the governance reforms, but no agreement could be reached.

17 38. The Parties agreed instead that, in connection with the Court approval process
18 required pursuant to Rule 23.1, Plaintiffs' Counsel would file a motion with the Court
19 requesting that the Court make an award to Plaintiffs' Counsel of attorneys' fees and
20 expenses in recognition of the benefits conferred upon Banc through the Settlement.

21 **F. The Settlement Terms.**

22 39. The Settlement confers substantial benefits on Banc through several corporate
23 governance reforms ("Reforms") which target the alleged wrongdoing.

24 40. **Credit for Two New Independent Directors:** Banc acknowledges that the
25 filing and maintenance of Plaintiffs' stockholder derivative actions, and the service of
26 Plaintiffs' litigation demands, were substantial and material factors contributing to ongoing
27 changes to the Board composition, including the recent appointment of two independent
28 directors, James A. Barker and Andrew Thau. These independent directors were appointed

1 to the Board in November 2019, just as defendant Halle Bennett's retirement became
2 effective.

3 **41. Formal Whistleblower Policy:** Banc agreed adopt a new stand-alone
4 comprehensive Whistleblower Policy ("Whistleblower Policy") that sets forth in one
5 document Banc's policies and procedures for employees to submit anonymous
6 whistleblower reports and how such reports will be addressed.

7 **42. Credit for Enhancements to Code of Ethics:** Banc acknowledges that the
8 filing and maintenance of Plaintiffs' stockholder derivative actions, and the service of
9 Plaintiffs' litigation demands, were substantial and material factors contributing to Banc's
10 decision to revise its Code of Ethics in the following ways: (1) Section 1.3 of the Code
11 (titled "Reporting Violations of the Code"), was amended to provide that reports under this
12 provision may also be made pursuant to the Whistleblower Hotline and to provide the
13 telephone and online reporting mechanisms provided by the Whistleblower Hotline; (2)
14 Section 3.2 (titled "Waivers") was amended to provide that (a) requests for waiver should
15 be directed through the General Counsel and (b) any waiver granted to directors or
16 executive officers, the reasons therefor, and any changes to the Code applicable to directors
17 or executive officers, shall be disclosed in a Form 8-K filed with the U.S. Securities and
18 Exchange Commission or posted to the Company's internet website.

19 **43. Mandatory Attendance at Shareholder Meetings:** Each member of the
20 Board shall attend each annual stockholder meeting in person or by videoconference,
21 teleconference, or other virtual means, unless he or she is unable to attend after reasonable,
22 good-faith efforts, and informs the Board of his or her reasons for not attending.

23 **44.** These Reforms, which are set forth in full in Exhibits A-B to the Amended
24 Stipulation, lay the foundation for restoring investor confidence in the Company going
25 forward. Indeed, as part of the Settlement, the Board of Banc acknowledges and agrees that
26 the Reforms confer substantial benefits on Banc.

27 **45.** In the Final Approval Memorandum filed herewith, Plaintiffs set forth the
28 legal and corporate governance authority recognizing the significance of these corporate

1 governance reforms. Weighed against the substantial risk that continued litigation would
2 yield no benefit for Banc, the recovery here is outstanding, and well within the range of
3 what is fair, reasonable, and adequate.

4 **G. The Settlement Merits Final Approval.**

5 46. The Settlement provides immediate and substantial benefits to Banc that
6 directly address the wrongdoing alleged and attempt to prevent a future recurrence thereof.
7 As discussed in the Final Approval Memorandum, it merits final approval pursuant to the
8 factors applied by the Ninth Circuit for evaluating settlements in representative actions like
9 this shareholder derivative action.

10 47. Although Plaintiffs' Counsel believe that the derivative claims are
11 meritorious, liability was by no means a foregone conclusion. Had Plaintiffs continued to
12 litigate, they would have faced several pre-trial motions designed to eliminate or curtail
13 their claims, including motions to dismiss for failing to adequately allege that their
14 demands were wrongfully refused. Even if Defendants' anticipated motions to dismiss
15 were denied, continued litigation would be extremely complex, costly, and of substantial
16 duration. And significant risks remained in getting past any subsequent motions for
17 summary judgment, and obtaining a favorable judgment after trial. Presuming liability was
18 established, the amount of recoverable damages would still have posed significant issues.
19 The Settlement eliminates these and other risks of continued litigation.

20 48. The Settlement merits final approval because: (a) the Settlement confers
21 substantial benefits on Banc in the form of corporate governance reforms, relief recognized
22 by Courts as forming a favorable and desirable basis for the settlement of stockholder
23 derivative claims; (b) Plaintiffs faced significant litigation risks, in particular Defendants'
24 anticipated motions to dismiss under Rules 23.1 and 12(b)(6); (c) even if Plaintiffs had
25 defeated the anticipated motions to dismiss, continued litigation promised to be complex,
26 expensive and lengthy, including likely post-trial motions and appeals; and (d) the
27 Settlement was negotiated between well-informed, experienced counsel with a firm
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1 understanding of the strengths and weaknesses of the claims and defenses asserted, and is
2 the product of protracted bargaining.

3 **H. SJK's Lodestar and Expenses.**

4 49. In addition to filing their motion for final approval of the Settlement,
5 Plaintiffs' Counsel also move for an award of attorneys' fees and reimbursement of
6 expenses in the total amount of \$1.5 million, to be paid by Banc's insurers pursuant to the
7 Stipulation of Settlement. Detailed below is lodestar and expense information for my firm,
8 SJK, presented in support of that motion. Lodestar and expense information for the other
9 Plaintiffs' Counsel (Co-Lead Counsel Robbins LLP and Holzer & Holzer LLP) is set forth
10 in their respective declarations, filed contemporaneously herewith. A compilation of the
11 data from all three declarations in support of the requested award is set forth below.

12 50. In its capacity as Co-Lead Counsel, SJK engaged in multiple tasks that
13 resulted in the successful resolution of the Action. SJK's work included, among other
14 things: (a) conducting pre-suit/pre-demand investigation and analyses, including reviewing
15 Banc's press releases, public statements, SEC filings, and public reports and advisories
16 about the Company, and drafting complaints; (b) consulting with an accounting expert
17 regarding Plaintiffs' allegations regarding improper accounting practices concerning
18 employee bonus accrual; (c) researching the applicable Maryland law with respect to
19 potential derivative claims and defenses thereto; (d) drafting litigation demands directed to
20 Banc's Board; (e) monitoring developments in the related Securities Action, in addition to
21 multiple related lawsuits between Banc and certain former executives and directors; (f)
22 reviewing and analyzing Banc's internal corporate governance documents and comparing
23 Banc's policies with best practices of comparable companies; (g) preparing a joint
24 settlement demand, and (h) negotiating the Settlement.

25 51. SJK also worked on drafting the Stipulation of Settlement and all filings in
26 support of preliminary and final approval. However, such work has not been included in
27 my firm's lodestar submitted for the Court's consideration.

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1 52. My firm undertook this representation on a wholly contingent basis, with the
2 understanding that we would receive no compensation, and our expenses would not be
3 reimbursed, unless our efforts resulted in the recovery of a substantial benefit for Banc.
4 None of the attorneys' fees and expenses submitted to this Court have been paid from any
5 source or have been the subject of any prior request or award in any litigation.

6 53. Included in the application is my firm's reported lodestar from the period
7 February 10, 2017 through February 6, 2018, during which time my firm prepared and then
8 prosecuted the *Gordon* Demand Futility Action, which preceded this consolidated action.
9 *Gordon v. Szniewajs*, No. 8:17-cv-01678-CJC-DFM. As described above, the *Gordon*
10 Demand Futility Action was based on the same essential facts and circumstances at issue
11 in this consolidated demand refused action, except Plaintiff Gordon alleged that making a
12 demand on the Banc Board to bring the asserted claims was excused for futility.

13 54. I have included only such time from the *Gordon* Demand Futility Action spent
14 investigating the allegations and filing the original complaint and the amended complaint
15 in the *Gordon* Demand Futility Action. Excluded from this date range is all time spent after
16 my firm filed the amended complaint in the *Gordon* Demand Futility Action, including all
17 work done litigating the motion to dismiss. Specifically, I have excluded all lodestar
18 incurred between February 7, 2018 (the day after the amended complaint was filed in the
19 *Gordon* Demand Futility Action) and June 25, 2018 (the day the *Gordon* Demand Futility
20 Action was voluntarily dismissed), amounting to a total of \$83,142.00.

21 55. I respectfully submit that the reported lodestar incurred by SJK during the
22 designated date range in litigating the *Gordon* Demand Futility Action should be included
23 for purposes of Plaintiffs' Counsel's motion for an award of attorneys' fees in this
24 consolidated demand refused action, as such lodestar was necessarily incurred and
25 instrumental to subsequent litigation efforts in this consolidated demand refused action.

26 56. From the February 10, 2017 inception of SJK's pre-filing investigation into
27 the alleged wrongdoing at issue in this litigation through April 6, 2021, when the Settling
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1 Parties executed the MOU documenting the substantive terms of the Settlement, SJK
2 devoted 547.2 hours to the litigation, representing total lodestar of \$426,376.00.

3 57. Attached hereto as Exhibit 7 is the SJK firm resume. The chart below
4 summarizes the total hours, hourly rates, and lodestar of each attorney and professional
5 support staff employee who worked on this matter:

Timekeeper	Rate	Hours	Lodestar
Robert Schubert (P)	\$950	33.2	\$31,540.00
Willem Jonckheer (P)	\$800	443.3	\$354,640.00
Dustin Schubert (P)	\$650	45.6	\$29,640.00
Noah Schubert (P)	\$650	3.2	\$2,080.00
Cassidy Kim (A)	\$420	15.8	\$6,636.00
Sara Kahan (PL)	\$200	4.2	\$840.00
Total		545.3	\$425,376.00

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15 58. SJK's lodestar reported above was prepared from contemporaneous, daily
16 time records prepared and maintained by the firm. SJK's hourly rates are the firm's usual
17 and customary rates. These rates are set based on market rates for attorneys of comparable
18 skill and experience, and they have been approved by federal and state courts throughout
19 the nation.

20 59. Set forth in paragraphs 60 through 62 below is a detailed breakdown of the
21 hours spent by my firm during three distinct phases on the case, in particular: (a) pre-filing
22 investigation of the claims leading up to the filing of Gordon's initial demand refused
23 complaint filed in this action, including time incurred in the *Gordon Demand Futility*
24 *Action* as described above (February 10, 2017 through April 2, 2019); (b) litigation activity
25 in the demand refused action following the filing of Gordon's initial complaint and through
26 consolidation with the *Johnston* and *Witmer* actions (April 3, 2019 through December 11,
27 2019); and (c) settlement negotiations leading to the negotiation and signing of the MOU
28 (December 12, 2019 through April 6, 2021).

60. Pre-filing Investigation: The chart below describes the hours and lodestar incurred by each timekeeper at my firm during the period February 10, 2017 through April 2, 2019, along with a short description of the work done:

Timekeeper	Lodestar	Description of Work
Robert Schubert (P) (19.7 hours)	\$18,715.00	Review drafts of demand futility and demand refused pleadings; conduct oversight of litigation strategy.
Willem Jonckheer (P) (210.8 hours)	\$168,640.00	Manage overall litigation activities; research factual background and draft demand futility complaint and amended complaint; research factually related cases; review drafts of shareholder demand and correspond with counsel for Special Litigation Committee; research and draft demand refused complaint; consult with accounting expert regarding allegations; interact with defense counsel regarding case management; confer with counsel regarding litigation strategy.
Dustin Schubert (P) (30.1 hours)	\$19,565.00	Research factual background and draft demand futility complaint and amended complaint; confer with counsel regarding demand refused complaint; consult with counsel regarding case management issues; research and review status of factually related cases; confer with counsel regarding litigation strategy.
Noah Schubert (P) (.1 hour)	\$65.00	Confer with counsel regarding litigation demand.
Cassidy Kim (A) (15.8 hours)	\$6,636.00	Research Maryland law regarding demand.
Sara Kahan (PL) (1.9 hours)	\$380.00	Administer court filings.
Total Hours 278.4 hours	Lodestar \$214,001.00	

61. Litigation Activity in the Consolidated Action: The chart below describes the hours and lodestar incurred by each timekeeper at my firm during the period April 3, 2019 through December 11, 2019, along with a short description of the work done:

Timekeeper	Lodestar	Description of Work
Robert Schubert (P) (8.2 hours)	\$7,790.00	Review drafts of pleadings; conduct oversight of litigation strategy including consolidation.
Willem Jonckheer (P) (115.0 hours)	\$92,000.00	Manage overall litigation activities; coordinate litigation strategy regarding consolidation with related cases; attend hearing regarding consolidation; draft correspondence regarding litigation issues; research corporate governance; review status of factually related cases; draft additional shareholder demand and confer with counsel re same; research and draft consolidated demand refused complaint.
Dustin Schubert (7.9 hours)	\$5,135.00	Confer with counsel regarding case management issues and litigation strategy.
Noah Schubert (1.2 hours)	\$780.00	Confer with counsel regarding litigation strategy.
Sara Kahan (2.3 hours)	\$460.00	Administer court filings.
Total Hours 134.6	Lodestar \$106,165.00	

62. Settlement Negotiations: The chart below describes the hours and lodestar incurred by each timekeeper at my firm during the period during the period December 12, 2019 through April 6, 2021, along with a short description of the work done:

Timekeeper	Lodestar	Description of Work
Robert Schubert (P) (5.3 hours)	\$5,035.00	Conduct oversight of settlement negotiations.
Willem Jonckheer (P) (117.5 hours)	\$94,000.00	Conduct settlement negotiations with co-counsel; research and develop corporate governance proposals; negotiate terms of settlement with defense counsel; confer with

		counsel regarding settlement strategy; manage court filings regarding case management schedule; draft MOU.
Dustin Schubert (P) (7.6 hours)	\$4,940.00	Confer with counsel regarding settlement strategy and status.
Noah Schubert (P) (1.9 hours)	\$1,235.00	Confer with counsel regarding settlement strategy and status.
Total Hours 132.3	Lodestar \$105,210.00	

63. As the partner responsible for performing most of my firm's work on the case, and supervising my firm's work, I reviewed SJK's time records to prepare this declaration. The purpose of this review was to confirm both the accuracy of the time entries and the necessity for, and reasonableness of, the time committed to the litigation. SJK has only submitted time through execution of the MOU, and therefore, in addition to certain time from the demand futility case as described above, has excluded all time spent: (a) negotiating attorneys' fees; (b) drafting and negotiating the Stipulation of Settlement; and (c) drafting motions in support of preliminary and final approval of the settlement and Plaintiffs' motion for final approval, and all related appearances.

64. Following this review, I believe that the time reflected in my firm's lodestar calculation as stated in this declaration is reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the case. I can aver that the hours reported and the work they reflect were reasonably necessary to the successful commencement, prosecution, and settlement of the derivative claims.

65. SJK incurred a total of \$11,436.44 in unreimbursed expenses in connection with the prosecution of the entirety of the litigation, as summarized in the chart below:

Category of Expense	Amount
Copy Charges	\$911.60
Database	\$1,939.78
Expert Fees	\$4,796.25

Express Mail	\$147.50
Filing Fees	\$1,740.80
Messenger	\$287.75
Travel	\$1,612.76
Total	\$11,436.44

66. These expenses are reflected in records maintained by my firm in the ordinary course of business. These records are prepared from expense vouchers, invoices, and other billings records submitted contemporaneously as they are incurred. I have reviewed the expense records in detail and can aver that they were reasonably necessary for the effective and efficient pre-filing investigation, commencement, prosecution, and resolution of the derivative claims brought on behalf of Banc, and are reasonable in amount.

I. The Collective Lodestar and Expenses of All Plaintiffs' Counsel.

67. Based upon the compilation provided by each respective plaintiffs' firm that worked on this case, the total reported hours of Plaintiffs' Counsel are 2044.3 and the total lodestar of Plaintiffs' Counsel is \$1,265,628.50, as reflected below:

Law Firm	Hours	Lodestar
SJK	545.3	\$425,376.00
Robbins LLP	963.0	\$485,911.25
Holzer & Holzer LLP	536.0	\$353,341.25
Total	2,044.3	\$1,264,628.50

68. Based upon the compilation provided by each respective plaintiffs' firm, the total amount of unreimbursed expenses incurred by Plaintiffs' Counsel in connection with the prosecution of the litigation is \$20,528.51, as reflected below:

Law Firm	Expenses
SJK	\$11,436.44
Robbins LLP	\$4,470.23

Holzer & Holzer LLP	\$4,621.84
Total	\$20,528.51

3 **J. The Requested Fee and Expense Award Should Be Approved.**

4 69. As set forth in the Fee and Expense Memorandum, Plaintiffs' Counsel are
5 entitled to an award of attorneys' fees and reimbursement of expenses under the substantial
6 benefit doctrine. In addition to the nature and value of the benefit obtained, which are
7 explained in detail therein and in the Final Approval Memorandum, among the additional
8 factors considered in the Ninth Circuit are the relative complexities of the litigation, the
9 contingent nature of the fee, and the standing and ability of Plaintiffs' Counsel.

10 70. The requested fee award is fair and reasonable in light of the substantial
11 benefits conferred upon Banc and its stockholders as a result of the Settlement and should
12 be finally approved. Plaintiffs' Counsel achieved this result for Banc and its stockholders
13 at significant risk to themselves of recovering no fee. Yet Plaintiffs' Counsel did not waver
14 in their dedication to the interests of the Company and its stockholders, and invested the
15 time and resources necessary to bring the Action to a successful conclusion. Plaintiffs'
16 Counsel's standing and ability in shareholder derivative litigation further support the
17 requested award.

18 71. In addition, as illustrated in the Fee and Expense Memorandum (at 8-10)], the
19 requested fee and expense award is reasonable when compared to similar derivative actions
20 which settled for similar relief.

21 72. While Plaintiffs' Counsel's application is based on the substantial benefit
22 achieved, it is also supported by their collective lodestar, which was necessary and
23 reasonably incurred. Plaintiffs' Counsel seek a modest multiplier on their lodestar of
24 approximately 1.1, which is unquestionably reasonable, for the reasons discussed in the
25 Fee and Expense Memorandum (at 12-15).

26 73. The following exhibits are attached hereto:
27
28

- 1 Exhibit 1: Transcript, *In re Tile Shop Holdings, Inc. S'holder Derivative Litig.*, No.
2 10884-VCG (Del. Ch. Aug. 23, 2018) (excerpted)
- 3 Exhibit 2: Transcript, *In re TerraForm Power, Inc. Derivative Litigation*, C.A. No.
4 11898-CB (consol.) (Del. Ch. Dec. 19, 2016; Dec. 30, 2016) (excerpted)
- 5 Exhibit 3: Banc of California, Inc., Annual Report at 192 (Form 10-K) (Mar. 1,
6 2017) (excerpted)
- 7 Exhibit 4: Banc of California, Inc., Current Report (Form 8-K) (Nov. 7, 2019) &
8 Exhibit (press release)
- 9 Exhibit 5: CalPERS's Governance & Sustainability Principles (excerpted)
- 10 Exhibit 6: BlackRock Investment Stewardship Annual Report 2020 (excerpted)
- 11 Exhibit 7: SJK Firm Resume
- 12 Exhibit 8: Stipulation and Agreement of Settlement, Compromise and Release, *In*
13 *re Tile Shop Holdings, Inc. S'holder Derivative Litig.*, No. 10884-VCG
14 (Apr. 23, 2018)
- 15 Exhibit 9: Stipulation of Settlement, *van der Gracht de Rommerswael v. Auerbach*
16 *(Puma Biotechnology, Inc.)*, 8:18-cv-00236-AG-JCG (C.D. Cal. Sept.
28, 2018), ECF No. 17-1
- 17 Exhibit 10: *van der Gracht de Rommerswael v. Auerbach (Puma Biotechnology,*
18 *Inc.)*, 8:18-cv-00236-AG-JCG (C.D. Cal. Jan. 7, 2019), ECF No. 32
- 19 Exhibit 11: *Wilfred v. Modany*, No. 13-cv-3110 (JPO), slip op. (S.D.N.Y. Apr. 6,
20 2016), ECF No. 67
- 21 Exhibit 12: Stipulation and Agreement of Settlement, *Wilfred v. Modany*, No. 13-
22 cv-3110 (JPO) (S.D.N.Y. Jan. 26, 2016), ECF No. 60-1

23 I declare under penalty of perjury under the laws of the United States of America
24 that the foregoing is true and correct.

25 Dated: October 29, 2021

26 /s/ Willem F. Jonckheer

27 Willem F. Jonckheer