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

26 IN RE BANC OF CALIFORNIA,)
27 INC. STOCKHOLDER) Lead Case No. 8:19-cv-621-DMG-
28 DERIVATIVE LITIGATION) DFMx
)
) (Consolidated with Case Nos. 19-cv-
) 1152 and 19-cv-05488)
)
) This Document Relates To:)
)
) ALL ACTIONS.) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PLAINTIFFS' MOTION FOR
) AWARD OF ATTORNEYS' FEES
) AND REIMBURSEMENT OF
) EXPENSES AND SERVICE
) AWARDS
)
) Date: December 17, 2021
) Time: 10:00 a.m.
) Judge: Hon. Dolly M. Gee
) Ctrm: 8C, 8th Floor

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1 **I. INTRODUCTION**

2 As detailed in Memorandum of Points and Authorities in Support of Plaintiffs'
3 Motion for Final Approval of Derivative Settlement ("FA Mem." or "Final Approval
4 Memorandum"), the Settlement confers substantial benefits upon Banc.¹ These
5 benefits warrant approval of Plaintiffs' Counsel's requested fee and expense amount
6 of \$1.5 million (the "Fee and Expense Amount") under the substantial benefits
7 doctrine.

8 The Settlement is comprised of critical corporate governance reforms
9 ("Reforms") that directly address the alleged wrongdoing by transforming Banc into
10 a more independent and accountable Company focused on compliance.

11 To begin, Plaintiffs' Counsel's efforts were significant and material factors in
12 the appointment of two new independent directors to the Board, in addition to
13 ongoing Board changes. Achieving this significant Board turnover is an outstanding
14 result in this Action. At the time Plaintiffs first issued their litigation demands,
15 Banc's Board was allegedly tainted by serious conflicts of interest, secret allegiances,
16 attempts to gain power over the Board and exclude other directors, and efforts to
17 push whistleblowers out of the Company. Since then, ongoing Board changes
18 reflect: (i) the departure of significant wrongdoers; and (ii) the appointment of new
19 directors who appear independent from the other directors and free of damaging
20 conflicts of interest. Now, nine of the ten members of the Board are independent,
21 and the Board is no longer comprised of a majority of conflicted directors. Obtaining
22 an independent Board was a critical step toward addressing the alleged wrongdoing
23 and improving the Company's culture, from the top down.

24
25
26 _____
27 ¹ Unless otherwise defined, all capitalized terms used herein shall have the same
28 meanings as set forth in the Amended Corrected Stipulation and Agreement of
Settlement filed September 27, 2021, ECF No. 120 ("Stip.").

1 The Reforms also require that each director attend the Company's annual
2 shareholder meeting (absent certain exceptions), which makes these independent
3 directors available to answer stockholder questions and more accountable.

4 Plaintiffs' efforts were also substantial and material factors in obtaining a
5 stand-alone Whistleblower Policy, which included significant enhancements to the
6 Company's prior practices. At the time Plaintiffs issued their litigation demands,
7 Banc's Code of Ethics noted that potential violations could be reported anonymously
8 to certain individuals within the Company. There was no reference to an
9 independent whistleblower hotline, and there was not a formal Whistleblower
10 Policy. As highlighted by the alleged wrongdoing, Banc's whistleblower controls
11 failed. Thus, achieving this policy was critical to addressing serious allegations that
12 whistleblower reports were ignored and whistleblowers retaliated against.

13 The Reforms also include amendments to Banc's Code of Ethics, which now
14 references the Company's independent whistleblower hotline, and also requires
15 heightened requirements to obtain a waiver from the rules set forth in the Code.

16 Collectively, these Reforms will confer immediate and lasting value upon
17 Banc by significantly enhancing the independence of the Board, and helping to
18 transform the Company's culture to one focused on compliance and detecting and
19 remedying potential wrongdoing.

20 The reasonableness of the requested Fee and Expense Amount is underscored
21 when the benefits achieved are compared to similar governance-only, derivative
22 settlements. For instance, as detailed below, the Delaware Court of Chancery, a
23 leading Court on issues of shareholder litigation and corporate governance, has
24 opined that obtaining a single "independent director alone" warrants attorneys' fees
25 of approximately *one million dollars* to plaintiffs' counsel. Tr. at 41:12-15, 42:8-
26 11, *In re Tile Shop Holdings, Inc. S'holder Derivative Litig.*, No. 10884-VCG (Del.
27 Ch. Aug. 23, 2018) (attached as Ex. 1 to the Declaration of Willem F. Jonckheer
28

1 ("Jonckheer Decl." or "Jonckheer Declaration"). Here, the Settlement achieves two
2 independent directors, among additional, excellent Reforms.

3 The reasonableness of the requested Fee and Expense Amount is further
4 confirmed by a lodestar cross-check. Even with significant time excluded from their
5 calculations (for purposes of convenience and efficiency, Plaintiffs' Counsel
6 excluded all time negotiating fees, drafting the Stipulation of Settlement, and
7 seeking approval of the Settlement), Plaintiffs' Counsel seek a very modest
8 multiplier of approximately 1.1, which is far below the multipliers often awarded in
9 the Ninth Circuit (especially in wholly contingent litigation).

10 In accordance with the Court's Amended Preliminary Approval Order (ECF
11 No. 121), Notice was disseminated, which informed investors that "Plaintiffs'
12 Counsel intend to file an application to the Court for an award of attorneys' fees and
13 litigation expenses in an amount not to exceed \$1,500,000." See ECF No. 122 at 11.
14 To date, Plaintiffs' Counsel have not received any objections (the deadline to submit
15 objections is November 19, 2021). See ECF No. 121, ¶11.

16 In sum, and as detailed herein, the requested Fee and Expense Amount is fair
17 and reasonable and should be approved.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 A detailed background of the facts and procedural history of this consolidated
20 action is set forth in the Jonckheer Declaration, filed herewith, as well as in the Final
21 Approval Memorandum.

22 **III. THE FEE AND EXPENSE AMOUNT SHOULD BE APPROVED**

23 **A. Plaintiffs' Counsel Are Entitled to an Award of Fees Under the** 24 **Substantial Benefits Doctrine**

25 Under the substantial benefits doctrine, counsel who prosecute a derivative
26 action that confers benefits on the corporation are entitled to an award of attorneys'
27 fees and costs. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, at 395-96 (1970) ("a
28 corporation may receive a 'substantial benefit' from a [lawsuit], justifying an award

1 of counsel fees, regardless of whether the benefit is pecuniary in nature," and
2 "regardless of the relief granted, private stockholders' actions of this sort 'involve
3 corporate therapeutics,' and furnish a benefit to all shareholders").

4 Indeed, "courts consistently have approved attorneys' fees and expenses in
5 shareholder actions where the plaintiffs' efforts resulted in significant corporate
6 governance reforms but no monetary relief." *In re Rambus Inc. Derivative Litig.*,
7 No. C 06-3513 JF (HRL), 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009); *In re*
8 *Google Inc. S'holder Derivative Litig.*, No. CV 13-11-04248-PJH, 2015 WL
9 12990195, at *1-2 (N.D. Cal. Jan. 21, 2015) (awarding \$9.9 million fee for corporate
10 governance enhancements); *Unite Nat'l Ret. Fund v. Watts*, No. Civ.A.
11 04CV3603DMC, 2005 WL 2877899, at *5 (awarding \$9.2 million fee based on "the
12 great benefit conferred upon [the company] as a result of the new corporate
13 governance principles provided for in the settlement agreement").

14 The Ninth Circuit has enumerated several factors to consider when
15 determining the reasonableness of attorneys' fees awards in representative litigation,
16 including: "(1) the results achieved; (2) the risks of litigation; (3) the skill required
17 and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried
18 by plaintiffs' counsel; and (6) the awards made in similar cases." *In re MRV*
19 *Communs., Inc. Derivative Litig.*, No. CV 08-3800 GAF (MANx), 2013 WL
20 2897874, at *6 (C.D. Cal. June 6, 2013).² As set forth below, the requested Fee and
21 Expense Amount is reasonable and appropriate in light of the factors the Ninth
22 Circuit traditionally considers in determining reasonable fee awards.

23 **B. The Requested Fee and Expense Amount Is Fair and Reasonable**
24 **in Light of the Substantial Benefits Obtained**

25 The U.S. Supreme Court has stated that "the most critical factor in
26 determining the reasonableness of a fee award is the degree of success obtained."

27 ² Here, as throughout, all emphasis is deemed added and citations and footnotes are
28 deemed omitted unless otherwise noted.

1 *Klein v. City of Laguna Beach*, 810 F.3d 693, 698-99 (9th Cir. 2016) (quoting *Farrar*
2 *v. Hobby*, 506 U.S. 103, 114 (1992) (internal quotation marks omitted). Here,
3 Plaintiffs' Counsel achieved a significant degree of success.³

4 **1. Two New Independent Directors and Ongoing Board**
5 **Changes**

6 Plaintiffs' Counsel's efforts were a "substantial and material factor
7 contributing to" the "recent appointment of two independent directors," in addition
8 to "ongoing changes to the Board." ECF No. 112-1 at Ex. A. As detailed in
9 Plaintiffs' Final Approval Memorandum, given the turmoil at Banc during the
10 relevant time period, Board turnover was critical to Banc becoming a stronger, more
11 credible corporation and restoring investor confidence in the Company. *See* FA
12 Mem. at 10-13. Even Banc acknowledged in an Annual Report filed with the U.S.
13 Securities and Exchange Commission ("SEC") that "the material weakness
14 identified" in 2016 related to "an inadequate tone at the top regarding the importance
15 of internal control over financial reporting." Banc of California, Inc., Annual Report
16 at 192 (Form 10-K) (Mar. 1, 2017), attached as Exhibit 3 to the Jonckheer Decl.

17 When Plaintiffs issued their litigation demands, Banc's Board was comprised
18 of a majority of defendants who were alleged to have, among other things, engaged
19 in undisclosed conflicts of interest, secret allegiances with other directors, and
20 efforts to push whistleblowers out of the Company. *See* FA Mem. at 11-12.
21 Critically, since Plaintiffs began issuing the litigation demands, defendants Benett,
22 Karish, and Bowers have left the Board. As detailed in Plaintiffs' Final Approval
23 Memorandum, the departure of defendants Benett and Karish was particularly
24 significant in light of their alleged conflicts of interest and efforts to silence

25
26 ³ For a thorough discussion of the substantial benefits conferred upon Banc through
27 the Settlement, please see the Final Approval Memorandum at §4.A. In an attempt
28 to limit duplicative briefs, the following discussion is a high-level summary of these
substantial benefits.

1 whistleblowers. *See id.* at 11-12. Now, Banc's Board is comprised of nine
2 independent directors and seven non-defendants.

3 Plaintiffs' efforts in achieving these ongoing Board changes, in addition to the
4 appointment of two new independent directors—who Banc touts as being
5 "extremely valuable to the Board"⁴—confer long-term value on the Company by
6 leaving Banc with a stronger, more accountable Board, comprised of a super-
7 majority of independent directors of various backgrounds. As explained in the Final
8 Approval Memorandum, improving Banc's tone at the top was critical, as
9 "independent boards are essential to a sound governance structure." CalPERS's
10 Governance & Sustainability Principles at 11 (noting that "[i]ndependence also
11 requires a lack of conflict between the director's personal, financial, or professional
12 interest, and the interests of shareowners"), attached as Exhibit 5 to the Jonckheer
13 Decl.; *see also* FA Mem. at 12-13. Moreover, when the prior Board was tainted by
14 serious conflicts and wrongdoing, as it was here, turnover is critical to reestablishing
15 investor trust in the Company.

16 **2. Formal Whistleblower Policy**

17 In addition to these valuable Board changes, the Settlement requires that Banc
18 adopt a formal Whistleblower Policy. *See* ECF No. 112-1 at Ex. B. This Reform is
19 essential to addressing serious allegations at Banc that whistleblower reports went
20 unanswered and whistleblowers were retaliated against.

21 As explained in the Final Approval Memorandum, when the settling parties
22 began negotiating the Settlement, Banc's policies did not reference an independent
23 whistleblower hotline and did not include a formal Whistleblower Policy. FA Mem.
24 at 13. Rather, Banc's Code of Ethics noted that potential violations could be reported
25 anonymously to certain individuals within the Company.

27 ⁴ *See* Banc of California, Inc., Current Report (Form 8-K) (Nov. 7, 2019) & Exhibit,
28 attached as Exhibit 4 to the Jonckheer Decl.; *see also* FA Mem. at 10-13.

1 Now, as part of the Settlement, Banc's Board has embraced a formal
2 Whistleblower Policy, which emphasizes the importance and necessity of reporting
3 potential wrongdoing, requires Banc to engage an independent whistleblower
4 hotline, reassures employees that retaliation is forbidden, requires documentation
5 and reporting regarding complaints and investigations, and mandates that
6 information regarding the whistleblower hotline be conspicuously posted on the
7 Company's intranet and throughout its facilities. *See* FA Mem. at 13-15.

8 In sum, this new Whistleblower Policy emphasizes the importance of
9 compliance and provides a meaningful avenue for those within the Company to
10 report and detect potential wrongdoing. *See* CalPERS' Governance & Sustainability
11 Principles at 31 (Jonckheer Decl., Ex. 5) ("The board should ensure that the company
12 has in place an independent, confidential mechanism whereby an employee, supplier
13 or other stakeholder can (without fear of retribution) raise issues of particular
14 concern with regard to potential or suspected breaches of a company's code of ethics
15 or local law.").

16 **3. Enhancements to Code of Ethics:**

17 Plaintiffs' Counsel's efforts were also substantial and material factors
18 contributing to important revisions to Banc's Code of Ethics, which were
19 implemented during the parties' settlement negotiations. *See* ECF No. 112-1, Ex. A.
20 First, Banc's Code of Ethics now references the Company's whistleblower hotline,
21 which emphasizes to employees that they may now make reports anonymously,
22 through an independent, third-party hotline. *Id.* Second, Banc's Code of Ethics now
23 enhances its process for reviewing and granting requested waivers to its Code of
24 Ethics (which would have included the conflicts of interest at issue in this Action)
25 to make sure any such request is properly vetted and fully disclosed. *Id.*; *see also*
26 FA Mem. at 15-16.

4. Mandatory Attendance at Shareholder Meetings

1
2 Finally, the Settlement requires that each member of the Board attend each
3 annual shareholder meeting, unless they are unable to after reasonable, good-faith
4 efforts. *See* ECF No. 112-1 at Ex. A. This reform requires directors to be present
5 and accountable to shareholders, as directors will be able to respond directly to
6 questions from shareholders. *See Basaraba v. Greenberg*, No. CV 13-5061 PSG
7 (SHX), 2014 WL 12591677, at *4 (C.D. Cal. Nov. 10, 2014) (even an
8 "expectation[]" that board members attend the annual meeting provided "some
9 benefit to shareholders"); *see also* FA Mem. at 16.

10 Collectively, the value of these Reforms and their positive effect on the
11 Company's intrinsic value are substantial. *Maher v. Zapata Corp.*, 714 F.2d 436,
12 461 (5th Cir. 1983) ("effects of the suit on the functioning of the corporation may
13 have a substantially greater economic impact on it, both long- and short-term, than
14 the dollar amount of any likely judgment"); *In re Schering-Plough Corp. S'holders*
15 *Derivative Litig.*, 2008 WL 185809, at *1, *5 (D.N.Y. Jan. 14, 2008) ("The adoption
16 of the corporate governance and compliance mechanisms required by the settlement
17 can prevent breakdowns in oversight that would otherwise subject the company to
18 the risk of regulatory action, or uncover and remedy a problem at the early stages
19 before it becomes the subject of a government investigation. Effective corporate
20 governance can also affect stock price by bolstering investor confidence and
21 improving consumer perceptions.").

5. Comparable Derivative Settlements Support the Fee and Expense Amount

22
23 Fee awards approved in comparable derivative settlements confirm the
24 reasonableness of the requested Fee and Expense Amount. For example, in *Tile*
25 *Shop Holdings, Inc. Stockholder Derivative Litigation*, Case No. 10884-VCG (Del.
26 Ch. 2018) (attached as Exhibits 1 and 8 to the Jonckheer Decl.), plaintiffs settled for
27 governance reforms including one new independent director, creation of a
28 compliance department to oversee the Code of Ethics, revisions to the Code of

1 Ethics, and amendments to a Related Persons Policy. In ruling on the plaintiffs'
2 contested motion for fees, the Court of Chancery recognized that "getting an
3 independent director is a substantial benefit to the corporation.... It seemed to me
4 that about *a million dollars was a proper plaintiff firm recovery for achieving the*
5 *independent director alone.*" Jonchkeer Decl., Ex. 1 at 41:12-15, 42:8-11. The
6 court found that the remaining governance was worth approximately \$250,000, and
7 awarded a total of \$1,250,000 in attorneys' fees. *See id.* at 42:24-43:11. The Court
8 of Chancery noted that the benefit conferred was the primary factor when arriving
9 at \$1,250,000, and that this amount was "not out of line" with counsel's lodestar, as
10 it represented a "modest multiplier" of approximately 1.1. *Id.* at 43:5-11.

11 Consistent with this finding in *Tile Shop*, the Delaware Court of Chancery
12 emphasized the significant value of obtaining a new independent director in *In re*
13 *TerraForm Power, Inc. Derivative Litigation*, C.A. No. 11898-CB (consol.). In
14 *TerraForm*, the Court awarded \$3 million in attorneys' fees (in a non-contingent fee
15 case) for a settlement that was comprised of three corporate governance reforms, one
16 of which was adding an independent director to the Board. Tr. at 21:11-13, *In re*
17 *TerraForm Power, Inc. Derivative Litig.*, C.A. No. 11898-CB (consol.) (Del. Ch.
18 Dec. 19, 2016; Dec. 30, 2016). During the hearing, the court recognized:

19 I do think there are meaningful benefits here that certainly warrant the
20 settlement They include separating TERP's information technology
21 systems from SunEdison, being the first one. ***The second being the***
22 ***addition of an independent board member, which is relief that would***
23 ***have been difficult for the Court to judicially order and certainly is a***
good thing. And then lastly, putting into the COO position somebody
not aligned, as had been the case historically, with SunEdison. All of
these are meaningful benefits.

24 *Id.* at 20:6-21-21:1 (emphasis added); *see also In re Activision Blizzard, Inc. S'holder*
25 *Litig.*, 124 A.3d 1025, 1071 (Del. Ch. 2015) (noting that "precedent suggests that an
26 award of \$5-10 million could be justified" where non-monetary components of
27 derivative settlement included two independent directors rendering board majority
28 independent, and reduction of insiders' voting power).

1 Similarly, in *van der Gracht de Rommerswael v. Auerbach, et al. (Puma*
2 *Biotechnology, Inc.)*, Case No. 8:18-cv-00236-AG-JCG (C.D. Cal. 2019), plaintiffs
3 achieved a governance-only derivative settlement, and the primary benefits obtained
4 were an independent director and a new Research and Development Committee to
5 review the Company's new drug applications. Stipulation of Settlement, *van der*
6 *Gracht de Rommerswael v. Auerbach (Puma Biotechnology, Inc.)*, 8:18-cv-00236-
7 AG-JCG (C.D. Cal. Sept. 28, 2018), ECF No. 17-1. The Court awarded \$1,175,000
8 in fees, which amounted to a lodestar multiplier of approximately 1.7. *van der*
9 *Gracht de Rommerswael v. Auerbach (Puma Biotechnology, Inc.)*, 8:18-cv-00236-
10 AG-JCG, slip op. at 4, 7 (C.D. Cal. Jan. 7, 2019), ECF No. 32, attached as Exhibit
11 10 to the Jonckheer Decl.

12 Finally, in *Wilfred v. Modany, et al. (ITT Educational Services, Inc.)*, Case
13 No. 13-cv-3110 (JPO) (S.D.N.Y. 2016), the court awarded \$1,100,000 in fees in a
14 governance-only derivative settlement that achieved two new independent directors,
15 among other reforms, which included improvements to the Company's
16 whistleblower policies (though not a formal, stand-alone policy, as Plaintiffs
17 achieved here). *Wilfred v. Modany*, No. 13-cv-3110 (JPO) (S.D.N.Y. Apr. 6, 2016),
18 ECF No. 67, attached as Exhibit 11 to the Jonckheer Decl; Stipulation and
19 Agreement of Settlement, *Wilfred v. Modany*, No. 13-cv-3110 (JPO) (S.D.N.Y. Jan.
20 26, 2016), ECF No. 60-1, attached as Exhibit 12 to the Jonckheer Decl. The fee
21 award of \$1,100,000 amounted to a negative multiplier. *See id.*

22 As here, the settlements in *Tile Shop*, *Puma*, and *ITT* were all reached before
23 the parties litigated a motion to dismiss. As reflected through the foregoing
24 comparable settlements, the Reforms achieved through the Settlement confer
25 substantial benefits upon Banc that warrant the requested Fee and Expense Amount.

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1 **C. The Other Ninth Circuit Factors Support the Requested Award**

2 In addition to the success achieved and comparison to comparable settlements,
3 the other pertinent factors also support Plaintiffs' Counsel's entitlement to a
4 reasonable fee and expense award.

5 As discussed in the Final Approval Memorandum and in the Jonckheer
6 Declaration, Plaintiffs' Counsel faced substantial risks in this litigation based on the
7 difficulty of Maryland law and the complexity of the facts. *See* FA Mem. at 16-19.
8 Even if Plaintiffs could overcome the hurdle of alleging that their demands were
9 wrongfully refused, a Maryland corporation may through its charter limit the liability
10 of its directors and officers to the corporation or its shareholders for money damages.
11 *See* Md. Code Ann., Corps. & Ass'ns §2-405.2. The charter may eliminate liability
12 of directors and officers for money damages, except for (1) the amount of any
13 "improper benefit or profit in money, property, or services ... actually received" or
14 (2) "active and deliberate dishonesty." Md. Code Ann., Cts. & Jud. Proc. §5-418.
15 Banc's charter limits its directors and officers' liability accordingly, setting a very
16 high bar for successfully prosecuting the derivative claims.

17 Their ability to obtain an excellent settlement in the face of these obstacles
18 clearly displays the skill of their representation and the quality of their work against
19 able and resourceful adversaries. Indeed, counsel on all sides are highly experienced
20 in complex shareholder litigation, which resulted in hard-fought litigation and arm's-
21 length settlement discussions. *See* FA Mem. at 20.

22 Additionally, Plaintiffs' Counsel's fee should "take into account the risk of
23 representing ... Plaintiffs on a contingency basis over a period of over [three] years."
24 *Bennett v. SimplexGrinnell LP*, No. 11-cv-01854-JST, 2015 WL 12932332, at *6
25 (N.D. Cal. Sept. 3, 2015). Courts routinely recognize that contingent litigation
26 warrants a "modest premium over the pay that plaintiffs' attorneys command in a
27 noncontingency undertaking." *Dr. Pepper/Seven Up Cos., Inc. S'holders Litig.*, No.
28 13109, 1996 WL 74214, at *5 (Del. Ch. Feb. 9, 1996); *In re Vitalink Commc'ns*

1 *Corp. S'holders Litig.*, No. 12085, 1991 WL 238816, at *17 (Del. Ch. Nov. 8, 1991)
2 ("In all fairness, the contingent nature of [counsel's] fee agreement demands a higher
3 fee for [their] work."). Plaintiffs' Counsel litigated this case on a fully contingent
4 basis knowing that it would likely entail hundreds of hours of firm time and
5 thousands of dollars in upfront costs that might not be recouped for years, or ever.
6 As such, the contingent nature of this litigation provides further support for
7 requested Fee and Expense Amount.

8 **D. The Time and Effort Required—a Lodestar Cross-Check Supports**
9 **the Reasonableness of the Fee and Expense Amount**

10 While Plaintiffs' Counsel's fee request is based on the substantial benefits
11 achieved, the Court may look to Plaintiffs' Counsel's collective "lodestar" as a cross-
12 check for assessing the reasonableness of an award. *In re OSI Sys., Inc. Derivative*
13 *Litig.*, No. CV-14-2910-MWF(MRWXx), 2017 WL 5642304, at *5 (C.D. Cal. May
14 2, 2017) ("*OSI Sys.*"). In *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002),
15 the Ninth Circuit approved the lodestar method as a "cross-check" against a
16 percentage award and noted that "'courts have routinely enhanced the lodestar to
17 reflect the risk of non-payment in common fund cases.'" 290 F. 3d at 1051-52; *see*
18 *also id.* at App'x & n.6 (listing lodestar multipliers for twenty-four settlements
19 averaging 3.28).

20 The requested Fee and Expense Amount is reasonable in light of Plaintiffs'
21 Counsel's substantial investments of time and expenses on a wholly contingent basis.
22 Plaintiff's Counsel devoted a total of 2044.3 hours to the investigation of the alleged
23 wrongdoing, issuance of litigation demands, commencement and prosecution of the
24 litigation, and settlement of the case, incurring a collectively lodestar of
25 \$1,264,628.50.⁵ Jonckheer Decl., ¶¶67-68. Plaintiffs' Counsel's lodestar reflects

26 _____
27 ⁵ This lodestar is based on an hourly rate ranging from \$650 to \$950 for partners,
28 \$375 to \$850 for associates and of counsel attorneys, and \$200 to \$305 for
professional staff. Comparable rates for attorneys have been approved by federal
and state courts throughout the nation, including this Court. *See Roberti v. OSI Sys.*,

1 over four years of litigation where they dedicated considerable time and resources
2 in the investigation and prosecution of the alleged wrongdoing. This investment is
3 commensurate with the challenges confronted and necessary to secure the benefits
4 achieved for Banc. Notably, the hours reported include time through the date the
5 parties executed a Memorandum of Settlement ("MOU"), documenting their
6 agreement in principle to settle the case, and exclude significant time spent trying to
7 negotiate an agreed-upon fee, drafting and negotiating the formal Stipulation, as well
8 as time briefing their motions for preliminary approval of the settlement, final
9 approval of the settlement, and the instant motion for attorneys' fees and expenses.

10 As set forth in the accompanying declarations, Plaintiffs' Counsel's efforts can
11 be broken down into three phases of litigation: (a) pre-filing investigation and
12 drafting of their respective litigation demands complaints (totaling approximately
13 \$551,444.75 in lodestar), (b) litigating the consolidated action through the filing of
14 a consolidated complaint and issuance of the November 15, 2019 Demand (as
15 defined in the Final Approval Memorandum) (totaling approximately \$443,256.25
16 in lodestar), and (c) engaging in extensive, hard-fought and protracted settlement
17 negotiations (totaling approximately \$269,927.50 in lodestar).⁶ Each of the three
18 firms comprising Plaintiffs' Counsel has provided for the Court detailed lodestar
19 analyses broken down in this fashion, by timekeeper. *See* Jonckheer Decl., ¶¶60-62;
20 Declaration of Ashley R. Rifkin on Behalf of Robbins LLP in Support of Plaintiffs'
21 Motion for a Fee and Expense Award, ¶¶6-10; Declaration of Marshall Dees on
22 Behalf of Holzer & Holzer, LLC in Support of Plaintiffs' Motion for a Fee and
23 Expense Award, ¶¶12-14.

24 _____
25 *Inc.*, No. CV-13-09174 MWF (MRW), 2015 WL 8329916, at *7 (C.D. Cal. Dec. 8,
26 2015) (approving hourly rates of \$525 to \$975 per hour for complex litigation
attorneys with 15 or more years of experience).

27 ⁶ Plaintiffs have broken down these phases of litigation by time period, and thus,
28 there may be some (albeit minimal) overlap among the categories.

1 To summarize their collective time and efforts, Plaintiffs' Counsel's work
2 included: (a) factual investigation, including, but not limited to, inspecting,
3 analyzing, and reviewing Banc's public filings with the SEC, press releases,
4 announcements, transcripts of investor conference calls, and news articles; (b)
5 consulting with an accounting expert; (c) drafting numerous litigation demand
6 letters; (d) drafting their complaints, including the Consolidated Complaint; (e)
7 researching the applicable law with respect to the claims asserted and the potential
8 defenses thereto; (f) reviewing and analyzing securities analysts' reports and
9 advisories and media reports about the Company; (g) reviewing and analyzing the
10 pleadings contained in the Securities Action (as defined in the Final Approval
11 Memorandum), as well as other lawsuits relevant to the allegations made in the case
12 and the litigation demands; (h) researching the Company's internal corporate
13 governance policies, processes, and procedures, as well as those of the Company's
14 peers; (i) preparing and submitting a detailed settlement demand and modified
15 demands over the course of the Parties' settlement negotiations; (j) engaging in
16 extensive settlement discussions with counsel for Defendants regarding the specific
17 facts, the perceived strengths and weakness of the claims and defenses thereto, and
18 the remedies that might be secured through litigation as compared to those that could
19 be secured through settlement; (k) negotiating the terms of the MOU embodying the
20 principal substantive settlement terms; and (l) negotiating the comprehensive final
21 Stipulation and Agreement of Settlement.⁷

22 In addition to their total lodestar of \$1,264,628.50, Plaintiffs' Counsel also
23 have unreimbursed litigation costs totaling approximately \$20,528.51. The Fee and
24

25 ⁷ Since the Parties agreed to seek to consolidate the actions and appoint a leadership
26 structure, Plaintiffs' Counsel have continuously acted in good-faith to coordinate
27 their efforts and avoid duplicative work. Plaintiffs' Counsel were also conservative
28 in safeguarding against overbilling and, among other things, ceased substantive
casework upon reaching an agreement in principle to settle months before the
Settlement was executed.

1 Expense Amount therefore equates to a lodestar multiplier of approximately 1.1.
2 This multiplier is unquestionably reasonable, especially given the substantial
3 benefits achieved, and is well below the positive multiplier typically applied in other
4 securities and derivative litigation. *See Vizcaino*, 290 F.3d at 1051-52, Appendix &
5 n.6 (upholding a multiplier of 3.65 in a shareholder settlement and analyzing twenty-
6 three approved shareholder settlements, with an average multiplier of 3.28).

7 In sum, a lodestar cross-check supports that the requested Fee and Expense
8 Amount is unquestionably reasonable, especially given the substantial benefits
9 achieved.

10 **IV. THE SERVICE AWARDS SHOULD BE APPROVED**

11 Plaintiffs respectfully request that the Court approve a service award of
12 \$2,000 for each Plaintiff, to be paid from the amount of fees awarded by the Court,
13 in recognition of the substantial benefits that Plaintiffs have helped create for Banc.
14 *See OSI Sys.*, 2017 WL 5642304, at *5 (awarding a \$5,000 incentive award and
15 finding that "[n]amed plaintiffs ... are eligible for reasonable incentive payments"
16 and "[a]n ."). Plaintiffs stepped forward and willingly undertook responsibilities
17 that go along with litigating a representative action on behalf of a company,
18 including verifying complaints and holding ownership in Banc stock in order to
19 maintain standing. The modest service awards, to be deducted from the fees awarded
20 to counsel, should therefore be approved.

21 **V. CONCLUSION**

22 Plaintiffs respectfully request that the Court award \$1.5 million in fees and
23 expenses to Plaintiffs' Counsel, including the Service Awards of \$2,000 to be paid
24 therefrom.

25
26
27
28

1 DATED: October 29, 2021

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