David E. Bower
MONTEVERDE & ASSOCIATES PC
600 Corporate Pointe, Suite 1170
Culver City, California 90230
Tel: 310-446-6652
dbower@monteverdelaw.com

*Counsel for Plaintiff Sheila Baker and Co-Lead Counsel for the Putative Class*

[*Additional Counsel Listed on Signature Page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEILA BAKER, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

JOSEPH E. MCADAMS, LLOYD MCADAMS, JOE E. DAVIS, ROBERT C. DAVIS, MARK S. MARON, and DOMINIQUE MIELLE,

Defendants.

Lead Case No. 21STCV07569
Consolidated with:
Case No. 21STCV07571
Case No. 21STCV08413
Hon. Carolyn B. Kuhl, Judge
Dept 12 Spring St.

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

Hearing Date: November 14, 2023
Time: 10:30 a.m.
Location: Spring Street Courthouse, Dept. 12

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## I. INTRODUCTION[1]

Plaintiffs Sheila Baker, Benjamin Gigli, and Merle Bundick, on behalf of themselves and each member of the Class,[2] hereby move for final approval of the proposed class action settlement in this action (the "Action"), which creates a common fund in the amount of $3,000,000 for the Class (the "Settlement").

The Settlement is the culmination of vigorous litigation, the product of arm's-length negotiation between the Parties, and the result of a mediation that initially failed but which later succeeded after weeks of further negotiations between the parties with the assistance of the mediator. Plaintiffs submit that the proposed Settlement is fair, reasonable, and adequate and meets all indicia of fairness to merit the Court's final approval. As an initial matter, the Settlement is fair because it was reached through arm's-length bargaining with the assistance of a mediator. The Settlement should also be presumed fair because Co-Lead Counsel, who are well-respected and experienced securities litigators, have concluded that the Settlement is a highly favorable result and in the best interest of the Class. This conclusion is based on, among other things: (i) their investigation and prosecution of this Action, which assured that the Settlement was entered into on a fully informed basis; (ii) the recovery when weighed against the significant risk, expense, and delay inherent in protracted litigation; (iii) a complete analysis of the evidence obtained; (iv) past experience in litigating complex actions similar to the present Action; and (v) the serious disputes among the Parties on both merits

[1] Capitalized terms not otherwise defined herein have the meaning defined in the Amended Stipulation and Agreement of Settlement, Compromise, and Release, dated June 15, 2023, and/or the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Plaintiffs' Opening Brief") (filed 2/28/23 and attached as Exhibits ("Ex[s].") A and B, respectively, to the Declaration of David E. Bower in Support of Plaintiffs' Motion for Final Approval (the "Bower Decl.")). The factual background and procedural history is largely duplicative of Plaintiffs' Opening Brief. A condensed version is included again herein for the convenience of the Court.

[2] The Class is defined as "[t]he putative class of former Anworth stockholders who held Anworth common stock from December 6, 2020 (the date of the Merger) through and including on March 19, 2021 (the date upon which Anworth's Merger with Ready Capital was consummated), as well as purchasers of Anworth stock during the period from December 6, 2020 through March 19, 2021 who still held Anworth stock as of March 19, 2021."

and damages issues. The Settlement should also be approved because, to date, **there have been no written objections to the Settlement**.

Simply put, while Plaintiffs and Co-Lead Counsel believe that the litigation has merit, they considered the numerous risks to proceeding and the arguments raised by Defendants in the course of this litigation (including at mediation and during settlement discussions), as well as the risks in establishing liability and damages at trial, which may have resulted in the Class receiving little or no recovery at all, and concluded that the Settlement was the best path to recovery for shareholders. Accordingly, Plaintiffs respectfully request that the Court approve the Settlement.

Plaintiffs and Co-Lead Counsel also move this Court for an award of attorneys' fees and expenses, including an award to Plaintiffs for their representation of the Class throughout this Action. After aggressive and protracted litigation efforts, which included voluminous discovery, surviving a demurrer, and a full-day mediation, Co-Lead Counsel secured an all-cash Settlement of $3 million on behalf of the Class – an excellent result given the risks and challenges Plaintiffs and Co-Lead Counsel would encounter in the continued litigation of this Action. Having secured this monetary benefit for the Class, Co-Lead Counsel respectfully move for: (i) an award of attorneys' fees in the amount of one-third of the Settlement; (ii) payment of $35,100.71 for expenses that were necessary to the prosecution of this Action; (iii) estimated administrative expenses of $49,157.00; and (iv) an incentive award of $1,000 for each Plaintiff in connection with their time spent prosecuting this Action on behalf of the Class. *See*, Bower Decl., ¶¶51-62; *See also*, Bower Decl., Exs. C-E (Declarations of Sheila Baker, Benjamin Gigli, and Merle Bundick). In light of the risks undertaken, the diligent efforts of counsel, and the excellent result obtained, the requested attorneys' fees are fair and reasonable and should be approved. The expenses requested by Co-Lead Counsel are similarly reasonable, were necessary for the successful prosecution of the Action, and should also be awarded. Finally, given their active involvement in and supervision of this multi-year litigation and their essential role in effectuating the Settlement, the incentive awards requested for Plaintiffs are modest and reasonable and should be granted.

For these and other reasons set forth below, as well as those set forth in Plaintiffs' Opening Brief and the Bower Decl., Plaintiffs respectfully request that the Court (i) approve the Settlement; (ii) enter the Final Approval Order submitted herewith; (iii) approve the requested attorneys' fees and reimbursement of expenses; and (iv) approve the incentive awards requested for Plaintiffs.

## II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This Action commenced on February 24, 2021; on June 15, 2021, Plaintiffs filed a Consolidated Class Action Complaint alleging breaches of fiduciary duty and violations of Md. Corps. & Ass'ns Code§ 2-405.1 (the "Consolidated Complaint") in connection with the acquisition of Anworth Mortgage Asset Corporation ("Anworth" or the "Company") by an affiliate of Ready Capital Corporation ("Ready Capital") (the "Merger"). ¶¶3, 8, 19-24.

Therein, Plaintiffs challenged the acquisition of Anworth by Ready Capital via the Merger for an implied value of $2.94 per share, consisting of $0.61 in cash and 0.1688 shares of Ready Capital stock per share of Anworth stock (the "Merger Consideration"). ¶¶6-8. Plaintiffs alleged that the Merger was the result of an unfair and conflicted process orchestrated by Defendants,[3] who tilted the sales process in favor of Ready Capital because Ready Capital was the bidder most willing to cooperate with Defendants' plan to bump up the value of the Management Termination Fee that Anworth would pay to its external manager, Anworth Management LLC (the "Anworth Manager"), which was owned and controlled by the McAdams Defendants.[4] ¶¶8-10. With Ready Capital's

[3] The Defendants are the former directors of Anworth. Defendant Joseph McAdams ("J. McAdams") was Anworth's President, Chief Executive Officer, and the Chairman of Anworth's Board of Directors. Defendant Lloyd McAdams ("L. McAdams," and together with J. McAdams, the "McAdams Defendants") had previously served as Anworth's Chairman and Chief Executive Officer and is J. McAdams' father. ¶¶2, 4. Defendants Joe E. Davis ("J. Davis"), Robert C. Davis ("R. Davis"), Mark S. Maron ("Maron"), and Dominique Mielle ("Mielle") were the Anworth directors that comprised the special Strategic Review Committee that was formed in July 2019, disbanded the following month, and reactivated in November 2020, about a month before the Merger Agreement was executed. ¶4.

[4] Prior to the Merger, Anworth was externally managed by Anworth Asset Management, LLC (the Anworth Manager), pursuant to the Anworth Management Agreement. ¶¶2-3. The McAdams Defendants were the principal owners and employees of the Anworth Manager, which was supervised and directed by the Anworth Board of Directors. ¶4. Each of the McAdams Defendants owned a 47.4% interest in the Anworth Manager. ¶4.

acquiescence, Defendants amended Anworth's original termination fee simultaneously with the execution of the Merger Agreement to increase the fee's value to **$20.3 million** – from a variable figure under the original termination fee formula that would have netted the Anworth Manager and the McAdams Defendants millions less. ¶9. Defendant J. McAdams self-servingly elicited Ready Capital's consent to cover 100% of that bumped up, fixed fee. ¶9. Plaintiffs further alleged that Defendants misled shareholders to obtain their approval, and that, as a result, shareholders were damaged because the implied value of the Merger Consideration ($2.94 per share) failed to adequately compensate stockholders in light of the Company's financial performance and growth prospects. ¶¶13-17.

Plaintiffs further alleged, *inter alia*, that J. McAdams used his influence as Chairman and Chief Executive Officer to steer the transaction to Ready Capital because it was willing to maximize the termination fee payable to Anworth Manager, thereby improperly diverting value from shareholders to the McAdams Defendants in breach of Defendants' fiduciary duties. ¶9. A rational acquiror has no financial reason to care how the merger consideration it pays is split between a target company's management and shareholders—all that matters from a buyer's perspective is whether the cost of a transaction represents acceptable or better value to itself. ¶¶ 9-10.

On August 13, 2021, Defendants filed a demurrer to the Consolidated Complaint. On December 2, 2021, following full briefing by the parties, the Court overruled Defendants' demurrer, holding that Plaintiffs had adequately stated a claim for breach of fiduciary duty. ¶25.

Thereafter, the parties engaged in several meet and confers related to discovery and disputes that arose regarding its scope, which they thereafter presented to the Court in a number of conferences. ¶26. Eventually, all issues were resolved, and discovery ensued. Following that resolution, from March 2022 through December 2022, the parties engaged in discovery. ¶26. In total, Plaintiffs obtained and reviewed approximately 40,000 pages of internal documents from Defendants, Anworth, Credit Suisse Securities (USA) LLC ("Credit Suisse"), Anworth's financial advisor in connection with the Merger, and several other third parties involved in the events that culminated in the Merger. ¶¶26-27.

Discovery and investigation validated Plaintiffs' theory that Defendants had improperly diverted value to the McAdams Defendants by maximizing the value of Anworth Manager's termination fee. ¶11. Specifically, Plaintiffs calculated that the fee paid to Anworth Manager under the original terms of the Anworth Management Agreement would have resulted in a termination fee to Anworth Manager (and by extension the McAdams Defendants) of approximately $14.6 million, in contrast to the materially higher $20.3 million fee ultimately paid. ¶11. In brief, during the 24-month period relevant to calculating Anworth Manager's termination fee (Q3 2019 through Q2 2021), Anworth received management fees totaling approximately $9,735,500. ¶11. On an annualized basis, Anworth Manager therefore received approximately $4,867,750 per year during this 24-month period. ¶11. Three times that annualized amount is $14,603,250, yielding an approximate termination fee for the Anworth Manager under the Anworth Management Agreement of $14.6 million, meaning that Defendants' approval of the amended $20.3 million termination fee shifted at least $5.7 million in value from stockholders to the McAdams Defendants, resulting in $5.6 million in damages when adjusted for the Class (after excluding Defendants). ¶11. Plaintiffs believe that this shift of value constituted the core of the Class's damages and maximum realistic recovery. ¶12. **The Settlement results in a significant recovery of approximately 53% of the Class's realistic damages**. ¶12.

These findings were based on Plaintiffs' collection, review, and analysis of board minutes, banker books, and communications from Defendants and third parties, totaling approximately 40,000 pages; (ii) Plaintiffs' review and analysis of Anworth's material public corporate filings and Management Agreement; and (iii) Defendants' formal responses and objections to Plaintiffs' interrogatories and requests for admission. ¶¶26-28.

On October 3, 2022, the parties participated in a full-day mediation session before Michelle Yoshida of Phillips ADR in an effort to resolve the Action. Before the Mediation, the parties exchanged mediation statements and exhibits, which addressed both liability and damages. ¶29. The Mediation did not lead to resolution of the Action. ¶30.

Thereafter, the parties continued discovery. During that time, the Settling Parties also continued to engage in arm's-length negotiations about the potential resolution of the Action. ¶31.

After another two-and-a-half months of extensive, arm's-length negotiations, the Settling Parties reached an agreement in principle on December 23, 2022 to settle the Action for $3,000,000.00 in cash, subject to approval by the Court. ¶32. Absent a Settlement, Plaintiffs would have proceeded to conclude discovery and would have likely faced a summary judgment motion or strong evidence at trial that there was no breach of fiduciary duty by the Defendants because the Management Termination Fee was approved by the Board and conducted at the direction of its legal advisors. ¶¶32, 48. Thus, the Class had a real risk of recovering nothing. ¶48.

Plaintiffs filed their Opening Brief in support of the Settlement on February 28, 2023. ¶33. On May 15, 2023, this Court issued a tentative ruling identifying certain observations and requirements that needed to be addressed pending preliminary approval. ¶34. Following a hearing on May 16, 2023, the parties executed the Amended Stipulation and Agreement of Settlement, Compromise, and Release, dated June 15, 2023, and on June 16, 2023, Plaintiffs filed a Supplemental Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement. ¶¶34-35. On June 30, 2023, the Court certified the Class for the purposes of this Settlement only, and preliminarily approved the Settlement (the "Preliminary Approval Order"). ¶36. The Court set the Settlement Hearing to be held on November 14, 2023. ¶36.[5]

Following, and pursuant to, the Preliminary Approval Order, notice to the Class was effectuated within fourteen days after the entry of the Preliminary Approval Order. ¶37; *See also* Bower Decl., Ex. F (Declaration from Settlement Admin). More specifically, RG/2 Claims Administration LLC ("RG/2") mailed the Long-Form Notice to 78 reasonably identifiable Class Members and 308 nominee firms and claims filers and caused the Notice to be posted to the Depository Trust & Clearing Corporation Legal Notice System. Bower Decl., Ex. F (Declaration from Settlement Admin). As a result of the responses from Nominees, RG/2 mailed an additional 448 Notices to potential Class Members and provided 11,245 Notices in bulk for nominees to mail the Notice to the clients directly. *Id.* Broadridge, a representative for multiple nominee firms, also sent

[5] Pursuant to the Guidelines for Motions for Preliminary and Final Approval of Class Settlement, attached to the Bower Decl. as Exs. B and B-1 are a copy of the Motion for Preliminary Approval and a copy of the Court's Order Granting Preliminary Approval.

9,693 emails to potential class members with links to the Notice. *Id.* As a result, RG/2 arranged for the mailing or emailing of 21,464 Notices to potential Class Members. *Id.* In addition, on July 14, 2023, the Publication Notice was published through *PRNewswire*, and on July 13, 2023, the Stipulation and Notice were posted online at https://www.rg2claims.com/anworth.html. *Id.*; ¶37.

## III. THE TERMS OF THE SETTLEMENT

Defendants have agreed to a Settlement Payment to the Class of $3 million in exchange for the releases provided in the Stipulation and the dismissal of this Action with prejudice. ¶40. Attorneys' fees, incentive awards, costs, expenses (including notice and administrative expenses) and any other Court-approved deductions will be paid out of the Settlement Payment. ¶41. The resulting Net Settlement Amount will be distributed to all Eligible Class Members on a pro rata basis, based on the number of Anworth shares owned by each such Eligible Class Member immediately prior to the consummation of the Merger. ¶41. At the time of the Merger, there were approximately 97,408,025 million shares owned by Eligible Class Members. ¶¶43-45. Accordingly, the expected payment – assuming the Court approves Plaintiffs' Counsel's request for attorneys' fees in the amount requested, plus reimbursement of expenses – will be approximately $0.02 per share, representing approximately 36% of total realistic damages to be recovered by the Class through the Net Settlement Fund. ¶46.

The Class will not need to submit a proof of claim. Instead, payment of the Settlement will be made directly to former Anworth shareholders through AST or DTC as described in the Stipulation at p. 13, § C2(b). This is the most efficient and comprehensive way to pay the Class. ¶47.

As discussed below, Plaintiffs submit that the proposed Settlement is fair, reasonable and adequate to the Class and meets all indicia of fairness to merit the Court's final approval.

## IV. EVALUATION OF THE SETTLEMENT

Plaintiffs alleged that Defendants breached their fiduciary duties by steering the Merger to a bidder (Ready Capital) willing to maximize the termination fee payable to the Company's external manager, Anworth Manager, which was owned and controlled by the McAdams Defendants. ¶¶3-4, 8-9. Plaintiffs alleged that Defendants amended the original Anworth Management Agreement

termination fee to increase the fee to be paid to the Anworth Manager and diverted $5.7 million to the Anworth Manager and McAdams Defendants and from Anworth's common stockholders. ¶¶9-10. Plaintiffs further alleged that Defendants misled shareholders to obtain their approval, and that, as a result, shareholders were damaged because the implied value of the Merger Consideration ($2.94 per share) failed to adequately compensate stockholders in light of the Company's financial performance and growth prospects. ¶¶13-17.

As noted above and further discussed below, Counsel believes that this shift in value ($5.6 million after adjustment to reflect shares owned by Defendants and other persons excluded from the Class) represents the maximum realistic recovery of former Anworth shareholders. ¶12. The Settlement results in a significant recovery of approximately 53% of the Class's realistic damages, and the Net Settlement Fund represents approximately 36% of the Class's realistic damages. ¶¶12, 46. Accordingly, as outlined further below, the Settlement is a real recovery that will guarantee Anworth's former shareholders get more money now without the risks inherent in a trial, including no recovery at all. ¶48.

## V. STANDARDS FOR FINAL APPROVAL OF SETTLEMENT[6]

California Civil Code § 1781(f) requires the approval of the court before dismissal, settlement, or compromise of a class action. The court's role in approving a class action settlement is to determine whether the settlement is fair, reasonable, and adequate. *See Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 (2009); *State of California v. Levi Strauss & Co.*, 41 Cal. 3d 460, 471 (1986); *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 245 (2001), overruled on other grounds as recognized in *Hernandez v. Restoration Hardware*, Inc., 4 Cal. 5th 260, 270, 228 Cal. Rptr. 3d 106, 113, 409 P.3d 281, 287 (2018) (overruling *Trotsky v. L.A. Fed. Sav. & Loan Ass'n*, 48 Cal. App. 3d 134, 121 Cal. Rptr. 637 (1975) and its progeny regarding an objector's standing to appeal an order or judgment in a class action). While trial courts are granted broad discretion in approving settlements in representative lawsuits, the role is limited to considering the overall fairness, reasonableness, and

[6] For the reasons outlined in Plaintiffs' Motion for Preliminary Approval, which is attached to the Bower Decl. as Ex. B, Plaintiffs also respectfully request that the Court finally certify the Class and finally appoint Plaintiffs as Lead Plaintiffs and Co-Lead Counsel as Class Counsel.

adequacy of the settlement, rather than a determination of the potential outcome of any trial. *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1138-39 (1996), overruled by *Hernandez*, 4 Cal. 5th 260; *see also Wershba*, 91 Cal. App. 4th at 245-46.

California policy favors compromises of litigation, particularly in complex class actions. *See Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1607-08 (1991) (declining to modify a settlement agreement in light of the strong public policy in favor of setting class action suits). The evaluation of a class action settlement is limited to "reach[ing] a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citation omitted). "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted).[7]

## VI. THE SETTLEMENT IS ENTITLED TO AN INITIAL PRESUMPTION OF FAIRNESS

An initial presumption of fairness applies when: "'(1) the settlement [was] reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" *Wershba*, 91 Cal. App. 4th at 245 (citation omitted); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008); *Cho*, 177 Cal. App. 4th at 734. Each of these factors is satisfied here.

First, the Settlement was the product of extensive arm's-length negotiations by counsel, which included the assistance of an experienced mediator over a full-day mediation. ¶¶29-32. Courts have recognized that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 U.S. Dist.

[7] California courts and the federal courts consider similar factors when considering whether to grant approval of class action settlements. *See La Sala v. Am. Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971).

LEXIS 99066, at *17 (N.D. Cal. Apr. 13, 2007). Here, the parties had the assistance of a well-known and highly competent mediator with significant experience mediating securities class actions.

Second, as discussed herein and in the Bower Decl., the Settlement was negotiated between counsel after nearly two years of litigation, after briefing and the denial of a dispositive demurrer, after development of the evidentiary record, and after the parties exchanged mediation briefing and argument regarding legal issues, all of which was sufficient to allow Plaintiffs to make an intelligent and well-informed decision about the propriety of the Settlement. ¶¶19-32. The factual record included tens of thousands of pages of documents garnered following multiple rounds of discovery requests and third-party subpoenas. *Id.* These efforts enabled Plaintiffs and their Counsel to frankly assess the strengths and weaknesses of the Class's claims.

Third, Co-Lead Counsel have significant experience in complex class action litigation, particularly in merger-related class actions in federal and state courts, and have negotiated numerous other class action settlements throughout the country. *See* Bower Dec., Exs. G-H (firm resumes). In fact, the Monteverde firm primarily handles shareholder merger and acquisition class action cases and was listed in the Top 50 in the 2018 and 2019 ISS Securities Class Action Services Report. Bower Decl., Ex. G. Similarly, with lawyers in Louisiana, New York, New Jersey, Chicago, and California dedicated almost exclusively to the practice of class action and individual investor securities and corporate governance litigation, Kahn Swick & Foti, LLC ("KSF") is one of the nation's premier boutique securities litigation law firms. Bower Decl., Ex. H. Indeed, KSF served as special counsel and court-appointed Co-Counsel to the lead plaintiff in *The Erica P. John Fund, Inc. v. Halliburton Company, et al*., No. 02-cv-1152 (N.D. Tex.), a case that resulted in a $100 million settlement after two trips to the Supreme Court, and has achieved numerous large settlements as lead, co-lead, or executive committee counsel in other securities class actions. *Id.* (citing *Pearlstein v. BlackBerry Limited, et al.*, No. 13-cv-7060 (S.D.N.Y.) (final approval of $165 million settlement – the fourth largest securities class action settlement of 2022 – granted after 9 years of litigation on September 29, 2022); *In re Chicago Bridge & Iron Co. N.V. Secs. Litig*., No. 17-cv-1580 (S.D.N.Y) (final approval

of $44 million settlement granted on August 2, 2022); *Farrar v. Workhorse Group, et al.*, 21-cv-02072 (C.D. Cal.) (preliminary approval of $35 million settlement granted on February 14, 2023)).

Simply put, Monteverde and KSF possess extensive knowledge and experience litigating complex securities and M&A class actions, both together and separately, and have successfully obtained significant recoveries for aggrieved shareholders. They fully support the Settlement and believe it to be a highly favorable result when weighed against the uncertainty and substantial risk of continuing this litigation through trial and appeals. The fact that qualified and well-informed counsel endorse the Settlement as being fair, adequate, and reasonable entitles the Settlement to an initial presumption of fairness.

Fourth, although the date for filing objections has not passed, to-date, Co-Lead Counsel have not received any written objections to the Settlement, nor has any Class Member elected to opt out of the Settlement. ¶38. This factor too supports an initial presumption of fairness. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1153 (2000) (one factor that "lead[s] to a presumption the settlement was fair" is that only "a small percentage of objectors" came forward); *Nat'l Rural*, 221 F.R.D. at 529 (small number of objections raises strong presumption that settlement is fair).

## VII. THE SETTLEMENT SATISFIES FACTORS FAVORING APPROVAL

When granting final approval of a settlement, California courts consider: (1) the settlement amount; (2) the risks of continued litigation; (3) the stage of proceedings; (4) the complexity, expense, and likely duration of the litigation absent settlement; (5) the experience and views of class counsel; and (6) the reaction of class members. *See Dunk*, 48 Cal. App. 4th at 1801; *see also Cazares v. Areas USA LAX, LLC, et al.*, No. 19STCV08209 (Los Angeles Cnty. Super. Ct. May 6, 2021) (Hon. Carolyn B. Kuhl).[8] Each of these criteria supports final approval of the Settlement.

### A. The Amount of the Settlement Favors Final Approval

Under the Settlement, Defendants agreed to pay the Class $3 million. ¶40. This amount is unquestionably better than the very possible alternative outcome of no recovery for the Class and

[8] Order attached as Ex. K to the Bower Decl.

represents a significant portion of what Co-Lead Counsel believes to be the maximum realistic amount the Class could have obtained if Plaintiffs had succeeded through trial. ¶¶12, 46, 48. As noted above, Plaintiffs believe that Defendants' approval of the amended $20.3 million termination fee shifted at least $5.7 million in value from stockholders to the McAdams Defendants, resulting in $5.6 million in damages when adjusted for the Class (after excluding Defendants). Plaintiffs believe that this shift of value constituted the core of the Class's damages and maximum realistic recovery. ¶¶8-11. As also noted above, t**he Settlement results in a significant recovery of approximately 53% of the Class's realistic damages**, and the Net Settlement Fund (assuming the Court approves Co-Lead Counsel's requested attorney's fees and expenses) will be approximately $0.02 per share, representing approximately 36% of total realistic damages available. ¶¶12, 46.

As the Ninth Circuit has made clear, the very essence of a settlement agreement is compromise that necessitates "a yielding of absolutes and an abandoning of highest hopes." *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir. 1982) (citations omitted). "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation." *Id.* (citation omitted). Accordingly, the fact that the Class potentially could have achieved a greater recovery after trial does not preclude the Court from finding that the Settlement is within a "range of reasonableness" for approval. *See e.g.*, *In re Warner Commc'ns Sec. Litigation*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985).

Even if Plaintiffs were able to successfully prosecute this Action through trial and establish Defendants' liability, there was no guarantee that a favorable verdict would be awarded for damages in any amount, much less an amount that would exceed the value of the Settlement, and it would have taken years before all appeals were resolved and the Class received any payment. ¶48; *See Wershba*, 91 Cal. App. 4th at 250 ("Compromise is inherent and necessary in the settlement process"). Through the Settlement, Class Members have an opportunity to obtain additional consideration for their Anworth stock beyond the amount they already received in the Merger. This warrants approval. *See, e.g., In re Cox Radio, Inc. S'holders Litig.*, C.A. No. 4461-VCP, 2010 Del. Ch. LEXIS 102, at *32

(Del. Ch. May 6, 2010) (finding a price increase to be a material benefit to the settlement class); *Matter of Cablevision Sys. Corp. Shareholders Litig.*, 868 N.Y.S.2d 456, 468 (Sup. Ct., Nassau Co. 2008) (increase in the share price "was clearly a substantial benefit" to the settlement class); *In re Infinity Broadcasting Corp. Shareholders Litig.*, 802 A.2d 285 (Del. 2002) (holding that an increase in the exchange ratio was beneficial to the settlement class).

Moreover, the Settlement was only reached after substantial litigation, and is the product of each party's evaluation of the strengths and weaknesses of their respective case and the costs of taking the litigation through the completion of merits and expert discovery, trial, and appeals. Based on all factors involved, the Settlement is a highly favorable result for the Class. Accordingly, this factor weighs in favor of the Court granting final approval. *See Wershba,* 91 Cal. App. 4th at 250 ("A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable.").

**B. <u>The Substantial Risks of Continued Litigation</u>**

Plaintiffs' case against Defendants was far from assured, and continued litigation presented substantial risks to the establishment of both liability and damages and to the preservation of any win on appeal.

**1. Risks in Establishing Liability**

Defendants argued that neither Maryland law nor the facts of this case would support any claim for liability against Defendants, and Plaintiffs faced substantial risks under Maryland law, including the possibility that the decisions of the Board would be protected under Maryland's business judgment rule, codified at Maryland Corporations and Associations Code ("MCAC") § 2-405.1 (the "Business Judgment Statute"). ¶48. The Maryland Business Judgement Statute adopts a presumption (§ 2-405.1(g)) that directors act in good faith, in what they believe to be in the best interests of the company, and as an ordinarily prudent person would (§ 2-405.1(c)), and provides that directors have "immunity" from personal liability ((§ 2-405.1(e)) for conduct in accordance therewith. ¶48. Maryland law also provides two independent ways pursuant to which self-interested transactions can be ratified: approval by a majority of disinterested stockholders, pursuant to MCAC § 2-419(b)(1)(ii)

(inapplicable here); or, approval of a majority of the disinterested members of the board, pursuant to MCAC § 2-419(b)(1)(i) ("Board Ratification"). ¶48.

As noted above, Plaintiffs alleged that Defendants – including the McAdams Defendants – tilted the sales process in favor of Ready Capital because Ready Capital was the bidder most willing to cooperate with Defendants' plan to bump up the value of the Management Termination Fee that Anworth would pay to the Anworth Manager in connection with a merger transaction. ¶¶8-11. Plaintiffs' discovery and investigation established that the original terms of the Anworth Management Agreement would have resulted in a termination fee to Anworth Manager (and by extension the McAdams Defendants) of approximately $14.6 million, in contrast to the materially higher $20.3 million fee ultimately paid in connection with the Merger. *Id*. Discovery also revealed that the Management Termination Fee was a central issue in Defendant J. McAdams' negotiations with bidders. *Id*.

While these facts *could* support a claim for breach of fiduciary duty against the Defendants, Defendants cold (and did) argue that the Board formed a strategic review committee of purportedly independent directors that (a) recommended to the Board that the Company proceed with Ready Capital and (b) negotiated the Anworth Management Agreement Amendment that provided for the $20.3 million Management Termination Fee. ¶48. Defendants also could (and did) argue that the Management Termination Fee was a contractual obligation of Anworth pursuant to the Anworth Management Agreement; that, as a result of the timing of the effective date of the Merger and the automatic renewal of the Merger Agreement, the Anworth Manager was contractually entitled to a Management Termination Fee that reflected the payment of management fees through December 31, 2021; and, accordingly, that Defendants' estimation and calculation of this future fee (that resulted in the Management Agreement Amendment and $20.3 million Management Termination Fee) was a reasonable exercise of the Defendants' business judgment. ¶48.

In short, Plaintiffs faced substantial challenges regarding both the appropriate interpretation of the Management Agreement and establishing that Defendants were not entitled to the protections of the Business Judgement Statute and/or Board Ratification. Although Plaintiffs were prepared to

make counterarguments to Defendants' positions, the Court (at summary judgment) or a jury (at trial) may well have found Defendants' factual and legal arguments persuasive and dispositive as to liability.

**2. Risks Relating to Damages**

Another crucial issue in this case related to the value of Anworth at the time of the Merger and the superiority of Ready Capital's proposal. Plaintiffs alleged that the implied value of the Merger Consideration, approximately $2.94 per share, undervalued the Company, but that the Defendants nevertheless approved the Merger because Ready Capital agreed to pay the higher $20.3 million Management Termination Fee to the Anworth Manager. ¶¶8-11, 17. However, Defendants could argue (and did) (i) that the Merger Consideration was entirely fair (based on the analyses and opinion of the Board's financial advisor) and represented a significant premium for Anworth's shareholders; (ii) that the Company was shopped to several bidders who were also willing to pay the full contractually obligated Management Termination Fee; and (iii) that Ready Capital's offer was the highest proposal. ¶48. Defendants would have noted (and did note) that the Merger with Ready Capital offered a 25% premium to Anworth's then-most current market trading price, a 43.7% premium to the prior one-month average, and significant immediate liquidity for Anworth stockholders based upon a 20% cash component (the highest of all bidders) during a time of great market instability and uncertainty.[9] ¶48.

Accordingly, even if Plaintiffs were successful in rebutting the presumption of the Business Judgment Statute, defeating Defendants' Board Ratification defense, and demonstrating liability, Plaintiffs faced substantial factual challenges and legal issues regarding the availability and value of damages, and there remained a substantial risk that the finder of fact would agree with Defendants' contention that no damages existed, or that damages were less than the Settlement amount. In short, Plaintiffs faced the very real prospect of winning on liability, only to lose on damages and recover nothing for the Class. That precise outcome has played out in numerous merger class actions in the

[9] Defendants similarly contend that Plaintiffs' claim for damages based on purported inadequate Merger Consideration is an impermissible (and unavailable) appraisal remedy under MCAC § 3-202(c)(1). ¶48.

last decade. *See, e.g., In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013) (plaintiffs proved directors' breaches of fiduciary duty at trial in connection with a disputed merger, but the Court of Chancery found that the price was fair and damages were zero); *In re PLX Tech. Stockholders Litig.*, C.A. No. 9880-VCL, 2018 Del. Ch. LEXIS 336 (Del. Ch. Oct. 16, 2018) (finding liability but entering judgment in favor of defendants because plaintiffs failed to show causally related damages); *In re Warner Comm'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) (approving settlement where "it 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); *In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) ("even if the jury agreed to impose liability, the trial would likely involve a confusing 'battle of the experts' over damages").

What is more, as noted above, Plaintiffs and Co-Lead Counsel believe that the disputed increased Management Termination Fee and alleged diversion of approximately 5.7 million ($5.6 million after adjustment to reflect shares owned by Defendants and other persons excluded from the Class) to the Anworth Manager and McAdams Defendants and from Anworth's common stockholders represents the maximum realistic recovery of former Anworth shareholders. ¶¶12, 46, 48. In light of these risks, they believe that the $3 million settlement, which represents a 53% recovery, is a meaningful recovery. *Id.*

**3. Risks Relating to Appeal**

Finally, even if Plaintiffs were to prevail on all of the above issues at trial, the risks would not end there. *See In re Mfrs. Life Ins. Co. Premium Litig.*, MDL No. 1109, 1998 U.S. Dist. LEXIS 23217, at *17 (S.D. Cal. Dec. 21, 1998) ("even if it is assumed that a successful outcome for plaintiffs at summary judgment or at trial would yield a greater recovery than the Settlement - which is not at all apparent - there is easily enough uncertainty in the mix to support settling the dispute rather than risking no recovery in future proceedings"). There are innumerable securities cases in which a successful verdict has been overturned either by motion after trial or an appeal. *See, e.g., In re Apple Comput. Sec. Litig.*, No. C-84-20148(A)JW, 1991 U.S. Dist. LEXIS 15608 (N.D. Cal. Sept. 6, 1991)

(after jury rendered a verdict for plaintiffs after an extended trial and recoverable damages would have exceeded $100 million, the court overturned the verdict, entered judgment notwithstanding the verdict for the individual defendants, and ordered a new trial with respect to the corporate defendant); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction). In sum, the risks posed by continued litigation were substantial and would be present at every step of continued litigation. Plaintiffs took all of the above risk factors into account in accepting the Settlement, and concluded it represents an excellent outcome for the Class. ¶48.

### C. The Stage of the Proceedings and Available Evidence Gave the Parties Sufficient Information to Negotiate a Fair, Reasonable, and Adequate Settlement

The third factor in the Court's analysis – the stage of proceedings – focuses on whether the parties had sufficient information to conduct an informed negotiation that resulted in a settlement that adequately reflects the merits of the case. When applying this factor, "[t]he question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it." *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *39-*40 (E.D. La. Mar. 2, 2009). Moreover, for this factor, the trial court "may legitimately presume that counsel's judgment [that it has the information necessary to evaluate a settlement] . . . is reliable." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981).

As detailed above and in the Bower Decl., Plaintiffs and Co-Lead Counsel sufficiently investigated and researched the merits of their claims and the potential defenses to determine that the terms of the Settlement are fair, reasonable, and adequate and in the best interest of the Class. Plaintiffs and Co-Lead Counsel actively litigated the merits of this case for almost two years and engaged in significant factual discovery, including the receipt and review of nearly 40,000 pages of discovery. ¶¶19-32. The merits of the parties' respective positions were also tested through Demurrer and settlement discussions, including in mediation briefing and a subsequent full-day mediation

before an experienced securities mediator, which further highlighted the legal and factual issues in dispute. *Id.* The knowledge and insight gained through litigation provided Plaintiffs and Co-Lead Counsel with sufficient information to evaluate the strengths and weaknesses of the Class's claims and the Defendants' defenses, as well as whether a larger recovery was likely to be obtained through continued litigation. *Id.*; ¶48.

### D. Balancing the Certainty of an Immediate Recovery Against the Expense and Likely Duration of Continued Litigation and Trial Favors Settlement

The immediacy and certainty of recovery is another key factor in determining whether the Settlement is fair, adequate, and reasonable. Courts have held that "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984); *Officers for Justice,* 688 F.2d at 626. Thus, the benefit of the present settlement must be balanced against the expense of achieving a more favorable result at a trial in the future. *Young v. Katz,* 447 F.2d 431, 433 (5th Cir. 1971).

Approval of the Settlement will mean a significant, prompt recovery for the Class. If not for this Settlement, the Action would have continued at great cost and substantial duration. Further fact and expert discovery would need to be completed, and Plaintiffs would have had to successfully defeat a Motion for Summary Judgment. Assuming Plaintiffs were successful and the Action went to trial, that trial would have occupied multiple attorneys for weeks and would have required substantial and costly expert testimony on both sides. Furthermore, a judgment favorable to the Class, in light of the contested nature of virtually every aspect of this case, would unquestionably be the subject of post-trial motions and further appeals, which could prolong the case for several more years. *See, e.g.*, *Warner Comm'ns*, 618 F. Supp. at 745 (delay from appeals is a factor to be considered). Therefore, delay, not just at the trial stage, but through post-trial motions and the appellate process as well, could force Class Members to wait many more years for an uncertain recovery, further reducing its value. The Settlement of this Action now, by contrast, ensures an immediate recovery and eliminates the risk of no recovery at all. *See In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 373-74 (S.D. Ohio 2006) (explaining "the difficulty Plaintiffs would encounter in proving their claims, the substantial

litigation expenses, and a possible delay in recovery due to the appellate process, provide justifications for this Court's approval of the proposed Settlement").

### E. The Recommendation of Experienced Counsel Heavily Favors Approval of the Settlement

While a court must independently review a proposed settlement for fairness and adequacy, the judgment of experienced counsel – who are most closely acquainted with the facts of the underlying litigation – also weighs in favor of approval. *See Nat'l Rural*, 221 F.R.D. at 528; *Dunk*, 48 Cal. App. 4th at 1802. As described above, Co-Lead Counsel have extensive experience and commendable track records in complex and class action litigation and fully support the Settlement as being in the best interest of the Class. This factor heavily favors the Court's approval of the Settlement.

### F. The Reaction of the Class Supports Approval of the Settlement

Finally, courts also consider the class's reaction in determining whether to approve a settlement. *Dunk*, 48 Cal. App. 4th at 1801; *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001). A "relatively small number" of objections is "an indication of a settlement's fairness." *Brotherton*, 141 F. Supp. 2d at 906 (citing Herbert Newberg & Alba Conte, 2 *Newberg on Class Actions* § 11.48 (3d ed. 1992). "The fact that some class members object to the Settlement does not by itself prevent the court from approving the agreement." *Brotherton*, 141 F. Supp. 2d at 906.

In this case, to date, thousands of long-form notices have been sent to potential Class Members and their nominees, and the Summary Notice was published following the Preliminary Approval Order. ¶37. Although the time for objections has not yet expired, to date, Co-Lead Counsel have not received any written objections to the Settlement, nor has any Class Member elected to opt out of the Settlement. ¶38. Thus, the reaction of the Class weighs heavily in favor of approving the Settlement. *See Nat'l Rural*, 221 F.R.D. at 529 (finding the absence of a large number of objections raises a strong presumption that the settlement is fair to the class).

## VIII. THE PLAN OF ALLOCATION IS A FAIR METHOD OF DISTRIBUTING THE SETTLEMENT PROCEEDS AND SHOULD BE APPROVED

The purpose of a plan of allocation is to provide an equitable basis for the distribution of the settlement fund among eligible class members. *See Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir.

1978) (noting that courts have "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably."). Assessment of the plan of allocation is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). To meet this standard, an allocation formula must only have a reasonable, rational basis, particularly if recommended by "experienced and competent" Co-Lead Counsel. *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993). Because they tend to mirror the complaint's allegations, "plans that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatec Sys. Inc. Sec. Litig.*, No. 704-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428, at *15 (D.N.J. Nov. 28, 2007).

Here, the Net Settlement Fund will be distributed to all Eligible Class Members on a *pro rata* basis, based on the number of outstanding Anworth shares owned by such Eligible Class Member immediately prior to the Merger. ¶41. The objective of this plan is to provide Eligible Class Members with their *pro rata* share of the Net Settlement Fund on a fair basis by automatically providing each with the same recovery per share. Class members will not be required to fill out a proof of claim form. ¶47. This process will result in fair distribution to the Net Settlement Fund among Class Members as it is consistent with how post-trial damages are calculated and distributed for cases of this nature that proceed through trial. *See In re Rural/Metro Corp. Stockholders Litigation*, 102 A.3d 205, 224 (Del. Ch. Oct. 10, 2014) (explaining that monetary damages are "equal to the 'fair' or 'intrinsic' value of their stock at the time of the merger, less the price per share that they actually received"). Thus, the plan of allocation is appropriate and should be approved.

## IX. THE COURT SHOULD AWARD PLAINTIFFS' COUNSEL REASONABLE ATTORNEY'S FEES USING THE PERCENTAGE METHOD

After almost two years of hard-fought litigation, which included the filing of two complaints, the defeat of a dispositive motion, significant document discovery, and a full day of mediation, Co-Lead Counsel secured an all-cash Settlement of $3 million on behalf of the Class. ¶¶19-32. As discussed above, the Settlement represents approximately 53% of the total realistic damages (of $5.7 million) available to the Class and is an excellent recovery, particularly given Defendants' steadfast

position that the Merger Consideration exceeded the intrinsic value of Anworth shares at the time of the Merger and that the disputed Management Termination Fee was a contractual obligation owed to the Anworth Management and not a diversion of funds otherwise available to shareholders. ¶¶11-12, 48. Thus, the Settlement alone demonstrates the outstanding results obtained by Co-Lead Counsel.

Having secured this monetary benefit for the Class, Co-Lead Counsel now respectfully move for: (i) an award of attorneys' fees in the amount of one third of the Settlement, (ii) payment of $35,100.71 for expenses that were necessary to the prosecution of this Action, and (iii) an incentive award of $1,000 for each Plaintiff in connection with their time spent prosecuting this Action on behalf of the Class. ¶¶51-62; *See also* Bower Decl., Exs. C-E (Declarations of Plaintiffs); I-J (Declarations of Monteverde and Palestina).

California Supreme Court precedent supports these awards. In *Laffitte v. Robert Half Int'l Inc.*, ("*Laffitte*"), the California Supreme Court affirmed a one-third percentage-based fee award to class counsel as part of a $19 million settlement in a wage and hour class action. 1 Cal. 5th 480 (2016). The facts of *Laffitte* support the fees, expenses, and service awards requested here:

- The *Laffitte* case, like the present Action, was settled before trial. *Id*. at 487.
- The Court approved a fee to class counsel of just over 33.33%. *Id*. at 485. Here, Co-Lead Counsel requests the same.
- The lodestar multiplier cross-check in *Laffitte* was 2.13, excluding work performed on the appeal. *Id*. at 487. Here, Plaintiffs' Counsels' lodestar multiplier is just 0.825x.
- The Court noted with approval that the settlement provided no reversion to defendants. *Laffitte*, l Cal. 5th at 503. Here, if approved, the Settlement also provides no reversion to Defendants and any unclaimed funds is requested to go to a *cy pres* recipient – to the Legal Aid Foundation of Los Angeles. ¶47. Counsel is not affiliated with the Legal Aid Foundation of Los Angeles and Anworth was headquartered in Santa Monica, CA. ¶47. It makes sense that any *cy pres* funds benefit the community where Anworth (and its employees, who were likely shareholders in Anworth and members of the Class) is situated. ¶47.

For the reasons set forth herein and below, Co-Lead Counsel respectfully submit that the requested attorneys' fees are fair and reasonable, and, in light of the risks undertaken, the diligent efforts of counsel, and the excellent result obtained, should be approved by the Court. The expenses

requested by Co-Lead Counsel are similarly reasonable, were necessary for the successful prosecution of the Action, and should also be awarded. Finally, given their active involvement in and supervision of this multi-year litigation and their essential role in effectuating the Settlement, the incentive awards requested for Plaintiffs are modest and reasonable and should also be granted.

### A. The Common Fund Doctrine Allows the Court to Compensate Attorneys for Their Efforts in Creating a Common Fund

When litigation creates a common fund for the benefit of a class, courts award counsel their reasonable attorneys' fees out of that fund based on a percentage of the fund created. *Laffitte*, 1 Cal. 5th at 503. In *Laffitte*, the Court recognized the 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 to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id.* The *Laffitte* ruling is consistent with decisions from courts throughout the country, including the United States Supreme Court. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (holding under common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class"). In fact, the Supreme Court recognized in *Laffitte* that, "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method [and] [m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." *Laffitte*, l Cal. 5th at 493-94 (citation omitted).

Compensating counsel with a percentage of the common fund is not only fair, but it also incentivizes efficient and effective litigation. *Id*. at 503 (percentage awards align the incentives of counsel with those of the class). As noted by a task force charged by the Third Circuit to investigate court-awarded attorneys' fees, "any and all inducement or inclination to increase the number of . . . hours will be reduced, since the amount of work performed will not . . . alter the contingent fee." Report of the Third Circuit Task Force, Court Awarded Attorney Fees, 108 F.R.D. 237, 258 (Oct. 8,

1985). Utilizing a percentage fee thus creates "a substantial inducement" for Co-Lead Counsel to work efficiently, since "counsel's compensation will not be enhanced by a delay." *Id*.

Further, a contingency fee accounts for the lost opportunities to develop other clients and the foregone ability to accept competing engagements. *See Franklin Balance Sheet Inv. Fund v. Crowley*, No. Civ. A. 888-VCP, 2007 Del. Ch. LEXIS 133, at *39 (Del. Ch. Aug. 30, 2007) (holding that the court should compensate "plaintiffs' attorneys for their lost opportunity cost . . . , the risks associated with the litigation, and a premium"). As the Supreme Court noted, "'[a] contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.'" *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001) (citation omitted).

**B. The Requested Fee of One Third is Reasonable in This Case**

In determining the reasonableness of a fee request, California courts typically consider the following factors: (1) the continuing obligation of plaintiffs' counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing a fee award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation, and (5) the amount involved and the results obtained on behalf of the class by plaintiffs' counsel. *Nat. Gas Anti-Trust Cases*, No. 4221, 2006 Cal. Super. LEXIS 1302, at *7-8 (Cal. Super. Ct. Dec. 11, 2006); *see also Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk*, 48 Cal. App. 4th at 1810 n.21. "However, no rigid formula applies and each factor should be considered only 'where appropriate.'" *Nat. Gas Anti-Trust Cases*, 2006 Cal. Super. LEXIS 1302, at *8.

Here, the requested fee of one-third of the common fund is consistent with recent awards from this Court, as well as other courts in California and nationwide in similar shareholder class actions. *See, e.g., Cazares v. Areas USA LAX, LLC, et al.*, No. 19STCV08209 (Los Angeles Cnty. Super. Ct.

May 6, 2021) (Hon. Carolyn B. Kuhl) (awarding one-third attorney fee award on $895,000 recovery) (Bower Decl., Ex. K) *In re Menlo Therapeutics Inc. Sec. Litig.*, No. 18 CIV06049, slip op. at 6 (San Mateo Cnty. Super. Ct. Aug 14, 2020) (awarding one-third fee award on $9.5 million recovery) (Bower Decl., Ex. L); *In re Hansen Inc. S'holder Litigation,* No. 16cv294288 (Santa Clara Cnty. Super. Ct. July 12, 2019) (awarding fees of 1/3 of gross settlement, plus $131,901.64 in expenses and $6,000 in incentive awards) (Bower Decl., Ex. M); *In re Avalanche Biotechnologies, Inc. S'holder Litig.*, No. CIV536488, slip op. (San Mateo Cnty. Super. Ct. Jan. 19, 2018) (awarding 33% fee on $13 million recovery) (Bower Decl., Ex. N); *In re ITC Holdings Corp. S'holder Litig.*, No. 2016-151852-CB, slip op. (Oakland Cnty. Cir. Ct. Sept. 25, 2017) (awarding 30% fee in merger-related shareholder class action) (Bower Decl., Ex. O); *In re Epicor Software Corp. S'holder Litig.*, No. 30-2011-00465495-CU-BT-CXC, slip op. (Orange County Super. Ct. Oct. 24, 2014) (awarding 30% fee in merger-related shareholder class action) (Bower Decl., Ex. P).[10] Moreover, as discussed below, the requested fee award for Co-Lead Counsel is also supported by: (1) the result achieved; (2) the time and effort put into the litigation; and (3) the contingent nature of the representation and associated risk of loss.

**1. The Result Achieved in This Action**

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2020 U.S. Dist. LEXIS 177056, at *7 (C.D. Cal. Sep. 18, 2020) (citing *Hensley*); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client"). In this case, the Settlement Amount of $3 million is approximately 53% of the Class's reasonable damages, and thus represents

[10] *See also In re Syntroleum Corp. Shareholder Litigation*, No. CJ-2013-5807 (Tulsa Cnty. Okla. Dist. Ct. 2016) (approving a fee award of 1/3 of the common fund plus expenses of $66,427.94, together representing 35.7% of the $2.8 million settlement fund) (Bower Decl., Ex. Q); *In re American Capital Shareholder Litigation*, No. 422598-V (Montgomery Cir. Ct., MD 2018) (approving a fee and expense award in the amount of $5,895,270.00, representing 1/3 of the $17.5 million common fund plus expenses) (Bower Decl., Ex. R).

a highly favorable result given the risks of proving liability and damages, while providing an immediate and certain recovery for Class Members without the risk, expense and delay of summary judgment, trial, and appeals.

**2. Time and Effort Required**

This Court has requested that counsel provide a lodestar analysis[11] and submit their billing records for the Court's review. That information is provided herewith. *See* Bower Decl., Exs. I-J, respectively. As detailed therein, Co-Lead Counsel invested 1,735.3 hours of time litigating the Action for almost two years, resulting in a total lodestar of $1,212,312.50.[12] ¶¶19-32, 53.

During this time, Co-Lead Counsel, among other things: researched, drafted and filed complaints; successfully opposed a demurrer; engaged in a dispute regarding the scope of discovery and participated in conferences with the Court related thereto; conducted extensive investigation and obtained voluminous discovery from the Company, the Company's financial advisor, and other third parties involved in the Company's sale process;[13] consulted with a forensic damages expert regarding the calculation of damages; briefed memorandum and argument in preparation for mediation; and

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[11] Although a comparison of lodestar to the requested fees is not required, "[a] lodestar cross-check" will provide the court with "a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." *Laffitte*, l Cal. 5th at 504. In *Laffitte*, the Court observed: "With regard to expenditure of judicial resources, we note that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent 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." *Id.* (citations omitted).

[12] Lodestar is determined by multiplying the number of hours worked by the hourly rates of the attorneys and paraprofessionals. *Serrano*, 20 Cal. 3d at 48-49.

[13] In total, Plaintiffs collected, reviewed, and analyzed approximately (i) 800 pages of documents from Anworth, including minutes and banker presentations; (ii) 26,000 pages of documents from Credit Suisse (Anworth's financial advisor during the Merger), which included corporate books and records for Anworth and documents generated in connection with the Merger process, such as pitch books and due diligence materials provided to Anworth / Credit Suisse by potential bidders; (iii) 13,500 pages of documents and communications from six unsuccessful alternative bidders during the Merger process; (iv) Anworth's 10-Ks and 10-Qs from 2017 and onwards; and (v) Anworth's 2011 Management Agreement. ¶¶26-27.

engaged in a full day mediation. *Id*. This was all time well spent, as the $3 million Settlement could not have been secured but for these efforts.

The requested award of attorneys' fees ($1 million) is reasonable in comparison to Co-Lead Counsel's total lodestar ($1,212,312.50) and represents a multiple of just 0.825x. An appropriate fee award will generally be a multiple 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*, 24 Cal. 4th at 1138 (emphasis in original); *see also Chavez*, 162 Cal. App. 4th at 61 ("[A] lodestar enhancement based on 'quality of representation' by definition involves considerations not captured by counsel's hourly rates.") (citation omitted). The requested multiplier is well below the range of multipliers that have been deemed reasonable by California courts. *See Wershba*, 91 Cal. App. 4th at 255 (recognizing that "[m]ultipliers can range from 2 to 4 or even higher"). Indeed, "numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees." *Nat. Gas Anti-Trust Cases*, 2006 Cal. Super. LEXIS 1302, at *9 (remanding for a lodestar enhancement of "two, three, four or otherwise"); *Glendora Cmty. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465 (1984) (affirming a 12-times multiplier of counsel's hourly rate and expressly rejecting the argument that the requested fee was exorbitant or unconscionable).

The effective hourly rate sought by Co-Lead Counsel is also reasonable when compared to the community of class action counsel in the Los Angeles and Silicon Valley legal markets. "It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court," and the court should take into consideration the "prevailing market rate for comparable legal services." *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096 (2000). Here, Co-Lead Counsel are located in Los Angeles, New York, and Louisiana, and Defendants' counsel is litigating the Action from its Los Angeles, CA office. The hourly rate sought for Co-Lead Counsel range between $475 per hour (for associates) to $975 (for partners). Bower Decl., Exs. I-J. By contrast, according to the National Law Journal's 2015 Law Firm Billing Survey, law firms with their largest office in Los Angeles, Palo Alto or San Francisco had average associate and partner hourly

rates (*over seven years ago*) of $806 and $979, respectively. *See* Bower Decl., Ex. S (NLJ Billing Survey). In addition, the community of law firms that litigate in the securities arena are limited and among the most recognized firms in the world. For example, Defendants are represented by Greenberg Traurig, LLP, a premier, world-recognized law firm that, in part, specializes in the litigation of damages cases in the securities law arena. Such securities work garners one of the highest hourly rates of any practice area. *See* Bower Decl., Ex. T, Kostal, Susan, *Rate Gap Widens Between Biggest Law Firms and Their Smaller Competitors*, https://www.attorneyatwork.com/rate-gap-widens-between-biggest-law-firms-smaller-competitors/ (Last visited September 24, 2023) (*citing*, LexisNexis CounselLink, 2019 CounselLink Enterprise Legal Management Trends Report (noting a national median hourly rate of $706 for attorneys specializing in mergers and acquisitions)).

In sum, the lodestar crosscheck, the multiplier, and the effective hourly rate all reinforce the fairness of the requested fee award.

**3. The Contingent Nature of Representation**

Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *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 considering the appropriate percentage award) (citation omitted). This makes sense because, in the legal marketplace, an attorney who takes a case on contingency expects a higher fee than an attorney who is paid as the case goes along, win or lose. *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"). As the Court of Appeals explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

> 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 . . . .
>
> Finally, even 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. If a lawyer was forced to borrow against the legal services already performed on a case which took five years to complete, the cost of such a financing arrangement could be significant.

*Id.* at 288.

Here, Co-Lead Counsel undertook this litigation on a completely contingent basis, assuming a significant risk that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and reimbursed for their expenses on a regular basis, Co-Lead Counsel have not been compensated for any time or expenses since this case began in February 2021. Moreover, Co-Lead Counsel faced significant litigation risk. As discussed above and detailed in the Bower Decl., there was significant risk that Plaintiffs would lose at summary judgment or at trial, or prevail and still recover no (or minimal) damages. *Supra* § VII(B); Bower Decl., ¶48.

The contingent nature of counsel's representation and the sizable financial risks borne by Co-Lead Counsel further support the percentage fee requested. It simply cannot be disputed that the risk of no recovery (and thus no fees) in complex contingency cases is very real. As the court in *In re Xcel Energy, Inc.* recognized, "[t]he risk of no recovery in complex cases of this sort is not merely hypothetical[,] [p]recedent 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." *In re Xcel Energy, Inc*., 364 F. Supp. 2d 980, 994 (D. Minn. 2005). For example, in *In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 U.S. Dist. LEXIS 50995 (N.D. Cal. June 16, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010), the court granted summary judgment to defendants after *eight years* of litigation, and after class counsel incurred over $6 million in expenses, and worked over 100,000 hours, representing a lodestar of approximately $40 million. Similarly, in *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW (EDL), 2008 U.S. Dist. LEXIS 124407, at *13 (N.D. Cal. Mar. 19, 2008), after a lengthy trial involving securities claims, the jury reached a verdict in defendants' favor, and plaintiffs' counsel recovered no fee.

Because the fee in this matter was entirely contingent, the only certainties were that there would be no fee without a successful result and that such a successful result would be realized only after considerable and difficult effort. Despite such risks, Co-Lead Counsel committed significant

resources, time, and money to successfully prosecute the Action for the Class's benefit. This risk supports the fee requested.

## X. THE REQUESTED EXPENSES ARE REASONABLE, WERE NECESSARY FOR PROSECUTING THE ACTION, AND SHOULD BE APPROVED

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses, because those who benefit from their effort should share in the cost. *Rider v. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The relevant standard for awarding expenses is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *In re Packaged Seafood Prods. Antitrust Litig.*, No. 15-MD-2670 DMS (MDD), 2022 U.S. Dist. LEXIS 150247, at *28 (S.D. Cal. Aug. 19, 2022) (citing *In re LendingClub Secs. Litig.*, 2018 U.S. Dist. LEXIS 163500, at *15 (N.D. Cal. 2018) (expenses such as expert and consultant fees, court fees, travel and lodging costs, legal research fees, and copying expenses were reasonable and recoverable)); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Here, Co-Lead Counsel incurred expenses in the amount of $35,100.71 prosecuting the Action. These expenses included: (1) fees paid to outside expert consultants; (2) court fees; (3) court reporter fees and transcripts; (4) fees for online legal research using LexisNexis and/or WestLaw; (5) fees for mediation; (6) photocopying fees; (7) fees necessary to utilize eDiscovery database platform; (8) courier fees; and (9) FedEx and overnight mail fees. Bower Decl. ¶¶55; Bower Decl. Exs. I-J. These expenses are the type that are normally charged to paying clients and reasonable in light of the work performed, the scale and duration of the Action, the legal and factual issues presented, and the outcome obtained. ¶¶57-61; *See also*, Bower Decl., Exs. I-J. They should thus be reimbursed in the amount requested. *See Missouri v. Jenkins*, 491 U.S. 274,287 n.9 (1989) (expenses billed in accordance with "prevailing practice" are reimbursable); *In re Am. Bus. Fin. Servs. Noteholders Litig.*, No. 05-232, 2008 U.S. Dist. LEXIS 95437, at *53-*54 (E.D. Pa. Nov. 21, 2008) (approving expenses for "delivery and freight, class notice costs, duplication costs, online legal research, travel,

meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, transportation and press releases" based on declarations of counsel).

Finally, the Class Administrator has also incurred, and is required to incur, expenses in the approximate amount of $49,157.00 in providing notice to the class and administration of the Settlement Fund if the Settlement receives final approval. ¶56. Co-Lead Counsel respectfully requests that these reasonable and necessary expenses be approved for reimbursement.

## XI. THE REQUESTED SERVICE AWARDS ARE REASONABLE

Finally, Plaintiffs and Co-Lead Counsel respectfully request that the Court approve a modest service award of $1,000 for each Plaintiff for their time incurred in ensuring that the Class was adequately represented in the Action. ¶62. Service awards are supported by public policy and ample legal precedent. The purpose of service awards is to "encourage participation of plaintiffs in the active supervision of their counsel." *Varljen v. HJ Meyers & Co.*, No. 97 CIV. 6742 (DLC), 2000 U.S. Dist. LEXIS 16205, at *14 n.2 (S.D.N.Y. Nov. 8, 2000). Service awards are essential in securities class action litigation because individual plaintiffs often have small amounts at stake and, "without a named plaintiff there can be no class action." *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804, 96 Cal. Rptr. 3d 441, 455 (2009). As a result, a service award "is appropriate 'if it is necessary to induce an individual to participate in the suit.'" *Id.* at 456. *See also Diaz v. Tak Communs. Ca*, 2021 Cal. Super. LEXIS 124703, *24 (Alameda Cnty. Super. Ct. Apr. 2, 2021) ("Courts award service payments to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class, as well as to compensate class representatives for their time, effort, inconvenience, and for any expense or risk incurred.").

Courts consider the following non-exclusive factors in determining whether to approve service awards for plaintiffs: "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Clark*, 96 Cal. Rptr. 3d at 456. Here, Plaintiffs were dedicated to the prosecution of the Action, regularly conferred with Co-Lead Counsel, reviewed pleadings and motions, searched for and/or collected trading records and other discovery, and

discussed and considered the various settlement proposals that were discussed at the mediation, and, ultimately, the proposed Settlement. *See* Bower Decl., Exs. C-E (Declarations of Plaintiffs). What is more, their dedication plainly benefitted the Class, resulting in a recovery that represented 53% of the Class's realistic damages. Finally, Plaintiffs devoted at least 12, 11, and 10 hours, respectively, in furtherance of their work as lead plaintiffs. *Id.* These facts all support the approval of a modest service award.

And, here, Plaintiffs request just that: a very modest amount – just $1,000 for each Plaintiff. *See, e.g.*, *Cazares*, No. 19STCV08209 (Hon. Carolyn B. Kuhl) (approving $5,000 service award for plaintiff) (Bower Decl., Ex. K); *Williams, Inc. v. Kaiser Sand & Gravel Co.*, No. C914028 MHP, 1995 U.S. Dist. LEXIS 14262, at *6-*7 (N.D. Cal. Sept. 19, 1995) (granting $10,000 incentive award to single plaintiff); *Xcel Energy*, 364 F. Supp. 2d at 1000 ($100,000 collectively awarded to lead plaintiff group as reimbursement). The requested awards are thus supported by the facts and well within precedent, and they too should be approved.

## XII. CONCLUSION

The certain monetary recovery that the Settlement will provide to the Class is a highly favorable result, and is fair, reasonable, and adequate. The Plan of Allocation is a simple and straightforward method of allocating the net settlement proceeds among Class Members, consistent with how damages would be calculated at trial, and is thereby necessarily fair, reasonable, and adequate. Co-Lead Counsel's requested attorneys' fees and expenses are fair, reasonable, and appropriate. Finally, the requested service awards for Plaintiffs for their representation of the Class are fair, reasonable, and appropriate. For the foregoing reasons, Plaintiffs and Co-Lead Counsel respectfully request that the Court approve the Settlement, Plan of Allocation, Co-Lead Counsel's Request for Attorneys' Fees and Expenses, and Plaintiffs' requested Service Awards.

Dated: September 26, 2023

**OF COUNSEL**

**MONTEVERDE & ASSOCIATES PC**
Juan E. Monteverde (admitted *pro hac vice*)
Miles D. Schreiner (admitted *pro hac vice*)
Jonathan T. Lerner (admitted *pro hac vice*)

**MONTEVERDE & ASSOCIATES PC**

By: _____
David E. Bower SBN 119546
600 Corporate Pointe, Suite 1170

The Empire State Building
350 Fifth Avenue, Suite 4740
New York, NY 10118
Tel: (212) 971-1341
Fax: (212) 202-7880
E-mail: jmonteverde@monteverdelaw.com

Culver City, CA 90230
Tel: 310-446-6652
Fax: 212-202-7880
Email: dbower@monteverdelaw.com

*Co-Lead Counsel for the Class*

**KAHN SWICK & FOTI, LLC**
Michael Palestina (admitted *pro hac vice*)
1100 Poydras Street, Suite 960
New Orleans, Louisiana 70163
Tel: 504-648-1843
Fax: 504-455-1498
Email: michael.palestina@ksfcounsel.com
*Co-Lead Counsel for the Class*

**PROOF OF SERVICE**

STATE OF CALIFORNIA }

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, with my business address as 600 Corporate Pointe, Suite 1170, Culver City, California. I am over the age of 18 years, and I am not a party to this Action.

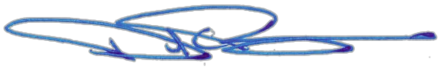
On September 26, 2023, I served the foregoing POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF CLASS ACTION SETTLEMENT on interested parties in this action by sending a true copy thereof to the email addresses below:

**GREENBERG TRAURIG LLP**
Daniel J. Tyukody
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Tel: (310) 586-7723
Email: tyukodyd@gtlaw.com
horowitzr@gtlaw.com
linhardta@gtlaw.com
phieferd@gtlaw.com
Counsel for Defendants

I sent a copy of this document via electronic mail to the email addresses above via Caseanywhere pursuant to the agreement of all parties for service of documents in this case.

I declare, under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

September 26, 2023



David E Bower