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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 IN RE ILLUMINA, INC. SECURITIES
12 LITIGATION

Case No.: 3:16-cv-3044-L-MSB

13 **ORDER (1) GRANTING FINAL**
14 **APPROVAL OF CLASS**
15 **SETTLEMENT [DOC NO. 105]; (2)**
16 **GRANTING IN PART AND**
17 **DENYING IN PART APPLICATION**
18 **FOR ATTORNEYS' FEES, COSTS,**
19 **AND CLASS REPRESENTATIVE**
20 **SERVICE AWARDS [DOC NO, 106];**
21 **(3) DISBURSEMENT OF FUNDS**
22 **[DOC NO. 112]; AND (4) JUDGMENT**
23 **[DOC NO. 111.]**

24 Pending before the Court are Class Counsel's unopposed motions for final approval
25 of class action settlement, Doc. 105; joint motion for judgment, Doc. No. 111; application
26 for Class Counsel's attorney's fees, costs, and litigation expenses, as well as Class
27 Representatives' awards, Doc. 106; along with a Motion for Approval of Fund
28 Disbursement, Doc. No. 112, filed by Lead Plaintiff Natissisa Enterprises Ltd.
("Natissisa") and Plaintiffs Anton Agoshkov, Braden Van Der Wall, and Steven Romanoff
(hereinafter referred together as "Plaintiffs").

1 The Court has considered the motions, and the file in this matter. For the reasons
2 stated below, the motion for final approval of class action settlement is granted, the
3 application for Class Counsel’s attorneys’ fees, costs, and litigation expenses, as well as
4 Class Representatives awards is granted in part and denied in part, and the motion for
5 approval of funds distribution is granted.

6 **I. Procedural Background**

7 This is a securities class action brought on behalf of all persons who purchased or
8 otherwise acquired Illumina, Inc. (“Illumina”) common stock during the period between
9 July 26, 2016 and October 10, 2016. Plaintiffs’ Amended Complaint claimed that Illumina
10 and Defendants Francis A. deSouza and Marc A. Stapley (together, “individual
11 defendants”) (all together “Defendants”) violated federal securities laws by providing
12 investors misleading material information concerning Illumina’s revenue and sales for the
13 third quarter of the 2016 fiscal year. *See* Doc. 28. Specifically, it is alleged Defendants
14 failed to disclose that Illumina lacked adequate internal controls over financial reporting;
15 and, on October 10, 2016, Illumina revealed, in a press release, that its third quarter revenue
16 (\$607 million) was significantly lower than Defendants’ previous forecast of \$625 million
17 to \$630 million. *Id.* After the press release, Illumina’s stock price fell from \$184.85 per
18 share on October 10, 2016 to \$138.99 per share on October 11, 2016. *Id.*

19 On December 16, 2016, plaintiffs Yi Fan Chen and Frontline Global Trading Pte.
20 filed a class action complaint in this Court against Defendants, alleging violations of the
21 Security Exchange Act of 1943 (“SEA”). *See* Doc. 1. On January 10, 2017, plaintiff James
22 McLeod filed a second, substantially similar class action complaint against Defendants in
23 this Court for the same violations. *See McLeod v. Illumina Inc., et al.*, No. 3:17-cv-0053.
24 Subsequently, the district court consolidated both class actions and appointed Natissisa as
25 lead plaintiff and Levi & Korsinsky, LLP, as lead counsel pursuant to the Private Securities
26 Litigation Reform Act of 1995, 15 U.S.C. § 78u-4. *See* Doc. 19. On May 30, 2017,
27 Natissisa filed the Amended Complaint alleging Defendants committed fraud under
28 Section 10(b) of the SEA and SEC Rule 10b-5 as: (1) Illumina failed to truthfully disclose

1 that the demand for one of its premier products was decreasing, (2) Illumina's earning
2 projections were misleading, and (3) control liability had attached. *See* Doc. 28.

3 Defendant moved to dismiss the Amended Complaint, and the Court granted in part
4 and denied in part the motion on certain allegations. *See* Docs. 32, 39. The parties began
5 discovery after the Honorable Karen S. Crawford, United States Magistrate Judge, held a
6 case management conference and issued a scheduling order. Docs. 54, 55. On September
7 12, 2018, Natissisa moved to amend the Amended Complaint to include Anton Agoshkov
8 as an additional named plaintiff. *See* Doc. 62. On September 14, 2018, Natissisa and
9 Anton Agoshkov moved for class certification. *See* Doc. 63. On October 4, 2018,
10 plaintiffs, Braden Van Der Wall and Steven Romanoff filed a Complaint against the
11 Defendants. *See Van Der Wall et ano. v. Illumina, Inc., et al.*, No. 3:18-cv-2307. Upon
12 joint motion of the parties, the Court granted a stay in the *Van Der Wall* action pending the
13 resolution of the class certification motion. *Id.* at Doc. 26.

14 On December 14, 2018, the parties filed a joint request to extend scheduling order
15 deadlines in order to provide the parties more time to complete discovery and participate
16 in private mediation. Doc. 83. The Court granted the joint motion on December 18, 2018.
17 Doc. 84. On January 8, 2019, the Court denied Natissisa's motion to amend without
18 prejudice. Doc. 85. Around January 30, 2019, the parties scheduled a mediation for April
19 18, 2019. Doc. 95-1 at 11. The parties participated in mediation on April 18, 2019 and
20 tentatively agreed to a settlement after a full day of negotiations. *Id.* at 11-12. On April
21 25, 2019, the Court granted the parties' joint motion to stay resolution of the class
22 certification motion due to the settlement. Doc. 93. On May 29, 2019, the Court granted
23 the joint motion to hold the Court's ruling on class certification in abeyance in order to (1)
24 allow the parties to finalize necessary settlement paperwork and (2) allow Plaintiff to file
25 a motion for preliminary approval of the settlement. *See* Doc. 94. On December 18, 2019,
26 the Court conditionally granted Plaintiffs' unopposed motion for preliminary approval of
27 class settlement and issued a briefing schedule for filing Motion for Class Representative
28

1 Service Awards, Fee and Expense Application, and Final Approval of Class Action
2 Settlement.

3 Plaintiffs filed the Motion for Final Approval of the Settlement and Motion for
4 Attorney’s Fees on March 2, 2020. Doc. No. 105. On May 29, 2020, Plaintiffs filed the
5 Joint Motion for Judgment. Doc. No. 111. Plaintiffstas filed the Motion for Disbursement
6 of Funds on November 3, 2020. Doc. No. 112.

7 **II. Settlement Agreement**

8 The Court incorporates by reference the Settlement Agreement as outlined in the
9 Conditional Preliminary Approval Order with the following changes:

10 The Parties modified the settlement terms, as ordered by the Court, to identify the *cy*
11 *pres* recipient. The Agreement calls for any portion of the Net Settlement Fund remaining
12 following distribution, granted the amount limits the effectiveness of a redistribution to the
13 Settlement Class, to be donated to Investor Protection Trust, a 501(c)(3) organization
14 located in Washington D.C. that serves to educate investors in the United States. Doc. 103
15 at 2.

16 The Notice Program was modified in accordance with the instructions provided in
17 the Court’s Conditional Preliminary Approval Order and is approved in all respects;

18 The Parties modified the definition of “Escrow Account” in the Stipulation of
19 Settlement pursuant to the Court’s instructions.

20 The Parties have agreed to amend the definitions of “Effective Date” and
21 “Preliminary Approval Order” set forth in the Stipulation of Settlement to refer to the
22 Conditional Preliminary Approval Order entered by this Court.

23 **III. Settlement Class Certification**

24 The Court evaluated the class certification requirements solely for purposes of the
25 Settlement in its Order Granting Preliminary Approval of Class Action Settlement,
26 conditionally certifying the Settlement Class under Rule 23(b)(3). Ord. Granting Prelim.
27 Approval, Doc. No. 102 at 19. There have been no additional facts raised since that time,
28 therefore, the Court incorporates by reference the determination of Rule 23(b)(3) class

1 certification from the prior Order, and approves the Settlement Class solely for purposes
2 of the Settlement.

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5 **IV. Discussion**

6 A class action settlement must be fair, adequate, and reasonable. Fed. R. Civ. P.
7 23(e)(2). When, as here, parties reach an agreement before class certification, “courts must
8 peruse the proposed compromise to ratify both the propriety of the certification and the
9 fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). The
10 Ninth Circuit maintains a “strong judicial policy” that favors the settlement of class actions.
11 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

12 In determining whether a class action settlement is fair, adequate, and reasonable,
13 the Court considers whether:

- 14 (A) the class representatives and class counsel have adequately represented
15 the class;
16 (B) the proposal was negotiated at arm’s length;
17 (C) the relief provided for the class is adequate, taking into account:
18 (i) The costs, risks, and delay of trial and appeal;
19 (ii) The effectiveness of any proposed method of distributing relief to
20 the class, including the method of processing class-member
21 claims;
22 (iii) The terms of any proposed award of attorney’s fees, including
23 timing of payment; and
24 (iv) Any agreement required to be identified under Rule 23(e)(3); and
25 (D) The proposal treats class members equitably relative to each other.

26 Fed. R. Civ. Proc. 23(e)(2). Subsection (e)(2) was added to Rule 23 as a part of the 2018
27 amendments. Fed. R. Civ. Proc. 23, Advisory Comm. Notes. Prior to the amendments,
28 the analysis was guided by the *Churchill* factors;

- (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and
likely duration of further litigation; (3) the risk of maintaining class action
status throughout the trial; (4) the amount offered in settlement; (5) the

1 extent of discovery completed and the stage of the proceedings; (6) the
2 experience and views of counsel; (7) the presence of a governmental
3 participant; (8) the reaction of the class members of the proposed settlement

4 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (quoting
5 *Churchill Vill., L.L.C. v. Gen.Elec.*, 361 F.3d 566, 577 (9th Cir. 2004); other citation
6 omitted). The goal of the 2018 amendment “was not to displace any factor, but rather to
7 focus . . . on the core concerns . . . that should guide the decision whether to approve the
8 propos[ed settlement].” Fed. R. Civ. Proc. 23, Advisory Comm. Notes. Several of the
9 *Churchill* factors were incorporated into Rule 23(e)(2) as amended.

10 On balance, the Court finds that the relevant factors support a finding that the
11 proposed Settlement is fair, adequate, and reasonable.

12 **A. Class Representatives and Class Counsel Have Adequately Represented the**
13 **Class**

14 The named Plaintiffs and Class Counsel have demonstrated their ability to
15 vigorously prosecute this action on behalf of the class through significant motion practice
16 and discovery efforts. These efforts included defeating a comprehensive motion to dismiss
17 and briefing motions for leave to amend and class certification. Named Plaintiffs have also
18 actively participated in the case by submitting numerous documents, and in the case of
19 Plaintiff Agoshkov, traveling from Moscow, Russia to New York City to participate in a
20 day long deposition. Plaintiffs have been committed to prosecuting this case and reaching
21 a resolution in the best interests of the Settlement Class.

22 **B. Proposal was Negotiated at Arm’s Length**

23 Plaintiffs and the Settlement Class, by and through their counsel, have sufficiently
24 investigated the facts and law relating to the matters alleged in the Amended Complaint,
25 including through discovery and motion practice, legal research as to the sufficiency of the
26 claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal.
27 The parties here engaged in formal mediation before an experienced mediator for a full
28 day, after completing discovery. Following a full day of negotiation, the parties tentatively

1 agreed to a settlement with the mediator's assistance. As such, the Court finds that this
2 settlement was the product of arm's-length negotiation.

3 **C. Supplemental Agreement under Rule 23(e)(3);**

4 In a Supplemental Agreement, separate from the parties' stipulation, the parties
5 gave Illumina the right to terminate the Settlement if the "Opt-Out Threshold" is
6 exceeded. Docs. 95-1 at 20-21, 95-2 at 11. Although the Parties did not submit the
7 Supplemental Agreement for review, the Court finds the content of the Supplemental
8 Agreement as described in the Motion to be adequate and reasonable under the
9 circumstances. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, *7 (N.D. Cal.
10 2018); *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 329 (C.D. Cal. 2016)
11 (compiling cases). Therefore, the Rule 23(e)(3) agreement does not weigh against
12 approval

13 **D. Relief Provided for the Class is Adequate.**

14 (i) The costs, risks, and delay of trial and appeal

15 Plaintiffs recognize that settlement prevails over the substantial risks of continued
16 litigation. Doc. 95-1 at 17-18. Whether the alleged misrepresentation in this case was
17 "forward-looking" and thus protected under the safe harbor provision of the Securities
18 Exchange Act of 1934 is a critical risk to Plaintiffs' case. Defendants would likely
19 challenge this issue by introducing evidence that could prove dispositive at summary
20 judgment. Another issue that Defendants would challenge in continued litigation is
21 Plaintiffs' ability to prove damages. Either issue would be appealed by the non-prevailing
22 party; therefore, considerable expenditure and delay of any recovery by Settlement Class
23 members, assuming Plaintiffs succeeded, would arise in further litigation. Moreover,
24 continued litigation could prove to be difficult, expensive, time consuming, and possibly
25 fruitless as a motion for class certification was contested and pending prior to settlement.
26 The Court concludes that the strength of Plaintiffs' case, risk, expense, complexity, and
27 risk of maintaining class status throughout trial factors weighs in favor of approving
28 settlement.

1 (ii) Effectiveness of Proposed Method of Distributing Relief

2 The Court considers “the effectiveness of [the] proposed method of distributing
3 relief to the class.” Fed. R. Civ. P. 23(e)(C)(ii). Assessment of a plan of allocation of
4 settlement proceeds in a class action under Fed. R. Civ. P. 23 is governed by the same
5 standards of review applicable to the settlement as a whole – the plan must be fair,
6 reasonable, and adequate. *Seattle*, 955 F.2d at 1284; *In re Omnivision Techs., Inc.*, 559
7 F.Supp.2d 1036, 1045 (N.D. Cal. 2008).

8 Here, a Settlement Class member must complete and sign the Proof of Claim and
9 Release Form to recover from the Settlement Fund. Doc. 95-2 at 82. A Recognized Loss
10 will be assigned to each Settlement Class member that submits a valid claim (an
11 “Authorized Claimant”). See Doc. 95-2 at 70. An Authorized Claimant’s Recognized
12 Loss will depend upon the number of Illumina shares purchased or acquired during the
13 Class Period and held at the close of trading on October 10, 2016. *Ibid.* The Plan of
14 Allocation as set forth in the long-form Notice of Proposed Settlement reads as follows:

15 For each share of Common Stock purchased, an Authorized Claimant’s
16 Recognized Loss is equal to:

- 17 • If the share was purchased during the Class Period and held through
18 January 9, 2017, then the Recognized Loss is equal to the price paid for the
19 share minus \$134.01 (which is the mean trading price of Illumina’s
20 Common Stock during the 90-day period following the Class Period);
- 21 • If the share was purchased during the Class Period and sold between
22 October 11, 2016 and January 9, 2017, then the Recognized Loss is equal to
23 the price paid for the share minus the greater of (i) \$134.01 or (ii) the price
24 at which you sold the share.
- 25 • If the share was purchased during the Class Period and sold on or before
26 October 10, 2016, then the Recognized Loss is \$0. This is because the share
27 was not harmed in accordance with Plaintiffs’ theory of liability and,
28 therefore, there are no recoverable damages.

See Doc. 95-2 at 70.

1 The Plan of Allocation outlined above correlates each Settlement Class members’
2 recovery to the timing of any sales or purchases of Illumina common stock to calculate
3 each Settlement Class member’s Recognized Loss. See Doc. 95-2 at 71. “After the
4 deadline for all Authorized Claimants to send in their Proof of Claim forms, the payment
5 [each Settlement Class member gets] will be a proportion of the Net Settlement Fund equal
6 to [each Settlement Member’s] Recognized Loss divided by the total of each Authorized
7 Claimant’s Recognized Losses.” *Ibid.* The Court finds that “[i]t is reasonable to allocate
8 the settlement funds to class members based on the extent of their injuries or the strength
9 of their claims on the merits.” *In re Omnivision Techs., Inc.*, 559 F.Supp.2d at 1045 (N.D.
10 Cal. 2008). The Court also finds that the Settlement treats absent class members equitably
11 relative to each other.

12 The Plan of Allocation here is fair, reasonable, and adequate as it reflects the best
13 estimate of damages, crediting all Class members with the best possible result they could
14 have achieved. Lending support to this conclusion is the fact that no objections to the
15 Settlement have been received, and only two exclusions have been submitted.

16 (iii) *Exclusions*

17 To be excluded, the Notice stated that Settlement Class members must send a letter,
18 by mail, to Lead Counsel’s office indicating the member’s desire to be excluded from *In*
19 *re Illumina Inc. Securities Litigation*, No. 3:16-cv-3044-L-MSB. Doc. 95-2 at 75. In the
20 letter, a Settlement Class member must provide their name, address, telephone number,
21 signature, the number of Illumina shares they purchased or otherwise acquired during the
22 Class Period, and the dates of such purchases or acquisitions. *Ibid.*

23 The Parties do not object to the exclusion submitted by Robert Fisher, which
24 complied with the Settlement’s directive by providing information on the 32 shares of
25 Illumina stock he purchased during the Class Period. Supp. Dec. Ewashko Doc. No. 108-
26 1.

27 However, the Parties object to the request for exclusion submitted on behalf of
28 deceased class member, Jack Reilly. The Patrick Reilly Trust informed the Claims

1 Administrator that it did not have information about the number of shares purchased and
2 the dates of these transactions. Resp. Req. Exclusion at 2 Doc. No. 110. Counsel for
3 Defendant Illumina requests that the Court reject this request for exclusion because
4 “[w]ithout knowing the number of shares purchased by a class member who seeks to opt
5 out, Defendants cannot ascertain whether the Opt-Out Threshold has been triggered and
6 whether they have a resulting termination right.” *Id.* at 3.

7 The letter from the Patrick Reilly Trust states that Mr. Reilly passed away “4/4/2018
8 and it is unknown dates of purchases and acquisitions. The trust is closed. Please exclude
9 him from this settlement class.” Supp. Dec. Ewashko Ex. A Doc. No. 108-1. It is unclear
10 from the record whether Mr. Reilly was a member of the class, or how many shares (if any)
11 he purchased during the Class Period.” Resp. Req. Exclusion at 3 Doc. No. 110. .

12 However, Illumina’s right to terminate the Settlement Agreement arises only when
13 the number of *Class Members* agreed upon is exceeded. The Supplemental Agreement
14 “provides Illumina with the right to terminate the Settlement if a *certain number of Class*
15 *Members* exceeds a threshold.” Mot. for Order on Preliminary Approval. 95-1 at
16 21(emphasis added). The Opt Out provision addresses the number of Class Members, not
17 the number of shares a class member holds. Defendants object to the exclusion based on
18 the unknown number of shares Patrick Reilly purchased. This is not the salient inquiry for
19 purposes of the Opt Out provision here. Instead, the Court looks to the number of Class
20 Members, and notes that if the Patrick Reilly Trust, as a representative for one potential
21 class member, is excluded from the Settlement, the Class Member pool remains the same
22 because the Trust does not have the required information to submit a claim. In addition,
23 the Patrick Reilly Trust is now closed, indicating all financial matters have been resolved.
24 Because the time for claims has passed, any potential risk to Defendant Illumina if Patrick
25 Reilly is excluded from the Settlement Class is negligible, if it exists. For the foregoing
26 reasons, the Court grants the request for exclusions by Robert Fisher and the Patrick Reilly
27 Trust, on behalf of Patrick Reilly.

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1 (iv) Attorney's Fees

2 Under the Agreement, the Parties agreed that Class Counsel could apply for an award
3 from the Settlement not to exceed 25% (\$3,462,500) of the Settlement Value. Class
4 Counsel has now requested \$2,125,332.25 in fees. Class Counsel was also entitled to
5 request reimbursement of out-of-pocket litigation expenses up to \$180,000, that were
6 advanced in connection with the Consolidated Action. Class Counsel have now applied
7 \$169,727.62 in costs and expenses. The requested fees and expenses are within the range
8 approved by this Court in its Preliminary Approval of Class Settlement, and are therefore
9 presumptively reasonable.

10 In order to determine the fairness and adequacy of a settlement, “a district court must
11 carefully assess the reasonableness of a fee amount spelled out in a class action settlement
12 agreement.” *Staton*, 327 F.3d at 963. “In a certified class action, the court may award
13 reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’
14 agreement.” Fed. R. Civ. P. 23(h). “[C]ourts have an independent obligation to ensure
15 that the award, like the settlement itself, is reasonable, even if the parties have already
16 agreed to an amount.” *In re Bluetooth*, 654 F.3d at 941 (citations omitted). In a common
17 fund case, district courts may use either the percentage-of-the-fund method or the lodestar
18 method to calculate an appropriate attorneys’ fee award. *Vizcaino v. Microsoft Corp.*, 290
19 F.3d 1043, 1047 (9th Cir. 2002).; *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
20 1291, 1295 (9th Cir. 1994). When applying the percentage-of-the-fund method, an
21 attorneys’ fee award of “twenty-five percent is the ‘benchmark’ that district courts should
22 award.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (citing *Six (6)*
23 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)).

24 Even when courts employ the percentage of recovery method, a lodestar crosscheck
25 on the reasonableness of the fee is often performed. *Vizcaino*, 290 F.3d at 1047. Any class
26 member must be allowed an opportunity to object to the fee motion itself, aside from any
27 objection the class member may have to the preliminary notice that such a motion will be
28 filed. *See In re Mercury Interactive Corp. Sec. Litig.* 618 F.3d 988, 993-95 (9th Cir. 2010).

1 In the Ninth Circuit, courts generally consider the following factors when reviewing
2 a proposed fee: 1) the results achieved; 2) awards made in similar cases; 3) the risk of
3 litigation; 4) the skill required and the quality of the work; 5) the contingent nature of the
4 fee and the financial burden carried by the plaintiffs; 6) the reaction of the class to the
5 proposed fee and expense request; 7) whether the percentage appears reasonable in light of
6 a lodestar cross-check. *Vizcaino*, 290 F.3d at 1048-50.

7 In their Application for Fees and Costs, Class Counsel request \$2,125,332.25 in fees.
8 Counsel's request is approximately 25% of the settlement fund, which is an established
9 benchmark for awarding class action fees, making it consistent with fee awards granted in
10 similar actions. *Six Mexican Workers*, 904 F.2d at 1311; *Paul, Johnson, Alston & Hunt v.*
11 *Graulty*, 886 F.2d 268, 272 (9th Cir. 1989).

12 Plaintiffs' counsel achieved a settlement of \$13,850,000, which is approximately
13 4.5% of the total recoverable damages of \$300 million, as estimated by Plaintiffs' expert.
14 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
15 recovery will not per se render the settlement inadequate or unfair." *Officers for Justice v.*
16 *Civil Service Com'n*, 688 F.2d 615, 628 (9th Cir. 1982).

17 Plaintiffs' Counsel undertook the representation of Plaintiffs on a wholly contingent
18 basis, received no compensation during the pendency of this action, and yet incurred
19 significant expenses for the benefit of the Class, totaling over \$160,000. Counsel bore the
20 risks of litigation which included a strong possibility that the action would be dismissed at
21 the pleading stage due to the heightened pleading requirements of the Private Securities
22 Litigation Reform Act ("PSLRA"). *See generally In re Impac Mortg. Holdings, Inc.* 554
23 F.Supp. 2d 1083, 1089 (S.D. Cal. May 19, 2008). It was also possible that the case could
24 be dismissed because, among other factors, the alleged misrepresentation was "forward
25 looking" and therefore arguably subject to the safe harbor provision of the Securities
26 Exchange Act of 1934. Counsel also faced difficulties in calculating damages because the
27 price of Illumina's stock varied during the course of the Class Period which made it
28

1 difficult to ascertain the actual damage caused by the alleged fraud. Apton Dec. ¶¶ 22, 23.
2 The litigation risks faced by Counsel warrant approval of the requested fee.

3 Plaintiffs' Counsel is experienced with securities class actions, as demonstrated by
4 the recovery obtained and reflected in the firm's profile and biographies. Mot. Ex. A Doc.
5 No. 105-3. Plaintiffs' Counsel defeated a motion to dismiss. Plaintiff's Counsel further
6 managed the complexity of the litigation, which was increased due to Natissia's bankruptcy
7 filing during pendency of the case.

8 Finally, a lodestar cross-check demonstrates that the requested fee is reasonable.
9 Plaintiffs' lodestar of \$2,125,332.25 reflects 3,936.20 hours of billable time. This includes
10 hourly rates charged by Lead Counsel of \$850 to \$1025 for partners, and \$350 to \$650 for
11 associates. Lead Counsel sufficiently supported their attorneys' fee request with
12 declarations of counsel summarizing the tasks and time devoted to the prosecution of this
13 case. The Court has reviewed the attorneys' hourly rates along with the hours worked, and
14 finds them reasonable in light of the procedural background of this action and the favorable
15 Class Settlement.

16 The Agreement demands that Lead Counsel be paid any amounts awarded in the
17 Court's later attorneys' fees order from the Escrow Account within three (3) days of that
18 order's filing, notwithstanding any appeal or collateral attack. Doc. 95-2 at 28. The
19 Agreement also obligates Lead Counsel to refund any "attorneys' fees and Litigation
20 Expenses that have been paid, plus interest thereon at the same rate as would have been
21 earned had those sums remained in the Escrow Account[,]" to the extent the attorneys' fees
22 order is later reversed or modified. The Court finds this timing is reasonable as it
23 compensates Lead Counsel for its unpaid efforts as soon as practicable without forfeiting
24 protection of the Settlement Fund's principal held in the Escrow Account.

25 The Court therefore, approves the fee request of \$2,125,332.25 in attorneys' fees.

26 (v) Costs

27 Lead Counsel seeks \$169,727.62 in costs and litigation expenses. In addition to fees
28 for experts, travel, meals, computer research, and filings, Counsel seeks \$2,000 for travel

1 to the Final Approval Hearing. Supp. Dec. Apton Doc. No. 105-2 at 6. The Court decided
2 the motion for final approval without conducting a hearing per Civil Local Rule 7.1.d.1.,
3 therefore, the request for \$2,000 for travel expenses to the Final Approval Hearing is denied
4 as moot. Upon review of itemized lists, the Court finds the request reasonable, with the
5 exclusion of the \$2,000 for travel to the Final Approval Hearing, and approves costs for a
6 total amount of \$167,727.62.

7 (vi) Plaintiff Incentive Awards

8 Lead Counsel requests the Court award Plaintiffs' incentive awards to Anton
9 Agoshkov in the amount of \$25,000; Braden Van Der Wall in the amount of \$1,000; and
10 Steven Romanoff in the amount of \$1,000. Mot. Atty's Fees Doc. 106-1 at 9. Incentive
11 awards such as this "are discretionary and are intended to compensate class representatives
12 for work done on behalf of the class, [and] to make up for financial or reputational risk
13 undertaken in bringing the action . . ." *Rodriquez v. West Publ'g Corp.*, 563 F.3d 948, 958-
14 59 (9th Cir. 2009)(internal citations omitted). The amount of the award should be related
15 to the actual service or value the class representative provides to the class. *See id.* at 960.
16 While incentive awards are "fairly typical in class actions," *id.* at 958, they "should not
17 become routine practice," lest the representatives be "tempted to accept suboptimal
18 settlements at the expense of the class members whose interests they are appointed to
19 guard." *Radcliffe v. Experian Information Solutions Inc.*, 715 F.3d 1157, 1163 (9th Cir.
20 2013)(internal quotation marks and citations omitted).

21 Here, Mr. Agoshkov submitted a declaration in which he stated he spent
22 approximately 70 hours of time assisting in the case, including conferring with counsel
23 concerning issues and strategy, reviewing court filings, traveling from Moscow, Russia to
24 New York City for a full-day deposition, and evaluating the settlement with counsel.
25 Agoshkov Dec. ¶2 105-7. In light of the considerable time and expense spent by Mr.
26 Agoshkov assisting with this case, an award of \$25,000 is reasonable.

27 Mr. Romanoff and Mr. Van Der Wall also submitted declarations in which each
28 individual noted that he consulted with counsel about the issues and strategy of the case,

1 reviewed court filings, and collected documents relevant to the claims. Romanoff Dec. ¶2
2 Doc. No. 105-8; Van Der Wall Dec. ¶2 105-9. Mr. Romanoff and Mr. Van Der Wall's
3 recommended award of \$1,000 each is reasonable with respect to the time and efforts each
4 individual devoted to the case.

5 For the foregoing reasons, the Court grants the application for incentive awards to
6 the extent of \$25,000 to Plaintiff Agoshkov, and \$1,000 each to Plaintiffs Romanoff and
7 Van Der Wall.

8 Taking into account all the foregoing factors, the Court finds the proposed settlement
9 adequate under Rule 23.

10 **IV. CONCLUSION**

11 For the reasons stated above, the Court hereby orders as follows:

- 12 1. Plaintiffs' motion for final approval of class action Settlement is GRANTED,
13 Doc. No. 105;
- 14 2. Plaintiff's Motion for Disbursement of Funds is GRANTED as outlined above;
- 15 3. Plaintiffs' request for \$2,125,332.25 in attorneys' fees is GRANTED, Doc. No.
16 106;
- 17 4. Plaintiff's request for expenses is GRANTED IN PART AND DENIED IN
18 PART, as noted above in the amount of \$167,727.62, Doc. No. 6;
- 19 5. Plaintiffs' request for incentive awards is GRANTED as follows:
 - 20 a. \$25,000 for Anton Agoshkov;
 - 21 b. \$1,000 for Braden Van Der Wall; and
 - 22 c. \$1,000 for Steven Romanoff;

23 The Court further orders as follows:

- 24 1. The Complaint (Doc. No. 1) is dismissed with prejudice.
- 25 2. Upon the Effective Date as defined in the Settlement Agreement, this Judgment
26 will permanently bar, extinguish, and discharge any and all claims, actions, suits,
27 causes of action, or demands by any person against the Released Parties, whether
28 for contribution or indemnification or however styled, where the alleged injury

1 consists of or arises from liability to the Settlement Class or any Settlement Class
2 Member for a claim arising out of or related to the allegations in the Consolidated
3 Action.

- 4 3. The class members who requested exclusion, Robert Fisher and Patrick Reilly,
5 are not bound by this Settlement Agreement or Judgment of the Court.
- 6 4. Provided it is economically feasible, should any funds remain after the initial
7 distribution of the class member awards, the parties shall do a second distribution
8 to Settlement Class Members who received their class member awards. Should
9 residual funds remain following a second distribution, or in the event a second
10 distribution is not economically feasible, the Parties shall distribute the remaining
11 funds, if any, to *cy pres* recipient, Investor Protection Trust, a 501(c)(3)
12 organization located in Washington D.C.
- 13 5. The Court retains jurisdiction over implementation and enforcement of the
14 Agreement.
- 15 6. The Court finds that no just reason exists for delay in entering Final Judgment
16 and, accordingly, the Clerk is hereby directed to enter Final Judgment forthwith.
17 Doc. No. 111.

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19 Dated: March 17, 2021

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21 Hon. M. James Lorenz
22 United States District Judge
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