COTCHETT, PITRE & MCCARTHY LLP
Mark C. Molumphy (SBN 168009)
Tyson Redenbarger (SBN 294492)
Elle Lewis (SBN 238329)
840 Malcolm Road, Suite 200
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
E-mail: mmolumphy@cpmlegal.com
tredenbarger@cpmlegal.com
elewis@cpmlegal.com

BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr. (SBN 175783)
Yury A. Kolesnikov (SBN 271173)
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002
E-mail: fbottini@bottinilaw.com
ykolesnikov@bottinilaw.com

Co-Lead Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

IN RE EVENTBRITE, INC. SHAREHOLDER LITIGATION	Lead Case No. 19CIV02798 (Consolidated with Case Nos. 19CIV02911 and 19CIV04924)
This Document Relates To: ALL ACTIONS.	Class Action
	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR (1) FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS
	Date: March 18, 2021 Time: 2:00 pm Judge: Hon. Robert D. Foiles Dep't: 21
	Date Action Filed: May 24, 2019

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I. INTRODUCTION

Plaintiffs and Class Representatives Crystal Clemons and Cristina Cotte (together, "Plaintiffs") submit this memorandum in support of their motion for (1) final approval of the settlement of this class action on the terms set forth in the Stipulation of Settlement dated October 26, 2021 (the "Stipulation" or "Settlement")[1] and (2) an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs.

The Settlement provides a substantial cash payment of $19,250,000 for the benefit of the Class[2] – approximately 27.5% of Plaintiffs' maximum recoverable damages (and an even higher percentage of Defendants' estimate), one of the highest percentage IPO recoveries ever – and was reached only after years of hard-fought litigation between the Parties, and Plaintiffs' successful intervention in related federal court proceedings to prevent a far smaller, secretly reached deal.[3] The Settlement is an excellent result, especially considering the risk of a much smaller recovery if the case were to proceed through discovery, dispositive motions, trial, and likely appeals.

Plaintiffs also move the Court for an award of attorneys' fees in the amount of 33.3% of the Settlement Amount (or $6,410,250), as well as payment of the litigation expenses incurred in prosecuting the Action in the amount of $100,476.62. The requested fee is fair and reasonable

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[1] All capitalized terms not otherwise defined shall have the same meaning as set forth in the Stipulation. Citations are omitted and emphasis is added throughout unless otherwise indicated.

[2] "Class" means "all persons and entities who purchased or otherwise acquired class A common stock of Eventbrite, Inc. ("Eventbrite" or the "Company") between September 20, 2018 and May 24, 2019, inclusive. Excluded from the Class are Defendants, the officers and directors of Eventbrite (at all relevant times), members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which any Defendant has a majority ownership . . . Also excluded from the Class are those Persons who would otherwise be Class Members but who timely and validly exclude themselves therefrom." Also excluded from the Class are certain entities affiliated with the Underwriter Defendants.

[3] "Parties" means Plaintiffs and Defendants Eventbrite, Inc., Julia Hartz, Kevin Hartz, Katherine August-Dewilde, Samantha Harnett, Randy Befumo, Roelof Botha, Andrew Dreskin, Sean P. Moriarty, Lorrie M. Norrington, Helen Riley, Steffan C. Tomlinson, Sequoia Capital U.S. Venture 2010 Fund, Sequoia Capital U.S. Venture 2010 Partners Fund (Q), L.P., L.P, Sequoia Capital U.S. Venture 2010 Partners Fund, L.P,, SC US (TTGP), Ltd., J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC, Allen & Company LLC, Stifel, Nicolaus & Company, RBC Capital Markets, LLC, and Suntrust Robinson Humphrey, Inc. (now known as Truist Securities, Inc.).

under the applicable standards, well within the range of fees awarded by California Superior Courts, and supported by California Supreme Court precedent. *See, e.g.*, *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480 (2016) (approving 33.3% fee award).[4]

Finally, Plaintiffs Crystal Clemons and Cristina Cotte seek service awards of $5,000 in connection with their representation of the Class.

II. FACTUAL BACKGROUND

A. The Claims in the Action

This certified class action is a strict liability case brought under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act") by Plaintiffs against Defendants Eventbrite, its officers and directors, and the underwriters of Eventbrite's September 20, 2018 initial public offering ("IPO"). The Action arises from alleged misstatements and material omissions in Eventbrite's IPO registration statement and prospectus (together, the "Offering Documents"). Plaintiffs allege that the Offering Documents contained numerous misstatements and omissions relating to Eventbrite's $200 million acquisition of a company called Ticketfly. The Offering Documents claimed that the Ticketfly acquisition was "successful" and had "accelerated our momentum," but in reality, the acquisition, and subsequent integration of Ticketfly's platform into Eventbrite's platform, were not as positive as the Offering Documents led investors to believe. Plaintiffs alleged that internal documents produced in discovery, including e-mails between executives, described the status of the integration as starkly different from the rosy picture outlined in the Offering Documents.

Plaintiffs also allege that the Offering Documents misstated the abilities and functionalities of Eventbrite's platform by portraying it as being strong, powerful, and versatile and claiming, *inter alia*, that it enabled the Company to "quickly integrate and migrate creators" (*i.e.*, the hosts, venues, artists, or other clients that use Ticketfly and Eventbrite to host events). Yet, Eventbrite's platform was not as it was described — it lacked many of the critical features needed to integrate

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[4] Representative California Superior Court decisions are attached to the Declaration of Tyson Redenbarger ("Redenbarger Decl."), submitted herewith.

the Ticketfly platform, and the deficiencies led to a delayed and problematic migration of customers. The failing migration and integration had an expected outcome—customers were leaving Ticketfly and Eventbrite in significant numbers, which harmed Eventbrite. However, Plaintiffs allege that the Offering Documents again failed to disclose the negative trends that resulted from the internal problems, including the full extent of lost customers and the increased costs associated with running two platforms.

B. The Litigation, Mediation and Settlement

On May 24, 2019, the first of several related class actions was filed in San Mateo Superior Court by Eventbrite shareholders, captioned *Long v. Eventbrite,* Case No. 19CIV02798. The actions were deemed complex, consolidated, and assigned to the Honorable Marie Weiner. On February 2, 2020, Plaintiffs filed their consolidated complaint, alleging strict liability claims under the Securities Act against Defendants relating to Eventbrite's IPO.

Defendants demurred to all causes of action. On June 23, 2020, the Court sustained the demurrer as to the Section 11 and Section 15 claims, with leave to amend, and overruled the demurrer as to the Section 12 claim. Plaintiffs then engaged in substantial additional discovery. Defendants vigorously objected to the discovery and the parties participated in extensive negotiations – personally supervised by Judge Weiner – concerning the scope of production of Eventbrite's internal documents, including e-mails.

Meanwhile, unbeknownst to Plaintiffs and Judge Weiner, Eventbrite was engaging in negotiations with plaintiffs in a related federal court action and reached an agreement to pay $1.9 million in exchange for releasing all claims, including those pursued in the state court action. On August 7, 2020, the federal plaintiffs filed a motion for preliminary approval of settlement and scheduled a preliminary approval hearing for October 29, 2020.

Subsequently, on September 23, 2020, Plaintiffs filed a motion to intervene in the federal court action, requesting United States District Judge Edward Davila to postpone the preliminary approval hearing pending the resolution of the pleadings in this Court. On October 30, 2020, Judge Davila granted the motion to intervene and postponed the preliminary approval hearing.

On October 16, 2020, Eventbrite finally produced their internal emails. On November 9,

2020, Plaintiffs filed their Second Amended Complaint, utilizing just a small number of these documents. On December 17, 2020, the Court overruled Defendants' demurrers to Plaintiffs' Second Amended Complaint in their entirety. On January 15, 2021, Defendants filed their answers to the Second Amended Complaint.

On January 22, 2021, the same day that Plaintiffs filed a motion for class certification in this action, and following status updates from the federal parties, Judge Davila denied the federal plaintiffs' motion for preliminary approval without prejudice to renew that motion after the state court issued a ruling on the state court Plaintiffs' motion for class certification. On February 17, 2021, this Court entered an Order Granting Class Certification and appointing Cotchett, Pitre & McCarthy LLP ("CPM") and Bottini & Bottini, Inc. ("B&B") as Class Counsel.

On April 22, 2021, and again on July 20, 2021, the Parties participated in a Zoom mediation before Robert A. Meyer, Esq. of JAMS. After further discussions, the Parties finally reached an agreement on the monetary component of the Settlement on August 24, 2021, and thereafter engaged in negotiations regarding the complete terms of the Settlement.

While the complete terms of the Settlement are set forth in the Stipulation, attached as Exhibit 1 to the Joint Declaration of Mark C. Molumphy and Frank A. Bottini, Jr. ("Joint Decl."), Defendants agreed that $19,250,000 will be paid to resolve the Action. *See* Joint Decl., Ex. 1, Stipulation, ¶3.1. The Net Settlement Fund will be distributed to eligible Class Members in accordance with the Plan of Allocation ("Plan") described in the Notice, which is based on the statutory calculation of damages under §11(e) of the Securities Act and treats all claimants in a fair and equitable fashion. Joint Decl., ¶28. In exchange for monetary relief, Plaintiffs agree to the dismissal of the Action against all Defendants and the release of Released Claims. Released Claims include claims asserted in, or which could have been alleged in, the related federal securities class action — *In re Eventbrite Sec. Litig*., Case No. 5:19-cv-02019-EJD. *See* Stipulation, ¶1.25.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

A. Standards Governing Final Approval of Class Action Settlements

"A class action shall not be dismissed, settled, or compromised without the approval of the court." CAL. CIV. CODE §1781(f). When assessing a proposed class action settlement, the court's

inquiry centers on whether the settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The inquiry "'must be limited to the extent necessary to reach 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.'" *Id.*

Accordingly, the Court need not inquire into the result that might have been obtained at trial. *See Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 245 (2001), *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018). A review of the likely rewards of settlement and the risks and costs of continued litigation suffices. *See North Cty. Contractor's Ass'n v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1091 (1994) (court must determine if settlement is in the "ballpark"). "'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).[5] Further, longstanding public policy strongly favors settlements. *See, e.g.*, *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933) ("[I]t is the policy of the law to discourage litigation and to favor compromises."). This policy becomes an "overriding public interest" in class actions. *Bell v. Am. Title Ins. Co*., 226 Cal. App. 3d 1589, 1608 (1991).

In determining whether a settlement is fair, adequate, and reasonable, there is a "presumption of fairness ... where: (1) the settlement is 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." *Dunk*, 48 Cal. App. 4th at 1802; *see also Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010) (same). The court in *Dunk* set forth additional factors to be considered along with this presumption, including: (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] California courts also look to the standards developed by federal courts in reviewing class action settlements. *See, e.g.*, *La Sala v. Am. Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971).

(5) the experience and views of class counsel; and (6) the reaction of class members. *Dunk*, 48 Cal. App. 4th at 1801. As discussed below, the Settlement is entitled to a presumption of fairness, and readily satisfies the additional *Dunk* factors.

B. The Settlement Should Be Accorded a Presumption of Fairness

The Settlement is presumptively fair. ***First***, the Parties negotiated the Settlement at arm's length under the direct supervision of Robert Meyer, a highly experienced and effective mediator in cases like this. Joint Decl., ¶¶4, 14-20. The negotiations included two mediation sessions during which the Parties' positions on merits and damages issues were discussed, as well as extensive follow-up negotiations, all of which were informed by detailed mediation briefs and supporting materials exchanged in advance of the negotiations. *Id.*

Second, the Parties engaged in extensive investigation and discovery and other proceedings to evaluate the strengths and weaknesses of the claims and defenses, and therefore entered into the Settlement on a fully informed basis. Class Counsel, among other things, conducted a robust factual investigation of the IPO, drafted detailed complaints and survived pleading challenges, pursued discovery of Defendants' records, including internal emails, retained a financial expert to develop a damages report, and participated in arms-length settlement negotiations. *Id.,* ¶¶ 4, 7, 10, 30. Given these efforts, Class Counsel plainly were in a position to negotiate the Settlement based on a fully informed evaluation of the strengths and weaknesses of the claims asserted, the defenses raised, and the risks of continued litigation.

Third, although the Court must independently review the Settlement, the judgment of experienced counsel regarding the Settlement is entitled to great weight and supports a presumption of fairness. *Dunk*, 48 Cal. App. 4th at 1802. Class Counsel here, who have extensive experience and expertise in the prosecution of securities class actions, fully support the Settlement and believe that the substantial and certain recovery is a highly favorable result for the Class when weighed against the uncertainty and substantial risk and expense of continuing this litigation through trial and appeals. *Id*. ¶¶ 21-22.

Fourth, the reaction of the Class to the Settlement supports a presumption of fairness. Pursuant to the Court's preliminary approval order, copies of the Notice were sent to potential Class

Members and their nominees. *See* Declaration of Jordan Broker Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Broker Decl.") ¶¶ 4-13 & Exs. 1-3, submitted herewith. Although Class Members have until January 25, 2022 to object or exclude themselves from the Class, Class Counsel have not received any objections to the Settlement or the Plan of Allocation as of the date hereof, nor any requests for exclusion from the Class. *Id*. ¶ 13. The small number of objections (here zero) supports a presumption of fairness. *See 7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal. App. 4th 1135, 1153).

C. The Settlement Readily Satisfies the Additional *Dunk* Factors

The additional *Dunk* factors supports final approval.

The **settlement amount** here is substantial. Defendants agreed to pay $19,250,000 to the Class, with no right of reversion. Based on the assumption that Plaintiffs would survive summary judgment, prevail at trial, and Defendants would not prevail on their affirmative defense of loss causation, Plaintiffs' damages expert estimated recoverable damages for Plaintiffs' Section 11 claims of between $67.2 million and $73.4 million.[6] Accordingly, the percentage of recovery is approximately 26.2% to 28.6%, which significantly exceeds the median settlement in similar actions asserting claims under § 11 of the Securities Act. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements – 2017 Review and Analysis* at 9, Fig. 8 (Cornerstone Research 2018) (analyzing 70 class action settlements asserting §§ 11 and/or 12(a)(2) claims filed between 2008 and 2017, and finding the median settlement as a percentage of "simplified statutory damages" was 7.5%).[7]

The recovery is also significant considering the inherent **risks of continued litigation**, including the possibility of little or no recovery at all. *See Wershba*, 91 Cal. App. 4th at 250 ("Compromise is inherent and necessary in the settlement process.") While Plaintiffs believe their

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[6] *See* Declaration of Bjorn I. Steinholt, ¶14 (Ex. 2 to the Joint Decl.). Mr. Steinholt's declaration was previously submitted to Judge Davila in connection with Plaintiffs' Motion to Intervene in federal court. Not surprisingly, Defendants contended that the damages were substantially lower than the amount estimated by Plaintiffs' expert.

[7] The Cornerstone Research report is available online at: https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis.pdf.

claims are strong on the merits, success is hardly assured and Defendants hotly disputed the allegations. Defendants would continue to dispute the materiality or falsity of any of the challenged statements in the Registration Statement and Prospectus, or that any price decline after Eventbrite's IPO was attributable to any omission or misrepresentation in the Registration Statement. While Plaintiffs have substantial responses to these arguments, the uncertainty of continued litigation weighs strongly in favor of approval of the Settlement. Plaintiffs also faced a risk that the Court or jury would substantially reduce or even eliminate damages based on Defendants' likely "negative causation" defense at summary judgment and trial. At a minimum, the Parties' respective experts would offer sharply divergent testimony concerning damages, reducing the determination of this element to a "battle of the experts." Finally, even had Plaintiffs prevailed at trial, there was a risk that a successful verdict would be overturned either by motion after trial or an appeal. Such litigation risks support approval of the Settlement.

Further, the Settlement was reached at an **advanced stage of proceedings**. *Dunk*, 48 Cal. App. 4th at 1801. Class Counsel's reasoned judgment was obtained after years of litigation, during which time they drafted detailed complaints, survived demurrers, obtained critical documentary evidence through discovery, defeated an attempted settlement of the claims for 1/10th of the amount obtained by Class Counsel here,[8] obtained certification of the class, and participated in mediated settlement negotiations during which the strengths and weaknesses of the Parties' positions were fully explored and debated. Joint Decl. ¶¶ 7, 10-12, 30.

If approved, the Settlement Fund will be distributed the Class immediately. The immediacy and certainty of a recovery here, when weighed against the **complexity, expense, and duration of further litigation**, further supports final approval. *Dunk*, 48 Cal. App. 4th at 1801. If not for the Settlement, this litigation would continue to proceed through the completion of deposition

[8] The proposed settlement in federal court of $1.9 million represents just 9.8% of the $19.25 million settlement obtained by Class Counsel here. Many attorneys would have given up and not challenged the federal court settlement, given the difficult hurdles faced in opposing preliminary approval of a settlement. Class Counsel did not give up on the Class' best interests, retained Mr. Steinholt to prepare a proper damages report, and successfully thwarted the inadequate federal court settlement, thus significantly benefitting the Class.

discovery, expert discovery, summary judgment, trial, and likely appeal. A trial would occupy teams of attorneys for weeks and would require substantial and costly expert testimony on both sides. Further, 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 appeals, which would prolong the case for several more years. Settlement of this litigation ensures an immediate recovery and eliminates the risk of no recovery at all.

The **views of the attorneys** actively conducting the litigation, while not conclusive, are entitled to weight in the fairness analysis. *Dunk*, 48 Cal. App. 4th at 1802. As noted above, Class Counsel, who have extensive experience in the prosecution of securities class actions, recommend the Settlement to the Court as in the best interests of the Class. *See* Joint Decl. ¶¶ 20-21.

Finally, the **reaction of the Class** is also relevant to the fairness of the Settlement. *See Dunk*, 48 Cal. App. 4th at 1801. As noted above, there have been no objections and no opt-outs to date, which strongly demonstrates the excellent result achieved by the Settlement. *Id.*, ¶25. If any timely objections are submitted, Plaintiffs will address them in the reply memorandum.

In sum, because each of the *Dunk* factors supports a finding that the Settlement is fair, reasonable, and adequate, the Court should approve the Settlement.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Plaintiffs also seek approval of the Plan of Allocation. The Plan of Allocation is set forth in full in the Notice mailed to potential Class Members. *See* Broker Decl., Ex. 1 at pp. 3-4. Assessment of a plan of allocation in a class action is governed by the same standards of review applicable to the settlement as a whole — the plan must be fair and reasonable. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). An allocation formula "'need only have a reasonable, rational basis, particularly if recommended by experienced and competent'" class counsel. *See, e.g.*, *In re Zynga Inc. Sec. Litig.*, No. 12- cv-04007-JSC, 2015 WL 6471171, at *12 (N.D. Cal. Oct. 27, 2015). No objections to the Plan of Allocation have been filed to date.

The Plan of Allocation provides an equitable basis to allocate the Net Settlement Fund among all Class Members who submit an acceptable Proof of Claim. The Plan of Allocation was developed by Class Counsel with the assistance of their damages consultant, reflects an assessment

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of the damages that could have been recovered at trial, and follows the statutory framework for calculating damages. Joint Decl., ¶28. Accordingly, Plaintiffs respectfully submit that the Plan of Allocation is a fair and reasonable method for allocating the Net Settlement Fund.

V. THE COURT SHOULD AWARD ATTORNEYS' FEES TO CLASS COUNSEL

A. The Common Fund Doctrine Supports an Award of Attorneys' Fees

Where, as here, litigation has created a common fund for the benefit of the named plaintiffs and all class members, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and expenses out of the fund created. The California Supreme Court has expressly affirmed "'the historic power of equity to permit ... a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or directly from the other parties enjoying the benefit.'" *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977); *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 27 (2000).

While "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method," *Wershba*, 91 Cal. App. 4th at 254, the United States Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Trs. v. Greenough*, 105 U.S. 527, 532 (1882); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980).

California's Supreme Court has long accepted the percentage approach for awarding fees in common fund cases as well:

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

Laffitte, 1 Cal. 5th at 503. *Laffitte* is consistent with the Supreme Court's decision in *Blum v. Stenson*, 465 U.S. 886 (1984), where the Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class." *Id.* at 900 n.16. Lead Counsel respectfully submit that an award should be made here on a percentage basis.

B. The Requested Fee Is Reasonable

Class Counsel request a fee award of 33.3% of the Settlement Amount. In *Laffitte*, the California Supreme Court affirmed a fee award of 33⅓ of the common fund. 1 Cal. 5th at 506. Similarly, in *Chavez v. Netflix, Inc.*, the California Court of Appeal cited empirical studies showing that, regardless of the method used, "fee awards in class actions average around one-third of the recovery." 162 Cal. App. 4th 43, 66 (2008). The requested fee here is consistent with that "average" (*id.*) and is an appropriate fee in this case under the circumstances.

In determining the reasonableness of a fee request, California courts typically consider the following "basic factors": (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *See, e.g.*, *Serrano*, 20 Cal. 3d at 49; *Dunk*, 48 Cal. App. 4th at 1810 n.21. These factors support the requested fee award.

i. The Result Achieved

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Omnivision*, 559 F. Supp. 2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.").

Here, the $19,250,000 Settlement Amount recovered for the Class through the efforts of Class Counsel represents both (1) a percentage recovery (26.2% to 28.6%) that is many multiples higher than the median recovery in similar cases (7.5%), as discussed *supra*; and (2) over ten times the amount that plaintiffs in the related federal action attempted to settle the case for (*i.e.*, the present settlement is over 1000% higher than the proposed federal settlement). This is an outstanding result given the previously-discussed risks of proving liability, causation, and damages, and the similarly vigorous efforts of Defendants, and provides an immediate and certain recovery

for Class Members without the risk, expense, and delay of the completion of discovery, summary judgment, trial, and appeals.

ii. The Time and Labor Required

Class Counsel vigorously investigated and prosecuted this litigation for years, and counsel, among other things: (a) conducted an extensive factual investigation of the events underlying Eventbrite's IPO, including reviewing and analyzing the representations made by the Company in the Registration Statement, as well as subsequent public filings and statements concerning the Company; (b) drafted the initial and consolidated complaints; (c) briefed and argued demurrers to the consolidated complaint; (e) briefed, argued, and successfully argued a motion to intervene in the federal proceedings; (f) drafted and propounded discovery on all Defendants and obtained key documents, including internal emails; (g) retained and consulted with a forensic damages consultant regarding the calculation of damages; (h) obtained certification of the Class; and (i) prepared mediation materials in advance of the mediation before Robert Meyer and negotiated a tremendous settlement. Joint Decl. ¶¶ 7, 10-12, 14-18, 30.

Although Class Counsel make this application on a percentage-of-recovery basis, using the lodestar approach as a cross-check on the reasonableness of the requested fee further demonstrates that it is fair and should be awarded. In total, Plaintiffs' Counsel and their paraprofessionals expended 9,989.65 hours in the prosecution of this Action, resulting in a combined lodestar of $5,109,306.25.[9] The requested fee of 33.3%, or $6,410,250, represents a small multiplier of approximately 1.2. Thus, the requested fee results in a multiplier that is within the range of multipliers that have been deemed reasonable by courts in California and nationwide. *See e.g.*, *Wershba*, 91 Cal. App. 4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Lealao*, 82 Cal. App. 4th at 24, 52 (multiplier in excess of 3.5 was reasonable and not ruling out request for a multiplier of 8).

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[9] The time and expenses devoted by Class Counsel, as well as the two other firms who appeared for Plaintiffs in this Action and performed work at Class Counsel's direction, are set forth in the accompanying Joint Declaration, including the Declaration of Stephen J. Oddo and the Declaration of James I. Jaconette. Joint Decl., Exs. 5 and 6.

iii. The Contingent Representation, Risk of Loss, and Delay in Payment

Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are ordinarily paid an hourly rate and paid for their expenses on a regular basis, Class Counsel have not been compensated for any time or expense since this case began. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who takes a case on contingency reasonably 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 noted above, Plaintiffs faced significant risk concerning their ability to prevail at the demurrer stage or to establish both liability and damages. While Plaintiffs believe they could have proven their claims, success at the summary judgement stage, and then trial, was far from certain. Nonetheless, Class Counsel devoted substantial resources and prosecuted this case on a fully contingent basis. The contingent nature of counsel's representation and the sizable financial risks support the percentage fee requested.

iv. Awards Made in Similar Cases

Class Counsel are applying for a fee award of 33.3% of the Settlement Fund. This request falls squarely within the parameters of percentage fees awarded in other class action litigation in California. "'Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Chavez*, 162 Cal. App. 4th at 66 n.11.

Superior courts have awarded fees as high as 33⅓% in similar securities class actions. *See, e.g.*, *Sunrun*, slip op. at 6 (awarding 33⅓% fee award); *Brooks v. Capitol Valley Elec. Inc.*, No. CIV

536903, slip op. (San Mateo Super. Ct. Mar. 7, 2017) (awarding 33%); *W. Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. at 7 (San Diego Super. Ct. June 28, 2012) (awarding 33⅓%). The fee requested is, therefore, consistent with the fees awarded in other shareholder class actions.

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

The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also support the requested fee award. Class Counsel at CPM and B&B have earned national reputations for excellence through many years of litigating complex civil actions, particularly the prosecution of securities class actions. Moreover, Class Counsel were opposed in this litigation by experienced and skilled counsel from large law firms with well-deserved reputations for vigorous advocacy on behalf of their clients. In the face of such knowledgeable and experienced opposition, Class Counsel were able to develop a case that was sufficiently strong to persuade Defendants to settle the case for an amount that is highly favorable to the Class. As a result, this factor weighs strongly in favor of the requested fee.

vi. The Continuing Obligations of Lead Counsel

Class Counsel's work does not end with the approval of the Settlement. Continuing work will include supervising the claims process and, if necessary, litigating appeals.

vii. The Reaction of the Class

While the deadline for objecting to counsel's fee and expenses has not passed, Class Counsel have not received any objections to the fee and expense request and not a single Class member has opted out. "The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *71.

VI. REIMBURSEMENT OF ADVANCED EXPENSES SHOULD BE APPROVED

Common fund fee and expense awards should include counsel's incurred expenses, ensuring those who benefit from their effort also share in the cost. *See Laffitte*, 231 Cal. App. 4th at 871; *Rider v. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). Appropriate costs include

those typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Here, Class Counsel are seeking reimbursement of expenses incurred by Class Counsel, and the two other firms of record who performed work at their direction, in an aggregate amount of $100,476.62. As itemized in the Joint Declaration, these expenses include: (1) expert and consultant fees; (2) mediator's fees; (3) on-line legal, financial, and factual research; (4) transportation, meals, and hotels; (5) photocopying; and (6) transcript preparation fees. These expenses are of the type normally charged to paying clients, over and above hourly fees. Further, these expenses were necessary for the successful prosecution of the litigation, are reasonable in amount, and should be reimbursed.

VII. SERVICE AWARDS TO PLAINTIFFS ARE REASONABLE

Pursuant to 15 U.S.C. § 77z-1(a)(4), the court may award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class." Here, Plaintiffs Crystal Clemons and Cristina Cotte seek an award of $5,000 each in connection with their representation of the Class, and their time and efforts devoted to the case are set forth in their declaration, including review of the pleadings, participation in discovery, and active discussions with Class Counsel regarding the litigation and the settlement. *See* Clemons Decl. ¶ 8 and Cotte Decl. ¶ 6, Exs. 7 and 8 to Joint Decl. Both Plaintiffs performed a public service through their willingness to step forward, supervise counsel, and actively participate in the litigation, including serving as class representatives for the certified Class. Courts routinely grant awards to plaintiffs who, through their efforts, brought the case and pursued it to a successful conclusion for the benefit of a class of people. Approval of these awards is warranted as a matter of public policy and federal statute. To date, there has been no objection to this request.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that the Settlement is fair, reasonable, and appropriate under all the circumstances and that the Court should grant final approval thereto. Additionally, the requested attorneys' fees and expenses to Class Counsel, and the requested service awards to Plaintiffs, are fair and reasonable should be approved.

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COTCHETT, PITRE & McCARTHY, LLP

<u>/s/ Mark C. Molumphy</u>
Mark C. Molumphy (SBN 168009)
mmolumphy@cpmlegal.com
Tyson C. Redenbarger (SBN 294492)
tredenbarger@cpmlegal.com
Elle Lewis (SBN 238329)
elewis@cpmlegal.com
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

DATED: January 11, 2022

BOTTINI & BOTTINI, INC.

<u>/s/ Francis A. Bottini, Jr.</u>
Francis A. Bottini, Jr. (SBN 175783)
fbottini@bottinilaw.com
Yury A. Kolesnikov (SBN 271173)
ykolesnikov@bottinilaw.com
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
Telephone: (858) 914-2001
Facsimile: (858)914-2002

Co-Lead Class Counsel