

1 Martin A. Muckleroy
2 State Bar #9634
3 **MUCKLEROY LUNT, LLC**
4 6077 S. Fort Apache Rd., Ste 140
5 Las Vegas, NV 89148
6 Telephone: 702-907-0097
7 Facsimile: 702-938-4065
8 Email: martin@muckleroylunt.com

9 James M. Wilson, Jr. (*pro hac vice*)
10 Email: jwilson@faruqilaw.com
11 Robert W. Killorin (*pro hac vice*)
12 Email: rkillorin@faruqilaw.com
13 **FARUQI & FARUQI, LLP**
14 685 Third Avenue, 26th Floor
15 New York, NY 10017
16 Telephone: 212-983-9330
17 Facsimile: 212-983-9331

18 *Attorneys for Lead Plaintiff Tiffany Huynh,*
19 *as executor for the estate of Kevin Nguyen*

20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 In re TAHOE RESOURCES, INC. SECURITIES
23 LITIGATION

24 This Document Relates to: All Actions

25 Case No. 2:17-cv-01868-RFB-NJK

26 **REPLY IN SUPPORT OF U.S.**
27 **PLAINTIFF'S MOTION FOR FINAL**
28 **APPROVAL OF THE CLASS ACTION**
SETTLEMENT AND U.S. PLAINTIFF'S
COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND AN AWARD TO U.S. PLAINTIFF

TABLE OF CONTENTS

1

2 INTRODUCTION1

3 ARGUMENT2

4 I. THE NOTICE PROGRAM TO DATE2

5 II. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE

6 SETTLEMENT AND PLAN OF ALLOCATION.....4

7 III. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE FEE

8 REQUESTS6

9 CONCLUSION.....6

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 exclusion from the Settlement, and no one has objected to the Fee Requests. *See* Sullivan Suppl.
2 Decl. ¶¶9-10; Wilson Decl.² ¶¶5-6. To date there have been 13,708 Claim Forms received. *See*
3 Sullivan Suppl. Decl. ¶11.

4 As part of the effort to increase submission of Claim Forms by the February 1, 2024
5 deadline, the Claims Administrator sent an e-mail reminder with the Notice Packet to the 315
6 potential Class Members for whom it had email addresses available. Sullivan Suppl. Decl. ¶5.
7 Additionally, the Claims Administrator coordinated with Broadridge, a nominee filer that had the
8 largest number of potential Class members in its database, to send an e-mail “blast” of the
9 Settlement notice to the 17,362 potential Class Members for whom it had email addresses
10 available. *Id.*

11 As of the filing of this Reply, only one person, Mr. William Schnitt, sent a letter styled as
12 an “objection” to certain terms in the Settlement. Mr. Schnitt sought clarification that his Tahoe
13 shares received through a stock-for-stock merger during the Class Period were included in the
14 terms of the U.S. Settlement for potential recovery. As reflected in the Notice of Withdrawal of
15 Objection, Mr. Schnitt has been informed that such Tahoe shares are included and Mr. Schnitt has
16 withdrawn his objection. *See* Notice of Withdrawal of Objection, ECF No. 270-2, Exhibit B to
17 Wilson Decl.; *see also* Wilson Decl. ¶10.

18 Thus, U.S. Plaintiff and U.S. Plaintiff’s Counsel respectfully request that the Court approve
19 the Settlement and Plan of Allocation as fair, reasonable, and adequate, and likewise approve the
20 Fee Requests.

21 **ARGUMENT**

22 **I. THE NOTICE PROGRAM TO DATE**

23 As detailed in the Final Approval Motion, the notice program approved by the Court was
24 implemented and satisfies the requirements of Rule 23, the PSLRA, and due process. *See* FA Mot.
25 at 19-20; U.S. Order Preliminarily Approving U.S. Settlement and Providing for Notice
26 (“Preliminary Approval Order”) (ECF No. 252), at ¶¶6, 12.

27 ² “Wilson Decl.” refers to the Declaration Notifying the Court of Withdrawal of Objection.
28 ECF No. 270.

1 Pursuant to the Preliminary Approval Order, Notice Packets have been mailed to 58,947
2 potential Class Members and nominees beginning on November 17, 2023. Sullivan Suppl. Decl.
3 ¶3; Mailing Decl.³ ¶6. The day before, the Notice and Claim Form were also made available on
4 the website www.USTahoeSettlement.com. Mailing Decl. ¶15. The Summary Notice was
5 published in *Investor's Business Daily* and transmitted over *Globe Newswire* on November 27,
6 2023. *Id.* at ¶12. The Claims Administrator also set up a toll-free telephone number through
7 which potential Class Members could contact the Claims Administrator with any questions or
8 concerns. *Id.* at ¶¶13-14.

9 Pursuant to the schedule set forth in the Preliminary Approval Order, U.S. Plaintiff and
10 U.S. Plaintiff's Counsel filed their opening papers in support of the Motions on December 14,
11 2023. *See* ECF Nos. 254-62. Those papers described the Settlement, U.S. Plaintiff's and U.S.
12 Plaintiff's Counsel's views about the Settlement, the work performed in the litigation, and the
13 specific fees and expenses requested. *See generally id.*

14 Since the Motions were filed, U.S. Plaintiff's Counsel communicated frequently with the
15 Claims Administrator regarding the notice program's progress. In an effort to ensure a wide
16 distribution of the Settlement for potential submission of claims forms by the February 1, 2024
17 deadline, the Claims Administrator sent an e-mail reminder with the Notice Packet to the 315
18 potential Class Members for whom it had email addresses available. Sullivan Suppl. Decl. ¶5.
19 Additionally, the Claims Administrator also coordinated with Broadridge to send an email blast of
20 the Settlement notice to the 17,362 potential Class Members for whom it had email addresses
21 available. *Id.*

22 As of February 1, 2024, the Claims Administrator has received 13,708 Claim Forms, *id.* at
23 ¶11, which represents approximately 23% of the 58,947 Notice Packets mailed to potential Class
24 Members, *id.* at ¶3. This is within the norm for securities class actions. *See In re Celera Corp.*
25 *Sec. Litig.*, 2015 WL 1482303, at *4 (N.D. Cal. Mar. 31, 2015) (noting that “[g]enerally, . . . the

26
27 ³ “Mailing Decl.” refers to the Declaration of Owen F. Sullivan Regarding: (A) Mailing of
28 the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests
for Exclusion. ECF No. 254.

1 claims rate range between 20 and 30 percent”). The number of claims submitted will likely
2 increase, as any Claim Forms postmarked on the February 1, 2024 deadline have not yet been
3 received, and there are often late claims submitted. U.S. Plaintiff’s Counsel has the discretion to
4 accept late claims and will submit them to the Court for approval in connection with the motion for
5 approval of the distribution of the Net Settlement Fund to Class Members as long as processing the
6 late claims does not materially delay distribution. *See* Preliminary Approval Order ¶15(a).

7
8 **II. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE
SETTLEMENT AND PLAN OF ALLOCATION**

9 The Class’s reaction to the proposed Settlement is “perhaps the most significant factor to be
10 weighed in considering its adequacy[.]” *In re Rambus Inc. Derivative Litig.*, 2009 WL 166689, at
11 *3 (N.D. Cal. Jan. 20, 2009). “If only a small number of objections are received, that fact can be
12 viewed as indicative of the adequacy of the settlement.” *IBEW Local 697 Pension Fund v. Int’l
13 Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012). “[T]he willingness of the
14 overwhelming majority of the class to approve the offer and remain part of the class presents at
15 least some objective positive commentary as to its fairness.” *In re Celera Corp. Sec. Litig.*, 2015
16 WL 7351449, at *7 (N.D. Cal. Nov. 20, 2015).

17 As mentioned above, only one Tahoe shareholder sent an objection to certain narrow
18 language in the Settlement Notice. The objection was submitted by Mr. Schnitt, a former Lake
19 Shore Gold shareholder who acquired Tahoe shares pursuant to the merger of Lake Shore Gold
20 into Tahoe on April 1, 2016. *See* ECF No. 264 at 2. By way of background, Tahoe acquired two
21 companies during the Class Period: Lake Shore Gold and Rio Alto. Tahoe provided the Claims
22 Administrator with the shareholder records for Lake Shore Gold and Rio Alto, and the Claims
23 Administrator sent notice to those shareholders as well as other Tahoe shareholders. *See* Mailing
24 Decl. at ¶4. Mr. Schnitt objected to the Settlement because, while the Class definition included
25 those who acquired Tahoe shares by means other than a purchase, such as through a merger, Mr.
26 Schnitt was concerned that there was language in the Notice’s instruction section from which one
27 could “infer that former Lake Shore shareholders may not use the designated claims forms to
28

1 report the fair market value of their Lake Shore stock tendered in the merger exchange.” ECF No.
2 264 at 3 (quoting the Notice at 14, “Receipt of Tahoe common stock during the U.S. Settlement
3 Class Period in exchange for securities of any other corporation or entity shall not be deemed a
4 purchase or sale of Tahoe common stock”). After receiving Mr. Schnitt’s objection, U.S.
5 Plaintiff’s Counsel conferred with U.S. Defense Counsel and the Claims Administrator, and all
6 agreed that the those who acquired their shares through the Lake Shore Gold merger are included
7 and can use the designated Claim Forms to participate in the Settlement. Wilson Decl. ¶7. As
8 U.S. Plaintiff’s Counsel informed Mr. Schnitt, those shares would be valued at Tahoe’s closing
9 price on the date the merger closed, April 1, 2016. *Id.* at ¶8. Mr. Schnitt has now withdrawn his
10 objection. ECF No. 270-2.

11 Now that Mr. Schnitt’s objection has been resolved, **there are no objections to any aspect**
12 **of the Settlement, Plan of Allocation, or the Fee Requests.** *See* Sullivan Suppl. Decl. ¶10. This
13 strongly supports final approval. *See IBEW*, 2012 WL 5199742, at *3-4 (finding that the receipt of
14 only one objection supported settlement); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
15 1043 (N.D. Cal. 2008) (finding that the class’s reaction weighed in favor of the settlement where
16 “the Court received objections from only 3 out of 57,630 potential Class Members who received
17 the notice[]”).

18 Additionally, the fact that no requests for exclusion (due January 18, 2024) have been
19 submitted further provides strong support for final approval. *See* Sullivan Suppl. Decl. ¶9;
20 *DeStefano v. Zynga, Inc.*, 2016 WL 537946, at *14 (N.D. Cal. Feb. 11, 2016) (stating that a low
21 number of exclusions supports a settlement’s reasonableness).

1 **III. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE FEE**
2 **REQUESTS**

3 The Notice informed Class Members that U.S. Plaintiff’s Counsel would apply for an
4 award of attorneys’ fees of 33% of the Settlement Fund, reimbursement of expenses up to
5 \$900,000, and an award for U.S. Plaintiff not to exceed \$10,000. *See* ECF No. 254-1 at 2-3. The
6 Notice also informed Class Members of their right to object to the Fee Request and the January 18,
7 2024 deadline for submitting such objections. *See id.* at 9-10. On December 14, 2023, U.S.
8 Plaintiff’s Counsel filed the Fee Motion seeking an award of 33% of the Settlement Fund,
9 reimbursement of \$886,464.29 in expenses, plus accrued interest, and an award for U.S. Plaintiff
10 of \$10,000 for the time and effort she and her husband devoted to representing the Class in this
11 Action. *See generally* Fee Motion. The deadline for objections has passed and no objections to
12 the Fee Requests have been received.

13 U.S. Plaintiff’s Counsel’s extensive work over the past six years of litigation, including
14 work performed domestically and with the authorities of Central and South America to prepare for
15 depositions, and protracted negotiations with counsel for the Canadian class action to achieve a
16 global settlement that was fair, reasonable, and adequate, along with the **absence of any**
17 **objections to the Fee Requests** weigh strongly in favor of approval. *See Kendall v. Odonate*
18 *Therapeutics, Inc.*, 2022 WL 1997530, at *6 (S.D. Cal. June 6, 2022) (lack of objections supported
19 reasonableness of request for attorneys’ fees of 33 1/3% of settlement); *Khoja v. Orexigen*
20 *Therapeutics, Inc.*, 2021 WL 5632673, at *9-10 (S.D. Cal. Nov. 30, 2021) (granting lead counsel’s
21 request for 33% of settlement and plaintiff’s request for an award pursuant to 15 U.S.C. §78u-
22 4(a)(4) where there were no objections to either).

23 **CONCLUSION**

24 For the reasons stated above, U.S. Plaintiff and U.S. Plaintiff’s Counsel respectfully request
25 that the Court grant the relief requested in the Motions.

26 Dated: February 1, 2024

Respectfully submitted,

27 By: /s/ James M. Wilson, Jr.
28 James M. Wilson, Jr., Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Robert Killorin, Esq.
FARUQI & FARUQI, LLP
685 Third Avenue, 26th Floor
New York, NY 10017
Telephone: 212-983-9330
Facsimile: 212-983-9331
Email: jwilson@faruqilaw.com
rkillorin@faruqilaw.com

Martin A. Muckleroy
State Bar #9634
MUCKLEROY LUNT, LLC
6077 S. Fort Apache Rd., Ste 140
Las Vegas, NV 89148
Telephone: 702-907-0097
Facsimile: 702-938-4065
Email: martin@muckleroylunt.com

*Attorneys for Lead Plaintiff Tiffany Huynh, as
executor for the estate of Kevin Nguyen*

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record. I also caused the foregoing to be served on Interested Party William Schnitt via First Class U.S. Mail at 2844 N. 82nd St., Scottsdale, AZ 85257.

By: /s/ James M. Wilson, Jr. _____
James M. Wilson, Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28