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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 In re NUTANIX, INC. SECURITIES
16 LITIGATION

) Case No. 3:19-cv-01651-WHO
) Case No. 3:21-cv-04080-WHO
)

17 CLASS ACTION

18 JOHN P. NORTON, ON BEHALF OF THE
NORTON FAMILY LIVING TRUST UAD
19 11/15/2002, Individually and On Behalf of All
Others Similarly Situated,

) DECLARATION OF STEPHEN R. ASTLEY
) IN SUPPORT OF: (1) PLAINTIFFS'
) MOTION FOR FINAL APPROVAL OF
) CLASS ACTION SETTLEMENT AND
) APPROVAL OF PLAN OF ALLOCATION,
) AND (2) LEAD COUNSEL'S MOTION FOR
) AN AWARD OF ATTORNEYS' FEES AND
) EXPENSES AND AWARD TO CLASS
) REPRESENTATIVE PURSUANT TO 15
) U.S.C. §78u-4(a)(4)

20 Plaintiff,

21 vs.

22 NUTANIX, INC., DHEERAJ PANDEY, and
23 DUSTON M. WILLIAMS,

24 Defendants.

) DATE: October 4, 2023
) TIME: 2:00 p.m. (via videoconference)
) JUDGE: Honorable William H. Orrick
)

1 I, STEPHEN R. ASTLEY, declare as follows, pursuant to 28 U.S.C. §1746:

2 1. I am a member of the law firm Robbins Geller Rudman & Dowd LLP (“Robbins
3 Geller”). Robbins Geller serves as lead counsel on behalf of the Court-appointed lead plaintiff
4 California Ironworkers Field Pension Trust (“California Ironworkers”) in the *Nutanix* Action.¹ I
5 submit this declaration in support of: (i) final approval of the settlement (“Settlement”) that
6 California Ironworkers, named plaintiff City of Miami Fire Fighters’ and Police Officers’ Retirement
7 Trust in the *Nutanix* Action (“City of Miami”), and lead plaintiff John P. Norton, on behalf of the
8 Norton Family Living Trust UAD November 15, 2002, in the *Norton* Action (“Norton,” and
9 collectively with California Ironworkers and City of Miami, “Plaintiffs”) reached on behalf of
10 themselves and the Class (defined below) with defendants Nutanix, Inc. (“Nutanix” or the
11 “Company”), Dheeraj Pandey (“Pandey”), and Duston M. Williams (“Williams”) (the “Individual
12 Defendants” and collectively with Nutanix, the “Defendants”); (ii) approval of the proposed plan for
13 the allocation of the Net Settlement Fund (“Plan of Allocation”); and (iii) approval of an award of
14 attorneys’ fees and litigation expenses and charges (“Fee and Expense Application”). Unless
15 otherwise indicated, I have personal knowledge of the matters set forth herein based both on my
16 extensive participation in the prosecution and settlement of the claims asserted in the *Nutanix* Action
17 and my supervision of those working at my direction.

18 2. The Settlement will resolve all claims asserted in the *Nutanix* Action and the *Norton*
19 Action (collectively, the “Actions”) against all Defendants on behalf of the Class, which consists of
20 all persons or entities who: (i) purchased or otherwise acquired Nutanix securities between
21 November 30, 2017 and May 30, 2019, inclusive (the “Class Period”); and/or (ii) transacted in
22 publicly traded call options and/or put options of Nutanix during the Class Period.²

23 _____
24 ¹ Capitalized terms not otherwise defined herein have the meanings given to them in the
25 Stipulation of Settlement dated April 7, 2023 (“Stipulation”) (*Nutanix* Action ECF 307-2; *Norton*
Action ECF 117-2).

26 ² Excluded from the Class are Nutanix and its subsidiaries and affiliates, the Individual
27 Defendants, any of Defendants’ respective officers and directors at all relevant times, and any of
28 their immediate families, legal representatives, heirs, successors, or assigns, and any entity in which
any Defendant has or had a Controlling Interest. Order Preliminarily Approving Settlement and
Providing for Notice as Amended, dated May 19, 2023 (*Nutanix* Action ECF 311; *Norton* Action
ECF 121) (“Preliminary Approval Order”), ¶1. Also excluded from the Class are any persons or

1 **I. PRELIMINARY STATEMENT: THE SIGNIFICANT RECOVERY**
2 **ACHIEVED**

3 3. Through intensive efforts and after extensive arm's-length settlement negotiations,
4 Lead Counsel achieved a \$71 million settlement on behalf of the Class. As set forth in the
5 Stipulation, in exchange for this payment, the Settlement resolves all claims asserted in the Actions
6 by Plaintiffs and the Class against Defendants.

7 4. The Settlement was negotiated at arm's length and reached after mediation conducted
8 under the auspices of nationally recognized mediator and retired United States District Judge, Hon.
9 Layn R. Phillips, of Phillips ADR Enterprises, P.C. Plaintiffs agreed to the Settlement only after
10 they gained a thorough appreciation for the strengths and weaknesses of the Actions by, among other
11 things, (i) conducting an extensive investigation; (ii) reviewing and analyzing 570,862 pages of
12 documents produced by Defendants and third parties; (iii) incorporating documents produced by
13 Defendants and other facts into detailed amended complaints; (iv) opposing Defendants' motions to
14 dismiss and motion for judgment on the pleadings; (v) preparing detailed mediation statements; and
15 (vi) participating in a mediation session with Judge Phillips, followed by months of settlement
16 discussions with Judge Phillips' assistance.

17 5. The \$71 million Settlement represents a recovery of approximately 15% of the
18 estimated aggregate damages as calculated by Plaintiffs' damages expert. As set forth in the
19 accompanying Memorandum of Points and Authorities in Support of Motion for Final Approval of
20 Class Action Settlement and Approval of Plan of Allocation (the "Final Approval Memorandum")
21 (at 14-15), this is well within the range of reasonableness under the circumstances and warrants final
22 approval of the Settlement.

23 6. Plaintiffs and Lead Counsel obtained this substantial recovery despite the significant
24 risks Plaintiffs faced in prosecuting the Actions. Defendants strenuously maintained, and continue to
25 maintain, that no liability or damages could be proven at trial. When viewed in the context of these
26 risks and uncertainties, the Settlement is a very favorable result for the Class.

27 _____
28 entities who exclude themselves by submitting a request for exclusion in connection with the Notice
that is accepted by the Court. *Id.*, ¶2.

1 **II. BRIEF SUMMARY OF PLAINTIFFS' CLAIMS**

2 7. Plaintiffs allege that during the period between November 30, 2017 and May 30,
3 2019, Defendants made materially false or misleading statements and omissions in violation of
4 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5
5 promulgated thereunder, which caused the prices of Nutanix securities and publicly traded options to
6 trade at artificially inflated prices. Specifically, Plaintiffs allege that Defendants concealed
7 Nutanix's transition to a new business model, which diverted its customer pipeline spending to the
8 R&D of new software products, rather than sales and marketing efforts to obtain new customers.
9 Plaintiffs allege that contrary to Defendants' Class Period statements indicating that Nutanix was
10 making significant investments in sales and marketing while maintaining high profit margins,
11 Defendants had actually decreased Nutanix's lead generation spending, which in turn drove higher
12 margins and resulted in weak guidance. According to Plaintiffs' allegations, Defendants knew that,
13 without pipeline expenditures, Nutanix would see lower growth, fewer customer acquisitions, and
14 declining sales productivity. Plaintiffs further allege that these problems were compounded by an
15 exodus of Nutanix's sales force. Plaintiffs allege that Defendants attempted to conceal these
16 negative trends by pulling in future sales based on inducements such as discounts and a novel rebate
17 program, but ultimately, Defendants were unable to pull in sufficient sales to hide the lagging
18 pipeline growth and sales productivity. Plaintiffs allege that, when Defendants were forced to make
19 a series of partial disclosures of disappointing financial results tied to the Company's sales pipeline
20 and productivity issues, the prices of Nutanix securities and publicly traded options plummeted,
21 causing massive losses to investors.

22 8. Defendants have denied and continue to deny each and all of the claims and
23 contentions alleged by Plaintiffs in these Actions. Defendants further assert that they are entering
24 into this Settlement solely to eliminate the burden, expense, and uncertainty of further protracted
25 litigation.

1 **III. RELEVANT PROCEDURAL HISTORY AND NEGOTIATION OF THE**
2 **SETTLEMENT**

3 9. On March 29, 2019, an initial class action complaint was filed in this Court against
4 Defendants, alleging violations of Sections 10(b) and 20(a) of the Exchange Act. *Nutanix* Action
5 ECF 1. On July 10, 2019, the Court entered an order consolidating the initial class action complaint
6 with several related class action complaints against Defendants, appointing Shimon Hedvat
7 (“Hedvat”) as lead plaintiff of the consolidated action, and approving Hedvat’s selection of lead
8 counsel, Levi & Korsinsky, LLP (“Levi & Korsinsky” and collectively with Robbins Geller, “Lead
9 Counsel”). *Nutanix* Action ECF 87.

10 10. On September 9, 2019, Hedvat and City of Miami filed a consolidated amended
11 complaint against Defendants on behalf of themselves and all other persons similarly situated who
12 purchased or otherwise acquired Nutanix securities between November 30, 2017 and May 30, 2019,
13 inclusive (“*Nutanix* FAC”). *Nutanix* Action ECF 102. On October 24, 2019, Defendants filed a
14 motion to dismiss the *Nutanix* FAC. *Nutanix* Action ECF 108. On March 9, 2020, the Court granted
15 the motion to dismiss with leave to amend. *Nutanix* Action ECF 121.

16 11. On April 17, 2020, Hedvat and City of Miami filed a second consolidated amended
17 complaint against Defendants (“*Nutanix* SAC”). *Nutanix* Action ECF 124. On May 22, 2020,
18 Defendants moved to dismiss the *Nutanix* SAC. *Nutanix* Action ECF 125. On September 11, 2020,
19 the Court granted in part and denied in part the motion to dismiss. *Nutanix* Action ECF 140.

20 12. On October 23, 2020, Defendants filed their Answer to the *Nutanix* SAC. *Nutanix*
21 Action ECF 145.

22 13. On October 23, 2020, Hedvat and City of Miami served their Initial Disclosures on
23 Defendants, and Defendants served their Initial Disclosures on Hedvat and City of Miami, pursuant
24 to Federal Rule of Civil Procedure 26(a)(1)(A).

25 14. On October 26, 2020, the Court entered a Stipulated Protective Order. *Nutanix*
26 Action ECF 151.

1 15. On October 27, 2020, the Court held a case management conference and entered a
2 Pretrial Schedule with certain case management deadlines, including a deadline for Hedvat and City
3 of Miami to file a motion for class certification by February 26, 2021. *Nutanix* Action ECF 152.

4 16. On November 4, 2020, Hedvat and City of Miami served their First Set of Requests
5 for Production of Documents on Defendants.

6 17. On November 6, 2020, Hedvat and City of Miami issued subpoenas *duces tecum* to
7 the following third parties: Wells Fargo Securities, LLC; RBC Capital Markets; Goldman Sachs &
8 Co., LLC; J.P. Morgan Chase & Co.; Morgan Stanley & Co.; Oppenheimer & Co., Inc.; Bank of
9 America Corporation; Deloitte & Touche LLP, Maxim Group LLC; KeyBanc Capital Markets, Inc.;
10 JMP Securities LLC; Jefferies Group LLC; Garrison, Bradford & Associates, Inc.; Forbes Media,
11 LLC; Deutsche Bank Securities Inc.; The Channel Company, LLC, d/b/a CRN; Accounting
12 Research & Analytics, LLC; Barclays Bank PLC; BTIG, LLC; Wolfe Research Advisors, LLC;
13 Zacks Investment Research; William Blair & Company, L.L.C.; TechTarget; Susquehanna
14 International Group, LLP; Robert W. Baird & Co. Incorporated; Stifel, Nicolaus & Company,
15 Incorporated; Piper Sandler & Co.; Raymond James Financial, Inc.; and Needham & Company,
16 LLC.

17 18. On November 19, 2020, Hedvat, City of Miami, and Defendants stipulated and
18 agreed to a protocol regarding the production of electronically stored information and hard copy
19 documents, following negotiations over the terms of such protocol.

20 19. Between November 30, 2020 and February 11, 2022, the following third parties
21 produced documents in response to the subpoenas *duces tecum* issued by Hedvat and City of Miami
22 on November 6, 2020:

- 23 • Goldman Sachs & Co., LLC (1,302 pages on November 30, 2020);
- 24 • William Blair & Company, L.L.C. (290 pages on December 1, 2020);
- 25 • Morgan Stanley & Co. (289 pages on December 2, 2020);
- 26 • Raymond James Financial, Inc. (312 pages on December 2, 2020);
- 27 • Wolfe Research Advisors, LLC (7,751 pages on December 3, 2020);

- 1 • Deutsche Bank Securities Inc. (6,598 pages total on December 3, 2020 and February
2 1, 2021);
- 3 • RBC Capital Markets (2,519 pages on December 4, 2020);
- 4 • Robert W. Baird & Co. Incorporated (8,055 pages on December 4, 2020);
- 5 • Accounting Research & Analytics, LLC (2,743 pages on December 5, 2020);
- 6 • BTIG, LLC (42,660 pages total on December 7 and 11, 2020);
- 7 • JMP Securities LLC (4,968 pages on December 8, 2020);
- 8 • Needham & Company, LLC (514 pages on December 8, 2020);
- 9 • Jefferies Group LLC (2,420 pages on December 10, 2020);
- 10 • Piper Sandler & Co. (305,006 pages on December 10, 2020);
- 11 • Stifel, Nicolaus & Company, Incorporated (1,089 pages total on December 10, 16,
12 and 22, 2020);
- 13 • The Channel Company, LLC, d/b/a CRN (17,407 pages on December 11, 2020);
- 14 • Maxim Group LLC (8,311 pages total on December 11, 2020 and February 9, 2021);
- 15 • KeyBanc Capital Markets, Inc. (6,459 pages on December 23, 2020);
- 16 • Zacks Investment Research (1,179 pages on December 24, 2020);
- 17 • Susquehanna International Group, LLP (67,940 pages on January 8, 2021);
- 18 • Bank of America Corporation (270 pages total on January 25, 2021 and January 4,
19 2022);
- 20 • Wells Fargo Securities, LLC (3,449 pages on January 24, 2022); and
- 21 • J.P. Morgan Chase & Co. (257 pages on February 11, 2022).

22 As these and the other third-party productions were made, Plaintiffs conducted a thorough review of
23 the documents to assess their relevance to Plaintiffs' claims and organized them in preparation for
24 anticipated depositions and motion practice.

25 20. On December 4, 2020, Defendants served their Responses & Objections to Plaintiffs'
26 First Set of Requests for Production of Documents.

27 21. On December 12, 2020, Hedvat and City of Miami issued a subpoena *duces tecum* to
28 third party FBN Securities, Inc., which was subsequently re-issued on December 15, 2020. On

1 January 12, 2021, FBN Securities, Inc. produced 338 pages of documents in response to the
2 subpoena.

3 22. On January 18, 2021, Hedvat and City of Miami issued a subpoena *duces tecum* to
4 third party Bain Capital, LP.

5 23. On January 27, 2021, Hedvat, City of Miami, and Jose Flores (“Flores”) moved to
6 withdraw Hedvat as lead plaintiff in the *Nutanix* Action, and to substitute Flores and City of Miami
7 as co-lead plaintiffs and approve their selection of lead counsel. *Nutanix* Action ECF 161.

8 24. On February 4, 2021, the Court entered an Order Modifying Class Certification
9 Deadlines, extending, in pertinent part, the deadline to file a motion for class certification to March
10 10, 2021. *Nutanix* Action ECF 165.

11 25. On February 19, 2021, City of Miami issued a subpoena *duces tecum* to Champlain
12 Investment Partners.

13 26. On March 1, 2021, the Court entered an order withdrawing Hedvat as lead plaintiff
14 and allowing any putative class member to file by March 22, 2021, an application to serve as lead
15 plaintiff. *Nutanix* Action ECF 171. Up through and until the Court entered its March 1, 2021 order,
16 City of Miami and its counsel had worked to prepare a motion for class certification, including by
17 consulting with a market efficiency and damages expert.

18 27. On May 28, 2021, Norton filed a class action complaint in this Court against
19 Defendants alleging violations of Sections 10(b) and 20(a) of the Exchange Act (“*Norton*
20 *Complaint*”). *Norton* Action ECF 1. The *Norton* Complaint was filed on behalf of Norton and all
21 other persons or entities similarly situated who transacted in publicly traded call options and/or put
22 options of Nutanix between November 30, 2017 and May 30, 2019, inclusive. *Id.*

23 28. On June 2, 2021, the Court entered an order finding that the *Norton* Action was
24 related to the *Nutanix* Action. *Norton* Action ECF 8; *Nutanix* Action ECF 223.

25 29. On June 10, 2021, the Court entered an order appointing California Ironworkers as
26 lead plaintiff in the *Nutanix* Action and approving its selection of Robbins Geller as lead counsel.
27 *Nutanix* Action ECF 224.

1 30. On July 8, 2021, California Ironworkers filed a motion for leave to supplement the
2 *Nutanix* SAC to conform it to events related to the withdrawal of Hedvat and appointment of
3 California Ironworkers as lead plaintiff. *Nutanix* Action ECF 229. The Court granted the motion on
4 August 16, 2021, and California Ironworkers filed a supplement to the *Nutanix* SAC on the same
5 day. *Nutanix* Action ECF 237-238.

6 31. On July 26, 2021, Defendants made their first document production consisting of 265
7 pages. Plaintiffs carefully reviewed these documents as they continued to meet-and-confer with
8 Defendants regarding further productions.

9 32. On September 3, 2021, California Ironworkers served Lead Plaintiff's Initial
10 Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A).

11 33. On September 8, 2021, the Court entered an order appointing Norton as lead plaintiff
12 in the *Norton* Action and approving his selection of Levi & Korsinsky as lead counsel. *Norton*
13 Action ECF 30.

14 34. On September 17, 2021, Defendants served their First Set of Requests for Production
15 of Documents and Electronically Stored Information to Lead Plaintiff California Ironworkers Field
16 Pension Trust.

17 35. On October 18, 2021, California Ironworkers served its Responses and Objections to
18 Defendants' First Set of Requests for Production of Documents and Electronically Stored
19 Information to Lead Plaintiff California Ironworkers Field Pension Trust.

20 36. On October 22, 2021, Defendants served their First Set of Requests for Production of
21 Documents and Electronically Stored Information to Lead Plaintiff John P. Norton, on Behalf of the
22 Norton Family Living Trust UAD 11/15/2002.

23 37. On October 28, 2021, Defendants made their second document production consisting
24 of 1,273 pages.

25 38. On November 1, 2021, Defendants filed a motion to dismiss the *Norton* Complaint.
26 *Norton* Action ECF 41-42.

1 39. On November 5, 2021, Defendants issued Subpoenas *Duces Tecum* for the
2 Production of Documents to Hedvat and third parties Champlain Investment Partners LLC and RVK,
3 Inc.

4 40. On November 16, 2021, Hedvat served his Objections to Defendants' Subpoena
5 *Duces Tecum* Dated November 5, 2021.

6 41. On November 22, 2021, Norton served his Responses and Objections to Defendants'
7 First Set of Requests for Production of Documents and Electronically Stored Information to Lead
8 Plaintiff John P. Norton, on Behalf of the Norton Family Living Trust UAD 11/15/2002.

9 42. On November 24, 2021, RVK, Inc. served its Responses and Objections to Subpoena
10 to Produce Documents.

11 43. On December 1, 2021, Champlain Investment Partners, LLC served its Response and
12 Objections to Subpoena.

13 44. On December 1, 2021, Defendants made their third document production consisting
14 of 4,776 pages.

15 45. On December 17, 2021, California Ironworkers issued subpoenas *duces tecum* to The
16 Blueshirt Group, LLC and Joele Frank, Wilkinson Brimmer Katcher.

17 46. On January 4, 2022, the parties informed the Court that they wished to explore a
18 resolution of the Actions through the services of a private mediator. *See Nutanix* Action ECF 252;
19 *Norton* Action ECF 52. On January 5, 2022, the Court entered orders vacating existing deadlines in
20 the Actions in connection with the mediation. *Nutanix* Action ECF 255; *Norton* Action ECF 53.

21 47. The parties agreed that it would serve all parties' interests to engage a mediator with a
22 track record of mediating complex class action litigation, and someone who had an understanding of
23 the law and issues involved in PSLRA actions. As a result, the parties agreed to retain retired United
24 States District Judge, Layn R. Phillips.

25 48. To facilitate a meaningful mediation process, Defendants made a series of additional
26 document productions for the purposes of mediation only. On January 27, 2022, Defendants made
27 their first document production for purposes of mediation, consisting of 108 pages.

28

1 49. On February 4, 2022, Defendants made their second document production for
2 purposes of mediation, consisting of 2,945 pages.

3 50. On February 11, 2022, Defendants made their third document production for purposes
4 of mediation, consisting of 14,979 pages.

5 51. On February 18, 2022, Defendants made their fourth document production for
6 purposes of mediation, consisting of 17,655 pages.

7 52. On February 25, 2022, Defendants made their fifth document production for purposes
8 of mediation, consisting of 19,342 pages.

9 53. On March 5, 2022, Defendants made their sixth document production for purposes of
10 mediation, consisting of 2,068 pages.

11 54. On March 12, 2022, Defendants made their seventh document production for
12 purposes of mediation, consisting of 153 pages.

13 55. On March 13, 2022, Defendants made their eighth document production for purposes
14 of mediation, consisting of 6,403 pages.

15 56. Prior to the mediation there were numerous issues about which the parties disagreed,
16 including whether the statements made or facts allegedly omitted were material, false, misleading, or
17 actionable and whether Plaintiffs had adequately alleged and could prove that Defendants acted with
18 scienter. Defendants also disputed loss causation as to the alleged corrective disclosures on May 30,
19 2019.

20 57. The parties scheduled their mediation for April 26, 2022, and Judge Phillips
21 instructed the parties to submit and exchange statements prior to mediation detailing their respective
22 positions and supporting evidence. Lead Counsel prepared Plaintiffs' opening and responsive
23 mediation statements, marshaling the facts and documentary evidence obtained through their
24 extensive investigation, including from the documents made available to Plaintiffs for purposes of
25 the mediation and consultation with an expert on loss causation and damages. The parties'
26 respective mediation statements each included a thorough discussion of Plaintiffs' and Defendants'
27 positions.

28

1 58. On April 26, 2022, through their representatives, the parties, along with
2 representatives of Defendants’ insurers, participated in a hybrid (in-person and virtual) mediation
3 session in Corona del Mar, California, overseen by Judge Phillips. During the mediation session,
4 Lead Counsel elaborated upon certain facts set forth in Plaintiffs’ mediation statements as to, *inter*
5 *alia*, falsity, scienter, and damages.

6 59. On May 11, 2022, the parties informed the Court that they were unable to resolve the
7 Actions in mediation, and would present a joint proposed schedule to resume the Actions. *Nutanix*
8 Action ECF 262; *Norton* Action ECF 56.

9 60. On May 23, 2022, Defendants re-produced 63,685 pages of documents they had
10 produced earlier in the litigation for purposes of mediation, as described above.

11 61. On May 27, 2022, Defendants filed a motion for partial judgment on the pleadings in
12 the *Nutanix* Action. *Nutanix* Action ECF 270.

13 62. On June 16, 2022, the Court denied Defendants’ motion to dismiss the *Norton*
14 Complaint. *Norton* Action ECF 64.

15 63. On June 27, 2022, in response to a joint stipulation filed by the parties in the *Norton*
16 Action (*Norton* Action ECF 66), the Court ruled that Defendants’ deadline to answer the *Norton*
17 Complaint would be held in abeyance, and that the parties would include joint (or competing)
18 proposal(s) for a proposed deadline by which Defendants would answer the *Norton* Complaint in
19 their scheduling submission(s) due on September 7, 2022 (*Norton* Action ECF 69).

20 64. On August 5, 2022, Defendants made an additional document production consisting
21 of 8,737 pages. In total, Plaintiffs received and reviewed 570,862 documents produced by
22 Defendants and third parties throughout the course of the litigation.

23 65. On September 1, 2022, California Ironworkers and City of Miami filed a third
24 consolidated amended complaint in the *Nutanix* Action (“*Nutanix* TAC”) to add new allegations,
25 including allegations based on documents obtained from Defendants, and to re-allege previous
26 allegations from the *Nutanix* SAC. *Nutanix* Action ECF 281.

27 66. On September 1, 2022, Norton filed a first amended class action complaint in the
28 *Norton* Action (“*Norton* FAC”) to add new allegations, including allegations based on documents

1 obtained from Nutanix, and to re-allege previous allegations from the *Norton* Complaint. *Norton*
2 Action ECF 74-78.

3 67. On September 7, 2022, Defendants withdrew their motion for partial judgment on the
4 pleadings without prejudice because it was mooted by the *Nutanix* TAC. *Nutanix* Action ECF 282.

5 68. On September 7, 2022, in response to joint stipulations filed by the parties (*Nutanix*
6 Action ECF 282; *Norton* Action ECF 79), the Court ruled that the parties' deadlines to submit a
7 proposed case schedule, including any schedules regarding Defendants' motions to dismiss or other
8 responses to the *Nutanix* TAC and *Norton* FAC, were extended to September 14, 2022, and that
9 Defendants did not have to answer or otherwise respond to the *Nutanix* TAC or the *Norton* FAC by
10 the deadline under Fed. R. Civ. P. 15 (*Nutanix* Action ECF 283; *Norton* Action ECF 80).

11 69. On September 14, 2022, the parties filed competing proposals for motion to dismiss
12 briefing on the *Nutanix* TAC and *Norton* FAC. *Nutanix* Action ECF 284-286; *Norton* Action ECF
13 86-88.

14 70. On September 14, 2022, Norton filed a motion for leave file a Revised First Amended
15 Complaint ("*Norton* RFAC") to conform the *Norton* FAC to the *Nutanix* TAC. *Norton* Action ECF
16 82-85.

17 71. On September 29, 2022, the Court granted Norton's motion for leave to file the
18 *Norton* RFAC, and set a briefing schedule for an omnibus motion to dismiss the *Nutanix* TAC and
19 the *Norton* RFAC. *Nutanix* Action ECF 288; *Norton* Action ECF 93.

20 72. On October 4, 2022, Norton filed the *Norton* RFAC. *Norton* Action ECF 94-98.

21 73. On November 14, 2022, Defendants filed an omnibus motion to dismiss the *Nutanix*
22 TAC and the *Norton* RFAC. *Nutanix* Action ECF 292; *Norton* Action ECF 105. On December 29,
23 2022, Plaintiffs filed an omnibus opposition to the motion to dismiss. *Nutanix* Action ECF 296;
24 *Norton* Action ECF 107. On February 1, 2023, Defendants filed a reply in support of the motion to
25 dismiss. *Nutanix* Action ECF 298; *Norton* Action ECF 109. A hearing on the motion to dismiss was
26 scheduled for February 15, 2023. *Nutanix* Action ECF 288; *Norton* Action ECF 93.

27 74. Prior to the motion to dismiss hearing, the parties agreed in principle to settle the
28 Actions. The parties thereafter memorialized the final terms of the Settlement in the Stipulation. On

1 February 9, 2023, the parties filed the Stipulation informing the Court of the Settlement and
2 requested that the Court vacate the motion to dismiss hearing. *Nutanix* Action ECF 301; *Norton*
3 Action ECF 111. On February 10, 2023, the Court entered the parties’ proposed order vacating the
4 motion to dismiss hearing. *Nutanix* Action ECF 302; *Norton* Action ECF 112.

5 75. On April 7, 2023, Plaintiffs filed their Notice of Unopposed Motion and Motion for
6 Preliminary Approval of Proposed Settlement and Memorandum of Points and Authorities in
7 Support Thereof, together with the Stipulation, the proposed Plan of Allocation, the Postcard Notice,
8 the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), the Proof of Claim
9 and Release Form (the “Proof of Claim” and, collectively, the Notice and Proof of Claim are referred
10 to as the “Notice Package”), the Summary Notice, and a request that the Court preliminarily certify
11 the Class. *See Nutanix* Action ECF 307; *Norton* Action ECF 117.

12 76. On May 17, 2023, the Court held a Preliminary Approval hearing. On May 19, 2023,
13 the Court entered an order preliminarily approving the Settlement, approving the form and manner of
14 notice to the Class as amended, and provisionally certifying the Class for settlement purposes (the
15 “Preliminary Approval Order”). *Nutanix* Action ECF 311; *Norton* Action ECF 121.

16 77. Pursuant to the Preliminary Approval Order, a Settlement Hearing is scheduled for
17 October 4, 2023. *Id.*

18 **IV. PLAINTIFFS’ DAMAGES CONSULTANT**

19 78. As part of their comprehensive investigation of the relevant facts and legal issues,
20 Lead Counsel retained the services of an expert consultant from a reputable financial economics
21 firm. The consultant assisted with analyzing the losses associated with declines in the prices of
22 *Nutanix* securities and publicly traded options as a result of the alleged partial disclosures.

23 79. The consultant further assisted with preparing for negotiations of the Settlement and
24 developing the Plan of Allocation.

25 **V. RISKS FACED BY PLAINTIFFS IN THE LITIGATION**

26 80. Lead Counsel are confident that Plaintiffs would be able to prove their securities
27 fraud claims, based on their investigation of the relevant facts and legal issues, their review of the
28 documentary evidence produced by Defendants and third parties to date, and their expectation that

1 additional discovery would provide further support. Lead Counsel also realize, however, that
2 Plaintiffs would face considerable risks and defenses in continuing to litigate their claims.

3 81. Specifically, Plaintiffs would face substantial risks and uncertainties in proving that:
4 (i) Defendants' alleged misstatements and omissions were materially false and misleading; (ii) made
5 with scienter; and (iii) caused the alleged damages suffered by the Class, as required by the federal
6 securities laws. Plaintiffs and Lead Counsel carefully considered these risks and uncertainties during
7 the months leading up to the Settlement and throughout the Settlement discussions with Defendants
8 and Judge Phillips.

9 82. But for this Settlement, there existed the distinct possibility that the Court would rule
10 against Plaintiffs on Defendants' fully briefed omnibus motion to dismiss the *Nutanix* TAC and
11 *Norton* RFAC. Notably, according to NERA Economic Consulting, from 2013 through 2022, 61%
12 of securities cases were dismissed (some without prejudice). See Janeen McIntosh, Svetlana
13 Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year*
14 *Review*, at 11, Figure 11 (NERA Economic Consulting Jan. 24, 2023), attached hereto as Ex. E.
15 And, even if Plaintiffs survived the motion to dismiss that was pending at the time the parties agreed
16 to settle, there is a distinct possibility that Defendants would ultimately prevail on summary
17 judgment or at trial.

18 **A. Risks Concerning Falsity**

19 83. For Plaintiffs to prevail, they first would have to establish that Defendants made a
20 material false or misleading statement or omission. Plaintiffs believe that the material false and
21 misleading statements and omissions alleged in the *Nutanix* TAC and *Norton* RFAC were particular
22 and well supported by the alleged facts, including internal documents produced by Defendants.

23 84. Defendants, on the other hand, have maintained that Plaintiffs cannot demonstrate
24 that any of the alleged statements or omissions were materially false or misleading. They argued
25 that certain documents attached to the *Nutanix* TAC and *Norton* RFAC showed that Nutanix's sales
26 pipeline and productivity were strong, and therefore the alleged statements concerning those matters
27 were accurate when made. They further argued that other alleged statements should be dismissed

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1 because they were puffery, opinions, or forward-looking statements accompanied by meaningful risk
2 factors.

3 85. Plaintiffs believe additional discovery would have provided further support for their
4 falsity allegations, but such discovery may have provided additional support for Defendants’
5 arguments as well.

6 **B. Risks Concerning Scienter**

7 86. Defendants also contend that Plaintiffs did not sufficiently allege scienter. Plaintiffs
8 believe that a finding of scienter is well supported by numerous indicia, including internal
9 documents received and discussed by the Individual Defendants.

10 87. While Plaintiffs believe that their scienter allegations are both cogent and compelling,
11 there is a substantial risk that the Court or a jury could disagree. Even if the Court upheld the claims
12 in the *Nutanix* TAC and *Norton* RFAC at the motion-to-dismiss stage, Plaintiffs anticipate that
13 Defendants would have argued on summary judgment and again at trial that scienter was lacking
14 because, among other things, certain internal Company documents showed that Nutanix’s sales
15 pipeline and productivity were strong.

16 88. Such questions of scienter are often reduced to the jury’s evaluation of the credibility
17 of numerous witnesses. The risk that Defendants’ arguments would resonate with the Court and a
18 jury is very real. Moreover, as discussed above, there is a significant risk that Plaintiffs’ arguments
19 would never even reach the jury.

20 **C. Risks Concerning Loss Causation and Damages**

21 89. Plaintiffs also recognize the risk of ultimately proving loss causation and damages.
22 To establish loss causation, Lead Plaintiff would have to prove “a causal connection between the
23 material misrepresentation and the loss.” *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 342 (2005).
24 Defendants’ motion for judgment on the pleadings in the *Nutanix* Action challenged loss causation,
25 arguing that certain of the alleged partial disclosures failed to reveal any new information about the
26 alleged fraud. Although Defendants withdrew the motion after the *Nutanix* TAC was filed, Plaintiffs
27 may face similar arguments on summary judgment or at trial.

28

1 90. Aside from loss causation, the issue of damages would have been hotly disputed and,
2 like loss causation, would have been the subject of expert testimony proffered by all parties. The
3 damages assessments of experts retained by the parties would involve complex analyses and surely
4 vary substantially as to the existence and amount of damages. Moreover, when, as here, Plaintiffs’
5 loss causation and damage theories rest primarily on the testimony and opinions of experts, Plaintiffs
6 face a serious risk of having their theories rejected by the Court on a *Daubert* motion. Even were
7 Plaintiffs to overcome this hurdle, no assurances can be made as to the outcome of a jury when it
8 must balance the credibility of competing experts. The opinions of the parties’ opposing experts
9 would be hotly contested at trial where the jury’s reaction to such a “battle of the experts” would be
10 uncertain and unpredictable, including the possibility that the jury rejects Plaintiffs’ expert, leaving
11 Plaintiffs unable establish loss causation or damages.

12 **D. Risks Concerning the Expense, Delay, and Uncertainty of Further**
13 **Litigation**

14 91. If not for this Settlement, the Actions would have continued to be highly contested by
15 the parties at each significant stage, if the case even proceeded from its current posture. Assuming
16 for argument’s sake that the *Nutanix* TAC and *Norton* RFAC survived Defendants’ motions to
17 dismiss, continued litigation would be complex, costly, and lengthy. Among other things, document
18 discovery would need to be completed; depositions taken; experts designated; and expert reports and
19 discovery completed. Motions for class certification and summary judgment also would likely have
20 to be briefed and argued. A trial could take weeks to complete, even without taking into account
21 pre- and post-trial motions, and any favorable ruling to one party would almost certainly be
22 appealed.

23 92. Moreover, the insurance proceeds available to cover the claims in the Actions are
24 limited, and therefore diminishing as litigation proceeds. The longer the Actions continued, the
25 more the available insurance proceeds would have been reduced by defense costs, reducing the
26 amount available to the Class and resulting in the possibility that most, if not all, available insurance
27 policies would have been exhausted before any verdict or later settlement.

1 **VI. PLAN OF ALLOCATION**

2 93. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class
3 Members who wish to participate in the distribution of the Settlement proceeds must submit a valid
4 Proof of Claim, including all required information, postmarked (if mailed) or received (if submitted
5 online) on or before September 6, 2023. As provided in the Notice, after deduction of Court-
6 awarded attorneys' fees and expenses, notice and administration costs, and all applicable taxes, the
7 balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan
8 of Allocation. To date, no Class Member has objected to the Plan of Allocation.

9 94. The proposed Plan of Allocation, which was set forth and explained in full in the
10 Notice, is designed to achieve an equitable and rational distribution of the Net Settlement Fund, but
11 it is not a formal damages analysis that would be submitted at trial. Lead Counsel developed the
12 Plan of Allocation in close consultation with Plaintiffs' damages consultant and it is based on the
13 out-of-pocket measure of damages, *i.e.*, the difference between what Class Members paid for
14 Nutanix securities and publicly traded options during the Class Period and what they would have
15 paid had the misstatements not been made or omissions withheld. Lead Counsel, therefore, believe
16 that the Plan of Allocation provides a fair and reasonable method to equitably distribute the Net
17 Settlement Fund among Authorized Claimants.

18 95. The Plan of Allocation provides for distribution of the Net Settlement Fund among
19 Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to the amount
20 of alleged artificial inflation in the prices of Nutanix securities and publicly traded options at various
21 times during the Class Period, as quantified by Plaintiffs' damages consultant. Plaintiffs' consultant
22 analyzed the movement of the prices of Nutanix securities and publicly traded options and took into
23 account the portion of the price drops attributable to the alleged fraud. The Plan of Allocation
24 ensures that the Net Settlement Fund will be fairly and equitably distributed based on the amount of
25 inflation in the prices of Nutanix securities and publicly traded options during the Class Period that
26 was attributable to the alleged wrongdoing. The Plan of Allocation also incorporates the 90-day
27 "look-back" provision required by the PSLRA.

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1 96. The Court-appointed claims administrator, Gilardi, under Lead Counsel’s direction,
2 will determine each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon
3 each Authorized Claimant’s total Recognized Loss compared to the aggregate Recognized Losses of
4 all Authorized Claimants. Calculation of Recognized Loss will depend upon several factors,
5 including when the claimants purchased or acquired Nutanix securities or publicly traded options
6 during the Class Period, and whether the claimants sold Nutanix securities or publicly traded options
7 during or after the Class Period, and if so, when.

8 97. In sum, the proposed Plan of Allocation, developed in consultation with Plaintiffs’
9 damages consultant, was designed to allocate the Net Settlement Fund fairly and rationally among
10 Authorized Claimants. Accordingly, Lead Counsel respectfully submit that the proposed Plan of
11 Allocation is fair, reasonable, and adequate, and should be approved.

12 **VII. LEAD COUNSEL’S FEE AND EXPENSE APPLICATION**

13 98. Based on the exceptional result obtained for the Class, and the extensive efforts of
14 Lead Counsel required to achieve this result, Lead Counsel are requesting an award of attorneys’
15 fees in the amount of 30% of the Settlement Amount, plus interest. The percentage-of-the-fund
16 method is the appropriate method of compensating counsel in PSLRA class actions because, among
17 other things, it aligns the lawyers’ interest in being paid a fair fee with the interest of the class in
18 achieving the maximum recovery in the shortest amount of time under the circumstances. As set
19 forth in the accompanying Memorandum of Points and Authorities in Support of Attorneys’ Fees
20 and Expenses (the “Fee Memorandum”), numerous courts have applied the percentage-of-the-fund
21 method in awarding fees and doing so is consistent with the PSLRA. *See* 15 U.S.C. §78u-4(a)(6).
22 The percentage sought is merited in light of the results obtained and the efforts required.

23 **A. The Requested Fee Is Reasonable**

24 99. Lead Counsel believe that the requested fee of 30% of the Settlement Amount, plus
25 interest, is fair and reasonable in light of Lead Counsel’s diligent prosecution of the Actions, the
26 excellent result achieved in securing a significant and certain recovery for the Class, the complexity
27 of the factual and legal issues presented in the Actions, and the substantial risks and uncertainties of
28 prosecuting the Actions on a contingent basis without assurance of any compensation. Considering

1 these and the other factors described in this Declaration and the Fee Memorandum, as well as the
2 fact that the 30% fee request is consistent with fee awards in complex class actions within this
3 District and the Ninth Circuit, the requested fee is well-supported.

4 **B. Plaintiffs Support Lead Counsel’s Fee and Expense Application**

5 100. Plaintiff California Ironworkers is a Pasadena, California-based multi-employer
6 defined pension benefit plan established by labor and employers through collective bargaining, and
7 administered by a Board of Trustees. California Ironworkers is an experienced fiduciary with assets
8 of over \$2 billion. In addition to serving as the Court-appointed lead plaintiff in the *Nutanix* Action,
9 California Ironworkers has prior experience serving as a lead plaintiff in other similar securities
10 cases.

11 101. Plaintiff City of Miami is a single employer defined benefit plan established by the
12 City of Miami, Florida, and administered by a Board of Trustees. City of Miami is an experienced
13 fiduciary with assets of over \$1 billion. In addition to serving as a named plaintiff in the *Nutanix*
14 Action, City of Miami has prior experience serving as a lead plaintiff in other similar securities
15 cases.

16 102. Plaintiff Norton is a sophisticated individual investor, having invested in the stock
17 market for over 30 years, and a prior business owner. In addition to serving as the Court-appointed
18 lead plaintiff in the *Norton* Action, Norton has prior experience overseeing and hiring counsel for
19 general litigation matters during his time as a business owner.

20 103. Plaintiffs have evaluated and fully support Lead Counsel’s fee and expense request.³

21 **C. The Risks and Unique Complexities of the Litigation**

22 104. The Actions presented substantial challenges from the outset. The specific risks that
23 were faced in proving Defendants’ liability and damages are detailed herein.

24 105. Lead Counsel respectfully submit that any assessment of the proposed fee request
25 should appropriately account for those significant risks. Given that an exceptional result was

26 ³ See Declaration of John Stonehouse on Behalf of California Ironworkers Field Pension Trust,
27 ¶¶7-8; Declaration of Ornel N. Cotera on Behalf of City of Miami Fire Fighters’ and Police Officers’
28 Retirement Trust, ¶¶6-7; Declaration of John P. Norton, on Behalf of the Norton Family Living Trust
UAD 11/15/2002, ¶¶6-7, attached hereto as Exs. A, B, and C, respectively.

1 achieved for the Class in the face of these risks, Lead Counsel should be rewarded accordingly.
2 Indeed, without the efforts and skill of Lead Counsel, this Settlement would not have been
3 consummated.

4 106. These risks are in addition to the more typical risks accompanying securities class
5 actions, including that the Actions were undertaken on a contingent basis.

6 107. In that regard, Lead Counsel understood from the outset that they were embarking on
7 a complex, expensive, and lengthy litigation with no guarantee of being compensated for the
8 substantial investment of time and money the cases would require. In undertaking that
9 responsibility, Lead Counsel were obligated to ensure that sufficient resources were dedicated to the
10 prosecution of the Actions, and that funds were available to compensate staff and to cover the
11 considerable expenses that cases such as these require. With an average lag time of several years for
12 these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm
13 that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during
14 the course of the Actions, but have incurred more than 16,000 hours of time, for a total lodestar of
15 \$10,581,445.25, and have incurred \$638,213.52 in expenses and charges in prosecuting the Actions
16 for the benefit of the Class.⁴

17 108. Lead Counsel also bore the risk that no recovery would be achieved (or that a
18 judgment could not be collected, in whole or in part). Even with the most vigorous and competent
19 efforts, success in contingent-fee litigation, such as this, is never assured.

20 109. Lead Counsel know from experience that the commencement of a class action does
21 not guarantee a recovery. To the contrary, it takes hard work and diligence by skilled counsel to
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23 _____
24 ⁴ See Declaration of Stephen R. Astley Filed on Behalf of Robbins Geller Rudman & Dowd LLP in
25 Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Declaration"
26 or "Robbins Geller Decl."), Exs. A-C; Declaration of Shannon L. Hopkins Filed on Behalf of Levi &
27 Korsinsky, LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Levi &
28 Korsinsky Declaration" or "Levi & Korsinsky Decl."), Exs. A-C; Declaration of Robert D. Klausner
Filed on Behalf of Klausner, Kaufman, Jensen & Levinson in Support of Application for Award of
Attorneys' Fees and Expenses ("Klausner Declaration" or "Klausner Decl."), ¶4. Collectively, the
Robbins Geller, Levi & Korsinsky, and Klausner Declarations are referred to herein as the "Fee
Declarations."

1 develop the facts and theories that are needed to sustain a complaint or win at trial, or to convince
2 sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

3 110. Lead Counsel are aware of many hard-fought lawsuits where because of the discovery
4 of facts unknown when the case was commenced, changes in the law during the pendency of the
5 case, or a decision of the court or a jury verdict following a trial on the merits, exceptional
6 professional efforts of members of the plaintiffs' bar produced no fee for counsel.

7 111. Accordingly, even if Plaintiffs had survived Defendants' omnibus motion to dismiss
8 the *Nutanix* TAC and *Norton* RFAC and successfully opposed a motion for summary judgment,
9 there is no guarantee that Plaintiffs would have prevailed at trial. Indeed, while only a modest
10 number of securities class actions have been tried before a jury, some have been lost in their entirety.
11 Additionally, a plaintiff who succeeds at trial still may find its verdict overturned on appeal. And,
12 even when a plaintiff wins a jury verdict, it still may face substantial challenges in securing a
13 recovery.

14 112. When counsel undertook to act for the Class in this matter, it was aware that the only
15 way it would be compensated was to achieve a successful result. The benefits conferred on the
16 members of the Class by the Settlement are noteworthy in that a common fund worth \$71 million
17 (plus interest) was obtained for the Class despite the existence of substantial risks and Defendants'
18 zealous and vigorous defense.

19 113. Here, diligent efforts by counsel in the face of substantial risks and uncertainties have
20 resulted in a significant and immediate recovery for the benefit of the Class. In circumstances such
21 as these, and in consideration of the substantial effort expended and the very favorable result
22 achieved, the requested fee of 30% of the Settlement Amount and the requested payment of
23 \$638,213.52 in expenses and charges are reasonable and should be approved.

24 **D. A Lodestar Cross-Check Supports the Requested Award of**
25 **Attorneys' Fees**

26 114. A lodestar cross-check supports the requested attorneys' fees. A lodestar cross-check
27 is performed by multiplying the number of hours expended in the litigation by the hourly rates of the
28

1 attorneys. While a lodestar cross-check is often a useful tool in determining the reasonability of a
2 fee request, whether or not to perform one is within the Court's discretion.

3 115. The Settlement occurred only after Lead Counsel spent significant time and effort
4 prosecuting the Actions, including thoroughly investigating the Class' claims; researching and
5 preparing the detailed *Nutanix* TAC and *Norton* RFAC and earlier iterations of complaints filed in
6 the Actions; fully briefing Defendants' omnibus motion to dismiss the *Nutanix* TAC and *Norton*
7 RFAC, Defendants' prior motions to dismiss earlier iterations of complaints, and Defendants'
8 motion for judgment on the pleadings; negotiating with Defendants to obtain documents pursuant to
9 Plaintiffs' requests for production; reviewing and analyzing 570,862 pages of documents produced
10 by Defendants and third parties; consulting with loss causation, market efficiency, and damages
11 experts; and engaging in an arm's-length mediation process, including the preparation of detailed
12 mediation statements. At all times throughout the pendency of the Actions, Lead Counsel's efforts
13 were driven and focused on advancing the Actions to bring about the most successful outcome for
14 the Class, whether through settlement or trial, by the most efficient means possible.

15 116. Here, Plaintiffs' Counsel have expended over 16,000 hours in the prosecution and
16 investigation of the Actions. *See* Robbins Geller Decl., Ex. A; Levi & Korsinky Decl., Ex. A;
17 Klausner Decl., Ex. A. The resulting lodestar is \$10,581,445.25. Pursuant to a lodestar "cross-
18 check," the requested fee of 30% of the Settlement Amount (which equates to \$21.3 million, plus
19 interest) results in a "multiplier" of 2.01 on the lodestar, which does not include any time that will
20 necessarily be spent obtaining approval of and thereafter administering the Settlement.⁵ As further
21 detailed in the Fee Memorandum, this level of multiplier is well within the range of multipliers
22 approved in this Circuit and elsewhere.

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25 ⁵ Additional work will be required by Lead Counsel on an ongoing basis, including: preparation
26 for, and participation in, the final approval hearing; responding to any objections; supervising the
27 claims administration process being conducted by the Claims Administrator (including responding to
28 inquiries from Class Members); and supervising the distribution of the Net Settlement Fund to Class
Members who have submitted valid Proofs of Claim. Lead Counsel will *not* seek payment for this
work.

1 **E. Standing and Expertise of Lead Counsel**

2 117. Robbins Geller, the sole Court-appointed lead counsel in the *Nutanix* Action, is
3 highly experienced in complex securities class actions and has successfully prosecuted numerous
4 securities class action suits in this Circuit and throughout the country. *See* Robbins Geller Decl., Ex.
5 E. Robbins Geller has been approved by courts to serve as lead counsel in scores of securities class
6 actions throughout the United States. *See id.* Moreover, the firm has served as lead counsel in
7 numerous high-profile matters which, during the last several years alone, have recovered billions of
8 dollars for investors. *See id.*

9 118. Levi & Korsinsky, the sole Court-appointed lead counsel in the *Norton* Action and
10 additional counsel in the *Nutanix* Action, has extensive experience in successfully prosecuting
11 complex securities class actions. *See* Levi & Korsinsky Decl., Ex. H. Levi & Korsinsky has often
12 been appointed as lead or co-lead counsel in actions in this Circuit and across the country arising
13 under the federal securities laws on behalf of investors. *See id.* Levi & Korsinsky has obtained
14 numerous favorable judgments in these actions on behalf of investors. *See id.*

15 **F. Standing and Caliber of Defense Counsel**

16 119. Nutanix was represented throughout the Actions by Wilson Sonsini Goodrich &
17 Rosati, a well-respected law firm with substantial resources and expertise in the defense of complex
18 securities litigation. This prominent law firm and its attorneys zealously provided its clients with a
19 vigorous and aggressive defense of the Actions. In the face of this formidable opposition, Lead
20 Counsel developed the case and successfully negotiated the Settlement.

21 **G. Request for Litigation Expenses and Charges**

22 120. Lead Counsel also seek payment from the Settlement Fund of \$638,213.52 in
23 litigation expenses and charges reasonably and necessarily incurred in connection with commencing
24 and prosecuting the claims against Defendants.

25 121. From the beginning of the case, Lead Counsel were aware that they might not recover
26 any of their expenses, and, at the very least, would not recover anything until the Actions were
27 successfully resolved. Thus, they were motivated to, and did, take steps to minimize expenses
28 whenever practicable without jeopardizing the vigorous and efficient prosecution of the Actions.

1 The expenses and charges for which Lead Counsel seek payment are the types of expenses that are
2 necessarily incurred in litigation and routinely charged to litigants who are billed by the hour. These
3 expenses include, among others, travel costs, computer-based research, and mediator and expert fees.

4 122. The Fee Declarations summarize by category the expenses and charges incurred by
5 Plaintiffs' Counsel in connection with the prosecution of the Actions. These expenses and charges
6 are reflected on the books and records maintained by Plaintiffs' Counsel. These books and records
7 are prepared from expense vouchers, check records, and other source materials, and are an accurate
8 record of the expenses and charges incurred.

9 123. All of the litigation expenses and charges incurred by Plaintiffs' Counsel, which total
10 \$638,213.52, were necessary for the successful prosecution and resolution of the claims against
11 Defendants.

12 **H. The Reaction of the Class to the Fee and Expense Application**

13 124. Consistent with the Preliminary Approval Order, as of August 29, 2023, a total of
14 154,004 Postcard Notices have been emailed or mailed to potential Class Members and nominees.
15 See accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and
16 Requests for Exclusion Received to Date, ¶¶5-11, attached hereto as Ex. D. The Postcard Notices
17 stated that Lead Counsel would seek an award of attorneys' fees of no more than 30% of the
18 Settlement Amount, plus interest, and payment of expenses and charges in an amount not greater
19 than \$750,000, plus interest. Additionally, the Summary Notice was published in *The Wall Street*
20 *Journal* and transmitted over *Business Wire*. *Id.*, ¶12. In addition, the Notice Package is available
21 on the Settlement website maintained by Gilardi, www.NutanixSecuritiesSettlement.com. *Id.*, ¶14.

22 125. While the deadline set by the Court for Class Members to object to the requested fees,
23 expenses, and charges has not yet passed, to date, not a *single* objection has been received. In
24 Plaintiffs' reply papers, Lead Counsel will respond to any objections received by the September 13,
25 2023 deadline.

26 **VIII. MISCELLANEOUS EXHIBIT**

27 126. Attached hereto as Exhibit F is a true and correct copy of William B. Rubenstein, *On*
28 *Plaintiff "Incentive" Payments*, Class Action Attorney Fee Digest (Vol. 1, Apr. 2007), 95-97.

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IX. CONCLUSION

127. In view of the certain and meaningful recovery to the Class and the substantial risks of continued litigation, as described above and in the accompanying Final Approval Memorandum, Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate, and that the proposed Plan of Allocation should likewise be approved as fair and reasonable. Further, in view of the significant recovery achieved in the face of substantial risks, the quality of work performed, the contingent nature of the fee, and the standing and experience of Lead Counsel, Lead Counsel respectfully request that the Court award attorneys' fees in the amount of 30% of the Settlement Amount, plus expenses and charges in the amount of \$638,213.52, plus the interest earned thereon.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of August, 2023, at Boca Raton, Florida.

s/ Stephen R. Astley

STEPHEN R. ASTLEY