

1 John T. Jasnoch
 SCOTT+SCOTT ATTORNEYS AT LAW LLP
 2 600 W. Broadway, Suite 3300
 San Diego, CA 92101
 3 Telephone: (619) 233-4565
 Facsimile: (619) 233-0508
 4 Email: jjasnoch@scott-scott.com

5 *Lead Counsel for the Putative Class and for Lead Plaintiff Raju Shah*

6 Brian J. Schall (290685)
 7 Rina J. Restaino (285415)
THE SCHALL LAW FIRM
 8 2049 Century Park East, Suite 2460
 Los Angeles, CA 90067
 9 Telephone: (310) 301-3335
 10 Facsimile: (213) 519-5876
 brian@schallfirm.com
 11 rina@schallfirm.com

12 *Additional Counsel for Lead Plaintiff Raju Shah*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN JOSE DIVISION**

17 MARTIN JOSEPH ABADILLA, et al.,

18 Plaintiff,

19 v.

20 PRECIGEN, INC., et al.,

21 Defendants.

Case No.: 5:20-cv-06936-BLF

Dept.: Courtroom 3, 5th Floor
 Judge: Honorable Beth Labson Freeman
 Hearing Date: October 19, 2023
 9:00 a.m.

22 *This Document Relates to:*

23 **ALL CONSOLIDATED ACTIONS**

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 25
 26 **DECLARATION OF LEAD PLAINTIFF RAJU SHAH IN SUPPORT OF MOTION FOR**
(1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
 27 **(2) AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4)**
 28

1 I, Raju Shah, hereby declare under penalty of perjury under the laws of the United States
2 of America as follows:

3 1. I am 68 years of age and am a retired corporate controller. I hold a bachelor’s
4 degree in accounting, and I have over 35 years of investing experience. During the Class Period,
5 I purchased 40,000 shares of Precigen common stock at what I allege to have been inflated prices
6 of between \$14.99 and \$18.85 per share during the Class Period, and I sustained substantial losses
7 on my investment in Precigen shares.

8 2. In 2021, this Court appointed me to serve as the “Lead Plaintiff” in the above-
9 captioned securities class action (the “Action”). I submit this declaration in support of (1) Lead
10 Plaintiff’s Motion for Final Approval of Proposed Class Action Settlement, and (2) Plaintiff’s
11 Counsel’s Fee and Expense Application (which includes my request for an award of \$3,000
12 pursuant to 15 U.S.C. §78u-4(a)(4)).

13 3. I am aware that under the proposed Settlement (the “Settlement”), the Defendants
14 have agreed to pay \$13 million in cash for the benefit of the Class in exchange for the settlement
15 and release of all claims asserted against them in the Action.

16 4. I understand that this case involved significant litigation risk – indeed, I am aware
17 that the Court had previously dismissed this action in the spring of 2022, and that there could be
18 no assurance that the Court would uphold the later amended class action complaint that I filed last
19 summer. I also understand that Defendants’ had only a finite amount of insurance coverage, and
20 that Precigen itself has for some time been under significant financial stress and is currently trading
21 below \$2.00 per share, and that accordingly there could be no assurance that a better result could
22 have been obtained even if: (a) the Court upheld the current complaint and (b) the Class and I,
23 after further lengthy proceedings, had prevailed both at trial and after likely appeals. Accordingly,
24 I believe that the proposed \$13 million Settlement is fair, reasonable, and in the best interests of
25 the Class, as it represents a “bird in the hand” recovery where it seems doubtful that a larger
26 recovery could be obtained from Defendants later, and even then only after the completion of
27 further lengthy proceedings including a costly trial and subsequent appeals. Moreover, I also
28

1 understand that the proposed settlement is consistent with and based upon the terms proposed by
2 a retired federal judge who acted as an independent mediator in this matter. For all of these reasons,
3 I fully support the proposed Settlement.

4 5. As the Lead Plaintiff in the Action, I have consistently understood throughout these
5 proceedings that I have the obligation to do my best to represent not only my own interests, but to
6 also faithfully represent the best interests of all other members of the proposed Class. I respectfully
7 submit that, to date, I have discharged those duties to the best of my ability, including by: (a)
8 consulting regularly with both Lead Counsel, Scott+Scott Attorneys at Law LLP (“Scott+Scott”)
9 and my additional counsel, The Schall Law Firm (“Schall”); (b) reviewing important litigation
10 papers and court orders sent to me by Scott+Scott and Schall; and (c) otherwise generally following
11 the course of the Action and speaking with counsel at important junctures in the case, including in
12 connection with the filing of various complaints, the Court’s ruling on the Defendants’ motion to
13 dismiss, and decision to explore settlement discussions (including the mediation process which led
14 to the proposed Settlement).

15 6. I am a member of the proposed Class in this matter. As noted above, I purchased
16 40,000 shares of Precigen common stock at what I allege to have been inflated prices of between
17 \$14.99 and \$18.85 per share during the Class Period.

18 7. I chose to be involved in this action as Lead Plaintiff because I was committed to
19 vigorously prosecuting this lawsuit. I have been actively involved in litigating this Action since I
20 moved to be appointed Lead Plaintiff on December 4, 2020 (ECF Nos. 11-15). In connection with
21 my representation of the Class, over the past three years I have, among other things:

- 22 • researched and followed the performance of Precigen common stock;
- 23 • communicated first with Schall and thereafter (upon its recommendation) also with
24 members of Scott+Scott, to discuss the basis of possible securities claims against
25 the Defendants;

- 1 • reviewed the initial complaint filed in the Action, as well as the two later amended
- 2 complaints filed by Scott+Scott and Schall on my and the Class’s behalf in this
- 3 matter;
- 4 • discussed with my counsel the Court’s Order granting Defendants’ motion to
- 5 dismiss;
- 6 • prior to mediation, discussing with my counsel the strengths and weaknesses of the
- 7 Action, the prospects for a successful mediation, and overall settlement objectives;
- 8 and
- 9 • following the mediation, discussing with my counsel the “mediator’s proposal”
- 10 (made by a retired federal judge) for a settlement, as well as the various factors
- 11 noted above which have led me to also support the proposed \$13 million
- 12 Settlement.

13 8. In total, I conservatively estimate that I have spent roughly 15 hours in connection
14 with doing my best to faithfully represent the best interests of the Class in this Action.

15 9. Based on the time and effort I have spent on this case, the success that has been
16 achieved in obtaining the \$13 million settlement for the benefit of the Class, and my understanding
17 from my counsel that 15 U.S.C. §78u-4(a)(4) permits a court to award plaintiffs reasonable costs
18 and expenses (including lost wages) incurred as a result of serving as a representative of a plaintiff
19 class, I respectfully request that the Court approve my request for an award of \$3,000.

20 10. I am also aware that Plaintiff’s Counsel have, collectively, requested an award of
21 attorneys’ fees equal to 25% of the recovery in this matter, plus their reasonable litigation expenses.
22 In this regard, I note that (a) both Scott+Scott and Schall agreed to litigate this case on a fully
23 contingent basis and (b) I have been advised that attorneys’ fee awards of 25% of a class action
24 recovery are very common and are considered to be the “benchmark” rate awarded by federal
25 courts in California. Accordingly, I also support the fee and expense application.

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I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this day of 9/13/2023 at Shoreline, Washington State.

DocuSigned by:

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RAJU SHAH