

1 Matthew R. Wilson (SBN 290473)  
Michael J. Boyle, Jr. (SBN 258560)  
2 MEYER WILSON CO., LPA  
3 305 W. Nationwide Blvd  
Columbus, OH 43215  
4 Telephone: (614) 224-6000  
Facsimile: (614) 224-6066  
5 mwilson@meyerwilson.com  
mboyle@meyerwilson.com  
6

7 *Attorneys for Plaintiffs and the Proposed Class*

8 [Additional Counsel Listed on Signature Page]

9 **THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 ROBERT GROGAN and HELENA CRUZ, on  
behalf of themselves and all others similarly  
13 situated,

14 Plaintiffs,

15 v.

16 MCGRATH RENTCORP,

17 Defendant.  
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Case No. 3:22-cv-00490-AGT

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR ATTORNEYS'  
FEES, COSTS, AND SERVICE AWARDS**

Judge Alex G. Tse

Date: February 2, 2024

Time: 10 a.m.

Place: Courtroom A

**NOTICE OF MOTION AND MOTION**

To the Clerk of Court and all interested parties:

PLEASE TAKE NOTICE THAT on February 2, 2024, or as soon thereafter as counsel may be heard, in Courtroom A of this Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, before Hon. Alex G. Tse, Plaintiffs Robert Grogan and Helena Cruz, hereby do and will move the Court for (1) an award of \$466,666.67 in attorneys’ fees, based on the percentage-of-the fund method (along with a lodestar cross-check based on a current lodestar of \$350,263.00 in time worked on the case to date, plus future work to be performed), (2) reimbursement of litigation costs up to \$27,051.20 and (3) an award of a service payment of \$5,000 for each of the named Plaintiffs for the time they have spent, the value they have created, and the risk they have undertaken in service of the Class.

As more fully discussed in the following memorandum, this motion is made on the grounds that the requested fee is reasonable under the Ninth Circuit’s application of the percentage of the common fund doctrine, because the size of the fund is modest (correspondingly resulting in a relatively smaller fee), the fee request of 33.33% of the \$1,400,000 common fund (or \$466,666.67) reflects a small multiplier of approximately 1.33 of Counsel’s total lodestar to date, and it is consistent with applicable Ninth Circuit and District authority. Although an upward departure from the Ninth Circuit’s benchmark of 25%, such departure is merited in this case. Furthermore, the requested litigation expenses are modest, and were all necessarily and reasonably incurred, and the requested service awards are reasonable and appropriate in light of applicable case law.

This motion is based on this notice of motion and motion, the memorandum in support of the motion, the Joint Declaration of Class Counsel, and the Court’s record in this action.

Dated: October 2, 2023

By: /s/ Michael J. Boyle, Jr.

Matthew R. Wilson (SBN 290473)  
Michael J. Boyle, Jr. (SBN 258560)  
MEYER WILSON CO., LPA

1 305 W. Nationwide Blvd  
2 Columbus, OH 43215  
3 Telephone: (614) 224-6000  
4 Facsimile: (614) 224-6066  
5 mwilson@meyerwilson.com  
6 mboyle@meyerwilson.com

7 Raina C. Borrelli (*pro hac vice*)  
8 TURKE & STRAUSS LLP  
9 613 Williamson St., Suite 201  
10 Madison, Wisconsin 53703-3515  
11 Telephone: (608) 237-1775  
12 Facsimile: (608) 509-4423  
13 raina@turkestrauss.com

14 Anthony I. Paronich  
15 PARONICH LAW, P.C.  
16 350 Lincoln Street, Suite 2400  
17 Hingham, MA 02043  
18 Telephone: (617) 485-0018  
19 Facsimile: (508) 318-8100  
20 anthony@paronichlaw.com

21 *Attorneys for Plaintiffs and the Proposed Class*  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

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## I. INTRODUCTION

As explained in Plaintiffs' preliminary approval papers and further herein, the Settlement Agreement provides exceptional relief to the Settlement Class. In light of the excellent settlement Class Counsel achieved on behalf of the Class, Class Counsel requests an award of attorneys' fees and costs. The \$1,400,000 common fund settlement on behalf of only 8,502 Class Members is an exceedingly good result, not only in comparison to similar data breach cases, but also given the benefits Class Members can claim, including up to \$5,000 for Documented Economic Losses, a pro rata share of the Settlement Fund, and one year of free credit monitoring. These benefits directly address the harm alleged by Plaintiffs, on behalf of the Class, that resulted from the Data Breach.

This exceptional result for the Class was only achieved after many months of hard-fought litigation, significant investigation by Class Counsel, and extensive arm's-length settlement negotiations. In the face of the risks inherent to class actions in general, and data breach class actions in particular, Class Counsel was able to broker a Settlement that likely exceeds what Plaintiffs and the Class could have obtained at trial (which comes with its own set of risks). In light of their efforts on behalf of Plaintiffs and the Class, Class Counsel requests a reasonable fee of one-third of the \$1,400,000 common fund (or \$466,666.67), which amounts to a lodestar multiplier of 1.33. Class Counsel also request reimbursement of their costs of up to \$27,051.20 (with current actual costs of \$30,498.69). Finally, Plaintiffs request that the Court grant their motion for service awards of \$5,000 each in light of their commitment to pursuing this litigation on behalf of the Class.

These requests are in line with amounts approved in similar class action settlements in this Circuit. The amounts also reflect the risk and exceptional results corresponding to this case and were specifically included in the Notice documents to the Class.<sup>1</sup> Accordingly, Class Counsel

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<sup>1</sup> The Court-approved Notice documents posted to the case website advise class members that Class Counsel intend to request fees in an amount not to exceed one-third of the Settlement Fund, reimbursement of out-of-pocket litigation expenses not to exceed \$27,051.20, and service awards of \$5,000 for the Class Representatives service as representative on behalf of the Class.

1 respectfully request that the Court approve the requested service awards, fees, and costs by  
2 granting final approval after the fairness hearing on February 2, 2024.

## 3 **II. BACKGROUND**

### 4 **A. Procedural Background**

5 In January 2022, Plaintiff Grogan sued Defendant, alleging that it failed to protect his and  
6 a putative class's private information, leading to a data breach by cybercriminals. Doc. 1. Prior to  
7 filing that case on behalf of Plaintiff Grogan, Class Counsel spent significant time investigating  
8 the facts surrounding the data breach, interviewing breach victims, and researching the potential  
9 legal claims. Joint Fees Dec., ¶2. Plaintiff Grogan filed a First Amended Complaint on March 1,  
10 2022 (Doc. 14), and Defendant moved to dismiss Plaintiff's claims in their entirety shortly  
11 thereafter. Doc. 20. After research and analysis about Defendant's arguments, Plaintiff Grogan  
12 filed a Second Amended Complaint (with Defendant's consent) in response to the motion to  
13 dismiss. Doc. 28. Plaintiff Cruz was added as a class representative in this case later. Doc. 39.

14 Shortly thereafter, the Parties agreed to explore resolution, agreeing to mediate the case  
15 on a class-wide basis and stay all case deadlines pending a mediation. Joint Fees Dec., ¶7; Docs.  
16 30, 31.

### 17 **B. Mediation**

18 The Parties agreed to mediate with Randall Wulff, a respected mediator, in-person on June  
19 29, 2022. Joint Fees Dec., ¶11. Prior to mediation, Class Counsel requested, and Defendant  
20 provided, key information needed to negotiate the Settlement, including class size and  
21 composition, information about the breach and the breach notice Defendant provided, and  
22 information related to applicable insurance coverage. *Id.* ¶¶8-9. Armed with that information, the  
23 Parties engaged in a full day, arm's-length mediation on June 29, 2022, assisted by Mr. Wulff. *Id.*  
24 ¶11. As a result of the mediation, the parties reached agreement on the key terms of the Settlement  
25 and executed a term sheet. *Id.* ¶¶12-13. Over the subsequent weeks, Class Counsel drafted the  
26  
27

1 Settlement Agreement and exhibits (including the notices and claim form), worked with counsel  
2 for McGrath to finalize those documents, and prepared a motion for preliminary approval. *Id.*  
3 ¶14. Additionally, Class Counsel prepared and filed the Third Amended Complaint, adding Ms.  
4 Cruz as a class representative. Doc. 39.

### 5 **C. Preliminary Approval and Notice**

6 On November 11, 2022, Class Counsel filed an unopposed motion for preliminary  
7 approval of the Settlement, supported by a legal memorandum, the Settlement Agreement and  
8 exhibits, a declaration from Class Counsel, a declaration from the proposed Settlement  
9 Administrator, and declarations from the Plaintiffs. Docs. 40 to 40-8. The Court held a hearing  
10 on January 6, 2023, at which time it denied Plaintiffs' motion "without prejudice to renewal for  
11 the reasons stated on the record." Doc. 46. Class Counsel worked with counsel for McGrath to  
12 address the Court's comments and submitted a renewed motion for preliminary approval on  
13 January 20, 2023. Docs. 50, 51; Joint Fees Dec., ¶18. On September 1, 2023, the Court granted  
14 preliminary approval to the Settlement. Doc. 59.

15 Following the entry of the preliminary approval order, Class Counsel worked with the  
16 Settlement Administrator, Kroll, and counsel for McGrath to finalize the notices and claim forms,  
17 approve the Settlement website, and approve the script for the Settlement telephone line. Joint  
18 Fees Dec., ¶19. Class Counsel anticipates spending additional time working with Kroll throughout  
19 the notice and claims process on behalf of the Settlement Class. *Id.*

### 20 **D. Summary of the Settlement Terms**

21 The details of the Settlement are laid out in Plaintiffs' Second Unopposed Motion for  
22 Preliminary Approval (Doc. 50), but Plaintiffs will repeat some of the key elements here. The  
23 Parties have agreed to settle all claims in this case for a common fund of \$1,400,000. Doc. 40-2  
24 ("Settlement Agreement" or "S.A.") at § 1.16. This fund will cover payments to Settlement Class  
25 Members, attorneys' fees and costs, incentive awards to the named plaintiffs, and settlement  
26 administration expenses. No portion of this fund will revert to the Defendant. *Id.* at §§ 4.5, 6.4,  
27 9.1.

1 From that fund, Class Members can make two types of claims. First, they can make a  
2 claim for Documented Economic Losses, up to a maximum of \$5,000. *Id.* at § 4.5.2. Second,  
3 Settlement Class Members can make a claim for non-economic losses, and receive a pro-rata  
4 share of the remaining funds available in the Settlement Fund, after paying Documented  
5 Economic Loss claims, attorneys' fees and costs, incentive payments, and administrative  
6 expenses. *Id.* at § 4.5.8. Settlement Class Members may make both types of claims.

7 Additionally, every Class Member has the ability to get one free year of credit monitoring,  
8 valued at \$119.88 per Class Member. *Id.* at § 4.5.1. According to the Settlement Administrator,  
9 the value of one free year of credit monitoring is \$119.88 a class member. Doc. 40-4, § 4.

10 The relief provided by this settlement is outstanding. The total cash value of this non-  
11 reversionary common fund (\$1,400,000) is equal to ***\$164.67 per class member***. Not included in  
12 this amount is the value of the credit monitoring also offered, which is significant. This level of  
13 recovery per class member is well-beyond what has been achieved in other data breach class  
14 actions of any size. *Compare, e.g., Gaston v. Fabfitfun, Inc.*, No. 2:20-cv-09534-RGK-E, 2021  
15 U.S. Dist. LEXIS 147383, at \*\* 18-19 (C.D. Cal. Apr. 2, 2021) (granting preliminary approval to  
16 a \$625,000 common fund, 441,000 class members, \$0.83 per class member); *In re Anthem, Inc.*  
17 *Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (\$1.45 per class member). Class  
18 Counsel have been unable to find a higher dollar-per-class-member class settlement in any data  
19 breach, anywhere.

20 **III. THE REQUESTED SERVICE AWARDS ARE REASONABLE AND SHOULD**  
21 **BE APPROVED**

22 Class Counsel respectfully request Service Awards for the two Class Representatives, Mr.  
23 Grogan and Ms. Cruz, of \$5,000 each. “[A] class representative is entitled to some compensation  
24 for the expense he or she incurred on behalf of the class lest individuals find insufficient  
25 inducement to lend their names and services to the class action.” *In re Oracle Sec. Litig.*, No. C-  
26 90-0931-VRW, 1994 U.S. Dist. LEXIS 21593, at \*2 (N.D. Cal. June 18, 1994). Such payments  
27 are “intended to compensate class representatives for work done on behalf of the class, to make

1 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
2 recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*,  
3 563 F.3d 948, 958-59 (9th Cir. 2009); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d  
4 934, 943 (9th Cir. 2015) (service awards “are intended to compensate class representatives for  
5 work undertaken on behalf of a class [and] ‘are fairly typical in class action cases’” (quoting  
6 *Rodriguez*, 563 F.3d at 958)); *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9<sup>th</sup> Cir. 2003) (courts  
7 assessing service awards consider “the actions the plaintiff has taken to protect the interests of the  
8 class, the degree to which the class has benefitted from those actions, . . . the amount of time and  
9 effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of]. . . retaliation”  
10 (internal quotations and citations omitted)).

11 The participation of Mr. Grogan and Ms. Cruz directly led to the excellent settlement  
12 achieved in this case. Without their willingness to step forward as Class Representatives, the other  
13 victims of the Data Breach would be left without legal recourse. Both Mr. Grogan and Ms. Cruz  
14 took personal time to seek out and speak with Class Counsel, search for relevant evidence, review  
15 and approve the complaint for filing, keep apprised of the progress of the litigation, prepare for  
16 mediation, evaluate the settlement proposals during and following mediation, and read through  
17 and discuss drafts of the Settlement Agreement and amendment thereto with Class Counsel before  
18 executing them. *See* Doc. 40-6 (Declaration of Robert Grogan), at ¶¶ 5-8; Doc. 40-7 (Declaration  
19 of Helena Cruz), at ¶¶ 5-9. Plaintiffs’ sacrifice was made to support a case in which they had a  
20 relatively modest personal interest, but that has and will continue to provide benefits to thousands  
21 of Settlement Class Members, warranting the Court’s approval of the requested service awards.

22 The requested incentive payments are reasonable and within the range of incentive  
23 payments often awarded in class actions in this District. *See In re Yahoo! Inc. Customer Data Sec.*  
24 *Breach Litig.*, No. 16-MD-02752-LHK, 2020 U.S. Dist. LEXIS 129939, at \*166 (N.D. Cal. July  
25 22, 2020) (granting requested \$5,000 service awards in a data breach case, noting that the award  
26 was “set at or below the Ninth Circuit’s benchmark award for representative plaintiffs”); *In re*  
27 *Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 U.S. Dist. LEXIS 140137, at

1 \*168 (N.D. Cal. Aug. 17, 2018) (same); *see also Gaston*, No. 2:20-cv-09534-RGK-E, 2021 U.S.  
 2 Dist. LEXIS 250695, at \*11 (C.D. Cal. Dec. 9, 2021) (\$10,000 service award in a data breach  
 3 case was granted); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming  
 4 incentive awards of \$5,000 each to the two class representatives). Additionally, the total service  
 5 award sought is \$10,000, which is a tiny fraction of the total Settlement Fund, weighing in favor  
 6 of approval. *See In re Anthem*, 2018 U.S. Dist. LEXIS 140137, at \*173 (citing cases approving  
 7 service awards that were an even greater percentage of the settlement fund (up to 1-2%) than what  
 8 is sought here)

9 Given Plaintiffs' personal contributions to the successful prosecution of this action, each  
 10 Plaintiff should be granted a service award in the amount of \$5,000.

11 **IV. CLASS COUNSEL'S APPLICATION FOR FEES AND EXPENSES IS**  
 12 **REASONABLE AND JUSTIFIED, AND SHOULD BE APPROVED**

13 The Parties' Settlement permits Class Counsel to apply to the Court for attorneys' fees  
 14 and expenses. Given the outstanding outcome Class Counsel obtained on behalf of the Settlement  
 15 Class, Class Counsel requests the Court approve their request for attorneys' fees of 33.33% of the  
 16 \$1,400,000 common fund (or \$466,666.67), and \$27,051.20 for documented and reasonable out-  
 17 of-pocket expenses.<sup>2</sup>

18 **A. The Fee Award May Be Calculated as a Percentage of the Common Fund**

19 “[A] private plaintiff, or his attorney, whose efforts create, discover, increase or preserve  
 20 a fund to which others also have a claim is entitled to recover from the fund the costs of his  
 21 litigation, including attorneys' fees.” *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir.  
 22 1977); *see also Chem. Bank v. Jaffe & Schlesinger, P.A.*, 19 F.3d 1306, 1308 (9th Cir. 1994);  
 23 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (the United States Supreme Court “has  
 24 recognized consistently that a litigant or a lawyer who recovers a common fund . . . is entitled to  
 25 a reasonable attorney's fee from the fund as a whole”). In the Ninth Circuit, district courts award

26 <sup>2</sup> Class Counsel have included \$2,000 in expenses for anticipated travel for the final approval  
 27 hearing on February 2, 2024—the amount applied for at final approval will be reconciled with  
 the amount spent on travel, if anything. Joint Fees Dec. ¶33.

1 attorneys' fees as either a percentage-of-the-fund or pursuant to the lodestar method. *See Vizcaino*  
2 *v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *accord In re Bluetooth Headset Prods.*  
3 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). “[T]he use of the percentage-of-the-fund method  
4 in common-fund cases is the prevailing practice in the Ninth Circuit for awarding  
5 attorneys' fees and permits the Court to focus on showing that a fund conferring benefits on a  
6 class was created through the efforts of plaintiffs' counsel.” *In re Apple Inc. Device Performance*  
7 *Litig.*, No. 5:18-md-02827-EJD, 2021 U.S. Dist. LEXIS 50546, at \*21 (N.D. Cal. Mar. 17, 2021)  
8 (quoting *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2013 U.S. Dist. LEXIS 186262, 2013  
9 WL 7985367, at \*1 (C.D. Cal. Dec. 23, 2013)). And the “percentage of the fund better ‘align[s]  
10 the interest of lawyer and client. The lawyer gains only to the extent his client gains.” *In re*  
11 *Oracle Sec. Litig.*, 852 F. Supp. 1437, 1454 (N.D. Cal. 1994) (citation omitted).

12 Here, where Class Counsel's advocacy resulted in a substantial \$1,400,000 common fund  
13 on behalf of only 8,502 Class Members, the percentage of the fund approach is appropriate  
14 because it ensures “consistency with contingency fee calculations in the private market, aligning  
15 the lawyers' interests with achieving the highest award for the class members, and reducing the  
16 burden on the courts that a complex lodestar calculation requires.” *In re Apple, Inc. Device*  
17 *Performance*, 2021 U.S. Dist. LEXIS 50546, at \*22. Moreover, the percentage of the fund  
18 approach aligns the incentives of class members and their counsel, so that time is spent efficiently,  
19 and the class's recovery is maximized. *See In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375-  
20 76 (N.D. Cal. 1989); *see also* 4 Herbert B. Newberg & William Rubenstein, *Newberg and*  
21 *Rubenstein on Class Actions* § 15:65 (6th ed.) (noting that the percentage calculation is “far more  
22 straightforward than determining the right number of hours, proper billing rate, and appropriate  
23 multiplier using the lodestar method” and that “[t]he ease of administration of the percentage  
24 method saves valuable judicial and party resources, thus heeding the Supreme Court's insistence  
25 that the ‘request for attorney's fees . . . not result in a second major litigation’”) (quoting *Hensley*  
26 *v. Eckerhart*, 461 U.S. 424, 437 (1983)). For these reasons, this approach is appropriate here.  
27



**B. Class Counsel’s Request for One-Third of the Common Fund Should be Granted**

In the Ninth Circuit, the benchmark for attorneys’ fees based on the percentage of the fund method is 25% of the common fund. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949; *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). From that point, the Ninth Circuit and district courts in this Circuit instruct that the benchmark be adjusted up or down based on the circumstances of the case. *See Vizcaino*, 290 F.3d at 1048-50 & n.4 (recognizing that the benchmark “may be inappropriate in some cases”).

The benchmark is regularly adjusted upward in circumstances such as this, where an exceptional result is achieved. *See, e.g., Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020 U.S. Dist. LEXIS 177056, at \*9 (C.D. Cal. Sep. 18, 2020) (awarding class counsel attorneys’ fee of one-third the settlement fund where an “exceptional result” was achieved); *Lusby v. Gamestop Inc.*, No. C12-03783 HRL, 2015 U.S. Dist. LEXIS 42637, at \*11 (N.D. Cal. Mar. 31, 2015) (awarding class counsel one-third of the common fund in fees); *Sevilla v. Aaron’s, Inc.*, No. CV 17-4053-DMG (Ex), 2020 U.S. Dist. LEXIS 86994, at \*4 (C.D. Cal. May 15, 2020) (“It is also not uncommon for courts to award one-third of the gross settlement fund as attorneys’ fees where the circumstances warrant it.” (citing *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 506, 205 Cal. Rptr. 3d 555, 376 P.3d 672 (2016); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 297-98 (N.D. Cal. 1995)); *In re Banc of Cal. Sec. Litig.*, No. SA CV 17-118 DMG (DFMx), 2020 U.S. Dist. LEXIS 48778, at \*4 (C.D. Cal. Mar. 16, 2020) (awarding fee of \$6,517,500, representing 33% of the settlement); *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 571 (9th Cir. 2019) (“We have affirmed fee awards totaling a far greater percentage of the class recovery than the [25%] fees here.”); *In re Heritage Bond Litig. v. U.S. Tr. Co. of Tex., N.A.*, 2005 U.S. Dist. LEXIS 13627, at \*50 (C.D. Cal. June 10, 2005) (awarding 33.33% of \$27.8 million to counsel that recovered 36% of the class’s total net loss); *Hernandez v. Burrtec Waste & Recycling Servs., LLC*, 2023 U.S. Dist. LEXIS 147432, at \*15 (C.D. Cal. Aug. 21, 2023) (“California courts routinely award attorneys’ fees of one-third of the common fund.”); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS 162880, at \*28 (C.D. Cal. Nov. 18,

1 2014) (awarding one-third in fees when common fund represented 36% of damages); *Carlin v.*  
2 *DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1021, 1023 (E.D. Cal. 2019) (awarding 33.3% of a \$40  
3 million common fund that represented 48% of damages). Additionally, where the common fund  
4 benchmark would “disincentivize[] [counsel] from pursuing claims like these, which have a  
5 modest dollar value but which provide a social benefit,” the Court can, and should, exercise its  
6 discretion to make an upward departure from the benchmark. *Qiuzi Hu v. Plehn-Dujowich*, No.  
7 18-cv-01791-AGT, 2020 U.S. Dist. LEXIS 260177, at \*6-8 (N.D. Cal. Mar. 2, 2020).

8 Additionally, courts in this Circuit and this District, in particular, routinely award fees  
9 above 25% where the common fund is significantly below \$50 million. *See, e.g., In re Mego Fin.*  
10 *Corp. Sec. Litig.*, 213 F.3d at 460 (affirming award of 33.3% of \$1.725 million fund); *Rivas v.*  
11 *BG Retail, LLC*, No. 16-cv-06458-BLF, 2020 U.S. Dist. LEXIS 8712, (N.D. Cal. Jan. 16, 2020)  
12 (“California district courts usually award attorneys’ fees in the range of 30-40% in wage and hour  
13 class actions that result in the recovery of a common fund under \$10 million”); *Qiuzi Hu v. Plehn-*  
14 *Dujowich*, No. 18-cv-01791-AGT, 2020 U.S. Dist. LEXIS 260177, at \*6-8 (N.D. Cal. Mar. 2,  
15 2020) (approving a 43% fee in a \$680,000 settlement); *Bennett v. SimplexGrinnell LP*, No. 11-  
16 cv-1854, 2015 U.S. Dist. LEXIS 192870, at \*18-19 (N.D. Cal. Sept. 3, 2015) (award of 38.8% of  
17 \$4.9 million fund); *Rabin v. PricewaterhouseCoopers LLP*, No. 16-cv-02276-JST, 2021 U.S.  
18 Dist. LEXIS 41285, at \*22-27 (N.D. Cal. Feb. 3, 2021) (award of 35% of \$11.6 million fund);  
19 *Fernandez v. Victoria Secret Stores, LLC*, No. 06-cv-4149, 2008 U.S. Dist. LEXIS 123546, at  
20 \*54-57 (C.D. Cal. July 21, 2008) (34% fee of \$8.5 million fund). Ultimately, the appropriate fee  
21 percentage is based on “all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

22 Finally, as discussed below, courts commonly use a lodestar cross-check to confirm the  
23 reasonableness of a percentage-based fee. *See id.* at 1050. Here, the requested fee of \$466,666.67  
24 represents a small 1.33 multiplier of Class Counsel’s current lodestar of \$350,263.00. Joint Fees  
25 Dec. ¶29. And Class Counsel will continue to perform work throughout the claims process and  
26 leading up to final approval. *Id.* ¶30. The Ninth Circuit has identified several factors a court should  
27 consider to determine whether to adjust a fee award from the benchmark: (1) the results achieved

1 for the class; (2) the quality of representation; (3) the novelty and complexity of the issues; (4)  
2 the risks of the litigation; and (5) awards in similar cases. *See id.* at 1048-51; *Cabiness v. Educ.*  
3 *Fin. Sols.*, No. 16-cv-01109, 2019 U.S. Dist. LEXIS 50817, at \*17 (N.D.Cal. Mar. 26, 2019). All  
4 of these factors weigh in favor of approving the requested attorneys' fees of one-third of the  
5 common fund, but the most important one is the first: the results achieved for class members.  
6 Here, it is among the very best data breach class settlements ever reached, out of hundreds of such  
7 cases.

### 8 **1. Class Counsel Achieved Exceptional Results for the Class.**

9 In determining whether a fee award is reasonable, the most critical factor is the results  
10 achieved; *i.e.*, the overall result and benefit to the class from the litigation. *Farrar v. Hobby*, 506  
11 U.S. 103, 114 (1992); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS  
12 17196, at \*58 (N.D. Cal. Feb. 11, 2016). Here, the Settlement establishes a \$1,400,000 non-  
13 reversionary fund for the Settlement Class, from which Class Members can claim benefits.  
14 Additionally, each class member can claim one year of credit monitoring to protect themselves  
15 from the risk of future identity theft associated the data breach. These benefits are valued at  
16 \$284.54 per Class Member (\$164.66 from the common fund and \$119.88 for one year of credit  
17 monitoring). This per-Class Member value is unheard of in data breach settlements, as  
18 demonstrated by the chart below:<sup>3</sup>

19  
20  
21  
22  
23  
24  
25  
26  
27 <sup>3</sup> *See also*, Ex. B attached to Plaintiffs' Motion for Preliminary Approval (Doc. 40-3), comparing  
the excellent results achieved in this case to other data breach settlements.

Case Title	No. of Class Members	Settlement Fund	Amount Per Class Member	Credit Monitoring
<i>In re Equifax Inc. Data Security Breach Litig.</i> <sup>4</sup>	>147M	\$380.5M	\$2.59	4 years
<i>In re Target Corp. Customer Data Breach Security Litig.</i> <sup>5</sup>	97.6M	\$16.75M	\$0.17	None
<i>Atkinson, et al. v. Minted, Inc.</i> <sup>6</sup>	4.2M	\$5M	\$1.19	2 years
<i>In re Sonic Corp. Customer Data Sec. Breach Litig.</i> <sup>7</sup>	1.5M	\$4.325M	\$2.88	None
<i>Kostka v. Dickey's Barbecue Restaurants, Inc.</i> <sup>8</sup>	725,000	\$2.35M	\$3.24	2 years
<i>Gupta v. Aeries Software, Inc.</i> <sup>9</sup>	98,199	\$1.75M	\$17.82	1 year
<i>Hutton v. Nat'l Board of Examiners in Optometry, Inc.</i> <sup>10</sup>	61,000	\$3.25M	\$53.28	3 years
<i>In re Citrix Data Breach Litig.</i> <sup>11</sup>	24,316	\$2.275M	\$93.56	5 years

That Class Counsel was able to secure well over \$160 per Class Member in benefits, with the added benefit of credit monitoring on top of that, is a testament to the skill and dedication of

<sup>4</sup> *In re Equifax Customer Data Sec. Breach Litig.*, 2020 U.S. Dist. LEXIS 118209, at \*145, 149–50 (N.D. Ga. Mar. 17, 2020).

<sup>5</sup> *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 U.S. Dist. LEXIS 155137, at \*4, 12 (D. Minn. Nov. 17, 2015).

<sup>6</sup> *Atkinson v. Minted, Inc.*, No. 3:20-cv-03869-VC, 2021 U.S. Dist. LEXIS 244257, at \*2–4 (N.D. Cal. Dec. 17, 2021).

<sup>7</sup> *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at \*3, 5 (N.D. Ohio Aug. 12, 2019).

<sup>8</sup> *Kostka v. Dickey's Barbecue Rests., Inc.*, No. 3:20-cv-03424-K, 2022 U.S. Dist. LEXIS 188186, at \*8, 21 (N.D. Tex. Oct. 14, 2022).

<sup>9</sup> *Gupta v. Aeries Software, Inc.*, No. SA CV 20-0995 FMO (ADSx), 2023 U.S. Dist. LEXIS 36141, at \*5–6 (C.D. Cal. Mar. 3, 2023).

<sup>10</sup> *Hutton v. Nat'l Bd. Exam'rs Optometry, Inc.*, No. JKB-16-3025, 2019 U.S. Dist. LEXIS 120558, at \*10, 22 (D. Md. July 15, 2019).

<sup>11</sup> *In re Citrix Data Breach Litig.*, No. 19-61350-CIV-ALTMAN/Hunt, 2021 U.S. Dist. LEXIS 112272, at \*5, 8 (S.D. Fla. June 10, 2021).

1 Class Counsel. The result achieved on behalf of the Class merits the attorneys' fees requested.

## 2 **2. Class Counsel Exhibited Outstanding Skill and Diligence**

3 The quality of Class Counsel's representation in this case supports an award of one third  
4 of the Settlement Fund. "A fee award of one third of the settlement fund is justified where class  
5 counsel has significant experience in the particular type of litigation at issue... Moreover, a one-  
6 third fee is appropriate where counsel litigated effectively, and their experience was essential for  
7 obtaining the result." *Marshall*, 2020 U.S. Dist. LEXIS 177056, at \*11 (internal citation omitted);  
8 *Boyd*, 2014 U.S. Dist. LEXIS 162880, at \*27 ("skill and work of counsel merits an upward  
9 adjustment from the [25%] benchmark."); *In re Heritage Bond*, 2005 U.S. Dist. LEXIS 13627, at  
10 \*38-39 ("Class Counsel's experience representing plaintiffs in class actions, particularly [cases of  
11 this type], justifies an award of one-third of the Settlement Fund in attorneys' fees.").

12 Class Counsel's analysis of the issues in this action, litigation strategy and diligence in  
13 prosecuting this action support the requested award. Despite the early stage of litigation at which  
14 this case settled, Class Counsel expended significant effort—at the expense of other potentially  
15 fee-generating cases—to negotiate and finalize the Settlement Agreement on behalf of the  
16 Settlement Class. Joint Fees Dec. ¶¶2-20. Class Counsel devoted significant time and resources  
17 to this case to date, including: conducting an investigation into the facts regarding Plaintiffs'  
18 claims and class members' claims; researching law relevant to, and preparing, Plaintiffs' class  
19 action complaints; researching law relevant to Defendant's motion to dismiss; preparing for and  
20 attending mediation with Randall Wulff, including researching and preparing a detailed mediation  
21 statement; negotiating and preparing the Parties' Settlement Agreement, along with the proposed  
22 class notice and claim form; negotiating with settlement administration companies to secure the  
23 best notice plan practicable; preparing Plaintiffs' motion for preliminary approval of the class  
24 action settlement and preparing a detailed declaration in support; working with the Settlement  
25 Administrator to ensure the timely completion of Notice and processing of claims; preparing the  
26 instant motion for attorneys' fees, costs, and a service award; closely monitoring evolving law  
27 regarding data security and its potential impacts on the case; and conferring with Plaintiffs

1 throughout the case. *Id.* Counsel further anticipates completing additional work throughout  
2 settlement administration, and in preparing and arguing Plaintiffs’ motion for final approval of  
3 the settlement. *Id.* ¶19.

4         Additionally, Class Counsel’s experience (detailed in counsel’s Joint Declaration and in  
5 their firm resumes) is a huge asset, especially in a case that involves such novel and complex  
6 areas of law. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807,  
7 2019 U.S. Dist. LEXIS 135573, at \*13 (N.D. Ohio Aug. 12, 2019) (“[D]ata breach litigation is  
8 complex and largely undeveloped.”); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS  
9 164375, at \*21 (E.D. Pa. Sep. 23, 2019) (“This is a complex case in a risky field of litigation  
10 because data breach class actions are uncertain and class certification is rare.”). Indeed, “many  
11 [data breach cases] have been dismissed at the pleading stage.” *In re TD Ameritrade Account*  
12 *Holder Litig.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at \*36 (N.D. Cal. Sep. 12,  
13 2011). Further, a successful outcome could only ensue, if at all, after prolonged and arduous  
14 litigation with an attendant risk of drawn-out appeals. Joint Fees Dec. ¶26. Among national  
15 consumer protection class action litigation, data breach cases are some of the most complex and  
16 involve a rapidly evolving area of law. *Id.* As such, these cases are particularly risky for plaintiffs’  
17 attorneys. *Id.* Class Counsel took on this case and zealously advocated on behalf of Settlement  
18 Class in spite of the risks and challenges posed and devoted a substantial amount of time and  
19 money to the prosecution of this case, which ultimately resulted in a Settlement this is highly  
20 beneficial to the Class, weighing in favor of awarding the requested fee.

### 21                   **3. The Risks of Litigation and the Novelty and Complexity of the Issues** 22                   **Justify the Requested Fees**

23         “The risk that further litigation might result in Plaintiffs not recovering at all, particularly  
24 in a case involving complicated legal issues, is a significant factor in the award of fees.” *In re*  
25 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-7 (N.D. Cal. 2008) (citing *Vizcaino*, 290  
26 F.3d at 1048). Likewise, “the importance of ensuring adequate representation for plaintiffs who  
27 could not otherwise afford competent attorneys justifies providing those attorneys who do accept

1 matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.”  
2 *Id.* at 1047; *see also Morales v. Conopco, Inc.*, No. 2:13-2213 WBS EFB, 2016 U.S. Dist. LEXIS  
3 144349, at \*21 (E.D. Cal. Oct. 18, 2016) (“Since class counsel took this case on a contingency  
4 basis, their risk of recovery was the same as the class members.”); *Birch v. Office Depot Inc.*, No.  
5 06 CV 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747, at \*7 (S.D. Cal. Sep. 28, 2007)  
6 (“Class Counsel has proceeded on a contingency basis despite the uncertainty of any fee award.  
7 Class Counsel risked that it would not obtain any relief on behalf of Plaintiff or the Class, and so  
8 no recovery of fees. In addition, Class Counsel was precluded from pursuing other potential  
9 sources of revenue due to its prosecution of the claims in this action.”).

10 Class Counsel took this case on a purely contingent basis. Joint Fees Dec., ¶21. This matter  
11 has required Class Counsel to spend significant time on this litigation that could have been spent  
12 on other fee-generating matters. *Id.* ¶22. Because Class Counsel undertook representation of this  
13 matter on a contingency-fee basis, they shouldered the risk of expending substantial costs and  
14 time in litigating the action without any monetary gain in the event of an adverse judgment. *Id.* If  
15 not devoted to litigating this action, from which any remuneration is wholly contingent on a  
16 successful outcome, the time Class Counsel spent working on this case could and would have  
17 been spent pursuing other potentially fee-generating matters. *Id.* ¶24.

18 Additionally, pursuing this case at all presented significant risk. As discussed above, data  
19 breach class actions are particularly challenging given the ever-changing case law and the reality  
20 that many such cases are dismissed at the pleading stage, let alone surviving through class  
21 certification and a trial. As one federal district court recently observed in finally approving a data  
22 breach settlement with similar class relief and similar attorneys’ fees:

23 Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon*  
24 *v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at \*1  
25 (D. Colo. Dec. 16, 2019) (“Data breach cases ... are particularly risky, expensive, and  
26 complex.”). Plaintiffs also faced the risk that [defendant] would successfully oppose class  
27 certification, obtain summary judgment on one or more of their claims, or win at trial or  
on appeal. Also, the cost for [defendant] and Plaintiffs to maintain the lawsuit would be  
high, given the amount of documentary evidence as well as the expert costs both parties  
would incur in the context of class certification, summary judgment, and trial. As such,

1 the current Settlement strikes an appropriate balance between Plaintiffs’ “likelihood of  
2 success on the merits” and “the amount and form of the relief offered in the settlement.”  
3 *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

4 *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at  
5 \*14 (W.D. Wis. Mar. 4, 2021) (also approving attorneys’ fees and costs in the amount of  
6 \$1,575,000). Class certification is another hurdle that would have to be met—and one that has  
7 been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec.*  
8 *Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). And finally, *no* data breach class action has yet to be  
9 tried to a jury, leaving the level of recovery available at trial on the types of claims brought here  
10 a complete unknown. *See Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOx), 2022 U.S. Dist.  
11 LEXIS 119454, at \*18-19 (C.D. Cal. Feb. 22, 2022) (“Moreover, these risks are compounded by  
12 the fact that data breach class actions are a relatively new type of litigation and that damages  
13 methodologies in data breach cases are largely untested and have yet to be presented to a jury”).

14 Nevertheless, Class Counsel spent approximately 575.6 hours and more than \$350,000 to  
15 zealously promote the Class’s interests. Joint Fees Dec. ¶29. The contingent nature of Class  
16 Counsel’s representation, along with the risk inherent in data breach class actions in particular,  
17 strongly favors approval of the requested fee.

#### 18 **4. Awards in Similar Cases Support the Requested Fees**

19 “The Ninth Circuit has repeatedly held that 25% of the gross settlement amount is the  
20 benchmark for attorneys’ fees awarded under the percentage method and that if the Court departs  
21 from that benchmark, the record must indicate the Court’s reasons for doing so.” *Glass v. UBS*  
22 *Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*44 (N.D. Cal. Jan. 26, 2007).  
23 The benchmark has been adjusted upward in circumstances such as this, where an exceptional  
24 result was achieved and based on counsel’s expertise and significant investment of time and  
25 resources. *See, e.g., Marshall*, 2020 U.S. Dist. LEXIS 177056, at \*9 (awarding class counsel an  
26 attorney fee of one-third the settlement fund where an “exceptional result” was achieved); *Lusby*,  
27 2015 U.S. Dist. LEXIS 42637, at \*11 (awarding class counsel one-third of the common fund);  
*Boyd*, 2014 U.S. Dist. LEXIS 162880, at \*27 (“skill and work of counsel merits an upward



1 adjustment from the [25%] benchmark”); *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG  
2 (JEMx), 2018 U.S. Dist. LEXIS 245359, at \*18-20 (C.D. Cal. Apr. 2, 2018) (38% of common  
3 fund awarded as attorneys’ fees in data breach case); *Stuart v. Radioshack Corp.*, No. C-07-4499  
4 EMC, 2010 WL 3155645, at \*6 (N.D. Cal. Aug. 9, 2010) (noting that “the fee award represents  
5 one-third of the settlement amount,” which is “well within the range of percentages which courts  
6 have upheld as reasonable in other class action lawsuits”); *In re Mego Fin. Corp. Sec. Litig.*, 213  
7 F.3d at 463 (affirming one-third of the common fund).

8 Class Counsel requests attorneys’ fees in the amount of one-third of the Settlement Fund,  
9 which is justified in light of the excellent outcome, when compared to the risks attendant to this  
10 action and the fees awarded in similar class actions.

11 **A. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

12 Courts may employ a lodestar cross-check to confirm the reasonableness of a percentage-  
13 based fee. *See Vizcaino*, 290 F.3d at 1050 (“[T]he lodestar may provide a useful perspective on  
14 the reasonableness of a given percentage award.”). To calculate the lodestar, the Court  
15 “multipl[ies] the number of hours the prevailing party reasonably expended on the litigation ...  
16 by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Bluetooth*  
17 *Headset Prod. Liab. Litig.*, 654 F.3d at 941. This base “unadorned” lodestar figure is  
18 “presumptively reasonable.” *Id.* “Courts have routinely enhanced the lodestar to reflect the risk  
19 of non-payment in common fund cases. This mirrors the established practice in the private legal  
20 market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over  
21 their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose  
22 compensation depends on their winning the case must make up in compensation in the cases they  
23 win for the lack of compensation in the cases they lose.” *Vizcaino*, 290 F.3d at 1051 (internal  
24 citation omitted).

25 Class Counsel have invested approximately 575.6 hours prosecuting Plaintiffs’ and the  
26 Class’s claims through September 28, 2023. Additionally, Class Counsel conservatively expect  
27 to invest at least another 40 hours communicating with Settlement Class Members, preparing for

1 and attending the Final Fairness Hearing, including drafting a motion for final approval, managing  
 2 the claims process, and tending to any claims-administration issues that arise. Joint Fees Dec.  
 3 ¶¶29-30. To date, Class Counsel have a lodestar of \$350,263.00. *Id.* ¶29. In accordance with the  
 4 guidance of this Court, Counsel have provided detailed summaries of their work broken down by  
 5 each timekeeper’s activities in order to “identify the general subject matter of [their] time  
 6 expenditures.” *Hensley*, 461 U.S. at 437 n.12 (1983); *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115,  
 7 1121 (9th Cir. 2000) (“a summary of the time spent on a broad category of tasks such as pleadings  
 8 and pretrial motions” satisfies the “basic requirement”); *see also* N.D. Cal. Procedural Guidance  
 9 for Class Action Settlements, available at [https://www.cand.uscourts.gov/forms/procedural-](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements)  
 10 [guidance-for-class-action-settlements](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements).<sup>12</sup>

11 Class Counsel’s requested attorneys’ fee award here is \$466,666.67, which represents  
 12 application of a multiplier of approximately 1.33 to Class Counsel’s lodestar. Multipliers in the  
 13 range of one to four times the lodestar are common. *Vizcaino*, 290 F.3d at 1051, n.6 (finding a  
 14 range of 0.6 to 19.6 in a survey of 24 cases, with 83% in the range of 1.0 to 4.0, and affirming a  
 15 multiplier of 3.65); *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (affirming  
 16 attorneys’ fees based on a multiplier of approximately 6.85 as “well within the range of multipliers  
 17 that courts have allowed”); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2020 U.S. Dist.  
 18 LEXIS 129939, at \*140 (approving a 1.15 multiplier in a mega fund case). The requested  
 19 multiplier is appropriate when comparing the benefits of the Settlement to the risk of non-payment  
 20 for Class Counsel’s significant investment of attorney time and out of pocket cost.

### 21 **1. The Time Class Counsel Dedicated to the Case is Reasonable**

22 Class Counsel has devoted 575.6 hours to this litigation, and conservatively anticipate  
 23 investing an additional 40 hours between drafting a final approval motion, preparing for the final  
 24 fairness hearing, and continuing to oversee the case and settlement administration process. Joint  
 25 Fees Dec. ¶¶29-30. The Ninth Circuit has found that courts should defer to successful counsel’s  
 26

27 <sup>12</sup> Class Counsel is able to provide the Court with detailed billing records should the Court require.

1 judgment as to how much work was needed to succeed. *Moreno v. City of Sacramento*, 534 F.3d  
2 1106, 1112 (9th Cir. 2008) (“By and large, the court should defer to the winning lawyer’s  
3 professional judgment as to how much time he was required to spend on the case; after all, he  
4 won, and might not have, had he been more of a slacker.”). Class Counsel’s hours are not  
5 excessive or otherwise unnecessary.

6 Class Counsel spent significant time and effort to achieve the substantial settlement for  
7 the Class. Prior to filing the case, Class Counsel spent significant time investigating the facts  
8 surrounding the data breach, interviewing breach victims, and researching the potential legal  
9 claims. Joint Fees Dec. ¶2. Then, once they filed the case and Defendant moved to dismiss, they  
10 worked to assess the legal arguments made and, after research and analysis about Defendant’s  
11 arguments, filed a Second Amended Complaint (with Defendant’s consent) in response to the  
12 motion to dismiss. *Id.* ¶6; Doc. 28. Then, once the parties agreed to explore settlement, Class  
13 Counsel engaged in extensive settlement negotiations, drafting a comprehensive mediation  
14 statement and attending a full-day mediation. Joint Fee Dec. ¶¶7-12. Over the subsequent weeks,  
15 Class Counsel drafted the Settlement Agreement and exhibits (including the notices and claim  
16 form), worked with counsel for McGrath to finalize those documents, and prepared a motion for  
17 preliminary approval. *Id.* ¶14. Additionally, Class Counsel prepared and filed the Third Amended  
18 Complaint, adding Ms. Cruz as a class representative. Doc. 39. After moving for preliminary  
19 approval and attending an in-person hearing, Class Counsel worked to address the Court’s  
20 questions about the Settlement, submitting an amended preliminary approval motion. *Id.* ¶18. And  
21 since preliminary approval, Class Counsel worked with the Settlement Administrator, Kroll, and  
22 counsel for McGrath to finalize the notices and claim forms, approve the Settlement website, and  
23 approve the script for the Settlement telephone line. *Id.* ¶19.

## 24 **2. Class Counsel’s Rates are Reasonable**

25 Class Counsel’s hourly rates are consistent with those charged by other class action  
26 litigators. In 2020, the National Association of Legal Fee Analysis issued the results of its 2020  
27 Class Action Hourly Rate Survey, finding that hourly rates for Associates ranged from \$201-

1 500/hour for associate attorneys, depending on years of experience, and \$501-\$900/hour for  
2 partner level attorneys, depending on years of experience.<sup>13</sup> (Indeed, these rates from only three  
3 years ago are already out of date, given across-the-board rate increases by virtually all law firms  
4 during that time.)

5 Courts within this District have previously approved as reasonable similar hourly rates in  
6 similar cases involving class counsel with similar experience and participation in those cases as  
7 Class Counsel here. *See Hashemi*, 2022 U.S. Dist. LEXIS 210946, at \*27 (approving hourly rates  
8 of \$350 to \$975 in a data breach class action); *Etter v. Allstate Ins. Co.*, No. C 17-00184 WHA,  
9 2018 U.S. Dist. LEXIS 189136, at \*12 (N.D. Cal. Nov. 4, 2018) (approving class counsel’s  
10 attorney hourly rates ranging from \$600 to \$950 in a TCPA case); *Moore v. Verizon Commc’ns*  
11 *Inc.*, No. C 09-1823 SBA, 2014 U.S. Dist. LEXIS 19145, at \*15 n.9 (N.D. Cal. Feb. 14, 2014)  
12 (approving class counsel attorney rates ranging from \$550 to \$825 as “reasonable given the  
13 geographic location and experience of counsel”); *see also Kearney v. Hyundai Motor America*,  
14 No. SACV 09-1298-JST (MLGx), 2013 U.S. Dist. LEXIS 91636, at \*25 (C.D. Cal. June 28,  
15 2013) (approving hourly rates between \$650 and \$800 for class counsel in a consumer class  
16 action).

17 Given the experience and competence of Class Counsel, as evidenced by the substantial  
18 work done to litigate this case and the exceptional result for the Settlement Class, the geographic  
19 location of this action, and the significant risks involved, Class Counsel’s hourly rates are justified  
20 and appropriate.

### 21 **B. Class Counsel’s Request for Expenses is Reasonable**

22 Rule 23(h) also permits the Court to “award . . . nontaxable costs that are authorized by  
23 law or by the parties’ agreement.” Fed. R. Civ. P. 23 (h). The Settlement permits Class Counsel  
24 to seek reimbursement of their reasonable expenses. “Attorneys may recover their reasonable  
25 expenses that would typically be billed to paying clients in non-contingency matters.” *In re*

26 \_\_\_\_\_  
27 <sup>13</sup> <https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/> (last visited Sept. 18, 2023).

1 *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1048 (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th  
 2 Cir. 1994)). Class Counsel have incurred expenses in the prosecution of this action totaling  
 3 \$27,051.20 for filing fees, *pro hac vice* fees, service of process fees, postage and courtesy copy  
 4 costs, travel, hotel, airfare costs, and mediation fees. Joint Fees Dec., ¶¶33, 37, 41, 45. These  
 5 expenses were reasonable and necessary for the prosecution of this action and are the types of  
 6 expenses that would typically be billed to clients in non-contingency matters, and therefore should  
 7 be approved.

## 8 V. CONCLUSION

9 The Settlement, which creates a \$1,400,000 non-reversionary common fund from which the  
 10 8,502 Class Members can claim benefits represents an exceptional result for the Settlement Class,  
 11 especially when compared with other data breach class actions and in light of the risks and  
 12 complexities inherent in this litigation. Class Counsel's request for a \$5,000 service award for  
 13 each Class Representative, for attorneys' fees of \$466,666.67 (one-third of the common fund),  
 14 and reasonable expenses of \$27,051.20, should be granted.

15 Dated: October 2, 2023

16 By: /s/ Michael J. Boyle, Jr.

17 Matthew R. Wilson (SBN 290473)  
 18 Michael J. Boyle, Jr. (SBN 258560)  
 19 MEYER WILSON CO., LPA  
 20 305 W. Nationwide Blvd  
 21 Columbus, OH 43215  
 22 Telephone: (614) 224-6000  
 23 Facsimile: (614) 224-6066  
 24 mwilson@meyerwilson.com  
 25 mboyle@meyerwilson.com

26 Raina C. Borrelli (*pro hac vice*)  
 27 TURKE & STRAUSS LLP  
 613 Williamson St., Suite 201  
 Madison, Wisconsin 53703-3515  
 Telephone: (608) 237-1775  
 Facsimile: (608) 509-4423  
 raina@turkestrauss.com

1 Anthony I. Paronich  
2 PARONICH LAW, P.C.  
3 350 Lincoln Street, Suite 2400  
4 Hingham, MA 02043  
5 Telephone: (617) 485-0018  
6 Facsimile: (508) 318-8100  
7 anthony@paronichlaw.com

8 *Attorneys for Plaintiffs and the Proposed Class*  
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**CERTIFICATE OF SERVICE**

I, Michael J. Boyle, Jr., hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record via the ECF system.

DATED this 2nd day of October, 2023.

By: /s/ Michael J. Boyle, Jr.  
Michael J. Boyle, Jr. (SBN 258560)  
MEYER WILSON CO., LPA  
305 W. Nationwide Blvd  
Columbus, OH 43215  
Telephone: (614) 224-6000  
Facsimile: (614) 224-6066  
mboyle@meyerwilson.com