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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 ANWAR ABDEL RAHMAN
individually and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 v.

18 ERICKSON COMPANIES, LLC,
ERICKSON FRAMING AZ, LLC, and
19 DOES 1 through 100, inclusive,

20 Defendants.

Case No. 2:25-CV-01866-SMB

CLASS ACTION

**PLAINTIFF'S MEMORANDUM
IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS'
FEES AND COSTS AND
REQUEST FOR SERVICE
AWARD**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 12, 2025, this Court preliminarily approved the Settlement between Plaintiff and Defendants and ordered that notice be given to the Class. The Settlement negotiated on behalf of the Class provides a \$225,000 non-reversionary Settlement Fund will be used to provide Participating Class Members who submit valid claims with Documented Losses reimbursement of up to \$5,000 and Flat Cash Payment representing a *pro-rata* share of what remains in the Settlement Fund (\$225,000) after payment of Documented Losses. Furthermore, the Settlement mandates that Defendant implement substantial business practice changes.

This is an excellent Settlement of a risky and complex matter that provides substantial relief for Class Members. As discussed further in this Motion, the parties arrived at the Settlement after significant litigation, including informal discovery efforts. The matter was ultimately settled after several months of negotiation.

Pursuant to the terms of the preliminarily-approved Settlement Agreement, Plaintiff requests an award of (a) \$74,992.50 in attorneys’ fees (i.e. one third of the gross settlement amount) based on Class Counsel’s extensive work in prosecuting this case and delivering an excellent Settlement, (b) \$1,318.32 in reasonable litigation costs and (c) a Service Award of \$2,500 to the Representative Plaintiff.

II. CASE SUMMARY

On November 18, 2024, Defendants discovered unusual activity on their network. Following a forensic investigation and manual review, on February 19, 2025, Defendants confirmed that Private Information may have been made accessible to unauthorized parties (the “Data Breach”). On or about March 12, 2025, Defendants began sending notice of the Data Breach to Plaintiff and approximately 11,820 other individuals whose Private Information is believed to have been exposed in the Data Breach. Declaration of Scott Edward Cole (“Cole Decl.”) ¶ 3.

1 On April 2, 2025, Plaintiff Rahman filed a Complaint against Defendants in
 2 Superior Court of the State of Arizona in and for the County of Maricopa on a class action
 3 basis, asserting claims for Negligence, Breach of Implied Contract and Unfair Business
 4 Practices. *Id.* at ¶ 4. Defendants removed the case to this Court and then filed a Motion to
 5 Dismiss. After the exchange of information tailored to the settlement process, the Parties
 6 engaged in extensive arm’s-length negotiations which ultimately resulted in a settlement
 7 that Class Counsel considers fair, adequate and reasonable. *Id.* The Settlement Agreement,
 8 executed on August 29, 2025, provides substantial benefits to the Settlement Class,
 9 eliminates the costs and burdens of continued litigation and fully accomplishes Plaintiff’s
 10 goals in this Action. *Id.*

11 **III. ARGUMENT**

12 **A. The Court Should Approve the Request for Attorneys’ Fees**

13 District courts may award attorneys’ fees and costs to a prevailing plaintiff where
 14 “the successful litigants have created a common fund for recovery or extended substantial
 15 benefit to the class.” *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab.*
 16 *Litig.)*, 654 F.3d 935, 941 (9th Cir. 2011) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness*
 17 *Soc.*, 421 U.S. 240, 275 (1975)). Where counsel for a class seek fees from a common fund,
 18 courts within the Ninth Circuit have discretion to employ either the percentage-of-fund or
 19 the lodestar-multiplier method to determine whether the fee request is reasonable. *See*
 20 *Mercury Interactive Corp. Sec. Litig. v. Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th
 21 Cir. 2010); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-49 (9th Cir. 2002); *Hanlon*
 22 *v. Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998), *overruled on other grounds by*
 23 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Regardless of the chosen method,
 24 courts must award attorneys’ fees based on an evaluation of “all of the circumstances of
 25 the case.” *Vizcaino*, 290 F.3d at 1048.

26 Under the “percentage-of-the-fund” method, the “court simply awards the attorneys
 27 a percentage of the fund sufficient to provide class counsel with a reasonable fee.” *Hanlon*,

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1 150 F.3d at 1029. Most courts have found the percentage approach superior in cases with
 2 a common-fund recovery because it (i) parallels the use of percentage-based contingency
 3 fee contracts; (ii) aligns the lawyers’ interests with that of the class in achieving the
 4 maximum possible recovery; and (iii) reduces the burden on the court by eliminating the
 5 detailed and time-consuming lodestar analysis. *See In re Activision Sec. Litig.*, 723 F. Supp.
 6 1373, 1374–77 (N.D.Cal. 1989); *Nguyen v. Radiant Pharms. Corp.*, No. SACV 11-00406
 7 DOC(MLGx), 2014 U.S. Dist. LEXIS 63312, at *24 (C.D. Cal. May 6, 2014) (“There are
 8 significant benefits to the percentage approach, including consistency with contingency fee
 9 calculations in the private market, aligning the lawyers’ interests with achieving the highest
 10 award for the class members, and reducing the burden on the courts that a complex lodestar
 11 calculation requires.”).

12 Whether applying the lodestar or percentage method, “the most critical factor is the
 13 degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also*
 14 *Bluetooth*, 654 F.3d at 942 (“Foremost among these considerations . . . is the benefit
 15 obtained for the class.”); Federal Judicial Center, *Manual for Complex Litigation*, § 27.71,
 16 336 (4th ed. 2004) (“[The] fundamental focus is on the result actually achieved for class
 17 members.”).

18 As detailed in Plaintiff’s accompanying Motion for Final Approval, Data breach
 19 litigation is difficult and presents cutting edge issues. *See Gordon v. Chipotle Mexican*
 20 *Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019)
 21 (“Data breach cases . . . are particularly risky, expensive, and complex.”); *accord In re*
 22 *Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, MDL No. 2807, 2019
 23 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019). The “novelty and difficulty of the issues”
 24 here favor approving the requested fee, particularly because the novelty and difficulty
 25 “created significant risk for Class Counsel.” *George v. Academy Mortgage Corporation*
 26 *(UT)*, 369 F. Supp. 3d 1356, 1378 (N.D. Ga. 2019). The Court should approve the requested
 27 fee award in light of these risks and challenges and the results achieved.
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1 **1. The Requested Fee Is Reasonable Under the Percentage Method**

2 Under the percentage method, the district court may award plaintiffs’ attorneys a
3 percentage of the common fund, so long as that percentage represents a reasonable fee. *See*
4 *e.g., In re: Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir.
5 1994). Although the Ninth Circuit has set 25% of a common fund as a “benchmark” award
6 under the percentage-of-the-fund method, courts award more than the benchmark when
7 justified, considering factors much like those considered when determining whether a
8 multiplier is appropriate under the lodestar approach. *Vizcaino*, 290 F.3d at 1048, 1051.
9 *See also In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (approving an
10 award of 33% of a \$12 million settlement fund); *Morris v. Lifescan, Inc.*, 54 F. App’x 663,
11 664 (9th Cir. 2003) (approving an award of 33% of a \$14.8 million settlement fund).

12 Indeed, numerous Court have found that a 33% fee award is “within the range of
13 awards in this Circuit.” *See In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018
14 U.S. Dist. LEXIS 162425, at *39 (N.D.Cal. Sep. 20, 2018) (approving an award of 33% of
15 a \$104 million settlement fund); *Grey Fox, LLC v. Plains All-Am. Pipeline, L.P.*, No. CV
16 16-03157 PSG (JEMx), 2024 U.S. Dist. LEXIS 167594, at *10 (C.D.Cal. Sep. 17, 2024)
17 (approving an award of 33% of a \$70 million settlement fund).

18 The analysis begins by determining the size of the fund, and the Court has discretion
19 to determine what portion of the common fund is “for the benefit of the entire class.”
20 *Bluetooth*, 654 F.3d at 942. Here, the Settlement Fund is \$225,000—before consideration
21 of the value from Defendants’ business changes. As such, the requested fee award of
22 \$74,992.50 represents 33.33% of the settlement value. As explained above, the excellent
23 result presented by the Settlement, the contingent nature of representation, the risks of
24 nonpayment, and the highly complex nature of the litigation and the high caliber of
25 lawyering required and employed by all counsel weigh in favor of the 33.33% of the fund
26 sought by Class Counsel here.

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2. The Requested Fee is Reasonable Under the Lodestar Approach

In the alternative, application of the lodestar method here confirms the propriety of Class Counsel’s fee request. Under the lodestar method, “the district court ‘multiplies a reasonable number of hours by a reasonable hourly rate.’” *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (quoting *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir. 2002)). The lodestar amount may then be adjusted by a risk multiplier, and/or “a multiplier that reflects ‘a host of “reasonableness” factors.’” *Stetson*, 821 F.3d at 1166 (quoting *In re Bluetooth*, 654 F.3d at 941-42).

i. The Number of Hours Claimed Is Reasonable

Class Counsel maintained contemporaneous, detailed time records billed in 6-minute increments. Cole Decl. ¶ 9. The result is a total number of 153.51 hours and total lodestar of \$79,969.50. The total fee award of \$75,000 thus represents a negative lodestar.

This number of hours and corresponding lodestar sought by Class Counsel is reasonable and should be reflected in the fees awarded to Class Counsel. *See Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028-29 (9th Cir. 2000), *as amended on denial of reh’g* (Nov. 2, 2000) (counsel entitled to recover for all hours reasonably expended); *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982) (“‘every item of service which, at the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance or protect his client’s interest’”) (citation omitted).

As detailed above and in the declarations, these hours include: (1) engaging in extensive efforts to develop strategic plans, (2) extensively researching and filing the initial complaint, (3) legal research and drafting an opposition to Defendants’ motion to dismiss, (4) drafting the Amended Complaint, (5) meeting and conferring regarding informal discovery, (6) undertaking substantial investigation of the Data Breach and the corporate structure of Defendants, (7) negotiating the details of the Settlement Agreement over multiple months and securing preliminary approval of the Settlement, and (8) overseeing the claims process. Cole Decl. ¶¶ 10-11.

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4. The Settlement Provides a Remarkable Recovery for Settlement Class Members

Class Counsel’s efforts generated an exceptional Settlement, which includes a \$225,000 non-reversionary Settlement Fund as well as business practice changes by Defendants with an estimated cost of \$332,758. Cole Decl. ¶ 5.

As further described in Representative Plaintiff’s Motion for Preliminary Approval (Dkt. No. 19), the \$225,000 non-reversionary Settlement Fund will be used to provide Participating Class Members who submit valid claims with out-of-pocket loss reimbursement of up to \$5,000 and a Flat Cash Payment of any money remaining in the Settlement Fund after paying all other expenses and costs, subject to increase or decrease *pro-rata* to expend all funds remaining in the Settlement Fund.

5. The Value Ascribed to Defendants’ Remedial Measures Is Not Included in the Measurement of Settlement Value

“Incidental or non-monetary benefits conferred by the litigation are relevant circumstances” in determining an appropriate award of attorneys’ fees, under both the lodestar and percentage methods. *Vizcaino*, 290 F.3d at 1049 (concluding that change in employer practices and clarification of law were factors supporting fee award) (citing with approval *Bebchick v. Wash. Metro. Area Transit Comm’n*, 805 F.2d 396, 408 (D.C. Cir. 1986) (“[A]n upward adjustment to the lodestar is appropriate to reflect the benefits to the public flowing from this litigation.”)); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (“[C]ourts should consider the value of the injunctive relief obtained as a ‘relevant circumstance’ in determining what percentage of the common fund class counsel should receive as attorneys’ fees.”).

As Class Counsel has detailed, Defendants have already and will continue to invest in remedial measures. S.A. ¶ 71. Because the remedial measures bolster Defendants’ global security—not just the attack used for the Data Breach—these remedial measures provide an enormous benefit to *all* Class Members (and any individuals for whom Defendants store PII), regardless of whether they submit a claim for other benefits. Cole Decl. ¶ 6.

Because “the value to individual class members of benefits deriving from

1 injunctive relief can be accurately ascertained,” the amount of such relief may be included
 2 “as part of the value of a common fund for purposes of applying the percentage method
 3 of determining fees.” *Staton*, 327 F.3d at 974; *see also In re Checking Account Overdraft*
 4 *Litig.*, No. 1:09-MD-02036-JLK, 2013 U.S. Dist. LEXIS 190562, at *37-8 (S.D.Fla. Aug.
 5 2, 2013) (adding value of non-assessed overdraft fees to common fund before applying
 6 percentage method); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D.N.J. 2008)
 7 (including value of injunctive relief that benefits the class in percentage-of-recovery
 8 calculation). Here, where Class Counsel have not increased the value of the Settlement
 9 Fund beyond the cash payment by Defendant, the Court should “consider the value of this
 10 nonmonetary relief as ‘a “relevant circumstance” in determining what percentage of the
 11 common fund class counsel should receive as attorneys’ fees, rather than as part of the fund
 12 itself.” *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 U.S. Dist.
 13 LEXIS 140137, at *93 (N.D. Cal. Aug. 17, 2018).

14

15 **6. The Requested Amount Is Comparable to Attorneys’ Fees** **Awarded in Other Cases**

16 In determining whether an award is reasonable, courts may look to awards made in
 17 similar cases. *See Vizcaino*, 290 F.3d at 1050 n.4. The request here is incredibly modest in
 18 absolute terms when compared with awards in other data breach cases. For instance, the
 19 fee requested here compares favorably with that awarded in *Home Depot* where relying
 20 primarily on the lodestar method, the court approved a fee award of \$7,536,497.80 after
 21 applying a 1.3 multiplier to counsel’s base lodestar of \$5,797,306, where the settlement
 22 featured a \$13 million settlement fund, and was valued at \$27 million total. *In re Home*
 23 *Depot Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-TWT, 2016 U.S. Dist.
 24 LEXIS 200113 (N.D.Ga. Aug. 23, 2016) (granting fee motion); *see also id.* No. 1:14-md-
 25 02583, at Dkt. No. 226-1 (explaining settlement benefits in detail in motion for final
 26 approval).

27 In *Experian Data Breach Litigation*, the court awarded \$10.5 million in attorneys’
 28

1 fees. *In re Experian Data Breach Litig.*, No. SACV 15-01592 AG (DMFx), 2019 U.S. Dist.
 2 LEXIS 81243, at *30, 32 (C.D.Cal. May 10, 2019). The *Anthem* court applied the
 3 percentage-of-fund approach to award plaintiffs’ counsel in that data breach case 27% of
 4 the settlement fund, for a total of \$31.05 million. *Anthem*, 2018 U.S. Dist. LEXIS 140137
 5 at *16. Similarly, the *Target* court approved a fee award of \$6.75 million, which
 6 represented 29% of defendant’s total payout, which included a \$10 million settlement fund.
 7 *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018)).

8 Here, Class Counsel’s requested fee of \$74,992.50 for the litigation of virtually
 9 identical facts under the same laws represent significant efficiency for the Settlement Class.
 10 Although Class Counsel request 33.33% of the Settlement Fund, a lesser amount—which
 11 would entail a negative multiplier—would disincentivize future plaintiffs where class sizes
 12 are not sufficient to secure large enough settlements.

13 **B. Class Counsel is Entitled to Reimbursement of Litigation Costs**

14 Under well-settled law, Class Counsel are entitled to recover “out-of-pocket
 15 expenses that would normally be charged to a fee-paying client.” *Harris v. Marhoefer*,
 16 24 F.3d 16, 19 (9th Cir. 1994) (internal citation and quotation marks omitted).

17 To date, Class Counsel have collectively incurred \$1,318.32 in unreimbursed
 18 litigation costs. Cole Decl. ¶ 21. These costs were reasonably necessary for the prosecution
 19 and resolution of this litigation (*Id.*), and were incurred by Class Counsel for the benefit of
 20 Class Members with no guarantee that they would be reimbursed. *See Staton*, 327 F.3d at
 21 974 (class counsel entitled to reimbursement of expenses reasonably incurred). Class
 22 Counsel’s litigation costs are reasonable in amount, and the Court should approve their
 23 reimbursement.

24 **C. The Court Should Approve the Service Award**

25 “The Ninth Circuit recognizes that named plaintiffs in class action litigation are
 26 eligible for reasonable incentive payments.” *Saliba v. KS Statebank Corp.*, No. CV-20-
 27 00503-PHX-JAT, 2021 U.S. Dist. LEXIS 196634, at *18 (D.Ariz. Oct. 13, 2021). Service
 28

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1 awards, which are discretionary, “are intended to compensate class representatives for
2 work done on behalf of the class, to make up for financial or reputational risk undertaken
3 in bringing the action.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir.
4 2009).

5 The Court should grant the modest Service Award of \$2,500 to the Representative
6 Plaintiff to compensate him for the effort and risk entailed in pursuing this litigation. Cole
7 Decl. ¶ 22. The Representative Plaintiff has been enthusiastic and active and has fought for
8 the best interests of the Class. The Representative Plaintiff actively participated in the
9 litigation by: investigating the matter prior to and after retaining his attorney; reviewing
10 and approving his original complaint and/or the Amended Complaint; participating in
11 discovery by collecting documents and gathering evidence; and corresponding and
12 communicating with counsel to monitor the progress of the litigation and settlement. *Id.*
13 The Representative Plaintiff put his name and reputation on the line for the sake of the
14 Class, and no recovery would have been possible without their critical role. *Id.*

15 **IV. CONCLUSION**

16 For all the foregoing reasons, Representative Plaintiff respectfully requests that the
17 Court award \$74,992.50 in attorneys’ fees, \$1,318.32 in costs, as well as a Service Award
18 of \$2,500 to the Representative Plaintiff.

19
20 Dated: January 23, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2025, I electronically transmitted the foregoing document to the Clerk’s Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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