The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re MCG Health Data Security Issue Litigation	NO. 2:22-CV-00849-RSM-DWC **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS** **NOTE ON MOTION CALENDAR:** September 4, 2024

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

TABLE OF CONTENTS

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

TABLE OF AUTHORITIES

Page(s)

Cases

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Other Authorities

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

INTRODUCTION

This case arises out of a 2022 data breach of Defendant MCG Health, LLC's systems. The medical data breach impacted approximately 1,100,000 people. From the outset, Class Counsel led the prosecution of the cases on an inclusive, and cooperative basis, first consolidating the related actions, and then, after defeating in part Defendant's first motion to dismiss, seeking appointment as interim class counsel, filing an amended complaint, and briefing Defendant's second motion to dismiss.

In December 2023, following extensive arm's-length negotiations, the parties reached an agreement to resolve the claims in this class action. That Settlement—the product of Class Counsel's zealous efforts—created an $8,800,000 common fund for the benefit of the Settlement Class, from which all Class Members can receive a payment. As compensation for their efforts and the significant benefit conferred on the Settlement Class, Class Counsel moves for an award of reasonable attorneys' fees and costs in the amount of $2,930,000 or 33.3% of the straight cash value of the Settlement Fund.

The requested fee is in line with the benchmark for fees in this district and is reasonable considering the benefits negotiated for the Class, the substantial risks presented in prosecuting this action in a rapidly evolving area of law, and the quality of work conducted. Class Counsel also requests Service Awards of $2,500 to each named Plaintiff.

STATEMENT OF FACTS

In the interests of brevity and efficiency, Plaintiffs refer the Court to the Statement of Facts provided in Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement filed on March 1, 2024 (Dkt. 82).

Since this Court granted preliminary approval to the Settlement on May 1, 2024, Class Counsel has worked closely with Kroll, the Settlement Administrator, to ensure the Settlement Notice and administration proceeded smoothly and according to plan approved by the Court. Joint Declaration of Class Counsel Supporting Plaintiffs' Motion for Fees, Costs, and Service

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Awards ("Joint Decl.") ¶15. Class Counsel anticipates further involvement with Kroll and opposing counsel in the coming months to ensure the successful administration of the settlement for the Class. *Id.* ¶30.

While the deadline to object or request exclusion is on August 29, 2024, to date, the settlement has been well received, with only 113 requests for exclusion and no objections. Joint Decl. ¶16.

THE SETTLEMENT TERMS

The Settlement provides substantial relief for the Settlement Class of approximately 1,100,000 individuals. Dkt. 83-1, Settlement Agreement ("S.A.") ¶1.2. The Settlement consists of an $8,800,000 Settlement Fund from which class members may make a claim for: (1) reimbursement of ordinary expenses and lost time up to $1,500; (2) reimbursement of extraordinary expenses up to $10,000, or; (3) as an alternative to filing a claim for reimbursement, Class Members may claim an alternative cash payment, which will be a pro rata share of the net Settlement Fund; and (4) an option to receive three years of free three-bureau credit monitoring.[1] S.A. ¶4.2. The Settlement Fund will also be used to cover the costs of Notice and Settlement Administration and will be used to pay any award of attorneys' fees and costs and service awards. S.A. ¶¶6.2, 11.1, 11.2.

The Settlement Agreement also requires MCG to maintain and implement significant additional security measures to protect Class Members into the future. The value of these measures, based on implementation and maintenance costs, is approximately $1,565,000 to $3,580,000. Dkt. 84, ¶¶54-74.

Class Counsel conservatively estimates that the total value of the settlement benefits offered to the Class exceeds $22 million, making their fee request approximately 13% of the net Settlement benefits for the Class.

[1] The individual retail value of similar credit monitoring is $359.64. Dkt. 85 at ¶16. Class Counsel anticipates that credit monitoring will yield a net class benefit of approximately $11,868,120 to $19,780,200. *Id.* ¶19.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

ARGUMENT

It is well established that where counsel's work results in substantial benefit to a class, an award of reasonable attorney's fees and costs is appropriate. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In deciding whether the requested fee amount is appropriate, the Court determines whether such amount is "fundamentally fair, adequate, and reasonable." *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

A. The Court Should Apply the Percentage-of-the-Fund Method

Where counsel seek fees from a common fund, courts may use one of two methods to determine whether the request is reasonable: "percentage-of-the-fund" or "lodestar/multiplier." *Staton*, 327 F.3d at 963-64; *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). However, "the percentage method in common fund cases appears to be dominant" in the Ninth Circuit. *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2008).

The common fund doctrine rests on the understanding that attorneys should normally be paid by their clients. *See Boeing*, 444 U.S. at 478 ("[A] litigant or a lawyer who recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole."). Awarding fees from a common fund avoids "the unjust enrichment of [the class who] benefit[s] from the fund that is created, protected, or increased by the litigation and who otherwise would bear none of the litigation costs.'" *In re: Facebook Biometric Info. Privacy Litig.*, 2022 WL 822923, at *1 (9th Cir. Mar. 17, 2022) (quotation omitted).

Courts prefer the percentage model over a lodestar approach where it is possible to ascertain the value of a common fund. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar."); *Vizcaino v. Microsoft*

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Corp., 290 F.3d 1043, 1050 (9th Cir. 2002) ("[T]he primary basis of the fee award remains the percentage method."); *Omnivision*, 559 F.Supp.2d at 1046.

By contrast, courts rely on the lodestar method when "there is no way to gauge the net value of the settlement or of any percentage thereof." *Hanlon*, 150 F.3d at 1029; *Bluetooth*, 654 F.3d at 941 (lodestar appropriate "where the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized"). The percentage-of-the-fund approach also rewards efficiency. *Vizcaino*, 290 F.3d at 1050 n.5 (recognizing "that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement."); *see also In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1378 (N.D. Cal. 1989) (lodestar method may encourage "abuses such as unjustified work" contrary to "the stated purposes of proportionality, predictability and protection of the class").

Because the Parties negotiated a settlement resulting in a common fund, Class Counsel request that the Court use the percentage-of-the-fund method in determining attorneys' fees.

B. The Requested Fee Amount Is Reasonable Under the Percentage-of-the-Fund Method

Class Counsel's request for $2,930,000[2] in attorneys' fees and costs—33.3% of the common fund—is fair and reasonable. The Ninth Circuit has established a 25-percent benchmark as the "starting point" for analysis. *In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015). "That percentage amount can then be adjusted upward or downward depending on the circumstances of the case." *De Mira v. Heartland Emp't Serv., LLC*, 2014 WL 1026282, at *1 (N.D. Cal. Mar 13, 2014). Courts have recognized that "in most common fund cases, the award *exceeds* th[e] benchmark." *Id.* (emphasis added) (quoting *Omnivision*, 559 F.Supp.2d at 1047); *see also Larsen v. Trader Joe's Co.*, 2014 WL 3404531,

[2] Class Counsel's requested fee award includes costs; this request can alternatively be stated as a request for an award of costs of $45,853.52 and a separate request for fees in the amount of $2,884,146.48, or 32.7% of the common fund. Joint Decl. ¶¶29, 33.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

at *9 (N.D. Cal. July 11, 2014) (citing multiple cases awarding fees of up to 33.3%). Indeed, the mean percentage awarded in this district is 27% and awards regularly exceed that percentage. *Benson v. DoubleDown Interactive, LLC*, 2023 WL 3761929, at *2 (W.D. Wash. June 1, 2023) (awarding 29.3% fee); *Bolding v. Banner Bank*, 2024 WL 755903, at *2 (W.D. Wash. Feb. 23, 2024) ("a 33% fee is standard and reasonable for this type of contingency case."); *Brown v. Papa Murphy's Holdings Inc.*, 2022 WL 1303176, at *2 (W.D. Wash. May 2, 2022) (awarding 31.5% and finding that "30% should be the benchmark").

The Ninth Circuit asks district courts to "take into account all of the circumstances of the case" and "reach[] a reasonable percentage," *Vizcaino*, 290 F.3d at 1048, including "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." *Omnivision*, 559 F.Supp.2d at 1046. These factors support Class Counsel's requested attorneys' fees and costs.

1. Class Counsel Achieved an Excellent Result for the Settlement Class

In determining the attorneys' fees to award, a court should examine "the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Omnivision*, 559 F.Supp.2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award."); Federal Judicial Center, *Manual for Complex Litigation* § 27.71 at 336 (4th ed. 2004) ("The fundamental focus is the result actually achieved for class members."). Here, the Settlement is a significant result for the Class. This litigation was hard-fought, contentious, and involved a number of case-dispositive risks.

While Plaintiffs believe they have strong claims, success was not guaranteed. Plaintiffs' chances of prevailing on the merits were uncertain—especially where significant unsettled questions of law and fact exist, which is common in data breach litigation. "Data breach litigation is evolving; there is no guarantee of the ultimate result." *Fox v. Iowa Health Sys.*, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (citing *Gordon v. Chipotle Mexican Grill, Inc.*,

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019)). Data breach litigation is lengthy, complex, and difficult, and the fact that the case law is rapidly evolving means that outcomes are uncertain, and the expense of such litigation is high. Joint Decl. ¶25.

Here, the $8,800,000 Settlement Fund is an excellent result that avoids the uncertainty and risk presented by continued litigation, while providing the Class with immediate relief. The Settlement Fund ensures that all Class Members can receive a cash payment and may obtain three years of three-bureau credit monitoring. Class Members will also receive the benefit of enhanced data security protection. The Settlement represents a robust relief package and a valuable outcome for the Class. Indeed, the Settlement, apportioned on a per class member basis of $8 per class member, is significantly better than many other approved data breach settlements. *See* Dkt. 82 at 25, n.3; *see also Ikuseghan v. Multicare Health Sys.*, 2016 WL 4363198, at *2 (W.D. Wash. Aug. 16, 2016) (recognizing that a superior result warrants an upward adjustment to percentage awarded as attorneys' fees).

a. Plaintiffs Face Significant Risks in This Litigation

Risk is a critical factor in determining a fair fee award. *Omnivision*, 559 F.Supp.2d at 1046-47 (the risk of non-recovery in a complicated case "is a significant factor in the award of fees"). While Plaintiffs believe their case is strong, cases like this are subject to substantial risk. This case involves a complicated and technical factual overlay and a well-represented Defendant.

Although nearly all class actions involve a high level of risk and expense, this case is complex class action in an especially risky arena. Numerous courts have recognized that data breach cases are especially risky given the unsettled and evolving nature of the law. *See, e.g.*, *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable."); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that "many of the legal issues

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

presented in [] data-breach case[s] are novel"). Historically, data breach cases have faced substantial hurdles in surviving even the pleading stage—and more in obtaining and maintaining contested class certification. *See, e.g., Hammond v. Bank of N.Y. Mellon Corp*., 2010 WL 2643307, at *2-4 (S.D.N.Y. June 25, 2010) (collecting cases).

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly with respect to damages. Some of the damages methodologies advanced in this case, while theoretically sound in Plaintiffs' view, remain untested in a disputed class certification setting and unproven in front of a jury. And as in any data breach case, establishing causation on a class-wide basis is rife with uncertainty.

Finally, because the parties reached agreement in principal while the case was at the pleadings stage, the parties had not briefed, and the Court had not yet certified a class. If they were to proceed to litigate through trial, Plaintiffs would face risks in obtaining and maintaining certification of the class, which Defendant would likely oppose in the absence of a settlement. Thus, Plaintiffs "necessarily risk losing class action status" at any time following certification. *Grimm v. American Eagle Airlines, Inc.*, 2014 WL 12746376, at *10 (C.D. Cal. Sept. 24, 2014); *see Mazzei v. Money Store*, 829 F.3d 260, 265–67 (2d Cir. 2016) (class decertified after trial).

Each risk could have impeded the successful prosecution of these claims at trial, resulting in zero recovery to the class. Thus, this factor supports the requested fee award.

b. Class Counsel are Highly Skilled Attorneys Experienced in Data Breach Litigation

The "prosecution and management of a complex national class action requires unique legal skills and abilities" relevant to determining a reasonable fee. *Omnivision*, 559 F.Supp.2d at 1047 (citation omitted); *see also Vizcaino*, 290 F.3d at 1048 (reasoning that the complexity of the issues and skill and effort displayed by class counsel are among the relevant factors under the percentage approach). In general, data breach class actions present relatively unchartered territory, and no data breach case has gone to trial. Class Counsel are experienced litigators who

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

have successfully prosecuted and resolved numerous large consumer class actions and other complex matters, including in other data breach cases. *See* Dkt. 83 at ¶¶4-8, Exs. 2-5. Class Counsel's ability and relevant experience were critical to achieving the Settlement; each stage of investigating, prosecuting, and settling this matter required skill and commitment of time and resources. Class Counsel successfully opposed a comprehensive motion to dismiss, in which multiple claims survived. Dkt. 59.

Courts also consider "the quality of opposing counsel as a measure of the skill required to litigate the case successfully." *In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *22 (C.D. Cal. Jul. 28, 2014). Throughout the litigation, Class Counsel faced Greenberg Traurig LLP and Davis Wright Tremaine LLP, both highly respected national law firms. *See DeStefano v. Zynga, Inc.*, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016) ("The quality of opposing counsel is also relevant to the quality and skill that class counsel provided.").

c. Class Counsel Faced Substantial Risk of Non-Payment and Carried Significant Financial Burdens, Litigating on a Contingent Basis

The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent nature of the fee. *See, e.g.*, *Vizcaino*, 290 F.3d at 1050. Courts recognize that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work. *See, e.g.*, *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are . . . a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose."); *Vizcaino*, 290 F.3d at 1051 (observing courts reward successful class counsel in contingency cases "by paying them a premium over their normal hourly rates").

Class Counsel litigated this case on a purely contingent basis. Class Counsel devoted substantial resources to the prosecution of this matter, foregoing other opportunities, with no guarantee that they would be compensated for their time or reimbursed for their expenses. Joint

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Decl. ¶¶2-17, 20-25. Nevertheless, class counsel zealously advocated for Plaintiffs and the Settlement Class. To date, Class Counsel have received no compensation for their work on this case. Class Counsel's "substantial outlay," and the risk of no recovery, further supports the award of their requested fees. *Omnivision*, 559 F.Supp.2d at 1047.

Additional burdens such as the cost and duration of litigation are also relevant. This litigation has been pending for over two years, during which Class Counsel has advanced time and out-of-pocket costs—and foregone other work. *See In re Infospace, Inc. Sec. Litig.*, 330 F.Supp.2d 1203, 1212 (W.D. Wash. 2004) (noting "preclusion of other employment ... due to acceptance of the case" is a factor to consider) (quotation omitted).

To date, Class Counsel has worked over 1,840 hours on this case and advanced nearly $46,000 in costs. Joint Decl. ¶¶29, 33. This substantial outlay of time and resources on a purely contingent basis favors approval of the requested fee.

d. Fees Awarded in Comparable Cases Align with Those Requested Here

Comparing the requested fees to awards in similar cases highlights the reasonableness of this application. "[I]n most common fund cases, the award exceeds" the 25% benchmark. *Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009). "Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Romero v. Producers Dairy Foods, Inc.*, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (quoting 4 Newberg and Conte, Newberg on Class Actions § 14.6 (4th ed. 2007)). In this District, fees are often awarded within the "usual, 20-30% range recognized by Washington and Ninth Circuit courts." *Benson*, 2023 WL 3761929, at *2.

Federal courts in the Ninth Circuit, including this district, routinely award percentage recoveries exceeding the 25% benchmark. *See, e.g.*, *id.* (awarding 30% of common fund); *Hallman v. Wells Fargo Bank, N.A.*, 2021 WL 9567171, at *2 (W.D. Wash. June 10, 2021) (awarding 1/3 of settlement fund); *In re Atossa Genetics, Inc. Sec. Litig.*, No. 13-CV-01836-

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

RSM, 2018 WL 3546176, at *1 (W.D. Wash. July 20, 2018) (awarding 33.3% of common fund in addition to costs) (Martinez, J); *Goldiner v. Datex-Ohmeda Cash Balance Plan*, 2011 WL 13190205, at *1 (W.D. Wash. May 10, 2011) (awarding 1/3 of net settlement fund); *Pine v. A Place for Mom, Inc.*, No. 17-cv-1826-TSZ (W.D. Wash. Jan. 11, 2021) (Dkt. 174) (awarding 30% of total settlement fund); *In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *Syed v. M-I, L.L.C.*, 2017 WL 3190341, at *8 (E.D. Cal. July 27, 2017) (awarding one-third of common fund); *Dearaujo v. Regis Corp.*, 2017 WL 3116626, at *13 (E.D. Cal. July 21, 2017) (same); *Lee v. JPMorgan Chase & Co.*, 2015 WL 12711659, at *8-9 (C.D. Cal. Apr. 28, 2015) (same).

Accordingly, fee awards in comparable cases support this request.

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

The Ninth Circuit has encouraged, but not required, courts to conduct a lodestar cross-check when assessing the reasonableness of a percentage fee award. *See Bluetooth*, 654 F.3d at 944 (stating "we have also encouraged courts to guard against an unreasonable result by cross-checking their calculations against a second method" of determining fees). The first step in the lodestar method is to multiply the number of hours counsel reasonably expended on the litigation by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029. At that point, "the resulting figure may be adjusted upward or downward to account for several factors including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Id*. (*citing Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)); *see also Bluetooth*, 654 F.3d at 942. The lodestar-multiplier method confirms the propriety of the requested fee here.

1. <u>Class Counsel's Lodestar Is Reasonable</u>

Through August 15, 2024, Class Counsel devoted over 1,840.4 hours to the investigation, litigation, and resolution of this complex case, incurring more than $1,394,495 in lodestar. Joint Decl. ¶29. As detailed in the declarations, counsel's time was spent investigating

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

the claims, conducting discovery, researching and analyzing legal issues, engaging in settlement negotiations, and litigating dispositive motions. Joint Decl. ¶¶2-17. Class Counsel audited all time submissions and took measures to protect against overreporting. Class Counsel, for example, eliminated time that did not comply with the Plaintiffs' Timekeeping Protocol. Joint Decl. ¶28. The time Class Counsel devoted to this case was conservatively reported and reasonable. Class Counsel prosecuted the claims at issue efficiently and effectively, making every effort to prevent the duplication of work. Class Counsel will devote additional time and efforts to this case as they continue to oversee the administration of the settlement, respond to inquiries from Class Members, move for final approval, and work with Kroll to distribute payments to Class Members. *Id.*, ¶30.

Class Counsel's hourly rates are reasonable and have been approved by Courts in this district and throughout the Country. In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). Class Counsel here are experienced, highly regarded members of the bar, who brought to this case extensive experience in consumer class actions. *See* Dkt. 83.

2. <u>A Multiplier is Warranted</u>

The fee requested by Class Counsel reflects a modest multiplier of 2.06. Joint Decl. ¶42. Multipliers in the Ninth Circuit have ranged from 0.6 to 19.6. *Vizcaino*, 290 F.3d at 1050-51 and n.6 (upholding 3.65 multiplier); *Infospace*, 330 F.Supp.2d 1216 (3.5 multiplier); *Steiner v. Am. Broad. Co, Inc.*, 248 F. App'x. 780, 783 (9th Cir. 2007) (finding 6.85 multiplier to be "well within the range of multipliers that courts have allowed"); *Craft v. Cnty. of San Bernardino*, 624 F.Supp.2d 1113, 1123 (C.D. Cal. 2008) (5.2 multiplier).

Courts in the Ninth Circuit use similar factors when analyzing a lodestar-multiplier cross check. *See Hanlon*, 150 F.3d at 1029. As discussed above, the factors outlined favor this request.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

A 2.06 multiplier is in line with multipliers awarded in the Ninth Circuit, and the lodestar cross check thus supports the requested fee.

D. Class Counsel's Reported Expenses are Reasonable

Under well-settled law, Class Counsel are entitled to reimbursement of the expenses reasonably incurred investigating and prosecuting this matter. *Mills v. Electric Auto-Lite Co*., 396 U.S. 375, 391-92 (1970). To date, Class Counsel collectively incurred $45,853.52 in unreimbursed litigation costs. The expenses for which Class Counsel seek reimbursement were reasonably necessary for the continued prosecution and resolution of this litigation and were incurred by Class Counsel for the benefit of the class members with no guarantee that they would be reimbursed. They are reasonable in amount and the Court should approve their reimbursement.

E. The Requested Service Awards are Reasonable

Service awards compensate named plaintiffs for work done on behalf of the Class, account for financial and reputational risks associated with litigation, and promote the public policy of encouraging plaintiffs to undertake the responsibility of representative lawsuits. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646-47 (S.D. Cal. 2011) ("Incentive awards are fairly typical in class actions."). The Settlement is not contingent on the Court's granting of such an award.

The requested service awards of $2,500 each are modest under the circumstances and in line with awards approved in Washington and elsewhere. *See Pelletz v. Weyerhaeuser Co.*, 592 F.Supp.2d 1322, 1329-30 & n.9 (W.D. Wash. 2009) (approving $7,500 service awards and collecting decisions approving awards ranging from $5,000 to $40,000); *Reed v. Light & Wonder, Inc.*, 2022 WL 3348217, at *2 (W.D. Wash. Aug. 12, 2022) (approving incentive awards of $10,000 and $2,500). These awards will compensate Plaintiffs for their time and effort serving as class representatives, assisting in the investigation, reviewing pleadings, keeping abreast of the litigation, and reviewing and approving the proposed settlement terms after

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

consulting with Class Counsel. Joint Decl. ¶19. Indeed, without Plaintiffs participation, the Class would have recovered nothing.

CONCLUSION

Plaintiffs and Class Counsel respectfully request the Court grant this motion and award the requested attorneys' fees and costs and plaintiff service awards in full.

I certify that this memorandum contains 4,189 words, in compliance with the Local Civil Rules.

DATED this 15th day of August, 2024.

TOUSLEY BRAIN STEPHENS PLLC

By: *s/Jason T. Dennett*

Jason T. Dennett, WSBA #30686
Rebecca L. Solomon, WSBA #51520
1200 Fifth Avenue, Suite 1700
Seattle, WA 98101-3147
Tel: (206) 682-5600/Fax: (206) 682-2992
jdennett@tousley.com
rsolomon@tousley.com

Gary M. Klinger (Admitted *Pro Hac Vice*)
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: 866.252.0878
gklinger@milberg.com

Adam E. Polk (Admitted *Pro Hac Vice*)
Simon Grille (Admitted *Pro Hac Vice*)
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
apolk@girardsharp.com
sgrille@girardsharp.com

Co-Lead Counsel for Plaintiffs and Settlement Class