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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF TULARE

21 In re HAPY BEAR SURGERY CENTER  
22 DATA SECURITY INCIDENT  
23 LITIGATION

CASE NO. VCU307987

*Assigned for All Purposes to  
Hon. Gary M. Johnson*

24 This Document Relates To: All Actions

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION FOR  
ATTORNEYS' FEES, COSTS AND  
ENHANCEMENT AWARD**

Hearing Date: February 24, 2025  
Time: 8:30 a.m.  
Dept.: 7

1 TO THE CLERK OF COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on February 24, 2025, at 8:30 a.m., or as soon thereafter  
3 as the matter may be heard, before the Honorable Gary M. Johnson in Department 7 of the  
4 Superior Court of California, County of Tulare, located at 221 S. Mooney Blvd., Visalia,  
5 California 93291, plaintiffs David Underwood and Duncan Meadows (“Plaintiffs”) will and  
6 hereby do move the Court, pursuant to California Civil Procedure Code § 1021.5, California Rule  
7 of Court 3.769 and the parties’ class action settlement agreement in this matter, for an order  
8 granting Plaintiff’s counsel’s request for \$312,500 in attorneys’ fees and \$10,196.46 in costs  
9 incurred in prosecuting this class action and granting each Plaintiff an enhancement award of five  
10 thousand dollars (\$5,000) for his services as the named representatives of the class.

11 This motion is made on grounds that Plaintiffs are the successful parties and entitled to  
12 recover fees and costs under the Private Attorney General Doctrine, codified in §1021.5, because  
13 Plaintiffs’ efforts have enforced an important right affecting the public interest, have conferred a  
14 significant benefit on the general public and/or a large class of person, and have imposed a  
15 financial burden on Plaintiffs out of proportion to his individual stake in the matter. Counsel  
16 seeks for a total of \$312,500 for attorneys’ fees and \$10,196.46 for costs incurred in this matter  
17 and does not seek a multiplier. As set forth in the concurrently filed memorandum in support of  
18 this motion, these figures and the total amount sought are plainly justified under the applicable  
19 case law.

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This motion is based upon this notice of motion and motion, the concurrently filed memorandum of points and authorities in support of the motion, the concurrently filed declaration of Jason M. Wucetich, the concurrently filed declaration of Daniel Srourian, the declaration of Duncan Meadows, the declaration of David Underwood, and attached exhibits, the records and files in this action, and such arguments as may be presented at the hearing on this motion.

Dated: January 29, 2025

WUCETICH & KOROVILAS LLP



By: \_\_\_\_\_  
Jason M. Wucetich  
Attorneys for Plaintiffs,  
individually and on behalf of  
all others similarly situated

By: Charisma Hughes,  
Deputy Clerk

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CASE NO. VCU307987

*Assigned for All Purposes to*  
Hon. Gary M. Johnson

**CLASS ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR ATTORNEYS' FEES AND COSTS  
AND ENHANCEMENT AWARD  
PURSUANT TO CLASS ACTION  
SETTLEMENT**

Hearing Date: February 24, 2025  
Time: 8:30 a.m.  
Dep't: 7

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1           **I. INTRODUCTION**

2           Plaintiffs bring the instant motion to seek recovery of reasonable attorneys’ fees and  
3 expenses incurred in the prosecution this class action, which successfully safeguarded the privacy  
4 rights of tens of thousands of California citizens and provided them with a significant financial  
5 benefit. This is a data breach case alleging that Defendant failed to protect Plaintiffs’ and the  
6 class’s private information from cybercriminals.

7           The instant class action protected hundreds of California consumers who are members of  
8 the Class. Moreover, it confirmed that Defendant made changes to its cybersecurity practices to  
9 ensure future data breaches do not occur. If approved, the Agreement will deliver significant  
10 benefits to the class. First, class members will receive credit monitoring for two years, guarding  
11 class members against identity theft. Second, the settlement will reimburse class members’ losses  
12 related to the data breach up to \$500, addressing members’ out-of-pocket losses. Third, for class  
13 members who have suffered identity theft, fraud, or criminal victimization, the settlement will  
14 reimburse them up to \$7,500 for losses stemming from those acts. Fourth, class members will be  
15 eligible to receive up to \$100 cash, at \$25 per hour, to reimburse their “non-economic” losses in  
16 the form of lost time following the data breach. Fifth finally, Defendant has improved its data  
17 security, verifying that it has upgraded its threat detection monitoring systems and has  
18 implemented additional security changes to prevent future cybersecurity instances. This is fair  
19 and appropriate relief that the Court already approved in granting Plaintiff’s motion for  
20 preliminary approval of class action settlement.

21           What this action has done is ensure the Class is fairly compensated for the Data Security  
22 Incident, and confirmed Defendant has enhanced its security practices. Preventing identity theft,  
23 protecting consumer privacy, and preserving personal safety are important matters of public  
24 policy as shown by many news articles and government studies, and are the objectives served by  
25 this class action.

26           Awarding fair compensation to Class Counsel for bringing this action to enforce important  
27 public policy signals to industry watchers that data security policies and procedures need to be  
28 enhanced and updated to protect consumers from fraud and identity theft. Given the risks

1 undertaken as well as the benefits achieved for California consumers, Class Counsel is entitled,  
2 and deserves, to be appropriately compensated.

3 The California Supreme Court requires market rate compensation for attorneys who  
4 undertake the risk of contingent, public interest litigation. According to the Supreme Court, the  
5 primary way to achieve market rate compensation in such cases is to provide a multiplier to the  
6 value of the attorney's services had he been paid hourly while the services were provided, *i.e.* the  
7 lodestar method. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1136-1138 (2001). The fees now  
8 sought — to be paid in addition to the benefits to the class — were plainly disclosed in the class  
9 notice approved by this Court in its April 2024 preliminary approval order. Of the more than  
10 100,000 class members who were notified of this settlement, ***none*** have filed any formal  
11 objections to the settlement agreement or the fee request as of the date of this filing and ***none***  
12 have requested to be excluded from the settlement. Plaintiffs will address why the class benefits  
13 are appropriate in their upcoming motion for final approval of the class action settlement.

14 The overall settlement, including the agreed upon fee award sought by this motion, is fair,  
15 reasonable, warranted, and favored by the class. There is no basis in fact or law to alter the  
16 parties' agreement. Accordingly, Plaintiffs respectfully request that the Court grant the instant  
17 motion for attorneys' fees and also award Plaintiffs the enhancement awards set forth in the  
18 settlement agreement.

## 19 **II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

20 In evaluating the settlement for final approval, the trial court is asked to determine  
21 whether the private, consensual agreement between the parties is fair, adequate, and reasonable  
22 and protects the rights of absent class members. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.  
23 4th 224, 244-45 (2001). The trial court is not asked to decide the merits of the case, attempt to  
24 reach ultimate conclusions on disputed issues of fact or law, or otherwise re-negotiate the private  
25 agreement, including the agreement to pay attorneys' fees and costs. *7-Eleven Owners for Fair*  
26 *Franchising v. Southland Corporation*, 85 Cal. App. 4th 1135, 1145-46. A presumption of  
27 fairness exists where: (1) the settlement is reached through arms'-length bargaining; (2)  
28 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)

1 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Wershba*,  
2 91 Cal. App. 4th at 245.

3 The instant proposed settlement meets each of these criteria. Each will be discussed in  
4 detail in Plaintiffs' separately filed motion for final approval, along with a full explanation of the  
5 settlement agreement, its terms, and its overall fairness.

6 The instant motion therefore focuses on Class Counsel's entitlement to and the  
7 reasonableness of the negotiated attorneys' fees and costs award under the private attorney  
8 general statute.

9 **III. ATTORNEYS' FEES ARE WARRANTED UNDER THE PRIVATE**  
10 **ATTORNEY GENERAL DOCTRINE**

11 Under the private attorney general doctrine, codified at Code Civil Procedure § 1021.5,  
12 attorneys' fees are awarded in cases that enforce rights affecting public policies:

13 The fundamental objective of section 1021.5 is to encourage suits effectuating a  
14 strong public policy by awarding substantial attorney's fees to those who  
15 successfully bring such suits. The statute is based on the recognition that privately  
16 initiated lawsuits are often essential to the effectuation of the fundamental public  
17 policies embodied in constitutional or statutory provisions.

18 *California Common Cause v. Duffy*, 200 Cal. App. 3d 730, 741 (1987).

19 Successful litigants are entitled to fees under Code Civil Procedure § 1021.5 when the  
20 litigants' efforts: (1) have enforced an important right affecting the public interest; (2) have  
21 conferred a significant benefit on the general public or a large class of persons; and (3) have  
22 imposed a financial burden on the plaintiff out of proportion to his individual stake in the matter.

23 *Baggett v. Gates*, 32 Cal. 3d 128, 142 (1982).

24 While trial courts do have discretion to determine appropriate fee awards, they are also  
25 urged to recognize that: (1) class action settlements should be approved in the absence of  
26 evidence of collusion between the class representative and defendant; and (2) attorneys' fees are  
27 an integral part of a class action settlement. *Lealao v. Beneficial California, Inc.*, 82 Cal.  
28 App. 4th 19, 33 (2000) ("The award to the class and the agreement on attorney fees represent a  
package deal. Even if the fees are paid directly to the attorneys, those fees are still best viewed as

1 an aspect of the class' recovery.'").

2 Here, Plaintiffs contend this case meets the criteria for such an award, and an award of  
3 \$312,500 in attorneys' fees and \$10,196.46 in costs for work performed by Class Counsel is  
4 reasonable, justified and should be awarded.

5 **A. Plaintiffs Enforced Important Rights and Public Policy**

6 The "important right" criterion in Code Civil Procedure § 1021.5 tests whether "the subject  
7 matter of the action implicated the public interest." *Beasley v. Wells Fargo Bank*, 235 Cal. App.  
8 3d 1407, 1418 (1991). Consumer protection litigation has long been judicially recognized to be  
9 vital to the public interest." *Beasley*, 235 Cal. App. 3d at 1418, citing *Vasquez v. Superior Court*,  
10 4 Cal. 3d 800, 808 (1971). Protection of consumers personal identification information is an  
11 important public interest. Data breaches occur across the United States on a daily basis.  
12 Consumers who have had their private information collected and stored are at risk of identity  
13 theft, which is often financially devastating and is both expensive and time consuming to redress.  
14 With advances in computer technology, the concerns the Legislature recognized nearly twenty  
15 years ago are even more pronounced today. As evidenced by the rash of computer database  
16 security breaches and the increase in identity theft cases nationwide, identity theft is one of the  
17 most important crime issues facing consumers today.

18 **B. This Action Conferred Benefits on a Class**

19 The benefits this action conferred on a sizeable class are beyond dispute. If approved, the  
20 Agreement will deliver significant benefits to the class. First, class members will receive credit  
21 monitoring for two years, guarding class members against identity theft. Second, the settlement  
22 will reimburse class members' losses related to the data breach up to \$500, addressing members'  
23 out-of-pocket losses. Third, for class members who have suffered identity theft, fraud, or criminal  
24 victimization, the settlement will reimburse them up to \$7,500 for losses stemming from those  
25 acts. Fourth, class members will be eligible to receive up to \$100 cash, at \$25 per hour, to  
26 reimburse their "non-economic" losses in the form of lost time following the data breach. Fifth  
27 finally, Defendant has improved its data security, verifying that it has upgraded its threat  
28 detection monitoring systems and has implemented additional security changes to prevent future

1 cybersecurity instances. However, the benefits of this action go beyond the class. This lawsuit  
2 will send a clear message to other industry watchers that use of new technologies to develop,  
3 enhance and maintain aggressive cybersecurity measures to avoid data breaches in the future.  
4 Such effects are precisely why consumer class litigation is an established and favored mechanism  
5 for redressing consumer rights. *See Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971); *Linder*  
6 *v. Thrifty Oil Co.*, 23 Cal. 4th 429, 445 (2000).

7 **C. The Burden of Private Enforcement Justifies a Fee Award**

8 Both the necessity and financial burden of privately litigating this action make a fee award  
9 appropriate. The theoretical possibility that a governmental agency could have brought a suit  
10 does not foreclose a fee award; fees are appropriate when the government has failed to act to  
11 protect the plaintiff or the public. *Daniels v. McKinney*, 146 Cal. App. 3d 42, 52 (1983); *see also*  
12 *Committee to Defend Reproductive Rights v. A Free Pregnancy Center*, 229 Cal. App. 3d 633,  
13 641 (1991) (plaintiff need not obtain approval from the district attorney to be eligible for Code  
14 Civil Proc. § 1021.5 fees).

15 The “financial burden” criterion of Code Civil Proc. § 1021.5 is met when “the cost of the  
16 claimant’s legal victory transcends his or her personal interest, that is, when the necessity of  
17 pursuing the lawsuit placed a burden on the plaintiff out of proportion to his or her individual  
18 stake in the matter.” *Woodland Hills Residents Assn., Inc. v. City Council*, 23 Cal. 3d 917, 941  
19 (1979); *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors*, 79 Cal.  
20 App. 41h 505, 519 (2000) (“The issue, in short, is whether the cost of litigation is out of  
21 proportion to the litigant’s stake in the litigation.”); *Notrica v. State Compensation Ins. Fund* 70  
22 Cal. App. 4th 911, 955 (1999).

23 Here, Plaintiffs had little financial incentive to pursue this lawsuit on an individual basis.  
24 However, they sought to ensure Defendant would be held accountable for failing to prevent the  
25 breach and provide relief to the Class that is on par with other data breach cases of similar size  
26 and scope. Accordingly, each of the factors for a fee award under § 1021.5 is satisfied here and  
27 the Court should grant Plaintiffs’ motion for attorneys’ fees.  
28

1           **IV. THE SUPREME COURT REQUIRES MARKET RATE**  
2                           **COMPENSATION FOR CLASS COUNSEL**

3           **A. The Requested Attorneys' Fees Amount is Appropriate Under a**  
4                           **Percentage of the Fund Analysis and a Lodestar Analysis.**

5                           **1. The Percentage of the Fund Analysis**

6           Under California law, in a class action case, the primary method for calculating  
7 attorneys' fees in a class action settlement may be either a percentage of the relief  
8 obtained *or* a lodestar method (i.e., hours worked times a reasonable hourly rate). *See*  
9 *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 485-86, 489 (2016). Each method can  
10 be used as a cross-check on the reasonableness of the result obtained by using the other.

11 As the California Supreme Court explained in *Laffitte*:

12           Class action litigation can result in an attorney fee award pursuant to a statutory  
13 fee shifting provision or through the common fund doctrine when, as in this case,  
14 a class settlement agreement establishes a relief fund from which the attorney fee  
15 is to be drawn. Two primary methods of determining a reasonable attorney fee in  
16 class action litigation have emerged and been elaborated in recent decades. The  
17 *percentage method* calculates the fee as a percentage share of a recovered  
18 common fund or the monetary value of plaintiffs' recovery. The *lodestar method*,  
19 or more accurately the lodestar-multiplier method, calculates the fee "by  
20 multiplying the number of hours reasonably expended by counsel by a reasonable  
21 hourly rate. Once the court has fixed the lodestar, it may increase or decrease that  
22 amount by applying a positive or negative 'multiplier' to take into account a  
23 variety of other factors, including the quality of the representation, the novelty  
24 and complexity of the issues, the results obtained, and the contingent risk  
25 presented.

21           The two approaches to determining a fee contrast in their primary foci: 'The  
22 lodestar method better accounts for the amount of work done, while the  
23 percentage of the fund method more accurately reflects the results achieved.

23 *Id.* at 489 (emphasis added). Where the relief obtained is not easily monetized or is  
24 primarily injunctive in nature, the lodestar method is appropriate. *See Broomfield v.*  
25 *Craft Brew Alliance, Inc.*, 2020 WL 1982505, at \*11 (N.D. Cal. Feb. 5, 2020).

26           Here, the proposed settlement is a common fund. Under the common fund  
27 analysis, Plaintiff seeks fees of 33% of the settlement compensation, which equates to  
28 \$312,500. This amount was plainly disclosed to the Class and no class member has

1 objected to it. As discussed further below, the amount is also consistent with other class  
2 action data breach settlements given final approval where the claims and defenses are  
3 similar to those presented in this action.

## 4 **2. The Lodestar Plus Multiplier Method**

5 The lodestar method for establishing attorneys' fees in private attorney general cases was  
6 established in *Serrano v. Priest (Serrano III)* 20 Cal. 3d 25 (1997). There, the Supreme Court  
7 held that the starting point for determining the amount of attorneys' fees under the private  
8 attorney general doctrine begins by determining the "lodestar" amount. The "lodestar" is  
9 calculated by multiplying the time spent by the reasonable hourly compensation for the attorney  
10 involved in the presentation of the case. *Serrano III*, 20 Cal. 3d at 48, n.23; *see also Maria P. v.*  
11 *Riles*, 43 Cal. 3d 1281, 1294 (1987); *Vo v. Las Virgenes Muncipal Water District*, 79 Cal. App.  
12 4th 440, 445 (2000); *Laffitte*, 1 Cal. 5th at 489.

13 The court may then "increase or decrease that amount by applying a positive or negative  
14 'multiplier' to take into account a variety of other factors, including the quality of the  
15 representation, the novelty and complexity of the issues, the results obtained, and the contingent  
16 risk presented." *Id.* Accordingly, the "results obtained" is simply one of various factors the  
17 Court may consider when choosing to apply a positive or negative multiplier. *Id.* Typically,  
18 when the results obtained are particularly large, this factor is used to justify applying a positive  
19 multiplier.

20 Courts have cautioned, however, that when the primary calculation is based on a lodestar  
21 analysis and a fee-shifting statute, it is not appropriate to impose a negative multiplier based on  
22 the results obtained being comparatively small. *See, e.g., Seltzer v. R.W. Selby & Company, Inc.*,  
23 2017 WL 1684206 (Cal. App. May 3, 2017) (**reversing** trial court's reduction of class counsel's  
24 fees based on percentage of the recovery on grounds that the fees sought exceeded class recovery  
25 because the fee award under § 1021.5, a fee shifting statute, should have been based on lodestar  
26 method) (citing *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001) and *Lealao v. Beneficial Cal.,*  
27 *Inc.* 82 Cal. App. 4th 19, 53 (2000)). The California Supreme Court has instructed that attorney  
28 fee awards under section 1021.5 "should be fully compensatory" and "absent circumstances

1 rendering the award unjust, an attorney fee should ordinarily include compensation for **all** the  
2 hours **reasonably spent.**” *Ketchum*, 24 Cal. 4th at 1133 (emphasis in original). The Court of  
3 Appeal has acknowledged that although exorbitant fee awards “fuel[] public cynicism about class  
4 actions claiming to be in the public interest” it is also true that “awards that are too small can also  
5 be problematic, as they chill private enforcement essential to the vindication of many legal rights  
6 and obstruct the representative actions that often relieve the courts of the need to separately  
7 adjudicate numerous claims.” *Lealao*, 82 Cal. App. 4th at 53. “This is especially true in cases  
8 involving section 1021.5.” *Seltzer*, 2017 WL 1684206 at \*4 (citing *Ketchum*).

9 In *Seltzer*, the Court of Appeal, citing *Ketchum* and *Lealao*, specifically rejected the idea  
10 that attorneys’ fees should be reduced based only a small number of claims having been made:

11 [T]he benefit to the class resulting from the settlement if **all** class members had  
12 presented valid claims was not of mere nuisance value. . . The circumstance that  
13 only 559 valid claims were submitted [i.e. 5.3% of the 10,538 class members] does  
14 not diminish the results obtained by the litigation. The resulting fee must still bear  
some reasonable relationship to the lodestar figure and to the purpose of the private  
attorney general doctrine.

15 *Seltzer*, 2017 WL 1684206 at \*4 (citing *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 323-24  
16 (1983). In non-class cases that involve fee-shifting statutes courts have likewise rejected the idea  
17 that a fee award based on a fee-shifting statute need be proportionate to the results obtained.<sup>1</sup>

18 In *Ketchum*, the California Supreme Court affirmed the use of multipliers to provide market  
19 rate compensation to attorneys who undertake contingent, public interest litigation. In such cases,  
20 the Supreme Court found that the unadorned lodestar is not reasonable compensation because it  
21 does not reflect the marketplace; that is, it does not provide a premium comparable to that earned

22 <sup>1</sup> See *Taylor v. Nabors Drilling USA, LP*, 222 Cal. App. 4th 1228 (2014) (“A reversal is not  
23 compelled merely because the lodestar figure substantially exceeds respondent’s recovery of  
24 \$150,000. Appellant has not cited any authority requiring that fee awards be proportional to the  
25 amount of damages recovered.”); *Harman v. City and County of San Francisco*, 58 Cal.App.4th  
26 407, 421 (2008) (“There is ‘no mathematical rule requiring proportionality between  
27 compensatory damages and attorney’s fees awards, [citation], and courts have awarded attorney’s  
28 fees where plaintiffs recovered only nominal or minimal damages”); *Graciano v. Robinson  
Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 164 (2006) (attorney fee award reversed when trial  
court “imposed a downward adjustment based on its notion of an appropriate contingent fee  
percentage, regardless of the amount of attorney fees [plaintiff’s] counsel assertedly incurred”);  
*Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 323-24 (1983) (trial court abused its discretion  
because “arbitrary formula” used to determine the amount of fees was “an illogical measure of the  
results obtained by the litigation”).



1 by all attorneys who undertake the risk of contingent fee litigation.

2 Under our precedents, the unadorned lodestar reflects the general local hourly rate  
3 for a fee-bearing case; it does not include any compensation for contingent risk,  
4 extraordinary skill, or any other factors a trial court may consider under *Serrano*  
5 *III*. The adjustment to the lodestar figure, e.g., to provide a fee enhancement  
6 reflecting the risk that the attorney will not receive payment if the suit does not  
7 succeed, constitutes earned compensation; unlike a windfall, it is neither  
8 unexpected nor fortuitous. Rather, it is intended to approximate market-level  
9 compensation for such services, which typically includes a premium for the risk of  
10 nonpayment or delay in payment of attorney fees.

11 *Ketchum*, 24 Cal. 4th at 1138; *see also Ketchum*, 24 Cal. 4th at 1136; *Lealao*, 82 Cal. App. 4th at  
12 47.

13 Multipliers in class action litigation typically range from 2 to 4 or even higher. *Wershba*, 91  
14 Cal. App. 4th at 255; *see also Van Vranken v. Atlantic Ritchfield Co.*, 901 F. Supp. 294,298 (N.D.  
15 Cal. 1995) (multipliers in the 3-4 range are common in lodestar awards for class actions); *Keith v.*  
16 *Volpe*, 86 F.R.D. 565,575-577 (C.D. Cal. 1980) (awarded multiplier of 3.5); *Mangold v. Cal.*  
17 *Public Utilities Commn.*, 67 F.3d 1470 (9th Cir. 1995) (applying California law to award 2.0  
18 multiplier in age discrimination case); *Glendora Community Redevelopment Agency v. Demeter*,  
19 155 Cal. App. 3d 465 (1984) (multiplier of 12 affirmed); *City of Oakland v. Oakland Raiders*,  
20 203 Cal. App. 3d 78, 82-83, 86 (1988) (enhancing \$853,756 lodestar by approximately 2.3 to  
21 award a \$2 million fee).

22 Indeed, failure to award multipliers to reflect market-rate compensation for attorneys  
23 performing similar services would discourage competent, qualified attorneys from undertaking  
24 contingent consumer litigation, leaving class representation to attorneys who are less skillful and  
25 experienced than the attorneys defending such lawsuits. Such a result would defeat the purpose  
26 of consumer class litigation which, as the California Supreme Court recognizes, promotes a  
27 variety of public policy principles:

28 Not only do class actions offer consumers a means of recovery for modest  
individual damages, but such actions often produce ‘several salutary by-products,  
including a therapeutic effect upon those sellers who indulge in fraudulent  
practices, aid to legitimate business enterprises by curtailing illegitimate  
competition, and avoidance to the judicial process of the burden of multiple  
litigation involving identical claims.

1 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 445 (2000).

2 Finally, counsel who facilitate a prompt settlement should be rewarded with a fully  
3 compensatory fee. *Lealao*, 82 Cal. App. 4th at 52 (citing *Neary v. Regents of University of*  
4 *California*, 3 Cal. 4th 273, 277-280 (1992) (“Considering that our Supreme Court has placed an  
5 extraordinarily high value on settlement ... it would seem counsel should be rewarded, not  
6 punished, for helping to achieve that goal, as in federal courts.”)).

7 Class members deserve the same quality of representation as defendants. Such defendants  
8 are usually represented by teams of sophisticated and experienced class action defense attorneys  
9 from large commercial law firms, as here. As the Supreme Court recognized in *Ketchum*,  
10 reasonable multipliers are needed in order to encourage qualified lawyers to take on the  
11 substantial risk of litigation against such formidable foes.

### 12 **3. The Requested Lodestar Amount is Reasonable**

13 The concurrently filed declaration of Class Counsel summarize the services performed and  
14 the time spent on this case. Both the amount of hours set forth in the declaration and counsel’s  
15 hourly rate are reasonable, and Class Counsel deserves to be fully compensated for all work  
16 performed. *Feminist Women’s Health Center v. Blythe*, 32 Cal. App. 4th 1641, 1674 n.8 (1995).

17 Testimony of an attorney as to the number of hours spent on a particular case is sufficient  
18 evidence to support an award of attorneys’ fee. *Wershba*, 91 Cal. App. 4th at 254-255; *Martino v.*  
19 *Denevi*, 182 Cal. App. 3d 553, 559 (1986). Fee awards are to be based on the prevailing billing  
20 rates of attorneys in private practice with similar skills and experience. *Serrano v. Unruh*, 32 Cal.  
21 3d 621, 643 (1982).

22 In this case, Class Counsel has provided testimony regarding the total number of hours  
23 worked on this matter. Wucetich Decl. ¶¶ 14-20; Srourian Declaration. Class Counsel has also  
24 provided testimony regarding its hourly rate and prevailing rates for attorneys in private practice  
25 with similar skills and experience. *Id.* Class Counsel seeks compensation in this action based on  
26 reasonable, hourly rates. *Id.* Together those figures create a pure lodestar fees figure of  
27 \$317,680 Wucetich Decl. ¶20. ***Plaintiff does not seek a multiplier, and in fact seeks less than***  
28 ***the pure lodestar amount worked on this matter***, for a total amount of \$312,500 in attorneys’

1 fees and \$10,196.46 in costs incurred related to this case, as agreed to by the parties as part of the  
2 settlement of this matter.

3 Class Counsel are experienced litigators with extensive trial and class action experience.  
4 They have been certified class counsel in numerous consumer and employment cases. The firms  
5 involved in this case have a broad and sophisticated legal practice, including a number of  
6 consumer class action litigation matters. Wucetich Decl. ¶¶ 9-13.

7 **B. The Attorneys' Fees Amount is Commensurate with Other Attorneys'**  
8 **Fees Awards in Similar Class Data Breach Cases**

9 The agreed upon \$312,500 figure is also reasonable in that it is commensurate  
10 with other attorneys' fees awards in similar class settlements of data breach and  
11 consumer protection cases. Plaintiffs here seek an award of 33% of the gross settlement  
12 amount. This amount, which was disclosed in the notice to class members, is reasonable,  
13 and was not objected to by any class member. *See Gonzalez v. Hunt Enterprises, Inc. et*  
14 *al.*, Dkt. 22STCV15057 (Cal. Super. Ct.), at October 31, 2023, (awarding attorneys' fees  
15 that amounted to 35% of the gross settlement fund, in addition to expenses); *Feao v. UFP*  
16 *Riverside, LLC*, No. CV173080PSGJPRX, 2019 WL 12340202, at \*7 (C.D. Cal. Oct. 22,  
17 2019) ("...Class Counsel's request for attorneys' fees in the amount of 35 percent of the  
18 common fund is reasonable.") (collecting cases); *Laffitte, supra*, 1 Cal.5th at 487  
19 [California Supreme Court upholding fee award of 33% of a common fund but stating an  
20 award of 40% "is within a historical range of 20 to 50 percent of a common fund."]; *see*  
21 *also, Pomerants v. Skechers U.S.A., Inc.*, Los Angeles Super Court Case No. BC436360,  
22 Order Dated February 7, 2012 (approving class settlement with \$275,000 award to  
23 Plaintiff's counsel); *Konevskya v. Tommy Bahama Group, Inc.*, Los Angeles Superior  
24 Court Case No. BC424931, Order Dated December 12-13, 2011 (approving class  
25 settlement with \$250,000 award to Plaintiff's counsel in attorneys' fees); *Kiss v. Louis*  
26 *Vuitton North America, Inc.*, Los Angeles Superior Court Case No. BC405192, Order  
27 Dated Dec. 11, 2009, ¶ 7 (approving class settlement with \$197,500 award to Plaintiff's  
28 counsel in attorneys' fees).

1           **V. PLAINTIFFS' ENHANCEMENT AWARDS**

2           When a settlement is given final approval at the fairness hearing, a class representative  
3 may make an application for an incentive award in recognition of the risk taken in commencing  
4 the action and the representative's work in prosecuting the action. California case law does not  
5 address the standard by which the Court is to evaluate the granting of an incentive award. Thus,  
6 federal case law is instructive. *Apple Computer v. Superior Court (Cagney)*, 126 Cal. App. 4th  
7 1253, 1264, n.4 (2005) (California courts may look to federal authority for guidance on matters  
8 involving class action procedures).

9           Under federal law, class representatives are eligible to receive reasonable incentive  
10 payments. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). The factors the court  
11 considers include "the actions the plaintiff has taken to protect the interests of the class, the  
12 degree to which the class has benefit[ed] from those actions, ... the amount of time and effort the  
13 plaintiff expended in pursuing the litigation ... and reasonabl[ e] fears[s of] workplace  
14 retaliation." *Id.* at 977. Here, Plaintiffs have expended substantial time and effort to enforce the  
15 important public policy of privacy and consumer protection by pursuing this action on behalf of  
16 the general public and achieving the settlement now before the Court. Wucetich Decl. ¶ 20.  
17 Plaintiff researched, located and retained law firms with class action experience, particularly  
18 related to data breach class actions, to represent them and the Class in this Action. *Id.* Plaintiffs  
19 were aware of the risks he faced if they lost, including potentially having to pay Defendant's  
20 costs. *Id.*; Declarations of Plaintiffs. ¶¶ 3-9. Plaintiffs actively participated in the litigation by  
21 meeting with counsel and participating with counsel during the parties' investigations,  
22 developments and settlement of the case. *Id.*

23           If the settlement is granted final approval, Defendant has agreed to compensate each  
24 Plaintiff five thousand dollars (\$5,000) for their efforts and risk. This amount is fully  
25 commensurate with enhancement award paid to named plaintiff in consumer class action  
26 litigation. In fact, many courts have approved enhancement awards much larger than the one  
27 requested here. *See, e.g., Payless ShoeSource Wage and Hour Cases*, JCCP Case Number 4699  
28 (William F. Highberger, Los Angeles Superior Court, presiding) (2014) (approving \$10,000

1 enhancement award); *see e.g., Mann & Co. v. C-Tech Indus., Inc.*, 2010 WL 457572, at \*2 (D.  
2 Mass. Feb. 5, 2010) (approving \$15,000 incentive award to named plaintiff); *Barcia v. Contain-*  
3 *A-Way, Inc.*, 2009 WL 587844, at \*5 (S.D. Cal., March 6, 2009) (approving incentive awards of  
4 \$12,000 to each of several class representatives); *In re Cellphone Fee Termination Cases*, 186  
5 Cal.App.4th at 1394-95 (2010) (approving \$10,000 service awards); *see also In re TFT-LCD*  
6 *(Flat Panel) Antitrust Litig.*, Case No. 3:07-md-1827 SI, 2011 WL 7575003, at \*2 (N.D. Cal.  
7 Dec. 27, 2011) (approving \$15,000 incentive awards); *In re Wachovia Corp. "Pick-A-Payment"*  
8 *Mortg. Mktg. & Sales Pracs. Litig.*, No. 5:09-md-02015 JF, 2011 WL 1877630, at \*7 (N.D. Cal.  
9 May 17, 2011) (approving class representative incentive awards ranging from \$5,000 to \$14,250  
10 each); *Singer v. Becton Dickinson and Co.*, 08-cv-821-IEG (BLM), 2010 WL 2196104, at \*9  
11 (S.D. Cal. June 1, 2010) (finding class representative award of \$25,000 reasonable); *Munoz* at 412  
12 (approving \$5,000 enhancement).

13           Accordingly, the incentive awards agreed to be paid to Plaintiff is fair, adequate, and  
14 reasonable, and should be granted final approval.


15           **VI. CONCLUSION**

16           The requested attorneys' fee and costs award was earned by competent, qualified Class  
17 Counsel. The parties agree that the amount now sought is fair and reasonable in light of the risks  
18 involved and benefits achieved for California consumers. No class member has objected to the  
19 requested fee, cost and/or enhancement amount. Accordingly, an order awarding the negotiated  
20 fee is proper and warranted, and the Court should grant the motion.

21 Dated: January 29, 2025

WUCETICH & KOROVILAS LLP

22  
23 By: \_\_\_\_\_

  
Jason M. Wucetich  
Attorneys for Plaintiffs  
individually and on behalf of  
all others similarly situated