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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18
19 MIN WOO BAE, individually and on behalf
of all others similarly situated,

20 Plaintiff,

21 v.

22 PACIFIC CITY BANK,

23 Defendant.

Case No.: 21STCV45922

(Assigned to Hon. Judge William F. Highberger,
Dept. 10)

**NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AWARD OF
ATTORNEYS' FEES, COSTS, EXPENSES,
AND SERVICE AWARDS**

DATE: February 9, 2024

TIME: 8:30 a.m.

DEPT.: 10

Complaint filed: December 16, 2022

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 9, 2024, at 8:30 a.m. or as soon thereafter as
3 the matter may be heard in Department 10 of the above-entitled Court located 312 N Spring St,
4 Los Angeles, CA 90012, Plaintiff Min Woo Bae (“Plaintiff”) will and does hereby move the Court
5 for an Order for an Order awarding Class Counsel attorneys’ fees in the amount of \$233,333.33,
6 reimbursement of reasonable costs and litigation expenses in the amount of \$28,910.09 for their
7 legal services relating to the claims that have been asserted in this case, and a service award of
8 \$5,000 to the Plaintiff for his service as the Class Representative.

9 Good cause supports the requested Order. Plaintiff and those whom he represents are
10 prevailing parties. Class Counsel’s efforts have created substantial benefit for the Class. Class
11 Counsel are entitled to fees under the common fund doctrine; Code of Civ. Proc. § 1021.5 and
12 consistent with the provisions of the Joint Stipulation of Class Action Settlement (“Settlement
13 Agreement”). The amount of the requested fee is reasonable, including under the percentage of
14 recovery method and under the lodestar multiplier method, against which the proposed percentage
15 of recovery method award may be cross-checked.

16 This Motion is based upon this Notice, the Motion, the accompanying Memorandum of
17 Points and Authorities, the previous declarations of Kiley L. Grombacher, Terence R. Coates, and
18 Joseph M. Lyon submitted in support of preliminary approval; the Settlement Agreement attached
19 as Exhibit 1 thereto; and the declaration of Joseph M. Lyon in support of this Motion, and all
20 pleadings, records, and papers on file in this action, and such other further evidence and arguments
21 as may be presented at the time of the hearing in this matter.

22 **DATED: October 18, 2023**

23 By, /s/ Kiley L. Grombacher
24 **BRADLEY/GROMBACHER LLP**
25 Marcus J. Bradley, Esq.
26 Kiley L. Grombacher, Esq.
27 Lirit A. King, Esq.

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THE LYON FIRM
JOSEPH M. LYON (*pro hac vice* forthcoming)

MARKOVITS, STOCK & DEMARCO, LLC
TERENCE R. COATES (*pro hac vice* forthcoming)

Attorneys for Plaintiff and the Proposed Class

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1 Class Representative Min Woo Bae, individually and on behalf of the Settlement Class,¹
2 submits this Memorandum of Points and Authorities in Support of Plaintiff’s Unopposed Motion
3 for Award of Attorneys’ Fees, Costs, Expenses, and Service Awards to compensate himself and
4 his counsel for the skillful work they undertook on a completely contingent basis to achieve a
5 highly beneficial class action settlement.

6 **I. INTRODUCTION**

7 Plaintiff filed this Putative Class Action on December 16, 2021, after receiving notice that his personal
8 identifying information (“PII” or “Private Information”) was subject to data breach suffered by Pacific City
9 Bank (“PCB”) on or around August 30, 2021. Plaintiff alleges that a third-party threat actor group gained
10 unauthorized access to PCB’s systems and acquired certain files and posted sample images to the internet
11 (“Data Incident”). In response to the Data Incident, Defendant sent a Notice Letter to each of the
12 approximately 15,037 impacted individuals providing a description of the type of Private Information
13 involved, which may have included: loan applications, tax returns, Form W-2, payroll records, names,
14 addresses, Social Security numbers, and other tax information.

15 On March 29, 2022, PCB filed its Demurrer to Plaintiff’s Class Action Complaint. Then, on May 3,
16 2022, after the Parties had fully briefed Defendant’s Demurrer that addressed each of Plaintiff’s four Counts,
17 this Court entered a Tentative Ruling Overruling Defendant and allowing Plaintiff’s claims to proceed on all
18 Counts. Thereafter, recognizing the benefits of possible early resolution, the Parties agreed to mediation.

19 After months of settlement discussion, which included informal discovery related to class size,
20 available insurance, mechanism and scope of the breach, data misuse (dark web activity), notice, and the cost
21 of identity theft program previously offered, and two arms-length mediations, PCB and Class Counsel, on
22 behalf of the Plaintiffs, agreed to a settlement in principle and ultimately the Settlement Agreement, which
23 provides substantial benefits to the Settlement Class, eliminates the costs and burdens of continued litigation,
24 and fully accomplishes Plaintiff’s goals of this Action.

25
26 ¹ Capitalized terms herein have the same meanings as defined in the Class Action
27 Settlement Agreement (the “Settlement Agreement” or “S.A.”).

1 Specifically, the Settlement Agreement provides that PCB will provide for a non-reversionary
2 common fund of seven hundred thousand dollars (\$700,000.00) that would offer all Class Members the
3 opportunity to submit a Claim Form for certain Claimed Benefits, including: (a) Pro-Rata Cash Payment; (b)
4 Out-of-Pocket-Expense Claims; (c) Lost-Time Claims; (d) Verified Fraud Claims; and (e) CCPA Payment,
5 and any Valid Claim may be combined with any other Valid Claim. S.A. Sec. 2 and Sec. 6. The proposed
6 Settlement also includes verification on data security improvements to help protect the Settlement
7 Class and other customers from the risk of future data Incidents. S.A. Sec. 2.3.

8 The factual background and the granular details of the settlement are set forth in Plaintiff’s
9 Motion for Preliminary Approval of the Settlement—granted by this Court on August 3, 2023—
10 and will be described in the forthcoming Motion for Final Approval. But the settlement is well
11 within the range of known data breach class action settlements, as set out in the Motion for
12 Preliminary Approval.

13 Counsel for Plaintiff were only able to achieve this result through significant effort and
14 ingenuity. This settlement was the culmination of a nationwide class action, exhaustive legal and
15 factual research and briefing, informal discovery, and eventual mediation. Moreover, as set forth
16 in Plaintiff’s Motion for Preliminary Approval, there is always the risk that, as the defense
17 maintained, obtaining and maintaining certification posed a risk to Plaintiff and the Class. The
18 settlement obtained provides cash payments to all Class Members who file timely claims.

19 Here, counsel seek 33.3% of the total common fund of \$700,000.00, or \$233,333.33—an
20 amount Defendant has agreed to not contest. This request is well within the accepted range for
21 comparable cases. Indeed, “[e]mpirical studies show that, regardless whether the percentage
22 method or the lodestar method is used, fee awards in class actions average around one-third of the
23 recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11 (quoting *Shaw v. Toshiba*
24 *America Information Systems, Inc.* (E.D.Tex.2000) 91 F.Supp.2d 942, 972.); *see also, Laffitte v.*
25 *Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 485-486 (upholding a decision to approve a class
26 action settlement providing that plaintiff receive one-third of a \$19 million settlement).

27 Here, Plaintiff’s fee request is amply supported by the strong results achieved, skill of
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1 counsel in achieving them, risks undertaken in bringing the case, and the other factors that inform
2 the determination of reasonable fee awards. As further discussed below, Plaintiff’s fee request also
3 is reasonable under the lodestar-multiplier cross-check method, requiring only a modest multiplier
4 of 0.81. The out-of-pocket costs and expenses also are reasonable and well-documented. Finally,
5 Plaintiff seeks a service award of \$5,000. Plaintiff was an active participant in the litigation. For
6 these reasons and as further discussed below, Plaintiff respectfully requests that the Court grant
7 the Motion.

8 **II. THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS’ FEES**

9 **A. Plaintiff is entitled to attorneys’ fees under the common fund doctrine**
10 **(“fee spreading”).**

11 Plaintiff’s request for attorneys’ fees is well supported by the common fund doctrine.
12 Thereunder, the Court is empowered to award reasonable attorneys’ fees and costs where, as here,
13 a litigant proceeding in a representative capacity has achieved a “substantial benefit” for a class of
14 persons. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 38 (“*Serrano III*”). Plaintiff has achieved a
15 substantial benefit by securing the proposed \$700,000 non-reversionary class action settlement.
16 Thus, Plaintiff is entitled to reasonable attorneys’ fees and costs.

17 **B. The two methods for calculating the amount attorneys’ fees.**

18 There are two methods of calculating attorneys’ fees in civil class actions: (1) the
19 lodestar/multiplier method, and (2) the percentage of recovery method. *Wershba v. Apple*
20 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. While the trial court has discretion, one
21 recognized approach is to determine the plaintiffs’ lodestar fees, determine whether a multiplier is
22 warranted, and then “cross check” the propriety of that amount as a percentage of the overall
23 recovery. *See Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 49-50. It also is
24 permissible for courts to “double-check” the reasonableness of a percentage fee through a lodestar
25 calculation. *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 504.

26 Courts generally do not “closely scrutinize each claimed attorney-hour but have instead
27 used information on attorney time spent to ‘focus on the general question of whether the fee award

1 appropriately reflects the degree of time and effort expended by the attorneys.” *Laffitte*, 1 Cal.5th
2 at 505. Here, Plaintiff seeks final approval of a fee award of one-third of the \$700,000.00 proposed
3 settlement. As discussed below, an award of one-third of the common fund (\$233,333.33) is
4 reasonable and warranted in light of the contingency risk and difficulty of the representation here,
5 as well as the excellent results achieved. Furthermore, the “Lodestar-Multiplier” cross-check
6 supports the reasonableness of Plaintiff’s fee request.

7 **C. A fee award of 33.3% of the total settlement amount is fair and**
8 **reasonable under the common fund doctrine.**

9 PCB has agreed in the Settlement Agreement to pay up to a maximum of \$233,333.33 for Plaintiff’s
10 Counsel’s Fees and Expenses, and \$5,000.00 in Service Award to Plaintiff, subject to approval by the Court.
11 In cases like this one, which involve significant common fund recoveries, courts are empowered to award
12 appropriate fees under the percentage of the fund method. *Laffitte, supra*, 1 Cal.5th at 503. The Supreme Court
13 of California recently reaffirmed that “when class action litigation establishes a monetary fund for the benefit
14 of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
15 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
16 created. *Id.* The high court approved of this approach because of the “recognized advantage of the percentage
17 method—including relative ease of calculation, alignment of incentives between counsel and the class, a
18 better approximation of market conditions in a contingency case, and the encouragement it provides counsel
19 to seek an early settlement and avoid unnecessarily prolonging the litigation” *Id.*

20 Here, counsel for Plaintiff and the class seek an award of fees that is 33% of the total common fund
21 of \$700,000.00, or \$233,333.33. This request is justified by the nature of the case, the work involved, and
22 the risks taken, and is in line with other attorney fee awards in common fund cases.

23 In California, attorneys’ fee awards of around one-third of the value of the recovery to the class are
24 common. In fact, “[e]mpirical studies show that, regardless of whether the percentage method or the lodestar
25 method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*
26 (2008) 162 Cal. App. 4th 43, 66, fn. 11. In *Laffitte, supra*, the Supreme Court upheld a fee award of 33% of
27 the common fund and stated that an award of 33% “is within a historical range of 20 to 50 percent of a
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1 common fund.” 1 Cal. 5th at 487. Other California courts have reached similar results. *See, e.g., Schulz v.*
2 *Jeppesen Sanderson, Inc.* (2018) 27 Cal. App. 5th 1167, 1175 (noting that “31 percent is not out of line with
3 awards in class actions”); *Augustus v. American Commer. Sec. Servc’s.* (L.A. Cnty. Super. Ct., July 6, 2017)
4 No. BC336416, 2017 WL 11417614 (approving 30% fee plus 3 and 1/3% fee for appellate work); *Helmick*
5 *v. AJR Methods Corp.* (Alameda Cnty. Super. Ct., Oct. 14, 2020) No. RG13-665373, 2020 WL 7090367, at
6 *2 (“The court ORDERS that class counsel are awarded fees of one third of the 2020 final settlement . . .”).
7 Furthermore, the Los Angeles County Superior Court regularly approves fee requests for 1/3 of
8 the common fund. *See, e.g., Contreras v. Zum Servs., Inc.*, No. 19STCV43062, 2022 WL 4295607,
9 at *5-6 (Mar. 25, 2022 Cal.Super.) (Riff, J.) (“Plaintiffs seek attorneys’ fees and costs in the amount
10 of approximately \$633,333, which is 1/3 of the settlement amount. . . . The court approves an
11 attorneys’ fee award equal to 1/3 of the total settlement amount as reasonable.”); *Halcomb v.*
12 *Autism Response Team Inc.*, No. BC604363, 2018 WL 4278937, at *6 (July 18, 2018 Cal.Super.)
13 (Nelson, J.) (“The \$916,666.66 fee request is 1/3 of the \$2,750,000.00 gross settlement amount,
14 which is average. Here, the \$916,666.66 fee request represents a reasonable percentage of the total
15 funds . . .”) (internal citation omitted); *Rios v. Laurmark Enterprises Inc.*, No. BC650323, 2018
16 WL 11275564, at *7 (Oct. 3, 2018 Cal.Super.) (Nelson, J.) (similar); *Reyes v. Front Porch*
17 *Communities & Servs.* (Apr. 17, 2018 Cal.Super.) Nos. BC622720, BC607175, 2018 WL 3760672,
18 at *3 (Kuhl, J.) (similar); *Martinez v. Flying Food Grp. Pacific Inc.* (Feb. 8, 2018 Cal.Super.) Nos.
19 BC508478, BC569325, 2018 WL 2291094, at *5 (Jones, J.) (similar).

20 Likewise, common fund awards of 33.3% of the fund—what Plaintiff seeks here—have repeatedly
21 been held appropriate by the federal courts. *See, e.g., Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. July
22 2, 2013) 297 F.R.D. 431, 448 (awarding 33.3%); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. Mar. 9,
23 2010) 266 F.R.D. 482, 492 (finding 33.3% attorneys’ fee award reasonable).

24 As explained more fully below, the results obtained for the class are outstanding and counsel spent
25 considerable time and effort on this litigation. The nature of the claims, which dealt with the theft of sensitive
26 personal information from Defendant required substantial research and creative thinking to resolve. Further,
27 Defendant raised defenses to all of Plaintiff’s claims, including his claim arising out of the CCPA, which
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1 created risk to the Plaintiff and the class, that their recovery would be reduced or non-existent, that class
2 certification would not be granted or that they would spend years waiting for resolution of this matter as the
3 case wound through appeals. Class counsel assumed all the risks of litigation and faced a very real possibility
4 of recovering nothing. All of these factors demonstrate a 33% fee is justified.

5 **D. The recovery and substantial benefit provided to the Class justifies an**
6 **upward adjustment.**

7 In light of the litigation risks and the per person allocation achieved, Class Counsel
8 negotiated an excellent settlement, which justifies the modest upward adjustment to a fee of one-
9 third of the fund. The non-reversionary \$700,000 Settlement confers valuable benefits on the Class
10 that could not have been obtained without this Litigation.

11 As discussed previously, the Settlement provides significant and appropriate monetary
12 benefits to Class Members. Here, the Plaintiff has secured the Class of 15,037 members the
13 opportunity to receive pro rata cash payments and up to \$5,000 per Class Member for
14 reimbursement of documented losses, verified fraud, and lost time. S.A. ¶¶ 2.1, 2.2. Each member
15 of the California Subclass who submits a valid Claim Form will also receive a statutory benefit of
16 \$100.00. *Id.* ¶ 2.3. The \$700,000 common fund equates to over \$46 per class member (before costs
17 and fees). Moreover, if the claims rate meets the average of 2.45%, (*see* previously filed Motion
18 for Preliminary Approval, 4:11.), the average per claim value would be \$1,902 per class member
19 (before costs and fees), which confers substantial value to this Class, which is exceedingly higher
20 than other reported data breach settlements. *See, e.g., In re Target Corp. Customer Data Sec.*
21 *Breach Litig.* provided a settlement fund of \$10 million for 100 million members equating to \$0.10
22 per member. No. 14-2522 (PAM), 2017 U.S. Dist. LEXIS 75455, at *5 (D. Minn. May 17, 2017),
23 *aff'd, In re Target Corporation Customer Data Security Breach Litig.* (8th Cir. 2018) 892 F.3d
24 968, 979; *In re Yahoo! Inc. Customer Data Sec. Breach Litig.* included 194 million class members
25 and a \$117.5 million fund, or \$0.61 per member. (N.D. Cal. July 22, 2020) No. 16-MD-02752,
26 2020 U.S. Dist. LEXIS 129939, at *47; *In re Herff Jones Data Breach Litig.*, (S.D. Ind. July 19,
27 2022) No. 1:21-cv-1329 (Dkt. 73, at 3) (included a class size of 1 million members and a common
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1 fund of \$4,350,000 or \$4.35 per member). Finally, all Class Members will receive the benefit of
2 the cybersecurity enhancements implemented by PCB.

3 The modest upward adjustment here is permissible under California law. See *Chavez v.*
4 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (2.5 multiplier that class counsel received is in line
5 with prevailing case law); *Wershba v. Apple Computer, Inc.*, supra, 91 Cal.App.4th at 255
6 (multipliers can range from 2 to 4 or even higher); *City of Oakland v. Oakland Raiders* (1988) 203
7 Cal.App.3d 78 (affirming a multiplier of 2.34).

8 **E. The risks presented by the contingent nature of the recovery and**
9 **complex nature of the case justify fee award of 33.3% of the common**
10 **fund.**

11 The risks associated with the contingent nature of this action justify the requested fees. “It
12 is an established practice in the private legal market to reward attorneys for taking the risk of non-
13 payment by paying them a premium over their normal hourly rates for winning contingency cases.”
14 *Fischel v. Equitable Life Assurance Soc’y of U.S.* (9th Cir. 2002) 307 F.3d 997, 1008. By
15 undertaking a class action on a contingency fee basis, counsel not only must turn away other
16 income-generating opportunities but must take on a substantial risk of “never receiving
17 compensation at all.” *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1217-18.

18 Counsel take their cases on a contingent fee basis and rely on attorneys’ fee awards to
19 continue their work for the enforcement of privacy standards. Lyon Decl. ¶ 11. Indeed, Counsel
20 did not charge the Plaintiff or the Class for their work on the case and as of October 17, 2023,
21 Counsel have invested a total of 365.8 attorney hours in this case and have not yet received any
22 payment for them. *Id.* In addition, Counsel have to date incurred \$28,910.09 in out-of-pocket costs,
23 which they have not yet recouped. *Id.* ¶ 14. During the course of this case, Counsel also had to
24 forego requests by other prospective clients to bring other cases with merit to ensure that they
25 could continue to adequately and successfully represent the Plaintiff and the Class in this matter.

26 Like other important and complex data breach class actions, this case carried a risk of no
27 recovery at all for either the class or the attorneys representing them. Examples of the specific risks
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1 faced here included whether Plaintiff would prevail on a contested motion for class certification;
2 whether Plaintiff would be able to prove up damages across the Class; and whether Defendant
3 would prevail on any number of its affirmative defenses. As is the nature of contingency work,
4 Plaintiff's Counsel sometimes recover very little or nothing at all, even for cases that may be
5 meritorious, due to a variety of factors that may or may not have anything to do with the merits.
6 When Counsel do succeed in vindicating statutory and privacy rights on behalf a class of
7 consumers, such as in this case, they depend upon reasonable percentage-of-the-fund fee awards
8 to enable them to take on similar risks in future cases. Otherwise, they could not continue to
9 represent consumers who have been the victim of data security incidents and/or cyber-attacks, but
10 whose cases may be time-consuming and difficult to prove.

11 The instant case is one in which Plaintiff's Counsel's skill, efforts, and representation of the
12 Class secured strong benefits for the Class Members. Indeed, defendants throughout the country
13 have successfully defeated class certification on similar data breach claims. *See for example*, Order
14 Denying Class Certification, *Flores-Mendez v. Zoosk, Inc.* (N.D. Cal. July 27, 2022) No. 3:20-
15 04929-WHA, 2022 WL 2967237.

16 Moreover, Plaintiff had to contend with the California Court of Appeals decision in *Moore*
17 *v. Centrelake Med. Group, Inc.* (Cal. App. 2d Dist. Sept. 16, 2022) No. B310859, 2022 WL
18 4285804. There, the court affirmed dismissal of the plaintiffs' negligence claim under the
19 economic loss doctrine, ruling that lost time was an economic injury. *Id.* at *12. The court also
20 held that lost-value-of-PII was not a cognizable injury under the UCL. *Id.* at *13.

21 From the first interviews with the named Plaintiff through mediation and the settlement
22 process, Plaintiff's Counsel worked hard to ensure that the relief being sought by the case would
23 be realized on a wholly contingent basis, effectively loaning their services to the Class Members
24 during this time and taking on the risk of recovering nothing or close to nothing in light of the
25 difficulties and uncertainties of class litigation. Given all these considerations, a fee award
26 amounting to one-third of the common fund settlements is fair and reasonable.

27 ///

1 **F. The skill required and quality of Counsel’s work justify an upward**
2 **adjustment.**

3 Counsel’s expertise and experience in complex data privacy cases lend further support to
4 the requested fee. Bradley/Grombacher LLP is a national law firm with extensive experience
5 litigating complex consumer class actions, including those involving data privacy and the CCPA.
6 *See generally*, Grombacher Decl. The partner on this matter, Kiley Grombacher, has litigated
7 plaintiff-side class actions for over fifteen years, primarily in the consumer realm. *Id.* Ms.
8 Grombacher has personally been lead counsel and/or actively participated as plaintiffs’ counsel in
9 many class actions that have achieved significant and beneficial results for the class. *Id.*².
10 Moreover, she has extensive experience in cases involving data breach and privacy. *Id.*

11 Courts around the country have recognized Markovits, Stock & DeMarco as experienced in
12 handling complex cases including class actions. *Shy v. Navistar Int’l Corp.*, No. 3:92-CV-00333,
13 2022 WL 2125574, at *4 (S.D. Ohio June 13, 2022) (“Class Counsel, the law firm Markovits,
14 Stock & DeMarco, LLC, are qualified and are known within this District for handling complex
15 including class action cases such as this one.”); *Bechtel v. Fitness Equip. Servs., LLC*, 339 F.R.D.
16 462, 480 (S.D. Ohio 2021) (“plaintiffs’ attorneys have appeared in this Court many times and have
17 substantial experience litigating class actions and other complex matters.”); *Schellhorn v. Timios,*
18 *Inc.*, No. 2:221-cv-08661, 2022 WL 4596582, at *4 (C.D. Cal. May 10, 2022) (noting that Class
19 Counsel, including “Terence R. Coates of Markovits, Stock & DeMarco, LLC, have extensive
20 experience litigation consumer protection class actions ...”); *Bedont v. Horizon Actuarial*
21 *Services, LLC*, No. 1:22-CV-01565, 2022 WL 3702117, at *2 (N.D. Ga. May 12, 2022) (noting

22
23 ² In recent months, two federal district courts have commented on excellent results obtained by
24 Bradley/Grombacher LLP attributable to our skilled advocacy and determination. *See, In re Johnson &*
25 *Johnson Aerosol Sunscreen Mktg., Sales Pracs. & Prod. Liab. Litig.* (S.D. Fla. Feb. 28, 2023) 2023 WL
26 2284684, at *9 (“The Court has observed class counsel’s diligence, ability, and experience in pleadings and
27 motion practice; in their presentation of the settlement to this Court; and in their attention to matters of
28 notice and administration after the announcement of the settlement. The excellent job Class Counsel have
done for the class is also demonstrated in the benefits afforded by the Settlement.”); *Razo v. AT&T Mobility*
Servs., LLC, (E.D. Cal. Apr. 26, 2023) 2023 WL 3093845, at *24, *26 (commenting on the skill class
counsel displayed faced with complex issues and significant uncertainty as to the viability of the claims
throughout much of the case).

1 While the “percentage of the fund method” is proper in class actions, “trial courts have discretion to
2 conduct a lodestar cross-check on a percentage fee.” *Laffitte, supra*, 1 Cal. 5th at 506; *see also Schneider v.*
3 *Chipotle Mexican Grill, Inc.* (N.D. Cal. 2020) 336 F.R.D. 588, 600. Nevertheless, “[t]rial courts ‘also retain
4 the discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness of a
5 requested percentage fee.’” *Laffitte, supra*, 1 Cal. 5th at 506. If the Court desires to conduct a lodestar cross-
6 check, it demonstrates that the requested fee is reasonable.

7 Under the two-step lodestar-multiplier method, the Court first calculates the lodestar, i.e., all the hours
8 reasonably spent multiplied by reasonable hourly rates. *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1133.
9 Second, courts may enhance or multiply the lodestar “based on a number of factors in order ‘to fix a fee at the
10 fair market value for the particular action.’” *Syers Props. III v. Rankin* (2014) 226 Cal. App. 4th 691, 697-98.
11 The adjusted lodestar should not be significantly different from the percentage fee freely negotiated in
12 comparable litigation. *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 50.

13 As of October 18, 2023, the collective lodestar is \$285,711.00, resulting in a modest multiplier of
14 0.81.

15 **1. Counsel’s Hourly Rates and Hours Spent are Reasonable**

16 Plaintiff’s Counsel are entitled to the hourly rates charged by attorneys of comparable experience,
17 reputation, and ability for similar litigation. *Ketchum v. Moses, supra*, 24 Cal. 4th at 1133; *Syers Props. III,*
18 *supra*, 226 Cal. App. 4th at 700. Payment at full market rates is essential to fulfill the goal of enticing qualified
19 counsel to undertake difficult consumer litigation such as this. *San Bernardino Valley Audubon Soc’y* (1984)
20 155 Cal. App. 3d 738, 755. To determine whether attorney rates are reasonable, courts look to prevailing
21 market rates in the community in which the court sits. *Shaffer v. Super. Ct.* (1995) 33 Cal. App. 4th 993, 1002.
22 An attorney’s actual billing rate for similar work is presumptively appropriate. *Wershba v. Apple Computer,*
23 *Inc.* (2001) 91 Cal. App. 4th 224, 254-55. Additionally, attorney declarations are satisfactory evidence of
24 prevailing market rates. *Welch v. Metro. Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 947.

25 Here, Class Counsel’s rates are reasonable, within the range of rates routinely approved in data breach
26 and other class actions. While counsel who work on contingency cases do not charge clients on an hourly
27 basis, these rates are representative of the standard rates approved by courts in these and other cases. Due to
28

1 the nature of the damages and the value of each individual case, it would be nearly impossible for any
2 particular class member, based on these facts, to retain an attorney on an hourly basis. Such is the case in most
3 class actions, and the reason it is an approved vehicle for the vindication of the rights of those with smaller
4 value claims. Nonetheless, Class Counsel's rates are well within the range of rates billed by comparable
5 attorneys in the consumer class action market throughout the state. (*See* Lyon Decl. ¶ 13). Class Counsel's
6 skill and experience justify these rates. Further, this group of law firms is a representative sample of the firms
7 in the market and their rates are also well within the rates approved as reasonable by other courts.

8 In California, counsel are entitled to compensation for every hour reasonably spent litigating a matter.
9 *Ctr. For Biological Diversity* (2010) 185 Cal. App. 4th 866, 895-96; *Ketchum v. Moses*, *supra* at 1133.
10 Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed,
11 including time spent interviewing the clients, investigating the facts and the law, and preparing the initial
12 pleadings. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should also include
13 fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639.
14 Detailed time records are not required, and the court is permitted to rely on declarations of counsel. *See In re*
15 *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (relying on summary declarations
16 to establish reasonable hours worked); *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254-55.

17 Here, Counsel spent 365.8 attorney hours litigating this case and bringing it to fruition. (Declaration
18 of Joseph M. Lyon ¶13). This includes time spent investigating the claims and drafting pleadings, including
19 complaints, law and motion practice, attending hearings, reviewing documents and performing legal research
20 on numerous issues, exchanging important information through pre-mediation informal discovery, preparing
21 for and participating in out-of-town mediation, and extensive settlement negotiations and communications
22 and meetings among the parties and counsel, and communications with Class Members since the initial filing
23 of the lawsuits (Lyon Decl. ¶ 13). Further, counsel's work is not yet done. Counsel will still be performing
24 various tasks related to this matter and for the benefit of the Class including, but not limited to: (1) preparing
25 reply briefing in support of the instant motion; (2) continuing to oversee the claims administration process;
26 (3) confirming/monitoring the status and maintenance of the security enhancements to ensure all agreed
27 enhancements are timely implemented; (4) providing status reports to the Court as needed or required; (5)

1 moving for final approval of the settlement, responding to any objections to the settlement, and attending the
2 final approval hearing; and (6) attending to class member inquiries. Indeed, Class Counsel may spend
3 thousands of dollars of additional attorney time.

4 Counsel will receive no further compensation for this work other than the funds approved on this
5 motion. Thus, Class Counsel request the Court find these hours were and are reasonably expended in this
6 litigation.

7 **2. The Fee Sharing Between Counsel Was Adequately Disclosed**

8 Finally, in class actions, an attorney’s agreement to share legal fees is governed by Rules of
9 Professional Conduct, rule 2–200 (“rule 2–200”) and California Rules of Court, rule 3.769 (“rule 3.769”).
10 Rule 2–200 permits an attorney to share legal fees with another lawyer only with the client’s informed, written
11 consent. Rule 3.769 requires an applicant seeking court approval of a class action settlement to inform the
12 court of any fee-sharing agreement. The purpose of Rule 2-200 is to protect clients from conflicts of interest.

13 As the court noted in *Chambers v Kay*, “[r]equiring the client’s written consent to fee sharing
14 impresses upon the client the importance of his or her consent, and the right to reject the fee sharing.”
15 (*Chambers v Kay* (2012) 29 Cal.4th 142, 157). It has also been noted that the requirement for written
16 disclosure has the added benefit of ensuring that the attorneys know the terms of their fee sharing agreement,
17 thus limiting the chance of a dispute between the attorneys and a potential negative impact on the
18 representation of the client. (*Margolin v Shemaria* (2000) 85 Cal.App. 4th, 891, 903).

19 Here, Plaintiff has executed a retainer agreement in this action. (Lyon Decl. ¶ 18.) This retainer
20 agreement clearly and plainly explains the division of fees between the law firms which represent Plaintiff—
21 15% to the firm of Bradley Grombacher; 42.5% to the Lyon Law Firm and 42.5% to Markovits, Stock &
22 DeMarco, LLC. (*Id.*) The agreement further provides that, although the fee is shared between firms, the
23 amount of attorneys’ fees negotiated between Plaintiff and his counsel does not increase.

24 Such an agreement clearly protects Plaintiff from the conflict of interest inherent in fee splitting
25 agreements (*see e.g. Mark v Spencer* (2008) 166 Cal.App.4th 219, 225; *Chambers v Kay supra*, 29 Cal.4th at
26 p. 157 (noting the purpose of 2-200 is to protect individuals from conflict of interest). Moreover, this written
27 disclosure of a fee sharing agreement between counsel allows Plaintiff to know his legal rights with respect
28

1 to how his legal fees will be determined and shared and permitted Plaintiff to make an informed decision
2 regarding a division of fees. (See e.g., *Huskinson & Brown LLP v. Wolf* (2004) 32 Cal.4th 453, 459; *Mark v*
3 *Spencer, supra*, 166 Cal. App.4th at p. 225).

4 **III. COUNSEL ARE ENTITLED TO REIMBURSEMENT OF EXPENSES**

5 Courts routinely award litigation costs in contingency matters. *Rider v. Cty. of San Diego*
6 (1992) 11 Cal.App.4th 1410, 1423, fn. 6 (in contingency cases expenses are awarded “for precisely
7 the same reasons” as fees); see also *Melendres v. L.A.* (1975) 45 Cal.App.3d 267, 272-73 (citing
8 *Estate of Stauffer v. Wollenberg* (1959) 53 Cal.2d 124, 132 (affirming expense award for
9 contingency litigation)); *Lealao v. Beneficial Cal., Inc., supra*, 82 Cal.App.4th at p. 35 (citing cases
10 awarding expenses of over \$1.5 million.). Plaintiff’s Counsel seek reimbursement of out-of-pocket
11 expenses in the amount of \$28,910.09. Defendant agreed not to take a position regarding Class
12 Counsel’s request for litigation expenses from the Settlement Sum not exceeding \$30,000.

13 All expenses sought by Class Counsel are of the types typically incurred and are routinely
14 reimbursed in class action settlements. For example, in *Rodriguez v. Danell Custom Harvesting,*
15 *LLC* (E.D. Cal. 2018) 327 F.R.D. 375, 394, the awarded expenses included: “travel, postage,
16 telephone, fax, notice, online legal research fees, mediation fees, filing fees and photocopies.”
17 Indeed, other than office overhead, “all reasonable expenses incurred in case preparation, during
18 the course of litigation, or as an aspect of settlement of the case” are subject to reimbursement. *In*
19 *re Media Tech. Sec. Litig.* (N.D. Cal. 1995) 913 F. Supp. 1362, 1368; see also *Hartless v. Clorox*
20 *Company* (S.D. Cal. 2011) 273 F.R.D. 630, 645-46 (court awarded litigation costs for consultants,
21 online legal research, copying, postage, long distance charges, travel expenses, filing fees,
22 mediation fees, and investigation fees).

23 Class Counsel’s out-of-pocket expenses are types of expenses normally incurred in
24 litigation, were incurred in the course of this litigation, and were incurred in connection with the
25 litigation. Lyon Decl. ¶ 13.

26 **IV. CLASS REPRESENTATIVES’ SERVICE AWARDS SHOULD BE APPROVED**

27 Named plaintiffs in representative actions are eligible for reasonable service awards to
28

1 compensate them for their time, efforts, and the inconvenience they incurred in securing benefits
2 for other members of the class. *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
3 Cal.App.4th 399, 412; *In re Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380,
4 1395. “Incentive awards [for class representatives] are fairly typical in class actions.” *Cellphone*
5 *Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1393 (citing *Rodriguez v. West Publ’g.* (9th
6 Cir. 2009) 563 F.3d 948, 958.) “Since without a named plaintiff there can be no class action, such
7 compensation as may be necessary to induce him to participate in the suit could be thought the
8 equivalent of the lawyers’ nonlegal but essential case-specific expenses, such as long-distance
9 phone calls, which are reimbursable.” *Clark v. Am. Residential Servs.* (2009) 175 Cal.App.4th 785,
10 804 (citing *Matter of Cont’l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571.) Service awards
11 “compensate class representatives for work done on behalf of the class, to make up for financial
12 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
13 willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp., supra*, 563 F.3d at
14 pp. 958-59.

15 Here, Plaintiff seeks a service award of \$5,000.00. Plaintiff stepped forward, discussed this
16 matter at length on numerous occasions with Class Counsel to assist in the investigation and
17 discovery process before and after this case was filed, and reviewed the complaint and other filings.
18 (Bae Decl., ¶¶ 7-10) Plaintiff also made himself available during the mediation that took place, as
19 well as during the subsequent continued negotiations and settlement process. (Bae Decl., ¶ 13-15).
20 He spent hours reviewing, investigating, and assisting Class Counsel in carefully, fully, and
21 accurately preparing the complaint and preparing for mediation, which included providing
22 documents and specific historical facts requested by counsel. (Bae Decl., ¶ 9)

23 The requested award is well within acceptable ranges of incentive awards. *See, e.g., In re*
24 *Cellphone Fee Termination Cases, supra*, 186 Cal.App.4th at p. 1393 (awarding “\$10,000 each to
25 [the four] class representatives” who participated in significant written discovery and document
26 production and testified in deposition or at trial); *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct.
27 29, 2012) 2012 U.S.Dist.LEXIS 160052, at *32 (\$15,000 incentive award affirmed); *In re Mego*

1 *Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 456-457, 463 (approving, without discussion,
2 incentive awards of \$5,000 each to two class representatives from a settlement of \$1.725 million,
3 plus interest); *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA)*
4 *Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 472 (“incentive award of \$5,000 for each of Edwards,
5 Schley, and Ellis is ‘just and reasonable under the circumstances.’”); *In re Online DVD-Rental*
6 *Antitrust Litig.* (9th Cir. 2015) 779 F.3d 934, 947 (approving “incentive awards in this case—
7 \$5,000 for each of nine class representatives.”) In light of the work that the Class Representative
8 performed on behalf of Class Members, the requested incentive award is reasonable and
9 appropriate.

10 **V. CONCLUSION**

11 This settlement is an excellent result for the Class. Class Counsel has put in substantial effort to
12 analyze the various claims and the risks and benefits of pursuit of settlement for the class. The 33% fee
13 requested is well within the range of approved percentages from common fund settlements. Here, based on
14 the results obtained by Class Counsel, the substantial benefits the settlement provides, and the amount of effort
15 set forth to obtain them, the requested fee is justified.

16 For the foregoing reasons, Plaintiff respectfully requests that the Court (1) award attorneys’ fees in
17 the amount of \$233,333.33; (2) approve reasonable costs in the amount of \$28,910.09; and (3) award the
18 service award in the amount of \$5,000 for the named Plaintiff.

19 **DATED: October 18, 2023**

20 By, /s/ Kiley L. Grombacher
21 **BRADLEY/GROMBACHER LLP**
22 Marcus J. Bradley, Esq.
23 Kiley L. Grombacher, Esq.
24 Lirit A. King, Esq.

25 **THE LYON FIRM**
26 JOSEPH M. LYON (*pro hac vice* forthcoming)

27 **MARKOVITS, STOCK & DEMARCO, LLC**
28 TERENCE R. COATES (*pro hac vice* forthcoming)

Attorneys for Plaintiff and the Proposed Class

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BAE v. PACIFIC CITY BANK
LOS ANGELES SUPERIOR COURT CASE NO. 21STCV45922

Service List

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