The Honorable Marsha J. Pechman

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

LEO GUY, RYAN TANNER, MAGALY GRANADOS, KERRY LAMONS, TAMMY RANO, VICKI WILL and JENNIFER WHITE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CONVERGENT OUTSOURCING, INC.,

Defendant.

NO. 2:22-cv-01558-MJP

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS TO PLAINTIFFS

Noting Date: July 19, 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

Other Authorities

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

I. INTRODUCTION

Following extensive arm's-length negotiations, the parties reached an agreement to resolve the claims in this class action. That Settlement, which is the product of Class Counsel's zealous efforts in this litigation—created a $2,450,000 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 respectfully moves the Court for an award of reasonable attorneys' fees and costs in the amount of $661,500, or 27% of the Settlement Fund. This 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 $1,500 each to the named Plaintiffs for their work on behalf of the Class.

II. STATEMENT OF FACTS

In the interests of brevity and efficiency, Plaintiffs refer the Court to the Statement of Facts provided in Plaintiffs' Renewed Unopposed Motion for Preliminary Approval of Class Action Settlement filed on February 9, 2024 (Dkt. #61).

On February 20, 2024, this Court granted preliminary approval to the Settlement. Dkt. #63. Since that time, Class Counsel has worked closely with Epiq, 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 Awards ("Joint Decl.") ¶ 11. Class Counsel anticipate further involvement with Epiq and opposing counsel in the coming months to ensure the successful administration of the settlement for the Class. *Id.* ¶ 24.

III. THE SETTLEMENT TERMS

The Settlement provides substantial relief for the Settlement Class of approximately 640,906 individuals. Dkt. #62-1, Amended Settlement Agreement ("S.A.") ¶ 3.1. The

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

Settlement negotiated on behalf of the Class consists of a $2,450,000 Settlement Fund from which class members may make a claim for: (1) reimbursement of ordinary expenses and lost time up to $1,500 per Class Member; (2) reimbursement of extraordinary expenses up to $10,000 per Class Member, or; (3) as an alternative to filing a claim for reimbursement of ordinary expenses, lost time, and extraordinary expenses, Settlement Class Members may submit a claim to receive an alternative cash payment, which will be a pro rata share of the net Settlement Fund. S.A. ¶ 4.2. The Settlement Fund will also continue to 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 to Plaintiffs.

IV. ARGUMENT

It is well established that where counsel's work results in substantial benefit to a class of individuals, counsel is entitled to an award of their reasonable attorney's fees and costs. *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)); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir. 1994).

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

Where counsel seek fees from a common fund, courts have discretion to 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). Such "discretion must be exercised so as to achieve a reasonable result." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). However, "the percentage method in common fund cases appears to be dominant" in the Ninth Circuit. *In re Omnivision*

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

Techs., Inc., 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2008); *see also Demmings v. KKW Trucking, Inc.*, 2018 WL 4495461, at *13 (D. Or. Sept. 19, 2018).

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 in cases where it is possible to ascertain the value of a common fund. *See Bluetooth*, 654 F.3d at 942 ("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 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 under circumstances not applicable here, i.e., 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"). This limited use of the lodestar method relates in part to its potential deterrent effect: "[I]t is widely recognized 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." *Vizcaino*, 290 F.3d at 1050 n.5; *see also In re Activision Sec. Litig.,* 723 F.Supp. 1373, 1378 (N.D. Cal. 1989) (application of the lodestar method may encourage "abuses such as unjustified work" and therefore "does not achieve the stated purposes of proportionality, predictability and protection of the class").

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

Because the Parties negotiated a settlement resulting in a common fund, Class Counsel request the Court to 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 $661,500[1] in attorneys' fees and costs—27% of the common fund—is fair and reasonable under the circumstances of this case. The Ninth Circuit has established a 25-percent benchmark to be used as the "starting point" for analysis. *In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015); *In re Intermec*, 1992 WL 203800, at *1 (W.D. Wash. June 9, 1992) (awarding 25%). "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; *accord Burnthorne-Martinez v Sephora USA, Inc.*, 2018 WL 5310833, at *2 (N.D. Cal. May 16, 2018). Indeed, the mean percentage awarded in the Western District of Washington is 27%. *Benson v. DoubleDown Interactive, LLC*, 2023 WL 3761929, at *2 (W.D. Wash. June 1, 2023).

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. Specifically, the Ninth Circuit directs courts to consider: "(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 (citing *Vizcaino*, 290 F.3d at 1048). Each of these factors supports Class Counsel's request for an award of 27% of the common fund for attorneys' fees and costs.

[1] To date, Class Counsel incurred costs of $24,979.91. Joint Decl. ¶ 27. Class Counsel seeks an award of 27% that is inclusive of costs; this request can alternatively be stated as a request for an award of costs of $24,979.91 and a separate request for fees in the amount of $631,520.09, or 25.98% of the common fund). *Id.* ¶ 23.

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

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

In determining the amount of 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 serious number of case-dispositive risks.

While Plaintiffs believe they have strong claims, they also understand that their success is not guaranteed. Plaintiffs' chances of prevailing on the merits are 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*., 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases…are particularly risky, expensive, and complex.")). 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. ¶ 20.

Here, the $2,450,000 Settlement Fund is an excellent result that avoids the uncertainty and risk presented by continued contested litigation. Instead, the Settlement Fund ensures that all Class Members have the opportunity to receive a payment, either through reimbursement for monetary losses and/or lost time, or an Alternative Cash Payment. The Settlement represents a robust relief package and a valuable outcome for the Settlement Class.

1. 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 that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of

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

fees"). While Plaintiffs believe their case is a strong one, cases like this are subject to substantial risk. This case involves a complicated and technical factual overlay; and a somewhat indignant Defendant that had already provided some relief to its potentially affected customers.

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 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 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). Even cases implicating data far more sensitive than at issue here have been found wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig*., 266 F.Supp.3d 1, 19 (D.D.C. 2017) ("The Court is not persuaded that the factual allegations in the complaints are sufficient to establish ... standing."), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

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 in 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.

Each risk, by itself, could impede the successful prosecution of these claims at trial and result in zero recovery to the class. "Regardless of the risk, litigation is always expensive, and

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

both sides would bear those costs if the litigation continued." *Paz v. AG Adriano Goldschmeid, Inc.*, 2016 WL 4427439, at *5 (S.D. Cal. Feb. 29, 2016). Thus, this factor favors the appropriateness of the requested fee award.

2. Class Counsel are Highly Skilled Attorneys Experienced in the Area of 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 involved and skill and effort displayed by class counsel are among the relevant factors for determining the proper fee 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 have successfully prosecuted and resolved numerous large consumer class actions and other complex matters, including in other data breach cases. *See* Dkt. #58 at 7 ("[T]he Court finds that Plaintiffs have retained counsel who have vigorously litigated this action, are experienced in bringing class action data breach cases, and have the resources necessary to litigate this case."). 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, with five of Plaintiffs' eleven claims sustained in whole and one in part. Dkt. #45.

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 defense counsel at the top of their profession, from a highly respected law firm. *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.").

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

3. Class Counsel Faced Substantial Risk of Non-Payment and Carried a Significant Financial Burden, Litigating on a Purely 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 have long recognized 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.*, *Wash. Pub. Power Supply*, 19 F.3d at 1299 ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as 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 have devoted substantial resources to the prosecution of this matter with no guarantee that they would be compensated for their time or reimbursed for their expenses. Joint Decl. ¶¶ 15-20. In spite of this substantial risk of non-payment, 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 16 months, 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 600 hours on this case and advanced nearly $25,000 in costs. Joint Decl. ¶¶ 23, 27.

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

This substantial outlay of time and resources on a purely contingent basis favors approval of the requested fee.

4. Fees Awarded in Comparable Cases Exceed 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 that guides Class Counsel's request. *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" with the mean percentage awarded in the Western District of Washington sitting at 27%. *Benson*, 2023 WL 3761929, at *2.

Federal courts in the Ninth Circuit routinely award percentage recoveries in excess of the 25% benchmark. *See, e.g.*, *id.* (awarding 30% of common 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 $7 million common fund); *Dearaujo v. Regis Corp.*, 2017 WL 3116626, at *13 (E.D. Cal. July 21, 2017) (awarding one-third of common fund); *Lee v. JPMorgan Chase & Co*., 2015 WL 12711659, at *8-9 (C.D. Cal. Apr. 28, 2015) (awarding one-third of common fund). 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

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

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. Class Counsel's Lodestar Is Reasonable

Through April 10, 2024, Class Counsel devoted 602 hours to the investigation, litigation, and resolution of this complex case, incurring more than $479,000 in lodestar. Joint Decl. ¶¶ 23. As detailed in the declarations, counsel's time was spent investigating the claims of the Settlement Class Members, conducting discovery, researching and analyzing legal issues, engaging in settlement negotiations, and litigating a dispositive motion brought by Convergent.[2] Joint Decl. ¶¶ 12. Class Counsel's efforts and time in this case will continue past the effective date of the Settlement as Class Counsel continues to oversee the administration of the settlement, respond to inquiries from Class Members, file a motion for final approval, and work with Epiq for the distribution of payments to class members.

The time Class Counsel devoted to this case is reasonable. Class Counsel prosecuted the claims at issue efficiently and effectively, making every effort to prevent the duplication of work that might have resulted from having multiple firms working on this case.

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

[2] Class Counsel's efforts to secure a timely settlement before expending even more lodestar further support the fee. *See, e.g.*, *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 539 (W.D. Wash. 2009) (approving settlement reached after thorough pre-filing negotiations); *Vizcaino*, 290 F.3d at 1050, n.5 (noting "it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief").

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

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 the area of consumer class actions. *See* Dkt. #56. ¶

2. A Multiplier is Warranted

The fee requested by Class Counsel reflects a modest multiplier of 1.3. 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 (multiplier of 3.5); *Steiner v. Am. Broad. Co, Inc*., 248 F. App'x. 780, 783 (9th Cir. 2007) (finding multiplier approximating 6.85 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) (multiplier of 5.2).

Courts in the Ninth Circuit use similar factors when analyzing a lodestar-multiplier cross check, namely, courts consider the results achieved, risks stemming from the complexity of the case, and the risk of nonpayment. *See Hanlon*, 150 F.3d at 1029. As discussed above, the factors outlined favor this request. The multiplier of 1.3 is in line with multipliers awarded in the Ninth Circuit, and the lodestar cross check thus supports the requested fee.

D. The Costs Sought Are Appropriate, Fair, and 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 have collectively incurred $24,979.91 in unreimbursed litigation costs. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover. Joint Decl. ¶ 38. 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

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

be reimbursed. They are reasonable in amount and the Court should approve their reimbursement.

E. The Requested Service Awards for Plaintiffs are Reasonable

Service awards compensate 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 $1,500 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 proposed class representatives, assisting in the investigation, reviewing pleadings, keeping abreast of the litigation, and reviewing and approving the proposed settlement terms after consulting with Class Counsel. Indeed, without Plaintiffs litigating this matter, the Class would not have been able to recover anything.

V. CONCLUSION

For the foregoing reasons, 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 4,191 words, in compliance with the Local Civil Rules.

//

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

DATED this 19th day of April, 2024.

TOUSLEY BRAIN STEPHENS PLLC

By: /s/*Cecily C. Jordan*
Jason T. Dennett, WSBA #30686
Cecily C. Jordan, WSBA #50061
1200 Fifth Avenue, Suite 1700
Seattle, WA 98101-3147
Tel: (206) 682-5600
Fax: (206) 682-2992
jdennett@tousley.com
cjordan@tousley.com

MASON LLP

By: /s/*Gary E. Mason*
Gary E. Mason (*admitted pro hac vice*)
Danielle L. Perry (*admitted pro hac vice*)
Lisa A. White (*admitted pro hac vice*)
5101 Wisconsin Avenue NW, Suite 305
Washington, DC 20016
Telephone: 202.429.2290
Facsimile: 202.429.2294
gmason@masonllp.com
dperry@masonllp.com
lwhite@masonllp.com

MORGAN & MORGAN
COMPLEX LITIGATION GROUP

By: /s/*Jean S. Martin*
Jean S. Martin (*admitted pro hac vice*)
Email: jeanmartin@ForThePeople.com
Email: fkester@ForThePeople.com
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 559-4908

MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC

By: /s/*Gary M. Klinger*
Gary M. Klinger (*admitted pro hac vice*)
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (202) 429-2290

gklinger@milberg.com

Attorneys for Plaintiffs

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