

1 Daniel S. Robinson (SBN 244245)
2 Wesley K. Polischuk (SBN 254121)
3 Michael W. Olson (SBN 312857)
4 **ROBINSON CALCAGNIE, INC.**
5 19 Corporate Plaza Drive
6 Newport Beach, CA 92660
7 (949) 720-1288; Fax (949) 720-1292
8 drobinson@robinsonfirm.com
9 wpolischuk@robinsonfirm.com
10 molson@robinsonfirm.com

7 Adam E. Polk (SBN 273000)
8 Simon Grille (SBN 294914)
9 **GIRARD SHARP LLP**
10 601 California Street, Suite 1400
11 San Francisco, CA 94108
12 (415) 981-4800; Fax: (415) 981-4846
13 apolk@girardsharp.com
14 sgrille@girardsharp.com

11 *Class Counsel*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – COMPLEX CIVIL**

14 IN RE PLANNED PARENTHOOD LOS
15 ANGELES DATA INCIDENT LITIGATION

16 _____
17 This Document Relates to:
18 All Cases

Lead Case No. 21STCV44106

Assigned for All Purposes to:
Hon. Yvette M. Palazuelos, Dept. 9

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR AWARD OF
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Filed Concurrently with Declarations, and
[Proposed] Order]

Final Approval Hearing

Date: August 8, 2024
Time: 10:00 a.m.
Dept.: 9

Complaint Filed: July 23, 2022

Electronically FILED by
Superior Court of California,
County of Los Angeles
5/16/2024 10:22 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Drew, Deputy Clerk


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

2 PLEASE TAKE NOTICE that on August 8, 2024, at 10:00 a.m., or as soon as the matter may
3 be heard before the Honorable Yvette M. Palazuelos, located in Department 9 at the Superior Court
4 for the County of Los Angeles, Spring Street Courthouse, 312 N. Spring Street, Los Angeles,
5 California 90012, Plaintiffs and Class Representatives Maria Orellana, B.E., J.C., Michelle Garza,
6 K.O., and T.S.,¹ individually and on behalf of the Settlement Class, will and hereby do move for an
7 Order, consistent with the terms of the Settlement Agreement in this case, awarding Class Counsel’s
8 request of \$2,400,000 in attorneys’ fees and costs, and a Service Award of \$1,500 to each of the Class
9 Representatives.

10 This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum
11 of Points and Authorities, the Declarations of Class Counsel, the Declarations of the Class
12 Representatives, the Declaration of Jacob Kamenir on behalf of Simpluris, Inc., the Settlement
13 Agreement previously filed with and preliminarily approved by the Court, and all papers filed in
14 support thereof, the argument of counsel at the hearing of this Motion, all papers and supporting
15 exhibits, the complete file and record in this action, and any such further briefing, additional
16 documents or information, and oral argument as the Court may consider in deciding this motion at
17 the Final Approval Hearing.

18
19 Dated: May 16, 2024

Respectfully submitted,

20
21 By: 

22 Daniel S. Robinson
ROBINSON CALCAGNIE, INC.

23 Adam E. Polk
GIRARD SHARP LLP

24 Abbas Kazerounian
KAZEROUNI LAW GROUP, APC

25
26 *Class Counsel*

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28 ¹ Certain Plaintiffs are proceeding under pseudonyms to protect their privacy. (See, e.g., *Doe v. Superior Court (Luster)* (2011) 194 Cal.App.4th 750, 754.)

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Class Representatives² respectfully request an award of \$2.4 million in attorneys’ fees and
4 costs, as well as service awards of \$1,500 to each of the Class Representatives. After months of hard-
5 fought, arm’s-length negotiations, including a full day mediation, Class Counsel secured an
6 exceptional Settlement that provides significant cash payments to Class Members for their injuries and
7 protects them against future harms caused by the Data Breach. While the Settlement establishes a non-
8 reversionary cash Settlement Fund of \$6 million, the overall benefits provided under the Settlement
9 deliver a value to Class Members in excess of that fund, in light of the substantial business practice
10 changes PPLA implemented and the value of the Credit Monitoring and Identity Theft Insurance
11 Services (“Credit Monitoring”) offered to each Class Member.

12 Due to the significant value of benefits provided under the Settlement, the overall value of the
13 Settlement presents an appropriate measure for the award of attorneys’ fees. Based on the 13,614
14 Credit Monitoring claims received as of May 10, 2024, and taking into account the business practice
15 changes implemented by PPLA, the Settlement is presently valued in excess of \$22 million, and this
16 will likely increase before the July 6, 2024 Claims Deadline. The requested attorneys’ fees amount to
17 only 10.8% of the current Total Settlement Value, and 39.5% of the non-reversionary Settlement Fund.

18 The fee request is fair and reasonable in light of Plaintiffs’ counsel’s lodestar. As detailed
19 below, Plaintiffs’ counsel devoted 1,940.8 hours and incurred a conservatively calculated, collective
20 lodestar of \$1,455,619.00 to secure the relief for the Class. Class Counsel will devote additional time
21 that will be uncompensated, as they work to secure final approval of the Settlement, litigate any
22 appeals, and assist Class Members through the claims process. The requested fee award represents a
23 lodestar multiplier of 1.66, which is fair and reasonable in light of the significant risks Class Counsel
24 faced, the complexity of the issues presented, and the excellent results and benefits achieved with this
25 Settlement. Plaintiffs similarly request the Court award \$28,061.64 in costs, which reflect reasonable
26 costs necessary to pursue this litigation and secure the Settlement, and \$1,500 in Service Awards to
27

28 ² Capitalized terms have the same meaning as in the Second Amended Class Action Settlement Agreement and Release, unless otherwise noted.

1 each of the six Class Representatives for their efforts throughout the litigation.

2 **II. BACKGROUND**

3 **A. The Data Breach and Procedural History**

4 PPLA is one of seven California Planned Parenthood affiliates and provides primary care
5 services, as well as a full range of reproductive health services, including contraceptive services,
6 sexually transmitted disease screening and treatment, HIV education and testing, pregnancy testing
7 and options, education, emergency contraceptives and supplies, and legal abortion services to patients
8 at 19 health centers in Los Angeles and surrounding counties. (Declaration of Abbas Kazerounian
9 “Kazerounian Decl.” ¶ 7.)

10 On or around November 30, 2021, PPLA announced a data breach in which unauthorized
11 parties accessed and acquired the personally identifiable information (“PII”) and protected health
12 information (“PHI”) of approximately 409,437 PPLA patients (the “Data Breach”). (*Id.* ¶ 8.) In its
13 Notice of Data Breach, PPLA disclosed that on October 17, 2021, it became aware of suspicious
14 activity on its computer network. (*Id.*) Following an investigation, PPLA “determined that an
15 unauthorized person gained access to [PPLA’s] network between October 9, 2021, and October 17,
16 2021, and exfiltrated some files containing PII and PHI from [PPLA’s] systems during that time.” (*Id.*)
17 Those files contained the names, addresses, insurance information, dates of birth, and clinical
18 information, such as diagnosis, procedure, and prescription information, of PPLA patients. (*Id.*)

19 Seven related class action cases arising from the Data Breach were brought against PPLA. (*Id.*
20 ¶ 9.) Following consolidation of these related cases, the Court appointed Robinson Calcagnie, Inc. and
21 Girard Sharp LLP as Interim Co-Lead Counsel and Kazerouni Law Group, APC as Interim Liaison
22 Counsel. (*Id.*) On May 25, 2022, Plaintiffs Maria Orellana, B.E., J.C., Michelle Garza, K.O., and T.S.
23 filed a consolidated class action complaint (“Complaint”) on behalf of a Class of “[a]ll individuals
24 who were sent a Data Breach notice indicating their Confidential Information was compromised as a
25 result of the Data Breach.” (*Id.*)

26 **B. Settlement Negotiations and Mediation**

27 The parties participated in mediation on September 2, 2022, with mediator Jill R. Sperber, Esq.
28 of Judicate West. (*Id.* ¶ 12). In advance of the mediation, the parties voluntarily exchanged

1 confirmatory information. (*Id.* ¶¶ 11). The parties also prepared and exchanged extensive mediation
2 briefs. (*Id.*) Although the parties were unable to come to a resolution during mediation, they continued
3 to engage in settlement discussions through the mediator and ultimately reached an agreement in
4 principle on September 8, 2022 (*Id.* ¶ 12.) Class Counsel also secured and compared multiple bids
5 from competing settlement administrators and worked through the process to select an experienced
6 administrator well suited for this Settlement. (*Id.*) Since then, the parties continued to discuss the
7 details of the Settlement and ultimately entered into a term sheet. (*Id.*) The parties subsequently
8 conferred and exchanged multiples drafts of the settlement agreement with revisions and comments,
9 before entering into a settlement agreement on April 18, 2023. (*Id.*)

10 **C. Preliminary Approval and the Second Amended Settlement Agreement**

11 On April 19, 2023, Plaintiffs filed a motion for preliminarily approval of the Settlement. On
12 August 2, 2023, the Court issued a tentative ruling, in which the Court continued the preliminary
13 approval hearing, called for supplemental papers to be filed, and directed the Parties to address several
14 items, including certain items that required amendment of the Settlement Agreement. On August 8,
15 2023, the Court adopted its tentative, and on December 5, 2023, Plaintiffs filed supplemental briefing
16 and an Amended Settlement Agreement addressing concerns raised by the Court.

17 On January 2, 2023, the Court issued a tentative ruling on the supplemental papers and directed
18 the parties to address a final concern regarding the Settlement. The Parties subsequently entered into
19 the Second Amended Settlement Agreement, which Plaintiffs lodged on January 16, 2024. On January
20 18, 2024, the Court issued an Order concerning the Effective Date of the Settlement and, after
21 Plaintiffs submitted a declaration identifying that Paragraphs 63 and 103 of the Settlement Agreement
22 provide that the release is only effective after Defendant fully funds the gross Settlement amount, the
23 Court preliminarily approved the Settlement on January 22, 2024 (“Preliminary Approval Order”).

24 **D. Summary of the Settlement Terms³**

25 Under the Settlement, PPLA will establish a \$6 million non-reversionary Settlement Fund that
26 will provide all Settlement Class Members who submit a claim with three years of Credit Monitoring
27 through TransUnion; a cash payment of up to \$210 for up to seven hours of documented time spent

28 ³ Additional details concerning the Settlement will be provided with the final approval papers.

1 fairly traceable to the Data Breach valued at \$30 per hour; a cash payment of up to \$10,000 for
2 documented losses fairly traceable to the Data Breach; and a statutory cash payment (regardless of the
3 Settlement Class Member’s documentation) estimated to be between \$359.23 and \$66.35 (assuming a
4 participation rate between 2% and 10%), to be calculated after deducting payments for Documented
5 Time and Fraud/Out-of-Pocket Costs from the remaining Net Settlement Fund. (Settlement Agreement
6 (“SA”) ¶¶ 73, 84.) Additionally, the Settlement provides injunctive relief that will ensure PPLA has
7 adequate processes and procedures in place to safeguard patients’ PII and PHI in the future.⁴ (SA ¶
8 83.) Consistent with the common-fund model for class settlements, the Settlement Fund will also pay
9 for direct notice to the Settlement Class as well as the costs of settlement administration and attorneys’
10 fees, costs, and service awards as awarded by the Court. (SA ¶ 66.) Class Members who do not opt
11 out of the Settlement will release claims based on the same set of operative facts as alleged in the
12 Complaint against the Released Parties (SA ¶¶ 39-41, 60-62.) The Release will not be effective as to
13 Class Members until after Defendant fully funds the gross Settlement amount, and upon entry of the
14 Final Approval Order and Judgment. Further, the Release will be effective only upon entry of the Final
15 Approval Order and Judgment. (*Id.* ¶¶ 63, 103, 109.)

16 **E. Settlement Administration**

17 Since the Preliminary Approval Order, Class Counsel has worked alongside the Settlement
18 Administrator, Simpluris, Inc., to ensure the notice and claims process has gone smoothly for Class
19 Members. Class Counsel audited the Settlement Website to ensure it was correct and user-friendly,
20 reviewed weekly reports from, and conferred with, Simpluris about the progress of the notice and
21 claims process, and responded to inquiries from Class Members. (Kazerounian Decl., ¶ 17.) Class
22 Counsel have and will continue to ensure that the offered benefits reach Class Members, will continue
23 to oversee the claims process and communicate with Class Members, seek final approval of the
24 Settlement, and respond to any criticism that may be filed, including potential appeals. (*Id.* ¶ 28.) The
25 lodestar presented to the Court in this Motion does not include this significant effort. (*Id.*)

26 _____
27 ⁴ See Declaration of Kevin Oliver ¶¶ 3-4 in support of preliminary approval. This Declaration sets
28 forth these Business Practices Changes, the costs PPLA incurred, and an estimate of the costs it will
incur to implement and maintain the changes. Pursuant to the Settlement Agreement, Plaintiffs
previously filed this Declaration under seal to prevent unauthorized parties from utilizing this
information in the future and otherwise protect information Defendant treats as confidential.

1 On March 8, 2024, the Settlement Administrator disseminated Notice to Class Members
2 pursuant to the terms of the Settlement Agreement. (Kamenir Decl. ¶ 4.) Notice was provided via
3 email to all Class Members for whom PPLA provided email address information. (SA ¶ 88; Kamenir
4 Decl. ¶ 6.) Summary Notice was also sent via U.S. mail to all Settlement Class Members for whom
5 PPLA did not have an email address. (Kamenir Decl. ¶ 4.). Class Counsel confirmed with the
6 Settlement Administrator that the claims rate exceeded 3%, and thus—consistent with Paragraph 88(d)
7 of the Second Amended Class Action Settlement Agreement and Release—determined that no
8 additional mailing was necessary for Class Members whose emails are confirmed as having not been
9 opened. (Kazerounian Decl. ¶ 18). Thus far, the Settlement Class Members have reacted positively to
10 the Settlement. Class Members have until June 6, 2024, to opt out of or submit an objection to the
11 Settlement, and until July 6, 2024, to submit a claim. As of May 10, 2024, a total of 14,336 claims
12 have been received by Simpluris, or approximately 3.51% of the Class. (Kamenir Decl. ¶ 13.) Thus
13 far, there have been 4 opt outs and no objections received. (*Id.* ¶¶ 15-16.)

14 **III. ARGUMENT**

15 **A. The Court Should Approve Class Counsel’s Attorneys’ Fees**

16 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
17 will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal.,*
18 *Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [The “experienced
19 trial judge is the best judge of the value of professional services rendered in his court”]; *see also Thayer*
20 *v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 839 [courts should be “sensitive to the need to
21 encourage ‘private attorneys general’ willing to challenge injustices in our society. Adequate fee
22 awards are perhaps the most effective means of achieving this salutary goal. Courts should not be
23 indifferent to the realities of the legal marketplace or unduly parsimonious”].)

24 Under California law, attorneys’ fees in class action litigation can be calculated using two
25 methods: the lodestar/multiplier method and the percentage of recovery method. (*Wershba v. Apple*
26 *Computer* (2001) 91 Cal. App. 4th 224, 254). The first method, the “lodestar” method, is based on
27 multiplying the number of hours reasonably expended by counsel by their reasonable hourly rate. (See
28 *Thayer, supra*, 92 Cal.App.4th 819, 833.) Once the court has fixed the lodestar, it may increase the

1 amount by applying a “multiplier” to take into account a variety of other factors, including: (1) the
2 quality of the representation; (2) the novelty and complexity of the issues; (3) the results obtained; and
3 (4) the contingent risk presented. (*Id.* at 833.)

4 The second method, the “percentage of the recovery” method, determines attorneys’ fees based
5 on a reasonable percentage of the total value provided to the class through the settlement agreement.
6 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1808.) Where the amount of a settlement is a
7 “certain easily calculable sum of money,” California courts calculate attorneys’ fees as a reasonable
8 percentage of the settlement. (Weil and Brown, California Practice Guide, Civil Procedure Before
9 Trial, Chapter 14, § 14:145; see *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk*,
10 *supra*, 48 Cal.App.4th at 808.) The percentage-of-the-benefit approach is preferred in class and
11 representative actions because “it better approximates the workings of the marketplace than the
12 lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49.)

13 **1. The Attorneys’ Fees Requested by Class Counsel Are Reasonable Under**
14 **the Lodestar Method**

15 A lodestar “cross-check” analysis is typically performed in three steps. First, the trial court
16 determines a baseline guide or “lodestar” figure based on the time spent and reasonable hourly
17 compensation for counsel involved in the case. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) Second,
18 the court sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing
19 rates in the geographical area in which the action is pending. (*Bihun v. AT&T Information System*
20 (1993) 13 Cal.App.4th 976, 997. Finally, a “multiplier” is selected with reference to several factors,
21 including the novelty and difficulty of issues, and thus the risk factor; the skill displayed in
22 presenting the issues; whether the litigation precluded other employment; and the contingent nature
23 of the fee award. (*Serrano*, 20 Cal.3d at 49

24 California courts are empowered to adjust the baseline lodestar with a multiplier that reflects
25 the fair market value of legal services. (*Graham v. Daimler Chrysler Corp.* (2004) 34 Cal. 4th 553,
26 579; *Wershba*, 91 Cal.App.4th at 255 [under California law, multipliers typically range from 2 to
27 4]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming
28 multiplier of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable].)

1 **a. The Hours Expended by Class Counsel Are Reasonable**

2 In accordance with the Order Timekeeping and Expenses, Duties of Lead and Liaison Counsel,
3 and Case Caption, entered by the Court on May 3, 2022, Plaintiffs' Counsel maintained
4 contemporaneous, detailed time records billed in 6-minute increments. The hours expended by each
5 firm included in the present request are detailed in the accompanying Class Counsel Declarations. In
6 anticipation of filing this Motion, Class Counsel reviewed all of the time submissions, audited them,
7 and reduced hours that appeared duplicative, excessive, or unnecessary. Class Counsel did not include
8 de minimis billers (under 10 hours) and performed an audit eliminating time and expenses incurred
9 that did not contribute to the advancement of the litigation as a whole. (Kazerounian Decl. ¶ 25;
10 Robinson Decl. ¶ 17-18; Polk Decl. ¶¶ 15, 24.) As a result of this audit, the total number of hours was
11 reduced by approximately 355.1 hours and the total lodestar for all firms from \$1,663,100.00 to
12 \$1,445,619.00 or a total reduction of \$217,481.00 or 13%.

13 These hours are reasonable in light of the substantial efforts undertaken by Class Counsel and
14 other Plaintiffs' Counsel. Prior to filing the complaint, Class Counsel conducted an extensive
15 investigation into the Data Breach and Defendant's business practices. Class Counsel also researched
16 the pertinent caselaw, reviewed notices concerning the Data Breach, and ultimately drafted
17 complaints. Class Counsel also self-organized among other Plaintiffs' Counsel, assisted with
18 consolidation of the cases, and were appointed as Interim Co-Lead and Liaison Counsel by the Court
19 after a formal leadership selection process. Following appointment, Class Counsel filed the
20 consolidated complaint. Class Counsel also requested, and Defendant voluntarily provided as part of
21 settlement negotiations, confirmatory information regarding its investigation of the Data Breach, the
22 scope of the Data Breach, and its response to the Data Breach. Class Counsel reviewed and analyzed
23 this information in order to determine the scope of necessary injunctive relief and the appropriate
24 measure of settlement benefits to Plaintiffs and the Class. (Kazerounian Decl. ¶ 11.)

25 Class Counsel also attended a full day of mediation. In advance of the mediation, Class Counsel
26 prepared and exchanged extensive mediation briefs. When mediation was unsuccessful, Class Counsel
27 continued negotiations through the mediator who ultimately was able to reach an agreement in
28 principle. The parties subsequently spent months conferred and exchanged multiples drafts of the

1 Settlement Agreement with revisions and comments, before entering into the Settlement Agreement,
2 which the parties worked cooperatively to amend twice before obtaining the preliminary approval. (*Id.*
3 ¶ 12.) Moreover, additional work will be required that will be uncompensated. Class Counsel must
4 still: (1) attend the final approval hearing, including the research and drafting of any replies that may
5 be required; (2) continue to respond to the many inquiries from Class Members; (3) oversee the
6 Settlement through final approval of distribution of the common fund; (4) oversee the claims
7 administration process, including addressing any claim review issues; and (5) handle any appeals. (*Id.*)

8 This summary, along with the declarations submitted by Class Counsel, provide a detailed and
9 sufficient explanation of the substantial work performed.⁵ (*Lobatz*, 222 F.3d at 1148-49.) When all
10 this effort is considered, the total number of hours expended is reasonable. (See *Hartless v. Clorox*
11 *Co.* (S.D. Cal. 2011) 273 F.R.D. 630, 643-44 [holding 5,995.4 hours spent on a consumer class action
12 that settled prior to class certification reasonable].)

13 **b. The Hourly Rates Requested Are Reasonable**

14 Class Counsel is entitled to hourly rates charged by attorneys of comparable experience,
15 reputation, and ability for similar complex litigation. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 640,
16 n.31; *Syers Props. III, Inc. v. Rankin* (2014) 226 Cal. App. 4th 691, 702 [“[T]he reasonable hourly
17 rate used for the lodestar calculation ‘is that prevailing in the community for similar work.’”].)
18 Payment at full market rates is essential to entice well-qualified counsel to undertake difficult cases
19 such as this one. (*San Bernardino Valley Audubon Soc’y v. County of San Bernardino* (1984) 155
20 Cal. App. 3d at 755 [“[T]he court is obliged to use the ‘market value’ approach which is more likely
21 to entice competent counsel to undertake difficult public interest cases.”].)

22 Class Counsel have extensive experience prosecuting and defending class actions, including
23 those involving the breach of customer and/or employee data. Class Counsel have served as Class
24 Counsel in some of the largest data breach cases in the country. (Kazerounian Decl. ¶¶2, 4, 36-39;

25 _____
26 ⁵ Although “[t]he law is clear, [] an award of attorney fees may be based on declarations without
27 production of detailed time records.” *Tuchscher Dev. Enters., Inc. v. San Diego Unified Port Dist.*
28 (2003) 106 Cal. App. 4th 1219, 1248; *Syers Props.*, 226 Cal. App. 4th at 698-99 (California courts do
not require detailed time records); *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal. App. 4th
1309, 1324 (“It is not necessary to provide detailed billing timesheets to support an award of attorney
fees under the lodestar method.”). Class Counsel will provide their detailed billing records if requested
by the Court. See Kazerounian Decl., ¶ 58; Robinson Decl., ¶ 16; Polk Decl., ¶ 14.

1 Robinson Decl. ¶¶ 6-12; Polk Decl. ¶¶ 6-11.) Class Counsel’s requested hourly rates are fully
2 supported by their experience and reputation in handling complex litigation, and are commensurate
3 with, if not lower than, prevailing market rates in California for attorneys of comparable experience
4 and skill. (*Id.*) Identical or similar market rates have been approved in prior cases. (*Id.*)

5 Therefore, Class Counsel’s rates are reasonable, since they are within the rates charged by
6 private attorneys of attorneys of similar skill, reputation, and experience for comparably complex
7 litigation. (See *Blum v. Stenson* (1984) 465 U.S. 886, 895 n. 11 [“[T]he requested rates are in line
8 with those prevailing in the community for similar services by lawyers of reasonably comparable
9 skill, experience, and reputation.”].) Furthermore, Class Counsel’s rates in calculating the lodestar
10 are the same rates they would charge non-contingent hourly clients and similar or identical rates
11 have been approved by other courts. (Kazerounian Decl. ¶ 29; Robinson Decl. ¶15; Polk Decl. ¶ 22.;
12 see also *Fleming v. Impax Lab’ys Inc.* (N.D. Cal. July 15, 2022) 2022 WL 2789496, at *9 (approving
13 rates of up to \$1,325 for partners); *Hope Med. Enters., Inc. v. Fagron Compounding Serv., LLC*
14 (C.D. Cal. Mar. 14, 2022) 2022 WL 826903, at *3; *In re Auto. Parts Antitrust Litig.* (E.D. Mich.
15 Dec. 29, 2019) 2019 WL 13090127, at *3.) As such, the rates are “presumptively reasonable.”
16 *Gusman v. Unisys Corp.* (7th Cir. 1993) 986 F.2d 1146, 1150 [“[T]he best measure of the cost of an
17 attorney’s time is what the attorney could earn from paying clients.”].) Accordingly, the requested
18 rates should be adopted and employed in the lodestar calculation.

19 **c. A Positive Multiplier Is Justified**

20 The trial court has substantial discretion in adjusting the lodestar to account for various factors
21 inadequately reflected therein. (*Lealao, supra*, 82 Cal. App. 4th at 45-53 [describing factors courts
22 consider in awarding a multiplier and noting that “awards that are too small can . . . chill the private
23 enforcement essential to the vindication of many legal rights and obstruct the representative actions
24 that often relieve the courts of the need to separately adjudicate numerous claims.”]. The court may
25 augment the lodestar upon consideration of various factors, including, but not limited to, contingent
26 nature of the fee award, the novelty and difficulty of the questions involved, and the skill displayed in
27 presenting them. (See *Serrano*, 20 Cal. 3d at 49.)

28 Based on these factors, as further explained below, Class Counsel submit that the requested

1 multiplier of 1.66 is modest and more than merited given the excellent results obtained on a
2 contingency basis in this complex case. (See *Wershba*, 91 Cal.App.4th at 255) [“Multipliers can range
3 from 2 to 4 or even higher.”], overruled on other grounds by *Hernandez v. Restoration Hardware, Inc.*
4 (2018) 4 Cal. 5th 260; see also *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78
5 [affirming a multiplier of 2.34]; *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 [reversed a fee
6 award based only on the hours worked, finding the trial court abused its discretion in failing to consider
7 a lodestar multiplier and remanded the case to determine the appropriateness of a lodestar enhancement
8 of “two, three, four or otherwise.”]; *Amaro v. Gerawan Farming Inc.* (E.D. Cal. 2020, No. 1:14-cv-
9 00147-DAD-SAB) 2020 WL 6043936 at *8 [Multipliers ranging between one and two percent are
10 frequently deemed “modest” and “courts typically approve percentage awards based on lodestars
11 cross-checks of 1.9 to 5.1 or even higher,” citation omitted]; *Glendora Community Redevelopment
12 Agency v. Demeter* (1984) 155 Cal.App.3d 465 [approving multiplier of 12].) This is especially true
13 in light of the exceptional Settlement for the Class, already valued in excess of \$22 million based on
14 the current claims rate. (Kazerounian Decl. ¶ 31.)

15 The complexity of this case required experienced legal skills and high-quality work. All class
16 actions involve a high level of risk, expense, and complexity, but the emerging and evolving area of
17 data breach litigation is especially risky and complex. (See *Hashemi v. Bosley, Inc.* (C.D. Cal., Feb.
18 22, 2022, No. CV 21-946 PSG (RAOx)) 2022 WL 2155117, at *7 [“[D]ata breach class actions are a
19 relatively new type of litigation and that damages methodologies in data breach cases are largely
20 untested and have yet to be presented to a jury.”]; *Cheryl Gaston v. FabFitFun, Inc.* (C.D. Cal., Dec.
21 9, 2021, No. 2:20-CV-09534-RGK-E) 2021 WL 6496734, at *3 [“Historically, data breach cases have
22 experienced minimal success in moving for class certification.”]; *Gordon v. Chipotle Mexican Grill,
23 Inc.* (D. Colo., Dec. 16, 2019, No. 17-CV-01415-CMA-SKC) 2019 WL 6972701, at *1 [“Data breach
24 cases such as the instant case are particularly risky, expensive, and complex.”]; *In re Sonic Corp.
25 Customer Data Security Breach Litigation* (N.D. Ohio, Aug. 12, 2019, No. 1:17-MD-2807) 2019 WL
26 3773737, at *7 [“Data breach litigation is complex and risky.”].) Further, “[b]eyond the novel state of
27 the law in regards to identity theft, there are inherent issues of causation” that make litigation uncertain.
28 (*In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.* (W.D. Ky. Aug. 23, 2010, No. 3:08-

1 MD-01998) 2010 WL 3341200, at *4; see *Koenig v. Lime Crime, Inc.* (C.D. Cal. Apr. 2, 2018, No.
2 CV 16-503 PSG (JEMx)) 2018 WL 11358228, at *3) [approving data breach settlement and finding,
3 in part, “[b]ecause of the difficulty of proving damages and causation, Plaintiff faced a substantial risk
4 of losing at summary judgment or at trial.”]; *In re The Home Depot, Inc., Customer Data Sec. Breach*
5 *Litig.* (N.D. Ga. Aug. 23, 2016, No. 1:14-MD-02583-TWT) 2016 WL 6902351, at *5 [“[E]stablishing
6 causation . . . has been a barrier to consumer plaintiffs’ success” in data breach litigation].)

7 Class Counsel in this matter have extensive experience litigating and serving as counsel in
8 numerous consumer class actions, including in other data breach cases. (Kazerounian Decl. ¶¶ 36-39;
9 Robinson Decl. ¶¶ 6-8; Polk Decl. ¶¶ 6-8.) This case was prosecuted by Class Counsel on a purely
10 contingent basis, thereby assuming the risk of no payment for a considerable amount of work over an
11 extended period of time. Plaintiffs’ Counsel spent more than 1,940.8 hours advancing this case without
12 any compensation and without knowing whether their efforts would ever be rewarded, thus supporting
13 the reasonableness of the current fee request and the application of a multiplier. (Kazerounian Decl.
14 ¶¶ 27, 65; Robinson Decl. ¶25; Polk Decl. ¶ 22.) As demonstrated by their past experience in pursuing
15 class actions on behalf of consumers, Class Counsel possess considerable expertise in litigating class
16 action matters. Class Counsel have been involved as lead counsel, liaison counsel, or co-counsel in
17 many of the largest data breach and class action cases in the country, resulting in a multitude of
18 beneficial results to class members in California and throughout the United States. (Kazerounian Decl.
19 ¶ 35-49; Robinson Decl. ¶¶ 6-8; Polk Decl. ¶ 6-8.) Because it is reasonable to compensate Class
20 Counsel commensurate with their skill, reputation and experience, the requested amount is justified
21 here.

22 Thus, the requested fee award for Class Counsel equates to the application of a multiplier of
23 1.66 (Kazerounian Decl. ¶ 64; Robinson Decl. ¶ 25; Polk Decl. ¶ 22.) In the event the Court decides
24 to utilize the lodestar/multiplier approach, a multiplier of 1.66 is well within the range of
25 reasonableness considering the risk of non-recovery, the excellent and expedient result achieved, and
26 the complex and novel nature of the claims at issue. Given the additional tasks yet to be performed by
27 Class Counsel, such as preparing for the Final Fairness Hearing and monitoring the settlement and
28 claims process, that multiplier will continue to diminish.

1 **2. A Percentage Cross-Check Confirms the Requested Fee**

2 California courts have long awarded attorneys’ fees as a percentage of the benefit created by
3 counsel in pursuing claims on behalf of a class. The California Supreme Court held that “when a
4 number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or
5 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
6 plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano, supra*, 20 Cal.3d at 34, quoting
7 *D’Amico v. Board of Medical Examiners*, 11 Cal.3d 1.) Although courts have broad discretion in
8 determining the appropriate amount of attorneys’ fees as part of a class action settlement, courts
9 routinely award approximately one-third of the recovery as a fee award. (*Chavez v. Netflix, Inc.* (2008)
10 162 Cal.App.4th 43, 66, fn. 11 (2008) [noting that “[e]mpirical studies show that, regardless whether
11 the percentage method or the lodestar method is used, fee awards in class actions average around one-
12 third of the recovery”]; *see also Laffitte, supra*, 1 Cal.5th at 487 [California Supreme Court upholding
13 fee award of 33% of a common fund but stating an award of 40% “is within a historical range of 20 to
14 50 percent of a common fund.”].)

15 Class Counsel’s efforts here generated an exceptional Settlement valued in excess of \$22
16 million, which includes a \$6 million non-reversionary Settlement Fund, the cost of the business
17 practice changes implemented by PPLA, and the value of the Credit Monitoring being provided to
18 Class Members, which, as of May 10, 2024, already provides a tangible benefit of \$14,188,944.10.

19 The Credit Monitoring offered to every Class Member presents a real and valuable benefit to
20 Class Members, and protects them from the consequences of the Data Breach going forward. The
21 value of the Credit Monitoring and Insurance Services—which retails to the general public for \$29.95
22 per month—to the Settlement Class is at least \$4,414,549.73 for every 1% of Class Members that elect
23 to receive this benefit, but before excluding the cost of that benefit.⁶ The retail value of these services
24 (rather than the cost) is the proper gauge to apply here, given that this is the benefit that the Class
25 Members actually receive.⁷ (*In re Equifax Inc. Customer Data Sec. Breach Litig.* (N.D. Ga. Mar. 17,

26
27 ⁶ 409,437 Settlement Class Members x 1% = 4,094.37. 4,094.37 x 36 months x \$29.95 =
28 \$4,414,549.73. The cost of Credit Monitoring will be paid out of the Settlement Fund as part of the
administrative costs. (Kamenir Decl. in Support of Preliminary Approval ¶ 14.)

⁷ *See, e.g., Johansson-Dohrmann v. Cbr Sys., Inc.* (S.D. Cal. July 24, 2013m No. 12-cv-1115-MMA

1 2020. No. 1:17-MD-2800) 2020 WL 256132, at *38, aff'd as to attorneys' fees, 999 F.3d 1247 (11th
2 Cir. 2021) ["[T]he record shows that the highquality credit monitoring offered here is more valuable
3 than the free or low-cost services typically available," and "courts have often recognized the benefit
4 of credit monitoring, use its retail cost as evidence of value, and consider that value in awarding fees."],
5 collecting cases); *In re Experian Data Breach Litig.* (C.D. Cal. May 10, 2019, No. 8:15-cv-01592-
6 AG-DFM) Dkt. 322 at 8-10 ["Based on current claims figures, the Credit Monitoring and Insurance
7 Services will add a value of at least \$138.8 million."]; *see also Laffitte*, 1 Cal.5th at 489 ["The
8 percentage method calculates the fee as a percentage share of a recovered common fund or the
9 monetary value of plaintiffs' recovery."].)

10 As of May 10, 2024, a total of 14,336 claims have been received, or 3.51% of the Settlement
11 Class, which is already far greater than many other data privacy cases. (Kamenir Decl. ¶ 14.) Of the
12 claims received, 13,614 Class Members have elected to receive the Credit Monitoring. (*Ibid.*) Since
13 the Claims Deadline is not until July 6, 2024, these numbers are likely to increase before then. Updated
14 numbers will be provided at the Final Fairness Hearing. (*Id.*) However, based on these figures, Credit
15 Monitoring already contributes an additional value of \$14,188,944.10 to the Settlement (which
16 subtracts the cost of providing such services). Adding this retail cost value to the cash value of the
17 Settlement Fund (\$6 million) results in a current Total Settlement Value of \$22,139,798.10, after
18 taking into account the added value of PPLA's business practice changes.⁸ (Kazerounian Decl. ¶ 19).

19
20 (BGS)), 2013 WL 3864341, at *9 (including value of credit monitoring in value of common fund, and
21 finding requested fees "well within the 25% benchmark"); *In re The Home Depot, Inc., Customer Data*
22 *Security Breach Litig.*, No.: 1:14-md-02583-TWT, 2016 WL 6902351, at * (N.D. Ga. Aug. 23, 2016)
23 (granting final approval and reasoning "[t]hese services have a retail value of approximately \$180 per
24 enrollee"); *Lockwood v. Certegy Check Svcs., Inc.* (M.D. Fla. Sept. 3, 2008) No. 07-cv-01434, Dkt.
25 101 at 9 n.4 ("Using the Representative Plaintiffs' estimates of the value of the monitoring . . ."); *In*
26 *re Michaels Stores Pin Pad Litig.*, No. 11-cv-03350, Dkts. 103 (fee motion), 107 (final approval order)
27 (N.D. Ill. Mar. 3 & April 17, 2013) (granting fee request justified under percentage method based on
28 retail value of credit monitoring).

⁸ Where "the value to individual class members of benefits deriving from injunctive relief can be
accurately ascertained," the amount of such relief may be included "as part of the value of a common
fund for purposes of applying the percentage method of determining fees." *In re Anthem, Inc. Data*
Breach Litig. (N.D. Cal. Aug. 17, 2018, No. 15-MD-02617-LHK) 2018 WL 3960068, at *8 (quoting
Staton, 327 F.3d at 974); *see also In re Checking Account Overdraft Litig.* (S.D. Fl. Aug. 2, 2013, No.
1:09-MD-02036-JLK) 2013 WL 11319243, at *13 (adding value of non-assessed overdraft fees to
common fund before applying percentage method); *McCoy v. Health Net, Inc.* (D.N.J. 2008) 569 F.
Supp. 2d 448, 478 (including value of injunctive relief that benefits the class in percentage-of-recovery
calculation). At a minimum, the Court should "consider the value of this nonmonetary relief as "a
"relevant circumstance" in determining what percentage of the common fund class counsel should
receive as attorneys' fees, rather than as part of the fund itself." *Anthem*, 2018 WL 3960068, at *8.

1 Based on current Total Settlement Value, Class Counsel’s fee request amounts to just 10.7%
2 This percentage is expected to decrease as additional claims are received through the remainder of the
3 Claims Period; to this end, Class Counsel will provide an update prior to the Final Approval Hearing.

4 **3. The Fees and Costs Award Was Negotiated at Arms’ Length**

5 Approval is warranted when nothing before the Court suggests collusion between the parties.
6 *Lobatz v. U.S. West Cellular of Cal., Inc.* (9th Cir. 2000) 222 F.3d 1142, 1148-1149. Here, “[t]he fee
7 was negotiated at arm’s length with sophisticated defendants by the attorneys who were intimately
8 familiar with the case, the risks, the amount and value of their time, and the nature of the result obtained
9 for the class.” *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.* (C.D. Cal. June 10, 1992)
10 MDL No. 901, 1992 U.S. Dist. LEXIS 14337, at *13. Importantly, the parties arrived at the negotiated
11 fee only after first reaching agreement on settlement terms for the class. [Cite] Under such
12 circumstances, where there’s no evidence of self-dealing or conflicts of interest, the court should be
13 “reluctant to interpose its judgment as to the amount of attorneys’ fees in the place of the amount
14 negotiated by the adversarial parties in the litigation.” *In re First Capital*, 1992 U.S. Dist. LEXIS
15 14337, at *13; *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 553 (noting the practice of
16 negotiating the fee “serves to facilitate settlements and avoids a conflict, and yet it gives the defendant
17 a predictable measure of exposure of total monetary liability for the judgment and fees in a case.”)

18 California courts recognize that “a presumption of fairness exists where ... [a] settlement is
19 reached through arm’s length bargaining.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th
20 224, 245. Here, there is no doubt the Settlement is the result of non-collusive, arm’s-length, and
21 informed negotiations. The Settlement terms and corresponding documents were agreed upon by the
22 parties after months of good faith, arm’s-length negotiations by experienced counsel, facilitated by an
23 experienced mediator, and included the exchange of confirmatory discovery and extensive research
24 and investigation by Class Counsel. (Kazerounian Decl. ¶¶ 11-12) Throughout settlement negotiations,
25 Class Counsel’s interests were fully aligned with the interests of the Settlement Class, and the proposed
26 fee award does not involve any conflict or impairment of the Class’s interests. (*Id.* ¶12.)

27 **B. Class Counsel Are Entitled to Recovery of Litigation Costs**

28 Class Counsel also requests that Plaintiffs’ Counsel reimbursed for \$28,061.64 in expenses

1 incurred prosecuting this action, which may increase between now and the Effective Date of the
2 Settlement. (Kazerounian Decl. ¶ 35; Robinson Decl. ¶ 26; Polk Decl. ¶ 18.) California law allows
3 recovery of pre-settlement litigation costs in the context of class action settlements. Expenses of the
4 type normally charged to hourly paying clients are reimbursable. (See, e.g., *Harris v. Marhoefer* (9th
5 Cir. 1994) 24 F.3d 16, 19 [recovery of “those out-of-pocket expenses that ‘would normally be charged
6 to a paying client’” are reimbursable]; *See Beasley v. Wells Fargo Bank* (1991) 235 Cal. App. 3d 1407,
7 1419; *Bussey v. Affleck* (1990) 225 Cal. App. 3d 1162, 1166.) Class Counsel seek reimbursement for
8 filing fees, legal research, necessary travel costs, photocopies, postage, and other fees incurred in the
9 ordinary operation of practicing law. All of these charges are commonly accepted as reimbursable.

10 **C. The Court Should Approve Service Awards for the Class Representatives**

11 Class Counsel request that the Court grant Service Awards of \$1,500 to each of the Class
12 Representatives as their participation in this action was critical in this action and the resulting
13 Settlement obtained for the benefit of the Settlement Class. (Kazerounian Decl. ¶ 5; Exhibit B,
14 Declarations of Class Representatives ¶ 15.) As detailed in their Declarations, all of the factors that
15 courts consider weigh in favor of awarding the \$1,500 Service Awards. (See *Golba v. Dick's Sporting*
16 *Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010)
17 186 Cal. App. 4th 399, 412; *Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1395;
18 *Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.) The amount of the Service
19 Award requested for each of the Class Representatives consistent with or below the amounts typically
20 awarded in similar litigation. (See *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1380
21 (approving incentive payments of \$10,000 each); *Lee v. Glob. Tel*Link Corp.* (C.D. Cal. Sep. 24,
22 2018, No. 2:15-cv-02495-ODW (PLA)) 2018 U.S. Dist. LEXIS 163410, at *34-35 (“[I]n the Ninth
23 Circuit, a \$5,000 incentive award is presumed reasonable.”); *Gergetz v. Telenav, Inc.*, No. 16-cv-
24 04261-BLF, 2018 U.S. Dist. LEXIS 167206, at *21-22 (N.D. Cal. Sep. 27, 2018) (approving incentive
25 award of \$5,000); *Fulford v. Logitech, Inc.* (N.D. Cal. Mar. 5, 2010, No. 08-cv-02041 MMC) 2010
26 U.S. Dist. LEXIS 144437, at *7 n.1 (collecting cases awarding service payments ranging from \$5,000
27 to \$40,000); *In re Mego Fin.*, 213 F.3d 254, 457, 463 (9th Cir. 2000) (approving \$5,000 awards).

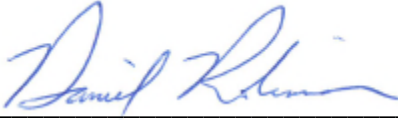
28 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request that the Court grant Class Counsel's
3 requested award of attorneys' fees and costs, as well as the Service Awards requested for the Class
4 Representatives in this action.

5
6 Dated: May 16, 2024

Respectfully submitted,

7
8 By: 

9 Daniel S. Robinson
10 **ROBINSON CALCAGNIE, INC.**

11 Adam E. Polk
12 **GIRARD SHARP LLP**

13 Abbas Kazerounian
14 **KAZEROUNI LAW GROUP, APC**

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Class Counsel

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is Robinson Calcagnie, Inc., 19 Corporate Plaza Drive, Newport Beach, California 92660.

On May 16, 2024, I served the foregoing document described as:

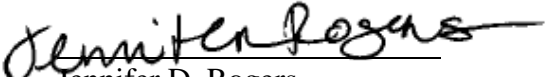
NOTICE OF MOTION AND UNOPPOSED MOTION FOR AWARD OF ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES

on interested parties in this action through the use of the case website maintained by Case Anywhere. I caused the foregoing document to be transmitted to Case Anywhere for electronic service in the following manner (check one box):

I provided the document(s) listed above electronically to Case Anywhere through the Case Anywhere website pursuant to the instructions on that website. [The document will be deemed served on the date that it was uploaded to the website as indicated by the Case Anywhere system.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 16th day of May 2024, at Newport Beach, California.


Jennifer D. Rogers