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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Chris Griffey, et al.,
Plaintiffs,
v.
Magellan Health, Incorporated,
Defendant.

No. CV-20-01282-PHX-MTL (Lead)
No. CV-20-01350-PHX-MTL (Consol.)

**AMENDED¹ MOTION FOR
ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS AND
MEMORANDUM IN SUPPORT**

(Assigned to the Honorable Michael T. Liburdi)

Daniel Ranson, et al.,
Plaintiffs,
v.
Magellan Health, Incorporated,
Defendant.

¹ The original motion (Doc. 110) attached an incorrect version of the supporting declaration. This amended motion corrects that error.

1 **I. INTRODUCTION**

2 Plaintiffs and Class Counsel zealously litigated these Consolidated Actions
3 for almost three years now, achieving a favorable settlement providing substantial
4 benefits for the approximately 948,719 Settlement Class members. Despite
5 Magellan prevailing on an initial motion to dismiss, Class Counsel replead their
6 allegations and several claims survived Magellan's successive motion to dismiss.
7 This demonstrated Class Counsel's substantial commitment to this complex,
8 difficult, novel case.

9 Class Counsel conducted targeted discovery to develop evidence
10 supporting Plaintiffs' claims-reviewing thousands of pages of documents
11 produced by Magellan and working closely with experts to prepare for class
12 certification briefing. And after carefully analyzing the merits of Plaintiffs' claims
13 and Magellan's defenses, all with the assistance of multiple consulting experts,
14 Class Counsel successfully negotiated the proposed class settlement with the
15 initial involvement of a highly-regarded and experienced mediator, but also with
16 their own formidable negotiating skills.

17 The resulting Settlement Agreement provides up to \$3.75 million in
18 significant, immediate benefits to the Settlement Class.

19 Class Counsel prosecuted the class claims and generated the Settlement
20 benefits on an entirely contingent basis, with no guarantee of recovering their fees
21 and expenses. They now seek \$1,000,000 in fees, which falls well within the
22 Ninth Circuit's benchmark for a presumptively reasonable fee award, and \$25,000
23 in out-of-pocket expenses incurred (which is only a part of the actual out-of-
24 pocket expenses, per an agreement with Defendant) to secure a favorable result
25 for the Settlement Class members.

26 Based on the results obtained for the Settlement Class in this complex and
27 risky litigation, the time and effort devoted by Plaintiffs' counsel, the skill and
28 expertise required to litigate the Consolidated Actions, and the risks shouldered

1 by Plaintiffs' counsel, the requested fee and expense award is eminently fair and
2 reasonable. That is particularly so given that the requested fee award is
3 substantially less than Plaintiffs' counsels' collective lodestar, resulting in a
4 negative multiplier.

5 Finally, the Court should approve service awards ranging from \$1,500 to
6 \$5,000 to the Class Representatives to compensate them for their efforts on behalf
7 of the Settlement Class.

8 **II. BACKGROUND OF THE LITIGATION**

9 This litigation arises from a 2020 phishing incident wherein a Magellan
10 employee clicked on a phishing email that resulted in a cybercriminal accessing
11 a subset of data and subsequently deploying ransomware to encrypt Magellan's
12 files (the "Data Incident"). Plaintiffs allege that as a result of the Data Incident,
13 the cybercriminals gained access to Plaintiffs' and the Settlement Class Members'
14 personal information ("PII") and personal health information ("PHI") including
15 names, addresses, employee ID number, W-2 or 1099 details, treatment
16 information, health insurance account information, medical IDs, and in some
17 instances, Social Security numbers or Taxpayer ID numbers.

18 Upon discovering the Data Incident, Magellan notified approximately
19 963,450 individuals of the Data Incident, including offering these individuals free
20 credit monitoring. Individuals, including Plaintiffs, received notices in or around
21 May and June 2020.

22 **III. PROCEDURAL HISTORY**

23 On June 29, 2020, Chris Griffey, Bharath Maduranthgam Rayam, Michael
24 Domingo, Laura Leather, and Clara Williams filed a putative class action. One
25 week later, on July 8, 2020, Daniel Ranson, Mitchell Flanders, Joseph Rivera,
26 Teresa Culberson, and Keith Lewis filed a substantially identical case. On
27 October 8, 2020, the Court consolidated both actions with and under the *Griffey*
28 matter, On December 11, 2020, the consolidated plaintiffs filed their First

1 Amended Consolidated Class Action Complaint, asserting 13 causes of action on
2 behalf of themselves and nationwide and various putative classes.

3 On January 25, 2021, the Court granted Magellan’s motion to dismiss in
4 its entirety, dismissing with prejudice the negligence *per se* claim and dismissing
5 without prejudice the remaining claims. On October 12, 2021, plaintiffs filed the
6 operative complaint, the Second Amended Consolidated Class Action Complaint
7 (“SACC”), alleging eight claims against Magellan. On October 26, 2021,
8 Magellan moved to dismiss the SACC for failure to state a claim under Fed. R.
9 Civ. P. 12(b)(6). On June 2, 2022, the Court granted in part and dismissed in part
10 Magellan’s second motion to dismiss, dismissing Teresa Culberson and Keith
11 Lewis from the Litigation, dismissing Plaintiffs Rayam’s and Williams’s
12 negligence claims, Plaintiffs Leather, Rivera, and Lewis’s unjust enrichment
13 claims, and Plaintiffs Domingo’s, Ranson’s, and Rivera’s statutory claims.

14 On September 30, 2022, the Parties participated in a full-day virtual
15 mediation before Rodney A. Max of Upchurch Watson White & Max. The Parties
16 were unable to come to a settlement agreement.

17 Following the September 30 mediation, the Parties engaged in discovery,
18 including exchanging discovery requests, the production of documents, and
19 Plaintiff Leather’s deposition. During this time, the Parties continued to discuss
20 settlement, and on May 4, 2023, the Parties reached a settlement, which is
21 memorialized in this settlement agreement and attached exhibits (“Settlement
22 Agreement”). The Parties took several weeks to finalize the full scope of the
23 Settlement Agreement and executed the same in June 2023. Plaintiffs
24 subsequently filed their motion for preliminary approval and, after an in-person
25 hearing, the Court granted preliminary approval on August 9, 2023. ECF 106.

26 **IV. THE SETTLEMENT TERMS**

27 **A. The Settlement Class**

28 The Settlement provides relief for the following Settlement Class: “All

1 persons who were mailed a notification that their information may have been
2 impacted in the Magellan Data Incident.” S.A. § 1.29. The Settlement Class
3 contains approximately 948,719 individuals. This number includes “Claims-
4 Made” portion of the Settlement Class (669,373 persons), and the “Common
5 Fund” portion of the Settlement Class (279,346 persons).

6 **B. Settlement Benefits**

7 The Settlement provides for the following benefits:

8 **1. Claims-Made Benefits**

9 Claims-Made Settlement Class Members have the opportunity to submit a
10 Claim for Claims-Made Settlement Benefits including (1) attested Lost-Time
11 Claims of up to 3 hours at \$20; (2) documented Out-of-Pocket Expense Claims
12 of up to \$750; and (3) 12-months of Identity Protection Benefits. Claims-Made
13 Settlement Class Members’ claims for Lost Time and/or Out-of-Pocket Losses
14 are subject to an individual cap of \$750 per claimant. S.A. § 2.1.2. In no event
15 shall the total costs of Claims-Made Benefits exceed \$2,250,000. S.A. § 2.1.3.

16 **2. Common Fund Benefits**

17 Common-Fund Settlement Class Members have the opportunity to submit a
18 Claim for Common-Fund Benefits including (1) \$100 Pro-Rata Cash Payments;
19 or (2) Lost-Time Claims of up to 5 hours at \$25 per hour; and (3) Out-of-Pocket
20 Expense Claims of up to \$5000. These benefits shall be paid from the \$1,500,000
21 non-reversionary Common Fund. S.A. § 2.2.1. Common Fund Settlement Class
22 Members may either (1) submit a claim for the Pro-Rata Cash Payment or (2)
23 submit a claim for Lost Time and/or Out-of-Pocket Expenses. S.A. § 2.2.2.
24 Common-Fund Settlement Class Members’ claims for Lost Time and/or Out-of-
25 Pocket Losses are subject to an individual cap of \$5,000 per claimant. S.A. §
26 2.2.3.

27 **3. Class Notice and Settlement Administration**

28 Notice and settlement administration will be paid for by Defendant. Notably,

1 the cost of notice and administration are to be paid from the Claims Made Portion
2 of the Settlement (i.e. under the \$2.25 million claims made cap), and will not
3 diminish the amounts paid by Defendant for the non-reversionary common fund.

4 4. **Attorneys' Fees, Expenses, and Service Awards.**

5 The Settlement contemplates an award of attorneys' fees, expenses, and
6 service awards. Notably, these awards also are to be paid from the Claims Made
7 Portion of the Settlement, and will not diminish the amounts paid by Defendant
8 for the non-reversionary common fund.

9 **V. ARGUMENT**

10 Subject to Court approval, Magellan has agreed not to object to Plaintiffs'
11 request for up to \$1 million in attorneys' fees, and \$25,000 in out-of-pocket case
12 expenses. The attorneys' fees represents 26.67 percent of the \$3.75 million in
13 benefits made available to the Settlement Class through the exclusive efforts of
14 Class Counsel. This amount is fair and appropriate under the percentage of the
15 fund method, is commensurate with the Ninth Circuit benchmark, and is
16 supported by all relevant factors.

17 **A. The Requested Fees Are Reasonable Under the Percentage Method.**

18 "In a class action, the district court must exercise its inherent authority to
19 ensure that the amount and mode of payment of attorneys' fees are fair and
20 appropriate." *Stern v. New Cingular Wireless Servs., Inc.*, No. 8:09-CV-01112-
21 CAS (AGRx), 2010 WL 11531076, at *3 (C.D. Cal. Nov. 22, 2010) (Snyder, J.)
22 (citing *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328 (9th Cir.
23 1999)). "In calculating attorneys' fees in class actions, the district court has
24 discretion to use either a percentage or lodestar method in order to calculate the
25 attorneys' fees to be awarded to counsel." *Id.* (citing *Hanlon v. Chrysler Corp.*,
26 150 F.3d 1011, 1029 (9th Cir. 1998)). As the Ninth Circuit has explained,
27 however, "the primary basis of the fee award remains the percentage method,"
28 while "the lodestar may provide a useful perspective on the reasonableness of a

1 given percentage award." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th
2 Cir. 2002) ("*Vizcaino II*"); *see also Six (6) Mexican Workers v. Ariz. Citrus*
3 *Growers*, 904 F.2d 1301, 1311 (9th Cir.1990) (approving calculation of attorneys'
4 fees based on percentage of the total fund); *Nwabueze v. AT&T Inc.*, No. C 09-
5 01529 SI, 2014 WL 324262, at *1 (N.D. Cal. Jan. 29, 2014) ("where a settlement
6 does not create a common fund from which to draw, a court may, in its discretion,
7 analyze the case as a "constructive common fund" for fee-setting").

8 Many courts and commentators have recognized that the percentage of the
9 available fund analysis is the preferred approach in class action fee requests
10 "because it more closely aligns the interests of the counsel and the class, *i.e.*, class
11 counsel directly benefit from increasing the size of the class fund and working in
12 the most efficient manner." *Aichele v. City of L.A.*, No. CV 12-10863-DMG
13 (FFMx), 2015 WL 5286028, at *5 (C.D. Cal. Sept. 9, 2015) (citing cases). "[A]
14 number of salutary effects can be achieved by this procedure, including removing
15 the inducement to unnecessarily increase hours, prompting early settlement,
16 reducing burdensome paperwork for counsel and the court and providing a degree
17 of predictability to fee awards." *In re Activision Sec. Litig.*, 723 F. Supp. 1373,
18 1376 (N.D. Cal. 1989).

19 As set out above, the value of this Settlement is capped at \$3,750,000.
20 Under the percentage method, the requested fee of \$1 million is approximately
21 26.67 percent of the total settlement value. This percentage is calculated without
22 assigning any value to the equitable settlement terms, *i.e.* Magellan's
23 commitment to implement and/or maintain certain reasonable steps to adequately
24 secure its systems and environments).

25 **B. The Requested Fee Percentage is Below the Ninth Circuit**
26 **Benchmark.**

27 "[I]n common fund cases, the 'benchmark' award is 25 percent of the
28 recovery obtained, with 20-30% as the usual range." *Vizcaino II*, 290 F.3d at
1047. "While the benchmark is not *per se* valid, it is a helpful 'starting point.'" *In*

1 *re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 1995) (quoting
2 *Vizcaino II*, 290 F.3d at 1048). Here, the percentage of the aggregate available
3 monetary benefits sought by Class Counsel (approximately 26.67%) is reasonable
4 because it comports with the established Ninth Circuit benchmark for attorneys'
5 fees awarded in percentage of recovery cases. Class Counsel's fee request is well
6 within the range of reasonableness for Settlements of this nature and size. The
7 Ninth Circuit has found attorneys' fees awards of 1/3 of the fund to be reasonable.
8 *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming
9 award of one-third of total recovery).

10 **C. The Requested Fee is Supported by Every Relevant Consideration.**

11 The requested fee amount is also supported by each of the normative
12 considerations under governing Ninth Circuit precedent, which include: (1) the
13 extent to which class counsel 'achieved exceptional results for the class,' (2)
14 whether the case was risky for class counsel, (3) whether counsel's performance
15 'generated benefits beyond the cash settlement fund,' (4) the market rate for the
16 particular field of law (in some circumstances), (5) the burdens class counsel
17 experienced while litigating the case (e.g., cost, durations, foregoing other work),
18 and (6) whether the case was handled on a contingency basis. *In re Online DVD-*
19 *Rental Antitrust Litig.*, 779 F.3d at 954-55 (citing *Vizcaino II*, 290 F.3d at 1048-
50).

20 In assessing the reasonableness of the fee award, the Court may also
21 consider other factors established for determining the reasonableness of a lodestar
22 multiplier (which substantially overlap with the *Vizcaino II* factors). Those
23 factors include: (1) the time and labor required, (2) the novelty and difficulty of
24 the questions involved, (3) the skill requisite to perform the legal service properly,
25 (4) the preclusion of other employment by the attorney due to acceptance of the
26 case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time
27 limitations imposed by the client or the circumstances, (8) the amount involved

1 and the results obtained, (9) the experience, reputation, and ability of the
2 attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the
3 professional relationship with the client, and (12) awards in similar cases.
4 *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1306 (W.D. Wash. 2001),
5 aff'd, 290 F.3d 1043 (9th Cir. 2002).

6 These factors all support Class Counsel's fee request here.

7 **1. The Results Obtained For the Class.**

8 The most critical factor in evaluating the reasonableness of a fee request is
9 the degree of success in achieving results for the class. *Hensley v. Eckerhart*, 461
10 U.S. 424, 434-36 (1983); *In re Bluetooth Headsets Prods. Liab. Litig.*, 654 F.3d
11 935, 942 (9th Cir. 2011). Outstanding results merit a higher fee. *In re Omnivision*
12 *Techs., Inc.* ("*In re Omnivision*"), 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008)
13 (awarding a fee of 28 percent where class counsel achieved "triple the average
14 recovery in securities class action settlements").

15 The Settlement Agreement's benefits set out above are tailored to address
16 the fundamental concerns raised in the Action, providing meaningful monetary
17 relief up to \$3.75 million. The per Class Member amounts of compensation are
18 substantial, with the Common Fund Settlement Class Members receiving \$5.37
19 per Class Member, and the Claims-Made Settlement Class receiving up to \$3.36
20 per Class Member. This settlement is a strong result for the Class, and exceeds or
21 is in line with other settlements in cases involving data breaches of similar scope.
22 *See* ECF Doc. 103, page 23, n.1 (detailing the per person recoveries in other
23 similar data breach settlements).

24 Class Counsel negotiated a streamlined, straightforward notice program
25 that Magellan agreed to fund, including postcard notice, a dedicated website, and
26 a toll-free phone line, all to facilitate and increase class member participation.
27 That program, along with the claims process, provides direct additional benefits
28 to the Settlement Class.

2. Risks of Litigation and the Novelty of the Issues Presented.

"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 fees." *In re Omnivision*, 559 F. Supp. 2d at 1046-47. Accord *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (upholding fee award "because of the complexity of the issues and the risks"); *see also, e.g., In re Am. Equity Annuity Practices & Sales Litig.*, No. CV-05-6735-CAS(MANx), 2014 WL 12586112, at *6 (C.D. Cal. Jan. 29, 2014)("In determining reasonable compensation to Class Counsel, the Court is mindful that this litigation was especially complex. As the Court observed for several years, the litigation called upon a high level of skill and experience in class actions for Plaintiffs to succeed against Defendant ..., which also had first-rate legal representation."). Although nearly all class actions involve a high level of risk, expense, and complexity, *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), data breach cases are especially so. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar wide-spread notoriety and 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 the area of damages. For now, data breach cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages

1 methodologies, while theoretically sound in Plaintiffs' view, remain untested in
2 a disputed class certification setting and unproven in front of a jury. And as in
3 any data breach case, establishing causation on a class-wide basis is rife with
4 uncertainty.

5 Each risk, by itself, could impede the successful prosecution of these
6 claims at trial and in an eventual appeal—which would result in zero recovery to
7 the class. “Regardless of the risk, litigation is always expensive, and both sides
8 would bear those costs if the litigation continued.” *Paz v. AG Adriano*
9 *Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at *5 (S.D.
10 Cal. Feb. 29, 2016).

11 Plaintiffs believe their claims are viable and that they have a reasonably
12 good chance of proving that Magellan's data security was inadequate and that, if
13 they establish that central fact, Defendant is likely to be found liable under at least
14 some of the liability theories and statutory and common law Plaintiffs pled in
15 their Second CAC. While Plaintiffs believe they have strong claims and would
16 be able to prevail, their success is not guaranteed. It is “plainly reasonable for the
17 parties at this stage to agree that the actual recovery realized and risks avoided
18 here outweigh the opportunity to pursue potentially more favorable results
19 through full adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-L(WMc),
20 2013 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class
21 actions, there was risk to both sides in continuing towards trial. The settlement
22 avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*, No. 5:15-cv-
23 01437-ODW(DTB), 2017 WL 6205788, at *6 (C.D. Cal. Dec. 5, 2017). Class
24 Counsel's ability to navigate all these risks justifies the fee requested.

25 3. The Contingent Nature of the Representation.

26 The "risks and financial burdens that Class Counsel undertook in litigating
27 the Consolidated Actions on a fully contingent basis" are also important factors
28 in assessing the reasonableness of the requested attorney's fee award. *Lozano v.*

1 *AT&T Wireless Servs., Inc.*, No. 2:02-CV-00090-CAS (AJWx), 2010 WL
2 11520704, at *1 (C.D. Cal. Nov. 22, 2010). Indeed, "[c]ourts have long
3 recognized that the public interest is served by rewarding attorneys who assume
4 representation on a contingent basis with an enhanced fee to compensate them
5 for the risk that they might have been paid nothing for their work." *Ching v.*
6 *Siemens Indus.*, No. 11-cv-048383-MEJ, 2014 WL 2926210, at *8 (N.D. Cal.
7 June 27, 2014) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
8 1291, 1299 (9th Cir. 1994) (explaining that "[c]ontingent fees that may far exceed
9 the market value of the services if rendered on a non-contingent basis are accepted
10 in the legal profession as a legitimate way of assuring competent representation
11 for plaintiffs who could not afford to pay on an hourly basis regardless whether
12 they win or lose."). "This mirrors the established practice in the private legal
13 market of rewarding attorneys for taking the risk of nonpayment by paying them
14 a premium over their normal hourly rates for winning contingency cases."
15 *Vizcaino II*, 290 F.3d at 1051.

16 Here, Plaintiffs' Counsel assumed the risk of representation, including
17 advancing their time and \$47,124.60 in potentially non-recoverable expenses, on
18 a completely contingent basis in litigation dependent on evolving jurisprudence.
19 This assumption of risk justifies a fee paid as a percentage of recovery. *Lozano*,
20 2010 WL 11520704, at *1; *accord*, *In re Omnivision*, 559 F. Supp. 2d at 1047
21 ("This substantial outlay, when there is a risk that none of it will be recovered,
22 further supports the award of the requested fees.").

22 **4. Class Counsel's Level of Skill and Experience**

23 The effort and skill displayed by counsel is an additional factor used in
24 determining a proper fee. *Vizcaino II*, 290 F.3d at 1048; *In re Omnivision*, 559 F.
25 Supp. 2d at 1047. The Settlement Agreement was achieved by Class Counsel,
26 who cumulatively have decades of experience in prosecuting and trying complex
27 consumer class actions, including data breach cases. *See* ECF 103 (resumes of
28

1 Class Counsel). That experience proved invaluable in litigating the Action and
2 enabled Plaintiffs' counsel not only to focus discovery on key liability issues, but
3 also to assess and understand the strengths of both Plaintiffs' claims and
4 Magellan's defenses, and the reasonableness of the benefits provided for under
5 the Settlement Agreement. *Id.*; see also *In re Xcel Energy, Inc., Sec., Deriv. &*
6 *"ERISA" Litig.*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) ("But for the
7 cooperation and efficiency of counsel, the lodestar of plaintiffs' counsel would
8 have been substantially more and would have required this court to devote
9 significant judicial resources to its managements of the case. Instead, counsel
10 moved the case along expeditiously, and the court determines that the time and
11 labor spent to be reasonable and fully supportive [of the awarded attorney fee].").
12 As a consequence, despite its complexity this litigation moved expeditiously and
13 culminated in a favorable settlement. See also, e.g., *Negrete v. Allianz Life Ins.*
14 *Co. of N. Am.*, Nos. CV-05-6838-CAS(MANx), CV-05-8909-CAS(MANx),
15 2015 WL 12592726, at 24 (C.D. Cal. March 17, 2015) (observing "the
16 zealousness with which Class Counsel prosecuted this Action . . . , and the
17 exceptionally high quality of Class Counsel's representation of the Settlement
18 Class").

18 **5. The Lodestar Cross-Check**

19 The Court may conduct a lodestar cross-check to confirm the
20 reasonableness of a requested percentage fee award. *In re Online DVD-Rental*
21 *Antitrust Litig.*, 779 F.3d at 949 ("a crosscheck using the lodestar method can
22 confirm that a percentage of recovery amount does not award counsel an
23 exorbitant hourly rate") (internal quotation marks and citation omitted). The
24 lodestar cross-check calculation need not entail "mathematical precision nor bean
25 counting," and the Court may rely on summaries submitted by the attorneys rather
26 than reviewing actual billing records. *Covillo v. Specialty's Café*, No. C-11-00594
27 DMR, 2014 WL 954516, at *6 (N.D. Cal. Mar. 6, 2014) (*citing In re Rite Aid*

1 *Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005)); *see also, e.g.*,
2 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015)
3 (accepting sworn declarations submitted by counsel).

4 Here, Plaintiffs' Counsel has submitted both a declaration reporting, after
5 the exercise of billing judgment, 1,063.35 hours of time, for a total lodestar of
6 \$824,803.50, and also contemporaneously submitted an *in camera* submission of
7 the detailed billing records (consistent with this Court's Preliminary Approval
8 Order). *See* Declaration of David K. Lietz in Support of Motion for Attorneys'
9 Fees, Expenses, and Services Awards ("Decl."), attached hereto as Exhibit 1.
10 After determining the lodestar, the Court divides the total fees sought by the
11 lodestar to arrive at the multiplier. *Bellinghausen*, 306 F.R.D. at 265. "The
12 purpose of this multiplier is to account for the risk Class Counsel assumes when
13 they take on a contingent-fee case." *Id.* (quoting *Hopkins v. Stryker Sales*
14 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at 19 *4 (N.D. Cal. Feb. 6,
15 2013)). If the multiplier falls within an acceptable range, it further supports the
16 conclusion that the fees sought are, in fact, reasonable. *See Vizcaino II*, 290 F.3d
17 at 1051. "[D]istrict courts have applied a wide range of multipliers--generally
18 ranging from 2 to 4--in making fee award determinations." *Stern*, 2010 WL
19 11531076, at *3.

20 Here, Plaintiffs' Counsel's current reported lodestar yields a modest
21 multiplier of approximately 1.21, which is well-under the accepted range within
22 this Circuit. *Vizcaino II*, 290 F.3d at 1047-48 (collecting sampling of published,
23 common fund settlements, with multipliers spanning from 0.6 to 8.5). Given the
24 anticipated time that will be spent finalizing the settlement, as well as overseeing
25 the processing and payment of all claims, it is likely that there will be a *de minimis*
26 or no multiplier at or shortly after the time of final approval.

27 As detailed in the supporting declaration and the biographies submitted in
28 connection with Preliminary Approval, Plaintiffs' Counsel are well-respected

1 members of the bar who are highly experienced in the areas of consumer class
2 actions, data breach class actions, and complex litigation. [Decl., ¶ 26] And as
3 Plaintiffs' Counsel avows, the hourly rates submitted reflect actual and customary
4 billing rates. [*Id.*] These rates are reasonable, have been approved in various
5 courts, and are comparable to the rates for other law firms in the relevant
6 geographical market. [*Id.*]

7 The lodestar cross-check thus confirms the reasonableness of the requested
8 fee award, particularly in light of the significant results achieved by the
9 Settlement, the contingent nature of Class Counsel's fee arrangement, and the skill
10 and expertise Class Counsel employed maneuvering the case towards settlement.

11 **VI. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE.**

12 Plaintiffs' Counsel seek Court approval of \$25,000 in reimbursed expenses
13 necessarily incurred in the prosecution of this action. [Decl., ¶ 34] Magellan has
14 agreed not to object to a request for expenses, not to exceed \$25,000. This amount
15 is less than the \$47,124.60 in actual out-of-pocket expenses incurred to date. All
16 submitted expenses are of the sort typically billed by attorneys to paying clients.
17 *See generally Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). A major
18 component of Class Counsel's expenses include the cost of experts and
19 consultants, which were necessary given the novel, difficult and complex liability
20 and damages issues presented in the Consolidated Actions. [Decl., ¶ 33] Class
21 Counsel's expenses also do not include the standard charges for computerized
22 factual and legal research, which were necessary for this case given the complex
23 issues in this case and the developing state of the law in data-breach cases. The
24 modest fee request – which Defendant has agreed not to oppose – is warranted.

25 **VII. THE REQUESTED SERVICE AWARDS ARE WARRANTED.**

26 Service awards for named plaintiffs are provided to encourage them to
27 undertake the responsibilities and risks of representing the classes and to
28 recognize the time and effort spent in the case. *See Rodriguez v. West Publ'g*

1 *Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that such awards
2 "compensate class representatives for work done on behalf of the class, to make
3 up for financial or reputational risk undertaken in bringing the action, and,
4 sometimes, to recognize their willingness to act as a private attorney general");
5 *see also Scovil v. FedEx Ground Package Sys., Inc.*, No. 1:10-CV-515-DBH,
6 2014 WL 1057079, at *6 (D. Me. Mar. 14, 2014) ("Because a named plaintiff is
7 an essential ingredient of any class action, an incentive or service award can be
8 appropriate to encourage or induce an individual to participate in the suit.") A
9 service award is appropriate where the class representatives "have actively
10 participated and assisted Class Counsel in this litigation for the substantial benefit
11 of the Settlement Class despite facing significant personal limitations and
12 sacrifices." *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, Nos. 11-
13 md-02208-MAP, etc., 2014 WL 6968424, at *7 (D. Mass. Dec. 9, 2014); *see*
14 generally, *Rodriguez*, 563 F.3d at 958 ("Incentive awards are fairly typical in class
action cases.").

15 Each of the Plaintiffs for whom service awards are sought have spent a
16 significant amount of time assisting Class Counsel in litigating the Action for the
17 benefit of absent class members. [Decl., ¶¶ 35-36] Plaintiffs actively assisted
18 Class Counsel in gathering facts for this case and reviewing pleadings and
19 discovery, including Plaintiff Leather preparing and sitting for her deposition.
20 [*Id.*] The class representatives' time and effort expended on behalf of the
21 Settlement Class as a whole should not go unrecognized. The Court should
22 therefore approve of a service awards of \$5000 for Plaintiff Leather (who
23 prepared for and sat for her deposition), and \$1500 service awards to Plaintiffs
24 Griffey, Rayam, Ranson, and Flanders.

25 As the Court will note, the requested amounts are consistent with or fall
26 below service awards previously approved by courts in this Circuit. *See, e.g.*,
27 *Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-02122-CAS (CWx), 2016 WL

1 7173806, at *2 (C.D Cal. Apr. 18, 2016) (approving payment of \$10,000 service
 2 awards to each of the Plaintiffs); *Negrete*, 2015 WL 12592726, at *15 (same);
 3 *Quezada v. Schneider Logistics Transloading & Distrib., Inc.*, No. CV 12-2188
 4 CAS (DTBx), 2014 WL 12584436, at *12 (C.D. Cal. May 12, 2014)
 5 (explaining that "other courts have found that service awards of \$10,000 to
 6 named plaintiffs are reasonable") (citing cases); *Fulford v. Logitech, Inc.*, No.
 7 08-CV-02041 MMC, 2010 WL 807448, at *6, n.1 (N.D. Cal. Mar. 5, 2010)
 8 (collecting cases awarding service fees between \$5,000 and \$40,000).

9 **VIII. CERTIFICATION OF CONSULTATION**

10 Pursuant to Local Rule 54.2(e)(1), Class Counsel consulted with Defense
 11 Counsel in an effort to resolve the issues presented herein. After good-faith
 12 negotiations, Plaintiffs and Class Counsel have agreed to request, and Defendant
 13 has agreed not to oppose, a request by Plaintiffs to seek up to \$1 million for their
 14 attorneys' fees, and up to \$25,000 for their attorneys' out-of-pocket expenses. The
 15 parties did not reach an agreement on the amount of service awards to each class
 16 representative. Defendant agreed not to oppose Plaintiffs' request for up to \$10,000
 17 in total in service awards, and reserves the right to object to any request more than
 18 \$10,000 in total.

19 **IX. CONCLUSION**

20 For the foregoing reasons, Co-Lead Counsel respectfully request that the
 21 Court enter an order (a) approving the payment of \$1,000,000 in attorneys' fees,
 22 (b) approving the payment of \$25,000 in reimbursed litigation expenses, and (c)
 23 approving the payment of service awards to the Plaintiffs named above.

24 Date: December 23, 2023

Respectfully Submitted,

25 s/David K. Lietz

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Counsel for Plaintiffs and the Putative Class

* *Previously admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice of such filing to all registered users.

/s/ David K. Lietz
David K. Lietz

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