

1 MEYER WILSON CO., LPA  
2 Matthew R. Wilson, Esq. (SBN 290473)  
3 mwilson@meyerwilson.com  
4 Michael J. Boyle, Jr. (SBN 258560)  
5 mboyle@meyerwilson.com  
6 305 W. Nationwide Blvd  
7 Columbus, OH 43215  
8 PH: 614-224-6000  
9 Fax: 614-224-6066

6 COLE & VAN NOTE  
7 Laura Van Note (STATE BAR NO. 310160)  
8 lvn@colevannote.com  
9 555 12<sup>th</sup> Street, Suite 2100  
Oakland, CA 94607  
Telephone: (510) 891-9800

10 *Attorneys for Plaintiffs and the Proposed Settlement Class*

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF CONTRA COSTA**

13 JOHN DOE, by and through JANE DOE,  
14 and ULYSSES NAVARRO, on behalf of  
themselves and all others similarly situated,

15 Plaintiff,

16 v.

17 CLINIVATE, LLC.,

18 Defendant.  
19

Civil Action No. C22-01620

JUDGE CHARLES S. TREAT

**MOTION FOR ATTORNEY'S FEES,  
COSTS, AND INCENTIVE AWARDS**

Hearing Date: August 29, 2024

Time: 9:00 a.m.

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I.	INTRODUCTION.....	1
II.	THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.....	2
III.	ATTORNEYS’ FEES ARE WARRANTED UNDER THE PRIVATE ATTORNEY GENERAL DOCTRINE.....	3
A.	Plaintiff Are Successful Parties.....	4
B.	Plaintiffs Enforced Important Rights and Public Policy.....	4
C.	This Action Conferred Benefits on a Large Class.....	5
D.	The Burden of Private Enforcement Justifies a Fee Award.....	6
IV.	THE SUPREME COURT REQUIRES MARKET RATE COMPENSATION FOR CLASS COUNSEL.....	7
A.	The Requested Attorneys’ Fees Amount is Appropriate Under a Lodestar Analysis.....	7
1.	The Lodestar Plus Multiplier Method.....	7
2.	The Requested Lodestar Amount is Reasonable.....	9
B.	The Attorneys’ Fees Amount is Commensurate with Other Attorneys’ Fees Awards in Similar Class Settlements .....	10
V.	PLAINTIFFS’ ENHANCEMENT AWARD.....	11
VI.	CONCLUSION.....	12

**TABLE OF AUTHORITIES**

**CASES**

1

2

3

4 *7-Eleven Owners for Fair Franchising v. Southland Corporation,*  
85 Cal. App. 4th 1135..... 3

5 *Apple Computer v. Superior Court (Cagney),*  
126 Cal. App. 4th 1253(2005)... 11

6

7 *Baggett v. Gates,*  
32 Cal. 3d 128 (1982)... 4

8 *Beasley v. Wells Fargo Bank,*  
235 Cal. App. 3d 1407 (1991). 5

9

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

11 *Committee to Defend Reproductive Rights v. A Free Pregnancy Center,*  
229 Cal. App. 3d 633 (1991).. 6

12

13 *City and County of San Francisco v. Sainez,*  
77 Cal. App. 4th 1302 (2000)... 5

14 *City of Oakland v. Oakland Raiders,*  
203 Cal. App. 3d 78 (1988).. 8

15

16 *Daniels v. McKinney,*  
146 Cal. App. 3d 42 (1983).. 6

17 *Dunk v. Ford Motor Co.,*  
48 Cal. App. 4th 1794 (1996)... 7

18

19 *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors,*  
79 Cal. App. 4th 505 (2000).. 6

20 *Feminist Women’s Health Center v. Blythe,*  
32 Cal. App. 4th 1641 (1995)... 9

21

22 *Florez v. Linens N’ Things,*  
108 Cal. App. 4th 447 (2003).. 1

23 *Folsom v. Butte County Assn. of Governments,*  
32 Cal. 3d 668 (1982).. 4

24

25 *Glendora Community Redevelopment Agency v. Demeter,*  
155 Cal. App. 3d 465 (1984).. 8

26 *Hill v. National Collegiate Athletic Assn.,*  
7 Cal. 4th 1 (1974).... 1

27

28

**TABLE OF AUTHORITIES**  
**(cont'd)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Keith v. Volpe*,  
86 F.R.D. 565 (C.D. Cal. 1980).. ..... 8

*Ketchum v. Moses*,  
24 Cal. 4th 1122 (2001)... ..... 2, 7

*Kiss v. Louis Vuitton North America, Inc.*,  
Los Angeles Superior Court Case No. BC405192..... 10, 11

*Konevskya v. Tommy Bahama Group, Inc.*,  
Los Angeles Superior Court Case No. BC424931..... 10, 11

*Lealao v. Beneficial California, Inc.*,  
82 Cal. App. 4th 19 (2000).. ..... 4, 8, 9

*Linder v. Thrifty Oil Co.*,  
23 Cal. 4th 429 (2000)... ..... 6, 9

*Mangold v. Cal. Public Utilities Commn.*,  
67 F.3d 1470 (9th Cir. 1995).. ..... 8

*Maria P. v. Riles*,  
43 Cal. 3d 1281 (1987).. ..... 7

*Neary v. Regents of University of California*,  
3 Cal. 4th 273 (1992)... ..... 9

*Northington v. Davis*,  
23 Cal. 3d 955 (1979)... ..... 4

*Notrica v. State Compensation Ins. Fund*,  
70 Cal. App. 4th 911 (1999).. ..... 6

*Pineda v. Williams-Sonoma Stores, Inc.*,  
51 Cal. 4th (2011)... ..... 1

*Pomerants v. Skechers U.S.A., Inc.*,  
Los Angeles Super Court Case No. BC436360..... 10, 11

*Serrano v. Priest (Serrano III)*,  
20 Cal. 3d 25 (1997)... ..... 7, 8

*Serrano v. Unruh*,  
32 Cal. 3d 621 (1982).. ..... 9

*Staton v. Boeing Co.*,  
327 F.3d 938 (9th Cir. 2003)... ..... 11

*Urbaniak v. Newton*,  
19 Cal. App. 4th 1837 (1993)... ..... 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**  
**(cont'd)**

<i>Van Vranken v. Atlantic Ritchfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....	8
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971).....	5-6
<i>Vo v. Las Virgenes Muncipal Water District</i> , 79 Cal. App. 4th 440 (2000).....	7
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001).....	3, 7, 8
<i>Westside Community for Independent Living v. Obledo</i> , 33 Cal. 3d 348 (1983)..	4
<i>Woodland Hills Residents Assn., Inc. v. City Council</i> , 23 Cal. 3d 917 (1979)..	6

1 **I. INTRODUCTION**

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

7 The instant class action protected thousands of California consumers who are members of  
8 the Class. In the settlement agreement, which is similar to data breach cases of comparable size  
9 and scope, Defendant has agreed to address the Data Breach’s harms by providing two years of  
10 free credit monitoring and identity restoration services with up to \$1 million in insurance,  
11 compensating class members’ documented losses up to \$5,000, and a benefit for class members  
12 of up to \$120 for lost time. Settlement Agreement § 2.4.2m 2.4.3. This is fair and appropriate  
13 relief that the Court already approved in granting Plaintiffs’ motion for preliminary approval of  
14 class action settlement.

15 This action and settlement ensure the Class will be fairly compensated for the Data Breach,  
16 requires Defendant to enhance its security practices, and more broadly provides a general  
17 deterrent against other companies engaged in similar practices. Preventing identity theft,  
18 protecting consumer privacy, and preserving personal safety are important matters of public  
19 policy as shown by news articles and government studies, and are the objectives served by this  
20 class action.

21 The California Supreme Court requires market rate compensation for attorneys who  
22 undertake the risk of contingent, public interest litigation. According to the Supreme Court, the  
23 primary way to achieve market rate compensation in such cases is to provide a multiplier to the  
24 value of the attorney’s services had he been paid hourly while the services were provided, *i.e.* the  
25 lodestar method. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1136-1138 (2001). After arms-length  
26 negotiations to settle this action, as set forth in the concurrently filed motion for final approval of  
27 the class action settlement agreement, Defendant agreed not to oppose a request by Plaintiffs for  
28

1 \$257,000 in combined attorney’s fees and costs. The fees now sought — to be paid in addition  
2 to the benefits to the class — were plainly disclosed in the class notice approved by this Court in  
3 its preliminary approval order. Of the hundreds of class members who were notified of this  
4 settlement, none have filed any formal objections to the settlement agreement or the fee request  
5 as of the date of this filing and none have requested to be excluded from the settlement. Plaintiff  
6 addresses why the class benefit is appropriate in her concurrently filed motion for final approval  
7 of the class action settlement.

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

13 **II. ATTORNEYS’ FEES ARE WARRANTED UNDER THE PRIVATE**  
14 **ATTORNEY GENERAL DOCTRINE**

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

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

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

22 Successful litigants are entitled to fees under Code Civil Procedure § 1021.5 when the  
23 litigants’ efforts: (1) have enforced an important right affecting the public interest; (2) have  
24 conferred a significant benefit on the general public or a large class of persons; and (3) have  
25 imposed a financial burden on the plaintiff out of proportion to his individual stake in the matter.  
26 *Baggett v. Gates*, 32 Cal. 3d 128, 142 (1982).

27 While trial courts do have discretion to determine appropriate fee awards, they are also urged  
28

1 to recognize that: (1) class action settlements should be approved in the absence of evidence of  
2 collusion between the class representative and defendant; and (2) attorneys' fees are an integral  
3 part of a class action settlement. *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 33  
4 (2000) ("The award to the class and the agreement on attorney fees represent a package deal.  
5 Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of  
6 the class's recovery.").

7 Here, Plaintiffs contend this case meets the criteria for such an award, and Defendant has  
8 agreed not to oppose Plaintiffs' motion for an award of \$257,000 in attorneys' fees and in costs  
9 for work performed by Class Counsel.

10 **A. Plaintiffs Are Successful Parties**

11 Plaintiffs are successful parties under Code Civil Procedure § 1021.5. "A plaintiff will be  
12 considered a successful party where an important right is vindicated by activating defendants to  
13 modify their behavior." *Westside Community for Independent Living v. Obledo*, 33 Cal. 3d 348,  
14 353 (1983). "[T]o be a 'successful party,' a plaintiff need not achieve a favorable final judgment."  
15 *Urbaniak v. Newton*, 19 Cal. App. 4th 1837, 1842 (1993). Thus, fees are awarded where plaintiffs  
16 obtain relief through corrective action by the defendants caused by litigation. *Folsom v. Butte*  
17 *County Assn. of Governments*, 32 Cal. 3d 668, 685-686 (1982) ("The critical fact is the impact of  
18 the action, not the manner of its resolution."); *Northington v. Davis*, 23 Cal. 3d 955, 960 n.2  
19 (1979) ("voluntary" corrective action, induced by litigation, is a benefit of the litigation). Here,  
20 Plaintiffs are entitled to recover reasonable attorneys' fees and costs because they obtained a  
21 successful settlement that confers significant benefits on Settlement Class Members and the  
22 general public.

23 **B. Plaintiffs Enforced Important Rights and Public Policy**

24 The "important right" criterion in Code Civil Procedure § 1021.5 tests whether "the subject  
25 matter of the action implicated the public interest." *Beasley v. Wells Fargo Bank*, 235 Cal. App.  
26 3d 1407, 1418 (1991). Consumer protection litigation has long been judicially recognized to be  
27 vital to the public interest." *Beasley*, 235 Cal. App. 3d at 1418, citing *Vasquez v. Superior Court*,



1 4 Cal. 3d 800, 808 (1971). Protecting consumers' personal identification information is an  
2 important public interest. Data breaches occur across the United States on a daily basis.  
3 Consumers who have had their private information collected and stored are at risk of identity  
4 theft, which is often financially devastating and is both expensive and time consuming to redress.  
5 With advances in computer technology, the concerns the Legislature recognized nearly twenty  
6 years ago are even more pronounced today. As evidenced by the rash of computer database  
7 security breaches and the increase in identity theft cases nationwide, identity theft is one of the  
8 most important crime issues facing consumers today.

9 **C. This Action Conferred Benefits on a Large Class**

10 The benefits this action conferred on a sizeable class are beyond dispute. If this settlement  
11 is given final approval, the Settlement Agreement addresses the harms to the Class by providing  
12 free credit monitoring and identity restoration services, compensating class members'  
13 documented losses up to \$5,0000, and a benefit of up to \$120 for lost time. Settlement Agreement  
14 § 2.4.2, 2.4.3. However, the benefits of this action go beyond the class. This lawsuit will send a  
15 clear message to other industry watchers that use of new technologies to develop, enhance and  
16 maintain aggressive cybersecurity measures to avoid data breaches in the future. Such effects are  
17 precisely why consumer class litigation is an established and favored mechanism for redressing  
18 consumer rights. *See Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971); *Linder v. Thrifty Oil*  
19 *Co.*, 23 Cal. 4th 429, 445 (2000).

20 **D. The Burden of Private Enforcement Justifies a Fee Award**

21 Both the necessity and financial burden of privately litigating this action make a fee award  
22 appropriate. The theoretical possibility that a governmental agency could have brought a suit  
23 does not foreclose a fee award; fees are appropriate when the government has failed to act to  
24 protect the plaintiff or the public. *Daniels v. McKinney*, 146 Cal. App. 3d 42, 52 (1983); *see also*  
25 *Committee to Defend Reproductive Rights v. A Free Pregnancy Center*, 229 Cal. App. 3d 633,  
26 641 (1991) (plaintiff need not obtain approval from the district attorney to be eligible for Code  
27 Civil Proc. § 1021.5 fees). Without the incentive of an attorneys' fee award, Plaintiffs would  
28

1 have encountered considerable difficulty finding adequate representation because their damages  
2 would not have justified individual suits. *See Ryan v. California Interscholastic Federation*, 94  
3 Cal. App. 4th 1033, 1044 (2001) (“As to the necessity and financial burden of private  
4 enforcement, an award is appropriate where the cost of the legal victory transcends the claimant’s  
5 personal interest; in other words, where the burden of pursuing the litigation is out of proportion  
6 to the plaintiff’s individual stake in the matter.”).

7 The “financial burden” criterion of Code Civil Proc. § 1021.5 is met when “the cost of the  
8 claimant’s legal victory transcends his or her personal interest, that is, when the necessity of  
9 pursuing the lawsuit placed a burden on the plaintiff out of proportion to his or her individual  
10 stake in the matter.” *Woodland Hills Residents Assn., Inc. v. City Council*, 23 Cal. 3d 917, 941  
11 (1979); *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors*, 79 Cal.  
12 App. 4th 505, 519 (2000) (“The issue, in short, is whether the cost of litigation is out of proportion  
13 to the litigant’s stake in the litigation.”); *Notrica v. State Compensation Ins. Fund* 70 Cal. App.  
14 4th 911, 955 (1999).

15 Here, Plaintiffs had little financial incentive to pursue this lawsuit. However, they both  
16 sought to ensure Defendant would be held accountable for the breach and provide relief to the  
17 Class that is on par with other data breach cases of similar size and scope. Accordingly, each of  
18 the factors for a fee award under § 1021.5 is satisfied here and the Court should grant Plaintiff’s  
19 motion for attorneys’ fees.

20 **III. THE SUPREME COURT REQUIRES MARKET RATE COMPENSATION FOR**  
21 **CLASS COUNSEL**

22 **A. The Requested Attorneys’ Fees Amount is Appropriate Under a Lodestar**  
23 **Analysis.**

24 **1. The Lodestar Plus Multiplier Method**

25 The primacy of the lodestar method for establishing attorneys’ fees in private attorney  
26 general cases was established in *Serrano v. Priest (Serrano III)* 20 Cal. 3d 25 (1997). There,  
27 the Supreme Court held that the starting point for determining the amount of attorneys’ fees  
28

1 under the private attorney general doctrine begins by determining the “lodestar” amount. The  
2 “lodestar” is calculated by multiplying the time spent by the reasonable hourly compensation  
3 for the attorney involved in the presentation of the case. *Serrano III*, 20 Cal. 3d at 48, n.23; see  
4 also *Maria P. v. Riles*, 43 Cal. 3d 1281, 1294 (1987); *Vo v. Las Virgenes Muncipal Water District*,  
5 79 Cal. App. 4th 440, 445 (2000).

6 An adjustment to the lodestar, known as a multiplier, has long been recognized as necessary  
7 to fully compensate attorneys who undertake the risk of contingent public interest litigation.  
8 *Serrano III*, 20 Cal. 3d at 48-49; *Wershba*, 91 Cal. App. 4th at 254; *Lealao v. Beneficial*  
9 *California, Inc.*, 82 Cal. App. 4th 19, 40 (2000). A positive multiplier is applied to the lodestar  
10 to account for a variety of factors, including: (1) the novelty and difficulty of the issues; (2) the  
11 skill displayed in presenting the issues; (3) the results achieved; and (4) the contingent nature of  
12 the fee award. *Serrano III*, 20 Cal. 3d at 48-49; *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-1132  
13 (2001); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810, n.21 (1996).

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

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

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

Multipliers in class action litigation typically range from 2 to 4 or even higher. *Wershba*, 91

1 Cal. App. 4th at 255; *see also Van Vranken v. Atlantic Ritchfield Co.*, 901 F. Supp. 294,298 (N.D.  
2 Cal. 1995) (multipliers in the 3-4 range are common in lodestar awards for class actions); *Keith*  
3 *v. Volpe*, 86 F.R.D. 565,575-577 (C.D. Cal. 1980) (awarded multiplier of 3.5); *Mangold v. Cal.*  
4 *Public Utilities Commn.*, 67 F.3d 1470 (9th Cir. 1995) (applying California law to award 2.0  
5 multiplier in age discrimination case); *Glendora Community Redevelopment Agency v. Demeter*,  
6 155 Cal. App. 3d 465 (1984) (multiplier of 12 affirmed); *City of Oakland v. Oakland Raiders*,  
7 203 Cal. App. 3d 78, 82-83, 86 (1988) (enhancing \$853,756 lodestar by approximately 2.3 to  
8 award a \$2 million fee).

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

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

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

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

25 Class members deserve the same quality of representation as businesses who break the law.  
26 Such companies are usually represented by teams of sophisticated and experienced class action  
27

1 defense attorneys from large commercial law firms. As the Supreme Court recognized in  
2 *Ketchum*, reasonable multipliers are needed in order to encourage qualified lawyers to take on  
3 the substantial risk of litigation against such formidable foes.

4 In this case, Defendant has agreed not to oppose Plaintiff's request for an award of \$257,000  
5 for fees and costs, and Plaintiff contends that this is a fair and reasonable amount. Payment of the  
6 attorney's fee will be paid in addition to class benefits under the settlement and will not reduce  
7 the benefits to the settlement class in any respect.

8 **2. The Requested Lodestar Amount is Reasonable**

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

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

18 Pursuant to the Settlement Agreement, Class Counsel is requesting **\$14,842.98** in expenses  
19 and **\$242,157.02** in attorney's fees, for a total of \$257,000. Class Counsel has provided testimony  
20 regarding the total number of hours worked on this matter. Joint Decl. ¶¶ 10-16. Class Counsel  
21 has also provided testimony regarding its hourly rate and prior cases approving those rates. Joint  
22 Decl. ¶ 12. Class Counsel seeks compensation in this action based on a total number of **905.1**  
23 hours at the reasonable, hourly rate set according to the experience of counsel and the prevailing  
24 rates in counsel's respective legal markets. Together those figures create a pure lodestar fees  
25 figure of **\$463,864.50**. This represents a negative lodestar multiplier of **0.55**, which is  
26 significantly lower than the multipliers approved in similar cases.

27 Considering the *Ketchum* factors identified above, Class Counsel litigated this matter  
28

1 through an evolving and “novel” practice area to settlement, achieving what the plaintiffs set out  
2 to accomplish with this lawsuit. *Ketchum*, 24 Cal. 4th at 1138. The settlement compensates the  
3 class for its losses and protects them into the future with credit monitoring—alleviating the harms  
4 Defendant’s breach caused. And the class could not have achieved this result without experienced  
5 counsel. As they describe in their declaration, Class Counsel are experienced litigators with  
6 extensive trial experience. They have been certified class counsel in numerous consumer and  
7 employment cases. Both firms involved in this case have a broad and sophisticated legal practice,  
8 including a number of consumer class action litigation matters. Joint Decl, Exhibits 1 and 2. As  
9 a result, the Court should find that the *Ketchum* factors favor approving the settlement and Class  
10 Counsel’s proposed multiplier.

11 **B. The Attorneys’ Fees Amount is Commensurate with Other Attorneys’**  
12 **Fees Awards in Similar Class Data Breach Cases**

13 The agreed upon \$257,000 figure is also reasonable in that it is commensurate with —  
14 and, in fact, in some cases lower than — other attorneys’ fees awards in similar class settlements  
15 of data breach and smaller consumer protection cases. *See, e.g., Pomerants v. Skechers U.S.A.,*  
16 *Inc.*, Los Angeles Super Court Case No. BC436360, Order Dated February 7, 2012 (approving  
17 class settlement with \$275,000 award to Plaintiff’s counsel in attorneys’ fees in § 1747.08 case  
18 with similar procedural posture); *Konevskya v. Tommy Bahama Group, Inc.*, Los Angeles  
19 Superior Court Case No. BC424931, Order Dated December 12-13, 2011 (approving class  
20 settlement with \$250,000 award to Plaintiff’s counsel in attorneys’ fees in § 1747.08 case with  
21 similar procedural posture); *Kiss v. Louis Vuitton North America, Inc.*, Los Angeles Superior  
22 Court Case No. BC405192, Order Dated Dec. 11, 2009, ¶ 7 (approving class settlement with  
23 \$197,500 award to Plaintiff’s counsel in attorneys’ fees in § 1747.08 case with similar procedural  
24 posture).

25 **IV. PLAINTIFFS’ ENHANCEMENT AWARD**

26 When a settlement is given final approval at the fairness hearing, a class representative  
27 may make an application for an incentive award in recognition of the risk taken in commencing  
28

1 the action and the representative's work in prosecuting the action. California case law does not  
2 address the standard by which the Court is to evaluate the granting of an incentive award. Thus,  
3 federal case law is instructive. *Apple Computer v. Superior Court (Cagney)*, 126 Cal. App. 4th  
4 1253, 1264, n.4 (2005) (California courts may look to federal authority for guidance on matters  
5 involving class action procedures).

6 Under federal law, class representatives are eligible to receive reasonable incentive  
7 payments. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). The factors the court  
8 considers include "the actions the plaintiff has taken to protect the interests of the class, the degree  
9 to which the class has benefit[ed] from those actions, ... the amount of time and effort the plaintiff  
10 expended in pursuing the litigation ... and reasonabl[e] fears[s] of workplace retaliation." *Id.* at  
11 977. Here, both Plaintiffs expended substantial time and effort to enforce the important public  
12 policy of privacy and consumer protection by pursuing this action on behalf of the general public  
13 and achieving the settlement now before the Court. Plaintiffs researched, located and retained  
14 law firms with class action experience, particularly related to data breach class actions, to  
15 represent them and the Class in this Action. They actively participated in the litigation by meeting  
16 with counsel and participating with counsel during the parties' investigations, developments and  
17 settlement of the case.

18 If the settlement is granted final approval, Defendant has agreed to compensate Plaintiffs  
19 three thousand five hundred dollars (\$3,500) each for their efforts and risk. This amount is fully  
20 commensurate with enhancement awards paid to named plaintiffs in similar class litigation. *See,*  
21 *e.g., Pomerants v. Skechers U.S.A., Inc.*, Los Angeles Super Court Case No. BC436360, Order  
22 Dated February 7, 2012 (approving class settlement with \$2,500 payment to named plaintiff);  
23 *Kiss v. Louis Vuitton North America, Inc.*, Los Angeles Superior Court Case No. BC405192,  
24 Order Dated Dec. 11, 2009, ¶ 8 (approving class settlement with \$3,000 payment to named  
25 plaintiff); *Konevskya v. Tommy Bahama Group, Inc.*, Los Angeles Superior Court Case No.  
26 BC424931, Order Dated December 12-13, 2011 (final approval to \$2,000 enhancement award).  
27 Accordingly, the incentive awards agreed to be paid to Plaintiffs are fair, adequate, and  
28

1 reasonable, and should be granted final approval.

2 **V. CONCLUSION**

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

8  
9 Respectfully submitted,

10 Dated: July 1, 2024

By: /s/ Michael J. Boyle, Jr.

11 Michael J. Boyle, Jr. (SBN 258560)  
12 mboyle@meyerwilson.com  
13 MEYER WILSON CO., LPA  
14 Matthew R. Wilson, Esq. (SBN 290473)  
15 [mwilson@meyerwilson.com](mailto:mwilson@meyerwilson.com)  
16 305 W. Nationwide Blvd  
17 Columbus, OH 43215  
18 Phone Number: 614-224-6000  
19 Fax: 614-224-6066

20  
21 COLE & VAN NOTE  
22 Laura Van Note (STATE BAR NO.  
23 310160)  
24 lvn@colevannote.com  
25 555 12<sup>th</sup> Street, Suite 2100  
26 Oakland, CA 94607  
27 Telephone: (510) 891-9800  
28



1  
2 **PROOF OF SERVICE**

3 I, Michael J. Boyle, Jr., declare as follows:

4 I am employed in the County of Franklin, State of Ohio. I am a resident of the State of  
5 Ohio, over the age of eighteen years old, and not a party to this action. My business address is  
6 Meyer Wilson Co., LPA, 305 W. Nationwide Blvd., Columbus, OH 43215. On May 23, 2023, I  
7 served the following document(s) described as:

8  
9 MOTION FOR FEES AND ATTACHED DOCUMENTS

10 on all parties of record as follows:

11 (X) Electronically as follows:

12 Jennifer Stegmaier, [jennifer.stegmaier@wilsonelser.com](mailto:jennifer.stegmaier@wilsonelser.com)  
13 Wilson Elser Moskowitz Edelman & Dicker, LLP  
14 Attorneys for Defendant

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on July 1, 2024 at Columbus, Ohio.

17  
18 /s/ Michael J. Boyle, Jr.  
19 Michael J. Boyle, Jr.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28