

1 Kim D. Stephens, OSB #030635
Kaleigh N. Boyd
2 TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
3 Seattle, Washington 98101
4 Tel: (206) 682-5600
Fax: (206) 682-3992

5 *Additional attorney signature blocks listed below*

6 *Attorneys for Plaintiffs and the Proposed Class*

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON
10 (PORTLAND DIVISION)

11 LISA UNSWORTH, MICHAEL RAMONE,
12 CHRISTOPHER POTTER, THERESE
13 COOPER, and CHARLES SANDERSON,
individually and on behalf of all others similarly
situated,

14 Plaintiffs,

15 v.

16 LEWIS & CLARK COLLEGE

17 Defendant.
18
19
20
21
22
23
24
25
26
27
28

Case No.: 3:24-cv-00614-SB

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

1 **INTRODUCTION**

2 Plaintiffs Lisa Unsworth, Michael Ramone, Christopher Potter, Therese Cooper, and
3 Charles Sanderson (collectively, “Plaintiffs”) respectfully move for an Order approving: (1) Class
4 Counsel’s attorneys’ fees of \$166,666.67 and costs of \$13,311.01, and (2) Service Awards of
5 \$2,000 for each named Plaintiff.
6

7 In December 2024, after arm’s-length negotiations, the parties reached a Settlement
8 resolving this action. That Settlement—the product of Class Counsel’s zealous efforts—established
9 a \$500,000 non-reversionary common fund for the Settlement Class. As compensation for their
10 efforts, Class Counsel seek reasonable attorneys’ fees and costs in the amount of \$166,666.67 (one-
11 third of the Settlement Fund), as well as reimbursement for \$13,311.01 in costs. The requested fee
12 is in line with the benchmark for fees in this district and is reasonable given the benefits secured,
13 the risks in this evolving area of law, and the quality of work performed. Additionally, Class
14 Counsel request Service Awards of \$2,000 to each named Plaintiff.
15

16 **STATEMENT OF FACTS**

17 Plaintiffs incorporate by reference the Statement of Facts in their Unopposed Motion for
18 Preliminary Approval of Class Action Settlement. *See* Dkt. 27.

19 Since this Court granted Preliminary Approval on January 15, 2025 (*see* Dkt. 33), Class
20 Counsel has worked closely with EAG Gulf Coast, LLC (“EAG”), the Settlement Administrator, to
21 ensure smooth implementation of the Settlement Notice approved by the Court. *See* Decl. of
22 Kaleigh N. Boyd in Support of Pls.’ Motion for Fees, Costs, and Service Awards (“Boyd Decl.”)
23 ¶ 9. Class Counsel anticipates ongoing coordination with EAG and Defendant’s Counsel in the
24 coming months to ensure successful administration of the Settlement for the Class. *Id.* ¶ 23.
25
26
27
28

1 While the deadline to object or request exclusion is April 15, 2025, the Settlement has been
2 well received, with no objections or requests for exclusion to date. Boyd Decl. ¶10.

3 THE SETTLEMENT TERMS

4 The Settlement provides substantial relief to a class of approximately 48,799 individuals.
5 Dkt. 28, Settlement Agreement (“S.A.”) ¶ 41. It establishes a \$500,000 Settlement Fund from which
6 Settlement Class may claim reimbursement for ordinary Out-of-Pocket Losses or receive a Cash
7 Award, along with the option of two years of free three-bureau credit monitoring. S.A. ¶ 51–54.
8 The Settlement Fund will also cover Notice and Settlement Administration costs, as well as any
9 awarded attorneys’ fees, costs, and Service Awards. S.A. ¶¶ 72, 82, 84.

11 ARGUMENT

12 It is well established that when counsel’s efforts result in a substantial benefit to a class, an
13 award of reasonable attorneys’ fees and costs is appropriate. *See Boeing Co. v. Van Gemert*, 444
14 U.S. 472, 478 (1980). In deciding whether the requested fee amount is appropriate, the Court
15 assesses whether it is “fundamentally fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327
16 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

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

19 Where counsel seek fees from a common fund, courts may assess reasonableness using
20 either the percentage-of-the-fund method or the lodestar method. *In re Mercury Interactive Corp.*
21 *Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th
22 Cir. 1998). In the Ninth Circuit, the percentage method is the dominant approach in the common
23 fund cases. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008).

25 The common fund doctrine rests on the understanding that attorneys should be compensated
26 by those who benefit from their work. *See Boeing*, 444 U.S. at 478 (“[A] litigant or a lawyer who
27 recovers a common fund . . . is entitled to a reasonable attorney’s fee from the fund as a whole.”).

1 Awarding fees from a common fund avoids unjust enrichment by ensuring that class members who
2 benefit from litigation also share in its costs. *In re: Facebook Biometric Info. Privacy Litig.*, 2022
3 WL 822923, at *1 (9th Cir. Mar. 17, 2022) (quotation omitted).

4 Courts prefer the percentage model when the value of a common fund is readily
5 ascertainable. See *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)
6 (“Because the benefit to the class is easily quantified in common-fund settlements, we have allowed
7 courts to award attorneys a percentage of the common fund in lieu of the often more time-
8 consuming task of calculating the lodestar.”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050
9 (9th Cir. 2002) (“[T]he primary basis of the fee award remains the percentage method.”).

10 By contrast, courts apply the lodestar method when the net value of the settlement is
11 difficult to determine or when a percentage-based approach would be impracticable. *Hanlon*, 150
12 F.3d at 1029; *Bluetooth*, 654 F.3d at 941 (lodestar appropriate “where the relief sought—and
13 obtained—is often primarily injunctive in nature and thus not easily monetized”).

14 Because the Settlement establishes a common fund, Class Counsel request that the Court
15 apply the percentage-of-the-fund method in determining attorneys’ fees.

16 **B. The Requested Fee Amount Is Reasonable Under the Percentage-of-the-Fund**
17 **Method**

18 Class Counsel’s request for \$166,666.67 in attorneys’ fees—33.3% of the common fund—
19 and \$13,311.01 in costs is fair and reasonable. The Ninth Circuit has established a 25% benchmark
20 as the “starting point” for analysis. *In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th
21 Cir. 2015). “That percentage amount can then be adjusted upward or downward depending on the
22 circumstances of the case.” *De Mira v. Heartland Emp’t Serv., LLC*, 2014 WL 1026282, at *1
23 (N.D. Cal. Mar. 13, 2014). Courts have recognized that “in most common fund cases, the award
24 exceeds [the] benchmark.” *Id.* (quoting *Omnivision*, 559 F. Supp. 2d at 1047). Indeed, the mean
25
26
27
28

1 percentage awarded in this district is 27%, with awards frequently surpassing that threshold.
2 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (noting that the typical range of
3 acceptable attorney fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement
4 value); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (approving an award of
5 33 percent of a \$12 million settlement fund).
6

7 The Ninth Circuit instructs district courts to “take into account all of the circumstances of
8 the case” in determining a reasonable percentage, *Vizcaino*, 290 F.3d at 1048, including “(1) the
9 results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the
10 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made
11 in similar cases.” *Omnivision*, 559 F. Supp. 2d at 1046. These factors support Class Counsel’s
12 requested attorneys’ fees and costs.
13

14 **1. Class Counsel Achieved an Excellent Result for the Settlement Class**

15 The Court should consider “the degree of success obtained” in determining attorneys’ fees.
16 *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Omnivision*, 559 F. Supp. 2d at 1046 (“The overall
17 result and benefit to the class from the litigation is the most critical factor in granting a fee award.”).

18 This Settlement delivers significant results for the Class. While Plaintiffs believed in their
19 claims, their chances of prevailing on the merits were uncertain due to unsettled questions of law
20 and fact common in data breach cases. *Fox v. Iowa Health Sys.*, 2021 WL 826741, at *5 (W.D. Wis.
21 Mar. 4, 2021) (noting that this area of law “is evolving; there is no guarantee of the ultimate
22 result.”) (internal citation omitted) Given the drawn-out and complex nature of such litigation, the
23 \$500,000 Settlement Fund is an excellent result that avoids the continued risk of litigation and
24 provides immediate relief. It offers cash payments and two years of three-bureau credit monitoring.
25 S.A. ¶51–54.
26
27
28

1 **a. Plaintiffs Faced Significant Risks in This Litigation**

2 Risk is critical in determining a fair fee award. *Omnivision*, 559 F. Supp. 2d at 1046–47 (the
3 risk of non-recovery in a complicated case “is a significant factor in the award of fees”). While
4 Plaintiffs believe their case is strong, data breach cases carry substantial risks. *See, e.g., In re Sonic*
5 *Corp. Customer Data Sec. Breach Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019)
6 (“Data breach litigation is complex and risky. This unsettled area of law often presents novel
7 questions for courts. And of course, juries are always unpredictable.”). Although theoretically
8 sound, the damages methodologies in this case remain untested in a disputed class certification
9 setting. As with any data breach case, establishing causation on a class-wide basis has uncertainty.
10 Each of these risks could have impeded the successful prosecution of Plaintiffs’ claims, potentially
11 resulting in zero recovery for the Settlement Class. Thus, this factor supports the requested fee
12 award.
13
14

15 **b. Class Counsel are Highly Skilled Attorneys Experienced in Data**
16 **Breach Litigation**

17 The “prosecution and management of a complex national class action requires unique legal
18 skills and abilities” relevant to determining a reasonable fee. *Omnivision*, 559 F. Supp. 2d at 1047
19 (citation omitted); *see also Vizcaino*, 290 F.3d at 1048 (reasoning that the complexity of the issues
20 and skill and effort displayed by class counsel are among the relevant factors under the percentage
21 approach). Data breach class actions remain relatively uncharted, as none have gone to trial. Class
22 Counsel are experienced litigators who have successfully prosecuted numerous large consumer
23 class actions and other complex matters, including data breach cases. Their ability and relevant
24 experience were critical to achieving the Settlement; each stage of this case required skill and a
25 significant commitment of time and resources.
26
27
28

1 Courts also consider “the quality of opposing counsel as a measure of the skill required to
2 litigate the case successfully.” *In re Am. Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at *22
3 (C.D. Cal. July 28, 2014). Throughout the litigation, Class Counsel faced Miller Nash LLP and
4 McDonald Hopkins LLC, both highly respected law firms.

5
6 Earlier this year, a court in this District granted final approval to a class settlement arising
7 out of a data breach, and approved a fee award of one-third of the settlement plus expenses. *See In*
8 *re: Kannact, Inc. Data Security Incident*, No. 6:23-cv-1132-AA, Dkt. 43 (D. Ore. Jan. 22, 2025). In
9 approving the fee award, the court found that the plaintiffs’ counsel—two of which represent
10 Plaintiffs in this matter—were highly skilled, and that the “work that [counsel] did to resolve this
11 case should be applauded . . . in terms of the work that [went] into managing, organizing, and
12 litigating” the case. *In re: Kannact*, Jan. 22, 2025 Hearing Tr., at 4, 9. The skills, abilities, and
13 experience demonstrated by Class Counsel in reaching this Settlement supports the requested fee
14 award.
15

16 **c. Class Counsel Faced Substantial Risk of Non-Payment and Financial**
17 **Burdens Litigating on a Contingent Basis**

18 The Ninth Circuit has confirmed that a fair fee award must include consideration of the
19 contingent nature of the fee. *See, e.g., Vizcaino*, 290 F.3d at 1050. Courts recognize the public
20 interest in rewarding attorneys who take on such cases with an enhanced fee to compensate for the
21 risk of nonpayment. *See, e.g., In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299
22 (9th Cir. 1994) (“Contingent fees that may far exceed the market value of the services if rendered
23 on a non-contingent basis are . . . a legitimate way of assuring competent representation for
24 plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose.”);
25

26 Class Counsel litigated this case on a purely contingent basis, devoting substantial resources
27 and foregoing other opportunities with no guarantee of payment. Boyd Decl. ¶¶ 2–11, 14–17.
28

1 Despite this, Class Counsel zealously advocated for Plaintiffs and the Settlement Class.
 2 Additionally, they advanced significant out-of-pocket costs. To date, they have dedicated over
 3 213.20 hours and nearly \$13,311.01 in costs. Boyd Decl. ¶¶ 20, 24. This substantial outlay on a
 4 purely contingent basis supports the requested fee.

5
 6 **d. Fees Awarded in Comparable Cases Align with Those Requested Here**

7 Courts in the Ninth Circuit, including this district, routinely award percentage recoveries
 8 exceeding the 25% benchmark. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (noting that
 9 the typical range of acceptable attorney fees in the Ninth Circuit is 20 percent to 33.3 percent of the
 10 total settlement value); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995)
 11 (approving an award of 33 percent of a \$12 million settlement fund); *Morris v. Lifescan, Inc.*, 54
 12 Fed. App'x 663, 664 (9th Cir. 2003) (an attorneys' fee award of 33 percent was not an abuse of
 13 discretion); *In re: Kannact, Inc. Data Security Incident*, No. 6:23-cv-1132-AA, Dkt. 43 (D. Ore.
 14 Jan. 22, 2025) (awarding 33.33% fee); *In re Galena Biopharma, Inc. Sec. Litig.*, 2016 WL 3457165,
 15 at *11 (D. Or. June 24, 2016) (awarding 32% fee). Comparing the requested fees to awards in
 16 similar cases highlights the reasonableness of this application. Accordingly, fee awards in
 17 comparable cases support this request.

18
 19
 20 **C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

21 The Ninth Circuit has encouraged, but not required, courts to conduct a lodestar cross-check
 22 when assessing percentage-based fee awards. *See Bluetooth*, 654 F.3d at 944 (stating, “we have also
 23 encouraged courts to guard against an unreasonable result by cross-checking their calculations
 24 against a second method” of determining fees). The first step in the lodestar method is to multiply
 25 the number of hours counsel reasonably expended on the litigation by a reasonable hourly rate.
 26 *Hanlon*, 150 F.3d at 1029. This “figure may [then] be adjusted upward or downward to account for
 27

1 several factors, including the quality of representation, the benefit obtained for the class, the
2 complexity and novelty of the issues presented, and the risk of nonpayment.” *Id.* (citing *Kerr v.*
3 *Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)). The lodestar multiplier method
4 confirms the propriety of the requested fee here.

5
6 **1. Class Counsel’s Lodestar is Reasonable**

7 Through February 2025, Class Counsel devoted over 213.20 hours to the investigation,
8 litigation, and resolution of this complex case, incurring \$134,161.00 in lodestar. Boyd Decl. ¶ 20.
9 As detailed in the declaration, their time was spent investigating claims, conducting discovery,
10 researching and analyzing legal issues, and engaging in settlement negotiations. Boyd Decl. ¶¶ 2–
11 11. The time they devoted was reasonable, reflecting the efficient and effective prosecution of the
12 claims. Further, much work still remains, as Class Counsel will move for final approval of the class
13 action settlement, continue to oversee the administration of the Settlement, respond to Participating
14 Settlement Class Members’ inquiries, and work with the EAG to distribute payments. *Id.* ¶ 30.
15 Based on their collective experience, Class Counsel anticipate the lodestar will be very close or
16 match the total amount requested.
17

18 Class Counsel’s hourly rates are reasonable and have been approved by courts in this district
19 and throughout the country. In assessing the reasonableness of an attorney’s hourly rate, courts
20 consider whether the claimed rate is “in line with those prevailing in the community for similar
21 services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*,
22 465 U.S. 886, 895–96 n.11 (1984). Class Counsel are experienced, highly regarded members of the
23 bar who brought extensive experience in consumer class actions to this case.
24

25 **2. A Multiplier is Warranted**

26 The fee requested by Class Counsel reflects a current multiplier of 1.24. Boyd Decl. ¶ 31.
27 Multipliers in the Ninth Circuit have ranged from 0.6 to 19.6. *Vizcaino*, 290 F.3d at 1050–51 & n.6
28

1 (upholding 3.65 multiplier); *Infospace*, 330 F.Supp.2d 1216 (3.5 multiplier); *Steiner v. Am. Broad.*
2 *Co., Inc.*, 248 F. App'x. 780, 783 (9th Cir. 2007) (finding 6.85 multiplier to be “well within the
3 range of multipliers that courts have allowed”). Courts in the Ninth Circuit apply similar factors
4 when analyzing a lodestar multiplier cross check. *See Hanlon*, 150 F.3d at 1029. As discussed
5 above, these factors favor this request. The current multiplier of 1.24 will continue to decrease as
6 Class Counsel move for final approval of the class action settlement and administer the settlement.
7 Even so, the current 1.24 multiplier is consistent with multipliers awarded in the Ninth Circuit, and
8 the lodestar cross-check thus supports the requested fee.

10 **D. Class Counsel’s Reported Expenses are Reasonable**

11 Under well-settled law, Class Counsel are entitled to reimbursement of the expenses
12 reasonably incurred in investigating and prosecuting this matter. *Mills v. Electric Auto-Lite Co.*, 396
13 U.S. 375, 391-92 (1970). To date, Class Counsel have collectively incurred \$13,311.01 in
14 unreimbursed litigation costs. These expenses were necessary for the prosecution and resolution of
15 this litigation, incurred for the benefit of the Settlement Class, with no guarantee of reimbursement.
16 They are reasonable in amount, and the Court should approve their reimbursement.

18 **E. The Requested Service Awards are Reasonable**

19 Service awards compensate the named Plaintiffs for their work on behalf of the Class,
20 account for financial and reputational risks, and promote public policy by encouraging plaintiffs to
21 take on representative lawsuits. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th
22 Cir. 2009); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646–47 (S.D. Cal. 2011) (“Incentive awards are
23 fairly typical in class actions.”). The Settlement is not contingent on the Court’s approval of such
24 awards. Here, the requested Service Awards of \$2,000 each are modest and in line with awards
25 approved in Oregon and elsewhere. *See Facebook*, 2024 WL 700985, at *2 (9th Cir. Feb. 21, 2024)
26 (award of \$3,000 to \$5,000 was modest and not an abuse of discretion); *Perkins v. Singh*, 2021 WL
27

1 5085119, at *3 (D. Or. Nov. 2, 2021) (approving award of \$2,500); *Makaneole v. Solarworld Indus.*
2 *Am., Inc.*, 2023 WL 1965490, at *2 (D. Or. Feb. 13, 2023) (approving award of \$1,000). These
3 awards will compensate Plaintiffs for their time and effort serving as Settlement Class
4 Representatives, assisting in the investigation, reviewing pleadings, keeping abreast of the
5 litigation, and reviewing and approving the proposed settlement terms. Boyd Decl. ¶ 12. Indeed,
6 without Plaintiffs’ participation, the Class would have recovered nothing.
7

8 **CONCLUSION**

9 Plaintiffs and Class Counsel respectfully request that the Court grant this motion and award
10 the requested attorneys’ fees, costs, and Service Awards in full.

11 *I certify that this memorandum contains 2,980 words in compliance with the Local Civil*
12 *Rules.*

13 DATED this 28th day of February, 2025.

14
15 /s/ Kaleigh N. Boyd
16 Kim D. Stephens, OSB #030635
17 Kaleigh N. Boyd (*pro hac vice*)
18 **TOUSLEY BRAIN STEPHENS PLLC**
19 1200 Fifth Avenue, Suite 1700
20 Seattle, WA 98101
21 Telephone: (206) 682-5600
22 Fax: (206) 682-2992

23 Daniel O. Herrera
24 Nickolas J. Hagman (*pro hac vice*)
25 Mohammed A. Rathur
26 **CAFFERTY CLOBES MERIWETHER**
27 **& SPRENGEL LLP**
28 135 S. LaSalle, Suite 3210
Chicago, Illinois 60603
Telephone: (312) 782-4880
Fax: (312) 782-4485

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

Philip Krzeski (admitted *pro hac vice*)
CHESTNUT CAMBRONNE PA
100 Washington Ave. S., Ste. 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
Fax: (612) 336-2940
pkzeski@chestnutcambronne.com