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Appointed Class Counsel

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
SAN JOSE DIVISION

MICHAEL FORD, NOE GAMBOA AND
MADISON COPELAND, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

[24]7 .AI, INC.,

Defendant.

CASE NO. 5:18-CV-02770-BLF

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES
AND COSTS AND SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: January 27, 2022

Time: 9:00 A.M. (Pacific Time)

Courtroom: 3, 5th Floor

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1 **NOTICE OF MOTION FOR ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on January 27, 2022, at 9:00 A.M. (Pacific Time), or as soon
4 thereafter as the matter may be heard in the Courtroom of the Honorable Beth Labson Freeman, United
5 States District Court, Northern District of California, San Jose Division, 280 South 1st Street, San
6 Jose, CA 95113, Plaintiffs Michael Ford, Noe Gamboa, and Madison Copeland (previously appointed
7 as "Class Representatives") will and hereby do move the Court, pursuant to Federal Rule of Civil
8 Procedure 23, for the entry of an order approving the requested attorneys' fees and costs in the amount
9 of \$450,000.00, as well as service awards in the amount of \$2,000.00 for each Class Representative.

10 The grounds for this motion are that the proposed settlement is within the necessary range of
11 reasonableness to justify granting the requested attorneys' fees and costs, as well as service awards.
12 This motion is based upon this Notice and Motion for Attorneys' Fees and Costs and Service Awards,
13 the Memorandum of Points and Authorities, the accompanying declarations of Melissa S. Weiner and
14 Michael F. Ram, the pleadings and papers on file in this action, and such oral argument and
15 documentary evidence as may be presented at the hearing on this motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Settlement Class Counsel have worked diligently in prosecuting this matter on behalf of the
4 Settlement Class and have achieved a successful result. The Settlement Agreement provides for
5 monetary reimbursement up to \$2,000 for myriad out-of-pocket expenses and monetary relief for lost
6 time spent up to three hours for undocumented time, and an additional two hours (for five hours total)
7 for documented time spent dealing with the Data Incident as well as non-monetary benefits improving
8 Defendant’s data and information security practices. To reach this result, Settlement Class Counsel
9 expended extensive resources to investigate this case, interviewed potential plaintiffs, drafted the
10 complaints, attempted to consolidate other cases pending in other jurisdictions, responded to numerous
11 dispositive motions, pursued an appeal, and ultimately brought this case to finality through mediation
12 and settlement.

13 In compensation for their efforts, Settlement Class Counsel seek \$450,000.00 for fees and costs
14 incurred in securing relief for the Settlement Class. This request is less than Settlement Class Counsel’s
15 current lodestar of \$580,867.80, and Settlement Class Counsel will incur further lodestar in moving
16 for Final Approval, addressing any objections, responding to any appeals, and overseeing the
17 administration of benefits for the Settlement Class, as described below and in the Declarations of
18 Melissa S. Weiner, attached as **Exhibit 1** (“Weiner Decl.”) and Michael F. Ram, attached as **Exhibit**
19 **2** (“Ram Decl.”).

20 Finally, Settlement Class Counsel seek modest Service Awards of \$2,000.00 for each Class
21 Representative, as determined by their involvement in this case, including reviewing pleadings,
22 reviewing discovery requests sent to Defendant, keeping apprised of the litigation and appeal, and
23 participating in settlement negotiations and approving the Settlement.

24 The fees and costs sought here are factually supported by Settlement Class Counsel’s
25 declarations, including biographic backgrounds, lodestar totals, and expense breakdowns.

26 **II. HISTORY OF THE LITIGATION**

27 **A. Brief Factual Background**

1 On September 26, 2020, Class Representatives Michael Ford, Noe Gamboa and Madison
 2 Copeland filed a Second Consolidated Amended Class Action Complaint (“SAC”). (Dkt. 101.) The
 3 SAC alleges that Defendant failed to secure and safeguard customers’ payment card data (“PCD”) and
 4 other personally identifiable information (“PII”) that Defendant collected while Class Representatives
 5 and Class and Subclass members shopped on Best Buy’s, Sears’, and other companies’ websites or
 6 chatted with customer service on Best Buy’s, Sears’, and other companies’ websites in the Fall of
 7 2017. (Dkt. 101.) Class Representatives asserted four causes of action: negligence, violation of
 8 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (the “UCL”); breach
 9 of confidence; and violation of Illinois Consumer Fraud and Deceptive Business Practices Act, 815
 10 Ill. Comp. Stat. Ann. §§ 505, *et seq.* (*Id.*)

11 **B. Procedural History and Summary of the Litigation**

12 The parties vigorously litigated this case. The first complaint in this case was filed on May 10,
 13 2018, asserting claims arising out of a Data Incident that affected customers of Best Buy, Delta Airlines,
 14 and Sears, all of which had contracted with Defendant, which offered sales and service-oriented
 15 software, as well as voice and chat agent services for sales support. Class Representatives alleged that
 16 the Data Incident was a result of Defendant’s inadequate security measures despite being aware of the
 17 increase in cyberattacks. Class Representatives further alleged that, in addition to Defendant’s failures
 18 to prevent the Data Incident, Defendant also failed to disclose the Data Incident for approximately six
 19 months, despite detecting and allegedly remedying the breach in October 2017.

20 On August 1, 2018, (Dkt. 45), Delta Airlines moved to dismiss the case, transfer or stay the
 21 matter under the first-to-file rule because a substantially similar case—*Pica, et al. v. Delta Air Lines,*
 22 *Inc., et al.*, Case No. 2:18-cv-02876-MWF-E (C.D. Cal.) (“Pica”)—had been filed in the Central
 23 District of California one month prior and was more procedurally advanced. On August 15, 2018,
 24 Defendant joined Delta Airlines’ motion. Class Representatives opposed the motion. (Dkt. 50.) After
 25 briefing on the issues, this Court issued a ruling indicating it was inclined to transfer the matter rather
 26 than dismiss it. However, it was unclear to the Court whether the Central District of California was the
 27 proper District to transfer the matter to under the first-to-file rule. The Court then directed the Parties
 28 to submit supplemental briefings on the issues. (Dkt. 87.) The Parties subsequently, due to the *Pica*

1 Court dismissing the *Pica* matter with prejudice, filed a Stipulation to Set Briefing Schedule, proposing
 2 to submit 5-page supplemental briefs addressing the venue issue and the effect of the *Pica* dismissal.
 3 (Dkt. 88.) The Court denied the Parties' request and granted Defendant's motion to dismiss the case
 4 under the first-to-file rule. (Dkt. 89.)

5 Class Representatives appealed the Court's ruling to the Ninth Circuit Court of Appeals. The
 6 Appeals Court vacated the Court's decision and remanded pending resolution of *Pica*. (Dkt. 90.) On
 7 September 26, 2020, Class Representatives filed the SAC. Defendant filed a Motion to dismiss the
 8 SAC on November 13, 2020. (Dkt. 109.) The Parties subsequently filed responsive and reply motions.
 9 (Dkts. 112, 113.)

10 C. Settlement Negotiations

11 Following full briefing of Defendant's Motion to Dismiss, counsel for the parties discussed the
 12 possibility of a mediation in this case, and on March 10, 2021, the parties engaged in an arm's-length,
 13 remote, day-long mediation session under the direction of Mr. Rodney Max via Zoom. (Dkt. 124, at
 14 19.) During the mediation, the parties agreed to terms forming the substance of the Settlement.
 15 Negotiations of attorneys' fees and costs did not commence until agreement on behalf of the
 16 Settlement Class had been finalized. *See* § 10.2.

17 III. ARGUMENT

18 A. Legal Standard

19 Rule 23(h) provides that parties may agree to an award of reasonable attorney's fees and
 20 nontaxable costs in a certified class action. Fed. R. Civ. P. 23(h). As the Supreme Court has explained:
 21 "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants
 22 will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Thus, litigants are
 23 encouraged to resolve fee issues by agreement as long as the amount is reasonable. *Hanlon v. Chrysler*
 24 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also In re M.D.C. Holdings Sec. Litig.*, No. CV 89-
 25 0090, 1990 WL 454747, at *4 (S.D. Cal. Aug. 30, 1990) ("Because this Court believes the parties
 26 should be encouraged to settle all their disputes as part of the settlement . . . including the amount of
 27 the fee . . . if the agreed-to fee falls within a range of reasonableness, it should be approved as part of
 28 the negotiated settlement . . ."); *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012

1 WL 4755371, at *1 (N.D. Cal. Oct. 4, 2012) (“The award of Class Counsel’s fees and costs will be paid
2 directly by Defendants and will not affect the injunctive relief benefiting the Class. Under these
3 circumstances, the Court finds that the agreed amounts for attorneys’ fees and expenses, and service
4 awards for the Class Representatives, are presumed to be reasonable.”). As the Ninth Circuit has held,
5 the lodestar “presumptively provides an accurate measure of reasonable attorney’s fees.” *Harris v.*
6 *Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994); *Clark v. City of Los Angeles*, 803 F.2d 987, 990 (9th Cir.
7 1986). Where there is no common fund, “the percentage-of-the-fund method is an inappropriate method
8 of calculating fees.” *In re Toys R Us-Delaware, Inc. – Fair and Accurate Credit Transactions Act*
9 *(FACTA) Litig.*, 295 F.R.D. 438, 468 (C.D. Cal. 2014).

10 In the Settlement Agreement, Defendant agreed that Class Counsel could “move the Court for
11 an award of attorneys’ fees and costs not to exceed \$450,000. § 7.2. The Parties’ Agreement is that the
12 award of attorneys’ fees and costs will not impact the monetary relief to be made available to the
13 Settlement Class and is to compensate Class Counsel for the services they have performed in the past
14 as well as services they may be required to perform in the future through final implementation of the
15 Settlement. Pursuant to the Settlement Agreement, Class Counsel now apply for a total fee and cost
16 award of \$450,000.00, which accounts for both the attorneys’ fees for the law firms representing the
17 Class Representatives (who have amassed to date a collective lodestar of \$580,867.80), and the
18 reimbursement of their cumulative litigation expenses (which to date total \$28,872.13). Weiner Decl.,
19 at ¶¶ 23, 26; Ram Decl., at ¶¶ 23, 24, 26.

20 In light of the policy favoring settlement of fee disputes, it is appropriate to account for the fact
21 that “the parties are compromising to avoid litigation.” *Laguna v. Coverall N. Am.*, 753 F.3d 918, 922
22 (9th Cir. 2014), *vac’d on other grounds*, 772 F.3d 608 (9th Cir. 2014). Accordingly, the Ninth Circuit
23 holds that “the court need not inquire into the reasonableness of the fees . . . with precisely the same
24 level of scrutiny as when the fee amount is litigated.” *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938,
25 966 (9th Cir. 2003)) (internal quotations omitted). Thus, while the Court must conduct an inquiry into
26 the reasonableness of the fee request, the parties’ negotiated agreement as a reasonable attorneys’ fees
27 request should be given substantial weight. Class Representatives’ fee request, negotiated at arm’s-

1 length and under the supervision of the experienced and respected mediator Rodney Max, is reasonable
 2 considering the work performed (and remaining to be performed) and the results achieved, and is
 3 consistent with similar awards recently approved in this Circuit. The settlement is the product of
 4 strenuous and efficient efforts by Class Counsel in a case involving complex issues of fact and law.

5 Under the lodestar method, a “lodestar figure is calculated by multiplying the number of hours
 6 the prevailing party reasonably expended on the litigation (as supported by adequate documentation)
 7 by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Bluetooth Headset*
 8 *Prod’s. Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (citing *Staton*, 327 F.3d at 965); *Ferland v.*
 9 *Conrad Credit Corp.*, 244 F.3d 1145, at 1149 n.4 (9th Cir. 2001). A reasonable hourly rate is ordinarily
 10 the “prevailing market rate [] in the relevant community.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S.
 11 542, 551 (2010). The attorneys’ fee and cost award must be supported “by findings that take into
 12 account all of the circumstances of the case.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th
 13 Cir. 2002). The Ninth Circuit has identified five factors that may inform this inquiry: (1) the results
 14 achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent
 15 nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar
 16 cases. *Id.* at 1048-50.

17 **B. The Amount of Attorneys’ Fees Sought is Reasonable**

18 “The reasonableness of an hourly rate should be determined based on the rates prevailing in
 19 the community for ‘lawyers of reasonably compared skill, experience and reputation.’” *Lewis v.*
 20 *Silvertree Mohave Homeowners’ Ass’n, Inc.*, No. C 16-03581 WHA, 2017 WL 5495816, at *4 (N.D.
 21 Cal. Nov. 16, 2017) (quoting *Blum v. Stenson*, 465 U.S. 886, n.11 (1984)); *Comacho v. Bridgeport*
 22 *Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); MANUAL FOR COMPLEX LITIGATION, FOURTH, § 14.122
 23 (“The rate should reflect what the attorney would normally command in the relevant marketplace.”).
 24 The relevant community is typically the community in which the district court sits. *Schwarz v. Sec’y*
 25 *of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). A court in this District has recognized
 26 that attorneys seeking fee awards in complex litigation, like this case, “are not limited to [comparing]
 27 only the rates charged or awarded in [similar cases]. Instead, they are entitled to the rates charged by
 28 attorneys handling similarly complex federal cases in other fields as well, including, when appropriate,

1 class actions.” *Id.* at *5 (quoting *Guerrero v. California Dep’t of Corr. & Rehab*, No. C 13-05671
2 WHA, 2016 WL 3360638, at *9 (N.D. Cal. June 16, 2016)).

3 Here, Settlement Class Counsel request rates ranging from \$500.00 to \$1,050.00 for attorneys,
4 and \$225.00 to \$202.00 for law clerks, paralegals, and litigation support staff. Weiner Decl., at ¶ 23;
5 Ram Decl., at ¶ 22. “[T]he determination of a reasonable hourly rate is not made by reference to the
6 rates actually charged the prevailing party[.]” but rather, “by reference to the fees that private attorneys
7 of an ability and reputation comparable to that of prevailing counsel charge their paying clients for
8 legal work of similar complexity.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007)
9 (internal quotation marks omitted). The court must determine the reasonable hourly rate in the context
10 of rates charged in “the relevant community[.]” which is “the forum in which the district court sits.”
11 *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016), *aff’d in part, vacated*
12 *in part, remanded*, 980 F.3d 645 (9th Cir. 2020) (quoting *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d
13 973, 979 (9th Cir. 2008). The hours expended and the rate should be supported by adequate
14 documentation and other evidence. *Hanlon*, 150 F.3d at 1029. These hourly rates are set by counsel
15 based on their own experience, awards in similar cases, based on reviews of the rates charged by other
16 attorneys involved in complex litigation, and fall within the range of rates prevailing in the relevant
17 legal community. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-
18 LHK, 2020 WL 4212811, *29 (N.D. Cal. July 22, 2020) (approving attorney billing rates up to \$900
19 per hour); *In re Anthem, Inc. Data Breach Litig.*, No. 15-md-02617-LHK, 2018 WL 3960068, at *17
20 (N.D. Cal. Aug. 17, 2018) (approving attorney billing rates up to \$970); *In re Equifax Customer Data*
21 *Sec. Breach Litig.*, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (finding as reasonable attorneys
22 rates ranging up to \$935 per hour); *Fulton-Green v. Accolade, Inc.*, No. 18-cv-274, 2019 WL 4677954,
23 at *12 (E.D. Pa. Sept. 24, 2019) (same; \$202 and \$975 per hour). Settlement Class Counsels’ firm
24 resumes and declarations provide additional information on these attorneys’ background and
25 experience, Weiner Decl., at ¶¶ 25; 29-40; Ram Decl., at ¶ 25, which the Court previously reviewed
26 in conjunction with the Order preliminarily approving the Settlement. (Dtk. 131).

1 The hours expended are also reasonable. In considering the reasonableness of hours, “[b]y and
2 large, the court should defer to the winning lawyer’s professional judgment as to how much time he
3 was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.”
4 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Class Counsel devoted a
5 reasonable amount of professional time to this case. *Caudle v. Bristow Optical Co.*, 224 F.3d 1014,
6 1028 (9th Cir. 2000); *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (“An attorney’s
7 sworn testimony that, in fact, it took the time claimed ‘. . . is evidence of considerable weight on the
8 issue of the time required . . .’”) (citation omitted) (alterations in original).

9 Class Counsel’s lodestar is not bloated by unnecessary duplication or inefficiencies. The
10 number of attorneys and firms working on this case was small, and the team was a tightly knit group
11 of lawyers who had experience working with each other in other data breach cases. Class Counsel
12 endeavored to prevent duplication of work and avoid inefficiencies that might otherwise have resulted
13 from multiple firms working on this case. Tasks were managed so as to promote efficiency and ensure
14 continuity. Because complex litigation often requires a team structure, courts have compensated time
15 spent in collaborative efforts. *See Horsford v. Board of Trustees*, 132 Cal. App. 4th 359, 397, 33 Cal.
16 Rptr. 3d 644 (2005) (finding time reasonable where multiple attorneys represented plaintiffs to prepare
17 notes, attend conferences to discuss strategies, and assign tasks, as part of a “supervision structure
18 within the plaintiffs’ litigation team”); *Building a Better Redondo, Inc. v. City of Redondo Beach*, 203
19 Cal. App. 4th 852, 872 n.14, 137 Cal. Rptr. 3d 622 (2012) (compensating counsel for inter-office
20 communications as “some conferences between counsel might be expected, particularly in a case of
21 some complexity”).

22 To date, Class Counsel have expended 813.10 hours litigating this matter to the benefit of the
23 Class. Weiner Decl., at ¶ 23; Ram Decl., at ¶¶ 23, 24. This time included investigating this case;
24 drafting and finalizing complaints; attentively tracking news and announcements concerning the Data
25 Incident; amending complaints; consolidating the cases before this Court; attempting to consolidate
26 pending actions related to this litigation before the Judicial Panel on Multidistrict Litigation; defending
27 against motions to dismiss and transfer; conducting informal discovery leading up to the mediation;
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1 preparing for and attending mediation; obtaining post-mediation information; negotiating a complex
2 Settlement Agreement; discussing the notice and administration plans with the Settlement
3 Administrator to ensure compliance with Due Process; moving for and successfully obtaining
4 preliminary approval; working in concert with the Settlement Administrator; preparing notices;
5 monitoring the Notice Program and claims administration; and this Motion. Weiner Decl., at ¶¶ 12-
6 19; Ram Decl., at ¶¶ 12-18. These tasks were done for the benefit of Class Representatives and the
7 Class they represent, and the time spent was reasonable.

8 Class Counsel's responsibility for this case is far from over. Class Counsel necessarily must
9 continue to work with the Settlement Administrator, review and respond to objections, move for final
10 approval, handle appeals, and oversee the final administration of benefits to Class Members. Class
11 Counsel will likely expend dozens of additional hours bringing the settlement through completion.
12 Weiner Decl., at ¶ 23; Ram Decl., at ¶ 23. Not including the additional time that will be spent after
13 final approval, Class Counsel are seeking only 72% of their lodestar. That is, the multiplier is currently
14 .72 (less than one). Not only were the hours spent by Class Counsel reasonable in light of the needs of
15 the case, but their work served the public good by securing relief that consumer protection statutes
16 intend to provide. *See Center for Biological Diversity v. Cnty. of San Bernardino*, 185 Cal. App. 4th
17 866, 897-98, 111 Cal. Rptr. 3d 374 (2010) (declining to reduce an award of attorneys' fees where the
18 plaintiff "achieved its primary objective;" noting such a reduction 'would impede the Legislature's
19 intent of 'encouraging attorneys to act as private attorneys general and vindicate important rights
20 affecting the public interest.'" (citation omitted).

21 Based on the foregoing, Class Representatives respectfully request the Court find the hours
22 Class Counsel worked were reasonable and necessary to the successful prosecution of this action.
23 Given the foregoing, and in light of Class Counsel's hourly work performed to date well exceeding
24 the amount of attorneys' fees and costs, Class Counsel's fee request of \$450,000.00 is reasonable.

1 **1. Additional Factors Support the Fee Request**

2 **i. The Benefits Achieved and Risk of Litigation**

3 “The overall result and benefit to the class from the litigation is the most critical factor in
4 granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008);
5 *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor” in considering the
6 reasonableness of fee request is “degree of success obtained”).

7 Here, if the parties had been unable to resolve this case through settlement, the litigation would
8 likely have been protracted and costly. Although Class Representatives and Class Counsel believe that
9 the claims asserted are meritorious, continued litigation against Defendant posed significant risks that
10 made any recovery uncertain. At the outset, continued litigation of this matter would require the Court
11 to resolve several separate threshold questions concerning the viability of the litigation.

12 First, the Court would have had to resolve the numerous, complex legal issues here. Defendant
13 has disputed (and continues to dispute) liability, claiming that while it provided services for third party
14 websites, Defendant itself never accepted PII or PCD. (*See* Dkt. 109, at 6.) Defendant also challenged
15 whether any of the Class Representatives suffered cognizable injury. (*See* Dkt. 109, at 7.) The Class
16 Representatives faced myriad legal challenges at the pleadings stage of litigation, demonstrating that
17 the risk of nonpayment to Class Members was substantial. The Class Representatives would have then
18 faced opposition to class certification, and likely a motion for summary judgment from Defendant.
19 Thus, risks existed for the Class Representatives and the Classes they sought to represent.

20 Second, few contested classes have been certified in consumer data breach class actions. *See*,
21 *e.g., In re Brinker Data Incident Litig.*, No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla.
22 April 14, 2021); *Adkins v. Facebook, Inc.*, 424 F. Supp. 3d 686 (N.D. Cal. 2019); *Smith v. Triad of*
23 *Alabama, LLC*, No. 1:14-cv-324-WKW, 2017 WL 1044692 (M.D. Ala. Mar. 17, 2017). With these
24 factors and other potential hurdles in mind, there can be no question that the risk of litigation was high.

25 The Settlement provides a range of recovery the Class Representatives and Settlement Class
26 Members likely would have recovered at trial: Settlement Class Members can receive compensation
27 for out-of-pocket losses amounting to \$2,000, as well as up to five (5) hours of time spent at a rate of
28

1 \$20 addressing the effects of the Data Incident. The out-of-pocket expenses are the same as those
2 numerated in the Class Representatives' complaints (including the most-recent Second Amended
3 Consolidated Complaint). Importantly, the Settlement provides immediate relief for the Settlement
4 Class Members they otherwise may not receive due to the costs and time associated with protracted
5 litigation.

6 **ii. The Skill Required and the Quality of Work**

7 In setting fee awards, courts also consider counsel's experience and skill. *Hanlon*, 150 F.3d at
8 1029; *Chambers*, 214 F. Supp. 3d at 902. Here, the reputation, experience, and ability of Class Counsel
9 were essential to the litigation's success. Indeed, two other cases brought against Defendant and other
10 third parties were dismissed *with prejudice*, leaving those plaintiffs and certain classes they sought to
11 represent with *no recovery* (e.g., those consumers who were injured via their use of Delta Airline's
12 website, on which Defendant's technologies were employed). Class Counsel pursued this matter not
13 only through the pleadings stage (and informal discovery leading up to mediation), but also undertook
14 the costs and time associated with an intricate appeal with a dearth of precedent. Their record in similar
15 class actions and complex litigation, and their commitment of resources to this action, made credible
16 their commitment to pursue this case until they achieved a fair result. Their skill in investigating the
17 claims and negotiating a favorable resolution was essential to achieving the benefits under the
18 Settlement. Moreover, the comprehensive and detailed provisions of the Settlement agreement, and
19 the favorable relief provided pursuant to a notice and claims process, demonstrate the skill applied by
20 Class Counsel.

21 **iii. The Contingent Nature of the Fee and Financial Burden**

22 Contingency risk is one of the primary fee analysis factors. *Chambers*, 214 F. Supp. 3d at 902
23 (stating "one extremely important factor . . . is the contingent nature of success; for every successful
24 ... action brought, several more may be lost, and in these no fee will be received.") (citing *White v.*
25 *City of Richmond*, 559 F. Supp. 127, 133 (N.D. Cal. 1982)); *In re Washington Public Power Supply*
26 *Sys. Sec. Litig.*, 19 F.3d 1291, 1299–1300 (9th Cir. 1994) ("Contingent fees that may far exceed the
27 market value of the services if rendered on a non-contingent basis are accepted in the legal profession
28

1 as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on
2 an hourly basis regardless whether they win or lose.”); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,
3 70 (9th Cir. 1975)). As noted above, Defendant adamantly denied (and continue to deny) any
4 wrongdoing, much less a legal entitlement to class certification or any recovery. The path to
5 establishing liability was particularly challenging given these risks. Class Counsel have already
6 exceeded the \$450,000 fee and expense request, having invested \$580,867.80 in lodestar in a case that
7 could have failed, and advanced over \$ 28,872.13 in litigation expenses.

8 Class Counsel prosecuted this case on a pure contingent-fee basis, advancing all expenses on
9 the understanding that they would receive a fee only if the case was successful. In all, Class Counsel
10 and their staff have spent approximately 813.10 hours investigating, analyzing, researching, litigating,
11 and negotiating a favorable resolution of this case, as well as incurring \$ 28,872.13 in necessary
12 litigation expenses. Class Counsel expended these resources despite the genuine risk that they would
13 never be compensated at all—not only in this litigation, but also with competing cases in other Districts
14 that could have settled without Class Counsel’s involvement. Moreover, Class Counsel faced a
15 Defendant with ample resources to vigorously fight the litigation, represented by experienced counsel.
16 Defendant vigorously contested the factual basis of Class Representatives’ claims. Class Counsel
17 faced risks not only in proving their claims but also in getting a class certified and proving damages.
18 Yet, ample works remains to be completed, including obtaining final approval, and responding to
19 objections and defending against any potential appeals related thereto.

20 **C. The Expenses of Class Counsel Are Reasonable**

21 Recovery of litigation costs in the context of class action settlements is allowed in the Ninth
22 Circuit. *See Staton*, 327 F.3d at 974. Attorneys may recover the out-of-pocket costs they reasonably
23 incurred in investigating, prosecuting, and settling this case. *See In re Media Vision Tech. Sec. Litig.*,
24 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-
25 92 (1970)); *Staton*, 327 F.3d at 974. Attorneys are entitled to “recover as part of the award of attorneys’
26 fees those out-of-pocket expenses that would normally be charged to a fee paying client.” *Harris v.*
27 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)). An itemized list of expenses by category, providing the
28 total amount advanced for each, permits the Court to assess whether the requested expenses are

1 reasonable. *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30
 2 (N.D. Cal. Apr. 1, 2011), *supplemented*, No. 06-cv-05778-JCS, 2011 WL 1838562 (N.D. Cal. May
 3 13, 2011). While Class Counsel’s requested \$450,000.00 is inclusive of costs and expenses, and Class
 4 Counsel make no separate request for the reimbursement of costs and expenses, § 7.2, an inquiry into
 5 the reasonableness of these expenses is appropriate.

6 Here, Settlement Class Counsel request reimbursement of expenses of \$ 28,472.13. The
 7 attached declarations detail Settlement Class Counsel’s costs. Weiner Decl., at ¶ 26; Ram Decl., at ¶
 8 26. These expenditures were necessary to Settlement Class Counsel’s prosecution of the action and
 9 are particularly reasonable given the complexities of this case. Such costs are regularly billed to clients
 10 in hourly fee cases, and routinely awarded in contingency fee cases. *See, e.g., In re Yahoo! Inc.*
 11 *Customer Data Breach Litig.*, 2020 WL 4212811, at *42 (approving reimbursement of expenses
 12 related to expert witness fees, case-related travel, transcript fees, document management, copying,
 13 mailing, and serving documents, operation of a call center to respond to Settlement Class Member
 14 inquiries, electronic research, and filing and court fees); *In re Capacitors Antitrust Litig.*, No. 14-cv-
 15 03264, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) (“Reasonable reimbursable litigation
 16 expenses include: those for document production, experts and consultants, depositions, translation
 17 services, travel, mail and postage costs.” (citations omitted)); *In re Lenovo Adware Litig.*, No. 15-md-
 18 0624, 2019 WL 1791420, at *9 (N.D. Cal. April 24, 2019) (reimbursing counsel’s “professional
 19 service fees (experts, investigators, accountants), travel fees, and discovery-related fees”)

20 **D. The Requested Service Awards are Reasonable and Should be Approved**

21 The Ninth Circuit has recognized that “named plaintiffs, as opposed to designated members
 22 who are not named plaintiffs, are eligible for reasonable incentive payments.” *Staton*, 327 F.3d at 977;
 23 *Rodriguez v. W. Pub’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards “are fairly typical in
 24 class action cases”). Such awards are “intended to compensate class representatives for work done on
 25 behalf of the class [and] make up for financial or reputational risk undertaken in bringing the action.”
 26 *Id*; *see also Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 157, 163 (9th Cir. 2013) (“Incentive
 27 awards are payments to class representatives for their service to the class in bringing the lawsuit.”).
 28 Service awards should be awarded based upon the Court’s required inquiry into criteria including the

1 amount of time and effort spent on the litigation, the duration of the litigation, and the degree of
2 personal gain obtained as a result of the litigation. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.
3 Supp. 294, 299 (N.D. Cal. 1995); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL
4 5402120, at *6 (N.D. Cal. Sept. 26, 2013); *Wilson v. Airborne, Inc.*, No. 07-cv-00770, 2008 WL
5 3854963, at *12 (C.D. Cal. Aug. 13, 2008). So long as the service awards do not create a conflict of
6 interest between the representatives and class members, modest payments to named plaintiffs for their
7 services as class representatives are customary and commonly approved. *See, e.g., Van Vranken*, 901
8 F. Supp. at 300; *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000)
9 (approving \$5,000 service awards); *Wren v. RGIS Inventory Specialists*, No. C-06-05778-JCS, 2011
10 WL 1230826, at *36 (N.D. Cal. Apr. 1, 2011) (“As Plaintiffs correctly note, there is ample case law
11 finding \$5,000 to be a reasonable amount for an incentive payment.”).

12 As part of the Settlement Agreement, Defendant has agreed to pay, subject to court approval,
13 a service award to each Settlement Class Representative in the amount of \$2,000 in recognition of the
14 time and effort they personally invested in this lawsuit. § 7.3. The requested Service Awards are
15 reasonable and appropriate. Each of the Settlement Class Representatives has served the Settlement
16 Class well. The Settlement Class Representatives lent their names to this case and thereby subjected
17 themselves to public attention, including being forever linked to the litigation in any internet searches
18 using their names, and publicizing the fact that their PII and PCD information had been stolen,
19 bolstering any credibility that a nefarious actor might seek to gain by selling this information or using
20 it for ill-gotten gains. In addition, each of them participated in numerous conferences with their
21 attorneys, reviewed and authorized the filing of the class action complaints in this action, produced
22 relevant documents and information to Class Counsel, and evaluated and supported the proposed
23 settlement.

24 The \$2,000 awards sought will not affect the benefits provided to any consumers covered by
25 the Settlement and fall at the lower end of the spectrum of amounts awarded in comparable cases. *See,*
26 *e.g., Hawthorne v. Umpqua Bank*, No. 11-6700, 2015 WL 1927342, at *8 (N.D. Cal. Apr. 28, 2015)
27 (“Many courts in the Ninth Circuit have also held that a \$5,000 incentive award is ‘presumptively
28

1 reasonable.”) (citation omitted); *In re Mego Fin. Corp.*, 213 F.3d at 457, 463 (service awards of
2 \$5,000); *Resnick v. Frank*, 779 F.3d 934, 941 (9th Cir. 2015) (approving service awards of \$5,000 to
3 class representatives in a consumer case).

4 In light of the Class Representatives’ willingness to step forward on behalf of consumers on a class-
5 wide basis, the Court should grant the requested Service Awards, which Defendant has agreed to pay.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Class Representatives and Class Counsel respectfully request that
8 the Court enter the accompanying proposed order awarding Settlement Class Counsel their attorneys’
9 fees and costs, as well as the requested Service Awards to the Class Representatives.

10 DATED: October 18, 2021

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By: /s/ Michael F. Ram

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL FORD, NOE GAMBOA, and
MADISON COPELAND, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

[24]7.AI, INC.,

Defendant.

Case No.: 5:18-cv-02770-BLF

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF THE CLASS-ACTION
SETTLEMENT AND FOR
ATTORNEYS' FEES AND COSTS
AND SERVICE AWARDS**

Hon. Beth Labson Freeman

1 Plaintiffs Michael Ford, Noe Gamboa, and Madison Copeland (collectively, “Plaintiffs”) and
2 Defendant [24]7.AI, Inc. (“[24]7”), have agreed to a settlement, the terms and conditions of which are
3 set forth in an executed Settlement Agreement (the “Settlement Agreement”). The parties reached the
4 Settlement through arm’s-length negotiations following mediation. Under the Settlement, subject to the
5 terms and conditions therein and subject to Court approval, Settlement Class Members are eligible to
6 receive reimbursement of up to \$2,000 (in total) for the following categories of out-pocket expenses
7 resulting from the Data Incident: (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees;
8 (iii) unreimbursed overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v)
9 unreimbursed late fees; (vi) unreimbursed over-limit fees; (vii) long distance telephone charges; (viii)
10 cell minutes (if charged by minute), Internet usage charges (if charged by the minute or by the amount
11 of data usage and incurred solely as a result of the Data Incident), and text messages (if charged by the
12 message and incurred solely as a result of the Data Incident); (ix) unreimbursed charges from banks or
13 credit card companies; (x) interest on payday loans due to card cancellation or due to over-limit
14 situation incurred solely as a result of the Data Incident; (xi) costs of credit report(s) purchased by
15 Settlement Class Members between September 27, 2017 and the date of the Claims Deadline (with
16 affirmative statement by Settlement Class member that it was purchased primarily because of the Data
17 Incident); (xii) costs associated with freezing and/or unfreezing credit reports with any credit reporting
18 agency (with affirmative statement by Settlement Class member that the charge was incurred primarily
19 because of the Data Incident); and (xii) costs of fraud resolution services incurred by Settlement Class
20 Members between September 27, 2017 and the date the Claims Deadline (with affirmative statement by
21 Settlement Class member that the cost was incurred primarily because of the Data Incident and not for
22 other purposes, and with proof of purchase). To receive reimbursement for any of the above-referenced
23 out-of-pocket expenses, Settlement Class Members must submit documentation.

24 Settlement Class Members are also eligible to receive up to three hours of lost time spent
25 dealing with the Data Incident (calculated at the rate of \$20 per hour), as long as one full hour was
26 spent and the Settlement Class Member attests on the Claim Form to the time spent. To receive up to
27 three hours in lost time, Settlement Class members need not submit any documentation of that lost
28 time, but Settlement Class members must attest that the time claimed was spent dealing with the Data

1 Incident. Settlement Class Members may claim an additional two hours of lost time if they can provide
2 adequate documentation of those additional two hours spent dealing with the Data Incident.

3 In exchange for these considerations, Plaintiffs and the proposed Settlement Class would fully,
4 finally, and forever resolve, discharge, and release their claims against [24]7, related to the Data Incident,
5 which resulted in unauthorized access to customer payment card data and personally identifiable
6 information (“PII”), without admission of liability by [24]7. In addition, Proposed Co-Lead Settlement
7 Class Counsel has moved the Court for an award of attorneys’ fees and costs not to exceed \$450,000,
8 and [24]7 has agreed to a service award of \$2,000 for each Class Representative. Such amounts will be
9 paid separately by [24]7 and will not reduce the amount of payments to Class Members who submit valid
10 claims.

11 The Settlement has been filed with the Court, and Plaintiffs and Class Counsel filed a Motion for
12 Final Approval of Class Settlement (the “Motion”). Upon considering the Motions and exhibits thereto,
13 the Settlement, the record in these proceedings, the representations and recommendations of Class
14 Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject
15 matter and parties to these proceedings; (2) for settlement purposes only, the proposed Settlement Class
16 meets the requirements of Federal Rule of Civil Procedure 23 and is certified; (3) the persons and entities
17 identified below should be appointed Class Representatives and Class Counsel; (4) the Settlement is the
18 result of informed, good-faith, arm’s-length negotiations between the parties and their capable and
19 experienced counsel and is not the result of collusion; (5) the Settlement is fair, reasonable, and adequate
20 and is finally approved; (6) the Notice Program and forms of Notice satisfied Federal Rule of Civil
21 Procedure 23 and constitutional due process requirements, and were reasonably calculated under the
22 circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms
23 of the Settlement, Class Counsel’s application for an award of attorneys’ fees, costs and expenses (“Fee
24 Application”) and request for Service Award for Plaintiffs, and their rights to opt-out of the Settlement
25 Class and object to the Settlement, Class Counsel’s Fee Motion, and/or the request for Service Award for
26 Plaintiffs; and (7) the other related matters pertinent to the final approval of the Settlement should also
27 be approved.

1 Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

2 1. As used in this Order, capitalized terms shall have the definitions and meanings
3 accorded to them in the Settlement.

4 2. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant
5 to 28 U.S.C. § 1332.

6 3. This Court also has jurisdiction to approve the Settlement's release of claims by
7 Settlement Class Members over which the Court has jurisdiction, even if the Court would not
8 independently have jurisdiction over those released claims. *See Reyn's Pasta Bella, LLC v. Visa USA,*
9 *Inc.*, 442 F.3d 741, 748 (9th Cir. 2006) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287-
10 88 (9th Cir. 1992) (“[A] federal court may release not only claims alleged in the complaint, but also state
11 claims arising from the same nucleus of operative facts over which the court would not have jurisdictional
12 competence.”)).

13 4. Venue is proper in this District.

14 **Final Settlement Approval, Class Certification, and Appointments**

15 5. The Court, having fully reviewed Plaintiffs' Motion, the supporting Memorandum and
16 Declarations filed in support thereof, and for the reasons stated in the Preliminary Approval Order,
17 determines that the Settlement is the product of thorough, serious, informed, and non-collusive
18 negotiations between experienced attorneys familiar with the legal and factual issues of this case; does
19 not improperly grant preferential treatment to the Settlement Class Representatives or segments of the
20 Class; and is fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil
21 Procedure, such that final approval of the Settlement should be granted. The Court finally approves the
22 Settlement as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the
23 absence of collusion, and is the product of informed, good-faith, arm's-length negotiations between the
24 parties, and their capable and experienced counsel under the supervision of a mediator.

25 6. Pursuant to Rule 23(e), the Court further finds and determines that the terms of the
26 Settlement are fair, reasonable, and adequate to, and in the best interests of, the Class Representatives
27 and each Settlement Class Member and is consistent and in compliance with all requirements of due
28 process and federal law. The Court finds that Settlement Class Members who have not opted out will be

1 bound by the Settlement, that the Settlement is ordered finally approved, and that all terms and provisions
2 of the Settlement should be and hereby are ordered to be consummated. The Court specifically finds that
3 the Settlement is rationally related to the strength of Plaintiffs' claims given the risk, expense, complexity,
4 and duration of further litigation, liability and damages issues, and potential appeals of rulings. This Court
5 also finds that the Settlement is the result of arms'-length negotiations between experienced counsel
6 representing the interests of the Settlement Class Members, Class Representatives and [24]7, under the
7 supervision of an experienced and independent third-party mediator, after thorough factual and legal
8 investigation.

9 7. The Court finds that this Settlement complies with the Northern District of California's
10 Procedural Guidance for Class Action Settlements.

11 8. The Court finds, for settlement purposes only, that the Federal Rule of Civil Procedure 23
12 factors are present and that certification of the Settlement Class is appropriate under Rule 23. The Court,
13 therefore, certifies the following Settlement Class:

14
15 All persons who were mailed notification by Best Buy of the Data Incident perpetrated on
16 [24]7 in the fall of 2017. The Settlement Class specifically excludes: (i) [24]7, Best Buy, and
17 their respective officers and directors; (ii) all Settlement Class Members who timely and
18 validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the
19 fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction
20 to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity
21 occurrence of the Data Incident or who pleads nolo contendere to any such charge.

22 9. Specifically, the Court finds, for settlement purposes only, that the Settlement Class
23 satisfies the following factors of Federal Rule of Civil Procedure 23:

24 (a) Numerosity: In the Action there are approximately 378,768 Class members across
25 the United States. Their joinder is impracticable. Thus, the Rule 23(a)(1) numerosity requirement is met.
26 *See Fed. R. Civ. P. 23(a)(1); Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

27 (b) Commonality: The bar for proving commonality is met when there is at least one
28 issue whose resolution will affect all or a significant number of the putative class members. *See Wal-*
Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). Here, the commonality requirement is satisfied for
settlement purposes because there are many questions of law and fact common to the Settlement Class

1 regarding [24]7's Data Incident. *See* Fed. R. Civ. P. 23(a) (2). There are multiple questions of law and
2 fact that center on whether [24]7 was culpable in failing to prevent the Data Incident, which are common
3 to the Settlement Class.

4 (c) Typicality: Plaintiffs are typical of absent Settlement Class Members because they
5 were subjected to the same [24]7 conduct, had their information placed at risk in the same manner as all
6 Class Members, and because they will also benefit from the relief provided by the Settlement. Rule
7 23(a)(3) is therefore satisfied. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“it is
8 sufficient for typicality if the plaintiff endured a course of conduct directed against the class”).

9 (d) Adequacy: Adequacy under Rule 23(a)(4) relates to: (1) whether the proposed
10 class representatives have interests antagonistic to the Settlement Class; and (2) whether the proposed
11 class counsel has the competence to undertake the litigation at issue. *Staton v. Boeing Co.*, 327 F.3d 938,
12 957 (9th Cir. 2003) (adequacy satisfied if plaintiffs and their counsel lack conflicts of interest and are
13 willing to prosecute the action vigorously on behalf of the class). Rule 23(a)(4) is satisfied here because
14 there are no conflicts of interest between the Plaintiffs and the Settlement Class, and Plaintiffs have
15 retained competent counsel to represent them and the Settlement Class. Class Counsel here regularly
16 engage in consumer class litigation and other complex litigation similar to the present Action and have
17 dedicated substantial resources to prosecuting the Action. Moreover, Plaintiffs and Class Counsel have
18 vigorously and competently represented the Settlement Class Members' interests in the Action.

19 (e) Predominance and Superiority: Rule 23(b)(3) is satisfied for settlement purposes,
20 as well, because the common legal and alleged factual issues here predominate over individualized issues,
21 and resolution of the common issues for thousands of Settlement Class Members in a single, coordinated
22 proceeding is superior to many individual lawsuits addressing the same legal and factual issues. With
23 respect to predominance, Rule 23(b)(3) requires that “the questions of law or fact common to class
24 members predominate over any questions affecting only individual members, and a class action is
25 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ.
26 P. 23(b)(3); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Based on the record
27 currently before the Court, the predominance requirement is satisfied here for settlement purposes
28 because common questions present a significant aspect of the case and because class-wide relief can

1 fairly be provided for all Settlement Class Members through a single common judgment.

2 10. The Court confirms as final the appointment of Plaintiffs Michael Ford, Noe Gamboa, and
3 Madison Copeland as the Class Representatives.

4 11. The Court confirms as final the appointment of the following persons and entities as Class
5 Counsel who shall be responsible for handling all Settlement-related matters on behalf of Plaintiffs and
6 the Settlement Class:

7 Melissa S. Weiner, as Class Counsel
8 **PEARSON, SIMON & WARSHAW, LLP**
9 800 LaSalle Avenue, Suite 2150
10 Minneapolis, MN 55402
11 Telephone: (612) 389 0600
12 mweiner@pswlaw.com

13 Michael F. Ram, as Class Counsel
14 **MORGAN & MORGAN**
15 **COMPLEX LITIGATION GROUP**
16 711 Van Ness Avenue, Suite 500
17 San Francisco, CA 94102
18 Telephone: (415) 358-6913
19 mram@ForThePeople.com

20 **Final Approval of Notice and Notice Program and Appointment of Administrator**

21 12. Pursuant to the Preliminary Approval Order, the notice documents were sent to Settlement
22 Class Members by email or by first-class mail, and the Claims Administrator also created the Settlement
23 Website, established a 24/7 operational toll-free number, 1-855-535-1873, for Settlement Class Members
24 to call and obtain additional information regarding the Settlement through an Interactive Voice Recording
25 (“IVR”) system with pre-recorded information about the Settlement, and also established a dedicated
26 email inbox, info@247ClassSettlement.com, and a dedicated mailing address, P.O. Box 6509, Portland,
27 Oregon 97228-6509, allowing Settlement Class Members to contact the Claims Administrator with any
28 specific requests or questions about the Settlement. The Court finds that the manner and form of notice
(the “Notice Program”) set forth in the Settlement Agreement was provided to Settlement Class
Members. The Court finds that the Notice Program, as implemented, was the best practicable under the
circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the

1 Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their
2 rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and
3 the request for Service Award for Plaintiffs. The Notice and notice program constituted sufficient notice
4 to all persons entitled to notice. The Notice and notice program satisfy all applicable requirements of law,
5 including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of
6 due process.

7 13. Pursuant to CAFA, at the direction of counsel for Defendant, within 10 days after the
8 filing of the motion seeking preliminary approval of the Settlement, 57 officials, which included the
9 Attorney General of the United States and the Attorney General of each of the 50 states, the District of
10 Columbia and the United States Territories were identified to receive the CAFA notice. On July 12, 2021,
11 the Claims Administrator sent 57 CAFA Notice Packages via USPS Certified Mail to 56 officials,
12 including the Attorneys General of each of the 50 states, the District of Columbia and the United States
13 Territories. The Notice was also sent by UPS to the Attorney General of the United States. The Notice
14 Packages included copy of the complaint and any amended complaints in this action, including any
15 materials filed with the complaints; the Notice of Motion and Motion for Preliminary Approval of Class
16 Action Settlement, all Exhibits and Declarations thereto, which included a notice of the scheduled
17 preliminary approval hearing in this class action; copies of the Settlement; the proposed Notice; and a
18 chart providing estimates of the number of Settlement Class Members in each state. This Final Approval
19 Order is being entered at least 90 days after the latest of the dates on which the appropriate federal and
20 state officials were served with the notice of proposed settlement. The Court finds and determines that
21 [24]7's notice of Settlement was timely, adequate, and compliant with the statutory requirements of
22 CAFA. Accordingly, 28 U.S.C. § 1715(e) has no application to the Settlement.

23 14. The Court finally confirms appointment of Epiq Systems, Inc. as the Settlement
24 Administrator.

25 15. All fees and costs associated with the Notice Program shall be paid by [24]7, as set forth
26 in the Settlement.

27 16. Epiq Systems, Inc. is directed to perform all responsibilities assigned to the Settlement
28 Administrator in the Settlement.

1 **Final Approval Hearing, Opt-Outs, and Objections**

2 17. The Court held a Final Approval Hearing on January 27, 2022, to consider the fairness,
3 reasonableness, and adequacy of the Settlement. Objection(s) to the Settlement received by the Court
4 were considered and overruled.

5 18. The Court finds that Settlement Class Members who filed valid requests for exclusion will
6 not have their rights shall affected by the Settlement, and they shall not receive any of the benefits of the
7 Settlement. A list of Settlement Class Members who filed valid requests for exclusion is attached hereto
8 as Exhibit 1.

9 19. Upon entry of this Order, the remaining Settlement Class Members, and all and each of
10 them, are hereby bound by the terms set forth in the Settlement Agreement.

11 **Post-Distribution Accounting**

12 20. Plaintiffs and Class Counsel shall, within 21 days after the distribution of the settlement
13 funds, file a Post-Distribution Accounting, as described in the Northern District’s Procedural Guidance
14 for Class Action Settlements, informing the Court about the administration of the settlement.

15 21. The Post-Distribution Accounting shall describe the total settlement fund, the total
16 number of class members, the total number of class members to whom notice was sent and not returned
17 as undeliverable, the number and percentage of claim forms submitted, the number and percentage of
18 opt-outs, the number and percentage of objections, the average and median recovery per claimant, the
19 largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of
20 payment to class members, the number and value of checks not cashed, the amounts distributed to each
21 cy pres recipient, the administrative costs, the attorneys’ fees and costs, the attorneys’ fees in terms of
22 percentage of the settlement fund, and the multiplier, if any.

23 **Attorneys’ Fees, Costs, and Expenses, and Class Representative Service Awards**

24 22. Class Counsel attest to performing substantial work on behalf of the Settlement Class
25 Members, totaling at least 813.10 hours valued at \$580,867.80 in lodestar as of October 13, 2021, which
26 does not include time spent preparing the Motion for Final Approval or attending the Final Approval
27 Hearing, or any future work, such as defending appeals, if any. “Under Ninth Circuit law, the district
28 court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar

1 method.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Bluetooth Headset*
2 *Products Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

3 23. The Court finds that the lodestar method is proper here. *See Fischel v. Equitable Life*
4 *Assur. Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002) (“There is a strong presumption that the lodestar
5 figure represents a reasonable fee.”). The Court further finds the hours worked by Class Counsel to be
6 reasonably incurred for the benefit of the Settlement Class Members. Class Counsel’s hourly rates are
7 reasonable considering the market for legal services of this type and quality. The Court confirms as final
8 the appointment of Co-Lead Class Counsel and Class Counsel, as noted above. The Court finds that Class
9 Counsel have capably and effectively represented the Settlement Class Members’ interests. The Court
10 finds and determines that the payment of \$450,000 in attorneys’ fees and litigation costs and expenses—
11 representing a multiplier of 0.72 based upon Class Counsel’s lodestar—to Class Counsel, is fair and
12 reasonable, especially in light of their commendable work on this case. The Court finds that all costs and
13 expenses were necessarily and reasonably incurred.

14 24. The Court confirms as final the appointment of Michael Ford, Noe Gamboa, and Madison
15 Copeland as Class Representatives of the Settlement Class. The Court finds that the Class
16 Representatives have adequately represented the Settlement Class for purposes of litigating this matter
17 and entering into and implementing the Settlement. The Court finds that the Class Representative Service
18 Awards, in addition to any payments to which they may be entitled under the Settlement, is fair and
19 reasonable. The Court approves the \$2,000 Service Awards to the Class Representatives as fair and
20 reasonable. The payment shall be made to the Class Representatives separate from the Settlement Fund
21 in accordance with the terms of the Settlement.

22 **Release**

23 25. The Court has reviewed the releases in section 6 of the Settlement and finds it to be fair,
24 reasonable, and enforceable under Rule 23 and all other applicable law.

25 **Effect of Failure to Approve the Settlement or Termination**

26 26. In the event the Settlement does not reach its Effective Date or otherwise become Final,
27 or the Settlement is terminated pursuant to its terms for any reason, this Final Approval Order will be
28 automatically vacated upon notice to the Court, and the following shall apply:

1 (a) All orders and findings entered in connection with the Settlement shall become null and
2 void and have no further force and effect, shall not be used or referred to for any purposes whatsoever,
3 and shall not be admissible or discoverable in any other proceeding;

4 (b) All of the Parties' respective pre-Settlement claims and defenses will be preserved;

5 (c) Nothing contained in this Order is, or may be construed as, any admission or concession
6 by or against [24]7 or Plaintiffs on any point of fact or law; and

7 (d) Neither the Settlement terms nor any publicly disseminated information regarding the
8 Settlement, including, without limitation, the Notice, court filings, orders and public statements, may be
9 used as evidence. In addition, neither the fact of, nor any documents relating to, either party's withdrawal
10 from the Settlement, and/or any objections or interventions may be used as evidence.

11 **Final Judgment and Dismissal**

12 27. By means of this Final Approval Order, this Court hereby enters final judgment in this
13 action, as defined in Federal Rule of Civil Procedure 58(a)(1).

14 28. Without affecting the finality of the Court's judgment in any way, the Court retains
15 jurisdiction over the Named Plaintiffs, the Settlement Class and [24]7 as to all matters concerning the
16 administration, consummation and enforcement of the Settlement Agreement. Nothing in this Final
17 Approval Order will preclude any action to enforce the Parties' obligations under the Settlement or under
18 this order, including the requirement that [24]7 make the settlement payments in accordance with the
19 terms of the Settlement.

20 29. The Parties are hereby ordered to comply with the terms of the Settlement. The Parties,
21 without further approval from the Court, may mutually agree to and adopt such amendments,
22 modifications and expansions of the Settlement Agreement as: (i) shall be consistent in all material
23 respects with this Order; and (ii) do not limit the rights of Settlement Class Members.

24 30. This Action is dismissed on the merits and with prejudice, each side to bear its own costs
25 and attorneys' fees except as provided by the Settlement and the Court's orders.
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[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____

HON. BETH LABSON FREEMAN
United States District Judge

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EXHIBIT 1

Excluded Settlement Class Members

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