**JS-6**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. 8:24-cv-01201-FWS-ADS Date: September 2, 2025
Title: Kevin Gregerson v. Toshiba America Business Solutions, Inc.

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

| Rolls Royce Paschal | N/A |
|---|---|
| Deputy Clerk | Court Reporter |
| Attorneys Present for Plaintiff: | Attorneys Present for Defendant: |
| Not Present | Not Present |

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT [47] AND GRANTING IN SUBSTANTIAL PART MOTION FOR ATTORNEY FEES, EXPENSES, AND SERVICE AWARD [44]**

In this putative class action, Plaintiff Kevin Gregerson asserts claims against Defendant Toshiba American Business Solutions, Inc. ("TABS") arising out of a data breach. (Dkt. 12 (First Amended Complaint, "FAC").) The parties reached a proposed settlement agreement (the "Settlement"). (Dkt. 40-1 (Settlement Agreement, "SA").) After the court granted preliminarily approval of the Settlement, (Dkt. 43 ("Prelim. App. Order")), the court-appointed settlement administrator, RG/2 Claims Administration ("RG/2"), successfully gave 98% of 6,883 class members notice of the Settlement, (Dkt. 47-2 (Declaration of Dana Boub, "Boub Decl.") ¶¶ 4-6, 10). The deadline for class members to postmark requests to opt out or object to the Settlement passed on July 17, 2025, and only three class members requested to opt out, and no class member objected. (Boub Decl. ¶¶ 11-12.) In addition, the deadline to submit a claim passed on August 14, 2025, and 999 claim forms were received. (*Id.* ¶ 13; Dkt. 49 (Supplemental Declaration of Dana Boub, "Supp. Boub Decl.") ¶ 5.)

Now before the court are two motions: (1) Motion for Final Approval of Class Action Settlement (Dkt. 47, "Final Approval Motion" or "FA Mot."), and (2) Motion for Attorney Fees, Expenses, and Service Award (Dkt. 44, "Fee Motion" or "Fee Mot."). No opposition to

the Final Approval Motion or the Fee Motion has been filed. (*See generally* Dkt.) The court held a hearing on the Final Approval Motion and the Fee Motion on August 28, 2025. (Dkt. 48.) Based on the state of the record, as applied to the applicable law, the Final Approval Motion is **GRANTED** and the Fee Motion is **GRANTED IN SUBSTANTIAL PART**.

## I. Background

### A. Factual and Procedural Background

TABS provides copiers, printers, managed document services, and digital signage for businesses. (FAC ¶ 2.) Through this business, TABS stores personal identifiable information ("PII") about its current and former employees. (*Id.* ¶ 3.) "[O]n or around December 4, 2023, [TABS] lost control over that data when cybercriminals infiltrated its insufficiently protected computer systems in a data breach (the 'Data Breach'). (*Id.* ¶ 4.) TABS "waited until May 28, 2024, before it began to notify victims of the breach—almost six months after the breach occurred." (*Id.*) "When Toshiba finally disclosed the Data Breach to victims in May 2024, its Breach Notice obfuscated the nature of the breach and the threat it posed— refusing to tell its victims how many people were impacted, how the breach happened on Toshiba's systems, when the breach first occurred, when Toshiba discovered the Data Breach, or why it took Toshiba close to six months to begin notifying victims that hackers had gained access to highly sensitive PII." (*Id.* ¶ 5.) Plaintiff also alleges that TABS did not adequately safeguard its employees' PII, including by failing to "adequately train its employees on reasonable cybersecurity protocols or implement reasonable security measures." (*Id.* ¶ 33.)

Plaintiff "is a former employee of" TABS and a "victim" of the Data Breach. (FAC ¶¶ 8, 40-47.) Plaintiff asserts claims for (1) negligence, (2) negligence *per se*, (3) breach of implied contract, (4) invasion of privacy, (5) breach of fiduciary duty, (6) violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, (7) violation of California Consumer Privacy Act, Cal. Civ. Code § 1798.150, and (8) declaratory relief. (*Id.* ¶¶ 89-191.)

**B. The Proposed Settlement**

"From the onset of the Litigation, and over the course of several months, the Parties engaged in arms'-length settlement negotiations that included informal exchange of information necessary to evaluate the Parties' respective strengths and weaknesses. As a result of these negotiations, the Parties reached the settlement." (SA at 2.)

Under the Settlement, TABS agree to establish a non-reversionary common fund of $435,000.00 (the "Settlement Fund"). (SA ¶¶ 1.30-.31, 3.2.) The Settlement Fund will be used for four main purposes. First, the fund will be used to reimburse class members for "actual, documented, and unreimbursed monetary loss" up to $7,500 which "was more likely than not caused by the Data Incident." (*Id.* ¶ 2.2.) Second, "[a]ll California Settlement Subclass Members may make a claim for a $150.00 cash payment." (*Id.* ¶ 2.4.) Third, all class members "may make a claim for a *pro rata* distribution of all cash remaining" in the Settlement Fund after claims for monetary loss, California subclass payments, service awards, attorney fees, and administrative costs have been disbursed. (*Id.* ¶ 2.5.) Fourth, the Settlement Fund will pay for attorney fees and costs, service awards for class representatives, and administrative costs. (*Id.* ¶¶ 7.1-7.3.) The Settlement notes that Class Counsel intend to seek and TABS has agreed not to oppose "up to one-third of the Settlement Fund for … attorneys' fees, as well as any costs and expenses of the Litigation" and "an order from the Court awarding a $5,000.00 service award to the Class Representative in this case." (*Id.* ¶¶ 7.2-7.3.)

As part of the Settlement, "TABS has implemented or will implement certain reasonable steps to adequately secure its systems and environments to prevent the likelihood of another data incident from occurring in the future" in accordance with a confidential declaration provided to Plaintiff. (*Id.* ¶ 2.7.) Moreover, TABS provided "reasonable access to confidential confirmatory discovery regarding the number of Settlement Class Members and state of residence, the facts and circumstances of the Data Incident and TABS' response thereto, and the changes and improvements that have been made or are being made to further protect Settlement Class Members' PII." (*Id.* ¶ 2.8).

In exchange for the Settlement's benefits, participating class members agree to release any claims that have been, were, or could have been asserted by any member of the class against TABS, and TABS' owners and subsidiaries, "based on, relating to, concerning or arising out of the Data Incident and alleged theft of personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation as they related to the Data Incident." (*Id.* ¶¶ 1.22-1.24.)

**C. Notice to the Class and the Class' Response**

After the court granted preliminary approval of the Settlement, (*see generally* Prelim. Appr. Order), RG/2 "processed the Settlement Class list of 6,883 names and addresses received through the United States Postal Service's ('USPS') National Change of Address database ('NCOA') and updated the data with corrected information." (Boub Decl. ¶ 5.) Then, RG/2 mailed notice to the 6,883 class members. (*Id.* ¶ 6.) After some notices were returned as undeliverable, RG/2 mailed notice to forwarding addresses and addresses found through skip-trace procedures. (*Id.* ¶ 10.) "A total of 95 Notice packets remained undeliverable. Thus, 98% of Settlement Class Members were successfully delivered Notices, while less than 2% of Settlement Class Members did not receive Notice." (*Id.*)

RG/2 also created a settlement website and a toll-free phone number and email address dedicated to the Settlement. (Boub Decl. ¶¶ 7-8.) "To date, RG/2 Claims has received 12 calls regarding the Settlement." (*Id.* ¶ 8.)

Class members had until July 17, 2025, to postmark any requests to opt out or object to the Settlement. (*Id.* ¶¶ 11-12.) Only three requests to opt out were received, and no objections were received. (*Id.*) Class members had until August 14, 2025, to submit claims to receive benefits. (*Id.* ¶ 13.) RG/2 received 999 claim forms. (Supp. Boub Decl. ¶ 5.) "Of the 999 Claim Forms submitted, 797 selected the Pro Rata Cash Payment (currently estimated to be approximately $201.74 per cash payment, subject to change based on the total claims filed), 471

selected the CA Subclass Payment for a total of $70,650, 11 selected Out of Pocket Expenses for a total of $55,036.82." (*Id.*)

## II. Discussion

In deciding whether to grant the Final Approval Motion and Fee Motion, the court analyzes (1) whether to certify a class for settlement purposes and (2) the fairness of the Settlement.

### A. Class Certification

Plaintiff seeks to certify the following class:

> [A]ll United States residents who were mailed notice by TABS that their personal information was impacted in a data incident beginning on approximately December 4, 2023. However, the Settlement Class specifically excludes: (i) TABS, the Related Entities, and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iv) any judges assigned to this case and their staff and family; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

(Mot. at 3; SA ¶ 1.28.) Plaintiff also seeks to certify the following California subclass:

> [A]ll persons residing in California who were mailed notification of the Data Incident from TABS at a California address.

(Mot. at 3; SA ¶ 1.2.) When a plaintiff seeks provisional class certification for settlement purposes, a court must ensure Federal Rule of Civil Procedure 23(a)'s four requirements and at least one of Rule 23(b)'s requirements are met. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Staton v. Boeing Co*., 327 F.3d 938, 952–53 (9th Cir. 2003); Fed. R. Civ. P. 23(e)(1)(B)(i) (stating that notice to the class must be given "if giving notice is justified by the parties' showing that the court will likely be able to . . . certify the class for purposes of judgment on the proposal").

The court previously concluded that Plaintiff presented sufficient evidence to show "the requirements of Rule 23(a) and Rule 23(b)(3) are met." (Prelim. Appr. Order at 5-10.) Having reviewed the requirements again, the court adopts its prior analysis regarding class certification and grants certification of the proposed class for settlement purposes only. *See Atzin v. Anthem, Inc.*, 2022 WL 4238053, at *3 (C.D. Cal. Sept. 14, 2022) ("Nothing has changed to disturb that conclusion, and class certification remains appropriate."); (*see also* FA Mot. at 6 ("None of the circumstances that warranted provisional certification has changed. Thus, the Settlement Class should be maintained through entry of a final judgment.")).

**B. Fairness of the Settlement**

Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), a settlement of class claimas requires court approval. Fed. R. Civ. P. 23(e). This is because "[i]ncentives inhere in class-action settlement negotiations that can, unless checked through careful district court review of the resulting settlement, result in a decree in which the rights of class members, including the named plaintiffs, may not be given due regard by the negotiating parties." *Staton*, 327 F.3d at 959 (cleaned up).

Rule 23(e) governs class action settlement approval. Courts may approve class action settlements only when they are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, courts must consider whether (A) the class representatives and class

counsel have adequately represented the class, (B) the proposal was negotiated at arm's length, (C) the relief provided for the class is adequate, and (D) the proposal treats class members equitably relative to each other. *Id.* 23(e)(2)(A-D).

### 1. Adequacy of Class Representatives and Class Counsel

For reasons including those explained in the court's analysis of the Rule 23(a) factors at the preliminary approval stage, the court finds Plaintiff and Class Counsel's adequacy weighs in favor of granting final approval. (Prelim. Appr. Order at 8-9, 11.) "The Court is unaware of any conflict of interest between Plaintiff[] and the proposed class." *Dean v. China Agritech*, 2012 WL 1835708, at *5 (C.D. Cal. May 3, 2012). "Plaintiff's claims are identical to those of the class and []he has every incentive to vigorously pursue those claims." *Becerra-S. v. Howroyd-Wright Emp. Agency, Inc.*, 2020 WL 8571838, at *3 (C.D. Cal. Oct. 5, 2020). "Nor is there any evidence that [Class Counsel] will not adequately represent or protect the interests of the class." *Id.* Class Counsel has extensive experience litigating consumer class actions and data breach cases, (Dkt. 44-1 (Declaration of Raina Borrelli in Support of Fee Mot., "Borrelli Fee Decl.") ¶ 12, Exs. 1-2), have ably represented the class to date including negotiating a significant settlement, and appears "qualified and competent." *Hanlon*, 150 F.3d at 1020. Accordingly, the court finds this factor weighs in favor of granting final approval.

### 2. Arm's Length Negotiation

Rule 23(e)(2)(B) requires that "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Here, the parties exchanged informal discovery and engaged in negotiations "[f]rom the onset of the Litigation, and over the course of several months." (SA at 2.) There is no indication that the negotiations were collusive, and Counsel affirms that the Settlement was negotiated at arm's length. (FA Mot. at 12.) The court notes that the parties did not appear before a neutral mediator, which would have provided "positive evidence that settlement negotiations were conducted at arm's length." *Bailey v. Kinder Morgan G.P., Inc.*, 2020 WL 5748721, at *4 (N.D. Cal. Sept. 25, 2020). However, the court observes that the

settlement negotiations occurred between experienced counsel. *See Nguyen v. Radient Pharms. Corp.*, 2014 WL 1802293, at *3 (C.D. Cal. May 6, 2014) ("The fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight.") (cleaned up). Moreover, as further explained in Section II.B.3.c., *infra*, although the Settlement contains a clear sailing arrangement, it does not appear to have any other "subtle signs" of collusion that courts must police, and the clear sailing arrangement does not appear indicative of collusion. *See Roes, 1-2 v. SFBSC Mgmt.*, LLC, 944 F.3d 1035, 1048 (9th Cir. 2019). The court concludes that this factor weighs in favor of granting final approval.

**3. Adequacy of Class Relief**

In determining whether class relief is "adequate," courts consider "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C).[1]

[1] Before Congress codified these factors in 2018, the Ninth Circuit instructed district courts to apply the following factors in determining whether a settlement agreement was fair, reasonable, and accurate: "[1] the strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *Roes, 1-2*, 944 F.3d at 1048; *Staton*, 327 F.3d at 959. The court still considers these factors to the extent that they shed light on the Rule 23(e) inquiry. *See Wong v. Arlo Techs., Inc.*, 2021 WL 1531171, at *8 (N.D. Cal. Apr. 19, 2021).

**a. The Costs, Risks, and Delay of Trial and Appeal**

The court finds that the $435,000 Settlement reflects a substantial outcome for class members. Indeed, the most recent estimate of the value of a *pro rata* cash payment is $201.74. (Supp. Boub Decl. ¶ 5.) Other courts have approved settlements in privacy and security cases with much lower recovery per person. *See, e.g.*, *In re Yahoo!*, 2020 WL 4212811, at *10 (approving a settlement fund of $117.5 million with a settlement class size of approximately 194 million and collecting cases where recovery was only a few dollars per person or less); *Hashemi.*, 2022 WL 2155117, at *7 (collecting cases with estimated settlement values of less than $1 per class member). And numerous privacy class actions have settled for non-monetary relief only. *See, e.g.*, *Campbell v. Facebook Inc.*, 2017 WL 3581179, at *8 (N.D. Cal. Aug. 18, 2017) (granting final approval of settlement providing for declaratory and injunctive relief in litigation alleging Facebook engaged in user privacy violations), *aff'd,* 951 F.3d 1106 (9th Cir. 2020); *In re Google LLC St. View Elec. Commc'ns Litig.*, 2020 WL 1288377, at *16 (N.D. Cal. Mar. 18, 2020) (granting final approval of settlement providing injunctive relief and creating a non-distributable *cy pres* settlement fund in litigation alleging Google violated privacy by illegally gathering Wi-Fi network data).

The court further finds the benefits class members will receive under the Settlement present a fair compromise given the costs, risks, and delay of trial and appeal. Although litigation had not progressed far in this case, the parties had the benefit of informal discovery and significant negotiation. (*See* SA ¶ 2; Borrelli Fee Decl. ¶¶ 4-5.) With that information, the parties were able to realistically value the scope of TABS' potential liability and assess the costs, risks, and delay of moving forward with class certification, motion practice, and trial. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (explaining that approving the settlement is favored when the "parties have sufficient information to make an informed decision about settlement" (cleaned up)).

Those costs and risks are not insignificant. Because this case has not yet progressed very far, substantial litigation costs would be required to take this case to trial. "Numerous

depositions and document and other written discovery would be required if the case continued." *Farrar v. Workhorse Grp., Inc.*, 2023 WL 5505981, at *7 (C.D. Cal. July 24, 2023). "Extensive and expensive expert discovery would also be necessary." *Id.* There are also significant risks associated with class certification, summary judgment, and trial, especially in this data breach case when tying Plaintiff's alleged injuries to this particular data breach may be difficult. *See In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *3 (N.D. Cal. 2007) ("Additional consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement."); *Hashemi*, 2022 WL 2155117, at *7 (explaining that "data breach class actions are a relatively new type of litigation and that damages methodologies in data breach cases are largely untested and have yet to be presented to a jury"); *Gaston v. FabFitFun, Inc.*, 2021 WL 6496734, at *3 (C.D. Cal. Dec. 9, 2021) ("Historically, data breach cases have experienced minimal success in moving for class certification."); *see also In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007) ("Additional consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement."); *In re Netflix Privacy Litig*., 2013 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013) ("The notion that a district court could decertify a class at any time is one that weighs in favor of settlement." (citation omitted)). Indeed, Class Counsel acknowledges that "Plaintiff faced serious risks prevailing on the merits, including proving causation, as well as risks at class certification and at trial, and surviving appeal." (Dkt. 47-1 (Declaration of Raina Borrelli in Support of FA Mot., "Borrelli FA Decl.") ¶ 13; *see also* Borrelli Fee Decl. ¶ 5 ("Although I believe in the merit of the claims asserted, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and Plaintiff would face risks at each stage of litigation.").) Even if Plaintiff could secure a better result than the Settlement represents at trial, any result obtained after additional litigation or trial would take significantly longer and there is a risk that Plaintiff could have received much less, or nothing at all. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041-42 (N.D. Cal. 2008) (discussing how a class action settlement offered an "immediate and certain award" in light of significant obstacles posed through continued litigation).

The Settlement removes these costs and risks "by ensuring class members a recovery that is certain and immediate, eliminating the risk that class members would be left without any recovery at all." *Graves v. United Indus. Corp.*, 2020 WL 953210, at *7 (C.D. Cal. Feb. 24, 2020) (cleaned up). "It also secures a settlement now rather than imposing the delay of additional litigation, which in this case could span years." *Farrar*, 2023 WL 5505981, at *7; (*see* Borrelli FA Decl. ¶ 15).

The court concludes that the elimination of all of these costs, risks, and delays weighs heavily in favor of approving the Settlement. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff class.").

**b. The Effectiveness of the Proposed Method of Distribution of Class Relief**

Next, the court must consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C). "Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims." Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *Id.*

In this case, the relief distribution is straightforward. Class members were able to submit simple claim forms, either submitting supporting documentation for reimbursement or selecting a *pro rata* cash payment. (*See* SA ¶¶ 1.7, 2.2-2.3, Ex. C.) Class members were permitted to submit the claim form either by mail or online. (*See id.* Ex. C.) That 999 class members submitted claim forms confirms the adequacy of the process. (Supp. Boub Decl. ¶ 5.) And

although "[a] portion of the claims received are in the review process," (*id.*), nothing in the record indicates that the claims process is unduly demanding. *See Bowdle*, 2022 WL 19235264, at *8 (approving a similar process for filing claims). The court therefore concludes that this factor weighs in favor of granting final approval.

**c. Award of Attorney Fees and Costs**

Next, the court must consider "the terms of any proposed award of attorneys' fees, including timing of payment," in determining whether the class's relief is adequate. Fed. R. Civ. P. 23(e)(2)(c). When reviewing attorney fee requests in class action settlements, courts have discretion to apply the percentage-of-the-fund method or the lodestar method to determine reasonable attorney fees. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944045 (9th Cir. 2011). In considering the proposed attorney fee award, the court must also scrutinize the Settlement for three factors that tend to show collusion: (1) when counsel receives a disproportionate distribution of the settlement, (2) when the parties negotiate a "clear sailing arrangement," under which the defendant agrees not to challenge a request for agreed-upon attorney fees, and (3) when the agreement contains a "kicker" or "reverter" clause that returns unawarded fees to the defendant, rather than the class. *Briseno v. ConAgra Foods, Inc.*, 998 F.3d 1014, 1022 (9th Cir. 2021).

Here, Class Counsel seeks 25% of the $435,000 Gross Settlement Amount, or $108,750.00, plus reimbursement of $2,722.36 in litigation expenses. (Fee Mot. at 2.) Class Counsel notes that "[t]his request is ***less*** than the amount contemplated by the Settlement Agreement (33%) and Plaintiff's Motion for Preliminary Approval." (*Id.*) Regarding the factors tending to show collusion, the court previously raised for the parties' attention the Settlement's "clear sailing" arrangement. (Prelim. Appr. Order at 16-17 (citing SA ¶ 7.2).) While this arrangement is concerning, it is not a "death knell," *McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 610 (9th Cir. 2021), and after "peer[ing] into the provision and scrutiniz[ing] closely the relationship between attorneys' fees and benefit to the class," *Kim v. Allison*, 8 F.4th 1170, 1180 (9th Cir. 2021) (citation omitted), the court determines that the presence of the clear

sailing arrangement does not indicate collusion in this case. As the court has explained, the Settlement provides a substantial recovery for the class, with *pro rata* cash payments currently estimated to be approximately $201.74 per cash payment. (Supp. Boub Decl. ¶ 5); *see Singh v. Roadrunner Intermodal Servs. LLC*, 2019 WL 316814, at *7-8 (E.D. Cal. Jan 24, 2019) (granting final approval despite clear sailing provision, finding "that the requested fees are justified and do not betray the class's interests" and that "[o]n balance, the court is satisfied that the settlement is not the product of collusion"). Moreover, the inference of collusion from a clear sailing arrangement is diminished when class counsel's fees are "to be made from the settlement fund," *Rodriguez*, 563 F.3d at 958, and "when the agreement lacks a reversionary or 'kicker provision,'" *In re Toys "R" Us-Del., Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 458 (C.D. Cal. 2014) (citation omitted). *See also Swain v. Anders Grp., LLC*, 2023 WL 2976368, at *10 (E.D. Cal. Apr. 17, 2023) ("Moreover, the collusion concerns raised by the clear sailing provision are minimized, however, because any fees not awarded will be distributed to the class, not revert to Anders."); *Musgrove v. Jackson Nurse Pros., LLC*, 2022 WL 18231364, at *6 (C.D. Cal. June 24, 2022) (similar). That is the case here. (*See generally* SA; FA Mot. at 16; Fee Mot. at 15.) Finally, the court finds the clear sailing arrangement is less concerning here, where the parties agreed TABS would not oppose a fee request up to one-third of the Settlement, but Class Counsel instead seeks only 25% of the Settlement—the benchmark amount of fees. (*See* Fee Mot. at 2.)

The court further finds that the fee Class Counsel seeks is not "disproportionate." *See Bluetooth*, 654 F.3d at 947. The Ninth Circuit has held that 25% of a settlement fund is the "benchmark" for a reasonable fee award. *Id.* at 942-43. In deciding whether "'special circumstances' justify[ ] a departure" upward or downward from the benchmark, *id.* at 942, courts typically consider (1) the size of the fund, (2) the quality of the results achieved, (3) the risk counsel undertook, (4) the skill required and the quality of work, (5) the contingent nature of the fee and the financial burden carried by the plaintiff, and (6) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

Here, the court finds awarding the 25% benchmark, as Class Counsel requests, is appropriate. "The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award," and class members are receiving a very significant benefit from this litigation as a result of Class Counsel's effort. *In re Omnivision Techs.*, 559 F. Supp. 2d at 1046. Indeed, many class members are eligible to receive nearly two hundred dollars in cash, even if they have no expenses to be reimbursed. (*See* Boub Decl. ¶ 13.) The risk of litigation was real and substantial, and the fee was also contingent. (*See* Borrelli Fee Decl. ¶¶ 5, 19.) It is also relevant that counsel successfully negotiated the Settlement with a company represented by a prominent litigation firm. *See Gutierrez v. Amplify Energy Corp.*, 2023 WL 3071198, at *5 (C.D. Cal. Apr. 24, 2023) (citing *In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *22 (C.D. Cal. July 28, 2014) ("In addition to the difficulty of the legal and factual issues raised, the court should also consider the quality of opposing counsel as a measure of the skill required to litigate the case successfully.")). "Finally, there is no doubt that the expertise of many of these counsel contributed to both a substantial saving of expense for the class and a maximization of the ultimate recovery." *In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. at 1337. In summary, the court finds "[t]here [are] no special circumstances here indicating that the 25% benchmark award [is] either too small or too large." *In re MGM Mirage Sec. Litig.*, 708 F. App'x 894, 897-98 (9th Cir. 2017).

A lodestar cross-check also confirms the reasonableness of Class Counsel's requested award. Courts commonly perform a lodestar cross-check to assess the reasonableness of the percentage award. *See In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022) ("A cross-check is discretionary, but we encourage one when utilizing the percentage-of-recovery method."); *Vizcaino*, 290 F.3d at 1050 ("Calculation of the lodestar, which measures the lawyer's investment of time in the litigation, provides a check on the reasonableness of the percentage award."); *Bluetooth*, 654 F.3d at 943 (encouraging a "comparison between the lodestar amount and a reasonable percentage award"); *see also Chambers v. Whirlpool Corp.*, 980 F.3d 645, 663 (9th Cir. 2020) (confirming that a lodestar cross-check is "ordinarily" not required).

Class Counsel submitted evidence of a $71,480.00 lodestar for 115.20 hours of work, meaning the requested fee "reflects a modest positive lodestar multiplier of 1.5." (Fee Mot. at 12, 14; Borrelli Fee Decl. ¶ 14); *see Vizcaino*, 290 F.3d at 1051. "[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases," and "multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." *Vizcaino*, 290 F.3d at 1051 n.6; *see also Gutierrez*, 2023 WL 3071198, at *6 (describing multipliers ranging from one to four as "presumptively acceptable") (citing *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014)). The court has reviewed the information provided and concludes that the lodestar amount with the requested multiplier fairly compensates Class Counsel case given the excellent result they achieved for the class; their able and efficient representation; the investigation, discovery, negotiation, and other work performed; and the substantial risk Class Counsel undertook in this data breach class action. *See In re Coordinated Pretrial Proc. in Petroleum Prod. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) (explaining that comparing the lodestar fee to the 25% benchmark "resembles what lawyers commonly do when they draft a bill based on hours spent, consider the bottom line as compared with the value of the result, then cut the bill if the total seems excessive as compared with the results obtained"); *Pfeiffer v. RadNet, Inc.*, 2022 WL 2189533, at *3 (C.D. Cal. Feb. 15, 2022) ("Historically, data breach cases have had great difficulty in moving past the pleadings stage and receiving class certification. . . . Because Class Counsel took this case on a contingency basis in a risky and still-developing area of law, this factor weighs in favor of the proposed attorneys' fee award."). The court therefore concludes that Class Counsel's lodestar confirms the reasonableness of the fees sought.

In addition, the court has reviewed Class Counsel's request for $2,722.36 in litigation costs incurred for pro hac vice fees, filing fees, and mailing. (Fee Mot. at 12; Borrelli Fee Decl. ¶ 15.) The court observes that these are generally the types of expenses that are reasonably and necessarily incurred in litigation and routinely charged to paying clients in non-contingency cases. *See, e.g.*, *Reed v. Balfour Beatty Rail, Inc.*, 2023 WL 4680922, at *7 (C.D. Cal. June 22, 2023) (finding on final approval "expenses adequately documented and reasonable" including, among other expenses, "filing and service fees, pro hac vice motions, printing and

photocopying, and postage"). And the court finds the requested $2,722.36 in litigation costs are reasonable and adequately supported by the documentation submitted.

The court will make one change, however, in calculating Class Counsel's fee: it will apply the benchmark percentage after deducting litigation and administration costs from the common fund. "In other words, to calculate attorney fees in this case, the court will apply the [percentage fee award] to the amount the class recovers." *Farrar*, 2023 WL 5505981, at *10; *Carter v. Vivendi Ticketing US LLC*, 2023 WL 8153712, at *8 (C.D. Cal. Oct. 30, 2023). Calculating Counsel's percentage fee award before deducting costs would mean that counsel not only gets reimbursed for their costs but also receives an additional 33% of those costs as a fee. *See, e.g.*, *Smith v. Experian Info. Sols., Inc.*, 2020 WL 6689209, at *7 (C.D. Cal. Nov. 9, 2020) (calculating benchmark fees by deducting litigation costs and settlement administrator costs from the settlement amount, and taking 25% of that amount); *In re Apple iPhone/iPad Warranty Litig.*, 40 F. Supp. 3d 1176, 1182 (N.D. Cal. 2014) (same); *Kmiec v. Powerwave Techs., Inc.*, 2016 WL 5938709, at *5 (C.D. Cal. July 11, 2016) (same); *Kanawi v. Bechtel Corp.*, 2011 WL 782244, at *3 (N.D. Cal. Mar. 1, 2011) (same). And deducting the settlement administrator's and independent fiduciary's costs before calculating the fee ensures that class counsel's incentive remains keeping those costs low. *See Farrar*, 2023 WL 5505981, at *10. Subtracting from the $435,000 million Settlement amount $32,057 in settlement administration costs and $2,722.36 in litigation costs yields $400,220.64. (*See* Borrelli Fee Decl. ¶ 15; Boub Decl. ¶ 14.) 25% of that amount is $100,055.16. Accordingly, the court will award Class Counsel **$100,055.16** in attorney fees.

In addition to the amount of Class Counsel's fees and costs, the court must scrutinize the timing of payment. Fed. R. Civ. P. 23(e)(2)(c). The Settlement provides that any fees awarded to class counsel must be paid within thirty days of the Effective Date, which is the date when the Settlement is finally approved and is no longer under or subject to further appellate review. (*See* SA ¶¶ 7.4, 9.1, 1.12.) That date would be well in advance of when class members can expect to be compensated. (*See id.* ¶¶ 2.6.1-2.6.5 (describing a claims administration process that could extend months after the Effective Date).) At the preliminary approval stage, the court

noted that "[t]his could cast a slight shadow on the proposed fee and cost arrangements." (Prelim. Appr. Order at 17 (citing *Farrar*, 2023 WL 5505981, at *10 (citing *Salas Razo v. AT&T Mobility Servs., LLC*, 2022 WL 4586229, at *13 (E.D. Cal. Sept. 29, 2022) ("[C]ounsel will receive payment at the same time as Class Members, and the timing of payment does not weigh against preliminary approval of the Class Settlement."))). However, "[t]o address these concerns, Class Counsel has requested that RG/2 delay disbursing any Court approved attorney fees until the Settlement Class Members are issued settlement payments. As such, Class Counsel will not receive payment before Class Members—which further supports the reasonableness of the Settlement and the proposed fee award." (FA Mot. at 14-15 (citing Borrelli FA Decl. ¶¶ 19-20).) Because "counsel will receive payment at the same time as Class Members, . . . the timing of payment does not weigh against" final approval of the Settlement. *Razo v. AT&T Mobility Servs., LLC*, 2022 WL 4586229, at *13 (E.D. Cal. Sept. 29, 2022); *see Perks v. Activehours, Inc.*, 2021 WL 1146038, at *6 (N.D. Cal. Mar. 25, 2021) (similar).

**d. Agreements Required to Be Identified Under Rule 23(e)(3)**

The court must also consider whether there is "any agreement required to be identified under Rule 23(e)(3)," Fed. R. Civ. P. 23(e)(2)(C)(iv)—that is, "any agreement made in connection with the proposal," *id.* 23(e)(3). Here, the parties have identified no agreement other than the proposed Settlement. (FA Mot. at 15 ("Rule 23(e)(2)(C)(iv) is neutral toward final approval because there is no agreement that requires identification.").)

**e. Service Award**

Next, the court considers a service award for Plaintiff. Service awards or incentive awards are payments to class representatives for their service to the class in bringing the lawsuit. *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). Courts routinely approve this type of award to compensate representative plaintiffs for the services they provide and the risks they incur during class action litigation, and the awards are discretionary. *Rodriguez*, 563 F.3d at 958-59; *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 499

(E.D. Cal. 2010). A $5,000 payment is "presumptively reasonable." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015).

Plaintiff seeks a service award of $5,000. (Fee Mot. at 17-18.) "Plaintiff expended considerable effort on behalf of the Class, including answering a detailed questionnaire; providing essential information to Class Counsel to prosecute his claims; collecting documents and other evidence that supported his claims; agreeing to face invasive and time-consuming discovery, if necessary; reviewing pleadings and coordinating with Class Counsel as to the status of, and strategy for, the action; conferring with Class Counsel about the settlement negotiations; and considering and approving the Settlement terms on behalf of the Class." (Fee Mot. at 17-18 (quoting Borrelli Fee Decl. ¶ 22).) The court finds the requested award, which is presumptively reasonable, is reasonable and appropriate in this case. *See Bellinghausen*, 306 F.R.D. at 266.

**4. Equitable Class Member Treatment**

The final Rule 23(e) factor turns on whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment.

Under the Settlement, class members are eligible to submit a claim for an out-of-pocket expense reimbursement up to $7,500 and a *pro rata* cash payment. (SA ¶¶ 2.2, 2.5.) It is reasonable to allocate more of the Settlement fund to class members with a sufficiently documented injury. *See Bowdle*, 2022 WL 19235264, at *10 (finding differing payouts based on documentation of harm to be reasonable in data breach case); *In re Omnivision Techs., Inc.*, 559 F.Supp. 2d at 1045 (distributing a settlement fund proportionately to actual injury in a securities class action). The Settlement also treats California sub-class members differently

than class members from other states based on their claims that provide for statutory damages. "This distinction is also reasonable." *Carter*, 2023 WL 8153712, at *11 (finding it reasonable to treat California class members differently as to statutory damages). The release is also the same for all class members. (*See* SA ¶¶ 1.22-1.24.) Accordingly, the court concludes the Settlement treats class members equitably.

**5. Response to Notice**

Finally, in assessing the Settlement's adequacy, the court also considers the class' response to the notice. *See Alfred v. Pepperidge Farm*, 2022 WL 17066171, at *7 (C.D. Cal. Mar. 4, 2022) ("Because the notice process has been completed, the reaction of Class Members to the Settlement Agreement may be considered in evaluating whether it is fair and appropriate."). As explained, RG/2 successfully gave 98% of 6,883 class members notice of the Settlement. (Boub Decl. ¶¶ 4-6, 10.) The deadline to postmark requests to opt out or object to the Settlement passed on July 17, 2025, and only three class members requested to opt out, and no class member objected. (*Id.* ¶¶ 11-12.) In addition, the deadline to submit a claim passed on August 14, 2025, and RG/2 received 999 claim forms. (*Id.* ¶ 13; Supp. Boub Decl. ¶ 5.) This indicates strong overall support for the Settlement and supports final approval. *See, e.g.*, *National Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("The absence of a single objection to the Proposed Settlement provides further support for final approval of the Proposed Settlement. It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members."); *Hashemi*, 2022 WL 18278431, at *6 ("Very few objections and opt-outs create a strong presumption that the Settlement is beneficial to the Class and thus warrants final approval."); *In re Lifelock, Inc. Mktg. & Sales Practices Litig.*, 2010 WL 3715138, at *6 (D. Ariz. Aug. 31, 2010) (explaining that low number of timely written objections and requests for exclusion supported settlement approval); *Kacsuta v. Lenovo (United States) Inc.*, 2014 WL 12585787, at *5 (C.D. Cal. Dec. 16, 2014) ("Because the reaction of the class to settlement has been almost entirely positive, with only two objections, this factor favors final approval."); *Hashemi II*, 2022

WL 18278431, at *6 ("Very few objections and opt-outs create a strong presumption that the Settlement is beneficial to the Class and thus warrants final approval.").

**6. Summary**

In sum, after analyzing the Rule 23(e)(2) factors, and taking into consideration the factors the Ninth Circuit has provided to guide the court's Rule 23(e)(2) analysis, the court concludes that the Settlement is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2); *Kim*, 8 F.4th at 1178; *Roes, 1-2*, 944 F.3d at 1048; *Staton*, 327 F.3d at 959.

## III. Disposition

For the foregoing reasons, the Final Approval Motion is **GRANTED.** The Fee Motion is **GRANTED IN SUBSTANTIAL PART.** Specifically, the Fee Motion is **GRANTED** in all respects except that the court calculates the fee award by applying the percentage fee award after deducting litigation and administration costs from the common fund, for a total fee award of **$100,055.16.**