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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

11 **KEVIN GREGERSON**, on behalf of
12 himself and all others similarly situated,

13 Plaintiff,

14 v.

15 **TOSHIBA AMERICA BUSINESS
16 SOLUTIONS, INC.,**

17 Defendant.

Case No. 8:24-cv-01201-FWS-ADS

**PLAINTIFF’S NOTICE OF
MOTION AND MOTION FOR
AWARD OF ATTORNEYS’
FEES, EXPENSES, AND
SERVICE AWARD AND
MEMORANDUM IN SUPPORT**

Judge Fred W. Slaughter

Date: August 28, 2025

Time: 10:00 a.m.

Courtroom: 10D (Santa Ana)

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 28, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 10D of the above-captioned Court before the Honorable Fred W. Slaughter, Plaintiff Kevin Gregerson (“Plaintiff”), will and hereby does move for an Order, consistent with the terms of the Class Action Settlement Agreement in this case, awarding Class Counsel’s attorney’s fees in the amount of \$108,750.00 (25% of the total value of the Settlement), reimbursing Class Counsel’s litigation expenses in the amount of \$2,722.36, and awarding a Service Award of \$5,000.00 to the Class Representative.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum in Support, the Declaration of Raina Borrelli, the Class Action Settlement Agreement and Release (the “Settlement Agreement” or “SA”) previously filed with the Court (ECF No. 40-1),¹ and all papers filed in support thereof, the argument of counsel at the hearing of this Motion, all papers and records on file in this matter, and such other matters as the Court may consider.

Dated: July 3, 2025

By: /s/ Raina C. Borrelli

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¹ All capitalized terms herein shall have the meaning ascribed to them in the Settlement Agreement unless explicitly stated herein.

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I. INTRODUCTION

This class action lawsuit stems from a data security incident impacting Defendant Toshiba America Business Solutions, Inc.’s (“TABS” or “Defendant”) computer network that resulted in unauthorized access to personally identifiable information (“PII”) belonging to Plaintiff and the Class. (Declaration of Raina Borrelli (“Borrelli Decl.”), ¶ 4 (attached hereto as **Exhibit 1**)). After protracted arm’s length settlement negotiations, reviewing informal discovery, and assessing the strengths and weaknesses of the case, the Parties reached a settlement that is fair, reasonable, and adequate. (*Id.*). The Court preliminarily approved the Settlement on April 17, 2025. (ECF No. 43). The Court approved notice program, notifying the Class of the Settlement and their rights thereunder, is currently being implemented by the Settlement Administrator, RG/2 Claims Administration LLC. (*Id.*). Class Counsel² now move the Court for an order awarding attorneys’ fees, expenses, and a service award to compensate Class Counsel and Plaintiff for the work they performed that resulted in an outstanding Settlement for the Class.

Class Counsel negotiated a class action settlement that provides substantial benefits to Settlement Class Members, in the form of a \$435,000.00 non-reversionary common fund that will provide compensation for Out-of-Pocket Expense Reimbursement, a California Settlement Subclass Payment, and a Pro Rata Cash Payment. (SA, ¶¶ 22., 2.4–2.5). Additionally, Class Counsel received assurances (in the form of a confidential declaration) that TABS has implemented

² “Class Counsel” refers to William B. Federman and Kennedy M Brian of Federman & Sherwood and Raina Borrelli and Andrew Gunem of Strauss Borrelli PLLC.

1 or will implement certain reasonable steps to adequately secure its systems to
2 prevent the likelihood of another data incident from occurring. (*Id.* ¶ 2.7). This
3 Settlement represents an excellent result for the Settlement Class and was obtained
4 against a Defendant represented by a well-regarded and experienced national
5 defense law firm. (Borrelli Decl., ¶ 5). Although Class Counsel believe in the merits
6 of Plaintiffs' claims, this litigation was inherently risky and complex. (*Id.*). The
7 claims involve the intricacies of data breach litigation (a fast-developing area in the
8 law), and Plaintiffs would face risks at each stage of litigation. (*Id.*). Against these
9 risks, it was through the hard-fought negotiations and the skill and hard work of
10 Class Counsel and Plaintiffs that the Settlement was achieved for the benefit of the
11 Settlement Class. (*Id.*).

12 Class Counsel now respectfully move this Court for an award of attorneys'
13 fees in the amount of \$108,750.00 (25% of the total value of the Settlement) and
14 reimbursement of litigation expenses in the amount of \$2,722.36. (*Id.* ¶ 8). This
15 request is *less* than the amount contemplated by the Settlement Agreement (33%)
16 and Plaintiff's Motion for Preliminary Approval. (*Id.*). The fee request was also
17 clearly delineated in the notice materials provided to the Settlement Class (ECF 40-
18 1 (Ex. A to the Settlement Agreement)). As of the date of this filing, no Class
19 Member has objected to the Settlement nor the requested attorneys' fees. (Borrelli
20 Decl., ¶ 8). When applying the relevant factors and standards, this request falls well
21 within the range of reasonableness for fee requests in the Ninth Circuit. Class
22 Counsel's fee and expense request is fair and reasonable under both a percentage of
23 the fund approach and a lodestar approach.

1 In addition to the attorneys' fees, Plaintiffs' Counsel also seeks an award of
2 reasonable litigation costs and expenses in the amount of \$2,722.36. Class Counsel
3 also seek a service award for the Class Representative in the amount of \$5,000.00
4 for the Plaintiffs' efforts on behalf of the Settlement Class. For each of the reasons
5 identified below, the instant motion should be granted.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND AND SUMMARY**
7 **OF THE SETTLEMENT TERMS.**

8 In the interest of judicial efficiency, for factual and procedural background on
9 this case and a summary of the Settlement terms, Plaintiffs respectfully refer this
10 Court to and hereby incorporate by reference Plaintiffs' Unopposed Motion for
11 Preliminary Approval of Class Action Settlement (ECF No. 40), and the
12 accompanying Exhibits, including the Settlement Agreement, filed in conjunction
13 therewith.

14 **III. ARGUMENT**

15 **A. The Court Should Approve the Application for Award of Attorney's**
16 **Fees.**

17 **1. Applicable Legal Standards**

18 District courts may award attorneys' fees and costs to a prevailing plaintiff
19 where "the successful litigants have created a common fund for recovery or extended
20 substantial benefit to the class." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.
21 935, 941 (9th Cir. 2011) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*, 421
22 U.S. 240, 275 (1975)). Where counsel for a class seeks fees from a common fund,
23 courts within the Ninth Circuit have discretion to employ either the percentage-of-

1 fund or the lodestar-multiplier method to determine whether the fee request is
2 reasonable. *See In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010);
3 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–49 (9th Cir. 2002); *Hanlon v.*
4 *Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998), *overruled on other grounds by*
5 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Regardless of the chosen
6 method, courts must award attorneys’ fees based on an evaluation of “all of the
7 circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

8 Under the “percentage-of-the-fund” method, the “court simply awards the
9 attorneys a percentage of the fund sufficient to provide class counsel with a reasonable
10 fee.” *Hanlon*, 150 F.3d at 1029. Most courts have found the percentage approach
11 superior in cases with a common-fund recovery because it (i) parallels the use of
12 percentage-based contingency fee contracts; (ii) aligns the lawyers’ interests with that
13 of the class in achieving the maximum possible recovery; and (iii) reduces the burden
14 on the court by eliminating the detailed and time-consuming lodestar analysis. *See*
15 *Vinh Nguyen v. Radient Pharm. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at *9
16 (C.D. Cal. May 6, 2014) (“There are significant benefits to the percentage approach,
17 including consistency with contingency fee calculations in the private market,
18 aligning the lawyers’ interests with achieving the highest award for the class members,
19 and reducing the burden on the courts that a complex lodestar calculation requires.”).

20 The lodestar-multiplier method, in contrast, “is typically used when the relief
21 obtained is ‘not easily monetized.’” *Ahmed v. HSBC Bank United States*, 2019 WL
22 13027266, at *5–6 (C.D. Cal. Dec. 30, 2019) (internal citation omitted). It also
23 “inadequately responds to the problem of risk.” *See In re: Wash. Pub. Power Supply*

1 *Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (without the percentage-of-the-
2 fund method of calculating fees, “very few lawyers could take on the representation
3 of a class client given the investment of substantial time, effort, and money, especially
4 in light of the risks of recovering nothing”) (citation omitted).

5 Whether applying the lodestar or percentage method, “the most critical factor
6 is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983);
7 *see also In re Bluetooth*, 654 F.3d at 942 (“Foremost among these considerations . . .
8 is the benefit obtained for the class.”); Federal Judicial Center, *Manual for Complex*
9 *Litigation*, § 27.71, 336 (4th ed. 2004) (“[The] fundamental focus is on the result
10 actually achieved for class members.”). Under either approach, the award requested
11 here is fair and reasonable.

12 **2. The Requested Fee is Reasonable Under the Percentage of the Fund**
13 **Method.**

14 When assessing the reasonableness of an attorneys’ fee award under the
15 percentage of the fund method, courts consider “(1) the size of the fund (and thus the
16 resulting size of the percentage fee award); (2) quality of the results obtained by
17 counsel; (3) risk taken on by counsel; (4) incidental or non-monetary benefits
18 conferred by settlement; (5) effort expended by counsel; and (6) counsel's reasonable
19 expectations based on the circumstances of the case and fee awards in other cases.”
20 *Vizcaino*, 290 F.3d at 1047–50. Here each of these factors supports Class Counsel’s
21 requested fee amount.

22 ***i. Factors 1, 2, and 4: The Size of the Fund, the Benefits***
23 ***Obtained, and the Quality of the Results.***

1 Through Class Counsel’s efforts and negotiations, Class Counsel quickly
2 achieved an excellent Settlement of \$435,000.00 for approximately 6,883 Settlement
3 Class Members. The Settlement provides two (2) components of meaningful relief:
4 (i) cash payments to Settlement Class Members; and (ii) injunctive relief. (SA, ¶¶
5 2.2, 2.4–2.5, 2.7).

6 Under the cash component of the Settlement, Class Counsel secured a
7 \$435,000.00 common fund which will be used to pay for the following categories of
8 benefits to Settlement Class Members: (i) Out-of-Pocket Expense Reimbursements
9 up to \$7,500.00; (ii) California Settlement Subclass Payments of \$150.00; and (iv)
10 a Pro Rata Cash Payment from the Net Settlement Fund, the amount of which will
11 be determined by the number of claims submitted. (*Id.* ¶¶ 2.2 2.4–2.5).

12 Additionally, under the injunctive relief portion of the Settlement, TABS
13 assurances in the form of a confidential declaration that TABS has implemented or
14 will implement certain reasonable steps to adequately secure its systems and
15 environments. (*Id.* ¶ 2.7). These Business Practice Commitments will benefit every
16 Settlement Class Member regardless of if they submit a claim for monetary relief.
17 Most importantly, the injunctive relief made available through the Settlement
18 mirrors the relief Class Members could expect to receive only after a successful trial,
19 adding further value to the Settlement. *See In re Equifax Inc. Customer Data Sec.*
20 *Breach Litig.*, No. 17-md-2800-TWT, 2020 WL 256132, at *3 (N.D. Ga. Mar. 17,
21 2020) (finding commitment to invest in “data security and related technology
22 substantially benefits the class because it ensures adequate funding for securing
23 plaintiffs’ information long after the case is resolved.”), *rev’d in part on other*

1 grounds, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th
2 Cir. June 3, 2021).

3 Considering these benefits, the Settlement provides a remarkable recovery of
4 approximately \$63.20 per Settlement Class Member.³ This per person value exceeds
5 that of many other data privacy settlements across the nation. *See, e.g., Kondo v.*
6 *Creative Servs. Inc.*, No. 1:22-cv-10438, ECF No. 39 (D. Mass.) (approximate
7 recovery of \$7.26 per class member); *Desue v. 20/20 Eye Care Network, Inc.*, No.
8 21-CIV-61275-RAR, 2023 WL 4420348 (S.D. Fla.) (approximate recovery of \$0.75
9 per class member); *Kostka v. Dickey's Barbecue Restaurants Inc.*, No. 3:20-cv-3424,
10 ECF No. 103 (N.D. Tex.) (approving \$2.35 million common fund in data breach
11 settlement, which was worth approximately \$3.24 per class member); *In re*
12 *Forefront Data Breach Litig.*, No. 1:21-CV-00887, ECF No. 81 (E.D. Wis. March
13 1, 2023) (approving \$3.75 million fund in data breach settlement, which equaled
14 approximately \$1.55 per class member); *Dearing v. Magellan Health Inc. et al.*, No.
15 CV2020-013648 (Supr. Ct. Ariz., Maricopa Cty.) (approving \$1.43 million fund in
16 data breach class action with 273,000 class members, for an approximate per class
17 member value of \$5.24); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318
18 (N.D. Cal. 2018) (approving a settlement where the settlement value per class
19 member was \$1.45).

20 In sum, the sizable fund coupled with the Business Practice Changes should
21 lead the court to conclude that factors 1, 2, and 4, support the award of the requested

22
23 ³ Calculated by dividing the Settlement Fund (\$435,000.00) by the number of
Settlement Class Members (6,883).

1 fee.

2 *ii. Factors 3: The Risk Taken on by Counsel*

3 Class Counsel assumed significant risk of nonpayment or underpayment of
4 attorneys' fees by undertaking this case. (Borrelli Decl., ¶ 19). Class Counsel took
5 this case on a purely contingent basis with the understanding that they would only
6 be compensated if there was a recovery for Plaintiffs, and Court approval of the
7 requested fees. (*Id.*). This litigation began in 2024 and has required the devotion of
8 substantial time, totaling over 115.20 hours from Class Counsel to date. (*Id.* ¶ 14).
9 This case, as with most class action lawsuits, required a significant commitment of
10 time and resources from Class Counsel. (*Id.*). This time could have been devoted to
11 other fee generating matters of lesser risk and complexity. (*Id.* ¶ 19). As such, neither
12 compensation for their time nor reimbursement of their costs were guaranteed to
13 Class Counsel. (*Id.*).

14 Furthermore, the risk of non-payment is especially prevalent in data breach
15 cases. Many data breach cases are dismissed in their entirety at the motion to dismiss
16 stage providing no relief for the class and no payment for class counsel. *See, e.g.,*
17 *Scifo v. Alvaria, Inc.*, No. 23-CV-10999-ADB, 2024 WL 4252694 (D. Mass. Sept.
18 20, 2024) (dismissing data breach case for lack of Article III standing); *Rivera-*
19 *Marrero v. Banco Popular de Puerto Rico*, No. CV 22-1217 (ADC), 2023 WL
20 2744683 (D.P.R. Mar. 31, 2023) (similar); *Johnson v. Yuma Reg'l Med. Ctr.*, No.
21 CV-22-01061-PHX-SMB, 2024 WL 4803881 (D. Ariz. Nov. 15, 2024) (dismissing
22 data breach case in its entirety); *Gannon v. Truly Nolen of Am. Inc.*, No. CV 22-428-
23 TUC-JAS, 2023 WL 6536477 (D. Ariz. Aug. 31, 2023) (dismissing data breach case

1 in its entirety). It is evident from the case law above that by undertaking this case,
2 Class Counsel ran a significant risk of non-payment. Therefore, this factor weighs
3 in favor of approval of the requested fee.

4 ***iii. Factor 5: Efforts Expended by Counsel.***

5 Class Counsel devoted substantial time, labor, and resources to achieve the
6 Settlement. Since inception of the case, Class Counsel have documented 115.20
7 hours in this case to date. (Borrelli Decl., ¶ 14). This time does not include the time
8 spent preparing the motion for final approval, preparing for the final fairness hearing,
9 supervising the claims administration process, nor responding to Settlement Class
10 Member inquiries about their payments. (*Id.*). All these activities will require Class
11 Counsel to accrue additional time and fees. (*Id.*). As a result, Class Counsel estimate
12 they will spend in excess of forty (40) additional hours aiding Class Members and
13 completing the Settlement approval process. (*Id.*).

14 Although Class Counsel have consistently sought to keep costs and fees to a
15 minimum, this case required a significant amount of work and time. (*Id.* ¶ 10). The
16 case was levied against a large company with counsel experienced in data privacy
17 litigation. (*Id.*). Class Counsels' efforts expended in this matter included:

- 18 a. fully investigating the facts and legal claims, including interviewing and
19 vetting multiple potential plaintiffs;
20 b. obtaining and reviewing documents from Class Members substantiating
21 their claims;
22 c. drafting and preparing the complaints, as well as conducting extensive
23 research for those complaints;

- d. regularly communicating with the named Plaintiff to keep him apprised of the progress in the action;
- e. requesting, obtaining, and reviewing documents and information from TABS regarding the Data Incident, and TABS's remedial measures after the Data Incident;
- f. analyzing the strengths and weaknesses of the case;
- g. participating in months of settlement negotiations with TABS to reach and finalize the Settlement Agreement, proposed orders, and notice documents;
- h. developing the notice program and distribution plan for the Settlement;
- i. soliciting bids from several settlement administrators to ensure the class was getting the best notice at a cost-effective price;
- j. obtaining preliminary approval of the Settlement;
- k. aiding Class members with questions about the claims process and submitting claims;
- l. conducting research for Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards and subsequently drafting Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards; and
- m. working with the Settlement Administrator to implement the notice program and oversee the claims process.

(*Id.*). For these reasons, the time and labor required strongly support finding that the requested fee is reasonable.

iv. Factor 6: Awards in Similar Cases.

Furthermore, the attorneys' fees awarded in similar cases support the requested fee here. Plaintiffs request the Court award 25% of the Settlement Fund (or \$108,750.00) which is on par with other fee awards in similar data privacy settlements. *Gupta v. Aries Software, Inc.*, 2023 U.S. Dist. LEXIS 36141 at *20 (C.D. Cal. March 3, 2023) (holding that 25% of the common fund was reasonable in settlement of a data breach class action); *Pfeiffer v. Radnet, Inc.*, No. 2:20-cv-09553-RGK-SK, 2022 U.S. Dist. LEXIS 125933, at *8 (C.D. Cal. Feb. 15, 2022) (same); *Gaston v. Fabfitfun, Inc.*, 2021 U.S. Dist. LEXIS 250695, at *9 (C.D. Cal. Dec. 9, 2021)(same); *In re: Orrick, Herrington & Sutcliffe, LLP Data Breach Litig.*, No. 3:23-cv-04089, ECF Nos. 68, 74 (N.D. Cal.). Therefore, each factor of the percentage of the fund method supports the requested fee.

3. The Lodestar Method Confirms the Reasonableness of the Requested Fee.

Application of the lodestar method confirms the propriety of Class Counsel's fee request. "The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). "In applying the 'lodestar method,' courts consider non-attorney fees, such as paralegal, secretarial, and technician services, as part of the attorney's fees calculation." *Ctr. for Biological Diversity v. Env't Prot. Agency*, No. C 17-00720 WHA, 2017 WL 6761932, at *4 (N.D. Cal. Dec. 4, 2017), *report and recommendation adopted*, No. C 17-00720 WHA, 2018 WL 264087 (N.D. Cal. Jan.

2, 2018). “The court may adjust [the lodestar] upward or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 941–42.

i. The Number of Hours Claimed is Reasonable

Class Counsel devoted substantial time, labor, and resources to achieve the Settlement. Since inception of the case, Class Counsel have documented 115.2 hours spent to date litigating this case, at a value of \$71,480.00, when multiplied by their customary rates, as depicted by the chart below:

Firm	Hours	Lodestar	Expenses
Federman & Sherwood	46.70	\$27,930.00	\$1,000.00
Strauss Borrelli, PLLC	68.50	\$43,550.00	\$1,722.36
TOTAL	115.20	\$71,480.00	\$2,722.36

Class Counsel maintained contemporaneous, detailed time records billed in 6-minute increments. (Borrelli Decl., ¶ 9). In anticipation of the filing of the fee motion, Class Counsel collectively reviewed the time submissions, audited them, and reduced hours that appeared duplicative, excessive, or unnecessary. (*Id.* ¶ 9).

As detailed above and in the attached Declaration, these hours include: (1) engaging in extensive efforts to develop strategic plans; (2) extensive background investigation; (3) vetting potential class representatives; (4) extensively researching and filing the complaints to address arguments raised by Defendant; (5) meeting and conferring with defense counsel; (6) undertaking substantial investigation of the Data Incident and the corporate structure of Defendant; (7) negotiating the details of

1 the Settlement Agreement over multiple months and securing preliminary approval
2 of the Settlement; (8) preparing the preliminary approval motion papers; (9)
3 obtaining bids from multiple claims administration firms and working with RG/2
4 Claims Administration, LLC to prepare and implement the notice plan and claims
5 process; and (10) monitoring and aiding Settlement Class Members in this claims
6 process. (*Id.* ¶ 10).

7 However, additional work will be required. The lodestar chart above does not
8 include the time spent preparing the motion for final approval, preparing for and
9 traveling to the final fairness hearing, supervising the claims process, or responding
10 to Settlement Class Member inquiries about their payments after the Settlement
11 receives final approval, all of which will require Class Counsel to accrue additional
12 time and fees. (*Id.* ¶ 14). Class Counsel estimate they will incur approximately 40
13 hours engaging in these additional tasks. (*Id.*).

14 ***ii. The Hourly Rates are Reasonable.***

15 To assist the court in calculating the lodestar, a plaintiff must submit
16 “satisfactory evidence ... that the requested rates are in line with those prevailing in
17 the community for similar services by lawyers of reasonably comparable skill,
18 experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895–96 n.11 (1984).
19 The relevant community is that in which the district court sits. *See Schwarz v. Sec’y*
20 *of Health and Human Serv.*, 73 F.3d 895, 906 (9th Cir.1995).

21 Here, Class Counsel’s hourly rates have been approved by courts within this
22 Circuit in other data privacy litigation similar to this Action. *See, e.g., Perez, et al.*
23 *v. Carvin Wilson Software, LLC*, No. CV-23-00792, ECF Nos. 48-1, 53 (D. Ariz.)

(approving Federman & Sherwood’s hourly rate range of \$300–\$1,150); *Hogsed v. PracticeMax, Inc.*, No. 2:22-cv-01261, ECF Nos. 42-1, 45 (D. Ariz.) (approving hourly rate range from \$125.00–\$1,450.00); *In re: Orrick, Herrington & Sutcliffe, LLP Data Breach Litig.*, No. 3:23-cv-04089, ECF Nos. 68, 74 (N.D. Cal.) (approving partner hourly rate of \$1,150.00, attorney hourly rate of \$600.00, and paralegal hourly rate of \$300.00); *In re Solara Medical Supplies Data Breach Litigation*, No. 3:19-cv-02284, ECF Nos. 148, 150 (S.D. Cal.); *In re Ethos Tech. Inc. Data Breach Litig.*, No. 3:22-cv-09203, ECF Nos. 43, 68 (N.D. Cal.) (approving Strauss Borrelli’s hourly rates ranging from \$150-700). Thus, the hourly rates on which Class Counsel’s lodestar is based are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. (Borrelli Decl., ¶ 18).

iii. Class Counsel’s Lodestar Reflects a Modest Multiplier.

Class Counsel’s fee request reflects a modest positive lodestar multiplier of 1.5. A lodestar multiplier in this range is regularly approved by courts in this Circuit and is particularly appropriate considering the complexity of the case, the risk of nonpayment, the quality of Class Counsel’s performance, and the benefit obtained for the Class. *See, e.g., Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013) (“Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases.”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n. 6 (9th Cir.) (noting that lodestar multipliers “ranging from one to four are frequently awarded”); *Zwicky v. Diamond Resorts Inc.*, No. CV-20-02322-PHX-DJH, 2024 WL 1717553, at *6 (D. Ariz. Apr. 22, 2024) (awarding lodestar multiplier of 3.879).

1 **4. The Requested Fee Award is Not the Product of Collusion**

2 In evaluating the motion for preliminary approval, the Court considered all
3 three signs of collusion that the Ninth Circuit has identified. *Briseno v. ConAgra*
4 *Foods, Inc.*, 998 F.3d 1014, 1022 (9th Cir. 2021); *see also McKinney-Drobnis*, 16
5 F.4th at 607–08. Nothing in the record changes the Court’s preliminary conclusion
6 regarding these factors.

7 The Settlement is non-reversionary—a factor that weighs against any indicia
8 of collusion. Cases in the Ninth Circuit that have identified “subtle signs” of
9 collusion include those where the defendant is set to recover some of the settlement
10 fund through a reversionary agreement. *See, e.g., McKinney-Drobnis v. Oreshack*,
11 16 F.4th 594, 610 (9th Cir. 2021) (“[W]e have identified ‘reverter’ or ‘kicker’
12 provisions as red flags.”); *Zwicky v. Diamond Resorts Mgmt. Inc.*, --- F.R.D. ---, No.
13 CV-20-02322-PHX, 2022 WL 16950222, *14 (D. Az. Nov. 15, 2022) (granting
14 preliminary approval of class but denying settlement without prejudice to re-file and
15 correct, *inter alia*, “subtle signs” of collusion); *Maree v. Deutsche Lufthansa AG*,
16 No. 8:20-cv-00885, 2022 WL 5052582, *4 (C.D. Cal. Sep. 30, 2022) (denying
17 claims-made settlement due to the “clandestine” nature of settlement negotiations
18 conducted without any formal discovery). However, where the settlement is non-
19 reversionary, but a clear-sailing agreement exists, courts have found that the clear-
20 sailing agreement is not necessarily a strong indicator of collusion. *See Lim v.*
21 *Transforce, Inc.*, No. LA CV19-04390 JAK, 2022 WL 17253907, *12 (C.D. Cal.
22 Nov. 15, 2022) (granting preliminary approval and finding no collusion where non-
23 reversionary settlement reached under supervision of mediator); *Lusk v. Five Guys*

1 *Enters. LLC*, No. 1:17-cv-00762-AWI, 2022 WL 4791923, *9 (E.D. Cal. Sep. 30,
2 2022) (finding no collusion based on same).

3 Next, the Settlement Agreement calls for a monetary distribution in addition
4 to injunctive relief, which weighs against a finding of collusion.⁴ *See Vu v. I Care*
5 *Credit, LLC*, No. CV 17-04609 RAO, 2022 WL 22871480, at *9 (C.D. Cal. Nov. 4,
6 2022). Class Counsel received assurances in the form of a confidential declaration
7 (suitable for filing under seal if the Court requests) that TABS has implemented or
8 will implement certain reasonable steps to adequately secure its systems and
9 environments to prevent the likelihood of another data incident from occurring in
10 the future. (SA, ¶ 2.7).

11 Lastly, Class Counsel reduced their fee request to 25% of the common fund,
12 further supporting the absence of collusion.

13 **B. Class Counsel Are Entitled to Reimbursement of Litigation Costs.**

14 Under well-settled law, Class Counsel are entitled to recover “out-of-pocket
15 expenses that would normally be charged to a fee-paying client.” *Harris v.*
16 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal citation and quotation marks
17 omitted). “Expenses such as reimbursement for travel, meals, lodging,
18 photocopying, long-distance telephone calls, computer legal research, postage,
19 courier service, mediation, exhibits, documents scanning, and visual equipment are
20 typically recoverable.” *Rutti v. Lojack Corp., Inc.*, No. SACV 06–350 DOC (JCx),

21 ⁴ The Ninth Circuit has held that courts should “take into account the present
22 nonmonetary benefit bestowed upon plaintiffs’ class” when evaluating the
23 appropriateness of a fee award. *Loring v. City of Scottsdale*, 721 F.2d 274, 275 (9th
24 Cir. 1983).

2012 WL 3151077, *12 (C.D. Cal. July 31, 2012). It is appropriate to reimburse Class Counsel for such expenses from the common fund. *See In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, No. CV-87-3962, 1989 WL 73211, at *6 (C.D. Cal. Mar. 9, 1989). Such expense awards comport with the notion that the district court may “spread the costs of the litigation among the recipients of the common benefit.” *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1121 (9th Cir. 2002).

To date, Plaintiffs’ Counsel collectively incurred \$2,722.36 in unreimbursed litigation costs. As explained in the supporting Declaration filed herewith, the reimbursement requested is for unavoidable expenses such as filing fees and pro hac fees—all of which inured to the benefit of the Class. (Borrelli Decl., ¶ 15). These expenses are typical of litigation, reasonable in amount, and were necessary for advancement of the action. (*Id.*). For these reasons, Class Counsel’s expenses should be approved.

C. The Court Should Approve the Service Award.

“It is well-established in this circuit that named plaintiffs in a class action are eligible for reasonable incentive payments, also known as service awards.” *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198, 2017 WL 661352, at *4 (N.D. Cal. Feb. 17, 2017) (citation omitted). Service awards, which are discretionary, “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009).

Plaintiff expended considerable effort on behalf of the Class, including

1 answering a detailed questionnaire; providing essential information to Class Counsel
2 to prosecute his claims; collecting documents and other evidence that supported his
3 claims; agreeing to face invasive and time-consuming discovery, if necessary;
4 reviewing pleadings and coordinating with Class Counsel as to the status of, and
5 strategy for, the action; conferring with Class Counsel about the settlement
6 negotiations; and considering and approving the Settlement terms on behalf of the
7 Class. (Borrelli Decl., ¶ 22). Plaintiff's commitment to the Class's interests and
8 desire to remedy these issues warrants recognition in the form of the requested
9 Service Award. A \$5,000.00 payment is "presumptively reasonable." *Bellinghausen*
10 *v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015).

11 **IV. CONCLUSION**

12 For all the foregoing reasons, Plaintiff respectfully requests that the Court
13 award attorneys' fees in the amount of \$108,750.00 (25% of the total value of the
14 Settlement), reimbursement of litigation expenses in the amount of \$2,722.36, and a
15 service award of \$5,000.00 to the Class Representative.

16
17 Dated: July 3, 2025

By: /s/ Raina C. Borrelli

Raina C. Borrelli (*pro hac vice*)

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