

ALEXANDER MORRISON & FEHR LLP

Michael S. Morrison (SB #205320)
Erin Lim (SB # 323930)
1900 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Tel: (310-394-0888
Fax: (310) 394-0811
mmorrison@amfllp.com
elim@amfllp.com

Class Counsel

[Additional Counsel Listed on Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE UKG INC CYBERSECURITY
LITIGATION

Case No.: 3:22-cv-00346-SI

THIS DOCUMENT RELATES TO:

All Actions.

**PLAINTIFFS’ NOTICE OF MOTION AND
MOTION FOR AWARD OF ATTORNEYS’
FEES, COSTS, SETTLEMENT
ADMINISTRATION EXPENSES, AND
CLASS REPRESENTATIVE SERVICE
AWARDS; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: November 17, 2023

Time: 10:00 a.m.

Dept.: Courtroom 1, 17th Floor

Judge: Honorable Susan Illston

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN THAT** on November 17, 2023 at 10:00 a.m., or as soon
3 thereafter as the Court is available, in the courtroom of the Honorable Susan Illston, located at
4 Courtroom 1 – 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs
5 William Muller, Antonio Knezevich, Adam Bente and Cindy J. Villanueva (collectively “Plaintiffs”
6 or “Class Representatives”), will and hereby do move pursuant to Fed. R. Civ. P. 23(e) for the Court
7 to issue an Order Granting an Award of Attorneys’ Fees, Costs, Settlement Administration Expenses,
8 and Class Representative Service Awards.

9 This notice and motion are made pursuant to Rules 23(h) and 54 of the Federal Rules of Civil
10 Procedure and on the grounds that the proposed class settlement appears to be fair, reasonable and
11 adequate. The motion is unopposed by Defendant.

12 This motion is also based upon this notice; the Memorandum of Points and Authorities
13 submitted herewith; the Declarations and exhibits filed concurrently herewith; the other records,
14 pleadings, and papers filed in this action; and upon such other documentary and oral evidence or
15 argument as may be presented to the Court at the hearing of this motion.

16
17 DATED: August 14, 2023

Respectfully submitted,
/s/ Michael Morrison
Michael Morrison
Erin Lim
ALEXANDER MORRISON & FEHR LLP
1900 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Tel: (310)-394-0888
Fax: (310) 394-0811
mmorrison@amflp.om
elim@amflp.com

24
25 Kas L. Gallucci
LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
26 *ron@consumersadvocates.com*
ALEXIS M. WOOD
27 *alexis@consumersadvocates.com*
KAS L. GALLUCCI
28

kas@consumersadvocates.com

651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

WUCETICH KOROVILAS LLP

Jason M. Wucetich
Dimitrios V. Korovilas
222 N. Pacific Coast Highway Suite 2000
El Segundo, CA 90245
Tel: (310) 335-2001
Fax: (310) 364-5201
jason@wukolaw.com
dimitri@wukolaw.com

LEBE LAW

Jonathan Michael Lebe
Zachary Taylor Gershman
Nicolas W. Tomas
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Tel: (213)444-1973
jon@lebelaw.com
zacary@lebelaw.com
nicolas@lebelaw.com

Class Counsel

1 **STATEMENT OF THE ISSUES TO BE DECIDED**

2 Pursuant to Local Rule 7-4(a)(3) of the Civil Local Rules, Plaintiffs set forth the following
3 Statement of Issues to be decided:

- 4 1. Whether Class counsel’s request for attorneys’ fees in the amount of \$2,000,000, which
5 represents 26.67% of the Total Economic Benefit being conferred by this Settlement
6 and 33.33% of the non-reversionary and supplemental cash funds, is fair and reasonable
7 and should be approved?
8 2. Whether Class Counsel’s request for its litigation costs not to exceed \$50,000 (currently,
9 costs are \$27,076.33) is fair and reasonable and should be approved?
10 3. Whether the Settlement Administration costs which are not to exceed \$1,200,000 are
11 fair and reasonable and should be approved?
12 4. Whether the service awards in the amount of \$7,500 for each Class Representative
13 (\$30,000 total) is fair and reasonable and should be approved?
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

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

I. INTRODUCTION1

II. AN AWARD OF \$2,000,000 IN ATTORNEYS’ FEES IS FAIR AND REASONABLE2

 A. Class Counsel’s Fee Is Properly Calculated as A Percentage of the Total Class Settlement2

 B. Class Counsel’s Request for 26.67% of The Total Economic Benefit Conferred on The Class Is Reasonable Under The Percentage of Recovery Theory4

 1. The Court Should Determine The Settlement Fund to Be \$7,500,000.....7

 2. A Slight Upward Adjustment to 26.67% of The Total Economic Benefit Conferred Is Warranted with Respect to The Attorneys’ Fee Award.....8

 C. The Lodestar Approach Demonstrates that Class Counsel’s Attorneys’ Fee Request Is Fair, Reasonable and Justified Under the Facts of This Case12

 1. The Total Number of Hours Claimed Is Reasonable.....14

 2. Class Counsel Are Entitled to Local Market Rates and The Hourly Rates Claimed Are Reasonable.....15

 D. Class Counsel’s Request for Reimbursement of Costs as Part of the Fee Award is Reasonable and Proper.....16

 E. Settlement Administration Expenses Are Reasonable.....17

III. THE PAYMENT TO THE CLASS REPRESENTATIVES FOR THEIR SERVICES TO THE CLASS IS REASONABLE AND ROUTINELY AWARDED BY COURTS17

IV. CONCLUSION.....21

TABLE OF AUTHORITIES

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

Acosta v. Frito Lay, 2018 U.S. Dist. LEXIS 75998 (N.D. Cal. May 14, 2018)15, 16, 17

Alvarez v. Farmers Ins. Exch.,
No. 3:14-cv-00574-WHO, 2017 WL 2214585 (N.D. Ca. Jan. 18, 2017)6

Antonopulos v. North American Thoroughbreds, Inc.,
No. 87-0979G(CM) 1991 WL 427893 (S.D. Cal. 1991)11

Barbosa v. Cargill Meat Solutions Corp, 297 F.R.D. 431 (E.D. Cal. 2013)12

Beckman v. KeyBank N.A., 293 F.R.D. 467 (S.D.N.Y 2013)14

Black v. T-Mobile USA, INC., 219 WL 3323087 (N.D. Cal July 24, 2019)5

Blandino v. MCM Constr., Inc.,
No. C 12-1729-WHO, 2014 WL 11369763 (N.D. Cal. Mar. 6, 2014)5

Brown v. CVS Pharmacy, Inc.,
No. CV 15-7631 PSG (PJWx) 2017 WL 3694297 (C.D. Cal. Apr. 24, 2017)11

Boeing Co. v. Van Gemert, 444 U.S. 472 (1980)2, 6

Bower v. Cycle Gear, Inc., 2016 WL 4439875 (N.D. Cal. August 23, 2016)11

Chun v. Bd. Of Trustees of E.R.S., 992 P.2d 127 (Haw. 2000)3

Cullen v. Whitman Medical Corp., 197 F.R.D. 136 (E.D. Pa. 2000)11

Cunningham v. Cnty of L.A., 879 F.2d 481 (9th Cir. 1988)12

Davis v. J.P. Morgan Chase & Co., 827 F.Supp.2d 172 (W.D.N.Y. 2011)14

Dawson v. Hitco Carbon Composites, Inc.,
No. CV 16-07337 PSG (FFMx) 2019 WL 7842550 (C.D. Cal. November 11, 2019)11

Fernandez v. Victoria Secrets Stores, LLC,
No. CV 06-4149 MMM (SH), 2008 WL 8150856 (C.D. Cal. July 21, 2008)12

Garcia v. Gordon Trucking, Inc.,
No. CV 10-0324 AWI (SKO) 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012)12

Garner v. State Farm Mutual Automobile Ins. Co.,
No CV 08-1365-CW, 2010 WL 1687829 (N.D. Cal. Apr. 22, 2010)6

Giroux v. Essex Property Trust Inc.,
2019 WL 1207301(N.D. Cal. March 14, 2019)6, 9, 11

Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2d Cir. 2000)12

Gottlieb v. Barry, 43 F.3d 474 (10th Cir. 1994)3

1 *Greko v. Diesel U.S.A., Inc.*,
 2 No. 10-cv-02576 NC, 2013 WL 1789602 (N.D. Cal. Apr. 26, 2013)6

3 *Hamilton v. Juul Labs, Inc.*,
 4 No. 20-CV-03710-EMC, 2021 WL 5331451 (N.D. Cal. Nov. 16, 2021)7

5 *Harris v. Marhoefer*, 24 F.3d 16 (9th Cir. 1994)17

6 *Hashemi v. Bosley, Inc.*,
 7 No. CV 21-946 PSG (RAOx) 2022 WL 18278431 (C.D. Cal. Nov. 21, 2022)9

8 *Hensley v. Eckerhart*, 461 U.S. 424 (1983)15

9 *Herrera v. Wells Fargo Bank, N.A.*,
 10 2021 WL 9374975 (C.D. Cal. Nov. 16, 2021)7

11 *Hightower v. JPMorgan Chase Bank, N.A.*,
 12 No. CV 11-1802 PSG (PLAx) 2015 WL 9664959 (C.D. Cal. Aug. 4, 2015)12

13 *In re Activision Sec. Litig.*, 723 F. Supp. 1373 (N.D. Cal. Oct 3, 1989)6, 11

14 *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981)12

15 *In re Anthem, Inc. Data Breach Litig.*,
 16 No. 15-MD-02617-LHK, 2018 WL 6930068 (N.D. Cal. Aug. 17, 2018) Passim

17 *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011)6, 12

18 *In re Businessland Sec. Litig.*,
 19 1991 WL 427887 (N.D. Cal. June 14, 1991)16

20 *In re Cendant Corp. PRIDES Litigation*, 243 F.3d 722 (3rd Cir. 2001)5

21 *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320 (E.D.N.Y 1993)11

22 *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th Cir. 2021)4

23 *In re GNC Shareholder Litig.*, 668 F.Supp. 450 (W.D. Pa. 1987)16

24 *In re Lidoderm Antitrust Litig.*,
 25 No. 14-md-02521-WHO, 2018 WL 4620695 (N.D. Cal. Sept. 20, 2018)5

26 *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573 (D. Oregon March 20, 2020)4

27 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454 (9th Cir. 2000)5

28 *In re Netflix Privacy Litig.*,
 No. 5:11-cv-00379 EJD, 2031 WL 1120801 (N.D. Cal. Mar. 18, 2013)9

In re Online DVD-Rental Antitrust Litig., 779 F.3d 934 (9th Cir. 2015)7

In re Pac. Enterprises Sec. Litig., 47 F.3d 373 (9th Cir. 1995)3, 11

1 *In re Premera Blue Cross Customer Data Sec. Breach Litig.*,
 2 Case No. 3:15-md-2633-SI [Docket no. 312] (D. Oregon March 20, 2020) Passim

3 *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*,
 4 148 F.3d 283 (3rd Cir. 1998) 12

5 *In re Quantum Health Resources, Inc.*, 962 F. Supp. 1254 (C.D. Cal. 1997) 3

6 *In re Safety Components Int’l, Inc.*, 166 F. Supp. 2d 72 (D.N.J. 2001) 11

7 *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270 (S.D. Ohio 1997) 18

8 *In re Thirteen Appeals Arising Out of San Juan*, 56 F.3d 295 (1st Cir. 1992) 3

9 *In re Warner Communications Sec. Litig.*, 618 F.Supp 735 (S.D.N.Y. 1985)..... 16

10 *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685 (N.D. Ga. 2001) 19

11 *Johnson v. Brennan*, No. 10 Civ. 4712(CM), 2011 EL 4357376 (S.D.N.Y. 2013) 14

12 *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986) 3

13 *Koehl v. Verio, Inc.*, 142 Cal. App. 4th 1313 (2006) 19

14 *Koenig v. Lime Crime, Inc.*,
 15 No. CV 16-503 PSG (JEMx) 2018 WL 11358228 (C.D. Cal. April 2, 2018) 11

16 *Linney v. Cellular Alask P’ship*,
 17 1997 WL 450064 (N.D. Cal, July 18, 1997) 5

18 *Lo Re v. Chase Manhattan Corp.*, 19 F.E.P. Cas. (BNA) 1366 (S.D.N.Y. 1979) 18

19 *Maley v. Del Global Techs. Corp.*, 186 F. Supp.2d 358 (S.D.N.Y. 2002) 14

20 *Martin v. Toyota Motor Credit Corp.*,
 21 No. 220CV10518JVSMRW, 2022 WL 17038908 (C.D. Cal. Nov. 15, 2022)..... 7

22 *Mashburn v. National Healthcare, Inc.*, 684 F. Supp. 679 (M.D. Ala. 1988) 3

23 *Matter of Cont’l Illinois Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) 3

24 *McKenzie v. Federal Exp. Corp.*,
 25 No. Cv 10-0240 GAF (PLAx), 2012 WL 2930201(C.D. Cal. July 2, 2011) 14

26 *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663 (9th Cir. 2003) 11

27 *Officers for Justice v. Civil Service Commission of San Francisco*,
 28 688 F.2d 615 (9th Cir. 1982) 18

Ontiveros v. Zamora, 303 F.R.D 356 (E.D. Cal. 2014) 16

Paul, Johnson, Alston & Hunt v. Graulty, 866 F.2d 268 (9th Cir. 1989) 3

1 *Perdue v. Hy-Vee, Inc.*, 550 F. Supp. 3d 572 (C.D. Ill. 2021)8

2 *Perkins v. Mobile Housing Board*, 847 F.2d 735 (11th Cir. 1998)14

3 *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999)18

4 *Pygin v. Bombas, LLC*,

5 No. 20-cv-04412-JSW, 2021 WL 6496777 (N.D. Cal. Dec.16, 2021)8

6 *Ramirez v. Lovin’ Oven Catering Suffolk, Inc.*,

7 No. 11 Civ. 0520(JLC), 2012 WL 651640 (S.D.N.Y. Feb. 24, 2012)14

8 *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513 (6th Cir. 1993)3

9 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948 (9th Cir. 2009)17

10 *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, U.S.D.C. Case No. 94-CV-0403 (JG) 2002 U.S.

11 Dist. LEXIS 16314 (S.D.N.Y Aug. 1, 2002)18

12 *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 938 (9th Cir. 2003)2

13 *Stanton v. Boeing Co.*, 327 F.3d 938 (9th Cir. 2003)2, 6, 7

14 *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993)3

15 *United Steelworkers of Am. V. Phelps Dodge Corp.*, 896 F.2d 403 (9th Cir 1990)15

16 *Van Gemert v. Boeing Co.*, 516 F. Supp. 412 (S.D.N.Y. 1981)12

17 *Van Vranken v. Alt. Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995).....18, 19

18 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482 (E.D. Cal. Mar. 9, 2010)6, 11

19 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) Passim

20 *Walsh v. Kindred Healthcare*,

21 No. C 11-00050 JSW, 2013 WL 6623224 (N.D. Cal. Dec. 16, 2013)8

22 *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*,

23 2007 WL 4531783 (N.D. Cal. Dec. 17, 2007)19

24 *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026 (9th Cir. 1997)6

25 *Zeltser v. Merrill Lynch & Co., Inc.*,

26 No. 13 Civ. 1531 (FM), 2014 WL 4816134 (S.D.N.Y. 2011)14

27

28

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

STATUTES

Complex Manual
 § 30.42.....19

H. Newberg, Attorney Fee Awards
 §2.07.....3
 §2.08.....16

Newberg on Class Actions (3rd Ed. 1992)
 §14.03.....5

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs William Muller, Antonio Knezevich, Adam Bente, and Cindy Villanueva, by and
3 through proposed Class Counsel,¹ respectfully submit this memorandum in support of Plaintiffs’
4 Motion for an Order Granting an Award of Attorneys’ Fees, Costs, Settlement Administration
5 Expenses, and Class Representative Service Awards.

6 **I. INTRODUCTION**

7 Plaintiffs have reached a settlement of the class action case they brought against Defendant
8 UKG, Inc. (“Defendant” or “UKG”) arising out of the December 21, 2021 ransomware attack UKG
9 suffered on its KPC environment. In this motion, Class Counsel seek an award of attorneys’ fees in
10 the amount of \$2,000,000, their litigation costs not to exceed \$50,000 (currently costs are
11 \$27,076.33), Settlement Administration costs not to exceed \$1,200,000, and Class Representative
12 service awards of \$7,500 for each Plaintiff (\$30,000 total).

13 With respect to Plaintiffs’ request for attorneys’ fees, this should be granted for the following
14 reasons:

15 **Degree of Success:** Despite the significant risks attendant to data breach class action cases,
16 Class Counsel and the Class Representatives obtained a settlement which confers \$7,500,000 in
17 benefits to the Class, including a non-reversionary cash fund of \$5,500,000, a supplemental cash
18 fund of up to an additional \$500,000, and security hardening measures to UKG’s KPC which cost
19 \$1,500,000. The amounts available from the Settlement to Class Members who submit claims are
20 commensurate with other data breach settlements which have been approved by courts in the
21 Northern District. Further, Class Counsel were able to resolve this case early in the litigation due to
22 their choice to work cooperatively and their aggressive pursuit of information and data relevant to
23 the claims in the case.

24 **Risks of Continued Litigation:** The excellent result achieved in this case was obtained in
25 the face of a substantial risk of receiving nothing or a substantially reduced amount if litigation
26

27 _____
28 ¹ All capitalized terms not otherwise defined herein shall have the same definitions as set out in the Settlement Agreement. See Settlement [Docket No. 68-2].

1 continued. As detailed in the Motion for Preliminary Approval and forthcoming Motion for Final
2 Approval, Defendant had potentially several strong defenses to this case that would either
3 completely defeat Plaintiffs' claims or substantially limit their value.

4 **Fees Awarded by Other Courts:** The percentage sought by Class Counsel is within the
5 historical range of fees awarded by other federal and state courts in similar class actions, including
6 data breach class actions.

7 **Time Expended and Lodestar Cross-Check:** Class Counsel performed significant work to
8 achieve the Settlement. The lodestar to date is **\$1,221,733.00**. The multiplier of **1.64** which Class
9 Counsel seek is well within the range of multipliers awarded by state and federal courts in California.

10 **Contingent Nature of Litigation:** During the pendency of the case, Class Counsel has not
11 received any money and has advanced all costs to date.

12 With respect to the Class Representative service payments, these should be granted because:
13 (1) the amounts sought are commensurate with the amounts exfiltration Class Members are eligible
14 to receive under the Settlement; (2) they bore risks by being Class Representatives that others did
15 not; and (3) they provided valuable assistance to Counsel and spent significant time doing so.

16 For all of the foregoing reasons, this motion should be granted in its entirety.

17 **II. AN AWARD OF \$2,000,000 IN ATTORNEYS' FEES IS FAIR AND REASONABLE.**

18 **A. Class Counsel's Fee Is Properly Calculated as a Percentage of the Total Class**
19 **Settlement.**

20 It is well-established that when a litigant's efforts create or preserve a fund from which others
21 derive benefits, the court may spread litigation costs proportionately among all the beneficiaries to
22 compensate those who created the fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A]
23 lawyer who recovers a common fund for the benefit of persons other than...his client is entitled to a
24 reasonable attorneys' fee from the fund as a whole.”); *see also Six (6) Mexican Workers v. Arizona*
25 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

26 Indeed, it is an accepted practice in class action settlements to award attorneys' fees to Class
27 Counsel based on a total settlement value agreed upon by the parties. *See, e.g., Staton v. Boeing Co.*,
28 327 F.3d 938, 967-72 (9th Cir. 2003).

1 In fact, courts have made “the percentage-of-the-benefit approach the preferred method for
2 determining fees” in class action cases. *See In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th
3 Cir. 1995); *Paul, Johnson, Alston & Hunt v. Graulity*, 866 F.2d 268 (9th Cir. 1989). This is because
4 the lodestar approach encourages inefficiency and wasteful attorney hours. *Vizcaino v. Microsoft*
5 *Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (“[I]t is widely recognized that the lodestar method
6 creates incentives for counsel to expend more hours than may be necessary on litigating a case so as
7 to recover a reasonable fee”).

8 Other courts have declared a preference for the percentage method because deficiencies of
9 the lodestar method “ha[ve] stimulated greater judicial willingness to evaluate a fee award as a
10 percentage of the recovery.” *In re Thirteen Appeals Arising Out of San Juan*, 56 F.3d 295, 305-06
11 (1st Cir. 1995); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994); *Rawlings v. Prudential-Bache*
12 *Properties, Inc.*, 9 F.3d 513, 517 (6th Cir. 1993); *Matter of Cont’l Illinois Sec. Litig.*, 962 F.2d 566,
13 572 (7th Cir. 1992); *Chun v. Bd. of Trustees of E.R.S.*, 992 P.2d 127 (Haw. 2000); *Swedish Hosp.*
14 *Corp. v. Shalala*, 1 F.3d 1261, 1266-67 & fn.3, 1271 (D.C. Cir.1993) (noting that the lodestar
15 approach “encourages significant elements of inefficiency,” by giving attorneys an “incentive to
16 spend as many hours as possible” and “a strong incentive against early settlement”; the percentage
17 of the fund approach “more accurately reflects the economics of litigation practice,” and “the
18 monetary amount of the victory is often the true measure of success, and therefore it is most efficient
19 that it influence the fee award”; and stating “we join the Third Circuit Task Force and the Eleventh
20 Circuit, among others, in concluding that a percentage-of-the-fund method is the appropriate
21 mechanism for determining the attorney fees....”).²

22 The percentage of the fund method also more accurately reflects the fees counsel deserves
23 and the benefit conferred upon the class in cases, like this one, where the case resolves before class
24 certification or trial. *See Kirchoff v. Flynn*, 786 F.2d 320, 325-26 (7th Cir. 1986) (“The contingent
25 fee uses private incentives rather than careful monitoring to align the interests of lawyer and client.

26
27 ² *Mashburn v. National Healthcare, Inc.*, 684 F. Supp. 679, 695 (M.D. Ala. 1988) (“One of the
28 reasons for supporting a percentage fee award is to encourage early settlement of cases,” citing H.
Newberg, *Attorney Fee Awards*, § 2.07 at 48-51).

1 The lawyer gains only to the extent his client gains...The unscrupulous lawyer paid by the hour may
 2 be willing to settle for a lower recovery coupled with a payment for more hours. Contingent fees
 3 eliminate this incentive and also ensure a reasonable proportion between the recovery and the fees
 4 assessed to defendants...At the same time as it automatically aligns interests of lawyer and client,
 5 rewards exceptional success, and penalizes failure, the contingent fee automatically handles
 6 compensation for the uncertainty of litigation.”); *In re Quantum Health Resources, Inc.*, 962 F. Supp.
 7 1254, 1257 (C.D. Cal. 1997) (“As critics have noted, the lodestar method needlessly increases
 8 judicial workload, creates disincentive for early settlement, and causes unpredictable results. The
 9 court agrees with these criticisms.”) (internal citations omitted).

10 Courts in data breach class action settlements, including courts in the Northern District, have
 11 also used the percentage of recovery method to award attorneys’ fees. *See In re Anthem, Inc. Data*
 12 *Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *5 (N.D. Cal. Aug. 17, 2018) (finding
 13 in data breach settlement percentage of recovery method best serves interests of justice); *In re*
 14 *Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1278-80 (11th Cir. 2021) (approving
 15 District Court’s percentage of recovery method to determine attorney fee award in data breach
 16 settlement); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 590-91 (N.D. Cal. 2021) (same); *In*
 17 *re Premera Blue Cross Customer Data Sec. Breach Litig.* (D. Oregon March 20, 2020), Case No.
 18 3:15-md-2633-SI [Docket No. 312], p. 3 (same).

19 Accordingly, basing the fee award on the total settlement benefits conferred on Class
 20 Members is appropriate and justified under the circumstances.

21 **B. Class Counsel’s Request for 26.67% of The Total Economic Benefit Conferred**
 22 **on The Class Is Reasonable Under The Percentage of Recovery Theory.**

23 Class counsel requests \$2,000,000 in attorneys’ fees, which constitutes 26.67% of the Total
 24 Economic Benefit³ conferred on the Class or 1/3 (33.33%) of the non-reversionary (\$5,500,000) and
 25 supplemental (up to \$500,000) cash funds.

26 _____
 27 ³ The Settlement Agreement defines the Total Economic Benefit as follows: “the non-reversionary
 28 cash Settlement Fund made by Defendant of Five Million Five Hundred Thousand Dollars
 (\$5,500,000.00), the additional payment by Defendant of up to Five Hundred Thousand Dollars
 (\$500,000.00), as well as One Million Five Hundred Thousand Dollars (\$1,500,000.00) in security

1 Historically, attorneys' fee awards in common fund cases range from 20% to 50% of the
 2 settlement fund, depending on the circumstances of the case. *Newberg on Class Actions* (3rd Ed.
 3 1992), § 14.03; *c.f. In Re Cendant Corp. PRIDES Litigation*, 243 F.3d 722, 736 (3rd Cir. 2001)
 4 (finding that "most fee award range 'from nineteen percent to forty-five percent of the settlement
 5 fund.'"). According to Newberg:

6 No general rule can be articulated on what is a reasonable percentage
 7 of a common fund. Usually 50% of the fund is the upper limit on a
 8 reasonable fee award from a common fund in order to assure that the
 9 fees do not consume a disproportionate part of the recovery obtained
 10 for the class, although somewhat larger percentages are not
 11 unprecedented.

12 (*Newberg*, § 14.03).

13 Courts in the Ninth Circuit have ruled 25% is the benchmark courts should use as a starting
 14 point to determine the percentage of attorneys' fees to award from a common fund (*see Hanlon*, 150
 15 F.3d at 1029), with 20%-30% being "the usual range." *See Black v. T-Mobile USA, INC.*, 219 WL
 16 3323087, *6 (N.D. Cal July 24, 2019), *citing Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th
 17 Cir. 2002). Courts can adjust this 25% upward based on the following factors: (1) the results
 18 achieved; (2) the risk of litigation; (3) the skill required and quality of the work; (4) the contingent
 19 nature of the fee and the financial burden carried by the plaintiff; and (5) awards in similar cases.
 20 *Id.*, *citing Vizcaino*, 290 F.3d at 1048-1050.

21 District courts within this circuit, including this Court, routinely award attorneys' fees that
 22 are one-third of the total settlement fund. *See, e.g., Blandino v. MCM Constr., Inc.*, No. C 12-1729
 23 WHO, 2014 WL 11369763, at *3 (N.D. Cal. Mar. 6, 2014) (awarding 33% of settlement fund in
 24 attorneys' fees); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695 (N.D.
 25 Cal. Sept. 20, 2018) (awarding 33% in fees); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457,
 26 460 (9th Cir. 2000) (affirming 33.5% fee award); *Linney v. Cellular Alaska P'ship*, 1997 WL
 27 450064, at *7 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998) (affirming 33.3% fee
 28 award) ("The \$2,000,000 requested by class counsel amounts to one-third of this common fund. ...

hardening measures resulting from the December 2021 KPC Cyberattack and this Action." Settlement, ¶ 48.

1 Courts in this district have consistently approved attorneys’ fees which amount to approximately
2 one-third of the relief procured for the class.”) (citations omitted); *Vasquez v. Coast Valley Roofing,*
3 *Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. Mar. 9, 2010) (noting that “[t]he typical range of acceptable
4 attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value”); *In re Activision*
5 *Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal. Oct 3, 1989) (awarding fee of 32.8%); *Garner v.*
6 *State Farm Mutual Automobile Ins. Co.*, No. CV 08 1365 CW, 2010 WL 1687829, at *1 (N.D. Cal
7 Apr. 22, 2010) (“A fee award of 30 percent is within the ‘usual range’ of fee awards that Ninth
8 Circuit courts award in common fund cases.”). *See also Alvarez v. Farmers Ins. Exch.*, No. 3:14-cv-
9 00574-WHO, 2017 WL 2214585, at *3 (N.D. Cal. Jan. 18, 2017) (“Fee award percentages generally
10 are higher in cases where the common fund is below \$10 million.”) (citations omitted); *accord Greko*
11 *v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *11 (N.D. Cal. Apr. 26, 2013).

12 Courts have long recognized that a percentage of recovery for attorneys’ fees is properly
13 awarded on the basis of the total value rather than the claims payments made. *Boeing*, 444 U.S. at
14 478, 480-81 (fees of approximately \$2,000,000 approved on settlement value of \$7,000,000 where
15 claims totaled \$706,600 or 47% of the total available); *Williams v. MGM-Pathe Communications*
16 *Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (attorney fee award should be based on 33.3% as agreed
17 by the parties based on total recovery value of \$4.5 million, though actual payout totaled less; “court
18 abused its discretion by basing the fee on the class members’ claims against the fund rather than on
19 the percentage of the entire fund or on the lodestar”); *Vizcaino*, 290 F.3d at 1049-50 (no abuse of
20 discretion in awarding percentage of the common fund).

21 Further, where, as here, the Settlement involves both monetary and non-monetary
22 components (e.g., the security hardening measures undertaken by UKG), the Court may determine
23 the amount that is “for the benefit of the entire class” before applying the percentage calculation. *In*
24 *re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *7 (N.D. Cal. Aug. 17, 2018), *quoting In*
25 *re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Courts may adjust a
26 common fund amount upward based on non-monetary relief “where the value to individual class
27 members of benefits deriving from [non-monetary] relief can be accurately ascertained.” *Giroux v.*
28 *Essex Property Trust Inc.*, 2019 WL 1207301, at *5-6 (N.D. Cal. March 14, 2019), *quoting Staton*,

1 327 F.3d at 974.⁴ Accordingly, inclusion of the non-monetary relief is appropriate here in
 2 determining the value of the Settlement. *See Martin v. Toyota Motor Credit Corp.*, No.
 3 220CV10518JVSMRW, 2022 WL 17038908, at *12 (C.D. Cal. Nov. 15, 2022) (court recognizing
 4 the monetary fund and other benefits in the form of a Business Practice Change when determining
 5 the reasonableness of the fee award); *Herrera v. Wells Fargo Bank, N.A.*, 2021 WL 9374975, at *12
 6 (C.D. Cal. Nov. 16, 2021) (Court approving inclusion of the future Business Practice Change in the
 7 value of the settlement when determining if requested fee award is reasonable); *Hamilton v. Juul*
 8 *Labs, Inc.*, No. 20-CV-03710-EMC, 2021 WL 5331451, at *12 (N.D. Cal. Nov. 16, 2021) (“Because
 9 the minimum value of the injunctive relief can be accurately ascertained... that sum is included in
 10 determine the size of the common fund for fee purposes.”).

11 **1. The Court Should Determine The Settlement Fund to Be \$7,500,000.**

12 When evaluating the fee award under the percentage of recovery method, this Court should
 13 adjust the size of the settlement fund upward to include the security hardening measures undertaken
 14 by UKG because these measures have value to Class Members which can be accurately quantified.
 15 As a result of this Settlement, UKG has committed to: expanding the scanning and monitoring
 16 program using insight from its investigation; supplementing UKG’s Security Operations Center
 17 monitoring with additional third-party managed service monitoring; deploying additional malware
 18 scanning tools across all products and UKG’s corporate IT environment; and expanding storage
 19 backups. Settlement ¶ 58. The security hardening measures help ensure similar breaches and
 20 disruption of UKG’s cloud-based services (which includes payroll and time keeping applications)
 21 do not occur in the future. The cost of these measures is approximately \$1,500,000. Settlement ¶
 22 58(a), 46, 48; Morrison Decl., ¶¶ 22-24. The cost of implementing non-monetary benefits to the class
 23 has been held to be an accepted method of quantifying the benefit conferred to the Class. *See In re*
 24 *Premiera Blue Cross Customer Data Sec. Breach Litig.*, No. 3:15-md-2633-SI, 2019 WL 3410382,

25 _____
 26
 27 ⁴ The Ninth Circuit has repeatedly held that district courts do not abuse their discretion by including
 28 the costs of providing notice to the class (or other administrative costs and litigation expenses) as
 part of the percentage fund valuation. *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068 at
 *8, citing *In re Online DVD-Rental*, 779 F.3d 934, 953 (9th Cir. 2015); *Staton*, 327 F.3d at 974–75.

1 at *23 (D. Ore. July 29, 2019) (using “Cost Approach” to determine value of increased security);
 2 *see also Perdue v. Hy-Vee, Inc.*, 550 F.Supp.3d 572 (C.D. Ill 2021) (court finds request for attorneys’
 3 fees, which exceeded actual cash payout to class members, to be reasonable in light of value of
 4 security measures undertaken by the Defendant); *Pygin v. Bombas, LLC*, No. 20-cv-04412-JSW,
 5 2021 WL 6496777 at *6 (N.D. Cal. Nov. 29, 2021) (court considers value of non-monetary relief
 6 when determining fairness of fee award under percentage of the recovery method); *Walsh v. Kindred*
 7 *Healthcare*, No. C 11-00050 JSW, 2013 WL 6623224, at *3 (N.D. Cal. Dec. 16, 2013) (“[t]he parties
 8 also negotiated substantial injunctive relief, and when the Court considers the value of that
 9 injunction, it reduces the overall percentage of fees that counsel will receive.”) Accordingly, the
 10 Total Economic Benefit of \$7,500,000 should be considered as the “common fund” for purposes of
 11 assessing the fee award.⁵

12 **2. A Slight Upward Adjustment to 26.67% of The Total Economic Benefit**
 13 **Conferred Is Warranted with Respect to The Attorneys’ Fee Award.**

14 A slight upward adjustment of the attorneys’ fee award from the benchmark of 25% is
 15 justified under the circumstances. With respect to the results achieved, Class Counsel and Plaintiffs
 16 were able to secure \$7,500,000 in benefits to the Class which includes a cash settlement fund of
 17 \$5,500,000 and a supplemental cash fund of \$500,000. Under the Settlement, all Nationwide Class
 18 Members may seek compensation for Ordinary Losses up to \$1,000 for out-of-pocket expenses and
 19 lost time valued at \$25/hour for four hours. Exfiltration Subclass Members may also seek
 20 compensation for Extraordinary Losses associated with fraud or identity theft up to \$7,500 and an
 21 additional payment of \$100. California Class Members are entitled to an additional \$30
 22 enhancement. Settlement ¶¶ 53-55. These recoveries compare favorably to other data breach class
 23 action settlements, including cases which were much larger in scope and resulted in extensive
 24 _____

25 ⁵ Indeed, the value here to the Class may very well exceed the actual cost to implement the security
 26 measures. Many customers and their employees rely on UKG’s cloud based services, including its
 27 time and payroll applications. The disruption in services led to millions of dollars in underpayment
 28 records during the period the cloud was off-line, resulting in numerous lawsuits being filed. A future
 breach could cause another disruption of these services and result in tens of millions of dollars in
 missed, inaccurate, or late payments to employees. Morrison Decl., ¶ 24.

1 litigation spanning several years.⁶ The fact that the result in this case was achieved early in the
2 litigation, which benefits Class Members now and avoids costly and risky litigation, greatly weighs
3 in favor of awarding the requested attorneys' fees.

4 Moreover, as detailed in the Motion for Preliminary Approval, the success in this case was
5 achieved despite the enormous risks which were present. *See* MPA Motion, Docket No. 68, pp.12-
6 14. Indeed, one of the class action cases filed against UKG as a result of the data breach resulted in
7 a dismissal at the pleading stage for lack of standing. Defendant in this case filed a similar motion
8 to dismiss which was set to be heard if the case did not resolve. Even if Plaintiffs survived a motion
9 to dismiss, they could lose on class certification if, for example, the Court found that individualized
10 causation and choice of law issues would overwhelm the litigation and defeat predominance. This
11 Court could also decertify the Class if individual issues became more pronounced following the
12 initial grant of class certification. *See In re Netflix Privacy Litig.*, No. 5:11-cv-00379 EJD, 2013 WL
13 1120801, at *6 (N.D. Cal. Mar. 18, 2013) ("The notion that a district court could decertify a class at
14 any time is one that weighs in favor of settlement.") Finally, Plaintiffs could lose on the merits if the
15 trier of fact credits Defendant's experts over Plaintiffs' on the issue of liability for the breach.

16 The results in this case are largely due to the efforts and skill of Class Counsel. As with many
17 other recent data breaches, multiple, overlapping class action lawsuits were filed around the country
18 shortly after the breach was announced. Instead of spending their time to secure lead counsel status,
19 which often results in time consuming and lengthy disputes amongst plaintiffs' counsel, Class
20 Counsel endeavored to work cooperatively. This resulted in a joint prosecution agreement at the
21

22 ⁶ By comparison, in *Giroux v. Essex Property Trust, Inc.*, No. 16-cv-01722-HSG, 2019 WL
23 1207301, *3 (N.D. Cal. March 14, 2019), the class members' recovery not including the value of
24 identity theft protection was approximately \$70. In *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG
25 (RAOx), 2022 WL 18278431, *2 (C.D. Cal. Nov. 21, 2022), class members were eligible to
26 receive up to \$300 in ordinary expenses and up to \$5,000 for extraordinary loss. With respect to
27 *Perdue v. Hy-Vee, Inc.*, 550 F.Supp.3d 572, 574 (C.D. Ill 2021), class members could seek
28 reimbursement of up to \$225 for ordinary expenses and up to \$5,000 for ordinary expenses. In *In*
re Premera Blue Cross Customer Data Security Breach Litigation, 2019 WL 3410382 at *22,
Class Members were eligible to receive up to \$10,000 for losses attributable to the data breach. In
In re Anthem, Inc. Data Breach Litigation, 327 F.R.D. 299, 332 (N.D. Cal. August 15, 2018),
Class Members were also eligible to receive up to \$10,000 for losses. As the above makes clear,
Class Members' individual recovery is commensurate with other data breach settlements.

1 outset of litigation amongst Class Counsel and the filing of a consolidated complaint. By working
2 cooperatively early on and avoiding in-fighting, Plaintiffs were able to present the image of a united
3 front that Defendant could not exploit through reverse auction tactics.⁷ Further, the cooperation
4 allowed counsel to serve formal discovery early in the litigation and engage Defense counsel in
5 substantive discussions which ultimately resulted in an agreement to mediate the case following an
6 exchange of information and data relevant to issues in the case. Class Counsel then reached out to
7 counsel with overlapping claims in other parts of the country to try to work out agreements. The
8 result of these efforts was an agreement to carve out wage claims from the scope of the Settlement
9 so the other Plaintiffs' counsel could pursue these claims in their cases. This avoided unnecessary
10 adversarial proceedings amongst plaintiffs and a possible objection to the Settlement which could
11 have delayed payment by years. Declaration of Michael Morrison ("Morrison Decl."), ¶ 7.

12 Class Counsel did extensive work to secure this Settlement, which included: (1) serving
13 formal and informal discovery prior to mediation; (2) interviews with scores of affected Class
14 Members concerning the impact of the data breach; (3) coordinating this matter with other cases
15 across California and the country; (4) conducting extensive research into the relevant legal issues in
16 the case, including issues raised in the motion to dismiss such as Article III standing; (5) conducting
17 extensive research on other data breach settlements in order to help determine appropriate settlement
18 values; (6) reviewing Defendant's documents and data, including its communications regarding the
19 breach and the internal investigation into the breach; (7) preparing a thorough and detailed mediation
20 brief; (8) participating in a mediation where the relevant legal and factual issues were thoroughly
21 discussed; (9) engaging in hours of post-mediation negotiations; (10) working with the Settlement
22 Administrator to develop an appropriate notice plan; (11) serving formal, confirmatory discovery
23 requests and reviewing those responses prior to executing the Settlement; and (12) motion practice
24 before the Judicial Panel on Multidistrict Litigation. Morrison Decl., ¶ 8; Declaration of Dimitrios

25
26
27 ⁷ Class Counsel also successfully kept this case out of Multi-District Litigation ("MDL"). This result
28 avoided needless delays and allowed Counsel to focus its efforts on obtaining the documents and
information they needed, which culminated with an early resolution of the case. Morrison Decl., ¶
7.

1 Korovilas (“Korovilas Decl.”), ¶¶ 4-6.

2 Concerning the fourth factor courts evaluate when deciding whether to adjust the fee award
3 from the benchmark 25%, Class Counsel’s fees are entirely contingent on a successful outcome.
4 None of the counsel have been paid to date for their work on the case and all costs have been
5 advanced by counsel and not reimbursed. Declaration of Michael Morrison (“Morrison Decl.”), ¶¶
6 19-20; Declaration of Jonathan M. Lebe (“Lebe Decl.”), ¶ 22; Korovilas Decl., ¶ 12; Declaration of
7 Ronald A. Marron (“Marron Decl.”), ¶¶ 17-18.

8 Finally, California and federal courts have approved numerous attorneys’ fee requests in
9 similar cases seeking a similar or greater percentage of the settlement fund as that sought by
10 Plaintiffs here, including data breach cases like this one. *See Koenig v. Lime Crime, Inc.*, No. CV
11 16-503 PSG (JEMx), 2018 WL 11358228, at *7 (C.D. Cal. April 2, 2018) (awarding 38% of
12 common fund in data breach case based on results achieved, the risks of litigation, the contingent
13 nature of the fee, and the financial burden carried by Class Counsel); *Giroux*, 2019 WL 1207301 at
14 *5 (awarding \$140,000 in fees from cash settlement fund of \$350,000); *see also Bower v. Cycle*
15 *Gear, Inc.*, 2016 WL 4439875, *6 (N.D. Cal August 23, 2016) (awarding 30% of common fund in
16 wage and hour action); *In re Pacific Enterprises Securities Litigation*, 47 F.3d at 379 (upholding
17 award of 33 1/3% of \$12 million settlement); *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663 (9th Cir.
18 2003) (affirming award of 33% of 14.8 million settlement); *Vasquez v/ Coast Valley Roofing, Inc.*,
19 266 F.R.D. 482, 492 (E.D. Cal. 2010) (granting fees of 1/3 of the common fund; citing to cases
20 where courts approved awards ranging from 30 to 33 percent); *Antonopoulos v. North American*
21 *Thoroughbreds, Inc.*, No. 87-0979G(CM), 1991 WL 427893, at *4 (S.D. Cal. 1991) (33 1/3 of \$3.1
22 million); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 WL
23 7842550, *9 (C.D. Cal. November 11, 2019) (awarding 35%); *Brown v. CVS Pharmacy, Inc.*, No.
24 CV 15-7631 PSG (PJWx), 2017 WL 3494297, at *6 *7 (C.D. Cal. Apr. 24, 2017) (awarding 30
25 percent of the common fund in attorneys’ fees); *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136,
26 146-47 (E.D. Pa. 2000) (1/3 of \$5.97 million); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326-
27 327 (E.D.N.Y. 1993) (33.8% of \$42 million); *In re Safety Components Int’l, Inc.*, 166 F. Supp. 2d
28 72, 109 (D.N.J. 2001) (1/3 of net \$4.31 million); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375

1 (N.D. Cal. 1989) (awarding 32.8% of \$42 million); *Fernandez v. Victoria Secret Stores, LLC*, No.
 2 CV 06-4149 MMM (SH), 2008 WL 8150856 (C.D. Cal. July 21, 2008) (awarding 34 percent of the
 3 common fund); *Hightower v. JPMorgan Chase Bank, N.A.*, No. CV 11-1802 PSG (PLAx), 2015
 4 WL 9664959 (C.D. Cal. Aug. 4, 2015) (approving attorneys' fees of 30 percent of the settlement
 5 fund); *Garcia v. Gordon Trucking, Inc.*, No. CV 10-0324 AWI (SKO), 2012 WL 5364575 (E.D.
 6 Cal. Oct. 31, 2012) (approving fees in the amount of 33 percent of the common fund); *In re*
 7 *Ampicillian Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981) (awarding 45% of \$7.3 million
 8 settlement fund); *Van Gemert v. Boeing Co.*, 516 F. Supp. 412, 420 (S.D.N.Y. 1981) (awarding 36%
 9 of the settlement fund).

10 **C. The Lodestar Approach Demonstrates that Class Counsel's Attorneys' Fee**
 11 **Request Is Fair, Reasonable and Justified Under the Facts of this Case.**

12 The lodestar number is calculated by multiplying the number of hours reasonably expended
 13 on the litigation by a reasonable hourly rate for the region and for the experience of the lawyer. *In*
 14 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 941. The lodestar number is "presumably
 15 reasonable." *Cunningham v. Cnty of L.A.*, 879 F.2d 481, 488 (9th Cir. 1988).

16 If the Court chooses to perform a lodestar analysis, case law is clear the Court is not required
 17 to closely scrutinize each claimed attorney-hour, but instead "focus on the general question of
 18 whether the fee award appropriately reflects the degree of time and effort expended by the
 19 attorneys." 5 Rubenstein, *Newberg on Class Actions*, section 15:86 (5th Ed. 2015) at 331; *see also*
 20 *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) ("[W]here used as a mere
 21 cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district
 22 court"); *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283,
 23 342 (3d Cir. 1998) (agreeing with district court that **detailed time summaries were unnecessary**
 24 **where, as here, it was merely using the lodestar calculation to double check its fee award**
 25 [emphasis added]); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 451 (E.D. Cal. 2013)
 26 ("Where the lodestar method is used as a cross-check to the percentage method, it can be performed
 27 with a less exhaustive cataloguing and review of counsel's hours.").

1 Here, the lodestar approach supports the conclusion that the fee award sought by Class
2 Counsel is fair and reasonable.

3 Class Counsel's lodestar to date is as follows:

<u>Attorneys</u>	<u>Hours</u>	<u>Lodestar</u>
Michael Morrison	226.2 hrs	226.2 x \$850 = <u>\$192,270</u>
Erin Lim	21.80 hrs	21.80 x \$450 = <u>\$9,810</u>
Alexis M. Wood	325.4 hrs	325.4 x \$645 = <u>\$209,883</u>
Kas L. Gallucci	272.5 hrs	272.5 x \$605 = <u>\$164,862.50</u>
Dimitrios Korovilas/Jason Wucetich	577.2 hrs	577.2 x \$750 = <u>\$432,900</u>
Jonathan M. Lebe	162.2 hrs	162.2 x \$800 = <u>\$129,760</u>
Zachary Gershman	130.7 hrs	130.7 x \$475 = <u>\$62,082.50</u>
Nicolas Tomas	52.9 hrs	52.9 x \$350 = <u>\$18,515</u>
Brielle Edborg	5.5 hrs	5.5 x \$300 = <u>\$1,650</u>
TOTAL	1,774.40 hrs	\$1,221,733.00

19 Morrison Decl., ¶¶ 9-16; Lebe Decl., ¶¶ 16-21; Korovilas Decl., ¶¶ 13-15; Marron Decl., ¶¶ 8-9.

20 The figures above do not include the extensive time Class Counsel will spend dealing with
21 inquiries from Class Members, preparing final approval papers, appearing at the final approval
22 hearing, and any post-final approval work which is required.

23 While the amount of attorneys' fees Class Counsel are seeking is 1.64 times higher than their
24 lodestar, this is clearly a case where a multiplier is justified. Despite significant obstacles to recovery,
25 as will be described in more detail in the Motion for Final Approval and already described in the
26 preliminary approval motion and above, the Class Representatives and their counsel obtained class-
27 wide relief without the need for protracted litigation.

1 Moreover, courts have routinely approved much greater multipliers than the modest 1.64
 2 multiplier Class Counsel are seeking here. *See, e.g., Vizcaino*, 290 F.3d at 1050-51 (upholding 28%
 3 fee award that constituted a 3.65 multiplier); *id.* at 1052-54 (noting district court cases in the Ninth
 4 Circuit approving multipliers as high as 6.2, and citing only 3 of 24 decisions with approved
 5 multipliers below 1.4); *McKenzie v. Federal Exp. Corp.*, No. CV 10-0240 GAF (PLAx), 2012 WL
 6 2930201 at *10 (C.D. Cal. July 2, 2012) (in wage and hour action, approving percentage-based fee
 7 award that represented multiplier of 3.2); *Johnson v. Brennan*, No. 10 Civ. 4712(CM), 2011 WL
 8 4357376, at *20 (S.D.N.Y. 2011) (in wage and hour action, noting that “[c]ourts regularly award
 9 lodestar multipliers from two to six times lodestar”) (emphasis added); *Beckman v. KeyBank N.A.*,
 10 293 F.R.D. 467, 481–82 (S.D.N.Y. 2013) (in wage and hour action, approving of 6.3 multiplier in
 11 lodestar cross-check analysis); citing *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, No. 11 Civ.
 12 0520(JLC), 2012 WL 651640, at *4 (S.D.N.Y. Feb. 24, 2012) (in wage and hour action, approving
 13 of 6.8 multiplier in lodestar cross-check analysis); *Davis v. J.P. Morgan Chase & Co.*, 827
 14 F.Supp.2d 172, 184–86 (W.D.N.Y.2011) (in wage and hour action, approving of 5.3 multiplier in
 15 lodestar cross-check analysis); *see also Zeltser v. Merrill Lynch & Co., Inc.*, No. 13 Civ. 1531 (FM),
 16 2014 WL 4816134, at *10 (S.D.N.Y. 2014) (in wage and hour action, approving of 5.1 multiplier in
 17 lodestar cross-check analysis and noting “[w]hile this multiplier is near the higher end of the range
 18 of multipliers that courts have allowed, this should not result in penalizing Plaintiffs' counsel for
 19 achieving an early settlement, particular where, as here, the settlement amount is substantial.”);
 20 *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 371 (S.D.N.Y. 2002) (“modest multiplier”
 21 of 4.65 in wage and hour class action was “fair and reasonable”) (emphasis added). This is further
 22 proof that the amount of fees sought by Class Counsel is reasonable.

23 **1. The Total Number of Hours Claimed Is Reasonable.**

24 The declarations of Class Counsel unequivocally demonstrate that the hours spent on this
 25 case in order to obtain the important benefits conferred upon Class Members are reasonable. Lebe
 26 Decl., ¶¶ 16-21; Korovilas Decl., ¶¶ 4-6, 13-15; Marron Decl., ¶¶ 4-11; and Morrison Decl., ¶¶ 7-
 27 16; *see also Perkins v. Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1998) (“Sworn
 28 testimony that, in fact, it took the time claimed is evidence of considerable weight on the issue of

1 time required in the usual case....”). To deny compensation, “it must appear that the time claimed
 2 is obviously and convincingly excessive under the circumstances.” (*Id.*). The applicant need not
 3 detail how each minute was expended; rather counsel should identify ‘the general subject matter of
 4 his time expenditures.’” *Hensley v. Eckerhart*, 461 U.S. 424, 437, n. 12 (1983).

5 Although this case settled before class certification (as are the vast majority of Class Action
 6 settlements), substantial work was performed by Class Counsel, as detailed above. Therefore, the
 7 number of hours claimed is reasonable.⁸

8 **2. Class Counsel Are Entitled to Local Market Rates and The Hourly Rates**
 9 **Claimed Are Reasonable.**

10 When determining the reasonable hourly rate, the court should consider the rate prevailing
 11 in the community for similar work performed by attorneys of comparable skill, experience and
 12 reputation. *Acosta v. Frito Lay*, 2018 U.S. Dist. LEXIS 75998, at *36 (N.D. Cal. May 14, 2018). For
 13 purposes of determining the rate prevailing in the community, the court generally looks at the “forum
 14 in which the district court sits.” *Id.*

15 The background of Class Counsel and the reasonableness of their hourly fees are set forth in
 16 the declarations of Class Counsel submitted contemporaneously with this motion. These declarations
 17 demonstrate that Class Counsel’s hourly rates are well within the range for comparable attorneys of
 18 their skill and experience. Lebe Decl., ¶¶ 3-21 and Exh. “B”; Korovilas Decl., ¶¶ 7-10 ; Marron
 19 Decl., ¶¶ 13-23 and Exh. “2-3”; Morrison Decl., ¶¶ 2-6, 9-12 and Exh. “1”.

20 The hourly rates of Class Counsel are fully supported by their extensive experience and
 21 reputation in litigating class, collective, and representative actions in California, as well as other
 22 complex actions. *Id.*; see also *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407
 23 (9th Cir. 1990) (“Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees
 24 in the community, and rate determinations in other cases, particularly those setting a rate for
 25 plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.”) Class Counsel’s hourly
 26 _____

27 ⁸ Class Counsel is dividing the attorneys’ fee award as follows: Alexander Morrison + Fehr and
 28 Wucetich & Korovilas – 40% (with the 40% being evenly divided between the firms, e.g., 20%
 each); Law Offices of Ronald A Marron – 30%; and Lebe Law (30%). Morrison Decl., ¶ 17.

1 rates commensurate with the prevailing market rates in the greater San Diego, Los Angeles and San
2 Francisco areas for attorneys of comparable experience and skill. Exh. “1” to Morrison Decl. and
3 Exh. “B” to Lebe Decl. Class Counsel has also been approved at the hourly rates requested by various
4 state and federal courts. Morrison Decl., ¶¶ 10-12; Korovilas Decl., ¶ 15; Marron Decl., ¶ 16. The
5 hourly rates requested are also comparable to the Laffey Matrix. Exhibit “B” to Lebe Decl. Thus,
6 the hourly rates requested are reasonable and should be approved.

7 **E. Class Counsel’s Request for Reimbursement of Costs as Part of the Fee Award**
8 **is Reasonable and Proper.**

9 It is well-established that an attorney who has created a common fund for the benefit of the
10 class is to be reimbursed from the common fund for reasonable litigation expenses. *Ontiveros v.*
11 *Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014). In class actions, courts typically award litigation
12 costs and expenses – including reasonable travel expenses. *Acosta*, 2018 U.S. Dist. LEXIS 75998 at
13 *42.

14 In total, as set forth in the declarations of counsel to this Court, Class Counsel has incurred
15 an aggregate of \$27,076.33 in unreimbursed costs and expenses in prosecuting this case. Morrison
16 Decl., ¶ 18 and Exh. “2” (\$7,095.98); Lebe Decl., ¶ 16 and Exh. “A” (\$7,291.62); Korovilas Decl.,
17 ¶ 14 (\$5,200); and Marron Decl., ¶ 10 (\$7,488.73). Notice distributed in this case also advised that
18 reimbursements of costs would not exceed \$50,000.

19 Since the inception of the litigation, Class Counsel has incurred costs, including mediation
20 costs, etc. All of these costs and expenses were reasonable and necessary to bring this case to
21 closure. *Id.* As one commentator noted, “the prevailing view is that expenses are awarded in addition
22 to the fee percentage.” Conte, *Attorney Fee Awards* § 2.08 (2d Ed. 1977) at 50-51.

23 Courts routinely reimburse plaintiff’s counsel for the costs incurred in prosecuting cases on
24 a contingent fee basis. *See In re Businessland Sec. Litig.*, 1991 WL 427887, at *2-3 (N.D. Cal. June
25 14, 1991) (and cases cited therein); *In re Warner Communications Sec. Litig.*, 618 F.Supp. 735
26 (S.D.N.Y. 1985); *In re GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). Each of the
27 expenses incurred are of the type that would normally be billed to and paid for by the client, such as
28 filing fees, legal research, attorney services, litigation support, mediation fees, travel, food and

1 lodging, and other miscellaneous expenses. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

2 Because the expenses and costs were incurred by Class Counsel for the benefit of the
3 Settlement Class, the requested Class Counsel Costs Award is reasonable and should be approved.

4 **F. Settlement Administration Expenses Are Reasonable.**

5 Courts regularly award administrative costs associated with providing notice to the class.
6 *Acosta*, 2018 U.S. Dist. LEXIS 75998 at *44. The estimated total cost of settlement administration
7 through final approval will not exceed \$1,200,000. Declaration of Scott Fenwick, ¶ 19. Unlike many
8 other class action cases, the contact information for putative class was unavailable except for the
9 approximately 20,000 members of the exfiltration class. Exfiltration class members received direct
10 notice of the Settlement. Notice was also provided through an ambitious and extensive notice process
11 that includes: (1) digital advertising on LinkedIn targeted to employees of UKG’s customers; (2)
12 social media advertising on Facebook, Instagram, and YouTube; and (3) Google Search Advertising.
13 Kroll also worked with UKG customers who indicated they would voluntarily provide contact
14 information for its employees or distribute the notice internally themselves to ensure more direct
15 mailings/emailing to Class Members. Further, the Kroll established a website which contains, among
16 other things, the long form notice, access to important court documents, case deadlines and hearing
17 dates, the ability to complete claim forms on-line, and a toll-free number for additional
18 questions/help. Significantly, Kroll also processed all of the claim forms in this case to determine
19 eligibility for recovery (and the amount) under the Settlement. Fenwick Decl., ¶¶ 5-16.

20 In Class Counsel’s view and experience, this is a reasonable cost for settlement
21 administration given the size of the class, type of case, and the scope of the Settlement
22 Administrator’s duties. Morrison Decl., ¶ 21; Marron Decl., ¶ 24.

23 **III. THE PAYMENT TO THE CLASS REPRESENTATIVES FOR THEIR SERVICES**
24 **TO THE CLASS IS REASONABLE AND ROUTINELY AWARDED BY COURTS.**

25 Service awards are typical in class action cases as they are generally meant to “compensate
26 class representatives for work done on behalf of the class, to make up for financial or reputational
27 risk undertaking and bring the action, and sometime, to recognize their willing to act as a private
28 attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). When

1 determining whether an incentive award is reasonable courts generally consider:

2 (1) the risk to the representative in commencing the suit, both financially and
3 otherwise; (2) the notoriety and personal difficulties encountered by the
4 representative; (3) the amount of time and effort spent by the representative; (4) the
5 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the
6 representative as a result of the litigation.

7 *Van Vranken v. Alt. Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995).

8 The Class Representatives seek a service payment or enhancement of \$7,500 each. Class
9 Counsel is of the opinion that the requested enhancements are reasonable and proper and supported
10 by the particular circumstances of this case and the applicable case law. Defendant does not oppose
11 this request.

12 Courts have long acknowledged that active litigants are entitled to be compensated for
13 bearing the risk and time to represent others. *Lo Re v. Chase Manhattan Corp.*, 19 F.E.P. Cas. (BNA)
14 1366 (S.D.N.Y. 1979). Where class representatives are provided with special compensation as part
15 of a class settlement, the Court should ensure that it is fair and reasonable. However, “[i]t is the
16 complete package, taken as a whole, rather than the individual component parts, that must be
17 examined.” *Officers for Justice v. Civil Service Commission of San Francisco*, 688 F.2d 615, 628
18 (9th Cir. 1982).

19 Indeed, service awards “are not uncommon and can serve an important function in promoting
20 class action settlements.” *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, U.S.D.C. Case No. 94-CV-
21 0403 (JG), 2002 U.S. Dist. LEXIS 16314, at *16 (S.D.N.Y. Aug. 1, 2002); *see also Petrovic v.*
22 *Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class representatives frequently receive
23 substantial incentive payments); *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272
24 (S.D. Ohio 1997) (“[c]ourts routinely approve incentive awards to compensate named plaintiffs for
25 the services they provided and the risks they incurred during the course of the class action litigation”,
26 and cases cited therein).

27 The reasonable service awards to the named Plaintiffs are intended to recognize their time
28 and efforts on behalf of the Class. “Courts routinely approve incentive awards to compensate named

1 plaintiffs for the services they provide and the risks they incurred during the course of the class
2 action litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *see also*
3 Complex Manual § 30.42 n.763 (noting that such awards “may sometimes be warranted for time
4 spent meeting with class members or responding to discovery”). In the *Coca-Cola* case, the Court
5 approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they
6 provided to the class by responding to discovery, participating in the mediation process and taking
7 the risk of stepping forward on behalf of the class. *Ingram*, 200 F.R.D. at 694; *see also Van Vranken*,
8 901 F. Supp. at 299-300 (approving \$50,000 participation award).

9 Here, the service payments being sought are commensurate with the amounts members of
10 the exfiltration class were eligible to receive for extraordinary loss - \$7,500.

11 In addition, the Class Representatives risked having a potential judgment entered against
12 them. In fact, several judgments against Class Representatives have been entered. *See, e.g., Koehl v.*
13 *Verio, Inc.*, 142 Cal. App. 4th 1313, 1328 (2006) (class action where Defendant prevailed at trial
14 and the named plaintiffs were held liable, jointly and severally, for the Defendants’ attorney fees);
15 *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, 2007 WL 4531783, at *4 (N.D. Cal. Dec.
16 17, 2007) (cost award of \$56,788 was entered against the Named Plaintiff after the Court granted
17 Summary Judgment in a misclassification case). Because of its reliance on experts and scope, the
18 costs in data breach cases can be particularly acute, meaning the Class Representatives could have
19 had significant judgments entered against them if they lost at class certification, summary judgment,
20 or trial.

21 The service payments being sought here are also justified by the level of participation of the
22 Plaintiffs and the personal sacrifices they made.

23 **William Muller and Antonio Knezevich**

24 Class Representatives Muller and Knezevich spent a substantial amount of time on this
25 case, which included: searching and retaining counsel; extensive meetings with counsel to
26 substantiate the factual bases of the claims; producing relevant documents and information;
27 participating in regular communication with counsel throughout the duration of the case regarding
28 the case status and strategy going forward; and providing the facts and evidence to prove the

1 allegations in the complaint to counsel. Further, in the early stages of this case, both spent
2 significant time on gathering other class members — including dozens of other employees at
3 PepsiCo and Tesla [the respective companies at which they were employed] — to report their
4 experiences, volunteer to be interviewed by counsel, and provide additional factual support for the
5 case. They also remained available to counsel as needed throughout the duration of the case. In
6 total, Muller and Knezevich estimate they spent in excess of 20 hours assisting in the prosecution
7 of this case over the last two years. Declaration of William Muller (“Muller Decl.”), ¶ 3;
8 Declaration of Antonio Knezevich (“Knezevich Decl.”), ¶ 3.

9 Further, Muller and Knezevich have taken a substantial risk by electing to have their names
10 as part of the public record in this lawsuit, including fears of retaliation by their employers for their
11 involvement in this lawsuit [and for Muller, other previous lawsuits against PepsiCo relating to
12 wage issues]. Muller Decl., ¶ 4; Knezevich Decl., ¶ 4.

13 **Adam Bente**

14 Class Representative Bente suffered hardships that ordinary Class Members did not
15 experience. In particular, after the filing of this lawsuit, his employer at the time, the Family
16 Health Centers of San Diego, Inc., threatened to terminate him unless he agreed to remove all
17 references to his employer from the Complaint. The request left him feeling threatened and
18 worried about his future employment. As a direct consequence of this, he resigned his employment
19 with Family Health Centers of San Diego so he could continue the lawsuit. Declaration of Adam
20 Bente (“Bente Decl.”), ¶ 8. This type of sacrifice alone justifies the modest service award he is
21 seeking.

22 In terms of his participation in the case, Bente performed the following activities: obtaining
23 legal counsel; speaking with legal counsel on numerous occasions; assisting counsel in gathering
24 information; identifying the claims brought in this case; gathering documents relevant to the
25 lawsuit; being available for in person conference or hearing if necessary, such as sitting for a
26 deposition and at trial; and carefully reviewing the Settlement and other case-related documents on
27 his own and with his counsel to make sure that the Settlement and other work the attorneys
28 performed are in the best interest of the class. Bente Decl., ¶ 8.

1 **Cindy J. Villanueva**

2 Class Representative Villanueva spent significant time on this case. Her case-related
3 activities included: (1) obtaining counsel; (2) providing detailed information to counsel about her
4 experiences with the data breach and impact; (3) gathering relevant documents to turn over to her
5 counsel; (4) reviewing documents with her attorneys; (5) being available to answer questions from
6 her counsel; (6) making herself available for mediation; and (7) reviewing the Settlement
7 Agreement. Villanueva estimates she spent between 15 and 20 hours on this case. Declaration of
8 Cindy Villanueva (“Villanueva Decl.”), ¶¶ 8-11, 12.

9 Ms. Villanueva also experienced emotional distress and anxiety when serving as a lead
10 plaintiff and had fears she would have an adverse judgment for costs personally entered against
11 her. Villanueva Decl., ¶ 13.

12 **IV. CONCLUSION**

13 For all of the foregoing reasons, this motion should be granted in its entirety.
14

15 DATED: August 14, 2023

Respectfully submitted,
/s/ Michael Morrison
Michael Morrison
Erin Lim
ALEXANDER MORRISON & FEHR LLP
1900 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Tel: (310-394-0888
Fax: (310) 394-0811
mmorrison@amflp.com
elim@amflp.com

Kas L. Gallucci
LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
ron@consumersadvocates.com
ALEXIS M. WOOD
alexis@consumersadvocates.com
KAS L. GALLUCCI
kas@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006

Facsimile: (619) 564-6665

ALEXANDER MORRISON & FEHR LLP

Michael S. Morrison

Erin Lim

1900 Avenue of the Stars, Suite 900

Los Angeles, CA 90067

Tel: (310)-394-0888

Fax: (310) 394-0811

mmorrison@amfllp.com

elim@amfllp.com

WUCETICH KOROVILAS LLP

Jason M. Wucetich

Dimitrios V. Korovilas

222 N. Pacific Coast Highway Suite 2000

El Segundo, CA 90245

Tel: (310) 335-2001

Fax: (310) 364-5201

jason@wukolaw.com

dimitri@wukolaw.com

LEBE LAW

Jonathan Michael Lebe

Zachary Taylor Gershman

Nicolas W. Tomas

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Tel: (213)444-1973

jon@lebelaw.com

zacary@lebelaw.com

nicolas@lebelaw.com

Attorneys for Plaintiffs and the Proposed Classes