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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

In re Kannact, Inc. Data Security Incident	Lead Case No. 6:23-cv-1132-AA

PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AWARD, EXPENSE REIMBURSEMENT, AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS

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Pursuant to FRCP 23(h) and FRCP 54(d)(2), and consistent with the parties' preliminarily-approved class action Settlement Agreement ("Settlement Agreement" or "SA"), Plaintiffs respectfully request and move the Court to approve, as fair and reasonable, class counsel's request for fees in the amount of $233,333.00 (33.3% of the $700,000 Settlement Fund), costs and expenses in the amount of $18,292.53, and Class Representative Service Awards to the three Plaintiffs in the amount of $1,500 each, for a total of $4,500 in Service Awards.

This motion is supported by the previous filings on the docket; the following memorandum; and the declaration of Nickolas J. Hagman ("Hagman Fees Decl.").

L.R. 7-1 CERTIFICATION

Pursuant to the Parties' class action Settlement Agreement and Plaintiffs' counsels' conferral with counsel for Defendant, Kannact, Inc. ("Defendant" or "Kannact"), Defendant does not oppose this motion.

I. INTRODUCTION

Counsel for Plaintiffs Terry Dukes, Ann Fongheiser, and Alan White (collectively, "Plaintiffs" or "Representative Plaintiffs") negotiated a proposed settlement resolving the claims of 109,210 individuals who allegedly had their personally identifying information, financial account information, and private health information (collectively "Private Information") compromised as a result of a data breach of Defendant Kannact, Inc's ("Kannact" or "Defendant") computer systems (the "Data Security Incident"). The Settlement provides a non-reversionary Settlement Fund of up to $700,000 in order to provide the Settlement Class with substantial and immediate benefits.

Specifically, all Settlement Class Members are eligible to receive, from the Settlement Fund, cash payments in the form of a *pro rata* Cash Award, which at this time is estimated to be approximately $105 per person; documented loss payments of up to $5,000 with supporting attestation regarding any actual and unreimbursed documented loss; and three (3) years of Credit

Monitoring and Insurance Services, regardless of whether they also make a claim for a Settlement Payment. *See* Settlement Agreement attached as Exhibit 1 to ECF No. 30-1 (also referred to herein as "S.A." or "Agreement") ¶¶ 2.2–2.3. Only after negotiating this relief for the Settlement Class Members did the Parties agree that Class Counsel would request no more than 33.33% of the common settlement fund ($233,333.00) for attorney's fees, along with a request for reimbursement of $18,292.53 in costs and expenses incurred in connection with this Litigation, and no more than $1,500 to each Plaintiff for Class Representative Service Awards.

On May 16, 2024, Plaintiffs filed an unopposed Motion for Preliminary Approval of Class Settlement and Certification (ECF No. 30) (the "Preliminary Approval Motion") with supporting declarations and exhibits, which the Court granted on August 21, 2024. ECF No. 34 ("Preliminary Approval Order"). Pursuant to the Settlement Agreement (S.A. ¶ 7.1) and Preliminary Approval Order, Plaintiffs now file this motion.

As discussed in more detail below, consistent with the Agreement and applicable caselaw in this District and throughout the Ninth Circuit, because Plaintiffs' and Class Counsel's requested relief is fair and reasonable, they should respectfully be awarded at the Final Approval Hearing currently scheduled for January 22, 2025.

II. GENERAL LEGAL STANDARDS

Federal Rule of Civil Procedure 23(h) permits the court to award reasonable attorney's fees and costs in class action settlements as authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). In deciding whether the requested fee amount is appropriate, the Court's role is to determine whether such amount is '"fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

"The common fund doctrine provides that a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). This prevents "unjust enrichment by distributing the costs of litigation among those who benefit from the efforts of the litigants and their counsel." *Paul,*

Johnson, Alston, & Hunt v. Graulty, 886 F.2d 268, 271 (9th Cir.1989); *see also Strawn v. Farmers Ins. Co.*, 353 Or. 210, 216 (2013)[1] (similarly recognizing, under Oregon law, that the common fund doctrine allows class counsel's fees and expenses "to be shared among those who benefitted from the litigant's efforts by allowing plaintiff's lawyers to be paid from the common fund created or preserved by the litigation"). The Oregon procedural rule governing class actions, ORCP 32, appears to codify the common-fund doctrine by authorizing a reasonable fee award to be paid from any recovery awarded to the class when the judgment can be divided for that purpose. *Compare* ORCP 32 M(1)(c) ("If the prevailing class recovers a judgment that can be divided for the purpose, the court may order reasonable attorney fees and litigation expenses of the class to be paid from the recovery") *with State Farm Mut. Auto. Ins. v. Clinton*, 267 Or. 653, 657, 518 P.2d 645 (1974) (describing common-fund doctrine in similar terms).

III. ARGUMENTS IN SUPPORT OF FEE APPLICATION

As stated above, Federal Rule of Civil Procedure 23(h) permits the court to award reasonable attorney's fees and costs in class action settlements as authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). For an attorney fee awarded either pursuant to a fee-shifting statute or the common-fund doctrine, the touchstone for the amount of the award is the same—reasonableness. *See* ORCP 32 M(1)(c) (court may order "reasonable attorney fees" in class action).

Where a class settlement results in the creation of common benefits, courts in this Circuit may use either—or both—the "percentage-of-the-recovery" or the "lodestar-multiplier" method to determine a reasonable fee. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). However, "the primary basis of the fee award remains the percentage method" while "the lodestar

[1] Plaintiffs cite to parallel federal and Oregon caselaw governing class action fee and cost awards because, as Oregon law governs Plaintiffs' claims, "it also governs the award of fees." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). In turn, Oregon appellate caselaw refers to and relies on federal caselaw, given that Oregon's class action provision (ORCP 32) is modeled after Fed. R. Civ. P. 23. *See Strawn*, 353 Or. at 217–20; *see also Froeber v. Liberty Mut. Ins. Co.*, 222 Or. App. 266, 275 (2008) (noting the congruence between ORCP 32 D and FRCP 23(e) and that the "universally applied standard" is to assess whether the terms of the settlement are "fundamentally fair, adequate and reasonable" (internal quotation marks omitted) (citing *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992))).

may provide a useful perspective on the reasonableness of a given percentage award." *Id*. at 1050. The percentage-of-recovery approach may be used "where the defendants provide monetary compensation to the plaintiffs" and class benefit is easy to quantify. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019). Under this method, "the court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 at 1029 (9th Cir. 1998). Here, under either measure, the requested fee is fair, reasonable, and adequate as it falls within the commonly approved range and reflects a 1.05 multiplier.

A. Class Counsel's Requested Fees Are Fair and Reasonable, and Should be Granted

The Supreme Court has long held that, in common fund settlement cases like this, class counsel is entitled to a reasonable fee based "on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16, 79 L. Ed. 2d 891, 104 S. Ct. 1541 (1984)). Consistent with this long-standing rule, the Ninth Circuit has consistently approved awards of attorneys' fees using the percentage-of-recovery method. *See, e.g., Vizcaino*, 290 F.3d at 1047–48. In recent years, this method has become the preferred one. American Law Institute, *Principles of the Law of Aggregate Litigation* §3.13(b) (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases."). And "although statutory awards of attorneys' fees are subject to 'lodestar' calculation procedures, a reasonable fee under the common fund doctrine is calculated as a percentage of the recovery." *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990) (citing *Blum*, 465 U.S. 886 (1984)).

As an in-circuit District Court has aptly explained:

> Compensation of class counsel in common fund cases on a percentage of the recovery method makes eminently good sense. First, it is consistent with practice in the private marketplace where contingent fee attorneys are customarily compensated on a percentage of the recovery method. Second, it provides plaintiffs' counsel with a strong incentive to effectuate the maximum possible recovery in the shortest amount of time. Third, use of the percentage method decreases the burden imposed upon the court by other fee award procedures,

> especially the lodestar method, and assures that class members do not experience undue delay in receiving their share of the proceeds of the settlement due to protracted fee proceedings.

In re M.D.C. Holdings Sec. Litig., Case No. 89-0090 E(M), 1990 U.S. Dist. LEXIS 15488, at *24 (S.D. Cal. 1990); *see also Paul, Johnson, Alston & Hunt, v. Graulty*, 886 F.2d 268 (9th Cir. 1989) (discussing at length the comparative advantages and factors of the percentage-of-recovery method and ultimately stating "we believe that the percentage method is better").

The percentage-of-the-fund approach offers several advantages that militate in favor of its use as the principal method for determining the reasonableness of Class Counsel's fee request here. First, it reduces the burden on this Court to undertake the painstaking process of applying the lodestar method. *Jones v. GN Netcom, Inc. (In re Bluetooth Prod. Liab. Litig.)*, 654 F.3d 935, 942 (9th Cir. 2011) ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar."). The percentage approach also offers the significant benefit of aligning the interests of class counsel with the class they represent. *Davies v. PeaceHealth*, Case No. 6:21-cv-00825-AA, 2023 U.S. Dist. LEXIS 122310 (D. Or. July 17, 2023) ("Plaintiffs' counsel intend to seek a recovery based on a percentage of the common fund, which would incentivize vigorous pursuit of the largest possible settlement amount."). "For complex class actions that result in substantial economic recoveries, the normal fees tend to be between 20 and 30 percent of the recovered fund . . . ." *Strawn*, 353 Or. 210, 229 (2013).

"The Ninth Circuit has identified several factors that may be relevant in determining if the award is reasonable, including: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." *Perkins v. Singh*, Case No. 3:19-cv-01157-AC, 2021 U.S. Dist. LEXIS 211578, at *5 (D. Or. Nov. 2, 2021) (citing *Vizcaino*, 290 F.3d at 1048–50). Each of these factors is discussed, *infra*.

1. The Result Achieved Supports Class Counsel's Fee Request

"The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *Perkins*, 2021 U.S. Dist. LEXIS 211578, at *6–*7 (D. Or. Nov. 2, 2021). Here, the size of the Settlement Fund and quality of the settlement justifies the requested attorneys' fees.

Class Counsel successfully obtained a $700,000 non-reversionary, all-cash common fund for the benefit of the Settlement Class Members, which is a significant result considering the size of the Class, the nature of the information obtained by the thieves, and that some recently approved data breach class actions were resolved on a claims-made basis. *See, e.g.*, *Mackey v. Belden Inc.*, No. 4:21-cv-00149, Dkt. No. 72 (E.D. Mo. April 19, 2023) (approving claims-made data breach settlement); *In re: Scripps Health Data Incident Litig.*, No. 37-2021-00024103 (Cal. Sup. Ct. Cnty. of San Diego April 7, 2023) (same); *Pagan, et al. v. Faneuil Inc.*, No. 3:22-CV-297, Dkt. No. 53 (E.D. Va. Feb. 17, 2023) (same). As noted, the Settlement Fund will permit Participating Settlement Class Members to obtain reimbursement if they experienced identity theft, as well as enroll in three (3) free years of Credit Monitoring and Insurance Services. Participating Settlement Class Members can also choose to receive a *pro rata* cash payment (estimated at $105 per Participating Settlement Class member), subject to the amount of Documented Loss Payments, ¶ 2.4(b). As such, the Settlement Agreement should make Participating Class Members whole for damages caused to date, will protect those that want protection going forward, and will provide real cash payments to all or nearly all Participating Class Members.

The instant Settlement Agreement also compares favorably to other data breach settlements when viewed on a per-person basis. With 109,210 Settlement Class Members, the non-reversionary fund is worth $6.41 per Settlement Class member. A $6.41 per-person rate is greater than the per-person rate approved in a number of other recent data breach class action settlements. *See, e.g., Nelson v. Bansley & Kiener, L.L.P.*, No. 2021CH06274, Dkt. No. 67 (1st J. Cir. Ct. Cook Cnty., Ill Nov. 29, 2022) (approving $900,000 fund in data breach settlement with 274,115 class members, for a per class member rate of $3.28); *Gaston v. Fabfitfun, Inc.*, Case No. 2:20-cv-09534-

RGK-E, 2021 U.S. Dist. LEXIS 250695 at *5 (C.D. Cal. 2021) (data breach case involving credit card information that resulted in a $625,000 settlement fund for 441,000 class members, totaling $1.42 per person); *In re Blackhawk Network Data Breach Litig.*, Case No. 3:22-cv-07084-CRB at Dkt. No. 59 (N.D. Cal. June 3, 2024) (approving $985,000 fund in data breach settlement with 162,115 settlement class members, for a per class member rate of $6.07).

In sum, the per class member value of the instant settlement demonstrates the excellent result achieved here and strongly supports the 33% attorneys' fees award requested.

2. Risk and Burdens Taken by Class Counsel

"The risk of costly litigation and trial is an important factor in determining the fee award." *Bell v. Consumer Cellular, Inc.*, Case No. 3:15-cv-941-SI, 2017 U.S. Dist. LEXIS 95401 at *29–*30 (D. Or. June 21, 2017) (quoting *Rosales v. El Rancho Farms*, Case No. 1:09-cv-00707-AWI-JLT, 2015 U.S. Dist. LEXIS 95775, at *20 (E.D. Cal. July 21, 2015). Although nearly all class actions involve a high level of risk, expense, and complexity—undergirding the strong judicial policy favoring amicable resolutions—data breach cases are unique. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) ("[D]ata breach class actions are among the riskiest and uncertain of all class action litigation due to the absence of direct precedent certifying data breach cases as class actions."); *Gaston*, 2021 U.S. Dist. LEXIS 250695, at *7 (C.D. Cal. 2021) ("Historically, data breach cases have experienced minimal success in moving for class certification.")*; In re Sonic Corp. Customer Data Sec. Breach Litig.,* No. 1:17-md- 2807, 2019 U.S. Dist. LEXIS 135573, at *14 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky."). As such, the risks presented justify rewarding counsel for taking on this Litigation, representing their clients on contingency, and then achieving an excellent result for the entire Class. Hagman Fees Decl. ¶ 4.

3. Incidental or Non-Monetary Relief

"Apart from monetary benefits, Class Counsel successfully negotiated substantial non-monetary benefits, likely to protect current class members' and future employees' and patients' data. Thus, this factor weighs in favor of a fee award." *Gaston*, 2021 U.S. Dist. LEXIS 250695, at

*8. As part of the Settlement Agreement, Plaintiffs have received assurances that Kannact has implemented or will implement certain reasonable steps to adequately secure its systems and environments presently and in the future in order to protect and safeguard current Settlement Class Members' and future Kannact employees' and patients' data. SA, ¶ 2.5. Thus, this factor also weighs in favor of the requested fee award.

4. Effort Expended by Class Counsel

Class Counsel expended meaningful effort to secure a favorable settlement for the Class. Prior to the Settlement, Class Counsel investigated the data breach at issue, the corporate formation of Kannact, the nature of the alleged breach, and the legal claims at issue and quickly prepared and filed a complaint that brought Kannact to mediation. Class Counsel then conducted informal discovery with Kannact, prepared a mediation brief, negotiated with Kannact during an all-day mediation, and thereafter negotiated a complex settlement agreement. Hagman Fees Decl. ¶ 4 (detailing the specific efforts expended by Class Counsel). Class Counsel then prepared the Preliminary Approval Motion, has overseen the Notice process, answered questions from Settlement Class Members and Settlement Administrator regarding the Settlement and Claims process, and prepared the instant motion. *Id*. Class Counsel further anticipates undertaking additional work in preparing the final approval papers, attending the final approval hearing, and then assuring payment to Participating Settlement Class Members. *Id*. ¶ 5.

5. The Contingent Nature of the Fee and Fee Awards in Similar Cases.

Class Counsel took this matter on contingency with the reasonable expectation that, if they were successful, they would receive fees comparable to those in other recent data breach class actions. Class Counsel's request to receive 33.3% of the Settlement Fund is consistent with the fees awarded in numerous other common fund data breach class action settlements. *See, e.g.*, *In re: Sovos Compliance Data Sec. Incident Litig.*, Case No. 1:23-cv-12100-AK at Dkt. 51 (E.D. Mass. July 23, 2024) (order awarding Attorney's fees equal to 33% of the Settlement Fund in data breach settlement.); *Nguyen v. Crystal Bay Casino LLC*, No. 3:23-cv-00092-MMD-CLB at Dkt. 44 (D. Nev. Aug. 5, 2024) (order approving attorneys' fees equal to 1/3 of $675,000 Settlement

Fund in a class settlement arising out of a data breach); *In re: Wright & Filippis, LLC*, No. 2:22-cv-12908-SFC-EAS at Dkt. No. 50 (E.D. Mich. June 20, 2024) (order approving attorneys' fees in the amount of 33.3% of the Settlement Fund); *In re: UKG Inc. Cybersecurity Litigation*, No. 3:22-cv-00346 at Dkt. 80 (N.D. Cal. Nov. 21, 2023) (order approving attorneys' fees of 33.33% in a breach impacting approximately 2,000 people); *Phelps, et al. v. Toyotetsu North America*, No. 6:22-cv-00106-CHB-HA, at Dkt. 47 (E.D. KY October 25, 2023) (order approving one-third of 400,000 settlement fund in attorney's fees.).

Plaintiffs and Class Counsel believe use of the percentage method is appropriate for the reasons identified by the Ninth Circuit, myriad of in-circuit courts, and the leading class action treatises, and therefore respectfully request that the Court adopt this method of assessing Class Counsel's fees in this case. More specifically, Class Counsel requests fees equating to 33.33% of the $700,000 common settlement fund (*i.e.*, $233,333.00) that Kannact will pay pursuant to the Settlement Agreement.

B. Applying a Lodestar Cross Check Also Supports Class Counsel's Requested Fee Amount

As shown, the percentage-of-the-fund analysis demonstrates that Class Counsel seek a reasonable fee for their services, and that conclusion is further confirmed by performing a lodestar crosscheck. "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." *Alfred v. Pepperidge Farm*, No. LA CV14-07086 JAK (x), 2022 U.S. Dist. LEXIS 210622, at *40–*41 (C.D. Cal. Mar. 4, 2022) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)). "After the lodestar amount is determined, a trial court may adjust the lodestar upward or downward using a 'multiplier' based on factors not subsumed in the initial calculation of the lodestar." *Id.* (internal quotations omitted).

1. Class Counsel's Lodestar is Reasonable and Represents an Appropriate Valuation of the Time They Spent

Class Counsel's total hours are reasonable and necessary. Hagman Fees Decl. ¶ 9. At the time of this filing, Class Counsel has invested 321.9 hours, which is appropriate for a class action like this in which a swift resolution was achieved on behalf of the Settlement Class. *Id*. ¶ 8. The tasks that Class Counsel spent this time achieving are summarized above in Section (A)(4), as well as in the Hagman Fees Declaration. Furthermore, Class Counsel expects to expend additional time going forward drafting the final approval motion, preparing for and appearing at the Final Approval Hearing, and overseeing the final weeks of the claims administration process. *Id*. ¶ 7.

Class Counsel's current lodestar is $221,155.30. Hagman Fees Decl., ¶ 8. Class Counsel are well regarded as leaders in data breach litigation and have extensive experience in class actions and complex litigation and, as such, were able to efficiently prosecute this Litigation. Hagman Fees Decl. ¶ 3. Class Counsel should be compensated at hourly rates that reflect this experience and the reasonable market value of their legal services, based on their skill, experience and expertise. *See Sarabia v. Ricoh United States, Inc.*, No. 8:20-cv-00218-JLS-KES, 2023 U.S. Dist. LEXIS 85742, at *20–*21 (C.D. Cal. May 1, 2023).

Class Counsel's hourly rates are consistent with the prevailing market in this forum for attorneys of comparable experience, reputation, and ability, *see* Hagman Fees Decl. ¶10, and have been accepted by judges in similarly complex class actions settled within this District and the Ninth Circuit. *See, e.g.*, *In re Portland GE Sec. Litig.*, 2022 U.S. Dist. LEXIS 51404, at *28 (D. Or. Mar. 22, 2022) (finding rates ranging from $220 to $1,000 reasonable); *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOx), 2022 U.S. Dist. LEXIS 210946, at *28 (C.D. Cal. Nov. 21, 2022) (noting that "partners litigating consumer-related matters, such as data breach class actions, have hourly rates ranging from $304 to $965" and finding rates of $800 and $850 per hour reasonable); *Judson v. Goldco Direct, LLC*, No. CV 19- 6798 PSG (PLAx), 2021 U.S. Dist. LEXIS 258173, at *23–*24 (C.D. Cal. June 11, 2021) (accepting partner's hourly rate of $800); *Correa v. Zillow, Inc.*, No. 8:19-cv-00921-JLS-DFM, 2021 U.S. Dist. LEXIS 113227, at *20 (C.D. Cal. June 14, 2021)

(finding $850 per hour for a senior partner involved in class action reasonable). Given that the hours expended, and total lodestar, are both reasonable, this Court should "defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case . . ." and find Class Counsel's lodestar is reasonable and supports an appropriate valuation of the time spent. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008); *see also Rodriguez v. County of L.A.*, 96 F. Supp. 3d 1012, 1024 (C.D. Cal. 2014) ("Courts generally accept the reasonableness of hours supported by declarations of counsel.").

2. Class Counsel's Requested Fee Represents a Modest Multiplier

To offset the risks of non-payment, and thereby encourage attorneys to take on risky class actions on a contingent basis, the Court is permitted to increase the lodestar by applying a positive multiplier to "take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." *Bendon v. DTG Operations, Inc.*, No. ED CV 16-0861 FMO (AGRx), 2018 U.S. Dist. LEXIS 143027, at *19 (C.D. Cal. Aug. 22, 2018). Here, however, each of these factors weighs in favor of the conclusion that the fee request of $233,333 is reasonable in that it represents only a positive multiplier of 1.05 under the current lodestar of $221,155.30. Hagman Fees Decl., ¶ 13.

"In the Ninth Circuit, a multiplier ranging from 1.0 to 4.0 is considered 'presumptively acceptable.'" (*Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628-DOC(JDEx), 2023 U.S. Dist. LEXIS 72861, at *30 (C.D. Cal. Apr. 24, 2023)) and "[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation." *In re Portland GE Sec. Litig.*, Case No. 3:20-cv-1786-SI (consolidated), 2022 U.S. Dist. LEXIS 51404, at *28. Indeed, courts have repeatedly accepted multipliers of 3.0 and greater. *See Alston v. NCAA*, 768 F. App'x 651, 654 (9th Cir. 2019) (holding that the district court did not abuse its discretion when awarding fees that represented a lodestar multiplier of 3.66); *See also Vizcaino*, 290 F.3d at 1051 (affirming 25% fee recovery, which was supported by lodestar cross-check with a multiplier of

3.65, and explaining that that multiplier "was within the range of multipliers applied in common fund cases"). For this reason, Class Counsel's reasonable 1.05 multiplier should be approved.

3. The Complex Nature of the Litigation and Contingent Risks

In this District, "there is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Lane v. Brown*, 166 F. Supp. 3d 1180 (D. Or. 2016)(quoting *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir 2008)). *See also Chalmers v. Los Angeles*, 796 F.2d 1205 (9th Cir. 1985)(noting that the novelty or the difficulty of the question presented was a factor in determination of a reasonable fee).

As noted, this Circuit considers data breach cases particularly complex and risky in nature, given the evolution of applicable legal principles and dearth of direct precedent certifying data breach cases. *See Schellhorn v. Timios, Inc.*, No. 2:21-cv-08661-VAP-(JCx), 2022 U.S. Dist. LEXIS 184949, at *18 (C.D. Cal. May 10, 2022) ("data breach cases are among the riskiest and uncertain of all class action litigation."); *Pfeiffer v. Radnet, Inc.*, No. 2:20-cv-09553-RGK-SK, 2022 U.S. Dist. LEXIS 125933, at *6–*7 (C.D. Cal. Feb. 15, 2022) ("Historically, data breach cases have had great difficulty in moving past the pleadings stage and receiving class certification. . . . Because Class Counsel took this case on a contingency basis in a risky and still-developing area of law, this factor weighs in favor of the proposed attorneys' fee award.").

As a novel area of the law, the certification and outcome of data breach class actions at trial is largely unexplored. Settlement Class Members may never have secured relief, financial or otherwise, absent this Settlement. Class Counsel has foregone the ability to devote time to other cases and faced a substantial risk that the litigation would yield no or very little recovery and leave them uncompensated for their time and out-of-pocket expenses. However, despite the substantial risks, Class Counsel still chose to represent Plaintiffs on contingency. *See Bell*, 2017 U.S. Dist. LEXIS 95401 (D. Or. 2017) ("In considering both the contingent nature of the work performed by Class Counsel as well as the risk involved in the costs advanced, this factor weighs slightly in favor of a departure from the benchmark fee award.") (quoting *Richardson v. THD At-Home Servs.*, Case No. 1:14-cv-0273-BAM, 2016 U.S. Dist. LEXIS 46784 (E.D. Cal. 2016)).

4. Class Counsel Quickly Obtained an Excellent Result

Despite the foregoing concerns and risks, the Settlement affords the Settlement Class Members timely relief which meets the potential impact of the Data Security Incident—remedial measures and monetary benefits carefully negotiated by Class Counsel to right the alleged wrongs underlying this action. As shown in Section A.1, *supra*, this represents an excellent result for the Settlement Class. Not only that, but Class Counsel negotiated this timely settlement to ensure that Settlement Class Members will receive a swift resolution that provides both monetary relief for harms suffered prior to final approval, up to three years of free Credit Monitoring and Insurance Services, and secures the implementation of data security enhancements on the part of Defendant going forward. Therefore, Class Counsel believes the result here supports the requested fee award.

5. Class Counsel Demonstrated the Skill Required to Prosecute This Litigation Effectively

Class Counsel's skills and experience in complex class action litigation also favor the requested fee award here. Class Counsel's background and the background of the supporting attorneys and staff of Class Counsel demonstrate that Class Counsel is experienced in the highly specialized field of class action litigation, well credentialed, and equal to the difficult and novel tasks at hand. *See* Class Counsel's firm resumes, attached as Exhibits A through D to Hagman Decl. Indeed, the Court previously recognized Class Counsel's experience and skill in prosecuting class actions arising out of data breaches when appointing Class Counsel as Interim Co-Lead and Liaison Counsel. *See* Order dated Sept. 26, 2023 ECF 15. Class Counsel's fee request is commensurate with that experience, which was leveraged here to procure the Settlement. The skill demonstrated by Class Counsel in developing initial complaints and the Consolidated Complaint, mediating the case and settling the Litigation early further support the fees requested. *Perkins v. Singh*, Case No. 3:19-cv-01157-AC, 2021 U.S. Dist. LEXIS 211578, at *6–*7 (D. Or. Nov. 2, 2021).

Class Counsel were also equal to the experience and skill of the attorneys representing Kannact—a factor to be considered here. *See In re Am. Apparel, Inc. S'holder Litig.*, No. CV 10-

06352 MMM (JCGx) 2014 U.S. Dist. LEXIS 184548, at *72 (C.D. Cal. July 28, 2014) ("In addition to the difficulty of the legal and factual issues raised, the court should also consider the quality of opposing counsel as a measure of the skill required to litigate the case successfully."). *See also Dickerson v. Cable Communs., Inc.*, Case No. 3:12-cv-00012-PK, 2013 U.S. Dist. LEXIS 167152 (D. Or. Nov. 25, 2013) ("Further, each party's counsel is experienced and agrees to the settlement."). Kannact was represented in this case by Wilson Elser Moskowitz Edelman & Dicker LLP, a nationally known and highly respected law firm with significant resources and substantial experience defending class actions in the cyber security area. This factor, therefore, weighs in favor of the requested fee award.

Given the foregoing, Class Counsel's fee request of $233,333.00 is reasonable when analyzed under the lodestar method.

C. Class Counsel's Expense Request is Justified Here

Class Counsel is entitled to reasonable and relevant litigation expenses to be taxed from the Settlement Fund. *See Rausch v. Hartford Fin. Servs. Group*, No. 01-cv-1529, 2007 U.S. Dist. LEXIS 14740, at *7–*8 (D. Or. Feb. 26, 2007) (finding costs and expenses of $118,052.72 reasonably and necessarily incurred and recoverable from the proceeds of the common fund); *See also Schmitt v. Kaiser Found. Health Plan of Wash.*, Case No. 2:17-cv-1611-RSL,2024 U.S. Dist. LEXIS 71166, at *13 (W.D. Wash. Apr. 18, 2024) ("Litigation costs are recoverable in a class action settlement.") (citing *Staton v. Boeing Co.*, 327 F.3d 938, 974–75 (9th Cir. 2003)). Class counsel "may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters." *Id.* (citing *Harris v. Marhoefer*, 24 F.3d 16, 19–20 (9th Cir. 1994)). Class Counsel has incurred expenses in the prosecution of this Litigation in the total amount of $18,292.53. Hagman Fees Decl. ¶ 12. The expenses incurred adequately reflect Class Counsel's experience and expertise in litigating this matter efficiently.

Applicable litigation expenses include, *inter alia*, filing fees, mediation and mediator fees, research and investigation costs, travel costs, and other administration costs and expenses. *See Marshall v. Northrop Grumman Corp.*, Case No. 16-CV-6794 AB (JCx), 2020 U.S. Dist. LEXIS

177056, at *25–*27 (C.D. Cal. 2020) (approving class counsel's request for litigation expenses for these types, and others, in the amount of $390,587 and finding that "[g]iven that the expenses sought are the type of costs typically recovered in similar cases, and based on the significant efforts expended by [class counsel] over the extended litigation, the Court finds their request of reimbursement of litigation expenses reasonable.").

Courts typically permit class counsel to be reimbursed for similar types of expenses, "such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment[.]" *Metrow v. Liberty Mut. Managed Care LLC*, No. EDCV 16-01133 JGB (KKx), 2018 U.S. Dist. LEXIS 100835, at *34 (C.D. Cal. June 14, 2018). These types of expenses are in line with those approved by courts within this District and Circuit. *See Clifton v. Babb Constr. Co.,* No. 6:13-cv-1003 MC, 2014 U.S. Dist. LEXIS 140951, at *9 (D. Or. Oct. 1, 2014); *see also Sudunagunta v. NantKwest, Inc.*, No. CV 16-1947-MWF (JEMx), 2019 U.S. Dist. LEXIS 81337, at *18–*19 (C.D. Cal. May 13, 2019) (finding class counsel's reimbursement request for routine litigation expenses fair and reasonable). As such, Class Counsel's request for $18,292.53 in litigation costs and expenses is similarly reasonable here.

D. The Requested Service Awards for Plaintiffs are Reasonable

Class representative service (or incentive) awards are "fairly typical" in class action cases in the Ninth Circuit. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Incentive awards "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, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958–59. "The trial court has discretion to award incentives to the class representatives." *Rausch v. Hartford Fin. Servs. Grp.*, No. 01-cv-1529-BR, 2007 WL 671334, 2007 U.S. Dist. LEXIS 14740, at *8 (D. Or. Feb. 26, 2007).

Here, the Court should approve the service awards of $1,500 for each of the three Plaintiffs as it is equal or less than typical awards in the Ninth Circuit. Plaintiffs' requests are lower than

typical as Ninth Circuit courts have commonly approved service awards of $5,000 or more. *See, e.g.*, *Gessele v. Jack in the Box, Inc.*, Case No. 3:14-cv-01092-HZ, 2024 U.S. Dist. LEXIS 67942 (D. Or. Apr. 14, 2024) ("Generally, in the Ninth Circuit, a $5,000 incentive award is presumed reasonable."); *see also Demmings v. KKW Trucking, Inc.*, No. 3:14-CV-0494-SI, 2018 U.S. Dist. LEXIS 159749 (D. Or. Sept. 19, 2018) (granting an incentive award of $7,500 for named plaintiff); *Pauley v. Cf Entm't*, No. 2:13-CV-08011-RGK-CW, 2020 U.S. Dist. LEXIS 187614, at *9 (C.D. Cal. July 23, 2020) (finding $5,000 service awards reasonable).

Here, Plaintiffs took on the inherent, substantial risks associated with being named plaintiffs in a national class action lawsuit and spent many hours fulfilling their responsibilities as plaintiffs and class representatives, including answering detailed questionnaires via vetting interviews; providing essential information to Class Counsel; collecting documents and other evidence that supported their claims; agreeing to face invasive and time-consuming discovery, if necessary; reviewing pleadings and coordinating with Class Counsel as to the status of, and strategy for, the Litigation; conferring with Class Counsel about the settlement negotiations and providing meaningful input about what potential benefits were most important to them; and considering and approving the Settlement terms on behalf of the Class. Therefore, the amounts requested here comport with Plaintiffs' efforts in this Litigation and previous courts' prior application of the Ninth Circuit's benchmark.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the instant Motion for entry of an Order approving Class Counsel's request for: (i) an attorneys' fee award in the amount of $233,333; (ii) reimbursement of litigation costs and expenses totaling $18,292.53, and (iii) Service Awards Payments of $1,500 to each of the Plaintiffs.

DATE: November 5, 2024

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b), because it contains 5,938 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

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