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Class Counsel

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

VISHAL SHAH, and JAYDEN KIM, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

FANDOM, INC.,

Defendant.

Case No. 3:24-cv-01062-RFL

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS'
FEES, COSTS, EXPENSES, AND
SERVICE AWARDS**

Date: May 19, 2026
Time: 1:30 p.m.
Ctrm: 15, 18th Floor (And Via Zoom)
Judge: Hon. Rita F. Lin

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 **PLEASE TAKE NOTICE THAT** on May 19, 2026 at 1:30 p.m. or as soon thereafter as
2 counsel may be heard by the above-captioned Court, located at 450 Golden Gate Avenue, Courtroom
3 15, 8th Floor, San Francisco, California 94102 in the courtroom of Hon. Ria F. Lin (and via Zoom),
4 Plaintiffs Vishal Shah and Jayden Kim (“Plaintiffs”), by and through their undersigned counsel of
5 record, will move, pursuant to Fed. R. Civ. P. 23(h), for the Court to: (i) award Class Counsel three-
6 hundred forty-eight thousand ninety dollars (\$348,090.00) in attorneys’ fees; (ii) award Class
7 Counsel fifty-one thousand eight hundred seventy-two dollars and ninety-six cents (\$51,872.96) in
8 reasonable litigation costs and expenses; (iii) award Plaintiffs a service award of \$5,000 each; and
9 (iv) enter the [Proposed] Order submitted herewith.

10 This motion is based on Plaintiffs’ Memorandum of Points and Authorities in Support of
11 Motion for Attorneys’ Fees, Costs, Expenses, and Service Awards, the accompanying Declaration
12 of Max S. Roberts and attachments thereto, the pleadings and papers on file herein, and any other
13 written and oral arguments that may be presented to the Court.

14 Dated: February 27, 2026

Respectfully submitted,

15
16 By: /s/ Max S. Roberts
Max S. Roberts

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TABLE OF CONTENTS

	PAGE
INTRODUCTION.....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	2
SUMMARY OF THE PROPOSED SETTLEMENT.....	2
ARGUMENT.....	2
I. CLASS COUNSEL’S FEE REQUEST IS REASONABLE UNDER THE PERCENTAGE OF THE BENEFIT METHOD.....	3
A. The Settlement Confers Substantial Benefits To The Class.....	4
B. The Risk Of Litigation Supports The Fee Request.....	5
C. Class Counsel Provided Quality Work In A Complex Case.....	6
D. The Contingent Nature Of The Fees And Financial Burden Carried By Class Counsel Support The Fee Request.....	7
E. Market Rates As Reflected By Awards In Similar Cases Support Class Counsel’s Fee Request.....	8
II. CLASS COUNSEL’S ATTORNEYS’ FEES ARE REASONABLE UNDER A LODESTAR CROSS-CHECK.....	9
A. Class Counsel Spent A Reasonable Number Of Hours On This Litigation At A Reasonable Hourly Rate.....	9
B. The Lack Of A Multiplier—If Not A Negative Multiplier Accounting For Forthcoming Work—Supports The Reasonableness Of Class Counsel’s Fee Request.....	11
III. CLASS COUNSEL’S EXPENSES WERE REASONABLE AND NECESSARILY INCURRED TO ACHIEVE THE BENEFITS OBTAINED.....	12
IV. PLAINTIFFS’ REQUESTED SERVICE AWARDS ARE REASONABLE.....	13
CONCLUSION.....	14

TABLE OF AUTHORITIES

PAGE(S)

CASES

1

2

3

4 *Barbosa v. Cargill Meat Solutions Corp.*,
297 F.R.D. 431 (E.D. Cal. 2013)..... 9

5 *Bellinghausen v. Tractor Supply Co.*,
306 F.R.D. 245 (N.D. Cal. 2015) 14

6

7 *Chea v. Lite Star ESOP Committee*,
2026 WL 383318 (E.D. Cal. Feb. 11, 2026) 2, 3, 5

8

9 *Corzine v. Whirlpool Corp.*,
2019 WL 7372275 (N.D. Cal. Dec. 31, 2019) 12

10 *Curran v. City of Oakland*,
2025 WL 3485360 (N.D. Cal. Dec. 4, 2025) 9, 10, 11

11

12 *de Mira v. Heartland Emp. Serv., LLC*,
2014 WL 1026282 (N.D. Cal. Mar. 13, 2014) 9

13

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303 F.R.D. 326 (N.D. Cal. 2014) 11

15 *Dynabursky v. Alliedbarton Sec. Servs., LP*,
2016 WL 8921915 (C.D. Cal. Aug. 15, 2016) 6

16

17 *Elder v. Hilton Worldwide Holdings, Inc.*,
2021 WL 4785936 (N.D. Cal. Feb. 4, 2021)..... 10

18

19 *Fitzhenry-Russell v. Coca-Cola Co.*,
2019 WL 11557486 (N.D. Cal. Oct. 3, 2019) 12

20 *Gamino v. KPC Healthcare Holdings, Inc.*,
2023 WL 3325190 (C.D. Cal. Mar. 11, 2023) 11

21

22 *Gates v. Deukmejian*,
987 F.2d 1392 (9th Cir. 1992) 10

23

24 *Graham v. DaimlerChrysler Corp.*,
34 Cal. 4th 553 (2004)..... 8

25 *Greko v. Diesel U.S.A., Inc.*,
2013 WL 1789602 (N.D. Cal. Apr. 26, 2013)..... 13

26

27 *Grey Fox, LLC v. Plains All-Am. Pipeline, L.P.*,
2024 WL 4267431 (C.D. Cal. Sept. 17, 2024) 10

28

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 24 F.3d 16 (9th Cir. 1994)..... 3, 13

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 3 273 F.R.D. 630 (S.D. Cal. 2011)..... 10

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 5 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016)..... 10

6 *Hensley v. Eckerhart*,
 461 U.S. 424 (1983) 11

7 *Hightower v. JPMorgan Chase Bank, N.A.*,
 8 2015 WL 9664959 (C.D. Cal. Aug. 4, 2015) 14

9 *In re Activision Sec. Litig.*,
 10 723 F. Supp. 1373 (N.D. Cal. 1989)..... 8

11 *In re Anthem, Inc. Data Breach Litig.*,
 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018)..... passim

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 13 654 F.3d 935 (9th Cir. 2011) 2

14 *In re California Pizza Kitchen Data Breach Litig.*,
 15 129 F.4th 667 (9th Cir. 2025)..... 8

16 *In re Omnivision Techs., Inc.*,
 559 F. Supp. 2d 1036 (N.D. Cal. 2008)..... 6

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 18 74 F. Supp. 2d 393 (S.D.N.Y. 1999) 8

19 *In re Vizio, Inc. Consumer Privacy Litig.*,
 20 2019 WL 12966638 (C.D. Cal. July 31, 2019) 6, 7, 8

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 746 F. App’x 655 (9th Cir. 2018)..... 11

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 23 19 F.3d 1291 (9th Cir. 1994)..... 7

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 445 F. Supp. 3d 508 (N.D. Cal. 2020)..... 14

25 *Joh v. Am. Income Life Ins. Co.*,
 26 2021 WL 66305 (N.D. Cal. Jan. 7, 2021)..... 14

27 *Katz-Lacabe v. Oracle Am., Inc.*,
 28 2024 WL 4804974 (N.D. Cal. Nov. 15, 2024)..... 10

1 *Kaupelis v. Harbor Freight Tools USA, Inc.*,
2022 WL 2288895 (C.D. Cal. Jan. 12, 2022)..... 10

2 *Lalli v. First Team Real Estate—Orange Cnty.*,
3 2022 WL 8207530 (C.D. Cal. Sept. 6, 2022)..... 6

4 *Larsen v. Trader Joe’s Co.*,
5 2014 WL 3404531 (N.D. Cal. July 11, 2014) 3

6 *Mauss v. NuVasive, Inc.*,
2018 WL 6421623 (S.D. Cal. Dec. 6, 2018)..... 4

7 *McKeen-Chaplin v. Provident Savings Bank, FSB*,
8 2018 WL 3474472 (E.D. Cal. July 19, 2018)..... 7

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10 491 U.S. 274 (1989) 10

11 *Montera v. Premier Nutrition Corp.*,
2025 WL 751542 (N.D. Cal. Mar. 10, 2025) 4

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13 96 F.3d 359 (9th Cir. 1996)..... 11

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15 2022 WL 2704551 (E.D. Cal. July 12, 2022)..... 4

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2014 WL 324262 (N.D. Cal. Jan. 29, 2014)..... 3

17 *Perez v. Rash Curtis & Associates*,
18 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020)..... 10

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281 F. Supp. 3d 833 (N.D. Cal. 2017)..... 12

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25 2025 WL 2794920 (Los Angeles Super. Ct. Sept. 24, 2025)..... 5

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2024 WL 5286227 (C.D. Cal. Nov. 26, 2024) 10

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 2018 WL 1919823 (E.D. Cal. Apr. 24, 2018) 12

2
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 327 F.3d 938 (9th Cir. 2003) 12

4 *Van Vranken v. Atl. Richfield Co.*,
 5 901 F. Supp. 294 (N.D. Cal. 1995) 13

6 *Vasquez v. Coast Valley Roofing, Inc.*,
 266 F.R.D. 482 (E.D. Cal. 2010) 7

7
 8 *Vizcaino v. Microsoft Corp.*,
 290 F.3d 1043 (9th Cir. 2002) 3, 8, 9, 11

9 *Wong v. Arlo Techs., Inc.*,
 2021 WL 1531171 (N.D. Cal. Apr. 19, 2021) 12

10
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 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011) 3

12 **RULES**

13 Fed. R. Civ. P. 23(h) i

14 **OTHER AUTHORITIES**

15 CAL. PRAC. GUIDE CIV. APP. & WRITS Ch. 15-F 5

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

1
2
3 Plaintiffs and Class Counsel have achieved an outstanding result in this case. The \$1.2
4 million non-reversionary Settlement Fund¹ they have negotiated provides a real and substantial
5 monetary benefit to hundreds of thousands of Settlement Class Members. See Mar. 2, 2026
6 Declaration of Max S. Roberts (the “Mar. Roberts Decl.”) ¶¶ 5-6; see also Oct. 16, 2026 Declaration
7 of Max S. Roberts (ECF No. 71-1) (the “Oct. Roberts Decl.”) ¶¶ 18-28. This Settlement brings
8 certainty, closure, and significant and valuable relief for individuals to what would otherwise likely
9 be a contentious and costly litigation where Plaintiffs’ relatively novel claims faced significant risks
10 inside and outside this Court. Mar. Roberts Decl. ¶¶ 12-14; Oct. Roberts Decl. ¶¶ 29-34.

11 Class Counsel now request that the Court approve an award of attorneys’ fees in the amount
12 of \$348,090.00, or approximately 29% of the \$1.2 million Settlement Fund. Calculating the fee
13 award based on a percentage of the Settlement Fund is straightforward, fair, and strongly supported
14 by Ninth Circuit case law. Cross-checking this percentage fee against Class Counsel’s lodestar
15 validates the reasonableness of Class Counsel’s fee request. As of February 23, 2026, Class Counsel
16 had worked 483.3 hours on this case for a total lodestar fee, at current billing rates, of \$348,090.00.
17 Mar. Roberts Decl. ¶ 24; see also *id.* Ex. 4 (Class Counsel’s detailed billing records for this case).
18 Class Counsel’s blended hourly rate of \$720.24 is within the bounds of reasonable hourly rates in
19 California and elsewhere. *Id.* ¶¶ 28-32. Thus, a fee award of \$348,090.00 represents no multiplier
20 over the base lodestar fee, and will likely result in a 0.91 negative multiplier once further work is
21 performed in moving for Final Approval and continuing to oversee the claims administration process.
22 Mar. Roberts Decl. ¶ 25. This strongly supports the reasonableness of the fee request.

23 Class Counsel also requests that the Court award reimbursement of litigation costs and
24 expenses of \$51,872.96. As detailed herein, these expenses were reasonable and necessarily incurred
25 for the prosecution of this action. Mar. Roberts Decl. ¶¶ 26-27.

26 Finally, Plaintiffs request that the Court award them a service award in the amount of \$5,000

27 ¹ All capitalized terms not otherwise defined herein shall have the same meaning as in the Settlement
28 (ECF No. 73-1)

1 each to account for the significant time and effort they invested in this case on behalf of the Class.
 2 Mar. Roberts Decl. ¶¶ 34-38.

3 For the foregoing reasons, Plaintiffs' Motion should be granted.

4 **FACTUAL AND PROCEDURAL BACKGROUND**

5 The factual and procedural background of this matter are discussed in detail in both the
 6 October and March Roberts Declarations. Oct. Roberts Decl. ¶¶ 4-17; Mar. Roberts Decl ¶¶ 8-11.

7 **SUMMARY OF THE PROPOSED SETTLEMENT**

8 Pursuant to the Settlement, Defendant has established a \$1.2 million non-reversionary
 9 Settlement Fund from which all Settlement Class Members with Approved Claims are entitled to a
 10 *pro rata* share. Settlement ¶¶ 2.1(a)-(b). Class Counsel anticipates a recovery of as much as \$216.67
 11 per Settlement Class Member "based on the expected number of Approved Claims." Oct. Roberts
 12 Decl. ¶ 28. This compares favorably with other CIPA § 638.51 settlements and the potential actual
 13 damages. *Id.* In accordance with the Northern District of California's Procedural Guidelines for
 14 Class Action Settlements, the key terms of the settlement and its administration were summarized in
 15 Plaintiffs' Motion for Preliminary Approval (ECF No. 71).

16 As most relevant to this Motion though, the Settlement permits Class Counsel to petition for
 17 attorneys' fees, costs, and expenses of no more than one-third of the Settlement Fund (*i.e.*,
 18 \$400,000.00), and for Plaintiffs to "seek no more than \$5,000 each as an incentive award."
 19 Settlement ¶¶ 8.1, 8.3. In addition, "the Settlement Agreement does not include a clear sailing
 20 provision, and any remaining residual funds are to be distributed" *pro rata* to Settlement Class
 21 Members with Approved Claims or "to a *cy pres* recipient approved by the Court." *Chea v. Lite Star*
 22 *ESOP Committee*, 2026 WL 383318, at *7 (E.D. Cal. Feb. 11, 2026); *see also* Settlement ¶¶ 2.1(d)-
 23 (e), 8.1; Mar. Roberts Decl. ¶ 8.

24 **ARGUMENT**

25 Under Ninth Circuit precedent, the Court may analyze and issue an attorneys' fee award:
 26 (i) as a percentage of the total benefit made available to the settlement class, including costs, fees,
 27 and injunctive relief; or (ii) under the "lodestar" method. *See, e.g., In re Bluetooth Headset Prods.*

1 *Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *Nwabueze v. AT&T, Inc.*, 2014 WL 324262, at *2-3
 2 (N.D. Cal. Jan. 29, 2014). Both the percentage method and lodestar method require examination of
 3 (i) the results achieved; (ii) the risk of litigation; (iii) the skill required and the quality of work;
 4 (iv) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (v) awards
 5 made in similar cases. *Larsen v. Trader Joe’s Co.*, 2014 WL 3404531, at *9 (N.D. Cal. July 11,
 6 2014). Class Counsel’s fee request is reasonable under either of these approaches.

7 Further, an attorney is entitled to “recover as part of the award of attorney’s fees those out-
 8 of-pocket expenses that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24
 9 F.3d 16, 19 (9th Cir. 1994) (cleaned up). To support an expense award, plaintiffs should file an
 10 itemized list of their expenses by category, listing the total amount advanced for each category,
 11 allowing the Court to assess whether the expenses are reasonable. *See Wren v. RGIS Inventory*
 12 *Specialists*, 2011 WL 1230826, at *30 (N.D. Cal. Apr. 1, 2011); District Guideline 6. Class Counsel
 13 has done that here.

14 Here, Class Counsel requests an award of \$348,090.00 in attorneys’ fees. This amount
 15 represents 29% of the \$1.2 million common fund, is equal to Class Counsel’s current lodestar, and
 16 will likely represent a negative multiplier after accounting for time that will be spent on final approval
 17 and overseeing claims administration. Mar. Roberts Decl. ¶¶ 24-25. Class Counsel also requests
 18 reimbursement of \$51,872.96 in litigation costs and expenses. *Id.* ¶¶ 26-27. For the reasons
 19 explained below, Class Counsel requests are reasonable and should be awarded.

20 **I. CLASS COUNSEL’S FEE REQUEST IS REASONABLE UNDER THE**
 21 **PERCENTAGE OF THE BENEFIT METHOD**

22 “The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the
 23 total settlement value, with 25% considered the benchmark.” *Chea*, 2026 WL 383318, at *7. In
 24 deciding on a fee award, the Court must consider “all of the circumstances of the case.” *See Vizcaino*
 25 *v. Microsoft Corp.*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). “The Ninth Circuit has identified five
 26 factors which may be probative: (1) the results achieved; (2) the risk of litigation; (3) the skill
 27 required and the quality of work; (4) the contingent nature of the fee and the financial burden carried
 28 by the plaintiffs; and (5) awards made in similar cases.” *In re Anthem, Inc. Data Breach Litig.*, 2018

1 WL 3960068, at *9 (N.D. Cal. Aug. 17, 2018) (Koh, J.). Each of these factors justifies the requested
2 fee award.

3 **A. The Settlement Confers Substantial Benefits To The Class**

4 “[T]he overall result and benefit to the Class ... has been called the most critical factor in
5 granting a fee award.” *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *9 (N.D. Cal.
6 Aug. 17, 2018) (cleaned up). The considerations offered by the Settlement provide excellent results
7 for the Settlement Class. The Settlement creates a non-reversionary \$1.2 million Settlement Fund
8 from which “[e]ach Settlement Class Member with an Approved Claim shall be entitled to a *pro rata*
9 portion.” Settlement ¶ 2.1(b). As detailed in Plaintiffs’ Motion for Preliminary Approval, the
10 Settlement provides for a substantial recovery of actual damages per Approved Claim:

11 by installing and using the Trackers, Plaintiff Kim would have
12 alleged that his information was sold to advertisers for
13 approximately \$0.79, and would have been sold for less had
14 Defendant not installed and used the Trackers. Thus, Plaintiffs’
15 actual damages would likely be a few cents on the dollar.

16 By comparison, the Settlement represents a recovery of \$1.40 per
17 Settlement Class Member based on an estimated class size of
18 860,000, and provides an expected payout of \$216.67 based on the
19 expected number of Approved Claims. Further, even on a per IP
20 basis, the Settlement represents a \$0.28 recovery, roughly 35% of
21 Plaintiffs’ actual damages.

22 *See* Oct. Roberts Decl. ¶ 28. In addition, as the Court acknowledged at the Preliminary Approval
23 Hearing, using the potential statutory damages is an inapt comparison here because the statutory
24 damages may have been found excessive under Ninth Circuit precedent. *See* Mar. Roberts Decl. Ex.
25 1 at 4:11-14; *see also* *Montera v. Premier Nutrition Corp.*, 2025 WL 751542, at *7 (N.D. Cal. Mar.
26 10, 2025) (awarding reduced statutory damages after finding full amount of \$83 million in statutory
27 damages was “grossly punitive and thus wholly disproportionate to the legislative goals”).

28 A recovery of 35% of each Approved Claim’s actual damages (at worst) and more than 100%
of actual damages (at best) is more than reasonable. *Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at
*6 (S.D. Cal. Dec. 6, 2018) (awarding attorneys’ fees where settlement was “approximately 23 to 34
percent” of maximum damages); *Newell v. Ensign United States Drilling (California) Inc.*, 2022 WL
2704551, at *5 (E.D. Cal. July 12, 2022) (same where “the settlement amount of \$2,400,000

1 correlates to a 38 percent recovery of their maximum potential damages”); *Chea*, 2026 WL 383318,
2 at *9 (same where the settlement provided “approximately 45%-75% of the estimated maximum
3 recovery”).

4 **B. The Risk Of Litigation Supports The Fee Request**

5 This factor looks to the risk and novelty of the claims at issue. Both are certainly present
6 here. *See* Oct. Roberts Decl. ¶¶ 29-34; Mar. Roberts Decl. ¶¶ 12-14. Indeed, the risks to this case
7 articulated in Plaintiffs’ Preliminary Approval Motion have only been compounded since then. On
8 November 21, 2025, in *Rose v. Variety Media, LLC*, Case No. 25STCV01865 (Los Angeles Super.
9 Ct.)—another case alleging violations of CIPA § 638.51—the defendant filed a petition for writ of
10 mandate following the overruling of the defendant’s demurrer. Mar. Roberts Decl. ¶ 12; *see also*
11 *Rose v. Variety Media, LLC*, 2025 WL 2794920 (Los Angeles Super. Ct. Sept. 24, 2025). The
12 question in that petition is whether CIPA § 638.51 applies to non-telephonic technology (as this
13 Court ruled) or is limited to only telephonic technologies. *Id.* On January 8, 2026, the Court of
14 Appeal for the Second District issued an order to show cause requesting further briefing from the
15 real party in interest (also represented by Class Counsel). *Id.*; *see also Variety Media LLC v. Super.*
16 *Ct.*, Case No. B350578 (Ct. App. 2d Dist.).

17 To be sure, Class Counsel believes they will ultimately prevail on the writ petition. Mar.
18 Roberts Decl. ¶ 13. And the order to show cause “does *not* amount to a determination that petitioner
19 is correct on the merits; it merely determines that writ relief is the only adequate avenue for review.”
20 CAL. PRAC. GUIDE CIV. APP. & WRITS Ch. 15-F, at § 15:153 (emphasis in original). Nonetheless, if
21 the Court of Appeal were to side with the petitioner (*i.e.*, find that CIPA § 638.51 is limited to only
22 telephonic technology), then Plaintiffs’ claim here would likely be eviscerated. Mar. Roberts Decl.
23 ¶ 13. At the very least, had this matter continued, Defendant would have likely requested to stay the
24 case pending resolution of the writ petition, thus delaying any potential relief to Settlement Class
25 Members. *Id.*

26 The writ petition only compounds the already significant risks to Plaintiffs’ relatively novel
27 claim that Plaintiffs pointed out in their Motion for Preliminary Approval (Mar. Roberts Decl. ¶ 14),
28

1 further justifying the requested fee award. *See, e.g., In re Vizio, Inc. Consumer Privacy Litig.*, 2019
2 WL 12966638, at *7 (C.D. Cal. July 31, 2019) (finding fee award reasonable where recent Ninth
3 Circuit decision “threatens to undermine Plaintiffs’ theory of VPPA liability, and Plaintiffs’ Wiretap
4 Act claim raises an issue of first impression in the Ninth Circuit”); *Lalli v. First Team Real Estate—*
5 *Orange Cnty.*, 2022 WL 8207530, at *5 (C.D. Cal. Sept. 6, 2022) (same where recent Supreme Court
6 holding “would have likely precluded some of Lalli’s claims”); *Dynabursky v. Alliedbarton Sec.*
7 *Servs., LP*, 2016 WL 8921915, at *9 (C.D. Cal. Aug. 15, 2016) (same where the matter was stayed
8 “pending the Ninth Circuit’s decision” in a related case”).

9 C. Class Counsel Provided Quality Work In A Complex Case

10 The prosecution of a complex class action like this one “requires unique ... skills and
11 abilities.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (cleaned up).
12 This is particularly so in data privacy cases involving technical expertise in an evolving area of the
13 law. Given all the attendant risks of CIPA litigation, Class Counsel was called upon to “astutely
14 navigate[] a technically complex, procedurally fraught, and legally uncertain course to achieve a
15 superior result.” *In re Vizio*, 2019 WL 12966638, at *7. As noted above, this is the second-ever class
16 settlement under CIPA § 638.51, with the only other such settlement being secured by Class Counsel.

17 “The parties engaged in vigorous motion practice, including Class Counsel’s successful
18 defense against” Defendant’s motion to dismiss and motion for reconsideration or interlocutory
19 appeal. *In re Vizio*, 2019 WL 12966638, at *7. The motion to dismiss presented a relatively novel
20 theory of liability, and one where “in January 2024, only one court had” sustained similar allegations
21 and “several state courts had rejected the theory by the time the motion to dismiss was argued in
22 October 2024.” Oct. Roberts Decl. ¶ 30. And while the authority has moved in Plaintiffs’ favor in
23 the last year, that is attributable “to the work of Plaintiffs and undersigned counsel” in paving the
24 trail in this case and others. *Id.*

25 Moreover, in the months of litigation that followed the denial of Defendant’s motions, Class
26 Counsel (i) conducted factual research regarding data brokers, real-time bidding, and cookie syncing
27 that would have been used to amplify the allegations here; (ii) negotiated the Settlement at arm’s
28

1 length with Defendant, including attending a mediation with Hon. Robert B. Freedman (Ret.);
 2 (iii) subpoenaed third parties to ascertain the contact information for Settlement Class Members,
 3 including working with a non-testifying expert on the same; (iv) successfully moved for preliminary
 4 approval; and (v) managed (and are continuing to manage) the dissemination of notice and the claims
 5 process. Oct. Roberts Decl. ¶¶ 4-17; Mar. Roberts Decl. ¶¶ 9-11, 22.

6 The work performed by Class Counsel in this case thus supports their requested fee award.
 7 *Id.*; see also *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *13 (approving attorneys’
 8 fees where class counsel “performed significant factual investigation prior to bringing these actions
 9 ... and participated in protracted negotiations with Anthem”).

10 **D. The Contingent Nature Of The Fees And Financial Burden Carried By**
 11 **Class Counsel Support The Fee Request**

12 To date, Class Counsel has worked for two years with no payment, and no guarantee of
 13 payment absent a successful outcome. That presented considerable risk. See *Vasquez v. Coast Valley*
 14 *Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (“Class Counsel prosecuted the case on a
 15 contingency basis, which presented considerable risk.”). “Courts have long recognized that the
 16 attorneys’ contingent risk is an important factor in determining the fee award and may justify
 17 awarding a premium over an attorney’s normal hourly rates.” *In re Vizio*, 2019 WL 12966638, at *8
 18 (cleaned up); see also *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.
 19 1994). The contingent nature of Class Counsel’s fee recovery, coupled with the uncertainty that any
 20 recovery would be obtained, is significant. *Wash. Pub. Power*. 19 F.3d at 1300. In *Wash. Pub.*
 21 *Power*, the Ninth Circuit recognized that:

22 [i]t is an established practice in the private legal market to reward
 23 attorneys for taking the risk of non-payment by paying them a
 24 premium over their normal hourly rates for winning contingency
 25 cases ... [I]f this ‘bonus’ methodology did not exist, very few
 26 lawyers could take on the representation of a class client given the
 27 investment of substantial time, effort, and money, especially in light
 28 of the risks of recovering nothing.

29 *Id.* at 1299-1300 (cleaned up); see also *McKeen-Chaplin v. Provident Savings Bank, FSB*, 2018 WL
 30 3474472, at *2 (E.D. Cal. July 19, 2018) (“Counsel has not received payment for the vast majority
 31 of its time spent on this case over the last five and a half years, and took on significant financial risk

1 by taking on this action on a contingency fee basis.”); *Graham v. DaimlerChrysler Corp.*, 34 Cal.
 2 4th 553, 580 (2004) (“A contingent fee must be higher than a fee for the same legal services paid as
 3 they are performed. The contingent fee compensates the lawyer not only for the legal services he
 4 renders but for the loan of those services.”) (cleaned up); *In re Sumitomo Copper Litig.*, 74 F. Supp.
 5 2d 393, 396-98 (S.D.N.Y. 1999) (“No one expects a lawyer whose compensation is contingent on
 6 the success of his services to charge, when successful, as little as he would charge a client who in
 7 advance of the litigation has agreed to pay for his services, regardless of success.”).

8 Further, if the case had advanced through class certification, Class Counsel’s expenses would
 9 have increased manifold, and Class Counsel would have been required to advance these expenses
 10 potentially for several years to litigate this action through judgment and appeals. This is compounded
 11 by the risky nature of this case. Argument § I.B, *supra*; *see also* Oct. Roberts Decl. ¶¶ 29-34; Mar.
 12 Roberts Decl. ¶¶ 12-14. And Class Counsel has already expended more than \$51,000 in out-of-
 13 pocket litigation expenses here. Mar. Roberts Decl. ¶ 26. By achieving an early resolution, Class
 14 Counsel “reduce[d] attorneys’ fees, preserve[d] value for the class, and” obviated the significant risk
 15 of non-payment. *In re California Pizza Kitchen Data Breach Litig.*, 129 F.4th 667, 678 (9th Cir.
 16 2025).

17 **E. Market Rates As Reflected By Awards In Similar Cases Support Class**
 18 **Counsel’s Fee Request**

19 Fee awards must also consider the interest in “encourage[ing] plaintiff’s attorneys to move
 20 for early settlement, provid[ing] predictability for the attorneys and the class members, and
 21 reduc[ing] the time consumed by counsel and court in dealing with voluminous fee petitions.” *In re*
 22 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1378-79 (N.D. Cal. 1989).

23 Class Counsel’s fee request of 29% of the Settlement Fund—marginally more than the 25%
 24 benchmark in this Circuit—is reasonable. *See, e.g., In re Vizio*, 2019 WL 12966638, at *9 (“[T]he
 25 Court finds that an award of 33% of the Settlement Fund is appropriate and reasonable in this
 26 action.”); *Vizcaino*, 290 F.3d at 1050 (“We conclude that the district court ... did not abuse its
 27 discretion in finding a 28% fee award to be reasonable under the percentage method.”); *In re Anthem,*
 28 *Inc. Data Breach Litig.*, 2018 WL 3960068, at *9 (“[T]he Court finds that a percentage award of

1 27% of the common fund is appropriate...”); *de Mira v. Heartland Emp. Serv., LLC*, 2014 WL
2 1026282, at *3 (N.D. Cal. Mar. 13, 2014) (“An attorney’s fee award that is 28% of the common fund
3 is consistent with, and within the range of, awards made in wage and hour cases by district courts in
4 California.”).

5 Based on the foregoing, there is ample authority to support the 28.93% fee award here.

6 **II. CLASS COUNSEL’S ATTORNEYS’ FEES ARE REASONABLE UNDER A** 7 **LODESTAR CROSS-CHECK**

8 Courts in the Ninth Circuit often examine the lodestar calculation as a cross-check on the
9 percentage fee award to ensure that counsel will not receive a “windfall.” *Vizcaino*, 290 F.3d at
10 1050. The cross-check analysis is a two-step process. *First*, the lodestar is determined by
11 multiplying the number of hours reasonably expended by the reasonable rates requested by the
12 attorneys. *See Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 451 (E.D. Cal. 2013).
13 *Second*, the Court cross-checks the proposed percentage fee against the lodestar. *Id.* “Three figures
14 are salient in a lodestar calculation: (1) counsel’s reasonable hours, (2) counsel’s reasonable hourly
15 rate and (3) a multiplier thought to compensate for various factors (including unusual skill or
16 experience of counsel, or the ex ante risk of nonrecovery in the litigation).” *Id.* (cleaned up). Here,
17 the lodestar cross-check confirms the reasonableness of Class Counsel’s requested fee.

18 **A. Class Counsel Spent A Reasonable Number Of Hours On This** 19 **Litigation At A Reasonable Hourly Rate**

20 Class Counsel has submitted their detailed daily billing records showing what work was done
21 and by whom. Roberts Decl. Ex. 3. Those records confirm Class Counsel’s efficient and reasonable
22 billing.

23 As to the time spent on this matter, “the Ninth Circuit has instructed district courts to defer
24 to the winning lawyers’ professional judgment as to how much time they were required to spend on
25 the case.” *Curran v. City of Oakland*, 2025 WL 3485360, at *6 (N.D. Cal. Dec. 4, 2025) (cleaned
26 up). Here, Class Counsel has spent 483.3 hours on this matter over the last two years, and the detailed
27 billing records submitted to the Court reflect Class Counsel’s “us[e] [of] billing judgment to ensure
28 that duplicative and unnecessary time has been excluded and that only time reasonably devoted to
the litigation has been included.” Mar. Roberts Decl. ¶ 23. Also notably, approximately 74% of the

1 time billed to this matter was by associates (one of whom was elevated to partner in December),
2 emphasizing that Class Counsel made efficient use of attorney time. *Id.* ¶ 24. Accordingly, “Class
3 Counsel’s time spent on this matter was efficient and diligent and led to an excellent result for the
4 Class.” *Curran*, 2025 WL 3485360, at *6.

5 As to Class Counsel’s rates, rates are “reasonable where they [are] similar to those charged
6 in the community and approved by other courts.” *Hartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D.
7 Cal. 2011). Here, the blended hourly rate for Class Counsel’s work is \$720.24. Mar. Roberts Decl.
8 ¶ 24.² California courts have found Class Counsel’s rates to be fair and reasonable. *See Perez v.*
9 *Rash Curtis & Associates*, 2020 WL 1904533, at *20 (N.D. Cal. Apr. 17, 2020) (finding Bursor &
10 Fisher’s blended hourly rate of \$634.48 to be reasonable); *Kaupelis v. Harbor Freight Tools USA,*
11 *Inc.*, 2022 WL 2288895, at *9 (C.D. Cal. Jan. 12, 2022) (finding Bursor & Fisher hourly rates ranging
12 from \$250/hr to \$1000/hr as “reasonable compared to other awards in California courts”); *Elder v.*
13 *Hilton Worldwide Holdings, Inc.*, 2021 WL 4785936, at *9 (N.D. Cal. Feb. 4, 2021) (finding Bursor
14 & Fisher rates ranging from \$200/hr to \$1000/hr “are reasonable”); *Hendricks v. Starkist Co.*, 2016
15 WL 5462423 (N.D. Cal. Sept. 29, 2016) (“The Court further finds that the billing rates used by class
16 counsel to calculate the lodestar are reasonable and in line with prevailing rates in this District for
17 personnel of comparable experience, skill, and reputation.”).

18 California courts have likewise sustained rates similar to Class Counsel’s. *See, e.g., Grey*
19 *Fox, LLC v. Plains All-Am. Pipeline, L.P.*, 2024 WL 4267431, at *5 (C.D. Cal. Sept. 17, 2024)
20 (approving rates of “partners with hourly rates in the range of \$745 to \$1,380, associates in the range
21 of \$345 to \$720, and paralegals/research staff in the range of \$345 to \$535”); *Katz-Lacabe v. Oracle*
22

23 ² Class Counsel’s lodestar here is calculated using their current billing rates. Mar. Robert Decl.
24 ¶ 24. “The Supreme Court has held that when determining a reasonable attorney’s fee, ‘the
25 application of current rather than historic hourly rates’ is ‘an appropriate adjustment for delay in
26 payment.’” *S.G. v. City of Los Angeles*, 2024 WL 5286227, at *9 (C.D. Cal. Nov. 26, 2024) (quoting
27 *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *see also, e.g., Curran*, 2025 WL 3485360, at *6
28 n.1 (“The Court finds it appropriate for Class Counsel to use their current hourly rates to calculate
the lodestar on all time spent since the inception of the case to account for delay in payment.”); *Gates*
v. Deukmejian, 987 F.2d 1392, 1406 (9th Cir. 1992) (“We long have recognized that district courts
have the discretion to compensate prevailing parties for any delay in the receipt of fees by awarding
fees at current rather than historic rates in order to adjust for inflation and loss of the use funds.”).

1 *Am., Inc.*, 2024 WL 4804974, at *5 (N.D. Cal. Nov. 15, 2024) (finding same rates were “in line with
 2 those prevailing in this District for similar services by lawyers of reasonably comparable skill,
 3 experience, and reputation”); *Curran*, 2025 WL 3485360, at *6 (approving rates of up to \$1,350 for
 4 partners, \$850 for associates, and \$475 for paralegals); *Gamino v. KPC Healthcare Holdings, Inc.*,
 5 2023 WL 3325190, at *6 (C.D. Cal. Mar. 11, 2023) (sustaining rates “ranging from \$280 to \$1,050”).
 6 And based on Class Counsel’s experience, Class Counsel’s hourly rates are reasonable compared to
 7 other legal fees charged in similar matters. *See* Mar. Roberts Decl. ¶¶ 29-33, *id.* Exs. 5-8.

8 Thus, Class Counsel billed a reasonable amount of time to this matter at reasonable rates.

9 **B. The Lack Of A Multiplier—If Not A Negative Multiplier Accounting**
 10 **For Forthcoming Work—Supports The Reasonableness Of Class**
 11 **Counsel’s Fee Request**

12 The lodestar analysis is not limited to the initial mathematical calculation of Class Counsel’s
 13 base fee. *See Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th Cir. 1996). Rather, Class
 14 Counsel’s actual lodestar may be enhanced according to those factors that have not been “subsumed
 15 within the initial calculation of hours reasonably expended at a reasonable rate.” *Hensley v.*
 16 *Eckerhart*, 461 U.S. 424, 434 n.9 (1983) (cleaned up); *see also Morales*, 96 F.3d at 364. Multipliers
 17 in the “range of 1.0-4.0” are considered “presumptively acceptable” in this Circuit. *Dyer v. Wells*
 18 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014).

19 Here, however, Class Counsel has not requested an enhancement to their lodestar. The
 20 requested fee award represents a 1.0 multiplier of Class Counsel’s lodestar. Mar. Roberts Decl. ¶
 21 25. In another words, Class Counsel “does not request a multiplier at all.” *In re Anthem, Inc. Data*
 22 *Breach Litig.*, 2018 WL 3960068, at *27. This strongly supports the requested fee award. *Id.* (“In
 23 the Ninth Circuit, multipliers ‘ranging from one to four are frequently awarded.’”) (quoting *Vizcaino*,
 24 290 F.3d at 1051 n.6).

25 Moreover, courts routinely include the time class counsel projects to spend on a matter in the
 26 lodestar cross-check. *See, e.g., In re Volkswagen “Clean Diesel” Mktg., Sales Practices, and Prods.*
 27 *Liab. Litig.*, 746 F. App’x 655, 659 (9th Cir. 2018) (“The district court did not err in including
 28 projected time in its lodestar cross-check; the court reasonably concluded that class counsel would,

1 among other things, defend against appeals and assist in implementing the settlement”); *Reyes v.*
2 *Bakery & Confectionery Union & Indus. Int’l Pension Fund*, 281 F. Supp. 3d 833, 856 (N.D. Cal.
3 2017) (including, over the defendants’ objection, “125 anticipated future hours” to be spent on
4 “communicating with the settlement administrator and responding to inquiries from class members”
5 in the lodestar calculation); *Corzine v. Whirlpool Corp.*, 2019 WL 7372275, at *11 (N.D. Cal. Dec.
6 31, 2019) (including “an estimate of 250 hours for future work to complete Settlement’s claims
7 process through 2026” in the lodestar calculation). Here, Class Counsel anticipates spending at least
8 an additional 50 hours drafting the final approval motion, preparing for and attending the Final
9 Approval Hearing, and assisting with settlement administration and Settlement Class Member
10 inquiries. Mar. Roberts Decl. ¶ 25.

11 Including an additional 50 hours at Class Counsel’s blended hourly rate of \$720.24 would
12 increase Class Counsel’s lodestar to \$383,970.50 and lead to a negative lodestar multiplier of 0.91.
13 *Id.* This further supports the reasonableness of Class Counsel’s fee request. *See, e.g., Wong v. Arlo*
14 *Techs., Inc.*, 2021 WL 1531171, at *11 (N.D. Cal. Apr. 19, 2021) (“[A] multiplier below 1.0 is below
15 the range typically awarded by courts and is presumptively reasonable.”); *Fitzhenry-Russell v. Coca-*
16 *Cola Co.*, 2019 WL 11557486, at *10 (N.D. Cal. Oct. 3, 2019) (awarding fees where fee request
17 “result[ed] in a negative lodestar multiplier of 0.92”); *Rabin v. PricewaterhouseCoopers LLP*, 2021
18 WL 837626, at *8 (N.D. Cal. Feb. 4, 2021) (“Plaintiffs request a negative 0.6x multiplier, which
19 supports the request for a greater-than-average common fund percentage award.”); *Schiller v.*
20 *David’s Bridal, Inc.*, 2012 WL 2117001, at *23 (E.D. Cal. June 11, 2012) (“An implied negative
21 multiplier [of 0.76] supports the reasonableness of the percentage fee request.”); *Seguin v. County of*
22 *Tulare*, 2018 WL 1919823, at *7 (E.D. Cal. Apr. 24, 2018) (same for “negative modifier” of 0.55).

23 **III. CLASS COUNSEL’S EXPENSES WERE REASONABLE AND NECESSARILY** 24 **INCURRED TO ACHIEVE THE BENEFITS OBTAINED**

25 To date, Class Counsel incurred out-of-pocket costs and expenses in the aggregate amount of
26 \$51,872.96 in prosecuting this litigation on behalf of the Class. Roberts Decl. ¶ 26; *see also id.* Ex.
27 4. The Ninth Circuit allows recovery of litigation expenses in the context of a class action settlement.
28 *See Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). Class Counsel is entitled to

1 reimbursement for standard out-of-pocket expenses that an attorney would ordinarily bill a fee-
2 paying client. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). These expenses include
3 (i) court fees; (ii) research fees; (iii) mediation and service fees; (iv) expert consulting fees; (v) travel
4 expenses related to the motion to dismiss hearing, mediation, and preliminary approval hearing; (vi)
5 subpoenas to the Third Parties; and (vii) the imaging of Plaintiffs’ devices. Mar. Roberts Decl. ¶ 26.
6 Each of these expenses was necessarily and reasonably incurred to bring this case to a successful
7 conclusion, and they reflect market rates for various categories of expenses incurred. *Id.*

8 **IV. PLAINTIFFS’ REQUESTED SERVICE AWARDS ARE REASONABLE**

9 This Court should also approve the requested Service Awards to the Plaintiffs as they are
10 just, fair and reasonable. Service awards “are fairly typical in class action cases.” *Rodriguez v. W.*
11 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *Greko v. Diesel U.S.A., Inc.*, 2013 WL 1789602, at
12 *13 (N.D. Cal. Apr. 26, 2013) (granting request for \$5,000 incentive award). Such awards “are
13 intended to compensate class representatives for work done on behalf of the class, to make up for
14 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
15 willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958-59. Service awards are
16 committed to the sound discretion of the trial court and should be awarded based upon the court’s
17 consideration of, *inter alia*, the amount of time and effort spent on the litigation, the duration of the
18 litigation and the degree of personal gain obtained as a result of the litigation. *See Van Vranken v.*
19 *Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995); *see also* District Guideline 7.

20 Here, each Plaintiff seeks a \$5,000 incentive award. The significant result achieved for the
21 Settlement Class would not have been possible without Plaintiffs’ important contributions. Mar.
22 Roberts Decl. ¶ 34. Plaintiffs have kept in constant communication with counsel, have reviewed
23 important documents—including the Complaint, First Amended Complaint, and Settlement—and
24 assisted with Class Counsel’s investigation of this matter, and provided their browser traffic from
25 the GameSpot website that supported their allegations. Mar. Roberts Decl. ¶ 36; Shah Decl. ¶¶ 4-6,
26 8; Kim Decl. ¶¶ 4-6, 8. Moreover, Plaintiffs had their devices imaged in preparation for the
27 mediation, which prevented Plaintiffs from using their laptops for several hours or more. Roberts
28

1 Decl. ¶ 36; Shah Decl. ¶ 6; Kim Decl. ¶ 6. Plaintiffs were also prepared to sit for a deposition and
2 testify at trial were this matter to go forward. Roberts Decl. ¶ 36; Shah Decl. ¶ 6; Kim Decl. ¶ 6.

3 On top of their substantial contributions in this case, courts in the Ninth Circuit have held
4 that “[a]n incentive award of \$5,000 is presumptively reasonable.” *In re Wells Fargo & Co. S’holder*
5 *Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) (awarding \$25,000 incentive awards to
6 lead plaintiffs). Indeed, courts in this district have held that “incentive awards” of up to “\$10,000”
7 fall within the “typical[] range.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266–67 (N.D.
8 Cal. 2015). And the two service awards here—\$10,000 total—represent 0.83% of the Settlement
9 Fund, which likewise bolsters the reasonableness of the service awards. *See, e.g., Hightower v.*
10 *JPMorgan Chase Bank, N.A.*, 2015 WL 9664959, at *13 (C.D. Cal. Aug. 4, 2015) (granting service
11 awards and noting the service awards, “which constitute 1.5% of the maximum settlement amount,
12 do not significantly reduce the amount of settlement funds available to the rest of the class”); *Joh v.*
13 *Am. Income Life Ins. Co.*, 2021 WL 66305, at *9 (N.D. Cal. Jan. 7, 2021) (same where service awards
14 were “equal to 0.5% of the net Settlement fund”).

15 CONCLUSION

16 For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court
17 (i) award \$348,090.00 in attorneys’ fees to Class Counsel; (ii) award \$51,872.96 in costs and
18 expenses to Class Counsel; (iii) award a \$5,000 service award to each Plaintiff; and (iv) enter the
19 [Proposed] Order in the form submitted herewith.³

20 Dated: February 27, 2026

Respectfully submitted,

21 By: /s/ Max S. Roberts
22 Max S. Roberts

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³ Class Counsel understands that the Court’s standard practice is to hold back approximately ten percent (10%) of the requested fee award until after the post-distribution accounting. The [Proposed] Order submitted herewith accounts for this.

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