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12 *Class Counsel*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF NEVADA**

17 JENNIFER MIRANDA and PATRICIA
 18 TERRY, on behalf of themselves and all others
 similarly situated,

19 Plaintiffs,

20 v.

21 GOLDEN ENTERTAINMENT (NV), INC.,

22 Defendant.

Case No.: 2:20-cv-00534-APG-DJA

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION FOR AN AWARD OF
 ATTORNEYS' FEES, COSTS AND
 EXPENSES, AND INCENTIVE
 AWARDS FOR THE CLASS
 REPRESENTATIVES**

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE THAT** Plaintiffs Jennifer Miranda and Patricia Terry
 25 (“Plaintiffs”), by and through their undersigned counsel of record, move pursuant to Fed. R. Civ. P.
 26 23(h) and 54(d)(2) and the Court’s December 17, 2020 Order Preliminarily Approving Class
 27
 28

1 Action Settlement, for an order awarding attorneys' fees, reimbursement of litigation costs and
2 expenses, and payment of incentive fees to Class Representatives.

3 This motion is made on the grounds that an award of attorneys' fees, reimbursement of
4 litigation costs and expenses, and payment of incentive fees is proper, given that the parties have
5 agreed that Class Counsel may make such applications in their Class Action Settlement Agreement,
6 the work of Class Counsel has conferred substantial benefits to the Class, and that such awards are
7 permitted under the laws of this Circuit.

8 This motion is based on: (1) this Notice of Motion and Motion, (2) the Memorandum of
9 Points and Authorities in support thereof, (3) the Declaration of Yitzchak Kopel, (4) the
10 declarations of Jennifer Miranda and Patricia Terry (ECF Nos. 40-1 and 40-2), (5) the papers and
11 pleadings on file, (6) and other written and oral arguments that may be presented to the Court.

12 Dated: April 15, 2021

Respectfully submitted,

13
14 By: /s/ Bradley S. Schrager

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Class Counsel

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CASES

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Cosgrove v. Sullivan,
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Ebarle v. Lifelock, Inc.,
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Govereau v. Wellish,
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Hanlon v. Chrysler Corp.,
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Harris v. Marhoefer,
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Hartless v. Clorox Co.,
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1 *Hensley v. Eckerhart*,
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2 *In re Activision Sec. Litig.*,
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4 *In re Anthem, Inc. Data Breach Litig.*,
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5 *In re Anthem, Inc. Data Breach Litig.*,
6 327 F.R.D. 299 (N.D. Cal. 2018) 1, 8, 9

7 *In re Beverly Hills Fire Litig.*,
8 639 F. Supp. 915 (E.D. Ky. 1986)..... 14

9 *In re Bluetooth Headset Prods. Liab. Litig.*,
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10 *In re Cenco Inc. Sec. Litig.*,
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11 *In re Equifax Inc. Customer Data Security Breach Litig.*,
12 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) 10

13 *In re Home Depot, Inc., Customer Data Security Breach Litig.*,
14 2017 WL 9605207 (N.D. Ga. Oct. 11, 2017),
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15 *In re Pac. Enters. Sec. Litig.*,
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16 *In re Sonic Corp. Customer Data Sec. Breach Litig.*,
17 2019 WL 3773737 (N.D. Ohio Aug. 12, 2019)..... 8

18 *In re Target Corp. Customer Data Security Breach Litig.*,
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19 *In re TracFone Unlimited Service Plan Litig.*,
20 112 F. Supp. 3d 993 (N.D. Cal. 2015)..... 11

21 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
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22 *In re Yahoo! Inc. Customer Data Security Breach Litig.*,
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24 *In re Zappos.com, Inc.*,
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25 *Kerr v. Screen Extras Guild, Inc.*,
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27 *Lee v. Enterprise Leasing Co.-West*,
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28

1 *Lopez v. Youngblood*,
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2 *Maley v. Del Global Technoligies Corp.*,
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3

4 *Martin v. AmeriPride Servs., Inc.*,
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5 *Martínez v. Silveira*,
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6

7 *Morales v. City of San Rafael*,
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8 *Morris v. Lifescan, Inc.*,
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9

10 *Muchnick v. First Fed. Savs. & Loan Assoc. of Phil.*,
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11 *Municipal Auth. of Bloomsburg v. Pennsylvania*,
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12

13 *Pacquiao v. Mayweather*,
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14 *Perrong v. Sperian Energy Corp.*,
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15

16 *Roberts v. Texaco, Inc.*,
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17 *Rodriguez v. West Publishing Corp.*,
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18

19 *Smith v. Triad of Ala., LLC*,
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20 *State of Florida v. Dunne*,
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21

22 *Staton v. Boeing*,
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23 *Tallman v. CPS Sec. (USA), Inc.*,
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24

25 *Van Vranken v. Atl. Richfield Co.*,
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26 *Vizcaino v. Microsoft Corp.*,
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Young v. Polo Retail, LLC,
2007 WL 951821 (N.D. Cal. Mar. 28, 2007) 4

OTHER AUTHORITIES

Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 14:03 (3d ed. 1992) 14

1 Plaintiffs Jennifer Miranda and Patricia Terry (“Plaintiffs” or “Class Representatives”)
2 respectfully submit this memorandum in support of Plaintiffs’ Motion for an Award of Attorneys’
3 Fees, Costs and Expenses, and Incentive Awards for the Class Representatives.

4 I. INTRODUCTION

5 The Settlement Agreement provides over \$4.77 million in value to class members through
6 free credit monitoring and reimbursement for lost time and out-of-pocket expenses. *See generally*
7 Declaration of Yitzchak Kopel (“Kopel Decl.”), ¶¶ 9-10; *see also* ECF No. 34-2 (“Settlement
8 Agreement”). As discussed in detail in Plaintiffs’ Motion for Preliminary Approval of Class
9 Action Settlement, ECF No. 34, at 21-23, Class Counsel was able to retain a reputable class action
10 administration company provided a sweeping notice campaign with a claims rate in line with much
11 larger data breach settlements. *See* Declaration of Brian Smitherman ¶¶ 2, 20; *In re Anthem, Inc.*
12 *Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (granting final approval of data breach
13 settlement where “[o]nly about 1.8% of the Settlement Class Members have submitted claims”); *id.*
14 (noting that the claims rate “in the *In re Home Depot* and *In re Target* data-breach actions”—in
15 which final approval was granted in both actions—were “0.2% and 0.23%” respectively); *In re*
16 *Yahoo! Inc. Customer Data Security Breach Litig.*, 2020 WL 4212811, at *34 (N.D. Cal. July 22,
17 2020) (granting final approval of data breach settlement with “only a 0.3% claims rate”); *Fox v.*
18 *Iowa Health System*, Case No. 3:18-cv-00327-JDP, ECF No. 101, at ¶ 28 (W.D. Wis. Dec. 3,
19 2020), *final approval granted*, 2021 WL 826741 (W.D. Wisc. Mar. 4, 2021) (12,028 claims out of
20 1.4 million class members in data breach action, or a 0.86% claims rate). Further, all costs and
21 expenses related to the Settlement Agreement are paid by Defendant separately from the relief to
22 class members. Kopel Decl. ¶ 10. Thus, a not a single penny awarded to Plaintiffs and their
23 counsel will come out of the pockets of Class Members.

24 Pursuant to the Settlement Agreement, Class Members (1) can recoup up to \$200 in
25 documented out-of-pocket expenses, with an aggregate cap of \$250,000, (2) receive reimbursement
26 for up to three hours of undocumented lost time, payable at \$15 per hour (for a total of \$45), that is
27 not subject to the \$250,000 aggregate cap, and (3) can sign up for a free year of “Identity Guard
28

1 Total powered by IBM Watson” advanced credit monitoring (which includes, among other things, a
2 policy of up to \$1 million reimbursement insurance from AIG covering losses due to identify theft and
3 stolen funds), an aggregate retail value of over \$3.5 million. Altogether, the relief available under
4 the settlement, including the attorneys’ fees and expenses requested hereunder, totals \$4.77 million.
5 Kopel Decl. ¶¶ 9-10. This is an outstanding result for the class, especially given the relatively
6 small size of the data breach.

7 In light of these considerations, Class Counsel requests that the Court approve an award of
8 attorneys’ fees of less than 5% of the \$4.77 million value of the Settlement Fund, or \$224,500.
9 Ninth Circuit precedent requires courts to award class counsel fees based on the total benefits being
10 made available rather than the amount actually paid out. The 5% fee is also far below the Ninth
11 Circuit’s “25% of the common fund” benchmark for attorney fees, and is fair in light of the
12 significant time Class Counsel has devoted to this case on a contingency fee basis with the threat of
13 no recovery at all absent a successful resolution.

14 Class Counsel also seeks reimbursement of \$481.49 in out-of-pocket expenses. *See* Kopel
15 Decl. ¶ 27; *see also id.*, Ex. 4 (an itemized listing of each out-of-pocket expense incurred by Bursor
16 & Fisher in connection with this case). The expenses were necessary to the prosecution of this
17 case, were carefully and reasonably expended, and should be reimbursed. Kopel Decl. ¶ 26.
18 Further, the expenses are being paid independent of relief to Settlement Class Members, such that
19 the costs and fees will not detract from said relief.

20 Finally, Plaintiffs Miranda and Terry request that the Court award them service awards in
21 the amount of \$3,000 each to account for the significant time and effort they invested in this case
22 on behalf of the Class.

23 **II. BACKGROUND AND PROCEDURAL HISTORY**

24 The Declaration of Yitzchak Kopel, submitted herewith, contains a detailed discussion of
25 the background and procedural history of this case, including (i) Plaintiffs’ pre-suit investigation,
26 (ii) the pleadings and motions, (iii) the parties’ arms-length settlement negotiations, and
27 (v) preliminary approval and dissemination of notice.
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III. SUMMARY OF THE PROPOSED SETTLEMENT

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Class Members can recoup up to \$200 in documented out-of-pocket expenses incurred as a result of the Phishing Attack,¹ with an aggregate cap of \$250,000. Out-of-pocket expenses include eleven categories of expenses that are defined in § 2.1 of the Settlement Agreement. To the extent that the total out-of-pocket expenses claimed exceeds \$250,000, each Settlement Class Member's claim will be reduced on a pro rata basis. Class Members can also receive reimbursement for up to three hours of undocumented lost time, payable at \$15 per hour (for a total of \$45), that is not subject to the \$250,000 aggregate cap. Finally, Class Members can sign up for a free year of "Identity Guard Total powered by IBM Watson" advanced credit monitoring, an aggregate retail value of over \$3.5 million. The advanced credit monitoring includes, among other things, a policy of up to \$1 million reimbursement insurance from AIG covering losses due to identify theft and stolen funds.

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As discussed in Plaintiffs' Preliminary Approval Motion, these three categories of relief provide over \$4.5 million in value available to the Settlement Class (excluded the requested attorneys' fees and expenses): \$250,000 in out-of-pocket expense reimbursement, up to \$45 per class member for undocumented lost time, totaling \$795,735, and one free year of "Identity Guard Total powered by IBM Watson" credit monitoring, which includes, among other things, a \$1 million insurance policy per Settlement Class Member, and which carries a retail value of over \$3.5 million. Kopel Decl. ¶ 9. Altogether, when including the requested attorneys' fees and costs, the relief available under the settlement totals \$4.77 million,. *Id.* ¶ 10. This result is particularly outstanding given the relatively small size of the data breach.

IV. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AWARD IS FAIR AND REASONABLE

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Under Ninth Circuit standards, a District Court may award attorneys' fees under either the "percentage-of-the-benefit" method or the "lodestar" method. *Fischel v. Equitable Life Assur.*

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¹ All capitalized terms used herein that are not otherwise defined are defined in the Settlement Agreement.

1 *Soc’y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029
2 (9th Cir. 1998). Class Counsel’s fee request is fair and reasonable under either of these methods.

3 **A. The Percentage Of The Benefit Method**

4 Under the common fund doctrine, courts typically award attorneys’ fees based on a
5 percentage of the total settlement. *See State of Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir.
6 1990); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming
7 attorneys’ fee award of 33% of the recovery); *Morris v. Lifescan, Inc.*, 54 F. App’x 663, 664 (9th
8 Cir. 2003) (affirming attorneys’ fee award of 33% of the recovery).

9 *1. The Total Value Of The Settlement Fund Is \$4,770,735*

10 To calculate attorneys’ fees based on the percentage of the benefit, the Court must first
11 determine the value of the Settlement Fund. In doing so, the Court should only consider the
12 amount *made available* to the Class, rather than the total monetary amount *distributed* to the Class.
13 *Lee v. Enterprise Leasing Co.-West*, 2015 WL 2345540, at *10 (D. Nev. May 15, 2015) (“[T]he
14 Court finds that the percentage of the fund cross check should be calculated based on the total
15 amount available to the class, rather than the amount actually recovered.”); *Castellon v. Penn-
16 Ridge Transportation, Inc.*, 2020 WL 7786659, at *11 (C.D. Cal. Nov. 3, 2020) (“Ninth Circuit
17 precedent requires courts to award class counsel fees based on the total benefits being made
18 available to class members rather than the actual amount that is ultimately claimed.”) (internal
19 quotations omitted); *Young v. Polo Retail, LLC*, 2007 WL 951821, at *8 (N.D. Cal. Mar. 28, 2007)
20 (“The Ninth Circuit, however, bars consideration of the class’s actual recovery in assessing the fee
21 award”); *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (ruling that
22 a district court abused its discretion in basing attorney fee award on actual distribution to class
23 instead of amount being made available); *Lopez v. Youngblood*, 2011 WL 10483569, *12 (E.D.
24 Cal. Sept. 2, 2011) (“It is well established that, in claims made [settlements] ... it is appropriate to
25 award class fund attorneys’ fees based on the gross settlement fund.”). Further, courts must
26 include any attorneys’ fee, expenses, and notice and claims administration payments to be made in
27 determining the value of benefits conferred to Settlement Class Members. *Staton v. Boeing*, 327
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1 F.3d 938, 972 (9th Cir. 2003); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 645 (S.D. Cal. 2011), *aff'd*,
2 473 F. App'x. 716 (9th Cir. 2012) (“In cases such as this one, where attorneys' fees are paid
3 separately from the claim fund, courts base the fee award on the entire settlement fund as that
4 package is the benefit to the class. This amount includes notice and administration costs and
5 separately paid attorneys' fees and costs.”).

6 Here, the total value of the Settlement Fund is \$4,770,735: \$250,000 in out-of-pocket
7 expense reimbursement, up to \$45 per class member for undocumented lost time, totaling
8 \$795,735, and one free year of “Identity Guard Total powered by IBM Watson” credit monitoring,
9 which includes, among other things, a \$1 million insurance policy per Settlement Class Member,
10 and which carries a retail value of over \$3.5 million, and requested attorneys’ fees and expenses
11 totaling \$225,000. Kopel Decl. ¶ 9.

12 2. *Class Counsel’s Requested Attorneys’ Fees Are Far Below The*
13 *Ninth Circuit’s 25% Benchmark*

14 The Ninth Circuit established 25% of the common fund as a starting benchmark. *Hanlon*,
15 150 F.3d at 1029. However, Class Counsel seeks less than \$225,000 in attorneys’ fees, or 5% of
16 the total settlement value.

17 The Ninth Circuit has identified five factors that are relevant in determining whether
18 requested attorneys’ fees in a common fund case are reasonable: (i) the results achieved; (ii) the
19 risk of litigation; (iii) the skill required and the quality of work; (iv) market rates as reflected by
20 awards made in similar cases; and (v) the contingent nature of the fee and the financial burden
21 carried by the plaintiffs. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002); *In*
22 *re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *9 (N.D. Cal. Aug. 17, 2018). Each of
23 these factors shows that Class Counsel’s fee request of 5% of the settlement value is reasonable,
24 and that any downward adjustment would be manifestly unfair.

25 i. *Class Counsel Achieved Extraordinary Results For*
26 *The Class*

27 [T]he overall result and benefit to the Class ... has been called the most critical factor in
28 granting a fee award.” *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *9 (internal

1 quotations omitted). The considerations offered by the Settlement Agreement provide
 2 extraordinary results for the Class. As discussed above, Class Members may be entitled to (i) up to
 3 \$200 in documented out-of-pocket expenses incurred as a result of the Phishing Attack, with an
 4 aggregate cap of \$250,000, (ii) up to three hours of undocumented lost time, payable at \$15 per
 5 hour (for a total of \$45), that is not subject to the \$250,000 aggregate cap, and (iii) a free year of
 6 “Identity Guard Total powered by IBM Watson” advanced credit monitoring—which includes,
 7 among other things, a policy of up to \$1 million reimbursement insurance from AIG covering
 8 losses due to identify theft and stolen funds—an aggregate retail value of over \$3.5 million. Kopel
 9 Decl. ¶ 9. Considering the significant risks of non-payment Class Members would have faced had
 10 this case proceeded, the Settlement Agreement provides tremendous relief. *Id.* ¶¶ 11-15.

11 The \$4,545,735 settlement value (exclusive of counsel’s fee and expense request) and
 12 individual relief per Class Member are also outstanding in comparison to other, larger data breach
 13 cases²:

Case	Size	Out-Of Pocket Reimbursement	Lost Time Reimbursement	Credit Monitoring
<i>Miranda v. Golden Entertainment (NV), Inc.</i> , Case No. 2:20-cv-00534 (D. Nev.)	17,683	Up to \$200 documented per class member, capped at \$250,000 in aggregate	Up to three hours, \$15 per hour (total of \$45), undocumented, not subject to aggregate cap	One free year of “Identity Guard Total powered by IBM Watson” credit monitoring, including a \$1 million AIG insurance policy for losses from data breach
<i>Johansson-Dohrmann v. CBR Systems, Inc.</i> , Case No. 3:12-cv-01115 (S.D. Cal.)	~292,000	Aggregate cap of \$500,000 for all documented out of pocket expenses, \$200 cap per class member for cost of obtaining credit monitoring	\$10 per hour, no hour cap, documented, subject to \$500,000 aggregate cap	Two free years of ProtectMyID Alert credit monitoring

27 ² The below-referenced settlement have been attached as Exhibits 5-8 to the Declaration of
 28 Yitzchak Kopel ISO Motion for Preliminary Approval (ECF No. 34).

Case	Size	Out-Of Pocket Reimbursement	Lost Time Reimbursement	Credit Monitoring
<i>Smith v. ComplyRight, Inc.</i> , Case No. 1:18-cv-04990 (N.D. Ill.)	~663,000	Estimated \$50 cash payment per class member from \$3.025 million fund, no documentation required	Estimated \$50 cash payment from \$3.025 million fund, no documentation required	Two free years of MyIDCare credit monitoring
<i>Bray v. Gamestop Corp.</i> , Case No. 1:17-cv-01365 (D. Del.)	~1.3 million	Up to \$235 per class member in documented out-of-pocket expenses, no aggregate cap	Up to three hours of documented lost time per class member, compensable at \$15 per hour (total of \$45)	None
<i>In re LinkedIn User Privacy Litig.</i> , Case No. 5:12-cv-03088 (N.D. Cal.)	~6.5 million	Maximum payment of \$50 from \$1.25 million common fund, no documentation	Maximum payment of \$50 from \$1.25 million common fund, no documentation	None

As the above chart makes clear, Class Members in this case will be compensated for lost time and out-of-pocket expenses at roughly the same level as class members in much larger data breaches. Further, unlike class members in *CBR Systems* and *Gamestop*, Class Members here do not need documentation to recover lost time. Finally, unlike class members in *Gamestop* and *LinkedIn*, Class Members here can receive a free year of advanced credit monitoring. Thus, the Settlement Agreement here is equivalent, if not superior, to approved settlement agreements in much larger data breach cases.

ii. Plaintiffs' Claims Carried Substantial Litigation Risk

The second *Vizcaino* factor looks to the risk and novelty of the claims at issue. Both are certainly present here. *See generally* Kopel Decl. ¶¶ 11-15 (discussing the risks of litigating Plaintiffs' claims). Class Counsel undertook significant financial risk in prosecuting this case.

As an initial matter, data breach cases in general present a significant risk. *Fox v. Iowa Health System*, 2021 WL 826741, at *5 (W.D. Wisc. Mar. 4, 2021) ("Data breach litigation is evolving; there is no guarantee of the ultimate result."); *Gordon v. Chipotle Mexican Grill, Inc.*,

1 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case are
2 particularly risky, expensive, and complex.”); *In re Sonic Corp. Customer Data Sec. Breach Litig.*,
3 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and
4 risky.”). Those risks are exacerbated at class certification due to the “dearth of precedent” on non-
5 settlement data breach classes. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D.
6 Cal. 2018). Indeed, as far as Class Counsel knows, only one non-settlement data-breach class has
7 been certified under Fed. R. Civ. P. 23(b)(3) to date. *Id.* (citing *Smith v. Triad of Ala., LLC*, 2017
8 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017)). “Moreover, multiple federal courts around the
9 country had denied bids to certify classes in data-breach cases.” *In re Anthem, Inc. Data Breach*
10 *Litig.*, 2018 WL 3960068, at *12. At class certification, Golden would likely argue that
11 predominance and commonality cannot be satisfied because some class members did not suffer
12 identity theft or the like and so were not harmed by the data breach, and no damages model exists
13 that could compensate class members for their lost time. Without much precedent to bolster their
14 arguments, Plaintiffs would have faced a significant uphill battle.

15 Plaintiffs would have faced serious risks even before getting to class certification. Golden
16 previously brought a Fed. R. Civ. P. 12(b)(1) and 12(b)(6) motion (ECF No. 21). In that motion,
17 Golden argued that Plaintiffs’ negligence claims were barred by the economic loss rule, which has
18 some support in Nevada case law dealing with data breaches. *Affinity Gaming v. Trustwave*
19 *Holdings, Inc.*, 2016 WL 5799300, at *6 (D. Nev. Sept. 30, 2016) (dismissing gross negligence
20 claim under economic loss doctrine); *In re Zappos.com, Inc.*, 2013 WL 4830497, at *3 (D. Nev.
21 Sept. 9, 2013) (“[T]he Court is compelled to agree with Defendant that the economic loss doctrine
22 bars recovery in negligence in this case.”). Further, Golden argued that Plaintiff Miranda, as a
23 former Golden employee, could not recover under the Nevada Deceptive Trade Practices Act. *See*
24 *Govereau v. Wellish*, 2012 WL 5215098, at *2 (D. Nev. Oct. 19, 2012). While Class Counsel (and
25 some other district courts) disagree with Golden’s arguments, and Plaintiffs amended their
26 complaint to address some of these concerns (ECF No. 24), the risk that Plaintiffs’ entire case
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1 could be dismissed—or at least a significant portion of the Class, Golden’s current and former
2 employees, would be barred from recovery—weighed heavily in favor of settlement.

3 Even if Plaintiffs’ claims could proceed past class certification and dispositive motions, this
4 case would ultimately devolve into an uncertain “battle of the experts.” Golden would surely
5 present testimony from experts who would claim that Golden took appropriate steps to secure
6 sensitive information within its possession. Thus, Golden would present evidence that it was not
7 negligent and did not breach its contract with Class Members.

8 Plaintiffs would also face the very high risk that they could not present a damages model at
9 trial. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 318 (“The Court further notes that
10 trying the case may have presented certain manageability problems with regard to the calculation
11 of individual damages under some of the proposed damages theories.”); *In re Yahoo! Inc.*
12 *Customer Data Security Breach Litig.*, 2020 WL 4212811, at *9 (N.D. Cal. July 22, 2020) (“Yahoo
13 contested whether Plaintiffs could determine on a class-wide basis ... the value of any Personal
14 Information provided to Yahoo, and whether the Data Breaches caused a decrease in that value.”).
15 Even in certifying a non-settlement data breach class, the *Smith* court noted “[t]he Named Plaintiffs
16 claim myriad [] different expenses, costs, fees, penalties, lost opportunities, loss of time, mileage
17 costs, lost wages, professional fees, general frustration, and other inconveniences. Resolving these
18 claims for damages will require a series of proceedings in which each class member can put on his
19 or her case for damages.” *Smith v. Triad of Ala., LLC*, 2017 WL 1044692, at *14 (M.D. Ala. Mar.
20 17, 2017).

21 Despite these risks, the Settlement Agreement allows Class Members to submit claims for
22 documented out-of-pocket expenses up to \$200, undocumented lost time up to \$45, and one year of
23 advanced credit monitoring, a \$3.5 million at retail value. For most Class Members, the relief
24 provided by the Settlement Agreement is more than sufficient to cure the injuries they incurred as a
25 result of the Phishing Attack.

1 iii. *Class Counsel Provided Quality Work In A Complex*
2 *Case*

3 The third factor cited in *Vizcaino* looks to the skill required and the quality of work by
4 Class Counsel. *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *9 (citing *Vizcaino*,
5 290 F.3d at 1048-50). Here, Class Counsel “performed significant factual investigation prior to
6 bringing th[is] action[] ... participated in protracted negotiations with [Golden],” and filed several
7 pleadings. *Id.*, at *13. Further, had the case moved forward, Class Counsel would have had to
8 engage in matters such as expert testimony, evaluations of Golden’s security measures “as well as
9 the risks associated with the theft of personal information and the most effective remedies to
10 prevent fraud,” and the general complexities of a class action case. *Id.* This, combined with the
11 relative uncertainty in data breach law, meets the third factor. *Fox*, 2021 WL 826741, at *5 (“Data
12 breach litigation is evolving; there is no guarantee of the ultimate result.”).

13 iv. *Market Rates As Reflected By Awards In Similar*
14 *Cases*

15 The fourth factor cited by *Vizcaino* looks to market rates as reflected by awards in similar
16 cases. *Vizcaino*, 290 F.3d at 1049 (“Fourth, the court found the 28% rate to be at or below the
17 market rate.”). As an initial matter, Class Counsel’s 5% fee request is well below the 25% starting
18 benchmark set by the Ninth Circuit. *Hanlon*, 150 F.3d at 1029. Further, Class Counsel’s fee
19 request is well below other fee requests in data breach cases. *In re Anthem, Inc. Data Breach*
20 *Litig.*, 2018 WL 3960068, at *14-16 (finding 27% fee award in data breach case was reasonable);
21 *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018)
22 (affirming fee award of “29% of the total monetary payout Target is required to make as part of the
23 settlement”); *In re Home Depot, Inc., Customer Data Security Breach Litig.*, 2017 WL 9605207, at
24 *2 (N.D. Ga. Oct. 11, 2017), *rev’d other grounds*, 931 F.3d 1065 (11th Cir. 2019) (awarding fees
25 of roughly 33% of “total benefit” of settlement); *In re Equifax Inc. Customer Data Security Breach*
26 *Litig.*, 2020 WL 256132, at *31 (N.D. Ga. Mar. 17, 2020) (granting fee award of roughly 20% of
27 the settlement fund); *accord Martin v. AmeriPride Servs., Inc.*, 2011 WL 2313604, at *8 (S.D. Cal.
28 June 9, 2011) (noting that “courts may award attorneys fees in the 30%-40% range in ... class
 actions that result in recovery of a common fun[d] under \$10 million”). Fee awards must also

1 consider the interest in “encourage[ing] plaintiffs’ attorneys to move for early settlement,
2 provid[ing] predictability for the attorneys and the class members, and reduc[ing] the time
3 consumed by counsel and court in dealing with voluminous fee petitions.” *In re Activision Sec.*
4 *Litig.*, 723 F. Supp. 1373, 1378-79 (N.D. Cal. 1989).

5 Based on the foregoing, there is ample authority to support a fee award of less than 5% of
6 the settlement value. *Lee*, 2015 WL 2345540, at *10 (“If all class members had received cash, the
7 total amount available to class members would have been \$19,344,653.98 ... Class counsel’s
8 requested attorney fee award represents 11% of this figure, well below the 25% benchmark. Thus,
9 under the calculation based on the total amount available to class members, class counsel’s
10 requested attorney fee award is reasonable. ”); *In re TracFone Unlimited Service Plan Litig.*, 112
11 F. Supp. 3d 993, 1007 n.4 (N.D. Cal. 2015) (“[T]he fees awarded represent 11% [] of total
12 settlement amount. This figure is particularly reasonable in light of the 25% benchmark for fees
13 awards in the Ninth Circuit.”); *Ebarle v. Lifelock, Inc.*, 2015 WL 5076203, at *11 (N.D. Cal. Sept.
14 20, 2016) (“The Court declines to conduct a lodestar cross-check in this case, given that under the
15 percentage-of-the-fund method the fee request was significantly below the 25% benchmark.”); *Doe*
16 *v. Hawaii*, 2014 WL 12138769, at *3 (D. Haw. Apr. 22, 2013) (granting fee request where “the fee
17 request represents 15.65% of the total settlement award, which is well below the 25% benchmark
18 established by the Ninth Circuit”); *Martinez v. Silveira*, 2011 WL 13295761, at *2 (E.D. Cal. Dec.
19 14, 2011) (granting fee request where attorneys requested “nineteen percent (19%) of the total
20 settlement amount,” which was “below the 25% benchmark figure”).

21 v. *The Contingent Nature Of The Fee And Financial*
22 *Burden Borne By Class Counsel*

23 The fifth factor cited by *Vizcaino* was the contingent nature of the fee and the financial
24 burden carried by the plaintiffs. *Vizcaino*, 290 F.3d at 1050. To date, Class Counsel has worked
25 for roughly a year with no payment, and no guarantee of payment absent a successful outcome. If
26 the case had advanced through class certification, Class Counsel’s expenses would have increased
27 many-fold, and Class Counsel would have been required to advance these expenses potentially for
28 several years to litigate this action through judgment and appeals.

B. The Court May Alternatively Grant The Requested Attorneys' Fees Award Under The Lodestar Method

Under Ninth Circuit standards, a District Court may award attorneys' fees under the "lodestar" method. *Hanlon*, 150 F.3d at 1029. The lodestar figure is calculated by multiplying the hours spent on the case by reasonable hourly rates for the region and attorney experience. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011); *Hanlon*, 150 F.3d at 1029. The resulting lodestar figure may be adjusted upward or downward by use of a multiplier to account for factors including, but not limited to: (i) the quality of the representation; (ii) the benefit obtained for the class; (iii) the complexity and novelty of the issues presented; and (iv) the risk of nonpayment. *Hanlon*, 150 F.3d at 1029; *see also Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).³ Courts typically apply a multiplier or enhancement to the lodestar to account for the substantial risk that class counsel undertook by accepting a case where no payment would be received if the lawsuit did not succeed. *Vizcaino*, 290 F.3d at 1051.

Here, as of April 15, 2021, a fee award of \$224,500 of the Settlement Fund would amount to a 1.99 multiplier. Kopel Decl. ¶ 25. As discussed below, such a multiplier is reasonable in light of the complexity and novelty of the litigation, the hours and resources devoted to this litigation, the outstanding results achieved, and the significant risk of non-payment.

3. Class Counsel Spent A Reasonable Number Of Hours On This Litigation At A Reasonable Hourly Rate

Class Counsel worked very efficiently. A single law firm, Bursor & Fisher, P.A., served as Class Counsel, with Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP assisting as local counsel. Class Counsel have submitted their detailed daily billing records showing what work was done and by whom. Kopel Decl., Exs. 2-3. These records confirm Bursor & Fisher's efficient billing. For

³ *Kerr* identifies twelve factors for analyzing reasonable attorneys' fees:

(1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and the ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

1 example, Bursor & Fisher strives to assign as much work as possible to more junior lawyers who
2 bill at lower hourly rates in order to minimize fees for the class. Approximately 56% of hours were
3 billed by attorneys or paralegals billing at or less than \$325 per hour. Kopel Decl. ¶ 35. However,
4 this case required significant settlement negotiations, which required involvement by a more
5 experienced lawyer. *Id.* Only one partner, Mr. Kopel, billed any time on this case. *Id.* Mr. Kopel
6 billed 44% of the total hours, primarily on developing the litigation strategy and negotiating the
7 settlement. *Id.* In total, as of April 15, 2021, Bursor & Fisher billed 214 hours. *Id.*

8 Golden was represented by very able counsel from one of the largest firms in the United
9 States. The settlement was reached only after extensive negotiations over six months amongst
10 counsel. Given the complexity of the case, the nature of the litigation, and the difficulty of the
11 settlement negotiations, the number of hours Class Counsel spent was reasonable.

12 Courts “determine[] a reasonable hourly rate by reference to the ‘prevailing market rates in
13 the relevant community’ for an attorney of similar experience, skill, and reputation.” *Tallman v.*
14 *CPS Sec. (USA), Inc.*, 23 F. Supp. 3d 1249, 1257 (D. Nev. 2014) (quoting *Gonzalez v. City of*
15 *Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013)). “Generally, when determining a reasonable
16 hourly rate, the relevant community is the forum in which the district court sits.” *Camacho v.*
17 *Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). However, in complex litigation. “the
18 parties can reasonably be expected to retain nationally respected law firms and nationally respected
19 attorneys to pursue their interest in the litigation,” which will result in “higher lodestars than
20 normally seen in this district.” *Pacquiao v. Mayweather*, 2012 WL 4092684, at *2 (D. Nev. Sept.
21 17, 2012).

22 The blended hourly rate for Bursor & Fisher’s work of \$496.13 is quite reasonable. Kopel
23 Decl. ¶ 31. And the hourly rates for each of the lawyers (and staff) who worked on the case, which
24 are set forth in the Kopel Declaration, are also reasonable and amply supported by the evidentiary
25 materials submitted therewith and the caselaw. *Id.* ¶¶ 29-30 & Exs. 5-12. *See, e.g., In re Anthem,*
26 *Inc. v. Data Breach Litig.*, 2018 WL 3960068, at *16-17 (finding rates between \$400 to \$975 per
27 hour to be reasonable); *Pacquiao*, 2012 WL 4092684, at *2 (approving blended rate of \$505.84 per
28

1 hour, with \$495 for fourth-year associate and \$695 for partner); *Perrong v. Sperian Energy Corp.*,
2 2021 WL 24688, at *1 (D. Nev. Jan. 4, 2021) (“[A]ssociate rates in the District of Nevada typically
3 r[u]n between \$250 and \$350 an hour.”).

4 *4. All Relevant Factors Support Applying A Multiplier To Class*
5 *Counsel’s Lodestar*

6 The lodestar analysis is not limited to the initial mathematical calculation of class counsel’s
7 base fee. *See Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th Cir. 1996). Rather, Class
8 Counsel’s actual lodestar may be enhanced according to those factors that have not been
9 “subsumed within the initial calculation of hours reasonably expended at a reasonable rate.”
10 *Hensley v. Eckerhart*, 461 U.S. 424, 434 n.9 (1983) (internal citations omitted); *see also Morales*,
11 96 F.3d at 364. In a historical review of numerous class action settlements, the Ninth Circuit found
12 that lodestar multipliers normally range from 0.6 to 19.6, with most (83%) falling between 1 and 4,
13 and a bare majority (54%) between 1.5 and 3. *See Vizcaino*, 290 F.3d at 1051 n.6; *see also Alba*
14 *Conte & Herbert B. Newberg, Newberg on Class Actions* § 14:03 (3d ed. 1992) (recognizing that
15 multipliers of 1 to 4 are frequently awarded); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D.
16 534, 549 (S.D. Fla. 1988) (“The range of lodestar multiples in large and complicated class actions
17 runs from a low of 2.26 to a high of 4.5” (internal citations omitted)). Yet state and federal courts
18 often approve multipliers of 4 or more.⁴

19 In considering the reasonableness of attorneys’ fees and any requested multiplier, the Ninth
20 Circuit has directed district courts to consider the time and labor required, novelty and complexity
21 of the litigation, skill and experience of counsel, the results obtained, and awards in similar cases.

22 ⁴ *See, e.g., In re Cenco Inc. Sec. Litig.*, 519 F. Supp. 322 (N.D. Ill. 1981) (approving multiplier of 4
23 in securities class action); *Municipal Auth. of Bloomsburg v. Pennsylvania*, 527 F. Supp. 982 (M.D.
24 Pa. 1981) (approving multiplier of 4.5); *Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d
25 358, 369 (S.D.N.Y. 2002) (approving multiplier of 4.65); *In re Beverly Hills Fire Litig.*, 639 F.
26 Supp. 915 (E.D. Ky. 1986) (approving multiplier of up to 5); *Roberts v. Texaco, Inc.*, 979 F. Supp.
27 185 (S.D.N.Y. 1997) (approving multiplier of 5.5); *Boston & Maine Corp. v. Sheehan, Phinney,*
28 *Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985) (approving multiplier of 6); *Muchnick v. First*
Fed. Savs. & Loan Assoc. of Phil., 1986 WL 10791, at *3-4 (E.D. Pa. Sept. 30, 1986) (approving
multiplier of 8.3 in a consumer class action); *Cosgrove v. Sullivan*, 759 F. Supp. 166 (S.D.N.Y.
1991) (approving multiplier of 8.74); *Perera v. Chiron Corp.*, Civ. No. 95-20725-SW (N.D. Cal.
1999, 2000) (approving multiplier of 9.14; cited in California Class Actions and Coordinated
Proceedings §15.05).

1 *Blum v. Stenson*, 465 U.S. 886, 898-900 (1984); *Kerr*, 526 F.2d at 70. All of the factors weigh
2 heavily in favor of the requested fee award in this action. *Vizcaino*, 290 F.3d at 1051.

3 *vi. Novelty And Complexity Of This Litigation*

4 As discussed above, only one data breach case has been certified as a Rule 23(b)(3) class
5 action. Thus, Class Counsel was faced with difficult legal and factual issues, which required a
6 litigation strategy that was most likely to ensure recovery for Class Members. Class Counsel also
7 undertook the significant risk that its efforts would go uncompensated. Settlement negotiations
8 consisted of many months of informal settlement discussions, which were complicated both in
9 terms of the subject matter and damages analyses at issue. *See* Kopel Decl. ¶¶ 4-8.

10 Therefore, a multiplier of 1.99 is well within the parameters used throughout this Circuit.
11 Indeed, in light of the complexity of this case and the concomitant risks to counsel, a substantially
12 higher multiplier would be justified.

13 *vii. Class Counsel Provided Exceptional Representation*
14 *Prosecuting This Complex Case*

15 Class Counsel respectfully submits that the lawyers at Bursor & Fisher have conducted
16 themselves in this action in a professional, diligent, and efficient manner. The lawyers at Bursor &
17 Fisher have extensive experience in the field of class action litigation. *See* Kopel Decl., Ex. 1
18 (Bursor & Fisher’s resume). Additionally, litigation tasks were allocated to prevent
19 “over-lawyering” and inefficiency. The bulk of the work was performed by a small number of
20 attorneys fully familiar with the complex factual and legal issues presented by this litigation. This
21 division of labor permitted the work to be done efficiently, resulting in an economy of service and
22 avoiding duplication of effort.

23 *viii. Class Counsel Obtained Excellent Class Benefits*

24 As discussed above, the Settlement Agreement allows Class Members to submit claims for
25 documented out-of-pocket expenses up to \$200, undocumented lost time up to \$45, and one year of
26 advanced credit monitoring, a \$3.5 million at retail value. The results are comparable to much
27 larger data breach settlements, and were achieved much earlier rather than after years of litigation.
28

1 The notice plan is robust. Indeed, it is difficult to conceive how Class Counsel could have
2 structured a better settlement.

3 *ix. Class Counsel Faced A Substantial Risk Of*
4 *Nonpayment*

5 A critical factor bearing on fee petitions in Ninth Circuit courts is the level of risk of
6 non-payment faced by Class Counsel at the inception of the litigation. *See, e.g., Vizcaino*, 290 F.3d
7 at 1048. The contingent nature of Class Counsel’s fee recovery, coupled with the uncertainty that
8 any recovery would be obtained, are significant. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
9 19 F.3d 1291, 1300 (9th Cir. 1994). In *In re Wash. Pub. Power*, the Ninth Circuit recognized that:

10 It is an established practice in the private legal market to reward
11 attorneys for taking the risk of non-payment by paying them a
12 premium over their normal hourly rates for winning contingency
13 cases [I]f this ‘bonus’ methodology did not exist, very few
14 lawyers could take on the representation of a class client given the
15 investment of substantial time, effort, and money, especially in
16 light of the risks of recovering nothing.

17 *Id.* at 1299-1300 (citations omitted) (internal quotations marks omitted).

18 Throughout this case, Class Counsel expended substantial time and costs to prosecute a
19 nationwide class action suit with no guarantee of compensation or reimbursement in the hope of
20 prevailing against a sophisticated defendant represented by high caliber attorneys. *See* Kopel Decl.
21 ¶ 33. Class Counsel obtained a highly favorable result for the Class, knowing that if its efforts
22 were ultimately unsuccessful, it would receive no compensation or reimbursement for its costs.
23 This fact alone supports a finding that Class Counsel is entitled to a multiplier.

24 **V. CLASS COUNSEL’S EXPENSES WERE REASONABLE AND NECESSARILY**
25 **INCURRED TO ACHIEVE THE BENEFIT OBTAINED ON BEHALF OF THE**
26 **CLASS**

27 To date, Class Counsel incurred out-of-pocket costs and expenses in the aggregate amount
28 of \$481.49 in prosecuting this litigation on behalf of the Class. Kopel Decl. Ex. 4. The Ninth
Circuit allows recovery of litigation expenses in the context of a class action settlement. *See*
Staton, 327 F.3d at 974. Class Counsel is entitled to reimbursement for standard out-of-pocket
expenses that an attorney would ordinarily bill a fee-paying client. *See, e.g., Harris v. Marhoefer*,

1 24 F.3d 16, 19 (9th Cir. 1994). These expenses include court fees, copying fees, courier charges,
2 legal research charges, telephone/facsimile fees, travel expenses, postage fees, court reporter fees,
3 transcript costs, expert fees, and other related expenses. Kopel Decl. Ex. 4.

4 Each of these expenses was necessarily and reasonably incurred to bring this case to a
5 successful conclusion, and they reflect market rates for various categories of expenses incurred.

6 See Kopel Decl. ¶ 26.

7 **VI. THE REQUESTED INCENTIVE AWARDS FOR THE CLASS**
8 **REPRESENTATIVES ARE FAIR AND REASONABLE**

9 In recognition of their efforts on behalf of the Class, and subject to the approval of the
10 Court, Golden has agreed to pay the Class Representatives up to \$3,000 each (for a total of
11 \$6,000), as appropriate compensation for their time and effort serving as the class representatives
12 in this litigation.

13 Incentive awards “are fairly typical in class action cases.” *Rodriguez v. West Publishing*
14 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Such awards “are intended to compensate class
15 representatives for work done on behalf of the class, to make up for financial or reputational risk
16 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
17 attorney general.” *Id.* at 958-59. Incentive awards are committed to the sound discretion of the
18 trial court and should be awarded based upon the court’s consideration of, *inter alia*, the amount of
19 time and effort spent on the litigation, the duration of the litigation and the degree of personal gain
20 obtained as a result of the litigation. See *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299
21 (N.D. Cal. 1995). Incentive awards are appropriate when a class representative will not benefit
22 beyond ordinary class members. For example, where a class representative’s claim makes up “only
23 a tiny fraction of the common fund,” an incentive award is justified. *Id.* at 299.

24 The requested amount of \$3,000 each for the Class Representatives is appropriate to
25 compensate them for their efforts in bringing this action for the benefit of millions of Class
26 Members. Throughout the litigation, the Class Representatives held regular meetings with Class
27 Counsel to receive updates on the progress of the case and to discuss strategy. Declarations of
28 Jennifer Miranda in Support of Plaintiffs’ Motion for Preliminary Approval of Settlement, ECF

1 No. 40-1, at ¶¶ 2-7; Patricia Terry in Support of Plaintiffs’ Motion for Preliminary Approval of
2 Settlement, ECF No. 40-1, at ¶¶ 2-7. They assisted in Class Counsel’s pre-suit investigation by
3 discussing their experiences and providing information related to the Phishing Attack and the
4 identity theft they experienced that was upon information and belief the result of the data breach.
5 *Id.* The Class Representatives assisted in drafting the complaints that have been filed in this
6 litigation, and they reviewed the complaints for accuracy before they were filed. *Id.* They were
7 intimately involved in the settlement process, and have continued to keep abreast of settlement
8 progress to date. *Id.* They were prepared to litigate this case to a verdict if necessary. *Id.* Their
9 dedication and efforts have conferred a significant benefit on thousands of consumers, vendors, and
10 employees of Golden whose personal information was exposed in the Phishing Attack. *Id.*

11 **VII. CONCLUSION**

12 Class Counsel and the Class Representatives have worked on this case for over a year. That
13 work produced a benefit to Class Members in the form of a Settlement Agreement that provides
14 over \$4.77 million in value to Class Members. They now seek to be paid fairly for that work.
15 Class Counsel and the Class Representatives therefore respectfully request that the Court approve:

- 16 • \$225,000 in attorneys’ fees and costs for Class Counsel, representing less than 5%
17 of the Settlement value;
- 18 • Incentive awards of \$3,000 for each of the Class Representatives (for \$6,000 total).

19 For the foregoing reasons, these amounts are fair and reasonable and should be approved.

20 Dated: April 15, 2021

Respectfully submitted,

21 By: /s/ Bradley S. Schrager

22 Bradley S. Schrager, Esq. (SBN 10217)

23 Daniel Bravo, Esq. (SBN 13078)

24 A. Jill Guingcangco, Esq. (SBN 14717)

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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2021, a true and correct copy of **Plaintiffs’ Notice of Motion and Motion for an Award of Attorneys’ Fees, Costs and Expenses, and Incentive Awards for the Class Representatives** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ Danielle Fresquez
Danielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

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