The Honorable Stanley A Bastian

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
SPOKANE DIVISION

RAE WHITMAN, individually and on behalf of all others similarly situated, Plaintiff, v. WHITMAN COUNTY PUBLIC HOSPITAL DISTRICT #3, d/b/a WHITMAN HOSPITAL & MEDICAL CENTER, Defendant.	Case No. 2:25-cv-00246-SAB **PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

INTRODUCTION

In January 2026, after arms-length negotiations between experienced counsel that took place over the course of approximately three months, the parties reached a Settlement[1] resolving this action. That Settlement—the product of Class Counsel's zealous efforts—established a $500,000.00 non-reversionary Settlement Fund for the Settlement Class. As compensation for their efforts, Class Counsel now seek reasonable attorneys' fees in the amount of $166,666.67 and costs in the amount of $634.62. The requested fee is in line with the benchmark for fees in this district and is reasonable given the benefits secured, the risks in this evolving area of law, and the quality of work performed. Additionally, Class Counsel request a Service Award of $3,000.00 to the Plaintiff.

In the interest of brevity and efficiency, Plaintiff refers the Court to the facts, procedural history, and the Settlement terms set forth in Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, as well as the Declaration of Kaleigh N. Boyd in support of that motion. ECF Nos. 23 & 24. *See also* Order Granting Motion for Preliminary Approval. ECF No. 25. Plaintiff also refers the Court to the Motion for Final Approval of Class Action Settlement, filed concurrently herewith.

Since this Court granted preliminary approval of the Settlement on February 20, 2026, Class Counsel have worked closely with Eisner Advisory Group, LLC ("Eisner"), the Settlement Administrator, to ensure the Class Notice plan was carried out. *See* Declaration of Kaleigh N. Boyd in Support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Unopposed Motion for Attorneys' Fees, Costs, and Service Award ("Boyd Decl.") ¶ 17. Class

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[1] All capitalized terms herein shall have the same meanings as those defined in Section II of the Settlement Agreement.

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Counsel anticipate further involvement with Eisner in the coming months to ensure the successful administration of the Settlement for the Class. *Id*.

The Settlement provides a very favorable result for the Settlement Class. It establishes a $500,000.00 non-reversionary Settlement Fund for the Settlement Class from which Settlement Class Members may claim reimbursement for up to $5,000.00 for documented losses that are fairly traceable to the Data Incident, or for an alternate cash payment in the estimated amount of $60.00, along with two (2) years of one-bureau Credit Monitoring. Settlement Agreement ¶ 71(a)–(c). The Settlement Fund will also cover Notice and Settlement Administration Costs, as well as any awarded attorneys' fees, costs, and a Service Award. *Id.* ¶ 68. While the deadline to object or request exclusion is June 9, 2026, to date, the Settlement has been well received, with no requests for exclusion and no objections. Boyd Decl. ¶ 18.

The fee and Service Award requested are reasonable when considered under applicable Ninth Circuit standards and are well within the normal range of awards in contingent-fee class actions in this Circuit. Plaintiff and her counsel could have devoted additional lodestar and resources to this litigation, increasing their lodestar, but instead relied on their extensive experience in the data breach privacy litigation space to secure an excellent result for the Settlement Class without delay. Plaintiff thus respectfully requests that the Court grant this Motion.

ARGUMENT

A. The Court Should Apply the Percentage-Of-The-Fund Method.

Where counsel seek fees from a common fund, courts use one of two methods to determine whether the request is reasonable: percentage-of-the-fund or lodestar/multiplier. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). However, "the percentage method in common fund cases appears

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to be dominant" in the Ninth Circuit. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1050 (9th Cir. 2002) ("[T]he primary basis of the fee award remains the percentage method . . . .").

Courts prefer the percentage method over a lodestar approach where it is possible to ascertain the value of a common fund. *See In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 942 (9th Cir. 2011) ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar."). By contrast, courts rely on the lodestar method when "there is no way to gauge the net value of the settlement or of any percentage thereof." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1029 (9th Cir. 1998); *Bluetooth*, 654 F.3d at 941 (lodestar appropriate "where the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized"). The percentage-of-the-fund approach also rewards efficiency. *Vizcaino*, 290 F.3d at 1050 n.5 (recognizing "that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.").

Because the Parties negotiated a settlement resulting in a Settlement Fund in a fixed dollar amount, Class Counsel request that the Court use the percentage-of-the-fund method in determining attorneys' fees.

B. The Requested Fee Amount Is Reasonable Under the Percentage-Of-The-Fund Method.

Class Counsel's request for $166,666.67, which amounts to one-third of the Settlement Fund in attorneys' fees, and an additional $634.62 in reasonable

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costs, is fair and reasonable. The Ninth Circuit has established a 25-percent benchmark as the "starting point" for analysis in awarding attorneys' fees from a common fund, *In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015), but "[t]hat percentage amount can then be adjusted upward or downward depending on the circumstances of the case." *De Mira v. Heartland Emp't Serv., LLC*, 2014 U.S. Dist. LEXIS 33685, *2 (N.D. Cal. Mar 13, 2014). Courts have recognized that "in most common fund cases, the award exceeds th[e] benchmark." *Id.* (quoting *Omnivision*, 559 F. Supp. 2d at 1047); *see also Bolding v. Banner Bank*, 2024 U.S. Dist. LEXIS 32806, *5 (W.D. Wash. Feb. 23, 2024) ("a 33% fee is standard and reasonable for this type of contingency case."), The Ninth Circuit asks district courts to "take into account all of the circumstances of the case" and "reach[] a reasonable percentage," *Vizcaino*, 290 F.3d at 1048, including "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." *Omnivision*, 559 F. Supp. 2d at 1046. These factors support Class Counsel's requested fee.

1. Class Counsel achieved an excellent result for the Settlement Class.

In determining the amount of attorneys' fees to award, a court should examine "the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Omnivision*, 559 F.Supp.2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award."); Federal Judicial Center, *Manual for Complex Litigation* § 27.71 at 336 (4th ed. 2004) ("The fundamental focus is the result actually achieved for class members.").

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The $500,000.00 Settlement Fund is an excellent result for the Settlement Class that avoids the uncertainty and risk presented by continued contested litigation. All Settlement Class Members may make a claim for either reimbursement for up to $5,000.00 for documented losses that are fairly traceable to the Data Incident, or for an alternate cash payment in the estimated amount of $60.00, along with two (2) years of one-bureau credit monitoring. Settlement Agreement. ¶ 71(a)–(c). This Settlement provides an excellent result that avoids the uncertainty and risk presented by continued litigation, while providing the Class with immediate relief. This factor therefore supports the requested fee.

2. Plaintiff faced significant risks in this Litigation.

The risk of non-recovery in a complicated case "is a significant factor in the award of fees." *Omnivision*, 559 F. Supp. 2d at 1046–47. While Plaintiff believes her case is strong, data breach cases carry substantial risks. "Data breach cases . . . are particularly risky, expensive, and complex" due at least in part to the cutting-edge, innovative nature of data breach litigation and the rapidly evolving law. *Gordon v. Chipotle Mexican Grill, Inc.*, 2019 U.S. Dist. LEXIS 215430, *3 (D. Colo. Decl. 16, 2019). Additionally, the risk of establishing damages in this Action was not insignificant. Indeed, there is no assurance that a jury or the Court would find in favor of the Settlement Class and awarded the full amounts claimed as owed. S*ee, e.g.*, *Southern Independent Bank v. Fred's, Inc.*, 2019 U.S. Dist. LEXIS 40036, *57 (M.D. Ala. Mar. 13, 2019) (ruling under *Daubert* that causation not satisfied for class certification purposes in data breach action). Indeed, the damages methodologies, while theoretically sound in Plaintiff's view, remain untested in a disputed class certification setting and unproven in front of a jury. Thus, this factor supports the requested fee award.

3. Class Counsel are highly skilled attorneys experienced in data breach litigation.

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The "prosecution and management of a complex national class action requires unique legal skills and abilities" relevant to determining a reasonable fee. *Omnivision*, 559 F. Supp. 2d at 1047 (citation omitted); *see also Vizcaino*, 290 F.3d at 1048 (reasoning that the complexity of the issues and skill and effort displayed by class counsel are among the relevant factors under the percentage approach). Class Counsel's skill and experience in complex class action litigation weigh in favor of the requested attorneys' fee award. Class Counsel's background and the background of the supporting attorneys and staff demonstrate that Class Counsel is experienced in the highly specialized field of class action litigation—particularly data breach class action litigation—and are well-credentialed and equal to the difficult and novel tasks at hand. Boyd Decl. Exhibits 1–2 (Class Counsel's firm resumes). Settlement Class Counsel's attorneys' fee request is commensurate with that experience, which was leveraged here to procure the Settlement via early resolution of the Action.

4. Class Counsel faced substantial risk of non-payment and carried financial burdens litigating on a contingent basis.

The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent nature of the fee. *See, e.g.*, *Vizcaino*, 290 F.3d at 1050. Courts recognize that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work. *See, e.g.*, *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

Class Counsel litigated this case on a purely contingent basis, devoting resources to the prosecution of this matter and foregoing other opportunities, with no guarantee that they would be compensated for their time or reimbursed for their expenses. Boyd Decl. ¶ 24. Nevertheless, Class Counsel zealously advocated for Plaintiff and the Settlement Class. To date, Class Counsel have received no

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compensation for their work on this case. Class Counsel's "substantial outlay" of both time and money, and the risk of no recovery, further supports the award of their requested fees. *Omnivision*, 559 F. Supp. 2d at 1047.

To date, Class Counsel have worked 131.7 hours on this case and advanced $634.62 in expenses. Boyd Decl. ¶¶ 26, 38. This outlay of time and resources on a purely contingent basis favors approval of the requested fee.

5. Fees awarded in comparable cases align with those requested here.

Comparing the requested fees to awards in similar cases highlights the reasonableness of this application. "[I]n most common fund cases, the award exceeds" the 25% benchmark. *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, *17 (N.D. Cal. Feb. 2, 2009); *see also, e.g.*, *E.S. v. Blueshield,* 2026 U.S. Dist. LEXIS 59219, *9 (W.D. Wash. Mar. 20, 2026) (awarding one-third of settlement fund); *Hallman v. Wells Fargo Bank, N.A.*, 2021 U.S. Dist. LEXIS 261860, *5 (W.D. Wash. June 10, 2021) (awarding one-third of settlement fund). Accordingly, fee awards in comparable cases support this request).

C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees.

The Ninth Circuit has encouraged, but not required, courts to conduct a lodestar cross-check when assessing the reasonableness of a percentage-based fee award. *See Bluetooth*, 654 F.3d at 944. The lodestar cross-check calculation need not entail "mathematical precision nor bean counting," and the Court may rely on summaries submitted by the attorneys rather than reviewing actual billing records. *Covillo v. Specialtys Café*, 2014 U.S. Dist. LEXIS 29837, *21 (N.D. Cal. Mar. 6, 2014). The first step in the lodestar method is to multiply the number of hours counsel reasonably expended on the litigation by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029. At that point, "the resulting figure may be adjusted upward or

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downward to account for several factors including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Id.*; *see also Bluetooth*, 654 F.3d at 942. The lodestar-crosscheck confirms the propriety of the requested fee here.

1. Class Counsel's lodestar is reasonable.

Through May 19, 2026, Class Counsel devoted 131.7 hours to the investigation, litigation, and resolution of this case, incurring $112,752.90 in lodestar at counsel's current hourly rates. Boyd Decl. ¶¶ 26, 30. Counsel's time was spent investigating the claims, conducting informal discovery, including relating to the proper venue for the Action, researching and analyzing legal issues, and engaging in months-long settlement negotiations. *Id.* ¶ 29. Class Counsel anticipate spending approximately 40–50 hours in preparation of this Motion and Motion for Final Approval, preparing for and attending the Final Approval Hearing, and assisting the Settlement Administrator following Final Approval. *Id.* That is time spent and invested on behalf of the Settlement Class that could have been spent on less risky cases, where liability or damages were more certain. Class Counsel prosecuted the claims at issue efficiently and effectively, making every effort to prevent the duplication of work. *Id.* ¶ 32.

2. A multiplier is warranted.

Currently, the fee requested by Class Counsel reflects a reasonable multiplier of 1.48, which will continue to go down with the additional hours Class Counsel will spend finalizing this Motion and Plaintiff's Motion for Final Approval, arguing the Motion for Final Approval, and overseeing the administration and distribution of claims. Multipliers in the Ninth Circuit have ranged from 0.6 to 19.6. *Vizcaino*, 290 F.3d at 1050–51 & n.6 (upholding 3.65 multiplier); *Steiner v. Am. Broad. Co, Inc.*, 248 F. App'x. 780, 783 (9th Cir. 2007) (finding 6.85 multiplier to be "well

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within the range of multipliers that courts have allowed"); *Morris v. Fpi Mgmt.*, 2022 U.S. Dist. LEXIS 137522, *18 (E.D. Wash. Feb. 3, 2022) (3.64 multiplier). Courts in the Ninth Circuit use similar factors when analyzing a lodestar cross-check, s*ee Hanlon*, 150 F.3d at 1029, and the factors outlined above support this request. A 1.48 multiplier is in line with multipliers awarded in the Ninth Circuit, and the lodestar cross-check thus supports the requested fee.

D. Class Counsel's expenses are reasonable.

Under well-settled law, Class Counsel are entitled to reimbursement of the expenses reasonably incurred investigating and prosecuting this matter. *Mills v. Electric Auto-Lite Co*., 396 U.S. 375, 391–92 (1970). Under the Settlement, Class Counsel may seek reimbursement from the Settlement Fund of all costs and expenses actually incurred. Settlement Agreement ¶ 68. Through May 19, 2026, Class Counsel have incurred $634.62 in unreimbursed litigation costs, which may be updated at final approval. *See* Boyd Decl. ¶ 38. The expenses for which Class Counsel seek reimbursement were reasonably necessary for the continued prosecution and resolution of this litigation and were incurred by Class Counsel for the benefit of the Class with no guarantee that they would be reimbursed. They are reasonable in amount and the Court should approve their reimbursement.

E. The requested Service Award is reasonable.

Service awards compensate named plaintiffs for work done on behalf of the class, account for financial and reputational risks associated with litigation, and promote the public policy of encouraging plaintiffs to undertake the responsibility of representative lawsuits. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). The Settlement is not contingent on the Court's granting of such an award. The requested Service Award of $3,000.00 to the Plaintiff is modest under the circumstances and in line with awards approved

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in Washington and elsewhere. *See, e.g.*, *Clarkson v. Alaska Airlines, Inc*., 2025 U.S. Dist. LEXIS 11293, *25 (E.D. Wash. Jan. 15, 2025) (approving $15,000 service award for one plaintiff, and $5,000 service award for the other plaintiffs). This award will compensate Plaintiff for her time and effort serving as the proposed Class Representative, reviewing pleadings, keeping abreast of the litigation, and reviewing and approving the proposed settlement terms after consulting with Class Counsel. Indeed, without Plaintiff litigating this matter, the Class would not have been able to recover anything.

CONCLUSION

Plaintiff respectfully requests that the Court grant her Motion and enter an order: (1) awarding Plaintiff a $3,000.00 Service Award; and (2) awarding Class Counsel $166,666.67 in attorneys' fees and $634.62 in costs.

DATED this 22nd day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2026, a true and correct copy of the foregoing document was served via CM/ECF Defendant's counsel below:

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