

THE HONORABLE JUDGE JAMES E. ROGERS
HEARING DATE: July 14, 2023
TIME: 10:00 AM

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

RICHARD EASTER and TRISTEN STAR,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

SOUND GENERATIONS,

Defendant.

Case No. 21-2-16953-4 SEA

**PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS,
EXPENSES, AND SERVICE
AWARDS AND MEMORANDUM
IN SUPPORT**

**MOT. FOR ATTORNEYS' FEES, COSTS,
EXPENSES, AND SERVICE AWARDS AND
MEM. IN SUPPORT**

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4 *Manual for Compl. Litig.*
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6 **Rules**

7 Fed. R. Civ. P. 23 10

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1 Plaintiffs Richard Easter and Tristan Star (together, “Plaintiffs”), on behalf of themselves
2 and the other members of the proposed Settlement Class,¹ respectfully move this Court for an
3 award of attorneys’ fees, costs, and expenses (i.e., Fee Award and Costs), and payment of Service
4 Awards to the two named Class Representatives. In support of their motion, Plaintiffs submit this
5 Memorandum in Support.

6 **I. INTRODUCTION**

7 This Action relates to the targeted data security incident (the “Data Incident”) that Sound
8 Generations publicly reported on or about December 7, 2021. Sound Generations, a Washington
9 corporation that provides care services for older adults and adults with disabilities, experienced
10 cyberattacks on July 18, 2021 and September 18, 2021, during which one or more unauthorized
11 individuals infiltrated Sound Generations’ network. After breaching Sound Generations’ network,
12 the cybercriminal gained access to confidential files containing the personally identifying
13 information (“PII”) and personal health information (“PHI) (together, (“PII/PHI” or “Personal
14 Information”) of approximately 600,605 patients, including names, addresses, phone numbers,
15 emails, dates of birth, whether or not a client had health insurance and, data concerning health
16 insurance numbers, health history, and health conditions.

17 Faced with the risks inherent to data breach lawsuits, Class Counsel expeditiously secured
18 a class-wide Settlement that compensates Class Members for their losses and provides meaningful
19 prospective relief to protect against future risks arising from the Incident. Following a productive
20 mediation session with the Honorable Morton Denlow (Ret.) of JAMS, Class Counsel worked for
21 two months to finalize settlement terms and expended substantial additional time to draft the
22 Settlement Agreement and its exhibits pertaining to notice, preliminary approval, and final
23 approval. The Settlement provides outstanding relief for the class, including up to \$750,000.00 in
24

25 _____
26 ¹ Unless otherwise noted, all capitalized terms not defined herein have the same meaning ascribed
to them in the Settlement Agreement (“Settlement” or “SA”).

1 Settlement Benefits for the proposed Settlement Class and enhanced data security obligations for
2 Sound Generations.

3 Class Counsel now respectfully request that the Court award \$345,000 in attorneys' fees,
4 costs, and expenses as compensation for their work bringing this case to a successful resolution.
5 The requested \$332,203.09 award for attorneys' fees (which excludes the costs and expenses that
6 Class Counsel have expended pursuant to the litigation) represents an approximately 1.29
7 multiplier on Class Counsel's collective current lodestar of \$257,252.50, which is well within the
8 range of what courts have found to be reasonable in other data breach class action settlements.

9 Additionally, Class Counsel respectfully request that the Court approve Service Awards in
10 the amount of \$2,500 to each of the two Class Representatives (total of \$5,000) in recognition of
11 their time and effort pursuing this litigation. No Settlement or recovery would have been possible
12 without their vital role. Importantly, Class Counsel's attorneys' fees, expenses, and costs, and the
13 Service Awards to the Class Representatives will be paid by Defendant separately, without
14 decreasing any Class benefits.

15 For all these reasons, and for those set forth in more detail below, Plaintiffs respectfully
16 request that the Court grant this Motion in its entirety.

17 **II. STATEMENT OF ISSUES AND RELIEF REQUESTED**

18 The issue to be decided is whether the Court should grant Plaintiffs' Motion for Attorneys'
19 Fees, Costs, Expenses, and Service Awards.

20 Relying on this Motion and Memorandum of Points and Authorities, the Declarations of
21 Andrew W. Ferich ("Ferich Fee Decl."), Ben Barnow ("Barnow Fee Decl."), and Alex Strong
22 ("Strong Fee Decl.") filed herewith, and the other papers filed in this matter, Plaintiffs respectfully
23 suggest and request the Court grant the Motion and enter an order that:

- 24 (1) grants Plaintiffs' request for attorneys' fees, expenses, and costs in the amount of
25 \$345,000, inclusive of \$12,796.91 in reasonable litigation costs;

- 1 (2) grants Plaintiffs' request for payment of Service Awards to each of the two Class
2 Representatives in the amount of \$2,500 each; and
3 (3) granting such other, further, or different relief as the Court deems just and proper.

4 **III. STATEMENT OF FACTS AND EVIDENCE RELIED UPON**

5 **A. Defendant Sound Generations**

6 Defendant Sound Generations is a non-profit organization providing health care services
7 to older adults and adults with disabilities in Washington. In the ordinary course of business, Sound
8 Generations collects and maintains the sensitive personal information of current and former
9 patients, employees (and related persons), vendors, volunteers, and donors. Specifically, patients
10 are required to provide sensitive PII/PHI before receiving health care services, including names,
11 email addresses, dates of birth, health information, health insurance, health history, and health
12 conditions.²

13 **B. The Data Incident**

14 Plaintiffs allege that on or about December 7, 2021, Sound Generations publicly reported
15 that unauthorized individuals gained access to its network systems on July 18, 2021 and September
16 18, 2021, which provided the cybercriminals access to the Personal Information of Plaintiffs and
17 Class Members. Following Sound Generations' public announcement of the Data Incident,
18 Plaintiffs and approximately 600,605 other persons received notice from Sound Generations that
19 certain of their PII/PHI may have been compromised in the Data Incident.

20 **C. Litigation Background and Plaintiffs' Claims and the Relief Sought**

21 On December 29, 2021, Plaintiffs filed this Action against Sound Generations in the
22 Superior Court of the State of Washington, alleging that Sound Generations failed to properly
23 protect the PII/PHI of patients and other persons in its possession due to inadequate data security
24 measures in place. Specifically, Plaintiffs alleged that Sound Generations' conduct violated (1)

25 _____
26 ² The Incident implicated additional information for donors, vendors, and volunteers, including
certain sensitive PII such as Social Security Numbers ("SSNs"). *See* Complaint at ¶ 15.

1 RCW 19.86.010, the Washington State Consumer Protection Act, and constituted (2) negligence,
2 (3) negligence per se, (4) breach of fiduciary duty, (5) breach of implied contract, and (6) unjust
3 enrichment. On behalf of the Class, Plaintiffs sought equitable, monetary, and injunctive relief.

4 Shortly after filing the Action, Plaintiffs served Sound Generations with extensive written
5 discovery related to the merits of Plaintiffs' claims, potential defenses thereto, and class
6 certification. Ferich Fee Decl. ¶ 7. Sound Generations filed a motion to dismiss in March
7 of 2022. *Id.*

8 **D. Settlement Negotiations and Preliminary Approval**

9 After Sound Generations filed a motion to dismiss, the Parties began to engage in arm's
10 length negotiations concerning the possible settlement of this Action. Ferich Fee Decl. ¶ 12. After
11 continuous conferral, the Parties agreed to attend a full-day mediation on June 6, 2022 and engaged
12 the Honorable Morton Denlow (Ret.) of JAMS, a well-respected and seasoned mediator, to oversee
13 settlement negotiations. Ferich Fee Decl. ¶ 12. In advance of formal mediation, the Parties
14 prepared and submitted detailed mediation briefs discussing their respective positions on the merits
15 of the claims and class certification. Ferich Fee Decl. ¶ 13. Also, the Parties exchanged pre-
16 mediation discovery and numerous documents to facilitate the negotiations, all of which required
17 attorney review and analysis. Ferich Fee Decl. ¶ 14.

18 Despite hard-fought settlement negotiations during the full-day mediation session, the
19 Settling Parties were not able to reach a final settlement. Ferich Fee Decl. ¶ 15. Following months
20 of subsequent productive negotiations and the exchange of numerous term sheets, the parties
21 reached a settlement in principle. Ferich Fee Decl. ¶ 16. The parties finalized and signed the
22 Settlement on December 22, 2022. Ferich Fee Decl. ¶ 19.

23 On February 21, 2023, Plaintiffs filed an unopposed Motion for Preliminary Approval of
24 Class Action Settlement and Memorandum in Support. Ferich Fee Decl. ¶ 29. Shortly thereafter,
25 the Court granted preliminary approval of the Class Settlement. *See Order Allowing Preliminary*
26

1 Approval of Class Action Settlement and Directing Notice of Proposed Settlement (“Prelim. App.
2 Order”); *see also* Ferich Fee Decl. ¶ 32. Pursuant to the Court-approved Notice plan, notice
3 subsequently issued to the Settlement Class, and the claims process is underway. *Id.*

4 **E. Summary of Settlement**

5 After over a year of hard-fought litigation, Class Counsel secured a quality Settlement that
6 provides significant and immediate relief to Class Members.³ The speedy resolution of data breach
7 class actions is in the best interests of class members because it allows class members to take
8 advantage of settlement benefits and protect their identities in an expeditious, effective, and
9 proactive manner moving forward while avoiding the attendant risks of litigation and non-
10 recovery. Ferich Fee Decl. ¶¶ 25-26. The Settlement provides the following benefits, which are
11 designed to address past, present, and future harm:

12 **1. Lost Time Payment**

13 All Settlement Class Members who submit a valid Claim are eligible to recover
14 compensation for up to two (2) hours of lost time at a rate of \$25.00 per hour, for a maximum of
15 \$50.00, for time spent monitoring bank accounts, checking credit reports, and otherwise attempting
16 to mitigate and prevent fraud or to remedy actual fraud or identity theft as a result of the Incident.
17 Prelim. App. Order ¶ 8(a); SA ¶ 4.

18 **2. Credit Monitoring Services**

19 All Settlement Class Members who submit a valid Claim are eligible to receive two (2)
20 years of one bureau credit monitoring and identity theft insurance. Prelim. App. Order ¶ 8(b); SA
21 ¶ 5. Settlement Class Members who already maintain a credit monitoring service may elect to
22 delay their enrollment in the Credit Monitoring Services claimed as a Settlement Benefit under
23 this Settlement for a period of twelve months for no additional charge. SA ¶ 5.

24 ³ The Settlement Class is defined as: “all natural Persons who are residents of the United States
25 whose Personal Information was potentially compromised in the Incident, including those to whom
26 Sound Generations sent notification that their Personal Information may have been compromised
in the Incident.” Prelim. App. Order ¶ 11.

1 **3. Documented Economic Loss Payment**

2 All Settlement Class Members who submit a valid Claim are eligible to receive a payment
3 of up to \$130 per Settlement Class Member as compensation for documented unreimbursed
4 economic losses resulting from the Incident that were incurred between July 18, 2021 and the
5 Claims Deadline, including but not limited to: (1) cost to obtain credit reports; (ii) fees related to
6 credit freezes; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday
7 loans taken as a direct result of the Incident; (vii) other bank or credit card fees; (viii) postage,
8 mileage, and other incidental expenses resulting from lack of access to an existing account; (ix)
9 costs associated with credit monitoring or identity theft insurance if purchased as a result of the
10 Incident; and (x) fraudulent charges or transactions. Prelim. App. Order ¶ 8(c); SA ¶ 6.

11 **4. Alternative Cash Payment**

12 In the alternative to all the Settlement Benefits provided for above, Settlement Class
13 Members—excluding Social Security Number Class Members—may submit a Claim to receive a
14 cash Settlement Payment in the amount of \$25.00. Prelim. App. Order ¶ 8(d); SA ¶ 7. The
15 aggregate cap on Alternative Cash Payments to be paid for valid Claims is \$200,000.00. SA ¶ 7(a).

16 **5. SSN Cash Payment**

17 In addition to being able to submit a Claim for a Lost Time Payment, Credit Monitoring
18 Services, and/or a Documented Economic Loss Payment, Social Security Number Class Members
19 may also submit a Claim for an SSN Cash payment to receive a pro rata share of the \$100,000.00
20 provided by the Settlement. Prelim. App. Order ¶ 8(3); SA ¶ 8.

21 **6. Business Practice Changes**

22 Additionally, the Settlement Agreement requires Sound Generations to implement certain
23 enhanced data security policies for at least two (2) years from the Effective Date of the Settlement.
24 SA ¶ 10. These increased security measures include: organizational password change for users;
25 encryption technologies; multi-factor authentication for network access; endpoint protection for
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1 workstations; additional email/attachment protection; a cloud-based computing network; multi-
2 factor authentication for the cloud-based back-up system; written information security plan update;
3 security rule risk mitigation plan update; and security rule risk analysis. *Id.*

4 **IV. ARGUMENT AND LEGAL AUTHORITY**

5 **A. Class Counsel’s Fee Request is Reasonable and Should Be Approved**

6 “Whether attorney fees are reasonable is a question of fact to be answered in light of the
7 particular circumstances of each individual case, and in fixing fees the trial court is given broad
8 discretion.” *Schmidt v. Cornerstone Invest.*, 115 Wash. 2d 148, 169 (1990). In determining the
9 reasonableness of the fee award, the Court can look to the “lodestar” method (multiplying hours
10 worked by a reasonable hourly rate and adjusting upward or downward) or the “percentage of
11 recovery” method (awarding fees that are a reasonable percentage of the total recovery). *See*
12 *Bowles v. Wash. Dep’t of Ret. Sys.*, 121 Wash. 2d 52, 72 (1993). An analysis of both of these
13 methods demonstrates that both support Class Counsel’s requested fee award here.

14 **1. The Lodestar Method Supports the Fee Request**

15 Under the lodestar approach, “[t]he total number of hours reasonably expended is
16 multiplied by the reasonable hourly rate of compensation,” yielding the lodestar figure. *Bowers v.*
17 *Transamerica Title Ins. Co.*, 100 Wash. 2d 581, 597 (1983). After calculating the lodestar fee, the
18 court may adjust the fee to reflect factors not already considered in reaching the lodestar amount,
19 including the contingent nature of success and the quality of the work performed. *Banuelos v. TSA*
20 *Washington, Inc.*, 134 Wash. App. 607, 615-616, 141 P.3d 652, 657 (2006) (citing *Bowers*, 100
21 Wash.2d at 598).

22 **a. The Amount of Time Spent By Class Counsel is Reasonable**

23 The amount of time reported by Class Counsel is reasonable. As set forth in the Class
24 Counsel Fee Declarations submitted herewith, Class Counsel have spent at least 409.7 hours on
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1 this litigation, which is broken down by timekeeper. *See* Ferich Fee Decl. ¶¶ 34, 39; Barnow Fee
2 Decl. ¶¶ 12, 16; Strong Fee Decl. ¶ 5.

3 Class Counsel submit that the 409.7 collective lodestar hours underlying this fee
4 application were reasonably spent and necessary in the course of litigation. As detailed in the
5 procedural section above, *see* Section III.C, *supra*, Plaintiffs faced determined adversaries
6 represented by highly motivated and experienced counsel, sophisticated legal issues and
7 challenges, and resistance from Sound Generations at the outset of the litigation. Ferich Fee Decl.
8 ¶ 44; Barnow Fee Decl. ¶ 19.

9 Counsel dedicated significant time and resources investigating the Data Incident itself
10 including, but not limited to: (1) communicating with interviewing potential class representatives;
11 (2) researching the claims alleged, drafting the complaint in this Action; (3) serving Sound
12 Generations with extensive formal written discovery related to the merits of Plaintiffs' claims,
13 potential defenses thereto, and class certification; (4) opposing Defendant's motion to dismiss, (5)
14 preparing for and participating in an all-day mediation session; (6) participating in extensive
15 subsequent negotiations to ultimately reach a settlement in principle with Sound Generations on
16 December 22, 2022; (7) successfully moving for preliminary approval of the Settlement; and (8)
17 playing a primary role in developing the class notice materials and claims forms. Ferich Fee Decl.
18 ¶ 9; Barnow Fee Decl. ¶ 8.

19 Altogether, the time expended by Class Counsel was reasonable and necessary to bring this
20 case to a successful conclusion and should be compensated.

21 **b. Class Counsel's Hourly Rates are Reasonable**

22 The hourly rates that Class Counsel use to calculate their lodestar are reasonable. "A
23 reasonable hourly rate reflects the market value of the attorney's services." *Collins v. Clark Cnty.*
24 *Fire Dist. No. 5*, 155 Wash. App. 48, 99 (2010). While courts often look to the hourly rate of
25 attorneys in the locality, the Court of Appeals has affirmed an attorneys' fee award in which the
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1 trial court held that it is appropriate to consider non-local hourly rate standards when the work is
2 “highly specialized.” *Id.* at 101. This is true of large scale, nationwide class actions, such as the
3 one here. *See Lucas v. Kmart Corp.*, Civil Action No. 99-cv-01923-JLK-CBS, 2006 WL 2729260,
4 at *4 (D. Colo. July 27, 2006) (holding that because few attorneys handle nationwide class actions
5 due to the “significant resources and skill required” it is appropriate to look at that community of
6 lawyers rather than a local community for determining a reasonable hourly rate). It is appropriate
7 to apply current rates to account for the delay in compensation. *See Fisher Props. v. Arden-*
8 *Mayfair, Inc.*, 115 Wash. 2d 364, 376 (1990). The rates of all attorneys and paralegals whose time
9 is included in this application are listed in the Class Counsel declaration submitted herewith. The
10 rates for attorneys and paralegals fall within the following ranges:

- 11 • \$250 for paralegals, \$450 for associates, and \$850-\$1,200 for partners for the firm of
12 Ahdoot & Wolfson, PC;
- 13 • \$425-\$725 for associates and \$1,050 for partners for the firm Barnow and Associates,
14 P.C.;
- 15 • \$250 for paralegals and \$650 for attorneys for Bendich, Stobaugh & Strong, P.C.

16 These are the hourly rates Class Counsel charge in similar matters, and these rates have
17 been approved by state and federal courts in other contingent matters. Ferich Fee Decl. ¶ 41; *In re*
18 *Zoom Video Commc’ns, Inc. Priv. Litig.*, No. 20-cv-02155-LB, 2022 WL 1593389, at *11 (N.D.
19 Cal. Apr. 21, 2022) (granting final approval to \$85 million common fund privacy litigation
20 settlement, and approving Ahdoot Wolfson’s hourly rates, including Andrew Ferich’s then-current
21 rate of \$750 for work performed in 2021, and Robert Ahdoot’s then-current rate of \$950); *In re*
22 *Forefront Data Breach Litigation*, No. 1:21-cv-00887-LA, ECF No. 81 (E.D. Wis.) (awarding
23 attorneys’ fees and reimbursement of costs and expenses at Ahdoot Wolfson’s current hourly
24 rates); Barnow Fee Decl. ¶ 17; *see, e.g., Yamagata v. Reckitt-Benckiser, LLC*, No. 3:17-cv-03529-
25 VC, 2021 WL 5909206, at *4 (N.D. Cal. Oct. 28, 2021) (awarding \$12,500,000 of reasonable
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1 attorneys' fees, costs, and expenses on the basis of evidence submitted, including time records for
2 Ben Barnow (\$950/hr) and Anthony L. Parkhill (\$650/hr)).

3 Moreover, Class Counsel's rates are in line with those recognized across the country as
4 acceptable in data breach and large complex class action cases. *See, e.g., Carideo v. Dell, Inc.*, No.
5 06-CV-01772-PET, 2010 WL 11530555, at *2 (W.D. Wash. Dec. 17, 2010) (settlement and
6 plaintiffs' request for fees at comparable rates to those sought here granted); *Fulton-Green v.*
7 *Accolade, Inc.*, No. 18-274, 2019 WL 4677954, at *12 (E.D. Pa. Sept. 24, 2019) (finding in data
8 breach lawsuit that "Class Counsel's rates range from \$202 to \$975 per hour. Courts have
9 considered similar rates reasonable in the past.").⁴

10 Thus, Class Counsel's hourly rates are reasonable and appropriate for calculating
11 the lodestar.

12 **c. A Multiplier is Warranted Here**

13 Multiplying Class Counsel's time by their hourly rates produces a collective lodestar of
14 \$257,252.50. While courts "presume that the lodestar represents a reasonable fee, occasionally a
15 risk multiplier will be warranted because the lodestar figure does not adequately account for the
16 high-risk nature of a case." *Pham v. Seattle City Light*, 159 Wash.2d 527, 542 (2007). A fee
17 consisting of the lodestar enhanced by a 1.29 multiplier would be reasonable given the risks here.

18 In Washington, the fee award may be adjusted to reflect factors not already taken into
19 consideration by the court, which can include the contingency of the case and the quality of work
20 performed. *Bowers*, 100 Wash.2d at 598. A contingency-based enhancement applies where, as
21 here, "there is no fee agreement that assures the attorney of fees regardless of the outcome of the
22 case." *Id.* at 599. *See Khalid v. Citrix Sys., Inc.*, Nos. 79143-5-I, 79405-1-I, 79145-1-I, 79305-5-I,
23 2020 Wash. App. WL 7136600, at *45 (Ct. App. Dec. 7, 2020) (upholding 1.75 multiplier due to

24 ⁴ As Civil Rule 23 is substantially similar to Federal Rule of Civil Procedure 23, Washington courts
25 find "federal cases interpreting the analogous federal provision [to be] highly persuasive." *Pickett*
26 *v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001) (citing *Brown v. Brown*, 6 Wn.
App. 249, 252 (1971)).

1 the large amount of risk involved in the lawsuit); *Banuelos v. TSA Wash., Inc.*, 134 Wash. App.
2 603, 617 (2006) (upholding 1.5 multiplier which was awarded “based on the risk of litigation, the
3 contingent nature of the success, the quality of work, and the lack of legal authority”); *Herring v.*
4 *DSHS*, 81 Wash. App. 1, 34 (1996) (upholding 1.5 multiplier). Class Counsel had no assurance of
5 compensation in this case, as it was taken on entirely on a contingent basis. Ferich Fee Decl. ¶ 36;
6 Barnow Fee Decl. ¶ 13. Their fee was entirely dependent on a favorable outcome. *Id.* Here, Class
7 Counsel achieved a favorable result despite considerable legal hurdles inherent in data breach class
8 action litigation and despite Sound Generation’s insistence that it has a number of meritorious
9 defenses to the claims asserted and denies any and all liability.

10 **B. The Percentage of Recovery Method Supports the Fee Request**

11 While the Washington Court of Appeals has held that when no common fund exists in a
12 class action settlement, it is unnecessary for courts to cross-check the lodestar with a percentage
13 of recovery analysis (*See Luna v. Household Fin. Corp.*, No. 54667-8-I, 2005 Wash. App. WL
14 2840338, at *7 (Ct. App. Oct. 31, 2005)), doing so here reveals that the percentage of recovery
15 method also supports Class Counsel’s requested fee award. “A ‘percentage of recovery’ approach
16 sets attorney fees by calculating the total recovery secured by the attorneys and awarding them a
17 reasonable percentage of that recovery, often in the range of 20 to 30 percent.” *Bowles*, 121 Wash.
18 2d at 72. When using the percentage of recovery method, “the ‘benchmark’ award is 25 percent of
19 the recovery obtained.” *Id.*

20 Class Counsel’s suggested fee award is reasonable based on the benefits made available by
21 the Settlement. Class Counsel estimates that the amount of benefits made available to the
22 Settlement Class under the Settlement is \$1,430,000, which includes the amount Settlement Class
23 Members can claim under the Settlement (\$750,000), Class Counsel’s requested attorneys’ fees,
24 costs, and expenses (\$345,000), service awards (\$5,000), and the cost of notice to the Settlement
25 Class (\$330,000). These are all benefits that are normally paid through a common fund. *See*
26

1 *Spencer v. FedEx Ground Package Sys.*, No. 14-2-30110-3 SEA, 2016 Wash. Super. LEXIS
2 12083, *6 (King Cnty. Sup. Ct. Dec. 2, 2016) (noting that the amount of attorneys’ fees, costs,
3 expenses, service awards, and administration costs will be paid out of the settlement fund);
4 *McFarland v. Swedish Health Servs.*, No. 18-2-02948-1 SEA, 2019 Wash. Super. LEXIS 8816,
5 *8 (King Cnty. Sup. Ct. Apr. 26, 2019) (same). Class Counsel’s requested fee award of
6 \$332,203.09 makes up 23.2% of the total recovery for the Settlement Class, lower than the
7 benchmark despite the strong work that Class Counsel performed in the litigation. As such, the
8 percentage of recovery method also supports Class Counsel’s requested fee award as reasonable.

9 **C. Additional Factors Support Class Counsel’s Fee Request**

10 In addition to the factors warranting a multiplier as outlined above, *see* Section IV.A.4
11 *supra*, courts may consider the following factors in determining the reasonableness of a request
12 for attorneys’ fees: (1) whether counsel achieved exceptional results for the class; (2) whether the
13 case was risky for class counsel; (3) whether the case was handled on a contingency basis; (4)
14 the market rate for the particular field of law; and (5) the burdens class counsel experienced
15 while litigating the case. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 954-55; *see also*
16 *Mehlenbacher v. DeMont*, 103 Wn. App. 240, 248, 11 P.3d 871, 876 (2000) (quoting *Scott*
17 *Fetzer Co. v. Weeks*, 122 Wash. 2d 141, 149-150 (1993)). Each of these factors supports Class
18 Counsel’s request for a fee award of \$345,000.

19 **1. Class Counsel Obtained a Substantial Result**

20 In determining the amount of attorneys’ fees to award, a court should examine “the degree
21 of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); Federal Judicial Center,
22 Manual for Complex Litigation, § 27.71, p.336 (4th ed. 2004) (“MCL”) (the “fundamental focus
23 is on the result actually achieved for class members”). The Settlement is a significant result for the
24 Class, comprising both core prospective and monetary relief. As further described in the
25
26

1 accompanying declarations, the litigation was hard-fought, contentious, and posed a series of case
2 dispositive risks for Plaintiffs and the Class. See Ferich Fee Decl. ¶ 23; Barnow Fee Decl. ¶ 20.

3 The Settlement reflects the high quality of work by skilled and experienced Class Counsel
4 throughout the litigation, including protracted settlement negotiations. Class Counsel’s fee request
5 is commensurate with their extensive experience, which they were able to leverage to procure the
6 settlement. See Ferich Fee Decl. ¶¶ 53, 66, 72-74; Barnow Fee Decl. ¶¶ 25-35. The skill
7 demonstrated by Class Counsel in developing the Complaint and negotiating and settling the action
8 early further supports the fees requested. *See Vizcaino*, 290 F.3d at 1050 n.5; *Zepeda v. PayPal,*
9 *Inc.*, 2017 WL 1113293, at *20 (N.D. Cal. Mar. 24, 2017) (class counsel’s consumer class action
10 expertise allowed for a result that “would have been unlikely if entrusted to counsel of lesser
11 experience or capability” given the “substantive and procedural complexities” and the “contentious
12 nature” of the settlement).

13 Plaintiffs believe that they would succeed in litigation and be able to recover damages on
14 behalf of the Class. However, Class Counsel recognize that the range of potential litigation
15 outcomes is wide. The scope of damages would depend in large part on the scope of class
16 certification, whether various theories of damages would be accepted by the Court (i.e., benefit of
17 the bargain and loss of value of Personal Information theories), and which causes of action survive.
18 Whether the case would be litigated to a favorable outcome and the amount obtained through
19 continued litigation are not certain, and the case is subject to numerous risks. By settling and
20 obtaining relief for Class Members now, practical remedies that have been absent become
21 imminently available.

22 The Settlement promises significant remedial measures that Sound Generations has agreed
23 to implement because of this litigation, all of which will benefit all Class Members, irrespective
24 of whether they submit a Claim Form for monetary relief. The results achieved here, both monetary
25 and equitable, are substantial and support the Class Counsel’s fee request.

1 **2. The Risk Involved with the Litigation Supports the Fee Request**

2 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly
3 a case involving complicated legal issues, is a significant factor in the award of fees.” *In re*
4 *Omnivision*, 559 F. Supp. 2d 1036, 1046-47 (N.D. Cal. 2007); *see also Vizcaino*, 290 F.3d at 1048
5 (risk of dismissal or loss on class certification is relevant to evaluation of a requested fee). Class
6 Counsel confronted significant hurdles to obtaining any recovery.

7 While almost all class actions involve a high level of risk, expense, and complexity,
8 numerous courts have recognized that data breach cases are especially risky, expensive, and
9 complex given the unsettled and evolving nature of the law. *See, e.g., In re Sonic Corp. Customer*
10 *Data Sec. Breach Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach
11 litigation is complex and risky. This unsettled area of law often presents novel questions for courts.
12 And of course, juries are always unpredictable.”); *In re Anthem, Inc. Data Breach Litig.*, 327
13 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach
14 case[s] are novel”).

15 Another significant risk faced by Plaintiffs here are the risks of maintaining class action
16 status through trial. The class has not yet been certified, and Defendant will certainly oppose
17 certification if the case proceeds. Thus, Plaintiffs “necessarily risk[s] losing class action status.”
18 *Grimm v. Am. Eagle Airlines, Inc.*, 2014 WL 12746376, at *10 (C.D. Cal. Sept. 24, 2014). Class
19 certification in contested consumer data breach cases is not common—first occurring in *Smith v.*
20 *Triad of Ala., LLC*, 2017 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017).

21 In sum, to prevail in any ongoing litigation Class Counsel would be required to successfully
22 litigate a number of quickly evolving legal issues. An upward adjustment to Class Counsel’s fee
23 is appropriate when considered against such risks.

1 **3. Class Counsel Faced Risk of Non-Payment Due to a Contingency**

2 The requested fee is also justified by the financial risks undertaken by Class Counsel in
3 representing the Class on a contingency basis. *See Vizcaino*, 290 F.3d at 1050 (finding that class
4 counsel’s representation of the class on a contingency basis is relevant to the assessment of the
5 fee). “Most important, ‘the contingency adjustment is designed solely to compensate for the
6 possibility . . . that the litigation would be unsuccessful and that no fee would be obtained.’”
7 *Bowers*, 100 Wash.2d at 598-599.

8 Class Counsel have devoted substantial resources to the prosecution of this case with no
9 guarantee that they would be compensated for their time or reimbursed for expenses. *See Ferich*
10 Fee Decl. ¶ 36; Barnow Fee Decl. ¶ 13. Despite the substantial risk of nonpayment, Class Counsel
11 zealously represented and advanced the interests of the Class. “Attorneys are entitled to a larger
12 fee award when their compensation is contingent in nature.” *In re Toyota Motor Corp. Unintended*
13 *Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 WL 12327929, at *32 (C.D. Cal.
14 July 24, 2013) (citing *Vizcaino*, 290 F.3d at 1048-50); *see also Kissel v. Code 42 Software Inc.*,
15 2018 WL 6113078, at *5 (C.D. Cal. 2018)).

16 Here, Class Counsel pursued this case on a contingency fee basis, and the risk of potential
17 non-payment after years of litigation justifies the requested fee and costs amounts. *Bellinghausen*
18 *v. Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015).

19 **4. The Market Rate for Fees**

20 As discussed above, Class Counsel’s hourly rates are in line with market rates specifically
21 in the data privacy field of law, and the hours expended and costs and expenses incurred by Class
22 Counsel in advancing this litigation to settlement were reasonable. *See Section IV.A, supra*. Class
23 Counsel’s hourly rates have been approved by numerous courts in previous data breach and other
24 consumer class action settlements. *Id.* Class Counsel’s fee request is supported under the lodestar
25 approach. *Id.* Accordingly, this factor supports the requested attorneys’ fees.

1 **5. The Burdens Faced by Class Counsel Support the Fee Request**

2 “The Ninth Circuit instructs district courts to consider the burdens class counsel
3 experienced while litigating the case (e.g., cost, duration, and foregoing other work). This litigation
4 has been pending for almost a year and a half. Class Counsel have advanced time and out-of-
5 pocket costs, and have foregone other work while litigating this case. *See In re Infospace, Inc.*
6 *Secs. Litig.*, 330 F. Supp. 2d 1203, 1212 (W.D. Wash. 2004) (noting that “preclusion of other
7 employment by the attorney due to acceptance of the case” is a factor to consider when determining
8 an appropriate fee award). Accordingly, Class Counsel’s fee request is warranted to compensate
9 for the burden faced in bringing this litigation.

10 **D. Class Counsel’s Request for Reimbursement of Costs is Also Reasonable**

11 Class Counsels’ request for a Fee Award and Costs of \$345,000 includes reimbursement
12 of their costs and expenses reasonably incurred in prosecuting this purely contingency action on
13 behalf of the Class. It is well-established that recovery of costs, in addition to fees, is appropriate
14 in its own right. “Reasonable costs and expenses incurred by an attorney who creates or preserves
15 a common fund are reimbursed proportionately by those class members who benefit [from] the
16 settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). Class
17 Counsel incurred out-of-pocket expenses totaling \$12,796.91 primarily to cover expenses related
18 to mediation fees, pro hac vice applications, court filing fees, legal research, service fees and
19 administrative costs such as copying, mailing, and messenger expenses. Ferich Fee Decl. ¶¶ 49-
20 50; Barnow Fee Decl. ¶¶ 23-24; Strong Fee Decl. ¶ 5. These out-of-pocket expenses were
21 necessary to secure the resolution of this litigation and may be recouped. *See In re Immune*
22 *Response Sec. Litig.*, 497 F. Supp. 2d 1177-78 (S.D. Cal. 2007) (finding that costs such as filing
23 fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal
24 research fees, and mediation expenses are relevant and necessary expenses in a class action
25 litigation).

1 The Notice informed Class Members that Class Counsel would seek a combined award of
2 fees and costs no greater than \$345,000.00. In light of the expenses Class Counsel have had to
3 incur to bring this case to its current settlement posture, and the excellent response by Class
4 Members to the Settlement to date, Class Counsel’s request for a total award of \$345,000, inclusive
5 of necessary litigation costs, is reasonable.

6 **E. Service Awards for the Class Representatives Are Appropriate**

7 Service awards compensate plaintiffs for work done on behalf of the Class, account for
8 financial and reputational risks associated with litigation, and promote the public policy of
9 encouraging plaintiffs to undertake the responsibility of representative lawsuits. *See Rodriguez v.*
10 *West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *Hartless v. Clorox Co.*, 273 F.R.D. 630,
11 646-47 (S.D. Cal. 2011) (“Incentive awards are fairly typical in class actions.”), *aff’d*, 473 F. App’x
12 716 (9th Cir. 2012). Plaintiffs request a Service Award in the amount of \$2,500 for both Class
13 Representatives. These stipends do not affect or reduce the benefits to the Class in any way; the
14 awards are paid in addition to the other relief the Class Representatives may receive under the
15 Settlement. SA ¶¶ 55, 57.

16 Each of the Class Representatives participated actively in the litigation. Ferich Fee Decl.
17 ¶¶ 27-28; Barnow Fee Decl. ¶¶ 10-11. Such enhancement payments, which serve as mere
18 premiums in addition to any claims-based recover provided for by the settlement, promote the
19 public policy of encouraging individuals to undertake the responsibility of representative lawsuits.
20 *Manual for Compl. Litig.* § 21.62 n. 971 (2004). Here, the efforts of the named Plaintiffs on behalf
21 of the Settlement Class underscore the propriety of the requested incentive awards, including (1)
22 assisting counsel with the preparation of the complaint; (2) producing relevant documents and
23 responded to other informal written discovery; (3) staying abreast of case developments through
24 each stage of the litigation; (4) reviewing the settlement terms; and (5) consulting with Class
25 Counsel. Ferich Fee Decl. ¶ 28; Barnow Fee Decl. ¶ 11.

1 After the Court granted preliminary approval of the Settlement and the Service Award
2 request, the Notice informed Class Members of Plaintiffs’ request for incentive payments. Ferich
3 Fee Decl. ¶ 33. At the time of filing this motion, no Class Member filed an objection to the
4 requested service payments weighing in favor of approval of the Service Awards requested.

5 Further, the requested Service Awards of \$2,500 are modest under the circumstances, and
6 well in line with awards approved by state and federal courts in Washington and elsewhere. *See,*
7 *e.g., Viesse v. Saar's Inc.*, No. 17-2-07783-6 SEA, 2018 Wash. Super. LEXIS 3427, *6 (King Cnty.
8 Sup. Ct. Mar. 5, 2018) (approving \$5,000 service award to class representative); *In re Online DVD-*
9 *Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015) (approving service payments to
10 plaintiffs in the amount of \$5,000 each); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-
11 30 (W.D. Wash. 2009) (approving \$7,500 service awards and collecting decisions approving
12 awards ranging from \$5,000 to \$40,000). Indeed, without Plaintiffs effort litigating this matter, the
13 Class would not have been able to recover anything. Ferich Fee Decl. ¶ 28; Barnow Fee Decl. ¶ 10.

14 In light of Plaintiffs considerable effort and risk undertaken to obtain the outstanding result
15 for the Class—and the lack of objections to the service payments—Plaintiffs request that the Court
16 approve the payments of \$2,500 to Plaintiffs Richard Easter and Tristan Star.

17 **V. CONCLUSION**

18 For the reasons set forth, Plaintiffs respectfully request that this Court grant their motion
19 and award the requested attorneys’ fees, costs, and expenses, and Plaintiffs’ Service Awards in
20 full.

21 I certify that this memorandum contains 5,864 words.

1 Dated: May 15, 2023

Respectfully submitted,

2 */s/ Alexander F. Strong*

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**pro hac vice to be submitted*

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**MOT. FOR ATTORNEYS' FEES, COSTS,
EXPENSES, AND SERVICE AWARDS AND
MEM. IN SUPPORT**

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1 **DECLARATION OF SERVICE**

2 I, Erika Haack, declare that I effected service of the following document(s) on the parties
3 listed below via the King County Superior Court eFiling application.

4 Document(s):

- 5 1. Motion for Attorney Fees, Etc.
6 2. Declaration of Alexander Strong
7 3. Declaration of Ben Barnow
8 4. Declaration of Andrew Ferich

9 Parties:

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20 *Generations*

21 I declare under penalty of perjury that the foregoing is true and correct.

22 DATED this 15th day of May, 2023.

23 /s/ Erika R. Haack

24 Erika R. Haack