

1 Raina C. Borrelli (*pro hac vice*)
Samuel J. Strauss (*pro hac vice*)
2 STRAUSS BORRELLI PLLC
980 N. Michigan Avenue, Suite 1610
3 Chicago, IL 60611
Telephone: (872) 263-1100
4 Facsimile: (872) 263-1109
5 raina@straussborrelli.com
sam@straussborrelli.com
6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9
10 **Adam Voelker, Alexxi Guyette, Janelle**
Bailey, Brittany Evans, and Baltazar
11 **Darosa**, individually and on behalf of all
others similarly situated,
12

13 Plaintiffs,

14 v.

15 **Enroll Confidently Inc.,**

16 Defendant.
17
18
19
20
21
22
23
24
25

Case No. 2:24-cv-01886-DJH

PLAINTIFFS' MOTION AND
MEMORANDUM OF LAW IN
SUPPORT OF REQUESTS FOR
ATTORNEYS' FEES,
EXPENSES, AND SERVICE
AWARDS

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. FACTS AND PROCEDURAL HISTORY.....2

III. ARGUMENT 2

 A. The Requested Fee Amount is Reasonable Under the Percentage-of-Fund Method. 3

 B. The *Vizcaino* Factors Support the Award Requested. 4

 1. Class Counsel achieved a favorable result for the Class.....5

 2. The litigation was risky, complex, and expensive. 6

 3. Counsel performed superior quality work to achieve the Settlement.....8

 4. Class Counsel worked on a contingent basis. 10

 5. Fees awarded in comparable cases exceed those requested here. 12

 6. The reaction of the Class supports the fee request..... 14

 C. A Lodestar Cross-check Confirms the Reasonableness of the Attorneys’ Fees Requested. 14

 1. Class Counsel Should be Reimbursed for Their Litigation Expenses..... 16

 D. The Court should grant a Service Award for each Class Representative. 17

IV. CONCLUSION 18

TABLE OF AUTHORITIES

CASE(S)	PAGE(S)
<i>Aguilar v. Wawona Frozen Foods</i> , No. 1:15-cv-00093-, 2017 WL 2214936 (E.D. Cal. May 19, 2017)	13
<i>Allagas v. BP Solar Int’l, Inc.</i> , No. 314CV00560SIEDL, 2016 WL 9114162 (N.D. Cal. Dec. 22, 2016).....	9
<i>Avila v. LifeLock Inc.</i> , No. 2:15-CV-01398, 2020 WL 4362394 (D. Ariz. July 27, 2020)	13
<i>Barbosa v. Cargill Meat Sols. Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013)	13
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015).....	11
<i>Boyd v. Bank of Am. Corp.</i> , No. SACV 13–0561, 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014).....	13
<i>Brown v. 22nd Dist. Agric. Ass’n</i> , No. 15-CV-02578-DHB, 2017 WL 3131557 (S.D. Cal. July 24, 2017)	11
<i>Burden v. Select Quote Ins. Servs.</i> , No. C 10-5966, 2013 WL 3988771 (N.D. Cal. Aug. 2, 2013)	13
<i>Ching v. Siemens Indus.</i> , No. 11-CV-04838-MEJ, 2014 WL 2926210 (N.D. Cal. June 27, 2014).....	11
<i>Cicero v. DirecTV, Inc.</i> , No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010)	4
<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408, 2017 WL 3116626 (E.D. Cal. July 21, 2017)	13
<i>Fernandez v. Victoria’s Secret Stores, LLC</i> , No. CV 06-04149, 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	13
<i>Franco v. Ruiz Food Prods., Inc.</i> , No. 1:10-cv-02354, 2012 WL 5941801 (E.D. Cal. Nov. 27, 2012)	13

1	<i>Graham v. Capital One Bank (USA), N.A.</i> ,	
2	No. SACV 13-00743-JLS, 2014 WL 12579806 (C.D. Cal. Dec. 8, 2014)	5
3	<i>Hammond v. The Bank of N.Y. Mellon Corp.</i> ,	
4	No. 08 Civ. 6060(RMB)(RLE), 15 2010 WL 2643307 (S.D.N.Y. June 25,	
5	2010)	7
6	<i>Hanlon v. Chrysler Corp.</i> ,	
7	150 F.3d 1011 (9th Cir. 1998)	9
8	<i>Hawthorne v. Umpqua Bank</i> ,	
9	No. 11-6700, 2015 WL 1927342 (N.D. Cal. Apr. 28, 2015).....	17
10	<i>In re Activision Sec. Litig.</i> ,	
11	723 F. Supp. 1373 (N.D. Cal. 1989).....	3
12	<i>In re Am. Apparel, Inc. S'holder Litig.</i> ,	
13	No. CV1006352MMMJC GX, 2014 WL 10212865 (C.D. Cal. July 28, 2014) 10	
14	<i>In re Anthem, Inc. Data Breach Litig.</i> ,	
15	No. 15-MD-02617-LHK, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018)	8
16	<i>In re Capacitors Antitrust Litig.</i> ,	
17	No. 14-cv-03264, 2018 WL 4790575 (N.D. Cal. Sept. 21, 2018)	16
18	<i>In re Equifax Inc. Customer Data Sec. Breach Litig.</i> ,	
19	No. 1:17-MD-2800, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020)	6, 8
20	<i>In re Heritage Bond Litig.</i> ,	
21	No. 02-ML-1475, 2005 WL 1594389 (C.D. Cal. June 10, 2005)	5, 9
22	<i>In re Lenovo Adware Litig.</i> ,	
23	No. 15-md-0624, 2019 WL 1791420 (N.D. Cal. April 24, 2019).....	16
24	<i>In re Mego Fin. Corp. Sec. Litig.</i> ,	
25	213 F.3d 454 (9th Cir. 2000)	12, 18
26	<i>In re Nuvelo, Inc. Sec. Litig.</i> ,	
	No. C 07-04056 CRB, 2011 WL 2650592 (N.D. Cal. July 6, 2011)	3
	<i>In re Omnivision Techs., Inc.</i> ,	
	559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	5, 6

1	<i>In re Online DVD-Rental Antitrust Litig.</i> ,	
2	779 F.3d 914, 2015 WL 845842 (9 th Cir. 2015)	18
3	<i>In re Pac. Enters. Secs. Litig.</i> ,	
4	47 F.3d 373 (9 th Cir. 1995)	13
5	<i>In re Toyota Unintended Acceleration Mktg., Sales Practices, & Prods. Liab.</i>	
6	<i>Litig.</i> ,	
7	No. 8:10-ML-2151, 2013 WL 12327929 (C.D. Cal. July 24, 2012).....	8, 11
8	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> ,	
9	19 F.3d 1291 (9 th Cir. 1994)	10, 11
10	<i>In re Yahoo! Inc. Customer Data Breach Litig.</i> ,	
11	No. 16-MD-02752, 2020 WL 4212811 (N.D. Cal. July 22, 2020)	16
12	<i>Jordan v. Freedom Nat'l Ins. Servs. Inc.</i> ,	
13	No. CV-16-00362, 2017 WL 10185526 (D. Ariz. July 20, 2017)	13
14	<i>Kissel v. Code 42 Software Inc.</i> ,	
15	No. 8:15-cv-01936, 2018 WL 6113078 (C.D. Cal. Feb. 20, 2018).....	5, 11, 16
16	<i>Knight v. Red Door Salons, Inc.</i> ,	
17	No. 08–01520 SC, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009)	8
18	<i>Laffitte v. Robert Half Int'l, Inc.</i> ,	
19	1 Cal. 5th 480, 376 P.3d 672 (2016).....	3
20	<i>Lee v. JPMorgan Chase & Co.</i> ,	
21	No. 13-cv-511, 2015 WL 12711659 (C.D. Cal. Apr. 28, 2015).....	13
22	<i>Linney v. Cellular Alaska P'ship</i> ,	
23	151 F.3d 1234 (9 th Cir. 1998)	7
24	<i>Lozano v. AT&T Wireless Servs., Inc.</i> ,	
25	No. 2:02-CV-00090-CAS (AJWx), 2010 WL 11520704 (C.D. Cal. Nov. 22,	
26	2010)	10
	<i>Marshall v. Northrop Grumman Corp.</i> ,	
	No. 16-CV-6794 AB (JCx), 2020 U.S. Dist. LEXIS 177056 (C.D. Cal. Sep. 18,	
	2020)	4

1	<i>Mejia v. Walgreen Co.</i> ,	
	No. 2:19-CV-00218 WBS AC, 2021 WL 1122390 (E.D. Cal. Mar. 24, 2021)	14
2	<i>Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles</i> ,	
3	No. CV 07-3072, 2009 WL 9100391 (C.D. Cal. June 24, 2009)	4
4	<i>Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco</i> ,	
5	688 F.2d 615 (9th Cir. 1982)	8
6	<i>Pierce v. Rosetta Stone, Ltd.</i> ,	
	No. C 11-01283 SBA, 2013 WL 5402120 (N.D. Cal. Sept. 26, 2013)	2
7	<i>Rodriguez v. W. Publ'g Corp.</i> ,	
8	563 F.3d 948 (9th Cir. 2009)	17
9	<i>Romero v. Producers Dairy Foods, Inc.</i> ,	
	No. 1:05-CV-0484, 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007)	4, 12
10	<i>Sevilla v. Aaron's, Inc.</i> ,	
11	No. CV 17-4053-DMG (Ex), 2020 U.S. Dist. LEXIS 86994 (C.D. Cal. May 15,	
12	2020)	4
13	<i>Singer v. Becton Dickinson Co.</i> ,	
	No. 08-CV-821, 2010 WL 2196104 (S.D. Cal. June 1, 2010)	13
14	<i>Smith v. CRST Van Expedited, Inc.</i> ,	
15	No. 10-CV-1116-IEG, 2013 WL 163293 (S.D. Cal. 2013).....	12
16	<i>Staton v. Boeing Co.</i> ,	
17	327 F.3d 938 (9th Cir. 2003)	3
18	<i>Stuart v. Radioshack Corp.</i> ,	
19	No. C-07-4499, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010).....	13
20	<i>Syed v. M-I, LLC</i> ,	
	No. 1:12-cv-1718, 2017 WL 3190341 (E.D. Cal. July 27, 2017)	13
21	<i>United States v. Armour & Co.</i> ,	
22	402 U.S. 673 (1971).....	8
23	<i>Van Vranken v. Atlantic Richfield Co.</i> ,	
24	901 F. Supp. 294 (N.D. Cal. 1995).....	17

1	<i>Vizcaino v. Microsoft Corp.</i> ,	
	290 F.3d 1043 (9th Cir. 2002)	passim
2	<i>Williams v. MGM-Pathe Comms. Co.</i> ,	
3	129 F.3d 1026 (9th Cir. 1997)	13
4	<i>Willner v. Manpower Inc.</i> ,	
5	No. 11-cv-02846, 2015 WL 3863625 (N.D. Cal. June 22, 2015)	16
6	<i>Wing v. Asarco Inc.</i> ,	
	114 F.3d 986 (9th Cir. 1997)	10
7	<i>Wren v. RGIS Inventory Specialists</i> ,	
8	No. 06-cv-05778, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)	13
9	<i>Zepeda v. PayPal, Inc.</i> ,	
	No. C-10-2500, 2017 WL 1113293 (N.D. Cal. Mar. 24, 2017)	9

RULES

11	Fed. R. Civ. P. 23(e)	3
12	Fed. R. Civ. P. 23(h)	2, 3

OTHER AUTHORITIES

14	<i>ABA Regulation of Contingency Fees: Money Talks, Ethics Walks</i> ,	
15	65 Fordham L. Rev. 247 (1996)	14
16	Federal Judicial Center, Manual for Complex Litigation, § 21.71, (4th ed. 2022).	5

I. INTRODUCTION

Counsel for Plaintiffs Adam Voelker, Alexxi Guyette, Janelle Bailey, Brittany Evans, and Baltazar Darosa (collectively, “Plaintiffs”) negotiated a proposed settlement resolving the claims of individuals who had their Private Information compromised as a result of a cyberattack on Defendant Enroll Confidentially, Inc.’s (“Defendant” or “Enroll”) computer system. (the “Data Incident”).

The proposed Settlement provides substantial and immediate benefits to the Settlement Class. Specifically, the Settlement creates a \$990,000 Settlement Fund from which all Class Members are eligible to make a claim for compensation for ordinary out-of-pocket losses up to \$3,500 or a pro rata cash payment in an estimated amount of \$100 as well as one year of three bureau credit monitoring. Doc. 48-1, Settlement Agreement, (“S.A.”) ¶ 73.

The hard-won bargain achieved for the Class did not come easily. Rather, it took considerable time, effort, and skill from Class Counsel. To reach this result, Class Counsel expended extensive resources to investigate this case, interviewed potential plaintiffs, drafted multiple complaints, consolidated cases into a single class action lawsuit, researched and drafted the detailed consolidated complaint, engaged in months of settlement negotiations, and participated in formal mediation, before ultimately achieving the final result for the Class.

Plaintiffs and their Counsel now seek an award of attorneys’ fees in the amount of one third of the Settlement Fund (\$330,000) plus \$13,435 in out-of-pocket litigation expenses.

1 The Settlement Agreement further provides that Defendant will pay a
2 \$5,000 service award to each Plaintiff as compensation for his or her time and
3 efforts participating in the case. Courts routinely approve such awards as
4 “presumptively reasonable.” *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA,
5 2013 WL 5402120, at *6 (N.D. Cal. Sept. 26, 2013) (“In this district, a \$5,000
6 payment is presumptively reasonable.”) (citing cases).

7 The requested fee, expense, and service awards are reasonable and should
8 be approved.

9 II. FACTS AND PROCEDURAL HISTORY

10 In the interest of judicial efficiency, for factual and procedural background
11 on this case, Plaintiffs refer this Court to, and hereby incorporate, Plaintiffs’
12 Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 41),
13 the Report and Recommendation by the Magistrate Judge Alison S. Buchus (Doc.
14 47) as well as Plaintiffs’ Notice of Filing Amended Settlement Documents in
15 Support of Preliminary Approval of Class Action Settlement (Doc. 48) and the
16 accompanying exhibits filed in conjunction therewith. Plaintiffs also incorporate
17 Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement, filed
18 concurrently with this Motion.

19 The Court granted preliminary approval of the Settlement on March 25,
20 2026. Doc. 49. Pursuant to the Settlement Agreement and the Court’s Order
21 Plaintiffs now submit this motion.

22 III. ARGUMENT

23 Federal Rule of Civil Procedure 23(h) permits the court to award reasonable
24 attorney’s fees and costs in class action settlements as authorized by law or by the
25

1 parties' agreement. Fed. R. Civ. P. 23(h). In deciding whether the requested fee
2 amount is appropriate, the Court's role is to determine whether such amount is
3 "fundamentally fair, adequate, and reasonable." *Staton v. Boeing Co.*, 327 F.3d
4 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

5 Where a class settlement results in the creation of common benefits, courts
6 in this Circuit may use either—or both—the "percentage-of-the-recovery" or the
7 "lodestar-multiplier" method to determine a reasonable fee. *Vizcaino v. Microsoft*
8 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). However, "the primary basis of the fee
9 award remains the percentage method" while "the lodestar may provide a useful
10 perspective on the reasonableness of a given percentage award. *Id.* at 1050. Indeed,
11 courts frequently use the percentage method as it 'is easy to calculate; it establishes
12 reasonable expectations on the part of plaintiffs' attorneys as to their expected
13 recovery; and it encourages early settlement, which avoids protracted litigation.'" *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 490, 376 P.3d 672, 677 (2016)
14 (citation omitted).

15
16 Here, under any measure, the requested fee is fair, reasonable, and adequate.

17 **A. The Requested Fee Amount is Reasonable Under the Percentage-of-**
18 **Fund Method.**

19 Under the percentage of the fund approach, class counsels' fees are
20 calculated as a percentage of the common benefit generated through their efforts.
21 Numerous district courts in this Circuit have recognized that "nearly all common
22 fund fee awards range around 30%" of the overall benefit recovered. *In re*
23 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989); *see In re*
24 *Nuvelo, Inc. Sec. Litig.*, No. C 07-04056 CRB, 2011 WL 2650592, at *2 (N.D. Cal.

July 6, 2011) (finding “an exhaustive list of cases” indicating that the Ninth Circuit’s benchmark “is at approximately 30% of the fund”); *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, No. CV 07-3072, 2009 WL 9100391, at *3-5 (C.D. Cal. June 24, 2009) (“attorneys’ fees in class actions averaged approximately 32% of the recovery”); *Cicero v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) (“[C]ase law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded[.]”); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05-CV-0484, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (“[F]ee awards in class actions average around one-third of the recovery.”) Here, Class Counsel’s request for a combined fee and expense award that represents 33% of the Settlement benefit is reasonable, as the benchmark is regularly adjusted upward in circumstances such as this where an exception result is achieved for the class. *See, e.g., Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020 U.S. Dist. LEXIS 177056, at *9 (C.D. Cal. Sep. 18, 2020) (awarding class counsel attorneys’ fee of one-third the settlement fund where an “exceptional result” was achieved); *Sevilla v. Aaron’s, Inc.*, No. CV 17-4053-DMG (Ex), 2020 U.S. Dist. LEXIS 86994, at *4 (C.D. Cal. May 15, 2020) (“It is also not uncommon for courts to award one-third of the gross settlement fund as attorneys’ fees where the circumstances warrant it.”) (citation omitted).

B. The Vizcaino Factors Support the Award Requested.

In assessing a fee award, the Ninth Circuit directs courts to consider: “(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.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048-50); *see also Kissel v. Code 42 Software Inc.*, No. 8:15-cv-01936, 2018 WL 6113078, at *4 (C.D. Cal. Feb. 20, 2018). These factors support the requested fee.

1. Class Counsel achieved a favorable result for the Class.

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *Graham v. Capital One Bank (USA), N.A.*, No. SACV 13-00743-JLS, 2014 WL 12579806, at *5 (C.D. Cal. Dec. 8, 2014) (citing *In re Omnivision*, 559 F. Supp. 2d at 1046); *see also In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594389 at *8 (C.D. Cal. June 10, 2005) (“result achieved is a major factor” in making fee award); *Vizcaino*, 290 F.3d at 1049; Federal Judicial Center, *Manual for Complex Litigation*, § 21.71, p. 336 (4th ed. 2022) (the “fundamental focus is the result actually achieved for class members”) (citation omitted). Outstanding results merit a higher fee. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (awarding a fee of 28 percent).

Here, the Settlement provides for a \$990,000 non-reversionary common fund, which the Court previously held is “fair, reasonable, and adequate as to the Class Members . . .” Preliminary Approval Order, Doc. 49, ¶ 1. The amount of compensation per Class Member is substantial, with each Class Member being entitled to a year of credit monitoring as well as up to \$3,500 in documented losses, or up to \$100 as an alternative cash payment from the \$990,000 Settlement Fund. S.A., ¶ 73. These benefits directly address the harm alleged by Plaintiffs, on behalf of the Class, that resulted from the Data Incident.

1 Plaintiffs believe that they would succeed in litigation and be able to recover
2 damages on behalf of the Class. However, they recognize that the range of potential
3 litigation outcomes is large. The scope of damages would depend in large part on
4 the scope of class certification, whether various theories of damages would be
5 accepted by the Court (i.e., benefit of the bargain and loss of value of Private
6 Information theories), and which causes of action survive. Whether the case would
7 be litigated to a favorable outcome and the amount obtained through continued
8 litigation are not certain, and the case is subject to numerous risks. Through this
9 settlement, practical remedies that have been absent become imminently available.
10 Even if Plaintiffs achieved a successful judgment, relief to Class Members would
11 likely be forestalled for years following the exhaustion of appeals. Based on the
12 size of the breach and the substantial litigation risks, the Settlement presents a
13 robust relief package and valuable outcome for the Class compared to other recent
14 data breach class action settlements.

15 The results achieved here are substantial, and support Class Counsel's fee
16 request.

17 **2. The litigation was risky, complex, and expensive.**

18 Risk is a critical factor in determining a fair fee award. *In re Omnivision*,
19 559 F. Supp. 2d at 1046-47 ("The risk that further litigation might result in
20 Plaintiffs not recovering at all, particularly a case involving complicated legal
21 issues, is a significant factor in the award of fees.") (citing *Vizcaino*, 290 F.3d at
22 1048).

23 Data breach cases in particular are among the riskiest and most uncertain of
24 all class action litigation. Such cases are innately complex. *See, e.g., In re Equifax*
25

1 *Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 WL 256132, at
2 *32-33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues
3 in data breach class actions). Although nearly all class actions involve a high level
4 of risk, expense, and complexity, *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234,
5 1238 (9th Cir. 1998), data breach cases are especially so. *See, e.g., Hammond v.*
6 *The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060(RMB)(RLE), 15 2010 WL
7 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases).

8 This case is no exception to that rule. Defendant has emphatically denied
9 Plaintiffs' allegations of wrongdoing, and in continued litigation will vigorously
10 defend against Plaintiffs' claims. It involves complicated and technical facts,
11 highly skilled opposing counsel, contested issues on class certification, and
12 substantive defenses. There are numerous substantial hurdles that Plaintiffs would
13 have had to overcome before the Court might find a trial appropriate.

14 Data breach cases, particularly, face substantial hurdles in surviving even
15 past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08
16 Civ. 6060, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases).
17 Were litigation to proceed, there would be numerous expert reports and costly
18 depositions, which would present significant expenses. As in any data breach class
19 action, establishing causation and damages on a class-wide basis is largely
20 uncharted territory and full of uncertainty.

21 As in any litigation, Plaintiffs faced significant risk of no recovery. Plaintiffs
22 also faced uncertainty with respect to obtaining and maintaining class certification.
23 Success at class certification has been challenging in data breach cases. Even if this
24 Court had granted in full Plaintiffs' motion for class certification, the inherent risks

1 attendant to trying a data breach class action would have only magnified the
2 difficult legal questions at issue here. *See, e.g., In re Anthem, Inc. Data Breach*
3 *Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *12 (N.D. Cal. Aug. 17,
4 2018) (“[C]lass certification was not guaranteed, in part because Plaintiffs had a
5 scarcity of precedent to draw on.”); *In re Equifax*, 2020 WL 256132, at *33.
6 Although Plaintiffs believe they would have prevailed in this action, a verdict for
7 the defense was entirely possible.

8 To the extent the law has gradually accepted this relatively new type of
9 litigation, the path to a class-wide monetary judgment remains unforged,
10 particularly in the area of damages. While Plaintiffs believe they could overcome
11 these challenges, any of these defenses, if successful, could end the case entirely
12 and result in the Settlement Class Members receiving nothing at all. The proposed
13 Settlement therefore achieves a far more certain and preferable result for the
14 Settlement Class members than continued litigation, as it strikes an appropriate
15 balance between the potential benefits, on the one hand, and the risks and costs
16 associated with continued litigation, on the other. *Officers for Justice v. Civil Serv.*
17 *Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982);
18 *United States v. Armour & Co.*, 402 U.S. 673, 81-82 (1971). This factor
19 supports the appropriateness of the requested fee award.

20 **3. Counsel performed superior quality work to achieve the**
21 **Settlement.**

22 “Courts have recognized that the ‘prosecution and management of a
23 complex national class action requires unique legal skills and abilities.’” *In re*
24 *Toyota Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No.

1 8:10-ML-2151, 2013 WL 12327929, at *31 (C.D. Cal. July 24, 2012) (quoting
2 *Knight v. Red Door Salons, Inc.*, No. 08–01520 SC, 2009 WL 248367, at *6 (N.D.
3 Cal. Feb. 2, 2009)). When evaluating this factor, the “single clearest factor
4 reflecting the quality of class counsels’ services to the class are the results
5 obtained.” *In re Heritage*, 2005 WL 1594389, at *12 (citations omitted). As set
6 forth above, the results achieved are excellent.

7 Moreover, in setting fee awards, courts also consider counsel’s experience
8 and skill. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Class
9 Counsel’s skill and experience in complex class action litigation also favor the
10 requested fee award here. Class Counsel are highly specialized in field of data
11 breach class action litigation, well credentialed, and equal to the difficult and novel
12 tasks at hand. *See* Klinger Decl., ¶¶ 16-18. Class Counsel’s fee request is
13 commensurate with that experience, which they were able to leverage to procure
14 the settlement. The skill demonstrated by Class Counsel in developing the
15 Complaints, coordinating all the cases, researching and drafting the detailed
16 Consolidated Complaint, and negotiating and settling the action early further
17 supports the fees requested. *See Vizcaino*, 290 F.3d at 1050, n.5; *Zepeda v. PayPal,*
18 *Inc.*, No. C-10-2500, 2017 WL 1113293, at *20 (N.D. Cal. Mar. 24, 2017) (class
19 counsel’s consumer class action expertise allowed for a result that “would have
20 been unlikely if entrusted to counsel of lesser experience or capability” given the
21 “substantive and procedural complexities” and the “contentious nature” of the
22 settlement); *Allagas v. BP Solar Int’l, Inc.*, No. 314CV00560SIEDL, 2016 WL
23 9114162, at *2 (N.D. Cal. Dec. 22, 2016) (class counsel that were “highly
24
25

1 experienced in prosecuting and settling complex class actions” factors in favor of
2 requested fee).

3 Enroll was also represented by highly experienced and competent counsel,
4 a factor to be considered here. *See In re Am. Apparel, Inc. S’holder Litig.*, No.
5 CV1006352MMMJCGX, 2014 WL 10212865, at *22 (C.D. Cal. July 28, 2014)
6 (“In addition to the difficulty of the legal and factual issues raised, the court should
7 also consider the quality of opposing counsel as a measure of the skill required to
8 litigate the case successfully.”) (citing *Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th
9 Cir. 1997)). Defendant was represented in this case by a national, highly respected,
10 national law firm with significant resources and substantial experience defending
11 consumer and data breach class actions. This factor, therefore, weighs in favor of
12 the requested fee award.

13 **4. Class Counsel worked on a contingent basis.**

14 The Ninth Circuit has confirmed that a fair fee award must include
15 consideration of the contingent nature of the fee. *See, e.g., Vizcaino*, 290 F.3d at
16 1050; *Lozano v. AT&T Wireless Servs., Inc.*, No. 2:02-CV-00090-CAS (AJWx),
17 2010 WL 11520704, at *1 (C.D. Cal. Nov. 22, 2010). Courts long have recognized
18 that the public interest is served by rewarding attorneys who assume representation
19 on a contingent basis with an enhanced fee to compensate them for the risk that
20 they might be paid nothing at all for their work. *See, e.g., In re Wash. Pub. Power*
21 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (“Contingent fees that
22 may far exceed the market value of the services if rendered on a non-contingent
23 basis are accepted in the legal profession as a legitimate way of assuring competent
24 representation for plaintiffs who could not afford to pay on an hourly basis
25

1 regardless whether they win or lose.”); *Vizcaino*, 290 F.3d at 1051 (observing
2 courts reward successful class counsel in contingency cases “by paying them a
3 premium over their normal hourly rates”).

4 This factor deserves particular weight under the unique circumstances of
5 this matter. If Class Counsel had been able to negotiate a fee directly with Class
6 Members, a 33% combined contingent fee and expense percentage would have
7 been eminently reasonable, and in line with market rates for a case this complex,
8 risky, and difficult.

9 “Attorneys are entitled to a larger fee award when their compensation is
10 contingent in nature.” *In re Toyota*, 2013 WL 12327929, at *32 (citing *Vizcaino*,
11 290 F.3d at 1048-50); *see also Kissel*, 2018 WL 6113078, at *5. “[W]hen counsel
12 takes cases on a contingency fee basis, and litigation is protracted, the risk of non-
13 payment after years of litigation justifies a significant fee award.” *Bellinghausen v.*
14 *Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015). The potential of
15 receiving little or no recovery in the face of increasing risk weighs in favor of the
16 requested fee. *See In re Wash. Pub. Power*, 19 F.3d at 1299; *Ching v. Siemens*
17 *Indus.*, No. 11-CV-04838-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014)
18 (“Courts have long recognized that the public interest is served by rewarding
19 attorneys who assume representation on a contingent basis with an enhanced fee to
20 compensate them for the risk that they might be paid nothing at all for their work.”);
21 *Brown v. 22nd Dist. Agric. Ass’n*, No. 15-CV-02578-DHB, 2017 WL 3131557, at
22 *8 (S.D. Cal. July 24, 2017) (recognizing that “class counsel was forced to forego
23 other employment in order to devote necessary time to this litigation” and the
24
25

1 substantial risk associated with taking the matter on a contingent basis warranted
2 “an upward adjustment to the fee award”).

3 Here, Defendant adamantly denied (and continues to deny) any wrongdoing,
4 much less a legal entitlement to class certification or any recovery. The path to
5 establishing liability was particularly challenging given these risks. Class Counsel
6 expended significant resources despite the genuine risk that they would never be
7 compensated at all—not only in this litigation, but also with competing cases in
8 other districts that could have settled without Class Counsel foregoing that other
9 work to focus on this case. Class Counsel prosecuted this matter on a purely
10 contingent basis, agreeing to advance all necessary expenses and agreeing that they
11 would only receive a fee if there was a recovery. To date, Class Counsel have
12 received no compensation at all litigating this case on behalf of the Class.
13 Moreover, Class Counsel faced a Defendant with ample resources to vigorously
14 fight the litigation, represented by experienced counsel. The risk of non-recovery
15 is sufficiently substantial to justify the instant fee request.

16 **5. Fees awarded in comparable cases exceed those requested**
17 **here.**

18 The requested fee here is 33% of the Settlement Fund created for the benefit
19 of the Settlement Class. There is an overwhelming amount of support for the
20 reasonableness of this request in this Circuit. “Empirical studies show that,
21 regardless whether the percentage method or the lodestar method is used, fee
22 awards in class actions average around one-third of the recovery.” *Romero v.*
23 *Producers Dairy Foods, Inc.*, No. 1:05-cv-0484, 2007 WL 3492841, at *4 (E.D.
24 Cal. Nov. 14, 2007) (quoting 4 Newberg and Conte, NEWBERG ON CLASS
25

1 ACTIONS § 14.6 (4th ed. 2007)). “Under the percentage method, California has
2 recognized that most fee awards . . . are 33 percent” *Smith v. CRST Van*
3 *Expedited, Inc.*, No. 10-CV-1116-IEG, 2013 WL 163293, at *5 (S.D. Cal. 2013).
4 Indeed, the Ninth Circuit has repeatedly found attorneys’ fee awards of 33% of the
5 recovery to be fair and reasonable. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213
6 F.3d 454, 463 (9th Cir. 2000) (affirming fee award of one-third of total recovery);
7 *In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33%
8 award); *Williams v. MGM-Pathe Comms. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)
9 (same); *Jordan v. Freedom Nat’l Ins. Servs. Inc.*, No. CV-16-00362, 2017 WL
10 10185526, at *2 (D. Ariz. July 20, 2017) (Rayes, J.) (approving fees and expenses
11 totaling 41% of common fund); *Avila v. LifeLock Inc.*, No. 2:15-CV-01398, 2020
12 WL 4362394, at *1 (D. Ariz. July 27, 2020) (awarding fees of 30% of \$20 million
13 fund); *Syed v. M-I, LLC*, No. 1:12-cv-1718, 2017 WL 3190341, at *8 (E.D. Cal.
14 July 27, 2017) (awarding one-third of \$7 million common fund); *Dearaujo v. Regis*
15 *Corp.*, No. 2:14-cv-01408, 2017 WL 3116626, at *13 (E.D. Cal. July 21, 2017)
16 (awarding one-third of recovery); *Lee v. JPMorgan Chase & Co.*, No. 13-cv-511,
17 2015 WL 12711659, at *8-9 (C.D. Cal. Apr. 28, 2015) (same); *Boyd v. Bank of Am.*
18 *Corp.*, No. SACV 13–0561, 2014 WL 6473804, at *10-11 (C.D. Cal. Nov. 18,
19 2014) (same); *Burden v. Select Quote Ins. Servs.*, No. C 10-5966, 2013 WL
20 3988771, at *5 (N.D. Cal. Aug. 2, 2013) (same); *Barbosa v. Cargill Meat Sols.*
21 *Corp.*, 297 F.R.D. 431, 454 (E.D. Cal. 2013) (same); *Franco v. Ruiz Food Prods.,*
22 *Inc.*, No. 1:10-cv-02354, 2012 WL 5941801, at *25 (E.D. Cal. Nov. 27, 2012)
23 (same); *Singer v. Becton Dickinson Co.*, No. 08-CV-821, 2010 WL 2196104, at *8
24 (S.D. Cal. June 1, 2010) (awarding 33% and citing two prior similar Southern
25

District awards); *Stuart v. Radioshack Corp.*, No. C-07-4499, 2010 WL 3155645, at *8 (N.D. Cal. Aug. 9, 2010) (awarding one-third); *Fernandez v. Victoria's Secret Stores, LLC*, No. CV 06-04149, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding 34%); *Aguilar v. Wawona Frozen Foods*, No. 1:15-cv-00093-, 2017 WL 2214936, at *9 (E.D. Cal. May 19, 2017) (awarding 33%); *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778, 2011 WL 1230826, at *27-28 (N.D. Cal. Apr. 1, 2011) (awarding 42% of \$27 million fund).

In addition, the requested fee is at the low end of the prevailing percentage for standard contingency-fee agreements in individual cases. *See Vizcaino*, 290 F.3d at 1049. Surveys have estimated that contingency-fee percentages in individual litigation start at 33% and go up to 40%. *See, e.g.*, Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev. 247, 248 (1996) (“standard contingency fees” are “usually thirty-three percent to forty percent of gross recoveries”).

Accordingly, this factor supports the requested fee here.

6. The reaction of the Class supports the fee request.

The settlement received broad and consistent support with only one objection received. This meritless objection is addressed in Plaintiffs’ concurrently filed Motion for Final Approval of Class Action Settlement.

C. A Lodestar Cross-check Confirms the Reasonableness of the Attorneys’ Fees Requested.

Application of the lodestar method as a cross-check confirms the reasonableness of the fees requested here. *See Vizcaino*, 290 F.3d at 1050-51

1 (“Calculation of the lodestar, which measures the lawyers’ investment of time in
2 the litigation, provides a check on the reasonableness of the percentage award.”).
3 Plaintiffs’ Counsel and their respective staffs have devoted a total of approximately
4 262.2 hours to this litigation and have a total lodestar to date of \$217,048.30
5 Klinger Decl. ¶ 14. This represents a modest 1.52 risk multiplier based on the
6 requested fee. *Id.* Courts in the Ninth Circuit routinely approve similar and much
7 higher multipliers. *Mejia v. Walgreen Co.*, No. 2:19-CV-00218 WBS AC, 2021
8 WL 1122390, at *8 (E.D. Cal. Mar. 24, 2021) (discussing court approval of lodestar
9 multipliers from 2.0 to 4.5 and noting that risk multipliers “between 3 and 4.5 have
10 become more common”) (citations omitted); *Vizcaino*, 290 F.3d at 1052 appx.
11 (finding that risk multipliers range between 1.0 and 4.0 in 83% of cases). All of the
12 Plaintiffs’ Counsel time was reasonable and necessary for the prosecution of this
13 action. Class Counsel took meaningful steps to ensure the efficiency of their work.
14 Klinger Decl. ¶ 15. Further, these amounts do not include the additional time that
15 Class Counsel will have to spend through the Final Approval Hearing and beyond,
16 including finalizing and filing this motion and the final approval motion, attending
17 the final approval hearing, and overseeing the distribution of Settlement benefits to
18 the Class. *Id.*

19 Class Counsel here are experienced, highly regarded members of the bar.
20 They have brought to this case extensive experience in the area of consumer class
21 actions and data breach and privacy litigation. Klinger Decl. ¶¶ 17-18; *see also*
22 Doc. 41-2 Ex.A (firm biographies). Class Counsel’s customary rates are in line
23 with prevailing rates in this District, have been approved by courts in this District
24
25

1 and other courts, and are in line with the rates charged by contemporaries in the
2 data breach bar. *Id.* ¶ 16.

3 The lodestar cross-check thus confirms the reasonableness of the requested
4 fee award, particularly in light of the significant results achieved by the Settlement,
5 the contingent nature of Class Counsel’s representation, and the skill and expertise
6 Class Counsel employed maneuvering the case toward a favorable Settlement.

7 **1. Class Counsel Should be Reimbursed for Their Litigation**
8 **Expenses.**

9 “Attorneys may recover their reasonable expenses that would typically be
10 billed to paying clients in non-contingency matters.” *Kissel*, 2018 WL 6113078, at
11 *6. This includes expenses that are reasonable, directly related to the litigation, and
12 normally charged to a fee-paying client. *Willner v. Manpower Inc.*, No. 11-cv-
13 02846, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015).

14 Here, Settlement Class Counsel request reimbursement of expenses of
15 \$13,435. Klinger Decl., ¶ 19. The requested expense reimbursement represents
16 Class Counsel’s actual out-of-pocket litigation costs for items such as filing fees,
17 mediation fees, and pro hac vice fees. These expenditures were necessary to Class
18 Counsel’s prosecution of the action and are particularly reasonable given the
19 complexities of this case. Such costs are regularly billed to clients in hourly fee
20 cases and routinely awarded in contingency fee cases. *See, e.g., In re Yahoo! Inc.*
21 *Customer Data Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *42 (N.D.
22 Cal. July 22, 2020) (approving reimbursement of expenses related to expert witness
23 fees, case-related travel, transcript fees, document management, copying, mailing,
24 and serving documents, operation of a call center to respond to Settlement Class
25

1 Member inquiries, electronic research, and filing and court fees); *In re Capacitors*
2 *Antitrust Litig.*, No. 14-cv-03264, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21,
3 2018) (“Reasonable reimbursable litigation expenses include: those for document
4 production, experts and consultants, depositions, translation services, travel, mail
5 and postage costs.”) (citations omitted); *In re Lenovo Adware Litig.*, No. 15-md-
6 0624, 2019 WL 1791420, at *9 (N.D. Cal. April 24, 2019) (reimbursing counsel’s
7 “professional service fees (experts, investigators, accountants), travel fees, and
8 discovery-related fees”).

9 **D. The Court should grant a Service Award for each Class**
10 **Representative.**

11 Class Counsel also request that the Court approve service awards in the
12 amount of \$5,000 for each Class Representative. Service awards are typically
13 awarded in class actions, and “are intended to compensate class representatives for
14 work done on behalf of the class, to make up for financial or reputational risk
15 undertaken in bringing the action, and, sometimes, to recognize their willingness
16 to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948,
17 958-59 (9th Cir. 2009).

18 Each of the Plaintiffs expended considerable effort on behalf of the Class
19 by, among other things: (1) participating in plaintiff vetting interviews with Class
20 Counsel at the outset of the case; (2) gathering and providing supporting documents
21 to Class Counsel; (3) assisting with investigation of the facts; (4) reviewing the
22 complaints prior to filing; and (5) consulting with Class Counsel during the
23 litigation and settlement negotiations. Their commitment to the Class’s interests
24 and desire to remedy these issues, not just for themselves, but also the entire Class,
25

1 was essential to the successful and timely prosecution of this class action and, in
2 Class Counsel’s view, warrants recognition in the form of the service awards
3 requested. Their commitment is notable given the modest size of their personal
4 financial stakes in the matter. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.
5 Supp. 294, 299 (N.D. Cal. 1995) (“In exchange for his participation, [named
6 plaintiff] will not receive great personal benefit. He owns a moderately sized truck
7 stop and his claim makes up only a tiny fraction of the common fund.”).

8 The \$5,000 service awards sought fall at the lower end of the spectrum of
9 amounts awarded in comparable cases. *See, e.g., Hawthorne v. Umpqua Bank*, No.
10 11-6700, 2015 WL 1927342, at *8 (N.D. Cal. Apr. 28, 2015) (“Many courts in the
11 Ninth Circuit have also held that a \$5,000 incentive award is ‘presumptively
12 reasonable.’”) (citation omitted); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
13 457, 463 (9th Cir. 2000) (service awards of \$5,000); *In re Online DVD-Rental*
14 *Antitrust Litig.*, 779 F.3d at 943 (approving service awards of \$5,000 to class
15 representatives in a consumer case).

16 In light of the Class Representatives’ willingness to step forward and their
17 continued commitment to pursue this litigation for the benefit of the Class, the
18 Court should grant the requested Service Awards.

19 IV. CONCLUSION

20 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
21 the instant motion and approve Class Counsel’s request for: (i) attorneys’ fees in
22 the amount of \$330,000.00; (iii) reimbursement of reasonable costs in the amount
23 of \$13,435; and (iii) payment of service awards of \$5,000 to each of the Class
24 Representatives.

1 Dated: June 22, 2026

By: /s/ Raina C. Borrelli

2 Raina C. Borrelli (*pro hac vice*)
3 Samuel J. Strauss (*pro hac vice*)
4 STRAUSS BORRELLI PLLC
5 One Magnificent Mile
6 980 N Michigan Avenue, Suite 1610
7 Chicago IL, 60611
8 Telephone: (872) 263-1100
9 Facsimile: (872) 263-1109
10 raina@straussborrelli.com
11 sam@straussborrelli.com

8 Andrew J. Shamis
9 SHAMIS & GENTILE P.A.
10 14 NE 1st Avenue, Suite 705
11 Miami, Florida 33132
12 ashamis@shamisgentile.com

12 Jeff Ostrow
13 KOPELOWITZ OSTROW P.A.
14 1 W. Las Olas Blvd., Ste. 500
15 Fort Lauderdale, FL 33301
16 Telephone: (954) 525-4100
17 ostrow@kolawyers.com

16 Gary M. Klinger
17 MILBERG PLLC
18 227 W. Monroe Street, Suite 2100
19 Chicago, IL 60606
20 Phone: (312) 283-3814
21 gklinger@milberg.com

20 *Attorneys for Plaintiffs and the Proposed*
21 *Class*

CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that on June 22, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, below, via the ECF system.

DATED this 22nd day of June, 2026.

STRAUSS BORRELLI PLLC

By: /s/ Raina C. Borrelli

Raina C. Borrelli
raina@straussborrelli.com
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N Michigan Avenue, Suite 1610
Chicago IL, 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109

1 Raina C. Borrelli (*pro hac vice*)
Samuel J. Strauss (*pro hac vice*)
2 STRAUSS BORRELLI PLLC
980 N. Michigan Avenue, Suite 1610
3 Chicago, IL 60611
Telephone: (872) 263-1100
4 Facsimile: (872) 263-1109
5 raina@straussborrelli.com
sam@straussborrelli.com
6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9
10 **Adam Voelker, Alexxi Guyette, Janelle**
Bailey, Brittany Evans, and Baltazar
11 **Darosa**, individually and on behalf of all
others similarly situated,
12

13 Plaintiffs,

14 v.

15 **Enroll Confidently Inc.,**

16 Defendant.
17
18
19
20
21
22
23
24
25

Case No. 2:24-cv-01886-DJH

DECLARATION OF GARY M.
KLINGER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
EXPENSES, AND SERVICE
AWARDS

26 **DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFFS' MOTION**
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

1 I, Gary M. Klinger, hereby declare, under penalty of perjury, as follows:

2 **I. THE SETTLEMENT REPRESENTS A HIGHLY FAVORABLE**
3 **RESULT**

4 1. The Settlement was the result of hard-fought negotiations and
5 provides substantial benefits to the Settlement Class, including significant
6 monetary benefits, and identity theft protection and credit monitoring, and
7 corrective remedial measures.

8 2. Following the initial filing of each of the lawsuits that gave rise to this
9 action and their consolidation before this Court, Class Counsel continued to
10 investigate the facts of the Data Incident, including gathering all of the information
11 that was available regarding Defendant and the Data Incident, such as all publicly-
12 available documents concerning announcements of the Data Incident and notice of
13 the Data Incident by Defendant to the potentially affected individuals and various
14 states' Attorneys' General.

15 3. Under the terms of the Settlement, Defendant has agreed to create a
16 Settlement Fund \$990,000.00 to the Settlement Class. Under the Settlement, each
17 Class Member can make a claim for one year of credit monitoring as well as up to
18 \$3,500 in documented losses, or up to \$100 as an alternative cash payment.

19 4. It is my opinion that the Settlement achieved here represents an
20 excellent result considering the significant benefits to the Settlement Class as well
21 as the risks and delays attendant to further protracted litigation.

II. THE ATTORNEYS' FEES AND EXPENSES ARE FAIR AND REASONABLE

5. Only after an agreement was reached as to the essential terms of the Settlement, specifically the benefits to the Settlement Class, were there discussions regarding Settlement Class Counsel's attorneys' fees, reimbursement of litigation expenses, and service awards for Class Representatives.

6. As compensation for the substantial benefit conferred upon the Settlement Class, Defendant has agreed to pay Class Counsel's combined attorneys' fees of \$330,000 (one third of the Settlement Fund), reimbursement of expenses in the amount of \$13,435, and service awards of \$5,000 for each of the Class Representatives.

7. . As of the filing of this declaration, **no** class members have objected to the Settlement or the fee request. This is a strong indicator of the favorability of the Settlement. It further supports the appropriateness of Class Counsel's fee and expense request.

8. Plaintiffs' Counsel aggressively litigated this Action. The tasks Class Counsel performed include, but are not limited to: fully investigating the facts and legal claims; interviewing and vetting potential plaintiffs; preparing the individual complaints; preparing the detailed consolidated complaint; requesting, obtaining, and reviewing numerous documents from Defendant regarding the Data Incident, Defendant's remediation efforts, and Defendant's insurance coverage and financial condition; drafting a comprehensive mediation statement assessing the legal and factual strengths and weaknesses of the case; participating in a full day mediation that lasted well into the evening hours; participating in months-long negotiations

1 concerning the final terms of the Settlement; drafting the Settlement Agreement
2 and the exhibits thereto, including the notices and claim form; developing the
3 notice program and distribution plans, including soliciting bids from settlement
4 administrators; preparing and filing the motion for preliminary approval; working
5 with the Claims Administrator to implement the notice program, including
6 answering questions from Class Members regarding the Settlement and the
7 submission of claims.

8 9. Class Counsel have decades of experience as class action advocates
9 in general and as advocates in data breach class actions in particular. Taken together,
10 Class Counsel have even more decades of experience.

11 10. This combined experience enables Settlement Class Counsel to
12 represent Plaintiffs' and Class Members' interests without expending hundreds of
13 hours and substantial financial resources to come up to speed on the subject area.

14 11. Having worked on behalf of the class since the Data Incident was first
15 announced, evaluated the legal and factual disputes, and dedicated significant time
16 and resources to this litigation, Settlement Class Counsel fully endorse the
17 settlement.

18 12. Class Counsel coordinated to efficiently allocate work, coordinate
19 assignments, and prevent any work unnecessary for the effective prosecution of
20 this case.

21 13. In tracking lodestar and expenses in this matter, Class Counsel
22 maintained contemporaneous and detailed time records, which include a
23 description of all work performed and expenses incurred. Based on this review and
24 the adjustments made, I believe that the time reflected in the lodestar calculation
25

1 and the expenses for which payment is sought are reasonable and were necessary
2 for the effective prosecution and resolution of the litigation.

3 14. After the reductions referred to above, the number of hours spent on
4 the litigation by Plaintiffs' Counsel, to date, is 262.2 hours for a total lodestar of
5 \$217,048.30. This reflects a very modest multiplier of 1.52. The current lodestar
6 does not include the time spent preparing the fee motion nor the many additional
7 hours of work that will be required from Plaintiffs' Counsel to secure final approval
8 of the Settlement and to oversee the distribution of benefits to Settlement Class
9 Members.

10 15. The hours billed by Class Counsel were reasonable and necessary for
11 the prosecution of this case on behalf of Plaintiffs and the Class. Class Counsel's
12 hours and lodestar are minimal for getting a class action case to final approval and
13 were undertaken in a manner to avoid duplication of work. Class Counsel have
14 worked together on many other data breach and data privacy cases across the
15 country and know each other well. Through working together so often, Class
16 Counsel understand each other's strengths and work to divide up the work
17 necessary to prosecute this matter efficiently and effectively.

18 16. In addition, the hourly rates included in the lodestar are based on the
19 attorney/paraprofessional's current rates. These rates are consistent with hourly
20 rates submitted by Class Counsel, and approved by courts in this Circuit and
21 District, in other complex class action litigation, including data breach class
22 actions. The rates are set based on periodic analysis of rates charged by firms
23 performing comparable work both on the plaintiff and defense side. The requested
24 rates are reasonable for this case considering the impressive experience and
25

1 expertise these particular lawyers have in this area of law.

2 17. Class Counsel are attorneys who specialize in litigating complex
3 class actions, and have successfully prosecuted and settled numerous data breach
4 class actions, consumer class actions, and other complex litigation throughout the
5 country. Indeed, Class Counsel are very experienced with handling data breach
6 class actions and collectively have acted as, or are acting as, Plaintiffs' counsel in
7 hundreds of data breach class actions nationwide.

8 18. Plaintiffs' Counsel have represented Plaintiffs and the Class purely
9 on a contingency fee basis in this matter and have not received any payment for
10 their time, effort, or expenses to date and have passed up other work in order to
11 devote time and resources to this matter.

12 19. The litigation expenses for which Class Counsel seek reimbursement
13 were actually incurred in connection with the prosecution of this case. Since case
14 inception, Plaintiffs' Counsel incurred combined litigation expenses in the amount
15 of \$13,435. Those expenses include charges for necessary litigation costs,
16 including mediation fees, filing fees, and pro hac vice fees.

17 **III. THE REQUESTED SERVICE AWARDS ARE WARRANTED**

18 20. Plaintiffs also seek service awards in the amount of \$5,000 each. The
19 Plaintiffs initiated and oversaw this litigation for the benefit of the Class, and it is
20 due to their services that the favorable Settlement was obtained. Among other
21 things, the Plaintiffs participated in vetting interviews, and provided essential
22 information to Plaintiffs' Counsel; collected documents and other evidence that
23 supported the claims alleged in the complaint; agreed to face invasive and time
24 consuming discovery, if necessary; reviewed pleadings and coordinated with Class
25

1 Counsel as to the status of, and strategy for, the Action; conferred multiple times
2 with Class Counsel about the settlement negotiations and provided meaningful
3 input about what potential benefits were most important to them; and considered
4 and approved the Settlement terms on behalf of the Class.

5 21. The sacrifices of time undertaken by the Plaintiffs in furtherance of
6 this Action on behalf of absent Class Members warrants the Court's approval of
7 the requested service awards. The requested \$5,000 amount is reasonable in
8 consideration of Plaintiffs' substantial contributions to the case. The active
9 participation and efforts expended by Plaintiffs in prosecuting this Action
10 materially aided, and indeed were necessary to, the Settlement achieved.

11 **IV. CONCLUSION**

12 22. In my professional opinion, the Settlement represents an excellent
13 result for the Settlement Class. It is also our opinion that the requested fees,
14 expenses, and Service Awards are fair and reasonable.

15 I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct.

17 Executed this 22nd day of June, at Chicago, Illinois.

18
19 By: /s/ Gary M. Klinger
Gary M. Klinger

1
2
3
4
5
6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
9

10 **Adam Voelker, Alexxi Guyette, Janelle**
11 **Bailey, Brittany Evans, and Baltazar**
12 **Darosa**, individually and on behalf of all
others similarly situated,

13 Plaintiffs,

14 v.

15 **Enroll Confidently Inc.,**

16 Defendant.
17
18
19
20
21
22
23
24

Case No. 2:24-cv-01886-DJH

**[PROPOSED] ORDER
GRANTING PLAINTIFFS'
MOTION AND
MEMORANDUM OF LAW IN
SUPPORT OF REQUESTS FOR
ATTORNEYS' FEES,
EXPENSES, AND SERVICE
AWARDS**

25 **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION AND MEMORANDUM**
26 **OF LAW IN SUPPORT OF REQUESTS FOR ATTORNEYS' FEES, EXPENSES, AND**
SERVICE AWARDS

1 The Court, having reviewed Plaintiffs' Motion and Memorandum of Law in
2 Support of Requests for Attorneys' Fees, Expenses, and Service Awards, and the
3 file and records herein, with good cause appearing, hereby orders that:

4 1. Plaintiffs' motion is GRANTED.

5 2. Class Counsel is awarded attorneys' fees in the total amount of
6 \$330,000.00;

7 3. Class Counsel is awarded litigation expenses in the total amount of
8 \$13,435; and

9 4. The proposed Service Awards are APPROVED. The Court approves
10 payment of service awards of \$5,000 to each of the Class Representatives.

11 IT IS SO ORDERED.

12
13
14 _____
15 Dated

Judge Diane J. Humetewa