

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FERNANDO MENDOZA, SOPHIA
MENDOZA, and HUEY NGUYEN,
individually and on behalf of all others
similarly situated,

Case No.: 3:23-cv-00092-MMD-CLB

Plaintiff,

v.

CRYSTAL BAY CASINO, LLC.,

Defendant.

**NOTICE OF MOTION AND MOTION FOR ATTORNEYS’ FEES,
EXPENSES, AND SERVICE AWARDS**

**TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiffs Fernando Mendoza, Sophia Mendoza, and Huey Nguyen (“Plaintiffs”), individually and on behalf of all others similarly situated, will and hereby do move this Court for an order granting Plaintiffs’ request for attorneys’ fees in the amount of \$225,000, reasonable case expenses in the amount of \$15,480.01, and service awards to each of the Class Representative in the amount of \$1,000.

This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed Declaration of David Lietz, all other documents filed in support of this motion, the papers and pleadings on file in this action, and upon such other and further evidence as may be offered at the time of the hearing.

Dated: April 22, 2024

Respectfully Submitted,

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/s/ David K. Lietz

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs and Class Counsel zealously litigated these Consolidated Actions, achieving a
4 favorable settlement providing real and substantial benefits for the approximate 93,950
5 Settlement Class members.

6 After filing two separate actions that increased the risks of litigation for Defendant
7 exponentially, Class Counsel conducted a thorough investigation through informal discovery and
8 mutual exchange of information, which included information regarding Crystal Bay's PII storage
9 systems, policies and procedures regarding the safeguarding of PII in Crystal Bay's possession,
10 custody, or control, and knowledge of third-party unauthorized access to PII in the Data Breach.
11 With a thorough understanding of each party's information and the strengths and weaknesses of
12 the claims and defenses in this matter, Class Counsel was able to evaluate the probability of class
13 certification, success on the merits, and Crystal Bay's monetary exposure for the claims. And
14 after carefully analyzing the merits of Plaintiffs' claims and Crystal Bay's defenses, Class
15 Counsel successfully negotiated the proposed class settlement with the involvement of a highly
16 regarded and experienced mediator, but also with their own formidable negotiating skills.

17 The resulting Settlement Agreement provides a non-reversionary common fund in the
18 amount of \$675,000 that will be used to provide significant, immediate benefits to the Settlement
19 Class. Among other forms of relief, Class Members may choose a pro rata cash payment. No one
20 can argue that actual cash is a real, tangible benefit to this Class.

21 Class Counsel prosecuted the class claims and generated the Settlement benefits on an
22 entirely contingent basis, with no guarantee of recovering their fees and expenses. They now seek
23 \$225,000 in fees (one-third of the Settlement Fund, which falls within the Ninth Circuit's range
24 of reasonable fee awards), and \$15,480.01 in out-of-pocket expenses incurred to secure a
25 favorable result for the Settlement Class members.

26 Based on the results obtained for the Settlement Class in this complex litigation, the time
27 and effort devoted by Plaintiffs' counsel, the skill and expertise required to litigate the
28 Consolidated Actions, and the risks shouldered by Plaintiffs' counsel, the requested fee and

1 expense award is eminently fair and reasonable.

2 Finally, the Court should approve modest service awards of \$1,000 to each of the Class
3 Representatives to compensate them for their efforts on behalf of the Settlement Class.

4 **II. BACKGROUND OF THE LITIGATION**

5 As this Court is aware, this class action litigation arose from a November 2022
6 ransomware attack and resulting data breach perpetrated upon Crystal Bay. The attack allowed a
7 third-party access to some of Crystal Bay’s computer systems and data resulting in access to
8 allegedly sensitive personal information associated with current and former Crystal Bay
9 customers and/or employees, including Plaintiffs. Crystal Bay owns and operates a casino near
10 Lake Tahoe that offers products and services including gaming, entertainment, hospitality, and
11 dining. In the course of its business, Crystal Bay collects personally identifiable information
12 (“PII”) from its customers and employees. Plaintiffs and Settlement Class Members, current or
13 former employees and/or current and former customers reasonably relied (directly or indirectly)
14 on Crystal Bay to keep their sensitive personally identifiable information, which includes names,
15 Social Security numbers, and driver’s license numbers (“PII”) confidential, to maintain its system
16 security, to use this information for business purposes only, and to make only authorized
17 disclosures of their PII. ECF No. 27 (“Complaint”) at ¶¶ 2, 13–15, 20–23, 33–47. Crystal Bay
18 had a duty to adopt reasonable measures to protect Plaintiffs’ and Settlement Class Members’ PII
19 from involuntary disclosure to third parties. *Id.* at ¶¶ 39–56.

20 **III. PROCEDURAL HISTORY**

21 Plaintiffs brought this action individually and on behalf of all persons whose PII was
22 compromised and subject to unauthorized access and exfiltration, theft, or disclosure as a direct
23 result of the breach of Crystal Bay’s information system’s security, an event disclosed on or
24 around February 2023 (the “Data Breach”). Plaintiff Huey Nguyen filed his Complaint on March
25 8, 2023 in the United States District Court for the District of Nevada, Case No. 3:23-cv-00092
26 (“Nguyen”). Nguyen ECF No. 1. Plaintiffs Fernando Mendoza and Sophia Mendoza filed their
27 Complaint the same day, also in the United States District Court for the District of Nevada, Case
28 No. 3:23-cv-00368 (“Mendoza”). Mendoza ECF No. 1. Crystal Bay moved to dismiss both

1 matters on May 22, 2023. Nguyen ECF No. 23; Mendoza ECF No. 29. The Court consolidated
2 the *Nguyen* and *Mendoza* actions under the lower case number on May 30, 2023, with the motions
3 to dismiss being denied without prejudice pending the filing of a consolidated complaint. Nguyen
4 ECF No. 24; Mendoza ECF No. 31. The consolidated Class Action Complaint (“Complaint”) was
5 filed on June 29, 2023, which is the operative complaint in this Litigation. ECF No. 27.

6 After the filing of the Complaint, Plaintiffs and Crystal Bay (the “Parties”) engaged in
7 informal discovery and mutual exchange of information, which included information regarding
8 Crystal Bay’s PII storage systems, policies, and procedures regarding the safeguarding of PII in
9 Crystal Bay’s possession, custody, or control, and knowledge of third-party unauthorized access
10 to PII in the Data Breach.

11 On October 30, 2023, the Parties engaged in an arm’s-length mediation before Judge
12 Morton Denlow, a retired federal magistrate judge currently employed by JAMS in Chicago,
13 Illinois. Judge Denlow is a highly sought after and accomplished mediator with a plethora of
14 experience mediating data breach cases. The mediation involved extensive negotiations,
15 discussions, and considerations of the case by each party. The Parties went into mediation willing
16 to explore a potential settlement for the dispute, but each was prepared to litigate their claims and
17 defenses through trial and appeal if no settlement could be reached. After an all-day, arm’s-length
18 mediation, the Parties reached an agreement to resolve all claims arising from or related to the
19 Data Breach.

20 The Parties then spent several weeks negotiating the terms of a fulsome settlement
21 agreement, with Plaintiffs’ counsel taking the lead on the initial draft of that agreement. Plaintiffs’
22 counsel also spent considerable time and effort drafting the exhibits to the Settlement Agreement,
23 which included well-crafted class notices and a simple, easy to understand claim form. Plaintiffs’
24 counsel also drafted a concise motion for preliminary approval for the Court’s consideration.
25 Plaintiffs subsequently filed their motion for preliminary approval. ECF No. 34. Court granted
26 preliminary approval on February 5, 2024. ECF No. 35.

27 **IV. THE SETTLEMENT TERMS**

28 The settlement’s key terms are noted below.

1 **A. The Class**

2 The Parties have agreed and stipulated that the following Class can be certified under Rule
3 23 for settlement purposes: means all individuals that received notice from Crystal Bay in or
4 around February 2023, of a data security incident involving their Personal Information. *Id.* at ¶ 2,
5 Ex. 1 (Agreement) § 1.30. Excluded from the Settlement Class are any judge presiding over this
6 matter and any members of their first-degree relatives, judicial staff, Crystal Bay’s officers,
7 directors, and members, and persons who timely and validly request exclusion from the
8 Settlement Class. *Id.*

9 **B. The Benefits to Settlement Class Members**

10 The settlement provides for the creation of the Settlement Fund of \$675,000.00 within 14
11 days of the Preliminary Approval Order. *Id.* at ¶ 2, Ex. 1 (Agreement) §§ 1.34, 2.2, 2.3.2. The
12 Settlement Fund is non-reversionary and includes the funds to be paid to Settlement Class
13 Members who submit timely and valid Claim Forms, Settlement Costs, any service awards to
14 Plaintiffs as Class Representatives, and Class Counsel’s Attorney’s Fees and Costs. *Id.*

15 As part of the monetary relief offered to Settlement Class Members, each Settlement Class
16 Member may make a Settlement Claim for reimbursement of documented ordinary losses,
17 including lost time, and/or reimbursement for extraordinary losses. In the alternative, Settlement
18 Class Members may submit a claim to receive an Alternative Cash Payment. *Id.* at § 2.3.2.

19 In addition to the Settlement Fund monetary relief, the settlement provides that all
20 Settlement Class Members will be eligible to claim and enroll in three years of single-bureau
21 Credit Monitoring Services, regardless of whether they submit any claim for monetary relief. *Id.*
22 at § 2.3.1.

23 The costs of the Court-approved notice and administration plan will also be paid from the
24 Settlement Fund, as will any Court-approved attorneys’ fees, expenses, and service awards.

25 **V. ARGUMENT**

26 Plaintiffs request \$225,000 in reasonable attorneys’ fees, and \$15,480.01 in out-of-pocket
27 case expenses. The attorneys’ fees represent one-third, or 33.33 percent of the \$675,000 in
28 benefits made available to the Settlement Class through the exclusive efforts of Class Counsel.

1 This amount is fair and appropriate under the percentage of the fund method, is commensurate
2 with the Ninth Circuit benchmark, and is supported by all relevant factors.

3 **A. The Requested Fees Are Reasonable Under the Percentage Method**

4 “In a class action, the district court must exercise its inherent authority to ensure that the
5 amount and mode of payment of attorneys’ fees are fair and appropriate.” *Stern v. New Cingular*
6 *Wireless Servs., Inc.*, No. 8:09-CV-01112-CAS (AGR_x), 2010 WL 11531076, at *3 (C.D. Cal.
7 Nov. 22, 2010) (Snyder, J.) (citing *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328
8 (9th Cir. 1999)). “In calculating attorneys’ fees in class actions, the district court has discretion
9 to use either a percentage or lodestar method in order to calculate the attorneys’ fees to be awarded
10 to counsel.” *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)). As the
11 Ninth Circuit has explained, however, “the primary basis of the fee award remains the percentage
12 method,” while “the lodestar may provide a useful perspective on the reasonableness of a given
13 percentage award.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (“*Vizcaino*
14 *IP*”); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th
15 Cir.1990) (approving calculation of attorneys’ fees based on percentage of the total fund);
16 *Nwabueze v. AT&T Inc.*, No. C 09-01529 SI, 2014 WL 324262, at *1 (N.D. Cal. Jan. 29, 2014)
17 (“where a settlement does not create a common fund from which to draw, a court may, in its
18 discretion, analyze the case as a ‘constructive common fund’ for fee-setting”).

19 Many courts and commentators have recognized that the percentage of the available fund
20 analysis is the preferred approach in class action fee requests “because it more closely aligns the
21 interests of the counsel and the class, i.e., class counsel directly benefit from increasing the size
22 of the class fund and working in the most efficient manner.” *Aichele v. City of L.A.*, No. CV 12-
23 10863-DMG (FFM_x), 2015 WL 5286028, at *5 (C.D. Cal. Sept. 9, 2015) (citing cases). “[A]
24 number of salutary effects can be achieved by this procedure, including removing the inducement
25 to unnecessarily increase hours, prompting early settlement, reducing burdensome paperwork for
26 counsel and the court and providing a degree of predictability to fee awards.” *In re Activision Sec.*
27 *Litig.*, 723 F. Supp. 1373, 1376 (N.D. Cal. 1989).

28 As set out above, this Settlement is for a \$675,000 non-reversionary common fund, from

1 which Class Counsel seeks an award of one-third, or \$225,000. However, the actual potential
2 value of this Settlement to the Class Members is far greater than that. This Settlement offers Class
3 Members the ability to claim three years of credit monitoring, with up to \$1 million in fraud and
4 identity theft insurance. The least expensive credit monitoring of this quality available in the
5 marketplace is \$6.95 per month, or \$250.20 for a 36-month subscription. If one takes into account
6 that all 93,950 Class Members can claim this benefit, the retail value of this settlement skyrockets
7 into multiple millions of dollars. The substantial and tangible benefit to the Settlement Class from
8 this Settlement justifies the fees requested.

9 **B. The Requested Fee Percentage is Within the Range of Fee Awards Ninth**
10 **Circuit Courts Find Reasonable**

11 “The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to 33.3
12 percent of the total settlement value with 25 percent considered a benchmark percentage.” *Small*
13 *v. Univ. Med. Ctr. of S. Nevada*, No. 213CV00298APGPAL, 2019 WL 3063509, at *2 (D. Nev.
14 May 29, 2019) (quoting *Barbosa v. Cargill Meat Sol. Corp.*, 297 F.R.D. 431,448 (E.D. Cal. 2013)
15 (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)). “[I]n common fund cases, the
16 ‘benchmark’ award is 25 percent of the recovery obtained, with 20-30% as the usual range.”
17 *Vizcaino II*, 290 F.3d at 1047. “While the benchmark is not *per se* valid, it is a helpful ‘starting
18 point.’” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 1995) (quoting
19 *Vizcaino II*, 290 F.3d at 1048)). Here, the percentage of the available monetary benefits sought
20 as fees by Class Counsel (one-third, or 33.33%) is well within the range of reasonableness for
21 Settlements of this nature and size. Courts in this district and the Ninth Circuit have found
22 attorneys’ fees awards of 1/3 of the fund to be reasonable. *See Small*, 2019 WL 3063509, at *2
23 (approving 33% fee award); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)
24 (affirming award of one-third of total recovery).

25 **C. The Requested Fee is Supported by Every Relevant Consideration**

26 The requested fee amount is also supported by each of the normative considerations under
27 governing Ninth Circuit precedent, which include: (1) the extent to which class counsel ‘achieved
28 exceptional results for the class,’ (2) whether the case was risky for class counsel, (3) whether

1 counsel’s performance ‘generated benefits beyond the cash settlement fund,’ (4) the market rate
2 for the particular field of law (in some circumstances), (5) the burdens class counsel experienced
3 while litigating the case (*e.g.*, cost, durations, foregoing other work), and (6) whether the case
4 was handled on a contingency basis. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 954-
5 55 (citing *Vizcaino II*, 290 F.3d at 1048-50).

6 In assessing the reasonableness of the fee award, the Court may also consider other factors
7 established for determining the reasonableness of a lodestar multiplier (that substantially overlap
8 with the *Vizcaino II* factors). Those factors include: (1) the time and labor required, (2) the novelty
9 and difficulty of the questions involved, (3) the skill requisite to perform the legal service
10 properly, (4) the preclusion of other employment by the attorney due to acceptance of the case,
11 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by
12 the client or the circumstances, (8) the amount involved and the results obtained, (9) the
13 experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case, (11) the
14 nature and length of the professional relationship with the client, and (12) awards in similar cases.
15 *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1306 (W.D. Wash. 2001), *aff’d*, 290 F.3d
16 1043 (9th Cir. 2002).

17 These factors all support Class Counsel’s fee request here.

18 **1. The Results Obtained for the Class**

19 The most critical factor in evaluating the reasonableness of a fee request is the degree of
20 success in achieving results for the class. *Hensley v. Eckerhart*, 461 U.S. 424, 434-36 (1983); *In*
21 *re Bluetooth Headsets Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Outstanding results
22 merit a higher fee. *In re Omnivision Techs., Inc.* (“*In re Omnivision*”), 559 F. Supp. 2d 1036,
23 1046 (N.D. Cal. 2008) (awarding a fee of 28 percent where class counsel achieved “triple the
24 average recovery in securities class action settlements”).

25 The Settlement Agreement's benefits set out above are tailored to address the fundamental
26 concerns raised in the Action, providing meaningful monetary relief. The per Class Member
27 amounts of compensation are substantial, with the Common Fund Settlement Class Members
28 receiving \$7.18 per Class Member. This settlement is a strong result for the Class, and exceeds

1 or is in line with other settlements in cases involving data breaches of similar scope. *See, e.g.,*
2 *Cochran v. Accellion, Inc., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 32 (June 30,
3 2021) (\$5 million settlement fund for 3.82 million class members, or approximately \$1.31 per
4 Class member before deducted the costs of settlement administration or attorneys' fees); *Dickey's*
5 *Barbeque Restaurants, Inc.*, Case No. 20-cv-3424 (N.D. Tex.), ECF No. 62 (settlement for
6 725,000 million class members for \$2.3 million, or \$3.24 per class member).

7 As explained in Plaintiffs' Unopposed Motion for Preliminary Approval, Plaintiffs
8 believe that they would succeed in litigation and be able to recover damages on behalf of the
9 Class. However, Class Counsel recognizes that the range of potential litigation outcomes is large.
10 The scope of damages would depend in large part on the scope of class certification, whether
11 various theories of damages would be accepted by the Court (*i.e.*, benefit of the bargain and loss
12 of value of PII theories), and which causes of action survive. Whether the case would be litigated
13 to a favorable outcome and the amount obtained through continued litigation are not certain, and
14 the case is subject to numerous risks. By settling and paying Class Members now, practical
15 remedies that have been absent become imminently available. Even if Plaintiffs achieved a
16 successful judgment, relief to Class Members would likely be forestalled for years following the
17 exhaustion of appeals. Based on the size of the breach and the substantial litigation risks, the
18 Settlement presents a robust relief package and valuable outcome for the Class compared to other
19 recent data breach class action settlements.

20 Class Counsel negotiated a streamlined, straightforward notice program that Crystal Bay
21 agreed to fund, including postcard notice, a dedicated website, and a toll-free phone line, all to
22 facilitate and increase class member participation. That program, along with the claims process,
23 provides direct additional benefits to the Settlement Class.

24 **2. Risks of Litigation and the Novelty of the Issues Presented**

25 "The risk that further litigation might result in Plaintiffs not recovering at all, particularly
26 a case involving complicated legal issues, is a significant factor in the award of fees." *In re*
27 *Omnivision*, 559 F. Supp. 2d at 1046-47; *accord In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379
28 (9th Cir. 1995) (upholding fee award "because of the complexity of the issues and the risks"); *see*

1 *also, e.g., In re Am. Equity Annuity Practices & Sales Litig.*, No. CV-05-6735-CAS(MANx),
2 2014 WL 12586112, at *6 (C.D. Cal. Jan. 29, 2014) (“In determining reasonable compensation
3 to Class Counsel, the Court is mindful that this litigation was especially complex. As the Court
4 observed for several years, the litigation called upon a high level of skill and experience in class
5 actions for Plaintiffs to succeed against Defendant ..., which also had first-rate legal
6 representation.”). Although nearly all class actions involve a high level of risk, expense, and
7 complexity, *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), data breach
8 cases are especially so. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ.
9 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases). Even
10 cases of similar wide-spread notoriety and implicating data far more sensitive than at issue here
11 have been found wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec.*
12 *Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual
13 allegations in the complaints are sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d
14 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

15 To the extent the law has gradually accepted this relatively new type of litigation, the path
16 to a class-wide monetary judgment remains unforged, particularly in the area of damages. For
17 now, data breach cases are among the riskiest and uncertain of all class action litigation, making
18 settlement the more prudent course when a reasonable one can be reached. The damages
19 methodologies, while theoretically sound in Plaintiffs’ view, remain untested in a disputed class
20 certification setting and unproven in front of a jury. And as in any data breach case, establishing
21 causation on a class-wide basis is rife with uncertainty.

22 Each risk, by itself, could impede the successful prosecution of these claims at trial and
23 in an eventual appeal—which would result in zero recovery to the class. “Regardless of the risk,
24 litigation is always expensive, and both sides would bear those costs if the litigation continued.”
25 *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at *5
26 (S.D. Cal. Feb. 29, 2016).

27 Plaintiffs believe their claims are viable and that they have a reasonably good chance of
28 proving that Crystal Bay’s data security was inadequate and that, if they establish that central

1 fact, Defendant is likely to be found liable under at least some of the liability theories and statutory
2 and common law Plaintiffs pled in their Consolidated Complaint. While Plaintiffs believe they
3 have strong claims and would be able to prevail, their success is not guaranteed. It is “plainly
4 reasonable for the parties at this stage to agree that the actual recovery realized and risks avoided
5 here outweigh the opportunity to pursue potentially more favorable results through full
6 adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-L (WMC), 2013 WL 6055326, at *3 (S.D.
7 Cal. Nov. 14, 2013). “Here, as with most class actions, there was risk to both sides in continuing
8 towards trial. The settlement avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*,
9 No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788, at *6 (C.D. Cal. Dec. 5, 2017). Class
10 Counsel’s ability to navigate all these risks justifies the fee requested.

11 3. The Contingent Nature of the Representation

12 The “risks and financial burdens that Class Counsel undertook in litigating the
13 Consolidated Actions on a fully contingent basis” are also important factors in assessing the
14 reasonableness of the requested attorney’s fee award. *Lozano v. AT&T Wireless Servs., Inc.*, No.
15 2:02-CV-00090-CAS (AJWx), 2010 WL 11520704, at *1 (C.D. Cal. Nov. 22, 2010). Indeed,
16 “[c]ourts have long recognized that the public interest is served by rewarding attorneys who
17 assume representation on a contingent basis with an enhanced fee to compensate them for the risk
18 that they might have been paid nothing for their work.” *Ching v. Siemens Indus.*, No. 11-cv-
19 048383-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014) (citing *In re Wash. Pub. Power*
20 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (explaining that “[c]ontingent fees that
21 may far exceed the market value of the services if rendered on a non-contingent basis are accepted
22 in the legal profession as a legitimate way of assuring competent representation for plaintiffs who
23 could not afford to pay on an hourly basis regardless whether they win or lose.”)). “This mirrors
24 the established practice in the private legal market of rewarding attorneys for taking the risk of
25 nonpayment by paying them a premium over their normal hourly rates for winning contingency
26 cases.” *Vizcaino II*, 290 F.3d at 1051.

27 Here, Plaintiffs’ Counsel assumed the risk of representation, including advancing their
28 time and \$15,480.01 in potentially non-recoverable expenses, on a completely contingent basis

1 in litigation dependent on evolving jurisprudence. This assumption of risk justifies a fee paid as
2 a percentage of recovery. *Lozano*, 2010 WL 11520704, at *1; *accord In re Omnivision*, 559 F.
3 Supp. 2d at 1047 (“This substantial outlay, when there is a risk that none of it will be recovered,
4 further supports the award of the requested fees.”).

5 **4. Class Counsel’s Level of Skill and Experience**

6 The effort and skill displayed by counsel is an additional factor used in determining a
7 proper fee. *Vizcaino II*, 290 F.3d at 1048; *In re Omnivision*, 559 F. Supp. 2d at 1047. The
8 Settlement Agreement was achieved by Class Counsel, who cumulatively have decades of
9 experience in prosecuting and trying complex consumer class actions, including data breach
10 cases. *See* ECF Nos. 34-1, 34-2 and 34-3 (declarations and resumes of Class Counsel). That
11 experience proved invaluable in litigating the Action and enabled Plaintiffs’ counsel not only to
12 focus discovery on key liability issues, but also to assess and understand the strengths of both
13 Plaintiffs’ claims and Crystal Bay’s defenses, and the reasonableness of the benefits provided for
14 under the Settlement Agreement. *Id.*; *see also In re Xcel Energy, Inc., Sec., Deriv. & “ERISA”*
15 *Litig.*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) (“But for the cooperation and efficiency of
16 counsel, the lodestar of plaintiffs’ counsel would have been substantially more and would have
17 required this court to devote significant judicial resources to its managements of the case. Instead,
18 counsel moved the case along expeditiously, and the court determines that the time and labor
19 spent to be reasonable and fully supportive [of the awarded attorney fee.]”). As a consequence,
20 despite its complexity, this litigation moved expeditiously and culminated in a favorable
21 settlement. *See also, e.g., Negrete v. Allianz Life Ins. Co. of N. Am.*, Nos. CV-05-6838-
22 CAS(MANx), CV-05-8909-CAS(MANx), 2015 WL 12592726, at 24 (C.D. Cal. March 17, 2015)
23 (observing “the zealotness with which Class Counsel prosecuted this Action . . . , and the
24 exceptionally high quality of Class Counsel’s representation of the Settlement Class”).

25 **5. Response of the Class**

26 It also bears noting that the Settlement Class received unambiguous notice of the amount
27 of attorneys’ fees and service awards that Class Counsel and Plaintiffs intended to seek from this
28 Court. Both the \$225,000 figure and the \$1,000 service award figure are plainly stated in both the

1 Short Form (postcard) notice, as well as in the Long Form notice approved by this Court. *See*
2 ECF No. 34-2, Exs. B and C. To date, which is approximately halfway through the 90-day claims
3 process, there has been no objection to the Settlement as a whole, and no objection to the
4 attorneys' fees or service awards.

5 **6. The Lodestar Cross-Check**

6 The Court may conduct a lodestar cross-check to confirm the reasonableness of a
7 requested percentage fee award. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949 (“a
8 crosscheck using the lodestar method can confirm that a percentage of recovery amount does not
9 award counsel an exorbitant hourly rate”) (internal quotation marks and citation omitted). The
10 lodestar cross-check calculation need not entail “mathematical precision nor bean counting,” and
11 the Court may rely on summaries submitted by the attorneys rather than reviewing actual billing
12 records. *Covillo v. Specialtys Café*, No. C-11-00594 DMR, 2014 WL 954516, at *6 (N.D. Cal.
13 Mar. 6, 2014) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005)); *see*
14 *also, e.g., Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015) (accepting
15 sworn declarations submitted by counsel).

16 Here, Plaintiffs' Counsel has submitted a declaration reporting, after the exercise of billing
17 judgment, 354.3 hours of time, for a total lodestar of \$122,391. *See* Declaration of David K. Lietz
18 in Support of Motion for Attorneys' Fees, Expenses, and Services Awards (“Lietz Decl.”). After
19 determining the lodestar, the Court divides the total fees sought by the lodestar to arrive at the
20 multiplier. *Bellinghausen*, 306 F.R.D. at 265. “The purpose of this multiplier is to account for the
21 risk Class Counsel assumes when they take on a contingent-fee case.” *Id.* (quoting *Hopkins v.*
22 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)).
23 If the multiplier falls within an acceptable range, it further supports the conclusion that the fees
24 sought are, in fact, reasonable. *See Vizcaino II*, 290 F.3d at 1051. “[D]istrict courts have applied
25 a wide range of multipliers--generally ranging from 2 to 4--in making fee award determinations.”
26 *Stern*, 2010 WL 11531076, at *3.

27 Here, Plaintiffs' Counsel's current reported lodestar yields a modest multiplier of
28 approximately 1.83, which is well-under the accepted range within this Circuit. *Vizcaino II*, 290

1 F.3d at 1047-48 (collecting sampling of published, common fund settlements, with multipliers
2 spanning from 0.6 to 8.5); *see also Lee v. Enter. Leasing Co.-W.*, No. 3:10-CV-00326-LRH, 2015
3 WL 2345540, at *8 (D. Nev. May 15, 2015) (approving a 2.07 multiplier and noting with favor
4 the *Vizcaino* multiplier of 3.65). Given the anticipated time that will be spent finalizing the
5 settlement, as well as overseeing the processing and payment of all claims, it is likely that the
6 multiplier will be far smaller at or shortly after the time of final approval.

7 As detailed in the supporting declaration and the biographies submitted in connection with
8 Preliminary Approval, Plaintiffs' Counsel are well-respected members of the bar who are highly
9 experienced in the areas of consumer class actions, data breach class actions, and complex
10 litigation. Lietz Decl., ¶¶ 23-40. And as Plaintiffs' Counsel avows, the hourly rates submitted
11 reflect actual and customary billing rates. *Id.* These rates are reasonable, have been approved in
12 various courts, and are comparable to the rates for other law firms in the relevant geographical
13 market. *Id. See also, generally*, Declaration of Thiago M. Coelho in Support of Motion for
14 Attorneys' Fees, Expenses, and Services Awards.

15 The lodestar cross-check thus confirms the reasonableness of the requested fee award,
16 particularly in light of the significant results achieved by the Settlement, the contingent nature of
17 Class Counsel's fee arrangement, and the skill and expertise Class Counsel employed
18 maneuvering the case towards settlement.

19 **VI. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE**

20 Plaintiffs' Counsel seek Court approval of \$15,480.01 in reimbursed expenses necessarily
21 incurred in the prosecution of this action. Lietz Decl., ¶ 34. All submitted expenses are of the sort
22 typically billed by attorneys to paying clients. *See generally Harris v. Marhoefer*, 24 F.3d 16, 19
23 (9th Cir. 1994). A major component of Class Counsel's expenses were the fees for Judge
24 Denlow's mediation services. Lietz Decl. ¶ 34. Class Counsel's expenses also do not include the
25 standard charges for computerized factual and legal research, which were necessary for this case
26 given the complex issues in this case and the developing state of the law in data-breach cases.
27 The modest expense reimbursement request is warranted.

28

VII. THE REQUESTED SERVICE AWARDS ARE WARRANTED

Service awards for named plaintiffs are provided to encourage them to undertake the responsibilities and risks of representing the classes and to recognize the time and effort spent in the case. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that such awards “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general”); *see also Scovil v. FedEx Ground Package Sys., Inc.*, No. 1:10-CV-515-DBH, 2014 WL 1057079, at *6 (D. Me. Mar. 14, 2014) (“Because a named plaintiff is an essential ingredient of any class action, an incentive or service award can be appropriate to encourage or induce an individual to participate in the suit.”). A service award is appropriate where the class representatives “have actively participated and assisted Class Counsel in this litigation for the substantial benefit of the Settlement Class despite facing significant personal limitations and sacrifices.” *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, Nos. 11-md-02208-MAP, etc., 2014 WL 6968424, at *7 (D. Mass. Dec. 9, 2014); *see generally, Rodriguez*, 563 F.3d at 958 (“Incentive awards are fairly typical in class action cases.”).

Each of the Plaintiffs for whom service awards are sought have spent a significant amount of time assisting Class Counsel in litigating the Action for the benefit of absent class members. Lietz Decl., ¶¶ 35-36. Plaintiffs actively assisted Class Counsel in gathering facts for this case. *Id.* The class representatives’ time and effort expended on behalf of the Settlement Class as a whole should not go unrecognized. The Court should therefore approve of service awards of \$1,000 for each of the three named Plaintiffs (who are also the Court-appointed Class Representatives).

As the Court will note, the requested amounts are consistent with or fall below service awards previously approved by courts in this Circuit. *See, e.g., Cunningham v. Leslie’s Poolmart, Inc.*, No. CV 13-02122-CAS (CWx), 2016 WL 7173806, at *2 (C.D Cal. Apr. 18, 2016) (approving payment of \$10,000 service awards to each of the Plaintiffs); *Negrete*, 2015 WL 12592726, at *15 (same); *Quezada v. Schneider Logistics Transloading & Distrib., Inc.*, No. CV

1 12-2188 CAS (DTBx), 2014 WL 12584436, at *12 (C.D. Cal. May 12, 2014) (explaining that
2 “other courts have found that service awards of \$10,000 to named plaintiffs are reasonable”)
3 (citing cases); *Fulford v. Logitech, Inc.*, No. 08-CV-02041 MMC, 2010 WL 807448, at *6 n.1
4 (N.D. Cal. Mar. 5, 2010) (collecting cases awarding service fees between \$5,000 and \$40,000).

5 **VIII. CONCLUSION**

6 For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court
7 enter an order (a) approving the payment of \$225,000 in attorneys’ fees, (b) approving the
8 payment of \$15,480.01 in reimbursed litigation expenses, and (c) approving the payment of
9 \$1,000 service awards to the named Plaintiffs.

10 Dated: April 22, 2024

Respectfully Submitted,

11
12 /s/ Thiago M. Coelho

Thiago M. Coelho

pro hac vice

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17 /s/ David K. Lietz

David K. Lietz

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Attorneys for Plaintiffs and Proposed Class

CERTIFICATE OF SERVICE

I certify that on April 22, 2024, a true and correct copy of the foregoing NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification.

/s/ Thiago M. Coelho
Thiago M. Coelho

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FERNANDO MENDOZA, SOPHIA
MENDOZA, and HUEY NGUYEN,
individually and on behalf of all others
similarly situated,

Case No.: 3:23-cv-00092-MMD-CLB

Plaintiff,

v.

CRYSTAL BAY CASINO, LLC.,

Defendant.

**DECLARATION OF DAVID K. LIETZ IN SUPPORT OF MOTION FOR
ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS**

I, David K. Lietz, declare as follows:

1. I am currently a senior partner of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”). I am counsel for Plaintiffs Fernando Mendoza, Sophia Mendoza, and Huey Nguyen in this matter, and have been appointed Class Counsel by this Court in the above-captioned action. I make this Declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service awards. I make this declaration based on my personal knowledge and/or upon information and belief of the matters set forth herein and based on my active participation in all material aspects of this litigation. If called upon to do so, I could and would testify competently thereto.

2. My experience and qualifications are outlined in my declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval. ECF No. 34-3.

3. My work in this matter, and the work of others in my law firm involved investigating the cause and effects of the Crystal Bay Casino, LLC (“Crystal Bay”) Data Incident, interviewing potential clients, evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint; conducting legal research; conducting extensive research into data security incidents and their causes and effects, conducting

1 further extensive research into data security practices and standards across e-Commerce platforms
2 and industries; drafting and filing the Complaint; conducting informal discovery regarding the
3 Data Incident; drafting a detailed mediation summary, preparing for and participating in a formal
4 mediation presided over by Hon. Morton Denlow of JAMS; drafting the settlement term sheet,
5 the settlement agreement, well-crafted notices of settlement and an easy to understand claim form,
6 the Unopposed Motion for Preliminary Approval, and this instant motion for attorneys' fees;
7 communicating with defense counsel; updating and handling questions from our class
8 representatives; overseeing the launching of the notice program with substantial interaction
9 between Class Counsel and the Settlement Administrator; and overseeing the claims process. I
10 conferred with my colleagues about strategy and case status while being mindful to avoid
11 duplicative efforts within my firm.

12 4. The other Plaintiffs' Counsel performed a similar range of tasks, including filing
13 a separate complaint that exponentially increased the Plaintiffs' leverage against Defendant.
14 These tasks were not duplicative, as it was the cumulative weight of multiple lawsuits that
15 ultimately provided great impetus to resolve these actions through this Settlement. *See also*,
16 concurrently filed Declaration of Thiago M. Coelho in Support of Motion for Attorneys' Fees,
17 Expenses, and Service Award.

18 5. Continuing through today, my co-counsel and I have continued to work with
19 Defendant and the Claims Administrator regarding claims administration and processing as well
20 as answering class members questions about the settlement and the process. Based on my past
21 experience I and my law firm expect to spend another 40-50 hours seeking final approval,
22 defending the Settlement from and potential objections, and supervising claims administration
23 and the distribution of proceeds.

24 6. As of the date of filing, I have received no objections to the Settlement Agreement
25 in general, and no objections to the proposed attorneys' fees, costs (the amount of which was
26 made known to the Class via the Court-approved notice program) in particular.

27 7. It is my understanding that Kroll, the Settlement Administrator, also has received
28 only 2 opt-outs and no objections. Plaintiffs will submit a declaration from Kroll detailing the

1 notice and claims administration with their Motion for Final Approval.

2 **The Contingent Nature of the Case**

3 8. My Firm, and all of the other Plaintiffs' lawyers, prosecuted this case on a purely
4 contingent basis. As such, Plaintiffs' Counsel assumed a significant risk of nonpayment or
5 underpayment.

6 9. This matter has required me, other attorneys at my Firm, and all other Plaintiffs'
7 Counsel to spend time on this litigation that could have been spent on other matters. At various
8 times during the litigation of this class action, this lawsuit has consumed significant amounts of
9 my time and my Firm's time.

10 10. Such time could otherwise have been spent on other fee-generating work. Because
11 Plaintiffs' Counsel undertook representation of this matter on a contingency-fee basis, we
12 shouldered the risk of expending substantial costs and time in litigating the action without any
13 monetary gain in the event of an adverse judgment.

14 11. If not devoted to litigating this action, from which any remuneration is wholly
15 contingent on a successful outcome, the time Plaintiffs' Counsel spent working on this case could
16 and would have been spent pursuing other potentially fee generating matters.

17 12. Litigation is inherently unpredictable and therefore risky. Here, that risk was very
18 real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the
19 state of data privacy law. Therefore, despite Plaintiffs' Counsel's devotion to the case and our
20 confidence in the claims alleged against Defendant, there have been many factors beyond our
21 control that posed significant risks.

22 13. The fees contemplated under Class Counsel's representation agreements for cases
23 in this District and elsewhere generally fall within the one-third to 40% range. It is my
24 understanding that the representation agreements of the other Plaintiffs' Attorneys are similar.
25 Class Counsels' and Plaintiffs' Counsel's fees were not guaranteed—the retainer agreements
26 counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis,
27 and, in the case of class settlement, approved by the court.

28

1 **The Costs and Fees Incurred**

2 14. Due to the early stage of litigation and efficiency by which Class Counsel was able
3 to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low.

4 15. Class Counsel have currently accrued 354.3 hours through April 22, 2024. The
5 hours Class Counsel spent litigating this matter reflect the reasonable and necessary effort
6 required to achieve such a satisfactory result.

7 16. All Plaintiffs' Counsel are well-respected members of the bar with substantial
8 experience in complex civil litigation, class actions, and data breach litigation. The hourly rates
9 reflect actual and customary billing rates. These rates are reasonable, have been approved by other
10 courts, and use rates comparable to those charged in this geographic area.

11 17. As Class Counsel I have gathered and reviewed the time spent by all other
12 Plaintiffs' Counsel on this litigation to date. The total amount of time and hours expended, and
13 the case expenses incurred, is listed in the chart below:

14

Firm	Hours to Date	Rate Range	Total Time Billed	Expenses
Milberg Coleman Bryson Phillips Grossman PLLC	109.1	\$208-\$1,057	\$ 82,385.00	\$ 7,740.25
Wilshire Law Firm	245.2	\$150-\$1000	\$139,595.00	\$ 7,739.76
TOTALS	354.3	\$170-\$1450	\$221,980.00	\$15,480.01

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21 18. Additional time will be spent drafting the final approval motion, preparing for and
22 attending the Final Approval Hearing, defending any appeals taken from the final judgment
23 approving Settlement, and ensuring that the claims process and distribution of Settlement
24 proceeds to Class Members is done in a timely manner in accordance with the terms of the
25 Settlement. Based upon my past experience, I estimate that another 50-75 hours of attorney time
26 will be reasonably expended on this matter.

27 19. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs,
28 and Service Awards are reasonable and seek fair and reasonable compensation for undertaking

1 this case on a contingency basis, and for obtaining the relief for Plaintiffs and the Class.

2 20. Where possible, Class Counsel made efforts to carefully assign work so as to avoid
3 duplication of efforts and have the work completed by the appropriate level of attorney.

4 21. If the Court will permit, detailed contemporaneous billing records of all Plaintiffs'
5 Counsel will be submitted to the Court for review *in camera*. In camera inspection is appropriate
6 where the contemporaneous billing records may (and likely do) contain attorney-client privileged
7 material and attorney work-product. Should the Court determine that *in camera* submission in
8 not appropriate, Class Counsel will seek leave to supplement their motion for attorneys' fees to
9 submit the detailed billing records.

10 22. All books and records in this case regarding costs expended were maintained in
11 the ordinary course of business, from expense vouchers and check records. I have reviewed the
12 records of out-of-pocket expended in this matter.

13 **The Hourly Rates are Reasonable**

14 23. My hourly rate has increased over time based on my experience and my
15 accomplishments in my practice. I have been practicing law continuously since 1991 (over 32
16 years), and the rate for my time is commensurate with partners of that level of experience.

17 24. The billing rates for Milberg attorneys were most recently set in January 2024, and
18 are drawn from the Laffey Matrix without any deviation. The titles, billing rates, law schools, and
19 year of graduation of the attorneys who billed time to this matter is as follows:

20 David Lietz. Senior Partner \$997 in 2023, \$1057 in 2024 (JD Georgetown 1991)

21 Gary Klinger – Senior Partner \$850 in 2023, \$878 in 2024 (JD Illinois 2010)

22 John Nelson – Associate \$508 in 2023 (JD San Diego 2017)

23 Dean Meyer – Associate \$413 in 2023 (JD Northwestern 2021)

24 25. The rates we charge for our time is also commensurate with hourly rates charged
25 by our contemporaries around the country, including those rates charged by lawyers with our
26 level of experience who practice in the area of data breach class litigation across the nation (i.e.
27 the national market for data breach litigation). *See e.g. In re: Capital One Consumer Data Breach*
28 *Litigation*, MDL No. 1:19-md-02915-AJT-JFA (Doc. 2231-1 – approving rates for partners in

1 data breach ranging from \$919 to \$1050 per hour); *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-
2 JDP, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (data breach settlement awarding
3 \$1,575,000 in attorneys' fees and costs, at hourly rates from \$815-\$865 per hour for partners,
4 \$550-\$625 for senior associates, \$415-\$500 for associates, and \$215-\$350 for paralegals); *Perdue*
5 *v. Hy-Vee, Inc.*, No. 19-1330, 2021 WL 3081051, at *5 (C.D. Ill. July 21, 2021) (approving
6 reasonable hourly rates requested by Class Counsel of \$700-\$815 for partners, \$325-\$700 for
7 associates, \$200-\$275 for paralegals, and \$150-\$225 for law clerks); *In re Equifax Inc. Customer*
8 *Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17,
9 2020) (finding reasonable hourly rates charged by partners who billed \$1050, \$1000 \$750, and
10 \$935 per hour); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK,
11 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (finding reasonable rates from \$450 to \$900
12 for partners, \$160-\$850 for non-partner attorneys, and \$50 to \$380 for paralegals);); *Fulton-*
13 *Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *12 (E.D. Pa. Sept. 24, 2019)
14 (finding reasonable hourly rates range \$202 to \$975 per hour); *In re Anthem, Inc. Data Breach*
15 *Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *16 (N.D. Cal. Aug. 17, 2018) (finding
16 reasonable hourly rates of partners from \$400 to \$970, non-partner attorneys from \$185 to \$850,
17 and non-attorneys from \$95 to \$440).

18 26. Our billing rate are also consistent with rates billed for similar class action legal
19 services.¹

20 27. Prior to submitting the Motion for Attorneys' Fees, Costs, and Service Awards, I
21 compared and confirmed our hourly rates with lawyers at other law firms whose practice is
22 focused on data breach class litigation. Moreover, I routinely survey hourly rates charged by
23 lawyers around the country in published surveys, and review continuously as part of my
24 continuing education opinions rendered by courts on attorneys' fee requests. Again, based upon
25

26 ¹ 2020 Class Action Hourly Rate Survey, NALFA (March 4, 2020)
27 [https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-](https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in)
28 [rates-in](https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in)
2020/#:~:text=The%20NALFA%20survey%20shows%20that,than%20%24200%20and%20
over %20%241%2C200 (listing hourly rates up to \$1,200 per hour for class actions).

1 my research, my rate – and the rates charged by my colleagues -- are within the range of lawyers
2 with our levels of experience, practicing in this area of law.

3 28. The Milberg lawyers' hourly rates have been approved by federal courts around
4 the country. Most recently, my hourly rate was approved in *In re: GE/CBPS Data Breach*
5 *Litigation*, Case No. 1:20-cv-02903 (KPF) (S.D.N.Y. 3/28/2023) (Judge Failla); *Pagan v.*
6 *Faneuil, Inc.*, Case No. 3:22-cv-297 (ED VA February 17, 2023); *Powers, Sanger et al v. Filters*
7 *Fast LLC*, Case 3:20-cv-00982-jdp (WD WI, July 22, 2022), ECF 84) where the fee application
8 was submitted on a lodestar basis; *James v. Cohnreznick LLP*, Case Number: 1:21-cv-06544-LJL
9 (SD NY September 20, 2022) (fee application submitted on both percentage of benefit and
10 lodestar calculation); *In re Deva Concepts Product Liability Litigation*, Case 1:20-cv-01234-
11 GHW, Order Granting Motion for Attorneys' Fees, Document 129 (January 3, 2022); see also
12 Document 121-1 (filed 10/01/21).

13 29. In addition, Milberg's hourly rates were approved by at least three federal courts
14 using that hourly rate as a lodestar cross-check, which is what my hourly rate is submitted for in
15 this case. See *Lamie et al. v. LendingTree, LLC*, Case No. 3:22-cv-00307, ECF Doc. 60 (W.D.
16 N.C. February 27, 2024) (final approval order approving hourly rates as reasonable as part of a
17 lodestar cross-check, and highlighting "the quality, skill, and experience of counsel" and "the
18 excellent results"); *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-
19 cv-04066 (W.D. Mo.) ECF 76; *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-
20 02277-LMM (N.D. Ga.) (appointed class counsel; final approval granted October 2022), ECF 79.

21 30. In the time-keeping systems of my firm and co-counsel, our typical hourly rates
22 are reflected. However, those rates are higher than those charged by Nevada practitioners. Based
23 upon case law from this Court, the range of approved attorney rates is \$250 to \$550 per hour.
24 *Wunderlich v. State Farm Mut. Auto. Ins. Co.*, No. 221CV00486JADEJY, 2021 WL 6138236, at
25 *2 (D. Nev. Dec. 28, 2021). Notably, these Court-approved hourly rates are not for complex civil
26 litigation or class actions.

27 31. In reviewing the hours of my firm and those of my co-counsel, it becomes clear
28 that the majority of the work on this matter was performed by partner level attorneys with

1 considerable experience with data breach litigation. Extrapolating that their rates would fall into
 2 the range previously approved by this Court, for the partner level Milberg attorneys on this case,
 3 I conservatively estimate that a blended rate of \$450 accurately reflects rates that this Court would
 4 approve in this case, and that would be in line with hourly rates for Nevada practitioners. In other
 5 words, without “getting out the green visor,” approximately 45% of Class Counsel’s lodestar
 6 using their typical hourly rates would bring the lodestar in line with Court-approved Nevada
 7 hourly rates.

8 32. 45% of Class Counsel’s current lodestar set out above is \$99,891. If another 50
 9 hours are accrued as anticipated through final approval and closing out the claims’ process, that
 10 is another \$22,500.

11 33. I therefore expect the lodestar (adjusted for Court-approved hourly rates) will meet
 12 or exceed \$122,391 through final approval, given the hours expended to date plus the anticipated
 13 additional hours. Given the fee request of \$225,000, the fees requested fairly represent a lodestar
 14 multiplier of 1.83 for purposes of any lodestar crosscheck.

15 34. My firm and co-counsel have also accrued \$15,480.01 in out-of-pocket expenses
 16 pertaining to this litigation; including:

Expense	Amount
Filing Fees	\$ 810.00
Court Fees for Lietz PHV	\$ 250.00
Court Fees for Coelho PHV	\$ 250.00
Mediator Fees for Hon. Morton Denlow	\$13,002.75
Westlaw	\$ 1,167.26
TOTAL	\$ 15,480.01

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 27 35. These costs are reasonable, and necessary for the litigation, and are modest in
 28 comparison to the enormous costs that likely would have been incurred if litigation had continued.

1 Reimbursement of these costs is sought in addition to the attorneys' fees requested. Based upon
2 my past experience, the amount of out-of-pocket case expenses will increase prior to Final
3 Approval, and will include additional travel expenses to appear at the Final Approval Hearing.

4 36. The Settlement Agreement calls for reasonable service award to Plaintiffs in the
5 amount of \$1,000 each, subject to approval of the Court. The Service Award is meant to recognize
6 Plaintiffs for their efforts on behalf of the Class, including assisting in the answering investigation
7 of the case, maintaining contact with counsel, reviewing the pleadings, counsel's many questions,
8 communicating with counsel during the settlement negotiations, and reviewing the terms of the
9 Settlement Agreement. Plaintiffs were not promised a service award, nor did they condition their
10 representation on the expectation of any service or incentive award.
11

12 37. I strongly believe that the Settlement Agreement is favorable for the Settlement
13 Class. The Settlement addresses the type of injury and repercussions sustained by Settlement
14 Class Members in the wake of the Data Incident. In the opinion of the undersigned and other
15 Settlement Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees,
16 expenses, and service awards requested here.
17

18 38. Although Plaintiffs believe in the merits of their claims, this litigation was
19 inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-
20 developing area in the law), and the Plaintiffs would face risks at each stage of litigation. Against
21 these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement
22 Class Counsel and the Class Representative that the Settlement was achieved for the benefit of
23 the Settlement Class.
24

25 39. In contrast to the risks, the Settlement provides certain and substantial
26 compensation to the Settlement Class Members. The result achieved in this Settlement is notable
27
28

1 because the parties were able, through capable and experienced counsel, to reach a negotiated
2 Settlement without involvement of the Court in managing this litigation or discovery disputes.

3 40. Settlement Class Counsel worked on behalf of the Settlement Class to obtain
4 information from Defendant regarding the Data Incident and used that information (along with
5 their experience and the knowledge gained from other data breach class actions) to negotiate the
6 Settlement.

7 * * * * *

8
9 I declare under penalty of perjury under the laws of the State of Nevada that that foregoing
10 is true and correct.

11 Executed April 22, 2024, at Washington, DC.

12
13
14 

15 _____
David K. Lietz

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FERNANDO MENDOZA, SOPHIA MENDOZA, and HUEY NGUYEN, individually and on behalf of all others similarly situated,

Case No.: 3:23-cv-00092-MMD-CLB

Plaintiff,

v.

CRYSTAL BAY CASINO, LLC.,

Defendant.

DECLARATION OF THIAGO M. COELHO IN SUPPORT OF MOTION FOR ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS

I, Thiago M. Coelho, declare as follows:

1. I am currently the chair of the Consumer Class Action and Data Privacy Class Action Departments of Wilshire Law Firm, PLC (“WLF”). I am counsel for Plaintiffs Fernando Mendoza, Sophia Mendoza, and Huey Nguyen in this matter, and have been appointed Class Counsel by this Court in the above-captioned action. I make this Declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service awards. I make this declaration based on my personal knowledge and/or upon information and belief of the matters set forth herein and based on my active participation in all material aspects of this litigation. If called upon to do so, I could and would testify competently thereto.

2. My experience and qualifications are outlined in my declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval. ECF No. 34-1.

3. My work in this matter, and the work of others in my law firm involved investigating the cause and effects of the Crystal Bay Casino, LLC (“Crystal Bay”) Data Incident, interviewing potential clients, evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint; conducting legal research; conducting extensive research into data security incidents and their causes and effects, conducting

1 further extensive research into data security practices and standards across e-Commerce platforms
2 and industries; drafting and filing the Mendoza Plaintiffs' Complaint; conducting informal
3 discovery regarding the Data Incident; drafting detailed responses to Defendant's informal
4 mediation requests and a mediation statement, preparing for and participating in a formal
5 mediation presided over by Hon. Morton Denlow of JAMS; drafting the settlement term sheet,
6 the settlement agreement, well-crafted notices of settlement and an easy to understand claim form,
7 the Unopposed Motion for Preliminary Approval, and this instant motion for attorneys' fees;
8 communicating with defense counsel; and updating and handling questions from our class
9 representatives. I conferred with my colleagues about strategy and case status while being
10 mindful to avoid duplicative efforts within my firm.

11 4. The other Plaintiffs' Counsel performed a similar range of tasks, including filing
12 a separate complaint that exponentially increased the Plaintiffs' leverage against Defendant.
13 These tasks were not duplicative, as it was the cumulative weight of multiple lawsuits that
14 ultimately provided great impetus to resolve these actions through this Settlement. *See also*,
15 concurrently filed Declaration of David K. Lietz in Support of Motion for Attorneys' Fees,
16 Expenses, and Service Award.

17 5. Continuing through today, my co-counsel and I have continued to work with
18 Defendant and the Claims Administrator regarding claims administration and processing as well
19 as answering class members questions about the settlement and the process. Based on my past
20 experience I and my law firm expect to spend another 40-50 hours seeking final approval,
21 defending the Settlement from and potential objections, and supervising claims administration
22 and the distribution of proceeds.

23 6. As of the date of filing, I have received no objections to the Settlement Agreement
24 in general, and no objections to the proposed attorneys' fees, costs (the amount of which was
25 made known to the Class via the Court-approved notice program) in particular.

26 7. It is my understanding that Kroll, the Settlement Administrator, also has received
27 only 2 opt-outs and no objections. Plaintiffs will submit a declaration from Kroll detailing the
28 notice and claims administration with their Motion for Final Approval.

1 **The Contingent Nature of the Case**

2 8. My Firm, and all of the other Plaintiffs’ lawyers, prosecuted this case on a purely
3 contingent basis. As such, Plaintiffs’ Counsel assumed a significant risk of nonpayment or
4 underpayment.

5 9. This matter has required me, other attorneys at my Firm, and all other Plaintiffs’
6 Counsel to spend time on this litigation that could have been spent on other matters. At various
7 times during the litigation of this class action, this lawsuit has consumed significant amounts of
8 my time and my Firm’s time.

9 10. Such time could otherwise have been spent on other fee-generating work. Because
10 Plaintiffs’ Counsel undertook representation of this matter on a contingency-fee basis, we
11 shouldered the risk of expending substantial costs and time in litigating the action without any
12 monetary gain in the event of an adverse judgment.

13 11. If not devoted to litigating this action, from which any remuneration is wholly
14 contingent on a successful outcome, the time Plaintiffs’ Counsel spent working on this case could
15 and would have been spent pursuing other potentially fee generating matters.

16 12. Litigation is inherently unpredictable and therefore risky. Here, that risk was very
17 real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the
18 state of data privacy law. Therefore, despite Plaintiffs’ Counsel’s devotion to the case and our
19 confidence in the claims alleged against Defendant, there have been many factors beyond our
20 control that posed significant risks.

21 13. The fees contemplated under Class Counsel’s representation agreements for cases
22 in this District and elsewhere generally fall within the one-third to 40% range. It is my
23 understanding that the representation agreements of the other Plaintiffs’ Attorneys are similar.
24 Class Counsels’ and Plaintiffs’ Counsel’s fees were not guaranteed—the retainer agreements
25 counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis,
26 and, in the case of class settlement, approved by the court.

1 not appropriate, Class Counsel will seek leave to supplement their motion for attorneys' fees to
2 submit the detailed billing records.

3 22. All books and records in this case regarding costs expended were maintained in
4 the ordinary course of business, from expense vouchers and check records. I have reviewed the
5 records of out-of-pocket expended in this matter.

6 **The Hourly Rates are Reasonable**

7 23. My hourly rate has increased over time based on my experience and my
8 accomplishments in my practice. I have extensive experience litigating consumer class action and
9 data privacy class actions. I was also lead counsel in *Moore v. Centrelake Medical Grp.* (2022)
10 83 Cal.App.5th 515, a data breach class action, where the Court of Appeal reversed the trial
11 court's judgment sustaining the defendant's demurrer, in part, because the plaintiff's loss of
12 benefit of the bargain was deemed a sufficient injury for UCL standing. (*Id.* at pp. 527–530.) I
13 was also lead counsel in *Mier v. CVS Health* (9th Cir. July 8, 2023) No. 22-55665, 2023 WL
14 4837851, a consumer class action involving false advertising claims where the Ninth Circuit
15 reversed the denial of class certification. I have settled over 300 cases, including but not limited
16 to, data breach class actions and consumer class actions. My hourly rate is \$1,000.00, which was
17 approved in *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB,
18 2024 WL150721, *3 (“As for the lodestar cross-check, the billing rates are normal and customary
19 for timekeepers with similar qualifications and experience in the relevant market.”).

20 24. Jennifer M. Leinbach is an Associate Attorney at Wilshire Law Firm and a
21 member of the California Bar since 2011. Ms. Leinbach has significant experience as a class
22 action litigator. Her work experience as an attorney began with a number of federal judicial
23 clerkships spanning from 2012-2016. Following law school, she was the judicial law clerk to the
24 Honorable Judges: Mark Houle; Maureen Tighe; Alan Ahart; Thomas Donovan; Robin Riblet;
25 Vincent Zurzolo; and Victoria Kaufman. As a federal judicial law clerk, she became intimately
26 acquainted with federal practice and procedure. This federal court experience parlayed into her
27 position as an associate at a class action boutique from 2016-2021. As a class action associate,
28 she assisted the firm with obtaining numerous class action settlements in federal and state court.

1 Some representative matters include the below cases:

- 2 a. Assisted with obtaining an \$80 million class settlement in an action filed
3 against Yahoo! for failure to disclose a massive data breach to shareholders in
4 a case alleging violations of the Securities Exchange Act of 1934. The
5 settlement was reached following successfully defeating Yahoo’s! motion to
6 dismiss.
- 7 b. Assisted with obtaining a \$3.75 million class settlement for Mammoth
8 Mountain’s alleged violations of the Telephone Consumer Protection Act
9 (“TCPA”). Settlement was reached following a stay of the action during which
10 the Federal Communications Commission considered Mammoth’s petition on
11 the consent requirement of an agency TCPA rule change.
- 12 c. Assisted with obtaining a \$10.4 million dual-class settlement in an action
13 alleging violations of both federal and state securities laws based on an alleged
14 Ponzi-like scheme. The settlement was reached after filing an omnibus
15 opposition to over sixteen (16) motions to dismiss.
- 16 d. Assisted with obtaining a class settlement against Michael’s Stores in a Fair
17 Credit Reporting Act case with very complicated procedural posture. The case
18 was removed to the Northern District of California from Sonoma Superior
19 Court and was added to an MDL in the District of New Jersey. The MDL was
20 stayed pending the U.S. Supreme Court’s decision in the Spokeo v. Robins
21 matter. Following the Spokeo decision, the MDL court dismissed two of the
22 consolidated cases, remanding our matter to Sonoma County Superior Court.
23 Plaintiffs in the two dismissed cases appealed the MDL dismissal to the Third
24 Circuit. Michaels, in the remanded Sonoma County matter, successively
25 removed the case to the Northern District of California citing a relevant change
26 in circumstances. Ms. Leinbach assisted in successfully opposing Michael’s
27 motion to stay pending the Third Circuit appeal in the Northern District of
28 California action and obtained an order granting plaintiff’s motion to remand

1 back to the Sonoma Superior Court, after which a class settlement was
2 successfully negotiated.

3 e. Assisted with obtaining a \$8.5 million class settlement after defeating a motion
4 to dismiss in an action alleging violations of the Securities Act of 1933 based
5 on a Chinese company's IPO omission. She also assisted with obtaining
6 successful Hauge Convention/ alternative service on all foreign defendants,
7 including those located in China. Following months of hard-fought negotiation
8 and mediation efforts, and additional motion to dismiss briefing by later-
9 served foreign defendants, settlement was finally reached.

10 25. Jesenia Martinez is an Associate Attorney at Wilshire Law Firm and a member of
11 the California Bar since 2017. Ms. Martinez has experience in all stages of litigation and been
12 named as lead counsel in cases around the country. Some of her notable cases include securing
13 class certification in a matter pending in this very district, *George v. Shamrock Saloon II, LLC*,
14 Case No.1: 17-cv-06663-RA-HBP, as well as a \$12.3 million settlement in a consumer class
15 action, *Kim v. Tinder, Inc.*, et al., Case No. 2:18-cv-03093-JFW-AS (U.S.D.C. C.D. Cal.). Ms.
16 Martinez obtained her Bachelor of Arts degree from Tufts University and her J.D. from
17 Southwestern Law School's accelerated program, SCALE.

18 26. Jesse Chen is an Associate Attorney at Wilshire Law Firm. Mr. Chen's hourly
19 rate is \$650.00. He graduated in 2017 from Brandeis University, with honors, obtaining a B.A. in
20 Politics and International and Global Studies. He received his J.D. from University of Southern
21 California, Gould School of Law in 2020. Mr. Chen's practice has focused on complex consumer
22 class actions, including in the areas of data breach and cybersecurity, in both state and federal
23 courts across the country.

24 27. Our billing rate are also consistent with rates billed for similar class action legal
25 services.¹

26
27 ¹ 2020 Class Action Hourly Rate Survey, NALFA (March 4, 2020)
28 <https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs->

