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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
12/09/2025
By: E. Leon Barrientos Deputy

11 Attorneys for Plaintiffs
12 JANE DOE I and JANE DOE II

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SACRAMENTO**

15 JANE DOE I and JANE DOE II, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 SUTTER HEALTH,

20 Defendant.

Case No. 34-2019-00258072-CU-BT-GDS

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES,
COSTS AND INCENTIVE AWARDS**

Date: February 27, 2026
Time: 9:00 a.m.
Dept.: 22
Judge: Hon. Lauri A. Damrell

Reservation Number: A-258072-039

Action Filed: June 10, 2019
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on February 27, 2026, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard by the Honorable Lauri A. Damrell in Department 22 of the Sacramento
4 Superior Court located at the Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, California
5 95814, Plaintiffs Jane Doe I and Jane Doe II (“Plaintiffs”) will and hereby do move the Court for an
6 order approving and awarding attorneys’ fees, costs and incentive awards. By way of this Motion,
7 Plaintiffs seek:

- 8 1. \$7,095,000.00 in attorneys’ fees to Class Counsel;
- 9 2. \$216,639.11 in verified litigation costs to Class Counsel;
- 10 3. \$20,000.00 in incentive awards, in total, to the Class Representatives, Jane Doe I and
11 Jane Doe II; and
- 12 4. Up to \$445,00 in notice and settlement administration costs to Epiq Class Action &
13 Claims Solutions, Inc. (“Epiq”).

14 This Motion is made on the grounds that: (1) Plaintiffs’ requested attorneys’ fees are fair and
15 reasonable in light of the efforts of Class Counsel in obtaining the settlement herein; (2) the requested
16 attorneys’ fees comport with the applicable law; (3) the expenses for which reimbursement is sought
17 were reasonably and necessarily incurred in connection with the prosecution and settlement of this
18 action; and (4) a reasonable payment to the Class Representatives for their efforts on behalf of the
19 Class is warranted and appropriate. Further, Epiq, having given notice to the Settlement Class and
20 otherwise performed its role as Settlement Administrator, should be paid.

21 This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points
22 and Authorities, the accompanying declarations of Class Counsel, declarations of the Class
23 Representatives, declarations of Epiq, Class Counsel’s time records lodged with the Court, the
24 pleadings and records on file herein, and upon such additional evidence or argument as may be
25 accepted by the Court at or prior to the hearing on this Motion.

26 Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this
27 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may
28 be downloaded off the Court’s website. If the party does not have online access, they may call the

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dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

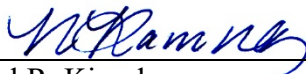
Class Members can appear remotely for the hearing through the Department’s Zoom link or phone number:

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>

To join by phone: (833) 568-8864 / ID: 16184738886

DATED: December 9, 2025

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Jane Doe I and Jane Doe II (“Plaintiffs”) respectfully request attorneys’ fees, costs,
4 and incentive awards in connection with the settlement of this case. In this class action, patients of
5 Defendant Sutter Health (“Sutter Health” or “Defendant”) allege that Sutter Health disclosed patients’
6 personally identifiable information (“PII”) and protected health information (“PHI”) to third parties
7 like Facebook and Google without patients’ consent. This Action, pending for more than six years, has
8 been nothing short of hard-fought by both sides, considering the multiple rounds of pleading
9 challenges, voluminous and sometimes contentious discovery, and completion of class certification
10 briefing, among other things. Rather than face the uncertainty inherent in litigating this case through
11 class certification and trial, the parties engaged in arm’s length settlement negotiations, including two
12 mediation sessions, which resulted in the class settlement that obtains substantial monetary relief for
13 Class Members. Indeed, the settlement compensates the Class by creating a \$21.5 million non-
14 reversionary fund which will be used to compensate Class Members,¹ and pay administrative and
15 notice costs, attorneys’ fees and costs, and incentive awards, with residual funds, if any, going to the
16 *cy pres* recipients (the “Settlement”).

17 Through this Motion, Plaintiffs request attorneys’ fees in the amount of \$7,095,000.00,
18 litigation costs in the amount of \$216,639.11, and incentive awards in the amount of \$10,000 to each
19 of the Class Representatives. The requested fees represent one-third of the \$21.5 million non-
20 reversionary fund, which is supported by the facts of this case and the relevant law, as set forth below.
21 The reasonableness of the fee request is confirmed by a lodestar cross-check based on Class Counsel’s
22 current hourly rates and amount of time spent. Plaintiffs’ requested litigation costs, advanced by Class
23 Counsel, were reasonably incurred and necessary. Finally, Plaintiffs’ requested incentive awards are
24 appropriate to reward the Class Representatives for their substantial work and service to the Class
25 throughout the course of this litigation. Thus, Plaintiffs request that the Court grant this Motion.

26
27 _____
28 ¹ Class Members who submit timely and valid claims will receive their pro rata share of the Settlement Fund up to \$90.

1 **II. RELEVANT BACKGROUND**

2 Plaintiffs brought this class action lawsuit on behalf of themselves and other Sutter Health
3 patients to seek redress for Sutter Health’s alleged disclosure of their PII and PHI to third parties like
4 Facebook and Google without their consent. *See* Doe I Decl. ¶ 7; Doe II Decl. ¶ 7. These core
5 allegations (which Defendant denies) formed the basis for each of Plaintiffs’ claims as described
6 below.

7 Plaintiffs initiated this Action on June 10, 2019. Defendant filed initial pleading challenges
8 (demurrers and motion to strike) as to the Class Action Complaint, and demurrers were sustained with
9 leave to amend. On February 14, 2020, Plaintiffs filed a First Amended Class Action Complaint, to
10 which Defendant filed a second round of pleading challenges (demurrers and motion to strike). The
11 Court sustained the demurrers with leave to amend and granted the motion to strike in part with leave
12 to amend. On February 9, 2021, Plaintiffs filed a Second Amended Class Action Complaint, to which
13 Defendant filed a third round of pleading challenges (demurrers and motion to strike). The Court
14 sustained the demurrers without leave to amend as to five causes of action, with leave to amend as to
15 two causes of action, and overruled as to one cause of action, and the motion to strike was granted in
16 part. On December 6, 2021, Plaintiffs filed a Third Amended Class Action Complaint, to which
17 Defendant filed a fourth round of pleading challenges (demurrers, motion to strike, and motion for
18 judgment on the pleadings). The Court sustained the demurrers with leave to amend as to two causes
19 of action, granted in part the motion to strike, and denied the motion for judgment on the pleadings.

20 On July 1, 2022, Plaintiffs filed a Fourth Amended Class Action Complaint pleading claims
21 for: (1) Violation of CIPA; (2) Breach of Express Contract; and (3) Breach of Implied Contract.
22 Defendant filed a fifth round of pleading challenges (demurrers to the causes of action for breach of
23 express and implied contract), which the Court overruled. On October 13, 2022, Defendant filed an
24 Answer and Affirmative Defenses to Plaintiffs’ Fourth Amended Class Action Complaint.

25 On November 14, 2023, after extensive discovery (described in detail below), Plaintiffs filed
26 a Motion for Class Certification. On March 21, 2024, Defendant filed an Opposition to the Motion for
27 Class Certification, and a Motion to Strike or Exclude the Testimony and Report (Damages Model) of
28 Plaintiffs’ Expert Joshua Kreisman. On May 16, 2024, Plaintiffs filed a Reply in Support of their

1 Motion for Class Certification, as well as an Opposition to the Motion to Strike (to which Defendant
2 replied). Before those Motions were argued or decided, the Parties participated in two private
3 mediation sessions on June 27, 2024, and September 6, 2024, with Judge Gail Andler (Ret.) of JAMS,
4 a well-respected class action mediator. Declaration of Jeffrey A. Koncius in Support of Motion for
5 Attorneys’ Fees, Costs, and Incentive Awards (“Koncius Decl.”) ¶¶ 4, 15-19. At the conclusion of the
6 second mediation, Judge Andler (Ret.) made a mediator’s proposal to settle the case for
7 \$21,500,000.00, which the Parties both accepted. *Id.* ¶ 19. Thereafter, the Parties negotiated the terms
8 of the Settlement Agreement presented to the Court and finalized the related documents on May 19,
9 2025.² *Id.* ¶ 21.

10 **III. THE SETTLEMENT**

11 The Settlement is crafted to provide substantial relief to Class Members and to fully resolve
12 the claims in this case. Absent this Settlement, Class Members would not get the benefit of any
13 compensation relating to Defendant’s alleged disclosure of patients’ PII and PHI without undertaking
14 their own suit and without guarantee that they would be paid anything for such efforts.

15 **A. The Key Financial Terms**

16 The Settlement Agreement provides for a total of \$21.5 million in monetary relief and is a non-
17 reversionary, fixed common-fund amount, which will be used to compensate Class Members who
18 submit timely and valid Claims with their pro rata share of the Settlement Fund up to \$90, and pay
19 administrative and notice costs, attorneys’ fees and costs, and incentive awards. After deductions
20 related to administrative and notice costs, attorneys’ fees and costs, and incentive awards, should those
21 amounts be granted, the net settlement amount will be approximately \$13,723,360.89.³

22 **1. Class Counsel Attorneys’ Fees and Litigation Costs**

23 The Settlement Agreement allows Class Counsel to apply to the Court for an award of
24

25 ² The Settlement Agreement, which is referenced throughout this Motion, is attached to the Koncius
Decl. as Exhibit 1.

26 ³ The net amount was calculated as follows: \$21,500,000 [fund] - \$445,000 [notice] - \$7,095,000
27 [attorney’s fees] - \$216,639.11 [costs and expenses] - \$20,000 [incentive awards] = \$13,723,360.89.
28 Class Counsel’s costs increased since submitting their Motion for Preliminary Approval (“MPA”) and
such additional costs include filing fees, MPA travel expenses, deposition transcript costs, and
document repository charges.

1 attorneys' fees up to one-third of the fund, which amounts to \$7,095,000. Settlement Agreement § 8.1;
2 *see Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 506 (2016). Class Counsel also move the Court
3 for reimbursement of costs and expenses which, to date, total \$216,639.11. As explained below, Class
4 Counsel's fees and costs are reasonable and justified, considering their extensive work on this case.
5 Koncius Decl. ¶¶ 28-31. These attorneys' fees and costs will be paid within ten days after receipt of
6 the balance of the Settlement Fund by the Settlement Administrator. Settlement Agreement § 8.2.

7 **2. Settlement Administrator Fees**

8 The cost to implement the Notice Plan and administer the settlement is estimated to be between
9 \$385,000 and \$445,000. Declaration of Cameron R. Azari, Esq. Re Notice Plan in Support of Motion
10 for Preliminary Approval of Class Action Settlement ("Azari Decl.") ¶ 34.⁴

11 **3. Incentive Awards**

12 The named Plaintiffs are allowed to seek incentive awards of \$10,000, designed to compensate
13 them for their time and service to the Class. Settlement Agreement § 8.3. The incentive awards are
14 based on the work performed and costs incurred in order to obtain a successful result on behalf of
15 Settlement Class Members. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393-
16 94 (2010) ("[I]ncentive awards are fairly typical in class action cases . . . and are intended to
17 compensate class representatives for work done on behalf of the class, to make up for financial or
18 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to
19 act as a private attorney general."). Here, both Plaintiffs went above and beyond in their efforts for the
20 Class and spent a significant amount of time on case-related tasks over the last six years including, but
21 not limited to, reviewing the complaint, responding to extensive written discovery, searching for and
22 producing voluminous amounts of documents, preparing and sitting for their full-day depositions,
23 discussing the settlement with counsel, and generally staying informed about the case. Doe I Decl. ¶¶
24 4-5; Doe II Decl. ¶¶ 4-5. Moreover, Plaintiffs agreed to serve as class representatives notwithstanding
25 the potential risk of their names being disclosed. Doe I Decl. ¶ 3; Doe II Decl. ¶ 3.

26
27 ⁴ The Azari Decl. is attached as Exhibit A to the concurrently filed Declarations from Epiq Class
28 Action & Claims Solutions, Inc. in Support of Plaintiffs' Motion For Attorneys' Fees, Costs and
Incentive Awards ("Epiq Decls.").

1 **4. Payment of Valid Approved Claims**

2 Class Members who submit a timely and valid Claim will receive an amount equal to a pro rata
3 share of the Net Settlement Fund, up to \$90.00. Settlement Agreement § 2.9(a). There are an estimated
4 1,628,160 Class Members. The anticipated claims rate is 5-10% of the total Settlement Class.
5 Declaration of Stephanie Amin-Giwner in Support of Plaintiffs’ Supplemental Brief Re Preliminary
6 Approval of Class Action Settlement (“Amin-Giwner Decl.”) ¶ 8.⁵ Therefore, even if 9.36% of Class
7 Members submit timely and valid claims, the pro rata amount of the net funds available will be \$90.⁶

8 **5. Payment of Cy Pres Donation**

9 Any funds remaining after payment of claims to Class Members, attorneys’ fees and costs,
10 settlement administrator fees, and incentive awards will be divided evenly and donated to Privacy
11 Rights Clearinghouse (“PRC”) and American Health Information Management Association
12 (“AHIMA”). Settlement Agreement § 2.13. Both proposed recipients are non-profit organizations
13 dedicated to ensuring the privacy of consumer health data, which squarely fulfills the purpose of this
14 action: protecting the privacy of consumers’ health data. *See* Cal. Civ. Proc. Code § 384(b).

15 **III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AND JUSTIFIED AND**
16 **SHOULD BE APPROVED BY THE COURT.**

17 As the California Supreme Court has held, courts have discretion in common fund cases to
18 apply either the percentage-of-the-fund or the lodestar method in calculating an attorney’s fee award.
19 *Laffitte*, 1 Cal. 5th at 480. The *Laffitte* Court stated:

20 We join the overwhelming majority of federal and state courts in holding that when
21 class action litigation establishes a monetary fund for the benefit of the class members,
22 and the trial court in its equitable powers awards class counsel a fee out of that fund,
23 the court may determine the amount of a reasonable fee by choosing an appropriate
24 percentage of the fund created. The recognized advantages of the percentage method—
including relative ease of calculation, alignment of incentives between counsel and the
class, a better approximation of market conditions in a contingency case, and the
encouragement it provides counsel to seek an early settlement and avoid unnecessarily
prolonging the litigation—convince us the percentage method is a valuable tool that

25 ⁵ The Amin-Giwner Decl. is attached as Exhibit B to the document Epiq Decls.

26 ⁶ This calculation was done by dividing \$13,723,360.89 (the net fund amount after subtracting
27 attorneys’ fees (\$7,095,000) and costs (\$216,639.11), incentive awards (\$20,000), and administrator
28 costs (\$445,000), should the Court award these amounts from the total settlement fund (\$21,500,000))
by \$90, which equals 152,482 claims. Then dividing 152,482 claims by 1,628,160 (the estimated
number of Class Members), which equals a 9.36% claims rate.

1 should not be denied our trial courts.

2 *Id.* at 503 (internal citations omitted).

3 The *Laffitte* decision followed numerous other authorities advocating for the use of the
4 percentage method because it promotes important values in the administration of justice. *See e.g.*
5 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000) (recognizing traditional approach
6 in common fund cases to award percentage of total fund under “common fund” doctrine); *In re*
7 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557-58 (2009). Indeed, “when a number of persons
8 are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
9 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
10 awarded attorney’s fees out of the fund.” *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977). It also encourages
11 early settlement of meritorious cases and “ensure[es] that competent counsel continue to be willing to
12 undertake risky, complex, and novel litigation.” Manual for Complex Litigation § 14.121 (4th ed.
13 2004). As a practical matter, the percentage method makes sense—it is easy to administer, conserves
14 judicial resources and rewards counsel for efficiency rather than focusing on the time counsel spent
15 on the case, which potentially bears no relation to the value of the benefits achieved.

16 Courts that use the percentage-of-the-fund method to calculate a fee award can apply the
17 lodestar method as a “cross-check.” *See Lealao*, 82 Cal. App. 4th at 45-46; *Chavez v. Netflix, Inc.*,
18 162 Cal. App. 4th 43, 65-66 (2008). Though not required, courts may in their discretion “cross-check”
19 an award of attorneys’ fees calculated by one method against an award calculated by the other method
20 in order to confirm the award is reasonable. *See Consumer Privacy Cases*, 175 Cal. App. 4th at 557.
21 The process should not require undue consumption of judicial resources because “trial courts
22 conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed
23 attorney-hour, but have instead used information on attorney time spent to ‘focus on the general
24 question of whether the fee award appropriately reflects the degree of time and effort expended by the
25 attorneys.’” *Laffitte*, 1 Cal. 5th at 505 (citing 5 Alba Conte & Herbert B. Newberg, *Newberg on Class*
26 *Actions* § 15:86 (5th ed. 2015)).

27 Here, Plaintiffs request attorneys’ fees that are reasonable under both the percentage method
28 and the lodestar method. Their requested fees of \$7,095,000.00 represent 33% of the \$21.5 million

1 Settlement Fund. This falls well within the range of percentages awarded in similar class action cases
2 and is justified by the risks involved in the litigation, Class Counsel’s experience and skill in
3 overcoming those risks, and the tremendous result achieved in this case. A lodestar cross-check
4 confirms the reasonableness of Plaintiffs’ fee request as well.

5 **A. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate Under**
6 **the Percentage-of-the-Fund Approach.**

7 Under the percentage method, California courts recognize that “fee awards in class actions
8 average around one-third of the recovery.” *Chavez*, 162 Cal. App. 4th at 66 n.11. With respect to the
9 settlement fund amount, “the total fund could be used to measure whether the portion allocated to the
10 class and to attorney fees is reasonable.” *Consumer Privacy Cases*, 175 Cal. App. 4th at 558. As our
11 Supreme Court has held, “when an attorney fee is awarded out of a common fund preserved or
12 recovered by means of litigation, the award is not per se unreasonable merely because it is calculated
13 as a percentage of the common fund.” *Laffitte*, 1 Cal. 5th at 486 (internal citation omitted).

14 Courts have often approved attorney fee awards of 33.33% of the fund created. *See, e.g.,*
15 *Laffitte*, 1 Cal. 5th at 480; *Colin Higgins Prods., Ltd. v. Universal City Studios, LLC*, Case No.
16 BC499180 (L.A. Super. Ct. Dec. 28, 2015) (approving 33.33% fee of \$13 million common fund);
17 *Martindale, et al. v. Sony Pictures Entm’t, Inc.*, Case No. BC499182 (L.A. Super. Ct. March 23, 2018)
18 (approving 33.33% fee of \$5 million fund); *Stanley Donen Films, Inc. v. Twentieth Century Fox Film*
19 *Corp.*, Case No. BC499181 (L.A. Super. Ct. April 9, 2018) (approving 33.33% fee of \$12.6 million
20 fund); *In re California Indirect-Purchaser Plasticware Antitrust Litig.*, Case Nos. 961814, 963201
21 and 963590 (S.F. Super. Ct. 1995) (approving 33.33% award); *In re Liquid Carbon Dioxide Cases*,
22 J.C.C.P. 3012 (S.D. Super. Ct. 1996) (approving 33.33% award); *In re Facsimile Paper Antitrust*
23 *Litig.*, Case Nos. 963598, 964899 and 967137 (S.F. Super. Ct. 1997) (approving 33.33% award); *In*
24 *re Milk Antitrust Litig.*, Case No. BC070061 (L.A. Super. Ct. 1998) (approving 33.33% award). As
25 shown below, consideration of the above factors in this case supports the reasonableness of Plaintiffs’
26 requested fee.

27 **1. Class Counsel Achieved an Extraordinary Result for the Class.**

28 The Settlement in this case is an outstanding result for the Class. The Settlement provides

1 \$21.5 million in monetary relief. Absent this Settlement, Class Members would not receive any
2 compensation without individually filing suit which, in light of the value and cost of an individual
3 claim, was unlikely and without the guarantee of a successful result. Class Members who submit
4 timely and valid claims will receive their pro rata share up to \$90. While the exact amounts recovered
5 by individual Class Members will depend on the number of Class Members who submit timely and
6 valid claims, it is guaranteed that the full benefit of the non-reversionary \$21.5 million Fund, after
7 deduction of fees, costs, awards and administrative fees, will go to Class Members and potentially *cy*
8 *pres* recipients for the benefit of the Class, without any reversion. This constitutes a significant result
9 in light of the numerous legal and factual challenges outlined in this Motion.

10 **2. Class Counsel Demonstrated their Skill in Litigating this Difficult Case**
11 **with a Focus on Certification.**

12 This case was significant as it confronted a novel and complex issue: the lawfulness of tracking
13 technologies on healthcare provider web properties and sharing of patients' PHI with third parties.
14 Plaintiffs took on a major health system and argued for a change in its practices and, in effect, health
15 care provider practices across the country. This was no easy feat. Sutter Health filed five separate
16 rounds of pleading challenges. The Parties engaged in extensive discovery. Class Counsel
17 demonstrated their expertise and understanding of the underlying technologies through their pre-filing
18 investigation, and obtaining the technological discovery necessary to prove their claims.

19 Class Counsel also filed their briefing on class certification, engaged computer and damages
20 experts, and deposed Sutter Health's computer and damages experts. At the class certification stage,
21 Sutter Health argued that the differences among Class Members precluded certification. Given the
22 potential exposure, Sutter Health raised, and would have continued to raise, numerous defenses and
23 attempted to defeat or severely limit Plaintiffs' claims through summary judgment and trial. Even if
24 Plaintiffs prevailed, Sutter Health would have likely appealed the Court's class certification decision
25 and judgment thus potentially delaying by years any recovery to the Class.

26 Despite these challenges, Plaintiffs believed that they would be able to prevail at class
27 certification and trial. Still, there was no way to guarantee either outcome. Before the motion for class
28 certification and motion to exclude were argued or decided, the Parties participated in the

1 aforementioned two mediation sessions resulting in the mediator’s proposal settling the case. In short,
2 “prosecuting this case required a significant commitment of time, resources, and energy from Class
3 Counsel, and the relief achieved simply would not have been possible but for the commitment and
4 skill of Class Counsel.” *Garner v. State Farm Mutual Auto. Ins. Co.*, 2010 WL 1687829, at *2 (N.D.
5 Cal. Apr. 22, 2010).

6 **3. Class Counsel Took on a Contingent Risk, Advanced All Costs and**
7 **Worked on this Case Without Any Guarantee of Success.**

8 The contingent risk of receiving little or no recovery for significant legal work is another major
9 factor in considering an appropriate award of attorneys’ fees. *See, e.g., Ketchum v. Moses*, 24 Cal. 4th
10 1122, 1132 (2001) (“[A] contingent fee contract, since it involves a gamble on the result, may properly
11 provide for a larger compensation than would otherwise be reasonable.”). As the declarations of Class
12 Counsel attest, they worked diligently on this case for over six years on a pure contingency basis with
13 no guarantee of recovery. Class Counsel have collectively spent over 4,786.5 hours working on this
14 case, and advanced all out-of-pocket expenses, including discovery costs and mediation-related costs,
15 totaling \$216,639,11 to date, with no promise of repayment. *See* Koncius Decl. ¶¶ 28-29, Exs. 2-3;
16 Johnson Decl. ¶¶ 15-16, Exs. 2-3. Indeed, Class Counsel faced the possibility that they would spend
17 additional time litigating this complex case and recover nothing, so their high-risk and successful
18 efforts on behalf of the Class further warrant the requested attorneys’ fees.

19 For these reasons, particularly the outstanding result obtained, the issues and challenges faced
20 and overcome, the extensive and high-quality work performed, and the burdens Class Counsel bore
21 in pursuing this litigation on a pure contingency basis, Plaintiffs’ requested fee award is reasonable
22 as a percentage (33.33%) of the \$21,500,000 Settlement Fund. *See Laffitte*, 1 Cal. 5th 480.

23 **B. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate Under the**
24 **Lodestar Approach.**

25 The reasonableness of Class Counsel’s fee request is further supported by the lodestar method.
26 *Laffitte*, 1 Cal. 5th at 506 (noting trial courts “also retain the discretion to forgo a lodestar cross-check
27 and use other means to evaluate the reasonableness of a requested percentage fee”). The first step in
28 examining fees under the lodestar method is to calculate the lodestar amount, which is the number of

1 hours reasonably performed at a reasonable hourly rate. *Serrano*, 20 Cal. 3d at 48; *Vo v. Las Virgenes*
2 *Mun. Water Dist.*, 79 Cal. App. 4th 440 (2000). The court may then adjust the lodestar amount based
3 on “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,
4 (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and]
5 (4) the contingent nature of the fee award.” *Ketchum*, 24 Cal. 4th at 1132. Other factors include “the
6 time limitations imposed by the litigation, the amount at stake, and the result obtained by counsel.”
7 *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78, 83 (1988).

8 Here, Class Counsel incurred a lodestar of \$4,056,073.00 in prosecuting this lawsuit. Koncius
9 Decl. ¶ 29; Johnson Decl. ¶ 16. This lodestar is based on contemporaneously maintained hourly
10 records, calculated at Class Counsel’s current ordinary and customary hourly fee. *See, e.g., Graham*
11 *v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 584 (2004) (noting when awarding fees “if the lodestar
12 rate is based on the present hourly rate rather than the lesser rate applicable when the services were
13 rendered” there is no need to adjust for inflation); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051
14 (9th Cir. 2002) (affirming trial court’s use of current hourly rates when awarding fees as “[c]alculating
15 fees at prevailing rates to compensate for delay in receipt of payment was within the district court’s
16 discretion”); *see also, Missouri v. Jenkins*, 491 U.S. 274, 284 (1989) (finding “an appropriate
17 adjustment for delay in payment—whether by the application of current rather than historic hourly rates
18 or otherwise” acceptable in civil rights litigation). Finally, the requested 1.7 multiplier is within the
19 range of reasonableness and supports granting Plaintiffs’ fee request.

20 **1. Class Counsel’s Lodestar Is Reasonable and Compensable.**

21 “Under the lodestar method, a party who qualifies for a fee should recover for all hours
22 reasonably spent unless special circumstances would render an award unjust.” *Vo*, 79 Cal. App. 4th
23 at 446; *see also Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175-76 (1998) (noting “the
24 attorney who takes such a case can anticipate receiving full compensation for every hour spent
25 litigating a claim against even the most polemical opponent”); *Ketchum*, 24 Cal. 4th at 1132.
26 Compensable activities under the lodestar method include pre-litigation activities (e.g., interviewing
27 the client, investigating the facts, researching the law and preparing the initial pleading) and litigation
28 activities (e.g., discovery, conferring with clients, drafting pleadings, court appearances, travel time

1 and settlement negotiations). *Stokus v. Marsh*, 217 Cal. App. 3d 647, 655-56 (1990).

2 A review of billing records is not necessary to award attorneys’ fees; the court can accept
3 declarations of counsel setting forth the hours worked and tasks performed. *See Laffite*, 1 Cal. 5th at
4 505 (“[T]rial courts conducting lodestar cross-checks have generally not been required to closely
5 scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to
6 ‘focus on the general question of whether the fee award appropriately reflects the degree of time and
7 effort expended by the attorneys.’”); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th
8 495, 511-12 (2009) (“We see no reason why [the court] could not accept the declarations of counsel
9 attesting to the hours worked, particularly as he was in the best position to verify those claims by
10 reference to the various proceedings in the case.”); *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
11 4th 224, 254-55 (2001) (“California case law permits fee awards in the absence of detailed time
12 sheets.”). Nevertheless, pursuant to the requirement set forth in the Sacramento Superior Court
13 Checklist for Approval of Class Action and/or Private Attorneys General Act (“PAGA”) Settlements
14 (“Checklist”), Class Counsel are lodging their billing records with the Court for review.

15 As of November 6, 2025, Class Counsel spent a total of 4,786.5 hours working on this case
16 and incurred a combined lodestar of \$4,056,073.⁷ Koncius Decl. ¶ 29; Johnson Decl. ¶ 16. A
17 breakdown of these fees and hours is set forth in the below chart:

Firm	Hours	Lodestar
Kiesel Law LLP	3,912.8	\$3,050,618.00
Simmons Hanly Conroy LLP	873.7	\$1,005,455.00
TOTAL	4,786.5	\$4,056,073.00

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19
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21 The work performed, hours and lodestar for each of the above law firms are detailed in the
22 concurrently filed declarations and in the detailed time records lodged for the Court’s *in camera*
23 review.⁸ These declarations detail the amount of work that was necessary in order to obtain a
24

25 ⁷ Not included in the lodestar is time related to this Motion or reviewing time records. However, the
26 Notice campaign commenced on November 19, 2025, and Class Counsel have spent time since then
fielding inquiries from Class Members and anticipate doing so through final approval of the settlement.

27 ⁸ Additionally, in accordance with the Checklist, the lodged time records and accompanying
28 declarations include information regarding the attorneys who worked on the case, their status, billing
rate, and total number of hours worked on the case, as well as information regarding the specific tasks
(footnote continued)

1 successful result on behalf of Class Members at every stage of the litigation, including: (1) pre-
2 litigation research and investigation; (2) drafting the relevant pleadings and motions, including
3 complaints, oppositions to Sutter Health’s multiple demurrers and motions to strike, motion for class
4 certification and motions to approve the Settlement; (3) conducting discovery, including multiple
5 rounds of written discovery, reviewing Sutter Health’s document productions, searching for and
6 producing Plaintiffs’ documents, taking depositions of Sutter Health employees, persons most
7 qualified, and experts, preparing for and defending depositions of Plaintiffs and Plaintiffs’ experts;
8 (4) addressing and resolving various discovery disputes, including those related to Plaintiffs’
9 Facebook DYI and Google Takeout files; (5) engaging in a lengthy process of narrowing the scope of
10 the case and entering into a stipulation; (6) settlement related activities, including preparing for and
11 attending mediations, drafting a mediation brief and engaging in numerous settlement discussions;
12 and (7) obtaining Court approval of the Settlement. *See* Koncius Decl. ¶ 33; Johnson Decl. ¶ 16. Each
13 hour expended by Class Counsel on this case ultimately benefited Class Members, and Class
14 Counsel’s lodestar is reasonable and compensable.

15 **2. Class Counsel’s Hourly Rates Are Reasonable and Have Been Approved**
16 **By Other Courts.**

17 The test for the reasonableness of an attorney’s hourly rate is whether it is “within the range
18 of reasonable rates charged by and judicially awarded comparable attorneys for comparable work.”
19 *Children’s Hosp. & Med. Ctr. v. Bunt*, 97 Cal. App. 4th 740, 783 (2002); *see also PCLM Group, Inc.*
20 *v. Drexler*, 22 Cal. 4th 1084, 1095 (2000) (“reasonable hourly rate is that prevailing in the community
21 for similar work.”); *see also Shaffer v. Superior Court*, 33 Cal. App. 4th 993, 1002 (1995). In
22 performing this analysis, courts look class counsel’s experience and reputation, the complexity of the
23 issues, the geographic market in which the case is litigated, and other factors affecting the litigation.
24 *See Oakland Raiders*, 203 Cal. App. 3d at 82 (affirming trial court’s award based on an hourly rate
25 that falls in line with the rates charged by “top law firms in the Bay Area”). Further, “[t]he court may
26 rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate.”
27

28 performed on the case and the hours spent on each task.

1 *Heritage Pacific Fin., LLC v. Monroy*, 215 Cal. App. 4th 972, 1009 (2013) (noting further that
2 “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community,
3 and rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
4 satisfactory evidence of the prevailing market rate” (internal quotation and citation omitted)).

5 The attorney declarations and exhibits establish the basis and calculation for the hourly rates
6 of the attorneys at each firm. Class Counsel have experience handling class actions and complex
7 litigation in this courthouse as well as state and federal courts throughout the country. This experience
8 was invaluable in adjudicating the issues in this case, and supports the reasonableness of Class
9 Counsel’s hourly rates. Class Counsel billed this case at their usual and customary hourly billing rates,
10 which have been approved by other courts presiding over similar complex class action lawsuits. *See*
11 *Koncius Decl.* ¶ 30; *Johnson Decl.* ¶ 17.

12 **3. A Lodestar Multiplier Is Warranted Based on Class Counsel’s Handling**
13 **of this Case and the Results Obtained.**

14 Once calculated, the lodestar may be adjusted upward using a “multiplier” based on several
15 factors, including: the novelty and difficulty of the litigation; class counsel’s skill in handling it; the
16 burdens imposed by taking on the case; the contingent nature of the fee award; and the quality of the
17 results achieved. *See Ketchum*, 24 Cal. 4th at 1132; *Oakland Raiders*, 203 Cal. App. 3d at 83. “There
18 is no magic formula; any one factor may justify an enhancement.” *Sonoma Land Trust v. Thompson*,
19 63 Cal. App. 5th 978, 986 (2021). In appropriate cases, “[m]ultipliers can range from 2 to 4 or even
20 higher.” *Wershba*, 91 Cal. App. 4th at 255; *Santana v. FCA US, LLC*, 56 Cal. App. 5th 334, 353
21 (2020) (affirming 2.0 multiplier); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding
22 for lodestar enhancement of “two, three, four or otherwise”); *Craft v. County of San Bernardino*, 624
23 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (awarding multiplier of approximately 5.2, noting “ample
24 authority for such awards resulting in multipliers in this range or higher,” and citing to cases with
25 multipliers of 5 up to 19.6). As noted by the *Vizcaino* court, “[t]his mirrors the established practice in
26 the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a
27 premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051.

28 For the reasons discussed above, the 1.7 lodestar multiplier is warranted.

1 **IV. CLASS COUNSEL SHOULD BE REIMBURSED THEIR COSTS.**

2 “Class action courts have applied the ‘reasonable expenses normally charged to a fee paying
3 client’ type formulation in awarding expenses from a common fund. In a common fund case, expenses
4 are not shifted to the defendant; rather, the class itself pays such expenses as they are deducted directly
5 from their common fund recovery.” 5 Newberg and Rubenstein on Class Actions § 16:5 (6th ed. 2025)

6 Under the Settlement, Class Counsel are entitled to apply to the Court for reimbursement for
7 litigation costs and expenses. *See* Settlement Agreement § 8.1. Class Counsel incurred \$216,639.11
8 in litigation costs. *See* Koncius Decl. ¶ 31, Ex. 3; Johnson Decl. ¶ 19, Ex. 3. These verified costs
9 include filing fees, travel expenses, deposition expenses and mediation-related expenses incurred in
10 the normal course of business. *See id.* All costs incurred were reasonable and essential to the
11 successful prosecution of this lawsuit.

12 **V. THE COURT SHOULD APPROVE THE INCENTIVE AWARDS.**

13 Courts typically approve awards to the named plaintiffs in a class action for their work
14 performed on behalf of the class. *In re Cellphone*, 186 Cal. App. 4th at 1393-94. “[I]ncentive awards
15 are fairly typical in class action cases . . . and are intended to compensate class representatives for
16 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
17 the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Id.*
18 (internal citations omitted); *see also Clark v. American Residential Servs. LLC*, 175 Cal. App. 4th
19 785, 806-07 (2009). Here, Plaintiffs request incentive awards of \$10,000 each. This award is
20 reasonable and justified by the time and effort the Class Representatives dedicated to this case and the
21 fact that they are bound by a much broader release than that applicable to Class Members. *See* 5
22 Newberg and Rubenstein on Class Actions § 17:3 (6th ed. 2025) (noting such awards to class
23 representatives is for their “hav[ing] typically done something the absent class members have not—
24 stepped forward and worked on behalf of the class”); *Munoz v. BCI Coca-Cola Bottling Co. of Los*
25 *Angeles*, 186 Cal. App. 4th 399, 412 (2010) (finding no basis to conclude enhancement awards to
26 class representatives were not fair, reasonable and appropriate given class representatives’ services
27 rendered. Here, both Plaintiffs went above and beyond in their efforts for the Class and spent a
28 significant amount of time on case-related tasks over the last six years. Doe I Decl. ¶¶ 4-5; Doe II

1 Decl. ¶¶ 4-5. Moreover, Plaintiffs agreed to serve as class representatives understanding the potential
2 risk of their names being disclosed. Doe I Decl. ¶ 3; Doe II Decl. ¶ 3

3 The requested awards comport with case law. California state and federal courts have
4 approved service awards of \$10,000 or more. *See, e.g., In re Cellphone*, 186 Cal. App. 4th at 1395
5 (approving \$10,000 awards to each of four class representatives); *In re Warner Music Grp. Corp.*
6 *Digital Downloads Litig.*, Case No. 12-cv-00559-RS (N.D. Cal. Jan. 12, 2015) (approving \$10,000
7 awards to each of six class representatives); *Universal City Studios*, Case No. BC499180 (L.A. Super.
8 Ct. Dec. 28, 2015) (approving \$10,000 awards to each of three class representatives); *Colin Higgins*
9 *Prods., Ltd. v. Paramount Pictures Corp.*, Case No. BC499179 (L.A. Super. Ct. Dec. 28, 2016)
10 (awarding \$10,000 to each of two class representatives); *Sony Pictures Entm't*, Case No. BC499182
11 (L.A. Super. Ct. March 23, 2018) (approving \$10,000 to each of two class representatives); *Twentieth*
12 *Century Fox*, Case No. BC499181 (L.A. Super. Ct. April 9, 2018) (awarding \$10,000 to class
13 representative).

14 **VI. THE COURT SHOULD AWARD EPIQ'S COSTS.**

15 The Settlement calls for the payment of the settlement administrator's costs and fees. *See*
16 Settlement Agreement § 2.3. The Court preliminarily appointed Epiq to act as the settlement
17 administrator to, among other tasks, send out Email and Postcard Notice; establish and maintain a
18 case specific website; respond to Class Member inquiries; process and pay settlement checks to Class
19 Members; and perform other duties as specified in the Settlement Agreement. Azari Decl. ¶¶ 23-33.
20 Epiq has performed all of its responsibilities to date and continues to do so. The estimated cost to
21 implement the Notice Plan and administer the settlement is between \$385,000 and \$445,000 (*Id.* ¶ 34)
22 and is reasonable and fair given the work performed and should be awarded.

23 **VII. CONCLUSION**

24 Based on the foregoing, Plaintiffs respectfully request fees, costs and incentive awards in the
25 amounts set forth above.

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DATED: December 9, 2025

KIESEL LAW LLP

By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 8648 Wilshire Boulevard, Beverly Hills, CA 90211-2910.

On December 9, 2025, I served true copies of the following documents described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS** on the interested parties in this action as follows:

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Michael D. Abraham
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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent by e-mail to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 9, 2025, at Beverly Hills, California.



Jessica Mendez