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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIDDHARTH MEHTA, KEVIN QIAN, and  
MICHAEL FURTADO, individually and on  
behalf of other similarly situated individuals,

Plaintiffs,

vs.

ROBINHOOD FINANCIAL LLC;  
ROBINHOOD SECURITIES, LLC; and DOES  
1-10

Defendants.

Case No.: 21-CV-01013-SVK

PLAINTIFFS' MOTION FOR ATTORNEYS'  
FEES, REIMBURSEMENT OF EXPENSES,  
AND CLASS REPRESENTATIVE SERVICE  
AWARDS; MEMORANDUM OF POINTS  
AND AUTHORITIES

Date: May 16, 2023  
Time: 10:00 a.m.  
Courtroom: 6, 4<sup>th</sup> Floor  
Judge: Hon. Susan van Keulen

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS  
REPRESENTATIVE SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES

**NOTICE OF MOTION AND MOTION**

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

PLEASE TAKE NOTICE that on May 16, 2023 at 10:00 a.m., or as soon thereafter at the matter may be heard, before the Honorable Susan van Keulen, United States Magistrate Judge, in Courtroom 6, 4<sup>th</sup> Floor of the San Jose Federal Courthouse, located at 280 South 1<sup>st</sup> Street, San Jose, CA 95113, Plaintiffs Kevin Qian and Michael Furtado (“Plaintiffs”) will and do hereby move this Court for an order awarding: (1) attorneys’ fees to Class Counsel in the amount of \$484,540; (2) reimbursement of litigation expenses of \$15,460; and (3) service awards to Plaintiffs Kevin Qian and Michael Furtado in the amount of \$5,000 each.

This Motion is made pursuant to the Court’s August 29, 2022 Order Granting Preliminary Approval (“Preliminary Approval Order”) [Dkt. 67], paragraph 6 of the Settlement Agreement [Dkt. 60], and Federal Rule of Civil Procedure 23(h).

This Motion is based upon this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the Declaration of Julie C. Erickson in Support of Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Service Awards and all exhibits thereto, the Declaration of Kevin Qian, the Declaration of Michael Furtado, Plaintiffs’ Motion for Final Approval of Settlement, the Declaration of Julie C. Erickson in Support of Plaintiffs’ Motion for Final Approval of Settlement and all exhibits thereto, the Declaration of Amy Crooks and all exhibits thereto, all other pleadings and papers on file, and such other arguments and materials as may be presented before the Motion is taken under submission.

Dated: March 15, 2023

Julie Erickson  
Elizabeth Kramer  
Kevin Osborne  
Erickson Kramer Osborne, LLP

/s/ Julie C. Erickson

Elizabeth Kramer

Attorneys for Plaintiffs Siddharth Mehta,  
Kevin Qian, and Michael Furtado

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REPRESENTATIVE SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES

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**STATEMENT OF ISSUES TO BE DECIDED**

Pursuant to the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California, Rule 7-4(a)(3), Plaintiffs ask the Court to rule on the following issues:

1. Whether Class Counsel's requested attorneys' fees should be awarded;
2. Whether Class Counsel's requested litigation expenses should be reimbursed; and
3. Whether the requested class representative service awards should be awarded to Plaintiffs Qian and Furtado.

## I. INTRODUCTION

Plaintiffs seek an award of attorneys' fees in the amount of \$484,540. Class Counsel collectively spent over 824 hours litigating the action and procuring a settlement that provides monetary payments that will make valid claimants whole, commands meaningful business practice changes, and provides credit monitoring worth \$480 per claimant. Substantial time was spent in case development, discovery, law and motion practice, and settlement discussions, which included significant review and analysis of data and documents in preparation for a formal full-day mediation.

The requested fee award is justified based on Class Counsel's lodestar and pursuant to California law. Class Counsel's lodestar reflects reasonable time spent on the case by capable counsel at reasonable rates approved by district courts within the Ninth Circuit. The requested fee represents a negative multiplier, which puts this request well within the range of fee awards approved under Ninth Circuit precedent. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). Other relevant factors support the requested fee, including complex and novel issues involved, the significant benefits provided under the proposed Settlement, and the caliber of representation provided by Class Counsel. Finally, there is no clear sailing provision in the Settlement and no other evidence of collusion or unfairness. Plaintiffs also seek reimbursement of litigation expenses in the amount of \$15,460. These expenses were reasonably incurred in the prosecution of this action on matters such as mediation and experts. Lastly, Plaintiffs seek service awards in the amount of \$5,000.00 each to Plaintiffs Kevin Qian and Michael Furtado. This amount is appropriate in light of Plaintiffs' involvement in the pursuit of this action, which included approximately twenty hours each spent conducting pre-filing investigation, engaged in discovery, reviewing documents, and reviewing the Settlement.

For the reasons set forth herein, Plaintiffs respectfully request that the Court enter an order granting Plaintiffs' attorneys' fees, expenses, and service awards.



## II. BACKGROUND

### A. Factual and Litigation History

Rather than repeat it here, Plaintiffs refer the Court to Plaintiffs' Motion for Preliminary Approval (Dkt. 61 at pp. 1-4) and Motion for Final Approval, filed concurrently herewith, for a summary of the factual background and litigation history of this case.

### B. Class Counsel Achieved Substantial Benefits for the Class

As described more fully in Plaintiffs' Motion for Preliminary Approval (Dkt. 61 at pp. 5-7) and Motion for Final Approval, the proposed Settlement provides three main components of benefits to the Settlement Class. First, Robinhood agrees to provide cash payments of up to \$260 each to Settlement Class Members who submit a claim, up to a total amount of \$500,000. Dkt. 60, Settlement Agreement ["S.A."], §§ 2.1-2.3, 2.7. Second, Robinhood agrees to provide two years of credit monitoring and identity theft protection services to those who elect to receive it. *Id.* at § 2.4. Third, Robinhood agrees to maintain improvements to its security protocols and policies to decrease the risk of unauthorized access to its customers' accounts and to respond effectively to instances of potential unauthorized access. *Id.* at § 2.5.

#### 1. *The Settlement Provides Valuable Monetary Recovery to the Class*

For every Settlement Class Member who submits a claim, the Settlement provides up to \$100 for out-of-pocket expenses resulting from the unauthorized access, up to \$100 in reimbursement for credit monitoring or identity theft protection services that were purchased based on the unauthorized access, and up to \$60 as a payment for time spent responding to the unauthorized access. Settlement Class Members may submit a claim for all these options for maximum cash payment of \$260. Valid claims will be paid in full up to a maximum of \$500,000. As of March 13, 2023, the 2,807 valid claims have been submitted and are approved to receive \$434,080 in settlement awards. Declaration of Amy Crooks (filed concurrently herewith in support of Plaintiffs' Motion for Final Approval) ("Crooks Decl.") at ¶ 18.

#### 2. *Credit Monitoring*

In addition to the monetary payments, Robinhood will provide 2 years of 3-bureau credit monitoring service to all class members. S.A. § 2.4. The service will provide up to \$1,000,000 of

identity theft insurance coverage, daily monitoring of 50 leading indicators of identity theft, alerts, customer support, fraud resolution, and educational resources. S.A. § 2.4; Dkt. 62, Kramer Decl. in Support of Preliminary Approval, Ex A. Class Counsel estimates the retail value of this service to be \$19.99 per month (a total of \$480 for the entire two-year term) for each subscriber. Declaration of Julie Erickson in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards ("Erickson Decl.") at ¶ 22. To date, 442 Class Members elected this benefit. Crooks Decl. at ¶ 20.

### 3. *Changes to Robinhood's Policies and Practices*

The Settlement also requires Robinhood to maintain improved policies and procedures to prevent unauthorized access to customer accounts, including: supplemental two-factor authentication; screening for, and prompting users to update, potentially compromised passwords; proactive monitoring of account takeovers; customer awareness campaigns that provide information and tools for better cybersecurity hygiene; and real-time voice support. Robinhood will maintain these new procedures for a minimum of 18 months and Class Counsel will have standing to seek relief from the Court if Robinhood fails to comply. S.A. § 2.5.

Finally, the Settlement provides a process by which those Settlement Class Members whose claims of unauthorized account access were denied by Robinhood or who did not respond to Robinhood's requests for information concerning their claim can re-submit their claim of unauthorized access to Robinhood and request reimbursement. S.A. § 2.6. If, upon additional review, Robinhood determines there was unauthorized account activity, Robinhood will provide the customer the same remedy as if the claim had been accepted in the first instance. *Id.* If Robinhood again determines that no unauthorized account activity occurred, that determination is final. Settlement Class Members will still be eligible for all other benefits of the Settlement regardless of whether they elect the renewed review and regardless of the outcome. *Id.*

### 4. *Unanimous Support of Class Members Supports the Fee Request*

The Notice of Settlement informed the approximately 40,000 Settlement Class Members that Plaintiffs would request an award of attorneys' fees and costs in the amount of \$500,000 and

service awards totaling \$10,000. Crooks Decl. at ¶¶ 7, 10, 13, Exs. 2, 5. To date, no Settlement Class Member has objected to any aspect of the Settlement. *Id.*, at ¶ 22.

The Notice also informed Class Members that the motion would be posted to the Settlement Website and that Settlement Class Members would have an opportunity to object or comment on it. Crooks Decl., Ex. 6, Long Form Notice, at § 11. In accordance with the Court's Order Granting Preliminary Approval, this motion and supporting papers will be posted to the Settlement Website and Settlement Class Members will have 35 days to object or comment.

**C. Class Counsel Expended Considerable Time and Resources to Investigate, Litigate, and Settle the Class Claims**

Plaintiffs filed this class action in January 2021. In the several months prior to and after filing the initial Complaint, Class Counsel engaged in extensive investigation, including communications with Class Members to determine the scope and specifics of the allegations. Class Counsel also engaged in research regarding the various potential claims that could be pleaded. Erickson Decl. at ¶ 15.

Class Counsel drafted multiple versions of the complaint as they worked to focus the claims to represent all Class Members and support class certification. Erickson Decl. at ¶ 15. Class Counsel also conducted a Rule 26(f) conference with counsel for Robinhood and drafted and served the Rule 26(f) Report and Plaintiffs' initial disclosures. Class Counsel also drafted and negotiated the ESI protocol to be used in this case. *Id.*, at ¶ 16.

*1. Motion Practice*

From March to September 2021, the Parties engaged in motion practice on the pleadings. Robinhood filed two motions to dismiss (Dkts. 15, 35), both of which were granted in part and denied in part (Dkts. 33, 41). A major question of law presented in these motions was whether Plaintiffs' claims under the California Consumer Privacy Act, Cal. Civ. Code § 1798.150 ("the CCPA"), could survive despite Robinhood's contention that no data breach of its computer systems had occurred. The Court ultimately found the CCPA claim was adequately pleaded. The other surviving claims included negligence and negligence per se; violations of the Customer Records Act, Cal. Civ. Code § 1798.80, et seq. ("CRA"), and constitutional privacy claim;

claims under the unlawful and unfair prongs of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.; and breach of contract based on the alleged refusal to reimburse funds lost to unauthorized access. Robinhood filed an answer to the complaint on October 15, 2021. Dkt. 47. Plaintiffs' deadline to file a motion for class certification was September 16, 2022.

## 2. *Discovery*

In addition to the exchange of initial disclosures, Plaintiffs requested and received significant discovery from Robinhood both before and during settlement negotiations. Class Counsel served 36 document requests and 80 requests for admissions. Erickson Decl. at ¶¶ 7, 15, 16. Plaintiffs also noticed the depositions of Defendants pursuant to Fed. R. Civ. Pro. 30(b)(6) on nine topics covering the allegations in the Complaint as well as the depositions of several other Robinhood employees. Discovery issues were highly contested and resulted in numerous telephonic and written meet and confers over the course of the litigation. *Id.*

In response discovery requests, Robinhood produced over 11,000 pages of records and data files. Erickson Decl. at ¶ 14. These documents, which consisted of hundreds of technical guides, operating policy and procedure manuals, anonymized customer data files and service correspondence logs, and over 250,000 data points, shed light on, *inter alia*, the nature and function of Robinhood's security practices and business practices during the class period and the size and scope of the potential class. *Id.* The Parties were in the process of scheduling depositions when they agreed to go to mediation. *Id.* at ¶ 14. Over the course of the litigation, Class Counsel was in frequent communication with Plaintiffs to update them on the status of the case, continue the investigation of the claims, and prepare discovery responses. *Id.*, ¶ 15, 24. In addition, in preparation for the motion for class certification, Class Counsel consulted with subject matter experts. *Id.* at ¶ 15.

## 3. *Negotiations & Mediation*

Between March and June 2022, the Parties engaged in lengthy and contentious negotiations to resolve the claims in the action. Erickson Decl. at ¶ 8. On March 29, 2022, the Parties participated in a full-day mediation overseen by Bruce Friedman of JAMS. *Id.* Prior to

1 the mediation, the Parties prepared detailed mediation briefs outlining their positions on the  
2 strengths and weaknesses of the case as well as damages analyses. *Id.* Class Counsel received  
3 and analyzed extensive data from Robinhood relating to the impact of the alleged incidents of  
4 unauthorized access to Robinhood customer accounts, including tens of thousands of specific  
5 incident information and data concerning the categories of individuals whose accounts were  
6 accessed by or claimed to have been accessed by unauthorized users, the amounts looted from  
7 these accounts, and the amounts reimbursed by Robinhood. *Id.*, at ¶¶ 15-16. Analyzing the  
8 spreadsheets produced by Robinhood involved running tens of thousands of calculations using  
9 hundreds of thousands of data points to assess potential damages in the case. *Id.*

10 The Parties negotiated vigorously throughout the full-day mediation, and, while  
11 significant progress was made, they were unable to reach an agreement. Erickson Decl. at ¶ 8.  
12 Following the mediation, the Parties continued to negotiate over the next several weeks through  
13 shuttle communications led by Mr. Friedman. *Id.* After the exchange of numerous drafts of a  
14 term sheet, the Parties finally reached a settlement in principle on May 4, 2022. *Id.* Over the next  
15 eight weeks, the Parties negotiated a complete settlement agreement, along with exhibits of the  
16 notice, claim form, and proposed orders. *Id.* These efforts resulted in the Settlement Agreement  
17 executed on July 1, 2022. Dkt. 60. Class Counsel drafted and filed the motion for preliminary  
18 approval, which was granted August 2022. Erickson Decl. at ¶ 8. Following preliminary  
19 approval, Class Counsel spent a considerable amount of time assisting with settlement  
20 administration and distribution of notice as well as fielding calls from Class Members with  
21 questions about the settlement. *Id.*, at ¶ 15. Class Counsel anticipate they will continue to have  
22 communications with Class Members following final approval. *Id.*

#### 23 **D. Class Counsel Is Highly Experienced**

24 Class Counsel consisted of a team of experienced attorneys with special skills and  
25 resources that contributed to the investigation, prosecution and resolution of this action. Erickson  
26 Decl. at ¶ 3. Class Counsel has considerable expertise in litigating complex cases, including data  
27 and privacy matters. *Id.*, at ¶¶ 3-6. Class Counsel coordinated their efforts to maximize  
28

efficiency and avoid duplication, with each attorney assuming responsibility for different aspects of the case to advance the litigation. *Id.*, at ¶ 19.

### III. ARGUMENT

#### A. California Law Entitles Class Counsel to a Reasonable Fee

Federal Rule of Civil Procedure 23(h) permits the Court to award reasonable attorney’s fees and costs in class action settlements as authorized by law or by the parties’ agreement. Fed. R. Civ. P. 23(h). Here, because Plaintiffs’ claims arise under California law, California law governs the award of attorneys’ fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Mangold v. Calif. Pub. Utils. Comm’n*, 67 F.3d 1470, 1478 (9th Cir. 1995) (“[W]e follow other circuits that apply state law in calculating the fee.”).

Under California law, “absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001) (emphasis omitted); *accord Serrano v. Unruh*, 32 Cal. 3d 621, 632-33 (1982) (“The rule in federal courts of appeals when they construe statutes like section 1021.5, embodying the private-attorney-general doctrine, is that, absent facts rendering the award unjust, parties who qualify for a fee should recover for all hours reasonably spent, including those on fee-related matters.”) (footnotes omitted). As the Ninth Circuit held: “Only in rare or exceptional cases will an attorney’s reasonable expenditure of time on a case not be commensurate with the fees to which he is entitled.” *Velez v. Wynne*, 220 F. App’x 512, 514 (9th Cir. 2007) (quoting *Cunningham v. County of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988)).

Code of Civil Procedure section 1021.5 applies to Class Counsel’s request for attorneys’ fees because the action was brought under California law. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 560-61 (2004) (awarding fees in nationwide class settlement under section 1021.5); *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 551 (2009) (same). Section 1021.5 entitles Class Counsel to a reasonable fee, as Plaintiffs succeeded in obtaining substantial benefits to vindicate an important right affecting the public interest. *See generally MacDonald v. Ford Motor Co.*, 142 F. Supp. 3d 884 (N.D. Cal. 2015); *see also Howard v. First*

1 *Horizon Home Loan Corp.*, 2013 WL 6174920, at \*8 (N.D. Cal. Nov. 25, 2013) (the court  
 2 “determine[s] the significance of the benefit and the size of the class receiving that benefit by  
 3 realistically assessing the gains that have resulted in a particular case.”) (citation omitted).

4 The primary benefits obtained through this Settlement—a \$500,000 cash fund and two  
 5 years of credit monitoring—are significant and resulted from private enforcement. The monetary  
 6 fund achieves the central aim of Plaintiffs’ case by making Class Members whole, while the  
 7 credit monitoring prevents further potential harm that might occur because of the alleged  
 8 incidents of unauthorized access. Defendants’ agreement to implement changes in their security  
 9 practices constitutes another significant benefit and further accomplishes the objectives of the  
 10 litigation by protecting Class Members from being victimized by unauthorized access to their  
 11 Robinhood accounts again in the future. Moreover, by securing these benefits, Plaintiffs enforced  
 12 important public rights, including the public’s right to be free from unfair or misleading trade  
 13 practices. *See Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 949-51 (2002); *see also MacDonald*, 142 F.  
 14 Supp. 3d at 895 (recognizing that “[t]he ‘enforcement of the California consumer protection  
 15 laws’ qualifies as ‘an important right affecting the public interest.’”) (citations omitted);  
 16 *Delacruz v. CytoSport, Inc.*, 2014 WL 12648451, at \*5 (N.D. Cal. July 1, 2014) (applying  
 17 lodestar method to award fees where “Class Counsel advanced the public interest by enforcing  
 18 [California’s] consumer protection laws, and obtained significant benefits”).

19 Additionally, it is appropriate for the Court to apply the lodestar method here because it is  
 20 difficult to assign a monetary value to the two non-monetary components of the Settlement—the  
 21 secondary review process and enhanced security measures. *Hanlon v. Chrysler Corp.*, 150 F.3d  
 22 1011, 1029 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564  
 23 U.S. 338 (2011).

#### 24 **B. The Requested Fee Award is Fair, Reasonable, and Justified**

25 Class Counsel’s lodestar is presumptively reasonable: “There is a strong presumption that  
 26 the lodestar figure represents a reasonable fee.” *Morales v. City of San Rafael*, 96 F.3d 359, 363  
 27 n.8 (9th Cir. 1996); *see also Cunningham*, 879 F.2d at 488. The lodestar “constitutes earned  
 28 compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to



approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001). Prevailing counsel are routinely awarded their lodestar. *See, e.g., Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1085 (N.D. Cal. 2010) (holding that, under section 1021.5, prevailing counsel were entitled to be “fully compensated” in the amount of their lodestar); *Kulesa v. PC Cleaner, Inc.*, 2014 WL 12581770, at \*8-10 (C.D. Cal. Aug. 26, 2014) (applying a 1.08 multiplier in a case asserting false advertising of software in violation of California law); *Bottoni v. Sallie Mae, Inc.*, 2013 WL 12312794, at \*4-5 (N.D. Cal. Nov. 21, 2013) (applying a 1.29 multiplier under section 1021.5 in a case asserting unlawful loan costs).

The first step in the lodestar analysis is to multiply the number of hours counsel reasonably spent on the litigation by a reasonable hourly rate. *See Graham*, 34 Cal. 4th at 579; *Hanlon*, 150 F.3d at 1011. Once this raw lodestar figure has been determined, the Court may consider “enhancement” factors (also known as the “*Hanlon* factors”) to adjust the lodestar award, “including the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *Hanlon*, 150 F.3d at 1029; *see also Ketchum*, 24 Cal. 4th at 1132.

In this case, Class Counsel’s lodestar to date (\$652,630) exceeds their \$484,540 fee request, meaning that Class Counsel are requesting a negative multiplier (0.74). Erickson Decl. at ¶ 11. Class Counsel respectfully submit that this request is reasonable given the novelty and complexity of the action, the high quality of representation on both sides, the contingent risk of nonpayment, the time and labor required, and the benefits obtained for the Class.

The negative multiplier on Class Counsel’s lodestar, without accounting for work still to come, is consistent with precedent and reasonable in light of the risks Class Counsel assumed in bringing this matter, their efforts in bringing about a speedy resolution that provides substantial monetary and non-monetary relief for the Class, and the favorable reception of Class members to the Settlement.



1 *1. The Hours Expended by Class Counsel Are Reasonable*

2 The 824 hours spent by Class Counsel for the benefit of the class—excluding future work  
3 to effectuate the settlement—were necessary and reasonable. *Serrano v. Unruh*, 32 Cal. 3d 621,  
4 632-33 (1982) (counsel are entitled to compensation for all hours reasonably expended); *Caudle*  
5 *v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (same). These hours are described  
6 fully in the attached Declaration of Julie Erickson and are broken down by timekeeper according  
7 to ten categories of work in Exhibit 2 thereto. Erickson Decl. at ¶¶ 13, 15-17, Ex. 2.

8 In short, Class Counsel expended a substantial amount of time investigating, litigating,  
9 and negotiating a resolution, including through formal and informal discovery, two rounds of  
10 motions to dismiss, conferences with defense counsel, consultation with an expert, and analysis  
11 of documents and data. Erickson Decl. at ¶¶ 15-16. Class Counsel also prepared a detailed  
12 mediation brief, engaged in a full-day mediation, negotiated and drafted the settlement, drafted  
13 the preliminary approval motion, and assisted with administration of the Notice. *Id.* All of this  
14 work was performed for the benefit of the Class, and the time spent was reasonable. Each of the  
15 three attorneys was delegated responsibility for specific tasks to minimize duplicative work. *Id.*,  
16 at ¶ 19.

17 Consequently, Class Counsel should be paid for all of their time. *See Hensley v.*  
18 *Eckerhart*, 461 U.S. 424, 435-36 (1983); *Ketchum*, 24 Cal. 4th at 1133 (holding that the fee  
19 award should be “fully compensatory [and] absent circumstances rendering the award unjust, . . .  
20 should ordinarily include compensation for all the hours reasonably spent, including those  
21 relating solely to the fee.” (emphasis in original)); *Moreno v. City of Sacramento*, 534 F.3d 1106,  
22 1112 (9th Cir. 2008) (stating that “lawyers are not likely to spend unnecessary time on  
23 contingency fee cases” and that, “[b]y and large, the court should defer to the winning lawyer’s  
24 professional judgment as to how much time he was required to spend on the case.”); *Cabrales v.*  
25 *County of Los Angeles*, 935 F.2d 1050, 1052-53 (9th Cir. 1991).

2. *Class Counsel's Hourly Rates Are Reasonable*

The established standard for determining a reasonable hourly rate is the “rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.” *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir. 1997).

Further, “to compensate for the delay in payment,” the Court should apply each biller’s current rate for all hours of work performed, regardless of when the work took place. *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994).

Declarations regarding the prevailing market rate in the relevant community are sufficient to establish a reasonable hourly rate. *See Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir. 1998); *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

Class Counsel have substantial experience in class action litigation, including data and privacy cases. Erickson Decl. at ¶¶ 3, 5, 6. Each of the three attorneys brought unique expertise and skill, including specialized knowledge in data and privacy class actions and complex litigation which were vital to the success and settlement of this case. *Id.* Here, the rates used by Class Counsel to calculate their lodestar are well within the range of rates charged by skilled counsel in the Northern District of California in similar complex civil litigation and are in line with those approved by courts within this District and Circuit. Erickson Decl. at ¶ 12. Class Counsel’s hourly rates are reasonable.

3. *Additional Circumstances Support Class Counsel's Fee Request*

In addition to the presumptive reasonableness of the lodestar figure calculated above, *see In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011), other factors support the reasonableness of the requested fee, which, significantly, represents a negative multiplier (0.74) of the value of their time expended.<sup>1</sup> *See, e.g., Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at \*18 (C.D. Cal. Apr. 29, 2014), *objections overruled*, 2014 WL 4090512 (C.D. Cal. June 20, 2014) (where class counsel “unilaterally reduced” their fee request to seek a

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<sup>1</sup> The final multiplier here will be even lower because the current lodestar does not reflect Class Counsel’s future work.

“negative lodestar modifier of 93.6%,” the court commented that while it “might ordinarily consider granting an upward lodestar adjustment based on the skill displayed by Class Counsel . . . and the contingent nature of Class Counsel’s fee,” their “conservative request makes the Court’s analysis much simpler.”); *Rosado v. Ebay Inc.*, 2016 WL 3401987, at \*8 (N.D. Cal. June 21, 2016) (conducting a lodestar cross-check, this Court found that a negative multiplier “strongly suggests the reasonableness of the negotiated fee.”); *Oxina v. Lands’ End, Inc.*, 2016 WL 7626190, at \*5-7 (S.D. Cal. Dec. 2, 2016) (applying the lodestar method under the CLRA and section 1021.5, the court concluded that “Class Counsel’s request for fees is reasonable, given that the requested fees are a negative multiplier of Class Counsel’s lodestar to date.”)

The lack of objections also supports Class Counsel’s fee request. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (“the lack of objection from any Class Member supports the attorneys’ fees award”). To date, no Class Member has objected to the Settlement. *See Crooks Decl.* at ¶ 22.

Consideration of the *Hanlon* factors further demonstrates the reasonableness of the requested fee. *See Hanlon* 150 F.3d at 1029 (counsel’s lodestar may be enhanced or reduced based on “the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment”)

a. Quality of Representation

Not only does the Settlement provide significant benefits to the Class Members, but Class Counsel managed to achieve this result in an expeditious manner, without the delay or expense of protracted litigation. This weighs in favor of the fee request’s reasonableness. *See In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at \*10 n. 61 (N.D. Cal. Dec. 6, 2017). As discussed above in detail, this case was sharply contested and included two rounds of motions to dismiss, thousands of pages of documents to review, extensive investigation through class member communications, and lengthy and fierce settlement negotiations. *See* Sections II.C.1 & 2, *supra*. Robinhood was well-defended by some of the finest litigators in the country and counsel on both sides worked professionally to advance their clients’ interest and resolve the matter efficiently once the facts and issues were sufficiently developed. *See Barbosa v. Cargill*

1 *Meat Solutions Corp.*, 297 F.R.D. 431, 449 (C.D. Cal. 2013) (“The quality of opposing counsel  
2 is important in evaluating the quality of Class Counsel’s work.”)

3 b. Class Counsel Achieved Significant Benefits for the Class

4 The proposed Settlement provides the Class with as much as \$260 per claimant to  
5 compensate for lost time and expenses. Significantly, all 40,656 Class Members are also eligible  
6 to receive credit monitoring services to protect against future identity theft for two years, making  
7 a benefit available to the Class worth up to \$19.5 million in aggregate – or, in other words, full  
8 dollar-for-dollar recovery. Viewed under this lens, the Settlement provides recovery of special  
9 damages of nearly 90 percent of total potential recovery. Robinhood’s agreement to implement  
10 changes to its security practices also protects Class Members from future incidents of  
11 unauthorized access. Erickson Decl. at ¶ 22. Thus, this factor strongly favors awarding the  
12 requested fee.

13 c. Complexity and Novelty of Issues Presented and Litigation Risk

14 The “prosecution and management of a complex national class action requires unique  
15 legal skills and abilities.” *In re Heritage Bond Litig.*, 2005 WL 1594403, at \*19 (C.D. Cal. June  
16 10, 2005) (citation omitted). Data breach cases are particularly complex and expensive by  
17 nature. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at \*32-  
18 33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data breach  
19 class actions). Courts explicitly recognize data breach cases as among the most risky and  
20 uncertain of all types of class action litigation. *See, e.g., Hammond v. The Bank of N.Y. Mellon*  
21 *Corp.*, 2010 WL 2643307, at \*1 (S.D.N.Y. June 25, 2010) (collecting cases).

22 This case is no exception. It involves tens of thousands of class members, complicated  
23 and technical facts, well-funded and motivated defendants, and contested central issues relating  
24 to class certification, liability, and damages. Robinhood made clear that it would oppose class  
25 certification on the grounds that the way Class Members’ accounts were accessed varied widely,  
26 forming a roadblock to class-wide liability. Dkt. 51, Rule 26(f) Report and Joint Case  
27 Management Statement, p. 9. Robinhood would also argue that, even if a class were certified, it  
28 is not liable for the harm at issue because there was no breach of its computer network.

1 Establishing such a breach (or an alternative theory of liability) at trial would require countless  
 2 hours of costly investigation, discovery, reporting, and testimony from data security and  
 3 financial industry expert witnesses.

4 Plaintiffs' statutory claims under California law also face significant risk of dismissal on  
 5 summary judgment or appeal. Both the CCPA and the CRA statutes are relatively new and  
 6 remain largely untested in motion to dismiss, summary judgment, and class certification  
 7 proceedings.

8 Finally, even if a class were certified and Plaintiffs established liability, establishing  
 9 causation and damages both present significant challenges. The theft of the Robinhood  
 10 customers' funds and personal information was, without dispute, the act of third-party hackers.

11 d. Risk of Nonpayment

12 It is common practice "to reward attorneys for taking the risk of non-payment by paying  
 13 them a premium over their normal hourly rates for winning contingency cases." *In re Wash. Pub.*  
 14 *Power Supply System Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

15 Legal issues and unfavorable facts presented uncertainty and risks to the claims at issue.  
 16 By prosecuting this action on a pure contingency basis, Class Counsel bore substantial risk of an  
 17 uncertain outcome as well as all the difficulties inherent in complex class action litigation. Class  
 18 Counsel risked significant amounts of time and expenses to ensure a successful outcome—over  
 19 800 hours and \$15,000 in costs. Erickson Decl. at ¶¶ 11, 23. When this case was accepted, Class  
 20 Counsel were aware of the risks but considered the possibility of a risk-related enhancement  
 21 award as justification for accepting fees on a contingent basis.

22 **C. Percentage Method Crosscheck Confirms the Requested Fee Is Reasonable**

23 The Ninth Circuit "do[es] not require courts employing the lodestar method to perform a  
 24 crosscheck using the percentage method [...] because the lodestar method yields a fee that is  
 25 presumptively reasonable." *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 571 (9th  
 26 Cir. 2019) (citations omitted). The Court therefore has discretion to award the requested fee  
 27 based solely on the lodestar method. *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d  
 28 922, 930 (9th Cir. 2020) (discretionary crosscheck is more appropriate where the percentage

method is being utilized, the reverse scenario of the present case). Should the Court opt to perform a crosscheck, however, the percentage of recovery method supports the requested fee.

Under the percentage method, a court sets attorney fees by calculating the total recovery secured by the attorneys and awarding them a reasonable percentage of that recovery, often in the range of 20 to 30 percent. Courts within the Ninth Circuit examine the following factors in determining the reasonableness of fees under the percentage method: (1) the results achieved; (2) the risk involved with the litigation; (3) the skill required and quality of work; (4) the contingent nature of the fee; and (5) awards made in similar cases. *Vizcaino*, 290 F.3d at 1048-50.

Here, the Settlement achieved by Class Counsel provides common benefits to the Class with a total value of \$20 million. The Settlement creates a \$500,000 monetary fund and provides two years of credit monitoring and identity theft protection services to all Class Members. As discussed in Plaintiffs' Motion for Preliminary Approval, the credit monitoring services offered to the Class have an aggregate retail value of \$19.5 million. *See* Dkt. 61 at p. 13 (retail value of credit monitoring is \$480 per person). The injunctive relief also has significant value but is difficult to monetize. *Fraley v. Facebook, Inc.*, 2013 WL 4516806, at \*3 (N.D. Cal. Aug. 26, 2013), *aff'd sub nom. Fraley v. Batman*, 638 F. App'x 594 (9th Cir. 2016). Even excluding the value of the injunctive relief, the requested fee represents 2.4 percent of that. This is far below the Ninth Circuit benchmark.

If the Court were to analyze the value of the Settlement's benefits that have been claimed so far, the fee is still reasonable. The 2,807 valid claims submitted as of March 13, 2023, are currently approved to receive \$434,080.00 in settlement awards and 442 class members have elected to receive the credit monitoring services (total retail value of \$212,160). Crooks Decl., ¶¶ 18, 20. Not including the injunctive relief, the monetary value of the settlement benefits that will be directly delivered to Class Members is \$646,240. Class Counsel's requested fee equals approximately 74 percent of this amount. Although this exceeds the Ninth Circuit benchmark, it does not mean the fee request is per se unreasonable in light of the circumstances of this case and the other *Vizcaino* factors. The benefits achieved here are impressive. In short, Class Members are made 90-100 percent whole by the payments made available to them. A better-than-expected

7 percent of the Class claimed this benefit while another 1 percent claimed the added benefit of the credit monitoring services. This is even more significant when put into context of the case-specific facts. As discussed in more detail in Plaintiffs' Motion for Preliminary Approval, 63 percent of the Class experienced no unauthorized transactions and lost no funds. Of those who did, all losses were compensated by Robinhood. Dkt. 61 at p. 25. Thus, the Class suffered no cognizable special damages other than the loss of time spent sorting out the ordeal and possible expenses relating to the re-securing of their private information. Based on Class Counsel's investigation, Class Members spent a maximum of three hours of their time addressing the alleged hacks at a rate. Lost time is commonly valued at a rate of \$20. The proposed Settlement provides the Class with as much as \$260 per claimant thereby fully compensating for lost time and expenses.

These dual benefits of credit monitoring and per claimant payment of \$60-260 available here exceeds the average pro rata payments in other data breach cases. *See, e.g., In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 581, 588 (N.D. Cal. 2015) (approximately \$15 to each class member \$14.81); *Perkins v. LinkedIn Corp.*, 2016 WL 613255, at \*2, 9 (N.D. Cal. Feb. 16, 2016) (approximately \$20 to each class member); *Ebarle v. Lifelock, Inc.*, 2016 WL 5076203, at \*2, 5 (N.D. Cal. Sept. 20, 2016) (approximately \$20 to each class member); *In re Google LLC St. View Elec. Commc'ns Litig.*, 2020 WL 1288377, at \*11 (N.D. Cal. Mar. 18, 2020), *aff'd sub nom.*

Considering the risk and complexity of the legal issues and facts presented in this case and the extraordinary settlement benefits achieved, Class Counsel's requested fee award is highly reasonable and fair.

#### **D. Class Counsel's Litigation Costs Are Reasonable and Should Be Reimbursed**

Class Counsel are entitled to recover the out-of-pocket costs they reasonably incurred in investigating, prosecuting, and settling this case. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970)). The total cost amount requested by Class Counsel reflects the expenses Class Counsel advanced for the benefit of the class. As with fees, reimbursement of costs will be paid directly by HP and will not affect the relief afforded to the class.



Class Counsel seek reimbursement of \$15,460 in unreimbursed, out-of-pocket expenses in this action. These include costs advanced in connection with mediation, expert witnesses, legal research, and other customary litigation expenses. Erickson Decl. at ¶ 23, Ex. 2. These costs were reasonable and necessary for the prosecution of this action. *See, e.g., In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1367-72 (N.D. Cal. 1996) (reimbursable costs include expenses for travel and legal research); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at \*16 (N.D. Cal. Sept. 2, 2015) (expert witnesses, court reporters, document review vendor).

#### **E. Class Representative Service Awards**

“[N]amed plaintiffs . . . are eligible for reasonable incentive payments” as part of a class action settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). “The request of \$5,000 is reasonable as that amount is the presumptive incentive award in [the Northern District of California].” *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, 2019 WL 536661, at \*9 (N.D. Cal. Feb. 11, 2019); *see also Cottle v. Plaid Inc.*, 2022 WL 2829882, at \*13 (N.D. Cal. July 20, 2022) (awarding \$5,000 for each of the 11 class representatives).

Class Counsel request the Court approve service awards to named Plaintiffs Kevin Qian and Michael Furtado in the amount of \$5,000 each in recognition of their service to the Settlement Class Members. These will be paid separately by Robinhood and acknowledge the benefits they conferred on the Class. S.A. § 6.2. When evaluating the reasonableness of an incentive award, courts consider, *inter alia*, “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from these actions,” and “the amount of time and effort the plaintiff expended in pursuing the litigation.” *Id.*

The requested \$5,000 service awards are reasonable in light of Plaintiffs’ efforts and service performed on behalf of the Class. Erickson Decl., ¶ 24; *see generally* Declaration of Kevin Qian, filed herewith; Declaration of Michael Furtado, filed herewith. Mr. Qian and Mr. Furtado assisted counsel with their investigation of the case and preparation of the complaints, participated in discovery, including responding to Rule 34 document requests and Rule 33 interrogatories, and, in connection with the mediation, provided detailed information regarding



1 the alleged unauthorized access to their Robinhood accounts and the associated damages they  
2 incurred. *Id.* Mr. Qian and Mr. Furtado also maintained regular contact with Class Counsel to  
3 monitor the progress of the litigation and provide feedback on the proposed Settlement. *Id.*

#### 4 **IV. CONCLUSION**

5 For the foregoing reasons, Class Counsel respectfully request an Order awarding: (i)  
6 attorneys' fees in the amount of \$484,540.00; (ii) reimbursing actual litigation expenses in the  
7 amount of \$15,460.00; and (ii) service awards in the amount of \$5,000.00 to Plaintiffs Qian and  
8 Furtado in recognition of their service to the Settlement Class Members.

9  
10 Dated this 17th day of March, 2023.

Erickson Kramer Osborne, LLP

11 /s/ Julie Erickson

12 Julie Erickson

13 Attorneys for Siddharth Mehta, Kevin Qian,  
14 and Michael Furtado

**ATTESTATION**

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

/s/ Elizabeth A. Kramer  
Elizabeth A. Kramer