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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Montana Strong and Debra Yick, *individually and on behalf of all others similarly situated*,

Plaintiffs,

v.

LifeStance Health Group, Inc. d/b/a LifeStance, a Delaware corporation,

Defendant.

Case No. 2:23-cv-00682-PHX-KML

Assigned to the Honorable Krissa M. Lanham

PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO CLASS REPRESENTATIVES AND MEMORANDUM OF LAW IN SUPPORT THEREOF

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MOTION

Plaintiffs hereby respectfully move the Court for an order: (i) awarding Zimmerman Reed LLP and Almeida Law Group LLC ("Plaintiffs' Counsel" or "Counsel") attorneys' fees of one-third of the $3,027,874.44 Settlement Amount, totaling $1,009,291.48; (ii) granting payment of $18,844.90 in reasonable litigation costs and expenses; and (iii) awarding Class Representatives Montana Strong and Debra Yick Service Awards in the amount of $2,500 each, totaling $5,000.[1]

In support of this Motion, and pursuant to LRCiv 54(c), Plaintiffs submit the below Memorandum of Law. Pursuant to LRCiv 54.2(d)(3) and LRCiv 54.2(e)(3), the task-based itemized statement of time and expenses and related materials are attached to the accompanying declaration of Hart l. Robinovitch ("Robinovitch Decl."). While Plaintiffs are aware that LRCiv 54.2(d)(1)-(2) requires that a Statement of Consultation and Fee Agreement be attached to this memorandum, the Robinovitch Affidavit explains how those requirements have already been satisfied as part of the negotiated class action settlement. Robinovitch Decl. ¶¶ 21-22.[2]

MEMORANDUM OF SUPPORTING POINTS AND AUTHORITIES

I. ELIGIBILITY OF CLASS COUNSEL FOR AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS.

This class action lawsuit was filed on April 21, 2023, and alleges federal and state claims against LifeStance Health Group, Inc. ("Lifestance") based on its alleged use of third-party Tracking Technologies to collect and to disclose its patients' personally identifiable information and protected health information to third parties. Robinovitch Decl. ¶ 6.

On June 30, 2023, LifeStance filed its initial Motion to Dismiss the Complaint. *Id.* ¶ 9. Plaintiffs filed their Response in Opposition on July 28, 2023 (amended July 30, 2023), and Defendant filed its Reply on August 11, 2023. *Id.* On Judge Michael T. Liburdi dismissed the

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[1] All capitalized terms used in this Memorandum shall have the same meaning as set forth in the Settlement Agreement, a true and correct copy of which is attached as Exhibit 1 to Declaration of David S. Almeida in Support of Plaintiffs' Motion for Preliminary Approval of Revised Class Action Settlement. *See* Dkt. No. 95-1.

[2] There is no free-sailing provision in the Settlement Agreement. To the extent it wishes to do so, LifeStance may oppose or otherwise comment on Class Counsel's fee petition. Settlement Agreement ¶10.3 ("Defendant retains the right to comment on and/or object to any Motion for Attorneys' Fees and Expenses and for approval of Service Awards for the Class Representatives.")(Dkt. No. 95-1)

original Complaint without prejudice and granted Plaintiffs leave to amend. *Id.* Plaintiffs filed the Amended Complaint on January 19, 2024. *Id.* ¶ 10. Defendant again moved to dismiss, with the ensuing briefing involving numerous notices of supplemental authority. *Id.*

The case was reassigned to Judge Krissa M. Lanham on August 7, 2024. *Id.* ¶ 11. On January 28, 2025 the Court denied the motion to dismiss for all claims except intrusion upon seclusion. *Id.* The Parties then explored the prospect of settlement discussions following the Court entering a Case Management Order and agreed to participate in a confidential mediation with Hon. Suzanne H. Segal (Ret.) of Signature Resolution. *Id.* ¶ 13.

Prior to the mediation, Class Counsel propounded informal discovery and prepared and submitted a detailed mediation statement addressing liability, class certification, damage models, and LifeStance's anticipated defenses. *Id.* ¶¶ 14-15. As a result, Class Counsel entered mediation fully informed of the merits of Settlement Class Members' claims and LifeStance's potential defenses. *Id.* Class Counsel negotiated the proposed Settlement while advancing Plaintiffs' and Class Members' interests, remaining prepared to continue litigating rather than accept a settlement that was not in the Plaintiffs' and Settlement Class's best interest. *Id.*

The Parties engaged in a full-day, in-person mediation on April 15, 2025, in Los Angeles, California, and over the course of approximately ten hours, plus subsequent remote sessions, came to an agreement on all material terms of a class action settlement on April 23, 2025. *Id.* ¶ 16. The final negotiations on the initial Settlement Agreement were completed through late August 2025. *Id.* The Settlement Agreement, the product of informed negotiations conducted at arm's length, memorialized the Parties' resolution of all claims and causes of action related to LifeStance's alleged use of online Tracking Technologies. *Id.* ¶¶ 16-18. Class Counsel was actively involved in drafting the Settlement Agreement with LifeStance's counsel, communicating with named Plaintiffs, evaluating competitive bids from settlement administrators, and creating a Notice Program. *Id.* ¶ 19.

Plaintiffs moved for preliminary approval of the initial settlement on August 29, 2025. *Id.* ¶ 20. On October 6, 2026 the Court denied the motion for preliminary approval without prejudice, noting certain areas of the settlement that required further explanation or revision. *Id.*

¶ 20. Subsequently, counsel for the Parties entered into further arm's-length negotiations seeking to revise aspects of the settlement terms that were addressed in the Court's Order while attempting to preserve the overall settlement for the class. Class Counsel were actively involved in negotiating a revised settlement, drafting revisions to the Settlement Agreement, revising the relevant Notices of Settlement, drafting a new Motion for Preliminary Approval, and adjusting the proposed Notice Program. *Id.* ¶22.

On December 3, 2025, Plaintiffs filed a motion for preliminary approval of a revised class action settlement. *Id*. ¶23.

On May 12, 2026, the Court granted the motion for preliminary approval and set a schedule for the submission of motions for final approval, motion for attorneys' fees, expenses, and Services Awards, and for a Final Approval Hearing on October 16, 2026. *Id.* ¶24.

From the start of the Notice Program through the present time, Class Counsel have continued to work with LifeStance and the Settlement Administrator regarding claims administration and processing, as well as responding to Class Members' questions about the Settlement and the claims process. *Id.* ¶25. The Settlement Administrator has provided periodic updates to the Parties showing the Settlement Class Members' response. To the extent Class Members have had questions about the settlement or other inquiries, time has been spent addressing them.

Overall Class Counsel have maintained a high level of oversight and involvement in this Action and will continue to expend significant amounts of time given the future work still needed for finalization of the Settlement, including drafting the motion for final approval, preparing for and appearing at the Final Approval Hearing on October 16, 2026, overseeing claims administration, answering Class Members' questions, responding to any potential objections, and resolving any potential appeals. *Id.* ¶26.

The Settlement Agreement, if granted final approval by the Court, secures a non-reversionary common Settlement Fund in the amount of $3,027,874.44, which is the aggregate of the non-reversionary Settlement Subclass 1 Fund ($1,203,405.00) and non-reversionary Settlement Subclass 2 Fund ($1,824,469.44). *Id.* ¶¶ 28; Settlement Agreement ¶¶ 2.1-2.2.

("SA") (ECF 95-1). In addition, the settlement secures injunctive relief suspending the challenged tracking practices for a period of no less than five years. SA ¶¶ 1.22, 2.1-2.2. Settlement Subclass 1 comprises approximately 171,915 LifeStance patients who booked appointments through the website. *Id.* ¶ 29. Settlement Subclass 2 consists of approximately 967,737 LifeStance patients who are not in Subclass 1. *Id.* ¶ 30. The Settlement Agreement also allows Plaintiffs to "request that the Court approve an award of attorneys' fees not to exceed one third (1/3) of the Settlement Fund" and "separately seek recovery of reasonable costs and expenses incurred from the Settlement Fund." Robinovitch Decl. ¶¶ 31, 33; SA ¶¶ 10.1. The Settlement Agreement provides for court-approved service awards for the class representatives up to $2,500 each. Robinovitch Decl. ¶ 60; SA ¶¶ 10.5.

II. ENTITLEMENT TO AN AWARD OF ATTORNEYS' FEES AND COSTS

The Court's Preliminary Approval Order states that, consistent with the Settlement Agreement, seeking fees of up to 33% of the settlement funds would be reasonable. Order, May 12, 2026 at p. 2, footnote 1. Dkt. No. 99. Given the positive results achieved for Class Members, Class Counsel respectfully request fees in the amount of one-third (1/3) of the Settlement Fund. This fee request is supported by both the percentage-of-the-fund method for awarding fees in class action litigation and the lodestar method.

First, it is well-settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). A reasonable fee may be based "on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). Courts often use both the percentage of the common fund method and the "lodestar" method to "crosscheck" the amounts to ensure that fees are not overly disproportionate. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002).

Under Fed. R. Civ. P. 54(d)(1), "costs—other than attorney's fees—should be allowed to the prevailing party" unless "a federal statute, these rules, or a court order provides otherwise[.]"

Although Fed. R. Civ. P. 54(d)(1) allows the district court discretion to refuse to award costs, that "discretion is not unlimited." *Ass'n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 591 (9th Cir. 2000). "A district court must 'specify reasons' for its refusal to award costs." *Id.*

Second, a party that is entitled to an award of attorneys' fees is also entitled to compensation for time expended on an application for attorneys' fees. *See, e.g.*, *Gary v. Carbon Cycle Arizona LLC*, 398 F.Supp.3d 468, 479 (D. Ariz. 2019) (awarding reasonable attorneys' fees incurred in preparing the Motion for Attorneys' Fees and Costs); *In re Nucorp Energy Inc.*, 764 F.2d 655, 659-60 (9th Cir. 1985) (finding that federal courts "have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable" because it would otherwise dilute a fee award). Here, Class Counsel's lodestar calculation includes the time and costs incurred in drafting this Motion as of the afternoon of August 13, 2026. Additional time and expenses are anticipated to be spent in further preparation for this Motion as well as the final approval motion, in administering the settlement, if approved, and in responding to class members' inquiries.

Third, the Ninth Circuit has recognized that service awards "are intended to 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." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *see also Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (holding that named plaintiffs in class action are eligible for "reasonable" payments); *In re Maxwell Techs. Inc., Sec. Litig.*, 2015 WL 12791401, at *4 (S.D. Cal. Feb. 17, 2015) (awarding plaintiff "reimbursement of its reasonable time, costs and expenses directly relating to its representation of the Settlement Class").

Here, Class Counsel may request that the Court approve an award of attorneys' fees not to exceed one third (1/3) of the Settlement Fund for a total fee request not to exceed one million nine thousand two hundred ninety-one dollars and forty-eight cents ($1,009,291.48). SA ¶ 10.1; Robinovitch Decl. ¶¶ 33, 41, 59. Class Counsel separately seek recovery of reasonable costs and expenses of $18,844.90. SA ¶ 10.1; Robinovitch Decl. ¶¶ 33, 41, 56-59. Given Plaintiffs' personal contribution to the successful prosecution and settlement of this Action, Plaintiffs Montana Strong and Debra Yick are eligible to request a service award "in recognition of each of their time, efforts, and risks undertaken on behalf of the Settlement Class" of up to $2,500 each, pursuant to the Settlement Agreement. SA, ¶ 10.5; *see also* Robinovitch Decl. ¶ 60-64. For the reasons explained below, Class Counsel's request is fair and reasonable and in accordance with the applicable standards.

III. REASONABLENESS OF THE REQUESTED FEE AND COST AWARD

A. The requested award for attorneys' fees and costs is reasonable.

Class Counsel's request for approval of fees equal to one-third of the Settlement Fund ($1,009,291.48) is reasonable and consistent with Ninth Circuit case law. In the Ninth Circuit, a district court has discretion to award attorneys' fees as a percentage of the common fund. *See, e.g.*, *Vizcaino*, 290 F.3d at 1047 (affirming fee award of 28% of the common fund after application of a lodestar crosscheck); *see also Carlin v. Dairy America, Inc.*, 380 F. Supp. 3d 998, 1023 (E.D. Cal. 2019) (awarding attorneys' fees of 33.3% of the common fund); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (finding a fee award of 33.33% "more than reasonable in this case.").

Moreover, pursuant to this Court's Order granting the Motion for Preliminary Approval, Plaintiffs' request for attorneys' fees of 33% "would be reasonable." Dkt. No. 99 at 2 n.1. The Court cited *In re Novant Health, Inc.*, a data privacy class action case where the court found attorneys' fees of one-third of the class fund to be a reasonable amount, especially as compared to "other data tracking pixel cases … and data privacy class actions." 2024 WL 3028443, at *2 (M.D.N.C. June 17, 2024).

While the benchmark for percentage-of-recovery awards in class litigation is 25 percent of the total settlement, this amount can be adjusted upward or downward depending on (1) the result obtained; (2) the risk involved in the litigation; (3) the contingent nature of the fee; (4) counsel's efforts, experience, and skill; and (5) awards in similar cases. *Vizcaino*, 290 F.3d at 1048-50. Other factors to be considered when considering a request for attorneys' fees and costs under the District of Arizona's Local Rules include: (1) The time and labor required of counsel; (2) The novelty and difficulty of the questions presented; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by counsel because of the acceptance of the action; (5) Any other matters deemed appropriate under the circumstances. LRCiv 54.2(c)(3).

Plaintiffs respectfully submit that an evaluation of all applicable factors supports the one-third attorneys' fee award requested here, especially when Class Counsel's collective lodestar time to-date ($917,009.45) exceeds 25% of the common fund ($756,968.60) and will continue to increase due to future work that will be required to complete and administer the settlement, if approved. A review of the applicable factors confirms the reasonableness of the request.

1. Counsel achieved an excellent result for the class.

Courts have repeatedly recognized that the result achieved is "the most critical factor" to consider in granting a fee request. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020). In fact, clients care most about results and would willingly pay, and are financially better off paying, a larger fee for a great result than a lower fee for a poor outcome and, as a result, "want to incentivize their counsel to pursue every last settlement dollar." *In re Broiler Chicken Antitrust Litig.*, 2021 WL 5709250, at *3 (N.D. Ill. Dec. 1, 2021).

Here, against substantial risks of continued litigation, Class Counsel achieved significant benefits for the class, including a substantial non-reversionary common fund of $3,027,874.44, together with a five-year injunction against use of the challenged Tracking Technologies. Dkt. 95-1 at 8, 16.

The Settlement Subclass 1 Fund (applicable to Class Members who booked appointments through Defendant's website and therefore had stronger claims) equates to $7 per person prior to any pro rata allocation based on claims rate, an amount that exceeds those achieved in similar healthcare privacy cases, which settled for approximately $4 to $6 per class member. Dkt. 94 at 21-23. The Settlement Subclass 2 Fund (applicable to Class Members who did *not* book appointments through Defendant's website and thus had comparably weaker claims) equates to $1.885 per person prior to any pro rata allocation based on claims rate.

The Settlement compares favorably on a per-class-member basis, as Plaintiffs have already discussed at length in the Motion for Preliminary Approval. Dkt. No. 94 at 19-22. Further, the amount of fees and costs petitioned for — falls squarely within the range deemed reasonable in similar cases against healthcare defendants in similar pixel litigation. *See, e.g.*, *In re Novant Health, Inc.* ("*Novant*"), 2024 WL 3028443, at *8-14 (M.D.N.C. June 17, 2024) (awarding one-third fee award of $2,220,000 in pixel-tracking action against North Carolina health system with a $6,660,000.00 common fund); *In re Grp. Health Plan Litig.*, 2025 WL 4348561 (D. Minn. July 9, 2025) (awarding a $2,000,000.00 fee award, representing one-third of the $6,000,000.00 common fund in an analogous case); *In re Christ Hosp. Pixel Litig.*, No. A 2204749 (Ohio Ct. Com. Pl., Hamilton Cnty. Oct. 29, 2025) (awarding one-third of a $7,000,000 common fund in addition to attorneys' expenses).

Finally, the injunctive relief secured as a result of this litigation provides an additional benefit to the class that supplements the $3,027,874.44 common fund. The injunctive relief is valuable as the challenged practices and alleged privacy violations will no longer continue accrue at the rate they were prior to the litigation. Under the Settlement, Lifestance has agreed to refrain from engaging in the challenged tracking practices for a period of five years. *See* SA ¶¶ 1.41, 2.1-2.2. In another pixel case, *Kurowski v. Rush Sys. for Health*, the court approved a settlement that provided only injunctive relief to the class finding such relief standing alone to be a valuable benefit to the class. *Kurowski v. Rush Sys. for Health*, No. 22-cv 5380, at *2 (N.D. Ill., Dec. 17, 2024)(Dkt. No. 160) (Order Granting Final Approval Of Class Action Settlement And Re-Certifying The Settlement Class)("The injunctive relief provided to the Class under the Settlement Agreement is adequate and will provide a benefit to all Class Members, and more broadly to all visitors of Rush's web properties."); *see also Kurowski v. Rush Sys. for Health*, No. 22-cv 5380, at (N.D. Ill., Dec. 17, 2024)(Dkt. No. 161) (Order Granting Settlement Class Counsel's Motion For Attorneys' Fees, Reimbursement Of Litigation Expenses And Class Representative Service Awards) (Approving attorneys' fee award of $2,800,000 plus costs to class counsel). Consideration of the injunctive benefits here increases the value of the overall settlement benefits secured and the reasonableness of the attorneys' fees requested.

The excellent settlement benefits obtained for the Class here supports Plaintiffs' fee request.

2. The litigation was uncertain, complex and presented significant risks.

The complexity and risk in litigation are relevant factors in determining a fee award. *Vizcaino*, 290 F.3d at 1048. While Plaintiffs are confident in the merits of their claims and courts have upheld the claims at issue,[3] the likelihood of prevailing and receiving recovery remained uncertain. The Ninth Circuit has dismissed similar privacy class actions. *See Gutierrez v. Converse, Inc.*, 2025 WL 1895315, at *1 (9th Cir. July 9, 2025) (affirming dismissal of California Invasion of Privacy Act ("CIPA") claim); *see also Doe v. Eating Recovery Center LLC*, 806 F.Supp.3d 1109, 1119 (N.D. Cal. 2025) (dismissing CIPA claim against healthcare provider).

Moreover, there was considerable uncertainty and risk in obtaining damages for the claims that survived the motion to dismiss: 1. Electronic Communications Privacy Act ("ECPA") 2. CIPA 3. California's Unfair Competition Law ("UCL"), 4. Arizona Consumer Fraud Act ("AZCFA"), 5. New York General Business Law § 349 ("NYGBL"), and 6. California Confidentiality of Medical Information Act ("CMIA"). Dkt. 94 at 19. While the ECPA, CIPA, and CMIA claims provide for statutory damages, securing such relief presented risks as Plaintiffs would have had to overcome challenges of proving intent and causation, amongst other standards. Dkt. 94 at 20. The consumer protection statutes would have either provided only equitable relief under the UCL or have required significant litigation risk under the AZCFA and

[3] *See, e.g.*, *Kane v. Univ. of Rochester*, 2024 WL 1178340 (W.D.N.Y. Mar. 19, 2024); *In re Grp. Health Plan Litig.*, 2023 WL 8850243, at *8 (D. Minn. Dec. 21, 2023) ("*Group Health*") (denying motion to dismiss invasion of privacy, breach of implied contract, unjust enrichment, negligence & ECPA causes of action); *E.H. v. Meta Platforms, Inc.*, 2024 WL 557728, at *2-10 (N.D. Cal. Feb. 12, 2024) (denying motion to dismiss in its entirety); *In Re Meta Healthcare Pixel Litig.*, 2024 WL 333883, at *3-7 (N.D. Cal. Jan. 29, 2024) ("*Meta Pixel III*") (denying motion to dismiss constitutional privacy & intrusion upon seclusion as well as other claims); *Cousin v. Sharp Healthcare*, 2023 WL 8007350, at *3-6 (S.D. Cal. Nov. 17, 2023) ("*Sharp II*") (denying motion to dismiss invasion of privacy, CMIA & CIPA claims); *Doe v. Meta Platforms, Inc.*, 2023 WL 5837443, at *2-17 (N.D. Cal. Sept. 7, 2023) ("*Meta Pixel II*") (similar); *Doe v. Regents of Univ. of California*, 672 F. Supp. 3d 813, 817-22 (N.D. Cal. 2023) (similar).

NYGBL to establish economic loss on a classwide basis to prove actual damages. *Id.*

Further, courts have been divided on the issue of class certification for litigation purposes in privacy cases such as this. For instance, while the California Court of Appeals just recently reversed, in part, the denial of a motion for Class Certification in a healthcare pixel case, the superior court's initial denial of the motion demonstrates the risks presented. *See Doe v. Adventist Health System/West*, No. B344951, 2026 WL 2137386 (2d Dist., Div. 3, July 24, 2026); s*ee also Frasco v. Flo Health, Inc*., 349 F.R.D. 557, 587-88 (N.D. Cal. 2025) (granting certification of nationwide class and California subclass in pixel case alleging transmission of information to Meta and Google). *But see Ingraham et al v. Capital One Financial Corporation,* No. 24-CV-05985-TLT, 2026 WL 1759155 (N.D. Cal., June 16, 2026)(denying motion for class certification in case alleging violation of ECPA and CIPA). The drastically different results of these litigations reflect the very real risks and uncertainties faced by both Parties in this case.

Thus, there existed a significant risk that class-wide recoverable damages would have been far less than the $3 million Settlement Fund, including the risk of no recovery at all. *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at *2 (N.D. Cal. Mar. 17, 2017) ("Despite their strong claims, Class Counsel 'recognize there are always uncertainties in litigation[.]' It is possible that 'a litigation Class would receive less or nothing at all, despite the compelling merit of its claims, not only because of the risks of litigation, but also because of the solvency risks such prolonged and expanding litigation could impose upon [Defendant].' "). And any recovery absent the Settlement "would come years in the future and at far greater expense to the . . . Class." *Id.* (citation modified). The Settlement achieved here in the face of significant litigation risks supports the requested fee award.

3. Class Counsel assumed financial risk by taking this action on a contingent-fee basis.

It has long been recognized that attorneys are entitled to a premium when their compensation is contingent in nature. *See Vizcaino*, 290 F.3d at 1048-50. As the Ninth Circuit has explained:

> It is an established practice in the private legal market to reward attorneys for

> taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. Contingent fees that may far exceed the market value of the services if rendered on a noncontingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose. As the court observed [ ], if this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

In re: Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994) (citation modified).

Class Counsel undertook this Action on a contingent-fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. Robinovitch Decl. ¶¶ 43-50. Unlike Defendant's Counsel, who were paid and reimbursed for their out-of-pocket expenses on an ongoing basis, Class Counsel have received no compensation for their efforts during the three-year course of the Action. *Id.* ¶ 43. Not only did Class Counsel devote a significant amount of time to this Action, but they also advanced nearly $19,000 in costs in this matter, without any promise of repayment. *Id.* ¶¶ 56-59. The contingent nature of Class Counsel's work therefore supports the requested fee award. *See In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *14 (N.D. Cal. Aug. 17, 2018) ("Fourth, this case was conducted on a contingent-fee basis against well-represented Defendants. To be sure, Class Counsel were capable of fronting the costs, but the financial risk of litigation was assumed by Class Counsel throughout the pendency of the action. Moreover, the representation has lasted for nearly three years and the case schedule was compressed, thereby requiring Class Counsel to forego work on other matters.") Such a contingent fee arrangement "weighs in favor of the requested attorneys' fees award, because [s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered." *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F.Supp.2d 1178, 1256 (D.N.M. 2012).

The contingent nature of Class Counsel's representation, which exposed Class Counsel to risk and lost opportunity cost to work on other cases (Robinovitch Decl. ¶ 46), thus further supports approval of the requested fee.

4. Class Counsel's efforts, experience and skill supported the fee award.

Courts have recognized that the "prosecution and management of a complex national class action requires unique legal skills and abilities." *In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX), 2005 WL 1594389, at *12 (C.D. Cal. June 10, 2005) (citation modified). As detailed in the firm resumes filed in support of the Motion for Preliminary Approval, Zimmerman Reed LLP has earned a national reputation for excellence through decades of litigating complex civil actions, including privacy related class actions. Dkt. 95-3. The firm resume for Almeida Law Group LLC similarly details the firm's experience and resources that have allowed them to obtain significant recoveries throughout the country on behalf of their clients in complex actions. Dkt. 95-2.

Here, Class Counsel went above and beyond to ensure that the Class would receive a favorable result by, amongst other efforts: (1) conducting an extensive factual investigation in preparing the operative Complaint, including a detailed examination of LifeStance's source code, and interviewing clients; (2) vigorously fighting the initial Motion to Dismiss; (3) filing amended Complaints; (4) defeating a subsequent Motion to Dismiss on all but one claim; (5) exchanging discovery and preparing a detailed mediation statement for an in-person mediation; (6) negotiating the initial Settlement Agreement over the course of four months to ensure protection of Class's interests; (7) evaluating settlement administrators and collaborating with them on a notice program; (8) moving for initial preliminary approval; (9) re-negotiating the agreement to revise the settlement terms in light of the Court's Order; (10) moving for revised preliminary approval; (11) maintaining involvement and oversight in the ongoing notice program; and (12) working with the Settlement Administrator to administrate claims and answer questions from Class Members. Robinovitch Decl. ¶¶ 3, 6-27.

Moreover, Class Counsel's success in recovering a substantial settlement in this district "early in the litigation" further supports the fee request. *See, e.g.*, *Quintana v. HealthPlanOne LLC*, No. CV-18-02169-PHX-RM, 2019 WL 3342339, at *7 (D. Ariz. July 25, 2019) (finding "an upward departure from the [25%] benchmark . . . is appropriate" where the settlement represented an "'outstanding recovery'" where "Plaintiff's counsel was able to achieve these results early in the litigation, thus avoiding costly and risky litigation"); *see also Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011)(settlement would bypass "the inherent risk, complexity, time, and cost associated with continued litigation[.]"). Class Counsel's skill and experience brought the Class a substantial Settlement that avoided the risks and costs associated with class certification, summary judgment, pretrial motions, trial, and subsequent appeals over the course of potentially several years.

The standing of opposing counsel should also be weighed because such standing reflects the challenge faced by Class Counsel. *See, e.g.*, *Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997). Defendant was represented by highly capable defense firms, Ropes & Gray LLP and Snell & Wilmer LLP. The firms spared no effort or expense on behalf of Defendant in their zealous defense of this Action. Class Counsel's ability to obtain a favorable result for the Class while litigating against highly regarded and resourced defense counsel further evidences the quality of Class Counsel's work and weighs in favor of awarding the requested fee. Robinovitch Decl. ¶¶ 49-50.

5. The attorneys' fee is consistent with those in other Ninth Circuit cases.

The final *Vizcaino* factor—awards in similar cases—firmly supports the requested fee award. As this Court noted in its Order granting the Motion for Preliminary Approval, a 33% attorneys' fee "would be reasonable" considering courts have awarded attorneys' fees of one-third of the settlement amount and other pixel-related cases "awarding the same or more." Dkt. No. 99 at 2 n.1. Indeed, many courts in the Ninth Circuit have awarded one-third, or more, of the settlement amount to attorneys' fees. *See, e.g.*, *Delnoce v. GlobalTranz Enters., Inc.*, 2018 WL 6505868, at *2 (D. Ariz. July 27, 2018) (approving attorneys' fees calculated by the percentage method amounting to more than 33% of the settlement fund); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7 (finding a fee award of 33.33% "more than reasonable"); *Head v. Citigroup Inc.*, 2025 WL 226660, at *4 (D. Ariz. Jan. 15, 2025) (awarding attorneys' fees equal to one-third of the settlement fund); *In re Audioeye, Inc., Sec. Litig.*, 2017 WL 5514690, at *4 (D. Ariz. May 8, 2017) (awarding thirty-three and one-third percent of gross settlement fund to attorneys' fees, plus accrued interest, which the court found "fair and reasonable"); *Yanez v. Knight Transportation Inc.*, 2024 WL 4524164, at *8 (D. Ariz. Oct. 17, 2024) (finding a percentage-of-fund approach appropriate and 33.3% of total settlement fund reasonable); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of common fund); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19 (awarding attorneys' fees in the amount of 33% of the common fund); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award equal to 33% of fund); *Linney v. Cellular Alaska P'ship*, 1997 WL 450064, at *7 (N.D. Cal. July 11, 2014) (approving a one-third percentage of the common fund, especially in light of the "benefit based upon injunctive relief with a value … that can only be estimated" and collecting similar cases). As noted above, fees of one-third have been awarded in other healthcare pixel settlements. *See e.g.*, *In re Grp. Health Plan Litig.*, 2025 WL 4348561 (D. Minn. July 9, 2025).

Here, Class Counsel's request for one-third of the Settlement Fund is reasonable in comparison to other percentage of the fund awards. An upwards adjustment is also justified given that the injunctive relief obtained by the Settlement—five years of restrictions on LifeStance's use of Tracking Technologies—is certainly valuable to protecting the privacy of the Class. *See*, *Kurowski*, *supra*.

6. A lodestar cross-check confirms the reasonableness of the requested fees.

The reasonableness of the requested attorneys' fee is confirmed even after application of the "lodestar cross-check." *See Vizcaino,* 290 F.3d at 1047 (affirming use of percentage method and applying the lodestar method as a cross-check). The Ninth Circuit has recognized that attorneys in common fund cases are frequently awarded a multiple of their lodestar, rewarding them "for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Id.* at 1051 (citation omitted). For example, the district court in *Vizcaino* approved a fee that reflected a multiple of 3.65 times counsel's lodestar. *Id.* The Ninth Circuit affirmed, holding that the district court correctly considered the range of multiples applied in common fund cases, and noting that a range of lodestar multiples from 1.0 to 4.0 are frequently awarded. *Id.*; *see also Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (affirming the district court's approval of a 6.85 lodestar multiplier because it falls "well within the range of multipliers that courts have allowed" and collecting cases).

The Supreme Court and other courts have held that the use of current rates, as opposed to historic rates, is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Rutti v. Lojack Corp. Inc.*, 2012 WL 3151077, at *11 (C.D. Cal. July 31, 2012) ("it is well-established that counsel is entitled to current, not historic, hourly rates") (citing *Jenkins*, 491 U.S. at 284). Here, Class Counsel present their lodestar time using historical rates. But had Class Counsel applied current rate calculations, the lodestar would be even higher and the multiplier even lower.

Based on Class Counsel's calculations using historical hourly rates, the total combined lodestar is $917,009.45 for work through August 13, 2026, meaning that the requested attorneys' fees of $1,009,291.48, if awarded, would represent only a slightly positive multiplier of 1.1. Robinovitch Decl. ¶ 59. This lodestar does not take into account the future time Counsel will expend through the completion of this action and administration of the settlement, nor does it use current hourly rates. It is respectfully submitted that the hourly historic rates used in Class Counsel's lodestar calculation are reasonable in light of prevailing market rates for lawyers with comparable levels of experience and expertise in complex class action litigation. Robinovitch Decl. ¶¶ 52-59. Counsel also submits that their rates are less than, or at most comparable to, those used by peer defense-side law firms litigating matters of similar magnitude.

Since the conservatively estimated 1.1 multiplier from the lodestar crosscheck falls well within the range of previously approved multipliers, the one-third attorneys' fees is reasonable.

B. The requested reimbursement of costs is reasonable.

"An attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation costs from that fund." *Carlin*, 380 F. Supp. 3d at 1023; *see also Cabiness v. Educ. Fin. Solutions, LLC*, 2019 WL 1369929, at *8 (N.D. Cal. Mar. 26, 2019) ("An attorney is entitled to recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client."). The award "should be limited to typical out-of-pocket expenses that are charged to a fee-paying client and should be reasonable and necessary." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D.

Cal. 2007). These costs can include reimbursements for: (1) meals, hotels, and transportation; (2) photocopies; (3) postage, telephone, and fax; (4) filing fees; (5) messenger and overnight delivery; (6) online legal research; (7) class action notices; (8) experts, consultants, and investigators; and (9) mediation fees. *See Torres v. Pick-A-Part Auto Wrecking*, 2018 WL 3570238, at *9 (E.D. Cal. July 23, 2018).

Class Counsel request the reimbursement of $18,844.90 in litigation costs and expenses necessarily incurred to prosecute and resolve this matter on behalf of the Class. Robinovitch Decl. ¶¶ 41, 59. The costs listed in Class Counsel's expense statements attached to the Robinovitch Declaration comprise filing fees, travel costs for hearings and mediation, expert fees, and research fees, all of which are eminently reasonable in a class action like this and were necessary to the successful prosecution of this action. Robinovitch Decl. ¶¶ 56-59. Thus, this Court should approve reimbursement for them.

C. The requested Service Awards are reasonable.

Plaintiffs Strong and Yick seek an award of $2,500 each for their diligent and determined representation of the Class. Dkt. 95-1 at ¶10.5. Plaintiffs contributed significantly to the case by assisting with the investigation, participating in interviews, providing relevant documents, maintaining contact with Class Counsel, and reviewing the Settlement Agreement. Robinovitch Decl. ¶¶ 60-64. In taking part in this Action, Plaintiffs have also put their personal reputations at risk, exposed themselves to public scrutiny in a case about health information and risked costs being awarded against them if they failed to prevail on the merits of the class claims and/or on appeal. *Id*.

The amount of the requested Service Award is consistent with, if not lower than, service awards approved by courts. *See, e.g.*, *Congdon v. Uber Techs., Inc.*, 2019 WL 2327922, at *9 (N.D. Cal. May 31, 2019) (collecting cases) (noting that "[t]he Ninth Circuit has repeatedly held that $5,000 is a reasonable amount for an incentive award."); *Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *11 (N.D. Cal. July 15, 2022) (approving award of $9,462 to plaintiff for time spent working with counsel "reviewing documents, providing input into the case's prosecution, and engaging in meetings, phone conferences, and correspondence with Lead

Counsel"); *In re Novant Health, Inc.*, 2024 WL 3028443, at *13 (finding award of $2,500 per class representative reasonable in comparison to other common fund data privacy class action settlements). Thus, the Court should approve the $2,500 service award for each named Plaintiff.

IV. CONCLUSION

Class Counsel efficiently obtained an exceptional result for the Class in the face of numerous litigation risks. Based on the foregoing and the entire court record, Plaintiffs and Class Counsel respectfully request that the Court: (i) award Class Counsel attorneys' fees of one-third of the Settlement amount equal to $1,009,291.48; (ii) grant payment of $18,440.90 in litigation expenses; (iii) award the Class Representatives $2,500 each in connection with their representation of the Class; (iv) provide all other relief that is just and equitable in the circumstances.

Dated: August 17, 2026

Respectfully submitted,

By:/s/ Hart L. Robinovitch

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* *Pro hac vice* granted

Class Counsel