

1 EILEEN R. RIDLEY (SBN 151735)
2 *eridley@foley.com*

3 **FOLEY & LARDNER LLP**
4 555 California Street, Suite 1700
5 San Francisco, CA 94104-1520
6 Telephone: (415) 434-4484
7 Facsimile: (415) 434-4507

RONALD A. MARRON (SBN 175650)
ron@consumersadvocates.com

LAW OFFICES OF
RONALD A. MARRON, APLC
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

7 ROBERT L. TEEL (SBN 127081)
8 *lawoffice@rlteel.com*

9 **LAW OFFICE OF ROBERT L. TEEL**
10 1425 Broadway, Mail Code: 20-6690
11 Seattle, Washington 98122
12 Telephone: (866) 833-5529
13 Facsimile: (855) 609-6911

Attorneys for Plaintiffs and the Class

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 JUAN ROMERO, FRANK TISCARENO,)
17 and KENNETH ELLIOTT on behalf of)
18 themselves and all others similarly)
19 situated,)

20 Plaintiff,

21 v.

22 SECURUS TECHNOLOGIES, INC.,)

23 Defendant.)

Case No. 16-CV-1283-JM-MDD

) CLASS ACTION

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR**
) **LITIGATION COSTS, INCENTIVE**
) **AWARDS, AND ATTORNEYS'**
) **FEES**

) Date: September 28, 2020

) Time: 10:00 AM

) Ctrm: 5D

) Judge: Hon. Jeffrey T. Miller

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28 MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR COSTS,
INCENTIVE AWARDS, AND ATTORNEYS' FEES
CASE NO. 16-CV-1283-JM-MDD

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1 **I. INTRODUCTION**

2 This Motion comes before the Court pursuant to Federal Rule of Civil
3 Procedure 54(d) and 23(h) and the Court's Order Preliminarily Approving Class
4 Action Settlement entered on June 16, 2020. [D.E. 178]. The Court should,
5 respectfully, award a total sum of \$900,000 for litigation costs, incentive awards, and
6 attorneys' fees as further set forth below.

7 In the interest of settling the matter, Plaintiffs and Class Counsel agreed to a
8 total sum of \$900,000 inclusive of litigation costs, incentive awards, and attorneys'
9 fees. This sum includes \$26,458.96 towards litigation costs, not more than \$20,000
10 for each of the named Plaintiffs as incentive awards, and the balance of the \$900,000
11 towards attorneys' fees. See Declaration of Ronald A. Marron in Support of
12 Plaintiffs' Motion for Costs, Incentive Awards, and Attorneys' Fees ("Marron
13 Decl."), ¶ 22; Declaration of Robert Teel in Support of Plaintiffs' Motion for Costs,
14 Awards, and Fees ("Teel Decl."), ¶ 15; Declaration of Eileen Ridley in Support of
15 Plaintiffs' Motion for Costs, Incentive Awards, and Attorneys' Fees ("Ridley Decl."),
16 ¶12.

17 Counsel's lodestar guides the Court in this case because it is an injunctive
18 relief settlement. Class Counsel's request for costs and fees is reasonable and
19 supported by detailed billing records for time spent investigating, prosecuting, and
20 negotiating this matter plus a significant negative multiplier of at least 55.3%.¹ A
21

22
23 ¹ Class Counsel's detailed billing records are voluminous and contain information that
24 is protected from disclosure by the attorney-client privilege and the attorney work-
25 product doctrine. However, Class Counsel will make its detailed billing records
26 available to the Court for *in camera* review upon the Court's request. Marron Decl.,
¶ 23; Teel Decl., ¶ 16; Ridley Decl., ¶ 13.

1 significant amount of time, effort, and expense was required to successfully prosecute
2 this action and obtain a form of injunctive relief eliminating the very injuries that led
3 Plaintiffs to pursue the litigation.

4 Class Counsel have broken down their hours spent by timekeeper, to assist the
5 Court and the Class in evaluating the reasonableness of the fee request. *See* Marron
6 Decl., ¶ 23; Teel Decl. ¶¶ 12, 16; Ridley Decl., ¶ 10. Class Counsel’s cost
7 reimbursement is supported by statute and includes costs reasonably necessary to
8 successfully prosecute this action. Marron Decl., ¶ 19; Teel Decl. ¶ 9; Ridley Decl. ¶
9 9.

10 Plaintiffs are cognizant of the Court’s reservations regarding the requested
11 amount of payments for serving as Class Representatives. This case, however, takes
12 place at the intersection where constitutional and civil rights meet law enforcement,
13 and the financial and reputational risk to the Plaintiffs was and is much greater than
14 in a consumer class action case. Those risks were in fact manifested and resulted in
15 actual financial and reputational harm to the Plaintiffs. For the reasons set forth in
16 their declarations, Plaintiffs respectfully request \$20,000 per Class Representative for
17 Plaintiffs Kenneth Elliott, Juan Romero, and Frank Tiscareno for their service and
18 efforts made in successfully prosecuting this action and incentivizing the Defendant
19 to settle by executing a general release. To the extent the Court determines that the
20 incentive award should be reduced, Class Representatives respectfully request that
21 the remaining amount within the total settlement amount be applied to the costs
22 incurred in the litigation for the benefit of all Class Members.

23 The Class Representatives initiated this action, assisted with its successful
24 prosecution, and as a direct result suffered reputational and financial consequences.
25 Teel Decl. ¶ 17; Declaration of Juan Romero in Support of Motion for Costs, Awards,
26 and Fees (“Romero Decl.”) ¶ 5; Declaration of Kenneth R. Elliott in Support of
27 Motion for Costs, Awards, and Fees (“Elliott Decl.”), ¶ 4; Declaration of Frank
28

1 Tiscareno in Support of Motion for Costs, Awards, and Fees (“Tiscareno Decl.”), ¶
2 4. After weighing the uncertainties of continued litigation and the significant benefit
3 of injunctive relief for the Class and the public at large, Plaintiffs sacrificed not only
4 their claims for statutory damages under Cal. Penal Code § 637.2, but also gave a
5 general release of their claims for any financial and/or reputational harm resulting
6 from their service in order to consummate the settlement. Elliott Decl., ¶¶ 12-13;
7 Romero Decl., ¶¶ 11 and 13; Tiscareno Decl., ¶¶ 15-16.

8 Plaintiffs devoted their time and efforts to successfully prosecuting this case,
9 understanding that this was not a typical consumer false advertising case but a
10 necessary action to vindicate the constitutional rights of attorneys and detainees.
11 Incentive awards encourage individuals to come forward and represent other
12 members of the public in important public interest class actions such as this. In light
13 of the extra-ordinary financial and reputational risks involved in this case, the harm
14 manifested by those risks, and the successful efforts of the Plaintiffs in litigating this
15 case, the requested payments are in line with Ninth Circuit precedent.

16 **II. LEGAL STANDARD**

17 “In a certified class action, the court may award reasonable attorney’s fees and
18 nontaxable costs that are authorized by law or by the parties’ agreement.” FED. R.
19 CIV. P. 23(h). In order to do so, the court must make an independent determination
20 that the fee is reasonable. *In re Bluetooth Headset Products Liability Litigation*, 654
21 F.3d 935, 941 (9th Cir. 2011). The decision to award attorneys’ fees “is committed to
22 the sound discretion” of the court and should be based on “the unique contours of the
23 case.” MANUAL FOR COMPLEX LITIG., FOURTH § 14.121 (2004).

24 In a class action, the court follows Rule 23(h) to award attorney fees and costs.
25 FED. R. CIV. P. 23(h). The “fundamental focus [of Rule 23(h)] is the result actually
26 achieved for class members.” MANUAL FOR COMPLEX LITIG., FOURTH § 21.71 (citing
27 FED. R. CIV. P. 23(h) committee note). The judgment on attorney’s fees and costs
28

1 must describe the bases for the Court’s order, including findings of fact and
 2 conclusions of law. *See id.* § 14.232; FED. R. CIV. P. 52(a), 54(d)(2)(C), 58(a)(3) (a
 3 separate judgment for fees is not required).

4 Notice to the class of an attorney’s fee motion is required, which is ordinarily
 5 accomplished in a settlement class by including information about the hearing and
 6 motion within the class notice itself as was done in this case. *See* FED. R. CIV. P.
 7 23(e)(1)(C). Counsel for the class may also move for costs, if they are a prevailing
 8 party. *See* FED. R. CIV. P. 54(d)(1).

9 **III. PLAINTIFF IS ENTITLED TO FEES UNDER PRIVATE ATTORNEY**
 10 **GENERAL STATUTE, CAL. CODE CIV. PROC. § 1021.5.**

11 “An award of attorneys’ fees incurred in a suit based on state substantive law is
 12 generally governed by state law.” *Champion Produce, Inc. v. Ruby Robinson Co.*,
 13 342 F.3d 1016, 1024 (9th Cir. 2003) (citation omitted). “The task of a federal court
 14 in a diversity action is to approximate state law [regarding attorneys’ fee awards] as
 15 closely as possible in order to make sure that the vindication of the state right is
 16 without discrimination because of the federal forum.” *Farmers Ins. Exch. v. Sayas*,
 17 250 F.3d 1234, 1236 (9th Cir. 2001) (quoting *Gee v. Temeco, Inc.*, 615 F.2d 857, 861
 18 (9th Cir. 1980)). Accordingly, “California substantive law determines the availability
 19 and amount of attorney’s fees in this diversity case.” *Winterrowd v. Am. Gen.*
 20 *Annuity Ins. Co.*, 556 F.3d 815, 829 (9th Cir. 2009) (citation omitted); *see also*
 21 *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1169 (C.D. Cal. 2010)
 22 (“[T]he Court, sitting in diversity adjudicating state law claims, turns to applicable
 23 California law.”).

24 Here, Plaintiffs invoke California’s private attorney general statute, Cal. Code.
 25 Civ. Proc. § 1021.5. “[S]ection 1021.5 authorizes an award of attorney fees to a
 26 ‘private attorney general,’ that is, a party who secures a significant benefit for many
 27 people by enforcing an important right affecting the public interest.” *Serrano v.*
 28

1 *Stefan Merli Plastering Co.*, 52 Cal. 4th 1018, 1020 (2011). Section 1021.5 was
 2 enacted “to encourage suits effectuating fundamental public policies by awarding
 3 substantial attorney fees to those who successfully bring such actions.” *Lindelli v.*
 4 *Town of San Anselmo*, 139 Cal.App.4th 1499, 1508 (2006); *accord Robinson v. City*
 5 *of Chowchilla*, 202 Cal.App.4th 382, 390 (2011) (citing *Olson v. Automobile Club of*
 6 *Southern California*, 42 Cal.4th 1142, 1147 (2008)). In accordance with the statute’s
 7 underlying policies, *both* the attorneys and the public-interest litigants “who are
 8 successful in such cases” may be awarded substantial attorneys’ fees, thereby
 9 incentivizing “representation of interests of similar character in future litigation.”
 10 *Serrano v. Priest*, 20 Cal.3d 25, 44 (1977); *see also Moreno v. City of Sacramento*,
 11 534 F.3d 1106, 1111 (9th Cir. 2008) (“[P]rivate enforcement of civil rights legislation
 12 relies on the availability of fee awards[.]”). “The ‘significant benefit’ required by
 13 [section 1021.5] need not be tangible or concrete but may be recognized from the
 14 effectuation of a fundamental policy.” *Indio Police Command Unit Assoc. et al., v.*
 15 *City of Indio*, 230 Cal.App.4th 521, 543 (2014) (citation omitted).

16 “Although [section 1021.5] ‘is phrased in permissive terms . . . , the discretion
 17 to deny fees to a party that meets its terms is quite limited,’ and generally requires a
 18 full fee award unless special circumstances would render such an award unjust.”
 19 *Fitzgerald v. City of Los Angeles*, No. cv-03-01876-DDP (RZx), 2009 WL 960825, at
 20 *3 (C.D. Cal. Apr. 7 , 2009) (quoting *Lyons v. Chinese Hospital Ass’n*, 136
 21 Cal.App.4th 1331, 1344 (2006)); *accord Robinson v. City of Chowchilla*, 202
 22 Cal.App.4th 382, 391 (2011) (“This limitation on the superior court’s discretion and
 23 the fact that the application of the statutory criteria often presents reviewing courts
 24 with questions of law are the reasons for the number of appellate decisions in which a
 25 superior court’s denial of attorney fees under section 1021.5 has been reversed.”)
 26 (citations omitted). Fees are awarded when:

1 (a) a significant benefit, whether pecuniary or nonpecuniary has been
2 conferred on the general public or a large class of persons, (b) the
3 necessity and financial burden of private enforcement are such as to
4 make the award appropriate, and (c) such fees should not in the interest
5 of justice be paid out of the recovery, if any.

6
7 *Indep. Living Ctr. of Southern California, Inc. v. Kent*, 909 F.3d 272, 283 (9th Cir.
8 2018) (quoting *Maria P. v. Riles*, 43 Cal.3d 1281, 1288 (1987)). “The key question is
9 ‘whether the financial burden placed on the party [claiming fees] is out of proportion
10 to its personal stake in the lawsuit.’” *Heston v. Taser Int’l, Inc.*, 431 Fed. Appx. 586,
11 589 (9th Cir. 2011) (quoting *Lyons v. Chinese Hosp. Ass’n*, 136 Cal. App. 4th 1331,
12 1352 (2006).

13 Here, the injunctive relief provided in the Settlement benefits both Class
14 Members and the general public because it will eliminate virtually all risk of an
15 inadvertent recording of attorney-detainee phone calls now and into the future. This
16 is a significant benefit because it will safeguard and protect the public’s state and
17 federal constitutional rights.

18 Moreover, it is highly unlikely that such relief would have been obtained
19 without the Settlement. As Plaintiffs explained in their First Amended Complaint,
20 Securus issued a press release in relation to the data breach claiming that Defendant
21 “found absolutely *no* evidence of attorney-client calls that were recorded without the
22 knowledge and consent of those parties.” [D.E. 8, ¶ 36]. Private enforcement and the
23 resulting financial burden were therefore necessary in order to prevent further injury
24 to members of the Class and the public at large. Plaintiffs have acted as true
25 attorneys general.

26 **A. Plaintiffs Are Successful Parties under Section 1021.5**

1 "In order to effectuate" the policy underlying section 1021.5, and consistent
 2 with the construction of comparable statutes, the California Supreme Court has
 3 "taken a broad, pragmatic view of what constitutes a 'successful party.'" *Graham v.*
 4 *DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004). "[A] party need not prevail on
 5 every claim to be considered a successful party within the meaning of the statute."
 6 *Grodensky v. Artichoke Joe's Casino*, 171 Cal. App. 4th 1399, 1437 (2009) (citation
 7 omitted). "[T]he critical fact is the impact of the action, not the manner of its
 8 resolution." *Indep. Living Ctr. of Southern California, Inc. v. Kent*, 909 F.3d 272,
 9 282 (9th Cir. 2018) (quoting *Maria P. v. Riles*, 43 Cal.3d 1281, 1291 (1987)).

10 Plaintiffs are successful parties because "(1) the change in business practices
 11 called for [in the Settlement Agreement] eliminates virtually all risk of an inadvertent
 12 recording of attorney-detainee phone calls, thereby protecting the state and federal
 13 constitutional rights of the Class, as well as other detainees and their counsel; and (2)
 14 the Settlement avoids the considerable risks, delays, and the expense of further
 15 litigation." *See* Settlement Agreement, at pg. 4. The injunctive relief provides an
 16 important societal benefit aimed at preventing the very injury that led to this class
 17 action. Plaintiffs were successful and the prevailing party under section 1021.5.

18 **IV. The Settlement Agreement Provides for Costs, Incentive Awards, and**
 19 **Attorneys' Fees**

20 "A request for attorney's fees should not result in a second major litigation.
 21 Ideally . . . litigants will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S.
 22 426, 437 (1983). This is what the parties have done in the Settlement Agreement.
 23 Defendant has agreed to pay \$900,000 for costs, incentives awards, and attorneys'
 24 fees inclusive. This sum includes litigation costs, up to \$20,000 per Class
 25 Representative, and the balance up to the total of \$900,000 for attorneys' fees
 26 Settlement Agreement, Article III, Sections F and G.

1 Settlements such as these “are highly favored,” in part because they promote
2 efficient resolution of disputes, and therefore interpretation ought to be made in favor
3 of enforcement wherever possible. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th
4 273, 277-78 (1992) (discussing how our civil litigation system favors settlements);
5 *see also Nicholson v. Barab*, 233 Cal. App. 3d 1671, 1683 (1991) (“[T]here is a well-
6 established policy in the law to discourage litigation and favor settlement. Pretrial
7 settlements are highly favored because they diminish the expense of litigation.”)
8 (citing *People ex rel. Dept. Pub. Wks v. Douglas* 15 Cal. App. 3d 814, 820 (1971) and
9 *Hastings v. Matlock* 171 Cal. App. 3d 826, 837 (1985)). Here, the parties have
10 agreed, subject to the Court’s approval, on the appropriate amount of compensation
11 for the Plaintiffs and Class Counsels’ efforts in obtaining injunctive relief.

12 Where, as here, the parties negotiated an arms’ length settlement with the help
13 of experienced professional mediators, “[a] court should refrain from substituting its
14 own value for a properly bargained-for agreement.” *In re Apple Computer, Inc.*
15 *Derivative Litig.*, No. C-06-4128-JF(HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov.
16 5, 2008). Where there is no evidence of collusion and no detriment to the parties,
17 courts “should give substantial weight to a negotiated fee amount, assuming that it
18 represents the parties’ best efforts to understandingly, sympathetically, and
19 professionally arrive at a settlement as to attorneys’ fees.” *Ingram v. Coca-Cola Co.*,
20 200 F.R.D. 685, 695 (N.D. Ga. 2001) (citation omitted).

21 In this case, the injunctive relief nature of the settlement was negotiated first,
22 with the assistance of the Hon. Leo S. Papas (Retired) and Ninth Circuit Mediator
23 Sasha M Cummings. The \$900,000 amount for total costs, incentive awards, and fees
24 was negotiated separately and only after the parties had reached agreement on
25 injunctive relief. *See Marron Decl.*, ¶ 13 and *Teel Decl.*, ¶ 6 and *Ridley Decl.* ¶ 8; *see*
26 *also In re Apple Computer, Inc. Derivative Litig.*, No. C-06-4128-JF(HRL), 2008 WL
27
28

1 4820784, at *3 (N.D. Cal. Nov. 5, 2008). Lastly, the parties’ decision to not allow a
2 reversion of the \$900,000 to Securus is further evidence that there was no collusion.

3 **V. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

4 Pursuant to California Code of Civil Procedure § 1033.5 (a)(1) and (4), Class
5 Counsel may recover costs for court fees and service of process fees. If a specific
6 cost item is not identified in section 1033.5, it may still be awarded in the trial court’s
7 discretion, provided it satisfies the further statutory requirement that it was
8 reasonably necessary to the conduct of the litigation. CAL. CODE CIV. PRO. §
9 1033.5(c)(2) and (4); accord *Seever v. Copley Press, Inc.*, 141 Cal.App.4th 1550,
10 1558 (2006); see also *Sanford v. Rasnick*, 246 Cal.App.4th 1121, 1132 (2016)
11 (awarding mediators’ fees and attorney service charges for court filings and
12 deliveries); *Page v. Something Weird Video*, 960 F.Supp. 1438, 1447 (1996)
13 (awarding travel expenses incurred by attorney for attending court hearings). In
14 addition, federal law allows Class Counsel to pursue “reimbursement of taxable
15 expenses in federal litigation governed by 28 U.S.C § 1920 and Fed. R. Civ. P. 54.”
16 *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1365-66 (N.D. Cal. 1996).
17 Here, Class Counsel has incurred \$26,458.97 in costs reasonably necessary to
18 conduct this litigation. Marron Decl., ¶ 19; Teel Decl. ¶¶ 9 and 10; Ridley Decl., ¶ 9.
19 All of Counsel’s expenses were reasonable and necessary for the successful
20 prosecution of this case. Accordingly, the Court should grant Class Counsel’s request
21 for \$26,458.97 for costs. Marron Decl., ¶ 19; Teel Decl. ¶¶ 9-10; Ridley Decl., ¶ 9.

22 **VI. THE REQUESTED INCENTIVE AWARDS ARE FAIR AND**
23 **REASONABLE**

24 Plaintiffs respectfully request that the Court approve an incentive award in the
25 amount of \$20,000 for their efforts as Class Representatives. Incentive awards are
26 “fairly typical in class action cases,” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948,
27 958 (9th Cir. 2009), and “serve an important function in promoting class action
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1 settlements.” *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, No. 94-CV-0403(JG),
2 2002 WL 2003206, at *5 (E.D. N.Y. Aug. 1, 2002). Incentive awards for class
3 representatives are routinely provided to encourage individuals to undertake the
4 responsibilities of representing the class and recognize the time and effort spent in the
5 case. *See In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 369 (D.
6 D.C. Feb. 1, 2002). Such awards “are intended to compensate class representatives
7 for work done on behalf of the class, to make up for financial or reputational risk
8 undertaken in bringing the action, and, sometimes, to recognize their willingness to
9 act as a private attorney general.” *Rodriguez v. W Publ’g Corp.*, 563 F.3d 948, 958
10 (9th Cir. 2009).

11 As a baseline, incentive awards of \$5,000 have been found to be presumptively
12 reasonable. *See Vikram v. First Student Management, LLC*, No. 17-cv-04656-KAW,
13 2019 WL 4168992, *5-6 (N.D. Cal. Sept. 3, 2019). But incentive awards beyond
14 \$5,000 have also been found to be reasonable under certain circumstances, including
15 cases involving financial and reputational risk and harm. For instance, in
16 *Bellinghausen v. Tractor Supply Company*, 306 F.R.D. 245, 267 (N.D. Cal. 2015), the
17 court awarded a \$10,000 incentive award to the named plaintiff who in addition to
18 spending 73 hours on the case, lost job opportunities due to his role as class
19 representative as multiple prospective employers sent him letters rejecting his
20 application because of his pending litigation. Likewise, in *Edwards v. First*
21 *American Corp.*, No. CV-07-03796-SJO(FFMx), 2016 WL 8999934 (C.D. Cal. Oct.
22 4, 2016), the court awarded the named plaintiff \$10,000 where the named plaintiff
23 “demonstrated . . . enthusiastic and active involvement in the case since 2007, [made]
24 efforts to make herself available during work hours for mediation, and travel[ed] at
25 her own expense from Cleveland, Ohio to attend oral argument before the Supreme
26 Court.” *But see Vikram*, 2019 WL 4168992, at *6 (court rejected a \$10,000 incentive
27 award request, instead awarding \$5,000 due in part because the named plaintiff’s
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1 counsel “*acknowledged that there was nothing extraordinary about the work Plaintiff*
2 *performed in this case*” (emphasis added)).

3 “Numerous courts in the Ninth Circuit and elsewhere have [also] approved
4 incentive awards of \$20,000 or more where, as here, the class representative has
5 demonstrated a strong commitment to the class.” *Id.* (citing *Garner v. State Farm*
6 *Mut. Auto. Ins. Co.*, No. CV-08-01365 CW, 2010 WL 1687832, at *17 n.8 (N.D. Cal.
7 Apr. 22, 2010) (collecting cases approving incentive awards of \$25,000 to named
8 plaintiffs who were deposed; \$35,000 to \$55,000 award in estimated \$18,000,000
9 settlement action; \$20,000 award in estimate \$4,000,000 settlement action)). In
10 *Garner*, the court awarded \$20,000 to the named plaintiff over the objections of a
11 member of the class where the plaintiff “made herself available for deposition on two
12 separate occasions, wherein she was subjected to questioning regarding her personal
13 financial affairs and other sensitive subjects; met with Class Counsel on six separate
14 occasions; attended the full-day Court-ordered appraisal hearing; spoke with Class
15 Counsel and their staff on many occasions; reviewed all major pleadings; and
16 repeatedly responded to interrogatories and document requests.” 2010 WL 1687832,
17 at *17. *See also Carter v. XPO Logistics, Inc.*, No. 16-cv-01231-WHO, 2019 WL
18 5295125, at *4 (N.D. Cal. Oct. 18, 2019) (awarding \$20,000 to each of the five
19 named plaintiffs, where named plaintiffs cumulatively “spent between 602 and 721
20 hours assisting in the preparation, prosecution and settlement of this case” and whose
21 “assistance to counsel in interpreting the class member discovery and data[] was
22 uniquely significant given the claim asserted and the lack of data available from
23 defendants”).

24 Incentive awards are committed to the sound discretion of the trial court and
25 should be awarded based upon the court’s consideration of: (1) the actions the class
26 representatives took to protect the interests of the class; (2) the degree to which the
27 class benefited from those actions; and (3) the amount of time and effort the class
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1 representatives expended in pursuing the litigation. *See, e.g., Cook v. Niedert*, 142
2 F.3d 1004, 1016 (7th Cir. 1998). These factors, as applied to this Action,
3 demonstrate the reasonableness of the requested Incentive Awards.

4 Plaintiffs here not only devoted their time and effort to successfully
5 prosecuting this case,² but even more significantly they endured serious adverse
6 financial and reputational collateral consequences as a direct result of serving as
7 Class Representatives. Teel Decl., ¶ 17. For example, Plaintiff Tiscareno lost
8 \$735,000 in solar equipment sales after a two customers with whom he had entered
9 into a contract with cancelled their contracts upon learning of Plaintiff’s involvement
10 in this action as Class Representative from a Google search. Tiscareno Decl., ¶¶ 6-8.

11 When Plaintiff Tiscareno completed his detention in 2015, he actively searched
12 for his name on the internet in order to take steps to try and maintain as much privacy
13 as possible in connection with any public records relating to his detention. Tiscareno
14 Decl., ¶ 4. Plaintiff learned that such records were typically sequestered behind a
15 “payment wall”, meaning a fee had to be paid in order to locate them on the publicly
16 available internet, but that all changed after this case was filed. Tiscareno Decl., ¶ 5.

17 In the middle of 2017, Plaintiff had completed negotiations with a liquor store
18 in National City, California and a golf course in Lakeside, California for the sale and
19 installation of over \$735,000 worth of solar panels. Tiscareno Decl., ¶ 7. Shortly
20 thereafter, those two customers each inquired as whether Plaintiff was the same Frank
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22
23 ² Plaintiff Kenneth Elliott directly spent 42.5 hours on this case (Elliott Decl., ¶ 11;
24 Teel Decl., ¶¶ 18-20); Plaintiff Frank Tiscareno spent approximately two dozen hours
25 on this case (Tiscareno Decl., ¶¶ 3 and 16; Teel Decl., ¶¶ 18-20); and Plaintiff Juan
26 Romero directly spent 33.3 hours on this case (Romero Decl., ¶¶ 4 and 13; Teel
27 Decl., ¶¶ 18-20).

1 Tiscareno involved in this action. Tiscareno Decl., ¶ 7. As a result of a Google
2 search turning up Mr. Tiscareno's name reported with this case, both customers
3 canceled their contracts. Tiscareno Decl., ¶ 8.

4 Subsequent to losing the contract, Plaintiff Tiscareno performed a Google
5 search on himself and found publicly available records on the internet regarding this
6 action which referred to him by name. Tiscareno Decl., ¶ 8. As a result of serving as
7 Class Representative in this action, Plaintiff Tiscareno has had to monitor the internet
8 from time to time, and particularly any time there is a filing with the Court. Each
9 time that he sees a public report regarding developments in this case with his name
10 linked to it, he must take affirmative steps to try and remove his name from the
11 Google search engine or cache, or otherwise minimize the risk that his name will
12 appear linked to the case so that it requires a more detailed search. Tiscareno Decl., ¶
13 11. Prior to his mitigation efforts, a Google search of Plaintiff Tiscareno's name
14 alone would turn up the search results set forth in Exhibit 2 of Tiscareno's
15 declaration. Tiscareno Decl., ¶ 12. Plaintiff Tiscareno estimates that the financial
16 and reputational harm resulting from his serving as Class Representative in this case
17 far surpasses the amount of \$100,000. Tiscareno Decl., ¶ 13.

18 Similarly, Plaintiff Elliott had to take lengthy steps to avoid tarnishing his
19 professional reputation and spent over 60 hours of time mitigating the potential harm.
20 Elliott Decl., ¶ 10. Upon learning that his phone calls with clients had been recorded,
21 Plaintiff made it a practice to travel to detention facilities to meet in person with his
22 client. When statewide shelter-in-place orders went into effect due to COVID-19,
23 Plaintiff Elliott continued to remain cautious and when using video visits (but not
24 through Securus) to speak with clients. Elliott Decl., ¶ 10, n. 1.

25 As most of his work is done on a flat fee basis, Plaintiff Elliott was unable to
26 charge for the additional time required to travel to and from the detention facilities,
27 but when he can, his hourly rate varies from \$350 to 500 per hour. Elliott Decl. ¶ 6.

1 Plaintiff Elliott estimates this change in practice since joining the case has consumed
2 at least an additional 50 hours of his time valued at his hourly rate between \$17,500
3 and \$25,000. Elliott Decl. ¶ 6. In addition, Plaintiff Elliott spent over 10 hours
4 reviewing his case files to evaluate the potential of any unlawful recordings on the
5 outcome of those cases. Had he not taken these steps to protect the confidentiality of
6 his communications with his clients, the effectiveness of his legal representation
7 would have been compromised, arguably falling below the professional standard of
8 care, and further risking tarnishing his professional reputation. Elliott Decl. ¶ 7.

9 Plaintiff Romero also suffered significant reputational consequences as a result
10 of serving as Class Representative. After discussing his involvement as lead Plaintiff
11 in the case with his probation officer, Plaintiff Romero noted that she became angry
12 about it. Romero Decl. ¶ 6. He became concerned about retribution or retaliatory
13 action, especially after his probation officer threatened to not rest until she saw him in
14 prison. Romero Decl. ¶ 7.

15 Plaintiff Romero became even more concerned when he learned that the
16 probation officer began showing his picture around the neighborhood asking whether
17 anyone had information about his involvement in any sort of illegal activity. Romero
18 Decl. ¶ 8. Eventually things got so bad that his attorney had the probation officer
19 removed from his case. Romero, Decl. ¶ 8. While Plaintiff Romero finds it difficult
20 to put a price on the worry and concern caused by his probation officer's conduct
21 which he directly attributes to his involvement in this case as Class Representative, he
22 believes it to exceed \$20,000. Romero, Decl. ¶ 9.

23 Despite the financial and reputational harms that Plaintiffs incurred as a result
24 of serving as Class Representatives, Plaintiffs stayed the course and successfully
25 prosecuted this litigation. Plaintiffs even gave a general release which includes any
26 claims for these harms as well as their right to statutory fines of \$5,000 per phone call
27 under CIPA. Tiscareno Decl., ¶ 16; Elliott Decl., ¶¶ 14-15; Romero Decl., ¶ 13-14.

1 The Plaintiffs are the *only* members of the Class who executed a release, nonetheless
2 a general release, of their claims against Securus. Settlement Agreement, Section IV,
3 Subsection A.

4 The rest of the 142,314 similarly situated individual attorneys and detainees
5 involved in this case are free to pursue damages from Defendant. The named
6 Plaintiffs would not have agreed to the Settlement if the rest of the Class Members
7 had been required to give a release. Romero Decl., ¶ 13; Elliott Decl., ¶ 13;
8 Tiscareno Decl., ¶ 16. Plaintiffs made the effort and sacrifices to settle this case
9 because Plaintiffs felt they were obligated to secure the constitutional rights of
10 attorneys and detainees. Elliott Decl., ¶ 12; Tiscareno Decl., ¶ 14; Romero Decl., ¶
11 10. Plaintiffs believe they have fulfilled these obligations. Elliott Decl., ¶ 12;
12 Romero Decl., ¶ 10; Tiscareno Decl., ¶ 14.

13 Without the Plaintiffs' extraordinary efforts and sacrifices in successfully
14 prosecuting this action, it is highly unlikely that Securus would have changed its
15 practices. *See* [D.E. 8, ¶ 36] (Securus press release denying knowledge of any
16 evidence of the recordings). Further, the injunctive relief is designed to prevent risk
17 of further recordings, which Plaintiffs believe is a highly favorable outcome and is
18 clearly in the best interests of the class and the public at large. Elliott Decl., ¶ 12;
19 Tiscareno Decl., ¶ 15; Romero Decl., ¶ 11. In light of the foregoing, the request of
20 \$20,000 per named Plaintiff as incentive awards for their efforts, sacrifices, and
21 harms suffered as result of serving as Class Representatives is reasonable and in line
22 with Ninth Circuit case law.

23 A comparison of this case with the subsequently filed Missouri case of *Johnson*
24 *v. CoreCivic, Inc. and Securus Technologies, Inc.*, Case No. 4:16-CV-00947-SRB
25 (USDC W.D. Mo.) is illustrative. The *Johnson* case involved a class of
26 approximately 750 class members whose recordings were found in the possession of
27 the U.S. Attorneys' Office. On July 31, 2020 the plaintiffs in *Johnson* filed a motion
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1 for preliminary approval of a \$3,700,000 settlement and requesting \$25,000 in service
2 awards for each of two class representatives. Teel Decl., ¶ 21. Under the *Johnson*
3 settlement, each of the 750 class members is required to release the defendants from
4 all liability under applicable federal and state in order to file a claim up to a
5 maximum of \$10,000. There is no injunctive relief in the preliminary approval
6 motion requiring the defendants to change their recording practices. Teel Decl., ¶ 22.

7 This result stands in contrast to the 142,314 individual attorneys and detainees
8 involved in this case who are not required to release their claims in order to benefit
9 from the injunctive relief negotiated by Plaintiffs to protect the constitutional sanctity
10 of attorney-client communications. Plaintiffs' requested service awards in total
11 amount to \$0.42 per individual who was sent notice, less than the cost of a postage
12 stamp, while the *Johnson* service awards in total amount to \$66.67 per individual
13 (roughly 158 times higher). Teel Decl. ¶ 23.

14 To determine the reasonableness of an incentive award request, courts consider
15 "(1) the risk to the class representative in commencing suit, both financial and
16 otherwise; (2) the notoriety and personal difficulties encountered by the class
17 representative; (3) the amount of time and effort spent by the class representative; (4)
18 the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by
19 the class representative as a result of the litigation." *Edwards v. First American*
20 *Corporation*, No. CV-07-03796-SJO-(FFMx), 2016 WL 8999934 (C.D. Cal. 2016)
21 (quoting *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

22 Here, the amount of time Plaintiffs spent on the case might not equate to a
23 \$20,000 incentive award. However, Plaintiffs not only devoted their time but risked
24 significant financial and reputational risks. As discussed above, these risks in fact did
25 manifest as a direct result of serving as Class Representatives. Further, in the interest
26 of settling the matter, Plaintiffs gave a general release of their rights to pursue claims
27 against Securus, including the damages that resulted from the financial and
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1 reputational harms and their \$5,000 statutory damages under CIPA. Plaintiffs each
2 value their releases to be over \$20,000. Tiscareno Decl., ¶ 20; Elliott Decl., ¶ 14;
3 Romero Decl., ¶ 14. Significantly, Plaintiffs were the only class members to give
4 such a release and would not have agreed to the Settlement had the rest of the class
5 members’ been required to give such releases. In light of the foregoing, Plaintiffs’
6 request of \$20,000 per Class Representative as incentive awards is reasonable.

7 **VII. CLASS COUNSELS’ REQUESTED FEES ARE FAIR AND**
8 **REASONABLE**

9 Under California law, the primary method for determining the amount of
10 reasonable attorneys’ fees in a case like this is the lodestar method. *McCrary v.*
11 *Elations Co., LLC*, No. EDCV130242JGBSPX, 2016 WL 769703, at *10 (C.D. Cal.
12 Feb. 25, 2016); *see also Perdue v. Kenny A.*, 130 S. Ct. 1662, 1673 (2010).
13 Moreover, “the ‘lodestar method’ is appropriate in class actions brought under fee-
14 shifting statutes . . . where the legislature has authorized the award of fees to ensure
15 compensation for counsel undertaking socially beneficial litigation.” *In re Bluetooth*,
16 654 F.3d at 941; *see also* MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.7 at p.
17 334-35 (“Statutory awards are generally calculated using the lodestar method.”). As
18 discussed above, the requested fee is based on Cal. Code Civ. Pro. § 1021.5, and thus
19 the lodestar method applies. *See id.* The lodestar is calculated by multiplying the
20 number of hours reasonably expended by counsel by a reasonable hourly rate.”
21 *McCrary*, 2016 WL 769703, at *10. “A court may increase or decrease that amount
22 by applying a positive or negative multiplier based on, among other factors, the
23 quality of representation, the novelty and complexity of the issues, the results
24 obtained, and the contingent risk presented.” *Id.*

25 Here, Class Counsel has a lodestar of \$1,820,341. Class Counsel respectfully
26 request the Court award Class Counsel the balance of the \$900,000 after payment of
27

1 litigation costs and incentive awards. Such an award represents a significant negative
2 multiplier of at least 55.3% to Class Counsels' lodestar.

3 In the interest of settling the matter, and given the uncertainty and risk of
4 further litigation, Class Counsel are willing to apply such a negative multiplier in
5 light of the significant benefit not only to the Class, but also to the public at large
6 resulting from the injunctive relief. Without the Settlement, Securus would have no
7 incentive to change or monitor its business practices to ensure compliance with the
8 best practices available at the highest levels regarding its recording practices. [D.E.
9 175-2], ¶ 15 (Declaration of Robert Teel in Support of Plaintiffs' Motion for
10 Preliminary Approval).

11 Moreover, if litigation were to continue, the Class runs the risk of being
12 decertified by the Ninth Circuit. [D.E. 178], at pg. 11 (Order Granting Preliminary
13 Approval). And, as a result of the Court's ruling on Plaintiffs summary judgment
14 motion, Plaintiffs would also incur the burden of having to prove some level of
15 scienter at trial, which could be difficult as Securus maintains that any call recordings
16 resulted from a software glitch. *Id.* Accordingly, Class Counsel respectfully requests
17 that the Court award them attorneys' fees in an amount equal to \$900,000 less the
18 amount of actual litigation costs and incentive awards approved.

19 **VIII. CLASS COUNSEL'S RATES AND HOURS EXPENDED ARE FAIR**
20 **AND REASONABLE**

21 To determine whether counsel's rates are reasonable, courts look to prevailing
22 market rates in the community in which the court sits. *Schwarz v. Sec'y of Health &*
23 *Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995); *see also Camancho v. Bridgeport*
24 *Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); MANUAL FOR COMPLEX LITIGATION,
25 FOURTH, § 14.122 ("The rate should reflect what the attorney would normally
26 command in the relevant marketplace."). Here, Class Counsel has a lodestar of
27 \$1,820,341, which is detailed in Class Counsel's billing records, which Class Counsel
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1 will make available to the Court for *in camera* review upon the Court’s request.
2 Marron Decl., ¶¶ 20, 21, 23; Teel Decl. ¶¶ 11, 13, 16; Ridley Decl. ¶ 13. This
3 lodestar is based on 974,804.95 hours of work and is supported by fair and reasonable
4 rates and hours. Marron Decl., ¶¶ 20, 21, 23, 25 and Exhibit B; Teel Decl. ¶¶ 11, 13,
5 14, 16; Ridley Decl. ¶¶ 9-18.

6 Class Counsel’s rates are reasonable because they are in line with hourly rates
7 charged by attorneys of comparable experience, reputation and ability for similar
8 complex consumer protection class action litigation. *See Ketchum v. Moses*, 24 Cal.
9 4th 1122, 1133 (2001) (“reasonable value of attorney services is . . . the hourly
10 amount to which attorneys of like skill in the area would typically be entitled)
11 (citation and quotation marks omitted); *see also Blum v. Stenson*, 465 U.S. 886, 895
12 (1984) (to assist the court in calculating the lodestar, plaintiff must submit
13 “satisfactory evidence . . . that the requested rates are in line with those prevailing in
14 the community for similar services by lawyers of reasonable comparable skill,
15 experience and reputation.”). Here, Class Counsel sets forth in their declarations
16 their experience in class action and complex litigation. Marron Decl., ¶¶ 6-8 & Ex.
17 A; Ridley Decl., ¶¶ 5 and 7; Teel Decl., ¶¶ 2-3. Additionally, Class Counsel’s
18 requested rates and hours are listed in each of Class Counsel’s declarations. *See*
19 Marron Decl., ¶ 20 (Table 1); Ridley Decl., ¶ 10 (Table 1); Teel Declaration ¶¶ 12-
20 13. These rates are in line with the prevailing market rates for attorneys and support
21 of similar experience, skill, and reputation. *See* Marron Decl., ¶ 25 & Ex. B; Ridley
22 Decl., ¶¶ 15-17; Teel Declaration ¶ 14.

23 Class Counsel also seeks compensation for its support staff, such as paralegals
24 and law clerks, which is permitted in this legal community. “The key . . . is the
25 billing custom in the relevant market. Thus, fees for work performed by non-
26 attorneys such as paralegals may be billed separately, at market rates, if this is the
27 prevailing practice in a given community. . . Indeed, even purely clerical or
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1 secretarial work is compensable if it is customary to bill such work separately[.]”
 2 *Trs. of Const. Indus. & Laborers Health & Welfare Trust v. Redland Ins. Co.*, 460
 3 F.3d 1253, 1257 (9th Cir. 2006). In California, it is customary and reasonable to bill
 4 for all non-attorney support staff, even word processors. *Serrano v. Priest*, 20 Cal. 3d
 5 25, 35 (1977); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001); *PLCM Group*
 6 *Inc. v. Drexler*, 22 Cal. 4th 1084 (2000). In *Salton Bay Marina Inc. v. Imperial*
 7 *Irrigation Dist.*, 172 Cal. App. 3d 914 (1985), the Court of Appeal stated that
 8 “necessary support services for attorneys, e.g., secretarial and paralegal services, are
 9 includable within an award of attorney fees.” Thus, Class Counsel’s staff hours are
 10 also compensable.

11 The Marron Firm’s requested rates are as follows:

Timekeeper	Position	Rate Requested
Ron Marron	Partner	\$815.00
Alexis Wood	Senior Associate	\$615.00
Kas L. Gallucci	Senior Associate	\$575.00
Michael Houchin	Senior Associate	\$550.00
Lilach Halperin	Associate	\$490.00
Skye Resendes	Associate	\$475.00
Elisa Pineda	Associate	\$440.00
William Richards, Jr.	Associate	\$440.00
Tania Babaic	Associate	\$440.00
Heather Mora, Allison Cardwell, Andrea Vasquez, Zechs Taduran	Paralegals/Legal Assistants	\$225.00

25 Marron Decl., ¶ 19 & Table 1.

26 Foley & Lardner LLP’s requested rates are as follows:

Timekeeper	Position	Rate
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1 “presumptively reasonable,” *In re Bluetooth*, 654 F.3d at 941 (quoting *Cunningham*
2 *v. County of Los Angeles*, 879 F. 2d 481, 488 (9th Cir. 1988); *see also Harris v.*
3 *Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994) (the lodestar “presumptively provides an
4 accurate measure of reasonable fees”). Here, Class Counsel negotiated a fee that they
5 understood would be a reduced rate of their actual lodestar. Marron Decl., ¶ 20.
6 Given that the requested fees and costs are less than Class Counsel’s presumptively
7 reasonable lodestar, the fee is reasonable.

8 **A. The Results Achieved for the Class**

9 Class Counsel agreed to a reduced rate in order to secure the significant
10 societal benefit that would be obtained through injunctive relief. As already
11 discussed, the Settlement represents a positive result for the Class and the general
12 public because it is designed to eliminate virtually all risk of an inadvertent recording
13 of attorney detainee calls, thereby preventing the very injuries that led the named
14 Plaintiffs to bring the case. *See Riker v. Gibbons*, No. 3:08-cv-00115-LRH-VPC,
15 2010 WL 4366012, at *4 (D. Nev. Oct. 27, 2010) (approving a settlement for
16 injunctive and declaratory relief, finding that it “achieve[d] the goals of the lawsuit”).
17 Moreover, under the terms of the Settlement, Class Members (excluding the named
18 Plaintiffs) may still pursue damages from Securus.

19 **B. The Effort, Skill, and Experience of Class Counsel**

20 Class Counsel has extensive experience handling complex consumer class
21 actions, Marron Decl., ¶ 6-8 & Ex. A; Ridley Decl., ¶ 4-7; Teel Decl., ¶¶ 2-3, and
22 have been approved by this Court as appropriate and experienced class counsel, *see*,
23 November 21, 2018 Order Certifying Class [D.E. 141]. Class Counsel has already
24 devoted 2,866.6 attorney and staff hours, plus costs, to litigating this class action, and
25 is committed to overseeing the Settlement and this litigation through to its successful
26 conclusion. *See* Marron Decl., ¶¶ 5, 19-21; Ridley Decl. ¶¶ 4-6 & 8; Teel Decl., ¶¶ 5
27 and 13. Based on their experience, Class Counsel concluded that the Settlement
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1 provides exceptional results for the class while sparing the class from the
2 uncertainties of continued and protracted litigation. Marron Decl., ¶ 14-17, Ridley
3 Decl. ¶¶ 4-6 & 8; Teel Decl., ¶ 25.

4 **C. Risk of No Class Relief**

5 Although Plaintiffs believe in the strengths of their claims, this case posed
6 significant risk for failure to prevail at trial. Here, the settlement negotiations were
7 hard-fought, requiring multiple mediation sessions with both parties and their counsel
8 thoroughly familiar with the applicable facts, legal theories, and defenses on both
9 sides. Marron Decl., ¶ 12-13, Ridley Decl. ¶¶ 4, 6 & 8; Teel Decl., ¶¶ 5-6. Plaintiffs’
10 counsel agreed to settle the action pursuant to the provisions of the Settlement, after
11 considering, among other things: (i) the substantial benefits to Plaintiff and the Class
12 under the terms of the Settlement; (ii) the uncertainty of being able to prevail at trial;
13 (iii) the uncertainty relating to Defendant's defenses and the expense of additional
14 motion practice in connection therewith; (iv) the attendant risks, difficulties and
15 delays inherent in litigation, especially in complex actions such as this; and (v) the
16 desirability of consummating this Settlement promptly in order to provide substantive
17 relief to Plaintiffs and the Class without unnecessary delay and expense. Marron
18 Decl., ¶¶ 10-15; Ridley Decl. ¶¶ 4, 6 & 8; Teel Decl., ¶¶ 5-6.

19 Devoting 2,866.6 attorney and staff hours and costs to this action necessarily
20 precluded Class Counsel taking on other employment. And, there was significant risk
21 that Class Counsel, despite committing these resources, would not have received any
22 compensation for its services. Marron Decl., ¶ 18; Teel Decl., ¶ 7; Ridley Decl. ¶¶ 4,
23 6 & 8. Class Counsel’s ability to collect compensation was entirely contingent upon
24 it prevailing.

25 **D. Establishment Of A Qualified Settlement Fund And Allocation Of**
26 **Attorney Fees**

1 The Settlement Agreement provides that one or more Class Counsel shall have
2 the option to receive any attorneys' fees awarded in this case in the form of periodic
3 payments in lieu of a lump sum payment, and authorizes a qualified settlement fund
4 under 26 U.S.C. § 468B (a "QSF") to be established with any qualified trustee,
5 including the settlement administrator. See Settlement Agreement, Article III, § F.
6 Class Counsel requests this Court direct and order the settlement administrator to
7 establish a QSF under Internal Revenue Code § 468B for purposes of paying
8 attorneys' fees for any attorney who requests the settlement administrator establish
9 such a fund and/or make payments in a periodic manner under 26 U.S.C. § 468B.

10 Courts routinely authorize fund administrators to establish qualified settlement
11 funds to distribute and pay class representative compensation, litigation expenses, and
12 attorneys' fees. See *Dakota Med., Inc. v. RehabCare Grp., Inc.*, No. 1:14-cv-02081-
13 DAD-BAM, at *19-20 (E.D. Cal. Sep. 20, 2017). See also *Kanawi v. Bechtel*
14 *Corporation*, No. C 06-05566 CRB (EDL), at *6 (N.D. Cal. Oct. 22, 2010) and
15 *Schaeppi v. Bayer Schering Pharma AG (In re Yasmin & Yaz (Drospirenone) Mktg.,*
16 *Sales Practices & Prods. Liab. Litig.)*, No. 3:09-md-02100-DRH-PMF, at *3 (S.D.
17 Ill. Jan. 16, 2013).

18 A qualified settlement fund is a fund or account that is established or approved
19 by an order of the court and is subject to its continuing jurisdiction to resolve or
20 satisfy one or more contested or uncontested claims arising out of a tort, breach
21 of contract, or violation of law, and is either a trust under applicable state law, or has
22 its assets segregated from other assets of the transferor and/or related persons. 25
23 U.S.C. § 1.468B-1(c). All the parties have agreed in the Settlement Agreement to the
24 request to authorize a QSF within the meaning of Treasury Regulation Section
25 1.468B-1 pursuant to the jurisdiction conferred on this Court by Treas. Reg. Section
26 1.468B-1(c)(1). The parties have also agreed that ILYM Group, Inc. as the settlement
27 administrator be granted the authority to establish and administer such a fund.

1 Accordingly, Plaintiffs and Class Counsel respectfully request the Court authorize
2 and order the administrator to establish, govern, and administer a qualified settlement
3 fund under Internal Revenue Code § 468B for purposes of paying attorneys’ fees to
4 any attorney, but only such attorney, who requests his/her/its share of any attorney
5 fees awarded in this case be paid to and received by a QSF, and that the regulations
6 accompanying Section 468B of Title 26 of the United States Code, as amended, be
7 used in interpreting the fund in a manner to accomplish the intent of the parties that
8 the fund be characterized as a qualified settlement fund under those regulations.
9 *Harris v. Nw. Inv. Mgmt. Co.*, No. CV 10-01763 CW (N.D. Cal. Oct. 4, 2012).

10 In this case, Plaintiffs and Class Counsel have agreed that attorneys’ fees
11 awarded by the Court after payment of litigation costs and incentive awards shall be
12 allocated \$400,000 to Foley & Lardner, LLP and the remainder 50 percent each to the
13 Law Office of Ronald A. Marron, APLC and the Law Office of Robert L. Teel.

14 **X. CONCLUSION**

15 For all of the foregoing reasons, Plaintiffs respectfully requests the Court grant
16 their Motion for Costs, Incentive Awards, and Attorneys’ in the total amount of
17 \$900,000.00.

18 Dated: August 17, 2020

Respectfully submitted,

20 THE LAW OFFICE OF RONALD A.
21 MARRON Ronald A. Marron

22 By: /s/ Ronald A. Marron
Ronald A. Marron

23 LAW OFFICE OF ROBERT L. TEEL
24 Robert L. Teel

25 FOLEY & LARDNER LLP
26 Eileen R. Ridley

27 *Attorneys for Plaintiffs Juan Romero,*
Frank Tiscareno, and Kenneth Elliot
and the Certified Class