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ON 4/10/2023
By /s/ Vanessa Jimenez
Deputy Clerk

7 *Attorneys for Plaintiffs and the Proposed*
8 *Settlement Class*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN MATEO**

11 ALABAMA DOE 1, ALABAMA DOE 2,
12 INDIANA DOE, MISSOURI DOE, AND
13 FLORIDA DOE, Individually and on Behalf of
14 All Others Similarly Situated,

15 Plaintiffs,

16 vs.

17 GILEAD SCIENCES, INC.,

18 Defendant.

Case No.: 20-CIV-03699

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE SERVICE
AWARDS**

Dept: 3
Judge: Hon. Susan L. Greenberg
Date: June 29, 2023
Time: 9:00 a.m.

CLASS ACTION

Action Filed: September 1, 2020
Trial Date: None Set

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(b), and in accordance with the Court’s
3 Preliminary Approval Order, Plaintiffs Alabama Doe 1, Alabama Doe 2, Indiana Doe, Missouri Doe,
4 and Florida Doe (collectively, “Plaintiffs” or “Class Representatives”) and Co-Lead Class Counsel seek
5 approval of an award of \$1,333,333.33 in attorneys’ fees, which is one-third of the \$4 million Settlement
6 Fund¹; reimbursement of Co-Lead Class Counsel’s out-of-pocket expenses not to exceed \$31,000.00,
7 (costs are currently \$24,835.05); and \$5,000 for each Plaintiff as a service award (\$25,000 total), with
8 all such amounts paid from the Settlement Fund. Co-Lead Class Counsel and Plaintiffs achieved a
9 settlement in this case that provides significant relief to the Settlement Class. The requested fees,
10 expenses, and service awards are authorized by the Settlement Agreement and are fair and reasonable.²

11 **II. CO-LEAD CLASS COUNSEL’S EXPERIENCE, CASE WORK, AND EFFORTS**
12 **TO SECURE THE SETTLEMENT BENEFITS FOR THE CLASS**

13 Co-Lead Class Counsel are attorneys at Berger Montague PC (“Berger Montague”), the AIDS
14 Law Project of Pennsylvania (“ALPP”), and Langer Grogan & Diver PC (“LGD”). Berger Montague
15 is a law firm that specializes in class action litigation in federal and state courts, including defective
16 products litigation, and is one of the preeminent class action law firms in the United States. (See
17 Declaration of Shanon J. Carson in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class
18 Representative Service Awards (“Carson Decl.”), § I & Ex. A (firm resume).) ALPP is a nonprofit
19 public-interest law firm providing free legal services to people living with HIV or at high risk of
20 acquiring it. Co-Lead Class Counsel are experienced class action litigators. (See Declaration of Ronda
21 B. Goldfein in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative
22 Service Awards (“Goldfein Decl.”) ¶¶ 3-15 & Ex. A.) LGD is a law firm specializing in complex civil
23 litigation including class action litigation in the areas of consumer protection, antitrust, constitutional
24 law and civil rights. (Goldfein Decl. ¶¶ 17-20 & Ex. B.) Based on their experience, Co-Lead Class

25 ¹ Unless otherwise defined, all capitalized terms have the same meanings as those set forth in the Parties’
26 Settlement Agreement, which is Exhibit A to the Declaration of John Albanese, filed December 23, 2022.

27 ² Plaintiffs are filing this motion in advance of the April 24, 2023 deadline for objections to the
28 Settlement, so that Settlement Class Members may review this motion before deciding whether to file an
objection. See *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th Cir. 2010) (such
motions should be filed before the deadline to object has passed). If any objections are filed, they will
be addressed in connection with the forthcoming motion for final settlement approval.

1 Counsel efficiently and effectively litigated this action and had the credibility necessary to negotiate an
2 excellent settlement on behalf of the Settlement Class. Co-Lead Class Counsel litigated this case on a
3 contingency basis and have thus far received no compensation for their time or out-of-pocket costs.
4 (Carson Decl. ¶ 31.) If Co-Lead Class Counsel did not successfully resolve this matter, Plaintiffs would
5 face significant risks inherent in continued litigation, possibly resulting in no recovery.

6 Co-Lead Class Counsel invested substantial resources litigating this action. Co-Lead Class
7 Counsel began investigating and analyzing Plaintiffs’ claims approximately three years ago in May
8 2020, shortly after Gilead Sciences, Inc. (“Gilead” or “Defendant”) sent Plaintiffs and Class Members,
9 individuals who were prescribed Gilead’s HIV-prevention medications and enrolled in Gilead’s
10 Advancing Access Program, a Mailer that included in the return address “HIV Prevention Team.”
11 (Carson Decl. ¶ 11.) After conducting an initial investigation, Co-Lead Class Counsel drafted a detailed
12 class action complaint on behalf of Plaintiffs Alabama Doe 1 and Indiana Doe, and a proposed
13 nationwide class of individuals who were sent the Mailer alleging that Defendant violated the California
14 Confidentiality of Medical Information Act, Cal. Civ. Code § 56 et seq. (“CMIA”), breached contractual
15 privacy obligations, negligently breached its duties to protect their medical information, and violated
16 their privacy. (Carson Decl. ¶ 12.) The complaint was filed in the Northern District of California on
17 May 21, 2020. (*Id.* ¶ 13.) After Defendant raised a jurisdictional issue related to Article III standing in
18 its motion to dismiss in federal court, Co-Lead Class Counsel dismissed the complaint filed in federal
19 court, and refiled the complaint in California state court on September 1, 2020. (*Id.*) In addition to the
20 prior claims, the complaint added claims on behalf of Missouri Doe and alleged that Gilead violated
21 Mo. Rev. Stat. § 191.656 and Mo. Rev. Stat. § 407.010.

22 Gilead mounted a substantial defense to the complaint. Gilead filed a demurrer and motion to
23 strike class allegations on October 20, 2020, arguing, in part, that Plaintiffs failed to allege particular
24 facts sufficient to meet the CMIA’s requirement that the protected information had been actually viewed
25 by a third party. Plaintiffs opposed and Co-Lead Class Counsel drafted and filed two responding briefs
26 on Plaintiffs’ behalf. (Carson Decl. ¶ 14.) On January 4, 2021, the Court overruled in part and sustained
27 in part Gilead’s demurrer and denied the motion to strike. On March 4, 2021, Gilead filed a petition for
28 writ of mandate challenging the Court’s order denying the demurrer and motion to strike as to Plaintiffs’

1 CMIA claims. On May 24, 2021, Co-Lead Class Counsel drafted and filed a preliminary response to
2 the petition for writ of mandate, urging the Court of Appeals to leave the Court’s opinion undisturbed.
3 (Carson Decl. ¶ 15.) The Court of Appeals denied the petition for writ of mandate on June 16, 2021.

4 After the Court’s order on Gilead’s demurrer and motion to strike, the parties agreed to engage
5 in private mediation. Before mediation, Co-Lead Class Counsel sought and obtained pre-mediation
6 discovery from Gilead on key issues to ensure that any potential settlement would be well informed. (*Id.*
7 ¶ 16.) On April 13 and 14, 2021, the parties participated in two full-day mediation sessions via Zoom
8 with an experienced mediator, Jill Sperber, Esq. Though the parties made progress, the April 2021
9 mediation was unsuccessful, and the parties returned to litigation and formal discovery efforts.

10 While discovery was ongoing, Co-Lead Class Counsel continued to interview putative class
11 members and ultimately were retained by Alabama Doe 2 and Florida Doe. (*Id.* ¶ 18.) Thus, on August
12 25, 2021, Plaintiffs filed the operative First Amended Complaint (“FAC”), adding the claims of Alabama
13 Doe 2 and Florida Doe, and naming Gilead’s mail vendor, Lahlouh, Inc., as an additional defendant.
14 Plaintiffs subsequently agreed to dismiss Lahlouh without prejudice following Lahlouh’s production of
15 documents and responses to written discovery requests. The Court granted Plaintiffs’ request to dismiss
16 Lahlouh on February 23, 2022. Co-Lead Class Counsel engaged in extensive formal discovery efforts,
17 both serving and responding to written discovery on behalf of Plaintiffs. (*Id.* ¶ 19.) Defendant produced
18 thousands of documents between September 16, 2021, and February 14, 2022, and responded to
19 interrogatories. (*Id.*) Plaintiffs also produced documents and responded to interrogatories. (*Id.*) During
20 this time, the parties engaged in numerous meet-and-confer conferences to negotiate various discovery
21 issues and litigated a motion to compel filed by Defendant and granted by the Court on October 29,
22 2021. (*Id.* ¶ 20.) The motion to compel implicated the CMIA’s actual viewing requirement and the
23 scope of discovery Defendant could pursue in an effort to show that Plaintiffs lacked evidence that third
24 parties actually viewed Plaintiffs’ Mailers, key legal and factual issues in the case. Before reaching the
25 Settlement, the parties were addressing several discovery disputes, including Defendant’s privilege
26 assertions, the sufficiency of Plaintiffs’ discovery responses, and a protocol for Defendant to depose
27 third parties, such as Plaintiffs’ neighbors and family members, who may have seen the Mailers sent to
28 Plaintiffs. (*Id.*) Co-Lead Class Counsel also started preparing for expert discovery by interviewing

1 potential experts who would testify on behalf of Plaintiffs and the class as to key factual issues. (*Id.*)

2 Depositions began in February 2022. Gilead deposed three Plaintiffs who were defended by Co-
3 Lead Class Counsel during their depositions. (*Id.* ¶ 21.) The depositions were strenuous for Plaintiffs,
4 touching on private medical information, their intimate relations, and the harms they alleged resulted
5 from the Mailer. (*Id.*) Depositions of the two remaining Plaintiffs and three Gilead witnesses were
6 calendared for late March and early April 2022. (*Id.*) It was only then, after substantial and hard-fought
7 litigation with more potentially invasive discovery on the way, did Co-Lead Class Counsel return to
8 arm's-length settlement negotiations with counsel for Gilead. (*Id.*) Picking up largely where the parties
9 ended the April 2021 mediation, the parties exchanged several counterproposals before reaching an
10 agreement on the core terms of the Settlement. (*Id.*) Thereafter, the parties engaged in subsequent
11 negotiations to reach and execute the full Settlement Agreement.

12 Co-Lead Class Counsel filed a motion for preliminary approval of the Settlement on October 21,
13 2022, and prepared for a potential Court hearing on the motion. (*Id.* ¶ 22.) After the Court issued its
14 tentative opinion on the motion for preliminary approval on November 30, 2022, Co-Lead Class Counsel
15 coordinated with counsel for Gilead to address the issues raised in the Court's tentative opinion,
16 including revising the Notice and drafting additional notice, amending the settlement terms, executing
17 the amended Settlement Agreement, obtaining declarations from the proposed settlement administrator,
18 and providing further evidence in support of the reasonable terms of the Settlement. (*Id.*) Co-Lead
19 Class Counsel provided this information to the Court in a supplemental filing on December 23, 2022.

20 Following the Court's January 19, 2023 Order granting Plaintiffs' motion for preliminary
21 approval of the Settlement, Co-Lead Class Counsel worked with the Settlement Administrator to finalize
22 the Notice of Settlement and Claim Form, create the settlement website, and address other issues relevant
23 to the notice plan. (*Id.* ¶ 23.) Since dissemination of the Notice, Co-Lead Class Counsel has responded
24 to several calls and emails from Settlement Class Members seeking information about the settlement.
25 (*Id.*) Co-Lead Class Counsel also anticipates that they will continue to address inquiries from the
26 Settlement Class, both before and after the final approval hearing. (*Id.* ¶ 24.) Co-Lead Class Counsel
27 will also prepare and argue the motion for final approval of Settlement and continue to oversee the
28 administration of the Settlement. (*Id.*)

1 To date, Co-Lead Class Counsel collectively devoted over 2,080 hours to this matter, not
2 including the time spent preparing this motion. (*Id.* ¶ 25.) The value of this time at Co-Lead Class
3 Counsel’s normal hourly rates is \$1,253,753.50. (*Id.*) The Carson Declaration and Goldfein Declaration
4 detail the time spent by Co-Lead Class Counsel on various categories of activities related to the action,
5 provide hourly billing rate information, and attach redacted time entries for this case. (Carson Decl. ¶¶
6 25-27, Ex. B; Goldfein Decl. ¶¶ 21-23, Exs. C, D.)

7 To date, Co-Lead Class Counsel has incurred \$29,941.44 in out-of-pocket litigation costs.
8 (Carson Decl. ¶ 33; Goldfein Decl. ¶ 29.)³ All of these costs were necessarily incurred and are of the
9 type typically reimbursed by paying clients. (Carson Decl. ¶¶ 32-35) Co-Lead Class Counsel anticipates
10 that there may be additional costs (including potential travel to the final approval hearing) and therefore
11 requests reimbursement of costs not to exceed \$31,000.

12 **III. PLAINTIFFS’ COMMITMENT WAS VITAL TO SECURING RELIEF**

13 Plaintiffs played a vital role in the success of this lawsuit and at all times had the best interest of
14 the Settlement Class in mind. To start, Plaintiffs Alabama Doe 1, Indiana Doe, and Missouri Doe
15 volunteered to initiate this matter and serve as class representatives to raise this important issue while
16 knowing that to do so would risk their own privacy. (Alabama Doe 1 Declaration in Support of
17 Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards (“Alabama Doe
18 1 Decl.”) ¶ 5; Indiana Doe Declaration in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and
19 Class Representative Service Awards (“Indiana Doe Decl.”) ¶ 8; Missouri Doe Declaration in Support
20 of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards (“Missouri
21 Doe Decl.”) ¶ 6.) Later, Plaintiffs Alabama Doe 2 and Florida Doe also volunteered to be named
22 Plaintiffs on behalf of the class, recognizing the same risk. (Alabama Doe 2 Declaration in Support of
23 Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards (“Alabama Doe
24 2 Decl.”) ¶ 5; Florida Doe Declaration in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and
25 Class Representative Service Awards (“Florida Doe Decl.”) ¶ 6.)

26 Plaintiffs worked closely with Co-Lead Class Counsel throughout the litigation, with numerous
27

28 ³ Class Counsel will provide an updated, precise number for costs and settlement administration expenses
prior to or at the final approval hearing. (Carson Decl. ¶ 36.)

1 phone calls and emails, providing information and documents to counsel, reviewing and providing input
2 on the complaint, responding to written discovery requests, staying informed regarding settlement
3 negotiations, and reviewing and approving the settlement agreement. (Alabama Doe 1 Decl. ¶ 7;
4 Alabama Doe 2 Decl. ¶ 7; Indiana Doe Decl. ¶ 10; Missouri Doe Decl. ¶ 8; Florida Doe Decl. ¶ 8.)
5 Further, all Plaintiffs agreed to sit for deposition, knowing in advance that the deposition would likely
6 cover deeply personal topics that are uncomfortable to discuss with anyone, let alone strangers, and on
7 the record. (*Id.*) Alabama Doe 1, Indiana Doe, and Missouri Doe were actually deposed, and the
8 depositions of Alabama Doe 2 and Florida Doe were imminent at the time of settlement. (Alabama Doe
9 1 Decl. ¶ 7; Indiana Doe Decl. ¶ 10; Missouri Doe Decl. ¶ 8.)

10 In total, each Plaintiff spent between 30 and 50 hours on this matter. (Alabama Doe 1 Decl. ¶ 8;
11 Alabama Doe 2 Decl. ¶ 8; Indiana Doe Decl. ¶ 11; Missouri Doe Decl. ¶ 9; Florida Doe Decl. ¶ 9.) These
12 efforts provided tremendous benefits to the Settlement Class, allowing Co-Lead Class Counsel to reach
13 a favorable Settlement despite significant obstacles to recovery.

14 **IV. THE SETTLEMENT PROVIDES SUBSTANTIAL RELIEF**

15 Plaintiffs sought damages and injunctive relief for Settlement Class Members who were harmed
16 by the Mailer. The Settlement requires Defendant to create a non-reversionary common fund for 18,192
17 Settlement Class Members consisting of \$4,000,000.00. (Settlement Agreement §§ 1.1.W, 1.1.X, 4.1.)
18 Defendant also represents that it no longer uses the term “HIV Prevention Team” in the return addresses
19 or otherwise on the face of envelopes sent to individuals enrolled in Gilead’s Advancing Access
20 Program. (*Id.*, Recital H.) All Settlement Class Members will receive an automatic payment of \$100
21 without the need to submit a Claim Form. (*Id.* § 4.2.a.) After deductions for any Court-awarded
22 attorneys’ fees and costs, settlement administration costs, and service awards for Plaintiffs, the Net
23 Settlement Fund will be made available for Claimant Awards. (*Id.* § 1.1.H.) A Claimant Award of up
24 to \$2,000 will be provided to each Settlement Class Member who submits a valid and timely Claim
25 Form for reasonable non-reimbursed out-of-pocket expenses that were directly caused by the Mailer
26 (e.g., moving costs, medical or counseling costs, etc.) upon a showing of reasonable proof. (*Id.* § 4.2.b.)
27 A further Claimant Award of up to \$500 will also be provided to Settlement Class Members who set
28 forth information on their Claim Form credibly declaring under oath that they experienced non-

1 economic harm as a direct result of the Mailer. (*Id.* § 4.2.c.)⁴

2 No portion of the Settlement Fund will revert to Defendant. (*Id.* § 4.1.) If there are any
3 remaining funds from the Net Settlement Fund and/or uncashed checks after the Settlement has been
4 distributed to Settlement Class Members, then the remaining amounts shall be distributed, subject to the
5 approval of the Court, to Positive Women’s Network-USA. (*Id.* § 4.8.)

6 On January 30, 2023, the Settlement Administrator, Kroll Settlement Administration, LLC,
7 activated the Settlement Website, <https://www.mailersettlement.com/>, and a toll-free telephone line for
8 Settlement Class Members to use. (Carson Decl. ¶ 37.) On February 23, 2023, Kroll sent the Notice of
9 Settlement and Claim Form to 18,187 Settlement Class Members via U.S. Mail (where address data was
10 available). (*Id.* ¶ 38.) That same day, Kroll also sent the Email Notice to 5 Settlement Class Members
11 via email (where email address was available and mailing address was not available). As of April 7,
12 2023, 344 Settlement Class Members have submitted claims for Claimant Awards beyond the \$100
13 automatic base payment and 260 claims have already been approved, including approximately 259
14 claims for non-economic harm and 2 claims for economic harms. (Carson Decl. ¶ 39.) Only one request
15 for exclusion and zero objections have been submitted. (*Id.* ¶ 40.) Settlement Class Members have until
16 April 24, 2023 to submit Claims Forms. A fulsome account of the claims process will be provided in
17 connection with the forthcoming motion for final approval.

18 **V. ARGUMENT**

19 **A. The Court Should Approve the Requested Attorneys’ Fees and Costs.**

20 The requested award of one-third of the Settlement Fund fairly and reasonably compensates Co-
21 Lead Class Counsel. It is also consistent with fees awarded by California courts in similar cases. Co-
22 Lead Class Counsel invested significant resources in this case with the possibility of no recovery. Due
23 to their skill, experience, and past successes in litigating similar claims on behalf of consumers,
24 including those who have suffered a breach of privacy such as Settlement Class Members, Co-Lead
25 Class Counsel were able resolve this case after extensive negotiations with a Settlement that provides
26 significant relief to Settlement Class Members. The parties’ ability to reach the Settlement before class
27

28 ⁴ If a claim is rejected for any reason, the Claimant will be provided another opportunity to establish their
eligibility or cure the deficiency. (*Id.* § 4.5.)

1 certification demonstrates Co-Lead Class Counsel’s efficient use of resources and recognizes the risks
2 and expenses of litigation and trial, as well as the benefits of Settlement. Importantly, a lodestar cross-
3 check confirms the appropriateness of awarding one-third of the fund as the award results in only a
4 modest multiplier of 1.06 which is well within the range generally approved in California.

5 **1. The Percentage of Recovery Method Is Appropriate to Determine Attorneys’ Fees.**

6 The Court has an “independent right and responsibility” to review the requested attorneys’ fees
7 and award fees to determine whether they are reasonable. *See Garabedian v. Los Angeles Cellular Tel.*
8 *Co.*, 12 Cal. Rptr. 3d 737, 741 (2004). “Courts recognize two methods for calculating attorney fees in
9 civil class actions: the lodestar/multiplier method and the percentage of recovery method.” *Wershba v.*
10 *Apple Computer, Inc.*, 110 Cal. Rptr. 2d 145, 169 (2001). Under the percentage of recovery method,
11 the Court may award class counsel a percentage of the value of the settlement benefits obtained for the
12 class. *Id.* “The percentage-of-recovery method is generally favored in common fund cases because it
13 allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it
14 for failure.” *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 493 (2016) (quoting *In re Rite Aid*
15 *Corp. Securities Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)). The percentage method is particularly
16 appropriate in common fund cases, because “the benefit to the class is easily quantified.” *In re Bluetooth*
17 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *see also Laffitte*, 1 Cal. 5th at 488
18 (affirming attorney fee award equal to 33% of settlement); *Serrano v. Priest (Serrano III)*, 20 Cal. 3d
19 25, 48-49 (1977) (“when a number of persons are entitled in common to a specific fund, and an action
20 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
21 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund”).

22 California courts have not established a “benchmark” percentage of the fund but have noted that
23 “[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used,
24 fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 75 Cal.
25 Rptr. 3d 413, 433 n.11 (2008) (internal quotation omitted). Here, Co-Lead Class Counsel requests
26 attorneys’ fees based on the value of the cash Settlement Fund. The requested one-third of the cash
27 Settlement Fund is an appropriate award of attorneys’ fees and is in line with fee requests regularly
28

1 approved by California courts. *See id.*⁵ The propriety of the requested fee can also be gleaned by
2 reviewing several factors considered under California law, including the risks and potential value of the
3 litigation, the contingent nature of the representation, the novelty and difficulty of the issues presented,
4 the skill shown by counsel, and the hours worked, and asserted hourly rates. *Laffitte*, 1 Cal. 5th at 504.

5 **a. The Monetary Results Obtained Are Significant.**

6 Plaintiffs and Co-Lead Class Counsel believe the Settlement benefits are impressive when
7 considering the number of hurdles between Plaintiffs and a final judgment. Notably, of the \$4 million
8 Settlement Fund, \$1,819,200 will be *automatically* paid to Settlement Class Members in the form of
9 \$100 base payments. (Settlement Agreement, § 4.2.a.) Further, to address damages that could be
10 obtained through successful litigation on Plaintiffs' tort claims, such as invasion of privacy, Settlement
11 Class Members may submit claims for additional Claimant Awards, including \$500 for non-economic
12 harm (such as emotional distress) and up to \$2,000 for out-of-pocket costs. (*Id.* § 4.2.b-c.) An estimated
13 \$630,601 is available for Claimant Awards (if the Court grants this Motion in full).

14 Here, if successful litigation could lead to each Settlement Class Member recovering up to
15 \$1,000 in statutory damages under the CMIA, by providing an automatic \$100 base payment without
16 the need for a claim form, the proposed Settlement recovery is well within the range of an acceptable
17 recovery for settlement approval considering the relative size of the class and the substantial benefit
18 provided by an automatic payment, compared to similar settlements, most of which required the
19 submission of a claim form to receive any payment.⁶ *See* Order Granting Final Approval of Settlement,

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21 ⁵ *See, e.g., Ayala v. Cherry Creek Mortg. Co., Inc.*, 2019 WL 8269063, at *3 (Cal. Super. Nov. 4, 2019)
22 (approving 1/3 of the common fund as attorneys' fees); *Cubillas v. Dav-El Los Angeles*, 2018 WL
23 3760657, at *3-4 (Cal. Super. June 14, 2018) (awarding \$1.12 million as attorneys' fees, 40% of the
24 common fund); *Larson v. John Hancock Life Ins. Co. (U.S.A.)*, 2018 WL 8016973, at *6 (Cal. Super.
25 May 8, 2018) (awarding \$17.925 million as attorneys' fees; 30% of the common fund and a 2.3 lodestar
26 multiplier); *Ha v. Google Inc.*, 2018 WL 1052448, at *2 (Cal. Super. Feb. 7, 2018) (awarding attorneys'
27 fees equaling 1/3 of the common fund); *Hernandez v. Gold Point Transp. Inc.*, 2017 WL 9751227, at *3-
28 5 (Cal. Super. Sept. 8, 2017) (awarding 1/3 of the common fund as attorneys' fees); *In re FireEye, Inc.*
Securities Litigation, 2017 WL 3536993, at *5 (Cal. Super. Aug. 7, 2017) (awarding \$3,416,667, 1/3 of
the common fund, as attorneys' fees); *Murphy v. CVS Caremark Corp.*, 2017 WL 4176566, at *3, *5
(Cal. Super. Feb. 28, 2017) (approving attorneys' fees equaling 30% of the common fund).

⁶ After reviewing other state statutes regarding the confidentiality of medical information, including HIV-
related information, Co-Lead Class Counsel concluded that none of the laws is so significantly different
from each other, either in substance or relief provided, as to warrant any structure that provides for

1 *J.C. v. Salinas Valley Memorial Healthcare Systems*, No. 20-CV-001923 (Dec. 15, 2022 Cal. Sup.
2 Monterey)⁷ (approving \$340,000 settlement of complaint, including CMIA claim, for 2,384 class
3 members allowing class members to file claims for up to \$750 in out-of-pocket expenses); Motion for
4 Final Approval, *In Re: T-Mobile Customer Data Security Breach Litigation*, MDL No. 3019, ECF No.
5 211⁸ (requesting final approval for \$350 million settlement involving 76.6 million consumers which
6 allowed California class members to make a claim for \$100 in lieu of claiming out-of-pocket losses);
7 Final Approval Order, *Gupta v. Aeries Software, Inc.*, No. 8:20-CV-00995, ECF No. 110⁹ (approving
8 settlement that provided \$1,750,000 involving 100,000 class members who could claim awards for out-
9 of-pocket losses resulting from data breach and time and to receive pro rata distribution); *Serrano v.*
10 *Inmediata Corp.*, Case No. 19cv1811 (D.P.R.), ECF No. 35-1¹⁰ (\$1,125,000 settlement with over
11 1,565,338 class members providing for claims made award of \$50 for CMIA claim for California class
12 members).

13 In light of the risks discussed further below that the Settlement Class would have faced had
14 litigation continued, this is a substantial recovery that supports the requested fees.¹¹

15 **b. Co-Lead Class Counsel Undertook Considerable Risk.**

16 Co-Lead Class Counsel took this case on a contingency fee basis and invested time and resources
17 without any compensation to date. (Carson Decl. ¶ 35.) Class action litigation is inherently complicated
18 and time-consuming. On top of the demands that come with this type of litigation, Co-Lead Class
19

20 differing allocations based on the state of Settlement Class Members. (See Plaintiffs' Supp. Submission
in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement at 5-7.)

21 ⁷ Available at [https://www.salinasvalleymemorialsettlement.com/docs/Order%20Granting%20Plfs%20Motion%20for%20Final%20Approval%20etc\[4\].pdf](https://www.salinasvalleymemorialsettlement.com/docs/Order%20Granting%20Plfs%20Motion%20for%20Final%20Approval%20etc[4].pdf).

22 ⁸ Available at https://www.t-mobilesettlement.com/home/1552/DocumentHandler?docPath=/Documents/5JO7059_2023_01_10_211_SUGGESTIONS_in_support_re_210_MOTION_for_order_for_Final_Approval_of_Class_Action_Settlement.PDF.

24 ⁹ Available at <https://www.school databreach.com/admin/api/connectedapps.cms.extensions/asset?id=a2e59b53-ccd2-4cae-aa1b-b32d12db7296&languageId=1033&inline=true>.

25 ¹⁰ Available at https://inmediatadatabreachsettlement.com/important-documents/inmediata_settlement-agreement.pdf.

26 ¹¹ As discussed in Plaintiffs' Supplemental Submission in Support of Unopposed Motion for Preliminary
27 Approval of Class Action Settlement (at 2-5), while settlements in *Beckett v. Aetna*, Case No. 2:17-cv-
3864 (E.D. Pa.), and *Doe One v. CVS Health Corporation*, Case No. 2:18-cv-238 (S.D. Ohio), were
28 higher on a per person basis than this matter, there are a number of reasons why a lower settlement
amount is reasonable in this matter.

1 Counsel also made this investment despite the very real possibility of an unsuccessful outcome and no
2 fee recovery of any kind. The California Supreme Court has recognized the importance of rewarding
3 attorneys who take cases on a contingency basis. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th
4 553, 580 (2004), *as modified* (Jan. 12, 2005) (“A contingent fee must be higher than a fee for the same
5 legal services paid as they are performed. The contingent fee compensates the lawyer not only for the
6 legal services he renders but for the loan of those services.”) (citation and internal quotation marks
7 omitted); *see also In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.
8 1994) (“Contingent fees that may far exceed the market value of the services if rendered on a non-
9 contingent basis are accepted in the legal profession as a legitimate way of assuring competent
10 representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win
11 or lose.”); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (lodestar may be adjusted by the court
12 based on factors including the contingent nature of the fee award).

13 The claims and factual scenarios brought in this case were novel, and Plaintiffs had to overcome
14 several hurdles, including the argument that no class could be certified under the CMIA without
15 evidence proving that a third party actually viewed each Class Member’s confidential medical
16 information. *See, e.g., Sutter Health v. Super. Ct.*, 227 Cal. App. 4th 1546, 1550 (2014) (in order to
17 prevail on a CMIA claim, plaintiffs must adequately allege their confidential medical information “was
18 actually viewed by an unauthorized person”); *Regents of Univ. of Cal. v. Super. Ct.*, 220 Cal. App. 4th
19 549, 570 (2013) (dismissing CMIA claim because plaintiff did not “allege her medical records were, in
20 fact, viewed by an unauthorized individual”). Defendant raised this argument in its demurrer and motion
21 to compel, and the Court stated the actual viewing requirement was established by “controlling case
22 law.” Moreover, achieving class certification and final judgment on Plaintiffs’ tort claims, such as
23 invasion of privacy, would also have been complicated by the fact that the circumstances under which
24 Class Members received the Mailer could vary greatly.

25 Although Co-Lead Class Counsel believe these arguments could have been overcome, there were
26 serious risks and obstacles to recovery in this case. Gilead has also actively and aggressively litigated
27 and defended this matter, requiring Co-Lead Class Counsel to invest significant attorney time and
28 resources in extensive motion practice, an appeal, discovery, and litigating a motion to compel. Thus,

1 at all times, this case carried a very real possibility of an unsuccessful outcome with Co-Lead Class
2 Counsel receiving no fees of any kind. Further, continued litigation of this matter carried very specific
3 risks that could have resulted in no recovery for the Settlement Class.

4 **c. Counsel’s Experience and Skill.**

5 Berger Montague’s, ALPP’s, and Langer Grogan’s experience and skill are set out in detail in
6 declarations submitted with Plaintiffs’ Motion for Preliminary Approval and the Carson and Goldfein
7 Declarations. (See Carson Prelim. Approval Decl. ¶¶ 11-15 & Exs. C-D). Together, Co-Lead Class
8 Counsel are qualified counsel who are deeply experienced in complex class action litigation and in
9 serving populations that face social stigma related to their health conditions.

10 **d. The Reaction of the Settlement Class to Date Is Positive.**

11 Notice of the Settlement and Email Notice, including the proposed amounts to be requested in
12 fees, costs, and service awards, was distributed on February 23, 2023 to 18,192 Settlement Class
13 Members. (Carson Decl. ¶ 38.) Not a single Settlement Class Member has filed an objection to the
14 requested fee award to date, and only one has opted-out. (*Id.* ¶ 40.) Even though all Settlement Class
15 Members will receive an automatic \$100 base payment, 344 Settlement Class Members have submitted
16 claim forms, and Settlement Class Members still have two weeks to submit claims. This factor further
17 supports the requested award. *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal.
18 2013) (finding only one opt-out and zero objections from 1,837 class members favored awarding 33%
19 of the common fund); *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-cv-1466, 2006 WL 3312024, at *3
20 (D. Or. Nov. 13, 2006) (finding 27 opt-outs out of 60,000 class members weighed in favor of granting
21 fee award in excess of 25% benchmark); *Thieriot v. Celtic Ins. Co.*, No. 10-cv-4462, 2011 WL 1522385,
22 at *6 (N.D. Cal. April 21, 2011) (“[t]he fact that no members of the 390-person class objected to the
23 proposed 33% fee award – which was also communication in the notice – supports an increase in the
24 benchmark rate.”). Further, all Class Representatives have reviewed the terms of the Settlement and
25 support the Settlement. (Alabama Doe 1 Decl. ¶ 9; Alabama Doe 2 Decl. ¶ 9; Indiana Doe Decl. ¶ 12;
26 Missouri Doe Decl. ¶ 10; Florida Doe Decl. ¶ 10.)

27 **e. A Lodestar Crosscheck Supports Approval.**

28 A comparison with Co-Lead Class Counsel’s lodestar further demonstrates that the requested fee

1 is reasonable. *Laffitte*, 1 Cal. 5th at 502 (a lodestar cross-check “helps to determine a reasonable fee
2 because a percentage-of-the-benefit analysis ‘provides a credible measure of the market value of the
3 legal services provided’”) (citation omitted). The “cross-check calculation need entail neither
4 mathematical precision nor bean counting...[courts] may rely on summaries submitted by the attorneys
5 and need not review actual billing records.” *Covillo v. Specialty’s Café*, 2014 WL 954516, at *21-22
6 (N.D. Cal. Mar. 6, 2014) (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005)).
7 The lodestar method is calculated by multiplying “the reasonable hours expended by a reasonable hourly
8 rate.” *Wershba*, 110 Cal. Rptr. 2d at 169.

9 Here, the Carson Declaration and Goldfein Declaration detail the hours spent by Co-Lead Class
10 Counsel on various categories of activities related to the action and Co-Lead Class Counsel’s hourly
11 billing rate information. (Carson Decl. ¶¶ 26, 27; Goldfein Dec. ¶ 23.) The standard hourly rates for
12 Co-Lead Class Counsel are reasonable (Carson Decl. ¶ 28; Goldfein Dec. ¶ 24.) In considering rates,
13 courts examine the rate “prevailing in the community for similar services by lawyers of reasonably
14 comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). Co-
15 Lead Class Counsel’s hourly rates have been approved by California courts and are comparable to those
16 approved by courts in Northern California. (Carson Decl. ¶ 28; Goldfein Dec. ¶ 24.)

17 To date, Co-Lead Class Counsel’s cumulative lodestar is \$1,253,753.50. (Carson Decl. ¶ 25.)
18 The lodestar cross-check of the percentage requested thus results in a multiplier of 1.06. Multipliers of
19 1 to 4 are commonly awarded in complex class action cases in California and the Ninth Circuit. *See*
20 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (finding that in approximately
21 83% of cases surveyed by the court, the multiplier was between 1.0 and 4.0 and affirming a multiplier
22 of 3.65); *Wershba*, 110 Cal. Rptr. 2d at 170 (recognizing “[m]ultipliers can range from 2 to 4 or even
23 higher”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (recognizing
24 “[m]ultipliers in the 3-4 range are common”); *McKenzie v. Federal Exp. Corp.*, 2012 WL 2930201 (C.D.
25 Cal. July 2, 2012) (approving multiplier of 3.2). The lodestar cross-check thus confirms the
26 reasonableness of the requested fee award.

27 **2. Co-Lead Class Counsel’s Litigation Costs Are Recoverable.**

28 Co-Lead Class Counsel also seek reimbursement of their documented out-of-pocket expenses

1 incurred in litigating and settling this matter. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)
2 (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying
3 client”) (citation and internal quotation marks omitted); *Ashker v. Sayre*, 2011 WL 825713, at *3 (N.D.
4 Cal. Mar. 7, 2011) (finding “costs of reproducing pleadings, motions and exhibits are typically billed by
5 attorneys to their fee-paying clients” and are thus reimbursable); *Trustees of Const. Indus. & Laborers*
6 *Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research
7 costs reimbursable); *In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1177-8 (S.D. Cal. 2007)
8 (mediation expenses, expert fees, legal research, copies, postage, filing fees, messenger, and federal
9 express costs reimbursable); *Marhoefer*, 24 F.3d at 19 (postage costs reimbursable).

10 As Co-Lead Class Counsel’s expense records show, the costs incurred were reasonable and
11 necessary to the successful conclusion of this litigation. (*See Carson Decl.* ¶ 33; *Goldfein Decl.* ¶ 29.)
12 These costs include mediation sessions and related mediator fees, court fees, expert fees, court reporting
13 costs, travel, and computer research. These types of expenses are routinely reimbursed by the courts as
14 noted above, thus Counsel’s requested costs, currently \$29,941.44, should be awarded.

15 **B. The Requested Service Awards Are Appropriate.**

16 California courts recognize that a named plaintiff is eligible for a reasonable service payment.
17 *Cellphone Termination Fee Cases*, 113 Cal. Rptr. 3d 510, 521 (2010) (service payment “are fairly typical
18 in class action cases.”) (citing *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)); *see*
19 *also Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726, as modified on denial of reh’g
20 (Mar. 9, 2004) (affirming an order for “service payments to the five named plaintiffs compensating them
21 for their efforts in bringing suit”). Such awards are intended to compensate class representatives for
22 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
23 the action, and to recognize their willingness to act as private attorneys general. *Id.* “[C]riteria courts
24 may consider in determining whether to make an incentive award include: 1) the risk to the class
25 representative in commencing suit, both financial and otherwise; 2) the notoriety and personal
26 difficulties encountered by the class representative; 3) the amount of time and effort spent by the class
27 representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by
28 the class representative as a result of the litigation.” *Id.* at 522.

1 As discussed above, the Class Representatives faced acute risk in bringing this suit and expended
2 considerable time and effort on behalf of the class. *See supra* at § IV. (*See also* Alabama Doe 1 Decl. ¶
3 5; Alabama Doe 2 Decl. ¶ 5; Indiana Doe Decl. ¶ 6; Missouri Doe Decl. ¶ 8; Florida Doe Decl. ¶ 6.) As
4 a result of Plaintiffs’ efforts and their willingness to pursue this action, substantial benefits have been
5 achieved on behalf of the Settlement Class. Aside from the requested service payments, the benefits to
6 Plaintiffs are the same as benefits available to other Settlement Class Members. An incentive award is
7 appropriate when a class representative will not gain any benefit beyond what they would receive as an
8 ordinary class member. *See In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act*
9 (*FACTA*) *Litig.*, 295 F.R.D. 438, 472 (C.D. Cal. 2014) (“An incentive award may be appropriate when
10 a class representative will not gain any benefit beyond that he would receive as an ordinary class
11 member.”); *Van Vranken*, 901 F. Supp. at 299 (finding incentive award supported by named plaintiffs’
12 modest recovery under the settlement agreement, which was only a “tiny fraction” of the common fund);
13 *Razilov*, 2006 WL 331204 at *4 (approving payment of incentive award where only benefit class
14 representative received from settlement was same statutory damages other class members received).

15 Moreover, the requested service awards of \$5,000 to each Class Representative, which in total
16 are less than 1% of the Settlement Fund, are in line with awards granted in other complex litigation.
17 *See, e.g., Mount v. Wells Fargo Bank, N.A.*, 2016 WL 537604, at *4 (Cal. App. 2d Dist. Feb. 10, 2016)
18 (approving incentive award of \$10,000 each for both named plaintiffs); *Cellphone Termination Fee*
19 *Cases*, 186 Cal.App.4th at 1395 (finding no abuse of discretion in a \$10,000 award); *Ralston v. Mortg.*
20 *Investors Grp., Inc.*, No. 08-cv-536, 2013 WL 5290240, at *5 (N.D. Cal. Sept. 19, 2013) (approving
21 service payment of \$12,500); *Vedachalam v. Tata Consultancy Servs. Ltd.*, No. 06-cv-0963, 2013 WL
22 3929129, at *7 (N.D. Cal. July 18, 2013) (approving service payments of \$25,000 and \$35,000).

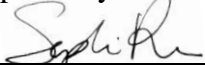
23 The service awards are justified, reasonable, and should be awarded.

24 **VI. CONCLUSION**

25 Based on the foregoing, Plaintiffs and Co-Lead Class Counsel respectfully request that the Court
26 grant Co-Lead Class Counsel’s requested award of one-third of the Settlement Fund as attorneys’ fees
27 (\$1,33,333.33), reimbursement of Co-Lead Class Counsel’s costs, not to exceed \$31,000, and service
28 awards of \$5,000 to each Class Representative.

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Respectfully submitted,

2
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