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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO**

14 MATTHEW PAGOAGA and ANTHONY
15 JONES, on behalf of themselves and all others
similarly situated,

16 Plaintiffs,

17 v.

18 STEPHENS INSTITUTE d/b/a ACADEMY
19 OF ART UNIVERSITY,

20 Defendant.

21 STEPHENS INSTITUTE d/b/a ACADEMY
22 OF ART UNIVERSITY,

23 Cross-Complainant,

24 v.

25 NAVISITE, LLC,

26 Cross-Defendant.

Case No. CGC 16-551952

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

Judge: Curtis E.A. Karnow

Dept.: 304


Action Filed: May 11, 2016

Hearing: July 16, 2018 at 9:00 a.m.

1 PLEASE TAKE NOTICE that on July 16, 2018 at 9:00 a.m., or as soon thereafter as the
2 matter may be heard, in Department 304 of the above-entitled Court, located at 400 McAllister
3 Street, San Francisco, California, Plaintiffs Matthew Pagoaga and Anthony Jones will move this
4 Court, in conjunction with their Motion for Final Approval of Class Settlement, for an order
5 approving the fee provisions of the proposed class settlement and awarding (1) \$455,000 in
6 attorneys' fees and \$24,903.53 in reasonable costs and expenses to Plaintiffs' counsel pursuant to
7 the Settlement Agreement; and (2) \$2,500 each to Class Representatives Matthew Pagoaga and
8 Anthony Jones as service awards in recognition of their service on behalf of the Class.

9 Plaintiffs' Motion is based on this Notice of Motion, the accompanying Memorandum of
10 Points and Authorities in support thereof, the Declarations of Norman E. Siegel, Daniel C. Girard,
11 Stanley D. Saltzman, and Matt J. Malone, and all exhibits attached thereto, the Proposed Order
12 Granting Plaintiffs' Motion for Attorneys' Fees, Costs and Service Awards, any additional papers
13 filed in support of this motion, the arguments of counsel at the hearing, and such other matters as
14 the Court may consider.

15
16 Dated: November 21, 2017

16 Respectfully submitted,
17 By: 
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14 MATTHEW PAGOAGA and ANTHONY
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19 Defendant.

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22 Cross-Complainant,

23 v.

24 NAVISITE, LLC,

25 Cross-Defendant.
26
27
28

Case No. CGC 16-551952

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

Judge: Curtis E.A. Karnow

Dept.: 304

Action Filed: May 11, 2016

Hearing: July 16, 2018 at 9:00 a.m.

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1 **I. INTRODUCTION**

2 Over the course of nearly two years, Plaintiffs Matthew Pagoaga and Anthony Jones
3 (“Plaintiffs”) and their attorneys from Stueve Siegel Hanson LLP and Girard Gibbs LLP
4 (collectively, “Class Counsel”) have vigorously litigated this data security class action against
5 Defendant Stephens Institute d/b/a Academy of Art University (“AAU”). Plaintiffs sought redress
6 for the company’s unauthorized release of 3,374 current and former employees’ 2015 Internal
7 Revenue Service Wage and Tax Statements – containing full names, addresses, dates of birth,
8 wage information, and Social Security Numbers (the “E-Mail Security Incident”).

9 The efforts of Plaintiffs and Class Counsel ultimately resulted in a settlement that provides
10 meaningful relief to class members who can now utilize premium credit monitoring services,
11 recoup out-of-pocket losses, and move on with their lives knowing that AAU will take additional
12 steps to safeguard its employees’ personal and confidential information.

13 As a part of the settlement, and in addition to the relief being made available to class
14 members, AAU has agreed to separately pay Class Counsel’s reasonable attorneys’ fees, costs, and
15 expenses incurred in prosecution of this case, as well as \$2,500 service award payments to
16 Matthew Pagoaga and Anthony Jones to compensate them for their service in this action. *See*
17 *Agreement*, ¶ 64. Plaintiffs now seek an award of \$455,000 in reasonable attorneys’ fees, which
18 represents a modest 1.1 multiplier on Plaintiffs’ current lodestar of \$401,475.50, but will likely
19 result in a negative multiplier when taking into account Class Counsel’s future work through final
20 approval, handling any appeals, and managing a multi-year claims period. Plaintiffs also seek
21 reimbursement of \$24,903.53 in costs and expenses.

22 In support of this motion, Plaintiffs submit: (1) the Declarations of Norman E. Siegel
23 (“Siegel Dec.”) and Daniel C. Girard (“Girard Dec.”), which include detailed summaries reflecting
24 Class Counsel’s time and expenses invested in this action and support for the reasonableness of
25 Class Counsel’s hourly rates; and (2) the Declaration of Stanley D. Saltzman (“Saltzman Dec.”),
26 an experienced California class action attorney who is familiar with the work of Class Counsel and
27 can attest to the reasonableness of rates in the prevailing market. The requested fee and expenses
28 also includes the submission of Matt Malone of ROCK Law LLP, who is seeking attorney’s fees

1 of \$11,970 and expenses of \$993.67 relating to his representation of Plaintiff Jones.

2 **II. SUMMARY OF THE LITIGATION AND WORK PERFORMED**

3 As set forth more fully in the accompanying Declaration of Norman E. Siegel, Class
4 Counsel spent over 700 hours investigating and prosecuting the claims of Plaintiffs and the class.
5 Class Counsel staffed the case in an efficient manner that avoided unnecessary duplication of
6 effort and assigned tasks commensurate with each attorney’s level of experience. The vast
7 majority of Class Counsel’s work (approximately 86%) was expended by two attorneys, Mr.
8 Siegel and Mr. Moore, who are well-versed in data breach and privacy litigation and have
9 represented consumers in several of the largest data breach class actions in U.S. history. *See* Siegel
10 Dec., ¶¶ 57-60. Moreover, as explained below, this case could have settled much earlier (with
11 lower fees) had AAU followed through with initial efforts to resolve the case. As a result, all of
12 the time included in this request was reasonable and necessary in achieving this result.

13 The following chart identifies each timekeeper who worked on the case, the timekeeper’s
14 years of experience, number of hours expended, and hourly rate:¹

15 **Chart 1. Counsel’s Hourly Rates and Experience**

Name	Position	Bar Admission	Experience	Rate
Stueve Siegel Hanson (Class Counsel)				
Norman E. Siegel	Partner	1993	24	\$865
Austin Moore	Associate	2011	6	\$475
Girard Gibbs (Class Counsel)				
Daniel C. Girard	Partner	1984	34	\$900
Linh Vuong	Associate	2012	5	\$450
Simon Grille	Associate	2013	4	\$425
ROCK Law (Counsel for Plaintiff Jones)				
Matt Malone	Partner	2002	16	\$600

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26 ¹ Although a lodestar calculation need not be supported by detailed time records, *see Wershba v.*
27 *Apple Computer, Inc.*, 110 Cal. Rptr. 2d 145, 170 (Cal. Ct. App. 200 1) (“California case law
28 permits fee awards in the absence of detailed time sheets”), if requested Class Counsel can
produce such records for inspection *in camera* to protect the privileged and work product nature of
the information.

Chart 2. Counsel's Total Time & Lodestar Through April 20, 2018				
Name	Position	Hours	Rate	Lodestar
Stueve Siegel Hanson (Class Counsel)				
Norman E. Siegel	Partner	130.2	\$865	\$112,623.00
Austin Moore	Associate	475.2	\$475	\$225,720.00
Firm Total:		605.4		\$338,343.00
Girard Gibbs (Class Counsel)				
Daniel C. Girard	Partner	20.3	\$900	\$18,270.00
Linh Vuong	Associate	33.9	\$450	\$15,255.00
Simon Grille	Associate	41.5	\$425	\$17,637.50
Firm Total:		95.7		\$51,162.50
ROCK Law (Counsel for Plaintiff Jones)				
Matt Malone	Partner	19.1	\$600	\$11,460.00
David Blum	Paralegal	3.4	\$150	\$510.00
Firm Total:		22.5		\$11,970.00
Combined Total				
		723.6		\$401,475.50

To put Class Counsel's fee request in context, the following summary is provided that delineates the time Class Counsel spent on each phase of the litigation.

A. Settlement negotiations through October 2016.

On May 11, 2016, plaintiff Matthew Pagoaga, a former employee of AAU, filed this action asserting claims against AAU for negligence, violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et. seq.*, and for declaratory relief. *See* Complaint.

Shortly after filing suit, Class Counsel and AAU's former counsel, Zuzana Ikels of Polsinelli LLP, began engaging in settlement discussions. To facilitate these discussions, the parties entered into a stand-still agreement that included multiple stipulations to extend AAU's deadline to respond to the Complaint by 120 days so that the parties could explore the possibility of settlement. *See* Siegel Dec., ¶¶ 6, 7. During this period, the parties regularly communicated on issues relating to settlement and agreed to exchange information necessary to facilitate those discussions, including class member information, detailed information concerning how the breach occurred, the scope and number of individuals affected, the types of injuries suffered by affected individuals, the actions AAU took in response to the breach, and information relating to AAU's vendors retained to handle, create, and secure emails and data, among other relevant information. *Id.*, ¶ 8. Class Counsel also began the process of vetting providers of credit monitoring services for

1 pricing and product information that could possibly be included as part of a settlement. This
2 information gathering process permitted Class Counsel to more fully weigh the merits of the case
3 and formulate an informed settlement demand on behalf of the Class. *Id.*, ¶ 9.

4 On July 26, 2016, Class Counsel participated in a settlement conference with Ms. Ikels and
5 a representative of AAU in San Francisco. *Id.*, ¶ 10. Following that conference, and at AAU's
6 request, Class Counsel prepared a formal settlement demand and delivered it to AAU's counsel on
7 August 15, 2016. The demand consisted of three primary components of relief, all of which were
8 included in the parties' ultimate settlement: (1) three-bureau credit monitoring for all class
9 members; (2) reimbursement to class members with out-of-pocket-losses relating to the breach;
10 and (3) business practice changes including the implementation of technical security barriers and
11 an employee cybersecurity training program. At the time this demand was made, Plaintiffs' total
12 lodestar in the case was \$65,626.50. *Id.*

13 Although the parties were close to settlement at that time, AAU made the decision to
14 replace its legal counsel with the attorneys currently representing AAU. *Id.*, ¶ 11. Given the
15 exchange of information and significant number of settlement discussions that had already taken
16 place, the substitution of counsel stalled the momentum of settlement negotiations considerably.
17 *Id.* Nevertheless, Class Counsel engaged in continued settlement discussions with AAU's new
18 counsel, brought them up to speed on the discussions that had occurred to date, and provided a
19 renewed settlement demand to AAU's counsel on September 27, 2016. The renewed settlement
20 demand again included the three components of relief outlined previously, and set a response
21 deadline of October 11, 2016. *Id.* After further discussions, on October 11, 2016, the parties
22 submitted to the Court a joint stipulation and proposed order to suspend, toll and extend all Court-
23 ordered, statutory and/or other legal deadlines by an additional 21 days. *Id.*, ¶ 12. The stipulation
24 provided that, "The parties have been diligently discussing settlement, and have made substantial
25 progress. The parties expect that within 21 days they will reach a settlement, or alternatively,
26 determine that settlement is not possible at this time." *Id.*

27 On October 28, 2016, Class Counsel provided to AAU's counsel a proposed term sheet
28 setting forth the essential terms of settlement that largely tracked the settlement ultimately agreed

1 to by the parties. *Id.*, ¶ 13. Despite the fact that the parties had been negotiating around the same
2 terms for over 3 months, AAU opted not to move forward with settlement, in part because AAU
3 elected to seek contribution from its cybersecurity provider, NaviSite, LLC. At the time Plaintiffs’
4 second settlement demand was made, Class Counsel’s lodestar was \$81,612.00. *Id.*

5 On November 4, 2016, the parties filed a joint case management conference statement
6 indicating that a settlement had not been reached and proposing a discovery and trial schedule. *Id.*

7 **B. Discovery efforts and AAU’s cross-complaint.**

8 After AAU’s decision to forego participating in settlement discussions in Fall 2016,
9 Plaintiffs moved forward with discovery efforts. On December 1, 2016, Plaintiffs propounded 32
10 document requests on AAU. *Id.*, ¶ 14. On January 25, 2017, Plaintiffs noticed AAU for a person
11 most knowledgeable deposition and served interrogatories on AAU. *Id.*, ¶ 16. On October 18,
12 2016, an additional civil action addressing the breach was filed in this Court. *See Anthony Jones v.*
13 *Academy of Art University Foundation*, Case No. CGC-16-554902. Plaintiffs’ counsel reached an
14 agreement with counsel for Mr. Jones to dismiss the *Jones* action, and Plaintiff Jones joined this
15 action via a First Amended Complaint, which Plaintiffs filed on January 20, 2017. Siegel Dec., ¶
16 17. AAU served its responses and objections to the Plaintiffs’ requests for production of
17 documents on January 26, 2017. To facilitate the exchange of documents, the parties negotiated a
18 protective order that this Court entered on February 22, 2017. In March 2017, AAU responded to
19 Plaintiffs’ interrogatory requests and produced approximately 2,300 pages of documents relating
20 to the breach. *Id.*, ¶ 18. AAU also filed a cross-complaint against NaviSite, LLC for breach of
21 contract, negligence, contractual indemnification, equitable indemnification, partial equitable
22 indemnification, and declaratory relief. *See Cross Complaint.* NaviSite subsequently filed a
23 demurrer to the Cross Complaint. *Id.*, ¶ 15.

24 On April 13, 2017, this Court entered an order sustaining in part and overruling in part
25 NaviSite’s demurrers to the Cross Complaint with leave to amend. Following that ruling, and in
26 advance of Plaintiffs’ motion for class certification, all parties agreed to participate in a joint
27 mediation session on April 25, 2017, before a mediator experienced in complex litigation. Siegel
28 Dec., ¶ 19. From November 2016 through April 2017, Class Counsel spent time attending status

1 conferences, propounding discovery, meeting and conferring on the parties' discovery requests,
2 and reviewing documents. *Id.*, ¶ 20. Class Counsel's lodestar between October 29, 2016, and April
3 19, 2017, which primarily involved discovery work, was \$79,082.50. Class Counsel's total
4 lodestar as through April 19, 2017, was \$160,694.00. *Id.*

5 **C. The parties continue negotiations and reach a settlement agreement.**

6 On April 25, 2017, counsel for Plaintiffs, AAU and NaviSite participated in a ten plus hour
7 mediation session before Cathy Yanni of JAMS ADR in San Francisco, California. *Id.*, ¶ 21.
8 Plaintiffs' counsel proposed a renewed term sheet that largely tracked what they initially proposed
9 in August 2016 and October of 2016, but AAU refused to sign the term sheet until after it reached
10 a settlement with NaviSite, which did not occur at the mediation session. *Id.*

11 Following the mediation, the parties continued to engage in settlement discussions through
12 Ms. Yanni and directly through counsel. *Id.*, ¶ 22. On June 9, 2017, the parties filed a joint
13 stipulation and proposed order to continue class certification deadlines informing the Court that
14 the parties were close to settlement. *Id.* Thereafter, AAU and NaviSite reached an agreement to
15 settle the Cross Complaint. Following that agreement, Plaintiffs and AAU agreed on the essential
16 terms of a settlement and AAU executed the term sheet proposed by Plaintiffs. On July 7, 2017,
17 after more than a year of negotiations, Plaintiffs and AAU filed a joint notice of settlement. *Id.*, ¶
18 23. The settlement, which is summarized at length in Plaintiff's motion for preliminary approval
19 and supplemental filings, provides for relief that meets Plaintiffs' litigation goals, is tailored to the
20 facts of this case, and includes multiple forms of relief that would not otherwise be available at
21 trial. *See Siegel Dec.*, ¶¶ 31-38 (providing overview of settlement).

22 With a term sheet in place, Class Counsel spent the next six weeks undertaking the
23 following tasks: (1) communicating with clients regarding the status of the settlement; (2)
24 preparing the draft settlement agreement; (3) preparing and initiating a request for proposal to
25 multiple settlement administrators; (4) drafting pre-deadline and post-deadline claim forms; (5)
26 drafting the class notice; (6) negotiating the terms of the settlement, claim form and notice with
27 AAU's counsel; (7) selecting the settlement administrator and conferring about the administrator's
28 upcoming tasks; and (8) drafting the motion for preliminary approval of the settlement with

1 accompanying exhibits, which was filed on August 22, 2017. This work was performed almost
2 exclusively by Class Counsel, with nominal input from AAU. *Id.*, ¶ 24. Class Counsel’s lodestar
3 from April 20, 2017 through August 22, 2017, which encompassed the mediation, subsequent
4 negotiations, and preparation of settlement documents, was \$134,066.50. Class Counsel’s total
5 lodestar through August 22, 2017 was \$294,760.50. *Id.*, ¶ 25.

6 **D. Preliminary approval process.**

7 On September 20, 2017, the Court held a hearing on Plaintiffs’ unopposed motion for
8 preliminary approval of the settlement. The Court denied the motion without prejudice and
9 requested clarification of several issues related to the settlement. *Id.*, ¶ 26.

10 Class Counsel thereafter renegotiated several aspects of the settlement with AAU, revised
11 the class notice and claim forms in accordance with the direction offered by the Court, and
12 prepared a renewed motion for preliminary approval. *Id.*, ¶ 27. As part of that filing, Plaintiffs
13 provided the Court with supplemental information regarding the types of harm likely to be
14 experienced by class members with accompanying exhibits, a summary of documentation
15 produced by AAU in the litigation, an explanation as to the benefits of the credit monitoring and
16 fraud resolution services offered under the settlement, and more information regarding the claims
17 process and contractual business commitments undertaken by AAU. The renewed motion came
18 for hearing on January 16, 2018. On that same day, the Court issued an order continuing the
19 motion so that the parties could address several additional issues raised by the Court. *Id.*

20 On February 6, 2018, Plaintiffs filed a supplemental memorandum that included additional
21 information requested by the Court along with a revised settlement agreement, class notice and
22 claim forms. On February 13, 2018, the Court granted the renewed motion for preliminary
23 approval. *Id.*, ¶ 28. Class Counsel’s lodestar from August 23, 2017 through February 13, 2018,
24 which encompassed time spent attending hearings and preparing supplemental filings relating to
25 the settlement, was \$96,610.00. Class Counsel’s total lodestar through February 13, 2018 was
26 \$382,590.50. *Id.*, ¶ 29.

27 **E. Settlement administration.**

28 Since preliminary approval of the settlement, Plaintiffs’ counsel has spent time directing

1 and overseeing administration of the settlement, including preparation of the settlement website,
2 distribution of class notice, reviewing claims, and consulting with class members. Excluding their
3 time preparing this motion, Class Counsel’s total lodestar through April 20, 2018 is \$389,505.50.²
4 *Id.*, ¶ 30. As explained further below, Class Counsel will likely spend significant additional time
5 overseeing administration of the settlement, communicating with class members, preparing and
6 arguing the motion for final approval, handling possible appeals, and overseeing claims
7 distribution during the multi-year tail period.

8 **III. ARGUMENT**

9 **A. The lodestar method is the proper measurement of the reasonableness of Class**
10 **Counsel’s fees.**

11 The parties’ Settlement Agreement provides Class Counsel with an award of reasonable
12 attorneys’ fees and costs. The applicable language from the Settlement Agreement states:

13 **Attorneys’ Fees, Costs and Expenses.** AAU agrees to pay the reasonable
14 attorneys’ fees, costs and expenses of Plaintiffs’ counsel in prosecuting this Action.
15 Class Counsel will make an application for such fees, costs and expenses to the
16 Court at least 21 days before the Objection Deadline. AAU reserves the right to
17 oppose or otherwise object to the amount of the fee, cost, or expense request ...
18 Any award of attorneys’ fees, costs, and expenses shall be paid by AAU separate
19 from any additional benefits offered under this Settlement. (Agreement, ¶ 64).³

20 ² Including the \$11,970 submitted by Mr. Malone for his work representing Plaintiff Jones, the
21 total lodestar is \$401,475.50.

22 ³ As successful plaintiffs in a class action, Plaintiffs may also be awarded reasonable attorneys’
23 fees and costs under California law and as a “private attorney general” pursuant to section 1021.5
24 of the California Code of Civil Procedure. *See Serrano v. Priest*, 569 P.2d 1303, 1309 (1977)
25 (*Serrano III*); *Serrano v. Unruh*, 652 P.2d 985, 988, 992 (Cal. 1982) (*Serrano IV*) (“The private-
26 attorney-general theory rests on the policy of encouraging private actions to vindicate important
27 rights affecting the public interest, without regard to material gain.”); Cal. Civ. Proc. Code
28 §1021.5. California’s “private attorney general” statute is designed to shift the costs of enforcing
important rights affecting the public interest from private plaintiffs to defendants. Cal. Civ. Proc.
Code § 1021.5; *see also Serrano IV*, 652 P.2d at 992. Courts have found that cases enforcing
California’s Unfair Competition Law, as this one does, satisfy this prerequisite. *See, e.g.,*
MacDonald v. Ford Motor Co., 142 F. Supp. 3d 884, 895 (N.D. Cal. 2015). Moreover, it is “not
significant that the ‘benefits’ found were achieved by settlement ... rather than by final judgment.”
West Cmty. for Indep. Living, Inc. v. Obledo, 657 P.2d 365, 367 (Cal. 1983) (citation omitted).

1 Under California law, there are “[t]wo primary methods of determining a reasonable
2 attorney fee in class action litigation.” *Laffitte v. Robert Half Int’l Inc.*, 376 P.3d 672, 676 (Cal.
3 2016). “The percentage method calculates the fee as a percentage share of a recovered common
4 fund or the monetary value of plaintiffs’ recovery. The lodestar method, or more accurately the
5 lodestar-multiplier method, calculates the fee ‘by multiplying the number of hours reasonably
6 expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may
7 increase or decrease that amount by applying a positive or negative ‘multiplier’ to take into
8 account a variety of other factors, including the quality of the representation, the novelty and
9 complexity of the issues, the results obtained, and the contingent risk presented.’” *Id.* at 676-77
10 (citations omitted). “The choice of a fee calculation method is generally one within the discretion
11 of the trial court, the goal under either the percentage or lodestar approach being the award of a
12 reasonable fee to compensate counsel for their efforts.” *Id.* at 687 (citing *In re Consumer Privacy*
13 *Cases*, 96 Cal. Rptr. 3d 127, 136-37 (Cal. Ct. App. 2009)).

14 It is well established under both Ninth Circuit and California law that where there is no
15 traditional “common fund”, the lodestar-multiplier method is the appropriate method for
16 determining the reasonableness of an attorneys’ fee award. *See, e.g., In re Consumer Privacy*
17 *Cases*, 96 Cal. Rptr. 3d at 136-37 (recognizing that where there is no “common fund” justifying a
18 percentage recovery, a “lodestar” approach should be used in calculating fees); *Create-A-Card,*
19 *Inc. v. Intuit, Inc.*, No. C 07-06452 WHA, 2009 WL 3073920, at *1 (N.D. Cal. Sept. 22, 2009)
20 (“Because there is no ‘common fund’ here, the ‘percentage-of-the-fund’ method is not available as
21 a way to calculate attorney’s fees. Under both Ninth Circuit and California law, courts have
22 discretion to use the lodestar method in awarding attorney’s fees.”); *cf., Lilly v. Jamba Juice Co.*,
23 No. 13-cv-02998, 2015 WL 2062858, at *5 (N.D. Cal. May 4, 2015) (“Because the settlement
24 [here] resulted in injunctive relief, the lodestar method is the appropriate measure for calculating
25 attorneys’ fees.”). This concept was recently reiterated in *Laffitte*, where the California Supreme
26 Court explained that it has historically “endorsed the lodestar or lodestar-multiplier method of
27 calculating an attorney fee award” in cases where there is no common fund. *Laffitte*, 376 P.3d at
28 684 (collecting cases). Indeed, “under California law, it has been held that the percentage-of-

1 recovery method should only be used for common fund cases, where the amount of recovery is a
2 ‘certain or easily calculable sum of money.’” *Yamada v. Nobel Biocare Holding AG*, No. CV-10-
3 04849-MWF, 2014 WL 12689937, at *5 (C.D. Cal. Feb. 4, 2014), *vacated and remanded on other*
4 *grounds*, 825 F.3d 536 (9th Cir. 2016) (quoting *Serrano v. Priest*, 20 Cal. 3d 25, 35 (Cal. 1977)).
5 Consequently, in settlements that do “not provide a conventional common fund or an easily
6 calculable sum of money, the lodestar method should be used.” *Id.*

7 There is no “common fund” in this case. Class members with out of pocket losses will be
8 paid on a claims-made basis. In addition, all class members are entitled to enroll in credit
9 monitoring services offered as part of the Settlement, a product that otherwise would cost at least
10 \$20 per month. All class members, regardless of whether they elect to enroll in credit monitoring
11 will have access to identity restoration services in the event they suffer fraud in the future. Finally,
12 as an additional benefit to the class, AAU has agreed to pay the reasonable attorneys’ fees, costs
13 and expenses of Plaintiffs’ counsel in prosecuting this action separate and apart from any relief
14 provided to the class. *See* Siegel Dec., ¶¶ 31-38. Because this relief does not constitute a
15 traditional “common fund,” the reasonableness of Class Counsel’s fees should be considered
16 under the lodestar-multiplier method. *See Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 978 (S.D. Cal.
17 2014) (“because there is no common fund, the lodestar analysis applies to Class Counsel’s
18 request.”). Moreover, “[u]nder the lodestar method, a fee award need *not* bear any
19 specific proportionality to the dollar amount of the recovery. *Britto v. Zep Inc.*, No. A141870,
20 2015 WL 5657147, at *16 (Cal. Ct. App. Sept. 25, 2015) (collecting cases) (emphasis in original).
21 Therefore, while Class Counsel believes the settlement benefits conferred on class members in this
22 case are significant, the Court need not conduct a “proportionality” analysis to assess the
23 reasonableness of Class Counsel’s fees under the lodestar method.

24 **1. Class Counsel have spent a reasonable number of hours on this litigation.**

25 “Where a plaintiff has obtained excellent results, his attorney should recover a fully
26 compensatory fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Here, Class Counsel has
27 spent approximately 701 hours litigating this case from April 26, 2016 through present, which
28 averages to approximately 6.8 hours per week.

1 To assist the Court in evaluating the reasonableness of the time spent in this litigation,
2 Class Counsel has thoroughly reviewed their contemporaneously maintained time records and
3 submitted a detailed summary of the work performed throughout the case. In doing so, Class
4 Counsel staffed the case efficiently, utilized the firm's standard billing practices to track and
5 record time, and exercised significant billing judgment before submitting the requested hours to
6 the Court. *See* Siegel Dec., ¶¶ 39-49. In Class Counsel's professional opinion, all of the time being
7 submitted to the Court is of the kind and character that Class Counsel would bill to a fee-paying
8 client and is reasonable in light of the nature of this litigation. *Id.*

9 *First*, Class Counsel staffed this case efficiently with primarily one associate (Mr. Moore,
10 billing at a rate of \$475 per hour) handling the day-to-day management of the case, under the
11 oversight of one partner (Mr. Siegel, billing at a rate of \$865). *Id.*, ¶ 39. The tasks performed by
12 Mr. Moore included investigating the facts underlying the case, interviewing potential plaintiffs,
13 drafting the Complaint, attending and presenting at status conferences, preparing written discovery
14 requests and responses, and serving as the primary client contact. *Id.* Where appropriate, these
15 attorneys utilized the expertise of their local counsel, Daniel Girard and other attorneys at Girard
16 Gibbs, who are members of the California bar, familiar with the rules of this Court, and have
17 significant experience in complex data breach litigation. These staffing decisions resulted in Class
18 Counsel billing considerably less on the case than if more senior attorneys had handled day-to-day
19 management of the case. *Id.*, ¶ 40.

20 *Second*, Class Counsel has submitted declarations (which attest to detailed time
21 summaries) demonstrating the amount of time spent by Class Counsel in this litigation. *See* Siegel
22 Dec., ¶¶ 43-46; Girard Dec., ¶ 6; Ex. A; *see also* Malone Dec., ¶¶ 4, 5. Class Counsel maintained
23 contemporaneous time records for all timekeepers in 6-minute increments. Siegel Dec., ¶ 43. A
24 large portion of this time relates to negotiation of the settlement. As explained above, Plaintiffs
25 made their initial settlement demand, which largely tracks the settlement terms ultimately agreed
26 upon by the parties, in August 2016 after the parties had already engaged in extensive settlement
27 negotiations, exchanged settlement information, and participated in a formal settlement
28 conference. *Id.*, ¶¶ 46, 47. Had AAU agreed to a settlement in the Fall 2016, Class Counsel's

1 lodestar would be materially lower. AAU instead chose to hire new counsel and pursued a third
2 party claim against NaviSite, which significantly complicated settlement negotiations, delayed
3 resolution, and added to the transaction costs of reaching a settlement. *Id.*, ¶ 48.

4 While AAU is fully within its rights to vigorously defend itself and seek to hold third
5 parties accountable for their potential fault, Class Counsel’s lodestar should be considered in
6 context – AAU refused to settle this case on substantially similar terms in the Fall 2016, when
7 Class Counsel’s lodestar was significantly less.

8 *Third*, Class Counsel personally reviewed all of the time entries billed to this matter and
9 exercised billing judgment to exclude hours that, in Class Counsel’s professional judgment, were
10 excessive, duplicative, or otherwise could not be billed to a fee-paying client. *Id.*, ¶ 44. Through
11 the exercise of billing judgment, Class Counsel collectively eliminated approximately 61.7 hours
12 of attorney and staff time representing \$27,216 in lodestar, including eliminating all paralegal
13 time, legal assistant time, and all timekeepers who billed less than 10 hours to the case.⁴ *Id.*, ¶ 45.

14 *Finally*, based on their collective several decades prosecuting class actions, Class Counsel
15 estimate that the prospective work needed to administer the case through final approval, any
16 possible appeals, and the tail deadline, which runs at least through March 2020, will be
17 approximately \$60,000 to \$100,000 in additional lodestar, resulting in an estimated total lodestar
18 of between \$460,000 and \$500,000 bringing this matter to final resolution. *Id.*, ¶ 67.

19 **2. Class Counsel’s hourly rates are reasonable and supported by their experience.**

20 Courts may determine the reasonableness of counsels’ hourly rates in part by examining
21 “the range of fees freely negotiated in the legal marketplace in comparable litigation.” *In re*
22 *Consumer Privacy Cases*, 96 Cal. Rptr. 3d at 136. Class Counsel’s hourly rates are reasonable and
23 are the same rates that are charged by Class Counsel for legal services in both contingency and
24 non-contingent matters. Siegel Dec. ¶ 56 ; Girard Dec., ¶ 10.

25 Chart 1, *supra*, reflects the hourly rates and experience for all of Class Counsel’s
26 timekeepers ranging from \$865-\$900 per hour for senior partners and \$425-\$475 per hour for

27 ⁴ In a further exercise of billing judgment, Class Counsel have elected not to submit their time
28 spent preparing this application for attorneys’ fees. *Id.*

1 associates. Chart 2 contains Class Counsel’s total lodestar broken down by timekeeper and shows
2 that Class Counsel has, to date, expended approximately 701 hours of attorney time on this
3 litigation (with an additional 22.5 hours spent by counsel for Plaintiff Jones). In determining the
4 reasonableness of the hourly rates, a court must set rates according to what the market commands
5 for analogous litigation. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The relevant community for
6 the purposes of determining the prevailing market rate is generally the “forum in which the district
7 court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). The fee applicant
8 must produce satisfactory evidence “that the requested rates are in line with those prevailing in the
9 community for similar services by lawyers of reasonably comparable skill, experience and
10 reputation” which becomes the “prevailing market rate.” *Id.*

11 Here, the submitted rates for these attorneys are well justified based on their skill,
12 experience, and reputations in the community, as well as the prevailing market rates. *See*
13 *generally*, Saltzman Dec.; Siegel Dec., ¶¶ 52-56; Girard Dec., ¶¶ 11, 12. Moreover, Class
14 Counsel’s rates have been approved in similar litigation, including cases prosecuted in California.
15 *See, e.g., Hapka v. CareCentrix, Inc.*, No. 16-cv-02372-KGG, 2018 WL 1879845 (D. Kan. Feb.
16 15, 2018) (approving Stueve Siegel Hanson’s 2017 hourly rates in a data breach class action
17 ranging from \$645-\$865 per hour for partners and \$375-\$475 per hour for associates, including
18 Mr. Siegel’s hourly rate of \$865 and Mr. Moore’s hourly rate of \$475); *Spangler v. Nat’l Coll. of*
19 *Tech. Instruction*, 2018 WL 846930, at *2 (S.D. Cal. Jan. 5, 2018) (approving Stueve Siegel
20 Hanson’s 2016 rates of \$795-\$825 per hour for partners and \$315-\$525 per hour for associates);
21 *Criddell v. Premier Healthcare Services, LLC*, Case No. 16-cv-05842-R-KS, Doc. 64 (C.D. Cal.
22 Jan. 16, 2018) (approving Stueve Siegel Hanson’s 2016 hourly rates of \$825 per hour for partners
23 and \$395 per hour for an associate with 5 years of experience); *Magill v. DIRECTV, LLC*, No. CV
24 16-00356-SVW-AS, 2017 WL 8894320, at *4 (C.D. Cal. June 23, 2017) (approving Stueve Siegel
25 Hanson’s 2016 rates of \$825 per hour for partners and \$600-\$650 per hour for of counsel).

26 Furthermore, a cross check of other hourly rates awarded to firms in other complex class
27 action further confirms that those sought by Class Counsel are commensurate with the relevant
28 legal market. *See, e.g., Laffitte v. Robert Half Int’l Inc.*, 180 Cal. Rptr. 3d 136, 152 (Cal. Ct. App.

1 2014) (affirming trial court’s acceptance of expert’s finding that “hourly rates approved by
2 California courts rang[ed] from \$750 to \$875” and that “surveys for 2009 showed hourly rates
3 ranging from \$775 to \$950”); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK,
4 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015) (approving hourly partner rates between \$490-
5 \$975); *Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW, 2017 WL 6017844, at *1
6 (N.D. Cal. Dec. 5, 2017) (approving hourly counsel rates ranging “from \$275 to \$950 per hour”);
7 *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liab. Litig.*, 3:15-
8 md-02672, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving blended rate of \$529
9 per hour that included billing rates up to \$1600 for partners); *see also* Saltzman Dec., ¶ 11.

10 Class Counsel’s rates are also well-supported by their expertise in this area of the law.
11 Attorneys from Stueve Siegel Hanson and Girard Gibbs have played lead roles in many of the
12 largest data breach class actions in U.S. history. *See* Siegel Dec., ¶¶ 57-65; Girard Dec., ¶ 9. For
13 example, Mr. Siegel and Mr. Girard served as members of plaintiff’s executive committee in *In re*
14 *Target Corp. Customer Data Security Breach Litigation*, No. 14-md-2522 (D. Minn.) (involving
15 breach affecting tens of millions of customers); Mr. Siegel was appointed as co-lead counsel and
16 Mr. Girard on the plaintiff’s executive committee in *In re Home Depot Customer Data Security*
17 *Breach Litigation*, No. 14-md-02583 (N.D. Ga.) (involving breach affecting more than 60 million
18 customers); and Mr. Siegel was recently appointed as co-lead counsel in *In re Equifax, Inc.,*
19 *Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.), which stemmed from
20 a massive breach that compromised information of more than 145 million consumers. Mr. Moore
21 has likewise played key roles in litigating these cases. Siegel Dec., ¶¶ 60-62. Consequently, Class
22 Counsel was not “learning on the job” when prosecuting this action – they used their considerable
23 experience in complex data breach class actions to efficiently staff the case and negotiate a well-
24 informed settlement based on their experiences in prior, similar litigation. *Id.*, ¶ 65.

25 **3. A modest multiplier on current time is appropriate.**

26 California courts have held that although “the lodestar is the basic fee for comparable legal
27 services in the community; it may be adjusted by the court based on factors including (1) the
28 novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the

1 extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4)
2 the contingent nature of the fee award.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132, 17 P.3d 735,
3 741 (Cal. 2001). Plaintiffs are seeking a reasonable fee of \$455,000, which represents a modest 1.1
4 multiplier on Plaintiffs’ current lodestar, but will likely result in a negative multiplier when taking
5 into account Class Counsel’s future work continuing to oversee administration of the settlement,
6 communicating with class members, preparing and arguing the motion for final approval, handling
7 possible appeals, and overseeing claims distribution during a multi-year claims period.⁵ Siegel
8 Dec., ¶ 68. As detailed in the Siegel Declaration, Class Counsel’s fee is well-supported by each of
9 the above factors, especially given the contingent risk of the litigation. *See* Siegel Dec., ¶¶ 69-73.

10 **B. The costs and expenses are fair and reasonable.**

11 Plaintiffs’ counsel has incurred a total of \$24,903.53 in unreimbursed expenses and costs
12 prosecuting this case on behalf of the Plaintiffs and class members. *See* Siegel Dec., ¶¶ 50, 51
13 (costs and expenses of \$17,495.67); Girard Dec., ¶ 13; Ex. C (costs and expenses of \$6,414.19);
14 Malone Dec., ¶ 10 (costs and expenses of \$993.67). All of these expenses were reasonably
15 necessary for the prosecution of this litigation and are recoverable under the Agreement.

16 **C. The unopposed service awards are fair and reasonable.**

17 Service awards are commonly awarded in class action litigation to those who have devoted
18 the time and effort to represent a class of similarly situated individuals. *Clark v. Am. Residential*
19 *Servs. LLC*, 175 Cal.App.4th 785, 804 (Cal. Ct. App. 2009). Plaintiffs seek – and AAU has agreed
20 not to oppose – reasonable service awards to Plaintiffs Matthew Pagoaga and Anthony Jones in
21 the amount of \$2,500 each for their efforts on behalf of the class. *See* Siegel Dec., ¶ 74.

22 **IV. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that the Court award attorneys’
24 fees in the amount of \$455,000, costs and expenses in the amount of \$24,903.53, and an award of
25 \$2,500 each to Plaintiff Pagoaga and Plaintiff Jones for their service as class representatives.

26 ⁵ Plaintiffs’ request is at the low-end of the range of those approved for attorneys’ fees in class
27 actions that have settled before trial. *See, e.g., Wershba*, 110 Cal. Rptr. 2d at 170 (“Multipliers can
28 range from 2 to 4 or even higher”) (collecting cases); *In re Consumer Privacy Cases*, 96 Cal. Rptr.
3d at 131-37 (affirming a 1.75 multiplier even without cash awards to class members).

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Respectfully submitted,

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