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17 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

18 **IN AND FOR THE COUNTY OF MARICOPA**

19 Carol Dearing, On Behalf of Herself and	)	Case No.: CV2020-013648
20 All Others Similarly Situated,	)	
	)	
21 Plaintiff,	)	<b>PLAINTIFF’S UNOPPOSED</b>
	)	<b>MOTION FOR AND</b>
22 v.	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>AWARD OF ATTORNEYS’ FEES</b>
23 Magellan Health, Inc. and Magellan RX	)	<b>AND EXPENSES AND</b>
24 Management, LLC,	)	<b>PLAINTIFF’S INCENTIVE</b>
	)	<b>AWARD</b>
25 Defendants.	)	
	)	(Assigned to the Hon. Connie Contes)

26 Pursuant to the Court’s August 1, 2022 Order Preliminarily Approving Settlement  
27 and Providing for Notice, Plaintiff requests the Court enter an Order granting Plaintiff’s  
28 Motion for Award of Attorneys’ Fees and Expenses and Plaintiff’s Incentive Award.

This Motion is based upon this Notice of Motion, the accompanying Memorandum  
of Points and Authorities, and the evidentiary submissions, including the Declaration of

1 Class Counsel (“Class Counsel Decl.”) attesting to their hourly rates and total hours devoted  
2 to the case, their experience, and describing their efforts to prosecute this case, and the  
3 Declaration of Elaine A. Ryan in support of Plaintiff’s Motion (“Ryan Decl.”).

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 This case arises out of an email phishing incident where a Magellan employee  
7 opened a phishing email potentially allowing third-party access to to Magellan’s emails and  
8 attachments containing the personally identifiable information (“PHI”) and/or protected  
9 health information (“PII”) of approximately 273,000 individuals.

10 Class Counsel<sup>1</sup> aggressively litigated this action for over two years. They consulted  
11 with data security experts, engaged in pre-motion informal discovery and attempted an early  
12 mediated resolution. When Plaintiff’s Complaint was dismissed by the Federal Court for  
13 lack of subject matter jurisdiction, Plaintiff’s counsel refiled in State Court and successfully  
14 defeated Magellan’s motion to dismiss Plaintiff’s State Court complaint on all grounds.  
15 Plaintiff’s counsel also defeated Magellan’s subsequent special petition action in the Court  
16 of Appeals.

17 After the special petition ruling on April 21, 2022, the parties agreed to renew  
18 mediation negotiations. They were able to reach agreement on all matters, with the  
19 exception of attorneys’ fees and expenses, and accepted the mediator’s proposal on April  
20 26, 2022. The settlement requires Defendants to provide Settlement Class Members  
21 reimbursements for both ordinary and extraordinary expenses incurred between November  
22 2019 and the Claims Deadline, as a result of the Data Incident. To receive settlement  
23 benefits, Settlement Class Members must submit a valid Claim Form online or by mail prior

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24  
25 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them  
26 in the Stipulation and Settlement Agreement (“Settlement Agreement”) attached as Exhibit  
27 1 to the Affidavit and Declaration of Elaine A. Ryan in Support of Preliminary Approval of  
28 Class Action Settlement and Certification of Class, previously attached as Exhibit A to  
Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and  
Certification of Class (“Preliminary Approval Motion”). To the extent there is any conflict  
between the definitions of those terms, the definitions in the Settlement Agreement will  
control.

1 to the December 15, 2022 Claims Deadline. While the Class only recently received notice  
2 of the Settlement, it appears to be well-received, as of October 21, 2022, there are no  
3 objectors and only three opt outs. Ryan Decl. ¶11.

4 As Class Counsel undertook this matter on a fully contingent basis (Class Counsel  
5 Decl. at ¶6), Plaintiff, by her Class Counsel, respectfully submits this Memorandum in  
6 Support of their Motion for Award of Attorneys' Fees and Expenses in the amount of  
7 \$280,000 (which is significantly less than Class Counsels' lodestar) and a \$2,500 Incentive  
8 Award for Plaintiff. Plaintiff will file a separate Memorandum of Law in Support of her  
9 Motion for Final Approval of the Settlement as a whole on or before November 18, 2022,  
10 pursuant to the Court's Preliminary Approval Order.

11 In light of the benefits obtained, the time and effort devoted by Class Counsel, the  
12 work performed, the skill and expertise required, the risks Counsel undertook, and that  
13 Class Counsels' lodestar exceeds the requested fees, Class Counsel submits that the  
14 requested fee award and the reimbursement of expenses are fair and reasonable. Further,  
15 based on Plaintiff's willingness to act on behalf of the Class, her diligent performance of  
16 her duties as Class representative, and good faith participation in this litigation, the  
17 requested Incentive Award is fair and reasonable.

## 18 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**

### 19 **A. The Data Incident**

20 Defendants are two large healthcare service companies that, among other things,  
21 provide and directly manage pharmaceutical benefits for their members' patients, including  
22 those participating in a wide variety of health plans, including publicly sponsored Medicaid  
23 programs such as TennCare of Tennessee, of which Plaintiff was a member at the time of  
24 the Data Incident. See Ryan Decl. at ¶4.

25 On or about November 8, 2019, Magellan publicly announced that an employee, who  
26 manages member data for various health plans, opened a phishing scheme email that may  
27 have exposed the information of tens of thousands of individuals, including 44,000  
28 TennCare participants. *Id.*, at ¶5. Magellan also announced that there was no evidence

1 that the intruder viewed any of the emails, and Magellan had determined the intruder's  
2 intent was to send spam. Plaintiff alleges that the Data Incident impacted approximately  
3 273,000 individuals whose information, including their names, Social Security numbers,  
4 member IDs, health plans, provider names and the names of the drugs they had been  
5 prescribed, was potentially accessed by an unauthorized party. *Id.*

6 Magellan notified potentially-impacted individuals, including Plaintiff, of the Data  
7 Incident in May 2019. *Id.*, at ¶6.

### 8 **B. District Court Litigation**

9 Plaintiff originally filed this action on April 17, 2020 in the United States District  
10 Court for the District of Arizona. In her initial complaint, she alleged: (1) negligence;  
11 (2) negligence per se; (3) breach of implied contract; (4) unjust enrichment; (5) Arizona  
12 Consumer Fraud Act violations, Ariz. Rev. Stat. §§ 44-1521, et seq.; and, (6) injunctive and  
13 declaratory relief claims. *Id.*, at ¶¶7-8.

14 An early attempt to mediate the case on August 27, 2020 with mediator Rodney Max  
15 of Upchurch, Watson, White & Max – who has extensive experience in the mediation of  
16 data breach cases – failed and litigation continued. *Id.* at ¶¶10-11.

17 On September 3, 2020, the District Court granted Magellan's motion to dismiss  
18 Plaintiff's complaint with prejudice for lack of subject matter jurisdiction, finding that  
19 Plaintiff failed to show that her personal information had been stolen or misused due to the  
20 Data Incident and therefore failed to plead any injury or damages caused by it. *Id.* at ¶14.

21 On September 17, 2020, Plaintiff filed a motion for reconsideration. The federal  
22 court denied this motion. *Id.* at ¶15.

### 23 **C. Superior Court Litigation**

24 On October 26, 2020, Plaintiff filed a putative class action against Magellan in the  
25 Superior Court of Maricopa County, Arizona asserting the same claims against Defendants.  
26 *Id.* at ¶16.

27 On December 21, 2020, Magellan moved to dismiss Plaintiff's complaint based on:  
28 (i) claim and issue preclusion; (ii) lack of standing; and, (iii) failure to state a claim upon

1 which relief could be granted. *Id.* at ¶17. On May 3, 2021, the Superior Court denied  
2 Magellan’s motion to dismiss on all grounds. *Id.* at ¶18.

3 On July 9, 2021, Magellan filed a special action petition with the Arizona Court of  
4 Appeals asserting that the trial court had erred by failing to give full faith and credit to the  
5 federal district court’s dismissal with prejudice. Following full briefing, the Arizona Court  
6 of Appeals accepted jurisdiction over Magellan’s special action petition but denied the  
7 requested relief. *Id.* at ¶¶20-22.

8 Thereafter, the Parties agreed to attend mediation. *Id.* at ¶24. After reaching an  
9 agreement on all matters except the amount of attorneys’ fees and expenses, the Parties  
10 agreed to accept the mediator’s proposal on April 26, 2022. *Id.* at ¶25.

#### 11 **D. History of Negotiations**

12 Going into both mediations, Plaintiff’s Counsel engaged in substantial research  
13 regarding the facts of the Data Incident. The Parties’ Counsel also are well-versed in data-  
14 breach litigation, having experience representing clients on similar matters throughout the  
15 country. The Parties’ Counsel engaged in informal discussions and briefing to assess the  
16 alleged claims and the potential defenses.

17 During the mediation process, Plaintiff’s Counsel, with the assistance of data  
18 security experts, issued informal written requests for data-breach-related information to  
19 Defendants, who produced voluminous documents allowing counsel to evaluate the  
20 circumstances surrounding the Data Incident. For both the 2020 mediation as well as the  
21 2022 session, the Parties agreed to use the same mediator. Mr. Max has vast experience  
22 with class actions and more specifically with data privacy matters.

23 And, before both sessions, rather than waiting for the mediation session to begin,  
24 Plaintiff forwarded a proposed Term Sheet to Defendants, and Defendants responded with  
25 their own proposals. Both Parties briefed the issues and exchanged their legal authorities,  
26 arguments and proposals.

27 For several weeks after reaching an agreement in principle, the Parties diligently  
28 negotiated, drafted, and finalized the settlement agreement, notice forms, and came to an

1 agreement on a claims process and administrator. The Settlement Agreement was finalized  
2 and signed by the Parties on June 23, 2022.

### 3 4 **III. SUMMARY OF SETTLEMENT**

#### 5 **A. Settlement Benefits**

6 With the assistance of data security experts and informal discovery produced by  
7 Defendants, Class Counsel was able to obtain the following relief for the Class:  
8 (1) Reimbursement for Ordinary Out-of-Pocket Expenses and Lost Time; and  
9 (2) Reimbursement for Extraordinary Out-of-Pocket Expenses and Lost Time. See  
10 Settlement Agreement (“Agr.”), Exhibit 1 – Ryan Dec. at ¶¶26-29.

#### 11 **1. Ordinary Out-of-Pocket Expenses**

12 Each Settlement Class Member who submits a valid Claim Form is eligible for up to  
13 \$225.00 in reimbursements for their ordinary out-of-pocket expenses. Expenses that qualify  
14 to be reimbursed include: (i) long distance telephone charges; (ii) cell phone minutes (if  
15 charged by the minute); (iii) internet usage charges (if either charged by the minute or  
16 incurred solely as a result of the Data Incident); (iv) documented costs of credit monitoring  
17 services and/or fraud resolution services purchased between November 2019 and the Claims  
18 Deadline; (v) other losses incurred by Settlement Class Members determined to be fairly  
19 traceable to the Data Incident; and (vi) compensation for attested-to lost time spent dealing  
20 with the Data Incident, at the rate of \$15 per hour for up to two (2) hours of lost time  
21 (attestation requires at least a narrative description of the activities performed during the  
22 time claimed and their connection to the Data Incident). No attestation or verification  
23 requires notarization. *Id.* at ¶32.

24 The total aggregate amount allocated to pay Out-of-Pocket Expenses is \$430,000.  
25 If the Claims exceed this amount, Settlement Class Members’ Settlement benefits will be  
26 reduced by a pro-rata share. *Id.* at ¶34.

1                   **2. Extraordinary Out-of-Pocket Expenses**

2                   Settlement Class Members also are eligible to be reimbursed for additional expenses  
3 up to \$2,500 including: (1) documented expenses directly associated with dealing with  
4 identity theft or identity fraud related to the Data Incident; and (ii) attested-to lost time  
5 dealing with documented identity theft and/or fraud from the Data Incident, at the rate of  
6 \$15 per hour, up to an additional three (3) hours of lost time (attestation requires at least a  
7 narrative description of the activities performed during the time claimed and their  
8 connection to the Data Incident). *Id.* at ¶35.

9                   The total aggregate amount allocated to pay Extraordinary Out-of-Pocket Expenses  
10 is \$1,000,000. If the Claims exceed this amount, Settlement Class Members’ Settlement  
11 benefits will be reduced by a pro-rata share. *Id.* at ¶36.

12                   **B. Notice and Administration Costs.**

13                   All costs of Notice and Administration will be paid by Defendants, including the fees  
14 and expenses of the Claims Administrator. In the event the Settlement does not become  
15 final, these costs will not be reimbursed to Defendants.

16                   **C. Incentive Award to Class Representative.**

17                   The Settlement Agreement provides that Plaintiff may apply for an Incentive Award  
18 in the amount of \$2,500, as compensation for time incurred in preparing and filing the  
19 putative class action, providing documents and relevant information to counsel, and actively  
20 monitoring and participating in the litigation and settlement negotiations.

21                   **D. Attorneys’ Fees and Costs.**

22                   The Settlement Agreement provides that Class Counsel may apply to the Court for  
23 an aggregate award of up to \$280,000 in attorneys’ fees, inclusive of costs, to be paid by  
24 Defendants.

25 **IV. LEGAL STANDARD**

26                   Arizona courts routinely award attorneys’ fees in class action cases. *Charles I.*  
27 *Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 351 (App. 2006); *Kerr v. Killian*, 191  
28

1 Ariz. 293, 295-96 (App. 1998).<sup>2</sup> “[A]wards of attorneys’ fees serve the dual purpose of  
2 encouraging persons to seek redress for damages caused to an entire class of persons and  
3 discouraging future misconduct.” *In re Apollo Grp. Inc. Secs. Litig.*, 2012 WL 1378677, at  
4 \*6 (D. Ariz. Apr. 20, 2012); *see also ESI Ergonomic Solutions, LLC v. United Artists*  
5 *Theatre Circuit, Inc.*, 203 Ariz. 94, 99 (App. 2002). Arizona has approved of fee shifting  
6 using the lodestar method, adjusted up or down depending on certain factors, each of which  
7 support an upward adjustment here. *Charles I. Friedman, P.C.*, 213 Ariz. at 351; *see also*  
8 *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 187 n.5 (App. 1983) (approving  
9 of the lodestar method and adjusting “the amount up or down depending on certain factors”)  
10 (citing 3 Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS* §§ 6900-7040  
11 (1977)).

12 Although a lodestar multiple of 1.5 to 3.0 is common—*see, e.g., Vizcaino v.*  
13 *Microsoft Corp.*, 290 F.3d 1043, 1051, n.6 (9th Cir. 2002) (surveying class actions  
14 settlements nationwide, and noting 54 percent of lodestar multipliers fell within the 1.5 to  
15 3.0 range, and that 83 percent of multipliers fell within the 1.0 to 4.0 range)<sup>3</sup>—Class  
16 Counsel has agreed to limit their fee request to \$280,000, a negative multiplier of 1.923  
17 which is substantially less than Class Counsel has received in similar cases. Class Counsels’  
18 willingness to do so is not based upon any perceived infirmity in the Settlement reached or  
19 their efforts in litigating this case. Instead, the agreed upon fee reduction considered the  
20 relatively early resolution of this case before substantial class and merits briefing had begun.  
21

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22 <sup>2</sup> Because Ariz. R. Civ. P. 23 tracks Fed. R. Civ. P. 23, Arizona courts consider federal  
23 cases construing the federal rules as authoritative. *ESI Ergonomic Solutions, LLC v. United*  
*Artists Theatre Circuit, Inc.*, 203 Ariz. 94, 98 n.2 (App. 2002).

24 <sup>3</sup> *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at \*5 (N.D. Cal. Feb. 6, 2013)  
25 (multiplier of 2.86); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, at \*8  
26 (multipliers ranging on average between 2.4 – 2.6); *Pokorny v. Quixtar, Inc.*, 2013 WL  
27 3790896, at \*2 (N.D. Cal. July 18, 2013) (multiplier of 2.2); *see also Milliron v. T-Mobile*  
28 *USA, Inc.*, 423 F. App’x 131, 135 (3d Cir. 2011) (approving district court’s use of 2.2  
multiplier); *Di Giacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, at \*10-11 (S.D.  
Fla. Dec. 19, 2001) (5.3 multiplier); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. D 358,  
369 (S.D.N.Y. 2002) (4.65 multiplier); *In re Aremissoft Corp. Sec. Litig.*, 210 F.R.D. 109,  
134-35 (D.N.J. 2002) (4.3 multiplier); *Sobel v. Hertz Corp.*, 2014 WL 5063397, at \*10 (D.  
Nev. Oct. 9, 2014) (multiplier of 2.0).

1 **V. CLASS COUNSELS' REQUEST FOR ATTORNEYS' FEES AND EXPENSES IS**  
2 **WARRANTED, FAIR, AND REASONABLE**

3 Class Counsel incurred approximately \$517,828.40 in attorneys' fees and  
4 \$20,706.17 in costs and expect to incur additional fees and costs related to overseeing and  
5 finalizing the settlement. Class Counsel Decl. ¶¶32. Thus, if the Court awards Class Counsel  
6 the agreed upon \$280,000 in fees and costs, Class Counsel will incur a negative multiplier  
7 to their total fees and costs.

8 **A. Counsels' Fee Request is Reasonable As it is Less Than the Actual Fees**  
9 **Incurred.**

10 Plaintiff's fee request of \$280,000 is reasonable. Under the lodestar method, a  
11 presumptively reasonable fee award can be determined by multiplying the number of  
12 hours reasonably expended by Plaintiff's counsel by their reasonable hourly rate.

13 *Schweiger*, 138 Ariz. at 187-88 & n.4.

14 **1. The number of hours that Counsel devoted to this litigation is**  
15 **reasonable.**

16 When determining the reasonableness of a fee request, courts first look at the number  
17 of hours spent by counsel on the case. *Id.* Here, to support the lodestar determination, Class  
18 Counsel submit declarations attesting to their total hours, hourly rates, experience, and  
19 efforts to prosecute this action. *See generally* Class Decl. at ¶¶8-31.

20 Class counsel collectively spent approximately 733.1 hours of attorney and litigation  
21 support time on this action. The number of hours counsel devoted to pursuing this litigation  
22 is appropriate and reasonable, given: (1) the pre-filing investigation required to file the  
23 complaints; (2) the informal discovery efforts taken, including the review of thousands of  
24 documents; (3) the search for, retention of, and consultations with data security experts;  
25 (4) the arm's-length, extended negotiations regarding the Settlement; and (5) post-  
26 settlement efforts, including confirmatory discovery, and drafting the Settlement  
27 Agreement, drafting the Motion for Preliminary Approval, drafting notice to the Class, and  
28 (6) overseeing the administration of the Settlement. *Id.* at ¶7.

Counsel will also expend further time and effort preparing final approval papers and  
resolving any objections, litigating any appeals that result therefrom, and addressing issues

1 raised by Class Members following final approval and judgment. Past experience shows  
2 this ongoing work will add significant time to the work already undertaken. Besides the  
3 hours already billed, Class Counsel anticipates incurring numerous additional hours  
4 finalizing materials for the final fairness hearing, appearing at the final fairness hearing,  
5 continuing to answer questions from Class Members, and resolving any appeals and/or  
6 objections. *Id.*

7 The hours that Class Counsel devoted to this action were reasonable and necessary.  
8 The hard work and commitment ultimately paid off, resulting in a Settlement that provides  
9 comprehensive monetary relief to Class Members. *See Moreno v. City of Sacramento*, 534  
10 F.3d 1106, 1112 (9th Cir. 2008) (“the court should defer to the winning lawyer’s  
11 professional judgment as to how much time he was required to spend on the case.”).

## 12 **2. Counsels’ hourly rates are reasonable.**

13 Class Counsels’ hourly rates are fair and reasonable. Under the lodestar method,  
14 counsel’s reasonable hourly rates are determined by the prevailing market rates that a  
15 lawyer of comparable skill, experience, and reputation could command in the community.  
16 *See, e.g., Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Class  
17 Counsels’ hourly rates range from \$275 to \$1,300, with the high-end reserved only for the  
18 most senior attorneys working on the case. All are highly experienced class action and  
19 complex litigation attorneys routinely called upon to assist other attorneys in high stakes  
20 litigation. Hourly rates for paralegals range from \$190 to 225. These rates are the usual and  
21 customary rates for the firms performing class action work. Class Counsel Decl. at ¶¶-12,  
22 24 and 30.

23 Class Counsel are highly respected members of the bar with extensive experience in  
24 prosecuting high-stakes complex litigation, including data-breach class actions. *Id.* at ¶¶8-  
25 31. Included in the many data-breach cases successfully resolved by Class Counsel are:

- 26 • *In re Valley Anesthesiology Consultants, Inc. Data Breach Litigation*, Case No.  
27 CV2016-013446 (AZ. Dec. 14, 2016);  
28

- 1 • *In re Banner Health Data Breach Litigation*, Case No. 2:16-CV-02696-SRB (D. AZ
- 2 Aug. 9, 2016);
- 3 • *In re Anthem, Inc. Data Breach Litigation*, Case No. 15-MD-02617-LHK (N.D. Cal.
- 4 2015);
- 5 • *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.)
- 6 (“Kimpton”) (Lead Counsel);
- 7 • *In re: Arby’s Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and
- 8 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel);
- 9 • *Jackson, et al., v. Wendy’s International, LLC*, No. 6:16-cv-210-PGB (M.D. Fla.;
- 10 • *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth
- 11 Judicial Court – Cascade County);
- 12 • *In re: Citrix Data Breach Litigation*, No. 19-cv-61350 (S.D. Fla.);
- 13 • *Finerman et al v. Marriott Ownership Resorts, Inc, and International Cruise &*
- 14 *Excursion Gallery* (United States District Court, Middle District of Florida, 3:14-
- 15 cv-1154); and
- 16 • *Boykin v. Tennessee Orthopaedic Alliance, P.A.*, Chancery Court for the State of
- 17 Tennessee – Twentieth Judicial District, Davidson County, Case No. 20-0615-BC;
- 18 • Among others.

19 Class Counsel Decl. at ¶¶8-31.

20

21 **B. Class Counsels’ Fee Request is Reasonable As, Absent the Agreement, It**  
22 **Would Likely Have Been Enhanced by a Multiplier.**

23 “Though the lodestar figure is presumptively reasonable, the court may adjust it

24 upward or downward by an appropriate positive or negative multiplier reflecting a host of

25 reasonableness factors, including the quality of representation, the benefit obtained for the

26 class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In*

27 *re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011); *see also*

28 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). The requested \$280,000

fee award represents a negative multiplier on Class Counsels’ lodestar, well below the low

1 end of multipliers accepted by courts across the country. *See, e.g., Vizcaino*, 290 F.3d 1051,  
2 n.6. The reasonableness factors therefore weigh heavily in favor of granting the total  
3 requested fee award.

4 First, Class Counsel obtained significant monetary relief to compensate Class  
5 Members for both their ordinary and extraordinary out-of-pocket expenses due to the Data  
6 Incident. Class Members will receive these benefits now instead of years from now when  
7 this case is successfully litigated to judgment or not at all if Defendants were to prevail.  
8 This is the most important factor to consider when determining fees. *In re Bluetooth*  
9 *Headset Products Liab. Litig.*, 654 F.3d at 942.

10 Second, Class Counsel faced difficult legal and factual issues, including the  
11 conflicting and ever-changing legal landscape on damages, liability, standing, and class-  
12 action certification in data breach cases. While Class Counsel was able to overcome these  
13 obstacles at the motion to dismiss stage – after almost two years of battle – many of these  
14 same issues and others would be revisited at the class-certification stage. These difficult  
15 legal and factual issues weigh in favor of granting the fee request.

16 Third, given that Class Counsel undertook this case on a contingency basis, they  
17 faced a considerable risk of non-payment. Courts have “routinely” awarded an enhanced  
18 lodestar in cases involving similar risks. *See Vizcaino*, 290 F.3d at 1051 (“[C]ourts have  
19 routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. .  
20 . This mirrors the established practice in the private legal market of rewarding attorneys for  
21 taking the risk of nonpayment by paying them a premium over their normal hourly rates for  
22 winning contingency cases.”); *see also, e.g., Garner v. State Farm Mut. Auto. Ins. Co.*, 2010  
23 WL 1687829, at \*2 (N.D. Cal. Apr. 22, 2010); *Larsen v. Trader Joe’s Co.*, 2014 WL  
24 3404531, at \*9 (N.D. Cal. July 11, 2014); *Bellinghausen v. Tractor Supply Co.*, 2015 WL  
25 1289342, at \*11 (N.D. Cal. Mar. 20, 2015). Class Counsels’ fee request involves a negative  
26 multiplier and is relatively, very reasonable.

27 Fourth, as discussed above, Plaintiff’s legal team comprises some of the most well-  
28 respected class action litigation and complex litigation attorneys in the country. Class

1 Counsels' reputation, experience, and skill were essential to resolving this case. From the  
2 outset, Class Counsel used their resources wisely to conduct informal discovery, minimize  
3 fees, and continually assess a favorable outcome. Never have Defendants ever conceded  
4 liability, the appropriateness of certification other than for settlement, or the existence of  
5 damages. Given the significant risks and uncertainty associated with class actions, it is a  
6 testament to Class Counsels' skill, creativity, and determination that they negotiated  
7 additional relief for the Class.

8 The quality of opposing counsel should also be considered. *See, e.g., In re Equity*  
9 *Funding Corp. of Am. Secs. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Counsel for  
10 Magellan, Baker Hostetler, is one of the largest firms in the nation with over 930 attorneys  
11 and extensive litigation experience. Additionally, Baker Hostetler's National Data  
12 Protection team was ranked in the 2017 edition of *Chambers USA: America's Leading*  
13 *Lawyers for Business*. Class Counsel vigorously litigated, and defense counsel vigorously  
14 defended against, the class-wide claims asserted by Plaintiff.

15 Fifth, the fee request is reasonable because of the future work and expenses that will  
16 be incurred by Class Counsel under the Settlement. This includes all work related to  
17 preliminary and final approval, such as overseeing claims administration, communications  
18 with Class Members, disputes over claims, appeals, and any other issues that may arise  
19 under the Settlement. This future work is substantial and could last for many months.

20 **C. Plaintiff's Expenses Are Reasonable and Were Necessarily Incurred.**

21 Class Counsels' \$280,000 fee request includes their \$20,706.17 in costs incurred in  
22 connection with the prosecution of this action. Class Counsel Decl. at ¶32. Pre-settlement  
23 litigation costs in class action settlements are recoverable. *See, e.g., Staton v. Boeing Co.*,  
24 327 F.3d 938, 974 (9th Cir. 2003). All expenses typically billed by attorneys to paying  
25 clients in the marketplace are compensable. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.  
26 1994). Most of the costs incurred were for filing and court fees, consulting expert fees,  
27 mediation fees, and computer research expenses. Class Counsel Decl. at ¶¶13, 25 and 31.  
28 All costs were necessarily and reasonably incurred to bring this case to a successful

1 conclusion, and they reflect market rates for the categories of expenses incurred. *Id.* at ¶¶13  
2 ,25 and 31. Further, Class Counsel advanced these necessary expenses without assurance  
3 they would even be recouped. *Id.* at ¶6.

4 **D. Plaintiff Respectfully Requests an Incentive Award.**

5 Plaintiff also requests that the Court approve an incentive award of \$2,500 to be paid  
6 by Magellan. Incentive awards for class representatives are routinely provided to encourage  
7 individuals to undertake the responsibilities of representing the class and recognize the time  
8 and effort spent. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)  
9 (“Incentive *awards* are fairly typical in class action cases.”) (emphasis in original).  
10 Incentive awards “compensate class representatives for work done on behalf of the class, to  
11 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,  
12 to recognize their willingness to act as a private attorney general.” *Id.* at 958-59. Courts  
13 may approve incentive awards based on the risk (financial or otherwise) of commencing  
14 suit, the notoriety and personal difficulties encountered, the time and effort spent, and the  
15 duration of the litigation. *See Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D.  
16 Ca. 1995). In many jurisdictions, a \$5,000 incentive payment is “presumptively  
17 reasonable.” *Pierce v. Rosetta Stone, Ltd.*, 2013 WL 5402120, at \*6 (N.D. Cal. Sept. 26,  
18 2013).

19 Plaintiff respectfully requests \$2,500 for her efforts. Plaintiff has been actively  
20 involved since the inception of this lawsuit in 2020, assisting counsel in all phases of the  
21 case, including gathering evidence to file the pleadings. Class Counsel Decl. at ¶7. She  
22 reviewed the settlement materials. *Id.* She was willing to take leave from her work to meet  
23 with counsel and attend trial. *Id.* She was prepared to respond to discovery requests, and  
24 understood her personal information was at issue and would likely be discussed in great  
25 detail. *Id.* The time and effort expended by Plaintiff resulted in a significant recovery for  
26 the Class. The incentive award of \$2,500 is therefore reasonable and compares favorably to  
27 incentive awards in other cases.  
28

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that, if the Court grants final  
3 approval of the Settlement, it also approve the requested attorneys' fees and costs and  
4 incentive award.

5  
6 Dated: October 25, 2022.

Respectfully Submitted,

7 /s/Elaine A. Ryan

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26 *\*\*Pro hac vice admission pending*  
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