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ALEXANDRIA N. VANDEN HEUVEL, on behalf of themselves and all others similarly  
13 situated,

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF SAN DIEGO**

16 D'ANGELO SANTANA, SASHA SAMI )  
SHAMON, and ALEXANDRIA N. VANDEN )  
17 HEUVEL, on behalf of themselves and all others )  
similarly situated, )

18 Plaintiffs, )

19 vs. )

20 RADY CHILDREN'S HOSPITAL-SAN )  
21 DIEGO, a California Corporation; and DOES 1 )  
through 100, inclusive, )

22 Defendants. )

) CASE NO. 37-2014-00022411-CU-MT-CTL  
) ASSIGNED FOR ALL PURPOSES TO:  
) The Honorable Joel R. Wohlfeil  
) Department 73

) **CONSOLIDATED CLASS ACTION**

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

) Date: January 25, 2019

) Time: 9:00 a.m.

) Dept.: C-73

) Judge: Hon. Joel R. Wohlfeil

) Complaint filed: July 8, 2014

) Trial date: Vacated

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1 ESTATE OF ABIGAIL MARCELENO, by and )  
through her successor in interest CYNTHIA )  
2 MARCELENO, )

3 )  
4 Plaintiff, )

5 vs. )

6 RADY CHILDREN'S HOSPITAL - SAN )  
DIEGO, a California Corporation; RADY )  
7 CHILDREN'S HEALTH SERVICES - SAN )  
DIEGO, a California Corporation; RADY )  
8 CHILDREN'S HOSPITAL AND HEALTH )  
CENTER, a California Corporation; DOES 1 )  
through 100, inclusive, )

9 Defendants. )  
10 )

CASE NO. 37-2014-00022652-CU-MC-CTL

Complaint filed:

July 9, 2014

Trial date:

Vacated

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Pursuant to California Rules of Court, Rule 3.769(b) and Code of Civil Procedure § 382,  
4 Plaintiffs D'ANGELO SANTANA, SASHA SAMI SHAMON, and ALEXANDRIA N. VANDEN  
5 HEUVEL (collectively as "Class Representative Plaintiffs") respectfully submit this memorandum  
6 of points and authorities in support of Plaintiffs' motion for award of attorneys' fees, costs, and  
7 incentive awards to Class Representative Plaintiffs. Through this motion, Plaintiffs respectfully  
8 request the Court for (i) an award of attorneys' fees to Plaintiffs' Counsel and reimbursement of  
9 their litigation costs, including the cost of settlement administration, in the total amount of  
10 \$3,925,000 and (ii) incentive or service awards of \$5,000 for each of the appointed Class  
11 Representative Plaintiffs for their significant efforts made on behalf of the Class. As provided in  
12 Section XI of the Settlement Agreement, Defendant RADY CHILDREN'S HOSPITAL – SAN  
13 DIEGO ("Defendant" or "Rady") does not oppose this motion. *See* Kazerounian Decl. ¶ 19.

14 The starting point for any analysis of a fee award is the benefit obtained for the Class. Class  
15 Counsel believe that the instant settlement represents the best result for the Class. In short, the  
16 Settlement Agreement provides multiple components of monetary relief and non-monetary relief  
17 and identity theft protection to Plaintiffs and the Class, including:

- 18 • Cash payment of \$5,000,000 into a non-reversionary Common Fund, which will result in  
19 cash payments to each Class Member in addition to paying for the cost of the identity  
20 theft protection and credit monitoring offered to all Class Members, the Class  
21 Representative Plaintiffs' incentive awards, the costs of notice, settlement  
22 administration, as well as Plaintiffs' attorneys' fees and costs incurred in litigation of  
23 this matter through final approval of the Settlement.
- 24 • Two (2) years of Experian identity theft protection and credit monitoring, including \$1  
25 Million identity theft insurance, provided to all Class Members. This benefit confers a  
26 value to Plaintiffs and the Class of up to approximately \$6,764,616; and
- 27 • Remedial measures by Rady, including enhanced preventative technology measures  
28 incorporated throughout the hospital, revised medical information training and security-  
related remedial measures taken and continuing to be implemented by Rady as a result  
of Plaintiffs' successful litigation of this action. This benefit confers a value to Plaintiffs  
and the Class of approximately \$1,800,000.

*See* Agr. § VI; Kazerounian Decl. ¶ 17; Keegan Decl. ¶ 22. This conferring a **total settlement benefit of approximately \$13,083,345.95** to the Settlement Class. *Id.*

1 **II. THE MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, AND**  
2 **INCENTIVE AWARDS SHOULD BE GRANTED**

3 Class Counsel have successfully secured an excellent result in this litigation, and as  
4 explained below, the requested award of \$3,925,000 for Plaintiffs' aggregate attorneys' fees and  
5 costs reflects a more than reasonable amount, especially in light of the fact that Class Counsel's fees  
6 and costs will continue to rise during the claims period through the date of final approval. As  
7 discussed at length below, Class Counsel is entitled to recover reasonable attorneys' fees, litigation  
8 expenses and costs per the parties' Class Settlement Agreement; and the Court has authority to  
9 award attorneys' fees and litigation expenses in this action pursuant to the common fund doctrine,  
10 recognized by both California State and Federal courts.

11 **A. The Common Fund Doctrine Supports an Award of Attorneys' Fees to**  
12 **Plaintiffs' Counsel in This Case**

13 The common fund doctrine is an equitable doctrine, providing "that one who expends  
14 attorneys' fees in winning a suit which creates a fund from which others derive benefits, may  
15 require those passive beneficiaries to bear a fair share of the litigation costs." *Quinn v. State of*  
16 *California* (1975) 15 Cal.3d 162, 167. "The court has inherent power, under the equitable 'common  
17 fund' doctrine, to order fees paid to the class action attorney out of any recovery obtained by  
18 settlement ...." *See Weil & Brown California Practice Guide: Civil Procedure Before Trial*, 14.142.1  
19 (Rutter Guide 2015) (citing *Boeing Co. v. Van Gernert*, 444 U.S. 472, 478 (1980)). The doctrine is  
20 based on the premise that "the lawyer who recovers a common fund for the benefit of persons other  
21 than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing*  
22 *Co.*, 444 U.S. at 478. The doctrine has been recognized by the California Supreme Court and  
23 repeatedly applied by appellate courts, *see Serrano v. Priest* (1977) 20 Cal.3d 25, 35 ("*Serrano*  
24 *III*"), including in the class action context, *see, e.g., Lealao v. Beneficial California, Inc.*, (2000) 82  
25 Cal. App. 4th 19.

26 To qualify for an award under the doctrine, the plaintiffs must show that their efforts have  
27 "effected the creation or preservation of an identifiable 'fund' of money out of which they seek to  
28 recover their attorneys fees." *Serrano III*, 20 Cal.3d at 37-38. The California Supreme Court has



1 explained that, “when a number of persons are entitled in common to a specific fund, and an action  
2 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that  
3 fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” *Id.* at 34 (*quoting*  
4 *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1). The common fund results when “the  
5 activities of the party awarded fees have resulted in the preservation or recovery of a certain or  
6 easily calculable sum of money-out of which sum or ‘fund’ the fees are to be paid.” *Id.* at 35. As the  
7 appellate court stated in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1809: “In *Serrano v.*  
8 *Priest*, 20 Cal.3d 35, ... the [California] Supreme Court acknowledged the use of a percentage  
9 method in common fund cases ....” The *Dunk* court further indicated that the percentage method  
10 “should only be used where the amount [of the settlement] was a ‘certain or easily calculable sum of  
11 money.’” *Id.* (citing *Serrano III*, 20 Cal.3d at 35).

12 **B. Class Counsel Are Entitled to 30% Percentage Of The Common Fund**

13 Class Counsel has recovered a common fund "for the benefit of persons other than [their]  
14 client[s]," *see Boeing Co.*, 444 U.S. at 478. Specifically, the \$5,000,000 cash that Defendant has  
15 agreed to pay into a non-reversionary common fund, two years of Experian identity theft protection  
16 with up to \$1 million identity theft insurance, and approximately \$1.8 million of remedial measures  
17 by Rady, all of which have a **cumulative benefit of approximately \$13,083,345.95** to the  
18 Settlement Class. Pursuant to the terms of the Settlement Agreement and the Court’s October 26,  
19 2018 Preliminary Approval Order, Class Counsel herein seek an award of attorneys’ fees and costs  
20 in the aggregate amount of \$3,925,000, which is roughly 30% of the cumulative settlement benefit  
21 being conferred upon the Class.

22 The *percentage method* calculates attorney’s fees as a reasonable percentage of the common  
23 fund. *Dunk*, 48 Cal.App.4th at 1808 (this method is particularly appropriate in “common fund”  
24 cases); *see also, Serrano III, supra*, 20Cal.3d at 48-49. Case law surveys suggest that 50% is the  
25 upper limit, with 30-50% commonly being awarded in cases where the common fund is relatively  
26 small. *See Rubenstein, Conte and Newberg, Newberg on Class Actions* at § 14:6. Courts have  
27 consistently recognized that the result achieved is a major factor to be considered in making a fee  
28

1 award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor is the degree of  
2 success obtained”). The Settlement in this action compares favorably and is superior to other  
3 settlements which were granted final approval in class actions involving unauthorized disclosure of  
4 medical information.<sup>1</sup> Further, the identity theft protection and credit monitoring benefits offered in  
5 the present case are more extensive than approved in other class actions.<sup>2</sup> Thus, this Settlement  
6 represents an extraordinary result obtained on behalf of the Class and Class Counsel’s request for  
7 roughly 30% of the cumulate settlement benefit is reasonable, particularly in light of the result  
8 achieved for the Class through this action.

9 **C. The Requested Attorneys’ Fees Are Reasonable Under the Lodestar Approach**

10 The requested fees are reasonable under the lodestar method. The lodestar calculation is  
11 produced by multiplying the number of hours reasonably expended by counsel by a reasonable  
12 hourly rate. *Serrano III, supra*, 20 Cal.3d at 48-49; see also *Lealao v. Beneficial Cal., Inc.* (2000) 82  
13 Cal. App. 4th 19, 26; see also *Ketchum v. Moses*, (2001) 24 Cal.4th 1122, 1133. The lodestar may  
14 then be enhanced or multiplied by the Court to take into account factors other than hours and rates  
15 that go into the determination of a reasonable attorneys’ fees, as “the unadorned lodestar reflects the  
16 general local hourly rate for a fee-bearing case; it does not include any compensation for contingent  
17 risk, extraordinary skill, or any other factors a trial court may consider ....” (*Id.* at p. 1138.) In other  
18 words, the lodestar does not account for the “risk multiplier” sought by Class Counsel in this action.

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21 <sup>1</sup> In *Springer v. Stanford Hospital and Clinics*, No. BC470522, (Super. Ct. Cal. 2014) (Los Angeles Cty.), the court  
22 approved a settlement which anticipated payments of approximately \$100 going to each of the 19,500 class members. In  
23 *Rice v. InSync, et al.*, No. 30-2014-00701147-CU-NP-CJC, (Super Ct Cal. Apr. 15, 2015) (Orange Cty.), the court  
24 approved a settlement which provided a common fund of \$4,125,000 for 50,036 class members, with anticipated  
25 payments of \$51.71 to each class member after accounting for attorneys’ fees and costs. In *Smith v. Regents of the*  
*University of California*, No. RGOS-410004 (Super Ct. Cal. 2010) (Alameda Cty.), a similar class action brought by  
patients against a medical facility for its unauthorized disclosure of medical records, the trial court approved a  
settlement that provided for injunctive relief, payment of a \$1.3 million *cy pres* fund, costs and an incentive award to the  
named plaintiff, and attorneys’ fees, **but no cash payment to class**.

26 <sup>2</sup> See, e.g., *Chakejian v. Equifax Info. Services, LLC*, 275 F.R.D. 201, 206 (E.D. Penn. 2011) (18 months of credit  
27 monitoring); and *Barel v. Bank of America*, 255 F.R.D. 393, 397 (E.D. Penn. 2009) (4 months of credit monitoring).  
Moreover, in a number of privacy class actions, courts have approved *cy pres* settlements in which class members have  
28 received no direct compensation. See, e.g., *Lane v. Facebook, Inc.*, 696 F.3d 811, 825 (9th Cir. 2012); *In re Netflix*  
*Privacy Litig.*, 2013 WL 1120801, \*7 (N.D. Cal. Mar. 18, 2013); *In re Google Buzz Privacy Litig.*, 2011 WL 7460099,  
\*4 (N.D. Cal. Jun. 2, 2011).

1 “There is a ‘strong presumption’ that the lodestar figure represents a reasonable fee.”  
2 *Fischel v. Equitable Life Assurance Society of the United States*, 307 F.3d 997, 1007 (9th Cir.  
3 2002); *see also Morales v. City of San Rafael*, 96 F.3d 359, 363, n.8 (9th Cir. 1996); *Harris v.*  
4 *Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994) (lodestar “presumptively provides an accurate measure of  
5 reasonable attorney’s fees”). “That figure may then be increased or reduced by the application of a  
6 ‘multiplier’ after the trial court has considered other factors concerning the lawsuit.” *See Hensley v.*  
7 *Eckerhart*, 461 U.S. at 433. The ultimate goal is to arrive at a fee that compensates plaintiffs’  
8 attorneys by the same standards that would apply to comparable private attorneys for litigation of  
9 similar difficulty and importance. *See Blum v. Stenson*, 465 U.S. 886, 893 (1984); *Davis v. City and*  
10 *County of San Francisco*, 976 F.2d 1536, 1547 (9th Cir. 1992), *vacated in part*, 984 F.2d 345 (9th  
11 Cir. 1993).

#### 12 **1) The Number of Hours Claimed is Reasonable**

13 Counsel for prevailing parties are entitled to be compensated “for all time reasonably  
14 expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally  
15 is compensated by a fee-paying client for all time reasonably expended on a matter.” *Hensley v.*  
16 *Eckerhart* (1983) 461 U.S. 424, 431 (internal quotes and citation omitted); *see also Laffittee v.*  
17 *Robert Half Int’l* (2016) 1 Cal. 5th 480, 491-92; and *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 632-  
18 33 (*Serrano IV*) (parties “should recover for all hours reasonably spent”); *Roth v. Plikaytis* (2017)  
19 15 Cal. App. 5th 283, 290 quoting *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133 ([P]arties who  
20 qualify for a fee should recover compensation for “all the hours reasonably spent . . .”). The  
21 ultimate goal is to arrive at a fee that compensates plaintiffs’ attorneys by the same standards that  
22 would apply to comparable private attorneys for litigation of similar difficulty and importance.  
23 *Blum v. Stenson*, 465 U.S. 886, 893 (1984).

24 Here, the amount of time Class Counsel spent on this case thus far, which culminated in the  
25 very favorable Settlement, was necessary and entirely reasonable given the complexity of the issues  
26 involved, Rady’s alleged defenses, the length of time the litigation has been pending, and the  
27 exceptional results obtained. Further, Class Counsel coordinated their efforts during various phases  
28

1 of this contentious litigation and the division of work ensured the efficient and non-duplicative  
 2 litigation of this matter. Given this contingent nature of this action and absence of incentive to  
 3 spend unnecessary hours, Class Counsel has appropriately spent the number of hours reasonably  
 4 required protect Class Representative Plaintiffs’ and the Class Members’ interests and to reach a  
 5 successful resolution of the case.

6 **2) The Hourly Rates Requested are Reasonable**

7 Class Counsel are entitled to be compensated at hourly rates that reflect the reasonable  
 8 market value of their legal services, based on their experience and expertise. *Serrano IV*, 32 Cal. 3d  
 9 at 640 n.31; *San Bernardino Valley Audubon Soc’y, Inc. v. County of San Bernardino*, (1984) 155  
 10 Cal. App. 3d 738, 755. “The reasonable hourly rate is that prevailing in the community for similar  
 11 work.” *PCLM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095; *see also Syers Props. III, Inc.*  
 12 *v. Rankin* (2014) 226 Cal. App. 4th 691, 702. Payment at full market rates is essential to entice well-  
 13 qualified counsel to undertake difficult cases such as this one. *San Bernardino Valley Audubon*  
 14 *Soc’y v. Cty. Of San Bernardino* (1984) 155 Cal. App. 3d 738, 755.

15 Here, all of Class Counsel assigned to this matter have considerable experience litigating  
 16 class actions involving a variety of consumer rights issues and have submitted declarations  
 17 evidencing the reasonable hourly rates for their services.<sup>3</sup> Class Counsel’s hours are summarized as  
 18 follows:

COUNSEL	TITLE	RATE	HOURS	TOTAL
<b><i>Cohelan Khoury &amp; Singer</i></b>				
Timothy D. Cohelan	Partner	\$850	78.5	\$66,725.00
Isam C. Khoury	Partner	\$825	29.8	\$24,585.00
Michael D. Singer	Partner	\$825	34.9	\$28,792.50
J. Jason Hill	Associate	\$600	748.3	\$448,980.00
Kristina De La Rosa	Associate	\$500	13	\$6,500.00
Janine Menhennet	Associate	\$550	8.3	\$4,565.00
Amber Worden	Paralegal	\$200	55.2	\$11,040.00
Matthew Atlas	Paralegal	\$170	23.6	\$4,012.00

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 28 <sup>3</sup> See declarations of Class Counsel submitted concurrently herewith in support of this motion: Cohelan Decl. ¶¶ 8-10; Keegan Decl. ¶¶ 25-27; Adler Decl. ¶¶ 6-9; Kazerounian Decl. ¶¶ 26-47; Swigart Decl. ¶¶ 28-32.

1	<b><i>Law Offices of Brian C. Gonzalez</i></b>				
2	Brian C. Gonzalez	Partner	\$500	47.1	\$23,550.00
3	<b><i>Keegan &amp; Baker LLP</i></b>				
4	Patrick Keegan	Partner	\$845	927.5	\$783,737.50
5	James M. Tregilio	Associate	\$695	234.8	\$163,186.00
6	Stacy Johnson	Paralegal	\$95	36.5	\$3,467.50
7	<b><i>Adler Law Group, APLC</i></b>				
8	E. Elliot Adler	Partner	\$695	624.3	\$405,795.50
9	Brittany Zummer	Associate	\$285	22.4	\$6,384.00
10	Sarah Tuttle	Paralegal	\$90	5.9	\$531.00
11	<b><i>Kazerouni Law Group, APC</i></b>				
12	Abbas Kazerounian	Partner	\$695	417.1	\$289,713.00
13	Mona Amini	Associate	\$395	518.4	\$204,768.00
14	<b><i>Hyde &amp; Swigart</i></b>				
15	Joshua B. Swigart	Partner	\$695	163.1	\$113,354.50
16	Robert L. Hyde	Partner	\$595	9.6	\$5,712.00
17	Eva Dickey	Paralegal	\$150	3.1	\$465.00
18	Erin O'Rourke	Paralegal	\$150	6.8	\$1,020.00
19	Kandace Birch	Paralegal	\$150	15.2	\$2,280.00
20	Antonia Smith	Paralegal	\$180	1.8	\$324.00
21	<b><i>Law Offices of Todd M. Friedman</i></b>				
22	Todd M. Friedman	Partner	\$695	27.1	\$18,834.50
23	<b><i>Law Office of Robert J. Waller, Jr.</i></b>				
24	Robert J. Waller	Partner	\$500	393	\$196,500.00
25	<b>TOTAL LODESTAR</b>			<b>4,445.3</b>	<b>\$2,814,933.50</b>

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**3) The Hourly Rates Submitted by Class Counsel are Consistent with the Prevailing Rate in California for Similar Class Action Litigation**

The reasonableness of the hourly rate is determined by the “[hourly rate] prevailing in the community for similar work.” *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). It depends on “the level of skill necessary, time limitations, the amount to be obtained in the litigation, [and] the attorney’s reputation,” *Ketchum v. Moses*, 24 Cal.4th 1122, 1139 (2001), as well as rates in comparable litigation, *see Margolin v. Reg’l Planning Com.*(1982) 134 Cal. App. 3d 999, 1003.

As demonstrated by the lodestar table above, Class Counsel have submitted hourly rates

1 between \$500 and \$850 for attorneys who are partners at their respective law firms and between  
2 \$285 and \$695 for associates at the law firms of Class Counsel. These rates not only fall within the  
3 range of hourly rates previously approved by California courts in consumer class actions, but these  
4 rates are also consistent with the billing rates of firms in California. According to the 2013 National  
5 Law Journal Billing Survey<sup>4</sup>, the billing rate for partners in California law firms ranged from \$305  
6 to \$1,195 per hour. The billing rate for associates at California law firms ranged from \$170 to \$750  
7 per hour for their highest earning associates. Class Counsel’s hourly rates fall within this range.  
8 Further, Class Counsel’s hourly rates are reasonable in light of their significant experience,  
9 expertise, and skill litigating consumer class actions. *See* Cohelan Decl. ¶¶ 8-10; Keegan Decl. ¶¶  
10 25-27; Adler Decl. ¶¶ 6-9; Kazerounian Decl. ¶¶ 26-47; Swigart Decl. ¶¶ 28-32. The extraordinary  
11 result obtained also warrants a fully compensatory fee. As discussed in greater detail above, the  
12 Settlement will result in substantial benefit to the Class and the community in general. Thus, Class  
13 Counsel should be awarded the requested attorneys’ fees and costs.

14 **4) The Attorneys’ Fees Requested Are Fair and Reasonable Under the**  
15 **Lodestar/Multiplier Approach**

16 Under the lodestar approach, the lodestar is calculated by multiplying the reasonable hours  
17 expended by a reasonable hourly rate. *Serrano III, supra*, 20 Cal.3d at 48-49. Once the lodestar is  
18 determined, the court may enhance the lodestar with a multiplier; *Wershba v. Apple Computer, Inc.*  
19 (2001) 91 Cal.App.4th 224, 254; *see also, Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d  
20 1344, 1347; and *Serrano III, supra*, 20 Cal. 3d at 49. The purpose of using the lodestar multiplier  
21 method is to mirror the legal marketplace because counsel will not handle cases for straight hourly  
22 fees payable only if they win; an enhancement is awarded so that the fee received is commensurate  
23 with what attorneys could expect to be compensated for similar services in these circumstances. *See*  
24 *San Bernardino Valley Audubon Soc., v. San Bernardino* (1984) 155 Cal.App.3d 738, 755 (an  
25 award must be large enough “to entice competent counsel to undertake difficult public interest  
26 cases”). No specific findings reflecting the court’s calculations are required. *Wershba, supra*, 91

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28 <sup>4</sup> A true and correct copy of the 2013 National Law Journal Billing Survey is attached as Exhibit 1 to the Declaration of  
Abbas Kazerounian submitted concurrently in support of this motion.

1 Cal.App.4th at 254; and *Rebney, supra*, 232 Cal.App.3d at 1349. “The record need only show that  
2 the attorney fees were awarded according to the ‘lodestar’ or ‘touchstone’ approach.” *Ibid.* In  
3 determining a multiplier, the Court may consider “a variety of other factors, including (1) the  
4 quality of the representation, (2) the novelty or complexity of the issues, (3) the results obtained,  
5 and (4) the contingent risk presented.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26  
6 (2000). While the purpose of an enhancement is “primarily to compensate the attorney for the  
7 prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class,”  
8 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001),” trial courts have broad discretion to enhance  
9 this lodestar upward to take into account various risks undertaken by counsel.” *Lealao*, 82 Cal. App.  
10 19 at 24. In California, “multipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal. App.  
11 4th at 255; *see also Chavez v. Netflix*, (2008) 162 Cal. App.4th 43, 66-67 (approving a multiplier of  
12 2.5, citing *Wershba*); *Vizcaino v. Microsoft Corp.* 290 F.3d 1043 (2002) (approving a multiplier of  
13 3.65).

14 As shown in the lodestar table above, Plaintiffs’ counsel have a lodestar of approximately  
15 \$2,814,933.50 thus far in this action. In addition, Plaintiffs’ counsel have incurred \$136,042.02 in  
16 litigation costs and expenses and the cost of settlement administration is estimated not to exceed  
17 \$80,000.00. Also, if approved by the Court, the Class Representatives will receive a total of \$15,000  
18 in incentive awards. Thus, in requesting an aggregate award of attorneys’ fees in the amount of  
19 \$3,693,957.98 (\$3,925,000 less \$136,042.02 litigation costs, less \$80,000 settlement administration  
20 costs, less \$15,000 in incentive awards), Class Counsel respectfully request a modest multiplier of  
21 approximately 1.31. Given (1) the quality of Class Counsel's representation of the Class, including  
22 the successful adjudication of numerous procedural issues necessary to maintain the action over the  
23 course of four years; (2) the novelty and complexity of the issues litigated by Class Counsel (3) the  
24 result obtained for the Class – a cumulative benefit of approximately \$13,083,345.95 to the  
25 Settlement Class, (4) the substantial contingency risk presented by this litigation which took place  
26 over more than four years, and (5) Class Members’ overwhelmingly positive response to the

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1 certification of the class and the settlement, a modest lodestar multiplier of approximately 1.31 is  
2 reasonable and appropriate.

3 ***a. The Quality of Class Counsel's Representation of the Class***

4 The successful prosecution of these complex claims required the work of highly skilled and  
5 specialized attorneys. As demonstrated by the declarations of Plaintiffs' counsel submitted  
6 concurrently herewith, Class Counsel have had significant experience in litigating consumer class  
7 actions and in privacy litigation. The settlement in this action was achieved as a result of Plaintiff's  
8 successful motion practice, ability to achieve class certification, and preparation to take the case to  
9 trial. The parties have conducted a thorough investigation of the facts through discovery, including,  
10 but not limited to the depositions of over twenty (20) witnesses (eight (8) depositions of  
11 Defendant's employees and designated experts, seven (7) depositions of non-party witnesses, the  
12 depositions of all four (4) named Plaintiffs and their previous Guardians Ad Litem), exchanged  
13 written discovery, including thirty-one (31) of sets of interrogatories, requests for admission, and  
14 requests for production of documents, reviews of over 2,500 pages of documents produced by  
15 Defendant, as well as through Class Counsel's research and private investigations. *See* Cohelan  
16 Decl. ¶¶ 8, 9, 12 & 13; Kazerounian Decl. ¶ 13; Keegan Decl. ¶¶ 12-16. The parties have also  
17 thoroughly analyzed and extensively litigated the relevant legal issues in regard to the claims and  
18 defenses in this action, which include a Class Representation Plaintiffs' contested motion for class  
19 certification and Defendant's contested motion for summary adjudication of the Class  
20 Representative Plaintiffs' individual claims. *Id.* Further, Plaintiffs were opposed in this litigation by  
21 very skilled and highly respected defense counsel, from a prominent firm with a reputation for  
22 vigorous advocacy in the defense of complex litigation cases such as this. Thus, the skill and quality  
23 of Class Counsel's work in this case was a major factor in achieving the result obtained.

24 ***b. The Novelty and Complexity of Issues Litigated by Class Counsel***

25 Plaintiffs faced several potential legal and procedural hurdles throughout this litigation. As  
26 the Court is aware, Plaintiffs successfully opposed Defendant's demurrer and Defendant's Motion  
27 for Summary Judgment. In addition, during the litigation, Defendant argued that Plaintiffs should  
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1 not be able to recover the statutory damages provided by Civ. Code § 56.36 of the CMIA without  
2 showing additional injury to Plaintiffs and that Plaintiffs and Class Members “waived”  
3 confidentiality and their protection under the CMIA by disclosing their medical information to third  
4 parties, and that even if Plaintiffs could prove Defendants' liability on a class-wide basis, Defendant  
5 were entitled to raise this defense as to individual Class Members. These contested issues presented  
6 a variety of novel and complex issues, which were successfully litigated by Class Counsel.

7 *c. The Result Obtained for the Class*

8 As discussed above and in Plaintiffs’ Motion for Final Approval, if the Settlement receives  
9 final approval of the Court, the Class will receive **total Settlement Benefits of \$13,083,345.95**.  
10 The Settlement Administrator shall calculate the pro rata Settlement Share to Final Settlement Class  
11 members by taking the Settlement Fund less the amount to be paid for identity theft protection,  
12 attorneys’ fees, reimbursed expenses, settlement administration costs, and incentive award to the  
13 Class Representatives (Z) and dividing it by the number of Final Settlement Class members who do  
14 not opt out of the Settlement (X), as represented in the following formula:

15 Settlement Share = 
$$\frac{\text{Settlement Fund} - Z}{X}$$

17 Each Class Member shall be entitled to a pro rata cash distribution payment from the Settlement  
18 Fund equal to the Settlement Share amount. If all 14,100 Class members remain in the Final  
19 Settlement Class, the Identity Theft Protection Package is fully utilized, and all such payments are  
20 approved by the Court, the Net Settlement Fund will be \$493,730.00. Thus, it is estimated that  
21 **each Class member will receive a cash payment of no less than \$35.02** from the Settlement  
22 Fund. *Id.*; see also Kazerounian Decl. ¶ 22; Keegan Decl. ¶ 27. In addition to their cash payment,  
23 each Class member will receive **free of charge** two (2) years of the Experian Identity Theft  
24 Protection Package (as defined in Section IV.B of the Settlement Agreement). The total value of  
25 free of charge two (2) years of the Identity Theft Protection Package to the Class is approximately  
26 **\$6,764,616.00**. Thus, the Identity Theft Protection Package will confer an additional value of  
27 approximately **\$479.76 to each Class member** who remains in the Final Settlement Class. *Id.*; see  
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1 also Kazerounian Decl. ¶ 23; Keegan Decl. ¶ 28. Further, the Class will also receive the benefit of  
2 approximately \$1.8 million in remedial measures by Defendant and, allocated amongst all 14,100  
3 Class members, these remedial measures by Rady will confer an additional value of approximately  
4 **\$127.66 to each Class member.** *Id.*; see also Kazerounian Decl. ¶ 24; Keegan Decl. ¶ 29.

5 In sum, if all 14,100 Class members remain in the Final Settlement Class, **each Class**  
6 **member will individually receive approximately \$642.44 in total Settlement Benefits** in the  
7 form of a pro rata cash payment, two (2) years of the Identity Theft Protection Package, and the  
8 remedial measures implemented by Rady as a result of Plaintiffs' successful litigation of this  
9 action.<sup>5</sup> Kazerounian Decl. ¶ 25; Keegan Decl. ¶ 30.

10 ***d. The Contingent Nature of the Fee and Burdens Carried by Class Counsel***

11 Courts routinely award multipliers in class actions that involve risk of non-recovery. *See,*  
12 *e.g., Amaral v. Cintas Corp. No. 2,* (2008) 163 Cal. App. 4th 1157, 1217. As discussed above, Class  
13 Representative Plaintiffs' instant fee award represents Class Counsel's sole compensation for  
14 bringing this action, which was entirely contingent on obtaining a successful result for the Class.  
15 Class Counsel have carried the burden and committed over four years of time, energy, and extensive  
16 resources successfully litigating and ultimately resolving the claims at issue in this action for the  
17 benefit of Class Representative Plaintiffs and the Settlement Class. To date, Class Counsel has  
18 received no payment for their services in conducting this litigation on behalf of Plaintiffs and the  
19 Class, nor have Class Counsel been reimbursed for their out-of-pocket expenses incurred in  
20 successfully litigating this action, including notice to the certified Class. Any fee award or expense  
21 reimbursement to Class Counsel has always been at risk and completely contingent on the result  
22 achieved and on this Court's exercise of its discretion in making any award. Thus, given the risks of  
23 the litigation, there was a substantial chance that Class Counsel could have received nothing at all  
24 for their efforts, time, and substantial advanced costs.

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28 <sup>5</sup> This settlement compares favorably and is superior to other settlements which were granted final approval in class actions involving unauthorized disclosure of medical information. *See* FN 1, *supra*.

1 ***e. The Class Members' Positive Response to the Settlement***

2 Given the significant monetary and non-monetary benefits of this Settlement to the Class,  
3 Class Counsel do not anticipate many objections, if any, from the Class. Also, given the extremely  
4 low number of requests for exclusion (21) following notice of class certification, Class Counsel  
5 believe that there will be few, if any, secondary requests for exclusion in response to the Notice of  
6 Class Action Settlement. Per the Court's Preliminary Approval Order, on November 5, 2018, Notice  
7 of Class Action Settlement was mailed and published on the settlement website informing Class  
8 Members of their right to object to the Settlement or to request exclusion from the Class. *See*  
9 *Molina Decl.*, ¶ 8, & Ex. A. As set forth in the Notice of Class Action Settlement, the deadline  
10 object to the Settlement or to request exclusion from the Class is December 10, 2018. *Id.*, ¶¶ 13-14.  
11 To date, the Settlement Administrator has not received any objections to the Settlement or any  
12 requests for exclusion. *Id.*

13 **D. Class Counsel Are Entitled to An Award of Costs and Litigation Expenses**

14 In addition to the costs recoverable for a prevailing party as a matter of right under Code of  
15 Civil Procedure § 1033.5 (for instance, filing fees, deposition costs, and costs for transcripts of court  
16 proceedings), "expert witness fees and other non-recoverable expenses incurred by counsel may  
17 be awarded under [the Private Attorney General Doctrine] ... if they represent expenses ordinarily  
18 billed to a client and are not included in the overhead component of counsel's hourly rate." *See*  
19 *Beasley v. Wells Fargo Bank* (1991) 235 Cal. App. 3d 1407, 1419.

20 Class Counsel's request for \$3,925,000 includes compensation for litigation expenses  
21 reasonably incurred by Plaintiffs' counsel thus far in this litigation. Class Counsel's total litigation  
22 expenses, not including costs related to providing notice of class certification and settlement  
23 administration, were \$136,042.02. This includes filing fees, expert fees, deposition fees, process  
24 server and mailing charges, costs associated with travel, the cost of focus groups conducted in  
25 preparation for trial, and the parties' mediation. In addition, Class Counsel retained ILYM to  
26 provide notice of class certification and provide settlement administration for this case. The cost of  
27 the Settlement administrator was estimated not to exceed \$80,000 to be paid from the Settlement  
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1 Fund. In light of the favorable result achieved, Class Counsel's costs and litigation expenses were  
2 appropriate and justified as part of the overall settlement and should be awarded by the Court.

3 **III. THE CLASS REPRESENTATIVES ARE ENTITLED TO AN INCENTIVE AWARD**  
4 **FOR THEIR SERVICE TO AND FOR THE BENEFIT OF THE CLASS**

5 The incentive awards allocated by the Settlement Agreement in the amount of \$5,000 for  
6 each of the Class Representative Plaintiffs is reasonable and should be approved. In California,  
7 courts have discretion to issue an incentive award to a named plaintiff "if it is necessary to induce  
8 an individual to participate in a suit." *See Clark v American Residential Servs. LLC*, (2009) 175 Cal.  
9 App. 4th 784, 804. The relevant factors include "the actions the plaintiff has taken to protect the  
10 interests of the class, the degree to which the class has benefitted from those actions, and the  
11 amount of time and effort the plaintiff expended in pursuing the litigation." *Id.* Courts may also  
12 consider "the duration of the litigation" and "the personal benefit (or lack thereof) enjoyed by the  
13 class representative as a result of the litigation." *Id.* citing *Van Vranken v. Atlantic Richfield Co.* 901  
14 19 F.Supp. 294, 299 (N.D. Cal.1995). Often with modest individual monetary stakes in the  
15 litigation, plaintiffs promote enforcement of laws reflecting important public policy and benefitting  
16 a class of persons similarly situated, knowing that they are committing themselves to the burden of  
17 participation in litigation which will primarily benefit the class in contrast to enhancing their  
18 personal recovery. 1 A. Conte, *Attorney Fee Awards*, §2 .25, pp. 94-95 (2nd. ed. 1993) (revised  
19 edition of *Attorney Fee Awards*, by Herbert B. Newberg (Shepard's/McGraw-Hill, Inc. 1986)).  
20 Courts have upheld incentive awards ranging from at least \$5,000 to \$55,000. *See, e.g., Munoz v*  
21 *BCI Coca-Cola Bottling Co.*, (2010) 186 Cal. App. 4th 399, 412 (upholding incentive award of  
22 \$5,000 to two class representatives); *Cellphone Fee Termination Cases*, (2010) 186 Cal. App. 4th  
23 1380, 1393-1395 (upholding incentive award of \$10,000 each to four class representatives who,  
24 among other things, produced documents, answered interrogatories, and provided deposition  
25 testimony).

26 The payment to Class Representative Plaintiffs is intended to recognize the critical role they  
27 each played in this case and the substantial time, effort, and risks undertaken to protect the interests  
28 of the Class and help secure the exceptional results obtained for the benefit of the Class. Although

1 each of the Class Representative Plaintiffs filed a class action lawsuit against Rady, under the terms  
2 of the Settlement Agreement, they do not stand to gain any benefits in addition to those provided to  
3 the Settlement Class as a whole, other than the modest incentive award requested. Furthermore,  
4 each of the Class Representatives spent significant time in pursuing this litigation by responding to  
5 discovery requests, preparing for and appearing for depositions, providing declarations in support of  
6 Plaintiffs' successful Motion for Class Certification, and each of the Class Representatives prepared  
7 to attend and testify at trial. *See* Declaration of D'Angelo Santana ¶ 13; Declaration of Sasha Sami  
8 Shamon ¶ 9; and Declaration of Alexandria Vanden Huevel ¶ 13. In fact, by subjecting themselves  
9 to deposition questioning as the named Class Representative of a CMIA class, each of the Class  
10 Representatives were questioned by Defendant about their highly sensitive medical information –  
11 for which the California Supreme Court has held individuals have a constitutionally protected  
12 privacy interest. *See Hill v. Nat'l Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 52 (individuals  
13 have a reasonable expectation in the privacy of their "medical treatment and medical information").

14 The incentive awards requested for the Class Representative Plaintiffs are consistent with  
15 incentive awards previously approved by California courts and appropriate given the actions taken  
16 and time spent by each Class Representative in litigating this action for the benefit of the Class. In  
17 addition, there have been no objections from Settlement Class Members to the request for an  
18 incentive award of \$5,000 to each of the Class Representative Plaintiffs. Accordingly, an award of  
19 \$5,000 to the Class Representative Plaintiffs reflecting reasonable reimbursement of the time and  
20 effort that they have each spent participating in the litigation should be ordered for the Class  
21 Representatives' extraordinary contributions for the benefit of the Settlement Class.

#### 22 **IV. CONCLUSION**

23 Based on the foregoing, Plaintiffs' Counsel respectfully request the Court for (i) an award of  
24 attorneys' fees to Plaintiffs' Counsel and reimbursement of their litigation costs, including the cost  
25 of settlement administration, in the total amount of \$3,925,000.00 and (ii) incentive or service  
26 awards of \$5,000.00 for each of the appointed Class Representative Plaintiffs for their significant  
27 efforts made on behalf of the Class.

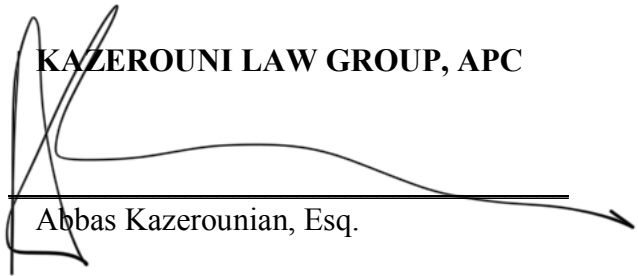
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**KAZEROUNI LAW GROUP, APC**

Dated: November 26, 2018

By:



Abbas Kazerounian, Esq.

Attorneys for Class Representative Plaintiffs  
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