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

16
17 In Re: Robinhood Outage Litigation

Master File No. 3:20-cv-01626-JD

18 CLASS ACTION

19 **PLAINTIFFS' NOTICE OF MOTION AND**
20 **MOTION FOR ATTORNEYS' FEES,**
21 **EXPENSES, AND SERVICE AWARDS;**
22 **MEMORANDUM OF POINTS AND**
23 **AUTHORITIES IN SUPPORT THEREOF**

24 Date: June 15, 2023
25 Time: 10:00 a.m.
26 Judge: Hon. James Donato
27 Ctrm: 11, 19th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 15, at 10:00 a.m., in Courtroom 11 of the United States District Court for the Northern District of California, San Francisco Courthouse, 19th Floor, 450 Golden Gate Ave., San Francisco, CA 94102, the Honorable District Judge James Donato presiding, Plaintiffs will and hereby move for an order pursuant to Rules 23(h)(1) and 54(d)(2) of the Federal Rules of Civil Procedure awarding: (i) Attorneys’ Fees to Plaintiffs’ Counsel¹ in the amount of \$2,970,000, which is 30% of the \$9,900,000 non-reversionary Settlement Fund; (ii) unreimbursed expenses totaling \$1,102,432.84 that Plaintiffs’ Counsel reasonably and necessarily incurred in furtherance of the prosecution of this Action; and (iii) Service Payments of \$2,500 for the Plaintiffs.

This motion is based upon this Motion, the Memorandum of Points and Authorities, the accompanying Joint Declaration of Anne Marie Murphy and Matthew B. George in Support of Plaintiffs’ Motion for 1) Final Approval of Class Action Settlement; and 2) Motion for Award of Attorneys’ Fees, Expenses, and Service Awards (“Joint Decl.”) and all exhibits attached thereto, the Declaration of Liaison Counsel Steve Lopez (“Lopez Decl.”) and all exhibits attached thereto, the Declaration of Scott Walster (“Waslter Decl.”), the fifteen Declarations submitted by the Plaintiffs (“Plaintiff Decls.”) which are attached to the Joint Declaration, the pleadings on file in this Action, and other such matters and arguments as the Court may consider at the hearing on this motion.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should award 30% of the \$9,900,000 non-reversionary Settlement Fund to Plaintiffs’ Counsel as attorneys’ fees;
2. Whether the Court should award \$1,102,432.84 in unreimbursed expenses that Plaintiffs’ Counsel reasonably and necessarily incurred in furtherance of the Action; and
3. Whether the Court should award Service Awards of \$2,500 to the Plaintiffs for their time and effort in pursuing this Action.

¹ Unless otherwise defined herein, capitalized words and terms shall have the same meaning as ascribed to them in the Class Action Settlement Agreement and Release (“Settlement Agreement”). ECF. No. 173-1.

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Respectfully submitted,

DATED: March 27, 2023

/s/ Anne Marie Murphy
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION..... 1

II. SUMMARY OF PLAINTIFFS’ COUNSEL’S EFFORTS2

III. THE COURT SHOULD AWARD ATTORNEY’S FEES4

 A. Plaintiffs’ Counsel Should Be Awarded Attorneys’ Fees from the Common Fund.....4

 B. The Court Should Use the Percentage Method to Calculate Reasonable Attorneys’ Fees4

 C. The Requested Fee Award is Reasonable.....5

 i. Plaintiffs’ Counsel Achieved an Exceptional Result for the Class5

 ii. There was Substantial Risk in this Litigation7

 iii. The Settlement Required Skill and High-Quality Work8

 iv. Plaintiffs’ Counsel Worked for Years on a Contingency Basis9

 v. The Award Requested is on Par with Awards in Similar Cases 10

 D. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees 11

 i. The Hours Devoted to the Case were Necessary and Reasonable 11

 ii. The Hourly Rates are Reasonable..... 12

 iii. A Negative Multiplier Establishes the Reasonableness of the Requested Fees..... 13

IV. PLAINTIFFS’ COUNSEL SHOULD BE REIMBURSED FOR THEIR REASONABLE LITIGATION EXPENSES..... 13

V. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE AND JUSTIFIED 14

VI. CONCLUSION..... 15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Activision Sec. Litig.</i> , 723 F.Supp. 1373 (N.D. Cal. 1989).....	11
<i>In re Am. Apparel, Inc. S’holder Litig.</i> , 2014 WL 10212865 (C.D. Cal. July 28, 2014).....	9
<i>In re Apple Inc. Device Performance Litig.</i> , 2023 WL 2090981 (N.D. Cal. Feb. 17, 2023)	8, 14, 15
<i>In re: Arizona Theranos Incorporated Litigation</i> , No. 2:16-cv-02138-HRH, ECF No. 372 (D. Az. Mar. 5, 2020)	8
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. 2013).....	9
<i>Barnes v. The Equinox Grp., Inc.</i> , 2013 WL 3988804 (N.D. Cal. Aug. 2, 2013)	4
<i>Beckett, et al., v. Aenta, Inc.</i> , No. 2:17-cv-03864-JS (E.D. Pa.).....	8
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015).....	9, 14
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	4
<i>Carlin v. DairyAmerica, Inc.</i> , 380 F.Supp.3d 998 (E.D.Cal. 2019), <i>appeal dismissed sub nom. Carlin v. Spooner</i> , 808 F.App’x571 (9th Cir.2020).....	10
<i>Ching v. Siemens Indus. Inc.</i> , 2014 WL 2926210 (N.D. Cal. June 27, 2014).....	9
<i>Destefano v. Zynga, Inc.</i> , 2016 WL 537946 (N.D. Cal. Feb. 11, 2016)	4
<i>Dickey v. Advanced Micro Devices, Inc.</i> , 2020 WL 870928 (N.D. Cal. Feb. 21, 2020)	12
<i>Doe One, et al., v. CVS Health Corporation, et al.</i> , No. 2:18- cv-00238-EAS-CMV (S.D. Ohio).....	8
<i>Fowler v. Wells Fargo Bank, N.A.</i> , 2019 WL 330910 (N.D. Cal. Jan. 25, 2019).....	12

1 *Garner v. State Farm Mut. Auto. Ins. Co.*,
 2010 WL 1687829 (N.D. Cal. Apr. 22, 2010)..... 11

2

3 *Hanlon v. Chrysler Group, Inc.*,
 150 F.3d 1011 (9th Cir. 1998)..... 5

4

5 *Harris v. Marhoefer*,
 24 F.3d 16 (9th Cir. 1994)..... 13

6 *Harrison v. Bank of Am. Corp.*,
 2021 WL 5507175 (N.D. Cal. Nov. 24, 2021) 5, 11

7

8 *Hensley v. Eckerhart*,
 461 U.S. 424 (1983)..... 5

9

10 *In re Heritage Bond Litig.*,
 2005 WL 1594403 (C.D. Cal. June 10, 2005)..... 11

11 *In re January 2021 Short Squeeze Trading Litigation*,
 2022 WL 255350 (S.D. Fla. Jan. 27, 2022)..... 7, 8

12

13 *Knight v. Red Door Salons, Inc.*,
 2009 WL 248367 (N.D. Cal. Feb. 2, 2009) 4

14

15 *In re Korean Air Lines Co., Ltd. Antitrust Litig.*,
 2013 WL 7985367 (C.D. Cal. Dec. 23, 2013)..... 4

16

17 *Ladore v. Ecolab, Inc.*,
 2013 WL 12246339 (C.D. Cal. Nov. 12, 2013) 10

18

19 *In re LendingClub Sec. Litig.*,
 2018 WL 4586669 (N.D. Cal. Sept. 24, 2018)..... 13

20

21 *In re Lidoderm Antitrust Litig.*,
 2018 WL 4620695 (N.D. Cal. Sept. 20, 2018)..... 12

22

23 *Linney v. Cellular Alaska P'ship*,
 1997 WL 450064 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998) 11

24

25 *In re Lithium Ion Batteries Antitrust Litig.*,
 No. 2018 WL 3064391 (N.D. Cal. May 16, 2018)..... 10

26

27 *In re Media Vision Tech. Sec. Litig.*,
 913 F. Supp. 1362 (N.D. Cal. 1995)..... 14

28

29 *In re Mego Financial Corp. Securities Litigation*,
 213 F.3d 454 (9th Cir. 2000) 6, 11

30 *Moreyra v. Fresenius Med. Care Holdings, Inc.*,
 2013 WL 12248139 (C.D. Cal. Aug. 7, 2013) 9

1 *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Antitrust Litig.*,
 2 768 F. App’x 651 (9th Cir. 2019) 13

3 *In re Nexus 6P Prod. Liab. Litig.*,
 4 2019 WL 6622842 (N.D. Cal. Nov. 12, 2019) 9, 10

5 *In re Omnivision Techs., Inc.*,
 6 559 F. Supp. 2d 1036 (N.D. Cal. 2008)..... 6, 7, 9

7 *In re Pac. Enterprises Sec. Litig.*,
 8 47 F.3d 373at 379 (9th Cir. 1995) 11

9 *Powers v. Eichen*,
 10 229 F.3d 1249 (9th Cir. 2000) 5

11 *Retta v. Millennium Prod., Inc.*,
 12 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) 6

13 *Rodriguez v. West Publ’g Corp.*,
 14 563 F.3d 948 (9th Cir. 2009) 14

15 *Russell v. United States*,
 16 2013 WL 3988778 (N.D. Cal. Aug. 2, 2013) 4

17 *Staton v. Boeing Co.*,
 18 327 F.3d 938 (9th Cir. 2003) 14

19 *In re TFT-LCD Antitrust Litig.*,
 20 2013 WL 149692 (N.D.Cal. Jan. 14, 2013)..... 10

21 *Thomas v. MagnaChip Semiconductor Corp.*,
 22 2018 WL 2234598 (N.D. Cal. May 15, 2018)..... 13

23 *Vizcaino v. Microsoft Corp.*,
 24 290 F.3d 1043 (9th Cir. 2002)*passim*

25 *In re Vizio, Inc., Consumer Priv. Litig.*,
 26 2019 WL 12966639 (C.D. Cal. Jan. 4, 2019) 6, 11

27 *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*,
 28 2017 WL 1047834 (N.D. Cal. Mar. 17, 2017) 13

Weeks v. Kellogg Co.,
 2013 WL 6531177 (C.D. Cal. Nov. 23, 2013) 11

Williamson v. McAfee, Inc.,
 2017 WL 6033070 (N.D. Cal. Feb. 3, 2017) 4

Wong v. Arlo Techs., Inc.,
 2021 WL 1531171 (N.D. Cal. Apr. 19, 2021)..... 6

1 *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*,
2 2020 WL 4212811 (N.D. Cal. July 22, 2020) 12

3 *In re Yahoo! Inc. S'holder Derivative Litig.*,
4 153 F. Supp. 3d 1107 (N.D. Cal. 2015)..... 8

5 **Other Authorities**

6 Federal Rules of Civil Procedure Rules

7 23(h)(1) 1

8 54(d)(2) 1

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10
11
12
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiffs respectfully move the Court for an attorneys' fee award of 30% of the \$9,900,000 non-reversionary Settlement Fund. The amount sought is reasonable given the substantial work performed in the case, the meaningful recovery obtained for the Settlement Class, and the unprecedented nature of this novel and complex consumer/securities class action. The \$9.9 million recovery was not easily achieved as Plaintiffs' Counsel litigated this case for several years and had to overcome serious risks. Those risks included a vigorous defense, uncertain legal issues (such as class certification), and the complicated and hotly contested nature of the Plaintiffs' damages theory, which may have been rejected by the Court or jury had this case proceeded. As a result, Plaintiffs' ability to survive summary judgment and then prevail at trial posed significant risks in this case. Moreover, under a lodestar/multiplier cross-check, the 30% request (\$2,970,000) is especially reasonable as Plaintiffs' Counsel's total lodestar through June 30, 2022, was \$5,450,919.23. That lodestar, which does not include pre-consolidation or post-June 30, 2022 time, represents a negative multiplier of 0.54 when compared to the reasonable requested award of 30%. Considering Plaintiffs' Counsel's extensive efforts, the risks presented, and the quality of the Settlement, the requested fee award should be granted.

Plaintiffs' Counsel also respectfully request reimbursement of their reasonable expenses in the total amount of \$1,102,432.84. The expenses incurred were necessary as this case required considerable amounts of expert input, especially concerning the Plaintiffs' damages modeling and complex data analysis. Moreover, the expenses fairly reflect that this case had been fiercely litigated beyond the completion of fact and expert discovery and the Parties were preparing for expert, class certification, and summary judgment hearings.

Plaintiffs also respectfully request the Court approve Service Awards of \$2,500 to each of the Plaintiffs for their time and efforts in this Action. Plaintiffs' efforts included producing documents, appearing for depositions, providing personal and financial information, and staying abreast of the developments in this case for several years. These efforts directly made the Settlement possible. Accordingly, Plaintiffs should be compensated for the amount of time and effort they expended in pursuing this successful litigation.

1 **II. SUMMARY OF PLAINTIFFS’ COUNSEL’S EFFORTS¹**

2 During the litigation, Anne Marie Murphy of Cotchett, Pitre & McCarthy and Matthew B.
3 George of Kaplan Fox & Kilsheimer LLP, (“Class Counsel”) with support from the Executive
4 Committee and Liaison Counsel (*see* ECF No. 65) (collectively “Plaintiffs’ Counsel”) performed a
5 significant amount of work, including:

- 6
- 7 • In anticipation of filing an amended consolidated complaint, Class Counsel extensively
8 researched the facts that gave rise to the March 2020 outages of Robinhood’s trading
9 platforms and explored the potential legal theories and causes of action;
 - 10 • Ensuring the efficient coordination of the proceedings such as reaching out to (or being
11 contacted by) counsel in each of the Robinhood Actions which facilitated (a) the stipulated
12 transfer of the Taaffe Action from the Middle District of Florida; (b) support for
13 consolidation in the Northern District of California without the need for multi-district
14 litigation proceedings; and (c) the negotiation of a leadership structure necessary to
15 efficiently and sufficiently prosecute the Robinhood Actions;
 - 16 • Drafting and filing three administrative motions to relate the later-filed actions, filing a
17 notice of pendency of other actions, and initiating coordinated outreach to Robinhood’s
18 counsel to forge a path forward for consolidation, subsequent pleadings, scheduling and
19 motion practice;
 - 20 • Working with proposed Executive Committee firms on research pertinent to the
21 consolidated complaint and also meeting and conferring with Robinhood about its Goodwill
22 program to make sure Class members received fair communications and notice of the
23 pending actions, and having limited discussions on reaching a stipulated resolution to the
24 issue to ensure that Class members’ claims were not inappropriately waived or released,
25 and drafting a proposed stipulation to that effect;
 - 26 • Vetting potential class representatives and eventually selecting Plaintiffs who were
27 impacted by the March 2020 Outages from a variety of states and diverse backgrounds;
 - 28 • Negotiating at length over document and discovery-related matters, including, an ESI
protocol for the format of document and data production; a stipulated protective order
governing the confidential treatment of documents; the selection of custodians and search
terms; and the parameters of any productions pursuant to specific requests;

1 For a further, detailed account of the history and facts of this case, the Court is referred to the Joint Declaration at ¶¶ 4-30.

- 1 • Successfully opposing Robinhood’s motion to dismiss the complaint, strike the Plaintiff’s
2 allegations, and stay discovery;
- 3 • Engaging in extensive negotiations over the production of Robinhood’s documents and
4 customer accounts and trading information;
- 5 • Engaging in a comprehensive discovery process including fact and expert discovery into
6 the claims and defenses, written discovery, document productions, expert disclosures, and
7 fact and expert depositions, including the review of more than 50,000 documents produced
8 by Robinhood and deposing ten key Robinhood executives and engineers;
- 9 • Consulting with technical experts on various issues relevant to the Action prior to and
10 during the course of the litigation, as well as during settlement negotiations. Class Counsel
11 also consulted with a damages expert to negotiate a sampling protocol that eventually led
12 to the production of account and trading information for approximately 40,000 Robinhood
13 active users;
- 14 • Filing a Motion for Class Certification, supported by over 50 documentary exhibits and
15 deposition excerpts, the Declaration of Plaintiffs, and their expert reports;
- 16 • Participating in extensive settlement discussions mediated by David Geronemus of JAMS,
17 including a full day of mediation on July 27, 2021, as well as numerous individual and joint
18 conversations with Mr. Geronemus and conversations and email communications between
19 counsel supervised by Mr. Geronemus;
- 20 • Obtaining several competitive bids for the class notice and claims administration, and
21 negotiating every aspect of said programs and costs to ensure the best practicable and most
22 cost-efficient settlement notice and administration program;
- 23 • Documenting the Settlement with Robinhood and briefing the preliminary approval and
24 final approval motions, as well as preparing for and attending the hearings on the motion;
25 and
- 26 • Overseeing the notice and claims administration process.

24 *See* Joint Decl. ¶¶7-30, 57-58.

25 All told, Plaintiffs’ Counsel devoted thousands of hours and advanced significant expenses to
26 develop and prosecute the Action and negotiate a favorable Settlement for the Settlement Class. *See*
27 Joint Decl. ¶48, Lopez Decl. ¶¶7-10, and Motion for Final Approval.

1 **III. THE COURT SHOULD AWARD ATTORNEY’S FEES**

2 **A. Plaintiffs’ Counsel Should Be Awarded Attorneys’ Fees from the Common Fund**

3 “This Court has recognized consistently that a litigant or a lawyer who recovers a common fund
4 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
5 the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “It is well established that
6 a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which
7 others also have a claim is entitled to recover from the fund the costs of his litigation, including
8 attorneys’ fees.” *Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *5 (N.D. Cal. Feb. 2, 2009).
9 In granting fees, “a court must ensure that attorney’s fees and costs awarded to class counsel are ‘fair,
10 reasonable and adequate.’” *Russell v. United States*, 2013 WL 3988778, at *3 (N.D. Cal. Aug. 2, 2013)
11 citing *Staton v. Boeing Co.*, 327 F.3d 938, 963–64 (9th Cir. 2003).

12 **B. The Court Should Use the Percentage Method to Calculate Reasonable**
13 **Attorneys’ Fees**

14 Under Ninth Circuit law, “the district court has discretion in common fund cases to choose
15 either the percentage-of-the-fund or the lodestar method.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
16 1047 (9th Cir. 2002); see also *Williamson v. McAfee, Inc.*, 2017 WL 6033070, at *1 (N.D. Cal. Feb. 3,
17 2017). However, “despite this discretion, use of the percentage method in common fund cases appears
18 to be dominant.” *Knight*, 2009 WL 248367, at *5. “The use of the percentage-of-the-fund method in
19 common-fund cases is the prevailing practice in the Ninth Circuit for awarding attorneys’ fees and
20 permits the Court to focus on a showing that a fund conferring benefits on a class was created through
21 the efforts of plaintiffs’ counsel.” *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2013 WL 7985367,
22 at *1 (C.D. Cal. Dec. 23, 2013).

23 The nature of this action warrants the application of the percentage-of-the-fund approach.
24 Here, Plaintiffs’ Counsel seeks a percentage from the non-reversionary Settlement Fund of \$9.9
25 million, and the amount is fixed and easily quantifiable. Additionally, the percentage method is
26 appropriate given Plaintiffs’ Counsel’s efficient litigation of this case. See Joint Decl. ¶15; *Barnes v.*
27 *The Equinox Grp., Inc.*, 2013 WL 3988804, at *3 (N.D. Cal. Aug. 2, 2013). These factors weigh in
28 favor of employing the percentage of the fund method. *Destefano v. Zynga, Inc.*, 2016 WL 537946, at

1 *17 (N.D. Cal. Feb. 11, 2016) (court applied percentage method in a case involving a common
2 settlement fund with an easily quantifiable benefit to the Class).

3 **C. The Requested Fee Award is Reasonable**

4 In applying the percentage of the fund method, the Ninth Circuit has established 25% as a
5 benchmark for attorneys' fee awards. *See Harrison v. Bank of Am. Corp.*, 2021 WL 5507175 at *8
6 (N.D. Cal. Nov. 24, 2021); *Vizcaino*, 290 F.3d at 1047; *Powers v. Eichen*, 229 F.3d 1249, 1257 (9th
7 Cir. 2000); *Hanlon v. Chrysler Group, Inc.*, 150 F.3d 1011, 1029 (9th Cir. 1998). "Selection of the
8 benchmark or any other rate must be supported by findings that take into account all of the
9 circumstances of the case." *Vizcaino*, 290 F.3d at 1047.

10 The Ninth Circuit has identified several factors a court should consider to determine whether to
11 award or adjust a fee award from the benchmark: (1) the results achieved; (2) the risk of litigation; (3)
12 the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden
13 carried by the plaintiffs; and (5) awards made in similar cases. *See Vizcaino*, 290 F.3d at 1048–50.
14 "[T]he most critical factor [in determining appropriate attorney's fee awards] is the degree of success
15 obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, the analysis of the *Vizcaino* factors
16 confirms that the 30% request is appropriate.

17 **i. Plaintiffs' Counsel Achieved an Exceptional Result for the Class**

18 Here, the results achieved in this case are very favorable considering the significant challenges
19 Plaintiffs would have faced in maintaining this litigation. Specifically, the \$9.9 million Settlement
20 represents a recovery of **48%** of the \$20.55 million in estimated losses. *See Walster Decl.* ¶7. If
21 attorney's fees and expenses are awarded as requested, Plaintiffs' estimate that Settlement Class
22 Members will receive a direct, cash payment for **28%** of their estimated loss. *See ECF No. 185* at 5.
23 As indicated in prior filings, the Plaintiffs exemplify how members of the Settlement Class will recover
24 a substantial portion of their estimated losses. *See ECF No. 185* at 5.

25 Based on consultations with Plaintiffs' damages experts, the Settlement's monetary benefit
26 (nearly 50% of the estimated losses) represents a significant recovery—particularly considering the
27 risks and challenges in this case (discussed *infra*). Those risks included but were not limited to, the
28 complexity of the novel damages theory in this case. *See e.g.*, *ECF No. 173* at 14-15; *ECF No. 173-3*

1 at 3-4 (describing three novel categories of “Qualifying Trades”: (1) VWAP (“Volume Weighted
2 Average Price”) Loss Trades; (2) SPY Options Trades; and (3) and Failed Marketable Trades). While
3 Plaintiffs were confident in their claims, Robinhood and their experts argued that Defendants were not
4 liable for *any damages* in this case, which further establishes that the recovery obtained is substantial.

5 Additionally, the \$9.9 million recovery in this case (which is 48% of the \$20.55 million in
6 potential damages, or 28% once attorneys’ fees and expenses are removed) is much larger than the
7 average recovery in securities class action settlements.² See *In re Omnivision Techs., Inc.*, 559 F. Supp.
8 2d 1036, 1046 (N.D. Cal. 2008) (“substantial achievement” to obtain 9% recovery of maximum
9 damages) citing *In re Heritage Bond Litig.*, 2005 WL 1594403, at *8–9 (C.D. Cal. June 10, 2005)
10 (Settlement Fund representing about 36% of the class’s total net loss before fees and 23% after, was an
11 “exceptional result,” noting average recovery was between 2% to 3% of maximum damages); *Wong*
12 *v. Arlo Techs., Inc.*, 2021 WL 1531171, at *9 (N.D. Cal. Apr. 19, 2021) (approving settlement
13 representing 2.35% of the total damages) citing *Int’l Bhd. of Elec. Workers Local 697 Pension Fund v.*
14 *Int’l Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (finding 3.5% recovery to be
15 within “the median recovery in securities class actions settled in the last few years”); see also *In re*
16 *Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that, given the
17 difficulties inherent in complex litigation, a settlement that paid plaintiffs one-sixth of their potential
18 recovery was fair and adequate).

19 Likewise, the 48% (or even 28.% once attorneys’ fees and expenses are removed) exceeds the
20 recoveries achieved in other consumer class actions. *In re Vizio, Inc., Consumer Priv. Litig.*, 2019 WL
21 12966639, at *9 (C.D. Cal. Jan. 4, 2019) (approving a 22% recovery of maximum liability) citing
22 *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *15 n. 85 (C.D. Cal. Nov. 23, 2013) (approving settlement
23 amount of 10% of consumers’ average total damages); *Retta v. Millennium Prod., Inc.*, 2017 WL
24 5479637, at *5 (C.D. Cal. Aug. 22, 2017) (finding settlement amount of 21% of estimated damages to
25 be reasonable and beneficial to the class).

26 Accordingly, given the significant success achieved and the above-average recovery of the
27 potential damages obtained, this factor weighs heavily in favor of the 30% requested fee.

28 ² Courts, including the vast majority of those in the cases cited calculate the percentage of recovery
based on the total settlement amount, without any discount for attorneys’ fees or expenses.

1 **ii. There was Substantial Risk in this Litigation**

2 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case
3 involving complicated legal issues, is a significant factor in the award of fees.” *In re Omnivision*, 559
4 F. Supp. 2d at 1046–47; *citing Vizcaino*, 290 F.3d at 1048.

5 Here, Plaintiffs’ Counsel faced numerous hurdles that could have substantially narrowed or
6 precluded any recovery in this case. Plaintiffs’ Counsel assumed the risk of challenging Robinhood, a
7 well-resourced defendant that would have continued to vigorously defend its business practices had the
8 litigation gone forward. Robinhood contested its liability from the very beginning by filing a motion
9 to dismiss arguing that Plaintiffs failed to adequately allege any viable claims and to strike the class
10 allegations. ECF No. 76. Robinhood also filed a Motion to Stay Discovery. ECF No. 77. It was only
11 through Plaintiffs’ Counsels’ advocacy and diligence that Plaintiffs successfully overcame
12 Robinhood’s motion to stay and largely defeated the motion to dismiss. ECF No. 95.

13 When Plaintiffs filed a motion for class certification, Robinhood opposed and filed a *Daubert*
14 motion to exclude the testimony and report of Plaintiffs’ damages expert. ECF No. 145. Prior to the
15 class certification hearing, Robinhood filed a Motion for Summary Judgement on all of Plaintiffs’
16 claims, relying heavily on the terms of Robinhood’s Customer Agreement and a recent federal court
17 decision in a separate multi-district litigation against Robinhood that dismissed those Plaintiffs’ claims
18 in *In re January 2021 Short Squeeze Trading Litigation*, 2022 WL 255350 (S.D. Fla. Jan. 27, 2022).
19 ECF No. 160. Robinhood then filed a second *Daubert* Motion to Exclude the opinions and testimony
20 of Plaintiffs’ brokerage operations expert. ECF No. 159. These motions illustrate the substantial risk
21 that Plaintiffs would not have recovered anything had the litigation continued.

22 There were also significant and novel legal issues that presented real risks to the Plaintiffs.
23 First, this case is not a typical consumer or securities fraud case and there are no putative class actions
24 that have laid a blueprint for litigation and resolution in a case like this. Second, the scope and
25 magnitude of the Outages were unprecedented and prevented documentation for most of the trading
26 records. Robinhood then argued extensively that its own alleged misconduct, and lack of records,
27 precluded Plaintiffs’ ability to determine issues of Article III standing and damages on a class-wide
28 basis. The Court raised similar concerns to Plaintiffs, particularly at the hearing on Plaintiffs’ Motion

1 for Class Certification. Third, as stated above, Robinhood filed for summary judgment alleging that
 2 its operative customer agreement exculpated it from any claims alleged in this case, an argument that
 3 was successful at dismissing a putative class action concurrently litigated in multidistrict litigation in
 4 Florida. *See In re January 2021 Short Squeeze Trading Litigation*, 2022 WL 255350 (S.D. Fla. Jan.
 5 27, 2022). Fourth, this case raised many legal questions of first impression (that are inherently risky),
 6 including whether Robinhood had any legal obligations to maintain contingency plans for traders on
 7 an online-only securities trading platform. Joint Decl. ¶¶62-63.

8 A further risk associated with this litigation was the publicized fact that Robinhood had
 9 struggled in 2022. Specifically, in April 2022 and again on August 2, 2022, Robinhood announced it
 10 was laying off a large percentage of its workforce.³ Also, on August 2, 2022, the New York State
 11 Department of Financial Services announced a \$30 million fine against Robinhood’s cryptocurrency
 12 trading unit.⁴ Robinhood’s stock price has also fallen sharply since its July 29, 2021, IPO (as of last
 13 check shares were trading at less than \$9.00, down from the IPO price of \$38).

14 In sum, continued litigation involved serious risks. In comparison, the Settlement provides a
 15 guaranteed, immediate, and substantial cash recovery of \$9.9 million. This factor, therefore, weighs
 16 heavily in favor of the requested fee award.

17 **iii. The Settlement Required Skill and High-Quality Work**

18 Plaintiff’s Counsel’s experience and the skill they brought to bear in this case also favor the fee
 19 award. Class Counsel, for example, have litigated complex consumer and securities class actions for
 20 over two decades and have significant expertise in high-profile consumer, privacy and/or security class
 21 actions including, *In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981 (N.D. Cal. Feb. 17,
 22 2023); *In re: Arizona Theranos Incorporated Litigation*, No. 2:16-cv-02138-HRH, ECF No. 372 (D.
 23 Az. Mar. 5, 2020); *In re Yahoo! Inc. S’holder Derivative Litig.*, 153 F. Supp. 3d 1107 (N.D. Cal. 2015);
 24 *Doe One, et al., v. CVS Health Corporation, et al.*, No. 2:18- cv-00238-EAS-CMV (S.D. Ohio);
 25 *Beckett, et al., v. Aenta, Inc.*, No. 2:17-cv-03864-JS (E.D. Pa.).

26
 27 ³ See “Robinhood cutting about 23% of jobs, releases second-quarter earnings” available at
 28 <https://www.cnbc.com/2022/08/02/robinhood-cutting-about-23percent-of-jobs.html>.

⁴ See August 2, 2022, New York Department of Financial Services Press Release available at
https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208021.

1 For more than three years, Class Counsel vigorously pursued discovery, resulting in the review
2 and analysis of over 50,000 documents from Robinhood. All this effort put Class Counsel in the best
3 possible position to negotiate a favorable resolution for the class. *Barbosa v. Cargill Meat Solutions*
4 *Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (class counsel used their specialized skill in the particular
5 area of law which represented an asset to class members and weighed in favor of the fee request);
6 *Omnivision*, 559 F. Supp. 2d at 1047 (that Plaintiffs’ case withstood a motion to dismiss, “despite other
7 weaknesses, is some testament to Lead Counsel’s skill. This factor also supports the requested fee.”).
8 The quality of representation is further reflected in the favorable Settlement for the Settlement Class.
9 *Moreyra v. Fresenius Med. Care Holdings, Inc.*, 2013 WL 12248139, at *3 (C.D. Cal. Aug. 7, 2013)
10 (noting that the result is “[t]he single clearest factor reflecting the quality of class counsels’ services”)
11 quoting *Heritage Bond*, 2005 WL 1594389, at *12 (C.D. Cal. June 10, 2005).

12 Additionally, the quality of opposing counsel should be considered when evaluating the
13 performance of Class Counsel. See *In re Am. Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at *22
14 (C.D. Cal. July 28, 2014). Here, Robinhood was represented by Debevoise & Plimpton LLP, a highly
15 respected international law firm with significant resources and substantial experience defending
16 securities and consumer class actions, and Farella Braun + Martel LLP a highly regarded Bay Area
17 litigation firm. This factor weighs in favor of the requested fee award.

18 **iv. Plaintiffs’ Counsel Worked for Years on a Contingency Basis**

19 In common fund cases, “attorneys whose compensation depends on their winning the case must
20 make up in compensation in the cases they win for the lack of compensation in the cases they lose.”
21 *Vizcaino*, 290 F.3d at 1051. “When counsel takes cases on a contingency fee basis, and litigation is
22 protracted, the risk of non-payment after years of litigation justifies a significant fee award.”
23 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015). “This substantial outlay,
24 when there is a risk that none of it will be recovered, further supports the award of the requested fees.”
25 *In re Nexus 6P Prod. Liab. Litig.*, 2019 WL 6622842, at *13 (N.D. Cal. Nov. 12, 2019) quoting
26 *Omnivision*, 559 F. Supp. 2d at 1047. “Courts have long recognized that the public interest is served
27 by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to
28 compensate them for the risk that they might be paid nothing at all for their work.” *Ching v. Siemens*

1 *Indus. Inc.*, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014). “A contingent fee must be higher than
2 a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer
3 not only for the legal services he renders but for the loan of those services.” *Ladore v. Ecolab, Inc.*,
4 2013 WL 12246339, at *11 (C.D. Cal. Nov. 12, 2013).

5 Here, Plaintiffs’ Counsel took this matter on a contingency basis and advanced all necessary
6 professional time and expenses for over three years. Joint Decl. ¶48. Plaintiffs’ Counsel have
7 performed over 9,281 hours of billable work from inception to date. *Id.* Of that work, approximately
8 73% was performed by the two Class Counsel firms. *Id.* Class Counsel endeavored at all times to
9 manage the litigation efficiently and undertook the bulk of the work in terms of communicating and
10 negotiating with Robinhood on case management and discovery issues; investigating, retaining, and
11 working with experts and consultants; taking and defending the parties’ and experts’ depositions;
12 attending court hearings; drafting and filing all pleadings, briefs, and motions; and conducting all
13 settlement negotiations. *Id.* ¶49.

14 Class Counsel also shared the bulk of the risk that the incurred expenses would not be
15 reimbursed. Given the complexity of the issues in the case, the most significant expenditures have
16 been associated with the Plaintiffs’ three experts, each of whom advised the Plaintiffs on discovery and
17 depositions, prepared a report, and were deposed. *Id.* ¶¶23-25. The other significant expenditures
18 include the costs of more than two dozen videoconference depositions and Plaintiffs’ ESI vendor, who
19 housed the voluminous document and data productions and assisted with collecting data that
20 Robinhood requested from Plaintiffs’ cell phones/devices. *Id.* ¶¶19, 53. In total, Plaintiffs’ Counsel
21 have incurred \$1,102,432.84 in expenses. *Id.* ¶55. This factor weighs in favor of the requested fee.

22 **v. The Award Requested is on Par with Awards in Similar Cases**

23 The request for attorneys’ fees of 30% falls squarely within the range of acceptable attorneys’
24 fees awarded in the Ninth Circuit in consumer and securities class action cases. *See In re Nexus 6P*
25 *Prod. Liab. Litig.*, 2019 WL 6622842, at *13 (N.D. Cal. Nov. 12, 2019) (approving 30% of \$9,750,000
26 common fund); *In re Lithium Ion Batteries Antitrust Litig.*, No. 2018 WL 3064391, at 1* (N.D. Cal.
27 May 16, 2018) (30% of \$139,000,000 recovery); *In re TFT-LCD Antitrust Litig.*, 2013 WL 149692 at
28 *2 (N.D. Cal. Jan. 14, 2013) (30% of \$68,000,000 recovery); *Carlin v. DairyAmerica, Inc.*, 380

1 F.Supp.3d 998, 1022 (E.D.Cal. 2019), *appeal dismissed sub nom. Carlin v. Spooner*, 808 F.App’x571
 2 (9th Cir.2020) (33% of \$40,000,000 recovery); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373at 379
 3 (9th Cir. 1995) (affirming 33% fee); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687829
 4 (N.D. Cal. Apr. 22, 2010) (30% fee); *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1375 (N.D. Cal.
 5 1989) (32.8% fee [noting that “all common fund awards range around 30%”]); *Linney v. Cellular*
 6 *Alaska P’ship*, 1997 WL 450064 (N.D. Cal. July 18, 1997), *aff’d*, 151 F.3d 1234 (9th Cir. 1998) (33.3%
 7 fee); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *23 (C.D. Cal. June 10, 2005) (33 ⅓% of
 8 \$27,783,000); *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 463 (9th Cir. 2000) (33
 9 ⅓%); *In re Vizio, Inc., Consumer Priv. Litig.*, 2019 WL 12966639, at *10 (C.D. Cal. Jan. 4, 2019)
 10 (33%); *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *30 (C.D. Cal. Nov. 23, 2013) (30%).

11 As the cases above illustrate, attorneys’ fees of thirty percent are very frequently awarded.
 12 Additionally, in many of the cases where the court awarded 30% fees, the total recovery of potential
 13 damages was less than the 48% recovery of potential damages in this case. *See* Section II.C.i *supra*;
 14 *see also, In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 463 (affirming 33 ⅓% attorneys’
 15 fees in case where the settlement was roughly one-sixth of the potential recovery).

16 As discussed above, each of the factors weighs in favor of an upward adjustment from the 25%
 17 benchmark. The Court should, therefore, grant Plaintiffs’ Counsels requested 30% fee.

18 **D. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

19 If the court applies the percentage method, then it typically calculates the lodestar as a “cross-
 20 check to assess the reasonableness of the percentage award.” *See, e.g., Weeks v. Kellogg Co.*, 2013
 21 WL 6531177, at *25 (C.D. Cal. Nov. 23, 2013); *Vizcaino*, 290 F.3d at 1050 (“Calculation of the
 22 lodestar, which measures the lawyers’ investment of time in the litigation, provides a check on the
 23 reasonableness of the percentage award.”). Under a lodestar cross-check, “the lodestar ... is produced
 24 by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate.”
 25 *Harrison*, 2021 WL 5507175, at *8 (citations omitted). The court has discretion in setting the
 26 reasonable hourly rates used in the lodestar calculation and can rely on its own experience. *Id.* at *9.

27 **i. The Hours Devoted to the Case were Necessary and Reasonable**

28 Pursuant to the Court’s appointment order, Class Counsel, Plaintiffs’ Executive Committee,

1 and Liaison Counsel maintained contemporaneous time records. Class Counsel collected and audited
2 all reported time regularly. Joint Decl. ¶47. As reflected in these reports, Plaintiffs' Counsel performed
3 a significant amount of work in this Action, including preparing the consolidated complaints after
4 comprehensive legal, factual and technical research, opposing dispositive motions, consulting with
5 experts to negotiate a protocol that eventually led to the production of account and trading information
6 for approximately 40,000 Robinhood active users, engaging in extensive formal, hard-fought
7 discovery, preparing for trial, and participating in mediation and settlement negotiations. *Id.* ¶¶7-30.
8 In total, Plaintiffs' Counsel jointly devoted more than 9,281 hours on this matter from consolidation
9 through June 30, 2022, and more since. *Id.* ¶48. In light of the needs of the case, and the amount and
10 quality of work performed, the hours spent were reasonable. *See* Lopez Decl., Exs. 1-16.

11 **ii. The Hourly Rates are Reasonable**

12 The reasonable hourly rate is “the rate prevailing in the community for similar work performed
13 by attorneys of comparable skill, experience, and reputation.” *Fowler v. Wells Fargo Bank, N.A.*, 2019
14 WL 330910, at *6 (N.D. Cal. Jan. 25, 2019).

15 Here, Class Counsel's billing rates for partners range from \$675.00 to \$995.00. *See* Lopez
16 Decl. Exhibits 1, 2; Joint Decl. ¶¶ 51. For non-partner attorneys, including of counsel, and associates,
17 rates range from \$425.00 to \$925.00, with associates capped at \$725. *Id.* For paralegals, law clerks,
18 and litigation support staff, rates range from \$125.00 to \$350. *Id.* Plaintiffs' Counsel's rates were
19 substantially similar, except for a few senior partners that billed over \$1,200. Lopez Decl. Exhibits 3-
20 14. However, as a result of the Court's appointment orders (ECF Nos. 59, 65), which prioritized the
21 appointment of more junior attorneys, the vast majority of work performed in this case was done by
22 attorneys that bill within the \$675.00 to \$995.00 range. These rates are in line with rates approved in
23 other cases in this district. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2020 WL
24 4212811, at *26 (N.D. Cal. July 22, 2020) (\$450 to \$900 for partners; \$160 to \$850, for non-partner
25 attorneys, including of counsel, associates, and staff/project attorneys; and \$50 to \$380 for paralegals);
26 *Dickey v. Advanced Micro Devices, Inc.*, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020) (rates
27 between \$275 and \$1,000 for attorneys found reasonable); *In re Lidoderm Antitrust Litig.*, 2018 WL
28

1 4620695, at *2 (N.D. Cal. Sept. 20, 2018) (rates between \$300 and \$1,050 for attorneys found
2 reasonable).

3 **iii. A Negative Multiplier Establishes the Reasonableness of the Requested**
4 **Fees**

5 Based on Plaintiffs' Counsel's collective hours spent, and their reasonable and customary
6 hourly rates, they have a combined lodestar of \$5,450,870. Lopez Decl. ¶7. Thus, the requested fee
7 award represents a negative multiplier of 0.54.

8 Such a multiplier is well below the range of multipliers that courts in the Ninth Circuit and
9 elsewhere regularly approve. *See Vizcaino*, 290 F.3d at 1051, & Appendix (approving multiplier of
10 3.65 and citing cases with multipliers as high as 19.6); *In re Volkswagen "Clean Diesel" Mktg., Sales*
11 *Pracs., & Prod. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) ("Multipliers in the
12 3-4 range are common in lodestar awards for lengthy and complex class action litigation."); *In re Nat'l*
13 *Collegiate Athletic Ass'n Athletic Grant-in-Aid Antitrust Litig.*, 768 F. App'x 651, 653 (9th Cir. 2019)
14 (approving 3.66 multiplier in \$200 million settlement).

15 Here, given the extensive efforts required, the Settlement's substantial results, in the face of the
16 risks presented, and the complexity of the issues this litigation entailed, the lodestar cross-check and
17 negative multiplier confirms the requested fee award of 30% is appropriate.

18 **IV. PLAINTIFFS' COUNSEL SHOULD BE REIMBURSED FOR THEIR REASONABLE**
19 **LITIGATION EXPENSES**

20 An attorney is entitled to recover as part of the award of attorney's fees "those out-of-pocket
21 expenses that would normally be charged to a fee-paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19
22 (9th Cir. 1994) (quotations omitted).

23 Here, the expenses incurred were reasonable and necessary for prosecuting this case and courts
24 have frequently found such expenses to be recoverable. *See e.g., In re LendingClub Sec. Litig.*, 2018
25 WL 4586669, at *3 (N.D. Cal. Sept. 24, 2018) (expenses such as expert and consultant fees, court fees,
26 travel and lodging costs, legal research fees, and copying expenses were reasonable and recoverable);
27 *Thomas v. MagnaChip Semiconductor Corp.*, 2018 WL 2234598, at *4 (N.D. Cal. May 15, 2018)
28 (granting requests for costs consisting of "court fees, online research fees, postage and copying, travel

1 costs, electronic discovery expenses, deposition costs, mediation charges, and travel costs”).
 2 “Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are
 3 reimbursed proportionately by those class members who benefit[.]” *In re Media Vision Tech. Sec.*
 4 *Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citation omitted).

5 Here, Plaintiffs’ Counsel have incurred \$1,102,432.84 in unreimbursed litigation expenses,
 6 including costs advanced in connection with consultants, legal research, court reporting services,
 7 copying and mailing, and other customary litigation expenses. Lopez Decl. ¶10; Joint Decl. ¶55. A
 8 substantial percentage of the expenses are attributable to experts, which were critical in this case.
 9 Without expert input, Plaintiffs’ damages models would have been subjected to increased scrutiny and
 10 attacks. *Id.* ¶54. Moreover, given the technical and unprecedented aspects of this case (involving a
 11 brokerage app outage that spanned several days and the lack of trading records) expert consultation on
 12 discovery was immensely helpful. *Id.* ¶54. Additional costs were necessitated by Robinhood’s
 13 vigorous defense, including, for example, the expenses required to forensically image certain Plaintiff’s
 14 cell phones so that Robinhood could collect browsing and historical data from each Plaintiff. *Id.* ¶53.
 15 The Court should approve the reimbursement of these reasonable expenses.

16 **V. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE**
 17 **REASONABLE AND JUSTIFIED**

18 Service awards are “intended to compensate class representatives for work undertaken on behalf
 19 of a class” and “are fairly typical in class action cases.” *DVD-Rental*, 779 F.3d 934, 943 (9th Cir.
 20 2015). The district court must evaluate a requested award using relevant factors including “the actions
 21 the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted
 22 from those actions ... [and] the amount of time and effort the plaintiff expended in pursuing the
 23 litigation.” *Staton*, 327 F.3d at 977; *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir.
 24 2009). Service awards of \$5,000 are “presumptively reasonable” in this district. *Bellinghausen*, 306
 25 F.R.D. at 266. *See also In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *18 (N.D.
 26 Cal. Feb. 17, 2023). The Ninth Circuit has recently held that service awards to non-class members are
 27 permitted. *Id.* at *20 (N.D. Cal. Feb. 17, 2023) *citing Chambers v. Whirlpool Corp.*, 980 F.3d 645, 670
 28 (9th Cir. 2020).

1 Here, Plaintiffs' Counsel request Service Awards of \$2,500 for each of the Plaintiffs in this
 2 Action.⁵ The requested service awards are lower than the presumptively reasonable amount of \$5,000
 3 and are consistent with precedent. *In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981 at
 4 *19 (N.D. Cal. Feb. 17, 2023) *citing Allagas v. BP Solar Int'l*, 2016 WL 9114162, at *4 (N.D. Cal.
 5 Dec. 22, 2016) (awarding \$7,500 to named plaintiffs who were deposed and \$3,500 to one named
 6 plaintiff who was not deposed). The awards are further justified as each Plaintiff spent over three years
 7 prosecuting this Action, including retaining counsel, providing documents and information to counsel,
 8 timely responding to inquiries from counsel, and sitting for depositions (though Robinhood only
 9 deposed nine Plaintiffs, all were willing and able to sit for a deposition).⁶ *See* Plaintiff Declarations at
 10 ¶3(e)-(g). The Plaintiffs also had their cell phones/devices backed up and/or submitted to vendors to
 11 obtain certain data that Robinhood requested, which required many hours, and in some cases, sending
 12 their cell phones to a vendor for several days to be imaged. *Id.* ¶3(d). As part of this case, each was
 13 also asked to provide sensitive and personal financial information, some of which had to be disclosed
 14 publicly in court filings and the experts' reports. *Id.* ¶5.

15 Plaintiffs' Service Awards total only \$37,500, or 0.37%, of the \$9.9 million Settlement Fund.
 16 This amount is reasonable considering how small the award is in relation to the value of the Settlement
 17 Fund. The Court should therefore award the Service Awards requested.

18 VI. CONCLUSION

19 Plaintiffs' Counsel devoted thousands of hours to the litigation, including substantial time spent
 20 before the cases were consolidated. As a result of their hard work and vigorous prosecution, and in the
 21 face of the real risk of no recovery, they successfully negotiated an extremely favorable \$9.9 million
 22 non-reversionary cash Settlement Fund. Based on these circumstances, and consistent with the factors
 23 applied by federal courts, including in the Northern District of California, Plaintiffs' Counsel
 24 respectfully request that the Court award \$2,970,000 in attorneys' fees, approve reimbursement of
 25 \$1,102,432 in litigation expenses, and award Services Payments of \$2,500 to each of the Plaintiffs.

27 ⁵ All named Plaintiffs seek a Service Award, including those that ultimately did not fall within the
 class definition, *i.e.*, Gwaltney, Kuri, Leith, Mahrouyan, Russell, Ward, and Xia.

28 ⁶ The nine Plaintiffs that appeared for a deposition were Plaintiffs Jones, Moghadam, Steinberg,
 Gwaltney, Kuri, Russell, Mahrouyan, Ward and Rao.

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Respectfully submitted,

DATED: March 27, 2023

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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Notice of Motion and Motion for Attorneys' Fees, Expenses, and Service Awards and Memorandum of Points and Authorities in Support Thereof. Pursuant to L.R 5-1(i)(3) regarding signatures, I, Anne Marie Murphy attest that concurrence in the filing of this document has been obtained.

DATED: March 27, 2023

/s/Anne Marie Murphy
Anne Marie Murphy