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*Class Counsel*

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15  
16 IN RE INTUIT DATA LITIGATION

Master Docket No. 15-CV-1778-EJD-SVK

17  
18 THIS DOCUMENT RELATES TO:

19 **ALL ACTIONS**

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES, COSTS AND  
SERVICE AWARDS; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: February 7, 2019  
Time: 10:00 a.m.  
Judge: Honorable Edward J. Davila  
Courtroom: 4, Fifth Floor

**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

**PLEASE TAKE NOTICE** that on February 7, 2019, at 10:00 a.m., in the Courtroom of the Honorable Edward J. Davila, United States District Court for the Northern District of California, 280 South First Street, San Jose, California, Plaintiffs Richard Brown, Christine Diaz, Carol Knoch, James Lebinski, David Stock, and Marilyn Williams (“Plaintiffs”) and Class Counsel<sup>1</sup> will and hereby do move the Court for an Order: (a) granting Class Counsel reasonable attorneys’ fees in the amount of \$2,717,225.56, plus reimbursement of litigation costs in the amount of \$102,774.44; and (b) granting service awards of \$5,000 each for the six Plaintiffs who served as class representatives in this action.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the declarations of Roger Heller, Mark Goldman, Steven Teppler, Joseph Siprut, Henry Kelston, Richard McCune, Julian Hammond, Richard Brown, Christine Diaz, Carol Knoch, James Lebinski, David Stock, Marilyn Williams, and Jennifer Keough, JND Legal Administration LLC, filed herewith, the papers filed in support of Plaintiffs’ motions for preliminary and final settlement approval, the record in this case, and any additional argument and evidence the Court may consider.

Dated: December 17, 2018

Respectfully submitted,

/s/ Roger Heller  
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<sup>1</sup> Class Counsel are: Lief Cabraser Heimann & Bernstein LLP, Milberg Tadler Phillips Grossman LLP; Goldman Scarlato & Penny, PC; Abbott Law Group, PA; and Siprut, PC. *See* Dkt. 173 at 2.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Having achieved substantial benefits for the Class through their vigorous prosecution of  
4 this case over more than three years, Class Counsel respectfully move the Court for an award of  
5 reasonable attorneys' fees in the amount of \$2,717,225.56, and reimbursement of litigation costs  
6 in the amount of \$102,774.44. The fees and costs awarded will be paid by Defendant Intuit Inc.  
7 ("Intuit") on top of (*i.e.*, in addition to) the other benefits that Class Members will receive under  
8 the Settlement that has been submitted for the Court's approval.

9 The requested fee, which represents a negative multiplier of .715 on counsel's lodestar of  
10 \$3,800,219, is fair and reasonable under the circumstances given, *inter alia*, the substantial  
11 benefits achieved for the Class and other taxpayers pursuant to the Settlement, the novelty and  
12 complexity of this case, the risks assumed by Class Counsel in prosecuting this case on a  
13 contingency basis, and the substantial effort required in prosecuting this case over more than three  
14 years.

15 This was anything but a garden-variety case. This case involved the novel factual  
16 scenario of hundreds of thousands of tax returns being filed by third party fraudsters in other  
17 peoples' names through Intuit's TurboTax platform. In large part because the fraud here was  
18 conducted by third parties, this case required the novel application of existing legal principles and  
19 theories. Simply put, no case like this case had ever been filed before.

20 Developing these legal theories and arguments, and prosecuting this case to a favorable  
21 result for the Class, required a substantial commitment of time and resources by counsel,  
22 including extensive factual investigation, legal research and analysis, litigating several dispositive  
23 and other motions, conducting extensive discovery—including reviewing and analyzing more  
24 than 100,000 pages of internal Intuit documents—and engaging in hard-fought settlement  
25 negotiations.

26 As addressed in further detail in the accompanying motion for final settlement approval,  
27 the result that Class Counsel achieved for the Class through their efforts in this case is a strong  
28 one. The benefits provided by the Settlement are directly tied to the alleged misconduct and to

1 the harms and risks faced by the Class Members—including significant security changes by Intuit  
2 that will help protect Class Members and other taxpayers from being subjected to tax identity  
3 fraud going forward, and providing all Class Members with the ability to enroll in two years of  
4 TransUnion credit monitoring and identity restoration services, at Intuit’s expense. Moreover,  
5 Class Members will receive these benefits without releasing any claims they may have for  
6 monetary relief.

7 Class Counsel also request that the Court grant service awards of \$5,000 each to the six  
8 Plaintiffs who served as class representatives in this case, to compensate them for their efforts and  
9 commitment on behalf of the Class.

## 10 **II. RELEVANT BACKGROUND**

### 11 **A. Class Counsel Devoted Substantial Time and Effort To Prosecuting This** 12 **Novel Case**

13 This was not a cookie-cutter case. Rather, filing, prosecuting, and ultimately favorably  
14 resolving this case required creativity and very hard work on the part of Class Counsel. This  
15 litigation arose in the unprecedented context of a dramatic increase in the use by third-party  
16 fraudsters of stolen personally identifiable information (“PII”) to file fraudulent tax returns  
17 through Intuit’s TurboTax platform.

18 The legal theories that Plaintiffs developed and pursued in this case—including the core  
19 legal theory that Intuit owed a duty of care to protect taxpayers under the circumstances here—  
20 were, frankly, novel and untested. Class Counsel incurred substantial risk, and demonstrated  
21 creativity and skill, in developing and pursuing these theories. Since this litigation commenced,  
22 Class Counsel have worked hard, over more than three years, to achieve the results delivered  
23 under the proposed Settlement. As summarized below, and in the accompanying counsel  
24 declarations, these efforts have included, *inter alia*: extensive legal research and factual  
25 investigation; communicating with numerous affected taxpayers; litigating multiple dispositive  
26 and other important motions; extensive discovery efforts—including reviewing more than  
27 100,000 pages of Intuit documents, propounding and responding to written discovery, conducting  
28 third party discovery with the U.S. Internal Revenue Service (“IRS”) and Santa Barbara Bank to

1 locate additional pertinent documents and information, extensive meet and confers with Intuit and  
2 the third parties, and an important litigated discovery dispute—as well as hard-fought settlement  
3 negotiations that culminated in the Settlement.

4 **1. The Early Stages of the Litigation**

5 From the outset, Class Counsel focused on litigating this case effectively *and* efficiently.  
6 After four putative class actions were initially filed in two Districts regarding these issues, Class  
7 Counsel and Plaintiffs agreed to consolidate the four cases into a single consolidated action. On  
8 August 24, 2015, the Court appointed Interim Class Counsel pursuant to Federal Rule of Civil  
9 Procedure 23(g) (Dkt. 39). Thereafter, on September 29, 2015, Plaintiffs filed their First  
10 Amended Consolidated Complaint. (Dkt. 51).

11 Drafting the underlying complaints and the consolidated complaint required significant  
12 factual investigation by counsel, including reviewing and analyzing the facts pertinent to the  
13 named plaintiffs' experiences, interviewing the plaintiffs and dozens of other affected taxpayers,  
14 and researching news articles and other sources regarding, *inter alia*, the scale and scope of fraud  
15 at issue, potential contributing factors, and Intuit's policies and practices that may have helped  
16 enable the fraud. Counsel also conducted extensive legal research to identify appropriate legal  
17 claims that might fit the novel factual circumstances here. Heller Decl., ¶ 7.

18 On December 18, 2015, Plaintiffs filed their Second Consolidated Amended Complaint  
19 (Dkt. 69) ("SAC"), which reflected Class Counsel's continuing factual investigation and legal  
20 research efforts. The SAC included updated legal causes of action, and additional allegations  
21 concerning, among other things, the increased levels of fraudulent tax filings through TurboTax  
22 and Intuit's policies and practices.

23 **2. Litigating Intuit's First Round of Dispositive Motions**

24 On February 4, 2016, Intuit moved to compel the claims of four of the plaintiffs to  
25 arbitration (Dkt. 75). On February 5, 2016 Intuit filed a motion to dismiss Plaintiffs' SAC in its  
26 entirety (Dkt. 78). Plaintiffs opposed both motions through briefs filed on March 11, 2016 (Dkt.  
27 82; 83). Briefing the numerous issues raised by these motions required considerable legal  
28 research and analysis by Class Counsel. Heller Decl., ¶ 9.



1 Concurrently with the briefing on Intuit's initial round of motions, Plaintiffs moved to  
2 open discovery in the case (Dkt. 72), which Intuit opposed (Dkt. 73). The Court granted  
3 Plaintiffs' motion, and discovery—previously stayed by order of the Court—opened on March  
4 14, 2016 (Dkt. 84).

5 **3. Discovery and Ongoing Investigation and Research**

6 Throughout the litigation, Class Counsel worked efficiently and effectively in managing  
7 the discovery process. The parties exchanged Rule 26(a) Initial Disclosures on October 1, 2015.  
8 The parties negotiated and stipulated to a protective order and ESI protocol for the litigation,  
9 which were entered by the Court on October 7, 2015 (Dkt. 55) and August 11, 2016 (Dkt. 94),  
10 respectively.

11 **Party Discovery.** Promptly after the Court's March 14, 2016 Order lifting the stay on  
12 discovery, on March 29, 2016, Plaintiffs served their First Requests for Production on Intuit,  
13 targeting 43 categories of documents. On July 7, 2016, Intuit served Requests for Production and  
14 Interrogatories on Plaintiffs. The parties then prepared and served written responses to each  
15 other's discovery requests, which required Class Counsel to work closely with the Plaintiffs to  
16 identify responsive information and documents. Heller Decl., ¶ 12.

17 Class Counsel and Intuit's counsel engaged in numerous, often lengthy meet and confer  
18 sessions over multiple months regarding the discovery requests and the responses and objections  
19 to same, including extensive negotiations regarding the substantive and temporal scope of the  
20 requests, the appropriate data sources and parameters to be used for Intuit's search of  
21 electronically-stored information, and regarding Intuit's demands concerning the Plaintiffs'  
22 electronic records which Intuit believed to be pertinent to the claims and defenses in the case. In  
23 connection with the latter item, Class Counsel held teleconferences with Plaintiffs regarding their  
24 electronic records, computer systems and their collection and preservation of same. Heller Decl.,  
25 ¶ 13.

26 Class Counsel also negotiated a separate stipulated protective order with Intuit concerning  
27 documents containing taxpayer information protected by 26 U.S.C. § 7216 (Dkt. 113, 115) Heller  
28 Decl., ¶ 14.

1 Almost all of the parties' discovery disputes were resolved through counsels' meet and  
2 confer efforts, without involving the Court. The parties were unable to reach agreement,  
3 however, on one important issue: whether certain documents regarding account takeover fraud  
4 (or "ATO") through TurboTax were discoverable. This issue was briefed and argued before  
5 Magistrate Judge Van Keulen, and following the hearing, Intuit was ordered to produce the  
6 discovery in question (Dkt. 114, 121).

7 In all, Intuit produced, and Class Counsel reviewed and analyzed, more than 100,000  
8 pages of internal Intuit documents. Class Counsel also worked closely with the Plaintiffs to  
9 prepare responses to Intuit's written discovery requests, including responses to Intuit's  
10 interrogatories, and to gather and produce documents from the Plaintiffs on a wide range of  
11 issues. Heller Decl., ¶ 16.

12 **Third party discovery.** Class Counsel actively pursued discovery from other sources as  
13 well. Among other things, they served requests under federal and state freedom of information  
14 laws on the IRS, the Illinois Department of Revenue, and on the Utah State Tax Commission.  
15 Class Counsel also served subpoenas on the IRS and Santa Barbara Bank (which processes  
16 certain tax refunds for returns filed through TurboTax pursuant to an agreement with Intuit) in  
17 order to obtain additional relevant documents and information. Class Counsel engaged in meet  
18 and confers with both of these third parties in connection with the subpoenas. With respect to the  
19 IRS, this involved, among other issues, ongoing discussions regarding the IRS's assertion of the  
20 law enforcement privilege concerning certain information. Heller Decl., ¶ 17.

21 **Ongoing Legal Research and Investigation.** Following the filing of the initial  
22 consolidated complaints, Class Counsel continued to conduct legal research on an ongoing basis,  
23 including actively monitoring developments regarding pertinent legal issues, such as the  
24 enforceability of arbitration clauses in analogous contexts, the standards for determining duty of  
25 care under a negligence theory, and the economic loss rule. These efforts continued through the  
26 resolution of this case.

27 As part of their ongoing investigative efforts, Class Counsel continued to review and  
28 analyze pertinent publically available information, researched and spoke with potential fact and

1 expert witnesses, and spoke with numerous affected taxpayers about their experiences. Heller  
2 Decl., ¶¶ 18-19.

3 **4. Additional Motions Practice and Plaintiffs' Third Amended**  
4 **Complaint**

5 On September 29, 2017, the Court granted Intuit's arbitration motion, ruling that the  
6 question of whether the claims of four of the plaintiffs must be arbitrated should be decided by an  
7 arbitrator, and staying proceedings as to those four plaintiffs' claims (Dkt. 123). On September  
8 29, 2017, the Court granted in part and denied in part Intuit's motion to dismiss Plaintiffs' SAC  
9 (Dkt. 124).

10 On October 27, 2017, Plaintiffs moved for permission to seek interlocutory appellate  
11 review of the Court's arbitration order under 28 U.S.C. § 1292(b) (Dkt. 127), which the Court  
12 denied (Dkt. 158).

13 After the Court granted in part and denied in part Intuit's motion to dismiss Plaintiffs'  
14 SAC (Dkt. 124), on November 27, 2017, Plaintiffs filed their Third Consolidated Amended  
15 Complaint ("TAC"), which contained additional factual allegations and information, including  
16 based upon documents and information obtained by Plaintiffs through discovery (Dkt. 131).  
17 Intuit filed a partial motion to dismiss the TAC on December 15, 2017, which Plaintiffs opposed  
18 (Dkt. 146). On May 15, 2018, the Court dismissed the second and third claims in Plaintiffs' TAC  
19 (Dkt. 164).

20 **5. Settlement Negotiations**

21 The parties participated in two formal mediation sessions with Hon. Edward A. Infante  
22 (Ret.) of JAMS on December 7, 2015 and March 14, 2018. For both sessions, the parties  
23 submitted written mediation briefs addressing the factual and legal issues raised in the case.  
24 Following the second session, and with the continuing assistance of Judge Infante, the parties  
25 reached an agreement in principle on the terms of a proposed settlement. After the parties  
26 reached that agreement in principle, the parties then negotiated regarding attorneys' fees and  
27 expenses through further mediation. The parties thereafter worked diligently to craft the  
28 settlement papers which were submitted to the Court for preliminary approval on August 23, 2018

1 (Dkt. 171). Heller Decl., ¶ 23.

2 **6. Preliminary Approval and Implementation To Date**

3 On October 4, 2018, the Court held a hearing on Plaintiffs' preliminary approval motion,  
4 and entered an order granting preliminary approval of the Settlement and directing dissemination  
5 of the class notice pursuant to the parties' proposed Notice Program (Dkt. 172, 173).

6 Following the entry of the preliminary approval order, Class Counsel have worked closely  
7 with Intuit and the Settlement Administrator to ensure that class notice and the Settlement  
8 Website were implemented as directed by the Court. Following the dissemination of notice,  
9 Class Counsel have fielded calls from class members regarding the Settlement. Heller Decl., ¶  
10 24.

11 **B. Class Counsel Achieved a Strong Result for the Class**

12 The Settlement that Class Counsel achieved here represents a strong result for the Class.  
13 The benefits provided are well-tailored to address the issues raised by this litigation. They will  
14 help Class Members avoid and mitigate the harms associated with the misuse of their identities  
15 and personal information, and will help reduce the incidence of tax identity fraud through  
16 TurboTax going forward, benefiting Class Members and countless other taxpayers. Moreover,  
17 the Settlement only releases non-monetary claims—notwithstanding that it provides valuable  
18 benefits to Class Members beyond injunctive relief—meaning that Class Members who  
19 experienced particular monetary damages resulting from the tax fraud that occurred in their  
20 names will still be able to pursue monetary relief claims if they choose.

21 **1. Credit Monitoring Services**

22 Under the Settlement, all Class Members may enroll, at Intuit's expense, in two (2) years  
23 of TransUnion's credit monitoring services. These services provide, *inter alia*, unlimited access  
24 to the consumer's credit report, daily credit monitoring and fraud alerts, up to \$1 million in  
25 identity theft insurance, credit dispute and identity restoration services, unlimited toll-free access  
26 to credit specialists, and access to educational resources regarding identity protection and credit.

27 Class Members have a period of sixty (60) days after notice was sent to enroll in these  
28 credit monitoring services. The deadline for Class Members to claim this benefit is January 22,

1 2019. As of December 14, 2018, more than 7,600 claims have already been filed. Keough Decl.,  
 2 ¶ 19.

## 3 **2. Security Improvements and Commitments By Intuit**

4 The Settlement also includes important security changes and commitments by Intuit.  
 5 Since this litigation commenced, Intuit has adopted numerous security measures to reduce the  
 6 incidence of tax identity fraud occurring through TurboTax. These measures are summarized in  
 7 Exhibit B to the Settlement. In addition to these security measures, Intuit also agreed to continue  
 8 to participate in the IRS Security Summit until at least 2021,<sup>2</sup> or until the IRS Security Summit  
 9 process ends, whichever is sooner. Intuit agreed to follow the security criteria that come out of  
 10 the IRS Security Summit process during that time (Agreement, ¶ 55).

11 These changes and commitments have made a major difference in curtailing the level of  
 12 tax identity fraud, and will continue to help protect Class Members and other taxpayers from  
 13 being the victims of tax identity fraud on a going forward basis.

## 14 **III. ARGUMENT**

### 15 **A. The Requested Attorneys' Fees are Reasonable and Should Be Approved**

#### 16 **1. The Court Should Use the Lodestar Method to Determine the Fee**

17 In a class action settlement, a court may award reasonable attorneys' fees as authorized by  
 18 law or by the parties' agreement. See Fed. R. Civ. P. 23(h); *see also Hendricks v. Starkist Co.*,  
 19 No. 13-00729, 2016 WL 5462423, at \*10 (N.D. Cal. Sept. 29, 2016), *aff'd*, 2018 WL 5115482  
 20 (9th Cir. Oct. 19, 2018) (stating a court has the power to award reasonable attorneys' fees and  
 21 costs where "a litigant proceeding in a representative capacity secures a 'substantial benefit' for a  
 22 class of persons"). The two primary methods in this District for determining a reasonable fee are  
 23 the "lodestar" and "percentage-of-the-fund" methods. *Vizcaino v. Microsoft Corp.*, 290 F.3d  
 24 1043, 1047 (9th Cir. 2002). Where, as here, there is no common fund and a significant  
 25 component of the relief provided is injunctive relief, the appropriate method to use is the lodestar  
 26 method. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *see also In re Toys*  
 27

28 <sup>2</sup> The IRS Security Summit is a collaboration between the IRS, state tax administrators, and other industry members to combat identity theft refund fraud to protect the nation's taxpayers.

1 “R” *Us FACTA Litig.*, 295 F.R.D. 438, 460 (C.D. Cal. 2014).

2 The first step in the lodestar method is to multiply the number of hours counsel reasonably  
3 expended by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029. Once this raw lodestar figure is  
4 determined, the court may then adjust that figure based upon its consideration of certain factors.  
5 *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

6 The Ninth Circuit has stated that “[t]here is a strong presumption that the lodestar figure  
7 represents a reasonable fee.” *Rodriguez v. W. Publ’g Corp.*, 602 F. App’x 385, 387 (9th Cir.  
8 2015). “Only in rare or exceptional cases will an attorney’s reasonable expenditure of time on a  
9 case not be commensurate with the fees to which he is entitled.” *Cunningham v. Cty. of Los*  
10 *Angeles*, 879 F.2d 481, 488 (9th Cir. 1988) (emphasis omitted); *In re Toys “R” Us FACTA Litig.*,  
11 295 F.R.D. at 460 (lodestar “presumptively provides an accurate measure of reasonable  
12 attorney’s fees.”) (quoting *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994)).

13 As set forth below and in the accompanying declarations submitted by counsel, Plaintiffs’  
14 counsel and their staffs have expended more than 6,600 hours investigating, litigating, and  
15 negotiating a resolution of this litigation, for a total combined lodestar to date of more than \$3.8  
16 million.<sup>3</sup>

## 17 **2. Class Counsel’s Hourly Rates are Reasonable**

18 The accompanying counsel declarations set forth the billing rates used to calculate their  
19 lodestars, and summarize the experience of the attorney timekeepers who worked on this  
20 litigation. In assessing the reasonableness of an attorney’s hourly rate, courts consider whether  
21 the claimed rate is “in line with those prevailing in the community for similar services by lawyers  
22 of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-

23 <sup>3</sup> These figures include the time expended by the five Class Counsel firms and by two additional  
24 firms that were counsel of record and worked on this case at the direction of Class Counsel,  
25 McCune Wright & Arevalo (“MWA”) and HammondLaw, P.C. (“Hammond”). In addition to  
26 MWA and Hammond, certain other non-Class Counsel firms assisted with specifically assigned  
27 tasks and/or spent time working on this case at the early stages prior to consolidation. Those  
28 firms are Ahdoot & Wolfson, P.C., Gustafson Gluek PLLC, Lite DePalma Greenberg, LLC,  
Morgan & Morgan & Morgan, PA, and Rhine Law Firm, P.C. Although any fee allocation for  
these five firms would come from the fee awarded to Class Counsel, Class Counsel are basing  
their request for attorneys’ fees and costs only on the time and expenses of the five Class Counsel  
firms, MWA, and Hammond.

1 96 n.11 (1984). Courts apply each biller's current rates for all hours of work performed,  
 2 regardless of when the work was performed, as a means of compensating for the delay in  
 3 payment. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994).

4 Class Counsel here are experienced, highly regarded members of the bar. They have  
 5 brought to this case extensive experience in the area of consumer class actions and complex  
 6 litigation.<sup>4</sup> Class Counsel's customary rates, which were used in calculating the lodestar here, are  
 7 in line with prevailing rates in this District, and have been approved by courts in this District and  
 8 other courts.<sup>5</sup>

### 9 **3. The Number of Hours That Class Counsel Worked is Reasonable**

10 The accompanying counsel declarations also set forth the number of hours for which  
 11 compensation is sought and describe the work performed by the attorneys and other timekeepers.  
 12 As set forth therein, counsel and their staffs have devoted more than 6,600 hours to this litigation,  
 13 and have a total lodestar to date of more than \$3.8 million.<sup>6</sup>

14 These amounts do not include time that counsel have written off in the exercise of billing  
 15 discretion, nor do they include the additional time that Class Counsel will have to spend going  
 16 forward in obtaining final approval of, and overseeing implementation of, the Settlement should  
 17 the Court approve it.

18 The number of hours that Class Counsel have billed is reasonable. *See Caudle v. Bristow*  
 19 *Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (counsel entitled to recover for all hours  
 20 reasonably expended). In order to be in a position to vigorously prosecute this matter and  
 21 negotiate and evaluate the proposed Settlement, Class Counsel were required to spend

22 \_\_\_\_\_  
 23 <sup>4</sup> Heller Decl., ¶¶ 2-4; Goldman Decl., ¶¶ 2-6, 9; Kelston Decl. ¶¶ 4-9, Ex. A; Siprut Decl., ¶¶ 2-  
 3; Teppler Decl., ¶¶ 2-14; McCune Decl., ¶¶ 2-5; Hammond Decl., ¶¶ 3-8, Ex. 1.

24 <sup>5</sup> Heller Decl., ¶ 45; Goldman Decl., ¶ 5; Kelston Decl. ¶ 11; Siprut Decl., ¶ 9; Teppler Decl., ¶¶  
 16-17; McCune Decl., ¶¶ 5, 7, 12; Hammond Decl., ¶ 17.

25 <sup>6</sup> Heller Decl., ¶¶ 43-44, Ex. A (\$1,689,927.50); Goldman Decl., ¶ 13 (\$608,818); Kelston Decl. ¶  
 26 12, Ex. B (\$871,565); Siprut Decl., ¶¶ 7-8 (\$204,780.50); Teppler Decl., ¶ 19 (\$128,877.50);  
 27 McCune Decl., ¶ 13 (\$200,969.50); Hammond Decl., ¶¶ 14-15, Ex. 2 (\$95,281); (total  
 28 \$3,800,219). The counsel declarations submitted herewith include descriptions of the work  
 performed by the attorneys and other timekeepers who worked on this case, and provide  
 timekeeper and task code breakdowns for each firm. If the Court prefers to review counsel's  
 detailed time records, counsel will make them available for *in camera* review.

1 considerable time investigating the factual issues involved, researching and analyzing applicable  
 2 law and legal claims, and speaking with class members about their experiences. These efforts  
 3 continued throughout the course of the litigation. Class Counsel engaged in extensive  
 4 discovery—including reviewing more than 100,000 pages of documents produced by Intuit,  
 5 propounding and responding to written discovery, working with the plaintiffs on preservation and  
 6 collection of pertinent materials, extensive meet and confers with Intuit and third parties  
 7 regarding discovery issues, and propounding third party discovery subpoenas on the IRS and  
 8 Intuit-affiliate Santa Barbara Bank. Moreover, Class Counsel litigated several dispositive and  
 9 other motions, including two motions to dismiss filed by Intuit, an arbitration motion, Plaintiffs’  
 10 motion to certify the Court’s arbitration ruling for interlocutory review pursuant to 28 U.S.C.  
 11 § 1292(b), and a discovery dispute regarding the production of certain key documents. Further,  
 12 Class Counsel committed considerable time and resources to preparing for the two mediation  
 13 sessions in the case and other negotiation efforts. Moreover, since reaching the Settlement, Class  
 14 Counsel have spent time working with Intuit and the Settlement Administrator to help ensure that  
 15 notice was disseminated as directed by the Court and speaking with class members about the  
 16 Settlement.<sup>7</sup>

17 The following is a breakdown, by task code, of the time for which Class Counsel seeks  
 18 compensation (further details about the work performed by the timekeepers, and task code  
 19 breakdowns for each timekeeper, are included in the counsel declarations that are submitted  
 20 herewith):

Task Code	Description	Hours
1	Factual Investigation	194.2
2	Legal Research	404.97
3	Complaints	252.47
5	Other briefs and pleadings	1,235.1
6	Depositions	8.4
7	Document Review	1,553.63

21  
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 23  
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 27  
 28 <sup>7</sup> See Heller Decl., ¶¶ 6-24; Goldman Decl., ¶¶ 12, 16; Kelston Decl. ¶¶ 2-9; Siprut Decl., ¶¶ 4-6 ;  
 Teppler Decl., ¶¶ 15, 18-19; McCune Decl., ¶¶ 8-11, 13; Hammond Decl., ¶¶ 9-16.



8	Other Discovery	1,029.11
9	Court Appearances	45.6
10	Experts	20.5
11	Mediation and Settlement	924.2
12	Case Strategy	583.45
13	Class Member Communications	163.7
14	Plaintiffs' Executive Committee Duties/Meetings	193.67
15	Trial/Trial Preparation	1
	<b>Total</b>	<b>6,610</b>

Class Counsel's efforts were expended for the benefit of the Class, and were critical to the success achieved. Moreover, the time spent on these tasks was reasonable. While there were multiple law firms working on this complex case, Class Counsel made all reasonable efforts to prevent the duplication of work and other inefficiencies. Tasks were routinely assigned by lead counsel with clear instructions, to ensure that there would not be duplication of effort and that appropriate personnel would perform each task. Moreover, counsel communicated regularly to monitor progress and ensure that tasks were being performed in a timely and effective manner. Group strategy calls were kept to a minimum, were generally limited to senior personnel and other attorneys with direct responsibility over the tasks being discussed, and guided by agendas prepared in advance. Heller Decl., ¶ 25.

**4. The Requested Fee Represents a Negative Multiplier of .715, and is Absolutely Reasonable Under the Circumstances**

Under the lodestar method, counsel's raw lodestar may be adjusted for purposes of awarding a fee based upon consideration of factors such as: (1) the results obtained, (2) the novelty and complexity of the questions presented, (3) the skill exhibited by counsel, (4) preclusion of other legal work because of counsel's acceptance and prosecution of the case, and (5) risk of nonpayment. *Hanlon*, 150 F.3d at 1029; *Kerr*, 526 F.2d at 70.

While the application of these factors would reasonably support a positive multiplier here, the fee requested by Class Counsel actually represents a significant *negative* multiplier (.715) on counsel's submitted lodestar. The amount requested is absolutely reasonable under the circumstances.

1                                    **a.     The Results Obtained for the Class**

2            The Settlement that Class Counsel achieved through their efforts provides substantial  
3 benefits to the Class that are well-tailored to the alleged misconduct and to the risks and harm  
4 faced by the Class Members. The Settlement represents a strong result, particularly given that no  
5 monetary relief claims are being released.

6            All Class Members will be able to enroll in two (2) years of TransUnion's credit  
7 monitoring service, which provides several valuable features including: unlimited access to the  
8 consumer's credit report, daily credit monitoring and fraud alerts, up to \$1 million in identity theft  
9 insurance, and credit dispute and identity restoration services. This relief is particularly pertinent  
10 and valuable for Class Members, because their PII demonstrably has already been exposed to  
11 fraudsters.

12           More than 7,600 Class Members have already enrolled in the services, with more than a  
13 month still remaining until the January 22, 2019 claim deadline. Keough Decl., ¶ 19. Based on a  
14 comparison to other similar services available on the market, a reasonable estimate of the retail  
15 value of the TransUnion services provided under the Settlement is between approximately \$10  
16 and \$20 per month, for a total value per enrollee of approximately \$240 to \$480 for the two years  
17 of service provided by the Settlement.<sup>8</sup>

18           The Settlement also includes important security practice changes, including numerous  
19 steps that Intuit has already implemented to reduce the incidence of tax identify fraud through  
20 TurboTax, and additional commitments by Intuit that will help to reduce such fraud. These  
21 changes and commitments have helped, and will continue to help, protect Class Members and  
22 other taxpayers going forward.

23           The Settlement's benefits speak directly to the shared experiences and risks faced by the  
24 Class. All Class Members have been subjected to identity theft. All of them had their personal  
25 information misused by fraudsters who filed fraudulent tax returns in their names through Turbo  
26 Tax. Moreover, all of them face continuing risks of identity theft and PII misuse going forward.

27 \_\_\_\_\_  
28 <sup>8</sup> See David Gewirtz, *Best Identity monitoring services for 2018*, CNET (Mar. 2, 2018),  
<https://www.cnet.com/news/best-identity-monitoring-services/>.

1 The TransUnion services provided under the Settlement will help protect Class Members from  
2 identity theft and the misuse of their information in the future, as well as to mitigate the  
3 corresponding harms associated with the past misuse of their information. Moreover, the security  
4 changes and commitments by Intuit will benefit Class Members (and other taxpayers) by helping  
5 to shore up Intuit's security and thereby reduce the incidence of tax identity fraud through  
6 TurboTax.

7 Moreover, Class Counsel were careful to negotiate a Settlement that does not deprive  
8 Class Members who suffered particular monetary damages of the ability to pursue those claims.  
9 Thus, although the Settlement does provide valuable benefits beyond the injunctive relief (i.e., the  
10 TransUnion services), the Settlement does *not* release any damages or other monetary relief  
11 claims Class Members may have.

12 The substantial relief obtained for the Class and other taxpayers, combined with the  
13 limited scope of the release, support the requested fee here.

14 **b. The Novelty and Complexity of the Issues and the Skill**  
15 **Demonstrated by Counsel**

16 This case raised highly novel and complex issues, both factually and legally. As the Court  
17 is aware, the alleged fraud here was not conducted by Intuit itself. Rather, this case concerned the  
18 use by third party fraudsters of taxpayer PII in filing fraudulent tax returns in other peoples'  
19 names through TurboTax. Plaintiffs' core theory of liability here—that Intuit was uniquely  
20 positioned and owed a duty to maintain policies to protect taxpayers from this conduct by third  
21 parties—was novel and, frankly, untested before this litigation commenced. Simply put, no case  
22 like this had been filed previously. It was far from certain that Plaintiffs would be able to succeed  
23 in establishing a duty of care, liability, or an entitlement to any remedy in this case. Nevertheless,  
24 Class Counsel endeavored to conduct substantial factual investigation to buttress their claims, and  
25 to develop by analogy novel applications of existing legal principles to the facts in this case.  
26 While not every claim that Plaintiffs pled ultimately survived the pleadings, some claims did  
27 survive, thus enabling the Settlement. The novelty and complexity of the factual and legal issues  
28 here strongly militate in favor of granting the requested fee.



1 2003); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing  
2 *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970)).

3 To date, counsel have incurred a total of \$102,774.44 in out-of-pocket litigation costs for  
4 which they seek reimbursement.<sup>10</sup> This amount includes costs for, *inter alia*, mediation fees,  
5 legal research, filing fees, data preservation and collection, electronic database maintenance, and  
6 travel. The costs for which Class Counsel seek reimbursement were reasonably necessary for the  
7 continued prosecution and resolution of this litigation, and were incurred by Class Counsel for the  
8 benefit of the Class with no guarantee that they would be reimbursed. They are reasonable in  
9 amount and the Court should approve their reimbursement.

10 **C. The Requested Service Awards Are Reasonable and Should Be Approved**

11 The Ninth Circuit has recognized that “named plaintiffs, as opposed to designated class  
12 members who are not named plaintiffs, are eligible for reasonable incentive payments.” *Staton*,  
13 327 F.3d at 977; *Rodriguez*, 563 F.3d at 958 (service awards “are fairly typical in class action  
14 cases”). Such awards are “intended to compensate class representatives for work done on behalf  
15 of the class [and] make up for financial or reputational risk undertaken in bringing the action.”  
16 *Id.*; *see also Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995).

17 The requested service awards here are reasonable and justified. In addition to lending  
18 their names to this case, and thus subjecting themselves to public attention, the named Plaintiffs  
19 here were actively engaged. Among other things, they provided information to their counsel,  
20 gathered documents, responded to interrogatories, reviewed pleadings, stayed updated about the  
21 litigation, and reviewed and approved the proposed Settlement.<sup>11</sup> Their commitment is  
22 particularly notable given the relatively modest size of their personal financial stakes in this  
23 matter. *See Van Vranken*, 901 F. Supp. at 299 (“In exchange for his participation, Van Vranken  
24

25 <sup>10</sup> This figure includes costs for the five Class Counsel firms as well as for McCune Wright &  
26 Arevalo and HammondLaw, PC. *See* Heller Decl., ¶ 46, Ex. B; Goldman Decl., ¶ 14; Kelston  
27 Decl. ¶ 14, Ex. C; Siprut Decl., ¶ 10; Tepler Decl., ¶ 20; McCune Decl., ¶ 15; Hammond Decl.,  
28 ¶ 18, Ex. 3. This figure also includes \$12,974.92 in disbursements from the parties’ common cost  
fund. *See* Heller Decl., ¶ 50.

<sup>11</sup> Heller Decl., Exs. D-I (Brown Decl. ¶¶ 4-8; Diaz Decl. ¶¶ 3-4; Knoch Decl. ¶¶ 3-4; Lebinski  
Decl. ¶¶ 3-4; Stock Decl. ¶¶ 7-9; Williams Decl. ¶¶ 3-4).

1 will not receive great personal benefit. He owns a moderately sized truck stop and his claim  
2 makes up only a tiny fraction of the common fund.”).

3 Moreover, the \$5,000 awards requested here are in line with what courts in this District  
4 have awarded in other cases. *See Pierce v. Rosetta Stone, Ltd.*, No. 11-01283, 2013 WL  
5 5402120, at \*6 (N.D. Cal. Sept. 26, 2013) (approving service awards of \$5,000 and stating that  
6 “[i]n this district, a \$5,000 payment is presumptively reasonable”) (citing cases); *In re LinkedIn*  
7 *User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015); *Dyer v. Wells Fargo Bank, N.A.*, 303  
8 F.R.D. 326, 335 (N.D. Cal. 2014); *Faigman v. AT & T Mobility LLC*, No. 06-04622, 2011 WL  
9 672648, at \*5 (N.D. Cal. Feb. 16, 2011).

#### 10 **IV. CONCLUSION**

11 For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court:  
12 (a) award Class Counsel attorneys’ fees in the amount of \$2,717,225.56 and reimbursement of  
13 litigation costs in the amount of \$102,774.44; and (b) award service awards in the amounts of  
14 \$5,000 each for the six Plaintiffs who served as class representatives in this case, with all such  
15 amounts to be paid by Intuit as set forth in the Settlement.

16 Dated: December 17, 2018

Respectfully submitted,

17 /s/ Roger Heller

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