IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

STEPHANIE HOOVER, RONALD BAILEY, DENA KIGER, JOSE KIGER, and JAMES HALL, *individually and on behalf of all others similarly situated*, Plaintiffs, v. CAMPING WORLD GROUP, LLC, GOOD SAM ENTERPRISES, LLC, CWI, INC., and CAMPING WORLD HOLDINGS, INC. Defendants.	Case No. 2023LA000372

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS

I. INTRODUCTION

In this putative class action, Plaintiffs Stephanie Hoover, Ronald Bailey, Dena Kiger, Jose Kiger, and James Hall ("Plaintiffs") allege that Defendants Camping World Group, LLC, Good Sam Enterprises, LLC, and Camping World Holdings, LLC ("Defendants") failed to properly secure and safeguard the Private Information of Plaintiffs and Settlement Class Members during a Security Incident that occurred in January and February 2022. Camping World notified Plaintiffs and Settlement Class Members of the Security Incident in November 2022.

In August 2023, the Parties finalized and executed a Settlement. The Settlement, which was preliminarily approved on December 12, 2023, provides for a $650,000 non-reversionary common fund that will be used to pay for benefits to the Settlement Class, including two (2) years of free one-bureau credit monitoring for all Settlement Class Members and a cash Settlement Payment in an amount equal to a pro rata share of what remains in the Net Settlement Fund after all funds necessary to pay Notice and Administration Costs and Fee Award and Costs.[1] This is meaningful compensation that meets and exceeds the applicable standards of fairness and the Settlement should be finally approved.

Additionally, Plaintiffs and Class Counsel respectfully request that the Court approve a Service Award of $2,500 to each Plaintiff and an award of attorneys' fees to Class Counsel of thirty-five percent (35%) of the Settlement Fund (or $227,500.00) and reimbursement of litigation costs and expenses of $13,286.04. As detailed below, the requested awards are appropriate under governing Illinois law, consistent with the amounts awarded in prior similar settlements, and fairly compensate Class Counsel and Plaintiffs for the work they performed and commendable result they achieved in this high-risk litigation.

[1] Unless otherwise noted, all capitalized terms have the definition given to them in the Class Action Settlement Agreement (the "Agreement").

II. FACTUAL AND PROCEDURAL BACKGROUND

This litigation, initiated via three proposed class action lawsuits filed on December 1, 8, and 9, 2022, in the United States District Court for the Northern District of Illinois, relates to a data security incident disclosed by Defendants on or about November 3, 2022, potentially affecting certain sensitive personally identifiable information of people who worked for or purchased goods or services from Defendants. Defendants denied Plaintiffs' claims in their entirety, raising dispositive issues that threatened to dispose of Plaintiffs' claims. Given these risks, Plaintiffs elected to consolidate their efforts and explore resolution.

In March of 2023, the Parties mediated their cases with Hon. Wayne Andersen (Ret.) from JAMS, a mediator experienced in settling data breach class actions. There, the Parties agreed to the material terms of a Settlement, desiring to resolve any claims related to the Security Incident rather than continue litigating the matter. On April 11, 2023, Plaintiffs voluntarily dismissed their separate actions in the United States District Court for the Northern District of Illinois and refiled the substantially similar above-captioned case in this Court. Plaintiffs moved thereafter for preliminary approval of the Settlement, which this Court granted on December 7, 2023. Plaintiffs now submit their unopposed consolidated Motion for Final Approval of the Settlement and for Attorneys' Fees, Costs, and Service Awards.

III. SUMMARY OF SETTLEMENT TERMS

A. CLASS DEFINITION

The Settlement Class includes approximately 35,000 individuals and is defined to include all persons "who were notified by Defendants that their personal information was or may have been compromised in the Data Security Incident." Agreement §26.[2]

[2] The Court preliminarily certified the Settlement Class. Nothing has changed since that Order was issued, and thus the Settlement Class should be finally certified.

B. SETTLEMENT BENEFITS

Defendants will place $650,000 into a non-reversionary Settlement Fund. Agreement §§ B.1, D.3 and J.3. To administer these funds and implement the Settlement's terms, the Court appointed Epiq as the "Settlement Administrator." *Id*. § B.5. Once funded, the Settlement Fund will be used to pay for: (i) credit monitoring and cash payments to class members; (ii) administrative expenses; (iii) tax-related expenses; and (iv) service awards and attorneys' fees, and costs. *Id.* Unless a member opts out of the Settlement, they will receive two years of free credit monitoring and a *pro rata* share of what remains in the Net Settlement Fund after payment of Notice and Administration Costs, Fee Award and Costs, and the Credit Monitoring Benefit *Id.* § B.5, C.1. This term ensures ease for Class Members, as they will all receive two years of free credit monitoring and a cash payment via check without needing to file a claim.

C. RELEASED CLAIMS

In exchange for the relief described above, Defendants and all "Released Persons" (as defined in Section K.1 of the Agreement), will receive a full release of all known and unknown claims arising out of or related to the Data Incident. *See* Agreement at §§ K1-K.2

D. NOTICE AND ADMINISTRATION

The Settlement Fund will be used to pay the cost of sending the Notice set forth in the Amended Settlement Agreement and any other notice as required by the Court, as well as all Settlement administration costs. *See* Agreement § B.1. Here, direct notice was sent was sent by Epiq via USPS first-class mail on January 9, 2024 to 28,278 class members, identified on a Class List provided by Defendants. Azari Decl. at ¶11. Prior to sending notice, all addresses were checked for accuracy. *Id*. ¶12. Epiq remailed all initially undeliverable notices for which better addresses could be found. *Id.* ¶13. As of February 6, 2024, a Postcard Notice was delivered to 25,987 of the 28,278 unique, identified Settlement Class Members. *Id*. ¶14. This means the

individual notice efforts reached approximately 91.8% of the Settlement Class, a reach rate consistent with other court-approved notice plans. *Id*. ¶7. Notice here "was the best notice practicable under the circumstances of this case and satisfied the requirements of due process, including its 'desire to actually inform' requirement." *Id*.

E. SERVICE AWARDS, ATTORNEYS' FEES, COSTS, AND EXPENSES

In recognition of their efforts on behalf of the Settlement Class, Defendants agreed that each Plaintiff may receive, subject to Court approval, an incentive award up to $2,500 from the Settlement Fund, as appropriate compensation for their contribution to this litigation. *See Id.* § L.1. Defendants will not oppose any request limited to this amount. *Id.* In addition, the Settlement Fund will be used to pay Class Counsel's reasonable attorneys' fees, costs and expenses, in an amount to be approved by the Court. *See Id.* § B.5(iv). Therefore, Class Counsel hereby petitions the Court for attorneys' fees of no more than 35% of the Settlement Fund, or $227,500, and reasonable expenses and costs of $13,286.04. Agreement § M.1.

IV. CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *see also* 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.41 (4th ed. 2002) (hereinafter "Newberg"). Courts review proposed class action settlements using a well-established two-step process. Newberg § 11.25, at 38-39; *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." Newberg, § 11.25, at 38–39; *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873 (7th

Cir. 1998). If the Court finds the settlement proposal is "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. Newberg, § 11.25, at 38–39. Plaintiffs are presently at the second step of this two-step process.

V. ARGUMENT

A. THE COURT SHOULD GRANT FINAL APPROVAL TO THE SETTLEMENT

Section 2-801 provides that a court may approve a proposed class settlement "on a finding that it is fair, reasonable, and adequate." 735 ILCS 5/2-801. "[T]here exists a strong policy in favor of settlement and the resulting avoidance of costly and time-consuming litigation[.]" *Sec. Pac. Fin. Serv. v. Jefferson*, 259 Ill. App. 3d 914, 919 (1st Dist. 1994). Where, as here, the settlement is the product of arm's-length negotiations between sophisticated parties, courts attach to the settlement a presumption of fairness, adequacy, and reasonableness. *See Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 42.

In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the Defendants' ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong,* 616 F.2d at 314. All eight factors weigh in favor of approval.

1. The settlement provides substantial relief

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class. Specifically, Class members will receive two (2) years of credit monitoring, a *pro rata* share of the Net Settlement Fund, and attorneys' fees and costs *See* Agreement § C.1.

Additionally, Defendants have implemented or agreed to implement certain data security measures.[3] The costs associated with these security measures shall be paid by Defendants separately and apart from the other Settlement benefits contained in the Agreement.

Although Plaintiffs believe they would likely prevail on their claims, they are also aware that Defendants deny the material allegations of the Complaint and intend to pursue several legal and factual defenses, including (but not limited to) whether Defendants were liable for the conduct of third-party hackers. *See* Borrelli Decl. ¶ 3. An adverse decision would have deprived the Settlement Class, or at least a substantial portion thereof, of any recovery whatsoever. *Id.*

Thus, the unsettled nature of several potentially dispositive threshold issues in this case poses a significant risk to Plaintiffs' claims and will add to the length and costs of continued litigation. *Id.* ¶ 2. Taking these realities into account and recognizing the risks involved in any litigation, the relief available to each Class Member represents an objectively positive outcome for the Plaintiffs . And "[t]he standard for class settlement approval is not whether the parties could have done better— the standard is whether the compromise was fair, reasonable, and adequate. . . A trial court cannot reject a settlement solely because it does not provide a complete victory to the class members." *Lebanon*, 2016 IL App (5th) 150111-U, ¶ 50.

In addition to any defenses on the merits Defendants would raise, should litigation continue, Plaintiffs would also be required to prevail on a class certification motion that would be highly contested and for which success is certainly not guaranteed. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation.") (internal citations omitted). "If

[3] Due to the confidential nature of these security measures, they are not disclosed in these papers. *See* Declaration of Mark Olthoff (dated Sept. 19, 2023, and filed in support of Plaintiffs' Unopposed Motion for Preliminary Approval).

the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id.* Approval would ensure that to receive meaningful and expeditious relief, thereby avoiding the potential for significant delay or a decision rendering no remedy at all. *See id.* at 582; Borrelli Decl. ¶¶2-3.

Additionally, the fairness, reasonableness, and adequacy of the instant Agreement are supported by previously approved settlements that provided comparable relief. *See e.g. Aguallo et al. v. Kemper Corporation*, Case No. 1:21-cv-01883 (N.D. Ill.), ECF No. 53, March 18, 2022 (granting final approval where all class members automatically received 18 months of identity theft protection); *Myshka et al. v. Wolfe Clinic, P.C.*, Case No. 02641 CVCI011151 (IA Dist. Ct for Marshall County), June 17, 2022 (final approval of settlement with 2 years of credit monitoring and identity theft protection without the need to make an affirmative claim).

2. Defendants are able to pay

The second factor that can be considered by the Court is the Defendants' ability to pay the settlement sum. Defendants' financial standing has not been placed at issue here.

3. Continued litigation will likely be complex, lengthy, and expensive

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. See *Korshak*, 206 Ill. App. 3d at 972. In absence of settlement, it is certain that the expense, duration, and complexity of the resulting litigation would be substantial. Borrelli Decl. ¶2. Not only would the Parties have to undergo significant motion practice before any trial on the merits, but evidence and witnesses from throughout the State of Illinois and beyond would have to be assembled for any trial. *Id.*

Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. *Id.* ¶3. As such, the immediate and considerable relief provided to the Settlement Class under the

Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a complex d trial and likely appeal. As a protracted and expensive litigation is not in the interest of any of the Parties, the Court should approval the instant Settlement..

4. No objections were filed

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Settlement Class to the Settlement. *See Korshak*, 206 Ill. App. 3d at 972. Following the implementation of the Notice plan set forth in the Agreement, The Settlement Class's reaction to the Settlement has been overwhelmingly favorable. In accordance with the Notice plan, the Settlement Administrator successfully provided direct notice to 25,887 Class Members. Azari Decl. ¶14. There is not a claims rate here, because Class Members don't need to file an affirmative claim to receive the benefits of this Settlement. However, because of the automatic nature of the benefits, almost 100% of the Class will receive a benefit. Moreover, no one has objected to the Settlement and no one has requested exclusion. *Id.* ¶18 The deadline to object to or request to be excluded from the Settlement is February 23, 2024. Should anything change with respect to these numbers, Plaintiffs will update the Court.

5. Settlement was the result of arm's-length negotiations between the parties after a significant exchange of information

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *See Korshak*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. See Newberg, § 11.42; *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21, 52 N.E.3d 427, 441 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'").

Here, the Settlement was reached only after arm's-length negotiations between counsel for the Parties and a mediation with Hon. Wayne R. Andersen (Ret.) of JAMS. *See* Borrelli Decl. ¶8. Moreover, negotiations began only after an exchange of information regarding the size and composition of the Settlement Class. Such an involved process underscores the non-collusive nature of the proposed Settlement. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties.

6. The Class Members approve of the Settlement

As stated above, there is no objection to the Settlement. Azari Decl. ¶18. Not only that, but no Class Member has opted-out of this Settlement. *Id*. The Class Members are 100% unified in their support for and approval of this Settlement.

7. The Settlement is supported by experienced class counsel

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See Korshak*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id*. Here, Class Counsel believes that the Settlement is in the best interest of the Class Members because the they will receive an immediate benefit, instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Borrelli Decl. ¶¶2-3. Further, due to the defenses Defendants have indicated that they would raise—and the resources Defendants have committed to defend and litigate this matter—it is possible that the Settlement Class Members would receive no benefit in the absence of this Agreement. *Id*. Given Class Counsel's extensive experience litigating similar cases , this factor weighs in favor of final approval. *See GMAC*, 236 Ill. App. 3d at 497 (the court should give weight to the class counsel's recommendation).

8. The parties exchanged sufficient information to assess the Settlement

The eighth factor is structured to permit the Court to consider the extent to which the Parties and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement. *See Korshak*, 206 Ill. App. 3d at 972. Class Counsel thoroughly investigated the facts and law relating to Plaintiffs' allegations and Defendants' defenses, and the Parties exchanged information regarding the facts and size of the Class during informal discovery. *See* Borrelli Decl. ¶¶ 5-6. . Accordingly, this factor also weighs in favor of final approval.

B. THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED

Service awards are appropriate in class actions because a class representative's efforts benefit absent class members and serve to encourage the future filing of beneficial litigation. *GMAC Mortg. Corp. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992). "Because a named plaintiff is an essential ingredient of any class action, the Court may authorize incentive awards when necessary to induce individuals to become named representatives." *In re TikTok, Inc., Consumer Privacy Litig.*, 617 F. Supp. 3d 904, 948 (N.D. Ill. 2022) (internal citations and quotations omitted). In the matter before this Court, the Plaintiffs have been instrumental in their role as Class Representatives. Plaintiffs consulted with Class Counsel, assisted in initiating the case, and reviewed the complaints and other pleadings prior to filing. Borrelli Decl. ¶20-23. Additionally, Plaintiffs and Class Counsel discussed the terms of the Settlement Agreement as it was being negotiated, and they also reviewed and approved the final Settlement Agreement. *Id.* ¶20. Plaintiffs were committed to this litigation and were prepared to participate in further discovery, sit for depositions, and testify at trial if a settlement was unfeasible. *Id.*

Here, a Service Award of $2,500 to each Plaintiff (Agreement § L.1) is reasonable and in line with service awards approved by courts in Illinois. *See In re TikTok, Inc. Consumer Privacy Litig.*, 617 F. Supp. 3d at 949 ("A study of approximately 1,200 class actions showed that the

median incentive award per plaintiff was $5,250."); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041-42 (N.D. Ill. 2011) (collecting cases finding $5,000-per-representative service awards reasonable). The Court should grant Plaintiffs' requests for Service Awards of $2,500 for each Plaintiff.

C. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

1. Standards for Attorneys' Fees

In determining the appropriate amount of attorneys' fees to award in a common-fund class action case (such as this one), Illinois courts have the discretion to use one of two approaches: the percentage-of-the-benefit method or the lodestar method. *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 243-44 (1995). Under the common-fund doctrine, "a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). Where such a Settlement Fund has been created, "attorneys for the successful plaintiff may directly petition the court for the reasonable value of those services which benefited the class." *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13-14 (1st Dist. 1992). Illinois courts have recognized that the percentage fee approach, as opposed to the lodestar method, is appropriate in common fund cases as "the best determinant of the reasonable value of services rendered by counsel." *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

2. The Requested Attorneys' Fee Award is Reasonable

Under the percentage method, the attorneys' fee award is calculated by using the gross amount of benefits provided to class members, including administrative expenses, and attorneys' fees and expenses. *See Ferris v. Sprint Comm'ns Co. L.P.*, 2012 U.S. Dist. LEXIS 198702, at *6-

7 (E.D.N.C. Dec. 13, 2012) ("Under the percentage-of-the-fund method, it is appropriate to base the percentage on the gross cash benefits available for class members to claim, plus the additional benefits conferred on the class by the Settling Defendants' separate payment of attorney's fees and expenses, and the expenses of administration."). "As a barometer for assessing the reasonableness of a fee award in common-fund cases, courts look to the going market rate for legal services in similar cases." *In re Dairy Farmers of Am., Inc., Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 845 (N.D. Ill.). The Seventh Circuit noted that the "usual range for contingent fees is between 33 and 50 percent." *Id.* (citation omitted). Illinois state and federal court cases have approved attorneys' fees in the 30-to-39% or higher range. *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 29 (granting attorneys' fee award of 35% of the fund); *Ryan v. City of Chic.*, 274 Ill. App. 3d 913, 925 (1st Dist. 1995) (granting attorneys' fee award of one-third of the common fund).

Here, the requested attorneys' fee award of 35% of the Settlement Fund is well-within the range typically awarded in common-fund class action cases. *See*, *e.g.*, *McCormick*, 2022 IL App (1st) 201197-U, ¶ 29 (granting attorneys' fee award of 35% of the fund); *Dobbs v. DePuy Orthopaedics, Inc.*, 15 CV 8032, 2017 WL 4572497, at *4 (N.D. Ill. May 9, 2017) (awarding 35% of the plaintiff's recovery under quantum meruit); *Campos v. KCBX Terminals*, N.D. Ill. Case No. 13 CV 08376, ECF. Nos. 216, 239 (granting attorneys' fee award of 35% of common fund); *see also Schulte v. Fifth Third Bank*, 805 F.Supp.2d 560, 599 (N.D. Ill. 2011) ("The Court is independently aware that 33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation."). Illinois courts consider the risks of bringing the litigation, and the relief provided to the class via settlement. *See Ryan*, 274 Ill. App. 3d at 924. Riskier litigation and better relief merit greater attorneys' fees. *Id.*

a. Data Breach Class Actions Taken on a Contingent Basis are Risky

Because Class Counsel prosecuted the instant action on a contingent-fee basis, they have not been compensated for the time spent representing Plaintiffs, nor have they been reimbursed for related expenses. Borrelli Decl. ¶13. The financial risk Class Counsel assumed in taking this case supports the reasonableness of the fee request. *See In re Dairy Farmers of Am.*, 80 F. Supp. 3d at 847-48; *see also Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) ("Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.").

Class Counsel accepted this litigation on a contingent-fee basis, forgoing other work, and accepting the risk they may receive no compensation for their work. Borrelli Decl. ¶13. Data breach litigation is a relatively new area of the law and many of the legal issues encountered in such cases are novel. *Id.* ¶18. No data breach class actions have gone to trial, and the outcome of such procedurally, legally, and factually complex cases are uncertain. Further, any litigated judgment would require significant time and effort, including complex and technical discovery as well as expert testimony. A motion for class certification would be complex, both procedurally and substantively. A trial would require an even larger investment of time and resources, and the outcome of any judgment would likely be appealed.

In sum, the inherent complexities and risks of data breach class action cases, justify the requested attorneys' fee award. The potential litigation pitfalls confirm the reasonableness of Plaintiffs' fee request. Balancing the strength of the Settlement Class's claims against the potential legal, factual, and procedural obstacles of a protracted litigation in the absence of a settlement, the Class Members faced a significant risk of little or no recovery.

b. Class Counsel Achieved an Outstanding Result

Notwithstanding the substantial risks presented by this litigation, the Settlement negotiated by Class Counsel provides the Class Members with substantial relief. Notably, Defendants agreed to pay $650,000 into a non-reversionary Settlement Fund from which every Settlement Class member will receive two years of free credit monitoring as well as a *pro rata* cash payment, all without needing to file a claim. *See* Agreement § B.5. As demonstrated by the *Aguallo* and *Myshka* cases cited above, the relief is in line with, or greater than, other data breach class actions and addresses the injuries alleged in the Complaint, particularly the future risk of identity theft. Hence, the relief recovered warrants the Court's approval of the requested attorneys' fee award.

c. The Lodestar Method Confirms the Reasonableness of the Award

Courts may, but need not, perform a cross-check to confirm the reasonableness of a fee award under the percentage of recovery method. *See McCormick*, 2022 IL App (1st) 201197-U, ¶ 26. The lodestar method is a computation that increases the reasonable value of services rendered by a weighted multiplier; this multiplier represents certain considerations, for example, "the contingency nature of the proceeding, the complexity of the litigation, and the benefits [to] … the class." *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58. Most often this "lodestar" figure is adjusted upwards by the Court—often called a "multiplier"—to compensate counsel for the contingent nature of the case, the quality of work performed, delay in payment and other factors. *Brundidge*, 168 Ill.2d at 240-42.

Lodestar multipliers between 3 and 4 are typically considered to be within the "middle" range of reasonable fees. *See Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 766 (S.D. W. Va. 2009) (approving a lodestar multiplier between 3.4 and 4.3 as "closer to the middle of the range considered reasonable by courts"). In addition, courts "may accept as reasonable class

counsel's estimate of the hours they have spent working on the case." *Id.* at 482-82; *see also Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756 (S.D.W. Va. 2009) (same).

Class Counsel's' reasonable hours and lodestar is set forth in the Borrelli Declaration at paragraphs 26 to 28. Their time—over 320 hours to date—was reasonably spent and was necessary to win the benefits of the Settlement. *Id.* Here, the requested attorneys' fee would amount to a modest 1.12 multiplier of their collective lodestar of $202,726.66. *Id.* This is well within the range accepted by courts, especially when considering the risks Class Counsel assumed.

3. Class Counsel's Costs and Expenses Were Reasonable

The Settlement Agreement provides that Class Counsel may recover from the Settlement Fund their reasonable costs and expenses incurred in prosecuting the litigation not to exceed $50,000. Agreement § M.1. Attorneys who generate a benefit for the class are entitled to recover reasonable litigation expenses incurred to advance the matter. *See Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 412 (E.D. Wis. 2002). These costs include reasonable out-of-pocket expenses that are normally charged by an attorney to a fee-paying client for the provision of legal services. *Decohen*, 299 F.R.D. at 483. Plaintiffs seek reimbursement of $13,286.04 in costs and expenses incurred in furtherance of this litigation. *See* Borrelli Decl. ¶30. The requested costs and expenses are reasonable.

VI. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter an Order granting final certification of the settlement class, granting final approval of the Settlement, and approving the requested Service Awards and Fee and Costs Award.[4]

[4] A proposed Final Order and Judgment is submitted herewith.

Dated: February 13, 2024

Respectfully submitted,

By: */s/ Raina C. Borrelli*

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2024, a copy of the foregoing was filed electronically via Odyssey eFileIL. Notice of this filing will be sent by email to counsel of record by operation of the court's electronic filing system.

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