UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JESSICA GUERRERO and JEFFREY MATTHEWS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MERRITT HEALTHCARE HOLDINGS, LLC d/b/a MERRITT HEALTHCARE ADVISORS,

Defendant.

Case No.: 3:23-cv-00389-MPS

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S AMENDED MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND NAMED PLAINTIFF SERVICE PAYMENTS

Judge: Hon. Michael P. Shea

October 29, 2024

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Pursuant to Federal Rules of Civil Procedure 12(h) and 54(d)(2), Class Counsel[1] for Plaintiffs Jessica Guerrero and Jeffrey Matthews ("Plaintiffs" or "Named Plaintiffs") respectfully submit this memorandum of law in support of their Amended Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Named Plaintiff Service Payments ("Amended Fee Motion").[2]

I. INTRODUCTION

As a result of the efforts of Class Counsel and Plaintiffs, a Settlement has been reached between Plaintiffs and Defendant Merritt Healthcare Holdings, LLC d/b/a Merritt Healthcare Advisors, Inc. ("Defendant" or "Merritt," and collectively with Plaintiffs, the "Parties"), that provides significant monetary benefits to the Settlement Class. ECF No. 67-3. The Settlement – preliminarily and finally approved by this Court (ECF Nos. 80, 95) – establishes a $1,525,000 ***non-reversionary, all cash*** common fund for the benefit of the Settlement Class. ECF No. 67-3, ¶II.E.1. As discussed in Plaintiffs' Response in Further Support of Motion for Final Approval of Class Action Settlement, Final Certification of Settlement Class and in Opposition to Objection ("Supplemental Final Approval Brief") (ECF No. 90 at 1-2), and as set forth in the Settlement, members of the Settlement Class could receive either a payment for Out-of-Pocket Losses up to $5,000 or a *Pro Rata* Cash Payment of up to $500. ECF No. 67-3, ¶¶II.H.2-4. This represents an excellent recovery for the Settlement Class.

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[1] Class Counsel include Kevin Laukaitis of Laukaitis LLC and Laura Van Note of Cole & Van Note, who the Court appointed as Co-Lead Class Counsel, as well as Erin Green Comite of Scott+Scott Attorneys at Law LLP ("Scott+Scott"), who the Court appointed as Liaison Counsel. ECF No. 80, ¶2. Unless otherwise noted, capitalized terms have the same meaning as in the Settlement Agreement ("Settlement"), ECF No. 67-3.

[2] After filing, Class Counsel will post this memorandum of law and all declarations in support of the Amended Fee Motion on the Settlement Website.

On October 15, 2024, this Court held a hearing ("Final Approval Hearing") to consider Plaintiffs' Motion for Final Approval of Class Action Settlement, Final Certification of Settlement Class (ECF No. 85) and the Motion for Attorney's Fees and Costs. ECF No. 83 ("Fee Motion"). At the Final Approval Hearing, the Court stated that it was inclined to grant final approval of the Settlement (ECF No. 91) and subsequently issued an order granting final approval of the Settlement. ECF No. 95 at 3, ¶2. However, the Court identified concerns with respect to the specificity of Class Counsel's Fee Motion and denied it without prejudice, allowing Class Counsel to file a new motion supported by "contemporaneous time records indicating, for each attorney, the date, the hours expended, the hourly rate, and the nature of the work done." ECF No. 91; *see also* ECF No. 93 at 9, ¶¶4-13. The requested time records are attached to a declaration submitted by each Class Counsel law firm seeking an award of attorneys' fees and reimbursement of expenses in this Amended Fee Motion. *See* Declaration of Kevin Laukaitis ("Laukaitis Decl."), Declaration of Laura Van Note ("Van Note Decl."), and Declaration of Daryl F. Scott ("Scott Decl.") (filed contemporaneously herewith). Furthermore, the Court expressed reservations regarding the Named Plaintiff Service Payments. ECF No. 93 at 10, ¶¶5-20. This request is now supported by revised declarations, which also are submitted with this Amended Fee Motion. *See* Plaintiff Jeffrey Matthews' Supplemental Declaration ("Matthews Decl."); Plaintiff Jessica Guerrero's Declaration in Support of Plaintiffs' Motion for Final Approval ("Guerrero Decl."). In light of the Court's comments at the Final Approval Hearing, Class Counsel have reduced their request for attorneys' fees to 25% of the common fund and have also reduced the amounts sought for the Named Plaintiffs' Service Payments to $1,500 for each Named Plaintiff.

As explained below, based on Class Counsel's overall investment of time and resources, the complexity of the litigation, and the risks assumed, the requested 25% fee award is fair and

reasonable, particularly when compared to fee awards granted in similar consumer class action and data breach cases in this Circuit and elsewhere. A lodestar cross-check further confirms that the fee request is reasonable. Based on a total fee award of $381,250 (*i.e.*, 25% of the $1,525,000 common fund), the lodestar cross-check results in a multiplier of 1.20, which is consistent with fee awards in other cases of similar complexity and magnitude.[3] Each Class Counsel firm has provided the Court with detailed time and billing rates. *See* Laukaitis Decl., ¶¶18-20 & Ex. 1; Van Note Decl., ¶4 & Ex. 1; and Scott Decl., ¶4 & Ex. 1.

In addition, Class Counsel request payment of unreimbursed litigation expenses, as set forth in the declarations from each of the Class Counsel firms that provides the amount as well as a chart of the litigation expenses incurred. *See* Laukaitis Decl., ¶22 & Ex. 2; Van Note Decl., ¶7 & Ex. 2; and Scott Decl., ¶7 & Ex. 2. These litigation expenses are of the type that attorneys typically bill to paying clients, were reasonably incurred to advance the litigation, and should be reimbursed.

Finally, Class Counsel seek Named Plaintiff Service Payments of $1,500 for each Plaintiff to compensate them for the time they devoted to this case and in recognition of the results that could not have been achieved without their participation. For this reason and the reasons stated herein, Class Counsel respectfully ask the Court to approve the Named Plaintiff Service Payment, the amount of which is routinely approved in the Second Circuit and data breach cases nationwide.

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[3] Class Counsel are mindful of the Court's concerns and voluntarily reduces their fee request from 33.3% to 25% of the common fund. This request, if granted, would result in an additional $127,000 distributed to members of the Settlement Class *pro rata*. This further ensures the reasonableness of the fee sought. *See In re Pall Corp. Class Action Att'ys' Fees Application*, No. CV 07-CV-3359, 2013 WL 1702227, at *3 (E.D.N.Y. Apr. 8, 2013), *report and recommendation adopted sub nom. In re Pall Corp.*, No. 07-CV-3359, 2013 WL 3244824 (E.D.N.Y. June 25, 2013).

Accordingly, Class Counsel respectfully request that this Court grant the Amended Fee Motion.

II. STATEMENT OF FACTS

A. Litigation History and Work Performed to Benefit the Settlement Class

Merritt discovered on November 30, 2022 that it experienced a data breach that Plaintiffs allege exposed their and others' sensitive personal health information and personally identifiable information. ECF No. 50, ¶2. After investigating, on March 29, 2023, Plaintiff Jessica Guerrero filed the first Class Action Complaint in this Court against Defendant regarding this data breach, asserting claims for negligence, negligence *per se*, breach of implied contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. *See generally*, ECF No. 1. On April 17, 2023, Plaintiff Jeffrey Matthews filed a complaint in this Court against Defendant, asserting similar claims. *See Matthews v. Merritt Healthcare Holdings, LLC*, No. 3:23-cv-00476 (D. Conn.), ECF No. 1.

On June 6, 2023, Plaintiffs moved to consolidate their cases and have their respective attorneys, Kevin Laukaitis of Laukaitis Law LLC and Laura Van Note of Cole & Van Note ("Co-Lead Interim Class Counsel"), appointed as Co-Lead Interim Class Counsel. ECF No. 37. The Court granted Plaintiffs' motion on July 13, 2023. ECF No. 43. Plaintiffs thereafter filed their Consolidated Amended Complaint ("Consolidated Complaint") on July 26, 2023. ECF No. 50. On September 26, 2023, Defendant filed a motion to dismiss Plaintiffs' Consolidated Complaint, which Class Counsel thoroughly analyzed. ECF Nos. 55, 56.[4]

[4] Plaintiff Joseph Castillo ("Plaintiff Castillo") also filed a similar complaint against Defendant. *See Castillo v. Merritt Healthcare Holdings, LLC*, No. 3:23-cv-00489 (D. Conn.), ECF No. 1. *Castillo* was consolidated with *Guerrero* (ECF No. 43); however, Plaintiff Castillo subsequently filed a notice of voluntary dismissal of his case. ECF No. 78.

Shortly after consolidation, the Parties began discussing possible early resolution and subsequently agreed to mediate the matter. ECF No. 59. In light of their agreement to mediate the case, on October 26, 2023, the Parties moved the Court to stay the action pending mediation, which the Court granted on October 27, 2023. ECF Nos. 59-60.

B. Mediation and Settlement

After agreeing to mediate, but before the mediation session, the Parties engaged in informal discovery to help facilitate resolution discussions. *See* ECF No. 67-2, Declaration of Kevin Laukaitis in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan ("Laukaitis Preliminary Approval Decl."), ¶¶4, 11-12. On December 21, 2023, the Parties engaged in a mediation session overseen by Hon. Wayne R. Andersen (Ret.) of JAMS. *Id.*, ¶5. After a successful full-day, arm's-length mediation session, the Parties agreed to a settlement in principle, which resolved all claims in the litigation. *Id.* The Parties notified the Court of their settlement in principle on December 29, 2023. ECF No. 61.

The Parties then worked diligently toward drafting and finalizing the Settlement. Laukaitis Preliminary Approval Decl., ¶6. They also obtained quotes from several claims administrators and agreed that Digital Settlement, LLC would best serve the interests of the Settlement Class. *Id.*, ¶7. The Parties continued drafting and finalizing the Settlement and proposed exhibits, and then all Parties fully executed the Settlement as of April 19, 2024. *Id.*, ¶8.

The negotiations leading to the Settlement were contentious and hard-fought, with Plaintiffs' counsel and Defendant's counsel each advocating for the Settlement Class's and Defendant's best interests, respectively. *Id.*, ¶9. The resulting Settlement reflects an agreement reached at arm's-length, in good faith, and free of collusion. *Id.* Based upon their independent

analysis, and recognizing the risks of continued litigation, Class Counsel believe that the Settlement is fair, reasonable, and adequate, and is in the best interest of Plaintiffs and the Settlement Class. *Id.*; *see also id.*, ¶¶14-15. The resulting Settlement substantially benefits the Settlement Class, eliminates the costs and burdens of continued litigation, and fully accomplishes Plaintiffs' goals of achieving a fair and reasonable all-cash common fund settlement.

C. Summary of the Settlement and Submitted Claims

1. The Settlement Class

The Court preliminarily certified, for settlement purposes only, a Settlement Class defined as:

> All individuals within or who are residents of the United States of America whose PHI/PII and/or financial information was exposed to unauthorized third parties as a result of the data breach discovered by Defendant on November 30, 2022.

ECF No. 80, ¶1. The Settlement Class excludes explicitly: (i) any judge or magistrate judge presiding over this Action, members of their staff, and members of their immediate families; (ii) the Released Parties; (iii) persons who properly execute and file a timely request for exclusion from the Settlement Class; (iv) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (v) counsel for Merritt; and (vi) the legal representatives, successors, and assigns of any such excluded persons. *Id.*

2. Monetary Relief

Under the Settlement, Merritt shall create an all cash $1,525,000 common fund ("Settlement Fund") to benefit members of the Settlement Class. ECF No. 67-3, ¶II.E.1. Members of the Settlement Class who submit valid proof of out-of-pocket expenses and losses will receive up to $5,000 in reimbursement. *Id.*, ¶II.H.3. Alternatively, members of the Settlement Class who submit a valid claim form will receive a *pro rata* cash payment after the paying any Class Counsel

Fees, Service Payments, Administrative Costs, and claims for Out-of-Pocket Losses. *Id.*, ¶II.H.4. None of the Settlement Fund will revert to Merritt. *Id.*

3. Attorneys' Fees, Litigation Expenses, and Service Awards

The Settlement provides that Class Counsel may seek an award of reasonable attorneys' fees, not to exceed 33 1/3% of the Settlement Fund. *Id.*, ¶II.F.1. The Settlement also provides that Class Counsel may seek to have the expenses incurred in the litigation reimbursed out of the Settlement Fund. *Id.*, ¶II.E.1 (defining "Class Counsel Fees"); *id.*, ¶II.F.1. The Settlement also provides that Plaintiffs may seek a service award of $2,500 for each Named Plaintiff. *Id.*, ¶II.F.2. In this Amended Fee Motion, Class Counsel seek 25% of the Settlement Fund, $23,051.81 in expenses, and $1,500 for each of the two Named Plaintiffs.

4. Settlement Administration and Claims

According to the Settlement Administrator, as of October 1, 2024, 86,803 members of the Settlement Class were mailed a Postcard Notice that was not returned as undeliverable, representing 98% of the total Settlement Class. ECF No. 89, ¶9. The Settlement Administrator also reported that it received 3,320 Claim Forms from members of the Settlement Class, all of which have been reviewed and validated, and received only seven requests for exclusion from the Settlement Class. *Id.*, ¶¶16, 20. In addition, only one objection to the Settlement was received, which the Court overruled. *Id.*, ¶18; ECF No. 93 at 4, ¶¶2-22. All but three of the 3,320 claimants opted to receive a *pro rata* case payment. ECF No. 89, ¶21. The three claimants who selected the out-of-pocket reimbursement option failed to provide documentation of those expenses, even after being sent a deficiency notice; thus, those three claimants also will receive a *pro rata* cash payment. *Id.*, ¶22. As of October 1, 2024, the Settlement Administrator reported that each of the 3,320 claimants was anticipated to receive a *pro rata* cash payment of $267.96. *Id.*, ¶23. If the

Court were to grant Class Counsel's reduced request for an award of attorneys' fees and expenses and payment of Named Plaintiff service awards, Class Counsel anticipate that members of the Settlement Class will receive more than $300 each.

III. ARGUMENT

A. The Requested Attorneys' Fee Award Is Reasonable as a Percentage of the Common Fund

Under Federal Rule of Civil Procedure 23(h), courts may award "reasonable attorney's fees and nontaxable costs that are authorized by law or the parties' agreement." Fed. R. Civ. P. 23(h); *see also* Fed. R. Civ. P. 54(d)(2). Consistent with the Parties' agreement, which permits Class Counsel to seek up to 33 1/3% of the Settlement Fund (ECF No. 67-3, ¶II.F.1, Class Counsel seek an award of 25% of the Settlement Fund, or $381,250.

As the U.S. Supreme Court has recognized, "a 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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970).[5] The common fund doctrine is based on the inherent powers of the federal court to "prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Boeing Co.*, 444 U.S. at 478. In common fund cases such as this, courts in the Second Circuit apply one of two fee calculation methods – the "percentage of the fund" or the "lodestar" method. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). However, "[t]he trend in this Circuit is to use the percentage of the fund method to compensate attorneys in common fund cases. . . ." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 477 (S.D.N.Y. 2013); *see also Pantelyat v. Bank of*

[5] Unless otherwise noted, all emphasis is added and internal citations are omitted.

Am., N.A., No. 16-CV-8964, 2019 WL 402854, at *8 (S.D.N.Y. Jan. 31, 2019) ("In light of the 'strong consensus—both in this Circuit and across the country—in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery,' the Court applies the percentage-of-the-fund method to this case. . . ."). Indeed, this "trend" is now "firmly entrenched in the jurisprudence of this Circuit." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 388 (S.D.N.Y. 2013).

As the Second Circuit has stated, the percentage method "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014); *see also Pearlstein v. BlackBerry Ltd.*, No. 13-CV-7060, 2022 WL 4554858, at *9 (S.D.N.Y. Sept. 29, 2022) ("[W]here counsel has created a common fund, attorneys' fees are properly determined on a percentage-of-recovery basis"); *Fresno Cnty. Emps.' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63, 71 (2d Cir. 2019) ("[O]nce the parties have agreed to settle, the percentage-of-the-fund methodology serves as important motivation for counsel to maximize the class's recovery, and, a fortiori, counsel's fee"); MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) ("Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation."). Courts favor the percentage of the fund method because the lodestar approach "created an unanticipated disincentive to early settlements," tempted lawyers to run up their hours, and "compell[ed] district courts to engage in a gimlet-eyed review of line-item fee audits." *In re Sterling Foster & Co., Inc., Sec. Litig.*, 238 F. Supp. 2d 480, 487 (E.D.N.Y. 2002) (quoting *Goldberger*, 209 F.3d at 48-49). Indeed, the

Goldberger court articulated the inherent challenges associated with the lodestar method as compared to the percentage-of-the-fund approach:

> As so often happens with simple nostrums, experience with the lodestar method proved vexing. Our district courts found it created a temptation for lawyers to run up the number of hours for which they could be paid. For the same reason, the lodestar [method] created an unanticipated disincentive to early settlements. But the primary source of dissatisfaction was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits. There was an inevitable waste of judicial resources.

Goldberger, 209 F.3d at 48-49. Accordingly, awarding Class Counsel a percentage of the common fund is appropriate here.

In *Goldberger*, the Second Circuit articulated six factors for determining the reasonableness of a requested percentage to award as attorneys' fees: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50 (ellipsis omitted). A review of these factors supports the reasonableness of Class Counsel's fee request.

1. Class Counsel Invested Substantial Time and Resources in the Litigation

As detailed in their declarations, Class Counsel have devoted significant time, effort, and expense in successfully pursuing this litigation, and they have done so entirely on a contingent basis. Laukaitis Decl., ¶¶3, 19 & Ex. 1; Van Note Decl., ¶4& Ex. 1; Scott Decl., ¶4 & Ex. 1. Class Counsel's dedication to this matter and expenditure of substantial time, effort, and resources have brought this complex litigation to a successful early resolution. From the outset, Class Counsel recognized that this litigation would be complex, costly, and potentially protracted, with no

assurance of any compensation for the significant time and financial resources required for its diligent prosecution.

Prior to initiating this action, Co-Lead Class Counsel conducted a comprehensive investigation into a wide array of factual and legal issues, thoroughly examining and investigating the data breach soon after it occurred. Laukaitis Preliminary Approval Decl., ¶¶11-12. Following the appointment of Co-Lead Interim Class Counsel and Liaison Counsel, a Consolidated Complaint was filed, which Defendant responded to with a motion to dismiss. ECF Nos. 43, 50, 55, 56. Thereafter, the Parties agreed to mediate. ECF Nos. 59-61. To be fully informed and prepared for mediation, Class Counsel sought and received informal discovery to facilitate discussions. Laukaitis Preliminary Approval Decl., ¶¶4, 11-12. Prior to mediation, Co-Lead Counsel prepared and exchanged a detailed, lengthy mediation statement with Defendant and the mediator. Laukaitis Decl., ¶11. The Parties then engaged in a full-day mediation session with the assistance of Hon. Wayne R. Andersen (Ret.) of JAMS, achieving a settlement in principle. Laukaitis Preliminary Approval Decl., ¶5. The Parties spent the next several months diligently negotiating the final terms of the Settlement. *Id.*, ¶6; ECF Nos. 67-3 at 15 (Settlement execution date of April 19, 2024). Following the Settlement, Class Counsel filed motions for preliminary and final approval of the Settlement – including supplemental briefing – and the initial motion seeking an award of attorneys' fees and expenses for Class Counsel and service awards for the two Named Plaintiffs. ECF Nos. 67, 83, 85, 90.

Since the inception of this case, Class Counsel have dedicated approximately 500 hours of attorney and other legal professional time through October 15, 2024. *See* Laukaitis Decl., ¶¶18-20 & Ex. 1; Van Note Decl., ¶¶4-5 & Ex. 1; and Scott Decl., ¶¶4-5 & Ex. 1. Class Counsel maintained these time records contemporaneously and represented that these hours were

reasonable and necessary for prosecuting this litigation. *See* Laukaitis Decl., ¶¶18-20 & Ex. 1; Van Note Decl., ¶4 & Ex. 1; and Scott Decl., ¶4 & Ex. 1. Based on these facts, the first *Goldberger* factor favors approval of Class Counsel's fee request. *See, e.g.*, *Berryman v. Avantus, LLC*, No. 21-CV-1651, 2024 WL 2108824, at *11 (D. Conn. May 10, 2024) (finding time spent achieving class-wide favorable resolution "without the need for extensive discovery and additional time-consuming litigation" weighed in favor of the proposed fee award); *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113, 2016 WL 6542707, at *15 (D. Conn. Nov. 3, 2016) (same).

2. The Complexity of the Litigation Supports Approval of the Fee Request

The complex nature of this litigation further favors the requested fee award. "[C]lass actions have a well deserved reputation as being most complex." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11-CV-8331, 2014 WL 1224666, at *21 (S.D.N.Y. Mar. 24, 2014) ("It is well settled that class actions are notoriously complex and difficult to litigate."). This litigation began as three separate cases, and the Settlement Class has more than 80,000 members. *See* Sec. II.A *supra*; ECF No. 89, ¶9. Moreover, "[d]ata breach litigation is inherently complex." *See In re Wawa, Inc. Data Sec. Litig.*, No. 19-CV-6019, 2024 WL 1557366, at *20 (E.D. Pa. Apr. 9, 2024). The difficulty of the legal issues in data breach cases revolving around Article III standing and damages is well known. *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 17-MD-2807, 2019 WL 3773737, at *6 (N.D. Ohio Aug. 12, 2019) ("The realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law."); ECF No. 56 at 4-13 (arguing Plaintiffs lacked Article III standing and damages and that Merritt

owed no duty to Plaintiffs). Even if the case were to survive a motion to dismiss, few data breach classes have been certified. *See Fulton-Green v. Accolade, Inc.*, No. 18-CV-274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare."). Undoubtedly, if the case had proceeded to summary judgment and trial, both would have been complex and challenging. *NASDAQ*, 187 F.R.D. at 477 ("There can be no doubt that this class action would be enormously expensive to continue, extraordinarily complex to try, and ultimately uncertain of result.").

Class Counsel can attest to the complexities of this case. During the mediation process, the Parties informally exchanged information to allow Co-Lead Interim Class Counsel to assess the strengths and weaknesses of Plaintiffs' claims and Merritt's defenses and to make an informed assessment of the value of Plaintiffs' claims. Laukaitis Preliminary Approval Decl., ¶¶4, 11-12. For example, before mediation and during mediation before the Hon. Wayne R. Andersen (Ret.), the Parties prepared and reviewed detailed mediation statements, covering Rule 23 considerations, the scope of damages, and insurance coverage. Laukaitis Decl., ¶11. Thus, through extensive factual investigation and targeted informal discovery, Co-Lead Interim Class Counsel was able to skillfully and efficiently negotiate a successful resolution on behalf of the Settlement Class that resolved and addressed the Plaintiffs' claims.

The complexity of this data breach class action litigation clearly supports the second *Goldberger* factor and demonstrates that the requested fee is fair and reasonable.

3. The Risk of Litigation Supports Approving the Requested Fee

The Second Circuit "has identified the risk of success as perhaps the foremost factor to be considered in determining" reasonable attorneys' fees. *In re Glob. Crossing Sec. & ERISA Litig.*,

225 F.R.D. 436, 467 (S.D.N.Y. 2004) (internal quotations omitted). This factor recognizes non-payment risk in cases prosecuted on a contingency basis where claims are unsuccessful, which can support a reasonable fee. *See In re Frontier Commc'ns Corp.*, No. 17-CV-1617, 2022 WL 4080324, at *15 (D. Conn. May 20, 2022) ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *Tchrs.' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.").

Here, when Plaintiffs filed their respective actions, they faced serious risks if the case had proceeded to class certification, summary judgment, and trial. Among other things, Plaintiffs likely would have encountered obstacles to establishing class-wide damages, particularly due to the inherent uncertainty of quantifying injury in a data breach case. *See, e.g.*, *Fulton-Green*, 2019 WL 4677954, at *13; *see also* §III.A.2 *supra* (discussing complexity of data breach cases). And even if Plaintiffs succeeded at class certification, Defendant would be entitled to seek permission for an interlocutory appeal of the Court's certification order under Fed. R. Civ. P. 23(f).

This case is one of this District's first data breach class actions. The lack of case law and uncertainty of success on the merits further shows that Class Counsel took on risk by filing this case. "Counsel should be rewarded for undertaking [those risks] and for achieving substantial value for the class." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 441 (E.D.N.Y. 2014). Undertaking this case on a contingent fee basis, Class Counsel invested significant time, effort, and resources in the litigation without any guarantee of compensation in the face of substantial loss and/or delay risks. Laukaitis Decl., ¶¶3, 19; Van Note Decl., ¶¶3-5; Scott Decl., ¶4. Class Counsel would face significant risks in moving for and

maintaining class certification through trial if this litigation continued. Thus, the third *Goldberger* factor supports the requested fee award.

4. The Exceptional Result Supports the Quality of the Representation and Warrants Approval of the Requested Fee

Class action litigation presents unique challenges, and by achieving an exceptional settlement, Class Counsel has shown that they have the ability to achieve a strong outcome for the Settlement Class. Class Counsel's efforts resulted in a successful settlement that will provide members of the Settlement Class with immediate benefits without the risks and delay of further litigation. When evaluating this factor, courts in the Second Circuit "review the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). Collectively, Class Counsel have represented plaintiffs in hundreds of class action lawsuits, including the resolution of multiple class actions involving similar data breach claims, giving them valuable knowledge and experience in litigating the complex legal and factual issues in this action. *See* Laukaitis Decl., ¶¶ 3-8 & Ex. 3; Van Note Decl., ¶9 & Ex. 3; and Scott Decl., ¶9 & Ex. 3. Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). As noted above, Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel. *See Solis v. OrthoNet LLC*, No. 19-CV-4678, 2021 WL 2678651, at * (S.D.N.Y. June 30, 2021) ("'Quality of representation is best measured by results.' Plaintiffs received a considerable settlement sum in light of the risks posed by Plaintiffs' claims. . . . [This result] demonstrates the quality of counsel's representation.").

The positive reaction of the Settlement Class to the Settlement weigh in favor of approving the requested fee. *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (recognizing "numerous courts have [noted] that the lack of objection from members of the class is one of the most important" factors in determining the reasonableness of the requested fee.) (internal quotations omitted). Out of more than 88,000 individuals in the Settlement Class, with 98% receiving notice, only seven members of the Settlement Class opted out and one objected.[6] ECF No. 89, ¶¶5, 9, 18, 20. Importantly, the Settlement and the Fee Motion (which was posted to the Settlement Website before the objection deadline) advised the Settlement Class that Class Counsel would seek an attorneys' fee award of 33 1/3% of the Settlement Fund, and no member of the Settlement Class objected to the amount of the attorneys' fee request.

In sum, this *Goldberger* factor also supports the requested fee.

5. The Requested Fee Is Comparable to Other Percentage of the Fund Fee Awards

This factor ensures that the requested fee is "fair and reasonable in relation to the recovery and compares favorably to fee awards" in other common fund cases. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010). Courts in this District and this Circuit routinely grant fee award requests for between 25% and 33% of a common fund. *See Caitflo LLC v. Sprint Commc'ns Co., LP*, No. 11-CV-0497, 2013 WL 3243114, at *3 (D. Conn. June 26, 2013) (approving attorneys' fee award of 30% of the settlement fund and listing other Second Circuit cases that approved between 25-33 1/3% of the settlement fund in attorneys' fee); *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 09-CV-1293, 2012 WL 3589610, at *14 (D. Conn. Aug. 20, 2012) (awarding attorneys' fee of 30% of common fund); *Menkes v. Stolt-Nielsen S.A.*, No. 03-CV-409, 2011 WL

[6] The Court overruled the objection at the Final Approval Hearing. ECF No. 93 at 21-22.

13234815, at *4 (D. Conn. Jan. 25, 2011) (awarding attorneys' fees of 33 1/3% of the common fund); *In re Priceline.com, Inc. Sec. Litig.*, No. 00-CV-1884, 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (awarding attorneys' fee of 30% of common fund); *see also Mateer v. Peloton Interactive, Inc.*, No. 22-CV-740, 2024 WL 1055009, at *1 (S.D.N.Y. Feb. 9, 2024) ("[E]mpirical evidence indicates that the median percentage of the settlement amount awarded as attorneys' fees in [] class actions is approximately 33%. . . . The award here aligns with the median percentage of 33% because $833,250 is approximately 33% of the gross settlement fund amount of $2,500,000[]") (footnote omitted); *de la Cruz v. Manhattan Parking Grp. LLC*, No. 20-CV-977, 2022 WL 3155399, at *4 (S.D.N.Y. Aug. 8, 2022) (approving 25% fee award where empirical studies found that for "class actions settlements within the Second Circuit, 'the percentage of the fund awarded generally falls within a range of 15% to 33%'"); *Solis*, 2021 WL 2678651, at *4 (approving fee award of 33.3%, resulting in a 2.37 multiplier); *Hayes v. Harmony Gold Min. Co. Ltd.*, No. 08-CV-03653, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding "attorneys' fees in the amount of one third" of a $9 million settlement fund), *aff'd* 509 F. App'x 21, 23-24 (2d Cir. 2013) (affirming fee award). Accordingly, Class Counsel's 25% fee request is within the reasonable range in the Second Circuit and should be approved.

This Settlement is a ***non-reversionary*** common fund, meaning no unclaimed funds revert to Defendant. This is an excellent recovery for members of the Settlement Class. Courts within the Second Circuit routinely award larger fee percentages in common funds even when funds ***revert*** to the defendant. *See Kiefer v. Moran Foods, LLC*, No. 12-CV-756, 2014 WL 3882504, at *8 (D. Conn. Aug. 5, 2014) ("In applying the common fund method, the Supreme Court, the Second Circuit, and other Circuit Courts have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund, even where amounts to be paid to

settlement class members who do not file claims will revert to the Defendants."); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 11-CV-0738, 2014 WL 3778211, at *6 (D. Conn. July 31, 2014) (same); *Caitflo*, 2013 WL 3243114, at *2 (same); *Aros v. United Rentals, Inc.*, No. 10-CV-73, 2012 WL 3060470, at *5 (D. Conn. July 26, 2012) (same).

This *Goldberger* factor thus supports approval of the requested fee award.

6. Public Policy Considerations Also Support Approval of the Requested Fee Award

Public policy, the final *Goldberger* factor, also strongly supports approval of the requested fee award. When considering whether to approve a fee award, courts consider the social and economic value of the class action, and the need to encourage experienced and able counsel to undertake such litigation. *Kemp-DeLisser*, 2016 WL 6542707, at *17 (attorneys' fee awards "should reflect the important public policy goal of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest."). Those considerations are present in this case and furthered by the Settlement. Awarding a reasonable percentage of the common fund properly motivates zealous enforcement of consumer protection laws and incentivizes skilled counsel to bring meritorious cases even where, at the outset, the prospect of any recovery is uncertain and the costs are daunting. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."). Fee awards "should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature." *In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-CV-2548, 2019 WL 4734396, at *3 (S.D.N.Y. Sept. 23, 2019) (quoting

Shapiro, 2014 WL 1224666, at *18). In addition, "[a]ttorneys who fill the private attorney general role must be adequately compensated for their efforts"; otherwise, the public risks an absence of a "remedy because attorneys would be unwilling to take on the risk." *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-CV-5669, 2012 WL 5874655, at *7 (E.D.N.Y. Nov. 20, 2012) (citing *Goldberger*, 209 F.3d at 51). Thus, there is a strong public interest in incentivizing Class Counsel to bring this complex litigation to protect Settlement Class Members' privacy rights, particularly where it is unlikely that they would pursue litigation on their own for economic or personal reasons.

For the foregoing reasons, each *Goldberger* factor supports approval of the requested attorneys' fee award.

B. The Requested Fee Is Also Reasonable Under a Lodestar Cross Check

As stated above, the lodestar fee calculation method has "fallen out of favor particularly because it encourages bill-padding and discourages early settlements." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. Accordingly, the lodestar method is used in this Circuit only "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Id.* Lodestar is "the product of a reasonable hourly rate and the reasonable number of hours required by the case." *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011). The Second Circuit encourages district courts to use the lodestar method as a "mere cross-check" on the reasonableness of the requested fee and not "exhaustively scrutinize[]" the hours documented by counsel. *See Goldberger*, 209 F.3d at 50; *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400, 403 (D. Conn. 2009), *aff'd*, 355 F. App'x 523 (2d Cir. 2009) (same).

When assessing whether legal fees are reasonable, the Court determines the "presumptively reasonable fee" for an attorney's services by examining what reasonable clients would be willing

to pay. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 183-84 (2d Cir. 2008). The next step is determining the reasonableness of the number of hours spent on the lawsuit. *Millea*, 658 F.3d at 166. The hours spent on a lawsuit are considered unreasonable if they are excessive, redundant, or unnecessary. *Gierlinger v. Gleason*, 160 F.3d 858, 876 (2d Cir. 1998).

The lodestar for Class Counsel is $317,944 reflecting approximately 500 hours of attorney and paralegal time. Laukaitis Decl., ¶¶18-20 & Ex. 1; Van Note Decl., ¶4-5 & Ex. 1; and Scott Decl., ¶¶4-5 & Ex. 1. Awarding the requested fee of $381,250 results in a multiplier of 1.20, which is consistent with lodestar multipliers awarded in this Circuit, as discussed further below.

1. Hours Expended

In support of this motion, Class Counsel submit a detailed breakdown of the nature of work performed in this case, the attorney performing the work, the amount of time spent, and the hourly rate charged. Laukaitis Decl., ¶19 & Ex. 1; Van Note Decl., ¶4 & Ex. 1; and Scott Decl., ¶4 & Ex. 1. Class Counsel's submission provides the degree of specificity required to evaluate a fee petition. *See Hensley v. Eckerhart*, 461 U.S. 424, 437, n.12 (1983) (noting that counsel is "not required to record in great detail how each minute of his time was expended," but should "identify the general subject matter of his time expenditures."). This is particularly true given that the lodestar here is calculated simply as a backstop to test the reasonableness of the percentage of the fund calculation. *Goldberger*, 209 F.3d at 50. In this case, there was no time for which compensation is now requested that was "excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 433. All the time submitted was reasonably necessary to achieve the successful outcome for Plaintiffs and the Settlement Class.

2. Hourly Rates

Within the Second Circuit, courts apply a presumption that a reasonable hourly rate should be evaluated concerning rates charged in the district where the reviewing court sits. *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 174 (2d Cir. 2009). Courts also look to "experience-based, objective factors" such as "counsel's special expertise in litigating the particular type of case, if the case is of such nature as to benefit from special expertise." *Id*. at 176. Class Counsel bring significant experience in class action data breach litigation. That experience was shown by achieving a settlement paying Class Members far more than many class actions approved nationwide. Class Counsel further submit that their usual hourly rates, which district courts have approved within the Second Circuit in other complex class action cases, including data privacy cases, should be applied to this complex data breach litigation.

Scott+Scott's hourly rates have been approved in this District, this Circuit, and nationwide. *See Steamship Trade Ass'n of Balt. – Int'l Longshoremen's Ass'n Pension Fund v. Olo Inc.*, No. 1:22-cv-08228 (S.D.N.Y. June 11, 2024), ECF Nos. 123-2, 125-5 (approving fee award with Scott+Scott's rates ranging from $1,150 to $1,975 for partners or senior counsel, $525 to $675 for associates, and roughly $435 for paralegals); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13-CV-7789, 2018 WL 5839691, at *5 (S.D.N.Y. Nov. 8, 2018) (approving partner rates, including for Scott+Scott, of $630 to $1,375, and associate rates of $325 to $625), *aff'd sub nom. Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019); *Ark. Fed. Credit Union v. Hudson Bay Co.*, No. 1:19-cv-04492 (S.D.N.Y. Dec. 7, 2021), ECF No. 109 (data breach class action approving Scott+Scott's rates of $825 to $900 for partners and $575 to $600 for associates); *Menkes*, 2011 WL 13234815, at *4 & ECF Nos. 136-137 (approving Scott+Scott's 2010 partner hourly rate of $750 and comparable rates of co-counsel); *Priceline.com*, 2007 WL 2115592, at *5

(approving Scott+Scott and co-counsel's 2007 partner hourly rate of $770); *In re TikTok Consumer Privacy Litig.*, No. 1:20-cv-04699 (N.D. Ill. 2022), ECF Nos. 197-28, 261 (approving Scott+Scott's rates of $995 to $1,150 for partners and $675 to 750 for associates). Courts across the country have approved Cole & Van Note's hourly rates. *See, e.g.*, *Teeter v. Easterseals-Goodwill Northern Rocky Mountain, Inc*., No. 4:22-cv-00096-BMM (D. Mont.), ECF No. 52 (approving attorney hourly rates between $375-$1,150 and litigation support staff rates between $225-$275); *Zucchero v. Heirloom Roses, Inc*., No. 4:22-cv-00068-KAW (N.D. Cal.), ECF No. 85; *Darrin v. Huntington Ingalls Indus., Inc.*, No. 4:23-cv-00053-JKW-DEM (E.D. Va.), ECF No. 64; *Domitrovich v. M.C. Dean, Inc*., No. 1:23-cv-00210-CMH-JFA (E.D. Va.), ECF No. 71; *In re: Cleveland Brothers Data Incident Litig.*, No. 1:23-cv-00501-JPW (M.D. Pa.), ECF No. 39. Similarly, the rates of Laukaitis Law have been approved in this Circuit and other federal district courts. *See, e.g.*, *Vela v. AMC Networks Inc.*, No. 1:23-cv-02524 (S.D.N.Y. May 16, 2024), ECF No. 64 (appointing Attorney Laukaitis as class counsel in nationwide data privacy class action and approving his partner rate of $925 per hour and senior law clerk rate of $325 per hour in common fund settlement); *Jackson v. Suffolk Univ.*, No. 1:23-cv-10019 (D. Mass. June 18, 2024), ECF No. 49 (same); *Counts v. Arkk Food Co.*, No 1:23-cv-00236 (N.D. Ill. Sept. 26, 2024), ECF No. 74 (appointing Attorney Laukaitis as co-lead counsel in common fund class settlement and approving his $925 per hour rate and $325 per hour and $300 per hour rates for senior law clerk and law clerk, respectively). The hourly rates used by Class Counsel are comparable to rates charged by attorneys with similar experience, skill, and reputation for similar services in the present legal market and have previously been approved as reasonable by district courts in the Second Circuit in other class action litigation. Most recently in this District, in *Berryman v. Avantus, LLC*, one court approved a requested fee where partner hourly rates were between $675 and $1180.

Berryman, No. 21-CV-1651, 2024 WL 2108824, at *13 & ECF No. 69-2. *See also Martinez v. Avantus, LLC*, No. 3:20-cv-01772-JCH (D. Conn.), ECF Nos. 108-2 & 111 (granting attorneys' fee request where hourly rates were $735 & $825 for partners, $425 for an associate, and $305 for paralegals); *Simerlein v. Toyota Motor Corp*., No. 17-CV-1091, 2019 WL 2417404, at *25 (D. Conn. June 10, 2019) & ECF No. 125-2 (approving requested fee where hourly rates for one peer class action firm were between $670 and $980 for partners, between $545 and $565 for of counsel, $530 for an associate, and between $235 and $325 for paralegals); *Kemp-DeLisser*, 2016 WL 6542707, at *17 & ECF No. 55-3 (approving requested fee where rates were between $700 and $775 for partners, $500 for of counsel, between $350 and $550 for associates, and $180 for a paralegal).

3. The Resulting Multiplier of 1.20 Is Reasonable

Through October 15, 2024, Class Counsel have billed approximately 500 hours, which at their regularly approved hourly rates amounts to total lodestar of $317,944. Laukaitis Decl., ¶¶18-20 & Ex. 1; Van Note Decl., ¶4-5 & Ex. 1; and Scott Decl., ¶¶4-5 & Ex. 1. Therefore, the requested fee award reflects a multiplier of approximately 1.20 on Class Counsel's lodestar, which is well within the range awarded by courts in this Circuit as well as across the country. *See, e.g.*, *In re Credit Default Swaps Antitrust Litig*., No. 13-MD-2476, 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (approving attorneys' fees constituting a multiple of 6.36 times the lodestar); *Beckman*, 293 F.R.D. at 481 ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Asare v. Change Grp. of N.Y., Inc*., No. 12-CV-3371, 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *City of Providence v. Aeropostale, Inc.*, No. 11-CV-7132, 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014) (noting "lodestar multiples of over 4 are awarded by this

Court"); *Maley v. Dale Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (describing a 4.65 lodestar multiple as "modest" and "fair and reasonable"); *In re RJR Nabisco, Inc. Sec. Litig.*, No. 88-CV-7905, 1992 WL 210138, at *6-8 (S.D.N.Y. Aug. 24, 1992) (awarding a lodestar multiplier of 6); *Jander v. Ret. Plans Comm. of IBM*, No. 15-CV-3781, 2021 WL 3115709, at *7 (S.D.N.Y. July 22, 2021) (approving request for 30% of gross settlement (1.7 multiplier), noting that "multipliers of between 3 and 4.5 have been common"); *Capsolas v. Pasta Res. Inc.*, No. 10-CV-5595, 2012 WL 4760910, at *9 (S.D.N.Y. Oct. 5, 2012) (awarding multiplier of 3.96); *Bozak*, 2014 WL 3778211, at *7 (collecting cases that have approved awards with a lodestar multiplier of up to eight times the lodestar).

In sum, Class Counsel's efforts in this case resulted in an exceptional settlement of a complex and uncertain case, and it is appropriate to award Class Counsel for achieving this result. Under the percentage-of-the-fund method, including the added scrutiny of a lodestar crosscheck, Class Counsel's fee request is reasonable and well within the ranges approved by courts in this Circuit.

C. Class Counsel's Expenses Are Reasonable and Should Be Reimbursed

Pursuant to Federal Rule of Civil Procedure 23(h), a trial court may award non-taxable costs that are authorized by law or by agreement between the parties. Fed. R. Civ. P. 23(h). In this case, the reimbursement of expenses incurred by Class Counsel is warranted under both the Settlement and the common fund doctrine. ECF No. 67-3, ¶II.E.1 (defining "Class Counsel Fees" to include "cost and expenses"); *id*., ¶II.F.1; *Mills*, 396 U.S. at 392 (affirming the right to recover expenses when a common fund is created or preserved for the benefit of a class); Alba Conte, *Attorney Fee Awards* §2.08, at 50-51 (3d ed. 2004); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) ("Courts in the Second Circuit normally

grant expense requests in common fund cases as a matter of course."). Reimbursable expenses typically include court fees, mediation fees, travel, conference calls, postage, delivery services, and computerized legal research. *See, e.g.*, *Cates v. Trustees of Columbia Univ. in City of N.Y.*, No. 16-CV-6524, 2021 WL 4847890, at *8 (S.D.N.Y. Oct. 18, 2021); *Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405, 2015 WL 10847814, at *23 (S.D.N.Y. Sept. 9, 2015).

The efforts of Class Counsel have resulted in substantial common benefits to the Settlement Class. In achieving this result, Class Counsel incurred out-of-pocket expenses in advancing the litigation in the aggregate amount of $23,051.81 for unreimbursed costs, such as filing and service fees, computerized legal research, postage, travel, and mediation costs. *See* Laukaitis Decl., ¶25 & Ex. 2; Van Note Decl., ¶7 & Ex. 2; and Scott Decl., ¶7 & Ex. 2. These costs are eminently reasonable in light of the nature of the action and the tasks that are needed to be performed. *See, e.g.*, *Simerlein*, 2019 WL 2417404, at *26 (awarding reimbursement of litigation expenses, including court costs and mediation and travel expenses); *Kiefer*, 2014 WL 3882504, at *10 (awarding reimbursement of litigation expenses that included court and process server fees, postage and courier fees, transportation, working meals, photocopies, electronic research, expert fees, and plaintiff's share of mediation fees). Accordingly, the Court should approve Class Counsel's requested reimbursement of expenses.

D. The Requested Service Awards Are Reasonable and Should Be Approved

In the Second Circuit, plaintiff service awards "are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs." *DeLeon v. Wells Fargo Bank, N.A.*, No. 12-CV-4494, 2015 WL 2255394, at *7 (S.D.N.Y. May 11, 2015). Service awards are within the court's discretion and amounts

awarded vary considerably depending on time spent and risks incurred by named plaintiffs and the size and scope of the recovery. *See, e.g.*, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-MD-2262, 2018 WL 3863445, at *2 (S.D.N.Y. Aug. 14, 2018) ("'Awards on an individualized basis have generally ranged from $2,500 to $85,000.'"); *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 125 (S.D.N.Y. 2001) (same). Granting a reasonable service award also "encourage[s] class representatives to participate in class action lawsuits." *Moses v. N.Y. Times Co*., 79 F.4th 235, 253 (2d Cir. 2023) ("[O]ur clear precedent . . . permits district courts to approve fair and appropriate incentive awards to class representatives."); *Massiah*, 2012 WL 5874655, at *8.

Here, the participation of Plaintiffs was critical to the ultimate success of the case. Plaintiffs spent significant time protecting the interests of the Settlement Class through their involvement in this case. Matthews Decl., ¶¶3-4; Guerrero Decl., ¶¶4-8. Plaintiffs assisted Co-Lead Class Counsel in investigating their claims by sitting for interviews to provide the information necessary to draft and file their respective complaints, gathering documents requested by Co-Lead Class Counsel, monitoring their respective credit and identity profiles for evidence of fraud, and reviewing documents prepared by Co-Lead Class Counsel. Matthews Decl., ¶¶3-4; Guerrero Decl., ¶¶4-8. Plaintiff Matthews estimates that he spent ten hours, seeking to "vindicate not only [his] own rights, but also those of others affected by the Merritt Data Incident." Matthews Decl., ¶¶3-4. Plaintiff Guerrero estimates that she spent at least four to six hours assisting her attorneys in matters related to the case, duties she took "very seriously." Guerrero Decl., ¶¶5-8. In addition, Plaintiffs exposed themselves to public scrutiny by choosing to bring this lawsuit for the benefit of other data breach victims. Matthews Decl., ¶6; Guerrero Decl., ¶9. Thus, Plaintiffs should be rewarded for taking on a forward-facing role through this litigation even after their personal information was exposed in this Data Breach.

"Courts have considered awards around 3.1 to 3.5 percent of the total recovery as proportional." *Wawa*, 2024 WL 1557366, at *23. Here, the aggregate request of $3,000 comes out to a mere 0.2% of the $1,525,000 million total recovery. On these facts, a modest $1,500 service payment to each Plaintiff is appropriate, as courts in this Circuit and other data breach cases nationwide routinely approve similar service awards in the range of $1,000 to $2,500. *See, e.g.*, *Moses*, 79 F.4th at 253 (affirming the district court's approval of $5,000 service award); *Maddison v. Comfort Sys. USA (Syracuse), Inc.*, No. 17-CV-359, 2023 WL 3251421, at *1 (N.D.N.Y. May 3, 2023) (approving a $2,500 service award per plaintiff); *In re CorrectCare Data Breach Litig.*, No. 22-CV-319, 2024 WL 4211480, at *5 (E.D. Ky. Sept. 17, 2024) (approving "relatively modest" service awards of $2,500 per plaintiff where they "reached out to counsel, provided relevant information, and reviewed the Complaint and Court filings"); *Wawa*, 2024 WL 1557366, at *23 (approving $1,000 per class representative for their case involvement "including researching their transactions with Wawa, checking their bank accounts for fraudulent activity, conforming to document preservation obligations, reviewing case filings, communicating with counsel, and approving the Settlement Agreement"); *Simerlein*, 2019 WL 2417404, at *27 (finding $ 2,500 service awards "fall near the low end of the typical service awards approved by courts in this Circuit"); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-2752, 2020 WL 4212811, at *44 (N.D. Cal. July 22, 2020) (awarding $2,500 to class representatives who were not deposed); *Kemp-DeLisser*, 2016 WL 6542707, at *5, 18-19 (approving $2,000 service award).

IV. CONCLUSION

For all the foregoing reasons, Class Counsel respectfully request that this Court grant this Amended Fee Motion and award (i) attorneys' fees of $381,250, or 25% of the Settlement Fund,

to Class Counsel; (ii) $23,051.81 in expenses to Class Counsel; and (iii) service payments of $1,500 to each of the two Named Plaintiffs.

Dated: October 29, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2024, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ *Kevin Laukaitis*
Kevin Laukaitis