UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CHRISTIE'S DATA BREACH LITIGATION	No. 24-CV-4221 (JMF)
This Document Relates To: *All Member Cases*	CLASS ACTION

MEMORADUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES

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Plaintiffs Efsathios Maroulis, William Colley, Russell DeJulio, Alice Bruce, and Ildar Gaifullin (collectively "Class Representatives"), on behalf of the Settlement Class, respectfully submit this Memorandum of Law in support of their motion for: (1) an award of attorneys fees in the amount of $330,000.00; (2) reimbursement of $15,278.13 in litigation expenses; and (3) service awards to the Class Representatives in the amount of $5,000 each.

I. INTRODUCTION

On or around May 8, 2024, Defendant Christie's Inc. ("Defendant" or "Christie's") discovered a data breach (the "Data Breach") in its computer systems. Following several weeks of arm's-length negotiations and a mediation session with Jill R. Sperber, Esq. on October 30, 2024, Plaintiffs and Defendant reached a Settlement (the "Settlement"). The Settlement Agreement or "S.A." is attached as Exhibit 1. The Court granted preliminary approval of the Proposed Settlement on February 19, 2024, after which class notice was sent to Settlement Class Members.

Pursuant to the Settlement Agreement and the Court's inherent authority, Class Counsel respectfully submit this Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award ("Fee Application") and asks that the Court award them a modest 33.33% of the value of the $990,000 fund (or $330,000.00) ("Fee Award") and $15,278.13 for expenses ("Expense Request"). The Agreement provides for it to be paid outside of any other benefit of the Class. As detailed more fully herein, the factual and legal complexity of these claims required the time and resources that Class Counsel invested. The work performed advancing the claims of the Settlement Class Members – on a fully contingent basis – carried significant risk, and Class Counsel dedicated themselves to this case.

In addition, Class Counsel requests that the Court approve a service award for the Class Representatives, in the amount of $5,000 each. This request is fully justified by the law and the

work performed by Class Representatives in connection with bringing this lawsuit on behalf of themselves and all others similarly situated.

This memorandum is supported by the cited and attached evidence, including the Joint Declaration of Class Counsel and the summary time records of Class Counsel and the Executive Committee members. Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Class Representatives.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant Christie's is an international auction house that operates in the global art and luxury market and is known for hosting auctions and private sales. As part of its business, Defendant collects and maintains the private information of its customers and prospective customers, including their names, addresses, dates of birth, nationality information, passport numbers, and driver's licenses or state identification numbers ("Private Information"). On or around May 8, 2024, Defendant discovered suspicious activity on its computer network (the "Data Breach"). Defendant determined that certain Private information of its customers and prospective customers had been unlawfully accessed and exfiltrated. On or around May 30, 2024, Defendant began notifying individuals who may have been impacted by the Data Breach.

On June 3, 2024, Defendant was named in the first of five putative class actions relating to the Data Breach. The Court then consolidated the putative class actions into the first filed action. On July 26, 2024, Plaintiffs filed a Motion to Appoint David Lietz and Jonathan S. Mann as Co-Lead Counsel and Raina Borelli, Courtney Maccarone, and Jeff Ostrow to an Executive Committee. The Motion was granted on July 29, 2024.

On August 19, 2024, Plaintiffs filed their Consolidated Class Action Complaint. Therein, Plaintiffs pleaded a Nationwide Class, and Alabama Subclass, a Florida Subclass, a Pennsylvania

Subclass, and a Texas Subclass. Plaintiffs brought claims for negligence, breach of implied contract, unjust enrichment, violation of New York Deceptive Trade Practices Act, declaratory judgment, negligence *per se*, invasion of privacy, violation of Florida Deceptive and Unfair Trade Practices Act, and wantonness. (Doc. 38). On September 16, 2024, Defendant filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). (Doc. 41). Thereafter, on October 7, 2024, Plaintiffs filed a First Amended Consolidated Class Action Complaint. (Doc. 43). Defendant filed a second Motion to Dismiss on October 28, 2024. (Doc. 45).

In or around the beginning of October 2024, the Parties began discussing the possibility of settlement. A mediation session was scheduled with Jill R. Sperber, Esq., who has substantial experience in mediating data breach class actions. Prior to mediation, the Parties engaged in informal discovery and exchanged mediation briefs, which enabled the Parties to better evaluate the merits of Plaintiffs' claims and the strengths of Defendant's defenses.

On October 30, 2024, the Parties engaged in a full day mediation session with Ms. Sperber. The Parties engaged in hours of hard-fought negotiations and ultimately agreed upon the material terms of the Settlement. Thereafter on November 1, 2024, the Parties executed a Term Sheet, and on November 15, 2024, the Parties filed a Joint Notice of Settlement and Motion to Stay All Deadlines. (Doc. 47). On November 18, 2024, the Court Granted the Motion and stayed all deadlines pending the filing of Plaintiffs' Motion for Preliminary Approval. (Doc. 48). In the weeks that followed, the Parties diligently negotiated and circulated drafts of the Settlement Agreement, along with accompanying draft notices, claim form, and other exhibits, and agreed upon a Settlement Administrator.

On December 13, 2024, the Parties filed a Motion for Preliminary Approval. (Doc. 49). On December 18, 2024, the Court issued an order directing the Parties to file supplemental briefs

whether, among other things, the Plaintiffs have standing. (Doc. 50). On January 9, 2025, Plaintiffs filed a Supplemental Memorandum of Law in Support of Their Unopposed Motion for Preliminary Approval. (Doc 51). And, on January 16, 2025, Defendant filed a Memorandum of Law in Response to Plaintiffs' Supplemental Briefing on Motion for Preliminary Approval. (Doc. 52). On January 28, 2025, the Court issued an Order directing Plaintiffs to file either a declaration addressing the potential for fraud or identity theft resulting from the Data Breach or a supplemental brief addressing why such a declaration should not be required. (Doc. 55). On February 4, 2025, Plaintiffs filed a second Supplemental Memorandum of Law in Support of their Unopposed Motion. (Doc. 56). On February 19, 2025, the Court issued an Order granting Preliminary Approval. (Doc 59).

Since this Court entered the Preliminary Approval Order, the Parties, in conjunction with the Settlement Administrator, have effectuated Class notice consistent with the Settlement and Preliminary Approval Order. Joint Dec. ¶ 10. Over the next several weeks and continuing to today, Class Counsel has continued to work with the Defendant and the Settlement Administrator regarding claims administration and processing, as well as answering Class Members questions about the settlement and the Process. *Id*. ¶ 12.

Class Counsel's work is not over and will continue throughout the claims period. Based on experience, Class Counsel will spend substantial additional hours seeking final approval, defending the Settlement from potential objections, and supervising claims administration and the distribution of proceeds. *Id*. ¶ 13.

III. SUMMARY OF SETTLEMENT

A. Settlement Benefits

The Settlement provides Class Members with timely benefits targeted at remediating specific harms they may have suffered because of the Data Breach. S.A. ¶¶ 71-73. The Settlement

established a non-revisionary common fund of nine-hundred and ninety thousand dollars ($990,000.00). *Id.* ¶ 67. Under the Settlement, Settlement Class Members can obtain (1) cash compensation for documented monetary losses up to $10,000.00 per Settlement Class Member, (2) *pro rata* cash payments (estimated at $100.00), and (3) credit monitoring and identity theft restoration services. *Id.* ¶ 71. California Settlement Class Members can obtain an additional *pro rata* cash payment of $100.00 given their potential statutory claims under the California Consumer Privacy Act. *Id.* Critically, these forms of relief are not mutually exclusive (*e.g.,* a Settlement Class Member may claim cash compensation for monetary losses and a pro rata cash payment and credit monitoring). *Id.* Furthermore, the Settlement provides injunctive relief as detailed below. *Id.* ¶ 73.

1. Documented Monetary Losses

Settlement Class Members can obtain up to $10,000.00 per person for documented monetary losses reasonably related to the Data Breach or to mitigating the effects of the Data Breach. *Id.* ¶ 71(a). For example, Settlement Class Members can obtain up to $10,000.00 per person for, *inter alia*, (i) out of pocket credit monitoring costs that were incurred on or after May 8, 2024, through the date of Claim submission; (ii) unreimbursed losses associated with actual fraud or identity theft; and (iii) unreimbursed bank fees, long distance phone charges, postage, or gasoline for local travel. *Id.*

2. Pro Rata Cash Payments

Settlement Class Members can also obtain a *pro rata* cash payment in the estimated amount of $100.00. *Id.* ¶ 71(b). The precise value of the *pro rata* cash payments will be adjusted upwards or downwards based upon the number of valid claims filed and the funds remaining in the Settlement Fund. *Id.* California Settlement Class Members can obtain an additional cash payment of $100.00 (a "California Statutory Payment") given their potential statutory claims under the California Consumer Privacy Act. *Id.* ¶ 71(c).

3. Credit Monitoring

Settlement Class Members can also obtain two years of three-bureau Credit Monitoring that also includes three-bureau credit monitoring, dark web monitoring, identity theft insurance coverage for up to $1,000,000 and fully managed identity recovery services. *Id.* ¶ 71(d).

4. Injunctive Relief

The Settlement also provides injunctive relief whereby Defendant agrees to implement enhanced data security measures to the extent not already done. *Id.* ¶ 73. Specifically the Settlement mandates that Defendant (a) periodically review and revise its policies and procedures addressing data security as reasonably necessary; (b) implement automated vulnerability scanning tools that covers its systems and will set policies for prompt remediation; (c) enhance existing firewall protections; (d) enhance existing multi-factor authentication processes for remote access; (e) verify that all default passwords are changed to follow password policies that comply with best practices; and (f) maintain a program to educate and train its employees on the importance of the privacy and security of Private Information. *Id*. Critically, Defendant will pay for these enhanced date security measures separate and apart from other benefits under the Settlement. *Id.*

B. Attorneys' Fees and Service Awards

The Parties did not negotiate attorneys' fees, costs, and service awards until after all material terms of the Settlement were agreed upon. *Id.* ¶ 108. In doing so, Class Counsel and Plaintiffs avoided conflicts with the Settlement Class. Thus, Class seeks an award of attorneys' fees of one third (approximately 33.33%) of the Settlement Fund plus the reimbursement of reasonable litigation expenses. *Id.* ¶ 107. Additionally, Class Counsel requests service awards of $5,000.00 for each Class Representative. *Id.* ¶ 106.

IV. ARGUMENT

A. Legal Standard

Plaintiffs' attorneys in a successful class action lawsuit may petition the Court for compensation relating to any benefits to the Class that result from the attorneys' efforts. *See, e.g., Boeing Co. V. Van Gemert*, 444 U.S. 472 (1980). Rule 23(h) of the Federal Rules of Civil Procedure expressly states that in a certified class action the Court may award "reasonable attorneys' fees and nontaxable costs that are authorized by law or the parties' agreement." Fed. R. Civ. P. 23(h). Pursuant to *Boeing*, Courts in the Second Circuit favor the use of the percentage of the settlement approach. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *McDaniel v. Cnty. Of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010) ("the percentage method has the advantage of aligning the interests of plaintiffs and their attorneys more fully by allowing the latter to share in both the upside and downside risk of litigation[.]").

The Second Circuit has held that in determining a percentage of the recovery, the Court should calculate the attorney's fees based on the settlement's total value; "[t]he entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not." *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007).

Courts in this Circuit have found numerous advantages to using the percentage method of awarding fees. First, the percentage method "directly aligns the interests of the class and its counsel" because it provides an incentive to attorneys to resolve a case efficiently to create the largest total value for the class. *Wal-Mart Stores, Inc.*, 396 F.3d at 121; *In re Lloyd's American Trust Fund Litig.*, 2007 WL 31663577 at *25 (S.D.N.Y. Nov. 26, 2002); *In re Polaroid ERISA Litig.*, 2007

WL 2116398 at *2 (S.D.N.Y. July 19, 2007); *Velez v. Majik Cleaning Serv., Inc.*, 2007 WL 7232783, at *7 (S.D.N.Y. June 25, 2007).

Second, this method is aligned with market practices, as it "mimics the compensation system actually used by individual clients to compensate their attorneys." *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999); *see also Sewell v. Bovis Lend Lease, Inc*, 2012 WL 1320124 at *10 (S.D.N.Y. April 16, 2012) (opining "[the percentage] method is similar to private practice where counsel operates on a contingency fee, negotiating a reasonable percentage of any fee ultimately awarded."); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (noting the percentage method "is consistent with and, indeed, is intended to mirror, practice in the private marketplace where contingent fee attorneys typically negotiate percentage fee arrangements with their clients.").

Third, the percentage method promotes efficiency and early resolution, as it eliminates any incentive plaintiffs' lawyers may have to run up billable hours—one of the most significant downsides to using the lodestar approach. *Savoie v. Merchants Bank*, 166 F.3d 456, 460-61 (2d Cir. 1999) ("It has been noted that once the fee is set as a percentage of the fund, the plaintiffs' lawyers have no incentive to run up the number of billable hours for which they would be compensated under the lodestar method."); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000) (citing *In re Union Carbide Corp., Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 167-168 (S.D.N.Y. 1989)); *see also In re Interpublic Sec. Litig.*, 2004 WL 2397190, at *11 (S.D.N.Y. Oct. 26, 2004).

Finally, the percentage method preserves judicial resources because it relieves the "cumbersome, enervating, and often surrealistic process of evaluating fee petitions." *Savoie v. Merchants Bank*, 166 F.3d at 461 n.4, quoting *Third Circuit Task Force*, 108 F.R.D. at 258. The

"primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits." *Goldberger*, 209 F.3d at 48-49; *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *16 (S.D.N.Y. July 27, 2007). As one New York district court stated:

> [The percentage method is] bereft of the largely judgmental and time-wasting computations of lodestars and multipliers. These latter computations, no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo. They do not guarantee a more fair result or a more expeditious litigation.

In re Union Carbide Corp., Consumer Prods. Bus. Sec. Litig., 724 F. Supp. 160, 170 (S.D.N.Y. 1989).

While courts still use the lodestar method as a "cross check" when applying the percentage of the fund method, courts are not required to scrutinize the fee records as rigorously. *Goldberger*, 209 F.3d at 50; *see In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) (using an "implied lodestar" for the lodestar cross check, and noting that when used as a cross-check, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case); *Varljen v. H.J. Meyers & Co*., 2000 WL 1683656, at *5 (S.D.N.Y. Nov. 8, 2000) (using an "unexamined lodestar figure" for the lodestar cross check).

Regardless of whether the percentage of the fund or lodestar method is used, courts in the Second Circuit evaluating the reasonableness of a fee request consider: "(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. Plaintiffs' Counsel respectfully submit that the Court should apply the percentage of the fund method here and, under the

Goldberger factors, the fee and expense request is reasonable and appropriate and warrants approval by the Court.

B. The *Goldberger* Factors Support the Fee Award Requested by Class Counsel

The Fee Request will compensate Plaintiffs' Counsel for their investment of time, expertise, and capital, which produced an extraordinarily successful outcome for the Settlement Class in a case that was novel, complex and high risk. *See Velez*, 2010 U.S. Dist. LEXIS 125945, at *58 ("The federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit."). Each of the six *Goldberger* factors weigh in favor of granting Class Counsel's request for attorneys' fees of 33% of the Common Fund.

1. The Time and Labor Expended

The litigation required extensive time and labor by Class Counsel. The Joint Declaration submitted by Class Counsel shows a total of 442.95 hours spent on the litigation. Joint Dec., ¶ 20. This number is not surprising given the breadth and scope of the litigation, the multiple cases filed, and the tasks required, and fully supports the requested fee.

As set forth above, Class Counsel and Executive Committee members drafted separate class action complaints to initiate this litigation, and then worked together to consolidate the related actions and file a Consolidated Complaint. *Id.* ¶ 5. As litigation commenced, Class Counsel, with the support of the Executive Committee members, coordinated the litigation schedule with defense counsel; analyzed topics for discovery; conducted settlement negotiations, including drafting of the notices and claim form; prepared and filed Plaintiffs' Motion and Memorandum of Law in Support of Preliminary Approval of the Settlement; and worked with the Settlement Administrator and Defendant's counsel to effectuate notice and administer the Settlement. *Id.* ¶ 6.

A lodestar crosscheck also supports the requested fee. As noted above, the lodestar fee calculation method has "fallen out of favor particularly because it encourages bill-padding and discourages early settlements." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). 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.* "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case (as well as encouraged by the strictures of Rule 11)." *Silberblatt v. Morgan Stanley*, 524 F.Supp.2d 425, 434 (S.D.N.Y. Nov. 19, 2007) (internal citations omitted). Class Counsel need only submit documentation appropriate to meet the burden establishing an entitlement to an award, not to satisfy "green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838 (2011).

The combined lodestar to date equals $297,181.50. Joint Dec., ¶ 20. Class Counsel has calculated that their total lodestar yields a modest multiplier of 1.11, which is well within the range accepted by courts in the Second Circuit. *See Id*. In fact, courts in this jurisdiction regularly award lodestar multipliers of two times the lodestar or higher. *See, e.g., James v. China Grill Mgmt.*, 2019 U.S. Dist. LEXIS 72759, at *8 (S.D.N.Y. Apr. 30, 2019) (collecting cases with multipliers between 2 and 4.9); *Sewell*, 2012 U.S. Dist. LEXIS 53556, at *38 ("Courts commonly award lodestar multipliers between two to six."); *In re Lloyd's Am. Trust Fund Litig.*, 2002 U.S. Dist. LEXIS 22663, at *81 (a "multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit"). Also, the lodestar multiplier will ultimately be lower once final approval is sought. Joint Dec., ¶ 20.

2. The Magnitude and Complexity of Litigation

"The size and difficulty of the issues in a case are significant factors to be considered in making a fee award." *Beckman v. KeyBank, N.A.,* 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citation omitted). In cases that require more expertise, a larger percentage of the fund should be awarded to the lawyers who can competently prosecute the case. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award."). This matter is no exception, as courts recognize that data breach cases enhance the risk litigants face in class litigation. *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOx), 2022 U.S. Dist. LEXIS 119454, at *18-19 (C.D. Cal. Feb. 22, 2022) ("Moreover, these risks are compounded by the fact that data breach class actions are a relatively new type of litigation and that damages methodologies in data breach cases are largely untested and have yet to be presented to a jury").

Class Counsel knew from their initial investigations that this litigation would involve extensive research on challenging and complex legal and factual claims in this unique data security class action. Data security and data breach cases across the country are presenting novel issues to the courts for consideration. Class Counsel were also aware that pursuing this case beyond settlement would likely be lengthy and expensive, requiring discovery, briefing, argument, trial, and potential appeals. Joint Dec., ¶ 14. All of this would require hundreds, or perhaps thousands, of hours of work, which would result in significant costs. Ultimately, Plaintiffs' Counsel accrued 442.95 hours litigating the matter up to this point, though there is more work to do, including preparing for and appearing at the Final Approval Hearing, overseeing claims administration, and resolving any appeals.

The magnitude and complexity of the litigation were significant; thus this factor weighs in favor of granting Plaintiffs' Motion.

3. The Risk of Litigation

Plaintiffs' Counsel undertook significant risk in accepting this case on an entirely contingent basis, supporting the requested fee award. 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); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) ("Courts have repeatedly recognized 'that the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions.") (citation omitted). Class Counsel here took on the risks of litigation knowing full well their efforts might not bear fruit. Fees were not guaranteed. This case involved complexities of data breach that are novel and evolving, and the risk of non-payment is especially high in class actions with contingent fee arrangements, like here. *See Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814(MP), 2004 U.S. Dist. LEXIS 8608, at *11 (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.").

"It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55. While Plaintiffs were confident that their claims would prevail, they faced several strong legal defenses and difficulties in demonstrating causation and injury, at the time of filing of this Action, there were complex issues of fact and law, which presented significant risks that continue through today. Due at least in part to their cutting-edge nature and the rapidly evolving law, data security cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. Bank of N.Y. Mellon Corp.*, 2010 U.S. Dist. LEXIS 71996, at *4 (S.D.N.Y. June 25, 2010)(collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Further, there was always a risk that Defendant would successfully oppose class certification. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y.

2005)(noting that "[w]hile plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might be not certified is not illusory"). Even if the Class was certified by the Court, Defendant could have then attempted to appeal the certification decision under Federal Rule of Civil Procedure 23(f) or argued for decertification as the litigation progressed. *See Chatelain v. Prudential-Bache Sec*., 805 F. Supp. 209, 214 (S.D.N.Y. 1992). Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiffs and Settlement Class Members.

Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on either certification or merits. The general risks of litigation are further heightened in the data breach arena. Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles—even just to make it past the pleading stage. As one federal district court recently observed when finally approving a data breach settlement with similar class relief and similar attorneys' fees:

> Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.,* No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019)("Data breach cases ... are particularly risky, expensive, and complex."). Plaintiffs also faced the risk that [defendant] would successfully oppose class certification, obtain summary judgment on one or more of their claims, or win at trial or on appeal. Also, the cost for [defendant] and Plaintiffs to maintain the lawsuit would be high, given the amount of documentary evidence as well as the expert costs both parties would incur in the context of class certification, summary judgment, and trial. As such, the current Settlement strikes an appropriate balance between Plaintiffs' "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." *See Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981).

Yvonne Mart Fox v. Iowa Health Sys., No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *14 (W.D. Wis. Mar. 4, 2021) (also approving attorneys' fees and costs in the amount of $1,575,000). Class certification is another hurdle that would have to be met—and one that has

been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

"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); *see also Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ. 214 CM, 2012 WL 2505644, at *10 (S.D.N.Y. June 27, 2012) ("[T]he risk of non-payment in cases prosecuted on a contingency basis where claims are not successful…can justify higher fees.").

Plaintiffs' Counsel were able to secure a significant settlement on behalf of Class members for complex claims asserted against Defendant. This was done despite the significant risks Plaintiffs faced in pursuing these claims. As such, the Settlement is a direct result of Counsel's skills and dedication in this Action. Accordingly, this factor weighs in favor of approving the requested fee percentage.

4. The Quality of Representation

In determining the quality of representation, courts examine the experience of the attorneys involved and the result obtained in the lawsuit. *See Taft v. Ackermans*, 2007 U.S. Dist. LEXIS 9144, at *31 (S.D.N.Y. Jan. 31, 2007). Here, Class Counsel, and the Executive Committee members, have substantial experience in both class actions generally, and complex consumer class actions involving cybersecurity incidents in particular. *See* Joint Dec. ¶ 18. It required significant skill and experience, as well as high quality representation, to even be able to identify the issues of Article III standing and the highly technical aspects of the data breach mechanism (*i.e.* the means by which Defendant's systems were breached), not to mention the specialized knowledge of class action procedure required to achieve certification, let alone settlement.

With respect to the results achieved for the Class, as discussed above, they are undoubtedly exemplary. Defendant has agreed to establish a $990,000.00 Common Fund to provide benefits to

the Settlement Class that will directly address the harm they suffered as a result of the Data Breach, including reimbursement documented monetary losses and *pro rata* cash payments. S.A. ¶ 71. The Settlement also provides the option to enroll in credit monitoring. *Id*. Finally, Defendant has agreed to implement enhanced data security measures to the extent not already done. *Id*. ¶ 73.

Given the quality of Class Counsel's representation, as evidenced by the excellent Settlement achieved for the Class, this factor weighs in favor of approval.

5. The Requested Fee in Relation to the Settlement

Compensation of one-third of the Settlement Fund is consistent with the proportion of common funds awarded as fees in other class action settlements within the Second Circuit. *See,* e.g., *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-CV-8405 (CM) & 14-CV-8714 (CM), 2015 U.S. Dist. LEXIS 121574, at *57 n.11 (S.D.N.Y. Sept. 9, 2015) (collecting cases with fee awards of approximately 30–33.33% of the total settlement value); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) ("[I]t is very common to see 33% contingency fees in cases with funds of less than $10 million . . . ."); *Kiefer v. Moran Foods, LLC*, No. 12-cv-756 (WGY), 2014 U.S. Dist. LEXIS 106924, at *51 (D. Conn. Aug. 5, 2014) (one-third of common fund "is reasonable and 'consistent with the norms of class litigation in this circuit.'" (quoting *Aros v. United Rentals, Inc.*, No. 3:10-cv-73 (JCH), 2012 U.S. Dist. LEXIS 104429, at *18 (D. Conn. July 26, 2012)); *City of Providence v. Aéropostale, Inc*., 2014 U.S. Dist. LEXIS 64517, at *60 (S.D.N.Y. May 9, 2014) (awarding 33% in attorneys' fees); *In re Hi-Crush Partners L.P. Securities Litigation*, No. 12-cv-8557 (CM), 2014 U.S. Dist. LEXIS 177175, (S.D.N.Y. Dec. 19, 2014) (awarding "33 1/3% of the Settlement Amount" in attorneys' fees); *Beckman v. KeyBank, N.A.,* 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (awarding class counsel one-third of the settlement fund).

Even recent decisions support the conclusion that fees amounting to one-third of a common

fund are reasonable, with one court stating earlier this year: "Courts in this Circuit routinely find that a percentage of fund award is appropriate and that a one-third percentage is fair and reasonable." *Kohari v. MetLife Group, Inc*., No. 21-cv-6146 (KHP), 2025 U.S. Dist. LEXIS 7675, *35 (S.D.N.Y. Jan. 15, 2025) (approving fees of one-third of a fund); s*ee, e.g, Caccavale v. Hewlett-Packard Co*., No. 20-cv-974-NJC-ST, 2025 U.S. Dist. LEXIS 47302, *30 (E.D.N.Y. Mar. 14, 2025) (preliminarily approving settlement where attorneys intended to seek up to one-third of the fund in fees, holding that "[c]ourts in this District have approved fees as high as 33.5% from comparable class settlement funds, finding that they are well within the applicable range of reasonable percentage fund awards" (*quoting In re GSE Bonds Antitr. Litig*., 414 F. Supp. 3d 686, 695 (S.D.N.Y. 2019))); *Zimmerman v. Paramount Global*, No. 23-CV-2409 (VSB), 2025 U.S. Dist. LEXIS 43617, *15 (S.D.N.Y. Mar. 11, 2025) (concluding in a preliminary approval award that "application for a fee award of an amount not to exceed one-third of the Settlement Fund, plus reasonable out-of-pocket costs . . . is consistent with what other courts in this District have approved" (internal quotations omitted)); *Silva v. Consol. Scaffolding, Inc*., No. 1:24-cv-04591, 2024 U.S. Dist. LEXIS 168162, at *5 (S.D.N.Y. Sept. 18, 2024) ("In light of the *Goldberger* factors, the Court finds that the one-third contingency fee in this case is appropriate").[1]

In addition, awarding Counsel "a one-third fee also aligns with those awarded by other courts in data breach class action cases" around the country. *Krant v. UnitedLex Corp.*, No. 23-2443-DDC-TJJ, 2024 U.S. Dist. LEXIS 230685, *21 (D. Kan. Dec. 19, 2024) (awarding one-third fee, and collecting data breach cases from around the country); *Alliance Ophthalmology, PLLC v. ECL Group, LLC*, No. 1:22-CV-296, 2024 U.S. Dist. LEXIS 113914, *42 (M.D.N.C. June 27,

[1] In fact, one decision that reviewed 289 class actions settlements found an "average attorney's fee percentage [of] 31.31%" and a median value "that turns out to be of one-third." *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001).

2024) (awarding one-third of a common fund as attorneys' fees in data breach action because this amount was "comparable to awards in other data privacy class actions"); *Thomsen v. Morley Cos*., No. 1:22-cv-10271, 2023 U.S. Dist. LEXIS 84005, *7 (E.D. Mich. May 12, 2023) (holding that attorneys' fee of one-third of the common fund was "apt because it reflects counsel's specialization in data breaches and simplifies the billing"); *see also Barletti v. Connexin Software, Inc.*, No. 2:22-cv-04676-JDW, 2024 U.S. Dist. LEXIS 43851, *16 (E.D. Pa. Mar. 13, 2024) (preliminarily approving data breach class action settlement which created a $4,000,000 fund, and finding that attorney fees of one-third that amount were "squarely within the range of awards found to be reasonable").

6. Public Policy Considerations

Public policy supports providing attorneys' fees in class action cases, as class actions are also an invaluable safeguard of public rights. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). Where, as here, the Settlement amount is relatively small, an award of attorneys' fees ensures that "plaintiffs' claims [will] likely . . . be heard." *Frank v. Eastman Kodak Co*., 228 F.R.D. 174, 189 (W.D.N.Y. 2005). If courts denied sufficient attorneys' fees "no attorneys . . . would likely be willing to take on . . . small-scale class actions[.]" *Id*.; *see also Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002)(private attorneys "should be encouraged" to take the risks required to represent those who would not otherwise be protected from socially undesirable activities, including fraud.). Public policy is in favor of rewarding counsel who persevere through risky litigation and achieve favorable results for the class they represent. Here, Class Counsel and the Executive Committee members took on this case despite the uncertainty and volatility of law pertaining to consumer class actions, especially ones seeking damages for data breach victims and persevered in obtaining a settlement allowing for Settlement Class

Members to receive cash, injunctive, and mitigative compensation. Such a result should be rewarded.

C. Class Counsel's Requested Expenses are Reasonable

Courts typically allow counsel to recover their reasonable out-of-pocket expenses. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) *(citing In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n. 3 (S.D.N.Y.2003)). "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation' of those clients." *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d at 183 n.3 (internal quotation marks omitted).

Here, Plaintiffs' Counsel's efforts have resulted in exceptional benefits to the Settlement Class. In doing so, Plaintiffs' Counsel incurred out-of-pocket expenses in the aggregate amount of $15,278.13 for filing fees, mediation costs, and other litigation costs including court and process server fees and postage. The requested costs are reasonable in light of the nature of the action and the tasks that needed to be performed. *See, e.g., Kiefer*, 2014 WL 38882504, at *55 (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).

D. Plaintiffs' Requested Service Awards are Justified and Should be Approved

Service awards are commonly awarded in class action cases to compensate plaintiffs for the time and effort they expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citation omitted). Courts consider such

compensation important. *See Massiah v. MetroPlus Health Plan, Inc.,* No. 11 Civ. 5669, 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012).

For their commitment to this case, Plaintiffs seek $5,000.00 each (or $25,000 total). Plaintiffs each assisted in preparing not only their original complaints, but also the Consolidated Complaint. Plaintiffs remained in contact with Class Counsel after filing their actions regarding the progress of the case, provided relevant documents and information, reviewed pleadings and other documents in the case, and discussed and approved the Settlement. Plaintiffs were also available throughout the mediation and settlement process to answer questions and represent the interests of the Settlement Class. They were each prepared to take on the responsibilities of a class representative, including being deposed and testifying at trial, if needed.

The amount requested is reasonable and modest relative to awards regularly granted by courts in this jurisdiction and the request should be granted. *See Beckman*, 293 F.R.D. at 481-83 (granting an award of $5,000 to $7,500 to plaintiffs); *McLaughlin v. IDT Energy*, No. 14-cv-417 (ENV) (RML), 2018 WL 3642627, at *20 (E.D.N.Y. July 30, 2018) ("Courts in this circuit regularly approve service awards, ranging from as low as $1,000 to as high as $25,000, in consumer class action settlements; generally, however, award between $1,000 and $10,000 are more typical.") (collecting cases).

V. CONCLUSION

For the foregoing reasons, Class Counsel requests that the Court grant this motion and (1) award 33.33% of the Common Fund, or $330,000.00 as attorneys' fees; (2) approve reimbursement of expenses in the amount of $15,278.13; and (3) approve a service award of $5,000.00 each ($25,000.00 total) for Class Representatives Efsathios Maroulis, William Colley, Russell DeJulio, Alice Bruce, and Ildar Gaifullin.

Date: May 6, 2025

Respectfully submitted,

/s/ David K. Lietz
David K. Lietz
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
5335 Wisconsin Avenue NW, Suite 440
Washington, D.C. 20015-2052
Tel.: (866) 252-0878
dlietz@milberg.com

Jonathan S. Mann
PITTMAN, DUTTON, HELLUMS, BRADLEY & MANN, P.C.
2001 Park Place North, Suite 1100
Birmingham, AL 35203
Tel.: (205) 322-8880
jonm@pittmandutton.com

Interim Lead Class Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ David Lietz
Counsel for Plaintiffs