

STATE OF NORTH CAROLINA
PITT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BUSINESS COURT NO.
24CVS000772-730

TAMMY FLYNN, HEISHA LYNCH, J.L.,
a minor through her mother, HEISHA
LYNCH, DEAN SWINSON, BRANDON
CANNON, BRITTANY MORRE,
ANNAIA MCLAMB, CYNTHIA
MEADOWS, SUZANNE ABRAMS,
LATASHA WILLIAMS, BILLY
ROBINSON, JOSEPH SAWYER,
SAMANTHA RICHARDSON, LORI
POWERS, JASON POWERS,
GENEVIEVE JONES, ELAINE
QUITTKAT, and MARY SHELDON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

EASTERN RADIOLOGISTS, INC.,

Defendant.

Class Action

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

Plaintiffs Tammy Flynn; Heisha Lynch; J.L., a minor through her mother,
Heisha Lynch; Dean Swinson; Brandon Cannon; Brittany Moore; Annaia McLamb;
Cynthia Meadows; Suzanne Abrams; Latasha Williams; Billy Robinson; Joseph
Sawyer; Samantha Richardson; Lori Powers; Jason Powers; Genevieve Jones; Elaine

Quittkat; and Mary Sheldon (“Plaintiffs”), individually and on behalf of all others similarly situated, submit the following memorandum and exhibits in support of their motion for attorneys’ fees, expenses, and service award.

I. INTRODUCTION

On July 15, 2025, this Court preliminarily approved a proposed class action settlement between Plaintiffs and Defendant Eastern Radiologists, Inc. (“Defendant” or “Eastern Radiologists”). The Settlement creates a \$3,200,000 non-reversionary Settlement Fund that will be used to pay Settlement Costs, cash payment awards to Settlement Class Members, Administrative Costs, Service Awards to Plaintiffs, and Attorneys’ Fees and Expenses. As part of the Settlement, Class Members may claim either (1) documented out-of-pocket losses up to \$5,000, or (2) a *pro rata* cash payment of approximately \$50, which may be increased or decreased based on the money remaining in the Settlement Fund after the payment of any Fee Award and Expenses, Service Awards, and Administrative Expenses. Claims for Out-of-Pocket Losses will be paid by Defendant outside the Settlement Fund. And will be subject to an aggregate cap of \$200,000. All Settlement Class Members may also elect to receive one year of medical account monitoring through CyEx’s Medical Shield product. Additionally, Defendant has or will make changes and improvements to its cybersecurity systems. These are substantial, tangible benefits to the Class Members. As shown, the Settlement offers far greater value to Settlement Class Members than just the \$3,200,000 Common Fund.

Settlement Class Counsel have zealously prosecuted Plaintiffs' claims, achieving the Settlement Agreement only after an extensive investigation and prolonged arms'-length negotiations, including a formal mediation overseen by Hon. Wayne Andersen (Ret.) of JAMS, a well-respected mediator. The mediation ended without a settlement, thus the Parties engaged in continued negotiations following the mediation. The arm's-length nature of the settlement negotiations between adversarial (yet collegial), competent and experienced counsel on both sides shows that this settlement was achieved free of collusion. After coming to an agreement to settle, with the assistance of a mediator's proposal from Judge Andersen, Settlement Class Counsel worked for weeks to finalize the Settlement Agreement and associated exhibits pertaining to notice, preliminary approval, and final approval.

As compensation for the substantial benefit conferred upon the Settlement Class, Settlement Class Counsel respectfully moves the Court for an award of attorneys' fees totaling \$1,500,000.00, which represents 33.33% percent of the aggregate Common Fund and additional claimable benefits. North Carolina courts have expressly and repeatedly approved fees that equal 25% to 40% of the common fund created. Plaintiffs also seek \$ 27,934.06 in reimbursement of modest out-of-pocket costs and expenses spent to date on this litigation. Plaintiffs' motion should be granted because: (1) the request is reasonable and appropriate in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case; (2) the requested fees and costs were clearly delineated in notice to the class, and no class member has objected; and (3) the costs

incurred were reasonable and necessary for the litigation. Plaintiffs also respectfully move the Court for an award of \$2,500 to each Plaintiff for their work on behalf of the Settlement Class.¹

II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to, and hereby incorporate, Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 42) and the accompanying Exhibits, including the proposed Settlement Agreement ("SA"), filed in conjunction therewith.

III. SUMMARY OF SETTLEMENT

The settlement's key terms are as follows:

A. Certification of the Settlement Class

The settlement provides for certifying the Settlement Class for settlement purposes only. The "Settlement Class" is defined as:

All persons whose Private Information was impacted by the Data Incident and were sent a notice of the Data Incident from or on behalf of Defendant. SA ¶ 1.35.

The Settlement Class specifically excludes: (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (ii) the Judge presiding over this Litigation and his or her staff and their direct family members.

¹ While Plaintiffs here move for attorneys' fees, expenses, and service awards, they will move for final approval of the settlement by separate motion, which will be filed prior to the final fairness hearing.

The Settlement Class contains approximately 884,935 individuals (each, a “Settlement Class Member”). *Id.* ¶¶ 1.35, 1.36.

B. Settlement Benefits to the Settlement Class

The Settlement creates a \$3,200,000 non-reversionary Settlement Fund which will be used to pay Settlement Costs, award payments to Settlement Class Members, Administrative Costs, Service Awards to Plaintiffs, and Attorneys’ Fees and Expenses. *Id.* ¶ 2.1.1. The benefits available to the Settlement Class are substantial. **First**, all Settlement Class Members are eligible to make a claim for one year of medical account monitoring through CyEx’s Medical Shield product, regardless of whether they submit a claim for reimbursement of documented losses. SA ¶ 2.3. This product includes dark web monitoring, \$1 million dollars of medical identity theft insurance, real-time authentication alerts, high-risk transaction monitoring, security freeze assistance, and fraud assistance. *Id.* The total cost of the claimed medical account monitoring, valued at approximately \$179.40 for the one year period per individual, will be paid for by Defendant separate and apart from the Common Fund, with no cap on the maximum amount to be paid. *Id.* **Second**, Settlement Class Members may submit a Claim Form for a *pro rata* Cash Payment from the Common Fund, estimated to be \$50.00, but that will be increased or decreased *pro rata* depending upon the number of claims made and approved. SA ¶ 2.1.2. The Settlement Class Members who make a claim for the Cash Payment will not be entitled to make a claim for Out-of-Pocket losses as enumerated below. Payments for valid and approved Cash Payment claims will be made from the Common Fund. *Id.* **Third**, in

the alternative to the *Pro Rata* Cash Payment, Class Members may submit a Claim Form for documented Out-of-Pocket Losses up to a maximum of \$5,000 per person. *Id.* ¶ 2.2.4. Total payments for Out-of-Pocket Losses shall not exceed an aggregate cap of \$200,000, which again will be paid by Defendant separate and apart from the Common Fund. *Id.* **Finally**, Defendant has implemented a number of security enhancements to avoid future incidents, from which all Settlement Class Members will benefit regardless of whether they file a claim for any other Settlement Benefits. *Id.* ¶ 2.4.

C. Other Aspects of the Settlement

The \$3,200,000 Common Fund will also be used to pay for the cost of notice and administration. SA ¶¶ 2.1.1, 2.1.3. The Settlement Fund will also be used to pay for the requested attorneys' fees, expenses, and service awards sought here. *Id.* ¶ 2.1.5. Importantly, after payment of all these costs, the Settlement Class will still take home the majority of the Settlement Proceeds here. And, given the fact that the *Pro Rata* Payments effectively "sweep" all of the Settlement Fund into actual payments to Class Members, the benefits of this Settlement will be delivered almost entirely to the Class (with any funds that remain unclaimed after the time expires for negotiation of checks or e-payments (and all re-issues) to be designated to a mutually agreed-upon *cy pres* recipient, subject to approval by the court). *Id.* ¶ 2.1.6.

IV. LEGAL ARGUMENT

A. PLAINTIFFS' COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND EXPENSES, AND AN INCENTIVE AWARD TO THE CLASS REPRESENTATIVES SHOULD BE APPROVED

Settlement Class Counsel requests an award of attorneys' fees in the amount of \$1,500,000.00. The amount of the requested attorneys' fees amounts to 33.33% of the Settlement Fund and claimable benefits and is reasonable.² Settlement Class Counsel further requests \$27,934.06 in actual out-of-pocket case expenses, to be awarded in addition to the fees requested. This expenses reimbursement request is modest, and the amounts spent were all reasonably incurred costs necessary for the prosecution and settlement of this case. Settlement Class Counsel also recommends and requests an award of \$2,500 to each of the Settlement Class Representatives.

1. The Fee Request Should Be Approved Under the Percentage of Common Benefit Method.

North Carolina has long approved granting attorneys' fees upon the creation of a common allocation of money. This doctrine was first recognized in *Horner v. Chamber of Commerce, Inc.*, 236 N.C. 96, 97-98 (1952), in which the Court stated the following:

the rule is well established that a court of equity, or a court in the exercise of equitable jurisdiction, may in its discretion, and without statutory authorization, order an allowance for attorney fees to a litigant who at his own expense has maintained a successful suit for the preservation, protection, or increase of a common fund or of common property, or who has created at his own expense or brought into court a fund which others may share with him.

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'

² The value of the benefits achieved through the Settlement include the \$3,200,000 Common Fund, in addition to payment of Out-of-Pocket Losses up to \$200,000 in the aggregate, and CyEx Medical shield, which is valued at \$179.40 per Class Member. Class Counsel calculated very conservatively that if even just 1% of the Settlement Class made a claim for the CyEx benefit, this would bring the valuation of the Settlement to \$4,500,000.

efforts. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Under this “common benefit” approach, attorneys’ fees are awarded as a percentage of the common benefit created by the settlement. The doctrine’s foundation rests on the principle that “where one litigant has borne the burden and expense of the litigation that has inured to the benefit of others as well as to himself, those who have shared in its benefits should contribute to the expense.” *Horner*, 236 N.C. at 98, 72 S.E.2d at 22. “Courts routinely impose enhanced common fund awards to compensate counsel for litigation risk at the expense of beneficiaries who do not shoulder this risk.” *Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Tr., NA*, 919 F.3d 763, 786 (4th Cir. 2019), *as amended* (Mar. 22, 2019).

The percentage-of-the fund method is the preferred method of calculating attorneys’ fees in cases involving common fund settlements in federal courts as well. “Indeed, there is a consensus among the federal circuit courts of appeal that the award of attorneys’ fees in common fund cases may be based on a percentage of the recovery.” *Ferris v. Sprint Comm’ns Co. L.P.*, No. 5:11-cv-667, 2012 WL 12914716, at *6 (E.D.N.C. Dec. 13, 2012) (quoting *Muhammad v. Nat’l City Mortgage, Inc.*, No. 2:07-0423, 2008 WL 5377783, at *7 (S.D. W. Va. Dec. 19, 2008)); *see also Phillips v. Triad Guaranty Inc.*, No. 1:09CV71, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016) (noting that district courts within the Fourth Circuit “overwhelmingly” prefer the percentage-of-the-fund method in common fund settlement); *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (Internal citation omitted) (noting that within the Fourth Circuit, the percentage-of-

the-fund method “is the preferred approach to determine attorneys’ fees.”); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260 (E.D. Va. 2009) (explaining that “[w]hile the Fourth Circuit has not definitively answered this debate, other districts within this Circuit, and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method[.]”).

The percentage-of-the-fund method provides a strong incentive to plaintiffs’ counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances by removing the incentive, which occurs under the lodestar method, for class counsel to “over-litigate” or “draw out” cases in an effort to increase the number of hours used to calculate their fees. *See Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 759 (S.D.W. Va. 2009); *see also Ferris*, 2012 WL 12914716, at *6 (noting that the percentage method “better aligns the interests of class counsel and class members because it ties the attorneys’ award to the overall result achieved rather than the hours expended by the attorneys”); *DeWitt v. Darlington Cty.*, No. 4:11-cv-00740, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013) (“The percentage-of-the-fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorneys’ fees on an hourly basis.”).

The fundamental test for awarding attorneys’ fees in class action settlements is whether the request is “fair and reasonable.” *Ehrenhaus v. Baker*, 243 N.C. App.

17, 30 (2015). The Court has discretion to determine what is reasonable. *In re Hatteras Fin., Inc., Shareholder Litig.*, 286 F. Supp. 3d, 727, 735 (M.D.N.C. 2017).

The reasonableness of an attorneys' fee award is determined by a set of non-exclusive factors, including "1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent." *Ehrenhaus*, 216 N.C. App. at 96-97. No single *Ehrenhaus* factor is dispositive.

However, attorney fee requests are presumptively fair and reasonable when they seek a third or less of the common fund. For example, the North Carolina Business Court in *Byers v. Carpenter*, No. 94 CVS 04489, 1998 NCBC 1, 1998 WL 34031740, at *9 (N.C. Super. Jan. 30, 1998) held that the appropriate level of compensation using a percentage-of-recovery method is typically 25% of the relief obtained if the case is settled before filing; 33% if after filing; and 40% if after an appeal has been taken. "The percentage fee is paid in addition to any expenses that the attorney has incurred on behalf of the client." *Id.*

Federal courts in North Carolina and in the Fourth Circuit often award fees equal to (or greater than) 33 percent of the settlement value. *See e.g. Earls v. Forga Contracting, Inc.*, No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020) (“Within the Fourth Circuit, contingent fees of roughly 33% are common.”); *In re Cotton*, 3:18-cv-00499, 2019 WL 1233740, at *4 (W.D.N.C. March 15, 2019) (approving an award of 33 percent of the total settlement value); *Neal v. Wal-Mart Stores, Inc.*, 3L17-cv-00022, 2021 WL 1108602, at *2 (W.D.N.C. March 19, 2021) (same); *McAdams v. Robinson*, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys’ fees award of \$1,300,00 or 43% of the \$3,000,000 common fund class action settlement). Attorneys’ fees in common fund cases typically reflect “around one-third of the recovery.”³

Here, the 33.33% requested equals the amount that North Carolina courts find presumptively reasonable. Relevant federal court precedent from North Carolina and the Fourth Circuit is in accord that a one-third attorneys’ fee request is reasonable. Learned treatises are in agreement as well. An examination of the *Ehrenhaus* factors further bears this out.

2. The Requested Attorneys’ Fees Are Reasonable Under the *Ehrenhaus* Factors.

The first and seventh *Ehrenhaus* factors – the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the

³ *See* 5 NEWBERG ON CLASS ACTIONS § 15:73 (5th ed. 2016) (noting that a “33% figure provides some anchoring for the discussion of class action awards [to counsel]” and that “many courts have stated that ... fee award in class actions average around one-third of the recovery.”).

service properly, and the experience, reputation, and ability of the lawyers involved – overwhelmingly support the requested fee award. Here, the lawyers representing all Plaintiffs in this matter have expended time equating to \$972,391.70 in lodestar on this case to date, and anticipate spending more time bringing this case through final approval and distribution of all Settlement benefits to Class Members. Joint Fee Decl. ¶¶ 13, 16.

The skill required to litigate data breach cases is great, in part due to the quickly evolving nature of data breach and privacy law. Here, as the supporting declaration in support of the preliminary approval motion abundantly shows, the lawyers representing Plaintiffs are some of the most experienced in this area of the practice. Martin Preliminary Approval Decl. ¶¶ 4-5. Indeed, in the case of the Milberg, Morgan, and Rhine firms, North Carolina courts have previously recognized their skill and experience.⁴ Settlement Class Counsel brought this established track record and experience to work in litigating Plaintiffs’ and Class Members’ claims. The significant experience and qualifications of counsel easily justify the attorneys’ fee award.

⁴ See *McManus v. Gerald O. Dry, P.A.*, Case No. 22 CVS 1776, Order on Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, May 5, 2023 (Bledsoe, C.J.) (“the Court recognizes that data breach class action litigation is a complex and novel area of the law and that Lietz and his law firm are national leaders in this field.”); See also *In Re Columbus Regional Healthcare System Data Security Incident Litigation*, Case No. 24 CVS 88-230, Order on Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, May 15, 2025 (A. Todd Brown, Special Superior Court Judge) (“the Court concludes that this action involved complex and novel questions which required high legal skills to satisfactorily resolve.”).

Settlement Class Counsel’s expertise is important because this was a case where Plaintiffs faced substantial hurdles on a case that involved novel and difficult legal questions. As courts in North Carolina have acknowledged,⁵ data breach cases are, by nature, particularly risky and expensive. Such cases also are innately complex. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *32 (N.D. Ga. Mar. 17, 2020), *aff’d in part, rev’d in part and remanded*, 999 F.3d 1247 (11th Cir. 2021) (recognizing the complexity and novelty of issues in data breach class actions); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737m at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”).

This case is no exception to that rule. It involves 884,935 Class Members, complicated and technical facts, and a well-funded and motivated defendant. While Plaintiffs believe they would have ultimately prevailed on the merits at trial or summary judgment, the risk of nonpayment was substantial. Moreover, the fact that Class Counsel was able to resolve this difficult case within several months of initiating it is further indicative of their skill and efficiency in litigating this matter.

⁵ *See In Re Columbus Regional Healthcare System Data Security Incident Litigation*, Case No. 24 CVS 88-230, Order on Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, May 15, 2025 (A. Todd Brown, Special Superior Court Judge) (“pursuing these actions is complicated, difficult, and fraught with risk, for both clients and attorneys, and such was the case here”).

See In re The Mills Corp. Sec. Litig., 265 F.R.D. 246, 262-63 (E.D. Va. 2009) (finding that Counsel’s ability to resolve the case within one year of the Court’s denial of Defendant’s Motion to Dismiss to be indicative of Counsel’s “skill and efficiency.”). In other words, Settlement Class Counsel did not run up the bill to seek additional fees.

Settlement Class Counsel already devoted significant time to this matter. Of course, Settlement Class Counsel’s work was not over after negotiating the Settlement. After preliminary approval of the Settlement Agreement was granted, Settlement Class Counsel has worked diligently to ensure that Settlement Class members would be able benefit from the Settlement. Joint Fee Decl. ¶¶ 3-4. The work performed by Class Counsel to date has been comprehensive, complex, and wide-ranging. Thus, the first and seventh factors amply support the requested fee award.

The second and eighth factors – the preclusion of other employment and whether the fee was fixed or contingent – likewise support the requested fee award. Settlement Class Counsel took this case on a purely contingent basis. Joint Fee Decl. ¶ 7. The Fourth Circuit has recognized the importance of the risk of non-payment in awarding fees. In a 2010 case, the United States Court of Appeals for the Fourth Circuit reversed the district court’s “reduction of attorney’s fees from thirty-three percent to a mere three percent,” noting that “[t]he chief error in the district court’s analysis was its failure to recognize the significance of the contingency fee in this case.” *Pellegrin v. Nat’l Union Fire Ins. (In re Abrams & Abrams, P.A.)*, 605 F.3d 238, 245, 249 (4th Cir. 2010). The Fourth Circuit noted that “contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining

representation,” stating, “[t]he contingency agreement was, as the saying goes, the key to the courthouse door that allowed [plaintiff] to retain the attorneys who eventually provided for his son’s ongoing needs.” *Id.* at 245-46. The Fourth Circuit further noted that “contingency fee agreements transfer a significant portion of the risk of loss to the attorneys taking a case,” and “[a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk.” *Id.* at 246. Stated differently, “plaintiffs may find it difficult to obtain representation if attorneys know their reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever.” *Id.* This reasoning applies to the realm of privacy law in spades since there is no shortage of well-paid legal defending or advising corporations as to their obligations to protect PII.

Here, the retainer agreements Settlement Class Counsel has with Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, attorneys’ fees would only be awarded to Settlement Class Counsel, if approved by the Court. Joint Fee Decl. *Id.* at ¶ 12. As such, attorneys’ fees were not guaranteed in this case. *Id.* Settlement Class Counsel assumed significant risk of nonpayment or underpayment of attorneys’ fees. *Id.* ¶¶ 7, 11-12. Settlement Class Counsel took on these significant risks knowing full well their efforts may not bear fruit. *Id.* Plaintiffs’ counsel’s acceptance of the work on a contingency basis is a significant factor counseling in favor of its fee request.

Settlement Class Counsel also took on significant risks with this particular case. While Plaintiffs believed they could prevail on their claims against Defendant, they were also aware that they would likely face several strong legal defenses and difficulties in demonstrating causation and injury. *Id.* ¶ 24. Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiffs and putative class members. *Id.* 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. Among national consumer protection class action litigation, data breach cases are some of the most complex and involve a rapidly evolving area of law. *Id.* At present, courts have certified only a limited number of contested classes in this area.⁶ Moreover, the theories of damages remain untested at trial and appeal. As another court recently observed:

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.”).

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). These cases are particularly risky for plaintiffs’ attorneys. Consequently, the requested fee award appropriately compensates for the risk undertaken by Plaintiffs’ counsel here.

⁶ *See, e.g., Attias v. CareFirst, Inc.*, No. 15-cv-882, 2024 WL 1344401, at *10 (D.D.C. Mar. 29, 2024); *Savidge v. Pharm-Save, Inc.*, No. 7-cv-186, 2024 WL 1366832, at *32 (W.D. Ky. Mar. 29, 2024).

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. *See Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). 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).

Another significant risk faced by Plaintiffs here is the risk of maintaining class action status through trial. The class has not yet been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiffs “necessarily risk losing class action status.” *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). In one of the few significant data breach class actions that have been certified on a national basis, this risk was very real. *In re Marriott International Customer Data Securities Breach Litigation*, 341 F.R.D. 128 (D.Md. 2022) was recently decertified twice on appeal. *See In re Marriott Int’l, Inc.*, 78 F.4th 677, 680 (4th Cir. 2023); *Maldini v. Marriott Int’l, Inc.*, 140 F.4th 123, 127 (4th Cir. 2025). The relative absence of trial class certification precedent in the relatively novel data breach setting adds to the risks posed by continued litigation.

This over-arching risk simply puts a point on what is true in all class actions – class certification through trial is never a settled issue, and is always a risk for the

Plaintiffs and their Counsel. Settlement Class Counsel, who took this matter on contingency, faced numerous challenges. Courts have recognized that such risk deserves extra compensation and is a critical factor in determining the reasonableness of a fee. *See, e.g. Stocks v. Bowen*, 717 F. Supp. 397, 402 (E.D.N.C. 1989); *Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co.*, 689 F. App'x 197, 201 (4th Cir. 2017) (“Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.”). Consequently, the requested fee award appropriately compensates for the risk undertaken by Plaintiffs’ counsel here.

As for preclusion of other employment (the second *Ehrenhaus* factor), in the *In Re Columbus Regional Healthcare* case, the Court recognized that preclusion of employment is not a factor for a fee request.⁷ Here, time spent on this matter meant that Settlement Class Counsel could not devote that time to other matters. Joint Fee Decl. ¶ 10. Accordingly, these two factors weigh in favor of approval of the attorneys’ fees request.

The third factor – the fee customarily charged for similar services – weighs heavily in favor of approving the fee requested here. In data breach cases with similar class relief, there have been fee awards well exceeding a million dollars. *See In re*

⁷ *See In Re Columbus Regional Healthcare System Data Security Incident Litigation*, Case No. 24 CVS 88-230, Order on Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, May 15, 2025 (A. Todd Brown, Special Superior Court Judge) (“Class Counsel contend that time spent litigating this action could have alternatively been spent on other fee generating work. The second factor, the likelihood that the acceptance of employment will preclude other work by the lawyer, then weighs in favor of the requested award.”).

Loancare Data Sec. Breach Litig., No. 3:23-cv-01508-CRK-MCR, 2025 U.S. Dist. LEXIS 175663, at *44 (M.D. Fla. Sep. 9, 2025) (approving attorneys' fees and costs in the amount of \$1,298,000 in data breach settlement with similar class relief). The class relief here is similar to results obtained in other data breach cases, and which include, for instance: *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.* 2019 U.S. Dist. LEXIS 120558, No. JKB-16-3025, 2019 U.S. Dist. LEXIS 120558, at *21-22 (D. Md. July 15, 2019) (finally approving request for attorneys' fees in the amount of 30% of a \$3,250,000 settlement fund); *Henderson V. Kalispell Reg'l Healthcare*, No. CDV 19-0761 (Mont. Dist. Ct., Cascade Cnty. Nov. 25 2020) (court awarded attorneys fee of 33% of the common fund of \$4.2 million).

Courts sitting in North Carolina and the Fourth Circuit have customarily approved fees equal to 30% to 43% of a common fund in class action litigation. *See, e.g., Stier Construction Company, Inc et al. v. Town of Carolina Beach*, 19-CVS-2999 (N.C. New Hanover Super. Ct. November 5, 2020) (awarding 33.33% of common fund); *Upright Builders Inc. v. Town of Apex*, 18-CVS-4384 (N.C. Wake Co. Super. Ct. May 28, 2019) (same); *Atrium Homes, Inc. et al. v. Carolina Shores Nort Homeowners' Association, Inc.*, 22-CVS-411 (N.C. Brunswick Co. Super. Ct. May 14, 2014) (same); *McAdams v. Robinson*, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys' fees award of \$1,300,000 or 43% of the \$3,000,000 common fund class action settlement); *Davidson v. Daimler Trucks N. Am. LLC*, No. 319CV00543RJCDCCK, 2021 WL 8442063, at *2 (W.D.N.C. Nov. 19, 2021) (attorneys' fee awards generally range up "to forty-five percent (45%) of the settlement fund") (citing *Faile v. Lancaster Cty.*,

2012 U.S. Dist. LEXIS 189610, at *28-29 (D.S.C. Mar. 8, 2012)). Thus, 33.33% fee is fully in line with other cases with similar results obtained for the Class.

The fourth factor – the amount involved and the results obtained – strongly favors the requested award. This is, without question, the most important inquiry. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“the most critical factor is the degree of success obtained”). As shown above, the Settlement provides a significant benefits to Settlement Class Members – a non-reversionary \$3,200,000 Settlement Fund, which includes a cash payment, and actual out-of-pocket expenses up to \$5,000 and a year of medical data monitoring paid outside the Settlement Fund. These are real, tangible benefits—that without the efforts of Plaintiffs and Settlement Class Counsel, and their willingness to take on the attendant risks of litigation, would not have been available to Settlement Class Members. Thus, this factor weighs heavily in favor of granting this fee request.

Additionally, the result achieved in this Settlement is notable because the parties were able, through capable and experienced counsel, to reach a negotiated Settlement without involvement of the Court in managing this litigation or discovery disputes. Joint Fee Decl. at ¶ 25. Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement. *Id.* at ¶ 30. The Settlement reached here is notable for the simplicity of the claims process; relief that addresses the type of injury and repercussions sustained by consumers in the wake of a Data

Incident of the type here; the speed with which counsel was able to secure a favorable settlement; and the cooperation of Plaintiffs' counsel which aided in the ability to resolve this matter efficiently. *Id.* at ¶ 31.

The fifth and sixth factors – the time limitations imposed by the client or circumstances and the nature and length of the professional relationship with the client – are neutral factors. Settlement Class Counsel did not have a professional relationship with Plaintiffs prior to this case, and there were no time limitations.

Therefore, all the *Ehrenhaus* factors overwhelmingly support the requested fee award.

3. The Requested Fees Are Reasonable Under a Lodestar Crosscheck.

While Settlement Class Counsel does not believe that a lodestar cross-check is necessary for a non-reversionary common fund case such as this, the requested fee of \$1,500,000 is also reasonable under a lodestar crosscheck. Class counsel has incurred a total lodestar of \$972,391.70 and resulting in a lodestar multiplier of approximately 1.5 when applying Class Counsel's standard rates. In carrying out their responsibilities to the Settlement Class, Counsel took care to ensure that no duplicative or unnecessary work was performed. Further evidencing this fact is that, in spite of the novelty and complexity of data privacy litigation, Class Counsel's position as some of the nation's leading experts in the field allowed them to efficiently address the issues presented in the litigation.

Courts in North Carolina regularly approve lodestar multipliers of 2-4 when conducting lodestar cross-checks. *Byers v. Carpenter*, No. 94 CVS 04489,

1998 NCBC 1, 1998 WL 34031740, at *11 (“A reasonable multiplier based on these factors would be 2 to 4.”); *see also Kirkpatrick*, 352 F. Supp. 3d 499, 507 (M.D.N.C. 2018) (citing cases where “courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee.”). The requested fee here represents a minimal lodestar multiplier, is reasonable under the percentage of the benefit and lodestar methods of review, and should be approved.

4. Other Factors Support the Reasonableness of the Requested Award

In addition to satisfying the *Ehrenhaus* factors, there are additional reasons to support the requested award. Notably, the requested fee award has been approved by the Settlement Class members themselves. Settlement Class members received direct notice of the Settlement, which provides the best possible and most practicable notice in a class settlement. The settlement notice described the amount that Settlement Class Counsel intended to request in attorneys’ fees and costs in plain and clear language. As of September 25, 2025, no Settlement Class member has objected to the Settlement including the requested attorneys’ fee, the case expenses sought, or the proposed service award. *See Varacallo v. Massachusetts Mutual Life Insurance Company*, 226 F.R.D. 207, 251 (D.N.J. 2005) (even a small number of objectors to a fee award favors approval of request). Accordingly, Settlement Class members have approved the requested award.

The requested award also falls comfortably within the percentage typically approved in class settlements. The North Carolina Business Court in *Byers*, 1998 WL

34031740, at *9, held that the appropriate level of compensation in class cases are typically 25% of the relief obtained if the case is settled before filing; one-third if after filing; and 40% if after an appeal has been taken. Here, as outlined above, Class Counsel seeks 33.33% of the non-reversionary Settlement Fund recovered for the Class. Under *Byers* and the ample North Carolina case law cited throughout herein, Plaintiffs' attorneys' fee request is therefore well within the range of reasonable fees in this state.

B. Class Counsel's Request for Expenses is Reasonable.

Settlement Class Counsel additionally seeks to recover reasonable litigation expenses of \$27,934.06 representing filing fees, service fees, pro hac vice admission fees, legal research and mediation fees. The Settlement Agreement provided that Settlement Class Counsel could seek up to \$50,000 in litigation expenses. SA ¶ 2.1.5. Courts regularly award litigation expenses in addition to attorneys' fees in class action cases. Courts in North Carolina and the federal Fourth Circuit have explained that such costs and expenses may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted). Counsel's expenses here, totaling \$27,934.06 were all reasonably incurred in pursuing this litigation. Joint Fee Decl., ¶¶ 20-21. Counsel's expenses were reasonable and necessary to litigate this case, and the Court should therefore include them in addition to any fee award. *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, No. CIV.A. DKC 11-1823, 2013 WL 5506027, at *17

(D. Md. Oct. 2, 2013) (awarding expenses that the court deemed were “reasonable and typical.”).

Settlement Class Counsel’s requested expense reimbursement is modest, is less than the amount projected in the Settlement Agreement, and is sought only for reimbursement of actual out-of-pocket expenses that were reasonable, typical, and necessary for the litigation and settlement of this case. The Court should award these modest expenses.

C. The Requested Incentive Award to the Class Representatives is Reasonable.

Class litigation cannot proceed without the willingness of an individual to step up and litigate on behalf of others. Putative class representatives must devote time and energy to carry out tasks that are far above and beyond what absent class members are asked to do. In recognition, courts often award service awards to class representatives. Service awards are “awarded to class representatives in recognition of their time, expense, and risk undertaken to secure a benefit for the Class they represent” and such awards are “within the discretion of the Court.” *Carl v. State*, No. 06CVS13617, 2009 WL 8561911 at ¶ 97 (N.C. Super. Dec. 15, 2009). The amount of the award is ultimately within the discretion of the Court, though the size of the award itself is typically commensurate with the level of activity performed and the size of the case. *See Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *4 (M.D.N.C. Jan. 10, 2007) (awarding a service award of \$15,000).

Factors courts consider when awarding incentive awards include: the risk to the plaintiff in commencing suit, both financially and otherwise; the notoriety and/or

personal difficulties encountered by the representative plaintiff; the extent of the plaintiff's personal involvement in the lawsuit in terms of discovery responsibilities and/or testimony at depositions and trial; the duration of the litigation; and the plaintiff's personal benefit, or lack thereof, purely in his capacity as a class member. *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 118 (E.D. Pa. 2005). The degree to which the Class has benefited from the Class Representatives' actions is also taken into account. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Plaintiffs seek Service Awards of \$2,500 each in recognition of the time and effort they have personally invested in this case. Plaintiffs were prepared to litigate this action through trial to properly represent the class and fight for significant relief. Absent their efforts, the class would have received no compensation. Plaintiffs also assisted in Counsel's investigation of the case, reviewing pleadings, maintaining contact with counsel, remaining available for consultation during settlement negotiations, answering counsel's many questions, and reviewing the Settlement Agreement. The Class Representatives amply fulfilled their duties, making the Service Awards requested appropriate. While they did not have to undergo extensive discovery production or depositions, Plaintiffs did gather documents and materials in support of their claims that were used in drafting the Complaint.

The requested service awards are reasonable and commensurate with Plaintiffs' efforts in the litigation. It is modest compared to other, recent service awards in data breach cases before North Carolina courts. *See McManus v. Dry, P.A.*,

No. 22-CVS-1776, 2023 WL 2785559, at *3 (N.C. Super. Mar. 29, 2023) (final approval granted by Bledsoe, C.J., March 29, 2023, and awarding \$5000 service awards).

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the instant motion as part of final approval of this class action settlement, award Settlement Class Counsel attorneys' fees in the amount of \$1,500,000, award reasonable case expenses in the amount of \$27,934.06, and make service awards in the amount of \$2,500 to each named Plaintiff for their service to the Class.

Dated: September 26, 2025

Respectfully submitted,

/s/ Joel R. Rhine

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**CERTIFICATE OF COMPLIANCE WITH
BUSINESS COURT RULE 7.8**

The undersigned, in accordance with Business Court Rule 7.8, certifies that the foregoing memorandum (exclusive of the case caption, signature blocks, and required certificates) contains fewer than 7,500 words, as reported by word-processing software.

This the 26th day of September, 2025.

/s/_____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing has been served on all counsel of record in accordance with Business Court Rule 3.9 through electronic filing with the North Carolina Business Court.

This the 26th day of September, 2025.

/s/ Joel R. Rhine