

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**IN RE: CLEVELAND BROTHERS  
DATA INCIDENT LITIGATION**

Case No. 1:23-cv-00501-JPW

**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR  
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

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## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Plaintiffs Randy Thomas, Gabrielle Thomas, and Robert MacMichael collectively referred to herein as “Plaintiffs,” hereby move this Court pursuant to Federal Rules of Civil Procedure 23(h) and 54(d), for an award of attorneys’ fees in the amount of \$150,000, and reasonable out-of-pocket case expenses of \$10,777.83 (together, the “Requested Fee and Expense Award”). Plaintiffs also respectfully move this Court for Service Awards for the Class Representatives in the amount of \$2,500 each (for a total of \$7,500) (the “Service Awards”).

The Settlement, and the efforts of Settlement Class Counsel, created substantial relief for Settlement Class Members, in the form of a \$450,000 non-reversionary settlement fund, which will be used to pay for benefits to the Settlement Class, notice and administration costs, Plaintiffs’ service awards, and attorneys’ fees and costs. Specifically, the Settlement provides Settlement Class Members the opportunity to make a claim for: (1) reimbursement for lost time (up to 6 hours at \$35 per hour) and out-of-pocket expenses up to \$5,000; or (2) a cash payment as an alternative to the other cash compensation offered above, estimated to be \$200.

This Settlement represents an excellent result for the Settlement Class in this litigation and was obtained against a well-funded defense by Cleveland Brothers Equipment Company, Inc. (“Cleveland Brothers” or “Defendant”), which was represented by a well-regarded law firm (Cipriani & Werner). Although Plaintiffs

believe in the merits of their claims, this litigation was inherently risky and complex. Declaration of David Lietz (“Lietz Decl.”), attached hereto as Exhibit 1, ¶ 33. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and the Plaintiffs would face risks at each stage of litigation. *Id.* Against these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class. *Id.*

As compensation for the substantial benefit conferred upon the Settlement Class, Settlement Class Counsel requests this Court grant the Requested Fee and Expense Award. The \$150,000 fee request represents one-third of the Settlement Fund. This request is contemplated by the Settlement Agreement, and Settlement Class Counsel apprised the Court of this request in its Motion for Preliminary Approval on March 14, 2024. This amount was also clearly delineated in both the Short and Long Form Notices to the Settlement Class (Exhibit B and C to the Settlement Agreement, ECF Doc. 29-1).

The requested fees and costs are a reasonable percentage of the non-reversionary common fund benefit recovered for the Settlement Class. Courts in the Third Circuit have routinely approved attorneys’ fees based on the recovery to the class that equals one-third of common fund. Plaintiffs’ \$10,777.83 request for costs and expenses actually incurred (which is in addition to the attorneys’ fees sought, as

outlined in the Settlement Agreement) is also reasonable and necessary for litigation of this nature and size. Finally, Plaintiffs' request that the Court grant a \$2,500 Service Award to each Class Representative. This amount falls well within the range of service awards that have been approved by this Court and other court within the Third Circuit.

### **STATEMENT OF FACTS**

#### **A. 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' Memorandum of Law in Support of the Unopposed Motion for Preliminary Approval of Class Action Settlement filed on March 14, 2024.

#### **B. Summary of Settlement**

The settlement establishes the following Settlement Class:

“All individuals within the United States of America whose personally identifiable information (PII) was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.”

Settlement Agreement (“S.A.”) ¶ 3.

#### **C. The Release**

In exchange for the Settlement benefits provided for under the Settlement Agreement, Class Members will release any and all claims against Cleveland Brothers and its Released Parties as set forth in the Settlement Agreement. The

release is tailored to cover the claims that were asserted or that could have been asserted by Class Members related to the Data Breach. S.A. ¶¶ (IX)(61-64).

**D. Compensation to Class Members**

As noted above, the Settlement provides for a \$450,000 non-reversionary Settlement Fund which will be used to pay for settlement administration, any Service Awards, and any Fee Award and Costs. S.A. ¶ (IV). The remaining amount, i.e., the Net Settlement Fund, will be used to pay for Approved Claims submitted by Class Members for Settlement Benefits. Class Members may submit a claim for only one of the following Settlement Benefits:

*1. Out-of-Pocket Losses and Attested Time*

Class Members may submit a claim for Out-of-Pocket Losses seeking up to \$5,000.00 per person for costs or expenditures incurred by a Class Member in response to the Data Breach that were incurred between November 3, 2022, and the Claims Deadline, as result of the Data Breach. S.A. ¶ (V)(43)(A)(i). Settlement Class Members with Ordinary Out-of-Pocket Losses may also submit a claim for up to six (6) hours of time spent remedying issues related to the Data Breach at a rate of thirty-five dollars (\$35.00) per hour. S.A. ¶ (V)(43) (A)(ii). Reimbursement for Attested Time is included in the five thousand dollars (\$5,000.00) per person cap for Out-of-Pocket Losses. *Id.*

2. *Alternative Cash Payments*

Settlement Class Members may, in lieu of making a claim for reimbursement of Out-of-Pocket Losses and Attested Time, may elect to receive a pro rata cash payment in an amount estimated to be approximately two hundred dollars (\$200.00) by submitting a timely and valid claim form. S.A. ¶ (V)(43)(B). However, the amount of this Alternative Cash Payment shall be pro rata increased or decreased based on the funds remaining in the Settlement Fund following the payment of Attorneys' Fees and Expenses Award, any Service Award, the Costs of Claims Administration, and claims for Out-of-Pocket Losses. *Id.*

**ARGUMENT**

For the reasons set forth below, the Requested Fee and Expense Award is reasonable and should be granted.

**A. The Class Has Received Reasonable Notice of the Requested Fee and Expense Award, and Has Been Given a Reasonable Opportunity to Object**

Fed. R. Civ. P. 23(h)(1) provides that “[n]otice of the motion [for an award of attorneys’ fees and costs] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.” Class Counsel provided reasonable notice of this motion through direct notice efforts, and Class Members have an opportunity to object to this motion.

Here, the postcard notices sent to Class Members plainly indicated that Class Counsel would seek “up to \$150,000 in attorneys’ fees, and reimbursement of costs” and “\$2,500 Service Awards to each Settlement Class Representative.” S.A., Ex. C (Short Form Notice). The fees, expenses, and service awards to be sought were also prominently featured in the Long Form Notice (S.A., Ex. B), which is posted on the Settlement Website.

The schedule approved by the Court requires Class counsel to file their Motion for an Award of Attorneys’ Fees and Reimbursement of Costs at least 14 days in advance of the deadline for Settlement Class Members to object or exclude themselves from the Settlement Agreement. As such, Class Members have two weeks after the filing of this motion to lodge any objections to the requested fees, expenses, and service awards. Class Members will be able to view this motion for fees, expenses, and service awards on the Settlement website.

**B. Legal Standards for Fee Awards**

“In a certified class action, the court may award reasonable attorney’s fees and . . . costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “The Supreme Court has recognized that ‘a litigant or 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.’” *In re Nutella Mktg. & Sales Pracs. Litig.*, 589 F. App’x 53, 58 (3d Cir. 2014) (quoting *Brytus v. Spang*

& Co., 203 F.3d 238, 242 (3d Cir. 2000)). “The awarding of attorneys’ fees in a class action settlement is within the Court’s discretion, provided that the Court thoroughly analyzes and reviews an application for such fees.” *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 08-3610 (CLW), 2015 WL 2383358, at \*7 (D.N.J. May 18, 2015), *aff’d*, 639 F. App’x 880 (3d Cir. 2016) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299 (3d Cir. 2005), *as amended* (Feb. 25, 2005)); *In re Nat’l Football League [NFL] Players’ Concussion Inj. Litig.*, 814 F. App’x 678, 683 n.6 (3d Cir. 2020) (“we give district courts considerable deference in fee decisions”).

Here, in the Settlement Agreement, the Parties agreed that Class Counsel will move the Court for an Order awarding attorneys’ fees of \$150,000, plus reasonable costs and expenses.

The Third Circuit has approved two methods to calculate appropriate attorneys’ fees in class action settlements—the lodestar method and the percentage-of-recovery method. *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006). The ultimate determination of the proper amount of attorneys’ fees rests within the sound discretion of the court based on the facts of the case. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009). As explained below, the use of the percentage-of-recovery method is appropriate in this case. The reasonableness of the fee request is also fully supported by a lodestar cross-check, indicating that the fee should be approved regardless of the method used by the Court.



**C. The Court Should Award a Reasonable Percentage of the Common Fund.**

In the Third Circuit, the percentage-of-recovery is generally favored in cases involving a settlement that creates a fund. *See Glaberson v. Comcast Corp.*, Civil Action No. 03-6604, 2015 WL 5582251, at \*11 (E.D. Pa. Sept. 22, 2015) (“The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases. Courts within the Third Circuit and elsewhere routinely use this method in antitrust class actions.”) (collecting cases). “Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed on the class.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

The attorneys’ fee request of \$150,000 is reasonable under the percentage-of-the-recovery method. Federal district courts in the Third Circuit have found reasonable fee awards “generally range from 19% to 45% of the settlement fund.” *Rose v. Travelers Home & Marine Ins. Co.*, No. CV 19-977, 2020 WL 4059613, at \*11 (E.D. Pa. July 20, 2020) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 736 (3d Cir. 2001)); *see also In re Gen. Motors*, 55 F.3d at 822 (same); *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 315 (E.D. Pa. 2012) (same); *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d 483, 498 (E.D. Pa. 2018) (“fee awards ranging from 30% to 43% have been awarded in cases with funds ranging from \$400,000 to \$6.5 million”).

Class Counsel's combined fee request also is commensurate with fee awards in other data breach cases. *See e.g., Thomsen v. Morley Companies, Inc.*, No. 1:22-CV-10271, 2023 WL 3437802, at \*2 (E.D. Mich. May 12, 2023) (awarding fee award of 33% in a data breach class action settlement that was “presumptively reasonable”); *Stoll v. Musculoskeletal Inst.*, No. 8:20-CV-1798-CEH-AAS, 2022 WL 16927150, at \*3 (M.D. Fla. July 27, 2022), report and recommendation adopted sub nom. *Stoll v. Musculoskeletal Inst.*, Chartered, No. 8:20-CV-1798-CEH-AAS, 2022 WL 16923698 (M.D. Fla. Nov. 14, 2022) (awarding 33% fee award in a data breach class action settlement).

**D. The *Gunter/Prudential* Factors Weigh in Favor of Awarding the Fees Requested.**

The Third Circuit utilizes the ten factors identified in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000) and *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998) (the “*Gunter/Prudential* factors”) in determining whether a fee is reasonable:

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiff's counsel; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee

arrangement at the time counsel was retained; and (10) any innovative terms of settlement.

*Gunter*, 223 F.3d at 195 n.1; *see also Prudential*, 148 F.3d at 336-40. The *Gunter/Prudential* factors should not “be applied in a rigid, formulaic manner, but rather a court must weigh them in light of the facts and circumstances of each case.” *Moore v. Comcast Corp.*, No. 08-cv-773, 2011 WL 238821, at \*4 (E.D. Pa. Jan. 24, 2011).

1. *The size of the fund created and the number of persons benefitted*

“The size of the fund is indicative of the success obtained through a settlement, and, accordingly, a significant consideration in evaluating the reasonableness of an award for attorneys’ fees.” *In re Merck & Co., Inc. Securities, Derivative & “Erisa” Litig.*, No. CV 05-02367 (SRC), 2016 WL 11686450, at \*8 (D.N.J. June 3, 2016); *see also* Manual for Complex Litigation, Fourth, § 14.121 (“The greatest emphasis is the size of the fund created, because a common fund is itself a measure of success and represents the benchmark from which a reasonable fee will be awarded.”) (citations and internal quotation marks omitted); *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“the most critical factor is the degree of success obtained”). Here, counsel obtained a significant amount for the class, negotiating a settlement fund of \$450,000 for the benefit of Settlement Class Members. This works out to approximately \$52.33 per each of the approximately

8,600 Class Members, which equals or exceeds the recoveries achieved in other similarly sized data breach class action settlements finally approved by courts.<sup>1</sup>

All Class Members may claim the substantial benefits offered in this settlement. In light of the complexity, likely duration and expense of continued litigation, and the risk of establishing liability and damages at trial, this is an excellent result. *See Maddy v. General Electric Co.*, CV-14-490-JBS-KMW, 2017 WL 2780741, at \*7 (D.N.J. June 26, 2017) (“[T]here is tremendous benefit to the Class Members in light of the stage of the litigation, the remaining hurdles prior to even arriving at a trial date, and the risks associated with continued litigation”). Given the size of the fund, as well as the number of class members entitled to benefits, this first factor strongly supports Plaintiffs’ counsel’s fee request.

2. *The presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel.*

As of June 10, 2024, no Class Members have submitted an objection to the Settlement or proposed Fee Award. Lietz Decl. ¶ 5. The deadline for submitting objections is June 24, 2024. *Id.* The lack of objections weighs in favor of Class

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<sup>1</sup> *See e.g. Linman v. Marten Transport*, No. 22-cv-204 (W.D. Wis.), \$520,000 for 35,511 class members, \$16.64 per person; *May v. Five Guys Enterprises*, Case No. 1:23-cv-00029 (E.D. Va.), \$700,000 for 37,922 class members, \$18.45 per person; *McKittrick v. Allwell Behavioral*, CH-2022-0174 (Muskingum County, OH), \$650,000 for 31,000 class members, \$20.97 per person.

Counsel's request. *See In re Diet Drugs*, 582 F.3d 524, 541–42 (3d Cir. 2009) (“few objections to the settlement terms and to the fees requested by counsel” weigh in favor of approval); *In re AT & T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006) (“the absence of substantial objections by class members to the fees requested by counsel strongly supports approval”); *In re Rite Aid*, 396 F.3d at 305 (“[t]he class’s reaction to the fee request supports approval of the requested fees”).

3. *The skill and efficiency of the attorneys involved*

The substantial recovery obtained demonstrates that Class Counsel zealously pursued the interests of Plaintiffs and the Class. *See, e.g., Oliver v. BMW of N.A., LLC*, No. CV 17-12979 (CCC), 2021 WL 870662, at \*10 (D.N.J. Mar. 8, 2021) (citing *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) (“the single clearest factor reflecting the quality of the class counsels’ services to the class are the results obtained”)). Notably, “[n]o one has taken issue with the skill or efficiency of Class Counsel in securing this Settlement Agreement, nor could they. This factor weighs heavily in Class Counsel’s favor.” *In re NFL Players*, 2018 WL 1635648, at \*5.

Class Counsel vigorously represented the Settlement Class and will continue to do so through Final Approval. *See Generally* Joint Declaration of Laura Van Note and David Lietz in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Joint Dec.”) ECF 29-2. To date, proposed

Class Counsel have: (i) conducted a thorough pre-suit investigation that resulted in the preparation of multiple detailed complaints; (ii) gathered Plaintiffs' documents and relevant information relating to the Incident; (iii) filed complaints for their respective Plaintiffs, with subsequent coordination between the two actions; (iv) responded to Defendant's motions to dismiss; (v) requested and reviewed relevant information via informal discovery for mediation; (vi) prepared a detailed mediation statement; (vii) participated in mediation with an experienced data breach mediator, Bennett G. Picker of Stradley Ronon Stevens & Young; (viii) conducted settlement discussions, achieving a very favorable Settlement for the Settlement Class; (ix) negotiated a comprehensive Agreement that includes a robust Notice Program, well-crafted Notices and Claim Form, and an easy to understand Claims Process, and (x) oversaw the successful implementation of the Notice Program and a robust and favorable response from the Class Members in making claims. Lietz Dec. ¶ 2.

Moreover, the fact that Class Counsel was able to resolve these difficult cases within months of initiating them is further indicative of their skill and efficiency in litigating these matters. *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, Plaintiffs did not run up the bill to seek additional fees. Accordingly, this factor supports the proposed fee award.

4. *The complexity and duration of the litigation*

The fourth *Gunter* factor is intended to capture “the probable costs, in both time and money, of continued litigation.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.* (“GM Truck”), 55 F.3d 768, 812 (3d Cir. 1995) (quoting *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974)); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004) (“[T]his factor favors settlement because continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial.”); *Kapolka v. Anchor Drilling Fluids USA, LLC*, C.A. No. 2:18-01007-NR, 2019 WL 5394751, at \*9 (W.D. Pa. Oct. 22, 2019) (counsel’s work saved “[c]onsiderable judicial time and resources”).

This matter affects the rights of almost 8,600 persons whose data was impacted in the Data Incident, and is a complex piece of litigation with many potential pitfalls. This case involved complex issues of the novel and evolving area of data breach litigation. *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.”). Defendant has consistently denied the allegations raised by Plaintiffs and made clear at the outset that it would vigorously defend the case, as evidenced by its substantial motions to

dismiss. While Plaintiffs have arguments and authorities that can support their allegations, the number of issues in this case, which centers on a developing area of the law—data breach litigation—creates uncertainty.

Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one face substantial hurdles—even just to make it past the pleading stage. *See, e.g., 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). Should litigation continue, Plaintiffs would face the hurdle of obtaining class certification. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (denying class certification in data breach class action). Though they strongly believe in the merits of their claims, Plaintiffs and Class Counsel acknowledge that proving causation and damages in the emerging area of data breach cases can be difficult, and is by no means guaranteed. *See, e.g., Southern Independent Bank v. Fred's, Inc.*, No. 2:15-CV-799-WKW, 2019 WL 1179396, at \*8 (M.D. Ala. Mar. 13, 2019) (holding under Daubert motion that causation was not met for class certification purposes in data security breach case); *In re TJX Cos. Sec. Breach Litig.*, 246 F.R.D. 389, 398 (D. Mass. Nov. 29, 2007) (“[T]he need for individualized damages decisions does not ordinarily defeat predominance where there are ... disputed common issues as to liability.”) (quoting



*Tardiff v. Knox Co.*, 365 F.3d 1, 6 (1st Cir. 2004)). Continued litigation further would have required formal discovery, depositions, expert reports, maintaining class certification throughout trial, and summary judgment, as well as possible appeals (interlocutory and/or after the merits), which would require additional rounds of briefing and the possibility of no recovery at all.

While Plaintiffs are confident in the strength of their claims, they are also pragmatic in their awareness of the various defenses available to Cleveland Brothers, as well as the risks inherent to continued litigation. Through the Settlement, Plaintiffs and Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all, at some point likely far in the future. *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at \*16 (E.D. Pa. Jan. 25, 2016)(settlement ensures recovery now, rather than the “speculative promise of a larger payment years from now.”). Thus, this factor weighs in favor of granting this fee request.

##### 5. *The risk of non-payment*

Settlement Class Counsel took this case on a purely contingent basis. Lietz Decl. ¶ 6. 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. *Id.* ¶ 11. As such, attorneys’ fees were not

guaranteed in this case. *Id.* Settlement Class Counsel assumed significant risk of nonpayment of attorneys' fees. *Id.* ¶ 6. Thus, Settlement Class Counsel took on these significant risks knowing full well their efforts may not bear fruit. *Id.* ¶ 8.

“Any contingency fee includes a risk of non-payment.” *O’Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 309 (E.D. Pa. 2003); *see also Kanefsky v. Honeywell Intl. Inc.*, No. 18-CV- 15536 (WJM), 2022 WL 1320827, at \*10 (D.N.J. May 3, 2022). In this case, while Class Counsel were optimistic that Plaintiffs’ claims would prevail, they recognized that success in this case was not assured. The risk of nonpayment was substantial. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737 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”). As one Third Circuit district court noted in another data breach class action case, “Class Counsel invested considerable resources into this case with no guarantee that they would recover those costs given that they were retained on a contingency fee basis. This factor again weighs in favor of determining that the fee is reasonable.” *Fulton-Green v. Accolade, Inc.*,

No. CV 18-274, 2019 WL 4677954, at \*13 (E.D. Pa. Sept. 24, 2019); *In re Rent- Way Sec. Litig.*, 305 F. Supp. 2d 491, 516 (W.D. Pa. 2003).

From the outset, Class Counsel undertook this complex and potentially lengthy litigation knowing that there was significant and real risk as to whether they would be compensated. Despite the serious litigation risks, Class Counsel were able to obtain a settlement that provides significant present relief to the Class, including substantial monetary benefits. Class Counsel undertook a significant risk here and the fee award should reflect that risk.

6. *The amount of time devoted to the case by Plaintiffs' counsel*

Class Counsel devoted 290 hours, through June 7, 2024, to this litigation. The time expended by Class Counsel was necessary to obtain this recovery, and to consummate this Settlement. The time expended was reasonable based on the needs of the case and ultimately resulted in a highly favorable Settlement for the benefit of the Class. This factor therefore weighs in favor of the requested fee.

7. *The awards in similar cases*

As shown above, awards of one-third of the common fund are common in data breach cases. An award of one-third of the fund has been deemed reasonable by

courts in the Third Circuit.<sup>2</sup> The \$150,000 fee request is one-third of the Settlement Fund and compares favorably to the awards in other data breach cases.

8. *The value of benefits attributable to the efforts of Plaintiffs' counsel relative to the efforts of other groups, such as government agencies conducting investigations*

The Settlement Agreement was obtained by Class Counsel without the benefit of findings from any government investigation. There has been no publicly announced action by any federal or state authorities relating to this data breach. “There is no contention, by objectors or otherwise, that the settlement could be attributed to work done by other groups, such as government agencies.” *Esslinger v. HSBC Bank Nevada, N.A.*, No. CIV.A. 10-3213, 2012 WL 5866074, at \*14 (E.D. Pa. Nov. 20, 2012). This factor therefore weighs in favor of the requested fee.

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<sup>2</sup> *McIntyre v. RealPage, Inc.*, No. 18-cv-03934, 2023 WL 2643201, at \*3, n.5 (E.D. Pa. Mar. 24, 2023) (finding a fee request of 1/3 of a fund to be “squarely within the range of awards found to be reasonable by the courts.”) (quoting *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 18-cv-1370, 2020 WL 3481458, at \*19 (W.D. Pa. June 26, 2020)); *Ahrendsen v. Prudent Fiduciary Servs., LLC*, No. 21-cv-2157, 2023 WL 4139151, at \*5 (E.D. Pa. June 22, 2023) (“class counsel reasonably seeks one-third of the settlement fund...for attorneys’ fees”); *In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, No. 17-cv-341, 2022 WL 16533571, at \*8 (E.D. Pa. Oct. 28, 2022) (“The fees requested constitute one third of the Settlement fund, which is within a reasonable range given both lead counsel's efforts in a challenging action made more complex by certain adverse facts and a comparison with fee awards in other Third Circuit class action settlements.”) (citations omitted)

9. *The percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained*

Class Counsel's requested fee is reasonable relative to contingent fee percentages commonly entered into in private fee agreements. *See, e.g., Hall v. Accolade, Inc.*, No. 17-cv- 03423, 2020 WL 1477688, at \*11 (E.D. Pa. Mar. 25, 2020) ("Contingency fees generally range between 30% to 40%."); *Kanefsky*, 2022 WL 1320827, at \*11 ("The requested award of fees and expenses relative to the size of the recovery and constructive common fund is also in line with contingent fees that are routinely negotiated in the private marketplace."); *In re Remeron Direct Purchaser Antitrust Litig.*, No. CIV.03-0085 FSH, 2005 WL 3008808, at \*16 (D.N.J. Nov. 9, 2005) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation."); *Karcich v. Stuart (In re Ikon Office Sols., Inc., Sec. Litig.)*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("[I]n private contingency fee cases . . . plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."). This factor therefore weighs in favor of the requested fee.

10. *Any innovative terms of settlement*

The Settlement Agreement provides for a multi-tiered claims system whereby Class Members may obtain a recovery based on the severity of harm caused by the Data Breach. Class Members suffering out-of-pocket losses can claim up to \$5,000

in reimbursements. Class Members currently suffering no out-of-pocket losses can choose to receive a cash award. This approach is tailored to individual Settlement Class Members' claims while being administratively efficient. This factor therefore weighs in favor of the requested fee. *See In re Prudential*, 148 F.3d at 339 (“multi-tiered review process” is an innovative term that weighs in favor of a fee award).

Where all the *Gunter/Prudential* factors weigh in favor of the fees requested, the Court should grant Plaintiffs' fee motion.

**E. The Lodestar Cross-Check Confirms the Fee Request is Reasonable.**

The Third Circuit has recommended that courts crosscheck the reasonableness of the attorneys' fee request using the lodestar method. *Gunter*, 223 F.3d at 195 n.1. “The purpose of the cross-check is to ensure that the percentage approach does not result in an ‘extraordinary’ lodestar multiple or windfall.” *Whiteley v. Zynerva Pharms., Inc.*, Civil Action No. 19-4959 2021 WL 4206696, at \*13 (E.D. Pa. Sept. 16, 2021)(quoting *In re Cendant*, 264 F.3d at 285). The Third Circuit has stated that a lodestar cross-check entails an abridged lodestar analysis that requires neither “mathematical precision nor bean counting.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The Court need not receive or review actual billing records when conducting this analysis. *Id.* at 307.

Under the lodestar method, a court begins the process by calculating the “lodestar,” i.e., the “number of hours reasonably expended on the litigation

multiplied by a reasonable hourly rate.” *McKenna v. City of Phila.*, 582 F.3d 447, 455 (3d Cir. 2009). Once the lodestar is determined, the court must then decide whether additional adjustments are appropriate. *Id.* A reasonable hourly rate in the lodestar calculation is “[g]enerally . . . calculated according to the prevailing market rates in the relevant community,” taking into account “the experience and skill of the . . . attorney and compar[ing] their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). The prevailing market rate is usually deemed reasonable. *Pub. Interest Research Grp. v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995).

Class Counsel spent 290 hours litigating this action, producing a lodestar amount of \$186,673.40 based on standard, current hourly rates that range from \$208 to \$1100. Lietz Decl., ¶¶ 19-23. The reasonableness of Class Counsel’s rates is also supported by the declaration, which establishes that the rates are the same as their standard hourly rates charged to paying clients on non-contingent matters and are in accord with the prevailing rates for class action and complex commercial litigation in the relevant legal markets (i.e. the national market for data breach litigation). Lietz Dec. ¶¶ 17-20, 23. *See New Berry, Inc. v. Smith*, No. CV 18-1024, 2021 WL 5332165, at \*2 (W.D. Pa. Nov. 15, 2021) (“The best evidence of a prevailing market rate is counsel’s customary billing rate.”); *Animal Legal Def. Fund v. Lucas*, No. CV

2:19-40, 2021 WL 4479483, at \*1 (W.D. Pa. Sept. 30, 2021) (“[T]he attorney’s normal billing rate is an appropriate baseline for assessing the reasonableness of the rate requested.”). These rates have been approved in other class action cases. Lietz Fee Decl. ¶¶ 17-18.

Class Counsel’s current lodestar represents a negative lodestar multiplier of .80. The negative multiplier is much lower than multipliers commonly awarded in the Third Circuit. *See* Newberg § 15:89 (noting two separate studies in which the mean multiplier in the Third Circuit was 2.01 and 1.38, respectively; *Dickerson v. York Int’l Corp.*, No. 15-cv-01105, 2017 WL 3601948, at \*11 (M.D. Pa. Aug. 22, 2017) (“Multipliers between one and four are routinely approved in the Third Circuit.”); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 225 (E.D. Pa. 2014) (“The [Third Circuit] Court of Appeals has recognized that multipliers ‘ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.’”). Given the quality of Class Counsel’s work and results achieved in these circumstances, the lodestar cross-check supports the reasonableness of the requested fee.

Class Counsel expect to expend at least another 40-50 hours of time consummating this Settlement, including preparing and filing a motion for final approval, participating in the final fairness hearing, assisting Settlement Class Members with their claims and answering their questions, and working with the



Claims Administrator on claims administration and distribution of benefits to the Settlement Class. This means that by the time this case is brought to final approval, the lodestar “multiplier” while already negative, will be even lower once these additional attorney hours are expended. Accordingly, the lodestar cross-check fully supports the fees requested.

**F. Class Counsel’s Request for Reimbursement of Expenses is Reasonable.**

“Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.” *O’Hern v. Vida Longevity Fund, LP*, No. CV 21-402-SRF, 2023 WL 3204044, at \*10 (D. Del. May 2, 2023). Class Counsel seeks reimbursement of \$10,777.83 for the reasonable expenses incurred to advance this litigation. These expenses include filing fees, pro hac vice admission fees, and mediation costs. Lietz Decl., ¶ 29. These expenses are typical in litigation, were necessary for the successful prosecution and resolution of the claims against Cleveland Brothers (as the bulk of the expenses are the mediator’s fees) and should be approved.

**G. The Requested Service Award is Reasonable.**

Service awards are “not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class.” *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 665 (E.D. Pa. 2015) (quotations

omitted). Generally, “[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (quotation omitted). Factors courts consider when deciding to give service awards include “the risk to the plaintiff in commencing litigation, 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 or trial; the duration of the litigation; and the plaintiff’s personal benefit (or lack thereof) purely in her capacity as a member of the class.” *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-CV-1833, 2020 WL 1922902, at \*33 (E.D. Pa. Apr. 21, 2020) (quoting *McGee v. Ann’s Choice, Inc.*, No. 12-2664, 2014 WL 2514582, at \*3 (E.D. Pa. June 4, 2014)). Federal district courts in the Third Circuit routinely approve service awards of \$1,000 to \$5,000.<sup>3</sup>

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<sup>3</sup> See, e.g., *Wood v. Saroj & Manju Invs. Philadelphia LLC*, No. CV 19-2820-KSM, 2021 WL 1945809, at \*10 (E.D. Pa. May 14, 2021) (awarding a service award of \$2,500 to the settlement class representative); *Fulton-Green*, 2019 WL 4677954, at \*13 (awarding service awards of \$1,000 to each settlement class representative); *Krimes v. JPMorgan Chase Bank, N.A.*, No. CV 15-5087, 2017 WL 2262998, at \*11 (E.D. Pa. May 24, 2017) (awarding service award of \$5,000 to the settlement class representative)

For their efforts on the case, Plaintiffs seek modest Service Awards in the amount of \$2,500 each. Plaintiffs were actively engaged in this action, including providing assisting in the investigation of the case, producing relevant documents, reviewing and approving pleadings, reviewing the Settlement documents, and answering counsel's many questions. Lietz Decl. ¶ 31. Moreover, the Service Award requested falls well below the range of service awards that have been approved by courts in Delaware and in the Third Circuit. Thus, this Court should grant the requested Service Awards.

### **CONCLUSION**

Class Counsel, with the help of Plaintiffs, have made significant benefits available to Settlement Class Members. In return, Plaintiffs seek attorneys' fees, expenses, and service awards commensurate with those regularly approved by courts sitting in Third Circuit. The attorneys' fees, expenses, and service awards are reasonable, and should be approved.

DATED: June 10, 2024

Respectfully submitted,

/s/ David K. Lietz, Esq.

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the Proposed Class*

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**IN RE: CLEVELAND BROTHERS  
DATA INCIDENT LITIGATION**

Case No. 1:23-cv-00501-JPW

**DECLARATION OF DAVID K. LIETZ IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE  
AWARDS**

I, David K. Lietz, being competent to testify, make the following declaration:

1. I am currently a senior partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”). My credentials were previously outlined for this Court in the Joint Declaration submitted in connection with Plaintiffs’ Unopposed Motion for Preliminary Approval. ECF Doc. 29. I have been appointed Class Counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them if called upon to do so.

2. The work of Class Counsel in connection with this action involved investigating the cause and effects of the Cleveland Brothers Holdings, Inc. (“Cleveland Brothers”) Data Incident, interviewing potential clients, evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint; conducting legal research; conducting extensive

research into data security incidents and their causes and effects, conducting further extensive research into data security practices and standards; drafting and filing the Plaintiffs respective Complaints; litigating against a prominent law firm with extensive data breach litigation experience; working on briefing a response to Defendant's significant motion to dismiss; obtaining information from Cleveland Brothers regarding the Data Incident and analyzing that information; participating in a formal mediation of this case presided over by Bennett G. Picker of Stradley Ronon Stevens & Young (a highly experienced and well-regarded mediator well-versed in data breach litigation); drafting the settlement term sheet, the comprehensive settlement agreement, well-crafted notices of settlement, an easy to understand claim form, the Motion for Preliminary Approval, and this instant motion for attorneys' fees; communicating with defense counsel; updating and handling questions from our class representative; overseeing the successful launching and implementation of the notice program with substantial interaction between me and the Settlement Administrator; and overseeing the claims process. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm and with co-counsel.

3. Continuing through to today, co-counsel and I have continued to work with Defendant and the Claims Administrator regarding claims administration and

processing as well as answering class members questions about the settlement and the process.

4. Based on my past experience I, my law firm, and other Plaintiffs' Counsel expect to spend another 40-50 hours seeking final approval, defending the Settlement from and potential objections, and supervising claims administration and the distribution of proceeds.

5. As of the date of filing, I have received no objections to the Settlement Agreement in general, and no objections to the proposed attorneys' fees, costs (the amount of which was made known to the Class via the Court-approved notice program) in particular. The deadline for submitting objections is June 24, 2024.

#### **The Contingent Nature of the Case**

6. My Firm and the other Plaintiffs' counsel firms prosecuted this case on a purely contingent basis. As such, Plaintiffs' Counsel assumed a significant risk of nonpayment or underpayment.

7. This matter has required me, other attorneys at my Firm, and the other Plaintiffs' Counsel to spend time on this litigation that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and my Firm's time, as well as the time of the other Plaintiffs' counsel.



8. Such time could otherwise have been spent on other fee-generating work. Because our Firm and the other Plaintiffs' attorneys undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

9. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time our Firm and other Plaintiffs' counsel spent working on this case could and would have been spent pursuing other potentially fee generating matters.

10. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite the devotion of all Plaintiffs' Counsel to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

11. The fees contemplated under Class Counsel's representation agreements for cases in this jurisdiction and elsewhere generally fall within the one-third to 40% range. Class Counsel's fees were not guaranteed—the retainer agreements counsel had with Plaintiff did not provide for fees apart from those

earned on a contingent basis, and, in the case of class settlement, approved by the court.

### **The Costs and Fees Incurred**

12. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low.

13. My hourly rate has increased over time based on my experience and my accomplishments in my practice. I have been practicing law continuously since 1991 (over 32 years), and the rate for my time is commensurate with partners of that level of experience.

14. The rates we charge for our time is also commensurate with hourly rates charged by our contemporaries around the country, including those rates charged by lawyers with our level of experience who practice in the area of data breach class litigation across the nation (i.e. the national market for data breach litigation). *See e.g. In re: Capital One Consumer Data Breach Litigation*, MDL No. 1:19-md-02915-AJT-JFA (Doc. 2231-1 – approving rates for partners in data breach ranging from \$919 to \$1050 per hour); *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at \*6 (W.D. Wis. Mar. 4, 2021) (data breach settlement awarding \$1,575,000 in attorneys’ fees and costs, at hourly rates from \$815-\$865 per hour for partners, \$550-\$625 for senior associates, \$415-\$500 for associates, and \$215-\$350

for paralegals); *Perdue v. Hy-Vee, Inc.*, No. 19-1330, 2021 WL 3081051, at \*5 (C.D. Ill. July 21, 2021) (approving reasonable hourly rates requested by Class Counsel of \$700-\$815 for partners, \$325-\$700 for associates, \$200-\$275 for paralegals, and \$150-\$225 for law clerks); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at \*39 (N.D. Ga. Mar. 17, 2020) (finding reasonable hourly rates charged by partners who billed \$1050, \$1000 \$750, and \$935 per hour); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at \*26 (N.D. Cal. July 22, 2020) (finding reasonable rates from \$450 to \$900 for partners, \$160-\$850 for non-partner attorneys, and \$50 to \$380 for paralegals); ); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at \*12 (E.D. Pa. Sept. 24, 2019) (finding reasonable hourly rates range \$202 to \$975 per hour); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at \*16 (N.D. Cal. Aug. 17, 2018) (finding reasonable hourly rates of partners from \$400 to \$970, non-partner attorneys from \$185 to \$850, and non-attorneys from \$95 to \$440).

15. The billable rates for Plaintiffs' law firms are also consistent with rates billed for similar class action legal services.<sup>1</sup>

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<sup>1</sup> 2020 Class Action Hourly Rate Survey, NALFA (March 4, 2020) <https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in>

16. Prior to submitting the Motion for Attorneys' Fees, Costs, and Service Awards, I compared and confirmed our hourly rates with lawyers at other law firms whose practice is focused on data breach class litigation. Moreover, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education opinions rendered by courts on attorneys' fee requests. Again, based upon my research, my rate – and the rates charged by my colleagues -- are within the range of lawyers with our levels of experience, practicing in this area of law.

17. The Milberg lawyers' hourly rates have been approved by federal courts around the country. Most recently, my hourly rate was approved in *In re: GE/CBPS Data Breach Litigation*, Case No. 1:20-cv-02903 (KPF) (S.D.N.Y. 3/28/2023) (Judge Failla); *Pagan v. Faneuil, Inc.*, Case No. 3:22-cv-297 (ED VA February 17, 2023); *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (WD WI, July 22, 2022), ECF 84) where the fee application was submitted on a lodestar basis; *James v. Cohnreznick LLP*, Case Number: 1:21-cv-06544-LJL (SD NY September 20, 2022) (fee application submitted on both percentage of benefit and lodestar calculation); *In re Deva Concepts Product Liability Litigation*, Case

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2020/ : :text The%20NALFA%20survey%20shows%20that,than%20%24200%20and%20over %20%241%2C200 (listing hourly rates up to \$1,200 per hour for class actions).

1:20-cv-01234-GHW, Order Granting Motion for Attorneys' Fees, Document 129 (January 3, 2022); see also Document 121-1 (filed 10/01/21).

18. In addition, Milberg's hourly rates were approved by at least three federal courts using that hourly rate as a lodestar cross-check, which is what my hourly rate is submitted for in this case. See *Lamie et al. v. LendingTree, LLC*, Case No. 3:22-cv-00307, ECF Doc. 60 (W.D. N.C. February 27, 2024) (final approval order approving hourly rates as reasonable as part of a lodestar cross-check, and highlighting "the quality, skill, and experience of counsel" and "the excellent results"); *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-cv-04066 (W.D. Mo.) ECF 76; *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; final approval granted October 2022), ECF 79.

19. My firm's lodestar of 118.7 hours as of June 7, 2024, amounts to \$90,990.90. The timekeepers, hours billed and the rates charged are listed below:

20. The billing rates for Milberg attorneys were most recently set in January 2024 and are drawn from the Laffey Matrix without any deviation. The titles, billing rates, law schools, and year of graduation of the attorneys who billed time to this matter is as follows:

- a. David Lietz - Senior Partner \$997 in 2023, \$1057 in 2024 (JD Georgetown 1991)

- b. Gary Klinger – Senior Partner \$878 in 2024 (JD Illinois 2010)
- c. Mariya Weekes – Senior Counsel \$878 in 2024 (JD Nova Southeastern University 2008)
- d. Carolyn Cuneo – Senior Associate \$878 in 2024 (JD University of Richmond 2011)
- e. John Nelson – Associate \$508 in 2023, \$538 in 2024 (JD San Diego 2017)
- f. Dean Meyer – Associate \$413 in 2023, \$437 in 2020<sup>4</sup> (JD Northwestern 2021)
- g. Paralegal – Billed based on years of experience with rates ranging from \$208 - \$239 per hour for time billed on this case.

21. In addition to the time expended by me and my Firm, my co-counsel accrued a reasonable amount of time billed on this matter.

22. Cole & Van Note has billed a total of 171.3 hours for \$95,682.50 in lodestar on this matter.

23. Cole & Van Note's attorneys billed their time at their usual and customary hourly billing rates, which have been previously approved by courts presiding over similar complex class action lawsuits. Cole & Van Note determines billing rates based on the experience of each individual attorney. The hourly rates of the professionals at Cole & Van Note are commensurate with hourly rates charged by contemporary firms doing similar work, including those rates charged by lawyers

with comparable levels of experience who practice in the area of class litigation across the nation. The titles, billing rates, law schools, and year of graduation of the attorneys who billed time to this matter is as follows;

- a.* Laura Van Note – Partner/Shareholder \$700 (JD University of Missouri, Kansas City, 2013)
- b.* Scott Edward Cole – Partner/Shareholder \$1100 (JD University of San Francisco, 1992)
- c.* Cody Bolce – Associate Attorney \$550 (JD Santa Clara University, 2018)
- d.* Elizabeth Klos – Associate Attorney \$350 (JD University of Southern California, 2022)
- e.* Margo Crawford – Associate Attorney \$375 (JD McGill University 2020, LLM University of California Hastings 2022)

24. The total accrued attorney/staff lodestar of all firms to date is **\$186,673.40**, representing 290 hours of work.

25. Additional time will be spent drafting the final approval motion, preparing for and attending the Final Approval Hearing, defending any appeals taken from the final judgment approving Settlement, and ensuring that the claims process and distribution of Settlement proceeds to Class Members is done in a timely manner

in accordance with the terms of the Settlement. Based upon my past experience, I estimate that another 40-50 hours of attorney time will be reasonably expended on this matter. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards are reasonable and seek fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiff and the Class.

26. Where possible, Class Counsel made efforts to carefully assign work so as to avoid duplication of efforts and have the work completed by the appropriate level of attorney.

27. Upon request, I and the other Plaintiffs' attorneys can provide detailed contemporaneous billing records to the Court for review.

28. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. I have reviewed the records of costs expended in this matter.

29. My firm and my co-counsel have also accrued **\$10,777.83** in out-of-pocket expenses pertaining to this litigation; including: filing fees, mediation fees, and pro hac vice fees.

30. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought as part of the



combined attorney fees and costs requested. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval, and will include additional travel expenses to appear at the Final Approval Hearing.

31. The Settlement Agreement calls for reasonable service awards to Plaintiff in the amount of \$2,500, subject to approval of the Court. The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering counsel's many questions, communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiffs also put their reputations at risk, and put themselves forward for public scrutiny. Plaintiffs were not promised any service award, nor did they condition their representation on the expectation of any service or incentive award.

32. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members in the wake of the Data Incident. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

33. Although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach

litigation (a fast-developing area in the law), and the Plaintiff would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

\* \* \* \* \*

I declare under penalty of perjury under the laws of the State of Delaware that that foregoing is true and correct.

Executed this 10th day of June, 2024, at Washington, DC.



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DAVID K LIETZ

David K. Lietz (admitted *pro hac vice*)  
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