UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE CONNECTONCALL.COM DATA BREACH LITIGATION	Case No. 2:24-cv-08790-SJB-JMW

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS, AND SERVICE AWARDS

TABLE OF CONTENTS

TABLE OF CONTENTS……..i-ii

TABLE OF AUTHORITIES……iii-viii

I. INTRODUCTION……1

II. BACKGROUND……...2

III. ARGUMENT……....3

A. LEGAL STANDARD……..3

1. Federal Rule of Civil Procedure 23(h) and the Goldberger Factors……..3

2. The Percentage of the Fund Method is the Typical Method for Awarding Attorneys' Fees in Common Fund Cases in the Second Circuit……3

B. CLASS COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE UNDER *GOLDBERGER* AND REPRESENTS A FAIR AND REASONABLE PERCENTAGE OF THE FUND……..5

1. Fee Request is Reasonable Under the *Goldberger* Factors……5

a. Class Counsel Invested Substantial Time and Resources…..……..5

b. This Class Action Included Complex Legal Issues……..9

c. The Requested Fee is Warranted Based on the High-Risk Nature of the Litigation……..10

d. Class Counsel Provided (and Continues to Provide) High-Quality Representation……12

e. The Requested Fee is Reasonable in Relationship to the Settlement……14

f. Public Policy Supports Approval of the Fee……..16

2. The Requested Fee Represents a Reasonable Percentage of the Fund……17

3. A Lodestar Multiplier "Cross-Check" Further Confirms the Reasonableness of Class Counsel's Requested Fee……...19

4. The Reaction of Class Members Supports Class Counsel's Fee Request……20

C. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES IS REASONABLE……21

D. PLAINTIFFS' REQUEST FOR MODEST SERVICE AWARDS IS REASONABLE……22

IV. CONCLUSION……24

TABLE OF AUTHORITIES

Page(s)

Cases

Alliance Ophthalmology, PLLC v. ECL Group, LLC,
No. 1:22-CV-296, 2024 WL 3203226 (M.D.N.C. June 27, 2024) 18

In re Arthur J. Gallagher Data Breach Litig.,
No. 22-CV-00137, ECF No. 128 (N.D. Ill.) (Feb. 27, 2025) 18

Asare v. Change Grp. of N.Y., Inc.,
2013 WL 6144764 (S.D.N.Y. Nov. 18, 2013) 20

Bangoura v. Beiersdorf, Inc. and Bayer Healthcare, LLC,
Case No. 1:22-cv-00291-BMC (S.D.N.Y. Jan. 5, 2023) 8, 9

Beckman v. KeyBank, N.A.,
293 F.R.D. 467 (S.D.N.Y. 2013) 9, 20

In re Canon United States Data Breach Litig.,
2024 U.S. Dist. LEXIS 138499 (E.D.N.Y. Aug. 2024) (Bulsara, J.) 20, 22

Carbone v. Ltd. Run Games, Inc.,
2025 U.S. Dist. LEXIS 162961 (E.D.N.Y. Aug. 21, 2025) 2, 5, 14, 18

Carrigan v. Xerox Corp.,
No. 21-CV-1085, 2024 U.S. Dist. LEXIS 68854, 2024 WL 1639535 (D. Conn. Apr. 16, 2024) 20

Cates v. Trs. of Columbia Univ.,
2021 WL 4847890 (S.D.N.Y Oct. 18, 2021) 21

Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.,
504 F.3d 229 (2d Cir. 2007) 3

Chavarria v. N.Y. Airport Serv., LLC,
875 F. Supp. 2d 164 (E.D.N.Y. 2012) 24

In re Citigroup Inc. Bond Litig.,
988 F. Supp. 2d 371 (S.D.N.Y. 2013) 9

City of Providence v. Aéropostale, Inc.,
2014 WL 1883494 (S.D.N.Y. May 9, 2014) 20

In re Colgate-Palmolive Co. ERISA Litig.,
36 F. Supp. 3d 344 (S.D.N.Y. 2014).....19

In re CorrectCare Data Breach Litig.,
No. 5:22-319-DCR, 2024 WL 4211480 (E.D. Ky. Sept. 14, 2024).....18

In re Credit Default Swaps Antitrust Litig.,
No. 13MD2476 (DLC), 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016).....20

In re Currency Conversion Fee Antitrust Litig.,
263 F.R.D. 110 (S.D.N.Y. 2009).....22

deMunecas v. Bold Food, LLC,
No. 09-CIV-00440 (DAB), 2010 WL 3322580, at *10 (S.D.N.Y. Aug. 23, 2010).....8

Dougherty, et al. v. Bojangles Restaurants, Inc.,
No. 25-CV-00065, ECF 34 (W.D.N.C. Sep. 30, 2025).....10

Dupler v. Costco Wholesale Corp.,
705 F. Supp. 2d 231 (E.D.N.Y. 2010).....22

Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.,
62 F.4th 704 (2d Cir. 2023).....10, 11

Fleisher v. Phoenix Life Ins. Co.,
No. 11-CV-8405 (CM), 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015).....11, 13, 21

Flores v. Mamma Lombardi's of Holbrook, Inc.,
104 F. Supp. 3d 290 (E.D.N.Y. 2015).....4

In re Fortra File Transfer Software Data Sec. Breach Litig.,
No. 24-MD-03090, 2025 WL 2675178 (S.D. Fla. Sept. 17, 2025).....18

In re Fortra File Transfer Software Data Sec. Breach Litig.,
No. 24-MD-03090, 2025 WL 457896 (S.D. Fla. Feb. 11, 2025).....18

Fox v. Vice,
563 U.S. 826 (2011).....19

Frank v. Eastman Kodak Co.,
228 F.R.D. 174 (W.D.N.Y. 2005).....11, 16

Garza v. HealthAlliance, Inc.,
No. 72450/2023 (NY Sup. Ct., Westchester Cty.).....18

Gascho v. Glob. Fitness Holdings, LLC,
822 F.3d 269 (6th Cir. 2016).....17

In re Glob. Crossing Sec. & ERISA Litig.,
225 F.R.D. 436 (S.D.N.Y. 2004).....10

Globus v. L. Rsch. Serv., Inc.,
418 F.2d 1276 (2d Cir. 1969).....17

Goldberger v. Integrated Res. Inc.,
209 F.3d 43 (2d Cir. 2000).....*passim*

Goldstein v. Henkel Corporation et al.,
Case No. 3:22-cv-00164-AWT (D. Conn.).....8

Grayson v. GE,
2020 U.S. Dist. LEXIS 134657 (D. Conn. Jul. 27, 2020).....15

Guippone v. BH S&B Holdings, LLC,
2011 WL 5148650 (S.D.N.Y. Oct. 28, 2011).....22, 23

Hesse v. Godiva Chocolatier, Inc.,
2022 U.S. Dist. LEXIS 72641 (S.D.N.Y. Apr. 20, 2022).....20

In re Hi-Crush Partners L.P. Sec. Litig.,
2014 WL 7323417 (S.D.N.Y. Dec. 19, 2014) 20

Hicks v. Morgan Stanley & Co.,
2005 U.S. Dist. LEXIS 24890 (S.D.N.Y. Oct. 19, 2005).....20

In re J.P. Morgan Stable Value Fund ERISA Litig.,
No. 12-2548-VSB, 2019 WL 4734396 (S.D.N.Y. Sept. 23, 2019).....16

Karpus v. Borelli (In re Interpublic Sec. Litig.),
20-cv-6527, 2004 WL 2397190 (S.D.N.Y. Oct. 26, 2004) (Cote, J.).....8

Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.,
No. 15-CV-1113 (VAB), 2016 WL 6542707 (D. Conn. Nov. 3, 2016).....8, 9

Kondo, et al. v. Creative Services, Inc.,
No. 1:22-cv-10438-DJC, ECF No. 39 (D. Mass. Sept. 7, 2023) 18

Logan v. Marker Group, Inc.,
No. 4:22-CV-00174, 2024 WL 3489208 (S.D. Tex. July 18, 2024).....10

Maley v. Dale Global Techs. Corp.,
186 F. Supp. 2d 358 (S.D.N.Y. 2002).....20

Masters v. Wilhelmina Model Agency, Inc.,
473 F.3d 423 (2d Cir. 2007).....4

McBean v. City of New York,
233 F.R.D. 377 (S.D.N.Y. 2006) 14

McDaniel v. Cty. of Schenectady,
595 F.3d 411 (2d Cir. 2010) 3

McNally, et. al. v. Infosys McCamish Systems, LLC,
No. 1:24-CV-00995-JPB (N.D. Ga.), ECF No. 81 18

In re Merrill Lynch Tyco Rsch. Sec. Litig.,
249 F.R.D. 124 (S.D.N.Y. 2008) 12

Millien v. Madison Square Garden Co.,
2020 U.S. Dist. LEXIS 141633 (S.D.N.Y. Aug. 7, 2020) 15

Mills v. Elec. Auto-Lite Co.,
396 U.S. 375 (1970) 21

Moses v. Apple Hospitality Reit, Inc.,
2018 U.S. Dist. LEXIS 50786 (E.D.N.Y. Mar. 17, 2028) 14, 15, 22

Murray v. Lemonade, Inc.,
2026 U.S. Dist. LEXIS 205511 (S.D.N.Y. Sep. 10, 2026) 5, 9, 14

In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,
991 F. Supp. 2d 437 (E.D.N.Y. 2014) 13

Phillips et al. v. Bay Bridge Associates,
Case 1:23-cv-00022-DAE (W.D. Tex. July 30, 2024), ECF No. 53 18

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985) 16

In re Planet Home Lending, LLC Data Breach,
No. 3:24-cv-127 (KAD) (D. Conn.), ECF No. 48 18

In re Prudential Sec. Inc. Ltd. P'ship Litig.,
912 F. Supp. 97 (S.D.N.Y. 1996) 9

In re RJR Nabisco, Inc. Sec. Litig.,
1992 WL 210138 (S.D.N.Y. Aug. 24, 1992) 20

Rosenfeld v. Lenich,
2021 WL 508339 (E.D.N.Y. Feb. 11, 2021) 12

Sand v. Greenberg,
2011 WL 7842602 (S.D.N.Y. Oct. 6, 2011) 22

Savoie v. Merchants Bank,
166 F.3d 456 (2d Cir. 1999).....4

In re Sonic Corp. Customer Data Sec. Breach Litig.,
2019 WL 3773737 (N.D. Ohio Aug. 12, 2019).....12

In re Sovos Compliance Data Security Incident Litigation,
No. 1:23-cv-12100 (D. Mass.), ECF No. 12.....19

In re Sturm, Ruger, & Co., Inc. Sec. Litig.,
2012 WL 3589610 (D. Conn. Aug. 20, 2012).....19

In re Sumitomo Copper Litig.,
74 F. Supp. 2d 393 (S.D.N.Y. 1999).....4

Taft v. Ackermans,
No. 02-cv-7951, 2007 WL 414493 (S.D.N.Y. Jan. 31, 2007).....12

In re Target Corp. Customer Data Sec. Breach Litig.,
MDL No. 14-2522, 2015 WL 7253765 (D. Minn. Nov. 17, 2015).....10

Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.,
2004 WL 1087261 (S.D.N.Y. May 14, 2004).....10

In re Tenet Healthcare,
Cause No. DC-22-07513 (Dist. Ct. Dallas County, Tex. May 22, 2024).....18

Thomsen v. Morley Cos.,
No. 1:22-cv-10271, 2023 WL 3437802 (E.D. Mich. May 12, 2023).....18

Torres v. Gristedes Operating Corp.,
519 F. App'x 1 (2d Cir. 2013).....17

In re Visa Check/Mastermoney Antitrust Litig.,
297 F. Supp. 2d 503 (E.D.N.Y. 2003).....21

In re Vitamin C Antitrust Litig.,
2012 WL 5289514 (E.D.N.Y. Oct. 23, 2012).....21

Wal-Mart Stores Inc. v. Visa U.S.A.,
396 F.3d 96 (2d Cir. 2005).....4, 15

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2005).....4, 16, 17

Statues

Fed. R. Civ. P. 23(e)(3).....14

Federal Rule of Civil Procedure 23(h) 3, 21

Rule 23 22

Plaintiffs,[1] individually, and on behalf of the Settlement Class, respectfully submit this Memorandum of Law in Support of Plaintiffs' Motion for Attorneys' Fees, Litigation Costs, and Service Awards.

I. INTRODUCTION

This Action arises from a cybersecurity incident that resulted in the unauthorized access of Private Information pertaining to 914,138 individuals who used Defendants' after-hours healthcare answering service. Class Counsel's efforts culminated in a hard-fought Settlement reached through mediation with former Eastern District of New York magistrate judge and JAMS mediator Steven M. Gold. The Settlement creates a $4,950,000.00 non-reversionary, all cash Settlement Fund from which Settlement Class Members may elect to receive Cash Payments and/or Dark Web and Medical Data Monitoring (valued at a retail price of $360). *See* Joint Declaration of Class Counsel in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards, filed concurrently herewith ("Joint Decl.") ¶ 13. The Settlement Fund will also be used to pay all Settlement Administration Costs, any Court-awarded attorneys' fees and costs to Class Counsel, and Service Awards to the Class Representatives. Class Counsel achieved this Settlement because of their extensive experience in data breach class action cases like this one and because they invested considerable time, effort, and resources into prosecuting this case.

By any measure, Class Counsel's efforts have been an unqualified success. In light of the recovery obtained, the time and effort devoted to this case by Class Counsel, the skill and expertise required, and the risks that counsel undertook, Class Counsel now respectfully move the Court for

[1] Capitalized terms herein shall have the same meanings as those defined in Section II of the Amended Settlement Agreement, attached to the Supplemental Joint Declaration in Support of Plaintiffs' Amended Motion for Preliminary Approval as Exhibit A. (ECF No. 58-1) (the "S.A.").

an award of attorneys' fees in the amount of $1,650,000.00, which represents one third of the Settlement Fund, reimbursement of reasonable litigation costs in the amount of 17,800.14 and Service Awards in the amount of $2,500.00 for each of the four Class Representatives. As discussed below, these requests are in line with awards regularly approved in similar cases in this Circuit. *See, e.g., Carbone v. Ltd. Run Games, Inc.*, 2025 U.S. Dist. LEXIS 162961, *28-29 (E.D.N.Y. Aug. 21, 2025) (awarding one-third fee in data privacy case and holding that "Courts in this Circuit routinely find that requests for attorney's fees totaling one-third of the settlement fund are well within the range of reasonableness.") (internal quotations omitted). Moreover, they are reasonable in proportion to the benefits Class Counsel negotiated and secured on behalf of the Settlement Class. Balanced against the significant risks of continued litigation, the Settlement represents an exceptional result for the Settlement Class and supports Class Counsel's request for attorneys' fees, costs, and service awards.

II. BACKGROUND

Plaintiffs refer the Court to the facts, procedural history, and the Settlement terms set forth in Plaintiffs' concurrently filed Unopposed Motion Final Approval of Class Action Settlement. As explained therein, the Settlement Agreement provides that Defendants will establish a Settlement Fund in the amount of $4,950,000, which will be used to pay all Settlement Class Member Benefits, as well as any attorneys' fees and costs, Service Awards, Settlement Administration Costs. S.A. ¶ 72, 75, 76.

Since this Court granted preliminary approval of the Settlement on July 27, 2026, Class Counsel have worked closely with the Settlement Administrator to ensure the Notice Program was carried out. *See* Joint Decl. ¶ 17. Class Counsel anticipate further involvement with the Settlement Administrator in the coming months to ensure the successful administration of the

Settlement for the Class. *Id*.

For the reasons set forth below, Class Counsel respectfully request that this Court grant this motion in its entirety and (1) award Class Counsel $1,650,000.00 for attorneys' fees and $17,800.14 for costs, and (2) award each Class Representative a $2,500.00 Service Award.

III. ARGUMENT

A. LEGAL STANDARD

1. Federal Rule of Civil Procedure 23(h) and the Goldberger Factors

Federal Rule of Civil Procedure 23(h) provides that courts may award "reasonable attorney's fees and nontaxable costs that are authorized by law or the parties' agreement." Fed. R. Civ. P. 23(h). In the Second Circuit, the reasonableness of requested attorneys' fees is analyzed according to the factors detailed in the seminal decision *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000): "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation … ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50.

2. The Percentage of the Fund Method is the Typical Method for Awarding Attorneys' Fees in Common Fund Cases in the Second Circuit

There are two methods for determining the appropriate award of attorneys' fees from a common fund, the "percentage of the fund" method and the "lodestar" method. *McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010) (citations omitted). Under the percentage method, the court calculates the fee award as some percentage of the settlement fund. *See Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007). Under the lodestar method, the court assesses the number of hours reasonably billed

and then multiplies them by an appropriate hourly rate. *See Flores v. Mamma Lombardi's of Holbrook, Inc.*, 104 F. Supp. 3d 290, 309 (E.D.N.Y. 2015) (citations omitted).

In cases such as this, where a settlement fund has been created, courts in the Second Circuit favor the use of a 'percentage of the fund' approach in awarding attorney's fees. *See Wal-Mart Stores Inc. v. Visa U.S.A.,* 396 F.3d 96, 122 (2d Cir. 2005) (noting the trend in the Second Circuit toward the percent of fund method of assessing attorneys' fees and the use of lodestar as a "cross-check" to a percentage award). In such cases, under Second Circuit precedent, the fees awarded are based on "the total funds made available, whether claimed or not." *Masters v. Wilhelmina Model Agency, Inc.,* 473 F.3d 423, 437 (2d Cir. 2007).

Courts in this Circuit have found numerous advantages to using the percentage method of awarding fees in common fund cases. First, the percentage method "directly aligns the interests of the class and its counsel" because it provides an incentive to attorneys to resolve a case efficiently and to create the largest total value for the class. *Wal-Mart Stores, Inc.*, 396 F.3d at 122. Second, this method is aligned with market practices, as it "mimics the compensation system actually used by individual clients to compensate their attorneys." *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999). Third, the percentage method promotes efficiency and early resolution, as it eliminates any incentive plaintiffs' lawyers may have to run up billable hours—one of the most significant downsides to using the lodestar approach. *Savoie v. Merchants Bank*, 166 F.3d 456, 460-61 (2d Cir. 1999). Fourth, the percentage method provides "appropriate financial incentives" necessary "to attract well-qualified plaintiffs' counsel who are able to take a case to trial...."." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005). Finally, the percentage method preserves judicial resources because it relieves the "cumbersome, enervating, and often surrealistic process of evaluating fee petitions." *Savoie v. Merchants Bank*,

166 F.3d at 461 n.4 (quoting *Court Awarded Attorney Fees: Report of the Third Circuit Task Force,* 108 F.R.D. 237, 242 (1986)).

B. CLASS COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE UNDER *GOLDBERGER* AND REPRESENTS A FAIR AND REASONABLE PERCENTAGE OF THE FUND

Class Counsel requests a fee award of $1,650,000.00 to be paid from the $4,950,000.00 Settlement Fund. This equals one-third of the Settlement Fund, which is well within the range typically awarded by courts in this Circuit in similar data breach class actions. *See Carbone v. Ltd. Run Games, Inc*., 2025 U.S. Dist. LEXIS 162961, *28-29 (E.D.N.Y. Aug. 21, 2025) (awarding one-third fee in data privacy case); *Murray v. Lemonade, Inc*., 2026 U.S. Dist. LEXIS 205511, *30 (S.D.N.Y. Sep. 10, 2026) (awarding one-third fee in data privacy case and noting that "the proposed attorneys' fees of one-third of the Settlement Fund . . . are routinely approved in this Circuit."). The requested fee award adequately compensates Class Counsel for their investment of time, expertise, and capital, which produced a successful outcome for the Class in a case that was both complex and high-risk.

1. Fee Request is Reasonable Under the *Goldberger* Factors

a. Class Counsel Invested Substantial Time and Resources

As detailed in the concurrently filed Joint Declaration, Class Counsel have dedicated their time, effort, and expense to this litigation, and they have done so entirely on a contingent basis with no guarantee of compensation or even reimbursement of expenses. To date, Class Counsel have dedicated 928.5 hours of attorney and other legal professional time prosecuting this Litigation. Joint Decl. ¶ 52. Class Counsel have also incurred 17,800.14 reasonable and necessary litigation expenses in prosecuting this Litigation.

Immediately after the public announcement of the Data Incident, Class Counsel began

investigating potential legal claims and remedies for the individuals impacted by the Data Incident. Those investigations included, among other things, investigating the facts surrounding the incident, investigating Defendants' background and corporate structure, analyzing reports and articles discussing the incident, and monitoring Defendants' websites and the internet for new information concerning the Data Incident. Joint Decl. ¶ 28. Class Counsel also interviewed impacted individuals, performed legal research to identify causes of action and available legal remedies, assessed damages, and consulted with experts in data security and damages. *Id*. ¶ 10.

On December 24, 2024, the first putative nationwide class action was filed seeking redress for those impacted in the Data Incident. Thereafter, 13 similar complaints with overlapping putative classes were filed. *See* ECF No. 21 n.1 (listing related actions). Class Counsel took it upon themselves to self-organize and coordinate the actions so that all the cases would proceed before this Court, eliminating duplication for the parties and the Courts and limiting the expense to both sides. Joint Decl. ¶ 6. On June 25, 2025, Plaintiffs' counsel filed a stipulation to appoint Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg PLLC, John A. Yanchunis of Morgan & Morgan, and Gerald D. Wells, III of Lynch Carpenter LLP as Interim Class Counsel, and Jason P. Sultzer of Sultzer & Lipari, PLLC as Liaison Counsel, which the Court approved on June 26, 2026. *See* ECF No. 39. Class Counsel then prepared and filed a Consolidated Class Action Complaint on July 28, 2025. *See* ECF No. 40.

In an effort to conserve the Parties' resources, the Parties agreed to pursue an early resolution of the Action, advising the Court on September 16, 2025 that, on October 6, 2025, they would mediate. ECF No. 44. To facilitate their settlement negotiations, the Parties agreed to mediate with the Honorable Steven M. Gold (Ret.), a former magistrate judge and well-respected and experienced class action mediator. Joint Decl. ¶ 9. In advance of the mediation, Class Counsel

served, and Defendants responded to, informal discovery requests tailored towards understanding the size and make up of the putative class, the nature of the Data Incident, Defendants' cybersecurity procedures and policies, and other information necessary to negotiate a classwide settlement. *Id.* ¶ 10. In addition, Class Counsel drafted a comprehensive mediation brief addressing the strengths and weaknesses of the merits and defenses of the case as well as class certification. *Id*. ¶ 11.

On October 6, 2025 Class Counsel attended a full-day mediation session with Judge Gold. *Id.* ¶ 12. While the Parties reached an agreement in principle, several key factual and legal issues remained in dispute and over the next ten weeks the parties continued to negotiate and memorialize the Agreement, Notice Program, and Claims Process. *Id*. During that time Class Counsel also drafted the motion for Preliminary Approval. *Id*. Pursuant to the Court's order dated January 29, 2026 denying without prejudice Plaintiffs' original Motion for Preliminary Approval of Class Action Settlement (ECF No. 51), Class Counsel prepared and filed an amended motion on March 2, 2026. *See* ECF No 54. This Court held an in-person hearing on Plaintiffs' Motion for Preliminary Approval on May 6, 2026. Thereafter, the Parties conferred and revised the Settlement Agreement and certain exhibits to address issues raised by the Court during the hearing. On June 3, 2026, Plaintiffs filed a Supplemental Joint Declaration of Class Counsel in support of their Motion for Preliminary Approval. *See* ECF No. 58 (the "Supplemental Preliminary Approval Decl."). On July 27, 2026, the Court issued an Order granting Preliminary Approval of the Settlement and setting a Final Approval Hearing for November 17, 2026. *See* ECF No. 60 (the "Preliminary Approval Order").

Class Counsel's work in this litigation has also included interviewing and vetting the Plaintiffs and others impacted by the Data Incident; obtaining and reviewing documents from

Plaintiffs substantiating their claims;regularly communicating with the named Plaintiffs to keep them informed of the progress in the Action and settlement; drafting and negotiating a comprehensive ESI protocol and stipulated protective order; identifying and consulting with expert witnesses; soliciting bids from settlement administrators and working with Defendants to select the Settlement Administrator; drafting the Settlement Agreement; developing the Notice Program and Claim Process with the Settlement Administrator's assistance; drafting the Notices and Claim Form, and drafting the proposed Preliminary Approval Order and Final Approval Order; regularly working and communicating with the Settlement Administrator and Defendants to implement and complete the Notice Program and Claim Process; and communicating with Settlement Class Members; and researching and preparing the Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards.

In sum, Class Counsel undertook substantial work in prosecuting this Action which ultimately led to the Settlement that the Court preliminarily approved.

It is also important to note that Class Counsel's work continues and will continue even if the Court grants final approval of the Settlement. Class Counsel will continue to spend time and resources overseeing the Settlement administration, assisting Settlement Class Members, and dealing with any other issues that may arise related to the Settlement. *See Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.,* No. 15-CV-1113 (VAB), 2016 WL 6542707, at *15 (D. Conn. Nov. 3, 2016) ("'Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward'" (quoting *deMunecas v. Bold Food, LLC*, No. 09-CIV-00440 (DAB), 2010 WL 3322580, at *10 (S.D.N.Y. Aug. 23, 2010))). Indeed, during a recent final approval hearing of a settlement in a class action lawsuit in the District of Connecticut, Judge Thompson noted that class counsel's

fee award was calculated to compensate counsel for work performed "as of September 2023 and the work continued beyond that date." *Goldstein v. Henkel Corporation et al.*, Case No. 3:22-cv-00164-AWT (D. Conn.) (ECF No. 98). This case will be no different as these matters take up an extraordinary amount of time even after final approval is granted.

That Class Counsel reached an excellent and expeditious settlement is another significant factor warranting this fee request. *See Karpus v. Borelli (In re Interpublic Sec. Litig.)*, 20-cv-6527, 2004 WL 2397190 at *12, (S.D.N.Y. Oct. 26, 2004) (Cote, J.) ("Any award of attorneys' fees therefore should recognize this risk and should not penalize counsel for settling at an early stage of the litigation when it appeared appropriate to do so."). Indeed, in a settlement hearing for the *Bangoura* class action, in which certain Class Counsel was involved, Judge Cogan in the Eastern District of New York commented:

> With regard to the attorneys' fees, I agree with everything counsel has said. ***I think there is definitely a premium to be taken for the fact that the case was settled at an early stage***. It is very often the case in these kinds of consumer fraud cases, whether it's marketing or potential personal injury or lack of value, that the case can drag on, you know, despite my best efforts I've had them drag on for four or five years. ***And the fact that I'm looking at 2022 index number on this case is, in itself, a testament to the efficiency of plaintiffs' counsel's efforts***.

Tr. of Final Approval Hearing, at 9:11-20, *Bangoura v. Beiersdorf, Inc. and Bayer Healthcare, LLC,* Case No. 1:22-cv-00291-BMC (S.D.N.Y. Jan. 5, 2023). Other data breach class actions cases in this Circuit have been settled at a similar procedural stage and courts have granted one-third fee requests in recognition of how efficiently they were handled. *See e.g. Murray,* 2026 U.S. Dist. LEXIS 205511, *17 (holding that "[a]lthough this case settled at an early stage, the parties were still sufficiently informed on the facts to evaluate the case" and granting a request for a one-third fee). Thus, this factor weighs heavily in favor of this fee application, especially given the complexity of the case and the magnitude of the recovery.

b. This Class Action Included Complex Legal Issues

"The size and difficulty of the issues in a case are significant factors to be considered in making a fee award." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citing *In re Prudential Sec. Inc. Ltd. P'ship Litig.*, 912 F. Supp. 97, 100 (S.D.N.Y. 1996) ("[C]lass actions 'have a well-deserved reputation as being most complex.'")); *see also Kemp-Delisser*, 2016 WL 6542707, at *16 (noting case was "complex and risky to litigate, given that it concerns an unsettled question of law…"). In cases that require more expertise, a larger percentage of the fund should be awarded to the lawyers who can competently prosecute the case. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award.").

This Action is no exception. This Action, had it not settled, would have involved a battle of economic cybersecurity experts regarding damages and the adequacy of Defendants' data protections. These factors make actions such as this inherently complex and high risk. Due at least in part to their cutting-edge nature and the rapidly evolving law, data security cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See e.g., Logan v. Marker Group*, Inc., No. 4:22-CV-00174, 2024 WL 3489208 (S.D. Tex. July 18, 2024) (dismissing all but one claim); *Dougherty, et al. v. Bojangles Restaurants, Inc.*, No. 25-CV-00065, ECF 34 (W.D.N.C. Sep. 30, 2025) (dismissing case in its entirety at pleading stage). *See also In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015) (legal issues involved in data breach litigation "are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues"). The magnitude and complexity of legal issues involved in this case further reinforces the reasonableness of Class Counsel's requested fee percentage.

c. The Requested Fee is Warranted Based on the High-Risk Nature of the Litigation

The Second Circuit "has identified the risk of success as perhaps the foremost factor to be considered in determining" reasonable attorneys' fees. *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). The risk of non-payment is especially high in class actions with contingent fee arrangements, like here. *See Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation."). The Second Circuit recently emphasized the "risk of litigation" factor in *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 727 (2d Cir. 2023) ("The true risk we identified in *Fresno County* was the risk that a case taken on contingency will fail." *Id.* (emphasis in original). Accordingly, the significant litigation risk in this case strongly supports Class Counsel's fee request.

Class Counsel took the risk of prosecuting this Action on a full contingency basis. Joint Decl. ¶ 44. see also *Goldberger*, 209 F.3d at 53 ("(o)f course contingency risk . . . must be considered in setting a reasonable fee."); *Fleisher v. Phoenix Life Ins. Co.,* No. 11-CV-8405 (CM), 2015 WL 10847814, at *21 n.16 (S.D.N.Y. Sept. 9, 2015) ("Contingency risk is the principal, though not exclusive factor, courts should consider in their determination of attorneys' fees.") (internal quotation marks omitted).

Here, Defendants deny Plaintiffs' allegations, and if the matter proceeded, Plaintiffs expected Defendants would vigorously defend themselves on the merits, at each stage of litigation and likely on appeal. The Action settled before a decision on class certification, and the certification requested herein is for settlement purposes only. While Plaintiffs believe that the Court would certify a litigation class, Defendants would zealously oppose the motion. Plaintiffs must meet the requirements, including proffering a suitable mechanism for calculating class-wide

damages. While Plaintiffs believe they could establish the existence of such a mechanism to the Court's satisfaction, this proposed Settlement eliminates the unavoidable risk that they could not do so. Furthermore, even if the Court were to certify a litigation class, the certification can be reviewed and modified at any time. *See* Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 160 (1982) ("Even after a certification order is entered, the judge remains free to modify it in the light of subsequent developments in the litigation."); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (noting that "[w]hile plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might not be certified is not illusory").

Most fundamentally, while Plaintiffs believe that Defendants had a duty to protect the security of Plaintiffs' Private Information and breached that duty by failing to implement reasonable security measures, a jury might not agree. In addition, Plaintiffs anticipated a zealous "battle of the experts" with respect to Defendants' claims regarding the accessibility of the data the Plaintiffs allege was compromised and regarding the calculations of damages. For these reasons, although Plaintiffs are confident in the merits of their case, the risks of establishing liability and damages were very much present.

According to Class Counsel's research, no data breach class action has reached trial, further demonstrating the unpredictable outcome if this Action were to be tried. Class action suits "have a well-deserved reputation as being most complex." *Rosenfeld v. Lenich*, 2021 WL 508339, at *5 (E.D.N.Y. Feb. 11, 2021) (internal quotation marks omitted); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky.").

Class Counsel were able to secure a significant Settlement for the Settlement Class Members for complex claims asserted against Defendants. This was done despite the significant

risks Plaintiffs faced in pursuing these claims. As such, the Settlement is a direct result of Class Counsel's skills and dedication in this Action. Accordingly, this factor weighs in favor of approving the requested percentage of the common fund.

d. Class Counsel Provided (and Continues to Provide) High-Quality Representation

When evaluating *Goldberger*'s "quality of representation" factor, courts in the Second Circuit "review the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008); *Taft v. Ackermans,* No. 02-cv-7951, 2007 WL 414493, *1 (S.D.N.Y. Jan. 31, 2007). Here, Class Counsel and Plaintiffs' Counsel have extensive experience in both class actions generally, and complex consumer class actions involving cybersecurity incidents in particular. Joint Decl. ¶ 23. It required significant skill and experience, as well as high quality representation, to even be able to identify the highly technical aspects of the data breach mechanism (*i.e.,* the means by which Defendants' systems were breached), not to mention the specialized knowledge of class action procedure required to achieve certification, let alone settlement. Defendants are also ably represented by a national law firm with extensive data breach litigation experience, presenting a formidable adversary for Plaintiffs and Class Counsel to successfully prosecute the Action in the absence of the Settlement. *Id.* ¶ 48.

Moreover, "the quality of representation … may be measured in large part by the results that counsel achieved for the classes." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,* 991 F. Supp. 2d 437, 441 (E.D.N.Y. 2014). Here, Class Counsel has obtained a $4,950,000.00 Settlement on behalf of the Settlement Class. Class Counsel's ability to obtain such a substantial recovery from litigation savvy Defendants is a testament to the skill with which Class Counsel have prosecuted this case. *See Fleisher*, 2015 WL 10847814 at *22 ("The quality of

opposing counsel is also important in evaluating the quality of Lead Counsel's work.") (internal quotations omitted). Throughout the Litigation, Defendants' Counsel, Morrison & Foerster LLP fervently represented Defendants against Plaintiffs' claims.

Given the quality of Class Counsel's representation, as evidenced by the excellent Settlement achieved for the Settlement Class, this factor supports the requested attorneys' fee award.

e. The Requested Fee is Reasonable in Relationship to the Settlement

The next *Goldberger* factor requires the Court to compare the requested fee to the benefits of the Settlement. *Goldberger*, 209 F.3d at 50. In examining the reasonableness of the fee, the Court must examine the fee in relation to the recovery by Settlement Class Members, in order to "protect the interests of the absent class members." *See McBean v. City of New York*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006). Moreover, "the relief actually delivered to the class can be a significant factor in determining the appropriate fee award." *Moses*, 79 F.4th at 244 (quoting Fed. R. Civ. P. 23(e)(3) advisory committee's note to 2018 amendment).

Here, the recovery by the Settlement Class Members is significant in relation to the fee request. The Net Settlement Fund is estimated to be $2.78 million.[2]. Additionally, all Settlement Class Members are entitled to make a claim for two years of Dark Web and Medical Data Monitoring, the retail cost of which is approximately $360.00. *See* S.A. ¶ 14.

[2] The Long Form Notice included an estimate of $490,000.00 in Settlement Administration Costs. The Declaration of Cameron R. Azari, Esq. Regarding Implementation of Notice Program and Settlement Administration ("Admin. Decl."), filed in connection with Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, concurrently herewith, states that through August 2026, administration fees and expenses total $194,856. *See* Admin. Decl. ¶ 41. Costs to date are below those estimated because fewer postcards needed to be sent than anticipated. *Id.* The supplemental declaration Mr. Azari will file in advance of the Final Approval Hearing will include updated Settlement Administration Costs information.

Courts in this Circuit recognize that large, complex class action lawsuits present considerable risk and require extensive work by counsel. As such, courts often award fees at or even above the percentage requested here, finding that it is reasonable in relationship to the settlement as a whole. *See See Carbone v. Ltd. Run Games, Inc*., 2025 U.S. Dist. LEXIS 162961, *28-29 (E.D.N.Y. Aug. 21, 2025) (awarding one-third fee in data privacy case); *Murray v. Lemonade, Inc*., 2026 U.S. Dist. LEXIS 205511, *30 (S.D.N.Y. Sep. 10, 2026) (awarding one-third fee in data privacy case and noting that "the proposed attorneys' fees of one-third of the Settlement Fund . . . are routinely approved in this Circuit."). This is especially true when, as here, the Settlement will result in thousands of Settlement Class Members recovering both cash compensation and valuable cybersecurity products.

Notably, the Class Members' reaction to the Settlement also supports the reasonableness of Class Counsel's fee request. Class Notice has been sent to Class Members informing them that Class Counsel would apply the Court for an award of attorneys' fees and expenses not to exceed one-third of the Settlement Fund. Zero objections been received and only four Class Members have opted out to date. Admin. Decl. ¶ 38. The fact that thus far no Class Members have objected to Class Counsel's fee request and expenses is strong evidence that the fee request is reasonable and appropriate. Moreover, the fact that there have been no objections out of thousands of Settlement Class Members is strong evidence of the fairness of a settlement. *See Millien v. Madison Square Garden Co*., 2020 U.S. Dist. LEXIS 141633, *14 (S.D.N.Y. Aug. 7, 2020) (approving class action settlement where only one member of the class filed an objection because "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.") (quoting Wal-*Mart Stores, Inc. v. Visa U.S.A. Inc*., 396 F.3d 96, 118 (2d Cir. 2005)); *Moses v. Apple Hospitality Reit, Inc*., 2018 U.S. Dist. LEXIS 50786, *20-21

(E.D.N.Y. Mar. 17, 2028) (holding that "[a] very low number of objections and exclusions ordinarily evinces a class's tacit acceptance of a settlement" and approving a settlement with one objector); *Grayson v. GE*, 2020 U.S. Dist. LEXIS 134657, *11 (D. Conn. Jul. 27, 2020) (approving class action settlement where "the one objection from a Class Member did not challenge the fairness of the terms of the Settlement to the Class.").

f. Public Policy Supports Approval of the Fee

Public policy also supports providing attorneys' fees in class action cases, as class actions are an invaluable safeguard of public rights. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). *See also In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-2548-VSB, 2019 WL 4734396, at *3 (S.D.N.Y. Sept. 23, 2019) ("In awarding attorneys' fees in common fund cases, the Second Circuit and courts in this district also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.") (internal quote omitted).

Where, as here, any individual Settlement Class Member's damages are relatively small, an award of attorneys' fees ensures that "plaintiffs' claims [will] likely … be heard." *Frank v. Eastman Kodak Co*., 228 F.R.D. 174, 189 (W.D.N.Y. 2005). If courts failed to award adequate attorneys' fees, "no attorneys . . . would likely be willing to take on … small-scale class actions." *Id*. Public policy favors rewarding counsel who persevere through risky litigation and achieve favorable results for the class they represent. Here, without private counsel taking on the risk and expense of this lawsuit, the Settlement Class would have recovered nothing, and important public interests would not have been vindicated. Awarding a reasonable percentage of the Settlement Fund properly motivates zealous enforcement of consumer protection laws and incentivizes skilled counsel to bring meritorious cases. *See WorldCom*, 388 F. Supp. 2d at 359. It also deters negligent

conduct from defendants. *See* 1 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 1:8 (6th ed. 2022) ("[W]here harms are small and dispersed, the defendants can avoid liability because no individual has sufficient incentive to sue. By avoiding liability, the defendants place the social costs of their actions on others."). By "enabling small-claim suits, class actions expose the defendants to the risk of liability and thereby deter them from engaging in wrongdoing in the first place." *Id*. As such, in addition to obtaining substantial monetary relief for the Class, this Settlement also serves an important public good by encouraging stricter cybersecurity measures non-monetary relief. *See* Brian T. Fitzpatrick, THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, 2019) at Chapter 8.

Courts within this Circuit agree that small-claims class actions are worthwhile pursuits in which class counsel should be compensated for their efforts.[3] Moreover, because of the potential for large liability exposure, consumer class actions serve as strong antidote to corporate wrongdoing. *See Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 287 (6th Cir. 2016) ("Consumer class actions, furthermore, have value to society more broadly, both as deterrents to unlawful behavior . . . and as private law enforcement regimes that free public sector resources.").

Here, Class Counsel took on this case despite significant uncertainty and volatility of law in data breach class actions, and successfully obtained a settlement allowing the Settlement Class Members to receive meaningful cash compensation. Such a result should be rewarded. This factor, like the others, supports Class Counsel's fee request.

[3] *See Globus v. L. Rsch. Serv., Inc.*, 418 F.2d 1276, 1285 (2d Cir. 1969) ("Compensatory damages, especially when multiplied in a class action, have a potent deterrent effect."); *deMunecas*, 2010 WL 3322580, at *8 ("Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorneys general,' attorneys who fill the private attorney general role must be adequately compensated for their efforts.").

2. The Requested Fee Represents a Reasonable Percentage of the Fund

In addition to being reasonable under *Goldberger,* the fee requested, one-third of the Settlement Fund, is reasonable under the percentage of the fund method and is consistent with many other fee awards granted in other class actions in this circuit and in similar litigations. *See*, *e.g.*, *Torres v. Gristedes Operating Corp*., 519 F. App'x 1, 5-6 (2d Cir. 2013) (acknowledging one-third of common fund is benchmark in Second Circuit and affirming higher percentage – 52.2% - of settlement value for attorney fees and costs.). Indeed, in recent litigations involving data breaches, courts have granted similar fee requests. *See, e.g., Carbone v. Ltd. Run Games, Inc*., 2025 U.S. Dist. LEXIS 162961, *28-29 (E.D.N.Y. Aug. 21, 2025) (awarding one-third fee in data privacy case and holding that "Courts in this Circuit routinely find that requests for attorney's fees totaling one-third of the settlement fund are well within the range of reasonableness.") (internal quotations omitted); *Krant*, 2024 WL 5187565 at *6 (awarding one-third fee, and collecting data breach cases from around the country); *In re Arthur J. Gallagher Data Breach Litig.*, No. 22-CV-00137, ECF No. 128 (N.D. Ill.) (Feb. 27, 2025) (awarding one-third of $21 million settlement fund); *In re Planet Home Lending, LLC Data Breach*, No. 3:24-cv-127 (KAD) (D. Conn.), ECF No. 48 (one-third of settlement fund); *In re Tenet Healthcare*, Cause No. DC-22-07513 (Dist. Ct. Dallas County, Tex. May 22, 2024) (35% of settlement fund); *Garza v. HealthAlliance, Inc*., No. 72450/2023 (NY Sup. Ct., Westchester Cty.) (same); *McNally, et. al. v. Infosys McCamish Systems, LLC*, No. 1:24-CV-00995-JPB (N.D. Ga.), ECF No. 81 (one-third of settlement fund); *In re Fortra File Transfer Software Data Sec. Breach Litig*., No. 24-MD-03090, 2025 WL 2675178, at *13-14 (S.D. Fla. Sept. 17, 2025) (same); *In re Fortra File Transfer Software Data Sec. Breach Litig*., No. 24-MD-03090, 2025 WL 457896, at *11-12 (S.D. Fla. Feb. 11, 2025) (same); *In re CorrectCare Data Breach Litig*., No. 5:22-319-DCR, 2024 WL 4211480, at *4 (E.D. Ky. Sept. 14, 2024) (same);

Phillips et al. v. Bay Bridge Associates, Case 1:23-cv-00022-DAE (W.D. Tex. July 30, 2024), ECF No. 53 (same); *Alliance Ophthalmology, PLLC v. ECL Group, LLC*, No. 1:22-CV-296, 2024 WL 3203226, *16 (M.D.N.C. June 27, 2024) (awarding one-third of common fund because this amount was "comparable to awards in other data privacy class actions"); *Kondo, et al. v. Creative Services, Inc*., No. 1:22-cv-10438-DJC, ECF No. 39 (D. Mass. Sept. 7, 2023) (same); *Thomsen v. Morley Cos*., No. 1:22-cv-10271, 2023 WL 3437802, *2 (E.D. Mich. May 12, 2023) (one-third of common fund "apt because it reflects counsel's specialization in data breaches and simplifies the billing"); *In re Sovos Compliance Data Security Incident Litigation*, No. 1:23-cv-12100 (D. Mass.), ECF No. 12 (same). Thus, this factor supports Class Counsel's attorneys' fee request.

As discussed above, Class Counsel's' fee request is also reasonable given the complexities and risks discussed herein and is within the parameters of fee awards in similar class actions in this circuit. Therefore, Class Counsel's requested fee is reasonable under a percentage of recovery analysis.

3. A Lodestar Multiplier "Cross-Check" Further Confirms the Reasonableness of Class Counsel's Requested Fee

The lodestar fee calculation method is used in this Circuit only "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *In re Colgate-Palmolive Co. ERISA Litig.,* 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.[4]

[4] *See also In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, 2012 WL 3589610, at *13 (D. Conn. Aug. 20, 2012) ("Where [the lodestar method is] used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.") (internal quotation omitted); *Fox v. Vice*, 563 U.S. 826, 838 (2011) ("The fee applicant (whether a plaintiff or a defendant) must, of course, submit appropriate documentation to meet the burden of establishing entitlement to an award. But trial courts need not, and indeed should not, become green-eyeshade accountants.").

Here, Class Counsel collectively billed 928.5 hours in this Litigation. Joint Decl. ¶ 52. At their usual and customary rates, and applying the rates in existence when counsel performed the work, these hours translate into approximately $862,180.5 in total lodestar as of October 2026. *Id*. Both the number of hours invested in the litigation and the hourly rates of the attorneys are reasonable in complex class actions of this type. Joint Decl. ¶ 52. As such, Class Counsel's request for $1,650,000.00 in attorneys' fees represents a modest total multiplier of 1.9 applied to their lodestar.[5] This multiplier is squarely within the range awarded by courts in this District and across the country. *See In re Canon United States Data Breach Litig*., 2024 U.S. Dist. LEXIS 138499, *27 (E.D.N.Y. Aug. 2024) (Bulsara, J.) (awarding fees that represented a 1.644 multiplier of the lodestar and noting that "[i]n complex class actions such as this, '[t]ypically, courts use multipliers of 2 to 6 times the lodestar.'") (quoting *Carrigan v. Xerox Corp*., No. 21-CV-1085, 2024 U.S. Dist. LEXIS 68854, 2024 WL 1639535, at *5 (D. Conn. Apr. 16, 2024).[6] Class Counsel also made every effort to work efficiently and minimize duplication of effort. Joint Decl. ¶ 42.

[5] Notably, Class Counsel will continue to spend time and resources overseeing the Settlement administration, assisting Class Members, and tending to any other issues that may arise related to the Settlement. Accordingly, Class Counsel's lodestar multiplier will decrease as they continue to work on the litigation in advance of the final approval hearing.

[6] *See In re Credit Default Swaps Antitrust Litig.,* No. 13MD2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (6.36 multiplier); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Asare v. Change Grp. of N.Y., Inc.*, 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *City of Providence v. Aéropostale, Inc.*, 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014) (noting "lodestar multiples of over 4 are awarded by this Court"); *Maley v. Dale Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (describing a 4.65 lodestar multiple as "modest" and "fair and reasonable"); *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138, at *6-8 (S.D.N.Y. Aug. 24, 1992) (awarding a lodestar multiplier of 6); *Hicks v. Morgan Stanley & Co.*, 2005 U.S. Dist. LEXIS 24890, at *28 (S.D.N.Y. Oct. 19, 2005) ("Taking the circumstances of the case into consideration, a multiplier of 1.85 is reasonable and, as a 'cross-check,' supports counsels' fee application. In this Circuit, contingency fees of 1.85 times the lodestar and greater have been deemed reasonable by the courts."); *Hesse v. Godiva Chocolatier, Inc.*, 2022 U.S. Dist. LEXIS

4. The Reaction of Class Members Supports Class Counsel's Fee Request

Finally, as set forth in Section III.B.1.e, the reaction of Class Members to the Settlement and to Class Counsel's fee and cost request, confirms the reasonableness of Class Counsel's request. *See In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *18 (S.D.N.Y. Dec. 19, 2014).

C. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES IS REASONABLE.

Under Fed. R. Civ. P. 23(h), a trial court may award nontaxable costs that are authorized by law or the parties' agreement. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a common fund has been produced or preserved for the benefit of a class); Alba Conte, Attorney Fee Awards § 2.08, at 50-51 (3d ed. 2004); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." (internal quote omitted)).

"Reimbursable expenses include expert fees, travel, conference telephone, postage, delivery services, and computerized legal research." *Cates v. Trs. of Columbia Univ.*, 2021 WL 4847890, at *8 (S.D.N.Y Oct. 18, 2021) (citing Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed. 2004)). *See also Fleisher*, 2015 WL 10847814, at *23 (noting as typical expenses in complex cases "fees paid to experts, mediation fees, notice costs, computerized research, document production and storage, court fees, reporting services, and travel in connection with th[e] litigation").

Here, Class Counsel have incurred $17,800.14 in reasonable and necessary litigation costs and expenses. Joint Decl. ¶ 53. These expenses include filing fees, service fees, *pro hac vice*

72641, at *40 (S.D.N.Y. Apr. 20, 2022) (approving lodestar multiplier of 1.9 as reasonable in consumer class action).

applications, mediation fees, expert fees, and travel and accommodation expenses that were incurred in the normal course of business and were essential to the successful prosecution of this lawsuit. None of Class Counsel's expenses have yet been reimbursed. "The fact that Class Counsel was willing to expend their own money, where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary." *Fleisher*, 2015 WL 10847814, at *19. In sum, there is "no reason to depart from the common practice in this circuit of granting expense requests." *In re Visa Check/Mastermoney Antitrust Litig*., 297 F. Supp. 2d 503, 525 (E.D.N.Y. 2003). Class Counsel therefore respectfully request that litigation costs and expenses in the amount of $17,800.14 be reimbursed.

D. PLAINTIFFS' REQUEST FOR MODEST SERVICE AWARDS IS REASONABLE

Rule 23 permits incentive awards that are reasonable and promote equity between class representatives and absent class members. *Moses*, 79 F.4th at 254-55 ("We decline to depart from Rule 23's mandate, which permits fair and appropriate incentive awards."). The comparison between the recovery of an average class member and that of a named plaintiff "is necessary to determine whether an incentive award is so disproportionate to the recovery of an average class member, such that the incentive award recipient . . . is being compensated inequitably." *Canon*, 2023 U.S. Dist. LEXIS 206513, 2023 WL 7936207, at *5. Courts have typically approved incentive awards in the range of $1,000 to $20,000 per class representative. *See Moses*, 79 F.4th at 255 n.12.).

Here, consistent with the Settlement Agreement, Class Counsel requests that the Court approve a $2,500.00 service award for each of the four Plaintiffs. S.A. ¶112. Class Counsel's requested Service Awards fall squarely within the range of service awards routinely approved by courts in this Circuit as reasonable. *See, e.g., Guippone v. BH S&B Holdings, LLC,* 2011 WL

5148650, at *8 (S.D.N.Y. Oct. 28, 2011) ($10,000 award approved in a settlement of approximately $900,000 for a class of approximately 300 members); *Sand v. Greenberg,* 2011 WL 7842602, at *3 (S.D.N.Y. Oct. 6, 2011) ($10,000 service awards "reasonable, given the risk the Plaintiffs took and the effort they expended"); *Dupler v. Costco Wholesale Corp.,* 705 F. Supp. 2d 231, 245-46 (E.D.N.Y. 2010) (awarding $25,000 to lead plaintiff in consumer class action and $5,000 to another plaintiff); *In re Currency Conversion Fee Antitrust Litig.,* 263 F.R.D. 110, 131 (S.D.N.Y. 2009) ($45,000 and $35,000 service awards are "within the range of what other courts have found to be reasonable, although on the higher end").

"In examining the reasonableness of service awards, courts consider: (1) the personal risk incurred by the named plaintiff; (2) time and effort expended by the named plaintiff in assisting the prosecution of the litigation; and (3) the ultimate recovery in vindicating statutory rights." *Guippone,* 2011 WL 5148650, at *7. All three factors support the requested service awards. Plaintiffs agreed to bring this action in their name without any assurance that it would be successful. Joint Decl. ¶ 54. Plaintiffs also expended valuable time and effort as a result of being involved the Action. Among other things, Plaintiffs initiated and remained in contact with Class Counsel and the other Plaintiffs' counsel, considered and reviewed the pleadings in this case, supervised and monitored Class Counsel, provided background documents, and followed the Action's progress to ensure the Settlement Class received the best recovery possible, given the circumstances and risks of the Action. *Id.* The Class Representatives were prepared to complete their responsibilities, including being deposed and testifying at trial, if needed. *Id*. Without Plaintiffs, the Settlement would not have been possible.

Moreover, in comparison to the average recovery of a class member, $2,500 per Plaintiff is reasonable. Settlement Class Members who have documented losses related to the cybersecurity

incident can receive up to $5,000. *Id.* S.A. 79.a. Settlement Class Members who do not have documented losses can receive an alternate cash payment of up to $75. *Id.* ¶ 79.b. Additionally, all Settlement Class Members are eligible to make a Claim for Dark Web and Medical Data Monitoring for two years, the retail cost of which is approximately $360.00. Since most Settlement Class Members who submit Valid Claims will receive recoveries, including Cash Payments and the retail value of the Dark Web and Medical Data Monitoring, in the range of a several hundred dollars to several thousand dollars, an incentive award of $2,500 for each Plaintiff for their contributions is fair and reasonable. *See, e.g., Chavarria v. N.Y. Airport Serv., LLC*, 875 F. Supp. 2d 164, 177 (E.D.N.Y. 2012) (approving incentive award of $5,000 for class representative who aided counsel in fact-finding, located class members, and attended meetings with counsel).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve: (i) the payment of attorneys' fees in the amount of one third of the Settlement Fund, or $1,650,000.00; (ii) the reimbursement of reasonable and necessary litigation expenses in the amount of $17,800.14; and (iii) Service Awards in the amount of $2,500 for each Plaintiff.

Dated: October 12, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Judge Bulsara's Individual Practices (Civil), § VI(E) and Local Rule 7.1(c), I hereby certify that the foregoing Memorandum of Law contains 7,647 words, excluding the parts of the Memorandum exempted by the Local Rules.

/s/ Jason Sultzer
Jason Sultzer

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Jason Sultzer
Jason Sultzer