UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re Red Roof Inns, Inc. Data Incident Litigation	Case No. 2:23-cv-4133 Judge Sarah D. Morrison Magistrate Judge Chelsey M. Vascura

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Rebecca Richardson, Vail Pinkston McCall, and Viomar Sena ("Plaintiffs") respectfully move this Court for an order awarding (1) $183,333.33 for attorneys' fees (one-third of the $550,000 common fund); (2) $14,259.34 for reimbursement of costs and expenses incurred in the litigation; and (3) service awards of $5,000 for each Class Representative.

The legal and factual bases supporting this Motion are fully set forth in the following Memorandum in Support, the Declaration of Terence R. Coates in Support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards ("Coates Decl.") (attached as **Exhibit 1**), as well as Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement Agreement (Doc. 25), incorporated herein by reference.

A proposed Order granting this Motion will be provided as an attachment to the Motion for Final Approval of the Class Action Settlement.

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I. INTRODUCTION

Pursuant to the Settlement Agreement (Doc. 25-1)[1] preliminarily approved by the Court on April 10, 2025 (Doc. 28), Plaintiffs respectfully move for an order awarding (1) $183,333.33 for attorneys' fees (one-third of the $550,000 common fund); (2) $14,259.34 for reimbursement of Class Counsel's costs and expenses; and (3) service awards of $5,000 for each Class Representative. As demonstrated herein, Class Counsel's attorneys' fees request is appropriate under the "percentage of the fund" method, which is the preferred approach for determining a reasonable fee in a common fund case such as this one. The requested fee percentage is approximately 33.33%, which is well within the range typically approved in the Sixth Circuit and is further supported by the discretionary lodestar cross-check analysis. Class Counsel's expenses are also reasonable under the circumstances, and the request for $5,000 Service Awards for each Plaintiff is an amount that is frequently approved by Courts within this District.

II. BACKGROUND

The case arises from the compromise of personally identifying information ("Personal Information") belonging to Plaintiffs and Class Members as a result of a September 2023 cyberattack (the "Data Incident") experienced by Defendant Red Roof Inns, Inc. ("Red Roof" or "Defendant"). Plaintiffs initiated this nationwide class action on behalf of themselves and a class of "all individuals residing in the United States who were sent notification by Red Roof that their Personal Information was potentially compromised in the Data Incident." S.A. ¶ 36. Plaintiffs and

[1] All capitalized terms not defined herein have the same meaning as in the Settlement Agreement.

Class Members include current and former employees of Defendant whose Personal Information, including names, dates of birth, social security numbers, driver's license numbers, passport numbers, financial account numbers, credit and/or debit card numbers, medical information, and health insurance information, was compromised due to the Data Incident. Consolidated Class Action Complaint, Doc. 12 ¶¶ 1, 29. In response to the Data Incident, Defendant sent a Notice Letter to each impacted individual providing a description of the type of Personal Information involved. *Id.* ¶ 31.

On December 15, 2023, Plaintiff Sena filed the first action—*Sena v. Red Roof Inns, Inc.*—in this Court for claims arising from the Data Incident. Doc. 1. Plaintiffs McCall and Richardson filed their respective complaints on December 19, 2023, and the Court entered an order consolidating the related actions on March 29, 2024. Doc. 7. On April 29, 2024, Plaintiffs filed their Consolidated Class Action Complaint. Doc. 12. After approximately a year's worth of litigation and negotiation, including a private mediation with an experienced mediator, Bennett G. Picker, the Parties reached a Settlement. On January 24, 2025, Plaintiffs moved this Court unopposed for preliminary approval of a Class Action Settlement (Doc. 25) which this Court granted on April 10, 2025. Doc. 28. In its Preliminary Approval Order, the Court also appointed Terence R. Coates of Markovits, Stock & DeMarco, LLC, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Raina Borrelli of Strauss Borrelli, PLLC, and Tyler J. Bean of Siri & Glimstad, LLP as Class Counsel for all Plaintiffs. *Id*.

In their Consolidated Class Action Complaint, Plaintiffs alleged individually and on behalf of the Class that, as a direct result of the Data Incident, Plaintiffs and Class Members suffered numerous injuries and would likely suffer additional harm in the future. Plaintiffs' claims for alleged damages and remedies included the following categories of harms: (i) identity theft; (ii)

the loss of the opportunity to control how their Private Information is used; (iii) the compromise, publication, and/or theft of their Personal Information; (iv) out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, and/or unauthorized use of their Personal Information; (v) lost opportunity costs associated with effort expended and the loss of productivity addressing and attempting to mitigate the actual and future consequences of the Data Incident, including but not limited to efforts spent researching how to prevent, detect, contest, and recover from identity theft; (vi) the continued risk to their Personal Information, which remain in Defendant's possession and is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect Personal Information in their continued possession; and (vii) future costs in terms of time, effort, and money that will be expended to prevent, detect, contest, and repair the impact of the Personal Information compromised as a result of the Data Incident for the remainder of the lives of Plaintiffs and Class Members. Doc. 12 ¶ 229. Plaintiffs, individually and on behalf of those similarly situated, asserted claims for Negligence, Negligence *Per Se*, Breach of Implied Contract, Invasion of Privacy, Unjust Enrichment, and Declaratory Judgment. Plaintiffs sought injunctive relief, declaratory relief, monetary damages, and all other relief as authorized in equity or by law.

The Settlement Agreement is the product of extensive arm's-length negotiations before Bennett G. Picker, an experienced class action mediator. Before entering into this Settlement Agreement, the Parties engaged in informal discovery during which Defendant produced information which allowed the parties to evaluate each side's respective position, including information about class size, insurance coverage, and potential defenses.

Under the terms of this Settlement, Defendant will pay $550,000 to establish the non-reversionary Settlement Fund which shall be used to pay benefits to Class Members, settlement

administration and class notice costs, attorneys' fees and expense reimbursement, and service awards as approved by the Court. This Settlement provides an excellent result for the Settlement Class and was obtained against a well-funded Defendant, represented by a large defense firm (Gordon Rees Scully Mansukhani, LLP) that is highly experienced in defending data breach actions. Although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex, with challenges at every stage. Through hard-fought negotiations and the dedicated efforts of Class Counsel and the Class Plaintiffs, the Settlement was achieved for the benefit of the Settlement Class.

Class Counsel zealously prosecuted Plaintiffs' claims, achieving the Settlement Agreement only after an extensive investigation and prolonged arm's-length negotiations. Even after coming to an agreement on the central terms, Class Counsel worked for weeks to finalize the Settlement Agreement and associated exhibits pertaining to notice, preliminary approval, and final approval.

As compensation for the substantial benefit conferred upon the Settlement Class, Class Counsel respectfully move the Court for an award of attorneys' fees of $183,333.33 and out-of-pocket expenses totaling $14,259.34, to be paid from the non-reversionary Settlement Fund. This fee request represents one-third of the total $550,000.00 common fund recovery. This request is contemplated by the Settlement Agreement, and Class Counsel apprised the Court of this request in its Motion for Preliminary Approval (filed on January 24, 2025). S.A. ¶ 88; Doc. 25-1. This amount was also clearly delineated in the Short Form and Long Form Notice to the Settlement Class (attached to the Settlement Agreement as Exhibits 1 and 2, filed asDoc. 25-1). As of May 30, 2025, no class members have objected to the Settlement, the attorneys' fees, expenses, and service awards, and none have opted out. Coates Decl. ¶ 11.

III. CLASS COUNSEL'S ATTORNEYS' FEES REQUEST IS REASONABLE

"[A] litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also State ex rel. Montrie Nursing Home, Inc. v. Creasy*, 449 N.E.2d 763, 766-67 (Ohio 1983) (similar). This is known as the "common fund doctrine" and it is premised upon the principle "that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense." *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1277 (S.D. Ohio 1996). "[A] court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Rule 23(h) of the Federal Rules of Civil Procedure also expressly authorizes a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."

Class Counsel respectfully move for an award of attorneys' fees of $183,333.33 as compensation for their efforts on behalf of the Class in this case to be paid from the non-reversionary Settlement Fund. The fee request represents one-third of the total $550,000.00 common fund recovery. This amount was also clearly delineated in the Short Form and Long Form Notice to the Settlement Class (attached to the Settlement Agreement as Exhibits 1 and 2, filed within Doc. 25-1).

Such an award is reasonable under the circumstances and should be approved by the Court.

A. It is Appropriate to Apply a Percentage of the Common Fund Analysis

The Sixth Circuit only requires "that awards of attorneys' fees in common fund cases be reasonable under the circumstances." *Rawlings*, 9 F.3d at 516. District courts apply a two-part analysis to assess the reasonableness of an attorney fee petition. *O'Donnell v. Fin. Am. Life Ins.*

Co., No. 2:14-cv-1071, 2018 WL 11357092, at *5 (S.D. Ohio Aug. 24, 2018). "First, the court must determine the appropriate method to calculate the fees, using either the percentage of fund or the Lodestar approach." *Id.* "Second, the Court must consider six factors to assess the reasonableness of the fee." *Id.* (citing *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009)). The Court should provide a concise and clear explanation of the reasoning for adopting a particular method and the factors considered to arrive at the fee. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *Rawlings*, 9 F.3d at 516. Class Counsel's request for attorneys' fees in this case is appropriately assessed using the percentage of the fund method with a lodestar crosscheck.

"The percentage of the fund method has a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of Plaintiff' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation." *Rawlings*, 9 F.3d at 516. Furthermore, "the percentage of the fund method more accurately reflects the results achieved." *Id*. Thus, the "percentage of the fund has been the preferred method for common fund cases, where there is a single pool of money and each class member is entitled to a share." *Lott v. Louisville Metro Gov't*, No. 3:19-CV-271, 2023 WL 2562407, at *3 n.4 (W.D. Ky. Mar. 17, 2023) (quotation omitted); *see also Robles v. Comtrak Logistics, Inc.*, No. 15-CV-2228, 2022 WL 17672639, at *10 (W.D. Tenn. Dec. 14, 2022) ("The percentage-of-the-fund method . . . tends to be favored over the lodestar approach by courts in this circuit."); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 789 (N.D. Ohio 2010) ("percentage of the fund has been the preferred method for common fund cases"). That approach is appropriate here, too.

"Typically, the percentage awarded ranges from 20 to 50 percent of the common fund created." *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 910 (S.D. Ohio 2001); *accord Connectivity Sys. Inc. v. Nat'l City Bank*, No. 2:08-CV-1119, 2011 WL 292008, at *12 (S.D. Ohio

Jan. 26, 2011) (explaining same); *Lott*, 2023 WL 2562407, at *3 (explaining same). In courts within the Sixth Circuit and in Ohio state courts, Class Counsel's request for one-third of the common fund is standard. *See* Coates Decl. ¶ 7. The Northern and Southern Districts of Ohio (including this Court) have recently applied the percentage of the fund method to award one-third of the common fund in analogous data breach actions that settled at or shortly after the pleading stage. *See, e.g.*, *Migliaccio v. Parker Hannifin Corp.*, No. 22-cv-00835, Doc. 42 (N.D. Ohio Aug. 2, 2023) (approving $583,333.33 fee award from a $1,750,000 common fund settlement in a data breach action); *Tucker v. Marietta Area Health Care*, No. 2:22-CV-00184, Doc. 38 (S.D. Ohio Dec. 7, 2024) (Morrison, J.) (same); *In re Marshall & Melhorn, LLC Data Breach Litig.*, No. 3:23-CV-01181, Doc. 34 (N.D. Ohio Jan. 13, 2025) (approving $266,666.67 fee award from an $800,000 common fund settlement in a data breach action); *In re Wasserstrom Holdings, Inc. Data Breach Litig.*, No. 2:23-CV-2070, 2025 WL 1563548, at *8-10 (S.D. Ohio Apr. 11, 2025) (approving a $116,655 fee award from a $350,000 common fund settlement in a data breach action).

The Court should not deviate from the standard percentage of common fund award here.

B. The *Ramey* Factors Support the Reasonableness of the Requested Award

The Sixth Circuit has adopted the following factors (often referred to as the *Ramey* factors) to consider when determining what constitutes a reasonable fee in a common fund case: (1) the value of the benefit rendered to the plaintiff class (i.e., the results achieved); (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (3) whether the services were undertaken on a contingent fee basis; (4) the value of the services on an hourly basis (the lodestar cross-check); (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides. *Swigart v. Fifth Third Bank*, No. 1:11-CV-

88, 2014 WL 3447947, at *6 (S.D. Ohio July 11, 2014) (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974)). Each factor supports Class Counsel's fee request here.

1. The Results Achieved in this Litigation

The first *Ramey* factor requires the Court to evaluate the benefit the settlement provides to the Class, a factor often recognized as the most important in assessing a fee award. *Bowling*, 922 F. Supp. at 1280. The Settlement established a $550,000 common fund and offers a range of valuable benefits to Class Members. First, Settlement Class Members may submit claims for Out-of-Pocket Losses up to a maximum of $10,000.00. S.A. ¶ 49. In addition, all Settlement Class Members may submit claims for an estimated Pro Rata Cash Payment of $100.00. S.A. ¶ 52.

Furthermore, the theoretical recovery per Class Member in this case of roughly $20.12 per person ($550,000 for 27,327 Class Members) is consistent with amounts recovered in other similar data breach class action settlements placing it within the range of reasonableness. *See* Coates Decl. ¶ 12 (noting several recent data breach class action settlements also involving Social Security numbers that settled for less or similar value on a per class member basis). This indicates that the $550,000 Settlement Fund is a fair recovery for the Class. *Id*. The substantial value of this Settlement is further bolstered by the fact that Defendant possessed substantial defenses to the merits of the claims at issue. *See In re Wasserstrom Holdings, Inc. Data Breach Litig.*, 2025 WL 1563548, at *7 ("Because they involve new technology and evolving law, the merits of data breach cases like this one are often uncertain."). Defendant has denied liability and has consistently maintained that the Plaintiffs' allegations lack merit. Although Plaintiffs are confident in their claims, Defendant could appeal a favorable judgment which would delay or even nullify any benefit to members of the Class.

Given the risk of proceeding, the value obtained from bringing, prosecuting, persevering, and settling this litigation should not be underestimated. Moreover, in addition to the inherent risk

as to the outcome, achieving a result that resolves this litigation *now* is valuable in that it avoids the certain delay of continuing litigation with the possibility of appeals. Any delay in the process could be of great detriment to the Class. *See Connectivity Sys. Inc.*, 2011 WL 292008, at *4 ("Given the time value of money, a future recovery, even one greater than the proposed Settlement Amount, may be less valuable to the Settlement Class than receiving the benefits of the Settlement Agreement now."). The timely results achieved here support Class Counsel's fee request.

2. The Requested Fee Provides Adequate Incentive to Undertake this Representation for the Benefit of Others

Awarding Class Counsel the requested attorneys' fee amount provides an incentive for qualified and experienced attorneys to undertake this type of speculative and risky litigation. Thus, "class counsel's expenditure of time and money benefitted small claimants who lack the resources to prosecute a case of this nature." *Hainey v. Parrott*, No. 1:02-CV-733, 2007 WL 3308027, at *3 (S.D. Ohio Nov. 6, 2007). Without counsel willing to take the risk of challenging companies like Defendant, Plaintiffs would have been left with no recourse since the cost to pursue their individual claims far exceeded their damages. *Myers v. Mem'l Health Sys. Marietta Mem'l Hosp.*, No. 15-CV-2956, 2022 WL 4079559, at *6 (S.D. Ohio Sept. 6, 2022) ("Society has a stake in rewarding attorneys who achieve a result that the individual class members probably could not obtain on their own.") (citation omitted); *In re Wasserstrom Holdings, Inc. Data Breach Litig.*, 2025 WL 1563548, at *9 ("Without a class action, the Class Members would not have had a strong incentive to pursue recovery because any monetary award would have been severely outweighed by the costs to litigate their case.").

This second factor also supports the requested attorneys' fee award.

3. Class Counsel Undertook this Representation on a Contingent Basis

The third *Ramey* factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 765 (S.D. Ohio 2007). Some courts consider the risk of non-recovery to be the most important factor in the fee determination. *Id*. (citing cases). "[C]ontingency fee arrangements indicate that there is a certain degree of risk in obtaining a recovery." *Whitlock v. FSL Mgmt., LLC*, No. 3:10-cv-00562, 2015 WL 9413142, at *9 (W.D. Ky. Dec. 22, 2015) (quoting *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001)).

Class Counsel agreed to undertake this litigation on a contingent basis. Coates Decl. ¶ 6. Class Counsel took considerable risk here in advancing all costs, while receiving no compensation for the work they have performed. *See* Coates Decl. ¶¶ 6, 8. Moreover, had there been no recovery, Class Counsel would not have been paid a fee or reimbursement for their expenses. *See id.* Therefore, this factor weighs in support of Class Counsel's fee request. *Cf. In re Wasserstrom Holdings, Inc. Data Breach Litig.*, 2025 WL 1563548, at *9 ("Class Counsel assumed a real risk in taking on this case, preparing to invest time, effort, and money with no guarantee of recovery. This factor favors approving the requested fee award.").

4. The Value of the Services Supports the Requested Fee

Performing a cross-check on the percentage method using Class Counsel's lodestar is optional and solely within the Court's discretion. *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 500 (6th Cir. 2011). However, courts may perform a lodestar cross-check to ensure counsel does not receive a windfall. *See In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d at 764. The purpose of the exercise is "not [to] supplant the court's detailed inquiry into the attorneys' skill and efficiency in recovering the settlement" using the percentage of the fund and

Ramey factors, but instead merely to ensure that the fee award is still "roughly aligned with the amount of work the attorneys contributed." *Id*.

"The Court performs a lodestar cross-check by comparing the lodestar multiplier used in this case to lodestar multipliers used in similar cases." *Id.* at 767. "In contrast to employing the lodestar method in full, when using a lodestar cross-check, 'the hours documented by counsel need not be exhaustively scrutinized by the district court.'" *Id*. (quoting *In re WorldCom, Inc. Sec. Litig*., 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005)). The Sixth Circuit has instructed that when "determining fee awards, courts should not 'become green-eyeshade accountants,' but instead must content themselves with 'rough justice.'" *Waters v. Pizza to You, LLC*, No. 3:19-cv-372, 2022 WL 3048376, at *6 (S.D. Ohio Aug. 2, 2022) (quoting *Rembert v. A Plus Home Health Care Agency LLC*, 986 F.3d 613, 618 (6th Cir. 2021) (internal punctuation altered)); *see also In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 306 n.16 (3d Cir. 2005) ("the lodestar cross-check is 'not a full-blown lodestar inquiry' and a court 'should be satisfied with a summary of the hours expended by all counsel at various stages with less detailed breakdown than would be required in a lodestar jurisdiction.'") (quoting Report of the Third Circuit Task Force, Selection of Class Counsel, 208 F.R.D. 340, 423 (2002)).

From December 2023 through the present, Class Counsel and their co-counsel have spent roughly 270.80 hours prosecuting this litigation. Coates Decl. ¶ 8. Class Counsel will necessarily spend substantial additional time from this point to conclusion of the case, time that will not be reflected in this fee application. Class Counsel and their co-counsel's current lodestar is $171,022.18. *Id.* The hourly rates that form the basis of the lodestar calculation reflect the experience of Class Counsel. *Id.* The requested $183,333.33 fee is one-third of the value of the $550,000 Settlement Fund. Thus, when cross-checked, the requested fee is equivalent to the

application of a current multiplier of 1.07 (i.e., $183,333.33/$171,022.18). *Id*. Class Counsel further predicts that by the time this matter is concluded, with significant work to be completed including overseeing the potential distribution of settlement benefits, there likely will be no lodestar multiplier. *Id*. Instead, the final lodestar multiplier will be negative (i.e., less than 1). *Compare id. with Miller v. Baltimore Builders Supply & Millwork, Inc.*, No. 2:21-cv-4867, 2023 WL 6554073, at *2 (S.D. Ohio Sept. 13, 2023) ("a negative multiplier supports the reasonableness of the fees.").

"Because of the inherent risks of litigation, courts in this district award multipliers of 'between approximately 2.0 and 5.0.'" *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, at *8 (S.D. Ohio Feb. 18, 2021) (citing *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 381 (S.D. Ohio 2016)). The modest 1.07 current multiplier falls well within the reasonable range. *See Dillow v. Home Care Network, Inc.*, No. 1:16-cv-612, 2018 WL 4776977, at *7 (S.D. Ohio Oct. 3, 2018) (approving 3.06 multiplier and citing cases with multipliers ranging from 4.3 to 8.5)); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d at 767 (approving 5.9 multiplier); *Myers*, 2022 WL 4079559, at *6 ("Awards of common-fund attorney fees in amounts two to three-times greater than the lodestar have been found reasonable"); *Rudi v. Wexner*, No. 2:20-cv-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("2.75 multiplier falls at the low end of that reasonable range"). Accordingly, Class Counsel's fee request is reasonable based on a percentage of the common fund, and on the discretionary lodestar cross-check.

5. The Complexity of the Litigation Supports the Requested Fee

The fifth *Ramey* factor requires the Court to consider the complexity of the case. Although nearly all class actions involve a high level of risk, expense, and complexity, this is a particularly complex class action in an especially risky area. Historically, data breach cases have faced

substantial hurdles in making it past the pleading stage. *See, e.g., In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010) (approving a data breach settlement in part because "proceeding through the litigation process in this case is unlikely to produce the plaintiffs' desired results"); *Hashemi v. Bosley, Inc.*, No. CV 21-946, 2022 WL 18278431, at *4 (C.D. Cal. Nov. 21, 2022) (noting the challenges in litigating data breach cases meant that "Plaintiffs would have faced prolonged litigation and significant obstacles as trial approached"); *Hammond v. Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases and noting that "every court to [analyze data breach cases] has ultimately dismissed under Rule 12(b)(6) . . . or under Rule 56 following the submission of a motion for summary judgment").

Success at class certification has also been very limited in these cases. *See Gaston v. FabFitFun, Inc.*, No. 2:20-CV-09534, 2021 WL 6496734, at *3 (C.D. Cal. Dec. 9, 2021) ("Historically, data breach cases have experienced minimal success in moving for class certification."); *see also In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 172 (D. Md. 2022) ("I acknowledge that this Court is one of the first to certify Rule 23(b)(3) classes involving individual consumers complaining of a data breach."), *vacated and remanded sub nom. In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023), *reinstated by In re Marriott Int'l Customer Data Sec. Breach Litig.*, 345 F.R.D. 137 (D. Md. 2023), *and rev'd sub nom. Maldini v. Marriott Intl., Inc.*, No. 24-1064, 2025 WL 1560372 (4th Cir. June 3, 2025). Even if this Court were to certify a contested class, the inherent risks attendant to trying a data breach class action would only magnify the difficult legal questions at issue here. Although Plaintiffs believe they would ultimately prevail in such a trial, a verdict for the defense would be entirely possible. To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-

wide monetary judgment remains unforged. Therefore, data breach cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable deal is available.

Because data breach litigation is particularly risky and complex, this factor weighs in favor of approval. While Class Counsel remain confident in Plaintiffs' claims, there is a recognized element of risk in any litigation, particularly complex and expensive data breach class litigation. *See In re Omnivision Tech*s., 559 F. Supp. 2d 1036, 1047 (C.D. Cal. 2008) ("The risk that further litigation might result in plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees").

6. The Professional Skill of Counsel on both sides Supports the Requested Fee

The last *Ramey* factor addresses the professional skill of counsel. Here, Class Counsel has extensive experience representing plaintiffs in data breach class actions. Class Counsel devote a substantial majority of their practices to data breach and privacy litigation and are frequently appointed as class counsel in data privacy cases across the country. *See* Coates Decl. ¶¶ 3-4, 15. This District has repeatedly recognized Mr. Coates's law firm, Markovits, Stock & DeMarco, for its experience in class and other complex litigation. *See, e.g.*, *Compound Prop. Mgmt. LLC v. Build Realty, Inc.*, 343 F.R.D. 378, 402 (S.D. Ohio 2023) ("Plaintiffs proceed with the aid of qualified counsel in the Finney Law Firm, LLC, and Markovits, Stock & DeMarco, LLC, both experienced firms with class-action experience before this Court and elsewhere."); *Shy v. Navistar Int'l Corp.*, No. 3:92-CV-00333, 2022 WL 2125574, at *4 (S.D. Ohio June 13, 2022) ("Class Counsel, the law firm Markovits, Stock & DeMarco, LLC, are qualified and are known within this District for handling complex cases including class action cases such as this one."); *Bechtel v. Fitness Equip. Servs., LLC*, 339 F.R.D. 462, 480 (S.D. Ohio 2021) (similar). Defendant likewise has been

represented by counsel who specialize in defending data breach cases. Class Counsel's professionalism, experience, and skill support the requested fee.

7. The Fee Request is Supported by the Class Representatives

The utilization of the common fund doctrine as a basis for the payment of attorneys' fees and expenses is employed in addition to, and independent of, the contingent fee contract between lawyer and client. Bolstering the foregoing common fund considerations, the Plaintiffs support the payment of fees and expenses as requested in the instant motion. *See* Coates Decl. ¶ 14. Based on the foregoing, a fee of $183,333.33, representing one-third of the $550,000 common fund, is fair and reasonable and falls within the range established by the Sixth Circuit, other federal courts of appeals, and district courts in Ohio.

IV. CLASS COUNSEL'S EXPENSES ARE REASONABLE

"Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket expenses and costs in the prosecution of claims, and in obtaining settlement, including but not limited to expenses incurred in connection with document productions, consulting with and deposing experts, travel and other litigation-related expenses." *Karpik*, 2021 WL 757123, at *9 (quoting *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534-35 (E.D. Mich. 2003)). "[T]he categories of expenses for which Plaintiffs' counsel seek reimbursement are the type routinely charged to hourly fee-paying clients and thus should be reimbursed out of the settlement fund . . . [including] the cost of experts and consultants . . . computerized research; travel and lodging expenses; photocopying cost; filing and witness fees; postage and overnight delivery; and the cost of court reporters and depositions." *New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006), *aff'd*

sub nom. Fidel v. Farley, 534 F.3d 508 (6th Cir. 2008) (approving expenses submitted pursuant to these categories).

Class Counsel has incurred $14,259.34 in costs and expenses. Coates Decl. ¶ 9. As set forth in the Coates Declaration, each expense for which Class Counsel seeks reimbursement was necessary and directly related to this litigation. *Id*. Accordingly, Class Counsel is entitled to this expense reimbursement.

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE

Plaintiffs seek modest service awards of $5,000 each. "Service awards are 'efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class.'" *In re Wasserstrom Holdings, Inc. Data Breach Litig.*, 2025 WL 1563548, at *9 (quoting *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003)). Service awards "are now paid in most class suits and average between $10,000 to $15,000 per class representative." 5 Newberg and Rubenstein on Class Actions § 17:1 (6th ed.).[2]

This Court and several others in Ohio have recently approved service awards equivalent to or greater than the amounts requested here in similar data breach class action settlements that settled before or just after the pleading stage. *See* Coates Decl. ¶ 13; *Tucker v. Marietta Area Healthcare, Inc.*, No. 2:22-cv-00184, Doc. 38 ¶ 7 (S.D. Ohio Dec. 8, 2023) (Morrison, J.) (approving $5,000 service awards in data breach action); *Jackson v. Nationwide Ret. Sols., Inc.*, No. 2:22-cv-3499, 2024 WL 958726, at *7 (S.D. Ohio Mar. 5, 2024) (same); *In re Wasserstrom Holdings, Inc. Data Breach Litig.*, 2025 WL 1563548, at *9 (same). In fact, Ohio federal courts often describe service awards that exceed the $5,000 amount requested in this case as "modest."

[2] Courts use the terms "incentive award" and "service award" interchangeably. 5 Newberg and Rubenstein on Class Actions § 17:2 (6th ed.).

See, e.g., Dillow, 2018 WL 4776977, at *8 (noting that "the Court finds that the proposed service award of $8,500 is modest."); *Swigart*, 2014 WL 3447947, at *7 (approving "modest" $10,000 service awards).

For the foregoing reasons, Service Awards of $5,000.00 to each Plaintiff for their time and effort in this case is appropriate.

VI. CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request this Court approve the payment from the $550,000.00 common fund of (1) $183,333.33 for reasonable attorneys' fees; (2) $14,259.34 for reimbursement of Class Counsel's reasonable expenses; and (3) $5,000 for each Class Representative as a Service Award, as well as any further relief that this Court deems just and equitable.

Dated: June 6, 2025

Respectfully submitted,

/s/ Terence R. Coates

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2025, I served the foregoing upon all parties through their counsel of record by filing it with the Court's electronic-filing system in accordance with Fed. R. Civ. P. 5(b)(2)(E) and S.D. Ohio Civ. R. 5.2(b).

/s/ Terence R. Coates
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