

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JEREMY KRANT, TODD DEATON,
THOMAS NASH, SHANA VACHHANI
and KIMBERLY MILLER, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

Case No. 2:23-cv-02443

UNITEDLEX CORP.,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S UNOPPOSED
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE
AWARDS**

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INTRODUCTION

Class Counsel have dedicated substantial time and expense on a purely contingent basis to deliver a comprehensive settlement that provides meaningful relief to the Settlement Class Members whose personal data was exposed in UnitedLex’s (“ULX”) March 2023 Data Breach. The non-reversionary \$1,300,000 settlement is an excellent result as it compensates the Settlement Class Members for time and money spent responding to the Data Breach, provides *pro-rata* distributions of all remaining cash to participating settlement class members, protects the Settlement Class from future harm through free access to credit monitoring, and requires data security reforms by ULX.

For these results, Class Counsel seek an attorneys’ fee award of one-third (33.33%) of the Settlement Fund equaling \$433,333.00, reimbursement of costs and expenses in the amount of \$28,755.17, and service awards for Class Representatives Adam Behrendt, Jeremy Krant and Kimberly Miller.¹

BACKGROUND

Class Counsel devoted substantial time and resources to investigate, litigate, mediate, and settle this case. This section summarizes Class Counsel’s investigation and litigation of this case, their efforts to bring about the Settlement Agreement, the additional work they have performed since the Court granted preliminary approval of the Settlement Agreement and directed notice to

¹ In support of their motion, Plaintiffs also submit the Declaration of J. Austin Moore on behalf of Interim Class Counsel (“Moore Decl.”) as Exhibit A to Plaintiffs’ Motion; the Declaration of Adam Behrendt in support of his service award (“Behrendt Decl.”) as Exhibit B to Plaintiff’s Motion; the Declaration of Jeremy Krant in support of his service award (“Krant Decl.”) as Exhibit C to Plaintiff’s Motion; the Declaration of Kimberly Miller in support of her service award (“Miller Decl.”) as Exhibit D to Plaintiffs’ Motion.

the Settlement Class, and the work they expect to perform during the Settlement Administration and final approval process.²

I. FACTUAL BACKGROUND

A. Class Counsel Investigates, Litigates, and Achieves a Settlement Agreement

In March 2023, ULX suffered a cyberattack whereby a third-party, criminal actor gained illegal access to files on ULX's server, resulting in unauthorized access to personally identifiable information. *See* ECF No. 1 at ¶¶ 28-36. Upon learning of the Data Breach, counsel spent significant hours interviewing affected class members and investigating and researching potential claims. For example, Class Counsel collectively spoke with over 50 former employees of ULX located across the country to learn about their experiences from the Data Breach. Most of these interviews were conducted by telephone or videoconference. Class Counsel also met in person with several former employees. During the initial calls, videoconferences, and in person meetings, Class Counsel followed a detailed intake questionnaire to learn important information about each victim's experience with the Data Breach. *See* Moore Decl., ¶ 3. After initial interviews, Class Counsel followed up with victims to obtain and review relevant documents. Additional conversations via phone and email were exchanged between former employees and Class Counsel to ensure all relevant information was obtained. Because there was very little public information about the Data Breach, the conversations with victims and the documents reviewed helped Class Counsel determine facts, claims, and guided research for the Complaint. *See id.*, ¶ 4.

After several lawsuits were filed in various jurisdictions, counsel in the cases were able to work cooperatively to file a single lawsuit in this District on behalf of five plaintiffs. *See id.*, ¶ 5. While the parties discussed the prospect of an early resolution, Class Counsel maintained that a

² Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in the Parties' Settlement Agreement. *See* Agreement, ECF No. 21-1.

stay of proceedings would not be appropriate unless ULX agreed to provide extensive discovery detailing the specifics of the Data Breach, including documents and information sufficient to determine the size and scope of the Data Breach, relevant investigative reports, and categories of individuals impacted by the Data Breach, among other information. *See id.*, ¶ 6.

The parties ultimately reached an agreement on this discovery and thereafter requested a joint stay of proceedings pending mediation before the Honorable Diane M. Welsh (Ret.). In advance of the mediation, Class Counsel reviewed the documents and information produced by ULX, prepared a thorough fact timeline and damages analysis, and submitted a detailed mediation statement. *See id.*, ¶ 7. On March 26, 2024, the Parties participated in an all-day mediation before Judge Welsh and were able to execute a binding term sheet setting forth the essential terms of settlement. *See id.* Class Counsel thereafter spent multiple weeks negotiating terms of the Settlement Agreement, evaluating bids from Settlement Administrators, and preparing the Class Notice and Claim Form. *See id.* ¶ 8.

B. Class Counsel Secures Preliminary Approval and Works on Issuance of Notice

On June 6, 2024, Class Counsel filed an Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement Pursuant to Rule 23(e). ECF No. 21. The motion was granted on July 23, 2024, wherein the Court concluded it would likely approve the Settlement as fair, reasonable, and adequate and certify the Settlement Class for purposes of judgment on the proposal, and thus directed notice be issued to the Class. ECF No. 23 ¶¶ 5-7. In addition, for purposes of issuing notice of the Settlement, the Court appointed Norman E. Siegel and J. Austin Moore of Stueve Siegel Hanson LLP, Bryce Bell of Bell Law, LLC, Tyler W. Hudson of Wagstaff & Cartmell, LLP, Manuel S. Hiraldo of Hiraldo P.A., and Rachel Dapeer of Dapeer Law, P.A. as interim class counsel pursuant to Rule 23(g)(3). *Id.* ¶ 4. The Court appointed KCC Class Action

Services, LLC (“KCC”) to serve as the Settlement Administrator and to execute the Notice plan set forth in the Settlement Agreement. *Id.* ¶ 10.

Since that time, Class Counsel has worked with KCC and counsel for ULX to issue Notice to the Settlement Class, which included review and approval of the final notice, review and feedback on the Settlement Website and responses to questions from Class Members and KCC. *See* Moore Decl. ¶ 9. KCC began to mail and e-mail notice to Class Members on August 9, 2024, and the claims process is ongoing. *See id.*, ¶ 10. Class Counsel will continue to work with KCC and Class Members to ensure progress of the Settlement. *See id.*

ARGUMENT

I. THE REQUESTED ATTORNEY’S FEES ARE REASONABLE

“In a certified class action, the court may award reasonable attorney’s fees . . . that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). When dealing with a common fund for the benefit of the class, the Supreme Court has long recognized “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This understanding “prevent[s] . . . inequity” by proportionately spreading payment among those who benefit from others’ labor. *Id.* at 478. Here, the Agreement and Notice to the Class details Class Counsel’s plan to seek up to one-third of the common fund. *See* Agreement, ECF No. 21-1 ¶ 110, Ex. 1 to Agreement at 7 (proposed Class Notice).

Under Fed. R. Civ. P. 23(h) the Court’s role is to assess whether the amount requested is reasonable. As outlined below, the requested fee of one-third of the common fund is reasonable.

A. The Requested Fee Award Is a Reasonable Percentage of the Settlement Fund

There are two methods for determining attorneys’ fees in common fund cases: the percentage-of-the fund method or the lodestar approach. *See Chieftain Royalty Co. v. Enervest*

Energy Institutional Fund XIII-A, L.P., 888 F.3d 455, 458-459 (10th Cir. 2017) (citing *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994)). Courts in the Tenth Circuit prefer the percentage-of-the-fund method for determining attorneys’ fees in common fund cases. *Id.* (“...expressing a preference for the percentage-of-the-fund approach” versus the lodestar method.).³ This approach is favored by courts because “a percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis” *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *5 (D. Colo. Apr. 22, 2015) (quoting *Lucken Family Ltd. P’ship, LLP v. Ultra Res., Inc.*, No. 09-CV-01543-REB-KMT, 2010 WL 5387559, at *2 (D. Colo. Dec. 22, 2010)). Here, Class Counsel’s request of one-third of the \$1.3 million Settlement Fund is reasonable and is supported by the *Johnson* factors, as explained below.

B. Class Counsel’s Fees are Reasonable under *the Johnson* Factors

To analyze whether a fee award is reasonable under Rule 23(b), courts in the Tenth Circuit evaluate the factors laid out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974):

- (1) the time and labor involved;
- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) any prearranged fee—this is helpful but not determinative;

³ See also, e.g., *McFadden et al. v. Sprint et al.*, No. 22-2464-DDC-GEB, 2024 WL 3890182, at *5 (D. Kan. Aug. 21, 2024) (Crabtree, J.); *KPH Healthcare Servs., Inc. v. Mylan, N.V.*, No. 2:20-cv-02065-DDC-TJJ, 2024 WL 3360499, at *7 (D. Kan. July 9, 2024) (using the percentage-of-the-fund method to award a one-third fee) (Crabtree, J.).

- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

Brown v. Phillips Petroleum Co., 838 F.2d 451, 454-55 (10th Cir. 1988) (citing *Johnson*, 488 F.2d 717-19). The weight given to each *Johnson* factor varies from case to case, and all twelve *Johnson* factors may not apply in each case. *See id.* at 456 (finding “rarely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation”); *see also Law v. Nat’l Collegiate Athletic Ass’n*, 4 F. App’x 749, 752 (10th Cir. 2001) (“We have never held that a district court abuses its discretion by failing to specifically address each *Johnson* factor.”) (quoting *Gudenkauf v. Stauffer Comm’ns, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998)). The pertinent *Johnson* factors⁴ analyzed below and listed in order of importance, support the requested one-third fee award.⁵

i. The Results Obtained (Factor 8)

The eighth *Johnson* factor is regarded by the Supreme Court as the “the most critical factor” in the fee award analysis. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, Plaintiff’s counsel obtained an excellent result for the class members, and based on class size, provides a

⁴ Two *Johnson* factors are not applicable in this case: Time limitations imposed by the client or the circumstances (Factor 7); and nature and length of the professional relationship with the client (Factor 11). *See* 5 Newberg on Class Actions § 15:77 n.15 (5th ed. 2015) (relationship with client “has little relevance in the class setting given that the ‘client’ is the class.”); *see also McFadden*, 2024 WL 3890182, at *7 (Factor 7 and Factor 11 were of no or nominal importance in evaluation of the percentage of the fund award.); *KPH Healthcare*, 2024 WL 3360499, at *6 (same).

⁵ In prior orders approving fee awards, this Court has analyzed several *Johnson* factors in tandem, which Counsel have adopted here. *See, e.g., McFadden*, 2024 WL 3890182, at *6; *KPH Healthcare*, 2024 WL 3360499, at *5.

significantly higher percentage based on a per-person basis than other data breach settlements. The result of a non-reversionary \$1.3 million recovery is substantial in the context of this case. Class members are entitled to reimbursement up to \$15,000 in out-of-pocket costs and reimbursement of class members' time spent remedying issues related to the Data Breach up to \$25/hour per hour (up to \$500 per individual). *See* ECF No. 21-1 at 16-17 ¶¶ 71-74. In addition to reimbursement, class members are entitled to a *pro-rata* distribution of all remaining cash to participating settlement class members. *See* ECF No. 21-1 at 17 ¶ 75. Additionally, and paid separate from the settlement fund, participating settlement class members will receive credit monitoring and ULX must make significant changes to its data security. *See id.* at 18, 26 ¶¶ 77, 88-90.

As noted in its preliminary approval motion, the relief made available under this Settlement compares very favorably to the relief made available to victims in other data breach cases, including many where members of Class Counsel served as lead counsel. *See, e.g., In re Equifax Inc.*, No. 1:17-md-2800-TWT, 2020 WL 256132, at *2 (N.D. Ga. Mar. 17, 2020) (describing settlement benefits made available from \$380.5 million fund on behalf of 147 million class members); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (approving \$115 million settlement on behalf of more than 79 million class members); *Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *3 (D. Kan. Feb. 15, 2018) (approving claims made settlement of minimum \$200 payment to class members with tax fraud or up to \$5,000 per individual with documentation of losses on behalf of 2,000 class members); *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 2019 WL 3183651 (D. Md. July 15, 2019) (approving non-reversionary \$3.25 million settlement on behalf of 61,000 class members); *In re Citrix Data Breach Litig.*, No. 19-61350, 2021 WL 2410651 (S.D. Fla. June 11, 2021) (approving non-reversionary settlement fund of \$2.275 million on behalf of class 24,316 members).

ii. Customary Fee (Factor 5) and Awards in Similar Cases (Factor 12)

The fifth *Johnson* factor asks whether the requested fee award is customary. In contingent-fee cases, “a one-third fee is customary.” *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1113-14 (D. Kan. 2018); *see also Nakamura v. Wells Fargo Bank, N.A.*, No. 17-4029-DDC-GEB, 2019 WL 2185081, at *3 (D. Kan. May 21, 2019) (Crabtree, J.) (“33%[] is within the range of customary fees awarded in similar cases”); *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1250 (D. Kan. 2015) (recognizing a one-third fee of the common fund was “well within the range typically awarded in class actions.”); *In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *5 (D. Kan. July 29, 2016) (“The Court agrees with counsel that a one-third fee is customary in contingent-fee cases[.]”). This Court has consistently found one-third is a customary fee in contingent fee cases.

The twelfth *Johnson* factor asks whether the requested fee is similar to other cases. “In this Circuit and District, courts typically award one-third of the fund as payment for attorneys’ fees in complex class action cases[.]” *In re Hill’s Pet Nutrition, Inc. Dog Food Prods. Liab. Litig.*, No. 19-MD-2887-JAR-TJJ (D. Kan. July 30, 2021), ECF No. 132 ¶ 9 (awarding one-third of the settlement fund in attorneys’ fees on a 12.5 million class recovery); *see, e.g., KPH Healthcare Servs.*, 2024 WL 3360499, at *6 (approving a fee award of 1/3 the common fund settlement amount in a \$50 million class recovery); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-md-2785-DDC-TJJ, 2022 WL 2663873, at *4-6 (D. Kan. July 11, 2022) (awarding one-third of the settlement fund in attorneys’ fees on \$264 million class recovery); *In re Syngenta*, 357 F. Supp. 3d at 1110 (awarding one-third of the settlement fund in attorneys’ fees on a \$1.5 billion class recovery). As this Court has recognized, class actions have “become more complex and riskier” since 2015 and that “increased complexity and risk has led to requests for

higher percentages” for attorneys’ fees, resulting in some awards exceeding one-third and reaching 40% of the settlement fund. *Nakamura*, 2019 WL 2185081, at *2-3 (internal quotations and citations omitted).

Additionally, the fee request is consistent with fee awards in data breach settlements from other jurisdictions. *See, e.g., In re Novant Health, Inc.*, No. 1:22-CV-697, 2024 WL 3028443, at *11 (M.D.N.C. June 17, 2024) (approving 1/3 fee award in \$6.6 million data breach settlement); *In re Forefront Data Breach Litig.*, No. 21-CV-887, 2023 WL 6215366, at *8-9 (E.D. Wis. Mar. 22, 2023) (approving 1/3 fee award in \$3.75 million data breach settlement); *Thomsen v. Morley Companies, Inc.*, No. 1:22-CV-10271, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (approving 1/3 fee award in data breach settlement); *In re Citrix*, 2021 WL 2410651, at *4 (approving 33% fee award in data breach settlement); *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 2720818, at *4 (N.D. Ga. June 6, 2019) (awarding 33% of common fund in data breach class action). This class action was taken on a contingency fee basis and involved complex, novel and difficult issues (see Factor 2 discussed below). Thus, the requested fee of one-third is customary and consistent with awards in similar cases.

iii. Contingent Fee Arrangement (Factor 6) and Desirability (Factor 10)

This Court has previously explained that cases taken on a contingency basis are less desirable to other attorneys due to a “substantial risk of no recovery[.]” *In re Syngenta*, 357 F. Supp. 3d. at 1114; *see also Eatinger v. BP America Prod. Co.*, No. 07-cv-01266-EFM-KMH (D. Kan. Sept. 17, 2012), ECF No. 375 at ¶ 35 (“The time, effort, and out-of-pocket investment makes a class action undesirable to most attorneys.”). Class Counsel took this case on a contingency basis which was an inherent risk given the potential outcome of a dismissal. Moore Decl. ¶ 2. Here, the risk and desirability associated with a contingency fee support the requested fee award.

iv. Novelty and Difficulty (Factor 2) Skill (Factor 3) and Experience (Factor 9)

As recognized by other courts, data breach cases are especially risky, expensive, and complex given the unsettled nature of the law. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”); *In re Anthem*, 327 F.R.D. at 315 (noting that “many of the legal issues presented in data-breach cases are novel”) (cleaned up).

The risk involved is highlighted by the fact that historically data breach cases have faced substantial hurdles even in making it past the pleading stage. *See C.C. v. Med-Data Inc.*, No. 21-2301-DDC-GEB, 2022 WL 970862, at *10 (D. Kan. Mar. 31, 2022) (Crabtree, J.) (dismissing data breach claims for lack of Article III injury). Class certification has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Because the “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.” *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015).

To assess skill (Factor 3) and experience (Factor 9), courts analyze whether the litigation “required great skill in a highly specialized field . . . , against highly skilled opposing counsel, and [whether] plaintiffs’ attorneys, . . . demonstrated great skill throughout.” *See In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *5.

As discussed above, data breach litigation involves cutting-edge and unsettled law which qualifies as “highly specialized.” Class Counsel enjoy a strong reputation litigating data breach

cases,⁶ and they were opposed in this case by highly experienced and skilled counsel representing a sophisticated client with meaningful resources. Counsel’s experience allowed them to negotiate a well-informed settlement that compares favorably to other data breach settlements and ensures class members are able to obtain settlement benefits now, rather than face a possible dismissal or other unfavorable results in the future.

v. Time and Labor (Factor 1)

In a common-fund case a lodestar analysis has “minimal importance.” *McFadden*, 2024 WL 3890182, at *7 (citing *Nakamura*, 2019 WL 2185081, at *3). “In fact, a lodestar analysis (or crosscheck) is neither required nor needed to assess reasonableness in a percentage of the fund determination.” *Id.* Although this case settled within a year of filing, significant time was spent to investigate, prepare and file a robust complaint to entice early settlement talks. In addition, counsel worked vigorously to obtain an early resolution. Specifically, Plaintiffs’ counsel thus far have dedicated 841.7 hours to the litigation, resulting in a total lodestar of \$660,538.10. Moore Decl. ¶ 12. Although the legal and financial risks undertaken by Class Counsel in this case could have warranted a multiplier on their lodestar, the fact that the fee request reflects a negative multiplier supports the reasonableness of the request. *See Flerlage v. US Foods, Inc.*, No. 18-2614-DDC-TJJ, 2020 WL 6318662, at *3 (D. Kan. Oct. 28, 2020) (Crabtree, J.).

vi. Preclusion of Other Employment (Factor 4)

A fee is justified where the engagement required extensive time and resources such that it “precluded or reduced [the attorneys’] opportunity for other employment.” *Brown*, 838 F.2d at 455. “This guideline involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that

⁶ See Moore Decl., ECF No. 21-2 ¶¶ 21-22.

once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718. Counsel dedicated significant time and resources to this litigation, often at the expense of other opportunities. Moore Decl. ¶12.

This *Johnson* factor analysis strongly supports and warrants an award of attorneys' fees in the amount of one-third of the 1.3 million Settlement Fund.

II. THE COSTS AND EXPENSES ARE REASONABLE

Rule 23(h) authorizes the reimbursement of counsel for reasonable "non-taxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Courts determine whether the requested costs are reasonable by analyzing whether the costs are the type typically billed by attorneys to paying clients in the marketplace. *See In re Bank of America Wage and Hour Employment Litig.*, Case No. 10-md-2138-JWL, 2013 WL 6670602, at *4 (D. Kan. Dec. 18, 2013) (awarding costs and expenses that are "typically borne by clients in non-contingent fee litigation") (citing *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1257 (10th Cir. 1998)).

The Agreement states the Settlement Fund may reimburse reasonable costs and expenses, and the Class Notice states that amount will not exceed \$30,000. *See* Agreement, ¶ 110; Ex. 1. Plaintiffs' counsel maintained careful records to document incurred expenses, and these records have been reviewed by Counsel. Moore Decl. ¶ 11. Plaintiffs' Counsel incurred \$28,755.17 in reasonable costs and expenses in prosecuting this litigation. *Id.* ¶ 13. All the costs and expenses were directly related and necessary to Counsel's prosecution of the litigation and are typical of complex class actions such as this. *Id.*

Plaintiffs therefore respectfully request that the Court approve fully an award reimbursing Counsel's reasonable costs and expenses in the amount of \$28,755.17.

III. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE MERITED

This Court has recognized that the time and dedication an individual devotes to a lawsuit helping the common benefit of others can warrant an additional service award payment.⁷ This Court has previously found that a service award “perform[s] the legitimate function of encouraging individuals to undertake the frequently onerous responsibility of [serving as the] named class representative.” *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1251 (D. Kan. 2015) (internal quotations and citations omitted). The Court must “examine whether the award to [the class representative] can be justified as payment at a reasonable rate for reasonable time expended on services rendered that were helpful to the litigation and did not duplicate what could be performed less expensively by counsel.” *Chieftain*, 888 F.3d at 468.

The Tenth Circuit “has directed district courts to make incentive awards proportional to each class representative’s contribution.” *McFadden*, 2024 WL 3890182, at *8 (citing *Chieftain*, 888 F.3d at 468). Accordingly, Class Counsel is only seeking service award payments for three of the Class Representatives, Mr. Behrendt, Mr. Krant and Ms. Miller, each of whom spent seven or more hours dedication to this litigation and who supported their work by declaration.

Based on the work described in their declarations, Class Counsel respectfully request a service award for Mr. Behrendt in the amount of \$2,500 for his 33 hours of work,⁸ Mr. Krant in

⁷ See, e.g., *Tommey v. Computer Scis. Corp.*, No. 11-Cv-02214-EFM, 2015 WL 11070580, at *1 (D. Kan. May 27, 2015) (approving \$5,000.00 service award to the named plaintiff); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1271 (D. Kan. 2006) (approving a \$5,000.00 service award to each named plaintiff); *Bruner v. Sprint/United Mgmt. Co.*, Nos. 07-2164-KHV, 08-2133 KHV, 08-2149-KHV, 2009 WL 2058762, at *11 (D. Kan. July 14, 2009) (awarding a \$5,000.00 service award to named plaintiff).

⁸ Exhibit B (Behrendt Decl.) at ¶¶ 4-7.

the amount of \$1,360 for his 13.6 hours of work,⁹ and Ms. Miller in the amount of \$780 for her 7.8 hours of work.¹⁰ For Mr. Behrendt, a \$2,500 award, the maximum allowable under the Settlement Agreement, amounts to \$75.76 per hour. The awards sought by Mr. Krant and Ms. Miller amount to \$100 per hour, which equals the rate most recently approved by this Court. *See McFadden*, 2024 WL 3890182, at *8.

Class Counsel submit that these awards are fair and reasonable considering that these Class Representatives helped uncover the Data Breach, have been active, hands-on participants in this litigation, and have expended significant amount of their own time to benefit the Class. They provided key insights about the Data Breach to aid Class Counsel's investigation, reviewed court filings, and consulted with counsel when the Settlement was being negotiated. Moore Decl. ¶ 14. It is appropriate to compensate them for their time and efforts on behalf of the Class, which has benefited greatly from their representation.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request the Court enter an order awarding Class Counsel attorneys' fees in the amount of one-third the settlement fund in the amount of \$433,333.00, costs and expenses in the amount of \$28,755.17, and service awards for Class Representatives Adam Behrendt in the amount of \$2,500, Jeremy Krant in the amount of \$1,360, and Kimberly Miller in the amount of \$780.

⁹ Exhibit C (Krant Decl.) at ¶¶ 4-7

¹⁰ Exhibit D (Miller Decl.) at ¶¶ 4-7.

Dated: August 30, 2024

Respectfully submitted,

/s/ J. Austin Moore

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, a true and correct copy of the foregoing document was filed electronically through the Court's CM/ECF system, and therefore, will be transmitted to all counsel of record by operation of the Court's CM/ECF system.

By: /s/ J. Austin Moore

Counsel for Plaintiffs and the Class

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JEREMY KRANT, TODD DEATON,
THOMAS NASH, SHANA VACHHANI
and KIMBERLY MILLER, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

Case No. 2:23-cv-02443

UNITEDLEX CORP.,

Defendant.

**DECLARATION OF J. AUSTIN MOORE IN SUPPORT OF UNOPPOSED MOTION FOR
APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

I, J. Austin Moore, hereby declares as follows:

1. I am a partner at Stueve Siegel Hanson LLP (“SSH”) and was appointed by this Court to serve as Plaintiffs’ Co-Lead Interim Class Counsel in the above-captioned matter. *See* ECF No. 23 ¶ 4. I submit this Declaration in support of Class Counsel’s Unopposed Motion for Approval of Attorneys’ Fees, Expenses, and Service Awards. I have personal knowledge of the information set forth in this declaration and, if called upon, I could and would competently testify thereto.

2. Class Counsel has prosecuted this case on a contingent-fee basis with no guarantee of recovery which required counsel to shoulder a high degree of risk given the unsettled nature of the law surrounding data breach cases.

3. Upon learning of the Data Breach, counsel spent significant hours interviewing affected class members and investigating and researching potential claims. For example, Class Counsel collectively spoke with over 50 former employees of ULX located across the country to

learn about their experiences from the Data Breach. Most of these interviews were conducted by telephone or videoconference. Class Counsel also met in person with several former employees. During the initial calls, videoconferences, and in person meetings, Class Counsel followed a detailed intake questionnaire to learn important information about each victim's experience with the Data Breach.

4. After initial interviews, Class Counsel followed up with victims to obtain and review relevant documents. Additional conversations via phone and email were exchanged between former employees and Class Counsel to ensure all relevant information was obtained. Because there was very little public information about the Data Breach, the conversations with victims and the documents reviewed helped Class Counsel determine facts, claims, and guided research for the Complaint.

5. After several lawsuits were filed in various jurisdictions, counsel in the cases were able to work cooperatively to file a single lawsuit in this District on behalf of Jeremy Krant, Todd Deaton, Thomas Nash, Shana Vachhani, and Kimberly Miller.

6. While the parties discussed the prospect of an early resolution, Class Counsel maintained that a stay of proceedings would not be appropriate unless ULX agreed to provide extensive discovery detailing the specifics of the Data Breach, including documents and information sufficient to determine the size and scope of the Data Breach, relevant investigative reports, and categories of individuals impacted by the Data Breach, among other information.

7. On January 11, 2024, the Parties submitted a joint motion to temporarily stay proceedings to participate in a mediation before the Hon. Diane Welsh (Ret.). *See* ECF No. 11. The Court granted the motion on January 12, 2024. *See* ECF No. 12. In advance of the mediation, Class Counsel reviewed the documents and information produced by ULX, prepared a thorough

fact timeline and damages analysis, and submitted a detailed mediation statement. On March 26, 2024, the Parties participated in an all-day mediation before Judge Welsh and were able to execute a binding term sheet setting forth the essential terms of settlement.

8. Following execution of the term sheet, Class Counsel spent multiple weeks negotiating terms of the Settlement Agreement, evaluating bids from Settlement Administrators, and preparing the Class Notice and Claim Form.

9. Since July 23, 2024, when the Court granted Preliminary Approval of the Proposed Class Action Settlement, Class Counsel have worked with KCC and counsel for ULX to issue Notice to the Settlement Class, which included review and approval of the final notice, review and feedback on the Settlement Website and responses to questions from Class Members and KCC.

10. On August 9, 2024 KCC began to mail and email notice to Class Members in accordance with the Court's preliminary approval order and the claims process is ongoing. Class Counsel will continue to work with Class Members and KCC to ensure progress of the Settlement.

11. Class Counsel maintained time and expense records throughout the litigation. My firm collected and reviewed a summary of each firm's time and expense records covering the work performed in this litigation.

12. From inception to August 9, 2024, our firms spent 841.7 hours advancing the litigation, resulting in a total lodestar of \$660,538.10. This number reflects a significant amount of time Counsel spent dedicated to this litigation, often at the expense of other opportunities.

13. Class Counsel has advanced costs and expenses that were reasonably necessary to prosecute this case and are typical of what Counsel would charge a paying client. These expenses total \$28,755.17 in unreimbursed costs, and include fees for court filings, process servers,

mediation, travel to mediation, copy and print, mailings, and online research. Below is a chart detailing each firm's costs and expenses:

Stueve Siegel Hanson LLP Expenses

Cost Category	Amount Paid
Travel Expenses	\$ 3,896.27
Printing & Copying	\$ 119.40
Legal Research	\$ 7,434.42
Court Fees	\$ 402.00
Federal Express	\$ 42.00
Mediation Fees and Costs	\$ 10,367.50
Total	\$ 22,261.59

Bell Law, LLC Expenses

Cost Category	Amount Paid
Travel Expenses	\$ 1,795.46
Mailing & Postage	\$ 15.60
Printing & Copying /Office Supplies	\$ 52.48
Legal Research	\$ 272.48
Court Fees/Process Server Fees	\$ 223.62
Expert Fees	\$ 1,225.00
Federal Express	\$ 30.57
Total	\$ 3,615.21

Wagstaff & Cartmell, LLP Expenses

Cost Category	Amount Paid
Travel Expenses	\$ 1,419.95
Total	\$ 1,419.95

Dapeer Law P.A. Expenses

Cost Category	Amount Paid
Travel Expenses	\$ 988.03
Court Fees/Process Server Fees	\$ 470.39
Total	\$ 1,458.42

14. Class Representatives Adam Behrendt, Jeremy Krant and Kimberly Miller helped uncover the Data Breach, have been active, hands-on participants in this litigation, and have expended a significant amount of their own time to benefit the Class. They provided key insights

about the Data Breach to aid Class Counsel's investigation, reviewed court filings, and consulted with counsel when the Settlement was being negotiated.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on August 30, 2024.

/s/ J. Austin Moore
J. Austin Moore

Counsel for Plaintiffs and the Class

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS
AT KANSAS CITY**

JEREMY KRANT, TODD DEATON,)
THOMAS NASH, SHANA VACHHANI,)
and KIMBERLY MILLER, individually and)
on behalf of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
UNITEDLEX CORP.,)
)
Defendants.)

**DECLARATION OF ADAM BEHRENDT IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR APPROVAL FOR AN AWARD OF ATTORNEYS’ FEES,
EXPENSES, AND SERVICE AWARDS**

I, Adam Behrendt, declare and state as follows:

1. I am a Settlement Class Representative in the above-captioned matter. I have personal knowledge of the facts declared herein and would competently testify to them if called to do so. I submit this Declaration in support of Plaintiffs’ Unopposed Motion for Approval for an Award of Attorneys’ Fees, Expenses, and Service Awards.

2. I currently reside in Lee’s Summit, Missouri and have resided there throughout the duration of this case.

3. From approximately February 2019 through August 2022, I was employed by Defendant as an IT specialist.

4. I actively participated and assisted Class Counsel in all phases of this litigation, including an extensive pre-suit investigation. Over the last fifteen (15) months, I devoted approximately 33 hours in total to the prosecution of this case. Most of this time was spent working with Class Counsel and investigating this matter during the initial investigation phase.

5. I spent approximately 25 hours researching and investigating if a data breach occurred at UnitedLex. This included online research, reaching out to former colleagues, and conversations with my prior boss. This time further included gathering documents, gathering information, and communicating with potential witnesses to assist the attorneys in their investigation of the data breach.

6. Also included in this time is approximately 6 hours meeting or talking with counsel on multiple occasions during the initial investigation and subsequent calls to stay informed of the case status as the litigation proceeded.

7. I also assisted Class Counsel in the preparation and review of the original Jackson County, Missouri Petition to ensure accuracy before filing. I spent approximately 2 hours reviewing and revising the Missouri Petition.

8. I believe I took a risk by attaching my name to this litigation against my former employer. I am concerned that my involvement in this litigation may create difficulty securing employment with future employers. Because this lawsuit is publicly filed, information about my participation in the lawsuit is easily accessible. I believe that future employers may be less likely to hire me if they learn the role that I played in this lawsuit.

9. I took my role as representative of the putative class seriously.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 21, 2024, in Lee's Summit, Missouri.


Adam Behrendt

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS
AT KANSAS CITY**

JEREMY KRANT, TODD DEATON,)
THOMAS NASH, SHANA VACHHANI,)
and KIMBERLY MILLER, individually and)
on behalf of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
UNITEDLEX CORP.,)
)
Defendants.)

**DECLARATION OF JEREMY KRANT IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR APPROVAL FOR AN AWARD OF ATTORNEYS’ FEES,
EXPENSES, AND SERVICE AWARDS**

I, Jeremy Krant, declare and state as follows:

1. I am a Settlement Class Representative in the above-captioned matter. I have personal knowledge of the facts declared herein and would competently testify to them if called to do so. I submit this Declaration in support of Plaintiffs’ Unopposed Motion for Approval for an Award of Attorneys’ Fees, Expenses, and Service Awards.

2. I currently reside in Los Angeles, California and have resided there throughout the duration of this case.

3. From approximately July 2020 through August 2022, I was employed by Defendant as a Vice President of Business Development.

4. I actively participated and assisted Class Counsel in all phases of this litigation, including extensive pre-suit investigation. Over the last fourteen (14) months, I devoted approximately 13.6 hours in total to the prosecution of this case. Most of this time was spent working with Class Counsel and investigating this matter during the initial investigation phase.

5. I spent approximately 8 hours researching and investigating if a data breach occurred at UnitedLex. This included online research, reaching out to former colleagues, and conversations with my prior boss. This time further included gathering documents, gathering information, and communicating with potential witnesses to assist the attorneys in their investigation of the data breach.

6. Also included in this time is approximately 2.6 hours meeting or talking with counsel on multiple occasions during the initial investigation and subsequent calls to stay informed of the case status as the litigation proceeded.

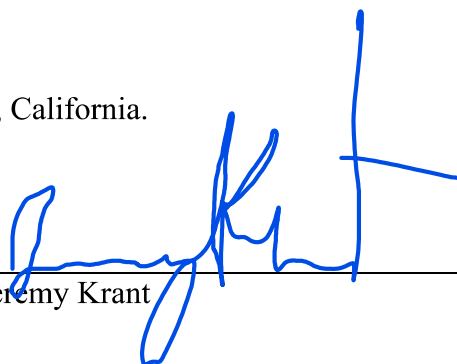
7. I also assisted Class Counsel in the preparation and review of the Kansas Complaint to ensure accuracy before filing. I spent approximately 3 hours reviewing and revising the Kansas Complaint.

8. I believe I took a risk by attaching my name to this litigation against my former employer. I am concerned that my involvement in this litigation may create difficulty securing employment with future employers. Because this lawsuit is publicly filed, information about my participation in the lawsuit is easily accessible. I believe that future employers may be less likely to hire me if they learn the role that I played in this lawsuit.

9. I took my role as representative of the putative class seriously.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 21, 2024, in Los Angeles, California.



Jeremy Krant

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS
AT KANSAS CITY

JEREMY KRANT, TODD DEATON,)
THOMAS NASH, SHANA VACHHANI,)
and KIMBERLY MILLER, individually and)
on behalf of all others similarly situated,)

Plaintiffs,)

v.)

UNITEDLEX CORP.,)

Defendants.)

**DECLARATION OF KIMBERLY MILLER IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR APPROVAL FOR AN AWARD OF ATTORNEYS’ FEES,
EXPENSES, AND SERVICE AWARDS**

I, Kimberly Miller, declare and state as follows:

1. I am a Settlement Class Representative in the above-captioned matter. I have personal knowledge of the facts declared herein and would competently testify to them if called to do so. I submit this Declaration in support of Plaintiffs’ Unopposed Motion for Approval for an Award of Attorneys’ Fees, Expenses, and Service Awards.

2. I currently reside in Jekyll Island, Georgia and have resided there throughout the duration of this case.

3. From approximately August 2020 through May 2022, I was employed by Defendant as a Senior Vice President, Experience Transformation.

4. I actively participated and assisted Class Counsel in all phases of this litigation, including extensive pre-suit investigation. Over the last thirteen (13) months, I devoted approximately 7.8 hours in total to the prosecution of this case. Most of this time was spent working with Class Counsel and investigating this matter during the initial investigation phase.

5. I spent approximately 4 hours researching and investigating if a data breach occurred at UnitedLex. This included online research and reaching out to former colleagues. This time further included gathering documents, gathering information, and communicating with potential witnesses to assist the attorneys in their investigation of the data breach.

6. Also included in this time is approximately 2.8 hours meeting or talking with counsel on multiple occasions during the initial investigation and subsequent calls to stay informed of the case status as the litigation proceeded.

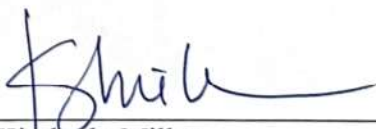
7. I also assisted Class Counsel in the preparation and review of the Kansas Complaint to ensure accuracy before filing. I spent approximately 1 hour reviewing and revising the Kansas Complaint.

8. I believe I took a risk by attaching my name to this litigation against my former employer. I am concerned that my involvement in this litigation may create difficulty securing employment with future employers. Because this lawsuit is publicly filed, information about my participation in the lawsuit is easily accessible. I believe that future employers may be less likely to hire me if they learn the role that I played in this lawsuit.

9. I took my role as representative of the putative class seriously.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 22, 2024, in Jekyll Island, Georgia.



Kimberly Miller