

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

IN RE RETINA GROUP OF WASHINGTON
DATA SECURITY INCIDENT LITIGATION

No. 8:24-cv-00004-LWW

**PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS FEES,
COSTS, EXPENSES, AND SERVICE AWARDS AND
MEMORANDUM OF LAW IN SUPPORT OF**

I. INTRODUCTION

Pursuant to FED. R. CIV. P. 23(h) and in accordance with this Court's Preliminary Approval Order of February 18, 2025 [ECF 36], this motion seeks: (1) an award of attorneys' fees in the amount of 33.33% of the Settlement Fund;¹ (2) Plaintiffs' Counsels reasonable costs and expenses in the amount of \$2,637.20; and (3) a service award for Plaintiffs Mary Vandenbroucke, Katherine Traynham, Kwame Dapaah-Siakwan, Jennifer Boehles, Shalane Vance, Sharon Jenkins, Natalia Girard, David Puckett, and Desiree McCormick ("Plaintiffs") for their service to the Class. As detailed below, these types of requests are routinely approved by district courts in Maryland and within the Fourth Circuit. The fees requested are fair and reasonable in light of the substantial relief obtained for the Settlement Class and to compensate Settlement Class Counsel for the risks taken and resources invested in this case.

¹ Unless otherwise noted, definitions of capitalized terms are found in § 2 of the Settlement Agreement ("S.A."), filed at ECF 35-2.

Settlement Class Counsel and additional Plaintiffs' Counsel have diligently and efficiently prosecuted this case to secure an outstanding settlement for Plaintiffs and the Class without any guarantee of payment for their services. Through Settlement Class Counsel's determination and hard work, Settlement Class Counsel secured a non-reversionary common fund of \$3,600,000.00 (the "Settlement Fund"). The result achieved in this case would not be possible without the significant investments of time and resources by Settlement Class Counsel and additional Plaintiffs' Counsel.

II. FACTUAL AND PROCEDURAL BACKGROUND

In the interest of efficiency, for the factual and procedural background on this case, Plaintiffs refer the Court to and hereby incorporate Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum in Support filed on February 22, 2024 (ECF No. 19) and the Declaration of Tyler J. Bean ("Bean Decl."), ¶¶ 4-10, attached hereto as Exhibit 1.

III. SETTLEMENT CLASS COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES, COSTS, AND EXPENSES IS FAIR AND REASONABLE

A. Awarding Attorneys' Fees on a Percentage-of-Recovery Basis is Appropriate

Rule 23(h) affords the Court authority to "award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement" in class actions. FED. R. CIV. P. 23(h). "There are two main methods for calculating the reasonableness of attorneys' fees — the lodestar method and the percentage-of-recovery method." *McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022). The lodestar method calculates reasonable fees "by multiplying the number of reasonable hours expended times a reasonable rate," *id.* (citation omitted), while the percentage-of-recovery method "considers the portion of the total settlement fund that will go to attorneys' fees." *Id.* (citation omitted). This Court "may choose the method it deems appropriate based on

its judgment and the facts of the case.” *Id.* (citing *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 760 (S.D. W. Va. 2009)).

When, as in this matter, a proposed settlement creates a common fund for the class, this Court has regularly awarded attorneys’ fees using a percentage-of-recovery method with a lodestar crosscheck. *See Donaldson v. Primary Residential Mortg.*, No. ELH-19-1175, 2021 U.S. Dist. LEXIS 101625, at *7 (D. Md. May 28, 2021); *Jernigan v. Protas, Spivok & Collins, LLC*, No. CV ELH- 16-03058, 2017 U.S. Dist. LEXIS 154241, at *8 (D. Md. Sept. 20, 2017); *McDaniels v. Westlake Servs., LLC*, No. CIV.A. ELH-11-1837, 2014 U.S. Dist. LEXIS 16081, at *13 (D. Md. Feb. 7, 2014).

As one court has recently explained after collecting and reviewing class cases:

In sum, there is a clear consensus among the federal and state courts, consistent with Supreme Court precedent, that the award of attorneys’ fees in common fund cases should be based on a percentage of the recovery. This consensus derives from the recognition that the percentage of fund approach is the better-reasoned and more equitable method of determining attorneys’ fees in such cases.

Cox v. Branch Banking & Tr. Co., No. 5:16-cv-10501, 2019 U.S. Dist. LEXIS 4587, at *5 (S.D. W. Va. Jan. 10, 2019).² Employing the percentage-of-recovery method is appropriate here.

² The percentage-of-recovery method is also overwhelmingly preferred by district courts in this Circuit. *See, e.g., Galloway v. Williams*, No. 3:19-cv-470, 2020 U.S. Dist. LEXIS 238950, at *5 (E.D. Va. Dec. 18, 2020) (“Nevertheless, over time, certain customs have developed, both in the Fourth Circuit and across the country; for example, the favored method for calculating attorneys’ fees in common fund cases is the percentage of the fund method.”); *Thomas v. FTS USA, LLC*, No. 3:13-cv-825, 2017 U.S. Dist. LEXIS 44946, at *3 (E.D. Va. Jan. 9, 2017) (“District Courts within this Circuit have also favored the percentage of the fund method.” (citations omitted)), *report and recommendation adopted*, No. 3:13-cv-825, 2017 U.S. Dist. LEXIS 44946 (E.D. Va. Mar. 27, 2017); *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835, 2020 U.S. Dist. LEXIS 14772, at *2 (D. Md. Jan. 28, 2020); *Seaman v. Duke Univ.*, No. 1:15-cv-462, 2019 U.S. Dist. LEXIS 163811, at *2 (M.D.N.C. Sept. 25, 2019); *Krakauer v. Dish Network, L.L.C.*, No. 14-333, 2018 U.S. Dist. LEXIS 203725, at *2 (M.D.N.C. Dec. 3, 2018); *Phillips v. Triad Guar. Inc.*, No. 1:09-cv-71, 2016 U.S. Dist. LEXIS 60950, at *2 (M.D.N.C. May 9, 2016); *Archbold v. Wells Fargo Bank, N.A.*, No. 13-24599, 2015 U.S. Dist. LEXIS 92855, at *5 (S.D. W. Va. July 14, 2015)

The percentage-of-recovery doctrine originates from the equitable principles of quantum meruit and unjust enrichment and aims to shift the expense of litigation from Plaintiffs, who obtained the fund’s benefits, to the absent class members, who benefit from the fund but likely contributed little, or nothing, to the process. *Brundle ex rel. Constellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 785 (4th Cir. 2019), *as amended* (Mar. 22, 2019). As the Fourth Circuit has explained, awarding fees as a percentage of the common fund “hold[s] the beneficiaries of a judgment or settlement responsible for compensating the counsel who obtained the judgment or settlement for them.” *Id.* at 786.

More generally, the Fourth Circuit has expressly recognized the importance and purpose of a contingency fee approach in a different but applicable context, noting that contingency fees:

transfer a significant portion of the risk of loss to the attorneys taking a case. Access to the courts would be difficult to achieve without compensating attorneys for that risk. ... In addition, it may be necessary to provide a greater return than an hourly fee offers to induce lawyers to take on representation for which they might never be paid, and it makes sense to arrange these fees as a percentage of any recovery.

* * *

Conversely, an attorney compensated on a contingency basis has a strong economic motivation to achieve results for his client, precisely because of the risk accepted. As the Seventh Circuit has explained, “[t]he contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains.” *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986). A contingency fee “automatically handles compensation for the uncertainty of litigation” because it “rewards exceptional success, and penalizes failure.” *Id.* at 326.

In re Abrams & Abrams, P.A., 605 F.3d 238, 246 (4th Cir. 2010). In addition, as the leading class

(“[T]he Court concludes that there is a clear consensus . . . that the award of attorneys’ fees in common fund cases should be based on a percentage of the recovery.”).

action treatise explains:

[T]he common fund fee award, as a contingent fee award, should often (if not always) be higher than counsel's lodestar itself. This is true because the fee reflects both the provision of legal services and the loan to the class of the attorney's resources and services, at the risk of recovering nothing. Given the higher risk of not getting paid, and the loan of the attorney's resources and services to the class, there must be some higher reward when a payday arrives.

5 *Newberg on Class Actions* § 15:73 (5th ed.).

As the appropriate amount of attorneys' fees are easily ascertained using the percentage-of-recovery method, it conforms with the Supreme Court's mandate that "request for attorney's fees not result in a second major litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The percentage method also aligns the interests of Settlement Class Counsel and the class members because it both motivates Settlement Class Counsel to generate the largest possible recovery for the class and rewards efficient litigation, removing any incentive to run up unnecessary attorney hours. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 (D. Md. 2013) ("An attractive aspect of the 'percentage of recovery' method is its results-driven nature which 'ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys.'") (quoting *Dominion Res. Servs.*, 601 F. Supp. 2d, at 759.³)

³ *See also Johnson v. Metro-Goldwyn-Mayer Studios, Inc.*, No. C17-541RSM, 2018 U.S. Dist. LEXIS 177824, at *11 (W.D. Wash. 2018) ("the percentage-of-recovery method . . . align[s] the interests of the class and class counsel [motivating counsel] to obtain the largest tangible benefit possible, to provide for the best possible notice to the class, and to assure that the claims process is not overly burdensome"); *In re Anthem, Inc. Data Breach Litigation*, No. 15-MD-02617-LHK, 2018 U.S. Dist. LEXIS 140137, at *5 (N.D. Cal. 2018) ("By tying the award to the recovery of the Class, Class Counsel's interests are aligned with the Class, and Class Counsel are incentivized to achieve the best possible result."); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014) ("The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients, rather than on the number of motions they file, documents they review, or hours they work."); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268–69 (D.C. Cir. 1993) ("using the lodestar approach in common fund cases encourages

By comparison, the lodestar method lacks these incentives, is time consuming, and requires lawyers to submit voluminous records that courts must then review and scrutinize in detail. Indeed, the lodestar method is used in only a fraction of class-action cases, often where the settlement provides injunctive relief that cannot be reliably calculated. *See, e.g.*, Theodore Eisenberg, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017) (finding that the lodestar method used only 6.29% of the time from 2009 to 2013, down from 13.6% from 1993 to 2002 and 9.6% from 2003 to 2008); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, 832 (2010) (finding that the lodestar method used in only 12% of settlements).

Accordingly, the Court should use the preferred percentage-of-recovery method here.

B. Awarding 33.33% of the Settlement Fund Is Reasonable

Pursuant to the Parties' Settlement Agreement, Defendant agreed not to oppose Settlement Class Counsel's request for an award for attorneys' fees of up to one third (33.33%) of the \$3.6 million Settlement Consideration, *i.e.*, \$1,200,000. S.A. at ¶ 69.

When considering the reasonableness of a percentage-of-recovery attorneys' fee award, district courts in the Fourth Circuit have analyzed the following seven factors:

- (1) the results obtained for the class;
- (2) the quality, skill, and efficiency of the attorneys involved;
- (3) the risk of nonpayment;
- (4) objections by members of the class to the settlement terms and/or fees requested by counsel;
- (5) awards in similar cases;
- (6) the complexity and duration of the case; and
- (7) public policy[.]

Singleton, 976 F. Supp. 2d at 682. Importantly, "fee award reasonableness factors need not be applied in a formulaic way because each case is different, and in certain cases, one factor may

significant elements of inefficiency," while "if a percentage-of-the-fund calculation controls, inefficiently expended hours only serve to reduce the per hour compensation of the attorney expending them").

outweigh the rest.” *Id.* (citing *In re AT & T Corp.*, 455 F.3d 160, 166 (3d Cir. 2006) (internal quotation marks omitted)). The above factors favor approval of Settlement Class Counsel’s request here.

1. Results obtained for the Class

In the Fourth Circuit, “the most critical factor in calculating a reasonable fee award is the degree of success obtained.” *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) (citation and internal quotation omitted).

In this case, Settlement Class Counsel has secured a non-reversionary Settlement Fund of \$3.6 million, which includes both *pro rata* payments and reimbursement of documented losses, entitles Settlement Class Members to 24 months of 3-bureau credit monitoring, and ensures that RGW will implement enhanced data security measures that will protect Settlement Class Members’ personal information that is still in its possession. S.A. § 5. The settlement secured by Settlement Class Counsel is in line with, or more favorable than, a number of recent settlements in the data breach context. Indeed, the Settlement Fund divided across the approximately 450,000 Settlement Class Members amounts to approximately \$8.00 per Settlement Class Member. This exceeds the cash value in other exemplary data breach settlements approved by courts around the country:

Case Title	Settlement Amount	No. of Class Members	\$ Per Class Member
<i>Winstead v. ComplyRight, Inc.</i> , No. 1:18-CV-4990 (N.D. Ill.)	\$3.025M	665,689	\$4.54
<i>Madkin v. Automation Personnel Services, Inc.</i> , No. 2:21-cv-1177 (N.D. Ala.)	1.37M	299,253	\$4.59
<i>Bingaman, et al. v. Avem Health Partners Inc.</i> , Case No. CIV23-130-SLP (W.D. Ok.)	\$1.45M	271,303	\$5.34
<i>Kesner, et al. v. UMass Memorial Health Care, Inc.</i> , No. 2185-cv-01210 (Mass. Supp. Ct.)	\$1.25M	209,047	\$5.74

<i>In re C.R. England, Inc. Data Breach Litigation</i> , No. 2:22-cv-374-DAK (D. Utah)	\$1.4M	224,572	\$6.23
<i>Reynolds v. Marymount Manhattan College</i> , No. 1:22-cv-06846 (S.D.N.Y.)	\$1.3M	191,752	\$6.78
<i>Kondo et al. v. Creative Services, Inc.</i> , Case No. 1:22-cv-10438-DJC (D. Mass.)	\$1.2M	164,000	\$7.27

This factor, therefore, strongly favors approval of Settlement Class Counsel’s requested fee.

2. *Quality, skills, and efficiency of Settlement Class Counsel*

As set forth in Settlement Class Counsels’ biographies, Settlement Class Counsel have years of experience in consumer, data breach, and class action law, and used their skills to obtain the result for the Class here. *See* Bean Decl. at Ex. A; Declaration of Ben Barnow (“Barnow Decl.”), attached hereto as Exhibit 2, at Ex. A; Declaration of Gary M. Klinger (“Klinger Decl.”), attached hereto as Exhibit 3, at Ex. A. Settlement Class Counsel’s collective history provided them with sufficient leverage to negotiate an excellent result for the Settlement Class.

3. *Risk of nonpayment*

From the outset, Settlement Class Counsel litigated this matter on a wholly contingent basis, risking their own time and resources in litigation in a relatively new area of law. Allowing a reasonable contingency fee is favored because “very few lawyers c[an] take on the representation of a class client given the investment of substantial time, effort and money, especially in light of the risks of recovering nothing.” *Behrens v. Wometco Enters.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988). In addition to the risks inherent in any class action, courts have recognized that “risks relevant to assessing an atypically large or small fee request are the distinctive risks specific to a particular litigation.” *Good v. W. Virginia-Am. Water Co.*, No. 14-1374, 2017 U.S. Dist. LEXIS 72715, at *25 (S.D. W.Va. July 6, 2017). If this matter had proceeded in litigation, Plaintiffs would have borne considerable additional risks. These include the uncertainty associated with contested

class certification and the possibility of an interlocutory appeal pursuant to FED. R. CIV. P. 23(f), dispositive motions, and potential appeals, not to mention trial. This factor favors awarding 33.33% of the Settlement Fund as attorneys' fees.

4. *Objections from Class members*

To date, *no* Class member has objected to the Settlement or Settlement Class Counsel's requested fee, which was clearly noted in the Notice sent to Class members. *See* Bean Decl. ¶ 23. "Such a lack of opposition . . . strongly supports a finding of adequacy, for '[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court.'" *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975); *see also Berry v. Schulman*, 807 F.3d 600, 618-19 (4th Cir. 2015) (affirming fee in part because of lack of objections).

5. *Awards in similar cases*

"[E]mpirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in the class actions average around one-third of the recovery." 4 *Newberg on Class Actions* § 14:6 (4th ed.). In fact, one decision that reviewed 289 class actions settlements found an "average attorney's fee percentage [of] 31.31%" and a median value "that turns out to be one-third." *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001).⁴ "A request for one-third of a settlement fund is common in this circuit and generally considered reasonable." *Starr v. Credible Behavioral Health, Inc.*, No. 20-2986 PJM, 2021 U.S. Dist. LEXIS 99783, at *15 (D. Md. May 25, 2021); *see also Wegner v. Carahsoft Tech. Corp.*, No.

⁴ *See also Thomas*, 2017 U.S. Dist. LEXIS 44946, at *5 ("Yet another study finds that courts consistently award between 30% and 33% of the common fund.") (*citing* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. of Empirical Legal Studies, 27, 31, 33 (2004)).

PJM 20-00305, 2022 U.S. Dist. LEXIS 18847, at *13 (D. Md. Feb. 1, 2022) (same); *Boger v. Citrix Sys., Inc.*, Civil Action No. 19-cv-01234-LKG, 2023 U.S. Dist. LEXIS 96379, at *32 (D. Md. June 1, 2023) (same). Consistent with these precedents, Settlement Class Counsel’s request for 33.33% percentage-of-recovery award is reasonable and should be approved.

6. *Case complexity and duration*

Though this case settled at a relatively early stage, it did so only after extensive briefing by the Parties on Defendant’s Motion to Dismiss, substantive informal discussion, and a vigorous, arms-length negotiation. This factor, too, favors approval of Settlement Class Counsel’s fee request.

7. *Public policy*

As one court in this District has observed, “public policy favors the requested award [where risk of nonpayment exists] because the relevant public policy considerations involve the balancing of the policy goals of encouraging counsel to pursue meritorious . . . litigation.” *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 482 (D. Md. 2014) (citation and internal quotations omitted). The same considerations apply here, as demonstrated by Settlement Class Counsel’s result for the Class.

C. **A Lodestar Cross-Check Confirms the Reasonableness of Settlement Class Counsel’s Request**

Although a lodestar cross-check is not required to determine the fairness of a fee when the percentage-of-recovery method is used, see *Manuel v. Wells Fargo Bank, Nat’l Ass’n*, No. 3:14-cv-238, 2016 U.S. Dist. LEXIS 33708, at *5 (E.D. Va. Mar. 15, 2016) (“The Court’s preference for the percentage method, in addition to the absence of any objection to the fee award, obviates the need for an exhaustive review of each of the twelve lodestar factors.”),⁵ courts that do

⁵ The 12 factors from *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216, 226 n. 28 (4th Cir. 1978), largely mirror those considered when assessing the reasonableness of a fee calculated using the percentage-

conduct them “have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys’ fee.” *Singleton*, 976 F. Supp. 2d at 689 (awarding multiplier of 3); *see also Decohen*, 299 F.R.D. at 483 (awarding multiplier of 3.9); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (awarding “a fee of \$130,647,868.95, which . . . represents a 2.57 multiplier[.]”).

Plaintiffs’ Counsel have incurred \$439,568.20 in fees to obtain the recovery here. Bean Decl. at ¶¶ 21-22. This results in a fee multiplier of 2.7, which is justified given the contingent nature of the case, the significant risk incurred, and the result achieved. *See McDonnell*, 134 F.3d at 641 (finding that the “most critical factor in calculating a reasonable fee award is the degree of success obtained”) (internal quotation marks omitted). This multiplier favorably aligns with comparable figures approved as cross checks in federal courts throughout the country and in this Circuit. *See, e.g., Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 U.S. Dist. LEXIS 193107, at *14 (M.D.N.C. Sep. 29, 2016) (approving 3.69 multiplier and noting that “multipliers falling between 2 and 4.5 demonstrate a reasonable attorney’s fee”); *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 U.S. Dist. LEXIS 14772, at *20 (D. Md. Jan. 28, 2020) (holding a 2.45 multiplier is “well within the range routinely approved in this Circuit”); *In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (finding that requested fee amount with a lodestar multiplier of 7.89 was not unreasonable “[g]iven the outstanding settlement in this case and the noticeable skill of counsel”); *In re Charter Comm’n, Inc., Sec. Litig.*, No. MDL 1506,

of-recovery method and include the following: (1) time and labor expended; (2) novelty and difficulty of the questions raised; (3) skill required to properly perform the legal services; (4) attorney's opportunity costs in pressing the litigation; (5) customary fee for like work; (6) attorney’s expectations at the outset of litigation; (7) time limitations imposed by the client or circumstances; (8) amount in controversy and results obtained; (9) experience, reputation, and ability of the attorney; (10) undesirability of the case within the legal community in which the suit arose; (11) nature and length of the professional relationship between the attorney and client; (12) fee awards in similar cases.

4:02-cv-1186-CAS, 2005 U.S. Dist. LEXIS 14772, at *18 (E.D. Mo. June 20, 2005) (approving lodestar multiplier of 5.61); *In re Excel Energy, Inc., Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 989 (D. Minn. 2005) (approving a multiplier of 4.7 in a case that only involved document review, and was resolved with no depositions after two days of mediation); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding lodestar multiplier of 6.96 even though the parties engaged mostly in informal discovery and took no depositions); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (describing multiplier of 4.65 as “modest” in a case in which plaintiffs conducted no depositions, only interviews, and confirmatory discovery consisted of tens of thousands of pages of documents); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding 3.97 multiplier, that multipliers between 3 and 4.5 were common); *In re WorldCom, Inc., Sec. Litig.*, 388 F. Supp. 2d 319, 353 (S.D.N.Y. 2005) (awarding multiplier of 4).

Given the significant benefit conferred to Class members, Settlement Class Counsel’s requested fees are reasonable and thus should be awarded as requested.

IV. SETTLEMENT CLASS COUNSEL’S COSTS AND EXPENSES ARE REASONABLE AND SHOULD BE REIMBURSED

Settlement Class Counsel also seek a reimbursement of \$2,637.20 for the reasonable costs and expenses they incurred in pursuing this litigation for Plaintiffs and the Class. *See* Bean Decl. ¶¶ 24-26. These unreimbursed litigation expenses include costs associated research, travel and filing fees. *Id.* These costs also reflect typical expenses of the type ordinarily passed on to fee-paying clients in a general legal practice and are also typically recoverable in a specialized complex class action practice as they are necessary and reasonable to prosecuting a class action. *Id.* Settlement Class Counsel’s expenses for which reimbursement is sought, and which Defendant has agreed to pay, were calculated from receipts, expense vouchers, check records and other documents

maintained by Settlement Class Counsel and additional Plaintiffs' counsel. Thus, reimbursement of these reasonable and necessary litigation costs and expenses is warranted.

V. PLAINTIFFS' REQUEST FOR A SERVICE AWARD IS REASONABLE

Plaintiffs request an award of \$18,000 in total, to be divided equally between the nine Plaintiffs, for their service to the Class. This amount, which is only one-half of one percent of the Settlement Fund, is reasonable as the recovery here could not have been obtained but for their willingness to step forward and publicly litigate this case, knowing that their own recovery would be subordinated to that of the Class. Plaintiffs took active roles in the litigation, including reviewing pleadings, staying in regular contact with Settlement Class Counsel about status of the case, remaining informed about settlement discussions, being available for consultation during the negotiation period, and reviewing and approving the settlement agreement. Bean Decl. at ¶¶ 39-42. They also understood their role as class representative and both supervised and responded to Settlement Class Counsel throughout the litigation. *Id.* Further, Defendant does not oppose this award and no Class member has objected to it as of the date of this filing.

Service awards in this range are reasonable and this Court, as well as others in this Circuit, have approved them in the past. *See, e.g., Boger v. Citrix Sys., Inc.*, Civil Action No. 19-cv-01234-LKG, 2023 U.S. Dist. LEXIS 96379, *28 (D. Md. June 1, 2023) (approving \$10,000 service award for class representative); *Donaldson*, 2021 U.S. Dist. LEXIS 101625, *24 (collecting unpublished cases from this Court with service awards including \$7,500 and \$6,000 per representative); *In re Tyson Foods, Inc.*, No. CIV.A. RDB-08-1982, 2010 U.S. Dist. LEXIS 48518, at *4 (D. Md. May 11, 2010) (approving aggregate service awards of \$20,000); *see also Chrismon v. Meadow Greens Pizza*, No. 5:19-cv-155-BO, 2020 U.S. Dist. LEXIS 119873,*14 (E.D.N.C. July 7, 2020) (approving \$10,000 service award); *Robinson v. Carolina First Bank NA*, No. 7:18-cv-02927-JDA,

2019 U.S. Dist. LEXIS 26450, *5 (D.S.C. Feb. 14, 2019) (“The Service Award in the amount of \$15,000 is well within the range of reasonable incentive awards approved by courts.”); *McCurley v. Flowers Foods, Inc.*, Civil Action No. 5:16-cv-00194-JMC, 2018 U.S. Dist. LEXIS 226234, *22 (D.S.C. Sep. 10, 2018) (finding \$25,000 “well within the range of reasonable incentive awards approved” and collecting cases).

In fact, the requested service award here is well *below* the national average—an empirical study published in 2006 suggests that the average award per class representative is about \$16,000. 4 *Newberg on Class Actions* § 11:38 (4th ed.). Because Plaintiffs’ participation and willingness to stand up for the class was instrumental to their recovery, an award of \$18,000 to be divided equally among the nine Plaintiffs is reasonable. Plaintiffs agreed to serve the Class by: (1) subordinating their own self-interest and resisting any pressure to sell their role as Plaintiffs for a larger individual settlement; (2) devoting time and work to the case; and (3) allowing a class settlement and notice necessary to satisfy Rule 23. The requested Service Awards are therefore well-deserved.

VI. CONCLUSION

For the above reasons, Plaintiffs respectfully request that the Court enter an Order awarding \$1,200,000 (33.33% of the Settlement Fund) to Settlement Class Counsel in attorneys’ fees, reimbursing litigation expenses of \$2,637.20, and awarding \$2,000 to each Named Plaintiff (for a combined total of \$18,000 for all class representatives) for their service to the Class. Plaintiffs will submit a proposed Order granting this request as part of the proposed Order and Final Judgment contemporaneously with their motion for final approval of the Settlement.

Dated: May 9, 2025

Respectfully submitted,

/s/ Thomas A. Pacheco

Thomas A. Pacheco (Bar No. 1712140091)

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, LLC**

900 W Morgan Street

Raleigh, NC 27603

T: (212) 946-9305

tpacheco@milberg.com

Ben Barnow (*pro hac vice*)

Anthony L. Parkhill*

BARNOW AND ASSOCIATES, P.C.

205 West Randolph Street, Suite 1630

Chicago, IL 60606

Tel: (312) 621-2000

Fax: (312) 641-5504

b.barnow@barnowlaw.com

aparkhill@barnowlaw.com

Gary M. Klinger (*pro hac vice*)

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN PLLC

227 W. Monroe Street, Suite 2100

Chicago, IL 60606

Tel: (866) 252-0878

Fax: (865) 522-0049

gklinger@milberg.com

Tyler J. Bean (*pro hac vice*)

SIRI & GLIMSTAD LLP

745 Fifth Avenue, Suite 500

New York, NY 10151

Tel: (212) 532-1091

tbean@sirillp.com

Settlement Class Counsel

CERTIFICATE OF SERVICE

The undersigned certifies that he filed the foregoing document and its exhibits using the Court's CM/ECF system, which shall provide notice of same to all counsel of record.

Dated: May 9, 2025

/s/ Thomas A. Pacheco
Thomas A. Pacheco