

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE PEOPLES BANK, AS SUCCESSOR  
TO LIMESTONE BANK, DATA BREACH  
LITIGATION

Case No. 2:23-cv-03043

Judge Michael H. Watson

This Document Relates to: All Actions.

Magistrate Judge Elizabeth P. Deavers

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

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Latasha Brooks, Michael Brooks, Earl Blankenship, Stephen McDonald, and Cheryl Barefoot (collectively "Plaintiffs"), respectfully move this Court for an order awarding (1) \$260,833.33 for attorneys' fees (one-third of the \$782,500 non-reversionary common fund); (2) \$4,908.26 for reimbursement of costs and expenses incurred in the litigation; and (3) service awards of \$2,500 for each Class Representative.

The legal and factual bases supporting this Motion are fully set forth in the following Memorandum in Support, and the Declaration of Terence R. Coates in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards ("Coates Decl.") (attached as **Exhibit 1**) and the exhibits thereto, as well as Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement Agreement (ECF No. 35), 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**

### **I. INTRODUCTION**

Pursuant to the Settlement Agreement (ECF No. 35-1)<sup>1</sup> preliminarily approved by the Court on April 14, 2025 (ECF No. 36), Plaintiffs respectfully move for an order awarding: (1) \$260,833.33 for attorneys' fees (one-third of the \$782,500 non-reversionary common fund); (2) \$4,908.26 for reimbursement of Class Counsel's costs and expenses; and (3) Service Awards of \$2,500 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 \$2,500 Service Awards for each Plaintiff is an amount that is frequently approved by Courts within this District.

### **II. BACKGROUND**

Plaintiffs and the proposed Class have reached a nationwide class action settlement with Defendant Peoples Bank, as successor to Limestone Bank, Inc., ("Defendant") for a \$782,500 non-reversionary common fund to resolve all claims arising from the unauthorized access to Defendant's network that occurred between November 21, 2022, and March 23, 2023 (the "Security Incident"). Approximately 47,590 individuals were notified by Defendant that their full names, address, Social Security number, and financial account number (collectively, "Personal

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<sup>1</sup> All capitalized terms not defined herein have the same meaning as in the Settlement Agreement.

Information”) may have been implicated in the Security Incident. *See id.*; *see also* Consolidated Amended Class Action Complaint (“CAC”), ECF No. 21, ¶ 1.

This is a class action brought by Plaintiffs on behalf of themselves and a nationwide class, as alleged in the CAC, of “all persons Defendant identified as being among those individuals impacted by the Security Incident, including all who were sent a notice of the Security Incident.” CAC, ¶ 153; S.A., ¶ I. The class action lawsuit concerns a cyberattack experienced by Limestone Bank between November 21, 2022, and March 23, 2023, in which it was determined that an unauthorized third party may have gained access to certain Limestone Bank files containing Private Information. Peoples Bank acquired Limestone Bank in April 2023. *See* S.A.; CAC, ¶ 1. Plaintiffs and Class Members include Defendant’s current and former clients. CAC, ¶ 156. In response to the Security Incident, Defendant sent a notice letter on or around September 15, 2023 (“Notice Letter”) to each individual who may have impacted and for whom Defendant could locate addresses, providing a description of the type of Private Information involved and explaining the Security Incident. *Id.*, ¶¶ 7-11, 84, 97, 112, 129, 141. Each Plaintiff received a Notice Letter dated September 15, 2023, from Defendant informing them about the Security Incident and that their Private Information was included in the Security Incident. *Id.*

In response, first, on September 21, 2023, Plaintiff Latasha Brooks and Michael Brooks initiated *In re Peoples Bank, as a Successor to Limestone Bank, Data Breach Litigation*, No. 2:23-CV-03043 (S.D. Ohio). In the week that followed, starting on September 22, 2023, Plaintiff Earl Blankenship, Stephen McDonald, and Cheryl Barefoot filed individual actions against the Defendant: *Blankenship v. Peoples Bank*, No. 1:23-CV-00603; *McDonald v. Peoples Bank*, No. 2:23-CV-03084; *Barefoot v. Peoples Bank*, No. 2:23-CV-03161. On December 14, 2023, the Court entered an order consolidating the related actions. ECF No. 15.

On January 19, 2024, Plaintiffs filed the CAC, asserting claims for Negligence (Count I), Negligence *Per Se* (Count II), Breach of Implied Contract (Count III), Breach of Fiduciary Duty (Count IV), and Unjust Enrichment (Count V). *See CAC passim*. The Court appointed Terence R. Coates of Markovits, Stock & DeMarco, LLC and Philip J. Krzeski of Chestnut Cambronne PA on February 26, 2024. ECF No. 23. Defendant filed its Motion to Dismiss (“MTD”) on February 20, 2024. ECF No. 22. The Parties concluded briefing on April 1, 2024, and the Court granted and denied in part Defendant’s MTD – allowing Plaintiffs’ negligence and breach of implied contract claims to proceed, dismissing the negligence per se claim with prejudice, and breach of fiduciary duty and unjust enrichment claims without prejudice. ECF No. 27.

Following the Court’s Opinion, the Parties stayed the case and pursued mediation with former United States Magistrate Judge David C. Jones (“Judge Jones”) on September 9, 2024. Before mediation, the Parties exchanged informal discovery, which allowed the parties to evaluate each side’s respective position, including class size, number of impacted individuals with Social Security numbers, insurance coverage, and Plaintiffs’ alleged damages. The Parties were unable to resolve the case at mediation, however, they ultimately reached a settlement in principle following a mediator’s proposal from Judge Jones for a non-reversionary \$782,500 common fund settlement on behalf of 47,590 individuals. The Settlement Agreement will resolve all claims related to the Security Incident for the Class. The Settlement Agreement is the product of extensive arm’s-length negotiations before Judge Jones, an experienced data privacy class action mediator.

Under the terms of this Settlement, Defendant will pay \$782,500 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 expenses, and Service Awards as approved by the Court. This Settlement provides a fair result for the Settlement Class and was

obtained against a well-funded Defendant, represented by a large defense firm (BakerHostetler 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 Representatives, the Settlement was achieved for the benefit of the Settlement Class.

Class Counsel zealously prosecuted Plaintiffs' claims, achieving the Settlement Agreement 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 benefits conferred upon the Settlement Class, Class Counsel respectfully move the Court for an award of attorneys' fees of \$260,833.33 and out-of-pocket expenses totaling \$4,908.26, to be paid from the non-reversionary Settlement Fund. This fee request represents one-third (1/3) of the total \$782,500 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. ¶ 17; ECF No. 35-1. This amount was also clearly delineated in the Long Form and Short Form Notice to the Settlement Class (attached to the Settlement Agreement as Exhibits B and D, filed as ECF No. 35-1). As of June 27, 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 \$260,833.33 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 (1/3) of the total \$782,500 common fund recovery. This amount was also clearly delineated in the Long Form and Short Form Notice to the Settlement Class (attached to the Settlement Agreement as Exhibits B and D, filed as ECF No. 35-1).

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-RGJ, 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 the Sixth Circuit and State of Ohio, Class Counsel’s request for one-third (1/3) of the common fund is standard. *See* Coates Decl. ¶ 7. The Southern and Northern 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, ECF No. 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, ECF No. 38 (S.D. Ohio Dec. 7, 2024) (Morrison, J.) (same); *In re Marshall & Melhorn, LLC Data Breach Litig.*, No. 3:23-CV-01181, ECF No. 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 one-third fee award from a \$350,000 common fund settlement in a data breach action); *In re CorrectCare Data Breach Litig.*, No. 5:22-319, 2024 WL 4211480, at \*4 (E.D. Ky. Sept. 17, 2024) (approving attorneys' fees of 1/3 of the \$6,490,000 settlement fund).

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 \$782,500 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 \$5,000.00. S.A. ¶ 48. In addition, all Settlement Class Members may submit claims for an estimated Pro Rata Cash Payment of \$50.00. *Id.*, ¶ 52. Moreover, Class Members are able to claim two years of three-bureau credit monitoring. *Id.*, ¶ 53.

Furthermore, the theoretical recovery per Class Member in this case of roughly \$16.44 per person (\$782,500 for 47,590 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 \$782,500 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 Teletronics 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. Pa. 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 January 2024 through the present, Class Counsel and their co-counsel have spent roughly 257.9 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<sup>2</sup> is \$179,685.80. *Id.* The hourly rates that form the basis of the lodestar calculation reflect the

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<sup>2</sup> Plaintiffs’ Counsel have detailed time and expense records supporting their lodestar and expense totals and are capable of submitting them for the Court’s review upon request from the Court.

experience of Class Counsel. *Id.* The requested \$260,833.33 fee is one-third (1/3) of the value of the \$782,500 Settlement Fund. Thus, when cross-checked, the requested fee is equivalent to the application of a current multiplier of 1.4 (*i.e.*, \$260,833.33/\$179,685.80). *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 a minimal multiplier. *Id.*

“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 Litg.*, 252 F.R.D. 369, 381 (S.D. Ohio 2016)). The modest 1.4 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 PSG (RAOX), 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 (RMB), 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-RGK-E, 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 Techs.*, 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 portion 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. ¶¶ 2-3, 15. This District has repeatedly recognized Mr. Coates's law firm, Markovits, Stock & DeMarco, LLC for its experience in class and other complex litigation. *See, e.g., 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); *Compound Prop. Mgmt. LLC v. Build Realty, Inc.*, 343 F.R.D. 378, 402 (S.D. Ohio 2023) (similar). Defendant likewise has been represented by counsel, BakerHostetler, 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 260,833.33, representing one-third (1/3) of the \$782,500 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 \$4,908.26 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 \$2,500 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.).<sup>3</sup>

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; *Jackson v. Nationwide Ret. Sols., Inc.*, No. 2:22-cv-3499, 2024 WL 958726, at \*7 (S.D. Ohio Mar. 5, 2024) (\$5,000 service awards); *Tucker v. Marietta Area Healthcare, Inc.*, No. 2:22-cv-00184, ECF No. 38 ¶ 7 (S.D. Ohio Dec. 8, 2023) (approving \$5,000 service awards in data breach action); *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 \$2,500 amount requested in this case as “modest.” *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).

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<sup>3</sup> Courts use the terms “incentive award” and “service award” interchangeably. 5 Newberg and Rubenstein on Class Actions § 17:2 (6th ed.).

For the foregoing reasons, Service Awards of \$2,500 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 \$782,500 common fund of (1) \$260,833.33 for reasonable attorneys' fees; (2) \$4,908.26 for reimbursement of Class Counsel's reasonable expenses; and (3) \$2,500 for each Class Representative as a Service Award, as well as any further relief that this Court deems just and equitable.

Dated: June 30, 2025

Respectfully submitted,

/s/ Terence R. Coates

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***Plaintiffs' Co-Lead Class Counsel***

**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2025, I served the foregoing upon counsel for all parties by filing it with the Court's electronic-filing system.

/s/ Terence R. Coates  
Terence R. Coates (0085579)