**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| **MARK JONES, MICHELLE GOULD, DICKY WARREN, and CARL JUNG,** on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>**STURM, RUGER & COMPANY, INC.,** and **FREESTYLE SOFTWARE, INC.,**<br><br>Defendants. | Case No. 3:22-cv-01233-KAD<br><br>August 27, 2025 |

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, AND SERVICE AWARDS**

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Plaintiffs Mark Jones, Michelle Gould, Dicky Warren, and Carl Jung (collectively, "Plaintiffs" or "Class Representatives"), on behalf of themselves and all others similarly situated, by and through preliminarily-approved Class Counsel Mason A. Barney of Siri & Glimstad LLP, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, and Justin C. Walker of Markovits, Stock & DeMarco, LLC (together with the law firm of Scott+Scott Attorneys at Law LLP, whose time and expenses are included herein, collectively "Class Counsel"), respectfully submit this Memorandum in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Costs and Expenses, and Service Awards. The Joint Declaration of Mason A. Barney, Gary M. Klinger, and Justin C. Walker in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Costs and Expenses, and Service Awards ("Joint Decl.") is filed herewith as **Exhibit 1**.

## I. BACKGROUND

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to and hereby incorporate by reference, Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement [DE # 119] and Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [DE # 119-1] and the accompanying Exhibits, including the proposed Settlement Agreement [DE # 119-2] ("S.A."), and the accompanying exhibits filed in conjunction therewith. [DE # 119-3, 119-4].

## II. SUMMARY OF SETTLEMENT

### A. The Settlement Fund

Class Counsel negotiated a robust and comprehensive settlement on behalf of the

Settlement Class of 183,082 individuals.[1] Under the proposed Settlement, Defendants will pay $1,500,000.00 to establish a non-reversionary common Settlement Fund. *See* Joint Decl. at ¶ 11. After deduction of Court-approved Service Awards, attorneys' fees and expenses, and settlement administration costs, the Settlement Fund will provide cash compensation to Settlement Class Members who submit Valid Claims. See *Id.* at ¶ 9.

Settlement Class Members may claim three types of monetary relief: (1) reimbursement for documented Out-of-Pocket losses fairly traceable to the Data Incident, up to $4,500 per claimant; (2) compensation for Lost Time spent responding to the Data Incident at $25 per hour for up to 5 hours ($125 maximum) with attestation; and (3) a Pro Rata Cash Payment initially estimated at $50, subject to increase or decrease based on the Settlement Fund balance after other distributions, not to exceed $175. *Id.* The total compensation for any individual Settlement Class Member is capped at $4,500. *Id.* Additionally, Defendants have agreed to provide documentation to Class Counsel demonstrating the implementation of data security measures to remedy the issues that led to the Data Incident. *Id.* at ¶ 10.

**B. Attorneys' Fees and Service Awards**

Class Counsel respectfully move for an award of attorneys' fees of $500,000 as compensation for their efforts on behalf of the Class in this case, to be paid from the non-reversionary Settlement Fund and $35,000 for costs. The fee request represents one-third of the total $1,500,000 common fund recovery. This request is contemplated by the Settlement Agreement, and Class Counsel previously apprised the Court of this request in its Memorandum

[1] The estimated class size of at least 168,000 persons—identified in Plaintiffs' Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [DE # 119-1]—was increased to 183,082 after Defendant Freestyle identified additional potential class members. The Settlement Administrator provided direct Notice of the Settlement via email and/or postal mail to all 183,082 identified class members pursuant to the approved Notice process. *See* Joint Decl. ¶ 31.

in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. See [D.E. # 119], S.A. ¶¶ 107, 108.

The Settlement Agreement calls for reasonable Service Awards to Plaintiffs in the amount of $3,500.00 each. S.A. ¶ 106. The Service Awards are meant to compensate Plaintiffs for their efforts on behalf of the Settlement Class, including maintaining contact with Class Counsel, assisting in the investigation of the case, reviewing the Complaint, remaining available for consultation throughout settlement negotiations, making themselves available for potential deposition and trial testimony, providing information to aid the negotiation process, reviewing the Settlement Agreement, and answering Class Counsel's many questions. See Joint Decl. ¶ 32.

Pursuant to the terms of the Settlement Agreement and the Court's Preliminary Approval Order [D.E. # 125], Plaintiffs' Motion for Service Award Payment and Fee Award and Costs is being submitted prior to the deadline for Settlement Class Members to exclude themselves or object to the Settlement Agreement, and Class Counsel's fee request was clearly delineated in the Long Form and Short Form Notice to the Settlement Class (See D.E. # 119-3).

### C. Total Claims, Opt-Outs, and Objections

As of the date of this filing, the claims process is ongoing. To date, the Settlement Administrator has received 2,275 claims for benefits and no Settlement Class Members have objected or opted out of the Settlement. See Joint Decl. ¶ 15. The deadline to object or opt-out is September 29, 2025 and the claims filing deadline is October 27, 2025. See *Id.*

## III. LEGAL STANDARD

### A. The Fee Request is Reasonable Under the Percentage of Recovery Method

Plaintiff's attorneys in a successful class action lawsuit may petition the Court for compensation relating to any benefits to the Class that result from the attorneys' efforts. *See, e.g.,*

*Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Federal Rule of Civil Procedure 23(h) permits courts to award "reasonable attorney's fees and nontaxable costs that are authorized by law or the parties' agreement." Fed. R. Civ. P. 23(h).

In common fund cases such as this, courts in the Second Circuit apply one of two fee calculation methods—the "percentage of the fund" or the "lodestar" method. *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method," although "[t]he trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).; *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010) ("[T]he percentage method has the advantage of aligning the interests of plaintiffs and their attorneys more fully by allowing the latter to share in both the upside and downside risk of litigation[.]"). The Second Circuit has held that Courts determining a percentage of the recovery should calculate the attorney's fees based on the settlement's total value: "[t]he entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not." *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007).

Second Circuit courts have recognized various advantages to using the percentage method for fee awards. This method "directly aligns the interests of the class and its counsel" because it provides attorneys with an incentive to resolve cases efficiently and to create the largest total value for a class. See, e.g., *Wal-Mart Stores, Inc.*, 396 F.3d at 122; *In re Lloyd's Am. Tr. Fund Litig.*, No. 96 CIV.1262, 2002 WL 31663577, at *25 (S.D.N.Y. Nov. 26, 2002), *aff'd sub nom. Adams v. Rose*, No. 03-7011, 2003 WL 21982207 (2d. Cir. Aug. 20, 2003) (collecting cases).

Moreover, this method comports with market practices, as it "mimics the compensation system actually used by individual clients to compensate their attorneys." *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999); *see also Sewell v. Bovis Lend Lease Inc.,* No. 09 CIV. 6548, 2012 WL 1320124, at *10 (S.D.N.Y. Apr. 16, 2012) (recognizing that "[the percentage] method is similar to private practice where counsel operates on a contingency fee, negotiating a reasonable percentage of any fee ultimately awarded."); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 3d 254, 262 (S.D.N.Y. 2003) (noting that the percentage method "is consistent with and, indeed, is intended to mirror, practice in the private marketplace where contingent fee attorneys typically negotiate percentage fee arrangements with their clients.").

Further, the percentage method promotes efficiency and expedient resolution by eliminating any incentive plaintiffs' lawyers may have to run up billable hours—one of the most significant downsides to using the lodestar approach. *Savoie v. Merchants Bank*, 166 F.3d 456, 460-61 (2d Cir. 1999) ("It has been noted that once the fee is set as a percentage of the fund, the plaintiffs' lawyers have no incentive to run up the number of billable hours for which they would be compensated under the lodestar method"); see also *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000) (citing *In re Union Carbide Corp., Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 167-68 (S.D.N.Y. 1989)).

Finally, the percentage method encourages judicial economy because it relieves the "cumbersome, enervating, and often surrealistic process of evaluating fee petitions." *Savoie*, 166 F.3d at 461 n.4 (quoting *Third Circuit Task Force*, 108 F.R.D. 237, 258). The "primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits." *Goldberger*,

209 F.3d at 48-49; *In re EVCI Career Colleges Holding Corp. Sec. Litig*., No. 05 CIV 10240, 2007 WL 2230177, at *16 (S.D.N.Y. July 27, 2007). As one court within the Second Circuit stated:

> The percentage method is bereft of the largely judgmental and time-wasting computations of lodestars and multipliers. These latter computations, no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo. They do not guarantee a more fair result or a more expeditious litigation. *In re Union Carbide,* 724 F. Supp. at 170.

Court in this Circuit regularly approve attorneys' fees awards up to and exceeding one-third of a recovery. *See, e.g., In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528, 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement recovery); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 135 (S.D.N.Y. 2010) (awarding one-third of $35 million); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.33% fee of $510 million net settlement recovery); *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-CV-1884, 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (awarding 30% of $80 million settlement recovery).

### B. The Lodestar Cross-Check Indicates the Reasonableness of the Fee Request

While courts still employ the lodestar method as a "cross-check" when applying the percentage of the fund method, courts are not required to scrutinize the fee records as rigorously. *Goldberger*, 209 F.3d at 50; see also *In re Global Crossing Sec. & ERISA Litig*., 225 F.R.D. 436, 468 (S.D.N.Y. 2004) (conducting a lodestar cross check with an "implied lodestar," noting that when used in that capacity, that the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case). The Second Circuit encourages District Courts to use the lodestar method as a "mere cross-check" on the reasonableness of the requested fee and not "exhaustively scrutinize[]" the hours documented by counsel. *Goldberger*, 209 F.3d at 50; *see also Cassese v. Williams*, 503 F. App'x 55, 59 (2d Cir. 2012) (noting the "need for exact [billing] records [is] not

imperative" where the lodestar is used as a "mere cross-check"); *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400, 403 (D. Conn. 2009), *aff'd*, 355 F. App'x 523 (2d Cir. 2009) (same). Indeed, courts should not engage in "an ex post facto determination of whether attorney hours were necessary to the relief obtained." *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992).

Here, Class Counsel and their firms have spent 1,213.70 hours litigating this case, which at their hourly rates amounts to a total lodestar of $869,301.30 See Joint Decl. at ¶¶ 22, 26. The hours reflected in this lodestar calculation were reasonably spent on the efficient and effective investigation, prosecution, and resolution of this matter. *Id.* ¶ 22. Therefore, the requested attorney fee award reflects a negative multiplier on Class Counsel's regular hourly rates. *Id.* ¶ 27. Here, Class Counsel's current hourly rates are appropriate, given the prevailing rates charged by attorneys with similar experience, skill, and reputation for similar services in the present legal market and have previously been approved as reasonable for settlement purposes in Circuit Courts throughout the country. *Id.*

The requested attorney fee of one-third of the Settlement Fund, when cross-checked against Class Counsel's lodestar, reflects a negative lodestar adjustment resulting in a multiplier of 0.57. Joint Decl. ¶ 27. While Class Counsel's fee is properly based on the percentage method rather than lodestar, this cross-check confirms the reasonableness of the percentage-based request. The negative lodestar multiplier demonstrates that Class Counsel's requested attorney fee falls well within acceptable bounds, particularly when compared to cases in this Circuit where courts regularly approve fee awards resulting in lodestar multipliers of between 2 to above 8. See, e.g., *Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738, 2014 WL 3778211, at *7 (D. Conn. July 31, 2014) (collecting cases that have approved awards with a lodestar multiplier of up to eight times the lodestar); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013)

("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *James v. China Grill Mgmt.*, No. 18 Civ. 455, 2019 WL 1915298, at *3 (S.D.N.Y. Apr. 30, 2019) (collecting cases with multipliers between 2 and 4.9); *Sewell*, 2012 WL 1320124, at 13 ("Courts commonly award lodestar multipliers between two and six."); *In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *27 (a "multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit"); *Asare v. Change Grp. of N.Y., Inc.*, No. 12 Civ. 3371, 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *In re RJR Nabisco, Inc. Sec. Litig.,* No. 88 Civ. 7905, 1992 WL 210138, at *6-8 (S.D.N.Y. Aug. 24, 1992) (awarding a lodestar multiplier of 6); *Jander v. Ret. Plans Comm. of IBM*, No. 15cv3781, 2021 WL 3115709, at *7 (S.D.N.Y. July 22, 2021) (approving request for 30% of gross settlement (1.7 multiplier), noting that "multipliers of between 3 and 4.5 have been common"); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014) (noting "lodestar multiples of over 4 are awarded by this Court"); *Maley v. Dale Global Techs. Corp.,* 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (describing a 4.65 lodestar multiple as "modest" and "fair and reasonable").

That Class Counsel's percentage-based attorney fee yields a multiplier below 1.0 provides additional support that the requested one-third of the common fund fee is fair and reasonable. Moreover, Class Counsel's lodestar will continue to increase through final approval and settlement administration, making the ultimate multiplier even lower. Joint Decl. ¶¶ 23, 27. This cross-check strongly supports approval of the requested percentage-based fee.

### C. The *Goldberger* Factors Support the Fee Award Requested by Class Counsel

Regardless of the method used, courts in the Second Circuit considering the reasonableness of a fee request weigh the following factors: "(1) the time and labor expended by counsel; (2) the

magnitude and complexities of the litigation; (3) the risk of the litigation . . . (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50. Plaintiffs' Counsel respectfully submit that the Court should apply the percentage of the fund method here and, under the *Goldberger* factors, the fee and expense request is reasonable and appropriate and warrants approval by the Court.

Class Counsel's requested fee will compensate Class Counsel for their investment of time, expertise, and capital, which produced an incredibly successful outcome for the Settlement Class in a case that was complex and high risk. See *Velez v. Novartis Pharms. Corp.*, No. 04 CIV 09194, 2010 WL 48877852, at *21 (S.D.N.Y. Nov. 30, 2010) ("The federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit."). Here, each of the six *Goldberger* factors weigh in favor of granting Class Counsel's request for attorneys' fees of one-third of the Common Fund.

**1. The Time and Labor Expended**

The litigation required extensive time and labor by Class Counsel. Class Counsel and their respective firms spent a combined 1,213.70 hours on this litigation to date. Joint Decl. ¶¶ 22, 26. The significant hours expended are not surprising given the breadth and scope of the litigation, and fully supports the requested fee. Class Counsel performed a broad range of tasks prosecuting this case, including: investigating the nature and cause of the Data Incident; researching relevant laws and regulations pertaining to data breaches; drafting the original and amended complaints; responding to both of Defendants' motions to dismiss; conducting extensive fact discovery; engaging with technical and damages experts; preparing for and participating in multiple mediation sessions; negotiating the Settlement Agreement and exhibits; preparing settlement

approval papers; communicating with the Settlement Administrator and Class Representatives; and working with the Settlement Administrator and Defendants' counsel to effectuate notice and administer the Settlement. *Id.* ¶ 19.

In addition, Class Counsel will be required to dedicate significant additional hours to this matter, including drafting and filing the final approval motion, attending the final settlement hearing, responding to Settlement Class Members' inquiries, supervising the claims administration in the review and processing of claims, and overseeing the distribution of payments to Settlement Class Members. *Id.* ¶ 23.

A lodestar crosscheck also supports the requested fee. As noted above, the lodestar fee calculation method has "fallen out of favor particularly because it encourages bill-padding and discourages early settlements." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). Accordingly, the lodestar method is used in this Circuit only "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Id.* "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case (as well as encouraged by the strictures of Rule 11)." *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 434 (S.D.N.Y. Nov. 19, 2007) (internal citations omitted). Class Counsel need only submit documentation appropriate to meet the burden establishing an entitlement to an award, not to satisfy "green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838 (2011).

The requested attorney fee of one-third of the Settlement Fund, when cross-checked against Class Counsel's lodestar, reflects a negative lodestar adjustment resulting in a multiplier of 0.57. Joint Decl. ¶ 27. The attorney fee request is well below the range historically accepted by courts

in the Second Circuit. In fact, courts in this Circuit regularly award lodestar multipliers of two times the lodestar or higher. See, e.g., *James v. China Grill Mgmt.*, No. 18 Civ. 455, 2019 WL 1915298, at 3 (S.D.N.Y. Apr. 30, 2019) (collecting cases with multipliers between 2 and 4.9); *Sewell*, 2012 WL 1320124, at 13 ("Courts commonly award lodestar multipliers between two and six."); *In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *27 (a "multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit"). Additionally, Class Counsel's negative lodestar multiplier will be even lower once final approval is sought, as additional work will be required to complete the settlement process. Joint Decl. ¶ 27.

**2. The Magnitude and Complexity of Litigation**

"The size and difficulty of the issues in a case are significant factors to be considered in making a fee award." *Beckman v. KeyBank, NA*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (internal citation omitted). In cases that require greater expertise, a larger percentage of the fund should be awarded to the lawyers who can competently prosecute the case. See *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award."). This matter is no exception, as courts recognize that data breach cases enhance the risk litigants face in class litigation. *Hashemi v. Bosley, Inc.*, No. CV 21-946, 2022 WL 2155117, at *7 (C.D. Cal. Feb. 22, 2022) ("Moreover, these risks are compounded by the fact that data breach class actions are a relatively new type of litigation and that damages methodologies in data breach cases are largely untested and have yet to be presented to a jury").

Courts across the country have grappled with data breach cases and recognized the complexity, nuance, and importance of the legal questions involved. See *Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting

data breach class actions present "serious risks" due, in part, to "the ever-developing law surrounding data breach cases"); *In re Citrix Data Breach Litig*., No. 19-61350-CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) ("Data breach cases in particular present unique challenges with respect to issues like causation, certification, and damages."); *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035, 2019 WL 2720818, at *3 (N.D. Ga. June 3, 2019) ("Further, data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits. Georgia law, in particular, presents challenges.").

Class Counsel knew from their initial investigations that this litigation would involve extensive research on challenging and complex legal and factual claims. Joint Decl. ¶ 3. Data security and data breach cases across the country present novel issues to the courts for consideration. *Id*. ¶ 38. Class Counsel were also aware that pursuing this case beyond settlement would likely be lengthy and expensive, requiring discovery, briefing, argument, trial, and potential appeals. *Id*. All of this would require hundreds, or perhaps even thousands, of hours of work, which would result in significant costs. *Id*. Ultimately, Class Counsel have accrued 1,213.70 hours litigating the matter up to this point, though there is more work to do, including preparing for and appearing at the Final Approval Hearing, overseeing claims administration, and resolving any appeals. Joint Decl. ¶¶ 23, 26.

The magnitude and complexity of the litigation were significant, and this factor weighs in favor of granting Plaintiffs' Motion.

**3. The Risk of Litigation**

Class Counsel undertook significant risk in accepting this case on an entirely contingent basis, supporting the requested fee award. *Id.* ¶ 28. The Second Circuit has identified "the risk of success as 'perhaps the foremost factor' to be considered in determining" reasonable attorneys'

fees. *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004); see also *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) ("Courts have repeatedly recognized 'that the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions.") (citation omitted). Class Counsel here took on the risks of litigation knowing full well their efforts might not bear fruit as fees or expense reimbursement were not guaranteed. Joint Decl. ¶ 28. This case involved complexities of data breach that are novel and evolving, and the risk of non-payment is especially high in class actions with contingent fee arrangements, like here. See *Teachers' Ret. Sys. of Louisiana v. ACLN, Ltd.*, No. 01-CV-11814, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.").

"It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55. While Plaintiffs were confident that their claims would prevail, they faced several strong legal defenses and difficulties in demonstrating causation and injury. At the time of filing of this Action, there were complex issues of fact and law, which presented significant risks that continue through today. See Joint Decl. ¶ 3. In particular, the claims asserted herein have been met with strong opposition in courts nationwide. Due at least in part to their cutting-edge nature and the rapidly evolving law, data security cases like this one generally face substantial hurdles—even just to make it past the pleading stage. See *Hammond v. The Bank of New York Mellon Corp.*, No. 08 Civ. 6060, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). In addition to the questions as to whether Plaintiffs' claims would survive a motion to dismiss, there was always a risk that Defendants would successfully oppose class certification. See *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (noting that "[w]hile plaintiffs might indeed prevail [on a

motion for class certification], the risk that the case might be not certified is not illusory"). Even if the Class was certified by the Court, Defendants could have then attempted to appeal the certification decision under Federal Rule of Civil Procedure 23(f) or argued for decertification as the litigation progressed. See *Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992). Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiffs and Settlement Class Members.

Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on either certification or merits. The general risks of litigation are further heightened in the data breach arena. Due at least in part to the rapidly changing nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles. As one federal district court recently observed in approving a data breach settlement with similar class relief and similar attorneys' fees:

> Data breach litigation is evolving; there is no guarantee of the ultimate result. See *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at 1 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex."). Plaintiffs also faced the risk that [defendant] would successfully oppose class certification, obtain summary judgment on one or more of their claims, or win at trial or on appeal. Also, the cost for [defendant] and Plaintiffs to maintain the lawsuit would be high, given the amount of documentary evidence as well as the expert costs both parties would incur in the context of class certification, summary judgment, and trial. As such, the current Settlement strikes an appropriate balance between Plaintiffs' "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." See *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

*Fox v. Iowa Health Sys.*, No. 3:18-cv-00327, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (also approving attorneys' fees and costs in the amount of $1,575,000). Class certification is another hurdle that would have to be met—and one that 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).

"Counsel should be rewarded for undertaking [those risks] and for achieving substantial value for the class." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig*., 991 F. Supp. 2d 437, 441 (E.D.N.Y. 2014); see also *Jermyn v. Best Buy Stores, LP*, No. 08 Civ. 214, 2012 WL 2505644, at *10 (S.D.N.Y. June 27, 2012) ("[T]he risk of non-payment in cases prosecuted on a contingency basis where claims are not successful…can justify higher fees.").

Class Counsel were able to secure an excellent settlement on behalf of Settlement Class members for complex claims asserted against Defendants. Joint Decl. ¶ 9. This was done despite the significant risks Plaintiffs faced in pursuing these claims. As such, the Settlement is a direct result of Class Counsel's skills and dedication in this Action. Accordingly, this factor weighs in favor of approving the requested fees.

**4. The Quality of Representation**

In determining the quality of representation, Courts examine the experience of the attorneys involved and the result obtained in the lawsuit. See *Taft v. Ackermans*, No. 02 Civ. 7951, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007). Here, Class Counsel have substantial experience in both class actions generally, and complex consumer class actions involving cybersecurity incidents in particular. Joint Decl. ¶ 3. It required significant skill and experience, as well as high quality representation, to even be able to identify the issues of Article III standing and the highly technical aspects of the data breach mechanism (i.e., the means by which Defendants' systems were breached), not to mention the specialized knowledge of class action procedures required to achieve certification, let alone settlement.

The Court also has first-hand experience with the skill level demonstrated by Class Counsel through the briefing submitted in connection with Defendants' motions to dismiss. With respect to the results achieved for the Class, they are substantial and favorable. Defendants have agreed to

establish a $1,500,000.00 non-reversionary Common Fund that will provide direct cash compensation to Settlement Class Members for the harm suffered as a result of the Data Incident. Given the quality of Class Counsel's representation, as evidenced by the excellent Settlement achieved for the Class, this factor weighs in favor of approval.

**5. The Requested Fee in Relation to the Settlement**

Class Counsel requests an award of attorneys' fees of one-third of the $1,500,000 Common Fund, or $500,000.00. The relationship between the requested $500,000 fee and the $1,500,000 Settlement is reasonable and consistent with the one-third benchmark regularly applied by courts throughout this Circuit.

Courts within the Second Circuit consistently approve attorneys' fees awards of one-third of the common fund. See, e.g., *In re Tenaris S.A. Securities Litig.*, No. 18-CV-7509, 2024 WL 1719632, at *10, 12 (E.D.N.Y. Apr. 22, 2024) (approving attorneys' fees of one-third of the $9,500,000 settlement fund); *In re N. Dynasty Minerals Ltd. Securities Litig.*, No. 20-CV-5917, 2024 WL 308242, at *5, 20 (E.D.N.Y. Jan. 26, 2024) (approving attorneys' fees of one-third of the $6,375,000 common fund); *Mateer v. Peloton Interactive, Inc.*, No. 1:22-cv-00740, 2024 WL 1055009, at *1 (S.D.N.Y. Feb. 9, 2024) ("[E]mpirical evidence indicates that the median percentage of the settlement amount awarded as attorneys' fees in [] class actions is approximately 33%. . . . The award here aligns with the median percentage of 33% because $833,250 is approximately 33% of the gross settlement fund amount of $2,500,000[]") (footnote omitted); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014) (approving attorneys' fees of "33% of the Settlement Fund (or $4,950,000)"); *Menkes v. Stolt-Nielsen S.A.*, No. 3:03CV00409, 2011 WL 13234815, at *4 (D. Conn. Jan. 25, 2011) (awarding attorneys' fees of 33 1/3% of the common fund).

The Second Circuit has affirmed such awards. See *Hayes v. Harmony Gold Min. Co. Ltd.*, No. 08 Civ. 03653, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding "attorneys' fees in the amount of one third" of a $9 million settlement fund), *aff'd* 509 F. App'x 21, 23-24 (2d Cir. 2013) (affirming fee award).

Connecticut district courts regularly approve similar fee percentages. See *Caitflo LLC v. Sprint Commc'ns Co., LP*, No. 11 Civ. 0497, 2013 WL 3243114, at *3 (D. Conn. June 26, 2013) (approving attorneys' fee award of 30% of the settlement fund and listing other Second Circuit cases that approved between 25-33 1/3% of the settlement fund in attorneys' fee); *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 3:09-cv-1293, 2012 WL 3589610, at *14 (D. Conn. Aug. 20, 2012) (awarding attorneys' fee of 30% of common fund); *In re Priceline.com, Inc. Sec. Litig.*, 2007 WL 2115592, at *5 (awarding attorneys' fee of 30% of common fund).

When considering the value offered to the Settlement Class through the Common Fund, Class Counsels' fee request is certainly reasonable in light of the significant benefits achieved on behalf of the Class, and this factor therefore weighs in support of approval.

**6. Public Policy Considerations**

Public policy supports providing attorneys' fees in class action cases, as class actions are also an invaluable safeguard of public rights. See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). Where, as here, the settlement amount is relatively small, an award of attorneys' fees ensures that "plaintiffs' claims [will] likely . . . be heard." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 189 (W.D.N.Y. 2005). If courts denied sufficient attorneys' fees "no attorneys . . . would likely be willing to take on . . . small-scale class actions[.]" *Id.*; see also *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (private attorneys "should be encouraged" to take the risks required to represent those who would not otherwise be protected from socially

undesirable activities, including fraud.). Public policy is in favor of rewarding counsel who persevere through risky litigation and achieve favorable results for the class they represent. Here, Class Counsel took on this case despite the uncertainty and volatility of law pertaining to data breach class actions, especially ones seeking damages for economic loss for data breach victims and persevered in obtaining a settlement allowing for Settlement Class Members to receive cash and injunctive compensation. Such a result should be rewarded.

**D. Class Counsel's Requested Expenses are Reasonable**

Pursuant to Federal Rule of Civil Procedure 23(h), a trial court may award non-taxable costs that are authorized by law or by agreement between the parties. Fed. R. Civ. P. 23(h). In this case, the reimbursement of expenses incurred by Class Counsel is warranted under both the Settlement Agreement and the common fund doctrine. S.A. ¶ 107; *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (affirming the right to recover expenses when a common fund is created or preserved for the benefit of a class); Alba Conte, *Attorney Fee Awards* § 2.08, at 50-51 (3d ed. 2004); *In re Vitamin C Antitrust Litig.,* No. 06-MD-1738, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) ("Courts in the Second Circuit routinely approve requests for reimbursement of expenses in common fund cases as a matter of course."). Courts typically allow counsel to recover their reasonable out-of-pocket expenses. *Beckman v. KeyBank, NA*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citing *In re Indep. Energy Holdings PLC Sec. Litig*., 302 F. Supp. 2d 180, 183 n. 3 (S.D.N.Y. 2003)). "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation' of those clients." *In re Indep. Energy Holdings PLC Sec. Litig*., 302 F. Supp. 2d at 183 n.3 (internal quotation marks omitted).

Class Counsel seek reimbursement of expenses in the amount of $35,000, which is the

amount contemplated in the Settlement Agreement. S.A. ¶ 107. Class Counsels' actual expenses to date are $45,579.61, but Class Counsel seek only the $35,000 established by the Settlement. Joint Decl. ¶ 25. The reasonable expenses incurred are all related to this litigation and were necessary for the quality of result achieved. *Id*. ¶ 24. These expenses are of the type routinely charged to hourly clients, are appropriately documented, and were necessary and reasonable to prosecute the litigation. *Id*. The expenses include, but are not limited to, filing fees, expert fees, mediation fees, travel expenses, litigation support services, and other costs necessary for the effective and efficient prosecution of this action. *Id*. ¶ 25. Accordingly, the Court should award Class Counsels' full requests for reimbursement of fees.

**E. The Requested Service Awards are Justified and Should be Approved**

Service awards are commonly awarded in class action cases to compensate plaintiffs for the time and effort they expended in assisting with the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained. *Beckman v. KeyBank, NA*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citation omitted). "Empirical evidence shows that incentive awards are now paid in most class suits and average between $10,000 to $15,000 per class representative." 5 Newberg and Rubenstein on Class Actions § 17:1 (6th ed.).[2] Courts consider such compensation important. See *Massiah v. MetroPlus Health Plan, Inc*., No. 11 Civ. 5669, 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012).

In the Second Circuit, class representative service awards "are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant and any

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

other burdens sustained by plaintiffs." *DeLeon v. Wells Fargo Bank, N.A.*, No. 12 Civ. 4494, 2015 WL 2255394, at *7 (S.D.N.Y. May 11, 2015). Class Representatives bring value to the class by lending their names to the litigation, subjecting themselves to discovery, and maintaining involvement throughout what can be lengthy proceedings.

For their sustained commitment to this case, the Class Representatives seek modest service awards of $3,500.00 each ($14,000 total), which represents reasonable and justified compensation for their work in this litigation. Joint Decl. ¶ 31. The Class Representatives demonstrated a desire and willingness to undertake time-consuming responsibilities and fiduciary duties on behalf of the class. *Id*. ¶ 32.

The Class Representatives' contributions were both substantial and continuous throughout this litigation. *Id*. They assisted in preparing not only the initial Complaint, but also provided detailed factual information to aid the settlement negotiation process. *Id*. During the critical negotiation phases, Plaintiffs remained actively engaged, making themselves available throughout the settlement process to answer questions and ensure the interests of the Settlement Class were properly represented. *Id.* Their involvement went beyond mere nominal participation, as they were prepared to take on the responsibilities of class representatives, including being deposed and, if necessary, testifying at trial. *Id*.

Perhaps most significantly, in the context of data breach litigation, Class Representatives were willing to put their names on public court filings and publicly associate themselves with a data breach involving their personal and financial information, a particularly sensitive matter that many victims would understandably prefer to keep quiet. *Id*. ¶ 33. By stepping forward as named plaintiffs in a data breach case, Plaintiffs accepted reputational risks and privacy intrusions that the absent class members were spared. *Id*. Such dedication and commitment in the face of these

unique risks warrants the reasonable Service Awards requested.

The requested Service Payment of $3,500.00 to each Class Representative is both appropriate and reasonable when compared to awards routinely approved by courts in this Circuit and nationwide. Recent Second Circuit precedent strongly supports this request. See*, Marshall v. Lamoille Health Partners, Inc.*, No. 2:22-CV-166, Dkt. 40 (D. Vt. Apr. 13, 2023) (approving a $3,500 service award for plaintiff); *Moses v. N.Y. Times Co*., 79 F.4th 235, 253 (2d Cir. 2023) (affirming the district court's approval of $5,000 service award); *Maddison v. Comfort Sys. USA (Syracuse), Inc.*, No. 517CV359, 2023 WL 3251421, at *1 (N.D.N.Y. May 3, 2023) (approving a $2,500 service award per plaintiff); *In re CorrectCare Data Breach Litig*., No. CV 5:22-319, 2024 WL 4211480, at *5 (E.D. Ky. Sept. 17, 2024) (approving "relatively modest" service awards of $2,500 per plaintiff where they "reached out to counsel, provided relevant information, and reviewed the Complaint and Court filings"); *Bozak*, 2014 WL 3778211, at *5 (approving service awards of $12,000 for named plaintiffs); *Alli v. Boston Mkt. Corp.*, No. 10 Civ. 00004, 2012 WL 1356478, at *3 (D. Conn. Apr. 17, 2012) (approving a $10,000 service award); *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113, 2016 WL 6542707, at *5 (D. Conn. Nov. 3, 2016) (approving $2,000 service award); *Riley v. City of Norwalk*, No. 3:19-cv-01436, 2020 WL 13535418 at *2 (D. Conn. Oct. 26, 2020) ($3,500 service award payment approved); *Esposito v. Nations Recovery Ctr., Inc.*, No. 3:18-cv-02089, 2021 WL 2109077, at *8 (D. Conn. May 25, 2021) (approving $3,000 service award and listing cases with service awards awarded of at least $3,000). Indeed, the Class Representatives' requested Service Awards here falls at or below what the Court described as "near the low end of the typical service awards approved by courts in this Circuit" *Simerlein v. Toyota Motor Corp*., No. 3:17-cv-1091, 2019 WL 2417404, at *27 (D. Conn. June 10, 2019).

In sum, the requested service awards appropriately compensate the Class Representatives for their substantial contributions while remaining well within the range typically approved in this Circuit. The awards reflect a measured recognition of the dedication of each of the Class Representatives to achieving a beneficial result for the entire Settlement Class.

## IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs: (1) attorneys' fees in the amount of $500,000, representing one-third of the $1,500,000 non-reversionary Settlement Fund; (2) reimbursement of litigation costs and expenses in the amount of $35,000; and (3) Service Awards of $3,500 each ($14,000 total) for Class Representatives Mark Jones, Michelle Gould, Dicky Warren, and Carl Jung.

Dated: August 27, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2025, I served the foregoing upon counsel for all parties by filing it with the Clerk of the Court by using the CM/ECF system in accordance with Fed. R. Civ. P. 5(b)(2)(E).

*/s/ Justin C. Walker*
Justin C. Walker (admitted *pro hac vice*)