UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re Peoples Bank, *as successor to Limestone Bank, Inc.*, Data Breach Litigation.	**Case No. 2:23-cv-3043 (lead)** **Judge Michael H. Watson** **Magistrate Judge Deavers**

OPINION AND ORDER

Latasha Brooks, Michael Brooks, Earl Blankenship, Stephen McDonald, and Cheryl Barefoot (collectively, the "Named Plaintiffs"), on behalf of themselves and all others similarly situated (collectively, the "Class Members"), move the Court for final approval of their class action settlement agreement. ECF No. 38.[1] Class Counsel also moves for attorneys' fees, expenses, and service awards for the Named Plaintiffs. ECF No. 37. Peoples Bank, as successor to Limestone Bank, Inc. ("Defendant") does not oppose either request. For the reasons below, the Named Plaintiffs' motions are **GRANTED.**

I. BACKGROUND

The Named Plaintiffs allege that Defendant suffered a data breach incident ("Security Incident") sometime between November 2022 and March 2023 after a third party gained unauthorized access to an employee's email account. Am. Compl. ¶ 1, ECF No. 21; Settlement Agmt. ¶ 25, ECF No. 35-1. The Security

[1] Unless otherwise indicated, the Court refers to filings on the docket in Case No. 2:23-cv-3043.

Incident exposed private information, including individuals' names, social security numbers, and financial account information, among other information. Am. Compl. ¶ 29, ECF No. 1. In September 2023, Defendant notified affected customers of the Security Incident via letter. *Id.* ¶ 27.

A. Procedural History

Shortly after receiving the letter, Latasha Brooks and Michael Brooks, individually and on behalf of a putative class, filed an action against Defendant in the Southern District of Ohio. Case No. 2:23-cv-3043. The next day, Earl Blankenship, individually and on behalf of a putative class, filed another action against Defendant in the Southern District of Ohio. Case No. 1:23-cv-603. About a week later, Stephen McDonald and Cheryl Barefoot, individually and on behalf of respective putative classes, filed two more actions against Defendant in the Southern District of Ohio. Case Nos. 2:23-cv-3084, 2:23-cv-3161. The Court subsequently consolidated these actions. ECF No. 15. In the consolidated case, the Named Plaintiffs bring claims for: (1) negligence; (2) negligence per se; (3) breach of implied contract; (4) breach of fiduciary duty; and (5) unjust enrichment. *See generally* Am. Compl., ECF No. 21.

In May 2024, the Court granted in part and denied in part Defendant's motion to dismiss, allowing the negligence and breach of implied contract claims to proceed and dismissing the negligence per se claim with prejudice and the breach of fiduciary duty and unjust enrichment claims without prejudice. ECF No. 27. Thereafter, the parties exchanged informal discovery and pursued

mediation with former United States Magistrate Judge David C. Jones. Coates Decl. ¶¶ 5, 6, ECF No. 35-2. The parties were unable to resolve the case at mediation, but they ultimately reached an agreement in principle following a later mediator proposal. *Id.* at ¶ 6.

B. Settlement Agreement

The Settlement Agreement defines the Settlement Class as follows:

> 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.

Settlement Agmt., ECF No. 35-1 at PAGEID # 347. The Settlement Class encompasses approximately 47,590 individuals but does not include:

> (1) Peoples Bank and its officers and directors; (2) all Persons who submit a timely and valid Request for Exclusion from the Settlement Class; (3) the Court; and (4) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident, or who pleads nolo contendere to any such charge.

Id. at ¶ 30; Coates Decl. ¶¶ 5, 7, ECF No. 38-1.

Under the terms of the Settlement Agreement, Defendant must make a non-reversionary payment of $782,500.00 ("Settlement Fund"). Class Members must submit a valid Claim Form, *see* ECF No. 35-1 at PAGEID ## 384–89, to receive a distribution payment from the Settlement Fund. Settlement Agmt. ¶ 46, ECF No. 35-1. Class Members who submit a timely and valid Claim Form may be eligible to receive any combination of three types of benefits:

- Documented Out-of-Pocket Losses: Class Members who claim they suffered out-of-pocket losses incurred as a result of the

Security Incident are eligible for a payment of the amount of loss up to five thousand dollars ($5,000). Such monetary losses may include, but are not limited to, unreimbursed costs, expenses, or charges incurred addressing or remedying identity theft, fraud, or misuse of personal information and/or other issues reasonably traceable to the Security Incident. To receive this reimbursement, Class Members must submit documentation supporting their claims, such as receipts or other documentation not "self-prepared" by the claimant. Settlement Agmt. ¶¶ 48–51, ECF No. 35-1.

- *Pro Rata* Cash Payments: All Class Members are eligible to submit a claim for a cash payment, which Class Counsel projected at the fairness hearing would amount to around $134.35. *See also* ECF No. 38 at PAGEID # 483. The actual amount of the cash payment will be adjusted up or down *pro rata*, depending on the number of claims submitted for this benefit and the amount of residual funds remaining in the Settlement Fund after payment of any documented out-of-pocket losses, attorneys' fees and expenses, service awards, and settlement administration costs. Settlement Agmt. ¶ 52, ECF No. 35-1.

- Identity Theft Protection and Credit Monitoring: Class Members may submit a claim for two years of three-bureau credit monitoring. Settlement Agmt. ¶ 53, ECF No. 35-1.

In the event that the aggregated amount of payment of all valid claims exceeds the total amount of the Settlement Fund, the value of each Class Member's payment will be *pro rata* reduced. Settlement Agmt. ¶ 55, ECF No. 35-1.

The Settlement Agreement also includes a release that relinquishes Class Members' claims arising out of or relating to the Security Incident. Settlement Agmt. ¶¶ 21–22, 34, 71–74, ECF No. 35-1.

C. Preliminary Approval, Notice, and Fairness Hearing

After reaching settlement with Defendant, the Named Plaintiffs moved for Preliminary Approval. ECF No. 35. The Court granted that motion, preliminarily approving the Settlement Agreement and conditionally certifying the class. ECF No. 36. The Court also directed the parties to proceed with their proposed notice plan, finding that "such notice plan meets the requirements of Federal Rules of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice." *Id.* at PAGEID # 438.

Consistent with the Preliminary Approval Order and Rule 23(e)'s requirements, Defendant provided the settlement administrator (Verita Global) with a data file containing known Settlement Class Member names and mailing addresses. Verita Decl. ¶ 5, ECF No. 38-2. Verita Global compared Defendant's address data against the United States Postal Service ("USPS") National Change of Address database and updated the data in a settlement-specific database with the changes. *Id.* Verita Global then sent written notice to each of the 47,360 Class Members for whom a valid mailing address was known. *Id.* ¶¶ 6–7. If a mailed notice was returned without a forwarding address, Verita Global performed a public records search (commonly called a "skip trace") to locate the Class Member's current address and remailed direct notice to the newly located address or forwarding address. *Id.* ¶ 8.

Along with direct notice by postcard, Verita Global prepared and maintained a Settlement Website.[2] *See Coates* Decl. ¶ 15, ECF No. 38-1; Verita Decl. ¶ 10, ECF No. 38-2. Through the Settlement Website, Class Members could submit a claim online and contact Verita Global with questions. Coates Decl. ¶ 15, ECF No. 38-1; Verita Decl. ¶ 11, ECF No. 38-2. Verita Global also maintains a toll-free telephone number, which appeared in the mailed notices and on the Settlement website. Verita Decl. ¶ 11, ECF No. 38-2. The Settlement Website and the telephone number were available to the public throughout the claims period. *Id.* ¶¶ 10–11.

Between the mailed notice and the Settlement website, Verita Global calculates that 91.18% of the Class received notice. *See* Verita Decl. ¶ 9, ECF No. 38-2. Upon initial review, Verita Global received 3,202 valid claim form submissions, or a claims rate of approximately 6.76%. *Id.* ¶ 12; *see also* Coates Decl. ¶¶ 16–17, ECF No. 38-1. The expected pro rata cash payout per Class Member is approximately $134.35 each, according to counsel at the fairness hearing. *See also* Coates Decl. ¶ 9, ECF No. 38-1; Verita Decl. ¶ 20, ECF No. 38-2. No individuals submitted any objections to the settlement. Coates Decl. ¶ 16, ECF No. 38-1.

---

[2] Located at *https://www.PeoplesBankSettlement.com*. The Settlement Website includes (1) downloadable copies of relevant settlement documents, including the Long Form Notice and Claim Form, the Preliminary Approval Order, and the Settlement Agreement; (2) important dates and deadlines for Settlement Class Members; and (3) frequently asked questions. Coates Decl. ¶ 15, ECF No. 38-1; Verita Decl. ¶ 10, ECF No. 38-2.

II. APPROVAL OF CLASS CERTIFICATION FOR SETTLEMENT

To grant final approval of a settlement class, the requirements provided in Rule 23 must be satisfied. *See* Fed. R. Civ. P. 23. The Court has already preliminarily approved the Class for settlement purposes, ECF No. 36, and now finds that the standards required for final approval are satisfied.

A. Numerosity

To satisfy numerosity, the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "There is no strict numerical test for determining impracticability of joinder." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) (citation omitted). Indeed, "[t]he numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc., v. EEOC*, 446 U.S. 318, 330 (1980). Here, the Class contains almost 50,000 members. ECF No. 38 at PAGEID # 478. Numerosity is satisfied because it would be impractical, if not impossible, to join all Class Members into one action.

B. Commonality

To establish commonality, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the Class Members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (internal quotation marks and citations omitted). The claims "must depend upon a common contention[,]" and "[t]hat common contention . . . must be of such a nature that is capable of

classwide resolution—which means that determination of its truth or its falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350.

As the Court previously observed, this case involves "common questions of law and fact[,] including whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Security Incident, satisfying commonality." ECF No. 36 at PAGEID # 436. Because that inquiry (and others) revolves around evidence that does not vary by Class Member, the issue can be fairly resolved—at least for settlement purposes—for all Class Members at once.

C. Typicality

A class representative's "claim is typical if 'it arises from the same event or practice or course of conduct that gives rise to the claims of other Class Members, and if his or her claims are based on the same legal theory.'" *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1082). The typicality requirement "tend[s] to merge" with the commonality requirement. *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

Here, all claims involve Defendant's conduct toward the Class Members. And the Named Plaintiffs properly rely on the same legal theories as the rest of the Class. So, the Named Plaintiffs' claims are typical of those of the Class.

D. Adequacy of Representation

The adequacy inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Products, Inc., v. Windsor*, 521 U.S. 591, 625 (1997) (citing *Falcon*, 457 U.S. 157–58). To determine the adequacy of representation requirement, a court must consider two elements: "'[(1)] the representative must have common interests with unnamed members of the class, and [(2)] it must appear that the representative[ ] will vigorously prosecute the interests of the class through qualified counsel.'" *Pelzer v. Vassalle*, 655 F. App'x 352, 364 (6th Cir. 2016) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1083).

Here, the Named Plaintiffs and Class Members share common interests. No conflict exists between the Named Plaintiffs and the Class Members that they seek to represent. And Class Counsel are thoroughly qualified in data breach litigation. *See, e.g.*, Coates Decl ¶¶ 1–4, ECF No. 37-1. Thus, adequacy is met.

E. Rule 23(b) Requirements

The Named Plaintiffs seek certification under Rule 23(b)(3), *see* ECF No. 35 at PAGEID # 338, which requires them to show that common questions of fact or law predominate over any individual questions and that a class action is superior to other available methods for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). Both elements are met here.

1. Predominance

"To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Randleman v. Fid. Nat'l Title Ins. Co.*, 646 F.3d 347, 353 (6th Cir. 2011) (citing *Beattie*, 511 F.3d at 564).

Predominance is satisfied here. There is one set of operative facts that would render Defendant potentially liable to each Class Member, as evident in the Class definition. Each Class Member alleges that Defendant should be held liable for the Security Incident. Consequently, the alleged injuries to Class Members are of the same nature. The Court therefore finds common questions predominate over individual issues.

2. Superiority

Finally, before certifying a class under Rule 23(b)(3), the Court must find that a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). To make this decision, the Court considers:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Id.; *see also, e.g.*, *In re Wasserstrom Holdings, Inc. Data Breach Litig.*, No. 2:23-CV-2070, 2025 WL 1563548, at *5 (S.D. Ohio Apr. 11, 2025).

Here, class treatment is superior to other available methods. The Class Members have little interest in individually controlling separate actions, as the amount of individual damages is likely to be small and far outweighed by the cost of litigation. "[S]mall awards weigh in favor of class suits." *Pipefitters Loc. 636 Ins. Fund v. Blue Cross Blue Shield of Mich.*, 654 F.3d 618, 631 (6th Cir. 2011) (citing cases). The Court is unaware of any litigation about this controversy that is currently pending, by or against the Class Members. It is desirable to concentrate the litigation in this forum as the parties and, to a lesser extent, the Court has already expended time and resources on this case. Last, the difficulties in managing a class action do not outweigh the benefits of certifying a class. So, a class action is clearly the superior method of adjudicating this case.

* * *

For these reasons, the Court **CERTIFIES** the class for purposes of the settlement using the above definition; **APPOINTS** Named Plaintiffs Latasha Brooks, Michael Brooks, Earl Blankenship, Stephen McDonald, and Cheryl Barefoot as the Class Representatives; and **APPOINTS** Terence R. Coates of Markovits, Stock & DeMarco, LLC, and Philip J. Krzeski of Chestnut Cambronne PA as Class Counsel.

III. APPROVAL OF PROPOSED CLASS SETTLEMENT

When deciding whether to approve a proposed class action settlement, the Court must consider whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, the Court considers:

> (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Poplar Creek Dev. Co. v. Chesapeake Appalachia, LLC, 636 F.3d 235, 244 (6th Cir. 2011) (citations and internal quotation marks omitted). The Court "enjoys wide discretion in assessing the weight and applicability of these factors." *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205–06 (6th Cir. 1992) (citation omitted). For the reasons below, the Court concludes that the settlement is fair, adequate, and reasonable.

A. The Risk of Fraud or Collusion

First, the Court finds that there is no evidence—or even a suggestion—that the settlement was the product of fraud or collusion. *See IUE-CWA v. Gen. Motors Corp.*, 238 F.R.D. 583, 598 (E.D. Mich. 2006) ("Courts presume the absence of fraud or collusion unless there is evidence to the contrary." (citation omitted)). Rather, the settlement is the result of extensive arm's-length negotiations over several months with the assistance of a mediator (Judge Jones). *See* Coates Decl. ¶ 6, ECF No. 35-2. The Court concludes that this factor favors settlement approval.

B. Complexity, Expense, and Likely Duration of Litigation

Generally, "'[m]ost class actions are inherently complex[,] and settlement avoids the costs, delays, and multitude of other problems associated with them.'" *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001) (quoting *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). This is especially true of data-breach litigation. Due in part to their cutting-edge nature and implication of rapidly evolving law, data breach cases (like this one) generally face substantial hurdles. *See, e.g.*, *Savidge v. Pharm-Save, Inc.*, 727 F. Supp. 3d 661, 663 (W.D. Ky. 2024) (certifying contested class of employees in data-breach case after roughly seven years of litigation); *Hammond v. The Bank of N.Y. 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).

Here, the difficulty that Class Members would encounter in proving their claims, the substantial litigation expenses, and the possibility of further delay in recovery due to the appellate process weigh in favor of approving the settlement. Continued litigation would require substantial time, effort, and expense, both to retain qualified experts and to conduct record review and depositions. Settling the case now saves time and money for the parties and time for the Court. Accordingly, this factor favors approving the settlement. It secures a substantial benefit for the Class Members, undiminished by further expenses and without the delay, cost, and uncertainty of protracted litigation.

C. Amount of Discovery

To confirm that the parties "have had access to sufficient information to evaluate their case and to assess the adequacy of the proposed [s]ettlement," the Court must consider the amount of discovery in which the parties have engaged. *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 374 (S.D. Ohio 2006) (citations omitted). "In considering whether there has been sufficient discovery to permit the plaintiffs to make an informed evaluation of the merits of a possible settlement," courts "should take account not only of court-refereed discovery but also informal discovery in which parties engaged both before and after litigation commenced." *UAW v. Gen'l Motors Corp.*, No. 05-CV-73991-DT, 2006 WL 891151, at *19 (E.D. Mich. Mar. 31, 2006) (citation omitted). In this consideration, "the absence of formal discovery is not unusual or problematic, so long as the parties and the court have adequate information in order to evaluate the relative positions of the parties." *Id.* (citing cases).

In this case, the parties engaged in significant informal discovery and engaged in extensive settlement negotiations, such that both sides have been able to analyze the strengths and weaknesses of their positions and determine that the settlement is fair and reasonable under the circumstances. *See* ECF No. 38 at PAGEID # 492. The parties exchanged Rule 408 discovery to enable them to make informed decisions about the potential resolution of this Litigation. Coates Decl. ¶ 6, ECF No. 38-1. Through this pre-mediation discovery, the Named Plaintiffs confirmed vital information about their claims, including, but not

limited to, the class size, the types of data impacted in the Security Incident, and material facts surrounding the circumstances of the Incident. *Id.* The Court finds that both sides made well-informed decisions to enter into the settlement. This factor weighs in favor of approving the settlement.

D. The Likelihood of Success on the Merits

"The most important of the factors to be considered in reviewing a [s]ettlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured." *Poplar Creek*, 636 F.3d at 245 (quoting *In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984)).

Because they involve new technology and evolving law, the merits of data breach cases like this one are often uncertain. *See, e.g.*, *Hammond*, 2010 WL 2643307, at *1. Given the nature of the proposed settlement, the Court finds that the benefits of settlement are proportionate to the Named Plaintiffs' likelihood of success on the merits. *See, e.g.*, *Connectivity Sys. Inc. v. Nat'l City Bank*, No. 2:08-CV-1119, 2011 WL 292008, at *6 (S.D. Ohio Jan. 26, 2011) (finding settlement is favored where the "Named Plaintiffs' likelihood of success on the merits is uncertain"). This factor therefore weighs in favor of approving the proposed settlement.

E. Opinions of Class Counsel and Class Representatives

The recommendation of Class Counsel, skilled in class actions and corporate matters, that the Court should approve the settlement is entitled to

deference. *See, e.g.*, *Williams v. Vukovich*, 720 F.2d 909, 922–23 (6th Cir. 1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs . . . . [T]he deference afforded counsel should correspond to the amount of discovery completed and the character of the evidence uncovered."); *see also Kritzer v. Safelite Sols., LLC*, No. 2:10-cv-0729, 2012 WL 1945144, at *7, (S.D. Ohio May 30, 2012) ("The Court gives weight to the belief of experienced counsel that a settlement is in the best interests of the class."). The Court also considers the approval of the Named Plaintiffs, particularly where they are significantly involved in the discovery and settlement negotiation process. *See, e.g.*, *Gascho v. Glob. Fitness Holdings, LLC*, Case No. 2:11-cv-436, 2014 WL 1350509, at *18 (S.D. Ohio Apr. 4, 2014), *R&R adopted*, 2014 WL 3543819 (S.D. Ohio July 16, 2014), *aff'd*, 822 F.3d 269 (6th Cir. 2016).

Here, that Class Counsel recommends the Court approve the settlement warrants deference, and the Named Plaintiffs have also approved the settlement. *See* Coates Decl. ¶ 26, ECF No. 38-1. Accordingly, this factor supports approving the proposed settlement.

F. The Reaction of Absent Class Members

The Court must also consider the reaction of the Class Members. *Poplar Creek*, 636 F.3d at 244; *In re Broadwing*, 252 F.R.D. at 376. Here, as described above, from a pool of almost fifty thousand Class Members, none objected after about 91.18% received notice. Verita Decl. ¶ 9, ECF No. 38-2. This response

from Class Members supports approving the settlement. *See, e.g.*, *Moore v. Med. Fin. Servs., Inc.*, No. 2:20-cv-02443, 2021 WL 6333304, at *4 (W.D. Tenn. Nov. 30, 2021) (granting final approval when "no objections were filed and only five members requested to be excluded"); *BleachTech LLC v. United Parcel Service, Inc.*, No. 14-12719, 2022 WL 2835830, at *3 (E.D. Mich. July 20, 2022) (noting that no objections to the class action settlement "was a clear indication that the Settlement Class Members support the Settlement").

G. The Public Interest

"Public policy generally favors settlement of class action lawsuits." *Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D. Ohio 2007) (citation omitted). In this case, the settlement confers immediate benefits on the Class Members, avoids the risks and expenses of further litigation, and conserves judicial resources. The Court therefore finds that this factor favors approving the settlement.

* * *

The Court concludes that the settlement provides a substantial benefit to the parties and is fair, reasonable, and adequate.[3] *See* Fed. R. Civ. P. 23(e)(2). The approval motion, ECF No. 38, is **GRANTED**.

[3] The Court observes, however, that the settlement is structured so as to require Class Members to affirmatively submit a claim to receive benefits. Settlement Agmt. ¶ 46, ECF No. 35-1. This type of "opt-in" approach differs from traditional "opt-out" class actions, in which class members automatically receive the benefit of the class-wide adjudication (unless they exclude themselves). Nevertheless, the Court acknowledges the unique nature of data breach class actions and settlements. Although the Court finds the settlement in this case to be fair, reasonable, and adequate, the Court is not inclined to approve this type of "opt-in"-adjacent settlement approach in future non-data-breach cases.

IV. ATTORNEYS' FEES AND SERVICE AWARDS

The Named Plaintiffs further seek an award of (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 Named Plaintiff as class representatives. ECF No. 37 at PAGEID # 443.

A. Attorneys' Fees

Class Counsel requests an attorneys' fees award of not more than one-third of the total settlement fund. ECF No. 37 at PAGEID # 448. "When awarding attorney's fees in a class action, 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) authorizes a court to "award reasonable attorney's fees and non-taxable costs that are authorized by law or by the parties' agreement."

Courts apply a two-part analysis to assess the reasonableness of an attorney fee petition. *See In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 760 (S.D. Ohio 2007). First, the Court must determine the appropriate method to calculate the fees, using either the percentage of fund or the Lodestar approach. *Id.* Whichever method is utilized, the Sixth Circuit requires "only that awards of attorney's fees by federal courts in common fund cases be reasonable under the circumstances." *Rawlings*, 9 F.3d. at 516. Second, the Court must

consider six factors to assess the reasonableness of the fee. *See Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009).

Here, the Court applies the percentage of the fund method. *See, e.g., Gascho v. Glob. Health Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (indicating that the district court must make a "clear statement" as to which calculation method is being applied (citation omitted)). Accordingly, the Court will consider the following factors in determining whether the fee request is reasonable under the circumstances:

> (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

Moulton, 581 F.3d at 352 (internal quotation marks and citations omitted).

Under the circumstances of this specific case, particularly where neither Defendant nor any Class Member opposes the fee request and where the Class has received a "substantial benefit," the Court concludes that all of these factors favor approving the requested award of attorneys' fees.

As to the first factor, the Court described above the benefit conferred to the Class Members through settlement. This factor therefore weighs in favor of approving the requested award.

Second, the value of the services on an hourly basis, multiplied by the hourly rate, favors the proposed fee award. In their motion for attorneys' fees,

Class Counsel explain how a cross-check of their lodestar reveals the reasonableness of their fee award proposals. ECF No. 37 at PAGEID ## 454–55; Coates Decl. ¶ 8, ECF No. 38-1. Their analysis shows that this factor favors granting a total award of up to one-third of the total settlement fund.

Third, Class Counsel represents that they took on this case pursuant to a contingency fee agreement. ECF No. 37 at PAGEID # 453; Coates Decl. ¶¶ 6, 8, ECF No. 38-1. In doing so, 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. *See, e.g.*, *In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litig.*, 268 F. Supp. 2d 907, 936 (N.D. Ohio 2003) ("Absent this class action, most individual claimants would lack the resources to litigate a case of this magnitude.").

The Court next considers whether the fourth factor (society's stake in rewarding attorneys who produce such benefits) favors an award of the requested attorneys' fees. Class actions such as this have a "value to society more broadly, both as deterrents to unlawful behavior—particularly when the individual injuries are too small to justify the time and expense of litigation—and as private law enforcement regimes that free public sector resources." *Gascho*, 822 F.3d at 287 (citing cases). Without a class action, 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.

The remaining two factors (the complexity of the litigation and the professional skill and standing of the attorneys involved) also support granting the requested award. As touched on above, this is a complex case with nuanced issues and significant litigation. And Class Counsel represent that they have substantial experience representing plaintiffs in data breach class actions. *See* Coates Decl. ¶¶ 2–3, 15, ECF No. 38-1; *see also, 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.").

For these reasons, the Court **APPROVES** the fee award of one-third of the total settlement fund ($260,833.33) to Class Counsel.

B. Costs and Expenses

"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 v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, at *9 (S.D. Ohio Feb. 18, 2021) (quoting *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003)).

Class Counsel aver that they seek reimbursement of expenses necessary and directly related to this litigation. Coates Decl. ¶ 9, ECF No. 38-1. The expenses were incurred to pay for filing fees, mediation, travel expenses for the final approval hearing, and copying costs. *Id.*; *see also* ECF No. 37-1 at PAGEID # 472. These are the types of expenses "routinely charged to hourly fee-paying clients and thus should be reimbursed out of the settlement fund." *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 categories 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"). The Court finds that all of these costs were reasonable and necessary to litigate and settle this case and therefore **APPROVES** the request of $4,908.26 for litigation expenses.

C. Class Representative Awards

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." *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). "[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Dillworth v. Case Farms Processing, Inc.*, No. 5:08-cv-1694,

2010 WL 776933, at *7 (N.D. Ohio Mar. 8, 2010) (internal quotation marks and citations omitted).

Here, the Named Plaintiffs move for service awards of $2,500 each ($12,500 total). ECF No. 37 at PAGEID # 459. The Named Plaintiffs have "stayed informed about this litigation, reviewed and approved the settlement demand and final settlement amount and Settlement Agreement, and spent substantial time and effort protecting the Class Members' interests." Coates Decl. ¶ 13, ECF No. 37-1. This Court and several others have recently approved service awards equal to or greater than the amounts requested here in similar data breach class action settlements. *See id.* (citing cases). In light of this, the Court **APPROVES** service awards to each Named Plaintiff as class representatives in the requested amount.

V. CONCLUSION

For these reasons, the Court **GRANTS** final approval of the Settlement and enters final judgment as follows:

1. The Court, for purposes of this Final Judgment, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein.
2. The Court finds that the Settlement Agreement is fair, reasonable, and adequate, as expressed further herein. The Court also finds that the Settlement Agreement was entered into in good faith, at

arm's length, and without collusion. The Court approves and directs consummation of the Settlement Agreement.

3. The Court approves the Release provided in the Settlement Agreement and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties.

4. The Court has and reserves jurisdiction over the settlement and this Settlement Agreement, and for purposes of the settlement and Settlement Agreement, the Court has and reserves jurisdiction over the parties to the settlement.

5. The Court finds that there is no just reason for delay of entry of Final Judgment with respect to the foregoing.

6. The Court dismisses with prejudice all claims of the Class against Defendant in the Litigation, without costs and fees except as explicitly provided for in the Settlement Agreement.

7. The Court grants Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards, ECF No. 37. The Court awards Class Counsel $260,833.33 in attorneys' fees and reimbursement of expenses of $4,908.26 to be paid according to the terms of the Settlement Agreement. This amount of fees and reimbursement is fair and reasonable. The Court awards the Named Plaintiffs—Latasha Brooks, Michael Brooks, Earl Blankenship, Stephen McDonald, and Cheryl

Barefoot—$2,500 each as class representatives to be paid according to the terms of the Settlement Agreement. The award is justified based on their service to the Class.

8. On April 14, 2025, the Court entered an Order Granting Preliminary Approval of Class Action Settlement, ECF No. 36, that preliminarily approved the Settlement Agreement and established a hearing date to consider the final approval of the Settlement Agreement, Class Counsel's request for service awards, and Class Counsel's and motion for attorneys' fees and expenses.

9. The Court's Preliminary Approval Order approved the Notice Program as proposed met the requirements of Fed. R. Civ. P. 23 and due process, and is the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice.

10. The Court finds that the distribution of the Notices has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement, and that the Notice to Class Members complied with Fed. R. Civ. P. 23 and due process.

11. The Court finds Defendant has complied with the requirements of 28 U.S.C. § 1715 regarding the CAFA Notice.

12. The Court grants final approval to its appointment of Latasha Brooks, Michael Brooks, Earl Blankenship, Stephen McDonald, and

Cheryl Barefoot as Class Representatives. The Court finds that they are similarly situated to absent Class Members, are typical of the Class, and are adequate representatives. The Court further finds that Class Counsel and the Class Representatives have fairly and adequately represented the Class.

13. The Court grants final approval to its appointment of Philip Krzeski of Chestnut Cambronne PA and Terence R. Coates of Markovits, Stock & DeMarco LLC as class counsel.

14. The Court certifies the following Class for settlement purposes under Fed. R. Civ. P. 23(a) and 23(b)(3), subject to the Class exclusions set forth in the Settlement Agreement: **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.**

15. The Court finds that the Class defined above satisfies the requirements of Fed. R. Civ. P. 23(a) and (b)(3) for settlement purposes in that: (a) the Class of approximately 47,590 is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact that are common to the Class; (c) the claims of the Named Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Class Members; (d) the Named Plaintiffs and Class Counsel have

fairly and adequately protected the interests of the Class, as the Named Plaintiffs have no interests antagonistic to or in conflict with the Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Class; (e) questions of law or fact common to Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement are superior to other methods available for a fair and efficient resolution of this controversy.

16. Having considered the negotiation of, the terms of, and all of the materials submitted concerning the Settlement Agreement; having considered the Named Plaintiffs' and the Class's likelihood of success both of maintaining this action as a class action and of prevailing on the claims at trial, including the possibility that Defendant could prevail on one or more of its defenses; having considered the range of the Named Plaintiffs' possible recovery (and that of the Class) and the complexity, expense, and duration of the Litigation; and having considered the substance and amount of opposition to the proposed settlement, it is hereby determined that:

    a. Named Plaintiffs and Class Counsel have adequately represented the proposed Class;

b. The terms of the Settlement Agreement were negotiated at arm's length, vigorously advocated by experienced counsel for Named Plaintiffs and Defendant;

c. The outcome of the Litigation was in doubt when the settlement was reached, making the compromise under this settlement reasonable under the circumstances;

d. It is possible the proposed Class could receive more if the Litigation were to go to trial, but it is also possible that the proposed Class could receive less (including the possibility of receiving nothing) and/or that Defendant could defeat class certification;

e. The value of immediate recovery outweighs the possibility of future relief that would likely occur, if at all, only after further protracted litigation and appeals;

f. The parties have in good faith determined the Settlement Agreement is in their respective best interests, including both the Named Plaintiffs and Class Counsel determining that it is in the best interest of the Class Members;

g. The aggregate consideration for the Class—including both the Settlement Fund, which Defendant shall fund, and remedial measures Defendant is or has implemented—is

commensurate with the claims asserted and being released as part of the Settlement; and

h. The terms of the Settlement Agreement treat the Class Members equitably relative to each other and fall within the range of settlement terms that would be considered a fair, reasonable, and adequate resolution of the Litigation.

Therefore, pursuant to Rule 23(e), the terms of the Settlement Agreement are finally approved as fair, reasonable, and adequate as to, and in the best interest of, the Class and each of the Class Members.

17. The Court approves the distribution and allocation of the Settlement Fund under the Settlement Agreement. To the extent that any funds remain after the allocation of the Settlement Fund pursuant to the terms of the Settlement Agreement, Settlement benefit distributions will be increased or decreased pro rata, with attorneys' fees and expenses, Settlement Administration fees and expenses, and Service Awards deducted first.

18. This Final Approval Order, and all statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any

liability of any kind on the part of Defendant or of the validity or certifiability for this Litigation or other litigation of any claims or class that have been, or could have been, asserted in the Litigation.

19. The Settlement Agreement and this Final Approval Order may be filed in any action by Defendant, Class Counsel, or Class Members seeking to enforce the Settlement Agreement or the Final Approval Order.

20. The Settlement Agreement and Final Approval Order shall not be construed or admissible as an admission by Defendant that the Named Plaintiffs' claims or any similar claims are suitable for class treatment.

The Clerk shall terminate ECF Nos. 37 and 38, close this case, and close the other related member cases (1:23-cv-00603, 2:23-cv-03084, and 2:23-cv-03161).

IT IS SO ORDERED.

Michael H. Watson

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT