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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GREGG NELSON and DANIEL COZZA,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BANSLEY & KIENER, L.L.P.,

Defendant.

Case No.: 2021-CH-06274

Judge: Sophia H. Hall

**PLAINTIFF'S UNOPPOSED MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

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Plaintiffs Gregg Nelson and Daniel Cozza (collectively, “Plaintiffs” or “Representative Plaintiffs”) hereby move this Court, pursuant to the Settlement Agreement and this Court’s August 12, 2022 Order Granting Preliminary Approval, to enter an Order approving: (1) Settlement Class Counsel’s requested attorneys’ fees and costs award of \$300,000, which is 33.3% percent of the \$900,000 non-reversionary Settlement fund’s value; (2) reasonable case expenses of \$15,000, and; (2) service awards of \$5,000 to each of the Representative Plaintiffs. Settlement Class Counsel’s request for fees and costs is unopposed, as is the request for Service Awards for the Representative Plaintiffs in recognition of their efforts in representing the absent Class.¹

I. INTRODUCTION

This data breach class action arose from a cyberattack on certain computer systems (the “Data Incident”) that maintain personally identifiable information for current and former customers of Defendant Bansley & Kiener, LLP (“Bansley” or “Defendant”). The criminals allegedly exfiltrated from certain of Bansley’s computer systems the private information (“Private Information” or “PII”) of approximately 274,000 people. Representative Plaintiffs, individually and on behalf of all those similarly situated, filed actions against Bansley for failing to safeguard and protect this highly sensitive PII, including social security numbers.

Throughout the pendency of this case, Bansley has denied allegations of wrongdoing and liability, and asserted defenses to the individual and representative claims. Following the exchange of certain discovery materials, and an all-day arms’ length mediation conducted by the Hon. Wayne Andersen (Ret.) of JAMS, the Parties were able to reach agreement on a settlement with Judge Andersen’s assistance. Settlement Class Counsel then worked to finalize the Settlement Agreement and associated exhibits pertaining to notice, preliminary approval, and final approval.

¹ Capitalized terms not defined herein shall have the meaning set forth in the Settlement Agreement (“Agr.”), which was filed in this action on July 11, 2022 with Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

The Settlement represents an outstanding result for the Class and will provide excellent relief to the approximately 274,115 individuals whose data was potentially compromised in the Data Incident. The Settlement Fund of \$900,000 is structured to provide payment for: (1) claims made by Settlement Class Members for reimbursement of out-of-pocket expenses and lost time up to \$1,000 per Class Member, including up to 5 hours of lost time spent mitigating the effects of the Data Incident at \$25 per hour; (2) up to \$5000 in documented, unreimbursed “extraordinary losses” arising from actual identity theft or fraud; (3) 12-months of Equifax identity theft protection, and (4) notice and settlement administration.

On August 12, 2022, after Settlement Class Counsel filed an amended Motion for Preliminary Approval, this Court preliminarily approved the Settlement. As compensation for the substantial benefit the Settlement conferred on the Settlement Class, Settlement Class Counsel hereby respectfully move the Court for an award of \$300,000 in attorneys’ fees, which is approximately 33.3% percent of the common fund, and reimbursement of \$15,000.00² in expenses (see Agr. ¶ 7.2). Additionally, Settlement Class Counsel seek Service Awards of \$5,000 for each of the Representative Plaintiffs in recognition of the time and effort they incurred and the risk they undertook in pursuing claims that benefited the Settlement Class. *See* Agr. ¶ 7.4. The requested Service Awards for each Representative Plaintiff are in line with such awards for this type of action and should be approved.

² Actual out-of-pocket expenses incurred to date are \$18,923.88, but the Settlement Agreement caps reimbursable expenses at \$15,000.

II. FACTUAL AND PROCEDURAL HISTORY

A. Procedural History and Work Performed for the Settlement Class

On December 10, 2020, Bansley identified an in-progress cyber security incident that resulted in the encryption of a portion of its systems. Bansley immediately took steps to contain the Data Incident and prevent further encryption, including disconnecting from the internet and restoring the encrypted systems from recent backups. Because Bansley identified the attack in progress, and before a ransom demand note appeared, Bansley believed it had prevented a full ransomware attack and had taken the necessary mitigation steps. Bansley's IT specialist did not identify any evidence that Bansley data was exfiltrated prior to ransomware deployment.

On May 24, 2021, Bansley first learned the threat actor exfiltrated information from Bansley's environment. Bansley then conducted a forensic investigation with leading cybersecurity consultants to determine the full nature and scope of the Data Incident. In November 2021, Bansley began notifying individuals who may have been impacted by the Data Incident. In total, Bansley notified 274,115 individuals of the Data Incident.

As a result of the Data Incident, Plaintiffs contend that thieves accessed and stole Plaintiffs' and Settlement Class Members' PII for misuse, identity theft, and other fraudulent activities. Plaintiffs also contend that the exfiltrated PII is typically used by unauthorized part(ies) to commit identity theft, including applying for credit cards and unemployment benefits, taking out loans, and leasing equipment. Bansley disputes Plaintiffs' contentions, including that Plaintiffs or any member of the putative class has been harmed as a result of the Data Incident.

These two class action lawsuits were filed as a result of Defendant's Data Incident. The Nelson action was filed on December 17, 2021, in the Circuit Court, First Judicial Circuit in Cook

County, Illinois, Case No.: 2021-CH-06274. Plaintiff Nelson asserted claims for (i) negligence, (ii) unjust enrichment, (iii) breach of express contract, (iv) breach of implied contract, and (v) declaratory relief. The Cozza action was filed on February 23, 2022, in the Circuit Court, First Judicial Circuit in Cook County, Illinois, Case No.: 2022-CH-01515. Plaintiff Cozza asserted claims for (i) negligence; (ii) negligence per se; (iii) breach of contracts to which plaintiff and class members are third-party beneficiaries; (iv) breach of implied contract; (v) unjust enrichment; (vi) common law unfair competition; (vii) declaratory and injunctive relief; (viii) violation of the Illinois Consumer Fraud Act; (ix) violation of the Illinois Uniform Deceptive Trade Practices Act; and (x) violation of the Missouri Merchandising Practices Act.

On June 21, 2022, Plaintiffs Gregg Nelson and Daniel Cozza filed a consolidated class action complaint (the “Consolidated Complaint”) against Defendant. The Consolidated Complaint asserts five causes of action, all of which allegedly arise from the Data Incident: (1) negligence; (2) unjust enrichment; (3) breach of express contract; (4) breach of implied contract; and (5) declaratory judgment.

The Parties began meeting and conferring regarding the circumstances surrounding and extent of the Data Incident. Eventually the Parties agreed to informal settlement discussions and mediation. Before and in preparation for mediation, the Parties engaged in informal discovery to ensure they had a thorough understanding of the facts and merits of this case.

On April 19, 2022, Plaintiffs’ counsel, Defendant, and Defendant’s counsel attended a mediation session with the Hon. Wayne Andersen (Ret.)—a well-respected and experienced mediator. (Exhibit B to Amended Unopposed Motion for Preliminary Approval, Declaration of Gary M. Klinger (“Klinger Decl.”) ¶ 8.) At the conclusion of the mediation, the Parties reached a resolution of this matter. (*Id.*) The Parties then negotiated the terms of the Settlement Agreement,

Class Notice, Claim Form, and Notice Plan, and the Parties agreed on P&N to serve as the Claims Administrator.

The Parties' Settlement Agreement was filed with this Court along with Plaintiffs' Amended Unopposed Motion for Preliminary Approval of Settlement on July 11, 2022. It was preliminarily approved by the Court on August 12, 2022, and notices related to the Settlement were sent to Class Members soon thereafter.

B. The Settlement Agreement Provides Excellent and Timely Relief to the Settlement Class.

The Settlement Agreement³ provides excellent and timely relief to the Settlement Class, defined as:

All persons who were identified by Bansley as having their data potentially accessed in the Data Incident, and who were sent a Notice of Data Breach letter by or on behalf of Bansley regarding the Data Incident. (the "Nationwide Class")

The proposed Settlement requires Defendant to pay \$900,000 to create a non-reversionary common fund for: (a) reimbursement for the Settlement Class Members' ordinary and extraordinary expenses related to the Data Incident and providing identity theft protection; (b) reasonable notice and settlement administration costs, including the cost of providing notice to the Class; (c) attorney fees and expenses, subject to Court approval; and (d) service awards to each of the Plaintiffs, subject to Court approval. (SA, ¶¶ 2.1, 2.2, 2.3, 2.11, 7.2, 7.4.) The settlement administration expenses, including costs for mailing the Class Notice, any Court-approved Service Awards and attorneys' fees and expenses to Class Counsel will be deducted from the Settlement Fund. (*Id.* ¶ 2.11).

³ Summarized here. For specific details and requirements, refer directly to Settlement and/or Notice documents filed with Plaintiff's Motion for Preliminary Approval.

Settlement Class Members may submit claims for reimbursement of ordinary and extraordinary expenses with reasonable documentation that the out-of-pocket expenses and charges claimed were both actually incurred and plausibly arose from the Data Incident. (SA, ¶¶ 2.1, 2.2, 2.2.1.) Settlement Class Members may also request reimbursement for up to five hours of time spent remediating the effects of the Data Incident, at a rate of \$25 per hour upon attestation detailing the time spent. The maximum total reimbursement any class member can claim is \$1,000 for time spent and ordinary losses. (*Id.* ¶ 2.1.) The maximum total reimbursement any class member can claim is \$5,000 for extraordinary losses—proven losses not already covered by the ordinary loss categories. (*Id.* ¶ 2.2.) There will be a 90-day period to submit claims for out-of-pocket expenses and time spent. (*Id.* ¶ 2.1.)

Additionally, all Settlement Class Members are also eligible to claim Equifax identity theft protection services (provided by Aura Sub, LLC) for a period of 12 months from the Effective Date. (*Id.* ¶ 2.3.)

The Settlement Agreement further provides for extensive equitable relief in the form of significant data security enhancements. Bansley agreed to take extensive and costly steps to better secure Settlement Class Members' PII. (SA, ¶ 2.4.) This commitment to improve security helps protect Plaintiffs' and Settlement Class Member's PII still in Defendant's possession from future data breaches and/or ransomware events. These security improvements are also important because Plaintiffs and Settlement Class Members have no other means of protecting the PII in Defendant's possession.

The ongoing improvements include third party 24/7 security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, multifactor authentication for server and email access and VPN logins, enhanced employee training on data

security and network security, ongoing engagement of information security consultants, upgraded anti-virus/malware software, and equipment upgrades. (Klinger Decl. ¶ 9; SA, ¶ 2.4.) Bansley agrees to keep these enhancements in place for 36 months after execution of this agreement. (SA, ¶ 2.4.)

The dual aspects of the Settlement—providing both direct benefits to the Settlement Class and protection against the loss of PII for both the Settlement Class and Defendant’s future customers whose PII will be stored—was a significant victory for both the Settlement Class and their future colleagues. Settlement Class Counsel negotiated these terms with, and obtained the results for the Settlement Class from, Bansley, which mounted a strong defense with experienced data breach attorneys. Prior to the negotiations, Settlement Class Counsel researched the merits of the claims and issues related to class certification, developed damage calculations and methodologies, and then prepared a lengthy mediation submission. Absent these efforts, the Settlement would not have been reached.

III. THE REQUESTED FEES, COSTS, AND SERVICE AWARDS ARE REASONABLE.

A. The Requested Fees are Reasonable.

The Settlement Agreement provides that Settlement Class Counsel may file a motion seeking reasonable attorneys’ fees, costs and expenses in a total amount not to exceed Three Hundred Thousand Dollars (\$300,000), which will be paid from the Settlement Fund. *See* Agr. ¶ 7.2. For the reasons that follow, Settlement Class Counsel’s request for \$300,000 in fees, costs, and expenses is eminently fair and reasonable and should be approved.

1. Percentage-of-the-Benefit is the Best Method for Calculating the Fee Data Breach Class Actions

Under Illinois law, an attorney in a class action “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.” *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill.2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) (internal citations omitted). The basis of the common fund doctrine is “the equitable concept that the beneficiaries of a fund will be unjustly enriched by the attorney’s services unless they contribute to the costs of the litigation.” *Wendling*, 242 Ill.2d at 265.

While not binding on this Court, persuasive authority from the United States Court of Appeals for the Seventh Circuit (which encompasses Illinois) hold that the court is required to ascertain a value of the settlement to the class when awarding attorneys’ fees. *See Redman v. RadioShack*, 768 F.3d 622, 365 (7th Cir. 2014); *Fritzinger v. Angie’s List, Inc.*, 2014 U.S. Dist. LEXIS 132468, *10-11, 2014 WL 4680898 (S.D. Ind. Sept. 22, 2014) (after estimating the conservative value to the class of the settlement, the court awarded fees that were 23.7% of the value). Federal district courts within the Seventh Circuit “regularly award percentages of 33.33% or higher to counsel in class action litigation.” *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368 at *35 (S.D. Ill. Dec. 13, 2018); *see also Behrens v. Landmark Credit Union*, No. 17-cv-101-jdp, 2018 U.S. Dist. LEXIS 106358 at *16 (W.D. Wis. June 26, 2018) (“And generally, a 33 to 40 percent contingency fee is considered consistent with the market rate and reasonable.”); *Martin v. Caterpillar Inc.*, No. 07-CV- 1009, 2010 U.S. Dist. LEXIS 145111, 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010) (“[C]ourts in the Seventh Circuit award attorney fees ‘equal to approximately one-third or more of the recovery.’ . . . The

Seventh Circuit itself has specifically noted that “the typical contingent fee is between 33 and 40 percent.”) (citation omitted).

In determining the amount of a reasonable fee award in a common fund case, the Court has discretionary authority to choose the percentage-of-the-recovery or lodestar method. *See, e.g., Brundidge v. Glendale Fed. Bank*, 168 Ill.2d 235, 243–44 (1995). Under the percentage-of-the-recovery method, the Court would award “attorney fees to Plaintiff’s counsel based on a percentage of the fund held by the court.” *Id.* at 244. This method “is, overall, a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with representing the plaintiff class.” *Id.* On the other hand, the lodestar method has been criticized for encouraging inefficiency and creating additional litigation. *See, e.g., Ryan City of Chicago*, 274 Ill.App.3d 913, 924 (1st Dist. 1995) (noting that “[p]ercentage analysis approach eliminates the need for additional major litigation” while detailing the inefficiencies of the lodestar method).

Applying the percentage-of-the-recovery approach here is most sensible. That approach has been used in Illinois in recent years to determine a reasonable fee award in many class action settlements, including privacy and data breach cases. *See, e.g., Kolinek v. Walgreen Co.*, 311 F.R.D. at 501 (N.D. Ill. 2015) (awarding fees of 36%); *Martin v. JTH Tax, Inc.*, No. 13-cv-6923, ECF No. 85 (N.D. Ill. Sept. 16, 2015) (awarding fees of 38%); *Kusinski v. Macneil Auto. Prod. Ltd.*, No. 17-CV-3618, 2018 WL 3814303, at *1 (N.D. Ill. Aug. 9, 2018) (“The Court authorizes 1/3 of the Gross Settlement Fund”); *Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 795 (7th Cir. 2018) (affirming post-Pearson fee award in TCPA class action that included, *inter alia*, “the sum of 36% of the first \$10 million”); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781 (same); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (noting table of 13 cases in

the Northern District of Illinois submitted by class counsel showing fees awarded ranged from 30% to 39% of the settlement fund); *Karpilovksy v. All Web Leads, Inc.*, 17-cv-01307, ECF No. 173 (N.D. Ill. Aug. 8, 2019) (approving fees of 35%); *Zepeda v. Intercontinental Hotels Group, Inc.*, Case No. 18-CH-02140 (Ill. Cir. Ct. Cook Cnty. 2018) (Atkins, J.); *Svagdis v. Alro Steel Corp.*, 17-CH-12566 (Ill. Cir. Ct. Cook Cnty. 2018) (Larsen, J.); *Zhirovetskiy v. Zayo Group, LLC*, 17-CH-09323 (Ill. Cir. Ct. Cook Cnty. 2019) (Flynn, J.); *Stecker v. MAAC Machinery Co., Inc.*, 2020-L-000321 (Ill. Cir. Ct. DuPage Cnty. 2021) (Rohm, R.).

2. A 33.3% Fee is Well Within the Normal Range for Data Breach Class Action Settlements as the Settlement Agreement Delivers Additional Non-Monetary Benefits and its Valuation is Conservatively Calculated.

The fee requested here is eminently reasonable when compared to the value of similar settlements approved by Illinois courts. This Settlement provides significant, concrete value to the Settlement Class Members. While the Out-of-Pocket and lost-time claims are capped at \$1000 per Class Member (and will be prorated should claims exceed the capped Settlement Fund), given typical claims rates, Settlement Class Counsel expect that each Settlement Class Member who makes a valid claim will receive their full Out-of-Pocket/Lost-Time allocation, without any *pro rata* reduction. Klinger Fees Dec. ¶ 30, attached to this motion as Exhibit A. Additionally, the value of the equitable relief included in this Settlement – ensuring that Bansley will secure and protect its employees’ and their dependents’ PII in the future -- provides additional value to the Settlement Class.

Under Illinois law, “an attorney is entitled to an award from the fund for the reasonable value of his or her services.” *Ryan*, 274 Ill.App.3d at 922. Here, the fees and costs requested are 33.3% of the settlement’s value. The fees and costs sought will fairly and equitably compensate Settlement Class Counsel. This request is in line with the market value of attorneys’ fees in

contingency cases, as well as fees approved in similar data breach class actions. Moreover, it also will compensate Settlement Class Counsel for their effort and the risk of bringing a data breach class action.

Settlement Class Counsel's requested attorneys' fees and expenses award of \$300,000 is reasonable in relation to the value of this settlement.

Courts in Illinois have regularly awarded 33.3% of the recovery value requested here, or even higher percentages. *See Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("Courts try to approximate the market in determining reasonable attorney's fees . . . A customary contingency fee would range from 33 1/3% to 40% of the amount recovered."); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) ("The Court is independently aware that 33 1/3% to 40% (*plus the cost of litigation*) is the standard contingent fee percentages [sic] in this legal marketplace[.]" (emphasis added)). Here, Plaintiffs' requested fee of 33.3% for falls well within the range of acceptable class action fees.

Furthermore, "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole,' even if part of the fund reverts to the defendant." *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, 333 F.R.D. 364, 386 (E.D. Pa. 2019) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)); *see also Boeing Co.*, 444 U.S. at 480 (the class members' "right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel."). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without

contributing to its costs are “unjustly enriched” at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478.

The fees and costs requested here also compare favorably to other data breach cases. For example, in *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016), the court awarded a 40% fee where the BIPA class settlement resulted in each class member being eligible to receive a *pro rata* share of a settlement fund that would have amounted to approximately \$40 per person if each class member had submitted a valid claim.

Plaintiffs here seek just 33.3% of the Settlement’s value, while providing up to \$1000 per Class Member for qualified claims ordinary loss claims, including 5 hours of attested to lost time at \$25 per hour. The Settlement also provides for up to \$5000 of reimbursement for document extraordinary losses, and one year of Equifax identity protection for those Class members who claim it. The settlement provides for meaningful equitable relief. Accordingly, the requested fee award is well within the existing market for fee awards in data breach class actions, reasonable, and should be approved by this Court.

3. The 33.3% Fee Award is Supported by Settlement Class Counsel’s Effort.

The requested 33.3% fee award is also reasonable based on the work Settlement Class Counsel have put into this case. This settlement required the coordination of multiple cases, filed by multiple plaintiffs in different courts. Despite the somewhat early stage of litigation and in light of the multiple complaints on file, Settlement Class Counsel agreed that early settlement discussions could benefit the putative Class. Klinger Fee Decl., ¶ 23. Therefore, Settlement Class Counsel and Bansley agreed to a mediation before the Honorable Wayne Andersen (Ret.), contingent upon Bansley producing confirmatory discovery needed to inform any settlement discussions and proposals. *Id.*

The Settlement was reached only after contentious negotiations between counsel for the Parties presided over by Judge Andersen. Negotiations began only after the Parties had exchanged information regarding the underlying facts of the case and the size of the putative class. Klinger Fee Decl., ¶ 23. Such an involved process underscores the non-collusive nature of the proposed settlement. Given the fair result for the Settlement Class in terms of the monetary and programmatic relief made available, it is clear that this Settlement was reached as a result of good-faith, yet hard fought, negotiations. *See* Klinger Fees Dec., ¶ 29.

Settlement Class Counsel expended considerable time and resources discussing and negotiating the details and terms of the Settlement Agreement, while also addressing the jurisdictional issues and maintaining the Settlement Fund cap. They spent considerable time drafting and revising settlement-related exhibits, and drafting the preliminary approval papers and preparing for and appearing at the preliminary approval hearing. And Settlement Class Counsel will incur additional time going forward as they drive this case to final resolution. Specifically, Settlement Class Counsel still must continue to monitor notice and claims administration, prepare the Motion for Final Approval, prepare for and participate in the Final Approval hearing, respond to any Settlement Class Member's inquiry and, after Final Approval, ensure that the Settlement is properly administered.

4. The 33.3% Fee Award is Well-Supported by the Contingent Risk Assumed by Settlement Class Counsel.

The requested fee award is also reasonable when measured against the contingent risk assumed by Settlement Class Counsel. Settlement Class Counsel accepted this litigation on a contingent fee basis, fronting costs and expenses, and accepting the risk that should they be ultimately unsuccessful they would receive no compensation for their work. Klinger Fees Dec., ¶¶

31-36. Although these risks are inherent in any class action, there are additional unique risks in data breach class actions, and in this case specifically.

Bansley firmly denies the material allegations of the Consolidated Class Action Complaint, and if litigation continues, will pursue several legal and factual defenses, including, but not limited to, whether Bansley owed or breached any duty of care to Representative Plaintiffs and Settlement Class Members. If successful, this potential defense would result in Representative Plaintiffs and the Settlement Class Members receiving no payment or, indeed, *any* relief whatsoever.

Moreover, the unsettled nature of several potentially dispositive threshold issues in this case poses a significant risk to Representative Plaintiffs' claims and would add to the length and costs of continued litigation. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, 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). Class certification is another hurdle that would have to be overcome—and certification has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015); *see also e.g., Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (“Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation”) (internal citations omitted).

These additional hurdles to the litigation of data breach class actions could have ended this case without relief to the Settlement Class or significantly reduced the value each Settlement Class

Member might receive years down the road while their personal, private data continued to be exposed and highly at risk.

5. A lodestar crosscheck demonstrates the reasonableness of the attorneys' fee request.

Illinois Circuit Courts will often opt to review or cross-check a requested fee under the lodestar method. The lodestar is “the product of the hours reasonably expended on the case multiplied by a reasonable hourly rate.” a lodestar analysis here supports the requested fee.

Here, Class Counsel has incurred a lodestar of \$302,374.60 (calculated by multiplying the hours spent versus counsel’s customary billable hour rates), meaning the \$300,000 in fees sought represent a negative multiplier of 0.99 —not including the additional fees Class Counsel expects to incur bringing the case to closure. Klinger Fees Decl. Exhibit A, ¶¶ 37, 39; *see also* fee declarations of other Class Counsel attached hereto as Exhibits B, C, and D. In fact, by the close of the case, if Counsel recovers the requested fees, they will likely represent a significant negative multiplier of their lodestar.⁴

Over the course of litigation, Counsel has carried out 448.25 hours of work including: conducting an investigation into the facts regarding Plaintiffs’ claims and Class Members’ claims; researching law relevant to, and preparing, Plaintiffs’ operative class action complaint; researching law relevant to the defenses raised in Defendant’s answer to Plaintiffs’ Complaint; preparing for and attending mediation with Judge Wayne Andersen (Ret.) of JAMS, including researching and

⁴ Given the negative lodestar multiplier provided by the requested fee, this factor heavily favors approval of the requested award of attorneys’ fees. *See, e.g., Hapka v. Carecentrix, Inc.*, No. 2:16-CV-02372-KGG, 2018 WL 1879845, at *2 (D. Kan. Feb. 15, 2018) (“a negative multiplier (0.87) on Class Counsel's lodestar—is inherently reasonable.”); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1023 (E.D. Cal. 2019) (negative multiplier supports finding of reasonableness); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at *23 (E.D. Cal. June 11, 2012) (a negative lodestar multiplier strongly supports the reasonableness of the fee request); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *15 (N.D. Cal. Nov. 26, 2007) (finding that a negative multiplier suggests that “the requested percentage[-]based fee is fair and reasonable”).

preparing a detailed mediation statement, as well as attending pre-mediation conferences and calls with Judge Andersen; negotiating and preparing the Parties' class action Settlement Agreement along with the proposed class notice and claim form; negotiating with settlement administration companies to secure the best notice plan practicable; reviewing and revising Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement; attending the preliminary approval hearing; working with the Settlement Administrator to ensure the timely completion of Notice and processing of claims; monitoring the claims process and corresponding with the Settlement Administrator regarding the same; preparing the instant Motion for Attorneys' Fees, Costs, Expenses, and an Incentive Award; closely monitoring evolving law regarding data security and its potential impacts on the case; conferring with Plaintiffs throughout the case; and responding to Settlement Class Member inquiries regarding the claims process. Klinger Fees Decl. ¶ 36. Where possible, Class Counsel made efforts to carefully assign work so as to avoid duplication of efforts. Klinger Fees Decl. ¶ 34. Upon request, Class Counsel will provide detailed contemporaneous records to the Court for review. *Id.* ¶ 40.

The hourly rates charged by Class Counsel are commensurate with hourly rates charged by their contemporaries around the country, including those rates charged by lawyers with similar experience who practice in the area of data breach class litigation in Illinois, the federal Seventh Circuit and across the nation. Klinger Fees Decl. ¶ 39. The rates utilized are also commensurate with rates approved by courts within the Seventh Circuit. *Id.*; see also *Daluge v. Cont'l Cas. Co.*, 2018 WL 6040091, at *3–4 (approving rates of \$795 for partners and \$225 for paralegal).

Class Counsel's rates also compare very favorably with rates approved by other trial courts in data breach and other class action litigation, by what attorneys of comparable skill and experience charge in similar areas of specialization. See *Spano v. Boeing Co.*, No. 06-CV-743-

NJR-DGW, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (approving these hourly rates: attorneys with at least 25 years of experience, \$998 per hour; for attorneys with 15–24 years of experience, \$850 per hour; for attorneys with 5–14 years of experience, \$612 per hour; for attorneys with 2–4 years of experience, \$460 per hour; for paralegals and law clerks, \$309 per hour; for legal assistants, \$190 per hour).

The hourly rates charged by Class Counsel are commensurate with hourly rates charged by their contemporaries around the country, including those rates charged by lawyers with similar experience who practice in the area of data breach class litigation in the Seventh Circuit and across the nation. The rates utilized are also commensurate with rates approved by this Court and courts within the Seventh Circuit. *Id.*; see also *Chesemore v. All. Holdings, Inc.*, No. 09-CV-413-WMC, 2014 WL 4415919, at *6 (W.D. Wis. Sept. 5, 2014) (from “\$395 (for lower-level associates) to \$895 (for highest-level partners)”). These rates are lower than or are comparable to rates that have been approved by this Court in another data breach class action settlement within the last year. See, e.g. *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (awarding \$1,575,000 in attorneys’ fees and costs, at hourly rates from \$815-\$865 per hour for partners, \$550-\$625 for senior associates, \$415-\$500 for associates, and \$215-\$350 for paralegals).

Class Counsel’s hourly rates are also on par with market rates usually charged by other plaintiffs’ firms handling multistate data-breach class actions. See *Perdue v. Hy-Vee, Inc.*, No. 19-1330, 2021 WL 3081051, at *5 (C.D. Ill. July 21, 2021) (approving reasonable hourly rates requested by Class Counsel of \$700-\$815 for partners, \$325-\$700 for associates, \$200-\$275 for paralegals, and \$150-\$225 for law clerks); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (finding reasonable

hourly rates charged by partners who billed \$1050, \$1000 \$750, and \$935 per hour); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (finding reasonable rates from \$450 to \$900 for partners, \$160-\$850 for non-partner attorneys, and \$50 to \$380 for paralegals);); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *12 (E.D. Pa. Sept. 24, 2019) (finding reasonable hourly rates range \$202 to \$975 per hour); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *16 (N.D. Cal. Aug. 17, 2018) (finding reasonable hourly rates of partners from \$400 to \$970, non-partner attorneys from \$185 to \$850, and non-attorneys from \$95 to \$440). *See* Docs. 59-1 and 59-2. These rates are reasonable in light of Class Counsel’s significant experience and the relatively specialized nature of this data breach class actions. These rates have been approved by other courts. *See* Klinger Fee Declaration ¶ 39.

The attorneys’ fees requested are fair and reasonable, and should be approved.

B. The Requested Expenses Are Reasonable and Warrant Reimbursement.

The Parties agreed that Settlement Class Counsel would be reimbursed their litigation costs and expenses. Agr. ¶ 7.2. As with attorneys’ fees, plaintiffs’ counsel who obtain a common fund for a class are entitled to reimbursement of expenses because class members receiving a common fund should contribute to the cost of litigation. *See, e.g., Wendling*, 242 Ill.2d at 265.

Here, Settlement Class Counsel’s expenses here were all reasonably incurred in pursuing this litigation. Settlement Class Counsel have expended \$18,923.88 in reimbursable litigation expenses, primarily related to filing and court fees and mediation costs, with the likelihood of incurring more expenses yet to come. Klinger Fees Dec. ¶ 45. Settlement Class Counsel have reviewed their expense records carefully and determined that the expenses were necessary to the successful prosecution of this case. *Id.* These minimal expenses were necessary to prosecute litigation on behalf of the Settlement Class, to drive resolution, and they are typical of expenses

regularly awarded in consumer class actions. *See, id.* Accordingly, Plaintiffs request that the Court approve the reimbursement of Settlement Class Counsel's reasonable litigation expenses in the amount of \$15,000.

C. The Service Awards are Reasonable.

The Settlement Agreement also provides for a Service Award for each Representative Plaintiff in the amount of Two Thousand Dollars (\$5,000), for a total of Ten Thousand Dollars (\$10,000), which will not be paid from the Settlement Fund. Agr. ¶ 7.4. Service awards "are not atypical in class action cases" as compensation for the class representative's service to the class and to incentivize others to step forward as future named Plaintiffs. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill.App.3d 486, 497 (1st Dist. 1992).

Here, the Representative Plaintiffs' participation was critical to the case's ultimate resolution. Each Representative Plaintiff's willingness to commit time to this litigation and undertake the responsibilities involved in representative litigation resulted in a substantial benefit to the Settlement Class and fully justifies the requested incentive award. *See Klinger Fees Dec.*, ¶ 40. Moreover, the requested Service Awards are consistent with—and even *lower* than—other class action incentive awards that have been granted by Illinois courts. *See, e.g., Sekura*, 2015-CH- 16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (granting \$5,000 incentive award in BIPA case); *Svagdis*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019) (granting \$5,000 incentive award in BIPA case); *Crawford Lumber Co. v. Interline Brands, Inc.*, No. 11-CV-4462, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (approving an award of \$25,000); *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07-CV-2898, 09-CV-2026, 2012 WL 651727 at 16 (N.D. Ill. Feb. 28, 2012) (awarding a \$25,000 award to each of seven plaintiffs); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (awarding award of \$25,000); *see also Kolinek*, 311 F.R.D. at 503 (awarding

\$5,000 where the case did not proceed past the earliest stages of discovery). Accordingly, Representative Plaintiffs' Service Award requests should be granted.

IV. CONCLUSION

Settlement Class Counsel, with the help of the Representative Plaintiffs, have made significant benefits available to Settlement Class Members, consisting of cash reimbursements of up to \$1000 per Class Member who have suffered from Out-of-Pocket Costs and Lost-Time from the data breach, up to \$5000 in documented extraordinary loss reimbursement, 12-months of Equifax credit monitoring and identity theft protection, and future protection of their PII in Bansley's possession. In return, the Representative Plaintiffs seek fees, costs, and Service Awards well within the range of those regularly approved by Illinois Courts. The fees, costs, and Service Awards are inherently reasonable, and as such Plaintiffs respectfully request their approval.

Date: September 26, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, on oath states that I served this UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS electronically by emailing copies to the below named attorneys at their respective email addresses on September 26, 2022.

s/Gary M. Klinger

Gary M. Klinger