UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KEVIN MERRELL, individually and on behalf of all others similarly situated, Plaintiff, v. **1ST LAKE PROPERTIES, INC.,** Defendant.	**CIVIL ACTION NO. 23-1450-SSV-DPC**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND LITIGATION COSTS AND APPROVAL OF SERVICE AWARD TO PLAINTIFF

This motion comes before the Court on Plaintiff's Motion to Approve Attorney's Fees, Costs, and Service Award. Plaintiff respectfully moves this Court for entry of an Order: (1) granting Plaintiff's request for $174,983.50 in attorney's fees, $10,410.64 for reasonable expenses, and (2) granting Plaintiff's request for a service award of $5,000. This Motion is based upon: (1) this Motion and the following supporting memorandum; (2) Class Counsel's Declaration; (3) Plaintiff Kevin Merrell's Declaration; (4) the Settlement Agreement; (5) the records, pleadings, and papers filed in this Action; and (6) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing.

INTRODUCTION

Plaintiff Kevin Merrell moves the Court to approve his request for attorney's fees, costs, and service awards as reasonable. The Court should grant Plaintiff's motion because he obtained a resolution of this matter that offers significant benefits to individuals whose information was impacted by the data incident discovered by 1st Lake Properties, Inc. ("1st Lake" or "Defendant") December 2021, and accomplished what he set out to achieve with this lawsuit: reaching a resolution that offers significant benefits to victims of 1st Lake's data breach. This result was achieved despite the challenges this case faced—namely, the risk that comes with litigating data incident cases through trial.

This Settlement addresses the harms the Settlement Class suffered as a result of the data incident that Defendant discovered in December 2021. Plaintiff alleges that cybercriminals breached 1st Lake's systems and may have accessed "personally identifying information" ("PII") belonging to thousands of current, former, and prospective tenants. As a result, Plaintiff brought this above-captioned action, on behalf of himself and all other victims of 1st Lake's data breach. Following arms-length negotiation of the matter, including mediation with Bruce A. Friedman, a mediator experienced in settling data breach cases, the parties reached a settlement consisting of a

$525,000.00 non-reversionary common fund which Plaintiff believes is in the best interest of himself and the class.

First, the Agreement provides for reimbursement for losses incurred as a result of the data incident. That includes up to $10,000 for out-of-pocket losses incurred dealing with the incident.

Second, class members may submit claims for two years of three-bureau credit and identity monitoring through RG/2 Claims Administration LLC.

Third, class members may make a claim for a *pro rata* cash payment, expected to be in excess of $50 per claimant.

Fourth, 1st Lake has affirmed it improved its cybersecurity following the incident and that it will pay for those cybersecurity improvements at its own cost separate from the Settlement Fund.

Given the tremendous result achieved on behalf of the class (achieved despite many of the obstacles data breach cases pose), the Court should grant Plaintiff's request for reasonable fees, costs, and a service award.

BACKGROUND FACTS

A. The Litigation

1st Lake is a developer and property manager in the New Orleans area with over 9,500 properties in greater New Orleans. D.E. 24 ("Am. Compl."), ¶¶ 5-6. Plaintiff alleges that 1st Lake collects PII an from its tenants, including names, Social security numbers, driver's license numbers, financial account numbers, credit card numbers, and debit card numbers. *Id*. ¶ 16. Plaintiff alleges that in so doing, 1st Lake agreed it would safeguard the data in accordance with its internal policies, state law, and federal law, yet failed to implement those practices, resulting in a December 2021 data security incident ("Data Incident"). *Id*. ¶¶ 9-11, 18.

On December 25, 2021, 1st Lake discovered that an unauthorized third party had accessed its computer network. *Id*. ¶ 12. As a result, Mr. Merrell alleges that the incident exposed the PII

belonging to thousands of former and current tenants, including his own. D.E. 50-1 ("Settlement Agreement" or "Agreement"), § I. In March 2023, Mr. Merrell sued 1st Lake to remediate the alleged harm the incident may have caused him and the class, asserting five counts and demanding that 1st Lake reimburse the class's losses. *Id.*

On June 15, 2023, Defendant moved to dismiss Plaintiff's claims, generally denying each and every cause of action asserted by Plaintiff in his Complaint. Declaration of Raina C. Borrelli in Support of Plaintiff's Motion to Approve Attorney's Fees, Costs, and Service Award ("Borrelli Fee Dec."), ¶ 5. The Court granted the motion in part, dismissing the claims of negligence *per se*, breach of fiduciary duty, and invasion of privacy. *Id.* On October 17, 2023, Plaintiff filed an Amended Complaint reasserting claims for negligence and violation of the Louisiana Database Security Breach Notification Law. *Id.* ¶ 6. The court denied Defendant's renewed motion to dismiss and strike Plaintiffs Amended Complaint. *Id.* The Parties engaged in informal discovery and mutual exchange of information prior to agreeing to mediation on June 6, 2024. *Id.* ¶ 8.

B. Mediation and Settlement

Given the risks that litigating Plaintiff's case posed to both sides, the parties agreed to mediate this case with Bruce A. Friedman, a mediator experienced in settling data security cases. Borrelli Fee Dec. ¶ 9. In advance of mediation, Plaintiff's counsel requested, and 1st Lake produced, confidential confirmatory discovery. *Id.* ¶ 8. During the June 6, 2024 mediation, the Parties engaged in an extensive evaluation and discussion of the relevant facts and law, and the Parties carefully considered the risk and uncertainties of continued litigation and all other factors bearing on the merits of settlement. *Id.* ¶ 9. However, the mediation did not result in a settlement, so the parties re-opened the case, prepared case management orders, sought guidance from the Court on scheduling expert and fact discovery, class certification briefing, and summary judgment briefing, and exchanged formal discovery requests and responses, all the while continuing their

negotiations. *Id.* ¶¶ 9-10. In the following months, the Parties succeeded in reaching agreement on the principal terms of a settlement. *Id.* ¶10.

From the start, the parties agreed they would not negotiate the proposed class's attorney fees or plaintiff's service award until they agreed on the settlement agreement's core terms, thus avoiding conflict between plaintiff, class counsel, and the class. *Id.* ¶ 11.

C. Settlement Terms

After the Settlement Agreement was executed, Plaintiff moved for preliminary approval on February 4, 2025. D.E. 50. The Settlement negotiated by Settlement Class Counsel secures significant benefits for the Settlement Class, namely, a $525,000 non-reversionary Settlement Fund.

First, the settlement offers Settlement Class members a chance to claim losses from the incident, including "Unreimbursed Economic Losses" losses. Agreement ¶ 61(i). For Unreimbursed Economic Losses, Class Members may claim up to $10,000 for losses resulting from the incident, including identity theft, fraud, and costs spent mitigating those risks. *Id.* To claim this loss, a claimant must submit supporting documentation that the losses were incurred as a result of the Data Incident. *Id.*

Second, Settlement Class Members can elect to make a claim for a *pro rata* Cash Payment. *Id.* ¶ 61(ii). Significantly, submission for the *pro rata* Cash Payment requires no additional documentation beyond a valid claim form. *Id.* The amount of the cash payments is estimated to exceed $50. *Id.*

Third, Settlement Class members can receive two years of three-bureau credit monitoring at no cost. *Id.* ¶ 61(iii). The monitoring will last for two years under three bureaus, through RG/2 Claims Administration LLC. *Id.*

Fourth, Defendant has confirmed it has implemented information security enhancements, affirming that it will attest to these changes in a confidential declaration. *Id.* ¶ 75. Costs associated with these security-related measures will be paid by Defendant separate and apart from other settlement benefits and the Settlement Fund. *Id.*

And lastly, Defendant agreed to pay the cost to administer the settlement, including the Claims Administrator's costs to notify the class and process claims. *Id.* ¶ 69. Additionally, 1st Lake agreed not to object to attorney's fees not to exceed $174,983.50, or to expenses not to exceed $25,000, and a service award to Plaintiff up to $5,000. *Id.* ¶¶ 94, 96. These terms were not negotiated until *after* agreeing on the Settlement Class benefits. Borrelli Decl., ¶ 11.

D. Preliminary Approval and Notice

On February 4, 2025, Plaintiff filed his Motion for Preliminary Approval. D.E. 50. On May 22, 2025, the Court granted preliminary approval to the Settlement. D.E. 57. Since this Court entered the Preliminary Approval Order, the Parties, in conjunction with the Settlement Administrator, RG/2, have effectuated Notice consistent with the Settlement and Preliminary Approval Order. Borrelli Fee Dec. ¶ 15. Over several weeks and continuing to today, Class Counsel continued to diligently work with Defendant and the Settlement Administrator regarding claims administration and processing. *Id*. ¶ 16. While the claims process is ongoing, and RG/2 will submit a detailed declaration about the notice program and claims process in connection with the motion for final approval, preliminary data about the notice and claims process is positive. *Id*. Through July 25, 2025, 28,505 notices were successfully mailed, only one Settlement Class Member has requested exclusion, and no Settlement Class Member has objected to the Settlement. *Id*. ¶ 17.

LEGAL STANDARD

The Fifth Circuit has applied the "common fund" doctrine for decades. *See Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981) ("it is well settled that the 'common benefit' or 'common fund' equitable doctrine allows for the assessment of attorneys' fees against a common fund created by the attorneys' efforts"); *see also, e.g., Burford v. Cargill*, Inc., No. 05-0283, 2012 U.S. Dist. LEXIS 161232, at *1-2 (W.D. La. Nov. 8, 2012).

In common fund cases such as this, courts typically use one of two methods for calculating attorneys' fees: (1) the percentage method, in which the court awards fees as a reasonable percentage of the common fund; or (2) the lodestar method, in which the court computes fees by multiplying the number hour hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012).

Courts in this District have recognized that the percentage method "provides more predictability to attorneys and class members or plaintiffs, encourages settlement, and avoids protracted litigation for the sake of racking up hours, thereby reducing the time consumed by the court and the attorneys." *Torregano v. Sader Power, LLC*, No. CV 14-293, 2019 WL 969822, at *2 (E.D. La. Feb. 28, 2019) (*quoting In re Prudential-Bache Energy Income P'ships Sec. Litig*., MDL No. 888, 1994 WL 150742 (E.D. La. Apr. 13, 1994)). "For this reason, many district courts in this circuit have simply applied the percentage fee method in common fund cases." *Id.* (collecting cases). Indeed, numerous courts and commentators[1] have stated that the "percentage

[1] *See* Report of Third Circuit Task Force: Court Awarded Attorney Fees, 108 F.R.D. 237, 246-49 (1986) (identifying a number of deficiencies with the lodestar method, including: (1) increasing the workload of the judicial system; (2) lack of objectivity; (3) a sense of mathematical precision unwarranted in terms of the realities of the practice of law; (4) ease of manipulation by judges who prefer to calculate the fees in terms of percentages of the settlement fund; (5) encouraging

method is vastly superior to the lodestar method for a variety of reasons, including an incentive to 'run up the bill' and the heavy burden that calculation that the lodestar method places upon the court." *Schwartz v. TXU Corp.*, 2005 U.S. Dist. LEXIS 27077 (N.D. Tex. Nov. 8, 2005).

Under the percentage-of-recovery method, the Court first determines the benchmark percentage to be applied to the actual monetary value conferred to class members by the settlement. *Burford v. Cargill, Inc.*, No. 05- 0283, 2012 U.S. Dist. LEXIS 161232, at *1-2 (W.D. La. Nov. 8, 2012). After setting the benchmark, the Court then applies the *Johnson* factors to evaluate a settlement's requested fee's "reasonableness" of the percentage and to determine whether an adjustment is warranted. *Id.* These factors include: (i) the work required to reach settlement; (ii) the "novelty and difficulty of the issues;" (iii) the skill required to litigate the case; (iv) whether the attorney was precluded from working on other cases; (v) the "customary fee" for services; (vi) whether the fee is fixed or contingent; (vii) the time limits imposed by the client or circumstances; (viii) the amount at stake and the results; (ix) the attorneys' experience and reputation; (x) whether the case was "undesirable;" (xi) counsel's relationship with their client; and (xii) awards in "similar cases." See *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974).

ARGUMENT

A. The Court Should Approve Plaintiff's Request for Reasonable Fees and Costs

In considering the fee application, the court "must independently analyze the reasonableness of the attorneys' fees proposed in the settlement." *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 628 (E.D. La. 2006) (citing *Strong v. BellSouth Telecomm., Inc.*, 137 F.3d 844, 849–50 (5th Cir.1998)). Here, Plaintiff

duplicative and unjustified work; (6) discouraging early settlement; (7) not providing judges with enough flexibility to award or deter lawyers so that desirable objectives, such as early settlement, will be fostered; (8) providing relatively less monetary reward to the public interest bar; and (9) confusion and unpredictability in administration).

requests reasonable fees considering the value the Settlement delivers to the Class. In fact, given the risks of class action litigation in general, and data privacy litigation specifically, the Settlement Class may not have recovered the relief realized in this settlement even if Plaintiff had tried and won the case. But through settlement, Class Counsel was able to achieve significant monetary relief as well as credit monitoring.

District courts in the Fifth Circuit routinely have awarded percentages of one-third. *Torregano v. Sader Power, LLC,* No. CV 14-293, 2019 WL 969822, at *3 (E.D. La. Feb. 28, 2019); *In re Harrah's Entm't, Inc*., 1998 WL 832574, *4 (E.D. La. Nov. 25, 1998); *In re Catfish Litig.*, 939 F. Supp. 3d 493, 500 (N.D. Miss. Aug. 12, 1996) (collecting cases awarding 1/3 of common fund in attorneys' fees); *Marcus v. J.C. Penney Co. Inc.*, No. 6:13-CV-736, 2017 U.S. Dist. LEXIS 214427, 2017 WL 6590976, at *6 (E.D. Tex. Dec. 18, 2017) ("It is not unusual for attorneys' fees awarded under the percentage method to range between 25% to 30% of the [settlement] fund or more."). That percentage is appropriate here.

Plaintiff's request for one-third of the Settlement Fund, or $174,983.50, as attorney fees is reasonable and supported by case law in Louisiana federal courts and in courts in data breach cases around the country. "No general rule exists as for what is a reasonable percentage of a common fund. Fifty percent 'is the upper limit on a reasonable fee award to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented.'" *Torregano*, 2019 WL 969822, at *3 (quoting *In re Combustion, Inc.*, 968 F. Supp. 1116, 1133 (W.D. La. 1997)). This amount does not even incorporate the value that credit monitoring provides, a benefit courts recognize as "substantial" when approving fees. *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *4 (N.D. Ga. Aug. 23, 2016) (recognizing that credit monitoring "confers a substantial benefit"); *In re Anthem, Inc.*

Data Breach Litig., 327 F.R.D. 299, 319 (N.D. Cal. 2018) (noting that credit monitoring was the settlement's "main form of relief" when awarding attorney fees).

Thus, Plaintiff's fee request is well-within the range of percentage fees awarded in this Circuit in comparable cases. *See Kemp v. Unum Life Ins. Co. of Am.*, 2015 U.S. Dist. LEXIS 166164, at *23 (E.D. La. Dec. 11, 2015) ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("[B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards . . . attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions. Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 U.S. Dist. LEXIS 69143, at *34 (N.D. Tex. Apr. 25, 2018) (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range"); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010) (approving 30% fee as within range of reasonableness and noting that "[i]f the request is relatively close to the average awards in cases with similar characteristics, the court may feel a degree of confidence in approving the award"). Thus, counsel's fee request qualifies under the percentage method.

i. Plaintiff's fee request satisfies the *Johnson* factors

Counsel's request is also reasonable under the *Johnson* factors.[2] First, counsel devoted "significant time and effort pursuing this case," including by investigating the data incident, detailing Plaintiff's claims in the complaint, preparing this case for litigation, engaging in informal

[2] Because not all factors apply, counsel evaluates only those that do.

discovery in preparation of arms'-length negotiations to ensure Class Counsel had sufficient facts and information to make an informed decision about resolution, drafting the Settlement Agreement and exhibits, preparing and submitting the Motion for Preliminary Approval (which was ultimately granted), and implementing the parties' settlement by working with Defendant and the settlement administrator to effectuate notice. Borrelli Dec. ¶ 3. Class Counsel's efforts maximized the Agreement's value by redirecting resources from litigation to settlement.

Second, the "novelty and difficulty of the issues" at stake warrant awarding counsel's fee request. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019) ("[D]ata breach litigation is complex and largely undeveloped."); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 23, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare."). Indeed, "many [data breach cases] have been dismissed at the pleading stage." *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at *36 (N.D. Cal. Sep. 12, 2011). Data privacy class actions are still new and can present novel and complex issues, making a successful outcome difficult to predict. Borrelli Dec. ¶ 24. Among national consumer protection class action litigation, data privacy cases are some of the most complex and involve a rapidly evolving area of law. *Id.* As such, these cases are particularly risky for plaintiffs' attorneys. *Id.* Further, a successful outcome could only ensue, if at all, after prolonged and arduous litigation with an attendant risk of drawn-out appeals. *Id.* ¶ 22. Class Counsel took on this case and zealously advocated on behalf of Settlement Class in spite of the risks and challenges posed and devoted a substantial amount of time and money to the prosecution of this case, which ultimately resulted in a Settlement that is highly beneficial to the Class, weighing in favor of awarding the requested fee.

Third, Plaintiff would not have settled this case without Class Counsel's skill and aptitude, qualities they detail by declaration. *See* Borrelli Fee Dec., Exs. C and D. Counsel exemplifies this factor where they "performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution." *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010) (citing *DiGiacomo v. Plains All Am. Pipeline*, 2001 U.S. Dist. LEXIS 25532, at *36 (S.D. Tex. Dec. 18, 2001)). As detailed above, data privacy cases are "novel and complex," and no two incidents are the same. To settle Plaintiff's claims, Class Counsel evaluated the class's makeup, the number of individuals impacted in the incident, and the information it exposed—all to address the harm the incident may cause. Borrelli Fee Dec. ¶ 10. Were it not for counsel's experience in this area, Plaintiff would not have settled on the terms he did at the time he did. Indeed, this factor overlaps with the factor considering their attorneys' "experience and reputation," both attributes that contributed to resolving this case at this stage. For these reasons, Class Counsel satisfies the third and ninth *Johnson* factors.

Fourth, counsel took this case on contingency, risking that they may recover no fees at all. Even so, they committed to litigating this case through discovery, which would have included hiring experts, moving to certify the class, and trying the case—all without knowing whether they would even recover those costs. Borrelli Fee Dec. ¶¶ 23-24. So too at settlement. Counsel agreed to settle this matter without tying their representation to whether the Court approves their fee request, meaning they ensured the Class would recover the Agreement's benefits no matter how the Court rules on this petition. In "[r]ecognizing the contingent risk of nonpayment in [class action] cases, courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment assumed by carrying through with the case." *Turner v. Murphy Oil USA, Inc.*, 472 F.

Supp. 2d 830, 859-60 (E.D. La. 2007) (citing *In re Combustion, Inc*., 968 F. Supp. at 1132). As a result, Class Counsel has satisfied this factor.

Fifth, the amount at stake and the results realized warrant Plaintiff's fee request. Almost "all class actions involve a high level of risk, expense, and complexity[.]" *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023). And this is not only a "complex" case—"it lies within an especially risky field of litigation: data breach." *Id*. This is why courts favor settling data privacy cases, as "proceeding through the litigation process[…] is unlikely to produce the plaintiffs' desired results." *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 U.S. Dist. LEXIS 87409, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010). For that reason, these cases are not always "desirable" given the risk that counsel will recover nothing. Even so, counsel accepted the risk that comes with litigating a case in this area—and attained significant relief for the Class, as detailed above. As a result, the Court should find counsel satisfies the eighth and tenth *Johnson* factors.

And sixth, the fee requested tracks with data privacy settlements across the country. For example, the district court in *Fox v. Iowa Health Sys.* approved a settlement with around the same benefits achieved here, but with ten times the requested fees. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *12 (W.D. Wis. Mar. 4, 2021). In *Fox*, the district court awarded $1.575 million in fees for a settlement that entitled members to claim up to $1,000 for lost money and time, and up to $6,000 when responding to "actual identity theft," one year for credit monitoring, and "improved security measures" from defendant. *Id*. When approving the settlement, the Court described it as "particularly adequate given the costs, risks, and delay of trial and appeal." *Id*. So too here. And despite attaining the benefits relief as the members in *Fox* received, counsel's fee request here is under 12% of what the court awarded in

Fox. *See also Kemp*, 2015 U.S. Dist. LEXIS 166164 at *23 ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Rodriguez v. Stage 3 Separation, LLC*, No. 14-cv-00603-RP, 2015 U.S. Dist. LEXIS 186251 at *15 (W.D. Tex. Dec. 23, 2015) (finding that a 30% benchmark fee is common in the Fifth Circuit); *Poe v. United Ass'n of Journeyman & Apprentices of the Plumbing & Pipefitting Indus. of the United States AFL-CIO Local 198 Health & Welfare Fund*, No. 18-00667-BAJ-SDJ, 2021 U.S. Dist. LEXIS 188683, at *6 (M.D. La. Sep. 30, 2021) (approving fees of 33.33%). Counsel's request is fee request is reasonable, and the Court should approve it.

ii. A Lodestar Crosscheck Confirms the Reasonableness of the Fees

In addition to applying the percentage approach to determine attorneys' fees in common fund cases like this one, courts in this Circuit sometimes apply the optional lodestar method as a rough cross-check to confirm that the fee determined under the percentage approach is reasonable. *See Burford v. Cargill, Inc.*, No. 05-0283, 2012 U.S. Dist. LEXIS 161232 at *6 n.1 (W.D. La. Nov. 8, 2012). The lodestar multiplier is calculated by dividing the attorneys' fees that class counsel seeks by class counsel's lodestar. *Id.* "In recognition of the noted disadvantages of the lodestar method as the principle means for determining attorneys' fees, such as the taxing of judicial resources by examining every time entry and billing rate for each attorney, a lodestar analysis which is rough and more abbreviated is appropriate for a cross check." *In re Vioxx Prods. Liab. Litig.*, No. MDL 1657, 2018 WL 4613941, at *12 (E.D. La. Sept. 26, 2018) (quoting *Turner v. Murphy Oil USA, Inc.,* 472 F. Supp. 2d 830, 867 (E.D. La. 2007)). In performing an optional lodestar cross-check analysis, a district court may rely on summaries submitted by the attorneys and need not review actual billing records. *See Turner*, 472 F. Supp. 2d at 867 ("a court performing a lodestar cross-check need not scrutinize each time entry; reliance on representations by class counsel as to total hours may be sufficient").

Here, the cumulative number of hours expended by Plaintiff's Counsel is 398 hours, and the resulting lodestar for the services performed is $225,111.50. Borrelli Fee Dec. at ¶29. The requested fee of $174,983.50 equates to a fractional multiplier (or "negative" multiplier) of approximately 0.77. This multiplier is far less than those typically awarded by this and other courts. Indeed, courts in this circuit "typically apply multipliers ranging from one to four." *In re Harrah's Entm't*, CIVIL ACTION NO. 95-3925 SECTION "N", 1998 U.S. Dist. LEXIS 18774, at *15 (E.D. La. Nov. 24, 1998); *Burford*, 2012 U.S. Dist. LEXIS 161232, at *6 n.1 (same).

The lodestar cross-check demonstrates that the requested fees are reasonable.

B. The Court Should Approve Plaintiff's Reasonable Litigation Costs

Class Counsel requests the reimbursement of $10,410.64 in expenses reasonably and necessarily incurred while prosecuting this case. These expenses are largely attributable to the Plaintiff's portion of the mediation fee. Borrelli Fee Dec., ¶¶ 31, 33. In addition to being entitled to reasonable attorneys' fees, class counsel are also entitled to reasonable litigation expenses. *In re Pool Prods. Distribution Mkt. Antitrust Litig.*, No. 2328, 2015 U.S. Dist. LEXIS 97578, at *48 (E.D. La. July 27, 2015) ("Typically, class action counsel who create a common fund for the benefit of the class… are entitled to reimbursement of reasonable litigation expenses from that fund."). These expenses represent filing fees and service costs, and were incurred with no guarantee of recovery, Class Counsel had a strong incentive to keep them at a reasonable level and did so. *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 310 (S.D. Miss. 2014) (approving request for litigation expenses including expert fees, travel costs, and administrative expenses including filing and court fees, PACER charges, copies, postage, delivery fees, and similar expenses). Consequently, Plaintiff's Counsel respectfully requests the Court approve the expense reimbursement request to be paid by Defendant pursuant to the terms of the Agreement. *See*

Faircloth v. Certified Fin. Inc., No. Civ. A. 99-3097, 2001 WL 527489, at *9, 12 (E.D. La. May 16, 2001).

C. The Court Should Approve Plaintiff's Service Award

Last, Plaintiff requests a service award of $5,000, which is reasonable. *Kemp*, 2015 U.S. Dist. LEXIS 166164, at *21 (awarding a $5,000 service award). Courts use differing factors when approving service awards, including "(1) the actions the plaintiff took to protect the interests of the class; (2) the degree to which the class benefitted from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation." *Id.* at *21. Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Altier v. Worley Catastrophe Response, LLC*, 2012 WL 161824, *15 (E.D. La. Jan. 18, 2012) (quoting *Sullivan v. DB Inv., Inc.,* 667 F.3d 273, 333 n.65 (3rd Cir. 2011)). For that reason, courts find that $5,000 awards are reasonable and proportional to the time and effort class representatives devote to the matter. *McCumber v. Invitation Homes, Inc.*, No. 3:21-cv-02194-B, 2024 U.S. Dist. LEXIS 166868, at *11 (N.D. Tex. July 30, 2024); *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 504 (N.D. Miss. 1996) ("approving incentive awards of $10,000 to each of the four named plaintiffs").

The Court should approve Plaintiff's request for a service award of $5,000. Plaintiff assisted in preparing the complaint by providing facts and documents regarding his allegations related to the data incident. *See* Declaration of Kevin Merrell. Plaintiff remained in contact with counsel after filing his action regarding the progress of the case. *Id*. Plaintiff was available throughout the settlement process to answer questions and represent the interests of the Settlement Class. *Id*. He was prepared to take on the responsibilities of a class representative, including being deposed and testifying at trial. *Id*. Counsel could not have pursued this case without the facts he

provided. A $5,000 service award recognizes these efforts and tracks with services awards in other data incident cases. As a result, the Court should approve it.

CONCLUSION

For the reasons above, Plaintiff requests that the Court grant his Motion to approve attorneys' fees, costs, and Plaintiff's service award.

Dated: August 6, 2025

Respectfully Submitted,

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