IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:24-cv-186

MASON VAUGHAN, *individually and on behalf of himself and all others similarly situated*,	)
Plaintiff,	)
v.	)
DELTA DELTA DELTA FRATERNITY, DELTA DELTA DELTA FOUNDATION, DELTA DELTA DELTA PARK STREET PROPERTIES, LLC, and DELTA DELTA DELTA NATIONAL HOUSE CORPORATION,	)
Defendants.	)

PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARD

I. NATURE OF THE MATTER BEFORE THE COURT

Plaintiff commenced this action against Defendants Delta Delta Delta Fraternity, Delta Delta Delta Foundation, Delta Delta Delta Park Street Properties LLC, and Delta Delta Delta National House Corporation (collectively, "Tri Delta" or "Defendants") for their failure to safeguard and secure the personally identifiable information ("PII") of 442 individuals, including Plaintiff. [DE 1]. By Order dated November 4, 2024, this Court granted preliminary approval to a proposed class action settlement between Plaintiff and Defendants. [DE 27]. The undersigned counsel now presents his motion for attorneys' fees, costs, expenses, and class representative service award.

Plaintiff requests an award of one-third (33.33%) of the Monetary Relief, amounting to $50,000.00. This amount encompasses all attorneys' fees, costs, and expenses incurred by Class

Counsel in this matter. Additionally, Plaintiff seeks a Service Award of $2,500.00 in recognition of his contributions to this case and his efforts on behalf of the Settlement Class.

Plaintiff's application for attorney's fees, costs and service awards is reasonable and fair given the circumstances of the litigation, the expertise and zealous advocacy demonstrated by Class Counsel, and the significant results ultimately achieved for the Class by both Class Counsel and Plaintiff, the Class Representatives. Plaintiff respectfully requests the Court grant the motion.

II. BACKGROUND

A. Procedural Background

On March 6, 2024, Plaintiff Mason Vaughan filed a class action complaint in the United States District Court for the Middle District of North Carolina on behalf of himself and all others similarly situated. Plaintiff alleged that Defendants failed to implement adequate cybersecurity measures, resulting in a data breach on or about March 5, 2024. [DE 1]. This breach exposed sensitive PII of approximately 442 individuals, including Plaintiff and members of the proposed class. [*Id.*] The compromised data included names, addresses, and Social Security numbers. [*Id.*] Plaintiff asserted claims for negligence, negligence per se, breach of fiduciary duty, breach of implied contract, and unjust enrichment. [*Id.*] On October 23, 2024, Plaintiff filed an unopposed motion for Preliminary Approval of the Settlement Agreement reached by the parties. [DE 27].

B. General Terms of the Settlement Agreement

The Settlement Agreement establishes a $150,000.00 Settlement Fund to provide monetary relief and benefits to the Settlement Class Members. [*See generally* DE 27-1]. This fund is non-reversionary and will be used to cover payments for approved claims, including reimbursement for out-of-pocket losses and attested time, an alternative cash payment, and credit monitoring

services, as well as associated administrative expenses, service awards, and attorneys' fees and costs.

Settlement Class Members may claim up to $5,000.00 for documented expenses incurred because of the Data Incident. These expenses include unreimbursed costs associated with identity theft, credit monitoring services, and other reasonable costs directly related to the Data Incident. Additionally, Settlement Class Members may claim up to four hours of lost time spent addressing issues caused by the Data Incident, compensated at $25.00 per hour, for a maximum of $100.00.

Settlement Class Members are eligible to enroll in three years of comprehensive credit monitoring and identity protection services through CyEx. [Ex. 3, Thompson Decl., ¶ 7]. The plan that will be offered to the Settlement Class Members is "Identity Defense Total" which retails for $19.99 per month. [*Id.*] These services include daily monitoring with the three major credit bureaus, identity restoration services, and up to $1 million in identity theft insurance. [*Id.*, ¶¶ 7-8; 10]. Assuming full participation by all class members, the retail value of the Identity Defense Total is approximately $318,080.88. [*Id.*, ¶ 9]. Alternatively, Settlement Class Members who prefer not to claim reimbursement or credit monitoring services may instead claim a one-time cash payment of $75.00.

In addition to these benefits, Defendants have expended approximately $138,800.00 to modify and improve their procedures relating to the protection of class members [Ex. 2, Tucker Decl., ¶¶ 2-3]. This amount was expended by Defendants separate and apart from the Settlement Fund. [DE 27-1, ¶ 72].

Any residual funds remaining in the Settlement Fund after all claims, administrative expenses, and awards have been paid will be distributed to a *cy pres* recipient approved by the Court, ensuring the entirety of the fund benefits the affected class or related causes. [*Id.*, ¶ 50].

This Settlement reflects the substantial effort and negotiation undertaken by Class Counsel to resolve this matter efficiently and effectively. Class Counsel conducted a thorough investigation into the data breach, prepared a detailed complaint alleging multiple claims, and engaged in extensive arm's-length negotiations to secure a $150,000.00 non-reversionary Settlement Fund. This fund provides meaningful benefits, including reimbursement for out-of-pocket expenses up to $5,000.00, compensation for attested time, three years of credit monitoring services, and an alternative cash payment option. Additionally, Class Counsel ensured that Defendants implemented enhanced data security measures valued at over $138,800.00 to protect Settlement Class Members' information. Class Counsel's diligent and thorough preparation, investigation, and negotiation ensured this favorable outcome, demonstrating the significant effort required to achieve substantial relief for the Settlement Class.

C. Response by Settlement Class Members

The deadline for Settlement Class Members to exclude themselves from the class or object to the settlement is February 3, 2025. [DE 27-2 ¶ 21]. As of the date of this filing, neither Class Counsel, nor the Settlement Administrator have received any objection to the settlement. [Gwaltney Decl. ¶35].

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has "recognized consistently that 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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *See United States v. Tobias*, 935 F.2d 666,

667 (4th Cir. 1991) (explaining common fund is an "equitable exception to the "American rule" that parties bear their own costs of litigation"). The common fund doctrine vests the district court holding jurisdiction over the fund to spread the costs of litigation proportionately across all persons benefited by the suit. *Id.* The Supreme Court has "applied it in a wide range of circumstances as part of [its] inherent authority." *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 104 (2013) (collecting cases).

Pursuant to the common fund doctrine and the Settlement Agreement, Class Counsel now applies for a total fee and cost award of one-third (1/3) of the settlement fund of $50,000.00 (inclusive of all litigation expenses and costs). For the reasons that follow, these requests should be approved.

A. Percentage of the Fund Method is Appropriate

The award of attorneys' fees is within the sound discretion of the trial judge. *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978) (further citation omitted). While the Fourth Circuit has not made obligatory a particular method of determining fees in common fund cases, it has recognized the financial significance of the contingency fee and associated risks. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 245 (4th Cir. 2010); *Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 786 (4th Cir. 2019), as amended (Mar. 22, 2019) ("courts routinely impose enhanced common fund awards to compensate counsel for litigation risk at the expense of beneficiaries who do not shoulder this risk.")

In a class action settlement, awards are made either under the "lodestar method, the percentage of the fund method, or a combination of both." *Hall v. Higher One Machines, Inc.*, No. 5-15-CV-670-F, 2016 WL 5416582, at *7 (E.D.N.C. Sept. 26, 2016); *Phillips v. Triad Guaranty Inc.*, 2016 WL 2636289, at * 2 (M.D.N.C. May 9, 2016) ("Courts either use the lodestar method,

the percentage of the fund method, or a combination of both."). "The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases." *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758 (S.D.W. Va. 2009) (collecting cases). "As its name implies, the percentage of fund method provides that the court award attorneys' fees as a percentage of the common fund" while "lodestar method requires the court to "determine the hours reasonably expended by counsel that created, protected, or preserved the fund[] then to multiply that figure by a reasonable hourly rate." *Phillips*, 2016 WL 2636289, at * 2 (citations and quotations omitted). The percentage method is preferred. *Id.*

The percentage-of-the-fund method provides a strong incentive to plaintiff's counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances by removing the incentive, which occurs under the lodestar method, for class counsel to "over-litigate" or "draw out" cases in an effort to increase the number of hours used to calculate their fees. *See Jones*, 601 F. Supp. 2d at 759; see also Ferris, No. 5:11- CV-00667-H, 2012 WL 12914716, at *2 (noting that the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys"); *Teague v. Bakker*, 213 F. Supp. 2d 571, 584 (W.D.N.C. 2002) ("[A]n award of attorneys' fees from a common fund depends on whether the attorneys' specific services benefited the fund—whether they tended to create, increase, protect or preserve the fund.").

Under the percentage method, the attorneys' fee award is calculated using the gross amount of benefits provided to class members, including administrative costs, attorneys' fees and expenses. *See Ferris*, No. 5:11-CV-00667-H, 2012 WL 12914716, at *2 ("Under the percentage-of-the-fund method, it is appropriate to base the percentage on the gross cash benefits available for

class members to claim, plus the additional benefits conferred on the class by the Settling Defendants' separate payment of attorney's fees and expenses, and the expenses of administration.*"); see also In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1080 (S.D. Tex. 2012) (determining the total value of the settlement based on the direct relief, indirect relief, administrative costs, attorneys fees and expenses, paid by defendant); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (where the value of the benefit can be "accurately ascertained" it is part of the common fund).

In the Fourth Circuit, fees constituting one-third (1/3) of the settlement are reasonable. *Chrismon v. Pizza*, No. 5:19-CV-155-BO, 2020 WL 3790866, at *5 (E.D.N.C. July 7, 2020) (collecting cases). To be sure, attorneys' fees in common fund cases typically reflect "around one-third of the recovery."[1] In this district, it is common to award the percentage-of-recovery method in similar cases. *See All. Ophthalmology, PLLC v. ECL Grp., LLC*, No. 1:22-CV-296, 2024 WL 3203226, at *14 (M.D.N.C. June 27, 2024); *Kruger v. Novant Health, Inc.*, No 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016).

Accordingly, Class Counsel's requested fee award reflects a reasonable and customary percentage of the recovery.

B. Factors Weigh in Favor of the Requested Fees

The Fourth Circuit has not required specific factors for consideration in a common fund case. There are two sets currently deployed in this Circuit, *Johnson v. Georgia Highway Express,*

[1] *See* 5 NEWBERG ON CLASS ACTIONS § 15:73 (5th ed. 2016) (noting that a "33% figure provides some anchoring for the discussion of class action awards [to counsel]" and that "many courts have stated that … fee award in class actions average around one-third of the recovery."); *accord* Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. OF EMPIRICAL LEGAL STUDIES, 27, 31, 33 (2004) (finding that courts consistently award 30–33% of the common fund).

Inc., 488 F.2d 714, 717–19 (5th Cir.1974) (adopted in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978))[2] and *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009). Both focus on the reasonableness of the fees and much of the factors overlap. The Federal District Court for the Eastern District of North Carolina has in the past, (*Speaks v. U.S. Tobacco Coop., Inc.*, No. 5:12-CV-729-D, 2018 WL 988083, at *2 (E.D.N.C. Feb. 20, 2018)), along with many courts in this circuit appear to favor the seven factors stemming from *In re Mills Corp*: "(1) the results obtained for the [c]lass; (2) objections by members of the [c]lass to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases." *In re Mills Corp. Sec. Litig*., supra. Application of these factors supports the fee requested here.

1. *Class Counsel Achieved Extraordinary Results*

The most critical factor in determining the reasonableness of an attorney fee award is "the degree of success obtained." *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). Here, a quantifiable recovery of $150,000.00 reflects an enormous success given the circumstances. The size of the fund and the number of persons benefitting from the Settlement also weigh in favor of the reasonableness of

[2] The *Johnson* factors are as follows:

> (1) the time and labor required in the case, (2) the novelty and difficulty of the questions presented, (3) the skill required to perform the necessary legal services, (4) the preclusion of other employment by the lawyer due to acceptance of the case, (5) the customary fee for similar work, (6) the contingency of a fee, (7) the time pressures imposed in the case, (8) the award involved and the results obtained, (9) the experience, reputation, and ability of the lawyer, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship between the lawyer and the client, and (12) the fee awards made in similar cases.

the fees requested. Approximately 442 class members are eligible to receive substantial benefits, including reimbursement for out-of-pocket losses, attested time, and three years of credit monitoring services. [DE 27-1, ¶¶ 52, 54, 57]. Class members also have the option to claim a $75.00 alternative cash payment, providing flexibility in how they receive compensation. [DE 27-1, ¶ 61]. These benefits are available without the protracted delays and risks inherent in continued litigation, ensuring immediate relief for the class. Class Counsel skillfully navigated these challenges to secure a Settlement that ensures meaningful relief for the class while avoiding the uncertainty of trial. The magnitude of this recovery and the efficient resolution of this case justify the requested award.

2. *Quality, Skill and Experience of the Attorneys*

Proper case management and effective representation in any complex class action, particularly one with novel and unique legal issues, require the highest level of experience and skill. *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987) ("prosecution and management of a complex [] class action requires unique legal skills and abilities."). This case was certainly no different. Class Counsel had the necessary experience and skill to manage the case. [Ex. 1, Gwaltney Decl., ¶ 4; Firm Resume, pp. 2-5]. As previously noted in Plaintiff's Motion for Preliminary Approval, Class Counsel has significant experience in complex civil litigation, including class actions and consumer protection cases. [DE 27, p. 20]. They have built a reputation for effectively litigating and resolving cases that involve intricate legal issues and substantial risks, as reflected in this matter.

In this case, Class Counsel thoroughly investigated the underlying data breach and prepared a detailed complaint that laid the foundation for the claims brought forward. [Gwaltney Decl., ¶ 9-11]. Class Counsel thereafter successfully negotiated a favorable settlement through extensive

arm's-length discussions, resulting in a $150,000.00 non-reversionary fund and significant non-monetary relief for the Settlement Class. [*Id.*, ¶¶ 15-24]. This outcome provides meaningful compensation and preventative measures to protect against future harm.

Class Counsel advanced all costs associated with this matter, committing the time and resources necessary to achieve a successful resolution without receiving reimbursement to date. [*Id.*, ¶¶ 61-62]. Their work included analyzing the legal issues, developing claims, working with vendors (including CyEx and the claims administrator), and coordinating settlement discussions. [*Id.*, ¶¶ 53-55]. The resources invested in this case necessarily limited Class Counsel's ability to work or take on other matters, underscoring their commitment to securing the best possible outcome for the Settlement Class. This resolution is a testament to Class Counsel's diligence, expertise, and strategic approach, resulting in a settlement that provides substantial and immediate relief to the Settlement Class. All told, Class Counsel demonstrated skill and dedication in litigating the case which ultimately resulted in a settlement that conferred substantial benefit on Class Members. As a result, this factor justifies the fee request.

3. *Genuine Risk of Non-Recovery*

Plaintiff and Class Counsel faced significant and genuine risks of non-recovery in this case, as is inherent in all contingency fee litigation. These challenges were exacerbated by the novel and complex legal issues involved, including Defendants' failure to safeguard sensitive personally identifiable information (PII) and the applicability of legal standards under Section 5 of the FTC Act (15 U.S.C. § 45(a)(1)) and North Carolina's Identity Theft Protection Act (N.C.G.S. § 75-65). The legal terrain of data privacy remains relatively uncharted, with courts recognizing the unique complexities and risks in such litigation. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 17-CV-2800, 2020 WL 256132, at *32 (N.D. Ga. Mar. 17, 2020) (acknowledging the

novel and difficult nature of data breach cases), *rev'd in part on other grounds*, 999 F.3d 1247 (11th Cir. 2021); *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-CV-1415, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (describing data breach cases as "particularly risky, expensive, and complex"); *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 941 (N.D. Ill. 2022) (noting that "[d]ata privacy law is a relatively undeveloped and technically complex body of law").

Class Counsel's willingness to advance all costs, devote significant resources, and accept the uncertainty of litigation outcomes demonstrates the exceptional commitment required to achieve a favorable resolution. These efforts directly led to the creation of a $150,000.00 non-reversionary Settlement Fund and additional structural reforms to Defendants' data security practices valued at over $138,800.00. [Tucker Decl., ¶¶ 2-3]. The legal and factual uncertainties faced by Class Counsel further underscore the reasonableness of the requested fee.

4. *Undesirability of the Case within the Legal Community*

Despite the general public being alerted to this data breach, Class Counsel were the only attorneys who filed a lawsuit, signaling other attorneys have deemed the case either undesirable or too risky. [Gwaltney Decl., ¶ 57]. This case presented unique difficulties due to its small size, as data breach litigation typically involves thousands, tens of thousands, or even millions of putative class members. Here, the relatively small class size made the case less appealing to potential co-counsel, despite efforts by Class Counsel to secure collaboration. [*Id.*, ¶ 58]. Class Counsel ultimately undertook the case alone, fully aware of the heightened risks involved, including rapidly evolving legal standards and potential adverse rulings on issues of first impression. [*Id.*, ¶ 59]. They navigated intricate questions about the adequacy of Defendants' data security measures and the significant impact of the breach on Class Members, who now face ongoing risks of identity theft and fraud requiring credit monitoring and vigilance.

Courts recognize that such risk-taking justifies enhanced compensation, as it is a critical factor in assessing the reasonableness of attorney fees. *See, e.g., In re Dun & Bradstreet Credit Servs. Cons. Litig.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990*); Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 889 F.2d 21 (11th Cir. 1990); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992).

In light of these challenges, Class Counsel's willingness to pursue this litigation despite its inherent risks and lack of co-counsel support underscores their exceptional commitment to achieving justice for the Class. Their efforts resulted in a meaningful recovery and important structural reforms, providing significant benefits to Class Members and addressing critical deficiencies in Defendants' data security practices. This outcome further highlights the reasonableness of the requested fee, given the substantial risk and effort required to bring this case to a successful resolution.

5. *Fees in Similar Cases*

As evidenced above, the attorneys' fee requested in this case falls well within the range of common fund attorney fee requests in this circuit and nationwide. Courts in the Fourth Circuit have found awards of approximately one-third of the class fund to be reasonable. *See Kruger v. Novant Health, Inc.*, No. 14-CV-208, 2016 U.S. Dist. LEXIS 193107, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016); *Chrismon v. Pizza*, No. 19-CV-155, 2020 U.S. Dist. LEXIS 119873, 2020 WL 3790866, at *5 (E.D.N.C. July 7, 2020). The amount sought is also comparable to awards in other data privacy class actions. *See, e.g., Lamie v. Lendingtree, LLC*, No. 22-CV-307, 2024 U.S. Dist. LEXIS 33632, 2024 WL 811519, at *2 (W.D.N.C. Feb. 27, 2024); *Thomsen v. Morley Cos.*, No. 22-CV-10271, 2023 U.S. Dist. LEXIS 84005, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023); *In re Forefront Data Breach Litig.*, No. 21-CV-887, 2023 U.S. Dist. LEXIS

174318, 2023 WL 6215366, at *8 (E.D. Wis. Mar. 22, 2023); *All. Ophthalmology, PLLC v. ECL Grp., LLC*, No. 1:22-CV-296, 2024 WL 3203226, at *14 (M.D.N.C. June 27, 2024).

6. *No Objections to the Settlement*

The number of objections to a settlement provides insight into how class members view a settlement, and thereby assist the Court in making a determination as to the reasonableness of the requested attorneys' fee award. As of the date of this filing, neither Plaintiff's Counsel, nor the Settlement Administrator have received an objection to the settlement or the request for attorneys' fees. [Gwaltney Decl. ¶ 35].

C. Class Counsel's Expenses are Reasonable

Federal Rule of Civil Procedure 23(h) allows a court approving a class settlement to "award reasonable...nontaxable costs that are authorized by law or by the parties' agreement." Accordingly, courts in the Fourth Circuit allow plaintiffs to recover "reasonable litigation-related expenses as part of their overall award." *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483 (internal citations omitted). Recoverable costs may include "those reasonable out-of- pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services*." Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988). "Litigation expenses such as supplemental secretarial costs, copying, telephone costs and necessary travel are integrally related to the work of the attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation…." *Daly v. Hill*, 790 F.2d 1071, 1083 (4th Cir. 1986).

Class Counsel's request for attorneys' fees is inclusive of all expenses and costs incurred in the prosecution of this litigation, which amounts to $405.00. [Gwaltney Decl., ¶ 62]. The requested award of one-third of the common fund not only compensates Class Counsel for their

time and effort but also captures all reasonable costs and expenses associated with litigating this case and protecting the interests of the Settlement Class. These expenses were incurred during the filing and service of this litigation. The inclusion of costs and expenses within that 1/3 fee aligns with established practices and fairly compensates Class Counsel for their work, while incentivizing efficiency and prudent cost management.

D. Service Award is Reasonable

Service awards are "routinely approved" in class actions to "encourage socially beneficial litigation by compensating named plaintiff for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook." *Kay Co.*, 749 F. Supp. 2d at 472; *Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015) (Service awards compensate the class representative for work done on behalf of the class and make up for financial risk undertaken in bringing the action). Serving as a class representative "is a burdensome task and it is true that without class representatives, the entire class would receive nothing." Id. at 473; *See also Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Class Counsel is requesting, and Defendants are not objecting to, an award to Plaintiff in the amount of $2,500.00 in recognition of the time and effort personally invested in the case. Plaintiff assisted Class Counsel in their investigation into Defendants' data security practices, produced documents to Class Counsel, assisted in the preparation of pleadings, and regularly stayed informed and requested and obtained updates from Class Counsel. [Gwaltney Decl., ¶¶ 38-41]. Plaintiff was available during the parties' negotiations, and assisted Class Counsel in weighing and accepting the settlement on behalf of the Settlement Classes in Monetary Benefits to the Settlement Class Members. [*Id.* at ¶ 42]. Plaintiff was prepared to litigate the action through trial

to properly represent the Settlement Classes and fight for significant relief. [*Id.* at ¶ 37]. Absent his efforts, the Settlement Classes were unlikely to receive any compensation. The requested service award is reasonable, commensurate with his efforts in the litigation, and is within the scope of awards granted in this circuit. *Speaks*, supra at *3 ($10,000 award, and collecting cases); *Manuel v. Wells Fargo Bank, Nat'l Ass'n,* No. 3:14CV238(DJN), 2016 WL 1070819, at *6, fn 3 (E.D. Va. Mar. 15, 2016) ("Various studies have found that the average incentive award per plaintiff ranged from $9,355 to $15,992." *citing* Newberg on Class Actions § 17.8 (5th ed.)).

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests the amount of $50,000.00, inclusive of all reasonable litigation expenses and costs incurred by Class Counsel during this litigation. Additionally, Class Counsel requests the Court for a service award for Plaintiff of $2,500.00 in recognition of his time and effort on behalf of the Settlement Class.

Respectfully submitted, this the 3rd day of January, 2025.

MAGINNIS HOWARD

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARD** has been electronically filed with the Clerk of Court by using the CM/ECF system, which will send notice of the filing to all parties of record.

Dated this the 3rd day of January, 2025.

MAGINNIS HOWARD

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