IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

CRYSTAL GANNON and JASON METZNER, individually and all others similarly situated,	**PLAINTIFFS,**
V.	**CASE NO. 60CV-24-3329**
W.P. MALONE, INC. d/b/a ALLCARE PHARMACY	**DEFENDANT.**

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND (2) FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

I. INTRODUCTION

On November 10, 2025, this Court preliminarily approved the Settlement between Plaintiffs Crystal Gannon and Jason Metzner and Defendant W.P. Malone, Inc. d/b/a AllCare Pharmacy ("AllCare" or "Defendant") and ordered that notice be given to the Class. Settlement Class Members who submit a valid claim may elect one of the following benefits: (1) up to $150 for documented out-of-pocket expenses, (2) up to $1,000 for documented extraordinary losses, (3) up to three hours of lost time at $25/hour, or (4) an Alternative Cash Payment of $50. Settlement Class Members can also enroll in two years of three-bureau credit monitoring and identity theft restoration services (including $1 million in identity theft insurance and fraud resolution support). Finally, AllCare represents that it has taken measures to improve its cybersecurity practices estimated at $100,000 annually. These terms and the settlement amount were approved by the Court at the preliminary approval hearing, and to date *no class members have objected or opted out* to the terms of the settlement. **This Motion is unopposed.**

Settlement Class Counsel zealously prosecuted Plaintiffs' claims, achieving the Settlement Agreement only after months of litigation, contentious settlement negotiations, and a mediation

session with experienced neutral Hon. Philip Gutierrez (Ret.) of JAMS on April 14, 2025. This Settlement represents an excellent result for the Settlement Class in this litigation and was obtained against a well-funded defense by Defendant, which was represented by a highly regarded law firm. Although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and Plaintiffs would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement Class Counsel and the Class Representative that the Settlement Agreement was achieved for the benefit of the Settlement Class.

After this Court granted preliminary approval, Settlement Administrator CPT Group successfully disseminated Notice to the Settlement Class. Notice was provided directly to 16,302 Settlement Class Members via U.S. First Class Mail. Class Notice reached the vast majority of the Class, easily meeting the due process standard. (Declaration of Irvin Garcia ("Garcia Decl.") ¶¶ 7-9.)[1] The Notice was written in plain language, providing each Settlement Class Member with information regarding how to reach the Settlement website, make a claim and opt-out or object to the Settlement if they chose to do so. To date, 203 Claims were received. (Garcia Decl. ¶ 16; Declaration of Scott Edward Cole ("Cole Decl.") ¶ 8.). No Class Members have opted out or objected. (Garcia Decl. ¶¶ 21-22.)

Plaintiffs request that the Court grant Final Approval of the Settlement. Additionally, pursuant to the terms of the preliminarily approved Settlement, Plaintiffs also request payment of attorneys' fees and costs of $200,000 and Service Awards of $3,000 for each of the Class Representatives ($6,000 total).

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[1] Mr. Garcia's declaration is attached as **Exhibit C** to the accompanying Declaration of Scott Edward Cole ("Cole Decl.")

II. FACTUAL BACKGROUND

On or around September 21, 2023, Defendant AllCare discovered its data network had been breached by an unauthorized third party. Upon further investigation it was discovered that the infamous ransomware cybercriminal group "Lorenz" was responsible for the attack. Moreover, the Lorenz cybercriminal group not only accessed victim's data, but published a large portion of it on the Dark Web to the detriment of the Settlement Class. While Defendant discovered the breach in late September 2023, it was not until April 12, 2024, that AllCare notified Representative Plaintiffs and the Class that both their Protected Health Information ("PHI") and Personally Identifiable Information ("PII") (hereafter "Private Information") had been severely compromised as a result of the Data Incident. The information exposed included names, mailing addresses, dates of birth, Social Security numbers, driver's license numbers, prescription and pharmacy records and payment card information.

Defendant AllCare denies liability and any wrongdoing. Cole Decl. ¶ 3. After receiving the Notice Letter sent by Defendant on April 12, 2024, Plaintiffs Gannon and Metzner filed individual Complaints on May 17 and May 30, 2024, respectively, that were amended into a single Class Action Complaint on July 10, 2024. Cole Decl. ¶ 4.

Plaintiffs' Amended Class Action Complaint asserts claims for negligence, breach of implied contract and breach of the implied covenant of good faith and fair dealing. Following the filing of Plaintiffs' Amended Complaint, Defendant moved to dismiss on August 9, 2024, and their motion was fully briefed as of September 4, 2024. *Id.* Additionally, starting on September 26, 2024, the Parties engaged in formal written discovery, document requests and various meet and confer efforts. Cole Decl. ¶ 5.

After confirming the Settlement Terms on behalf of the class on January 17, 2025, Plaintiffs and Defendant AllCare (collectively, the "Parties") participated in a half-day private mediation with the Hon. Philip Gutierrez (Ret.) of JAMS to finalize the Settlement on April 14, 2025. *Id*. Following the mediation, the Parties reached agreement on the material terms of a class-wide settlement, attorneys' fees and costs and service awards to the Plaintiffs. Cole Decl. ¶ 6.

On November 10, 2025, this Court preliminarily approved the Settlement and requested that the Parties give Notice to the Class. The Court's Order also appointed Scott Edward Cole of Cole & Van Note and Raina Borrelli of Strauss Borrelli PLLC as Co-Lead Class Counsel and designated Plaintiffs Crystal Gannon and Jason Metzner as Class Representatives. Cole Decl. ¶ 7. As discussed above, the Settlement Administrator successfully carried out the approved Notice plan to Settlement Class Members.

III. THE SETTLEMENT BENEFITS

A. The Settlement Terms

Plaintiffs incorporate by reference the terms of the preliminarily approved Settlement agreement ("Agreement") as well as Plaintiffs' previously filed Motion for Preliminary Approval. In exchange for a release of claims, the Settlement provides Settlement Class members with timely benefits targeted at remediating the specific harms they have suffered as a result of the Data Incident, including retrospective compensation for documented losses, for loss of privacy, credit monitoring and identity theft insurance, as well as business practices changes. Agreement ¶ 43. These benefits of the Settlement are available to all Settlement Class members, merely by submission of a valid claim. In exchange for the benefits conferred by the proposed Settlement, all Class Members who did not opt out/exclude themselves will be deemed to have provided a release of AllCare and its insurers from the claims asserted or which could have been asserted in the

lawsuit. Agreement ¶¶ 28-30. Settlement Class Member claims are subject to a global cap of $300,000. Agreement ¶ 43.

1. Documented Losses

Settlement Class Members may receive reimbursement of up to $150 for documented out-of-pocket expenses fairly traceable to the Data Incident. These may include unreimbursed costs for credit monitoring, communication with financial institutions or medical providers, card reissuance fees and other data-breach-related expenses. Agreement ¶ 43(a). Additionally, Settlement Class Members may receive reimbursement of up to $1,000 for documented, unreimbursed extraordinary losses directly caused by the Data Incident, provided the Class Member made reasonable efforts to avoid the loss and the loss is not already covered under other relief categories. Agreement ¶ 43(c).

2. Attested Time Spent

Settlement Class Members may also receive reimbursement for up to three (3) hours of time spent remedying issues related to the Data Incident, compensated at $25/hour, for a total of up to $75. This requires only a simple attestation—no additional documentation is needed. Agreement ¶ 43(b).

3. Alternative Cash Payments

In lieu of making any claims for Ordinary or Extraordinary Losses or Lost Time, Settlement Class Members may claim an Alternative Cash Payment of $50 per Settlement Class Member. In other words, if a Settlement Class Member claims the Alternative Cash Payment, they cannot also receive compensation for Ordinary Losses, Lost Time, or Extraordinary Losses. However, Settlement Class Members can claim both the Alternative Cash Payment and Credit Monitoring

Services. To receive this benefit, Settlement Class Members must submit a valid claim form, but no documentation is required to make a claim. Agreement ¶ 43(d).

4. Two Years of Credit Monitoring

Settlement Class Members may elect to receive two years of three-bureau credit monitoring and identity restoration services through Equifax, including $1 million in identity theft insurance and fraud resolution support. Agreement ¶ 43(e).

5. Equitable Relief - Business Practice Change

Defendant has provided a confidential declaration to Class Counsel describing the information security enhancements implemented since the Data Incident. Defendant estimated, to the extent reasonably calculable, the annual cost of these enhancements will be approximately $100,000. The cost of these improvements will be borne solely by Defendant and is separate from all other Settlement benefits. Agreement ¶ 44.

6. Attorneys Fees, Costs and Service Awards

Class Counsel will apply for an award of attorneys' fees and costs in the amount of $200,000, subject to Court approval. Agreement ¶ 72. Plaintiffs will also request service awards of $3,000 each to Settlement Class Representatives Crystal Gannon and Jason Metzner, in recognition of their service on behalf of the Settlement Class. Agreement ¶ 70. As stated in the Agreement, these amounts were negotiated only after agreement was reached on the relief to be provided to the Class. Agreement ¶ 73.

IV. THE SETTLEMENT MERITS FINAL APPROVAL

A. Legal Standard for Final Approval

Rule 23(e) of the Arkansas Rules of Civil Procedure requires judicial approval of a proposed class action settlement. The procedure for judicial review of a proposed class action

settlement is a well-established, three-step process of Court review and approval:

> First - the parties present a proposed settlement to the court for so-called "preliminary approval." If a class has not yet been certified, typically the parties will simultaneously ask the court to "conditionally" certify a settlement class. . . .
>
> Second - if the court does preliminarily approve the settlement (and conditionally certify the class), notice is sent to the class describing the terms of the proposed settlement, class members are given an opportunity to object or, in Rule 23(b)(3) class actions, to opt out of the settlement, and the court holds a fairness hearing at which class members may appear and support or object to the settlement. . . .
>
> Third - taking account of all of the information learned during that process, the court decides whether or not to give "final approval" to the settlement

Hunter v. Runyan, 382 S.W.3d 643, 647 (Ark. 2011); 4 *Newberg on Class Actions* § 13:10 (5th ed.). The final step in the approval of a class action settlement is a final approval hearing where, after notice has issued to the class regarding the terms of the settlement and the Court's preliminary approval of the settlement, the Court is to make a final ruling on the fairness, adequacy, and reasonableness of the settlement following a hearing where class members may be heard regarding the settlement. *See* Ark. R. Civ. P. 23(e); Manual for Complex Litigation §13.14 (4th ed. 2004); *Ballard v. Martin,* 349 Ark. 564, 79 S.W.3d 838 (2002)). While the Court has wide discretion in determining whether to approve a class action settlement, the United States Supreme Court has cautioned that in reviewing a proposed class settlement, a court should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981). Instead, the Court's inquiry should be limited to consideration of whether the proposed settlement is fair, reasonable, and adequate. *See Marshall v. Nat'l Football League,* 787 F.3d 502, 509 (8th Cir. 2015) (quoting *In re Wireless Tel Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005)).

B. The *Grunin* factors are satisfied

In *Ballard v. Martin*, 349 Ark. 564, 574 (2002), the Arkansas Supreme Court adopted the Eighth Circuit's class action approval factors:

> "Those four factors are listed below, with the first factor being the primary measure of fairness and the remaining three being secondary to the first:
>
> (1) the strength of the case for the plaintiffs on the merits, balanced against the amount offered in the settlement;
> (2) the defendant's overall financial condition and ability to pay;
> (3) the complexity, length, and expense of further litigation; and
> (4) the amount of opposition to the settlement."

These factors were originally described in *Grunin v. Int'l House of Pancakes,* 513 F.2d 114 (8th Cir. 1975). Plaintiffs analyze the *Grunin* factors below.

1. The strength of the case for the plaintiffs on the merits, balanced against the amount offered in the settlement

As a matter of public policy, settlement is a strongly favored mechanism for resolving disputed claims. *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910). While Arkansas courts have not adopted a fixed test for evaluating class settlements, they consistently assess whether the proposed settlement is fair, reasonable, and adequate in light of the asserted claims, procedural posture, and potential litigation risks. *Hunter,* 2011 Ark. 43, at 11–12 (affirming class settlement where record supported adequacy and fairness under Rule 23(e)); *Infinity Healthcare*, 2019 Ark. 346, at 7 (noting trial courts' discretion to approve settlement in light of litigation uncertainty and complexity).

Here, Plaintiffs allege that Defendant failed to implement reasonable data security safeguards, resulting in the unauthorized disclosure of sensitive personal data including names, Social Security numbers, financial information and prescription records. Plaintiffs assert claims

for negligence, breach of implied contract and breach of the implied covenant of good faith and fair dealing.

Data breach litigation is difficult and presents cutting edge issues. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex."); *accord In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, MDL No. 2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019). The "novelty and difficulty of the issues" here favor approving the requested fee, particularly because the novelty and difficulty "created significant risk for Class Counsel." *George v. Academy Mortgage Corporation (UT)*, 369 F. Supp. 3d 1356, 1378 (N.D. Ga. 2019).

Moreover, class certification is not guaranteed. Arkansas courts scrutinize Rule 23's predominance and superiority requirements and have denied certification where individual issues outweigh common ones. See *Ford Motor Credit Co. v. Nesheim*, 287 Ark. 78, 696 S.W.2d 732 (1985) (holding that individualized defenses rendered class treatment inappropriate); *Summers*, 296 Ark. at 54 (affirming trial court's discretion in class certification decisions). Even if certification were achieved, Defendant could move to decertify or assert individualized issues at trial to defeat class-wide liability or damages.

The Settlement avoids these uncertainties and provides immediate relief. It offers compensation for documented ordinary losses up to $150, documented extraordinary losses up to $1,000 per person, lost time, a $50 alternative cash payment and two years of three bureau credit monitoring/identity theft insurance. Agreement ¶¶ 43–44. In addition, Defendant has implemented post-incident data security improvements valued at $100,000 annually, which were negotiated

separately from the class benefit. Agreement ¶ 44. In light of these considerations, the Settlement reflects a fair and adequate resolution under Arkansas Rule 23.

The Settlement provides substantial and immediate relief that compares favorably with the uncertain and potentially limited recovery available through continued litigation. The relief made available to Class Members is especially significant in light of the uncertainty surrounding causation, injury and standing in data breach litigation. *Id.*

While Plaintiffs believe their claims are strong, recovery at trial would depend on expert testimony establishing the sufficiency of Defendant's data security practices and the link between the Data Incident and alleged harms. Courts have recognized that class settlements are particularly appropriate where damages are uncertain or where litigation would be costly and burdensome. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (approving settlement where damages were "not easily quantifiable", and trial risked a lower recovery). In light of these risks and the robust relief offered under the Settlement, the value achieved is fair, reasonable and adequate under Arkansas law. *See* Cole Decl. ¶¶ 9-26.

Here, Class Counsel relied on pre-suit inquiry, formal discovery and considerable experience in negotiating the Settlement. Cole Decl. ¶¶ 5-6, 25-31. The Parties' exchange of information enabled informed risk assessment and facilitated arm's-length negotiation. *Id.* Accordingly, the stage of proceedings and scope of discovery support the Court's finding that the proposed Settlement merits final approval.

2. The defendant's overall financial condition and ability to pay

Defendant operates only in Arkansas, and there is likelihood that it might not withstand a greater judgment. Nevertheless, this factor is neutral because although "continuing the action to trial might result in a larger award for class members, . . . this possibility does not outweigh the

risks of establishing liability, damages, and loss causation." *O'Hern v. Vida Longevity Fund, LP*, No. 21-402, 2023 U.S.Dist. LEXIS 76789, at *23 (D.Del. May 3, 2023). This is especially true in the context of data breach cases, which carry substantial risks.

3. The complexity, length and expense of further litigation

"The third factor in determining the fairness of a class settlement is the burden of litigating the case. This factor is also subordinate to the first factor but should still be considered in determining whether the trial court abused its discretion in approving the settlement." *Ballard v. Martin*, 349 Ark. 564, 581, 79 S.W.3d 838, 849 (2002). As discussed above, absent settlement, continued litigation would likely entail complex and expensive discovery, including cybersecurity expert testimony, and potentially protracted appellate review. Arkansas courts recognize that such burdens and uncertainties weigh in favor of settlement. See *Philip Morris Cos., Inc. v. Miner,* 2015 Ark. 73, 462 S.W.3d 313, at 8 ("The circuit court has broad discretion in managing class actions, including determining whether settlement is appropriate in light of case complexity and potential defenses."); see also *Ballard*, 349 Ark. at 574 (trial courts may approve settlements that avoid prolonged litigation where record supports fairness). This factor supports final approval of the Settlement.

4. The amount of opposition to the settlement

"The fourth and final factor in determining the fairness and adequacy of a class settlement is the degree of opposition to the settlement. Again, this factor is less important than the first factor." *Ballard v. Martin*, 349 Ark. 564, 582, 79 S.W.3d 838, 849 (2002). Here, no Class Members have opted out or objected, which evidences broad support for the Settlement. Garcia Decl. ¶¶ 21-22. This factor supports final approval of the Settlement.

V. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS SHOULD BE GRANTED

A. Class Counsel's Requested Fee Award is Appropriate Pursuant to the Factors Identified by Arkansas Courts

Pursuant to the terms of the preliminarily approved Settlement, Plaintiffs request payment of attorneys' fees and costs of $200,000. As discussed herein, this request is reasonable and should be granted.

An award of attorneys' fees is within the sound discretion of the district court. Ark. R. Civ. P. 23(h); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). Arkansas Rule of Civil Procedure 23 is comparable to its federal counterpart, which is thus instructive. *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Farm Bureau Policy Holders & Members*, 323 Ark. 706, 709 (1996). Substantial fee awards in successful cases, such as the present action, encourage and support meritorious class actions, and thereby promote private enforcement of, and compliance with, federal and state laws. Indeed, the success of lawsuits, such as the instant case, depends on the availability and willingness of attorneys to bring them. *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 251 (D. Del. 2002) ("A class action facilitates spreading of litigation costs among numerous litigants and encourages private attorney general enforcement of statutes."); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 349 (N.D. Ga. 1993) (recognizing that "in order to encourage 'private attorney general' class actions" a "financial incentive is necessary to entice qualified attorneys to devote their time to complex, time-consuming cases for which they may never be paid.").

The lodestar method is appropriate in determining an appropriate recovery, "and the ultimate reasonableness of the award is evaluated by considering relevant factors". *Rawa v.*

Monsanto Co., 934 F.3d 862, 870 (8th Cir. 2019). Courts in Arkansas utilize several factors in deciding whether the requested attorneys' fees are reasonable. These factors include:

> (1) the experience and ability of counsel; (2) the time and labor required to perform the legal service properly; (3) the amount involved in the case and the results obtained; (4) the novelty and difficulty of the issues involved; (5) the fee customarily charged in the locality for similar services; (6) whether the fee is fixed or contingent; (7) the time limitations imposed upon the client or by the circumstances; and (8) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 95 (2002); *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 229 (1990). All the above factors clearly support the requested fee award.

i. Experience and Qualifications of Counsel

Here, it is undisputed that Class Counsel are experienced in litigating similar consumer class actions. The firms that make up Class Counsel are leading class action law firms whose lawyers regularly prosecute consumer claims, and its attorneys are regularly appointed as class counsel in such actions. *See* Cole Decl. ¶¶ 25-31; Declaration of Raina Borrelli ("Borrelli Decl.") ¶¶ 6-8. Indeed, Class Counsel have and are currently prosecuting hundreds of different actions around the country alleging similar claims premised on data breaches.

Additionally, the firm resumes of Class Counsel speak to the national reputation and extensive experience of Class Counsel in the area of complex class litigation. Accordingly, the quality and skill involved in the services performed by Class Counsel support the requested fees. Had Class Counsel not taken a role in this litigation, they would have been free to allocate their time and resources elsewhere. Indeed, as the total number of hours expended in this litigation demonstrates, Class Counsel fully dedicated themselves to the prosecution of this litigation.

ii. Substantial Time and Labor were Required

Class Counsel took this case on a fully contingent basis, investing time, effort and money with no guarantee of ever getting paid. Cole Decl. ¶ 28. Since the inception of this litigation, Class Counsel have exerted substantial efforts to move this case along expeditiously. All work performed by Class Counsel was necessary, performed without duplication, and successfully advanced this litigation toward Settlement. Cole Decl. ¶ 28. As such, the effort and time expended by Class Counsel in navigating the complex legal and factual issues presented in this litigation supports the requested fee. *Yarrington v. Solvay Pharms., Inc*., 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010) (finding the efforts and time of counsel, among other factors, justified an award of attorneys' fee of one-third of the settlement fund).

Class Counsel have collectively spent over 494 hours prosecuting this litigation, for a total lodestar of $235,754 and faced significant risk in the prosecution of this matter and, more importantly, made substantial benefits available to a large number of consumers as part of the Settlement. Cole Decl. ¶ 28; Borrelli Decl. ¶ 5. Thus, the fee award amounts to a negative lodestar.

Class Counsel drew on their experience litigating hundreds of complex and class actions against defendants much like this one to minimize wasted effort. Class Counsel's efforts include, *inter alia*, litigating this matter including researching and drafting a response to Defendant's Motion to Dismiss, conducting formal and informal discovery in preparation for mediation, analyzing data for mediation, engaging in a full day of mediation, preparation of the Settlement Agreement and exhibits thereto, drafting the motions for preliminary and final approval and overseeing the claims administration process. Cole Decl. ¶ 28.

iii. The Difficulty and Novelty of the Legal and Factual Issues and the Significant Skill of Experienced Counsel

Class actions, by nature, are inherently complex and time-consuming. *Marshall v. Green Giant Co.*, 942 F.2d 539, 549 (8th 1991) ("It goes without saying that class actions are very complex and represent a significant drain on the court in terms of time and management."). That is especially true in data breach litigation. *In re Wawa, Inc. Data Sec. Litig.*, No. 19-6019, 2024 12 WL 1557366, at *20 (E.D. Pa. April 9, 2024) ("Data breach litigation is inherently complex."); *Beasley v. TTEC Servs. Corp.*, Nos. 22-cv-97 & 22-cv-347, 2024 WL 710411, at *5 (D. Colo. Feb. 21, 2024) ("Given the uncertainty of class members' likelihood of success on the merits and the prospects of prolonged litigation, the Court finds that immediate recovery outweighs the time and costs inherent in complex data breach litigation."). The novel nature of this litigation renders Plaintiffs' case all the more challenging. Data breach litigation is a relatively new area of the law and presents significant technical hurdles and risks. Cole Decl. ¶¶ 9-26. Given the law in this area is still developing, it renders cases more difficult to navigate and predict. Notwithstanding the complexity and difficulty of the issues involved in this case, Class Counsel was able to negotiate an excellent recovery for the Class. Class Counsel respectfully submit that the work they performed in this litigation reflect their skill and experience in complex class litigation.

iv. The Case was Litigated on a Contingent Basis

Consideration of the contingent nature of the representation also weighs in favor of the requested fee. *Yarrington,* 697 F. Supp. 2d at 1062 ("Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.") (citation omitted). Indeed, "[t]he risk of no recovery in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re*

Xcel, 364 F. Supp. 2d at 994. Bearing the full risk of no recovery at all, Class Counsel proceeded. Even if Plaintiffs did prevail, there was a chance that the case would take years to bring to trial and would not be resolved without a lengthy appeal. Thus, the contingent nature of the representation in this action further supports the fee award requested herein. See *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981) ("Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result."); *Maley v. Del Global Techs. Corp.,* 186 F. Supp. 2d 358 (S.D.N.Y. 2002) ("Class Counsel undertook a substantial risk of absolute non-payment in prosecuting this action, for which they should be adequately compensated.").

v. The Settlement Confers Substantial Benefits upon the Class

Many courts consider the result achieved to be the most important factor in determining whether the fee requested is reasonable. *In re Flight Transp. Corp. Sec. Litig.,* 685 F. Supp. 1092, 1095 (D. Minn. 1987) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)); *In re Terra-Drill P'Ships Sec. Litig.*, 733 F. Supp. 1127, 1129 (S.D. Tex. 1990).

As explained in detail above, the results achieved by Class Counsel confer a very significant benefit upon the Class. To begin with, the Settlement provides for the recovery of potentially up to a thousand dollars in reimbursements to class members, as well as alternative cash payments, additional credit monitoring that has substantial value if purchased on the open market, and business practice changes which are being paid for outside of the Settlement Fund. Accordingly, Class Counsel respectfully submit that the settlement confers benefits of monetary significance and therefore should be strongly considered in determining the reasonableness of the fee percentage.

vi. Reception of the Agreement by the Class

Settlement Class Members were informed of the fees Class Counsel intended to seek as part of the Notice Program. The fact that no Class Member has objected to the fee request further supports the contention that the fee-expense request is reasonable. *Knutson v. Sprint Commc'ns Co, L.P.*, 2013 WL 2490644, at *4 (D.S.D. June 10, 2013) ("The notice also informed class members of their ability to object to the fee-and- expense request. No class member objected to it. The absence of objections by class members to Settlement Class Counsel's fee-and-expense request further supports finding it reasonable."). Indeed, it is well settled that the absence of objections to a proposed class settlement and request for attorneys' fees is strong evidence that the fees are fair and reasonable. *DeBoer v. Mellon Mortg. Co.,* 64 F.3d 1171, 1178 (8th Cir. 1995) ("The fact that only a handful of class members objected to the settlement similarly weighs in [class counsel's] favor."); *In re Xcel Energy,* 364 F. Supp. 2d at 1002 ("[S]ilence can be read as an endorsement of the results received and the services rendered by plaintiff's counsel."); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 327 (E.D.N.Y. 1993) (holding that the lack of objections to the requested fee supported its reasonableness).

vii. Reasonableness and Necessity of Incurred Expenses

In addition to fees, "[a]n attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved." *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *5 (quoting *Alba Conte, 1 Attorney Fee Awards* § 2:19 (3d ed.); see also *Sprague v. Ticonic,* 307 U.S. 161, 166–67 (1939) (recognizing a court's equity power to award costs from a common fund)). Counsel "may recover those expenses that would normally be charged to a fee-paying client." *Tussey,* 2019 WL 3859763, at *5 (quoting *In re Guidant Corp. Implantable Defibrillators Prod.*

Liab. Litig., No. MDL 05-1708, 2008 WL 682174, at *4 (D. Minn. Mar. 7, 2008)). "Reimbursable expenses include many litigation expenses . . . and includes: expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research." *Id.* (collecting cases). In general, courts approve requested expense reimbursements because class counsel bring the case on a contingent basis, "so they had a strong incentive to keep costs to a reasonable level" because they might never recover them if the litigation does not result in a favorable outcome for the class. *Id.*

Furthermore, over the course of this litigation, Class Counsel collectively incurred ordinary litigation costs totaling $12,307.74 and anticipates incurring additional expenses for making future appearances, etc. Such costs were reasonable, necessary and are appropriate for reimbursement. Because the costs incurred by Plaintiffs' counsel were reasonable and necessary, the Court should approve reimbursement as part of the attorneys' fees and costs award. Cole Decl. ¶ 29; Borrelli Decl. ¶ 5.

B. Plaintiffs' Request for Service Awards is Reasonable

Plaintiffs Crystal Gannon and Jason Metzner seek a Service Award of $3,000 each ($6,000 total). Service awards to representative plaintiffs encourage members of a class to become class representatives and reward individual efforts taken on behalf of a class. *Klug v. Watts Regulator Co.*, No. 8:15CV61, 2017 WL 1373857 at *3 (D. Neb. April 13, 2017). Providing service awards to plaintiffs who come forward to represent a class is a necessary and important component of any class action settlement. *Caligiuri v. Symantec Corp.,* 855 F.3d 860, 867-68 (8th Cir. 2017). See also *Prater v. Medicredit, Inc.,* 2015 WL 8331602, at *4 (E.D. Mo. Dec. 7, 2015); *Lees v. Anthem Ins. Companies Inc.,* 2015 WL 3645208, at*4 (E.D. Mo. June 10, 2015); *Huyer v. Wells Fargo & Co.*, 314 F.R.D. 621, 629 (S.D. Iowa 2016); *Bassett v. Credit Mgmt. Servs., Inc.*, 2019 WL

4262019, at *1 (D. Neb. Aug. 6, 2019); *In re: Target Corp. Customer Data Security Breach Litig.*, 2016 WL 2757692, at *7 (D. Minn. May 12, 2016).

Here, the Parties agreed that Defendant would not object to Service Awards of $3,000 for each Class Representative ($6,000 total). Throughout the duration of the litigation, Plaintiffs actively prosecuted the claims in the interests of the class. Plaintiffs demonstrated an understanding of both the basis of the claims and the role of a class representative, having participated in interviews with Class Counsel regarding their experiences. For their essential efforts in advancing this litigation, Plaintiffs are entitled to a Service Award. See *Klug*, 2017 WL 1373857, at *3 (granting service award where named plaintiffs "brought their claims to the attention of [c]lass [c]ounsel"; "searched their files and produced all of the documents they had relating to this matter"; and "gave interviews concerning their experiences regarding the products to Class Counsel"). Here, Plaintiffs, as Class Representatives, devoted substantial time in the oversight of, and participation in, the litigation on behalf of the Class. Consequently, the requested Service Awards of $3,000 are fair and reasonable. *See* Cole Decl. ¶ 30 and Declarations of Crystal Gannon and Jason Metzner.

VI. CONCLUSION

For the reasons stated above, Representative Plaintiffs respectfully request that the Court grant final approval of the Settlement, award Class Counsel their attorneys' fees and costs and grant Service Awards to the Class Representatives.

Dated: January 26, 2026

By: */s/ Scott Edward Cole*

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