

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY**

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**JEANETTE CONIGLIO, individually and on
 behalf of all others similarly situated,**

Plaintiff,

-against-

Index No. 2024-1351

CARENET MEDICAL GROUP, P.C.

Defendant.

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**PLAINTIFF’S MEMORANDUM IN LAW IN SUPPORT OF UNOPPOSED MOTION
 FOR APPROVAL OF ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARD**

Plaintiff Jeanette Coniglio (“Plaintiff”) submits this Memorandum of Law in Support of Plaintiff’s Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards to Class Representatives.

I. INTRODUCTION

CareNet is a medical provider of obstetric and gynecologic services. NYSCEF Doc. No. 1 (“Compl.”) ¶ 13. On or about May 9, 2022, to June 4, 2022, CareNet experienced a data breach after its systems were breached by cybercriminals. *Id.* ¶¶ 20-22. After an investigation, CareNet became aware that cybercriminals may have gained unauthorized access to patients’ confidential personal identifiable information (“PII”) and protected health information (“PHI”) (together “PII/PHI”), including addresses, driver’s license numbers, bank account numbers, dates of birth, medical reference numbers, Medicare numbers, Social Security numbers, phone numbers, health insurance information and email addresses (the “Security Incident”). *Id.* ¶ 22. CareNet began notifying Plaintiff and the Settlement Class about the Data Security Incident in June 2023. *Id.* ¶ 24.

After extensive arms' length negotiations, the Parties reached a settlement that is fair, adequate, and reasonable. The Settlement Agreement provides Class Members with substantial potential relief, including: (a) compensation of claims for Ordinary Losses up to a total of \$500; (b) compensation for claims for Lost Time up to 4 hours at a rate of \$25.00 per hour (for a total of \$100.00) per claimant upon submission of a valid documented claim; (c) compensation for claims of Extraordinary Losses up to a total of \$5,000.00 per Settlement Class Member in compensation on submission of a valid and timely claim form; (d) three years of Credit Monitoring Services to include credit monitoring through one national reporting bureau provided through CyEx with at least \$1,000,000 in identity theft insurance; or (e) in the alternative to a claim for Ordinary Losses and Lost Time, Extraordinary Losses, and/or Credit Monitoring, Settlement Class Members can elect a \$50.00 Alternative Cash Payment.¹ S.A. ¶ 43. Additionally, Defendant has committed to making cybersecurity improvements and will provide a confidential declaration describing its information security enhancements since the Security Incident and estimating, to the extent reasonably calculable, the annual cost of those enhancements. *Id.* ¶ 44. The cost of such enhancements will be paid by Defendant separate and apart from all other settlement benefits. *Id.*

Pursuant to the Settlement Agreement and the Court's inherent authority, Settlement Class Counsel respectfully submits this Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for Class Representatives ("Fee Application"). First, Settlement Class Counsel requests that the Court award \$180,000.00 for payment of attorneys' fees and \$2,790.60 in attorneys' expenses ("Fee Request"). This request is reasonable in light of the significant relief provided to the Settlement Class. Additionally, Settlement Class Counsel requests

¹ The Settlement Agreement ("S.A.") in its entirety is attached as Exhibit A to Plaintiffs' Memorandum of Law in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. (NYSCEF No. 19). Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement.

that the Court approve a service award for the Class Representative, Jeanette Coniglio, in the amount of \$2,500. This request is modest and is fully justified by the law and the work performed by Plaintiff.

This Memorandum is supported by the cited and attached evidence, including: the affirmation from Settlement Class Counsel attached as **Exhibit 1** (Declaration of Cassandra P. Miller in support of Plaintiff's Unopposed Motion for Approval of Attorneys' Fees, Expenses, and Service Award) ("Fee Decl.").

II. FACTUAL BACKGROUND

A. PROCEDURAL HISTORY

On June 28, 2024, Plaintiff filed her Class Action Complaint against CareNet. NYSCEF Doc. No. 1. Plaintiff alleged causes of action of: (i) negligence; (ii) breach of implied contract; (iii) unjust enrichment; (iv) violation of N.Y. Gen. Bus. Law § 349 *et seq.* and (v) declaratory judgement.

Recognizing the benefits of early resolution, the parties began settlement discussions in early February 2024. Thereafter, the Parties exchanged numerous settlement proposals, and, in the coming weeks, the Parties were able to reach an agreement on all the principal terms of settlement for this matter, subject to final mutual agreement on all necessary documentation. NYSCEF Doc. No. 19, Appendix 1, Affirmation of Cassandra P. Miller in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Miller Aff.") ¶ 4. The Parties continued to negotiate the specific terms of the settlement in the following months. Miller Aff. ¶ 6. All negotiations were always collegial, cordial, and professional—but there is no doubt that they were adversarial in nature, with both parties forcefully advocating the position of their respective clients. *Id.* ¶¶ 5-6.

Settlement Class Counsel's work is not over and will continue throughout the claims period. Based on experience, Settlement Class Counsel will spend substantial additional hours seeking final approval, defending the Settlement from potential objections (of which there are none to date), and supervising claims administration and the distribution of proceeds. Fee Decl, ¶ 10.

B. SUMMARY OF SETTLEMENT

The Settlement Class is defined as: "all individuals residing in the United States whose Personal Information was compromised in the Data Breach experienced by CareNet in or around May 2022 to June 2022, including all those who received notice of the breach." S.A. ¶ 35. The Settlement Class is comprised of approximately 10,059 individuals (each, a "Settlement Class Member").

1. Monetary Relief

Each Settlement Class Member will be eligible to receive reimbursement for documented monetary losses incurred as a result of the Data Breach. *See* S.A. ¶ 43. Specifically, each eligible Settlement Class Member may choose from the below categories: (a) claims for Ordinary Losses; (b) claims for Lost Time; (c) claims for Extraordinary Losses; or (d) an Alternative Cash Payment in the amount of \$50.00.

a. Claims for Ordinary Losses

Settlement Class Members are eligible to receive compensation up to \$500 per person for expenses incurred because of the Security Incident upon submission of a valid documented claim. *Id.* ¶ 43(a). Examples of compensable losses for Ordinary Losses include bank fees, fees for credit monitoring or other identity theft insurance products, and credit report fees. *Id.*

b. Claims for Lost Time

Settlement Class Members can claim compensation for up to four (4) hours of lost time at \$25 per hour for a maximum of up to \$100 per person. *Id.* ¶ 43(b). Claims for Lost Time are subject to the \$500.00 cap for Ordinary Losses.

c. Claims for Extraordinary Losses

Settlement Class Members who submit a valid and timely claim are also eligible to recover up to \$5,000 if they were victims of actual documented identity theft for proven monetary loss. *Id.* ¶ 43(c). This claims category ensures that those who suffer significant and unreimbursed economic loss due to identity theft or other fraud due to the Security Incident can recover for their losses. Such losses must be supported by documentation, more likely than not caused by the Security Incident, and not already reimbursed. *See Id.*

d. Alternative Cash Payment

In the alternative to a claim for Ordinary Losses and Lost Time, Extraordinary Losses, and/or Credit Monitoring (*see infra*), Settlement Class Members can elect a \$50 Alternative Cash Payment.

2. Credit Monitoring and Identity Theft Protection

Plaintiff negotiated for significant credit monitoring services and identity theft protections for the Settlement Class. *Id.* ¶ 42. Settlement Class Members shall be offered an opportunity to enroll in three years of Credit Monitoring Services to include credit monitoring through one national reporting bureau provided through CyEx with at least \$1,000,000 in identity theft insurance. *Id.*

3. Business Practice Commitments

Plaintiffs also negotiated for and received commitments from CareNet that it will enhance

security for patients’ PII/PHI going forward. *Id.* ¶ 44. CareNet will provide a confidential declaration to Settlement Class Counsel describing its information security enhancements since the Security Incident and estimating, to the extent reasonably calculable, the annual cost of those enhancements. The cost of such enhancements will be paid by Defendant separate and apart from all other settlement benefits. *Id.*

4. Release

The Parties tailored the release to affect only those claims related to the Security Incident—defined as “Released Claims” in the Settlement Agreement. *Id.* ¶¶ 27, 66-68. Thus, any Settlement Class Members, who do not exclude themselves, will release their claims against CareNet related to the Security Incident. *Id.*

5. Claims Administration

Defendant has agreed to pay for the entire cost of Claims Administration and Notice separately from any funds made available to the class, much like the Attorneys Fees, expenses, and service award payments. S.A. ¶ 55.

III. ARGUMENT

A. THE FEE REQUEST IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

While the “determination as to the proper amount of an award of [counsel] fees lies largely within the discretion of the court, the discretion is not unlimited” *Matter of Rahmey v. Blum*, 95 A.D.2d 294, 299–300, 466 N.Y.S.2d 350 (1983). When reviewing a fee application in a class action, the court acts as a fiduciary and must protect the rights of absent class members. *See Silberblatt v. Morgan Stanley*, 524 F.Supp.2d 425, 433 (S.D.N.Y. Nov. 19, 2007). Although no single method of determining fees is mandated, two acceptable options are the percentage approach and the lodestar method, the latter having originated in class action litigation. *See*

Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2d Cir. 2000); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 188 (W.D.N.Y. 2005); *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, 94-CV-0403 (JG), 2002 U.S. Dist. LEXIS 16314, at *23 (E.D.N.Y. Aug. 1, 2002); *Friar v. Vanguard Holding Corp.*, 125 A.D.2d 444, 447, 509 N.Y.S. 2d 374 [1986]).

“In testing the reasonableness of the negotiated fee, [courts] first look[] to the percentage of recovery approach.” *Michels v. Phoenix Home Life Mut. Ins. Co.*, 1997 N.Y. Misc. LEXIS 171, at *91 (Sup. Ct. N.Y. Cnty. Jan 7, 1997). “[F]ederal Courts around the country, including federal district courts in New York, are turning away from the lodestar/multiplier approach and are returning to the percentage of the recovery approach.” *Id.* Courts have found numerous advantages to using the percentage method of awarding fees. First, the percentage method “directly aligns the interests of the class and its counsel” because it provides an incentive to attorneys to resolve a case efficiently and to create the largest total value for the class. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d at 122 (2d Cir. 2005).²

The percentage of recovery method is aligned with market practices, as it “mimics the compensation system actually used by individual clients to compensate their attorneys.” *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999); *see also Sewell v. Bovis Lend Lease LMB, Inc.*, 2012 U.S. Dist. LEXIS 53556, at *17 (S.D.N.Y. Apr. 16, 2012). This method also promotes efficiency and early resolution, as it eliminates any incentive plaintiffs’ lawyers may have to run up billable hours—one of the most significant downsides to using the lodestar approach. *Savoie v. Merchants Bank*, 166 F.3d 456, 460-61 (2d Cir. 1999); *Goldberger*, 209 F.3d

² In addition to citing New York state case law authority, this Memorandum will cite to federal case law authority for approval of attorneys’ fees, costs, and service awards to class representatives. “New York’s courts have recognized that its class action statute is similar to the federal statute and have looked to federal case law for guidance.” *Fiala v. Metro. Life Ins. Co.*, 2010 NY Slip Op 20071, ¶ 5, 27 Misc. 3d 599, 606, 899 N.Y.S.2d 531, 537 (Sup. Ct.) (citing cases); *Colt Indus. Shareholder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 194 (1991) (“New York’s class action statute has much in common with Federal Rule 23.”).

at 48-49 (citing *In re Union Carbide Corp., Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 167-168 (S.D.N.Y. 1989)). “The Lodestar method has the potential to lead to inefficiency and resistance to expeditious settlement because it gives attorneys an incentive to raise their fees by billing more hours.” *Lopez v. Dinex Grp., LLC*, 2015 NY Slip Op 31866(U), ¶ 10 (Sup. Ct.); *see also Matter of Karp*, 145 A.D.2d 208, 216 (1st Dep’t 1989).

Finally, the percentage method preserves judicial resources because it relieves the “cumbersome, enervating, and often surrealistic process of evaluating fee petitions.” *Savoie*, 166 F.3d at 461 n.4 (citation omitted); *see also Goldberger*, 209 F.3d at 48-49; *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 57918, at *46 (S.D.N.Y. July 27, 2007). While courts still use the lodestar method as a “cross check” when applying the percentage of the fund method, courts are not required to scrutinize the fee records as rigorously. *See Goldberger*, 209 F.3d at 50; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004).

In the instant matter the “lodestar” fully justifies the fees requested by counsel, particularly considering the inherent reasonableness of counsel seeking \$180,000.00 in fees and \$2,790.60 expenses compared to the value of the settlement to the Class (Fee Decl. ¶¶11-13), in addition to significant non-monetary benefits in the form of the substantial additional data security measures undertaken by Defendant to prevent future data breaches from harming the class. *See e.g. Zink v. First Niagara Bank, N.A.*, No. 13-CV-01076-JJM, 2016 U.S. Dist. LEXIS 179900, at *27 (W.D.N.Y. Dec. 29, 2016) (awarding attorneys’ fees based on the total value of the settlement available to the class); *Faican v. Rapid Park Holding Corp.*, No. 10-CV-1118 (JG), 2010 U.S. Dist. LEXIS 64382, at *5 (E.D.N.Y. June 29, 2010) (same).

B. THE FEES REQUESTED BY SETTLEMENT CLASS COUNSEL ARE WELL WITHIN THE RANGE OF FEES APPROVED BY SECOND CIRCUIT COURTS.

Settlement Class Counsel's request for attorney's fees of \$180,000.00 and documented litigation costs and expenses of \$2,790.60 is reasonable given that the value of the Settlement achieved. The Settlement makes significant relief available to the Settlement Class that directly addresses the injuries that gave rise to their claims, including reimbursement of ordinary losses, lost time, extraordinary losses, or an alternative cash payment. The Settlement further provides credit monitoring and additional cybersecurity measures, which will be paid separate and apart from amounts that Defendant has pledged to pay for monetary relief, and the cost of settlement administration and attorneys' fees and litigation costs and expenses themselves. These fees requested by counsel here are well within the range typically awarded.

New York courts "have routinely granted requests for one-third or more of the fund in cases with settlement funds similar to or substantially larger than this one." *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-cv-05669 (BMC), 2012 U.S. Dist. LEXIS 166383, at *18-19 (E.D.N.Y. Nov. 16, 2012); *Milton v. Bells Nurses Registry & Emp't Agency, Inc.*, No. 502303/2015, 2015 N.Y. Misc. LEXIS 4604, at *13 (Sup. Ct. Dec. 14, 2015) (collecting cases); *Josephs v. United Hebrew of New Rochelle Certified Home Health Agency, Inc. d/b/a United Hebrew Geriatric Center*, Index No. 50926/2019, NYSCEF No. 28 (Sup. Ct. Westchester Cnty. June 9, 2020) (Walker, J.); *Contreras v. Dania Marina, Inc. d/b/a Marina Del Rey Caterers*, Index No. 54536/2018, NYSCEF No. 54 (Sup. Ct. Westchester Cnty. Oct. 3, 2019) (Walsh, J.); *Ryan v. Volume Servs. Am.*, No. 652970/2012, 2013 N.Y. Misc. LEXIS 932, at *14 (Sup. Ct. Mar. 7, 2013); *Fernandez v. Hospitality*, No. 152208/2014, 2015 N.Y. Misc. LEXIS 2193, at *12 (Sup. Ct. June 20, 2015); *Mancia v. HSBC Sec. (USA) Inc.*, No. 9400/2015, 2016 N.Y. Misc. LEXIS 496, at *13 (Sup. Ct. Feb. 19, 2016) (same); see also *Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21,

24 (2d Cir. 2013); *See, e.g., Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007); *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 (CPS)(SMG), 2007 U.S. Dist. LEXIS 68964, at *58-59 (E.D.N.Y. Sep. 18, 2007); *Warren v. Xerox Corp.*, No. 01-CV-2909 (JG), 2008 U.S. Dist. LEXIS 73951, at *22 (E.D.N.Y. Sep. 19, 2008); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d at 397 (approving a fee of 27.5 percent), *In re Dime Sav. Bank*, MDL 846 CV 89-2189, 1994 U.S. Dist. LEXIS 2527, at *7 (E.D.N.Y. Feb. 23, 1994). Even were the Court inclined to estimate the total value of the Settlement as something less than \$4 million, courts have approved fee awards of significantly higher values in similar cases. *See In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, No. 18-cv-8472 (PKC), 2022 U.S. Dist. LEXIS 102805, at *70 (S.D.N.Y. June 8, 2022) (data breach class action settlement approving attorneys' fees in the amount of \$897,866.26 compared to an estimated total value for the settlement of \$1,479,550.67 (a fee of 60.7 percent)).

C. PLAINTIFF'S REQUEST FOR APPROVAL OF REIMBURSEMENT OF LITIGATION EXPENSES AND ATTORNEYS' FEES IS FAIR REASONABLE AND SHOULD BE GRANTED.

CPLR 909 permits courts to award attorneys' fees in class action litigation. In order to assess a reasonable fee, a court should consider:

[T]he risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case's history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.

Fiala v. Metro. Life Ins. Co., 899 N.Y.S.2d 531, 610 (Sup. Ct. N.Y. Cnty. 2010). Each of these factors supports approval of Settlement Class Counsel's fee and expense request here.

1. The Risk of Litigation

“Contingency risk is the principal, though not exclusive, factor courts should consider in their determination of attorneys' fees.” *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (quoting *In re Dreyfus Aggressive Growth Mut. Fund Litig.*, 98 cv 4318 (HB), 2001 U.S. Dist. LEXIS 8418, at *24 (S.D.N.Y. June 21, 2001)). Settlement Class Counsel here took on the risks of litigation knowing full well their efforts might not bear fruit. Fees were not guaranteed.

The risks undertaken in pursuing this data breach litigation were significant. This case involved complexities of data breach that are novel and evolving. While Plaintiff is confident that her claims will prevail, she face several strong legal defenses and difficulties in demonstrating causation and injury. Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiff and Settlement Class Members. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on either certification or merits. The general risks of litigation are further heightened in the data breach arena. Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles—even just to make it past the pleading stage. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *18 (W.D. Wis. Mar. 4, 2021) (also approving attorneys' fees and costs in the amount of \$1,575,000); *see also Hammond v. Bank of N.Y. Mellon Corp.*, 2010 U.S. Dist. LEXIS 71996, at *2-4 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. *See*,

e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig., 293 F.R.D. 21 (D. Me. 2013).

Accordingly, this factor weighs in favor of approving the requested fee percentage.

2. Whether Counsel Had the Benefit of a Prior Judgement

Data breach litigation is evolving; there is no guarantee of the ultimate result. *Gordon v. Chipotle Mexican Grill, Inc.*, Civil Action No. 17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019). Indeed, instead of relying on a prior judgment, Settlement Class Counsel took on the risk of filing this class action on an entirely contingent basis. While data breach litigation is still an emerging area of law, Settlement Class Counsel was able to draw on their extensive experience in this area to achieve a settlement that offers a substantial benefit to the class in spite of the novelty of and risks associated with the litigation. This factor weighs in favor of the requested fee award.

3. Settlement Class Counsel Provided Excellent Representation

In determining the quality of representation, Courts examine the experience of the attorneys involved and the result obtained in the lawsuit. *Taft v. Ackermans*, 2007 U.S. Dist. LEXIS 9144, at *11 (S.D.N.Y. Jan. 31, 2007). Here Settlement Class Counsel have substantial experience in both class actions generally, and complex consumer class actions involving cybersecurity incidents in particular. Miller Aff. ¶ 10. Further, Defendant was represented by competent and well-respected counsel, who are experienced in data breach litigation. *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010) (“the quality of the opposition should be taken into consideration in assessing the quality of the plaintiff’s counsel’s performance.”) In the instant case, both sides zealously advocated on behalf of their respective clients and the excellent result here is a function of the high quality of the work and intense negotiations by both sides. As such, this factor weighs in favor of approval.

4. The Magnitude and Complexity of Litigation

“The size and difficulty of the issues in a case are significant factors to be considered in making a fee award.” *Beckman*, 293 F.R.D. at 481-83 (internal citations omitted); *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998). This case was no exception. Defendant’s business practices impacted thousands of consumers and employees in New York and elsewhere and presented many novel and complex issues. While Plaintiff believes that her claims are strong, they are not without risk. Trial of this matter would necessitate costly preparation of experts who in all likelihood would have to conduct their own, original clinical studies. The magnitude and complexity of legal issues involved in this case reinforces the reasonableness of Settlement Class Counsel’s requested fee percentage.

5. The Case History and the Responsibility Undertaken by Settlement Class Counsel

Settlement Class Counsel’s activities included, but were not limited to, conducting an extensive pre-filing investigation of Plaintiff’s and Class Members’ claims and damages and vigorously prosecuting those claims. Settlement Class Counsel engaged in extensive discovery prior to filing the case, fully briefed and defended against Defendant’s motion to dismiss, prepared mediation statements, and ultimately negotiated a comprehensive settlement for the Settlement Class. Miller Aff. ¶¶ 4-6. Since reaching the Settlement, Settlement Class Counsel has drafted a motion for preliminary approval of the Settlement and assisted with the drafting and preparation of the Settlement Agreement, short and long form notice, and claim forms. Fee Decl. ¶ 7. The work performed by Settlement Class Counsel to date has been comprehensive, complex, and wide ranging, and this factor supports the requested fee award.

6. The Amount Recovered

As discussed above, the requested fee represents a fraction of the total value of the Settlement. This percentage is inherently reasonable and weighs in favor of approval. *See Massiah*, 2012 U.S. Dist. LEXIS 166383, at *18.

7. The Knowledge the Court has of the Case's History and the Work Done by Counsel Prior to Trial, and What Would be Reasonable for Counsel to Charge Victorious Plaintiffs

Under CPLR 909, “[i]f a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys’ fees.... Based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class.” The Settlement Agreement provides that Settlement Class Counsel may petition the Court for an award of attorneys’ fees up to \$180,000 and costs up to \$5,000, which is to be paid by Defendant separate and apart from the funds payable to Settlement Class Members. As mentioned above, New York courts routinely approve fee requests for one-third or more of a common fund.

Furthermore, public policy supports providing attorneys’ fees in class action cases, as class actions are also an invaluable safeguard of public rights. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). Where, as here, the settlement amount is relatively small, an award of attorneys’ fees ensures that “plaintiffs’ claims [will] likely . . . be heard.” *Frank*, 228 F.R.D. at 189. If courts denied sufficient attorneys’ fees “no attorneys . . . would likely be willing to take on . . . small-scale class actions[.]” *Id.*; *see also Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002). Public policy is in favor of rewarding counsel who persevere through risky litigation and achieve favorable results for the class they represent. Here, Settlement Class Counsel took on this case despite the uncertainty and volatility of law pertaining to consumer class actions, and data breach class actions in particular, and persevered in obtaining a settlement

allowing for Settlement Class Members to receive cash, injunctive, and mitigative compensation. Such a result should be rewarded.

D. THE REQUESTED ATTORNEYS' FEES ARE ALSO REASONABLE UNDER A LODESTAR CROSS-CHECK

The litigation required extensive time and labor by Settlement Class Counsel. The fee declarations submitted by Settlement Class Counsel show a total of 123.60 hours spent on the litigation. Fee Decl. ¶ 11. This number is not surprising given the breadth and scope of the litigation and fully support the requested fee. As set forth above, Settlement Class Counsel conducted an extensive pre-suit investigation into the Security Incident, drafted a class action complaint, coordinated the litigation schedule with defense counsel, conducted settlement negotiations, including drafting of the notices and claim form, and prepared and filed of Plaintiff's Motion Memorandum of Law in Support of Preliminary Approval of the Settlement. *Id.* ¶ 2-7, 9.

The lodestar fees to date equal \$71,832.50. Fee Decl., ¶ 11. Settlement Class Counsel have calculated that their total lodestar yields a multiplier of approximately 2.51, which is well within the range accepted by courts in New York and the Second Circuit. *Id.* ¶ 13. In fact, courts in this jurisdiction regularly award lodestar multipliers of two times the lodestar or higher. New York courts have observed that multipliers as high as 7.6 times the lodestar have been approved and that "in contingent litigation, 'lodestar multiples of over 4 are routinely awarded.'" *Milton*, 2015 N.Y. Misc. LEXIS 4604, *16-17; *Lopez*, 2015 NY Slip Op 31866(U), *14 (same); *see also Yuzary v. HSBC Bank USA, N.A.*, 2013 U.S. Dist. LEXIS 144327, at *29 (S.D.N.Y. Oct. 2, 2013) (approving 7.6 lodestar multiplier); *Perez v. Rash Curtis & Assocs.*, No. 4:16-cv-03396-YGR, 2020 U.S. Dist. LEXIS 68161, at *62-63 (N.D. Cal. Apr. 17, 2020) (approving lodestar multiplier ranging from 13.42 to 18.15); *James v. China Grill Mgmt.*, 2019 U.S. Dist. LEXIS 72759, at *8 (S.D.N.Y. Apr. 30, 2019); *Sewell*, 2012 U.S. Dist. LEXIS 53556, at *30; *In re Lloyd's Am. Tr. Fund Litig.*, 2002

U.S. Dist. LEXIS 22663, at *80 (S.D.N.Y. Nov. 26, 2002). Further, the lodestar multiplier will ultimately be much lower once final approval is sought, as Counsel expects to spend additional time in the finalization and filing of this motion, at the final approval hearing, and through the end of the claims process and distribution of funds to those Settlement Class Members who made eligible claims. Fee Decl. ¶ 14.

E. SETTLEMENT CLASS COUNSEL’S REQUESTED COSTS ARE REASONABLE, INCIDENTAL TO LITIGATION AND SHOULD BE APPROVED

Courts typically allow counsel to recover their reasonable out-of-pocket expenses. *Beckman*, 293 F.R.D. at 481-83 (internal citations omitted); *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3. (S.D.N.Y. Dec. 17, 2003). Settlement Class Counsel here seeks reimbursement of costs and expenses totaling \$2,790.60. Fee Decl. ¶ 12. These expenses are of the type of expenses routinely charged to hourly clients, are appropriately documented, and were necessary and reasonable to prosecute the litigation.

F. PLAINTIFF’S REQUESTED SERVICE AWARDS ARE JUSTIFIED AND SHOULD BE APPROVED

It is common for courts to grant service awards in class action suits. Such awards “reward[] the named plaintiff’s for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery. *Milton v. Bells Nurses Registry & Empl. Agency, Inc.*, 2015 N.Y. Misc. LEXIS 4604, at *5-6 (citing *Cox v. Microsoft Corp.*, 26 Misc. 3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2007)). Courts consider such compensation important. *See Massiah*, 2012 U.S. Dist. LEXIS 166383, at *22.

For their commitment to this case, Plaintiff Coniglio seeks \$2,500. Plaintiff assisted in the investigation of this case, participated in extensive interviews, reviewed and approved pleadings, stayed in contact with Settlement Class Counsel, and answered Settlement Class Counsel’s many

questions. Fee Decl. ¶ 8. The amount requested is reasonable and modest relative to awards regularly granted by courts in this jurisdiction and the request should be granted. *See Beckman*, 293 F.R.D. at 481-83 (granting an award of \$5,000 to \$7,500 to Plaintiffs); *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118 (S.D.N.Y. 2001).

IV. CONCLUSION

For the foregoing reasons, Settlement Class Counsel respectfully requests that the Court grant this motion and (1) award \$180,000.00 in attorneys' fees and \$2,790.60 in litigation costs and expenses; and (2) award Plaintiff Jeanette Coniglio a service award of \$2,500.00.

Dated: April 21, 2025

Respectfully submitted,

By: /s/ James Bilsborrow

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