UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO.: 25-CV-61610-MD

WILLIAM GILLIS, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

PHIL SMITH MANAGEMENT, INC., d/b/a
PHIL SMITH AUTOMATIVE GROUP,

Defendant. /

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S UNOPPOSED MOTION FOR AN AWARD OF REASONABLE ATTORNEYS' FEES AND EXPENSES AND RELATED RELIEF

TABLE OF CONTENTS

TABLE OF AUTHORIITES……..…ii

I. INTRODUCTION 1

II. BACKGROUND 1

A. History of the Litigation and Summary of Negotiations 1

B. Summary of the Settlement Terms 2

III. LEGAL STANDARD 4

IV. ARGUMENT 6

A. The Requested Fee is Reasonable Under the *Johnson* Factors Applied by in this Circuit 6

1. The Time and Labor Required 8

2. The Novelty and Difficulty of the Relevant Question 9

3. The Skill Required to Carry Out the Legal Services and the Experience and Reputation of the Attorneys 10

4. Preclusion of Other Employment by Class Counsel by Accepting the Case 11

5. Whether the Fee is Fixed or Contingent 11

6. The Results Obtained for the Settlement Class 12

7. Fee Awards in Similar Cases 14

8. A Lodestar Cross-Check Supports the Requested Fee 15

B. Litigation Expenses are Reasonable 16

C. The Service Payment to the Plaintiff Should Also Be Approved 17

V. CONCLUSION 19

TABLE OF AUTHORITES

Cases **Page(s)**

Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.,
12 So. 3d 850 (Fla. 3d DCA 2009) 17

In re Arby's Consumer Litig.,
2019 WL 2720818 (N.D. Ga. June 6, 2019) 10

Behrens v. Wometco Enterprises, Inc.,
118 F.R.D. 534 (S.D. Fla. 1988) 12

Belin v. Health Ins. Innovations, Inc.,
No. 19-CV-61430, 2022 WL 1126006 (S.D. Fla. Mar. 10, 2022).....9

In re Blackbaud, Inc., Customer Data Breach Litig.,
No.: 3:20-mn02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024).....13

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980).....4

Camden I Condo. Ass'n, Inc. v. Dunkle,
946 F.2d 768 (11th Cir. 1991) 5, 6, 7, 11

In re Checking Account Overdraft Litig.,
No. 1:09-MD-02036-JLK, 2020 WL 4586398 (S.D. Fla. Aug. 10, 2020) 15

In re Citrix Data Breach Litig.,
No. 19-61350-CIV, 2021 WL 2410651 (S.D. Fla. Jun 11, 2021) 9

Columbus Drywall & Insulation, Inc. v. Masco Corp.,
No. 04-CV-3066-JEC, 2008 WL 11234103 (N.D. Ga. Mar. 4, 2008).....16

Corona-Cantu v. Ingo Money Inc.,
No. 1:24-cv-03023, 2025 WL 3567122(N.D. Ga. June 17, 2025).....19

Cotter v. Checkers Drive-In Rests., Inc.,
No. 8:19-cv-1386, 2021 WL 3773414 (M.D. Fla. Aug. 25, 2021) 10

Davis v. Locke,
936 F.2d 1208 (11th Cir. 1991) 16

In re Equifax Customer Data Sec. Breach Litig.,
999 F.3d 1247 (11th Cir. 2021) 14, 15

In re Equifax Inc. Customer Data Sec. Breach Litig.,
No. 17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) 14

Erie R.R. Co. v. Tompkins,
304 U.S. 64, 58 S. Ct. 817, 82 L.Ed. 1188. 304 U.S. 64, 58 S.Ct. 817, 82 L. Ed. 1188 (1938) 18

In re Fortra File Transfer Software Data Sec. Breach Litig.,
794 F. Supp. 3d 1203 (S.D. Fla. 2025) ..... *passim*

Francisco v. Numismatic Guaranty Corp. of America,
No. 06- 61677-CIV, 2008 WL 649124 (S.D. Fla. Jan. 31, 2008) 9

Fulton-Green v. Accolade, Inc.,
No. CV 18-274, 2019 WL 4677954 (E.D. Pa. Sept. 24, 2019) 13

Gevaerts v. TD Bank, N.A.,
No. 11:14-cv-20744, 2015 WL 6751061 (S.D. Fla. Nov. 5, 2015) 5

In re Health Ins. Innovations Sec. Litig.,
No. 8:17-cv-2186, 2021 WL 1341881 (M.D. Fl. Mar. 23, 2021).....16

Johnson v. Ga. Highway Express, Inc.,
488 F.2d 714 (5th Cir. 1974) ..... *passim*

Johnson v. NPAS Solutions,
F.3d 1244 (11th Cir. 2020) 17

Maldini v. Marriott Int'l, Inc.,
140 F.4th 123 (4th Cir. 2025).....13

In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.,
No. 21-MD-02994-RAR, 2024 WL 4415214 (S.D. Fla. Oct. 5, 2024).....15, 16

Owings v. Medusind, Inc.,
No. 25-CV-20117, 2026 WL 199302 (S.D. Fl. Jan. 26, 2026) 14

Pinon v. Daimler
AG, No. 1:18-CV-3984-MHC, 2021 WL 6285941 (N.D. Ga. Nov. 30, 2021) 15

Ponzio v. Pinon,
87 F.4th 487 (11th Cir. 2023).....15

Roth v. GEICO Gen. Ins. Co.,
Civ. Act. No. 16-62942, 2020 WL 10818393 (S.D. Fla. Oct. 8, 2020) 18

In re S. Co. S'holder Derivative Litig.,
No. 1:17-CV-725-MHC, 2022 WL 4545614 (N.D. Ga. June 9, 2022).....7, 11

Sanchez v. State Farm Mutual Automobile Ins. Co.,
2025 WL 2460560 (M.D. Fl. Aug. 26, 2025) 18

South v. Progressive Select Ins. Co.,
Civ. Act. No. 19-21760, 2023 U.S. Dist. LEXIS 58227 (S.D. Fla. Mar. 31, 2023) 18

In re Sunbeam Sec. Litig.,
176 F. Supp. 2d 1323 (S.D. Fla. 2001) 5, 8, 11, 12

Theus v. Brinker Int'l, Inc.,
No. 3:18-cv-686-TJC-MCR, 2025 WL 1786346 (M.D. Fla. June 27, 2025) 13

Venerus v. Avis Budget Car Rental, LLC,
Civ. Act. No. 6:13-cv-921-CEM-RMN, 2023 WL 4673481 (M.D. Fla. May 23, 2023) 18

Waters v. Int'l Precious Metals Corp.,
190 F.3d 1291 (11th Cir. 1999) 15

Wolff v. Cash 4 Titles,
No. 03-22778-CIV, 2012 WL 5290155 (S.D. Fla. Sept. 26, 2012).....6, 14

Statutes

Telephone Consumer Protection Act, 47 U.S.C. § 227 17

Other Authorities

Federal Rule of Civil Procedure 23(h).....1, 4, 16

Federal Rules of Civil Procedure Rule 54(d)(2) 1

Pursuant to Rule 23(h) and Rule 54(d)(2) of the Federal Rules of Civil Procedure, as well as this Court's Preliminary Approval Order (ECF No. 21), Settlement Class Counsel respectfully submit this Memorandum of Law in Support of Settlement its Unopposed Motion for Reasonable Attorney's Fees and Expenses and Related Relief.

Unless otherwise stated, all definitions herein are the same as in the Settlement Agreement and Release ("S.A."). ECF. No. 20-4.

I. INTRODUCTION

This litigation arises from the Security Incident which compromised the security and Private Information of current and former customers or potential customers of Defendant Phil Smith Management, Inc., d/b/a Phil Smith Automotive Group ("Defendant"). The Settlement provides for a Settlement Fund of Three Hundred Seventy-Four Thousand Six Hundred Thirty-Two Dollars and Fifty Cents ($374,632.50), and delivers significant relief, including a pro-rata cash payment for undocumented losses, compensation of up to $5,000.00 per Settlement Class Member for documented losses and expenses, credit monitoring, and important security enhancements to improve Defendant's informational security.

II. BACKGROUND

A. History of the Litigation and Summary of Negotiations

In response to receiving notice of the Security Incident experienced by Defendant in which his private information was compromised, Plaintiff William Gillis ("Plaintiff") filed a class action complaint against Defendant on August 8, 2025. Thereafter, Plaintiff's and Defendant's counsel began to engage in informal settlement discussions; which

quickly escalated to confidential settlement communications subject to F.R.E. 408. Plaintiff propounded written informal settlement discovery including, but not limited to, information about the allegations in the Complaint, the class size, the types of data impacted in the Security Incident, and information supporting Plaintiff's damages allegations. The Parties engaged in extensive settlement discussions which resulted in the Parties' agreement on the terms of the settlement. This Settlement, if approved, would resolve all claims related to the Security Incident on behalf of the Settlement Class. Plaintiff and Class Counsel strongly believe that this Settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class. Plaintiff moved for entry of a Preliminary Approval of the Settlement Agreement (ECF No. 20), which the Court granted on December 10, 2025. ECF No. 21.

B. Summary of the Settlement Terms

The Settlement Class consists of all persons residing within the United States who were notified by Defendant that their Personal Information was potentially compromised in the Security Incident. Excluded from the Settlement Class are the judge to whom the Litigation is assigned and any member of the judge's staffs or immediate family members, and any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge. The Settlement Class includes 13,145 individuals.

The Settlement provides for the following relief to Settlement Class Members:

Undocumented Losses or Harm: Settlement Class Members may elect to receive a one-time pro rata cash payment without the need to document losses incurred as a result of the Security Incident. S.A. ¶ 2.3(b).

Documented Out-of-Pocket Losses: Alternatively, Settlement Class Members may submit claims for up to $5,000.00 (five thousand dollars) per Settlement Class Member for reimbursement of (i) proven monetary loss(es) that were more likely than not caused by the Security Incident; (ii) out-of-pocket expenses incurred as a result of the Security Incident; (iii) fees for credit reports, credit monitoring, or other identity theft insurance products; and (iv) any other actual, documented and un-reimbursed monetary loss that was more likely than not caused by the Security Incident. S.A. ¶ 2.3(a).

Credit Monitoring: In addition to electing to receive any monetary compensation, Settlement Class Members may also elect to receive three years of IDX credit monitoring. IDX credit monitoring has an estimated value of $900.00 per year per Settlement Class Member. *S.A.* ¶ 2.3(c).

Information Security Enhancements: Defendant has further enhanced its data security infrastructure S.A. ¶ 2.3(d), including, but not limited to (1) enabling multi-factor authentication; (2) strengthened firewalls and network defenses; (3) centralized the management of service providers and security service providers across all affiliated dealerships; and (4) updated data security policies to enhance cybersecurity awareness and improve defenses against future threats. *Id.*

Thus, the Settlement provides substantial monetary and non-monetary relief to a large class of individuals affected by the Security Incident, while also securing

meaningful injunctive relief to prevent future harm. Through this motion, Class Counsel are seeking an award for Attorneys' Fees in the amount of $124,877.50 in light of the results achieved, the complexity of the litigation, and the risks undertaken. The amount of fees sought by Class Counsel constitutes one-third of the Settlement Fund. In addition, Class Counsel are also seeking reimbursement of litigation expenses totaling $1,221.97, as well as a Service Award to the Plaintiff in the amount of $2,500. The settlement terms are fair, reasonable, and adequate, and support approval of the requested attorneys' fees, as well as Plaintiff's other requests.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23(h) allows a district court supervising a class action to "award reasonable attorney's fees and nontaxable costs that are authorized by law." Fed. R. Civ. P. 23(h). The United States Supreme Court noted that attorneys who represent a class and whose efforts achieve a benefit for the class are "entitled to a reasonable attorney's fee from the fund as a whole," as appropriate compensation for their services to the class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "It is well established that when a representative party has conferred a substantial benefit upon a class, counsel is entitled to attorneys' fees based upon the benefit obtained." *In re Fortra File Transfer Software Data Sec. Breach Litig.*, 794 F. Supp. 3d 1203, 1223 (S.D. Fla. 2025) *citing Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991) ("*Camden I*"). "The doctrine serves the 'twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts.'"

Gevaerts v. TD Bank, N.A., No. 11:14-cv-20744, 2015 WL 6751061, at *10 (S.D. Fla. Nov. 5, 2015). "As a result, the Supreme Court, the Eleventh Circuit, and courts in this District . . . have all recognized 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 whole.'" *Id.* (citations omitted).

In this Circuit, "class counsel are awarded a percentage of the funds obtained through a settlement." *In re Fortra, 794 F. Supp. 3d at 1224*. In *Camden I*—the controlling authority regarding attorneys' fees in common-fund class actions—the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774.

"There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (*quoting Camden I*, 946 F.2d at 774). Nonetheless, "[t]he majority of common fund fee awards fall between 20 percent to 30 percent of the fund" – though "an upper limit of 50 percent of the fund may be stated as a general rule." *Id.* (*quoting Camden I*, 946 F.2d at 774-75). Following *Camden I*, percentage-based fee awards in the Eleventh Circuit have averaged approximately thirty-three percent (33%) of the settlement value provided to the class. *See, e.g., Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at 5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that

of awards nationwide-roughly one-third"). Settlement Class Counsel's fee request here falls with the accepted range for fee awards in this Circuit.

IV. ARGUMENT

Due to their efforts, the Settlement provides the Settlement Class with, among other things, a cash Settlement Fund of $374,632.50 which Settlement Class Counsel believes is an excellent result given the size of this case and the impediments the class would have faced had this matter moved forward. Pursuant to the Settlement Class Notice, and consistent with recognized class action practice and procedure, Settlement Class Counsel respectfully submit that their request for a fee award equal to 33% of the Settlement Fund falls within the range of reasonableness under the relevant factors listed in *Camden 1*, 946 F. 2d 768. Importantly, to date, no Settlement Class Members have submitted an objection to Settlement Class Counsel's fee request, which was plainly detailed in the Long and Short Notice.

A. The Requested Fee is Reasonable Under the *Johnson* Factors Applied by in this Circuit

When evaluating a request for attorneys' fees, district courts in the Eleventh Circuit often analyze the twelve factors announced in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), to determine the appropriateness of the requested fee amount. *See Camden I,* 946 F.2d at 772. Those factors are:

(1) the time and labor required;

(2) the novelty and difficulty of the relevant questions;

(3) the skill required to properly carry out the legal services;

(4) the preclusion of other employment by the attorney as a result of his acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) time limitations imposed by the clients or the circumstances;

(8) the results obtained, including the amount recovered for the clients;

(9) the experience, reputation, and ability of the attorneys;

(10) the "undesirability" of the case;

(11) the nature and the length of the professional relationship with the clients; and

(12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3. Importantly, these twelve factors are guidelines and are not exclusive. Nor do all *Johnson* factors need to be considered in each case. *In re S. Co. S'holder Derivative Litig.*, No. 1:17-CV-725-MHC, 2022 WL 4545614, at *10 (N.D. Ga. June 9, 2022) (*quoting In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 502 (N.D. Miss. 1996) ("[N]ot every [Johnson] factor need be necessarily considered")). The Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Camden I*, 946 F.2d at 775. "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Sunbeam*, 176 F. Supp. 2d at 1333 (*quoting Camden I*, 946 F.2d at 775). Here, each

of the *Johnson* factors relevant[1] to this case support Settlement Class Counsel's motion for a fee award.

1. The Time and Labor Required

Although this Litigation was resolved at a relatively early stage, prosecuting and settling the claims in this case required time and effort by Settlement Class Counsel sufficient to demonstrate the reasonability of this fee request. In addition to investigating and researching Plaintiff's claims, Settlement Class Counsel also expended resources developing the legal claims at issue and drafting the Class Action Complaint. Settlement Class Counsel propounded written informal discovery including, but not limited to, information about the allegations in the Complaint, the class size, the types of data impacted in the Security Incident, and information supporting Plaintiff's damages allegations. The Parties then engaged in extensive settlement discussions prior to agreeing the terms of the Settlement. Significant time was also devoted to negotiating and drafting the Agreement, the Preliminary Approval process, and to all actions required thereafter by the Agreement and the Preliminary Approval Order. Settlement Class Counsel will undoubtedly spend substantial time leading up to the filing of the Motion for Final Approval, addressing the Notice Program, Claim Process, and preparing the Motion for Final Approval. Time will also be spent preparing for and attending the Final Approval Hearing. Finally, Settlement Class Counsel will devote substantial time

[1] The fifth, seventh, tenth, and eleventh Johnson factors are neutral in this matter.

to Settlement administration should Final Approval be granted responding to queries from Settlement Class Members and to ensure the Settlement is fully implemented.

Each of the above-described efforts was essential to achieving the Settlement. Settlement Class Counsel's time and resources devoted to prosecuting and settling this Litigation justify the requested fee. Indeed, in awarding attorneys' fees, courts have consistently recognized and rewarded class counsel for moving the litigation to conclusion with diligence and efficiency. *Belin v. Health Ins. Innovations, Inc.*, No. 19-CV-61430, 2022 WL 1126006, at *4 (S.D. Fla. Mar. 10, 2022), *report and recommendation adopted*, 2022 WL 1125788 (S.D. Fla. Apr. 15, 2022) ("courts have recognized the importance of providing incentives to experienced counsel to tackle complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively").

2. The Novelty and Difficulty of the Relevant Question

The second *Johnson* factor the Court must consider in evaluating a fee award is the novelty and difficulty of the claims raised in the case. *See Johnson*, 488 F.2d at 718. This factor weighs heavily in support of the requested attorneys' fee award. In fact, courts routinely recognize the novelty and difficulty of the questions present in a case as a "significant factor to be considered in making a fee award." *Francisco v. Numismatic Guaranty Corp. of America*, No. 06- 61677-CIV, 2008 WL 649124, at *15 (S.D. Fla. Jan. 31, 2008). Data breach class actions are notoriously risky and complex cases that present novel issues of law and fact as data security continues to develop and evolve. *See In re Citrix Data Breach Litig.*, No. 19-61350-CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) ("Data breach cases in particular present unique challenges with respect to issues like

causation, certification, and damages."); *Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting data breach class actions present "serious risks" due, in part, to "the ever-developing law surrounding data breach cases"). Data breach litigation is a relatively new subject matter in class action litigation and the law continues to evolve. *See In re Arby's Consumer Litig.*, 2019 WL 2720818, at *3 (N.D. Ga. June 6, 2019)("Consumer class action litigation is complex and difficult to prosecute . . . [and] data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits.").

3. The Skill Required to Carry Out the Legal Services and the Experience and Reputation of the Attorneys

The skill, experience, reputation, and ability of Settlement Class Counsel are factors courts evaluate in determining an appropriate attorneys' fee award. As detailed in the Declaration of Gerald D. Wells, III ("Wells Decl." attached hereto as "Exhibit A"), Settlement Class Counsel Nicholas Colella and Gerald D. Wells, III of Lynch Carpenter LLP relied on their extensive experience handling data privacy class actions across the country to negotiate the relief available in this Settlement with experienced data breach defense counsel. ¶¶ 7-9, 10, 12. Settlement Class Counsel used their experience to resolve this litigation and to reach a uniform, class-wide settlement even considering the risks involved. Settlement Class Counsel's experience in handling many other data privacy class action cases permitted Settlement Class Counsel to avoid the pitfalls such complex and difficult cases present, and, instead, to recover a settlement worth $374,632.50 to the Settlement Class. *Id.* Settlement Class Counsel's experience in prosecuting data breach

cases has proven to be critical to the efficient prosecution and ultimate resolution of this Litigation.

Additionally, in evaluating the quality of representation by Settlement Class Counsel, the Court should also consider opposing counsel. *See Camden I*, 946 F.2d at 772 n.3. Defendant is represented by extremely capable counsel from a prominent national law firm. *See Sunbeam*, 176 F. Supp. 2d at 1334 (quality of opposing counsel substantiates quality of plaintiffs' counsel's work).

4. Preclusion of Other Employment by Class Counsel by Accepting the Case

Settlement Class Counsel's pursuit of this case necessarily precluded them from working on other matters. Courts within this Circuit have weighed this factor in favor of Settlement Class Counsel's requested fee when the work on the case precluded Settlement Class Counsel's ability to pursue other matters. *See In re S. Co. S'holder Derivative Litig.*, No. 1:17-CV-725-MHC, 2022 WL 4545614, at *12 (N.D. Ga. June 9, 2022) (noting that class counsel's pursuit of the class action case "necessarily precluded them from devoting resources to other litigation and the prosecution of additional cases."). Accordingly, this factor supports Settlement Class Counsel's fee request.

5. Whether the Fee is Fixed or Contingent

Like most class action lawsuits, this case was prosecuted on a contingent basis because virtually no individual plaintiff possesses a sufficiently large stake in the litigation to justify paying attorneys on an hourly basis. In undertaking to prosecute this case entirely on a contingent fee basis, Settlement Class Counsel assumed a significant

risk of nonpayment or underpayment, while foregoing the opportunity to work on other cases. That risk warrants Settlement Class Counsel's fee request. Indeed, "[a] contingency fee arrangement often justifies an increase in the award of attorney's fees." *Sunbeam*, 176 F. Supp. 2d at 1335, (*quoting Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988)). This is because:

> "from a pure dollars-and-cents economic view, this higher fee is the appropriate measure of a reasonable fee that is required in the marketplace of services: (1) to induce an attorney to agree to assume the risk that no compensation will be received unless she or he successfully achieves a benefit for the client; and (2) if ultimately successful, to compensate for the costs suffered and investment income forgone by delay in payment."

H. Newberg and A. Conte, 1 *Attorney Fee Awards* § 1.8 (3d. ed.).

To the extent there was no recovery for the Settlement Class, Settlement Class Counsel would not have been compensated at all for their work in this Litigation and would have lost all litigation expenses incurred in pursuing it. Public policy concerns also support Settlement Class Counsel's requested fee award. As the court in *Behrens* held:

> "Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer. . . . A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing."

Behrens, 118 F.R.D. at 548.

6. The Results Obtained for the Settlement Class

As noted above, Settlement Class Counsel obtained a successful result, with $374,632.50 recovered for the Settlement Class, affording them meaningful Settlement benefits designed to meet the typical repercussions faced by consumers following an incident similar to the one that occurred in the instant matter. Those benefits include a cash Settlement Fund allowing for a pro-rata cash payment for undocumented loses or up to $5,000 in reimbursement for documented losses relating to the Security Incident. The terms of the Settlement also provide for three years of credit monitoring valued at $900 per year, and important security enhancements to improve Defendant's informational security.

In negotiating the Settlement, Settlement Class Counsel relied on published reports documenting the Security Incident, settlement discovery received from Defendant, their own experience in data breach litigation, and reported settlements in other data breach class actions.

The Settlement Agreement provides every Settlement Class Member who submits a valid Claim Form with a monetary award that is fair and reasonable. This is especially true when balanced against the risk of receiving no recovery at all had the Litigation proceeded. *See, e.g., Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123 (4th Cir. 2025) (decertifying data breach class); *Theus v. Brinker Int'l, Inc.,* No. 3:18-cv-686-TJC-MCR, 2025 WL 1786346 (M.D. Fla. June 27, 2025) (denying motion for class certification); *In re Blackbaud, Inc., Customer Data Breach Litig.*, No.: 3:20-mn02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024) (denying motion for class certification); *Fulton-Green v. Accolade, Inc.*, No. CV 18-

274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) (noting that data breach class actions are "a risky field of litigation because [they] are uncertain and class certification is rare").

Moreover, the equitable forward-looking relief—i.e., enhanced data security practices—also provides substantial non-monetary benefits to all Settlement Class Members, regardless of whether they submit a claim under the Settlement Agreement. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 17-MD-2800-TWT, 2020 WL 256132, at *34 (N.D. Ga. Mar. 17, 2020), aff'd in part, rev'd in part and remanded, 999 F.3d 1247 (11th Cir. 2021) (finding that injunctive relief provides "a substantial benefit to all class members"). This is especially true in the data breach context as Settlement Class Members' data remains in Defendant's hands and thus susceptible to another security incident. The enhanced data security measures implemented by Defendant reduces this risk; necessarily benefiting all Settlement Class Members.

As such, this factor also supports Settlement Class Counsel's fee request.

7. Fee Awards in Similar Cases

The requested fee is also consistent with awards in similar cases in the Eleventh Circuit. Indeed, percentage-based fee awards in the Eleventh Circuit have averaged around 33% of the class benefit. *See, e.g., Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third."); *Owings v. Medusind, Inc.*, No. 25-CV-20117, 2026 WL 199302, *12 (S.D. Fl. Jan. 26, 2026) (finding one-third of settlement fund appropriate in data breach settlement); *In re Fortra*, 794 F. Supp. 3d at 1224-1225 (awarding 33.33%); *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-

02994-RAR, 2024 WL 4415214, at *5 (S.D. Fla. Oct. 5, 2024) (noting district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common fund settlement). *See also, e.g., In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2020 WL 4586398, at *16 (S.D. Fla. Aug. 10, 2020) (awarding 35%); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33.33 % of settlement).

Moreover, courts in this District have found that a fee of 33.33% "is at the market rate of what the Class could have negotiated with counsel...as a traditional contingency fee arrangement at the outset of the case." *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1255 (S.D. Fla. 2016); *see also In re Checking Account Overdraft Litig.*, 830 F.Supp.2d 1330, 1366 (S.D. Fla. 2011) (acknowledging class counsel's requested fee of 30% "falls on the low end of the average in the private marketplace" where contingency fees of up to 40% are customary in the private marketplace).

8. A Lodestar Cross-Check Supports the Requested Fee

While not an enumerated factor under *Johnson*, nor required by courts in this Circuit[2], a lodestar cross-check here further demonstrates the reasonableness of Settlement Class Counsel's fee request. *See Pinon v. Daimler* AG, No. 1:18-CV-3984-MHC, 2021 WL 6285941, at *19 (N.D. Ga. Nov. 30, 2021), aff'd sub nom. *Ponzio v. Pinon*, 87 F.4th 487 (11th Cir. 2023) (noting that while not required, lodestar cross-check may be used "to ensure that the fee produced by the chosen method is in the ballpark of an appropriate fee"); *see also In re Mednax*,2024 WL 4415214, at *5 (using lodestar cross-check to further

[2] *In re Equifax Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1280 (11th Cir. 2021).

support the "reasonableness of the fee request"). Here, Settlement Class Counsel's total lodestar is $73,015.00, based on 75.3 hours dedicated to this case by attorneys and support staff at Lynch Carpenter.[3] Wells Decl. ¶ 24.

Based on Settlement Class Counsel's lodestar, granting the fee request of $124,877.50 would result in a lodestar multiplier of 1.71 (Wells Decl. ¶ 25), which is well within the range of multipliers approved in this Circuit. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-CV-3066-JEC, 2008 WL 11234103, at *3 (N.D. Ga. Mar. 4, 2008) (approving fee with lodestar multiplier between 2 and 3); *In re Health Ins. Innovations Sec. Litig.*, No. 8:17-cv-2186, 2021 WL 1341881, at *13 (M.D. Fl. Mar. 23, 2021) (noting that typically, lodestar multipliers range from "2.5 to 4 in class actions"); *Davis v. Locke*, 936 F.2d 1208, 1215 (11th Cir. 1991) (affirming district court's enhancement of lodestar by a multiplier of 1.6 to compensate, among other things, for the risk associated with a contingency fee). This further demonstrates the propriety of this fee request.

B. Litigation Expenses are Reasonable

Settlement Class Counsel are "entitled to reimbursement of reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class." *In re Fortra*, 794 F. Supp. 3d at 1224, (*quoting Morgan*, 301 F. Supp. 3d at 1258). Further, pursuant to Fed. R. Civ. P. 23(h), a trial court may award nontaxable costs that are authorized by law or the parties' agreement. *In re Fortra*, 794 F. Supp. 3d at 1224-1225,

[3] Notably, this lodestar does not include attorney time that will be required to prepare for and attend the Final Approval Hearing, or any of the time that Settlement Class Counsel will undoubtedly spend on claims administration in the event that Final Approval is granted.

citing Behrens, 118 F.R.D. at 549 (noting plaintiffs' counsel is entitled to be reimbursed from the class fund for reasonable expenses incurred). Here, Settlement Class Counsel has incurred $1,221.97 in litigation expenses to date, all of which are directly attributable to Settlement Class Counsels' efforts resulting in the Settlement Agreement. Wells Decl. ¶ 30. These expenses include filing fees and other court-related fees, as well as flight and hotel costs associated with traveling to the Final Approval Hearing. All of Settlement Class Counsels' litigation expenses were incurred for the benefit of the Settlement Class, and thus warrant reimbursement.

C. The Service Payment to the Plaintiff Should Also Be Approved

Florida law allows service awards in class action cases. In *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So. 3d 850, 857 (Fla. 3d DCA 2009), the court expressly approved a $10,000 service award to a class representative, noting that "[t]he position as fiduciary for the class is less an honor than a headache." Pursuant to the terms of the Settlement Agreement, Plaintiff Gillis may petition the Court for a Service Award of up to $2,500. Such a request is eminently reasonable. Plaintiff acknowledges there is some contradictory authority wherein service awards have been disallowed. *See, e.g., Johnson v. NPAS Solutions*, F.3d 1244 (11th Cir. 2020). However, *Johnson* was in the context of federal claims brought under the Telephone Consumer Protection Act, 47 U.S.C. § 227. *Id*. at 1249. Subsequent to the Eleventh Circuit's ruling in *Johnson*, a number of district courts in the Eleventh Circuit have found class representative service awards are still permitted under certain circumstances. *See, e.g., Sanchez v. State Farm Mutual Automobile Ins. Co.*, 2025 WL 2460560 (M.D. Fl. Aug. 26, 2025). Such circumstances include

diversity jurisdiction cases where the underlying claims arise under state law. That is precisely the case in the present Litigation. Plaintiff brings his claims under state common law.

Under the *Erie* doctrine, state law determines whether service awards for class representatives are permitted. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L.Ed. 1188. 304 U.S. 64, 58 S.Ct. 817, 82 L. Ed. 1188 (1938) (holding that federal courts sitting in diversity must apply substantive state law and federal procedural law). Thus, the holding in *Johnson* is inapplicable. *See Venerus v. Avis Budget Car Rental, LLC*, Civ. Act. No. 6:13-cv-921-CEM-RMN, 2023 WL 4673481, (M.D. Fla. May 23, 2023), report and recommendation adopted, 2023 WL 4673481, (M.D. Fla. May 25, 2023)(finding *Johnson* is inapplicable because under the *Erie* doctrine, substantive state law applied to the diversity action and state law permitted class representative service awards); *Roth v. GEICO Gen. Ins. Co.*, Civ. Act. No. 16-62942, 2020 WL 10818393, (S.D. Fla. Oct. 8, 2020) (same); *South v. Progressive Select Ins. Co.*, Civ. Act. No. 19-21760, 2023 U.S. Dist. LEXIS 58227 (S.D. Fla. Mar. 31, 2023) (same). Respectively, the Court should do the same here. As can be further explained at the fairness hearing, Plaintiff has devoted significant time to the prosecution of this litigation, including assisting Class Counsel where necessary. Moreover, Plaintiff has become the face of this litigation despite Plaintiff's sensitive private information being exfiltrated. In short, Plaintiff faces the risk of retaliation from, among others, the bad actors who illicit actions gave rise to this litigation. Despite this, Plaintiff was instrumental in achieving this result for the benefit of the entire class. Indeed, courts in this Circuit have awarded service awards in directly analogous data

breach class actions. *See, e.g., Corona-Cantu v. Ingo Money Inc.*, No. 1:24-cv-03023, 2025 WL 3567122, *11(N.D. Ga. June 17, 2025) (awarding $2,500 service award to named plaintiff, finding them "instrumental in achieving a Settlement benefiting the entire class"). Thus, the proposed service award to Plaintiff should be approved.

V. CONCLUSION

The Settlement of this litigation resulted directly from the work of Settlement Class Counsel. Settlement Class Counsel respectfully requests that the Court approve this application in full and grant fees of $124,877.50, expenses in the amount of $1,221.97.00, and a Service Award to Plaintiff in the amount of $2,500.00.

Respectfully submitted this 23d day of February, 2026.

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