NO. 20-CI-005631

JEFFERSON CIRCUIT COURT
DIVISION: THREE
JUDGE: HON. MITCH PERRY

(*ELECTRONICALLY FILED*)

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

-AND-

VS.

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

NOTICE

Notice is hereby given that the following Motion will be brought on for hearing before the Judge of the Jefferson Circuit Court on August 11, 2021, at 12:00 p.m., or as soon thereafter as counsel may be heard.

PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND CLASS REPRESENTATIVE'S SERVICE AWARD

Comes now, Jessica L. Lukasiewicz of the law firm Thomas & Solomon LLP, and respectfully moves the Court on behalf of Plaintiff Alissa Goodlett for entry of an order approving an award of attorneys' fees and the Class Representative's Service Award in this matter.

In support of this motion, Plaintiff submits a memorandum of law and the declarations of Jessica L. Lukasiewicz and D. Greg Blankinship.

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MEMORANDUM IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF
ATTORNEYS' FEES AND CLASS REPRESENTATIVE'S SERVICE AWARD

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PRELIMINARY STATEMENT

Plaintiff Alissa Goodlett (the "Plaintiff"), respectfully submits this Memorandum of Law and supporting declarations executed on June 16, 2021, in support of Plaintiff's Application for Attorneys' Fees and Expenses and Service Award to the Class Representative.

The Parties in this matter have reached a class action settlement (the "Settlement") which was preliminarily approved by the Court on March 11, 2021. In connection with Plaintiff's Unopposed Motion for Final Approval of the Settlement, which will be filed with the Court on August 11, 2021, Class Counsel seeks a fee and expense award of $570,000, less than 1% of the $126 million total value of the Settlement, without objection by Defendant Brown-Forman Corporation ("Brown-Forman" or "Defendant"). As set forth below, Class Counsel's requests for fees and expenses are reasonable and appropriate.

Further, Class Counsel seeks a Service Award in the amount of $5,000 for the Class Representative. The requested Service Award is warranted because of the extra effort the Class Representative put into assisting Class Counsel with the commencement of the action and resolving the case with the favorable settlement secured on behalf of the 20,968 current and former employees, and beneficiaries and dependents of those employees, as well the personal risk the Class Representative undertook by being named in the action.

Accordingly, for the reasons set forth herein, this Court should grant Plaintiff's motion.

FACTUAL BACKGROUND

Class Representative Alissa Goodlett filed a class action complaint on behalf of herself and all other similarly situated individuals (the "Class Members" or the "Class") against Brown-Forman Corporation. *See* Complaint ("Comp."), attached to the Lukasiewicz Decl. as Exhibit A.[1]

[1] All exhibits are attached to the declaration of Jessica L. Lukasiewicz ("Lukasiewicz Decl.").

Plaintiff's complaint alleged that on or around August 2020 Brown-Forman disclosed a data breach (the "Data Breach") that resulted in the exposure of personally identifiable information ("PII") of current and former employees, as well as their beneficiaries and dependents. *Id.* ¶ 18. The compromised PII included names, Social Security numbers, work contact information, home addresses, positions, business titles, and salary-related information. *Id.* ¶ 24.

Plaintiff's Claims

Plaintiff alleges that on or about July 28, 2020, Brown-Forman was the victim of a cyber-attack by Sodinokibi ("REvil"). Compl. ¶ 18. REvil accessed Defendant's servers and systems and stole certain records containing information about current and former employees, as well as certain beneficiaries and dependents of those employees. *Id.* REvil claims to have spent over one month examining the general structure of the computer network, as well as user services and cloud data storage. *Id.* ¶ 20. Further, according to Revil, one terabyte of corporate data was taken. *Id.* ¶ 21. On or about August 2020, upon becoming aware of such a Data Breach, Defendant notified those believed to be affected by the Data Breach and offered twelve months of free credit monitoring. *Id.* at ¶ 23.

As a result, Plaintiff alleged that (1) Defendant was aware of cyberattacks and nevertheless failed to adequately protect and safeguard the PII of the Class; (2) Plaintiff and the Class suffered concrete injury as a direct and/or proximate result of Defendant's negligence – including an increased risk that cybercriminals will use their PII for the rest of their lives, a decrease in the value of their PII, and an increased likelihood of identity/fraud; and (3) Defendant failed to provide adequate compensation to Plaintiff and the Class for Defendant's negligence. *Id.* ¶¶ 44-49.

Settlement Discussions

On or about October 2020, the Parties began engaging in settlement discussions.

Lukasiewicz Decl. ¶ 3. As part of the discussions, the Parties selected respected mediator Honorable Ann O'Malley Shake (Ret.) to assist in resolving the case. *Id.* In anticipation of the mediation, the Parties engaged in informal discovery. *Id.* The Parties also submitted written mediation statements in advance of the mediation. *Id.* On December 11, 2020, the Parties participated in a full-day, arms' length mediation with Judge Shake. *Id.* With her assistance, the Parties reached a Settlement benefiting more than 20,000 individuals. *Id.*

Settlement Achieved for Class Members

The Settlement provides for significant relief for the Class, including credit monitoring and identity theft protection through Experian IdentityWorks[SM] for up to a total of three (3) years which comes with $1 million in identity theft insurance, monetary Reimbursement for Out-of-Pocket Losses, Reimbursement for Attested Time spent remedying issues related to the Data Breach, and a Payment for Inconvenience, as well as the added benefit of requiring Defendant to adopt and implement certain business practices and remedial measures for at least three years. *See* Settlement Agreement ¶¶ 28, 29, attached to the Lukasiewicz Decl. as Exhibit B.

Class Counsel estimates that the credit monitoring and identity theft component of the Settlement is valued at a total of approximately $14.4 million to the Class. Declaration of Greg Blankinship executed on February 9, 2021 ("Feb. Blankinship Decl.") ¶ 6. Additionally, Class Counsel values the Reimbursement of Out-of-Pocket Expenses at approximately $104,840,000 to the Class, whereas the Reimbursement for Attested is valued at $3,354,880 to the Class, and the Cash Payment for Inconvenience component is valued at approximately $5,252,000 to the Class. Lukasiewicz Decl. ¶ 4. Further, Defendant's agreement to implement certain business practices and remedial measures as very valuable to the Class. Lukasiewicz Decl. ¶ 6.

Reaction of the Class to the Settlement

As of the filing of this motion, the notice period has not yet expired, but the reaction to the Settlement is already positive. Lukasiewicz Decl. ¶ 7. To date, there have been no objections to the Settlement, and only a single request to be excluded. *Id.* Class Members have until July 7, 2021, to opt-out or object to the Settlement. *See* Agreed Order, dated April 5, 2021, and entered with the Deputy Clerk on April 6, 2021.

Class Counsel's Efforts

To date, Class Counsel has expended over 850 hours prosecuting this case, including conducting an investigation, commencing the action, and ultimately securing the Settlement. Lukasiewicz Decl. ¶ 8.

To start, Class Counsel spent a significant number of hours working with the Class Representative to investigate the claims and ultimately commence the above-referenced action. *Id.* ¶ 9. Class Counsel conducted extensive factual and legal research into the claims and potential defenses in this matter, including interviewing dozens of potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans. *Id.* ¶ 10.

Following the commencement of the action and the filing of the complaint, and in anticipation of mediation with highly experienced and respected mediator Honorable Ann O'Malley Shake (ret.), the Parties engaged in informal discovery and Defense counsel provided Class Counsel information regarding the Data Breach. *Id.* ¶ 11. Prior to the mediation, the Parties provided Judge O'Malley Shake with a written mediation statement. *Id.* ¶ 12. Subsequently, the Parties participated in a full-day, arm's length mediation with Judge O'Malley Shake resulting in an agreement in principle codified in the form of a Term Sheet. *Id.* After agreeing to the Term

Sheet, the Parties negotiated the Settlement Agreement, which involved the exchange of multiple drafts, conference calls and resolution of various issues in dispute. *Id.* ¶ 13.

Following the preliminary approval of the Settlement, Class Counsel then expended significant time on the administration of the Settlement, including through drafting and preparing Settlement notice materials and the settlement website, as well as fielding calls and emails from the Class of more than 20,000 individuals. *Id.* ¶ 14.

Overall, Class Counsel expended 865.5 hours, totaling a lodestar of $423,821.50. *Id.* ¶ 17. These hours were broken down by attorney and paralegal time as illustrated in the charts within the Lukasiewicz Decl. ¶ 16 and the Declaration of D. Greg Blankinship ("Blankinship Decl.") ¶ 3. Notably, these hours do not reflect all of the time that Class Counsel will continue to spend on the Settlement of this action, including preparing the Motion for Final Approval of Settlement, handling telephone calls and inquiries from Class Members, as well as other administrative duties. Lukasiewicz Decl. ¶ 18. In addition to the time worked, Class Counsel also incurred $5,933.78 in expenses, including for research costs, mediation, and filing fees. *Id.* ¶ 20; Blankinship Decl. ¶ 5. To date, Class Counsel has not received any compensation for their work or any reimbursement for expenses. Lukasiewicz Decl. ¶ 21; Blankinship Decl. ¶ 6.

Pursuant to the Settlement Agreement, Defendant does not object to the requested fee and expense award, which is less than 1% of the total value of the Settlement. Settlement Agreement ¶ 30.

Class Representative Alissa Goodlett

Plaintiff Alissa Goodlett was instrumental to the initiation and prosecution of this action. Lukasiewicz Decl. ¶ 25. Plaintiff Goodlett expended considerable time and effort since the inception of this action, as well as took on a personal risk in being named in the action. *Id.* ¶ 26.

As Class Representative, Plaintiff Goodlett assisted in the investigation of this lawsuit, provided factual information to Class Counsel for the complaint, including regarding the impact of the Data Breach and reviewed the complaint prior to filing. *Id.* ¶ 27. Further, the Class Representative participated actively in the lawsuit, including by frequently communicating with her counsel regarding legal theories of the case, sources of evidence, her experiences, and case status, as well as reviewing and commenting on the complaint. *Id.* ¶ 28. During the mediation, Plaintiff Goodlett made herself available throughout the day to discuss disputed factual or legal issues. *Id.* ¶ 29. Following the Settlement, Plaintiff Goodlett participated in phone calls to discuss the terms of the Settlement, including reviewing the Settlement Agreement and accompanying exhibits and ultimately executed the Settlement Agreement. *Id.* ¶ 30. Plaintiff worked hard to represent the Class without assurance that she would ever receive compensation from this lawsuit. *Id.* ¶ 31.

ARGUMENT

I. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES

Class Counsel respectfully requests an award of reasonable attorneys' fees in the amount of $570,000, or less than 1% of the total value of the Settlement. As set forth below, Class Counsel's requested fee and expense award is reasonable and appropriate under the plain language of Kentucky Rules of Civil Procedure ("CR") 23.08, as well as under the percentage of the common fund and lodestar methods.

A. The Requested Fee Award is Reasonable under the Kentucky Rules of Civil Procedure 23.08.

CR 23.08 governs the award of attorneys' fees and costs in a class action and provides that a court may approve or award "reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Under CR 23.08, a court shall approve a request of reasonable fees and costs provided the following two factors are satisfied: (1) notice has been

served on all parties and directed to all class members in a reasonable manner; and (2) any class member, or any party from whom payment is sought, may object to the requested award.[2] CR 23.08(1), (2). Each of these factors have been satisfied.

Here, notice has been served on all Parties and directed to all Class Members in a reasonable manner. Indeed, Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion"), and the underlying Settlement Agreement, was served on Defendant through KCOJ eFiling System on February 9, 2021. Further, through the notice process approved by this Court, Class Members were also provided written notification of the Settlement, including Class Counsel's request for $570,000 in attorneys' fees and expenses. *See* Order Granting Preliminary Approval of Class Action Settlement and Approving Notice Program, dated March 3, 2021, and entered with the deputy clerk on March 11, 2021 ("Preliminary Approval Order"). Thus, notice has been served on all Parties and Class Members.

Further, Class Members and Defendant have been provided the opportunity to object to the requested fee and expense award. Significantly, Defendant does not oppose Class Counsel's requested fee and expense award. Settlement Agreement ¶ 30. Following the Court's approval of the notice program, the Settlement Administrator began issuing Notices to all Class Members. *Id.* ¶ 34. In the Settlement Long-Form Notice made available to all Class Members via the Settlement website, Class Members are notified that Class Counsel is requesting a fee and cost award of $570,000.[3] *See* Settlement Agreement, Exhibits 3-5. While the period of time for Class Members

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[2] Additionally, under CR 23.08, the "court may hold a hearing and must find the facts and state its legal conclusions." CR 23.08(3). On June 30, 2021, Plaintiffs will file their Motion for Award of Attorneys' Fees, Expenses and Service Awards to Class Representatives. This Court has scheduled a hearing on August 11, 2021 to further consider such a motion. *See* Order, dated March 4, 2021.

[3] Class Members have not only been notified of Class Counsel's fee and expense award in the Settlement Long-Form Notice, but this motion and the supporting papers will also be made

to object or opt out has not yet expired, significantly, only a single Class Member has requested to be excluded, and no Class Members have objected. Lukasiewicz Decl. ¶ 7. Therefore, Defendant and the Class have been provided the opportunity to object.

Accordingly, Class Counsel's requested fee and expense award should be approved because the plain language of CR 23.08 has been satisfied.

B. The Requested Award for Attorneys' Fees is Reasonable Under the Percentage-of-the-Fund Method.

The Court should approve Class Counsel's requested fee and expense award of $570,000 when considering the percentage-of-the-fund method.

There is only a single (unpublished) case, *College Retirement Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 WL 226112 (Ky. Ct. App. Jan. 16, 2015), where the Kentucky Court of Appeals examines a request for a $7 million fee award in a class action settlement pursuant to CR 23.08.[4] In doing so, the court noted that "no Kentucky appellate court has addressed how a trial court is to determine a reasonable fee under CR 23.08." *Id.* at *4. In considering the reasonableness of the fees, though, the Court ultimately affirmed the lower court's use of *only* the percentage of the fund methodology and decidedly rejecting any arguments that a lodestar crosscheck was required. *Id.* at *8. Further, the Court also rejected any arguments that the fee award of one-third percentage-of-the-fund is incompatible with the Kentucky Revised Statutes § 412.070.[5] *Id.* at *7.

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available on the Settlement website following its submission to this Court. *See* Preliminary Approval Order ¶ 21; Settlement Agreement ¶ 34(b)(iii).

[4] While *College Retirement Equities Fund, Corp.* is an unpublished decision, it contains a lengthy and helpful analysis regarding a fee award in a class action settlement. Pursuant to Kentucky Rules of Civil Procedure 76.28(4)(c) the unpublished opinion has been attached to the Lukasiewicz Decl. as Exhibit C.

[5] Pursuant to KRS § 412.070, attorneys' fees are to be paid "out of the funds recovered before distribution." As such, and as noted by the Court in *Rink*, a fee award that takes into account

The Court in *Rink* explained that when awarding fees pursuant to CR 23.08, the Court's primary concern should be to attract competent counsel but not produce windfalls to attorneys." *Id.* at *4. The Court noted that the lower court had supported its award with findings after considering whether: (a) class counsel was competent and experienced in class action litigation, as well as diligent and competent in prosecuting the action; (b) the settlement produced "exceptional" results for the class; and (c) the settlement was within the range of other percentage fees. *Id.* at *3.

As set forth below, consideration of these factors weighs in favor of approving the Settlement. [6]

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all available funds *before* distribution, not just those amounts actually claimed by settlement class members, is proper and consistent with KRS § 412.070. To the extent KRS § 412.070 is considered here, Class Counsel's request of a fee award valued at less than 1% of the total relief available *before* distribution under the Settlement is appropriate. Even if KRS § 412.070 is not considered here, the statute was codified from the common fund doctrine, and the Supreme Court has "consistently recognized that a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his clients is entitled to a reasonable attorney's fee from the fund as whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

[6] Should the Court apply the factors generally considered by the Sixth Circuit (commonly referred to as the *Ramey* factors) when confronted with an application for a fee award, Class Counsel's request is similarly reasonable. The Sixth Circuit considers the following non-exhaustive factors: (1) the value of the benefit rendered to the plaintiff; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides. *In re Countrywide Financial Corp.*, No 3:08-MD-10998, 2010 WL 3341200 (W.D. Ky. Aug. 23, 2010) (citing *Moulton v. United States Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009)). As an initial matter, factors one and six are similar to the *Rink* factors, thus weigh in favor of Class Counsel's requested fee and expense award. Further, the second factor considered by the Sixth Circuit weighs in favor of the requested fee award because as discussed in more detail below, Class Counsel expended a reasonable number of hours and Class Counsel's rates are reasonable. Factor three weighs in favor of the requested fee because Class Counsel took this case on a strictly contingency-fee basis such that it would be compensated only if it secured a favorable result for Plaintiff and the Class. Lukasiewicz Decl. ¶ 19. Factor four weighs in favor of the requested fee because as noted by the Court in *In re Countrywide*, also a data breach class action, "[e]ncouraging qualified counsel to bring inherently difficult and risky but beneficial class actions…benefits society." *Id.* at *11 (internal citation omitted). Further, like the class members in *In re*

1. Class Counsel is Competent and Experienced and is Diligent and Competent and in Prosecuting the Action

The competency and experience of both firms, as well as the diligence and competency in prosecuting this action both weigh in favor of the reasonableness of the required attorneys' fee and expense award.

a. Competency and Experience

Both firms are competent and have extensive experience in handling class actions and complex litigation and are knowledgeable about the applicable law here. Lukasiewicz Decl. ¶ 32; Blankinship Decl. ¶ 7.

For decades, Thomas & Solomon LLP ("TS") has devoted a majority of its practice to representing and protecting the rights of individuals against large institutions through complex and class litigation within a variety of substantive contexts. *Id.* ¶ 33. TS attorneys are also highly knowledgeable regarding data breach litigation, as the firm is currently pursuing numerous data breach cases and has devoted significant resources to extensively researching and analyzing the relevant claims and case law. *Id.* ¶ 34; TS Firm Resume, Exhibit D to the Lukasiewicz Decl.; *see also Coleman v. Railworks Corp.*, No. 20-civ-02428 (S.D.N.Y.) (co-lead counsel in a data breach class action on behalf of approximately 20,000 individuals in which the court granted final approval of settlement and approved class counsel's request for attorneys' fees and incentive payments). TS's experience includes representing classes consisting of tens of thousands of employees, including in class action contexts involving multistate and CAFA litigation. *Id*. ¶ 35.

Countrywide, many of the Class Members here are financially unable to pursue an action on their own, particularly when some may only receive a small recovery. *Id*. at *12. Finally, the sixth factor similarly weighs in favor of approving Class Counsel's fee and expense application because similar to *In re Countrywide*, the case is complex and presents "novel challenges and difficult issues concerning damages and causation, as well as the additional problems associated with the size of the class. *Id.*

Further, many courts have acknowledged TS' class action leadership and ethical standards in appointing TS Class Counsel.[7] *Id.* ¶ 36. TS has also successfully represented employees in numerous class actions or complex litigation. *Id.* ¶ 35.

Further, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG") attorneys are experienced and accomplished in data breach class actions. Blankinship Decl. ¶ 8. *See also* FBFG Firm Resume, Ex. A to the Blankinship Decl. Attorney D. Greg Blankinship of FBFG has worked on substantial class action matters in numerous state, federal, and multidistrict class actions, including data breach cases, wage and hour, and consumer fraud matters. *Id.* ¶ 9. In addition, Mr. Blankinship not only has been recognized for his skills as attorneys from various courts but has also been designated a New York Super Lawyer every year since 2014. *Id*. ¶ 10. Further, courts throughout the country have appointed FBFG as class counsel. *Id*. ¶ 11. *See, e.g.*, *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y.) (lead counsel in data breach class action in which the court denied defendants' motion to dismiss and approved a settlement valued at over $40 million); *In re Zappos Sec. Breach Litig.*, Case No. 12-00325, ECF No 335 (D. Nev.) (co-lead class counsel in consolidated data breach class action on behalf of approximately 23 million victims in which court denied defendants' motion to compel arbitration); *Goldenberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.) (co-lead class counsel in a deceptive product class action in which the court denied defendant's motion to dismiss and granted

[7] *See, e.g., Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005) (TS "has demonstrated that it is well-qualified to conduct the litigation"); *Camesi v. Univ. of Pittsburgh Med. Ctr.*, No. 09-85J, 2009 WL 3032590, at *1 (W.D. Pa. Sept. 17, 2009) (TS was "qualified and could appropriately represent the plaintiffs"); *Masters v. F. W. Webb Co.*, No. 03-CV-6280L, 2006 WL 2604833, at *3 (W.D.N.Y. Sept. 11, 2006) (TS "is abundantly experienced in employment litigation, a substantial portion of which has been conducted before this Court"); *Hamelin v. Faxton St. Luke's Healthcare*, 274 F.R.D. 385, 396 (N.D.N.Y 2011) (TS has "established they are qualified and able to conduct this litigation").

plaintiffs' motion for class certification).[8]

Thus, this factor weighs heavily in favor of approving the requested award.

b. *Diligence and Competence in Prosecuting the Action*

Class Counsel has diligently and competently prosecuted this action, ultimately securing a settlement providing substantial relief on behalf of the Class.

Shortly after Defendant's disclosure of the Data Breach, Class Counsel began their extensive factual and legal investigation into the claims and potential defenses in this matter. Lukasiewicz Decl. ¶ 10. Further, Class Counsel interviewed numerous potential Class Members and conducted research into the dangers of identity theft and available credit monitoring and identity theft protection plans. *Id.*

Following the commencement of the action and the filing of the complaint, the Parties began discussing what information would be necessary in order to fully evaluate the claims with an eye towards settlement. *Id.* ¶ 11. Indeed, the parties engaged in informal discovery which allowed the parties to participate in a mediation with highly respected mediator Honorable Ann O'Malley Shake. *Id.* ¶ ¶ 11-12. In anticipation of the mediation, the parties submitted written mediation statements. *Id.* ¶ 12. Following a full-day, arms' length negotiation, an agreement was reached. *Id.* The agreement in principle was initially codified in a Term Sheet. *Id.* In the subsequent weeks, the Parties negotiated the terms of the written Settlement Agreement, requiring the exchange of multiple drafts and conference calls. *Id.* ¶ 13.

Due to Class Counsel's diligence and competency in prosecuting the action, the Settlement

[8] Kentucky courts regularly look to federal courts in interpreting the Kentucky Civil Rules, including CR 23 because it mirrors its federal counterpart. *Hensley v. Haynes Trucking, LLC,* 549 SW.3d 430, 436 n.4 (Ky. 2018) (citing *Curtis Green & Clay Green, Inc. v. Clark,* 318 S.W.3d 98, 105 (Ky. App. 2010) ("It is well established that Kentucky courts rely upon Federal caselaw when interpreting a Kentucky rule of procedure that is similar to its federal counterpart.")).

Agreement makes significant relief available for the Class. The Settlement provides: (1) up to a total of three (3) years of identity protection through Experian IdentityWorks[SM] which includes credit monitoring from all three bureaus, access to Experian credit reports, $1 million in identify theft insurance, and identify restoration services; (2) reimbursement of Out-of-Pocket Losses up to $5,000 per individual that have not been reimbursed by related insurance provided by Experian IdentityWorks[SM]; (3) reimbursement for time spent remedying issues related to the Data Breach, but to not exceed up to eight (8) hours of time spent at $20 an hour; (4) for anyone who submitted and received an insurance payment through Experian IdentityWorks[SM], a cash payment of $250 for the inconvenience; and (5) Defendant will adopt and implement certain business practices and remedial measures for a period of at least three (3) years. Settlement Agreement ¶¶ 28, 29. Indeed, in total, Class Counsel values the Settlement at more than $126.4 million when considering all the relief available to the Class. Lukasiewicz Decl. ¶ 5; Blankinship Decl. ¶ 12.

As such, Class Counsel's competency and diligence weighs in favor of approving the requested fee and expense award.

2. The Settlement Produced Exceptional Results for the Class

As noted above, Class Counsel also deserves credit for the exceptional results for the Class of more than 20,000 current and former employees, as well as their beneficiaries and dependents. The Settlement makes significant relief available to each Class Member.

Class action settlements often conjure up associations with coupon settlements that offer very little in terms of value to class members and are therefore viewed with skepticism by the public. This Settlement, however, stands in stark contrast to such coupon settlements.

First, all Class Members are eligible to receive a total of three (3) years of identity theft and credit monitoring protection so prompt action can be taken should their PII be used in a

nefarious manner. Settlement Agreement ¶ 28(a). If Class Members previously signed up for one year of credit monitoring and identity theft protection through Brown-Forman before suit was filed, they are eligible to receive two additional years of Experian IdentityWorks^{SM} for a total of three years. Further, the service includes credit monitoring from all three bureaus, access to Experian credit reports, $1 million in identify theft insurance, and identify restoration services. *Id.* Class Counsel has valued the identity theft protection component of the Settlement at approximately $14.4 million to the Class. Feb. Blankinship Decl. ¶ 6.

Second, Class Members are able to make a claim for Reimbursement of Out-of-Pocket Losses up to $5,000 per individual that have not been reimbursed by insurance provided by Experian IdentityWorks^{SM}. Settlement Agreement ¶ 28(b). Out-of-Pocket Losses may include, without limitation: (1) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of the Class Member's personal information; (2) costs incurred on or after August 25, 2020, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; and (3) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Agreement ¶ 28 (b)(i). Class Counsel has valued the Reimbursement of Out-of-Pocket Losses component of the Settlement at approximately $104,840,000 to the Class. Lukasiewicz Decl. ¶ 4.

Third, Class Members are eligible to make a claim for Reimbursement of Attested Time for time spent remedying issues related to identity theft directly caused by the Data Breach. Settlement Agreement ¶ 28(c). Class Members are eligible to receive reimbursement for up to eight (8) hours of time spent at $20 per hour. *Id*. Class Counsel has valued the Reimbursement of Attested Time component of the Settlement at approximately $3,354,880 to the Class. Lukasiewicz

Decl. ¶ 4.

Fourth, Class Members who have submitted and received an insurance payment through Experian IdentityWorks[SM] may receive a cash payment of $250 for inconvenience. Settlement Agreement ¶ 28(d). Class Counsel has valued the Cash Payment for Inconvenience component of the Settlement at approximately $5,242,000 to the Class. Lukasiewicz Decl. ¶ 4.

Fifth, the Settlement Agreement requires Defendant to adopt and implement certain business practices and remedial measures for at least three (3) years, including (1) enhanced cybersecurity training and awareness program; (2) enhanced data security policies; (3) enhanced security measures; (4) further restricting access to personal information; and (5) enhanced monitoring and response capability. Settlement Agreement ¶ 29.

Given that Class Counsel values all the relief provided under the Settlement at approximately $126 million to the Class, this factor also weighs in favor of approving Class Counsel's requested fees.

3. The Requested Percentage of the Fund is Well-Within the Range of Other Cases.

Class Counsel's request of $570,000, or less than 1% of the total value of the Settlement, is well-within the range of other class action settlements.

Under the percentage-of-the-fund method, courts assess whether the requested fee is a reasonable percentage of the recovery obtained in the settlement. Significantly, the Court of Appeals of Kentucky in the *Rink* case affirmed a fee award of $7 million because an award of one-third of the available fund was "well within the range of appropriate percentage" in a class action. *Rink*, 2015 WL 226112, at *3. Further, "Federal Courts within Kentucky and the Sixth Circuit universally recognize that 'the percentages awarded in common fund cases typically range from 20 to 50 percent of the common fund awarded.'" *Id.* at *6. *See also New England Health Care*

Employees Pension Fund v. Fruit of the Loom, Inc., 234 F.R.D. 627, 633 (W.D. Ky. 2006) ("Fee awards in common fund cases typically range 'from 20 to 50 percent of the common fund created.'") (internal citation omitted); *In re Southeastern Milk*, No. 2:08-MD-1000, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) (finding a fee award of one-third of the settlement fund as "well within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *In re Automotive Parts Antitrust Litig.*, No. 12-MD-02311, 2020 WL 6701902, at *1 (E.D. Mich. Nov. 13, 2020); *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-cv-83, MDL No. 2343, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 910 (S.D. Ohio 2017); *Clevenger v. Dillards, Inc.*, No. C-1-02-558, 2007 WL 764291, at *3 (S.D. Ohio Mar. 9, 2007).

Further, in making such a consideration, courts across the country have calculated the value of a common fund for the purpose of evaluating attorneys' fees by multiplying the value of the credit monitoring services times the total number of class members plus funds available for reimbursement of lost time/reimbursement for out-of-pocket expenses/cash payments. *See Johansson-Dorhrmann. v. Cbr Sys., Inc.* No. 12-cv-1115, 2013 WL 3864341, at *2, *9 (S.D. Cal. July 24, 2013) (in calculating the value of the settlement at more than $114 million, the court multiplied the parties' valuation of the credit monitoring times the number of class members, plus the funds allocated for reimbursement of out-of-pocket expenses related to the data breach); *Hillis v. Equifax Consumer Servs. Inc.*, Nos. 104-CV-3400, 107-CV-314, 2007 WL 1953464, at *4-5 (N.D. Ga. Jun. 12, 2007).

Moreover, "[i]n calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of . . . non-monetary benefits conferred on the Class." *Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405, 2015 WL 10847814, at *15 (S.D.N.Y.

Sept. 9, 2015) (internal citation omitted). Even if the value of the required relief is not quantifiable, "courts should consider the value of the injunctive relief obtained [the requisite cybersecurity improvements] as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees." *In re Excess Value Ins. Coverage Litig.*, 598 F. Supp. 2d 380, 387 (S.D.N.Y. 2005) (internal quotation omitted); *accord McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D. N.J. 2008).

Indeed, it is well-settled that a fee award should be based on "the total funds made available, whether claimed or not." *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007); *see also Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 285 (6th Cir. 2016) (holding that "an option to file a claim creates a prospective value, even if the option is never exercised"); *Torres v. Gristede's Operating Corp.*, 519 Fed. Appx. 1, 5 (2d Cir. 2013) (unpublished) (calculating fees "on the basis of the total funds made available."); *Aros v. United Rentals, Inc.*, No. 10-73, 2012 WL 3060470 (D. Conn. July 26, 2012) ("In applying the common fund method, the Supreme Court, the Second Circuit, and other Circuit Courts, have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund, even where amounts to be paid to class members who do not file claims will revert to the Defendants.").[9]

[9] *See also Dahingo v. Royal Caribbean Cruises, Ltd.*, 312 F. Supp. 2d 440, 442-43 (S.D.N.Y. 2004) (noting that attorneys' fees equivalent to one-third of common fund had been approved notwithstanding the fact that a significant portion of fund was unclaimed and reverted to defendants); *Waters v. International Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir. 1999); *Williams v. MGM–Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)); *Alleyne v. Time Moving & Storage Inc.*, 264 F.R.D. 41, 59 (E.D.N.Y. 2010) ("the value of legal service rendered in the creation of a settlement fund [is not] diminished by the failure of beneficiaries to cash in, regardless of what happens to the surplus"); *Alleyne v. Time Moving & Storage Inc.*, 264 F.R.D. 41, 59 (E.D.N.Y. 2010) ("[T]he value of legal service rendered in the creation of a settlement fund [is not] diminished by the failure of beneficiaries to cash in, regardless of what happens to the surplus.").

Here, when considering the comprehensive relief provided under the Settlement, the requested fee award is reasonable. Indeed, when applying the above approach, the total value of the Settlement here is $126,400,000, plus the added benefit of the agreed upon Business Practice Commitments that Brown-Forman will implement. Lukasiewicz Decl. ¶¶ 5-6. Notwithstanding the extraordinary value conferred by the Settlement, Class Counsel seeks only a fee award of $570,000 – less than 1% of a conservative valuation of the fund.[10] Lukasiewicz Decl. ¶ 17. Given that Class Counsel's requested fee award is far below the range of reasonable percentage-of-the-fund benchmarks, the requested fee award is reasonable.[11]

C. The Requested Fee Award is Reasonable Under the Lodestar Method or When Applying a Lodestar Cross-Check.

While Class Counsel's requested fee award can be considered under the percentage-of-the-fund method and is entirely consistent with the *Rink* decision by the Kentucky Court of Appeals, Class Counsel's requested fee is similarly appropriate if a lodestar cross check is performed or even under a lodestar method analysis. Under the lodestar method, the reasonable attorney hours are multiplied by a reasonable hourly rate. *Rink*, 2015 WL 226112, at *7.

1. Class Counsel's Number of Hours Expended in this Litigation

Here, as evidenced by the more than 800 hours expended in this matter, Class Counsel was required to undertake significant legal work on behalf of the Plaintiff and the Class, including

[10] Of course, this number only decreases when also taking into consideration the $5,933.78 in expenses upfronted by Class Counsel, which are routinely granted by courts. *New England Health Care Employees Pension Fund*, 234 F.R.D. at 635 ("class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and settlement[,]" including costs associated with maintaining an electronic database, computerized research, travel and lodging expenses, photocopying cost, postage and overnight delivery, and court reporter costs.); Lukasiewicz Decl. ¶ 21.

[11] Significantly, the requested fee award was negotiated after an agreement for the Class was reached. Further, unlike traditional common fund settlements, any decrease of the attorneys' fee award does not result in an increase of available funds for the Class.

investigating the claims, conducting legal research on legal theories and defenses, conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans, researching publicly available materials regarding Defendant, its Data Breach, and identity theft, communicating with dozens of potential Class Members, drafting the complaint, completing informal discovery, drafting mediation statement, participating in a mediation, continued settlement negotiations as to the Settlement terms, exchanging several drafts of settlement documents, conference calls to resolve disputed issues as to the Settlement, and filing the requisite settlement approval documents. Lukasiewicz Decl. ¶¶ 9-14.

The more than 850 hours expended on the above tasks are reasonable and compare favorably to the hours submitted by counsel in other data breach class actions. *See In re TJX Co., Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass. 2008) (class counsel billed over 5,000 hours in filing a complaint, opposing a motion to dismiss, and in negotiating and obtaining approval of a settlement); *In re Countrywide*, 2010 WL 3341200, at *10 (counsel billed 11,453 hours when the case resolved prior to a decision on a motion to dismiss).

Here, Class Counsel spent far less time than the counsel expended in *TJX* and *In re Countrywide* and brought relief to more than 20,000 Class Members swiftly and without delay. Certainly, Class Counsel should not be penalized for resolving the case in the early stages of litigation. *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474 (S.D.N.Y. 2013) ("courts encourage early settlement of class actions … because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere.").

Thus, Class Counsel's time expended in this case is reasonable.

2. Class Counsel's Rates are Reasonable

Class Counsel's hourly rates, which range from $300 to $925 for attorneys, are also

reasonable. "A trial court, in calculating the reasonable hourly rate component of the lodestar computation, should initially assess the prevailing market rate in the relevant community." *Adcock-Ladd v. Sec'y of Treasury*, 227 F.3d 343, 350 (6th Cir. 2000) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). However, the relevant market need not be local to the venue. "District courts are free to look to a national market, an area of specialization market or any other market they believe appropriate to fairly compensate [] attorneys in individual cases." *Louisville Black Police Officers Org. v. City of Louisville*, 700 F.2d 268, 278 (6th Cir. 1983). A court is only constrained by their duty "to make an award of fees which is adequate to attract competent counsel, but which does not produce windfalls to attorneys." *Id.* (internal quotations omitted).

Here, the hourly rates used by Class Counsel are certainly reasonable when considering that courts routinely approve similar hourly rates in other complex litigation, including data breaches. *See e.g.*, Pls.' Mem. in Supp. of Mot. for Attys. Fees at 10-11, *McKenzie v. Allconnect, Inc.*, No. 18-cv-00359 (E.D. Ky. Aug. 7, 2019), ECF No. 45 (finding hourly rates between $350 and $810 to be fair, reasonable and appropriate)[12]; *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 793-94 (N.D. Ohio 2010) (finding hourly rates between $395 and $825 to be reasonable considering the experience and expertise of attorneys' in complex civil litigation); *Gilbert v. Abercrombie & Fitch, Co.*, No. 15-cv-2854, 2016 WL 4159682, at *16-17 (S.D. Ohio Aug. 5, 2016) (holding that hourly rates of attorneys of $350 to $850 are consistent with rates by lawyers of reasonably comparable skill, experience, and national reputation); Pls. Mot. for Attys. Fees at 19-20, *Castillo v. Seagate Tech., LLC*, No. 16-01958 (N.D. Cal. Dec. 22, 2017), ECF No. 77 (finding that the hourly rates of $300 to $850 are "reasonable in light of Settlement Class Counsel's

[12] Motions and decisions accessed only through Pacer are attached as Exhibit E to the Lukasiewicz Decl.

skill, experience, and expertise."); Mem. of Law in Supp. of Pls. Motion of Atty's Fees at 10-11, *Coleman v. Railworks Corp.,* No. 20-civ-02428 (S.D.N.Y. May 3, 2021), ECF No. 37 (awarding $493,000.00 in attorneys' fees and costs and finding FBFG's and TS regular hourly rates to be reasonable); Dec. of Jeremiah Frei-Pearson in Supp. of Pls. Mot. for Attys. Fees, Exhibit 1, *Winstead v. ComplyRight, Inc.*, No. 18-04990 (N.D. Ill. Oct. 7, 2019), ECF No. 91-4 (approving FBFG's hourly rates); *Sackin v. TransPerfect Global, Inc.*, No. 17-01469, ECF No. 74 (S.D.N.Y. Dec. 14, 2018) (same); *Castillo v. Seagate Tech., LLC*, No. 16-01958, ECF No. 85 at *3-*4 (N.D. Cal. Mar. 14, 2018) (same). Accordingly, Class Counsel's requested hourly rates are reasonable.

3. Class Counsel's Requested Multiplier is Reasonable

An award of $570,000 equates to a 1.34 multiplier on Class Counsel's lodestar.

This multiplier is reasonable and below the multipliers generally awarded by courts. *See Rink*, 2015 WL 226112, at *7-8 (Court of Appeals of Kentucky affirms a fee award where the lower court applied a 4.65 multiplier); *Lowther v. AK Steel Corp.*, No. 1:11-cv-877, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (holding that a lodestar of 3.06 was fully justified given the results achieved); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 517 (6th Cir. 1993) (approving a multiplier of 2.0); *Davis v. J.P. Morgan Chase 7 Co.*, 827 F. Supp. 2d, 172, 185 (W.D.N.Y. 2011) (approving multiplier of 5.3); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1051, 1051 n.6 (9th Cir. 2002) (affirming 25% fee recovery, which was supported by lodestar cross-check with a multiplier of 3.65, and explaining that the multiplier "was within the range of multipliers applied in common fund cases" where the "bare majority" of multipliers fall in the "1.5–3.0 range") (citation omitted); *In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-cv-12141, 2015 WL 1396473, at *4 (E.D. Mich. Jan. 20, 2015) (approving a multiplier of 3.01).

Here, Class Counsel expended 865.5 hours in this matter by the hourly rates of each attorney and paralegal involved in this matter, Class Counsel's lodestar amounts to $423,821.50. This calculation is illustrated by the charts set forth in the Lukasiewicz Decl. and the Blankinship Decl.[13]

Accordingly, the requested attorneys' fee and cost award of $570,000 is also reasonable under the lodestar methodology or when performing a lodestar cross check.[14]

II. THE SERVICE AWARD TO THE CLASS REPRESENTATIVE IS JUSTIFIED

The Service Award here is reasonable given the contributions made by the Class Representative.

As courts within the Sixth Circuit have recognized, service awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *In re Southeastern Milk*, 2013 WL 2155387, at *8 (internal quotation omitted). Indeed, such awards are generally "viewed as extensions of the common-fund doctrine, a doctrine which holds that a litigant who recovers a common fund for the benefit of others than himself is entitled" to an award from the fund. *Hainey v. Parrott*, No. 1:02-CV-733, 2007 WL 3308027, at *5 (S.D. Ohio Nov. 6, 2007). Service awards are common in class actions and serve to compensate plaintiffs for their time and effort in assisting the prosecution of the action, and for the risk of the adverse actions they may suffer as the most visible members of the Class.

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[13] In the event the Court requires additional detailed information, Class Counsel can certainly provide such information for an *in camera* review.

[14] Should the Court want to further consider the reasonableness of the requested fee and expense award, the Sixth Circuit again considers the same *Ramey* factors discussed above in connection with the percentage-of-the-fund methodology. *Moulton*, 581 F.3d at 352. For all the reasons discussed as to how the factors weigh in favor of the requested fee award under the percentage-of-the-fund methodology, the factors similarly weigh in favor of approving the requested fee award under a lodestar cross check or lodestar methodology.

Courts routinely find the amount requested here of $5,000 to the Class Representative to be well-within the range of reasonableness. *See Hainey*, 2007 WL 3308027, at *5-6 (awarding incentive awards of $50,000 to each of the four class representatives); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991) (awarding incentive awards in the amount of $50,000 each); *Dillworth v. Case Farms Processing, Inc.*, No. 5:08-cv-1694, 2010 WL 776933, at *7 (N.D. Ohio Mar. 8, 2010) (approves service awards in the amount of $4,000 and $6,000 respectively for the two class representatives); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp.2d. 766 (N.D. Ohio 2010) (awarding service payments in the amount of $5,000 each for the class representatives); *In re Southeastern Milk*, 2013 WL 2155387, at *8 (awarding $10,000 to each of the sixteen class representatives); *In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 507 (E.D. Mich. 2008) (awarding $5,000 to each of the six named plaintiffs); *Gokare v. Fed. Express Corp.*, No. 2:11-CV-2131, 2013 WL 12094887, at *10-11 (W.D. Tenn. Nov. 22, 2013) (awarding incentive awards of $5,000 each named plaintiff).

In examining the reasonableness of the requested service award, district courts have looked at the following factors: (1) the amount of time and effort expended by the class representative in pursuit of the litigation; (2) the extent to which actions taken by the class representative protect the interests of the entire class and whether those actions resulted in a substantial benefit to the entire class; and (3) whether the class representative assumed substantial direct and indirect financial risk. *Enterprise Energy Corp.*, 137 F.R.D. at 250.

Here, an analysis of these factors likewise weighs in favor of the requested Service Awards.

A. The Time and Effort Expended by the Class Representative Warrants the Amount Requested.

The Class Representative is deserving of the requested Service Award because she has expended extra time and effort in support of this litigation.

Courts recognize that a service award is meant to compensate the Class Representative for her "dedication and active participation" in "bringing [the lawsuit] to a successful conclusion on behalf of the class." *Hainey*, 2007 WL 3308027, at *6. *See also In re Southeastern Milk*, 2013 WL 2155387, at *8 (awarding incentive awards where the class representatives had "involvement in [the] litigation and deserve compensation above and beyond the amounts they [would] be entitled to by virtue of class membership alone.").

Here, the Class Representative assisted Class Counsel throughout the course of the case. Lukasiewicz Decl. ¶¶ 27-28. For example, prior to the filing of the complaint, Plaintiff Goodlett participated in interviews with Class Counsel in order to provide the information necessary to evaluate the claims in the case. *Id.* Plaintiff Goodlett was also aware of her obligations as a class representative, such as having her name associated with the lawsuit, the need to participate in discovery and a deposition, remaining in constant contact with Class Counsel, and the need to potentially appear at court appearances. *Id.* As the Class Representative, Plaintiff Goodlett participated activity in the litigation, including keeping in touch with Class Counsel, discussing legal theories of the case and her experiences. *Id.* ¶ 28. Then, during mediation, she made herself available to Class Counsel throughout the day to discuss factual and legal disputed issues. *Id.* ¶ 29. Following the proposed Settlement, Plaintiff Goodlett participated in phone calls with Class Counsel to discuss the terms of the proposed Settlement, including the Settlement Agreement and the exhibits. *Id.* ¶ 30. This included reviewing these documents in connection with Settlement. *Id.* Through her involvement in this action, the Class Representative fairly and adequately represented the Class at all times. *Id.* ¶¶ 25-31.

As such, this factor weighs in favor of granting the requested Service Award.

B. The Actions of the Class Representative Resulted in Substantial Benefit to the Entire Class.

Due to the actions of the Class Representative and her willingness to step forward and be named in an action against her former employer, the ultimate recovery to the Class is significant – a Settlement providing for free credit monitoring and identity theft protection, monetary relief in the form of Reimbursement for Out-of-Pocket Losses, Reimbursement for Attested Time, and Cash Payment for Inconvenience as provided for in the Settlement Agreement, and Brown-Forman's agreement to adopt and implement certain business practice commitments. Class Counsel has valued the relief provided under the Settlement at approximately $126.4 million to the Class. Feb. Blankinship Decl. ¶ 6; Lukasiewicz Decl. ¶ 5. Indeed, a Class of more than 20,000 individuals will benefit from the Settlement that is the direct result of the Class Representative's actions. Thus, the requested Service Award for the Class Representative is reasonable.

C. The Class Representative Assumed Substantial Direct and Indirect Financial Risk.

Granting a Service Award to the Class Representative willing to step forward knowing the risk and actively participating in the litigation is reasonable. Here, the Class Representative undertook risk by putting her name on the class action. Thus, the requested Service Award is warranted.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court (a) grant an award of attorneys' fees and expenses to Class Counsel in the amount of $570,000; and (b) a Service Award to the Class Representative in the amount of $5,000.

Dated: June 30, 2021

Respectfully submitted,

__/s/ Jessica L. Lukasiewicz_____

Jessica L. Lukasiewicz (*admitted pro hac vice)*
Thomas & Solomon LLP
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
jlukasiewicz@theemploymentattorneys.com

D. Greg Blankinship (*admitted pro hac vice)*
Jeremiah Frei-Pearson (*admitted pro hac vice)*
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP
One North Broadway Suite 900
White Plains, New York 10601
Telephone: (914) 298-3284
jfrei-pearson@fbfglaw.com
gblankinship@fbfglaw.com

Peter J. Jannace
Branstetter, Stranch & Jennings, PLLC
515 Park Avenue
Louisville, Kentucky 40208
Telephone: (502) 636-4333
peterj@bsjfirm.com

Attorneys for Plaintiff and Class Members

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, a true and correct copy of the foregoing was served via KCOJ eFiling System on the following:

STITES & HARBISON PLLC
Sarah Cronan Spurlock
400 West Market Street
Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400
sspurlock@stites.com

/s/ Jessica L. Lukasiewicz
Jessica L. Lukasiewicz (*admitted pro hac vice)*
Thomas & Solomon LLP
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
jlukasiewicz@theemploymentattorneys.com

Attorney for Plaintiff and Class Members

NO. 20-CI-005631

JEFFERSON CIRCUIT COURT
DIVISION: THREE
JUDGE: HON. MITCH PERRY

(*ELECTRONICALLY FILED*)

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

-AND-

VS.

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

DECLARATION OF JESSICA L. LUKASIEWICZ

Jessica L. Lukasiewicz, Esq. declares, pursuant to 28 U.S.C. § 1746 and CR Rule 11, that the following is true and correct.

1. I am a partner at the law firm of Thomas & Solomon LLP ("TS"). This law firm, along with Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, represents the Plaintiff in the above-captioned action.

2. I am fully familiar with the facts and circumstances surrounding this matter, and I submit this declaration in support of Plaintiff's Unopposed Motion for an Award of Attorneys' Fees and the Class Representative's Service Award.

Settlement Discussions

3. On or about October 2020, the Parties began engaging in settlement discussions. As part of the discussions, the Parties selected respected mediator Honorable Ann O'Malley Shake

(Ret.) to assist in resolving the case. In anticipation of the mediation, the Parties engaged in informal discovery. The Parties also submitted written mediation statements in advance of the mediation. On December 11, 2020, the Parties participated in a full-day, arms' length mediation with Judge Shake. With her assistance, the Parties reached a Settlement benefiting more than 20,000 individuals.

Settlement Achieved for Class Members

4. Class Counsel values the Reimbursement of Out-of-Pocket Expenses at approximately $104,840,000 to the Class, whereas the Reimbursement for Attested is valued at $3,354,880 to the Class, and the Cash Payment for Inconvenience component is valued at approximately $5,252,000 to the Class.

5. In total, Class Counsel values the Settlement at more than $126.4 million when considering all the relief available to the Class.

6. Further, Defendant's agreement to implement certain business practices and remedial measures as very valuable to the Class.

Reaction of the Class to the Settlement

7. As of the filing of this motion, the notice period has not yet expired, but the reaction to the Settlement is already positive. To date, there have been no objections to the Settlement, and only a single request to be excluded.

Class Counsel's Efforts

8. To date, Class Counsel has expended over 850 hours prosecuting this case, including conducting an investigation, commencing the action, and ultimately securing the Settlement.

9. To start, Class Counsel spent a significant number of hours working with the Class Representative to investigate the claims and ultimately commence the above-referenced action.

10. Class Counsel conducted extensive factual and legal research into the claims and potential defenses in this matter, including interviewing dozens of potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans.

11. Following the commencement of the action and the filing of the complaint, and in anticipation of mediation with highly experienced and respected mediator Honorable Ann O'Malley Shake (ret.), the Parties engaged in informal discovery and Defense counsel provided Class Counsel information regarding the Data Breach.

12. Prior to the mediation, the Parties provided Judge O'Malley Shake with a written mediation statement. Subsequently, the Parties participated in a full-day, arm's length mediation with Judge O'Malley Shake resulting in an agreement in principle codified in the form of a Term Sheet.

13. After agreeing to the Term Sheet, the Parties negotiated the Settlement Agreement, which involved the exchange of multiple drafts, conference calls and resolution of various issues in dispute.

14. Following the preliminary approval of the Settlement, Class Counsel then expended significant time on the administration of the Settlement, including through drafting and preparing Settlement notice materials and the settlement website, as well as fielding calls and emails from the Class of more than 20,000 individuals.

15. To date, TS has devoted a total of 648.4 hours to the case with a lodestar of $287,129.00.

16. The total time spent by each TS timekeeper, which has been broken down by attorney and paralegal time, is illustrated in the chart below:

Timekeeper	Hourly Rate	Year Graduated Law School	Hours	Total Lodestar
J. Nelson Thomas (partner)	$850	1993	21.5	$18,275.00
Jessica L. Lukasiewicz (partner)	$850	2008	123.9	$105,315.00
Jonathan W. Ferris (associate)	$450	2012	33.8	$15,210.00
Erin K. Hanlon (associate)	$450	2009	216.50	$97,425.00
Conor T. Tallet (former associate)	$300	2018	15.5	$4,650.00
Paralegals	$195		237.2	$46,254.00
Total			**648.4**	**$287,129.00**

17. I am informed by my co-counsel D. Greg Blankinship that FBFG has devoted a total of 217.1 hours to the case with a lodestar to date of $136,692.50. Based on these figures, in total, Class Counsel expended 865.5 hours, totaling a lodestar of $423,821.50, which is less than 1% of a conservative valuation of the fund.

18. Notably, these hours do not reflect all of the time that Class Counsel will continue to spend on the Settlement of this action, including preparing the Motion for Final Approval of Settlement, handling telephone calls and inquiries from Class Members, as well as other administrative duties.

19. Class Counsel took this case on a strictly contingency-fee basis such that it would be compensated only if it secured a favorable result for Plaintiff and the Class.

20. In addition to the time worked, TS also incurred $4,471.40 in expenses, including for filing, copying, research, mediation, and postage.

21. To date, TS has not received any compensation for their work or any reimbursement for expenses, which are illustrated in the chart below:

$ Amount	General Description
$282.24	Copying ($.12/page)
$1,480.95	Research costs, including Westlaw and Pacer
$523.61	Miscellaneous costs, including postage costs and mail-related costs
$2,184.60	Mediation & filing fees, including *pro hac vice* admission
Total $4,471.40	

22. Co-counsel D. Greg Blankinship informs me that his firm has incurred litigation expenses in this matter in the amount of $1,462.38, as described more fully in his declaration.

23. Thus, in addition to the time worked, in total, Class Counsel also incurred more than $5,900.00 in expenses, including for copying, research, mediation, and postage.

24. To date, TS has not received any compensation for their work or any reimbursement for expenses. D. Greg Blankinship has informed me that his firm has similarly not received any compensation for their work or any reimbursement for expenses.

Class Representative Alissa Goodlett

25. Plaintiff Alissa Goodlett was instrumental to the initiation and prosecution of this action.

26. Plaintiff Goodlett expended considerable time and effort since the inception of this action, as well as took on a personal risk in being named in the action.

27. As Class Representative, Plaintiff Goodlett assisted in the investigation of this lawsuit, provided factual information to Class Counsel for the complaint, including regarding the impact of the Data Breach and reviewed the complaint prior to filing.

28. Further, the Class Representative participated actively in the lawsuit, including by frequently communicating with her counsel regarding legal theories of the case, sources of evidence, her experiences, and case status, as well as reviewing and commenting on the complaint.

29. During the mediation, Plaintiff Goodlett made herself available throughout the day to discuss disputed factual or legal issues.

30. Following the Settlement, Plaintiff Goodlett participated in phone calls to discuss the terms of the Settlement, including reviewing the Settlement Agreement and accompanying exhibits and ultimately executed the Settlement Agreement.

31. Plaintiff worked hard to represent the Class without assurance that she would ever receive monetary compensation from this lawsuit.

TS is Competent and Experienced

32. TS has extensive experience in handling class actions and complex litigation and is knowledgeable about the applicable law here.

33. TS has devoted the majority of its practice to representing and protecting the rights of individuals against large institutions through complex and class litigation within a variety of substantive contexts.

34. TS attorneys are also highly knowledgeable regarding data breach litigation, as the firm is currently pursuing numerous data breach cases and has devoted significant resources to extensively researching and analyzing the relevant claims and case law.

35. TS's experience includes representing classes consisting of tens of thousands of employees, including in class action contexts involving multistate and CAFA litigation.

36. Many courts have acknowledged Thomas & Solomon LLP's class action leadership and ethical standards. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005)

(Thomas & Solomon "has demonstrated that it is well-qualified to conduct the litigation."); *Camesi v. Univ. of Pittsburgh Med. Ctr*., No. 09-85J, 2009 WL 3032590, at *1 (W.D. Pa. Sept. 17, 2009) (granting appointment as class counsel because Thomas & Solomon LLP were "qualified and could appropriately represent the plaintiffs"); *Masters v. F.W. Webb Co.*, No. 03-CV-6280L, 2006 WL 2604833, at *3 (W.D.N.Y. Sept. 11, 2006) (Thomas & Solomon LLP "is abundantly experienced in employment litigation, a substantial portion of which has been conducted before this Court."); *Hamelin v. Faxton-St. Luke's Healthcare,* 274 F.R.D. 385, 396 (N.D.N.Y. 2011) (Thomas & Solomon has "established they are qualified and able to conduct this litigation.").

37. TS is both experienced in class action litigation in general and also highly knowledgeable regarding data breach litigation.

38. For instance, TS has diligently developed the innovative and complex theories of this lawsuit, exchanged and reviewed informal discovery, and successfully negotiated the present Settlement to the benefit of the Settlement Class.

Supporting Exhibits

39. Attached hereto as **Exhibit A** is a copy of the Complaint.

40. Attached hereto as **Exhibit B** is a copy of the Settlement Agreement.

41. Attached hereto as **Exhibit C** is a copy of the unpublished opinion, *College Retirement Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 WL 226112 (Ky. Ct. App. Jan. 16, 2015).

42. Attached hereto as **Exhibit D** is a copy of Thomas & Solomon LLP's firm resume.

43. Attached hereto as **Exhibit E** are copies of the motions and decisions accessed only through Pacer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2021.

__/s/ Jessica L. Lukasiewicz_____
Jessica L. Lukasiewicz
Thomas & Solomon LLP
693 East Avenue
Rochester, New York 14607
(585) 272-0540
jlukasiewicz@theemploymentattorneys.com

Exhibit A

Filed 20-CI-005631 09/30/2020 David L. Nicholson, Jefferson Circuit Clerk

NO. _____
(*ELECTRONICALLY FILED*)

JEFFERSON CIRCUIT COURT
DIVISION: _____
JUDGE: _____

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

VS.

COMPLAINT

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

SERVE: Mary E. Barrazotto,
850 Dixie Highway
Louisville, KY 40210

* * * * * * * * * * * * *

COMES THE PLAINTIFF, ALISSA GOODLETT, individually, and as the representative of a class of similarly-situated persons (hereinafter Ms. "Goodlett" or "Plaintiff") by and through her attorneys, Bransetter Stranch & Jennings, PLLC, Thomas & Solomon LLP, and Finkelstein, Blankenship, Frei-Pearson, & Garber, LLP, that as and for her COMPLAINT pursuant to Kentucky Revised Statutes (hereinafter "KRS") TITLE XXIX – COMMERCE AND TRADE, Chapter 365 and Kentucky Rules of Civil Procedure Rule 23, hereby respectfully alleges, upon information and belief, as follows:

I. PARTIES, JURISDICTION AND VENUE

1. That the Plaintiff, Ms. Goodlett, resides at 123 Lakeview Drive, Lawrenceburg, Kentucky 40342, County of Anderson;

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2. That at all times relevant hereto, the Defendant, Brown-Forman Corporation (hereinafter "Brown-Forman"), was and is a Delaware corporation, with its principal place of business located at 850 Dixie Highway Louisville, KY 40210, organized and existing under the laws of the Delaware with the power to sue and be sued and it is subject to the venue and jurisdiction of this court pursuant to KRS 454.210;

3. That Brown-Forman's agent for service of process listed on the official website for the Secretary of State of the Commonwealth of Kentucky is: Mary E. Barrazotto, 850 Dixie Highway Louisville, KY 40210;

4. That Ms. Goodlett is a former employee of Brown-Forman, and that she received a notice dated August 25, 2020 from Brown-Forman informing her that IT had disclosed her personal identification information ("PII") in a data breach;

5. That jurisdiction and venue are proper in this Court, as the amount in controversy exceeds $5,000.00, exclusive of interest and costs, Plaintiff seeks declaratory and equitable relief herein, and Defendant's principal place of business is located, and all relevant matters alleged herein occurred, in Jefferson County, Kentucky;

II. CLASS ALLEGATIONS

6. That the legal and factual allegations contained in Complaint Paragraph(s) One (1) through Five (5) are repeated and re-alleged as if fully set forth herein;

7. That the Plaintiff brings this suit against the Defendant as a class action, prosecuted by the named representative individually, and on behalf of a class of similarly situated persons, *to wit*, those individuals whose sensitive and personal information was compromised via a data security breach that occurred on or about July 28, 2020 (the "Data Breach"), pursuant to Kentucky Rules of Civil Procedure, Rule (hereinafter "CR") 23.01

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and CR 23.02(b)-(c). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Plaintiff Class may be expanded or narrowed. The proposed Plaintiff Class is as follows:

> **Plaintiff Class:** All citizens of Kentucky who, like ALISSA GOODLETT, were the victims of a data security breach that occurred on or about July 28, 2020 wherein their sensitive and personal data was compromised;

8. That excluded from the Plaintiff Class are: (1) the Defendant, the Defendant's subsidiaries and any entity which the Defendant has a controlling interest in; and (2) the Judge assigned to this case and any member of his or her immediate family. The Plaintiff expressly reserves the right to modify the Plaintiff Class definition as further investigation and/or discovery so warrants;

9. That this action has been brought and may properly be maintained as a class action pursuant to CR 23 and the case law thereunder;

10. **Numerosity:** That the members of the Plaintiff Class are so numerous that joinder of all members is impracticable. The Plaintiff reasonably believes that the Plaintiff Class is comprised of numerous individuals throughout the Commonwealth of Kentucky and elsewhere;

11. **Commonality:** That common questions of law and fact exist as against the Defendant in this action. These common questions predominate over any questions affecting only individual Plaintiff Class members. These common legal and factual questions include, but are not limited to, the following:

- whether or not the Defendant owed the members of the Plaintiff Class a duty to safeguard their information;
- whether or not the Defendant breached that duty;
- whether or not the Defendant has invaded the privacy of the members of the Plaintiff Class;

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- whether or not the Plaintiff Class members have sustained monetary loss, and the proper measure of that loss;
- whether or not the Plaintiff Class members are entitled to punitive and/or exemplary damages; and
- whether or not the Plaintiff Class members are entitled to declaratory and injunctive relief.

These and other questions of law and/or fact are common to members of the Plaintiff Class and predominate over any questions affecting only individual members of it;

12. **Typicality:** That the Plaintiff's claims against the Defendant are typical of the claims of the similarly situated members of the Plaintiff Class, as the Plaintiff asserts claims against the Defendant flowing from a single security breach that occurred on or about July 28, 2020. Conversely, the Defendant, by and through one or more agent(s) thereof, engaged in a unitary course of conduct that forms the basis of this lawsuit. The Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of the Plaintiff Class;

13. **Adequacy:** That the Plaintiff's claims are made in a representative capacity on behalf of the other members of the Plaintiff Class. The Plaintiff has no interests antagonistic to the interests of the other members of the Plaintiff Class and is subject to no unique defenses;

14. That the Plaintiff is similarly situated in interest to all members of the proposed Plaintiff Class and is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions. Accordingly, the Plaintiff is an adequate representative of the Plaintiff Class and will fairly and adequately protect the interests of the members of the Plaintiff Class;

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15. That this suit may be maintained as a class action under CR 23.02(b) because Defendant has acted or refused to act on grounds generally applicable to the Plaintiff Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole. Defendant is still in possession of Plaintiff Class' PII, and absent court intervention requiring Defendant to enhance its inadequate security measures, there is a substantial likelihood that further unauthorized disclosures will occur; and

16. That this suit may be maintained as a class action under CR 23.02(c) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by the Defendant's conduct. It would be virtually impossible for members of the Plaintiff Class individually to redress the wrongs perpetrated upon them. Even if the members of the Plaintiff Class could afford such litigation, the court system cannot. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents no management difficulties, and provides the benefits of single adjudication, economy of scale and comprehensive supervision by a single court;

III. CAUSE(S) OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION NEGLIGENCE

17. That the legal and factual allegations contained in Complaint Paragraph(s) One (1)

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through Sixteen (16) are repeated and re-alleged as if fully set forth herein;

18. That on or about July 28, 2020, an unauthorized third party accessed the Defendant's servers and systems resulting in the Data Breach and exposure of the PII of thousands of persons;

19. That the unauthorized third party responsible for the cyber-attack is Sodinokibi ("REvil"), a group similar to other cyber gangs;

20. That REvil not only compromised the Defendant's computer network but has acknowledged that they spent over one month examining the general structure of the computer network, as well as user services and cloud data storage;

21. That according to REvil, one terabyte of corporate data was taken, and REvil has shared screenshots of file names as proof, with some files dating back ten years;

22. That the Defendant has confirmed that the Data Breach occurred and has acknowledged that information, including employee data, was impacted;

23. That the Plaintiff received a letter dated August 25, 2020 from Brown-Forman informing her of the Breach;

24. That the correspondence received by the Plaintiff informed her that as a result of the Breach, her PII was compromised, which could include her name, Social Security number, work contact information, home address, position, business title, and salary-related information;

25. That the correspondence sent by Brown-Forman further indicates that the cybercriminals are attempting to contact employees by phone, voicemail, and email;

26. That by disclosing the Plaintiff's PII to cybercriminals, the Defendant put the

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Plaintiff and the Plaintiff Class at risk;

27. That the Defendant negligently failed to take the necessary precautions required to safeguard and protect the Plaintiff's PII from unauthorized disclosure. The Defendant's actions and/or inactions represent a flagrant disregard of the Plaintiff's rights, both as to privacy and property;

28. That PII is of great value to hackers and cyber criminals, and the data compromised in the Data Breach can be used in a variety of unlawful manners;

29. That the PII of individuals is of high value to criminals, as evidenced by the prices they will pay through the dark web. For example, personal information can be sold at prices ranging from $40 to $200. *See Your personal data is for sale on the dark web. Here's how much it costs.* Digital Trends, Oct. 16, 2019, available at: https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/ (last accessed Sept. 17, 2020);

30. That there is a strong likelihood that the Plaintiff is already or will become a victim of identity theft and fraud, given the breadth of PII about her that has been released, disclosed, and published;

31. That it has been reported that this Data Breach was a ransomware attack by REvil, and that screenshots showing internal communications, directory trees, financial documents, contracts, and personnel data, have been posted by REvil to substantiate the breach;

32. That the possibility that the Plaintiff's Social Security numbers can be purchased on the dark web as a result of the Data Breach is particularly significant. For instance, REvil has auctioned off sensitive data from other companies hit by REvil's ransomware on

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their dark web blog, "Happy Blog";

33. That Neal O'Farrell, a security and identity theft expert for Credit Sesame, calls a Social Security number "your secret sauce," that is "as good as your DNA to hackers." *See* Cameron Huddleston, *How to Protect Your Kids From the Anthem Data Breach*, Kiplinger, (Feb. 10, 2015), https://www.kiplinger.com/article/credit/t048-c011-s001-how-to-protect-your-kids-from-the-anthem-data-brea.html (last accessed Sept. 17, 2020);

34. That the Plaintiff has to wait until she becomes a victim of Social Security number misuse before she can obtain a new one. Even then, the Social Security Administration warns "that a new number probably won't solve all [] problems . . . and won't guarantee . . . a fresh start." In fact, "[f]or some victims of identity theft, a new number actually creates new problems." *See* Social Security Admin., *Identity Theft and Your Social Security Number*, at 6, https://www.ssa.gov/pubs/EN-05-10064.pdf (last accessed Sept. 17, 2020);

35. That one of those new problems is that a new Social Security number will have a completely blank credit history, making it difficult to get credit for years unless it is linked to the old compromised number;

36. That given the nature of this Breach, it is foreseeable that cybercriminals can and will use the compromised PII in a variety of different ways;

37. That as part of her employment, the Defendant required the Plaintiff and the Plaintiff Class to surrender their PII including names, addresses, and social security numbers, as well as the names, addresses and social security numbers of their beneficiaries, and were entrusted with properly holding, safeguarding, and protecting against unlawful disclosure of PII;

38. That the Data Breach was a direct result of the Defendant's failure to implement

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adequate and reasonable cyber-security procedures and protocols necessary to protect the Plaintiff's PII;

39. That the Defendant maintained the PII in a reckless manner. In particular, the PII was maintained on the Defendant's servers in a condition vulnerable to cyberattacks;

40. That the Defendant knew, or reasonably should have known, of the importance of safeguarding PII and of the foreseeable consequences that would occur if the Plaintiff's PII was stolen, including the significant costs the Plaintiff would incur as a result of a breach;

41. That the mechanism of the cyberattack and potential for improper disclosure of the Plaintiff's PII was a known risk to the Defendant, and thus the Defendant was on notice that failing to take steps necessary to secure the PII from those risks left that information in a dangerous condition;

42. That the Defendant disregarded the rights of the Plaintiff by, *inter alia*, intentionally, willfully, recklessly, or negligently failing to take adequate and reasonable measures to ensure its data systems were protected against unauthorized intrusions; failing to disclose that it did not have adequately robust computer systems and security practices to safeguard the Plaintiff's PII; and failing to take standard and reasonably available steps to prevent the Data Breach;

43. That the Federal Trade Commission has issued an abundance of guidance for companies to protect the PII in their possession. *See e.g.*, *Protecting Personal Information: A Guide for Business*, FTC, *available at* https://www.ftc.gov/tips-advice/business-center/guidance/protecting-personal-information-guide-business;

44. That the Defendant, as a large and sophisticated employer, was well aware of the risks of data breaches and that the Defendant knew or should have known of the risks of

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data breaches and thus should have ensured that the adequate protections were in place;

45. That the Plaintiff entrusted the Defendant with her sensitive PII;

46. That the Plaintiff has suffered or will suffer actual injury as a direct result of the Data Breach. These actual injuries include out-of-pocket expenses and the value of her time reasonably incurred to remedy or mitigate the effects of the Data Breach relating to:

- Closely reviewing and monitoring bank accounts and credit reports;
- Purchasing credit monitoring and identity theft prevention;
- Addressing her inability to withdraw funds linked to compromised accounts;
- Placing "freezes" and "alerts" with credit reporting agencies; and
- Contacting financial institutions and closing or modifying financial accounts.

47. That the Plaintiff is at an increased risk that the cybercriminals will use her PII for the rest of her life;

48. That because of this increased risk that her PII will be misused, the Plaintiff purchased identify theft protection and monitoring services;

49. That the Plaintiff brings this action because as a direct and/or proximate result of the Defendant's wrongful actions and/or inaction and the resulting Data Breach, the Plaintiff has incurred and will continue to incur damages in the form of, *inter alia*, attempted identity theft, time and expenses mitigating harms (*e.g.*, the costs of engaging credit monitoring and protection services), increased risk of harm, diminished value of PII, and/or loss of privacy. The Defendant's omissions and/or commissions were a substantial

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factor in the Plaintiff and the other Plaintiff Class members incurring those damages;

50. By this action, the Plaintiff seeks to hold the Defendant responsible for the harm caused by its negligence;

51. That in addition, as a direct and/or proximate result of the Defendant's wrongful actions and/or inaction and the resulting Data Breach, the Plaintiff have been deprived of the value of her PII, for which there is a well-established national and international market;

52. That the Defendant's wrongful actions and/or inaction and the resulting Data Breach have also placed the Plaintiff at an imminent, immediate, and continuing increased risk of identity theft and identity fraud. Moreover, there is a high likelihood that significant identity fraud and/or identity theft has not yet been discovered or reported;

53. That the cybercriminals who obtained the Plaintiff's and the absent members of the Plaintiff Class's PII continue to exploit the data themselves and/or sell the data in the so-called "dark markets." Having obtained the Plaintiff and the absent members of the Plaintiff Class's names, addresses and Social Security numbers, cybercriminals can pair the data with other available information to commit a broad range of fraud in a Plaintiff's name, including but not limited to:

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a. obtaining employment;

b. obtaining a loan;

c. applying for credit cards or spending money;

d. filing false tax returns;

e. obtaining medical care;

f. stealing Social Security and other government benefits; and

g. applying for a driver's license, birth certificate or other public document;

54. That the Defendant has failed to provide adequate compensation to the Plaintiff harmed by its negligence. To date, the Defendant has offered the Plaintiff just twelve (12) months of credit monitoring through IdentityWorks℠. Even if a Plaintiff signs up for IdentityWorks℠, it will not provide the Plaintiff any compensation for the costs and burdens associated with fraudulent activity resulting from the Data Breach that took place prior to the Plaintiff signing up;

55. That because of the inadequate identity theft coverage offered by the Defendants, the Plaintiff was required to purchase her own independent identity theft protection services to have adequate protection of her PII;

56. That the Defendant owed the Plaintiff and the absent members of the Plaintiff Class a duty of ordinary and reasonable care to safeguard their personal and sensitive information, to the same extent that a reasonably prudent person would behave under the circumstances;

57. That the Defendant had full knowledge of the sensitivity of the PII and the types of harm that the Plaintiff and class members could and would suffer if that information was wrongfully disclosed. The Defendant had a duty to the Plaintiff and each Plaintiff Class

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member to exercise reasonable care in holding, safeguarding and protecting that information. The Plaintiff and the Plaintiff Class members were the foreseeable victims of any inadequate safety and security practices. The Plaintiff and the other class members had absolutely no ability to protect their data that was in the Defendant's possession;

58. That the Defendant's duty to the Plaintiff and other Plaintiff Class members included, *inter alia*, establishing processes and procedures to protect the personal and sensitive information from wrongful disclosure and training employees who had access to that information as to those processes and procedures. The Defendant's officers, directors and management knew or should have known of the risks associated with the wrongful disclosure of that entrusted information and the threats to that information posed by hackers, scammers, and other cybercriminals;

59. That the acts and/or omissions of the Defendant and/or its agents thereof complained of herein were wanton and/or willful, that they were conducted in such a reckless manner and with such patent disregard for the rights of the Plaintiff and the members of the Plaintiff Class, whereby the Defendant is liable to them for punitive and/or exemplary damages, as permitted by law; and, further, that the Plaintiff and the members of the Plaintiff Class seek an amount in punitive and/or exemplary damages that is fair and reasonable as shown by the evidence; and

60. That pursuant to CR 8.01, the amount in controversy exceeds the minimum threshold of the Jefferson County Circuit Court;

AS AND FOR A SECOND CAUSE OF ACTION
NEGLIGENCE PER SE

61. That the legal and factual allegations contained in Complaint Paragraph(s) One (1)

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through Sixty (60) are repeated and re-alleged as if fully set forth herein;

62. That the Kentucky General Assembly enacted AN ACT relating to the security of personal information (hereinafter the "Personal Information Security Law"), which was created by House Bill 232, and signed into law on April 10, 2014;

63. That the Personal Information Security Law is codified in KRS TITLE XXIX – COMMERCE AND TRADE, Chapter 365: Trade Practices (hereinafter "KRS 365"), and that those pertinent sections of the KRS are hereby made a part hereof as if the same was herein fully set forth at length;

64. That Section 720 of KRS 365: "Definitions for KRS 365.720 to 365.730" (3) defines the term "Individual" as a "natural person";

65. That Section 732 of KRS 365: "Notification to affected persons of computer security breach involving their unencrypted personally identifiable information" (hereinafter "KRS 365.732") (1)(a) defines the term "Breach of the security of the system" as an:

> **unauthorized acquisition of unencrypted and unredacted computerized data** that compromises the security, confidentiality, or integrity of personally identifiable information maintained by the information holder as part of a database regarding multiple individuals that **actually causes, or leads the information holder to reasonably believe has caused or will cause, identity theft or fraud against any resident of the Commonwealth of Kentucky**…

KRS 365.732(1)(a) (emphasis added);

66. That KRS 365.732(1)(b) further defines the term "Information holder" as "any… business entity that conducts business in [the Commonwealth of Kentucky]";

67. That KRS 365.732(1)(c) further defines "Personally identifiable information" as "an individual's first name or first initial and last name in combination with any one (1) or

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more of the following data elements, when the name or data element is not redacted: 1. Social Security number…";

68. That KRS 365.732(2) mandates that:

> [a]ny information holder **shall disclose any breach of the security of the system**, following discovery or notification of the breach in the security of the data, to any resident of Kentucky whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. **The disclosure shall be made in the most expedient time possible and without unreasonable delay**…

KRS 365.732(2) (emphasis added);

69. That the Plaintiff and the absent members of the Plaintiff Class are natural persons and individuals for the purposes of KRS 365.720(3);

70. That the Defendant encountered a breach of the security of its system(s) on or about July 28, 2020;

71. That the Defendant did not notify the Plaintiff and the absent members of the Plaintiff Class until August 25, 2020, almost a month after the breach;

72. That as a direct and/or proximate result of the Defendant's delay in notifying the Plaintiff and Plaintiff Class members of the breach, the Plaintiff was subject to potentially avoidable harm which could have been mitigated by: (i) purchasing identity protection services earlier; (ii) monitoring bank accounts, credit cards and other financial accounts earlier; and (iii) taking other steps to protect against identity theft and the fraudulent use of PII by third parties; and

73. That pursuant to CR 8.01, the amount in controversy exceeds the minimum threshold of the Jefferson County Circuit Court;

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AS AND FOR A THIRD CAUSE OF ACTION
INVASION OF PRIVACY

74. That the legal and factual allegations contained in Complaint Paragraph(s) One (1) through Seventy-Three (73) are repeated and re-alleged as if fully set forth herein;

75. That the Defendant, through its agent(s), publicized private, sensitive, and personal facts of or concerning the Plaintiff and the absent members of the Plaintiff Class to thousands of people on the dark web;

76. That the Plaintiff and the absent members of the Plaintiff Class had an actual and reasonable expectation of privacy in their sensitive PII which was publicized;

77. That the matters publicized are of a kind that would be highly offensive to a reasonable person;

78. That the matters publicized are not of legitimate concern to the public;

79. That as a direct and proximate result of the aforesaid publication, the Plaintiff and the absent members of the Plaintiff Class suffered damages, as their sensitive and personal information is literally in the hands of cybercriminals who intend to use that information for nefarious purposes;

80. That the acts and/or omissions of the Defendant and/or its agents thereof complained of herein were wanton and/or willful, that they were conducted in such a reckless manner and with such patent disregard for the rights of the Plaintiff and the members of the Plaintiff Class, whereby the Defendant is liable to them for punitive and/or exemplary damages, as permitted by law; and, further, that the Plaintiff and the members of the Plaintiff Class seek an amount in punitive and/or exemplary damages that is fair and reasonable as shown by the evidence; and

81. That pursuant to CR 8.01, the amount in controversy exceeds the minimum

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threshold of the Jefferson County Circuit Court;

AS AND FOR A FOURTH CAUSE OF ACTION
BREACH OF IMPLIED CONTRACT

82. That the legal and factual allegations contained in Complaint Paragraph(s) One (1) through Eighty-One (81) are repeated and re-alleged as if fully set forth herein;

83. That the Plaintiff and the absent members of the Plaintiff Class provided their PII in connection with their employment with the Defendant in order to verify their identity, receive compensation and in order for the Defendant to have complete employee records for tax purposes, amongst other things;

84. That the Plaintiff and the absent members of the Plaintiff Class provided various sensitive and personal information to the Defendant as a condition precedent to their employment with Defendant, or in connection with employer sponsored benefits;

85. That, understanding the sensitive nature of the PII, the Defendant implicitly promised the Plaintiff and the Plaintiff Class members that it would take adequate measures to protect their sensitive and personal information;

86. That a material term of this contract is a covenant by the Defendant that it will take reasonable efforts to safeguard that information;

87. That the Plaintiff and the Plaintiff Class members relied upon that covenant and would not have disclosed their PII without assurances that it would be properly safeguarded. Moreover, the covenant to adequately safeguard the PII is an implied term, to the extent it is not an express term;

88. That the Plaintiff and the Plaintiff Class members fulfilled their obligations under the contract by providing their PII to the Defendant;

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89. That the Defendant, however, failed to safeguard and protect the PII. The Defendant's breach of its obligations under the contract between the parties directly caused the Plaintiff and the Plaintiff Class members to suffer injuries;

90. That the Plaintiff and the Plaintiff Class members respectfully request that this honorable Court award all relevant damages for the Defendant's breach of contract; and

91. That pursuant to CR 8.01, the amount in controversy exceeds the minimum threshold of the Jefferson County Circuit Court;

AS AND FOR A FIFTH CAUSE OF ACTION
INTENTIONAL AND/OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

92. That the legal and factual allegations contained in Complaint Paragraph(s) One (1) through Ninety-One (91) are repeated and re-alleged as if fully set forth herein;

93. That the Defendant engaged in extreme or outrageous conduct;

94. That the afore-described conduct was intended to cause and/or the Defendant's actions indicate reckless disregard for the risk of causing, and did indeed cause severe emotional distress to the Plaintiff and the absent members of the Plaintiff Class;

95. That the acts and/or omissions of the Defendant and/or its agents thereof complained of herein were wanton and/or willful, that they were conducted in such a reckless manner and with such patent disregard for the rights of the Plaintiff and the members of the Plaintiff Class, whereby the Defendant is liable to them for punitive and/or exemplary damages, as permitted by law; and, further, that the Plaintiff and the members of the Plaintiff Class seek an amount in punitive and/or exemplary damages that is fair and

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reasonable as shown by the evidence; and

96. That pursuant to CR 8.01, the amount in controversy exceeds the minimum threshold of the Jefferson County Circuit Court;

AS AND FOR A SIXTH CAUSE OF ACTION
INJUNCTIVE/DECLARATORY RELIEF

97. That the legal and factual allegations contained in Complaint Paragraph(s) One (1) through Ninety-Six (96) are repeated and re-alleged as if fully set forth herein;

98. That Defendant acted or refused to act on grounds that apply generally to Plaintiff and the Plaintiff Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Plaintiff Class within the meaning of CR 23.02(b);

99. That Plaintiff seeks a declaration that Defendant's acts and omissions as alleged herein violate applicable state law as well as such other and further relief as may follow from the entry of such a judgment and request that the Court issue declaratory relief declaring Defendant's practice of using insecure, outdated, and inadequate email and computer systems and software that can be breached by third parties unlawful;

100. That Plaintiff and the Plaintiff Class further request the Court enter an injunction requiring Defendant to cease the unlawful practices described herein, and enjoining Defendant from disclosing or using PII without first adequately securing or encrypting it;

101. That Plaintiff and the Plaintiff Class members request the Court order Defendant to identify, seek, obtain, encrypt, and retain at the conclusion of this action all existing PII in their possession or the possession of third parties and provide it to Plaintiff and the Plaintiff Class members;

102. That Plaintiff and the Plaintiff Class members request that the Court enter an injunction ordering that Defendant:

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a. engage a third-party ombudsman as well as internal compliance personnel to monitor, conduct, test, and audit Defendant's safeguards and procedures on a periodic basis;

b. audit, test, and train its internal personnel regarding any new or modified safeguards and procedures;

c. conduct regular checks and tests on its safeguards and procedures;

d. periodically conduct internal training and education to inform internal personnel how to immediately identify violations when they occur and what to do in response;

e. meaningfully educate its former and current employees about their privacy rights by, without limitation, written statements describing with reasonable specificity the precautionary steps Defendant is taking to update its security technology to adequately secure and safeguard employee PII; and

f. identify to each Plaintiff Class member in writing with reasonable specificity the PII and personal information of each such Plaintiff Class member that was stolen in the Data Breach.

IV. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, ALISSA GOODLETT, individually, and as the representative of a class of similarly-situated persons respectfully prays this Court to grant an Order, pursuant to Kentucky Revised Statutes TITLE XXIX – COMMERCE AND TRADE, Chapter 365 and Kentucky Rules of Civil Procedure Rule 23: **(A)** certifying this case as a class action, appointing the Plaintiff as class representative and appointing the Plaintiff's counsel to represent the classes; **(B)** holding that the Defendant BROWN-

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FORMAN, INC. breached its duty to safeguard and protect the Plaintiff's and the Plaintiff Class members' personal and sensitive information that was compromised; **(C)** awarding the Plaintiff and class members appropriate relief, including actual damages, punitive and/or exemplary damages and statutory damages as permitted by law; **(D)** awarding equitable, injunctive and declaratory relief as appropriate; **(E)** awarding all costs, including experts' fees and attorneys' fees, and the costs of prosecuting this action; **(F)** awarding pre-judgment and post-judgment interest as permitted by law; **(G)** conducting trial by jury herein; **(H)** bestowing leave upon the Plaintiff to amend her COMPLAINT; and **(I)** for such other and further relief as may be just, proper, and equitable.

Dated: September 30, 2020
Louisville, Kentucky

Respectfully submitted,

/s/ Peter J. Jannace
Peter J. Jannace

BRANSTETTER, STRANCH & JENNINGS, PLLC

Gerard Stranch (to be admitted *pro hac vice*)
Peter J. Jannace
Attorneys for Plaintiff and Class Members
515 Park Avenue
Louisville, Kentucky 40208
Telephone: (502) 636-4333
Fax: (502) 636-4342
gerards@bsjfirm.com
peterj@bsjfirm.com

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

Jeremiah Frei-Pearson, Esq. (to be admitted *pro hac vice*)
D. Greg Blankinship, Esq. (to be admitted *pro hac vice*)
Attorneys for Plaintiff and Class Members

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One North Broadway, Suite 900
White Plains, NY 10601
Telephone: 914-298-3284
jfrei-pearson@fbfglaw.com
gblankinship@fbfglaw.com

THOMAS & SOLOMON LLP

J. Nelson Thomas, Esq. (to be admitted *pro hac vice*)
Jessica L. Lukasiewicz, Esq. (to be admitted *pro hac vice*)
Jonathan W. Ferris, Esq. (to be admitted *pro hac vice*)
Attorneys for Plaintiff and Class Members
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
nthomas@theemploymentattorneys.com
jlukasiewicz@theemploymentattorneys.com
jferris@theemploymentattorneys.com

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Commonwealth of Kentucky
David L. Nicholson, Jefferson Circuit Clerk

Case #: 20-CI-005631 **Envelope #:** 2812040

Received From: PETER JANNACE **Account Of:** PETER JANNACE

Case Title: GOODLETT, ALISSA VS. BROWN-FORMAN CORPORATION **Confirmation Number:** 114857732

Filed On 9/30/2020 7:52:54PM

#	Item Description	Amount
1	Access To Justice Fee	$20.00
2	Civil Filing Fee	$150.00
3	Money Collected For Others(Court Tech. Fee)	$20.00
4	Library Fee	$3.00
5	Money Collected For Others(Attorney Tax Fee)	$5.00
6	Charges For Services(Jury Demand / 12)	$70.00
7	Money Collected For Others(Postage)	$12.95
8	Charges For Services(Copy - Photocopy)	$2.40
	TOTAL:	$283.35

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AOC-E-105 Sum Code: CI
Rev. 9-14

Commonwealth of Kentucky
Court of Justice *Courts.ky.gov*

CR 4.02; Cr Official Form 1

Case #: **20-CI-005631**
Court: **CIRCUIT**
County: **JEFFERSON Circuit**

CIVIL SUMMONS

Plantiff, **GOODLETT, ALISSA VS. BROWN-FORMAN CORPORATION**, *Defendant*

TO: **MARY E. BARRAZOTTO**
850 DIXIE HIGHWAY
LOUISVILLE, KY 40210

Memo: Related party is BROWN-FORMAN CORPORATION

The Commonwealth of Kentucky to Defendant:
BROWN-FORMAN CORPORATION

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

David L. Nicholson
Jefferson Circuit Clerk
Date: **9/30/2020**

Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

☐ Not Served because: _____

Date: _____, 20_____

_____
Served By

_____
Title

Summons ID: @00000957230
CIRCUIT: 20-CI-005631 Certified Mail
GOODLETT, ALISSA VS. BROWN-FORMAN CORPORATION

eFiled

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Exhibit B

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the "Agreement") is entered into by and between Plaintiff Alissa Goodlett ("Plaintiff"), individually and on behalf of all others similarly situated, and Defendant Brown-Forman Corporation ("Defendant" or "Brown-Forman") (collectively, the "Parties"). The Agreement is subject to preliminary and final approval by Jefferson County Circuit Court (the "Court") as required by Rule 23 of the Kentucky Rules of Civil Procedure.

WHEREAS, on or about September 30, 2020, Plaintiff filed a class action complaint ("Complaint") in the Jefferson County Circuit Court entitled *Goodlett v. Brown-Forman Corporation*, Case No. 20-CI-005631, and the matter was assigned to the Honorable Mitch Perry (the "Action");

WHEREAS, the Action arises out of a data breach initially disclosed by Brown-Forman on or about August 25, 2020 (the "Data Breach");

WHEREAS, Plaintiff and Class Counsel believe that the factual and legal claims asserted in the Action are meritorious. Class Counsel have investigated the facts relating to the claims and the underlying events in the Action; made a thorough study of the legal principles applicable to the claims asserted in the Action; and conducted a thorough assessment of the strengths and weaknesses of the claims in the Action;

WHEREAS, Brown-Forman denies the allegations and all liability with respect to any and all facts and claims alleged in the Action; that Plaintiff and the class she purports to represent have suffered any damage; and that the Action satisfies the requirements to be tried as a class action under Rule 23 of the Kentucky Rules of Civil Procedure;

WHEREAS, the Parties agreed to engage the Honorable Ann O'Malley Shake (Ret.) as a mediator to oversee settlement negotiations in this Action. In advance of formal mediation, Brown-Forman provided certain discovery. The Parties also exchanged detailed mediation briefs with their respective positions on the merits of the claims and class certification;

WHEREAS, following extensive arm's length settlement negotiations conducted through Judge Shake that included an all-day mediation session on December 11, 2020, the Parties executed a binding term sheet setting forth the essential terms of settlement;

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, and without any admission or concession by either Party, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions.

I. DEFINITIONS

In addition to the terms defined at various points within the Agreement, the following definitions of terms apply throughout the Agreement.

1. "**Brown-Forman Counsel**" means David F. McDowell and Purvi G. Patel of Morrison & Foerster LLP.

2. **"Claim Form(s)"** means collectively the Claim Form (Identity Protection) and Claim Form (Other Benefits).

3. "**Claim Form (Identity Protection)**" means the form substantially in the form of Exhibit 1 attached hereto that Settlement Class Members must complete and submit on or before the Claim Deadline (Identity Protection) to be eligible to enroll in Experian IdentityWorks℠ identity protection services.

4. **"Claim Form (Other Benefits)"** means the form substantially in the form of Exhibit 2 attached hereto that Settlement Class Members must complete and submit on or before the Claim Deadline (Other Benefits) in order to be eligible for Reimbursement for Out-of-Pocket Losses, Reimbursement for Attested Time, and Cash Payment for Inconvenience.

5. "**Claim Deadline (Identity Protection)**" means the last day to submit a timely Claim Form (Identify Protection), which will be seventy-five (75) days after the Notice Deadline.

6. "**Claim Deadline (Other Benefits)**" means last day to submit a timely Claim Form (Other Benefits), which will occur on the expiration date of the Settlement Class Member's Experian IdentityWorks℠ identity protection services provided under this Agreement.

7. **"Class**" or "**Class Members**" means all individuals who were notified by Brown-Forman that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman on or about August 25, 2020.

8. "**Class Counsel**" shall mean Nelson Thomas, Jessica L. Lukasiewicz, and Jonathan W. Ferris of Thomas & Solomon LLP, and Jeremiah Frei-Pearson and Greg Blankinship of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP.

9. "**Data Breach**" means the data breach initially disclosed by Brown-Forman on or about August 25, 2020.

10. "**Effective Date**" has the meaning ascribed in Paragraph 42 of this Agreement.

11. "**Final Approval Hearing**" means the hearing to determine whether the Settlement should be given final approval and whether the applications of Class Counsel for attorneys' fees, costs, expenses, and the class representative service award should be approved.

12. "**Motion for Final Approval**" is the motion to be filed by Plaintiff pursuant to Paragraph 41 of this Agreement.

13. "**Motion for Preliminary Approval**" is the motion to be filed by Plaintiff pursuant to Paragraph 33 of this Agreement. This Agreement shall be an exhibit to the Motion for Preliminary Approval.

14. **"Notice(s)"** means the written notices to be sent to the Class pursuant to the Preliminary Approval Order, as set forth in Paragraph 34 of this Agreement.

15. "**Notice Deadline**" means the last day by which Notice must begin issuing to the Class, and will initially occur thirty (30) days after entry of the Preliminary Approval Order.

16. "**Objection Deadline**" is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be seventy-five (75) days after the Notice Deadline.

17. "**Opt-Out Deadline**" is the last day on which a Class Member may file a request to be excluded from the Settlement Class, which will be seventy-five (75) days after the Notice Deadline.

18. "**Order and Final Judgment**" means an order of the Court granting Final Approval of the Settlement and the corresponding final judgment.

19. "**Preliminary Approval Order**" means an order issued by the Court preliminarily approving the Settlement provided for in this Agreement.

20. "**Released Claims**" means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Parties had, have or may claim now or in the future to have (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that were or could have been asserted or alleged arising out of the same nucleus of operative facts as any of the claims alleged or asserted in the Action, including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged, argued, raised or asserted in any pleading or court filing in the Action, including those concerning: (i) the disclosure of the Settlement Class Members' personal information in the Data Breach; (ii) Brown-Forman's maintenance of Settlement Class Members' personal information as it relates to the Data Breach; (iii) Brown-Forman's information security policies and practices as it relates to the Data Breach; or (iv) Brown-Forman's provision of notice to Settlement Class Members following the Data Breach.

21. "**Settlement**" means the settlement reflected by this Agreement.

22. "**Settlement Administrator**" means Heffler Claims Group or another settlement administrator selected by Brown-Forman with the consent of the Plaintiff (not to be unreasonably withheld, conditioned or delayed).

23. "**Settlement Class**" or "**Settlement Class Member**" means all Class Members other than any Settlement Class Opt-Outs.

24. "**Settlement Class Opt-Out**" means any Class Member who timely and validly submits a request for exclusion from the Settlement Class in accordance with the procedures set forth in Paragraph 40 of this Agreement and the Settlement Long-Form Notice.

25. **"Settlement E-mail Notice"** refers to the notice to be provided to the Class by e-mail, substantially in the form of Exhibit 3 attached hereto, in accordance with Paragraph 34(b) of this Agreement.

26. "**Settlement Long-Form Notice**" refers to the notice to be made available to the Class on the website (see Paragraph 34(b)(iii)), substantially in the form of Exhibit 4 attached hereto, in accordance with Paragraph 34(c) of this Agreement.

27. "**Settlement Postcard Notice**" refers to the notice to be provided to the Class by U.S. Mail, substantially in the form of Exhibit 5 attached hereto, in accordance with Paragraph 34(b) of this Agreement.

II. SETTLEMENT TERMS

28. Class Benefit. Subject to the terms of this Agreement, Brown-Forman shall make available the following benefits (none of which are mutually exclusive) to Settlement Class Members who have submitted valid Claim Forms:

(a) Credit Monitoring Services. Settlement Class Members may enroll in Experian IdentityWorks℠ identity protection services for a total period of three (3) years by submitting the Claim Form (Identity Protection) by the Claim Deadline (Identity Protection). Class Members who have already signed up for one (1) year of Experian IdentityWorks℠ identity protection services offered by Brown-Forman following the Data Breach will be entitled to an additional two (2) years of services. Experian IdentityWorks℠ includes credit monitoring from all three bureaus, access to the Experian credit report, $1 million in identity theft insurance, and identity restoration services.

(b) Reimbursement for Out-of-Pocket Losses. Settlement Class Members may submit a claim for Out-of-Pocket Losses up to $5,000 per Settlement Class Member that have not been reimbursed by insurance provided through Experian IdentityWorks℠ (see Paragraph 28(b)(iii)) by submitting the Claim Form (Other Benefits) by the Claim Deadline (Other Benefits).

(i) "Out-of-Pocket Losses" are unreimbursed costs or expenditures incurred by Settlement Class Members that are fairly traceable to the Data Breach.

Out-of-Pocket Losses will be deemed "fairly traceable" to the Data Beach if (1) the timing of the loss occurred on or after July 14, 2020; and (2) the personal information used to commit identity theft or fraud consisted of the same type of personal information that was provided to Brown-Forman prior to the Data Breach.

Out-of-Pocket Losses may include, without limitation: (1) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of the Settlement Class Member's personal information; (2) costs incurred on or after August 25, 2020, associated with accessing or freezing/unfreezing credit reports with any

credit reporting agency; and (3) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

(ii) To receive Reimbursement for Out-of-Pocket Losses Settlement Class Members must provide to the Settlement Administrator information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation supporting the claim, including denial of the claim by Experian IdentityWorks℠ (see Paragraph 28(b)(iii)); and (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone.

Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Settlement Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

(iii) To be eligible for Reimbursement of Out-of-Pocket Losses, Settlement Class Members must first submit a claim for reimbursement to Experian IdentityWorks℠. Experian IdentityWorks℠ must have then denied the claim in whole or in part, and the Settlement Class Member must have exhausted the Experian IdentityWorks℠ claims process.

(c) Reimbursement for Attested Time. Settlement Class Members may submit a claim for up to eight (8) hours of time spent remedying issues related to identity theft directly caused by the Data Breach at $20 an hour by submitting the Claim Form (Other Benefits) by the Claim Deadline (Other Benefits).

(i) To receive Reimbursement for Attested Time, Settlement Class Members must provide to the Settlement Administrator information required to evaluate the claim, including: (1) the Class Member's name and current address; (2) a brief description of the time incurred including activities undertaken by the Class Member; and (3) an attestation that the information is being provided under penalty of perjury.

(d) Cash Payment for Inconvenience. Settlement Class Members who have submitted and received an insurance payment through Experian IdentityWorks℠ relating to the Data Breach may submit a claim for a cash payment of $250 by submitting the Claim Form (Other Benefits) by the Claim Deadline (Other Benefits).

(i) To receive a Cash Payment for Inconvenience, Settlement Class Members must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; and (2) documentation associated with insurance claim to Experian IdentityWorks℠, including documentation showing insurance payment.

29. Business Practice Commitments. Brown-Forman agrees to adopt and implement certain business practice commitments and remedial measures set forth in the declaration described below in Paragraph 29(ii) ("Business Practice Commitments") for a period of at least three (3) years following the Effective Date, subject to Paragraph 29(i) Modification and Costs. These Business Practice Commitments are specific business practice commitments and remedial measures within the following general categories:

(1) Enhanced Cybersecurity Training and Awareness Program;
(2) Enhanced Data Security Policies;
(3) Enhanced Security Measures;
(4) Further Restricting Access to Personal Information; and
(5) Enhanced Monitoring and Response Capability.

(i) Modification and Costs. The Parties acknowledge that technical requirements for securing information evolve and change dynamically. In the event that technological or industry developments, or intervening changes in law or business practices render specific Business Practice Commitments obsolete or make compliance by Brown-Forman with them unreasonable or technically impractical, Brown-Forman may modify its business practices as necessary to ensure appropriate security practices are being followed. For three years following the Effective Date (on or before the anniversary of the Effective Date), Brown-Forman will confirm in writing to Class Counsel that it is in compliance with its obligations under this Paragraph and the previous Paragraph. All costs associated with implementing the Business Practice Commitments will be borne by Brown-Forman.

(ii) Enforcement. Brown-Form will provide to Class Counsel a declaration attesting to the Business Practice Commitments within thirty (30) days after the Effective Date. Such declaration shall be treated as confidential and cannot be used for any purpose other than enforcement of this Settlement Agreement. If at any time Class Counsel has information indicating Brown-Forman is not complying with its Business Practice Commitments, the Parties are required to meet and confer to discuss the issue prior to seeking Court intervention. To the extent Court intervention is required, the Parties agree to cooperate in seeking the Court's permission to file the Business Practice Commitments and any discussion of the Business Practice Commitments under seal.

30. Class Counsel's Attorneys' Fees, Expenses, and Class Representative Service Award for Plaintiff. Plaintiff will move the Court for an order awarding Class Counsel's application for attorneys' fees and costs not to exceed five hundred seventy thousand dollars ($570,000) and a class representative service award not to exceed five thousand dollars ($5,000) (for a total amount not to exceed $575,000), which Brown-Forman agrees not to oppose. This term was negotiated only after the Parties reached an agreement as to the class benefit provided for in Paragraphs 28 and 29.

Any order for attorneys' fees, expenses, and the class representative award made by the Court in accordance with this paragraph shall be paid by wire transfer within ten (10) days after the Effective Date and Brown-Forman's receipt of a completed IRS Form W-9s for Class Counsel, whichever is later. Brown-Forman shall wire the amount(s) awarded for (i) attorneys' fees and expenses and (ii) the class representative service award separately, through two wire transfers. Class Counsel shall provide Brown-Forman Counsel payment instructions within five (5) days of the Effective Date.

III. IMPLEMENTATION OF SETTLEMENT

31. Reasonable Best Efforts to Effectuate This Settlement. Consistent with the terms of this Agreement and notwithstanding the rights of the Parties to terminate this Agreement as set

forth herein, the Parties and their counsel agree to cooperate and to use their reasonable best efforts, including all steps and efforts contemplated by this Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Agreement.

32. Class Certification for Settlement Purposes Only. The Parties acknowledge and agree and hereby stipulate that: (i) the Class will be certified for settlement purposes only pursuant to this Agreement, (ii) Brown-Forman reserves the right to object to class certification de novo in the event this Agreement is terminated for any reason, (iii) this Agreement shall have no precedential effect with regard to any motion for certification of a litigation class that may be filed if this matter is not fully and completely resolved through this settlement effort; and (iv) this Agreement shall have no precedential effect with regard to any other lawsuit against Brown-Forman that may be pending now or in the future, other than in a proceeding seeking to enforce this Agreement.

33. Motion for Preliminary Approval. Following the execution of this Agreement, Plaintiff shall promptly file a Motion for Preliminary Approval seeking entry of the Preliminary Approval Order. Plaintiff shall provide Brown-Forman with the opportunity to review and comment on the Motion for Preliminary Approval, and Brown-Forman shall cooperate with Plaintiff to obtain preliminary approval of the Settlement consistent with the terms herein. The Preliminary Approval Order shall be substantially similar to the proposed order attached as Exhibit 6.

34. Notice to the Class.

(a) List of the Class Members. Within twenty (20) days of entry of the Preliminary Approval Order, Brown-Forman shall prepare and provide to the Settlement Administrator a list of the names, last known addresses, and last known e-mail addresses of the Class Members.

(b) Notice. Within thirty (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall provide the Class Members with notice of the proposed Settlement by the following methods:

(i) E-Mail. The Settlement Administrator shall distribute the Settlement E-Mail Notice to those Class Members for whom Brown-Forman has provided an e-mail address.

(ii) U.S. Mail. The Settlement Administrator shall send the Settlement Postcard Notice via U.S. Mail to the Class Members' last known address (such addresses to be confirmed and, as necessary, updated using National Change of Address data). If the mailing of a Settlement Postcard Notice is returned as undeliverable, the Settlement Administrator will make reasonable efforts to identify a new address for that Class Member, including, but not limited to, skip-tracing, and promptly re-send the Settlement Postcard Notice to the identified new address, if any. If the Settlement Postcard Notice is returned as undeliverable a second time, the Settlement Administrator shall not have any obligation to re-send the Settlement Postcard Notice (unless the USPS provides a new address when returning the postcard as undeliverable for the second time) or attempt to identify a new address for that Class Member.

(iii) Website. The Settlement Administrator shall maintain a website, beginning on or before Notice Deadline and ending no later than three years and six months after the Effective Date. The website shall include copies of the Complaint, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order, Settlement Long-Form Notice, Claim Form (Identity Protection), Claim Form (Other Benefits), motions for Class Counsel's attorneys' fees, expenses, and/or class representative service award for Plaintiff, Motion for Final Approval, and Order and Final Judgement. The Website shall also provide applicable Settlement deadlines and answers to frequently asked questions.

(iv) Toll-Free Number. The Settlement Administrator will also maintain a toll-free number that will provide recorded answers to frequently asked questions about the Settlement.

(c) Settlement Long Form Notice. The Settlement Long Form Notice will be made available to the Class Members on the Website.

(d) Proof of Notice. Plaintiff shall file with the Motion for Final Approval, or at such other time required by the Court, a declaration from the Settlement Administrator confirming that notice has been provided to the Class in accordance with Paragraph 34.

35. Payment of Expenses Related to Notice and Administration. Brown-Forman will pay all costs incurred and fees charged by the Settlement Administrator in providing notice to the Class in accordance with Paragraph 34 and otherwise administering the Settlement.

36. Claim Forms. Settlement Class Members may submit Claim Forms electronically via the website referenced in Paragraph 34(b)(iii) or physically by mail to the Settlement Administrator. Claims Forms must be submitted electronically or postmarked by the applicable Claim Deadline (Identity Protection) and/or Claim Deadline (Other Benefits). Claim Forms must be submitted individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, except that the Claim Forms may be submitted by a legal representative of a deceased Settlement Class Member or a Settlement Class Member who has been adjudicated to be mentally incompetent. If Claim Forms are submitted by a legal representative of a deceased or mentally incompetent Settlement Class Member, the Claim Forms must be submitted together with a copy of a court order or other documentation from which the Settlement Administrator can reasonably verify the authority of the legal representative to act on behalf of the Settlement Class Member.

37. Claim Form Disputes. To the extent the Settlement Administrator determines a Claim Form is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the Settlement Class Member did not provide an e-mail address, in which case such notifications shall be sent via U.S. Mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within seven (7) days of the determination. The Settlement Administrator may consult with Class Counsel and Brown-Forman Counsel in making such determinations.

38. Objections. Any Settlement Class Member who wishes to object to the Settlement must send a signed, written objection to the Settlement Administrator by the Objection Deadline (or other date required by the Court). Written objections must set forth the following:

(a) the name of the proceedings ("*Goodlett v. Brown-Forman Corporation*");

(b) the Settlement Class Member's full name, current mailing address, and telephone number;

(c) a statement of the specific grounds for the objection, as well as any documents supporting the objection;

(d) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;

(e) the identity of any attorneys representing the objector;

(f) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and

(g) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

Settlement Class Members who fail to make objections in the manner specified in Paragraph 38 of this Agreement will be deemed to have waived any objections and will be foreclosed from making any objections, whether by a subsequent objection, intervention, appeal, or any other process.

39. Intention to Appear at Final Approval Hearing. Any Settlement Class Member who wishes to be heard at the Final Approval Hearing must send a signed Notice of Intention to Appear to the Settlement Administrator no later than seventy-five (75) days following the Notice Deadline (or other date required by the Court). The Notice of Intention to Appear must set forth the following:

(a) the name of this Action ("*Goodlett v. Brown-Forman Corporation*");

(b) the full name, address, and telephone number of the person intending to appear at the Final Approval Hearing;

(c) the words "Notice of Intention to Appear" at the top of the document;

(d) the points the person wishes to speak about at the Final Approval Hearing; and

(e) the identity (name, address, and telephone number) of any lawyer who will speak on the person's behalf.

40. Opt-Outs. A Class Member may opt out of the Settlement by submitting an opt-out request to the Settlement Administrator by U.S. mail, as set forth in the Notice. Any such opt-out

request, in order to be timely, must be postmarked by the Opt-Out Deadline (or other date required by the Court). The Request for Exclusion must set forth the following:

(a) the name of this Action ("*Goodlett v. Brown-Forman Corporation*");

(b) the full name, address, and telephone number of the person requesting to be excluded;

(c) the words "*Request for Exclusion*" at the top of the document; and

(d) a declaration stating "I request that I be excluded from the Settlement Class in *Goodlett v. Brown-Forman Corporation,* and do not wish to participate in the settlement. I understand that by requesting to be excluded from the Settlement Class, I will not receive any benefits under the Settlement."

Requests to opt-out must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass. A list of Class Members submitting a timely request for exclusion shall be submitted to the Court with the Motion for Final Approval. All Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and their claims shall be released as provided for herein.

A Class Member cannot submit an opt-out request and a Claim Form. If a Class Member submits an opt-out request and a Claim Form, the Settlement Administrator will determine based on the communication with the latest date (provided it is timely) whether the Class Member intends to opt out or submit a Claim Form.

A Class Member cannot submit both an opt-out request and an objection. If a Class Member submits both an opt-out request and an objection, the Settlement Administrator will send a letter explaining that they are not permitted to make both such requests, and asking the Class Member to make a final decision as to whether to opt out or object and inform the Settlement Administrator of that decision within ten (10) days. If the Class Member does not respond to that communication within ten (10) days after it was mailed (or by the Objection and Opt-Out Deadlines, whichever is later), the Class Member will be treated as having opted out of the Class, and the objection will not be considered, subject to the Court's discretion.

41. Motion for Final Approval. In accordance with a schedule to be established by the Court, Plaintiff shall file a Motion for Final Approval seeking final approval of the Settlement and entry of final judgment. Plaintiff shall provide Brown-Forman with the opportunity to review and comment on the Motion for Final Approval, and Brown-Forman shall cooperate with Plaintiff to obtain final approval of the Settlement consistent with the terms herein. The Final Approval Order and Judgment shall be substantially similar to the proposed order attached as Exhibit 7.

42. Effective Date of Settlement. The Settlement detailed in this Agreement shall be effective five (5) days following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Order and Final Judgment or one (1) business day following entry of the Final Approval Order and Judgment if no parties have standing to appeal; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of,

no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

43. Provision of Credit Monitoring Services. The Settlement Administrator shall send an activation code to each Settlement Class Member who submitted a valid Claim Form (Identity Protection) within thirty (30) days of the Effective Date, which can be used to activate Credit Monitoring Services via an enrollment website maintained by Experian. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Credit Monitoring Services claimants may activate Credit Monitoring Services for a period of at least ninety (90) days from the date the Settlement Administrator sends the activation code.

44. Payment of Other Benefits. Payments for Reimbursement of Out-of-Pocket Losses, Reimbursement for Attested Time, and Cash Payment for Inconvenience will be made by the Settlement Administrator within forty-five (45) days of validation of the Claim Form (Other Benefits) according to the process set forth in Paragraphs 36 and 37 or forty-five (45) days after the Effective Date, whichever is later. Thirty (30) days after the Effective Date, and every month thereafter for three and a half years, the Settlement Administrator shall invoice Brown-Forman for claims to be paid from the prior month. Within ten (10) business days Brown-Forman will provide the Settlement Administrator with the funds to pay the claims made during the previous month.

45. Uncashed Checks. In the event that a check or draft issued to a Settlement Class Member by the Settlement Administrator is not negotiated within one-hundred eighty (180) days of the date of the check or draft, within sixty (60) days thereafter, the Settlement Administrator shall return the funds to Brown-Forman, unless otherwise agreed between the Settlement Administrator and Brown-Forman. The Settlement Class Member shall be deemed to have waived his or her entitlement to payment under this Agreement and Brown-Forman shall have no further monetary liability or responsibility to that Settlement Class Member. All other terms of this Agreement, including the Release set forth in Paragraph 47 below, shall remain in effect.

46. All Claims Satisfied. Each Settlement Class Member shall look solely to the relief described in Paragraphs 28 and 29 for settlement and satisfaction, as provided herein, of all Released Claims.

IV. RELEASES AND JURISDICTION OF COURT

47. Release of Released Entities. Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns (the "Releasing Parties") shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against Brown-Forman and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns (the "Released Parties") of any of the foregoing.

48. Unknown Claims. The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Action and that any of the Releasing Parties does not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties of any of the foregoing or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

49. Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

50. Consent to Jurisdiction. The Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for purposes of any suit, action, proceeding, or dispute arising out of, or relating to, this Agreement or the applicability of this Agreement.

51. Resolution of Disputes; Retention of Jurisdiction. Any disputes between or among the Parties concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court for resolution. The Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

V. TERMINATION OF THE AGREEMENT

52. Rejection or Material Alteration of Settlement Terms. Brown-Forman and the Plaintiff shall each have the right to terminate this Agreement by providing written notice of their election to do so to each other within seven (7) days of: (1) the Court declining to enter the Preliminary Approval Order in a form materially consistent with this Settlement Agreement and indicating that it would not enter a Preliminary Approval Order if the Parties make revisions that are materially consistent with this Agreement; (2) the Court declining to enter a Final Approval Order and Judgment in a form materially consistent with this Agreement (other than determining, in the Court's sole discretion, the amount of the attorneys' fees and expenses award and service award in accordance with Paragraph 30) and indicating that it would not enter a Final Approval Order and Judgment if the Parties make revisions that are materially consistent with this

Agreement; (3) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate court, which indicates that the Settlement cannot be approved if the Parties make revisions that are materially consistent with this Agreement (except with respect to the amount of the attorneys' fees and expenses or service award); or (4) the mutual agreement of the Plaintiff and Brown-Forman to terminate the Agreement. If an option to terminate this Agreement arises under this Paragraph, no Party is required for any reason or under any circumstance to exercise that option.

53. Return to Pre-Agreement Status. In the event any of the Parties exercise the right of termination enumerated in Paragraph 52, this Agreement shall be null and void, the Parties shall jointly request that any orders entered by the Court in accordance with this Agreement be vacated, and the rights and obligations of the Parties shall be identical to those prior to the execution of this Agreement. In the event either Party exercises any right of termination, the Parties agree to jointly request that the Court provide a reasonable opportunity to engage in such other further proceedings as were contemplated before the Parties entered into this Agreement.

54. No Admission of Liability / Compromise of Disputed Claims. The Parties hereto agree that this Agreement, whether or not the Effective Date occurs, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Brown-Forman or of the truth of any of the claims or allegations contained in the Complaint; and evidence thereof shall not be discoverable or used directly or indirectly by the Plaintiff or any third party, in any way for any purpose, except that the provisions of this Agreement may be used by the Parties to enforce its terms, whether in the Action or in any other action or proceeding. This Agreement and all of the terms herein constitute compromises and offers to compromise under applicable Kentucky rules of court and statutes. In the event that this Agreement is terminated pursuant to Paragraph 52, nothing in this Agreement or its negotiation may be used as evidence in any action. The Parties expressly waive the potential applicability of any doctrine, case law, statute, or regulation, which, in the absence of this Paragraph, could or would otherwise permit the admissibility into evidence of the matters referred to in this Paragraph. The Parties expressly reserve all their rights and defenses if the Settlement set forth in this Agreement does not become final and effective substantially in accordance with the terms of this Agreement. The Parties also agree that this Agreement, any orders, pleadings or other documents entered in furtherance of this Agreement, and any acts in the performance of this Agreement are not intended to be, nor shall they in fact be, admissible, discoverable, or relevant in any other case or other proceeding against Brown-Forman to establish grounds for certification of any class, to prove either the acceptance by any Party hereto of any particular theory of coverage, or as evidence of any obligation that any Party hereto has or may have to anyone. This provision shall survive any termination of this Agreement.

VI. REPRESENTATIONS AND WARRANTIES

55. Authorization to Enter this Agreement. The undersigned representative of Brown-Forman represents and warrants that he or she is fully authorized to enter into and to execute this Agreement on behalf of Brown-Forman. Class Counsel represent and warrant that they are fully authorized to conduct settlement negotiations with Brown-Forman Counsel on behalf of Plaintiff

and to enter into, and to execute, this Agreement on behalf of Plaintiff and the Settlement Class, subject to Court approval.

56. Assignment. Plaintiff represents and warrants that she has not assigned or transferred any interest in the Action, in whole or in part.

57. Representation. Plaintiff acknowledges that she has been represented by counsel of her own choosing in the Action and the negotiation and execution of this Agreement, fully understands this Agreement, and that she has had a reasonable and sufficient opportunity to consult with counsel before executing this Agreement.

VII. ADDITIONAL PROVISIONS

58. Use of this Agreement. The provisions of this Agreement, and any orders, pleadings or other documents entered in furtherance of this Agreement, may be offered or received in evidence solely (i) to enforce the terms and provisions hereof or thereof, (ii) as may be specifically authorized by a court of competent jurisdiction after hearing upon application of a Party hereto, (iii) in order to establish payment or a defense in a subsequent case, including res judicata, or (iv) to obtain Court approval of this Agreement.

59. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

60. Headings. The headings to this Settlement Agreement have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.

61. Construction. This Agreement shall be construed and interpreted to effectuate the intent of the Parties. Plaintiff intends for the Settlement to provide fair compensation to Plaintiff and Settlement Class Members. Brown-Forman intends for the agreement to provide for a complete resolution of the Released Claims. This Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

62. Choice of Law. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of Kentucky without regard to its choice of law or conflict of laws principles.

63. Amendment or Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the Parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party or their counsel, who may only sign with the permission of their clients. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous.

64. Modification. Prior to entry of the Final Approval Order and Judgment, this Agreement may, with approval of the Court, be modified by written agreement of the Parties or their counsel, who may only sign with the permission of their clients, without giving any additional notice to the Settlement Class, provided that such modifications are not materially adverse to the Settlement Class.

65. Execution in Counterparts. This Agreement may be executed in counterparts. Facsimile signatures, electronic signatures obtained through a service ensuring an authentication process, or signatures in PDF format shall be considered as valid signatures as of the date thereof, and may be filed with the Court.

66. Integrated Agreement. This Agreement, including the exhibits hereto, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the Parties hereto, and supersedes any prior oral or written agreements and contemporaneous oral agreements among the Parties, including but not limited to the Confidential Settlement Term Sheet agreed to by the Parties on December 11, 2020. Exhibits to this Agreement are integral to the Agreement and are hereby incorporated and made part of this Agreement.

67. Notices. All notices and other communications required or permitted under this Agreement, other than requests for exclusion or objections to the proposed Settlement, shall be in writing and delivered in person, by overnight delivery service and by e-mail. Any such notice shall be deemed given as of the date of receipt and shall be delivered to the Parties as follows:

If to the Plaintiff:

Jessica L. Lukasiewicz
jlukasiewicz@theemploymentattorneys.com
Thomas & Solomon LLP
693 East Avenue
Rochester, New York 14607

Jeremiah Frei-Pearson
jfrei-pearson@fbfglaw.com
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP
One North Broadway Suite 900
White Plains, New York 10601

If to Brown-Forman:

David F. McDowell
dmcdowell@mofo.com
Purvi G. Patel
ppatel@mofo.com
Morrison & Foerster LLP
707 Wilshire Boulevard
Los Angeles, CA 90017-3543

68. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if the Parties mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

69. Confidential Information. The Settlement Administrator shall keep confidential any personal identifying information of the Class Members, and any financial information of Brown-Forman, that has or may come into its possession.

70. Deadlines. In the event any date or deadline set forth in this Settlement Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

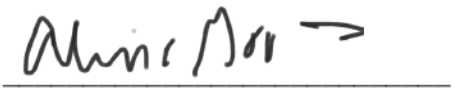
71. Retention of Records. The Settlement Administrator shall retain records relating to all mailed notices, returned mailed notices, correspondence related to the Settlement and Settlement checks for a period of three (3) years and six (6) months after the Effective Date. After this time, the Settlement Administrator will provide these records to Brown-Forman if it so desires, and the Settlement Administrator shall destroy any such documentary records it has in its possession, and Brown-Forman will have the option, in its sole discretion, to destroy such records.

72. Contact with Class Members. Brown-Forman may communicate with the Class Members in the ordinary course of its business. Brown-Forman will refer inquiries regarding this Agreement and the administration of the Settlement to the Settlement Administrator and/or Class Counsel.

SIGNED AND AGREED:

Dated: 02/08/2021 February __, 2021

ALISSA GOODLETT



_____

By: Alissa Goodlett

SignNow e-signature ID: 1726f8b41d...
02/09/2021 01:53:11 UTC

Dated: February __, 2021

BROWN-FORMAN CORPORATION

By: _____

Its: _____

APPROVED AS TO FORM ONLY:

Dated: February __, 2021

THOMAS & SOLOMON LLP

_____

By: Jessica L. Lukasiewicz
Attorney for Plaintiff

70. Deadlines. In the event any date or deadline set forth in this Settlement Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

71. Retention of Records. The Settlement Administrator shall retain records relating to all mailed notices, returned mailed notices, correspondence related to the Settlement and Settlement checks for a period of three (3) years and six (6) months after the Effective Date. After this time, the Settlement Administrator will provide these records to Brown-Forman if it so desires, and the Settlement Administrator shall destroy any such documentary records it has in its possession, and Brown-Forman will have the option, in its sole discretion, to destroy such records.

72. Contact with Class Members. Brown-Forman may communicate with the Class Members in the ordinary course of its business. Brown-Forman will refer inquiries regarding this Agreement and the administration of the Settlement to the Settlement Administrator and/or Class Counsel.

SIGNED AND AGREED:

Dated: February __, 2021

ALISSA GOODLETT

_____
By: Alissa Goodlett

Dated: February __, 2021

BROWN-FORMAN CORPORATION

By: _____

Its: _____

APPROVED AS TO FORM ONLY:

Dated: February 02/09/2021, 2021

THOMAS & SOLOMON LLP

_____
SignNow e-signature ID: 7e7952af2a...
02/09/2021 19:14:26 UTC
By: Jessica L. Lukasiewicz
Attorney for Plaintiff

70. Deadlines. In the event any date or deadline set forth in this Settlement Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

71. Retention of Records. The Settlement Administrator shall retain records relating to all mailed notices, returned mailed notices, correspondence related to the Settlement and Settlement checks for a period of three (3) years and six (6) months after the Effective Date. After this time, the Settlement Administrator will provide these records to Brown-Forman if it so desires, and the Settlement Administrator shall destroy any such documentary records it has in its possession, and Brown-Forman will have the option, in its sole discretion, to destroy such records.

72. Contact with Class Members. Brown-Forman may communicate with the Class Members in the ordinary course of its business. Brown-Forman will refer inquiries regarding this Agreement and the administration of the Settlement to the Settlement Administrator and/or Class Counsel.

SIGNED AND AGREED:

Dated: February __, 2021

ALISSA GOODLETT

_____

By: Alissa Goodlett

Dated: February 9, 2021

BROWN-FORMAN CORPORATION

By: _____

Its: SVP - Deputy General Counsel

APPROVED AS TO FORM ONLY:

Dated: February __, 2021

THOMAS & SOLOMON LLP

_____

By: Jessica L. Lukasiewicz
Attorney for Plaintiff

Dated: February __, 2021

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

_____

By: Greg Blankinship
Attorney for Plaintiff

Dated: February 9, 2021

MORRISON & FOERSTER LLP

_____

By: Purvi G. Patel
Attorney for Defendant Brown-Forman Corporation

Dated: February 9, 2021

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

By: Greg Blankinship
Attorney for Plaintiff

Dated: February __, 2021

MORRISON & FOERSTER LLP

_____

By: Purvi G. Patel
Attorney for Defendant Brown-Forman Corporation

Exhibit 1

JEFFERSON CIRCUIT COURT

Goodlett, et al. v. Brown-Forman Corporation, No. 20-CI-005631

CLAIM FORM (IDENTITY PROTECTION)

Instructions: If you were notified by Brown-Forman that your personal information was or may have been compromised in the data breach disclosed by Brown-Forman in or about August 2020, you can enroll in Experian IdentityWorks[SM] identity protection services for a total of three (3) years. For example, if you already signed up for one (1) year of monitoring, you will be eligible to submit an Identity Protection Claim Form to have an additional two (2) years of monitoring services. Experian IdentityWorks[SM] includes credit monitoring from all three bureaus, access to the Experian credit report, $1 million in identity theft insurance, and identity restoration services.

Submit this claim form online at [WEBSITE] by no later than [DATE]. You can also mail this claim form to [SETTLEMENT ADMINISTRATOR ADDRESS] postmarked no later than [DATE].

The detailed Notice and Settlement Agreement contain additional information and are available at [WEBSITE] or by calling [SETTLEMENT NUMBER].

Important: If you are submitting a claim for Reimbursement of Out-of-Pocket Losses, Reimbursement for Attested Time, and/or a Cash Payment for Inconvenience, please make sure to complete the separate **CLAIM FORM (OTHER BENEFITS)**.

A. CONTACT INFORMATION

Name:

_____

Address:

_____

City, State, Zip Code:

_____

Email Address:

_____

B. ATTESTATION UNDER PENALTY OF PERJURY

By submitting this Claim Form, I declare under penalty of perjury under the laws of the State of Kentucky that the information I have provided is true and accurate and that I am a member of the Class defined as follows: "all individuals who were notified by Brown-Forman that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020."

_____ _____

Signature Date

Typing your name constitutes your legal signature, in the same manner as if you signed by hand

THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND SUBMITTED TO THE SETTLEMENT ADMINISTRATOR BY [DATE].

IF YOU HAVE ANY QUESTIONS ABOUT THIS LAWSUIT, YOUR RIGHTS, OR COMPLETING THIS CLAIM FORM, PLEASE CONTACT CLASS COUNSEL AT 585-272-0540 or ContactUs@theemploymentattorneys.com.

Exhibit 2

JEFFERSON CIRCUIT COURT

Goodlett, et al. v. Brown-Forman Corporation, No. 20-CI-005631

CLAIM FORM (OTHER BENEFITS)

If you were notified by Brown-Forman that your personal information was or may have been compromised in the data breach disclosed by Brown-Forman in or about August 2020 (the "Data Breach"), you may submit a claim for one or more of the following benefits:

1. **Reimbursement for Out-of-Pocket Losses.** If you incurred expenses that are fairly traceable to the Data Breach, such as money spent remedying identity theft or identity fraud or freezing/unfreezing credit reports with any credit reporting agency, you can be reimbursed up to $5,000. You must submit documents supporting your claim, including denial of the claim by Experian IdentityWorks℠.

2. **Reimbursement for Attested Time**. If you spent time remedying issues related to identify theft directly caused by the Data Breach, you can recover $20 per hour for up to eight (8) total hours.

3. **Cash Payment for Inconvenience.** If you submitted and received an insurance payment through Experian IdentityWorks℠ relating to the Data Breach, you can receive a cash payment of $250.

Submit this claim form via [WEBSITE] or mail this claim form to [SETTLEMENT ADMINISTRATOR ADDRESS] postmarked no later than the date on which your Experian IdentityWorks℠ provided under the settlement expires.

The detailed Notice and Settlement Agreement contain additional information and are available at [WEBSITE] or by calling [SETTLEMENT NUMBER].

IMPORTANT: If you are submitting a claim for Identity Protection, please make sure the complete the separate **CLAIM FORM (IDENTITY PROTECTION)**.

A. CONTACT INFORMATION

Name:

_____

Address:

_____

City, State, Zip Code:

_____

Email Address:

_____

B. REIMBURSEMENT FOR OUT-OF-POCKET LOSSES

If you lost or spent money trying to prevent or recover from fraud or identity theft caused by the Data Breach, and Experian IdentityWorks℠ denied your claim for reimbursement, you can receive reimbursement for up to $5,000.

You must attach documents that show what happened and how much you lost or spent so that you can be repaid. You must also submit documents that show Experian IdentityWorks℠ denied your claim. Handwritten receipts are, by themselves, not enough to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

Description of Loss or Money Spent and Supporting Documents (Identify each document you are attaching, and explain why it is related to the Data Breach)	**Amount**	**Date**

C. REIMBURSEMENT FOR ATTESTED TIME

If you spent time remedying issues related to identity theft directly caused by the Data Breach, you can be compensated $20 per hour for up to eight (8) hours.

You must describe the actions you took in response to the Data Breach and the time each action took.

Total time spent remedying issues related to the Data Breach: _____ Hours _____ Minutes

Explanation of Time Spent (Identify what you did and why)	**Date**	**Number of Hours and Minutes**

D. CASH PAYMENT FOR INCONVENIENCE

If you submitted and received an insurance payment through Experian IdentityWorks℠ relating to the Data Breach, you can receive a cash payment of $250.

You must provide documentation showing the insurance payment by Experian IdentityWorks℠.

Place an "x" or "yes" in the space provided to confirm your election.

_____ I wish to receive a Cash Payment for Inconvenience of $250.

E. ATTESTATION UNDER PENALTY OF PERJURY

By submitting this Claim Form, I declare under penalty of perjury under the laws of the State of Kentucky that the information I have provided is true and accurate and that I am a member of the Class defined as follows: "all individuals who were or will be notified by Brown-Forman that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020."

_____ _____

Signature Date

Typing your name constitutes your legal signature, in the same manner as if you signed by hand

THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND SUBMITTED TO THE SETTLEMENT ADMINISTRATOR BY THE DATE ON WHICH YOUR EXPERIAN IDENTITYWORKS[SM] PROVIDED UNDER THE SETTLEMENT EXPIRES.

IF YOU HAVE ANY QUESTIONS ABOUT THIS LAWSUIT, YOUR RIGHTS, OR COMPLETING THIS CLAIM FORM, PLEASE CONTACT CLASS COUNSEL AT ContactUs@theemploymentattorneys.com or 585-272-0540.

Exhibit 3

E-Mail Notice

To: [Class Member]
From: Heffler Claims Group
Subject: Legal Notice of Settlement of Class Action and Applicable Deadlines

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A Court directed this Notice. This is not a solicitation from a lawyer.

YOU ARE ELIGIBLE FOR UP TO THREE YEARS OF CREDIT MONITORING AND YOU MAY ALSO BE ELIGIBLE TO RECEIVE CASH PAYMENTS.

TO: All individuals who were notified by Brown-Forman Corporation that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020.

A class action settlement has been proposed in litigation against Brown-Forman relating to a data breach that Brown-Forman disclosed on or about August 2020 ("Data Breach"). The case is known as *Goodlett et al. v. Brown-Forman Corporation*, Case No. 20-CI-005631 in the Jefferson Circuit Court. You are receiving this notice because Brown-Forman's records show that your personal information was or may have been compromised in the Data Breach. **The easiest way to submit a claim under the settlement is online at [website].**

Please read the detailed Class Notice and proposed settlement at [website] to fully understand your legal rights and options.

Under the terms of the settlement, you could be eligible to receive:

Identity Theft Protection Coverage: You can sign up for three years total of identity theft protection coverage through Experian IdentityWorks℠. For example, if you previously signed up for one (1) year of identity theft protection coverage through Brown-Forman, you will be eligible to receive an additional two (2) years of coverage.

To be eligible to receive identity theft protection coverage, you must submit a completed Claim Form (Identity Protection) by [75 days after notice is mailed/emailed]. You can access the Claim Form online at [WEBSITE].

Other Benefits: You may also be eligible to receive Reimbursement for Out-of-Pocket Losses, Reimbursement for Attested Time, and a Cash Payment for Inconvenience caused by the Data Breach. Further information about these benefits and whether you are eligible to receive them can be found at [WEBSITE].

To be eligible to receive these benefits, you must submit a completed Claim Form (Other Benefits) by the date on which your Experian IdentityWorks℠ provided under the settlement expires. You can access the Claim Form online at [WEBSITE].

Additional Information:

To object to the proposed settlement, please review Section 7 of the detailed Class Notice at [HYPERLINK]. To opt-out of the proposed Settlement, please review Section 8 of the detailed Class Notice at [HYPLERLINK]. The deadline for objecting to the proposed settlement or opting out of the settlement is [75 DAYS FROM THE NOTICE DATE].

The Court will hold a hearing on [DATE] to consider whether to approve the Settlement and whether to award up to $570,000 in attorneys' fees and expenses to Class Counsel and $5,000 to Plaintiff for her service as a class representative.

If you have questions or concerns, you can contact Class Counsel at ContactUs@theemploymentattorneys.com or at 585-272-0540. You can also contact the Settlement Administrator at [INSERT].

Exhibit 4

If you were notified by Brown-Forman that your personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020, you may be entitled to benefits from a class action Settlement.

A Court directed this notice. This is not a solicitation from a lawyer.

YOU ARE ELIGIBLE FOR UP TO THREE YEARS OF CREDIT MONITORING AND YOU MAY ALSO BE ELIGIBLE TO RECEIVE CASH PAYMENTS.

A class action settlement has been proposed in litigation against Brown-Forman Corporation relating to a data breach that Brown-Forman disclosed on or about August 2020 (the "Data Breach"). The case is known as *Goodlett et al. v. Brown-Forman Corporation*, Case No. 20-CI-005631 in the Jefferson Circuit Court. The proposed Settlement will provide benefits to Class Members whose personal information may have been affected by the Data Breach.

YOUR LEGAL RIGHTS AND OPTIONS IN THE PROPOSED SETTLEMENT

Do Nothing	By doing nothing, you will be foregoing the ability to obtain up to three (3) years of identity theft protection. If you have already signed up for identity theft protection in response to the August 2020 notice of the Data Breach, you are giving up the ability to extend that coverage to span a total of three (3) years. You will also be giving up the ability to receive other benefits available under the Settlement, should it be approved. These benefits are: reimbursement for out-of-pocket losses, reimbursement for attested time, and a cash payment for inconvenience. You are also relinquishing any rights you may have to sue Brown-Forman regarding the Data Breach.

Timely Submit Claim Form(s).	To be eligible to receive a total of three (3) years of identity protection coverage, you must submit a Claim Form (Identity Protection) by [75 days after Notice Deadline]. To be eligible to receive reimbursement for out-of-pocket losses, reimbursement for attested time incurred remedying issues related to the Data Breach, or a cash payment for inconvenience due to the Data Breach, you must submit a Claim Form (Other Benefits) by the date on which your Experian IdentityWorks℠ credit monitoring provided under the Settlement expires.
Object to the Settlement	Submit an objection to the Court by [75 days after Notice Deadline], to let the Court know you disagree with some or all of the terms of the proposed Settlement. You can still submit Claim Forms if you object to the proposed Settlement. If the Court approves the Settlement, you will be bound by the Court's decision and the Settlement Agreement.
Opt-out of the Settlement	Submit an Opt-Out Statement by [75 days after Notice Deadline], to be excluded from the Settlement. If you opt out of the Settlement, you forfeit any rights to Settlement benefits. You will retain any right you may have to sue Brown-Forman regarding the Data Breach.

This Notice explains these rights and options and the deadlines to exercise them. The Court still has to decide whether to approve this Settlement. Benefits for valid claims will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. What is this lawsuit about?

On July 28, 2020, Brown-Forman discovered it was the victim of a cyber-attack. The cyber-criminals stole certain records containing information about some of Brown-Forman's current and former employees (and in some cases, limited information about employee dependents or beneficiaries). Brown-Forman initially disclosed the Data Breach in or about August 2020, and has notified current and former employees whose personal information was or may have been compromised in the Data Breach.

Thereafter, Alissa Goodlett filed a class action lawsuit alleging that she and other individuals were affected by the Data Breach. Alissa Goodlett is the "Plaintiff" or "Class Representative" and she sued Brown-Forman the "Defendant" on behalf of people who have similar claims (the "Class"). The lawsuit alleges Brown-Forman did not adequately protect the Class Members personal information. Brown-Forman denies all allegations of wrongdoing.

2. Why is there a proposed Settlement?

The Court did not reach a final decision in favor of the Class or Brown-Forman. Instead, both sides agreed to a proposed Settlement to resolve the lawsuit. A settlement avoids the costs and uncertainty of a trial and related appeals, while providing benefits to the Class.

The Class Representative and Class Counsel believe the proposed Settlement is best for all members of the Class. The Court in charge of the lawsuit has granted preliminary approval of the proposed Settlement and has ordered that this notice be made available to explain it.

3. Who does the proposed Settlement affect?

You are a Class Member and are affected by the proposed Settlement if Brown-Forman notified you that your personal information was or may have been compromised in the Data Breach.

If you have questions about whether you are a Class Member, you may contact the Settlement Administrator at [phone number] or Class Counsel (see Question 10 below).

If you are a Class Member, you are eligible to obtain benefits under the proposed Settlement. The available benefits and process for submitting claims to receive benefits are described in Questions 4 and 6 below.

4. What benefits are provided?

The Settlement provides the following benefits:

Identity Protection Services.

Members of the Class can elect to enroll in Experian IdentityWorks^{SM} identity protection services for a total period of three (3) years. Experian IdentityWorks^{SM} includes credit monitoring from all three bureaus, access to the Experian credit report, $1 million in identity theft insurance, and identity restoration services.

If you previously signed up for identity protection coverage through Brown-Forman after receiving notice of the Data Breach, you must submit a valid Claim Form (Identity Protection) in order to receive additional coverage for a period of three (3) years total. If you did not previously sign up for identity protection services, and you submit a valid Claim Form (Identity Protection), you will receive three (3) years of identity theft protection coverage.

To be eligible to receive identity theft protection coverage, you must submit a completed Claim Form (Identity Protection) by [75 days after Notice Deadline].

Reimbursement for Out-of Pocket Losses.

If you incurred expenses that are fairly traceable to the Data Breach, that were not reimbursed by insurance provided through Experian IdentityWorks℠, you can be reimbursed up to $5,000. Examples of reimbursable Out-of-Pocket Losses include:

- costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of your personal information;
- costs incurred on or after August 25, 2020, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; or
- other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

If you submit a claim for Reimbursement of Out-of-Pocket Losses, you must provide the Settlement Administrator with your contact information as well as documents that show what happened and how much you lost or spent so that you can be repaid. You must also submit documents that show Experian IdentityWorks℠ denied your claim(s). Handwritten receipts are, by themselves, not enough to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

Out-of-Pocket Losses will be deemed fairly traceable to the Data Breach if the timing of the loss occurred on or after July 14, 2020, and the personal information used to commit identity theft or fraud consisted of the same type of personal information that was provided to Brown-Forman prior to the Data Breach.

To be reimbursed for Out-of-Pocket Losses, you must first sign up for Experian IdentityWorks℠ provided through the Settlement by submitting a Claim Form (Identity Protection) by [75 days after Notice Deadline], submit a claim for reimbursement to Experian IdentityWorks℠ that is denied in whole or in part by Experian, and have exhausted Experian's claims process.

To be eligible to receive Reimbursement for Out-of-Pocket Losses, you must submit a completed Claim Form (Other Benefits) by the date on which your Experian IdentityWorks℠ provided under the Settlement expires.

Reimbursement for Attested Time.

If you spent time remedying issues related to identify theft directly caused by the Data Breach, you can submit a claim for $20 per hour for up to eight (8) total hours.

If you submit a claim for Reimbursement for Attested Time, you must provide the Settlement Administrator with your contact information as well as the actions you took in response to the Data Breach and the time each action took. Class Members must also attest that the information is provided under penalty of perjury.

To be eligible to receive Reimbursement for Attested Time, you must submit a completed Claim Form (Other Benefits) by the date on which your Experian IdentityWorks℠ provided under the Settlement expires.

Cash Payment for Inconvenience.

If you submitted and received an insurance payment through Experian IdentityWorks℠ relating to the Data Breach, you can receive a cash payment of $250.

If you submit a claim for a Cash Payment for Inconvenience, you must provide the Settlement Administrator with your contact information as well as documentation showing the insurance payment by Experian.

To receive a Cash Payment for Inconvenience, you must first sign up for Experian IdentityWorks℠ provided through the Settlement by submitting a Claim Form (Identity Protection) by [75 days after Notice Deadline] and receive an insurance payment through Experian IdentityWorks℠ relating to the Data Breach.

To be eligible to receive Cash Payment for Inconvenience, you must submit a completed Claim Form (Other Benefits) by the date on which your Experian IdentityWorks℠ provided under the Settlement expires.

Business Practice Commitments. Brown-Forman agrees to adopt and implement certain business practice commitments and remedial measures within the following general categories until at least three years after the Effective Date of the Settlement:

1. Enhanced Cybersecurity Training and Awareness Program.
2. Enhanced Data Security Policies.
3. Enhanced Security Measures.
4. Further Restricting Access to Personal Information.
5. Enhanced Monitoring and Response Capability.

5. How will the proposed Settlement impact my legal rights?

If the Court approves the proposed Settlement and you do not opt out of the Settlement, you will no longer be able to sue Brown-Forman for claims relating to the Data Breach (see Question 8 below).

The Settlement Agreement describes the released claims specifically, so read it carefully. Section IV of the Settlement Agreement describes the specific claims you are giving up against Brown-Forman. You will be releasing Brown-Forman and all related people as described in Paragraph 47 of the Settlement Agreement. The Settlement Agreement is available at [website] or you can request a copy from the Settlement Administrator at [phone]. Talk to Class Counsel (see Question 10 in the section on "The Lawyers Representing You" below) or your own lawyer if you have questions about the Released Claims or what they mean.

SUBMITTING THE CLAIM FORMS TO PARTICIPATE IN THE SETTLEMENT

6. How do I submit the Claim Forms to receive the benefits of the proposed Settlement?

You must submit a Claim Form (Identity Protection) and/or a Claim Form (Other Benefits) to receive Settlement benefits. **Note that there are different deadlines that apply for each Claim Form, and to be eligible for Reimbursement for Out-of-Pocket Losses or Cash Payment for Inconvenience you must first submit a claim for Identity Protection.**

- The **Claim Form (Identity Protection)** must be submitted online [here] on [75 days after notice deadline] or by mail postmarked on or before [75 days after notice deadline].

- The **Claim Form (Other Benefits)** must be submitted online [here] or by mail postmarked on or before the date on which your Experian IdentityWorks℠ provided under the Settlement expires.

You can access and submit the Claim Forms online by going to [WEBSITE]. Alternatively, you can submit the Claim Forms by printing the forms from the Website or requesting paper copies from the Settlement Administrator, and mailing the completed Claim Forms to the Settlement Administrator at [SETTLEMENT ADMINISTRATOR ADDRESS].

You must sign the Claim Forms. If you submit your Claim Form(s) online, typing your name in the signature box will constitute your legal signature.

If you move after submitting a Claim Form, it is your responsibility to provide your new address to the Settlement Administrator. The Settlement Administrator will use the most recent address it has on file for providing benefits under the Settlement.

OBJECTING TO THE PROPOSED SETTLEMENT

7. How can I object?

As a Class Member, you can object to the proposed Settlement if you do not think the proposed Settlement is fair, reasonable, or adequate by filing a written objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, the Class Members will not receive the benefits described in this notice, and the lawsuit will continue.

You may object to the proposed Settlement in writing and appear at the Final Approval Hearing, either in person or through your own attorney, at your own expense, if the Court allows. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must include:

i. the name of the proceedings ("*Goodlett v. Brown-Forman Corporation*");

ii. your full name, current mailing address, and telephone number;

iii. a statement of the specific grounds for the objection, as well as any documents supporting the objection;

iv. a statement as to whether the objection applies only to you, to a specific subset of the class, or to the entire class;

v. the identity of any attorney(s) representing you;

vi. a statement regarding whether you (or your attorney) intends to appear at the Final Approval Hearing; and

vii. either your or your attorney's signature.

CLASS MEMBERS MUST MAIL OBJECTIONS TO THE SETTLEMENT ADMINISTRATOR POSTMARKED BY [75 DAYS AFTER THE NOTICE DEADLINE].

If you wish to be heard at the Final Approval Hearing, you must send a signed Notice of Intention to Appear to the Settlement Administrator no later than [seventy-five (75) days following the Notice Deadline (or other date required by the Court)]. The Notice of Intention to Appear must include the following:

i. the name of this Action ("*Goodlett v. Brown-Forman Corporation*");

ii. your full name, address, and telephone number if you intend to appear at the Final Approval Hearing;

iii. the words "Notice of Intention to Appear" at the top of the document;

iv. the points you wish to speak about at the Final Approval Hearing; and

v. the identity (name, address, and telephone number) of any lawyer who will speak on your behalf.

If you object and the Settlement is approved, you will still be entitled to receive benefits under the Settlement that you qualify for, but you must submit a valid Claim Form to do so (see Question 6 above). Submitting a Claim Form does not waive your objection to the Settlement.

If you want to keep the right you may have, if any, to sue Brown-Forman based on the Data Breach, you must exclude yourself from the Settlement Class, as described below in Question 8.

EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

8. How do I opt out of the proposed Settlement?

To opt out and not be part of the Class, you must mail a letter to the Settlement Administrator stating that you wish to do so.

Your opt-out request should state: "I request that I be excluded from the settlement class in *Goodlett v. Brown-Forman Corporation*, and do not wish to participate in the Settlement." The

letter must include: (1) your full name and current address; and (2) your signature. Your request for exclusion must be postmarked no later than [75 days after Notice Deadline] and must be mailed to:

[SETTLEMENT ADMINISTRATOR ADDRESS]

REQUESTS TO OPT-OUT THAT ARE NOT POSTMARKED ON OR BEFORE [DATE] WILL NOT BE HONORED.

If you opt-out of the Settlement, you cannot also object to the Settlement.

9. If I do not exclude myself, can I sue Brown-Forman for the same thing later?

No. If you do not exclude yourself from the Settlement, and the Court approves the proposed Settlement, you give up the right you may have, if any, to sue Brown-Forman and the Released Entities for any claims arising out of the Data Breach. See the answer to Question 5 above.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in the case?

The Court has appointed the following lawyers to represent you and the other Settlement Class Members:

J. Nelson Thomas **Jessica L. Lukasiewicz** Thomas & Solomon, LLP 693 East Avenue Rochester, NY 14607	**Jeremiah Frei-Pearson** **Greg Blankinship** Finkelstein, Blankinship, Frei-Pearson & Garber, LLP One North Broadway Suite 900 White Plains, NY 10601

These lawyers are called Class Counsel. Class Members will not be charged by these lawyers for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

You can contact Class Counsel at 585-272-0540 or at ContactUs@theemploymentattorneys.com.

11. How will the lawyers be paid?

Any attorneys' fees and expenses approved by the Court will be paid by Brown-Forman, and the amount of any such award will not affect the benefits to be provided to eligible Settlement Class Members as described above. Class Counsel will ask the Court to award (1) up to $570,000 for attorneys' fees and costs to Class Counsel; and (2) up to $5,000 for a service award to the Class Representative. Brown-Forman has agreed not to oppose the request for the award up to these amounts. The Court may award less than this amount.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing on [DATE] in Courtroom _____ of the Jefferson County Judicial Center, 700 W. Jefferson St., Louisville, KY 40202, or the hearing may be conducted virtually by online or telephonic means. The date of the hearing may change. If you plan to attend, please check the Settlement website at [WEBSITE]. If the hearing is conducted virtually, instructions for how Class Members may attend the hearing will be posted at [WEBSITE].

At this hearing, the Court will consider whether the proposed Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may listen to people who have submitted timely requests to speak at the hearing. The Court may also decide how much Class Counsel will receive as attorneys' fees and expenses, and the amount of an award, if any, the Class Representative will receive. At or after the hearing, the Court will decide whether to approve the proposed settlement. We do not know how long these decisions will take.

YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING.

IF YOU DO NOTHING

12. What happens if I do nothing?

If you do nothing, you will be included in the Settlement Class, and will not be able to pursue any other lawsuit against Brown-Forman and the Released Entities concerning or relating to the Data Breach. If you previously signed up for identity protection services when offered by Brown-Forman, you will not receive any further benefits other than the identity protection services you have already received. If you did not previously sign up for identity protection services, and you do nothing, you will not be eligible for reimbursement of out-of-pocket losses or the cash payment for inconvenience.

GETTING MORE INFORMATION

13. Are there more details about the proposed Settlement?

This notice summarizes the proposed Settlement. For precise terms and conditions of the Settlement, please see the Settlement Agreement available at [WEBSITE].

PLEASE DO NOT CONTACT BROWN-FORMAN, THE COURT, OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS. CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR ARE AVAILABLE TO ASSIST YOU SHOULD YOU HAVE ANY QUESTIONS.

Exhibit 5

Settlement Administrator
c/o Administrator
PO Box ____
_____, ___ XXXXX-XXXX

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

A COURT DIRECTED THIS NOTICE.
THIS IS NOT A SOLICITATION
FROM A LAWYER.

YOU ARE ELIGIBLE FOR
UP TO THREE YEARS
OF CREDIT MONITORING
AND YOU MAY ALSO
BE ELIGIBLE TO RECEIVE
CASH PAYMENTS.

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>
<<BusinessName>>
<<Address>>
<<Address2>>
<<City>>, <<ST>> <<Zip>>-<<zip4>>

[BARCODE AREA]

TO: All individuals who were notified by Brown-Forman Corporation that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020.

A class action settlement has been proposed in litigation against Brown-Forman relating to a data breach that Brown-Forman disclosed on or about August 2020 ("Data Breach"). The case is known as Goodlett et al. v. Brown-Forman Corporation, Case No. 20-CI-005631 in the Jefferson Circuit Court. You are receiving this notice because Brown-Forman's records show that your personal information was or may have been compromised in the Data Breach. **The easiest way to submit a claim under the settlement is online at [website].**

Please read the detailed Class Notice and proposed settlement at [website] to fully understand your legal rights and options.

Under the terms of the settlement, you could be eligible to receive:

Identity Theft Protection Coverage: You can sign up for three years total of identity theft protection coverage through Experian IdentityWorks℠. For example, if you previously signed up for one (1) year of identity theft protection coverage through Brown-Forman, you will be eligible to receive an additional two (2) years of coverage.

To be eligible to receive identity theft protection coverage, you must submit a completed Claim Form (Identity Protection) by [75 days after notice is mailed/emailed]. You can access the Claim Form online at [WEBSITE].

Other Benefits: You may also be eligible to receive Reimbursement for Out-of-Pocket Losses, Reimbursement for Attested Time, and a Cash Payment for Inconvenience caused by the Data Breach. Further information about these benefits and whether you are eligible to receive them can be found at [WEBSITE].

To be eligible to receive these benefits, you must submit a completed Claim Form (Other Benefits) by the date on which your Experian IdentityWorks℠ provided under the settlement expires. You can access the Claim Form online at [WEBSITE].

Information on how to object to or opt out of the proposed Settlement can be found in Sections 7 and 8, respectively, of the detailed Class Notice available at [WEBSITE]. The deadline for objecting to or opting out of the proposed Settlement is [75 DAYS FROM THE NOTICE DATE].

The Court will hold a hearing on [DATE] to consider whether to approve the Settlement and whether to award up to $570,000 in attorneys' fees and expenses to Class Counsel and $5,000 to Plaintiff for her service as a class representative.

If you have questions or concerns, you can contact Class Counsel at ContactUs@theemploymentattorneys.com or at 585-272-0540. You can also contact the Settlement Administrator at [INSERT].

Exhibit 6

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION: _____
JUDGE: _____

(*ELECTRONICALLY FILED*)

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

-AND-

VS.

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVING NOTICE PROGRAM

This matter coming before the Court upon the motion of Plaintiff seeking preliminary approval of a class action settlement between Plaintiff Alissa Goodlett and Defendant Brown-Forman Corporation, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this order shall have the same meaning as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Action, Plaintiff, the Class, and Defendant, and venue is proper in this Court.

Settlement Class Certification

3. Pursuant to Rule 23 of the Kentucky Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, a Class consisting of the following:

All individuals who were notified by Brown-Forman that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020.

4. The Court hereby appoints Plaintiff Alissa Goodlett as Class Representative.

5. The Court hereby appoints Thomas & Solomon LLP and Finkelstein, Blankinship, Frei-Pearson & Garber, LLP as Class Counsel, finding that Class Counsel are well-qualified and experienced.

Preliminary Approval

6. Plaintiff has moved the Court for an order approving the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice against Defendant. The Court, having read and considered the Settlement Agreement and having received the Parties' arguments in support of the Settlement Agreement, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing.

7. The Court preliminarily finds that the requirements for class certification under Rule 23.02(a) *et seq*. of the Kentucky Rules of Civil Procedure are satisfied for the reasons set forth in the Plaintiff's Motion for Preliminary Approval. For purposes of the settlement, the Court finds that the proposed Class is ascertainable and that the requirements of numerosity, commonality, typicality, and adequacy of representation are satisfied. The Court further finds preliminarily that, for purposes of the settlement, there are predominant common questions of fact or law. The Court further finds preliminarily that the settlement is a superior means of resolving the Class Members' claims rather than individual suits.

8. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement falls within the range of possible approval as fair, reasonable, adequate, and in the best interests of the Settlement Class as to their claims against Defendant. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides beneficial relief to the Settlement Class. The Court also finds that the Settlement

Agreement: (a) is the result of serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of experienced mediator, the Honorable Ann O'Malley Shake (Ret.); (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Kentucky Rule of Civil Procedure 23; and (d) is not a finding or admission of liability by Defendant.

Notice and Administration

9. Heffler Claims Group is hereby appointed as Settlement Administrator and shall perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this order.

10. The Court finds that the notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 3 through 5 thereto (the "Notice Program") is reasonably calculated to, under the circumstances, apprise the members of the Class of the pendency of this action, the certification of the Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process and constitutes the best notice practicable under the circumstances.

11. The Court thus hereby approves the Notice Program, including the proposed Notice documents attached as Exhibits 3 through 5 to the Settlement Agreement. The Court also approves the plan for claims administration, including the Claim Forms attached as Exhibits 1 and 2 to the Settlement Agreement. The Parties may, by agreement, revise the Notice and Claims Forms in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

12. Within twenty (20) days of entry of the Preliminary Approval Order, Brown-Forman shall provide the Settlement Administrator with a list of the names, last known mailing addresses, and electronic mail addresses of the Class Members;

13. Pursuant to the Settlement Agreement, after the entry of this Preliminary Approval Order, and subject to the requirements of the Settlement Agreement and this Preliminary Approval Order, Brown-Forman shall coordinate with the Settlement Administrator to provide Notice beginning within thirty (30) days of this Order being entered ("Notice Date") as follows:

a The Settlement Administrator shall send the Settlement E-mail Notice to each Class Member for whom Defendant provided an email address on or before the Notice Date;

b The Settlement Administrator shall send the Settlement Postcard Notice via U.S. Mail to each Class Member on or before the Notice Date;

c If the mailing of a Settlement Postcard Notice is returned as undeliverable, the Settlement Administrator will make reasonable efforts to identify a new address for that Class Member, including, but not limited to, skip-tracing, and promptly re-send the Settlement Postcard Notice to the identified new address, if any. If the Settlement Postcard Notice is returned as undeliverable a second time, the Settlement Administrator shall not have any obligation to attempt to identify a new address for that Class Member unless the USPS provides a new address when returning the postcard as undeliverable for the second time.

d The Settlement Administrator shall publish, on or before the Notice Date, the Long-Form Notice on the website in accordance with the requirements set forth in the Settlement Agreement.

14. Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form (Identity Protection) and/or a valid Claim Form (Other Benefits). The deadline to submit a Claim Form (Identity Protection) is seventy-five (75) days after the Notice Date. Any Claim Forms (Other Benefits) must be submitted by the expiration date of the Settlement Class Member's Experian IdentityWorks℠ identity protection services provided under the Settlement.

Objections

15. Any member of the Class may object to the granting of final approval to the settlement. Any Class Member may object on their own or may do so through separate counsel at their own expense. Any objection must be mailed to the Settlement Administrator, no later than seventy-five (75) days after the Notice Date. Any written objection to the Settlement must include: (i) the name of the proceedings ("*Goodlett v. Brown-Forman Corporation*"); (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or their attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

16. In addition, if the Settlement Class Member (or their attorney) intends to appear at the Final Approval Hearing, a Notice of Intention to Appear must be mailed to the Settlement Administrator, no later seventy-five (75) days after the Notice Date. The Notice of Intention to Appear must contain the following information, if the Class Member (or their attorney) requests permission to speak at the final approval hearing: (i) the name of this Action ("*Goodlett v. Brown-Forman Corporation*"); (ii) the full name, address, and telephone number of the person intending to appear at the Final Approval Hearing; (iii) the words "Notice of Intention to Appear" at the top of the document; (iv) the points the person wishes to speak about at the Final Approval Hearing; and (v) the identity (name, address, and telephone number) of any lawyer who will speak on the person's behalf.

17. Any member of the Class who fails to file and serve a timely written objection in compliance with the requirements of this Order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

Exclusion

18. Class Members who wish to exclude themselves from the Class for purposes of this Settlement may do so by submitting an opt-out request to the Settlement Administrator prior to the opt-out deadline, which shall be seventy-five (75) days after the Notice Date. The opt-out request must comply with the exclusion procedures set forth in the Settlement Agreement. Each Class Member desiring to opt out from the Settlement Class shall timely submit, by U.S. Mail, a written opt-out request to the Settlement Administrator. The written notice must clearly manifest the intent to opt out from the Settlement Class and must: (1) state "I request that I be excluded from the settlement class in *Goodlett v. Brown-Forman Corporation*, and do not wish to participate in the settlement."; (2) identify a Class Member's name and current address; and (3) include a signature. A request for exclusion may not request exclusion of more than one member of the Class. Mass opt-outs are not permitted.

19. Any member of the Class who timely requests exclusion consistent with these procedures may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement. Any member of the Class who fails to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment.

Fairness Hearing

20. A fairness hearing (the "Final Approval Hearing" or "Fairness Hearing") shall be held before this Court on _____, Jefferson County Judicial Center, 700 West Jefferson Street, Louisville, KY 40202, or by videoconference or telephonic means, to consider: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether a final judgment should be entered; (c) whether to award payment of attorneys' fees, costs, and expenses to Class Counsel and in what amount; and (d) whether to award payment of a service award to the Class Representative and in what amount. The Court may adjourn the Fairness Hearing without further notice to Class Members. If the Court chooses to hold the

Fairness Hearing by videoconference or telephonic means, notice will be posted on the Settlement Website.

21. Class Counsel shall file any papers in support of their requested award of attorneys' fees and expenses and the Settlement Class Representative's service award on or before 7 days before the deadline for Class Members to object to the Settlement.

22. Plaintiff shall file a Motion for Final Approval and the Parties shall file any response to any objections to the Settlement on or before 10 days before the Fairness Hearing.

Miscellaneous Provisions

23. To protect its jurisdiction to consider the fairness of the Settlement Agreement and to enter a final order and judgment having binding effect on all Class Members, the Court hereby enjoins all members of the Class, and anyone who acts or purports to act on their behalf, from pursuing all other proceedings in any state or federal court that seeks to address rights or claims of any Released Party or Class Member relating to, or arising out of, any of the Released Claims.

24. Class Members shall be bound by all determinations and judgments concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

25. All case deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

26. The Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

27. Nonsubstantive amendments may be made to Settlement Agreement and Settlement Notice upon written agreement of the Parties without Court approval.

28. In the event that this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Settlement Class for purposes of effectuating the Settlement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the

Action shall proceed as though the Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the Action shall return to the procedural posture in effect prior to entry of this Order. Neither party, nor counsel shall refer to or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Kentucky Rules of Civil Procedure if this Settlement Agreement is not consummated and the Action is later litigated and contested by Defendant under Rule 23 of the Kentucky Rules of Civil Procedure.

29. The Settlement Agreement is not a concession or admission, and shall not be used against Brown-Forman or any of the Released Parties as an admission or indication with respect to any claim of any fault or omission by Brown-Forman or any of the Released Parties. Whether or not the Settlement Agreement is finally approved, neither the Settlement Agreement, nor any document, statement, proceeding or conduct related to the Settlement Agreement, nor any reports or accounts thereof, shall in any event be:

a Construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by Brown-Forman or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or

b Disclosed, referred to, or offered or received in evidence against any of the Released Parties in any further proceeding in the Action, or in any other civil, criminal, or administrative action or proceeding, except for purposes of settling the Action pursuant to the Settlement Agreement and by the Parties for purposes of enforcing the Settlement Agreement.

ENTERED this _____ day of _____, 2021.

_____
Hon. Mitch Perry
Jefferson Circuit Judge

Exhibit 7

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION: _____
JUDGE: _____

(*ELECTRONICALLY FILED*)

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

-AND-

VS.

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

This Court conducted a hearing regarding final approval of the Settlement Agreement in this action on _____, 2021. After reviewing the Settlement Agreement, all papers filed in connection with Plaintiff's motion for final approval of the Settlement Agreement, motion for attorneys' fees and costs, motion for class representative service award for Plaintiff Alissa Goodlett, and the argument of counsel, and, good cause appearing, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for final approval of the parties' Settlement Agreement is GRANTED. The Court hereby finally approves the Settlement Agreement and finds that the settlement terms set forth therein are fair, adequate, and reasonable, and are hereby ordered to be performed by all parties.

2. The Court hereby confirms as final its provisional certification, for the purposes of settlement pursuant to Rule 23 of the Kentucky Rules of Civil Procedure, a settlement class as defined as follows:

> All individuals who were notified by Brown-Forman that their personal information was or may have been compromised in the data breach initially disclosed by Brown-Forman in or about August 2020.

(the "Settlement Class"). The Settlement Class does not include persons who validly and timely submitted an opt-out request.

3. The Court hereby confirms as final its appointment of Alissa Goodlett as the representative of the Settlement Class.

4. The Court hereby confirms as final its appointment of Thomas & Solomon LLP and Finkelstein, Blankinship, Frei-Pearson & Garber, LLP as Class Counsel.

5. The Court has determined the Class Members received proper and adequate notice of the Settlement, final approval hearing, Class Counsel's application for attorneys' fees, and service award to the Class Representative.

6. This final approval order and judgment applies to all claims or causes of action settled under the terms of the Settlement Agreement, and shall be fully binding with respect to all Settlement Class Members who did not properly request exclusion.

7. The Court hereby grants Class Counsel's motion for attorneys' fees and costs in the amount of five-hundred and seventy thousand dollars ($570,000.00). The Court finds that the amount of this award is fair and reasonable in light of the efforts expended by Class Counsel in prosecuting this action and the benefits obtained for the Settlement Class. Defendant is hereby directed to pay Settlement Class counsel this amount as provided in Paragraph 30 of the Settlement Agreement.

8. The Court hereby grants Plaintiff's motion for a class representative service award for Plaintiff Alissa Goodlett in the amount of five thousand dollars ($5,000.00). This amount is awarded in recognition of the risk to Plaintiff as the class representative in commencing the action, both financial and otherwise, and the amount of time and effort spent by Plaintiff as class representative. Defendant is hereby directed to pay Plaintiff this amount as provided in Paragraph 30 of the Settlement Agreement.

9. Upon the Effective Date, the Action shall be, and hereby is dismissed with prejudice in its entirety as to the Defendant, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

10. This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendant of any liability, claim, or wrongdoing in this Action or in any other proceeding.

11. In the event that the Settlement Agreement does not become effective in accordance with the Settlement Agreement, then this Judgment and Order shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated, and in such event, all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

12. The Court hereby finds that there is no just reason for delay of entry of this Judgment and hereby directs its entry.

13. Without affecting the finality of this Judgment in any way, this Action shall remain open and the Court hereby retains continuing jurisdiction over (a) implementation of this Settlement Agreement; (b) disposition of the benefits to the class and payment of attorneys' fees,

costs, and the class representative service award; and (c) all parties hereto for the purpose of construing, enforcing and administering the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: _____ _____

Hon. Mitch Perry

Exhibit C

2015 WL 226112
Only the Westlaw citation is currently available.

Unpublished opinion. See KY ST RCP Rule 76.28(4) before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

COLLEGE RETIREMENT EQUITIES FUND, CORP., Appellant

v.

Richard Donald RINK, individually and on behalf of all others similarly situated; Stites & Harbison, PLLC; Joseph L. Hamilton; Marjorie A. Farris; Clark C. Johnson; Amy K. Jay; Cassandra Wiemken; Michael K. Kim; Vonda Kirby; Chadwick A. McTighe; Foley, Bryant, Holloway & Raluy, PLLC; Irvin D. Foley; Anthony Raluy; Stewart & Irwin, P.C.; Donn H. Wray; Bradley Skolnick; Nick Gahl; Mark Menkveld; Ray Biederman; M. Scott Barrett; and Barrett & Associates, Appellees

NO. 2012–CA–002050–MR
|
JANUARY 16, 2015; 10:00 A.M.

Synopsis

Background: After settlement of investors' class action against investment company arising out of company's delays in distributing investor funds, the Jefferson Circuit Court, Olu A. Stevens, J., awarded class counsel $7.5 million in attorney fees, calculated as approximately one-third of the total $22.4 million available to be claimed by class members. Company appealed.

Holdings: The Court of Appeals, Lambert, J., held that:

fee order adequately stated trial court's findings of fact and conclusions of law;

trial court did not abuse its discretion by awarding attorney fees calculated as a percentage of a common fund, rather than by the lodestar method;

fee award was reasonable under the circumstances; and

trial court's alleged failure to compare the attorney fee it awarded to an award calculated using the lodestar method did not render the award arbitrary.

Affirmed.

APPEAL FROM JEFFERSON CIRCUIT COURT, HONORABLE OLU A. STEVENS, JUDGE, ACTION NO. 07–CI–010761

Attorneys and Law Firms

BRIEF FOR APPELLANT: Richard M. Sullivan, Kenneth A. Bohnert, Edward F. Busch, M. Tyler Reynolds, Louisville, Kentucky

BRIEF FOR APPELLEES, RICHARD DONALD RINK AND ALL OTHERS SIMILARLY SITUATED: Irvin D. Foley, Anthony Raluy, Louisville, Kentucky, Joseph L. Hamilton, Marjorie A. Farris, Clark C. Johnson, Louisville, Kentucky, Donn H. Wray, Indianapolis, Indiana

BEFORE: DIXON, LAMBERT, AND STUMBO, JUDGES.

OPINION

LAMBERT, JUDGE:

***1** College Retirement Equities Fund appeals from the Jefferson Circuit Court's award of $7.5 million in attorneys' fees to class counsel in the underlying class action litigation. After careful review, we affirm.

College Retirement Equities Fund (CREF) is a New York corporation organized in 1952 as an investment company to allow its participants (largely school teachers) to purchase retirement annuities through investments in common stock. Dr. Richard Rink is a professor who, during his employment with the University of Louisville, maintained a retirement account administered through CREF at the University.

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On October 30, 2006, Rink requested CREF to liquidate his account and transfer the proceeds to a broker. On that date, the value of the securities in Rink's account was $688,951.15. While certain CREF investment documents state that funds will be distributed within seven days of a liquidation request, the funds in Rink's account were not distributed until December 15, 2006, at which time CREF transferred $690,052.13 to his broker. This amount represented $688,951.15, the account value on October 30, 2006, plus $1,100.98 in interest. However, Rink contended that during the delay in receiving his funds, his account appreciated by $19,082.28, and he should have received $709,134.00, which he claims was the account value on December 15, 2006.

The delay in transfer of Rink's funds was due to problems that started in 2005 when CREF began to replace its obsolete computerized record-keeping system with a new system. Due to these problems, the transfer requests of other CREF investors were similarly delayed from 2005 to 2008. When CREF became aware of the issue, it implemented a program to compensate all participants who experienced such delays, which included interest payments and other compensation.

Instead of accepting CREF's compensation, Rink filed a class action complaint against CREF, alleging that it breached its fiduciary duties and contractual obligations by retaining the amount his and other class members' accounts appreciated during distribution delays exceeding the seven day limit set forth in CREF's form contract. Discovery eventually revealed that CREF used gains from appreciated accounts to offset losses from other participants' accounts that depreciated during the delays, which during the three-year duration of CREF's computer glitch was substantial.

After five years of contentious litigation, the parties executed a settlement agreement on May 10, 2012. The circuit court entered an order giving final approval to the settlement agreement on September 6, 2012. The agreement did not create a specified or fixed sum of money to distribute to class members. Instead, the agreement provided that each settlement class member who submitted a valid claim form during a ninety-day claim period would receive the difference between the amount actually received and that which would have been received if the securities had been priced as of the date of actual distribution (plus 4% interest per annum). The settlement provided that CREF would pay the costs of class notice and claims administration, as well as any reasonable attorneys' fees and expenses the circuit court might award. Any fees that CREF paid would be in addition to the payment of claims and did not reduce the amount any class member received for his or her claim.

***2** During the claims period, it was estimated that approximately 28,000 class members were eligible to file a claim and that if 100% did so, CREF would pay about $22.4 million in claims. These numbers were estimates; however, under the settlement, there was no limit on what CREF was required to pay any individual class member or the settlement class as a group. During the claim period, the settlement class members submitted $16.15 million in claims, which CREF has paid.

On July 2, 2012, class counsel filed a motion requesting that the circuit court award them $8.5 million in attorneys' fees and up to $150,000 in expenses. During briefing on the issue, class counsel reduced their fee request to $7.5 million. Counsel based their motion on a "percentage of fund" method, arguing that $7.5 million in fees was a reasonable percentage (one-third) of what counsel contended was a $22.4 million "common fund" that the settlement allegedly created for the class. CREF opposed the motion on the ground that the fee sought was excessive.

On September 6, 2012, the circuit court held a fairness hearing to address the motion for attorneys' fees. The circuit court entered an order on September 25, 2012, awarding class counsel $7.5 million in attorneys' fees and up to $150,000.00 in costs and expenses. The court stated that the fee award was warranted under the "common fund doctrine" as codified in Kentucky Revised Statutes (KRS) 412.070 and was determined based on a percentage of the fund, plus reasonable expenses. The court found that "[a] fee award of approximately one-third of the total fund available for a payment to the settlement class is well-within the range of appropriate percentage fees in an action of this nature."

In October 2012, CREF moved the circuit court to make additional findings with respect to its September 25, 2012, order. The circuit court denied that motion on November 1, and on November 16, 2012, CREF filed a notice of appeal seeking review of the September 25, 2012, and November 1, 2012, orders.

On appeal, CREF argues that the circuit court's award of attorneys' fees is erroneous and excessive for several reasons. First, CREF argues that the settlement in the underlying class action did not create a common fund but instead created a

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"claims-made" settlement with no cap, under which CREF paid the aggregate amount of all individual valid claims. Since the ultimate amount payable was not known at the time of the fee motion and fairness hearing and was not in a set/fixed amount against which claims were made and paid, CREF argues the circuit court should have used the lodestar method (multiply attorney hours by a reasonable hourly rate) to set the fees, under which a reasonable fee would be, at most, $5.06 million.

Next, CREF alleges that the circuit court failed to conduct a lodestar crosscheck to ensure that its percentage award did not produce an excessive effective hourly rate. CREF contends that this crosscheck shows that the $7.5 million in fees, when divided by class counsel's 5,074 hours in the case, produces an exorbitant hourly rate of almost $1,500 for each hour of time recorded by each partner, associate, and paralegal of class counsel's three separate law firms.

CREF argues that the circuit court misapplied the percentage-of-fund method and KRS 412.070, since the rule is that the fee should have been based on a percentage of the $16.1 million in claims actually paid to class members, and not, as the court's fee was, on a theoretical $22.4 million "phantom fund" that only would have been paid if 100% of the members had filed claims.

***3** Finally, CREF argues that even if the percentage-of-fund method had been the proper method to apply, the circuit court's one-third (33%) percentage is excessive, because it is significantly higher than recently awarded percentages.

Kentucky Rules of Civil Procedure (CR) 23.08 governs the award of attorneys' fees in a certified class action. CR 23.08(3) states that when a trial court awards fees in a class action, it must find the facts and state its legal conclusion under CR 52.01. Furthermore, when awarding fees in class actions, the trial court must also explain its "reasons for adopting a particular methodology." *Moulton v. U.S. Steel Corp.,* 581 F.3d 344, 352 (6th Cir.2009) (internal citation omitted).

CREF initially argues that the circuit court's September 25, 2012, fee order does not specifically find facts and does not state separately any conclusions of law. Further, CREF argues that the circuit court did not explain its reasons for adopting the percentage method to award a fee, and that it instead simply stated in a conclusory fashion that "a proper award would be one based on a percentage of the fund." CREF argues that the circuit court then summarily denied its motion to make additional fact findings as to what factors the court used to determine the fee awarded and whether a lodestar crosscheck was used to award fees. CREF urges this Court to conclude that the circuit court's ruling was arbitrary and vacate it.

A review of the record indicates that the circuit court did adequately state its findings of fact and conclusions of law supporting the attorneys' fees awarded to class counsel in its September 25, 2012, order. In fact, in its order, the circuit court indicated that it found the results obtained for the settlement class by class counsel to be exceptional. The court noted that any attorneys' fees awarded would be on top of the payments to the settlement class and thus that any award of fees would not reduce the recovery to the settlement class.

The circuit court also explained that class counsel was competent and experienced in class action litigation and that they were diligent and competent in prosecuting the action. The court described the underlying class action as "hard-fought litigation in which CREF raised numerous challenges to the claims presented and to the class certification efforts and in which CREF's objections and actions additionally necessitated a number of discovery disputes."

The circuit court held that this was a case in which an award of attorneys' fees and expenses was warranted under the common fund doctrine, as codified in KRS 412.070, and a proper award would be one based on a percentage of the fund, plus reasonable expenses. The circuit court then held that an award of $7.5 million plus actual costs incurred up to a limit of $150,000.00 was reasonable. The court noted that a fee award of approximately one-third of the total fund available for payment to the settlement class was well within the range of appropriate percentage fees in an action of this nature.

A review of the court's order awarding attorneys' fees indicates that the circuit court did support its award with written findings of fact and conclusions of law supporting its award of fees to class counsel. Additionally, the court did explain its reasons for adopting a particular methodology. Therefore, we find CREF's argument that the order awarding attorneys' fees was arbitrary or was clear error to be without merit. We find no error in this regard.

***4** CREF next argues that the circuit court's use of the percentage method to award fees was arbitrary since the

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settlement in this case was a claims-made settlement that did not create a common fund.

In order to address this argument and CREF's remaining arguments on appeal, a brief background about attorneys' fees in class action cases is helpful. Under CR 23.08, the trial court in a certified class action is to approve or award "reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." When doing so, the court's primary concern should be to attract competent counsel but not produce windfalls to attorneys. *See Reed v. Rhodes,* 179 F.3d 453, 471 (6th Cir.1999). Even when fees are authorized by the parties' agreement, courts have an independent obligation to ensure that the award is reasonable. *In re Bluetooth Headset Products Liability Litig.,* 654 F.3d 935, 941 (9th Cir.2011).

While no Kentucky appellate court has addressed how a trial court is to determine a reasonable fee under CR 23.08, federal courts awarding fees in class actions use two methods, lodestar and percentage-of-fund. The lodestar method sets a fee by multiplying the reasonable hours expended by the reasonable hourly rate. In the percentage-of-fund method, the fee is expressed as a percentage of a set or fixed "common fund," whether the fund is obtained by judgment or settlement.

CREF contends that some courts express preference for the percentage method in class actions with a true common fund, while other courts hold that lodestar must be used. *See Longden v. Sunderman,* 979 F.2d 1095, 1099 (5th Cir.1992). CREF argues that a majority of courts hold that either method is acceptable in any case, even when a settlement creates a common fund. *See Rawlings v. Prudential–Bache Properties, Inc.,* 9 F.3d 513, 516 (6th Cir.1993); *Johnston v. Comerica Mort. Corp,* 83 F.3d 241, 246 (8th Cir.1996) (either method proper). CREF contends that the more appropriate method should be used in light of the unique circumstances of each case. CREF argues that even if the percentage-of-fund method is used, a trial court should use the lodestar method as a cross-check to ensure a percentage-of-fund award is not excessive and does not produce an effective hourly rate that is unreasonably high, citing *Goldberger v. Integrated Resources, Inc.* 209 F.3d 43, 50 (2nd Cir.2000).

In support of its argument that the settlement award in this case did not create a common fund, CREF contends that the circuit court referred to a "total fund available for payment to the settlement class," referring to the $22.4 million CREF would have paid if 100% of the class members filed a claim, and awarded a fee of 1/3 of that amount ($7.5 million). CREF posits that the circuit court's order was based on a finding that this hypothetical $22.4 million "phantom fund," which was never paid because only $16.1 million in claims were filed during the claim period, was a common fund out of which a percentage-of-fund fee award could be made. CREF contends that this is clearly erroneous because a common fund exists only when a settlement specifies a specific or defined sum of money, which it argues is not the case here because the settlement is a claims-made agreement in which CREF's total money obligation was not specified and in fact was unlimited since every class member was to be paid the amount of their filed claim.

***5** CREF explains that the only "fund" ever created and explicitly named as such under the agreement was the money it deposited into an escrow account for distribution to class members. The amount to be deposited was not specified and not known until after the ninety-day claim period, at which time claims administrator BMC Group informed CREF of the total amount of the individually-approved claims. On the "funding date," (seven days after the final order approving the settlement became final), CREF deposited the total amount of the individually-approved claims ($16.1 million) into the escrow account of the claims administrator, which then issued a check to each claimant.

CREF contends that the $22.4 million "phantom fund" referred to by the circuit court was not a common fund, as it never actually existed. However, CREF argues the $16.1 million in escrow money also was not a common fund since the amount deposited was an aggregation of many previously-approved and individually-earmarked monies, which the claims administrator paid to each class member. Claims were not distributed from a set fund; rather, the escrow account was the accumulation of many individually-approved claims. CREF argues that such claims-based settlement funds are not considered by courts to be common funds.

The Appellees counter that the circuit court properly applied the percentage-of-fund method in determining the fee award. In support of this, the Appellees argue that in awarding attorneys' fees in class action litigation, courts have long recognized that a "lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980). The Appellees posit that

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this common fund doctrine is codified under KRS 412.070(1). That statute states:

> (1) In actions for the settlement of estates, or for the recovery of money or property held in joint tenancy, coparcenary, or as tenants in common, or for the recovery of money or property which has been illegally or improperly collected, withheld or converted, if one (1) or more of the legatees, devisees, distributees or parties in interest has prosecuted for the benefit of others interested with him, and has been to trouble and expense in that connection, the court shall allow him his necessary expenses, and his attorney reasonable compensation for his services, in addition to the costs. This allowance shall be paid out of the funds recovered before distribution. The persons interested shall be given notice of the application for the allowance, provided, however, that if the court before whom the action is pending should determine that it is impracticable and too expensive to notify all of the parties individually, then by order of said court, personal notice may be dispensed with and in lieu thereof, notice of the application shall be given by an advertisement pursuant to KRS Chapter 424.

The Appellees contend that courts that have considered class settlements like the one at issue in this case have referred to them as "constructive common fund" cases and analyze fee entitlement as a percentage-of-fund created by the labors of counsel, citing *Guschausky v. Am. Family Life Assur. Co. of Columbus,* 851 F.Supp.2d 1252, 1257 (D.Mont.2012).[1]

The Appellees note that even though the exact amount available to settlement class members can be quantified to the penny and was fully known to the circuit court at the time it entered the fee award, CREF contends that it was a "hypothetical phantom fund." The Appellees argue that there was no hypothetical phantom fund, as the fund was easily ascertainable. In support of this, the Appellees note that prior to the hearing in this case, the court was presented with the affidavit of CREF's own employee, Sandra Kong, who verified that the total amount available for settlement class members was $22,406.753.27, which they contend is hardly "hypothetical" or "phantom." The court expressly stated in the fee award, "[t]he total value of the settlement for the approximately 26,188 settlement class members currently identified is approximately $18 million, before accounting for at least four years of interest which would increase that total to $22.4 million." The Appellees argue that although CREF's own witness verified the creation of this $22.4 million fund, CREF mistakenly asserts that a common fund only exists when a settlement specifies a specified or defined sum of money.

***6** The Appellees contend that CREF ignores the fact that the full amount available to settlement class members was readily ascertainable and known to the circuit court at the time it entered the fee award and misstates the law in its brief. They argue that courts *do* recognize the use of the percentage-of-fund methodology in awarding attorneys' fees in a class action *even if no formal fund is created,* so long as the court can reasonably determine the settlement value, citing *Shaffer v. Continental Cas. Co.,* 362 Fed.Appx. 627, 631 (9th Cir.2010). The Appellees argue that the fact that the settlement is uncapped or the fact that every class member will be paid upon filing a claim does not change the character of a settlement. What is important is that the value of the settlement can be ascertained. If so, the Appellees argue, it is appropriate to base a fee award upon a percentage of the benefits available to settlement class members.

The Appellees further argue that the constructive common fund doctrine was created to address the economic benefit conferred on settlement class members when attorneys' fees are paid separately. "The award to the class and the agreement on attorney fees represent a package deal. Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class recovery." *Johnston v. Comerica Mortgage Corp.,* 83 F.3d 241, 246 (8th Cir.1996). The Appellees contend that since each settlement class member receives a higher net recovery than if assessed a portion of the attorneys' fee from a "traditional" common fund, each settlement class member receives a quantifiable benefit. Accordingly, the attorneys' fees and class settlement proceeds are aggregated for determining the value of the constructive common fund. *Guschausky,* 851 F.Supp.2d at 1257 ("When attorneys' fees are paid independently, the aggregate amount of attorneys' fees and class settlement payments may be viewed as a 'constructive common fund' ").

We agree with the Appellees that CREF attempts to exalt form over substance in asking this Court to find that the circuit court abused its discretion in awarding the attorneys' fees as a percentage-of-fund. The reality is that in the underlying settlement, the class members received a benefit that was far better than it would have been had a cap been established. The settlement in this case insured that the class members did not have their recovery reduced in any way to pay for the services provided by class counsel. Therefore, we find no

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error in the circuit court treating the settlement in this case as a constructive common fund.

A review of the record indicates that the constructive common fund in this settlement included the total amount available to settlement class members ($22,406,753.27), plus the $7,500,000.00 fee, plus expenses in the amount of $114,922.09, for a total constructive common fund of $30,021,675.36. The $7.5 million fee represents 25% of the constructive common fund. Federal Courts within Kentucky and the Sixth Circuit universally recognize that "the percentages awarded in common fund cases typically range from 20 to 50 percent of the common fund awarded." *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.,* 234 F.R.D. 627, 633 (W.D.Ky.2006). *See also Enterprise Energy Corp. v. Columbia Gas Transmission Corp.,* 137 F.R.D. 240, 249 (S.D.Ohio 1991).

CREF also argues that the fee award in the instant case is not compatible with KRS 412.070, because it is based on the amount available to settlement class members, instead of the amounts actually claimed by settlement class members. It is not disputed that the labors of class counsel created the $22,406.753.23 pool available for distribution to settlement class members. KRS 412.070 provides that attorneys' fees are to be paid "out of the funds recovered *before distribution.*" (Emphasis added). "The words of [a] statute are to be given their usual, ordinary, and everyday meaning." *Gateway Construction Co. v. Wallbaum,* 356 S.W.2d 247, 249 (Ky.1962) (internal citation omitted). We agree with the Appellees that the statute recognizes the practical reality that a common fund attorney fee under KRS 412.070 should be measured *before* determining payment to individual claimants. Indeed, this interpretation of KRS 412.070 is entirely consistent with United States Supreme Court precedent.

***7** In *Boeing, supra,* the United Supreme Court held that attorneys' fees were appropriately determined as a percentage of the entire amount obtained for the class even though some class members failed to make claims for their individual damages. "[Absentee class members'] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel." *Boeing,* 444 U.S. at 480–81. Because all class members receive a benefit with this type of settlement (including class members who choose not to take advantage of it) a majority of courts have awarded attorneys' fees based upon the amount that would be recovered if every class member makes a claim, regardless of whether the claims are filed. *See, e.g., Masters v. Wilhelmina Model Agency, Inc.,* 473 F.3d 423 (2nd Cir.2007); *Williams v. MGM–Pathe Commun. Co.,* 129 F.3d 1026 (9th Cir.1997).

Based on the above, we cannot say that the circuit court's decision to utilize a percentage-of-fund method based upon a constructive common fund was arbitrary or an abuse of discretion. A review of the applicable case law from the various jurisdictions indicates that either method was appropriate, as long as the circuit court based its decision on the facts presented by the underlying settlement and the benefits the class members received as a result of the efforts of class counsel, which was clearly the case here.

Next, CREF argues that the percentage awarded by the circuit court was too high. CREF argues that regardless of what the proper size of the fund was, the circuit court's use of one-third (33%) as the proper percentage was erroneous. In support of this, CREF argues that in securities class actions that awarded fees based off the percentage-of-fund method, the recent trend is for courts to award less than 20% of a common fund. CREF contends that even courts that award slightly more than 20% consider 25% as the benchmark percentage in securities cases, citing *City of Pontiac General Employees Retirement Systems,* 2013 WL 3796658 (S.D.N.Y.). There, the court reduced a fee request of 33% of $19.5 million to a "fee award at the increasingly used benchmark of 25%." CREF contends that the $7.5 million awarded as fees in this case is 46% of the $16.1 million that class members received under the settlement, which is excessive.

Again we agree with the Appellees that the attorneys' fees awarded by the circuit court were reasonable under the circumstances and were supported by the record in this case. Given the varying amounts of attorneys' fees awarded in similar types of class action litigation, we cannot say that an award of one-third of the constructive common fund was erroneous. Had the circuit court determined that the circumstances of this litigation warranted fees of only 25% of the settlement amount, it would have been in its discretion to do so. Awarding 25–30% of the settlement amount was not arbitrary and was supported by the evidence in this case.

Finally, CREF argues that the circuit court should have checked the award of attorneys' fees by comparing it to an award of fees calculated using the lodestar method. CREF alleges that its failure to compare the two methods in its

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written order renders the circuit court's order arbitrary and therefore an abuse of discretion.

In support of this argument, CREF contends that a lodestar fee is determined by multiplying the reasonable attorney hours expended by a reasonable hourly rate. CREF notes that the base lodestar for the three law firms comprising class counsel is $1.685 million for 5,073.9 hours time, giving a blended hourly rate of $332.00. In this case, the circuit court awarded a percentage fee of $7.5 million, which is 4.45 times the base lodestar fee ($7.5 million divided by 1.685 million). The 4.45 figure is known as a "multiplier" because the lodestar of $1.65 million is "multiplied" by 4.45 to reach the $7.5 million fee awarded by the circuit court. In effect, this means the circuit court awarded a fee that is 4.45 times what class counsel's legal services are worth in the legal market. CREF contends that even if a modest lodestar multiplier was appropriate, the 4.45 multiplier that the circuit court's $7.5 million fee produces results in an effective hourly rate of $1,500.00.

***8** CREF urges this Court to consider the court's analysis in *Hall v. Children's Place Retail Stores,* 669 F.Supp.2d 399 (S.D.N.Y.2009), where the court awarded a fee of 15% (instead of the requested 27% herein) of a $12 million settlement fund. The awarded fee produced a lodestar multiplier of 2.08, while the requested fee would have produced a 3.75 multiplier. The court noted that "more recent cases reveal[ ] a trend toward awarding more modest fees" and that "an award of one-third of the settlement fund is not always justified where that percentage amounts to a lodestar multiplier of substantially more than 2.0." *Id.* at 403–404. CREF contends that this action was a typical securities and breach of contract case and did not present any difficult or complex issues. Therefore, any multiplier of more than 2.0 over lodestar is difficult to justify since it would still produce a base lodestar fee of $3.3 million (2.0 × $1.685 million) and an effective hourly rate of $650 ($3.3 million divided by 5,074 hours).

CREF argues that because the $7.5 million fee awarded produces an unreasonable $1,500.00 hourly rate, the circuit court's refusal to use the lodestar method, at least as a cross-check to avoid that outcome, is arbitrary and should be reversed.

The record in this case indicates that CREF presented the lodestar method to the circuit court in its arguments below. Furthermore, CREF presented its argument that the circuit court should utilize the lodestar at least as a cross-check to the court below. Accordingly, the circuit court considered CREF's arguments regarding the reasonableness of the attorneys' fees and awarded the fee it thought reasonable, given the complexity of the case and the effectiveness of class counsel. The circuit court specifically detailed this reasoning in its written order, which it was required to do. Because the circuit court supported its conclusions of law with substantial findings of fact, we cannot say that its reasoning was arbitrary.

It is well-settled that the circuit court has discretion to determine the "appropriate method for calculating attorneys' fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them." *Rawlings,* 9 F.3d at 516. This Court reviews an award of attorneys' fees for an abuse of discretion. *Id.* This highly deferential standard of review recognizes the trial court's superior understanding of the litigation. *Hensley v. Eckerhart,* 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). Absent a clear abuse of discretion that is not supported by the record and the facts of the underlying litigation, we will not disturb a circuit court's award of attorneys' fees in a complex class action.

Finding no abuse of discretion, we affirm the circuit court's September 25, 2012, order.

STUMBO, JUDGE, CONCURS.

DIXON, JUDGE, CONCURS IN RESULT ONLY.

All Citations

Not Reported in S.W. Rptr., 2015 WL 226112

Footnotes

1 *Guschausky* was later vacated based on AFLAC's motion for relief under Federal Rule of Civil Procedure (FRCP) 60.02(b)(6), which showed that the common fund amount was erroneous. However, the court did not retract its analysis on the constructive common fund.

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Exhibit D

THOMAS & SOLOMON LLP

FIRM RESUME

Thomas & Solomon LLP

Thomas & Solomon LLP ("T&S") has extensive experience litigating complex actions, including nationwide class and collective actions. The lawyers at Thomas & Solomon also litigate complex qui tam actions, involving claims of fraud against the government. Descriptions of representative cases involving T&S are below:

- *Coleman v. Railworks Corporation,* No. 20-cv-02428 (S.D.N.Y.) Court approved a data breach class action settlement involving a breach of personally identifiable information of approximately 20,763 current and former employees, their beneficiaries and dependents, and IRS Form 1099 vendors, including their names, addresses, driver's license numbers and/or government issued IDs, Social Security numbers, date of birth, and dates of hire/termination and/or retirement.

- *McDonald v. Paperless Corporation, et al.*, No. 20-cv-516 (M.D. Fla.). Filed a data breach class action involving a breach of current and former employees' personal information, including their names, address, pay and withholdings information, bank account number information, and Social Security numbers.

- *U.S. ex rel. Carranza v. Guaranteed Rate, Inc.*, No. 17-637 (N.D.N.Y.). T&S filed a qui tam action alleging that the bank had used improper underwriting policies and practices thereby engaging in fraud against the government. After an investigation by the government, a $15 million settlement was reached.

- *Lusk v. Serve U Brands, Inc.*, No. 17-6451 (W.D.N.Y.). Represented delivery drivers in a class and collective action for wage and hour violations, including the failure to pay drivers required reimbursement for vehicle expenses. The action was settled in 2019 for $2.5 million.

- *U.S. ex rel. McGeehan v. Gateway Funding Diversified Mort. Servcs*., No. 16-750 (N.D.N.Y.). Relator, represented by T&S, filed a qui tam action against the financial institution claiming that it falsely certified compliance with underwriting requirements for Federal Housing Administration insurance. After an investigation by the government, a $14.5 million settlement was reached.

- *Roach v. T.C. Cannon Corp*., No. 10-591 (N.D.N.Y.). In an action alleging violations of various wage and hour laws on behalf of hourly workers at a restaurant chain, T&S served as co-class counsel. A class was certified, after the Second Circuit reversed and remanded an order by the district court denying class certification. The parties reached a settlement in 2018 in this case and companion litigation in the amount $3.5 million.

- *U.S. ex rel. Bozzelli v. PHH Mortgage Corp.*, No. 13-3084 (E.D.N.Y.). In a qui tam action claiming defendants engaged in fraud, including against the Federal Housing Administration through their underwriting practices, the claims were settled for approximately $74.5 million after an investigation by the government.

- *Demanchick v. S.G.P. Assocs. L.L.C.*, No. 2016-796 (Monroe Cty.). T&S brought a class action on behalf of banquet service workers working at a hotel. The case was resolved for $1.8 million in 2017.

- *Velva B. v. Megan J. Brennan, Postmaster General*, Hearing No. 520-2010-00280X (EEOC). T&S served as co-class counsel in a discrimination disability case involving over 100,000 workers against the U.S. Postal Service. The case was certified as a class action, and the EEOC found in favor of the employees holding that the Postal Service engaged in classwide discrimination, entitling class members to seek relief for the harm they experienced.

- *U.S. ex rel. Kelschenbach v. M&T Bank Corp.*, No. 13-280 (W.D.N.Y.). Whistleblower qui tam case alleging that the bank engaged in fraudulent mortgage lending practices under loans guaranteed by the Federal Housing Administration. After an investigation by the government into the claims, the matter was settled for $64 million in 2016.

- *Acevedo v. Workfit Medical LLC*, No. 14-6221 (W.D.N.Y.). T&S filed a lawsuit on behalf of employees against a medical staffing company for unpaid wages and overtime and for wage notice violations. In 2015, the parties reached a settlement of $2.1 million which received final approval in 2016.

- *Goldowsky v. First Niagara Bank, N.A.*, No. 16/7322 (Monroe Cty.). In a class and collective action alleging violations of federal and state overtime law, T&S achieved a $2.94 million settlement to resolve the claims on behalf of the plaintiffs.

- *Belviso v. Global Spectrum*, LP, No. E154027/2014 (Erie Cty.). T&S filed a class action lawsuit for unpaid gratuities pursuant to the New York Labor Law on behalf of banquet service employees who worked at the Niagara Falls Conference and Event Center. The settlement amount totaled $1.25 million and was approved by the court in 2016.

- *Nemeth v. General Motors Fin. Co., Inc.*, No. 12-2761 (C.D. Cal.). Class and collective action filed on behalf of underwriters working for an automobile financing company. T&S achieved a $2.9 million settlement to resolve plaintiffs' claims.

- *George v. TD Bank, N.A.*, No. 12-1695 (D.Conn.). Class and collective action filed on behalf of employees who performed underwriting functions for the financial institution for wage and hour violations. In 2013, the parties reached an $8 million settlement.

- *Cavallaro v. UMass Mem. Health Care Inc.*, No. 09-40152 (D.Mass.). On behalf hourly employees at a health care system, T&S brought a class and collective action for overtime wages. After dismissal by the district court, the First Circuit

reversed and remanded, and the parties commenced settlement discussions. The parties reached a $2.2 million settlement in 2013.

- *Hamelin v. Faxton-St. Luke's Healthcare*, No. 08-1219; *Colozzi v. St. Joseph's Hosp. Health Center*, No. 08-1220; *Myers v. Crouse Health System, Inc.*, No. 08-1221 (N.D.N.Y.). In certified class actions brought on behalf of health care workers alleging claims under federal and state law for unpaid wages and overtime, T&S achieved settlements totaling $4.5 million for the workers with the three health care systems.

- *Beatty v. Capital One Financial Corp*., No. 12-434 (N.D. Ill.). T&S brought a lawsuit on behalf of a class and collective claiming that underwriters and relationship managers employed by the defendants were misclassified as exempt from overtime. A settlement of $3.2 million was reached and approved by the court in 2012.

- *Davis v. JPMorgan Chase & Co.*, No. 01-6492 (W.D.N.Y.). Nationwide class and collective action on behalf of mortgage underwriters seeking unpaid overtime. After ten years of litigation, including an appeal to the Second Circuit which reversed the district court's order granting summary judgment in favor of the defendants, the parties reached a $42 million settlement that received final approval in 2011.

- *Barrus v. Dick's Sporting Goods.*, No. 05-6253 (W.D.N.Y.). Class and collective action nationwide on behalf of hourly employees claiming unpaid overtime wages. After extensive litigation and depositions of class members throughout the country, the parties reached a $15 million settlement which achieved final approval in 2011.

- *Gregg v. Trustees of the Univ. of Penn.*, No. 09-5547 (W.D. Pa.). T&S filed a class and collective action lawsuit on behalf of hospital workers for unpaid wages, including during meal breaks. The parties reached a $7.75 million settlement in 2011.

- *Huchzermeier v. Unity Health System*, No. 2008/16016 (Monroe Cty.). Action on behalf of a class and collective of employees who worked at a health system for wage and hour violations. In 2009, T&S achieved a settlement of $1.6 million for the workers.

- *Doe v. JPMorgan Chase & Co.*, No. 06-6237 (W.D.N.Y.). Represented plaintiffs who worked as personal and consumer bankers in a class and collective action claiming they were misclassified as exempt from overtime. A $7.75 million settlement was reached in 2007.

- *Mitchell v. Paychex, Inc.*, 03-6650 (W.D.N.Y.). Class and collective action on behalf of national sales support representatives and direct marketing sales representatives for unpaid overtime compensation as a result of being

misclassified as exempt employees. The parties reached a $5.5 million settlement which the court approved in 2007.

- *Malcolm & Luciano v. Eastman Kodak Co.*, Nos. 03-6589, 04-6194 (W.D.N.Y.). Class and collective actions on behalf of certain technical writers and customer support service specialists alleging such employees had been improperly misclassified as exempt from overtime. The parties agreed to a settlement fund of $11 million to resolve the claims. The court granted final approval of the settlement in 2007.

- *Lighthouse v. Rochester Institute of Tech.*, No. 2007-003180 (Monroe Cty.). Plaintiffs challenged the employer's policy of automatically deducting time for meal breaks and its time rounding policy, among others. The parties were able to resolve the claims for $2.5 million in 2007.

T&S represents clients in class actions and other matters in courts across the country and is currently prosecuting cases in United States District Courts in New York, Florida, and California.

Attorney Profiles

J. Nelson Thomas

J. Nelson Thomas is a founding partner of T&S. He has more than two decades of experience, including successfully representing clients in complex class and collective action lawsuits and whistleblower cases involving fraud on the government. He is a featured national speaker and author and leads panel discussions with judges and other lawyers on these issues. While his practice currently focuses on representing employees, he represented numerous employers at his previous firm – from large international companies to local entrepreneurial start-ups – acquiring a depth of experience that gives him an edge in litigating cases for plaintiffs. In 2017, he had the 22nd largest settlement in the country and the fifth largest in New York State. The total settlements he has reached for his clients over his career exceed $200 million. Mr. Thomas is an arbitrator with the American Arbitration Association and a certified federal court mediator with the U.S. District Court for the Western District of New York. Mr. Thomas received his B.A., *summa cum laude*, from Emory University and his J.D. from the University of Virginia School of Law. He has been selected a Super Lawyer from 2011 through the present and has receive the Martindale-Hubbell AV Preeminent rating from 2009 through the present, signifying the highest level of professional excellence.

In 1999, Mr. Thomas was recognized by the judges of the U.S. District Court for the Western District of New York as they awarded him the Special Service Award for "his excellence in the vigorous representation of his clients." In 2002, he received the 40 under 40 Award, which honors leaders who have made a significant contribution to the Rochester community.

Mr. Thomas is admitted to practice in New York and Pennsylvania and is a member of the bars of the Supreme Court of the United States, the Court of Appeals for the Second, Third, Sixth and Ninth Circuits, and U.S. District Courts for the District of Colorado, the Western, Eastern, Northern and Southern Districts of New York and the Western District of Pennsylvania.

Jessica Lukasiewicz

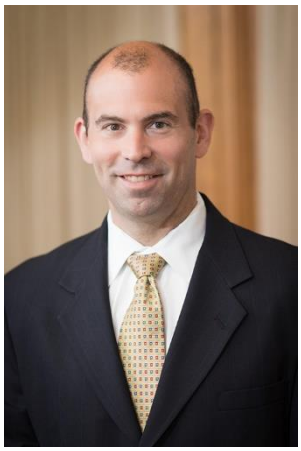
Jessica Lukasiewicz is a partner at T&S. Since joining the firm, Ms. Lukasiewicz has worked extensively on representing employees in wage-and-hour matters under both state and federal law, including the Fair Labor Standards Act. She also counsels and litigates on a wide variety of employment matters including discrimination, sexual harassment, and the Family Medical Leave Act. She was recognized as a Rising Star from 2015 through 2019.

During law school, Ms. Lukasiewicz gained experience on a wide range of discrimination issues while working at MFY Legal Services, Inc., Legal Services of Central New York, and the U.S. Department of Education Office for Civil Rights. She was also Business Editor for The Digest.

Before attending law school, Ms. Lukasiewicz graduated *cum laude* from the University of Florida in 2005, where she majored in psychology.

Ms. Lukasiewicz is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the Western, Eastern, Northern, and Southern Districts of New York and the Second Circuit Court of Appeals.

Michael J. Lingle



Michael J. Lingle is a partner with T&S. Throughout his career at T&S, Mr. Lingle has represented clients in class and collective actions, in both federal and state court. Mr. Lingle was recognized as a Rising Star in 2014-15 and has been recognized as a Super Lawyer every year since 2016. He currently serves as a member of the New York State Bar Association's Committee on Professional Ethics.

Prior to joining T&S, Mr. Lingle worked in the Executive Compensation and Employee Benefits practice group of the multinational law firm Shearman & Sterling. He earned his B.S. from Cornell University, School of Industrial and Labor Relations, with honors, and his J.D. from Harvard Law School.

Mr. Lingle is admitted in New York and is a member of the bars of the U.S. District Courts for the Western, Eastern, Northern and Southern Districts of New York. He is also admitted to practice before the Court of Appeals for the Second, Third and Sixth Circuits.

Jonathan Ferris

Jonathan Ferris is an associate attorney at T&S. He returned to T&S as an associate in 2012 after working there as a lead paralegal from 2007 to 2009. Since rejoining the firm, Mr. Ferris has been involved in developing and prosecuting fraud cases on behalf of whistle-blowers against health-care providers, defense contractors, and other government contractors. Mr. Ferris has also worked on a variety of collective- and class-action wage-and-hour lawsuits. Mr. Ferris graduated from Albany Law School *cum laude* in 2012. While in law school, in addition to working as a law clerk and summer associate for Thomas & Solomon in 2010 and 2011, Mr. Ferris was a quarterfinalist in the Karen C. McGovern Senior Prize Trials Competition. Before attending law school, Mr. Ferris graduated with honors in English from Colby College in 2007.

Mr. Ferris is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the District of Colorado and the Eastern, Western, and Southern Districts of New York as well as the Court of Appeals for the Third Circuit.

Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORNELIUS COLEMAN AND LINDA HORAN, *on behalf of themselves and all others similarly situated,* *Plaintiffs,* v. RAILWORKS CORPORATION, KEVIN RIDDETT, AND BOB CUMMINGS, *Defendants.*	No. 1:20-cv-02428 (GBD)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND INCENTIVE PAYMENTS TO CLASS REPRESENTATIVES

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PRELIMINARY STATEMENT

Plaintiffs Cornelius Coleman and Linda Horan (the "Plaintiffs") submit this Memorandum of Law and supporting declarations executed on May 3, 2021, in support of Plaintiffs' application for attorneys' fees and costs and incentive payments to the Class Representatives.

The Parties in this matter have reached a class action settlement (the "Settlement") which was preliminarily approved by the Court on January 4, 2021 (Dkt. No. 31), and Plaintiffs now seek final approval of the Settlement. In connection with Plaintiffs' Unopposed Motion for Final Approval of the Settlement (Docket No. 33), Class Counsel seeks a fee, cost, and expense award of $493,000, without objection by Defendants RailWorks Corporation, Kevin Riddett, and Bob Cummings ("RailWorks" or "Defendants"). As set forth below, Class Counsel's requests for fees, costs, and expenses are reasonable and appropriate, particularly when considering that Class Counsel is seeking less than they expended (or a negative multiplier) in the prosecution and resolution of this action. Further, Class Counsel seeks incentive payments in the form of $5,000 for each of the Class Representatives. The requested incentive payments are warranted because of the extra effort these individuals put into assisting Class Counsel with the commencement of the action and resolving the case with the favorable settlement secured on behalf of the approximately 20,763 current and former employees, beneficiaries and dependents of those employees, and IRS Form 1099 vendors, as well as the personal risk they undertook by being named in the action.

Accordingly, for the reasons set forth herein, this Court should grant Plaintiffs' motion.

FACTUAL BACKGROUND

The full factual background related to this motion is stated in Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement and Plaintiffs' Uncontested Motion for Final

Approval of Class Action Settlement and thus incorporated by reference. Dkt. Nos. 23-1, 33. In the interest of avoiding unnecessary repetition, Plaintiffs will not repeat the entirety of the background, but will highlight a few critical points, as well as those points not addressed in prior briefings.

Plaintiffs' Claims

Class Representatives Cornelius Coleman and Linda Horan filed a class action complaint on behalf of themselves and all other similarly situated individuals (the "Class Members" or the "Class") against RailWorks Corporation, Kevin Riddett and Bob Cummings. *See* Complaint, Dkt. No. 1. Plaintiffs' complaint alleged that on or around January 27, 2020, an unauthorized third party encrypted Defendants' servers and systems resulting in a security incident ("Security Incident")[1] and potential exposure of personally identifiable information ("PII") of current and former employees, their beneficiaries and dependents, and IRS Form 1099 vendors. *Id.* ¶ 3. The potentially compromised PII included names, addresses, driver's license numbers and/or government issued IDs, Social Security numbers, dates of birth and dates of hire/termination and/or retirement. *Id.*

Settlement

As described in more detail in Plaintiffs' initial moving papers, the Settlement provides for significant relief for the Class, including credit monitoring and identity theft protection through Identity Guard through April 1, 2023 at RailWorks' cost, as well as monetary reimbursement of actual lost time spent remedying issues related to identity theft caused by the Security Incident, as well as the added benefit of RailWorks' agreement to implement and maintain certain security

[1] In Court submissions, the Parties use the term "Data Breach" and "Security Incident" interchangeably. *See* Dkt. Nos. 27, 28, 29.

measures to prevent future security incidents. Settlement Agreement, Dkt. No. 28-1, at ¶ 44 (a)-(c).

Class Counsel estimates that the credit monitoring and identity theft protection component is valued at $300 per Class Member, or $6.2 million for the entire Class, whereas the reimbursement component is valued at up to $1.038 million for the Class. Declaration of Jeremiah Frei-Pearson executed on April 22, 2021 ("April Frei-Pearson Decl.") ¶ 13, Dkt. No. 34. Further, Class Counsel views RailWorks' agreement to implement and maintain security measures as very valuable to the Class.

Reaction of the Class to the Settlement

Consistent with the Settlement Agreement, the Settlement Administrator, issued notice to the Class of approximately 20,763 individuals. Dkt. No. 35, at ¶¶ 5-14. The Settlement notice discussed the relief available and the requested amount of attorneys' fees and incentive payments, as well as the options available for Class Members, including opting out, objecting, or submitting for relief. Declaration of Jessica L. Lukasiewicz ("Lukasiewicz Decl.") ¶ 3.

Significantly, to date, none of the 20,763 Class Members have opted out or objected to the Settlement. Lukasiewicz Decl. ¶ 4. Indeed, when considering the initial group of Class Members who enrolled in identity protection services offered by Defendants prior to the commencement of the lawsuit, as well as any additional Class Members that signed up through the Settlement process, approximately 1,072 Class Members have already enrolled in identity protection services. *Id.* ¶ 5. The number of Class Members who will receive identity protection services will only continue to increase given that Class Members may continue to submit Claim Forms until thirty (30) days after the Court enters an Order and Final Judgment. Dkt. No. 28-1, at ¶ 44 (a); April Frei-Pearson Decl. ¶ 21.

Class Counsel's Efforts

To date, Class Counsel has expended approximately 1,000 hours prosecuting this case, including conducting an investigation, commencing the action, and ultimately securing the Settlement. *See* Lukasiewicz Decl., ¶ 6.

To start, Class Counsel spent a significant number of hours working with the Class Representatives to investigate the claims and ultimately commenced the above-referenced action. *Id.* ¶ 7. Class Counsel conducted extensive factual and legal research into the claims and potential defenses in this matter, including interviewing dozens of potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans. *Id.* ¶ 8.

Following the commencement of the action and the filing of the complaint, and in anticipation of mediation with highly-experienced mediator Bennett G. Picker, the Parties engaged in substantial informal discovery, with Class Counsel using an expert to review and analyze that discovery. *Id.* ¶ 9. Further, the Parties participated in numerous telephone conferences with Mr. Picker, as well as just amongst the Parties, and supplied him with several written mediation statements prior to mediation. *Id.* ¶ 10. Subsequently, the Parties participated in a full-day, arm's length mediation negotiation with Mr. Picker resulting in an agreement in principle. *Id.* ¶ 11. Following the mediation, the Parties continued negotiations of the Memorandum of Understanding for twenty days, a contentious process involving multiple phone calls with Mr. Picker and between counsel. *Id.* After reaching an agreement on the Memorandum of Understanding, the Parties then turned to negotiating the Settlement Agreement, which again was contentious and involved the exchange of multiple drafts, numerous conference calls and resolution of various issues in dispute, and spanned over more than eight weeks of time. *Id.* ¶ 12.

Following the preliminary approval of the Settlement, Class Counsel then expended significant time on the administration of the Settlement, including through drafting and preparing Settlement notice materials and the settlement website, as well as fielding calls and emails from the Class of more than 20,000 individuals. *Id.* ¶ 14.

Overall, Class Counsel expended 1,000 hours, totaling a lodestar of $551,827.50. *Id.* ¶¶ 15-19. These hours were broken down by attorney and paralegal time as illustrated in the charts within the Lukasiewicz Decl. ¶ 16; Declaration of Jeremiah Frei-Pearson ("Frei-Pearson Decl.") at ¶¶ 6-7. Notably, these hours do not reflect all of the time that Class Counsel will continue to spend on the Settlement of this action, including handling telephone calls and inquiries from Class Members, as well as other administrative duties. *See* Lukasiewicz Decl. ¶ 20. In addition to the time worked, Class Counsel also incurred more than $13,470.94 in costs and expenses, including for copying, mediation, and postage. *See id.* ¶¶ 21-23; Frei-Pearson Decl. ¶ 8. To date, Class Counsel has not received any compensation for their work or any reimbursement for costs and expenses. Lukasiewicz Decl. ¶ 24; Frei-Pearson Decl. ¶ 8.

Pursuant to the Settlement Agreement, Defendants do not object to the requested fee, cost and expense award. Dkt. No. 28-1, at ¶ 51.

Named Plaintiffs Cornelius Coleman and Linda Horan

Plaintiffs Coleman and Horan were instrumental to the initiation and prosecution of this action. *See* Lukasiewicz Decl., ¶ 25. Each Plaintiff expended considerable time and effort since the inception of this action, as well as took on a personal risk in being named in the action. *Id.* As Class Representatives, each Plaintiff assisted in the investigation of this lawsuit by providing factual information for the complaint, providing factual information to their counsel regarding the impact of the Security Incident, and reviewing the complaint prior to filing. *Id.* ¶ 27. Further, each

of the Class Representatives participated actively in the lawsuit, including by frequently communicating with their counsel regarding legal theories of the case, sources of evidence, their experiences, and case status, as well as reviewing and commenting on the complaint. *Id.* ¶ 28. Following the Settlement in this action, each Plaintiff participated in multiple phone calls to discuss the terms of the Settlement, including reviewing the Settlement documents. *Id.* ¶ 29.

ARGUMENT

I. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES

Class Counsel respectfully requests an award of reasonable attorneys' fees, costs and expenses in the amount of $493,000. Dkt. No. 28-1, at ¶ 51. As set forth below, Class Counsel's requested fee award is reasonable under both the lodestar and the percentage of the fund methods.

A. Percentage Of The Fund Is The Preferred Method For Awarding Fees In This Circuit.

"[T]he court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. 23(h). *See also Pearlman v. Cablevision Sys. Corp.*, No. CV 10-4992, 2019 WL 3974358, at *3 (E.D.N.Y. Aug. 20, 2019).

According to the Second Circuit, courts may use either the "percentage of the fund" method or the "lodestar" method.[2] *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 347-48 (S.D.N.Y. 2014) (internal citations omitted). The clear trend in the Second Circuit is to use the "percentage of fund" method. *See Wal-Mart Stores Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d

[2] Under the lodestar method, the court multiples the reasonable hourly rate by the reasonable hours billed. *In re Colgate-Palmolive Co.*, 36 F.Supp.3d at 347. "Once that computation is made, the district court may adjust the multiplier based on other factors such as the risk of the litigation or the performance of the attorneys." *Id.* at 348. As compared to the percentage of the fund method, the lodestar method creates "a disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of the line-item fee audits." *Id.* (internal quotation omitted).

Cir. 2005) ("The trend in this Circuit is toward the percentage method…"); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 183-84 (W.D.N.Y. 2011) (collecting cases); *Sukhnandan v. Royal Health Care of Long Island LLC*, No. 12 Civ. 4216, 2014 WL 3778173, at *9 (S.D.N.Y. July 31, 2014); *Sewell v. Bovis Lend Lease, Inc.*, No. 09 CIV. 6548 (RLE), 2012 WL 1320124, at *10 (S.D.N.Y. Apr. 16, 2012).[3]

Thus, because percentage of the fund is the preferred methodology in awarding attorneys' fees, such a method should be utilized in this action.

B. The Amount of Attorneys' Fees Requested is Reasonable.

The Second Circuit has held that "no matter which method is chosen, district courts should continue to be guided by the traditional criteria" when determining a reasonable fee. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). These criteria include: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation …; (4) the quality of the representation; (5) the requested fee in relation to the settlement and (6) public policy considerations." *Id.* (internal quotations omitted).

Here, consideration of these criteria fully supports the requested award. Indeed, Class Counsel has expended over 1,000 hours investigating and subsequently litigating this matter. Lukasiewicz Decl. ¶ 19; Frei-Pearson Decl. at ¶ 6. As discussed above, this time has been spent investigating the claims, commencing the lawsuit, completing informal discovery and engaging

[3] Further, a majority of the circuit courts have also adopted the percentage-of-the-fund method. *See, e.g., In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) ("We have approved the percentage-of-recovery methodology to evaluate attorneys' fees in a common-fund settlement"); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995); *Florin v. Nationsbank of Ga.*, N.A., 34 F.3d 560, 564-65 (7th Cir. 1994); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *see also* William B. Rubenstein, Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 14:6 n.16 and accompanying text (observing that the majority of court of appeals have adopted the percentage-of-the-fund method).

experts, and successfully negotiating a Settlement achieving a result for more than 20,000 Class Members. Lukasiewicz Decl. ¶¶ 6-12. Further, Class Counsel has valued the Settlement at more than $7 million for the entire class when considering the identity protection component is valued at approximately $300 per Class Member, or $6.2 million for the entire Class and the lost time reimbursement component is valued at approximately $1.038 million for the Class, plus there is the added benefit of the agreed upon security measures that RailWorks will implement and maintain. April Frei-Pearson Decl. ¶¶ 12-13; Dkt. No. 28-1, at 44(a)-(c).

1. Class Counsel Expended Significant Time and Labor Litigating this Action

The first *Goldberger* factor is effectively equivalent to using the lodestar calculation as a calculation to cross-check a percentage-of-the-fund award. *Febus v. Guardian First Funding Grp., LLC*, 870 F. Supp. 2d 337, 339 (S.D.N.Y. 2012) (citing *Wal-Mart Stores*, 396 F.3d at 123); *Goldberger*, 209 F.3d at 50. The lodestar calculation is made by multiplying "hours reasonably expended against a reasonable hourly rate." *Wal-Mart Stores*, 396 F.3d at 121. When the lodestar cross-check is performed, "the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case." *Goldberger*, 209 F.3d at 50; *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) (in reviewing the cross-check, "[t]he district courts may rely on summaries submitted by the attorneys and need not review actual billing records"). Furthermore, courts may use their discretion to "increase the lodestar by applying a multiplier based on factors such as the riskiness of the litigation and the quality of the attorneys." *Wal-Mart Stores*, 396 F.3d at 121. Performing the lodestar cross-check here confirms that the fee requested by Class Counsel is reasonable and should be approved.

a. Class Counsel Expended a Reasonable Number of Hours

Class Counsel expended a reasonable number of hours considering the Settlement provides relief for more than 20,000 Class Members.[4]

Prior to the commencement of the class action complaint, and as part of its investigation, Class Counsel conducted extensive factual and legal research into the claims and potential defense in this matter, including interviewing dozens of potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans. Lukasiewicz Decl. ¶ 8. Further, Class Counsel researched publicly available materials regarding Defendants, its Security Breach, and identity theft. *See id.* ¶ 8. Class Counsel then prepared a complaint on behalf of the Class, which incorporated Class Counsel's thorough research and complex legal theories. *Id.* ¶¶ 6-8.

Following preliminary research and filing the Complaint, the Parties engaged in substantial informal discovery in anticipation of a mediation. *Id.* ¶ 9. In fact, Class Counsel engaged the services of an expert to analyze the discovery. *Id*. Additionally, prior to formal mediation, the Parties engaged in numerous conference calls, often with the assistance of Mr. Picker. *Id.* ¶ 10. Also, in advance of the mediation, the Parties also submitted several written mediation statements. *Id.* On August 26, 2020, the parties participated in a full-day, arms' length mediation with Mr. Picker. *Id.* ¶ 11. While a Settlement in principle was reached that day, continued negotiations over the Memorandum of Understanding and the Settlement Agreement itself continued for more than three months. *Id.* ¶ 12. Class Counsel then did the work necessary to obtain preliminary approval. *Id.* ¶ 13. Following, preliminary approval, Class Counsel expended significant time assisting with

[4] Class Counsel reviewed contemporaneous time records and exercised billing judgment, including removing any potential duplicative time. *See* Lukasiewicz Decl. ¶ 17; Frei-Pearson Decl. ¶ 6.

the administration of the Settlement, including fielding calls from Class Members regarding the Settlement. *Id.* ¶ 14.

The approximate 1,000 hours expended on the above tasks are reasonable and compare favorably to the hours submitted by counsel in other data breach class actions. *See In re TJX Co., Retail Sec. Breach Litg.*, 584 F. Supp. 2d 395 (D. Mass. 2008) (class counsel billed over 5,000 hours in filing a complaint, opposing a motion to dismiss, and in negotiating and obtaining approval of a settlement); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 08-19998, 2010 WL 3341200, at *10 (W.D. Ky. Aug. 23, 2010) (counsel billed 11,453 hours when the case resolved prior to a decision on a motion to dismiss).

Here, Class Counsel spent far less time than the counsel expended in *In re TJX* and *In re Countrywide* and brought relief to more than 20,000 Class Members swiftly and without delay. Certainly, Class Counsel should not be penalized for resolving the case in the early stages of litigation. *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474 (S.D.N.Y. 2013) ("courts encourage early settlement of class actions . . . because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere.").

Thus, Class Counsel's time expended in this case is reasonable.

b. Class Counsel's Rates are Reasonable

Class Counsel's hourly rates, which range from $300 to $850 for attorneys, are also reasonable. The reasonable hourly rate is determined by "the rate prevailing in the [relevant] community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Farbotko v. Clinton Cty. Of N.Y.*, 433 F.3d 204, 208 (2d Cir. 2005) (quoting *Blum v. Stenson*, 465 U.S. 886 n. 11 (1984)). *See also Danaher Corp. v. Travelers Indem. Co.*, No. 10 Civ. 0121, 2015 WL 409525, at *9 (S.D.N.Y. Jan. 16, 2015) ("[A reasonably hourly rate] need not be

the lowest possible rate, but, rather, must merely fall within a range of reasonableness.").

Here, the hourly rates used by Class Counsel is certainly reasonable when considering that courts routinely approve similar hourly rates in other complex litigation, including data breaches. *See, e.g.*, *Sackin v. Transperfect Global Inc.*, No. 17-01469 (S.D.N.Y. Dec. 14, 2018), Dkt. No. 74; *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-03139, at *9 (S.D.N.Y. Nov. 9, 2017), Dkt. No 141; *Castillo v. Seagate Tech., LLC*, No. 16-01958, at *3-4 (N.D. Cal. Mar. 14, 2018), Dkt. No. 85; *Rudman v. CHC Group Ltd.*, No. 15-cv-3773, 2018 WL 3594828, at *3 (S.D.N.Y. July 24, 2018); *Raniere v. Citigroup Inc.*, 310 F.R.D. 211, 221 (S.D.N.Y. 2015); *Blum v. Merrill Lynch & Co., Inc.*, No. 15-cv-01636 (S.D.N.Y. Mar. 22, 2016) (Hon. Daniels, G.), Dkt. No. 136.

Accordingly, Class Counsel's requested hourly rates are reasonable.

c. Class Counsel Seek a Negative Multiplier, Which Further Confirms The Reasonableness Of The Request

"Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010). Indeed, courts often award multipliers of between 2 and 6 in similar cases. *See also In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262(RWS), 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) ("multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit."); *Febus*, 870 F. Supp. 2d at 340 (2.2 multiplier was "well within the range of acceptable"); *Davis*, 827 F. Supp. 2d at 185 (approving lodestar multiplier of 5.3); *In re Telik Sec. Litig.*, 576 F.Supp.2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts"); *Beckman*, 293 F.R.D. at 482 (approving 6.3 multiplier).

Here, Class Counsel are seeking a negative multiplier. Given that positive multipliers are

routinely granted, Class Counsel's requested fee award should certainly be approved.[5] Indeed, Class Counsel's multiplier will likely be even lower than that reflected in this motion, as Class Counsel continues to receive phone calls and email inquiries from Class Members regarding the Settlement, and will likely continue with administrative duties, thus the hours expended will only increase.[6]

Therefore, Class Counsel's requested fee award should be approved.

2. The Magnitude and Complexity of Litigation Warrants the Fees Requested

"Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). As such, cases involving claims of data breach are similarly complex and involve technical issues. *See In re Yahoo! Inc. Customer Data Sec. Breach Litg.*, No. 16-MD-02750, 2020 WL 4212811, at *8 (N.D. Cal. July 22, 2020); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 17-md-2800, 2020 WL 256132, at *32 (N.D. Ga. 2020).

Here, the complexity and magnitude of the litigation supports the requested fee award. Without a Settlement, this case would be complex, expensive and any relief obtained on behalf of the Class would be years removed. For example, assuming no Settlement, Defendants would likely

[5] When Class Counsel seeks no multiplier, like here, courts are clear that the "lodestar cross-check unquestionably supports a percentage fee award." *In re Veeco Inst. Inc. Sec. Litig.*, 05-MDL-01695, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007). *See also Duling v. Gristede's Operating Corp.*, No. 06 Civ. 10197, 2014 WL 2567442, at *2 (S.D.N.Y. Jun. 6, 2014).

[6] The attorneys' fee award is not based solely on Class Counsel's efforts to date, but also is meant to reflect the time that Class Counsel will spend administering the Settlement in the future. *Beckman*, 293 F.R.D. at 482; *deMunecas v. Bold Food, LLC*, No. 09 Civ.00440, 2010 WL 3322580, at *10 (S.D.N.Y. Aug. 23, 2010); *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.,* No. 08 Civ.7670, 2010 WL 532960, at *2 (S.D.N.Y. Feb. 9, 2010).

file a motion to dismiss. Assuming Plaintiffs survive the motion to dismiss, the Parties would then engage in complex and technical discovery, including with experts, involving significant investment of the Parties' resources both in the amount of time to be spent on the matter and financially, as well as for this Court.

Further, there would then be a motion for class certification. Of course, Plaintiffs believe Defendants would have vigorously opposed certification, and there was a significant risk that the Court could deny class certification in whole or in part. In particular, there is little precedent from courts on data breach issues at such a procedural juncture. Following certification, Plaintiffs would continue to face a long road ahead, including surviving a likely motion for summary judgment. Defendants would also likely challenge Plaintiffs' ability to prove causation, damages, and the scope of Defendants' promise to protect PII.

Therefore, this factor weighs in favor of the fee request.

3. The Litigation was Wrought with Inherent Risk

The risk of nonpayment, after extensive use of resources and time, involved in continued litigation favors the fee award in this action. *See In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *6 (collecting cases); *Stefaniak v. HSBC USA, N.A.*, No.05-cv-720, 2008 WL 7630102, at *3 (W.D.N.Y. June 28, 2008) ("The attorneys' fees requested were entirely contingent upon success. Class Counsel risked time and effort and advanced costs and expenses, with no ultimate guarantee of compensation."); *Willix v. Healthfirst, Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at *7 (S.D.N.Y. Feb. 8, 2011).

Indeed, as the Second Circuit explained:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, it is just to make a fee dependent solely on the reasonable amount of time

expended.

City of Detroit v. Grinnell Cop., 495 F.2d 448, 470 (2d Cir. 1974) (internal citation omitted).

Here, Class Counsel undertook this action on a strictly contingent-fee basis, "upfronting" significant costs with the distinct possibility that there would be no recovery in the event the case was dismissed or summary judgment was granted. *See* Lukasiewicz Decl. ¶ 24; Frei-Pearson Decl. ¶ 8. Class Counsel assumed a high risk by entering into a contingency agreement with plaintiffs which supports the allocation of the requested attorneys' fees. *See Rotuna v. W. Customer Mgmt. Group, LLC*, No. 09CV1608, 2010 WL 2490989, at *8 (N.D. Ohio June 15, 2010) (approving one third in attorneys' fees finding "[t]he contingent nature of the fee arrangement also meant that counsel bore the risk of receiving no fee in the event that a less than favorable result was achieved."); *Willix*, 2011 WL 754862, at *7; *Mohney v. Shelley's Prime Steak*, No. 06 Civ. 4270, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009). Indeed, over the more than fourteen months spent investigating and prosecuting this action, Class Counsel has received no payment to date for the more than 1,000 hours they devoted to this matter. *See* Lukasiewicz Decl. ¶¶ 19, 24.

Thus, the wholly contingent nature of Class Counsel's fee structure, in combination with the uncertainty of the litigation moving forward, weighs in favor of approval of the fee award.

4. The Quality of Representation is Demonstrated by the Results Achieved

The history of litigation, the size of the fund created, the substantial recovery each employee will be eligible to receive as well as Class Counsel's experience all demonstrate the quality of representation in this case.

a. History of Litigation

As described throughout this memorandum, Class Counsel's zealous, yet efficient prosecution of this case, resulted in a Settlement providing comprehensive relief for more than

20,000 Class members. Indeed, from investigating the claims, speaking with dozens of Class Members, and researching novel legal theories, to conducting informal discovery, engaging the services of experts, and negotiating a Settlement providing more than $7 million in relief to the Class, Class Counsel has not once stopped advocating on behalf of the Class.

b. Size of the Fund Created

While there is not necessarily a "fund," for the Settlement, Class Counsel has secured substantial relief on behalf of the Class. This relief includes credit monitoring and identity theft protection coverage, reimbursement of lost time, and RailWorks' agreement to implement and maintain certain data security practices to prevent future security incidents. Dkt. No. 28-1, at ¶ 44. While it is difficult to put a monetary value on RailWorks' agreement to prevent future security measures, Class Counsel values the other two components at more than $7 million for the Class. *See* April Frei-Pearson Decl. ¶¶ 12-13. Weighing the benefits of the Settlement against litigation, the Settlement is reasonable. The relief available under the Settlement will be available to Class Members without the uncertainty and delays, and without the risk that the relief would come too late given that the risk of improper use of PII is higher immediately following a data breach rather than many years down the road.

c. Substantial Individual Relief for Class Members

Class Counsel also deserves great credit for the relief provided to each Class Member in the Settlement. The Settlement makes significant relief available to each Class Member.

Class action settlements often conjure up associations with coupon settlements that offer very little in terms of value to class members and are therefore viewed with skepticism by the public. This Settlement, however, stands in stark contrast to such coupon settlements—here, all Class Members are eligible to receive identity theft and credit monitoring protection so prompt

action can be taken should their PII be used in a nefarious manner. Dkt. No. 28-1, at ¶ 44 (a). Further, Class Members can also recover money for lost time which continues through April 1, 2023, depending on when the time accrued. *Id.* Additionally, RailWorks has also agreed to implement and maintain certain measures to protect against future security risks. *Id*. Significantly, here, the Class' reaction is favorable given that not a single Class Member opted out or objected to the Settlement when they were put on notice of the amount of fees being requested. Lukasiewicz Decl. ¶ 4.

Overall, the Settlement represents an excellent outcome for the Class Members.

d. Relief Afforded to Virtually All Affected Employees

In many class action settlements, it is not uncommon that only a small percentage of Class Members actually receive any benefit. In contrast here, Class Counsel successfully negotiated a Settlement that allowed any Class Member the opportunity to sign up for identity theft and credit monitoring services, as well as reimbursement of lost time. Dkt. No. 28-1, at ¶¶ 44(a), (b). Further, all Class Members benefit from RailWorks' commitment to take certain steps to protect PII. Dkt. No. 28-1, at ¶ 44(c). The significant relief here can be accredited to Class Counsel's representation.

Thus, it is clear this factor also weighs heavily in favor of approving the requested award.

e. Class Counsel has Extensive Experience in Complex Litigation

Both firms have extensive experience in handling class actions and complex litigation and are knowledgeable about the applicable law here. Lukasiewicz Decl. ¶ 30; Frei-Pearson Decl. ¶ 4.

For decades, Thomas & Solomon LLP ("TS") has devoted a majority of its practice to representing and protecting the rights of individuals against large institutions through complex and class litigation within a variety of substantive contexts. *Id.* ¶ 31. TS's experience includes representing classes consisting of tens of thousands of employees, including in class action

contexts involving multistate and CAFA litigation. *Id.* ¶ 32. Further, many courts have acknowledged TS' class action leadership and ethical standards in appointing TS Class Counsel.[7] *Id.* ¶ 33. TS has also successfully represented employees in numerous class actions or complex litigation. *Id.* ¶ 34. TS is also currently pursuing numerous data breach cases and has devoted significant resources to extensively researching and analyzing the relevant claims and case law. *Id.* ¶ 35.

Further, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG") attorneys are experienced and accomplished in data breach class actions. *See* FBFG Firm Resume, Ex. 1 to the Frei-Pearson Decl. Attorney Jeremiah Frei-Pearson of FBFG has spoken about data breach litigation on numerous panels, has given multiple CLEs on data breach litigation, and has been appointed to leadership roles in more than ten data breach class actions throughout the country, including serving as co-lead class counsel in the then-highest per-person data breach settlement and winning one of the few contested class certification motions in data breach litigation.[8] *Id.*

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[7] *See, e.g., Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005) (TS "has demonstrated that it is well-qualified to conduct the litigation"); *Camesi v. Univ. of Pittsburgh Med. Ctr.*, No. 09-85J, 2009 WL 3032590, at *1 (W.D. Pa. Sept. 17, 2009) (TS was "qualified and could appropriately represent the plaintiffs"); *Masters v. F. W. Webb Co.*, No. 03-CV-6280L, 2006 WL 2604833, at *3 (W.D.N.Y. Sept. 11, 2006) (TS "is abundantly experienced in employment litigation, a substantial portion of which has been conducted before this Court"); *Hamelin v. Faxton St. Luke's Healthcare*, 274 F.R.D. 385, 396 (N.D.N.Y 2011) (TS has "established they are qualified and able to conduct this litigation").

[8] *See, e.g., Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup.Ct.) (co-lead class counsel in consolidated data breach class action in which court denied defendants' motion to dismiss, granted class certification, denied defendants' motion for summary judgment, and approved settlement on the eve of trial valued at $39 million, providing more money per capita to individual class members than any other data breach settlement to date); *Coleman v. Boys Town Nat'l Research Hosp.*, No. D01CI180008162 (Neb. Dist. Ct.) (lead counsel in data breach class action in which court denied defendants' motion to dismiss and approved a settlement valued at over $42 million); *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y.) (lead counsel in data breach class action in which court denied defendants' motion to dismiss and approved settlement valued at over $40 million); *In re Zappos, Inc.*, No. 12-325 (D. Nev.) (co-lead class counsel in consolidated data breach class action on behalf of approximately 23 million

Further, Mr. Frei-Pearson not only has been recognized for his skills as attorneys from various courts, but also from various organizations such as the National Trial Lawyers Association, the Best Lawyers of America, and Super Lawyers. *Id*.

Thus, Class Counsel's requested fee award is reasonable.

5. The Requested Fee is Reasonable in Relation to the Settlement

As discussed above, the prevailing method of evaluating attorneys' fees in this Circuit is the percentage of the fund approach. Under the method, courts assess whether the requested fee is a reasonable percentage of the recovery obtained in the Settlement. "'The federal courts have established that a standard fee in complex class actions cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit,' which includes the value of both monetary and nonmonetary relief, and 'district courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater.'" *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-cv-8405, 14-cv-8714, 2015 WL 10847814, at *12 (S.D.N.Y. Sept. 9, 2014) (internal quotation omitted); *see also Blum*, 2017 WL 878449, at *1 (Hon. Daniels, G.) (awarding attorneys' fees of 33 1/3% of a settlement); *Greene v. Emersons Ltd*., No. 76 Civ.2178, 1987 WL 11558 (S.D.N.Y. May 20, 1987) (awarding 46.2% of settlement as fees); *In re Amaranth Nat. Gas Commodities Litig.*, No. 07 Civ. 6377, 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding 30% of $77.1 million settlement); *Willix*, 2011 WL 754862, at *7 (awarding 33 1/3% of settlement); *Prasker v. Asia Five Eight LLC*, No. 08 Civ. 5811, 2010 WL 476009, at *6

victims in which court denied defendants' motion to compel arbitration, FBFG successfully appealed the motion to dismiss at the 9th Circuit (with the Supreme Court then denying defendants' request for certiorari), and the court approved settlement); *Castillo v. Seagate Technology LLC*, No. 16-02136 (N.D. Cal.) (co-lead class counsel in data breach class action in which the court denied defendant's motion to dismiss, and the court approved settlement valued at over $40 million).

(S.D.N.Y. Jan. 6, 2010) (awarding attorneys' fees of 33 1/3% of settlement); *Mohney*, 2009 WL 5851465, at *5 (awarding attorneys' fees of 33% of settlement); *Wright v. Stern* No. 01-cv-4437 (S.D.N.Y. May 15, 2008), Dkt. No. 207 (awarding a total fee award of 38% of $21 million settlement).

Further, in making such a consideration, courts have calculated the value of a common fund for the purpose of evaluating attorneys' fees by multiplying the value of the credit monitoring services times the total number of class members plus funds available for reimbursement of lost time/reimbursement for out-of-pocket expenses. *See Johansson-Dorhrmann. v. Cbr Sys., Inc.* No. 12-cv-1115, 2013 WL 3864341, at *2, *9 (S.D. Cal. July 24, 2013) (in calculating the value of the settlement at more than $114 million, the court multiplied the parties' valuation of the credit monitoring times the number of class members, plus the funds allocated for reimbursement of out-of-pocket expenses related to the data breach); *Hillis v. Equifax Consumer Servs. Inc.*, Nos. 104-CV-3400, 107-CV-314, 2007 WL 1953464, at *4-5 (N.D. Ga. Jun. 12, 2007).

Moreover, "[i]n calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of . . . non-monetary benefits conferred on the Class." *Fleisher,* 2015 WL 10847814, at *15 (internal citation omitted). Even if the value of the required relief is not quantifiable, "courts should consider the value of the injunctive relief obtained [the requisite cybersecurity improvements] as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees." *In re Excess Value Ins. Coverage Litig.*, 598 F. Supp. 2d 380, 387 (S.D.N.Y. 2005) (internal quotation omitted); *accord McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D. N.J. 2008).

Here, when considering comprehensive relief provided under the Settlement to the more than 20,000 Class Members, the requested fee award is reasonable. Indeed, the identity theft

services provides an extraordinary benefit for Class Members. Dkt. No. 28-1, at 44(a). Every Class Member who previously signed up for services offered by Defendants prior to the commencement of this action, automatically receives continued coverage through Identity Guard until April 1, 2023 at RailWorks' cost. *Id.* Further, if someone previously did not sign up for the credit monitoring and identity theft protection when offered, they can (and will continue to have the opportunity until 30 days after the date of an Order and Final Judgment) sign up for such services. *Id.* Identity Guard provides a variety of services, including: (1) alerts of personal information on the dark web; (2) $1 million in insurance for stolen funds reimbursement; (3) a U.S. based dedicated case manager; and (4) alerts of high-risk transactions. Lukasiewicz Decl. ¶ 36. Each Class Member who signs up for the service is receiving a value of approximately $300 per Class Member, or $6.2 million for the entire Class. *See* April Frei-Pearson Decl. ¶¶ 12-13.

Further, when applying the above approach, the total value of the Settlement here is $7,238,000,[9] plus the added benefit of the agreed upon security measures RailWorks will implement. Notwithstanding the extraordinary value conferred by the Settlement, Class Counsel seeks only a fee award of $493,000 – a mere 6.8% of a conservative valuation of the fund.[10,11]

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[9] The class size is estimated to be 20,763 individuals and each Class Member is entitled to receive additional years of credit monitoring services (valued at $300 per person) and up to $50 in reimbursement of lost time. *See* April Frei-Pearson Decl. ¶¶ 12-13.

[10] Awards in similar actions likewise demonstrate that the requested fee is reasonable. *See In re Target Corp. Customer Data Sec. Breach Litigation,* No. 14-02522 (D. Minn. Nov. 11, 2015), Dkt. No. 645 (court approved an award of $6.25 million for attorneys' fees, costs and expenses which was 29% of the combined value of the data breach settlement).

[11] Of course, this number only decreases when also taking into consideration the $13,470.94 in costs and expenses upfronted by Class Counsel, which are routinely granted by courts. *See Mitland Raleigh-Durham v. Myers,* 840 F.Supp. 235, 239 (S.D.N.Y. 1993) ("Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they 'were incidental and necessary to the representation' of those clients" (citing *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.,* 818 F.2d 278, 283 (2d Cir. 1987)); Lukasiewicz Decl. ¶ 23.

Lukasiewicz Decl. ¶ 26. Given that Class Counsel's requested fee award is far below the range of reasonable percentage of the fund benchmarks, the requested fee award is reasonable.[12]

6. Public Policy Strongly Supports the Requested Fee

"Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorney generals,' attorneys who fill [that role] must be adequately compensated for their efforts." *Flores v. One Hanover, LLC,* No. 13 Civ.5184, 2014 WL 2567912, at *8 (S.D.N.Y. June 9, 2014) (internal quotation omitted), *accord* Parker Hannifin Corp. v. N. Sound Properties, No. 10 Civ.6359, 2013 WL 3527761, at *4 (S.D.N.Y. July 12, 2013) ("common fund awards are designed to encourage litigation by 'private attorneys general' as a means of implementing policies embodied in those statutes."); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.").

Here, many Class Members lack the time and financial resources necessary to be able to individually pursue long and protracted litigation at their own expense. Further, even if they had the financial resources, their individual recovery may not justify the hiring of an individual attorney. Also, not all firms have the required experience and resources to handle contingency based class actions. *See Laydon v. Mizubo Bank, LTD,* Nos. 12-cv-3419, 15-cv-5844, 2017 WL 6372625, at *2 (Daniels, G.). Thus, public policy favors granting Class Counsel's request for attorneys' fees.

[12] Significantly, the requested fee award was negotiated after an agreement for the Class was reached. Further, unlike traditional common fund settlements, any decrease of the attorneys' fee award does not result in an increase of available funds for the Class.

II. INCENTIVE PAYMENTS TO CLASS REPRESENTATIVES ARE JUSTIFIED

The incentive payments here are reasonable given the significant contributions made by each of the Class Representatives.

Courts in this circuit "fully support[] compensating class representatives for their work on behalf of the class, which has benefited from their representation." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Incentive payments reimburse class representatives who "take on a variety of risks and tasks when they commence representative actions[.]" *Id.* (citation omitted). Incentive payments are common in class action cases and serve to compensate plaintiffs for their time and effort in assisting in the prosecution of the action, and for the risk of adverse actions they may suffer as the most visible members of the Class. *See e.g., Gonzalez v. Pritzker*, No. 10-CV-3105, 2016 WL 5395905, at *5 (S.D.N.Y. Sept. 20, 2016); *Sewell*, 2012 WL 1320124, at *15.

In examining the reasonableness of the requested incentive payments, courts consider: (1) the existence of special circumstances including the personal risk by plaintiffs in becoming and continuing as litigants; (2) the time and effort expended by plaintiffs in assisting in the litigation or in brining added value; (3) any other burdens sustained by plaintiffs in assisting with the prosecution of the claim; and (4) the ultimate recovery. *Raniere*, 310 F.R.D. at 220. Each of these factors weigh in favor of granting Plaintiffs' request for incentive payments.

A. The Class Representatives Assumed Personal Risk by their Respective Participation.

Granting incentive payments to those Class Representatives willing to step forward knowing the risk and actively participate in the litigation is reasonable.

Courts acknowledge that a class representative who may by "exposed to a demonstrable risk of employer retaliation or whose future employability has been impaired may be worthy of

receiving an additional payment." *Silberblatt v. Morgan Stanley*, 524 F.Supp.2d 425, 435 (S.D.N.Y. 2007). Even if the class representative did not suffer any retaliatory actions, this does not mean that they did not assume great risks. As the court in *Frank* recognized, "the fear of adverse consequences or lost opportunities cannot be dismissed as insincere or unfounded." *Frank*, 228 F.R.D. at 188. *See also Bozak v. FedEx Ground Package System, Inc.*, 11-cv-00738, 2014 WL 3778211 (D. Conn. July 31, 2014) ("Even where, as here, there is no evidence or indication of any retaliation by Defendant, class representatives merit recognition for assuming the risk of retaliation for the sake of absent class members.").

The Class Representatives here undertook tremendous reputational risk by prosecuting their former employer and putting their names on the class action. Lukasiewicz Decl. ¶ 25. The Class Representatives made this sacrifice to support a case that has provided benefits to thousands of Class Members. *Id.* Thus, the requested incentive payments are warranted.

B. The Time and Effort Expended by the Class Representatives Warrants the Amount Requested.

Further, the Class Representatives are deserving of the requested incentive payments because they have expended extra time and effort in support of this litigation.

Courts recognize that an incentive payment is meant to compensate the class representative for "any additional effort expended by the individual for the benefit of the lawsuit." *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001). *See also In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d at 354; *Bozak*, 2014 WL 3778211, at *5.

As discussed above, the Class Representatives assisted Class Counsel throughout the course of the case, including assisting in the investigation of this lawsuit by providing factual information for the complaint, including regarding the impact of the Security Incident, and reviewing the complaint prior to filing. Lukasiewicz Decl. ¶ 27. Further, each of the Class

Representatives participated actively in the lawsuit, including by frequently communicating with their counsel regarding legal theories of the case, sources of evidence, their experiences, and case status. *Id.* ¶ 28. Following the Settlement, each Plaintiff participated in multiple phone calls with their counsel to discuss the terms of the Settlement and to review Settlement documents.[13] *Id.* ¶ 29.

Thus, the requested incentive payments are reasonable.

C. The Class Representatives Experienced Burdens in Assisting Class Counsel.

Additionally, the Class Representatives experienced various burdens due to assisting Class Counsel throughout the course of this litigation, thus warranting the requested incentive payments.

As noted above, the Class Representatives were actively involved in the litigation, including communicating with counsel, providing evidence, and reviewing and commenting on the complaint and Settlement Agreement. *See id.* ¶¶ 27-29.

Accordingly, due to the burdens experienced by the Class Representatives in assisting Class Counsel, the requested incentive payments are reasonable.

D. The Ultimate Recovery to the Class is Significant.

Lastly, the ultimate recovery to the class is significant – Class Counsel has secured a Settlement providing for free credit monitoring and identity theft protection coverage, monetary relief (reimbursement for lost time as provided for in the Settlement Agreement) and RailWorks' agreement to implement certain security measures. Class Counsel has valued the relief of identity protection and credit monitoring services, as well as the reimbursement of lost time, for the entire Class as $7,238,000, plus the added benefit of the agreed upon security measures. *See* Dkt. 34,

[13] Significantly, no Class Member objected to the Settlement or opted out when notified of the requested incentive payment. Lukasiewicz Decl. ¶ 4.

April Frei-Pearson Decl. ¶ 12.

The requested incentive payments are well within the range that courts find to be reasonable. Here, Plaintiffs seek $5,000 awards each.[14] Courts regularly awarded similar awards in other complex class actions. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d at 354 (awarding $5,000 to each of six named plaintiffs who "reviewed draft pleadings and motions, searched for and produced relevant documents, reviewed filings, and communicated regularly with Class Counsel"); *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573 (N.D. Cal. 2015) (awarding an incentive award of $5,000); *In re Yahoo Mail Litig.*, No. 13-4980, 2016 WL 4474612, at *11-12 (N.D. Cal. Aug. 25, 2016) (awarding $5,000 per class representative in data privacy action); *In re Honest Mktg. Litig.*, No. 16-01125, 2017 WL 8780329, at *2 (S.D.N.Y. Dec. 8, 2017) (awarding each of the nine named plaintiffs $5,000 in light of risks they faced commencing the action, and the time and effort spent assisting counsel).[15]

Thus, the requested incentive payments for each of the Class Representatives is reasonable.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the instant motion be granted, and that Class Counsel be awarded its requested $493,000 in attorneys' fees, costs, expenses, and the Class Representative are awarded $5,000 each in incentive payments.

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[14] Together, the requested incentive payments and award for attorneys' fees, costs and expenses are consistent with that which is provided for under the Settlement Agreement. *See* Dkt. No. 28-1, at ¶ 51; Lukasiewicz Decl. ¶ 26.

[15] *See also Bozak*, 2014 WL 3778211, at *4 (awarding a service award of $10,000 in light of the risk of retaliation and the work undertook on behalf of Class Members); *Guippone v. BH S & B Holdings, LLC*, No. 09 Civ. 01029, 2011 WL 5148650, at *8 (S.D.N.Y. Oct. 28, 2011) (awarding a service payment of $10,000 for the services provided and the risks taken on behalf of the class); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015) (holding that the court did not abuse its discretion in ultimately approving the settlement that approved incentive awards of $5,000 for each of the class representatives).

Dated: May 3, 2021

THOMAS & SOLOMON LLP

By: /s/ Jessica L. Lukasiewicz

J. Nelson Thomas, Esq.
Jessica L. Lukasiewicz, Esq.
Jonathan W. Ferris, Esq.
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
nthomas@theemploymentattorneys.com
jlukasiewicz@theemploymentattorneys.com
jferris@theemploymentattorneys.com

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

By: /s/

Jeremiah Frei-Pearson, Esq.
One North Broadway, Suite 900
White Plains, New York 10601
Telephone: (914) 298-3281
jfrei-pearson@fbfglaw.com

Attorneys for Plaintiffs and Class Members

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORNELIUS COLEMAN AND LINDA HORAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RAILWORKS CORPORATION, KEVIN RIDDETT AND BOB CUMMINGS,

Defendants.

Case No. 20-civ-02428 (GBD)

[redacted] FINAL JUDGMENT AND ORDER OF DISMISSAL

THIS CAUSE is before the Court on Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees, Costs, Expenses, and Incentive Payments to Class Representatives. Due and adequate notice having been given to the Settlement Class, and the Court having considered the Settlement Agreement, all papers filed and proceedings had herein, and all oral and written comments received regarding the proposed settlement, and having reviewed the record in this litigation and good cause appearing, **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

1. For purposes of this Final Judgment and Order of Dismissal ("Judgment"), the Court adopts all defined terms as set forth in the Settlement Agreement filed in this case.

2. The Court has jurisdiction over the subject matter of the litigation pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over Plaintiffs Cornelius Coleman and Linda Horan, the Class Members, and the Releasees ("the Settling Parties").

3. With respect to the Class and for purposes of approving this Settlement only, this Court finds as to the Class that:

(a) the Class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the Class;

(c) the claims of Plaintiffs are typical of the claims of the Class;

(d) Plaintiffs will fairly and adequately protect the interests of the Class;

(e) questions of law and fact common to class members predominate over any questions affecting only individual Class Members; and

(f) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of, and solely in connection with, the Settlement, the Court certifies this action as a class action on behalf of the following Class:

> All individuals who are citizens and/or residents of the United States of America and satisfy the following requirements: (1) the individual is an employee, former employee, beneficiary or dependent of an employee or former employee of RailWorks, or a vendor of RailWorks that received IRS Form 1099, and (2) the individual's personal information was affected by the Security Incident (as reflected by RailWorks' records pertaining to the Security Incident).

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Plaintiffs Cornelius Coleman and Linda Horan are appointed as the Class Representatives, and Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Thomas & Solomon LLP are appointed as Class Counsel. Epiq Class Action & Claim Solutions, Inc. is appointed as and shall continue to serve as the Settlement Administrator.

6. The Parties have complied fully with the notice provisions of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. None of the numerous officials to whom notice was given under CAFA has filed an objection to the Settlement or otherwise sought to be heard.

7. Based on evidence and other material submitted in conjunction with the Final Approval Hearing, the Court hereby finds and concludes that (1) the Settlement Notices to be sent by electronic mail and U.S. Mail ("Settlement Electronic Notice" and "Settlement Postcard Notice," respectively) and the Settlement Reminder Notice sent by electronic mail and U.S. Mail were disseminated to members of the Settlement Class in accordance with the Settlement Agreement and the Court's Preliminary Approval Order, and (2) the Settlement Long Form Notice, the Identity Theft Protection Claim Form, Reimbursement for Lost Time Claim Form, and the Settlement website complied with this Court's Preliminary Approval Order.

8. The Court finds and concludes that the Settlement Electronic Notice, Settlement Postcard Notice, Settlement Reminder Notice, Settlement Long Form Notice, the Identity Theft Protection and Reimbursement Claim Forms, the Settlement website, and all other aspects of the notice, opt-out, objection and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class and the Settlement Class Members.

9. Certain persons who fall within the definition of the Settlement Class have requested to opt out of the Settlement and have complied with the procedures established by the Settlement Agreement and this Court. These persons are listed in the attached Exhibit A, and they will not be bound by the terms of the Settlement Agreement.

10. The Court finds that the Settlement Agreement is the product of arm's-length settlement negotiations between the Settling Parties.

1. 11. The Court finds and concludes that the Settlement is fair, reasonable, and adequate and should be approved, after considering all of the relevant factors set forth in Fed. R.

Civ. P. 23(e)(2) and *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462-63 (2d Cir. 1974). The Court finds that:

(a) the Settlement was the product of informed, good-faith, arms' length, and lengthy negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator;

(b) the case was complex, expensive and time consuming and would have continued to be so through trial if the case had not settled, resulting in substantial delay before any Settlement Class Members would receive compensation if the litigation were successful;

(c) the Settlement Class would have faced numerous and substantial risks in obtaining certification of a litigation class, and in establishing liability and/or damages if they decided to continue litigation rather than settle;

(d) the benefits provided to Class Members under the Settlement Agreement are well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued;

(e) the benefits of the Settlement treat Settlement Class Members equitably relative to each other, as all Settlement Class Members are eligible for the same benefits;

(f) the method of distributing relief to the Settlement Class, including the method of processing class-member claims, is fair and reasonable and being conducted by an experienced and neutral Settlement Administrator;

(g) the proposed award of attorney's fees is to be paid separately from and does not affect the relief to be provided to the Settlement Class; and

(h) the proposed settlement was well-received by the Class; it is also significant that none of the numerous federal and state agencies notified pursuant to the CAFA have objected to the settlement.

12. The Court held a Final Approval Hearing on May 13, 2021 at 10:30 a.m., giving the Parties and any Settlement Class Members present an opportunity to be heard if they so desired.

13. The Court hereby approves the Settlement (as set forth in the Settlement Agreement), the Release, and all other terms in the Settlement Agreement, as fair, just, reasonable, and adequate as to the Parties and the Settlement Class. The Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement. However, without seeking further Court approval, the Settling Parties may jointly agree to make changes to the Settlement Agreement, including to the manner in which the claims process shall be administered, provided that those changes do not reduce the benefits to which Settlement Class Members may be entitled, increase the burden on Settlement Class Members in making a claim, or otherwise materially alter the Parties' obligations under the Settlement and the Settlement Agreement.

14. By this Judgment, the Releasors shall be deemed to have (and by operation of the Judgment shall have) fully finally, and forever released, relinquished, and discharged all Released Claims against the Releasees.

15. This action is dismissed with prejudice. The Parties are to bear their own attorney's fees and costs, except as otherwise expressly provided in the Settlement Agreement and in this Judgment.

16. This Court has considered and overruled all objections to the Settlement.

17. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Releasees may file the Settlement Agreement and/or the Judgment from this litigation in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement Agreement may not be the subject of discovery, and may not be referred to, or offered or received in evidence against any of the Releasees in any civil, criminal or administrative action or proceeding, except by the Parties for purposes of enforcing the Settlement Agreement.

18. If for any reason the Effective Date does not occur, then (1) the certification of the Settlement Class shall be deemed vacated, (2) the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues, and (3) the Settling Parties shall return to the *status quo ante* in the litigation as it existed on January 4, 2021, without prejudice to the right of any of the Settling Parties to

assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court

19. Upon consideration of Plaintiffs' Motion for Award of Attorneys' Fees and Costs, the Motion is GRANTED. Consistent with Paragraph 51 of the Settlement Agreement, Defendants shall pay Class Counsel $493,000 in attorneys' fees, costs, and litigation expenses, consistent with the terms of the Settlement Agreement. Per the Settlement Agreement, this award shall be paid separate and apart from the Settlement consideration received by members of the Settling Class. In making this award, the Court has considered and found that:

(a) The Settlement Notices advised that Class Counsel would seek an award of attorneys' fees, costs, and expenses of no more than $493,000, which, if approved by the Court, Defendants agreed to pay separately;

(b) This action involves complex factual and legal issues, was actively prosecuted, and, in the absence of the Settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(c) Class Counsel skillfully and zealously pursued this action on behalf of the Class Representatives and the Class;

(d) The hourly rates charged by Class Counsel are reasonable;

(e) Had Class Counsel not achieved the Settlement, there would remain a significant risk that the Class Representatives and the Class would recover less or nothing from Defendants; and

(f) The amount of attorneys' fees awarded here is consistent with awards in similar cases.

20. Upon consideration of Plaintiffs' Motion for Incentive Payments to Class Representatives, the request is GRANTED. Consistent with the terms of Paragraph 51 of the Settlement Agreement, Defendants shall pay Plaintiffs Cornelius Coleman and Linda Horan Incentive Payments in the amount of $5,000 each. Per the Settlement Agreement, these Incentive Payments shall be paid separate and apart from the Settlement consideration received by members of the Settling Class.

21. Each and every Class Member, and any person actually or purportedly acting on behalf of any Class Member, is hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum, against the Releasees. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

22. Confidential Information pertaining to the Settlement, including but not limited to personal identifying information of Settlement Class Members and any financial information of RailWorks, shall be handled in accordance with Paragraph 76 of the Settlement Agreement.

23. This document is a final, appealable order, and shall constitute a judgment for purposes of Rules 54 and 58 of the Federal Rules of Civil Procedure. By incorporating the Settlement Agreement's terms herein, the Court determines that this Final Judgment complies in all respect with Federal Rule of Civil Procedure 65(d)(1).

24. The Court reserves jurisdiction, without affecting in any way the finality of this Order and Judgment, over (a) the implementation and enforcement of this Settlement; (b) enforcing and administering this Order and Judgment; (c) enforcing and administering the Settlement Agreement, including any releases executed in connection therewith; and (d) other matters related or ancillary to the foregoing.

25. There is no just reason for delay in the entry of this Order and Judgment and immediate entry by the Clerk of the Court is expressly directed.

Dated: MAY 13 2021, 2021
New York, New York

SO ORDERED:

George B. Daniels

Hon. George B. Daniels

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

ELECTRONICALLY FILED

McKENZIE, METTEKJISTINE, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	**Case No. 5:18-cv-00359-JMH**
	)	
ALLCONNECT, INC.,	)	
	)	
Defendant.	)	
	)	

* * * * * * * * * * *

REPRESENTATIVE PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

MetteKjistine McKenzie and Chastity Combs (the "Representative Plaintiffs"), on behalf of themselves and on behalf of the certified Class, respectfully submit this Memorandum in support of their Motion for Attorney's Fees, Expenses, and Class Representative Service Awards. For the reasons explained below, the Representative Plaintiffs respectfully request that the Court issue an order: (1) awarding Class Counsel $550,000 in attorneys' fees and reimbursement of expenses to be paid by Defendant separate and apart from the monetary and other relief provided to the Class under the Stipulation and Agreement of Settlement (ECF No. 38); and (2) approving a $3,500 class representative service award to each Representative Plaintiff.

INTRODUCTION

This is a class action brought against the Defendant, Allconnect, Inc. ("Allconnect") for providing the sensitive information contained in W-2 statements of 1,854 of its current and former employees to an unauthorized third party who sought the information through an e-mail phishing

scheme (the "Data Breach").[1] After surviving a motion to dismiss and conducting informal discovery, Class Counsel and the Representative Plaintiffs negotiated a settlement that provides: (1) a $100 direct cash payment to each of the 1,854 Class members; (2) five years of AllClear ID's credit monitoring and identity theft protection plan at no cost to Class members (valued at approximately $1,663,038.00); (3) reimbursement of documented economic losses incurred as a result of the Data Breach that are not otherwise reimbursable through the AllClear ID plan up to $4,000 per class member with an aggregate cap of $500,000; and (4) payment of the costs of notice by Allconnect, which will cost approximately $29,968.00. The settlement also requires Allconnect to provide: (1) data security and tax-filing education training to its current employees; (2) additional enrollment instructions for AllClear ID's plan to current employees who were affected by the Data Breach; and (3) encouragement to current employees affected by the Data Breach to sign-up for the AllClear ID plan.

Class Counsel requests $550,000 in attorneys' fees and expenses, which will not reduce the benefits to the Class but will be paid by Allconnect in addition to the benefits to the Class, is well within the range of acceptable fee awards in similar cases, and is objectively reasonable under the relevant factors articulated by the Sixth Circuit. To the best of Class Counsel's knowledge, this is the most favorable W-2 phishing class settlement ever reached. The requested lodestar multiplier is less than 1.9, which is on the low end of multipliers that this Court and others have found to reflect a reasonable fee award, and the multiplier will ultimately be even lower given that Class Counsel will have to expend additional time in seeking final approval of the settlement and in administering the settlement through the end of the settlement benefit period of five years. A

[1] "Phishing" is the fraudulent attempt to obtain sensitive information such as usernames, passwords and financial information by disguising oneself as a trustworthy entity in an electronic communication.

percentage-of-fund cross-check calculates to approximately 23%, which is also on the low end for a settlement of this size. Furthermore, Class Counsel took this case on a contingency fee basis with no guarantee of recovery, successfully litigated the action (which involved complex issues pertaining to liability and class certification) before this Court against sophisticated and skilled defense counsel, and achieved excellent results for Class Members who likely would have had no legal recourse but for consolidation of their claims as a class action. These factors all confirm that the requested award is justified.

The Representative Plaintiffs also seek service awards of $3,500 each, which is reasonable in light of their active participation in this case and the benefits they achieved for the Class and is well within the range customarily awarded.

BACKGROUND

I. The Complaint and Representative Plaintiffs' Defeat of the Defendant's Motion to Dismiss

Representative Plaintiffs commenced a class action in Fayette Circuit Court (Case No. 18-CI-01449) on April 17, 2018, asserting claims for negligence, invasion of privacy, breach of implied contract, and breach of fiduciary duty. Allconnect filed a Notice of Removal of Action in the United States District Court for the Eastern District of Kentucky (Case No. 5:18-cv-00539-JMH) on May 15, 2018. On May 16, 2018, Allconnect filed a motion to dismiss the complaint. (ECF No. 5). On March 28, 2019, this Court issued its Memorandum Opinion and Order granting in Part and Denying in Part Defendant's Motion to Dismiss. (ECF No. 27.) In particular, the Court held that Plaintiffs have standing to sue, granted Defendant's Motion to Dismiss Plaintiffs' claims for invasion of privacy based on unreasonable publicity and for breach of fiduciary duty, and denied the Motion to Dismiss with respect to Plaintiffs' claims for negligence, invasion of privacy based on intrusion upon seclusion, and for breach of implied contract. (*Id.*)

II. The Parties Engage in a Successful Mediation Through a Distinguished Third-Party Neutral Mediator

After the Motion to Dismiss was fully briefed, the parties engaged in mediation before the Honorable Sanford M. Brook (Ret.) of Judicial Arbiter Group, Inc. (Declaration of J. Gerard Stranch, IV ("Stranch Decl.") ¶ 6.) Judge Brook previously served as Chief Judge of the Indiana Court of Appeals and as a trial court judge for the St. Joseph Superior Court in South Bend, IN. (Declaration of Judge Sanford M. Brook (ret.) ("Brook Decl.") ¶ 2.) Before the mediation, Allconnect provided Plaintiffs informal discovery, which included all emails involved in the phishing event, the compromised W-2 statements, and all remedial efforts taken by Allconnect after the Data Breach. (Stranch Decl. ¶ 6.) The mediation was an arm's-length negotiation conducted via an in-person mediation session, followed by months of tough negotiations by both sides before a settlement was finally reached. (Brook Decl. ¶ 4.) Class Counsel and counsel for the Defendant negotiated and settled on the relief to the proposed Settlement Class before engaging in any negotiation for the payment of attorneys' fees and expenses by Defendant to Class Counsel, which was itself a hotly contested issue. (*Id.* ¶ 5.). After the Court issued its order on the Motion to Dismiss, the parties were able to resolve the remaining outstanding issues and reach a binding resolution. (Stranch Decl. ¶ 6.)

As explained in the Motion for Preliminary Approval (and as will be explained in the forthcoming Motion for Final Approval), the Settlement involves both monetary relief and additional non-monetary relief. The Settlement provides that each Settlement Class Member who does not timely opt-out will receive a cash payment of $100. (ECF No. 38 ¶ 5.7.) The Settlement Administrator will distribute the $100 check by direct mail to the Settlement Class Members, without the need for any Settlement Class Member to submit a claim or take any other action. (*Id.*) The Settlement also provides that any Class Member that does not timely opt-out may receive five

additional years of AllClear ID credit monitoring and identity theft protection services, for a total of seven years, at Allconnect's expense. (*Id.* ¶ 5.1.) And any Settlement Class Member who enrolled in the AllClear ID Original Offering will be *automatically enrolled* in the additional five years of AllClear ID services. (*Id.*) Any Settlement Class Member may also submit one or more Claims for reimbursement for documented Economic Losses related to the Data Breach that have not been reimbursed by AllClear ID or other third parties, up to a total of $4,000 per Settlement Class Member, with an aggregate cap of $500,000. (*Id.* ¶ 5.2.) Allconnect will pay the costs of class notice. Pursuant to the terms of the Settlement Agreement, Allconnect will also provide the following non-monetary relief: data security and tax-filing education training for all current employees; additional enrollment instructions for AllClear ID's credit monitoring services to current employees who were affected by the Data Breach; and encouragement to current employees affected by the Data Breach to sign-up for the AllClear ID credit monitoring services. (*Id.* ¶ 5.5–5.6.)

The Settlement provides that Class Counsel will apply to the Court for an award of attorneys' fees and expenses up to $550,000 to be paid by Allconnect in addition to, and not from, the relief provided to the Class. (*Id.* ¶ 10.) As part of the Settlement, Defendant also agreed to pay up to $3,500 as a service award to each of the Representative Plaintiffs, subject to Court approval. (*Id.*) The Settlement is not conditioned on the Court's approval of the requested attorneys' fees and expenses or the requested service awards. (*Id.*)

III. Preliminary Approval

On June 17, 2019, the Representative Plaintiffs filed a Motion for an Order Preliminarily Approving Settlement, Approving Notice, Setting Objection and Opt-Out Deadlines, and Scheduling Final Approval Hearing in October 2019 ("Motion for Preliminary Approval"). (ECF

No. 35.) On June 20, 2019, the Court issued an Order Granting Preliminary Approval of Class Action Settlement and Approving Notice Program. (ECF No. 43.) The Court found that the proposed Settlement "falls within the range of possible approval as fair, reasonable, adequate, and in the best interests of the Settlement Class as to their claims against Allconnect," "is the result of serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case," and that the notice plan "is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances." (*Id.* ¶¶ 8–11.) The Order set deadlines for objections and opt-out notices, and set a final approval hearing for October 28, 2019. Following the Preliminary Approval Order, Class Counsel has worked with the Claims Administrator to facilitate notice to the Class. (Stranch Decl. ¶ 10.)

LEGAL STANDARD FOR FEE AWARDS

I. Class Counsel Is Entitled to a Reasonable Fee

Federal Rule of Civil Procedure 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The parties' agreement provides for an award of attorneys' fees and expenses of up to $550,000 in this case, which is the amount Class Counsel requests.

In determining whether a fee request is reasonable, the Court may employ either the percentage-of-the-fund method or the lodestar method.[2] "The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the

[2] *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 278-80 (6th Cir. 2016).

results achieved."[3] Whichever method the Court utilizes, it may, but is not required to, cross-check the fee with the other method.[4]

Under the "percentage-of-the-fund" method, the court determines a percentage of the settlement to award class counsel.[5] Courts in this Circuit routinely cite 20 to 50 percent as a reasonable range for attorney's fees, with one-third being very common.[6]

When utilizing the lodestar method, the Court calculates the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate, and then may apply a multiplier to enhance the lodestar figure in recognition of the "risk an attorney assumes in undertaking a case, the quality of the attorney's work product, and the public benefit achieved."[7] Courts within the Sixth Circuit typically approve lodestar multipliers of up to 4.5, and even as high as 10.[8]

Regardless of the method chosen, several factors may affect the reasonableness of a fee, whether expressed as a lodestar with multiplier or as a percentage-of-the-fund, including: (1) the

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[3] *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993).
[4] *See, e.g., Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 795 (N.D. Ohio 2010).
[5] *Rawlings*, 9 F.3d at 516.
[6] *See, e.g., In re Broadwing*, 252 F.R.D. 369, 380 (S.D. Ohio 2006); *New England Health Care Employees Pension Fund v. Fruit of the Loom*, 234 F.R.D. 627, 633 (W.D. Ky. 2006); *Manners v. Am. Gen. Life Ins. Co*, No. 3–98–0266, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 11, 1999); *Wise v. Popoff*, 835 F. Supp. 977, 980 (E.D. Mich. 1993); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-cv-95, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (noting that "[e]mpirical studies show that . . . fee awards in class actions average around one-third of recovery")(internal citation omitted).
[7] *Rawlings*, 9 F.3d at 515–17.
[8] *See, e.g.,.Manners*, 1999 WL 33581944, at *31 ("[p]laintiffs' counsel's request for a multiplier of 3.8 is fully warranted. This multiplier is well within the range of multipliers for similar litigations, which have ranged from 1–4 and have reached as high as 10."); *In Re Se. Milk*, No. 2:08–MD–1000, 2013 WL 2155387, at *4 (M.D. Ohio May 17, 2013) (lodestar multiplier of 1.9 was "within, but in the bottom half of, the range of typical lodestar multipliers"); *Lowther v. AK Steel Corp.*, No. 1:11-cv-877, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (finding that 3.06 multiplier was "very acceptable . . . especially in light of the extraordinary service rendered by counsel on behalf of the Class").

value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.[9]

APPLICATION

I. The Requested Fee Falls Within the Range Considered Reasonable and Fair by Courts within the Sixth Circuit.

Here, the requested fee multiplier, which is less than 1.9 and which will be even lower after Class Counsel sees this case through final approval and administration of settlement benefits, is well within the limits of multipliers approved by Courts in the Sixth Circuit. Similarly, although not necessary, when cross-checking the fee against the value of the settlement, the cross-check percentage of approximately 23% is well within the range of percentage of settlement value that has been approved by Courts in this Circuit. The fee requested here is therefore well within the range of fees considered reasonable.

II. Application of Relevant Factors Identified by the Sixth Circuit Confirms That the Requested Fee Is Reasonable

The six *Ramey* factors also support that the requested fee is reasonable and should be awarded.

A. The Benefits Conferred on the Class Are Extraordinary

The primary factor in determining a reasonable fee is the result achieved on behalf of the class.[10] Here, Class Counsel have procured total benefits for the class estimated at $2,378,406,

[9] *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir.1974), *cert. denied*, 422 U.S. 1048 (1975); *see also Lonardo*, 706 F. Supp. 2d at 795 (looking to *Ramey* factors when determining reasonable multipliers).

[10] *In re Delphi Corp. Sec. Derivative & ERISA Litigation*, 248 F.R.D. 483, 503 (E.D. Mich. 2008); *see also Rawlings*, 9 F.3d at 517 ("[O]ne of the primary determinants of the quality of work

comprised of: (1) $1,663,038 as the retail value of the five years of credit monitoring offered; (2) $500,000 fund for economic damages; (3) $185,400 in direct cash payments of $100 to each Class member; and (4) notice and administration valued at $29,968. In addition, Allconnect will pay for and provide the non-monetary benefits set forth above.

Individual Class members likely would have received no relief at all absent a Class settlement. And Class Counsel faced substantial obstacles to achieving a recovery in this case, including a Rule 12 motion, class certification, a Rule 23(f) petition to the Sixth Circuit, numerous merits defenses, trial, and appeal. The risks and complexities inherent in this litigation therefore reinforce the value of the benefits conferred on the Class. Finally, the overall value of the Settlement is reinforced by the lack of any objections from Settlement Class Members as of the date of this filing.

This factor therefore supports the requested fee.

B. <u>The Value of the Services on an Hourly Basis</u>

Courts may use the lodestar method to determine the reasonableness of the requested fee. To do so, the Court calculates the lodestar (the hours reasonably expended on the litigation multiplied by reasonable hourly rates), and then calculates a "multiplier" by comparing the lodestar to the amount of fees requested.[11] A reasonable multiplier above the lodestar reflects a reasonable fee, because it accounts for factors such as the contingency risk of the litigation and the quality of

performed is the result obtained."); *Hensley v. Eckerhart*, 461 U.S. 424, 434-36 (1983) (noting that the most critical factor in awarding fees is the result achieved by counsel).

[11] *See, e.g., In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007); *Broadwing*, 252 F.R.D. at 381.

the work performed.[12] Courts within the Sixth Circuit typically approve lodestar multipliers of up to 4.5, and even as high as 10.[13]

Here, as supported by the accompanying Stranch Declaration, Class Counsel already has spent over 540 combined hours on this litigation (exclusive of fees associated with this petition itself). These hours were reasonable and necessary to prosecuting the claims of the Representative Plaintiffs and the Class, relating to such tasks as drafting pleadings, briefing (and defeating) a Rule 12 motion, conducting informal discovery, analyzing records produced by the Defendant, drafting preliminary approval papers, participating in a mediation and lengthy settlement negotiations for months, and overseeing the notice process.

At reasonable and customary complex litigation rates, this results in a lodestar figure of approximately $290,000[14] broken down as follows:

TIMEKEEPER	**RATE**	**HOURS**	**BILLED ($)**
Richard E. Shevitz – Partner	$810.00	16.1	$13,041.00

[12] *See New York State Teacher's Retirement Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243-44 (E.D. Mich. 2016).

[13] *See, e.g.*, *Manners*, 1999 WL 33581944, at *31 ("[p]laintiffs' counsel's request for a multiplier of 3.8 is fully warranted. This multiplier is well within the range of multipliers for similar litigations, which have ranged from 1-4 and have reached as high as 10."); *In Re Se. Milk*, 2013 WL 2155387, at *4 (lodestar multiplier of 1.9 was "within, but in the bottom half of, the range of typical lodestar multipliers"); *Lowther*, 2012 WL 6676131, at *5 (finding that 3.06 multiplier was "very acceptable . . . especially in light of the extraordinary service rendered by counsel on behalf of the Class").

[14] The rates for this calculation are Class Counsel's usual and customary complex litigation rates for matters such as this. *See* Stranch Decl. at ¶ 14; *see also Lonardo*, 706 F. Supp. 2d at 793-94 (accepting as reasonable rates of $825 and $650 per hour for attorneys and $215 per hour for staff); *Gilbert v. Abercrombie & Fitch, Co.*, No. 15-cv-2854, 2016 WL 4159682, at *16-17 (S.D. Ohio Aug. 5, 2017) (accepting attorney rates as high as $850 per hour as reasonable). The rates reflect the firm's expertise and pre-eminent nationwide success in complex, consumer protection, and class action litigation. It is proper to use current rates, rather than historical rates, to compensate counsel for delay by using current hourly rates in examining the lodestar. *See Barnes v. City of Cincinnati*, 401 F.3d 729, 745 (6th Cir. 2005); *Broadwing*, 252 F.R.D. at 381; *see also Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1984) (indicating that use of current rates is appropriate in lodestar analysis).

TIMEKEEPER	RATE	HOURS	BILLED ($)
Richard E. Shevitz – Partner	$810.00	16.1	$13,041.00
J. Gerard Stranch, IV – Partner	$770.00	68.4	$52,668.00
Lynn A. Toops – Partner	$710.00	170.1	$120,771.00
David Suetholz – Partner	$700.00	6.4	$4,480.00
Vess A. Miller – Partner	$670.00	27.0	$18,090.00
Anthony Orlandi – Associate	$660.00	8.9	$5,874.00
Isaac Miller – Associate	$660.00	4.5	$2,970.00
Chris Jennings – Partner	$650.00	22.8	$14,820.00
Martin F. Schubert – Associate	$600.00	5.6	$3,360.00
Lisa M. LaFornara – Associate	$350.00	43.7	$15,295.00
Jennifer Steele - Paralegal	$300.00	6.7	$2,010.00
Elizabeth Hyde – Law Clerk	$250.00	120.2	$30,050.00
Courtney E. Einterz – Law Clerk	$250.00	8.9	$2,225.00
Cassandra L. Thompson – Law Clerk	$250.00	11.0	$2,750.00
Kim Hibbard – Paralegal	$250.00	11.9	$2,975.00
Mariah Young – Paralegal	$250.00	6.0	$1,500.00
Jacey Bittle – Paralegal	$175.00	3.6	$630.00
Total		**541.8**	**$293,509.00**

In addition, expenses are typically awarded so long as they are "fair and reasonable."[15] Here, Class Counsel incurred expenses of $7,525.72, reflecting the out-of-pocket expenses

[15] *In re Se. Milk*, 2013 WL 2155387 at *8.

incurred in this case. These include costs and expenses for filing fees, service of process, mediation fees, and travel expenses associated with the mediation. Class Counsel incurred these charges with no guarantee of reimbursement, and even with reimbursement, these expenses reduce the amount of the requested $550,000 that will go toward fees rather than toward expenses.

Measured against the requested fee of $550,000, and deducting reimbursement for expenses, the current lodestar multiplier is less than 1.9. This low multiplier reinforces the reasonableness of the requested fees, as it is substantially lower than multipliers approved as reasonable in common fund cases within the Sixth Circuit.[16]

Of course, this multiplier and the associated lodestar do not account for additional fees and expenses that Class Counsel reasonably will incur, including further time spent overseeing claims administration, preparing final approval papers, participating in a final approval hearing, and handling any post-approval proceedings. The multiplier therefore will drop even further.

Accordingly, the lodestar method confirms that the requested fee is reasonable.

C. Class Counsel Undertook this Case on a Contingency Fee Basis

Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. When counsel brings a putative class action on a contingency fee basis, counsel assumes "a substantial risk of non-payment for legal work and reimbursement of out-of-pocket expenses advanced."[17] This factor therefore "accounts for the substantial risk an attorney takes when he or she devotes substantial time and energy to a class action despite the fact that it will be uncompensated if the case does not settle and is dismissed."[18]

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[16] *See supra* FN 8; *see also Huyer v. Buckley*, 849 F.3d 395, 399-400 (8th Cir. 2017) (approving lodestar multiplier of 1.82 as "well within the range of multipliers awarded in this and other circuits").
[17] *In re Se. Milk*, 2013 WL 2155387, at *5.
[18] *Lonardo*, 706 F. Supp. 2d at 796.

Thus, the "failure to make any provision for risk of loss may result in systemic undercompensation of plaintiffs' counsel in a class action case, where . . . the only fee that counsel can obtain is, in the nature of the case, a contingent one."[19]

Here, Class Counsel undertook this litigation on a contingent fee basis. Class Counsel therefore assumed a significant risk that the litigation would yield no recovery, thereby leaving counsel entirely uncompensated for its time and its out-of-pocket expenses. Because the fee in this matter is entirely contingent, Class Counsel has faced a real risk that it could recover nothing for its efforts. Nevertheless, Class Counsel committed substantial time and money to the vigorous – and ultimately successful – prosecution of this litigation for the benefit of the Class. Accordingly, the contingent nature of the Class Counsel's representation strongly favors approval of the requested fee.

D. Public Policy Favors the Requested Award

"Adequately compensatory fee awards in successful class actions promote private enforcement of and compliance with important areas of" law.[20] Accordingly, "[e]ncouraging qualified counsel to bring inherently difficult and risky but beneficial class actions . . . benefits society."[21] Class Counsel therefore undertook a difficult and time-consuming class action case to pool the claims of numerous class members who otherwise would not have vindicated their rights. Awarding an appropriate fee will continue to encourage highly qualified counsel to undertake time-consuming class action litigation (at substantial monetary risk) to vindicate the rights of Class

[19] *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992); *see also Blum v. Stenson*, 465 U.S. 886, 902 (1984) (Brennan, J., concurring) (noting "the risk of not prevailing, and therefore the risk of not recovering any attorney's fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee").
[20] *In re Broadwing*, 252 F.R.D. at 381 (citing *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985)).
[21] *In re Cardizem*, 218 F.R.D. 508, 534 (E.D. Mich. 2003).

members who otherwise might have no practical means of redress. This factor therefore also supports the requested fee award.

E. Complexity of the Litigation

The complexity and novelty of the factual and legal issues presented, and the settlement negotiations necessary to resolve those issues, are factors to be considered in the approval of a fee request.[22] This case involved difficult issues regarding causation, class certification, and ultimate damages. Had litigation continued, class certification could have been denied, or even if granted, could have been appealed on an interlocutory basis. Surviving class certification, the claims still may have failed prior to or at trial, or even a successful verdict would have been subject to additional appeals. Accordingly, this factor also strongly supports Class Counsel's fee and expense request.

F. Class Counsel Are Qualified Complex Litigation Practitioners Who Prevailed Against Skilled Defense Counsel

Class Counsel has significant legal expertise, which they brought to bear in successfully prosecuting this class action and in securing the settlement. As detailed in the accompanying Stranch Declaration, Class Counsel has substantial expertise and decades of success nationwide in class actions, consumer rights, data breach matters, and other forms of complex civil litigation. Firm resumes, which identify some of the Class Counsel's most notable accomplishments, are attached as Exhibit A to the accompanying Stranch Declaration.

The quality of opposing counsel is also important when the Court evaluates services provided by plaintiffs' counsel.[23] Here, Allconnect is represented by qualified counsel that have

[22] *See Sulzer Hip Prosthesis & Knee Prosthesis*, 268 F. Supp. 2d 907, 939 (N.D. Ohio 2003).
[23] *See Dick v. Sprint Commc'ns Co., L.P.*, 297 F.R.D. 283, 301 (W.D. Ky. 2014) ("Counsel for both sides are skilled attorneys who brought extensive experience and knowledge to their motion practice, the fairness hearing, and the bargaining table."); *see also In re Delphi*, 248 F.R.D. at 504

a well-deserved reputation for vigorous advocacy in defending complex civil actions involving data breaches. Defense counsel mounted formidable opposition in this case throughout, including a Rule 12 motion, and in negotiating the settlement. The ability of Class Counsel to obtain extraordinary results in the face of determined, skilled opposition attests to the quality of Class Counsel's work.[24]

This factor therefore also strongly favors the requested fee award.

III. The Requested Service Awards to the Representative Plaintiffs are Reasonable.

Courts routinely approve service payments to recognize individuals' service to the Class and to reward them for contributing to the enforcement of laws through the class action mechanism.[25] These awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."[26]

Here, the Representative Plaintiffs initiated this litigation and were instrumental to its successful outcome. They reviewed pleadings and were actively involved in settlement negotiations. They remained apprised of the status of the litigation throughout this case, including regular correspondence with undersigned counsel. They also reviewed and agreed to all terms of the Settlement before it was executed. Accordingly, the Representative Plaintiffs respectfully

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("The ability of Co-Lead Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested.");

[24] *See In re Se. Milk*, 2013 WL 2155387, at *4 ("Class counsel… have efficiently and competently managed their enormous task and have vigorously and effectively prosecuted the case on behalf of the class. They have also been opposed by equally experienced and highly competent counsel for defendants and have achieved an excellent result for their clients.")

[25] *See, e.g., Fruit of the Loom, Inc.*, 234 F.R.D. at 635 (approving reimbursement payments exceeding $27,000 to four lead plaintiffs in a class action).

[26] *In re Se. Milk*, 2013 WL 2155387 at *8 (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)).

request service awards of $3,500 each. This reward is well within the reasonable range for a case of this size and complexity,[27] and awarding these amounts to the Representative Plaintiffs will still result in extraordinary monetary compensation to participating Class Members.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court (1) award attorney's fees and expenses in the amount of $550,000, and (2) award $3,500 to each Representative Plaintiff.

[27] *See In re Se. Milk*, 2013 WL 2155387, at *8 (approving a $10,000 incentive award to each representative and referencing incentive awards in other cases up to $50,000); *Landsman & Funk, P.C. v. Skinder-Strauss Associates*, No. 08-CV-3610, 2015 WL 2383358, at *8-*9 (D. N.J. May 18, 2015) *aff'd*, 639 Fed. Appx. 880 (3d Cir. 2016) (issuing a $10,000 incentive award to the representative plaintiff in a TCPA class action).

Dated: August 7, 2019

Respectfully submitted,

/s/ *David O'Brien Suetholz*
J. Gerard Stranch, IV
BRANSTETTER, STRANCH & JENNINGS, PLLC
223 Rosa L. Parks Ave, Ste. 200
Nashville, TN 37203
Telephone: (615) 254-8801
Fax: (615) 255-5419
Email: gerards@bsjfirm.com

Richard E. Shevitz
Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Fax: (317) 636-2593
Email: rshevitz@cohenandmalad.com
Email: ltoops@cohenandmalad.com

David O'Brien Suetholz
BRANSTETTER, STRANCH & JENNINGS, PLLC
515 Park Avenue
Louisville, KY 40208
Telephone: 502-636-4333
Email: davids@bsjfirm.com

Christopher D. Jennings
THE JOHNSON FIRM
2226 Cottondale Lane, Suite 210
Little Rock, AR 72202
Telephone: (501) 372-1300
Fax: (888) 505-0909
Email: chris@yourattorney.com

Attorneys for Plaintiffs and Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 7, 2019 a copy of the above document has been served upon the following persons by Electronic Mail and/or United States mail first class to:

Claudia C. McCarron
Mullen Coughlin LLC
1275 Drummers Lane, Suite 302
Wayne PA 19087
cmccarron@mullen.law

Robert E. Maclin, III
Jaron P. Blandford
Elizabeth C. Barrera
McBrayer, McGinnis, Leslie & Kirkland, PLLC - Lexington
201 E. Main Street, Suite 900
Lexington, KY 40507
remaclin@mmlk.com
jblandford@mcbrayerfirm.com
ebarrera@mmlk.com

/s/ *David O'Brien Suetholz*
J. Gerard Stranch, IV

Eastern District of Kentucky
FILED
DEC - 2 2019
AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

ELECTRONICALLY FILED

McKENZIE, METTEKJISTINE, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	**Case No. 5:18-cv-00359-JMH**
	)	
ALLCONNECT, INC.,	)	
	)	
Defendant.	)	
	)	

* * * * * * * * * * * *

ORDER GRANTING REPRESENTATIVE PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

This case is before the Court on Representative Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards (Dkt. No. 44) (the "Motion"). The Court, having reviewed the Settlement Agreement (Dkt. No. 38), the Motion, the Representative Plaintiffs' Memorandum in Support of the Motion (Dkt. No. 45) (the "Memorandum"), the Declaration of J. Gerard Stranch, IV (Dkt. No. 46) (the "Stranch Declaration"), the Declaration of Tad Thomas (Dkt. No. 47), and the Declaration of Judge Sanford M. Brook (Ret.) (Dkt. No. 48), finds that the requested attorneys' fees and expenses, the hourly rates and the number of hours worked set forth in the Memorandum and the Stranch Declaration, and the class representative service awards are fair, reasonable, and appropriate under the circumstances. Accordingly, the motion is hereby **GRANTED**.

Defendant shall pay or shall cause to be paid:

1. $3,500 to each of the Representative Plaintiffs as an incentive award for representing the

Class and achieving the Settlement for the benefit of the Class Members; and

2. $550,000 to Cohen & Malad, LLP, Branstetter, Stranch, and Jennings PLLC, and The Johnson Firm as an award of attorneys' fees and expenses.

IT IS ORDERED.

Dated: 12/2/19

Honorable Joseph M. Hood

ERIC A. GROVER
KELLER GROVER LLP
1965 Market Street
San Francisco, CA 91403
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com

Attorneys for Plaintiffs

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EVERETT CASTILLO, LINDA CASTILLO, NICHOLAS DATTOMA, FREDA LANG, WENDY TRAN, and STEVEN WILK, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SEAGATE TECHNOLOGY LLC,

Defendant.

Case No. 3:16-cv-01958-RS

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: March 8, 2018
Time: 1:30 p.m.
Judge: Hon. Richard Seeborg
Courtroom: 3

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on March 8, 2018, at 1:30 PM., or as soon thereafter as the matter may be heard by the Honorable Richard Seeborg in the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, Courtroom 3, 17th Floor, San Francisco, California, Plaintiffs Everett Castillo, Linda Castillo, Nicholas Dattoma, Freda Lang, Wendy Tran, and Steven Wilk ("Plaintiffs") will, and hereby do, move the Court for entry of an Order (1) granting Class Counsel's application for an award of reasonable attorneys' fees in the amount of $746,250 and reimbursement of actual expenses in an amount of $23,059.34; and (2) approving an service awards in the amount of $2,500 per class representative.

Plaintiffs bring this motion pursuant to Federal Rule of Civil Procedure 23(h) on the grounds that the parties' Settlement Agreement authorizes the requested fees, costs, expenses, and service awards. This Motion is based upon this Notice of Motion and Motion, the attendant Memorandum of Points and Authorities, the Declarations of Settlement Class Counsel David J. Stone, Marc L. Godino, Jeremiah Frei-Pearson, and Eric A. Grover, all pleadings and papers filed in this action, and such other matters as may be presented at or in connection with the hearing.

Dated: December 22, 2017

KELLER GROVER LLP

By: */s/ Eric A. Grover*
Eric A. Grover
1965 Market Street
San Francisco, CA 91403
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com

GLANCY, PRONGAY
& MURRAY, LLP
Marc L. Godino (State Bar No. 182689)
Lionel Z. Glancy (State Bar No. 134180)
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
mgodino@glancylaw.com

BRAGAR EAGEL & SQUIRE, P.C.
Jeffrey H. Squire
Lawrence P. Eagel
David J. Stone
885 Third Avenue, Suite 3040
New York, NY 10022
Telephone: (212) 308-5858
Facsimile: (212) 486-0462
stone@bespc.com

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP
Jeremiah Frei-Pearson (Pro Hac Vice)
445 Hamilton Avenue, Suite 605
White Plains, NY 10601
Telephone: (914) 908-6709
Jfrei-pearson@fbfglaw.com

Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this litigation Plaintiffs have secured an outstanding benefit for Settlement Class members.[1] Defendant Seagate Technology Inc. ("Seagate") will offer Employees and Third Parties up to two years of Experian's ProtectMyID identity theft protection plan at no cost to the Settlement Class members. In addition, Seagate will reimburse all Settlement Class members for documented out-of-pocket costs as a result of the Data Incident that are not otherwise reimbursable through the ProtectMyID plan, *up to $3,500 per class member*. As a result of the offered settlement benefits, few if any Settlement Class Members will suffer any financial harm as a result of the Data Incident. Plaintiffs estimate that the Experian ProtectMyID protection is valued at approximately $5.75 million to the Settlement Class. Plaintiffs further estimate that Seagate's "backstop" protection offers potential coverage of *more than $42 million* to protect a class estimated at 12,000 individuals. Settlement Class members will also directly benefit from business practice changes that require Seagate to deploy specific data security measures to protect Settlement Class members' personally identifiable information ("PII") in the future.

As compensation for their work, and in recognition of the risks they faced and the significant investment they made, David J. Stone of Bragar Eagel & Squire, P.C., Marc L. Godino and Mark S. Greenstone of Glancy, Prongay & Murray, LLP, Jeremiah Frei-Pearson of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"), and Eric A. Grover of Keller Grover ("Class Counsel") request $746,250 in fees and $23,059.34 in costs, which is less than

[1] All of the settlement terms are set forth in the Settlement Agreement attached as Exhibit 1 to the Frei-Pearson Declaration submitted with this motion. The Court preliminarily approved the settlement on October 19, 2017. ECF No. 76.

2% of Class Counsel's estimated value of the Settlement and also less than Class Counsel's lodestar and actual costs incurred to date. Defendant has agreed not to oppose Plaintiffs' request for fees and costs. By any measure, Class Counsel's requested fees are reasonable and justified.

To date, Class Counsel have devoted approximately 1,286.35 hours with a combined lodestar value of $819,127.75 and have incurred $23,059.34 in unreimbursed expenses to achieve the excellent result here.[2] These fees and costs were incurred as a result of intensive pre- and post-filing investigation that included personally interviewing numerous class members, aggressive law and motion practice, formal and informal discovery and mediation/settlement negotiation process that spanned many months. Measured by lodestar, Class Counsel's requested fees – representing a negative lodestar – are clearly justified.

Plaintiffs' request for class representative service awards of $2,500 is also justified by the nature of the case and work performed, and is commensurate with awards in similar cases.

Accordingly, Plaintiffs' request for an award of attorneys' fees, costs, expenses, and class representative service awards should be granted.

II. PROCEDURAL AND FACTUAL BACKGROUND

Pursuant to the Procedural Guidance for Class Action Settlements posted on the Northern District of California's website, Plaintiffs will set forth the case history and facts in the motion for final approval that will be filed on February 15, 2018, and will not repeat that information here.

[2] Class Counsel will incur additional fees and expenses in moving for final approval and in continuing to communicate with Settlement Class members.

III. ARGUMENT

A. The Requested Fee Is Fair, Reasonable, And Justified.

In a successful class action, Rule 23(h) permits the Court to "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The proposed Settlement Agreement permits Class Counsel to seek attorneys' fees and reimbursement of expenses of no more than $746,250 and $25,000, respectively. Settlement Agreement, ¶ 10. Class Counsel respectfully seek fees and expenses totaling $769,309.34. These fees are fair, reasonable, and justified.

1. California Law Governs Both The Entitlement To And Computation Of Fees.

"In diversity actions, federal courts look to state law in determining whether a party has a right to attorneys' fees and how to calculate those fees." *Mangold v. Calif. Public Utilities Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). The state law governing the underlying claims in a diversity action "also governs the award of fees." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).[3] Accordingly, California law governs this action. Notwithstanding, federal law may be used as guidance. *See Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1264 n.4 (2005) ("California courts may look to federal authority for guidance on matters involving class action procedures.").

[3] Plaintiffs' operative Complaint invokes diversity jurisdiction and the claims asserted by Plaintiffs here are California statutory and common law claims. *See* First Amended Consolidated Class Action Complaint at ¶¶ 11, 67-102 (ECF No. 48). Hence, California law applies. *See Chambers v. Whirlpool Corp.*, 2016 WL 5922456, at *1, *10 (C.D. Cal. 2016) (applying California law to determine fees in settlement of washing machine defect class action where plaintiffs alleged claims under California consumer protection statutes, as well as claims under the laws of other states and derivative Mag-Moss claims); *Mangold*, 67 F.3d at 1478 (9th Cir. 1995) (applying California law in case where plaintiff succeeded on both state and federal claims).

In common fund cases, the district court has discretion to employ either the percentage-of-recovery method or the lodestar method in determining reasonable attorneys' fees. *In re Apple iPhone/iPod Warranty Litig.*, 40 F. Supp. 3d 1176, 1179 (N.D. Cal. 2014) (Seeborg, J.) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002)). The Ninth Circuit encourages courts to cross-check their chosen method of calculating fees against the other method. *Id.* at 1181; *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 10-2143, 2016 WL 7364803, at *6 (N.D. Cal. Dec. 19, 2016) (Seeborg, J.) (citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015)). Although courts may use either method, "the percentage method in common fund cases appears to be dominant." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). That method "better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients." *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014). The Ninth Circuit recognizes 25% of the common fund as a "benchmark," which can be adjusted upward or downward based on the circumstances of the case. *Vizcaino*, 290 F.3d at 1047 (citing *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *In re Optical Disk Drive*, 2016 WL 7364803, at *7 (25% benchmark "is a helpful 'starting point'") (citation omitted). "[I]n most common fund cases, the award exceeds that benchmark." *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047.

Regardless of the method chosen, courts award attorneys' fees based on an evaluation of "all the circumstances of the case." *Vizcaino*, 290 F.3d at 1048. According to the Ninth Circuit, the following factors are relevant to any such determinations: (1) the results achieved for the class; (2) the quality of representation; (3) the novelty and complexity of the issues; (4)

the risks of the litigation; and (5) awards in similar cases. *See id.* at 1048-51; *see also EK Vathana v. Everbank*, No. 09-CV-02338, 2016 WL 3951334, at *2 (N.D. Cal. July 20, 2016) (Seeborg, J.) (same). All of the factors set forth by the Ninth Circuit militate in favor of the reasonableness of the requested attorneys' fees here.

2. Class Counsel Achieved Exceptional Results For The Class.

Of the *Vizcaino* factors, "[t]he overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1046; *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the "most critical factor" to the reasonableness of an attorney fee award is "the degree of success obtained"). Here, the proposed settlement directly benefits the class by providing comprehensive relief.

The credit monitoring services provide an extraordinary benefit for class members. Every Settlement Class member who signs up for credit monitoring will receive two years of Experian's ProtectMyID, worth approximately $479.76 in retail value ($19.99 a month for twenty-four months), at no cost. Declaration of Jeremiah Frei-Pearson ("Frei-Pearson Decl.") ¶ 18.[4] The Experian ProtectMyID plan includes: (i) daily bureau credit monitoring; (ii) identity theft resolution and ExtendCARE™, which provides fraud resolution support after expiration of the ProtectMyID membership; and (iii) $1 million in identity theft insurance, which covers certain costs, including lost wages and unauthorized electronic fund transfers. *Id.* ¶ 19.

Further, under the terms of the Settlement Agreement, each Settlement Class member is also entitled to up to $3,500 for reimbursement of out-of-pocket expenses incurred in connection

[4] The most equivalent identity theft protection plan Experian offers to consumers is the IdentityWorks Premium plan, which costs $19.99 per month. *Id.*

with the Data Incident that are not otherwise reimbursable through Experian. *Id.* ¶ 20. Thus, any "gaps" in protection by the Experian plan should be filled by the backstop. *Id.* Few Settlement Class members, if any, who take advantage of the Settlement will suffer any monetary harm from the Data Incident. *Id.*

In similar cases, courts have calculated the value of a common fund for the purpose of evaluating attorneys' fees by multiplying the value of credit monitoring services times the total number of class members plus funds available for reimbursement for identity theft-related out-of-pocket expenses. For instance, in *Johansson-Dohrmann v. Cbr Sys., Inc.*, the court calculated the $114,251,187 value of the settlement by multiplying the parties' valuation of the credit monitoring (which had a retail value of $15.95 per month, or $382.80 over a 24-month period) times the number of class members ("approximately 292,000"), plus the funds allocated for reimbursement of out-of-pocket expenses related to identity theft. No. 12-1115, 2013 WL 3864341, *2, *9 (S.D. Cal. July 24, 2013). The court then compared the requested fee award to its valuation of the settlement. *Id. See also Hillis v. Equifax Consumer Servs., Inc.*, 2007 WL 1953464 at *4-5 (N.D. Ga. June 12, 2007) (finding that settlement making class members eligible for three to six months of credit monitoring at retail value of $8.95 per month resulted in potential value of in-kind benefits of $100 to $221 million).

According to this approach, the total value of the settlement here is approximately $47,757,120, as the class size is estimated at 12,000 individuals and each Settlement Class member is entitled to receive two years of credit monitoring services (valued at $479.76 per person) and up to $3,500 in reimbursement for out-of-pocket identity theft-related expenses.

The Settlement Agreement's injunctive relief, which requires substantial upgrades to Seagate's cybersecurity and data practices, provides additional benefits to the Settlement Class

members. Pursuant to the Settlement Agreement, ¶ 5.4, Seagate agrees to implement and maintain: a data security program containing policies, procedures, and controls for sensitive data; training for employees who handle PII; controls regarding W-2 Forms and other records containing PII; and simulated phishing exercises to educate and train all of its employees. These comprehensive cybersecurity measures will remedy weaknesses in Seagate's systems that allowed for the Data Incident to occur.

"[W]here the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained . . . courts [may] include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees." *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003); *see also McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D.N.J. 2008) (including value of injunctive relief that benefits the class in percentage-of-recovery calculation where "the value of the injunctive relief cannot be precisely and mathematically ascertained as to each Class Member"). However, even if the value of the required injunctive relief is not quantifiable, "courts should consider the value of the injunctive relief obtained [the requisite cybersecurity improvements] as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees." *Staton*, 327 F.3d at 974 (quoting *Vizcaino*, 290 F.3d at 1049 ("Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance.")).

Furthermore, the changes in Seagate's data security benefit individuals beyond the class because any new Seagate employee will receive the same added cybersecurity protection. *See Vizcaino*, 290 F.3d at 1049 (considering the benefits to non-class members and holding that "[i]ncidental . . . benefits conferred by the litigation are a relevant circumstance."); *cf. City of Riverside v. Rivera*, 477 U.S. 561 (1986) (courts may consider the public benefit of counsel's

efforts in determining reasonable attorneys' fees).

3. Class Counsel Exhibited Outstanding Skill And Quality Throughout The Course Of Litigating The Action.

Class Counsel are partners at several of the leading data breach firms in the country and, together, have decades of experience litigating complex class actions in general and data breach class actions. Frei-Pearson Decl. ¶¶ 6-7; Declaration of David J. Stone ("Stone Decl.") ¶ 13; Declaration of Marc L. Godino ("Godino Decl.") ¶ 13; Declaration of Eric A. Grover ("Grover Decl.") ¶ 4. Class Counsel demonstrated exemplary skill and quality, and drew on their collective experience and abilities throughout this action.

Class Counsel demonstrated mastery of technical details about cybersecurity, including facts about Seagate's security mechanisms and industry standards. Class Counsel also exhibited in-depth knowledge of issues related to identity theft and credit monitoring, including the emerging risks associated with theft of PII and the most effective methods of mitigating risk.

From the outset, Class Counsel conducted extensive factual and legal research into the claims and potential defenses in this matter. Frei-Pearson Decl. ¶ 11. Class Counsel interviewed numerous class members. *Id.* ¶ 9. Class Counsel conducted extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans. *Id.*

Class Counsel utilized their extensive cybersecurity knowledge and experience to develop Plaintiffs' comprehensive Amended Consolidated Class Action Complaint, ECF No. 22, to oppose successfully Defendant's motion to dismiss, ECF No. 30, and to prepare the First Amended Consolidated Class Action Complaint in light of Your Honor's Order. ECF Nos. 39 and 48. Moreover, Class Counsel successfully litigated the motion to dismiss, obtaining a favorable decision on the implied breach of contract claim. ECF No. 39. Class Counsel's

understanding of the field was also critical to drafting targeted discovery requests concerning technical topics, and to understanding Defendant's responses. Frei-Pearson Decl. ¶ 23.

Throughout this action, Class Counsel crafted novel and complex claims and arguments on behalf of the Settlement Class, not only in the context of the rapidly-developing data privacy field, but also by alleging claims on behalf of current and former Seagate employees' spouses and dependents. *See generally* ECF Nos. 22, 39.

Furthermore, the work it took to reach the Settlement Agreement and the benefits provided herein clearly reveal the quality of Class Counsel's skill and effort. This was not a case in which the parties settled quickly or easily. Even after a mediation with the Honorable Judge Carl J. West (Retired), of JAMS in Los Angeles, the parties spent months attempting to paper the Settlement Agreement. Frei-Pearson Decl. ¶ 12. The multi-dimensional settlement that the parties ultimately entered into is the product of long and hard-fought negotiations, and is testament to Class Counsel's tenacity and skill as advocates.

The quality of opposing counsel is also an indicator of Class Counsel's quality. *See Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) ("The quality of opposing counsel is important in evaluating the quality of Class Counsel's work."). Defense counsel have significant class action litigation experience and demonstrated that experience by vigorously contesting Plaintiffs' allegations. Frei-Pearson Decl. ¶ 22. In addition, defense counsel devoted substantial resources to the defense. *Id.* Class Counsel's ability to obtain a favorable settlement despite the quality of work done by Defendant's highly-resourced elite law firm is an additional indicator of their skill and quality of work. *See, e.g., Knight v. Red Door Salons, Inc.*, No. 08-01520, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) (where defense counsel "understood the legal uncertainties in this case[] and were in a position to mount a

vigorous defense," the favorable class settlement was "some testament to Plaintiffs' counsel's skill"); *see also Lofton v. Verizon Wireless (VAW) LLC*, No. 13-05665, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (the "risks of class litigation against an able defendant well able to defend itself vigorously" support an upward adjustment in the award of fees).

4. Risks of Litigation

Class Counsel's fee request also appropriately reflects the inherent risks and financial burden associated with this action and contingent litigation generally. Class Counsel provided experienced, competent representation and obtained an eight-figure settlement for the Settlement Class members, all while prosecuting the case on a contingency basis. Class Counsel were required to dedicate significant resources to this case, and have collectively devoted 1,286.35 hours to litigating this case and spent over $23,059.34 in costs and other litigation expenses to date. Frei-Pearson Decl. ¶ 24.

As the California Supreme Court explained:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Ketchum v. Moses, 24 Cal. 4th 1122, 1132-33 (2001) (internal citation and quotations omitted).

The instant case presented extraordinary risk from its inception. Due to the novelty and complexity of the data breach and privacy fields of law, there was no guaranty that Plaintiffs' claims would survive a motion to dismiss. Indeed, many prior data breach cases were defeated on motions to dismiss. *See, e.g.*, *Beck v. McDonald*, 848 F.3d 262 (4th Cir. 2017) (dismissed for

lack of standing); *Reilly v. Ceridian Corp.*, 664 F.3d 38 (3d Cir. 2011) (same).

While Plaintiffs' case has survived Defendant's motion to dismiss, it still faced numerous hurdles. For instance, Plaintiffs faced a risk that, when deciding Defendant's inevitable motion to dismiss Plaintiffs' First Amended Consolidated Class Action Complaint, the Court would again render a decision that foreclosed the proposed third-party classes from recovery as a part of this action. While Plaintiffs believe that the Court would have found in favor of Plaintiffs when assessing Defendant's arguments, it posed a risk that thousands covered by the current Settlement Agreement would be left with no relief. *See Jenson v. First Tr. Corp.*, No. 05-3124, 2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008) ("Uncertainty that *any* recovery ultimately would be obtained is a highly relevant consideration.") (citations omitted).

Likewise, there was no guarantee that the Court would grant class certification to Plaintiffs' claims. Indeed, when Class Counsel initiated their respective actions that culminated in the present action, to the best of Class Counsel's knowledge, there was *no* federal court precedent granting class certification to victims in a data breach case other than for settlement purposes. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (denying class certification in data breach case); *In re TJX Companies Retail Sec. Breach Litig.*, 246 F.R.D. 389, 392 (D. Mass. 2007) (same); *see also Goldberger v. Integrated Res.*, 209 F.3d 43, 55 (2d Cir. 2000) ("It is well-established that litigation risk must be measured as of when the case is filed."). While Plaintiffs believe that the Court would have certified their claims, Defendant would have vigorously opposed certification, and there was a significant risk that the Court would deny class certification in whole or in part. Also, even if the Court were to certify the classes, there is no guarantee the certification would survive through trial, as Defendant might have sought decertification or modification of the classes.

Following certification, Plaintiffs would continue to face a long road ahead. Defendant would likely continue to challenge Plaintiffs' ability to prove causation, damages, and the scope of Seagate's promise to protect PII (among other issues) at summary judgment and trial, or on subsequent appeal. Due to the novelty of Plaintiffs' damages theories, there was also a risk that Plaintiffs would prevail on liability but establish only minor damages. *See In re Omnivision*, 559 F.Supp. 2d at 1047 (acknowledging risks where estimates of damages varied).

Class Counsel undertook considerable risk in litigating this matter for over twenty months to date on an entirely contingent basis while paying for all of the expenses incurred. Ultimately, there was no guarantee that they would recover any amounts expended, and a significant possibility that Class Counsel would neither be compensated for the time they expended nor reimbursed for their expenses.

5. Awards In Similar Cases Demonstrate That The Requested Fee Award Is Reasonable.

The requested fee award here is justified in light of fee awards in comparable data breach settlements. Courts have awarded more than 25% of the common fund in data breach actions with relatively less beneficial settlements, *i.e.*, providing for limited injunctive relief, credit monitoring, or reimbursement for expenses related to identity theft. Here, on the other hand, Class Counsel secured substantial benefits for the Class, including comprehensive upgrades to Seagate's data security practices, two years of credit and identity theft monitoring (which includes $1 million for identity theft insurance), *and* additional funds available for reimbursements of out-of-pocket costs associated with the Data Incident.

In *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-02522, ECF No. 645 at 8 (D. Min. Nov. 11, 2015), for instance, the court approved an award of $6.75 million for

attorneys' fees, costs, and expenses, which was 29% of the combined value of the settlement in a data breach affecting a class of more than forty million consumers whose credit and debit card information was stolen, and more than sixty million consumers whose PII was stolen. The court accepted class counsel's $23,320,816 valuation of the total settlement, which included the $10 million settlement fund for identity theft-related expenses, approximately $6.5 million in notice and administrative costs, and $6.75 million in attorney's fees and expenses. *Target*, No. 14-02522, ECF No. 645 at 8; *Id.*, ECF No. 482 at 35 (July 10, 2015); *Id.*, ECF No. 358-1 at 94-96 (Mar. 18, 2015). Notably, the *Target* settlement included limited reimbursements and injunctive relief, and no credit monitoring. *Id.* at 13-14. Likewise, in *Curry v. AvMed, Inc.*, the court approved a fee award of $750,000, which was 25% of the value of the settlement in a data breach action. No. 10-24513, ECF No. 91 at 4 (S.D. Fla. Feb. 28, 2014). The settlement itself consisted of a reversionary fund that permitted reimbursements of out-of-pocket expenses and injunctive relief, and did not provide for any monitoring services. *Id.*, ECF No. 85 at 16-17 (Jan. 23, 2014). Unlike this case, neither *Target* nor *AvMed* required specific and comprehensive improvements to cybersecurity, nor did they offer comprehensive credit and identity theft monitoring. Under the analysis used in *Target* and *AvMed*, Class Counsel would be entitled to substantially more than the $746,250 in fees they seek.

6. The Requested Fee Award Is Appropriate Under The Percentage-Of-The-Common-Fund Method.

The California Supreme Court just recently clarified that the percentage of the common fund is a proper and accepted method for awarding fees. *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 503 (2016). Indeed, courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a

group of persons may be awarded their fees and costs to be paid out of the fund. *Id.*; *see also Glendale City Employees' Assoc. v. City of Glendale*, 15 Cal. 3d 328, 341 n.19 (1975) (collecting cases); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("The common-fund doctrine reflects the traditional practice in courts of equity and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees." (citations omitted)). In *Laffitte*, the California Supreme Court held that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Id.* (providing an extended analysis of California law regarding fee award methodology).

Similarly, the Ninth Circuit has explained that "attorneys for a successful class may recover a fee based on the entire common fund created for the class, even if some class members make no claims against the fund so that money remains in it that otherwise would be returned to the defendants." *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (citation omitted); *accord Van Gemert*, 444 U.S. at 478 ("a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). Courts may likewise look at the total fund value in a reversionary settlement, although that is not necessary in this "all-in" (i.e., non-reversionary) settlement. *See Staton*, 327 F.3d 938, 967 (9th Cir. 2003) (citation omitted); *Williams*, 129 F.3d at 1027 (finding district court abused its discretion by awarding class counsel's fees based on percentage of claims made rather than the total common fund); *Stern v. Gambello*, 480 F. App'x 867, 870 (9th Cir. 2012) (finding district court correctly considered the requested fees against the potential recovery, not the claims actually made); *cf. Lealao v. Beneficial Calif.*, 82 Cal. App. 4th 19, 50-51 (2000)

(analyzing fee request under the percentage method of the maximum payout even "though the settlement did not create a common fund out of which fees are to be paid").

The Ninth Circuit recognizes 25% of the common fund as a "benchmark," which can be adjusted upward or downward based on the circumstances of the case. *Vizcaino*, 290 F.3d at 1047 (citing *Paul, Johnson, Alston & Hunt*, 886 F.2d at 272. "[I]n most common fund cases, the award exceeds that benchmark." *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047.

In this matter, as explained above, Defendant agreed to pay Class Counsel's fee and expenses separate and apart from the benefits to the Settlement Class. Thus, unlike typical "common fund" awards, the fee award to Class Counsel here will not reduce the value of the settlement to the Settlement Class.

As explained above, Plaintiffs estimate that the Experian ProtectMyID protection is valued at approximately $5.75 million to the Settlement Class and that Seagate's "backstop" protection offers more than $42 million in available coverage to protect the Class of approximately 12,000 individuals. Accordingly, Plaintiffs estimate the value of the Settlement to be $47.75 million. The 25% benchmark would result in a baseline fee award of nearly $12 million. Furthermore, Class Counsel obtained an excellent settlement for the Class despite the complexity and novelty of the action, and did so on a completely contingent basis, thereby meriting an upward adjustment in percentage. Conversely, Plaintiffs' requested fee award is $746,250, less than 2% of the value of the Settlement and approximately 6% of the fee award required by the benchmark's baseline. Given that Plaintiffs' requested fee award is far below the 25% benchmark, and all relevant considerations counsel in favor of a higher than average fee award, Plaintiffs fee award is reasonable under the percentage-of-the-fund approach.

7. A Lodestar Cross-Check Confirms The Reasonableness Of The Requested Fee Award.

California's lodestar method is a two-step process. To determine the lodestar, the Court must first multiply "the number of hours reasonably expended on the litigation . . . by a reasonable hourly rate." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). This base "unadorned" lodestar figure is "presumptively reasonable." *Id.* The Court may then enhance or reduce the lodestar by applying a multiplier to take into account the contingent nature and risk associated with the action, as well as other factors such as the degree of skill required and the ultimate success achieved. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556 (2009).

Class Counsel invested approximately 1,286.35 hours prosecuting Plaintiffs' claims and have a lodestar of $819,127.75 to date. Frei-Pearson Decl. ¶ 24. To assist the Court in evaluating the reasonableness of this lodestar, Class Counsel have provided summaries of their work. Frei-Pearson Decl. ¶¶ 8-17, 28; Stone Decl. ¶¶ 4-15; Godino Decl. ¶ 4-15; Grover Decl. ¶¶ 5-11, 13. These summaries are sufficient evidence for the Court to make a determination as to the reasonableness of Class Counsel's lodestar, as it is well established that in moving for fees, counsel is "not required to record in great detail how each minute of his time was expended." *Hensley*, 461 U.S. at 437 n.12. Instead, counsel need only "identify the general subject matter of his time expenditures." *Id.*; *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) ("a summary of the time spent on a broad category of tasks such as pleadings and pretrial motions" met "basic requirement" of documentation). Additionally, Class Counsel expect to spend at least another fifty hours preparing and filing the motion for final approval, communicating with Settlement Class members, attending the fairness hearing, and tending to claims administration issues.

In light of the circumstances discussed above, a substantial positive multiplier would be appropriate. *See, e.g.*, *Vizcaino*, 290 F.3d at 1051 n.6 (holding that in the Ninth Circuit, multipliers "ranging from one to four are frequently awarded" and affirming multiplier of 3.65); *St. Joseph Health System Medical Information Cases*, JCCP No. 4716, ECF No. 418 at 7 (Cal. Sup. Ct. Feb. 3, 2016) (approving of a 1.21 multiplier in a data breach action); *Rice v. InSync, et al.*, No. 30-2041-00701147, Orange County Super Ct. (Super Ct. Cal. 2015) (approving a 2.05 multiplier in data breach action); *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass. Nov. 3, 2008) (approving a 1.97 multiplier in data breach action). However, Plaintiffs' requested fee award here is $746,250, 8.9% *less than* Class Counsel's lodestar to date. Thus, as Class Counsel is seeking a negative multiplier, the requested fee award is more than reasonable.

i. Class Counsel's Hours Expended Are Reasonable.

In making a determination as to the reasonableness of the hours, courts must "focus on providing an award of attorneys' fees reasonably designed to fully compensate plaintiffs' attorneys for the services provided." *Horsford v. Board of Trustees of California State Univ.*, 123 Cal. App. 4th 359, 395 (2005). Courts do so by looking at "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, [and] litigation tactics[.]" *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal. App. 4th 440, 445 (2000).

The "entire course of the litigation" here shows that Class Counsel exerted extraordinary efforts at every step to achieve an outstanding result for the class. As part of its independent investigation, which began months before the filing of the initial complaint, Class Counsel interviewed numerous putative class members. Frei-Pearson Decl. ¶ 9; Stone Decl. ¶ 4, Godino Decl. ¶ 4, Grover Decl. ¶ 5. In addition, Class Counsel researched publicly available materials

and other litigation relating to similar data breaches. Although Class Counsel originally filed two separate complaints, Class Counsel worked together amicably to consolidate the actions.

Class Counsel diligently pursued discovery, propounding comprehensive written sets of discovery on Defendant, and successfully (in part) opposed Defendant's motion to dismiss. After the Court's Decision, Class Counsel drafted an amended complaint, interviewing new witnesses as part of the process. In addition, Class Counsel obtained preliminary approval and intend on moving for final approval of the settlement pursuant to the schedule ordered by the Court.

The settlement negotiations and the process of documenting the settlement, were hard fought. Prior to formal mediation, the Parties had direct settlement talks and then held several separate teleconferences with Judge West, who mediated the case. On December 13, 2016, the Parties attended a full-day mediation before Judge West, for which they submitted detailed mediation briefs, and for which Class Counsel flew to Los Angeles. Frei-Pearson Decl. ¶ 8.d. Thereafter, with Judge West's assistance, the parties negotiated for approximately seven months before finalizing the Settlement. *Id*. Class Counsel has spent significant additional time shepherding this case through the approval process, fielding regular inquiries from Class members, in addition to drafting the necessary documentation. *Id.*

The 1,286.35 hours expended on the above tasks are reasonable and compare favorably to the hours submitted by counsel in class actions of comparable duration involving a technical data breaches. For example, in *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass. 2008), a data breach class action, class counsel billed over 5,000 hours in filing a consolidated complaint, opposing a motion to dismiss (that was pending when the parties settled), and in negotiating and obtaining approval of a settlement. Indeed, Judge Young awarded a 1.97 multiplier on top of a lodestar of $3.3 million, bringing *TJX* class counsel's fees to $6.5 million.

Similarly, in *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 08-01998, 2010 WL 3341200, at *10 (W.D. Ky. Aug. 23, 2010), another data breach class action, class counsel billed 11,453 hours in shepherding the case through the MDL and settlement process and reaching resolution prior to a decision on the motion to dismiss. Judge Russell awarded a multiplier of 1.2 on top of a lodestar of $2.9 million, bringing class counsel's fees to $3.5 million.

All told, Class Counsel's lodestar of $819,127.75 reflecting 1,286.35 hours worked is reasonable, as Class Counsel appears to have worked substantially more efficiently than counsel in other data breach cases like *TJX* and *Countrywide*. Class Counsel's lodestar is not excessive, and does not reflect duplicative or unnecessary work. Indeed, the Ninth Circuit counsels courts should defer to successful counsel's judgment as to how much work was needed to succeed. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Accordingly, Class Counsel respectfully submits that the time devoted by Class Counsel in prosecuting this case is reasonable and should be approved.

ii. Class Counsel's Rates Are Reasonable.

Class Counsel's hourly rates, which range from $300 to $850 for attorneys and $180 to $325 for legal assistants, are also reasonable. Counsel are entitled to their requested hourly rates if those rates are within the range of rates charged by and awarded to attorneys of comparable experience, reputation, and ability for similar work, *i.e.*, complex class action litigation. *Children's Hospital and Med. Center v. Bonta*, 97 Cal. 4th 740, 783 (2002) (affirming that rates were "within the range of reasonable rates charged by, judicially awarded to, comparable attorneys for comparable work"). "Courts may find hourly rates reasonable based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates." *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160,

1172 (C.D. Cal. 2010).

Here, Class Counsel's rates have been approved by multiple other courts, including in data breach litigations, *see* Frei-Pearson Decl. ¶ 29, Stone Decl. ¶ 17, Godino Decl. ¶ 17, Grover Decl. ¶ 18, and are consistent with other attorneys engaged in similar complex class action litigation. *See, e.g.*, *In re High-Tech Employee Antitrust Litigation*, 2015 WL 5158730, at *9 (N.D. Cal. 2015) (finding reasonable "billing rates for partners [that] range from about $490 to $975 . . . billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and staff attorneys, [that] range from about $310 to $800, with most under $500 . . . [and] billing rates for paralegals, law clerks, and litigation support staff [that] range from about $190 to $430, with most in the $300 range."); *In re Cathode Ray Tube (CRT) Antitrust Litigation*, 2016 WL 4126533, at *7 (N.D. Cal. 2016) ("billing rates between $350 and $875 are reasonable within this legal market for cases of this size, type, and complexity"); *St. Joseph Health System Medical Information Cases*, JCCP No. 4716, ECF No. 418 at 7 (Cal. Sup. Ct. Feb. 3, 2016) (approving FBFG's rates and Keller Grover's rates in a data breach class action).

Accordingly, Class Counsel's hourly rates are reasonable.

IV. CLASS COUNSEL'S REQUESTS FOR EXPENSES ARE REASONABLE.

Rule 23(h) also permits the Court to "award . . . nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Section 10 of the Settlement Agreement permits Class Counsel to seek reimbursement of their reasonable expenses.

Attorneys who create benefit for a class are entitled to be reimbursed for their out-of-pocket expenses incurred in creating the fund or benefit, so long as the submitted expenses are reasonable, necessary, and directly related to the prosecution of the action. *See Roberti v. OSI*

Sys., No. 13-09174, 2015 WL 8329916, at *7 (C.D. Cal. Dec. 8, 2015) (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (class counsel may recover reasonable expenses typically billed to paying clients in non-contingent litigation)); *In re Am. Apparel S'holder Litig.*, No. 10-06352, 2014 WL 10212865, at *27 (C.D. Cal. July 28, 2014) ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." (quoting *In re OmniVision Techs., Inc.*, 559 F. Supp. 2d at 1048)); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement").

Class Counsel have incurred expenses in the prosecution of this Action in the total amount of $23,059.34. These expenses represent less than 3% of the combined lodestar of Class Counsel and are also less than Class Counsel may claim under the Settlement Agreement. All the expenses are described in the accompanying declarations of Plaintiff's Counsel. Frei-Pearson Decl. ¶ 31; Stone Decl. ¶ 20; Godino Decl. ¶ 20; Grover Decl. ¶ 22.

From the beginning of the case, Plaintiffs' Counsel were aware they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming that the Action was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced to prosecute the Action.

V. THE REQUESTED SERVICE AWARDS FOR THE CLASS REPRESENTATIVES ARE REASONABLE AND SHOULD BE APPROVED.

The requested service awards for Plaintiffs are reasonable and appropriate. Courts in California and in the Ninth Circuit routinely grant service awards (also known as incentive

awards) in similar class and representative litigation. *See, e.g.*, *Staton*, 327 F.3d at 977. "Such awards are intended to 'compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.'" *Anderson v. Nextel Retail Stores, LLC*, 07-4480, 2010 WL 11506729, at *9 (C.D. Cal. June 30, 2010) (quoting *In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *accord In re Online DVD Antitrust Litig.*, 779 F.3d at 943 (courts routinely permit service awards "to compensate class representatives for work undertaken on behalf of a class.").

Here, Plaintiffs seek $2,500 awards each, which is well below amounts courts in the Ninth Circuit and California ordinarily grant in similar cases. *See, e.g.*, *In re Yahoo Mail Litig.*, No. 13-4980, 2016 WL 4474612, at *11-12 (N.D. Cal. Aug. 25, 2016) (holding "[t]he Ninth Circuit has established $5,000.00 as a reasonable benchmark [for service awards]" and awarding $5,000 per class representative in data privacy action (citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947–48)); *St. Joseph Health System Medical Information Cases*, JCCP No. 4716, ECF No. 418 at 7 (Cal. Sup. Ct. Feb. 3, 2016) (approving incentive awards ranging from $8,750 to $15,000 in data breach action); *Johansson-Dohrmann*, 2013 WL 3864341, at *12 (holding that "the $5,000 incentive award is within the acceptable range of approval" in data breach case).

Each Plaintiff here invested time into this litigation. *See* Frei-Pearson Decl. at ¶ 32. They took personal time to speak with Class Counsel, search for and produce relevant evidence, review and approve the complaints for filing, kept abreast of the litigation for nearly two years and were actively involved in the settlement process. *Id.* This sacrifice was made to support a case in which they had a relatively modest personal interest, but that has provided benefits to

thousands of Settlement Class members and the general public nationwide, and warrants the Court's approval of the requested service awards. Given their contribution to the successful prosecution of this action, taking on the burden of challenging one of the largest automobile companies in the world, Plaintiffs should each be granted service awards of $2,500.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the instant Motion be granted, and that Class Counsel be awarded their requested attorneys' fees and costs in the aggregate amount of $769,309.34, and Plaintiffs their requested service awards of $2,500 each.

Dated: December 22, 2017

KELLER GROVER LLP

By: */s/ Eric A. Grover*

Eric A. Grover
1965 Market Street
San Francisco, CA 91403
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com

GLANCY, PRONGAY
& MURRAY, LLP
Marc L. Godino (State Bar No. 182689)
Lionel Z. Glancy (State Bar No. 134180)
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
mgodino@glancylaw.com

BRAGAR EAGEL & SQUIRE, P.C.
Jeffrey H. Squire
Lawrence P. Eagel
David J. Stone
885 Third Avenue, Suite 3040
New York, NY 10022
Telephone: (212) 308-5858
Facsimile: (212) 486-0462
stone@bespc.com

FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP
Jeremiah Frei-Pearson (Pro Hac Vice)
445 Hamilton Avenue, Suite 605
White Plains, NY 10601
Telephone: (914) 908-6709
Jfrei-pearson@fbfglaw.com

Attorneys for Plaintiffs and the Class

ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, CA 94103
Telephone: (415) 543-1305
Fax: (415) 543-7861

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EVERETT CASTILLO, LINDA CASTILLO, NICHOLAS DATTOMA, FREDA LANG, WENDY TRAN, AND STEVEN WILK, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SEAGATE TECHNOLOGIES LLC,

Defendant.

CASE NO. 3:16-cv-01958-RS

[~~PROPOSED~~] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES

Date: March 8, 2018
Time: 1:30 p.m.
Ctrm: 3, 17th Floor

Consolidated Complaint Filed: June 28, 2016
Amended Complaint Filed: October 18, 2016

The Court having granted preliminary approval of the parties' class action settlement on October 19, 2017 (Dkt. 76), and directed notice of the proposed settlement to all Settlement Class members, having read and considered Plaintiffs' Motion for Award of Attorneys' Fees, Costs, Expenses, and Incentive Awards to Class Representatives and supporting papers (Dkts. 77 through 77-4), Plaintiff's Motion for Final Approval of Class Action Settlement and supporting papers (Dkts. 80 through 80-8), and Defendant's Memorandum of Points and Authorities in Support of Final Approval of Class Action Settlement and supporting papers (Dkts. 81 through 81-1), and upon consideration of argument presented on March 8, 2018, and with GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of this action and all parties to this action, including Plaintiffs, the Settlement Class members, as defined below, and Defendant Seagate Technologies LLC ("Defendant").

2. The Court finds that the prerequisites for a settlement class under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 23(a) and (b)(3) have been satisfied in that:

a. The number of Settlement Class members is so numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to the Settlement Class;

c. The claims of the Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent;

d. The Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class;

e. The questions of law and fact common to the Settlement Class members predominate over any questions affecting any individual Settlement Class members; and

f. A class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

3. Specifically, the members of the Settlement Class that are subject to this Final Approval Order and Judgment are made up of the following subclasses:

a. **Settlement Employee Class:** All persons who are or were employees of Seagate or its affiliates (collectively "Seagate") and whose W-2 information was involved in the Data Incident (referred to as "Employees").

b. **Settlement Third Party Class:** All individuals who were Qualifying Spouses[1] or Qualifying Adult Dependents[2] of a Settlement Employee Class Member (referred to as "Third Parties").

4. Excluded from the Settlement Class are Defendant, their officers and directors during the Settlement Class Period, the members of their immediate families, and their respective representatives, heirs, successors, and assigns. Also excluded from the Settlement Class are the 57 individuals identified in **Exhibit A** hereto who otherwise satisfy the above requirements for membership in the Settlement Class, but who timely and validly requested exclusion from the Settlement Class.

5. The Court hereby finds that the notice of settlement, which was provided to Settlement Class Members via email, U.S. mail, and a settlement website, all as described in the Settlement Agreement[3] and ordered by the Court (Dkt. 76), provided the date of the final fairness hearing, the manner in which Settlement Class members could object to or participate in the settlement, and the manner in which Settlement Class members could opt out of the Settlement.

[1] A "Qualifying Spouse" is defined as "a person who jointly filed his or her 2015 federal income taxes as a spouse, as defined by IRS requirements (https://www.irs.gov/publications/p17/ch02.html#en_US_2016_publink1000170736) with a Settlement Employee Class Member." (Settlement Agreement ¶ 1.20.)

[2] A "Qualifying Adult Dependent" is defined as "a person who was listed as a dependent on a Settlement Class Member's 2015 federal income tax filings and was over the age of 21 at the time." (Settlement Agreement ¶ 1.19.)

[3] The Parties' Stipulation and Agreement of Settlement ("Settlement Agreement"), including the definitions contained therein, is incorporated by reference into this Final Approval Order and Judgment. All capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

The Court finds that it was the best notice practicable under the circumstances, and complied fully with Fed. R. Civ. P. 23(c)(2)(B) and 23(e)(1), due process, and all other applicable laws. The Court finds that the notice has also been given as required by 28 U.S.C. § 1715. The Court further finds that a full and fair opportunity has been afforded to all Settlement Class members to participate in the proceedings convened to determine whether the proposed settlement should be given final approval.

6. The Court finds that the settlement is fair, reasonable and adequate in all respects, and is the product of good faith, arm's-length negotiations between the parties, and fully complies with all applicable provisions of law. Accordingly, the Court hereby finally and unconditionally approves the settlement, and specifically:

a. Approves as fair, adequate, and reasonable the benefits provided to the Settlement Class members, all as described in the Settlement Agreement;

b. Reaffirms its designation of Everett Castillo, Linda Castillo, Wendy Tran, Nicholas Dattoma, Freda Lang, and Steven Wilk as Settlement Class Representatives and approves the payment of $2,500 by Defendant to each Settlement Class Representative. These incentive awards are justified by the time and effort expended by the Settlement Class Representatives on behalf of the Settlement Class and the risk each assumed in bringing this action;

c. Reaffirms its appointment of David J. Stone of Bragar Eagel & Squire, P.C., Marc L. Godino of Glancy Prongay & Murray LLP, Jeremiah Frei-Pearson of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Eric A. Grover of Keller Grover LLP as Settlement Class Counsel and approves the payment by Defendant to Settlement Class Counsel of attorneys' fees in the amount of $746,250; an amount less than the combined lodestar of Settlement Class Counsel. The hourly rates used to arrive at Settlement

Class Counsel's lodestar are consistent with market rates and reasonable in light of Settlement Class Counsel's skill, experience, and expertise. The Court is further satisfied that the number of hours expended on the litigation is reasonable and that an award of fees to Class Counsel in the amount of $746,250 is reasonable and appropriate under the circumstances of this case; and

d. Approves Settlement Class Counsel's request for payment by Defendant in the amount of $23,059.34 as reimbursement of litigation expenses.

7. All amounts that Defendant is required by this Final Approval Order and Judgment to pay to the Settlement Class Representatives and Settlement Class Counsel shall be paid in the time and manner described in and required by the Settlement Agreement.

8. The Court hereby orders Defendant to make all required payments to Dahl Administration, the Court-approved Settlement Administrator, for its work in administering this settlement. The Court hereby orders Settlement Class Counsel to make the required payment for the reminder notice distributed to Settlement Class Members.

9. This Final Approval Order and Judgment applies to all claims or causes of action settled under the terms of the Settlement Agreement, and shall be fully binding with respect to all Settlement Class Members except for the individuals listed on **Exhibit A**, who submitted timely and valid requests for exclusion. This Final Approval Order and Judgment shall have a res judicata effect and bar the named Plaintiffs and each Settlement Class member and Releasing Party who did not timely opt-out from bringing any action asserting any of the "Released Claims" against any of the Released Parties as provided in the Settlement Agreement.

10. This action, including all claims asserted herein, is hereby dismissed with prejudice in all respects.

11. This Final Approval Order and Judgment is not, and shall not be construed as, an admission by Defendant or any Released Party of any liability or wrongdoing in this or in any other proceeding.

12. Without affecting the finality of this judgment, this Court shall retain jurisdiction to enforce the terms of the Settlement Agreement.

IT IS ORDERED.

Dated: 3/14, 2018

HONORABLE RICHARD SEEBORG

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/14/2018

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE SACKIN, PETER HARRIS, STEPHEN LUSTIGSON, NICHOLAS MIUCCIO, and SARAH HENDERSON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TRANSPERFECT GLOBAL, INC.,

Defendant.

Case No. 17-cv-1469 (LGS)

~~[PROPOSED]~~ **FINAL JUDGMENT AND ORDER OF DISMISSAL**

WHEREAS, Plaintiffs filed a motion on December 15, 2017, for preliminary approval of a proposed class action settlement and release. A hearing was held on the motion on February 7, 2018. By Order dated March 13, 2018, the Court conditionally certified a Settlement Class for settlement purposes under Rules 23(b)(1) and (2), approved the form and manner of notice to potential class members, and set a schedule for final consideration of the settlement;

WHEREAS, Plaintiffs filed an Uncontested Motion for Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees, Costs, Expenses, and Service Awards to Class Representatives;

WHEREAS, a conference for the final approval of the settlement was held on September 27, 2018. For the reasons stated at the conference, the Court requested certain additional information including affidavits from the class representatives detailing the efforts they took on behalf of the class. The parties filed the requested material on November 7, 2018;

WHEREAS, by the close of the claims period, 1,419 members or 29.1% of the class elected to join the settlement;

WHEREAS, no objections to the Settlement were timely filed;

WHEREAS, due and adequate notice having been given to the Settlement Class, and the Court having considered the Settlement Agreement, all papers filed and proceedings had herein, and all oral and written comments received regarding the proposed settlement, and having reviewed the record in this litigation, and good cause appearing, **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

1. For purposes of this Final Judgment and Order of Dismissal ("Judgment"), the Court adopts all defined terms as set forth in the Settlement Agreement filed in this case.

2. The Court has jurisdiction over the subject matter of the litigation, Plaintiffs Jesse Sackin, Peter Harris, Stephen Lustigson, Nicholas Miuccio, and Sarah Henderson, the Class Members, and the Released Persons ("the Settling Parties").

3. With respect to the Settlement Class and for purposes of approving this Settlement only, this Court finds as to the Settlement Class that:

(a) the Class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the Class;

(c) the claims of Plaintiffs are typical of the claims of the Class;

(d) Plaintiffs will fairly and adequately protect the interests of the Class;

(e) questions of law and fact common to class members predominate over any questions affecting only individual Class Members; and,

(f) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of, and solely in connection with, the Settlement, the Court certifies this action as a class action on behalf of the following Settlement Class:

> All persons in the United States whose 2015 Form W-2 data and/or payroll information was compromised as a result of the Data Breach.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Plaintiffs are certified as the Class Representatives, and Jeremiah Frei-Pearson of the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, is certified as Class Counsel.

6. The Parties have complied fully with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

7. Based on evidence and other material submitted in conjunction with the Final Approval Hearing, the Court hereby finds and concludes that (1) the Summary Notices to be sent by electronic and physical mail ("Email Notice" and "Postcard Notice," respectively) were disseminated to members of the Settlement Class in accordance with the Settlement Agreement, the Court's Preliminary Approval Order, and the Court's July 24, 2018 Order, and (2) the Long

Form Notice, the Election and Reimbursement Forms, and the Settlement Website complied with this Court's Preliminary Approval Order.

8. The Court finds and concludes that the Email Notice, Postcard Notice, Long Form Notice, the Election and Reimbursement Forms, Settlement Website, and all other aspects of the notice, opt-out and claims submission procedures set forth in the Settlement Agreement satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, provided the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class and the Settlement Class Members.

9. Certain persons who fall within the definition of the Settlement Class have requested to opt out of the Settlement and have complied with the procedures established by the Settlement Agreement and this Court. These Persons are listed in the attached Exhibit A, and they will not be bound by the terms of the Settlement Agreement.

10. The Court finds that the Settlement Agreement is the product of arm's length settlement negotiations between the Settling Parties.

11. The Court finds and concludes that the Settlement is fair, reasonable, and adequate.

12. The Court hereby approves the Settlement (as set forth in the Settlement Agreement), the Releases, and all other terms in the Settlement Agreement, as fair, just, reasonable and adequate as to the Settling Parties. The Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement. However, without seeking further Court approval, the Settling Parties may jointly agree to make changes to the Settlement

Agreement, including to the manner in which the claims process shall be administered, provided that those changes do not reduce the benefits to which Settlement Class Members may be entitled, increase the burden on Settlement Class Members in making a claim, or otherwise materially alter the Settling Parties' obligations under the Settlement and the Settlement Agreement.

13. By this Judgment, the Releasing Parties shall be deemed to have (and by operation of the Judgment shall have) fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties.

14. This action is dismissed with prejudice. The Settling Parties are to bear their own attorneys' fees and costs, except as otherwise expressly ordered by the Court.

16. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Released Parties may file the Settlement Agreement and/or the Judgment from this litigation in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. If for any reason the Effective Date does not occur, then (1) the certification of the Settlement Class shall be deemed vacated, (2) the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues, and (3) the Settling Parties shall return to the *status quo ante* in the litigation as it existed on March 13, 2018, without prejudice to the right of any of the Settling Parties to assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court.

18. Upon consideration of Plaintiffs' Motion for Award of Attorneys' Fees and Costs, the Motion is GRANTED. Consistent with Section 10.1 of the Settlement Agreement, Defendant shall pay Class Counsel $715,000 in attorneys' fees and $17,748.95 in litigation expenses, consistent with the terms of the Settlement Agreement. Per the Settlement Agreement, this award shall be paid separate and apart from the Settlement Consideration received by members of the Settling Class. The Notice Program advised that Class Counsel would seek an award of attorneys' fees of no more than to $715,000 and reimbursement of reasonable expenses of no more than $20,000, which, if approved by the Court, Defendant agreed to pay separately. In making this award, the Court has considered and found that the requested attorneys' fees are reasonable in light of the following considerations:

(a) In applying the *Goldberger* factors, *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000), this analysis adopts the three-step approach set forth in *Colgate-Palmolive*. *In re Colgate-Palmolive Co. ERISA Litigation*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014). The first step is to determine a baseline reasonable fee by reference to

other common fund settlements of a similar size, complexity and subject matter. *Id*. This step considers three of the *Goldberger* factors -- the requested fee in relation to the settlement, the magnitude and complexity of the case, and the policy consideration of avoiding a windfall to class counsel. *Id*. The second step is to make any necessary adjustments to the baseline fee based on the *Goldberger* factors of risk, quality of representation and other public policy concerns. *Id*. The third step is to apply the lodestar method as a cross-check, which addresses the final *Goldberger* factor of the time and labor expended by counsel. *Id*.

(b) With regard to the first step, for the purposes of comparing fee amounts in other class actions, the Court values the settlement benefits here, not including injunctive relief, to amount to at least $4 million dollars, and possibly considerably more. Empirical evidence shows that for class actions of a similar size to this one, the median percentage for fees is 27.5% of the gross settlement fund. *See* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 835, 839 (2010) (analyzing nearly 700 common fund settlements from 2006 and 2007) (median is 27.5% for gross settlement funds between $2.85 to $4.45 million). In a study of attorneys' fees in class actions between 2009 to 2013, empirical evidence shows that in mass torts cases, the median fee is 28% of the settlement when the median recovery is $4.2 million. *See* Theodore Eisenberg et al., Attorney Fees and Expenses in Class Action Settlements: 2009-2013, 92 N.Y.U. L. Rev. 937, 940, 952 (2017) (analyzing over 450 class action cases from 2009–2013). The magnitude and nature of this case point toward

a baseline fee percentage that falls within the range of the median fees found by the empirical studies, or approximately 28%.

(c) With respect to the second step, weighing the public policy goal of encouraging lawyers to bring common fund cases that protect consumers, the risk undertaken by counsel, the quality of representation in this case, and the number of participating class members (1,419 members or 29.1% of the class), there is no reason to deviate downward from the baseline fee. *See Goldberger*, 209 F.3d 43, 53 (2d Cir. 2000) (citation omitted). Class Counsel is therefore entitled to 18% of the Settlement Fund, which is well below the median fees awarded for similar class actions.

(d) As for the third step, the Second Circuit encourages the use of the lodestar method as "cross check" on the reasonableness of the requested percentage. *Goldberger*, 209 F.3d at 50. However, when used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court. *Id.* Based on 883.1 hours worked and attorneys' fees that range from $350 to $800, Class Counsel calculates a lodestar multiplier of 1.6. The Court finds that the hours Class Counsel has spent on this case are reasonable. As for the reasonableness of the hourly rate, based on "the market rate prevailing in the community for similar services by lawyers of reasonably comparable skill," *Rodriguez-Hernandez v. K Bread & Co., Inc.*, No. 15 Civ. 6848, 2017 WL 2266874, at *5 (S.D.N.Y. May 23, 2017) (citation omitted), the hourly rates are reasonable. *See Rudman v. CHC Grp. Ltd.*, No. 15 Civ. 3773, 2018 WL 3594828, at *3 (S.D.N.Y. July 24, 2018) (finding that hourly rates ranging from $210 to $985 per hour

are appropriate for class counsel). The lodestar multiplier is within the range of comparable awards in similar class actions. *See, e.g., In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 497 (S.D.N.Y. 2017) (collecting cases) (for a $10 million dollar settlement, "[t]here is no question that Lead Counsel's lodestar multiplier of 1.39 is at the lower range of comparable awards in common fund cases"). This multiplier is especially reasonable given that the lodestar does not reflect any work Class Counsel has done since June 11, 2018, and will continue to do subsequent to the date of the publication of this Order. *Id.*; *see also Parker v. Jekyll & Hyde Entm't Holdings. L.L.C.*, No. 08 Civ. 7670, 2010 WL 532960, at *2 (S.D.N.Y. Feb. 9, 2010). Based on an analysis of the *Goldberger* factors, Class Counsel's request for attorneys' fees is reasonable and is therefore granted.

19. Notwithstanding anything in the Final Judgment and Order of Dismissal to the contrary, attorneys' fees shall not be paid until payments are substantially made to class members.

20. Upon consideration of Plaintiffs' Motion for Service Awards to Class Representatives, and the Class Representatives' affidavits filed at the Court's request, the application is GRANTED. Consistent with the terms of Section 10.1 of the Settlement Agreement, Defendant shall pay Plaintiffs a Service Award in the amount of $3,500 each. Per the Settlement Agreement, these Service Awards shall be paid separate and apart from the Settlement Consideration received by members of the Settling Class.

21. Each and every Class Member, and any Person actually or purportedly acting on behalf of any Class Member, is hereby permanently barred and enjoined from commencing,

instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum, against the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

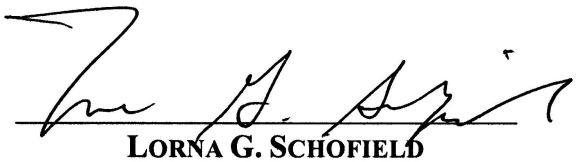
22. This document is a final, appealable order, and shall constitute a judgment for purposes of Rules 54 and 58 of the Federal Rules of Civil Procedure. By incorporating the Settlement Agreement's terms herein, the Court determines that this Final Judgment complies in all respect with Federal Rule of Civil Procedure 65(d)(1).

23. The Court reserves jurisdiction, without affecting in any way the finality of this Order and Judgment, over (a) the implementation and enforcement of this Settlement; (b) enforcing and administering this Order and Judgment; (c) enforcing and administering the Settlement Agreement, including any releases executed in connection therewith; and (d) other matters related or ancillary to the foregoing.

24. There is no just reason for delay in the entry of this Order and Judgment and immediate entry by the Clerk of the Court is expressly directed.

Dated: December 14, 2018
New York, New York

SO ORDERED:



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

MARSHALL SMITH, BRANDON HERMAN, CHAD PATTERSON, JEFFERY ROBERTS, MICHAEL WILL, SUSAN WINSTEAD, ROBERT BOHANNON, HOLLY BUCKINGHAM, RICHARD MORELLO, JR., ROBERT HARRIS, AMANDA LARISCY, CHARLES NEWMAN, and PAUL CHRISTIANSEN individually and on behalf of all similarly situated persons,

Plaintiffs,

v.

COMPLYRIGHT, INC., a Minnesota corporation,

Defendant.

Civil Action No. 1:18-cv-4990

CLASS ACTION

Jury Trial Demanded

Hon. Edmond E. Chang

DECLARATION OF JEREMIAH FREI-PEARSON FILED ON BEHALF OF FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND REPRESENTATIVE PLAINTIFF SERVICE AWARDS

I, Jeremiah Frei-Pearson, declare as follows:

1. I am a founding partner of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"). I submit this declaration in support of Representative Plaintiffs' Motion for Award of Attorneys' Fees, Costs, Expenses, and Representative Plaintiff Service Awards in connection with services rendered in the above-captioned litigation. I make this declaration based on personal knowledge. If called as a witness, I could and would testify competently as to the matters stated herein.

2. This Court appointed FBFG to the Plaintiff's Executive Committee on this case.

3. The information in this declaration regarding FBG's time and expenses is taken from time and expense records prepared and maintained by FBFG in the ordinary course of business.

4. I oversaw and conducted FBFG's day-to-day activities in the litigation, and I reviewed FBFG's time and expense records (and supporting documentation where necessary and appropriate) in connection with the preparation of this declaration. In reviewing these records, I exercised billing judgment and reduced certain time entries that may have been excessive. The purpose of the review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. I believe that the time reflected in FBFG lodestar calculation and the expenses for which payment is sought as set forth herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. I also believe the time and expenses are of the type that would normally be charged to a fee-paying client in the private legal marketplace. FBFG took this matter solely on a contingency basis. FBFG works primarily on contingency, but FBFG does

sometimes have hourly clients and FBFG charges hourly clients the same rates that it bills in this case and in all other cases.

5. Attached hereto as Exhibit 1 is a summary of FBFG's lodestar. The summary includes the names of attorneys and professional support staff who worked on this case and each timekeeper's respective hours and lodestar at current rates. The hourly rates shown in Exhibit 1 are the usual and customary rates set by FBFG for attorney. FBFG expended 54.7 hours working on this case and the total lodestar is $29,220.

6. FBFG expended $295.01 in costs and expenses on this case. The costs and expenses pertaining to this case are reflected in FBFG's records. These records are prepared from receipts and are an accurate record of the costs and expenses. Attached hereto as Exhibit 2 is a summary of FBFG's costs and expenses in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 23rd day of August, 2019, in White Plains, New York.

Jeremiah Frei-Pearson

EXHIBIT 1

Time Report

Name	Experience	Hours	Rate	Lodestar
Jeremiah Frei-Pearson (P)	16 years	13.4	$850	$11,390
Antonino Roman (A)	21 years	15	$575	$8,625
Andrew White (A)	3 years	25.3	$350	$8,855
C. Khalil (A)	3 years	1	$350	$350
TOTAL		54.7		$29,220

(P) Partner
(A) Associate

EXHIBIT 2

Costs and Expenses Summary

CATEGORY	TOTAL
Transportation, Hotels, and Meals	$0
Telephone, Facsimile	$0
Postage	$80.35
Messenger, Overnight Delivery	$0
Photocopies	$0
Electronic Research	$64.66
Litigation Fund Contribution	$0
Court Fees	$150
Witness/Service Fees	$0
Miscellaneous (Describe)	$0
TOTAL	$295.01

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

MARSHALL SMITH, BRANDON HERMAN, CHAD PATTERSON, JEFFERY ROBERTS, MICHAEL WILL, SUSAN WINSTEAD, ROBERT BOHANNON, HOLLY BUCKINGHAM, RICHARD MORELLO, JR., ROBERT HARRIS, AMANDA LARISCY, CHARLES NEWMAN, and PAUL CHRISTIANSEN, individually and on behalf of all similarly situated persons,

Plaintiffs,

v.

COMPLYRIGHT, INC., a Minnesota corporation,

Defendant.

Civil Action No. 1:18-cv-4990

CLASS ACTION

Jury Trial Demanded

Hon. Edmond E. Chang

ORDER AND JUDGMENT

WHEREAS, the Court, having considered the Settlement Agreement filed May 22, 2019 (ECF No. 83-1) (the "Settlement") between and among Representative Plaintiffs, individually and on behalf of the Settlement Class, and Defendant ComplyRight, Inc. ("ComplyRight"), the Court's Order Granting Preliminary Approval of Class Action Settlement Agreement, Directing Notice to the Settlement Class, and Scheduling Final Fairness Hearing (ECF No. 88) ("Preliminary Approval Order"), having held a Final Fairness Hearing on October 7, 2019, having considered all of the submissions and arguments with respect to the Settlement, and otherwise being fully informed, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Representative Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement (ECF No. 95-1) is granted.

2. This Order and Judgment incorporates herein and makes a part hereof, the Settlement (including its exhibits) and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement and Preliminary Approval Order shall have the same meanings for purposes of this Order and Judgment.

3. The Court has subject matter jurisdiction over this matter including, without limitation, jurisdiction to approve the Settlement, confirm certification of the Settlement Class, to settle and release all claims released in the Settlement, and to dismiss the Litigation with prejudice.

I. CERTIFICATION OF THE SETTLEMENT CLASS

4. Based on its review of the record before the Court, including the Settlement, all submissions in support of the Settlement, and all prior proceedings in the Litigation, the Court finally certifies the following nationwide class (the "Settlement Class") for settlement purposes only:

> All persons whose Personal Information was maintained on ComplyRight's website during the Data Breach that occurred from at least April 20, 2018 through May 22, 2018, including all persons who were sent the July 13, 2018 letter informing them of the Data Breach. Excluded from the Settlement Class are: (a) individuals who are or were during the Data Breach officers or directors of ComplyRight; (b) any person found to be criminally involved in the Data Breach; and (c) any judge presiding over this matter.

5. Excluded from the Settlement Class are those Persons listed in Exhibit C to the Declaration of Jeremy Neville on Behalf of Settlement Administrator Regarding Class Notice (ECF No. 95-2), who submitted timely and valid requests for exclusion from the Settlement Class. Such Persons shall not receive the benefits of the Settlement and shall not be bound by this Order and Judgment.

6. The Court confirms, for the purposes of settlement only, that the class action requirements of Fed. R. Civ. P. 23(a) and (b)(3) are satisfied in that: (a) Settlement Class Members are so numerous that joinder of all members is impracticable; (b) important questions of law or fact exist that are common to all Settlement Class Members; (c) the claims of Representative Plaintiffs are typical of the claims of the Settlement Class Members they seek to represent; (d) Representative Plaintiffs and Co-Lead Settlement Class Counsel have and will fairly and adequately represent the interests of the Settlement Class; (e) questions of law and fact common to members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is the superior method to fairly and efficiently adjudicate this controversy.

II. NOTICE TO THE SETTLEMENT CLASS

7. The Court finds that Notice has been given to the Settlement Class in the manner approved by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Settlement, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

8. The Court further finds that ComplyRight, through the Settlement Administrator, provided notice of the Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government officials the requisite ninety (90) day time period to comment or object to the Settlement before entering its Order and Judgment.

III. FINAL APPROVAL OF THE SETTLEMENT

9. The Court finds that the Settlement resulted from extensive arm's length good faith negotiations between Co-Lead Settlement Class Counsel and ComplyRight, through experienced counsel, with the assistance of the Honorable Wayne R. Andersen (Ret.) of JAMS.

10. Pursuant to Fed. R. Civ. P. 23(e) and for the reasons stated in open court on October 7, 2019, the Court hereby finally approves in all respects the Settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class.

11. The Court finds that Representative Plaintiffs and Co-Lead Settlement Class Counsel fairly and adequately represented the interests of Settlement Class Members in connection with the Settlement.

12. The Settling Parties shall consummate the Settlement in accordance with the terms thereof. The Settlement, and each and every term and provision thereof, shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order of this Court.

IV. DISMISSAL OF CLAIMS AND RELEASE

13. The Litigation is hereby dismissed with prejudice and without cost to any party, except as otherwise provided herein or in the Settlement.

14. Upon the Effective Date, each Settlement Class Member, including Representative Plaintiffs, shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Claims that either have been asserted or could have been asserted by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the allegations, facts, or circumstances alleged in the Litigation, and related to the Data Breach ("Released Claims"). Without limitation of the foregoing, Released Claims specifically include Claims stemming from the Data Breach that may have been or could have been asserted whether known or unknown, by any Settlement Class Member against any person or entity that could seek indemnification or contribution from any of the Released Persons in respect of such Claim. Released Claims shall not include the right of any Settlement Class Member or any Released Person to enforce the terms of the settlement contained in the Settlement Agreement. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in, any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

15. Upon the Effective Date, ComplyRight and Related Persons shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all claims, known or unknown, arising out of or relating to the institution, prosecution, settlement, or resolution of the Litigation, provided however, that this release, relinquishment, and discharge shall not include claims by the Parties or Settlement Class Members to enforce the terms of the Settlement or Settlement Agreement.

V. ATTORNEYS' FEES, COSTS, AND EXPENSES AND REPRESENTATIVE PLAINTIFF SERVICE AWARDS

16. Representative Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Costs and Expenses, and Payment of Representative Plaintiff Service Awards (ECF No. 91), is granted.

17. For the reasons stated in open court on October 7, 2019, the Court awards attorneys' fees of $908,333, reimbursement of costs and expenses in the amount of $23,723.85, and payment of service awards in the amount of $2,500 to each of Representative Plaintiffs. The Court directs the Settlement Administrator to pay such amounts from the Settlement Fund in accordance with the terms of the Settlement. Co-Lead Settlement Class Counsel, in their sole discretion to be exercised reasonably, shall allocate and distribute the attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of record in the Litigation.

VI. OTHER PROVISIONS

18. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over the Settling Parties and the Settlement Class for the administration, consummation, and enforcement of the terms of the Settlement Agreement.

19. In the event the Effective Date does not occur, this Order and Judgment shall be rendered null and void and shall be vacated and, in such event, as provided in the Settlement

Agreement, this Order and Judgment and all orders entered in connection herewith shall be vacated and null and void, the Settling Parties shall be restored to their respective positions in the Litigation, the terms and provisions of the Settlement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

IT IS SO ORDERED.

Edmond E. Chang

Dated: October 7, 2019

Honorable Edmond E. Chang
United States District Judge

NO. 20-CI-005631

JEFFERSON CIRCUIT COURT
DIVISION: THREE
HON. MITCH PERRY

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

v.

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

Electronically Filed

DECLARATION OF D. GREG BLANKINSHIP

I, D. Greg Blankinship, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct:

1. I am a founding partner of the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber LLP ("FBFG") and counsel for Plaintiff Alissa Goodlett in the above-captioned action.

2. I am fully familiar with the facts and circumstances surrounding this matter and I respectfully submit this Declaration in Support of Plaintiffs' Unopposed Motion for Award of Attorneys' Fees, Costs, Expenses, And Service Award to the Class Representative.

3. I have reviewed FBFG's time records. FBFG has expended over 217 hours of attorney time, resulting in an aggregate lodestar of $136,692.50. From inception through June 25, 2021, FBFG has expended the following number of hours at the following hourly rates, in performing legal services in this matter:

Timekeeper	**Hourly Rate**	**Year Graduated Law School**	**Hours**	**Total Lodestar**

D. Greg Blankinship (partner)	$925	2002	69.5	$64,287.50
Jeremiah Frei-Pearson (partner)	$925	2003	12.6	$11,655.0010, 710.00
Chantel R. Mills (associate)	$450	2009	135	$60,750.00
Total:			**217.1**	**$136,692.50**

4. The information in the above table is based on contemporaneous time records reflecting the current rates of FBFG attorneys that were maintained in FBFG's computerized billing system. These hours are reasonable and were compiled from contemporaneous time records maintained individually by each attorney participating in the case. Class Counsel made every effort to coordinate work to avoid duplication of efforts.

5. In addition to the time worked, FBFG also incurred $1,462.38 in expenses for filing fees and research fees to date. All of these expenses were necessary expenses in the current complex class action, and therefore merit reimbursement.

6. To date, FBFG has not received any compensation for their work or any reimbursement for expenses, which are illustrated in the chart below:

$ Amount	General Description
$826.88	Research costs, including Westlaw and Pacer
$635.50	Filing fees, including pro hac vice admissions
Total $ 1,462.38	

7. FBFG is competent and has extensive experience in handling class actions and complex litigation and is knowledgeable about the applicable law here.

8. FBFG attorneys are experienced and accomplished in data breach class actions.

9. For example, Attorney D. Greg Blankinship of FBFG has worked on substantial class action matters in numerous state, federal, and multidistrict class actions, including data breach cases, wage and hour, and consumer fraud matters.

10. In addition, Mr. Blankinship not only has been recognized for his skills as attorneys from various courts but has also been designated a New York Super Lawyer every year since 2014.

11. Further, courts throughout the country have appointed FBFG as class counsel. *See, e.g.*, *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y.) (lead counsel in data breach class action in which the court denied defendants' motion to dismiss and approved a settlement valued at over $40 million); *In re Zappos Sec. Breach Litig.*, Case No. 12-00325, ECF No 335 (D. Nev.) (co-lead class counsel in consolidated data breach class action on behalf of approximately 23 million victims in which court denied defendants' motion to compel arbitration); *Goldenberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.) (co-lead class counsel in a deceptive product class action in which the court denied defendant's motion to dismiss and granted plaintiffs' motion for class certification).

12. In total, Class Counsel values the Settlement at more than $126.4 million when considering all the relief available to the Class.

I declare under penalty of perjury under the laws of the United States of America and the State of New York that the foregoing is true and correct.

Executed on June 30, 2021 in White Plains, New York.

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

By: /s/ D. Greg Blankinship_
D. Greg Blankinship

Exhibit A

FBFG | Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

FIRM RESUME

Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

The lawyers of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG")[1] have successfully litigated complex class actions in federal and state courts across the country and have obtained successful results for clients against some of the world's largest corporations. A sampling of FBFG's more significant cases includes:

- *Farruggio v. 918 James Receiver, LLC*, No. 3831/2017 (Onondaga Cty. Com. Div.). Class action on behalf of approximately 4,000 residents of an unsafe nursing home. On July 5, 2018, the Court granted Plaintiffs' contested motion to certify a class of all nursing home residents and appointed a FBFG attorney as class counsel. On December 18, 2018, the Court finally approved a settlement with the current owners valued at over $4 million that required the home to provide substantial injunctive relief to make the home safe and also provided the then-highest per capita payout of any nursing home class action in New York. After a two-day mediation, the parties reached a classwide settlement with the prior owners that will be the highest valued settlement in a New York nursing home class action.

- *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup.Ct.). Complex class action on behalf of approximately 31,800 patients who were victimized by a data breach. A FBFG lawyer was appointed co-lead class counsel. The Court denied Saint Joseph's demurrer and the Court of Appeals upheld that ruling. The Court certified the class and denied Saint Joseph's summary judgment motion; the Court of Appeals upheld those rulings as well. On the eve of trial the parties reached a settlement valued at approximately $39 million and the Court finally approved the settlement on February 3, 2016. This settlement provides the more money per capita to individual class members than any other known data breach settlement.

- *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,800 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect's motion to dismiss. The Court appointed FBFG as class counsel and, on December 14, 2018, finally approved a settlement valued at over $40 million.

- *Castillo v. Seagate Technology LLC*, No. 16-1958 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate's motion to dismiss in part. The Court appointed a FBFG attorney as co-lead class counsel and, on March 14, 2018, finally approved settlement valued at over $40 million.

[1] Three of the founding partners of FBFG were formerly partners in the firm of Meiselman, Packman, Nealon, Scialabba & Baker, P.C. ("MPNSB"). References in this resume to "lawyers of FBFG" includes instances involving current FBFG lawyers while they were at MPNSB.

- *Lowell v. Lyft, Inc.*, No. 17-6521 (S.D.N.Y.). Nationwide class action on behalf of millions of people with disabilities who are denied services by Lyft. On November 29, 2018, the Court denied Lyft's motion to compel arbitration, calling Lyft's arguments "supremely unjust," and denied in part Lyft's motion to dismiss.

- *Durling v. Papa John's International Inc.*, No. 16-03592 (S.D.N.Y.). Nationwide class and collective action on behalf of tens of thousands of Papa John's delivery drivers who were paid wages below the minimum. On August 3, 2018, the Court conditionally certified a nationwide collective of all corporate Papa John's delivery drivers.

- *McLaughlin v. IDT Energy*, No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October 18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $54 million.

- *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $19 million.

- *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately $12 million, on September 13, 2019.

- *Wise v. Energy Plus Holdings, LLC*, No. 11-7345 (S.D.N.Y.). Nationwide class action alleging that Energy Plus falsely claimed to offer competitive electricity rates when its prices were substantially higher than market rates in violation of New York Gen. Bus. L. § 349 and other consumer protection laws. On September 17, 2013, the Court certified the class, appointed the lawyers of FBFG as lead class counsel, and approved the settlement valued at over $11 million.

- *Chen v. Hiko Energy, LLC*, No. 14-1771 (S.D.N.Y.). Multistate class action alleging that Hiko falsely claimed to offer competitive electricity rates when its prices are substantially higher than market rates in violation of New York Gen. Bus. L. §§ 349 and 349-d, and common law. On May 9, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over $10 million.

- *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and

obtained class certification and an appointment as co-lead class counsel. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.

- *In Re: KIND LLC "Healthy and All Natural" Litigation*, Nos. 15-md-2645, 15-mc-2645 (S.D.N.Y.). Class action alleging false advertising of Defendant KIND's snack food products. Appointed as co-lead interim class counsel on November 13, 2015.

- *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-3139 (S.D.N.Y.). Statewide class action on behalf of mortgagors alleging Chase's failure to comply with mortgage recording requirements. On November 9, 2017, the Court approved a settlement valued at $10,808,630, certifying the settlement class and appointing FBFG attorneys as class counsel.

- *Reed v. Friendly's Ice Cream, LLC*, No. 15-0298 (M.D. Pa.). Nationwide class and collective minimum wage and overtime claim on behalf of approximately 10,000 servers. On January 31, 2017, the Court certified the class, appointed a FBFG lawyer as co-lead class counsel, and approved the settlement valued at over $4.6 million.

- *Quinn v. Walgreens*, No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at $2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court certified the class, appointed FBFG lawyers as Co-Lead Class Counsel and approved a nationwide $2.8 million settlement.

- *Al Fata v. Pizza Hut of America, Inc.*, No. 14-376 (M.D. Fla.). Statewide minimum wage claim on behalf of approximately 2,000 Pizza Hut delivery drivers. On June 21, 2017, the Court certified the class and approved a settlement valued at $3.1 million that provided the then-highest per-person recovery in any delivery driver under-reimbursement class action.

- *Adler v. Bank of America, N.A.*, No. 13-4866 (S.D.N.Y.). Class action alleging that Bank of America failed to timely present certificates of discharge for mortgages that were satisfied in New York State. On July 20, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over $7 million.

- *In re Michaels Stores, Inc. Zip Code Litigation*, No. 11-10920 (D. Mass.). State-wide class action alleging that Michaels Stores unlawfully collected consumers' private information. After securing a groundbreaking decision by the Massachusetts Supreme Judicial Court, establishing that consumers whose privacy has been violated may bring consumer protection claims against companies that unlawfully collect personal identification information, the lawyers of FBFG were appointed as co-lead class counsel and negotiated a classwide settlement, which the Court approved.

FBFG is also counsel of record in numerous class actions throughout the country, including cases pending in United States District Courts in New York, California, Massachusetts, Nevada, New Jersey, Maryland, New Mexico, Colorado, Arkansas, and Pennsylvania, as well as actions pending in the state courts of New York, California, Nebraska, and New Jersey.

FBFG also has an accomplished appellate practice, having obtained numerous groundbreaking decisions from federal and state appellate courts. Examples include: *In re Zappos.com, Inc.*, 888 F.3d 1020, 1027-28 (9th Cir. 2018), *cert. denied*, 18-225, 2019 WL 1318579 (U.S. Mar. 25, 2019) (reversing dismissal by district court and holding that consumers whose personal identification information was stolen in a data breach have Article III standing); *Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, 72 N.E.3d 333, *reh'g denied* (Jan. 23, 2017) (on certified question from the Seventh Circuit, holding that the Illinois Commerce Commission does not have exclusive jurisdiction to hear consumer claims against alternative retail electricity suppliers); *Zahn v. N. Am. Power & Gas, LLC*, 847 F.3d 875 (7th Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for excessive electricity charges by alternative retail electricity supplier); *John v. Whole Foods Mkt. Grp., Inc.*, 858 F.3d 732, 738 (2d Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for Whole Foods' alleged practice of representing the weight of prepackaged foods); *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 984 N.E.2d 737 (2013) (on certified question from U.S. District Court for the District of Massachusetts, finding that the collecting personal identification information from unwitting consumers violates Massachusetts consumer protection law).

Attorney Profiles

Jeremiah Frei-Pearson

Jeremiah Frei-Pearson is a founding partner of FBFG. He is a passionate advocate and an experienced litigator who represents consumers and employees in complex class actions. The National Trial Lawyers Association selected Mr. Frei- Pearson as a member of the Top 100 Trial Lawyers every year since 2014. Mr. Frei-Pearson is a member of the Best Attorneys of America, a distinction that is limited to less than 1% of attorneys, and he is also designated as a Super Lawyer, a distinction awarded to only 5% of the New York Metro Area. Mr. Frei-Pearson practices in federal and state courts throughout the country and his areas of expertise include class actions, privacy, consumer fraud, employment law, and civil rights.

Prior to joining FBFG, Mr. Frei-Pearson was an associate with Kaye Scholer LLP, a multinational law firm, and a staff attorney with Children's Rights, a national public interest law firm representing children in foster care reform class action lawsuits. Mr. Frei-Pearson received his B.A. from Skidmore College, *Magna Cum Laude*, Phi Beta Kappa in 2000 and he earned his in 2003 from Stanford Law School. While in law school, Mr. Frei-Pearson was a Public Interest Fellow and served as Senior Symposium Editor of the Stanford Law & Policy Review.

A sampling of Mr. Frei-Pearson's significant cases includes:

- Appointed class counsel in *Farruggio v. 918 James Receiver, LLC*, No. 3831/2017 (Onondaga Cty. Com. Div). Class action on behalf of approximately 4,000 residents of an unsafe nursing home. On July 5, 2018, the Court granted Plaintiffs' contested motion to certify a class of all nursing home residents. On December 18, 2018, the Court finally approved a settlement with the current owners valued at over $4 million that required the home to provide substantial injunctive relief to make the home safe and also provided the highest *per capita* payout of any nursing home class action in New York. After a two-day mediation, the parties reached a classwide settlement with the prior owners that will be the highest valued settlement in a New York nursing home class action.

- Appointed co-class counsel in *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup. Ct.). The Court denied Saint Joseph's demurrer and the Court of Appeals upheld that ruling. After more than two years of litigation, the Court granted Plaintiffs' motion to certify a class of approximately 31,800 data breach victims. On January 14, 2015, the Court denied Saint Joseph's motion for summary judgment. The Court of Appeals upheld the Court's summary judgment and class certification decisions. The case was set for trial on August 24, 2015, but the parties reached a settlement valued at approximately $39 million, which the Court finally approved on February 3, 2016. This settlement provides the more money *per capita* to individual class members than any other known data breach settlement on record.

- Appointed co-lead class counsel in *Castillo v. Seagate Technology LLC*, No. 16-02136 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate's motion to dismiss in part. On March 14, 2018, the Court finally approved a settlement valued at over $40 million.

- Appointed class counsel in *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,800 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect's motion to dismiss. On December 14, 2018, the Court finally approved a settlement valued at over $40 million.

- Appointed co-liaison class counsel in *Yahoo! Inc. Private Information Disclosure Cases*, JCCP No. 4895 (Cal Sup. Ct.). Complex class action involving one of the largest data breaches in U.S history. The Court denied Yahoo's demurrer, and, after Plaintiffs' class certification motion was fully briefed, the parties reached a settlement valued at over $85 million. Plaintiffs moved for preliminary approval in federal court.

- Appointed co-lead class counsel in *In Re Zappos.Com, Inc., Customer Data Security Breach Litigation*, No. 16-16860 (D. Nev. 2012). Multidistrict class action on behalf of approximately 23 million consumers victimized by a data breach. The Ninth Circuit reversed the District Court' decision dismissing the

case and issued a significant decision holding that data breach victims whose personal identification information was stolen in a data breach have standing. On March 25, 2019, the Supreme Court denied Zappos' request for certiorari. The court granted preliminary approval of the settlement on September 19, 2019.

- Lead counsel to plaintiffs in *Lowell v. Lyft, Inc.*, No. 17-6521 (S.D.N.Y.). Nationwide class action on behalf of millions of people with disabilities who are denied services by Lyft. On November 29, 2018, the Court denied Lyft's motion to compel arbitration, calling Lyft's arguments "supremely unjust", and denied in part Lyft's motion to dismiss. Discovery is ongoing and Plaintiffs will expeditiously move for class certification.

- Lead counsel to Plaintiffs and the certified collective in *Durling v. Papa John's International Inc.*, No. 16-03592 (S.D.N.Y.). Nationwide class and collective action on behalf of tens of thousands of Papa John's delivery drivers who were paid wages below the minimum. On August 3, 2018, the Court conditionally certified a nationwide collective of all corporate Papa John's delivery drivers.

- Appointed co-lead class counsel in *Reed v. Friendly's Ice Cream, LLC*, No. 15-00298 (M.D. Pa.). The Court denied motions to dismiss and ruled for plaintiffs on several other motions in this wage and hour class action. On January 31, 2017, the Court certified the class and finally approved a settlement valued at over $4.6 million.

- Appointed co-lead class counsel in *Al Fata v. Pizza Hut of America, Inc.*, No. 14-376 (M.D. Fla.). The Court denied defendant's motion to compel arbitration. While Plaintiffs' class certification motion was *sub judice*, the parties reached a class settlement on behalf of a Florida class of delivery drivers alleging minimum wage violations. The Court granted final approval of the settlement, which is valued at $3.1 million, on June 21, 2017.

- Appointed class counsel in *Hanna v. CFL Pizza, LLC*, No. 05-2011-CA-52949 (Fl. Cir. Court). On September 3, 2013, the Court granted final approval of a settlement that created a substantial settlement fund for under-reimbursed Pizza Hut franchisee delivery drivers who alleged violations of Florida minimum wage law.

- Appointed co-class counsel in *Bellaspica v. PJPA, LLC*, No. 13-3014 (E.D. Pa.). On June 22, 2016, the Court granted final approval of a FLSA collective action settlement, providing a settlement fund for under-reimbursed Papa John's franchisee pizza delivery drivers.

- Appointed class counsel in *Yoeckel v. Marriott*, No. 703387 (Queens Cty. Com. Div.). Class action alleging that Marriott violated New York wage and hour laws. On May 3, 2017, the Court certified a class and finally approved a settlement that provided class members with 100% of their maximum compensatory damages alleged.

- Appointed co-class counsel in *Miller v. Fresh*, No. 14-0880 (Mass. Suffolk Cty.). State-wide class action alleging that Fresh unlawfully collected consumers' personal identification information. On July 15, 2015, the Court certified a class and granted final approval to a settlement.

- Appointed co-class counsel in *Miller v. Patagonia*, No. 14-0888 (Mass. Suffolk Cty.). State-wide class action alleging that Patagonia unlawfully collected consumers' personal identification information. On February 9, 2015, the Court certified a class and granted final approval to a settlement.

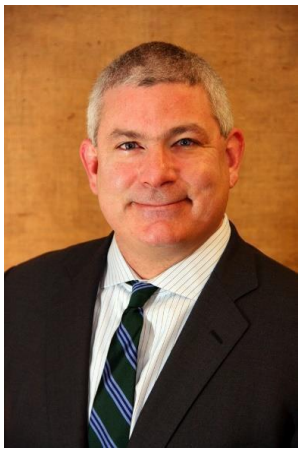
- Counsel to the Plaintiffs in *D.G. ex rel. Stricklin v. Henry*, No. 08-074 (N.D. Okl.). In this class action to reform Oklahoma's foster care system, the Court certified a statewide class of Oklahoma's foster children (an opinion that was affirmed by the Tenth Circuit). As a result of this litigation, Oklahoma has committed to restructuring its state foster care agency to eliminate dangerous practices (such as an unsafe shelter where babies in state custody disproportionately suffered fractured skulls), and improve measurable outcomes for children in state custody.

- As counsel in *Charlie and Nadine H. v. Christie*, No. 99-3678 (D.N.J.), worked with the state agencies, a federally appointed monitor, and the Court to help ensure implementation of a consent decree to reform New Jersey's foster care system. Among many other significant achievements under the consent decree, New Jersey broke a record for adoptions achieved, significantly reformed supervision procedures that were inadequate, and substantially increased the percentage of foster children who subsequently attended college. Mr. Frei-Pearson continues to be involved in this litigation in a *pro bono* capacity.

Mr. Frei-Pearson has received numerous awards for his legal work, including the New York City Bar Association's Thurgood Marshall Award for his work on death penalty cases, a citation from the New York City Council for his child advocacy work, and the 2010 Palomountain Award from Skidmore College. Mr. Frei-Pearson is also active in his community; he is a district leader in White Plains, where he serves as Chair of the Mayor's Sustainability Committee and a member (and former Chair) of the Mayor's Committee For People With Disabilities; he also serves on the Board of the Legal Services of the Hudson Valley.

Mr. Frei-Pearson is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the Eastern, Northern, Western, and Southern Districts of New York.

Greg Blankinship



Greg Blankinship is a founding partner of FBFG, and he specializes in class actions in state and federal courts. Mr. Blankinship has worked on substantial class action matters representing both defendants and plaintiffs in numerous state, federal, and multidistrict class actions, including wage and hour and consumer fraud matters. Mr. Blankinship has been named class counsel by numerous courts. Mr. Blankinship has been designated a New York Super Lawyer every year since 2014, a distinction earned by only five percent of the lawyers in the New York metro area.

Prior to joining FBFG, Mr. Blankinship was an associate with Skadden, Arps, Slate, Meagher & Flom LLP and Greenberg Traurig, LLP. Mr. Blankinship received his B.A. from Emory University in 1991 and his M.A. from the University of North Carolina in 1995. He attended law school at the University of Washington, where he earned his J.D. in 2003. While in law school, Mr. Blankinship was a member of the University of Washington Law Review.

A sampling of Mr. Blankinship's successful cases includes:

- Appointed Interim Co-Lead Class Counsel in *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report, and won class certification. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.

- Appointed to the Plaintiffs' Executive committee in *In Re: Santa Fe Natural Tobacco Company Marketing and Sales Practices Litigation*, No. 16-md-2695 (D. N.M.). Plaintiffs in this multidistrict litigation contend that Santa Fe Natural Tobacco mislead consumers into believing their cigarettes were less harmful than others because they are natural and organic. Litigation is on-going.

- Appointed co-class counsel in *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately $12 million, on September 13, 2019.

- Class counsel in *McLaughlin v. IDT Energy*, No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October 18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued atover $54 million.

- Class counsel in *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $19 million.

- Counsel in *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y.). Plaintiffs alleged that Energy Plus, an independent electricity supplier, misrepresented that its rates were reflective of the market when they were much higher. The Court granted final approval of a settlement covering more than 400,000 consumers in eight states and valued at more than $11,000,000.

- Appointed Class Counsel in *Brenner v. J.C. Penney Company, Inc.*, No. 13-11212 (D. Mass.). Plaintiff alleged that J.C. Penney requested and recorded customers' ZIP codes, which it then used to identify consumers' mailing addresses to send them junk mail, in violation of Massachusetts law. The Court granted final approval of a settlement valued at more than $3.5 million.

- Appointed Class Counsel in *Brenner v. Kohl's Corporation*, No. 13-10935 (D. Mass). State-wide class action alleging that Kohl's unlawfully collected consumers' personal identification information. On December 5, 2013, the Court granted preliminary approval to a settlement valued at $435,000 and appointed lawyers of FBFG class counsel.

- Appointed Interim Co-Lead Class Counsel in *Chen v. Hiko Energy, LLC*, No. 4-01771 (S.D.N.Y.). State-wide class action alleging that Hiko charged deceptively high electricity and natural gas rates.

- Appointed Interim Co-Lead Class Counsel in *Tyler v. Bed Bath & Beyond, Inc.*, No. 13-10639 (D. Mass.). Plaintiff alleged that Bed, Bath & Beyond illegally requested and recorded customers' ZIP codes.

Mr. Blankinship's broad experience as a litigator has also exposed him to a wide variety of substantive business and consumer issues. He also has substantial experience with the issues and procedural aspects of large class action and complex cases.

Mr. Blankinship is admitted to practice in New York and Massachusetts and is a member of the bars of the U.S. District Courts for the Eastern, Western, Northern, and Southern Districts of New York, the District of Connecticut, the District of Massachusetts, and the First, Second, Third, Seventh, and Ninth Circuit Courts of Appeals.

Todd S. Garber

Todd S. Garber is a founding partner of FBFG. Mr. Garber is an experienced litigator, who practices in state and federal courts. His areas of experience include class actions, consumer fraud, securities fraud, complex commercial disputes, business torts, antitrust, and general litigation. Mr. Garber was designated a New York Super Lawyer every year since 2013, a distinction earned by only five percent of the lawyers in the New York metro area.

Prior to joining FBFG, Mr. Garber worked at Lowey Dannenberg Cohen & Hart, P.C., where he prosecuted and defended complex commercial litigation matters and class actions.

Mr. Garber's career achievements include:

- Appointed co-class counsel in *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately $12 million, on September 13, 2019.

- Appointed Class Counsel in *Brenner v. J.C. Penney Company, Inc.*, No. 13-11212 (D. Mass.). Plaintiff alleged that J.C. Penney requested and recorded customers' ZIP codes, which it then used to identify consumers' mailing addresses to send them junk mail, in violation of Massachusetts law. The Court granted final approval of a settlement valued at more than $3.5 million.

- Appointed Class Counsel in *Brenner v. Kohl's Corporation,* No. 13-10935 (D. Mass). State-wide class action alleging that Kohl's unlawfully collected consumers' personal identification information. On March 12, 2014, the Court granted final approval to a settlement valued at $425,000 and appointed lawyers of FBFG class counsel.

- Appointed Co-Lead Class Counsel in *Quinn v. Walgreen,* No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at $2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court finally approved the settlement and certified the class.

- Appointed Interim Co-Lead Class Counsel in *Chen v. Hiko Energy, LLC*, No. 14- cv-01771 (S.D.N.Y.). State-wide class action alleging that Hiko charged deceptively high electricity and natural gas rates. On May 9, 2016, the Court certified the class and approved a settlement valued at over $10 million.

- Appointed Interim Co-Lead Class Counsel in *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals

brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report, and won class certification. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.

- Appointed Co-Lead Class Counsel in *Tyler v. Bed Bath & Beyond, Inc.*, No. 13-10639 (D. Mass.). Plaintiff alleged that Bed, Bath & Beyond illegally requested and recorded customers' ZIP codes.

- Class Counsel in *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y.). Plaintiffs alleged that Energy Plus, an independent electricity supplier, misrepresented that its rates were reflective of the market when they were much higher. The Court granted final approval of a settlement covering more than 400,000 consumers in eight states and valued at more than $11,000,000.

- As counsel for the New York City Pension Funds, Lead Plaintiff in *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal 2010), helped achieve a settlement of $169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.

- Involvement in the prosecution of a number of high-profile cases, which have resulted in hundreds of millions of dollars in recoveries for investors, including *In re WorldCom Securities Litigation*, *In re HealthSouth Securities Litigation*, *In re DaimlerChrysler AG Securities Litigation*, and *In re Bayer AG Securities Litigation*.

- Representation of institutional investors in stockholder voting rights and corporate governance cases, including *Gabelli Global Multimedia v. Western Investment LLC*, 700 F. Supp. 2d 748 (D. Md. 2010); *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d. Cir. 2006); *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006); *meVC Draper Fisher Jurvetson Fund I, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); and *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

Mr. Garber received his B.A. from Cornell University in 1999 and his J.D. from the Benjamin N. Cardozo School of Law in 2002, where he was articles editor for the Cardozo Journal of International and Comparative Law and was competitively selected to work for the New York City Law Department's Corporation Counsel in its Appellate Division.

Mr. Garber co-authored "Morrison v. National Australia Bank: The Potential Impact on Public Pension Fund Fiduciaries," The NAPPA Report, Vol. 24, Number 3, August 2010, and "Loss Causation in the Ninth Circuit," New York Law Journal, September 2, 2008.

Mr. Garber is admitted to practice in New York and Connecticut and is a member of the bars of the U.S. District Courts for the Eastern, Western, and Southern Districts of New York and the Second Circuit Court of Appeals.

Andrew Finkelstein

Andrew Finkelstein is the Managing Partner of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP. He has become a noted consumer activist through his representation of injured individuals against corporate wrong doers and other irresponsible parties.

Mr. Finkelstein served as Captain of the 9/11 Victim Compensation Fund in a pro bono capacity, where he helped obtain over $10 million for victims and waived all legal fees associated with this representation. Mr. Finkelstein is also the Chairman of the Plaintiff Personal Injury Steering committee for the Neurontin Liability Multidistrict Litigation in Boston, Massachusetts. He has worked closely with the FDA regarding the adverse effects associated with Neurontin, having filed a Citizens Petition seeking enhanced warning of the side effects of this drug, specifically increased suicidal tendencies. Additionally, Mr.Finkelstein is a member of the Executive Steering Committee of the Hormone Replacement Therapy Multidistrict Litigation in both Philadelphia, Pennsylvania and Little Rock, Arkansas. He is a member of the Plaintiff Steering Committee of the Ortho Evra Birth Control Patch New Jersey Coordinated Litigation, and the Plaintiff Steering Committee of the Viagra Multidistrict Litigation in Minneapolis, Minnesota.

Mr. Finkelstein is a frequent lecturer at Continuing Legal Education courses. His topics include "Science in the Courtroom", "Technology in the Courtroom", "Prosecution of a Pharmaceutical Case", "The Ethics of On-line Advertising", and "Structured Settlements and the Personal Injury Settlement."

In addition to these presentations, Mr. Finkelstein volunteers his time to present his "Commit to Quit Texting While Driving" seminar to area high school students.

John Sardesai-Grant

Mr. Sardesai-Grant is a highly experienced litigator who specializes in class actions in state and federal courts.

Before joining FBFG, John was an associate at Baritz & Colman LLP, where he represented clients in employment discrimination and commercial disputes. As of counsel to Reese Richman LLP, John brought cases against the New York Police Department on behalf of victims of police misconduct. As an associate at Brower Piven, P.C., he prosecuted complex securities fraud class actions on behalf of shareholders. And as an associate at Bickel & Brewer, a premier commercial litigation boutique, he represented clients in a variety of regulatory and commercial matters.

John earned his B.S. in Economics from The Wharton School at the University of Pennsylvania, as well as an M.A. in Chinese from the University of Pennsylvania's Graduate School of Arts and Sciences. John received his J.D. from New York University School of Law.

John is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado. He is an active member of the New York County Lawyers Association.

Bradley F. Silverman

Mr. Silverman is a highly experienced litigator. He has represented individuals and public and private companies in courts throughout the country. He has broad experience handling numerous types of disputes. This experience includes the representation of plaintiffs and defendants in: class actions; contract disputes; employment matters; disputes relating to the management and control of closely held businesses; intellectual property and trade secret disputes; RICO actions; antitrust and unfair competition matters; real estate disputes; Title IX and other claims relating to college disciplinary actions; challenges to local and state laws that are either unconstitutional or preempted by federal law; and actions to enforce First Amendment rights.

At FBFG, Mr. Silverman's practice focuses on class actions in which he represents individuals across the country who have been harmed by the unlawful acts of companies. Past class actions in which he has been involved include *In re: Coca-Coca Products Marketing and Sales Practices Litigation*, a multidistrict litigation where Mr. Silverman's prior firm served as co-lead counsel for all plaintiffs. In that case and in other cases, he has asserted claims against some of the largest food manufacturers in the world for placing illegal, deceptive, and false statements on product labels.

Prior to joining FBFG, Mr. Silverman practiced at several of the leading litigation firms in New York City, including the international law firm of Kaye Scholer LLP (now Arnold & Porter Kaye Scholer LLP). He received his undergraduate degree, *Magna Cum Laude*, from Brandeis University. He received his law degree from the University of Pennsylvania Law School where he served as a member of the Moot Court Board and as Senior Editor of the Journal of International Economic Law. Born and raised in Brooklyn, New York, he and his family now reside in Westchester County.

Sami Ahmad

Sami Ahmad is an associate at FBFG, where he specializes in prosecuting class actions in state and federal courts. Mr. Ahmad joined the firm after working as an associate at a prominent firm specializing in securities class action litigation. He was previously an Honors Intern with the Securities & Exchange Commission and a paralegal and financial analyst. Mr. Ahmad received his J.D. from George Washington University, a Certificate of Financial Analysis from New York University, and his B.A., with honors, from McGill University. During law school, Mr. Ahmad served as an Associate Editor on the George Washington Business and Finance Law Review and also worked as a research assistant focusing on contract law.

Olena Ball

Olena Ball is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Mrs. Ball joined the firm after working at several prominent law firms. She received her J.D. from Benjamin N. Cardozo School of Law and her B.A., cum laude, from the City College of New York. During law school, Mrs. Ball served on the Cardozo Women's Law Journal.

Chantal Khalil

Ms. Khalil is an associate at FBFG, where she specializes in class actions in state and federal courts. She is admitted to practice in New York and in the United States District Court for the Southern District of New York. Ms. Khalil received her J.D. from George Washington University Law School and her B.A. from New York University (*Magna Cum Laude*). During Law School, Ms. Khalil served on *The George Washington International Law Review*, was recognized as a Thurgood Marshall Scholar, and received President Obama's Volunteer Service Award.

Earl Kirkland III

Mr. Kirkland is an associate at FBFG, where he specializes in class actions in state and federal courts. Mr. Kirkland joined the firm from the NAACP Legal Defense and Educational Fund, Inc. (LDF), where he litigated complex civil rights matters across the country involving issues of educational equity, criminal justice, and voting rights. At LDF, he also co-drafted amicus briefs defending transgender youth rights and challenging Pennsylvania's death penalty. Mr. Kirkland previously clerked for the Honorable Damon J. Keith of the U.S. Court of Appeals for the Sixth Circuit, the Honorable Linda V. Parker of the U.S. District Court for the Eastern District of Michigan, and them Honorable Edward Ewell, Jr. of the Third Judicial Circuit of Michigan. He received his J.D. from Cornell Law School and his B.A., with honors, from the University of Michigan.

Ayana McGuire

Ms. McGuire is an associate at FBFG, where she specializes in class actions in state and federal courts. Ms. McGuire received her J.D. from the University of Connecticut School of Law and her B.A. from Cornell University. She is a member of the New York bar.

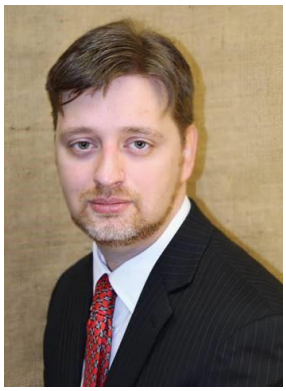
Chantel Mills

Chantel Mills is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Ms. Mills joined the firm after working at several prominent law firms. She received her J.D. from William and Mary School of Law and her B.A., with honors, from the University of Pennsylvania. During law school, Ms. Mills received various awards for her commitment to academic excellence and community service.

W. Scott Terrell III

Mr. Terrell is an associate at FBFG, where he specializes in class actions in state and federal courts. Before joining FBFG, Mr. Terrell clerked for the Honorable Dale S. Fisher and for Magistrate Judge Karen L. Stevenson, both in the Central District of California. He also worked for four years in the Bronx District Attorney's Office, serving successfully in the Trial Bureau and in the Appeals Bureau. Mr. Terrell received his J.D. from the University of Virginia School of Law and his B.A. from Morehouse College.

Andrew White



Mr. White is an associate at FBFG, where he specializes in class actions in state and federal courts. Mr. White received his J.D. from New York University School of Law and his B.A. from State University of New York, College at Potsdam. During law school, Mr. White served as an editor for the Journal of Law and Liberty. Mr. White is admitted to practice in New York and in the United States District Court for the Southern District of New York.