

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ROBIN FORSLUND, TIMOTHY KELLY,
MATTHEW MENTING, DONALYN
NORTH, ROBIN RECTOR, ERIC
OTTENHEIMER, GAIL ROSSI, and
GREGORY WILLIAMS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

R.R. Donnelley & SONS COMPANY,

Defendant.

Case No. 1:22-cv-04260

Judge John J. Tharp, Jr.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED
MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. CASE SUMMARY..... 2

 A. The Data Incident..... 2

 B. Procedural Posture 2

 C. History of Negotiations..... 3

 D. Preliminary Approval 4

III. SUMMARY OF SETTLEMENT 4

 A. Settlement Class..... 4

 B. Settlement Benefits 5

 1. Monetary Relief 5

 a. Reimbursement for Ordinary Losses & Attested Time 5

 b. Reimbursement for Extraordinary Out-of-Pocket Losses..... 6

 c. Alternative Cash Payment..... 7

 2. Equitable Relief 7

 C. Attorneys’ Fees, Costs, and Plaintiffs’ Service Awards 8

IV. LEGAL STANDARD..... 9

V. ARGUMENT 11

 A. Class Counsel’s Requested Fee is Reasonable and Should be Approved. 11

 1. Class Counsel’s Requested Fee Award Represents a Modest Percent
 of the Settlement Fund. 11

 2. Class Counsel’s Requested Fee Award is Also Reasonable Under
 a Lodestar Analysis..... 13

 3. The Requested Fee Reflects the Fees Awarded in Other
 Similar Settlements. 16

4.	The Risk Associated with this Litigation Justifies the Requested Fee Award.....	17
5.	The Requested Fee is Well Within the Range of Typical Contingency Fee Arrangements in this Circuit.	17
6.	The Quality of Performance and Work Invested Support the Fee Request....	18
B.	The Court Should Also Award Reasonable Reimbursement for Expenses.....	19
C.	The Incentive Award to the Class Representative Should Be Approved.	20
VI.	CONCLUSION.....	21

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.</i> , 743 F.3d 243 (7th Cir. 2014)	10
<i>Beckman v. KeyBank, N.A.</i> , 293 F.R.D. 467 (S.D.N.Y. 2013)	15
<i>Beesley v. Int’l Paper Co.</i> , No. 06-703, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014)	19
<i>Benzion v. Vivint, Inc.</i> , No. 12-61826 (S.D. Fla. Feb. 23, 2015)	21
<i>Birchmeier v. Caribbean Cruise Line, Inc.</i> , 896 F.3d 792 (7th Cir. 2018)	12, 16
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	12
<i>Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.</i> , 897 F.3d 825 (7th Cir. 2018)	10
<i>In re Cap. One TCPA Litig.</i> , 80 F. Supp. 3d 781 (N.D. Ill. 2015)	10, 12, 16
<i>Columbus Drywall & Insulation, Inc. v. Masco Corp.</i> , No. 1:04-CV-3066-JEC, 2012 WL 12540344 (N.D. Ga. Oct. 26, 2012)	15
<i>In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.</i> , 333 F.R.D. 364 (E.D. Pa. 2019).....	11
<i>In re Cont’l Ill. Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992)	10
<i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998)	<i>passim</i>
<i>In re Dairy Farmers</i> , 80 F. Supp. 3d 838	13
<i>Demaria v. Horizon Healthcare Servs., Inc.</i> , No. 2:11-CV-07298 (WJM), 2016 WL 6089713 (D.N.J. Oct. 18, 2016).....	15

Denius v. Dunlap,
330 F.3d 919 (7th Cir. 2003)14

Desai v. ADT Sec. Servs., Inc.,
No. 11-1925 (N.D. Ill. Feb. 27, 2013), ECF No. 24321

Drazen v. Godaddy.com,
No. 1:19-00563-KD-B, 2020 WL 8254868 (S.D. Ala. Dec. 23, 2020).....11

In re Facebook Biometric Info. Priv. Litig.,
15-cv-03747-JD (N.D. Cal. 2015), ECF Doc No. 499-314

Florin v. Nationsbank of Ga., N.A.,
34 F.3d 560 (7th Cir. 1994)10, 14

Gaskill v. Gordon,
160 F.3d 361 (7th Cir. 1998)18

Gaskill v. Gordon,
942 F. Supp. 382 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998)10, 11

Gastineau v. Wright,
592 F.3d 747 (7th Cir. 2010)14

Gehrich v. Chase Bank USA, N.A.,
316 F.R.D. 215 (N.D. Ill. Mar. 2, 2016)9

George v. Kraft Foods Glob., Inc.,
Nos. 1:08-cv- 03799.....13

Harman v. Lyphomed, Inc.,
945 F.2d 969 (7th Cir. 1991)14, 15

Hillson v. Kelly Servs. Inc.,
No. 2:15-CV-10803, 2017 WL 3446596 (E.D. Mich. Aug. 11, 2017).....15

In re Iowa Ready-Mix Concrete Antitrust Litig.,
No. 10-4038, 2011 WL 5547159 (N.D. Iowa Nov. 9, 2011).....20

Jeffboat, LLC v. Dir., Office of Workers’ Comp. Programs,
553 F.3d 487 (7th Cir. 2009)13

Karpilovsky v. All Web Leads, Inc.,
No. 2017-cv-01307 (N.D. Ill. Aug. 8, 2019), ECF No. 17313, 16

Kelly v. R.R. Donnelley & Sons Co.,
Case No. 1:22-cv-043012

Kirchoff v. Flynn,
786 F.2d 320 (7th Cir. 1986)18

Kolinek v. Walgreen Co.,
311 F.R.D. 483 (N.D. Ill. 2015).....16, 21

In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.,
733 F. Supp. 2d 997 (E.D. Wis. 2010).....15

Leung v. XPO Logistics,
326 F.R.D. 185 (N.D. Ill. May 30, 2018)9, 13

Mangone v. First USA Bank,
206 F.R.D. 222 (S.D. Ill. 2001)18

In re Marsh ERISA Litig.,
265 F.R.D. 128 (S.D.N.Y. 2010)19

Menting v. R.R. Donnelley & Sons Co.,
Case No. 1:22-cv-048382

Paz v. Portfolio Recovery Assocs., LLC,
924 F.3d 949 (7th Cir. 2019)14

Pearson v. NBTY, Inc.,
772 F.3d 778 (7th Cir. 2014)12

Redman v. RadioShack Corp.,
768 F.3d 622 (7th Cir. 2014)12

Remijas v. The Neiman Marcus Grp., LLC,
No. 1:14-cv-01735 (N.D. Ill. June 4, 2021).....16

Retsky Fam. Ltd. P’ship v. Price Waterhouse, LLP,
No. 97-7694, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001).....18

Schulte v. Fifth Third Bank,
805 F. Supp. 2d 56015

In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.,
867 F.3d 791 (7th Cir. 2017)12

Silverman v. Motorola Sols., Inc.,
739 F.3d 956 (7th Cir. 2013)17

Skelton v. Gen. Motors Corp.,
860 F.2d 250 (7th Cir. 1988)14

Spicer v. Chi. Bd. Options Exch., Inc.,
844 F. Supp. 1226 (N.D. Ill. 1993)19

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

Sutton v. Bernard,
504 F.3d 688 (7th Cir. 2007)17, 18

In re Synthroid Mktg. Litig.,
264 F.3d 712 (7th Cir. 2001)9, 19, 20

Taubenfeld v. Aon Corp.,
415 F.3d 597 (7th Cir. 2005)13, 16, 17

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.,
724 F. Supp. 160 (S.D.N.Y. 1989)10

In re VeriFone Holdings, Inc. Sec. Litig.,
No. C-07- 6140 EMC, 2014 WL 12646027 (N.D. Cal. Feb. 18, 2014)15

Vizcaino v. Microsoft Corp.,
290 F.3d 1043 (9th Cir. 2002)15

In re Wawa, Inc. Data Sec. Litig.,
No. 19-cv- 6019-GEKP (E.D. Pa. Oct. 28, 2021).....16

Will v. Gen. Dynamics Corp.,
No. 06–698–GPM, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010).....21

Williams v. Rohm & Haas Pension Plan,
658 F.3d 629 (7th Cir. 2011)9, 13

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2003).....15

Wright v. Nationstar Mortg. LLC,
No. 1:14-cv-10457, 2016 WL 4505169 (N.D. Ill. Aug. 29, 2016).....13

STATUTES

Illinois Consumer Fraud and Deceptive Business Practices Act.....3

New York Labor Law3

RULES

Fed. R. Civ. P. 23.....9
Fed. R. Civ. P. 23(h).....9

I. INTRODUCTION

On October 31, 2023 this Court preliminarily approved a proposed class action settlement between Plaintiffs Robin Forslund, Timothy Kelly, George Lenz Jr., Matthew Menting, Donalyn North, Robin Rector, Eric Ottenheimer, Gail Rossi, and Gregory Williams (“Plaintiffs”) and Defendant R.R. Donnelley & Sons Company (“R.R. Donnelley” or “Defendant” and together with Plaintiffs, the “Parties”). ECF No. 64. Class Counsel’s¹ efforts created distinct monetary benefits for the approximately 81,642 Settlement Class Members in the form of a \$979,704.00 non-reversionary common fund from which Settlement Class Members can claim reimbursement for Out-of-Pocket Losses and Attested Lost Time, or an Alternative Cash Payment. Settlement Class Members will further benefit from equitable relief in the form of information security enhancements designed to ensure Settlement Class Members information is better protected in the future.

Class Counsel has zealously prosecuted Plaintiffs’ claims, achieving this Settlement only after an extensive investigation and prolonged arm’s-length negotiations. Even after coming to an agreement on the central terms, Class Counsel worked for months to finalize an agreement, and to finalize the amended Settlement Agreement and associated exhibits pertaining to notice, and preliminary approval.

As compensation for the substantial benefit conferred upon the Settlement Class, Class Counsel respectfully move the Court for a combined award of attorneys’ fees and costs totaling \$326,568, or 33.33% of the Settlement Fund, and \$1,248.69 as reimbursement for litigation expenses. Plaintiffs’ Motion should be granted because the request is reasonable and appropriate considering both the percent-of-benefit method and the lodestar method of calculating attorneys’

¹ All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement and Release (“Settlement Agreement”).

fees. Class Counsel also respectfully moves the Court for an award of \$3,000 to each of the Plaintiffs for their work on behalf of the Class.²

II. CASE SUMMARY³

A. The Data Incident

This case involves a putative class action against R.R. Donnelley relating to a ransomware cyber-attack Defendant experienced on or about November 29, 2021. R.R. Donnelley announced the Data Incident in a Notice of Data Breach sent to customers in August 2022.

B. Procedural Posture

Shortly after Defendant issued the Notice of Data Incident, three separate putative class action lawsuits were filed alleging Defendant failed to employ proper safeguards to prevent the ransomware attack in the Norther District of Illinois: *Forslund v. R.R. Donnelley & Sons Co.*, 1:22-cv-04260; *Kelly v. R.R. Donnelley & Sons Co.*, Case No. 1:22-cv-04301; and *Menting v. R.R. Donnelley & Sons Co.*, Case No. 1:22-cv-04838. On September 15, 2022, the three putative class actions were consolidated into the first filed matter, and a Consolidated Amended Complaint (“Compl.”) was filed on October 14, 2022. ECF No. 24. Plaintiffs, collectively, alleged individually and on behalf of a putative nationwide Class, that, as a direct result of the Data Incident, Plaintiffs and Class Members suffered numerous injuries and would likely suffer additional harm in the future. Plaintiffs' claims for alleged damages and remedies included the following categories of harms: "(i) invasion of privacy; (ii) out-of-pocket expenses; (iii) loss-of time and productivity incurred mitigating the present risk and imminent threat of identity theft; (iv) actual identity theft and fraud resulting in additional economic and non-economic damages;

² While Plaintiffs here move for attorneys' fees, costs, and service awards, they will move for final approval of the settlement by separate motion, which will be filed prior to the final fairness hearing.

³ This section has been largely adopted from the Memorandum of Law in Support of Plaintiffs' Amended Unopposed Motion for Preliminary Approval of Class Action Settlement, filed October 26, 2023 at ECF No. 61.

(v) diminution of value of their PII; (vi) anxiety, stress, nuisance, and annoyance; (vii) increased targeted and fraudulent robocalls and phishing email attempts; (viii) the present and continuing risk of identity theft posed by their personal data being placed in the hands of the ill-intentioned hackers and/or criminals; (ix) the retention of the reasonable value of the PII entrusted to Defendant; and (x) the present and continued risk to PII, which remains on Defendant's vulnerable network, placing Plaintiffs and Class Members at an ongoing risk of harm." Compl. ¶ 110.

Plaintiffs, individually and on behalf of other members of the proposed nationwide Class, collectively asserted claims for: (i) negligence, (ii) breach of implied contract, (iii) unjust enrichment, (iv) invasion of privacy, (v) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("CFA"), (vi) violation of the New York Labor Law (on behalf of Plaintiff Lenz and the proposed New York subclass), and (vii) declaratory judgment/injunctive relief. *See id.* at 11219-324. Defendant filed a Motion to Dismiss the Complaint, which is fully briefed. ECF Nos. 32, 33, 43, 45. Before the Court ruled on the Motion to Dismiss, the Parties reached this Settlement.

C. History of Negotiations

The Parties exchanged extensive informal discovery into several areas, including, but not limited to, the putative Class size and residence, number of individuals with SSNs impacted, forensic investigation(s) into the Data Incident, and Defendant's insurance coverage and/or ability to pay. *See* Joint Declaration of Plaintiffs' Counsel in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. ECF No. 61-2. ("MPA Decl.") ¶ 4. Based on this informal discovery exchange, the Parties were able to fully evaluate each side's respective positions on the merits and class certification. *Id.* With this knowledge, the Parties spent approximately three months negotiating the material terms of a class settlement of Plaintiffs'

claims, ultimately reaching agreement on the material terms on May 9, 2023. *Id.* The Parties then worked to memorialize those terms in a full settlement agreement, which was signed on July 26, 2023. *Id.* The negotiations were professional and courteous, but each side zealously advocated for their clients' position. *Id.*

D. Preliminary Approval

Plaintiffs moved for preliminary approval of the July 26, 2023, version of the settlement agreement on July 28, 2023. ECF Nos. 52, 53. The Court held a hearing on Plaintiffs' motion on October 5, 2023, at which time the Court raised certain questions about the Parties' settlement. ECF No. 56. In response to the Court's questions, the Parties met and conferred and agreed upon certain changes to the Settlement Agreement, executing an Amended Settlement Agreement (ECF No. 53-1). Plaintiffs filed their Amended Unopposed Motion for Preliminary Approval of Class Action Settlement on October 26, 2023, and this Court granted preliminary approval on October 31, 2023.

III. SUMMARY OF SETTLEMENT

A. Settlement Class

The settlement negotiated on behalf of the Class provides for two separate forms of relief: (1) monetary relief; and (2) equitable relief in the form of information security enhancements. ECF No. 53-1, Amended Settlement Agreement (“SA”), § 2. The Settlement provides for a nationwide Settlement Class defined as, "All individuals who were sent notice of the Data Incident on or around August 5, 2022." *Id.* § 1.7. The Settlement Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this Settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge. *Id.*

B. Settlement Benefits

1. Monetary Relief

The Settlement includes a non-reversionary common fund in the amount of \$979,704.00 (the "Settlement Fund") to be distributed to Settlement Class Members. All Settlement Class Members shall have the opportunity to submit a Claim Form from the Settlement Fund for certain Claimed Benefits either through the Settlement Website or by hand to a designated Post Office box established by the Settlement Administrator. Any Valid Claims may be subject to pro rata increase or decrease depending on the aggregated amount of payments of Valid Claims. The Claimed Benefits, as described below, shall include: (a) Reimbursement for Ordinary Out-of-Pocket Losses and Attested Lost Time; (b) Reimbursement for Extraordinary Out-of-Pocket Losses; and (c) Alternative Cash Payments. Settlement Agreement (SA), ¶ 2.

a. Reimbursement for Ordinary Losses & Attested Time

All Settlement Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Ordinary Out-of-Pocket Losses and Attested Lost Time, if fairly traceable to the Data Incident, not to exceed \$750 per Settlement Class Member ("Ordinary Out-of-Pocket Loss Cap"). SA, ¶ 2. "Ordinary Out-of-Pocket Losses" are unreimbursed costs or expenditures incurred by a Settlement Class Member in responding to notice of the Data Incident. Ordinary Out-of-Pocket Losses may include, without limitation, the following: (1) costs incurred on or after November 29, 2021 associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (2) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (3) credit monitoring or other mitigative costs that were incurred on or after November 29, 2021 through the date of the Settlement Class Member's Claim submission. *Id.* ¶

2(A). Settlement Class Members who elect to submit a Claim for reimbursement of Ordinary Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the Claim, including: (1) the Settlement Class Member's name and current address; (2) documentation supporting their Claim; (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; and (4) a verification, stating that the Claim is true and correct, to the best of the Settlement Class Member's knowledge and belief, and is being made under penalty of perjury. Ordinary Out-of-Pocket Losses will be deemed "fairly traceable" to the Data Incident if the timing of the loss occurred on or after November 29, 2021. *Id.* ¶ 2(A)(iii).

Settlement Class Members may also submit a Claim for up to ten (10) hours of time spent remedying issues related to the Data Incident at \$25 per hour by providing an attestation and a brief description of (1) the actions taken in response to the Data Incident; and (2) the time associated with each action ("Attested Lost Time"). Claims for Attested Lost Time are capped at \$250 and fall under the \$750 Ordinary Out-of-Pocket Loss Cap. *Id.* ¶ 2(A)(iv).

b. Reimbursement for Extraordinary Out-of-Pocket Losses

All Settlement Class Members who submit a Valid Claim are also eligible to receive reimbursement for documented Extraordinary Out-of-Pocket Losses, if fairly traceable to the Data Incident, not to exceed \$5,000 per Settlement Class Member. *Id.* ¶ 2(B). "Extraordinary Out-of-Pocket Losses" are unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Incident. *Id.* Extraordinary Out-of-Pocket Losses may include, without limitation, the unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Settlement Class

Member's Personal Information. Settlement Class Members may submit multiple Claims, but the total of all amounts claimed may not exceed \$5,000. *Id.*

c. Alternative Cash Payment

Moreover, Settlement Class Members may, in lieu of making a claim for reimbursement of Ordinary and/or Extraordinary Out-of-Pocket Losses and Attested Lost Time, elect to receive a cash payment in an amount up to \$50 on a claims-made basis. *Id.* ¶ 2(C). This payment, along with all other monetary relief provided in the Settlement, will be reduced on a pro rata basis if the Settlement Funds are insufficient to cover all Valid Claims. *Id.* ¶ 2(D). And this payment, along with all other monetary relief provided in the Settlement, could also be increased pro rata if, after the distribution of attorneys' fees, Settlement Class Counsel's litigation expenses, Settlement Administration Costs, Service Awards, and all Valid Claims, there are remaining Settlement Funds. *Id.* ¶ 2(E).

2. Equitable Relief

For a period of four (4) years following the Effective Date, Defendant agrees to maintain reasonable information security policies ("Business Practice Commitments"). The actual cost for the implementation and maintenance of the Business Practice Commitments will be paid by Defendant separate and apart from the Settlement Fund. Defendant has provided reasonable access to confidential confirmatory discovery regarding the number of Settlement Class Members broken down by category (e.g., current employee, former employee, etc.) and state of residence, the facts and circumstances of the Data Incident and Defendant's response thereto, and the changes and improvements that have been made or are being made to protect Settlement Class Members' PII. *Id.* ¶ 2.1.

C. Attorneys' Fees, Costs, and Plaintiffs' Service Awards

The Settlement Agreement calls for a reasonable Service Award to be sought for Plaintiffs in the amount of \$3,000 per Plaintiff. SA, ¶ 7.3. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Class, which include maintaining contact with Counsel, participating in client interviews, providing relevant documents, assisting in the investigation of the case, remaining available for consultation throughout settlement negotiations, reviewing relevant pleadings and the Settlement Agreement, and for answering Counsel's many questions. Declaration of Gary M. Klinger in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, ("Fee Decl.") ¶ 19.

After agreeing to the terms of the Settlement on behalf of the Class, Class Counsel negotiated their fees and costs separate from the benefit to Class Members, in the amount of \$326,568.00 for fees and up to \$10,000 in costs, subject to Court approval. SA., ¶¶ 7.1-7.2. This figure was determined by direct negotiations between the Parties after the substantive terms of the Settlement were agreed upon. *Id.*

Class Counsels' fees were not guaranteed—the retainer agreement Counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. Fee Decl. ¶ 7. The purely contingent basis upon which Class Counsel took the case meant that Class Counsel assumed significant risk. *Id.* Class Counsel spent time on this matter that could have otherwise been spent on other, fee-generating matters, and shouldered the risk of expending substantial costs and time without any monetary gain in the case of adverse judgment. *Id.* ¶ 8.

Due to the early stage of litigation at which Plaintiffs were able to reach settlement, costs incurred by Plaintiffs are low. *Id.* at ¶ 17. Plaintiffs' current costs are \$1,248.69 and include filing

fees and legal research costs. *Id.* These costs are reasonable and were necessary for the litigation. *Id.* ¶ 18.

IV. LEGAL STANDARD

Rule 23 provides that “[i]n a certified class action, the court may award reasonable attorney's fees...that are authorized by law or by the parties' agreement.” Fed. R. Civ. P. 23(h). In the Seventh Circuit, courts determine class action attorneys’ fees by “[d]oing their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (“*Synthroid I*”) (collecting cases). “At the time” is at the start of the case: The Court must “estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed).” *Id.* “The best time to determine this rate is the beginning of the case, not the end (when hindsight alters of the perception of the suit’s riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets.” *Id.* As part of this inquiry, “the judge must assess the value of the settlement to the class and the reasonableness of the agreed-upon attorneys' fees for class counsel,” the central consideration being what class counsel achieved for members of the class. *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 235 (N.D. Ill. Mar. 2, 2016) (quoting *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014)).

Courts have discretion to determine the “market rate” based on either a lodestar or percent-of-benefit method. *See Leung v. XPO Logistics*, 326 F.R.D. 185, 204 (N.D. Ill. May 30, 2018); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011); *see also Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998) (“[W]e have never ordered the district judge to ensure

that the lodestar result mimics that of the percentage approach.”); *Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014) (“[T]he choice of methods is discretionary . . . in our circuit, it is legally correct for a district court to choose either.”) A lodestar analysis can (but is not required to be) used as a crosscheck on the common fund method of awarding attorneys’ fees. *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 829 (7th Cir. 2018).

In fact, the approach favored for consumer class actions in the Seventh Circuit is to compute attorneys’ fees as a percentage of the benefit conferred upon the class: “there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration.” *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *In re Cap. One TCPA Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (finding percentage-of-the-fund to be the “normal practice in consumer class actions”). Courts have explained that “[t]he percentage method is bereft of largely judgmental and time-wasting computations of lodestars and multipliers.” *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 170 (S.D.N.Y. 1989); *see also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (easier to establish market based contingency fee percentages than to “hassle over every item or category of hours and expense and what multiple to fix and so forth,”); *Gaskill v. Gordon*, 942 F. Supp. 382, 386 (N.D. Ill. 1996) (percentage-of-fund method “provides a more effective way of determining whether the hours expended were reasonable”), *aff’d*, 160 F.3d 361 (7th Cir. 1998). Because the Settlement here involves a common fund, the percent of benefit method for calculating attorneys’ fees is appropriate.

The requested fees are reasonable, under both a common fund assessment and a lodestar analysis.

V. **ARGUMENT**

Plaintiffs respectfully request that the Court approve attorneys' fees of \$326,568, costs of \$1,258.69 and a \$3,000 Service Award for each Plaintiff. As explained below, the requested fee award is in line with the market rate for similar attorney services in this jurisdiction, and fairly reflects the result achieved. Similarly, the requested incentive award is comparable to other privacy cases and should be approved.

A. **Class Counsel's Requested Fee is Reasonable and Should be Approved.**

1. **Class Counsel's Requested Fee Award Represents a Modest Percent of the Settlement Fund.**

Class Counsel here have created a significant benefit for Settlement Class Members consisting of reimbursement for Out-of-Pocket Losses, the opportunity to elect an Alternative Cash Payment in lieu of reimbursement, and valuable equitable relief in the form of significant data security enhancements. In return, Class Counsel seeks fees of \$326,568, or 33.33% of the Settlement Fund, and \$1,248.69 in costs.

When assessing the reasonableness of requested attorneys' fees, most federal courts compare the amount requested against the total value of the benefit created by the Settlement. "In calculating a percentage fee award in a class action involving a settlement fund, the Supreme Court has recognized 'that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole,' even if part of the fund reverts to the defendant." *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, 333 F.R.D. 364, 386 (E.D. Pa. 2019) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)); *see also id.* at 480 (the 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"); *Drazen v. Godaddy.com*, No. 1:19-00563-

KD-B, 2020 WL 8254868, at *12 (S.D. Ala. Dec. 23, 2020) (citing *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (in turn, citing *Van Gemert*, 444 U.S. at 478)). Pursuant to the Supreme Court’s reasoning in *Van Gemert*, numerous courts have recognized that “[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as whole.” *Sunbeam*, 176 F. Supp. 2d at 1333.

In the Seventh Circuit however, courts prefer to consider the ratio of “(1) the fee to (2) the fee plus what the class members received.” *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014) (omitting administrative costs and incentive awards from analysis). The “presumption” should be that “attorneys’ fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel.” *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014). “[A] district court should compare attorney fees to what is actually recovered by the class and presume that fees that exceed the recovery to the class are presumptively unreasonable.” *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 867 F.3d 791, 792 (7th Cir. 2017) (citing *Pearson*, 772 F.3d at 782).

Here, the requested fees do not run afoul of the presumption set forth in *Pearson*. The Settlement creates a non-reversionary Settlement Fund of \$979,704, from which Class Counsel is requesting Attorneys’ Fees of 33.33%. Moreover, all Settlement Class Members will receive the benefit of the extensive business practice changes implemented by R.R. Donnelley. Class Counsel submit that this fee request is inherently reasonable, lower than market rates, and should be approved. See *Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 795 (7th Cir. 2018) (affirming post-*Pearson* fee award in TCPA class action that included, inter alia, “the sum of 36% of the first \$10 million”); *In re Cap. One TCPA Litig.*, 80 F. Supp. 3d 781 (N.D. Ill. 2015) (same);

see also *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (noting table of 13 cases in the Northern District of Illinois submitted by class counsel showing fees awarded ranged from 30% to 39% of the settlement fund); *Karpilovksy v. All Web Leads, Inc.*, No. 2017-cv-01307 (N.D. Ill. Aug. 8, 2019), ECF No. 173 (approving 35% of the settlement fund).

2. Class Counsel's Requested Fee Award is Also Reasonable Under a Lodestar Analysis.

While the percentage-of-the-fund method is favored in the Seventh Circuit for calculating fees in common fund cases, *In re Dairy Farmers*, 80 F. Supp. 3d 838 at 844, courts may use a lodestar cross-check to understand class counsel's time and effort and determine the reasonableness of a fee. *Id.* But this cross-check is not required. *Rohm & Haas II*, 658 F.3d at 636 (“[C]onsideration of a lodestar check is not an issue of required methodology”); accord *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 204 (N.D. Ill. 2018) (“The Court is not required to check its percentage-of-fee determination against the lodestar.”); *Wright v. Nationstar Mortg. LLC*, No. 1:14-cv-10457, 2016 WL 4505169, at *17 (N.D. Ill. Aug. 29, 2016) (noting that a lodestar cross-check is not required); No. 05-01908, 2012 WL 5878032, at *2 (S.D. Ind. Nov. 20, 2012) (criticizing a class member for “overstat[ing] the importance of the lodestar method in this Circuit.”). In fact, “[t]he use of a lodestar cross-check has fallen into disfavor.” *George v. Kraft Foods Glob., Inc.*, Nos. 1:08-cv-03799; 1:07-cv-01713, 2012 WL 13089487, at *3 (N.D. Ill. June 26, 2012). And the Seventh Circuit has “never ordered [a] district judge to ensure that the lodestar result mimics that of the percentage approach.” *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998). The lodestar is derived by multiplying the hourly rate of the attorney or professional by the number of hours reasonably expended. *Wright*, 2016 WL 4505169, at *14. A reasonable hourly rate is one that is consistent with the common rate in the “community for similar services by lawyers of reasonably comparable skill, experience and reputation.” See *Jeffboat, LLC*

v. Dir., Office of Workers' Comp. Programs, 553 F.3d 487, 489 (7th Cir. 2009); *see also Denius v. Dunlap*, 330 F.3d 919, 930 (7th Cir. 2003) (holding that the attorney's billing rate for comparable work is generally appropriate). The base lodestar is often augmented by a multiplier that takes into account factors that affect the amount of the fees awarded. *See Cook*, 142 F.3d at 1015; *Florin*, 34 F.3d at 565; *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 255 (7th Cir. 1988). These include the complexity of the legal issues, the degree of success, and the public interest advanced by the litigation. *Paz v. Portfolio Recovery Assocs., LLC*, 924 F.3d 949, 954 (7th Cir. 2019); *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). Also considered is the risk of non-payment. *See Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991).

In his declaration in *Facebook BIPA*, Professor William B. Rubenstein discussed his expertise in assessing attorneys' fees and his authorship of a "multiplier calculator" in the *Newberg on Class Actions* treatise. *In re Facebook Biometric Info. Priv. Litig.*, 15-cv-03747-JD (N.D. Cal. 2015), ECF Doc No. 499-3, ¶ 2. According to Professor Rubenstein, "risk factors each supporting a one point increase in the multiplier are: (1) unique cases, not based on rote, prior pleadings; (2) cases in which counsel themselves enforce the law and do not simply follow government enforcement actions; and (3) cases in which counsel are solely responsible for the case's costs and cannot share this risk among a larger group of firms." Each of those factors applies here, "supporting an increase from a 1 to a 4 multiplier." *See id.* Professor Rubenstein also discusses further increasing the multiplier in cases where, as here, class members are able to receive compensation, and based on how that compensation compares to the value of the claim itself. *Id.* Professor Rubenstein reported that, based on five studies examining various time windows between 1973 to 2013, "the average lodestar multiplier ranges from 1.42 to 3.89." *Id.* at ¶ 46. "Average" cases award multipliers of about 1.5, and multipliers tend to rise as the size of the

class’s fund increases. *Id.* at ¶¶ 47-48. The average multiplier in larger cases like this one – with common fund recoveries over \$44 million – is 3.20 (ranging from 2.39 to 4.5), according to four studies examined by Professor Rubenstein. *Id.* at ¶ 48. A lodestar cross-check in this case supports the requested fee. The risks, complexities and challenges Class Counsel faced are discussed in detail above. Using current rates, Class Counsel’s collective base lodestar is \$327,172.35. Awarding 33.33% of the Settlement Fund in Attorneys’ Fees would result in a negative multiplier, meaning that Class Counsel will receive less under this agreement than they would had they billed Plaintiffs hourly at their customary rates. Such a multiplier is well within accepted ranges⁴ and is warranted here.

⁴ See, e.g., *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) (“Here, the lodestar sought by Class Counsel, approximately 6.3 times, falls within the range granted by courts and equals the one-third percentage being sought. While this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing plaintiffs’ counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial.”); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359-60 (S.D.N.Y. 2003) (4.0 multiplier); *Hillson v. Kelly Servs. Inc.*, No. 2:15-CV-10803, 2017 WL 3446596, at *6 (E.D. Mich. Aug. 11, 2017) (“Here, as discussed, the risk in this case was considerable but not extraordinary. A multiplier of 4 would seem to adequately account for that risk.”); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066-JEC, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) (“Here, the requested fee would represent a multiplier of approximately four times lodestar, which is well within the range of approved fees.”); *In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07- 6140 EMC, 2014 WL 12646027, at *2 (N.D. Cal. Feb. 18, 2014) (“[A]lthough the lodestar cross- check though reveals a high multiplier—4.3 compared to the Ninth Circuit’s observation that over 80% of multipliers fall between 1.0 and 4.0—other courts have awarded multipliers in excess of 4.0, and the Court finds that the multiplier here is acceptable in light of the very substantial risks involved and Lead Plaintiff’s risk and extensive work on the case.”); *Demaria v. Horizon Healthcare Servs., Inc.*, No. 2:11-CV-07298 (WJM), 2016 WL 6089713, at *5 (D.N.J. Oct. 18, 2016) (“Although a lodestar multiplier of 4.3 is large, it is not unreasonable.”); *Harman*, 945 F.2d at 976 (internal citations omitted) (observing that “[m]ultipliers anywhere between one and four have been approved.”); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560 at 598 (approving an award that “represent[s] a multiplier of less than 2.5, which is not an unreasonable risk multiplier.”); *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d 997, 1015 (E.D. Wis. 2010) (awarding a fee that represented a multiplier of 2.07 on a lodestar cross-check and recognizing that “the mean risk multiplier in cases involving class settlements comparable in size to the present settlement is 2.70.”) (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees & Expenses in Class Action Litigation: 1993–2008*, 7 J. OF EMPIRICAL LEGAL STUD. 248, 274 tbl.15 (2010)); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (upholding a lodestar multiplier cross-check showing a multiplier of 3.65).

3. The Requested Fee Reflects the Fees Awarded in Other Similar Settlements.

“As the Seventh Circuit has held, attorney’s fee awards in analogous class action settlements shed light on the market rate for legal services in similar cases.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (citation omitted).

The requested fees were determined by direct negotiations between the Parties after the substantive terms of the Settlement were agreed upon. Fee Decl. ¶ 24. The Parties considered the range of fee awards from the other payment card data breaches that were considered comparable cases. *Id.*; *see, e.g., Remijas v. The Neiman Marcus Grp., LLC*, No. 1:14-cv-01735 (N.D. Ill. June 4, 2021) (where the parties reached an settlement for \$1,600,000.00 and had a class size of approximately 370,385 payment cards, and negotiated attorneys’ fees of \$530,000.00; *see also, In re Wawa, Inc. Data Sec. Litig.*, No. 19-cv- 6019-GEKP (E.D. Pa. Oct. 28, 2021) (class counsel petitioned for up to \$3,200,000 in fees).

Moreover, Class Counsel’s request for fees of 33.33% is reasonable compared to similar cases. In fact, awards of more than 35% of a settlement fund are commonplace. *See, e.g., Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d at 795 (affirming post-*Pearson* fee award in TCPA class action that included, inter alia, “the sum of 36% of the first \$10 million”); *In re Cap. One TCPA Litig.*, 80 F. Supp. 3d 781 (N.D. Ill. 2015) (same); *Karpilovksy*, No. 2017-cv-01307, ECF No. 173 (approving 35% of the settlement fund); *see also Taubenfeld v. Aon Corp.*, 415 F.3d at 600 (noting table of 13 cases in the Northern District of Illinois submitted by class counsel showing fees awarded ranged from 30% to 39% of the settlement fund). Consequently, the requested fee award falls well within the range of settlements approved as reasonable in this Circuit.

4. The Risk Associated with this Litigation Justifies the Requested Fee Award.

“Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.” *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (citing *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986)). Thus, the risk of non-payment is a key consideration in assessing the reasonableness of a requested fee and must be incorporated into any ultimate fee award. *See Sutton v. Bernard*, 504 F.3d 688, 694 (7th Cir. 2007) (finding abuse of discretion where lower court, in applying percentage-of-the-fund approach, refused to account for the risk of loss on basis that “class actions rarely go to trial and that they all settle[,]” noting that “there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit[;] . . . [b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated”).

Class Counsel assumed the risk of this litigation, including the advancement of time, costs, and expenses necessary to prosecute this matter zealously on behalf of Plaintiffs and the Class. Fee Decl. ¶ 15. Given the uncertainty surrounding data breach law where both causation and actual damages are difficult to prove, and the unknown variables in relation to the size and nature of the class pre-suit, whether this Court would ultimately certify Plaintiffs’ proposed Class, and whether Plaintiffs would ultimately be successful on the merits of their claims, the risk Class Counsel assumed was significant. This factor supports the requested fee award.

5. The Requested Fee is Well Within the Range of Typical Contingency Fee Arrangements in this Circuit.

The “actual fee contracts that were negotiated for private litigation” may also be relevant considerations to a fee request. *Taubenfeld v. AON Corp.*, 415 F.3d at 599 (citing *Synthroid I*, 264

F.3d at 719); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (requiring weight be given to the judgment of the parties and their counsel where the fees were agreed to through arm's length negotiations after the parties agreed on the other key deal terms).

The customary contingency agreement in this Circuit is 33% to 40% of the total recovery. *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998) (affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (finding 40% to be “the customary fee in tort litigation”); *Retsky Fam. Ltd. P’ship v. Price Waterhouse, LLP*, No. 97-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (customary contingent fee is “between 33 1/3% and 40%”). The agreement between Plaintiffs and Class Counsel is consistent with such customary contingency agreements.

The fees contemplated under Class Counsel’s representation agreements for cases in this District and elsewhere generally fall within the one-third to 40% range. Fee Decl. ¶ 15. Here, Class Counsel’s fee request of 33.33% of the Settlement fund is at the low end of the range regularly allowed for by courts in this District. This factor supports a finding that the requested fee reflects the amount Class Counsel would have received had they negotiated their fee *ex ante* and should therefore be awarded.

6. The Quality of Performance and Work Invested Support the Fee Request.

The quality of Class Counsel’s performance and time invested through substantial informal discovery and adversarial negotiations to achieve a Settlement worth hundreds of millions of dollars for the benefit of the Settlement Class further supports the requested fee award. *Sutton*, 504 F.3d at 693. In addition to accepting considerable risk in litigating this action, Class Counsel committed their time and resources to this case without any guarantee of compensation, whatsoever, only achieving the Settlement after substantial negotiations. Fee Decl. ¶¶ 8-10. Class Counsel has performed significant work in this case, including a pre-suit investigation, and months

negotiating and finalizing the settlement approval papers. *Id.* ¶ 2. After preliminary approval was granted, counsel for Plaintiffs spent further time working with the Settlement Administrator to get notice out and monitor the claims process. *Id.* ¶ 3.

Class Counsel are experienced in litigating consumer class actions, including privacy cases. *See* MPA Decl. ¶¶ 17-21. And because they were proceeding on a contingent fee basis, Class Counsel “had a strong incentive to keep expenses at a reasonable level[.]” *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Given the strength of the Settlement obtained for the Class, the lengthy and adversarial nature of the settlement negotiations, Class Counsel respectfully submit that their experience and the quality and amount of work invested for the benefit of the Class supports the requested fee.

B. The Court Should Also Award Reasonable Reimbursement for Expenses.

It is well established that counsel who create a common benefit like this one are entitled to the reimbursement of litigation costs and expenses. *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014) (citing Fed. R. Civ. P. 23; *Van Gemert*, 444 U.S. at 478). The Seventh Circuit has held that costs and expenses should be awarded based on the types of “expenses private clients in large class actions (auctions and otherwise) pay.” *Synthroid I*, 264 F.3d at 722 **Error! Bookmark not defined.**; *see also Spicer v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (noting that courts regularly award reimbursement of those expenses that are reasonable and necessarily incurred in the course of litigation).

Here, Class Counsel have incurred \$1,248.69 in reimbursable expenses. Fee Decl. ¶ 17. These expenses were necessary to prosecute this case and modest in comparison to both similarly sized lawsuits and the enormous costs that likely would have been incurred if litigation had

continued. *Id.* Accordingly, Class Counsel request that the Court approve as reasonable expenses in the amount of \$1,248.69.

C. The Incentive Award to the Class Representative Should Be Approved.

Class Counsel requests that the Court grant Service Awards to Plaintiffs—in the amount of \$3,000 to each Plaintiff—for their efforts on behalf of the Class. Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded. Such awards encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook v. Niedert*, 142 F.3d at 1016 (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *Synthroid I*, 264 F.3d at 722 (“Incentive awards are justified when necessary to induce individuals to become named representatives.”). Without Plaintiffs serving as Class Representative, the Class would not have been able to recover anything. *See In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. 10-4038, 2011 WL 5547159, at *5 (N.D. Iowa Nov. 9, 2011) (“[E]ach . . . plaintiff has provided invaluable assistance and demonstrated an ongoing commitment to protecting the interests of class members. The requested incentive award for each named plaintiff recognizes this commitment and the benefits secured for other class members, and is thus reasonable under the circumstances of this case.”).

The Class Representatives spent considerable time pursuing Class Members’ claims. In addition to lending their names to this matter, and thus subjecting themselves to public attention, Plaintiffs were actively engaged in this Action. They (1) maintained contact with counsel; (2) participated in client interviews; (3) provided relevant documents; (4) assisted in the investigation of the case; (5) remained available for consultation throughout settlement negotiations; (6) reviewed relevant pleadings and the Settlement Agreement, and (7) answered counsel’s many

questions. Fee Decl. ¶ 19. Their dedication to this Action was notable, particularly given the relatively modest size of their personal financial stakes in this case.

Moreover, the total amount requested here, \$3,000 each for five Plaintiffs, is less than many other awards approved by federal courts in this Circuit. *See, e.g., Kolinek v. Walgreen Co.*, 311 F.R.D. at 502 (“a \$5,000 reward is justified based on Kolinek's role working with class counsel, approving the settlement agreement and fee application, and volunteering to play an active role if the parties continued litigating through trial”); *Cook*, 142 F.3d at 1016 (affirming \$25,000 incentive award); *Heekin*, 2012 WL 5878032, at *1 (approving \$25,000 incentive award to lead class plaintiff over objection); *Will v. Gen. Dynamics Corp.*, No. 06–698–GPM, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (awarding \$25,000 each to three named plaintiffs); *Benzion v. Vivint, Inc.*, No. 12-61826 (S.D. Fla. Feb. 23, 2015) (awarding \$20,000 incentive award in class settlement); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925 (N.D. Ill. Feb. 27, 2013), ECF No. 243 ¶ 20 (awarding \$30,000 incentive awards in class settlement). Thus, the requested service awards should be approved.

VI. CONCLUSION

Settlement Class Counsel, with the help of Plaintiffs, have made significant benefits available to Class Members. In return, they seek fees, costs, and service awards well below or within the range of those regularly approved by courts sitting in the Seventh Circuit. The fees, costs, and service awards are inherently reasonable, and as such, Plaintiffs respectfully request their approval.

Dated: December 21, 2023

Respectfully submitted,

/s/ Gary M. Klinger

Gary M. Klinger
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (866) 252-0878
gklinger@milberg.com

Joseph M. Lyon (OH Bar #76050)
THE LYON FIRM, LLC
2754 Erie Avenue
Cincinnati, OH 45208
Phone: (513) 381-2333/Fax: (513) 721-1178
jlyon@thelyonfirm.com

Raina C. Borrelli
raina@turkestrauss.com
TURKE & STRAUS LLP
613 Williamson St., Ste. 201
Madison, WI 53703
Telephone: (608) 237-1775
Facsimile: (608) 509-4423

Interim Co-Lead Class Counsel

Bryan L. Bleichner (*pro hac vice* forthcoming)
CHESTNUT CAMBRONNE PA
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Phone: (612) 339-7300
Fax: (612) 336-2940
bbleichner@chestnutcambronne.com

Terence R. Coates (*pro hac vice* forthcoming)
Jonathan T. Deters (*pro hac vice* forthcoming)
**MARKOVITS, STOCK &
DEMARCO, LLC**
119 E. Court St., Ste. 530
Cincinnati, Ohio 45202
Phone: (513) 651-3700
Fax: (513) 665-0219
tcoates@msdlegal.com
jdeters@msdlegal.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 21, 2023, the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on the following ECF-registered counsel of record.

/s/ Gary M. Klinger _____

Gary M. Klinger

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ROBIN FORSLUND, TIMOTHY KELLY,
MATTHEW MENTING, DONALYN
NORTH, ROBIN RECTOR, ERIC
OTTENHEIMER, GAIL ROSSI, and
GREGORY WILLIAMS on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

R.R. D/ONNELLEY & SONS COMPANY,

Defendant.

Case No. 1:22-cv-04260

Judge John J. Tharp, Jr.

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF
PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS FOR CLASS REPRESENTATIVE**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). I have been appointed co-class counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them if called upon to do so.

2. My work in this matter, the work of others in my law firm, and the work of my co-counsel involved investigating the cause and effects of the R.R. Donnelley & Sons Company ("R.R. Donnelley" or "Defendant") Data Incident, evaluating potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint; conducting

legal research; conducting extensive research into data security incidents and their causes and effects; drafting and filing the Complaint; obtaining information from Defendant regarding the Data Incident and analyzing that information; engaging in extensive arm's-length settlement negotiations with Defendant over the course of several months; drafting the settlement agreement, the relevant notices of settlement, the Motion for Preliminary Approval, and this instant motion for attorneys' fees; communicating with defense counsel; updating and handling questions from a class representative; overseeing the launching of the notice program with substantial interaction between the Settlement Administrator and myself; and overseeing the claims process. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm and with co-counsel.

3. From the start of the notice program through to today, my co-counsel and I have continued to work with Defendant and the Claims Administrator regarding claims administration and processing, as well as answering class members questions about the settlement and the process.

4. Class Counsel expect to maintain a high level of oversight and involvement in this case and will continue to incur significant amounts of time given the future work still needed for completion of the Settlement, including: drafting, and filing Plaintiffs' Motion for Final Approval, preparing for and appearing at the Final Approval Hearing, overseeing claims administration, answering Class Members' questions, responding to any potential objections, and resolving any appeals.

5. Based on my past experience, I and my co-counsel expect to spend a minimum of another 40-50 hours seeking final approval, defending the Settlement from any potential objections, and supervising claims administration and the distribution of proceeds.

6. As of the date of filing, I have received no objections to the Settlement Agreement in general, and no objections to the proposed attorneys' fees, costs (the amount of which was made known to the Class via the Court-approved notice program) in particular.

The Contingent Nature of the Case

7. My Firm, and my co-counsel, prosecuted this case on a purely contingent basis. Counsel's fees were not guaranteed—the retainer agreement counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. As such, the firm and my co-counsel assumed a significant risk or nonpayment or underpayment.

8. This matter has required me, other attorneys at my Firm, my co-counsel, and other Plaintiffs' Counsel to spend time on this litigation that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and my Firm's time.

9. Such time could otherwise have been spent on other fee-generating work. Because our Firm and my co-counsel undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

10. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time our firms spent working on this case could and would have been spent pursuing other potentially fee generating matters.

11. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite my Firm's devotion to the case, the equal devotion of

my co-counsel to the cases, and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

12. Defendant was represented in this case by the well-regarded defense firm. Based upon my personal experience, this firm has substantial experience in defending data breach cases and are formidable adversaries. This added to the risks undertaken by Plaintiffs and Class Counsel here.

13. Consistent with this, Class Counsel regularly receives a one-third or higher fee in state and federal courts.

14. In cases involving a claims process, it is common for courts to award fees on top of the benefits provided to the class.

15. The fees contemplated under Class Counsel’s representation agreements generally fall within the one-third to 40% range. Class Counsel’s fees were not guaranteed—the retainer agreement counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court. Class Counsel assumed the risk of advancing the time, costs, and expenses, necessary to prosecute this matter.

The Costs and Fees Incurred

Firm	Hours	Lodestar
Chestnut Cambronne, PA	60.1	\$43,291.50
Turke & Strauss, LLP	99.1	\$53,798.60
The Lyon Firm	103.9	\$82,673.75
Markovits, Stock & DeMarco, LLC	98.5	\$52,204.00

Milberg Coleman Bryson Phillips Grossman, LLC	122.3	\$95,204.50
TOTAL		\$327,172.35

16. Class Counsel has incurred \$ 327,172.35 in lodestar as shown here:

17. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low, totaling just \$1,248.69.

Firm	Expenses
Chestnut Cambronne, PA	\$181.13
Turke & Strauss, LLP	\$462.10
The Lyon Firm	\$ 402.00
Markovits, Stock & DeMarco, LLC	\$203.46
Milberg Coleman Bryson Phillips Grossman, LLC	\$0.00
TOTAL	\$ 1,248.69

18. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought in addition to the requested attorney fees. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval, and will include additional travel expenses to appear at the Final Approval Hearing.

19. The Settlement Agreement calls for a reasonable service award to Plaintiffs in the amount of \$3,000, to each Plaintiff subject to approval of the Court, and separate from any award of attorneys' fees and expenses. The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering counsel's many questions,

communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiffs also put their personal reputations at risk, and put themselves forward for public scrutiny. Plaintiffs were not promised a service award, nor did they condition their representation on the expectation of an incentive award.

20. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members in the wake of the Data Incident. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

21. To my knowledge, no Settlement Class Members have objected to the Settlement at this time.

22. Although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and the Plaintiffs would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

23. In contrast to the risks, the Settlement provides certain and substantial compensation to the Settlement Class Members.

24. Here, the Court should approve Class Counsel's request for \$326,568, or 33.33% of the Settlement Fund. The requested fee amount is in line with similar settlements and compares favorably against the benefits offered by the Settlement. These requested fees were determined by

direct negotiations between the Parties after the substantive terms of the Settlement were agreed upon.

* * * * *

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

Executed this 21st day of December, 2023, at Chicago, Illinois.

s/Gary M. Klinger

GARY M. KLINGER