UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION	Case No. 8:16-md-2737-MSS-AEP
This Document Relates to All Cases	MDL No. 2737

PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

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I. INTRODUCTION

Plaintiffs respectfully request an award of $3,750,000 for attorneys' fees and costs as well as service awards of $2,500 to each of the fourteen named Plaintiffs in accordance with the Settlement between the Parties.[1]

After over four years of risky and heavily-contested litigation—including bankruptcy proceedings and a Declaratory Action in which insurance coverage for the claimed losses was disputed—Plaintiffs' Counsel negotiated an exceptional Settlement that compensates the approximately 2.2 million Settlement Class Members for their losses and protects them against future risks caused by the Data Breach. Based on current claims numbers, the Settlement is valued in excess of $12.5 million, and this value should increase before the May 10, 2021 Claims Deadline.

The requested attorneys' fees, costs, and service awards amounts to 30% of the minimum estimated value of the Settlement. Over more than four years of heavily-contested litigation, Plaintiffs' Counsel devoted more than 11,491.6 hours and a lodestar of $5,760,993.00 to securing this relief, from November 15, 2016 through January 31, 2021. This time included researching, drafting, and amending the consolidated complaint; briefing and oral argument in support of Plaintiffs' opposition to 21st Century's motion to dismiss; conducting Court-ordered discovery and a Rule 30(b)(6) deposition of 21st Century's corporate designee; pursuing claims on behalf of Settlement Class Members in the Bankruptcy Action and reaching a settlement

[1] Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Settlement Agreement (ECF No. 243-1).

agreement with 21st Century Bankruptcy Entities through which they were able to continue litigating this action; pursuing the interests of Settlement Class Members in the Declaratory Action, including filing and opposing cross motions for summary judgment; and in negotiating a favorable settlement for the Class over the course of two years, including three mediation sessions with two independent mediators. The requested fees represent a negative multiplier of 59.77% of the fees Plaintiffs' Counsel actually incurred in this matter.

Plaintiffs' Counsel undertook their efforts on a purely contingent basis and have yet to be compensated for their success in achieving comprehensive relief for the Settlement Class. In light of the significant risks faced by Plaintiffs' Counsel, the extraordinary value of the Settlement, and the overwhelmingly positive response from the Settlement Class, the requested attorneys' fees, costs, and service awards are fair and reasonable. As such, Plaintiffs respectfully request that the Court grant this Motion in its entirety.

II. BACKGROUND

Litigating this case to a successful resolution required substantial commitments of time and resources from Plaintiffs' Counsel. While the concurrently filed Unopposed Motion for Final Approval of Class Action Settlement details the events of the case, the following summarizes the work performed by Plaintiffs' Counsel from initial investigation through settlement as well as the further time counsel anticipates spending throughout settlement approval and claims administration.

A. The Litigation

The Data Breach Action. Following 21st Century's announcement of the Data Breach in March 2016, thirteen actions were filed in the Middle District of Florida, two actions in the Northern District of California, and one action in the Central District of California. Declaration of Cari Campen Laufenberg in Supp. of Pls.' Mot. For Attorneys' Fees, Costs, And Service Awards ("Laufenberg Decl.") ¶ 26. On October 6, 2016, the Judicial Panel on Multidistrict Litigation entered a Transfer Order centralizing the federal actions in the Middle District of Florida before the Honorable Mary S. Scriven. Laufenberg Decl. ¶ 27; ECF No. 1. On November 16, 2016, the Court appointed Cari Campen Laufenberg of Keller Rohrback L.L.P. and Daniel S. Robinson of Robinson Calcagnie, Inc. as Interim Co-Lead Counsel; Robert C. Gilbert of Kopelowitz Ostrow Ferguson Weiselberg Gilbert and Jodi Westbrook Flowers of Motley Rice LLC as Co-Liaison Counsel; Kent G. Whittemore of The Whittemore Law Group, P.A., as Local Counsel; and a Steering Committee.[2] Laufenberg Decl. ¶ 28; ECF No. 79; ECF No. 80.

Following their appointment, Plaintiffs' Counsel spent a significant amount of time researching, drafting, and amending a robust complaint against 21st Century. On January 17, 2017, Plaintiffs filed a Consolidated Class Action Complaint, alleging that

[2] The members of the Steering Committee are Matthew B. George of Kaplan Fox & Kilsheimer LLP, Kenneth G. Gilman of Gilman Law, LLP, Thomas V. Girardi of Girardi | Keese, Eric A. Grover of Keller Grover LLP, Julie Braman Kane of Colson Hicks Eidson, P.A., Steven S. Maher of The Maher Law Firm, PA, Charles PT Phoenix of Rhodes Tucker, and Linh Vuong of Girard Sharp LLP (for whom Daniel C. Girard of Girard Sharp LLP was later substituted). *See* ECF No. 79 at 1; ECF No. 80 at 2-4; ECF No. 134.

21st Century breached its duties to Plaintiffs by failing to maintain reasonable and adequate security measures to protect its patients' personal and health information from unauthorized access and disclosure, allowing their information to be obtained and misused by unauthorized persons. Laufenberg Decl. ¶ 29; ECF No. 100.

Plaintiffs' Counsel spent substantial time successfully opposing 21st Century's motion to dismiss the complaint, which ultimately laid the groundwork for settlement negotiations. Laufenberg Decl. ¶ 30. On February 21, 2017, 21st Century moved to dismiss the Complaint. *Id.*; ECF No. 116. At the motion to dismiss hearing on May 16, 2017, the Court ordered supplemental briefing on the issue of damages, ordered 21st Century to provide Plaintiffs with certain limited discovery, and permitted depositions to be taken of 21st Century's witnesses and FBI personnel with personal knowledge as to what patient information had been acquired. Laufenberg Decl. ¶ 30; ECF No. 154. Subsequently, on May 25, 2017, after the Parties submitted additional supplemental briefing, but before the Court had issued its Order on the motion to dismiss, the 21st Century Bankruptcy Entities initiated the Bankruptcy Action, thereby automatically staying the Data Breach Action and the Declaratory Action. Laufenberg Decl. ¶ 31; ECF No. 158.

The Bankruptcy Action. Plaintiffs' Counsel and Class Representatives devoted considerable time and resources pursuing the interests of Settlement Class Members in the Bankruptcy Action. Plaintiffs hired bankruptcy counsel to advocate for the Class in the Bankruptcy Action, filed individual proofs of claim on behalf of each of the Plaintiffs and other members of the Class, opposed the Debtor's motion to disallow

these proofs of claim, and moved for class certification under Bankruptcy Rule 7023, or, in the alternative, seek relief from the automatic stay to proceed with the underlying litigation to the extent of available insurance. Laufenberg Decl. ¶ 32; *Bankruptcy Action*[3] ECF No. 503. On November 20, 2017, following extensive multi-week negotiations, Plaintiffs reached an agreement with the 21st Century Bankruptcy Entities ("Bankruptcy Settlement") whereby, *inter alia*, the automatic stay would be lifted to allow the Actions to proceed, subject to (1) Plaintiffs' agreement to limit any monetary recovery to certain insurance policies; and (2) the 21st Century Bankruptcy Entities' agreement to assign the rights to seek and receive coverage under these policies to Plaintiffs, which the bankruptcy court approved on December 11, 2017. Laufenberg Decl. ¶ 33; *Bankruptcy Action*, ECF No. 825-1.

After the stay was lifted, Plaintiffs took additional Court-ordered discovery, including a 30(b)(6) deposition of 21st Century's corporate designee, and filed their Amended Consolidated Class Action Complaint on July 30, 2018. Laufenberg Decl. ¶ 34; ECF No. 191. Following additional supplemental briefing (ECF Nos. 195, 199), the Court denied 21st Century's motion to dismiss on March 3, 2019, holding that Plaintiffs sufficiently alleged an Article III injury in fact. Laufenberg Decl. ¶ 34; ECF No. 207.

The Declaratory Action. Plaintiffs' Counsel's zealous advocacy in the Declaratory Action was also essential to obtaining meaningful relief for Settlement

[3] *See 21st Century Oncology Holdings, Inc., et al.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y.).

Class Members. Because they were named as Plaintiffs in the Data Breach Action, 21st Century's insurers named Plaintiffs as defendants in the Declaratory Action. *See Declaratory Action* ECF No. 128. Through the Bankruptcy Settlement, the named Plaintiffs obtained an assignment of rights to 21st Century's interest in the insurance policies at issue in the Declaratory Action. Laufenberg Decl. ¶ 35; *Bankruptcy Action*, ECF No. 825-1. Accordingly, Plaintiffs' Counsel vigorously represented the interests of named Plaintiffs (who were named as defendants in the Declaratory Action) as well as 21st Century, answering the complaint, asserting counterclaims, and briefing opposing cross motions for summary judgment, resolution of which was pending when the Parties agreed to settle. Laufenberg Decl. ¶ 35.

B. Settlement and Administration

On February 13, 2018, this Court held a Status Conference with parties from the Data Breach and Declaratory Actions. The Court ordered the parties to engage in mediation following the Status Conference. Laufenberg Decl. ¶ 36; ECF No. 175. The Parties attended mediation with mediator Rodney A. Max, Esq. on April 26, 2018, which was ultimately unsuccessful. Laufenberg Decl. ¶ 36.

On April 3, 2019, Plaintiffs and 21st Century filed a joint motion to stay the Data Breach Action pending mediation and a determination on the duty to defend in the Declaratory Action. Laufenberg Decl. ¶ 37; ECF No. 210. The Court issued an order on May 3, 2019, staying the Data Breach Action for ninety days to allow for mediation, but denied staying the proceeding pending a decision on the duty to defend in the Declaratory Action. Laufenberg Decl. ¶ 37; ECF No. 214. The Court also

proposed Hon. Layn Phillips (Ret.) of Phillips ADR as the mediator. Laufenberg Decl. ¶ 37; ECF No. 214. The Parties engaged in vigorous arm's-length settlement negotiations before Judge Phillips and Michelle Yoshida of Phillips ADR, including in-person private mediation sessions on August 9, 2019 and October 17, 2019. Laufenberg Decl. ¶ 39. Through these mediation sessions, as well as subsequent discussions with the mediators, the Parties reached an agreement in principle to resolve the Data Breach Action and the Declaratory Action. Laufenberg Decl. ¶ 39. After the essential terms of the Settlement had been determined, the Parties engaged in further challenging negotiations but ultimately memorialized their agreement in a Memorandum of Understanding and filed a Joint Status Report with the Court regarding the agreement on April 14, 2020. Laufenberg Decl. ¶ 40. In addition, on August 12, 2020, the parties in the Declaratory Action signed a Settlement and Release Agreement to resolve the claims in the Declaratory Action. Laufenberg Decl. ¶ 40.

As described in Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, the Settlement provides substantial relief to Settlement Class Members, including (i) a two-year subscription to comprehensive credit monitoring and identity theft protection through Identity Guard's Total Plan, which may be deferred by two years; (ii) a cash payment of up to $40 for two hours of time spent related to the Data Breach; (iii) an additional cash payment of up to $260 for up to thirteen additional hours of documented time fairly traceable to the Data Breach; and (iv) reimbursement of up to $10,000 for documented losses and/or expenditures fairly traceable to the Data Breach. 21st Century also acknowledges that, following the Data

Breach, it undertook significant steps to improve its data security practices and procedures, including the Corrective Action Plan set forth in the settlement agreement between 21st Century and the United States Department of Health and Human Services Office of Civil Rights. SA ¶ IV.E.11.

Since this Court granted preliminary approval of the Settlement, Class Counsel has worked with Angeion Group ("Angeion"), the Court-appointed Settlement Administrator, to ensure that the notice and claims processes proceed smoothly. Class Counsel worked with Angeion to draft the postcard notice, long form notice, claim form, website content, frequently asked questions, and IVR script for the toll-free number. Laufenberg Decl. ¶ 44. Class Counsel has also responded to numerous inquiries by telephone and email from Settlement Class Members. Laufenberg Decl. ¶ 43. Class Counsel will continue to expend time and effort to ensure that Settlement Class Members are able to file claims and receive benefits from the Settlement, although the fees requested in this motion do not include the significant time that is likely to be expended on these future efforts. Laufenberg Decl. ¶ 43.

III. THE REQUESTED ATTORNEYS' FEES SHOULD BE AWARDED

Rule 23 establishes that a court may award "reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Here, as part of the Settlement, 21st Century has agreed not to oppose an award of up to $3,750,000 in attorneys' fees and costs. SA ¶ IV.L.1. The Parties did not negotiate attorneys' fees and costs nor the Plaintiffs' service awards until after the Parties had agreed upon all substantive elements of the Settlement. Laufenberg Decl. ¶ 46; SA ¶

IV.L.1. The requested fees and costs are reasonable both in light of the Parties' agreement as to the amount of these fees and costs—which was reached as a result of arm's-length, informed, and heavily-contested negotiations—and are also independently reasonable, as set forth herein. *See* Laufenberg Decl. ¶¶ 36-46; see generally Declaration of John A. Yanchunis in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Service Awards ("Yanchunis Decl.").

A. The Percentage Method Demonstrates the Requested Fees Are Reasonable

1. Legal Standard

The Supreme Court "has recognized consistently 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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Accordingly, "[a]ttorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval." *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991). In the Eleventh Circuit, "attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Id.* at 774.

In 1991, when *Camden I* was decided, "[t]he majority of common fund fee awards [fell] between 20% to 30% of the fund," and 25% of the fund was considered "a 'bench mark' percentage fee award which may be adjusted in accordance with the individual circumstances of each case," with "an upper limit of 50% of the fund" being "stated as a general rule, although even larger percentages have been awarded." *Id.* at

774-75. Since that time, "[a]ccording to recent empirical studies, however, the average percentage fee award in this Circuit is now at or above 30%, as courts within this Circuit have routinely awarded attorneys' fees of 33 percent or more of the gross settlement fund." *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61218-CIV, 2018 WL 5905415, at *7–8 (S.D. Fla. Nov. 9, 2018) (collecting cases) (internal quotation marks, citation, and emphasis omitted); *see also Smith v. KFORCE Inc.*, No. 819CV02068CEHCPT, 2020 WL 7250603, at *2 (M.D. Fla. Dec. 9, 2020) ("[A]ttorneys' fees and costs in the amount of one third (33.33%) of the common fund, . . . is within the reasonable range.").

2. The Monetary Value of the Settlement

The minimum estimated monetary value of the Settlement Benefits is $12.5 million, which is not opposed by 21st Century. *See* SA ¶ IV.E.12. However, Class Counsel estimate the ultimate monetary value is likely to substantially exceed $12.5 million. Based on a conservative projection of a one percent participation rate, as set forth in detail below, Class Counsel estimates the monetary value of the Settlement Benefits is at least $15,965,022.06.

The Settlement Benefits consist of a $7.85 million non-reversionary Settlement Fund, as well as the significant monetary benefit each Settlement Class Member who submits a claim for Credit Monitoring and Insurance Services will receive, as detailed below. The Settlement Fund will be used to make the cash payments and reimbursements set forth above, as well as to provide a robust class notice, settlement administration, and any award of attorneys' fees, costs and service awards approved

by the Court, as well as the cost of Credit Monitoring and Insurance Services.

The Credit Monitoring and Insurance Services retail to the general public for $19.99 per month, or $16.67 per month if purchased annually. Declaration of Robert Siciliano ("Siciliano Declaration") ¶¶ 8-9.[4] As such, the value of these services to the Settlement Class[5] is at least $8,632,022.06 for every 1% of Class Members that elect to receive this benefit, before excluding the cost of the Credit Monitoring and Insurance Services.[6] SA ¶ E.11.b.; *see also* Siciliano Decl. ¶¶ 8-9.

Class Counsel estimates that over 1% of Settlement Class Members will make eligible claims for Credit Monitoring and Insurance Services. Laufenberg Decl. ¶¶ 71-72. As of February 5, 2021—within 30 days of the January 8, 2021 Notice Date—a total of 33,800 claims have been received. (Giannotti Decl. ¶ 15.) This amounts to a response rate of 1.6% of the over 2 million Class Members, to date. Of the 33,800 claims that have been submitted, 12,263 have been reviewed, of which 9,042 or 73.7% include a claim for Credit Monitoring and Insurance Services (approximately 0.4% of the Settlement Class). Since not all of the submitted claims have yet been reviewed,

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[4] *See Total Plan*, Identity Guard, https://www.identityguard.com/plans/total (last visited February 10, 2021). The Siciliano Declaration was based upon the prior figure of 2,213,587 Class Members, which was the estimated number of Class Members before Angeion performed deduplication of the Settlement Class List. *See Declaration of Steven J. Giannotti* ("Giannotti Decl.") ¶ 4.

[5] The retail value of these services is the proper metric to apply because this represents the value of the benefit Settlement Class Members will actually receive. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *38 (N.D. Ga. Mar. 17, 2020) ("[T]he record shows that the high-quality credit monitoring offered here is more valuable than the free or low-cost services typically available," and "courts have often recognized the benefit of credit monitoring, use its retail cost as evidence of value, and consider that value in awarding fees.") (collecting cases); *see also In re Experian Data Breach Litig.*, No. 8:15-cv-01592-AG-DFM (C.D. Cal. May 10, 2019).

[6] 2,157,574 Settlement Class Members × 1% = 21,575.74. 21,575.74 × $16.67 (retail price per month) × 24 months = $8,632,022.06. (Laufenberg Decl. ¶ 70.)

based on the fact that 73.7% of claims that have been reviewed include a claim for Credit Monitoring and Insurance Services, Class Counsel estimates that the claims for Credit Monitoring and Insurance Services is likely to exceed 1% of the Settlement Class, because 73.7% of the 33,800 claims received to date is approximately 24,911 claims, which represents approximately 1.2% of the Settlement Class. (Laufenberg Decl. ¶ 71.) Moreover, this estimate is further supported by the fact that approximately three quarters (3/4) of the claims period remains for claims to be submitted by the May 10, 2021 Claims Deadline, and as such the number of claims for Credit Monitoring and Insurance Services is likely to increase significantly beyond the number of claims received to date. (Laufenberg Decl. ¶ 71.)

The estimated claims rate is expected to be consistent with those in similar data breach settlements, including *In re Banner Health Data Breach Litigation,* No. 16-cv-02696-SRB, ECF No. 195 at 1 (D. Ariz. 2019), in which the claims rate was at least approximately 1.3%; *In re Anthem, Inc. Data Breach Litigation,* No. 15-md-02617-LHK, ECF No. 1007 at 4 (N.D. Cal. 2017), in which the claims rate was approximately 1.7%; and *In re Experian Data Breach Litigation,* No. 15-cv-01592AG, ECF No. 309 at 17 (C.D. Cal. 2018), in which the claims rate was approximately 2.91%.

After taking into account the cost of the Credit Monitoring and Insurance Services,[7] Class Counsel believes that the retail value of the Credit Monitoring and

[7] The cost of the Credit Monitoring and Insurance Services will be paid out of the Settlement Fund, and, based on Plaintiffs' agreement with Identity Guard, under no circumstances will those costs exceed $517,000, unless Plaintiffs use any residual funds to purchase additional months of Credit Monitoring and Insurance Services at a rate of $24,000 per month for all Class Members electing to receive that benefit. Laufenberg Decl. ¶ 41.

Insurance Services will significantly exceed $8,115,022.06, based on Class Counsel's conservative estimate that the claims for Credit Monitoring and Insurance Services is likely to exceed 1% of the Settlement Class. Laufenberg Decl. ¶ 73. Given a Settlement Class of approximately 2.1 million individuals, this is an enormous value to Settlement Class Members as compared to obtaining similar, or even inferior, credit monitoring products on their own. Taken together with the $7.85 million non-reversionary Settlement Fund, Class Counsel estimates the monetary value of the Settlement Benefits to significantly exceed $15,965,022.06, based on Class Counsel's conservative estimate that the claims for Credit Monitoring and Insurance Services is likely to exceed 1% of the Settlement Class. Laufenberg Decl. ¶ 73.

Accordingly, the percentage method demonstrates that the requested fees are reasonable. Yanchunis Decl. ¶¶ 16, 19-38, 48. The requested fees of $3,443,535.54 represent approximately 21.6% of Class Counsel's settlement valuation of $15,965,022.06 at a conservative projected 1% participation rate.[8] Laufenberg Decl. ¶ 73. If the claims rate reaches 2%, then the total settlement valuate would be $24,597,044.12, resulting in the requested fees being only 14% of that value. Similarly, the requested fees are 27.5% of the $12.5 million minimum estimated value of the Settlement Benefits, which is not opposed by 21st Century. *See* SA ¶ IV.E.12. As such,

[8] The "Total Value" depicted here represents the value of Credit Monitoring and Insurance Services based on the estimated claims rate ($8,115,022.06), minus the cost to pay for those services ($517,000), plus the $7.85 million Settlement Fund, which is used, as explained herein, to make the cash payments to Participating Settlement Class Members and also to pay for the attorneys' fees and costs required to achieve the Settlement, Service Awards, notice and administration expenses, and to purchase the Credit Monitoring and Insurance Services.

the requested fees are well within the Eleventh Circuit's 20% to 30% "benchmark" percentage for such awards. *See Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017) ("[I]n this circuit we have identified twenty to thirty percent of the common fund as a 'benchmark' for an attorney's fee award."). This percentage range is also common in data breach cases. *See, e.g.*, *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-MI-55555-WMR, 2019 WL 2720818, at *4 (N.D. Ga. June 6, 2019) (awarding a fee of approximately 30%); *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 11299474, at *2 (N.D. Ga. Aug. 23, 2016) (awarding "about 28% of the monetary benefit conferred on the Class."). As is further demonstrated by consideration of the Eleventh Circuit factors and the lodestar cross-check set forth below, the requested fees are reasonable and should be awarded.

B. The Eleventh Circuit Factors Support the Requested Fees

The factors used by courts in the Eleventh Circuit to evaluate an award of attorneys' fees further demonstrate that the requested fees are reasonable. Yanchunis Decl. ¶¶ 16, 19-38. In the Eleventh Circuit, courts applying the percentage method "begin with a 20-30% benchmark, and adjust the percentage up or down based on 'the individual circumstances of each case.'" *Thorpe v. Walter Inv. Mgmt. Corp.*, No. 1:14-CV-20880-UU, 2016 WL 10518902, at *7 (S.D. Fla. Oct. 17, 2016) (quoting *Camden I*, 946 F.2d at 775). In evaluating whether the benchmark should be enhanced, courts in the Eleventh Circuit consider the following factors: "(1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due

to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases." *Camden I*, 946 F.2d at 772 n.3, 775 (citing *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717–19 (5th Cir. 1974)). Further, "[o]ther pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Id.* at 775. These factors justify an upward adjustment to the benchmark and demonstrate that the requested fees are reasonable.

1. The Time and Labor Required

The amount of work necessary to resolve the litigation also weighs in favor of the requested fees. As demonstrated by the lodestar analysis set forth below, Plaintiffs' Counsel spent 11,491.6 hours over more than four years prosecuting and resolving the litigation, from November 15, 2016 through January 31, 2021. Laufenberg Decl. ¶ 5. This work included significant factual investigation, successfully opposing 21st Century's motion to dismiss; conducting offensive and defensive discovery in support of this opposition; pursuing claims on behalf of Plaintiffs in the Bankruptcy Action and reaching a settlement in the Bankruptcy Action that enabled Plaintiffs to continue litigating the Data Breach Action; pursuing the interests of Settlement Class Members

in the Declaratory Action, including filing and opposing cross motions for summary judgment; and in negotiating a favorable settlement for the Class in the Data Breach Action as well as the Declaratory Action. *Id.* at ¶¶ 25-47. Further, Class Counsel will continue to spend significant time managing the Settlement's claims and administration process. *Id.* at ¶ 47. Based on Plaintiffs' Counsel's hourly rates, subject to the hourly rate caps established by Class Counsel, the value of this work if performed on an hourly basis would be $5,760,993.00. *Id.* at ¶ 9. The significant time and labor that Plaintiffs' Counsel expended on behalf of the Settlement Class with no assurance of ultimately being paid, as well as the fact that the requested fees represent a negative multiplier of 59.99% of the fees Plaintiffs' Counsel actually incurred in this matter, supports an upward adjustment to the benchmark percentage. *See id*.

2. The Novelty and Difficulty of the Questions Involved

Although all class actions involve a high level of risk, expense, and complexity, data breach litigation is especially risky and complex. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases such as the instant case are particularly risky, expensive, and complex."). In this regard, case law specific to data breach litigation is currently evolving, with differing results, and there is no guarantee of the ultimate result. *See In re Anthem*, *Inc. Data Breach*, 327 F.R.D. 299, 318 ("Due to the unsettled nature of the legal questions, [p]laintiffs would likely have to contend with changing interpretations of procedural and substantive provisions throughout the course of the case."); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, Case No. 1:17-MD-2807, 2019 WL

3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("This unsettled area of law often presents novel questions for courts."). For instance, courts have reached different decisions as to whether to grant class certification in data breach cases. *Compare In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 35 (D. Me. 2013) (denying certification), and *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389, 401 (D. Mass. 2007) (same), *with Smith v. Triad of Alabama, LLC*, No. 1:14-CV-324-WKW, 2017 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017) (granting certification). In addition to obtaining class certification, Plaintiffs would have to overcome 21st Century's motion for summary judgment, which would present issues of standing, causation, and damages. Not only did Plaintiffs face the foregoing risks inherent in data breach litigation, they also were confronted with similar challenges in the Bankruptcy Action, through which class-wide recovery might have been foreclosed, as well as in the Declaratory Action, through which insurance coverage essential to obtaining meaningful relief might have been denied. As such, this factor warrants an upward adjustment to the benchmark percentage.

3. The Skill Requisite to Perform the Legal Service Properly

The quality of Plaintiffs' Counsel's performance also weighs in favor of an upward adjustment from the benchmark percentage. Plaintiffs and Plaintiffs' Counsel have vigorously and skillfully represented the Settlement Class—prosecuting the claims against 21st Century, preserving Plaintiffs' claims in the Bankruptcy Action, defending claims brought in the Declaratory Action, and working tirelessly to gather the documents and information necessary to properly evaluate the case, prepare for

trial, and negotiate a robust settlement that provides Settlement Class Members with significant relief. Laufenberg Decl. ¶¶ 25-47. The quality of opposing counsel is also important in evaluating the quality of Plaintiffs' Counsel's work. *See, e.g.*, *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). In this regard, 21st Century was represented by experienced and highly-skilled lawyers from Baker & Hostetler LLP, one of the leading law firms in the defense of data breach class action litigation.

4. The Customary and Contingent Nature of the Fee

"The 'customary fee' in a class action lawsuit is contingent, since virtually no individual plaintiff has a large enough monetary stake in the litigation to justify charging on an hourly basis." *Id.* at 654. In this regard, "[t]he Court should give substantial weight to the contingent nature of Class Counsel's fees when assessing the fee request," insofar as "Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in determining the award of fees, and that skilled counsel should be encouraged to undertake this risk." *Thorpe*, 2016 WL 10518902, at *10 (citations omitted). Here, Plaintiffs' Counsel have prosecuted this action—as well as the Bankruptcy Action and the Declaratory Action—on a fully contingent basis. Laufenberg Decl. ¶ 57; Declaration of Daniel S. Robinson in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards ("Robinson Decl.") ¶ 54; Plaintiffs' Counsel's Declarations in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards (attached as Exhibit D to Laufenberg Decl.) ("Plaintiffs' Counsel's Decl."). During the years that this litigation has proceeded, Plaintiffs' Counsel have received no compensation for their efforts and

have advanced $306,464.46 in out-of-pocket expenses, knowing that they would not receive any reimbursement for either their work or expenses if their efforts were unsuccessful. *Id.* "[T]here are numerous contingent cases such as this where [plaintiffs'] counsel, after investing thousands of hours of time and effort, have received no compensation whatsoever," and for this reason "[l]awyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Ressler*, 149 F.R.D. at 656–57 (quoting *Jones v. Diamond,* 636 F.2d 1364, 1382 (5th Cir. 1981)). Because this litigation presented a significant financial risk to Plaintiffs' Counsel, this factor supports an upward adjustment to the benchmark percentage.

5. The Amount Involved and the Results Obtained

"Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award." *Thorpe*, 2016 WL 10518902, at *10 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436, 103 S. Ct. 1933 (1983) (The "most critical factor is the degree of success obtained"); *Ressler*, 149 F.R.D. at 655 ("It is well-settled that one of the primary determinants of the quality of the work performed is the result obtained.")). Here, the amount Plaintiffs have recovered through this Settlement is an exceptional result for the Class, particularly in light of the obstacles presented by the Bankruptcy Action and Declaratory Action. If this case proceeded to trial, Plaintiffs' ultimate recovery would be limited to that of available insurance as a result of the Bankruptcy Settlement. Laufenberg Decl. ¶ 33. Because of this, the maximum amount that Plaintiffs could obtain as damages is less than $32 million. *Id.* As such, the

Settlement returns more than 24.55% of the maximum damages available to the Settlement Class, which is a remarkable result. *See, e.g.*, *Thorpe*, 2016 WL 10518902, at *10 ("The Settlement thus returns an excellent 5.5% of maximum damages."); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1256 (S.D. Fla. 2016) (a settlement fund that "represents about 20% of the maximum damages that could have been recovered" is "an unqualified success and is the result of quality lawyering by Class Counsel").

Importantly, despite 21st Century having declared bankruptcy and the fact that damages were limited to insurance coverage that was largely disputed, the Settlement is in line with or superior to other recent data breach settlements, including *In Re: Banner Health Data Breach Litigation*, No. 2:16-cv-02696-PHX-SRB (D. Ariz. 2020) ($6 million settlement fund for a class of 2.9 million members, with an additional $2.9 million in attorney fees); *In re Anthem, Inc. Data Breach Litigation*, No. 5:15-MD-02617-LHK (N.D. Cal. 2017) ($110 million settlement fund for a class of 78.8 million members); *In re The Home Depot, Inc. Customer Data Security Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga. 2016) ($13 million settlement fund, an additional $6.5 million for credit monitoring services, and $7.5 million in attorney fees for a class of over 40 million members); and *In re Target Corp. Customer Data Security Breach Litigation*, No. 0:14-md-02522-PAM (D. Minn. 2015) ($10 million settlement fund and $6.75 million in attorney fees for a class of up to 110 million members). These data breach settlements support the tremendous benefits Plaintiffs have achieved for the Settlement Class here, particularly in light of the obstacles presented by the Bankruptcy and Declaratory Actions. As such, this factor warrants an upward adjustment to the

benchmark percentage.

6. The Experience, Reputation, and Ability of the Attorneys

"The standing and experience" of Plaintiffs' counsel are important factors in evaluating the reasonableness of a requested fee. *Ressler*, 149 F.R.D. at 655; *see also David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362, at *8 n. 15 (S.D. Fla. Apr. 15, 2010) (a court should consider "the skill and acumen required to successfully investigate, file, litigate, and settle a complicated class action lawsuit such as this one"). Plaintiffs' Counsel are recognized as experts in consumer law and class-action litigation, especially cases involving data privacy. Laufenberg Decl. ¶¶ 62-65, Ex. C; Robinson Decl. ¶¶ 59-61, Ex. C. Plaintiffs' Counsel have diligently, vigorously, thoroughly, efficiently, and skillfully prosecuted this action, as well as the related Bankruptcy and Declaratory Actions. *See generally* Laufenberg Decl.; Robinson Decl. Resolving this case required not only expertise in complex class action litigation but also an extensive understanding of the complex, technical subject matter of data security, industry best practices, and the mechanisms of a data breach, particularly in the healthcare context. Laufenberg Decl. ¶ 61; Robinson Decl. ¶ 58. In this regard, "[l]itigating complicated matters, especially unprecedented issues, is a circumstance that points in favor of a larger [fee award]." *See In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *13 (N.D. Cal. Aug. 17, 2018). This factor therefore supports an upward adjustment to the benchmark percentage.

7. Other Pertinent Factors

a. The Time Required to Reach a Settlement

Counsel for the Parties began discussing the possibility of settlement in February 2018 and first attended mediation on April 26, 2018. Not until approximately two years after the parties began settlement negotiations—including two additional in-person mediation sessions and subsequent settlement negotiations—did the Parties ultimately reach an agreement in principle, which was memorialized in a Memorandum of Understanding on April 14, 2020. Laufenberg Decl. ¶¶ 36-40; ECF No. 234. Thus, this litigation resulted in settlement more than four years after the appointment of Co-Lead Counsel and approximately two years after settlement discussions had begun. This reflects the care and deliberation with which Plaintiffs' Counsel approached the settlement process and warrants an upward adjustment to the benchmark percentage. *See Ressler*, 149 F.R.D. at 656.

b. Risk of Nonpayment

As set forth above, given the uncertainties inherent in data breach class action litigation, the risk of nonpayment was significant. In addition to obtaining class certification, Plaintiffs would have to overcome 21st Century's motion for summary judgment, then prevail at trial and in any appeals, all of which add to the substantial risk of nonpayment in this case. Moreover, the amount of available insurance coverage—to which Plaintiffs' recovery is limited on account of the Bankruptcy Settlement—has been vigorously disputed by certain of 21st Century's insurance carriers in the related Declaratory Action, in which cross motions for summary

judgment were pending at the time the Settlement was reached. Laufenberg Decl. ¶¶ 31-34. If the Court were to have ruled against Plaintiffs in the Declaratory Action, the amount Plaintiffs could have recovered from Defendants would have been drastically less than the amount available to the Class through this Settlement. Moreover, even if Plaintiffs had obtained a favorable decision in the Declaratory Action, this would likely have resulted in a lengthy appeal, which in turn would have further delayed resolution of the Data Breach Action. Relatedly, the cost to maintain the lawsuit would have been higher, given the amount of discovery required as well as the substantial expert costs both Parties would have incurred in the context of class certification, summary judgment, and trial. Given the uncertainty of available insurance coverage, the substantial risk of nonpayment weighs in favor of an upward adjustment to the benchmark percentage.

C. The Lodestar Method Also Shows the Requested Fees Are Reasonable

"[W]hile the Eleventh Circuit has held that the 'lodestar method' is not a proper calculation of fee awards in common fund cases, courts are permitted to use such figures as a comparison for determining the reasonableness of a proposed fee award." *Townsend v. Princeton Review*, No. 8:08-CV-1879-T33AEP, 2009 WL 10708315, at *8 (M.D. Fla. Dec. 2, 2009) (citing *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1298 (11th Cir. 1999) ("[W]hile we have decided in this circuit that a lodestar calculation is not proper in common fund cases, we may refer to that figure for comparison."); *see, e.g.*, *Kuss v. Am. HomePatient, Inc.*, No. 8:18-CV-2348-T-TGW, 2020 WL 7406507, at *3 (M.D. Fla. Aug. 13, 2020). "The lodestar is calculated by

multiplying the number of hours reasonably expended by a reasonable hourly rate." *Townsend*, 2009 WL 10708315, at *8 (citing *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988)).

The lodestar method further demonstrates that the fee request is reasonable. Yanchunis Decl. ¶¶ 16, 39-44, 48. Here, Class Counsel's request for an award of $3,750,000 in attorneys' fees is substantially less than the lodestar of $5,760,993.00, which represents the actual value of the time spent on this litigation. The lodestar represents 11,491.6 hours reasonably spent on this litigation from November 15, 2016 through January 31, 2021. Laufenberg Decl. ¶ 5. As detailed herein and in the supporting declarations, Plaintiffs' Counsel spent many hours researching, drafting, and amending the consolidated complaint; litigating the motion to dismiss and conducting discovery in support of this opposition; pursuing claims on behalf of Settlement Class Members in the Bankruptcy Action and reaching a settlement with 21st Century Bankruptcy Entities in that action; pursuing the interests of Settlement Class Members in the Declaratory Action, including filing and opposing cross motions for summary judgment; and in negotiating a favorable settlement for the class. *Id.* at ¶¶ 25-47. Many of these tasks are typical of this sort of litigation, and all were necessary to the successful prosecution and resolution of the claims. *Id.* at ¶ 7. In support of this Motion, Plaintiffs' Counsel have submitted affidavits describing the hours reasonably incurred in this litigation. *Id.* at ¶ 10; Exhibit D. Class Counsel is also prepared to submit for *in camera* review Plaintiffs' Counsel's detailed time records, consisting of contemporaneous logs, with separate entries for the hours spent on specific tasks,

indicating who performed the work and giving a description of the task. *Id.* at ¶ 11.

For purposes of lodestar analysis, a "reasonable hourly rate" is defined as "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). Here, Class Counsel has adopted the following schedule of hourly rates to be utilized by all those who have performed authorized work in this litigation:[9]

Partners	Standard hourly rate not to exceed $675.00
Of Counsel	Standard hourly rate not to exceed $500.00
Associates	Standard hourly rate not to exceed $400.00
Paralegals	Standard hourly rate not to exceed $175.00

ECF No. 92 at 16; *see also* ECF No. 79 at 2; ECF No. 81 at 1-2. In determining whether an hourly rate is reasonable, the Court "'is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses as to value.'" *Norman*, 836 F.2d at 1303 (quoting *Campbell v. Green,* 112 F.2d 143, 144 (5th Cir. 1940)). Accordingly, the fact that this schedule of hourly rates was ordered and reviewed by this Court provides evidence that these hourly rates are reasonable. *See id.*

In the judgment of Class Counsel, this schedule of hourly rates was conservative at the time it was established more than four years ago, and as such these rates are significantly less than the hourly rates currently charged by Plaintiffs' Counsel in other

[9] Although not specified by the schedule of hourly rates set forth in ECF No. 92, Class Counsel has also limited the hourly rates of contract attorneys not to exceed $175.00. Laufenberg Decl. ¶ 16.

matters. Laufenberg Decl. ¶ 16; Exhibit D. Similarly, these hourly rates are less than or comparable to the hourly rates charged by other law firms involved in similar complex litigation. *Id*. In this regard, Plaintiffs' Counsel's hourly rates submitted here are less than or comparable to rates that have been approved by other federal courts in the context of multistate data-breach class actions, including in the Eleventh Circuit. *See, e.g.*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (reasonable hourly rates ranged from $750 to $1,050 for partners); *In re Anthem,* 2018 WL 3960068, at *17 (reasonable hourly rates ranged from $400 to $970 for partners, from $185 to $850 for non-partner attorneys, and from $95 to $440 for non-attorneys); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (reasonable hourly rates ranged from $450 to $900 for partners, from $160 to $850 for non-partner attorneys, and from $50 to $380 for paralegals); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087 (S.D. Tex. 2012) (reasonable hourly rates ranged as high as $825 for co-lead class counsel); Laufenberg Decl. ¶ 55.

In addition to limiting rates as set forth above, Plaintiffs' Counsel also base their hourly rates upon the experience and skill of the attorney or paralegal performing a given task. *Id*. at ¶ 54. These rates are particularly reasonable in light of Plaintiffs' Counsel's significant experience as well as the specialized nature of data breach class actions. *Id*. at ¶¶ 54; 61-65.

Further, as reflected in the lodestar, Plaintiffs' Counsel took measures to litigate

this case efficiently. *Id.* at ¶ 17. Where possible, partners assigned tasks to associates or paralegals who bill at lower hourly rates, or to other employees whose time Class Counsel does not seek to recover. *Id.* Class Counsel communicated proactively among firms to ensure that no duplicate work would occur. *Id.* at ¶ 18. Additionally, before submitting this motion, Class Counsel reviewed the time reports to ensure that the lodestar did not include hours that were "excessive, redundant, or otherwise unnecessary," reducing the lodestar by tens of thousands of dollars. *Id.* at ¶ 20. Finally, the total hours figure does not include time spent on this motion, on reviewing the time reports of Plaintiffs' counsel, or on further claims administration—time for which Class Counsel has not and will not seek reimbursement.

"Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee," and "[n]ormally this will encompass all hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 434-35, 103 S.Ct. 1933, 1940 (1983) (footnotes and citations omitted). Here, not only is the lodestar itself reasonable, but Class Counsel requests considerably less in fees—Class Counsel's request represents a negative multiplier of 59.77% of the fees Plaintiffs' Counsel actually incurred in this matter. Accordingly, the lodestar method demonstrates that the requested fee is more than reasonable in light of the excellent results obtained for the Settlement Class. *See, e.g.*, *In re NetBank, Inc. Sec. Litig.*, No. 1:07-CV-2298-TCB, 2011 WL 13353222, at *3 (N.D. Ga. Nov. 9, 2011) (where the requested fee is evaluated using the percentage method, and the lodestar "cross-check yields a negative multiplier," this "further confirms that the awarded fee is wholly proper").

IV. THE REQUESTED COSTS SHOULD BE AWARDED

In addition to fees, the Federal Rules of Civil Procedure allow the court to "award reasonable . . . nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Yanchunis Decl. ¶¶ 16, 45-48. In this litigation, Plaintiffs' Counsel incurred $306,464.46 in reasonable expenses. Laufenberg Decl. ¶ 12. These costs are attributable to ordinary and necessary costs such as filing fees, expert fees, document organization, travel, and engaging a mediator. *Id.* ¶ 59. Class Counsel has reviewed these costs to ensure that they are not excessive or unnecessary. *Id*. at ¶ 60. Plaintiffs' Counsel had a strong incentive to keep expenses at a reasonable level, insofar as the litigation proceeded on a contingent-fee basis with a significant risk of no recovery. In support of this Motion, Class Counsel has submitted affidavits describing the expenses reasonably incurred in this litigation and is also prepared to submit detailed expense records for *in camera* review. *Id*. at ¶ 10. Accordingly, Plaintiffs' Counsel should be awarded reimbursement for these reasonable expenses.

V. THE REQUESTED SERVICE AWARDS SHOULD BE AWARDED

Historically, "there is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." *American Suzuki Motor Corp.,* 2010 WL 1628362, at *6. Such service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Services, Inc. v. Exxon Corp.,* 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). Similarly, "[c]ourts have consistently found service awards to be an efficient and productive way to encourage members of a class to

become class representatives. *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1357 (S.D. Fla. 2011). "The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation." *Id.* (citing *Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir.1998)).

Here, analysis of these factors supports approval of the requested service awards of $2,500 to each named Plaintiff, in accordance with the Settlement Agreement, to compensate for the time and effort they spent representing the best interests of the Settlement Class. *See* SA ¶ IV.K.1-3. Although modest, the service awards recognize the significant contributions of the named Plaintiffs to this litigation, the Bankruptcy Action, and the Declaratory Action, which were essential to procuring this Settlement.

As set forth in their declarations, attached as Exhibit 1 to the Declaration of Cari Campen Laufenberg in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 244 ("Laufenberg MPA Decl."), these Plaintiffs have been dedicated and active Class Representatives who have fulfilled their duties by pursuing their claims so as to obtain relief for absent members in this matter. Laufenberg MPA Decl. ¶ 8, Ex. 1. In this regard, the named Plaintiffs understand their obligations as Class Representatives and have diligently prosecuted this case since its inception on behalf of all Settlement Class Members so as to represent and pursue their interests. Laufenberg Decl. ¶ 69. Further, they have actively participated in the litigation by reviewing the pleadings, conferring with Plaintiffs' Counsel regarding

various issues pertaining to this case, and providing valuable insights and information that has enabled Plaintiffs' Counsel to effectively litigate this action and negotiate this Settlement. *Id*. As such, their work and participation were essential to achieve the Settlement. *Id*. Given their significant contributions to this litigation, the request for service awards of $2,500 for each of the fourteen Plaintiffs, totaling $35,000, is appropriate and should be granted.

Plaintiffs are aware of the recent Eleventh Circuit precedent that calls into question the availability of the requested service awards. *See Johnson v. NPAS Sol'ns., LLC*, No. 18-12344, 2020 WL 5553312, at *11 (11th Cir. Sept. 17, 2020) (petition for rehearing *en banc* pending). In the event that this issue remains unresolved when the Court decides the instant motion, Plaintiffs request that the Court defer resolution of this issue pending a final decision in *Johnson*, as other courts in this district have done.[10]

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order granting Plaintiffs' request for attorneys' fees and costs of $3,750,000 and awarding $2,500 as service awards to each of the named Plaintiffs.

[10] *See Mosley v. Lozano Insurance Adjusters, Inc.*, No. 3:19-CV-379-J-32JRK, 2021 WL 293243, at *5 (M.D. Fla. Jan. 11, 2021), *report and recommendation adopted,* No. 3:19-CV-379-J-32JRK, 2021 WL 289031 (M.D. Fla. Jan. 28, 2021) (retaining jurisdiction to decide the question of service awards "pending a final decision in *Johnson*" and directing the parties "to deposit the $5,000 into the registry of the Court pending the Court's determination of the service award issue"); *Harvey v. Hammel & Kaplan Co., LLC*, No. 3:19-CV-640-J-32JRK, 2020 WL 7138568, at *3–4 (M.D. Fla. Dec. 7, 2020) ("[T]he Court will defer the issue of a service award due to a recent Eleventh Circuit case that bars such awards to plaintiffs in class action settlements," directing the defendant "to deposit $1,500 in the registry of the Court, to be held pending the Eleventh Circuit's issuance of a mandate in *Johnson*," and retaining jurisdiction to "determine whether and how the funds will be distributed once *Johnson* is final."); *see also Metzler v. Med. Mgmt. Int'l, Inc.*, No. 8:19-CV-2289-T-33CPT, 2020 WL 5994537, at *3 (M.D. Fla. Oct. 9, 2020).

RESPECTFULLY SUBMITTED this 10th day of February, 2021.

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Plaintiffs' Steering Committee

ATTESTATION OF FILER

The undersigned filer hereby attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated February 10, 2021.

By: */s / Cari Campen Laufenberg*
Cari Campen Laufenberg

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2021, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which sends notice of electronic filing to all counsel of record.

By: */s / Cari Campen Laufenberg*
Cari Campen Laufenberg