

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

BARBARA HORVATH, on behalf of herself and
all others similarly situated,

Index No.: 159212/2024

Plaintiff,

v.

GRAMERCY SURGERY CENTER, INC.,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION FOR AWARD
OF ATTORNEYS’ FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE
AWARD TO CLASS REPRESENTATIVE**

Plaintiff Barbara Horvath submits this Memorandum of Law in Support of Plaintiff’s Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award to Class Representative.

INTRODUCTION

This class action lawsuit brought by Plaintiff Barbara Horvath involves a Data Incident in which unknown actors accessed Defendant Gramercy Surgery Center, Inc.’s (“GSC” or “Defendant”) networks. On or about June 18, 2024, GSC became aware of suspicious activity on its computer network, potentially impacting certain information on the network (the “Data Incident”). The impacted information may include, but is not limited to, names, Social Security numbers, financial account information, date of birth, driver’s license numbers, medical record numbers, treatment information, and health insurance (personally identifiable information or “PII.” and protected health information or “PHI”) (collectively, “Personal Information”). After

GSC learned of the Data Incident, GSC issued approximately 52,372¹ notices to inform individuals (including Plaintiff Horvath) that their Personal Information may have been impacted by the Data Incident.

The Parties conducted extensive arms' length negotiations and reached a fair, adequate, and reasonable settlement. If approved, the settlement provides Class Members with substantial relief, including: (a) documented out-of-pocket expenses of up to \$2,500, inclusive of reimbursement for up to 3 hours lost time (at a rate of \$20 per hour), OR (b) a \$50 Alternative Cash Payment, AND; (c) three (3) years of one-bureau credit monitoring and identity theft protection services with identity theft insurance of at least \$1 million. In addition, all Settlement Class Members will benefit from Defendant's business practice changes regarding information security, which Defendant must confirm as part of this Settlement. Plaintiff strongly believes the settlement is favorable to the Settlement Class.

Pursuant to the Settlement Agreement and the Court's inherent authority, Class Counsel respectfully submits this Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for Class Representative ("Fee Application"). First, Class Counsel request that the Court award \$200,000.00 for payment of attorneys' fees and expenses ("Fee Request"). This represents just 21.6% of the \$924,159 total valuation² of the Settlement under the Settlement Agreement. As detailed more fully herein, the factual and legal complexity of these claims required extensive investment of labor and advancement of costs by counsel. The work performed

¹ During de-duplication by the Settlement Administrator in preparation for sending the Class notice, the actual number of Class Members was revealed to be 52,181. Admin Decl. ¶ 6.

² This number includes the \$400,000 Aggregate Cap on Monetary Relief, a conservative valuation of the retail value of the credit monitoring of \$250,594, \$71,065 for notice and administration, \$200,000 in attorneys' fees, and a \$2500 service award. Lietz Decl. ¶ 13. It does not include any dollar amount for the business practice changes (equitable relief), which is another valuable benefit to the Settlement Class. *Id.*

advancing the claims of Class Members—on a fully contingent basis—carried significant risk, and counsel performing that work, including Class Counsel, forwent other opportunities and dedicated themselves to this case.

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

This Memorandum is supported by the cited and attached evidence, including: the declaration from Class Counsel attached as **Exhibit 1** (Declaration of David Lietz in support of Plaintiffs’ Motion for Approval of Attorneys’ Fees Award, Expense Reimbursement, and Service Awards to Representative Plaintiffs) (“Lietz Fee Decl.”).

FACTUAL BACKGROUND

A. PROCEDURAL HISTORY

On August 22, 2024, Plaintiff filed a lawsuit in federal court against GSC concerning the Data Incident: *Horvath v. Gramercy Surgery Center, Inc.*, Case No.: 1:24-cv-06360-GHW-GWG. Subsequently, voluntary pre-suit discovery surfaced the fact that more than two-thirds of the putative class were residents of the State of New York, such that a federal court would be obligated to decline to exercise its jurisdiction under the Class Action Fairness Act. As a result, Plaintiff voluntarily dismissed the federal court lawsuit and refiled this case, also styled *Horvath v. Gramercy Surgery Center, Inc.*, under Index No.: 159212/2024. The Class Action Complaint in the Litigation asserts claims for (i) negligence, (ii) breach of implied contract, and (iii) unjust enrichment.

Shortly thereafter, the Parties began discussing settlement. Prior to negotiating, GSC providing information related to, among other things, the nature and cause of the incident, the

number and geographic location of victims impacted by the Data Incident, and the specific type of information breached. After months of voluntary discovery and arms-length negotiations, the Parties reached agreement on the materials terms of the settlement.

This Settlement came about as the result of protracted, arms' length negotiations. *See* Lietz Fee Decl., ¶ 10. The Parties negotiated in good faith and zealously defended their respective positions as they negotiated the Settlement Agreement. Both Parties strongly advocated for their respective client's positions. *See id.* The Settlement Agreement and the various exhibits thereto ("S.A.") were ultimately finalized and signed in March 2025. *See id.* ¶ 12.

Class Counsel has already invested considerable time and effort into this matter. *Id.*, ¶ 20. Class Counsel's work is not over and will continue throughout the claims period. Based on experience, each Class Counsel will spend an additional 40-50 hours defending the Settlement from potential objections (of which there are none to date), continuing to monitor the claims process, preparing for and appearing for the final fairness hearing, and supervising claims administration and the distribution of as outlined in the Settlement Agreement. *Id.*, ¶ 21.

In the Preliminary Approval Order the Court set the final fairness hearing for October 21, 2025, at 9:30 a.m. *See* NYSCEF Doc. No. 18.

B. SUMMARY OF SETTLEMENT

1. Class Definition

The Class is defined as: "all individuals to whom GSC provided notice of the Data Incident." The Class specifically excludes: (i) GSC, and its officers and directors; (ii) all Class Members who timely and validly request exclusion from the Class; (iii) the presiding judge, and his or her staff and family; and (iv) 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. See S.A. ¶ 1.28.

The Class is comprised of approximately 52,181 individuals.

2. Settlement Benefits

a. **Monetary Relief** Class Members may claim (a) documented out-of-pocket expenses of up to \$2,500, inclusive of reimbursement for up to 3 hours lost time (at a rate of \$20 per hour), OR (b) a \$50 Alternative Cash Payment. Monetary Relief is subject to an aggregate cap of \$400,000. S.A. ¶ 2.1. This aggregate cap does not apply to the costs of credit monitoring, business practice changes, notice and claims administration, or attorneys' fees, costs, and a service award. S.A. ¶ 2.1.3.

b. **Credit Monitoring and Identity Theft Protection** In addition to, and regardless of whether they submit a claim for, the Expense Reimbursements or the Alternative Cash Payment, Class Members may claim three (3) years of one-bureau credit monitoring and identity theft protection services. The identity theft monitoring will include identity theft insurance of at least \$1 million. S.A. ¶ 2.2.

The value of this credit monitoring to Settlement Class Members is significant. The current lowest retail price for comparable credit monitoring with \$1 million in insurance is \$6.67 per month, if purchased on an annual basis, or \$240.12 per Settlement Class Member for the three-year term offered here. Lietz Fee Decl. ¶ 14. If the entire Settlement Class were to claim this benefit, it would have a value exceeding \$12 million. *Id.* Even if only 2% of the Settlement Class (which is the current overall claims rate, with over six (6) weeks left in the Claims Period) were to claim this benefit, a conservative assessment of the value to the Settlement Class is \$250,594.00. *Id.*

c. **Business Practices Changes** As part of the settlement consideration, GSC, has adopted, paid for, implemented, and will maintain certain business practice changes related to information security to safeguard personal information on its systems. GSC will detail these business practice changes to Class Counsel in a confidential declaration. S.A. ¶ 2.4.

3. Release

The relief provided to Class Members in the Lawsuit is tailored to the claims that have been pleaded or could have been pleaded that are related in any way to the activities stemming from the Data Incident. Class Members who do not exclude themselves from the Settlement Agreement will release claims related to the Data Incident.

4. Attorneys' Fees, Costs, and Service Awards

The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiff until after the substantive terms of the settlement had been agreed upon, other than that GSC would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiff as may be ordered by the Court. . S.A. ¶ 7.1.

The Settlement Agreement indicates that Class Counsel may petition the Court for attorneys' fees, inclusive of any costs and expenses of the Litigation, in an amount not to exceed \$200,000.00. S.A. ¶ 7.2. Also, subject to Court approval, GSC has agreed not to object to a request for a service award in the amount of \$2,500 to the named Plaintiff. S.A. ¶ 7.3. The Service Award is meant to recognize the Class Representative for her efforts on behalf of the Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. *See* Lietz Declaration in Support

of Preliminary Approval ¶ 37. Defendant will pay any attorneys' fees, expenses, and service award approved by the Court separately and apart from the Class Relief.

ARGUMENT

A. THE FEE REQUEST IS FAIR AND REASONABLE

While the “determination as to the proper amount of an award of [counsel] fees lies largely within the discretion of the court, the discretion is not unlimited” *Matter of Rahmey v. Blum*, 95 A.D.2d 294, 299–300, 466 N.Y.S.2d 350 (1983). When reviewing a fee application in a class action, the court acts as a fiduciary and must protect the rights of absent class members. *See Silberblatt v. Morgan Stanley*, 524 F.Supp.2d 425, 433 (S.D.N.Y. 2007). Although no single method of determining fees is mandated (*see Bear Stearns Cos. v. Jardine Strategic Holding, Ltd.*, N.Y.L.J., Aug. 7, 1991, at 22 (Sup. Ct., New York County)), two acceptable options are the percentage approach and the lodestar method, the latter having originated in class action litigation. *See Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 188 (W.D.N.Y. 2005); *Sheppard v. Consolidated Edison Co. of N.Y.*, 2002 WL 2003206, at *7 (E.D.N.Y. 2002); *Friar v. Vanguard Holding Corp.*, 125 A.D.2d 444, 447, 509 N.Y.S. 2d 374 (1986).

“In testing the reasonableness of the negotiated fee, [courts] first look[] to the percentage of recovery approach.” *Michels v. Phoenix Home Life Mut. Ins.*, 1997 WL 1161145, at *31 (Sup. Ct. N.Y. Cnty. Jan 7, 1997). “Federal Courts around the country, including federal district courts in New York, are turning away from the lodestar/multiplied approach and are returning to the percentage of the recovery approach. *Id.* Courts have found numerous advantages to using the percentage method of awarding fees. First, the percentage method “directly aligns the interests of the class and its counsel” because it provides an incentive to attorneys to resolve a case efficiently

and to create the largest total value for the class. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d at 122 (2d Cir. 2005).³

The percentage method also promotes efficiency and early resolution, as it eliminates any incentive plaintiffs' lawyers may have to run up billable hours—one of the most significant downsides to using the lodestar approach. *Savoie v. Merchants Bank*, 166 F.3d 456, 460-61 (2d Cir. 1999) (“It has been noted that once the fee is set as a percentage of the fund, the plaintiffs’ lawyers have no incentive to run up the number of billable hours for which they would be compensated under the lodestar method”); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000) citing *In re Union Carbide Corp., Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 167-168 (S.D.N.Y. 1989); see also *In re Interpublic Sec. Litig.*, Nos. 02-cv-6527, 03-cv-1194, 2004 WL 2397190, at *11 (S.D.N.Y. Oct. 26, 2004). “The Lodestar method has the potential to lead to inefficiency and resistance to expeditious settlement because it gives attorneys an incentive to raise their fees by billing more hours.” *Lopez v. The Dinex Group, LLC*, 2015 WL 5882842, at *5 (Sup. Ct. N.Y. Cnty. Oct. 06, 2015); see also *Matter of Karp*, 145 A.D.2d 208, 216 (1st Dep’t 1989) (“To base a fee solely on hours worked is to penalize the experienced and skillful lawyer who can perform the services in substantially less time than the inexperienced one.”).

B. THE FEES REQUESTED BY CLASS COUNSEL ARE ROUTINELY GRANTED

Here, Class Counsel’s requested Attorneys’ Fees and reasonable expenses necessary to the prosecution of this Action are reasonable under either the percentage of the fund or lodestar method. Class Counsel seek an award of 21.6% of the conservative estimate (\$924,159) of the

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

total Settlement Benefit (or 29.69% of the Defendant's total financial responsibility if one only considers the \$400,000 Aggregate Cap on monetary benefits, the \$71,065 cost of notice and administration, the \$200,000 in attorneys' fees, and the \$2,500 service award). Plaintiff's Attorneys' Fees are well within the range of, and in fact even lower than amounts routinely granted by New York Courts, which "routinely grant[] requests for one-third or more of the fund in cases with settlement funds." *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *7 (E.D.N.Y. Nov. 20, 2012) (citing cases). *Milton*, 2015 WL 9271692, at *5 (collecting cases and noting that 33.3% is "consistent with the norms of class litigation in this circuit"); *Josephs v. United Hebrew of New Rochelle Certified Home Health Agency, Inc. d/b/a United Hebrew Geriatric Center*, Index No. 50926/2019, NYSCEF No. 28 (Sup. Ct. Westchester Cnty. June 9, 2020) (Walker, J.) (awarding one-third of \$2.1 million settlement fund in attorneys' fees); *Contreras v. Dania Marina, Inc. d/b/a Marina Del Rey Caterers*, Index No. 54536/2018, NYSCEF No. 54 (Sup. Ct. Westchester Cnty. Oct. 3, 2019) (Walsh, J.) (awarding one-third of the settlement fund in attorneys' fees); *Lopez*, 2015 WL 5882842, *6 ("[O]ne-third of the settlement fund as attorney's fees . . . is well within the range of reasonableness and within the percentage regularly approved in class action[s]"); *Ryan v. Volume Services America, Inc.*, 2013 WL 12147011, at *4 (Sup. Ct. N.Y. Cnty. Mar. 07, 2013) (same); *Fernandez v. Legends Hospitality, LLC*, 2015 WL 3932897, at *5 (Sup. Ct. N.Y. Cnty. June 22, 2015) (same); *Mancia v. HSBC Securities (USA) Inc.*, 2016 WL 833232, at *4 (Sup. Ct. N.Y. Cnty. Feb. 19, 2016) (same); see also *Hayes*, 2011 WL 6019219, at *1 (awarding "attorneys' fees in the amount of one third" of a \$9 million settlement fund), *aff'd* 509 F. App'x 21, 23-24 (2d Cir. 2013); *See, e.g., Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007) (affirming fee award of 30 percent of recovery); *In re Gilat Satellite Networks, Ltd.*, CV-

02-1510 (CPS)(SMG), 2007 WL 2743675, at *16 n.41 (E.D.N.Y. Sept. 18, 2007) (30 percent fee); *Warren v. Xerox Corp.*, 01-CV-2909 (JG), 2008 WL 4371367, at *22 (E.D.N.Y. Sept. 19, 2008) (awarding class counsel attorneys' fees and expenses at 33.33 percent of the total settlement value, and finding such a sum "comparable to sums allowed in other cases").

Here, the work of Class Counsel has generated a considerable common benefit for the Settlement Class. Class Counsel has negotiated a robust relief package for Settlement Class Members, which includes up to \$400,000 in monetary losses, valuable credit monitoring, business practice changes, notice and claims administration, and attorneys' fees, costs, and service awards. It is well established that in calculating the value of the common benefit created by Class Counsel's efforts, "[a]n allocation of fees by percentage should [] be awarded on the basis of the total funds made available, whether claimed or not." *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir.2007); *see also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir.1999) *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 18-cv-8472-PKC, 2022 WL 2063864, at *14-15 (S.D.N.Y. June 6, 2022). Plaintiffs' request for 21.6% of the entire value of the Settlement is consistent with prior decisions from both state and federal courts in New York. Accordingly, the request should be granted.

C. PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES IS REASONABLE

CPLR 909 permits courts to award attorneys' fees in class action litigation. In order to assess a reasonable fee, a court should consider: (1) the risks of litigation; (2) whether counsel had the benefit of a prior judgment; (3) standing at bar of counsel for the plaintiffs and defendants; (4) the magnitude and complexity of the litigation; (5) the case's history and the work done by counsel prior to trial; (6) the amount recovered; and (7) what would be reasonable for counsel to charge a victorious plaintiff. *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531,

610 (Sup. Ct. N.Y. Cnty. 2010). Each factor supports approval here.

1. The Risk of Litigation

“Contingency risk is the principal, though not exclusive, factor courts should consider in their determination of attorneys' fees.” *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (quoting *In re Dreyfus Aggressive Growth Mut. Fund Litig.*, 2001 WL 709262, *6 (S.D.N.Y. June 22, 2001). Here, class counsel took on the risks of litigation knowing full well their efforts might not bear fruit.

Although nearly all class actions involve a high level of risk, expense, and complexity—undergirding the strong judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is a particularly complex class due the constant standing challenges plaintiffs face in data breach class actions. Historically, data breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 U.S. Dist. LEXIS 71996, at *2-4 (S.D.N.Y. June 25, 2010) (collecting cases). Even data breach cases of wide-spread notoriety have been found wanting by courts throughout the country. *See e.g. In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, data breach cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The

damages methodologies, while theoretically sound in Plaintiff's view, remain untested in a disputed class certification setting and unproven in front of a jury. And, as in any data breach case, establishing causation on a class-wide basis is rife with uncertainty. Consequently, Class Counsel incurred significant risk by taking and litigating this case. This factor supports approval of Plaintiff's request for approval of attorneys' fee and reimbursement of litigation expenses.

2. Whether Counsel Had the Benefit of a Prior Judgement

Data breach litigation is evolving; there is no guarantee of the ultimate result. *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex."). Indeed, instead of relying on a prior judgment, Class Counsel took on the risk of filing this class action on an entirely contingent basis. While data breach litigation is still an emerging area of law, Class Counsel was able to draw on their extensive experience in this area to achieve a settlement that offers a substantial benefit to the class in spite of the novelty of and risks associated with the litigation. This factor weighs in favor of the requested fee award.

3. Standing at the Bar of Counsel for Plaintiffs and Defendants

In determining the quality of representation, Courts examine the experience of the attorneys involved and the result obtained in the lawsuit. *Taft v. Ackermans*, No. 02-cv-7951, 2007 WL 414493, *1 (S.D.N.Y. Jan. 31, 2007). Here, Class Counsel have substantial experience in both class actions generally, and complex consumer class actions involving cybersecurity incidents in particular. *See* Lietz Fee Decl. ¶ 1. This case required significant skill and experience, as well as high quality representation, to even be able to identify the issues of standing and the highly

technical aspects of the data breach mechanism (the means by which Defendant's systems were breached), and the specialized knowledge of class action procedures.

Furthermore, "[t]her quality of the opposition should be taken into consideration in assessing the quality of the plaintiff's counsel's performance." *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Here, Defendant was represented by competent and well-respected counsel (from the well-regarded Mullen Coughlin law firm), who are highly experienced in data breach litigation. Both sides zealously advocated on behalf of their respective clients and the excellent result here is a function of the high quality of the work and intense negotiations by both sides. Accordingly, this factor weighs in favor of approval.

4. The Magnitude and Complexity of Litigation.

"The size and difficulty of the issues in a case are significant factors to be considered in making a fee award." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citing *In re Prudential Sec. Inc. Ltd. P'ship Litig.*, 912 F. Supp. 97, 100 (S.D.N.Y.1996)). Indeed, "[C]lass actions have a well-deserved reputation as being most complex." *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998). This case was no exception. Defendants' business practices impacted hundreds of thousands of consumers, both in New York and elsewhere, and presented novel and complex issues. While Plaintiffs believe that their claims are strong, they are not without risk. Trial of this matter would necessitate costly preparation of experts who in all likelihood would have to conduct their own, original clinical studies. The magnitude and complexity of legal issues involved in this case reinforces the reasonableness of Counsel's requested fee percentage.

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

Class Counsel's activities included, but were not limited to, conducting an extensive pre-filing investigation of Plaintiff's and Class members' claims and damages and vigorously prosecuting those claims from the federal court to this Court. Class Counsel engaged in protracted settlement negotiations and ultimately negotiated a comprehensive settlement for the Settlement Class.

Since reaching the Settlement, Class Counsel has drafted a motion for preliminary approval of the Settlement, and assisted with the drafting and preparation of the Settlement Agreement, short and long form notice, and claim forms. Class Counsel oversaw the launch of the notice and claims program, and has been supervising and monitoring the same. Class Counsel prepared this instant motion and the motion for final approval filed contemporaneously herewith. Class Counsel anticipates expending additional time administering the Settlement after final approval. Thus, the work performed by Class Counsel to date has been comprehensive, complex, and wide ranging, and this factor supports the requested fee award.

6. The Amount Recovered

As discussed above, the requested fee represents 21.6% percent of the \$924,159 total value of the Settlement benefits (or 29.69% if no value is attributed to the credit monitoring). This percentage is inherently reasonable and weigh in favor of approval. *See Rodriguez v. It's Just Lunch Int'l*, No. 07-cv-09227, 2020 WL 1030983, at *10 (S.D.N.Y. Mar. 2, 2020) ("Courts in this Circuit routinely grant fee applications based on the percentage method when the fee award is one-third of a common fund.").

7. The Knowledge The Court Has Of The Case's History And The Work Done By Counsel Prior To Trial, And What Would Be Reasonable For Counsel To Charge A Victorious Plaintiff.

Under CPLR 909, “[i]f a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys’ fees. . . . Based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class.” The Settlement Agreement provides that Class Counsel may petition the Court for an award up to \$200,000.00. The “Fee Award” also includes all costs and expenses incurred by Class Counsel. As mentioned above, New York courts routinely approve fee requests for one-third of a common fund. *See supra* Argument § A. Class Counsel’s fee request equates to approximately 21.6% of the \$924,159 total value of the settlement (which is based upon a conservative estimate of this Settlement’s value to the Settlement Class).

Furthermore, Public policy supports providing attorneys’ fees in class action cases, as class actions are also an invaluable safeguard of public rights. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). Where, as here, the settlement amount is relatively small, an award of attorneys’ fees ensures that “plaintiffs’ claims [will] likely . . . be heard.” *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 189 (W.D.N.Y. 2005). If courts denied sufficient attorneys’ fees “no attorneys . . . would likely be willing to take on . . . small-scale class actions[.]” *Id.*; *see also Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (private attorneys “should be encouraged” to take the risks required to represent those who would not otherwise be protected from socially undesirable activities, including fraud.). Public policy is in favor of rewarding counsel who persevere through risky litigation and achieve favorable results for the class they represent. Here, counsel took on this case despite the uncertainty and volatility of law pertaining to consumer class actions, and data breach class actions in particular, and persevered in obtaining a substantial settlement. Such a result should be rewarded.

D. A SUMMARY LODESTAR CROSSCHECK CONFIRMS THE REASONABLENESS OF THE FEES REQUESTED

Although no lodestar crosscheck is required, a summary lodestar crosscheck confirms the reasonableness of the fees requested here. Class Counsel have expended 117.7 hours of work on this matter to date. Lietz Fee Decl. ¶ 20. At the normal billing rates of participating counsel, that have been approved by courts across the country, this equates to a lodestar of \$119,414.00, and the fees requested represent a current lodestar multiplier of 1.67. Courts in New York routinely find fees reasonable where the percentage of recovery method leads to a lodestar multiplier between 2 and 6 and even as high as 8. *See Fleisher v. Phoenix Life Ins. Co., Civil Action*, No. 11-cv-8405 (CM), 2015 U.S. Dist. LEXIS 121574, *61 (S.D.N.Y. Sep. 9, 2015) (“Courts regularly award lodestar multipliers from 2 to 6 times lodestar.” (quoting *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 623-24 (S.D.N.Y. 2012))); *Yuzary v. HSBC Bank USA, N.A.*, No.12-cv-3693, 2013 U.S. Dist. LEXIS 144327, at *29 (S.D.N.Y. Oct. 2, 2013) (awarding multiplier of 7.6); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-82 (S.D.N.Y. 2013) (awarding multiplier of 6.3 and noting that “Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n. 1 (S.D.N.Y.1991) (awarding multiplier of 8.74). Class Counsel expects to expend another 40-50 hours of time consummating this Settlement, including traveling to and participating in the final approval hearing, assisting Settlement Class Members with their claims and answering their questions, and working with the Settlement Administrator on claims administrator and distribution of benefits to the Settlement Class. Lietz Fee Decl. ¶ 21. This means that by the time this case is brought to final approval, the lodestar “multiplier” will very likely be 1.25 or below, once these additional attorney hours are expended. Accordingly, the lodestar crosscheck fully supports the fees requested.

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

Courts typically allow counsel to recover their reasonable out-of-pocket expenses. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (citing *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n. 3 (S.D.N.Y.2003)). “Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were ‘incidental and necessary to the representation’ of those clients.” *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d at 183 n.3 (internal quotation marks omitted).

As part of (and not in addition to) the \$200,000 fee and expense request, Class Counsel seeks reimbursement of costs and expenses totaling \$977.57. Lietz Fee Decl., ¶ 22. These expenses are of the type of expenses routinely charged to hourly clients, are appropriately documented, and were necessary and reasonable to prosecute the litigation. The full requested amount should be awarded as part of the combined \$200,000.00 attorneys’ fee and expense request.

F. PLAINTIFF’S REQUESTED SERVICE AWARD IS JUSTIFIED AND SHOULD BE APPROVED.

It is common for courts to grant service awards in class action suits. Such awards “reward[] the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery, including depositions.” *Milton*, 2015 WL 9271692, *2-3 (citing *Cox v. Microsoft Corp.*, 26 Misc. 3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2007)). Courts consider such compensation important. *See Massiah v. MetroPlus Health Plan, Inc.*, No. 11 Civ. 5669, 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012).

For her commitment to this case, Plaintiff Barbara Horvath requests a Service Award in the amount of \$2,500 for her important work in this case. Plaintiff was subjected to extensive

interviews by her counsel and submitted documentation to prove the hardship that the Data Breach caused her, and was prepared to take on the responsibilities of a class representative, including being deposed and testifying at trial. Lietz Fee Decl., ¶ 23.

The amount requested is reasonable and modest relative to awards regularly granted by courts in this jurisdiction and the request should be granted. *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (granting an award of \$5,000 to \$7,500 to Plaintiffs); *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118 (S.D.N.Y. 2001) (noting in class actions representative plaintiff awards for \$2,500 or more are commonly accepted).

CONCLUSION

For the foregoing reasons, Class Counsel requests that the Court grant this motion and (1) award \$200,000.00 as attorneys' fees and expenses and (2) approve a service award of \$2,500 to Plaintiff Barbara Horvath.

Dated: August 11, 2025

Respectfully submitted,

/s/ Vicki J. Maniatis

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Counsel for Plaintiff and the Settlement Class

CERTIFICATION OF COMPLIANCE WITH RULE 202.8-b

I hereby certify that the foregoing contains 5,491 words and the word count is in compliance with Rule 202.8-b.

Vicki J. Maniatis

CERTIFICATE OF SERVICE

I, Vicki J. Maniatis, hereby certify that on Monday, August 11, 2025, I caused a true and correct copy of the foregoing Plaintiffs' Memorandum In Support of Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Class Representative to be electronically filed using the Court's NYSCEF system, which will serve all counsel of record.

/s/ Vicki J. Maniatis

Vicki J. Maniatis