UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AMANDA FITTON, on behalf of herself and all others similarly situated,

Plaintiff,

v.

PINNACLE PROPANE, LLC,

Defendant.

Case No. 3:23-cv-1559

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE ATTORNEY'S FEES, COSTS, AND SERVICE AWARD

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This motion comes before the Court on Plaintiff's Motion to Approve Attorney's Fees, Costs, and Service Awards. Plaintiff respectfully moves this Court for entry of an Order: (1) granting Plaintiffs' request for $163,333 in attorney's fees, $18,668.33 of reasonable costs and expenses, and (2) granting Plaintiff's request for a service award of $5,000. This Motion is based upon: (1) this Motion and the following supporting memorandum; (2) Class Counsel's Declaration; (3) the Settlement Agreement; (4) the records, pleadings, and papers filed in this Action; and (5) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing.[1]

INTRODUCTION

Plaintiff Amanda Fitton moves the Court to approve her request for attorney's fees, costs, and service awards as "reasonable." The Court should grant Plaintiff's motion because she obtained a resolution of this matter that offers significant benefits to individuals whose information was impacted by the December 2022 data incident experienced by Pinnacle Propane LLC ("Pinnacle" or "Defendant") and accomplished what she set out to achieve with this lawsuit: reaching a resolution that offers significant benefits to victims of Pinnacle's data breach.. This result was achieved despite the challenges this case faced—namely, the risk that comes with litigating data incidents cases through trial.

The relief Settlement provides addresses the harms the Settlement Class suffered as a result of the December 2022 data incident. Plaintiff alleges that between November 28, 2022 and December 6, 2022, cybercriminals breached Pinnacle's systems and may have accessed "personally identifiable information" ("PII") belonging to thousands of current and former employees. As a result, Plaintiff brought this above-captioned action, on behalf of herself and all

[1] Defendant does not oppose the relief sought in this Motion.

other victims of Pinnacle's data breach. Following arms-length negotiation of the matter, including mediation with Hon. Jay C. Ghandhi (ret.), a mediator experienced in settling data breach cases, the parties reached a settlement consisting of a $490,000.00 non-reversionary common fund which Plaintiff believes is in the best interest of herself and the class.

First, the Agreement provides for reimbursement for losses incurred as a result of the data incident. That includes up to $240 for lost time and $2,000 for out-of-pocket losses incurred dealing with the incident.

Second, class members may submit claims for three years of three-bureau credit and identity monitoring, including $1 million in fraud insurance.

Third, in lieu of the aforementioned benefits and credit monitoring, class members may make a claim for a $100 cash payment.

Fourth, Pinnacle has affirmed it improved its cybersecurity following the incident and that it will pay for those cybersecurity improvements at its own cost separate from the Settlement Fund.

Given the tremendous result achieved on behalf of the class (achieved despite many of the obstacles data breach cases pose), the Court should grant Plaintiff's request for reasonable fees, costs, and a service award.

BACKGROUND FACTS

A. The Litigation

Pinnacle is a propane supplier based in Irving, Texas and claims to be the largest global liquefied petroleum gas distributor. Doc. 1 ("Compl."), ¶¶ 2, 18. Plaintiff alleges that Pinnacle collects PII an from its employees, including names and Social security numbers. *Id*. ¶¶ 3, 7. Plaintiff alleges that in so doing, Pinnacle agreed it would safeguard the data in accordance with

its internal policies, state law, and federal law, yet failed to implement those practices, resulting in a December 2022 data security incident ("Data Incident"). *Id*. ¶¶ 4, 21, 23.

On December 4, 2022, Pinnacle discovered that an unauthorized third party had accessed its computer network between November 28, 2022, and December 6, 2022. *Id*. ¶¶ 4, 23. As a result, Ms. Fitton alleges that the incident exposed the PII belonging to thousands of former and current employees, including her own. Doc. 20-1 ("Settlement Agreement" or "Agreement"), § I.

Plaintiff alleges that her information was potentially impacted in the Data Incident. In July 2023, Ms. Fitton sued Pinnacle to remediate the alleged harm the incident may have caused her and the class, asserting six counts and demanding that Pinnacle reimburse the class's losses. *Id*. Prayer for Relief.

On September 7, 2023, Defendant filed a Motion to Dismiss, generally denying each and every cause of action asserted by Plaintiff in her Complaint. Declaration of Raina C. Borrelli in Support of Plaintiff's Motion to Approve Attorney's Fees, Costs, and Service Award ("Borrelli Fee Dec."), ¶ 7. Shortly after Defendant filed its Motion to Dismiss, the Parties agreed to explore mediation. No formal discovery was conducted. Instead, the Parties engaged early in Federal Rule of Evidence 408 communications and discovery. *Id*. ¶ 8.

B. Mediation and Settlement

Given the risks that litigating Ms. Fitton's case posed to both sides, the parties agreed to mediate this case with Hon. Jay C. Ghandhi (Ret.), a mediator experienced in settling data security cases. Borrelli Fee Dec. ¶ 9. In advance of mediation, Plaintiff's counsel requested, and Pinnacle produced, confidential confirmatory discovery, including information regarding the security improvements Pinnacle had already implemented. *Id*. In December 2023, the parties mediated with Judge Ghandhi. After a lengthy mediation, conducted at arms-length with Judge Ghandhi's

assistance, the parties were able to reach a settlement. *Id*. ¶ 10. From the start, the parties agreed they would not negotiate the proposed class's attorney fees or plaintiff's service award until they agreed on the settlement agreement's core terms, thus avoiding conflict between plaintiff and the class. *Id*.

C. Settlement Terms

After the Settlement Agreement was executed, Plaintiff moved for preliminary approval on February 16, 2024. Docs. 19, 20. The Settlement negotiated by Settlement Class Counsel secures significant benefits for the Settlement Class, namely, a $490,000 non-reversionary Settlement Fund.

First, Settlement Class members, including those previously enrolled in credit monitoring offered by Pinnacle after the data breach, can receive three years of credit monitoring at no cost. Agreement ¶ 70(i). The monitoring will last for two years under three bureaus, adding "identity theft protection services" as a service. *Id.* Those services will come with fraud insurance, covering up to $1 million in losses for members who enroll. *Id.*

Second, the settlement offers Settlement Class members a chance to claim losses from the incident, including "Out of Pocket" losses. *Id.* ¶70. For "Out of Pocket" losses, Class Members may claim up to $2,000 for losses resulting from the incident, including identity theft, fraud, and costs spent mitigating those risks. *Id.* For lost time, class members can claim "Attested Lost Time" at $40/hour for up to six hours (or up to $240). *Id*. To claim this loss, a claimant need not submit any documents but must simply attest to the time they spent dealing with the incident using a check-box style form. *Id*.

Third, in lieu of the aforementioned out of pocket losses, lost time, and credit monitoring, Settlement Class Members can elect to make a claim for a $100 Alternative Cash Payment. *Id*.

Significantly, submission for the $100 Alternative Cash Payment requires no additional documentation. *Id*.

Fourth, Defendant agreed to pay the cost to administer the settlement, including the Claims Administrator's costs to notify the class and process claims. *Id.* ¶ 95. The Claims Administrator, Analytics, has estimated the cost of notice and claims administration to be $28,594.80. Borrelli Fee Dec., ¶ 17. Additionally, Pinnacle agreed not to object to a Plaintiff's attorney's fees, not to exceed $163,333, with expenses not to exceed $20,000, and a service award to Plaintiff up to $5,000. Agreement ¶¶ 124, 128. These terms were not negotiated until *after* agreeing on the Settlement Class benefits. Borrelli Decl., ¶ 10. What's more, how the Court rules on Plaintiff's request for fees, costs, and an award will not impact the class's recovery, meaning the class can claim the benefits above in any event. Agreement ¶ 131.

And fourth, Defendant has confirmed it has implemented information security enhancements, affirming that "Pinnacle shall provide Plaintiff's Counsel with a confidential declaration or affidavit, suitable for filing under seal with the Court, attesting that agreed upon security-related measures have been implemented on or before and up to the date of the Preliminary Approval Order and identifying the approximate annual cost of those security-related measures. Costs associated with these security-related measures will be paid by Defendant separate and apart from other settlement benefits." *Id.* ¶ 71.

D. Preliminary Approval and Notice

On June 18, 2024, the parties attended the preliminary approval hearing in Dallas, Texas where the Court requested that the parties address certain items related to the Settlement and requested that Plaintiff file a supplemental declaration containing detailed time records in support of the attorney's fees contemplated by the proposed Settlement. Docs. 23-24. A stipulation to

amend the Settlement Agreement and a supplemental declaration in support of Plaintiff's unopposed motion for preliminary approval was subsequently filed by Plaintiff on June 21, 2024. Doc. 24.

On June 26, 2024, the Court granted preliminary approval to the Settlement. Doc. 26. Since this Court granted entered the Preliminary Approval Order, the Parties, in conjunction with the Settlement Administrator, Analytics, have effectuated Notice consistent with the Settlement and Preliminary Approval Order. Borrelli Fee Dec. ¶ 14. Over the several weeks and continuing to today, Class Counsel continued to diligently work with Defendant and the Settlement Administrator regarding claims administration and processing. *Id*. ¶ 15. While the claims process is ongoing, and Analytics will submit a detailed declaration about the notice program and claims process in connection with the motion for final approval, preliminary data about the notice and claims process is positive. *Id*. Through October 25, 2024, 9,971 notices were mailed and no Settlement Class Member has requested exclusion or objected to the Settlement. *Id*. ¶ 16.

LEGAL STANDARD

The Fifth Circuit has applied the "common fund" doctrine for decades. *See Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981) ("it is well settled that the 'common benefit' or 'common fund' equitable doctrine allows for the assessment of attorneys' fees against a common fund created by the attorneys' efforts"); *see also, e.g., Burford v. Cargill*, Inc., No. 05-0283, 2012 U.S. Dist. LEXIS 161232, at *1-2 (W.D. La. Nov. 8, 2012).

In common fund cases such as this, courts typically use one of two methods for calculating attorneys' fees: (1) the percentage method, in which the court awards fees as a reasonable percentage of the common fund; or (2) the lodestar method, in which the court computes fees by multiplying the number hour hours reasonably expended on the litigation by a reasonable hourly

rate and, in its discretion, applying an upward or downward multiplier." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012).

While either method may be utilized, "[t]he percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund "in a manner that rewards counsel for success and penalizes it for failure." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (quoting *In re Prudential Ins. Co.*, 148 F.3d 283, 333 (3d Cir. 1998)). Indeed, numerous courts and commentators[2] have stated that the "percentage method is vastly superior to the lodestar method for a variety of reasons, including an incentive to 'run up the bill' and the heavy burden that calculation that the lodestar method places upon the court." *Schwartz v. TXU Corp.*, 2005 U.S. Dist. LEXIS 27077 (N.D. Tex. Nov. 8, 2005).

Under the percentage-of-recovery method, the Court first determines the benchmark percentage to be applied to the actual monetary value conferred to class members by the settlement. *Burford v. Cargill, Inc.*, No. 05- 0283, 2012 U.S. Dist. LEXIS 161232, at *1-2 (W.D. La. Nov. 8, 2012). After setting the benchmark, the Court then applies the *Johnson* factors to evaluate a settlement's requested fee's "reasonableness" of the percentage and to determine whether an adjustment is warranted. *Id.* These factors include: (i) the work required to reach settlement; (ii) the "novelty and difficulty of the issues;" (iii) the skill required to litigate the case; (iv) whether the attorney was precluded from working on other cases; (v) the "customary fee" for services; (vi)

[2] *See* Report of Third Circuit Task Force: Court Awarded Attorney Fees, 108 F.R.D. 237, 246-49 (1986) (identifying a number of deficiencies with the lodestar method, including: (1) increasing the workload of the judicial system; (2) lack of objectivity; (3) a sense of mathematical precision unwarranted in terms of the realities of the practice of law; (4) ease of manipulation by judges who prefer to calculate the fees in terms of percentages of the settlement fund; (5) encouraging duplicative and unjustified work; (6) discouraging early settlement; (7) not providing judges with enough flexibility to award or deter lawyers so that desirable objectives, such as early settlement, will be fostered; (8) providing relatively less monetary reward to the public interest bar; and (9) confusion and unpredictability in administration).

whether the fee is fixed or contingent; (vii) the time limits imposed by the client or circumstances; (viii) the amount at stake and the results; (ix) the attorneys' experience and reputation; (x) whether the case was "undesirable;" (xi) counsel's relationship with their client; and (xii) awards in "similar cases." See *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974).

ARGUMENT

A. The Court Should Approve Plaintiff's Request for Reasonable Fees and Costs

Plaintiff requests "reasonable" fees considering the value the Settlement delivers to the Class. In fact, given the risks of class action litigation in general, and data privacy litigation specifically, the Settlement Class may not have recovered the relief realized even if Plaintiff had tried the case. But through settlement, Class Counsel was able to achieve significant monetary relief as well as credit monitoring.

District courts in the Fifth Circuit routinely have awarded percentages of one-third. *See Celeste v. Intrusion Inc.*, No. 4:21-CV-307-SDJ, 2022 U.S. Dist. LEXIS 226841, at *35-36 (E.D. Tex. Dec. 16, 2022); *Marcus v. J.C. Penney Co. Inc.*, No. 6:13-CV-736, 2017 U.S. Dist. LEXIS 214427, 2017 WL 6590976, at *6 (E.D. Tex. Dec. 18, 2017) ("It is not unusual for attorneys' fees awarded under the percentage method to range between 25% to 30% of the [settlement] fund or more."). That percentage is appropriate here.

Plaintiff's request for one-third of the Settlement Fund, or$163,333, as attorney fees is reasonable and supported by case law in Texas federal courts and in courts in data breach cases around the country. *Schwartz*, 2005 U.S. Dist. LEXIS at *25 ("The vast majority of Texas federal courts and courts in this District have awarded fees of 25%–33% in [] class actions... "Indeed, courts throughout this Circuit regularly award fees of […] 30% or more of the total recovery under the percentage-of-the recovery method.") (collecting cases). This does not even incorporate the

value that credit monitoring provides, a benefit courts recognize as "substantial" when approving fees.[3] *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *4 (N.D. Ga. Aug. 23, 2016) (recognizing that credit monitoring "confers a substantial benefit"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 319 (N.D. Cal. 2018) (noting that credit monitoring was the settlement's "main form of relief" when awarding attorney fees). Thus, Plaintiff's fee request is well-within (and, in fact, significantly below) the range of percentage fees awarded in this Circuit in comparable cases. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 U.S. Dist. LEXIS 69143, at *34 (N.D. Tex. Apr. 25, 2018) (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("[B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards . . . attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions. Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Kemp v. Unum Life Ins. Co. of Am.*, 2015 U.S. Dist. LEXIS 166164, at *23 (E.D. La. Dec. 11, 2015) ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010) (approving 30% fee as within range of reasonableness and noting that "[i]f the request is relatively close to the average awards in cases with similar characteristics, the court may feel a degree of confidence in approving the award"). Thus, counsel's fee request qualifies under the percentage method.

[3] The credit monitoring benefit provided by the Settlement would cost approximately $9/month at retail and is thus worth approximately $26.4 million. (Settlement Class members can enroll in a year of monitoring- *see* https://www.idx.us/privacy-identity-protection/consumer-plans).

i. Plaintiff's fee request satisfies the Johnson factors

Counsel's request is "reasonable" under the *Johnson* factors.[4] First, counsel devoted "significant time and effort pursuing this case," including by investigating the data incident, detailing Plaintiff's claims in the complaint, preparing this case for litigation, engaging in informal discovery in preparation of arms'-length negotiations to ensure Class Counsel had sufficient facts and information to make an informed decision about resolution, reviewing "confirmatory" discovery, drafting the Settlement Agreement and exhibits, preparing and submitting the Motion for Preliminary Approval (which was ultimately granted), and implementing the parties' settlement by working with Defendant and the settlement administrator to effectuate notice. Borrelli Dec. ¶ 6. And although the case settled before conducting formal discovery, Class Counsel's efforts maximized the Agreement's value by redirecting resources from litigation to settlement.

Second, the "novelty and difficulty of the issues" at stake warrant awarding counsel's fee request. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019) ("[D]ata breach litigation is complex and largely undeveloped."); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 23, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare."). Indeed, "many [data breach cases] have been dismissed at the pleading stage." *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at *36 (N.D. Cal. Sep. 12, 2011). Data privacy class actions are still new and can present novel and complex issues, making a successful outcome difficult to predict. Borrelli Dec. ¶ 18. Further, a successful outcome could only ensue, if at all,

[4] Because not all factors apply, counsel evaluates only those that do.

after prolonged and arduous litigation with an attendant risk of drawn-out appeals. *Id.* Among national consumer protection class action litigation, data privacy cases are some of the most complex and involve a rapidly evolving area of law. *Id.* As such, these cases are particularly risky for plaintiffs' attorneys. *Id.* Class Counsel took on this case and zealously advocated on behalf of Settlement Class in spite of the risks and challenges posed and devoted a substantial amount of time and money to the prosecution of this case, which ultimately resulted in a Settlement this is highly beneficial to the Class, weighing in favor of awarding the requested fee.

Third, Plaintiff would not have settled this case without Class Counsel's skill and aptitude, qualities they detail by declaration. *See* Borrelli Fee Dec., Exs. C and D. Counsel exemplifies this factor where they "performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution." *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010) (citing *DiGiacomo v. Plains All Am. Pipeline*, 2001 U.S. Dist. LEXIS 25532, at *36 (S.D. Tex. Dec. 18, 2001)). As detailed above, data privacy cases are "novel and complex," and no two incidents are the same. To settle Plaintiff's claims, Class Counsel evaluated the class's makeup, the number of individuals impacted in the incident, and the information it exposed—all to address the harm the incident may cause. Borrelli Fee Dec. ¶ 9. Were it not for counsel's experience in this area, Plaintiff would not have settled on the terms she did at the time he did. Indeed, this factor overlaps with the factor considering their attorneys' "experience and reputation," both attributes that contributed to resolving this case at this stage. For these reasons, Class Counsel satisfies the third and ninth *Johnson* factors.

Fourth, counsel took this case on "contingency," risking that they may recover no fees at all. Even so, they committed to litigating this case through discovery, which would have included

hiring experts, moving to certify the class, and trying the case—all without knowing whether they would even recover those costs. Borrelli Fee Dec. ¶ 23. So too at settlement. Counsel agreed to settle this matter without tying their representation to whether the Court approves their fee request, meaning they ensured the Class would recover the Agreement's benefits no matter how the Court rules on this petition. As a result, Class Counsel has satisfied this factor.

Fifth, the amount at stake and the results realized warrant Plaintiff's fee request. Almost "all class actions involve a high level of risk, expense, and complexity[.]" *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023). And this is not only a "complex" case—"it lies within an especially risky field of litigation: data breach." *Id*. This is why courts favor settling data privacy cases, as "proceeding through the litigation process[…] is unlikely to produce the plaintiffs' desired results." *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 U.S. Dist. LEXIS 87409, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010). For that reason, these cases are not always "desirable" given the risk that counsel will recover nothing. Even so, counsel accepted the risk that comes with litigating a case in this area—and attained significant relief for the Class, as detailed above. As a result, the Court should find counsel satisfies the eighth and tenth *Johnson* factors.

And sixth, the fee requested tracks with data privacy settlements across the country. For example, the district court in *Fox v. Iowa Health Sys.* approved a settlement with around the same benefits achieved here, but with ten times the requested fees. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *12 (W.D. Wis. Mar. 4, 2021). In *Fox*, the district court awarded $1.575 million in fees for a settlement that entitled members to claim up to $1,000 for lost money and time, and up to $6,000 when responding to "actual identity theft," one year for credit monitoring, and "improved security measures" from defendant. *Id*. And

like the Agreement here, the *Fox* settlement did "not cap the total amount of monetary benefits available to the Class, meaning that all Class members who submit valid claims will be reimbursed for the full amount of their expenses up to the stated limits[.]" *Id*. When approving the settlement, the Court described it as "particularly adequate given the costs, risks, and delay of trial and appeal." *Id*. So too here. And despite attaining the benefits relief as the members in *Fox* received, counsel's fee request here is under 6% what the court awarded in *Fox*. *See also Schwartz*, *v. TXU Corp.*,3:02-cv-2243, 2005 U.S. Dist. LEXIS 28453, at *14 (N.D. Tex. Nov. 8, 2005) ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method") (compiling cases); *Erica P. John*, 2018 U.S. Dist. LEXIS 69143, at *34 (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range."); *Shaw*, 91 F. Supp. 2d at 972 ("attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions"); *Kemp*, 2015 U.S. Dist. LEXIS 166164 at *23 ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Rodriguez v. Stage 3 Separation, LLC*, No. 14-cv-00603-RP, 2015 U.S. Dist. LEXIS 186251 at *15 (W.D. Tex. Dec. 23, 2015) (finding that a 30% benchmark fee is common in the Fifth Circuit); *Klein*, 705 F. Supp. 2d at 675 (approving 30% fee); *Al's Pals Pet Care v. Woodforest Nat'l Bank*, No. 17-cv-3852, 2019 U.S. Dist. LEXIS 17652 (S.D. Tex. Jan. 30, 2019) (awarding 33% fee). Counsel's request is fee request is "reasonable" and the Court should approve it.

ii. A Lodestar Crosscheck Confirms the Reasonableness of the Fees

In addition to applying the percentage approach to determine attorneys' fees in common fund cases like this one, courts in this Circuit sometimes apply the optional lodestar method as a rough cross-check to confirm that the fee determined under the percentage approach is reasonable.

See Burford v. Cargill, Inc., No. 05-0283, 2012 U.S. Dist. LEXIS 161232 at *6 n.1 (W.D. La. Nov. 8, 2012). The lodestar multiplier is calculated by dividing the attorneys' fees that class counsel seeks by class counsel's lodestar. Id. In performing an optional lodestar cross-check analysis, a district court may rely on summaries submitted by the attorneys and need not review actual billing records. *See Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 867 (E.D. La. 2007) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean counting. For example, a court performing a lodestar cross-check need not scrutinize each time entry; reliance on representations by class counsel as to total hours may be sufficient").

Here, the cumulative number of hours expended by Plaintiff's Counsel is 117.9 hours, and the resulting lodestar for the services performed is $75,627.50. Borrelli Fee Dec. at ¶29. The requested fee of $163,333.33 equates to a multiplier of approximately 2.16. This modest multiplier is comparable to or less than those typically awarded by this and other courts. Indeed, multipliers of 1 to 4 are "typically approved by courts within [the Fifth] circuit." *Burford*, 2012 U.S. Dist. LEXIS 161232, at *6 n.1; *Di Giacomo v. Plains All Am. Pipeline*, No. Civ.A. H-99-4137, 2001 U.S. Dist. LEXIS 25532 at *11 (S.D. Tex. Dec. 19, 2001) (stating same and approving 5.3 multiplier).

The lodestar cross check demonstrates that the requested fees are plainly reasonable.

B. The Court Should Approve Plaintiff's Reasonable Litigation Costs

Class Counsel requests the reimbursement of $18,668.33in modest expenses reasonably and necessarily incurred while prosecuting this case. These expenses are largely attributable to the Plaintiff's portion of the mediation fee. Borrelli Fee Dec., ¶ 32. In addition to being entitled to reasonable attorneys' fees, class counsel are also entitled to reasonable litigation expenses. *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1089 (S.D. Tex. 2012). These expenses represent

filing fees and service costs, and were incurred with no guarantee of recovery, Class Counsel had a strong incentive to keep them at a reasonable level and did so. Consequently, Plaintiff's Counsel respectfully requests the Court approve the expense reimbursement request to be paid by Defendant pursuant to the terms of the Agreement. *See Faircloth v. Certified Fin. Inc.*, No. Civ. A. 99-3097, 2001 WL 527489, at *9, 12 (E.D. La. May 16, 2001).

C. The Court Should Approve Plaintiff's Service Award

Last, Plaintiff requests a service award of $5,000, which is "fair and reasonable." *Lee v. Metrocare Servs.*, Civil Action No. 3:13-cv-2349-O, 2015 U.S. Dist. LEXIS 194001, at *9 (N.D. Tex. July 1, 2015). Courts use differing factors when approving service awards, but they all consider the "risk" accepted by the representative, whether they protected the class, how they benefited from the settlement, and their effort. *Id*. (explaining five- and three-factor tests). Awarding a plaintiff for serving as a representative encourages them to participate in the action despite the work and risks involved. *Id*. For that reason, courts find that $5,000 awards are reasonable and proportional to the time and effort class representatives devote to the matter. *McCumber v. Invitation Homes, Inc*., No. 3:21-cv-02194-B, 2024 U.S. Dist. LEXIS 166868, at *11 (N.D. Tex. July 30, 2024).

The Court should approve Plaintiff's request for a service award of $5,000. Plaintiff assisted in preparing the complaint by providing facts and documents regarding her allegations related to the data incident. *See* Declaration of Amanda Fitton. Plaintiff remained in contact with counsel after filing their action regarding the progress of the case. *Id*. Plaintiff was available throughout the settlement process to answer questions and represent the interests of the Settlement Class. *Id*. She was prepared to take on the responsibilities of a class representative, including being deposed and testifying at trial. *Id*. Counsel could not have pursued this case without the facts she

provided. A $5,000 service award recognizes these efforts and tracks with services awards in other data incident cases. As a result, the Court should approve it.

CONCLUSION

For the reasons above, Plaintiff requests that the Court grant her Motion to approve attorneys' fees, costs, and Plaintiff's service award.

Dated: October 30, 2024

Respectfully Submitted,

By: */s/ Raina C. Borrelli*

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CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that on October 30, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, below, via the ECF system.

DATED this 30th day of October, 2024.

STRAUSS BORRELLI PLLC

By: */s/ Raina C. Borrelli*

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