

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

In re Great Expressions Data Security
Incident Litigation

Case No.: 2:23-cv-11185-JJCG-CI

Hon. Jonathan J.C. Grey

**REPRESENTATIVE PLAINTIFFS' MOTION FOR
SERVICE AWARD, ATTORNEY'S FEES, AND EXPENSES**

Representative Plaintiffs¹ Vanessa Brito, Crystal Coffey, Jacqueline Williams, Aprill Denson, as next friend of C.D., a minor, and James Patterson (“Representative Plaintiffs” or “RPs”), on behalf of themselves and all others similarly situated, requests that the Court award them each a service award of \$2,500.00, attorney’s fees of \$900,000.00, and expenses of \$25,000.00. The requested attorney’s fees are 33.33% of the \$2,700,000.00 Settlement Fund and RPs’ expenses were reasonably incurred and are of the type routinely approved.

RPs request the Court enter the order proposed by RPs awarding the requested service award, attorney’s fees, and expenses. This motion is supported by the Brief contained herein. The Parties have conferred, and Defendants do not take a position on the relief requested herein.

¹ Defined terms are as defined in the Settlement Agreement (ECF No. 33-1).

Dated: September 20, 2024

Respectfully Submitted,

/s/ Patrick A. Barthle, II

Patrick A. Barthle II
Florida Bar No. 99286
pbarthle@ForThePeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 229-4023
Facsimile: (813) 222-4708

Joseph M. Lyon
THE LYON FIRM
2754 Erie Avenue
Cincinnati, OH 45208
Tel: (513) 381-2333
Fax: (513) 766-9011
Email: jlyon@thelyonfirm.com

Class Counsel

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Case No.: 2:23-cv-11185-JJCG-CI

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**REPRESENTATIVE PLAINTIFFS' BRIEF IN SUPPORT OF MOTION
FOR SERVICE AWARD, ATTORNEY'S FEES, AND EXPENSES**

Concise statement of the issues presented

1. Whether the Court should award Representative Plaintiffs the requested service award.
2. Whether the Court should award Representative Plaintiffs the requested attorney's fees.
3. Whether the Court should award Representative Plaintiffs the requested expenses.

Controlling or most appropriate authority for the relief sought

Authority supporting that the Court should award the requested service award

In re Fam. Dollar Stores, Inc., Pest Infestation Litig., No. 2:22-MD-3032-SHL-TMP, 2024 WL 2000059 (W.D. Tenn. May 6, 2024)

Jackson v. Nationwide Ret. Sols., Inc., No. 2:22-CV-3499, 2024 WL 958726 (S.D. Ohio Mar. 5, 2024)

Authority supporting that the Court should apply the percentage-of-the-fund method

In Re Flint Water Cases, 63 F.4th 486, 495 (6th Cir. 2023)

Ramey v. Cincinnati Enquirer, Inc., 508 F.2d 1188 (6th Cir. 1974)

Authority supporting that the Court should award the requested attorney's fees

Thomsen v. Morley Companies, Inc., No. 1:22-CV-10271, 2023 WL 3437802 (E.D. Mich. May 12, 2023) (Ludington, J.) (final approval order)

Garner Properties & Mgmt., LLC v. City of Inkster, No. 17-CV-13960, 2020 WL 4726938 (E.D. Mich. Aug. 14, 2020) (Borman, J.)

Authority supporting that the Court should award the requested expenses

Plagens v. Deckard, No. 1:20-CV-2744, 2024 WL 2080662 (N.D. Ohio May 9, 2024)

I. INTRODUCTION

Following the exchange of informal discovery, and a full day of in person mediation, the Parties² reached a settlement to resolve claims arising from a Data Security Incident Defendants announced in May 2023. The settlement creates a non-reversionary common fund of \$2,700,000.00 for the benefit of approximately 1,945,788 individuals, including (i) reimbursement for Ordinary Out-of-Pocket Losses and Ordinary Attested Time for SSN Subclass Members; (ii) reimbursement for Extraordinary Losses for SSN Subclass Members; (iii) Cash Payments for SSN Subclass Members; and (iv) reimbursement for Attested Time for Non-SSN Subclass Members. Subject to Court approval, the Settlement Fund will also pay for a notice and administration program, service award payments to RPs, and attorneys' fees and expenses. Defendants also commit to pay for, implement, and continue certain data-security practices.

The settlement is a favorable result for the Settlement Class, securing valuable benefits tailored to the facts of the case. RPs thus move for an order awarding service awards, attorney's fees, and expenses. In support of their motion, RPs submit the

² The parties to the settlement are the employee and patient Settlement Class Representatives, on behalf of the proposed Settlement Class, and Defendants ADG, LLC d/b/a Great Expressions Dental Centers ("ADG") and Great Expressions Dental Centers, P.C. ("GEDC") (collectively, "Defendants"). Capitalized terms used in this Brief have the same meaning as in the Settlement Agreement ("S.A."), previously filed at ECF No. 33-1.

declaration of co-Class Counsel Patrick A. Barthle, Esq. (“Barthle Decl.”) (Ex. 1 hereto).

II. FACTUAL BACKGROUND

A. Overview of the Litigation

Between February 17 and February 22, 2023, Defendants experienced a Data Security Incident that impacted some of their IT systems. Defendants’ investigation of the Data Security Incident determined that the Threat Actor potentially accessed certain records containing personal information pertaining to current and former employees and patients of Defendants’ customers/licensees, including (1) for employees: names, Social Security numbers, driver’s license numbers, passport numbers, and/or bank account and routing number and (2) for patients, in various combinations: patient names, dates of birth, contact information, mailing addresses, Social Security numbers, driver’s license numbers, financial account information, credit or debit card numbers, diagnosis and treatment information, medical and dental history, dental examination information, charting information, treatment plans, x-ray images, dates of service, provider names, GEDC office of treatment, billing records, costs of services, prescription information and/or health insurance information. On or around May 12, 2023, Defendants announced the Data Security Incident.

On May 18, 2023, RP Brito filed a Class Action Complaint in this Court. RPs

Coffey, Denson, and Williams subsequently filed cases that were consolidated with RP Brito's case. On August 28, 2023, RPs filed a consolidated Class Action Complaint. On October 9, 2023, Defendants moved to Dismiss the Complaint. Prior to the Court ruling on the motion to dismiss, the Parties agreed to mediate their dispute and jointly requested a stay of the case pending mediation. On May 15, 2024, the Parties stipulated to the addition of RP Patterson as a plaintiff in this action and RPs filed their First Amended Consolidated Complaint ("the Complaint").

On March 21, 2024, the Parties participated in an in-person mediation session in Palm Beach, Florida, which was facilitated by an experienced mediator, Bennett G. Picker. After a full day of settlement negotiations, and upon the Parties' acceptance of the mediator's recommendation as to the monetary amount of the settlement, the Parties reached an agreement in principle.

B. ARGUMENT

1. The Court Should Award the Requested Service Awards.³

"The Sixth Circuit has not defined the circumstances where service awards to class representatives are justified." *In re Fam. Dollar Stores, Inc., Pest Infestation Litig.*, No. 2:22-MD-3032-SHL-TMP, 2024 WL 2000059, at *7 (W.D. Tenn. May 6, 2024) (citing *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 787 (N.D.

³ The Settlement Agreement provides that "[t]he Claims Administrator shall, from the Settlement Fund, pay any service awards approved by the Court." *Id.*

Ohio 2010)). “However, district courts in this Circuit have considered three factors when considering these requests: (1) actions taken by Class Representatives to protect the interests of Class members and others and whether these actions resulted in substantial benefit to Class members; (2) whether the Class Representatives assumed substantial direct and indirect financial risk; and (3) the amount of time and effort spent by the Class Representatives in pursuing the litigation.” *Id.* (citing *Robles v. Comtrak Logistics, Inc.*, 2022 WL 17672639, at *12 (W.D. Tenn. Dec. 14, 2022)).

As recently as March 2024, another court in the Sixth Circuit approved a \$5,000 service award in a data breach case. *See Jackson v. Nationwide Ret. Sols., Inc.*, No. 2:22-CV-3499, 2024 WL 958726, at *7 (S.D. Ohio Mar. 5, 2024). Outside the data breach context, several courts within the Sixth Circuit have approved service awards in this or higher amounts. *See, e.g., In re Fam. Dollar Stores*, 2024 WL 2000059, at *7 (awarding \$5,000 or \$2,000 service awards to class representatives based on their level of involvement in the case and noting that they “helped to initiate the case,” “risked retaliation for their participation,” and “spent considerable time pursuing the litigation”); *Carr v. Guardian Healthcare Holdings, Inc.*, No. 2:20-CV-6292, 2022 WL 501206, at *8 (S.D. Ohio Jan. 19, 2022) (approving \$10,000 service awards in wage and hour action); *Satterly v. Airstream, Inc.*, No. 3:19-CV-107, 2020 WL 6536342, at *9 (S.D. Ohio Sept. 25, 2020) (approving service awards of \$15,000, \$12,500, \$10,000, and \$2,500 in wage and hour action); *Ware v. CKF*

Enterprises, Inc., No. CV 5:19-183-DCR, 2020 WL 2441415, at *17 (E.D. Ky. May 12, 2020) (approving \$5,000 service awards).

Here, as explained below, RPs' filing of this action and agreement to act as a class representatives resulted in substantial benefits to Settlement Class Members. Without RPs' willingness to bring this action, these claimants may have received nothing. Finally, RPs spent time reviewing and approving the complaint and the settlement agreement. Barthle Decl. ¶ 2. Given these considerations, a service award of \$2,500 is appropriate.

2. The Court Should Apply the Percentage-of-the-Fund Method and Award the Requested Attorney's Fees.

a. The Court Should Apply the Percentage-of-the-Fund Method.

“Courts employ two methods for calculating attorneys' fees and for evaluating the reasonableness of those fees: the percentage-of-the-fund method and the lodestar method.” *In Re Flint Water Cases*, 63 F.4th 486, 495 (6th Cir. 2023) (citing *Van Horn v. Nationwide Prop. and Cas. Ins. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011)). “The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.” *Id.* (quoting *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)). “Courts have discretion ‘to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in

general, and the unique circumstances of the actual cases before them.” *Id.* (quoting *Rawlings*, 9 F.3d at 516). “And given the respective benefits and drawbacks of the percentage-of-the-fund and lodestar methods, courts often select one method and use the other as a cross-check.” *Id.* (citing *Van Horn*, 436 F. App'x at 500–01).

“In selecting a method, and in evaluating the overall reasonableness of the fee, courts also rely on the six ‘*Ramey* factors.’” *Id.* (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974)). “Those factors include:”

- 1) the value of the benefit rendered to the [settling parties],
- 2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others,
- 3) whether the services were undertaken on a contingent fee basis,
- 4) the value of the services on an hourly basis,
- 5) the complexity of the litigation, and
- 6) the professional skill and standing of counsel involved on both sides.

Id. (citing *Ramey*, 508 F.2d at 1196).

i. The value of the benefit rendered to the Settlement Class.

The \$2.7 million “common fund” settlement obtained for RP and Settlement Class Members is a satisfactory result for a data breach settlement, particularly considering the facts at play here and a cyberattack case with no statutory damages at issue. These considerations weigh in favor of applying the percentage-of-the-fund method. *See Friske v. Bonnier Corp.*, No. 16-12799, 2019 WL 5265324, at *2 (E.D. Mich. Oct. 17, 2019) (Lawson, J.) (“The percentage of the fund method is appropriate here for evaluating the reasonableness of the attorney fee since the result

achieved for the class in terms of the cash payments to be made from the fund was substantial, and class counsel undertook the representation on a contingent fee basis and advanced significant labor and expenses to litigate the case.”); *accord Allen v. Silverback Moving Inc.*, No. 2:20-CV-03132, 2021 WL 4839248, at *5 (S.D. Ohio Jan. 19, 2021).

Specifically, the vast majority of the Settlement Class, the “Non-SSN Subclass,” containing approximately 1,902,862 individuals whose Social Security numbers were *not* potentially involved in the Data Security Incident, (S.A. ¶ 1.14), had significant challenges in demonstrating compensable damages for purposes of their claims on a class wide basis. Yet, the Settlement provides real, reasonable, and substantial relief for these individuals in the form of payment for time spent remedying issues related to the Data Security Incident, by submitting a claim for up to two hours of time spent at a rate of \$20 per hour via an attestation and a brief description. S.A. ¶ 2.7.

Meanwhile, the “SSN Subclass,” which contains approximately 42,926 individuals whose Social Security numbers *were* potentially accessed or acquired during the Data Security Incident (S.A. ¶ 1.32); and thus have stronger class wide damages and claims, are eligible to receive (1) up to \$500 per individual for Ordinary Out-of-Pocket Losses and Ordinary Attested Time, S.A. ¶ 2.2; (2) up to \$5,000 for Extraordinary Losses and Attested Time related to identity theft, fraud, or other

extraordinary losses, S.A. ¶ 2.3; and (3) in addition to, or in the alternative to, making Claims for Ordinary and/or Extraordinary Losses, SSN Subclass Members may elect to receive a cash payment of up to \$500 on a claims-made basis (subject to an aggregate cap), S.A. ¶ 2.6.

Rather than facing additional litigation that would be complex, costly, and likely continue for several years with no guarantee of relief, the Settlement provides real benefits and real relief to the Settlement Class, thus weighing in favor of applying the percentage-of-the-fund method.

ii. Society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others.

Unfortunately, data breaches are reported on an almost daily basis. *See, e.g.*, Office of the Maine Attorney General – Data Breach Notifications;⁴ U.S. Dep't of Health and Human Servs., Breach Portal.⁵ They can affect hundreds, or millions, of individuals. Typically, the more individuals that are impacted, the more class action cases that are filed as the size of the class can be a major factor in the size of a settlement. Accordingly, it is not unusual to see a dozen cases filed even where only 100,000 individuals or less are involved, and scores of cases where millions of consumers are at issue.

⁴ Available at <https://apps.web.maine.gov/online/aeviewer/ME/40/list.shtml>

⁵ Available at https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

The Data Security Incident at issue here, however, spurred the filing in this District of only four cases initially, *see* (ECF No. 11), and a fifth following dismissal briefing, *see* (ECF No. 29). That paucity of cases, despite a nearly two-million-person class, is not accidental. Rather, here, the issues litigated in Defendants' motion to dismiss confirm that this case was difficult, the outcome highly uncertain, and that substantial time, effort, and skill were required to achieve the present result. This uncertainty as to *any* potential recovery—much less the substantial recovery achieved in the Settlement—likely contributed to the scarcity of other case filings.

Importantly, if impacted individuals in data breach cases are to have their rights protected, it requires incentivizing competent class action counsel to invest the time and resources necessary to secure a settlement or potentially take a case to trial, especially in cases like this one with challenging facts and a large class. Rewarding Class Counsel in this action would not only do that but also demonstrate the value in fighting a motion to dismiss where appropriate and striving to obtain a better result for class members than what might be available at an earlier stage of litigation. Put another way, to not reward Class Counsel for their efforts in this action might discourage pursuit of cases like this one in the first instance, or, at minimum encourage other counsel to settle similar cases sooner (or on far less favorable terms) for fear that the additional time, resources, and risk associated with litigating a motion to dismiss and beyond might go unrewarded.

Cases like this one are often resolved on a basis that does not involve a common fund. Such settlement structures generally do not provide nearly the same level of actual relief to class members as a common fund structure does. Class Counsel here litigated and negotiated zealously in order to obtain a significant common fund settlement. Recognition of this superior settlement structure, and the skill necessary to achieve it here, serves the public interest going forward.

iii. Whether the services were undertaken on a contingent fee basis.

Class counsel's services were undertaken on a completely contingent fee basis. Barthle Decl. ¶ 3. Absent recovery, like the Settlement, Class Counsel would receive nothing for their time, effort, and expenses in this case. *Id.* This weighs in favor of applying the percentage-of-the-fund method. *See Friske v. Bonnier Corp.*, No. 16-12799, 2019 WL 5265324, at *2 (E.D. Mich. Oct. 17, 2019) (“The percentage of the fund method is appropriate here for evaluating the reasonableness of the attorney fee since the result achieved for the class in terms of the cash payments to be made from the fund was substantial, and class counsel undertook the representation on a contingent fee basis and advanced significant labor and expenses to litigate the case.”).

iv. The value of the services on an hourly basis.

The value of the services on an hourly basis is sometimes analyzed as a “lodestar cross-check” where the percentage-of-the-fund method is applied.

However, the Sixth Circuit has made clear that the lodestar cross-check is not mandatory, but instead optional. *In re Flint Water Cases*, 63 F.4th at 499 (“[T]he district court was not required to conduct a lodestar cross-check.”) (citing *Linneman v. Vita-Mix Corp.*, 970 F.3d 621, 628 (6th Cir. 2020) (“O]ur court has repeatedly said that district courts are not required to conduct a crosscheck in every case.”)).

And District Courts throughout the Sixth Circuit have recognized that the lodestar cross-check is “optional.” *See, e.g., In re Flint Water Cases*, 583 F. Supp. 3d 911 (E.D. Mich. 2022), *dismissed*, No. 22-1187, 2022 WL 18960956 (6th Cir. Sept. 14, 2022) (Levy, J.) (noting the “optional nature of the cross-check”); *Est. of Benjamin v. DJGN LLC*, No. 1:22-CV-166, 2023 WL 7536973, at *7 (S.D. Ohio Nov. 13, 2023) (“Conducting a lodestar cross-check is optional.”) (Black, J.); *Blasi v. United Debt Servs., LLC*, No. 2:14-CV-83, 2019 WL 6050963, at *9 n.2 (S.D. Ohio Nov. 15, 2019) (Morrison, J.) (“Performing the lodestar cross-check is optional. The Court deems that analysis unnecessary here.”).

RPs respectfully submit that a lodestar crosscheck is not necessary in this action given the quality of the result obtained for the class. *See, e.g., Thomsen v. Morley Companies, Inc.*, No. 1:22-CV-10271, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (Ludington, J.) (final approval order) (awarding fees in data breach class action case without discussion of lodestar). Nonetheless, should the Court nonetheless wish to perform the cross-check, Class Counsel will promptly furnish

the necessary information for the Court's consideration.

v. The complexity of the litigation.

Data breach litigation is inherently complex. It not only raises highly technical questions about data security practices and procedures and methods behind cyberattacks, but also often confronts the rapidly evolving state of the law on Article III standing and typically requires evaluating whether alleged damages, which may not easily classify as injuries to person or property, are cognizable under state law.

Here, the parties litigated such issues in their arguments to the Court regarding Defendants' motion to dismiss. (ECF Nos. 17, 23, and 25). Among other things, the parties disputed:

- Which states' laws applied to each of RPs' claims
- Whether RPs alleged cognizable injuries to sustain their negligence claims
- Whether RPs stated claims for breach of implied contract, including the existence of implied contracts and cognizable injuries
- Whether RPs stated a claim for declaratory judgment
- Whether RPs have standing to seek an injunction

The parties' submissions make clear that the issues presented were complex, weighing in favor of applying the percentage-of-the-fund method.

vi. The professional skill and standing of counsel involved

on both sides.

The professional skill and standing of counsel involved on both sides also weighs in favor of applying the percentage-of-the-fund method.

Patrick A. Barthle

Mr. Barthle is the second-longest tenured attorney in the Class Action Department of Morgan & Morgan. Morgan & Morgan is the largest plaintiff-oriented, contingency-only law firm in the country, with over 800 lawyers throughout the United States. Its depth of skill as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country. Morgan & Morgan has demonstrated its willingness to zealously advocate for clients in data breach class actions by, among other things, pursuing and successfully obtaining class certification over the defendant's objection, *see In re: Brinker Data Incident Litig.*, No. 3:18-cv-00686 (M.D. Fla.), and successfully appealing the dismissal of cases for lack of standing or failure to state a claim, *see, e.g., Sheffler v. Americold Realty Trust*, No. 1:21-cv-1075-TCB (N.D. Ga.); *Ramirez v. The Paradises Shops, LLC*, No. 1:21-cv-03758 (N.D. Ga.); and *Bohnak v. Marsh & McLennan Cos., Inc.*, No. 1:21-cv-06096 (S.D.N.Y.).

Mr. Barthle has deep substantive experience in data breach cases such as this one. He has deposed multiple C-suite-level executives in these types of cases, prepared and examined expert witnesses, as well as briefed and argued motions for

class certification and summary judgment in any number of data breach cases. For example, in *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 16-md-2752, (N.D. Cal.), a data breach class action involving approximately 3 billion Yahoo user accounts, Mr. Barthle was deeply involved in discovery, including with the depositions of multiple Chief Information Security Officers (“CISO”) and other cybersecurity related witness, including the Chief Information Officer (“CIO”); as well as assisting with the reports, and defending the depositions, of Plaintiffs’ cybersecurity and identity theft experts. Likewise, in the *In re Capital One Customer Data Security Breach Litigation*, Case No.: 1:19-md-2915 (E.D. Va.) case, Mr. Barthle was heavily involved in all aspects of discovery including drafting and arguing myriad motions to compel and the taking of various depositions, including multiple corporate representative witnesses for both Capital One and Amazon Web Services, as well as arguing and briefing summary judgment and class certification.

That experience is buoyed by Mr. Barthle’s involvement in most of the highest profile data breach cases in the country, including substantive roles in cases such as, amongst others: *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (data breach involving 40 million payment cards); *In re Office of Pers. Mgmt. Data Breach*, No. 1:15-mc-01394-ABJ (D.D.C.) (data breach involving millions of federal employees); *Adkins. v. Facebook, Inc.*,

No. C 18-05982 WHA (JSC) (N.D. Cal.) (data breach involving millions of Facebook users); and *In re Equifax, Inc. Customer Data Sec. Breach Litigation*, 1:17-md-02800 (N.D. Ga.) (data breach involving in excess of 140 million individuals).

Mr. Barthle has been appointed as Co-Lead Counsel in multiple pending data breach class actions, including *Hernandez et al. v. Advance America, Cash Advance Centers, Inc. et al*, Case No. 7:23-cv-4256 (D. S.C.), *In re Great Expressions Data Security Incident Litigation*, Case No. 2:23-cv-11185 (E.D. Mich.); *Trottier et al. v. Sysco Corp.*, Case No. 4:23-cv-01818 (S.D. Tex.); and *Thomas et al. v. Citi Trends, Inc.*, Case No. 4:23-cv-00175 (S.D. Ga.).

Mr. Barthle has also been appointed as Settlement Class Counsel in a number of data privacy related cases, including:

- *Torres v. Wendy's Int'l., LLC*, No. 6:16-cv-210 (M.D. Fla.) (final approval granted), a payment card data breach case;
- *Morrow v. Quest*, No.: 2:17-cv-0948(CCC)(JBC) (D.N.J.) (Final Approval entered), a healthcare data breach case involving the loss of private health information (PHI); and
- *Abdelmessih v. Five Below Inc.*, Case No. 2:19-cv-01487 (E.D. Pa.) (Final Approval entered), a payment card data breach case.

Apart from data privacy cases, Mr. Barthle has been appointed as Class

Counsel in other consumer class action cases, including in *Swaney v. Regions*, Case No. 2:13-cv-00544-JHE (N.D. Ala.) (TCPA class action, Final Approval entered), *Peterson v. Apria Healthcare Group, Inc.*, Case No. 6:19-cv-00856 (M.D. Fla.) (TCPA class action, Final Approval entered), and *Guidry v. Penn Credit*, Case No.: 6:19-cv-1936-Orl41LRH (M.D. Fla.) (TCPA class action, Final Approval entered); and in *Richards et al. v. Chime Financial, Inc., et al.*, Case No. 4:19-cv-06864 (N.D. Cal.), a case involving a payment disruption for certain payment card users.

Mr. Barthle is also no stranger to contested class certifications, having certified nationwide and multi-state classes in cases such as *Still v. Selene Finance, LP*, Case No. CJ-2013-51 (Okla. Dist. Ct, Nowata County) (multi-state certified class action concerning property inspections fees related to HUD-backed mortgages); and *Nolen et al. v. Fairshare Vacation Owners Association*, Case No. 6:20-cv-330-PGB-EJK (M.D. Fla.) (nationwide class certified concerning alleged breaches of fiduciary duties involving a Wyndham timeshare program).

Prior to his class action legal practice, Mr. Barthle attended the University of Florida where he was admitted to the Honors Program and graduated, *cum laude*, with a double major in History and Criminology. Thereafter he attended Washington and Lee University School of Law, graduating *summa cum laude*, where he was a Lead Articles Editor for the Washington & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L

Law Families student organization. Mr. Barthle’s practice began at Greenberg Traurig, LLP, where he was involved in complex civil, commercial, and environmental litigation. Thereafter, he served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Following his clerkship, Mr. Barthle joined Morgan & Morgan’s Complex Litigation Group, where, as explained above, he has been litigating—almost exclusively—class action cases for several years.

Mr. Barthle has been recognized as a Florida Super Lawyers Rising Star on multiple occasions and as an attorney “on the Rise” by the Daily Business Review, at its Florida Legal Awards for 2024.

Joseph M. Lyon

Joseph M. Lyon is the founder of The Lyon Firm, ALC, a Cincinnati, Ohio based law firm representing individuals nationwide in class actions and complex product liability matters. The Firm also maintains offices in St. Louis, Missouri and Irvine, California. Mr. Lyon is licensed in Ohio, California, and Kentucky, as well as numerous federal district courts.

Mr. Lyon brings significant and substantive experience in complex litigation and privacy class actions. Over the past twenty years, Mr. Lyon has represented thousands of individuals and participated in over thirty-eight (38) MDLs and state consolidated mass tort matters, engaging in both case specific and general liability

case development and working alongside many of the leading plaintiff firms. See, e.g., MDL 1748 In Re: Testosterone Replacement Therapy Products Liab. Litig. (discovery committee and bellwether trial support); MDL 2327 In Re: Ethicon, Inc. Pelvic Repair Systems Product Liab. Litig. (discovery committee).

Over the past four years, Mr. Lyon has dedicated significant time and resources toward helping consumers in privacy litigation, including data breach and pixel tracking class actions. Mr. Lyon has been actively involved in over one hundred (100) data privacy class actions and has been routinely appointed to leadership positions in federal and state court class actions, including co-lead and steering committee leadership roles in cases involving millions of class members. *See, e.g., Migliacio v Parker Hannifin Corp.*, Case No. 1:22-cv-00835 (N.D. OH) (Appointed Co-Lead Settlement Class Counsel in data breach impacting over 100,000 current and former employees; Final Approval Granted); *Tucker v Marietta Area Health Care, Inc.*, No 2-22-cv-00184 (S.D. Ohio) (Appointed Settlement Co-Lead Class Counsel in healthcare data breach impacting over 200,000 patients; Final Approval Granted); *Forslund v. R.R. Donnelly*, Case No. 1:22-cv-04260 (N.D. Ill.) (Appointed Settlement Co-Lead Class Counsel in data breach action impacting over 80,000 individuals; Final Approval Granted); *Henderson v Reventics, LLC*, Case No. 1:23-cv-00586 (D. Colo) (Appointed Co-Lead Class Counsel in data breach impacting over 4 million consumers); *In Re NCB Management Services, Inc. Data*

Breach Litig., Case No. 2:23-cv-01236 (E.D. PA) (Appointed Co-Lead Class Counsel in data breach impacting over 1 million consumers); *In re Houser LLP Data Breach Litig.*, Case No. 8:24-cv-00468 (C.D. Cal.) (Appointed Co-Lead Class Counsel in data breach impacting over 300,000 consumers); *In re Navvis & Co., LLC Data Breach Litig.*, Case No. 4:24-cv-00029 (E.D. Mo.) (Appointed Co-Lead Class Counsel in data breach impacting over 450,000 individuals). *See, also, e.g., Miller v Next Gen Healthcare, Inc.*, Case No. 1:23-cv-02043 (N.D. GA) (Appointed to Executive Committee in data breach impacting over 1 million consumers); *Baker v Park Mobile, LLC*, Case No: 1:21-cv-2182 (N.D. GA) (Appointed to Executive Committee in data breach action impacting over 20 million consumers).

Some additional recent prominent cases include: *Owens v. US Radiology Specialist, Inc.*, Case No. 22 CVS 17797, Mecklenburg County, N.C. (\$5.05 million common fund for data breach impacting 1.3 million consumers; Final Approval Granted); *In Re Advocate Aurora Pixel Litig.*, 22-cv-1253, E.D. WI (\$12 million common fund settlement related to the hospitals use of tracking technology installed on the hospital's web properties that was transmitting patient health information to Facebook and Google; final approval); *See also Allen et al. v. Novant Health, Inc.*, 1:22-cv-00697, M.D. of N.C. (\$6.66 million common fund settlement arising from tracking technologies on hospital web properties; Final Approval Granted).

b. The Court Should Award the Requested Attorney’s Fees.⁶

Assuming the Court applies the percentage-of-the-fund method, the requested 33.33% of the Settlement Fund is reasonable and “within the range of percentage fees that have been approved in complex class actions.” *Nolan v. Detroit Edison Co.*, No. 18-13359, 2022 WL 16743866, at *6 (E.D. Mich. Nov. 7, 2022) (Lawson, J.).

Under the percentage-of-the-fund method, “requests for one-third of the common fund are typically approved.” *Green v. FCA US LLC*, No. 20-13079, 2022 WL 3153777, at *3 (E.D. Mich. Aug. 8, 2022) (Steeh, J.) (citing *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 2019 WL 4746744, at *6 (E.D. Mich. Sept. 30, 2019), *aff’d*, 833 Fed. Appx. 430 (6th Cir. 2021)); *see also Pratt v. KSE Sportsman Media, Inc.*, No. 1:21-CV-11404, 2023 WL 5500832, at *7 (E.D. Mich. Aug. 25, 2023) (Ludington, J.) (finding limit of 35% of settlement fund “adequate” in non-cyberattack data privacy class action) (citing *Garner Properties & Mgmt., LLC v. City of Inkster*, No. 17-CV-13960, 2020 WL 4726938, at *10 (E.D. Mich. Aug. 14, 2020) (Borman, J.)).

Accordingly, RPs request that the Court award attorney’s fees in the amount of 33.33% of the Settlement Fund, or \$900,000.00.

⁶ The Settlement Agreement provides that “[t]he Claims Administrator shall, from the Settlement Fund, pay any attorney’s fee ... award approved by the Court.” *Id.*

3. The Court Should Award the Requested Expenses.⁷

RPs request an award of \$25,000.00 in expenses, comprised of RPs' share of the mediator's fees (\$9,750.00), costs associated with traveling for the in-person mediation (\$7,805.09), fees for RPs' dark web expert (\$3,500.00), PACER and Court fees (\$1,123.70), fees for service of process (\$344.70), and anticipated costs of travel for the final approval hearing (at least \$1,800.00), all of which were or will be reasonably and necessarily incurred in the prosecution and settlement of this action. Barthle Decl. ¶ 4.

“Generally, class counsel is entitled to reimbursement of all reasonable and necessary expenses incurred in the prosecution and settlement of the claims.” *Plagens v. Deckard*, No. 1:20-CV-2744, 2024 WL 2080662, at *10-11 (N.D. Ohio May 9, 2024) (awarding \$82,181.50 in litigation expenses, including mediation fees and document and research fees) (citing *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003)); *Treviso v. Nat'l Football Museum, Inc.*, No. 5:17-CV-00472-CAB, 2024 WL 753560 (N.D. Ohio Feb. 12, 2024), *report and recommendation adopted*, No. 5:17CV00472, 2024 WL 724530 (N.D. Ohio Feb. 22, 2024) (“Under the common fund doctrine, class counsel are generally entitled to reimbursement of all reasonable necessary expenses, including class-notice costs,

⁷ The Settlement Agreement provides that “[t]he Claims Administrator shall, from the Settlement Fund, pay any ... expenses award approved by the Court.” *Id.*

incurred in the prosecution and settlement of claims.”) (collecting cases).

Accordingly, RPs request reimbursement of their \$25,000.00 in costs and expenses.

III. CONCLUSION

Despite Class Counsel’s deep belief in the sanctity of their cause and the viability of their claims, this case was far from a slam dunk. While one would typically expect dozens of case filings for a data breach matter involving nearly two million people, here, only five such cases were filed in this District. That is not mere happenstance. Rather, the facts and the law at issue here made this case particularly challenging. Nonetheless, with the assistance and involvement of RPs, Class Counsel were able to achieve a \$2.7 million common fund settlement. Such an outcome, under the circumstances presented, should be commended and appropriately rewarded. Accordingly, for the reasons stated above, RPs respectfully request that the Court award them each a service award of \$2,500.00, attorney’s fees of \$900,000.00, and expenses of \$25,000.00.

Dated: September 20, 2024

Respectfully Submitted,

/s/ Patrick A. Barthle, II

Patrick A. Barthle II

Florida Bar No. 99286

pbarthle@ForThePeople.com

MORGAN & MORGAN

COMPLEX LITIGATION GROUP

201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 229-4023
Facsimile: (813) 222-4708

Joseph M. Lyon
THE LYON FIRM
2754 Erie Avenue
Cincinnati, OH 45208
Tel: (513) 381-2333
Fax: (513) 766-9011
Email: jlyon@thelyonfirm.com

Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Patrick A. Barthle

Patrick A. Barthle

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

In re Great Expressions Data Security
Incident Litigation

Case No.: 2:23-cv-11185-JJCG-CI

Hon. Jonathan J.C. Grey

**DECLARATION OF CO-CLASS COUNSEL PATRICK A. BARTHLE,
ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR SERVICE AWARD,
ATTORNEY'S FEES, AND EXPENSES**

I, Patrick A. Barthle, Esq., hereby declare as follows:

1. On July 2, 2024, the Court appointed me as co-Class Counsel for settlement purposes only. (ECF No. 34, PageID.563).

2. I am informed that Representative Plaintiffs reviewed and approved the complaint filed in this action and the Settlement Agreement submitted to the Court for approval (ECF No. 33-1).

3. The services of both co-Class Counsel were undertaken on a completely contingency fee basis. Absent recovery, like the Settlement, Class Counsel would receive nothing for their time, effort, and expenses in this case.

4. Plaintiffs and their counsel reasonably and necessarily incurred the following expenses in the prosecution and settlement of this action:

- a. \$9,750.00 in mediation fees;

- b. \$7,805.09 in travel costs;
- c. \$3,500.00 in costs for Representative Plaintiffs' dark web expert;
- d. \$1,123.70 in PACER and Court fees;
- e. \$344.70 in fees for service of process; and
- f. An estimated minimum of \$1,800.00 in costs of travel for the final approval hearing.

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

Executed on September 20, 2024.

/s/ Patrick A. Barthle, II
Patrick A. Barthle II
Florida Bar No. 99286
pbarthle@ForThePeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 229-4023
Facsimile: (813) 222-4708

Co-Class Counsel