

INDIANA COMMERCIAL COURT

STATE OF INDIANA)
)SS: IN THE MARION SUPERIOR COURT
COUNTY OF MARION) CAUSE NO. 49D01-2207-PL-024807

IN RE: GOODMAN CAMPBELL)
BRAIN AND SPINE)
DATA INCIDENT LITIGATION)

MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES, EXPENSES, AND CLASS REPRESENTATIVES’ SERVICE AWARDS

Joshua Ham, May Rebecca Hostetter, Victoria Power, Ricky Perdue, Julianne Smallwood, Karrin Spencer, Anne Elsner, Connie Goff, Rhonda Hensley-Johnson, Dylan Gill, and Brittany Gilland (“Plaintiffs or Class Representatives”), on behalf and themselves and all others similarly situated, respectfully move this Court for an Order granting Plaintiffs’ reasonable attorneys’ fees and expenses in the amount of \$610,000, and Class Representatives’ Service Awards in the amount of \$1,000 each. Defendant Goodman Campbell Brain and Spin (“GCBS” or “Defendant”) has agreed not to oppose Plaintiffs’ request for these amounts. Because the fee request and Service Awards are reasonable, the Court should grant the motion.

I. Background

This case arises from a cyberattack on Defendant’s information systems that occurred on or about May 20, 2022 (the “Data Incident”) that Plaintiffs alleged affected approximately 264,218 individuals.¹ Consolidated Class Compl. ¶ 1; Settlement Agreement, § I.² Plaintiffs allege that cybercriminals gained access to Defendant’s information systems and stole Plaintiffs’ highly

¹ Plaintiffs’ complaint originally listed about 364,000 individuals, but that number was reduced during informal discovery based on the type of data stolen and a deduplication of names. Decl. of J. Gerard Stranch, IV, ¶ 16.

² The Settlement Agreement was filed with the Court as Exhibit 1 to the Motion for Preliminary Approval. Because the Settlement Agreement has already been filed with the Court, Plaintiffs have not re-attached it here as an Exhibit.

sensitive personally identifiable information (“PII”) and protected health information (“PHI”), including medical, financial, and demographic information. *Id.* Notwithstanding that the attack occurred around May 20, 2022, Defendant did not provide notice to the affected individuals until around July 19, 2024. Class Compl. ¶ 9. To remedy the harms associated with the Data Incident, Plaintiffs filed multiple cases, all of which alleged that Defendant had failed to implement reasonable and industry standard cybersecurity safeguards, as they were legally obligated to do. Ultimately, these cases were consolidated into the instant action.

Though the Parties remain confident in their respective positions, the Parties agreed to pursue a compromise to avoid the expense and delay associated with prolonged litigation, including through motion practice, trial, and potential appeals. Settlement Agreement, § II. Moreover, the Parties understand that data breach litigation is inherently risky notwithstanding counsel’s experience and understanding of relevant case law. *Id.*

II. The Settlement Agreement

On March 12, 2024, the Parties agreed to a class-wide Settlement.³ Under the Settlement Agreement, the Class is defined as:

- (i) all persons residing in Indiana who received written notification that their Social Security Number was potentially accessed, viewed, and/or obtained as a result of the Data Incident which occurred between May 17, 2022 and May 20, 2022, and
- (ii) any Plaintiff who filed a lawsuit against GCBS related to the Data Incident prior to December 15, 2023.

Settlement Agreement, § 1.23. Excluded from the Settlement Class are:

- (i) GCBS and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their 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.

³ Defendant continues to deny any liability in this matter, notwithstanding its decision to settle. Settlement Agreement, § III.

Id.

The Settlement Agreement provides an array of benefits to Class Members. First, Class Members may submit claims to be reimbursed for ordinary out-of-pocket up to \$375 per Class Member, including unreimbursed bank fees, phone and data charges, and mileage, etc. *Id.* § 2.1.1(a). Next, Class Members can claim reimbursement for credit report costs, credit monitoring, or any other identity theft protection insurance products purchased between May 17, 2022, and the Claims Deadline, subject to the same \$375 per Class Member cap. *Id.* § 2.1.1(b). Moreover, Class Members are eligible to be paid for the time they spent dealing with the aftermath of the Data Incident, up to four hours per Class Member at twenty dollars per hour. *Id.* § 2.1.1(c). Furthermore, Class Members can claim reimbursement for extraordinary expenses up to \$5,000 per Class Member. *Id.* § 2.1.2. Class Members may also enroll in credit monitoring services for an additional two years, which includes at least \$1,000,000 in identity theft insurance. *Id.* § 2.3. Lastly, Defendant has or will implement enhanced cybersecurity measures to improve its ability to protect Class Members' information, which will be paid for separately from the other Settlement benefits. *Id.* § 2.4.⁴

In exchange for these various benefits, participating Class Members agree to release Defendant from any claims they may have related to the Data Incident. *Id.* § 6. After the Parties agreed on the terms of the above-outlined Settlement Agreement, the Parties then agreed that Defendant would not oppose Plaintiffs' request for attorneys' fees and expenses up to \$610,000. *Id.* § 7.2. Defendant furthermore agreed not to oppose Plaintiffs' request for Service Awards up to \$1,000 for each Class Representative. *Id.* § 7.3. Pursuant to these agreements, Plaintiffs now move

⁴ In addition to these benefits, the Settlement Agreement provides that Defendant will pay the cost associated with settlement administration. Settlement Agreement, ¶¶ 2.6, 3.2.

the Court to approve Class Counsel's attorneys' fees and expenses in the amount of \$610,000 and Class Representatives' Service Awards in the amount of \$1,000 for each Class Representative.

III. The Court Should Grant Class Counsel's Attorneys' Fees as Reasonable

The Court should approve Plaintiffs' fee request of \$610,000 as reasonable. It is well-settled that attorneys who obtain a settlement on behalf of a class are entitled to an award of their reasonable attorneys' fees and expenses. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Otherwise, competent attorneys would be unable to take on the very risky, difficult, and often time-consuming task of class litigation, and consumers might then be precluded from seeking legal redress because of the value of their individual claims. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (noting that class actions allow plaintiffs to pool claims that would otherwise be economically infeasible); *see also Mace v. Van Ru Credit Corp.*, 109 F.3d 338, (7th Cir. 1997) (explaining that class actions allow plaintiffs to overcome the problem that small recoveries provide no incentive to bring claims on an individual basis).

Under Indiana Rule of Trial Procedure 23(D), Indiana courts allow class counsel to recover their reasonable attorneys' fees and expenses. The Rule has been interpreted to require only that the court deem the fees and expenses reasonable. *Cnty. Care Centers, Inc. v. Indiana Fam. & Soc. Servs. Admin.*, 716 N.E.2d 519, 550 (Ind. Ct. App. 1999) ("only requirement specifically set forth in Trial Rule 23 is that the attorney's fee award be reasonable"). When, as here, class counsel successfully negotiates a settlement, class counsel is awarded attorneys' fees consistent with a reasonable percentage of the benefits made available by that settlement. *Id.* Attorneys' fees are justified where a "legal benefit" or relief is obtained for class members. *N. Ind. Pub. Serv. Co., v. Citizens Action Coalition of Ind., Inc.*, 548 N.E.2d 153, 161–62 (Ind. 1989).

In consumer class action litigation, a fee of one-third the benefit achieved for the class is typically considered reasonable because such representation is taken on a contingent basis. *See, e.g., In re Ready Mixed Concrete Litig.*, No. 1:05-cv-00979, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (explaining that one-third recovery for attorneys' fees is the market price for contingency-based legal services and awarding class counsel \$1,838,150); *Burkholder v. City of Ft. Wayne*, 750 F. Supp. 2d 990, 997 (N.D. Ind. 2010) (same); *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998) (noting that typical contingency fees are between 33% and 40%); *Harris v. Centier Bank*, No. 45D01-2101-PL-000072 (Lake Super. Ct. Jan. 28, 2022) (awarding class counsel fee of one-third (\$1,302,166) of settlement value plus \$2,695.10 in expenses); Order, *Johnson v. Elements Fin. Credit Union*, No. 49D01-2001-PL-004706 (Marion Super. Ct. Oct. 29, 2020) (awarding class counsel fee of one-third (\$275,823.64) of settlement value); Order, *Hill v. Ind. Members Credit Union*, No. 49D02-1804-PL-016174 (Marion Super. Ct. Jan. 21, 2020) (awarding class counsel fee of one-third (\$1,000,000) of settlement value); Order, *Wilmoth v. Celadon Trucking Servs., Inc.*, No. 49D01-1310-PL-036806 (Marion Super. Ct. Oct. 17, 2017) (awarding class counsel one-third (\$1,558,401.14) of settlement value); Order, *Todd v. The Nat'l Found. for Special Needs Integrity, Inc.*, No. 29D01-1702-TR-000046 (Hamilton Super. Ct. June 20, 2017) (awarding class counsel one-third fee).

In valuing the class benefit, courts determine whether the requested fees represent a reasonable percentage of the amount made available to the class, regardless of the number of class members that ultimately exercise the rights created for them by class counsel. *E.g., In re Wawa, Inc. Data Sec. Litig.*, No. 19-6019, 2024 WL 1557366, at *17 (E.D. Pa. April 9, 2024) (“Under the circumstances of this data breach class action, the Court determines that this beneficial but difficult-to-value injunctive relief weighs strongly in favor of analyzing the fee award against the

amounts made available to the class instead of the amount claimed by the class.”); *Theodore Broomfield v. Craft Brew Alliance, Inc.*, No. 17-cv-1027, 2020 WL 1972505, at *16 (N.D. Cal. Feb. 5, 2020) (explaining that the Ninth Circuit “requires courts to award class counsel fees based on the total benefits made available to class members rather than the actual amount that is ultimately claimed”); *Swaney v. Regions Bank*, No. 2:13-cv-544, 2020 WL 3064945, at *5 (N.D. Ala. June 9, 2020) (noting that class settlements are valued based on the amounts made available rather than the amounts ultimately claimed).

Additionally, because there is no evidence of collusion here, the Court should afford substantial deference the Parties negotiated fee award. *In re S. Co. Shareholder Derivative Litig.*, No. 1:17-cv-725, 2022 WL 4545614, at *9 (N.D. Ga. June 9, 2022) (“Where there is no evidence of collusion, courts accord substantial deference to fee and expense amounts determined by the parties.”); Decl. of J. Gerard Stranch, IV, ¶ 14 (noting the lack of any collusion in this case). Deference to the Parties negotiated fee award is especially strong here because Class Counsel’s fee request will be funded by Defendant without reducing the benefit to the Class. *See Glasser v. Volkswagen of Am., Inc.*, 645 F.3d 1084, 1088 (9th Cir. 2011) (finding class member did not have standing to object to fee award because class counsel’s fee request was to be paid “pursuant to a fee order that is independent of the settlement agreement and the class recovery” and was thus a “constructive fund” that did not diminish class members’ recovery).

Here, Class Counsel’s request for \$610,000 is well below the standard one-third fee award. First, the Settlement provides for a cap of \$375 per Class Member with no limit on the number of Class Members that can receive the full amount. Settlement Agreement, § 2.1.1. Moreover, Class Members may claim extraordinary expenses up to \$5,000 per Class Member, again without limitation as to the number of Class Members that can make claims. *Id.* § 2.1.2. And Class

Members may enroll in two years of one-bureau credit monitoring services with at least \$1,000,000 in identity fraud insurance. *Id.* § 2.3. Credit monitoring services typically range between \$9 and \$20 per month. *See* Jeff Kinney, *Best Identity Theft Protection Services of June 2024* (June 11, 2024), <https://www.usnews.com/360-reviews/privacy/identity-theft-protection>; Decl. of J. Gerard Stranch, IV, ¶ 6. Thus, even at the low end of that price range, consumers could expect to pay \$108 per year, and \$216 over two years. Because Class Counsel negotiated an early settlement without a cap on the number of Class Members that can make claims, this presents value made available of \$57,071,088.00. And the costs of settlement administration, which are not being borne by the Class, will not be less than \$93,677.06. *Id.* ¶ 8. These costs and expenses should be considered as benefits to the Class when valuing the Settlement. *E.g.*, *Pinon v. Daimler AG*, No. 1:18-cv-3984, 2021 WL 6285941, at *17 (N.D. Ga. Nov. 30, 2021) (including attorneys' expenses and administration costs in the calculation of the settlement benefits). Calculating the benefit made available based on credit monitoring and settlement administration costs alone results in a value of \$57,164,765.06.

Moreover, this value does not include the ordinary and extraordinary expenses for which Class Members can claim reimbursement. It further does not quantify the enhancements to Defendant's cybersecurity posture that will benefit all Class Members in a nonmonetary but tangible way. And because Class Counsel paid for \$20,222.75 in litigation costs and expenses without seeking reimbursement from Plaintiffs, Decl. of J. Gerard Stranch, IV, ¶ 9, Class Counsel's fee request is reduced to \$589,777.25 after accounting for those expenses.

Thus, Class Counsel's fee request is significantly below the typical percentage, at just over one percent, and the Court should find that it is reasonable.

IV. The Court Should Grant Class Representatives' Service Awards as Reasonable

The Court should find that Class Representatives' Service Awards are reasonable. Defendant has agreed not to challenge Class Representatives' request for Service Awards up to \$1,000 each. Settlement Agreement, § 7.3 (“Subject to Court approval, GCBS has agreed not to object to a request for a service award in the amount of \$1,000 to each of the named Plaintiffs.”). These Service Awards are a standard part of class action settlements in most jurisdictions. These awards are designed “to compensate class representatives for their service to the class and simultaneously serve to incentivize them to perform this function.” William B. Rubenstein, *Newberg on Class Action*, § 17.1 (6th ed.). Based on one study, the median per class representative service award was around \$6,500. *Id.* § 17.8 (Table 1).

Here, Class Representatives have actively and fully participated in this litigation, including by assisting with Class Counsel's investigations, providing documents and other materials, reviewing documents and information, and by participating in the settlement process. Decl. of J. Gerard Stranch, IV, ¶ 11. Without these efforts, Class Counsel could not have prosecuted this action. Moreover, the requested Service Awards are reasonable in light of typical such awards in similar cases. *Beasley v. TTEC Servs. Corp.*, Nos. 22-cv-97 & 22-cv-347, 2024 WL 710411, at *7 (D. Colo. Feb. 21, 2024) (awarding \$2,500 service awards); *Hashemi v. Bosley, Inc.*, No. CV 21-946, 2022 WL 18278431, at *14 (C.D. Cal. Nov. 21, 2022) (awarding \$1,250 service awards and collecting cases that show typical service awards in data breach litigation ranging between \$2,500 and \$7,500); *Gaston v. FabFitFun, Inc.*, No. 2:20-cv-9534, 2021 WL 6496734, at *4 (C.D. Cal. Dec. 9, 2021) (awarding \$5,000 each in service awards). Thus, the Court should hold that Class Representatives' Service Awards of \$1,000 are reasonable.

V. Conclusion

For the foregoing reasons, the Court should grant Plaintiffs' motion for attorneys' fees, expenses, and Service Awards. The requests are reasonable and in line with similar class actions.

Dated: June 14, 2024

Respectfully submitted,

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I certify that the foregoing has been served upon the following counsel of record by email using the Indiana E-Filing System (IEFS) on June 14, 2024:

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