

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

IN RE FOREFRONT DATA BREACH
LITIGATION

This Document Relates to: ALL ACTIONS.

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) Master File No. 1:21-cv-00887-LA
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**PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES, COSTS, EXPENSES,
AND SERVICE AWARDS FOR CLASS REPRESENTATIVES**

Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d) and this Court’s October 3, 2022 Order granting preliminary approval of the class action Settlement¹ (ECF No. 58), Plaintiffs Judith Leitermann, Lynn Anderson, and Milan E. Kunzelmann (collectively, “Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated, hereby respectfully move this Court to approve an award of attorneys’ fees in the amount of \$1,250,000. This requested amount represents approximately 40% of the Net Settlement Fund and 33.33% of the gross Settlement Fund. Plaintiffs also respectfully move this Court for an award of reasonable and necessary litigation costs and expenses in the amount of \$13,868.76 and for reasonable Service Awards for Class Representatives in the amount of \$2,500 each (for a total of \$7,500).

In support of this Motion, Plaintiffs state and present the following:

¹ Unless otherwise indicated, the defined terms herein shall have the same definition as set forth in the Class Settlement Agreement and Release between Plaintiffs and Defendants Forefront Dermatology, S.C. and Forefront Management, LLC (“Settlement Agreement”), which was filed with this Court on September 1, 2022. *See* ECF No. 57-1.

1. The terms of the Settlement are set forth in the Settlement Agreement, at ECF No. 57-1.

2. The relief sought in this Motion is supported by: (a) Plaintiffs' Memorandum of Law ("Memorandum") in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives ("Motion for Attorneys' Fees"); (b) the Declaration of Andrew W. Ferich in Support of the Motion for Attorneys' Fees, attached as **Exhibit 1** to the Memorandum; and (c) the Declaration of Gary M. Klinger in Support of Plaintiffs' Motion for Attorneys' Fees ("Klinger Decl."), attached as **Exhibit 2** to the Memorandum.

3. Plaintiffs will submit a [Proposed] Order and Judgment Granting Final Approval of Class Action Settlement ("[Proposed] Final Order and Judgment"), covering the requested fees, costs, expenses, and Service Awards, with Plaintiffs' Motion for Final Approval of Class Action Settlement ("Motion for Final Approval") on or before February 8, 2023. *See* Klinger Decl. ¶ 43.

WHEREFORE, Plaintiffs respectfully request that the Court enter the [Proposed] Final Order and Judgment filed with Plaintiffs' Motion for Final Approval, approving Plaintiffs' requested fees in the amount of \$1,250,000, litigation costs and expenses in the amount of \$13,868.76, and Service Awards in the amount of \$2,500 per Class Representative (for a total of \$7,500).

Dated: January 3, 2023

Respectfully submitted,

/s/ Gary M. Klinger

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2023, I caused a true and correct copy of the foregoing motion to be filed with the Clerk of the Court for the Eastern District of Wisconsin via the Court's CM/ECF system, which will send notification of such filing to the counsel of record in the above-captioned matters.

/s/ Gary M. Klinger
Gary M. Klinger

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IN RE FOREFRONT DATA BREACH
LITIGATION

This Document Relates to: ALL ACTIONS.

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Master File No. 1:21-cv-00887-LA

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

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Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d), Plaintiffs Judith Leitermann, Lynn Anderson, and Milan E. Kunzelmann (collectively, “Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated, respectfully move this Court for entry of an Order (a) awarding Class Counsel’s attorneys’ fees in the amount of \$1,250,000, plus reimbursement of reasonable and necessary litigation costs and expenses in the amount of \$13,868.76; and (b) awarding Service Awards to the three Class Representatives in the amount of \$2,500 each (for a total of \$7,500), for their efforts and commitment on behalf of the Class.¹

I. INTRODUCTION

Faced with the risks inherent to data breach lawsuits, Class Counsel secured an exceptional common fund Settlement that compensates Class Members for their losses and privacy injuries, and provides extensive prospective relief which protects against future risks arising from a Ransomware Attack on Forefront’s computer network.

Specifically (and as set forth in detail in the granted motion for preliminary approval), Class Counsel was able to obtain a non-reversionary common fund of \$3,750,000 on behalf of the class. Class Members have the option of submitting a claim against the fund for two (2) years of Credit Monitoring and Insurance Services (“CMIS”), and/or a payment of up to \$10,000 for Documented Losses, and/or a payment for Lost Time of up to five hours at \$25 per hour (maximum of \$125). In the alternative to the foregoing, Class Members can elect a *pro rata* cash payment (“Cash Fund Payment”). SA ¶¶ 3.1, 3.2(a)-(d); ECF No. 57-1.

Forefront also has agreed to adopt, continue, and/or implement various data security measures for a period of no less than two years from the Effective Date of the Settlement, which

¹ Unless otherwise indicated, the defined terms herein shall have the same definition as set forth in the Class Settlement Agreement and Release between Plaintiffs and Defendants Forefront Dermatology, S.C. and Forefront Management, LLC (“Settlement Agreement”), which was filed with this Court on September 1, 2022. *See* ECF No. 57-1.

will help protect Class Members' Personal Information from future ransomware attacks. SA ¶ 2.1. The Settlement Fund, and the corrective measures Forefront is taking, and will continue to take, provide Class Members with both improved security of their Personal Information and compensation for the damages they sustained as a result of the Ransomware Attack.

These results are directly attributable to Class Counsel's zealous prosecution of Plaintiffs' claims and negotiations on behalf of the class. The Settlement is a product of an extensive investigation, prolonged arm's-length negotiations, an all-day mediation with Jill Sperber of Judicate West, follow-up negotiations with the assistance of Ms. Sperber, and a mediator's proposal. *See* Declaration of Andrew W. Ferich in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives ("Ferich Decl."), ¶¶ 9-17 (Exhibit 1 hereto); Declaration of Gary M. Klinger in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards to Class Representatives ("Klinger Decl.") ¶ 14 (Exhibit 2 hereto). Then, after coming to an agreement on the central terms of the Settlement, Class Counsel worked for weeks to finalize the Settlement Agreement, Notices, Claim Form, and other associated exhibits pertaining to preliminary approval, and confirmed the Settlement as fair, reasonable, and adequate. Ferich Decl. ¶¶ 22-27; Klinger Decl. ¶¶ 14, 19. Class Counsel also obtained competitive bids from various experienced Settlement Administrators and thereafter chose Postlethwaite & Netterville ("P&N") to act as the Settlement Administrator. Ferich Decl. ¶ 18; Klinger Decl. ¶ 15.

The Settlement represents an excellent result for the Settlement Class in this litigation and was obtained against a well-funded defense by Forefront, which was represented by a well-regarded law firm. This result is even more remarkable because, although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex. Against the backdrop of

the attendant litigation risks, it was through the skill and hard work of Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of Class Members.

As compensation for the significant, real benefits conferred upon the Settlement Class, Class Counsel respectfully move the Court for an award of attorneys' fees in the amount of \$1,250,000. Class Counsel's fee request is reasonable when considered under the applicable Seventh Circuit standards and is well within the normal range of fee awards in contingent-fee class actions in this Circuit. Moreover, Plaintiffs seek \$13,868.76 in litigation costs and expenses. These litigation costs and expenses are reasonable and were necessary to litigating this Action. Finally, Plaintiffs seek \$2,500 in Service Awards for each of the Class Representatives—for a total of \$7,500. The requested Service Awards are reasonable, as well as standard, for this type of action and in this Circuit, and should be approved.²

II. CASE SUMMARY

A. The Data Breach

From May 28, 2021 to June 4, 2021, an unauthorized actor accessed the Personal Information of approximately 2,413,552 of Forefront's patients, employees, employee beneficiaries, and other individuals on its computer network from May 28, 2021 to June 4, 2021. *See* SA ¶¶ 1-2. Personal Information may have included names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers, drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other medical or personal health information. *See* SA ¶ 1.35; ECF Nos. 35, 57-1.

² While Plaintiffs here move for attorneys' fees, costs, expenses, and service awards, they will move for final approval of the Settlement by separate motion, which will be filed prior to the Final Approval Hearing.

Forefront announced the Ransomware Attack in a Notice of Data Breach sent to individuals on June 24, 2021. ECF No. 35, ¶ 43.

B. Procedural History

The initial *Leitermann* complaint was filed on July 28, 2021. It alleged, *inter alia*, that Forefront failed to take adequate measures to protect class members' Personal Information and failed to disclose that Forefront's systems were susceptible to a cyberattack. *See* ECF No. 1. On July 29, 2021, Plaintiff Anderson filed suit against Forefront related to the Ransomware Attack. *See Anderson v. Forefront Dermatology, S.C., et al.*, No. 1:21-cv-00891. ECF No. 1. On August 17, 2021, Plaintiffs Leitermann and Anderson moved to consolidate the actions under Federal Rule of Civil Procedure 42(a), and the Court granted that motion on August 19, 2022. ECF Nos. 9, 11; Fed. R. Civ. P. 42(a). That same day, on August 19, 2021, Plaintiff Kunzelmann filed a class action complaint against Forefront. *Kunzelmann v. Forefront Dermatology SC et al*, Case No. 1:21-CV-00980. *See* ECF No. 1. Plaintiffs Leitermann, Anderson, and Kunzelmann thereafter moved to consolidate their cases³ on September 7, 2021, and the motion was granted by the Court on September 21, 2021. *See* ECF Nos. 19, 20.

On September 21, 2021, Jeanette Alonso filed a putative class action complaint against Forefront,⁴ and, on November 11, 2021, she moved to consolidate her case with the Related Actions and simultaneously moved the Court to appoint her counsel as interim lead counsel. ECF Nos. 21, 22. Plaintiffs in the Related Actions and Forefront opposed the respective motions, and the Court ordered the *Alonso* action consolidated with the instant case but denied Alonso's motion to appoint interim lead counsel. ECF Nos. 31, 33. On January 27, 2022, the Court appointed Ahdoot & Wolfson, PC and Milberg Coleman Bryson Phillips Grossman, PLLC as interim co-

³ Hereinafter, the "Related Actions."

⁴ *Alonso v. Forefront Dermatology S.C., et al*, Case No. 1:21-cv-01105. *See* ECF No. 1.

lead counsel (“Class Counsel”). ECF No. 34. Plaintiffs Leitermann, Anderson, and Kunzelmann filed the Consolidated Complaint on February 28, 2022. ECF No. 35. On May 10, 2022, Forefront filed a Motion to Dismiss. ECF No. 42; Fed. R. Civ. P. 12(b)(6).

C. History of Settlement Negotiations

During this time, the Parties continued to make meaningful progress towards a settlement and eventually agreed to explore a mediated resolution of the matter. Ferich Decl. ¶¶ 14-15; Klinger Decl. ¶ 10. Prior to mediation, Forefront produced documentation to Plaintiffs to allow for a meaningful evaluation of the claims and to better inform the parties in preparation of mediation. *See* Ferich Decl. ¶ 16; Klinger Decl. ¶ 10. In particular, Plaintiffs received and analyzed data relating to the Ransomware Attack, including information concerning the categories of individuals who received breach notification letters from Forefront, the nature of the Personal Information impacted, Forefront’s actions after it was notified of the breach, and the nature and number of Class Members impacted. Ferich Decl. ¶ 16; Klinger Decl. ¶ 13.

On June 10, 2022, the Parties attended an all-day mediation session with Jill Sperber of Judicate West. Ferich Decl. ¶ 15; Klinger Decl. ¶ 12. While the Parties were unable to resolve the matter at the June 10, 2022 mediation, they continued to engage in negotiations with the assistance of Ms. Sperber. Ferich Decl. ¶ 17; Klinger Decl. ¶ 14. After additional weeks of hard-fought negotiations, on June 28, 2022, the Parties agreed to a mediator’s proposal that set forth a settlement in principle. Ferich Decl. ¶ 17; Klinger Decl. ¶ 14. Thereafter, the Parties negotiated the various details regarding the Settlement, circulating drafts back and forth of the Settlement Agreement and its many exhibits. Ferich Decl. ¶ 17; Klinger Decl. ¶ 14. Plaintiffs also obtained competitive bids from different experienced Settlement Administrators and chose P&N to act as the Settlement Administrator. Ferich Decl. ¶ 18; Klinger Decl. ¶ 15. The Settlement Agreement was finalized and executed on August 31, 2022. Ferich Decl. ¶ 20; Klinger Decl. ¶ 17.

III. SUMMARY OF SETTLEMENT

A. The Settlement Class.

The provisionally certified Settlement Class is defined as:

All natural persons who are residents of the United States whose Personal Information was potentially compromised in the Ransomware Attack and were sent, either by U.S. Mail or e-mail, notice by Forefront that their Personal Information may have been compromised in the Ransomware Attack.

See Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), ECF No. 58 ¶ 15; SA ¶ 1.45; Fed. R. Civ. P. 23(b)(3).⁵ The Settlement Class consists of approximately 2,413,553 individuals.

B. Settlement Benefits.

Pursuant to the Settlement, Forefront established a \$3,750,000 non-reversionary Settlement Fund. Class Members have the opportunity to submit a Claim for either: (1) (a) Credit Monitoring and Insurance Services (“CMIS”) (two years of 3B credit monitoring, up to \$1,000,000 of coverage for identity theft, credit monitoring, fraud consultation, and identity theft restoration services), (b) a payment to compensate for Documented Losses,⁶ and/or (c) a payment for Lost Time;⁷ *or*, (2) *in the alternative to the foregoing*, a Cash Fund Payment. See SA ¶¶ 3.1, 3.2(a)-(d). In addition

⁵ The Settlement Class excludes: (1) the Judges presiding over the Action and members of their families; (2) Forefront, its subsidiaries, parent companies, successors, predecessors, and any entity in which Forefront or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person. SA ¶ 1.45.

⁶ “Documented Losses” are monetary losses (up to \$10,000), supported by Reasonable Documentation, for attempting to remedy that are more likely than not traceable to the Ransomware Attack, and that are not otherwise recoverable through insurance. See SA ¶¶ 1.16, 3.2(b).

⁷ “Lost Time Payments” means a Class Members’ lost time (up to five hours at \$25 per hour) resulting from efforts undertaken to prevent or mitigate fraud and identity theft following the announcement of the Ransomware Attack. SA ¶¶ 1.27, 3.2(c).

to this direct relief, all Class Members benefit from the Settlement's prospective relief which obligates Forefront to employ certain data security measures. *See id.* ¶ 2.1.

To submit a Claim, a Class Member need only submit a Claim Form prior to the Claim Deadline. *See id.* ¶¶ 3.2, 3.4 & Ex. A. Class Members may choose from the two alternative options described above (i.e., Option 1—CMIS, and/or Documented Loss Payment, and/or Lost Time Payment; *or* Option 2—the Cash Fund Payment). Class Members who submit a Claim Form for a Cash Fund Payment will not be entitled to select the CMIS, Documented Loss Payment, or Lost Time Payment benefits. *See id.* ¶ 3.2(d).

To calculate the Cash Fund Payment amount, the Settlement Administrator will first apply the Net Settlement Fund to pay for CMIS claimed by Class Members.⁸ *See id.* ¶ 3.7. If funds remain after paying for the CMIS, the Settlement Administrator will pay claims for Documented Loss Payments and Lost Time Payments. *See id.* Any remaining funds thereafter will be distributed, *pro rata*, to Class Members who made claims for the Cash Fund Payment. *See id.*

C. Prospective Relief.

In addition to the benefits described above, Forefront has agreed to implement valuable data security measures for a period of no less than two years from the Effective Date of the Settlement. *See id.* ¶ 2.1. These measures are designed to help protect Class Members' Personal Information from future ransomware attacks.

⁸ In the unlikely event the Net Settlement Fund is insufficient to cover the payment for the CMIS claimed by Class Members, the duration of the CMIS coverage will be reduced to exhaust the fund. *See SA* ¶ 3.7. The Net Settlement Fund is the amount of funds remaining in the Settlement Fund after payments of reasonable Administrative Expenses, Service Awards, attorneys' fees, costs, and expenses, taxes, if any. *See id.* ¶ 1.28.

D. Class Representative Service Awards.

The Settlement provides that Class Representatives may seek a Service Award in the amount not to exceed \$2,500 each to be paid from the Settlement Fund. *See* SA ¶ 8.1. The Parties did not discuss the payment of Service Awards to Class Representatives until after the substantive terms of the Settlement had been agreed upon.⁹ SA ¶ 8.4.

E. Attorneys' Fees, Costs, and Expenses.

The Settlement allows Class Counsel to make an application to the Court for an award of reasonable attorneys' fees, costs, and expenses (i.e., the Fee Award and Costs) to be paid from the Settlement Fund. *See* SA ¶ 9.1. The Parties did not discuss or agree to the amount to be applied for (i.e., the Settlement does not include a "clear sailing provision"). Class Counsel requests an attorneys' fee award of \$1,250,000.00. The Long Form Notice discloses this amount. *See id.* Ex. D, ¶ 13; ECF No. 57-1. The Settlement is not conditioned upon the Court's approval of an award of Class Counsel's attorneys' fees, costs, or expenses. *See* SA ¶ 9.3.

Class Counsel's fees were not guaranteed—the retainer agreements Class Counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. Klinger Decl., ¶¶ 26-27; Ferich Decl. ¶ 28. The purely contingent basis upon which Class Counsel took on the case meant that Class Counsel assumed significant risk. Klinger Decl. ¶ 26; Ferich Decl. ¶ 28. Class Counsel spent time on this matter that could have otherwise been spent on other, fee-generating matters, and shouldered the risk of

⁹ Plaintiffs' support for the Settlement as fair, reasonable, and adequate is not conditioned upon the Court's award of the requested Service Awards, and in the event the Court declines to approve, in whole or in part, the payment of the Service Awards, the remaining provisions of the Settlement Agreement shall remain in full force and effect. SA ¶ 8.3. The finality or effectiveness of the Settlement is not dependent on the Court awarding Class Representatives the Service Awards. *Id.*

expending substantial costs and time without any monetary gain in the case of adverse judgment. Klinger Decl. ¶ 29; Ferich Decl. ¶ 29.

Due to the early stage of litigation at which Plaintiffs were able to reach settlement, costs and expenses incurred by Plaintiffs are low. As of the date of this filing, Class Counsel have incurred litigation costs and expenses in the amount of \$13,868.76, which include filing and service fees, research costs, reproduction fees, telephone fees, court admission fees, CMIS expert fees, and mediation fees. Klinger Decl. ¶ 34; Ferich Decl. ¶¶ 34-35. These costs are reasonable and were necessary for the litigation. Klinger Decl. ¶ 34; Ferich Decl. ¶ 35.

IV. PRELIMINARY APPROVAL AND DISSEMINATION OF NOTICE

On October 3, 2022, this Court preliminarily approved the Settlement and ordered that the Settlement Class be given notice. *See* Preliminary Approval Order, ECF No. 58. The Court appointed Plaintiffs Judith Leitermann, Lynn Anderson, and Milan E. Kunzelmann as Class Representatives; Tina Wolfson and Andrew W. Ferich of Ahdoot & Wolfson, PC and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel; and P&N as Settlement Administrator. *Id.* ¶¶ 18, 19, 32. The Court also approved the forms of notice, which state the amount of fees that would be requested, the fact that litigation costs and expenses would be requested, and the amount of service awards that would be requested, as well as approved the plan for disseminating notice to the Settlement Class. *Id.* ¶¶ 22-24. On November 7, 2022, Court-approved notice was sent to the Settlement Class, and Class Members have until January 24, 2023, to file requests for exclusion and objections, if any. *Id.* ¶ 48. Notice will be reported on more extensively in Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion for Final Approval").

As of December 13, 2022, P&N reports that, out of the approximately 2,416,078 individuals who were sent Notice on November 7, 2022 via first class U.S. mail and/or email, 85

individuals have submitted requests for exclusion from the Settlement (meaning only 0.0035% of the Settlement Class has requested exclusion from the Settlement). Klinger Decl. ¶¶ 36-37. (The claims period ends February 8, 2023. *Id.* ¶ 40.) As of December 13, 2022, P&N is not aware of any objections that have been filed with the Court, and P&N has not received any objections in this case.¹⁰ *Id.* ¶ 38. Also, as of the date of the filing, Class Counsel has not received any objections to the Settlement Agreement in general or to the proposed attorneys' fees, costs, or expenses (the amount of which was made known to the Settlement Class via the Court-approved Notice) in particular. *Id.* ¶ 39.

In the Preliminary Approval Order, the Court set the Final Approval Hearing for March 1, 2023 and ordered that the instant motion be heard at that hearing. *See* ECF No. 58. Plaintiffs will submit a declaration from P&N detailing the notice and claims administration with their Motion for Final Approval prior to that hearing. *Id.* ¶ 42.

V. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE, APPROPRIATE, AND SHOULD BE GRANTED

Plaintiffs request that the Court approve attorneys' fees of \$1,250,000, costs and expenses of \$13,868.76, and \$2,500 Service Awards for each of the three Class Representatives (for a total of \$7,500). As explained below, the requested fee award is in line with the market rate for similar attorney services in this Circuit and fairly reflects the results achieved in this Settlement. Similarly, the requested Service Awards are routinely awarded in this Circuit and should be approved.

A. The Percentage of the Fund Method is the Appropriate Method For Calculating Attorneys' Fees in this Case

Rule 23(h) provides that “[i]n a certified class action, the court may award reasonable attorney’s fees . . . that are authorized by law or by the parties' agreement.” Fed. R. Civ. P. 23(h).

¹⁰ The Settlement Agreement provides that Class Members should file objections with the Court. *See* SA ¶ 6.9.

In the Seventh Circuit, courts determine class action attorneys' fees by "[d]oing their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) [hereinafter, "*Synthroid I*"] (collecting cases). "At the time" is at the start of the case: the Court must "estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed)." *Id.* "The best time to determine this rate is the beginning of the case, not the end (when hindsight alters of the perception of the suit's riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets." *Id.* As part of this inquiry, "the judge must assess the value of the settlement to the class and the reasonableness of the agreed-upon attorneys' fees for class counsel," the central consideration being what class counsel achieved for members of the class. *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 235 (N.D. Ill. 2016) (quoting *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014)).

Courts have discretion to determine the "market rate" based on either a lodestar or percentage of the fund method. *See Leung v. XPO Logistics*, 326 F.R.D. 185, 204 (N.D. Ill. 2018); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011); *see also Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998) ("[W]e have never ordered the district judge to ensure that the lodestar result mimics that of the percentage approach."); *Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014) ("[T]he choice of methods is discretionary . . . in our circuit, it is legally correct for a district court to choose either."¹¹)

¹¹ A lodestar cross-check is not required in the Seventh Circuit. *See Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) ("[C]onsideration of a lodestar check is not an issue of required methodology."); *In re Dairy Farmers of Am., Inc.*, 80 F.Supp.3d 838, 849 (N.D.

“Although . . . [the] Court has discretion to use ‘either a percentage of the fund or lodestar methodology,’ the ‘percentage method is employed by the vast majority of courts in the Seventh Circuit.” *T.K. Through Leshore v. Bytedance Tech. Co., Ltd.*, Case No. 19-CV-7915, 2022 WL 888943, at *24 (N.D. Ill. Mar. 25, 2022) (quoting *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *10 (S.D. Ill. Sept. 16, 2018)); *Chambers v. Together Credit Union*, Case No. 19-CV-00842-SPM, 2021 WL 1948452, at *1 (S.D. Ill. May 14, 2021) (same); *T.K. Through Leshore v. Bytedance Tech. Co., Ltd.*, Case No. 19-CV-7915, 2022 WL 888943, at *24 (N.D. Ill. Mar. 25, 2022), *appeal docketed*, *T.K., et al. v. Bytedance Tech. Co., Ltd., et al.* (7th Cir. Apr. 25, 2022) (same); *Beesley v. Int’l Paper Co.*, No: 3:06-cv-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (“When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis.”).

Moreover, the approach favored for consumer class actions in the Seventh Circuit is to compute attorneys’ fees as a percentage of the fund conferred upon the class: “there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration.” *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *see also In re Cap. One TCPA Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (finding percentage-of-the-fund to be the “normal practice in consumer class actions” and the “most efficient” and “most likely to yield an accurate approximation of the market rate”). Courts have explained that “[t]he percentage method is bereft of largely judgmental and time-wasting computations of lodestars and

Ill. 2015) (“A district court is under no obligation to cross check the requested fees against the lodestar.”); *Bell v. Pension Comm. of Ath Holding Co. LLC*, 2019 U.S. Dist. LEXIS 150302 at *14 (S.D. Ind. Sep. 4, 2019) (noting that the use of the lodestar cross-check in the Seventh Circuit “is no longer recommended”) (citing *In re Synthroid Marketing Litig.*, 325 F.3d 974, 979-80 (7th Cir. 2003)); *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 829 (7th Cir. 2018) (A lodestar analysis can (but is not required to be) used as a crosscheck on the common fund method of awarding attorneys’ fees.”)).

multipliers.” *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 170 (S.D.N.Y. 1989); *see also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (easier to establish market based contingency fee percentages than to “hassle over every item or category of hours and expense and what multiple to fix and so forth,”); *Gaskill v. Gordon*, 942 F. Supp. 382, 386 (N.D. Ill. 1996) (percentage-of-fund method “provides a more effective way of determining whether the hours expended were reasonable”), *aff’d*, 160 F.3d 361 (7th Cir. 1998). Courts have also explained that the percentage of the fund method can be just as effective as the lodestar method at determining a reasonable fee since both methods require the court to “consider the circumstances of the case.” *Id.* at 386 (citing *Donovan v. Robbins*, 588 F. Supp. 1268, 1272 (N.D. Ill. 1984)).

Here, the Settlement creates a non-reversionary Settlement Fund of \$3,750,000 for the benefit of the Settlement Class due to the efforts of Class Counsel, and, for the reasons stated above, the percentage of the fund method is the appropriate method for calculating attorneys’ fees in this consumer privacy case. *See, e.g., Leung*, 326 F.R.D. at 199 (using percentage of the fund method where Settlement Fund created in consumer TCPA class action); *Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 795 (7th Cir. 2018) (same).

B. The Requested Attorneys’ Fee Award is Reasonable and Appropriate

“In assessing the reasonableness of an attorney fee award for a class action settlement, district courts should ‘do their best to award counsel the market price for legal services, in light of the risk of non-payment and the normal rate of compensation in the market at the time.’” *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007) (quoting *Synthroid I*, 264 F.3d at 718)). Relevant factors include the quality of the attorneys’ performance, the amount of work necessary to resolve the litigation, and the stakes of the case, and the complexity, length, and expense of the litigation. *See id.* at 693; *Synthroid I*, 264 F.3d at 721; *Isby v. Bayh*, 75 F.3d 1191, 1198-99 (7th Cir. 1996).

1. The Requested Fee is Well Within the Range of Typical Contingency Fee Arrangements in this Circuit.

The “actual fee contracts that were negotiated for private litigation” are relevant considerations to a fee request. *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (citing *Synthroid I*, 264 F.3d at 719); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) (requiring weight be given to the judgment of the parties and their counsel where the fees were agreed to through arm’s length negotiations after the parties agreed on the other key deal terms). “Where, as here, the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the market rate.” *Chambers*, Case No. 19-CV-00842-SPM, 2021 WL 1948452, at *1 (quoting *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) (emphasis in original)).

Class Counsel’s fee request for \$1,250,000 is reasonable and consistent with market rates and with Seventh Circuit precedent. The Seventh Circuit has held:

When a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund, in recognition of the fact that most suits for damages in this country are handled on the plaintiff’s side on a contingent-fee basis. The typical contingent fee is **between 33 and 40 percent**.

Gaskill v. Gordon, 160 F.3d 361, 362 (7th Cir. 1998) (emphasis added) (upholding the award of 38 percent of a \$20 million settlement). Indeed, District Courts within the Seventh Circuit “regularly award percentages of 33.33% or higher to counsel in class action litigation.” *Hale*, No. 12-0660-DRH, 2018 WL 6606079, at *10; *Kirchoff*, 786 F.2d at 323 (finding 40% to be “the customary fee in tort litigation”); *Retsky Fam. Ltd. P’ship v. Price Waterhouse, LLP*, No. 97-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (customary contingent fee is “between 33 1/3% and 40%”); *Behrens v. Landmark Credit Union*, No. 17-cv-101-jdp, 2018 U.S. Dist. LEXIS 106358 at *16 (W.D. Wis. June 26, 2018) (“And generally, a 33 to 40 percent contingency fee is

considered consistent with the market rate and reasonable.”); *Birchmeier*, 896 F.3d at 795 (affirming fee award in TCPA class action that included, *inter alia*, “the sum of 36% of the first \$10 million”); *In re Cap. One TCPA Litig.*, 80 F. Supp. 3d at 781 (same); *see also Martin v. Caterpillar Inc.*, No. 07-CV- 1009, 2010 U.S. Dist. LEXIS 145111, 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010) (“[C]ourts in the Seventh Circuit award attorney fees ‘equal to approximately one-third or more of the recovery.’ . . . The Seventh Circuit itself has specifically noted that ‘the typical contingent fee is between 33 and 40 percent.’”) (citation omitted)); *Taubenfeld*, 415 F.3d at 600 (noting table of 13 cases in the Northern District of Illinois submitted by class counsel showing fees awarded ranged from 30% to 39% of the settlement fund).¹²

The fees contemplated under Class Counsel’s representation agreements for cases in this District and elsewhere generally fall within the one-third (33.33%) to 40% range. Klinger Decl. ¶ 46; Ferich Decl. ¶ 65. Here, Class Counsel’s fee request of one-third of the Settlement Fund, or roughly 40% of the Net Settlement Fund, is in the range of Class Counsel’s representation agreements and reflects the amount Class Counsel would have received had they negotiated their fee *ex ante*. This factor weighs in favor of Class Counsel’s fee request.

¹² After taking into account deductions for Administrative Expenses, which include the costs of Notice and settlement administration through completion of the Settlement estimated to be \$682,346.32, litigation costs and expenses amounting to \$13,868.76, and Service Awards of \$2,500 to each of the three Class Representatives amounting to \$7,500, the Net Settlement Fund amounts to \$3,046,284.92. Klinger Decl. ¶¶ 44-45. Class Counsel’s fee request of \$1,250,000 equates to 33.33% of the gross Settlement Fund. It represents roughly 40% of the Net Settlement Fund (\$1,241,596.82), which is consistent with the market rate in the Seventh Circuit. *See, e.g., Karpilovsky v. All Web Leads, Inc.*, No. 2017-cv-01307 (N.D. Ill. Aug. 8, 2019), ECF No. 173 (approving fees amounting to 35% of the entire settlement fund, which amounted to approximately 38% of the net settlement fund); *see also Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014). Klinger Decl. ¶ 46; Ferich Decl. ¶ 65.

2. The Requested Fees Reflect the Fees Awarded in Other Similar Settlements.

“As the Seventh Circuit has held, attorney’s fee awards in analogous class action settlements shed light on the market rate for legal services in similar cases.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (citation omitted). Class Counsel’s request for fees is reasonable compared to similar cases. In fact, awards of more than 35% of a settlement fund are commonplace in similar privacy cases in the Seventh Circuit. *See, e.g., Birchmeier*, 896 F.3d at 795 (affirming award in TCPA class action that included, *inter alia*, “the sum of 36% of the first \$10 million”); *In re Cap. One TCPA Litig.*, 80 F. Supp. 3d at 781 (same); *Karpilovksy*, No. 2017-cv-01307, ECF No. 173 (approving 35% of the settlement fund); *see generally Taubenfeld*, 415 F.3d at 600 (noting table of 13 cases in the Northern District of Illinois submitted by class counsel showing fees awarded ranged from 30% to 39% of the settlement fund). Consequently, the requested fees of 40% of the Net Settlement Fund, or 33.33% of the gross Settlement Fund, falls well within the range of fee awards approved as reasonable in similar cases in this Circuit.

3. Class Counsel Assumed the Risk of Non-Payment.

Courts emphasize the severity of the financial risk class counsel assumed in taking on a class action when determining the reasonableness of a fee request. *In re Dairy Farmers of Am., Inc.*, 80 F.Supp.3d at 847; *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 746 (7th Cir. 2011) (“[I]f the market-determined fee for a sure winner were \$1 million the market determined fee for handling a similar suit with only a 50% chance of a favorable outcome should be \$2 million.”). “Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.” *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (citing *Kirchoff*, 786 F.2d 320). Thus, the risk of non-payment is a key consideration in assessing the reasonableness

of a requested fee and must be incorporated into any ultimate fee award. *See Sutton*, 504 F.3d at 694 (finding abuse of discretion where lower court, in applying percentage-of-the-fund approach, refused to account for the risk of loss on basis that “class actions rarely go to trial and that they all settle[,]” noting that “there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit[;] . . . [b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated”).

The reasonableness of Class Counsel’s requested fees is underscored by the numerous risks of non-recovery to Plaintiffs (and thus non-payment to Class Counsel) that existed at the outset of the litigation. Class Counsel agreed to take on these risks knowing full well that their efforts may not bear fruit. Fees were not guaranteed—the retainer agreements Class Counsel have with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. Klinger Decl. ¶ 26; Ferich Decl. ¶ 28. Class Counsel and their firms labored and advanced their own funds to prosecute the case at the risk of never being paid for their work or reimbursed for their costs and expenses. Class Counsel devoted their time and resources to this matter, instead of pursuing other income, at the risk of never getting paid and, at best, being paid at some point potentially many years down the road. Had Forefront prevailed on the merits, on class certification, or on appeal, Class Counsel might have recovered nothing for the time and expense they invested in this litigation.

This case involved complexities of data breaches that are novel and evolving. While Plaintiffs were confident that their claims would prevail, they faced several strong legal defenses. Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving

law, data breach cases like this one face substantial hurdles—even just to make it past the pleading stage.¹³ *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). As one federal district court recently observed:

Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and complex.”).

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (approving attorneys’ fees and costs in the amount of \$1,575,000).

Plaintiffs also faced the risks of obtaining and maintaining class status throughout trial. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (denying class certification in data breach class action). Moreover, they would have had difficulties in demonstrating causation and damages. *See, e.g., Southern Independent Bank v. Fred’s, Inc.*, No. 2:15-CV-799-WKW, 2019 WL 1179396, at *8 (M.D. Ala. Mar. 13, 2019) (holding under *Daubert* motion that causation was not met for class certification purposes in data security breach case); *In re TJX Cos. Sec. Breach Litig.*, 246 F.R.D. 389, 398 (D. Mass. Nov. 29, 2007) (“[T]he need for individualized damages decisions does not ordinarily defeat predominance where there are . . . disputed common issues as to liability.”) (quoting *Tardiff v. Knox Co.*, 365 F.3d 1, 6 (1st Cir. 2004)). Continued litigation also would have required formal discovery, depositions, expert reports, maintaining class certification throughout trial, and summary

¹³ Had this case not settled, Plaintiffs would have had to face their first hurdle: responding to attempting to defeat Forefront’s Motion to Dismiss Plaintiffs’ Consolidated Class Action Complaint, which was filed on May 10, 2022. *See* ECF No. 42; Fed. R. Civ. P. 12(b)(6).

judgment, as well as possible appeals (interlocutory and/or after the merits), which would require additional rounds of briefing and the possibility of no recovery at all.

Although this matter presented numerous risks of non-recovery to the Class and non-payment to Class Counsel at the outset, Class Counsel confronted those risks head on and ultimately achieved an excellent result for the Settlement Class. Accordingly, this factor weighs heavily in favor of approval of Class Counsel's fee request.

4. The Quality of Counsel's Performance and Work Invested Support the Requested Fee Award.

The quality of Class Counsel's performance and time invested through informal discovery and adversarial negotiations to achieve a Settlement worth millions of dollars for the benefit of the Settlement Class further supports the requested fee award. *See Sutton*, 504 F.3d at 693. The Settlement is a fair, reasonable, and adequate remedy for Class Members when compared to the facts and law at issue in this matter. In addition to accepting considerable risk in litigating this action, Class Counsel committed their time and resources to this case without any guarantee of compensation, whatsoever, only achieving the Settlement after substantial negotiations. Ferich Decl. ¶¶ 28-32; Klinger Decl. ¶¶ 27. Prior to filing the Complaint, Class Counsel expended considerable hours in preparing a pre-suit investigation into the claims. Ferich Decl. ¶ 9; Klinger Decl. ¶ 4. They prepared for and participated in an all-day mediation and follow-up negotiations with the assistance of Jill Sperber of Judicate West, and spent weeks negotiating, drafting, and finalizing the preliminary settlement approval papers. Ferich Decl. ¶¶ 15-17; Klinger Decl. ¶¶ 12-14. After the Court preliminarily approved the Settlement, Class Counsel continued to work with the Settlement Administrator to supervise dissemination of Notice to the Class and to monitor the Claims process. Klinger Decl. ¶ 25; Ferich Decl. ¶ 25. These efforts resulted in a Settlement with significant benefits to and protections for the Settlement Class that they would not otherwise have.

Specifically, Class Counsel successfully negotiated a \$3,750,000 non-reversionary Settlement Fund on behalf of the Settlement Class. Class Members have the opportunity to submit a Claim for either: (a) CMIS (two years of 3B credit monitoring, up to \$1,000,000 of coverage for identity theft, credit monitoring, fraud consultation, and identity theft restoration services), (b) a payment to compensate for Documented Losses, and/or (c) a payment for Lost Time, *or* (d) ***in the alternative to the foregoing***, (d) a Cash Fund Payment. SA ¶¶ 3.1, 3.2(a)-(d). In addition to this direct relief, all Class Members benefit from the Settlement’s prospective relief which obligates Forefront to employ certain data security measures. *Id.* ¶ 2.1.

The Settlement provides real benefits that will be available to Class Members in the very near future, rather than years from now. This is a further enhancement to the value of the Settlement to the Class Members. *See Donovan v. Est. of Frank E. Fitzsimmons*, 778 F.2d 298, 309 n.3 (7th Cir. 1985) (recognizing that at a prime interest rate of 12.5 percent of a \$2 million settlement sum today is worth the same as a \$3.6 million recovery five years from now).

Class Counsel are highly experienced in litigating consumer class actions, including privacy cases. Ferich Decl. ¶ 58; Klinger Decl. ¶ 2. And because they were proceeding on a contingent fee basis, Class Counsel “had a strong incentive to keep expenses at a reasonable level[.]” *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Given the strength of the Settlement obtained for the Settlement Class and the lengthy, adversarial nature of the settlement negotiations, Class Counsel submit that their experience and the quality and amount of work invested for the benefit of the Settlement Class support the requested fee.

5. The Complexity, Length, and Expense of the Litigation.

Data breach class action lawsuits are complex, risky, and expensive to litigate. *See generally Synthroid I*, 264 F.3d at 721 (noting that market rate depends “in part on the amount of

work necessary to resolve the litigation”)); *Isby*, 75 F.3d at 1198-99 (listing “an assessment of the likely complexity, length and expense of the litigation” as factors that determine the reasonableness of a fee award)). As stated above, Class Counsel were aware that pursuing this case without a settlement would be lengthy and expensive. Plaintiffs would have to make it past several hurdles to achieve a potential recovery in this case—the pleadings stage, discovery, class certification, summary judgment, possibly maintaining class certification throughout trial, trial, and potential appeals. All of this would require hundreds, or perhaps thousands, of hours, which would result in significant costs.

As discussed herein and in Class Counsels’ supporting declarations, investigating, prosecuting, and settling this matter required considerable commitment of time and resources. Class Counsel have vigorously and zealously represented the interests of the Settlement Class from the inception of this litigation and will continue to do so through final approval. Class Counsel expended substantial time and effort in the prosecution of this case, and their coordinated efforts were critical to achieving a substantial Settlement for the Settlement Class. Klinger Decl. ¶¶ 4-5; Ferich Decl. ¶ 27. Class Counsel expect to maintain a high level of oversight and involvement in this case, and will continue to incur significant amounts of time given the future work still needed for completion of the Settlement, including: drafting, and filing Plaintiffs’ Motion for Final Approval, preparing for and appearing at the Final Approval Hearing, overseeing claims administration, answering Class Members’ questions, responding to any potential objections, and resolving any appeals. Klinger Decl. ¶ 35; Ferich Decl. ¶ 33. As such, this factor weighs in favor of approval of the fee request.

6. The Stakes of the Case.

Class action lawsuits are high stakes litigation and data breach class action lawsuits come with their own set of uncertainties, as discussed above. Class Members' claims could have faced a number of defenses, such as the possibility that the Court would dismiss some or all of their claims, decline to certify the Settlement Class or decertify the Settlement Class, or that Plaintiffs would not prevail at trial. *See Synthroid I*, 264 F.3d at 721. This factor weighs in favor of granting this motion because there was an uncertain nature of the lawsuit from the time the Class Action Complaints were first filed by each Plaintiff (before they were ever consolidated into instant action), yet Class Members are receiving the benefits of the Settlement.

Accordingly, Plaintiffs' request for attorneys' fees in the amount of \$1,250,000 meets the factors for reasonableness, is within the well-established 33% to 40% range of fee requests (it represents 33.33% of the gross Settlement Fund and approximately 40% of the Net Settlement Fund) in class action litigation in the Seventh Circuit, and should be granted.

VI. THE COURT SHOULD AWARD REASONABLE REIMBURSEMENT FOR LITIGATION COSTS AND EXPENSES

It is well established that counsel who create a common benefit for class are entitled to the reimbursement of litigation costs and expenses. *See Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014) (citing Fed. R. Civ. P. 23; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The Seventh Circuit has held that costs and expenses should be awarded based on the types of "expenses private clients in large class actions (auctions and otherwise) pay." *Synthroid I*, 264 F.3d at 722; *see also Spicer v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (noting that courts regularly award reimbursement of those expenses that are reasonable and necessarily incurred in the course of litigation); *Hale*, No. 12-0660-DRH, 2018 WL 6606079, at *10 ("It is well established that counsel who create a common fund ... are entitled

to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.”) (quoting *Beesley*, No. 06-703, 2014 WL 375432, at *3)).

Here, Class Counsel have incurred \$13,868.76 in reimbursable expenses related to: (1) filing fees; (2) CMIS expert fees; (3) court admission fees and notary costs; (4) service costs; (5) research costs; (6) reproduction costs; (7) telephone costs; and (8) mediation fees. *See* Klinger Decl. ¶ 34; Ferich Decl. ¶ 34. These expenses were necessary to prosecute this case and modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Accordingly, the Court should grant Class Counsel’s request for \$13,868.76 as reasonable expenses.

VII. THE REQUESTED SERVICE AWARDS ARE REASONABLE, APPROPRIATE, AND SHOULD BE GRANTED

Class Counsel requests that the Court grant Service Awards to Class Representatives—in the amount of \$2,500 to each of the three Class Representatives—for their efforts on behalf of the Settlement Class. Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded. Such awards encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook*, 142 F.3d at 1016 (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *Synthroid I*, 264 F.3d at 722 (“Incentive awards are justified when necessary to induce individuals to become named representatives.”). Without Plaintiffs serving as Class Representatives, the Settlement Class would not have been able to recover anything. *See In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. 10-4038, 2011 WL 5547159, at *5 (N.D. Iowa Nov. 9, 2011) (“[E]ach . . . plaintiff has provided

invaluable assistance and demonstrated an ongoing commitment to protecting the interests of class members.”).

Plaintiffs have been actively engaged in this litigation and were essential to the success achieved. Ferich Decl. ¶ 63; Klinger Decl. ¶ 23. Among other things, they provided information to Class Counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. Ferich Decl. ¶ 63; Klinger Decl. ¶ 23. The Settlement would not have been possible without the effort and commitment of Plaintiffs, who sacrificed time and put their name on the line for the sake of the Class. Ferich Decl. ¶ 63; Klinger Decl. ¶ 23.

Moreover, the total amount requested here, \$2,500 each for three Class Representatives, is less than many other awards approved by federal courts in the Seventh Circuit. *See, e.g., Kolinek*, 311 F.R.D. at 502 (“a \$5,000 reward is justified based on Kolinek’s role working with class counsel, approving the settlement agreement and fee application, and volunteering to play an active role if the parties continued litigating through trial”); *Cook*, 142 F.3d at 1016 (affirming \$25,000 incentive award); *Heekin v. Anthem, Inc.*, No. 05-01908, 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (approving \$25,000 incentive award to lead class plaintiff over objection); *Will v. Gen. Dynamics Corp.*, No. 06–698–GPM, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (awarding \$25,000 each to three named plaintiffs); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925 (N.D. Ill. Feb. 27, 2013), ECF No. 243 ¶ 20 (awarding \$30,000 incentive awards in class settlement). Thus, the requested Service Awards are reasonable and should be approved.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Motion be granted and the Court enter an Order: (a) awarding Class Counsel’s attorneys’ fees in the amount of \$1,250,000.00; (b) providing a reimbursement of reasonable and necessary litigation costs and expenses in the amount of \$13,868.76; and (c) awarding Service Awards to the three Class

Representatives in the amount of \$2,500 each (for a total of \$7,500), for their efforts and commitment on behalf of the Class.

Dated: January 3, 2023

Respectfully submitted,

/s/ Gary M. Klinger

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EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

IN RE FOREFRONT DATA BREACH
LITIGATION

This Document Relates to: ALL ACTIONS.

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Master File No. 1:21-cv-00887-LA

**DECLARATION OF ANDREW W. FERICH IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES, COSTS, EXPENSES,
AND SERVICE AWARDS FOR CLASS REPRESENTATIVES**

I, Andrew W. Ferich, declare as follows:

1. I am a partner at Ahdoot & Wolfson, PC (“AW”), and a member in good standing of the Commonwealth of Pennsylvania, the State of New Jersey, and the District of Columbia. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, Expenses, and Service Awards for Class Representatives.¹ I make the following declaration based on my own personal knowledge and, where indicated as based on information and belief, that the following statements are true. If called upon as a witness, I could and would competently testify as follows.

2. AW, along with our co-Class Counsel, have vigorously and zealously represented the interests of the Settlement Class from the inception of this litigation until the present.

3. Throughout this action, AW has sought to reach consensus with co-Class Counsel to manage the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls, working to avoid duplication of efforts

¹ Unless otherwise noted, all capitalized terms not defined herein have the same meaning ascribed to them in the Class Action Settlement Agreement and Release, ECF No. 57-1.

or unnecessary work undertaken, and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way.

4. As explained herein, I and my partners at AW, including co-Class Counsel Tina Wolfson, believe the Settlement to be fair, reasonable, and adequate, and in the best interests of the Settlement Class.

THE COMMENCEMENT OF THE LITIGATION

5. This class action against Forefront results from the Ransomware Attack that allowed an unauthorized actor to potentially access, from May 28, 2021 to June 4, 2021, the Personal Information of approximately 2,413,552 of Forefront's patients, employees, employee beneficiaries, and other individuals. Forefront detected the intrusion on June 4, 2021 and announced the Ransomware Attack in a Notice of Data Breach sent to customers on June 24, 2021.

6. The Complaint was filed on July 28, 2021. It alleged, *inter alia*, that Forefront failed to take adequate measures to protect putative class members' Personal Information and failed to disclose that Forefront's systems were susceptible to a cyberattack. ECF No. 1. On July 29, 2021, Plaintiff Anderson filed suit against Forefront related to the Ransomware Attack. *Anderson v. Forefront Dermatology, S.C., et al.*, No. 1:21-cv-00891, ECF No. 1. On August 17, 2021, Plaintiffs Leitermann and Anderson moved to consolidate the actions under Federal Rule of Civil Procedure 42(a), and the Court granted that motion on August 19, 2022. ECF Nos. 9, 11. *See* Fed. R. Civ. P. 42(a). That same day, on August 19, 2021, Plaintiff Kunzelmann filed a class action complaint against Forefront. *Kunzelmann v. Forefront Dermatology SC, et al.*, Case No. 1:21-CV-00980, ECF No. 1. Plaintiffs Leitermann, Anderson, and Kunzelman thereafter moved

to consolidate their cases² on September 7, 2021, and the motion was granted by the Court on September 21, 2021. ECF Nos. 19, 20.

7. On September 21, 2021, Jeanette Alonso filed a putative class action complaint against Forefront,³ and, on November 11, 2021, she moved to consolidate her case with the Related Actions and simultaneously moved the Court to appoint her counsel as interim lead counsel. ECF Nos. 21, 22. Plaintiffs in the Related Actions and Forefront opposed the respective motions, and the Court ordered the *Alonso* action consolidated with the instant case but denied Alonso's motion to appoint interim lead counsel. ECF Nos. 31, 33.

8. On January 27, 2022, the Court appointed Ahdoot & Wolfson, PC and Milberg Coleman Bryson Phillips Grossman, PLCC as interim co-lead counsel ("Class Counsel"). ECF No. 34. Plaintiffs Leitermann, Anderson, and Kunzelmann filed their Consolidated Complaint on February 28, 2022. ECF No. 35.

9. Since this litigation was filed, Class Counsel persistently advanced and protected the interests of the Class. Before initiating the action, Class Counsel independently conducted an investigation of the factual circumstances of the Data Breach and the potential legal claims and defenses that may be raised in this case.

10. On May 10, 2022, Forefront filed a motion to dismiss. ECF No. 42; Fed. R. Civ. P. 12(b)(6). During this time, the parties continued to make meaningful progress towards a settlement and eventually agreed to explore a mediated resolution of the matter. Prior to mediation, the parties negotiated a stipulated protective order, and Forefront produced

² Hereinafter the "Related Actions."

³ *Alonso v. Forefront Dermatology SC, et al.*, Case No. 1:21-CV-01105, ECF No. 1.

documentation to Plaintiffs to allow for a meaningful evaluation of the claims and to better inform the parties in preparation of mediation.

CLASS COUNSEL'S LITIGATION EFFORTS AND WORK ON BEHALF OF THE CLASS

11. The attorneys at AW who worked on this matter have stayed abreast of all material developments involving the Data Breach. We have gathered the press releases and statements concerning the Data Breach, reviewed the information Forefront has provided about the breach, and reviewed Forefront's data breach notification letters; reviewed numerous news stories and other publicly available sources of information relating to the breach, including its impact on Forefront; interviewed a number of individuals who were impacted by the data breach, and kept abreast of developments as they occurred.

12. Following commencement of this action, Class Counsel took all necessary steps to efficiently prosecute the claims of the Plaintiffs and the Class Members. Immediately after filing this case, Class Counsel agreed to work together cooperatively through private ordering for the benefit of the Class.

13. Having been appointed by the Court, Class Counsel began a dialogue with Forefront about case management issues and engaged in multiple meet-and-confer discussions.

MEDIATION AND SETTLEMENT NEGOTIATIONS

14. Class Counsel advocated zealously on behalf of the Plaintiffs and Class Members during the Settlement negotiation process.

15. After extensive pre-mediation negotiations and discussions, on June 10, 2022, the Parties attended mediation with Jill Sperber of Judicate West, an experienced class action litigation mediator. The mediation session was spirited and hard-fought. Class Counsel and counsel for Forefront aggressively advocated for each side's positions and views during the

mediation session.

16. Prior to the mediation session with Ms. Sperber, the parties exchanged information to prepare for and facilitate a productive mediation session. The parties communicated their respective positions regarding this litigation with each other and with the mediator. Plaintiffs received and analyzed data relating to the Data Breach, including information concerning the categories of individuals who received breach notification letters from Forefront, the nature of the Personal Information impacted, Forefront's actions after it was notified of the breach, and the nature and number of Settlement Class Members impacted.

17. While the parties were unable to resolve the matter on June 10, they continued to negotiate with the assistance of Ms. Sperber. After additional weeks of hard-fought negotiations, on June 28, 2022, the parties agreed to a mediator's proposal that set forth a settlement in principle. Thereafter, the parties negotiated the myriad of details regarding the Settlement, circulating drafts back and forth of the Settlement Agreement and its many exhibits.

18. Class Counsel solicited competing bids from separate third-party administrators for settlement notice and administration. With each of the potential settlement administrators, Class Counsel discussed the notice and distribution plans agreed to in the Settlement. Class Counsel ultimately negotiated an agreement with P&N to act as the Settlement Administrator, subject to the Court's approval. Class Counsel crafted, negotiated, and meticulously refined the final notice program and each document comprising the Class Notice (with the assistance of P&N) to ensure that the information disseminated to Settlement Class Members is clear and concise.

19. At all times during settlement discussions, the negotiations were at arm's length. Furthermore, it was always Class Counsel's primary goal to achieve the maximum substantive relief possible for the Settlement Class Members.

20. The Settlement Agreement was finalized and executed on August 31, 2022.

21. As a result of the mediation discovery conducted by the parties, Class Counsel was not only able to verify the details about the impact of the Data Breach and information about the Class Members, but also to ensure that the terms of and relief provided under the Settlement are fair, reasonable, and adequate and based on correct assumptions and facts.

MOTION FOR PRELIMINARY APPROVAL AND BEYOND

22. After the lengthy process that led to finalization of the Settlement, Class Counsel prepared and filed the Motion for Preliminary Approval, which included voluminous supporting documents, declarations, and exhibits.

23. The information gleaned from investigation and research into the facts and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with Forefront's counsel about attending mediation and later settling the matter.

24. Class Counsel's diligence in preparing for mediation, including obtaining information necessary to analyze all claims and defenses, allowed Class Counsel to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan.

25. On October 3, 2022, the Court granted Plaintiffs' Motion for Preliminary Approval. ECF No. 58. After the Settlement received preliminary approval, Class Counsel worked closely with the Settlement Administrator to implement the Notice Plan. My firm continues to work closely with the Settlement Administrator during the ongoing Claims Period. AW will continue to communicate with and assist Class Members who reach out to Class Counsel about

the Settlement and filing Claim Forms.

26. AW has performed various other litigation related work during the pendency of this matter, included meetings, emails, and phone calls between co-counsel and with counsel for Forefront, communicating with the Plaintiffs regarding case developments and litigation strategy, and calls with numerous consumers who reached out to AW about this litigation.

27. Class Counsel will continue to diligently and efficiently litigate this matter through the Final Approval Hearing.

AHDOOT WOLFSON HAS COMMITTED SIGNIFICANT EFFORTS AND RESOURCES TO THIS LITIGATION FOR THE BENEFIT OF THE CLASS

28. AW's representation of the Class in this matter is on a wholly contingent basis. AW's fees were not guaranteed—the retainer agreements AW has with Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. AW has devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the out-of-pocket costs and expenses that AW committed to the litigation of this case. As such, AW assumed a significant risk of nonpayment or underpayment. We did this, with no guarantee of repayment, to represent our clients and because of the public interest and social importance of this case. Moreover, AW was required to forego other financial opportunities to litigate this case. AW thus took this case with the expectation that the Firm would receive a risk enhancement in the event we prevailed.

29. This matter has required me, and other attorneys at AW, to spend time on the investigation and litigation of this matter that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and AW's time. Such time could otherwise have been spent on other fee-generating work. Because our Firm undertook representation of this matter on a contingency-fee basis, we

shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time my Firm spent working on this case could and would have been spent pursuing other potentially fee generating matters.

30. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real and high, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite AW's devotion to the case and our confidence in the claims alleged against Forefront, there have been many factors beyond our control that posed significant risks. Had Forefront prevailed on the merits, on class certification, or on appeal, I and my Firm might have recovered nothing for the time and expense AW invested in representing the Settlement Class.

31. AW has made every effort to litigate this matter efficiently by coordinating the work of AW's attorneys and paralegals, as well as co-Class Counsel, minimizing duplication, and assigning tasks in a time and cost-efficient manner, based on the timekeepers' experience levels and talents.

32. I believe that the time and resources spent by my Firm were reasonable and I have sought to manage this matter efficiently at every turn.

33. AW will continue to expend significant attorney time and resources given the future work still needed for completion of the Settlement, including: drafting and filing a motion for final approval, preparing for and attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections,

addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

AHDOOT WOLFSON'S REASONABLE EXPENSES

34. To date, AW has incurred \$8,405.97 of litigation expenses, as follows:

Description	Amount
Filing Fees and Case Initiation	\$535.63
Attorney Services	\$796.79
Court Admission Fees	\$669.00
Electronic Research	\$136.00
Mediation and Expert Fees	\$6,268.55
Total	\$8,405.97

35. These costs include court fees, mediation fees, electronic research fees, attorney service fees, electronic document storage fees, expert fees relating to the provision of credit monitoring services under the Settlement, postage, and other related costs. Each of these costs and expenses are fully documented, and in my opinion, were necessary and reasonable. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover. The charges for electronic research above are independent charges, and do not include the firm's monthly Westlaw subscription charges, which though used for this matter, were not charged as an expense.

AHDOOT & WOLFSON, PC FIRM EXPERIENCE

36. At all times, AW had the experience, expertise, and resources to effectively litigate any all issues related to this litigation.

37. In March 1998, Robert Ahdoot and Tina Wolfson founded AW, now a nationally recognized law firm that specializes in complex and class action litigation, with a focus on privacy rights, consumer fraud, anti-competitive business practices, employee rights, defective products, civil rights, and taxpayer rights. The attorneys at AW are experienced litigators who have often

been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring hundreds of millions of dollars to the victims, and affecting real change in corporate behavior. A copy of AW firm's resume is attached hereto as **Exhibit A.**

38. AW has been on the cutting edge of privacy litigation since the late 1990s, when its attorneys successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, they were novel and hidden from public scrutiny at the time AW was prosecuting them. Our work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

39. AW has been appointed lead counsel in numerous complex consumer class actions. The following are some examples of recent class actions that AW has litigated to conclusion or are currently litigating on behalf of clients – either as Class Counsel, proposed Class Counsel or members of a Court appointed Plaintiff Steering Committee:

40. As co-lead counsel in *In re Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), AW achieved an \$85 million settlement that provides monetary relief to Zoom users who submit a claim for payment and comprehensive injunctive relief which addresses the privacy issues on which Plaintiffs' claims were based. This settlement was recently finally approved by the Northern District.

41. In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill. Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google’s alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, AW achieved a \$100 million non-reversionary cash settlement, with meaningful prospective relief, which was granted final approval by Judge Loftus on September 28, 2022.

42. As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over \$150 million. Under that settlement, each class member was entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel’s efforts and efficiency in achieving the settlement, commenting “You folks have truly done a great job, both sides. I commend you.”

43. As a member of a five-firm Plaintiffs’ Steering Committee (“PSC”) in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-md-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

44. In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was

instrumental in achieving a \$29 million settlement and robust injunctive relief for the consumer class.

45. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-SKC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provided for up to \$250 in claimed damages or \$10,000 in extraordinary damages.

46. In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty.) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients impacted by a university medical data breach, achieved a settlement providing two years of credit monitoring, a \$5,275,000 fund, and robust injunctive relief.

47. AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited routinely in briefing on Article III and data breach standing, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Seventh Circuit concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

48. Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful

appeal to the D.C. Circuit. Judge Jackson recently issued her preliminary approval of a \$60 million settlement in this Action.

49. AW's other ongoing privacy class actions include *In re Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald) (serving as co-lead counsel), *In re Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila) (same), *In re Ambry Genetics Data Breach Litigation*, No. 8:20-cv-791-CJC-KES (C.D. Cal.) (Hon. Cormac J. Carney) (same), and *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

50. In addition, AW has served or is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in \$10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) (\$14.5 million nationwide settlement).

51. I joined AW as a partner at the age of only 33, and already have extensive experience serving in leadership and support roles in data privacy class action cases and other complex actions. For example, I have been at the forefront of the highly publicized Accellion FTA data breach litigation announced in late 2020, and have zealously prosecuted cases against Accellion and three of its customers that were impacted by this massive breach. Due to my firm's efforts, settlements were reached in each of these litigations. In one of these settlements, final approval of the settlement was recently granted, and I was appointed as class counsel. *See Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 115

(granting final approval of nationwide settlement that provides \$5 million non-reversionary fund, and appointing me and AW as co-lead class counsel).

52. I was appointed recently as Interim Co-Lead Counsel in *Smeltz, et al. v. Logan Health, et al.*, No. A-DV-22-0124 (8th Judicial District Court, Cascade County Mar. 31, 2022) (Grubich, J.), a data breach class action arising from the exposure of highly sensitive information of 213,545 individuals, including medical records.

53. I was recently appointed to the plaintiffs' executive steering committee in a ransomware class action lawsuit involving disclosure of sensitive medical information and other PII/PHI. *See In re: Eskenazi Health Data Incident Litig.*, No. 49D01-2111-PL-038870 (Ind. Comm. Ct. Jan. 24, 2022).

54. I was also recently appointed as co-lead class counsel in *Kesner et al. v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Mass. Super. Ct.), a medical data breach case where the Court has granted preliminary approval of a \$1.2 million non-reversionary common fund settlement.

55. I was previously appointed as class counsel in *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330 (C.D. Ill.), a payment card data breach that exposed the sensitive payment card information of millions of class members. *Id.*, ECF No. 62, at 3. My efforts on behalf of the class resulted in the creation of an uncapped claims settlement providing cash payments to class members, and Hy-Vee committing at least \$20 million to data security improvements. *Id.*, ECF No. 58, at 4; *see also Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (data breach case where millions of consumers' payment card data was exposed to hackers); *Bray, et al. v. GameStop Corp.*, No. 1:17-cv-01365 (D. Del.) (data breach settlement involving exposure of payment card information through defendant's website).

56. I have also been appointed to leadership positions in other consumer class actions. For example, I was appointed as class counsel in *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.), where I helped obtain a settlement valued at more than \$6.25 million on behalf of owners and lessees of Subaru vehicles with allegedly defective infotainment systems. *See also McFadden v. Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at *3 (W.D. Wash. Sept. 22, 2020) (appointed as co-lead counsel).

57. In sum, I and my Firm have led and continue to lead many high-profile privacy cases, including those involving data privacy (e.g., *Zoom, Ring*), data breaches (e.g., *Experian, Premera, Home Depot, OPM, Chipotle, The Kroger Co., Logan Health*), geo-location tracking (e.g., *Google Location History Litigation*), collection and storing of biometric information (e.g., *Google, Shutterfly, Vimeo*), and TCPA violations (e.g., *Hollister, American Eagle*), as well as many other types of consumer class actions (e.g., *Eck* - \$295 million class settlement against City of Los Angeles for unlawful utility taxes), as well as other complex class action litigation.

58. AW has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. AW has a proven track record of experience and results, and specific expertise in data privacy class action litigation.

59. I am, and my Firm is, fully aware of the financial and human resources that are required to bring this case to a successful conclusion and the Court should have no reservations that my Firm has and is willing to commit those resources for the benefit of the plaintiff class. AW has never used third-party funding or failed to meet its assessment obligations in any case.

60. The work of proposed Class Counsel in this action to date, as well as their experience prosecuting complex litigation matters, demonstrate that proposed Class Counsel are well-qualified to represent the Settlement Class.

61. The bulk of AW's practice is contingent, and many of my Firm's cases have been large and substantial in settlements or verdicts. In contingent risk cases, my firm and other firms doing this type of work frequently advance expenses and costs and defer all payment of our fees for several years, with no guarantee that any of the fees we incurred or costs we advanced would ever be recovered.

62. The Settlement achieved in this litigation is the product of the initiative, investigations, and hard work of skilled counsel.


63. The named Plaintiffs have been actively engaged in this litigation, and were essential to the success achieved. Among other things, they provided information to Class Counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. The Settlement would not have been possible without the effort and commitment of the Plaintiffs, who sacrificed their time and put their name on the line for the sake of the Class. Their commitment is notable given the modest size of their personal financial stakes in the matter.

64. As of the date of filing, I have received *zero* objections to either the Settlement Agreement in general or to the proposed attorneys' fees, costs (the amount of which was made known to the Settlement Class via the Court-approved Notice) in particular. (The Settlement Agreement provides that objections should be filed with the Court.)

65. Class Counsel's fee request of \$1,250,000 equates to 33.33% of the gross Settlement Fund. It represents and roughly 40% of the estimated Net Settlement Fund (\$1,241,596.82), which is consistent with the market rate in the Seventh Circuit. *See, e.g., Karpilovksy v. All Web Leads, Inc.*, No. 2017-cv-01307 (N.D. Ill. Aug. 8, 2019), ECF No. 173 (approving fees amounting to 35% of the entire settlement fund, which amounted to

approximately 38% of the net settlement fund); *see also Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014). The fees contemplated under Class Counsel's representation agreements for cases in this District and elsewhere generally fall within the one-third (33.33%) to 40% range. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Fee Award and Costs and Service Awards is reasonable, and that the Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of January 2023, at Radnor, Pennsylvania



Andrew W. Ferich

EXHIBIT A



Ahdoot & Wolfson, PC (“AW”) is a nationally recognized law firm founded in 1998 that specializes in complex and class action litigation, with a focus on privacy rights, unfair and anti-competitive business practices, consumer fraud, employee rights, defective products, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who often have been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has vindicated the rights of millions of class members in protracted, complex litigation, conferring billions of dollars to the victims, and affecting real change in corporate behavior.

Privacy Class Actions

AW has been prosecuting cutting edge privacy cases on behalf of consumers since the late 1990s. AW was among the first group of attorneys who successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without the consumers’ consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, at the time AW was prosecuting these cases before the Hon. Richard R. Kramer (Ret.) in the complex department of San Francisco Superior Court, such practices were novel and hidden from public scrutiny. AW’s work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over \$150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires), plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel’s efforts and efficiency in achieving the settlement, commenting “You folks have truly done a great job, both sides. I commend you.”

In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google’s alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information

Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), AW achieved a settlement that was preliminarily approved by Judge Loftus on April 25, 2022. The settlement establishes a \$100 million non-reversionary cash settlement fund and provides meaningful prospective relief for the benefit of class members.

As co-lead counsel in the *Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155 (N.D. Cal.) (Hon. Laurel Beeler), a nationwide class action alleging privacy violations from the collection of personal information through third-party software development kits and failure to provide end to end encryption, AW achieved an \$85 million nationwide class settlement that also included robust injunctive relief overhauling Zoom’s data collection and security practices.

As an invaluable member of a five-firm Plaintiffs’ Steering Committee (“PSC”) in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW, as a member of the PSC, briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit. Recently, Judge Jackson preliminarily approved a \$60 million settlement for the benefit of class members.

In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a \$29 million settlement fund and robust injunctive relief for the consumer class. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-MLC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provides for up to \$250 in claimed damages or \$10,000 in extraordinary damages.

In addition, AW has served and is serving as plaintiffs’ counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 (“TCPA”), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in \$10 million nationwide settlement), and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) (\$14.5 million nationwide settlement).

In *Miracle-Pond v. Shutterfly, Inc.*, No. 2019CH07050 (Cir. Ct. Cook County) (Hon. Raymond W. Mitchell), a class action arising from Shutterfly’s alleged illegal collection, storage, and use of the biometrics of individuals (including those without Shutterfly accounts) who appear in photographs uploaded to Shutterfly in violation of BIPA. AW achieved a settlement that established a \$6.75 million non-reversionary cash Settlement Fund and provided meaningful prospective relief for the benefit of class members.

AW's efforts have shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW's attorneys successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited in every standing brief, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013) and concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

Noteworthy Results in Other Consumer Class Actions

AW has achieved excellent results as lead counsel in numerous complex class actions.

In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW achieved a nationwide class action settlement conservatively valued at approximately \$420 million. The settlement extended the promised lifetime subscription for the lifetime of class members who have active accounts, and it provided the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover \$100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement literally minutes prior to oral argument in the Ninth Circuit.

As a member of the Plaintiffs' Executive Committee in the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N.D. Cal.) (Hon. Edward J. Davila), AW helped achieve a nationwide settlement of \$310 million minimum and \$500 million maximum. The case arose from Apple's alleged practice of deploying software updates to iPhones that deliberately degraded the devices' performance and battery life.

In *Eck v. City of Los Angeles*, No. BC577028 (Cal. Super. Ct.) (Hon. Ann I. Jones), AW achieved a \$295 million class settlement in a case alleging that an 8% surcharge on Los Angeles electricity rates was an illegal tax. Final settlement approval was affirmed on appeal in October 2019.

In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N.D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made \$80 million available to the class and required McAfee to notify customers regarding auto-renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

In *Lavinsky v. City of Los Angeles*, No. BC542245 (Cal. Super. Ct.) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, AW certified the plaintiff class in litigation and then achieved a \$51 million class settlement.

As co-lead counsel in *Berman v. Gen. Motors, LLC*, No. 2:18-cv-14371-RLR (S.D. Fla.) (Hon. Robin L. Rosenberg) (vehicle oil consumption defect class action), AW achieved a \$40 million settlement.

In *McKnight v. Uber Technologies, Inc.*, No. 4:14-cv-05615-JST (N.D. Cal.) (Hon. Jon S. Tigar), AW achieved a \$32.5 million settlement for the passenger plaintiff class alleging that Uber falsely advertised and illegally charged a “safe rides fee.”

In *Pantelyat v. Bank of America, N.A.*, No. 1:16-cv-08964-AJN (S.D.N.Y.) (Hon. Alison J. Nathan), a class action arising from allegedly improper overdraft fees, AW, serving as sole class counsel for plaintiffs, achieved a \$22 million class settlement, representing approximately 80% of total revenues gleaned by the bank’s alleged conduct.

Current Noteworthy Leadership Roles

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google’s allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW was appointed, after competing applications, to serve as interim co-lead class counsel in the *Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald), a consolidated class action arising from Ring’s failure to implement necessary measures to secure the privacy of Ring user accounts and home-security devices, and failure to protect its customers from hackers despite being on notice of the inadequacies of its cybersecurity.

AW also currently serves on the PSC in *Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litigation*, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients, as well as many other data breach class actions.

AW was appointed, after competing applications, to serve as interim co-lead class counsel in the *StubHub Refund Litigation*, No. 4:20-md-02951-HSG (N.D. Cal.) (Hon. Haywood S. Gilliam, Jr.). This consolidated multidistrict litigation alleges that StubHub retroactively changed its policies for refunds for cancelled or rescheduled events as a result of the Covid-19 pandemic and refused to offer refunds despite promising consumers 100% of their money back if events are cancelled.

AW also serves on the Plaintiffs’ Executive Committees in *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-2921-BRM-JAD (D.N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma and in *ZF-TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-2905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbag component units.

In the *Kind LLC “All Natural” Litigation*, No. 1:15-md-02645-WHP (S.D.N.Y.) (Hon. William H. Pauley III), AW was selected as interim co-lead class counsel after competing applications. AW certified three separate classes of New York, California, and Florida consumers who purchased Kind LLC’s products in a false labeling food MDL.

As part of the leadership team in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-2514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal), AW certified a class of immigration detainees challenging private prison’s alleged forced labor practices.

In the *Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010-PKC (S.D.N.Y.) (Hon. P. Kevin Castel), a class action alleging monopolization of the digital advertising market, AW is serving as court appointed co-lead counsel on behalf of the advertiser class.

In the *Dental Supplies Antitrust Litigation*, No. 1:16-cv-00696-BMC-GRB (E.D.N.Y.) (Hon. Brian M. Cogan), a class action alleging an anticompetitive conspiracy among three dominant dental supply companies in the United States, AW served on the plaintiffs’ counsel team that brought in an \$80 million cash settlement for the benefit of a class of approximately 200,000 dental practitioners, clinics, and laboratories.

In *Klein v. Meta Platforms, Inc.*, No. 3:20-cv-08570-JD (N.D. Cal.) (Hon. James Donato), AW is serving on the Executive Committee for the digital advertiser plaintiff class in a class action alleging that Meta (formerly Facebook) engaged in anticompetitive conduct to stifle and/or acquire competition to inflate the cost of digital advertising on its social media platform. Many of the plaintiffs’ claims recently survived a motion to dismiss and are in the process of amending their complaint.

In *Robinson v. Jackson Hewitt, Inc.*, No. 2:19-cv-09066-SDW-ESK (D.N.J.) (Hon. Susan D. Wigenton), a class action alleging that a standardized “no-poach” agreement among Jackson Hewitt and its franchisees limited mobility and compensation prospects for the tax preparer employees, AW is asserting claims on behalf of consumers under both federal antitrust and California employment laws.

Attorney Profiles

Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm’s *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson has led numerous class actions to successful results. Ms. Wolfson is a member of the California, New York, and District of Columbia Bars.

Recognized for her deep class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. She is a guest lecturer on class actions at the University of California at Irvine Law School. Her notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Consumer Class Actions Roundtable) March 2020, featuring Hon. Lucy H. Koh, Hon. Edward M. Chen, and Hon. Fernando M. Olguin.
- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019.
- Association of Business Trial Lawyers: “Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts,” Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi.
- CalBar Privacy Panel: “Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California,” Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning.
- American Conference Institute: “2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions,” April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr.
- Federal Bar Association: N.D. Cal. Chapter “2016 Class Action Symposium,” San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston.
- Federal Bar Association: “The Future of Class Actions: Cutting Edge Topics in Class Action Litigation,” San Francisco Nov. 2015 (Co-Chair & Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.
- American Association for Justice: AAJ 2015 Annual Convention - “The Mechanics of Class Action Certification,” July 2015, Montreal, Canada.
- HarrisMartin: Data Breach Litigation Conference: The Coming of Age - “The First Hurdles: Standing and Other Motion to Dismiss Arguments,” March 2015, San Diego.
- Bridgeport: 2015 Annual Consumer Class Action Conference, February 2015, Miami (Co-Chair).
- Venable, LLP: Invited by former opposing counsel to present mock oral argument on a motion to certify the class in a food labeling case, Hon. Marilyn Hall Patel (Ret.) presiding, October 2014, San Francisco.
- Bridgeport: 15th Annual Class Action Litigation Conference - “Food Labeling and Nutritional Claim Specific Class Actions,” September 2014, San Francisco (Co-Chair and Panelist).
- Bridgeport: 2014 Consumer Class Action Conference - “Hot Topics in Food Class Action Litigation,” June 2014, Chicago.
- Perrin Conferences: Challenges Facing the Food and Beverage Industries in Complex

- Consumer Litigations, invited to discuss cutting edge developments in settlement negotiations, notice, and other topics, April 2014, Chicago.
- Bridgeport: Class Action Litigation & Management Conference - "Getting Your Settlement Approved," April 2014, Los Angeles.
 - HarrisMartin: Target Data Security Breach Litigation Conference - "Neiman Marcus and Michael's Data Breach Cases and the Future of Data Breach Cases," March 2014, San Diego.
 - Bridgeport: Advertising, Marketing & Media Law: Litigation and Best Management Practices - "Class Waivers and Arbitration Provisions Post-*Concepcion* / *Oxford Health Care*," March 2014, Los Angeles.

Ms. Wolfson currently serves as a Ninth Circuit Lawyer Representative for the Central District of California, as Vice President of the Federal Litigation Section of the Federal Bar Association, as a member of the American Business Trial Lawyer Association, as a participant at the Duke Law School Conferences and the Institute for the Advancement of the American Legal System, and on the Board of Public Justice.

Robert Ahdoot graduated from Pepperdine Law School *cum laude* in 1994, where he served as Literary Editor of the Pepperdine Law Review. Mr. Ahdoot clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began his career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where he defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters. Since co-founding AW in 1998, Mr. Ahdoot had led numerous class actions to successful results. Recognized for his extensive class action experience, Mr. Ahdoot frequently lectures on numerous class action topics across the country. His notable speaking engagements include:

- MassTorts Made Perfect: Speaker Conference, April 2019, Las Vegas: "Llegal Fees: How Companies and Governments Charge The Public, and How You Can Fight Back."
- HarrisMartin: Lumber Liquidators Flooring Litigation Conference, May 2015, Minneapolis: "Best Legal Claims and Defenses."
- Bridgeport: 15th Annual Class Action Litigation Conference, September 2014, San Francisco: "The Scourge of the System: Serial Objectors."
- Strafford Webinars: Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates and More, February 2014: "Minimizing Court Scrutiny and Overcoming Objector Challenges."
- Pincus: Wage & Hour and Consumer Class Actions for Newer Attorneys: The Do's and Don'ts, January 2014, Los Angeles: "Current Uses for the 17200, the CLRA an PAGA."
- Bridgeport: 2013 Class Action Litigation & Management Conference, August 2013, San Francisco: "Settlement Mechanics and Strategy."

Theodore W. Maya is a partner at AW. Mr. Maya graduated from UCLA Law School in 2002 after serving as Editor-in-Chief of the UCLA Law Review. From July 2003 to August 2004, Mr. Maya served as Law Clerk to the Honorable Gary Allen Feess in the United States District Court for the Central District of California. Mr. Maya was also a litigation associate in the Los Angeles offices of Kaye Scholer LLP for approximately eight years where he worked on a large variety of complex commercial litigation from inception through trial. Mr. Maya was named “Advocate of the Year” for 2007 by the Consumer Law Project of Public Counsel for successful pro bono representation of a victim of a large-scale equity fraud ring. As a partner at AW, Mr. Maya has extensive experience litigating all aspects of complex and consumer class actions.

Henry J. Kelston, a partner at AW, graduated from New York University School of Law in 1978 and is a member of the New York and Connecticut Bars. Mr. Kelston has litigated a broad array of class actions for more than two decades, including actions challenging improperly charged bank fees, unauthorized collection of biometric data, and unlawful no-poach agreements among employers. He has been on the front lines in major data breach cases against companies such as Yahoo! and Facebook, and he has represented consumers in class actions challenging food labeling practices, including the use of “natural” claims on products containing GMOs. His work in *In re Conagra Foods, Inc.*, contributed to a groundbreaking decision by the Ninth Circuit Court of Appeals, significantly strengthening the rights of consumers to bring class actions. Mr. Kelston is also a frequent speaker and CLE presenter on electronic discovery, and a member of The Sedona Conference® Working Group 1 on Electronic Document Retention and Production.

Bradley K. King is a partner at AW and a member of the State Bars of California, New Jersey, New York, and the District of Columbia. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney’s Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, civil rights, police misconduct, municipal contracts, criminal defense, and premises liability cases. During his career at AW, Mr. King has focused on consumer class actions, and privacy class actions in particular. He has served as appointed interim lead counsel and has extensive experience litigating consolidated and MDL class actions with AW, including numerous large data breach cases that have resulted in nationwide class settlements.

Andrew W. Ferich, also a partner at AW, is admitted to the bars of Pennsylvania, New Jersey, and the District of Columbia. Mr. Ferich received his law degree from Villanova University’s Charles Widger School of Law in 2012, where he served as Executive Editor of the *Journal of Catholic Social Thought*. Mr. Ferich has significant experience in consumer protection, data privacy, ERISA/retirement plan, and whistleblower/*qui tam* litigation. Prior to joining the firm, Mr. Ferich

was a senior associate at a well-known Philadelphia-area class action law firm. Before joining the plaintiffs' bar, Mr. Ferich was an associate at an AmLaw 200 national litigation firm in Philadelphia where he focused his practice on commercial litigation and financial services litigation. Mr. Ferich has represented a wide array of clients and has received numerous court-appointed leadership positions in large class actions. Mr. Ferich possesses major jury trial experience and has assisted in litigating cases that have collectively resulted in over \$100 million in settlement value in damages and injunctive relief for various classes and groups of people.

Deborah De Villa is an associate attorney at AW and a member of the State Bars of New York and California. She graduated from Pepperdine University School of Law in 2016, where she earned the CALI Excellence for the Future Award in immigration law, business planning and commercial law. During law school, Ms. De Villa completed internships at the Los Angeles District Attorney's Office, Hardcore Gangs Unit, and at the Supreme Court of the Philippines, Office of the Court Administrator. Born in the Philippines, Ms. De Villa moved to Florida at the age of sixteen to attend IMG Golf Academy as a full-time student-athlete. Ms. De Villa earned a scholarship to play NCAA Division 1 college golf at Texas Tech University, where she graduated *magna cum laude* with a Bachelor of Arts in Psychology and a minor in Legal Studies. Ms. De Villa has gained substantial experience litigating class actions with AW and focuses her practice on consumer protection and privacy class actions.

Sarper Unal is an associate attorney at AW. Mr. Unal graduated from the University of California, Irvine School of Law in 2021. Prior to joining AW, Mr. Unal gained litigation experience in a class action firm in the District of Columbia focusing on employment discrimination cases. He also clerked for the Orange County Public Defender's Office and served as an intake coordinator at the Civil Rights Litigation Clinic during law school. At AW, Mr. Unal has contributed to the firm's efforts in privacy and antitrust class actions.

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

IN RE FOREFRONT DATA BREACH
LITIGATION

This Document Relates to: ALL ACTIONS.

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) Master File No. 1:21-cv-00887-LA
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**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES, COSTS, EXPENSES,
AND SERVICE AWARDS FOR CLASS REPRESENTATIVES**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am a partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”). I am one of the lead attorneys for Plaintiffs and have been preliminarily appointed Class Counsel for the proposed Settlement Class.¹ I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, Expenses, and Service Awards for Class Representatives (“Motion for Attorneys’ Fees”). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. I, along co-Class Counsel in this matter—Andrew W. Ferich and Tina Wolfson of Ahdoot & Wolfson, PC (“AW”)—have extensive experience in the prosecution of class action litigation generally and data breach class action litigation in particular. Milberg has a proven track record of experience in data privacy class action litigation.

¹ Unless otherwise indicated, the defined terms herein shall have the same definition as set forth in the Class Settlement Agreement and Release (“Settlement Agreement”), which was filed with this Court on September 1, 2022. *See* ECF No. 57-1.

Class Counsel's Work Efforts On Behalf of the Class

3. The attorneys at Milberg who worked on this matter have stayed abreast of all material developments involving the Ransomware Attack.

4. My and my team's work on this matter includes: gathering all of the information that is publicly-available regarding Defendants Forefront Dermatology, S.C. and Forefront Management, LLC's ("Forefront" or "Defendant," together with Plaintiffs, the "Parties") and the Ransomware Attack—including publicly-available documents concerning announcements of the Ransomware Attack and Notice of Data Breach; investigating the cause and effects of Forefront's Ransomware Attack; conducting extensive research into data security Breaches and their causes and effects; conducting further extensive research into data security practices and standards across e-Commerce platforms and industries; interviewing potential clients; evaluating the potential class representatives; conducting a pre-suit investigation and evaluation into the facts and the merits of Plaintiff Leitermann's and Class Members' legal claims; researching law relevant to, Plaintiff Leitermann's Class Action Complaint and Forefront's defenses and drafting Plaintiff Leitermann's Class Action Complaint; coordinating and consolidating the three separately filed class actions by Plaintiffs with AW attorneys and appointment with AW attorneys as interim Class Counsel; preparing Plaintiffs' Consolidated Class Action Complaint; opposing consolidation and appointment as interim lead class counsel attorneys in the *Alonso* class action; preparing for and attending mediation with Jill Sperber of Judicate West, including researching and preparing a detailed mediation statement, as well as attending pre-mediation and post-mediation negotiations with Ms. Anderson; engaging in settlement negotiations with Forefront prior to the mediation; negotiating and drafting the Class Settlement Agreement and Release; preparing the Unopposed Motion for Preliminary Approval for Class Action Settlement, Notices, Claim Form, and

accompanying exhibits for preliminary approval of Settlement; negotiating with settlement administration companies to secure the best notice plan practicable; working with the Settlement Administrator to ensure the timely completion of Notice and processing of claims; monitoring the claims process and corresponding with the Settlement Administrator regarding the same; communicating with defense counsel; and updating and handling questions from our Class Representatives.

5. Throughout this action, Milberg has sought to reach consensus with AW to manage the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls, working to avoid duplication of efforts or unnecessary work undertaken, and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way. In addition, I have conferred with my colleagues and team about strategy and case status while being mindful to avoid duplicative efforts within my firm.

The Commencement of the Litigation and Procedural Posture

6. This class action against Forefront results from the Ransomware Attack that allowed an unauthorized actor to potentially access, from May 28, 2021 to June 4, 2021, the Personal Information of approximately 2,413,552 of Forefront's patients, employees, employee beneficiaries, and other individuals. Forefront detected the intrusion on June 4, 2021 and announced the Ransomware Attack in a Notice of Data Breach sent to customers on June 24, 2021.

7. The Complaint was filed on July 28, 2021. It alleged, *inter alia*, that Forefront failed to take adequate measures to protect putative class members' Personal Information and failed to disclose that Forefront's systems were susceptible to a cyberattack. ECF No. 1. On July 29, 2021, Plaintiff Anderson filed suit against Forefront related to the Ransomware Attack. *Anderson v.*

Forefront Dermatology, S.C., et al., No. 1:21-cv-00891, ECF No. 1. On August 17, 2021, Plaintiffs Leitermann and Anderson moved to consolidate the actions under Federal Rule of Civil Procedure 42(a), and the Court granted that motion on August 19, 2022. ECF Nos. 9, 11. *See* Fed. R. Civ. P. 42(a). That same day, on August 19, 2021, Plaintiff Kunzelmann filed a class action complaint against Forefront. *Kunzelmann v. Forefront Dermatology SC et al*, Case No. 1:21-CV-00980, ECF No. 1. Plaintiffs Leitermann, Anderson, and Kunzelman thereafter moved to consolidate their cases² on September 7, 2021, and the motion was granted by the Court on September 21, 2021. ECF Nos. 19, 20.

8. On September 21, 2021, Jeanette Alonso filed a putative class action complaint against Forefront,³ and, on November 11, 2021, she moved to consolidate her case with the Related Actions and simultaneously moved the Court to appoint her counsel as interim lead counsel. ECF Nos. 21, 22. Plaintiffs in the Related Actions and Forefront opposed the respective motions, and the Court ordered the *Alonso* action consolidated with the instant case but denied Alonso's motion to appoint interim lead counsel. ECF Nos. 31, 33.

9. On January 27, 2022, the Court appointed Ahdoot & Wolfson, PC and Milberg Coleman Bryson Phillips Grossman, PLCC as interim co-lead counsel ("Class Counsel"). ECF No. 34. Plaintiffs Leitermann, Anderson, and Kunzelmann filed their Consolidated Complaint on February 28, 2022. ECF No. 35.

10. On May 10, 2022, Forefront filed a motion to dismiss. ECF No. 42; Fed. R. Civ. P. 12(b)(6). During this time, the Parties continued to make meaningful progress towards a settlement and eventually agreed to explore a mediated resolution of the matter. Prior to mediation, the Parties

² Hereinafter the "Related Actions."

³ *Alonso v. Forefront Dermatology SC et al*, Case No. 1:21-CV-01105, ECF No. 1.

negotiated a stipulated protective order, and Forefront produced documentation to Plaintiffs to allow for a meaningful evaluation of the claims and to better inform the parties in preparation of mediation.

History of Negotiations and Mediation

11. Class Counsel advocated zealously on behalf of Plaintiffs and Class Members during the Settlement negotiation process with Forefront.

12. After extensive pre-mediation negotiations and discussions, on June 10, 2022, the Parties attended an all-day mediation with, experienced class action litigation mediator, Jill Sperber of Judicate West. While negotiations were always collegial and professional between the Parties, there is no doubt that the negotiations were also adversarial in nature, with both Parties strongly advocating their respective client's positions.

13. Prior to the mediation session with Ms. Sperber, the parties exchanged information to prepare for and facilitate a productive mediation session. The parties communicated their respective positions regarding the Litigation with each other and with the mediator. Forefront informally produced data relating to the Ransomware Attack to Class Counsel. Class Counsel was analyzed the data received from Forefront, including information relating to the categories of individuals who received breach notification letters from Forefront, the nature of the Personal Information impacted, Forefront's actions after it was notified of the breach, and the nature and number of Settlement Class Members impacted.

14. While the Parties were unable to resolve the matter on June 10, 2022, they continued to negotiate with the assistance of Ms. Sperber. After additional weeks of hard-fought negotiations, on June 28, 2022, the Parties agreed to a mediator's proposal that set forth a settlement in principle. Thereafter, the Parties worked for weeks negotiating the myriad of details

regarding the Settlement and circulating drafts back and forth of the Settlement Agreement and its many exhibits pertaining to preliminary approval.

15. Class Counsel solicited and received competing bids from separate third-party administrators for settlement notice and administration. With each of the potential settlement administrators, Class Counsel discussed the notice and distribution plans agreed to in the Settlement. Class Counsel ultimately negotiated an agreement with Postlethwaite & Netterville (“P&N”) to act as the Settlement Administrator, subject to the Court’s approval. Class Counsel crafted, negotiated, and meticulously refined the final notice program and each document comprising the Class Notice (with the assistance of P&N) to ensure that the information disseminated to Settlement Class Members is clear and concise.

16. At all times during settlement discussions with Forefront, the negotiations were at arm’s length and in good faith. Furthermore, it was always Class Counsel’s primary goal to achieve the maximum substantive relief possible for the Class Members.

17. The Settlement Agreement was finalized and executed on August 31, 2022.

18. The information gleaned from Class Counsel’s investigation and research into the facts and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of the case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiations and about attending mediation and later settling the matter.

19. Class Counsel’s diligence in preparing for mediation, including obtaining upfront information necessary to analyze all claims and defenses, allowed Class Counsel to negotiate a robust relief package and valuable outcome for the Settlement Class and to determine a fair and efficient structure and distribution plan and to confirm that the Settlement was fair, reasonable, and adequate.

20. As a result of the mediation discovery conducted by the Parties, Class Counsel was able to verify the details about the impact of the Ransomware Attack and information about the Class Members.

The Settlement

21. The Settlement represents an excellent result for the classes in this litigation and was obtained against a well-funded defense by the Forefront, which was represented by a well-regarded law firm. This result is even more remarkable because, although Plaintiffs believe in the merits of their claims, this Litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and Plaintiffs faced risks at each stage of litigation. Aside from the potential that either side will lose at trial, Plaintiffs would likely need to counter a motion for summary judgment, and both gain and maintain certification of the class. Even if successful with their class certification argument, Plaintiffs would face a near inevitable interlocutory appeal attempt. Without a certified class, no class member would likely receive any recovery. And summary judgment, trial, and appeal present significant risks in any case.

22. The Settlement allows Class Counsel to make an application to the Court for an award of reasonable attorneys' fees, costs, and expenses (*i.e.*, the Fee Award and Costs) to be paid from the Settlement Fund. The Parties did not discuss or agree to the amount to be applied for (*i.e.*, the Settlement does not include a "clear sailing provision"). Class Counsel requests an attorneys' fee award of \$1,250,000. ECF No. 57-1. The Long Form Notice discloses this amount. *See id.* This requested amount represents approximately 40% of the Net Settlement Fund and 33.33% of the gross Settlement Fund.

23. Class Counsel will make an application to the Court for \$2,500 for each of the three Class Representatives. Plaintiffs have been actively engaged in this litigation and were essential to the success achieved. The Settlement would not have been possible without the effort and commitment of Plaintiffs. In addition to lending their names to the lawsuit, among other things, they provided information to Class Counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. The Parties did not discuss the payment of Service Awards to Class Representatives until after the substantive terms of the Settlement had been agreed upon. Plaintiffs' support for the Settlement as fair, reasonable, and adequate is not conditioned upon the Court's award of the requested Service Awards, and in the event the Court declines to approve, in whole or in part, the payment of the Service Awards, the remaining provisions of the Settlement Agreement shall remain in full force and effect. The finality or effectiveness of the Settlement is not dependent on the Court awarding Class Representatives the Service Awards.

Preliminary Approval of the Settlement

24. After the the Settlement, Class Counsel prepared and filed the Motion for Preliminary Approval, which included voluminous supporting documents, declarations, and exhibits.

25. Since the Court granted preliminary approval on October 3, 2022 (ECF No. 58) and continuing to today, I have continued to work with Forefront, Mr. Ferich, Ms. Wolfson, and P&N, regarding claims administration and processing, as well as answering Class Members' questions about the settlement and the process. Based on experience, I will spend substantial additional hours seeking Final Approval, defending the Settlement from potential objections, and supervising claims administration and the distribution of proceeds.

The Contingent Nature of the Case

26. My Firm prosecuted this case on a purely contingent basis. My fees were not guaranteed—the retainer agreement I have with my client does not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. As such, the firm assumed a significant risk of nonpayment or underpayment.

27. My Firm prosecuted this case on a purely contingent basis. My fees were not guaranteed—the retainer agreement I have with my client does not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. As such, the firm assumed a significant risk of nonpayment or underpayment. In addition to accepting considerable risk in litigating this action, Class Counsel committed their time and resources to this case without any guarantee of compensation, whatsoever, only achieving the Settlement after substantial negotiations.

28. This matter has required me, and other attorneys at my Firm, to spend time on the investigation and litigation of this matter that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and my Firm's time.

29. Such time could otherwise have been spent on other fee-generating work. Because our Firm undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

30. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time my Firm spent working on this case could and would have been spent pursuing other potentially fee generating matters.

31. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real and high, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite my Firm’s devotion to the case and our confidence in the claims alleged against Forefront ,there have been many factors beyond our control that posed significant risks.

32. Had Forefront prevailed on the merits, on class certification, or on appeal, I and my firm might have recovered nothing for the time and expense I invested in representing the Settlement Class.

33. The fees contemplated under Class Counsel’s representation agreements for cases in this District and elsewhere generally fall within the one-third to 40% range. Class Counsel’s fees were not guaranteed—the retainer agreement counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

Costs and Expenses

34. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, costs and expenses incurred by Plaintiffs are low. I have advanced \$5,462.79 in out-of-pocket costs and expenses pertaining to this litigation. These costs expenses are comprised of:

<u>Description</u>	<u>Amount</u>
Mediation Fees	\$4,250.00
Computer and Other Research Fee(s)	\$279.19
Reproduction	\$36.75
Service Fees	\$178.70
Telephone	\$718.15
TOTAL	\$5,462.79

These costs and expenses are fully documented, and in my opinion, were necessary and reasonable

for the litigation. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover. Additional costs and expenses may be incurred before our work is done in this case, as is true of the additional services which we will provide to the Settlement Class.

Milberg Will Continue to Commit Significant Efforts and Resources
to this Litigation for the Benefit of the Class

35. I anticipate that my firm will continue to expend significant attorney time and resources, given the future work still needed for completion of the Settlement, including: continuing to monitor the claims process; helping preparing a Motion for Final Approval of Class Action Settlement (“Motion for Final Approval”), preparing for and attending the Final Approval Hearing, continuing to respond to Class Member inquiries; responding to Class Member challenges; responding to any requests for exclusion or objections, addressing any appeals, and working with Forefront and P&N on the distribution of benefits to the Settlement Class.

36. P&N reports that 2,413,552 Class Members were sent Notice via first class U.S. mail and/or email on November 7, 2022—the Notice Date.

37. As of December 13, 2022, P&N reports that, out of the approximately 2,416,078 Class Members who were sent Notice, 85 Class Members submitted requests for exclusion from the Settlement (meaning only .0035% of the Settlement Class has requested exclusion from the Settlement).

38. As of December 13, 2022, P&N reports that it is not aware of any objections to the Settlement or to the request for fees, costs, and service awards that have been filed with the Court, and that P&N has not received any objections in this case. (The Settlement Agreement provides that objections should be filed with the Court.)

39. As of the date of filing, Class Counsel has received *zero* objections to either the Settlement Agreement in general or to the proposed attorneys' fees, costs (the amount of which was made known to the Settlement Class via the Court-approved Notice) in particular.

40. In the Preliminary Approval Order, at ECF No. 58, the Court currently set the final approval hearing for March 1, 2023 and ordered that the Motion for Attorneys' Fees be heard at that hearing.

41. Notice in this case has been provided as agreed upon and as approved by the Court's Preliminary Approval Order (ECF No. 58) and will be reported on more extensively in Plaintiffs' Motion for Final Approval, which is currently due to be filed on or before February 8, 2023. The claims period is ongoing. The claims period ends February 8, 2023. *See* ECF No. 58.

42. Plaintiffs will file a declaration from P&N certifying completion of notice and detailing the status of the claims administration process with their Motion for Final Approval on February 8, 2023.

43. Plaintiffs will also file a [Proposed] Order and Judgment Granting Final Approval of Class Action Settlement, covering the requested fees, costs, expenses, and Service Awards, with Plaintiffs' Motion for Final Approval.

44. As of December 13, 2022, the Claims Administrator reports that the costs of Claims Administration through completion of the Settlement are estimated to be \$682,346.32.

45. After taking into account deductions for Administrative Expenses, which include the costs of Notice and settlement administration through completion of the Settlement estimated to be \$682,346.32, litigation costs and expenses amounting to \$13,868.76, and Service Awards of \$2,500 to each of the three Class Representatives amounting to \$7,500, the Net Settlement Fund amounts to \$3,046,284.92.

46. Class Counsel’s fee request of \$1,250,000 equates to 33.33% of the gross Settlement Fund. It represents and roughly 40% of the estimated Net Settlement Fund (\$1,241,596.82), which is consistent with the market rate in the Seventh Circuit. *See, e.g., Karpilovsky v. All Web Leads, Inc.*, No. 2017-cv-01307 (N.D. Ill. Aug. 8, 2019), ECF No. 173 (approving fees amounting to 35% of the entire settlement fund, which amounted to approximately 38% of the net settlement fund); *see also Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014). The fees contemplated under Class Counsel’s representation agreements for cases in this District and elsewhere generally fall within the one-third (33.33%) to 40% range. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Fee Award and Costs and Service Awards are reasonable, and that the Settlement in this matter is favorable for the Settlement Class.

47. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

* * * * *

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Chicago, Illinois on this 3rd day of January, 2023.

/s/ Gary M. Klinger
Gary M. Klinger
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