STATE OF NORTH CAROLINA

BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

KAREN STIWINTER and PATRICIA NORMAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ASHEVILLE ARTHRITIS AND OSTEOPOROSIS CENTER, P.A.,

Defendant.

Case No.: 24CV208570-100

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Plaintiffs,[1] individually and on behalf of the Settlement Class, respectfully request the Court enter an Order (1) granting Final Approval of the Settlement; (2) confirming certification of the Settlement Class for settlement purposes; (3) finalizing the preliminary appointments of Class Counsel and Class Representatives; (4) awarding Class Counsel attorneys' fees of one-third of the Settlement Fund ($166,666.67), plus reimbursement of reasonable costs in the amount of $21,954.51; and (5) awarding Service Awards of $2,500.00 to each Class Representative.

I. INTRODUCTION

On October 9, 2025, this Court preliminarily approved the Settlement, which provides substantial Settlement Class Member Benefits via a non-reversionary, all-cash $500,000.00 Settlement Fund that will be used to make Cash Payments to the

[1] All capitalized terms used herein shall have the same meanings as those defined in section II of the Settlement Agreement ("SA"), attached as Exhibit A to the Motion for Preliminary Approval (ECF No. 51-1).

Settlement Class. SA ¶ 61. The Settlement Fund will also be used to pay all Settlement Administration Costs, Court-awarded Service Awards to Class Representatives, and Court-awarded attorneys' fees and costs. *Id.* Plaintiffs and Class Counsel strongly believe the Settlement is favorable to the Settlement Class. *See* Joint Decl. of Class Counsel, attached as ***Exhibit A*** hereto ("Joint Decl.") at ¶ 32.

Plaintiffs now move the Court for Final Approval, and apply for an award of attorneys' fees and costs to Class Counsel and Service Awards to the Class Representatives. The Settlement satisfies all Final Approval criteria. Currently, there are no objections to the Settlement and just one opt-out request. *See* Decl. of Cameron Z. Azari, Esq., attached as ***Exhibit B*** hereto ("Admin. Decl."), ¶ 29. This overwhelmingly positive response affirms the Court's initial determination, outlined in the Preliminary Approval Order, that the Settlement is "within the range of a fair, reasonable, and adequate resolution overall." ECF. No. 56. Class Counsel zealously prosecuted Plaintiffs' claims and achieved the Settlement only after an extensive investigation, exchange of informal discovery, and prolonged arm's length negotiations, including at formal mediation. Joint Decl. ¶¶ 9–11. They and Plaintiffs fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions, and believe the Settlement fairly resolves their differences. *Id.* ¶ 36.

As compensation for the substantial benefit conferred upon the Settlement Class due to Class Counsel's extensive efforts, Class Counsel respectfully moves the Court for an award of attorneys' fees equal to one-third percent of the Settlement Fund ($166,666.67). As detailed herein, North Carolina courts have expressly and

repeatedly approved attorneys' fees ranging from 30% to 43% of the common fund created. The requested fee here is reasonable and appropriate in light of the substantial risks presented in prosecuting this Action, the quality and extent of work conducted, and the value secured for the Settlement Class. Class Counsel also seek reimbursement of $21,954.51 in reasonable litigation costs, and Service Awards of $2,500.00 to Class Representatives for their work on behalf of the Settlement Class.

Accordingly, the Court should grant Final Approval of the Settlement and the Application for Attorneys' Fees, Costs, and Service Awards.

II. INCORPORATION BY REFERNCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to and hereby incorporate Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF. No. 51) and its accompanying exhibits, including the proposed Settlement Agreement (ECF No. 51-1), filed in conjunction therewith.

III. SUMMARY OF SETTLEMENT

Plaintiffs seek Final Approval for the Settlement Class of "all individuals to whom Defendant sent individual notification that they were affected by the Data Incident." SA ¶ 54. The Settlement Class excludes (a) all persons who are employees, directors, officers, and agents of Defendant; (b) governmental entities; and (c) the Judge assigned to the Action, that Judge's immediate family, and Court staff. *Id*. The Settlement Class includes approximately 58,521 individuals. *Id*. ¶ 3.

A. Settlement Consideration

The Settlement establishes a $500,000.00 non-reversionary Settlement Fund, which will be used to pay (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) all Notice and Settlement Administration Costs; (3) any Court-approved Service Awards to Class Representatives; and (4) any Court-awarded attorneys' fees and costs to Class Counsel. SA ¶ 6.

The Settlement Class Member Benefits include the following:

1. **Cash Payment A - Documented Losses**. Settlement Class Members may submit a Claim for a Cash Payment of up to $5,000.00 for reimbursement of documented losses related to the Data Incident. SA ¶ 64(a). To receive this documented loss payment, Settlement Class Members must elect Cash Payment A – Documented Losses on the Claim Form attesting to incurring the claimed losses, and submit reasonable documentation supporting the Claim. *Id.* If a Settlement Class Member does not submit reasonable documentation, or if a Claim for Cash Payment A – Documented Losses is rejected by the Settlement Administrator for any reason and the Settlement Class Member fails to cure, the Claim will be treated as one for Cash Payment B – Alternative Cash Payment. *Id*.

2. **Cash Payment B – Alternative Cash Payment**. As an alternative to Cash Payment A – Documented Losses, Settlement Class Members may elect to receive Cash Payment B – Alternative Cash Payment, which is a Cash Payment in the estimated amount of $100.00. *Id*. ¶ 64(b). All Valid Claims for Cash Payment B

– Alternative Cash Payment will be subject to a *pro rata* increase or decrease on an equal percentage basis from the estimated $100.00 amount after payment of (1) Valid Claims for Cash Payment A - Documented Losses, (2) Settlement Administration Costs, (3) Court-awarded Service Awards, and (4) Court-awarded attorneys' fees and costs. *Id.* ¶ 65.

3. **Attorneys' Fees, Costs, and Service Awards**. The Settlement Fund will also be used to pay Class Counsel's Court-awarded attorneys' fees and costs and reasonable Service Awards for the Class Representatives. *Id.* ¶ 61. As explained in the Agreement and the Notice to the Settlement Class, Class Counsel seek an attorneys' fees award equal to one-third of the Settlement Fund ($166,666.67), plus reimbursement of litigation costs of $21,954.51. *Id.* ¶ 97; Joint Decl. ¶ 69. Additionally, subject to Court approval, the Agreement provides for $2,500.00 Service Awards for each Class Representative to be paid from the Settlement Fund. SA ¶ 98. The Service Awards are meant to compensate Class Representatives for their efforts in this Action, including assisting in Class Counsel's investigation and answering questions, reviewing and providing case documents, and being prepared to assist with discovery and mediation. Joint Decl. ¶¶ 41–42. The Parties did not discuss attorneys' fees and costs or Service Awards as until after all material terms of the Settlement were negotiated and agreed upon. *Id.* ¶ 16.

4. **Releases**. The Releasing Parties will release the Released Parties for all Released Claim relating to the Data Incident. SA ¶ 101. The Releases are narrowly tailored to the claims asserted in the Action. Joint Decl. ¶ 15.

B. Notice Program

The Settlement Administrator implemented the Notice Program in full compliance with the Settlement Agreement and the Preliminary Approval Order. Admin. Decl. ¶¶ 20–28. Double-sided Postcard Notices with prepaid, tear-off Claim Forms were sent via USPS first-class mail to the 58,213 members of the Settlement Class members for whom a physical address was provided by Defendant. *Id.* ¶ 22. Prior to sending the Postcard Notice, all mailing addresses were checked against the USPS National Change of Address database to ensure all address information was up-to-date, certified via the Coding Accuracy Support System to ensure the quality of zip codes, and verified through Delivery Point Validation. *Id.* ¶ 23. Postcard Notices returned as undeliverable were promptly re-mailed to new addresses found through USPS information or a third-party address trace service. *Id.* ¶ 24. As of December 10, 2025, the Settlement Administrator had remailed 154 Postcard Notices. *Id.*

Additionally, on November 7, 2025, the Settlement Administrator launched the Settlement Website at www.arthritisdatabreach.com. *Id.* ¶ 26. The Settlement Website address is prominently displayed in all Notice documents. *Id.* Relevant documents, including the Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order, Long Form Notice, and Claim Form are posted on the Settlement Website. *Id.* In addition, the Settlement Website includes relevant dates, answers to frequently asked questions, instructions for how Settlement Class Members may opt-out from or object to the Settlement, contact information for the Settlement Administrator, and other case-related information. *Id.* Settlement Class

Members are also able to submit a Claim Form on the Settlement Website. *Id.* As of December 10, 2025, there have been 793 unique visitor sessions to the Settlement Website, and 2,503 web pages have been presented. *Id.*

The Settlement Administrator also established a toll-free telephone number for the Settlement, where callers have the option to learn more about the Settlement in the form of recorded answers to commonly asked questions, and request that a claim package with the Long Form Notice and Claim Form be mailed to them. *Id.* ¶ 27. As of December 10, 2025, the Settlement Administrator mailed 12 Claim Packages upon such requests. *Id.* The toll-free telephone number was prominently displayed in all Notice documents, and is available 24/7. *Id.* As of December 10, 2025, there have been 126 calls to the toll-free telephone number representing 358 minutes of use. *Id.* A postal address and email address were also established for Settlement Class Members to request additional information about the Settlement. *Id.* ¶ 28.[2]

Although Rule 23 of the North Carolina Rules of Civil Procedure does not discuss notice to class members, "[t]he trial court should require that the best notice practical under the circumstances be given." *Crow v. Citicorp Acceptance Co.*, 319 N.C. 282-84, 354 S.E.2d 465 (1987). This may include "requir[ing] that potential class members be given an opportunity to request exclusion from the class within a specified time in a manner similar to the current federal practice." *Id.* at 466. The Notice Program accomplished that here. The Notices adequately informed the

[2] The Settlement Administrator will provide a supplemental declaration to Court prior to the Final Approval Hearing with additional details regarding the final reach of the Notice Program and individual Notice to the Settlement Class. *Id.* ¶ 36.

Settlement Class of the nature of the Action, the Settlement Class definition, the claims at issue, the binding effect of Final Approval and judgment, and the rights to object and opt-out. Admin Decl. ¶¶ 22, 30, & Att. 2–4. The forms of Notice utilized clear and concise language that is easy to understand. *Id*. Thus, the Notice provided has been consistent with the Preliminary Approval Order, satisfies North Carolina law and due process, and weighs in favor of Final Approval.

C. Claims, Opt-Outs, and Objections

The Claim Process was structured to give all members of the Settlement Class adequate time to review the Settlement terms, submit Claims, and decide whether to opt-out of or object to the Settlement. Joint Decl. ¶ 28. The Opt-out Deadline, Objection Deadline, and Claim Form Deadline are January 26, 2026. Admin Decl. ¶¶ 29, 31. As of December 10, 2025, the Settlement Administrator has received 3,333 Claim Forms (264 online and 3,069 paper), one opt-out request, and no objections. *Id.* With over a month left before the Claim Form Deadline, Class Counsel anticipate the number of Claims will continue to increase. Joint Decl. ¶ 29. Class Counsel will update the Court with the final Notice Program and Claim Process results at the Final Approval Hearing, including responding to any objections, if filed.

IV. LEGAL ARGUMENT

A. The Settlement Should Be Finally Approved

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, a "class action shall not be dismissed or compromised without the approval of the judge." To evaluate a proposed class action settlement, North Carolina courts "follow the two-step procedure generally employed by federal courts." *Ehrenhaus v. Baker*, 216 N.C. App.

59, 73, 717 S.E.2d 9, 19 (2011); *see also, e.g. Nakatsukasa v. Furiex Pharms., Inc.*, 2015 NCBC LEXIS 71 (N.C. Super. Ct. July 1, 2015). First, courts review whether the proposed class satisfies Rule 23. *Ehrenhaus*, 216 N.C. App. at 73. Second, courts review whether the settlement is "fair, reasonable, and adequate." *Id.*

The Court has already determined the Settlement "appears preliminarily to be within the range of a fair, reasonable, and adequate resolution overall; within the range of reasonableness for such a class action; and apparently in the best interests of the Settlement Class, such that it warrants providing notice." ECF No. 56 ¶ 10. The Court must now therefore determine if the Settlement is fair, reasonable, and adequate. *Ehrenhaus*, 216 N.C. App. at 73. Notably, one North Carolina Business Court reached that conclusion in approving a comparable common-fund settlement in a data breach class action earlier this year. *See In Re Columbus Regional Healthcare Sys. Data Security Incident Litig.*, No. 24CVS88 (April 30, 2025), ECF No. 109, attached as ***Exhibit C*** hereto. The instant Settlement providing substantial Settlement Class Member Benefits despite significant risks of litigation is likewise fair, reasonable, and adequate, warranting this Court's Final Approval.

1. Certification of the Settlement Class Should Be Confirmed.

In the Preliminary Approval Order, the Court, for settlement purposes only, preliminarily certified the Action as a class action for the Settlement Class, finding the prerequisites of Rule 23 satisfied. ECF No. 56 ¶ 14. The Court conditionally appointed Plaintiffs as Class Representatives, finding them similarly situated to absent Settlement Class Members and therefore adequate. *Id.* ¶ 15. The Court also

conditionally appointed Kenneth J. Grunfeld of Kopelowitz Ostrow P.A. and Tyler J. Bean of Siri & Glimstad LLP as Class Counsel, finding them experienced and adequate to represent the Settlement Class. *Id.* ¶ 16. For efficiency, Plaintiffs incorporate by reference their Settlement Class certification arguments from the Motion for Preliminary Approval. *See* ECF No. 51. Because nothing regarding class certification has changed since Preliminary Approval, the Court should finally certify the Settlement Class for settlement purposes and confirm the appointments of Class Counsel and Class Representatives.

2. The Settlement Is Fair, Reasonable, and Adequate.

It is well-established that the public interest favors settling litigation, including in class actions. *See Ehrenhaus*, 216 N.C. App. at 72 ("Our judicial system has a strong preference for settlement over litigation."); *see also Knight Pub. Co., Inc. v. Chase Manhattan Bank, NA.,* 131 N.C. App. 257, 262 (N.C. Ct. App. 1998) ("[T]he law favors the avoidance of litigation, and a compromise made in good faith will be sustained . . .upon the highest consideration of public policy.") (citation omitted).

With this policy favoring settlements in mind, North Carolina courts consider "two key factors in determining whether to approve a proposed settlement of a class action lawsuit." *Nakatsukasa*, 2015 NCBC at 17. "The first is the likelihood the class will prevail should litigation go forward and the potential spoils of victory, balanced against benefits to the class offered in the settlement." *Id.* (citing *Ehrenhaus*, 216 N.C. App. at 74). "The second is the class's reaction to the settlement." *Id.* "The opinion of counsel is also a relevant factor." *Ehrenhaus*, 216 N.C. App. at 74. All

relevant factors support Final Approval here.

i. The Likelihood the Settlement Class Will Prevail Balanced Against the Settlement Class Member Benefits

The meaningful and substantial Settlement Class Member Benefits made available under the Settlement vis-à-vis the significant risk of litigating the Action weighs heavily in favor of Final Approval.

To start, the outcome would be far from certain had the Action not settled. Although Plaintiffs are confident in the merits of their claims, the litigation risks cannot be disregarded; "Data-privacy cases are 'particularly risky, expensive, and complex.'" *Weddle v. Wakemed Health*, 2025 NCBC 71, 27 (Nov.17, 2025) (granting final approval) (quoting *Gordon v. Chipotle Mexican Grill, Inc.*, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019)); *see also, e.g. In re Wawa, Inc. Data Sec. Litig.*, 2024 WL 1557366, at *20 (E.D. Pa. April 9, 2024) ("Data breach litigation is inherently complex."); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, *15 (N.D. Ga. Mar. 17, 2020) (data privacy law "remains uncertain and the applicable legal principles have continued to evolve"). As this case "revolves around rapidly evolving legal questions of digital security, data breaches, and digital privacy, which are at the cutting edge of the interplay between new technology and the law," it is "therefore complicated, difficult, and fraught with risk." *McManus v. Gerald O. Dry, P.A.*, 2023 NCBC LEXIS 69, *4 (May 5, 2023).

Given the complex and uncertain nature of this Action, Plaintiffs would face challenges at all stages of litigation had the Settlement not been reached. Data breach cases like this one have been dismissed at the pleading stage. *See, e.g., Logan v.*

Marker Group, Inc., 2024 WL 3489208 (S.D. Tex. July 18, 2024) (dismissing all but one claim); *In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226, at *14 (N.D. Cal. Sep. 13, 2011) ("[M]any [data breach class actions] have been dismissed at the pleading stage."). Class certification is another hurdle, and has been denied in other data breach cases. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013); *In re Blackbaud, Inc., Customer Data Breach Litig.*, 2024 WL 21555221 (D.S.C. May 14, 2024); *Theus v. Brinker Int'l, Inc.*, 2025 WL 1786346, at *4 (M.D. Fla. June 27, 2025). Maintaining certification can be equally challenging. *See e.g., Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123 (4th Cir. 2025) (reversing reinstated class certification). Thus, "[t]here is no doubt that, absent a settlement, the parties would spend considerable time and resources contesting class certification and summary judgment (not to mention, if necessary, a long and complex trial)," supporting the Settlement's reasonableness. *Weddle*, 2025 NCBC at 17.

Through the Settlement, Plaintiffs and Settlement Class Members avoid the risks of litigation (including the risk they recover nothing at all), while receiving significant Settlement Class Member Benefits now. The Settlement provides immediate and substantial value through a $500,000.00 non-reversionary Settlement Fund to approximately 58,521 Settlement Class Members. Reduced to a per-person amount, this Settlement provides over $8.50 per Settlement Class Member, which compares very favorably, and in fact exceeds, many similar common fund data breach settlements. *See* Joint Decl. ¶ 22. Indeed, just last month the North Carolina Business Court of Wake County granted final approval to a similar data privacy class action

settlement in *Weddle*, reasoning "[t]he settlement fund is substantial" (representing approximately $5.00 per class member) and "each [class] member who has submitted a claim will receive a nontrivial, pro rata share of this fund." *See, e.g. Weddle*, 2025 NCBC at 21. The same rationale supporting final approval in *Weddle* applies to the higher-value per-person Settlement here.

Moreover, Settlement Class Members who submit Valid Claims can recover their monetary losses attributed to the Data Incident now, rather than waiting for the risk and uncertainty of class certification and trial. To Class Counsel's knowledge, no data breach class action has been tried to date, making it difficult to predict what a jury may award and adding to the risk. Joint Decl. ¶ 20. Thus, "[w]hether Plaintiffs could have achieved a similar or better result by seeing their claims through to the finish line is highly uncertain," to say the least. *Weddle*, 2025 NCBC at 21. As the *Weddle* court recently found, considering "the claims and defenses, the case's overall complexity, the odds that [Defendant] would successfully defend itself, and the length of time needed to obtain a final judgment through one or more trials and appeals . . . settl[ing] the case on these terms is reasonable and prudent." *Id.*

ii. The Settlement Class's Positive Reaction to the Settlement

"The reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Ehrenhaus*, 216 N.C. App. at 74 (citation modified).The Settlement Class's response to the Settlement has been overwhelmingly positive, further establishing that the Settlement is fair, adequate, and reasonable.

At present the Settlement Administrator has received only one opt-out request and zero objections to the Settlement. Admin Decl. ¶ 29. This "absence of any significant opposition to the settlement heavily favors approval." *Weddle*, 2025 NCBC at 18. Additionally, with over a month remaining until the Claim Deadline, the Settlement Administrator has received 3,333 Claim Forms from Settlement Class Members, representing an excellent Claims rate of over 5.7% and providing additional support for Final Approval. Admin Decl. ¶ 31. *See Weddle*, 2025 NCBC at 18 ("settlement administrator's extraordinarily successful notice campaign and the remarkably high rate at which class members submitted claim forms" supports final approval); *see also, e.g. See, e.g., Wawa*, 2024 U.S. Dist. LEXIS 65200, at *70-71 (collecting cases and noting claims rate of "about 2.56% . . . compares favorably to the claims rates in other data breach class actions").

iii. Class Counsel's Opinion

"The opinion of counsel is also a relevant factor" in the Final Approval analysis. *Id*. Class Counsel here have decades of experience in data privacy class actions like this Action, and they and their respective firms have emerged as nationwide leaders in litigation over breaches involving consumers' personal data. Joint Decl. ¶¶ 37–40. They applied that extensive experience to achieve the Settlement after a thorough investigation, exchange of informal discovery, and prolonged arm's length negotiations, including at formal mediation. *Id.* ¶¶ 9–11, 40. Class Counsel strongly support the Settlement and submit it is an excellent result for the Settlement Class. *Id.* ¶ 74. As "the opinion of experienced and informed counsel is entitled to

considerable weight," this is additional strong evidence the Settlement is fair, reasonable, and adequate. *Ehrenhaus*, 216 N.C. App. at 93.

* * *

In sum, the Settlement Class Member Benefits are substantial, the Settlement Class's reaction has been overwhelmingly positive, and Class Counsel strongly support the Settlement based on their decades of experience. The relevant factors establish the Settlement is fair, reasonable, adequate, and should be finally approved.

B. The Application for Attorneys' Fees, Costs, and Service Awards to the Class Representatives Should Be Granted.

Class Counsel requests an award of attorneys' fees equal to one-third of the Settlement Fund, which is reasonable under either the percentage of the fund method or the lodestar method. Plaintiffs' lodestar of $165,688.15 represents a negligible lodestar multiplier of 1.005. Joint Decl. ¶¶ 45-46. Class Counsel further requests reimbursement of $21,954.51 in actual out-of-pocket expenses reasonably incurred and necessary for the prosecution and settlement of this Action. *Id.* ¶ 44. Class Counsel also recommends and requests a Service Award of $2,500.00 to each Class Representative in recognition of the work they performed on behalf of the Settlement Class.

1. The Fee Request Should Be Approved Under the Percentage of Common Benefit Method.

North Carolina has long approved granting attorneys' fees upon the creation of a common allocation of money. "The North Carolina Court of Appeals has held that 'parties to a class action may agree to a fee-shifting provision in a negotiated settlement that is—like all other aspects of the settlement—subject to the trial court's

approval in a fairness hearing.'" *Weddle*, 2025 NCBC 71, 25 (quoting *Ehrenhaus v. Baker*, 243 N.C. App. 17, 30 (2015) ("*Ehrenhaus II*")).

This doctrine was first recognized in *Horner v. Chamber of Commerce, Inc.*, 236 N.C. 96, 97-98 (1952), in which the Court stated the following:

> [T]he rule is well established that a court of equity, or a court in the exercise of equitable jurisdiction, may in its discretion, and without statutory authorization, order an allowance for attorney fees to a litigant who at his own expense has maintained a successful suit for the preservation, protection, or increase of a common fund or of common property, or who has created at his own expense or brought into court a fund which others may share with him.

Plaintiffs' attorneys in a successful class action lawsuit may petition the court for compensation relating to any benefits to the class that result from the attorneys' efforts. *See, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). The doctrine's foundation rests on the principle that "where one litigant has borne the burden and expense of the litigation that has inured to the benefit of others as well as to himself, those who have shared in its benefits should contribute to the expense." *Horner*, 236 N.C. at 98, 72 S.E.2d at 22.

Thus, common fund cases like this Action "routinely result in attorneys' fees being awarded under a percentage of the fund method." *Johnson v. Hawthorne Residential Partners LLC*, 2023 N.C. Super. LEXIS 71, *11 (Aug. 29, 2023) (citing *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 345 N.C. 683, 483 (1997)). The percentage-of-the-fund method is the preferred method of calculating attorneys' fees in cases involving common fund settlements in federal courts as well. *See Ferris v. Sprint Comm'ns Co. L.P.*, 2012 WL 12914716, at *6 (E.D.N.C. Dec. 13, 2012) (quotations omitted) ("[T]here is a consensus among the federal circuit courts

of appeal that the award of attorneys' fees in common fund cases may be based on a percentage of the recovery."); *see also Phillips v. Triad Guaranty Inc.*, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016) (noting that courts within the Fourth Circuit "overwhelmingly" prefer percentage-of-the-fund method in common fund settlement); *Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (citations omitted) (same). Indeed, the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Ferris*, 2012 WL 12914716, at *6; *see also DeWitt v. Darlington Cty.*, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013) ("The percentage-of-the fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case.").

2. Class Counsel's Fee Request is Fair Under the *Ehrenhaus* Factors.

The fundamental test for awarding attorneys' fees in class action settlements is whether the request is "fair and reasonable." *Ehrenhaus II*, 243 N.C. App. at 30. The reasonableness of an attorneys' fee award is determined by a set of nonexclusive factors, including the following:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

Ehrenhaus, 216 N.C. App. at 96-97. No single factor is dispositive. *Id.*

Fee requests have been deemed presumptively fair and reasonable when they seek one-third of the common fund. For example, the North Carolina Business Court in *Byers v. Carpenter*, No. 94 CVS 04489, 1998 WL 34031740, at *9 (N.C. Super. Jan. 30, 1998), held the appropriate level of compensation using a percentage-of-recovery method is typically 25% of the relief obtained if the case is settled before filing; 33.33% if after filing; and 40% if after an appeal has been taken. "The percentage fee is paid in addition to any expenses that the attorney has incurred on behalf of the client." *Id.*

An examination of the *Ehrenhaus* factors further bears this out. The first and seventh factors—the time and labor required, the novelty and difficulty of the questions involved, the skill required, and the experience, reputation, and ability of the lawyers involved—overwhelmingly support the requested fee award. Class Counsel have expended 233.2 hours on this case, they anticipate spending more through Final Approval and distribution of Settlement Class Member Benefits. Joint Decl. ¶¶ 45, 61. The skill required to litigate data breach cases is great, in part due to the quickly evolving nature of data privacy law. Here, Class Counsel are some of the most experienced in this area of the practice. *Id.* ¶¶ 37–39. Class Counsel brought this established track record and experience to work in litigating the Settlement Class Members' claims.

Class Counsel's expertise is important because this was a case where Plaintiffs faced substantial hurdles involving novel and difficult legal questions. As discussed in § IV.A(2)(i), *supra*, data breach cases, in general, are innately risky and expensive

by their nature. *See, e.g.*, *Weddle*, 2025 NCBC at 27 ("Data-privacy cases are 'particularly risky, expensive, and complex.'"); *Equifax*, 2020 WL 256182, at *382 (recognizing the complexity and novelty of issues in data breach class actions); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (same); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (same). Moreover, as theories of damages remain untested at trial and appeal, "[d]ata breach litigation is evolving; there is no guarantee of the ultimate result." *Fox v. Iowa Health Sys.*, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021).

This case is no exception to that rule. It involves 58,521 Settlement Class Members, complicated and technical facts, and a well-funded and motivated Defendant. While Plaintiffs believe that they would have ultimately prevailed on the merits at trial or summary judgment, they are also aware that there are substantial risks inherent in bringing any case to trial. 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. *In re TD Ameritrade*, 2011 WL 4079226, at *14. Class certification is another hurdle, and has been denied in other data breach cases. *See, e.g.*, *Hannaford Bros.*, 293 F.R.D. 21; *Blackbaud*, 2024 WL 21555221; *Theus*, 2025 WL 1786346, at *4. And one of the few significant data breach class actions that have been certified on a national basis, *In re Marriott International Customer Data Securities Breach Litigation*, 341 F.R.D. 128 (D. Md. 2022), was decertified on appeal. *See Maldini*, 140 F.4th 123.

Accordingly, the fact that Class Counsel was able to navigate this case and

resolve it at a relatively early stage is indicative of their skill and efficiency in litigating this matter. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 262-63 (E.D. Va. 2009) (finding counsel's ability to promptly resolve case indicative of counsel's "skill and efficiency").

Class Counsel also devoted significant time and effort in settling this matter, including the following tasks:

a. investigating potential claims, interviewing potential plaintiffs, gathering information about the Data Incident, and conducting extensive legal research on the best strategy to prosecute the case;
b. preparing the initial complaints, consolidation papers, and the First Amended Class Action Consolidated Complaint;
c. requesting and reviewing informal discovery from Defendant;
d. engaging in mediation with an experienced class action mediator;
e. negotiating the terms of the Settlement Agreement with Defendant through numerous phone calls and emails;
f. drafting the Settlement Agreement and Notice documents;
g. preparing a request for proposal to potential claims administration firms and reviewing multiple rounds of bids to ensure Settlement Administration at a competitive price;
h. working with the Settlement Administrator to develop and then implement the Notice Program and Claims Process;

i. preparing, finalizing, and filing the Motion for Preliminary Approval and Motion for Final Approval; and

j. responding to client phone calls and questions regarding the Settlement.

Joint Decl. ¶ 60. Class Counsel's work to date has been comprehensive, complex, and wide-ranging. Thus, the first and seventh *Ehrenhaus* factors amply support the requested fee award.

The eighth factor—whether the fee was fixed or contingent—likewise supports the requested fee award. Class Counsel took this case on a purely contingent basis. Joint Decl. ¶¶ 62–63. Their retainer agreements with Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, attorneys' fees would only be awarded if approved by the Court. *Id*. As such, Class Counsel assumed significant risk of nonpayment or underpayment. *Id*.

This overarching risk simply puts a point on what is true in all class actions: class certification through trial is not guaranteed and presents a significant risk for Plaintiffs and their Counsel. Courts have recognized that such risks deserve extra compensation and comprise a critical factor in determining the reasonableness of a fee. *See, e.g*., *Stocks v. Bowen*, 717 F. Supp. 397, 402 (E.D.N.C. 1989); *Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co*., 689 F. App'x 197, 201 (4th Cir. 2017); *Silverman v. Motorola Sols., Inc*., 739 F.3d 956, 958 (7th Cir. 2013) ("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."). Consequently, the requested fee award appropriately compensates for the risk undertaken by Class Counsel here.

The third *Ehrenhaus* factor—the fee customarily charged for similar services—weighs heavily in favor of approving the fee requested. The request for attorneys' fees equaling 33.33% of the Settlement Fund represents a percentage that North Carolina courts customarily find reasonable; Courts sitting in North Carolina and the Fourth Circuit have customarily approved fees equal to 30% to 43% of a common fund in class action litigation. *See, e.g.*, *Stier Construction Co. v. Town of Carolina Beach*, 19-CVS-2999 (N.C. New Hanover Super. Ct. November 5, 2020) (awarding 33.33% of common fund); *Upright Builders Inc. v. Town of Apex*, 18-CVS-4384 (N.C. Wake Co. Super. Ct. May 28, 2019) (same); *Atrium Homes, Inc. et al. v. Carolina Shores Nort Homeowners' Association, Inc.*, 22-CVS-411 (N.C. Brunswick Co. Super. Ct. May 14, 2014) (same); *McAdams v. Robinson*, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys' fees award of $1,300,00 or 43% of the $3,000,000 common fund class action settlement); *Davidson v. Daimler Trucks N. Am. LLC*, 2021 WL 8442063, at *2 (W.D.N.C. Nov. 19, 2021) (citation omitted) (attorneys' fee awards generally range up "to forty-five percent (45%) of the settlement fund"); *Kirkpatrick v. Cardinal Innovations Healthcare Sols.*, 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018) ("The requested 33.33 percent award is within the range of percentages that have been approved in other cases in this circuit."); *see also In re Cotton*, 3:18-cv-00499, 2019 WL 1233740, at *4 (W.D.N.C. March 15, 2019) (approving an award of 33 percent of the total settlement value); *Neal v. Wal-Mart Stores, Inc.*, 3L17-cv-00022, 2021 WL 1108602, at *2

(W.D.N.C. March 19, 2021) (same). Further, in similar data breach class actions, class counsel has been awarded fee awards well exceeding the award sought here. *See, e.g.*, *McAdams v. Robinson*, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys' fees award of $1,300,00 or 43% of the common fund); *Fox*, 2021 WL 826741 at *6 (approving attorneys' fees and costs in the amount of $1,575,000 in data breach settlement).

The fourth factor—the amount involved and the results obtained—strongly favors the requested award. This is, without question, the most important inquiry. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1988) ("[T]he most critical factor is the degree of success obtained."). As shown above, the Settlement provides a significant benefit to Settlement Class Members: a non-reversionary $500,000.00 Settlement Fund, from which a wide array of benefits, including direct Cash Payments. These are real, tangible benefits that would be available to Settlement Class Members Class Counsel's efforts and willingness to take on the attendant risks of litigation. Thus, this factor weighs heavily in favor of the requested fee award.

Finally, the result achieved in this Settlement is notable because the Parties through capable and experienced counsel, were able to reach a negotiated Settlement without significant involvement of the Court in managing this Action. Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement. Joint Decl. ¶ 59. The Settlement reached here is notable for the simplicity

of the Claims Process; the Settlement Class Member Benefits including Cash Payments; the speed with which Class Counsel was able to secure these benefits; and Class Counsel's skill in resolving this matter efficiently.

The fifth and sixth factors—the time limitations imposed by the client or circumstances and the nature and length of the professional relationship with the client—are neutral. Class Counsel did not have a professional relationship with Plaintiffs prior to this case, and there were no time limitations. *Id*. ¶ 24.

Accordingly, on balance *Ehrenhaus* factors overwhelmingly support the requested fee award.

3. The Requested Fees Are Reasonable Under a Lodestar Crosscheck.

While Class Counsel does not believe that a lodestar cross-check is necessary for a non-reversionary common fund case such as this, the requested fee of $166,666.67 is also reasonable under a lodestar crosscheck. Despite the novelty and complexity of data privacy litigation, Class Counsel's position as some of the nation's leading experts in the field allowed them to efficiently address the issues presented in the Action. *Id.* ¶ 40. In carrying out their responsibilities to the Settlement Class, Class Counsel took care to ensure that no duplicative or unnecessary work was performed. *Id.* ¶ 68.

Class counsel has worked 233.2 hours on this matter, incurring a total lodestar of $165,688.15, and resulting in a minimal lodestar multiplier of approximately 1.005 when applying their standard rates. Joint Decl. ¶¶ 45–46. This is before factoring in the time counsel will spend attending the Final Approval Hearing and continuing to

oversee the Settlement Administration process. *Id.* ¶ 61.

Courts in North Carolina regularly approve lodestar multipliers of 2–4 when conducting lodestar cross-checks. *Byers*, 1998 WL 34031740, at *11 ("A reasonable multiplier based on these factors would be 2 to 4."); *see also Kirkpatrick*, 352 F. Supp. 3d 499, 507 (M.D.N.C. 2018) (citing cases where "courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee."). Further, courts around the country have held that fee requests representing a negative multiplier are reasonable and should be approved. *See, e.g.*, *Baffa v. Donaldson Lufkin & Jenrette Sec. Corp.*, 2002 WL 1315603 at *2 (S.D.N.Y. June 17, 2002); *In re Blech Sec. Litig.*, 2000 WL 661680 at *5 (S.D.N.Y. May 19, 2000) (awarding 30% of the settlement, and confirming award was reasonable because it represented a negative multiplier). The requested fee here represents a lodestar multiplier significantly less than what Courts customarily approve, showing it is reasonable under the percentage and lodestar approaches and should be approved.

4. Other Factors Supporting the Requested Award

In addition to satisfying the *Ehrenhaus* factors, the requested fee award has been approved by the Settlement Class Members themselves. Settlement Class members received direct Notice of the Settlement, which provides the best possible and most practicable notice in a class settlement. Joint Decl. ¶ 26. The Notice described the amount Class Counsel intended to request in attorneys' fees and costs in plain and clear language. *Id.* ¶ 27. As of the date of this filing, no Settlement Class Member has objected to the requested attorneys' fee, the case expenses sought, or the

proposed Service Awards, further establishing the requests are reasonable. *See Varacallo v. Massachusetts Mutual Life Insurance Co.*, 226 F.R.D. 207, 251 (D.N.J. 2005) (even small number of objectors to fee award favors approval).

C. Class Counsel's Request for Expenses is Reasonable.

Class Counsel also seeks to recover reasonable litigation expenses in the amount of $21,954.51, representing filing fees, service fees, research fees, and the cost of mediation. Joint Decl. ¶¶ 70–75. Courts regularly award litigation expenses in addition to attorneys' fees in class action cases, which may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted). Class Counsel's expenses here, were all reasonably incurred in, and necessary to, pursuing this Action, and they respectfully request the Court award them. *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665 (D. Md. Oct. 2, 2013) (awarding expenses that the court deemed were "reasonable and typical.").

D. The Requested Service Awards Are Reasonable.

Class litigation cannot proceed without one individual's willingness to step up and litigate on others' behalf. A putative class representative must devote time and energy to carry out tasks that are far above and beyond what absent class members are asked to do. In recognition of these efforts, courts often award service awards to class representatives. *See Carl v. State*, 2009 WL 8561911 at § 97 (N.C. Super. Dec. 15, 2009) (service awards are "awarded to class representatives in recognition of their

time, expense, and risk undertaken to secure a benefit for the Class they represent" and are "within the discretion of the Court.").

Factors courts consider when awarding incentive awards include the risk to the plaintiff in commencing suit, both financially and otherwise; the notoriety and/or personal difficulties encountered by the representative plaintiff; the extent of the plaintiff's personal involvement in the lawsuit; the duration of the litigation; and the plaintiff's personal benefit, or lack thereof, purely in his capacity as a class member. *Perry v. Fleetboston*, 229 F.R.D. at 118. The degree to which the Settlement Class has benefited from the Class Representatives' actions is also taken into account. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Class Representatives here seek Service Award of $2,500.00 each in recognition of the significant time and effort they have personally invested in this Action. They were prepared to litigate this Action through trial to properly represent the Settlement Class and fight for significant relief. Absent their efforts, the Settlement Class would have received no Settlement or the benefits made available thereunder. Plaintiffs assisted in Class Counsel's investigation of the case, willingly put their names in the public domain, subjected themselves to a vetting process which required them to disclose numerous personal details, compiled relevant documents, reviewed pleadings, maintained contact with Class Counsel, remained available for consultation during Settlement negotiations, answered Class Counsel's many questions, and reviewed the Settlement Agreement. Joint Decl. ¶ 42.

The requested Service Awards are reasonable and commensurate with

Plaintiffs efforts in the Action. They are also in line with other, recent service awards in data breach cases and other class actions approved by North Carolina courts. *See, e.g.*, *McManus*, 2023 WL 2785559, at *3 (awarding $5,000 service awards); *Stier Construction* (awarding service awards of $5,000); *Upright Builders*, 18-CVS-4384 (same); *Atrium Homes,* 22-CVS-411 (awarding service awards of $5,000 and $2,500).

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order (1) granting Final Approval of the Settlement; (2) confirming certification of the Settlement Class for settlement purposes; (3) finalizing the preliminary appointments of Class Counsel and Class Representatives; (4) awarding Class Counsel attorneys' fees of one-third of the Settlement Fund ($166,666.67), plus reimbursement of reasonable costs in the amount of $21,954.51; and (5) awarding Service Awards of $2,500.00 to each Class Representative.

Dated: December 23, 2025

Respectfully submitted,

/s/ Dana Smith

Dana Smith, NCSB 51015
Email: dsmith@sirillp.com
SIRI & GLIMSTAD LLP
525 North Tryon Street Suite 1600 #7433
Charlotte, NC 28202

Tyler J. Bean (*pro hac vice*)
Email: tbean@sirillp.com
SIRI & GLIMSTAD LLP
745 Fifth Avenue, Suite 500
New York, New York 10151
Tel: (212) 532-1091

Kenneth Grunfeld (*pro hac vice*)
Email: ostrow@kolawyers.com
KOPELOWITZ OSTROW P.A.
1 West Las Olas BLVD, 5th Floor
Ft. Lauderdale, Florida 33301
Tel: (954) 525-4199

Counsel for the Plaintiffs and Putative Class