

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

TIFFANY RAYBURN and MARQUITA)	
PATTERSON, individually, and on behalf)	
of all others similarly situated,)	
)	
Plaintiffs,)	
)	Case No.: 2522-CC00257
v.)	
)	
MERS MISSOURI GOODWILL)	
INDUSTRIES,)	
)	
Defendant.)	
)	

**PLAINTIFFS’ MEMORANDUM IN LAW IN SUPPORT OF UNOPPOSED MOTION
FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND SERVICE AWARD**

Plaintiffs Tiffany Rayburn and Marquita Patterson (“Settlement Class Representatives”), through their undersigned counsel, respectfully move the Court for entry of an Order approving: (1) Settlement Class Counsel’s requested attorneys’ fees, costs and expenses of \$330,000.00, and (2) a Service Award to each of the Settlement Class Representatives in the amount of \$5,000.00.

I. BACKGROUND

A. History of Litigation

Plaintiffs allege that from on or around March 10, 2023 to on or around March 15, 2023, MERS experienced a digital security incident where an unauthorized party accessed and removed certain files from MERS’ computer systems (the “Data Incident”). Plaintiffs also allege that the files removed by the unauthorized party included the personally identifying information (“PII”) and protected health Information (“PHI”) (collectively “Private Information”) of approximately 70,390 individuals. Plaintiffs further allege that MERS sent them notice of the Data Incident, dated

May 9, 2024, informing them that their Private Information was potentially accessed by cybercriminals in the Data Incident.

On May 30, 2024, Plaintiffs Tiffany Rayburn and Marquita Patterson, former employees of Defendant, filed a putative class action complaint in the United States District Court for the Eastern District of Missouri styled *Tiffany Rayburn at al. v. MERS Missouri Goodwill Industries,*, Case No. 4:24-cv-756 (the “Federal Action”). Plaintiffs brought claims for negligence, negligence per se, breach of implied contract, unjust enrichment, and breach of fiduciary duty. MERS subsequently filed a motion to dismiss Plaintiffs’ claims on August 26, 2024. MERS denies the allegations in the Federal Action and further denies that it has any liability to Plaintiffs relating to the Data Incident.

Pursuant to the Parties’ settlement negotiations, detailed below, and in light of information learned, on December 12, 2024, Plaintiffs dismissed the Federal Action. On February 4, 2025, Plaintiffs refiled their claims against Defendant in the Circuit Court of the City of St. Louis, Missouri, related to the Security Incident, asserting the same five causes of action. MERS denies the allegations in the state action and further denies that it has any liability to Plaintiffs relating to the Data Incident.

B. Negotiations and Settlement

As the Parties briefed MERS’ motion to dismiss, on or around September 2024, they initiated settlement negotiations to explore a resolution rather than proceed with timely and expensive discovery. Declaration of Raina C. Borrelli in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Borrelli Decl.”) ¶ 5. To facilitate negotiations, the Parties agreed to use experienced mediator Honorable David E. Jones (Ret.) of Resolute Dispute Resolution Nationwide. *Id.* Prior to the mediation, the Parties submitted briefs

to Judge Jones which set forth their respective positions on the strengths of Plaintiffs' case and Defendant's defenses, and Defendant produced pre-mediation documents. *Id.*

On November 21, 2024, the Parties attended a full day mediation at Plaintiffs' counsel's office with Judge Jones and reached an agreement in principle. *Id.* ¶ 6. Over the ensuing weeks, the Parties continued negotiating the finer points of the Settlement Agreement, diligently drafting and finalizing the Settlement, Notice, and Claim Forms, and drafting the motion for preliminary approval for presentment to the Court. *Id.* The Parties did not negotiate attorney's fees or a service award until after they had agreed on benefits for the Settlement class. *Id.* ¶ 9. Plaintiffs' counsel is confident that the Settlement terms are fair, reasonable, adequate, and provide significant relief to the Settlement Class. *Id.* ¶ 12.

C. Settlement Class Counsel Achieved Significant and Valuable Benefits for the Settlement Class

The Settlement achieved by Settlement Class Counsel¹ provides Settlement Class Members with excellent and timely benefits targeted at remediating the specific harms they allege they have suffered as a result of the Data Incident. With the aggregate cap on the benefits paid of \$500,000 to Settlement Class Members, the costs of settlement administration (approximately \$50,000 outside of the aggregate cap), and the cost of cybersecurity enhancements (estimated at \$100,000 per year for three years, S.A. ¶3.5), and the attorneys' fees and costs and service awards (\$330,000 and \$5,000 per Plaintiff, respectively), the total value of the Settlement can be conservatively estimated at nearly \$1.2 million.

The Settlement provides the following benefits to all Settlement Class members who submit a valid claim:

¹ Unless otherwise noted, capitalized terms have the meaning attributed to them in the Settlement Agreement filed with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

1. Credit Monitoring

Settlement Class Members will be offered enrollment in two years of three-bureau credit monitoring with at least \$1,000,000 in identity theft protection insurance. *Id.* ¶ 3.4. This will ensure that Settlement Class Members' Private Information is protected well into the future.

2. Reimbursement for Ordinary Losses

Settlement Class Members may make a claim for compensation for unreimbursed Ordinary Losses up to \$500. *Id.* ¶ 3.3(a). Documented Out-of-Pocket losses may include, but are not limited to unreimbursed losses relating to fraud or identity theft, professional fees including attorneys' fees and accountants' fees, fees for credit repair services and/or credit monitoring costs that were incurred. *Id.* Settlement Class Members may also make a claim for compensation for Lost Time up to 4 hours at a rate of \$25.00 per hour, for a total of \$100.00 per claimant (subject to the \$500 cap). *Id.*

3. Reimbursement for Extraordinary Losses

Defendant further will provide up to a maximum of \$5,000 per Settlement Class Member for Extraordinary Losses caused by the Data Incident, upon submission of a valid claim with third-party documentation. *Id.* ¶ 3.3(b).

4. Alternative Cash Payment

Furthermore, Settlement Class Members can make a Claim for an Alternative Cash Payment of fifty dollars and zero cents (\$50.00) in the alternative to Claims for Ordinary Losses, Lost Time, and Extraordinary Losses. *Id.* ¶ 3.3(c).

5. Remedial Relief

Finally, in addition to the monetary benefits offered, the Settlement confirms that, after the Data Incident, Defendant will spend at least \$100,000 on upgrades to information security for three

years, designed to protect Settlement Class Members' Private Information moving forward. *Id.* ¶ 3.5.

II. LEGAL STANDARD

A trial court has discretion in determining the appropriate amount of reasonable attorneys' fees to approve in a class action. *Berry v. Volkswagen Grp. Of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. 2013) (en banc). "The trial court is deemed an expert at fashioning an award of attorneys' fees," and the court's determination will be affirmed unless it is "so arbitrary and unreasonable as to shock one's sense of justice." *Id.* at 430–31 (citations omitted). As to what constitutes a reasonable fee, courts employ one of two methods: (1) the percentage-of-the-benefit approach; or (2) the lodestar multiplier approach. *See id.* (using lodestar multiplier approach); *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. Ct. App. 2011) (using percentage-of-the-benefit approach and noting that a "one-third contingent fee award is not unreasonable"). The percentage-of-the-benefit approach is the appropriate method for determining fees in this litigation, with a lodestar crosscheck to confirm the reasonableness of the request.

The most common method of awarding attorneys' fees is based on the percentage of the benefit. *See Paulson v. Dynamic Pet Prod., LLC*, 560 S.W.3d 583, 593 (Mo. Ct. App. 2018) (affirming award of attorneys' fees and expenses and a service award from a fund created by a class action settlement); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 U.S. Dist. LEXIS 138880, at *7 (W.D. Mo. Aug. 16, 2019) (holding that "Class Counsel is entitled to an award of reasonable attorneys' fees from the settlement proceeds" in a class action.).² The percentage-of-

² Federal Rule of Civil Procedure 23, governing class actions, is identical to Missouri's rule governing class actions, Missouri Rule of Civil Procedure 52.08, such that cases interpreting Rule 23 are persuasive in interpreting Rule 52.08. *Dale v. DaimlerChrysler Corp.* 204 S.W. 3d 151, 166 (Mo. Ct. App. 2006). Accordingly, federal case law is cited in support of Plaintiffs' Motion.

the-benefit method of calculating fees encourages counsel to obtain the largest possible settlement for the class, and “use of the percentage of the fund method when awarding attorneys’ fees . . . is not only approved, but also ‘well established.’” *In re NuvaRing Prod. Liab. Litig.*, 2014 U.S. Dist. LEXIS 176228, at *300 (E.D. Mo. Dec. 16, 2014) (citation omitted). *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (percentage of fund is “a method of more closely aligning the lawyer’s interests with those of his client by giving him a stake in a successful outcome”).

The trial court is considered an expert on fees, given its familiarity with all of the issues in the case and with the character of the legal services rendered. *Alhalabi v. Mo. Dep’t of Corr.*, 662 S.W.3d 180, 194 (Mo. Ct. App. 2023). In no way does this mean that courts determine attorneys’ fees in a vacuum; rather, the court is already familiar with the legal work done before it in the case and is presumed to properly assess the reasonableness of the attorneys’ fees. *4021 Iowa, LLC v. K&A Delmar Prop., LLC*, 705 S.W.3d 103, 111 (Mo. Ct. App. 2025). Here, the percentage-of-benefit method is the proper method under which to evaluate this request for attorneys’ fees. Whereas the lodestar approach is viewed as appropriate in statutory fee shifting cases, the percent-of-benefit method is widely endorsed in common fund and common benefit cases. *See* Report of the Third Circuit Task Force, 108 F.R.D. 237, 246–49 (1985) (concluding that the percent-of-recovery fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases); *In re Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 736 F. Supp. 1007, 1009 (E.D. Mo. 1990) (adopting what the court called the “healthy trend” of applying the percent-of-fund approach over the lodestar analysis).

The percentage of the benefit approach aids litigants and the courts because it “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d

96, 120 (2d. Cir. 2005). Indeed, “[u]nder the percentage method, ‘[t]he more the attorney succeeds in recovering money for the client, and the fewer legal hours expended to reach that result, the higher dollar amount of fees the lawyer earns’” *McKeage v. Bass Pro Outdoor World, L.L.C.*, Case No. 12-03157-CV-S-GAF, 2015 U.S. Dist. LEXIS 195232, at *8 (W.D. Mo. Aug. 11, 2015) (quoting *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn 2005)). Thus, “under the percentage approach, the class members and the class counsel have the same interest—maximizing the recovery of the class.” Silber and Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 *Rev. Litig.* 525, 534 (Summer 1998).

III. ARGUMENT

A. The Value of the Settlement

Courts determine the total benefit to the class “based on both the monetary and the nonmonetary value of the settlement.” *Tussey*, 2019 U.S. Dist. LEXIS 138880, at *7; *see also* *Principles of the Law of Aggregate Litigation*, A.L.I., § 3.13(b) (May 20, 2009) (“a percent-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and the nonmonetary value of the settlement.”). Thus, consideration of injunctive or declaratory relief, as well as savings to class members is appropriately considered as part of the total value of a settlement. *Tussey*, 2019 U.S. Dist. LEXIS 138880, at *9-10 (including tax avoidance and injunctive relief in addition to monetary relief as being the basis for the total value of the settlement for determining an appropriate common-fund fee); *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (upholding use of fund administration costs as part of the “benefit” when calculating the percentage-of-the-benefit fee amount).

The value of the settlement for purposes of determining the fee is the value that is made available to class members, regardless of whether the full amount is claimed through the claims process. *See Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (approving requested fees and noting that “even if 97 percent of the class did not exercise their right to share in the fund, their opportunity to do so was a benefit to them”) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980) (“Their right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.”)). Attorneys’ fees, costs, the costs of notice of administration and related expenses borne by the Defendants are all properly considered in assessing the value of a settlement. *Fellows v. Am. Campus Cmty. Servs.*, Case No. 4:16-cv-01611-JAR, 2018 U.S. Dist. LEXIS 103003, at *15 (E.D. Mo. June 20, 2018) (citing *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 623 (8th Cir. 2017) (other citations omitted)).

In this case, the Settlement is easily valued at \$1.2 million. Indeed, just the \$500,000 set aside for monetary compensation and credit monitoring, plus the \$100,000 Defendant has committed to enhancing its network security for three years, plus the \$330,000 that Defendant has agreed to pay in attorneys’ fees and costs and \$10,000 in service awards, plus the approximately \$50,000 in settlement administration and notice costs (outside the aggregate cap), brings the value of the Settlement to \$1,190,000.

As to the appropriate percentage to award, “courts have ‘frequently awarded attorneys’ fees ranging up to 36% in class actions.’” *Niewinski v. State Farm Life Ins. Co.*, Case No. 23-04159-CV-C-BP, 2024 U.S. Dist. LEXIS 231348, at *13-14 (W.D. Mo. Apr. 1, 2024) (quoting *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017); *Caligiuri*, 855 F.3d at 865–66 (affirming one-third fee); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming fee award

representing 36% of the settlement fund as reasonable); *Burnett v. Realtors*, Case No. 4:19-CV-00332-SRB, 2024 U.S. Dist. LEXIS 101100, at *52 (W.D. Mo. May 9, 2024) (upholding one-third fee award); *Rogowski v. State Farm Life Ins. Co.*, No. 22-CV-203, 2023 U.S. Dist. LEXIS 141934, at *16 (W.D. Mo. April 18, 2023) (same); *In re Xcel*, 364 F.Supp.2d at 998 (collecting cases demonstrating that district courts routinely approve fee awards between 25% and 36%).

Pursuant to the Settlement, Settlement Class Counsel seeks attorneys' fees, costs, and expenses in the amount of \$330,000. Such a request is within the range of fees approved in other class actions using the percentage of the fund method and is fair and reasonable in light of the work performed by Settlement Class Counsel and the outstanding recovery secured on behalf of the Settlement Class. Accordingly, the Court should approve Plaintiffs' request for attorneys' fees, costs, and expenses in the amount based on the percentage of benefit approach.

To date, Settlement Class Counsel and local counsel have expended 145.5 hours litigating this case, resulting in a total lodestar of \$91,920.65 at their customary rates, and reasonably expect to incur additional hours throughout the final approval process and in administering the settlement. Declaration of Raina C. Borrelli in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Litigation Expenses, and Service Award ("Fee Decl.") ¶ 14.

B. Attorney Fees, Costs, and Expenses

Relevant factors in determining the reasonable value and amount of attorneys' fees include (1) the rates customarily charged by the attorneys in the case and other attorneys in the community for similar services; (2) the number of hours reasonably expended on the litigation; (3) the nature and character of the services rendered; (4) the degree of professional skill required; (5) the nature and importance of the subject matter of the litigation; (6) the amount involved or the result obtained; and (7) the vigor of the opposition. *4021 Iowa*, 705 S.W.3d at 111 (citing *Wilson v. City*

of Kansas City, 598 S.W.3d 888, 896 (Mo banc. 2020); *Berry*, 397 S.W.3d at 431; *Terpstra v. State*, 565 S.W.3d 229, 250 (Mo. Ct. App. 2019).

Here, the application of the above factors reaffirms the reasonableness of Plaintiffs' requested fee award. To date, Settlement Class Counsel incurred a lodestar of \$91,920.65 by investing 145.5 hours of work. Fee Decl. ¶ 14. Settlement Class Counsel's billing records have been reviewed for duplicative work, and to ensure appropriate tasks were delegated to paralegals or support staff. *Id.* Settlement Class Counsel also incurred reasonable and necessary costs of \$3,012.17 for mediation, filing fees, service, and pro hacs.. *Id.* ¶ 13.

1. Settlement Class Counsel's Rates Conform with those Accepted by Other Attorneys in the Community (factor 1)

In the data breach context, attorney fee awards either approximate or exceed Settlement Class Counsel's request here. *See, e.g., Sciaroni v. Target Corp. (In re Target Corp. Customer Data Sec. Breach Litig.)*, 892 F.3d 968, 977 (8th Cir. 2018) (affirming district court's award of attorney's fees and expenses of \$6.75 million); *In re Phila. Inquirer Data Sec. Litig.*, No. 24-2106-KSM, 2025 U.S. Dist. LEXIS 48541, at *42 (E.D. Pa. March 18, 2025) (awarding \$175,000 in fees and \$13,765.32 in costs); *In re Onix Grp., LLC Data Breach Litig.*, No. 23-2288-KSM, 2024 U.S. Dist. LEXIS 225686, at *48 (E.D. Pa. Dec. 13, 2024) (awarding \$416,666.66 in fees and \$12,032 in expenses); *Linman v. Marten Transp., Ltd.*, 22-cv-204-jdp, 2024 U.S. Dist. LEXIS 106334, at *5, *10 (W.D. Wis. June 13, 2024) (stating \$152,000 in attorney fees and \$15,000 in litigation expenses appears reasonable); *Bahnmaier v. Wichita State Univ.*, Case No. 2:20-cv-02246-JAR-TJJ, 2021 U.S. Dist. LEXIS 155540, at *12 (D. Kan. Aug. 18, 2021) (awarding \$210,974.50 in fees and \$4,052,39 in expenses); *Smith v ComplyRight, Inc.*, Civil Action No. 1:18-cv-4990, 2019 U.S. Dist. LEXIS 174217, at *9 (N.D. Ill. Oct. 7, 2019) (awarding \$908,333 in fees and \$23,723.85 in costs); *Hapka v. Carecentrix, Inc.*, Case No. 2:16-cv-02372-KGG, 2018 U.S.

Dist. LEXIS 68186, at *10 (D. Kan. Feb. 15, 2018) (awarding \$400,000 in combined fees and expenses). *See also In re Lincare Holdings Inc. Data Breach Litig.*, Case No.: 8:22-cv-01472-AAS, 2024 U.S. Dist. LEXIS 110789, at *12 (M.D. Fla. June 24, 2024) (awarding \$2,416,666.67.00 in attorney fees and \$41,455.42 in litigation costs in a data breach settlement where Strauss Borrelli PLLC was co-Class Counsel). Thus, this factor supports Settlement Class Counsel’s application for attorney fees.

2. Settlement Class Counsel Devoted Significant Time and Effort to this Litigation (factor 2)

Data breach class actions, such as this one, present novel and difficult legal questions as “[t]he realm of data breach litigation is complex and largely undeveloped.” *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019). *See also Gilbert v. Bioplus Specialty Pharmacy Servs., LLC*, 2024 U.S. Dist. LEXIS 138439, at *9 (M.D. Fla. Aug. 5, 2024) (explaining that “[c]ourts have recognized that the novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award” and that “data breach class actions present ‘serious risks’ due, in part, to ‘the ever- developing law surrounding data breach cases’”) (collecting cases). Accordingly, this case required a significant investment of time and labor, as the case involved novel, complex, and difficult legal questions. Fee Decl. ¶ 20. Settlement Class Counsel was precluded from representing other clients during the 145.5 hours that Settlement Class Counsel invested in this case. *Id.* ¶ 18.

Settlement Class Counsel invested time and labor by investigating the Security Incident, interviewing potential clients, researching viable claims under Missouri law, drafting the complaint, reviewing the complaint with Plaintiffs, drafting and serving informal discovery, reviewing informal discovery from Defendant, briefing Plaintiffs’ positions prior to mediation, advocating for an excellent settlement for Plaintiffs and the Class during a full-day mediation,

negotiating and preparing the Settlement Agreement, notice forms, and the claims form, drafting the motion for preliminary approval and exhibits, overseeing the settlement process, including assisting and supervising the Settlement Administrator's initial implementation of the Class Notice, and preparing this motion for attorney fees, costs, expenses, and a service award. Fee Decl. ¶¶ 2-5, 8, 10-11, 17.

Settlement Class Counsel's hourly rates are customary for their firms and are reasonable in the complex class action context. *Id.* ¶ 15; *McCabe v. Heid Music Co., Inc.*, Case No. 23-CV-1215-JPS-JPS, 2024 U.S. Dist. LEXIS 97850, at *4 (W.D. Wis. June 3, 2024) (approving hourly rates of \$750); *Watchfire Signs LLC v. Catalyst Outdoor Adver. LLC*, Case No. 21-2128, 2023 U.S. Dist. LEXIS 132728, at *18 (C.D. Ill. June 21, 2023) (approving "Plaintiff's counsel['s] actual billing rates" of \$700 and \$500 hourly) (emphasis in original); *Linda G. v. Saul*, 487 F.Supp.3d 743, 748 (N.D. Ill. 2020) (approving hourly rates of \$700); *Bianco v. Colvin*, No. 3:14cv98, 2016 U.S. Dist. LEXIS 45097, at *3 (N.D. Ind. Apr. 4, 2016) (approving effective rate of \$825 per hour); *Zerlaya v. City of LA*, Case No. 2:20-cv-08382-ODW (MAAx), 2024 U.S. Dist. LEXIS 112652, at *9 (C.D. Cal. June 25, 2024) (approving \$700 and \$920 hourly). The experience, reputation, and ability of the attorneys at Strauss Borrelli PLLC and Stranch, Jennings & Garvey, PLLC, justifies the customary hourly fee. Therefore, these factors weigh in favor of approval.

3. The Nature and Character of the Services Rendered and the Degree of Professional Skill Required (factors 3 and 4)

Settlement Class Counsel employed their considerable skill and experience litigating consumer class actions, and data breach matters in particular, to deliver suburb results for Plaintiffs and the Class. In general, "prosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). This

is particularly true in the data breach context given the novelty and difficulty of the questions involved. Because of the complexity and difficulty of the issues that arise in data breach litigation, there is a paucity of data breach cases where certification of a contested class has been granted, and many data breach class actions have been dismissed at the pleadings stage. *See, e.g., Solomon v. Deer Oaks Mental Health Assocs., P.C.*, NO. SA-23-CV-1465-FB, 2024 U.S. Dist. LEXIS 180416, at *12 (W.D. Tex. Sept. 30, 2024); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 24, 2019); *Petta v. Christie Bus. Holdings Co., P.C.*, 2025 IL 130337, ¶ 25. Therefore, this case required highly skilled attorneys.

Settlement Class Counsel have extensive experience in consumer class actions generally, in data privacy and cybersecurity incident cases in particular, and are leaders in the field. Borrelli Decl. ¶ 12. They have been appointed sole lead in dozens of data breach cases, and have successfully litigated and settled similar cases across the country against law firms of national prominence. *See Id.* at Ex. 2; *In re Folding Carton Antitrust Litigation*, 84 F.R.D. 245, 268 (N.D. Ill. 1979) (“Where counsel had been involved in class action litigation in the past, a presumption arose that such experience...allowed those attorneys to exhibit a fair degree of skill in this litigation...where counsel have had lead positions in prior multidistrict litigation, it could fairly be inferred...they had higher organizational and efficiency capabilities than the average attorney.”)

4. The Nature and Importance of the Subject Matter of the Litigation (factor 5)

Courts have held that public policy favors allowing consumer class action proceedings when the class members present common legal or factual questions but their individual claims may be too small to be economically litigated on an individual basis. *Picardi v. Eighth Jud. Dist. Ct. of State, ex rel. Cty. of Clark*, 127 Nev. 106, 108, 251 P.3d 723 (2011). This is especially true in the data breach context, where suits by individual consumers against a large entity like Defendant for

a data breach would be, at best, problematic, as the cost to litigate would quickly outpace any possible recovery. *In re Capital One Consumer Data SEC Breach Litig.*, MDL No. 1:19-md-2915 (AJT/JFA), 2022 U.S. Dist. LEXIS 213070, at *11-12 (E.D. Va. Nov. 17, 2022). Indeed, absent Class Counsel’s prosecution of this case, the overwhelming majority of the class members here would fail to receive any relief. *Id.* Accordingly, this class action serves the public interest and this factor is satisfied.

5. Settlement Class Counsel Delivered an Excellent Result for the Settlement Class (factor 6)

Settlement Class Counsel successfully secured monetary relief, credit monitoring, identity theft services, and remedial measures, including security enhancements by MERS to strengthen its cybersecurity protocols. S.A. ¶¶ 3.3-3.5. This reduces the risk of future data breaches and helps to fortify the security of Plaintiff’s and the Class’s Private Information. Further, this relief encompasses not only the approximately thousands of victims of the Data Incident but also benefits Defendant’s future employees and program participants. Accordingly, this factor also weighs in support of approval.

6. The Vigor of the Opposition (factor 7)

Settlement Class Counsel faced significant opposition from Defendant, who moved to dismiss Plaintiffs’ claims and who advocated strenuously for Defendant’s position in mediation and in the Parties’ settlement negotiations. *See Borrelli Decl.* ¶¶ 4-6. Indeed, the Parties did not come to an agreement easily – they negotiated forcefully for over three months before agreeing to their Settlement. *See id.* Thus, the history of this litigation demonstrates that this factor has been met.

C. Class Counsel is Entitled to Reimbursement of Reasonable Costs and Expenses

Settlement Class Counsel have expended \$3,012.17 in reimbursable expenses related to filing fees, fees for service of process, and case administration, with the likelihood of more expenses yet to come. Fee Decl. ¶ 13. Missouri Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g.,*

Doyle v. Fluor Corp., 400 S.W.3d 316, 320 (Mo. Ct. App. 2013) (affirming award of litigation costs); *Giancristofaro v. Ima Pizza, LLC*, 2024 Mo. Cir. LEXIS 330, *4 (approving litigation expenses as part of \$240,000 fee award); *Union Bank & Trust Co. v. White*, 2017 Mo. Cir. LEXIS 32, *7 (awarding expenses of \$3,250.25).

Settlement Class Counsel's request for reimbursement of reasonable total costs and expenses of \$3,012.17 is included in the request for \$330,000.00.

D. Service Awards

The Court should grant the requested Service Awards of \$5,000.00 per Plaintiff to compensate the Settlement Class Representatives for their efforts and for the risk entailed in pursuing this litigation, which has triggered important and positive changes in MERS' business practices and has secured significant compensation for Class Members. In a class action, the rationale for a service award to a class representative includes compensating the class representative for his or her time and energy and the benefits they conveyed to the class, acknowledging the risk he or she took in pursuing the action, and offering an incentive to encourage people to step up and represent the class. *Tussey v. ABB, Inc.*, 850 F.3d 951, 962 (8th Cir. 2017)

Here, the requested Service Awards are squarely in line with incentive awards that are approved by Missouri state and federal courts in class actions. *Giancristofaro*, 2024 Mo. Cir. LEXIS 330, at *4 (approving service awards of \$10,000 and \$5,000); *Martin v. Safe Haven Sec.*

Servs. No. 19-CV-00063-ODS, 2020 U.S. Dist. LEXIS 149626, at *6 (W.D. Mo. Aug. 19, 2020) (approving service awards of \$10,000 and \$5,000). *Fellows v. Am. Campus Cmty. Servs. No. 4:16-cv-01611-JAR*, 2018 U.S. Dist. LEXIS 103003, at *17 (E.D. Mo. June 20, 2018) (approving service award of \$5,000).

Without the efforts of Plaintiffs, the thousands of other Settlement Class Members would not have received the benefits of the Settlement. Plaintiffs committed to participate actively in what they knew could have been a long and hard-fought lawsuit, and did so on behalf of a Class of thousands of other Settlement Class Members, with no guarantee of ever being compensated. Fee Decl. ¶ 21. Even though no award of any sort was promised to Plaintiffs, they contributed their time and effort by assisting in the litigation, aiding in the preparation of the Complaint, and approving of the Settlement. *Id.* Further, agreeing to serve as the Settlement Class Representatives meant that Plaintiffs publicly placed their name on this suit and opened themselves to “scrutiny and attention” which, in and of itself, “is certainly worthy of some type of remuneration.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011). Now that a substantial recovery has been made on behalf of the Class, Plaintiffs’ efforts in bringing and litigating this case should be recognized and rewarded

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys’ fees of \$330,000.00; and (ii) approving a Service Award in the amount of \$5,000.00 to Plaintiffs in recognition of their significant efforts on behalf of the Settlement Class Members.

Dated: May 23, 2025

Respectfully submitted,

/s/John F. Garvey

John F. Garvey, #35879 (MO)

Colleen Garvey, #72809 (MO)

Ellen Thomas, #73043 (MO)

**STRANCH, JENNINGS &
GARVEY, PLLC**

701 Market Street, Suite 1510

St. Louis, MO 63101

Tel: (314) 390-6750

jgarvey@stranchlaw.com

cgarvey@stranchlaw.com

ethomas@stranchlaw.com

Raina Borrelli*

STRAUSS BORRELLI PLLC

890 N Michigan Ave, Suite 1610

Chicago, IL 60611

T: (608) 237-1775

raina@straussborrelli.com

*Counsel for Plaintiffs and the
Putative Class*

**Pro Hac Vice* application
forthcoming