

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JUSTIN SHERWOOD, on behalf of)	
himself and all others similarly)	Case No. 1:22-CV-01495-ELR
situated,)	
)	
Plaintiffs,)	
)	
vs.)	MEMORANDUM OF LAW IN
)	SUPPORT OF PLAINTIFFS’
HORIZON ACTUARIAL)	MOTION FOR ATTORNEYS’
SERVICES, LLC,)	FEES AND LITIGATION
)	EXPENSES
Defendant.)	

Under Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2), as well as this Court’s Order Granting Preliminary Approval of Class Action Settlement and Notice Plan (Doc. No. 71), Class Counsel respectfully submit this memorandum of law in support of Plaintiffs’ Motion for Attorneys’ Fees and Litigation Expenses.

INTRODUCTION

This case arises from a cyber security incident (the “Data Security Incident”) that occurred within Defendant Horizon Actuarial Services, LLC’s (“Horizon”) network and compromised the security of the personally identifying information (“PII”) of Plaintiffs Justin Sherwood, Lindsey Quan, Tabatha Bedont f/k/a Tabatha Johnson, Greg Torrano, Jennifer Hill, Sia Moody, Anthony Ruiz, Alice Dodd, Frederick Lewis, Douglas Ackman, Ryan Evans, and Amber Thomas (“Plaintiffs”)

and approximately 4,386,969 Class Members nationwide. The Parties negotiated a Settlement that provides significant relief for Plaintiffs and the Class Members they seek to represent. As part of the Settlement, Class Counsel now seek an award of attorneys' fees of \$2,911,148.79 and litigation expenses in the amount of \$18,285.14. As described below, the attorneys' fees and expenses are well within the range awarded in similar class action cases in the United States District for the Northern District of Georgia and the Eleventh Circuit.

FACTUAL BACKGROUND

I. Factual and Procedural Overview of this Litigation

A. Negotiations and Settlement

After Horizon announced the Data Security Incident, several class action lawsuits were filed by Plaintiffs throughout the country. Class counsel coordinated with counsel for all Plaintiffs and sought consolidation of all lawsuits filed before this Court. (ECF 6.) Simultaneously, counsel sought to be appointed Interim Co-Lead Class Counsel and Liaison Counsel. (ECF 7.) The Court consolidated the actions, appointed the undersigned as Interim Co-Lead Class Counsel, and set deadlines for filing a consolidated complaint and any responsive pleadings. (ECF 16.) To prepare the consolidated complaint, Interim Co-Lead Class Counsel extensively researched the law and facts surrounding the Data Security Incident. Among other things, Counsel reviewed Horizon's public announcements and

communications to customers, privacy policies, reports, news articles, and retained experts in the areas of data privacy and cyber security to assist them in the litigation. Interim Co-Lead Class Counsel also reviewed other data breach litigation case law and analyzed the statutory and common law of all U.S. states and territories. To ensure the viability of class treatment, Plaintiffs' Counsel interviewed and investigated potential class representatives and vetted them to be named Plaintiffs. Finally, Counsel were well-informed about Defendant's available insurance coverage and ability to pay beyond insurance coverage.

After this extensive investigation, Plaintiffs filed their comprehensive 126-page Consolidated Class Action Complaint on July 13, 2022 ("Complaint") against Horizon. (ECF 21.) The Complaint alleged seventeen (17) claims, including: negligence, negligence per se, unjust enrichment, declaratory judgment and injunctive relief, invasion of privacy, violations of the Arkansas Deceptive Trade Practices Act, violation of the California Consumer Privacy Act, violation of California's Customer Records Act, violation of the unlawful and unfair prong of California's Unfair Competition Law, violation of Idaho's Consumer Protection Act, violations of the Illinois Consumer Fraud Act, violation of Louisiana's Database Security Breach Notification Law, violation of Louisiana's Unfair Trade Practices and Consumer Protection Law, violation of Nevada's Deceptive Trade Practices Act, violation of North Carolina's Unfair Trade Practices Act, violations of Oregon's

Unfair Trade Practices Act, and sought fees and expenses of litigation for violations of O.C.G.A. § 13-6-11.

The Complaint alleged that in November of 2021, Horizon experienced a Data Security Incident in which unauthorized third parties gained access to its network and file server. Following discovery of this Data Security Incident, Horizon began investigating the scope and cause of the incident and determined that files containing Plaintiffs' and Settlement Class Members' names, addresses, Social Security numbers, benefit plan enrollment data, and dates of birth were accessed without authorization and reported stolen by the threat actors. Horizon began the process of notifying the victims of this data security incident on or around January 13, 2022, although some Settlement Class Members were not notified until June 9, 2022.

Horizon moved to dismiss the Complaint on September 12, 2022, arguing lack of Article III standing and failure to state any plausible claim for relief against Horizon. (ECF 32.) After the Motion to Dismiss was fully briefed, the Parties began to conduct informal arm's-length negotiations and eventually filed a joint Motion to Stay Pending Mediation on February 22, 2023 (ECF 51), which this court granted (ECF 52) and subsequently extended (ECF 55).

Following extensive mediating and arm's-length negotiations from June 2023 through July 2023, the Parties reached a settlement pursuant to a mediator's recommendation from a highly experienced mediator and retired Article III federal

judge, the Honorable Wayne Andersen (Ret.) of JAMS. The parties submitted an Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Plan on September 20, 2023. (ECF 70.) The Court granted preliminary approval of the Class Action Settlement and Notice Plan on September 21, 2023. (ECF 71.) On October 23, 2023, the Parties filed a Joint Motion for Amendment of Preliminary Approval Order to Extend Notice and Settlement Deadlines (ECF 73), which the Court granted on November 3, 2023. (ECF 74.) On November 8, 2023, the Parties filed a Joint Motion for Amendment of Settlement Agreement and Approval of Revised Forms (ECF 76), enlarging the class from 3,892,966 individuals to 4,386,969 individuals and the Settlement Fund from \$7,750,000 to \$8,733,446.36. The Court granted the amendment of Settlement Agreement and Revised Forms on November 9, 2023. (ECF 77.)¹

B. Summary of Settlement Terms

The Settlement is the result of months of arm's-length negotiations and hard bargaining. The Parties exchanged informal discovery, including, but not limited to, the allegations in the Complaint, the class size, the types of data impacted in the Data Security Incident and information related to Plaintiff's damages allegations. *See* Joint Declaration of Plaintiffs' Counsel in Support of Plaintiffs' Motion for

¹ The Amended Settlement Agreement is ECF 79-1.

Attorneys' Fees and Litigation Expenses, ¶ 4 ("Decl."). Through the informal discovery process, Plaintiffs were able to properly evaluate damages on a class-wide basis. *See id.* After the exchange of a series of offers and demands, the Parties engaged in an all-day mediation session under the guidance of Retired United State District Judge Wayne Andersen. *Id.* at ¶¶ 5-6. However, the Parties were unable to reach a resolution that day. *Id.*

After weeks of additional negotiations, Judge Andersen submitted a mediator's proposal for a \$7.75 million non-reversionary common, which the parties accepted. *Id.* at ¶ 6. When Defendant later determined that there were additional members of the class that were not been previously accounted for, the parties returned to the bargaining table before agreeing that the common fund would be increased on a *pro rata* basis per previously unaccounted for Class Member. *Id.* at ¶ 7. This resulted in an updated common fund amount of \$8,733,446.36. *Id.*

Horizon also disclosed certain cybersecurity business practice changes it implemented to limit the potential for future data security incidents. *Id.* at ¶ 10. This Settlement would resolve all claims related to the Data Security Incident on behalf of the Settlement Class. (ECF No. 79-1, Amended Settlement Agreement ("SA")).

C. The Preliminary Approval and Notice Process

Under the proposed Settlement, Defendant will pay \$8,733,446.36 to establish the Settlement Fund to be distributed to Settlement Class Members under the

Amended Settlement Agreement. The Settlement defines the Settlement Class as follows:

[T]he individuals whose personal information may have been impacted during the Data Security Incident, including those individuals who received a letter from Horizon Actuarial notifying them of the Data Security Incident. Excluded from the Settlement Class are: (1) the judge presiding over this Action, and members of the presiding judge’s direct family; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.²

SA, ¶ 43. The Settlement Class is comprised of approximately 4,386,969 individuals nationwide. Decl., ¶ 7. Under the Proposed Settlement, Horizon agrees to pay a total of \$8,733,446.36 into the Settlement Fund, which will be used to make payments to Settlement Class Members and to pay the costs of Notice and Administrative Expenses, and attorneys’ fees and expenses. *See* SA, ¶¶ 58, 82 and Order on Joint Motion for Amendment of Settlement Agreement and Approval of Revised Forms, ¶¶ 2-4, ECF 77.

The Settlement Fund will be used to pay approximately \$50 to each Settlement Class Member submitting a valid claim under the Settlement. SA, ¶ 56(i). This \$50 cash payment will be increased *pro rata* or decreased *pro rata* after the payment of

² “Data Security Incident” shall mean the August 2022 cybersecurity incident against Horizon giving rise to the action.

any documented Out-of-Pocket Losses as identified below, and for attorneys' fees, expenses, and the Notice and Administrative Expenses. *Id.* The Settlement Fund will provide the reimbursement of up to \$5,000 per claimant for documented Out-of-Pocket Losses that are fairly traceable to the Data Security Incident. *Id.* at ¶ 56(ii). The Settlement Fund will also compensate the Settlement Class for lost time at a rate of \$25 an hour for up to 5 hours (*i.e.*, a \$125 cap). *Id.* at ¶ 56 (iii). Additionally, the Settlement Fund will be used to pay for any attorneys' fees, expenses, and the cost of Settlement Administration, as approved by the Court. *Id.* at ¶¶ 58,82.

LEGAL STANDARD

Federal Rule of Civil Procedure 23(h) allows a district court supervising a class action to “award reasonable attorney’s fees and nontaxable costs that are authorized by law.” Fed. R. Civ. P. 23(h). The United States Supreme Court noted that attorneys who represent a class and whose efforts achieve a benefit for the class are “entitled to a reasonable attorney’s fee from the fund as a whole,” as appropriate compensation for their services to the class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “[D]istrict courts have great latitude in setting fee awards in class action cases.” *In re Home Depot Inc. Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1078 (11th Cir. 2019) (Internal quotation and citation omitted).

In common fund cases, such as this case, “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a

reasonable attorneys' fee from the fund as a whole." *Home Depot*, 931 F.3d at 1079 (citing *Boeing*, 44 U.S. at 478). The Eleventh Circuit has held that the "percentage of the fund approach" should be used to determine a reasonable fee award when the settlement established a common fund. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

ARGUMENT

II. The Requested Fee Should be Approved Because it is Reasonable and Supported by the Relevant Factors

A. The Settlement Establishes a Non-Reversionary Common Fund

Data breach class action settlements typically fall under one of two structures: (1) a common fund or (2) claims made. The Settlement here is a non-reversionary common fund whereby after Settlement Class Members select their choice of payments for certain out-of-pocket expense reimbursements and/or lost time payments. Any funds remaining in the common fund will be distributed *pro rata* to Settlement Class Members who submitted valid claims. Courts prefer this structure over claims made settlements. *See, e.g., Hart v. Movement Mortg., LLC*, No. 814CV1168JLSPLAX, 2016 WL 11756826, at *7 (C.D. Cal. Nov. 30, 2016) ("The non-reversionary nature of these amounts counsels in favor of final approval."). Class Counsel have negotiated many *pro rata* cash payments under non-reversionary common fund settlement structures with the understanding that there typically are

pro rata increases in the amount of the cash payments to class members, which permits increased, direct benefits to Settlement Class Members.

B. The Requested Fee is Within the Range Typically Approved

The Eleventh Circuit’s controlling authority is *Camden I*, which holds attorneys’ fees in common fund cases must be calculated using the percentage rather than the lodestar approach.³ *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d at 774-75. In *Camden I*, although the court noted that awards typically range from 20% to 30%, it stated: “There is no hard and fast rule . . . because the amount of any fee must be determined upon the facts of each case.” *Id.* at 774. *see also, e.g., Waters v. Int’l. Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999).

Following *Camden I*, percentage-based fee awards in the Eleventh Circuit have averaged around 33% of the common fund. *See, e.g., Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide -roughly one-third”); *Abrams v. Savannah College of Art & Design, Inc.*, No. 1:22-cv-4297 (N.D. Ga. Sept. 22, 2023) (Doc. 29) (approving fee request of 1/3 of the common fund plus expenses); *Alghadeer Bakery & Marker, Inc. v. Worldpay US, Inc.*, No. 1:18-cv-02688-MLB, 2020 WL 10935986, at *4 (N.D. Ga. June 3, 2020)

³ A lodestar cross-check is not required in this Circuit. *In re Equifax Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1280 (11th Cir. 2021).

(“The fee represents one-third of the \$15 million cash settlement fund, which the Court finds to be reasonable and consistent with awards in similar cases in this Circuit.”); *Waters v. Int’l Precious Metals, Corp.*, 190 F.3d 1291, 1292-98 (11th Cir. 1999) (affirming attorneys’ fees of 1/3 of the \$40 million common fund); *Morefield v. NoteWorld, LLC*, Nos. 1:10-CV-00117; 1:11-CV-0029, 2012 WL 135573, at *5 (S.D. Ga. Apr. 18, 2012) (1/3 of \$1,040,000 common fund); *Lunsford v. Woodforest Nat’l Bank*, No. 1:12-cv-103, 2014 WL 12740375, at *15 (N.D. Ga. May 19, 2014) (fee award of 1/3 of the common fund); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61217-CIV, 2018 WL 5905415, at *7-8 (S.D. Fla. Nov. 9, 2018) (awarding fee of \$33,333,333 of the \$100 million common fund); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1257 (S.D. Fla. 2016) (noting that “a fee award of 33% ... is consistent with attorneys’ fees in federal class actions in this Circuit.”). Class Counsel’s attorneys’ fee request of 1/3 (\$2,911,148.79) the \$8,733,446.36 non-reversionary common fund in this case is reasonable in that it is within the range typically approved by courts within the Eleventh Circuit.

C. The Relevant *Johnson* Factors Support Approval of the Fee Request

“In the Eleventh Circuit, the percentage method requires a district court to consider a number of relevant factors called ‘the *Johnson* factors’ in order to determine if the requested percentage is reasonable.” *In re Ethicon Physiomesh*

Flexible Composite Hernia Mesh Prods. Liab. Litig., No. 1:17-md-02782, 2022 WL 17687425, at *6 (N.D. Ga. Nov. 22, 2022). Courts within this District have noted that not all twelve *Johnson* factors need to be reviewed and have determined the reasonableness of a fee request based on the following six *Johnson* factors: (1) the results obtained and fees in similar cases; (2) the novelty and difficulty of the questions involved; (3) the preclusion of other employment by the attorneys due to the acceptance of this case; (4) whether the fee is fixed or contingent; (5) the experience, reputation, and ability of the attorneys; and, (6) the time and labor required. *In re S. Co. S'holder Derivative Litig.*, No. 1:15-CV-725-MHC, 2022 WL 4545614, at *10 (N.D. Ga. June 9, 2022); *see also Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (listing all 12 *Johnson* factors).

1. The Results Obtained and Fees in Similar Cases

The non-reversionary common fund of \$8,733,446.36 is a strong recovery for the Settlement Class of roughly 4,386,969 individuals. In negotiating the Settlement Amount, Class Counsel relied upon published reports documenting the Data Security Incident, actual costs incurred by Class Members (as relayed in conversations with Class Counsel), information uncovered *via* informal discovery, their own experience in data breach litigation, and reported settlements in other data breach class actions. *See* Decl., ¶ 4; Class Counsel were also acutely aware of Defendant's available insurance coverage and ability (or lack thereof) to pay beyond

the available insurance coverage. *Id.* In light of the circumstances, the Settlement is an excellent result. The SA provides every class member who submits a valid claim with a monetary award that is fair and reasonable, especially considering the risks at class certification and trial. *See id.* Moreover, the equitable forward-looking relief—i.e., Horizon’s enhanced data security practices—also provides substantial non-monetary benefit to all Class Members, regardless of whether they submit a claim under the SA. *Id.*; *see also O’Dowd v. Anthem, Inc.*, No. 14-cv-02787, 2019 WL 4279123, at *18 (D. Colo. Sept. 9, 2019) (injunctive relief provides “substantial non-monetary benefits” to the class).

2. The Novelty and Difficulty of the Questions Involved

Courts also consider the difficulty and novelty of the legal and factual issues. *See Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting data breach class actions present “serious risks” due, in part, to “the ever-developing law surrounding data breach cases”); *In re Citrix Data Breach Litig.*, No. 19-61350-CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) (“Data breach cases in particular present unique challenges with respect to issues like causation, certification, and damages.”); *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 2720818, at *3 (N.D. Ga. June 3, 2019) (“Further, data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits. Georgia law, in

particular, presents challenges.”). This case is no exception. The pursuit of nationwide claims and relief presented complex issues of law and fact. Additionally, the substantial benefits achieved in the Settlement are attributable to the efforts of Class Counsel, and the complexity of the factual and legal issues presented by this litigation supports Class Counsel’s request for attorneys’ fees. *In re Citrix Data Breach Litig.*, 2021 WL 2410651, at *9 (noting that “by resolving the case early in the litigation, Class Counsel avoided these difficult questions and ensured a successful result for Class Members” in a data breach class action).

3. The Preclusion of Employment by the Attorneys Due to the Acceptance of this Case

Class Counsel’s pursuit of this case precluded them from working on other matters. Decl., ¶ 12. Courts within this District have weighed this factor in favor of Class Counsel’s requested fee when the work on the case precluded Class Counsel’s ability to pursue other matters. *See In re S. Co. S’holder Derivative Litig.*, 2022 WL 4545614, at *12 (noting that class counsel’s pursuit of the class action case “necessarily precluded them from devoting resources to other litigation and the prosecution of additional cases.”). Accordingly, this factor supports Class Counsel’s fee request.

4. Whether the Fee is Fixed or Contingent

“Courts have routinely recognized that another important factor in evaluating an application for fees is the contingent nature of the fee.” *Id.* at *11. Class Counsel pursued this matter on a wholly contingent basis without any guarantee of recovery while advancing litigation expenses on behalf of Plaintiff and the Settlement Class. Decl., ¶ 12. To the extent there was no recovery for the Class by way of the non-reversionary common fund, Class Counsel would not have been compensated at all for their work on this case and would have lost all litigation expenses incurred in pursuing this matter. *See In re Arby’s*, 2019 WL 2720818, at *4 (“The risk of non-payment based on the contingent nature of recovery in this case supports the requested award of attorneys’ fees.”). Accordingly, this factor also weighs in favor of granting Class Counsel’s requested fee.

III. The Experience, Reputation, and Ability of the Attorneys

The experience, reputation and ability of class counsel is another factor courts evaluate in determining an appropriate attorneys’ fee. As detailed in the attached Declaration, Interim Co-Lead and Liaison Counsel (Markovits, Stock & Demarco, LLC; Milberg Bryson Coleman Bryson Phillips Grossman PLLC; Morgan and Morgan Complex Litigation Group, and The Finley Firm, P.C.), in conjunction and cooperation with the other Plaintiffs’ firms involved in this matter, relied upon their vast experience handling data privacy class actions across the country to negotiate a

non-reversionary common fund settlement with experienced data breach defense counsel. Decl., ¶ 4; *see also* ECF 70-3, Exhibit A (firm resumes).⁴ Class Counsel utilized their experience to efficiently resolve this case in roughly 15 months and to reach a uniform, class-wide settlement even considering the risks of class certification or potentially losing at summary judgment or trial. *See* Decl., ¶ 4. Class Counsel's experience in handling many other data privacy class action cases permitted Class Counsel to avoid the pitfalls of having the case potentially compelled to arbitration and, instead, to recover the \$8,733,446.36 non-reversionary common fund. Class Counsel's experience in prosecuting data breach cases has proven to be critical to the efficient prosecution and ultimate resolution of this case. Furthermore, Class Counsel have a national reputation for handling complex class action cases. *See* ECF 70-3, Exhibit A.

The result achieved here is particularly noteworthy considering that the nature of every data breach is different, and some cases have failed at the dismissal or class certification stages. *See, e.g., SELCO Cmty. Credit Union v. Noodles & Co.*, 267 F. Supp. 3d 1288, 1292 (D. Colo. 2017) (dismissing a nationwide class action for a data breach at Noodles & Co, holding Colorado's economic loss rule prohibited tort

⁴ For brevity purposes, Co-Lead Counsel attached each firm resume as Exhibit A to ECF 70-3, the Joint Declaration of Plaintiffs' Counsel Supporting Their Unopposed Motion for Preliminary Approval of Class Action Settlement, which lists each firm's tremendous experience and success in data breach class action litigation.

damages caused by the data breach); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 WL 896256 (S.D. Tex. Mar. 14, 2012) (after three rounds of dismissal motions, dismissing among other claims, negligence), *rev'd sub nom., Lone Star Nat'l Bank N.A. v. Heartland Payment Sys., Inc.*, 729 F.3d 421, 424 (5th Cir. 2013) (concluding that New Jersey's economic loss doctrine could not be applied at dismissal stage); *In re TJX Cos. Retail Sec. Breach Litig.*, 524 F. Supp. 2d 83 (D. Mass. 2007) (dismissing claims for negligence and negligence per se), *aff'd*, 564 F.3d 489 (1st Cir. 2009); *In re TJX*, 246 F.R.D. at 400 (denying class certification because individual issues of reliance, causation, and damages predominated).

This factor further supports Class Counsel's request for attorneys' fees.

IV. The Time and Labor Required

As discussed above, Class Counsel litigated and negotiated this case both vigorously and efficiently. As of January 3, 2024, Class Counsel have expended approximately 1,500 hours pursuing this matter on behalf of the Settlement Class. Decl., ¶ 13-14. Class Counsel will certainly expend additional time and efforts pursuing this matter through the Final Approval Hearing and in overseeing the administration of settlement benefits to Settlement Class Members thereafter. *Id.* at ¶ 16. The amount of time invested by Class Counsel demonstrates both vigorous

advocacy and the efficient use of time by a highly experienced and effective group of advocates.

In awarding attorneys' fees, courts have consistently recognized and rewarded class counsel for moving the litigation to conclusion with diligence and efficiency. *Ressler v. Jacobson*, 149 F.R.D. 651 (M.D. Fla. 1992) (noting class counsel's efficiency in resolving the case as a factor supporting the requested fee award); *see also Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010) (noting that "Plaintiffs' counsel moved the case along expeditiously, and made every effort to limit duplicative efforts and to minimize the use of judicial resources in the management of the case" and "[c]ounsel exhibited diligence and efficiency throughout the litigation, resulting in a favorable result for the Class"). This factor, like the others, weighs in favor of approving Class Counsel's fee request.

V. The Requested Expenses are Reasonable in that They Were Necessary to Prosecute this Litigation

Class Counsel have been prudent in monitoring their litigation expenses in this case to date. As of June 25, 2023, Class Counsel have \$18,285.14 in expenses consisting mainly of filing fees, mediation fees, and travel costs for attending the upcoming Final Approval Hearing. Decl., ¶ 15. These expenses were incurred for the benefit of the Settlement Class.

CONCLUSION

For these reasons, Plaintiffs and Class Counsel respectfully ask the Court to enter an Order Granting Plaintiffs' Motion for Attorneys' Fees in the amount of \$2,911,148.79 and Litigation Expenses in the amount of \$18,285.14 (subject to being updated before the Final Approval hearing).

Dated: January 8, 2024

Respectfully submitted,

/s/ MaryBeth V. Gibson

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CERTIFICATE OF SERVICE

I certify that on January 8, 2024, I filed the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all counsel of record.

/s/ MaryBeth V. Gibson
MaryBeth V. Gibson

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned attorney hereby certifies that on this day the foregoing document was prepared in accordance with L.R. 5.1(C) using Times New Roman, 14-point font.

Dated: January 8, 2024.

/s/MaryBeth V. Gibson
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