**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEBRASKA**

| | |
|---|---|
| *In Re:*<br>*Data Security Cases Against NELNET SERVICING, LLC* | Case No. 4:22-cv-3191<br>The Honorable John M. Gerrard, S.U.S.D.J.<br>The Honorable Jacqueline M. DeLuca, U.S.M.J. |

**PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES, AND SERVICE AWARDS**

Plaintiffs Ian Scott, Jessica Alexander, Pamela Bump, Bridget Cahill, Lesly Canales, Melissa Charbonneau, Douglas Conley, Noah Helvey, Dallin Iler, Dustin Jones, Kayli Lazarz, Brittni Linn, Delilah Oliveira, Devinne Peterson, Eric Polanco, Justin Randall, Sofia Rodriguez, Joshua Sanchez, Charles Sangmeister, William Spearman, Taylor Vetter, Rachel Woods, Garner J. Kohrell, Olivia Covington, Alexis Luna, MaKayla Nelson, and Mary Traynor (collectively, "Plaintiffs") move for an Order under Federal Rules of Civil Procedure 23(h) and 54(d)(2) approving attorneys' fees of one-third of the Settlement Fund, reimbursing attorneys' costs and expenses, awarding Service Awards, and granting such other, further, or different relief as the Court deems just and proper.

In support thereof, Plaintiffs rely upon the accompanying Memorandum of Law in Support; the Joint Declaration of Christian Levis and Ian W. Sloss and Exhibits A – E, which includes the individual firm Declarations of Christian Levis on behalf of Lowey Dannenberg, P.C, Ian W. Sloss on behalf of Silver Golub & Teitell LLP, Kate M. Baxter-Kauf on behalf of Lockridge Grindal Nauen PLLP, William B. Federman of Federman Sherwood; Declaration of Jeana L. Goosmann on Behalf of Goosmann Law Firm, PLC; the Declaration of Mark Cowen of A.B. Data, Ltd. in Connection with Final Approval of Settlement; and the [Proposed] Final

Approval Order and Judgment.[1]

Wherefore, Plaintiffs respectfully request that this Court enter an Order finally approving the requested attorneys' fees, costs and expenses, and Service Awards.

Dated: February 19, 2026

Respectfully submitted,

*/s/ Christian Levis*
Christian Levis
Amanda G. Fiorilla
**LOWEY DANNENBERG, P.C.**
44 South Broadway, Suite 1100
White Plains, NY 10601
Tel: (914) 997-0500
Email: clevis@lowey.com
Email: afiorilla@lowey.com

Anthony M. Christina
**LOWEY DANNENBERG, P.C.**
One Tower Bridge
100 Front Street, Suite 520
West Conshohocken, PA 19428
Email: achristina@lowey.com

Ian W. Sloss
Johnathan Seredynski
Steven L. Bloch
**SILVER GOLUB & TEITELL LLP**
One Landmark Square, Floor 15
Stamford, CT 06901
Tel: (203) 325-4491
Email: isloss@sgtlaw.com
Email: jeredynski@sgtlaw.com
Email: sbloch@sgtlaw.com

*Class Counsel*

[1] Plaintiffs' Motion for Final Approval of Class Action Settlement is the subject of a separate motion filed in conjunction with this motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2026, a copy of the foregoing document was filed electronically with the U.S. District Court for the District of Nebraska and served on all counsel of record through the CM/ECF system.

*/s/ Christian Levis*
Christian Levis

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEBRASKA**

| | |
|---|---|
| *In Re:*<br>*Data Security Cases Against NELNET SERVICING, LLC* | Case No. 4:22-cv-3191<br><br>The Honorable John M. Gerrard, S.U.S.D.J.<br><br>The Honorable Jacqueline M. DeLuca, U.S.M.J. |

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES, AND SERVICE AWARDS**

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

Cases

Statutes



Rules

## INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(h), the Settlement Agreement,[1] the March 31, 2025 Preliminary Approval Order (ECF No. 146), and the December 4, 2025 Amended Preliminary Approval Order (ECF No. 162), Plaintiffs seek an Order: (a) approving an award to Plaintiffs' Counsel of one-third of the $10,000,000 Settlement Fund ($3,333,333.33) as attorneys' fees; (b) reimbursing Plaintiffs' Counsel $65,000 in litigation expenses and costs; and (c) granting Service Awards of $1,500 to each of the 27 Class Representatives (for a total of $40,500).

The $10,000,000 non-reversionary Settlement Fund is an excellent result considering the litigation risks faced by Plaintiffs. Class Counsel's efforts in this matter began in September 2022 following news reports of the Data Security Incident at Nelnet. After filing several separate complaints against Nelnet and Edfinancial, working to consolidate the related matters, and being appointed as lead counsel in this Action following a contested application process, Class Counsel filed a consolidated complaint against Nelnet and EdFinancial on behalf of a nationwide class of Persons in the United States whose Personal Information was compromised in the Data Security Incident, and opposed Nelnet's motion to dismiss. ECF Nos. 64, 73.

While the motion to dismiss was pending, the Parties agreed to mediate their dispute before Judge Jay C. Gandhi (Ret.), U.S. Magistrate Judge (C.D. Cal.). After spending several weeks preparing for mediation, Plaintiffs exchanged a detailed mediation statement and other relevant information with the Settling Entities to support their view of the case and the potential avenues for settlement.

---

[1] The Parties filed the Stipulation and Agreement of Class Action Settlement on August 23, 2024 and filed the Addendum to the Stipulation and Agreement of Class Action Settlement on September 26, 2025 (collectively the "Settlement Agreement" or "SA"). *See* ECF Nos. 110-1, 161-1. Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement. "ECF No." refers to docket entries in this Action.

After two hard-fought mediation sessions supervised by Judge Gandhi, the Parties agreed in principle to resolve the Action. Class Counsel worked tirelessly to negotiate and draft the Stipulation and Agreement of Class Action Settlement and prepare the Notice and other supporting documents. Class Counsel filed Plaintiff's motion for preliminary approval of the Settlement on August 23, 2024, which this Court granted on March 31, 2025. In light of developments concerning *Carr v. OSLA, et al.*, No. 5:23-cv-00099-R, ECF No. 1 (W.D. Okla.) ("*Carr*"), a related case that had not been consolidated into this Action, the Parties negotiated an Addendum to the Stipulation and Agreement of Class Action Settlement to ensure that the Settlement could move forward as intended and moved for an Amended Preliminary Approval Order, which the Court granted on December 4, 2025.

Although the March 5, 2026 deadline to object, opt-out, or file a claim has not yet passed, the reaction by Class Members to date has been overwhelmingly positive. As of this filing, over 737,292 claims have been submitted—which translates to a claims rate of approximately 29% based on the Class List provided to A.B. Data. Furthermore, to date, zero objections have been filed and only two requests for exclusion have been submitted. *See* Declaration of Mark Cowen of A.B. Data, Ltd. in Connection with Final Approval of Settlement ("Cowen Declaration" or "Cowen Decl.") at ¶¶ 24, 27-28. Class Counsel expects additional claims will be filed by the Settlement Claims Deadline and continues to work with A.B. Data to encourage Class Members' participation. Class Counsel's work will not end upon final approval of the Settlement; Class Counsel will work to ensure that the Net Settlement Fund is fully distributed to all Settling Class Members that file a timely and valid Settlement Claim Form.

Class Counsel (supported by additional counsel for Plaintiffs) undertook this litigation on a fully contingent basis and, through its investment of time, human capital, and financial

resources, obtained a $10,000,000 settlement fund to compensate Class Members for the alleged harms caused by the Data Security Incident. Accordingly, Plaintiffs now submit this motion for an award of attorneys' fees, reimbursement of expenses, and Service Awards. The amounts requested for attorneys' fees, litigation expenses and Service Awards were fully disclosed in the Long Form Notice.[2] The requested attorneys' fee award of one-third of the Settlement Fund is consistent with amounts approved by this Court and others for similar data breach settlements. The proposed fee award is further supported by Class Counsel's efforts in this litigation and the outcome attained for the Class. Applying the lodestar cross-check, the fee request reflects a negative multiplier of 0.79 on the lodestar of the counsel for Plaintiffs and individual Class Members, confirming the reasonableness of Class Counsel's request. The costs and expenses incurred during this litigation have been reasonable and are the type of expenses other courts regularly approve for reimbursement.

Finally, Plaintiffs request that the Court grant the Service Awards. Each of the Plaintiffs played important roles and provided valuable assistance in advancing the litigation and achieving the Settlement. The award requested is more than reasonable in light of the circumstances and the awards provided by other courts for similar efforts.

For these reasons, and as outlined below, Plaintiffs respectfully submit that this motion should be granted.

[2] *See* Exhibit C to the Cowen Decl. filed herewith; *see also* Settlement Website: https://nelnetsettlement.com/court-documents/(last visited Feb. 19, 2026).

## ARGUMENT[3]

### I. The Court Should Approve the Requested Attorneys' Fees

#### A. An Award of One-Third of the Settlement Fund Reasonably Aligns the Compensation Provided to Counsel with the Benefits Provided to the Settlement Class

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In a class action, the lawyers that obtain a favorable recovery for the class members are entitled to a portion of the common fund as attorneys' fees. *Arkin v. Pressman, Inc.*, 38 F.4th 1001, 1008 (11th Cir. 2022) ("those lawyers who recover a common fund for the plaintiffs are entitled to a portion of the common fund as a reasonable attorneys' fee.") (internal citations and quotations omitted). With respect to attorneys' fees, courts use two approaches to calculate the award: "Under the lodestar methodology, the hours expended by an attorney are multiplied by a reasonable hourly rate of compensation so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action. [T]he percentage of the benefit approach, permits an award of fees that is equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation." *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017) (internal citations and quotations omitted). Plaintiffs advocate for use of the percentage-of-the-fund method here to determine the appropriate fee.

##### 1. The Use of the Percentage-of-the-Fund Method Is Appropriate in this Action

Courts in this Circuit typically use the "percentage-of-the-fund method" to calculate attorneys' fees in common-fund cases. *See, e.g., Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th

[3] A detailed recitation of the procedural and factual background of the Action is provided in the Joint Declaration of Christian Levis and Ian W. Sloss in Support of Plaintiffs' Motions for Final Approval of Class Action Settlement and for Attorneys' Fees, Litigation Costs and Expenses, and Service Awards ("Joint Declaration" or "Jt. Decl.") filed herewith.

Cir. 2019); *In re Xcel Energy, Inc., Securities, Derivative & "ERISA" Litig. ("Xcel Energy")*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) ("In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.") (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999)). Indeed, some courts have suggested that using the "percentage of the fund method may be preferable." *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-cv-4321-NKL, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015); *see also Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 245 (8th Cir. 1996) ("[T]he Task Force recommended that the percentage of the benefit method be employed in common fund situations.") (citing *Court Awarded Attorneys Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255 (3rd Cir. 1985). In this regard, the percentage-of-the-fund method "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, 121 (2d Cir. 2005) (quotations omitted). In contrast, the lodestar method has been criticized for "creat[ing] an unanticipated disincentive to early settlements, tempt[ing] lawyers to run up their hours, and compel[ing] district courts to engage in a gimlet-eyed review of line-item fee audits." *Id.*; *see also Health Republic Ins. Co. v. United States*, 156 Fed. Cl. 67, 76 (2021) (noting the lodestar method "'is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation,' and it creates incentives for inefficiency") (quoting Manual for Complex Litigation § 14.121 (4th ed. 2004)).

Here, the requested fee—one third of the Settlement Fund—is consistent with fees upheld by courts in this District and Circuit. *See, e.g., Campbell v. Transgenomic, Inc.*, No. 4:17-CV-3021, 2020 WL 2946989, at *4 (D. Neb. June 3, 2020) (finding that an attorneys' fee request of one-third of a nearly $2 million settlement fund is "well in line with other attorney's fee awards

in this circuit."); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming one-third fee award from $25.75 million settlement, citing cases and noting "courts have frequently awarded attorneys' fees ranging up to 36% in class actions"); *Lechner v. Mutual of Omaha Ins. Co.*, No. 8:18CV22, 2021 WL 424421, *2 (D. Neb. Feb. 8, 2021) (granting fee request of one-third of the $6.7 million settlement fund and finding it to be typical in class action litigation).

In addition, courts awarding attorneys' fees in similar data privacy/data breach cases have applied a similar percentage. *See, e.g., In re NCB Management Services, Inc. Data Breach Litigation*, No. 2:23-cv-01236, ECF No. 141 (E.D. Pa. Sept. 29, 2025) (awarding 1/3 of settlement fund in attorneys' fees); *Rand v. The Travelers Indemnity Company*, No. 7:21-cv-10744, ECF No. 174 (S.D.N.Y. Feb. 5, 2025) (awarding 33 1/3% of settlement fund in attorneys' fees); *McNally, et al. v. Infosys McCamish Systems, LLC*, No. 1:24-cv-00995, ECF No. 81 (N.D. Ga. Dec. 18, 2025) (awarding one-third (33.33%) of settlement fund in attorneys' fees).

Moreover, as described below, a one-third fee award is reasonable compensation when the *Johnson* factors are considered, given the work and results achieved by Plaintiffs' Counsel, the complexity of the Action, and the commitment of financial and human resources to achieve a successful outcome. *See In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018).

**2. The Lodestar Method Confirms the Appropriateness of a One-Third Fee Award**

Upon determining the appropriate fee award using the percentage-of-the fund method, a lodestar crosscheck is "not required" in the Eighth Circuit, *Keil,* 862 F.3d at 701. However, even if the Court were inclined to perform a cross-check, or simply chose to rely on the lodestar method, doing so here confirms that the requested fee is reasonable and should be approved. *See Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010) (courts applying

the percentage of the fund method can "verify the reasonableness of an attorney fee award by crosschecking it against the lodestar method").

The lodestar approach requires the court to consider "(1) the number of hours spent in various legal activities by the individual attorneys, (2) the reasonable hourly rate for the individual attorneys, (3) the contingent nature of success, and (4) the quality of the attorneys' work." *Shanahan v. Lee L. Offs.*, No. 8:18-CV-129, 2019 WL 2603102, at *4 (D. Neb. June 25, 2019) (internal citations omitted) (Gerrard, *J.*).[4] "But the starting point is multiplying attorneys' hours and typical hourly rates; only after such a calculation do other, less objective factors come into the equation." *Id.* To determine a reasonable hourly rate, courts look to "the hourly amount to which attorneys of like skill in the area would typically be entitled for a given type of work on the basis of an hourly rate of compensation" or, where appropriate "the prevailing rate in the market from which attorneys have traveled may be considered." *Anderson v. Travelex Insurance Services Inc., et al.*, No. 8:18-CV-362, 2021 WL 4307093, at *4 (D. Neb. Sept. 22, 2021) (internal citations and quotations omitted) (Gerrard, *J.*).

In this instance, while Class Counsel's hourly rates may be greater than the rates of counsel in the area of the Court, they are nonetheless reasonable. Class Counsel are specialists in prosecuting data breach, data privacy, and data security claims. While the firms hail from White Plains, New York and Stamford, Connecticut, their practice spans nationwide. The hourly rates used in this case are the customary rates applied to all matters, are representative of those respectively legal markets, and have been approved in data breach/data privacy cases across the

[4] The accompanying Declarations of Christian Levis, Ian W. Sloss, Kate Baxter-Kauf, William B. Federman, and Jeana L. Goosmann provide a summary of the hours and lodestar of each timekeeper spent either prosecuting this Action or representing the interests of certain Class Representatives or Class Members) and a summary of the work undertaken by the firms. *See* Exhibits A – E to Jt. Decl. Should the Court require additional detail concerning timekeeper activities, Class Counsel will provide a detailed submission for *in camera review* upon request.

country because of the complexity and novelty of the issues that arise in this developing area of law. *See* Levis Decl. ¶ 14; Sloss Decl. ¶ 14; *In re: NCB Management Services, Inc. Data Breach Litigation*, No. 2:23-cv-01236 (E.D. Pa.). ECF Nos. 135-4, 141; *Rand v. The Travelers Indemnity Company*, Case No. No. 7:21-cv-10744-VB-VR (S.D.N.Y.), ECF Nos. 174; *Hubbard, et al. v. Google, LLC et al*, No. 5:19-CV-07016 (N.D. Cal.), ECF No. 347; *Knox County Retirement & Pension Board, et al. v. Allianz Global Investors U.S., LLC et al.*, Index No. 651233/2021, Sup. Ct., N.Y. County (Hon. Andrew Borrock), NYSCEF Doc. No(s). 95-99; *Borozny et al. v. RTX Corporation et al.*, No. 3:21-cv-1657-SVN (D. Conn.), ECF No. 1002.

The hours invested in this case are similarly reasonable. Class Counsel, Lockridge, Federman Sherwood, and Goosmann dedicated 4,822.4 hours to prosecute this Action (or represented the interest of certain Class Representatives or Class Members) from inception (September 1, 2022)[5] through January 31, 2026. Jt. Decl. ¶ 74. As described in the Joint Declaration, this case required constant focus and effort to achieve the Settlement before this Court. For example, attorneys spent hundreds of hours researching and updating their knowledge of the applicable data privacy/data breach laws that would apply to Plaintiffs' claims and the possible defenses that could be asserted (and the likelihood of their success); reviewing, researching, and briefing the motion to dismiss; conducting party discovery, including reviewing and analyzing confidentially produced documents; and engaging in extensive settlement discussions, which included preparing for multiple mediation sessions. Even after obtaining a settlement in principle to benefit the Settlement Class, Class Counsel's work remained constant, as they vigorously negotiated each of the key settlement terms over many months with the

[5] August 31, 2022 for Federman Sherwood, *see* Exhibit D (Federman Decl.) to Jt. Decl.

Settling Entities, while having to strategize and defend against collateral challenges to the proposed Settlement.

Ultimately, this work required thousands of hours of investment by attorneys and staff, resulting in a total lodestar (at current rates) of $4,209,196.50. Jt. Decl. ¶ 74.[6] If the Court grants the fee request, the resulting lodestar multiplier would be a negative 0.79. This is below the range of multipliers that have been upheld by courts as reasonable. *See Huyer*, 849 F.3d at 400 (finding a lodestar "multiplier [of 1.82] is well within the range of multipliers awarded in this and other circuits"); *Nelson v. Wal-Mart Stores, Inc.*, No. 05-cv-000134, 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009) (citing cases within the Eighth Circuit approving multipliers between 2.0 and 5.6). In fact, Plaintiffs' fee request reflects a negative multiplier, which many courts consider *presumptively* reasonable. *See, e.g., In re NCB Management Services, Inc. Data Breach Litigation*, No. 2:23-cv-01236, ECF Nos. 135-1, 141 (E.D. Pa.) (data breach case approving fees with a negative multiplier of 0.62); *Walsh v. Buchholz*, Civ. No.19-1856 (JWB/DTS), 2025 WL 823887, at *1 (D. Minn. Mar. 14, 2025) ("The requested award of 33.3% of the Settlement Fund represents a negative multiplier of approximately 0.55. Compared with the lodestar calculation, the percentage preserves a greater portion of the Settlement Fund for the Class Members."); *Shannon v. Sherwood Mgmt. Co., Inc., No. 19-cv01101*, 2020 WL 5891587, at *3 (S.D. Cal. Oct. 5, 2020) ("The negative multiplier suggests that the requested fee award is reasonable."); *Johnson v. Himagine Sols., Inc.*, No. 4:20-CV-00574-SPM, 2021 WL 2634669, at *7 (E.D. Mo. June 25, 2021) (approving fee request reflecting a "negative multiplier" of 0.85 because "[e]ven if the Court has concerns that the hourly rates charged appear somewhat high in this case, this

[6] Using Class Counsel's current hourly rates is appropriate. *See, e.g., In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 103, n.11 (D.N.J. 2001) ("calculating the lodestar of Plaintiffs' Counsel using current hourly rates is appropriate."); *McIntosh v. Pac. Holding Co.*, 12 F. Supp. 2d 987, 992 (D. Neb. 1998) ("the Court "usually deal[s] with delay in payment issues by using current hourly rates rather than historic rates").

low multiplier confirms that the fees sought are well within the reasonable range."); *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at *9 (D. Minn. Dec. 4, 2020) ("Overall, the amount of attorneys' fees and expenses requested is reasonable and results in a substantial negative multiplier, such that Plaintiffs' Counsel will not recover all fees incurred.").

The remaining two factors courts consider under the lodestar cross-check equally support the reasonableness of the proposed fee award. Class Counsel undertook this litigation on a wholly contingent basis and bore the full risk of an unsuccessful outcome. "'Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.'" *Yarrington,* 697 F. Supp. 2d at 1062 (quoting *Xcel Energy*, 364 F. Supp. 2d at 994). "Unless that risk is compensated with a commensurate award, no firm, no matter how large or well-financed, will have the incentive to consider pursuing a case such as this." *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *3 (W.D. Mo. Aug. 16, 2019). Critically, "[t]he risks plaintiffs' counsel faced must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day." *Xcel Energy,* 364 F. Supp. 2d at 994.

Data breach and data privacy cases are notoriously difficult to prosecute in part due to the evolving state of the law. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *32 (N.D. Ga. Mar. 17, 2020), *aff'd in part, rev'd in part and remanded*, 999 F.3d 1247 (11th Cir. 2021) ("The law in data breach litigation remains uncertain and the applicable legal principles have continued to evolve . . . . [T]his case involved many novel and difficult legal questions, such as the threshold issue of whether [the defendant] had a duty to protect plaintiffs' personal data, whether plaintiffs' alleged injuries are legally cognizable

and were proximately caused by the [data] breach, . . . [and] the meaning of various state consumer protection statutes . . . ."). A number of data breach-related actions have been commenced only to be unsuccessful after counsel invested substantial resources to prosecute the case. *See, e.g., Jenkins v. Associated Wholesale Grocers, Inc.*, No. 24-4039-DDC-GEB, 2025 WL 708574, at *15 (D. Kan. Mar. 5, 2025) (dismissing data breach case at motion to dismiss stage); *Stern v. Acad. Mortg. Corp.*, No. 2:24-CV-00015-DBB-DAO, 2025 WL 239036, at *8 (D. Utah Jan. 17, 2025) (same). Courts regularly credit counsel who undertake the risk to bring these difficult cases to vindicate the rights of individuals who would otherwise have no recourse to pursue their claims. *See McGowan v. CFG Health Network, LLC*, No. 3:22-cv-02770 (ZNQ) (RLS), 2024 WL 1340329, at *14 (D.N.J. Mar. 28, 2024) ("In short, class counsel undertook substantial risk that the litigation would yield little or no recovery and leave them completely uncompensated for their time.").

In light of the contingency risk present here, and the added challenge of prosecuting data breach/data privacy claims, Class Counsel's ability to achieve a significant recovery for the Settlement Class in the face of such uncertainty is a reflection of their skill and expertise. This lends further support for the reasonableness of the requested one-third fee award.

**3. The Applicable *Johnson* Factors Confirm That a One-Third Fee Is Reasonable**

Regardless of the method used to calculate the fee award, courts in this Circuit apply one or more of twelve factors enumerated in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974) to further assess the reasonableness of the fee award. *See Shanahan v. Lee L. Offs.*, No. 8:18-cv-129, 2019 WL 2603102, at *4 (D. Neb. June 25, 2019); *see also Keil*, 862 F.3d at 701 ("It is within the discretion of the district court to choose which method to apply, as

well as to determine the resulting amount that constitutes a reasonable award of attorney's fees in a given case."). The twelve *Johnson* factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

*In re Target Corp.*, 892 F.3d at 977, n.7.

In applying *Johnson* factors, courts recognize that not all of the factors will be relevant in a given case, and further each relevant factor may not have the same weight. *See Xcel Energy*, 364 F. Supp. 2d at 993 ("[N]ot all of the individual *Johnson* factors will apply in every case, so the court has wide discretion as to which factors to apply and the relative weight to assign to each."); *Shanahan*, 2019 WL 2603102, at *5 ("many of the Johnson factors are encompassed in the lodestar analysis. Others are not particularly pertinent."); *Hardman v. Bd. of Educ. of Dollarway, Arkansas Sch. Dist.*, 714 F.2d 823, 825 (8th Cir. 1983) ("Although the district court did not specifically recite all twelve of the *Johnson* factors, it did discuss in sufficient detail those factors which it considered relevant to this litigation."); *Uselton v. Commercial Lovelace Motor Freight, Inc.,* 9 F.3d 849, 854 (10th Cir. 1993) ("[R]arely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation.") (citation omitted).

In this instance, *Johnson* factors 5, 6, 12 have already been analyzed in connection with Plaintiffs' discussion above about the appropriateness of the percentage-of-the fund method and the lodestar cross-check. Plaintiffs contend that *Johnson* factors 7 (time limitations imposed by the client or other circumstances) and 11 (the nature and length of the professional relationship

with the client) are not applicable in this Action. The remaining *Johnson* factors are discussed below and weigh in favor of granting the attorneys' fees request.

**i. *Johnson* Factors 1 – 3: The time and labor required; the novelty and difficulty of the questions; and the skill requisite to perform the legal service properly.**

The first three *Johnson* factors "lend themselves to being analyzed in tandem." *Swinton v. SquareTrade*, Inc., 454 F. Supp. 3d 848, 886 (S.D. Iowa 2020). As a principal matter, "class actions are not easy cases. It takes lawyers of great skill to navigate the procedural and substantive hurdles inherent in them and, should such a matter settle, arrive at a settlement that is fair to the class as a whole." *Swinton*, 454 F. Supp. 3d at 886. Courts recognize that data breach class actions are particularly fraught with risks that justify an appropriate fee award. *See, e.g., In re: Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts"); *Fox v. Iowa Health Sys*., No. 3:18-cv-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) ("Data breach litigation is evolving; there is no guarantee of the ultimate result ... [they] are particularly risky, expensive, and complex."); *Rodriguez v. Pro. Fin. Co., Inc.*, No. 22-CV-01679-RMR-STV, 2024 WL 4494297, at *7 (D. Colo. Oct. 15, 2024) ("the Court finds the ultimate outcome of the [data breach] litigation is uncertain. Data breach litigation is evolving; there is no guarantee of the ultimate result."); *Krant v. UnitedLex Corp.*, No. 23-2443-DDC-TJJ, 2024 WL 5187565, at *3 (D. Kan. Dec. 20, 2024) ("Continued litigation of the matter involves incurring additional costs and presents a risk that Class Members might secure an unfavorable outcome. Cost and risk are an especially salient concern in the data breach context").

As noted above, this case had substantial risk, including a motion to dismiss that was pending at the time settlement took place. Plaintiffs bore the risk that an adverse motion to dismiss opinion could have been rendered while the parties were in settlement discussions, negating their work. Plaintiffs also had to contend with simultaneously preparing settlement and preliminary approval papers while briefing two motions to intervene from the *Carr* plaintiffs. Class Counsel successfully juggled both and achieved a settlement that has been preliminary approved.

Here, Class Counsel, Lockridge, Federman Sherwood, and Goosmann spent 4,822.4 hours on work related to this matter. As noted above, that work and the time expended was reasonable. Further, although the parties agreed to a settlement early on in the litigation, this was not an easy case and dealt with novel, cybersecurity and jurisdictional issues. Not only did Class Counsel brief a multi-count motion to dismiss, Class Counsel also spent considerable time over numerous months resisting the multiple motions to intervene and requests for discovery. *See Swinton*, 454 F. Supp. 3d at 886 (finding counsel's time spent "resist[ing] [the] Motion to Intervene" weighed in favor of these *Johnson* factors).

Considered together, these *Johnson* factors provide sufficient evidence supporting the reasonableness of the requested attorneys' fees.

**ii. *Johnson* Factor 8: The amount involved and the results obtained.**

The eighth *Johnson* factor is the "most critical factor" and weighs in favor of the requested attorneys' fees. *See Hull v. Ne. Legal Grp., LLC*, No. 4:12-cv-3224, 2013 WL 2403327, at *5 (D. Neb. May 31, 2013) ("Of these, the most critical factor is the results counsel has obtained for their client.") (internal citations omitted) (Gerrard, *J.*).

As described in Plaintiffs' accompanying Motion for Final Approval, the $10 million non-reversionary common fund settlement is an excellent result, resulting in a gross recovery of approximately $3.99 per person—which is on the higher end of these types of data breach cases. *See* Final Approval Brief at 14-15. *See Swinton*, 454 F. Supp. 3d at 886 ("The Court already discussed [] the various obstacles facing Plaintiff and the Settlement Class should this matter have proceeded to trial. The outcome of further litigation is far from certain, and the Settlement provides immediate benefits to the class without the delay, difficulties, and expense of further litigation."). This Settlement provided significant value to all Settlement Class Members—who can claim Credit Monitoring and Identity Theft Protection *in addition to* (i) Reimbursement of Documented Out-of-Pocket Losses and Cash Payments for Lost Time, or (ii) *Pro Rata* Cash Payments. In Class Counsel's view, the array of benefits is comparable to (if not better) than recoveries in other similar data breach/data privacy cases. *See* Final Approval Brief at 15-16; *see also Kostka v. Dickey's Barbecue Restaurants, Inc.,* No. 3:20-cv-03424-K, ECF Nos. 62-1, 103, 2022 WL 16821685, at *6 (N.D. Tex. Oct. 14, 2022), *report and recommendation adopted,* No. 3:20-cv-03424-K, 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022) (data breach class action involving "at least 725,000 individuals" that settled for $2.35 million – approximately $ 3.24 per class member); *In re Herff Jones Data Breach Litig.,* No. 1:21-cv-1329-TWP-DLP, 2022 WL 474696, at *3 (S.D. Ind. Jan. 12, 2022) (data breach class action involving more than 1 million people that settled for $4.35 million – approximately $4.35 per class member); compare SA § 2.54 (data breach class action involving 2,501,324 people that is settling for $10 million – at approximately $3.99 per class member ).

Similar to *Dickey's*, which provided a cash payment to Class Members and included a with a 2x multiplier for California class members, this Settlement also compensates California

residents with a 2x multiplier to account for the release of the statutory damages available under the CCPA. SA § 7.7.1.[7] The benefits provided by the Settlement provide another justification for the requested fee award.

### iii. *Johnson* Factors 4 and 10: The preclusion of other employment and the "undesirability" of the case.[8]

*Johnson* Factors 4 and 10 also weigh in favor of the requested attorneys' fees. By taking on this Action and devoting resources to achieving a successful outcome, Class Counsel necessarily had to forego other litigation opportunities given its limited resources. *See Johnson*, 488 F.2d at 718 ("This guideline involves the dual consideration of otherwise available business which is foreclosed"); *see also Williams v. City of New York*, No. 16-CV-233 (JPO), 2017 WL 1906899, at *2 (S.D.N.Y. May 9, 2017) (finding this *Johnson* factor weighed in favor, where "work prevented [counsel] from taking on other employment"). Moreover, the claims in this case are not the type that would encourage a typical, individual plaintiff to spend his or her resources to pursue an individual claim against the Settling Entities; even if successful, the individual's recovery likely would have been much less than the cost to file the case. In cases, such as this one, "where an individual's damages may be relatively modest, plaintiffs may be unwilling (or unable) to pay attorney's fees and costs in advance." *Swinton*, 454 F. Supp. 3d at 887 (S.D. Iowa 2020) (finding this Johnson factor weighed in favor of the fee request). There is a substantial public policy interest in incentivizing counsel to take up cases that may only be successful when prosecuted as a class action and have a significant risk of non-recovery. *See, e.g., Aichele v. City*

---

[7] *See Kostka v. Dickey's Barbecue Restaurants, Inc.*, No. 3:20-cv-3424 (N.D. Tex. June 6, 2023), ECF Nos. 62-1, 103 (included a cash payment component, with a 2x multiplier for California class members).

[8] *Johnson* factors 5 (customary fee) and 6 (whether the fee is contingent or fixed) play a role in how courts analyze the undesirability of the case. *See Swinton*, 454 F. Supp. 3d at 887 ("These fee-based factors are related to the tenth *Johnson* factor: the undesirability of the case.").

*of Los Angeles*, No. CV 12-10863-DMG (FFMX), 2015 WL 5286028, at *5 (C.D. Cal. Sept. 9, 2015) ("Class action litigation is risky by its very nature."); *Marshall v. Northrop Grumman Corp.*, 469 F. Supp. 3d 942, 948 (C.D. Cal. 2020) (there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.") (internal citations and quotations omitted). The proposed fee award adequately rewards the counsel prosecuting this Action for taking on the various risks and opportunity costs involved with prosecuting the claims.

**iv. *Johnson* Factor 9: The experience, reputation, and ability of the attorneys.**

*Johnson* factor 9 also weighs in favor of the requested attorneys' fees. Class Counsel each have considerable experience in class action lawsuits and data beach litigation. *See, e.g.,* Joint Declaration; Levis Declaration; Sloss Declaration; ECF Nos. 110-6, 110-7 (Class Counsel firm resumes). Class Counsel are highly regarded attorneys and the results in this case speak to their abilities. Class Counsel has achieved numerous data breach and privacy settlements and have the requisite skill and ability to take (and win) large complex data privacy cases at trial. *See, e.g.*, *Frasco v. Flo Health, Inc.*, No. 3:21-cv-00757 (N.D. Cal.) (Lowey as Class Counsel secured a plaintiffs' trial verdict in July 2025 in data privacy action, with judgment pending where the recovery could reach into the billions of dollars in statutory damages). This case presented numerous challenges, and Class Counsel were able to secure a fair, reasonable, and adequate Settlement for the Class.

## II. The Expense Reimbursement Request Is Reasonable

Sections 19.1 and 19.2 of the Settlement Agreement provides that Class Counsel may request reimbursement of expenses incurred in prosecuting and settling the Action, to be paid from the Settlement Fund. The Long Form Notice (Ex. C to Cowen Decl.) stated that Class Counsel would not seek more than $65,000 in litigation expenses. Class Counsel hereby requests

reimbursement of $65,000 in their actual litigation expenses incurred to date. Reimbursement of expenses and costs incurred in litigating a class action are ordinarily recovered as part of settlement approval. *See Woodard v. Navient Sols., LLC*, No. 8:23-cv-301, 2024 WL 94468, at *9 (D. Neb. Jan. 9, 2024) (finding $86,562.76 in expenses to be "reasonable in light of the multi-year… litigation that led to this settlement"); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1037 (8th Cir. 2002) (upholding a costs award of $40,000 as appropriate where the parties' settlement resulted in a $2 million common fund). In the class action context, costs related to document hosting and discovery, mediators, photocopies, court fees and legal research, among others, are routinely reimbursed from the common fund created by the settlement. *See In re Resideo Techs., Inc., Sec. Litig.*, No. 19-CV-2863 (WMW/BRT), 2022 WL 872909, at *7 (D. Minn. Mar. 24, 2022) ("the record reflects that Plaintiffs' requested litigation expenses include expert fees, online research, mediation fees, electronic document production, storage and management, court reporting and transcripts. … These are the types of expenses that courts recognize as reasonably recoverable.").

A chart summarizing the expense amounts incurred by each firm is set forth in the Joint Declaration and the accompanying counsel declarations. Jt. Decl. ¶ 76; *see also* Exhibits A – E. The expenses are reasonable and should be approved.

## III. The Requested Service Awards Are Reasonable

Finally, Plaintiffs request approval of $1,500 Service Awards to each of the 27 Class Representatives for their time and effort pursuing the litigation on behalf of the Class.[9] "Courts often grant service awards to named plaintiffs in class action suits to 'promote the public policy

[9] As with the attorneys' fees and expenses, any Service Award amounts approved by the Court will be paid from the Settlement Fund. S.A. § 18.1.

of encouraging individuals to undertake the responsibility of representative lawsuits.'" *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (quotation omitted). Here the proposed Class Representatives were active participants; they stayed informed about this litigation and undertook substantial work—including the time they spent reviewing materials and filings in support of their claims (protecting the Class's interests in the process)—at great personal and reputational risk. Jt. Decl. ¶ 80. They were available at each stage of the litigation, and the Settlement would not have been possible without their efforts. In light of these efforts, a Service Award in the amount of $1,500 per representative is consistent with service awards commonly approved by this Court. *See Anderson,* 2021 WL 4307093, at *5 (approving a $6,000 service award for class representatives). Further there have been no objections to the service awards requested. *See Shanahan*, 2019 WL 2603102, at *5 (approving service awards where "[t]here have been no objections to the incentive awards proposed").

The request is also comparable to service awards approved in other consumer data breach class actions. *See, e.g.*, *In re NCB Management Services, Inc. Data Breach Litigation*, No. 2:23-cv-01236, ECF No. 141 (E.D. Pa. Sept. 29, 2025) (approving $2,000 service awards); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752 (LHK), 2020 WL 4212811, at *43 (N.D. Cal. July 22, 2020), *aff'd*, No. 20-16633, 2022 WL 2304236 (9th Cir. June 27, 2022) (approving "$2,500 for the five Settlement Class Representatives who participated in the instant case without being deposed"); *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *2 (D. Colo. Dec. 16, 2019) ($2,500 service awards for each of six plaintiffs in case that settled prior to depositions). Plaintiffs' participation and assistance in advancing this litigation from inception to this Settlement amply justifies granting Plaintiffs the Service Awards.

## CONCLUSION

Plaintiffs respectfully request that the Court grant Plaintiffs' motion and approve the requested attorneys' fees, reimbursement of litigation costs and expenses, and the requested Service Awards to the Class Representatives.

Dated: February 19, 2026

Respectfully submitted,

*/s/ Christian Levis*
Christian Levis
Amanda G. Fiorilla
**LOWEY DANNENBERG, P.C.**
44 South Broadway, Suite 1100
White Plains, NY 10601
Tel: (914) 997-0500
Email: clevis@lowey.com
Email: afiorilla@lowey.com

Anthony M. Christina
**LOWEY DANNENBERG, P.C.**
One Tower Bridge
100 Front Street, Suite 520
West Conshohocken, PA 19428
Email: achristina@lowey.com

Ian W. Sloss
Johnathan Seredynski
Steven L. Bloch
**SILVER GOLUB & TEITELL LLP**
One Landmark Square, Floor 15
Stamford, CT 06901
Tel: (203) 325-4491
Email: isloss@sgtlaw.com
Email: jeredynski@sgtlaw.com
Email: sbloch@sgtlaw.com

*Class Counsel*

**CERTIFICATE OF COMPLIANCE**

I hereby certify that no generative artificial intelligence program was used in drafting the foregoing document.

*/s/ Christian Levis*
Christian Levis

**CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.1(d)(3)**

I hereby certify that this memorandum of law (the "Brief") complies with the word-count limit described of Local Civil Rule 7.1(d)(1)(A). I relied on the word count feature of the word-processing system, Microsoft Word, Version 2308, used to prepare the Brief. The actual number of words in the Brief, including all text (the caption, body, headings, footnotes, and quotations), is 7,212 words.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

*/s/ Christian Levis*
Christian Levis

**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2026, a copy of the foregoing document was filed electronically with the U.S. District Court for the District of Nebraska and served on all counsel of record through the CM/ECF system.

*/s/ Christian Levis*
Christian Levis