

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

---

**IN RE: NETGAIN TECHNOLOGY,  
LLC, CONSUMER DATA BREACH  
LITIGATION**

**Court File No. 21-cv-1210 (SRN/LIB)**

---

**MEMORANDUM OF LAW IN SUPPORT OF SETTLEMENT CLASS  
COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES, REIMBURSEMENT  
OF LITIGATION EXPENSES, AND SERVICE AWARDS**

**I. INTRODUCTION**

Plaintiffs Misty Meier (o.b.o. her minor child G.C-M.), Jane Doe, Susan M. Reichert, Robert Smithburg, Thomas Lindsay and Robin Guertin (“Plaintiffs” or “Class Representatives”), by and through their undersigned counsel, and on behalf of the Settlement Class, hereby submit this Memorandum of Law in Support of Settlement Class Counsel’s Application for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Awards (“Attorneys’ Fees Motion”). Settlement Class Counsel (“Co-Lead Counsel”) have litigated this action against Defendant Netgain Technology, LLC (“Defendant” or “Netgain”) to resolve claims arising from the ransomware type data breach that took place from September to December 2020, during which a third-party accessed sensitive information of Plaintiffs and the Settlement Class (the “Data Breach”). Through their hard work and resources, Co-Lead Counsel and Plaintiffs secured a Settlement that

establishes a gross non-reversionary One Million Nine Hundred Thousand Dollars (\$1,900,000) Settlement Fund that will provide cash payments to participating Settlement Class Members. This result could not have been attained absent Co-Lead Counsel's resources and skills, nor Plaintiffs' participation. Co-Lead Counsel now seek approval of an attorneys' fees and reimbursement of litigation expenses in the amount of **\$633,333.33** - *i.e.*, thirty-three and one-third percent (33 1/3%) of the Settlement Fund plus the actual expended costs of **\$48,261.52** – plus a service award of **\$1,500 for each** of the Class Representatives. As demonstrated below, the record in this case and the case law in the Eighth Circuit fully support the requested attorneys' fees, reimbursement of expenses, and service awards for the Class Representatives. For these reasons, and the others discussed further herein, the Attorneys' Fees Motion should be granted.

## **II. BACKGROUND**

The litigation history, history of settlement negotiations, and terms of the settlement are set forth in detail in the Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion") filed on May 9, 2025 [ECF No. 124] and are incorporated by reference here. This Memorandum focuses on the effort of Co-Lead Counsel and the Class Representatives to achieve the result in this case.

### **A. CO-LEAD COUNSEL WORKED DILIGENTLY ON BEHALF OF THE CLASS**

Co-Lead Counsel are highly experienced consumer class action practitioners who have years of experience in litigating complex data breach matters like this one. *See*

Declaration\_of Brian Gudmundson (“Gudmundson Decl.”) ¶¶ 10-12, 21-22. They leveraged their collective experience to litigate this case efficiently and effectively.

Co-Lead Counsel’s substantial time and resources spent on this matter – which they have been litigating since inception over four years ago – include:

- Investigation of the facts and interviewing Plaintiffs
- Drafting pre-suit statutory exhaustion letters (e.g., California Consumer Protection Act claim)
- Researching and drafting the underlying individual complaints
- Preparing the Joint Motion for Consolidation
- Drafting the Consolidated Class Action Complaint
- Researching and briefing Plaintiffs’ Opposition to Motion to Dismiss
- Reviewing Defendant’s Answer to Consolidated Class Action Complaint
- Negotiating and preparing the Joint Rule 26(f) Report
- Preparing Statement of the Case and attending Pre-trial Scheduling Conference
- Negotiating and preparing Stipulated Protective Order
- Negotiating and preparing Joint ESI Protocol
- Propounding formal written discovery, including Interrogatories and Requests for Production
- Propounding informal discovery in furtherance of mediation
- Engaging in multiple meet-and-confers regarding Defendant’s objections

- Drafting Motion to Compel discovery and presenting them to Magistrate Hon. Brisbois
- Closely analyzing Defendants' responsive documents and data
- Retaining and engaging a cyber consultant to analyze Defendant's data production
- Assessing Defendant's degree of liability and estimated class damages
- Preparing for and participating in three (3) separate mediation sessions before Magistrate Keyes (Ret.) in November 2022, October 2023, and December 2024
- Engaging in extensive settlement negotiations with counsel for Defendant
- Reviewing insurance information and confirmatory financial condition discovery
- Drafting the Settlement Agreements and accompany exhibits
- Obtaining and evaluating settlement administration proposals and declarations and notice programs
- Drafting the Motion for Preliminary Approval and supporting documents
- Coordinating and overseeing and engaging with the Settlement Administrator regarding the response to Notice and the administration of Settlement, and among other things,
- Regularly updating and communicating with Plaintiffs and putative Class Members.

*See* Gudmundson Decl. ¶ 11. Moreover, Co-Lead Counsel's work is not yet complete. Anticipated future tasks include continuing to oversee administration of the Settlement, responding to Class Member inquiries, and drafting the Motion for Final Approval. Gudmundson Decl. ¶ 13. Additionally, Co-Lead Counsel have incurred over \$48,261.52 in

out-of-pocket costs in furtherance of the litigation. Gudmundson Decl. ¶ 23. The requested attorneys' fees of \$633,333.33 and request for reimbursement of costs, together, in the amount of \$685,594.85 were identified in the Notice and online via the dedicated settlement website and there have been no objections to date from Settlement Class Members. Gudmundson Decl. ¶¶ 14-15, ¶ 17.

**B. THE CLASS REPRESENTATIVES PLAYED AN ACTIVE ROLE IN THIS CASE.**

The Class Representatives played a valuable and active role in this litigation and devoted significant time and attention to the case. Specifically, they assisted with the investigation of the facts of the case, providing documents and details about their experiences, reviewed and approved the initial underlying pleadings and subsequent Consolidated Class Action Complaint, regularly consulted with Co-Lead Counsel throughout the litigation, made themselves available for consultation on settlement negotiations, reviewed and approved the Settlement Agreement, and sought updates during the preliminary approval and notice processes. Gudmundson Decl. ¶ 27. The Settlement Agreement's provision of \$1,500 Service Award for each of the Class Representatives as was identified in the Notice and online via the dedicated settlement website and there have been no objections to date from Settlement Class Members. Gudmundson Decl. ¶ 15, 17.

**III. ARGUMENT**

Through their work, Co-Lead Counsel and Plaintiffs secured a \$1.9 million non-reversionary Settlement Fund that, irrespective of the reimbursement or pro rata mode of recovery selected, makes a significant cash award available to those participating

Settlement Class Members. First, and in light of this accomplishment, the Court should grant Plaintiffs \$1,500 each as Service Awards to acknowledge their services in prosecuting this litigation on behalf of the Class. Second, Co-Lead Counsel requests an award of attorneys' fees in the amount of \$633,333.33 – which is thirty-three and one-third percent (33.33%) of the Settlement Fund – and reimbursement of expenses of \$48,261.52, which are reasonable and should be approved. Considering the results achieved, the very real risks of no recovery posed by defendant's financial condition and continued litigation, Co-Lead Counsel's skilled prosecution of the case (on a fully contingent basis), and the fact that courts in similar class actions routinely award one-third (or more) of the common fund in fees, support Co-Lead Counsel's reasonable request. *See In re Xcel Energy, Inc. Sec. Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 998 (D. Minn. 2005) (“[C]ourts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions.”) (collecting cases). This conclusion is confirmed by a lodestar cross-check, which results in a negative multiplier, acknowledges the risks of class certification, defenses on the merits, and Defendant's financial situation, and underscores the reasonableness of the fee request given the extensive work performed. Accordingly, Plaintiffs respectfully request the Court grant the Attorneys' Fees Motion on the terms set forth herein.

**A. THE COURT SHOULD APPROVE SERVICE AWARDS TO THE SETTLEMENT CLASS REPRESENTATIVES**

The Parties' Settlement Agreement contemplates a service award of \$1,500 to each of the six Class Representatives. *See* ECF 129, Ex. 1 ¶ 9.1 These service awards are modest

compared to what courts have awarded in other class litigation, including data privacy cases. *See In re Target Corp. Customer Data Sec. Breach Litig.*, 2016 WL 2757692, at \*2 (D. Minn. May 12, 2016) (awarding \$20,000 to each of the five financial institution class representatives in data breach case); *Perry v. Bay & Bay Transportation Services, Inc.*, 2024 WL 6836674 (D. Minn. Jan. 24, 2024) (awarding \$2,500 to class representative in recognition of services in data breach case). *See also In re Resideo Tech., Inc. Derivative Litig.*, 2024 WL 95194, at \*5 (D. Minn. Jan. 9, 2024) (approving \$2,500 service awards in securities litigation); *Isbell v. Polaris, Inc.* 2023 WL 6662980, at \*3 (D. Minn. Oct. 12, 2023) (approving \$5,000 service award in FLSA action); *Yarrington v. Solvay Pharms., Inc.*, 697 F.Supp.2d 1057 (D. Minn. Mar. 16, 2010) (approving \$5,000 service award in consumer false advertising litigation). Thus, service awards like the ones requested here are appropriate.

Modest service awards promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *Id.* at 1068. Unlike unnamed members who will enjoy the benefits of the Settlement without taking on any significant role, the Settlement Class Representatives made significant efforts over several years on behalf of the collective and participated actively in the litigation, including spending time and effort in bringing this action. More particularly, the Settlement Class Representatives participated in lengthy interviews by Co-Lead Counsel, provided documents and details about their experiences, reviewed and approved the initial complaints and Consolidated Class Action Complaint, regularly consulted with Co-Lead Counsel throughout the litigation, made themselves available during settlement negotiations, and reviewed the

Settlement Agreement. Gudmundson Decl. ¶ 27. The time and effort expended by the Class Representatives benefited the Settlement Class and Co-Lead Counsel are not aware of any conflicts. Gudmundson Decl. ¶ 28. Under these circumstances, a service award of \$1,500 per Settlement Class Representative is reasonable.

**B. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS.**

Courts utilize two main approaches to analyzing a request for attorneys' fees: the "percentage of the fund" method and the "lodestar" method. *Johnson v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996). The percentage of the fund method is typically utilized in cases, like this one, where a common fund is created and attorneys' fees are calculated as some fraction of the common fund. *Id.* While the Eighth Circuit has not expressly adopted its own unique test for the reasonableness of a fee award, it has approved district court decisions using the Fifth Circuit "Johnson factors"<sup>1</sup> that consider: (1) the benefit conferred on the class; (2) the risk to which Co-Lead Counsel was exposed; (3) the difficulty and novelty of the legal and factual issues of the case; (4) the skill of the lawyers; (5) the time and labor involved; (6) the reaction of the class; and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases. *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming attorney fees award of one-third of settlement). Here, the same factors warrant Co-Lead Counsel's requested attorneys' fees which amount to thirty-three and one third percent (33 1/3%) of the Settlement Fund.

---

<sup>1</sup> See *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).



## **1. The Settlement Class Will Receive Substantial Benefits.**

Here, Co-Lead Counsel’s litigation efforts pushed this case towards a positive resolution that made benefits available to more than one and one half million Settlement Class Members potentially impacted by the Data Breach. Through this Settlement, Co-Lead Counsel obtained \$1,900,000 in monetary relief, which does not include the value of the business practice changes and security enhancements that Defendant has implemented since the Data Breach. The Settlement Fund is non-reversionary, meaning that after deducting attorneys’ fees and expenses, the class representative service awards, and costs related to settlement administration, the entirety of the Settlement Fund will be distributed to Settlement Class Members who submitted valid and approved claims.

## **2. Co-Lead Counsel Were Exposed to Significant Risks.**

“Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.” *Xcel Energy*, 364 F. Supp. 2d at 994. When taking on such a complex class action on a contingent basis, the risks of no recovery are quite real. *See id.* (recognizing that the risks of recovery are not merely hypothetical and stating that “[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy.”) For over four years since the initial filing in May 2021, Co-Lead Counsel have pursued this matter on a contingent fee basis, without payment or reimbursement to date, or a guarantee of any future payment for their efforts. *See Gudmundson Decl.* ¶ 18 (attesting to contingency representation by Co-Lead Counsel). *See also Zilhaver v. UnitedHealth Group, Inc.*, 646 F.Supp.2d 1075, 1083 (D. Minn. 2009) (“In

the Eighth Circuit, courts must take into account any contingency factor where plaintiffs' counsel assumes a high risk of loss..."). Here, the remaining hurdles in this case – *i.e.*, winning class certification, surviving summary judgment, prevailing at trial, and maintaining any such victories through inevitable appeals, not to mention collecting any judgment obtained – posed very real risks that Plaintiffs would not ultimately prevail. Thus, between the contingent nature of Co-Lead Counsel's fee agreements and the risks involved in this complex litigation, Co-Lead Counsel faced a very real possibility that they would receive no compensation at all for their work on this matter.

### **3. The Legal and Factual Issues Were Complex.**

Courts also consider the difficulty and novelty of the legal and factual issues in a class action when evaluating the reasonableness of a fee request. *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018); *see also Dryer v. Nat'l Football League*, 2013 WL 5888231, at \*3 (D. Minn. Nov. 1, 2013) (approving settlement where "[t]here is no doubt that further litigation in this matter would be both complex and extraordinarily expensive.") Here, Plaintiffs faced significant obstacles to ultimately prevailing on their nationwide putative class action claims. Data breach class actions must survive myriad uncertainties, and the accompanying risks, in order to provide any relief to the class. *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, 2019 WL 2720818, at \*3 (N.D. Ga. June 6, 2019) (observing that "data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits."). For example, the application of negligence law to data breach cases is still evolving and recent precedent in data breach cases have had mixed outcomes. For example, some cases have ended in

settlements, *see, e.g., In re Target Corp. Customer Data Sec. Breach Litig.*, 2016 WL 2757692 (D. Minn. May 12, 2016), but others have been dismissed in whole or substantial part, *see, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at \*1 (S.D.N.Y. June 25, 2010) (collecting cases exemplifying where data breach cases failed to survive pleading and/or summary judgment challenges), and class certification has been denied in others, *e.g. Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954, at \*8 (E.D. Pa. Sept. 24, 2019) (stating these are “complex case[s] in a risky filed of litigation because data breach class actions are uncertain and class certification is rare.”). Further, the benefits achieved in the Settlement are attributable solely to the efforts of Co-Lead Counsel. These legal and factual complexities justify the attorneys’ fees request.

#### **4. All Counsel Involved Are Highly Skilled.**

The skill of the attorneys litigating the case is another factor courts evaluate in determining an appropriate attorneys’ fee. *See Monosodium Glutamate Antitrust Litig. (“MSG”)* 2003 WL 297276, \*2 (D. Minn. Feb. 6, 2003) (awarding attorneys’ fees where the “attorneys prosecuted [the] case very skillfully, often under difficult circumstances”). Given the difficulties and risks noted above, counsel pursuing class actions such as this one must be knowledgeable about this complex and developing area of law, be aware of numerous merits and procedural pitfalls (including the risk of dismissal at any stage), and be prepared to pursue many years of litigation.

Here, the experience, reputation and ability of Co-Lead Counsel warrant approval of the requested award. The lawyers and firms designated as Co-Lead Counsel, Christopher Renz (Chestnut Cambronne PA), and Brian Gudmundson (Zimmerman Reed

LLP), Gayle M. Blatt (Casey Gerry Francavilla Blatt LLP), along with the law firms of Lockridge Grindal Nauen PLLP, Hellmuth & Johnson PLLC, Markovits, Stock & De Marco, LLC, Gustafson Gluek PLLC, Migliaccio & Rathod LLP, and Strauss Borelli PLLC, are each highly experienced in litigating complex class actions. Gudmundson Decl. ¶ 19. All attorneys and their firms have been appointed Co-Lead Counsel, lead counsel or settlement Co-Lead Counsel in numerous consumer class actions, and each has been involved in other data breach matters. Gudmundson Decl. ¶ 20. In preliminarily approving the Settlement, the Court designated Co-Lead Counsel, finding that “these lawyers are experienced and will adequately protect the interests of the Settlement Class.” *See* Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Order Granting Preliminary Approval”) dated May 19, 2025, ECF No. 131, at 13. Co-Lead Counsel’s experience litigating class actions, including in the data privacy arena, gave them the background, knowledge, and experience to permit full understanding of the complex and technical issues attendant in this case, value the risks of continued litigation, and resolve the case in a manner that achieves the relief sought in the Complaint. Thus, this factor supports Co-Lead Counsel’s request for attorneys’ fees.

#### **5. Co-Lead Counsel Spent Substantial Time and Resources on the Case.**

Throughout the over four years of litigation, Co-Lead Counsel have dedicated substantial time and resources on this matter. For example, even before filing suit, Co-Lead Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto, interviewed Plaintiffs, and drafted pre-suit letters required to bring certain consumer protection statutory claims. Gudmundson Decl. ¶ 11.

After consolidation of their respective underlying lawsuits, on September 23, 2021, Co-Lead Counsel filed a Consolidated Class Action Complaint on behalf of a nationwide class (with California and Minnesota subclasses) asserting six causes of action. ECF 35. Defendant then filed its motion to dismiss and after fulsome opposition briefing by Co-Lead Counsel, the Court granted in part and denied in part the Motion to Dismiss. *See* Order on Motion to Dismiss, filed on June 02, 2022, ECF 56.

Co-Lead Counsel also propounded extensive formal discovery - which necessitated meet and confers and motions to compel - and propounded informal discovery, as well as obtained ESI data produced by Defendant. Gudmundson Decl. ¶ 11. Co-Lead Counsel analyzed said documents and data, and hired a consultant to analyze a copy of the data at issue to glean the nature and characteristics of the exfiltrated information. Gudmundson Decl. ¶ 11. After assessing Defendant's degree of liability and estimated damages, and Co-Lead Counsel prepared for and participated in three separate mediation sessions: in November 2022, October 2023, and December 2024 before respected mediator Hon. Jeffrey J. Keyes (Ret.), along with subsequent, extensive arms-length negotiations with counsel for defense, which successfully culminated in the Settlement Agreement. Gudmundson Decl. ¶ 16. Moreover, in carrying out the aforementioned activities, Co-Lead Counsel made every effort to limit duplicative work and to minimize the use of judicial resources in the management of the case. Gudmundson Decl. ¶12.

Co-Lead Counsel struck an appropriate balance between diligence in litigation and discovery matters, forming a strong understanding of Plaintiffs' claims and Defendant's defenses, and efficiency in achieving the favorable settlement for Class Members. *See In*

*re Resideo*, 2024 WL 95194, at \*5 (determining that this factor supported requested fee award where “the record reflects that Plaintiffs’ counsel undertook substantial efforts in this litigation including factual and legal research, drafting pleadings and other filings, engaging in discovery and reviewing documents, preparing for and participating in mediation, and successfully negotiating the Settlement”); *Phillips v. Caliber Home Loans, Inc.*, 2022 WL 832085, at \*6 (D. Minn. Mar. 21, 2022) (concluding that the time and labor of Co-Lead Counsel, who “undertook substantial efforts, including factual and legal research, drafting pleadings and other filings, engaging in discovery and reviewing voluminous documents, preparing for and participating in mediation, and successfully negotiating the Settlement Agreement,” supported their request for one-third of the settlement fund in fees). To date, Co-Lead Counsel have devoted over 1,771.90 hours to this matter, amounting to a lodestar of at least \$1,961,508.80. Gudmundson Decl. ¶ 24. Not only that, but Co-Lead Counsel have also invested significant resources into this case, spending approximately \$48,261.52 in out-of-pocket expenses on, for example, incurred on legal research, service of process, court filing fees, postage and mailing, transportation costs, expert fees, and mediation. Gudmundson Decl. ¶¶ 23, 25. Co-Lead Counsel’s efforts support an award of \$633,333.33 in attorneys’ fees and \$48,261.52 as reimbursement of reasonable expenses.

**6. Class Members Have Responded Favorably to the Settlement.**

The reaction of the Class also supports the award. Notice to the Class has been provided in a manner that complies with this Court’s preliminary approval order. Order Granting Preliminary Approval, ECF No. 131, pp. 5-11. As of the date of this filing, even

after the expiration of the September 2, 2025 objection and opt-out deadlines, no Class Member opted out or objected to the Settlement or the award of attorneys' fees, expense reimbursement, or service awards requested by Co-Lead Counsel. Gudmundson Decl. ¶ 14. *See Beaver Cnty., Emps. Ret. Fund v. Tile Shop Holdings*, 2017 WL 2588950, at \*3 (D. Minn. June 14, 2017) (noting that the lack of a single class member objection is "strong evidence that the requested amount of fees and expenses is reasonable."). *See also Yarrington*, 697 F. Supp. 2d at 1064 (concluding "the Settlement Class strongly supports Settlement Class Counsel's request for attorneys' fees of 33% of the Settlement Fund, based on the fact that only one untimely objection was made"); *Xcel Energy*, 364 F. Supp. 2d at 998 (noting notices were mailed to over 265,000 potential class members and concluding that "careful consideration of the merits of the seven [fee] objections and the minuscule number of total objections received in light of the size of the class" supports the fee award). The favorable reaction of the Class provides further support for the attorneys' fee request and is in accord with past cases from this district.

#### **7. Courts Often Award One Third (or More) of the Common Fund.**

Courts in the Eighth Circuit and in this district routinely have awarded attorneys' fees ranging from twenty-five percent to thirty-six percent of a common fund. *See, e.g., In re Resideo*, 2022 WL 872909, at \*7; *Xcel Energy*, 364 F. Supp. 2d at 998 ("[C]ourts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions.") (collecting cases); *see also Huyer v. Buckley* 849 F.3d 395, 399 (8th Cir. 2017). Co-Lead Counsel seek \$633,333.33

of the \$1.9 million Settlement Fund, which is one third (33.33%) of the common fund, and that is well within that routinely approved range.

It is also in line with the regularly awarded one-third percentages in consumer class actions. *See, e.g. Yarrington*, 697 F. Supp. 2d at 1064 (holding fee award of 33% reasonable in consumer class action); *Phillips*, 2022 WL 832085, at \*6 (D. Minn. Mar. 21, 2022) (granting Co-Lead Counsel's motion for one-third of settlement funds in consumer litigation); *Khoday v. Symantec Corp.*, 2016 WL 1637039, at \*11 (D. Minn. Apr. 5, 2016) (same); *Huyer*, 849 F.3d at 399 (affirming one-third of fund as fees in consumer class action); *Caligiuri v. Symantic Corp*, 855 F.3d 60, 865-866 (8th Cir. 2017) (same).

Finally, an award of thirty-three and a third percent of a settlement fund is consistent with the customary awards in data breach settlements. *See, e.g. Perry v. Bay & Bay Transp. Servis., Inc.*, 2024 WL 6836674 (D. Minn. Jan. 24, 2024) (awarding one-third of common fund in data breach case); *Lutz v. Electromed, Inc.*, No. 21-cv-02198 (D. Minn. July 06, 2023), Dkt. No. 73 (same); *In re Target Corp. Customer Data Sec. Breach Litig.*, 2016 WL 2757692, at \*2 (D. Minn. May 12, 2016) (awarding attorneys' fees in a data breach class action of slightly less than 30% of the total benefit).

In sum, each of the relevant factors under the percentage of the fund approach weighs in favor of Co-Lead Counsel's requested attorneys' fees award. This request is reasonable and should be approved.



**C. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE REQUEST.**

The requested attorneys’ fees are also reasonable under the lodestar method. 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.” *Caligiuri*, 855 F.3d at 865; *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (stating that “[T]he lodestar approach is sometimes warranted to double check the result of the ‘percentage of the fund’ method.”) Moreover, courts recognize that “[i]n cases where fees are calculated using the lodestar method, counsel may be entitled to a multiplier to reward them for taking on risk and high-quality work.” *In re UnitedHealth Group, Inc. PSLRA Litig.*, 643 F. Supp.2d 1094, 1106 (D. Minn. 2009) (citation omitted); *see also In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622 (8th Cir. 2017) (noting the lodestar method multiplies the hours expended by a reasonable hourly rate and any adjustment “to reflect the individualized characteristics of a given action.”). Courts routinely hold that lodestar multipliers falling between 2 and 4.5 represent a reasonable attorneys’ fee. *MSG*, 2003 WL 297276, at \*3 (“a multiplier of slightly less than 2” is “within the range of multipliers that courts typically use”); *Yarrington*, 697 F. Supp. 2d at 1067 (2.26 multiplier was “modest” and reasonable “given the risk of continued litigation, the high-quality work performed, and the substantial benefit

to the Class”); *Dworsky v. Bank Shares Inc.*, 1993 WL 331012, at \*2 (D. Minn. May 3, 1993) (approving 2.75 multiplier);

At the time of this filing, Co-Lead Counsel collectively accumulated ***over \$1,961,508.80*** in lodestar for 1,771.90 hours worked in prosecution of this case. Gudmundson Decl. ¶¶23-24. Since Co-Lead Counsel is seeking an award of attorneys’ fees of ***\$633,333.33***, the result is a ***negative multiplier of approximately a third*** which strongly supports the requested fee. *See Rosado v. Ebay Inc.*, 2016 WL 3401987, at \*8 (N.D. Cal. June 21, 2016) (finding that a negative multiplier “strongly suggests the reasonableness of the negotiated fee.”); *Johnson v. Himagine Sols., Inc.*, 2021 WL 2634669, at \*7 (E.D. Mo. June 25, 2021) (noting the Eighth Circuit has approved multipliers “well over one” and negative multiplier of 0.85 confirms the fees sought were “well within the reasonable range”); *Calhoun v. Invention Submission Corp.*, 2023 WL 2403917, \*6 (W.D. Pa. March 8, 2023) (negative multiplier is “reasonable on its face”); *Hill v. State St. Corp.*, No 09-cv-12146, 2015 WL 127728, at \*18 (D. Mass. Jan. 8, 2015) (negative multipliers are reasonable because “there [is] ‘no real danger of overcompensation’ given that the requested fee represent[s] a discount to counsel’s lodestar. The negative lodestar here means that Co-Lead Counsel will be compensated at substantially less than the going hourly rate for the level of legal services they provided, notwithstanding the contingent nature of this case and caliber of the work. Further, Co-Lead Counsel will spend additional hours through the conclusion of this case – *i.e.*, moving for final approval, communicating with Plaintiffs and Class Members, and aiding the settlement administration, which will render the multiplier even more negative. Gudmundson Decl. ¶ 13.

In sum, the requested attorneys' fee is fair and reasonable under the lodestar method and should be awarded. Therefore, under either the percentage-of-the-common benefit or lodestar methods, the Court should approve the requested attorneys' fee as fair and reasonable.

**D. CO-LEAD COUNSEL SHOULD BE REIMBURSED FOR THEIR INCURRED LITIGATION COSTS.**

"Courts generally allow plaintiffs' counsel in a class action to be reimbursed for costs and expenses out of the settlement fund, so long as those costs and expenses are reasonable and relevant to the litigation." *Khoday*, 2016 WL 1637039, at \*12. "Counsel in common fund cases may recover those expenses that would normally be charged a fee paying client." *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 2008 WL 682174, at \*4 (D. Minn. Mar. 7, 2008). Permissible categories of expenses include, but are not limited to, "photocopying, postage, messenger service, document depository, telephone and facsimile charges, filing and witness fees, computer-assisted legal research, expert fees and consultants, and meal, hotel, and transportation charges for out-of-town travel." *Cleveland v. Whirlpool Corp.*, 2022 WL 2256353, at \*11 (D. Minn. June 23, 2022) (citing *Xcel Energy*, 364 F. Supp. 2d at 999-1000.) Co-Lead Counsel seek reimbursement of precisely such expenses.

Here, Co-Lead Counsel have advanced **\$48,261.52** in out-of-pocket costs on behalf of the Class with no reimbursement to date. Gudmundson Decl. ¶ 25 (attesting to costs incurred on legal research, service of process, court filing fees, postage and mailing, transportation costs, expert fees, and mediation.) These costs were necessarily incurred and

typical of the costs ordinarily charged to clients and approved for reimbursement in contingency fee cases. *See, e.g., Phillips*, 2022 WL 832085, at \*7 (reimbursing to costs for “filing fees, travel costs, mediation, photocopying, mail and telephone costs, and other incidental expenses related to the litigation of this matter”); *Yarrington*, 697 F. Supp. 2d at 1067 (same). All these expenses were relevant, necessary and reasonable for the litigation. Co-Lead Counsel respectfully requests that the Court grant reimbursement of litigation expenses incurred in this matter.

Finally, Co-Lead Counsel also request that the costs of settlement administration be reimbursed from the Settlement Fund, a request that courts routinely approve. *See, e.g., Taylor v. Inflection Risk Sols., LLC*, 2022 WL 16949543, at \*2 (D. Minn. Nov. 15, 2022) (authorizing payment from settlement fund to settlement administrator for reimbursement of its administration expenses); *Smith v. Questar Cap. Corp.*, 2015 WL 9860201, at \* 7 (D. Minn. Sept. 11, 2015) (granting final approval of settlement and directing that “the fees and expenses of the Settlement Administrator shall be paid from the Settlement Fund”). Because the final amount of those costs will depend on work that is still continuing, Co-Lead Counsel will address those costs in their forthcoming motion for final approval of the Settlement.

#### **IV. CONCLUSION**

Based on the foregoing, the Court should approve Co-Lead Counsel’s request for attorneys’ fees in the amount of \$633,333.33, *i.e.*, approximately 33.33% of the Settlement Fund, for reimbursement of expenses in the amount of \$48,261.52, and for Service Awards of \$1,500 to each of the Settlement Class Representatives: Misty Meier (o.b.o. her minor

child G.C-M.), Jane Doe, Susan M. Reichert, Robert Smithburg, Thomas Lindsay, and Robin Guertin.

Respectfully submitted,

Dated: September 25,

**ZIMMERMAN REED LLP**

2025

By: s/ Brian C. Gudmundson  
Brian C. Gudmundson (#336695)  
Michael L. Laird (#398436)  
Rachel K. Tack (#399529)  
1100 IDS Center  
80 S. 8th Street  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
brian.gudmundson@zimmreed.com  
michael.laird@zimmreed.com  
[rachel.tack@zimmreed.com](mailto:rachel.tack@zimmreed.com)

Bryan L. Bleichner (#0326689)  
Jeffrey D. Bores (#227699)  
Christopher P. Renz (#0313415)  
**CHESTNUT CAMBRONNE PA**  
100 Washington Avenue S, Suite 1700  
Minneapolis, MN 55401  
Telephone: (612) 339-7300  
Fax: (612) 336-2940  
bbleichner@chestnutcambronne.com  
jbores@chestnutcambronne.com  
crenz@chestnutcambronne.com

Gayle M. Blatt (admitted pro hac vice)  
**CASEY GERRY**  
**FRANCAVILLA BLATT LLP**  
110 Laurel Street,  
San Diego, CA 92101  
Phone: (619) 238-1811  
Facsimile: (619) 544-9232  
gmb@cglaw.com

*Interim Co-Lead Counsel*

Kate M. Baxter-Kauf (MN # 392037)  
Karen Hanson Riebel (MN # 0219770)  
Maureen Kane Berg (MN # 033344X)  
**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**  
100 Washington Ave. South, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
kmbaxter-kauf@locklaw.com  
khriebel@locklaw.com  
mkberg@locklaw.com

*Chair of the Interim Executive Committee*

Nathan D. Prosser (MN #0329745)  
Anne T. Regan (MN #0333852)  
**HELLMUTH & JOHNSON PLLC**  
8050 West 78<sup>th</sup> Street  
Edina, MN 55439  
Telephone: (952) 941-4005  
Facsimile: (952) 941-2337  
nprosser@hjlawfirm.com  
aregan@hjlawfirm.com

Terence R. Coates  
Justin Walker  
**MARKOVITS, STOCK & DEMARCO, LLC**  
3825 Edwards Road, Suite 650  
Cincinnati, OH 45209  
Phone: (513) 651-3700  
Fax: (513) 665-0219  
tcoates@msdlegal.com  
jwalker@msdlegal.com

Daniel E. Gustafson (#202241)  
Amanda M. Williams (#341691)  
David A. Goodwin (#386715)  
Mickey L. Stevens (#398549)

**GUSTAFSON GLUEK PLLC**

Canadian Pacific Plaza  
120 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Tel: (612) 333-8844  
Fax: (612) 339-6622  
dgustafson@gustafsongluek.com  
awilliams@gustafsongluek.com  
dgoodwin@gustafsongluek.com  
mstevens@gustafsongluek.com

Nicholas A. Migliaccio (*pro hac vice*)

Jason S. Rathod (*pro hac vice*)

**MIGLIACCIO & RATHOD LLP**

412 H Street NE Washington, DC 20002  
Tel: (202) 470-3520  
Fax: (202) 800-2730  
nmigliaccio@classlawdc.com  
jrathod@classlawdc.com

Raina C. Borrelli (#392127)

Samuel J. Strauss (*pro hac vice*)

**STRAUSS BORELLI PLLC**

613 Williamson Street, Suite 201  
Madison, WI 53703  
Tel: (608) 237-1775  
Fax: (608) 237-4423  
raina@turkestrauss.com  
sam@turkestrauss.com

***Plaintiffs' Interim Executive Committee***