

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

ADAM SCHROEDER, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

**M.I. INDUSTRIES, INC. d/b/a
INSTINCT PET FOOD,**

Defendant.

Case No. 25SL-CC02259

**PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES,
LITIGATION EXPENSES, AND SERVICE AWARD**

I. INTRODUCTION

Plaintiff Adam Schroeder (“Settlement Class Representative”), through his undersigned counsel, respectfully moves the Court for entry of an Order approving: (1) Settlement Class Counsel’s requested attorneys’ fees, costs and expenses of \$100,000.00, and (2) a Service Award to the Settlement Class Representative in the amount of \$2,500.00.

II. BACKGROUND

A. History of Litigation

Plaintiff alleges that on October 16, 2024, Defendant M.I. Industries, Inc. d/b/a Instinct Pet Food (“Instinct” or “Defendant”) experienced a digital security incident where an unauthorized party accessed and removed certain files from Instinct’s computer systems (the “Data Incident”). Plaintiff also alleges that the files removed by the unauthorized party included personally identifying information (“PII” or “Private Information”) of approximately 1,909 individuals. Plaintiff further alleges that Instinct did not sent him or the Class notice of the October 16, 2024 Data Incident, until November 19, 2024, informing them that their Private Information was potentially accessed by cybercriminals in the Data Incident.

On December 27, 2024, Plaintiff Adam Schroeder, a former employee of Defendant, filed a putative class action complaint in the United States District Court for the Eastern District of Missouri styled *Adam Schroeder. v. M.I. Industries, INC. d/b/a Instinct Pet Food*, Case No. 4:24-cv-1734 (the “Federal Action”). Plaintiff brought claims for negligence, negligence per se, breach of implied contract, invasion of privacy, unjust

enrichment, and breach of fiduciary duty. Instinct subsequently filed a motion to dismiss Plaintiff's claims on February 21, 2025.

Pursuant to the Parties' settlement negotiations, detailed below, and in light of information learned, on March 3, 2025, Plaintiff voluntarily dismissed the Federal Action. On March 3, 2025, Plaintiffs refiled their claims against Defendant in the Circuit Court of St. Louis County Missouri, related to the Security Incident, asserting the same five causes of action.

B. Negotiations and Settlement

After Defendant filed its motion to dismiss, on or around February 2025, the Parties initiated settlement negotiations to explore a resolution rather than proceed with timely and expensive discovery. Declaration of Brittany Resch in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Resch MPA Decl.") ¶ 5. Over the course of the following four months, the Parties engaged in arms-length negotiations, exchanging numerous offers and counteroffers. In this settlement communications, the Parties discussed the key legal issues in this litigation. *Id.* ¶ 6. Pursuant to these discussions, Plaintiff requested, and Defendant produced, informal discovery to Plaintiff's counsel, including individuals affected, which is approximately 1,909 individuals. This information allowed Plaintiff's counsel to be well-informed prior to engaging in settlement discussions. *Id.* ¶ 5.

On or around June 23, 2025, the Parties reached an agreement on the principal terms of the settlement – subject to final mutual agreement on all the necessary documentation. *Id.* ¶ 7. After reaching an agreement on the principal terms of their settlement, the Parties continued negotiating the finer points of the Settlement Agreement, diligently drafting and finalizing the Settlement Agreement, Notice, and Claim Forms, and drafting the motion for preliminary approval for presentation to the Court. *Id.* ¶ 8. The Parties did not negotiate attorney’s fees or a service award until after they had agreed on the substantive terms of the Settlement. *Id.* ¶ 7. Plaintiff’s counsel is confident that the Settlement terms are fair, reasonable, adequate, and provide significant relief to the Settlement Class. *Id.* ¶ 12.

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

The Settlement achieved by Settlement Class Counsel¹ provides Settlement Class Members with excellent and timely benefits targeted at remediating the specific harms they have suffered as a result of the Data Incident. With the aggregate cap of on the benefits paid of \$175,000 to Settlement Class Members, the costs of settlement administration (approximately \$14,115, Declaration of Brittany Resch in Support of Plaintiff’s Unopposed Motion for Attorneys’ Fees, Litigation Expenses, and Service Award (“Fee Decl.”) ¶ 7), and the cost of credit monitoring (approximately \$45,816, estimated at \$19.95

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

per month² for 24 months for all class members), and the attorneys' fees and costs and service award (\$100,000 and \$2,500 for the Plaintiff), the total value of the Settlement can be conservatively estimated at over \$337,000. And this total value does not include the unknowable costs Defendant incurred in enhancing its cybersecurity following the breach.

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

1. Credit Monitoring

Settlement Class Members will be offered enrollment in two years of three-bureau credit monitoring with at least \$1,000,000 in identity theft protection insurance. S.A. ¶ 2.3. This will ensure that Settlement Class Members' Private Information is protected well into the future.

2. Reimbursement for Ordinary Losses

Settlement Class Members may make a claim for compensation for unreimbursed Ordinary Losses up to \$1,000 per person. *Id.* ¶ 2.2(a). Documented Out-of-Pocket losses may include, but are not limited to, professional fees including attorneys' fees and accountants' fees; fees for credit repair services and/or credit monitoring costs that were incurred on or after mailing of the notice of data breach; and miscellaneous expenses such as fax, postage, copying, and mileage. *Id.* Settlement Class Members may also make a

² Calculated by using a comparable Equifax product available to the public located here, <https://www.equifax.com/personal/products/credit/monitoring-product-comparison/> (last accessed November 21, 2025).

claim for compensation for Lost Time up to 4 hours at a rate of \$20.00 per hour, for a total of \$80.00 per claimant (subject to the \$1,000 cap for Ordinary Losses). *Id.*

3. Reimbursement for Extraordinary Losses

Defendant further will provide up to a maximum of \$3,500 per Settlement Class Member for Extraordinary Losses caused by the Data Incident, upon submission of a valid claim with third-party documentation. *Id.* ¶ 2.2(b).

4. Alternative Cash Payment

Furthermore, Settlement Class Members can make a Claim for an Alternative Cash Payment of sixty dollars and zero cents (\$60.00) in the alternative to Claims for Ordinary Losses, Lost Time, and Extraordinary Losses. *Id.* ¶ 2.2(c).

5. Remedial Relief

Finally, in addition to the monetary benefits offered, the Settlement confirms that, after the Data Incident, Defendant will provide a confidential declaration to Class Counsel describing its information security improvements since the Data Incident. *Id.* ¶ 2.4.

III. LEGAL STANDARD

A trial court has discretion in determining the appropriate amount of reasonable attorneys’

fees to approve in a class action. *Berry v. Volkswagen Grp. Of Am., Inc.*, 397 S.W.3d 425, 431

(Mo. 2013) (en banc). “The trial court is deemed an expert at fashioning an award of attorneys’

fees,” and the court’s determination will be affirmed unless it is “so arbitrary and unreasonable as

to shock one’s sense of justice.” *Id.* at 430–31 (citations omitted). As to what constitutes a reasonable fee, courts employ one of two methods: (1) the percentage-of-the-benefit approach; or (2) the lodestar multiplier approach. *See id.* (using lodestar multiplier approach); *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. Ct. App. 2011) (using percentage-of-the-benefit approach and noting that a “one-third contingent fee award is not unreasonable”). The percentage-of-the-benefit approach is the appropriate method for determining fees in this litigation, with a lodestar crosscheck to confirm the reasonableness of the request.

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

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

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

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

The percentage of the benefit approach aids litigants and the courts because it “directly aligns the interests of the class and its counsel and provides a powerful incentive

for the efficient prosecution and early resolution of litigation.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 120 (2d. Cir. 2005). Indeed, “[u]nder the percentage method, ‘[t]he more the attorney succeeds in recovering money for the client, and the fewer legal hours expended to reach that result, the higher dollar amount of fees the lawyer earns.’” *McKeage v. Bass Pro Outdoor World, L.L.C.*, Case No. 12-03157-CV-S-GAF, 2015 U.S. Dist. LEXIS 195232, at *8 (W.D. Mo. Aug. 11, 2015) (quoting *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn 2005)). Thus, “under the percentage approach, the class members and the class counsel have the same interest—maximizing the recovery of the class.” Silber and Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 534 (Summer 1998).

IV. ARGUMENT

A. Percent of the Benefit

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

865 (8th Cir. 2017) (upholding use of fund administration costs as part of the “benefit” when calculating the percentage-of-the-benefit fee amount).

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

In this case, the Settlement is easily valued at over \$337,000. Indeed, just the \$175,000 set aside for monetary compensation and the \$45,816 value of the credit monitoring, plus the \$100,000 that Defendant has agreed to pay in attorneys’ fees and costs and \$2,500 in a service award, plus the approximately \$14,115 in settlement administration and notice costs, Resch Fee Decl. ¶ 7, brings the value of the Settlement to over \$337,000.

As to the appropriate percentage to award, “courts have ‘frequently awarded attorneys' fees ranging up to 36% in class actions.’” *Niewinski v. State Farm Life Ins. Co.*, Case No. 23-04159-CV-C-BP, 2024 U.S. Dist. LEXIS 231348, at *13-14 (W.D. Mo. Apr. 1, 2024) (quoting *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017); *Caligiuri*, 855 F.3d at 865–66 (affirming one-third fee); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming fee award representing 36% of the settlement fund as reasonable); *Burnett v. Realtors*, Case No. 4:19-CV-00332-SRB, 2024 U.S. Dist. LEXIS 101100, at *52 (W.D. Mo. May 9, 2024) (upholding one-third fee award); *Rogowski v. State Farm Life Ins. Co.*, No. 22-CV-203, 2023 U.S. Dist. LEXIS 141934, at *16 (W.D. Mo. April 18, 2023) (same); *In re Xcel*, 364 F.Supp.2d at 998 (collecting cases demonstrating that district courts routinely approve fee awards between 25% and 36%).

Pursuant to the Settlement, Settlement Class Counsel seeks attorneys’ fees, costs, and expenses in the amount of \$100,000. Such a request is within the range of fees approved in other class actions using the percentage of the fund method and is fair and reasonable in light of the work performed by Settlement Class Counsel and the outstanding recovery secured on behalf of the Settlement Class. Accordingly, the Court should approve Plaintiff’s request for attorneys’ fees, costs, and expenses in the amount based on the percentage of benefit approach.

To date, Settlement Class Counsel have expended 77.4 hours litigating this case, costing the firms \$52,227.50 at their customary rates, and reasonably expect to incur additional hours throughout the final approval process and in administering the settlement.

Fee Decl. ¶ 14.

B. Lodestar

Relevant factors in determining the reasonable value and amount of attorneys' fees include (1) the rates customarily charged by the attorneys in the case and other attorneys in the community for similar services; (2) the number of hours reasonably expended on the litigation; (3) the nature and character of the services rendered; (4) the degree of professional skill required; (5) the nature and importance of the subject matter of the litigation; (6) the amount involved or the result obtained; and (7) the vigor of the opposition. *4021 Iowa*, 705 S.W.3d at 111 (citing *Wilson v. City of Kansas City*, 598 S.W.3d 888, 896 (Mo banc. 2020); *Berry*, 397 S.W.3d at 431; *Terpstra v. State*, 565 S.W.3d 229, 250 (Mo. Ct, App. 2019).

Here, the application of the above factors reaffirms the reasonableness of Plaintiff's requested fee award. To date, Settlement Class Counsel incurred a lodestar of \$52,227.50 by investing 77.4 hours of work, resulting in a 1.89 multiplier. Fee Decl. ¶¶ 14-16. Settlement Class Counsel's billing records have been reviewed for duplicative work, and to ensure appropriate tasks were delegated to paralegals or support staff. *Id.* Settlement Class Counsel also incurred reasonable and necessary costs of \$1,047.10 for filing fees, research and postage. *Id.* ¶ 13.

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

In the data breach context, attorney fee awards either approximate or exceed Settlement Class Counsel's request here. *See, e.g., Sciaroni v. Target Corp. (In re Target Corp. Customer Data Sec. Breach Litig.)*, 892 F.3d 968, 977 (8th Cir. 2018) (affirming

district court's award of attorney's fees and expenses of \$6.75 million); *In re Phila. Inquirer Data Sec. Litig.*, No. 24-2106-KSM, 2025 U.S. Dist. LEXIS 48541, at *42 (E.D. Pa. March 18, 2025) (awarding \$175,000 in fees and \$13,765.32 in costs); *In re Onix Grp., LLC Data Breach Litig.*, No. 23-2288-KSM, 2024 U.S. Dist. LEXIS 225686, at *48 (E.D. Pa. Dec. 13, 2024) (awarding \$416,666.66 in fees and \$12,032 in expenses); *Linman v. Marten Transp., Ltd.*, 22-cv-204-jdp, 2024 U.S. Dist. LEXIS 106334, at *5, *10 (W.D. Wis. June 13, 2024) (stating \$152,000 in attorney fees and \$15,000 in litigation expenses appears reasonable); *Bahnmaier v. Wichita State Univ.*, Case No. 2:20-cv-02246-JAR-TJJ, 2021 U.S. Dist. LEXIS 155540, at *12 (D. Kan. Aug. 18, 2021) (awarding \$210,974.50 in fees and \$4,052,39 in expenses); *Smith v ComplyRight, Inc.*, Civil Action No. 1:18-cv-4990, 2019 U.S. Dist. LEXIS 174217, at *9 (N.D. Ill. Oct. 7, 2019) (awarding \$908,333 in fees and \$23,723.85 in costs); *Hapka v. Carecentrix, Inc.*, Case No. 2:16-cv-02372-KGG, 2018 U.S. Dist. LEXIS 68186, at *10 (D. Kan. Feb. 15, 2018) (awarding \$400,000 in combined fees and expenses). *See also In re Lincare Holdings Inc. Data Breach Litig.*, Case No.: 8:22-cv-01472-AAS, 2024 U.S. Dist. LEXIS 110789, at *12 (M.D. Fla. June 24, 2024) (awarding \$2,416,666.67.00 in attorney fees and \$41,455.42 in litigation costs in a data breach settlement where Strauss Borrelli PLLC was co-Class Counsel). Thus, this factor supports Settlement Class Counsel's application for attorney fees.

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

Data breach class actions, such as this one, present novel and difficult legal questions as “[t]he realm of data breach litigation is complex and largely undeveloped.” *In*

re Sonic Corp. Customer Data Sec. Breach Litig., 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019). *See also Gilbert v. Bioplus Specialty Pharmacy Servs., LLC*, 2024 U.S. Dist. LEXIS 138439, at *9 (M.D. Fla. Aug. 5, 2024) (explaining that “[c]ourts have recognized that the novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award” and that “data breach class actions present ‘serious risks’ due, in part, to ‘the ever- developing law surrounding data breach cases’”) (collecting cases). Accordingly, this case required a significant investment of time and labor, as the case involved novel, complex, and difficult legal questions. Fee Decl. ¶ 20. Settlement Class Counsel was precluded from representing other clients during the 77.4 hours that Settlement Class Counsel invested in this case. *Id.* ¶ 18.

Settlement Class Counsel invested time and labor by investigating the Security Incident, interviewing potential clients, researching viable claims under Missouri law, drafting the complaints, reviewing the complaints with Plaintiff, drafting and serving informal discovery, reviewing informal discovery from Defendant, advocating for an excellent settlement for Plaintiff and the Class during many months of arm’s-length negotiations, negotiating and preparing the Settlement Agreement, notice forms, and the claims form, drafting the motion for preliminary approval and exhibits, overseeing the settlement process, including assisting and supervising the Settlement Administrator’s initial implementation of the Class Notice, and preparing this motion for attorney fees, costs, expenses, and a service award. Fee Decl. ¶¶ 2-5, 8, 10-11, 17.

Settlement Class Counsel’s hourly rates are customary for their firms and are reasonable in the complex class action context. *Id.* ¶ 15; *McCabe v. Heid Music Co., Inc.*,

Case No. 23-CV-1215-JPS-JPS, 2024 U.S. Dist. LEXIS 97850, at *4 (W.D. Wis. June 3, 2024) (approving hourly rates of \$750); *Watchfire Signs LLC v. Catalyst Outdoor Adver. LLC*, Case No. 21-2128, 2023 U.S. Dist. LEXIS 132728, at *18 (C.D. Ill. June 21, 2023) (approving “Plaintiff’s counsel[‘s] actual billing rates” of \$700 and \$500 hourly) (emphasis in original); *Linda G. v. Saul*, 487 F.Supp.3d 743, 748 (N.D. Ill. 2020) (approving hourly rates of \$700); *Bianco v. Colvin*, No. 3:14cv98, 2016 U.S. Dist. LEXIS 45097, at *3 (N.D. Ind. Apr. 4, 2016) (approving effective rate of \$825 per hour); *Zerlaya v. City of LA*, Case No. 2:20-cv-08382-ODW (MAAx), 2024 U.S. Dist. LEXIS 112652, at *9 (C.D. Cal. June 25, 2024) (approving \$700 and \$920 hourly). The experience, reputation, and ability of the attorneys at Strauss Borrelli PLLC justifies the customary hourly fee. Therefore, these factors weigh in favor of approval.

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

Settlement Class Counsel employed their considerable skill and experience litigating consumer class actions, and data breach matters in particular, to deliver suburb results for Plaintiff and the Class. In general, “prosecution and management of a complex national class action requires unique legal skills and abilities.” *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). This is particularly true in the data breach context given the novelty and difficulty of the questions involved. Because of the complexity and difficulty of the issues that arise in data breach litigation, there is a paucity of data breach cases where certification of a contested class has been granted, and many data breach class actions have been dismissed at the pleadings stage. *See, e.g., Solomon v. Deer Oaks Mental*

Health Assocs., P.C., NO. SA-23-CV-1465-FB, 2024 U.S. Dist. LEXIS 180416, at *12 (W.D. Tex. Sept. 30, 2024); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 24, 2019); *Petta v. Christie Bus. Holdings Co., P.C.*, 2025 IL 130337, ¶ 25. Therefore, this case required highly skilled attorneys.

Settlement Class Counsel have extensive experience in consumer class actions generally, in data privacy and cybersecurity incident cases in particular, and are leaders in the field. Resch Decl. ¶ 11. They have been appointed sole lead in dozens of data breach cases and have successfully litigated and settled similar cases across the country against law firms of national prominence. *See Id.* at Ex. A; *In re Folding Carton Antitrust Litigation*, 84 F.R.D. 245, 268 (N.D. Ill. 1979) (“Where counsel had been involved in class action litigation in the past, a presumption arose that such experience...allowed those attorneys to exhibit a fair degree of skill in this litigation...where counsel have had lead positions in prior multidistrict litigation, it could fairly be inferred...they had higher organizational and efficiency capabilities than the average attorney.”)

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

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

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

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

Settlement Class Counsel successfully secured monetary relief, credit monitoring, identity theft services, and remedial measures, including security enhancements by Instinct to strengthen its cybersecurity protocols. S.A. ¶¶ 2.2-2.5. This reduces the risk of future data breaches and helps to fortify the security of Plaintiff’s and the Class’ Private Information. Further, this relief encompasses not only the approximately thousands of victims of the Data Incident but also benefits Defendant’s future employees and program participants. Accordingly, this factor also weighs in support of approval.

6. The Vigor of the Opposition (factor 7)

Settlement Class Counsel faced significant opposition from Defendant, who moved to dismiss Plaintiff’s claims for a lack of jurisdiction, and then strenuously advocated for its position in the Parties’ settlement negotiations. *See* Resch MPA Decl. ¶¶ 4-8. Indeed, the Parties did not come to an agreement easily – they negotiated forcefully for many months before agreeing to their Settlement. *See id.* Thus, the history of this litigation demonstrates that this factor has been met.

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

Settlement Class Counsel have expended \$1,047.10 in reimbursable expenses related to filing fees, fees for service of process, and case administration, with the likelihood of more expenses yet to come. Fee Decl. ¶ 13. Missouri Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g.,*

Doyle v. Fluor Corp., 400 S.W.3d 316, 320 (Mo. Ct. App. 2013) (affirming award of litigation costs); *Giancristofaro v. Ima Pizza, LLC*, 2024 Mo. Cir. LEXIS 330, *4 (approving litigation expenses as part of \$240,000 fee award); *Union Bank & Trust Co. v. White*, 2017 Mo. Cir. LEXIS 32, *7 (awarding expenses of \$3.250.25).

Settlement Class Counsel's fee request under both approaches comports with law and reasonableness.

D. Service Award

The Court should grant the requested Service Award of \$2,500.00 to Plaintiff to compensate him as the Settlement Class Representative for his efforts and for the risk entailed in pursuing this litigation, which has triggered important and positive changes in Instinct's business practices and has secured significant compensation for Class Members. In a class action, the rationale for a service award to a class representative includes compensating the class representative for his or her time and energy and the benefits they conveyed to the class, acknowledging the risk he or she took in pursuing the action, and offering an incentive to encourage people to step up and represent the class. *Tussey v. ABB, Inc.*, 850 F.3d 951, 962 (8th Cir. 2017)

Here, the requested Service Award is squarely in line with service awards that are approved by Missouri state and federal courts in class actions. *Giancristofaro*, 2024 Mo. Cir. LEXIS 330, at *4 (approving service awards of \$10,000 and \$5,000); *Martin v. Safe Haven Sec. Servs.* No. 19-CV-00063-ODS, 2020 U.S. Dist. LEXIS 149626, at *6 (W.D. Mo. Aug. 19, 2020) (approving service awards of \$10,000 and \$5,000). *Fellows v. Am. Campus Cmty. Servs.* No. 4:16-cv-01611-JAR, 2018 U.S. Dist. LEXIS 103003, at *17 (E.D. Mo. June 20, 2018) (approving service award of \$5,000).

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

V. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys' fees of \$100,000.00; and (ii) approving a Service Award in the amount of \$2,500.00 to Plaintiff in recognition of his significant efforts on behalf of the Settlement Class Members. This motion is intended to be heard simultaneous with the final approval motion yet-to-be-filed and the proposed final approval order will also resolve this motion.

Dated: December 1, 2025

Respectfully submitted,

By: /s/

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