

**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA**

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**In re Brady Martz Data Security Litigation**

Case No. 3:23-cv-176-PDW-ARS

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN  
AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND  
SERVICE AWARDS TO PLAINTIFFS**

**I. INTRODUCTION**

For over a year, Class Counsel<sup>1</sup> have worked diligently on behalf of Plaintiffs Jason Quaife, John Hoffer, Amanda Koffler, Alec R. Kiesow, and Samantha Stock (“Plaintiffs” or “Class Representatives”), and the Class in this data breach case against Defendant Brady Martz, (“Brady Martz” or “Defendant”). These efforts culminated in the \$850,000 common fund settlement with Brady Martz, which provided meaningful relief to the Class.

As detailed below and in the submissions filed herewith, the Settlement is a solid result, achieved under difficult circumstances, through Settlement Class Counsel’s vigorous litigation and extensive settlement negotiation efforts.

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiffs and the Class now respectfully submit this memorandum of law in support of their motion requesting: (i) an award of reasonable attorneys’ fees to Settlement Class Counsel in the amount of \$283,333.33, which represents one-third (1/3) of the \$850,000 common fund; (ii) reimbursement of expenses in the amount of \$71,088.55<sup>2</sup>; and (iii) approval of Service Awards to the Class Representatives in

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<sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meaning as used in the Settlement Agreement. [See Dkt. No. 56-4, Ex. 4].

<sup>2</sup> The \$71,088.55 total in expenses is comprised of \$66,506.75 for notice and administration to Analytics and \$4,581.80 reimbursement request for expenses to class counsel. Goodwin Decl., ¶ 28.

the amount of \$2,000 each. Class Counsel have incurred a lodestar of \$584,538.00, equating to a negative multiplier of nearly .52 from the inception of this case through May 5, 2025. As discussed below, the requested fees and expense and service awards are well within the range of requests that have been granted by District Courts within the Eighth Circuit as being reasonable under either the percentage of the common fund-benefit approach or the lodestar approach. This Court should grant Plaintiffs' motion.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. History of the Litigation**<sup>3</sup>

Defendant Brady Martz is an accounting, tax, and audit services firm based in Grand Forks, North Dakota, that operates throughout North Dakota and northwestern Minnesota. *See* CCAC ¶ 1 (ECF No. 15). On November 19, 2022, Brady Martz detected unusual activity on its network and determined that unauthorized third party accessed its systems and stole Private Information belonging to Plaintiffs and the Class (the "Data Breach"). *Id.* ¶ 4.

On November 20, 2023, Plaintiffs consolidated their complaints against Defendant. Plaintiffs alleged that Defendant failed to properly protect and preserve their highly sensitive private information. *See id.* Defendant filed a Motion to Dismiss under Rule 12(b)(6) for failure to state a claim. (ECF No. 20). The Court denied that motion as to Plaintiffs' negligence claim and request for declaratory judgment. (ECF No. 36.)

### **B. Following Informal Discovery, Settlement Negotiations Resulted in a Settlement**

In November 2023, the Parties began discussing an early resolution to this case. These discussions initiated 11 months of intense, good faith, arms'-length negotiations between the

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<sup>3</sup> Plaintiffs incorporate by reference the detailed background provided in their memorandum in support of preliminary approval (ECF No. 55), but present highlights relevant to the fee determination for the Court's convenience.

Parties and their respective counsel. The Parties continued to litigate this dispute during these negotiations, by, for example, briefing and arguing Defendant's motion to dismiss and engaging in informal discovery. Discovery included service of discovery requests, discovery responses, and a meet-and-confer to discuss the discovery responses. Through the discovery process and evaluation of Parties' class certification and motion to dismiss briefing, Plaintiffs evaluated damages on a class-wide basis. On October 15, 2024, the Parties' extended settlement negotiations resulted in an agreement in principle which was ultimately memorialized in the Settlement Agreement.

**C. The Settlement Agreement Provides Significant Benefits to the Class**

The Settlement resolves and releases all claims asserted by Plaintiffs and the Class against Brady Martz concerning the Data Breach and offers a substantial benefit by providing Class Members compensation for ordinary and extraordinary out-of-pocket losses and up to four hours of lost time. Under the proposed Settlement, Defendant will pay \$850,000 to establish the Settlement Fund to be distributed to Class Members pursuant to the Settlement Agreement. The Settlement defines the Settlement Class as:

All individuals in the United States who were sent a notification letter regarding the Data Incident Brady Martz discovered in November 2022. Excluded from the Settlement Class are Brady Martz, the Judge assigned to the Action, and that Judge's immediate family and Court staff, and also Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

*See* Goodwin Decl., Ex. 4 at ¶ 1.48 (ECF No. 55). It is estimated that the Class is comprised of approximately 58,500 individuals nationwide. *Id.* Under the Proposed Settlement, Defendant agrees to pay a total of \$850,000 into the Settlement Fund, which will be used to make payments to Class Members, to pay the costs of Settlement Administration, attorneys' fees and expenses, and a Service Awards to Plaintiffs. *See id.*

The Settlement Fund provides an estimated \$75 (subject to a *pro rata* increase or decrease) payment to each Class Member upon submission of a claim form. *Id.* at ¶ 2.2(a). Defendant will provide compensation for unreimbursed ordinary losses and unreimbursed extraordinary losses as detailed below:

Compensation for Ordinary Losses: From the Settlement Fund, the Class Members may seek compensation for unreimbursed losses and/or lost time, up to a total of \$250 per person, upon submission of a Claim Form and supporting documentation, and lost time with no documentation, such as the following categories of claimed losses:

- Out-of-pocket expenses incurred as a result of the Data Breach, including documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charge based on the amount of data used), postage, or gasoline for local travel, all of which must be fairly traceable to the Data Breach, must not have been previously reimbursed by a third party, and that are supported by documentation or sworn attestation that substantiated the full extent of the amount claimed; and
- Up to four hours of lost time at \$25/hour.

*Id.* at ¶ 2.2(b).

Compensation for Extraordinary Losses: From the Settlement Fund, Class Members may seek up to \$5,000 in compensation to each Claimant for proven monetary loss if the loss is not already covered by the Compensation for Ordinary Losses. *Id.* at 2.2(c).

Cash Award: The remaining funds in the Settlement Fund following the payment of settlement administration costs, Class Counsel's attorneys' fees and expenses, the Class Representative Service Awards, valid Extraordinary Loss claims and Ordinary Loss claims under the Settlement, will be used to provide to Class Members who submit a valid and timely claim a cash payment of an estimated \$75 (subject to a *pro rata* increase or decrease). *Id.* at ¶ 2.3(c).

Finally, any residual funds remaining after all claims are paid and the expiration of payments will go to a *cy pres* designee mutually agreed upon by the Parties and the Court.

In exchange for the consideration above, Plaintiffs and Class Members who do not timely and validly exclude themselves from the Settlement will be deemed to have released Brady Martz from claims arising from the Data Breach. *Id.* ¶ 4.3.

### **III. AWARDING ATTORNEYS' FEES TO CLASS COUNSEL IS REASONABLE UNDER GOVERNING LAW**

#### **A. Applicable Legal Standards**

Settlement Class Counsel seek a \$283,333.33 fee award, which is reasonable based on methodology well-established in the Eighth Circuit. Federal Rule of Civil Procedures 23(h) allows a district court supervising a class action to “award reasonable attorney’s fees and nontaxable costs that are authorized by law.” Fed. R. Civ. P. 23(h). “An award of attorney fees is committed to the sound discretion of the district court.” *In re Xcel Energy, Inc. Sec., Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (citing *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); Fed. R. Civ. P. 23(h)). Courts award fees to reward counsel for the benefits they have brought to the class, to compensate counsel for the risk entailed in doing so, and to incentivize attorneys to take on that risk. *In re Monosodium Glutamate Antitrust Litig.* (“MSG”), No. 00-md-1328, 2003 WL 297276, at \*1 (D. Minn. Feb. 6, 2003); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716460, at \*4 (D. Minn. Feb. 27, 2013) (“[A] financial incentive is necessary to entice capable attorneys . . . to devote their time to complex, time-consuming cases for which they may never be paid. To make certain that the public interest is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”) (citations omitted).

“Courts utilize two main approaches to analyzing a request for attorney fees”—the lodestar

method and the percentage method. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996). Which method to apply is within the discretion of the Court. *In re LifeTime Fitness, Inc. Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622 (8th Cir. 2017). In either case, the reasonableness of the fee award is evaluated by considering relevant factors from the twelve factors set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-20 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989);<sup>4</sup> *see also Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017).

### **B. Efficiency in Case Prosecution**

In awarding fees, courts within this Circuit have time and again emphasized efficiency considerations:

There is no question of the quality of lead counsel. Both they and their opposite numbers are exceptionally skilled. While hard-fought, the litigation was conducted cordially and efficiently. It is evident that absent counsel's willingness to work efficiently together, this case could well have lasted many more months, if not years.

*In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1105 (D. Minn. 2009). The theme of efficient case prosecution is a common thread running through other fee precedent in this Circuit. *See, e.g., Zurn Pex*, 2013 WL 716460, at \*3 ("To a large degree, the settlement and resolution of the complex issues present in this MDL litigation are the result of the diligence and

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<sup>4</sup> These 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.

*Johnson*, 488 F.2d at 719-20.

focus of class counsel.”); *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010) (noting that “Plaintiffs’ counsel moved the case along expeditiously, and made every effort to limit duplicative efforts and to minimize the use of judicial resources in the management of the case” and “[c]ounsel exhibited diligence and efficiency throughout the litigation, resulting in a favorable result for the Class”).

Here, Class Counsel litigated and settled this case in approximately thirteen months from the filing of the initial complaint on November 20, 2023, to the signed Settlement Agreement on December 18, 2028. The services provided by Class Counsel are found in detail in the Declaration of David Goodwin (“Decl.”). Class Counsel’s focus and efficiency in achieving resolution bears favorably on the quality of services provided by Class Counsel and their efforts should be rewarded.

**C. The Fee Requested is Reasonable under the Percentage-of-the-Fund Method**

The Supreme Court has “recognized consistently that . . . a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Eighth Circuit has upheld the use of a percentage of the fund approach. *Petrovic*, 200 F.3d at 1157. “In the Eighth Circuit, use of a percentage method of awarding attorney’s fees in a common-fund case is not only approved, but also well established.” *Yarrington*, 697 F. Supp. 2d at 1061 (citations and internal quotation marks omitted). Under the percentage-of-the-benefit method, courts award attorneys’ fees equal to a reasonable percentage of the fund obtained for the class. *Keil*, 862 F.3d at 701. “The key issue is whether the desired percentage is reasonable.” *Khoday v. Symantec Corp.*,

No. 11-cv-180, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing *Petrovic*, 200 F.3d at 1157), *aff'd sub nom.*, *Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017).

The Eighth Circuit has recently reiterated that district courts have discretion to use either the lodestar or percentage-of-the-fund method in determining an appropriate recovery, “and the ultimate reasonableness of the award is evaluated by considering relevant factors from the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-20 (5th Cir. 1974).” *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (quoting *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018)). In several recent cases, this Circuit has most often applied the following *Johnson* factors in determining a reasonable attorneys’ fee award:

(1) the benefit conferred on the class, (2) the risk to which plaintiffs’ counsel were exposed, (3) the difficulty and novelty of the legal and factual issues in the case, including whether plaintiffs were assisted by a relevant governmental investigation, (4) the skill of the lawyers, both plaintiffs and defendants, (5) the time and labor involved, including the efficiency in handling the case, (6) the reaction of the class and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases.

*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 relative weight to assign to each.”); *Yarrington*, 697 F. Supp. 2d at 1062.

Here, the total value of the monetary benefits secured by Class Counsel for the Class is \$850,000.00. Class Counsel’s attorneys’ fee request of 1/3 the total value of the Settlement Fund is \$283,333.33, a request fully supported by the *Johnson* factors. *See Xcel Energy*, 364 F. Supp. 2d at 998 (collecting cases supporting that this Circuit routinely approves fee awards of roughly 1/3 the common fund). This fee also represents a negative 5.2 multiplier on lodestar—further



supporting its reasonableness.<sup>5</sup> Furthermore, Class Counsel will continue to expend significant time prosecuting this case through final approval and settlement administration thereafter, which will further decrease the lodestar multiplier. The requested fee is therefore reasonable and the Court should award the requested fee.

### **1. The Benefit Conferred on the Class**

The benefit conferred on the Class is afforded great weight in assessing the reasonableness of a request for attorneys' fee and expenses. *Beaver Cnty. Emps. Ret. Fund v. Tile Shop Holdings*, No. 0:14-cv-786-ADM-TNL, 2017 WL 2588950, at \*2 (D. Minn. June 14, 2017) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). Here, Class Counsel pushed this case toward an early, positive resolution that benefits a nationwide class of individuals whose personal and private information was impacted by the Data Breach. Through this Settlement, Class Counsel obtained \$850,000 in non-reversionary monetary relief and significant non-monetary relief related to Brady Martz's data security incident. The substantial benefits to thousands of Class Members supports the requested Fee Award.

### **2. The Risks to which Class Counsel were Exposed**

"Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorneys' fees." *Xcel Energy*, 364 F. Supp. 2d at 994 (citation omitted). Risks "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." *Id.* (citation omitted). From commencement of this litigation through its eventual Settlement Class Counsel have received no compensation and have

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<sup>5</sup> Class Counsel's lodestar will continue to grow due to the final approval hearing, any issues that arise during the claims process, as well as choosing a *cy pres* designee and any other "clean-up" matters after the settlement has concluded.

assumed—entirely—the risk of no recovery while expending significant attorney time and advancing considerable litigation costs.

Such risks in complex class action litigation are very real. *See, e.g., Xcel Energy*, 364 F. Supp. 2d at 994 (stating that “[t]he risk of no recovery in complex cases of this sort is not merely hypothetical” and 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”). As one court aptly remarked, “[i]t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.” *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff’d*, 440 F.2d 1079 (2d Cir. 1971).

In sum, the contingent nature of the case and the substantial risks involved in this complex litigation strongly support Class Counsel’s fee request. *See Blum v. Stenson*, 465 U.S. 886, 902 (1984) (Brennan, J., concurring) (“[T]he risk of not prevailing, and therefore the risk of not recovering any attorney’s fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee.”); *Zilhaver v. UnitedHealth Grp., 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.’ Plaintiffs’ counsel assumed the risk this case would ‘produce no fee,’ and courts see fit to reward such gambles.”) (citations omitted).

### **3. The Difficulty and Novelty of the Legal and Factual Issues**

Courts also consider the difficulty and novelty of the legal and factual issues. *See Target Corp.*, 892 F.3d at 977 (“[T]he award was justified by the time and labor required, the difficulty of the matter, the skills necessary to prevail (or to reach the current settlement agreement), and the

length of the representation.”). Class actions are inherently complex. *Marshall v. Green Giant Co.*, 942 F.2d 539, 549 (8th Cir. 1991) (“It goes without saying that class actions are very complex . . .”). This case is no exception. The pursuit of nationwide claims and relief presented complex issues of law and fact.

Additionally, the substantial benefits achieved in the Settlement are attributable solely to the efforts of Class Counsel, and the complexity of the factual and legal issues presented by this litigation supports Class Counsel’s request for attorneys’ fees. *See In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 173 (3d Cir. 2006) (absence of assistance from any government group supported district court’s conclusion that the fee award to class counsel was fair and reasonable); *Dryer v. Nat’l Football League*, No. 09-2182 (PAM/AJB), 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”).

#### **4. The Skill of Class Counsel**

The skill of the attorneys litigating the case is another factor courts evaluate in determining an appropriate attorneys’ fee. *See MSG*, 2003 WL 297276, at \*2 (awarding attorneys’ fees where “[t]he attorneys prosecuted [the] case very skillfully, often under difficult circumstances”). Class Counsel brought the highest quality skills and efficiency to this litigation. Each firm and attorney possess significant complex and class action litigation experience, including in the field of data breach litigation, both in this Circuit and nationally. Class Counsel’s experience in prosecuting data breach cases have proven to be critical to the efficient prosecution and ultimate resolution of this case.

Despite the legal and factual hurdles, Class Counsel were able to obtain a settlement affording class-wide relief. *See Xcel Energy*, 364 F. Supp. 3d at 995-96 (“Thus, the effort of counsel

in efficiently bringing this case to fair, reasonable and adequate resolution is the best indicator of the experience and ability of the attorneys involved, and this factor supports the court's award . . . ."); *see also Jenkins ex rel. Jenkins v. Missouri*, 127 F.3d 709, 716 (8th Cir. 1997) ("The most important factor in determining what is a reasonable fee is the magnitude of the plaintiff's success in the case as a whole."); *Pentel v. Shepard*, No. 18-CV-1447 (NEB/TNL), 2019 WL 6975448, at \*2 (D. Minn. Dec. 20, 2019) (same); *Roth v. LifeTime Fitness, Inc.*, Civ. No. 16-2476 (JRT), 2019 WL 3283172, at \*2 (D. Minn. July 22, 2019) (same). In preliminarily approving the Settlement, the Court designated Class Counsel, finding, that they are "experienced counsel." [ECF No. 51 ¶ 6.]

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

#### **5. The Time and Labor Involved, Including the Efficiency in Handling the Case**

Class Counsel should be rewarded for moving the litigation along with diligence and extraordinary efficiency. As previously discussed, this case was resolved after more than a year of active litigation, providing a significant Settlement less than two years after the data breach. In awarding attorneys' fees, courts have consistently recognized and rewarded class counsel for moving the litigation to conclusion with diligence and efficiency. *See Yarrington*, 697 F. Supp. 2d at 1063. As a Court in this Circuit previously reasoned when granting a fee request:

[P]laintiffs' counsel presented a reasonable lodestar in a case that was not yet ancient, but easily could have become so. But for the cooperation and efficiency of counsel, the lodestar plaintiffs' counsel would have been substantially more and would have required this court to devote significant judicial resources to its management of the case. Instead, counsel moved the case along expeditiously. . . .

*Xcel Energy*, 364 F. Supp. 2d at 996. This factor, like the others, weighs in favor of approving Class Counsel's fee request.

## **6. The Reaction of the Class**

A favorable reaction from the Class also supports the reasonableness of a fee request. *See, e.g., Beaver Cnty. Emps. Ret. Fund*, 2017 WL 2588950, at \*3 (noting that the lack of a single class member objection is “strong evidence that the requested amount of fees and expenses is reasonable”); *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).

Notice to the Class has been provided in a manner that complies with this Court’s preliminary approval order. (ECF No. 54.) A short form notice via postcard was mailed to each available Class Member maintained on the Class List. The Notice plainly and concisely informed Class Members of the amount of the Settlement Fund, their individual rights, and the requested Attorneys’ Fees and Service Awards. Additionally, the administrator established a website (<https://bradymartzdatasettlement.com/>) for Class Members to file claims and learn about their rights and options. The deadline to submit a claim form is June 24, 2025, and the deadlines to exclude themselves or object to the settlement is May 25, 2025. Following completion of notice to the Class pursuant to the approved Notice Plan, 56,911 notices were sent. (Decl. ¶ 17.) To date, only one Class Member has requested exclusion, and no Class Member has objected to the fairness, reasonableness, or adequacy of the settlement or award of attorneys’ fees, expense reimbursement,

or service award to the Class Representative.<sup>6</sup> *Id.* This favorable reaction of the class supports the reasonableness of Class Counsel's fee request.

**7. The Comparison Between the Requested Attorneys' Fee Percentage and Percentages Awarded in Similar Cases**

The requested attorney fee is well within the range of fees previously approved by courts in similar cases. Class Counsel's request for fees totaling 1/3 of the common fund, in addition to expense reimbursement, falls squarely within the range of percentages deemed reasonable in similar class cases.

Courts in the Eighth Circuit "have frequently awarded attorney fees between [25%] and [36%] of a common fund in other class actions." *Xcel Energy*, 364 F. Supp. 2d at 998 (collecting cases); *see also Rawa*, 934 F.3d at 870 (noting that fees in the Eighth Circuit have ranged up to 36% in class actions); *Khoday*, 2016 WL 1637039, at \*9 (awarding a fee award of 33.33% for a total fee award of \$20 million from a \$60 million common fund); *In re US Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% of \$3.5 million settlement fund awarded); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. CIV 02-3780 JNE/JJG, 2006 WL 2671105, at \*8 (D. Minn. Sept. 18, 2006) (35.5% of the \$15 million settlement fund was "within the range established by other cases"); *Yarrington*, 697 F. Supp. 2d at 1064-65 (33% of \$16.5 million common fund was "certainly within the range established by other cases in this District"). This factor, too, supports Class Counsel's request.

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<sup>6</sup> Class Counsel will provide the Court with updated information on any objections and requests for exclusion deadline when they file pleadings regarding the motion for final approval of the Settlement on July 28, 2025, 14 days before the final approval hearing scheduled for August 11, 2025.

In conclusion, all relevant *Johnson* factors strongly support the requested attorneys' fees. Thus, requested attorneys' fee amounting to one-third (1/3) the common fund is reasonable under the percentage-of-the-benefit method and the Court should award the requested fee.

**D. The Fee Requested is Reasonable Under the Lodestar Method**

The requested attorneys' fees are also reasonable under the lodestar cross-check method. The lodestar approach may be used as an independent basis for a fee award, *see Zurn Pex*, 2013 WL 716460, at \*3-4; as a cross-check in evaluating a fee request under the common fund approach, *see Petrovic*, 200 F.3d at 1157; *Xcel Energy*, 364 F. Supp. 2d at 999; or as a side-by-side analysis alongside the common fund approach, *see MSG*, 2003 WL 297276, at \*2-3. Under the lodestar approach, district courts within this Circuit apply four factors in determining whether requested attorneys' fees are reasonable: "(1) the number of hours counsel expended; (2) counsel's 'reasonable hourly rate'; (3) the contingent nature of success, and (4) the quality of the attorneys' work." *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d at 1106 (citation omitted); *see also LifeTime Fitness*, 847 F.3d at 622 (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") (citation omitted). Application of these factors is straightforward and supports the reasonableness of Class Counsel's requested fee given the substantial time and resources Class Counsel devoted to litigating this case. (*See, supra* § II.B (describing significant efforts of counsel in securing an efficient resolution of this matter).)

Here, in addition to accounting for the requested expenses of \$71,088.55 and \$2,000 in service awards, Class Counsel's fee request amounts to a request in attorneys' fees of \$283,333.33—a negative multiplier of nearly .52. This multiplier will continue to shrink as time spent implementing the settlement is incurred.. The request of 1/3 of the common fund

(\$283,333.33) is more than justified based upon the well-established methodology in the Eighth Circuit that a negative multiplier demonstrates an inherent reasonableness of the fee request. *See Johnson v. Himagine Sols., Inc.*, No. 4:20-CV-00574, 2021 WL 2634669, at \*7 (E.D. Mo. June 25, 2021) (noting the Eighth Circuit has approved negative multipliers which confirms the fees sought were “well within the reasonable range”); *Calhoun v. Invention Submission Corp.*, No. 18-1022, 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”).

Courts in this Circuit appropriately expects sound billing judgment and has recognized in other cases that “[o]nly time and expenses authorized and incurred on matters that advance the litigation on behalf of all class members will be considered as compensable.” *Dryer v. Nat’l Football League*, No. 09-2182 (PAM/AJB), 2013 WL 1408351, at \*6 (D. Minn. Apr. 8, 2013). Class Counsel have and will continue carefully evaluate and scrutinize Class Counsels’ time and expense reports in allocating any fee and expense award.<sup>7</sup> Just as the Supreme Court has held that the standard for evaluating fee awards is reasonableness, *see Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), Class Counsel’s allocation must be fair and reasonable. Should the Court award the

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<sup>7</sup> Courts recognize that “submission of a combined fee application with actual allocation to be made by lead counsel has generally been adopted by the courts.” *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at \*17 (E.D. Pa. June 2, 2004). “[F]rom the standpoint of judicial economy, leaving allocation to such counsel makes sense because it relieves the Court of the ‘difficult task of assessing counsel’s relative contributions.’” *Id.* at \*18 (quoting *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 329 n.96 (3d Cir. 1998)). Courts afford broad discretion to lead counsel in initially allocating attorneys’ fee awards. *See In re Indigo Sec. Litig.*, 995 F. Supp. 233, 235 (D. Mass. 1998) (directing that “[a]ny and all allocations of attorneys’ fees and expenses among counsel for all class representatives shall be made by lead counsel for the class, who shall apportion the fees and expenses based upon their assessment of the respective contribution to the litigation made by each counsel”).



requested attorneys' fees and expenses in this matter, Class Counsel will award on a fair and reasonable basis applying factors courts consider in awarding fees in class litigation, including each firm's contribution to the litigation for the benefit of the Class, the risks borne by counsel in litigating this complex case on a contingency fee basis, leadership and other roles assumed, lodestars, the quality of work performed, contributions made, the magnitude and complexity of assignments executed, and the time and effort expended by counsel.

Rates for Class Counsel ranged from \$450/hour (associate attorney) to \$1,225/hour (partner). (Decl. ¶ 27.) These rates are consistent with the rates typically approved in complex litigation in the Eighth Circuit. *See, e.g., Tussey v. ABB, Inc.*, 746 F.3d 327, 340-41 (8th Cir. 2014) (approving, in 2014, a "blended rate" of \$514 per hour as reasonable in an ERISA class action); *Yarrington*, 697 F. Supp. 2d at 1066 (recognizing, as of 2010, partner rates ranging from \$500-\$800 "are based on prevailing fees for complex class actions of this type that have been approved by other courts"); *Zurn Pex*, 2013 WL 716460, at \*5 (approving \$8.5 million fee award based on rates shown in supporting declaration and noting "[t]hese hourly rates are market rates similar to those charged by firms with expertise in class action and other complex litigation"); *Austin v. Metro. Council*, No. 11-cv-03621-DWF-SER, slip op. ¶ 57 (D. Minn. Mar. 27, 2012) (ECF No. 27) (noting that attorney rate of \$500 per hour was "at the lower end of complex class action rates approved in this District"); *Xcel Energy*, 364 F. Supp. 2d at 989-90, 1004 (implicitly approving attorney rates ranging from \$225-\$650 in 2005).<sup>8</sup>

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<sup>8</sup> In more recent data breach class action cases in other federal jurisdictions, higher hourly rates have been approved. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LKH, 2018 WL 3960068, at \*17 (N.D. Cal. Aug. 17, 2018) (approving partner rates of \$400-\$970/hour; and non-partners, senior attorneys, and associates of \$185-\$850/hour).

Multiplying the total reasonable hours by the various rates, Class Counsel's lodestar totals \$548,538.00. (*Id.* ¶ 27).

The third and fourth lodestar factors: "the contingent nature of the success" and "the quality of the attorneys' work," discussed more fully above, further support Class Counsel's attorneys' fee request under a lodestar analysis.

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.

**E. The Expenses Incurred in this Litigation are Reasonable and should be Reimbursed.**

Class Counsel respectfully request that the Court reimburse expenses of \$71,088.55 representing Class Counsel's and the notice and claims administrator's out-of-pocket expenses on behalf of the Class from inception through May 5, 2025, and anticipated costs associated with the final approval hearing. (Decl. ¶¶ 28-29.)

"The common fund doctrine provides that a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation . . . ." *Zilhaver*, 646 F. Supp. 2d at 1084-85 (citation omitted). Courts routinely approve expenses incurred in the prosecution of complex cases. *See, e.g., Zurn Pex*, 2013 WL 716460, at \*5 (awarding costs and expenses "related and necessary to the prosecution of this type of litigation"); *Yarrington*, 697 F. Supp. 2d at 1067-68 (awarding, *inter alia*, filing fees, expenses associated with research, preparation, filing and responding to pleadings, costs associated with copying, uploading and analyzing documents, fees and expenses for experts and mediation fees); *Zilhaver*, 646 F. Supp. 2d at 1085 (awarding "reasonable and necessary" costs and expenses).

The expenses incurred in this litigation were necessary for its efficient but effective prosecution. All expenses have been carefully scrutinized to ensure that they were reasonable and necessarily incurred to benefit the Class. (*Id.* ¶ 28.) Therefore, Plaintiffs and Class Counsel respectfully request that the Court order the reimbursement of expenses totaling \$71,088.55 from the Settlement Fund.

**F. Awarding \$2,000 Service Awards to the Class Representatives is Reasonable and Appropriate given Their Service to the Settlement Class**

The district court has discretion to award service awards. *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002). Class Counsel have requested that the Court award \$2,000 to Plaintiffs who were appointed Class Representatives and represented other members of the Class in this litigation.

Courts routinely approve such service awards to recognize individuals’ service to the class and to reward them for contributing to the enforcement of laws through the class action mechanism. *See, e.g., China Agritech, Inc. v. Resh*, 138 S. Ct. 1800, 1811 n.7 (2018) (a “class representative may receive a share of the class recovery above and beyond her individual claim”); *Caligiuri*, 855 F.3d at 867 (service awards to named plaintiffs “promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits”) (quoting *Yarrington*, 697 F. Supp. 2d at 1068).

In this case, the Class Representatives stepped up to lead this litigation on behalf of all class members nationally and to provide valuable services for the benefit of the Class. They also worked extensively with Class Counsel to respond to numerous inquiries regarding individual facts and circumstances as the litigation proceeded. Class Representatives also provided important information in response to discovery requests. They actively monitored the litigation through

continuous communication with Class Counsel and were available for settlement discussions. (Decl. ¶¶ 30-32).

Because the Class Representatives devoted time and resources in service to the class, a service award in the amount of \$2,000 each to recognize the time, expense, and valuable contributions to this litigation should be awarded as fair and reasonable.

#### **IV. CONCLUSION**

Class Counsel, on behalf of Plaintiffs and the Class, respectfully request that the Court award (1) reasonable attorneys' fees in the amount of \$283,333.33; (2) reimbursement of expenses in the amount of \$71,088.55; and (3) service awards to the Class Representatives of \$2,000 each. The requests are fair and reasonable under all applicable law.

Respectfully Submitted,

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*s/ David A. Goodwin*  
**GUSTAFSON GLUEK PLLC**  
Daniel E. Gustafson  
David A. Goodwin  
Daniel J. Nordin  
Joe E. Nelson  
Canadian Pacific Plaza  
120 South 6th Street, Suite 2600  
Minneapolis, MN 55402  
Phone: (612) 333-8844  
dgustafson@gustafsongluek.com  
dgoodwin@gustafsongluek.com  
dnordin@gustafsongluek.com  
jnelson@gustafsongluek.com

**HELLMUTH & JOHNSON PLLC**  
Nathan D. Prosser  
8050 West 78th Street  
Edina, MN 55439  
Phone: (952) 941-4005  
nprosser@hjlawfirm.com

*Interim Co-Lead Plaintiffs' Counsel*