

**IN THE CIRCUIT COURT OF THE 1ST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

ALEXANDER COHEN AND TARA HILL,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

DRUG FREE WORKPLACES, USA, LLC,

Defendant.

CASE NO.: 2024 CA 000955

DIVISION: F-CIVIL

**PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR
SERVICE AWARDS AND AWARD OF ATTORNEYS' FEES AND COSTS**

Plaintiffs Alexander Cohen and Tara Hill (“Plaintiffs” or “Representative Plaintiffs”)¹ and Class Counsel respectfully move for award for attorneys’ fees and costs and for Service Awards for the Class Representatives.²

First, Plaintiffs respectfully request a \$1,250.00 Service Award for each Class Representative to compensate them for their work in filing the Litigation and facing the risks associated with serving as a Class Representative. Joint Decl. ¶¶ 3-5. In prosecuting this action, the Class Representatives expended time and effort and took significant financial and reputational risks for the benefit of the putative class as a whole, thus, imposing a burden on them out of proportion to their individual stakes in the matter. *See id.* ¶ 5.

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release, attached as Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

² Defendant does not oppose Plaintiffs’ previously approved Motion for Preliminary Approval of Class Action Settlement and will not oppose Plaintiffs’ impending motion for Final Approval of Class Action Settlement. Defendant does not take a position on Plaintiffs’ and Class Counsel’s requests for service awards or fees and costs, respectively, including any purported facts or law asserted therein.

Second, Class Counsel respectfully requests the Court award \$200,000.00 in attorneys' fees and costs. *Id.* ¶ 6. Following receipt of Notice, no Settlement Class Member has to date objected to the amount of attorneys' fees requested. *Id.* ¶ 7. Class Counsel's request is consistent with Florida's standard for awarding attorneys' fees in common fund class action settlements, analyzing Class Counsel's lodestar and applying a contingency risk multiplier. For the reasons set forth below, the requested attorneys' fees (and costs, which are included in the \$200,000.00), are more than reasonable when compared to the time and effort devoted to the prosecution of the Litigation and the results achieved through the Settlement.

A. A Service Award for Each Class Representative.

The Court should approve a \$1,250.00 Service Award for each Class Representative, as it is just, fair, and reasonable and Defendant does not oppose such an award. Service awards (also known as incentive awards) “are not uncommon in class action litigation where, as here, a common fund has been created for the benefit of the class,’ and are designed to ‘compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.’” *Halpern v. You Fit Health Clubs, Ltd. Liab. Co.*, No. 18-61722-CIV-DIMITROULEAS/S, 2019 WL 13067290, at *1 (S.D. Fla. Aug. 22, 2019) (the “requested award of \$5,000.00 to the named Plaintiff is 0.0035% of the settlement fund, and the Defendant has acquiesced to this amount. The undersigned finds that it is reasonable and should be awarded.”) (citing *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006)); *see also Exum v. Nat'l Tire & Battery*, No. 9:19-cv-80121, 2020 WL 5217060, at *7 (S.D. Fla. Sep. 1, 2020) (approving a service award of \$7,500.00 to each named class representative); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) (lead plaintiff applied for and was granted a service award of \$5,000.00, to which there were no objections, to compensate

plaintiff for aiding in the investigation of the claims, discovery requests, and settlement.); *Holt v. HHH Motors, LLP*, No. 16-2012-CA-010179, 2015 WL 14085461, at *2 (Fla. 4th Jud. Cir. June 17, 2015) (approving the payment of \$5,000.00 to both of the named plaintiffs as an incentive award for their actions and contributions to the litigation.).

“The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.” *In re Checking Account Overdraft Litigation*, No. 1:09-MD-02036-JLK, 2020 WL 4586398, at *16 (S.D. Fla. 2020).

The Class Representatives have actively followed this matter even prior to the complaints being filed in this matter and have made significant efforts on behalf of the Settlement Class, including maintaining contact with Class Counsel, participating in client interviews, providing relevant documents, assisting in the investigation of the Litigation, remaining available for consultation throughout settlement negotiations, reviewing relevant pleadings and the Agreement, and for answering Class Counsel’s many questions. Joint Decl. ¶ 3. The requested Service Awards are justified in light of the Class Representatives’ willingness to devote their time and energy to prosecuting the Litigation and is reasonable in consideration of the overall benefit conferred on the Settlement Class and should be approved.

B. The Court Should Award the Requested Attorneys’ Fees.

The award of attorneys’ fees in Florida is controlled by *Kuhnlein v. Dep’t of Revenue*, 662 So. 2d 309 (Fla. 1995), and *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990). “[U]nder the ‘common fund doctrine’ lawyers who recover a common fund for the benefit of others are entitled to reasonably attorney fees from the fund.” *Kuhnlein*, 662 So. 2d at 314. To calculate

the fee award, the Court should examine Class Counsel's lodestar (the hours reasonably expended at appropriate hourly rates), enhanced by a contingency risk and/or results achieved multiplier. In *Kuhnlein*, the Court identified the various factors for determining the reasonableness of the attorneys' fees:

1. the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
4. the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;
5. the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and
8. whether the fee is fixed or contingent, and, if fixed as to the amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

Id. at 323 n.5; *see also Nelson*, 985 So. 2d at 573. As discussed below, these factors support the \$200,000.00 requested in the Litigation, apply a contingency risk multiplier of approximately 2.42, which the Florida Supreme Court recognized in *Kuhnlein* should be applied "in recognition of the substantial benefit class counsel conferred upon the class members." 662 So. 2d at 315. A maximum multiplier of 5 has been approved in common fund cases, with the *Kuhnlein* court

reasoning that an “increased maximum multiplier . . . is appropriate in common-fund cases . . . to place greater emphasis on the monetary results achieved. Furthermore, a multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee which remains within the bounds of reasonableness.” *Id.*

1. The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

Prosecuting and settling the Litigation demanded considerable time, labor, and skill. Class Counsel’s work on this matter includes: investigating the cause and effects of alleged unlawful sharing of Plaintiff’s and Settlement Class Members’ information, interviewing potential clients; evaluating the potential class representatives; contributing to the evaluation of the merits of the Litigation before filing the Complaint; conducting legal research; drafting the Complaint, the settlement term sheet, the Settlement Agreement, the relevant notices of settlement, the Motion for Preliminary Approval of Class Action Settlement, and Class Counsel’s Motion for Service Awards and Award of Attorneys’ Fees and Costs; communicating with defense counsel; preparing document and information requests for Defendant as part of informal discovery; engaging in extensive settlement negotiations with Defendant; and providing updates to and handling questions from our class representatives. Joint Decl. ¶ 10. Class Counsel were mindful to avoid duplicative efforts among themselves. *Id.*

Further, the Litigation presented complex questions of law and fact. As a result, the Settlement Class may never have secured relief, financial or otherwise, absent this Settlement. Without reaching a swift settlement, Plaintiffs would have otherwise endured lengthy, expensive, and arduous litigation, during which they would still be exposed to the risk of identity theft. Accordingly, the requested attorneys’ fee award considers the novel, complex, and difficult nature

of data breach class action cases, and appropriately compensates Class Counsel's ability to resolve this matter efficiently while recovering the maximum amount available to the Settlement Class in a timely manner.

Indeed, Class Counsel's skill and experience in complex class action litigation weigh in favor of the requested attorneys' fee award. Class Counsel's background and the background of the supporting attorneys and staff demonstrate that Class Counsel is experienced in the highly specialized field of class action litigation—particularly data breach class action litigation—and are well-credentialed and equal to the difficult and novel tasks at hand. Joint Decl. ¶ 2 & Exs. 1-2 thereto (listing qualifications of Class Counsel). Class Counsel's attorneys' fee request is commensurate with that experience, which was leveraged here to procure the Settlement via early resolution of the Litigation.

2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

The Litigation has required substantial time and labor from the attorneys. *See id.* ¶¶ 14-15. Accepting a putative class action of this difficulty and magnitude with thousands of putative class members, and the inherent and substantial risk involved, substantially impeded Class Counsel's ability to work on other fee-generating and/or lower risk cases from the time the Litigation was being investigated throughout the litigation. *Id.* ¶¶ 16-17.

3. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.

Class Counsel have significant and unique legal experience in consumer class action litigation, and data breach litigation specifically. *Id.* ¶ 2 & Exs. 1-2. The hourly rates charged by Class Counsel range from \$500.00 to \$1,057.00 per hour for attorneys. *See id.* ¶ 19. These hourly rates are within the range of hourly rates that have been approved by Florida courts and elsewhere

in the United States for legal services in class actions of a similar nature, considering the type of matter, level of experience, training, and education. *Id.* ¶ 20. *See, e.g., Sos v. State Farm Mut. Auto. Ins. Co.*, No. 6:17-cv-890-PGB-LRH, 2021 WL 1186811, at *4 (M.D. Fla. Mar. 19, 2021) (approving rate of \$800 for partners and \$458 for associates and paralegal rates of \$150 and \$195 in recognition that “[c]ommercial class action law is sufficiently specialized that it should be considered a national market”); *Jackson v. Wendy’s Int’l LLC*, Case No. 6:16-cv-210-Orl-40DAB, Dkt. Nos. 153 and 157 (M.D. Fla. 2019) (approving application for attorneys’ fees utilizing lodestar crosscheck with rates of up to \$950.00 for partners and \$575.00 for associates); *Preman v. Pollo Operations, Inc.*, Case No. 6:16-cv-443-ORL-41-GJK, Dkt. No. 69 (M.D. Fla. 2018) (approving partner rates of \$950.00 and \$717.00 for associate); *Ioime v. Blanchard, Merriam, Adel & Kirkland, P.A.*, No. 5:15-cv-130-OC-30-PRL, 2016 U.S. Dist. LEXIS 195926, at *6 (M.D. Fla. May 16, 2016) (awarding fees based on hourly rates of \$350 to \$650, requested in Memo. of Law in Support of Final Approval of Class Action Settlement, ECF No. 46-2). Given the experience, reputation and skills of Class Counsel, these hourly rates are reasonable and are well within those customarily charged in this locale for services of a similar nature. Courts around the country have approved these rates. Joint Decl. ¶ 20.

Class Counsel’s lodestar (hours x hourly rates) through December 31, 2024 was \$82,517.40 *Id.* ¶ 11.³ Class Counsel will spend more time following Final Approval assisting the Settlement Administrator with distribution of the Cash Payments and attending to other Settlement administration matters.

³ This amount does not include an estimated 34 hours that Class Counsel has spent since December 31, 2024, and will spend drafting the instant Motion, the Motion for Final Approval of Class Action Settlement, preparing for and attending the Final Approval Hearing, and assisting the Settlement Administrator following Final Approval. This additional time will result in an even lower multiplier. *See* Joint Decl. ¶ 14.

As noted above, it would not be unreasonable for Class Counsel to seek a multiplier up to 5 times the lodestar amount. *See Kuhnlein*, 662 So. 2d at 313-15. Here, Class Counsel request a 2.42 multiplier, which is justified in light of the fact that Class Counsel rendered service without compensation, achieved an excellent result, and offered extremely reasonable billing rates given their experience. *See Joint Decl.* ¶¶ 12-13, 19-20. The requested fee is fair in view of the complicated nature of the Litigation, and the time, effort, and skill required. *Id.* ¶ 13. The financial risks borne by Class Counsel fully support the fee requested. *Id.* Other courts have awarded fees in data breach cases relying on risk multipliers in the range Class Counsel request here. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT, 2020 WL 256132, at 39-40 (N.D. Ga. Mar. 17, 2020) (finding multiplier of 2.62 reasonable and within the typical range); *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-TWT, 2016 WL 11299474, at *1 (N.D. Ga. Aug. 23, 2016) (finding multiplier of 1.3 reasonable and appropriate). *See also Martin v. Lake Cty.*, No. 2009-CA5295, 2016 Fla. Cir. LEXIS 2272, *24 (quoting *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla 2007)) (“Florida’s lodestar analysis is patterned after, ‘lodestar multipliers in larger and complicated class actions range from 2.26 to 4.5, while three appears to be the average.’”); *Roberts v. Capital One, N.A.*, No. 16 Civ. 4841 (LGS), (S.D.N.Y. Dec. 20, 2020) (awarding \$5,100,000 resulting in a 2.22 multiplier).

4. The significance of, or amount involved in the subject matter of the representation, the responsibility involved in the representation, and the results obtained.

The Litigation raised issues of genuine importance to approximately 37,705 customers of Defendant who were affected by the Data Incident. Because of the significant risks associated with the Litigation and potential barriers faced by the Plaintiffs, Class Counsel achieved an excellent recovery for the Settlement Class that includes significant monetary and nonmonetary relief. *Joint Decl.* ¶ 22.

Indeed, the result here demonstrates why the requested fee award is reasonable. The result achieved is a major factor to consider in making a fee award. *Kuhnlein*, 662 So. 2d at 315. *See also Hensley v. Eckerhart*, 461 U.S. 424, 436, (1983) (“critical factor is the degree of success obtained”); *Pinto v. Princess Cruise Lines*, 513 F. Supp. 2d 1334, 1342 (S.D. Fla. 2007); *Behrens*, 118 F.R.D. at 547-48 (“The quality of work performed in a case that settles before trial is best measured by the benefit obtained.”).

In considering the results, courts examine the value of both monetary and non-monetary relief. *See Marty v. Anheuser-Busch Cos., LLC*, No. 13-cv-23656-JJO, 2015 WL 6391185, at *2 (S.D. Fla. Oct. 22, 2015) (“[the] trial court properly concluded that ‘class received substantial benefit’ from label change that removed allegedly misleading statement . . . and non-monetary relief was properly considered in evaluating attorneys’ fees”); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360 (S.D. Fla. 2007). The results achieved here demonstrate that the results achieved through the Settlement are excellent.

5. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client.

Class Counsel incorporate by reference the previous discussion regarding their inability to work on other cases because of the time burdens of the Litigation and its importance. *See* Joint Decl. ¶¶ 16-17. With respect to demands imposed by the client, the representation of the Settlement Class does not end with Final Approval of the Settlement. *See id.* ¶ 14. Ultimately, Class Counsel are responsible for seeing that the terms of the Settlement are followed, which will involve a substantial time commitment. *See id.*

6. The nature and length of the professional relationship with the client.

Class Counsel and the Plaintiffs have had a relationship since before filing the complaints

in the actions and will continue to work with one another for a few more months, including time after Final Approval. *Id.* ¶ 15. The investigation, prosecution, and settlement of the Litigation has required a substantial amount of Class Counsel’s time and effort. *Id.* Class Counsel spent significant time working with the Plaintiffs—investigating the Litigation and keeping them informed of the progress of the Litigation. *Id.*

7. The experience, reputation, diligence and ability of the lawyer or lawyers performing the service and the skill, expertise or efficiency of effort reflected in the actual providing of such services.

Class Counsel have demonstrated their skills, experience, and reputation. Class Counsel have extensive experience in the litigation, certification, trial, and settlement of consumer class-action litigation, and specifically in data breach litigation. *Id.* ¶ 2 & Exs. 1-2. There are few, if any, firms in the nation with the expertise of Class Counsel in these types of cases. *Id.* ¶ 2. Class Counsel has recovered millions of dollars for the classes they represented in dozens of cases. *Id.* In negotiating this Settlement, Class Counsel had the benefit of years of experience and a familiarity with the facts of the Litigation as well as with other data breach cases. *Id.*

Class Counsel’s reputation, diligence, expertise, and skills are reflected in the work they performed and the results they achieved. The fact that Class Counsel were able to successfully resolve the Litigation through recovery of up to \$475.00 per person for document ordinary losses and up to \$5,000.00 per person for document extraordinary losses is a testament to their skill, expertise, and efficiency of effort despite the potential hurdles presented, including appellate proceedings.

8. Whether the fee is fixed or contingent, and if fixed as to the amount or rate, then whether the client’s ability to pay rested to any significant degree on the outcome of the representation.

The fee arrangement in this matter was fully contingent, meaning that Class Counsel have

not received any compensation for their services in the Litigation after rendering the described above. *Id.* ¶ 8. The fully contingent nature of this representation further supports the requested fee award, applying the requested multiplier.

Indeed, “[a] contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *Behrens*, 118 F.R.D. at 548; *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs’ counsel must be compensated adequately for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 (“Numerous cases recognize that the attorney’s contingent fee risk is an important factor in determining the fee award”); *Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga. 1985), *modified*, 803 F.2d 1135 (11th Cir. 1986); *York v. Alabama Senate Bd. of Ed.*, 631 F. Supp. 78, 86 (M.D. Ala. 1986). As the *Behrens* court observed:

Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer... A contingency fee arrangement often justifies an increase in the award of attorney’s fees. This rule helps assure that the contingency fee arrangement endures. If this “bonus” methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548.

That multiplier specifically addresses the contingent nature of Class Counsel’s representation of Plaintiffs, the putative class, and now the Settlement Class and the results Class Counsel obtained for them. *Kuhnlein*, 662 So. 2d at 315. Class Counsel received no compensation during the course of the Litigation and have incurred expenses litigating on behalf of the Settlement Class before this Court, which they risked losing had Defendant prevailed at the motion to dismiss, summary judgment, class certification, trial, or appellate stages. From the time Class Counsel filed the Litigation, there existed a real possibility they would achieve no recovery and, hence, no

compensation.

C. Class Counsel's Costs

Further, Class Counsel have also incurred reasonable and necessary costs to pursue the claims in the Litigation. Joint Decl. ¶ 21; *see Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). To date, those costs are \$2,246.00 and consist of court filing fees and service of process fees. Joint Decl. ¶ 21.

WHEREFORE, Plaintiffs and Class Counsel respectfully request the Court enter an Order approving an award to Class Counsel of attorneys' fees and costs in the amount of \$200,000.00, and granting a \$1,250.00 Service Award for each Class Representative. A proposed order granting this relief will be incorporated into the proposed Final Approval Order submitted with Plaintiffs' Motion for Final Approval of Class Action Settlement.

Dated: January 13, 2025

Respectfully submitted,

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*Application for Admission *Pro Hac Vice*
Forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via email via the Florida Courts E-Filing Portal on all counsel of record on this 13th day of January, 2025.

/s/ Steven Sukert
Steven Sukert