UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE ORACLE CORPORATION DATA BREACH LITIGATION This Document relates to Defendant Trustees of Dartmouth College d/b/a Dartmouth College	Case No. 1:25-cv-01805-ADA-SH

PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

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Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Matthew B. Ross and Lisa Mabey, individually and on behalf of themselves and all others similarly situated, by and through the undersigned Class Counsel,[1] hereby submit this Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards and Memorandum in Support, requesting final approval of this proposed class action settlement ("Settlement") on the terms set forth in the Settlement Agreement ("S.A.") (ECF 165-1). In support thereof, Plaintiffs rely upon the accompanying Memorandum in Support; the Declaration of Gary M. Klinger ("Klinger Decl.") attached here as **Exhibit 1**; the Declaration of Cameron R. Azari, Eq. Regarding Implementation and Adequacy of Notice Program ("Admin Decl.") attached hereto as **Exhibit 2;** the records, pleadings, and papers filed in this action; and such other evidence or argument that may be presented to the Court.

MEMORANDUM IN SUPPORT

Plaintiffs in the above-titled action, on behalf of themselves and all others similarly situated, respectfully submit this memorandum of law in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards and t.

I. INTRODUCTION

If approved, the Settlement will successfully resolve the claims of approximately 96,911 individuals whose Private Information was allegedly accessed in the Data Incident. The Settlement negotiated on behalf of Plaintiff and Class Members provided benefits to the class through a $750,000 non-reversionary common fund. The Settlement Fund will cover the cost of paying all Valid Claims for benefits from Settlement Class Members as well as Settlement Administration

[1] Unless otherwise noted, capitalized terms used herein shall have the meanings as those defined in Section II of the Settlement Agreement.

Costs, attorneys' fees and costs, and Service Awards to Class Representatives. Thus, the Settlement represents an excellent result for the Settlement Class, and provides them with meaningful and immediate benefits to remedy the harm they have allegedly suffered, or will suffer, due to the Data Incident.

On July 1, 2026, this Court granted preliminary approval to the Settlement, finding it a fair, reasonable, and adequate result for the Settlement Class. ECF 167. The Court-ordered notice plan has since been successfully executed, and the response to the Settlement has been favorable, with only one opting out of the Settlement and no objections. *See* Admin Decl. ¶ 35. This response weighs in favor of final approval. For the reasons detailed below, Plaintiffs and the Settlement Class respectfully submit that the Settlement meets the standard for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class. Plaintiffs, therefore, respectfully request that the Court finally approve the Settlement and enter a final judgment dismissing the case.

II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiff refers this Court to and hereby incorporates by reference, Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement filed on June 23, 2026, (ECF 165), and the accompanying Exhibits, including the proposed Settlement Agreement filed in conjunction herewith (ECF 165-1).

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Benefits

The Settlement creates a $750,000 non-reversionary Settlement Fund. SA ¶ 67. Settlement Class Members will be entitled to claim substantial relief from the Settlement Fund. The

Settlement Agreement provides for relief for a Settlement Class defined as: all living individuals residing in the United States who were sent notice by Dartmouth that their Private Information may have been impacted in the Data Incident. *Id*. ¶ 64.

Excluded from the Settlement Class are: (1) all persons who are directors, officers, members, and agents of Dartmouth, or their respective subsidiaries and affiliated companies, and any entity in which Dartmouth has a controlling interest; (2) governmental entities; (3) the Judge assigned to the Action, that Judge's immediate family, and Court staff; (4) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident, or who pleads nolo contendere to any such charge; and (5) Settlement Class Members who validly and timely excludes themselves from the Settlement. *Id*.

The following relief will be offered to Settlement Class Members:

1. Monetary Relief

a. Cash Payment A – Documented Losses

Settlement Class Members may submit a Claim for a Cash Payment under this section for up to $5,000.00 per Settlement Cass Member upon presentment of documented losses related to the Data Incident. *Id*.¶ 75(a).

b. Cash Payment B – Pro Rata Cash

In addition to Cash Payment A – Documented Losses above, a Settlement Class Member may also elect to receive Cash Payment B – Pro Rata Cash, which is a flat cash payment in an estimated amount of $75.00. *Id*. ¶ 75(b). These payments will be subject to a pro rata increase in the event the amount of Valid Claims is insufficient to exhaust the entire Settlement Fund.

Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payment B will be reduced on a *pro rata* basis.

2. Credit Monitoring

In addition to claiming either or both Cash Payments, Settlement Class Members may elect to receive two years of Credit Monitoring with one credit bureau. *Id.* ¶ 75(c).

B. Notice Program and Settlement Administration

The Settlement also provides that the costs of notice and settlement administration will be paid from the Settlement Fund. The Court approved the proposed Notice Program when it granted preliminary approval, and the Settlement Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), with the assistance of the Parties, effectuated the Notice Program consistent with the Settlement Agreement and Preliminary Approval Order. *See* Admin Decl. On July 10, 2026, Epiq received one data file with 99,159 identified Settlement Class Member records, which included names and last known addresses ("Class List"). *Id.* ¶ 23. Epiq sent the unique Settlement Class Member records to a third-party reverse lookup service to perform "reverse lookups" to identify the most likely current and valid email address. *Id.* After incorporating results of the "reverse lookup," Epiq deduplicated, rolled-up, and loaded the unique, identified Settlement Class Member records into its database for this Settlement. *Id.* These efforts resulted in 96,911 unique, identified Settlement Class Member records (of these, 17 records did not have an associated email address or postal address and were not sent Notice). *Id.*

On July 31, 2026, Epiq commenced sending 184,315 Email Notices to 68,907 identified Settlement Class Members for whom a valid email address was available. *Id.* ¶ 24. Some identified Settlement Class Member records had more than one valid email address and an Email Notice was sent to each valid email address. *Id.* Also, some valid email addresses were associated with multiple identified Settlement Class Members, and only one Email Notice was sent per unique, valid email address. Prior to sending the Email Notices, email validation and hygiene tools were used to standardize the email addresses, verify whether the email addresses were valid, and identify and remove email addresses that were a fraud/reputation threat – such as email addresses maintained by bots, spammers, and phishers. *Id.*

On August 26, 2026, Epiq commenced sending 34,807 double Postcard Notices with a detachable Claim Form to identified Settlement Class Members with an associated mailing address for whom a valid email address was not available and for whom an Email Notice was returned as undeliverable after multiple attempts. *Id.* ¶ 27. Prior to sending the Postcard Notices, all mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the USPS to ensure all address information was up-to-date and accurately formatted for mailing. *Id.* ¶ 28. The Postcard Notice was sent via USPS first-class mail. *Id.* ¶ 27. The Postcard Notice clearly and concisely summarized the Settlement and the legal rights of the Settlement Class Members. *Id*. In addition, the Postcard Notice also directed the recipients to the Settlement Website where they could access the Long Form Notice and additional information about the Settlement. *Id*.

As of September 9, 2026, an Email Notice and/or Postcard Notice was delivered to 94,035 of the 96,911 unique, identified Settlement Class Members. This means the individual notice efforts reached approximately 97% of the identified Settlement Class Members. *Id.* ¶ 31. This exceeds the 70% threshold considered a high percentage by the Federal Judicial Center Guidelines.

In addition, Epiq established a dedicated Settlement Website with an easy to remember domain name (www.OracleDartmouthDataSettlement.com). *Id.* ¶ 32. Relevant documents are posted on the Settlement Website, including the Settlement Agreement, Preliminary Approval

Order, Long Form Notice, Claim Form, and other case-related documents. *Id*. In addition, the Settlement Website includes relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members can opt-out (request exclusion) from or object to the Settlement, instructions for submitting a Claim Form, contact information for the Settlement Administrator, and how to obtain other case-related information. *Id*. Settlement Class Members are also able to submit a Claim Form on the Settlement Website. *Id.* As of September 18, 2026, there have been 4,753 unique visitor sessions to the Settlement Website, and 16,608 web pages have been presented.

Epiq also established a dedicated a toll-free telephone number (1-877-357-7730) for the Settlement. *Id*. ¶ 33. Callers are able to hear an introductory message, have the option to learn more about the Settlement in the form of recorded answers to FAQs, and are able to request a Claim Package be mailed to them. *Id.* This automated telephone system is available 24 hours per day, 7 days per week. The toll-free telephone number was prominently displayed in all notice documents. *Id.* As of September 18, 2026, there have been 85 calls to the toll-free telephone number representing 163 minutes of use. *Id.*

Moreover, Epiq established a postal mailing address and email address for the Settlement and continue to be available to allow Settlement Class Members the opportunity to request additional information or ask questions. *Id*. ¶ 34.

Settlement Class Members have up to and including October 6 2026, to object to or submit a request for exclusion from the Settlement. *Id.* ¶ 35. As of September 9, 2026, Epiq has received only one request for exclusion and no objections. *Id.*

C. Attorneys' Fees and Service Award

The Settlement Agreement calls for a reasonable service award to Plaintiffs in the amount of $3,000 each and attorneys' fees of up to one-third of the Settlement Fund, or $250,000. *Id.* ¶¶ 105, 106. As described in more detail below, these requests are reasonable and fairly compensate Class Counsel and Class Representatives for their efforts on behalf of the Settlement Class.

IV. LEGAL STANDARD

Plaintiffs bring this motion pursuant to Federal Rule of Civil Procedure 23(e), under which a class action may not be settled without approval of the Court. The general standard for final approval of a proposed settlement of a class action under Rule 23(e)(2) remains whether it is "fair, reasonable and adequate." To make that determination, Rule 23(e)(2) provides that a court should consider whether

> (A) The class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-members' claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treat class members equitably relative to each other.

Rule 23(e)(2).[2] These factors are consistent with the common-law criteria that preceded rule 23. *See Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983) (laying out six factors for courts to consider in determining the fairness, reasonableness, and adequacy of a proposed class settlement: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of

[2] There are no agreements here between the Parties except those set forth in or explicitly reference in the Settlement. Thus Rule 23(e)(2)(C)(iv) is irrelevant for purposes of this Motion.

possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class Members); *see also Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012) (quoting *Reed*, 703 F.2d at 172).

"Because the Rule 23 and case-law factors overlap, courts in this circuit often combine them in analyzing class settlements." *O'Donnell v. Harris Cnty.*, No. CV H-16-1414, 2019 WL 4224040, at *8 (S.D. Tex. Sept. 5, 2019). "When considering [Rule 23(e)(2)] factors, the court should keep in mind the strong presumption in favor of finding a settlement fair." *Purdie v. Ace Cash Express, Inc.*, No. Civ.A.301CV1754L, 2003 WL 22976611, at *4 (N.D. Tex. Dec. 11, 2003); *see also Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010) (There is a "strong presumption that an arms-length class action settlement is fair—especially when doing so will result in significant economies of judicial resources").

A "proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances." *Klein*, 705 F. Supp. 2d at 649. Indeed, because "compromise is the essence of a settlement…the settlement need not accord the plaintiff class every benefit that might have been gained after full trial." *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978); *see also Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977) ("The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes."). Accordingly, "absent fraud, collusion, or the like, [courts] should be hesitant to substitute [their] own judgment for that of counsel." *Klein*, 705 F. Supp. 2d at 649.

V. ARGUMENT

A. The Settlement is Fair, Reasonable, and Adequate, and Should be Approved

Under both Rule 23(e) factors and the Fifth Circuit's *Reed* factors, the Court should grant Plaintiffs' Motion for Final Approval of this the Data Incident. As the Court held when it granted preliminary approval, the Settlement is fair, reasonable, and adequate and Plaintiff asserts that the Settlement now warrants final approval following the notice period. ECF 167. Nothing has changed since preliminary approval that should alter this assessment. At the time of filing this Motion only one Class Member has submitted a request for exclusion, and no objections were received out of a class of over 96,000 further supporting that the Settlement is, in fact, fair, reasonable, and adequate. *See Burford v. Cargill, Inc.*, No. 05-0282, 2012 WL 5472118, at *6 (W.D. La. Nov. 8, 2012) (approving a class settlement because "not a single class member objected to the settlement" and that "the existence of 2 opt-outs established that "the settlement process worked" while also showing there was not "dissatisfaction with the settlement."). For these reasons, and for the additional reasons Class Counsel will show the Court below, the Court should finally approve the Settlement.

1. Plaintiffs and Class Counsel Provided Excellent Representation.

Class Counsel vigorously and zealously litigated this action from its inception. *re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d at 1055 (S.D. Tex. 2012) (adequacy satisfied where class counsel had "extensive experience representing consumers, and other plaintiff classes, in class-action litigation," including "experience representing consumer classes in similar data-breach cases").

This case is part of a consolidated litigation involving multiple defendants. This matter required considerable expertise and efforts by Class Counsel which ultimately culminated in a full day mediation, resulting in the Settlement. Klinger Decl. ¶ 14. The adequacy of proposed Class Counsel is demonstrated by their extensive experience and prior successes in resolving complex litigation related to data breaches. *Id.* ¶ 3. *see also* Plaintiffs' Amended Unopposed Motion to Consolidate Action and Appoint Interim Class Counsel, and firm resumes attached as exhibits thereto (ECF Doc. 23).

2. The Settlement is the Product of Serious, Informed, and Arm's-Length Negotiations.

This Settlement is the result of arm's length negotiations between attorneys experienced in consumer class actions and claims regarding data breaches with the assistance of an experienced mediator. Klinger Decl. ¶ 6. There has been no fraud or collusion, and there are no agreements between or among the Settling Parties or their counsel apart from the Settlement Agreement. *Id.* ¶ 7. "The Court may... presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary." *Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062-DAE, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018).

As detailed in Plaintiffs' Unopposed Motion for Preliminary Approval (ECF 165), the Parties were only able to resolve this case after the exchange of informal discovery, allowing the parties to properly evaluate class size and damages, and extensive full-day mediation.

3. The Settlement is Favorable Given the Complexity, Expense, and Likely Duration of the Litigation.

There exists "an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Assoc. for Disabled Am., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (citing *Cotton*, 559 F.2d at 1331). "When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." *In re*

Heartland, 851 F. Supp. 2d at 1064; *see also Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004) ("[S]ettling now avoids the risks and burdens of potentially protracted litigation.").

Here, Defendant has repeatedly denied its liability and was willing and able to vigorously defend itself. Further, all data breach class actions are complex and remain unpredictable. *See Cotter v. Checkers Drive-In Rests*., Inc., No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting data breach class actions present "serious risks" due, in part, to "the ever-developing law surrounding data breach cases"); *In re Citrix Data Breach Litig*., No. 19-61350-CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) ("Data breach cases in particular present unique challenges with respect to issues like causation, certification, and damages*."); In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 2720818, at *3 (N.D. Ga. June 3, 2019) ("Further, data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits."). This case is no exception.

The pursuit of nationwide claims and relief presented complex issues of law and fact. In contrast, the Settlement obtained provides immediate and direct relief to Class Members now and is within the settlement range for comparable data incident settlements. *See* Klinger Decl. ¶ 9. These facts support that continued litigation would be time-consuming and expensive, and weighs in favor of final approval.

4. The Parties Entered into the Settlement After Significant Litigation and Discovery.

The next factor involves whether "the parties and the district court possess ample information with which to evaluate the merits of the competing positions." *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004); see also *In re Heartland*, 851 F. Supp. 2d at 1064 (approving settlement because "[t]he parties have shown that they possessed sufficient information to gauge the strengths and weaknesses of the claims and defenses" despite the fact that only informal discovery was taken and the case settled at an early stage).

Here, the Parties were able to exchange and analyze the necessary information via public sources and informal discovery prior to mediation. There is no dispute that a Data Incident occurred, that certain types of unencrypted Private Information were potentially accessed and exfiltrated, and that this occurred for approximately 96,000 Class Members. Furthermore, the informal discovery addressed the critical factors relating to the sensitivity of the type of data and class size. This information provided a sufficient basis for a reasoned assessment of the value of the Settlement, particularly where class counsel has litigated and resolved the same legal issues in state and federal courts throughout the country, and Class Counsel can identify the strengths and weaknesses of the claims and defenses presented in this case, providing a solid basis for reasoned judgment.

5. The Settlement Terms Appropriately Balance the Merits of Plaintiff's Claims with the Likelihood of Success with Attendant Risks.

While Class Counsel believes Plaintiffs have a strong case on the merits, Defendant has a similarly strong belief to the contrary. While it is undisputed that the data incident occurred, it is strongly disputed that the Defendant's conduct fell below any standard or that the incident contributed to any class-wide harm or damages. As such, there are a number of controversial factual issues involved in this litigation, including class certification, liability, causation, and damages. Klinger Decl. ¶ 12. A district court "must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial." *Reed*, 703 F.2d at 172 (internal quotation marks and alteration omitted). This factor favors approval of the settlement when the class's likelihood of success on the merits is unknown and questionable. *See In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1326-27 (5th Cir. 1981) (affirming district court's finding that this factor favored approving the settlement when the class faced major obstacles in establishing proof of liability and damages).

Accordingly, this factor, too, supports approval of the Settlement.

6. The Recovery is Within an Appropriate Range.

Class Counsel has handled numerous cases involving data breach allegations, which helped inform their decision as to an appropriate value for the Settlement here. Klinger Decl. ¶ 13. The proposed Settlement meets and exceeds other data incident settlements with comparable class sizes which have been approved by courts throughout the country. This factor also supports final approval of the Settlement.

7. Experienced Class Counsel and the Proposed Class Representative support the Settlement.

As discussed, Class Counsel have extensive experience with similar data security incident class actions, and fully endorse the settlement. "The Fifth Circuit has repeatedly stated that the opinion of class counsel should be accorded great weight" when "evaluating a proposed settlement." *Klein*, 705 F. Supp. at 649 (citing *Pettway v. Am. Cast Iron Pipe Co*., 576 F.2d 1157, 1216 (5th Cir. 1978)); *DeHoyos v. Allstate Corp*., 240 F.R.D. 269, 292 (W.D. Tex. 2007) ("The endorsement of class counsel is entitled to deference."). Moreover, Class Representatives equally support the Settlement. Klinger Decl. ¶ 35.

8. The Settlement Treats Class Members Equitable Relative to Each Other.

The final factor, Rule 23(e)(2)(D), looks at whether Class Members are treated equitably. *See* Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement provides for a notice plan that is designed to reach as many Class Members as possible and provides Class Members with direct notice of the Settlement. It also informs Class Members of their right to object to, or opt out of, the Settlement. Every Class Member who submits a valid claim is eligible to receive two years of credit monitoring and a pro rata cash payment, and those who can prove out-of-pocket damages are also eligible to receive reimbursement for damages up to $5,000. The Settlement treats Settlement Class Members equitably to each other, satisfying Rule 23(e)(2)(D)

B. The Court Should Finally Certify the Settlement Class.

The prerequisites for class certification under Rule 23(a) are numerosity, commonality, typicality, and adequacy—each of which is satisfied here. Further, settlement classes are routinely certified in consumer data breach classes, and this case presents no different. In granting preliminary approval this Court already found that it likely would certify the Settlement class. The Court determined that, based on the information provided, numerosity, commonality, typicality, and adequacy were each satisfied and that a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this Action.

By all measures, the Settlement Class continues to meet the requirements of numerosity, commonality, typicality, and adequacy, and because common issues predominate and a class action is the superior means by which to resolve class members' claims, the Court should finally certify the Settlement Class for settlement purposes. Since preliminary approval, nothing has changed the factual predicate relative to the Rule 23(a) and pertinent Rule 23(b) factors that would disrupt the Court's previous analysis. Therefore, Plaintiffs respectfully request that the court finalize its decision for the reasons set forth in Plaintiffs' Preliminary Approval Motion and Supporting Memorandum. *See* ECF 165.

C. The Settlement Administrator Provided Notice Pursuant to the Court's Preliminary Approval Order and Satisfied Rule 23 and Due Process.

To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Fed. R. Civ. P. 23(e); *Phillips*

Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985). Notice provided to the class must be sufficient to allow class members "a full and fair opportunity to consider the proposed decree and develop a response." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). While individual notice should be provided where class members can be located and identified through reasonable effort, notice may also be provided by U.S. Mail, electronic means, or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B). Under Fed. R. Civ. P. 23(c)(2)(B). the notice must:

> clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Here, the short form direct Postcard Notice is the gold standard, and is consistent with Notice programs approved by other courts. *See Stott v. Capital Financial Services*, 277 F.R.D. 316, 342 (N.D. Tex. 2011) (approving notice sent to all class members by first class mail); *Billittri v. Securities America, Inc.*, Nos. 3:09-cv-01568-F, 3:10-cv-01833-F, 2011 WL 3586217, *9 (N.D. Tex. Aug. 4, 2011) (same). The content of the Notice provided adequately informed Settlement Class Members of the nature of the action, the definition of the class, the claims at issue, the ability of a class member to object or exclude themselves, and/or enter an appearance through an attorney, and the binding effect of final approval and class judgment. The Notice utilized clear and concise language that is easy to understand and organized the Notice in a way that allowed Class Members to easily find any section that they may be looking for. The Notice also directed Class Members to the toll-free number and Settlement Website for more information, including where the Long Form Notice and settlement documents could be found. Thus, it was substantively adequate. *See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App'x 752, 764 (10th Cir.), *cert. denied sub nom. Gonzalez v. Elna Sefcovic*, LLC, 141 S. Ct. 851 (2020) ("All that the notice must do is 'fairly apprise ... prospective members of the class of the terms of the proposed settlement' so that class members may come to their own conclusions about whether the settlement serves their interests.") (internal citations omitted).

As outlined in detailed in the supporting declaration of the Settlement Administrator, the Notice Plan here, and its execution, satisfied all the requirements of Rule 23(c). Epiq sent direct notice to all Settlement Class Members for whom valid email and/or mailing addresses were available. Admin. Decl. ¶¶ 24, 26. In total, the Email and Postcard Notices likely reached 94,035 of the 96,911 Settlement Class Members, or approximately 97% of the Class. *Id.* ¶ 31. The Email and Postcard Notices clearly and concisely summarized the Settlement and the legal rights of the Settlement Class Members. In addition, the Email and Postcard Notice also directed the recipients to the Settlement Website where they could access the Long Form Notice and additional information about the Settlement. Admin. Decl. Ex. 4. This reach rate of the Notice falls in the higher end of the goal reach of 70-95% that is often cited as meeting the requirements of Rule 23(c)(2)(B) and due process. *Federal Judicial Center, Judges' Class Action Notice and Claims Process Checklist & Plain Language Guide*, at 3 (2010), www.fjc.gov/sites/default/files /2012/NotCheck.pdf.

As described above, in addition to the direct mail notice, Epiq established a dedicated website for the Settlement where relevant documents were posted for Settlement Class Members to review. Admin. Decl. ¶ 32. The website also allowed Settlement Class Members to submit a claim form online. *Id.* Epiq also established a toll-free telephone number where Settlement Class Members could call and obtain additional information regarding the Settlement. *Id.* ¶ 33.

VI. PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES IS FAIR AND REASONABLE

An award of attorneys' fees is within the sound discretion of the district court. Fed. R. Civ. P. 23(h); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). The common fund doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs out of the fund, has long been a staple of class action settlements in federal courts. "[A] lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gamert*, 444 U.S. 472, 478 (1980); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970).

Fee awards in successful cases, such as the present action, encourage and support meritorious class actions, and thereby promote private enforcement of, and compliance with, federal and state laws. Indeed, the success of lawsuits, such as the instant case, depends on the availability and willingness of attorneys to bring them. Substantial fee awards encourage reputable law firms with skilled, capable attorneys to take the risk of serving as "private attorneys general." *Kramer v. Scientific Control Corp.*, 534 F.2d 1085, 1090 (3d Cir. 1976) (recognizing the importance of private attorneys general in the class action context to ensure "that legislative mandates be obeyed, administrative regulations respected, and constitutional guarantees observed."); *In re Warfarin Sodium Antitrust Litig*., 212 F.R.D. 231, 251 (D. Del. 2002) ("A class action facilitates spreading of litigation costs among numerous litigants and encourages private attorney general enforcement of statutes."); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 349 (N.D. Ga. 1993) (recognizing that "in order to encourage 'private attorney general' class actions" a "financial incentive is necessary to entice qualified attorneys to devote their time to complex, time-consuming cases for which they may never be paid.").

A. The Court May Award Fees Based On The Percentage Of The Common Fund Method.

To calculate attorneys' fees in common fund cases, courts in the Fifth Circuit will typically use: (1) the percentage of the fund method, in which the court awards fees as a reasonable percentage of the common fund cross-checked with (2) the lodestar method, in which the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.,* 669 F.3d 632, 644 (5th Cir. 2012) (endorsing "the district courts' continued use of the percentage method cross-checked with the *Johnson* factors"); *see also Matthews v. Priority Energy Servs.,* No. 6:15CV448, 2018 WL 1939327, at *1 (E.D. Tex. Apr. 20, 2018), report and recommendation adopted, No. 6:15CV448, 2018 WL 2193030 (E.D. Tex. May 11, 2018). In cross-checking the percentage fee, "courts set the lodestar multiplier by applying factors arising out of *Johnson v. Ga. Highway Exp., Inc.,* 488 F.2d 714, 718 (5th Cir. 1974) ("the *Johnson* factors"). Here, the requested fee of approximately one-third (33.33%) of the Settlement Fund is reasonable under the percentage of the fund method and is further confirmed by a loadstar cross-check.

The Fifth Circuit has employed, and even favors, the percentage of the fund method when assessing whether the awards sought for attorneys' fees are reasonable and appropriate. *See Longden v. Sunderman,* 979 F.2d 1095, 1100 n.11 (5th Cir. 1992) (affirming district court's percentage fee award in securities class action, noting that the district court stated its preference for the percentage of recovery approach "as a matter of policy."); *Ramirez v. J.C. Penney Corp., Inc.,* No. 6:14-CV-601, 2017 WL 6462355, at *5 (E.D. Tex. Nov. 30, 2017), report and recommendation adopted, No. 6:14CV601, 2017 WL 6453012 (E.D. Tex. Dec. 18, 2017); *Cunningham v. Kitchen Collection, LLC,* No. 4:17-CV-770, 2019 WL 2865080, at *3 (E.D. Tex.

July 3, 2019); *Batchelder v. Kerr-McGee Corp.,* 246 F. Supp. 2d 525, 531 (N.D. Miss. 2003) ("A percentage fee approach, as opposed to a lodestar computation, is the preferred method for determining awards of attorneys' fees in common fund, or class action, cases."). In this action, Defendant has agreed to pay $750,000 into a Settlement Fund, which will fund, in addition to the Valid Claims of Settlement Class Members and Settlement Administration Costs, the Service Awards and attorneys' fees, costs, and expenses. Class Counsel requests an award of approximately one-third (33.33 percent) of the Settlement Fund, or $250,000.00, as reasonable attorneys' fees. Class Counsel also requests reimbursement of $30,044.81 in out-of-pocket expenses and costs reasonably incurred in the prosecution of this case.

This fee is reasonable and appropriate. Courts in the Fifth Circuit routinely award fees in the range of 30%-36% of the Settlement Fund. *See, e.g., Welsh v. Navy Fed. Credit Union,* No. 5:16-CV-1062-DAE, 2018 WL 7283639, at *16 (W.D. Tex. Aug. 20, 2018) ("When the percentage method is used, fee awards commonly fall between 20% at the low end and 50% at the upper end[.]") (citing *In re Catfish Antitrust Litig.,* 939 F. Supp. 493, 503 (N.D. Miss. 1996) ("The petitioners present to the court citations of numerous cases wherein the presiding judge awarded fees within a range of fifteen (15) to fifty (50) percent."); *Erica P. John Fund, Inc. v. Halliburton Co.,* No. 3:02-CV-1152-M, 2018 WL 1942227, at *12 (N.D. Tex. Apr. 25, 2018) (awarding one-third of the Settlement Fund); *Schwartz v. TXU Corp.,* No. 3:02-CV-2243-K, 2005 WL 3148350, at *27 (N.D. Tex. Nov. 8, 2005) ("Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method."). Therefore, the requested attorneys' fees of one-third of the Settlement Fund, or $250,000.00, is reasonable.

1. The Requested Attorneys' Fees Are Also Warranted Under The Lodestar Method.

Under the lodestar approach, courts first multiply the number of hours reasonably spent on the case by each attorney's reasonable hourly rate in order to compute the lodestar and then adjusts that figure (by applying a multiplier) depending on the respective weights of the twelve factors set forth in *Johnson*. *Forbush v. J.C. Penney Co.,* 98 F.3d 817, 821 (5th Cir. 1996) (citing *Louisiana Power & Light Co. v. Kellstrom,* 50 F.3d 319, 324 (5th Cir.), cert. denied, 133 L. Ed. 2d 113, 116 S. Ct. 173 (1995); *Johnson,* 488 F.2d at 717-719). To compensate Plaintiff's counsel for their work in prosecuting this case, it is appropriate to use current billing rates in calculating the lodestar. *See Missouri v. Jenkins,* 491 U.S. 274, 283-84 (1989) (current rates, rather than historical rates, should be applied in order to compensate for delay in payment). Courts also determine whether the hourly rates are reasonable by comparing them to prevailing hourly rates in the community for similar services by lawyers of comparable caliber in their skills, legal reputation, experience, and status (e.g., partner, counsel, associate). *See, e.g., City of San Antonio v. Hotels.com, L.P.,* No. 5-06-CV-381-OLG, 2017 WL 1382553, at *10 (W.D. Tex. Apr. 17, 2017); *McClain v. Lufkin Indus.,* 649 F.3d 374, 381 (5th Cir. 2011). "The reasonable hourly rate is the rate 'prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.' The relevant legal community is the community where the district court sits." *Fessler v. Porcelana Corona de Mex., S.A. de C.V,* No. 4:17-CV-00001, 2020 WL 1974246, at *5 (E.D. Tex. Apr. 24, 2020).

Here, Class Counsel collectively spent approximately 216.5 hours litigating this or related actions, for a total current lodestar of $225,744.60. *See* Klinger Decl., ¶ 25. The time reflected in these lodestar calculations is reasonable and was necessary for the effective and efficient prosecution and resolution of this litigation. In addition, the fees and expenses incurred in this litigation are all of a type that would normally be charged to a fee-paying client in the private legal marketplace. Class Counsel's current rates are also appropriate in light of prevailing rates for similar legal services provided by lawyers of reasonably comparable skill, experience, and reputation. Other courts have found Class Counsel's rates to be reasonable and have approved them. Further, Plaintiff's requested fee award currently represents a multiplier of 1.12 on Class Counsel's collective lodestar. *Id.* ¶ 27. Because there is additional work required to obtain final approval, monitor the settlement, and assist Class Members, the requested fee will likely reflect no multiplier on the amount of Class counsel's lodestar. *Id.* Therefore, the lodestar crosscheck verifies the reasonableness of the attorneys' fee request.

2. The Johnson Factors Favor Plaintiff's Fee Request.

There are 12 *Johnson* factors: (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 other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (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 (internal quotations omitted). "Not all of the [*Johnson*] factors apply in every case, and the Court has broad discretion to determine which factors are relevant and the weight to assign those factors." *Huyer v. Wells Fargo & Co.*, 314 F.R.D. 621, 628 (S.D. Iowa 2016), *aff'd sub nom. Huyer v. Njema*, 847 F.3d 934 (8th Cir. 2017), and *aff'd sub nom. Huyer v. Buckley*, 849 F.3d 395 (8th Cir. 2017). Each of the *Johnson* factors will vary, depending on the case, and, rather than imposing a rigid application of each factor, the Fifth Circuit has entrusted the lower courts to apply those factors in view of the circumstances of a particular case. *Brantley v. Surles,* 804 F.2d 321, 325-26 (5th Cir. 1986). Courts should pay special attention to the time and labor involved, the customary fee, the amount involved, the result obtained, and the experience, reputation, and ability of counsel. *Von Clark v. Butler,* 916 F.2d 255, 258 (5th Cir. 1990). Here, however, all the *Johnson* factors support the requested fees award.

a. Substantial time and labor was required; Class Counsel assumed great risks.

Class Counsel took this case on a fully contingent basis, investing time, effort and money with no guarantee of ever getting paid. Consideration of the efforts and time expended by Class Counsel and the risk they assumed establish that the requested fee is reasonable and fair.

As noted above, since the inception of this litigation, Class Counsel have exerted substantial efforts to move this case along expeditiously. Collectively, Class Counsel has expended 216.5 hours to litigate and resolve this dispute. All work performed by Class Counsel was necessary, performed without duplicity, and successfully advanced this litigation toward Settlement.

Class Counsel, among other things, have:

a. investigated the potential claims against Defendant, interviewed potential plaintiffs, and gathered information about the Data Incident, including related to Dartmouth specifically, and its potential impact on consumers;

b. drafted and filed a Consolidated Class Action Complaint after the Court granted consolidation and appointed a leadership structure;

c. discussed with Defendant the potential for early resolution, and exchanged confidential information in advance of the settlement discussions, which information provided by Defendant aided Class Counsel in developing an understanding the Data Incident, the breadth of the Data Incident, the size and composition of the Settlement Class as related to Dartmouth, and the potential damages to Class Members;

d. conducted extensive direct negotiations with Defendant through its counsel, which proved successful in resolving the claims and resulted in the terms that would become the present Settlement;

e. prepared for and attended mediation which led to reaching a settlement in principle;

f. prepared the Settlement Agreement and supporting documents, including the Notices, Claim form, proposed preliminary and proposed final approval orders;

g. prepared and submitted Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and supporting brief, which was ultimately granted when the Court preliminarily approved the Settlement (ECF Doc. 167);

h. when necessary, conferred with one another about the status, strategy, and direction of the case and settlement negotiations.

Therefore, the time and labor devoted to the litigation by Class Counsel supports the requested fee.

b. The novelty and difficulty of the questions

The second *Johnson* factor also weighs in favor of awarding the fee requested because data breach class actions are still new and can present novel and complex issues, making a successful outcome difficult to predict. Also, a successful outcome would ensue, if at all, only after prolonged and arduous litigation with an attendant risk of drawn-out appeals. Among national consumer protection class action litigation, data breach cases are some of the most complex and involve a rapidly evolving area of law. As one federal district court observed: "Data breach litigation is evolving; there is no guarantee of the ultimate result." *See Fox v. Iowa Health Sys.,* No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (quoting *Gordon v. Chipotle Mexican Grill, Inc.,* No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex.").

Data breach class actions present novel and difficult legal questions, and are notoriously risky, complex cases involving issues of law and fact as data security continues to develop and evolve. *See, e.g., Kostka*, 2022 WL 16821685, at *11 ("in the Fifth Circuit, there is little case law on the subject of data breaches" and "[t]he fact that the case is now only at the pleading stage indicates that the greatest costs of potential litigation are still ahead, to say nothing of potential appeals"); *Wilson v. Frontier Commc'ns Parent, Inc.*, 2025 WL 2421373, at * 7 (N.D. Tex. June 20, 2025), adopted 2025 WL 2419872 (N.D. Tex. Aug. 20, 2025) ("Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them" and the dearth of Fifth Circuit case law on data breaches).

Class certification in contested consumer data breach cases is not common-first occurring in *Smith v. Triad of Ala., LLC,* No. 1:14-CV-324-WKW, 2017 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017), on reconsideration in part, No. 1:14-CV-324-WKW, 2017 WL 3816722 (M.D. Ala. Aug. 31, 2017), and more recently in *In re Brinker Data Incident Litig.,* No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508, at *1 (M.D. Fla. Apr. 14, 2021) (vacated in part *Green-Cooper v. Brinker Intl., Inc.,* 73 F. 4th 883 (11th Cir. 2023)), where a class was certified over objection to plaintiffs' damage calculation. Class certification was granted in part and denied in part in *In Re Marriott Int. Inc. Customer Data Security Breach Litig.,* No. 19-md-2879, 2022 WL 1396522 (D. Md. May 3, 2022) (vacated and remanded *In re Marriott Int. Inc.,* 78 F.4th 677 (4th Cir. 2023)) (reinstated on remand *In re Marriott Int. Inc. Customer Data Security Breach Litig.,* 345 F.R.D.

137 (D. Md. 2023) (certifying several classes in a data breach class action). And most recently, class certification was granted in *Attias v. CareFirst, Inc.,* with the district court explaining: "[A] class action is the appropriate vehicle for the more than one million CareFirst customers whose information was accessed in the 2014 data breach to pursue their remaining breach of contract claim." 2024 WL 1344401, at *10 (D.D.C. Mar. 29, 2024). The same day as *Attias,* the Western District of Kentucky certified a class action in a data breach action involving the theft of Social Security numbers. *See Savidge v. Pharm-Save, Inc.,* 2024 WL 1366832, at *32 (W.D. Ky. Mar. 29, 2024) ("To summarize the Court's ruling on class certification under Rule 23(b), the Court finds that common questions of law or fact predominate over individual ones; a class action is superior in this case; and the class is readily ascertainable."). While certification of additional consumer data breach classes may well follow, class certification still remains a hurdle in this case.

Accordingly, data breach cases are particularly risky for plaintiffs' attorneys and consequently, the requested fee award appropriately compensates for the risk undertaken by Class Counsel here.

c. The skill requisite to perform the legal service properly

The third *Johnson* factor is the skill requisite to perform the legal service properly. Class Counsel exemplified this factor where they "performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution." *King v. United SA Fed. Credit Union,* 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010) (citing *Di Giacomo v. Plains All Am. Pipeline,* No. H-99-422001, 2001 WL 34633373, at *12, U (S.D. Tex. Dec. 18, 2001). Here, the lawyers representing Plaintiffs are well-experienced in this area of the practice and have successfully litigated data breach cases to settlement. Also, the result achieved in this Settlement is notable because the parties were able, through capable and experienced counsel, to reach a negotiated Settlement without involvement of the Court.

Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement. Counsel achieved a superb result considering the risks of continuing litigation in this matter.

d. Preclusion of other employment by the attorney due to acceptance of the case

The application of the fourth *Johnson* factor (preclusion of other employment by the attorney due to acceptance of the case) provides some level of support for the requested fees because the pursuit of this litigation required a certain concentration of effort which prohibited counsel from engaging in other litigation. Class Counsel invested time, effort, and resources into the litigation of this risky and uncertain case with no guarantee or promise of return on their investment. Klinger Decl. ¶ 17. Class Counsel will continue to expend additional time and effort in communicating with Plaintiff and Settlement Class Members, attending the Final Approval Hearing, and overseeing the distribution of settlement benefits. Klinger Decl. ¶ 27.

e. Customary fee for similar work in the community

As discussed previously, the requested customary billing rates reflect the particular legal expertise of Class Counsel and are also based on established competitive market rates for national cases involving complex and class action litigation. Reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson,* 465 U.S. 886, 895 (1984). Class Counsel is entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Id.*, n. 11. Here, the relevant community is that of attorneys practicing multi-state class action litigation.

Class Counsel's lodestar is calculated using rates that have been accepted in numerous other data breach and consumer class action cases. Class Counsel's hourly rates are also on par with market rates usually charged by other plaintiffs' firms handling complex data-breach class actions. Klinger Decl. ¶ 28. These rates are reasonable considering Class Counsel's significant experience and the relatively specialized and particular nature of this data breach class action. As such, the application of the *Johnson* factor 5 supports the requested attorneys' fees.

f. Whether the fee is fixed or contingent

Class Counsel undertook this litigation on a purely contingent basis, with no assurance of recovery of expenses or compensation for their time. Klinger Decl. ¶ 24. The nature of contingency fees is that they are inherently uncertain and require counsel to assume more risk than in cases where compensation is based on billable hours. Accordingly, *Johnson* factor 6 tips the scales in favor of the requested award because the percentage of fee applied to the total recovery obtained for the client reflects the uncertain nature of contingency fee agreements, and the fee percentage is generally one third of the total recovery and can be higher where risk and likely case expenses are expected to be relatively high.

g. Time limitations imposed by the client or the circumstances

The time constraints here were typical of like-litigation; this factor is therefore neutral.

h. The amount involved and the results obtained

The most critical factor in determining the reasonableness of a fee award is the "degree of the success obtained." *Fessler v. Porcelana Corona De Mex., S.A. DE C.V.,* 23 F.4th 408, 418 (5th Cir. 2022) (citing *Farrar v. Hobby,* 506 U.S. 103 (1992)). The result achieved in this Settlement weighs in favor of the requested attorneys' fees. This most critical factor supports the requested fee because the Settlement Agreement provides significant monetary relief. Specifically, Defendant will establish a Settlement Fund of $750,000, which will be the source of all Settlement Class Member Benefits to Settlement Class Members, Settlement Administration Costs, Service Awards, attorneys' fees, and costs and expenses. Settlement Class Members will be entitled to three separate forms of relief from the Settlement Fund: (1) a *pro rata* cash payment; (2) reimbursement for up to $5,000.00 of documented Out-of-Pocket Losses; and (3) two years of Credit Monitoring. Therefore, this factor also weighs in favor of approval because Class Counsel achieved an excellent Settlement on behalf of the Class, who are entitled to a cash payment and reimbursement for actual losses they may have incurred as a result of the Data Incident.

i. The experience, reputation, and ability of the attorneys

This factor has been addressed under factors 1 and 3 above. Class Counsel collectively have decades of experience litigating consumer class actions, including many involving data breaches, deceptive practices, breach of contract, and other types of allegedly wrongful conduct and have emerged as leaders in nationwide litigation against institutions over data breaches and improper storage and protection of sensitive personal data. Overall, throughout this litigation, Class Counsel have demonstrated to the Court that they have competently handled this litigation. In the process of reaching this Settlement, this case was defended by highly qualified and nationally recognized counsel with a great deal of experience in data breach cases. As such, the prompt resolution of the case further demonstrates that Class Counsel managed this action skillfully, always mindful of Plaintiffs' and Class Members' best interests, while facing challenging opponents, which further attests to the experience, reputation, and ability of the attorneys involved.

j. The undesirability of the case

Given that data breach cases pose unique challenges, with areas of unsettled law and uncertain outcomes, cases like the one before this Court may be less desirable. Moreover, class action litigation is more involved, lengthier, and requires more discovery and more investigation than other types of litigation. Finally, Class Counsel here undertook this litigation on a contingency fee basis, which in itself carries more risk. All these factors contribute to the undesirability of the case.

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

Plaintiffs' counsel spent time building a relationship with the Plaintiffs, discussing claims, and addressing questions and concerns. As addressed under factor 1, before filing the Complaint, counsel investigated the potential claims against Defendant, interviewed potential plaintiffs, and gathered information about the Data Incident, specifically as to Dartmouth and its potential impact on consumers. Plaintiffs' counsel also conferred with Plaintiffs about the status, strategy, and direction of the case and settlement negotiations.

l. Awards in similar cases

Finally, *Johnson* factor 12 (awards in similar cases) also supports the requested fee award. The Settlement is similar to results obtained in other data breach cases, which include, for instance: *In re CaptureRx Data Breach Litig.,* No. 5:21-CV-00523, ECF 54 (W.D. Tex. June 23, 2022) ($4,750,000 non-reversionary common fund for 2.4 million class members including a one-third attorneys' fees of $1,583,333.33 plus litigation expenses); *Dickey's Barbecue,* 2023 WL 3914266, at *17 (granting attorneys' fees of 1/3 of the common fund in a data breach class action settlement); *Phillips v. Bay Bridge Administrators, LLC,* No. 1:23-CV-022-LY, ECF 53 (W.D. Tex. Apr. 24,

2023) ($2,516,890 non-reversionary common fund for 250,899 class members including a one-third attorneys' fees of $838,963.33 plus $19,167.68 in litigation expenses).

For these reasons, Class Counsel should be reasonably compensated for its successful efforts in representing the Class and achieving a beneficial settlement relatively early in the litigation.

In sum, Class Counsel's requested fee of $250,000, or one-third of the Settlement Fund, is facially reasonable under the percentage method. The lodestar crosscheck further confirms the presumption of reasonableness. Application of the *Johnson* factors further confirms the appropriateness of the requested fee award, which, respectfully, should be granted.

B. The Requested Costs are Reasonable

Class Counsel also incurred $30,044.81 in litigation expenses, which were all advanced by Plaintiff's counsel, were necessarily incurred in the prosecution of this case, and were also properly documented and prepared using contemporaneous time records. Such costs and expenses included court fees, service of process, mediation costs, and other costs that are necessary and reasonable to prosecuting a class action.

District courts allow reasonable litigation costs to be paid from the common fund. *See Armstrong*, 2024 WL 1123034, at *6 (awarding costs from common fund where "expenses incurred were reasonably expended in furtherance of the litigation"); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1089 (S.D. Tex. 2012); *DeHoyos*, 240 F.R.D. at 334; Fed. R. Civ. P. 23(h). Thus, $30,044.81 in costs and expenses should be awarded in addition to Class Counsel's attorneys' fee request.

C. The Requested Service Awards Are Reasonable

Class Counsel move this Court to approve a service award of $3,000 to each Class Representative for their service as representatives of the Settlement Class. Courts approve reasonable service awards to compensate the named plaintiffs for their services. *Guadalupe v. Am. Campus Cmtys. Servs.,* No. 1:16-CV-967-RP, 2020 WL 12029307, at *2 (W.D. Tex. Oct. 23, 2020); *see also Matson v. NIBCO Inc.,* No. 5-19-CV-00717-RBF, 2021 WL 4895915, at *13 (W.D. Tex. Oct. 20, 2021), aff'd sub nom. *Garcia v. Matson*, No. 21-51151, 2022 WL 6935303 (5th Cir. Oct. 12, 2022) (finding that an award of $10,000 to each plaintiff was appropriate under the circumstances of the case and would adequately compensate plaintiffs for the service they provided and the burdens they shouldered.); *Blackburn v. Conduent Commer. Sols. LLC,* No. 1:19-CV-1229-RP, 2020 WL 9810023, at *3 (W.D. Tex. Dec. 22, 2020) (approving an award of $2,500 where plaintiff was instrumental in identifying the alleged violation and building the case). Likewise, the Plaintiffs here have been instrumental in assisting Class Counsel throughout this proceeding. Klinger Decl., ¶ 34. This involvement was not merely nominal. *Id.* Plaintiffs initiated and remained in contact with their counsel; considered and questioned various pleadings in this case; provided background documents and followed the progress of this litigation; and have been actively involved in the prosecution of the case, to ensure that Class Members received the best recovery possible given the particular circumstances and risks of the case. Balancing the services that Plaintiffs rendered against the modest amount of the $3,000 requested, the Court should find such amount is reasonable

VII. CONCLUSION

In sum, Plaintiffs have negotiated fair, adequate, and reasonable Settlement that provides Class Members with significant relief, and the Settlement Administrator and Class Counsel have executed a highly successful notice program that meets all the requirements of Rule 23 and satisfies due process requirements. The Notice Plan provided the best notice practicable and afforded enough time to provide full and proper notice to Settlement Class Members before the opt-opt and objection deadlines. The Class's support of the Settlement indicates that it is fair, reasonable, and adequate, warranting final approval.

For the reasons set forth above, Plaintiffs request that the Court enter an order finally approving the Settlement as fair, reasonable, and adequate under Rule 23(e)(2), certifying the Settlement Class for purposes of judgment on the Settlement, and granting Plaintiff's request for attorneys' fees, expenses and a service award.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

Dated: September 21, 2026

Respectfully submitted,

By: /s/ *Gary M. Klinger*

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CERTIFICATE OF CONFERENCE

I, Gary Klinger, Interim Co-Lead Class Counsel and Counsel for Plaintiffs, hereby aver pursuant to W.D. Tex. R. CV-7(g), that I have conferred with the Defendant about the relief sought in this motion, and Defendant agreed not to oppose the relief sought.

/s/ Gary M. Klinger
Gary M. Klinger

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing document was served on all counsel of record on September 21, 2026 via CM/ECF, in accordance with he Federal Rules of Civil Procedure.

/s/ Gary M. Klinger
Gary M. Klinger