

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
COUNTY OF SANGAMON**

AARON UMBERGER and TRACEY
BRUNER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

KERBER, ECK & BRAECKEL LLP,

Defendant.

Case No. 2024LA000198

Hon. Jack D. Davis, Jr.

**PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF FEE AWARD,
EXPENSES AND SERVICE AWARDS**

Plaintiffs, Aaron Umberger and Tracy Bruner, along with Jessica Kurtz¹ (“Plaintiffs”), through their undersigned counsel, respectfully move the Court for entry of an Order approving: (1) Class Counsel’s requested Fee Award of \$466,666.67; (2) Expenses of up to \$20,000²; and (3) Service Awards to each of the Class Representatives in the amount of \$5,000.

I. BACKGROUND

A. History of Litigation

Between January 27 and February 7, 2023, Kerber, Eck & Braeckel LLP (“KEB” or “Defendant”) discovered suspicious cyber activity by an unauthorized third-party threat actor on its computer network at KEB’s Marion, Illinois office (the “Data Incident”). Amended Class Action Complaint (“Am. Compl.”) ¶ 29. Plaintiffs allege the affected files potentially contained the Private Information³ of approximately 103,645 individuals who were, or are, patients of KEB’s healthcare provider clients. Settlement Agreement⁴ (“S.A.”) ¶ 2.

On August 21, 2024, Plaintiff Aaron Umberger, individually and on behalf of a putative class, filed the *Umberger Action* in this Court, asserting claims for negligence, negligence *per se*, breach of implied contract, unjust enrichment, breach of fiduciary duty, breach of confidence,

¹ The Court provisionally designated and appointed Plaintiff Kurtz as a Class Representative in its July 27, 2025 Order granting preliminary approval. Plaintiffs Umberger, Bruner, and Kurtz are collectively referred to herein as “Plaintiffs” or “Class Representatives.”

² Settlement Class Counsel seek reimbursement of up to \$20,000.00 in litigation costs and expenses, consistent with the terms of the Settlement Agreement. To date, Counsel have incurred \$4,610.27 in documented costs, which include filing fees, mediation fees, and other expenses reasonably necessary to prosecute the litigation. Additional costs may be incurred prior to the January 7, 2026 Final Approval Hearing, and Class Counsel will include an updated accounting of all costs incurred to date in their Motion for Final Approval. Miller Fee Decl. ¶ 21.

³ Unless otherwise indicated, the capitalized terms contained herein carry the same meaning as those in the Settlement Agreement.

⁴ The Settlement Agreement is attached to the Declaration of Cassandra P. Miller, filed with Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement on June 24, 2025, as Exhibit 1.

breach of third-party beneficiary contract, and declaratory judgment. The *Umberger Action* was assigned to the Honorable Judge Jack D. Davis, Jr.

On October 25, 2024, Plaintiff Jessica Kurtz filed *Jessica Kurtz v. Kerber, Eck & Braeckel LLP*, Case No. 2024LA000264 (the “*Kurtz Action*”), in this Court, also asserting claims for negligence, negligence *per se*, unjust enrichment, and breach of implied contract against KEB. The case was assigned to the Honorable Joseph B. Roesch.

On November 22, 2024, Plaintiff Umberger amended his complaint in the *Umberger Action* to add Plaintiff Bruner and to assert the same causes of action. The *Umberger* and *Kurtz Actions* were subsequently coordinated for purposes of settlement, and the Court provisionally designated and appointed Plaintiff Kurtz as a Class Representative in its July 27, 2025 Order granting preliminary approval.

B. Negotiations and Settlement

To avoid protracted litigation, the Parties engaged Hon. Ronald B. Leighton (Ret.), an experienced mediator, to assist in settlement discussions. *See* Declaration of Cassandra P. Miller in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs and Service Awards⁵ (“Miller Fee Decl.”) ¶ 10.

Prior to the mediation, Plaintiffs requested and Defendant produced informal discovery necessary to evaluate the strengths and weaknesses of Plaintiffs’ claims, including information about the size and scope of the Data Incident and Defendant’s response thereto. *Id.* On February 5, 2025, the parties participated in a formal mediation with Judge Leighton and made substantial progress toward resolution. *Id.* ¶ 11. With continued assistance from the mediator, the Parties reached an agreement in principle on or about February 12, 2025, to resolve all claims on a class-

⁵ The Fee Declaration is attached hereto as **Exhibit A**.

wide basis. Importantly, attorneys' fees and service awards were not negotiated until after the Parties agreed on relief for the Settlement Class. *Id.*

In connection with these discussions, Plaintiffs Umberger and Bruner filed an amended complaint on April 11, 2025, and Plaintiff Kurtz agreed to stay her related action pending approval of the settlement. *Id.* ¶ 12. The Parties finalized and executed the Settlement Agreement on June 23, 2025. *Id.*

C. Summary of Settlement Terms

The Settlement provides meaningful and timely relief to the Settlement Class, defined as:

All individuals residing in the United States whose Private Information was identified as being actually or potentially accessed, compromised or impacted in connection with the Data Incident discovered by KEB in February 2023.

S.A. ¶ 51. The Settlement negotiated on behalf of the Class provides for the creation of a non-reversionary common fund in the amount of \$1,400,000. The Settlement Fund is structured to provide cash and Credit Monitoring benefits to Participating Settlement Class Members, as well as Notice and Administrative Expenses, the requested Fee Award and Expenses, and the requested Service Awards. *Id.* ¶¶ 54, 67, 75(i)-(iii), 112, 114.

Participating Settlement Class Members may make a claim for Unreimbursed Economic Losses up to \$10,000 upon submission of a valid Claim Form and supporting documentation. *Id.* ¶ 75(i). Unreimbursed Economic Losses must be fairly traceable to the Data Incident, and include, *inter alia* and without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services. *Id.*

Moreover, Participating Settlement Class Members can elect to make a claim for a *pro rata* share of the Net Settlement Fund, less all valid claims for Unreimbursed Economic Losses. *Id.* ¶

75(ii). To receive this benefit, Participating Settlement Class Members must submit a valid Claim Form, but no documentation is required to make a claim. *Id.* The amount of these Cash Payments will be increased or decreased on a *pro rata* basis to exhaust the Settlement Fund, depending upon the number of valid claims filed and the amount of funds available for these payments. Class Counsel predicts the value of *pro rata* payments will exceed fifty dollars and no/100 cents (\$50.00) per valid claimant, although the final amount paid will depend on the above-referenced factors and is not guaranteed. *Id.*

All Settlement Class Members will be offered two years of three-bureau Credit Monitoring Services upon submission of a valid Claim Form, regardless of whether the Settlement Class Member submits a claim for reimbursement of compensation for Unreimbursed Economic Losses, and/or *Pro Rata* Cash Payment. *Id.* ¶ 75(iii). This will ensure that Settlement Class Members' Private Information is protected well into the future.

Finally, in addition to the direct compensation to Settlement Class Members, the Settlement Agreement also provides for remedial measures taken by Defendant which protect Settlement Class Members' data still held by Defendant. Under the terms of the Agreement, Defendant must attest to the implementation of additional data security measures put in place since the Data Incident. *Id.* ¶ 92. None of the past or future costs associated with the development and implementation of these additional security procedures has been or will be paid by the Plaintiffs or the Settlement Class, and no portion of the relief available to Settlement Class Members will be used for this purpose. *Id.*

II. ARGUMENT

Illinois adheres to the "American Rule," under which each party bears its own attorney's fees and costs absent statutory or contractual authorization. *McNiff v. Mazda Motor of Am., Inc.*,

384 Ill. App. 3d 401, 405 (4th Dist. 2008) (quoting *Negro Nest, L.L.C. v. Mid-Northern Mgmt., Inc.*, 362 Ill. App. 3d 640, 641-2 (4th Dist. 2005)) (quotations omitted). Where a statute or contract expressly authorizes fee recovery, “the court may award fees so long as they are reasonable.” *Id.* (citing and quoting *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 405 (1st Dist. 2007)).

Here, the Parties’ Settlement Agreement expressly authorizes an award of attorneys’ fees, costs, and expenses up to 33.33% of the Settlement Fund (or \$466,666.67).⁶ S.A. ¶ 114.

A. The Court Should Apply the Percentage-of-Fund Method in this Case

When awarding attorneys’ fees in a class action, the Court must ensure counsel are “fairly compensated for the amount of work done as well as for the results achieved.” *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 244 (1995). The choice between the percentage-of-fund and lodestar methods lies within the Court’s sound discretion, guided by the facts and circumstances of each case. *Id.*

Illinois and federal courts overwhelmingly favor the percentage-of-fund approach in common-fund cases because it best reflects market realities and judicial efficiency. As the Illinois Appellate Court has explained, the percentage method “eliminates the need for additional major litigation and further taxing of scarce judicial resources,” and “most federal circuits have abandoned the lodestar in favor of a percentage fee.” *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924–25 (1st Dist. 1995). The approach also avoids unnecessary “lodestar cross-checks,”

⁶ See William B. Rubenstein, 5 NEWBERG ON CLASS ACTIONS § 15:12 (5th ed. 2019) (parties to suit may have private agreements concerning fees which may include agreement between class counsel and defendant whereby defendant agrees to pay a certain fee requested by class counsel); see also *Evans v. Jeff D.*, 475 U.S. 717, 738 n.30 (1986) (parties may simultaneously negotiate a “defendant’s liability on the merits and his liability for his opponents attorney’s fees”).

which courts have found unnecessary. *Fauley v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58, 52 N.E.3d 427, 441 (affirming 33% fee award without cross-check); *Perez v. Rash Curtis & Associates*, No. 4:16-cv-03396-YGR, 2020 U.S. Dist. LEXIS 68161, at *52 (N.D. Cal. Apr. 17, 2020) (“Generally, a district court is ‘not required’ to conduct a lodestar cross-check to assess the reasonableness of a fee award.”).

Courts determining which method to apply “look to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500-01 (N.D. Ill. 2015) (citing *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998)). In the class action context, “the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs’ ultimate recovery.” *Id.* Accordingly, both state and federal courts recognize that the percentage-of-fund approach most accurately reflects the fair market value of class counsel’s services. *See Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 199 (N.D. Ill. May 30, 2018) (percentage method “preferable to the lodestar method”); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D. Ill. 2015) (same); *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 2006) (“When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee is the ‘market rate.’”); *Ryan*, 274 Ill. App. 3d at 923 (1st Dist. 1995) (noting that “a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases”) (citation omitted).

The percentage-of-fund method not only reflects market practice but also aligns counsel’s interests with those of the class by tying compensation to results rather than hours billed. *See Brundidge*, 168 Ill.2d at 242; *Girsch v. Hiffman*, 2020 Ill. Cir. LEXIS 2697, at *16 (Cir. Ct. Cook Cnty. July 30, 2020) (“An attractive aspect of the ‘percentage of recovery method is its results-driven nature which “ties the attorneys’ award to the overall result achieved rather than the hours

expended by the attorneys”) (citation omitted). This approach rewards efficiency, discourages unnecessary motion practice, and better incentivizes early, meaningful resolutions that maximize recovery for the Class. *Kolinek*, 311 F.R.D. at 501 (noting that a lodestar method would “require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis, something a class of nine million lightly-injured plaintiffs likely would not be interested in doing”); *Ryan*, 274 Ill. App. 3d at 924.

Thus, the percentage-of-fund method best replicates the ex-ante market agreement between informed clients and counsel, ensures proportionality between results and reward, and conserves judicial resources. Consistent with the prevailing authority in Illinois and beyond, this Court should apply the percentage-of-the-fund method to determine Class Counsel’s fee.

B. The Requested Fee Award and Expenses are Reasonable as a Percentage of the Class Benefit

As numerous courts have recognized, the normal rate of compensation is 33.33% of the common fund recovered because the class action market commands contingency fee agreements and the class counsel accepts a substantial risk of nonpayment. *Chambers v. Together Credit Union*, Case No. 19-CV-00842-SPM, 2021 U.S. Dist. LEXIS 92151, at *4 (S.D. Ill. May 14, 2021); (citing *George v. Kraft Foods Global, Inc.*, No. 1:08-cv-3799, 2012 U.S. Dist. LEXIS 166816, (N.D. Ill. Jun. 26, 2012).

Thus, an award to Class Counsel of 33.33% of the Settlement Fund is well within the range of fees typically awarded to class counsel by Illinois courts in comparable class action settlements. *Winking v. Smithfield Fresh Meats Corp.*, No.: 1:22-cv-01937, 2022 U.S. Dist. LEXIS 202644, at *6 (N.D. Ill. Nov. 4, 2022) (approving plaintiffs’ counsel’s award of one-third of \$180,000 gross settlement amount as reasonable attorneys’ fees); *Wolfe v. TCC Wireless, LLC*, No. 16 C 11663, 2018 U.S. Dist. LEXIS 40596, at *9 (N.D. Ill. Mar. 12, 2018) (granting class counsel’s request for

one-third of \$1,150,000 common fund); *Kim Young v. Cty. of Cook*, Case No. 06 C 552, 2017 U.S. Dist. LEXIS 152466, *6, *17 (N.D. Ill. Sept. 20, 2017) (granting plaintiffs motion for attorney’s fees, finding that one-third of a \$32.5 million common fund was a “reasonable approximation of the rate that would have been negotiated *ex ante* in this case.”); *Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, No. 16 Civ. 3571, 2016 U.S. Dist. LEXIS 126893, at *8 (N.D. Ill. Sept. 16, 2016) (granting request for one-third of the settlement fund for attorneys’ fees plus costs); *see also, e.g., Fauley*, 2016 IL App (2d) 150236, at ¶ 59 (upholding an attorneys’ fees award of one-third of a reversionary fund recovered in light of the “substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]”); Final Approval Order and Judgement at 5, 2023 CH 14, *Tracy Bruner et al. v. Southern Illinois Hospital et al.*, (Cir. Ct. Jackson Co. Ill., Jan. 6, 2025) (approving plaintiffs’ counsel’s request for fee award of 35% of common fund in data breach class action settlement).

Furthermore, Plaintiffs’ request falls squarely within the acceptable range of approved attorney’s fee and expense requests in data breach matters throughout the nation. *In re Phila. Inquirer Data Sec. Litig.*, NO. 24-2106-KSM, 2025 U.S. Dist. LEXIS 48541, at *35-37, *41 (E.D. Pa. Mar. 18, 2025) (approving 33% fee award distribution of a common fund of \$525,000, noting “[c]ourts using the percentage-of-recovery method to calculate attorneys’ fees generally approve fees ranging ‘from roughly 20-45%.’”); *In re Cinfed Fed. Credit Union Data Breach Litig.*, No. 1:23-cv-776, 2025 U.S. Dist. LEXIS 109746, at *15, *27, *43 (S.D. Ohio June 10, 2025) (approving attorney’s fees of 25% of the \$700,000 common fund and litigation expenses of \$12,287); *In re Fortra File Transfer Software Data Sec. Breach Litig.*, (case nos. omitted), 2025 U.S. Dist. LEXIS 23719, at *56 (S.D. Fla. Feb. 11, 2025) (approving attorney’s fees of 33.3%, of the \$7,000,000.00 common fund and \$39,237.40 in reasonable litigation costs); *In re Onix Grp.*,

LLC Data Breach Litig., NO. 23-2288-KSM, 2024 U.S. Dist. LEXIS 225686, at *7. *46-47 (E.D. Pa. Dec. 13, 2024) (approving attorney’s fees of 33.3% of the \$1,250,000 common fund and \$12,032 in litigation expenses); *Holden v. Guardian Analytics, Inc.*, No.: 2:23-cv-2115, 2024 U.S. Dist. LEXIS 100349, at *4, *28, *38 (D.N.J. June 5, 2024) (approving attorney’s fees of 33.3% of the \$1,430,207.50 common fund and \$9,101.19 in expenses); *Beasley v. Ttec Servs. Corp.*, (case nos. omitted), 2024 U.S. Dist. LEXIS 29759, at *6, *19 (D. Colo. Feb. 21, 2024) (approving attorney’s fees of 30% of the \$250,000 common fund and \$14,080.53 in expenses); *Farmer v. Humana Inc.*, Case No. 8:21-cv-1478-MSS-SPF, 2022 U.S. Dist. LEXIS 232541, at *3, *10, *16 (M.D. Fla. Dec. 18, 2022) (approving attorney’s fees of 30% of the \$660,000 common fund, noting a “fee award of thirty percent of the common fund is consistent with fee awards in similar cases”); *Wave Lengths Hair Salons of Fla., Inc. v. CBL*, No. 2:16-cv-206-FtM-PAM-MRM, 2019 U.S. Dist. LEXIS 239523, at *46 (M.D. Fla. Aug. 22, 2019) (“[n]umerous decisions have found that a thirty percent fee is well within the range of a customary fee”) (collecting cases).

When assessing the reasonableness of fees, courts consider the following factors: (1) the nature of the case; (2) the case’s novelty and difficulty level; (3) the skill and standing of the attorney; (4) the degree of responsibility required; (5) the usual and customary charges for similar work; and (6) the connection between the litigation and the fees charged. *McNiff*, 384 Ill. App. 3d at 407 (quoting *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314-15 (1st Dist. 2007)) (quotations omitted). Here, each of these factors is satisfied.

1. The Nature of the Case and the Case’s Difficulty Level

This case involved substantial litigation risk and complex legal issues. Had litigation continued, Plaintiffs would first have needed to survive a motion to dismiss—an especially challenging task in data-breach class actions given the unsettled and evolving law on standing, causation, and damages. See *Panighetti v. Intelligent Bus. Sols., Inc.*, No. 1:23CV209, 2025 U.S.

Dist. LEXIS 123406, at *11 (M.D.N.C. June 30, 2025) (granting motion to dismiss data breach class action); *Solomon v. Deer Oaks Mental Health Assocs., P.C.*, No. SA-23-CV-1465-FB, 2024 U.S. Dist. LEXIS 180416, at *12 (W.D. Tex. Sept. 2024) (same); *McCombs v. Delta Grp. Elecs., Inc.*, 676 F. Supp. 3d 1064, 1074 (D.N.M. June 9, 2023) (same).

Beyond the pleading stage, class certification would have posed another major hurdle. Courts have denied certification in other data-breach cases, underscoring the uncertainty of success. *See In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA, 2024 U.S. Dist. LEXIS 86740, at *94 (D.S.C. May 14, 2024).⁷ Even a favorable ruling would likely have triggered appeals, further increasing costs and delaying recovery for years.

Despite these risks, Class Counsel undertook this case on a wholly contingent basis, with no guarantee of payment. They devoted significant attorney time and resources to investigating the breach, negotiating the settlement, and obtaining valuable relief for the Class—all without any upfront compensation. Miller Fee Decl. ¶¶ 8-9. In addition to attorney time spent on the case, Class Counsel also advanced \$4,610.27 in out-of-pocket expenses with no guarantee of repayment. *Id.* ¶¶ 6, 19. Had the case proceeded through discovery, certification, and appeal, those costs would have multiplied many times over. *Id.* ¶ 6.

Despite these risks, Class Counsel achieved an excellent result for the class. Defendant has agreed to pay for a non-reversionary common fund in the amount of \$1,400,000.00 for the benefit of the Settlement Class. S.A. ¶ 54. Participating Settlement Class Members can now submit Claims for two years of three-bureau Credit Monitoring, and Unreimbursed Economic Losses of up to

⁷ Plaintiffs note the court in *Blackbaud* found a lack of ascertainability, which Plaintiffs contend is not at issue here because Defendant purportedly maintains the very data—due to Defendant’s direct relationships with the Class—necessary to determine who was the subject of the Data Incident and what PII was taken for each Settlement Class Member.

\$10,000 or a *pro-rata* cash payment. *Id.* ¶ 75(i)-(iii). These benefits provide immediate and meaningful compensation and preventative protection for the Class—relief that would have been uncertain, costly, and delayed absent settlement.

Accordingly, the nature, complexity, and risk of this litigation strongly support the reasonableness of the requested fee.

2. The Skill and Standing of the Attorneys Supports the Requested Fees

Class Counsel, the attorneys at Strauss Borrelli, PLLC, Siri & Glimstad LLP and Milberg Coleman Phillips Grossman, PLLC, are highly experienced and well-regarded firms with deep expertise in complex class actions, particularly in the fields of data privacy and cybersecurity. Miller Fee Decl. ¶ 16. Collectively, they have served as lead or co-lead counsel in dozens of data breach class actions nationwide and have successfully litigated and resolved similar matters against major corporate and institutional defendants. Miller Fee Decl. ¶ 17. Their extensive experience and demonstrated leadership in this niche area of law ensured that the case was prosecuted efficiently and effectively, resulting in an excellent outcome for the Settlement Class.

Courts recognize that the skill and experience of counsel are critical factors in evaluating fee requests. *In re Folding Carton Antitrust Litigation*, 84 F.R.D. 245, 268 (N.D. Ill. 1979) (“Where counsel had been involved in class action litigation in the past, a presumption arose that such experience...allowed those attorneys to exhibit a fair degree of skill in this litigation...where counsel have had lead positions in prior multidistrict litigation, it could fairly be inferred...they had higher organizational and efficiency capabilities than the average attorney.”)

Similarly, KEB was defended by highly skilled and experienced counsel, further demonstrating the effectiveness of Class Counsel’s efforts. Miller Fee Decl. ¶ 14. The experience, reputation, and ability of the attorneys at Strauss Borrelli, PLLC, Siri & Glimstad LLP and Milberg Coleman Phillips Grossman, PLLC justifies their Fee and Expense Application. Given the caliber

of defense counsel and the experience of Class Counsel, the result achieved underscores the reasonableness of the requested fee.

3. The Settlement was the Result of Arm's-Length Negotiations Between the Parties after a Significant Exchange of Information

Courts endorse class action settlements where certain “indicia of trustworthiness,” such as third-party mediation, extensive confirmatory discovery, and arm’s length negotiations, demonstrate that the result was fair and non-collusive. *Roberts v. Graphic Packaging Int’l, LLC*, No. 3:21-cv-00750-DWD, 2024 U.S. Dist. LEXIS 122323, at *8 (S.D. Ill. July 11, 2024); *In re Tiktok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 934 (N.D. Ill. July 28, 2022). Indeed, settlements are regularly granted approval where a court finds that they are the product of informed, non-collusive, arm’s length negotiations. *See Rysewyk v. Sears Holdings Corp.*, No.: 1:15-cv-4519-MSS, 2019 U.S. Dist. LEXIS 236004, at *17 (N.D. Ill. Jan. 29, 2019) (finally approving class settlement, noting the parties engaged in “considerable arm's-length bargaining following extensive discovery and litigation. A proposed class action settlement is considered presumptively fair where, as here, there is no evidence of collusion and the parties, through capable counsel, have engaged in arm’s-length negotiations.”) (quoting Manual for Complex Litigation, Third, § 30.42 (West 1995)).

Class Counsel devoted significant time and effort to developing the case, investigating the breach, and negotiating a favorable resolution on behalf of the Class. Miller Fee Decl. ¶ 10. Working cooperatively with Defendant’s Counsel, Class Counsel obtained critical information through informal discovery before mediation, including details regarding the size and scope of the Class, the categories of Private Information potentially affected, and Defendant’s remedial measures in response to the Data Incident. Miller Fee Decl. ¶ 10. The Parties also exchanged detailed and comprehensive mediation statements outlining their respective factual and legal

positions. *Id.*

On February 5, 2025, the Parties participated in a mediation with Judge Leighton, which ultimately led to an agreement. *Id.* ¶ 11. Thus, through the undertaking of a thorough investigation, informal discovery, and substantial arm's-length negotiations, Class Counsel obtained a settlement that provides real and significant monetary benefits to the Class. *Id.* ¶ 6. Since that time, Class Counsel have moved for preliminary approval, are submitting this Fee and Expense Application, and are diligently monitoring the notice program and claims administration process. *Id.* ¶ 13. Thus, this factor is met.

4. The Usual and Customary Charges for Similar Work

Class Counsel's work on this matter required a significant commitment of time and resources, necessarily limiting their ability to accept other complex class cases. *Id.* ¶ 18. Throughout this litigation, Class Counsel prosecuted the case on a wholly contingent basis, assuming all risk of non-payment while advancing necessary litigation expenses totaling \$4,610.27. Miller Fee Decl. ¶¶ 6, 19. These expenditures, which included mediation fees, filing fees, and service costs, were reasonable, necessary, and consistent with prevailing market rates. *Id.* ¶ 20.

Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, 12 C 5134, 2014 U.S. Dist. LEXIS 83936, at *12 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Fauley*, 2016 IL App (2d) 150236, ¶ 15 (affirming settlement award which included \$592,094 as a reimbursement for costs and expenses). Accordingly, Class Counsel's request for reimbursement of total reasonable costs and expenses in the amount of \$4,610.27 should be approved.

Moreover, the requested Fee Award of 33.33% of the Settlement Fund, together with

\$4,610.27 in expenses, is consistent with market norms. *Id.* ¶ 22; *see supra* pp. 8-9. Courts in Illinois and nationwide routinely approve fee awards of one-third or more in comparable complex class action settlements. *See, e.g., Martin v. Safeway, Inc.*, 2020 CH 5480 (Cir. Ct. Cook Cnty., Ill.) (FACTA case awarding 40% fees (\$8,000,000), plus costs); *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016) (awarding a 40% fee in BIPA class settlement); *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill. 2018) (same). These authorities confirm that Class Counsel’s fee and expense request falls well within the range commonly approved in similar class settlements.

5. *The connection between the litigation and the fees charged*

Class Counsel’s hourly rates are consistent with prevailing market rates for complex class action litigation and reflect the high caliber of work performed. Miller Fee Decl. ¶ 22. Courts routinely approve comparable or higher rates for experienced class action attorneys. *McCabe v. Heid Music Co., Inc.*, Case No. 23-CV-1215-JPS-JPS, 2024 U.S. Dist. LEXIS 97850, at *4 (W.D. Wis. June 3, 2024) (approving hourly rates of \$750); *Watchfire Signs LLC v. Catalyst Outdoor Adver. LLC*, Case No. 21-2128, 2023 U.S. Dist. LEXIS 132728, at *18 (C.D. Ill. June 21, 2023) (approving “Plaintiffs’s counsel[‘s] actual billing rates” of \$700 and \$500 hourly) (emphasis in original); *Linda G. v. Saul*, 487 F.Supp.3d 743, 748 (N.D. Ill. 2020) (approving hourly rates of \$700); *Bianco v. Colvin*, No. 3:14cv98, 2016 U.S. Dist. LEXIS 45097, at *3 (N.D. Ind. Apr. 4, 2016) (approving effective rate of \$825 per hour); *Zerlaya v. City of LA*, Case No. 2:20-cv-08382-ODW (MAAx), 2024 U.S. Dist. LEXIS 112652, at *9 (C.D. Cal. June 25, 2024) (approving \$700 and \$920 hourly).

Given Class Counsel’s substantial experience, strong reputation, and the outstanding result achieved for the Class, the requested fees are fully justified. This factor therefore weighs heavily in favor of approving the requested Fee and Expense Award.

C. The Requested Service Awards are Reasonable and Should be Approved

The request of a \$5,000 Service Award for each Plaintiff is reasonable compared to other service awards granted to class representatives in similar class actions. Because a named Plaintiff is essential to any class action, “[i]ncentive awards are justified when necessary to induce individuals to become named representatives.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (service awards “are not atypical in class action cases...and serve to encourage the filing of class actions suits”). The requested \$5,000 Service Awards to each Class Representative will be paid from the Settlement Fund.

Plaintiffs Aaron Umberger, Tracey Bruner, and Jessica Kurtz assisted in the investigation of this case, participated in extensive interviews, reviewed and approved pleadings and the Settlement Agreement, stayed in contact with Class Counsel, and answered Class Counsel’s many questions. Miller Fee Decl. ¶ 23. Without the efforts of Plaintiffs, the thousands of other Settlement Class Members would not have received the benefits of the Settlement. Plaintiffs committed to participate actively in what they knew could be a long and hard-fought lawsuit, and to do so on behalf of a Class of hundreds of other Settlement Class Members, with no guarantee of ever being compensated. *Id.* ¶ 25. Even though no award of any sort was promised to Plaintiffs, they contributed their time and effort by assisting in the litigation, aiding in the preparation of the Complaint, and approving of the Settlement. *Id.* Further, by agreeing to serve as a Class Representatives, Plaintiffs publicly placed their name on this suit and opened themselves to “scrutiny and attention” which, in and of itself, “is certainly worthy of some type of remuneration.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011). Now that a substantial recovery has been made on behalf of the Class, Plaintiffs’ efforts in bringing and litigating this

case should be recognized and rewarded.

The \$5,000 Service Awards requested for Plaintiffs are well in line with the average service awards granted in class actions. Indeed, numerous courts that have granted final approval in similar class-action settlements have awarded larger service payments, collectively and individually, than what is sought here. *See, e.g., Quinn v. JK Buick GMC, Inc.*, No.: 1:23-cv-00447, 2024 U.S. Dist. LEXIS 201758, at *12-13 (N.D. Ill. Oct. 30, 2024) (finding a \$9000 service award to class representative “fair and reasonable”); *Robertson v. Hostmark Hospitality Grp., Inc.*, 2022 Ill. Cir. LEXIS 493, at *6 (Cir. Ct. Cook Cnty., Ill., 2022) (approving \$7,500 service award to class representative); *Shankula v. Ticketsonsale.com, LLC*, 2023 Ill. Cir. LEXIS 1, at *9 (Cir. Ct. DuPage Cnty., Ill., 2023) (approving \$15,000 in service awards, \$5000 to each of the 3 class representatives); *Watts v. Aurora Chi. Lakeshore Hosp., LLC*, 2019 Ill. Cir. LEXIS 8917, at *1 (Cir. Ct. Cook Cnty., Ill., 2019) (approving service award of \$10,000 to class representative); *Fauley*, 2016 IL App (2d) 150236, ¶15 (affirming trial court’s approval of \$15,000 incentive awards to class representatives).

III. CONCLUSION

In cases like this that vindicate the rights of consumers, “[i]t must be remembered that the award of attorney’s fees in certain cases is necessary to provide an incentive to counsel for the representation of a class.” *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1356 (N.D.Ill.1974). For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (i) approving their Fee Award of \$466,666.67 and Expenses of up to \$20,000.00; and (ii) approving Service Awards in the amount of \$5,000.00 to Plaintiffs in recognition of their significant efforts on behalf of the Class Members.

Dated: October 14, 2025

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CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on October 14, 2025, I electronically filed the foregoing with the Clerk of the Court using the Illinois Odyssey e-file system, which will send notification of such filing to counsel of record.

DATED this 14th day of October, 2025.

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— EXHIBIT A —

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
COUNTY OF SANGAMON**

AARON UMBERGER and TRACEY
BRUNER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

KERBER, ECK & BRAECKEL LLP,

Defendant.

Case No. 2024LA000198

Hon. Jack D. Davis, Jr.

**DECLARATION OF CASSANDRA P. MILLER IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR APPROVAL OF FEE AWARD, EXPENSES AND
SERVICE AWARDS**

I, Cassandra P. Miller, hereby declare as follows:

1. I am a partner at Strauss Borrelli PLLC. I am one of the lead attorneys for Plaintiffs and proposed Class Representatives, Aaron Umberger, Tracey Bruner, and Jessica Kurtz¹ (collectively, “Plaintiffs”) and for the proposed Settlement Class. I submit this declaration in support of *Plaintiffs’ Unopposed Motion for Approval of Fee Award, Expenses and Service Awards*. I make this Declaration based on my personal knowledge, and if called to testify, I could and would competently testify to the matters contained in this declaration.

2. I, my firm, and the attorneys of Siri & Glimstad LLP and Milberg Coleman Phillips Grossman, PLLC (collectively, “Settlement Class Counsel”), have vigorously prosecuted this litigation on behalf of Plaintiffs and the putative Settlement Class since its inception and dedicated

¹ The Court provisionally designated and appointed Plaintiff Kurtz as a Class Representative in its July 27, 2025 Order granting preliminary approval. Plaintiffs Umberger, Bruner, and Kurtz are collectively referred to herein as “Plaintiffs” or “Class Representatives.”

significant time and resources to this litigation—and will continue to do so through Final Approval. The prosecution of this litigation was done solely on a contingent fee basis, and Class Counsel have been completely at risk that they would not receive any compensation for prosecuting claims against the Defendant.

3. Prior to filing suit, Class Counsel conducted extensive investigations into the Data Incident. Class Counsel had to understand Defendant Kerber, Eck & Braeckel LLP's, ("Defendant") business and its relationship with its customers' patients. Plaintiffs' counsel next had to investigate Defendant's response to the Data Incident and whether it was sufficiently thorough. Plaintiffs' counsel examined sample data breach notices and related information that Defendant submitted to the various governmental entities. Plaintiffs' counsel analyzed these notices to discern the scope of the Private Information exposed due to the Data Incident, and the types of Private Information involved.

4. Class Counsel invested additional time and labor by interviewing potential clients, researching viable claims under Illinois law, drafting the complaint, and reviewing the complaint with Plaintiffs.

Plaintiffs' Claims Carried Substantial Risk

5. Despite the risks, Class Counsel took on this litigation, worked on the case, and even undertook a significant financial risk, with no upfront payment, and no guarantee of payment absent a successful outcome. Class Counsel obtained a settlement that provides real and significant monetary benefits to the Class.

6. In addition to attorney time spent on the case, Class Counsel also advanced \$4,610.27 in out-of-pocket expenses with no guarantee of repayment. If the case had advanced through class certification, these expenses would have increased many-fold, and Class Counsel would have been required to advance these expenses potentially for several years to litigate this

action through judgment and appeals.

7. Even if the claims survived after the pending appeals are decided, Defendant would have contested class certification, and Plaintiffs would have faced serious risks even before getting to class certification. Defendant most certainly would have sought summary judgment, as well as engaged in extensive and protracted discovery.

The Settlement Was the Result of Arms'-Length Negotiations Between the Parties after a Significant Exchange of Information

8. This action required considerable skill and experience to bring it to such a successful conclusion. This case required investigation of factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses.

9. In taking on this case, Class Counsel undertook the large responsibility of pursuing claims on behalf of a class healthcare patients against a large public accounting firm represented by experienced defense counsel. Class Counsel also undertook the large responsibility of funding this case, without any assurance that they would recover those costs. Class Counsel not only took on the obligation to act on behalf of the Plaintiffs, but also the class as a whole.

10. Rather than pursue protracted litigation, the Parties decided to employ Hon. Ronald B. Leighton (Ret.), an experienced mediator, to attempt to reach a settlement. Prior to the mediation, Plaintiffs requested, and Defendant produced, informal discovery necessary to evaluate the strengths and weaknesses of Plaintiffs' claims, including information about the size and scope of the Data Incident and Defendant's response thereto. The Parties also exchanged detailed mediation statements airing their respective legal arguments.

11. On February 5, 2025, the parties participated in a formal mediation with Judge Leighton, and made substantial progress toward a settlement. Thereafter, the Parties continued negotiations and maintained communication with the continued assistance of the mediator, and, as

a result, finally reaching an agreement in principle on or about February 12, 2025, to resolve all claims on a class-wide basis. Notably, the parties did not negotiate attorneys' fees or service awards until after agreeing on benefits for the Settlement Class.

12. As part of the settlement discussions, Plaintiffs Umberger and Burner filed an amended complaint on April 11, 2025, and Plaintiff Kurtz stayed her case pending Court approval of this settlement. Afterward, the parties negotiated the terms of the Settlement Agreement which was executed that Agreement on June 23, 2025.

13. Since reaching the Settlement, Class Counsel has drafted and prepared the exhibits for of the Settlement Agreement, including the short and long form notice, and claim forms, has moved for preliminary approval of the Settlement, has drafted and submitted this Fee and Expense Application, and is diligently monitoring the notice program and claims administration process.

14. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case and oppose class certification. Even assuming a class was certified, and summary judgment defeated, the case would then have moved on to pretrial briefing, a pretrial conference, and then a jury trial, which would have been costly, time-consuming, and very risky for Class Members.

15. Class Counsel undertook this representation understanding that the risk of losing on class certification, or summary judgment, or at trial were significant. But for this settlement, Defendant likely would have opposed class certification and moved for summary judgment, resulting in rounds of briefing and a risk of summary judgment and denial of class certification.

The Skill and Standing of Class Counsel

16. Class Counsel, the attorneys at Strauss Borrelli, PLLC, Siri & Glimstad LLP and Milberg Coleman Phillips Grossman, PLLC, have extensive experience in consumer class actions

generally, in data privacy and cybersecurity incident cases in particular, and are leaders in the field.

17. Class Counsel have been appointed sole lead in dozens of data breach cases, and have successfully litigated and settled similar cases across the country against law firms of national prominence.

The Usual and Customary Charges for Similar Work

18. When Class Counsel undertakes major litigation such as this, it necessarily limits their ability to undertake other complex litigation cases. During the course of this litigation, Class Counsel devoted significant time and resources to succeed in this case.

19. To date, Class Counsel incurred out-of-pocket costs and expenses in the amount of \$4,610.27 in prosecuting this litigation on behalf of the Class. Each of these expenses was necessarily and reasonably incurred to bring this case to a successful conclusion, and they reflect market rates for various categories of expenses incurred. Specifically, the costs are attributable, in substantial part, to mediation fees, as well as the filing fees, and service of the complaints.

20. Class Counsel had to make this commitment at the outset of this case without knowing how long the case would take to resolve, if ever. Therefore, Class Counsel's willingness to prosecute this action on a contingent fee basis and to advance costs diverted the time and resources expended on this action from other cases.

21. To date, Class Counsel have expended 284.30 hours litigating this case, incurring a total lodestar of \$194,038.70 at their customary hourly rates. Class Counsel reasonably expect to incur additional hours throughout the final approval process and in administering the Settlement. Class Counsel's billing records have been reviewed to eliminate duplicative work and to ensure that appropriate tasks were delegated to paralegals and support staff. The current hours and lodestar by firm are set forth below. Based on the total lodestar, Class Counsel's request for \$466,666.67 in attorneys' fees represents a multiplier of approximately 2.4, which is well within the range

approved in comparable data breach settlements.

Firm	Hours	Lodestar
Strauss Borrelli PLLC	80.80	\$56,248.00
Siri & Gilstad LLP	72.20	\$39,685.50
Milberg Coleman Bryson Phillips Grossman PLLC	76.70	\$63,819.20
Bronson Legal LLC	49.00	\$31,850.00
Wolf Haldenstein Adler Freeman & Herz LLP	5.60	\$2,436.00
Total	284.30	\$194,038.70

22. Class Counsel's hourly rates, are customary for their firms and are reasonable in the complex class action context. Class Counsel's requested Fee Award of 33% of the Settlement Fund and Expenses of \$20,000 is well within the market range

Service Awards

23. Plaintiffs Aaron Umberger, Tracey Bruner and Jessica Kurtz assisted in the investigation of this case, participated in extensive interviews, reviewed and approved pleadings and the Settlement Agreement, stayed in contact with Class Counsel, and answered Class Counsel's many questions.

24. Class Counsel advises that the Plaintiffs/Class Representatives approve of Class Counsel's Fee and Expense Application.

25. Class Counsel has maintained a professional relationship with Plaintiffs since this case was filed. Without the efforts of Plaintiffs, the thousands of other Settlement Class Members would not have received the benefits of the Settlement. Plaintiffs committed to participate actively in what they knew could be a long and hard-fought lawsuit, and to do so on behalf of a Class of

thousands of other Settlement Class Members, with no guarantee of ever being compensated. Even though no award of any sort was promised to Plaintiffs, they contributed their time and effort by assisting in the litigation, aiding in the preparation of the Complaint, and approving of the Settlement.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of October, 2025, at Oak Park, Illinois.

/s/ Cassandra P. Miller
Cassandra P. Miller