

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of all
others similarly situated*,

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC.,
d/b/a New London Hospital and Newport Health
Center

Defendant.

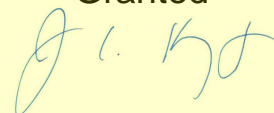
Civil Action No. 217-2021-CV-00281

**PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARD FOR
REPRESENTATIVE PLAINTIFF**

Plaintiff Tom Steen ("Plaintiff"), individually and behalf of all others similarly situated, hereby moves this Court to approve an award of combined attorneys' fees and costs in the amount of \$300,000.00 and further requests that the Court approve a service award of \$1,000.00 to the Representative Plaintiff. In support of this Motion, Plaintiff refers this Honorable Court to (A) his Memorandum in Support hereof ("Memorandum"), filed contemporaneously with this motion, (B) the Declaration of Gary M. Klinger in Support hereof, attached as **Exhibit 1** to the Memorandum, (C) the records, pleadings, and papers filed in this action, and (D) upon such other documentary, oral evidence, or argument as may be presented to the Court at or prior to the Final Approval Hearing currently scheduled for January 27, 2023.

Clerk's Notice of Decision
Document Sent to Parties
on 01/20/2023

Granted



Honorable John C. Kissinger, Jr.

January 20, 2023

WHEREFORE, Plaintiff respectfully requests that this Court grant his Unopposed Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for Representative Plaintiff and the relief sought therein as part of the Final Approval Order entered in this case.

DATED: November 23, 2022

Respectfully submitted,

TOM STEEN

/s/ Matthew V. Burrows

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Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I, Matthew V. Burrows, hereby certify that a copy of this motion was sent to counsel of record via the state court's e-filing system.

DATED: November 23, 2022

By: /s/ Matthew V. Burrows
Matthew V. Burrows, Esq. (#20914)

STATE OF NEW HAMPSHIRE

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Plaintiff,

v.

THE NEW LONDON HOSPITAL
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Defendant.

Civil Action No. 217-2021-CV-00281

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION
FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARD FOR REPRESENTATIVE PLAINTIFF**

Plaintiff Tom Steen (“Plaintiff”) submits this Memorandum of Law in Support of his *Unopposed* Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award for Representative Plaintiff (“Memorandum”).

I. INTRODUCTION

On May 18, 2021, Defendant The New London Hospital Association, Inc., d/b/a New London Hospital and Newport Health Center (“Defendant” or “New London,” and together with Plaintiff, the “Parties”) experienced a targeted cyberattack and data breach, which resulted in the potential compromise of 34,878 patients’ personally identifiable information (“PII”) and protected health information (“PHI”), including patient names, limited demographic information, Social Security numbers, and other PHI (the “Data Incident”). *See First Amended Complaint (“Complaint” or “Comp.”)*, ¶¶ 1, 3, 40-41, 48. This class action arises out of New London’s alleged failure to adequately safeguard and protect the PII and PHI that it collected and maintained for Plaintiff and Settlement Class Members. *See id.* ¶ 4.

The Settlement Agreement (or “SA”),¹ if approved, will provide Settlement Class Members substantial relief in the form of (1) reimbursement of ordinary losses of up to for up to a total of \$500.00 per Settlement Class Member in the form of out-of-pocket expenses and lost time; (2) a \$125 statutory benefit; (3) reimbursement of extraordinary losses up to \$5,000.00 per Settlement Class Member; and (4) two (2) years of three (3B) bureau credit monitory services, without the need to file an affirmative claim. Plaintiff strongly believes the settlement is favorable to the Settlement Class. Additionally, Settlement Class Members are already benefitting and will continue to benefit from security-related measures that it has implemented and will implement in

¹ The Settlement Agreement in its entirety is attached as Exhibit A to Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Motion”). Capitalized terms herein shall have the same meaning as assigned to them in the Settlement Agreement, unless otherwise indicated.

the future to better protect Settlement Class Members' data. *See* Declaration of Gary M. Klinger in Support of Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Award for Representative Plaintiff ("Klinger Fee Decl."), attached hereto as **Exhibit 1**, ¶ 26.

Settlement Class Counsel has zealously prosecuted Plaintiff's claims, achieving the Settlement Agreement after an extensive investigation, an exchange of informal discovery, prolonged arms'-length negotiations, and after an all-day mediation before preeminent data breach mediator, Bennett G. Picker of the firm, Stradley Ronon Stevens & Young, LLP. Even after coming to an agreement on the central terms, Settlement Class Counsel worked for weeks to finalize the Settlement Agreement and associated exhibits pertaining to notice, preliminary approval, and will continue to work on this matter for final approval of the settlement, among other things. Settlement Class Counsel's extensive experience in data breach class actions—in particular, healthcare data breach class actions allowed Settlement Class Counsel to effectively negotiate a settlement for Plaintiff and the Settlement Class Members that it is favorable for the Settlement Class and is fair, reasonable, and adequate. *See* Klinger Fee Decl., ¶¶ 2, 10-23 and attached Firm Resume at **Exhibit A**.

For their efforts, Settlement Class Counsel respectfully request that the Court award \$300,000.00 in attorneys' fees and costs incurred in prosecuting the litigation on behalf of the Class. Defendant has no opposition to this request. This request is contemplated by the Settlement Agreement, and Settlement Class Counsel apprised the Court of this request in its Preliminary Approval Motion. The requested fees and costs are a tiny fraction of the total benefit created for the Settlement Class. Indeed, as set forth herein, taking into consideration conservative claims rates of 2% for the \$125 statutory payment and ordinary reimbursement expenses and a modest 2% activation rate for the credit monitoring services benefit, as well as a

mere 1% claims rate for extraordinary reimbursement expenses, this fee request at the high end represents only 11.44% of the total fund recovered for the class, including the costs of settlement administration and attorneys' fees, which are both benefits to the class. Courts in the First Circuit have routinely approved attorneys' fees that equal one-third of the common fund percentage of the fund cases. Moreover, Settlement Class Counsel respectfully moves the Court for an award of \$1,000 to Representative Plaintiff for his work on behalf of the Class.² This Service Award is modest, fully justified by the law, and was also contemplated by the Settlement Agreement.

For these reasons and the reasons set forth herein, Settlement Class Counsel respectfully requests this Court grant its Unopposed Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for Representative Plaintiff ("Motion for Attorneys' Fees").

II. PROCEDURAL BACKGROUND

On May 18, 2021, Plaintiff filed a Class Action Complaint against New London. Thereafter, New London moved to dismiss the Complaint on the grounds that Plaintiff lacked standing to sue New London because there had been no injury in fact, Plaintiff failed to plead any legally cognizable damages, and Plaintiff failed to state a cause of action as to all five of his claims plead in his Complaint. On August 18, 2021, the Court granted the Plaintiff's Assented-To Motion to Amend Complaint and Notice Regarding Proposed Filing Schedule. Thereafter, Plaintiff filed a First Amended Class Action Complaint on September 16, 2021.

In his First Amended Complaint, Plaintiff alleged that New London experienced a targeted cyberattack and data breach, which resulted in the potential compromise of patients' PII and PHI, including patient names, limited demographic information, Social Security numbers, and other

² While Plaintiff here moves for attorneys' fees, expenses, and a service award, he will also move for final approval of the settlement by separate motion, which will be filed prior to the Final Approval hearing.

protected health information as defined by the HIPAA. *Id.* Plaintiff asserted claims for: (1) negligence; (2) breach of contract; (3) unjust enrichment; (4) violation of the New Hampshire Consumer Protection Act, N.H.R.S.A §§ 358-A *et seq.*; and (5) violation of New Hampshire Notice of Security Breach, R.S.A. §§ 359-C:20(I)(a) *et seq.* *Id.*

On October 25, 2021, New London filed its Answer to First Amended Complaint. New London denies all material allegations of the First Amended Complaint. *Id.* Nevertheless, given the inherent risks, uncertainties, burden, and expense of continued litigation, the Parties agreed to explore settlement of the Lawsuit. The Parties engaged in protracted, arms' length negotiations and a mediation with well-known data breach mediator, Bennett G. Picker of the firm, Stradley Ronon Stevens & Young, LLP. In the months following the execution of a term sheet, the Parties continued to negotiate the finer points of the agreement and drafted the Settlement Agreement and accompanying Notice documents. The Settlement Agreement and the various exhibits were finalized and signed in June 2022.

The court preliminarily approved the settlement on September 8, 2022 and directed that notice be disseminated to the class. *See* Order Granting Motion for Preliminary Approval of Class Action Settlement Agreement ("Preliminary Approval Order"). Over the next several weeks and continuing to today, Settlement Class Counsel have continued to work with New London and the Settlement Administrator regarding claims administration and processing, as well as answering class members questions about the settlement and the process. *Id.* ¶ 29. Settlement Class Counsel's work is not over and will continue throughout proposed Final Approval of the Settlement. Based on experience, Settlement Class Counsel will spend substantial additional hours seeking Final Approval, defending the Settlement from potential objections, and supervising claims administration and the distribution of proceeds. *Id.* Notably, the Settlement has been met with

overwhelming approval. As November 15, 2022, the Claims and Settlement Administrator (“Settlement Administrator”) has received *zero* requests for exclusion and *zero* objections (out of a class of over 34,878). *Id.* ¶¶ 52-53. (The claims period ends on January 6, 2023. *Id.* ¶ 52.) In the Preliminary Approval Order, and by separate Order, dated September 9, 2022, the Court set the final approval hearing for January 27, 2023 at 9:00 a.m. and ordered that the instant motion would be heard at that hearing.

III. SUMMARY OF SETTLEMENT

A. The Settlement Class.

The Settlement Class is defined as “all persons New London identified as being among those individuals potentially impacted by the Data Incident, including all who were sent a notice of the Data Incident.” SA ¶ I.1.29. The Settlement Class includes approximately 34,878 individuals.

B. Summary of Benefits.

1. Monetary Compensation for Losses.

Each Settlement Class Member is eligible to receive reimbursement for documented monetary losses incurred by him or her as a result of the Data Incident. *Id.* ¶¶ III.3.1(a)-3.1(b). Specifically, each eligible Settlement Class Member may choose from all applicable claim categories below – Claim A (Compensation for Ordinary Losses), Claim B (Compensation for Statutory Losses), and Claim C (Compensation for Extraordinary Losses). *Id.* The overall compensation cap for any Settlement Class Member is \$500.00 for all amounts claimed in Claims A and B, and \$5,000.00 for all amounts claimed in Claim C. *Id.*

a. Claim A: Compensation for Ordinary Losses

Settlement Class Members are eligible to receive compensation for unreimbursed ordinary losses for up to a total of \$500.00 per Settlement Class Member. *Id.* ¶ III.3.1(a). Ordinary losses may include: (i) out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; (ii) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between the date of the Data Incident and the close of the Claims Period; and (iii) up to 5 hours of lost time, at \$20/hour, if at least one (1) full hour was spent dealing with the Data Incident, provided that the Settlement Class Member certifies that the lost time was spent in response to the Data Incident. *Id.*

b. Claim B: Compensation for Statutory Benefits

Settlement Class Members are eligible to submit to receive a cash benefit in the amount of \$125.00 for settlement of the Class Members' New Hampshire statutory law claims. *Id.* ¶ III.3.1(b). This amount may be combined with a claim made under Claim A for reimbursement for lost time and ordinary out-of-pocket losses and is subject to the \$500.00 cap in Claim A. *Id.* ¶¶ III.3.1(a)-3.1(b). The total amount of statutory benefits is capped at \$150,000.00, and payments made to Settlement Class Members shall be reduced on a *pro rata* basis according to the number of claims made if the total exceeds the overall \$150,000.00 cap. *Id.* ¶ III.3.1(b).

c. Claim C: Compensation for Extraordinary Losses

Settlement Class Members are eligible for compensation for extraordinary losses, including proven actual monetary losses where: (i) the loss is an actual, documented, and unreimbursed monetary loss arising from fraud or misuse; (ii) the loss from fraud or misuse was more likely than not caused by the Data Incident; (iii) the actual misuse or fraud loss is not already covered by one or more of the ordinary loss compensation categories under Claim A; (iv) the

Settlement Class Member made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance; and (v) the actual misuse or fraud loss occurred between the date of the Data Incident and the Claims Deadline. *Id.* ¶ III.3.1(c). The maximum amount any one claimant may recover under Claim C is \$5,000.

2. Non-Monetary Benefits.

a. Credit Monitoring Offering

The first non-monetary benefit offered to Settlement Class Members is two (2) years of three (3B) bureau credit monitoring services without the requiring of filing a Claim for monetary compensation. *Id.* ¶ III.3.2. The credit monitoring offer was included in the Class Notice mailed the Settlement Class Members and will require Settlement Class Members to activate the credit monitoring after Final Approval by the Court. Settlement Class Members will not need to file a claim for this benefit. New London will pay for the credit monitoring services separate and apart from other settlement benefits. *Id.* ¶ III.3.3.

The value of this benefit to the Settlement Class is significant. The least expensive 3B credit monitoring product available in the retail marketplace today costs \$10.00 monthly.³ Using the least expensive product available on the market, the value of this benefit is \$240.00 per class member, and every Settlement Class Member can claim this benefit. With 34,878 Settlement Class Members, this settlement benefit has a potential value of \$8,370,720.

b. Business Practice Changes

³ <https://buy.aura.com/> (last visited Nov. 15, 2022). The retail price has increased from \$9.99 monthly to \$10.00 monthly if billed annually.

Plaintiffs also negotiated for and received commitments from New London that will ensure that the Settlement Class Members' confidential data is protected going forward. *Id.* ¶ III.3.3. New London agreed to pay for remedial costs separate and apart from other settlement benefits. *Id.* ¶ III.33.

c. Notice and Settlement Administration Costs

Pursuant to the Court's Preliminary Approval Order, RG2 Settlement Administration, LLC ("RG2") has been appointed as the Settlement Administrator in this matter. New London agreed to pay for the cost of providing Notice and Settlement Administration separate and apart from the benefits to the Settlement Class Members. *Id.* ¶ IV.4.1. This is another substantial benefit to the Settlement Class. RG2 estimates the costs of the providing Notice and Claims and Settlement Administration through completion of the case will be \$61,597. *See* Klinger Fee Decl., ¶ 31. Notice has been provided to the Settlement Class pursuant to the Court's Preliminary Approval Order and will be reported on more extensively in Plaintiff's Motion for Final Approval of Class Action Settlement. *Id.* V.5.3, Ex. B; Klinger Fee Decl., ¶ 31.

C. Fees, Costs, and Service Awards.

New London has agreed to pay, subject to Court approval, up to \$300,000.00 to Settlement Class Counsel for combined attorneys' fees and costs, in addition to any benefits provided to Settlement Class Members and the costs of settlement administration. SA ¶¶ VIII.8.2, 8.3. This amount was negotiated after the primary terms of the settlement were negotiated. *See* Klinger Fee Decl., ¶ 27.

New London also has agreed to pay a reasonable Service Award not greater than \$1,000.00, subject to approval of the Court. SA ¶ VIII.8.1. Plaintiff assisted in the investigation and development of the case, provided counsel with necessary documents, reviewed the pleadings,

remained available for consultation throughout the mediation and settlement negotiations, answered counsel's many questions, and reviewed the terms of the Settlement Agreement, communications, and other information. *See* Klinger Fee Decl., ¶ 28. The Parties did not discuss the payment of a Service Award to Representative Plaintiff until after the substantive terms of the settlement had been agreed upon. *See id.* The Service Award is separate and apart from any other sums agreed upon under the Settlement. *See id.*

Settlement Class Counsel's fees were not guaranteed—the retainer agreement counsel had with Plaintiff did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court. *See id.* ¶ 37. The purely contingent basis upon which Settlement Class Counsel took the case meant that Settlement Class Counsel assumed significant risk. *See id.* ¶ 32. Settlement Class Counsel spent time on this matter that could have otherwise been spent on other, fee-generating matters, and shouldered the risk of expending costs and time without any monetary gain in the case of adverse judgment. *See id.* ¶ 34.

IV. PLAINTIFF'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS SHOULD BE GRANTED

A. The Legal Standard.

Courts historically utilize two main approaches to analyzing a request for attorneys' fees: the lodestar approach and the percentage of the fund approach to calculating attorneys' fees in class action settlements. *See In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995). "By assessing attorneys' fees and litigation expenses against a common fund, the court spreads these costs proportionately among those benefitted by the suit." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Under the common fund doctrine, "a reasonable fee is based on a percentage of the fund bestowed upon the class." *In re Thirteen Appeals*, 56 F.3d at 305 (quoting *Blum v. Stenson*, 465 U.S. 886, 896-902 (1984)); *Wright v.*

Southern New Hamp. Univ., 561 F. Supp. 3d 211, 214 (D. N.H. 2021) (“[T]he common fund doctrine permits fee awards to class counsel calculated as a percentage of the fund created by a settlement for the benefit of the class.”) (quoting *Boeing Co.*, 444 U.S. at 478)). While the court has the discretion to use the lodestar method of calculating attorneys’ fees, in the First Circuit, the percentage of the fund method is the preferred method—or “prevailing praxis”—in calculating attorneys’ fees” in common fund cases. *In re Thirteen Appeals*, 56 F.3d at 307; *Wright*, 561 F. Supp. 3d at 214. “Under the percentage of the fund method, the Court has ‘extremely broad’ latitude to determine an appropriate fee award.” *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 458 (D. P.R. 2011) (quoting *In re Thirteen Appeals*, 56 F.3d at 305)).

There are also several “distinct advantages” of using the percentage of fund method in common fund cases. *See In re Thirteen Appeals*, 56 F.3d at 305; *Wright*, 561 F. Supp. 3d at 214.

First, the percentage method “directly aligns the interests of the class and its counsel” because it provides an incentive to attorneys to resolve a case efficiently and to create the largest total value for the class. *See Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375, 377 (D. Mass. 1997) (“[T]he POF method of calculating fees more appropriately aligns the interests of the class with the interests of class counsel-the larger the value of the settlement, the larger the value of the fee award.”); *see also Wright*, 561 F. Supp. 3d at 214 (“[R]eliance on the percentage of fund method tends to promote early and efficient settlement of claims.”).

Second, “as a matter of economic reality, individual class members” will have been “effectively unable to pursue their claims against” a defendant “through individually retained attorneys absent the potential for a class-based fee award.” *Wright*, 561 F. Supp. 3d at 714; *Bacchi v. Mass Mut. Life Ins. Co.*, Civil Action No. 12-11280-DJC, 2017 WL 5177610, at *4 (D. Mass. Nov. 8, 2017) (“[T]here is a public interest in having experienced counsel undertake the risk of

pursuing litigation regarding the dividends ... [to] the class and achieving a benefit for them that might not have been otherwise achieved.”) (internal citations omitted)).

Third, “providing adequate compensation encourages capable plaintiffs’ attorneys to aggressively litigate complex, risky cases ... rather than settling lower and earlier than would be in the best interests of the class members they represent.” *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D. N.H. 2007).

Fourth, this method is aligned with market practices, as it “is result-oriented rather than process-oriented, it better approximates the workings of the marketplace.” *In re Thirteen Appeals*, 56 F.3d at 307 (quoting *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992)); *In re Fleet/Norstar Secs. Litig.*, 935 F. Supp. 99, 105 (D. R.I. 1996) (noting the percentage of the fund method better approximates the workings of the marketplace).

Fifth, the percentage method promotes efficiency and early resolution, as it eliminates any incentive plaintiffs’ lawyers may have to run up billable hours—one of the most significant downsides to using the lodestar approach. *See In re Thirteen*, 56 F.3d at 307; Third Circuit Task Force, *Court Awarded Attorneys Fees*, 108 F.R.D. 237, 255 (1985); *see In re Fleet/Norstar Secs. Litig.*, 935 F. Supp. At 105 (noting the percentage of the fund method is easier to administer and enhances efficiency).

Lastly, the percentage of fund method preserves judicial resources because it relieves the “cumbersome, enervating, and often surrealistic process of evaluating fee petitions.” Third Circuit Task Force, *Court Awarded Attorneys Fees*, 108 F.R.D. 237, 258 (1985).

In complex litigation—and common fund cases, by and large, tend to be complex—the POF approach is often less burdensome to administer than the lodestar method. Rather than forcing the judge to review the time records of a multitude of attorneys in order to determine the necessity and reasonableness of every hour expended, the POF method permits the judge to focus on “a showing that the fund conferring a benefit on the class resulted from” the lawyers’ efforts. While the time logged is still relevant to the court’s

inquiry—even under the POF method, time records tend to illuminate the attorneys’ role in the creation of the fund, and, thus, inform the court’s inquiry into the reasonableness of a particular percentage the shift in focus lessens the possibility of collateral disputes that might transform the fee proceeding into a second major litigation.

In re Thirteen Appeals, 56 F.3d at 307 (internal citations and quotations omitted).

B. The Fees Requested by Settlement Class Counsel Are Well Within the Range of Reasonableness

In calculating the percentage of the recovery, it is appropriate to compare the fee to the total amount recovered for the benefit of the class. *See Boeing Co.*, 444 U.S. at 472 (attorneys’ fees must be based on the value of the entire common fund, even if some beneficiaries make no claim); *accord Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Comms. Co.*, 129 F.3d 1026 (9th Cir. 1997). It is also appropriate to include the amount of attorneys’ fees in the common fund when calculating the proper percentage. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH), § 21.7 (proper calculation of settlement benefits includes all fee amounts paid by defendant in addition to class relief).

As set forth *supra*, Settlement Class Counsel recovered the following benefits for the 34,878 Settlement Class Members in the Settlement:

- A \$125 statutory payment, subject to the \$500 cap for ordinary expense reimbursements, which is available to the Settlement Class Member if he or she simply checks a box on the Claim Form;
- Ordinary expense reimbursements in the form of out-of-pocket expenses and lost time, both subject to a \$500 cap;
- An offering for 3B credit monitoring services, for which Settlement Class Members were sent an activation code with the Notice allowing them to simply activate the services after Final Approval by the Court;

- Extraordinary expense reimbursements subject to a \$5,000 cap;
- \$300,000 in attorneys' fees, which are a benefit to the Settlement Class; and
- An estimated \$61,597 in Notice and Settlement Administration Costs, which are also a benefit to the Settlement Class.

Assuming a conservative 2% of the 34,878 Settlement Class Members submit valid timely, valid claims for the \$125 statutory payment, which is subject to the \$500 cap on ordinary expense reimbursements, the recovery for this benefit is \$87,195. Assuming that a mere 2% of the Settlement Class Members submit timely, valid claims for the remaining \$375 out of the \$500 cap for ordinary expense reimbursements, the recovery for this benefit is \$261,585. As set forth *supra*, the recovery for credit monitoring benefits is as high as \$8,370,720. If a mere 2% of the Settlement Class activated these services after Final Approval, the recovery for this benefit is \$167,414. And if an extremely modest 1% of Settlement Class Members submit timely, valid claims for extraordinary expense reimbursements, the recovery for this benefit is \$1,743,900. Adding \$300,000 for attorneys' fees and costs and an estimated \$61,597 for Notice and Settlement Administration Costs, the total amount recovered for the benefit bestowed upon the class based on these conservative claims and activation rates is \$2,621,691, which amounts to 11.44% of the total recovery on behalf of the Settlement Class. And 11.44% is on the high end of the range. If *not* one Settlement Class Member made a timely, valid claim for monetary benefits, which is *near impossible*, the attorneys' fees based on just 50% of the total recovery for the credit monitoring services *alone* (without attorneys' fees or Notice and Settlement Administration Costs) amounts is miniscule amounting to just .07%.

Settlement Class Counsel's modest fee request for 11.44% of the recovery of the settlement fund based on the above calculations is well below the percentage First Circuit courts find

reasonable in common fund cases. Indeed, First Circuit courts routinely award one-third of the common fund as reasonable attorneys' fees in class action settlements. *See, e.g., Rapuano v. Trustees of Dartmouth College*, 2020 WL 3965784, at *2 (D.N.H. July 10, 2020) (awarding 35% of \$14 million settlement fund in attorneys' fees); *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-CV-30184-MAP, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (awarding one-third of \$30.9 million settlement); *Lapan v. Dick's Sporting Goods, Inc.*, No. 1:13-CV-11390, ECF No. 220 (D. Mass. April. 19, 2016) (awarding one-third of \$10 million settlement); *Sylvester v. Cigna Corp.*, 401 F. Supp. 2d 147, 151 (D. Me. 2005) (awarding one-third of settlement fund); *In re Asacol Antitrust Litig.*, 2017 WL 11475275, at *4 (D. Mass. Dec. 7, 2017) (approving fee request for one-third of \$15 million settlement); *In re StockerYale, Inc. Sec. Litig.*, Master File No. 1:05cv00177-SM, 2007 WL 4589772, at *6-7 (D. N.H. Dec. 18, 2007) (awarding 33% of fund); *Kondash v. Citizens Bank, National Ass'n*, Case No. 18-cv-00288-WES-LDA, 2020 WL 7641785, at *5 (D. R.I. Dec. 23, 2020) (awarding one-third of \$1,837,500 settlement fund); *Mooney v. Domino's Pizza, Inc.*, Case No. 1:14-cv-13723-IT, 2018 WL 10232918, at *1 (D. Mass. Jan. 23, 2018) (awarding one-third of the settlement fund); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 82 (D. Mass. 2005) (approving attorneys' fees amounting to one-third of \$67 million settlement).

Thus, Plaintiff's requested fees for 11.44% of the total recovery on behalf of the common fund based on the above reasonable claims and activation rates falls well below the average attorneys' fees awarded in common fund cases in First Circuit courts and should be awarded here.

D. The Goldenberg Factors Support Settlement Class Counsel's Requested Fee Award.

Regardless of the method utilized by the Court, the reasonableness of fees requested from a common fund or total settlement recovery, courts typically, but are not required to, consider the following factors, referred to as the *Goldberger* factors:

(1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations.

In re Neurontin Mktg. & Sales Pracs. Litig., 58 F. Supp. 3d 167, 170 (D. Mass. 2014); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *but see Thirteen Appeals*, 56 F.3d at 307-09 (Unlike the Second and Third Circuit courts, the First Circuit does not *require* courts to examine a laundry list of factors) (emphasis added). Each of the *Goldberger* factors supports the reasonableness of Plaintiff's fee request.

1. The Size of the Fund and Number of Persons Benefitted.

The Court should award Settlement Class Counsel the \$300,000—or 11.44% of the value of the recovery of the Settlement—in attorneys' fees and costs as contemplated by the Settlement Agreement. Settlement Class Counsel obtained an outstanding, sizeable result for a considerable amount of 34,878 Settlement Class Members. As explained *supra*, if Settlement Class Members were to purchase the credit monitoring services on their own in the open market, it would cost them \$240. And Settlement Class Members do not need to make a claim for this benefit. They just need to activate these services after Final Approval of the Settlement with the code sent to them with the Notice. In addition, Settlement Class Members may submit claims for a \$125 statutory payment, subject to the \$500 cap on ordinary expense reimbursements, by simply checking a box on the Claim Form,. Settlement Class Members may also claim up to \$500 in ordinary expense reimbursements, which includes both out-of-pocket expenses and lost time. They further may submit claims for up to \$5,000 in extraordinary expense reimbursements. Moreover, Settlement Class Members will benefit from the data security enhancements implemented by New

London that will guarantee that Settlement Class Members' PII and PHI will be better safeguarded in the future. Thus, this factor weighs in favor of the requested fee.

2. The Skill, Experience, and Efficiency of the Attorneys Involved

Settlement Class Counsel is highly skilled and experienced in class action litigation, particularly in the data breach context, and has achieved a number of exceptional results throughout the country over the last several years. Milberg, Coleman, Bryson, Phillips Grossman, PLLC has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. The firm has been recognized by courts across the country for its expertise and its skilled, effective representation. *See* Klinger Fee Decl., ¶¶ 3-9 and Firm Resume attached thereto as **Exhibit A**. Accordingly, this factor weighs heavily in favor of the requested fee. On the other side of the case, New London is represented by a U.S. News & World Report ranked law firm that is a formidable opponent.

3. The Complexity and Duration of the Litigation

The third *Goldberger* 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 and duration of the litigation difficult to predict and risky for Plaintiffs' attorneys. Data breach cases are some of the most complex consumer protection class action cases and involve a rapidly evolving area of law. At present, courts have certified only four classes in this area. Moreover, the theories of damages remain untested at trial and appeal. "Data breach cases ... are particularly risky, expensive, and complex." *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019). Moreover, trial of this matter would necessitate costly preparation of experts who in all likelihood would have to

conduct their own, original clinical studies. The magnitude and complexity of legal issues involved in this case reinforces the reasonableness of Settlement Class Counsel's requested fee percentage.

4. *The Risks of the Litigation*

“Many cases recognize that the risk assumed by an attorney is perhaps the foremost factor in determining an appropriate fee award.” *In re Lupron Marketing & Sales Pracs. Litig.*, No. MDL 1430, 01–CV–10861–RGS, 2005 WL 2006833, at *4 (D. Mass. Aug. 17, 2005);⁴ *see also Gevaerts v. TD Bank*, No. 11:14-cv-20744, 2015 WL 6751061, at *13 (S.D. Fla. Nov. 5, 2015) (class counsel “assumed a significant risk of non-payment or underpayment. Numerous cases recognize such a risk as an important factor in determining a fee award.”). Settlement Class Counsel took this case on a pure contingent basis and committed substantial resources of attorney and staff time towards investigating and litigating this action. *See* Klinger Fee Decl., ¶ 33. In doing so, Settlement Class Counsel “bore the risk of the case being dismissed at the pretrial stage, of losing at [class certification or at] trial, or of failing to prove damages.” *In re Lupron*, No. MDL 1430, 01–CV–10861–RGS, 2005 WL 2006833, at *4. “Where, as here, lead counsel undertook this action on a contingency basis and faced a significant risk of non-payment, this factor weighs more heavily in favor of rewarding litigation counsel.” *Medoff v. CVS Caremark Corp.*, Civil No. 09-cv-554-JNL, 2016 WL 632238, at *9 (D. R.I. Feb. 17, 2016); *see also Roberts v. The TJX Cos. Inc.*, Civil Action No. 13-cv-13142-ADB, 2016 WL 8677312, at *13 (D. Mass. Sept. 30, 2016) (awarding one-third

⁴ “A contingency fee arrangement often justifies an increase in the award of attorneys’ fees. This rule helps assure that the contingency fee arrangement endures. If this ‘bonus’ methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.” *In re Lupron*, No. MDL 1430, 01–CV–10861–RGS, 2005 WL 2006833, at *4 (quoting *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir.1990)).

attorneys' fees and citing "the significant risk [class counsel] assumed in taking the case on a wholly contingent basis").

Settlement Class Counsel took on these risks knowing full well their efforts may not bear fruit. Fees were not guaranteed—the retainer agreement Settlement Class Counsel have with Plaintiff did not provide for fees apart from those earned on a contingent basis, and in the case of class settlement, approved by the court. Settlement Class Counsel labored and advanced their own funds to prosecute the case all at the risk of never being paid for their work or reimbursed for their expenses. Settlement Class Counsel devoted their time and energy to this matter, instead of pursuing other income, all at the risk of never getting paid and, at best, being paid at some point potentially many years down the road. Had New London prevailed on the merits, on class certification, or on appeal, Settlement Class Counsel might have recovered nothing for the time and expense they invested in representing the Settlement Class.

Moreover, this case involved complexities of data breach that are novel and evolving. While Plaintiff was confident that his claims would prevail, he faced several strong legal defenses and difficulties in demonstrating causation and injury. Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiff and Settlement Class Members. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on either certification or merits. The general risks of litigation are further heightened in the data breach arena. Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles—even just to make it past the pleading stage. As one federal district court recently observed in finally approving a data breach settlement with similar class relief and similar attorneys' fees:

Data breach litigation is evolving; there is no guarantee of the ultimate result. *See 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.”). Plaintiffs also faced the risk that [defendant] would successfully oppose class certification, obtain summary judgment on one or more of their claims, or win at trial or on appeal. Also, the cost for [defendant] and Plaintiffs to maintain the lawsuit would be high, given the amount of documentary evidence as well as the expert costs both parties would incur in the context of class certification, summary judgment, and trial. As such, the current Settlement strikes an appropriate balance between Plaintiffs’ “likelihood of success on the merits” and “the amount and form of the relief offered in the settlement.” *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (also approving attorneys’ fees and costs in the amount of \$1,575,000); *see also Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

Accordingly, the fee requested by Settlement Class Counsel is reasonable for a complex, high-risk action such as this one.

5. *The Amount of Time Devoted to the Case by Class Counsel*

Since Class Counsel began investigating this matter in March 2021, Counsel has devoted over 442.3 hours, for a total lodestar of \$237,078.10,⁵ to the successful pursuit of this matter. *See Klinger Fee Decl.*, ¶¶ 43-44. Settlement Class Counsel began investigating the Data Incident and the potential causes of action in March 2021 shortly after the Data Incident, and drafted separate complaints that were filed on May 18, 2021 and September 16, 2021. *See id.* ¶ 24. Settlement Class Counsel researched and completed a draft Opposition to Plaintiff’s Motion to Dismiss. Settlement

⁵ Counsel has excluded all time relating this fee application from the aggregate lodestar figure.

Class Counsel prepared Automatic Disclosures and two sets of formal discovery requests in November 2021. *See id.* ¶ 24. Settlement Class Counsel prepared for an engaged in an all-day mediation in this matter, including submission of a mediation brief and an exchange of informal discovery. *See id.* ¶ 25. Afterwards, Settlement Class Counsel spent a significant amount of time continuing to negotiate the finer aspects of the Settlement with New London’s counsel and in drafting the Settlement Agreement and corresponding exhibits. *See id.* Settlement Class Counsel also prepared the moving papers for preliminary approval of the class action settlement. *See id.* Settlement Class Counsel’s dedication to this matter and expenditure of substantial time, effort, and resources has brought this complex litigation to a successful resolution. And Settlement Class Counsel will continue to devote significant efforts to this case through Final Approval of the Settlement (and, beyond, for any appeals, if applicable). *See id.* ¶ 29.

The above amount of hours is reasonable for complex consumer class actions of this type and was compiled from contemporaneous time records maintained by each individual attorney or paraprofessional who performed work on the case. *See id.* ¶¶ 39-42. Moreover, the hourly rates are reasonable. *See, e.g., Vista Outdoor, Inc. v. Reeves Family Tr.*, No. 16 Civ. 5766, 2018 WL 3104631, at *6 (S.D.N.Y. May 24, 2018) (finding reasonable hourly partner rates between \$1,165 and \$1,260 and hourly associate rates between \$569.02 and \$753.42 (*citing MSC Mediterranean Shipping Co. Holdings S.A. v. Forsyth Kownacki LLC*, No. 16 Civ. 8103 (LGS), 2017 WL 1194372, at *3 (S.D.N.Y. Mar. 30, 2017))); *see also U.S. Bank Nat’l Ass’n v. Dexia Real Estate Capital Mkts.*, No. 12 Civ. 9412 (PAE), 2016 WL 6996176, at *8 (S.D.N.Y. Nov. 30, 2016) (“[P]artner billing rates in excess of \$1000 an hour[] are by now not uncommon in the context of complex commercial litigation.”) (internal quotation marks omitted).

The fifth *Goldberger* factor is therefore satisfied.

6. Awards in Similar Cases

Courts in the First Circuit routinely award one-third of the total fund in attorneys' fees. *See supra*, Section IV.B (collecting cases in the First Circuit awarding one-third in attorneys' fees). Settlement Class Counsel's fee request of 11.44% of the total percent of recovery on behalf of the Settlement Class, which is on the higher end of the range, is well below fee awards in other complex class action settlements within this Circuit. *See id.* (citing cases where courts routinely award 33% of the fund). Moreover, the requested fee is commensurate with, and in fact lower, than the amount that Settlement Class Counsel has been awarded in similar data breach litigation and in class action litigation in general in courts across the country. *See Klinger Fee Decl.*, ¶¶ 3-17 and Firm Resume attached thereto as **Exhibit A**; *see also Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *6 (approving attorneys' fees and costs in the amount of \$1,575,000 in data breach settlement with similar class relief). The fee requested here is 11.44% of the total recovery of the settlement based upon conservative claims and activation rates, which is well below the one-third attorneys' fees customarily approved in common fund cases by courts in the First Circuit. Accordingly, this factor weighs in favor of approval of Plaintiff's fee petition.

7. Public Policy Considerations

Public policy considerations also favor Settlement Class Counsel's fee request. There is a public interest in having experienced counsel undertake the risk of pursuing complex class actions. This is particularly true where it is unlikely that the Settlement Class Members will pursue litigation on their own for economic or personal reasons. *See, e.g., In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio), *decision clarified*, 148 F. Supp. 2d 936 (S.D. Ohio 2001) ("We believe that, without such a class action, small individual claimants would lack the

resources to litigate a case of this magnitude. Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.”).

Moreover, courts in the First Circuit have recognized that public policy supports rewarding class counsel for the time, expense, and risk involved in litigating complex matters, “especially where counsel’s dogged efforts—undertaken on a wholly contingent basis—result in satisfactory resolution for the class.” *Medoff*, Civil No. 09-cv-554-JNL, 2016 WL 632238, at *9; *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d at 270 (finding that “countervailing public policy considerations weigh against any reduction of the [percentage of fund] award” where class counsel’s “expenditure of time, money, and effort” and “dogged effort” contributed to the favorable end result: “public policy favors granting counsel an award reflecting that effort.”). “Without a fee that reflects the risk and effort involved in this litigation, future plaintiffs’ attorneys might hesitate to be similarly aggressive and persistent when faced with a similarly complicated, risky case and similarly intransigent defendants.” *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d at 270.

Accordingly, this Court should grant Plaintiff’s Motion for Attorney’s Fees and Costs because Plaintiff satisfies all of the *Goldenberg* factors.

D. A Lodestar Crosscheck Confirms the Reasonableness of the Requested Fee.

While courts may use the lodestar method as a “cross check” when applying the percentage of fund method in common fund cases, First Circuit courts are not required to do so. *See In re Thirteen Appeals*, 56 F.3d at 308 (Courts using the percentage of fund method to calculate attorneys’ fees “have the discretion to use a flexible approach in the combination of both methods.”); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 215-

16 (D. Me. 2003) (“The lodestar approach (reasonable hours spent times reasonable hourly rates, subject to a multiplier or discount for special circumstances, plus reasonable disbursements) can be a check or validation of the appropriateness of the percentage of funds fee, but is not required.”); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, Civil Action No. 05–11148–PBS, 2009 WL 2408560, at *1 (D. Mass. Aug. 3, 2009) (same). However, “[a]s the First Circuit explained, the ‘percentage of fund’ approach is a useful approach, and may be especially helpful in certain cases when combined with the lodestar approach.” *Mooney*, Case No. 1:14-cv-13723-IT, 2018 WL 10232918, at *1 (awarding one-third of the settlement fund).

Here, a lodestar cross-check⁶ confirms the reasonableness of Settlement Class Counsel’s fee request. Settlement Class Counsel has devoted more than 442.3 hours to prosecuting this litigation. *See* Klinger Fee Decl. ¶¶ 43-44. Settlement Class Counsel’s aggregate lodestar is \$237,078.10. *Id.* The requested fee award represents a multiplier of just 1.66, which is well below what other courts within the First Circuit have found to be reasonable in common fund cases. “Multipliers of 2 and more have been found reasonable in common fund cases” in the First Circuit. *See Roberts*, Civil Action No. 13-cv-13142-ADB, 2016 WL 8677312, at *13; *Mooney*, Case No. 1:14-cv-13723-IT, 2018 WL 10232918, at *1 (“Taking into account the additional time that class counsel have and will spend on settlement administration, the multiplier in this case is approximately 4.77, which is within the bounds of reasonableness for a class action.”); *In re Tyco*, 535 F. Supp. 2d at 271 (“the resulting lodestar multiplier of 2.697 appropriately compensates counsel for the risk that they assumed in litigating the case.”); *Gordan*, No. 13-CV-30184-MAP,

⁶ “The First Circuit does not require a court to cross check the percentage of fund against the lodestar in its determination of the reasonableness of the requested fee.” *In re Relafen Antitrust Litig.*, 231 F.R.D. at 81. However, “[a]s the First Circuit explained, the ‘percentage of fund’ approach is a useful approach, and may be especially helpful in certain cases when combined with the lodestar approach.” *Mooney*, Case No. 1:14-cv-13723-IT, 2018 WL 10232918, at *1.

2016 WL 11272044, at *3 (awarding lodestar multiplier of 3.66); *In re Neurontin Marketing and Sales Practices Litig.*, 58 F. Supp. 3d 167, 172 (D. Mass. Nov. 10, 2014) (awarding lodestar multiplier of 3.32).

Notably, Settlement Class Counsel's current lodestar does not take into account the additional hours that will be dedicated administering and overseeing the Settlement over the next several months. *See* Klinger Fee Decl., ¶ 29.

Accordingly, Plaintiff's lodestar is well below the acceptable range, and Plaintiff's lodestar cross check confirms the reasonableness of Plaintiff's requested fees.

E. Plaintiff's Costs are Reasonable.

As part of the \$300,000 requested, Plaintiff seeks to recover his costs incurred in the litigation. Overall, Plaintiff has expended \$7,283.00 in hard out-of-pocket costs to prosecute this litigation on behalf of the Class. *See id.* ¶ 50. These costs reflect case filing and service fees, pro hac vice fees, and the mediation fees, all of which contributed to the Settlement of this action. The costs incurred were not only reasonable but necessary to resolve the case. Accordingly, Plaintiff should be awarded his costs as well, which are inclusive of the requested \$300,000 award.

F. Plaintiff's Service Award Is Reasonable and Should Be Approved.

The Settlement provides that Plaintiff may seek a Service Award of \$1,000 for his efforts on behalf of the Settlement Class. This Service Award is fair and reasonable in light of the time and effort Plaintiff expended for the benefit of the Settlement Class, and the risks he assumed by initiating the litigation and publicly representing the Settlement Class. Courts recognize that named plaintiffs are "an essential ingredient of any class action" and that "an incentive award can be appropriate to encourage or induce an individual to participate in the suit." *Scovil v. FedEx Ground Package Sys., Inc.*, No. 1:10-CV-515-DBH, 2014 WL 1057079, at *6 (D. Me. Mar. 14, 2014).

Service awards are viewed favorably because they encourage “named plaintiffs to participate actively in class action litigation in exchange for reimbursement for their pursuits on behalf of the class overall.” *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 351 (D. Mass. 2015).

Here, Plaintiff has actively pursued this litigation from the outset. His initiative, time, and effort were essential to the successful prosecution of the case. He assisted in the investigation and development of the case, provided counsel with necessary documents, reviewed the pleadings, remained available for consultation throughout the mediation and settlement negotiations, answering counsel’s many questions, and reviewed the terms of the Settlement Agreement, communications, and other information. *See* Klinger Fee Decl., ¶ 28. A Service Award is appropriate in light of the efforts made by Plaintiff to protect the interests of the other Settlement Class Members, the time and effort he expended pursuing this matter, and the substantial benefit he helped achieve for the other Settlement Class Members. A Service Award of \$1,000 is well-deserved, reasonable, and equivalent to awards approved by other courts. *See Scovil*, No. 1:10–CV–515–DBH , 2014 WL 1057079 at *6 (citing a 2006 study of incentive awards during 1993–2002 found the median incentive payment to be \$4,537, with the average being \$15,992). Based on the foregoing, Settlement Class Counsel respectfully request that the Court approve a Service Award of \$1,000 for Plaintiff.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s application for attorneys’ fees, costs, expenses, and service award to the Representative Plaintiff.

DATED: November 23, 2022

Respectfully submitted,

TOM STEEN

/s/ Matthew V. Burrows

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Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I, Matthew V. Burrows, hereby certify that a copy of this motion was sent to counsel of record via the state court's e-filing system.

DATED: November 23, 2022

By: /s/ Matthew V. Burrows
Matthew V. Burrows, Esq. (#20914)

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of all others similarly situated*,

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC.,
d/b/a New London Hospital and Newport Health
Center

Defendant.

Civil Action No. 217-2021-CV-00281

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARD FOR REPRESENTATIVE PLAINTIFF**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). I am one of the lead attorneys for Plaintiff and have been appointed Settlement Class Counsel for the Settlement Class. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Award for Representative Plaintiff. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I have extensive experience in class action litigation generally and data breach class actions in particular. My experience, and that of my law partners, is described below.

3. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on hundreds of complicated and complex class actions. See Milberg Resume, attached as **Exhibit A**.

4. These cases recently include cutting-edge litigation, including: *In re Dealer Management Systems Antitrust Litigation*, Case No. 1:18-cv-00864 (N.D. Ill. 2018) (appointed co-lead counsel; partial settlement of \$29.5 million, case on-going); *In re Seresto Flea and Tick Collar Marketing, Sales Practices, and Products Liability Litigation*, Case No. 1:21-cv-04447 (N.D. Ill. 2021) (appointed co-lead counsel; case on-going); and *Carder v. Graco Children's Products, Inc. et al.*, Case No. 2:20-cv-00137 (N.D. Ga. 2020) (appointed interim co-lead counsel; case on-going).

5. With respect to privacy cases, Milberg is presently litigating more than fifty (50) cases across the country involving violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, privacy violations, data breaches, and ransomware attacks. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on data breach and privacy litigations, including *In re Blackbaud, Inc. Consumer Data Security Breach Litigation*, MDL 2972, Case No. 3:20-mn-02972 (D.S.C. 2020) (appointed co-lead counsel; case on-going).

6. Milberg Attorneys have also participated in other data breach and privacy litigation, recently, which includes: *Veiga, et al. v. Respondus, Inc.*, Case No., 1:21-cv-02620 (N.D. Ill. 2021); *Dickerson v. CDPQ Colonial Partners, L.P., et. al*, Case No. 1:21-cv-02098 (N.D. Ga. 2021); *In re Wawa, Inc. Data Security Litigation*, 2:19-cv-06019 (E.D. Pa. 2019); *Whalen v. Facebook, Inc.*, Case No.4:20-cv-06361 (N.D. Cal. 2020); and *K.F.C. v. Snap, Inc.*, No. 21-2247 (7th Cir. 2021).

7. Milberg Attorneys were Co-Lead Counsel in *In re Department of Veterans Affairs (VA) Data Theft Litigation*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful disclosure of PPI of 28.5 million military veterans and active-duty personnel; \$20 million settlement fund).

8. Milberg Attorneys were court-appointed Lead Counsel in *In re Google Buzz Privacy Litigation*, No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (\$10 million settlement fund in case arising for unauthorized disclosure or personal information).

9. Milberg Attorneys have also served as Lead Counsel, Co-Counsel, or Class Counsel on dozens of class actions ranging from defective construction materials, *e.g.*, defective radiant heating systems, siding, shingles, and windows, to misrepresented and recalled products, *e.g.*, dog food, prenatal vitamins, to environmental incidents, such as the Exxon Valdez, BP Oil Spill.

10. It is noteworthy that, just in the time since 2020 through the present, I (either individually, or as a member of the law firms in which I have been a partner during that timeframe) have been appointed class counsel in a number of data breach and/or data privacy cases, including, but not limited to, the following:

- a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted Aug. 2021);
- b. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D.N.Y.) (class counsel in a data breach class action settlement; final approval granted Feb. 2021);
- c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);
- f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed

class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);

- g. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case, final approval granted September 2021);
- h. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final approval granted November 2021);
- i. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action);
- j. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million);
- k. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (appointed co-lead counsel);
- l. *Suren et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted Sept. 27, 2021);
- m. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted Sept. 2021);
- n. *Aguallo et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.) (appointed Co-lead Counsel, final approval granted of \$17.1 million class settlement);
- o. *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million persons; preliminary approval of \$4.35 million settlement granted Jan. 2022);
- p. *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co- lead counsel in data breach case involving over 2.4 million class members; preliminary approval of \$4.75 million settlement granted Feb. 2022);
- q. *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (appointed co- lead counsel in data breach case involving over 3 million class members);

- r. *Heath v. Insurance Technologies Corp.*, No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers);
- s. *Hough v. Navistar, Inc.*, Case No.: 2021L001161 (Ill. 18th Jud. Cir. Ct., DuPage Cnty.); (appointed co-lead class counsel; final approval granted May 2022);
- t. *Clark v. Mercy Hospital, et al*, Case No. CVCV082275 (Iowa Dist. Ct., Johnson Cnty.) (appointed class counsel; final approval granted July 2022);
- u. *Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic*, (Iowa Dist. Ct., Marshall Cnty.) (appointed class counsel; final approval granted June 2022);
- v. *Devine, et al v. Health Aid of Ohio, Inc.*, (Ohio Court of Common Pleas, Cuyahoga Cnty.) (appointed class counsel; final approval granted September 2022);
- w. *Davidson v. Healthgrades Operating Company, Inc.*, Case No. 1:21-cv-01250-RBJ (D. Colo.), (appointed class counsel; final approval granted August 2022);
- x. *Bodie v. Capitol Wholesale Meats, Inc.*, Case No. 2022CH000020 (Ill. 18th Jud. Cir. Ct., DuPage Cnty.) (appointed class counsel; final approval granted March 2022);
- y. *Culp v. Bella Elevator LLC*, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Ct., Peoria Cnty.) (appointed class counsel; final approval granted May 2022);
- z. *Cain, et al. v. OSF Healthcare*, Case No. 21-L-00231 (Circuit Court for the Tenth Judicial Circuit of Peoria County, Illinois) (appointed settlement class counsel; preliminary approval granted September 2022);
- aa. *Nelson, et al. v. Bansley & Kiener*, Case No. 2021-CH-06274 (Ill. Cir. Ct., Cook Cnt'y) (appointed class counsel; preliminary approval granted August 2022);
- bb. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021-CV-00281 (Merrimack Superior Court, New Hampshire) (appointed class counsel; preliminary approval granted September 8, 2022);
- cc. *Summers II v. Sea Mar Community Health Ctrs.*, Case No. 22-2-00773-7 SEA (Wash. Sup. Ct., King Co.) (appointed class counsel; preliminary approval granted August 2022);
- dd. *In re Forefront Data Breach Litigation*, Master File No. 1:21-cv-00887-LA (E.D. Wisc.) (appointed settlement class counsel; preliminary approval granted October 2022); and

ee. *Engle v. Talbert House*, Case No.: A2103650 (Court of Common Pleas, Hamilton County, Ohio) (appointed class counsel; preliminary approval granted August 2022).

11. I have been appointed by state and federal courts to act as Class Counsel for millions of consumers and recovered hundreds of millions of dollars for consumers throughout the country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action lawsuits pending in state and federal courts across the country.

12. Indeed, I recently obtained final approval of a class-wide settlement for a major data breach class action involving more than six million consumers. See *Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (where I, as appointed co-lead counsel, obtained preliminary approval of a \$17.6 million dollar settlement to resolve similar data breach class action claims against Kemper Corporation in a case involving more than six million class members).

13. I presently serve as one of two Court-appointed Lead Counsel in the data breach case, *In re Canon U.S.A. Data Breach Litigation*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y. filed Dec. 23, 2020).

14. I was also appointed Co-Lead Counsel in the data breach case, *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involved more than one million class members and was finally approved on a class-wide basis for a \$4.35 million settlement.

15. I also served as co-lead counsel in the consolidated data breach litigation styled, *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.), which involved more than 2.4 million class members and was finally approved on a class-wide basis for a \$4.75 million settlement.

16. I was also recently as appointed co-lead counsel to represent more than three million class members in another major data breach class action in the Seventh Circuit. *See In re Arthur J. Gallagher Data Breach Litig.*, No. 1:21-cv-04056 (N.D. Ill.).

17. I have successfully litigated privacy class actions through class certification. *In Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *1 (N.D. Ill. June 25, 2018), where I certified, over objection, a nationwide privacy class action involving more than one million class members.

18. In a recent nationwide privacy class settlement hearing in the U.S. District Court for the Northern District of California, Judge Richard Seeborg personally commended me for having achieved “quite a substantial recovery for class members.” Judge Seeborg further stated he could not recall any class action case where “the amounts going to each class member were as substantial” as that obtained by me (and my co-counsel).

19. In addition to concentrating my practice on class action litigation involving consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised of the current law on these issues. In recent years, I have attended various legal training seminars and conferences, such as the driTM conference for Class Actions, The Consumer Rights Litigation Conference and Class Action Symposium, as well as attended various seminars offered by Strafford on class action issues.

20. I am also a member of the International Association of Privacy Professionals and a Certified Information Privacy Professional (CIPP/US).

21. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A. Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude). While at the U of I College of Law, I was a member of, and ultimately appointed as the Executive Editor

for the Illinois Business Law Journal. My published work includes: *The U.S. Financial Crisis: Is Legislative Action the Right Approach?*, Ill. Bus. L. J. (Mar. 2, 2009).

22. I am presently pursuing my Master of Laws (LLM) in Data Privacy and Cybersecurity from the University of Southern California Gould School of Law.

23. I became licensed to practice law in the State of Illinois in 2010 and am a member of the Trial Bar for the Northern District of Illinois, as well as the U.S. Bankruptcy Court for the Northern District of Illinois. Additionally, I am admitted to practice in federal courts across the country, including, but not limited to, the U.S. District Courts for the District of Colorado, the Central District of Illinois, the Northern District of Illinois, Northern District of Indiana, Southern District of Indiana, Eastern District of Michigan, and the Eastern District of Texas.

The Litigation and Settlement

24. My Firm began investigating the Data Incident and the potential causes of action in March 2021 shortly after the Data Incident, and drafted separate complaints that were filed on May 18, 2021 and September 16, 2021. Settlement Class Counsel researched and completed a draft Opposition to Plaintiff's Motion to Dismiss. Settlement Class Counsel prepared Automatic Disclosures and two sets of formal discovery requests in November 2021.

25. My Firm prepared for an engaged in an all-day mediation in this matter, including submission of a mediation brief and an exchange of informal discovery. Settlement Class Counsel reached the Settlement Agreement after an extensive investigation, an exchange of informal discovery, prolonged arms' length negotiations, and after an all-day mediation before preeminent data breach mediator, Bennett G. Picker of the firm, Stradley Ronon Stevens & Young, LLP. Even after coming to an agreement on the central terms, my Firm worked for weeks to finalize the Settlement Agreement and associated exhibits (such as the Class notices and claim Form)

pertaining to notice, preliminary approval, and final approval. My Firm also prepared the moving papers for preliminary approval of the class action settlement.

26. The Settlement Agreement will provide Settlement Class Members substantial relief in the form of (1) reimbursement of ordinary losses of up to for up to a total of \$500.00 per Settlement Class Member in the form of out-of-pocket expenses and lost time; (2) a \$125 statutory benefit; (3) reimbursement of extraordinary losses up to \$5,000.00 per Settlement Class Member; and (4) two (2) years of three (3B) bureau credit monitory services, without the need to file an affirmative claim. Plaintiff strongly believes the settlement is favorable to the Settlement Class. Additionally, Settlement Class Members are already benefitting and will continue to benefit from security-related measures that it has implemented and will implement in the future to better protect Settlement Class Members' data.

27. New London has agreed to pay, subject to Court approval, up to \$300,000.00 to Settlement Class Counsel for combined attorneys' fees and costs, in addition to any benefits provided to Settlement Class Members and the costs of settlement administration. This amount was negotiated after the primary terms of the settlement were negotiated.

28. New London also has agreed to pay a reasonable Service Award not greater than \$1,000.00, subject to approval of the Court. The Service Award is meant to recognize Plaintiff for his efforts on behalf of the Settlement Class, assisting in the investigation and development of the case, providing counsel with necessary documents, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement, communications, and information. The Parties did not discuss the payment of a Service Award to Representative Plaintiff until after the substantive terms of the settlement had been agreed upon.

29. Since the Court granted preliminary approval on September 8, 2022 and continuing to today, I have continued to work with New London and the Settlement Administrator regarding claims administration and processing, as well as answering Settlement Class Members' questions about the settlement and the process. Based on experience, I will spend substantial additional hours seeking Final Approval, defending the Settlement from potential objections, and supervising claims administration and the distribution of proceeds.

30. As of the date of filing, I have received no objections to either the Settlement Agreement in general or to the proposed attorneys' fees, costs (the amount of which was made known to the Settlement Class via the Court-approved notice program) in particular.

31. RG2 estimates the costs of the providing Notice and Claims and Settlement Administration through completion of the case will be \$61,597. Notice has been provided to the Settlement Class pursuant to the Court's Preliminary Approval Order and will be reported on more extensively in Plaintiff's Motion for Final Approval of Class Action Settlement.

The Contingent Nature of the Case

32. My Firm prosecuted this case on a purely contingent basis. As such, the firm assumed a significant risk of nonpayment or underpayment.

33. This matter has required me, and other attorneys at my Firm, to spend time on this investigating and litigation of this matter that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and my Firm's time.

34. Such time could otherwise have been spent on other fee-generating work. Because our Firm undertook representation of this matter on a contingency-fee basis, we shouldered the

risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

35. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time my Firm spent working on this case could and would have been spent pursuing other potentially fee generating matters.

36. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite my Firm's devotion to the case and our confidence in the claims alleged against New London Hospital, there have been many factors beyond our control that posed significant risks.

37. My fees were not guaranteed—the retainer agreement counsel had with Plaintiff did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

MILBERG'S TIME AND EXPENSES IN THE LITIGATION

38. Due to the early stage of litigation and efficiency by which Settlement Class Counsel was able to obtain this significant settlement, costs, and fees incurred by Plaintiff are low.

39. Milberg maintains contemporaneous records of its time and expenses. These records are prepared and maintained in the ordinary course of business through software systems maintained by the firm.

40. I prepared my declaration with the assistance of other lawyers and staff at the firm with knowledge of the matters reflected herein. I have personally reviewed the information supporting the fee and expense requests that are the subject of this declaration.

41. As part of the preparation of my declaration, I reviewed the time and expenses incurred in this litigation to exercise billing judgment. In reviewing the time and expenses, and in exercising my billing judgment, I have carefully reviewed the time entries for reasonableness, and endeavored to delete any time entries that could be viewed as duplication of work.

42. After exercising billing judgment and making billing reductions based on my review of the records, the number of hours spent on this litigation by my firm, and the reasonable hourly rates, my firm's lodestar is reflected below.

The Costs and Fees Incurred

43. My firm's lodestar of 251.2, as November 14, 2022, amounts to \$180,968.10. I have excluded all time relating to this fee application from the aggregate lodestar figure.

44. Our local counsel is Gallagher, Callahan & Gartrell, P.C. Local counsel's lodestar of 191.1, as of November 23, 2022, amounts to \$56,110. All time relating to this fee application has been excluded from the local counsel's aggregate lodestar figure.

45. I assert that the attorneys' fees sought in the motion for attorneys' fees are reasonable and seek fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiffs and the Settlement Class. As set forth in the Settlement Agreement, the attorneys' fees, costs, and expenses sought in this motion will not reduce the benefits payable to the class.

46. Prior to taking on Plaintiffs' case, I thoroughly researched New London's practices and Plaintiffs' legal claims by, among other things, conducting an independent investigation and researching relevant data privacy statutes. This information was critical to my understanding of the nature of the Data Incident, the scope of potential damages and remedies, and the potential risks and benefits of continued litigation.

47. The other attorneys at my firm and I devoted significant time and resources to this case, including:

- a. Conducting an investigation into the facts regarding Plaintiffs' claims and Settlement Class Members' claims;
- b. Researching law relevant to and preparing Plaintiff's class action Complaint filed on May 18, 2021;
- c. Researching law relevant law to and preparing a draft of an Opposition to Plaintiff's Motion to Dismiss Plaintiff's Complaint filed on May 18, 2021;
- d. Preparing Plaintiff's First Amended Class Action Complaint filed on September 16, 2021;
- e. Preparing Automatic Disclosures and two sets of formal discovery requests in November 2021;
- f. Preparing for and attending mediation with Bennett G. Picker of the firm, Stradley Ronon Stevens & Young, LLP, including researching and preparing a detailed mediation statement, as well as attending pre-mediation conferences and calls with Mr. Picker;
- g. Negotiating and preparing the Parties' class action settlement agreement, along with the proposed class notice and claim form;
- h. Negotiating with settlement administration companies to secure the best notice plan practicable;
- i. Preparing and revising Plaintiffs' motion for preliminary approval of the class action settlement;

- j. Working with the Settlement Administrator to ensure the timely completion of Notice and processing of claims;
- k. Monitoring the claims process and corresponding with the Settlement Administrator regarding the same;
- l. Closely monitoring evolving law regarding data security and its potential impacts on the case;
- m. Conferring with Plaintiff throughout the case;
- n. Reviewing New London's information responses; and
- o. Responding to Settlement Class Member inquiries regarding the claims process.

48. Where possible, Settlement Class Counsel made efforts to carefully assign work so as to avoid duplication of efforts and have the work completed by the appropriate level of attorney.

49. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. I have reviewed the records of costs expended in this matter.

50. My firm has also accrued \$7,283 in out-of-pocket costs pertaining to this litigation. These expenses are comprised of filing and service fees, pro hac vice fees, and the mediation fees. These costs are reasonable and necessary for the litigation.

51. Additional costs and expenses may be incurred before our work is done in this case, as is true of the additional services which we will provide to the Settlement Class.

52. As of November 15, 2022, the Settlement Administrator reports receiving zero requests for exclusion. (The Claims Period ends on January 6, 2023.)

53. As of November 15, 2022, the Claims and Settlement Administrator reports receiving zero objections to the Settlement or to the request for fees, costs, and service awards, the amounts of which were all included in the notice sent to Settlement Class Members.

54. In the opinion of the undersigned and other Settlement Class Counsel, the attorneys' fees and costs requested are fair and reasonable, under the facts and circumstances of this case.

* * * * *

I declare under penalty of perjury of the laws of New Hampshire that the foregoing is true and correct, and that this declaration was executed in Chicago, Illinois on this 23rd day of November, 2022.

/s Gary M. Klinger

Gary M. Klinger

Attorneys for Plaintiff and the Putative Class



Firm Resume

FIRM PROFILE

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN LLP (“MILBERG”) IS A LEADING GLOBAL PLAINTIFFS’ FIRM, successfully pioneering and litigating complex litigations in the following practice areas: class actions, antitrust and competition law, securities fraud, consumer protection, cyber security and data breach litigation, financial and insurance litigation, environmental law, securities litigation, and product liability. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride themselves on providing stellar service and achieving extraordinary results for their clients.

Milberg was founded in 1965, taking the lead in landmark cases that have set groundbreaking legal precedents and prompted changes in corporate governance benefiting shareholders and consumers. For more than 50 years, the firm has protected victims’ rights, recovering over \$50 billion in verdicts and settlements. Milberg was one of the first law firms to prosecute class actions in federal courts on behalf of investors and consumers. The firm pioneered this type of litigation and became widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing.

Milberg has offices in Illinois, New York, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee, Puerto Rico and Washington D.C. Recently, Milberg opened offices in London, Belgium and Germany that serve clients in the European Union. In addition, Milberg has expanded in South America, with primary emphasis in Brazil. Milberg has more than 100 attorneys worldwide.

The firm’s reputation has been built by successfully taking on challenging cases across a spectrum of practice areas for the past half-century. From resolving business disputes to proving antitrust conspiracies, Milberg is equipped to handle complex, high-stakes cases at any stage of the litigation process.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, and Super Lawyers, among others.

Notable Class Action Cases

Antitrust

In re: TFT-LCD (Flat Panel) Antitrust Litigation, No. 3:07-cv-01827, MDL No. 1827 (N.D. Cal.) (combined settlement totaling nearly \$1.1 billion in suit alleging the illegal formation of an international cartel to restrict competition in the LCD panel market) (2012).

Apartment Fee

Stewart v. Southwood Realty Company (Cumberland Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Lewis et al. v. Bridge Property Management, LLC et al. (Wake Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Hargrove v. Grubb Management, Inc. et al. (Wake Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Rush v. The NRP Group LLC (USDC MD NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Hamilton v. Arcan Capital, LLC et al. (Forsyth Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Suarez v. Camden Development, Inc. et al. (USDC ED NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Milroy et al. v. Bell Partners Inc. et al. (USDC ED NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Davis v. RAM Partners, LLC (USDC MD NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Hampton v. KPM et al. (USDC WD NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Brogden v. Kenney Properties, Inc. et al. (Wake Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Williams v. Pegasus Residential, LLC (USDC MD NC) (preliminary approval of settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Medina v. Westdale et al. (USDC ED NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Talley et al. v. Lincoln Property Company (USDC ED NC) (preliminary approval of settlement of class claims arising from apartment communities allegedly assessing improper eviction fees pending) (2021).

McCord v. PRG Real Estate Mgmt, Inc. et al. (USDC MD NC) (pending final approval of settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Appliances

Ersler, et. al v. Toshiba America et. al, No. 07- 2304 (D.N.J.) (settlement of claims arising from allegedly defective television lamps) (2009).

Maytag Neptune Washing Machines (class action settlement for owners of Maytag Neptune washing machines).

Stalcup, et al. v. Thomson, Inc. (Ill. Cir. Ct.) (\$100 million class settlement of claims that certain GE, PROSCAN and RCA televisions may have been susceptible to temporary loss of audio when receiving broadcast data packages that were longer than reasonably anticipated or specified) (2004).

Hurkes Harris Design Associates, Inc., et al. v. Fujitsu Computer Prods. of Am., Inc. (settlement provides \$42.5 million to pay claims of all consumers and other end users who bought certain Fujitsu Desktop 3.5” IDE hard disk drives) (2003).

Turner v. General Electric Company, No. 2:05-cv-00186 (M.D. Fla.) (national settlement of claims arising from allegedly defective refrigerators) (2006).

Automobiles

In re General Motors Corp. Speedometer Prods. Liability Litig., MDL 1896 (W.D. Wash.) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers) (2007).

Baugh v. The Goodyear Tire & Rubber Company (class settlement of claims that Goodyear sold defective tires that are prone to tread separation when operated at highway speeds; Goodyear agreed to provide a combination of both monetary and non-monetary consideration to the Settlement Class in the form of an Enhanced Warranty Program and Rebate Program) (2002).

Lubitz v. Daimler Chrysler Corp., No. L-4883-04 (Bergen Cty. Super. Ct, NJ 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of \$12 million fund; 7th largest judgment or settlement in New Jersey) (2007).

Berman et al. v. General Motors LLC, Case No. 2:18-cv-14371 (S.D. Fla.) (Co-Lead Counsel; national settlement for repairs and reimbursement of repair costs incurred in connection with Chevrolet Equinox excessive oil consumption).

Civil Rights

In re Black Farmers Discrimination Litigation, Case No. 1:08-mc-00511 (D.D.C.) (\$1.25 billion settlement fund for black farmers who alleged U.S. Department of Agriculture discriminated against them by denying farm loans) (2013).

Bruce, et. al. v. County of Rensselaer et. al., Case No. 02-cv-0847 (N.D.N.Y.) (class settlement of claims that corrections officers and others employed at the Rensselaer County Jail (NY)

engaged in the practice of illegally strip searching all individuals charged with only misdemeanors or minor offenses) (2004).

Commercial

In re: Outer Banks Power Outage Litigation, 4:17-cv-141 (E.D.N.C) (Co-Lead Counsel; \$10.35 million settlement for residents, businesses, and vacationers on Hatteras and Ocracoke Islands who were impacted by a 9-day power outage) (2018)

Construction Materials

Cordes et al v. IPEX, Inc., No. 08-cv-02220-CMA-BNB (D. Colo.) (class action arising out of defective brass fittings; court-appointed member of Plaintiffs' Steering Committee) (2011).

Elliott et al v. KB Home North Carolina Inc. et al 08-cv-21190 (N.C. Super. Ct. Wake County) (Lead Counsel; class action settlement for those whose homes were constructed without a weather-resistant barrier)(2017)

In re: Pella Corporation Architect and Designer Series Windows Marketing, Sales Practices and Products Liability Litigation, MDL No. 2514 (D.S.C.)(class action arising from allegedly defective windows; Court-appointed Co-Lead Counsel).

In re MI Windows and Doors, Inc., Products Liability Litigation, MDL No. 2333 (D.S.C) (National class action settlement for homeowners who purchased defective windows; Court-appointed Co-Lead Counsel).

In re: Atlas Roofing Corporation Chalet Shingle Products Liability Litig., MDL No. 2495 (N.D. Ga.) (class action arising from allegedly defective shingles; Court-appointed Co-Lead Counsel).

Helmer et al. v. Goodyear Tire & Rubber Co., No. 12-cv-00685-RBJ (D. Colo. 2012) (class action arising from allegedly defective radiant heating systems; Colorado class certified, 2014 WL 3353264, July 9, 2014)).

In re: Zurn Pex Plumbing Products Liability Litigation, No. 0:08-md-01958, MDL No. 1958 (D. Minn.) (class action arising from allegedly plumbing systems; member of Executive Committee; settlement) (2012).

Hobbie, et al. v. RCR Holdings II, LLC, et al., No. 10-1113 , MDL No. 2047 (E.D. La.) (\$30 million settlement for remediation of 364 unit residential high-rise constructed with Chinese drywall) (2012).

In re: Chinese Manufactured Drywall Products Liability Litigation, No. 2:09-md-02047, MDL No. 2047 (E.D. La.) (litigation arising out of defective drywall) (appointed Co-Chair, Insurance Committee) (2012).

Galanti v. Goodyear Tire & Rubber Co., No. 03-209 (D.N.J. 2003) (national settlement and creation of \$330 million fund for payment to owners of homes with defective radiant heating systems) (2003).

In re Synthetic Stucco Litig., Civ. Action No. 5:96-CV-287-BR(2) (E.D.N.C.) (member of Plaintiffs' Steering Committee; settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million).

In re Synthetic Stucco (EIFS) Prods. Liability Litig., MDL No. 1132 (E.D.N.C.) (represented over 100 individuals homeowners in lawsuits against homebuilders and EIFS manufacturers).

Posey, et al. v. Dryvit Systems, Inc., Case No. 17,715-IV (Tenn. Cir. Ct) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants) (2002).

Sutton, et al. v. The Federal Materials Company, Inc., et al, No. 07-CI-00007 (Ky. Cir. Ct) (Co-Lead Counsel; \$10.1 million class settlement for owners of residential and commercial properties constructed with defective concrete).

Staton v. IMI South, et al. (Ky. Cir. Ct.) ((Co-Lead Counsel; class settlement for approximately \$30 million for repair and purchase of houses built with defective concrete).

In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation, No. 15-cv-0018, MDL No. 2577 (D.N.J.) (Lead Counsel; national settlement to homeowners who purchased defective GAF decking and railings).

Bridget Smith v. Floor and Decor Outlets of America, Inc., No. 1:15-cv-4316 (N.D. Ga.) (Co-Lead Counsel; National class action settlement for homeowners who purchased unsafe laminate wood flooring).

In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation MDL No. 1:15-md-2627 (E.D.Va.) (Formaldehyde case; \$36 million national class action settlement for member who purchased a certain type of laminate flooring).

In re Lumber Liquidators Chinese-Manufactured Laminate Flooring Durability Marketing, Sales Practices Litigation MDL No. 1:16-md-2743 (E.D.Va.) (Co-Lead Counsel; Durability case; \$36 million national class action settlement for member who purchased a certain type of laminate flooring).

In re Windsor Wood Clad Window Products Liability Litigation MDL No. 2:16-md-02688 (E.D. Wis.) (National class action settlement for homeowners who purchased defective windows; Court-appointed Lead Counsel).

In re Allura Fiber Cement Siding Products Liability Litigation MDL No. 2:19-md-02886 (D.S.C.) (class action arising from allegedly defective cement board siding; Court-appointed Lead Counsel).

Environmental

Nnadili, et al. v. Chevron U.S.A., Inc., No. 02-cv-1620 (D.D.C.) (\$6.2 million settlement for owners and residents of 200 properties located above underground plume of petroleum from former Chevron gas station) (2008).

Fair Labor Standards Act/Wage and Hour

Craig v. Rite Aid Corporation, Civil No. 08-2317 (M.D. Pa.) (FLSA collective action and class action settled for \$20.9 million) (2013).

Stillman v. Staples, Inc., Civil No. 07-849 (D.N.J. 2009) (FLSA collective action, plaintiffs' trial verdict for \$2.5 million; national settlement approved for \$42 million) (2010).

Lew v. Pizza Hut of Maryland, Inc., Civil No. CBB-09-CV-3162 (D. Md.) (FLSA collective action, statewide settlement for managers-in-training and assistant managers, providing recompense of 100% of lost wages) (2011).

Financial

Roberts v. Fleet Bank (R.I.), N.A., Civil Action No. 00-6142 (E. D. Pa.) (\$4 million dollar settlement on claims that Fleet changed the interest rate on consumers' credit cards which had been advertised as "fixed.") (2003).

Penobscot Indian Nation et al v United States Department of Housing and Urban Development, N. 07-1282 (PLF) (D.D.C. 2008) (represented charitable organization which successfully challenged regulation barring certain kinds of down-payment assistance; Court held that HUD's promulgation of rule violated the Administrative Procedure Act) (2008).

Impact Fees

Town of Holly Springs, No. 17-cvs-6244, 17-cvs-6245, 18-cvs-1373 (Wake Co., NC) (Court appointed Class Counsel; Class action settlement with a \$7.9 million fund for builders and developers to recover improper capacity replacement and transportation fees paid to the town) (2019).

Larry Shaheen v. City of Belmont, No. 17-cvs-394 (Gaston Co., NC) (Court appointed Class Counsel; Class action settlement with a \$1.65 million fund for builders and developers to recover improper capacity replacement and transportation fees paid to the city) (2019).

Upright Builders Inc. et al. v. Town of Apex, No. 18-cvs-3720 & 18-cvs-4384, (Wake Co., NC) (Court appointed Class Counsel; Class action settlement with a \$15.3 million fund for builders and developers to recover improper capacity replacement and transportation paid fees to the town) (2019).

Mayfair Partners, LLC et al. v. City of Asheville, No. 18-cvs-04870 (Buncombe County) (Court appointed Class Counsel; Class action settlement with a \$1,850,000 million fund for builders and developers to recover improper impact fees paid to the city) (2020).

Shenandoah Homes, LLC v. Town of Clayton, No. 19-cvs-640 (Johnston County) (Court appointed Class Counsel; Class action settlement with a \$2.7 million fund for builders and developers to recover improper impact fees paid to the town) (2020).

Brookline Homes LLC v. City of Mount Holly, Gaston County file no. 19-cvs-1163 (Gaston County) (Court appointed Class Counsel; Class action settlement with a \$483,468 fund for builders and developers to recover improper impact fees paid to the city) (2020).

Eastwood Construction, LLC et. al v. City of Monroe, Union County file nos. 18-CVS-2692 (Union County) (Court appointed Class Counsel; Class action settlement with a \$1,750,000 million fund for builders and developers to recover improper impact fees paid to the city) (2020).

Insurance

Young, et al. v. Nationwide Mut. Ins. Co, et al., No. 11-5015 (E.D. Ky.) (series of class actions against multiple insurance companies arising from unlawful collection of local taxes on premium payments; class certified and affirmed on appeal, 693 F.3d 532 (6th Cir., 2012); settlements with all defendants for 100% refund of taxes collected) (2014).

Nichols v. Progressive Direct Insurance Co., et al., No. 2:06cv146 (E.D. Ky.) (Class Counsel; class action arising from unlawful taxation of insurance premiums; statewide settlement with Safe Auto Insurance Company and creation of \$2 million Settlement Fund; statewide settlement with Hartford Insurance Company and tax refunds of \$1.75 million) (2012).

Privacy/Data Breach

Baksh v. Ivy Rehab Network, Inc., Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted).

In re: GE/CBPS Data Breach Litigation, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action).

Mowery et al. v. Saint Francis Healthcare System, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted);

Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted).

Bailey v. Grays Harbor County Public Hospital District et al., Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Septem 2020).

Nelson, et al. v. Idaho Central Credit Union, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million).

In Re: Canon U.S.A. Data Breach Litigation, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (appointed co-lead counsel).

Richardson v. Overlake Hospital Medical Center et al., Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case; final approval granted September 2021).

Kenney et al. v. Centerstone of America, Inc. et al., Case No. 3:20-cv-01007-EJR (M.D. Tenn.) (appointed lead class counsel; final approval of \$1.5 million settlement granted August 9, 2021).

Jackson-Battle v. Navicent Health, Inc., Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);

Suren et al. v. DSV Solutions, LLC, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted September 27, 2021).

Chacon v. Nebraska Medicine, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted September 2021);

Aguallo et al v. Kemper Corporation et al., Case No. 1:21-cv-01883 (N.D. Ill.) (appointed Co-lead Counsel, final approval granted of \$17.1 million class settlement).

Martinez et al. v. NCH Healthcare System, Inc., Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (appointed Settlement Class Counsel; final approval granted).

Carr et al. v. Beaumont Health et al., Case No. 2020-181002-NZ (Circuit Court for the County of Oakland, Michigan) (appointed co-class counsel in data breach case involving 112,000 people; final approval granted October 2021).

Klemm et al. v. Maryland Health Enterprises, Inc. D/B/A Lorien Health Services, C-03-CV-20-002899 (Circuit Court for Baltimore County, Maryland) (appointed Settlement Class Counsel, preliminary approval granted November 2021).

Cece et al. v. St. Mary's Health Care System, Inc. et al., Civil Action No. SU20CV0500 (Superior Court of Athens-Clarke County, Georgia) (appointed Settlement Class Counsel in data breach case involving 55,652 people; final approval granted April 2022).

In re: Herff Jones Data Breach Litigation, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million persons; preliminary approval of \$4.35 million settlement granted January 2022).

In Re: CaptureRx Data Breach Litigation, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co-lead counsel in data breach case involving over 2.4 million class members; preliminary approval of \$4.75 million settlement granted February 2022).

In re Arthur J. Gallagher Data Breach Litigation, No. 1:21-cv-04056 (N.D. Ill.) (appointed co-lead counsel in data breach case involving over 3 million class members).

Heath v. Insurance Technologies Corp., No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers).

Powers, Sanger et al v. Filters Fast LLC, Case 3:20-cv-00982-jdp (appointed co-lead Settlement Class Counsel; preliminary approval granted November 2021).

Garcia v. Home Medical Equipment Specialists, LLC, Case No. D-202-cv-2021-06846 (appointed class counsel; final approval granted June 2022).

Baldwin et al. v. National Western life Insurance Company, Case No. 2:21-cv-04066 (W.D. Mo.) (appointed co-class counsel; final approval granted June 2022 in settlement valued at approximately \$4.4 million).

Hashemi, et. al. v. Bosley, Inc., Case No. 21-cv-00946-PSG (RAOx) (C.D. CA) (appointed co-class counsel; preliminary approval granted February 2022).

In re: Blaukbaud, Inc. Customer Data Security Breach Litigation (MDL 2972) (Milberg attorneys appointed co-lead counsel).

Paras, et al v. Dental Care Alliance, LLC, Case No. 22EV000181 (Ga. State Court Fulton Cnty.); (appointed co-lead class counsel; preliminary approval granted April 2022).

Hough v. Navistar, Inc., Case No.: 2021L001161 (Circuit Court for the Eighteenth Judicial Circuit, Dupage County, Illinois); (appointed co-lead class counsel; final approval granted May 2022).

Purvis, et al v. Aveanna Healthcare, LLC, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; preliminary approval granted June 2022).

Clark v. Mercy Hospital, et al, Case No. CVCV082275 (Iowa Dist. Crt, Johnson Cnty.) (appointed class counsel; preliminary approval granted February 2022).

Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic, (Iowa Dist. Crt., Marshall Cnty.) (appointed class counsel; final approval granted June 2022).

Devine, et al v. Health Aid of Ohio, Inc., (Ohio Court of Common Pleas, Cuyahoga Cnty.) (appointed class counsel; preliminary approval granted March 2022).

James v. CohnReznick LLP, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as co-class counsel; preliminary approval granted May 2022).

Davidson v. Healthgrades Operating Company, Inc., Case No. 1:21-cv-01250-RBJ (D. Colo.), (appointed class counsel; preliminary approval granted April 2022).

Bodie v. Capitol Wholesale Meats, Inc., Case No. 2022CH000020 (Ill. 18th Jud. Cir. Crt., DuPage Cnty.) (appointed class counsel; preliminary approval granted March 2022).

Culp v. Bella Elevator LLC, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Crt., Peoria Cnty.) (appointed class counsel; final approval granted May 2022).