

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

Michael Rentschler, Cathy Ehrisman, Heather Byam, and Kathleen Appel, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

Atlantic General Hospital Corporation

Defendant.

Case No. 1:23-cv-01005

Hon. Julie R. Rubin

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR CLASS REPRESENTATIVES

Plaintiffs Michael Rentschler, Cathy Ehrisman, Heather Byam, and Kathleen Appel respectfully submit this Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for Class Representatives. In support thereof, Plaintiffs state as follows:

INTRODUCTION

This class action lawsuit is brought by Michael Rentschler, Cathy Ehrisman, Heather Byam, and Kathleen Appel ("Plaintiffs" or "Class Representatives") against Defendant Atlantic General Hospital Corporation ("AGH" or "Defendant") (together with Plaintiffs, the "Parties"), and arises from a cyberattack perpetrated against AGH on and around January 20, 2023 (the "Data Incident").

AGH operates several general service hospitals and health care services throughout Maryland. On January 29, 2023, AGH staff discovered suspicious activity on its computer systems (the "Data Incident"). *See* Second Amended Class Action Complaint ("SAC"), ECF 22, at ¶ 4. Subsequent investigation determined that unauthorized actors obtained access to AGH's systems

on January 20, 2023 and accessed files containing the personally identifying information (“PII”), financial account information, and private health information (“PHI”) (collectively “Private Information”) belonging to AGH’s current and former patients. *Id.* On March 24, 2023, AGH sent notice of the Data Incident to 30,407 individuals it believed were affected by the Incident. On June 22, 2023, after further investigation determined that the total number of affected individuals was 136,981, AGH provided notice to additional individuals it determined had been affected by the Data Incident. *Id.* ¶ 6–7. Lawsuits were filed in April and June 2023.

After extensive arms’-length negotiations, the Parties reached a fair, adequate, and reasonable class settlement. Under the terms of the settlement, AGH agreed to establish a \$2,250,000 non-reversionary settlement fund. From this settlement fund, Class Members are eligible to claim substantial relief, including the option to submit a claim for a documented losses up to \$5,000. All Class members are also eligible to claim 36 months of credit monitoring services (“CMIS”). Plaintiffs further secured promises from AGH regarding enhancements to its security practices.

Pursuant to the Settlement Agreement and the Court’s inherent authority, Class Counsel respectfully submits this Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for Class Representative. Specifically, Class Counsel requests that the Court award \$750,000.00 for payment of attorneys’ fees and expenses (“Fee Request”). This represents one third of the settlement fund. As detailed more fully herein, the factual and legal complexity of these claims required extensive investment of labor and advancement of costs by Class Counsel. The work performed on behalf of Settlement Class Members—on a fully contingent basis—carried significant risk, and counsel forwent other opportunities and dedicated themselves to this case.

Further, Class Counsel requests that the Court approve a service award in the amount of \$1,500 to each Class Representative, for a total of \$6,000. This request is modest and is justified by prevailing case law and the work performed by Plaintiffs on behalf of the Settlement Class.

This Memorandum is supported by the cited and attached evidence, including: the declaration from Class Counsel attached as **Exhibit 1** (Declaration of Nickolas J. Hagman in support of Plaintiffs' Motion for Approval of Attorneys' Fees Award, Expense Reimbursement, and Service Awards to Representative Plaintiffs) ("Hagman Fee Decl.").

FACTUAL BACKGROUND

A. PROCEDURAL HISTORY

On April 13, 2023, Plaintiff Michael Rentschler ("Rentschler") filed a putative class action complaint against AGH concerning the Data Incident in the United States District Court for the District of Maryland. On June 30, 2023, Plaintiff Cathy Ehrisman ("Ehrisman") filed a putative class action, also in the District of Maryland. On July 12, 2023, Plaintiffs Rentschler and Ehrisman filed a joint motion to consolidate the two cases. On July 13, 2023, the Court issued an order consolidating these cases, and on August 14, 2023 Plaintiffs filed their Amended Class Action Complaint. Subsequently, Plaintiffs filed their Second Amended Class Action Complaint ("SAC") adding Plaintiffs Byam and Appel as named plaintiffs

The Parties began settlement negotiations in September 2023. Shortly thereafter, the Parties agreed to attend a full-day mediation on January 3, 2024, before Bennett G. Picker of Stradley Ronon Stevens & Young, LLP. Prior to the mediation, the parties engaged in an informal exchange of information and documents, and presented their positions and arguments in confidential submissions to Mr. Picker. The Parties were unable to reach an agreement at mediation, but continued their efforts to resolve this matter over the following weeks.

Ultimately, Mr. Picker made a mediator's proposal, which both sides accepted. Over the next weeks, the Parties continued negotiations and drafting the particular terms of the Settlement Agreement and associated exhibits. The Settlement Agreement and various exhibits ("SA") were finalized and signed on April 1, 2024. On April 2, 2024, the Plaintiffs filed their unopposed Motion for Preliminary Approval (ECF 23-1) which this court granted on April 25, 2024 (ECF 24).

This Settlement came about as the result of protracted, arms'-length negotiations. *See* Hagman Fee Decl., ¶ 2. Both Parties negotiated in good faith and zealously defended their respective positions as they negotiated the Settlement Agreement. *Id.* Class Counsel's work is not over and will continue throughout the claims period. Based on experience, Class Counsel will spend 50-100 additional hours seeking final approval, defending the Settlement from potential objections, and supervising claims administration and the distribution of proceeds. Hagman Fee Decl., ¶ 6. The Court set the final fairness hearing for September 5, 2024 (ECF 24). Pursuant to the Settlement Agreement and the Preliminary Approval Order, Plaintiffs now submit their motion for Fee Award.

B. SUMMARY OF SETTLEMENT

The Settlement Class is defined as:

All persons in the United States to whom AGH mailed a notification that their information may have been impacted in the Data Incident.

The Settlement Class specifically excludes: (i) AGH and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo

contendere to any such charge. S.A. ¶ 1.30. The Settlement Class is comprised of approximately 136,981 individuals (each, a “Settlement Class Member”). S.A. ¶ 7.

1. Settlement Benefits

Credit Monitoring (“CMIS”)

Each Settlement Class Member who submits a valid claim is entitled to a 36-month membership in Experian credit monitoring with at least \$1 million in fraud protection. S.A. ¶ 2.3. This is a significant benefit to the Class, and has an estimated value of approximately \$132 million.¹

Compensation for Documented Losses and Cash Award

Plaintiffs further negotiated for AGH to provide Class Members with compensation for unreimbursed and documented losses, up to a total of \$5,000.00 per person, upon submission of a claim and supporting documentation. S.A. ¶ 2.2(b). In the alternative, Class members may elect to receive a cash award equal to a share of the “Post Loss Payment Net Settlement Fund” (*i.e.*, the amount of the Net Settlement Fund remaining after documented loss claims and CMIS costs are deducted). S.A. ¶¶ 2.2(a); 2.4.

Business Practice Changes

In addition to the monetary benefits, Plaintiffs negotiated for and received commitments from AGH that it adopted and implemented additional security measures to further strengthen the security of its systems. *See* S.A. ¶ 2.5. These business practice changes are not identified here due to their sensitive nature, however, AGH agreed to provide confirmatory information to Class Counsel upon request.

¹ The value of the 36-months of 3-Bureau credit monitoring from Experian is \$24.99/month. *See Identity Protection Plans*, Experian, available at: <https://www.experian.com/protection/compare-identity-theft-products/> (last accessed July 9, 2024). For the entire Class, this benefit has a value of \$123,233,586.84 (\$24.99 x 36 Months x 136,981 Class Members).

2. The Release

The relief provided to Settlement Class Members is tailored to the claims that have been pled or could have been pled that are related in any way to the activities stemming from the Data Breach. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims related to the Data Breach. *See* S.A. ¶¶ 6.1–6.3.

3. Fees, Costs and Service Awards

For their work in obtaining an excellent result for the Class, the Settlement Agreement provides that Class Counsel may seek an award of Attorneys’ Fees and Costs and Expenses from the Settlement Fund. S.A. ¶ 7.2. AGH agreed not to oppose Class Counsel’s request for an award of attorneys’ fees and reimbursement of litigation costs and expenses not to exceed \$750,000.00. *Id.* Additionally, for their role in bringing this action and securing the significant relief for the Settlement Class discussed above, the Settlement Agreement provides for the payment of a court-ordered service award for each Class Representative. S.A. ¶ 7.4. AGH agreed to not oppose Class Counsel’s request for a service award not to exceed \$1,500 for each Class Representative. *Id.*

ARGUMENT

A. LEGAL STANDARDS GOVERNING THE AWARD OF ATTORNEYS’ FEES IN CLASS ACTIONS

According to Fourth Circuit precedent, “[i]t is for the district court in the first instance to calculate an appropriate award of attorney's fees.” *Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 628 (4th Cir.1995); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 (D. Md. 2013). Under Federal Rule of Civil Procedure 23(h), “the court may award reasonable attorney’s fees . . . that are authorized . . . by the parties’ agreement.” *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480–481 (D. Md. 2014) (internal quotations omitted). Two methods are commonly used for calculating an attorney’s fee award: the lodestar method and the “percentage of recovery” method.

Id. (internal quotations omitted); *Whitaker v. Navy Federal Credit Union*, 2010 WL 3928616, at *4 (D.Md. Oct. 4, 2010). District courts in the Fourth Circuit, and the majority of courts in other jurisdictions, use the percentage of recovery method in common fund cases. *See, e.g., Decohen*, 299 F.R.D. 469, 480–481; *Singleton*, 976 F. Supp. 2d at 681; *Goldenberg v. Marriott PLP Corporation*, 33 F.Supp.2d 434, 438 (D.Md. 1998) The lodestar method is less efficient and more burdensome than the percentage method, but it is usually used to cross-check the reasonableness of a fee award alongside the percentage method. *Decohen*, 299 F.R.D. 469, 480–481; *Singleton*, 976 F. Supp. 2d at 681.

B. THE FEES REQUESTED BY CLASS COUNSEL ARE FAIR AND REASONABLE UNDER THE PERCENTAGE OF RECOVERY METHOD

In the Settlement Agreement, the Parties agreed that Class Counsel may request an award of \$750,000 in attorneys’ fees and litigation costs and expenses. S.A. ¶ 7.2. District courts in the Fourth Circuit have analyzed the following seven factors when analyzing the reasonableness of a fee award under the percentage: “(1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the settlement terms and/or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy.” *Singleton*, 976 F. Supp. 2d at 682 (internal citations omitted); *Decohen*, 299 F.R.D. 481 (internal citations omitted). *See also Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 771 (D. Md. 2022) (internal citations omitted).

1. Class Counsel Achieved an Excellent Result

According to this Court, “[i]n the Fourth Circuit, the most critical factor in calculating a reasonable fee award is the degree of success obtained.” *Decohen*, 299 F.R.D. at 481. Here, the Settlement affords significant benefits to Settlement Class Members. Class Counsel secured a

\$2,250,000 common fund that provides multiple types of benefits for Class members. These benefits include reimbursement for documented losses up to \$5,000.00 or a cash award. S.A. ¶ 2.2. The Settlement also secures significant identify theft protection for all Class Members, allowing Settlement Class Members to claim 36 months of Credit Monitoring, and obtaining assurances that Defendant has and/or will implement certain business practice changes to better protect the information of Settlement Class Members in the future. *See* S.A. ¶¶ 2.3, 2.5. District Courts in the Fourth Circuit have approved similar results in other data breach case settlements. *See Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 2019 WL 3183651 at *7 (D. Md. July 15, 2019) (approving a fee request of 30% of a \$3,250,000 settlement fund that provided cash award/reimbursement of documented losses and credit monitoring for 61,000 settlement class members); *In re Novant Health, Inc.*, 2024 WL 3028443 at *9 (M.D.N.C. June 17, 2024) (approving an award of one-third of \$6,660,000 common fund settlement in attorney's fees).

2. Class Counsel are Skilled and Experienced in Data privacy Litigation

In assessing Counsel's performance for the purposes of determining an appropriate fee award, the Court may consider Counsel's experience in the field, the quality of opposing counsel, the amount of work done, and the efficiency and skill with which it was accomplished. *See In re The Mills Corp. Sec Litig.*, 265 F.R.D. at 262-63 (citations omitted). Class Counsel possess substantial experience in consumer class action litigation, including extensive experience in data privacy class actions, as evidenced by the Court's prior appointment of Class Counsel as Interim Co-Lead Counsel. *See Order on Motion to Consolidate Related Actions and to Appoint Interim Co-Lead Counsel*, ECF 13. Class Counsel extensively investigated this breach and spoke to many victims of the breach and "zealously pursued recovery for the class" against a "vigorous defense." *Decohen*, 299 F.R.D. at 482. Class Counsel also "participated in an all-day mediation with a private

mediator . . . [and] reached a favorable settlement after evaluating the strengths and weaknesses of the respective positions and negotiating with sophisticated defense attorneys.” *Singleton*, 976 F. Supp. 2d at 683. Class Counsel also vigorously negotiated for several months *after* the mediation, only agreeing to settlement terms that they felt were fair and reasonable given the harm suffered by Plaintiffs and the Class. These facts weigh heavily in establishing the reasonableness of requested fees.

3. The Risks of the Litigation

“In determining the reasonableness of an attorneys’ fee award, courts consider the relative risk involved in litigating the specific matter compared to the general risks incurred by attorneys taking on class actions on a contingency basis.” *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 762 (S.D.W. Va. 2009). Here, Class Counsel faced substantial risks and uncertainties in the litigation that made it far from certain that any recovery would be obtained for the Class. “Data breach class actions are among the riskiest and uncertain of all class action litigation due to the absence of direct precedent certifying data breach cases as class actions.” *Gaston v. FabFitFun, Inc.*, 2021 WL 6496734, at *3 (C.D. Cal. Dec. 9, 2021); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 U.S. Dist. LEXIS 135573, at *14 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky.”). Even cases of wide-spread notoriety that involved data far more sensitive than at issue here have been found wanting by courts throughout the country. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide judgment remains unforged, particularly in the area of damages. For now, data breach cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when it provides adequate and reasonable compensation to the Settlement Class, as is the case here. The damages methodologies, while theoretically sound in Plaintiffs' view, remain untested in a disputed class certification setting and unproven in front of a jury. And, as in any data breach case, establishing causation on a class-wide basis is rife with uncertainty. Consequently, Class Counsel incurred significant risk by taking and litigating this case. Despite these risks, Class Counsel invested substantial time and resources in the case to ensure zealous representation of the Settlement Class and obtained an excellent result. Class Counsel's willingness to take on such risks supports approval of Class Counsel's Fee Request.

4. Objections by Class Members

To date, the settlement administrator was able to reach 95% of the Settlement Class. Hagman Fee Decl. ¶ 5. This was a highly successful notice campaign. *See Jones*, F. Supp. 2d at 763 (reaching 95% of 25,000 class members considered exceptional); *Decohen*, 299 F.R.D. at 481 (94.7% notice rate considered exceptional). Moreover, the response to the settlement has been overwhelmingly positive. From this successful notice campaign, only one individual has opted out, and one individual has objected. Hagman Fee Decl. ¶ 8. This is an excellent result that demonstrates the Class's satisfaction with regards to the settlement. *See Hutton*, 2019 WL 3183651 at *5. ("Out of over 61,000 Settlement Class Members, only 16 requested exclusion from the Settlement (.026%) and none objected. This indicates strong support for the Settlement-by-Settlement Class Members and weighs strongly in favor of final approval.").

5. The Requested Fee is Consistent with the Market Rate

Class Counsel undertook this case on an entirely contingent basis, assuming the significant risk that the litigation would yield no recovery, or very little recovery, and leave them uncompensated for their time and out of pocket expenses. In pursuing this matter, Class Counsel forwent the ability to devote time to other, fee generating, cases. Hagman Decl., ¶¶ 10-13. Accordingly, Class Counsel undertook a substantial risk of nonpayment and the fee award should reflect Class Counsel's risk in prosecuting the case to a successful settlement. Therefore, this factor weighs in favor of approving Class Counsel's Fee Request. *See Pfeiffer v. RadNet, Inc.*, 2022 WL 2189533 at *6-7 (C.D. Cal. Feb. 15, 2022) ("Historically, data breach cases have had great difficulty in moving past the pleadings stage and receiving class certification. . . . Because Class Counsel took this case on a contingency basis in a risky and still-developing area of law, this factor weighs in favor of the proposed attorneys' fee award.").

The requested fee of \$750,000, which represents one-third of the settlement fund, is consistent with the amount awarded in similar matters across the country, including in the Fourth Circuit. This Court previously performed a review a review of fee awards in class actions by other courts within the Fourth Circuit and reached the same conclusion:

Contingent fees of up to one-third are common in this circuit. *Decohen*, 299 F.R.D. at 483; *In re Titanium Dioxide Antitrust Litig.*, No. 10-318, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013); *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201, at *3 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-1705, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019); *Krakauer*, 2018 WL 6305785, at *2; *Kruger*, 2016 WL 6769066, at *5. [Collecting cases]. In each of those cases, the district courts awarded one-third of the settlement to cover attorney's fees. This great weight of authority more than demonstrates that a one-third fee is justified in this case.

Kelly v. Johns Hopkins Univ., 2020 WL 434473 at *3 (D. Md. Jan. 28, 2020). *See also McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022) (affirming fee award of 43% of common fund but

acknowledging it approached “the upper limit of permissible recovery”); *Graham v. Famous Dave’s of Am., Inc.*, 2022 WL 17584274 at *10 (D. Md. Dec. 12, 2022) (approving one-third fee award); *Amaya v. DGS Constr., LLC*, 2023 WL 8188628 at *3 (D. Md. Nov. 27, 2023) (“Court concludes that the requested attorney’s fees of one-third of the common fund are reasonable. . .”); *Decohen*, 299 F.R.D. at 483 (“The Court will award class counsel the requested fee award of one-third of the common fund.”); *Starr v. Credible Behav. Health, Inc.*, 2021 WL 2141542 at *5 (D. Md. May 26, 2021) (“A request for one-third of a settlement fund is common in this circuit and generally considered reasonable.”). Thus, Class Counsel’s request for an award of one-third of the Settlement Fund is in line with the common practice in this District and the Fourth Circuit.

6. The Complexity and Duration of the Case Weigh in Favor of the Requested Fee

Class Counsel’s activities included, but were not limited to, conducting an extensive pre-filing investigation of Plaintiffs’ and Class Members’ claims and damages and vigorously prosecuting those claims. Class Counsel engaged in protracted settlement negotiations and ultimately negotiated a comprehensive Settlement for the Settlement Class.

Since reaching the Settlement, Class Counsel has assisted with the drafting and preparation of the Settlement Agreement, short and long form notice, and claim forms, drafted a motion for preliminary approval of the Settlement, drafted the instant motion for a Fee Award, and worked with the Settlement Administrator to ensure the successful implementation of the Notice Program and to answer any questions from Settlement Class Members. Class Counsel anticipates expending approximately 50-100 hours of additional time administering the Settlement, including drafting a Motion for Final Approval of the Settlement and preparing for and attending the final fairness hearing. Thus, the work performed by Class Counsel to date has been comprehensive, complex, and wide ranging, and this factor supports the Fee Request.

7. Public Policy Considerations Weigh in Favor of Approving the Requested Fee

In analyzing the reasonableness of a fee request, the relevant public policy considerations involve balancing “the policy goals of encouraging counsel to pursue meritorious . . . consumer litigation . . . while also protecting against excessive fees.” *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) (internal quotations and punctuation omitted); *Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 132 (2d Cir.2008). Under this factor, it is important for the courts to avoid any perception of overcompensation for class counsel. *In re Wachovia Corp. ERISA Litig.*, 2011 WL 5037183, at *6 (W.D.N.C. Oct. 24, 2011). As Class Counsel’s request for one-third of the settlement fund in fees is consistent with the market rate, there is no concern of overcompensation. Instead, the Court should award Class Counsel for pursuing this meritorious data breach litigation in spite of the risks discussed above.

C. A LODESTAR CROSS-CHECK SUPPORTS THE FEE AWARD

While the percentage of the fund analysis is the preferred method of determining the appropriate amount of attorneys’ fees, district courts in the Fourth Circuit still utilize the lodestar method to “cross-check” the reasonableness of a fee award as determined by the percentage method. *Decohen*, 299 F.R.D. 469, 480–481; *Singleton*, 976 F. Supp. 2d at 681. *See also Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 467 (D. Md. 2014) (“The purpose of a lodestar cross-check is to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiplier of the lodestar.”).

Here, Class Counsel’s Fee Request results in a modest multiplier, which supports the reasonableness of the requested fee. Since March 2023, Settlement Class Counsel has spent 340.1 hours litigating this case. Hagman Decl., ¶¶ 16-18. The rates charged by Class Counsel are well within the acceptable range for class action litigators in general and are in line with or less than

hourly rates that were approved in other complex data breach class action litigation. *Id.* Furthermore, Class Counsels' billing rates are within the range of rates approved in the Fourth Circuit and others in this state as reasonable. *See e.g., Kruger v. Novant Health, Inc.*, 2016 WL 6769066 at *4 (M.D.N.C. Sept. 29, 2016) (approving hourly rates of \$998 for attorneys with 25 years of experience, \$850 for attorneys with 15-24 years of experience, \$612 for attorneys with 5-15 years of experience, \$460 for attorneys with 2-4 years of experience; \$309 for paralegals and law clerks, and \$190 for legal assistants); *Rehberg v. Flowers Baking Co. of Jamestown, LLC*, No. 3:12-cv-00596-MOC-DSC (W.D.N.C. June 30, 2017), ECF Nos. 250, 245-5, 245-1 (approving hourly rates of \$975 for an attorney practicing 23 years and \$590 for an attorney practicing 10 years);

Class Counsel's total lodestar is \$260,625.84. Hagman Fee Decl. ¶ 16. This lodestar results in a multiplier of 2.9. In the Fourth Circuit, "[c]ourts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee." *Boyd*, 299 F.R.D. at 467 (citing *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 439 n.6 (D. Md. 1998) and *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 789 (E.D. Va. 2001)). *See also Decohen*, 299 F.R.D. at 483 (approving a lodestar multiplier of 3.9); *Freckleton v. Target Corp.*, No. 14-cv-00807, Doc. 145-1 at 22, 149 (D. Md. Dec. 11, 2017) (approving attorneys' fee award with a lodestar multiplier of 3.5). Furthermore, the multiplier in this case is less than awards in other class action cases. *See e.g., Kruger*, 2016 WL 6769066, at *5 (multiplier of 3.69); *Nieman v. Duke Energy Corp.*, 2015 WL 13609363, at *1 (W.D.N.C. Nov. 2, 2015) (approving a lodestar multiplier of greater than 4.5). Further, the multiplier will be lower after the additional work needed in connection with final approval and administration of the settlement. Therefore, the lodestar cross-check confirms the reasonableness of Class Counsel's request.

D. CLASS COUNSEL’S REQUESTED LITIGATION COSTS ARE REASONABLE

The Fourth Circuit has opined that litigation expenses are “integrally related to the work of the attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation” *Daly v. Hill*, 790 F.2d 1071, 1083 (4th Cir. 1986). Class Counsel seeks reimbursement of costs and expenses totaling \$10,598.61 as part of the requested \$750,000 Fee Award. Hagman Fee Decl., ¶ 21. These expenses are of the type of expenses routinely charged to hourly clients, are appropriately documented, and were necessary and reasonable to prosecute the litigation and include mediation fees, filing fees, and fees associated with *pro hac vice* admissions. The submitted expenses are reasonable, necessary, and directly related to the prosecution of the action and should be awarded to Class Counsel as a part of the Fee Award. *See Kabore v. Anchor Staffing, Inc.*, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012) (“It is well-established that Plaintiff who are entitled to recover attorneys’ fees are also entitled to recover reasonable litigation-related expenses as part of their overall award.”).

E. PLAINTIFFS’ REQUESTED SERVICE AWARDS ARE JUSTIFIED AND SHOULD BE APPROVED

“To determine whether an incentive payment is warranted, it is appropriate to consider ‘the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.’” *Edelen v. Am. Residential Servs., LLC*, 2013 WL 3816986, at *16 (D. Md. July 22, 2013) (citing *Hoffman v. First Student, Inc.*, 2010 WL 1176641, at *3 (D. Md. Mar. 23, 2010)

Here, Plaintiffs Rentschler, Ehrisman, Byam, and Appel have been vital in litigating this matter. For their commitment to this case, Plaintiffs each seek \$1,500 as a service award for their important work in this case. Plaintiffs have been personally involved in this case, they were

subjected to extensive interviews, submitted documentation to prove that they were impacted by the Data Breach, and were prepared to take on the responsibilities of class representatives, including being deposed and testifying at trial. Hagman Fee Decl., ¶¶ 23-24. “[I]ncentive awards are routinely approved in class actions to ‘encourage socially beneficial litigation by compensating named plaintiffs for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook.’” *Jones*, 601 F. Supp. 2d at 767-68 (quoting *Muhammad v. National City Mortg., Inc.*, No. 07-0423, 2008 WL 5377783, at *9 (S.D. W. Va. Dec. 19, 2008)).

The amount requested is reasonable and similar to the amounts commonly awarded in settled class action cases. *See, e.g., Singleton*, 976 F. Supp. 2d at 691 (awarding \$2,500 incentive award to each named plaintiff); *Hutton*, 2019 WL 3183651 at *8 (awarding \$2,000 service award to each settlement class representative).

CONCLUSION

For the foregoing reasons, Class Counsel requests that the Court grant this motion and (1) award \$750,000 as attorneys’ fees and expenses and (2) approve a service award of \$1,500 to each Plaintiff.

Dated: July 10, 2024

/s/ James P. Ulwick
James P. Ulwick
KRAMON & GRAHAM, P.A.
750 East Pratt Street, Suite 1100
Baltimore, Maryland 21202
Phone : (410) 752-6030
julwick@kglaw.com

**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**
Daniel O. Herrera (admitted *pro hac vice*)
Nickolas J. Hagman (*pro hac vice* forthcoming)
135 S. LaSalle, Suite 3210
Chicago, Illinois 60603

Telephone: (312) 782-4880
dherrera@caffertyclobes.com
nhagman@caffertyclobes.com

Gary M. Klinger (*pro hac vice* to be submitted)
MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (866) 252-0878
gklinger@milberg.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 10, 2024 the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ James P. Ulwick _____
James P. Ulwick

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

Michael Rentschler, Cathy Ehrisman, Heather Byam, and Kathleen Appel, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

Atlantic General Hospital Corporation

Defendant.

Case No. 1:23-cv-01005

Hon. Julie R. Rubin

**DECLARATION OF NICKOLAS J. HAGMAN IN SUPPORT OF PLAINTIFFS’
MOTION FOR AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF
EXPENSES AND SERVICE AWARD FOR CLASS REPRESENTATIVES**

I, Nickolas J. Hagman, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm of Cafferty Clobes Meriwether & Sprengel (“Cafferty Clobes”). I am one of the lead attorneys for Plaintiffs. I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award to Class Representatives.

2. This Settlement came about as the result of protracted, arms’-length negotiations and mediation. On January 3, 2024, the Parties participated in a full-day mediation before Mr. Bennett G. Picker, Esq., of Stradley Ronon Stevens & Young, LLP. Although the Parties were not able to reach a resolution at the mediation, the Parties continued to negotiate following the mediation. Eventually, Mr. Picker made a mediator’s proposal, which each side accepted. Throughout the entire process, Defendant was ably represented by a well-regarded defense firm with experience in cyber-security investigation and litigation. After reaching an agreement on the relief for Settlement Class Members, the Parties continued to negotiate in good faith and at arms’

length regarding the finer points of the settlement, and drafted the Settlement Agreement and accompanying Notice documents and other exhibits. While negotiations were always collegial and professional between the Parties, there is no doubt that the negotiations were also adversarial in nature, with both Parties strongly advocating their respective client's positions. The Settlement Agreement and the various exhibits thereto ("S.A.") were ultimately finalized and signed on April 1, 2024.

3. The work performed by Cafferty Clobes, and the work of co-counsel Milberg Coleman Bryson Phillips Grossman PLLC ("Milberg") and Kramon & Graham, P.A. ("K&G") (collectively, "Class Counsel"), involved investigating the cause and effects of the Atlantic General Hospital Corporation's ("AGH" or "Defendant") Data Incident, evaluating potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint; conducting legal research; conducting extensive research into data security incidents and their causes and effects; drafting and filing the Complaint and Amended Complaints; obtaining information from Defendant regarding the Data Incident and analyzing that information; preparing for mediation and drafting a confidential mediation summary; participating in an all-day mediation; engaging in extensive settlement negotiations with Defendant over the course of several weeks following; drafting the settlement agreement, the relevant notices of settlement, the Motion for Preliminary Approval, and this instant motion for attorneys' fees; communicating with defense counsel; updating and handling questions from class representatives; overseeing the launching of the notice program with substantial interaction between the Settlement Administrator and Class Counsel; and overseeing the claims process.

4. Class Counsel will continue to work throughout the claims period for this case. To date, this work has involved drafting and moving for final approval of the settlement, monitoring

for and defending against potential objections, and the supervision of the claims administration process and the distribution of the settlement proceeds.

5. Pursuant to recent reports from the Court-approved Settlement Administrator, Kroll Settlement Administration LLC (“Kroll”), direct mail notice of the Settlement reached approximately 95% of the Settlement Class.

6. Based on my past experience Class Counsel expect to spend a minimum of another 50-100 hours seeking final approval, defending the Settlement from any potential objections, and supervising claims administration and the distribution of proceeds.

7. In my opinion, and the option of Class Counsel, the Settlement is fair, reasonable, and adequate and provides significant benefits for Plaintiffs and approximately 136,981 Settlement Class Members, and I strongly support the Settlement. Plaintiffs also strongly support this Settlement.

8. As of the date of filing, Class Counsel have received one request for exclusion, and one objection to the Settlement Agreement. Plaintiffs will submit a declaration from Kroll detailing the notice and claims administration with their Motion for Final Approval.

The Contingent Nature of the Case

9. Class Counsel were retained to represent Plaintiffs on a contingent basis. Class Counsel’s fees were not guaranteed—Class Counsel have not received any hourly fees for their work on this case, and had Plaintiffs’ case been dismissed or if they lose at trial, Class Counsel would be paid nothing. As such, Class Counsel assumed a significant risk of nonpayment or underpayment.

10. This matter has required me, other attorneys at my firm, and my co-counsel to spend time on this litigation 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.

11. Such time could otherwise have been spent on other fee-generating work. Because Class Counsel 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.

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

13. 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, the equal devotion of my co-counsel to the cases, and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

Costs and Fees Incurred

14. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low.

15. The total lodestar of all Settlement Class Counsel to date is \$260,625.84.

16. To date, Cafferty Clobes professionals have worked a total of 175.6 hours on this case, which represents \$133,345.00 worth of time at our firm's regular rates. The time spent by each of the timekeepers that performed work for this case, along with their respective billable rates was kept contemporaneously as the work was performed. At the request of the Court, Cafferty

Clobes can and will produce detailed times records supporting the time set out above. The firm's rates are fair and reasonable and reflect the market rate for class action contingency litigation.

17. To date, Milberg professionals have worked a total of 115.6 hours on this case, which represents \$87,908.70 worth of time at Milberg's regular rates. The time spent by each of the timekeepers that performed work for this case, along with their respective billable rates was kept contemporaneously as the work was performed. At the request of the Court, Milberg can and will produce detailed times records supporting the time set out above. The firm's rates are fair and reasonable and reflect the market rate for class action contingency litigation.

18. To date, K&G professionals have worked a total of 48.9 hours on this case, which represents \$39,372.14 worth of time at K&G's regular rates. The time spent by each of the timekeepers that performed work for this case, along with their respective billable rates was kept contemporaneously as the work was performed. At the request of the Court, K&G can and will produce detailed times records supporting the time set out above. The firm's rates are fair and reasonable and reflect the market rate for class action contingency litigation

19. Additional time will be spent to prepare for and attend the Final Approval Hearing, defend any appeals taken from the final judgment approving Settlement, and ensure that the claims process and distribution of Settlement proceeds to Class Members is done in a timely manner in accordance with the terms of the Settlement. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards 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 Class. As set forth in the Settlement Agreement, the attorneys' fees and expenses sought in this Motion will not reduce the benefits payable to the Class.

20. Where possible, 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.

21. Class Counsel advanced costs in connection with this case in the amount of \$10,598.61, including \$5,024.97 from Cafferty Clobes, \$4,975.00 from Milberg, and \$598.64 from K&G. These expenses include mediator fees, filing fees, and fees associated with *pro hac vice* admissions.

22. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought as part of (and not in addition to) the \$750,000 in combined attorney fees and expenses requested. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval.

23. The Settlement Agreement calls for a reasonable service award to Plaintiffs in the amount of \$1,500, subject to approval of the Court, in addition to any benefits provided to Settlement Class Members and the costs of notice and settlement administration and separate from any award of attorneys' fees and expenses. The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering counsel's many questions, communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiffs also put their personal reputations at risk, and put themselves forward for public scrutiny. Plaintiffs were not promised a service award, nor did they condition their representation on the expectation of an incentive award. The Service Award will diminish the recovery to the Settlement Class Members in any way.

24. Plaintiffs made vital contributions to our litigation efforts. Specifically, they provided documents to Class Counsel, reviewed pleadings, and remained in frequent contact with me and my firm in order to keep apprised of the status of proceedings and informed me on important decision-making processes. I believe that Plaintiffs should each receive a service award and I support their request that the Court award each Plaintiff \$1,500 in recognition of the time, effort, and expense they incurred pursuing claims that benefited the Settlement Class.

25. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members in the wake of the Data Incident. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

26. Although Plaintiffs believe in the merits of his claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and the Plaintiffs would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

27. In contrast to the risks, the Settlement provides certain and substantial compensation to the Settlement Class Members.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK]

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Chicago, Illinois on July 10, 2024.

/s/ Nickolas J. Hagman

Nickolas J. Hagman

**CAFFERTY CLOBES MERIWETHER
& SPRENGEL LLP**

135 S. LaSalle, Suite 3210

Chicago, Illinois 60603

Telephone: (312) 782-4880

Facsimile: (312) 782-4485

nhagman@caffertyclobes.com

Attorney for Plaintiffs and the Class