IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HOKKY TJAHJONO and MILES BLACK, individually and on behalf of all others similarly situated, Plaintiffs, v. WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION, d/b/a WABTEC CORPORATION, Defendant.	Case No. 2:23-cv-531-WSS

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS

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INTRODUCTION

Plaintiffs Hokky Tjahjono and Miles Black (collectively, "Plaintiffs"), through undersigned counsel, respectfully move this Court for an award of attorneys' fees, costs, and expenses; and approval of a Service Award for each Representative Plaintiff in connection with the proposed class action settlement entered into with Defendant Westinghouse Air Brake Technologies Corporation, d/b/a Wabtec Corporation ("Wabtec" or "Defendant"). The Court preliminarily approved the Settlement[1] on August 26, 2024. ECF No. 57.

Under the Settlement, if approved, Wabtec will pay to create a Settlement Fund of $625,000 in exchange for a release of Plaintiffs' and Class Members' claims arising out of or related to the Cyberattack at issue in this litigation. SA §§ 1.29, 1.38, 2.1, 6.1. After deducting the amounts of any Court-approved Attorney's Fees, and Expenses Award, Service Awards, and the Costs of Settlement Administration and CAFA Notice, the net funds shall be distributed in equal shares per capita to each Settlement Class Member. SA. § 2.3.

Settlement Class Counsel vigorously and efficiently prosecuted this data breach action and were able to achieve an excellent result for the Settlement Class, without expending unnecessary time or resources. To compensate them for their work and reimburse reasonable litigation expenses advanced by Class Counsel in furtherance of the claims, Class Counsel requests approval of attorneys' fees in the amount of one-third of the Settlement Fund ($208,333.33), and expense reimbursements in the amount of $9,505. Plaintiffs also request approval of Service Awards in the amount of $5,000 each for Representative Plaintiffs Hokky Tjahjono and Miles Black.

[1] References to "SA," "Agreement," "Settlement Agreement," or "Settlement" refer to the Parties' preliminarily-approved proposed class Settlement Agreement, a copy of which was filed at ECF No. 54-3. Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Settlement Agreement.

As explained in more detail below, the requested fee is reasonable when considered under the applicable Third Circuit standards, particularly in view of the substantial risks of pursuing this litigation, Settlement Class Counsel's efforts in skillfully managing the case, and results achieved for the Settlement Class. Finally, the requested Service Awards for each Representative Plaintiff is reasonably modest, customary, and warranted to compensate them for their efforts in this Litigation on behalf of the Settlement Class. For these reasons, and those discussed below, Plaintiffs respectfully request that the Court grant their motion.

SUMMARY OF SETTLEMENT CLASS COUNSEL'S WORK

In late December 2022, Wabtec announced that beginning on or around March 15, 2022, it had been the target of a ransomware Cyberattack that impacted sensitive personally identifying information about current and former Wabtec employees contained on some of Wabtec's systems. First Am. Compl. ("FAC"), ECF No. 13 at ¶¶ 54, 63.

After Wabtec's announcement, Settlement Class Counsel spent multiple hours investigating potential claims against Wabtec. Joint Decl., ¶ 7.[2] Settlement Class Counsel's factual and legal investigation included gathering information about the type of information compromised in the Cyberattack, research into Wabtec, and a review of existing legal authority regarding potential claims. Joint Decl., ¶ 7.

On March 27, 2023, Plaintiff Hokky Tjahjono, represented by Lynch Carpenter, LLP, filed a class action complaint in this Court. ECF No. 1. On March 29, 2023, Plaintiff Miles Black, represented by DannLaw and Lynch Carpenter, filed a separate class action complaint, also in this District. *Black v. Westinghouse Air Brake Technologies Corp.*, Case No. 2:23-cv-547 (W.D. Pa.)

[2] All "Joint Declaration" or "Joint Decl." references are to the Joint Declaration of Jamisen A. Etzel and Marc E. Dann, concurrently filed in support hereof.

at ECF No. 1. On June 5, 2023, Wabtec moved to dismiss both Complaints for failure to state a claim. *Tjahjono*, ECF No. 10; *Black*, ECF No. 14.

On June 26, 2023, Plaintiff Black dismissed his separate action and joined Plaintiff Tjahjono in filing the operative Amended Complaint on June 26, 2023. ECF No. 13. Plaintiffs brought claims for negligence, negligence *per se*, breach of implied contract, unjust enrichment, and declaratory judgment. *See* FAC ¶¶ 94–137.

Once again, Wabtec moved to dismiss the Amended Complaint for failure to state a claim. ECF No. 23. Shortly after submission of the motion to dismiss, both parties agreed to explore a possible resolution and requested a stay. The Court granted the stay on August 16, 2023. ECF No. 29. The Parties participated in a full day of mediation before Bruce A. Friedman, Esq. of JAMS, which resulted in some progress towards a settlement, but the Parties did not reach a resolution, and they requested that the Court lift the stay, which the Court did on November 22, 2023. Joint Decl., ¶ 11; ECF No. 33. The Parties then completed briefing on Wabtec's 12(b)(6) Motion to Dismiss, which the Court granted in part and denied in part on March 26, 2024. ECF No. 39.

On April 9, 2024, Wabtec answered the Amended Complaint, and moved to dismiss for lack of jurisdiction under Rule 12(b)(1) on April 25, 2024. ECF Nos. 40, 42. The parties conducted their Rule 26(f) planning meeting, and submitted their report on May 8, 2024. ECF No. 45. On May 15, 2024, the Parties attended the telephonic Initial Case Management Conference, where the Court deferred merits discovery and ordered the Parties to conduct limited jurisdictional discovery. ECF No. 49. On May 21, 2024, Settlement Class Counsel requested deposition availability dates for two Wabtec witnesses. Jt. Decl. ¶ 14. On May 30, 2024, Settlement Class Counsel served Wabtec with five interrogatories, nine requests for document production, and seven requests for admission. *Id.*

During the initiation of the limited jurisdictional discovery, the Parties agreed to promptly resume settlement discussions and reengaged Mediator Bruce Friedman. Joint Decl. ¶ 15. On June 7, 2024, the Parties participated in supplemental videoconference mediation with Mediator Friedman. Joint Decl. ¶ 15. At the supplemental mediation, with the assistance of Mr. Friedman, the Parties succeeded in reaching an agreement in principle to resolve this Action on a classwide basis, and shortly thereafter executed a confidential term sheet. Joint Decl. ¶ 15.

On June 12, 2024, the Parties informed the Court of their impending settlement and requested an additional stay to permit them time to draft and finalize a comprehensive agreement and notice plan. Joint Decl. ¶ 16; ECF No. 50. During this time, Settlement Class Counsel solicited bids from settlement administration firms, and the Parties ultimately selected Verita Global to serve as the Settlement Administrator. Joint Decl. ¶ 17.

Plaintiffs filed a motion for preliminary approval of the agreement on August 23, 2024, which the Court granted on August 26, 2024. ECF Nos. 54–57. Afterwards, Settlement Class Counsel worked with the Settlement Administrator to implement the Notice Program and fielded any questions that have arisen from the Settlement Administrator or Settlement Class Members. Joint Decl., ¶ 19. The deadline for class members to opt out of or object to the Settlement is November 25, 2024, and the Final Approval Hearing is set for January 21, 2025, at 10:30 AM. ECF No. 57 at 7, 9.

ARGUMENT

I. Standard of Review.

Pursuant to Federal Rule of Civil Procedure 23(h), the Court "may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." *Id.* The Third Circuit has approved two methods to calculate appropriate attorneys' fees in class action

settlements—the lodestar method and the percentage-of-recovery method. *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006). The ultimate determination of the proper amount of attorneys' fees rests within the sound discretion of the court based on the facts of the case. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009). As explained below, the use of the percentage-of-recovery method is appropriate in this case, and in any event, the reasonableness of the fee request is fully supported by a lodestar cross-check, indicating that the fee should be approved regardless of the method used by the Court.

II. The Court Should Award a Reasonable Percentage of the Constructive Common Fund.

The Supreme Court has long recognized that a lawyer who obtains a recovery "for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In the Third Circuit, the percentage-of-recovery is generally favored in cases involving a settlement that creates a common fund, as this Settlement does. *See Glaberson v. Comcast Corp.*, No. 03-6604, 2015 WL 5582251, at *11 (E.D. Pa. Sept. 22, 2015) ("The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases. Courts within the Third Circuit and elsewhere routinely use this method in antitrust class actions.") (collecting cases). "Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed on the class." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

III. The Requested Attorneys' Fees Are Reasonable under the Percentage-of-Recovery Method.

The fee request of one-third of the Total Settlement Compensation is reasonable under the percentage-of-the-recovery method. While no general rule exists, in the Third Circuit such "fee awards generally range from 19% to 45% of the settlement fund." *Rose v. Travelers Home & Marine Ins. Co.*, No. CV 19-977, 2020 WL 4059613, at *11 (E.D. Pa. July 20, 2020) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 736 (3d Cir. 2001)); *see also In re Gen. Motors*, 55 F.3d at 822 (same); *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d 483, 498 (E.D. Pa. 2018) ("fee awards ranging from 30% to 43% have been awarded in cases with funds ranging from $400,000 to $6.5 million").

Considering the percentage of the request, Settlement Class Counsel's fee request of one-third of the Total Settlement Compensation falls squarely within the range of awards that courts have granted in other data breach cases. *See e.g.*, *Thomsen v. Morley Companies, Inc.*, No. 1:22-CV-10271, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (awarding fee award of 33% in a data breach class action settlement that was "presumptively reasonable"); *Stoll v. Musculoskeletal Inst.*, No. 8:20-CV-1798-CEH-AAS, 2022 WL 16927150, at *3 (M.D. Fla. July 27, 2022), *report and recommendation adopted sub nom. Stoll v. Musculoskeletal Inst., Chartered*, No. 8:20-CV-1798-CEH-AAS, 2022 WL 16923698 (M.D. Fla. Nov. 14, 2022) (awarding fee award of 33% in a data breach class action settlement resolving claims against a medical provider following a ransomware attack); *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, No. CV JKB-16-3025, 2019 WL 3183651, at *7 (D. Md. July 15, 2019) (awarding 30% percent of a settlement fund in a data breach class action).

Accordingly, and as further demonstrated by the *Gunter/Prudential* factors below, Settlement Class Counsel's fee request is reasonable under the percentage of the recovery method.

IV. The Requested Fee is Fair and Reasonable Under the Third Circuit's *Gunter/Prudential* Factors.

In assessing the reasonableness of a request for attorneys' fees under the percentage-of-recovery method, Courts consider the following factors:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by counsel; and (7) awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000). Courts also generally consider three additional factors:

> (8) [T]he value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

In re Diet Drug Prod. Liab. Litig., 582 F.3d 524, 541 (3d Cir. 2009) (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 338 (3d Cir. 1998)). "The fee award reasonableness factors need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest." *In re AT&T*, 455 F.3d at 166 (internal quotations and citations omitted). A review of the *Gunter/Prudential* factors confirms that Settlement Class Counsel's requested fees are reasonable.

A. The Size and Nature of the Fund Created and Number of Persons Benefited by the Settlement.

In awarding fees, the "most critical factor" for the Court to weigh is "the degree of success obtained." *In re Viropharma Inc. Sec. Litig.*, Civil Action No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). To assess this factor, courts consider "the fee request in comparison to the size of the fund created and the number

of class members to be benefited." *In re Remicade Antitrust Litig.*, No. 17-CV-04326, 2023 WL 2530418, at *24 (E.D. Pa. Mar. 15, 2023) (citation omitted).

Here, the Settlement provides $625,000 in monetary relief to a class consisting of approximately 17,757 individuals, compensating Settlement Class Members for the exposure of their PII and PHI, relief that they would have not obtained absent this action and Settlement Class Counsel's diligent efforts. Obtaining up to $625,000 in Total Settlement Compensation is a significant recovery for Settlement Class Members. The Settlement Funds will be directly distributed per capita to each Settlement Class Member after the payment of any Attorneys' Fees, Expenses, and Service Awards, the Cost of Settlement Administration, and the CAFA Notice, with no need for class members to submit claim forms. The Settlement is non-reversionary, and if any residual funds remain after the initial distribution, it will be redistributed to Class Members per capita if a second payment would equate to at least $5 for each Class Member. SA ¶ 2.3. If, however, this is not the case, the Parties shall instruct the Settlement Administrator to make a *cy pres* payment by donating all remaining funds to the Carnegie Science Center. *Id.*

The Settlement accomplished here compares favorably with, if not better than, settlements in similar data breach actions. *See e.g.*, *Davidson et al. v. Healthgrades Operating Company, Inc.*, No. 21-cv-01250-RBJ (D. Col. 2022) ($500,000 settlement reached after data breach affected 35,453 patients); *Mowery v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SPC (E.D. Mo. Dec. 22, 2020) (data breach settlement providing up to $280 in value to Settlement Class Members in the form of: reimbursement up to $180 of out-of-pocket expenses and time spent dealing with the data breach; credit monitoring services valued at $100; and equitable relief in the form of data security enhancements); *see also Christiansen, et al. v. Parker Hannifin Corporation*, No. 1:22-cv-00835-DAP (S.D. Ohio, August 2, 2023) ($1,750,000 settlement reached after data breach

affected 115,539 consumers); *Phelps, et al. v. Toyotetsu North America*, No. 6:22-cv-00106-CHB-HAI (E.D. Ky., Oct. 25, 2023) ($400,00 settlement reached after data breach affected 12,453 class members).

The non-reversionary, cash-common-fund, and automatic-distribution features of the settlement compare favorably to numerous other recent data breach settlements, many of which have been reversionary "claims made" settlements that require class members to submit claim forms or additional documentation in order to receive settlement proceeds. *Compare, e.g.*, *In re Wawa, Inc. Data Sec. Litig.*, No. 19-cv-06019, ECF No. 181 (E.D. Pa.) (requiring proof of actual or attempted fraud for $15 gift card, or proof of out-of-pocket losses for up to $500), *attorney fee award vacated*, 85 F.4th 712 (3d Cir. 2023); *In re Sonic Corp. Customer Data Breach Litig.*, No. 17-md-02807-JSG, ECF No. 144-2 (N.D. Ohio Dec. 14, 2018) ($10 payment with proof of purchase or $40 payment with proof of fraudulent charges); *Bray v. Gamestop Corp.*, No. 17-cv-01365-JEJ, ECF No. 40-1 (D. Del. July 16, 2018) ($15 per hour, up to three hours, for documented time and effort and $22 with proof of fraudulent charges).

B. The Absence of Objections to the Settlement and Requested Fee.

The deadline for Settlement Class Members to object to or opt-out of the Settlement is November 25, 2024. ECF No. 57, ¶ 28. Settlement Class Counsel will provide current information on the number of objections and requests for exclusion with their final approval motion. To date, no objections to the Settlement have been received, and only five requests for exclusion have been received. Jt. Decl. ¶ 19.

Thus, to date, this factor weighs in favor of Settlement Class Counsel's fee request. *See High St. Rehab., LLC v. Am. Specialty Health Inc.*, Case No. 2:12-cv-07243-NIQA, 2019 WL

4140784, at *4 (E.D. Pa. Aug. 29, 2019) ("A low number of objectors or opt-outs is persuasive evidence of the proposed settlement's fairness and adequacy.").

C. The Skill and Efficiency of Attorneys Involved.

The third *Gunter* factor is measured by the "quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *In re Viropharma*, 2016 WL 312108, at *16 (citation omitted). Here, these considerations support the reasonableness of Settlement Class Counsel's fee request.

Settlement Class Counsel have extensive and significant experience in the field of class action litigation and have significant experience in litigating data breach class actions, such as the current action. As set forth in the Joint Declaration, and as demonstrated by the respective firm resumes attached as Exhibit A (Lynch Carpenter) and Exhibit B (Dann Law Firm) thereto, Settlement Class Counsel are highly experienced attorneys in this type of litigation, with a strong track record of obtaining favorable resolutions in cases such as this one. Joint Decl. ¶¶ 36–38. Indeed, the favorable Settlement obtained here is attributable, in large part to the diligence, determination, hard work, and skill of Settlement Class Counsel. Recognizing the time and expense it would take to litigate this case past both summary judgment and class certification, and the inherent risk those procedural stages posed, Settlement Class Counsel worked diligently to resolve this action, all while providing an immediate benefit to Settlement Class Members.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Settlement Class Counsel. *See In re Remicade*, 2023 WL 2530418, at *25. Here, Wabtec was represented by undeniably experienced and skilled attorneys at the nationally recognized law firm Jones Day. The ability of Settlement Class Counsel to obtain a favorable

outcome for the Settlement Class in the face of formidable legal opposition further confirms the quality of Settlement Class Counsel's representation and supports the reasonableness of the requested fee award.

D. The Complexity and Duration of the Litigation.

There is no question that during the nearly two years of litigation, Plaintiffs faced, and Settlement Class Counsel resisted, numerous defenses to liability and damages. Although Plaintiffs prevailed in part at the motion to dismiss stage, Wabtec continues to vehemently deny liability, and there is no assurance that Plaintiffs would have overcome Wabtec's argument against Article III standing, or prevailed at summary judgment or class certification. *See Enslin v. Coca-Cola Co.*, 739 F. App'x 91 (3d Cir. 2018) (affirming grant of summary judgment in defendant's favor where former employee failed to establish the employer's alleged breach of contract caused a compromise of his accounts with internet retailers). Indeed, data breach and privacy cases have been found by courts to be complex and involving novel issues of law. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315, 317 (N.D. Cal. 2018); *In re Linkedin User Priv. Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *6 (N.D. Ohio Aug. 12, 2019) ("The realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law."). In recent years, countless data breach class actions have been dismissed at the Rule 12 or later stages, for reasons ranging from lack of standing, lack of duty, failure to demonstrate causation, or failure to prove damages. And numerous cases that surmounted these hurdles failed to proceed on a class basis for varied reasons. *E.g.*, *In re Blackbaud, Inc. Customer Data Breach Litig.*, Case No. 3:20-mn-2972, 2024 WL 2155221 (D.S.C. May 14, 2024).

In short, this was not a simple case with a clear path to liability and judgment, and this litigation could have proceeded for several years, including through appeals, had it not settled. Nonetheless, Settlement Class Counsel worked diligently to achieve a significant result for the Settlement Class in the face of very real litigation risks. Accordingly, this factor supports the reasonableness of the requested fee award.

E. The Risk of Non-Payment.

"Courts routinely recognize the risk created by undertaking an action on a contingency fee basis militates in favor of approval." *Whiteley v. Zynerba Pharms., Inc.*, CIVIL ACTION NO. 19-4959, 2021 WL 4206696, at *12 (E.D. Pa. Sept. 16, 2021). Settlement Class Counsel undertook this action on an entirely contingent fee basis, shouldering the risk that this litigation would yield no recovery and leave them wholly uncompensated for their time, as well as for their out-of-pocket expenses. Joint Decl., ¶ 4. To date, Settlement Class Counsel has not been paid anything for their efforts. As such, a dispositive ruling at any stage of this ligation could have meant a zero recovery for members of the Settlement Class, as well as non-payment for Settlement Class Counsel. Wabtec asserted several substantive defenses that could have eliminated any possibility of recovery for the Settlement Class, as well as non-payment for Settlement Class Counsel. Indeed, had this case not settled when it did, Plaintiffs may have lost the pending Rule 12(b)(1) motion, and even if not, they likely would have faced a motion for summary judgment on their individual claims; only if they prevailed would they have been able to move for class certification. Thus, this factor weighs in favor of Settlement Class Counsel's fee request.

F. The Amount of Time Devoted to the Litigation by Settlement Class Counsel.

Settlement Class Counsel have received no compensation for their efforts during the course of this Litigation for nearly two years. They risked non-payment of $9,505 in out-of-pocket

expenses and for the 304.65 hours they worked on this Litigation, knowing that if their efforts were not successful, no fee would be paid. Joint Decl., ¶¶ 4, 34. Settlement Class Counsel vigorously litigated this action, including the time spent consulting with the Representative Plaintiffs; investigating the claims; drafting and editing the initial and amended complaints; researching, drafting, and filing Plaintiffs' opposition to Wabtec's motion to dismiss; working with Wabtec's counsel to prepare the Parties' Report of Rule 26(f) planning meeting; appearing telephonically at the Initial Case Management Conference, drafting and serving discovery requests on Wabtec; participating in two mediation sessions before the Bruce A. Friedman, Esq. of JAMS; negotiating, drafting, and finalizing the proposed class action settlement agreement release and related exhibits; soliciting bids from settlement administration firms and working with the chosen administrator, Verita Global, to implement the notice program; drafting and filing the motion for preliminary approval; and responding to Settlement Class Member inquiries about the Settlement. Joint Decl., ¶ 21. At all times, Settlement Class Counsel conducted their work with skill and efficiency, conserving resources and avoiding duplication of effort. Joint Decl. ¶¶ 4–5.

The foregoing unquestionably represents a substantial commitment of time, personnel, and out-of-pocket expenses by Settlement Counsel, while taking on the substantial risk of recovering nothing for their efforts. The financial risk to Settlement Class Counsel was significant. This factor thus supports the Settlement Class Counsel's requested fee award.

G. The Request Is Comparable to Awards in Similar Cases.

As demonstrated above in Argument, *supra* § III, the request of one-third of the total Settlement Compensation to cover the time and out-of-pocket expenses of Settlement Class Counsel is well within the range of fees awarded in this Circuit and in comparable data breach cases. Accordingly, this factor supports the reasonableness of the requested fee.

H. The Settlement Benefits Are Attributable Solely to the Efforts of Settlement Class Counsel.

The Third Circuit has advised district courts to examine whether counsel has benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing, because this can indicate whether or not counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338. Settlement Class Counsel alone initiated this action and have been actively litigating this action themselves without assistance from the government or any third parties. Thus, this factor supports the requested fee. *See Harshbarger v. Penn Mut. Life Ins. Co.*, No. CV 12-6172, 2017 WL 6525783, at *5 (E.D. Pa. Dec. 20, 2017) ("Because Class Counsel were the only ones pursuing the claims at issue in this case, this factor weighs in favor of approval").

I. The Percentage of the Fee Approximates the Fee that Would Have Been Negotiated in the Private Market.

The Third Circuit has advised that the requested fee should also be compared to "the percentage fee that would have been negotiated had the case been subject to a private [non-class] contingent fee agreement." *In re AT&T*, 455 F.3d at 165. Here, Settlement Class Counsel's requested one-third of the Total Settlement Compensation is commensurate with customary percentages in private contingent fee agreements. *See Boone v. City of Philadelphia*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009) (explaining that the median attorneys' fee award in class actions is one-third, or 33%); *see also In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 156 (D.N.J. 2013) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation.").

J. Innovative Terms of the Settlement.

The Settlement does not contain any particularly novel or "innovative" terms—beyond simply being a quality, fair, settlement in the ever-evolving law that is data breach litigation. This factor is thus neutral as it neither weighs in favor of nor against approval of the requested fee. *See Harshbarger*, 2017 WL 6525783, at *5.

On the balance, the *Gunter/Prudential* factors demonstrate that Settlement Class Counsel's requested fee is reasonable, and therefore, should be approved.

V. The Lodestar Cross-Check Confirms the Fee Request Is Reasonable.

The Third Circuit has recommended that courts crosscheck the reasonableness of the attorneys' fee request using the lodestar method. *Gunter*, 223 F.3d at 195 n.1. "The purpose of the cross-check is to ensure that the percentage approach does not result in an 'extraordinary' lodestar multiple or windfall." *Whiteley*, 2021 WL 4206696, at *13 (quoting *In re Cendant*, 264 F.3d at 285). The Third Circuit has stated that a lodestar cross-check entails an abridged lodestar analysis that requires neither "mathematical precision nor bean counting." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The Court need not receive or review actual billing records when conducting this analysis. *Id.* at 307.

Under the lodestar method, a court begins the process of determining the reasonable fee by calculating the "lodestar," *i.e.*, the "number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *McKenna v. City of Phila.*, 582 F.3d 447, 455 (3d Cir. 2009). Once the lodestar is determined, the court must then decide whether additional adjustments are appropriate. *Id*. A reasonable hourly rate in the lodestar calculation is "[g]enerally . . . calculated according to the prevailing market rates in the relevant community," taking into account "the experience and skill of the . . . attorney and compar[ing] their rates to the rates prevailing in

the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). The prevailing market rate is usually deemed reasonable. *Pub. Interest Research Grp. v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995).

Settlement Class Counsel spent 304.65 hours litigating this action, producing a lodestar amount of $159,641.05 based on standard currently hourly rates that range from $200 to $950.[3] Joint Decl. ¶¶ 22, 28, 34. Summaries of the number of hours expended by attorneys and staff are provided in the Joint Declaration. Joint Decl. ¶¶ 22, 28. The reasonableness of Settlement Class Counsel's rates is supported by the Joint Declaration, which establishes that the rates are the same as their standard hourly rates and are in accord with the prevailing rates for class action and complex commercial litigation in the relevant legal markets in which the principal attorneys practice, and in consideration of the fact that all Settlement Class Counsel maintain national practices. Joint Decl., ¶¶ 27, 33. *See New Berry, Inc. v. Smith*, No. CV 18-1024, 2021 WL 5332165, at *2 (W.D. Pa. Nov. 15, 2021) ("The best evidence of a prevailing market rate is counsel's customary billing rate."); *Animal Legal Def. Fund v. Lucas*, No. CV 2:19-40, 2021 WL 4479483, at *1 (W.D. Pa. Sept. 30, 2021) ("[T]he attorney's normal billing rate is an appropriate baseline for assessing the reasonableness of the rate requested."). These rates have been approved in other class action cases. *See Jackson v. Suffolk Univ.*, 1:23-cv-10019, ECF No. 42-1 (D. Mass.) (using Lynch Carpenter 2024 rates, final approval granted June 18, 2024); *Opris, et al. v. Sincera Reproductive Medicine*, No. 2:21-cv-03072, ECF Nos. 62–64 (E.D. Pa.) (using Lynch Carpenter

[3] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Mo. v. Jenkins by Agyei*, 491 U.S. 274, 283–84 (1989); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. CIV.A. 08-2177 DMC, 2013 WL 5505744, at *33 n.28 (D.N.J. Oct. 1, 2013) (citing *Jenkins*, 491 U.S. at 283–88).

2023 rates, final approval granted September 8, 2023); *Christiansen, et al. v. Parker Hannifin Corporation*, No. 1:22-cv-00835-DAP (S.D. Ohio, August 2, 2023 (approving DannLaw's rates); *Kathryn M. Forrest, et al. v. PHH Mortgage Corporation*, No. 1:20-cv-00323-WES-LDA (D.RI, Jan. 3, 2024) (approving DannLaw's rates). Further, Settlement Class Counsel's rates are within the ranges that have been approved in this Circuit when overseeing class settlements. *See In re Remicade*, 2023 WL 2530418, at *27–*28 (approving hourly rates between $115 to $1,325); *In re Cigna-Am. Specialty Health Admin. Fee Litig.*, Case No. 2:16-cv-03967-NIQA, 2019 WL 4082946, at *15 (E.D. Pa. Aug. 29, 2019) (approving hourly rates between $175 and $995); *in re Viropharma*, 2016 WL 312108, at *18 (approving hourly rates ranging from $350 to $925). Given Settlement Class Counsel's experience and work, as well as the complex and relatively specialized nature of this litigation, their rates are reasonable.

Settlement Class Counsel in this litigation have submitted summaries of the number of hours expended by attorneys and staff and descriptions of the type of work each firm performed. Joint Decl., ¶¶ 22, 28. The hours billed were spent consulting with the Representative Plaintiffs; investigating the claims; drafting and editing the initial and amended complaints; researching, drafting, and filing Plaintiffs' opposition to Wabtec's motion to dismiss; working with Wabtec's counsel to prepare the Parties' Report of Rule 26(f) planning meeting; appearing telephonically at the Initial Case Management Conference, drafting and serving discovery requests on Wabtec; participating in two mediation sessions before the Bruce A. Friedman, Esq. of JAMS; negotiating, drafting, and finalizing the proposed class action settlement agreement release and related exhibits; soliciting bids from settlement administration firms and working with the chosen administrator, Verita Global, to implement the notice program; drafting and filing the motion for preliminary approval; and responding to Settlement Class Member inquiries about the Settlement. Joint Decl.

¶ 21. The tasks performed are typical in litigation and were necessary to the successful prosecution and resolution of the claims against Wabtec. Joint Decl., ¶¶ 4, 34.

The requested fee of $208,333.33 represents a multiplier 1.31 when compared to Settlement Class Counsel's lodestar (exclusive of expenses) of $159,641.05. Joint Decl., ¶ 34. Courts often approve fees in class actions that correspond to multiplies of one to four times the lodestar, and this requested fee is at the low end of that range. *See, e.g.*, *Prudential*, 148 F.3d at 341 ("Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied . . . .") (internal citation omitted); *In re Fasteners Antitrust Litig.*, Civil Action No. 08-md-1912. 2014 WL 296954, at *8 (E.D. Pa. Jan. 27, 2014) ("Since the multiplier here is less than one, which means that the requested fee is less than the amount that would be awarded using the lodestar method, we are satisfied that a lodestar cross-check confirms the reasonableness of Co-Lead Counsel's request for attorney's fees."). Given the quality of Settlement Class Counsel's work and results achieved in these circumstances, the lodestar cross-check supports the reasonableness of the requested fee.

VI. Settlement Class Counsel's Request for Reimbursement of Expenses Is Reasonable.

"Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case." *O'Hern v. Vida Longevity Fund, LP*, No. CV 21-402-SRF, 2023 WL 3204044, at *10 (D. Del. May 2, 2023). Settlement Class Counsel seeks reimbursement of $9,505 for the reasonable expenses incurred by Settlement Class Counsel to advance this litigation (exclusive of costs of notice and settlement administration, which will also be paid by Wabtec as part of the Total Settlement Compensation). These expenses are outlined in the Joint Declaration submitted

concurrently herewith and the majority were attributable to filing fees and the mediator fees. Joint Decl., ¶¶ 25, 31.

As explained above, Settlement Class Counsel diligently prosecuted this action, engaged in extensive discovery, actively participated in mediations with Bruce Friedman, and thoroughly worked to achieve this Settlement. Further, most of the expenses listed are attributable to Settlement Class Counsel's portion of the mediator's fees. *See* Joint Decl., ¶¶ 25, 34. The remainder of the expenses are costs associated with service of process, and filing fees. Joint Decl., ¶ 25, 31. In sum, the expenses Settlement Class Counsel incurred while prosecuting this litigation amount to $9,505, only 1.52% of the total common fund. These expenses are typical in litigation, were necessary for the successful prosecution and resolution of the claims against Wabtec, and should be approved. Joint Decl., ¶¶ 26, 32.

VII. The Requested Service Awards Are Reasonable.

Service awards are "not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class." *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 665 (E.D. Pa. 2015) (quotations omitted). Generally, "[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (quotation omitted). Factors courts consider when deciding to give service awards include "the risk to the plaintiff in commencing litigation, both financially and otherwise; the notoriety and/or personal difficulties encountered by the representative plaintiff; the extent of the plaintiff's personal involvement in the lawsuit in terms of discovery responsibilities and/or testimony at depositions or trial; the duration of the litigation; and the plaintiff's personal benefit (or lack thereof) purely in her capacity as a member of the

class." *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-CV-1833, 2020 WL 1922902, at *33 (E.D. Pa. Apr. 21, 2020) (quoting *McGee v. Ann's Choice, Inc.*, No. 12-2664, 2014 WL 2514582, at *3 (E.D. Pa. June 4, 2014)). Importantly, district courts in the Third Circuit routinely approve service awards of $1,000 to $5,000.[4]

Pursuant to the Settlement Agreement, for their time and effort advancing the action and for the risks they assumed in prosecuting this action against Wabtec on behalf of the Settlement Class Members, Settlement Class Counsel requests Service Awards totaling up to $5,000 each for Representative Plaintiffs Hokky Tjahjono and Miles Black. Specifically, each Settlement Class Representative invested time in this litigation by bringing their claims to Settlement Class Counsel for investigation; agreeing to serve as representative plaintiffs; reviewing the Complaint, Amended Complaint, remaining available to consult with Settlement Class Counsel when necessary regarding the progress of the litigation; and reviewing and approving the proposed Settlement. Joint Decl., ¶ 35.

If approved, the Service Awards totaling up to $10,000, will reflect approximately 1.6% of the Settlement Fund. Because they are reasonably tailored to reflect the Representative Plaintiffs' excellent service to the Settlement Class and are a modest size, the requested Service Awards should be approved. For these reasons, Settlement Class Counsel respectfully requests that the Court approve the requested Service Awards on behalf of the Representative Plaintiffs.

[4] *See, e.g.*, *Wood v. Saroj & Manju Invs. Philadelphia LLC*, No. CV 19-2820-KSM, 2021 WL 1945809, at *10 (E.D. Pa. May 14, 2021) (awarding a service award of $2,500 to the settlement class representative); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *13 (E.D. Pa. Sept. 24, 2019) (awarding service awards of $1,000 to each settlement class representative); *Krimes v. JPMorgan Chase Bank, N.A.*, No. CV 15-5087, 2017 WL 2262998, at *11 (E.D. Pa. May 24, 2017) (awarding service award of $5,000 to the settlement class representative).

CONCLUSION

For the above-mentioned reasons, Plaintiffs respectfully request that the Court grant their motion, and approve an attorneys' fee award of $208,333.33, reimbursement of litigation expenses in the amount of $9,505, and Service Awards in the amount of $10,000 total, with $5,000 each for Representative Plaintiffs Tjahjono and Black.

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Respectfully Submitted,

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