

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JULIA ROSSI, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No.: 1:20-cv-5090
)	
v.)	Hon. Andrea R. Wood, presiding
)	Hon. Magistrate Heather K. McShain
CLAIRE’S STORES, INC., <i>et al.</i> ,)	
)	
Defendants.)	
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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ UNOPPOSED MOTION FOR
ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

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Rules

Fed. R. Civ. P. 23(h) 1, 8

Plaintiffs Julia Rossi, Delilah Parker, and Kelvin Holmes (collectively, “Plaintiffs” or “Representative Plaintiffs”) respectfully move for approval of their request for attorneys’ fees, costs, and service awards in this preliminarily approved class action settlement with Defendants Claire’s Stores, Inc., Claire’s Boutiques, Inc., and CBI Distributing Corp. (collectively, “Claire’s” or “Defendants”). Defendants do not oppose this motion.

I. INTRODUCTION

On March 28, 2022, the Court issued an order preliminarily approving the proposed nationwide class action settlement with Claire’s, who was the subject of a data breach (“Data Breach”) that affected e-commerce websites owned and operated by Defendants and compromised consumers’ personally identifiable information (“PII”) and payment card data (“PCD”).

In accordance with Fed. R. Civ. P. 23(h) and this Court’s March 28 Order Certifying a Settlement Class, Preliminarily Approving Class Action Settlement, and Directing Notice to the Settlement Class (Dkt. 52) (the “Preliminary Approval Order”), Plaintiffs, on behalf of the Settlement Class,¹ move for an award of \$165,000 in fees and expenses which is approximately 2.8 percent of the conservative value of the benefits provided to the Class, without even deducting Plaintiffs’ Counsel’s expenses or accounting for the value of the injunctive relief provided through the Settlement. This request also represents a significant discount from the true figure of \$267,002.45, which includes a combined lodestar across all Plaintiffs’ firms of \$257,057.80 in fees, and \$9,944.65 in expenses, but is the maximum allowed under the terms of the Settlement

¹ The “Settlement Class” is defined in the Preliminary Approval Order as: “All persons in the United States who made a purchase online with Claire’s between April 7, 2020 through June 12, 2020.”

Agreement. Class Counsel² also seek service awards in the amount of \$1,500 for each of the three Representative Plaintiffs.³

The requested awards would be paid directly by Defendants. The negative multiplier that the requested award represents underscores its reasonableness. *See In re Sears, Roebuck & Co. Front-Loading Washer Prod. Liab. Litig.*, 867 F.3d 791 (7th Cir. 2017) (awarding class counsel full lodestar, despite fees exceeding settlement's benefits to the class). The requested award is within the range of approval under Seventh Circuit precedent, using either the lodestar method or the percentage-of-the-fund method.⁴ *See Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014) ("The ratio that is relevant to assessing the reasonableness of the attorneys' fee that the parties agreed to is the ratio of (1) the fee to (2) the fee plus what the class members received."); *see also Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014) ("[A]ttorneys' fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel."). The fee request also is reasonable given the enormous risks and investment required to develop and prosecute a case of this nature, and the excellent result achieved for the Class here.

As detailed below and in the supporting declarations of Bradley K. King ("King Decl."), M. Anderson Berry ("Berry Decl."), Rachele R. Byrd ("Byrd Decl."), and Katrina Carroll ("Carroll

² "Class Counsel" is defined as Bradley K. King of Ahdoot & Wolfson, PC, and M. Anderson Berry of Clayeo C. Arnold, P.C. (Dkt. 49-4 ¶ 1.20).

³ Unless otherwise stated here, capitalized terms are defined in the Settlement Agreement ("SA"). (Dkt. 49-4.)

⁴ Although this Settlement does not provide for a common fund, Defendants agreed to provide Experian's Identity Plan to all 60,842 class members independent of whether they submit a claim under the Settlement. Settlement Agreement (Dkt. 49-4), ¶ 2.6. Thus, assessing Plaintiffs' counsel's fee request as a percentage of that cumulative value to the class further supports its reasonableness.

Decl.”), multiple attorneys devoted significant hours over the last two years to bring this case to its current posture, while the action was pending before this Court. In fact, a *downward* multiplier of 0.62 must be applied to counsel’s true fees and expenses to approximate the award requested here. The requested award is reasonable, given the excellent result for the Settlement Class achieved here.

II. BACKGROUND

A. Procedural History

Plaintiff Rossi filed the initial action on July 31, 2020 in the Circuit Court of Cook County, Illinois. Defendants removed Plaintiff Rossi’s action to the Northern District of Illinois on August 28, 2020. Dkt. 1. Plaintiffs Parker and Holmes filed their action (No. 20-cv-5574) on September 18, 2020, which was related and reassigned to this Court on October 2, 2020. Dkt. 19. Plaintiffs agreed to coordinate their efforts and, with leave of the Court, filed a consolidated amended complaint (the “CAC”) on October 26, 2020. Dkt. 20. The Court granted Plaintiffs’ subsequent motion for appointment of interim co-lead counsel on November 6, 2020. Dkt. 30. Defendants filed their motion to dismiss the CAC on December 4, 2020. Dkt. 35.

On December 15, 2020, the parties informed the Court of their intent to mediate. Dkt. 37. On January 5, 2021, the Court granted Plaintiffs’ unopposed motion to continue the briefing of Defendants’ motion to dismiss to May 2021 and stay substantive discovery pending the parties’ mediation efforts, ordering the parties to submit a joint status report after their mediation no later than April 1, 2021. Dkt. 39.

After agreeing on a mediation date, the parties engaged in informal discovery, including the exchange of documents relevant to the parties’ claims and defenses. The parties also each drafted and submitted confidential mediation statements to Bennett G. Picker, Esq. in advance of

their mediation. In doing so, Plaintiffs also conducted independent investigation of factual issues pertaining to the Data Breach and extensive legal research to prepare their arguments for a prospective opposition to Defendants' motion to dismiss, as well as a preview of class certification and merits arguments.

On March 23, 2021, the parties participated, with Mr. Picker's guidance, in a lengthy, full-day mediation session of hard fought, arm's-length negotiations, ultimately reaching a settlement in principle. The parties informed the Court of their Settlement on March 30, 2021, Dkt. 42, and in acknowledging the notice of settlement, the Court terminated Defendants' motion to dismiss and ordered Plaintiffs to file a motion for preliminary approval of settlement, later granting an extension of that deadline. Dkts. 43, 45. Plaintiffs filed their preliminary approval motion on June 16, 2021. Dkt. 49. The Court granted it and entered the Preliminary Approval Order on March 28, 2022. Dkt. 52.

The Class notice and claims period commenced on April 27, 2022 (*id.* at 10), and, to date, no Settlement Class Members have objected to the Settlement and only one Settlement Class Member has requested exclusion. King Decl. ¶ 18. The deadline for objections and exclusion requests is September 24, 2022. Dkt. 52 at 11. Class Counsel will address any objections in Plaintiffs' motion and/or reply in support of final approval of the settlement. *Id.* The claims deadline is September 24, 2022. *Id.* The Final Approval Hearing is set for September 27, 2022 at 10:00 a.m. *Id.* at 5.

B. Summary of the Settlement's Benefits

The Settlement's valuable benefits squarely address the issues raised in the litigation and provide significant relief to the Settlement Class. The Settlement provides monetary relief to compensate Settlement Class Members for inconveniences and losses as a result of the Data

Breach, an additional year of Experian's IdentityWorks identity theft protection service ("Identity Plan"), and equitable relief in the form of significant business practice changes.

1. Expense and Time Reimbursement

The Settlement will provide Settlement Class Members with the ability to claim the following monetary benefits, subject to an aggregate cap of \$350,000:

- I. Ordinary expenses. The following expenses shall be subject to an individual cap of \$250:
 - A. Compensation for documented out of pocket losses for the following, if plausibly caused by the Data Breach:
 - a. Card replacement fees;
 - b. Late fees;
 - c. Overlimit fees;
 - d. Interest;
 - e. Other bank or credit card fees;
 - f. Postage, mileage, and other incidental expenses resulting from lack of access to a card or account resulting from the Data Breach; and
 - g. Up to \$50 in costs associated with credit monitoring or identity theft insurance, if purchased primarily as a result of the Data Breach.
 - B. A payment of \$19 for each payment card on which a Class Member incurred one or more actual, documented fraudulent charge; and
 - C. Compensation for documented lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath/clean-up of the incident, at the rate of \$19 per hour for up to 3 hours (documentation requires at

least a narrative description of the activities performed during the time claimed and their connection to the Data Breach).

- II. Extraordinary Expenses. Compensation of up to \$3,000 for unreimbursed fraudulent charges or out-of-pocket losses not covered in the ordinary expense category, incurred between April 7, 2020 and the end of the claims period, and more likely than not caused by the Data Breach.

SA at ¶ 2.2.

To receive payment for out-of-pocket expenses, a Class Member must complete the appropriate section of the Claim Form and provide any required documentation to support their claim. *Id.* at ¶ 2.33. The Claims Administrator will determine whether the claim is Facially Valid. *Id.* at ¶ 2.5.2. The Claims Administrator may request Claim Supplementation from the claimant as reasonably required to evaluate the claim. *Id.* at ¶ 2.5.1. If the Claims Administrator rejects a claim for reasons other than the lack of information necessary to evaluate the claim, it shall refer the claim to the Claims Referee upon request of the Settlement Class Member. *Id.* at ¶ 2.5.3.

2. Identity Theft Protection Plan

Further, every Settlement Class Member will receive, in the Class notice, a link and a redeemable code to immediately and directly obtain a complimentary one-year membership of the Identity Plan, regardless of whether they submit a Claim Form. This product will be the same as offered by Claire's in its initial notice letter of the Data Breach. *Id.* at ¶ 2.6. The Identity Plan includes up to \$1 million in reimbursement insurance for losses due to identity theft and fraud, Internet surveillance of thousands of websites and millions of data points to identify fraudulent activity, identity restoration in the event of identity theft or fraud, and extended fraud resolution with ExtendCare, which provides access to Experian's Fraud Resolution Agents during and even

after expiration of the Identity Plan in the event of identity theft or fraud. *See* Dkt. 49-2 at 3 (¶ 7); Dkt. 49-3 at 2-3 (¶ 4).

The Identity Plan, when compared to comparable identity theft protection products available for any consumer to purchase, has a conservative retail value of at least \$90 per Settlement Class Member. Dkt. 49-3 at 3-4 (¶¶ 5-9). Experian estimates the Identity Plan's retail value to be even higher, at \$107.88 per Settlement Class Member. Dkt. 49-2 at 4 (¶ 8). Under the proposed Settlement, Defendants will provide enrollment access to the Identity Plan to all 60,842 Settlement Class Members in conjunction with Class Notice and independent of any claims submitted. SA, ¶¶ 2.6, 3.3.1. Thus, the total value of the Identity Plan to the Settlement Class is, at a minimum, \$5.48 million and, by Experian's own estimate, as much as \$6.56 million.⁵

3. Remedial Measures Attributable to the Settlement

Defendants also agree to implement the following data security measures for a period of at least one year following settlement approval:

- a. Complete PCI Attestation of Compliance (AOC) in conjunction with a PCI-Security Assessor (QSA);
- b. Conduct annual penetration testing of the cardholder data environment;
- c. Conduct regular reviews of logs relating to Claire's e-commerce platforms;
- d. Deploy an endpoint detection and response tool; and
- e. Employ a data security and compliance person at the Executive Director level.

⁵ \$90 value x 60,842 Settlement Class Members = \$5,475,780.00; \$107.88 value x 60,842 Settlement Class Members = \$6,563,634.96.

Id. at ¶ 2.4.

III. ARGUMENT

A. Plaintiffs' Counsel Should Be Awarded Their Requested Attorneys' Fees.

“[T]he district judge has discretion to choose between the lodestar and percentage-of-fund approaches” to compute the appropriate fee award, but the Court need apply only one of these methods for computing fees. *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998) (“[W]e have never ordered the district judge to ensure that the lodestar result mimics that of the percentage approach.”); *see also* Fed. R. Civ. P. 23(h) (“In a certified class action, the court may award reasonable attorney’s fees . . . that are authorized by law or by the parties’ agreement.”); *Americana Art China Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014) (“[T]he choice of methods is discretionary.”).

In appropriate cases the Seventh Circuit has even approved lodestar-based awards of attorney fees that exceed the amount recovered by the class at issue. *See In re Sears*, 867 F.3d at 791. Of course, Class Counsel here seeks no such award, and even measured using the percentage-of-the-fund approach based upon a conservative value of the settlement, the requested amount is well within the range explicitly endorsed as approvable by the Seventh Circuit. District Courts within the Seventh Circuit “regularly award percentages of 33.33% or higher to counsel in class action litigation.” *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-cv-660, 2018 U.S. Dist. LEXIS 210368, at *35 (S.D. Ill. Dec. 13, 2018); *see also Behrens v. Landmark Credit Union*, No. 17-cv-101, 2018 U.S. Dist. LEXIS 106358, at *16 (W.D. Wis. June 26, 2018) (“And generally, a 33 to 40 percent contingency fee is considered consistent with the market rate and reasonable.”); *Martin v. Caterpillar Inc.*, No. 07-cv-1009, 2010 U.S. Dist. LEXIS 145111, at *6 (C.D. Ill. Sept. 10, 2010) (“[C]ourts in the Seventh Circuit award attorney fees ‘equal to approximately one-third or more of

the recovery.’ . . . The Seventh Circuit itself has specifically noted that ‘the typical contingent fee is between 33 and 40 percent.’”) (citation omitted).

Class Counsel’s requested attorneys’ fees and expenses award of \$165,000 is reasonable in relation to the value of this Settlement. Plaintiffs conservatively estimate the value of the settlement to be at least \$5.83 million. This valuation is based upon (1) the \$350,000 aggregate made available to Settlement Class Members via the claims process (SA at ¶ 2.3), and (2) the value of the Identity Plan provided automatically to *all* Settlement Class Members, which can be conservatively valued at \$5.48 million. *See supra* note 5.

This \$5.83 million valuation does not include the value to Settlement Class Members for the Settlement’s injunctive relief, which includes numerous important remedial measures to improve Defendants’ data security going forward. SA at ¶ 2.4. Further, deducting Plaintiffs’ counsel’s total expenses of \$9,944.65 from the requested \$165,000 award results in a net fee award of only \$155,055.35, which is only 2.7 percent of the Settlement’s conservative value.

To calculate the lodestar, counsel’s reasonable hours expended on the litigation are multiplied by counsel’s reasonable rates. *See Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986). The lodestar incurred by Plaintiffs’ counsel supporting the requested award are summarized as follows:

Firm	Hours	Lodestar
Ahdoot & Wolfson, PC	191.5	\$125,250.00
Clayco C. Arnold, APLC	131.1	\$79,006.30
Wolf Haldenstein Adler Freeman & Herz LLP	53.5	\$35,114.00
Lynch Carpenter, LLP	22.2	\$17,687.50
Total Lodestar:		\$257,057.80

More detail regarding each firm's time is included in their supporting declarations. *See* King Decl. ¶ 9; Berry Decl. ¶ 6; Byrd Decl. ¶ 6; Carroll Decl. ¶ 4.

These services were reasonable and necessary to litigate this case effectively and to reach the terms of the proposed Settlement as set forth in the Settlement Agreement. King Decl. ¶¶ 3-8; Berry Decl. ¶ 4; Byrd Decl. ¶ 4; Carroll Decl. ¶ 3. These attorneys invested time such that their requested compensation from this Settlement of \$165,000 represents a *negative* multiplier of 0.6 of their actual lodestar after deducting expenses. Given that Courts regularly approve much higher *positive* lodestar multipliers, the negative multiplier attendant to the requested award demonstrates its reasonableness. *See, e.g., In re Sears*, 867 F.3d at 791 (“the average multiplier in this circuit when the court awards a multiplier has been 1.85”); *Standard Iron Works v. Arcelormittal*, No. 08-cv-5214, 2014 U.S. Dist. LEXIS 162557, at *10 (N.D. Ill. Oct. 22, 2014) (awarding multiplier of 1.97 as “well within the range of reasonable multipliers awarded in similar contingent cases.”).

It was only through the expenditure of the time summarized above that Class Counsel was able to secure the Settlement for the benefit of the Class. Plaintiffs' attorneys devoted significant time to the prosecution of this action, including:

- extensive, independent factual investigation, before and after the original independent complaints were filed, into the Data Breach, the exposure of Plaintiffs' PII and PCD, and Plaintiffs' damages including mitigating the risk of fraud and identity theft;
- self-organizing and coordinating their combined legal talents for the benefit of the Class, consolidating the various lawsuits then pending before this Court;
- retaining and consulting with experts in data security and data breaches;
- preparation of and research for a consolidated Class Action Complaint (Dkt. 20);
- engaging in arm's-length negotiations, including mediation (King Decl. ¶¶ 4-8);

- requesting and reviewing information from Defendants sufficient to allow Class Counsel to evaluate the value of the claims and the viability of potential defenses (*id.* ¶ 5);
- painstaking negotiation of the Settlement Agreement and its exhibits, the notice program, and the notice forms;
- researching and drafting the preliminary approval motion (Dkt. 49-1);
- overseeing dissemination of notice with the Settlement Administrator; and
- preparing the present motion as well as the concurrently filed Motion for Final Approval, along with the supporting declarations.

Notably, the work is not done; Class Counsel will continue to incur significant additional time and expense in seeing this Settlement through to its conclusion, including working with the Settlement Administrator, answering questions from Class Members, briefing and arguing the final approval motion, analyzing and responding to any objections, and continuing to assist Settlement Class Members with claims. *See* King Decl. ¶ 17; Berry Decl. ¶ 5.

Plaintiffs' Counsel are nationally recognized for the successful prosecution of complex class action litigation. *See* King Decl. ¶ 2; Berry Decl. ¶ 3; Byrd Decl. ¶ 3; Carroll Decl. ¶ 2. As set forth above, Plaintiffs' Counsel worked expeditiously and efficiently, reflecting their knowledge and practical experience in litigating claims of this nature. Their expertise was the primary factor in bringing about the expeditious resolution of this litigation on extremely favorable terms for the Settlement Class.

B. Plaintiffs' Counsel Should Be Reimbursed For Their Expenses.

Pursuant to a market-based approach, attorneys who generate a benefit for the class are entitled to recover reasonable litigation expenses incurred to advance the matter. *See Great Neck*

Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P., 212 F.R.D. 400, 412 (E.D. Wis. 2002).

Plaintiffs' Counsel incurred expenses litigating this matter, with no assurance that the investment would pay off. The expenses incurred by Plaintiffs' Counsel supporting the requested award are summarized as follows:

Firm	Expenses
Ahdoot & Wolfson, PC	\$4,060.61
Clayco C. Arnold, APLC	\$2,507.71
Wolf Haldenstein Adler Freeman & Herz LLP	\$2,435.38
Lynch Carpenter, LLP	\$940.95
Total Expenses:	\$9,944.65

The majority of the \$9,944.65 in total expenses were for mediation and expert fees, in addition to less expensive items such as research and filing fees. King Decl. ¶ 10; Berry Decl. ¶ 11; Byrd Decl. ¶ 11; Carroll Decl. ¶ 5. These expenses were necessary to litigate the case effectively and reach the present Settlement. *Great Neck Capital Appreciation Inv. P'ship, L.P.*, 212 F.R.D. at 412; *see also Abbott v. Lockheed Martin Corp.*, No. 06-cv-701, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015); *City of Greenville v. Syngenta Crop Protection, Inc.*, 904 F. Supp. 2d 902, 910 (S.D. Ill. 2012) (“[T]he costs sought here are of the type that are routinely reimbursed by paying clients, such as experts’ fees, other consulting fees, deposition expenses, travel, and photocopying costs.”).

C. The Requested Service Awards to Plaintiffs Are Appropriate.

Representative plaintiff service awards encourage members of a class to become class representatives and reward individual efforts taken on behalf of a class. *Cook*, 142 F.3d at 1016 (awarding \$25,000). “In deciding whether such an award is warranted, relevant factors include 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.” *Id.*

The requested service award of \$1,500 to each Representative Plaintiff is reasonable, justified, and accords with common practice. Representative Plaintiffs stepped up and volunteered to take on the responsibilities, risks, and scrutiny of bringing a class action lawsuit. This benefitted the entire Settlement Class because, without the Representative Plaintiffs, there may not have been a class action lawsuit and the resultant benefits from the Settlement they achieved. Representative Plaintiffs were actively involved throughout the litigation by, *inter alia*, providing information for the complaint, reviewing case documents, staying in regular contact with Class Counsel, and responding to all inquiries they were called to answer. King Decl. ¶ 19; Berry Decl. ¶ 13.

Given Plaintiffs’ efforts, a \$1,500 service award, which is in line with or less than other such awards in this District, is appropriate. *See Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 239 (N.D. Ill. 2016) (noting that courts in this district “have recently and routinely granted \$5,000 incentive awards to named plaintiffs”); *see also Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding \$5,000 where the case did not proceed past the earliest stages of discovery). As such, the requested service awards of \$1,500 to each Plaintiff are reasonable and warranted considering their participation and willingness to undertake the responsibilities and risks attendant with bringing this class action lawsuit.

IV. CONCLUSION

For all of the reasons stated above, Plaintiffs respectfully request that the Court enter an order awarding Plaintiffs’ Counsel \$165,000 in fees and expenses and awarding Representative Plaintiffs service awards of \$1,500 each (\$4,500 total).

Dated: August 11, 2022

Respectfully submitted,

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