

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JANE DOE 1 and JANE DOE 2, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

WORKIT HEALTH, INC.,

Defendant.

Case No. 2:23-CV-11691-LVP-DRG

Hon. Linda V. Parker
Magistrate Judge David R. Grand

**PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF COSTS AND EXPENSES,
AND INCENTIVE AWARDS**

Plaintiffs Jane Doe 1 and Jane Doe 2, on behalf of themselves and all others similarly situated, respectfully move this Court for entry of an order: (1) granting attorneys' fees to Class Counsel in the amount of \$192,893.33; (2) awarding reimbursement of costs and expenses to Class Counsel in the amount of \$12,349.50; and (3) granting incentive awards to each Plaintiff in the amount of \$2,500, all to be paid from the Settlement Funds pursuant to the Settlement Agreement. In support of this motion, Plaintiffs state as follows:

1. On July 14, 2023, Plaintiffs commenced this putative class action lawsuit by filing a complaint against Defendant Workit Health, Inc. (hereinafter, "Defendant"), alleging the unlawful disclosure of certain personal or health-related

information through the implementation and usage of third-party tracking technologies such as the Meta Pixel and Google Analytics.

2. In an effort to avoid the time, risk, and expense of further litigation, the Parties engaged in settlement discussions to determine whether a resolution of the case could be reached. To that end, Plaintiffs and Defendant agreed to participate in mediation with independent neutral mediator Bruce Friedman (JAMS). On March 21, 2024, Plaintiffs and Defendant participated in a full-day, in person mediation and reached agreement on the material terms of a settlement that would resolve all claims in this case subject to class settlement approval by the Court after notice to the Settlement Class. ([ECF No. 12-2] ¶¶10-18).

3. Based upon their investigation and evaluation of the facts and law relating to the matters alleged in the action, Plaintiffs (on behalf of themselves and the proposed Class) and Class Counsel agreed to settle the lawsuit, pursuant to the terms of the Settlement Agreement.

4. The terms of the proposed settlement are fully set forth in the Settlement Agreement. ([ECF No. 12-1] (“Settlement Agreement”)). Defendant has agreed to create a non-reversionary common fund of \$578,680.00 from which direct monetary payment will be allocated to class members pursuant to the procedures outlined in the Settlement Agreement. (*Id.* at 9).

5. The Court preliminarily approved the settlement in accordance with the Settlement Agreement on September 7, 2024. ([ECF No. 14]).

6. The Court appointed Nicholas A. Coulson of Coulson P.C. and David S. Almeida of Almeida Law Group LLC as Class Counsel and Plaintiffs as the Class Representatives. (*Id.*).

7. Class Counsel prosecuted this case on a contingent basis, advancing thousands of dollars in costs and expenses and receiving no fees to this point for their efforts. The Settlement Agreement provides for Class Counsel to seek an award of attorneys' fees in the amount of 1/3 of the Settlement Fund plus reasonable costs and expenses incurred in prosecuting the litigation (all payable from the Settlement Fund). (Settlement Agreement ¶62).

8. Plaintiffs undertook to serve as class representatives in this case involving sensitive private information without any guarantee or assurance of recovery. The Settlement Agreement provides for Plaintiffs to seek the Court's approval for incentive awards of \$2,500 each. (*Id.* ¶63).

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, respectfully request that this Honorable Court enter an order: (1) granting attorneys' fees to Class Counsel in the amount of \$192,893.33; (2) awarding reimbursement of costs and expenses to Class Counsel in the amount of \$12,349.50; and (3) granting

incentive awards to each Plaintiff in the amount of \$2,500, all to be paid from the Settlement Funds pursuant to the Settlement Agreement.

Dated: December 9, 2024

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

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WORKIT HEALTH, INC.,

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FORWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS
AND EXPENSES, AND INCENTIVE AWARDS**

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2- Declaration of David S. Almeida

ISSUES PRESENTED

1. Should Class Counsel's request for attorneys' fees and reimbursement of costs and expenses be granted?

Plaintiffs' answer: YES.

2. Should Plaintiffs be granted modest incentive awards of \$2,500 each in recognition of their service to the Class?

Plaintiffs' answer: YES.

CONTROLLING AND MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 23(h), for the proposition that an award of attorneys' fees and reimbursement of costs and expenses is appropriate in a class action settlement.

Gascho v. Glob. Fitness Holdings, LLC, 822 F.3d 269 (6th Cir. 2016), for the proposition that the percentage of the fund method is the preferred method for determining attorneys' fees in common fund cases like this.

Moulton v. U.S. Steel Corp., 581 F.3d 344 (6th Cir. 2009), for the factors relevant to determining an appropriate fee award.

INTRODUCTION

Plaintiffs Jane Doe 1 and Jane Doe 2 brought this action on behalf of themselves and those similarly situated, alleging that Defendant Workit Health Inc.’s (hereinafter, “Workit” or “Defendant”) implementation and use of certain third-party website tracking technologies, including the Meta Pixel and Google Analytics, resulted in the unlawful disclosure of personal or health-related information to certain third-party digital media platforms such as Facebook. Following an investigation by Plaintiffs’ experienced counsel, informal discovery between the Parties, and a full-day in-person mediation on March 21, 2024 (before a neutral mediator, Bruce Friedman (JAMS)), the Parties reached an arms’ length agreement to fully and finally resolve this case subject to Court approval on a class-wide, non-reversionary common fund basis.

The Settlement Agreement provides for a common fund of \$578,680, to be distributed to Settlement Class Members (after the deduction of attorneys’ fees, costs and expenses, costs of administration, and incentive awards) as detailed herein. The Court preliminarily approved the settlement on September 7, 2024. ([ECF No. 14]). The Settlement Agreement provides for Class Counsel to seek an award of attorneys’ fees in the amount of 1/3 of the Settlement Fund plus reasonable costs and expenses incurred in prosecuting the litigation (all payable from the Settlement Fund).

(Settlement Agreement ¶62). Additionally, the Settlement Agreement provides for Plaintiffs to request Court approval for incentive awards of \$2,500 each. (¶63).

Cases involving similar factual predicates have been litigated in numerous venues around the country in recent years. A small number of them have been successfully resolved. Most of those cases involved certain states' statutory claims wherein application of the salient law to similar facts is more settled than in this case. Irrespective of the uncertain state of the applicable law and its application to relatively novel facts, the result in this case compares favorably to similar settlements in other jurisdictions. The settlement was reached efficiently and without unnecessary expenditures or delay, made possible by the substantial efforts of counsel with significant experience in complex consumer class action litigation, specifically including data privacy cases. As a result, Class Counsel should be awarded the requested attorneys' fees and reimbursement of costs and expenses, and Plaintiffs should be granted the requested incentive awards.

BACKGROUND

A. Description of Plaintiffs' Claims.

Plaintiffs and the proposed Settlement Class Members are individuals who accessed and used Defendant's website to receive remote medical, telehealth services. Plaintiffs' Complaint alleged that Defendant, a telehealth provider of addiction treatment, had unlawfully disclosed Plaintiffs' confidential and personally

identifiable information (“PII”) and protected health information (“PHI”) to third parties including, but not limited to Meta Platforms, Inc. d/b/a Facebook, without Plaintiffs’ knowledge or consent. ([ECF No. 1] PageID. 2, ¶ 1). Plaintiffs further alleged that their PHI and PII would allow the receiver of this information to know that a specific patient was seeking confidential medical care and the type of medical care being sought, as well as what specific type of condition they were being treated for. (*Id.*, PageID. 9, ¶ 29). Defendant denies these allegations.

The Settlement Class consists of: “all persons in the United States who used Defendant’s Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.” (Settlement Agreement, pg. 8, § 11).

B. Summary of the Litigation.

Plaintiffs filed their Complaint on July 14, 2023. ([ECF No. 1]). Plaintiffs’ complaint alleges ten causes of action: (i) Invasion of Privacy – Intrusion Upon Seclusion and Private Affairs; (ii) Invasion of Privacy – Public Disclosure of Embarrassing Private Facts; (iii) Unjust Enrichment; (iv) Breach of Implied Contract; (v) Negligence; (vi) Unauthorized Disclosure of Privileged Communications; (vii) Violations of the Michigan Consumer Protection Act

(MCPA); (viii) Violations of Electronic Communications Privacy Act – Unauthorized Interception, Use, and Disclosure; (ix) Violations of the California Invasion of Privacy Act (CIPA); and (x) Violations of the California Confidentiality of Medical Information Act (CMIA). (*Id.*). Plaintiffs’ Complaint was filed following an extensive pre-suit investigation conducted by Plaintiffs’ Counsel. (Settlement Agreement, pg. 2, ¶ 4; Declaration of Nicholas A. Coulson in Support of Plaintiffs’ Motion for Award of Attorneys’ Fees (“Coulson Fee Decl.”), ¶11; Declaration of David S. Almeida in Support of Plaintiffs’ Motion for Award of Attorneys’ Fees (“Almeida Fee Decl.”), ¶11).

Despite Defendant’s denial of Plaintiffs’ claims of wrongdoing, the Parties agreed to engage in good faith settlement discussions. Accordingly, after Defendant filed a Motion to Compel Arbitration, ([ECF No. 7]), the Parties submitted a stipulation to stay the case pending mediation on March 21, 2024 which was granted on March 23, 2024. ([ECF No. 8]).

Ultimately, the Parties voluntarily participated in a full-day mediation session with respected and experienced mediator Bruce Freidman (JAMS), prior to which we prepared a detailed mediation statement. (Settlement Agreement, pg. 2, ¶5; Coulson Fee Decl., ¶¶13-14, Almeida Fee Decl. ¶13-14). As a result of this mediation, which involved adversarial, arm’s-length negotiations between counsel experienced in similar matters, the Parties agreed to settle the claims asserted in the

Complaint on the terms and conditions set forth herein, subject to the Court's review and approval. (*Id.* ¶ 16 (both)). Class Counsel wholeheartedly believes that this settlement is in the best interest of the Settlement Class under the circumstances given the time, complexity, and expense this litigation would present absent this agreement.

C. Primary Terms of the Proposed Settlement.

Under the proposed Settlement Agreement¹ Defendant will provide monetary relief to the Settlement Class Members and, in exchange, Plaintiffs and the Settlement Class Members will release certain claims against Defendant. (Settlement Agreement, pgs. 29-31, ¶¶ 79-81, 86). Defendant will create a non-reversionary common fund for the benefit of the Settlement Class Members in the amount of \$578,680.00, which will be distributed on a *pro rata* basis (after the payment of costs, expenses, and such attorney fees and incentive awards as the Court may approve) to all Claimants who timely submit an approved Claim Form. (*Id.*, pg. 9, ¶ 14). The proposed settlement includes a full release and discharge by Plaintiffs and the Class of any and all claims that were, or could have been, asserted in this case or that relate to, concern or arise out of Defendant's use of third-party tracking technologies, including the Meta Pixel and Google Analytics, that may have led to

¹ Capitalized terms used herein shall have the same meaning as assigned to them in the Settlement Agreement.

any Third-Party Disclosure.² (*Id.*, pgs. 29-31, ¶¶ 78-86). The Release binds all Class Members who do not opt out of the settlement from suing Defendant relating to the allegations made in the Class Action. (*Id.* pg. 21, ¶ 61).

For their services in representing the interests of the Class, the Settlement Agreement provides that, Plaintiffs Jane Doe 1 and Jane Doe 2 may each request a one-time, service award of \$2,500 in addition to any payment that they may receive by virtue of their status as members of the Settlement Class. (*Id.*, pg. 22, ¶ 63). After deducting attorney's fees, any incentive awards, and costs (including those of settlement administration), the Net Settlement Fund will be divided equally among all Class Members who submit timely Claim Forms that are approved by Class Counsel as compliant with the requirements set forth in the Notice. The Settlement Agreement provides that Class Counsel may seek reimbursement of costs and an award of reasonable attorney's fees of 1/3 of the Total Settlement Value. (*Id.*, pg. 9, ¶ 14).

LEGAL STANDARD

Fed. R. Civ. P. 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or the parties' agreement." "When awarding attorney's fees in a class action, a court

² See the Settlement Agreement at page 7 for specific definition of "Plaintiffs' Released Claims," "Released Class Claims," "Released Persons" and "Releasing Persons."

must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved.” *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (citation omitted). There are two methods to measure the appropriateness of a requested fee in a class action. In the “percentage of the fund method, the court determines a percentage of the settlement to award to class counsel.” *Id.* (citation omitted). In the lodestar method, “the court multiplies the number of hours ‘reasonably expended’ on the litigation by ‘a reasonable hourly rate’” and “may then, within limits, adjust the ‘lodestar’ to reflect relevant considerations peculiar to the subject litigation.” *Id.* (citation omitted). “District courts have the discretion to select the particular method of calculation, but must articulate the reasons for adopting a particular methodology and the factors considered in arriving at the fee.” *Id.* (citing *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009)). *Moulton* set out the following factors relevant to this determination:

- (1) the value of the benefit rendered to the plaintiff class;
- (2) The value of the services on an hourly basis;
- (3) Whether the services were undertaken on a contingent fee basis;
- (4) Society’s stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others;
- (5) The complexity of the litigation; and
- (6) The professional skill and standing of counsel involved on both sides.

Moulton, 581 F.3d at 352.

The advantages of the percentage of the fund method as compared with the lodestar method are that “it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.” *Id.* (citation omitted). The lodestar method may “provide greater accountability” but “has been criticized for being too time-consuming of scarce judicial resources[,]” in addition to lacking the aforementioned benefits of the percentage of the fund method. *Id.* Because of this, “[t]he Sixth Circuit has observed a ‘trend towards adoption of a percentage of the fund method in common fund cases.’” *N.Y. State Teachers' Ret. Sys. v. GM Co.*, 315 F.R.D. 226, 242-43 (E.D. Mich. 2016) (citing *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 515 (6th Cir. 1993)).

ARGUMENT

I. THE COURT SHOULD GRANT CLASS COUNSEL’S FEE REQUEST BECAUSE IT IS FAIR AND REASONABLE

The relief in this case is a straightforward common fund of \$578,680. Class Counsel’s fee request is one-third, or 33-1/3% of that amount. This percentage is consistent both with the Sixth Circuit’s precedent and with fees awarded in similar cases nationwide. “[A] one-third contingency fee arrangement ... is ‘certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit.’” *Fitzgerald v. P.L. Mktg.*, No. 2:17-cv-02251-SHM-cgc, 2020 U.S. Dist. LEXIS 25672, at *31-32 (W.D. Tenn. Feb. 13, 2020) (quoting *In re Se.*

Milk Antitrust Litig., No. 2:07-cv-208, 2018 U.S. Dist. LEXIS 131855, 2012 WL 12875983, at *2 (E.D. Tenn. July 11, 2012)); *see also Am. Copper & Brass, Inc. v. Lake City Indus. Prods.*, No. 1:09-CV-1162, 2016 U.S. Dist. LEXIS 156778, at *9 (W.D. Mich. Mar. 1, 2016) (“the proposed one-third appears to be reasonable”).

The Sixth Circuit’s *Moulton* factors underscore the appropriateness of requested fee. The percentage approach is particularly “appropriate ... for evaluating the reasonableness of the attorney fee since the result achieved for the class in terms of the cash payments to be made from the funds [is] substantial, and class counsel undertook the representation on a contingent fee basis and advanced significant labor and expenses to litigate the case. And the percentage award requested is appropriate to compensate class counsel for the risk inherent in that contingent fee representation.” *Friske v. Bonnier Corp.*, No. 16-12799, 2019 U.S. Dist. LEXIS 179724, at *3-4 (E.D. Mich. Oct. 17, 2019) (citation omitted). Indeed, “[t]he lodestar method should arguably be avoided in situations where such a common fund exists because it does not adequately acknowledge (1) the result achieved or (2) the special skill of the attorney(s) in obtaining that result. [C]ourts and commentators have been skeptical of applying the formula in common fund cases. . . . [M]any courts have strayed from using the lodestar in common fund cases and moved towards the percentage of the fund method which allows for a more accurate approximation of a

reasonable award for fees.” *In re Delphi Corp. Sec.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008) (quoting *Fournier v. PFS Invs.*, 997 F. Supp. 828, 831-32 (E.D. Mich. 1998).

A. The Value of the Benefit Conferred on the Class Supports the Fee Request.

The first *Moulton* factor is “the value of the benefit rendered to the plaintiff class.” *Moulton*, 581 F.3d at 352. Because it is entirely in the form of cash, the value of the benefits conferred upon the Class by the Settlement is easily quantified at \$578,680. Compared against that, the requested fee amounts to one-third. This percentage is standard within this district and the Sixth Circuit. *See, e.g., Strano*, 649 F. Supp. 3d at 558 (granting preliminary approval to attorney’s fee request not to exceed 35% in a class settlement); *Garner Props. & Mgmt. v. City of Inkster*, 2020 WL 4726938, at *10 (E.D. Mich. August 14, 2020) (finding that 33% attorney’s fees were reasonable.) This typical percentage is more than justified under the circumstances, which include unusually complex and novel facts and law. The value rendered to the Class here supports the requested fee.

B. The Value of the Services on an Hourly Basis Supports the Fee Request.

While this factor is less relevant where the percentage method is applied, the value of the services rendered to the Class on an hourly basis also supports the requested fee. Class Counsel devoted more than 290.24 hours of specialized legal services to this case, counting only attorney time and excluding the significant efforts of support staff. (Coulson Fee Decl. ¶21; Almeida Fee Decl. ¶21). The

associated lodestar (which additionally includes under \$1000 in paralegal time from Almeida Law Group) is \$208,018.30, which when compared to the requested fee results in a *negative* multiplier of approximately 0.93, well below the typical range. *Id.*; *See N.Y. State Teachers' Ret. Sys.*, 315 F.R.D. at 243-44 (E.D. Mich. 2016) (“Most courts agree that the typical lodestar multiplier’ in a large class action ‘ranges from 1.3 to 4.5.’”)(quoting *In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 767-68 (S.D. Ohio 2007)).

C. That this Case was Undertaken on a Contingent Basis Fee Supports the Requested Fee.

“Whether counsel's services were undertaken on a[] contingent fee basis is another factor for the Court to consider in evaluating a fee request.” *Delphi Corp. Sec.*, 248 F.R.D. at 503. Class Counsel has litigated this case for approximately sixteen months, investing over 290 hours of attorney time and tens of thousands of dollars, without any guarantee of recovery. If they had not obtained a successful result for the Class, a result that was entirely possible given the facts of this case and the state of the applicable law, they would have had nothing to show for their considerable efforts. The requested fee recognizes the risk undertaken by Class Counsel by ensuring that they are compensated for their successful efforts.

D. Society’s Stake in Incentivizing Similar Undertakings Supports the Requested Fee.

“In evaluating the reasonableness of a fee request, the court also must consider society's stake in rewarding attorneys who produce a common benefit for class members in order to maintain an incentive to others.” *Delphi Corp. Sec.*, 248 F.R.D. at 503. This is because “[a]ttorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.” *Id.* (quoting *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 1029, 1042-43 (S.D. Ohio 2001)). Society has an obvious and important interest in the enforcement of consumer privacy rights. This area of litigation is typically complex, difficult, lengthy, and expensive. Litigating such cases on behalf of consumers is nearly always done on a high-risk, contingent basis due to the costs involved. The requested fee would continue to incentivize similar challenging undertakings and ensure that high quality representation remains available to those who require it.

E. The Complexity of the Litigation Supports the Requested Fee.

“Courts in this Circuit also consider the complexity of the litigation in determining the reasonableness of an attorneys’ fee award.” *Delphi Corp. Sec.*, 248 F.R.D. at 504. And “[w]hile ‘most class actions are inherently complex,’” they are especially so where, like here, they “present[] a number of complicated legal, factual and procedural issues[.]” *Id.* (citation omitted). This case is factually, legally, and procedurally complex. The nature of the allegations in this case meant that to prove

their claims, even if they were successful in defeating Defendant's Motion to Compel Arbitration, the Plaintiffs would need to establish Defendant's participation in a technologically complex process of data interception while satisfying the requirements of Fed. R. Civ. P. 23 and demonstrating a legal entitlement to relief that remains hotly contested. Courts have dismissed similar cases outright. *See, e.g., Vita v. New England Baptist Hospital*, 494 Mass. 824, 877 (2024) (reversing denial of defendant's motion to dismiss similar claims under Massachusetts law). This litigation was both complex and novel, counseling strongly in favor of granting the requested fee.

F. The Professional Skill and Standing of Counsel on Both Sides Supports the Requested Fee.

“Finally, in considering fee requests, courts consider the professional skill and standing of counsel...The quality of opposing counsel also is important to evaluate.” *Delphi Corp. Sec.*, 248 F.R.D. at 504. This case has been contested from its inception, by highly skilled defense counsel. Class counsel's experience contributed to a successful result nonetheless.

Class Counsel has extensive experience complex class action litigation, including in data privacy cases, and utilized that experience to the benefit of the Class. Nicholas A. Coulson of Coulson P.C. has been appointed to represent certified classes in dozens of cases and has recovered millions of dollars for consumers in privacy cases involving tracking technologies like those at issue here. (Coulson Fee

Decl. ¶¶ 5-9). Similarly, David S. Almeida of Almeida Law Group LLC has recovered many millions of dollars for consumers in “tracking technologies” cases, and has successfully represented certified classes in numerous other class actions, particularly in cases involving digital privacy. (Almeida Fee Decl. ¶¶5-9). Given this experience, Class Counsel was able to litigate this matter to a favorable resolution despite the skill and standing of counsel for the Defendant (from one of the 100 largest law firms in the country).³ This final factor further counsels in favor of approving the requested fee.

II. THE COURT SHOULD GRANT CLASS COUNSEL’S REQUEST FOR REIMBURSEMENT OF EXPENSES

Fed. R. Civ. P. 23(h) provides for an award of nontaxable costs that are authorized by law or the parties’ agreement. “Under the common fund doctrine, ‘class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses.’” *N.Y. State Teachers’ Ret. Sys.*, 315 F.R.D. at 244 (E.D. Mich. 2016) (citation omitted). “When deciding whether the requested expenses should be compensable, courts consider ‘whether

³ <https://www.law.com/law-firm-profile/?id=273&name=Shook-Hardy-%26-Bacon> (last visited Dec. 9, 2024).

the particular costs are the type routinely billed by attorneys to paying clients in similar cases.” *Id.* (citation omitted).

Here, Class Counsel incurred \$12,349.50 in expenses, an amount that is eminently reasonable given the nature and scope of this case. (See Coulson Fee Decl. ¶23 (detailing \$6,570.93 in costs/expenses; Almeida Fee Decl. 23 (detailing \$7,209.86 in costs/expenses). These are precisely the sort of major expenses routinely billed by attorneys to paying clients in litigation and exclude many lesser items for which other firms might bill. They include filing fees, reasonable travel expenses, minor consulting expenses, and mediation fees. (*Id.*). These costs should be reimbursed because they are of the type routinely billed to paying clients, eminently reasonable individually and in totality, and helped the Class to arrive at a successful outcome.

III. THE COURT SHOULD GRANT PLAINTIFFS’ REQUESTED INCENTIVE AWARDS

“Incentive awards are ‘efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class.’” *Am. Copper & Brass*, 2016 U.S. Dist. LEXIS 156778 (quoting *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). “These awards are ‘usually viewed as extensions of the common-fund doctrine, a doctrine that holds that a litigant who recovers a common fund for the benefit of persons other than himself is entitled to

recover some of his litigation expenses from the fund as a whole.” *Id.* In *Am. Copper & Brass*, the Court approved an award of \$10,000 for a single plaintiff. *See Id.*

The named Plaintiffs devoted substantial efforts to the prosecution of this case. In addition to working with Class Counsel on the investigation and filing of the case and reviewing and approving the Settlement Agreement, each named Plaintiff risked publicly associating themselves with a case that is by its nature about the unwanted disclosure of sensitive information. In view of their laudable efforts and the result in the case, the requested incentive awards are modest and appropriate.

CONCLUSION

Particularly in view of the uncertainty inherent in procedurally and technologically complex litigation such as this, the requested attorneys’ fees, reimbursement of costs and expenses, and incentive awards are fair and reasonable. Plaintiffs therefore request that the Court approve their requested attorneys’ fees, expenses, and incentive awards, each to be paid from the non-reversionary common fund.

Dated: December 9, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2024 I served a copy of the foregoing upon all counsel of record via the Court's CM/ECF system, which will send notifications of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Nicholas A. Coulson
Nicholas A. Coulson