UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JAE LEE, on behalf of himself and all others similarly situated, Plaintiff, v. TARO PHARMACEUTICALS U.S.A., INC., Defendant.	Case No. 7:23-cv-03834-CS Judge Cathy Seibel

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARD TO CLASS REPRESENTATIVE

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I. INTRODUCTION

Plaintiff moves the Court to approve his request for attorney's fees, expenses, and a service award as "reasonable" under Fed. R. Civ. P. 23. The Court should approve this request considering the result Plaintiff and Class Counsel[1] achieved for the Settlement Class, the time and effort they spent to secure it, and the Second Circuit's standards for approving fee requests. Plaintiff's request satisfies those standards and tracks with fee and cost award requests granted in the Second Circuit. Indeed, although this case involves a relatively small class, Class Counsel was able to achieve an exceptional result, guaranteeing Settlement Class Members compensation up to $5,500 for out-of-pocket expenses, up $20 per hour for up to four hours of time spent responding to the Data Incident, and two years of credit monitoring at no cost. Alternatively, Settlement Class Members are eligible for an alternative cash payment of $30 in lieu of all other compensation and credit monitoring protection. This is not to mention that Defendant Taro Pharmaceuticals U.S.A., Inc. will pay the costs to administer the parties' settlement. These results justify Plaintiff's request for $105,000 in attorney's fees and expenses and a $2,500 service award for the Plaintiff. As a result, the Court should grant it under Rule 23.[2]

As background, this is a data breach class action arising from a breach impacting Taro's current and former employees. In March 2023, cybercriminals bypassed Taro's cybersecurity and accessed the personally identifiable information ("PII" or "Private Information"), including full names, state identification numbers, passport numbers, driver's license numbers, and Social Security numbers, of Taro's current and former employees. Plaintiff's complaint sought relief to address harms stemming from this Data Incident and the Parties' settlement secures that relief.

[1] All capitalized terms herein are given the meaning they have in the Parties' Settlement Agreement (Doc. 28-1, 31-1).
[2] Defendant does not oppose the relief sought in this motion.

In February 2023, the Court "preliminarily" approved the settlement as "fair, adequate, and reasonable." Since then, the court-appointed Settlement Administrator has issued class Notice and Settlement Class Members have begun filing claims. There have been no objections or opt outs received to-date, indicating that the Settlement Class supports the Settlement terms and the results achieved by Class Counsel.

As a result, the Court should approve Plaintiff's fee, expense, and service award request for three reasons. ***First***, the settlement satisfies the *Goldberger* factors for approving fee award requests. ***Second***, whether under the "percentage of the fund" or lodestar approaches, Plaintiff's fee request satisfies the standard for approval. And ***third***, Plaintiff's request for a service award tracks incentive payments awarded in data breach cases like this and will compensate Plaintiff for his service to the Settlement Class.

This Memorandum is supported by the cited and attached evidence, including the Declaration of Raina Borrelli and the Declaration of the Class Representative. Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award.

II. FACTUAL AND PROCEDURAL BACKGROUND

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiff refers this Court to and hereby incorporate Plaintiff's Motion for Preliminary Approval of Class Action Settlement filed on January 26, 2024 (Doc. 27) and the accompanying memorandum and exhibits (including the proposed Settlement Agreement, *see* Docs. 28, 29, 31) filed in conjunction therewith.

After Plaintiff filed the Motion for Preliminary Approval of the Settlement., the Court entered an order deferring ruling on the motion and requesting additional information and

clarification about the Settlement terms. Doc. 30. In response, the Parties entered into and submitted a First Stipulation to Amend the Settlement Agreement (Doc. 31-1) that addressed the Court's questions. The Court granted the Motion for Preliminary Approval on February 5, 2024. Doc. 32. In the Order, the Court preliminarily certified the Settlement Class, ordered that Notice commence, and set a final approval hearing for June 20, 2024. *Id*. The Court also ordered that Class Counsel's motion for attorneys' fees be filed at least fourteen days prior to the opt-out and objection deadline.

Since this Court granted entered the Preliminary Approval Order, the Parties, in conjunction with the Settlement Administrator, RG2, have effectuated Notice consistent with the Settlement and Preliminary Approval Order. Borrelli Dec. ¶7. Over the next several weeks and continuing to today, Class Counsel have continued to work with Defendant and the Settlement Administrator regarding claims administration and processing. *Id.* ¶8. While the claims process is ongoing, and while RG2 will submit a detailed declaration about the notice program and claims process in connection with the motion for final approval, preliminary data about the notice and claims process is positive. Through March 29, 2024, 527 notices were mailed, 26 claims have been filed, and no Settlement Class Member has requested exclusion and or objected to the Settlement. *Id.* ¶11.

To support their fee request, counsel submits the time they have devoted to the case thus far, including their fee rates, experience, and the work they completed on the case. Borrelli Dec. In total, Plaintiff's counsel have spent 90.6 hours working on the case at rates between $225 and $700 per hour, depending on attorney or staff experience level. *Id*. ¶19. Multiplying those rates by counsel's hours yields $51,542.50 in lodestar, though counsel expects that number will climb as the settlement process progresses. *Id*. ¶18. Class Counsel's work is not over and will continue

throughout the claims period. Based on experience, each Class Counsel will spend substantial additional hours seeking final approval, defending the Settlement from potential objections (of which there are none to date), and supervising claims administration and the distribution of proceeds. *Id.* ¶¶10. 18.

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

The Court preliminarily approved the Settlement Class, defined as "all former and current employees of Taro (at the time of the Data Incident) who reside in the United States and whose Private Information was potentially compromised as a result of the Data Incident." Doc. 28-1 ("S.A."), ¶36. Private Information may include, but is not limited to, names, addresses, Social Security numbers, passports and driver's license numbers. *Id*.

B. Settlement Benefits

Taro will pay up to $190,000 to Settlement Class members for valid and timely claims for damages arising out of the Data Incident, credit monitoring, as well as the costs of Notice and Administration Expenses.[3] S.A. ¶45.

i. Compensation for Documented Out-of-Pocket Losses

Settlement Class Members are eligible to receive compensation for up to $5,500 of unreimbursed losses that were incurred "as a direct result of the Data Incident" for documented out-of-pocket costs, expenditures, and losses of time. S.A. ¶44(a). The claim must be supported by an attestation that the Settlement Class Member believes the unreimbursed losses were incurred as a result of the Data Incident and supported by reasonable documentation. *Id.*

[3] RG2 has agreed to cap notice and claims administration costs at $18,500.

Documented, ordinary out-of-pocket expenses may include, but is not limited to, the following unreimbursed losses: miscellaneous costs such as bank fees, postage, copying, mileage, telephone charges, and notary charges, and costs incurred as a result of purchasing credit monitoring or other identity theft insurance services between March 2023, and the date the Settlement Agreement is signed. S.A. ¶25. The Settlement Administrator shall have discretion to determine whether any claimed loss is a direct result of the Data Incident. *Id.* ¶47(a).

ii. Reimbursement for Attested Lost Time

Settlement Class Members who have spent time monitoring accounts or otherwise dealing with issues as a direct result of the Data Incident can submit a claim for reimbursement for that time of $20 per hour up to 4 hours (for a total of $80) provided they provide an attestation on the claim form that the activities they performed were a direct result of the Data Incident. S.A. ¶44(b). Claims for Lost Time are subject to the $5,500 cap for Out-of-Pocket Losses. *Id.*

iii. Credit Monitoring

In addition to the financial and temporal loss reimbursements, All Settlement Class Members shall have the ability to make a claim for 2 years of credit monitoring services, to include credit monitoring through all three national credit reporting bureaus and with at least $1,000,000 in identity theft insurance, for the Settlement Class. S.A. ¶43.This Settlement benefit has significant value as it will protect Settlement Class Members from identity theft and fraud in the future.

iv. Alternative Cash Payment

In lieu of reimbursement for out-of-pocket expenses and credit monitoring protection, Settlement Class Members may alternatively claim a cash payment of $30. S.A. ¶44. This cash payment can be claimed without attestations or supporting documents.

v. Costs of Notice and Settlement Administration, Attorneys' Fees, Costs, and Expenses, and Service Award

The parties did not discuss or agree upon payment of attorneys' fees, costs, and expenses or Plaintiff's service award until after they agreed on all material terms of relief to the Settlement Class. Borrelli Decl. ¶6. Taro will pay the costs of notice to the Settlement Class and costs of Settlement Administration (subject to the $190,000 Settlement Cap). S.A. ¶56. RG2 has agreed to cap notice and claims administration costs at $18,500. Taro will also pay for Plaintiff's attorneys' fees, costs, and expenses (not to exceed $105,000) and service award to Plaintiff (not to exceed $2,500) separate from the $190,000 cap. *Id*. ¶¶70, 72. Settlement Class Counsel is required to petition the Court for such fees, costs, and expenses at least 14 days before the Opt-Out and Objection Deadlines. *Id*. ¶¶70, 72.

IV. LEGAL STANDARD

Plaintiff's attorneys in a class action lawsuit may petition the Court for compensation relating to any benefits to the Class that result from the attorneys' efforts. *See e.g. Boeing Co. v. Van Gemert,* 444 U.S. 472 (1980). Under Rule 23 (h), the Court "may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ P. 23. Under that Rule, four procedures apply: (i) plaintiff must move for fees and serve the parties; (ii) class members must have a chance to object; (iii) the Court must address the request at a hearing; and (iv) the Court can involve a special master if needed. *Id*.

Courts review fee requests in substance under six factors and check the amounts requested under either the "percentage of the fund" or lodestar approaches. *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 U.S. Dist. LEXIS 102805, *42. Courts in the Second Circuit generally favor the use of the percentage of the settlement approach. *See e.g. Wal-Mart Stores Inc. v. Visa U.S.A.,* 396 F.3d 96, 121 (2d Cir. 2005); *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010) ("the percentage method has the advantage of aligning the interests of

plaintiffs and their attorneys more fully by allowing the latter to share in both the upside and downside risk of litigation[.]"). But no matter the method the Court chooses, its task is to evaluate the request's "reasonableness." And in a "claims-made" settlement like this, "where the parties agree to a fee that is to be paid separately by the Defendant rather than one that comes from, and therefore reduces, the Settlement Fund available to the class, the Court's fiduciary role in overseeing the award is greatly reduced because the danger of conflicts of interest between attorneys and class members is diminished." *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, 2016 U.S. Dist. LEXIS 152496, at *43 (D. Conn. Nov. 3, 2016) (citations and quotations omitted).

V. ARGUMENT

A. Plaintiff's Fee Request Satisfies the *Goldberger* Factors

Under Second Circuit precedent, "district courts should continue to be guided by the traditional criteria identified in *Goldberger* [] in analyzing the reasonableness of attorneys' fees[.]" *Kurtz v. Kimberly-Clark Corp.*, No. 14-CV-1142 (PKC) (RML), 2024 U.S. Dist. LEXIS 8711, at *10 (E.D.N.Y. Jan. 17, 2024) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49-50 (2d Cir. 2000)). Those factors are: (i) the time and labor expended by counsel; (ii) the case's complexities; (iii) the case's risks; (iv) the "quality of representation;" (v) the requested fee in relation to the settlement; and (vi) public policy considerations. *Id*. Plaintiff's request satisfies these factors.

i. The Time and Labor Expended

First, Plaintiff's counsel have devoted over 90 hours to this case, valued at $51,542.50 in fees. Borrelli Dec. ¶18. Those rates undershoot what attorneys have requested in data breach cases in this Circuit, including upwards of $1,000 per hour for partner time, $700 for "senior associates," $350-650 for juniors, and up to $400 for paralegals. *In re Hudson's*, 2022 U.S. Dist. LEXIS 102805, *61. Although those rates were at "the higher end of the hourly rates that have been

deemed reasonable in similar class action settlements over the past ten years[,]" the *Hudson's* court still approved them as "reasonable." *Id*. Given that counsel's rates here do not match those at the "higher end," the Court should find they are "reasonable."

This is not to mention that counsel's time and effort is what led to the settlement's "remarkable" result. Although this case settled before discovery, counsel devoted "significant time and resources" to investigating the facts and crafting the case's strategy, all on behalf of a class that is of a significantly smaller size than most lawyers that practice regularly in the data breach space will generally pursue. Borrelli Dec. ¶¶2-4. With that fact pattern came risks that counsel navigated by collaborating with Plaintiff to investigate the breach, the losses it caused, and how to frame the response to Taro's intended motion to dismiss. *Id*. Plaintiff's counsel also insisted on reviewing informal discovery to ensure they understood the landscape affecting settlement, including the data and class members it impacted. *Id*. ¶5 This is the same information counsel would have requested in discovery, allowing Plaintiff to shortcut that process when settling the case. Altogether, these efforts paid off given the settlement's results.

ii. The Magnitude, Complexity, and Risk of the Litigation

Under the second and third *Goldberger* factors, the case's complexities and risks warrant settlement. Plaintiff's Counsel undertook significant risk in accepting this case on an entirely contingent basis, supporting the requested fee award. The Second Circuit "has identified the risk of success as perhaps the foremost factor to be considered in determining" reasonable attorneys' fees. *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) ("Courts have repeatedly recognized 'that the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions.") (citation omitted). Class Counsel here took on

the risks of litigation knowing full well their efforts might not bear fruit. Fees were not guaranteed. This case involved complexities of data breach that are novel and evolving, and the risk of non-payment is especially high in class actions with contingent fee arrangements, like here. *See Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814(MP), 2004 U.S. Dist. LEXIS 8608, at *11 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.").

"It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55. While Plaintiff was confident that his claims would prevail, he faced several strong legal defenses and difficulties in demonstrating causation and injury. And at the time of filing of this Action, there were complex issues of fact and law, which presented significant risks that continue through today. In particular, the claims asserted herein have been met with strong opposition in courts nationwide. Due at least in part to their cutting-edge nature and the rapidly evolving law, data security cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. Bank of N.Y. Mellon Corp.*, 2010 U.S. Dist. LEXIS 71996, at *4 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). In addition to the questions as to whether Plaintiff's claims would survive a motion to dismiss, there was always a risk that Defendant would successfully oppose class certification. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (noting that "[w]hile plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might be not certified is not illusory"). Even if the Class was certified by the Court, Defendant could have then attempted to appeal the certification decision under Federal Rule of Civil Procedure 23(f) or argued for decertification as the litigation progressed. *See Chatelain v.*

Prudential-Bache Sec., 805 F. Supp. 209, 214 (S.D.N.Y. 1992). Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiff and Settlement Class Members.

"Counsel should be rewarded for undertaking [those risks] and for achieving substantial value for the class." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 441 (E.D.N.Y. 2014); *see also Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ. 214 CM, 2012 WL 2505644, at *10 (S.D.N.Y. June 27, 2012) ("[T]he risk of non-payment in cases prosecuted on a contingency basis where claims are not successful…can justify higher fees.").

Plaintiff's Counsel was able to secure a significant settlement on behalf of Settlement Class Members for complex claims asserted against the Defendant. This was done despite the significant risks Plaintiff faced in pursuing these claims. As such, the Settlement is a direct result of Class Counsel's skills and dedication in this Action. Accordingly, this factor weighs in favor of approving the requested fee.

iii. The Quality of Representation

Fourth, counsel's "quality of representation" justifies the fee they request. Here Class Counsel has substantial experience in both class actions generally, and complex consumer class actions involving cybersecurity incidents in particular. *See* Doc. 29-1 (Turke & Strauss LLP Firm Resume). With this knowledge, Class Counsel was able to evaluate the risks and benefits of continued litigation and determine the scope of a fair and reasonable settlement of Plaintiff's and the Class's claims, resulting in this Settlement that provides significant benefits to the Settlement Class.

Despite the risks identified above, Class Counsel delivered a settlement that offers claimants a chance to recover either their losses arising from the breach, compensation for the time spent responding to the breach, credit monitoring or an "alternative" $30 payment no matter their losses. Under caselaw, counsel should be judged by this excellent result: "the quality of

representation is best measured by results, and that such results may be calculated by comparing the extent of possible recovery with the amount of actual verdict or settlement." *Goldberger*, 209 F.3d 43, 55 (citation and quotation omitted).

Putting those results in context with other case results enhances them. For example, the district court in *Fox v. Iowa Health Sys*. approved a settlement with similar benefits achieved here (and without the "alternative" cash payment), but with a significantly higher requested fee. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *12 (W.D. Wis. Mar. 4, 2021). In *Fox*, the district court awarded $1.575 million in fees for a settlement that entitled members to claim up to $1,000 for lost money and time, and up to $6,000 when responding to "actual identity theft," *one* year for credit monitoring, and "improved security measures" from defendant. *Id*. When approving the settlement, the *Fox* court described it as "particularly adequate given the costs, risks, and delay of trial and appeal." *Id*. Plaintiff provided that "particularly adequate relief" here *plus* a chance to claim $30 in cash benefits without needing to prove losses and another two years in credit monitoring. In other words, counsel here secured relief that surpasses what counsel achieved in *Fox*.

Closer to home, the courts in this Circuit note that relief in data breach cases is often limited to only "$10" or "merchant coupons." *In re Hudson's*, 2022 U.S. Dist. LEXIS 102805, *30. While cases can include relief for lost time and losses arising from the breach, it is not common for data breach settlements to include a cash payment that can be claimed even where the Settlement Class member has not yet experienced out of pocket loss. *Compare* Doc. 28-1 (Settlement Agreement) with *In re Hudson's*, 2022 U.S. Dist. LEXIS 102805, *30 ($30 for "lost time" or $5,000 for losses related to the breach. No cash payment.) and *In re Canon United States Data Breach Litig.*, No. 20-CV-6239-AMD-SJB, 2023 U.S. Dist. LEXIS 206513, at 13 (E.D.N.Y. Nov. 15, 2023) ($300

for "ordinary" losses, $7,500 for extraordinary, and credit monitoring. No cash payment.). As a result, the Court should the results counsel achieved here support their request for fees.

iv. The Requested Fee in Relation to the Settlement

Under either the percentage or lodestar method, Plaintiff's fee request is reasonable in relation to the settlement. Although Defendant will fund the settlement under a "claims made" aggregate cap of $190,000 (including all Settlement Class Member benefits and the costs of notice and administration), rather than from a "common fund," that does not detract from the settlement's approvability or from Plaintiff's fee request: "An aggregate cap is a perfectly reasonable way for parties to settle a case such as this, where it may be difficult to know how many class members will seek recovery." *In re Hudson's*, 2022 U.S. Dist. LEXIS 102805, *37. As explained above, the Court's role in overseeing the award is "greatly reduced" as a result because attorney's fees in settlements like this are "paid separately" and "the danger of conflicts of interest between attorneys and class members is diminished." *Kurtz*, 2024 U.S. Dist. LEXIS 8711, at *31-32 (quotations and citations omitted). Still, the Court must assess the "reasonableness of the fee award" and it can do so under two methods: the "percentage of the fund" or the lodestar approaches. *Id*. Because "courts in this Circuit are divided between the lodestar method and the percentage-of-fund method" when evaluating claims-made settlements, Plaintiff explains why the fee request is justified by both below. *Id*.

1. Percentage Method

First, Plaintiff satisfies the percentage method. In the Second Circuit, "there is some debate about whether the award should be based on a percentage of the total funds made available to the class or the smaller amount actually claimed by the class." *Id*. at *33-34. In other words, because not all funds are paid from an "aggregate cap" settlement, district courts are split on whether to calculate the fee request against the amount "made available" to the class or the amount paid to it.

McLaughlin v. IDT Energy, No. 14 CV 4107 (ENV)(RML), 2018 U.S. Dist. LEXIS 128347, at 46 (E.D.N.Y. July 30, 2018).

When calculating a percentage-of-the-fund award on a "made available" basis, the Court takes the "aggregate cap" and adds the proposed fee to it before diving the fee request by the total to identify the percentage request. *Zink v. First Niagara Bank, N.A.*, No. 13-CV-01076-JJM, 2016 U.S. Dist. LEXIS 179900, at *20-21 (W.D.N.Y. Dec. 29, 2016) ("While it may seem curious to include separately-paid attorney's fees as a 'benefit to the class' when the class has no entitlement to them, the reason is that if the fees were not separately paid, then they would be paid out of the amounts otherwise available to the class, thereby diminishing the class recovery."); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not.").

Here, that means adding the $190,000 cap to the $105,000 fee and expense request, totaling $295,000, and dividing $105,000 by $295,000 to equal a 35% fee request.[4] That percentage is consistent with fee awards in courts in New York federal courts. *See Warren v. Xerox Corp.*, No. 01-CV-2909 (JG), 2008 U.S. Dist. LEXIS 73951, at *22 (E.D.N.Y. Sep. 19, 2008) (awarding class counsel attorneys' fees and expenses at 33.33 percent of the total settlement value, and finding such a sum "comparable to sums allowed in other cases"); *Lowe v. NBT Bank*, No. 3:19-CV-1400 (MAD/ML), 2022 U.S. Dist. LEXIS 180182, at *30-31 (N.D.N.Y. Sep. 30, 2022) (bank fee class action with $4.2 million common fund, collecting cases where 33% of the settlement fund was awarded); *Reyes v. City of Rye*, 2017 U.S. Dist. LEXIS 103096, at *20 (S.D.N.Y. June 30, 2017)

[4] This amount does not even include the value of the credit monitoring benefit, which is worth more than $252,000 (as an example, Identity Defense three-bureau credit monitoring retails at approximately $19.99 per month and Settlement Class members can enroll in two years of monitoring- *see* https://www.idx.us/privacy-identity-protection/consumer-plans).

(granting class counsel's fee request for one-third of the $984,964 common fund, and finding that the request was "reasonable and consistent with the norms of class litigation in this circuit.") (citing cases) (internal quotation marks omitted).

Courts have otherwise declined to apply the "percentage-of-the-fund" to amounts "paid to" the class in claims-made cases, as it would result in "such a low award [that it] may disincentivize some plaintiffs' attorneys in pursuing cases like this one in the future." *Kurtz*, No. 14-CV-1142 (PKC) (RML), 2024 U.S. Dist. LEXIS 8711, at 37 (noting that courts should not apply benchmark percentages to amounts "paid to" the class in claims made settlements.). As a result, if the Court applies the percentage method to Plaintiff's fee request it should calculate it by adding Plaintiff's fee request to the amount "made available" to the class, then dividing the fee request by that figure. If the Court declines to do so, then it should apply the lodestar method below.

2. Lodestar Method

Given the issues that can arise when applying the percentage test to claims-made settlements, some courts opt to apply the lodestar test instead. *Hart v. BHH, LLC*, No. 15cv4804, 2020 U.S. Dist. LEXIS 173634, at *24 (S.D.N.Y. Sep. 22, 2020) ("Due to the atypical structure of the settlement, lodestar is a more accurate measure of attorneys' fees."). Plaintiff satisfies that test, too.

A lodestar analysis can serve either as a "cross check" on an award's "reasonableness," or it can serve as the "main test." *Id*. It works by totaling the "number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate." *Goldberger*, 209 F.3d 43, 47. Courts then apply a "multiplier" that allows them to recover a multiple of their lodestar. *Id*. Courts apply multipliers because "awarding only the lodestar would give inadequate encouragement to counsel who would represent meritorious but risky claims." *In re Fine Host*

Corp. Sec. Litig., MDL DOCKET NO. 1241, 2000 U.S. Dist. LEXIS 19367, at *20 (D. Conn. Nov. 8, 2000). In other words, multipliers encourage attorneys to pursue contingency cases.

Under this method, district courts "regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (citations omitted); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (listing multipliers up to 19.6 times lodestar); *Sewell v. Bovis Lend Lease LMB, Inc.*, 2012 U.S. Dist. LEXIS 53556, at *13 (S.D.N.Y. Apr. 16, 2012) ("Courts commonly award lodestar multipliers between two and six.") (citations omitted)); *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262, 2002 U.S. Dist. LEXIS 22663, 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) (a "multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit" (citation omitted)); *see, e.g., Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (6.85 multiplier) (citations omitted); *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (7.6 multiplier); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184-86 (W.D.N.Y. 2011) (5.3 multiplier); *Buccellato v. AT&T Operations, Inc.*, No. 10 Civ. 463, 2011 U.S. Dist. LEXIS 85699, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (4.3 multiplier); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05 Civ. 11148, 2009 U.S. Dist. LEXIS 68419, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (8.3 multiplier); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 803 (S.D. Tex. 2008) (5.2 multiplier); *In re Cardinal Health Inc. Sec. Litigs.*., 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (6 multiplier); *In re Rite Aid Corp. Secs. Litig.*, 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (6.96 multiplier); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. Jan. 29, 2002) ("modest multiplier" of 4.65); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n. 1, 169 (S.D.N.Y. 1991) (8.74 multiplier).

Applying those standards here justifies counsel's request for three reasons. First, the time counsel put into this case is "reasonable." They devoted that time to working with Plaintiff to investigate his claims, including the circumstances of Taro's breach and how it impacted class members. Borrelli Dec. ¶¶3-5. Those efforts are reflected in Plaintiff's complaints and pre-motion to dismiss briefing, as they show how counsel adjusted their case theories to fit the class's unique facts. And while the case settled before discovery, counsel engaged in "informal" discovery, insisting on receiving information before engaging in settlement discussions. *Id.* Thus, counsel's hours here are "reasonable."

Second, counsel's rates are "reasonable." While courts in this Circuit have approved class counsel partner rates up to $1,000/hour, associate rates up to $700, and paralegal rates up to $400, counsel here request associate rates between $400-475 for associates and up to $700 for partners, with support staff time of $225. Borrelli Dec. ¶ 19.

And third, the result here justifies applying a multiplier. Dividing the requested fees, $104,325.50 ($105,000.00 less the costs identified below), by the lodestar incurred to date yields a modest 2.0 multiplier—within the range set by the district courts above. Borrelli Dec. ¶19. As a result, the Court should find the lodestar test justifies Plaintiff's fee request and thus approve it.

v. Public Policy Considerations

Last, public policy considerations warrant counsel's fee request. As *Goldberger* held: "[t]here is also commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d 43, 51; *see also Lizondro-Garcia v. Kefi LLC*, No. 12-CV-1906 (HBP), 2015 U.S. Dist. LEXIS 85873 (S.D.N.Y. July 1, 2015) ("when determining whether a fee award is reasonable, courts consider the social and economic value of the class action, and the need to encourage experienced and able counsel to undertake such litigation.") (internal quotation marks and brackets omitted). In fact, data breach

cases like this often fail to attract representation because at just over 500 members, this class is "small." Indeed, no other firms competed for leadership or filed "on top of" Plaintiff here. Without the undersigned, the Settlement Class here may not have secured any relief, thus depriving them a chance to claim their losses and the benefits the settlement affords. This is not to mention that awarding fees can serve as a "public good" in-and-of-itself: "[p]ublic policy also favors an award of the agreed-upon fees, as it will incentivize dedicated and experienced counsel to bring these types of cases, which inure to the public benefit by encouraging companies to protect the sensitive personal information in their possession." *Torretto v. Donnelley Fin. Sols., Inc.*, No. 1:20-cv-02667-GHW, 2023 U.S. Dist. LEXIS 5440, at 15 (S.D.N.Y. Jan. 5, 2023). For these reasons, this factor supports counsel's request.

As a result, Plaintiff has satisfied the *Goldberger* factors, and the Court should approve counsel's fee request. That amount will encompass counsel's expenses here, $674.50. Borrelli Dec. ¶ 22. Courts award counsel "routine" expenses like those identified in their declaration. *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 503 (S.D.N.Y. 2009) ("routine expenses such as copying and travel costs, as well as other costs unique to this litigation such as bank charges, rental and relocation costs associated with a document depository, and temporary personnel.").

vi. Fee Request in Comparison to Similar Settlements

In addition to the *Goldberger* factors, which Plaintiff analyzed in detail above, this Court considers a "baseline reasonable fee with reference to other [] settlements of a similar size and complexity, based on the subject matter of the claims." *City of Birmingham Ret. & Relief Sys. v. Credit Suisse Grp. AG*, 2020 U.S. Dist. LEXIS 237595, at *5 (S.D.N.Y. Dec. 17, 2020). In general, federal courts in New York commonly award attorneys' fees of 30-33% of the common fund. *See Cohan v. Columbia Sussex Mgmt., LLC*, No. CV 12-3203 (AKT), 2018 U.S. Dist. LEXIS 170192, at *15-16 (E.D.N.Y. Sep. 28, 2018) (granting request for attorneys' fees of 30% of a $980,663.99

common fund in a FLSA case that involved significant work and complex issues of law, like this action); *Reyes v. City of Rye*, 2017 U.S. Dist. LEXIS 103096, at *20 (S.D.N.Y. June 30, 2017) (granting class counsel's fee request for one-third of the $984,964 common fund, and finding that the request was "reasonable and consistent with the norms of class litigation in this circuit.") (citing cases) (internal quotation marks omitted). Empirical studies confirm this benchmark. *See* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Legal Stud. 811, 838 (analyzing nearly 700 common fund settlements from 2006 and 2007 and finding that the median percentage of the settlement fund awarded in cases with similarly sized funds is 30%)

Fee awards from comparable data breach settlements around the country confirm the reasonableness of Plaintiff's fee request. *See Flores v. Don Roberto Jewelers, Inc.*, No, 30-2021-01212035-CU-NP-CXC (Cal. Sup. Ct., Orange Cty. July 20, 2023) (awarding $1,312,890.96 in attorney's fees from a $4 million fund (32.8%)); *Culbertson et al v. Deloitte Consulting LLP*, No. 1:20-cv-03962-LJL (S.D.N.Y. Feb. 16, 2022) ("The Court hereby awards $1,649,835.00 in attorney's fees (33.33% of the Settlement Fund) to Class Counsel."); *Henderson v. Kalispell Regional Healthcare*, No. CDV 19-0761 (Montana Eighth Judicial District Court, Cascade County) (court awarded attorneys fee of 33% of the common fund of $4.2 million).

Given the applicable 30-33% benchmark, the court then considers whether a "sliding scale" approach is appropriate based on the size of the settlement fund to "avoid[] a windfall to plaintiffs' counsel to the detriment of class members." *City of Birmingham*, 2020 U.S. Dist. LEXIS 237595, at *8. This is not a "megafund" settlement where, given the size of the settlement, it is necessary to decrease the benchmark to avoid attorneys' fees that are outsized in comparison to the benefits to the Settlement Class. *See Precision Assocs. v. Panalpina World Transp., Ltd.*, No. 08-cv-42

(JG) (VVP), 2013 U.S. Dist. LEXIS 121795, at *61 (E.D.N.Y. Aug. 27, 2013) ("in megafund cases particularly, courts have "traditionally accounted for these economies of scale by awarding fees in the lower range[s]."") (citations omitted); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 (JG) (VVP), 2009 U.S. Dist. LEXIS 88404, at *86 (E.D.N.Y. Sep. 25, 2009) (same); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 486 (S.D.N.Y. 1998). Rather, this case involves a very small class of just over 500 members and a claims made structure with a $190,000 cap for Settlement benefits and notice and claims administration. Plaintiff's requested fee will not diminish that amount in any way, and thus there will be no detriment to Settlement Class Members.

Additionally, the court considers "whether the magnitude and complexity of this case warrants a departure from the lower range typically seen in similar cases." *City of Birmingham*, 2020 U.S. Dist. LEXIS 237595, at *9. As discussed above, under the percentage method, Plaintiff's fee request is just over the 33% benchmark range, at 35%. However, as Plaintiff notes, this calculation does not take into account the value of the credit monitoring, which is more than $250,000. *See supra* at n. 4. If that is taken into account, this percentage becomes significantly less and falls below the 33% benchmark. In any event, the exceptional result achieved here on behalf of a very small class that, without Class Counsel, would have had no recourse against Taro stemming the Data Incident, supports the requested fee.

B. The Court Should Approve the Service Award for Plaintiff

Service awards are "common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiff." *Khait v. Whirlpool Corp.*, No. 06-6381 (ALC), 2010 U.S. Dist. LEXIS 4067, at 26 (E.D.N.Y. Jan. 20, 2010) (awarding $15,000 and $10,000 service awards); *Mohney v. Shelly's*

Prime Steak, Stone Crab & Oyster Bar, 2009 U.S. Dist. LEXIS 27899, at *18 (S.D.N.Y. Mar. 31, 2009) (approving $6,000 service awards). In other words, incentive awards are a way to recognize the representative's service to the class.

Those principles apply here. Plaintiff served a "critical role in pursuing and resolving this case, from supplying the facts needed to understand that breach and draft their complaint, to helping counsel counter Taro's planned motion to dismiss by explaining the harm the breach imposed on him." Borrelli Dec. ¶24. Plaintiff assisted in preparing the complaints by providing facts and documents regarding his experience as a victim of the Data Incident. Declaration of Jae Lee. Plaintiff remained in contact with counsel after filing their action regarding the progress of the case. *Id.* Plaintiff was available throughout the settlement process to answer questions and represent the interests of the Settlement Class. *Id.* He was prepared to take on the responsibilities of a class representative, including being deposed and testifying at trial. *Id*. These efforts benefitted the Settlement Class and the Court should recognize his service. As a result, the Court should approve Plaintiff's request for a $2,500 in service award.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant his motion for attorneys' fees, costs, and Plaintiff's service award.

Dated: April 4, 2024

By: */s/ Raina C. Borrelli*

Raina C. Borrelli
TURKE & STRAUSS LLP
613 Williamson St., Suite 201
Madison, WI 53703
Telephone (608) 237-1775
Facsimile: (608) 509-4423
raina@turkestrauss.com

James J. Bilsborrow (NY Bar # 519903)
WEITZ & LUXENBERG, PC

700 Broadway
New York, NY 10003
Telephone: (212) 558-5500
jbilsborrow@weitzlux.com

Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that on April 4, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, below, via the ECF system.

DATED this 4th day of April, 2024.

TURKE & STRAUSS LLP

By: */s/ Raina C. Borrelli*

Raina C. Borrelli
raina@turkestrauss.com
TURKE & STRAUSS LLP
613 Williamson St., Suite 201
Madison, WI 53703
Telephone: (608) 237-1775
Facsimile: (608) 509-4423