

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

CARLA PLOWMAN, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

TY INC.,

Defendant.

Case No. 2024 CH 000205

**PLAINTIFF'S UNOPPOSED MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEY FEES AND SERVICE AWARD**

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***Attorneys for Plaintiff and the Proposed Class***

## **I. INTRODUCTION**

On February 3, 2025, this Court preliminarily approved the Settlement Agreement (“SA”) to resolve class-wide claims arising out of a cybersecurity incident that began on April 26, 2023 (the “Security Incident”). The Security Incident involved unauthorized access to Ty Inc.’s computer systems, which contained Plaintiffs’ and the Settlement Class Members’ personally identifiable information (“PII”) and protected health information (“PHI”) (collectively with PII, “Sensitive Information”). Pursuant to the terms of the Settlement, the Court appointed Plaintiff Carla Plowman as Class Representative, and her attorneys, Raina C. Borrelli and Cassandra P. Miller of Strauss Borrelli PLLC, as Class Counsel. *Preliminary Approval Order* (Feb. 3, 2025) (hereafter, “*Order*”) ¶¶32-33. Class Counsel seek approval of attorneys’ fees, costs, and expenses of \$159,000.00, and a service award of \$5,000 for the Class Representative, as provided for by the Settlement Agreement. SA ¶¶ 66, 68. As set forth below, Class Counsel’s request for fees, expenses, and service awards is reasonable and appropriate. For the reasons set forth herein, this Court should grant Plaintiff’s motion.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

This litigation arises out of the Security Incident, where Ty Inc. identified suspicious activity in its corporate computer network that resulted in unauthorized access by a third party. *Order* ¶4. On November 16, 2023, Plaintiff Carla Plowman filed a class action complaint against Defendant, alleging five causes of action: (i) Negligence; (ii) Breach of Implied Contract; (iii) Unjust Enrichment; (iv) Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. 505/1, *et seq.* and (v) Invasion of Privacy. *Order* ¶5. The case was refiled August 12, 2024. Shortly after the case was initially filed in 2023, the parties began exploring early resolution. *Order* ¶7; Declaration of Cassandra P. Miller in Support of Motion for

Attorneys' Fees, Costs, Expenses, and Service Awards ("Miller Decl."), ¶4. Plaintiff requested, and Defendant produced, informal discovery necessary to evaluate the strengths and weaknesses of Plaintiff's claims, including information about the class size, scope of the Security Incident, and Defendant's response to the Security Incident. Miller Decl. ¶¶2-3. In the ensuing months, Plaintiff's and Defendant's counsel, both of whom are experienced in data breach class actions, conducted multiple rounds of arms' length negotiations, and ultimately executed the Settlement Agreement in late November 2024. Miller Decl. ¶¶4-6, Ex. 1 SA, "Signatures." On November 27, 2024, Plaintiff filed her Unopposed Motion for Preliminary Approval of Class Action Settlement, and on February 3, 2025, this Court entered an Order granting preliminary approval of the Settlement. Pursuant to that Order and the Settlement Agreement, Plaintiff now submits this Motion for Attorneys' Fees, Costs, Expenses, and Service Award. *Order* ¶40.

#### **A. The Settlement Class**

The Settlement Class is defined as "all individuals residing in the United States whose Personal Information may have been compromised in the Security Incident experienced by Ty on or around April 2023, including all those who received notice of the breach." *Order* ¶13; SA ¶33. Excluded from the Settlement Class are: (i) Defendant, its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and immediate family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge. *Id.* The Settlement Class includes approximately 2,797 individuals (each, a "Class Member"). Miller Decl. ¶9.

## **B. The Settlement**

The Settlement provides significant benefits for the Settlement Class. Defendant will pay for (i) an opportunity to enroll in 2 years of credit monitoring services provided through CyEx; and (ii) approved claims for documented out-of-pocket losses and lost time. Miller Decl. ¶10. Defendant will pay notice and administrative expenses, service awards, and the fee award and expenses. Miller Decl. ¶11; SA ¶¶52, 66, 68. Class Members may submit claims for:

### **1. Compensation of Documented Out-of-Pocket Losses**

Upon submission of a valid claim and supporting documentation, each Class Member may receive compensation of up to a total of \$5,000 for unreimbursed ordinary and/or extraordinary economic losses incurred as a result of the Data Breach. SA ¶41.

### **2. Claims for Compensation of Lost Time**

Upon submission of a valid claim, Class Members are eligible to receive up to 4 hours at a rate of \$20.00 per hour (for a total of \$80.00) per Settlement Class Member, provided they identify the activities engaged in and the time spent on each such activity and an attestation on the Claim Form that the activities they performed were related to the Security Incident. *Id.*

### **3. Business Practice Commitments**

Ty Inc. agreed to enhance its data-security and privacy protocols policies, ensuring that the Sensitive Information of Plaintiff and Class Members is better protected in the future. *Id.* ¶42.

## **III. LEGAL STANDARD**

In deciding an appropriate fee, a trial judge has discretionary authority “to choose either the percentage or lodestar method.” *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 245 (1995). In both cases, the reasonable hours devoted by plaintiff’s attorneys should be the starting point. *Flynn v. Kucharski*, 59 Ill. 2d 61, 66-67 (1974); *Fiorito v. Jones*, 72 Ill. 2d 73 88-

89 (1978); *Leader v. Cullerton*, 62 Ill. 2d 483, 488 (1976). With the lodestar approach, attorneys' fees are calculated by determining the total amount of hours spent by counsel to secure the relief obtained for the class multiplied by the reasonable hourly rate. *Schlacher v. Law Offices of Phillip J. Rotche & Associates, P.C.*, 574 F.3d 852, 856 (7th Cir. 2009). A multiplier can then be applied in consideration of "the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Brundidge*, 168 Ill. 2d at 240; *Schlacher*, 574 F.3d at 856. There is a strong presumption that the lodestar represents a reasonable fee. *City of Burlington v. Dague*, 505 U.S. 557, 562, 112 S. Ct. 2638 (1992).

#### **IV. ARGUMENT**

Pursuant to Settlement, Class Counsel seek attorneys' fees, costs, and expenses in the amount of \$159,000.00. As set forth below, such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class. Additionally, Plaintiff's request for attorneys' fees will not be paid from any class fund, which would thereby reduce each class members' proportional share of the recovery. Instead, the settlement agreement provides Ty Inc. shall pay reasonable attorney fees *in addition to* the agreed-upon class-recovery amount. The Court should approve Plaintiff's request for attorneys' fees, costs, and expenses in the amount of \$159,000.00 based on the lodestar method and the accepted multiplier in Illinois.

To date, Settlement Class Counsel have expended 89.60 hours litigating this case, costing the firm \$55,344.00 at their customary rates, and reasonably expect to incur additional hours throughout the final approval process and in administering the settlement. Miller Decl. ¶13. The current lodestar multiplier of 2.86 (which will decrease as Class Counsel expend additional hours on this litigation) is within the range of lodestar multipliers regularly approved in Illinois. *Id.* ¶15.

## **A. Attorney Fees, Costs, and Expenses**

### **i. Settlement Class Counsel incurred a reasonable lodestar of \$55,344.**

The Seventh Circuit has identified twelve factors are useful in determining whether the lodestar is reasonable, *Tolentino v. Friedman*, 46 F.3d 645, (7th Cir. 1995), which were first applied in a Fifth Circuit case, *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (the “*Johnson* factors”). The *Johnson* factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases (“the *Johnson* factors”). *Hensley v. Eckerhart*, 461 U.S. 424, 430 n.3, 103 S. Ct. 1933 (superseded in part by the Prison Litigation Reform Act).

In *Perdue*, the Supreme Court held that the lodestar method was preferred over the *Johnson* factors as a more objective test for determining a reasonable attorney fee, permitting meaningful judicial review, and producing reasonably predictable results. *Perdue v. Kinny A. ex rel. Winn*, 559 U.S. 541, 551-52, 130 S. Ct. 1662 (2010). Although the Supreme Court cast doubt on the usefulness of the *Johnson* factors, some Illinois state courts and district courts within the Seventh Circuit find reference to the *Johnson* factors useful in calculating a reasonable fee even after *Perdue*, despite recognizing that many of the factors are already subsumed within the lodestar analysis. *Johnson*. See, e.g., *Watkins v. M Class Mining Health Prot. Plan*, 2020 IL App (5th) 180138, ¶109; *Aliano v. Transform SR LLC*, 2020 IL App (1st) 172325, ¶31; *Robinson v. Point*

*One Toyota*, 2017 IL App (1st) 152114, ¶ 31; *Doe v. Macleod*, 2024 U.S. Dist. LEXIS 56288, at \*3-4 (C.D. Ill. March 28, 2024); *Ellis v. Whitewater Auto Inc.*, 2023 U.S. Dist. LEXIS 20115, at \*26 (E.D. Wis. Feb. 7, 2023); *De La Riva v. Houlihan Smith & Co.*, 2013 U.S. Dist. LEXIS 136339, at \*18 (N.D. Ill. Sept. 24, 2013); and *Dominguez v. Quigley's Irish Pub, Inc.*, 897 F. Supp. 2d 674, 683 fn. 4 (N.D. Ill. Sept. 14, 2012).

Here, the lodestar approach provides a logical, analytical framework that leads to a fair and reasonable result and the application of the *Johnson* factors reaffirms the reasonableness of the requested fee award. To date, Settlement Class Counsel incurred a lodestar of \$55,344.00 by investing 89.60 hours of work. Miller Decl. ¶13. Settlement Class Counsel's billing records have been reviewed for duplicative work, and to ensure appropriate tasks were delegated to paralegals or support staff. *Id.* Settlement Class Counsel also incurred reasonable and necessary costs of \$1,303.10 for filing fees, research, and postage. *Id.* ¶16.

**1. The time and labor required; the novelty and difficulty of the questions involved; and the preclusion of other employment.<sup>1</sup>**

Settlement Class Counsel invested time and labor by investigating the Security Incident, interviewing potential clients; researching viable claims under Illinois law; drafting the complaint; reviewing the complaint with the client; drafting and serving informal discovery; reviewing informal discovery from Ty Inc.; negotiating and preparing the Settlement Agreement, notice forms, and the claims form; drafting the motion for preliminary approval and exhibits; overseeing the settlement process, including assisting and supervising the Settlement Administrator's initial implementation of the Class Notice; and preparing this motion for attorney fees, costs, expenses,

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<sup>1</sup> "The number of hours of work will automatically reflect the 'time and labor involved,' 'the novelty and difficulty of the question,' and 'preclusion of other employment,'" and therefore, these factors are subsumed in the lodestar analysis. *Merchandise Nat'l Bank v. Scanlon*, 86 Ill.App.3d 719, 732 (1st Dist. 1980) (citing *Northcross v. Bd. of Educ.*, 611 F.2d 624, 642-43 (6th Cir. 1979)). However, analyzed independently, these factors weigh toward approval.

and a service award. Miller Decl. ¶¶2, 17.

Data breach class actions, such as this one, present novel and difficult legal questions as “[t]he realm of data breach litigation is complex and largely undeveloped.” *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 U.S. Dist. LEXIS 135573, at \*13 (N.D. Ohio Aug. 12, 2019). *See also Gilbert v. Bioplus Specialty Pharmacy Servs., LLC*, 2024 U.S. Dist. LEXIS 138439, at \*9 (M.D. Fla. Aug. 5, 2024) (explaining that “[c]ourts have recognized that the novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award” and that “data breach class actions present ‘serious risks’ due, in part, to ‘the ever- developing law surrounding data breach cases’”) (collecting cases). Accordingly, this case required a significant investment of time and labor, as the case involved novel, complex, and difficult legal questions. Miller Decl. ¶17. Settlement Class Counsel was precluded from representing other clients during the 86.20 hours that Settlement Class Counsel invested in this case. *Id.*

**2. The skill requisite to perform legal services properly; the customary fee; and the attorney’s experience, reputation, and ability.<sup>2</sup>**

In general, “prosecution and management of a complex national class action requires unique legal skills and abilities.” *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). This is particularly true in the data breach context given the novelty and difficulty of the questions involved. Because of the complexity and difficulty of the issues that arise in data breach litigation, there is a paucity of data breach cases where certification of a contested class has been granted, and many data breach class actions have been dismissed at the pleadings stage. *See, e.g., Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at \*21 (E.D. Pa. Sep. 24, 2019); *In re*

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<sup>2</sup> “The attorney’s normal hourly billing rate will reflect ‘the skill requisite to perform the legal service properly,’ ‘the customary fee,’ and the ‘experience, reputation and ability of the attorney,’” and therefore, these factors are subsumed in the lodestar analysis. *Merchandise*, 86 Ill.App.3d at 731 (citing *Northcross*, 611 F.2d at 642-43). However, analyzed independently, these factors weigh toward approval.



*Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 33 (D. Me. 2013); and *In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 (N.D. Cal. Sep. 13, 2011). Therefore, this case required highly skilled attorneys.

Settlement Class Counsel have extensive experience in consumer class actions generally, in data privacy and cybersecurity incident cases in particular, and are leaders in the field. Miller Decl. ¶7. They have been appointed sole lead in dozens of data breach cases, and have successfully litigated and settled similar cases across the country against law firms of national prominence. *Id.* *In re Folding Carton Antitrust Litigation*, 84 F.R.D. 245, 268 (N.D. Ill. 1979) (“Where counsel had been involved in class action litigation in the past, a presumption arose that such experience...allowed those attorneys to exhibit a fair degree of skill in this litigation...where counsel have had lead positions in prior multidistrict litigation, it could fairly be inferred...they had higher organizational and efficiency capabilities than the average attorney.”)

Similarly, Ty Inc. was defended by highly skilled and experienced counsel, which further evidences the effectiveness of Settlement Class Counsel. Miller Decl. ¶7. Settlement Class Counsel’s hourly rates are customary for their firms and are reasonable in the complex class action context. *Id.* ¶14; *McCabe v. Heid Music Co., Inc.*, 2024 U.S. Dist. LEXIS 97850, at \*4 (W.D. Wis. June 3, 2024) (approving hourly rates of \$750); *Watchfire Signs LLC v. Catalyst Outdoor Adver. LLC*, 2023 U.S. Dist. LEXIS 132728, at \*18 (C.D. Ill. June 21, 2023) (approving “Plaintiff’s counsel[’s] actual billing rates” of \$700 and \$500 hourly) (emphasis in original); *Linda G. v. Saul*, 487 F.Supp.3d 743, 748 (N.D. Ill. 2020) (approving hourly rates of \$700); *Bianco v. Colvin*, 2016 U.S. Dist. LEXIS 45097, at \*3 (N.D. Ind. Apr. 4, 2016) (approving effective rate of \$825 per hour); *Zerlaya v. City of LA*, 2024 U.S. Dist. LEXIS 112652, at \*9 (C.D. Cal. June 25, 2024) (approving \$700 and \$920 hourly). The experience, reputation, and ability of the attorneys at Strauss Borrelli

PLLC justifies the customary hourly fee. Therefore, these factors weigh in favor of approval.

**3. Whether the fee is fixed or contingent; the time limitations imposed by the client or circumstances; and the undesirability of the case.<sup>3</sup>**

Settlement Class Counsel assumed considerable risk to pursue this matter on a pure contingency basis, and have not been compensated for any time spent in the litigation. Miller Decl. ¶18. Indeed, Settlement Class Counsel assumed a significant risk of underpayment (or even nonpayment). *Id.* Absent taking this case on a contingency basis, it is very likely that the Settlement Class Members would not be able to take advantage of the significant relief being made available. *Id.* The degree of financial risk assumed by Class Counsel supports the reasonableness of the fee request. *Fauley*, 2016 IL App (2d) 150236, ¶59 (upholding fee award in light of the “‘substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]’”); *Ryan v. City of Chicago*, 274 Ill. App. 3d, 913, 924 (1st Dist. 1995) (noting the trial court’s fee award was reasonable given the funds recovered for the class and the contingency risk).

Settlement Class Counsel dedicated significant time keeping the Class Representative informed throughout the litigation. Miller Decl. ¶17. This included obtaining information from and securing approval for the filing of the complaint, keeping the Class Representative apprised of and involved in key decisions, litigation strategies, and ultimately, the Settlement reached in this case. *Id.* Moreover, given the immediacy of the injuries and risks created by data breaches (such as the risk of future identity theft and fraud), Settlement Class Members benefited from the efficient prosecution of this case because Settlement Class Members can obtain timely and tailored relief

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<sup>3</sup> “Adjustments upward may be made to reflect the contingency of the fee, unusual time limitations and the ‘undesirability’ of the case.” *Merchandise*, 86 Ill.App.3d at 731 (citing *Northcross*, 611 F.2d at 642-43). Other facts relevant to the multiplier are discussed below.

now. *Id.* ¶18. Thus, these factors also weigh in favor of approval.

#### **4. The amount involved and the results obtained.**

Settlement Class Counsel successfully secured monetary relief, credit monitoring, identity theft services, and remedial measures, including improvements to Ty Inc.'s cybersecurity protocols reducing the risk of future data breaches. *Id.* ¶10. Such relief encompasses not only the approximately 2,797 current and former employees of Ty Inc. but also benefits Ty Inc.'s future employees. *Id.* ¶9. Thus, this factor also weighs in support of approval.

#### **5. The nature and length of the professional relationship with Plaintiff.**

Settlement Class Counsel have maintained a professional relationship with Plaintiff since this case was filed. *Id.* ¶20. Thus, this factor weighs toward approval.

#### **6. Awards in similar cases**

In the data breach context, attorney fee awards either approximate or exceed Settlement Class Counsel's request here. *See, e.g., In re Phila. Inquirer Data Sec. Litig.*, 2025 U.S. Dist. LEXIS 48541, at \*42 (E.D. Pa. March 18, 2025) (awarding \$175,000 in fees and \$13,765.32 in costs); *In re Onix Grp., LLC Data Breach Litig.*, 2024 U.S. Dist. LEXIS 225686, at \*48 (E.D. Pa. Dec. 13, 2024) (awarding \$416,666.66 in fees and \$12,032 in expenses); *Linman v. Marten Transp., Ltd.*, 2024 U.S. Dist. LEXIS 106334, at \*5, \*10 (W.D. Wis. June 13, 2024) (stating \$152,000 in attorney fees and \$15,000 in litigation expenses appears reasonable); *Bahnmaier v. Wichita State Univ.*, 2021 U.S. Dist. LEXIS 155540, at \*12 (D. Kan. Aug. 18, 2021) (awarding \$210,974.50 in fees and \$4,052.39 in expenses); *Smith v. ComplyRight, Inc.*, 2019 U.S. Dist. LEXIS 174217, at \*9 (N.D. Ill. Oct. 7, 2019) (awarding \$908,333 in fees and \$23,723.85 in costs); *Hapka v. Carecentrix, Inc.*, 2018 U.S. Dist. LEXIS 68186, at \*10 (D. Kan. Feb. 15, 2018) (awarding \$400,000 in combined fees and expenses). *See also In re Lincare Holdings Inc. Data Breach Litig.*, 2024 U.S. Dist. LEXIS 110789, at \*12 (M.D. Fla. June 24, 2024) (awarding

\$2,416,666.67.00 in attorney fees and \$41,455.42 in litigation costs in a data breach settlement where Strauss Borrelli PLLC was co-Class Counsel). This factor supports Settlement Class Counsel's application for attorney fees,

**ii. The proposed fee award falls within the acceptable range of multipliers.**

A trial court may increase the lodestar by applying a multiplier "to account for the contingent nature of the undertaking and the benefits conferred upon the class." *Fiorito*, 72 Ill. 2d at 91. A multiplier of three is common. *Leader*, 62 Ill. 2d at 492 (1976) (multiplying the hourly rate by three); *Fiorito*, 72 Ill. 2d at 92-93 (same); *Fauley*, 2016 IL App (2d) 150236, at ¶59 ("Therefore, had the trial court used the lodestar method, the effective multiplier would have been approximately 2.97."); *Bd. of Educ. v. Cnty. of Lake*, 156 Ill. App. 3d 1064, 1076 (1987) (affirming a fee award with a lodestar multiplier of three). Here, the proposed fee award is presently a modest multiplier of approximately 2.86,<sup>4</sup> and Settlement Class Counsel will endure additional hours preparing the motion for final approval, attending the hearing, responding to any inquiries from class members, and overseeing the administration of benefits to completion. Miller Decl. ¶15.

**1. The contingency risk factors.**

"In determining the weighted multiplier to be attributed to the contingent nature of the undertaking, the court must examine the probability or likelihood of plaintiff's success at the time the suit was filed...Each case must be analyzed separately, keeping in mind that the relevant issue is the contingent nature of the particular case involved, and not the risk factor in class actions generally." *Fiorito*, 72 Ill. 2d at 91-92. Further, "[t]he point at which plaintiffs settle with defendants...is simply not relevant to determining the risks incurred by their counsel in agreeing

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<sup>4</sup> This multiplier is calculated by first subtracting the incurred costs of \$1,303.10 from the requested fee award of \$159,000 which equates to a net fee request of \$158,273.30. *Id.* ¶15. Then, the fee multiplier is calculated by dividing \$158,273.30 by the total lodestar of \$55,344.00. This equals a multiplier of 2.8598095 which rounds up to 2.86. *Id.*

to represent them.” *Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988).

This factor weighs in favor of a multiplier because this case, as a data breach class action, posed significant risks. Miller Decl. ¶¶17-19. As explained *supra*, and in Plaintiff’s motion for preliminary approval, data breach cases are especially risky, expensive, and complex. *See also id.* Moreover, Settlement Class Counsel anticipates Ty Inc. would likely raise substantial and potentially meritorious defenses. *Id.* ¶19. This is significant because in the data breach context, few cases have gone through the certification stage, and none have been tried. *Id.* Any of these risks could easily have impeded, if not prevented, Plaintiff and Settlement Class Members from receiving any relief from their alleged injuries. *Id.* However, through this Settlement, Class Members receive substantial relief that is timely and tailored to the injuries and risks imposed by the Data Incident. *Id.* ¶10. As such, the recovery provided by this Settlement must be judged in reference to the reality that recovery through continued litigation could only have been achieved if Plaintiff succeeded in certifying a class, defeating a motion for summary judgment, establishing liability and damages at trial, and defending against any appeal. *Id.* ¶19. Thus, the Settlement here is a fair and reasonable recovery for the Settlement Class in light of Ty Inc.’s defenses, and the challenging and unpredictable path of protracted litigation. *Id.*

## **2. The results obtained for the benefit of the class.**

“The value of the weighted multiplier should also reflect the benefits conferred upon the class. When the attorney succeeds in recovering the total claims of the class members, a greater multiplier may be warranted than when the recovery covers only a fraction of the class members’ claims or potential recovery.” *Fiorito*, 72 Ill. 2d at 92.

The value of this Settlement is underscored by the complexity of the litigation and the significant risks and barriers that loomed in the absence of Settlement. *Id.* ¶19. Settlement Class

Counsel succeeded in recovering the total claims of the 2,797 current and former employees of Ty Inc. who were impacted by the Security Incident—indeed, *all* Settlement Class Members who submit valid claims will be fully reimbursed ordinary and extraordinary losses. *Id.* ¶10. The benefits include monetary relief of up to \$5,000.00 per person for ordinary and/or extraordinary losses, up to \$80.00 for lost time (at a rate of \$20.00 per hour for up to four hours), two years of credit monitoring and identity theft services with \$1 million in insurance. *Id.*

Additionally, Ty Inc.’s remedial measures benefit future employees as well. *Id.* This substantial non-monetary relief for the Settlement Class and future employees further justifies the reasonableness of the attorneys’ fees being sought here. *See Spano v. Boeing Co.*, 2016 U.S. Dist. LEXIS 161078, at \*5 (S.D. Ill. Mar. 31, 2016) (“A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request...This is important so as to encourage attorneys to obtain meaningful affirmative relief.” (citing *Beesley v. Int’l Paper Co.*, 2014 U.S. Dist. LEXIS 12037, at \*5 (S.D. Ill. Jan 31, 2014))); *Manual for Complex Litigation*, § 21.71, at 337 (4th ed. 2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (Awarding attorneys’ fees when relief is obtained for the class “must logically extend, not only to litigation that confers a monetary benefit on others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.” (internal quotations omitted)).

## **B. Costs and Expenses**

Settlement Class Counsel have expended \$1,303.10 in reimbursable expenses related to filing fees, fees for service of process, and case administration, with the likelihood of more expenses yet to come. Miller Decl. ¶16. Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, 2014 U.S. Dist. LEXIS 83936, at \*12 (N.D. Ill. June 20, 2014) (awarding expenses “for which a paying

client would reimburse its lawyer”); *Fauley*, 2016 IL App (2d) 150236, ¶ 15 (affirming settlement award which included \$592,094 as a reimbursement for costs and expenses). Settlement Class Counsel’s request for reimbursement of reasonable the total costs and expenses of \$1,303.10 is included in the request for \$159,000.

### **C. Service Award**

The requested \$5,000 Service Award for Plaintiff is reasonable compared to other service awards granted to class representatives in similar class actions. Because a named plaintiff is essential to any class action, “[i]ncentive awards are justified when necessary to induce individuals to become named representatives.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (service awards “are not atypical in class action cases...and serve to encourage the filing of class actions suits”).

Without the efforts of Plaintiff, the thousands of other Settlement Class Members would not have received the benefits of the Settlement. Plaintiff committed to participate actively in what she knew could be a long and hard-fought lawsuit, and to do so on behalf of a Class of thousands of other Settlement Class Members, with no guarantee of ever being compensated. Miller Decl. ¶20. Even though no award of any sort was promised to Plaintiff, she contributed her time and effort by assisting in the litigation, aiding in the preparation of the Complaint, and approving of the Settlement. *Id.* Further, agreeing to serve as the Class Representatives meant that Plaintiff publicly placed her name on this suit and opened herself to “scrutiny and attention” which, in and of itself, “is certainly worthy of some type of remuneration.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011). Now that a substantial recovery has been made on behalf of the Class, Plaintiff’s efforts in bringing and litigating this case should be recognized and rewarded

The \$5,000 Service Award requested for Plaintiff is well in line with the average service awards granted in class actions. Indeed, numerous courts that have granted final approval in similar class-action settlements have awarded larger service payments, collectively and individually, than what is sought here. *See, e.g., Fauley*, 2016 IL App (2d) 150236, ¶15 (affirming trial court's approval of \$15,000 incentive awards to class representatives); *Hestrup v. DuPage Med. Grp., Ltd.*, No. 2021L000937 (Cir. Ct. DuPage Cnty., Ill., 2022) (Schwartz, J.) (approving service award of \$27,000 total, awarding \$3,000 to each of the 9 class representatives); *Aranda v. Caribbean Cruise Line, Inc.*, 2017 U.S. Dist. LEXIS 54080, at \*3 (N.D. Ill. Apr. 10, 2017) (approving service award of \$40,000 total, awarding \$10,000 to each of the four class representatives).

## **V. CONCLUSION**

In cases like this that vindicate the rights of consumers, “[i]t must be remembered that the award of attorney’s fees in certain cases is necessary to provide an incentive to counsel for the representation of a class.” *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1356 (N.D.Ill.1974). For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys’ fees of \$159,000.00; and (ii) approving a Service Award in the amount of \$5,000.00 to Plaintiff in recognition of her significant efforts on behalf of the Settlement Class Members.



Dated: May 2, 2025

Respectfully submitted,

By: /s/ Cassandra Miller

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2025, a copy of the foregoing was filed electronically via Odyssey eFileIL. Notice of this filing will be sent by email to counsel of record by operation of the court's electronic filing system.

DATED this 2nd day of May, 2025.

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