

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENDA BRISCOE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FIRST FINANCIAL CREDIT UNION,

Defendant.

Case No. D-202-CV-2022-02974

CLASS ACTION

**PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, COSTS, AND SERVICE AWARDS**

I. INTRODUCTION

Faced with the risks inherent to data breach litigation, Class Counsel expeditiously secured a class-wide Settlement¹ that compensates Settlement Class Members for their losses and provides meaningful prospective relief which protects against future risks arising from the Data Incident. Class Counsel now respectfully request that the Court award \$533,333.33 in attorneys' fees, expenses, and costs as contingent compensation for their work associated with bringing this case to a successful resolution. The fee requested (\$533,333.33) represents approximately one-third of the Settlement Fund, which is well within range of what courts have found to be reasonable in other data breach class action settlements.

In addition, Class Counsel respectfully request that the Court approve Service Awards in the amount of \$2,000 each to the two Class Representatives² in recognition of their time and

¹ Unless otherwise noted, all capitalized terms not defined herein have the same meaning ascribed to them in the Settlement Agreement ("Settlement" or "SA").

² The Parties have agreed to the inclusion of Ms. Keast as a named Plaintiff and Class Representative in this Settlement Agreement. Accordingly, references to Plaintiffs, Class

effort in pursuing this litigation. The Class Representatives actively participated in the prosecution of the case to obtain an excellent outcome for the Class, and fulfilled all their duties as lead plaintiffs. No Settlement or recovery would have been possible without their vital role.

Class Counsel respectfully submit that the requested fee award is justified in light of the significant Settlement benefits obtained despite the numerous risks and obstacles of this litigation, the significant work Class Counsel have invested and will continue to invest in this case, and the caliber of Class Counsel's work in the face of formidable opposition. Further, given the time and effort Plaintiffs devoted to this litigation on behalf of the Class, Class Counsel submit that the requested Service Awards are reasonable.

For all these reasons, and for those set forth in more detail below, Plaintiffs respectfully request that the Court grant this Motion in its entirety.

II. BACKGROUND

The proposed Settlement seeks to resolve this class action lawsuit filed against Defendant First Financial Credit Union ("FFCU") arising from a security incident involving the personally identifiable information ("PII") of FFCU's customers.

Plaintiffs allege that an unauthorized person or persons gained access to FFCU's computer systems between January 17, 2022 and February 6, 2022, and that this attack resulted in cyber-criminals accessing and obtaining the PII of FFCU's customers (the "Data Incident"). Plaintiffs allege that the PII of approximately 229,748 FFCU customers were impacted in the Data Incident. Plaintiffs allege claims for negligence, negligence per se, breach of fiduciary duty, breach of express contract, breach of implied contract, unjust enrichment, and violation of the New Mexico Unfair Trade Practices Act. Defendant aggressively has maintained its position that

Representatives, Parties, Claimants, and Litigation in this Settlement Agreement are understood by the Parties to refer collectively to Ms. Keast and her claims as well as Ms. Briscoe and her claims.

Plaintiffs cannot state a claim for relief, that a class cannot be certified, that it would not be found liable at trial, and that Plaintiffs would not be able to prove damages resulting from the Data Incident. Defendant denies any and all liability.

As set forth in the concurrently filed Declarations of Ben Barnow (“Barnow Fee Decl.”) and Andrew W. Ferich (“Ferich Fee Decl.”), Class Counsel expended considerable efforts litigating this case, and they persistently advanced and protected the interests of the Class from inception. Barnow Fee Decl. ¶ 18–23; Ferich Fee Decl. ¶¶ 18–23.

A. Class Counsel Conducted Extensive Factual and Legal Investigations and Diligently Litigated the Case

Prior to commencing this litigation, Class Counsel diligently investigated potential legal claims (and potential defenses thereto) arising from FFCU’s alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect its customers PII. Barnow Fee Decl. ¶ 2, 18; Ferich Fee Decl. ¶¶ 2, 18. Class Counsel researched and analyzed voluminous reports, articles, and publicly available information surrounding the Data Incident, including FFCU’s corporate structure and potential co-defendants. Barnow Fee Decl. ¶ 3; Ferich Fee Decl. ¶ 3. Class Counsel interviewed and vetted victims and potential class members inquiring about the Data Incident. Barnow Fee Decl. ¶ ; Ferich Fee Decl. ¶ 3. In all phases of the litigation, Class Counsel stayed abreast of material developments involving the Data Incident and endeavored to gain an ample understanding of the legal issues underlying Plaintiffs’ claims. Barnow Fee Decl. ¶ 4; Ferich Fee Decl. ¶ 4. Class Counsel also filed an opposition to FFCU’s motion to dismiss this matter. Barnow Fee Decl. ¶ 19; Ferich Fee Decl. ¶ 19.

B. Class Counsel Engaged in Extensive Arms’ Length Settlement Discussions and Negotiated All Aspects of the Settlement

Class Counsel also advocated zealously on behalf of the Settlement Class Members during the Settlement negotiation process. Barnow Fee Decl. ¶ 5; Ferich Fee Decl. ¶ 5. In mid-2022, the Parties began to engage in extensive arm's length negotiations concerning a potential settlement of this matter. Barnow Fee Decl. ¶ 5; Ferich Fee Decl. ¶ 5. After extensive pre-mediation negotiations and discussions, on May 25, 2023, the Parties participated in a full-day mediation with Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP. Barnow Fee Decl. ¶ 5; Ferich Fee Decl. ¶ 5. In advance of formal mediation, the Parties discussed their respective positions on the merits of the claims and class certification and provided detailed information to the mediator on the relevant facts and law. Barnow Fee Decl. ¶ 6; Ferich Fee Decl. ¶ 6. The May 25, 2023 mediation session was informed and hard-fought. Class Counsel and counsel for FFCU aggressively advocated for their respective side's positions and views during the mediation session. Barnow Fee Decl. ¶ 6; Ferich Fee Decl. ¶ 6. The Parties were unable to reach a resolution at the mediation but continued to engage in settlement negotiations. Barnow Fee Decl. ¶ 6; Ferich Fee Decl. ¶ 6.

After substantial additional arm's length settlement negotiations during the week following the mediation, the Parties ultimately reached agreement on the general terms of the Settlement. Barnow Fee Decl. ¶ 7; Ferich Fee Decl. ¶ 7. While the Parties reached a settlement in principle in early June, 2023, extensive arm's length settlement negotiations continued for over five months until November, 2023. Barnow Fee Decl. ¶ 7; Ferich Fee Decl. ¶ 7. During these continued negotiations, the Parties exchanged drafts of the Settlement Agreement and its exhibits, and negotiated the remaining finer details of the Settlement. Barnow Fee Decl. ¶ 7; Ferich Fee Decl. ¶ 7. These negotiations continued to be contested and involved detailed

discussions regarding many provisions of the Settlement Agreement and related documents and the plan for Class Notice. Barnow Fee Decl. ¶ 7; Ferich Fee Decl. ¶ 7.

Class Counsel solicited competing bids from multiple third-party administrators for settlement notice and administration. Barnow Fee Decl. ¶ 8; Ferich Fee Decl. ¶ 8. The Parties ultimately agreed to the appointment of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) as Settlement Administrator. Barnow Fee Decl. ¶ 8; Ferich Fee Decl. ¶ 8. Class Counsel crafted, negotiated, and meticulously refined the final Notice Program and each document comprising the notice, with the assistance of a class action notice expert, to ensure that the information disseminated to Settlement Class Members is clear and concise. Barnow Fee Decl. ¶ 9; Ferich Fee Decl. ¶ 9.

The information gathered from an investigation and research into the facts and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with FFCU’s Counsel about attending mediation and later settling this matter. Barnow Fee Decl. ¶ 10; Ferich Fee Decl. ¶ 10. Class Counsel’s diligence in preparing for mediation, including obtaining information necessary to analyze all claims and defenses, allowed Class Counsel to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan. Barnow Fee Decl. ¶ 11; Ferich Fee Decl. ¶ 11.

At all times during settlement discussions, the negotiations were at arm’s length. Barnow Fee Decl. ¶ 12; Ferich Fee Decl. ¶ 12. Furthermore, it was always Class Counsel’s primary goal to achieve the maximum substantive relief possible for the Settlement Class Members. Barnow Fee Decl. ¶ 12; Ferich Fee Decl. ¶ 12.

C. Class Counsel Obtained Preliminary Settlement Approval and Implemented the Court-Approved Notice Plan

After the lengthy process that led to finalization of the Settlement Agreement and its numerous exhibits, Class Counsel prepared and filed Plaintiffs' Amended Motion for Preliminary Approval of Class Action Settlement ("Mot. for Prelim. App."), which included supporting documents, declarations, and exhibits.³ As discussed therein, despite the risk and uncertainty of class certification and continued litigation, the Settlement is an outstanding result for the Class.

On January 5, 2024, the Court preliminarily approved the Settlement and ordered that the Class be given notice. *See* Order Granting Preliminary Approval of Class Action Settlement ("Prelim. App. Order"). Thereafter, the Parties continued to work with the Settlement Administrator to supervise dissemination of Notice to Settlement Class Members. Barnow Fee Decl. ¶ 15; Ferich Fee Decl. ¶ 15. These efforts included review and drafting of the language and format of the Settlement Website, the script for the automated response to the toll-free number, the language and format of the Notice forms, monitoring for exclusion requests and objections, and ensuring prompt response to every Settlement Class Member inquiry (whether by phone or e-mail) regarding the Settlement. Barnow Fee Decl. ¶ 16; Ferich Fee Decl. ¶ 16.

D. Class Counsel Achieved an Excellent Result for the Class

After over a year of hard-fought litigation, Class Counsel secured a robust Settlement that provides significant and immediate relief to Settlement Class Members. As an initial matter, the prompt resolution of data breach class actions is in the best interests of class members because it allows class members to take advantage of settlement benefits and more immediately protect

³ Plaintiffs initially filed a motion for preliminary approval without any exhibits to comply with the Court's page limit while a motion for a page extension was pending. Upon the Court's granting of the motion for a page extension, Plaintiffs filed their Amended Motion with all exhibits included.

their identities to prevent against the risk of fraud and identity theft. Barnow Fee Decl. ¶ 13; Ferich Fee Decl. ¶ 13. As such, the results achieved in this case are even more significant in that they were achieved efficaciously while avoiding the attendant risks of litigation and non-recovery. The Settlement requires FFCU to pay a sum of \$1,600,000.00 into the Settlement Fund. SA ¶ 13. The Settlement Fund will be used, *inter alia*, to provide the following benefits to Settlement Class Members. SA ¶ 16.

1. Compensation for Ordinary Losses

Settlement Class Members who submit a valid Claim are eligible to recover compensation for up to \$150 of their ordinary out-of-pocket expenses, that were incurred between January 17, 2022, and the May 2, 2024 Claims Deadline, as a result of the Data Incident. *See* Prelim. App. Order ¶ 8(a); SA ¶ 24(a). These expenses include money spent on documented bank fees, long distance phone charges, certain cell phone charges and data charges, postage, gasoline for local travel, bank fees, and fees for credit reports, credit monitoring products, and other identity theft protections. Prelim. App. Order ¶ 8(a); SA ¶ 24(a).

2. Compensation for Lost Time

Settlement Class Members who submit a valid Claim are eligible to recover compensation for up to 4.5 hours of documented lost time at \$25 per hour, if at least one-half hour of time was spent dealing with the Data Incident. Prelim. App. Order ¶ 8(b); SA ¶ 24(b). The claimed lost time must be reasonably described and supported by an attestation that the time spent was reasonably incurred dealing with the Data Incident. Prelim. App. Order ¶ 8(b); SA ¶ 24(b).

3. Extraordinary Expense Reimbursement

Settlement Class Members who submit a valid Claim are eligible to recover compensation for up to \$5,000 of documented extraordinary monetary out-of-pocket losses

incurred on or after January 17, 2022. Prelim. App. Order ¶ 9(c); SA ¶ 24(c). To receive benefits under this category, Settlement Class Members will need to provide documentation plausibly supporting that the loss was not reimbursed by any other source, the loss was more likely than not the result of the Data Incident, the loss is not already covered by the “Compensation for Ordinary Losses” category, and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss. Prelim. App. Order ¶ 9(c); SA ¶ 24(c). Claims for extraordinary losses will be subject to heightened scrutiny and also must be supported by an attestation under penalty of perjury. SA ¶ 24(c).

4. Credit Monitoring and Identity Theft Protections

Under the Settlement, FFCU will provide 24 months of three bureau credit monitoring and identity theft insurance of \$1,000,000, and access to fraud resolution agents to help resolve identity thefts for those Settlement Class Members who submit valid Claims for such monitoring. Prelim. App. Order ¶ 9(d); SA ¶ 24(d).

5. Cash Compensation

In the alternative to the foregoing benefits, Settlement Class Members can elect to receive a pro rata payment from the Settlement Fund. Prelim. App. Order ¶ 9(e); SA ¶ 25. The amount of the cash payment provided to each Settlement Class Member who submits a timely and valid Claim Form for this benefit will be determined in accordance with the Settlement Agreement. SA ¶ 37.

6. Equitable Relief

Additionally, the Settlement Agreement requires FFCU to review and enhance its data privacy, security practices, and privacy protocols and policies, including, but not limited to, establishing and maintaining a policy that any third-party it allows to access its members’ personal data shall confirm that it has industry acceptable protection and security provisions in

place for said information and such other policies and measures as FFCU deems advisable. Prelim. App. Order ¶ 9(f); SA ¶ 26. All Settlement Class Members will receive this benefit, irrespective of whether they file a Claim.

III. ARGUMENT

A. The Court Should Grant Class Counsel’s Reasonable Fee Request

1. Legal Standard

Courts have broad discretion to award attorneys’ fees in a class action. *See In re N.M. Indirect Purchasers Microsoft Corp. Antitrust Litig.*, 2007-NMCA-007, ¶ 6, 140 N.M. 879, 887 [hereinafter, *Microsoft*]. The Court has “a duty to establish the reasonableness of a fee award, which arises out of its obligation to protect class interests.” *Id.* ¶ 12. The Court has discretion to use either the lodestar method or the percentage-of-recovery method to award reasonable fees. *Rivera-Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 78, 143 N.M. 158, 183 (citing *Microsoft*, 2007-NMCA-007, ¶ 47). Regardless of the method used, the fee awarded must be reasonable. *Microsoft*, 2007-NMCA-007, ¶ 76.

2. Plaintiffs’ Fee Request is Reasonable and Should Be Approved Under the Percentage-of-Recovery Method

a. The Court Should Use the Percentage-of-Recovery Method to Assess the Fee Award

Applying the percentage-of-recovery method is appropriate because this case involves a common fund. The Settlement establishes a Settlement Fund of \$1,600,000 to provide benefits and reimbursement to Settlement Class Members. *E.g.*, SA ¶ 13. “When counsel obtain a common fund settlement, they may seek a reasonable attorneys’ fee from the fund as whole.” *Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv-404-KG-SMV, 2020 U.S. Dist. LEXIS 202390, at *14 (D.N.M. Oct. 30, 2020) (citations omitted).

The percentage method “is like [the] calculation of a contingent fee [in that it] awards to counsel a variable percentage of the amount recovered for the class.” *Microsoft*, 2007-NMCA-007, ¶ 33. Courts in the Tenth Circuit “express[] a preference for the percentage-of-the-fund approach” in common fund cases.”⁴ *Chieftain Royalty Co. v. Enervest Energy Inst. Fund XIII-A, L.P.*, 861 F.3d 1182, 1186 (10th Cir. 2017); *Bhasker v. Fin. Indem. Co.*, No. 1:17-cv-00260-KWR-JHR, 2023 U.S. Dist. LEXIS 121532, at *2 (D.N.M. July 13, 2023) (“Generally, in calculating attorneys’ fees in class actions, the Tenth Circuit applies the percentage-of-the-fund method.”). The Court should use the preferred percentage method because this is a common fund case and Plaintiffs’ fee request is for a percentage of that common fund. *See, e.g., Paulson v. McKowen*, No. 19-cv-02639-PAB-NYW, 2023 U.S. Dist. LEXIS 43717, at *18 (D. Colo. Mar. 15, 2023).

b. Plaintiffs’ Fee Request is Reasonable

Courts determine the reasonableness of attorneys’ fee awards by applying the factors found in Rule 16-105 NMRA. *Rivera-Platte*, 2007-NMCA-158, ¶¶ 83–84. Rule 16-105 lists the relevant factors as:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;

⁴ New Mexico courts may “may look to federal law for guidance in determining the appropriate legal standards to apply under [New Mexico] rules.” *Romero v. Philip Morris Inc.*, 2005-NMCA-035, ¶ 35, 137 N.M. 229, 238; *see also Microsoft*, 2007-NMCA-007, ¶ 11.

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

Rule 16-105 NMRA.⁵ The factors “are not of equal weight, and all of the factors need not be considered.” *Microsoft*, 2007-NMCA-007, ¶ 78. Here, all of the *Fryar* factors weigh in favor of granting Plaintiffs’ fee request.

i. The time and labor required, the novelty and difficulty of the questions involved, and the skill required

The first *Fryar* factor supports the fee request. Bringing this case to a successful conclusion demanded a significant commitment of time and resources by a team of experienced lawyers. Barnow Fee Decl. ¶ 30; Ferich Fee Decl. ¶ 35. Over the course of nearly two years of litigating this case from its initiation until reaching a settlement, Class Counsel and their firms engaged in pre-suit investigation of the relevant facts and potential claims, communications with potential plaintiffs and class members, drafted the initial complaints, reviewed publicly available information and documents produced by FFCU, opposed a motion to dismiss, participated in extensive mediation and negotiation efforts to settle this action, briefed a motion for preliminary approval, and have responded to Settlement Class Member inquiries. Barnow Fee Decl. ¶ 19; Ferich Fee Decl. ¶ 19. The substantial investment of time and resources strongly supports the reasonableness of the requested fee. *Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv-404-KG-SMV, 2020 U.S. Dist. LEXIS 202390, at *19 (D.N.M. Oct. 30, 2020) (approving fee request where class counsel “engaged in extensive informal discovery concerning the merits of the case, prepared and revised voluminous damage models, attended mediation,

⁵ “These factors are effectively identical to the ‘*Johnson* factors’ used by the Tenth Circuit, and are commonly referred to as the ‘*Fryar* factors’ in New Mexico.” *Microsoft*, 2007-NMCA-007, ¶ 76 (citations omitted); *see also Fryar v. Johnsen*, 1979-NMSC-080, 93 N.M. 485.

negotiated beyond mediation, finalized the settlement agreement, worked with the claims administrator, and engaged in motion practice for preliminary and final approval”). Class Counsel and their firms will continue to expend time communicating with Settlement Class Members and seeking final approval of the Settlement. Barnow Fee Decl. ¶ 17; Ferich Fee Decl. ¶ 17.

This case presented complex and uncertain questions of fact and law. This is a highly complicated data breach case. FFCU adamantly denied liability and maintains that it has numerous meritorious defenses to the claims asserted in this Litigation.

Indeed, data breach cases are especially risky, expensive, and complex given the unsettled nature of the law. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. Aug. 15, 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 WL 256132, at *32-33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data breach class actions). Despite these risks, Class Counsel were able to obtain an excellent result for Settlement Class Members.

This case is no different in that it presented novel and difficult issues, the path to class certification was far from certain. *See, e.g., Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case are particularly risky, expensive, and complex, and they present significant challenges to plaintiffs at the class certification stage.”). Numerous courts to

consider class certification motions in data breach cases have denied certification. *See, e.g., Dolmage v. Combined Ins. Co. of Am.*, No. 14 C 3809, 2017 U.S. Dist. LEXIS 67555, at *32–33 (N.D. Ill. May 3, 2017) (class certification denied); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 33 (D. Me., 2013) (same); *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389, 397–98 (D. Mass., 2007) (same); *see also Hammond v. Bank of N.Y. Mellon Corp.*, 08 Civ. 6060, 2010 WL 2643307, at *14 (S.D.N.Y. June 25, 2010) (granting summary judgment for defendant due to lack of standing in data security/theft action). Accordingly, these factors support Plaintiffs’ fee request.

In general, data breach class actions present relatively uncharted territory, and no known data breach case has gone to trial. Class Counsel are experienced litigators who have successfully prosecuted and resolved numerous large consumer class actions and other complex matters, including in other data breach cases. Barnow Fee Decl. ¶ 25–26; Ferich Fee Decl. ¶¶ 24–34. Class Counsel’s skill and relevant experience were critical to achieving the Settlement here. This factor supports Plaintiffs’ fee request.

ii. Preclusion of other employment

As previously noted, Class Counsel spent 387.1 hours litigating this class action. Barnow Fee Decl. ¶ 30; Ferich Fee Decl. ¶ 38. Because hours and resources are necessarily limited, Class Counsel were required to defer or decline other work to properly prosecute this case. Barnow Fee Decl. ¶ 30 (Barnow and Associates spent 202.8 hours on the litigation); Ferich Fee Decl. ¶ 38 (Ahdoot & Wolfson spent 184.3 hours on the litigation); *see, e.g., Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1009 (D. Colo. 2014) (“Moreover, the time expended by Class Counsel on this case prevented them from working on other matters.”); *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *9 (D. Colo. Mar. 9, 2000) (“Class litigation of this magnitude inherently entails significant opportunity costs. . . . Class counsel’s obligation to

zealously pursue this enormous case no doubt cost them significant opportunities to earn other compensation through the litigation of less burdensome cases. The opportunity costs incurred by class counsel also weigh heavily in favor of the requested fee.”). Thus, this factor weighs in favor of Plaintiffs’ fee request.

iii. The customary fee charged for similar legal services

Plaintiffs are requesting a fee of \$533,333.33, which equals approximately one-third of the Settlement Fund. This is well in line with fees awarded in class action cases in New Mexican Courts.⁶ *E.g.*, *In re N.M. Indirect Purchasers Microsoft Corp. Antitrust Litig.*, 2007-NMCA-007, ¶ 81 (noting recent cases had fees equaling 25, 30%, and 33.33%); *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1264 (10th Cir. 2023) (holding district court “properly exercised its discretion” in awarding fee equaling 33% of the common fund); *Anderson Living Tr. v. Energen Res. Corp.*, No. 13-909 WJ/CG, 2021 U.S. Dist. LEXIS 135762, at *22 (D.N.M. July 21, 2021) (approving fee equal to 40% of settlement); *Acevedo v. Sw. Airlines Co.*, No. 1:16-cv-00024-MV-LF, 2019 U.S. Dist. LEXIS 213691, at *13 (D.N.M. Dec. 10, 2019) (approving fee equal to 33.33% of settlement); *Candelaria*, 2020 U.S. Dist. LEXIS 202390, at *18 (approving fee equal to 35% of settlement); *Fager v. Centurylink Comm’ns, LLC*, No. 14-cv-00870 JCH/KK, 2015 U.S. Dist. LEXIS 190795, at *7 (D.N.M. June 25, 2015) (collecting cases). Plaintiffs’ requested fees are also in line with attorneys’ fees awards in data breach class actions. *E.g.*, *Beasley v. Ttec Servs. Corp.*, No. 22-cv-00097-PAB-STV, 2024 U.S. Dist. LEXIS 29759, at *19 (D. Colo. Feb. 21, 2024) (noting in a data breach class action that a “fee of one-third of the common fund is typical in complex cases”).

⁶ As large class actions are “relatively infrequent in New Mexico, comparison to similar cases throughout the country is appropriate.” *Microsoft*, 2007-NMCA-007, ¶ 82.

iv. The amount involved and the results obtained

This factor also supports the fee request. “[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *O’Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-NYW, 2019 U.S. Dist. LEXIS 153610, at *52 (D. Colo. Sept. 9, 2019). In negotiating the amounts to be paid under the Settlement, Class Counsel relied upon published reports documenting data breach and identity theft costs, information uncovered in discovery, their own experience in other data breach litigation, and reported settlements in other data breach class actions. Barnow Fee Decl. ¶ 14; Ferich Fee Decl. ¶ 14. The monetary benefits offered to Settlement Class Members are fair and reasonable in light of reported average out-of-pocket expenses due to a data breach.

The benefits available here compare favorably to what Settlement Class Members could recover if successful at trial. In the experience of Class Counsel, the relief provided by this Settlement should be considered an outstanding result and benefit to the Class. *See, e.g., Hapka v. Carecentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 U.S. Dist. LEXIS 68186, at *8 (D. Kan. Feb. 15, 2018) (“By any measure, Class Counsel obtained a robust result in this data breach class action. The Settlement addresses past harms through reimbursement of Out-of-Pocket Losses . . . and also helps Settlement Class Members protect against future harm through the Credit Monitoring Services.”). The equitable, forward-looking relief obtained with respect to FFCU’s data security practices also provides substantial non-monetary benefits to all Settlement Class Members, irrespective of whether they submit a claim under the Settlement. *See* Barnow Fee Decl. ¶ 24; Ferich Fee Decl. ¶ 23; *see also O’Dowd*, 2019 U.S. Dist. LEXIS 153610, at *53 (injunctive relief provides “substantial non-monetary benefits” to the class).

v. Time limitations

Class Counsel’s efficient and expeditious resolution of this litigation and timely provision of the Settlement benefits is of tremendous value. This case involved a time-sensitive issue in that the longer this case went unresolved, the longer that Settlement Class Members’ sensitive information was at risk. Here, Class Counsel’s efficient work allows Settlement Class Members to seek compensation for out-of-pocket expenses incurred as a result of the Data Incident immediately. Barnow Fee Decl. ¶ 23; Ferich Fee Decl. ¶ 22. At the same time, the Settlement allows Settlement Class Members to take advantage of Credit Monitoring Services and other similar services, which will help mitigate future harms. Barnow Fee Decl. ¶ 23; Ferich Fee Decl. ¶ 22. “Given the nature of [data breach] case[s], it was important for Class Counsel to litigate this case on an expedited schedule, which Class Counsel successfully did.” *Hapka*, 2018 U.S. Dist. LEXIS 68186, at *8 (finding fee request appropriate where settlement provided \$200 payment for fraud). This factor thus supports the fee request.

vi. The nature and length of the professional relationship with the client

This factor weighs in favor of the fee award. Class Counsel have been in communication with their clients since before this action was commenced in May, 2022, and remain in close contact with them regarding details of this Settlement and its progression. Barnow Fee Decl. ¶ 36; Ferich Fee Decl. ¶ 21. The Plaintiffs have been actively involved in this litigation and strongly support the Settlement. Barnow Fee Decl. ¶ 36; Ferich Fee Decl. ¶ 44. Accordingly, this factor weighs in favor of Class Counsel’s fee request.

vii. The experience, reputation, and ability of Class Counsel

Class Counsel come from firms with established national data breach class action practices. Barnow Fee Decl. ¶ 25–26; Ferich Fee Decl. ¶¶ 24–34. They are some of the most

experienced and successful data breach class action practitioners in the country. Barnow Fee Decl. ¶ 25–26; Ferich Fee Decl. ¶¶ 24–34. This factor supports the fee request. *Microsoft*, 2007-NMCA-007, ¶ 85; *Beasley*, 2024 U.S. Dist. LEXIS 29759, at *18.

viii. Whether the fee is fixed or contingent

Class Counsel undertook this litigation on a contingent basis. Barnow Fee Decl. ¶ 28; Ferich Fee Decl. ¶ 36. Class Counsel advanced all expenses in the litigation and worked without receiving payment for nearly two years since this action’s inception. Barnow Fee Decl. ¶ 32; Ferich Fee Decl. ¶¶ 36, 40. This supports Plaintiffs’ fee request. *See Microsoft*, 2007-NMCA-007, ¶ 86; *Acevedo*, 2019 U.S. Dist. LEXIS 213691, at *15; *Candelaria*, 2020 U.S. Dist. LEXIS 202390, at *20 (D.N.M. Oct. 30, 2020) (“Further, the attorneys’ fees in this case were contingent. This factor weighs in favor of the requested attorneys’ fees award, because “[s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered.” (alterations in original) (citations omitted)); *Beasley*, 2024 U.S. Dist. LEXIS 29759, at *18–19 (“Class counsel additionally took this case on a contingency basis, adding to the risk class counsel incurred by bringing the case.” (internal citation omitted)).

3. A Lodestar Crosscheck Confirms the Fee Request is Reasonable

A lodestar crosscheck further supports the reasonableness of Plaintiffs’ fee request. A lodestar crosscheck “is conducted by dividing the percentage award by Class Counsel’s lodestar. If the resulting multiplier is not unreasonable in comparison with multipliers in other cases, the percentage of recovery is considered reasonable.” *Microsoft*, 2007-NMCA-007, ¶ 62 (internal citation omitted). Class Counsel have amassed a collective lodestar of \$270,597.50 through

March 18, 2024, thus the fee award they seek represents a 1.97 multiplier.⁷ Barnow Fee Decl. ¶ 30; Ferich Fee Decl. ¶ 38; *Microsoft*, 2007-NMCA-007, ¶ 62 (“When used to crosscheck a percentage award, the lodestar is estimated, using information provided by the fee applicant.”). Class Counsel’s lodestar also does not include the time of Mark Fine of the Fine Law Firm, an experienced local practitioner.

The 1.97 multiplier is well in line with multipliers approved by courts in complex class actions. *E.g.*, *Microsoft*, 2007-NMCA-007, ¶ 74 (approving multiplier of 3); *In re Davita Healthcare Partners, Inc. Derivative Litig.*, No. 12-cv-2074-WJM-CBS, 2015 U.S. Dist. LEXIS 74372, at *14–16 (D. Colo. June 5, 2015) (approving a multiplier of three where “Plaintiff has established that the significant risk it assumed by taking this case on contingency warrants compensation”); *Chieftain Royalty Co. v. Xto Energy*, No. CIV-11-29-KEW, 2018 U.S. Dist. LEXIS 225922, at *37 (E.D. Okla. Mar. 27, 2018) (Finding a multiplier of approximately 2.58 was “well within the range of multipliers approved in the Tenth Circuit, and other circuits, when a lodestar cross-check is used.”); *Carter v. Vivendi Ticketing United States LLC*, No. SACV 22-01981-CJC (DFMx), 2023 U.S. Dist. LEXIS 210744, at *23 (C.D. Cal. Oct. 30, 2023) (approving multiplier of 2.3 in a data breach class action); *Campbell v. C.R. Eng., Inc.*, No. 2:13-cv-00262, 2015 U.S. Dist. LEXIS 134235, at *20 n.5 (D. Utah Sept. 30, 2015) (Holding a “multiplier of 2.9 . . . is within a reasonable range.”); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. 2016) (“Counsel’s lodestar yields a 3.07 multiplier, which is well within the range for reasonable multipliers.”).

B. Plaintiffs’ Counsel’s Costs and Expenses are Reasonable and Appropriate

⁷ A summary of timekeeping records for each firm are provided with the Declarations submitted herewith. *See* Barnow Fee Decl. ¶ 30; Ferich Fee Decl. ¶ 38.

Plaintiffs' Counsel are entitled to reimbursement of the expenses they reasonably incurred investigating and prosecuting this matter. *See Microsoft*, 2007-NMCA-007, ¶ 18 (“Under the common fund doctrine, a litigant or a lawyer who recovers, preserves, or increases the value of a common fund, thereby benefitting other persons, may be reimbursed for reasonable fees and expenses from the fund as a whole.”). To date, Plaintiffs' Counsel have collectively incurred \$10,851.07 in unreimbursed litigation costs and expenses. Barnow Fee Decl. ¶ 33; Ferich Fee Decl. ¶ 41; Declaration of Mark Fine, ¶ 4. This amount does not include other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover. The expenses for which Class Counsel seek reimbursement were reasonably necessary for the continued prosecution and resolution of this litigation and were incurred by Class Counsel for the benefit of the class members with no guarantee that they would be reimbursed. They are reasonable in amount and the Court should approve their reimbursement.

C. The Requested Service Awards Should Be Approved

“[C]ourts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case.” *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2018); *see Fager*, 2015 U.S. Dist. LEXIS 190790, at *24 (“Incentive awards are fairly typical in class action cases.”); *also Lane v. Page*, 862 F. Supp. 2d 1182, 1236 (D.N.M. 2012) (“The Courts of Appeals consistently assert that incentive awards for class representatives are justified to give incentive to a class representative to come forward when none are forthcoming, and to compensate a class representative for risks they take and work they perform on behalf of the class.”) (collecting cases).

Efforts supporting incentive awards include “monitoring class counsel, being deposed by opposing counsel, keeping informed of the progress of the litigation, and serving as a client for purposes of approving any proposed settlement with the defendant.” *Chieftain Royalty Co.*, 888 F.3d at 468. Similarly stated, “[i]n deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); accord *UFCW Local 880—Retail Food Emp’rs Joint Pension Fund v. Newmont Mining Corp.*, 352 F. App’x 232, 235 (10th Cir. 2009) (“a class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class”).

Here, Plaintiffs request a Service Award of \$2,000 each in recognition of their contributions to the successful resolution of this litigation. *See* Barnow Fee Decl. ¶ 36; Ferich Fee Decl. ¶ 44. A \$2,000 Service Award is lower than those approved in numerous other data breach settlements. *See, e.g., Beasley*, 2024 U.S. Dist. LEXIS 29759, at *24 (\$2,500 service awards); *Gordon*, 2019 U.S. Dist. LEXIS 215430, at *10 (\$2,500 service awards); *In re Ashley Madison Customer Data Sec. Breach*, No. 4:15-md-02669 (E.D. Mo.) (\$5,000 service awards); *T.A.N. v. PNI Digital Media, Inc.*, No. 2:16-CV-00132 (S.D. Ga.) (\$3,750); *Bray v. Gamestop Corp.*, No. 1:17-cv-01365-JEJ, 2018 U.S. Dist. LEXIS 226221, at *7–8 (D. Del. Dec. 19, 2018) (\$3,750 service awards).

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order: (a) awarding Class Counsel attorneys’ fees and expenses in the amount of \$533,333.33; and (b)

awarding the Class Representatives Service Awards in the amount of \$2,000 each for their efforts and commitment on behalf of the Class.

Dated: March 19, 2024

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Class Counsel

* admitted *pro hac vice*

DECLARATION OF SERVICE

I, Mark Fine declare that I effected service of the following document(s) on the parties listed below via e-mail.

Document(s):

Plaintiffs' Motion for Attorneys' Fees, Expenses, Costs and Service Awards

Parties:

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Counsel for Defendant First Financial Credit Union

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 19th day of March, 2024.

/s/ Mark Fine

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENDA BRISCOE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FIRST FINANCIAL CREDIT UNION,

Defendant.

Case No. D-202-CV-2022-02974

CLASS ACTION

**DECLARATION OF ANDREW W. FERICH IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES, COSTS, AND SERVICE AWARDS**

I, Andrew W. Ferich, hereby declare as follows:

1. I am an attorney admitted to practice law in the commonwealth of Pennsylvania, state of New Jersey, and Washington, D.C. I have been admitted *pro hac vice* to practice before the Court in this case. I am a partner at the law firm of Ahdoot & Wolfson, PC ("AW"), and one of Class Counsel in this litigation. I have personal knowledge of the matters stated in this declaration except those stated on information and belief, and as to those, I believe them to be true. If called upon, I could and would competently testify to them. This declaration is submitted in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.

BACKGROUND AND SETTLEMENT NEGOTIATIONS

2. Prior to commencing this litigation, AW diligently investigated potential legal claims (and potential defenses thereto) arising from FFCU's alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII.

3. AW researched and analyzed voluminous reports, articles, and publicly available information surrounding the Data Incident, including FFCU's corporate structure and potential co-

defendants. AW and our co-counsel at Barnow and Associates, P.C. interviewed and vetted victims and potential class members inquiring about the Data Incident.

4. In all phases of the litigation, my firm and my co-counsel stayed abreast of material developments involving the Data Incident and endeavored to gain an ample understanding of the legal issues underlying Plaintiffs' claims.

5. AW advocated zealously on behalf of the Class Members during the Settlement negotiation process. The Parties began extensive arm's length negotiations concerning a possible settlement of this matter in mid-2022. After extensive pre-mediation negotiations and discussions, on May 25, 2023, the Parties participated in a full-day mediation with Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP.

6. In advance of formal mediation, the Parties discussed their respective positions on the merits of the claims and class certification and provided detailed information to the mediator on the relevant facts and law. The May 25, 2023 mediation session was spirited and hard-fought. Class Counsel and counsel for FFCU aggressively advocated for their respective positions and views during the mediation session. The Parties were unable to reach a resolution at the mediation but continued to engage in settlement negotiations.

7. Following substantial additional arm's length settlement negotiations after the mediation, the Parties ultimately reached agreement on the general terms of the Settlement in early June 2023. During the five months that followed, the Parties exchanged multiple drafts of the Settlement Agreement and its exhibits, and exhaustively negotiated the remaining finer details of the Settlement until November 2023. These negotiations continued to be contested and involved detailed discussions regarding every provision of the Settlement Agreement, ancillary documents, and the plan for Class Notice.

8. Class Counsel solicited bids from several third-party administrators. Ultimately, the Parties agreed to select Epiq Class Action and Claims Solutions, Inc. as the Settlement Administrator.

9. Class Counsel crafted, negotiated, and meticulously refined the final Notice Program and each document comprising the notice, with the assistance of a class action notice expert, to ensure that the information disseminated to Class Members is clear and concise.

10. The information gleaned from an investigation and research into the facts and potential legal claims enabled AW to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with FFCU's Counsel about attending mediation and later settling the matter.

11. AW's and co-counsel's diligence in preparing for mediation, including obtaining information necessary to analyze claims and defenses, allowed us to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan.

12. At all times during settlement discussions, the negotiations were at arm's length. Furthermore, it was always Class Counsel's primary goal to achieve the maximum substantive relief possible for Settlement Class Members.

13. The prompt resolution of data breach class actions is in the best interests of class members because it allows class members to take advantage of settlement benefits and protect their identities moving forward.

14. In negotiating the amounts to be paid under the Settlement, Class Counsel relied upon published reports documenting data breach and identity theft costs, actual costs incurred by Class Members (as relayed in conversations with Class Counsel), information uncovered in

discovery, their own experience in other data breach litigation, and reported settlements in other data breach class actions.

AFTER PRELIMINARY APPROVAL

15. After the Court preliminarily approved the settlement, we continued to work with the Settlement Administrator to supervise dissemination of Notice to Class Members.

16. These efforts included review and drafting of the language and format of the Settlement Website, the script for the automated response to the toll-free number, the language and format of the Notice forms, monitoring for exclusion requests and objections, and ensuring prompt response to every Class Member inquiry (whether by phone or e-mail) regarding the Settlement.

17. My firm and my co-counsel will continue to expend time communicating with Settlement Class Members and seeking final approval of the Settlement.

AHDOOT & WOLFSON'S EFFORTS ON BEHALF OF THE CLASS

18. AW has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, AW and co-counsel diligently investigated potential legal claims (and potential defenses thereto) arising from FFCU's alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

19. AW has performed the following work on behalf of Plaintiffs and Class Members, among other things:

- Investigated the circumstances surrounding the Data Incident;
- Stayed abreast of and analyzed reports, articles, and other public materials discussing the Data Incident and describing FFCU's challenged conduct;
- Communicated with putative Class Members who have contacted AW about the litigation;
- Reviewed public statements from FFCU concerning the Data Incident, including

the contents of the breach notification letter sent to impacted Class members;

- Researched FFCU's corporate structure and potential co-defendants;
- Drafted and filed an initial complaint against FFCU, and served that complaint on FFCU;
- Drafted and filed an opposition to FFCU's motion to dismiss this matter;
- Analyzed information provided by FFCU in pre-mediation discovery; and
- Engaged in a full-day mediation before Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP and continued to engage in arm's-length negotiations through telephone conferences and e-mails, exchanging draft term sheets until the Parties—represented by experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses—were able to reach an agreement in principle for the Settlement.

20. AW has committed appropriate and substantial time and resources to organizing and working collaboratively toward the advancement of the litigation, and will continue to do so. As a result of these efforts, AW developed a clear understanding of the strengths and weaknesses of the claims and defenses in this case and they were well-prepared to evaluate the fairness, reasonableness, and adequacy of the Settlement.

21. AW will continue to work cooperatively, coordinate, and meet and confer with Defendant's counsel in this litigation through final settlement approval.

22. Class Counsel's efficient work allows Settlement Class members to seek compensation for out-of-pocket expenses incurred as a result of the Data Incident immediately. At the same time, the Settlement allows Class Members to take advantage of Credit Monitoring Services and other similar services, which will help mitigate future harms.

23. The equitable, forward-looking relief obtained with respect to FFCU's data security practices also provides substantial non-monetary benefits to Class Members, irrespective of whether they submit a claim under the Settlement.

AHDOOT & WOLFSON'S EXPERIENCE

24. I joined Ahdoot & Wolfson, PC (“AW”) in 2021 as a partner at the age of only 33, and already have extensive experience serving in leadership and support roles in data privacy class action cases and other complex actions. For example, I have been at the forefront of the highly publicized Accellion FTA data breach litigation announced in late 2020 and have zealously prosecuted cases against Accellion and three of its customers that were impacted by this massive breach. In one of the Accellion cases, final approval of the settlement was recently granted, and I was appointed as class counsel. *See Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 115 (granting final approval of nationwide settlement that provides \$5 million non-reversionary fund, and appointing Ferich and his firm as class counsel with co-counsel). In another, preliminary approval was recently granted, and I again was appointed as class counsel. *See Harbour, et al. v. California Health & Wellness Plan, et al.*, No. 5:21-cv-03322-EJD (N.D. Cal.), ECF No. 56 (granting preliminary approval of nationwide health information data breach class action settlement that provides \$10 million non-reversionary common fund, and appointing Ferich and his firm as co-lead class counsel).

25. I was previously appointed as Interim Co-Lead Counsel in this litigation in *Smeltz, et al. v. Logan Health, et al.*, No. A-DV-22-0124 (Montana 8th Judicial District Court, Cascade County Mar. 31, 2022) (Grubich, J.). There, the court has granted final approval of a settlement that includes a \$4.3 million non-reversionary common fund.

26. I was appointed as Class Counsel in *Leitermann et al v. Forefront Dermatology SC, et al.*, No. 1:21-cv-00887-LA (E.D. Wis.) where the Wisconsin federal district court granted final approval of a settlement that included a \$3.75 million non-reversionary common fund.

27. I was recently appointed as co-lead class counsel with the Barnow firm by this Court in a data breach class action settlement against True Health New Mexico. *See McCullough v. True Health New Mexico, Inc.*, No. D-202-CV-2021-06816 (2nd Judicial Dist. Ct., Bernalillo Cty. May 30, 2023) (granting final approval of health information data breach class settlement and appointing AW and the Barnow firm as co-lead class counsel).

28. I was previously appointed as class counsel along with the Barnow firm in *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330 (C.D. Ill.), a payment card data breach that exposed the sensitive payment card information of millions of class members. *Id.*, ECF No. 62, at 3. My efforts on behalf of the class resulted in the creation of an uncapped claims settlement providing cash payments to class members, and Hy-Vee committing at least \$20 million to data security improvements. *Id.*, ECF No. 58, at 4; *see also Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (data breach case where millions of consumers' payment card data was exposed to hackers); *Bray, et al. v. GameStop Corp.*, No. 1:17-cv-01365 (D. Del.) (data breach settlement involving exposure of payment card information through defendant's website).

29. I have also been appointed to leadership positions in other consumer class actions. For example, I was appointed as class counsel in *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.), where I helped obtain a settlement valued at more than \$6.25 million on behalf of owners and lessees of Subaru vehicles with allegedly defective infotainment systems. *See also McFadden v. Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at *3 (W.D. Wash. Sept. 22, 2020) (appointed as co-lead counsel).

30. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class

members in protracted, complex litigation, conferring hundreds of millions of dollars to the victims, and affecting real change in corporate behavior.

31. AW has been on the cutting-edge of privacy litigation since the late 1990s, when its attorneys successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, they were novel and hidden from public scrutiny at the time AW was prosecuting them. Our work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

32. AW has been appointed lead counsel in numerous complex consumer class actions. The following are some examples of recent class actions that AW has litigated to conclusion or are currently litigating on behalf of clients – either as Class Counsel, proposed Class Counsel or members of a Court appointed Plaintiff Steering Committee:

- As co-lead counsel in *In re Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), AW achieved an \$85 million settlement that provides monetary relief to Zoom users who submit a claim for payment and comprehensive injunctive relief which addresses the privacy issues on which Plaintiffs' claims were based. This settlement was finally approved by the Northern District.

- In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google's alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, AW achieved a \$100

million non-reversionary cash settlement, with meaningful prospective relief. This settlement received final approval from the court.

- As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over \$150 million. Under that settlement, each class member was entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

- As a member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-md-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

- In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a \$29 million settlement and robust injunctive relief for the consumer class.

- In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty.) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients impacted by a university medical data breach, achieved a settlement providing two years of credit

monitoring, a \$5,275,000 fund, and robust injunctive relief.

- AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited routinely in briefing on Article III and data breach standing, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Seventh Circuit concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

- Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), I was chosen by Judge Jackson to serve as a member of the Plaintiffs' Steering Committee. AW briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit. Judge Jackson recently issued her preliminary approval of a \$60 million settlement in this Action.

- AW's other ongoing privacy class actions include *In re Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald) (serving as co-lead counsel), *In re Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila) (same), *In re Ambry Genetics Data Breach Litigation*, No. 8:20-cv-791-CJC-KES (C.D. Cal.) (Hon. Cormac J. Carney) (same), and *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

- In addition, AW has served or is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in \$10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) (\$14.5 million nationwide settlement).

33. In sum, I and my firm have led and continue to lead many high-profile privacy cases, including those involving data privacy (e.g., *Zoom, Ring*), data breaches (e.g., *Experian, Premera, Home Depot, OPM, Chipotle, The Kroger Co., Forefront Dermatology*), geo-location tracking (e.g., *Google Location History Litigation*), collection and storing of biometric information (e.g., *Google, Shutterfly, Vimeo*), and TCPA violations (e.g., *Hollister, American Eagle*), as well as many other types of consumer class actions (e.g., *Eck* - \$295 million class settlement against City of Los Angeles for unlawful utility taxes).

34. AW has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. Given AW's proven track record of experience and results, and its specific expertise in data privacy class action litigation, it can more than adequately represent the Settlement Class. A copy of AW's firm resume is attached as Exhibit A.

AHDOOT & WOLFSON'S TIME AND EXPENSES

35. My firm has dedicated a significant amount of time and labor to this case.

36. All of the services performed by our firm were undertaken on a contingent fee basis, and we have not been compensated for any of this work to date. AW's rates are reasonable and

have been approved by courts. Our firm's current hourly rates are as follows: \$1,000/hour¹ for senior partner Robert Ahdoot (senior partner); \$850/hour for Andrew W. Ferich (partner); \$675/hour for Deborah De Villa (senior associate); \$500/hour for Carlynne A. Wagner (former associate); and \$250/hour for Michelle Montecalvo and Heidi Liivamagi (paralegals). These hourly rates are the current usual and customary rates set by my firm for each individual and used in all current litigation matters, as periodically adjusted according to market rates. *See, e.g., Lukens v. Utah Imaging Associates, Inc.*, No. 210906618 (Salt Lake Cnty., Utah Nov. 8, 2023) (approving fee award of \$700,000, which included AW's fees at rates of \$1,050/hour (reduced rate) for Robert Ahdoot, \$850/hour for Andrew W. Ferich, \$675/hour for Deborah De Villa, and \$500/hour for Carlynne Wagner, and \$250/hour for paralegals); *Kesner v. UMass Mem'l Health Care, Inc.*, No. 2185 CV 01210 (Worcester Cnty., Mass. May 25, 2023) (approving AW's fees at rates of \$1,050/hour (reduced rate) for Robert Ahdoot, \$850/hour for Andrew W. Ferich, \$500/hour for junior associate, and \$250/hour for paralegals). The same rates were recently approved by this Court in *McCullough v. True Health New Mexico, Inc.*, No. D-202-cv-2021-06816 (Bernalillo Cnty., Second Judicial District Court) (approving AW's fees at rates of \$1,050/hour (reduced rate) for Robert Ahdoot, \$850/hour for Andrew W. Ferich, \$675/hour for Deborah De Villa, and \$250/hour for paralegal). The rates reflect what would be charged to a fee-paying client in the private legal marketplace for complex litigation. The rates are also in line with the rates charged by other firms that handle complex cases and class actions.

37. The work performed thus far required the efforts of various attorneys at AW. As of March 14, 2024, my firm has expended over 184.3 hours pursuing this matter on behalf of the

¹ Mr. Ahdoot's customary rate of \$1,200 per hour has been reduced for purposes of this litigation and Settlement.

Settlement Class.

38. My firm's total lodestar as of March 14, 2024, is \$143,112.50. A summary of rates and hours expended are as follows:

Attorney	Rate	Hours Expended	Lodestar
Robert Ahdoot (Senior Partner)	\$1,050	27.4	\$28,770.00
Andrew W. Ferich (Partner)	\$850	98.9	\$84,065.00
Deborah De Villa (Senior Associate)	\$675	21.3	\$14,377.50
Carlyne A. Wagner (Former Associate)	\$500	26.9	\$13,450.00
Heidi Liivamagi (Paralegal)	\$250	6.8	\$1,700.00
Michelle Montecalvo (Paralegal)	\$250	3.0	\$750.00
Total		184.3	\$143,112.50

39. In my opinion, all this time was reasonable and necessary for the prosecution of this action and my firm took meaningful steps to ensure the efficiency of our work.

40. In connection with the action, AW also advanced costs and expenses. Because our firm handled this action on a contingent basis, we have not yet received reimbursement for any of these costs and expenses.

41. As of the date of this Declaration, AW has incurred \$4,797.00 in costs and expenses in connection with this action. Below is a table categorizing these expenses.

Category	Amount
Filing/Court Fees	\$275.00
Mediation Fees	\$4,375.00
Attorney Admission/Notarization	\$147.00
Total	\$4,797.00

42. The amount of expenses stated above does not include other additional costs that my firm incurred in this litigation but, in an exercise of discretion, do not seek to recover.

43. Based on my experience prosecuting this action and overseeing the conduct of the litigation, all these expenses were reasonable and incurred in connection with the action.

CLASS REPRESENTATIVES' ROLE IN THE LITIGATION

44. The Class Representatives have played an active and important role in this litigation. Their actions, including communicating with Class Counsel, reviewing and approving documents, approving the terms of the Settlement, and acting on behalf of the Class's interests, were integral to the success of this litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of March 19, 2024, at Radnor, Pennsylvania.

/s/ Andrew W. Ferich
Andrew W. Ferich

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENDA BRISCOE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FIRST FINANCIAL CREDIT UNION,

Defendant.

Case No. D-202-CV-2022-02974

CLASS ACTION

**DECLARATION OF BEN BARNOW IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, COSTS, AND SERVICE AWARDS**

I, Ben Barnow, hereby declare as follows:

1. I am an attorney admitted to practice law in the State of Illinois and the State of New York, and I have been admitted pro hac vice to practice before the Court in this case. I am the President of Barnow and Associates, P.C. ("Barnow and Associates"), and one of Class Counsel in this litigation. I have personal knowledge of the matters stated in this declaration except those stated on information and belief, and as to those, I believe them to be true. If called upon, I could and would competently testify to them. This declaration is submitted in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.

BACKGROUND AND SETTLEMENT NEGOTIATIONS

2. Prior to commencing this litigation, Barnow and Associates diligently investigated potential legal claims (and potential defenses thereto) arising from FFCU's alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII.

3. Barnow and Associates researched and analyzed reports, articles, and publicly available information surrounding the Data Incident, including FFCU's corporate structure and potential co-defendants. Barnow and Associates and our co-counsel at Ahdoot Wolfson interviewed and vetted victims and potential class members inquiring about the Data Incident.

4. In all phases of the litigation, Barnow and Associates stayed abreast of material developments involving the Data Incident and endeavored to gain an ample understanding of the legal issues underlying Plaintiffs' claims.

5. Barnow and Associates advocated zealously on behalf of the Class Members during the Settlement negotiation process. The Parties began to engage in extensive arm's length negotiations concerning a possible settlement of this matter in mid-2022. After extensive pre-mediation negotiations and discussions, on May 25, 2023, the Parties participated in a full-day mediation with Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP.

6. In advance of formal mediation, the Parties discussed their respective positions on the merits of the claims and class certification and provided detailed information to the mediator on the relevant facts and law. The May 25, 2023 mediation session was informed and hard-fought. Class Counsel and counsel for FFCU aggressively advocated for their respective positions and views during the mediation session. The Parties were unable to reach a resolution at the mediation but continued to engage in settlement negotiations.

7. Following substantial additional arm's length settlement negotiations following the mediation, the Parties ultimately reached agreement on the general terms of the Settlement in early June, 2023. During the months that followed, the Parties exchanged drafts of the Settlement Agreement and its exhibits, and negotiated the remaining finer details of the Settlement until November, 2023. These negotiations continued to be contested and involved detailed discussions

regarding many provisions of the Settlement Agreement, related documents, and the plan for Class Notice.

8. Class Counsel solicited bids from several third-party administrators before the Parties agreed to appoint Epiq Class Action and Claims Solutions, Inc. as Settlement Administrator.

9. Class Counsel crafted, negotiated, and refined the final Notice Program and each document comprising the notice, with the assistance of a class action notice expert, to ensure that the information disseminated to Class Members is clear and concise.

10. The information gathered from an investigation and research into the facts and potential legal claims enabled Barnow and Associates to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with FFCU's Counsel about attending mediation and later settling the matter.

11. Barnow and Associates' diligence in preparing for mediation, including obtaining information necessary to analyze claims and defenses, allowed Barnow and Associates to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan.

12. At all times during settlement discussions, the negotiations were at arm's length. Furthermore, it was always Class Counsel's primary goal to achieve the maximum substantive relief possible for Settlement Class Members.

13. The prompt resolution of data breach class actions is in the best interests of class members because it allows class members to take advantage of settlement benefits and protect their identities moving forward.

14. In negotiating the amounts to be paid under the Settlement, Class Counsel relied upon published reports documenting data breach and identity theft costs, information uncovered in discovery, their own experience in other data breach litigation, and reported settlements in other data breach class actions.

AFTER PRELIMINARY APPROVAL

15. After the Court preliminarily approved the settlement, Barnow and Associates continued to work with the Settlement Administrator to supervise dissemination of Notice to Class Members.

16. These efforts included review and drafting of the language and format of the Settlement Website, the script for the automated response to the toll-free number, the language and format of the Notice forms, monitoring for exclusion requests and objections, and ensuring prompt response to every Class Member inquiry (whether by phone or e-mail) regarding the Settlement.

17. Class Counsel and their firms will continue to expend time communicating with Settlement Class Members and seeking final approval of the Settlement.

MY FIRMS' EFFORTS ON BEHALF OF THE CLASS

18. Barnow and Associates has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, Barnow and Associates diligently investigated potential legal claims (and potential defenses thereto) arising from FFCU's alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

19. Barnow and Associates has performed the following work on behalf of Plaintiffs and Class Members, among other things:

- Investigated the circumstances surrounding the Data Incident;
- Stayed abreast of and analyzed reports, articles, and other public materials discussing the Data Incident and describing FFCU's challenged conduct;
- Reviewed public statements from FFCU concerning the Data Incident, including the contents of the breach notification letter sent to impacted Class members;
- Researched FFCU's corporate structure and potential co-defendants;
- Drafted and filed an initial complaint against FFCU, and served that complaint on FFCU;
- Drafted and filed an opposition to FFCU's motion to dismiss this matter;
- Analyzed information provided by FFCU in pre-mediation discovery; and
- Engaged in a full-day mediation before Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP and continued to engage in arm's-length negotiations through telephone conferences and e-mails, exchanging draft term sheets until the Parties—represented by experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses—were able to reach an agreement in principle for the Settlement.

20. Barnow and Associates has committed appropriate and substantial time and resources to organizing and working collaboratively toward the advancement of the litigation, and will continue to do so. As a result of these efforts, Barnow and Associates developed a clear understanding of the strengths and weaknesses of the claims and defenses in this case and they were well-prepared to evaluate the fairness, reasonableness, and adequacy of the Settlement.

21. Barnow and Associates will continue to work cooperatively, coordinate, and meet and confer with Defendant's counsel and Co-Lead Counsel in this litigation through final settlement approval.

22. FFCU adamantly denied liability and maintains that it has numerous meritorious defenses to the claims asserted in this Litigation.

23. Class Counsel's efficient work allows Settlement Class members to seek compensation for out-of-pocket expenses incurred as a result of the Data Incident immediately. At the same time, the Settlement allows Class Members to take advantage of Credit Monitoring Services and other similar services, which will help mitigate future harms.

24. The equitable, forward-looking relief obtained with respect to FFCU's data security practices also provides substantial non-monetary benefits to Class Members, irrespective of whether they submit a claim under the Settlement.

BARNOW AND ASSOCIATES' EXPERIENCE

25. At all times, Barnow and Associates had the experience, expertise, and resources to effectively litigate any and all issues related to this litigation.

26. I am nationally recognized for my experience in leading some of the nation's largest consumer class actions and have been recognized as a Titan of the Plaintiffs Bar.¹ As a court-appointed lead counsel or equivalent designation, I have successfully led over fifty major class actions (including MDLs) where class-wide recoveries were achieved, resulting in benefits valued in excess of five billion dollars being made available to class members. This includes leading noteworthy privacy class actions where class settlements were achieved. A copy of my firm's resume was submitted with Plaintiffs' Motion for Preliminary Approval and is incorporated by reference herein.

TIME AND EXPENSES

27. My firm has dedicated a significant amount of time and labor to this case.

28. All of the services performed by our firm were undertaken on a contingent fee basis,

¹ See Sindhu Sundar, Law360, Titan of the Plaintiffs Bar: Ben Barnow (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow>.

and we have not been compensated for any of this work to date. Barnow and Associates' rates are reasonable and have been approved by courts. Our firm's current hourly rates are as follows: \$1,125/hour for Ben Barnow (President of Barnow and Associates); \$825/hour for Anthony L. Parkhill (partner); \$525/hour for Riley W. Prince (associate); and \$475/hour for Nicholas W. Blue (associate). These hourly rates are the current usual and customary rates set by my firm for each individual and used in all current litigation matters, as periodically adjusted according to market rates. *See, e.g., Lukens v. Utah Imaging Associates, Inc.*, No. 210906618 (Salt Lake Cnty., Utah Nov. 8, 2023) (approving fee award of \$700,000, which included Barnow and Associates' fees at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, \$475/hour for Riley W. Prince, and \$425/hour for Nicholas W. Blue); *Kesner v. UMass Mem'l Health Care, Inc.*, No. 2185 CV 01210 (Worcester Cnty., Mass. May 25, 2023) (approving Barnow and Associates' fees at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, \$475/hour for Riley W. Prince, and \$425/hour for Nicholas W. Blue); *In re BJC Healthcare Data Breach Litigation*, No. 2022-CC09492 (Circuit Court of the City of St. Louis, Missouri Sep. 6, 2022) (approving fee award of \$790,000, which included Barnow and Associates' fees at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, and \$425/hour for Riley W. Prince. The rates reflect what would be charged to a fee-paying client in the private legal marketplace for complex litigation. The rates are also in line with the rates charged by other firms that handle complex cases and class actions.

29. The work performed thus far required the efforts of various attorneys at Barnow and Associates, P.C. As of March 18, 2024, my firm has expended 202.8 hours pursuing this matter on behalf of the Settlement Class.

30. My firm's total lodestar as of March 18, 2024, is \$127,485.00. A summary of rates

and hours expended are as follows:

Attorney	Rate	Hours Expended	Lodestar
Ben Barnow (Partner)	\$1,125	24.6	\$27,675.00
Anthony L. Parkhill (Partner)	\$825	47.8	\$39,435.00
Riley W. Prince (Associate)	\$525	64.6	\$33,915.00
Nicholas W. Blue (Associate)	\$300/\$475 ²	65.8	\$26,460.00
Total		202.8	\$127,485.00

31. In my opinion, this time was reasonable and necessary for the prosecution of this action and my firm took meaningful steps to ensure the efficiency of its work.

32. In connection with the action, Barnow and Associates also advanced costs and expenses. Because our firm handled this action on a contingent basis, we have not received reimbursement for any of these costs and expenses.

33. As of the date of this Declaration, Barnow and Associates has incurred \$5,479.42 in costs and expenses in connection with this action. Below is a table categorizing these expenses.

Category	Amount
Attorney Admission Fees	\$1,000.00
Mediation Fees	\$4,375.00
Legal Research	\$91.97
Postage	\$12.45
Total	\$5,479.42

34. The amount of expenses stated above does not include internal and other additional costs that my firm incurred in this litigation but, in an exercise of discretion, do not seek to recover.

35. Based on my experience prosecuting this action and overseeing the conduct of the litigation, all of these expenses were reasonable and incurred in connection with the action.

² Nicholas Blue worked at Barnow and Associates, P.C. prior to being admitted to the Illinois State Bar. The lesser rates reflect his rate after taking the bar exam, but prior to being admitted to the bar.

Class Representatives' Role

36. The Class Representatives, Brenda Briscoe and Roberta Keast, have played an active an important role in this litigation since its inception. Barnow and Associates has been in contact with the Class Representatives throughout the litigation, including settlement negotiations. The Class Representatives' actions, including communicating with Class Counsel, reviewing and approving documents, approving the terms of the Settlement, and acting on behalf of the Class's interests, were integral to the success of this litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of March, 2024, at Chicago, Illinois.

/s/ Ben Barnow
Ben Barnow

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENDA BRISCOE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FIRST FINANCIAL CREDIT UNION,

Defendant.

Case No. D-202-CV-2022-02974

CLASS ACTION

**DECLARATION OF MARK FINE IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, COSTS, AND SERVICE AWARDS**

I, Mark Fine, hereby declare as follows:

1. I am an attorney admitted to practice law in the State of New Mexico. I am a partner at the Fine Law Firm, and one of Plaintiffs' Counsel in this litigation. I have personal knowledge of the matters stated in this declaration except those stated on information and belief, and as to those, I believe them to be true. If called upon, I could and would competently testify to them. This declaration is submitted in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.

COSTS AND EXPENSES

2. My firm has served as local counsel in this matter and has facilitated filings with the Court and provided other services on behalf of the Settlement Class.

3. In connection with the action, the Fine Law Firm advanced costs and expenses. We have not yet received reimbursement for any of these costs and expenses.

4. As of the date of this Declaration, the Fine Law Firm has incurred \$577.65 in costs and expenses in connection with this action. Below is a table categorizing these expenses.

Category	Amount
Filing Fees	\$523.72
Service	\$53.93
Total	\$577.65

5. The amount of costs and expenses stated above does not include internal and other additional costs that my firm incurred in this litigation but, in an exercise of discretion, do not seek to recover.

6. Based on my experience prosecuting this action, all of these costs and expenses were reasonable and incurred in connection with the action.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of March, 2024, at Albuquerque, New Mexico.

/s/ Mark Fine _____
Mark Fine