

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

CODY KENNEY and MELISSA SKINNER,  
individually and on behalf of all similarly  
situated persons,

Plaintiffs,

v.

CENTERSTONE OF AMERICA, INC.,  
CENTERSTONE OF INDIANA, INC., and  
CENTERSTONE OF TENNESSEE, INC.,

Defendants.

Case No. 3:20-cv-01007

JUDGE ELI J. RICHARDSON

MAGISTRATE JUDGE  
BARBARA D. HOLMES

**PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS  
AND MEMORANDUM IN SUPPORT**

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Plaintiffs Cody Kenney and Melissa Skinner (“Plaintiffs”) submit this Motion for Attorneys’ Fees, Costs, and Service Awards and Memorandum in Support.

## **I. INTRODUCTION**

On May 7, 2021, this Court preliminarily approved a proposed Class Action Settlement between Plaintiffs Cody Kenney and Melissa Skinner (“Plaintiffs”) and Centerstone of America, Inc., Centerstone of Indiana, Inc., and Centerstone of Tennessee, Inc.’s (“Centerstone” or “Defendants”). *See* Prelim. Approval Order, ECF No. 35. Class Counsel’s efforts created a Settlement Fund of \$1,500,000 to cover: (1) up to \$3,000 per Settlement Class Member in reimbursements for ordinary expenses, extraordinary expenses, and lost time related to the Data Incident; and (2) up to two years of Identity Theft Monitoring Services; and (3) all Court-approved attorneys’ fees, costs, and Plaintiffs’ Service Awards. In addition to the benefits described above, the Settlement Agreement provides that Centerstone is to implement equitable relief for Settlement Class Members in the form of data security enhancements designed to better protect Settlement Class Members’ data in the future.

Class Counsel have zealously prosecuted Plaintiffs’ claims, achieving the Settlement Agreement only after extensive investigation, negotiations, and an all-day mediation with respected JAMS mediator Judge Wayne Andersen (Ret.). Even after the mediation, Class Counsel worked for weeks to finalize the Settlement Agreement and associated exhibits pertaining to Notice, Preliminary Approval, and Final Approval.

As compensation for the substantial benefit conferred upon the Settlement Class, Class Counsel respectfully move the Court for a combined award of attorneys’ fees and costs totaling \$410,000 (27 and 1/3% of the Settlement Fund). The Sixth Circuit has expressly and repeatedly approved fees based on the benefit provided to the Class, and routinely approves fees greater than



those requested here. Plaintiffs' Motion should be granted because the request is reasonable and appropriate in light of consideration of the *Ramey* factors: the value of the benefit achieved; society's interest in rewarding attorneys who produce such benefits in order to maintain an incentive to others; the contingent nature of the case; the value of the services provided; the complexity of data breach litigation; and the professional standing and skill of counsel weigh in favor of approving the requested fee. Moreover, the \$7,338.76 in costs included within the requested award of \$410,000 are reasonable, were necessary to litigation, and are the types of costs usually charged to paying clients. Class Counsel also respectfully moves the Court for an award of \$2,500 to each of the two Plaintiffs for their work on behalf of the Class. The amount of requested fees, costs, and Service Awards were clearly delineated in Notice to the Class, and no Class Member has objected.<sup>1</sup>

## **II. CASE SUMMARY<sup>2</sup>**

### **a. Initial Investigation and Communications**

Centerstone is a healthcare services provider offering a range of mental health, substance use disorder treatment, pharmaceutical, and social services throughout Tennessee and other States, including Illinois, Indiana, Kentucky, and Florida. *See* Decl. of David K. Lietz in Supp. of Pls.' Mot. for Prelim. Approval ¶ 13.a, ECF No. 32-2 ("Lietz MPA Decl."). In the ordinary course of receiving treatment and health care services from Centerstone, patients are required to provide sensitive personal and private information such as: dates of birth; Social Security numbers; driver's

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<sup>1</sup> While Plaintiffs here move for attorneys' fees, costs, and Service Awards, they will move for Final Approval of the Settlement by separate motion, which will be filed prior to the Final Fairness Hearing, and in accordance with the Court's Order granting Preliminary Approval. ECF No. 35.

<sup>2</sup> Sections II and parts of Section III been largely adopted from the Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, filed April 30, 2021 at ECF No. 32-1.

license numbers; financial account information; payment card information; information relating to individual medical history; insurance information and coverage; information concerning an individual's doctor, nurse or other medical providers; photo identification; employer information; and other information that may be deemed necessary to provide care. *Id.* ¶ 13.b.

Plaintiffs allege the Data Breach, which occurred between December 12 and December 16, 2019, occurred when unauthorized person(s) accessed email accounts of certain Centerstone employees. *Id.* ¶ 13.c–d. The email accounts accessed by the Data Breach included information such as: names, dates of birth, Social Security numbers, drivers' license or identification card numbers, medical diagnosis or treatment information, Medicaid and/or Medicare information, and/or health insurance information. *Id.* ¶ 13.e. The compromised email accounts are thought to have contained messages and email attachments that included the Private Information of approximately 66,000 patients, including Plaintiffs' Private Information. *Id.* ¶ 14.

**b. Procedural Posture**

As a result of the Data Breach, Plaintiffs filed their initial Complaint on November 20, 2020, bringing causes of action for: (1) Negligence; (2) Negligence *Per Se*; (3) Breach of Implied Contract in Fact; (4) Violations of the Tennessee Consumer Protection Act; (5) Intrusion Upon Seclusion / Invasion of Privacy; and (6) Unjust Enrichment. *Id.* ¶ 15.

Soon after, the Parties began discussing the potential for early Settlement after an exchange of information necessary to evaluate the strengths and weaknesses of Plaintiffs' claims and Centerstone's defenses. *Id.* ¶ 16. The Parties initially agreed to mediation with Judge Jay Gandhi (Ret.) of JAMS in late February 2021, and to conserve judicial and Party resources, filed a Joint Motion to Reset the Initial Case Management Conference until after the mediation had been completed. *Id.* ¶ 17. Although the mediation with Judge Gandhi was cancelled due to unforeseen

administrative conflicts, the Parties rescheduled a mediation with Judge Wayne Andersen (Ret.) of JAMS, and filed a second Joint Motion to Reset the Initial Case Management Conference until after the mediation had been completed. *Id.* ¶¶ 18–19.

**c. History of Negotiations**

To facilitate their negotiations, the Parties agreed to mediate Plaintiffs’ claims with Hon. Wayne Andersen (Ret.) of JAMS. Judge Andersen is an experienced mediator with significant experience in settling privacy and data breach cases. *Id.* ¶ 21. In advance of mediation, Centerstone provided informal discovery related to the merits of Plaintiffs’ claims and class certification, and the Parties discussed their respective positions on the merits of the claims and class certification. *Id.* ¶ 22. This informal exchange of information, combined with Plaintiffs’ individual research and the relevant experience of Class Counsel, allowed counsel to fully evaluate the strengths and weaknesses of Plaintiffs’ case, and to conduct informed settlement negotiations. *Id.* ¶ 23.

On March 12, 2021, the Parties attended a full-day mediation via Zoom Video Conference with Judge Wayne Andersen (Ret.). *Id.* ¶ 24. After a full day of arm’s-length negotiations, and with the assistance of Judge Andersen, the Parties agreed to a memorandum of understanding describing the essential terms of the Settlement Agreement. *Id.* ¶ 25. On March 19, 2021, the Parties filed a Joint Notice of Settlement and Motion to Vacate all Deadlines, informing the Court that a Settlement had been reached and that the Parties would file the Final Agreement and Motion for Preliminary Approval no later than April 30, 2021. *Id.* ¶ 26. Over the next six weeks or so, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notice forms, and agreed upon a Claims Administrator. *Id.* ¶ 27.

Despite the grounds that exist for each of Plaintiffs’ claims, which Centerstone denies, no claims are certain to resolve in Plaintiffs’ favor on the merits. Further litigation would subject

Plaintiffs to numerous risks, including the risk that they and the other Class Members get no recovery at all. The Settlement provides significant relief to Members of the Class and Plaintiffs strongly believe that it is favorable for the Settlement Class, fair, reasonable, adequate, and worthy of Preliminary Approval. *Id.* ¶ 9.

### **III. SUMMARY OF SETTLEMENT**

#### **a. Settlement Class**

The Settlement Class includes all individuals who were mailed a notification by or on behalf of Centerstone on or about October 22, 2020 regarding the Data Breach. *Id.* ¶ 29. The Class consists of 63,490 individuals.

#### **b. Settlement Benefits**

The Settlement negotiated on behalf of the Class provides for three separate forms of relief. *Id.* ¶ 28. First, Centerstone will provide direct monetary relief to Class Members for reimbursement of actual ordinary and extraordinary expenses stemming from the Data Breach. *Id.* Second, Centerstone will provide Identity Theft Monitoring Services for up to two years for Settlement Class Members who sign up for the services. *Id.* Further, Centerstone will provide equitable relief in the form of information security enhancements that have been implemented since 2020, and that will continue to be implemented through 2022. *Id.*

The payments available to Settlement Class Members are divided into two separate categories. *Id.* ¶ 30. The first category is to provide expense reimbursement for out-of-pocket expenses up to \$500 per Class Member, incurred as a result of the Data Breach including: bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; fees for credit reports, credit monitoring, or other identity theft insurance product purchased between

October 22, 2020 and the date of the Preliminary Approval Order; up to four hours of documented lost time spent dealing with the Data Breach, *e.g.*, time spent dealing with replacement card issues, reversing fraudulent charges, rescheduling medical appointments and/or finding alternative medical care and treatment, retaking or submitting to medical tests, locating medical records, retracing medical history, and any other demonstrable form of disruption to medical care and treatment (calculated at the rate of \$15 per hour). *Id.* ¶ 30.a. The second category of payments to Class Members is for reimbursement of more extraordinary expenses up to \$2,500 per Class Member for monetary out-of-pocket losses claimed to have occurred as a result of Data Breach, incurred between December 12, 2019 and the end of the Claims Period. *Id.* ¶ 30.b.

The Settlement also provides for Identity Theft Monitoring Services to be offered to Settlement Class Members. *Id.* ¶ 31. Class Members who did not opt-in to the credit monitoring services offered by Centerstone in connection with the notice sent by or on behalf of Centerstone are eligible to claim two years of credit monitoring. *Id.* Class Members who elected to receive the initial year of monitoring offered by Centerstone are eligible to claim an additional year through the Settlement. *Id.* The Identity Theft Monitoring Services will include: (i) real time monitoring of the credit file at all three bureaus; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) comprehensive public record monitoring; (iv) medical identity monitoring; (v) identity theft insurance (no deductible); and (vi) access to fraud resolution agents to help investigate and resolve identity thefts. *Id.*

The additional equitable relief—provided for in the form of information security enhancements—will include third party security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, and equipment upgrades designed to better protect Plaintiffs’ and Class Members’ private information and personal health information

in the future. *Id.* ¶ 32. Centerstone began making these enhancements in 2020, and will continue to implement them through 2021 and 2022. *Id.* Such improvements in similar cases have cost defendants hundreds of thousands of dollars. *See* Decl. of David K. Lietz in Supp. of Pls.’ Mot. for Fees, Costs, & Service Awards ¶ 6 (“Lietz Fees Decl.”), filed herewith.

The Settlement Benefits (excluding the equitable relief) are subject to the Settlement Cap of \$1,500,000, which includes payments for claims made, cost of Identity Theft Monitoring Services, Settlement Administration costs, Service Awards to the Named Plaintiffs, and attorneys’ fees and costs. Lietz MPA Decl. ¶ 33.

The Settlement Benefits are provided in exchange for a release of claims reasonably related to the Data Breach. *Id.* ¶ 34.

**c. The Notice and Claims Process**

After reviewing bids from multiple providers, the Parties agreed to use KCC as the Notice Specialist and Settlement Administrator in this case. *Id.* ¶ 35. The Notice and Claim Forms negotiated by the Parties and approved by the Court are clear and concise, and inform Settlement Class Members of their rights and options under the Settlement, including detailed instructions on how to make a claim, object to the Settlement, or opt-out of the Settlement. *Id.* ¶ 36, Exs. A, B, C, and D. The Court-approved upon Notice Plan called for direct and individual Notice to be provided to Settlement Class Members via email or mail to the email address or postal address provided when the Settlement Class Members conducted transactions with Centerstone. *Id.* ¶ 37. The Claims Administrator will also establish a dedicated Settlement Website, <http://www.centerstonesettleme nt.com>. *Id.* ¶ 41. Settlement Class Members can submit Claim Forms through the Settlement Website. *Id.* The Claims Administrator also made a toll-free help line available to provide Settlement Class Members with additional information about the Settlement. *Id.* ¶ 42.

Notice in this case has been provided as agreed upon and as approved by the Court's Preliminary Approval Order and will be reported on more extensively in Plaintiffs' Motion for Final Approval of Class Action Settlement. Lietz Fees Decl. ¶ 17. As of July 6, 2021, the Settlement Administrator reports having received four requests for exclusion. *Id.* ¶ 19. As of the same date, neither the Administrator nor Class Counsel had received any objections to the Settlement or to the proposed request for fees, costs, and Service Awards. *Id.* ¶ 20.

**d. Fees, Costs, and Service Awards**

The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or Service Awards to Plaintiffs until after the substantive terms of the Settlement had been agreed upon, other than that Centerstone would pay reasonable attorneys' fees, costs, expenses, and Service Awards to the Representative Plaintiffs as may be agreed to by Centerstone and Proposed Class Counsel and/or as ordered by the Court. Lietz MPA Decl. ¶ 50.

The Settlement Agreement calls for a reasonable Service Award to Plaintiffs in the amount of \$2,500 per Plaintiff. Lietz Fees Decl. ¶ 7. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Class, which include maintaining contact with counsel, participating in client interviews, providing relevant documents, assisting in the investigation of the case, remaining available for consultation throughout mediation, reviewing relevant pleadings and the Settlement Agreement, and for answering counsel's many questions. *Id.* ¶ 8.

The Settlement provides that Plaintiffs may seek approval of a payment of attorneys' fees and costs combined not to exceed \$410,000. Lietz MPA Decl. ¶ 51. The agreed upon fees and costs represent 27 and 1/3% of the Settlement Fund. *Id.* This calculation is based on the \$1,500,000 Settlement Fund, and does not include the value of the enhancements Centerstone has been making and will continue to make to its information security systems. Lietz Fees Decl. ¶ 6. Similar

improvements have costs defendants in other data breach cases hundreds of thousands of dollars. *Id.* Thus, the requested fee represents an even smaller percentage of the total benefit negotiated on behalf of the Settlement Class.

Also, any approved fees will be split, not only by the designated Class Counsel in this case, but with local counsel and with counsel representing Plaintiffs in other cases and potential cases pertaining to the Data Incident at issue here. At least one other lawsuit was actually filed arising out of this data breach incident, and two more were on the cusp of filing when the parties went to mediation. Lietz Fees Decl. ¶ 9 The cumulative exposure from multiple lawsuits was a factor in the settlement negotiations. *Id.* All such attorneys have helped drive this case to resolution on behalf of Named Plaintiffs and the Settlement Class. *Id.* Also, all the Plaintiffs' attorneys involved with filing or preparing to file those lawsuits will share in the attorneys' fees requested here.

Class Counsel's fees were not guaranteed—the retainer agreement counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. Lietz Fees Decl. ¶ 11–16. As for costs, due to the early stage of litigation at which Plaintiffs were able to reach Settlement, costs incurred by Plaintiffs are low. *Id.* ¶ 17. Plaintiffs' current costs are \$7,338.76, and include filing fees, service fees, and costs of mediation. *Id.* These costs are reasonable and were necessary for and incidental to the litigation. *Id.*

#### **IV. LEGAL DISCUSSION**

**a. Class Counsel's Request for Attorneys' Fees are Reasonable and Should be Approved.**

*1. This Court should apply the percent of fund method.*

In the Sixth Circuit, the only requirement is that “awards of attorney’s fees by federal courts in common fund cases be reasonable under the circumstances.” *Rawlings v. Prudential Bache*



*Props., Inc.*, 9 F.3d 513, 517 (6th Cir. 1993) (citing *Smillie v. Park Chem. Co.*, 710 F.2d 271, 275 (6th Cir. 1983)). The district court has a duty to individual class members to ensure that the requested fee is reasonable, but that it does not engender a second major litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

While courts historically utilize two main approaches to analyzing a request for attorneys' fees—the lodestar approach and the percent-of-benefit approach—the Sixth Circuit has increasingly favored the utilization of the percent-of-benefit approach in common fund cases. *Hosp. Auth. of Metro. Gov't of Nashville v. Momenta Pharms., Inc.*, No. 3:15-CV-01100, 2020 WL 3053468, at \*1 (M.D. Tenn. May 29, 2020) (affirming the use of the percent-of-benefit method in assessing attorneys' fees in a common fund case); *In re Se. Milk Antitrust Litig.*, No. 07-208, 2013 WL 2155387, at \*2 (E.D. Tenn. May 17, 2013) (finding the percentage of the fund approach appropriate where “a substantial common fund has been established for the benefit of class members through the efforts of class counsel”); *Bowling v. Pfizer*, 922 F. Supp. 1261, 1278–79 (S.D. Ohio 1996), *aff'd*, 102 F.3d 777 (6th Cir. 1996) (citations omitted) (noting that the preferred method in common fund cases has been to award a reasonable percentage of the fund); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (same); *Newberg on Class Actions* § 12.55 (noting recent criticisms of the lodestar method of computing fees).

The percent-of-benefit approach is consistent with the private marketplace where contingent fee attorneys are routinely compensated on a percentage of recovery method. *Manners v. Am. Gen. Life Ins. Co.*, No. Civ.A. 3-98-0266, 1999 WL 33581944, at \*29 (M.D. Tenn. Aug. 11, 1999). Further, the percent-of-benefit approach best aligns the interests of class counsel with that of the class, providing “a strong incentive to plaintiffs' counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances.” *Id.* (citing *In re Cont'l Ill. Sec.*

*Litig.*, 962 F.2d. 566, 572 (7th Cir. 1992)); *Duhaime v. John Hancock Mut. Life. Ins. Co.*, 989 F. Supp. 375, 377 (D. Mass. 1997) (noting that the advantage of the percentage method is that it focuses on result, rather than process, which better approximates the workings of the marketplace) (internal quotations omitted). Quoting the Seventh Circuit, this Court has reflected,

The contingent fee uses private incentives . . . to align the interests of lawyer and client . . . . At the same time as it automatically aligns interests of lawyer and client, rewards exceptional success, and penalizes failure, the contingent fee automatically handles compensation for the uncertainty of litigation.

*Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at \*29 (quoting *Kirchoff v. Flynn*, 786 F.2d 320, 325–26 (7th Cir. 1986)). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are “unjustly enriched” at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478. And finally, the percentage approach reduces the burden on the Court to review and calculate individual attorney hours and rates and expedites getting the appropriate relief to class members. *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at \*29 (citing *In re Cont’l Ill. Sec. Litig.*, 962 F. 2d at 572).

2. *The fees requested by Class Counsel are well within the range of fees approved by Sixth Circuit Court and have not been objected to by the Class.*
  - i. Attorneys’ fees should be awarded based on the entire Fund available to the Class.

Plaintiffs respectfully submit that it “would not be appropriate for Class Counsel to receive a lower award because Settlement Class Members choose not to claim funds that are easily available to them.” *Manjunath A. Gokare, P.C. v. Fed. Express Corp.*, No. 2:11-CV-2131-JTF-CGC, 2013 WL 12094887, at \*6 (W.D. Tenn. Nov. 22, 2013). “In calculating a percentage fee award in a class action involving a settlement fund, the Supreme Court has recognized ‘that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole,’ even if part of the

fund reverts to the defendant.” *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, 333 F.R.D. 364, 386 (E.D. Pa. 2019) (quoting *Van Gemert*, 444 U.S. at 478); *see also id.* at 480 (the class members’ “right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel”); *Drazen v. Godaddy.com, LLC*, No. 1:19-00563-KD-B, 2020 WL 8254868, at \*12 (S.D. Ala. Dec. 23, 2020) (citing *In re Sunbeam Secs. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (in turn, citing *Van Gemert*, 444 U.S. at 478)).

Pursuant to the Supreme Court’s reasoning in *Van Gemert*, numerous courts have recognized that “[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as whole.” *Sunbeam*, 176 F. Supp. 2d at 1333. The common benefit doctrine is applied the same way to claims made settlements and is not limited by the number of individuals that ultimate claim. *See Poertner v. Gillette Co.*, 618 F. App’x 624, 628 n.2 (11th Cir. 2015) (“properly understood a claims-made settlement is . . . the functional equivalent of a common fund settlement where the unclaimed funds revert to the defendant; indeed, the two types of settlements are fully synonymous.”) (internal citations omitted).<sup>3</sup>

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<sup>3</sup> *See also Manjunath A. Gokare, P.C. v. Fed. Express Corp.*, 2013 WL 12094887, at \*6 (cited above); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007) (“The entire [f]und, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not.”); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1297–98 (11th Cir. 1999) (rejecting argument that fees should be paid solely based on actual payout and stating, “even if we were to accept defendants’ argument about the amount on which attorneys’ fees should be based, the reversionary nature of the settlement necessarily would mean that 90% of the reduction in attorneys’ fees would accrue to the benefit of the defendant[.]”); *Wilson v. EverBank*, No. 14-CIV-22264-BLOOM/VALLE, 2016 U.S. Dist. LEXIS 15751, at \*59–60 (S.D. Fla. Feb. 3, 2016) (“Where, as here, a claims-made process is a reasonable method for providing prompt and substantial relief to the class, requiring class members to file claim forms also maximizes the relief available to class members who opt to submit a claim. A settlement’s fairness is judged by the opportunity created for the class members, not by how many submit claims.”) (emphasis in *Wilson*) (quoting *Hamilton v. SunTrust Mortg. Inc.*, No. 12-60749-CIV, 2014 WL 5419507, at \*7 (S.D. Fla.

As explained in the above cases, awarding fees based on the amount claimed (1) encourages unnecessary litigation that taxes the court system and wastes judicial resources, (2) can result in class members receiving nothing if a matter is dismissed, and (3) can result in a windfall to defendants, thus reducing the deterrent effect of the settlement on future would-be violators. Awarding attorneys' fees based on the total fund made available to the Class however—as opposed to the total amount claimed from the available fund—is appropriate. *See Van Gemert*, 444 U.S. at 477 (1980). This is particularly the case where, as here, Plaintiffs submit that the Settlement Agreement's attorneys' fees provision—based on the total made available to the Class—is consistent with how attorneys' fees are paid in other class settlements and should be approved.

- ii. Fees and expenses combined totaling 27 and 1/3% of the Settlement Fund are widely accepted by Sixth Circuit Courts.

Courts throughout the Sixth Circuit have approved attorneys' fees ranging from 20% to 50% of settlement funds. *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at \*29 (collecting cases). Class Counsel here request an award of \$410,000—27 and 1/3% of the total benefit available to Settlement Class Members, not including the considerable value of the equitable relief

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Oct. 24, 2014)); *Park v. FDM Grp., Inc.*, No. 16-CV-1520 (LTS)(SN), 2021 U.S. Dist. LEXIS 12819, at \*4 (S.D.N.Y. Jan. 22, 2021) (finding percentage of the fund made available was appropriate); *Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at \*15 (M.D. Fla. Apr. 23, 2020) (noting that the percentage of the fund analysis applies to claims made settlements and that the “percentage applies to the total fund created, even where the actual payout following the claims process is lower.”); *Marty v. Anheuser-Busch Cos., LLC*, No. 13-cv-23656-JJO, 2015 U.S. Dist. LEXIS 144290, at \*5 (S.D. Fla. Oct. 22, 2015) (same); *Park v. FDM Grp., Inc.*, No. 16-CV-1520 (LTS)(SN), 2021 U.S. Dist. LEXIS 12819, at \*4 (S.D.N.Y. Jan. 22, 2021); *Zink v. First Niagara Bank, N.A.*, No. 13-CV-01076-JJM, 2016 U.S. Dist. LEXIS 179900, at \*21 (W.D.N.Y. Dec. 29, 2016) (approving 25% fee request of total fund made available in claims made settlement and discussing issue); *DeAngelis v. Corzine*, No. 1:11-cv-07866, 2017 U.S. Dist. LEXIS 18033, at \*55 (S.D.N.Y. Feb. 2, 2017) (same); *Hamilton v. SunTrust Mortg. Inc.*, 2014 WL 5419507, at \*7 (attorneys representing a class action are entitled to an attorneys' fee based solely upon the total benefits obtained in or provided by a class settlement); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) (noting that in a claims made situation, the attorneys' fees in a class action are determined based upon the total fund, not just the actual payout to the class); *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 766–67 (11th Cir. 2017) (same).

provided. This request is inherently reasonable. *See Hosp. Auth.*, 2020 WL 3053468 (awarding one-third fee); *Schuh v. HCA Holdings, Inc.*, No. 3:11-CV-01033, 2016 WL 10570957, at \*1 (M.D. Tenn. Apr. 14, 2016) (awarding 30% fee); *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, No. 3:09-CV-00882-WJH, 2015 WL 13647397, at \*1 (M.D. Tenn. Jan. 16, 2015) (awarding 29% fee); *Fitzgerald v. P.L. Mktg., Inc.*, No. 2:17-cv-02251, 2020 WL 3621250 (W.D. Tenn. July 2, 2020) (approving fees equal to 33 1/3% of the \$1,575,000 settlement fund); *In re Se. Milk Antitrust Litig.*, No. 2:07-cv-208, 2012 WL 12875983, at \*2 (E.D. Tenn. July 11, 2012) (collecting cases and noting that a 33.33 percent attorney's fee “is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit”); *Gokare v. Fed. Express Corp.*, No. 2:11-cv-2131, 2013 WL 12094887, at \*4 (W.D. Tenn. Nov. 22, 2013) (collecting cases in which courts in this Circuit have approved attorney's fee awards in common fund cases ranging from 30% to 33% of the total fund).

- iii. The reasonableness of the requested fee is underscored by the fact that no Settlement Class Member has objected.

As of July 6, 2021, only four Settlement Class Members have opted out of the Settlement, and *zero have objected*. Lietz Fees Decl. ¶¶ 19–20. The lack of objection and low exclusion rate further support granting Plaintiff's request for fees.

3. *The fees requested by Class Counsel satisfy Sixth Circuit criteria.*

In examining fees requests, Sixth Circuit Courts consider six separate factors set forth in *Ramey v. Cincinnati Enquirer, Inc.*, including: (1) the value of the benefit conferred upon the class; (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (3) whether the services were undertaken on a contingent fee basis; (4) the value of the services on an hourly basis; (5) the complexity of the litigation; and (6) the professional standing and skill of all counsel. 508 F.2d 1188, 1196 (6th Cir. 1974), *cert. denied*,

422 U.S. 1048 (1975); accord *Moulton v. U.S. Steel Corp.*, 581 F. 3d 344, 352 (6th Cir. 2009); *In re Rio Hair Naturalizer Prods. Liab. Litig.*, MDL No. 1055, 1996 WL 780512, at \*17 (E.D. Mich. Dec. 20, 1996). The *Ramey* factors weigh in favor of granting approval of Plaintiffs' request here.

i. The value conferred on the Class is substantial.

The first of the *Ramey* factors is the most critical. *Hensley v. Eckerhart*, 461 U.S. at 436 (“the most critical factor is the degree of success obtained”). Class Counsel here have been successful in negotiating a significant benefit for Settlement Class Members. First, Settlement Class Members who make a valid claim will be able to collect up to \$500 in reimbursements for ordinary out-of-pocket expenses, including for up to four hours of lost time dealing with the potential impacts of the Data Incident paid at \$15 per hour. Lietz MPA Decl. ¶ 30. Valid claimants are also permitted to claim reimbursement for extraordinary expenses likely to have resulted from the Data Incident up to \$2,500 per person. *Id.* Even further, the Settlement provides for credit monitoring services to be provided to any Settlement Class Member who claims them—for up to 24 months. *Id.* ¶ 31. The credit monitoring and identity theft protection services offered include real time monitoring of credit files at all three bureaus, dark web scanning with immediate notification of potential unauthorized use, comprehensive public record monitoring, medical identity monitoring, identity theft insurance with no deductible, and access to fraud resolution agents to help investigate and resolve any identity thefts. *Id.* And finally, as part of the Settlement, Centerstone has agreed to take remedial measures in the form of data security enhancements that include third party security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, and equipment upgrades. *Id.* ¶ 32. These improvements will help to ensure that Settlement Class Members PII and PHI is better protected in the future. *Id.* The total value of the Settlement, *not* including the value of the data security enhancements, is

\$1,500,000. *Id.* ¶ 33. Thus, the benefit provided for Settlement Class Members is a substantial one, and this factor weighs in favor of approval of the requested fees.

- ii. Attorneys who produce benefits for a Class should be compensated for their efforts.

Courts have long acknowledged the role of class actions in the public interest. *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at \*30. As the Supreme Court has recognized, without a class action, small claimants individually lack the economic resources to vigorously litigate their rights. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 161 (1974). “Thus, attorneys who take on class action matters enabling litigants to pool their claims provide a huge service to the judicial process.” *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at \*30 (citing *In re Rio Hair Naturalizer Prods. Liab. Litig.*, 1996 WL 780512, at \*17). Because without the efforts of Class Counsel, the Plaintiffs and Settlement Class Members would receive no opportunity for relief at all, this factor weighs in favor of granting the fee request.

- iii. Class Counsel was retained on a contingent basis.

Class counsel took this case on a purely contingent basis. Lietz Fees Decl. ¶ 11. The matter required Class Counsel, and other attorneys at Class Counsel’s firm, to spend time on litigation that could have been spent on other matters. *Id.* ¶ 12. At various times during litigation, the time contributed was substantial, especially considering the firm is small and consists of only four attorneys. *Id.* As the District Court of the Middle District of Tennessee has found, “[t]he risk of loss in any litigation is quite real.” *Manners*, 1999 WL 33581944, at \*30. Like counsel in *Manners*, Class Counsel here took on real risk that demonstrated their commitment to obtaining valuable relief on behalf of the class. *See, id.* As such, this factor weighs in favor of approval.

iv. The value of the services provided by Class Counsel is great.

Due in large part to the vast experience Class Counsel has in litigating class actions generally and data breach matters in particular, this Settlement in this case was negotiated at an early stage in the litigation—preserving costs and serving to provide real relief to Class Members in an expedient manner. And, despite the early stage at which this case reached Settlement, the relief provided for exceeds that given Final Approval in similar data breach cases by courts across the country. *See, e.g., Mowery v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SPC (E.D. Mo. Dec. 22, 2020) (providing up to \$280 in value to Settlement Class Members in the form of: reimbursement up to \$180 of out of pocket expenses and time spent dealing with the data breach; credit monitoring services valued at \$100; and equitable relief in the form of data security enhancements); *Baksh v. IvyRehab Network, Inc.*, No. 7:20-CV-01845 (S.D.N.Y. Jan. 27, 2021) (providing up to \$75 per Class Member for out-of-pocket expenses incurred related to the data breach and \$20 reimbursement for lost time, with payments capped at \$75,000 in aggregate; credit monitoring for claimants; and equitable relief in the form of data security enhancement). As such, and in light of the excellent results obtained and other *Ramey* factors, this factor weighs in favor of approval.

v. Data breach litigation is complex and evolving.

While Plaintiffs are confident in the strength of their claims, they are also pragmatic in their awareness of the various defenses available to Centerstone, as well as the risks inherent to continued litigation. Centerstone has consistently denied the allegations raised by Plaintiffs and made clear at the outset that they would vigorously defend the case.

Moreover, due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the



pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at \*1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

Class Counsel took on a very real risk in pursuing the litigation on behalf of Plaintiffs and Class Members, and as discussed at length below, brought their considerable experience and skill to bear in negotiating a significant settlement. The risk involved, and the complexity of data breach cases generally, weighs in favor of granting Class Counsel's reasonable request.

vi. Counsel is qualified and experienced.

While Mason Lietz & Klinger LLP attorneys have decades of experience in class actions generally, it is noteworthy that just in the time since the firm's inception on March 14, 2020, the firm's partners have been appointed Class Counsel in a number of data breach and privacy class actions, including: *Baksh v. IvyRehab Network, Inc.*, No. 7:20-CV-01845 (S.D.N.Y. Sept. 23, 2020), ECF No. 40 (Class Counsel in a data breach class action settlement involving 125,000 individuals with a settlement value of \$12.8 million; Final Approval granted); *In re GE/CBPS Data Breach Litig.*, No. 1:20-cv-02903 (S.D.N.Y. June 11, 2020), ECF No. 35 (appointed Lead Counsel in nationwide class action); *Mowery v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SRC (E.D. Mo. Aug. 17, 2020), ECF No. 36 (appointed Class Counsel; settlement value of over \$13 million); *Chatelain v. C, L & W PLLC*, No. 50742-A (Tex. 42d Dist. Ct. Taylor Cnty. Nov. 6, 2020) (appointed Class Counsel; settlement valued at over \$7 million); *Jackson-Battle v. Navicent Health, Inc.*, No. 2020-CV-072287 (Ga. Super. Ct. Bibb Cnty. Apr. 21, 2021) (appointed Class Counsel in data breach case involving 360,000 patients; settlement valued at over \$72 million);

*Bailey v. Grays Harbor Cnty. Pub. Hosp. Dist.*, No. 20-2-00217-14 (Wash. Super. Ct. Grays Harbor Cnty. May 27, 2020) (appointed Class Counsel in hospital data breach class action involving approximately 88,000 people; Final Approval granted); *In re Canon U.S.A. Data Breach Litig.*, No. 1:20-cv-06239-AMD-SJB (E.D.N.Y. Mar. 9, 2021), ECF No. 19 (appointed Co-Lead Counsel); *Carrera Aguallo v. Kemper Corp.*, No. 1:21-cv-01883-MMP (YBK) (N.D. Ill. Apr. 30, 2021), ECF No. 19 (appointed Co-Lead Interim Class Counsel); Lietz MPA Decl. ¶ 7; *see also*, Firm Resume at Lietz MPA Decl., Ex. 2. The significant experience and qualifications of counsel easily justify the modest requested fee of 27 and 1/3% of the Settlement Fund.

**b. Class Counsel’s Costs are Reasonable, Incidental to Litigation, and Should be Approved.**

A court may award reasonable nontaxable costs that are authorized by law or the Parties’ agreement. *Fitzgerald v. P.L. Mktg., Inc.*, 2020 WL 3621250, at \*11 (citing *Newberg* § 16:5); *see also*, *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534–35 (E.D. Mich. 2003) (court in a common fund case awarded costs that were “the type routinely billed by attorneys to paying clients in similar cases”) (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001)).

Here, Centerstone has agreed not to oppose a request for attorneys’ fees and costs not to exceed \$410,000. Due to Counsel’s ability to settle this litigation early, costs are low, were incidental and necessary to litigation and should be approved. Class Counsel incurred \$7,338.76 in costs for filing fees, service fees, and costs of mediation. Lietz Fees Decl. ¶ 17. These costs are reasonable, and necessary for the litigation. *Id.* Moreover, they are the type of costs regularly billed by attorneys to paying clients. *See e.g.*, *Fitzgerald v. P.L. Mktg., Inc.*, 2020 WL 3621250, at \*11 (awarding reimbursement of expenses including filing fees, *pro hac vice* fees, service fees, and mediator fees); *see also* *Johnson v. W2007 Grace Acquisition I, Inc.*, No. 13-cv-2777, 2015 WL 12001269, at \*14 (W.D. Tenn. Dec. 4, 2015).

**c. Plaintiffs' Requested Service Awards are Justified and Should be Approved.**

Sixth Circuit Courts will approve service awards for class representatives whose involvement in the litigation and efforts on behalf of the class justify compensation above and beyond amounts to which they are entitled by virtue of their class membership alone. *Hadix v. Johnson*, 322 F. 3d 895, 897 (6th Cir. 2003). Plaintiffs here seek a Service Award of \$2,500 each. Lietz Fees Decl. ¶ 7. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Class, which include maintaining contact with counsel, participating in client interviews, providing relevant documents, assisting in the investigation of the case, remaining available for consultation throughout mediation, reviewing relevant pleadings and the Settlement Agreement, and for answering counsel's many questions. *Id.* ¶ 8. Plaintiffs' request is consistent, and in fact modest compared with others accepted by Sixth Circuit courts. *Fitzgerald v. P.L. Mktg., Inc.*, 2020 WL 3621250, at \*11 (approving service award of \$7,500 to plaintiffs who participated in client interviews and produced relevant documents); *Salinas v. U.S. Xpress Enters., Inc.*, No. 1:13-cv-00245, 2018 WL 1477127, at \*10 (E.D. Tenn. Mar. 8, 2018) (collecting cases in which courts approved service payments to named plaintiffs between \$7,500 and \$10,000); *Osman v. Grube, Inc.*, No. 3:16-cv-00802, 2018 WL 2095172, at \*2 (N.D. Ohio May 4, 2018) (approving \$7,500 service payment to named plaintiff). Accordingly, Plaintiffs' request should be approved.

**V. CONCLUSION**

Class Counsel, with the help of Plaintiffs, have made significant benefits available to Class Members. In return, they seek fees, costs, and Service Awards well below the range of those regularly approved by Sixth Circuit Courts. The fees, costs, and Service Awards are inherently reasonable, and as such Plaintiffs respectfully request their approval.

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Respectfully submitted,

By: /s/ David K. Lietz

**MASON LIETZ & KLINGER LLP**

David K. Lietz (*admitted pro hac vice*)  
5101 Wisconsin Avenue NW, Suite 305  
Washington, D.C. 20016  
Phone: (202) 429-2290  
Fax: (202) 429-2294  
[dlietz@masonllp.com](mailto:dlietz@masonllp.com)

**MASON LIETZ & KLINGER LLP**

Gary M. Klinger (*admitted pro hac vice*)  
227 W. Monroe Street, Suite 2100  
Chicago, Illinois 60606  
Phone: (202) 429-2290  
Fax: (202) 429-2294  
[gklinger@masonllp.com](mailto:gklinger@masonllp.com)

*Counsel for Plaintiffs and the Proposed Class*

**SPRAGENS LAW PLC**

John Spragens (TN Bar No. 31445)  
311 22nd Avenue N.  
Nashville, TN 37203  
Phone: (615) 983-8900  
Fax: (615) 682-8533  
[john@spragenslaw.com](mailto:john@spragenslaw.com)

*Additional Counsel for Plaintiffs and the Proposed Class*