UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Burak C. Bingollu, on behalf of himself and all others similarly situated,

Plaintiff,

v.

One Source Technology, LLC, d/b/a Asurint,

Defendant.

No. 0:22-cv-00077-DTS

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD

INTRODUCTION

Plaintiff Burak C. Bingollu ("Plaintiff" or the "Class Representative") and Class Counsel have litigated this Fair Credit Reporting Act ("FCRA") action against Defendant One Source Technology, LLC, d/b/a/ Asurint ("Defendant") for years without compensation for their time or reimbursement of their expenses. Through their hard work and resources, Class Counsel and Plaintiff ultimately secured a Settlement[1] that establishes a non-reversionary $2,400,000 common Settlement Fund that will provide cash payments to Settlement Class Members. This notable result could not have been attained absent Class Counsel's resources and skill, nor Plaintiff's participation. Class Counsel now seek approval of an attorneys' fee of one-third of the Settlement Fund, reimbursement for Class

[1] Capitalized terms used and not defined in this Memorandum have the same meaning as those ascribed to them in the Settlement Agreement, filed at ECF No. 66-1, abbreviated as "S.A." herein.

Counsel's out-of-pocket expenditures, and a service award for Plaintiff. Each of the reasonable requests set forth herein should be granted.

First, the Court should grant Class Counsel's request for attorneys' fees of one-third of the Settlement Fund, i.e., $800,000. In light of the impressive results achieved, the very real risks of no recovery posed by continued litigation, Class Counsel's skilled prosecution of the case (on a fully contingent basis), and the fact that courts in similar class actions routinely award one-third (or more) of the common fund in fees in similar cases, Class Counsel's request is reasonable. *See In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 998 (D. Minn. 2005) ("[C]ourts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions.") (collecting cases). This conclusion is confirmed by a lodestar cross-check, which results in a multiplier that falls well within the range of those routinely approved in this Circuit.

Second, Class Counsel's request to be reimbursed up to $16,969.63 for their documented, out-of-pocket expenses, all incurred in litigating this matter and ultimately achieving the excellent result for the Settlement Class, should be approved. Class Counsel's reasonable costs—for expert fees, mediation expenses, and legal research, among others—are precisely the type of costs that courts typically reimburse. The Court should reimburse them here.

Third, Plaintiff's request for a $5,000 service award should be granted. Plaintiff has been instrumental in achieving the classwide resolution of this case by, for example, investigating his claims, staying in close communication with Class Counsel, and

reviewing and approving the Settlement Agreement. For his efforts, a "modest" award of $5,000 is more than appropriate. *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1069 (D. Minn. 2010).

For these reasons, and others discussed further herein, the Motion should be granted.

RELEVANT BACKGROUND

The litigation history, history of settlement negotiations, and terms of the settlement are set forth in detail in the Memorandum in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement (ECF No. 65) and are incorporated by reference here. This Memorandum focuses on the efforts of Class Counsel and the Class Representative to achieve the significant result in this case.

A. Class Counsel Have Worked Diligently on Behalf of Settlement Class Members for Years.

Class Counsel are highly experienced FCRA practitioners who have years of experience in litigating complex FCRA matters like this case. (Declaration of John G. Albanese ("Albanese Decl.") ¶¶ 3-10.) They leveraged their collective experience to litigate this case efficiently and effectively.

Class Counsel's substantial time and resources spent on this matter—which they began investigating over three years ago, and have been litigating for two-and-a-half-years, *id.* ¶¶ 11-13—include:

- researching and drafting the Complaint;
- negotiating and preparing the Joint Rule 26(f) Report;
- negotiating and preparing the Stipulated Protective Order;

- researching and drafting the First Amended Complaint;
- researching and briefing the Motion to Amend;
- propounding multiple sets of written discovery requests to Defendant, including three sets of Requests for Production and two sets of Interrogatories;
- engaging in multiple meet-and-confers regarding Defendant's objections to the above discovery requests, and ultimately negotiating the production of more than 50,000 documents as well as complex data sets on potential Class Members;
- closely analyzing Defendant's responsive documents and data, which required the retention and management of an expert;
- preparing for and participating in a full-day mediation with third-party neutral Rodney Max, and subsequent arms-length negotiations;
- drafting the Settlement Agreement and Exhibits thereto;
- obtaining and analyzing multiple settlement administration proposals;
- researching and drafting the Motion for Preliminary Approval of Class Action Settlement; and
- coordinating and overseeing administration of the Settlement. (*Id.* ¶ 14.)

To date, Class Counsel have devoted over 377 hours[2] to this matter, resulting in $254,120.00 in lodestar. (*Id.* ¶ 12.) Moreover, Class Counsel's work is not yet complete. Anticipated future tasks include continuing to oversee the administration of the Settlement,

[2] Class Counsel have reviewed their hours and have excluded any hours that did not go to benefit the class, including any time that was related to representing former plaintiff Sharon Wright on an individual basis. (*See* ECF No. 65 at 4; Albanese Decl. ¶ 12.)

responding to Class Member inquiries, researching and drafting final approval papers, and preparing for and arguing at the final approval hearing. (*Id.* ¶ 14.)

Class Counsel have additionally incurred $16,969.63 in out-of-pocket costs. (*Id.* ¶ 13.) These were incurred in furtherance of litigation and settlement, primarily to pay the retained expert who supported Class Counsel in the analysis of Defendant's data, and to pay for the Parties' mediation session, filing and service fees, postage and printing, legal research for the briefing done in this matter, and document hosting during discovery. (*Id.*)

The requested attorneys' fees and request for reimbursement of costs were identified in the Notices. (*Id.* ¶ 17.) There have been no objections to date from Settlement Class Members. (*Id.*)

B. Plaintiff Has Played an Active Role in this Case.

The Class Representative played a valuable and active role in this litigation, and devoted significant time and attention to the case. Specifically, he assisted with the investigation of the facts of the case by providing documents and details about his experience, reviewed and approved the First Amended Complaint, and regularly consulted with Class Counsel throughout the litigation, including during settlement negotiations. (*Id.* ¶ 18.) Additionally, the Class Representative reviewed and approved the Settlement Agreement. (*Id.*)

The Settlement Agreement's provision for a $5,000 Service Award for the Class Representative was listed in the Notices to the Class, and no objections have been received to date. (*Id.* ¶ 17.)

ARGUMENT

Through their hard work, Class Counsel and Plaintiff have secured exceptional relief for more than 60,000 consumers: a $2.4 million non-reversionary Settlement Fund. In light of this accomplishment, Class Counsel's request for one-third of the Settlement Fund in fees—which is reasonable under the "percentage of the fund" method and supported by a lodestar cross-check—should be approved. Class Counsel should also be reimbursed for documented, out-of-pocket expenses. Finally, Plaintiff should receive a $5,000 service award to acknowledge his service to the Class.

A. Class Counsel's Request for One-Third of the Settlement Fund in Attorneys' Fees Is Fair and Reasonable.

In class actions, Fed. R. Civ. P. 23(h) grants the Court authority to "award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." When a class action leads to a common fund for the class, the Court may award fees to be paid from that common fund. The common fund concept of assessing attorneys' fees provides for a way to "spread litigation costs proportionately among those who benefit from the lawsuit." *In re Worker's Compensation Ins. Antitrust Litig.*, 771 F. Supp. 284, 286 (D. Minn. 1991) (citing *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 257-8 (1975)). "An award of attorney fees is committed to the sound discretion of the district court." *In re Xcel*, 364 F. Supp. 2d at 991 (citing *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999)). "Courts utilize two main approaches to analyzing a request for attorney fees." *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (quoting *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996)).

Here, both approaches confirm that Class Counsel's request of one-third of the Settlement Fund is reasonable and should be approved.

1. The Requested Fee is Reasonable as a Percentage of the Fund.

First, under the percentage of the fund method, an analysis of the relevant factors supports the requested one-third of the Fund as attorneys' fees. Under this method, courts award an amount in "'fees that is equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation.'" *Huyer v. Buckley*, 849 F.3d 395, 398 (8th Cir. 2017) (quoting *Johnston*, 83 F.3d at 244-45). "Awarding attorney fees based on the percentage of the common fund recovered is a routine calculation of fees." *Yarrington*, 697 F. Supp. 2d at 1061 (citation omitted). "In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well established.'" *In re Xcel*, 364 F. Supp. 2d at 991 (D. Minn. 2005) (quoting *Petrovic*, 200 F.3d at 1157).

"The Eighth Circuit has not laid out factors that a district court must consider when determining whether a percentage of the common fund is reasonable." *Yarrington*, 697 F. Supp. 2d at 1061 (citing *In re Xcel*, 364 F. Supp. 2d at 998)). However, courts in this Circuit have generally recognized the following factors as assisting in such a determination: "(1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel were exposed, (3) the difficulty and novelty of the legal and factual issues in the case, . . . (4) the skill of the lawyers, both plaintiffs and defendants, (5) the time and labor involved, including the efficiency in handling the case, (6) the reaction of the class and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases." *In re Xcel*,

364 F. Supp. 2d at 993. *See also Yarrington*, 697 F. Supp. 2d at 1062. Each of these factors supports approval of the requested fee award.

i. The Class Will Receive Significant Benefits.

In evaluating the reasonableness of an attorney fee request, it is widely acknowledged that the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). The $2,400,000 non-reversionary common fund achieved for the Settlement Class here is an excellent recovery, providing substantial monetary benefits to Class Members who submit a straightforward Claim Form, and allowing the Settlement Class to avoid the risks of future litigation.

If the case were to proceed to trial, Class Members would only be able to recover statutory damages between $100 and $1,000, and, potentially, punitive damages. *See* 15 U.S.C. § 1681n. Should the requested attorneys' fees, costs, administration expenses, and Service Award be granted, and assuming a claims rate of 4% for those Class Members who must return a Claim Form, Class Counsel estimate that net payments would be approximately $560 per Class Member.[3] This figure compares favorably to other FCRA

[3] Currently, the claims rate is 2.71%. (Albanese Decl. ¶ 19.) However, this rate is expected to rise, as the Settlement Agreement directs the Settlement Administrator to mail and email a Reminder Notice to those Class Members who have not submitted a Claim Form, at least once no later than 21 days prior to the Claims Deadline. (S.A. ¶ 5.3.1.) A claims rate of less than five percent is not unusual. *See Jones v. Monsanto Co.*, 38 F.4th 693, 701 (8th Cir. 2022) (affirming order of the district court granting motion for final approval of class settlement with 2-3% estimated claims rate); *Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) ("[A] claim rate as low as 3 percent is hardly unusual in consumer class actions and does not suggest unfairness."); *In re Target Corp. Customer Data Sec. Breach Litig.*, 2017 WL 2178306, at *1–2 (D. Minn. May 17, 2017), *aff'd*, 892 F.3d 968 (8th Cir. 2018) (approving settlement with claims rate of roughly 0.23 percent); *Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 214 (W.D. Mo. 2017), *aff'd*, 896 F.3d 900 (8th Cir. 2018)

settlements of claims regarding inaccurate reporting. *See*, *e.g.*, *Ryals v. HireRight Solutions, Inc.*, No. 09-cv-625, ECF No. 127 (E.D. Va.) (final approval of settlement providing $15-$200 gross per class member); *Stokes v. RealPage, Inc.*, No. 2:15-cv-01520, ECF No. 63 (E.D. Pa.) (final approval of settlement involving 15 U.S.C. § 1681e(b) claims and providing approximately $50 per class member); *Legrand v. IntelliCorp Records, Inc.*, No. 1:15-cv-02091, ECF No. 94 (N.D. Ohio) (final approval of settlement that would provide $148 per class member); *Roe v. IntelliCorp Records, Inc., Insurance Info. Exchange, LLC*, No. 1:12-cv-2288-JG, ECF No. 139 (N.D. Ohio) (final approval of settlement where class members received between $50 and $270); *Speers v. Pre-Employ.com, Inc.*, No. 3:13-cv-1849-TC, ECF No. 83 (D. Or.) (final approval of settlement where class members received about $153 each); *Ridenour v. Sterling Infosystems, Inc.*, No. 2:15-cv-00041, ECF No. 204 (E.D. Va.) (final approval of settlement providing about $87 per class member).

Further, the Settlement will provide these benefits immediately. *See Yarrington*, 697 F. Supp. 2d at 1062 (finding that this factor weighed in favor of requested attorneys' fees because the "cash settlement provides a substantial and immediate benefit to the Class," which class members would receive "faster than they would receive awards obtained after trial and a likely appeal"); *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d

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("[M]any other courts have approved class action settlements when the claims rate was in the single digits.") (gathering cases); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (*en banc*) (noting evidence that claims rates in consumer class settlements "rarely" exceed 7%, "even with the most extensive notice campaigns"); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944-45 (9th Cir. 2015) (approving settlement class with claims rate of less than 4%).

1094, 1100 (D. Minn. 2009) (concluding that the expense of further litigation favored settlement approval where the length and cost of further litigation, including appeals, was not in question, and noting that "class members would receive nothing" as the case continued) (citing *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005)). Finally, that the Settlement is fully non-reversionary further benefits the Class. *See In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *11 (D. Minn. Dec. 4, 2020) (concluding that settlement that created non-reversionary common fund, and that would provide "a non-nominal monetary award to every claimant," conferred a "significant" benefit to the class). In sum, the Settlement provides significant and immediate benefits to the Class.

ii. Class Counsel Were Exposed to Substantial Risks.

"Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *In re Xcel*, 364 F. Supp. 2d at 994 (citation omitted). Here, between the contingent nature of Class Counsel's fee agreement and the risks involved in this complex litigation, Class Counsel faced a very real possibility that they would receive no compensation at all for their work on this matter. This factor therefore weighs in favor of their requested fee award.

First, since filing this case in December 2021, Class Counsel have pursued this matter on a contingent fee basis, without payment or reimbursement to date, or a guarantee of any future payment for their efforts. (Albanese Decl. ¶ 20.) The "substantial risks" thus inherent in Class Counsel's very representation in this case supports their requested attorneys' fees. *See In re Resideo Techs., Inc., Derivative Litig.*, 2024 WL 95194, at *4 (D.

Minn. Jan. 9, 2024) ("Plaintiffs' counsel worked on a contingent basis and have received no compensation to date…The substantial risks to Plaintiffs' counsel support the requested award of attorneys' fees."); *see also Zilhaver v.UnitedHealth Group, Inc.,* 646 F. Supp. 2d 1075, 1083 (D. Minn. 2009) ("In the Eighth Circuit, courts must take into account any contingency factor where plaintiffs' counsel assumes a high risk of loss. Plaintiffs' counsel assumed the risk this case would produce no fee, and courts see fit to reward such gambles.") (citations and quotations omitted).

Second, the litigation risks posed an even greater threat of non-payment. Should the litigation have moved forward, Defendant likely would have maintained that its reports—which indicated that consumers' Social Security Numbers could not be verified or validated—were not inaccurate in the first instance. (*See, e.g.*, ECF No. 53 at 42 (Defendant denying that its reporting was inaccurate).) In advancing such an argument, Defendant could have relied on *Erickson v. First Advantage Background Servs. Corp.*, where the Eleventh Circuit held that "a report must be factually incorrect, objectively likely to mislead its intended user, or both to violate the maximal accuracy standard of the Fair Credit Reporting Act." 981 F.3d 1246, 1252 (11th Cir. 2020). Under this standard, the Court of Appeal determined that a report that described plaintiff as a possible sex offender, and "explained that the matching record was located using a name-only search," was "factually correct," despite the fact that plaintiff was not an actual sex offender. *Id.*

In addition, Defendant would have vigorously maintained that it had not violated the FCRA at all, and that, even if it had, any such violation was not willful. (*See* ECF No. 53 at 39, 45, 54 (Defendant denying Plaintiff's allegation that Defendant has willfully

violated the FCRA).) While Plaintiff is confident in his position on these issues, they are serious obstacles. The FCRA only permits recovery of statutory damages when a plaintiff proves a willful violation. *Compare* 15 U.S.C. § 1681n with § 1681o. Thus, in order to recover statutory damages on behalf of the Settlement Class, Plaintiff would have had to show not only that Defendant had violated the FCRA, but that Defendant's violations were "willful." 15 U.S.C. § 1681n. This can be a high bar and presents a real risk to recovery. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69 (2007) ("[A] company subject to FCRA does not act in reckless disregard . . . unless the [challenged] action is not only a violation under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless"). Indeed, FCRA plaintiffs can lose on this standard even after a successful verdict at trial. *See Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 611 (6th Cir. 2016) (reversing jury verdict, holding that consumer reporting agency's conduct did not constitute a willful violation of the FCRA); *see also Domonoske v. Bank of America, N.A.*, 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) ("[G]iven the difficulties of proving willfulness or even negligence with actual damages [under the FCRA], there was a substantial risk of nonpayment.").

When taking on such a complex class action case on a contingent basis, the risks of no recovery are quite real. *See, e.g., In re Xcel Energy*, 364 F. Supp. 2d at 994 (stating that "[t]he risk of no recovery in complex cases of this sort is not merely hypothetical" and that "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite

their advocacy") (citations omitted). In light of the uncertainty presented by the remaining hurdles in this case—e.g., proving willfulness, winning class certification, surviving summary judgment, and prevailing on inevitable appeals—Class Counsel's litigation of this case, on a contingency basis no less, supports their fee request.

iii. The Legal and Factual Issues Were Complex.

As discussed above, this case involved complex legal issues and risks, including those related to willfulness, which Plaintiff would have had to overcome at class certification, summary judgment, trial, and inevitable appeals in order to receive any recovery through continued litigation. While Class Counsel are confident in the Class Representative's case, there was of course no guarantee that he would have been successful on these, and other, issues at every juncture of the litigation.

The posture of the case at the time of settlement—i.e., after significant discovery had been completed, but before significant motion practice—provided both sides a clear understanding of the strengths and weaknesses of each other's positions. At the same time, there was still significant litigation to be conducted, with each stage presenting legal obstacles to overcome, including expert discovery, motion practice (including class certification and summary judgment), trial, and appeals.

The complexity of the future issues to be argued before the Court at each of these stages underscores the risks that Class Counsel, by reaching a relatively early classwide resolution, allowed the Class Members to avoid. *See*, *e.g.*, *Phillips v. Caliber Home Loans, Inc.*, 2022 WL 832085, at *6 (D. Minn. Mar. 21, 2022) (granting class counsel's motion for one-third of settlement fund in fees, explaining that "many class-action lawsuits 'are

inherently complex,' and early settlement 'avoids the costs, delays, and multitudes of other problems associated with them'") (citation omitted); *In re Resideo*, 2022 WL 872909, *6 (finding this factor supported requested attorney fees, and agreeing that "settlement avoids the costs, delays and multitude of problems associated with [class actions]") (internal quotation omitted).

iv. All Counsel Involved Are Highly Skilled.

Class Counsel have extensive experience in consumer class action litigation, and FCRA litigation in particular. (*See* ECF No. 66-2; Albanese Decl. ¶¶ 3-10.) E. Michelle Drake, John Albanese, and Ariana Kiener all devote a significant amount of their practices to, and have been involved in dozens of, FCRA class actions, in particular. They are responsible for securing some of the largest and most notable FCRA settlements in the past decade all around the country. *See, e.g., Stewart et al. v. LexisNexis Risk Data Retrieval Services, LLC et al.*, No. 3:20-cv-903-JAG (E.D. Va.) (FCRA class action, alleging violations by consumer reporting agency, resulting in $21.5 million settlement fund to be distributed to class members automatically); *Saylor v. RealPage, Inc.*, No 1:22-cv-00053-AJT-IDD (E.D. Va.) (FCRA class action, alleging violations by consumer reporting agency, resulting in $9.7 million common fund, as well as significant non-monetary relief); *Gambles v. Sterling Infosystems, Inc.*, No. 15-cv-9746 (S.D.N.Y.) (FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of $15 million); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va.) (FCRA class action, alleging violations by credit bureau, providing a nationwide resolution of class action claims asserted by 32 plaintiffs in 16 jurisdictions, including injunctive relief, plus an

uncapped mediation program, for millions of consumers); *Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va.) (FCRA consolidated class action, alleging violations by credit bureau, providing groundbreaking injunctive relief, and an opportunity to recover monetary relief, for millions of consumers); *Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066 (S.D. Ohio) (FCRA class action, alleging violations by employer, resulting in a $15 million settlement); *Howell v. Checkr, Inc.*, No. 17-cv-4305 (N.D. Cal.) (FCRA class action, alleging violations by consumer reporting agency, resulting in a $4.46 million settlement); *Halvorson v. TalentBin, Inc.*, No. 15-cv-5166 (N.D. Cal.) (FCRA class action, alleging violations by online data aggregator, resulting in a $1.15 million settlement). (*See id.*)

Class Counsel's substantial experience in this practice area allowed them to conduct targeted discovery, which led to significant leverage for negotiating a favorable settlement for the Class. Class Counsel's intimate knowledge of the FCRA and familiarity with the operations of consumer reporting agencies allowed Class Counsel to reach this result efficiently, without the extensive delay that would result from litigating the case through class certification, summary judgment, trial, and inevitable appeals. The Settlement provides certain benefits to the Class *now*—and that is due in large part to the skill of Class Counsel. Class Counsel's high level of experience, coupled with reputable opposing defense counsel (*see generally* www.seyfarth.com; nilanjohnson.com), supports this factor. *See*, *e.g.*, *Yarrington*, 697 F. Supp. 2d at 1063 (finding this factor supported requested fees where class counsel "have extensive experience and expertise in prosecuting

complex class actions, including consumer actions" and defendant's "attorneys consist of multiple well-respected and capable defense firms").[4]

v. Class Counsel Spent Substantial Time and Resources on the Case.

Throughout more than two-and-a-half years of litigation, in addition to several months of investigation, Class Counsel have dedicated substantial time and resources on this matter. For example, Class Counsel conducted factual and legal research, drafted two iterations of the operative complaint, conducted extensive discovery (which involved reviewing more than 50,000 documents, as well as significant consumer data produced by Defendant, and retaining and managing an expert to analyze such data), prepared for and participating in mediation and subsequent arms-length negotiations, and successfully negotiated (and ultimately drafted) the Settlement Agreement. (Albanese Decl. ¶ 14.) To date, Class Counsel have devoted over 377 hours to this matter. (*Id.* ¶ 12.) Not only that, but Class Counsel have also invested significant resources into this case, spending approximately $16,969.63 in out-of-pocket expenses on, for example, expert fees, mediation fees, filing and service fees, e-discover hosting, and legal research. (*Id.* ¶ 13.)

[4] *See also James Morrison v. Entrust Corp., & Entrust MN Corp.*, 2024 WL 2207563, at *6 (D. Minn. May 14, 2024) ("The lawyers in the case—both representing Plaintiff and Defendants—are skilled. This conclusion is drawn safely from the lawyers' advocacy in this case, but it also is drawn from the Court's familiarity with the lawyers and their standing in the legal community."); *Khoday v. Symantec Corp.*, 2016 WL 1637039, at *10 (D. Minn. Apr. 5, 2016), *R&R adopted*, 2016 WL 1626836 (D. Minn. Apr. 22, 2016), *aff'd sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017) ("Here, on both sides, each of the firms has extensive experience and expertise in complex class actions, including consumer actions… Counsel for all parties exhibited great skill in advocating on behalf of their clients and bringing this case to a fair and reasonable resolution. The quality of the representation provided by both Plaintiffs' and Defendants' counsel is another factor that supports the reasonableness of the requested fees.").

Class Counsel struck an appropriate balance between diligence in litigation and discovery matters, forming a strong understanding of the Class's claims and Defendant's defenses, and efficiency in achieving the excellent settlement for Class Members before expensive and lengthy stages of the case that were approaching (i.e., dispositive motions, expert discovery, trial). Class Counsel's efforts and effectiveness support the fee award. *See*, *e.g.*, *Yarrington*, 697 F. Supp. 2d at 1063 (finding "that the time and effort expended by Settlement Class Counsel was reasonable and supports Settlement Class Counsel's request for fees" where "Counsel exhibited diligence and efficiency throughout the litigation, resulting in a favorable result for the Class"); *In re Xcel*, 364 F. Supp. 2d at 996 (concluding that this factor supported class counsel's fee request where "counsel moved the case along expeditiously" through their "cooperation and efficiency").[5]

vi. Class Members Have Responded Favorably to the Settlement.

The contemplated attorneys' fees request was included in all forms of Notice provided to the Class. To date, no Class Members have objected to the Settlement in any way, a strong indication that the Class approves of the Settlement and Class Counsel's requested fee. *Morrison v. Entrust Corp., & Entrust MN Corp.*, 2024 WL 2207563, at *6

[5] *See also In re Resideo*, 2024 WL 95194, at *5 (determining that this factor supported requested fee award where "the record reflects that Plaintiffs' counsel undertook substantial efforts in this litigation, including factual and legal research, drafting pleadings and other filings, engaging in discovery and reviewing documents, preparing for and participating in mediation, and successfully negotiating the Settlement"); *Phillips*, 2022 WL 832085, at *6 (concluding that the time and labor of class counsel, who "undertook substantial efforts, including factual and legal research, drafting pleadings and other filings, engaging in discovery and reviewing voluminous documents, preparing for and participating in mediation, and successfully negotiating the Settlement Agreement," supported their request for one-third of settlement fund in fees).

(D. Minn. May 14, 2024) ("The absence of objectors shows the class approves of the settlement and supports the requested fee award."). If any objections are received after this Motion is filed, Class Counsel will address them in the motion for final approval.

vii. In Similar Cases, Courts Often Award One-Third (or More) of the Common Fund in Attorneys' Fees.

Finally, courts in the Eighth Circuit and in this District "routinely have awarded attorneys' fees ranging from 25 percent to 36 percent of a common fund." *In re Resideo*, 2022 WL 872909, *7 (citing *In re Xcel*, 364 F. Supp. 2d at 998 as collecting cases). *See also Huyer*, 849 F.3d at 399. Class Counsel seek a one-third award, or 33.33%, of the Settlement Fund, which is well within that routinely approved range.

It is also in line with percentages awarded in consumer class actions, in particular, in this District and Circuit. *See*, *e.g.*, *Yarrington*, 697 F. Supp. 2d at 1064-5 (awarding 33% of fund as fees in consumer class action); *Phillips*, 2022 WL 832085, at *7 (same); *Khoday*, 2016 WL 1637039, *11 (same); *Huyer*, 849 F.3d at 399 (affirming one-third of fund as fees in consumer class action); *Caligiuri*, 855 F.3d at 865-66 (same).

Finally, an award of one-third of a settlement fund is routine in FCRA class action settlements, as well. *See, e.g., Taylor v. Inflection Risk Sols., LLC*, 2022 WL 16949543, at *2 (D. Minn. Nov. 15, 2022) (awarding class counsel one-third of total fund in FCRA class action settlement); *Boyd v. Task Mgmt. Staffing Inc.*, 2021 WL 2474433, at *2 (M.D. Fla. Apr. 30, 2021) (same); *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *1 (S.D. Ohio June 30, 2017), *R&R adopted*, 2017 WL 3142403 (S.D. Ohio July 25, 2017) (same); *Ford v. CEC Ent. Inc.*, 2015 WL 11439033, at *5-6 (S.D. Cal. Dec. 14, 2015) (same).

In sum, each of the relevant factors under the percentage of the fund approach weighs in favor of Class Counsel's requested fee award. This request is reasonable and should be approved.

2. A Lodestar Cross-Check Confirms that the Requested Fee Award is Reasonable.

Second, although not required,[6] a lodestar "cross-check" verifies the reasonableness of Class Counsel's request. Under the lodestar methodology, "the hours expended by an attorney are multiplied by a reasonable hourly rate of compensation so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action." *Caligiuri*, 855 F.3d at 865 (citing *Johnston*, 83 F.3d at 244). "The lodestar cross-check need entail neither mathematical precision nor bean counting but instead is determined by considering the unique circumstances of each case." *Yarrington*, 697 F. Supp. 2d at 1065 (citation omitted). Moreover, courts recognize that "[i]n cases where fees are calculated using the lodestar method, counsel may be entitled to a multiplier to reward them for taking on risk and high-quality work." *In re UnitedHealth Group*, 643 F. Supp.

[6] "Although not required" to do so, *In re Xcel*, 364 F. Supp. 2d at 999, "courts applying the percentage-of-the-fund method will often verify the reasonableness of an attorney fee award by crosschecking it against the lodestar method." *Yarrington*, 697 F. Supp. 2d at 1061 (citation omitted). *See also Petrovic*, 200 F.3d at 1157 ("[T]he lodestar approach is sometimes warranted to double check the result of the 'percentage of the fund' method."); *Keil*, 862 F.3d at 701 (explaining that lodestar cross-check is not required, but can be used to "verif[y] the reasonableness" of a fee award). Importantly, "[t]he lodestar cross-check does not trump the court's primary reliance on the percentage of common fund method." *In re Xcel*, 364 F. Supp. 2d at 999 (citation omitted).

2d at 1106 (using lodestar cross-check and finding multiplier of nearly 6.5 appropriate). *See also In re Xcel*, 364 F. Supp. 2d at 999 (approving lodestar multiplier of 4.7).

i. Class Counsel's Hourly Rates Are Reasonable.

Class Counsel's current hourly rates range $280-450 for non-attorneys, $610-770 for non-shareholders, and $675-1,180 for shareholders. (Albanese Decl. Ex. A.) Under the circumstances, these rates are appropriate.

"Generally, to determine whether an hourly rate is reasonable, courts look at the rates 'prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.'" *Wiley v. Portfolio Recovery Assocs., LLC*, 594 F. Supp. 3d 1127, 1145 (D. Minn. 2022) (citation omitted). "Sometimes, where particular legal specialization is required, courts may consider a national billing rate." *In re RFC*, 399 F. Supp. 3d 827, 846 (D. Minn. 2019) (citation omitted). *See also Casey v. City of Cabool, Mo.*, 12 F.3d 799, 805 (8th Cir. 1993) (explaining that "[t]he relevant market for attorneys…may extend beyond the local geographic community," because "[t]o limit rates to those prevailing in a local community might have the effect of limiting [] enforcement to those communities where the rates are sufficient to attract experienced counsel"); *M-I Drilling Fluids UK Ltd. v. Dynamic Air Inc.*, 2018 WL 1399308, at *3 (D. Minn. Mar. 20, 2018), *aff'd*, 771 F. App'x 484 (Fed. Cir. 2019) (finding counsel's hourly rate "not unreasonable" and explaining that, although the rate was "somewhat high for the Twin Cities generally," the importance of geographic location is reduced for patent litigators, who have relatively high rates and often have a national practice).

Here, although based in Minnesota, Class Counsel maintain a national and complex class action practice—with a focus in FCRA class action litigation—and have extensive experience and skills, as well as a strong reputation in this niche area of the law. Therefore, the relevant "community" should not be limited to a geographic area, i.e., Minnesota. Instead, the Court should "consider a national billing rate" for experienced, skilled, and highly regarded FCRA class action practitioners such as Class Counsel. *In re RFC*, 399 F. Supp. 3d at 846. By this—the correct—standard, Class Counsel's hourly rates are clearly reasonable. Indeed, federal courts across the country have routinely approved Class Counsel's hourly rates, specifically, no doubt in recognition of Class Counsel's unique expertise. *See, e.g., Garrett v. Advantage Plus Credit Reporting Inc.*, 2024 WL 1603442, at *4 (D. Ariz. Apr. 12, 2024) (approving the following hourly rates for Class Counsel, explaining that the rates have "been approved in the jurisdiction where Class Counsel normally practices": $645 per hour for the Senior Counsel; $980 per hour for the Executive Shareholder; $720 per hour for the Shareholder; $425 per hour for the Paralegal; $260 per hour for the Legal Assistants; and $295 per hour for the Legal Project Analyst"); *Steinberg v. CoreLogic Credco, LLC*, 2024 WL 1546921, at *9 (S.D. Cal. Apr. 9, 2024) (concluding that Class Counsel's requested attorney fees were reasonable, and satisfied lodestar crosscheck, where Berger Montague's hourly rates for attorneys were as high as $980). Moreover, Class Counsel's hourly rates were recently approved *in this District*. *See Taylor*, 2022 WL 16949543, at *2 (granting Class Counsel's request for attorneys' fees based on hourly rates ranging from $240-370 for non-attorneys, $399-670 for non-shareholders, and $640-980 for shareholders).

Further, it is appropriate for Class Counsel to rely on their current, rather than historical, rates. *See, e.g.*, *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 2013 WL 716460, at *4 (D. Minn. Feb. 27, 2013) ("Class counsel calculated the requested fee amount by using their current class action rates. This is appropriate given the deferred nature of counsel's compensation."); *Baufield v. Safelite Glass Corp.*, 831 F. Supp. 713, 721 (D. Minn. 1993) (accepting use of current hourly rates in calculating lodestar "as a proper adjustment for delay in payment"). In sum, Class Counsel's hourly rates are reasonable.

ii. Class Counsel's Hours Expended Are Reasonable.

The number of hours that Class Counsel have expended on this litigation, 377.2, is also reasonable. (Albanese Decl. ¶ 12.)[7] As summarized herein, this complex litigation was hard-fought, with Class Counsel engaging in extensive discovery involving complex data sets and extensive settlement negotiations over more than two-and-a-half years. (*See supra* at Relevant Background, § A.) The time Class Counsel have spent on this case—investigating Plaintiff's claims and drafting the complaints, researching novel legal issues, exchanging written discovery, reviewing voluminous documents and data, working with an expert, preparing for and attending mediation, regularly conferring with Plaintiff, drafting the Settlement Agreement and Exhibits thereto, and more—was "necessary to secure the results obtained," and is therefore reasonable. *See, e.g.*, *Cleveland v. Whirlpool*

[7] Class Counsel will continue to work on this case through final approval by, for example, responding to settlement-related inquiries, monitoring the settlement administration process, drafting the motion for final approval, and preparing for the final approval hearing. (Albanese Decl. ¶ 15.) This figure does *not* include the time that Class Counsel anticipate spending on such tasks.

Corp., 2022 WL 2256353, at *10-11 (D. Minn. June 23, 2022); *Phillips*, 2022 WL 832085, at **4, 6 (approving request for one-third of settlement fund in attorneys' fees where counsel expended more than 1,000 hours of attorney time on case that settled "before the completion of class certification, summary judgment, expert discovery, and trial preparation"); *Yarrington*, 697 F. Supp. 2d at 1066–67 (concluding that it was reasonable for class counsel—who, *inter alia*, "coordinated discovery, reviewed documents,…prepared for and participated in numerous mediation sessions, drafted and negotiated the Settlement Agreement, and prepared the motions for preliminary and final approval"—to have spent more than 5,000 hours litigating class action).

iii. The Resulting Lodestar Multiplier of 3.1 Is Reasonable.

To date, Class Counsel's lodestar is $254,120.00; thus, the lodestar cross-check of the percentage requested results in a multiplier of 3.1. (Albanese Decl. ¶ 12.) In light of the substantial benefits that Class Counsel achieved for the Class, and the fact that Class Counsel have litigated this case for two-and-a-half years without any compensation, all while shouldering litigation expenses and the risk of non-payment, this multiplier is reasonable.

Indeed, the Eighth Circuit and district courts within it routinely approve lodestar multipliers that are even higher. *See, e.g.*, *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (affirming award of attorneys' fees that resulted in 5.3 lodestar multiplier, explaining that although "high," this multiplier "does not exceed the bounds of reasonableness"); *Rogowski v. State Farm Life Ins. Co.*, 2023 WL 5125113, at *5, n.8

(W.D. Mo. Apr. 18, 2023) (approving lodestar multiplier of 5.75); *In re Xcel*, 364 F. Supp. 2d at 999 (finding lodestar multiplier of 4.7 reasonable); *In re UnitedHealth Group*, 643 F. Supp. 2d at 1106 (approving lodestar multiplier of nearly 6.5); *In re St. Paul Travelers Sec. Litig.*, 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006) (approving multiplier of 3.9); *In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005) (finding a 5.61 cross-check multiplier reasonable, and describing it as "within the range of multipliers awarded in comparable complex cases").

All told, and even without accounting for the future time Class Counsel will expend before final approval, the lodestar cross-check confirms that the requested fee award is reasonable. Because the lodestar method is being used here only as a cross-check, *even if* the Court were to conclude that a lower number of hours or lower hourly rates would be more appropriate, a higher lodestar multiplier would still fall within the range of those routinely approved in this Circuit, and would continue to support the requested fee.

B. Class Counsel's Litigation Costs Are Reasonable and Should be Reimbursed.

"Courts generally allow plaintiffs' counsel in a class action to be reimbursed for costs and expenses out of the settlement fund, so long as those costs and expenses are reasonable and relevant to the litigation." *Khoday*, 2016 WL 1637039, at *12. "Counsel in common fund cases may recover those expenses that would normally be charged to a fee paying client." *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 2008 WL 682174, at *4 (D. Minn. Mar. 7, 2008) (internal quotation marks omitted). Permissible categories of expenses include, but are not limited to, "photocopying, postage, messenger services, document depository, telephone and facsimile charges, filing and witness fees,

computer-assisted legal research, expert fees and consultants, and meal, hotel, and transportation charges for out-of-town travel." *In re Xcel*, 364 F. Supp. 2d at 999–1000.

Class Counsel seek reimbursement of precisely such expenses. (Albanese Decl. ¶ 13.) Class Counsel have advanced $16,969.63 in out-of-pocket costs on behalf of the Class with no reimbursement to date. (*Id.*) These costs were necessarily incurred, and typical of the costs ordinarily charged to clients and approved for reimbursement in contingency cases. *See*, *e.g.*, *Phillips,* 2022 WL 832085, at *7 (reimbursing to class counsel costs of "filing fees, travel costs, mediation, photocopying, mail and telephone costs, and other incidental expenses related to the litigation of this matter"); *Roeser v. Best Buy Co., Inc.*, 2015 WL 4094052 at *14 (D. Minn. July 7, 2015) (approving reimbursement to class counsel of filing fees, copying, telephone, postage, mediation, expert, travel, and legal research expenses, and finding "[s]uch costs and expenses reasonably incurred by class counsel are properly reimbursed," and "typical of costs and expenses ordinarily charged to clients, and were necessary to the resolution of this litigation" and citing cases in support); *Yarrington*, 697 F. Supp. 2d at 1067 (holding similar); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, *3 (D. Minn. July 13, 2015) (same, approving reimbursement of over $780,000 in costs, adding that since class counsel had taken case on a contingent fee basis "they had a strong incentive to keep those expenses at a reasonable level" and noting that "although Class Counsel incurred these expenses over the course of more than four years, they do not seek interest …associated with advancing these expenses to the Class.").

Class Counsel also request that the costs of settlement administration be reimbursed from the Settlement Fund, a request that courts routinely approve. *See, e.g., Taylor*, 2022

WL 16949543, at *2 (in finally approving settlement, authorizing payment from settlement fund "to the Settlement Administrator for reimbursement of its out-of-pocket expenses in the administration of the Settlement"); *Smith v. Questar Cap. Corp.*, 2015 WL 9860201, at *7 (D. Minn. Sept. 11, 2015) (granting final approval of settlement, and directing that "the fees and expenses of the Settlement Administrator shall be paid from the Settlement Fund"). Because the final amount of those costs will depend on work continuing through the Notice Period, Class Counsel will address those costs in conjunction with their forthcoming motion for final approval of the Settlement.

C. The Requested Service Award is Appropriate.

Courts often grant service awards to named plaintiffs in class action suits to "promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Caligiuri*, 855 F.3d at 867 (citing *Yarrington*, 697 F. Supp. 2d at 1068). "Small incentive awards, which serve as premiums to any claims-based recovery from the Settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Yarrington*, 697 F. Supp. 2d at 1068. "[C]ourts in this circuit regularly grant service awards of $10,000 or greater." *Caligiuri*, 855 F.3d at 867 (collecting cases and affirming service awards of $10,000 to each named plaintiff). Service awards of $5,000 "are at the modest end of the spectrum," *Yarrington*, 697 F. Supp. 2d at 1069, and frequently approved. *See, e.g., Reynolds v. Concordia Univ., St. Paul*, 2024 WL 2270585, at *3 (D. Minn. May 20, 2024) (finding $5,000 to be "a reasonable service award" and justified based on plaintiff's service to the class).

Here, the Court should grant Plaintiff's request for a service award of $5,000. Given the efforts that Plaintiff made on behalf of the Class—by, for example, assisting with the investigation of his claims, reviewing and approving the First Amended Complaint, staying in close communication with Class Counsel, including during settlement negotiations, and reviewing and approving the Settlement Agreement, Albanese Decl. ¶ 18—an even larger award could easily be justified. A $5,000 service award is more than appropriate. *See, e.g.*, *Phillips*, 2022 WL 832085, at *7 (granting $5,000 service awards to each of six class representatives who "supervised the litigation by reviewing pleadings, reviewing the Settlement Agreement, gathering and communicating information to Class Counsel regarding the litigation, and exercising general oversight over the case"); *Taylor*, 2022 WL 16949543, at *2 (awarding $7,5000 service award to named plaintiff, where case settled before plaintiff was deposed); *In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig.*, 2012 WL 2512750, at *11 (D. Minn. June 29, 2012), *aff'd*, 716 F.3d 1057 (8th Cir. 2013) (approving service awards of $5,000-$7,5000 for class representatives for gathering information and otherwise assisting counsel, and noting that settlement was reached before class representatives were deposed); *Khoday*, 2016 WL 1637039, *12 (awarding $10,000 to named plaintiffs). Plaintiff's modest request should be approved.

CONCLUSION

Based on the foregoing, the Court should approve Class Counsel's request for attorneys' fees in the amount of one-third of the Settlement Fund, reimbursement for out-of-pocket costs, and the request for the Class Representative's Service Award of $5,000.

Respectfully submitted,

Dated: June 27, 2024

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Burak C. Bingollu, on behalf of himself and all others similarly situated,

Plaintiff,

v.

One Source Technology, LLC,
d/b/a Asurint,

Defendant.

No. 0:22-cv-00077-DTS

LOCAL RULE 7.1(f) CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(h), the undersigned hereby certifies that the Memorandum in Support of the Motion for Attorneys' Fees, Costs, and Class Representative Service Award complies with the type-size requirement as it was prepared in Microsoft Word 365 using 13-point proportional font. Pursuant to Local Rule 7.1(f), the undersigned further certifies that the Memorandum complies with the type-volume requirement as there are 7,528 words, according to Microsoft Word 365's word count feature, including headings, footnotes, and quotations.

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