

STATE OF MICHIGAN
17TH JUDICIAL CIRCUIT
KENT COUNTY

CASE NO. 24-02304-NZ

JUDGE Scott A. Noto

CARLOS DIAS JR. and ERIKA
WOOLEY on behalf of
themselves and all others
similarly situated,

Plaintiffs,

ACRISURE, LLC

Defendant.

Rec'd & Filed

OCT 01 2024

KENT COUNTY
CIRCUIT COURT

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

Plaintiffs Carlos Dias, Jr. and Erika Wooley on behalf of themselves and all others similarly situated hereby move the Court to:

1. Approve an award of attorney fees for \$150,000 and costs of \$1,686.16; and
2. Approve service awards for Plaintiffs Carlos Dias, Jr. and Erika Wooley in the amount of \$1,500 each (or \$3,000 in total).

Date: October 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 1, 2024 the foregoing document was filed with Seventeenth Circuit Court for the County of Kent via hand-delivery, and e-mailed to the following counsel of record:

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

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I. Introduction

Over the past nine months, Class Counsel¹ worked diligently on behalf of Plaintiffs Carlos Dias, Jr. and Erika Wooley (“Plaintiffs”) and the Settlement Class in this data breach case against Defendant Acrisure, LLC (“Defendant” or “Acrisure”). Class Counsel’s efforts culminated in a substantial settlement for Plaintiffs and the Settlement Class of approximately 36,000 individuals. The Settlement provides tailored and timely relief—including two years of credit monitoring services, compensation for unreimbursed losses up to \$4,000 per person, and compensation for lost time up to \$100 (at a rate of \$25 per hour for up to four hours). There is no cap on settlement benefits, meaning that all valid claims will be paid in full. Additionally, the Settlement mandates that Acrisure pay for improvements to its data security systems. Critically, these improvements will be paid for by Acrisure *separate and apart* from all other settlement benefits.

From the start of this case through the filing of this motion, Class Counsel invested 154.2 hours, \$93,322.10 in fees, and \$1,686.16 in costs in pursuit of the claims of Plaintiffs and the Settlement Class. The docket in this matter reflects efficient and concise pleading of claims against Defendant and hard-fought settlement negotiations that ultimately resulted in the Settlement. Thus, Class Counsel respectfully requests attorney fees of \$150,000, costs of \$1,686.16, and service awards for Plaintiffs Carlos Dias, Jr. and Erika Wooley of \$1,500 each. As detailed below, these requests are reasonable under Michigan law and align with similar data breach settlements in Michigan and across the country. *See, e.g. Carr et al. v. Beaumont Health*, Case No. 2020-181002-NZ (Mich. Cir. Ct. Oakland County) (granting final approval on October 29, 2021, and awarding

¹ Milberg Coleman Bryson Phillips Grossman, PLLC, Greenwald Davidson Radbil, PLLC, and Strauss Borrelli PLLC (f/k/a Turke & Strauss, LLP).

\$260,000 in attorney fees and costs for a data breach settlement with comparable class relief).² Thus, this Court should grant the motion.

II. Background

A. Litigation History

On December 8, 2023, Plaintiff Carlos Dias, Jr. filed a putative class action (the “*Dias* Action”) in the Western District of Michigan relating to the Security Incident. Joint Decl. ¶ 2. On December 11, 2023, Erika Wooley filed a putative class action (the “*Wooley* Action”) in the Western District of Michigan, relating to the Security Incident. *Id.* Plaintiffs each sought monetary and equitable relief in their respective complaints. *Id.* These actions were later dismissed, and Plaintiffs refiled their consolidated complaint in this Court on March 6, 2024. *Id.* ¶ 3.

The Parties determined that early negotiations could be beneficial. *Id.* ¶ 4. Thus, the Parties explored the possibility of early and efficient resolution of Plaintiffs’ claims. *Id.* Thereafter, the parties engaged in zealous negotiations—which were always arm’s length, in good faith and hard-fought. *Id.* ¶ 5. Throughout the negotiation process, both sides were ready and willing to litigate the case further if the negotiation process was ultimately unsuccessful. *Id.*

After weeks of arm’s length negotiations, the Parties agreed to a term sheet describing the essential terms of the Settlement Agreement. *Id.* ¶ 6. Thereafter, the Parties continued to negotiate the finer terms of the Settlement. *Id.* Over the next several months, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notice forms, and agreed upon a Claims Administrator. *Id.* Critically, the Parties did not discuss any attorneys’ fees, costs, or service awards until the essential terms of the Settlement were already agreed upon. *Id.* ¶ 7. Finally, on April 12, 2024, the Settlement Agreement was finalized. *Id.* ¶ 8.

² Joint Declaration attached as Exhibit A.

On May 2, 2024, Plaintiffs filed the Unopposed Motion for Preliminary Approval of Class Action Settlement. *Id.* ¶ 9. And on July 2, 2024, the Court issued its Preliminary Approval Order and preliminary approved the settlement. *Id.* Thereafter, the Court scheduled a hearing on the Motion to Approve Settlement on November 8, 2024, at 8:30 am in Courtroom #11A. *Id.*

Since preliminary approval was granted, Settlement Class Counsel has worked to prepare and issue Notice to the Settlement Class, with the assistance of the Settlement Administrator. *Id.* ¶ 10. The Notice program has proceeded in a timely manner, and there have been no opt-outs or objections to the Settlement to date. *Id.*

B. Settlement Benefits

The Settlement provides substantial relief to the Settlement Class—including all individuals, or their respective successors or assigns, who reside in the United States and whose Personal Information was impacted by the Security Incident. Settlement Agreement (“S.A.”), ¶ 33. The Settlement provides multiple forms of timely relief that were specifically tailored to address the injuries alleged. Joint Decl. ¶ 12. For one, Class Members may claim two years of Credit Monitoring Services—including one-bureau credit monitoring with Experian and \$1 million in identity theft insurance. S.A. ¶¶ 9, 41.

Class Members may also claim up to \$4,000.00 per person for unreimbursed losses that were more likely than not caused by the Security Incident. *Id.* ¶ 42. Unreimbursed losses are broadly defined to include “without limitation, and by way of example, unreimbursed losses relating to fraud or identity theft; professional fees services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after mailing of the notice of data breach, through the date of claim submission; and

miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.” *Id.*

Class Members may also claim up to \$100.00 per person for lost time (up to four hours and at a rate of \$25.00 per hour). *Id.* ¶ 42(b). Eligible lost time includes time monitoring accounts or otherwise dealing with issues related to the Security Incident. *Id.* Claims for lost time are subject to the \$4,000.00 per person cap on unreimbursed losses. *Id.* Each of these Settlement benefits will be paid for in full by Acrisure for each valid claim, with no cap.

Finally, the Settlement requires that Acrisure provide equitable relief in the form of information security upgrades. *Id.* ¶ 43. Critically, Acrisure will pay for these data security improvements *separate and apart* from all the other settlement benefits. *Id.*

III. Legal Standard

The “touchstone” for determining the amount of attorney fees is “reasonableness.” *Woodman v. Dep’t of Corr.*, 511 Mich. 427, 450 (Mich. 2023) (quoting *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573, 588 (Mich. 1982)). In *Smith v Khouri*, the Michigan Supreme Court articulated the guidance principles for determining reasonableness. 481 Mich 519, 530 (Mich. 2008) (opinion by Taylor, C.J.). Then, in *Pirgu v. United Servs. Auto. Ass’n*, the Michigan Supreme Court refined the guiding principles. 499 Mich. 269, 281 (Mich. 2016). Taken together, the applicable framework for determining reasonable attorney fees is the “*Smith/Pirgu* framework” or the “*Smith/Pirgu* factors.” *Woodman*, 511 Mich. 427, 450; *see also Chew v. Lopez*, No. 366641, 2024 Mich. App. LEXIS 3210, at *6 (Ct. App. Apr. 25, 2024) (applying *Smith/Pirgu*); *Sunflower Vill. Homes Ass’n v. Lacy*, No. 358150, 2022 Mich. App. LEXIS 6776, at *10 (Ct. App. Nov. 10, 2022) (same).

First, the trial court calculates a “baseline figure” for attorney fees. *Id.* *Second*, the trial court applies the eight factors that the Michigan Supreme Court synthesized in *Pirgu*. *Id.* Notably, these eight factors “are not exclusive, and the trial court may consider any additional relevant factors.” *Id.* However, the trial court must “review and state its findings with respect to all the factors in the *Smith/Pirgu* framework[.]” *Id.*

IV. The Requested Attorneys’ Fees and Costs Are Reasonable.

The requested attorneys and costs are reasonable under the *Smith/Pirgu* framework, and the Court should grant the motion.

A. Calculating the Baseline Figure.

Calculating the “baseline figure” for attorney fees involves several steps. *Chew*, 2024 Mich. App. LEXIS 3210, at *6. First, the court determines a reasonable hourly rate “charged in the locality for similar legal services” based on “reliable surveys or other credible evidence of the legal market.” *Id.* (quoting *Smith*, 481 Mich at 530-31). Thereafter, the court multiplies that hourly rate by the “reasonable number of hours expended in the case[.]” *Id.* According to the State Bar of Michigan’s 2023 Economics of Law Survey, hourly rates in the Grand Rapids area ranged from \$350 at the median, \$450 at the 75th percentile, and \$625 at the 95th percentile.³

However, hourly rates for plaintiff attorneys are generally higher because “it is to be expected that an hourly rate on a contingent award would exceed the typical hourly rate[.]” *Kimble v. First Am. Home Warranty Corp. & Fivestrata LLC*, No. 23-10037, 2024 U.S. Dist. LEXIS 118951, at *23 (E.D. Mich. July 8, 2024). Thus, when broken down by practice area, the State Bar of Michigan’s 2023 Economics of Law Survey shows that median hourly rates range from \$400

³ 2023 Economics of Law Survey Results, STATE BAR OF MICHIGAN, https://www.michbar.org/file/pmrc/pdfs/2_2023EOL_SurveyResults.pdf (last visited Sept. 24, 2024).

for plaintiff personal injury law, to \$450 for plaintiff insurance law, and \$600 for plaintiff medical malpractice law.⁴ And at the 95th percentile, hourly rates ranged from \$900 for plaintiff personal injury, to \$700 for plaintiff insurance law, and \$1200 for plaintiff medical malpractice.⁵ However, the Survey does not contain statistics for plaintiff attorneys in the class action context.⁶

In the complex class action context, courts generally approve higher rates. *See e.g., Jackson v. Nationwide Ret. Sols., Inc.*, No. 2:22-cv-3499, 2024 U.S. Dist. LEXIS 38282, at *18 (S.D. Ohio Mar. 5, 2024) (approving hourly rates up to \$1,308 even though “[s]ome of these hourly rates are higher than what the Court typically sees”); *Weisenberger v. Ameritas Mut. Holding Co.*, No. 4:21-CV-3156, 2024 U.S. Dist. LEXIS 149359, at *11-12 (D. Neb. Aug. 21, 2024) (approving an hourly rate of \$700 because although “much higher than this Court is used to seeing from Nebraska lawyers . . . consumer protection class action cases are rare, and require some specialty”).

Here, Milberg Coleman Bryson Phillips Grossman, PLLC invested 71.9 hours and incurred \$41,169.60 in fees. Joint Decl. ¶ 13. The attorneys invested 41.8 hours with rates ranging from \$413 to \$1,057 and incurred \$34,056.90 in fees. *Id.* This equates to a blended (i.e., average) rate of \$814.76 per hour worked by an attorney.⁷ *Id.* Meanwhile, the paralegals and legal assistants invested 30.1 hours with rates ranging from \$208 to \$239 and incurred \$7,112.70 in fees. *Id.* This equates to a blended (i.e., average) rate of \$236.30 per hour per paralegal or legal assistant.⁸ Similarly, Strauss Borrelli PLLC invested 55 hours and incurred 29,487.50 in fees. Joint Decl. ¶ 14. Altogether, the attorneys invested 54.7 hours with rates ranging from \$400 to \$700 and incurred

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Calculated by dividing the fees incurred by the hours worked by the attorneys.

⁸ Calculated by dividing the fees incurred by the hours worked by the paralegals and legal assistants.

\$29,420.00 in fees. *Id.* This equates to a blended (i.e., average) rate of \$537.84 per hour worked by an attorney.⁹ Meanwhile, a paralegal invested 0.3 hours with a rate of \$225.00 and incurred \$67.50 in fees. *Id.* Strauss Borrelli also incurred costs of \$26.00 for notarization and research fees. *Id.* Greenwald Davidson Radbil PLLC invested 27.3 hours and incurred \$22,665.00 in fees. Altogether, the attorneys invested 27.3 hours with rates ranging from \$650 to \$850 and incurred \$22,665.00 in fees. This equates to a blended (i.e., average) rate of \$830.22 per hour worked by an attorney.

Altogether, these rates and fees incurred are reasonable and establish a baseline fee of \$93,322.10 for 154.2 hours—which equates to a global average rate of \$605.20 per hour. *Id.* ¶ 12. Similar rates have been accepted in numerous other data breach class action cases in the nationwide market. *See, e.g. Fox v. Iowa Health Sys.*, No. 3:18-CV-00327, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (awarding \$1,575,000 in attorneys’ fees and costs, at hourly rates from \$815-\$865 per hour for partners, \$550-\$625 for senior associates, \$415-\$500 for associates, and \$215-\$350 for paralegals for a data breach settlement); *Perdue v. Hy-Vee, Inc.*, No. 19-1330, 2021 WL 3081051, at *5 (C.D. Ill. July 21, 2021) (approving reasonable hourly rates requested by Class Counsel of \$700-\$815 for partners, \$325-\$700 for associates, \$200-\$275 for paralegals, and \$150-\$225 for law clerks); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (finding reasonable hourly rates charged by partners who billed \$1050, \$1000, \$750, and \$935 per hour); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (finding reasonable rates from \$450 to \$900 for partners, \$160-\$850 for non-partner attorneys, and \$50 to \$380 for paralegals); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954,

⁹ Calculated by dividing the fees incurred by the hours worked by the attorneys.

at *12 (E.D. Pa. Sept. 24, 2019) (finding reasonable hourly rates range \$202 to \$975 per hour); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617, 2018 WL 3960068, at *16 (N.D. Cal. Aug. 17, 2018) (finding reasonable hourly rates of partners from \$400 to \$970, non-partner attorneys from \$185 to \$850, and non-attorneys from \$95 to \$440). And as explained below, the requested fee of \$150,000 is reasonable and proper under the *Smith/Pirgu* framework.

B. The *Smith/Pirgu* Factors Support the Requested Fee.

After calculating the “baseline figure,” the court then assesses the eight *Smith/Pirgu* factors to determine “whether an up or down adjustment is appropriate.” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281). Here, the application of these factors reaffirms that the requested fee of \$150,000 is reasonable and proper under Michigan law.

i. Experience, reputation, and ability.

The first factor is “the experience, reputation, and ability of the lawyer or lawyers performing the services[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, Class Counsel is highly experienced in complex class action litigation—and with a specific expertise in data breach litigation. Joint. Decl. ¶ 16. Over the years, Class Counsel have successfully litigated *several hundred* data breach class actions across the country. *Id.* And many courts have remarked that Class Counsel—i.e., Milberg and Strauss Borrelli—are highly qualified and experienced in this area of law. *See e.g., McManus v. Gerald O. Dry, P.A.*, 2023 NCBC LEXIS 69, *7-8 (May 5, 2023) (declaring that “the Court recognizes that data breach class action litigation is a complex and novel area of the law and that Lietz and his law firm [Milberg] are national leaders in this field”); *In re Correctcare Data Breach Litig.*, Civil Action No. 5: 22-319, 2024 U.S. Dist. LEXIS 166754, at *14 (E.D. Ky. Sep. 17, 2024) (approving attorney fees of \$2,163,333.33 and declaring that “there is *no dispute* that class counsel is qualified and experienced in this type

of litigation”); *Huffman v. Commscope, Inc. of N.C.*, No. 5:23-cv-132, 2024 U.S. Dist. LEXIS 131250, at *14 (W.D.N.C. July 24, 2024) (granting final approval to a class action data breach settlement, finding that Strauss Borrelli adequately represented the settlement class and approving the request attorney’s fees). Thus, this factor strongly supports the requested fee.

ii. Difficulty, novelty, and skill required.

The second factor is “the difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). As a data breach class action, this case implicated novel and difficult questions and required a high level of expertise to pursue. Joint Decl. ¶ 17; *see also In re Correctcare Data Breach Litig.*, Civil Action No. 5: 22-319, 2024 U.S. Dist. LEXIS 166754, at *14 (E.D. Ky. Sep. 17, 2024) (collecting cases) (noting that “courts have acknowledged that data breach cases are particularly complex”); *Jackson v. Nationwide Ret. Sols., Inc.*, No. 2:22-cv-3499, 2024 U.S. Dist. LEXIS 38282, at *11 (S.D. Ohio Mar. 5, 2024) (“[T]he technical issues involved in data breach cases are complex.”); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019) (“The realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law.”). Thus, this factor strongly supports the requested fee.

iii. Amount in question and results obtained.

The third factor is “the amount in question and the results obtained[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, Class Counsel succeeded in obtaining substantial and timely relief for the Class of approximately 36,000 individuals. Joint Decl. ¶ 18. From the outset, Class Counsel acknowledges that calculating the precise value of data

breach settlements like this is difficult. *Id.* However, the following calculations help demonstrate the general magnitude of the benefits provided by the Settlement. *Id.*

First, the Settlement provides two years of credit monitoring services for 36,000 Class Members which equates to an estimated value of \$8,640,000.¹⁰ **Second**, the Settlement provides compensation for unreimbursed losses up to \$4,000 per person which equates to an approximate value of \$144,000,000 for all Class Members.¹¹ **Third**, the Settlement provides compensation for lost time up to \$100 per person which equates to an approximate value of \$3,600,000 for all Class Members.¹² Regardless of whether all 36,000 Class Members claim the full value of funds provided by the Settlement, these calculations illustrate the value (i.e., opportunity for monetary relief) that the Settlement provides. *Id.* ¶ 19. Thus, this factor strongly supports the requested fee.

iv. Expenses incurred.

The fourth factor is “the expenses incurred[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, Milberg incurred costs of \$1,661.16 and fees of \$41,169.60. Joint Decl. ¶ 13. Strauss Borrelli incurred costs of \$26.00 and fees of 29,487.50. *Id.* ¶ 14. Greenwald Davidson Radbil incurred fees of \$22,665.00. *Id.* ¶ 15. These costs and fees represent a substantial financial investment in this case. *Id.* ¶¶ 13–15. Thus, this factor also supports the requested fee.

¹⁰ Calculated by multiplying an estimated monthly cost of \$10 by 24 months by 36,000 Class Members. See Kiah Treece, et. al, *Best Credit Monitoring Services of September 2024*, FORBES ADVISOR (Aug. 30, 2024) <https://www.forbes.com/advisor/credit-score/best-credit-monitoring-services/> (explaining that “costs generally ranging from around \$7 to \$40 per month”).

¹¹ Calculated by multiplying \$4,000 by 36,000 Class Members.

¹² Calculated by multiplying \$100 by 36,000 Class Members.

v. Nature and length of the client relationship.

The fifth factor is “the nature and length of the professional relationship with the client[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, Plaintiff Carlos Dias, Jr. filed suit on December 8, 2023. Joint Decl. ¶ 2. And Erika Wooley filed suit on December 11, 2023. *Id.* Thus, Class Counsel has represented, and litigated on behalf of, Plaintiffs for over nine months. *Id.* ¶ 11. However, Class Counsel also invested substantial time investigating this case and communicating with Plaintiffs before filing suit. *Id.* This represents a substantial investment of time and effort in this case. *Id.* Thus, this factor also supports the requested fee.

vi. The preclusion of other employment.

The sixth factor is “the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, by representing Carlos Dias, Jr. and Erika Wooley, Class Counsel were precluded from using that time to represent other individuals in different class action cases. Joint Decl. ¶ 20. Thus, this factor also supports the requested fee.

vii. Time limitations.

The seventh factor is “the time limitations imposed by the client or by the circumstances[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, the clients did not impose any time limitations. Joint Decl. ¶ 21. However, given the nature of data breaches—which expose class members to a heightened risk of imminent fraud and identity theft—the efficient resolution of claims is desirable as to provide class members with timely relief (e.g., credit monitoring and reimbursement for fraud and identity theft). *Id.* Thus, this factor also supports the requested fee.

viii. Contingent fees.

The eighth factor is “whether the fee is fixed or contingent[.]” *Chew*, 2024 Mich. App. LEXIS 3210, at *7 (citing *Pirgu*, 499 Mich at 281–82). Here, Class Counsel worked wholly on a contingent basis—without guarantee of any recovery. Joint Decl. ¶ 22. Courts recognize that working on a contingent fee basis *strongly supports* the reasonableness of the requested fee. *See e.g., Kimble*, 2024 U.S. Dist. LEXIS 118951, at *23 (E.D. Mich. July 8, 2024) (“Certainly, it is to be expected that an hourly rate on a contingent award would exceed the typical hourly rate charged by counsel.”); *In re Home Point Capital Inc. Sec. Litig.*, No. 21-11457, 2024 U.S. Dist. LEXIS 118213, at *18 (E.D. Mich. June 28, 2024) (“The significant risk inherent in prosecuting this action warrants the award of the requested 30% contingent fee.”); *Nolan v. Detroit Edison Co.*, No. 18-13359, 2022 U.S. Dist. LEXIS 202368, at *22 (E.D. Mich. Nov. 7, 2022) (noting that when “[c]lass counsel was retained on a contingent basis” that they “assumed the risk of advancing substantial costs and expenses throughout this litigation”); *BleachTech, LLC v. UPS, Inc.*, No. 14-12719, 2022 U.S. Dist. LEXIS 128736, at *23-24 (E.D. Mich. July 20, 2022) (“In undertaking to prosecute this complex case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants an appropriate fee.”). Thus, this factor strongly supports the requested fee.

ix. The percentage of the benefit.

Here, the requested fee represents a small percentage of the benefit provided to the Settlement Class. Joint Decl. ¶ 23. While this factor is not explicitly contemplated by *Smith/Pirgu*, courts have the discretion to consider other relevant factors (so long as the court also addresses the eight factors required by *Smith/Pirgu*). *Sunflower*, 2022 Mich. App. LEXIS 6776, at *10.

Critically, Michigan courts frequently consider this factor when assessing the reasonableness of attorney fees. *See e.g., Friske v. Bonnier Corp.*, No. 16-12799, 2019 U.S. Dist. LEXIS 179724, at *6 (E.D. Mich. Oct. 17, 2019) (approving attorney fees of \$623,500.00 which was 29% of the settlement benefit); *Lyngaas v. Curaden AG*, No. 17-cv-10910, 2022 U.S. Dist. LEXIS 157299, at *12 (E.D. Mich. Aug. 31, 2022) (approving attorney fees of \$202,002.31 which was 25% of the settlement benefit); *Martin v. Trott Law, P.C.*, No. 15-12838, 2018 U.S. Dist. LEXIS 167531, at *25 (E.D. Mich. Sep. 28, 2018) (approving attorney fees of \$2,499,750 which was 33.33% of the settlement benefit).

Here, the requested fee of \$150,000 is a small fraction of the monetary relief available to Class Members. *First*, the requested fee equates to 1.7% of the value of the credit monitoring offered.¹³ *Second*, the requested fee equates to 0.1% of the value of the compensation for unreimbursed losses offered.¹⁴ *Third*, the requested fee equates to 4.2% of the value of the compensation for lost time offered.¹⁵ Simply put, regardless of the calculation used to estimate the value of the Settlement, the requested fee is a small percentage of that value. Joint Decl. ¶ 23.

V. The Costs Are Reasonable.

Class Counsel requests reasonable costs of \$1,686.16 for court fees, courier fees, delivery fees, notarization fees, and research fees. Joint Decl. ¶ 24. These costs are reasonable and align with the costs approved in analogous cases. *See e.g., Correctcare*, 2024 U.S. Dist. LEXIS 166754, at *14 (E.D. Ky. Sep. 17, 2024) (approving costs of \$12,313.92 because the “costs of court filings, *pro hac vice* fees, and attending court are reasonable”). Thus, the Court should award the requested costs.

¹³ Calculated by dividing the total value of \$8,640,000 by \$150,000.

¹⁴ Calculated by dividing the total value of \$144,000,000 by \$150,000.

¹⁵ Calculated by dividing the total value of \$3,600,000 by \$150,000.

VI. The Service Awards Are Reasonable.

Class Counsel requests service awards of \$1,500 for each Carlos Dias, Jr. and Erika Wooley (\$3,000 in total) in recognition of their efforts and dedication to their fellow Class Members. Joint Decl. ¶ 25. Carlos Dias, Jr. and Erika Wooley both fulfilled their duties as Class Representatives by reviewing the necessary documents, answering the many questions of Class Counsel. *Id.* Both Carlos Dias, Jr. and Erika Wooley were ready, willing, and able to assist with the case through trial if necessary. *Id.* Thus, the requested service awards are reasonable and align with the service awards approved in analogous cases. *See e.g., Thomsen v. Morley Cos.*, No. 1:22-cv-10271, 2023 U.S. Dist. LEXIS 84005, at *8 (E.D. Mich. May 12, 2023) (approving a service award of \$1,500 in a data breach class action); *Correctcare*, 2024 U.S. Dist. LEXIS 166754, at *15 (E.D. Ky. Sep. 17, 2024) (approving service awards of \$2,500 in a data breach class action while noting that such rewards were “relatively modest”). Thus, the Court should approve the requested Service Awards.

VII. Conclusion

For the foregoing reasons, Plaintiffs Carlos Dias, Jr. and Erika Wooley respectfully request that this Court enter an order (1) granting Class Counsel’s request for attorneys’ fees of \$150,000 and costs of \$1,686.16; (2) awarding Carlos Dias, Jr. and Erika Wooley service awards of \$1,500; and (3) providing such other and further relief as the Court deems reasonable and just.

Date: October 1, 2024

Respectfully submitted,

By: /s/ Nick Suciu

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 1, 2024 the foregoing document was filed with Seventeenth Circuit Court for the County of Kent via hand-delivery, and e-mailed to the following counsel of record:

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Nick Suciu

EXHIBIT A

CARLOS DIAS JR. and ERIKA
WOOLEY on behalf of
themselves and all others
similarly situated,

Plaintiffs,

ACRISURE, LLC

Defendant.

**JOINT DECLARATION IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEY FEES, COSTS, AND SERVICE AWARDS**

1. We are counsel for Plaintiffs Carlos Dias, Jr. and Erika Wooley in the above-captioned case. This declaration supports Plaintiffs' Unopposed Motion for Attorney Fees, Costs, and Service Awards.

Litigation History

2. On December 8, 2023, Plaintiff Carlos Dias, Jr. filed a putative class action (the "*Dias* Action") in the Western District of Michigan relating to the Security Incident. On December 11, 2023, Erika Wooley filed a putative class action (the "*Wooley* Action") in the Western District of Michigan, relating to the Security Incident. Plaintiffs each sought monetary and equitable relief in their respective complaints.

3. These actions were later dismissed, and Plaintiffs refiled their consolidated complaint in this Court on March 6, 2024.

4. The Parties determined that early negotiations could be beneficial. Thus, the Parties explored the possibility of early and efficient resolution of Plaintiffs' claims.

5. Thereafter, the parties engaged in zealous negotiations—which were always arm’s length, in good faith and hard-fought. Throughout the negotiation process, both sides were ready and willing to litigate the case further if the negotiation process was ultimately unsuccessful.

6. After weeks of arm’s length negotiations, the Parties agreed to a term sheet describing the essential terms of the Settlement Agreement. Thereafter, the Parties continued to negotiate the finer terms of the Settlement. Over the next several months, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notice forms, and agreed upon a Claims Administrator.

7. Critically, the Parties did not discuss any attorneys’ fees, costs, or service awards until the essential terms of the Settlement were already agreed upon.

8. Finally, on April 12, 2024, the Settlement Agreement was finalized.

9. On May 2, 2024, Plaintiffs filed the Unopposed Motion for Preliminary Approval of Class Action Settlement. And on July 2, 2024, the Court issued its Preliminary Approval Order and preliminarily approved the settlement. Thereafter, the Court scheduled a hearing on the Motion to Approve Settlement on November 8, 2024, at 8:30 am in Courtroom #11A.

10. Since preliminary approval was granted, Settlement Class Counsel has worked to prepare and issue Notice to the Settlement Class, with the assistance of the Settlement Administrator. The Notice program has proceeded in a timely manner, and there have been no opt-outs or objections to the Settlement to date.

11. Class Counsel has represented, and litigated on behalf of, Plaintiffs for over nine months. However, Class Counsel also invested substantial time investigating this case and communicating with Plaintiffs before filing suit. This represents a substantial investment of time and effort in this case.

The Settlement

12. The Settlement provides multiple forms of timely relief that were specifically tailored to address the injuries alleged. In total, to date, Class Counsel has invested 154.2 hours, \$93,322.10 in fees, and \$1,686.16 in costs.

13. Milberg Coleman Bryson Phillips Grossman, PLLC invested 71.9 hours and incurred \$41,169.60 in fees. The attorneys invested 41.8 hours with rates ranging from \$413 to \$1,057 and incurred \$34,056.90 in fees. This equates to a blended (i.e., average) rate of \$814.76 per hour worked by an attorney.¹ Meanwhile, the paralegals and legal assistants invested 30.1 hours with rates ranging from \$208 to \$239 and incurred \$7,112.70 in fees. This equates to a blended (i.e., average) rate of \$236.30 per hour per paralegal or legal assistant.² Milberg also incurred costs of \$1,661.16 for court fees and courier/delivery fees. These costs and fees represent a substantial financial investment in this case. A table breaking down these fees and costs is provided below.

Timekeeper	Rate	Hours	Total
David Lietz (Partner)	\$997.00/\$1,057.00	5.8	\$ 5,938.60
Gary M. Klinger (Partner)	\$878.00	13.5	\$ 11,853.00
CJ Cuneo (Associate)	\$878.00	14.2	\$ 12,467.60
John Nelson (Associate)	\$508.00/\$538.00	3.1	\$ 1,649.80
Dean Meyer (Associate)	\$413.00	5.2	\$ 2,147.90
Sandra Passanisi (Paralegal)	\$225.00/\$239.00	10.3	\$ 2,449.10
Heather Sheflin (Paralegal)	\$225.00/\$239.00	14.3	\$ 3,396.70
Kerry Brennan (Paralegal)	\$239.00	2.5	\$ 597.50
Ash Tyrrell (Legal Assistant)	\$208.00	2.7	\$ 601.90
Amanda Mkamanga (Paralegal)	\$225.00	0.3	\$ 67.50
	TOTAL:	71.9	\$41,169.60

¹ Calculated by dividing the fees incurred by the hours worked by the attorneys.

² Calculated by dividing the fees incurred by the hours worked by the paralegals and legal assistants.

Expense Type	Amount
Court fees	\$1,304.88
Courier / Delivery Fees	\$ 356.28
TOTAL	\$1,661.16

14. Strauss Borrelli PLLC invested 55 hours and incurred \$29,487.50 in fees. Altogether, the attorneys invested 54.7 hours with rates ranging from \$400 to \$700 and incurred \$29,420.00 in fees. This equates to a blended (i.e., average) rate of \$537.84 per hour worked by an attorney.³ Meanwhile, a paralegal invested 0.3 hours with a rate of \$225.00 and incurred \$67.50 in fees. Strauss Borrelli also incurred costs of \$26.00 for notarization and research fees. These fees and costs represent a substantial financial investment in this case. A table breaking down these fees and costs is provided below.

Timekeeper	Rate	Hours	Total
Raina Borrelli (Partner)	\$700.00	16.9	\$11,830.00
Samuel Strauss (Partner)	\$700.00	8.2	\$5,740.00
Andrew Gunem (Associate)	\$400.00	22.1	\$8,840.00
Carolyn Chen (Associate)	\$400.00	7.1	\$2,840.00
Zog Begolli (Associate)	\$425.00	0.4	\$170.00
Rachel Pollack (Paralegal)	\$225.00	0.3	\$67.50
	TOTAL:	55	\$29,487.50

Expense Type	Amount
Notarization fee	\$25.00
Research fee	\$1.00
TOTAL	\$26.00

15. Greenwald Davidson Radbil PLLC invested 27.3 hours and incurred \$22,665.00 in fees. Altogether, the attorneys invested 27.3 hours with rates ranging from \$650 to \$850 and incurred \$22,665.00 in fees. This equates to a blended (i.e., average) rate of \$830.22 per hour worked by an attorney.⁴ These fees represent a substantial financial investment in this case. A table breaking down these fees is provided below.

³ Calculated by dividing the fees incurred by the hours worked by the attorneys.

⁴ Calculated by dividing the fees incurred by the hours worked by the attorneys.

Timekeeper	Rate	Hours	Total
Aaron Radbil	\$850.00	16.30	\$13,855.00
James Davidson	\$850.00	4.5	\$3,825.00
Michael Greenwald	\$850.00	3.8	\$3,230.00
Jesse Johnson	\$650.00	2.7	\$1,755.00
	TOTAL:	27.3	\$22,665.00

16. Class Counsel is highly experienced in complex class action litigation—and with a specific expertise in data breach litigation. Over the years, Class Counsel have successfully litigated *several hundred* data breach class actions across the country.

17. As a data breach class action, this case implicated novel and difficult questions and required a high level of expertise to pursue.

18. Here, Class Counsel succeeded in obtaining substantial and timely relief for the Class of approximately 36,000 individuals. From the outset, Class Counsel acknowledges that calculating the precise value of data breach settlements like this is difficult. However, the following calculations help demonstrate the general magnitude of the benefits provided by the Settlement.

19. Regardless of whether all 36,000 Class Members claim the full value of funds provided by the Settlement, the calculations in the memorandum demonstrate the value (i.e., opportunity for monetary relief) that the Settlement provides.

Miscellaneous

20. By representing Carlos Dias, Jr. and Erika Wooley, Class Counsel were precluded from using that time to represent other individuals in different class action cases.

21. The clients did not impose any time limitations. However, given the nature of data breaches—which expose class members to a heightened risk of imminent fraud and identity theft—the efficient resolution of claims is desirable as to provide class members with timely relief (e.g., credit monitoring and reimbursement for fraud and identity theft).

22. Class Counsel worked wholly on a contingent basis—without guarantee of any recovery.

23. The requested fee represents a small percentage of the benefit provided to the Settlement Class. Regardless of the calculation used to estimate the value of the Settlement, the requested fee is a small percentage of that value.

24. Class Counsel’s motion requests reasonable costs of \$1,686.16 for court fees, courier fees, delivery fees, notarization fees, and research fees.

25. Class Counsel’s motion requests service awards of \$1,500 for each Carlos Dias, Jr. and Erika Wooley (\$3,000 in total) in recognition of their efforts and dedication to their fellow Class Members. Carlos Dias, Jr. and Erika Wooley both fulfilled their duties as Class Representatives by reviewing the necessary documents, answering the many questions of Class Counsel. And they were ready, willing, and able to assist with the case through trial if necessary.

I, Raina C. Borrelli, declare under penalty of perjury of the laws of the State of Michigan and the United States that the foregoing is true and correct, and that this declaration was executed in Eagan, Minnesota on October 1, 2024.

Date: October 1, 2024

Respectfully submitted,

By: /s/ Raina C. Borrelli

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