

**IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

CASE NO.: 23-CA-000317

JEREMY REARDON, LINDA POTTER,
AND FRANKIE SOLOMON, individually
and on behalf of all similarly situated persons,

Plaintiffs,

v.

SUNCOAST SKIN SOLUTIONS, INC.,

Defendant.

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

Plaintiffs, Jeremy Reardon, Linda Potter, and Frankie Solomon, (“Plaintiffs” or “Settlement Class Representatives”), respectfully move for approval of their request for attorneys’ fees in the amount of one-third of the \$825,000.00 Settlement Fund, or \$275,000.00, plus reasonable costs and expenses of \$15,613.01, and service awards of \$2,500.00 for each Settlement Class Representative in this preliminarily approved class action settlement with Defendant Suncoast Skin Solutions, Inc. (“Defendant” or “Suncoast”).¹

I. INTRODUCTION

On July 14, 2021, Defendant became aware of unusual activity on its network. On August 9, 2021, Defendant again detected unusual activity on some of its email accounts related to the earlier incident. Defendant’s investigation revealed that certain files and email accounts files were

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement (“S.A.”), which is attached to the Motion for Preliminary Approval as **[Exhibit 1]**.

accessed by an unauthorized actor and that the information of over 77,000 of its patients was impacted.

Plaintiffs allege that Defendant failed to ensure that access to the affected data systems was reasonably safeguarded, failed to acknowledge and act upon industry warnings, failed to use proper security systems and protocols to detect and deter the type of attack that occurred, and failed to provide timely and adequate notice to Plaintiffs and other proposed Class Members that their PII had been stolen, putting Plaintiffs and the proposed Class Members at a substantially increased risk of identity theft. Defendant disputes those allegations.

Following Defendant's filing of a motion to dismiss and strike on May 1, 2023, the Parties agreed to and did retain the Honorable Wayne R. Andersen (ret.), a highly experienced mediator, to assist the Parties in settlement negotiations. Joint Declaration of Class Counsel filed concurrently herewith ("Joint Decl."), ¶ 13, attached hereto as **Exhibit 1**. Prior to the mediation, the Parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. *Id.* ¶ 14. The Parties also submitted a draft settlement term sheet prepared by Plaintiffs, which was then used as the foundation for the ensuing negotiations. *Id.*

On August 30, 2023, the Parties, through their respective counsel, engaged in a full-day mediation session before Judge Andersen. The negotiations were hard-fought throughout and the settlement process was conducted at arm's length. *Id.* ¶ 17. With the assistance of Judge Andersen, the Parties were able to make progress on the terms of a settlement but were unable to reach an agreement that day. *Id.* ¶ 15. As a result, Plaintiffs filed an opposition to Defendant's motion to dismiss on September 7, 2023. *Id.* ¶ 12. Plaintiffs also drafted and served discovery on Defendant. *Id.* In the subsequent weeks, the Parties continued their negotiations and eventually negotiated resolution on a class-wide basis that provides monetary relief to Class Members and obligates

Defendant to continue to take remedial measures to safeguard against the reoccurrence of a data security incident. The principal terms of a settlement were reached and finalized in late September 2023. During the ensuing months, the Parties continued the exchange of information and negotiations as to the final details of the Settlement Agreement. Based on Plaintiffs' counsel's independent investigation of the relevant facts and applicable law, experience with other data breach cases, the information provided by Defendant, and the strengths and weaknesses of the Parties' respective positions (including the defenses articulated in Defendant's Motion to Dismiss and Reply to Plaintiffs' Opposition thereto), Plaintiffs' counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. Joint Decl., ¶ 17.

On April 5, 2024, Plaintiffs moved for preliminary approval of the settlement they had initially negotiated with Suncoast. The Court preliminarily approved that nationwide class action settlement on April 15, 2024. Plaintiffs now respectfully request an award of attorneys' fees of one-third of the \$825,000.00 Settlement Fund, or \$275,000, plus reasonable costs and expenses of \$15,613.01 and service awards of \$2,500.00 for each Settlement Class Representative consistent with the Settlement Agreement.²

II. ARGUMENT

a. Attorney's Fees, Costs, and Expenses.

Pursuant to the Settlement Agreement and the notice of class action settlement, and consistent with recognized class action practice and procedure, Plaintiffs respectfully request an award of attorneys' fee of one-third of the Settlement Fund, or \$275,000.00, and \$15,613.01 of

² For the sake of brevity, Plaintiffs do not repeat the details of the Settlement herein, but instead refer the Court to their Unopposed Motion for Preliminary Approval, the Settlement Agreement filed therewith as Exhibit 1, and the Joint Declaration of Francesca K. Burne and Raina Borrelli in Support of Plaintiffs' Motion for Preliminary Approval.

reasonable costs and expenses. Plaintiffs and Defendant negotiated and reached agreement regarding attorneys' fees, costs and expenses only after reaching agreement on all other material Settlement terms. Joint Decl. ¶ 17. The requested fee is within the range of reason under established Florida law. For the reasons detailed herein, Plaintiffs submit that the requested fee is appropriate, fair, and reasonable and respectfully request that it be approved by the Court.

In a class action case, “the trial court should have broad discretion to determine whether the fees requested ... are fair and reasonable in order to protect the interests of the class members.” *Nelson v. Wakulla Cnty.*, 985 So. 2d 564 (Fla. 5th DCA 2008). First, the court must determine an appropriate lodestar figure. Second, the court must determine whether a fee multiplier is appropriate and, if so, what such multiplier should be.

i. Class Counsel’s lodestar figure of \$171,438.70 is reasonable.

A lodestar figure should be determined by “an evaluation of all the factors enumerated in rule 4–1.5 of the Rules Regulating the Florida Bar except for the contingency risk factor and the results obtained for the benefit of the class. These two factors are accounted for in determining the applicability and amount of a multiplier.” *Kuhnlein v. Dep’t of Revenue*, 662 So. 2d 309, 315 (Fla. 1995). In other words, the factors to be considered in determining the lodestar are as follows:

- 1) the time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- 2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- 3) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
- 4) the significance of, or amount involved in, the subject matter of the representation, and the responsibility involved in the representation;
- 5) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

- 6) the nature and length of the professional relationship with the client;
- 7) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services.
- 8) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation

See Rule 4-1.5 of the Rules Regulating the Florida Bar. To date, Class Counsel's lodestar figure is \$171,438.70 for 250.9 hours of work, comprised as follows:

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Morgan & Morgan				
Jean Martin	Partner	\$1,150.00	2.0	\$2,300.00
Francesca Burne	Attorney	\$650	39.4	\$25,610.00
Ryan McGee	Attorney	\$878	73.9	\$64,884.20
Antonio Arzola	Attorney	\$437	4.5	\$1,966.50
Jennifer Cabezas	Paralegal	\$225	2.8	\$630.00
		Total:	122.6	\$95,390.70
Strauss Borrelli PLLC				
Sam Strauss	Partner	\$700	28.3	\$19,810.00
Raina Borrelli	Partner	\$700	58.0	\$40,600.00
Brittany Resch	Associate	\$475	4.3	\$2,042.00
Zog Begolli	Associate	\$425	.2	\$85.00
Alex Phillips	Associate	\$330	9.1	\$3,003.00
Carolyn Chen	Associate	\$400	13.2	\$5,280.00
Sarah Soleiman	Associate	\$400	11.7	\$4,680.00

Rachel Pollack	Legal Assistant	\$225	.3	\$67.50
Rudis Requeno	Legal Assistant	\$150	.5	\$75.00
Ahleea Zama	Legal Assistant	\$150	1.8	\$270.00
Jack Rader	Legal Assistant	\$135	.9	\$135.00
		Total:	128.3	\$76,048.00

1. The time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly.

Prosecuting and settling these claims demanded considerable time and labor. Joint Decl.

¶¶ 21, 34-36. The work performed included the following:

- Investigating the data breach and discussing it with potential clients;
- Drafting the various complaints and discussing them with clients;
- Analyzing and responding to Defendant’s motion to dismiss the complaint;
- Drafting and serving discovery on Defendant;
- Preparing the mediation statement and attending the mediation;
- Preparing the settlement agreement and exhibits thereto, including the notice and claim forms, and negotiating with opposing counsel;
- Preparing the motion for preliminary approval and exhibits thereto, including the proposed order, and negotiating with opposing counsel;
- Communicating with class members re: the settlement; and
- Preparing this motion for attorney’s fees, costs, expenses, and service awards.

Id. ¶¶ 34–35.

“[P]rosecution and management of a complex national class action requires unique legal skills and abilities.” *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). This is particularly true for data breach litigation. *See e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“The realm of data breach litigation is complex and largely undeveloped.”); *Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954 (E.D. Pa. Sep. 24, 2019) (“This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.”). The Court in *In re TD*

Ameritrade Account Holder Litig., 2011 WL 4079226 (N.D. Cal. Sep. 13, 2011) has noted that “many [data breach class actions] have been dismissed at the pleading stage.” Here, Defendant filed a motion to dismiss Plaintiffs’ claims in their entirety, and that motion remains pending. Had the parties not reached the Settlement, Plaintiffs would have had to survive that motion to dismiss to proceed with this case.

As a result of the high caliber of attorneys representing the Plaintiffs and the Settlement Class, a Settlement was reached that provides significant benefits to the class now rather than enduring the risk and time of years of litigation. Similarly, Suncoast was defended by highly skilled and experienced counsel. *Walco Inv., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (explaining that “[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results”); *see also Camden I*, 946 F.2d at 772 n.3 (in assessing the quality of representation by Class Counsel, the court should also consider the quality of their opposing counsel); *see also Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992) (same). “[T]hat this level of legal talent was available to the Settlement Class is another compelling reason in support of the fee requested In the private marketplace, as pointed out by several of Plaintiff’s experts, counsel of exceptional skill commands a significant premium.” *In re Checking*, 830 F. Supp. 2d at 1363.

2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

Class Counsel does not contend that acceptance of this particular employment precluded Class Counsel from accepting other employment.

3. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.

Class Counsel has submitted evidence that the above hourly rates are the usual and customary reasonable hourly rates that Class Counsel charge for similar work, Joint Decl. ¶¶ 24-

25 36, and no evidence has been submitted to the contrary. *See Kuhnlein*, 662 So. 2d at 315 (approving hourly rates where “evidence was submitted as to the usual hourly rates charged by class counsel's firms for those hours” and “no evidence [was presented] upon which it could be concluded that the hours expended were not reasonably necessary or that the hourly rates were not usual and customary for the services rendered”).

4. The significance of, or amount involved in, the subject matter of the representation, and the responsibility involved in the representation.

The subject matter of the representation was an alleged data breach that impacted approximately 77,000 individuals. Class Counsel was responsible for securing reimbursement of out-of-pocket expenses for all of these individuals and for securing equitable relief to decrease the likelihood of a future data breach. And through the work of Class Counsel, they achieved exactly that through the Settlement, which provides reimbursement for out-of-pocket expenses, reimbursement for time spent responding to the data breach, free credit monitoring, and ensures that Defendant makes and maintains cybersecurity improvements. *See* S.A. § 4.

5. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client.

The Settlement Class Representatives were at all times apprised of the status of the litigation, approving complaints, litigation strategy, and ultimately the Settlement that was reached in this case. Joint Decl., ¶ 26.

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

Class Counsel have maintained a professional relationship with Settlement Class Representatives since this case was filed in January 2023. Throughout the course of this case the relationship has remained professional and cordial. Joint Decl., ¶ 27.

7. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services.

Here, Class Counsel have a strong reputation in the area of complex, and in particular privacy and data breach class action litigation. Joint Decl. ¶¶ 1, 2. Class Counsel have successfully litigated and settled similar cases across the country and, in this case, have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf. *Id.*

ii. The proposed fee award in this case falls within the acceptable range of multiplier.

“Under *Kuhnlein*, a court must review the ‘contingency risk’ factors and the ‘results obtained for the benefit of the class’ as required by rule 4–1.5 of the Rules Regulating the Florida Bar to establish whether the multiplier is proper.” *Ramos v. Philip Morris Companies, Inc.*, 743 So. 2d 24, 32 (Fla. 3d DCA 1999).

A “multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee which remains within the bounds of reasonableness.” *Kuhnlein*, 662 So. 2d at 315. A maximum multiplier of 5 is permissible even when a class action settlement is not a common fund. *Ramos*, 743 So. 2d at 33 (Fla. 3d DCA 1999) (citing *Kuhnlein*, 662 So. 2d at 311; *Quanstrom*, 555 So.2d at 828; *Rowe*, 472 So.2d at 1146).

In *Ramos*, the Third DCA approved a 5x multiplier where, as here, (1) “the settlement was agreed to prior to fee negotiations between class counsel and defendants,” (2) “[a]ny reduction in the fee award would benefit *only* the [defendant] and *not* the class members,” and (3) “[the] case presented a high contingency risk and the need for high-level counsel, regardless of whether the fee is paid from the common fund or is negotiated separately. 743 So. 2d at 33 & n.8.

Here, the proposed fee award is presently a modest multiplier of 1.6, and Class Counsel will endure additional hours preparing the motion for final approval, attending the hearing, responding to any inquiries from class members, defending any class-wide judgment on appeal, and overseeing the administration of benefits to completion. Thus, the *Kuhnlein* factors counsel in favor of awarding the full fee award of \$275,000 to Class Counsel.

1. The contingency risk factors.

a. The Claims Entailed Serious Risk.

Given the context of this case—a data breach class action—the risks incurred in pursuing it were significant. “The simple fact is that there were a larger than usual number of ways that Plaintiffs could have lost this case, and he still managed to achieve a successful settlement. A significant amount of the credit for this must be given to Class Counsel’s strategy choices, effort and legal acumen.” *In re Checking*, 830 F. Supp. 2d at 1364. “A court’s consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk.” *In re Sunbeam*, 176 F. Supp. 2d at 1336. Further, “[t]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them.” *Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988).

The Settlement is particularly noteworthy given the combined litigation risks. Defendant would likely raise substantial and potentially meritorious defenses. Indeed, prosecuting this matter was risky from the outset. *See, e.g., In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010) (approving data breach settlement, in part, because “proceeding through the litigation process in this case is unlikely to produce the plaintiffs’ desired results”). Few cases in this area have gone through the certification stage, and none have yet been tried.

Through this Settlement, however, Plaintiffs and Class Members gain significant benefits without having to face further risk. The benefits obtained here are substantial, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of Settlement. Any of these risks could easily have impeded, if not prevented, Plaintiffs' and the Settlement Class' successful prosecution of these claims.

As explained in Plaintiffs' motion for preliminary approval, data breach cases are especially risky, expensive, and complex. *See, e.g., In re Sonic*, 2019 WL 3773737, at *7 (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”). Although data breach law is continuously developing, data breach cases are still relatively new, and courts around the country are still grappling with what legal principles apply to the claims. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”). Since the “legal issues involved [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015).

The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs and Settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiffs were able to certify a class; (ii) Plaintiffs were able to defeat summary judgment; (iii) Plaintiffs were able to establish liability and damages at trial; and (iv) the final judgment was affirmed on appeal. The Settlement here is a fair and reasonable recovery for the Settlement Class in light of Defendant's defenses, and the challenging and unpredictable path

of likely protracted litigation Plaintiffs and the certified class would have faced absent the Settlement. Joint Decl. ¶¶ 22–23.

b. Class Counsel Assumed Considerable Risk to Pursue This Matter on a Pure Contingency Basis.

In undertaking to prosecute this case on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. Joint Decl. ¶ 28. That risk warrants an appropriate fee. Indeed, “[a] contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (1988)); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs’ counsel must be compensated adequately for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 (“Numerous cases recognize that the attorney’s contingent fee risk is an important factor in determining the fee award”); *Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga. 1985), *modified*, 803 F.2d 1135 (11th Cir. 1986); *York v. Alabama Senate Bd. of Ed.*, 631 F. Supp. 78, 86 (M.D. Ala. 1986). As Judge King observed:

Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer... A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this “bonus” methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548.

The progress of this case to date shows the inherent risk faced by Class Counsel in accepting and prosecuting this matter on a contingency fee basis. Despite Class Counsel’s effort in litigating this case, Class Counsel remain uncompensated for the time invested, in addition to

the expenses they advanced. Joint Decl. ¶¶ 28, 33. There can be no dispute that this case entailed substantial risk of nonpayment for Class Counsel.

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

Given the significant litigation risks Class Counsel faced, the Settlement represents a successful result. Rather than facing years of costly and uncertain litigation, each Settlement Class Member (approximately 77,000) is eligible to receive (i) up to \$10,000 for reimbursement of documented out-of-pocket expenses incurred as a result of the incident; (ii) compensation of up to four hours of lost time, compensable at a rate of \$25.00 per hour, for a maximum of \$100.00; and (iii) two years of Medical Shield Complete medical and credit monitoring services. S.A. §4.

With regard to the monetary benefits provided to Settlement Class Members alone, this settlement compares favorably to other data breach class action settlements. *See Jackson et al. v. Wendy's International, LLC*, No. 6:16-cv-21-PGB-DCI (M.D. Fla.) (Doc. 157) (Feb. 26, 2019) (approving settlement that provides class members reimbursement of documented losses of up to \$5,000); *Albert v. School Bd. of Manatee Cty., Fla.*, No. 12-CA-004113 (Doc. 53) (Fla. 12th Cir. Ct. Nov. 19, 2018) (approving settlement that provides for reimbursement of identity theft protection, out-of-pocket expenses for tax fraud for up to \$250 and other incidents of identity theft or expenses for up to \$500, and also helps Settlement Class Members protect against future harm through extended identify theft protection); *see also Hapka v. CareCentrix, Inc.*, No. 2:16-CV-02372-KGG, 2018 WL 1879845, at *3 (D. Kan. Feb. 15, 2018) (“The Settlement addresses past harms through reimbursement of Out-of-Pocket Losses or the alternative minimum \$200 payment for tax fraud and also helps Settlement Class Members protect against future harm through the Credit Monitoring Services.”).

Here, the reimbursement for documented out-of-pocket losses due to fraud of up to \$10,000.00 with compensation for time spent investigating and remediating fraud of up to \$100.00 (\$25.00/hour for up to 4 hours) compares favorably to past data breach settlements. SA §§ 4.2, 4.3.

Furthermore, the injunctive relief provided for in this Settlement is significant and ensures the rights of the Settlement Class because it swiftly commits Suncoast to certain security measures and protection of personal information. These remedial measures are attributable to the Settlement and are squarely consistent with the claims on which Plaintiffs have focused in the Litigation. SA § 4.5. These commitments will ensure the adequacy of Defendant's data security practices, and will provide ongoing protection for any consumers' information, as well as providing protection for consumers in the future. Without this Settlement, there is little Settlement Class Members could do individually to achieve similar promises from Suncoast regarding data security going forward. The Settlement is calculated to ensure that Suncoast not only employs the necessary, immediate resources to address existing data security vulnerabilities, but also employs the consistent best practices and accountabilities needed for long-term, proactive data security.

Finally, the Settlement treats all Settlement Class Members equitably relative to one another because all who have been damaged are eligible to receive reimbursement based on expenses incurred, not on any unequitable basis. SA §§ 4.2–4.3.1. Class Counsel do not expect to encounter a high degree of opposition to the settlement considering the variety of benefits provided by the Settlement Class. The proposed Settlement would provide Settlement Class members with an excellent recovery at the level of what Plaintiffs might recover if they were to prevail at trial, but with immediate recovery and without continued litigation risk and cost. Given the hurdles Plaintiffs would have to overcome if they were to litigate this case to verdict and the benefits

provided by the Settlement, the parties submit that the proposed Settlement is in the best interest of the Class and represents a fair, reasonable and adequate recovery.

b. Costs.

Plaintiffs counsel has incurred reasonable out-of-pocket costs of \$15,613.01 through the date of this filing. Joint Decl., ¶ 37. These costs are largely attributable to mediation, service costs, and filing fees. *Id.* Courts regularly award reasonable costs and expenses to class counsel in class settlements. *See, e.g. In re: Lincare Holdings Inc. Data Breach Litig.*, 2024 WL 3104286 (M.D. Fla. June 24, 2024) (applying Florida law); *Stoll v. Musculoskeletal Inst.*, 2022 WL 16927150 (M.D. Fla. July 27, 2022) (applying Florida law). Here, the costs incurred are reasonable and were clearly related to the prosecution, and settlement, of this action. Plaintiffs ask that the requested fees, to be paid from the Settlement Fund, be awarded.

c. Service awards.

“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided during the course of class action litigation. Such awards are justified when the class representatives expend considerable time and effort on the case, especially by advising counsel, or when they risk retaliation as a result of their participation. In addition, the magnitude of the relief the named plaintiffs obtain on behalf of the class may warrant a substantial incentive award.” *Dreidame v. Village Center Community Development Dist.*, No. 2007-CA-3177, 2008 WL 7079074 (Fla. 5th Jud. Cir. (Lake County) Mar. 29, 2008); *see Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier*, No. 98-3763, 2008 WL 6161610 (Fla. 2d Jud. Cir. (Leon County) Mar. 26, 2008) (“Courts have approved incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.”).

Florida courts have approved service awards far greater than the \$2,500 per Settlement Class Representative sought here. *See, e.g., Hands on Chiropractic PL v. Infinity Indem. Ins. Co.*, No. 2017-CA-011237-O, 2020 WL 5640827 (Fla. 9th Jud. Cir. (Orange County) Aug. 21, 2020) (approving \$5,000 service award); *Lewis v. PGT Industries, Inc.*, No. 502013CA011785XXXXMB, 2020 WL 10817495 (Fla. 15th Jud. Cir. (Palm Beach County) Apr. 29, 2020) (approving service awards ranging from \$7,500 to \$15,000); *Broward Psychology, P.A. v. Singlecare Services, LLC*, No. CACE-18-022689, 2019 WL 3715043 (Fla. 17th Jud. Cir. (Broward County) June 04, 2019) (approving \$5,000 service award).

Here, Settlement Class Representatives consulted with Class Counsel throughout the course of this case, including the settlement process, and provided facts and documentation to Class Counsel. Joint Decl. ¶ 26. Given their time and effort, the risks inherent in this litigation, and the magnitude of the relief obtained on behalf of the class, service awards of \$2,500 for each Settlement Class Representative, to be paid from the Settlement Fund, are justified and appropriate.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the requested award of attorneys' fees of \$275,000.00 plus reasonable costs and expenses of \$15,613.01, and the requested service awards of \$2,500.00 per Settlement Class Representative.

Dated: July 3, 2024

Respectfully submitted,

/s/ Ryan J. McGee

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** pro hac vice forthcoming*

Attorneys for Plaintiffs and the Putative Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 3, 2024, I electronically filed a true and correct copy of the foregoing unopposed motion with the Clerk of the Court using the court's electronic filing system, which will send notification to all attorneys of record in this matter.

/s/ Ryan J. McGee

— EXHIBIT 1 —

**IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

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JEREMY REARDON, LINDA POTTER,
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SUNCOAST SKIN SOLUTIONS, INC.,

Defendant.

**JOINT DECLARATION OF FRANCESCA K. BURNE AND RAINA BORRELLI IN
SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
ATTORNEY'S FEES, COSTS, AND SERVICE AWARDS**

We, Francesca K. Burne and Raina Borrelli, declare as follows:

1. I, Francesca K. Burne, am an attorney duly licensed to practice before all courts of the State of Florida as well as other state and federal courts. I am a member of the Complex Litigation Department at Morgan & Morgan PA, where I focus my practice on complex litigation, including consumer protection, data privacy, and defective products class actions. I have been appointed settlement class counsel by the court in data breach cases across the country, including *Portier, et al. v. NEO Technology Solutions, et al.* Case No.: 3:17-cv-30111 (D. Mass.) and *Franchi v. Barlow Respiratory Hospital*, Case No. 22STC09016 (Cal. Super. Ct.). In addition to these personal appointments, I have been involved in landmark data privacy cases including *Tillman et al., v. Morgan Stanley Smith Barney, LLC*, Case No. 20cv591-PAE, (S.D. NY) (\$68 million settlement for 15 million class members) and *In re Capital One Customer Data Security*

Breach Litigation, MDL No. 1:19-md-2915 (one of the largest data breach class action settlements in history with a \$190 million settlement).

2. I, Raina Borrelli, am an attorney duly licensed to practice before all courts of the State of Minnesota as well as other state and federal courts. I am a founding partner of Strauss Borrelli PLLC. I have significant experience in data privacy litigation and am currently litigating more than one hundred data breach cases in courts around the country as lead counsel or co-counsel on behalf of millions of data breach victims, including *In re Netgain Tech. Consumer Data Breach Litig.*, 21-cv-1210 (D. Minn.) (appointed by the court to the Plaintiffs' Interim Executive Committee); *In re C.R. England, Inc. Data Breach Litig.*, 2:22-cv-374-DAK-JCB (appointed by the court as Interim Co-Lead Counsel); *Medina et al. v. PracticeMax Inc.*, 22-cv-01261-DLR (D. Ariz.) (appointed to Executive Leadership Committee); *Forslund et al. v. R.R. Donnelley & Sons Co.*, 1:22-cv-04260 (N.D. Ill.) (appointed as interim co-lead class counsel); *In re Lincare Holdings, Inc. Data Breach Litig.*, 8:22-cv-01472 (M.D. Fla.) (appointed to Interim Executive Leadership Committee, achieving a \$7.25 million settlement for the class); and *McLaughlin v. Flagstar*, 22-cv-11470 (E.D. Mich.).

3. We submit this Joint Declaration in support of Plaintiffs' Unopposed Motion for Attorney's Fees, Costs, and Service Awards ("Motion").

The Litigation

4. Defendant Suncoast Skin Solutions, Inc. ("Suncoast") is a system of dermatology clinics with 19 locations around Florida. Suncoast offers patients services treating skin cancer, medical dermatology, and cosmetic dermatology.

5. Between approximately July 2021 and August 2021, Suncoast experienced a cybersecurity attack that potentially exposed the Private Information, including but not limited to

first and last name, date of birth, Social Security number, clinical information, doctors' notes, and other medical/treatment information (the "Incident"), of approximately 77,000 individuals.

6. Suncoast began notifying affected patients about the Incident in approximately December 2022.

7. Plaintiff Jeremy Reardon filed an action against Suncoast in Florida state court on January 13, 2023, alleging negligence, negligence *per se*, breach of express contract, breach of implied contract, unjust enrichment, invasion of privacy, breach of confidence, breach of fiduciary duty, and Florida statutory claims.

8. On March 31, 2023, Plaintiff amended his complaint to add Plaintiff Linda Potter and Plaintiff Frankie Solomon as parties to the above-captioned matter.

9. On May 1, 2023, Suncoast filed a motion to dismiss Plaintiffs' Amended Complaint and motion to strike Plaintiffs' class allegations.

10. Upon the filing of Suncoast's motions, the Parties began engaging in informal discussions regarding the possibility of early resolution.

11. The Parties scheduled mediation with the Honorable Wayne R. Andersen (ret.) of Judicial Arbitration and Mediation Services for August 30, 2023.

12. When the initial mediation was unsuccessful, as explained in more detail below, Plaintiffs briefed a response in opposition to Suncoast's motions and filed it with the court on September 7, 2023. Plaintiffs also drafted and served discovery on Defendant.

The Settlement Negotiations

13. The Parties agreed to and did retain the Honorable Wayne R. Andersen (ret.), of Judicial Arbitration and Mediation Services, a highly experienced mediator, to assist the Parties in settlement negotiations. A full-time mediator and arbitrator, Judge Andersen has facilitated many

data breach mediations.

14. Prior to the mediation, the Parties gathered their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. The issues were discussed with the mediator during the course of the mediation. The Parties engaged in informal pre-mediation discovery, exchanging written requests and producing documents.

15. On August 30, 2023, the Parties, through their respective counsel, engaged in a full-day virtual mediation session before mediator Judge Andersen. With the assistance of Judge Andersen, the Parties were able to make progress on the terms of a settlement, but were unable to reach an agreement that day.

16. In the subsequent weeks, the Parties continued their negotiations and eventually negotiated resolution on a class-wide basis that provides monetary relief to Class Members and obligates Defendant to continue to take remedial measures to safeguard against the reoccurrence of a data security incident. The principal terms of a settlement were reached and finalized in late September 2023.

17. While courteous and professional, the negotiations were hard-fought throughout and the settlement process was conducted at arm's length between experienced counsel with an understanding of the strengths and weaknesses of their respective positions in the Lawsuit. Throughout the negotiations, Judge Andersen was able to assist the Parties in discussing substantive terms of the Settlement to include monetary compensation to class members and the adoption by Defendant of business practice changes related to data security. There was nothing collusive about the settlement negotiations or the ultimate Settlement reached. Lastly, attorneys' fees, costs, expenses, and service awards were negotiated only after all substantive terms of the Settlement were agreed upon by the Parties. Based on Plaintiffs' counsel's independent

investigation of the relevant facts and applicable law, experience with other data breach cases, the information provided by Defendant, and the strengths and weaknesses of the Parties' respective positions (including the defenses articulated in Defendant's Motion to Dismiss and Reply to Plaintiffs' Opposition thereto), Plaintiffs' counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

18. During the ensuing months, the Parties continued the exchange of information and negotiations as to the final details of the Settlement Agreement. Consequently, the Parties worked together to prepare a comprehensive set of settlement documents, which are embodied in the Settlement Agreement and the exhibits attached thereto. The Parties spent significant time negotiating the terms of this final written Settlement Agreement. Attorneys' fees, costs, expenses, and the service awards were negotiated only after all substantive terms of the Settlement were agreed upon by the Parties.

19. Plaintiffs' Counsel spent further time researching and drafting the motion for preliminary approval, filed with the Court on April 5, 2024.

20. As of the date of this filing, neither Plaintiffs' Counsel, nor the Settlement Administrator has received an objection to the settlement or the request for attorneys' fees.

The Time, Labor, and Skill Required to Litigate this Complex Case

21. Prosecuting and settling these claims demanded considerable time and labor.

22. Although Plaintiffs are confident in the merits of their claims, the risks involved in prosecuting a class action through trial cannot be disregarded. We cannot disregard the high level of risk, expense, and complexity of class litigation, which is one reason that judicial policy so strongly favors resolving class actions through settlement. This is not only a complex case, but it is in an especially risky field of litigation. Data breach cases continue to be among the most risky

and uncertain of all class action litigation. Many data breach cases are dismissed at motion to dismiss stage.

23. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk, including the risk of Plaintiffs' operative Complaint being dismissed at the motion to dismiss stage. Moreover, the cost of trial and any appeals would be significant and would delay the resolution of this litigation without the guarantee of any relief.

The Hourly Rates Charged by Class Counsel are Reasonable

24. Reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Class Counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Blum*, 465 U.S. at 895 n.11. Here, the relevant community is that of attorneys practicing multi-state class action litigation, and in particular data breach litigation.

25. 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-JDP, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (data breach settlement 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); *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-TWT, 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-LHK, 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, 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-LHK, 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).

The Time Limitations Imposed by the Client and the Nature and Length of the Professional Relationship With the Client

26. The Settlement Class Representatives were at all times apprised of the status of the litigation, approving complaints, litigation strategy, and ultimately the Settlement that was reached in this case.

27. Class Counsel have maintained a professional relationship with Settlement Class Representatives since this case was filed in January 2023. Throughout the course of this case the relationship has remained professional and cordial.

Contingent Nature of the Representation

28. Our respective firms prosecuted this case on a purely contingent basis. As such, the firms assumed a significant risk of nonpayment or underpayment.

29. This matter has required us, and other attorneys at our firms, to spend time on this litigation that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of our firms' time.

30. Such time could otherwise have been spent on other fee-generating work. Because our firms undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in

the event of an adverse judgment.

31. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time our firms spent working on this case could and would have been spent pursuing other potentially fee generating matters.

32. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite our firms' devotion to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

33. 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.

Lodestar Incurred

34. Our law firms have spent considerable time and effort on this case to date. The hours Class Counsel spent litigating this matter reflect the reasonable and necessary effort required to achieve such a satisfactory result.

35. Additional time will be spent drafting the final approval motion, preparing for and attending the Final Approval Hearing, defending any appeals taken from the final judgment approving Settlement, and ensuring that the claims process and distribution of Settlement proceeds to Class Members is done in a timely manner in accordance with the terms of the Settlement. Based upon our past experience, we estimate that a minimum of another 40-50 hours of attorney time will be reasonably expended on this matter. We assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards are reasonable and seek fair and reasonable

compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiffs and the Class.

36. This litigation required extensive time and labor by Class Counsel. In total, Class Counsel has spent 250.9 hours on the litigation totaling \$171,438.70 in lodestar. Class Counsel has calculated that their total lodestar yields a modest multiplier of 1.6, which is well within the range accepted by Florida courts. Also, the lodestar multiplier will ultimately be much lower once final approval is sought as Class Counsel expect to spend additional time working with the Settlement Administrator on notice and claims administration and seeking final approval. The breakdown of time spent by each Class Counsel Firm is laid out below.

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Morgan & Morgan				
Jean Martin	Partner	\$1,150.00	2.0	\$2,300.00
Francesca Burne	Attorney	\$650	39.4	\$25,610.00
Ryan McGee	Attorney	\$878	73.9	\$64,884.20
Antonio Arzola	Attorney	\$437	4.5	\$1,966.50
Jennifer Cabezas	Paralegal	\$225	2.8	\$630.00
		Total:	122.6	\$95,390.70
Strauss Borrelli PLLC				
Sam Strauss	Partner	\$700	28.3	\$19,810.00
Raina Borrelli	Partner	\$700	58.0	\$40,600.00
Brittany Resch	Associate	\$475	4.3	\$2,042.00
Zog Begolli	Associate	\$425	.2	\$85.00

Alex Phillips	Associate	\$330	9.1	\$3,003.00
Carolyn Chen	Associate	\$400	13.2	\$5,280.00
Sarah Soleiman	Associate	\$400	11.7	\$4,680.00
Rachel Pollack	Legal Assistant	\$225	.3	\$67.50
Rudis Requeno	Legal Assistant	\$150	.5	\$75.00
Ahleea Zama	Legal Assistant	\$150	1.8	\$270.00
Jack Rader	Legal Assistant	\$135	.9	\$135.00
		Total:	128.3	\$76,048.00

Costs Incurred

37. Class Counsel has incurred \$15,613.01 in expenses to date. These expenses and costs were incurred in the prosecution of Plaintiffs' case and in protecting the interests of the putative class. These costs include filing fees, mediation costs, and postage and copying costs. Executed this 3rd day of July 2024.

/s/ Francesca K. Burne
 Francesca K. Burne

/s/ Raina Borrelli
 Raina Borrelli