IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re Overby-Seawell Company Customer Data Security Breach Litigation	Case No. 1:23-md-03056-SDG Judge Steven D. Grimberg

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES AND SUPPORTING MEMORANDUM OF LAW

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Under Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2), as well as this Court's Preliminary Approval Order (ECF No. 146), Class Counsel respectfully submit Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses and Supporting Memorandum of Law.

I. INTRODUCTION

This case arises from a cyber security incident (the "Data Security Incident") that compromised the security of the personal information ("PI") of Plaintiffs Mariann Archer, Mark Samsel, Tim Marlowe, Melissa Urciuoli, James Urciuoli, Patrick Reddy, Jacint "Jay" Pittman, Joseph John Turowski, Jr., Teresa Turowski, Melissa D. Kauffman, Lebertus Vanderwerff, Adrianne Khanolkar, Dhamendra "DK" Khanolkar, and Joynequa West ("Plaintiffs") and approximately 607,924 Class Members nationwide. The Parties negotiated a Settlement providing significant relief for Plaintiffs and the Class Members they seek to represent. As part of the Settlement, Class Counsel now seek an award of attorneys' fees of $2,000,000.00 together with reimbursement of their litigation expenses not to exceed $150,000.00. Settlement Agreement ("S.A."), ECF No. 134.1, ¶ 87. As described below, the attorneys' fees and expenses are well within the range awarded in similar class action cases in this District and the Eleventh Circuit.

II. FACTUAL BACKGROUND

A. Procedural Overview of the Litigation and Summary of Negotiations

On or about August 26, 2022, KeyBank sent Plaintiffs and Settlement Class Members a *Notice of Vendor Security Incident* in which KeyBank informed Plaintiffs and Settlement Class Members of the Data Security Incident. Subsequently, several individual class actions were filed in various jurisdictions in the Northeast. On February 2, 2023, the Judicial Panel on Multi-District Litigation centralized and transferred the litigation to the Northern District of Georgia, Atlanta Division before the Honorable Judge Stephen D. Grimberg. ECF No. 24. Counsel for the separately filed cases transferred to the Northern District of Georgia worked collaboratively to prepare and file their Consolidated Class Action Complaint ("CCAC") on June 12, 2023 against Defendants alleging that OSC failed to implement and maintain reasonable data security measures. *See generally* ECF No. 90. After competing leadership applications were filed the Court appointed Interim Co-Lead Class Counsel and Plaintiffs' Steering Committee on September 11, 2023 (collectively "Plaintiffs' Counsel"). ECF No. 111.

To prepare the CCAC, Plaintiffs' Counsel extensively researched the law and facts surrounding the Data Security Incident. Among other things, Counsel reviewed Defendants' public announcements and communications to customers, privacy policies, reports, news articles, and further reviewed data breach litigation case law,

analyzed the statutory and common law of all relevant U.S. States and territories, and conferred with experts in the industry. To ensure the viability of class treatment, Plaintiffs' Counsel interviewed and investigated potential class representatives and vetted them to be named Plaintiffs. Plaintiffs' Counsel were also well-informed about Defendants' available insurance coverage and ability to pay beyond insurance coverage.

The CCAC alleges claims for negligence, negligence per se, breach of contract, unjust enrichment, violation of the Georgia Uniform Deceptive Trade Practices Act, Ga. Code Ann. §§ 10-1-370, *et seq.*, violation of California's Unfair Competition Law and Consumer Privacy Act, violation of New York's General Business Law § 349, *et seq.*, violation of Oregon's Unfair Trade Practices Act, violation of Pennsylvania's Unfair Trade Practices Act, violation of the Washington Consumer Protection Act, a claim under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and statutory claims under O.C.G.A. § 13-6-11. *Id.*

While Plaintiffs' Counsel were investigating the Data Security Incident and preparing the CCAC, Plaintiffs and Defendants engaged in arm's-length negotiations regarding the potential resolution of this matter. These initial negotiations culminated in a full day mediation session in Atlanta, Georgia on July 25, 2023. *See* Exhibit A, Joint Declaration of Class Counsel in Support of Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses ("Joint Decl."), ¶ 5. After the

Parties failed to resolve this matter at the first mediation session, Defendants OSC and KeyBank filed their respective Motions to Dismiss. ECF Nos. 112, 112-1, 113, 113-1. After the Motions were fully briefed, but before the Court ruled on them, the Parties participated in a second full-day mediation session in New York City on December 11, 2023. Joint Decl., ¶ 5.

Following months of negotiations and a series of offers and demands that began at the first mediation session and continued through the second session, the Parties were able to resolve the matter on a common fund basis for a non-reversionary fund of $6,000,000.00 to fully resolve all claims related to the Data Security Incident on behalf of the Settlement Class. *Id.*, ¶ 6. Thereafter, over the course of five months, the Parties continued to negotiate the details of the Settlement, first in a detailed term sheet and then a full Settlement Agreement. The Parties formally executed the Settlement Agreement on April 10, 2024. *Id*. ¶¶ 6-7. On April 10, 2024, Plaintiffs filed Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Preliminary Certification of Settlement Class. ECF No. 134. The Court held oral argument on the Motion for Preliminary Approval and objections on June 5, 2024. ECF No. 146. The Court granted the Motion for Preliminary Approval on June 13, 2024. ECF No. 147.

B. Summary of Settlement Terms

The Settlement is the result of a year of arm's-length negotiations and hard bargaining. The Parties exchanged extensive informal discovery as to the allegations in the operative Complaint, the size of the Classes, the types of data impacted, information regarding Plaintiffs' damages, information regarding insurance coverage, remedial measures taken by OSC, and other information regarding the Data Security Incident. Joint Decl., ¶ 4. Through the informal discovery process, Plaintiffs were able to properly evaluate damages on a class-wide basis. *See id.* After the exchange of a series of offers and demands, between the two mediation sessions, the Parties reached an agreement to settle this matter for a $6,000,00000 non-revisionary common fund. *Id.* at ¶ 6. OSC also disclosed certain cybersecurity business practice changes it implemented to limit the potential for future data security incidents. *Id.* at ¶ 9. This Settlement would resolve all claims related to the Data Security Incident on behalf of the Settlement Class against Defendants. *See* S.A. ¶¶ 4-5.

C. The Preliminary Approval and Notice Process

Under the proposed Settlement, Defendants will pay $6,000,000 to establish the Settlement Fund to be distributed to Settlement Class Members under the Settlement Agreement. The Settlement defines the Settlement Class as follows:

> All individuals whose Personal Information was impacted by the Data Security Incident.

There is a Fulton Bank Settlement Subclass defined as:

> All Settlement Class Members who provided their Personal Information to Fulton Bank and were notified that their Personal Information may have been impacted as a result of a Data Security Incident discovered on or about July 5, 2022 by Overby-Seawell Company.

S.A., ¶ 41. The Settlement Class is comprised of approximately 607,924 individuals nationwide. Under the Proposed Settlement, OSC agreed to pay a total of $6,000,000.00 into the Settlement Fund, to be used to make payments to Settlement Class Members and to pay the costs of Administration and Notice Costs, the Fee Award and Expenses, and the required CAFA notice. *See* S.A. ¶ 44, 52.

The Settlement Fund will be used to pay for all Settlement Class Members and Fulton Bank Settlement Subclass Members to make claims for: three years of three bureau identity theft protection and credit monitoring services (S.A. ¶ 54), reimbursement of Monetary Losses up to $6,000 per individual (S.A. ¶ 55), reimbursement of Lost Time at a rate of $25 per hour for up to five (5) hours (S.A. ¶ 56), $100 for Settlement Class Members who were residents of California from May 26, 2022 to the end of the claims period in recognition of their statutory claims under the California Consumer Privacy Act (S.A. ¶ 57), and, as an alternative to submitting a claim for reimbursement of Monetary Losses and Lost Time, Settlement Class Members may elect to receive an Alternative *Pro Rata* Cash Payment which will be determined *pro rata* based on the amount remaining in the

Settlement Fund following payment of the Fee Award and Expenses, Administration and Notice Costs, CAFA Notice, costs of Financial Account Monitoring, claims for Reimbursement of Monetary Losses and Lost Time and California Statutory Payments. S.A. ¶ 58. All Fulton Bank Subclass Members who participated in the Fulton Bank Settlement will still be eligible to submit a claim in this Settlement, with any amounts received for reimbursement of Monetary Losses and/or Lost Time debited from the same benefits paid to Fulton Bank Subclass Members in the Fulton Settlement. Fulton Bank Subclass Members who claimed and were approved to received reimbursement of Monetary Losses and/or Lost Time in the Fulton Bank settlement are not eligible for an Alternative *Pro Rata* Cash Payment in this Settlement. S.A. ¶ 59. Likewise, Members of the Settlement Class who claimed and were approved to received reimbursement of Monetary Losses and/or Lost Time in the Settlement are not eligible for an Alternative *Pro Rata* Cash Payment under the Settlement.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23(h) allows a district court supervising a class action to "award reasonable attorney's fees and nontaxable costs that are authorized by law." Fed. R. Civ. P. 23(h). The United States Supreme Court noted that attorneys who represent a class and whose efforts achieve a benefit for the class are "entitled to a reasonable attorney's fee from the fund as a whole," as appropriate

compensation for their services to the class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "[D]istrict courts have great latitude in setting fee awards in class action cases." *In re Home Depot Inc. Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1078 (11th Cir. 2019) (internal quotation and citation omitted).

In common fund cases, such as this case, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Home Depot*, 931 F.3d at 1079 (citing *Boeing*, 44 U.S. at 478). The Eleventh Circuit has held that the "percentage of the fund approach" should be used to determine a reasonable fee award when the settlement established a common fund. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

IV. ARGUMENT

A. The Requested Fee Should be Approved Because it is Reasonable and Supported by the Relevant Factors

1. The Settlement Establishes a Non-Reversionary Common Fund

The Settlement is a non-reversionary common fund whereby after Settlement Class Members and Fulton Bank Subclass Members select their choice of payments for certain out-of-pocket expense reimbursements and/or lost time payments, any funds remaining in the fund will be distributed *pro rata* to Settlement Class Members and Subclass Members who elected to receive an Alternative *Pro Rata* Cash Payment. Courts prefer this structure over claims made settlements. *See, e.g., Hart*

v. Movement Mortg. LLC, No. 814CV1168JLSPLAX, 2016 WL 11756826, at *7 (C.D. Cal. Nov. 30, 2016) ("The non-reversionary nature of these amounts counsels in favor of final approval.").

2. The Requested Fee is Within the Range Typically Approved

The Eleventh Circuit's controlling authority is *Camden I*, which holds attorneys' fees in common fund cases must be calculated using the percentage-of-the-fund rather than the lodestar approach.[1] *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d at 774-75. In *Camden I*, although the court noted that awards typically range from 20% to 30%, it stated: "There is no hard and fast rule . . . because the amount of any fee must be determined upon the facts of each case." *Id*. at 774; *see also, e.g.*, *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999).

Following *Camden I*, percentage-based fee awards in the Eleventh Circuit have averaged around thirty-three percent (33%) of the common fund. *See, e.g.*, *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at 5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide-roughly one-third"); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga. Apr. 4, 2024) (ECF No. 94) (approving fee request

[1] A lodestar cross-check is not required in this Circuit. *In re Equifax Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1280 (11th Cir. 2021).

of 1/3 of the common fund plus expenses); *Abrams v. Savannah College of Art & Design, Inc.*, No. 1:22-cv-4297 (N.D. Ga. Sept. 22, 2023) (ECF No. 29) (same); *Alghadeer Bakery & Marker, Inc. v. Worldpay US, Inc.*, No. 1:18-cv-02688-MLB, 2020 WL 10935986, at *4 (N.D. Ga. June 3, 2020) ("The fee represents one-third of the $15 million cash settlement fund, which the Court finds to be reasonable and consistent with awards in similar cases in this Circuit."); *Waters v. Int'l Precious Metals, Corp.*, 190 F.3d 1291, 1292-98 (11th Cir. 1999) (affirming attorneys' fees of 1/3 of the $40 million common fund); *Morefiled v. NoteWorld, LLC*, Nos. 1:10-CV-00117; 1:11-CV-0029, 2012 WL 135573, at *5 (S.D. Ga. Apr. 18, 2012) (1/3 of $1,040,000 common fund); *Lunsford v. Woodforest Nat'l Bank*, No. 1:12-cv-103, 2014 WL 12740375, at *15 (N.D. Ga. May 19, 2014) (fee award of 1/3 of the common fund); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61217-CIV, 2018 WL 5905415, at *7-8 (S.D. Fla. Nov. 9, 2018) (awarding fee of $33,333,333 of the $100 million common fund); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1257 (S.D. Gal. 2016) (noting that "a fee award of 33% … is consistent with attorneys' fees in federal class actions in this Circuit."). Class Counsel's attorneys' fee request of one-third ($2,000,000) of the $6,000,0000 non-reversionary common fund in this case is reasonable in that it is within the range typically approved by courts within the Eleventh Circuit.

3. The Relevant *Johnson* Factors Support Approval of the Fee Request

"In the Eleventh Circuit, the percentage method requires a district court to consider a number of relevant factors called 'the *Johnson* factors' in order to determine if the requested percentage is reasonable." *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, No. 1:17-md-02782, 2022 WL 17687425, at *6 (N.D. Ga. Nov. 22, 2022). Courts within this District have noted that not all twelve *Johnson* factors need to be reviewed and have determined the reasonableness of a fee request based on the following six *Johnson* factors: (1) the results obtained and fees in similar cases; (2) the novelty and difficulty of the questions involved; (3) the preclusion of other employment by the attorneys due to the acceptance of this case; (4) whether the fee is fixed or contingent; (5) the experience, reputation, and ability of the attorneys; and (6) the time and labor required. *In re S. Co. S'holder Derivative Litig.*, No. 1:15-CV-725-MHC, 2022 WL 4545614, at *10 (N.D. Ga. June 9, 2022); *see also Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (listing all 12 *Johnson* factors).

a. The Results Obtained and Fees in Similar Cases

The non-reversionary common fund of $6,000,000 is a strong recovery for the Settlement Class of roughly 607,924 individuals. In negotiating the Settlement, Class Counsel relied on published reports documenting the Data Security Incident, actual costs incurred by Class Members (as related in conversations with Class

Counsel), information uncovered *via* informal discovery, their own experience in data breach litigation, and reported settlements in other data breach class actions. *See* Joint Decl., ¶ 4. Indeed, the $9.76 per Settlement Class Member recovered here compares very favorably with other data breach class action settlements of a similar size which have previously been approved. *See, e.g.*, *Thomsen v. Morley Companies, Inc.*, No. 1:22-cv-10272 (E.D. Mich) ($6.96 per class member for a settlement class of 617,065); *Garcia v. Washington Dept. of Licensing*, No. 22-2-05635-5 SEA (Wash. Super. Ct. for King Cty.) ($6.59 per class member for a settlement class of 545,901); *Winstead v. ComplyRight, Inc.*, No. 1:18-cv-04990 (N.D. Ill.) ($4.54 per class member for a settlement class of 665,689).

The Settlement Agreement provides every class member who submits a valid claim with a monetary award that is fair and reasonable, especially considering the risks at class certification and trial. *See* Joint Decl. ¶ 7. Moreover, the equitable forward-looking relief—i.e., OSC's enhanced data security practices—also provides substantial non-monetary benefits to all Class Members, regardless of whether they submit a claim under the Settlement Agreement. *Id.*; *see also O'Dowd v. Anthem, Inc.*, No. 14-cv-02787, 2019 WL 4279123, at *18 (D. Colo. Sept. 9, 2019) (injunctive relief provides "substantial non-monetary benefits" to the class).

b. The Novelty and Difficulty of the Questions Involved

Courts also consider the difficulty and novelty of the legal and factual issues. *See Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting data breach class actions present "serious risks" due, in part, to "the ever-developing law surrounding data breach cases"); *In re Citrix Data Breach Litig.*, No. 19-61350-CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) ("Data breach cases in particular present unique challenges with respect to issues like causation, certification, and damages."); *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 272818, at *3 (N.D. Ga. June 3, 2019) ("Further, data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits. Georgia law, in particular, presents challenges."). This case is no exception. The pursuit of nationwide claims and relief presented complex issues of law and fact. Additionally, the substantial benefits achieved in the Settlement are attributable to the efforts of Class Counsel, and the complexity of the factual and legal issues presented by this litigation supports Class Counsel's request for attorneys' fees. *In re Citrix Data Breach Litig.*, 2021 WL 2410651, at *9 (noting that "by resolving the case early in the litigation, Class Counsel avoided these difficult questions and ensured a successful result for Class Members" in a data breach class action).

c. The Preclusion of Employment by the Attorneys Due to the Acceptance of this Case

Class Counsel's pursuit of this case precluded them from working on other matters. Joint Decl., ¶ 12. Courts within this District have weighed this factor in favor of Class Counsel's requested fee when the work on the case precluded Class Counsel's ability to pursue other matters. *See In re S. Co. S'holder Derivative Litig.*, 2022 WL 4545614, at *12 (noting that class counsel's pursuit of the class action case "necessarily precluded them from devoting resources to other litigation and the prosecution of additional cases."). Accordingly, this factor supports Class Counsel's fee request.

d. Whether the Fee is Fixed or Contingent

"Courts have routinely recognized that another important factor in evaluating an application for fees is the contingent nature of the fee." *Id.* at *11. Class Counsel pursued this matter on a wholly contingent basis without any guarantee of recovery while advancing litigation expenses on behalf of Plaintiffs and the Settlement Class. Joint Decl., ¶ 12. To the extent there was no recovery for the Class by way of the non-reversionary common fund, Class Counsel would not have been compensated at all for their work in this case and would have lost all litigation expenses incurred in pursuing this matter. *See In re Arby's*, 2019 WL 2720818, at *4 ("The risk of non-payment based on the contingent nature of recovery in this case supports the

requested award of attorneys' fees."). Accordingly, this factor also weighs in favor of granting Class Counsel's requested fee.

e. The Experience, Reputation, and Ability of the Attorneys

The experience, reputation, and ability of Class Counsel is another factor courts evaluate in determining an appropriate attorneys' fee. As detailed in the attached Declaration and in the firm biographies submitted as part of Class Counsel's Motion to Appoint Interim Class Counsel (ECF Nos. 95-3 - 95-11), Interim Co-Lead Class Counsel, M. Anderson Berry of Clayeo C. Arnold, APC, and MaryBeth V. Gibson of the Gibson Consumer Law Group, LLC, in conjunction and cooperation with the other Plaintiffs' firms named to the Plaintiffs' Steering Committee (Dann Law; Levin Sedran & Berman LLP; Hausfeld LLP; Scott & Scott Attorneys at Law, LLP; Milberg Coleman Bryson Phillips Grossman, PLLC; Lynch Carpenter LLP; and Meyer Wilson) and those firms to whom Interim Co-Lead Class Counsel assigned work, relied on their vast experience handling data privacy class actions across the country to negotiate a non-reversionary common fund settlement with experienced data breach defense counsel. Joint Decl., ¶ 15; *see also* ECF Nos. 95-3 - 95-11. Class Counsel used their experience to efficiently resolve this case and to reach a uniform, class-wide settlement even considering the risks of class certification or potentially losing at summary judgment or trial. *See* Joint Decl., ¶ 4. Class Counsel's experience in handling many other data privacy class action cases

permitted Class Counsel to avoid the pitfalls such complex and difficult cases present, and, instead, to recover the $6,000,000 non-reversionary common fund. Class Counsel's experience in prosecuting data breach cases has proven to be critical to the efficient prosecution and ultimate resolution of this case. Furthermore, Class Counsel have a national reputation for handling complex lass action cases. *See* ECF Nos. 95-3 - 95-11.

The result achieved here is particularly noteworthy considering that the nature of every data breach is different, and some cases have failed at the dismissal or class certification stages. *See, e.g., SELCO Cmty. Credit Union v. Noodles & Co.*, 267 F. Supp. 3d 1288, 1291 (D. Colo. 2017) (dismissing a data breach class action with a nationwide class); *Wilson v. J.B. Hunt Trans. Inc.*, No. 5:21-cv-5194, 2022 WL 20273042 (W.D. Ar. Oct. 6, 2022); *In re Heartland Payment Sys., Inc., Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 WL 896256 (S.D. Tex. Mar. 14, 2012) (after three rounds of dismissal motions, dismissing among other claims, negligence), *rev'd sub nom., Lone Star Nat'l Bank N.A. v. Heartland Payment Sys., Inc.*, 729 F.3d 421, 424 (5th Cir. 2013) (concluding that New Jersey's economic loss doctrine could not be applied at dismissal stage).

This factor further supports Class Counsel's request for attorneys' fees.

f. The Time and Labor Required

As discussed above, Class Counsel litigated and negotiated this case both vigorously and efficiently. As of August 30, 2024, Class Counsel have expended approximately 2,642 hours pursuing this matter on behalf of the Settlement Class. Joint Decl., ¶ 13. Class Counsel will certainly expend additional time and effort pursuing this matter through the Final Approval Hearing and in overseeing the administration of settlement benefits to Settlement Class Members thereafter. *Id.*, ¶ 17. The amount of time invested by Class Counsel demonstrates both vigorous advocacy and the efficient use of time by a highly experienced and effective group of advocates.

In awarding attorneys' fees, courts have consistently recognized and rewarded class counsel for moving the litigation to conclusion with diligence and efficiency. *Ressler v. Jacobson*, 149 F.R.D. 651 (M.D. Fla. 1992) (noting class counsel's efficiency in resolving the case as a factor supporting the requested fee award); *see also Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010) (noting that "Plaintiffs' counsel moved the case along expeditiously, and made every effort to limit duplicative efforts and to minimize the use of judicial resources in the management of the case" and "[c]ounsel exhibited diligence and efficiency throughout the litigation, resulting in a favorable result for the Class."). This factor, like others, weighs in favor of approving Class Counsel's fee request.

B. The Requested Expenses are Reasonable in that They Were Necessary to Prosecute this Litigation.

Class Counsel have been prudent in monitoring their litigation expenses in this case to date. Joint Decl., ¶ 14. As of June 30, 2024, Class Counsel have incurred $85,839.56 in expenses consisting mainly of filing fees, paid mediation fees, travel to and from mediations, prior court hearings, and expert consultations. Joint Decl., ¶¶ 13, 16. Class Counsel will incur additional travel costs of $1,169.74 for attending the upcoming Final Approval Hearing, for an expected total of $87,009.30. Joint Decl., ¶ 16. These expenses were and shall be incurred for the benefit of the Settlement Class.

V. CONCLUSION

For these reasons, Plaintiffs and Class Counsel respectfully ask the Court to enter an Order Granting Plaintiffs' Motion for Attorneys' Fees in the amount of $2,000,000 with reimbursement of their litigation expenses not to exceed $150,000 (subject to being updated before the Final Approval Hearing).

Respectfully submitted this 6th day of September, 2024.

/s/ *MaryBeth V. Gibson*
MaryBeth V. Gibson
Georgia Bar No. 725843
Gibson Consumer Law Group, LLC
4279 Roswell Road
Suite 208-108
Atlanta, GA 30342
Telephone: (678) 642-2503
marybeth@gibsonconsumerlawgroup.com

M. Anderson Berry*
CLAYEO C. ARNOLD,
A PROFESSIONAL CORP.
865 Howe Avenue
Sacramento, CA 95825
Tel: (916) 239-4778
aberry@justice4you.com

Interim Co-Lead Class Counsel

Marc Edward Dann*
Dann Law Firm
15000 Madison Avenue
Lakewood, OH 44107
Telephone: 216-373-0539
Fax: 216-373-0536
Email: notices@dannlaw.com

Charles E. Schaffer*
Levin Sedran & Berman
510 Walnut Street, Suite 500
Philadelphia, PA 19106-3697
Telephone: 215-592-4663
Email: cschaffer@lfsblaw.com

James J. Pizzirusso*
Hausfeld LLP
888 16th Street, Suite 300
Washington, DC 20006
Telephone: 202-540-7200
Email: jpizzirusso@hausfeld.com

Joseph P. Guglielmo*
Scott & Scott, Attorneys at Law, LLP
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: 212-223-6444
Email: jguglielmo@scott-scott.com

Gary M. Klinger*
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (866) 252-0878
Email: gklinger@milberg.com

Gary F. Lynch*
Lynch Carpenter, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Telephone: 412-322-9243
Email: Gary@lcllp.com

Matthew Ryan Wilson
Georgia Bar No. 871480
Meyer Wilson Co., LPA
305 W Nationwide Blvd.
Columbus OH 43215
Telephone: 614-812-0553
Fax: 614-224-6066
Email: mwilson@meyerwilson.com

Proposed Interim Class Counsel

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE AND
LOCAL RULE 7.1(D) CERTIFICATION

I hereby certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing and effectuate service to all counsel of record in this matter, pursuant to Local Rule 5.1.

I further certify that this Motion has been prepared with one of the fonts and point selections approved by the Court in Local Rule 5.1(C).

/s/ *MaryBeth V. Gibson*
MaryBeth V. Gibson

Interim Co-Lead Class Counsel

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re Overby-Seawell Company Customer Data Security Breach Litigation	Case No. 1:23-md-03056-SDG Judge Steven D. Grimberg

JOINT DECLARATION OF PLAINTIFFS' COUNSEL IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

1. We have been appointed by the Court as Interim Co-Lead Counsel (Class Counsel) for Plaintiffs in the above-captioned case. ECF No. 111. This declaration supports Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses.

2. Class Counsel previously submitted a declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Preliminary Certification of Settlement Class. ECF No. 134-2. That declaration explained the qualifications of Class Counsel, their work on behalf of the Settlement Class in this case, the history of settlement negotiations, the bases for settlement, the relief that the Settlement will afford the members of the Settlement Class, and how notice will be given to members of the Settlement Class.

3. The Settlement came about as the result of protracted arm's-length negotiations that followed Defendants Overby's and KeyBank's (collectively, "Defendants") filing of, and Plaintiffs' responses to, Defendants' respective Motions to Dismiss.

4. Before conducting any settlement discussions in this case, Plaintiffs submitted informal settlement discovery requests to Defendants for the purpose of gaining sufficient information to submit a well-informed demand to Defendants. In response to the informal settlement requests, Defendants disclosed information about this case including information about the allegations in the operative Consolidated Class Action Complaint (ECF No. 90), the size of the National Class

and Subclasses, the types of data impacted in the Data Security Incident, information supporting Plaintiffs' damages allegations, information about insurance coverage, and other important information regarding the Data Security Incident. Using their vast experience litigating data breach actions, Class Counsel also took into consideration the value of settlements in analogous data breach actions and the risk that Defendants would prevail at class certification, summary judgment, or trial. With this information in hand, Plaintiffs and Defendants participated in settlement discussions.

5. The Parties negotiated back and forth via e-mail and telephone calls. The Parties also participated in two full-day mediation sessions, one in Atlanta on July 25, 2023, and one in New York on December 11, 2023. While the negotiations were always collegial, cordial, and professional, there is no doubt that they were adversarial in nature, with both Parties forcefully advocating the position of their respective clients.

6. After the exchange of a series of offers and demands during the two mediation sessions, the Parties were able to resolve the matter for a non-reversionary common fund settlement of $6,000,000. This Settlement would resolve all remaining claims related to the Data Security Incident on behalf of the Settlement Class. Thereafter, the Parties continued to negotiate the details of the full Settlement Agreement. These protracted and detailed settlement negotiations and the assistance

of an experienced mediatory strongly indicate that Settlement was reached without collusion.

7. The Settlement Agreement provides every class member who submits a valid claim with a monetary award that is fair and reasonable, especially considering the risks at class certification and trial.

8. On April 10, 2024, the Parties formally executed and filed the Settlement Agreement and Release. ECF No. 134-1 ("Settlement Agreement" or "S.A.").

9. On June 13, 2024, the Court granted preliminary approval of the Parties' Settlement Agreement and proposed notice plan. (ECF No. 147). Therein, the Court approved the Parties' Settlement Agreement thereby (a) establishing a non-reversionary common fund of $6,000,000 for the benefit of the Settlement Class, (b) defining and certifying the Settlement Class for settlement purposes, (c) appointing Settlement Class Counsel and Settlement Class Representatives, (d) approving the Parties' proposed notice program set forth in the Settlement Agreement and more.

10. Defendants implemented cybersecurity business practices changes to limit the potential for future data security incidents. S.A., at ¶ 62.

11. Under the Settlement Agreement, Class Counsel may seek up to one-third (1/3) of the gross Settlement Fund ($2,000,000.00) as attorneys' fees and reimbursement of litigation expenses not to exceed $150,000.00. S.A. ¶ 87.

12. Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of their litigation expenses. Furthermore, due to accepting representation of Plaintiffs in this matter and pursuing the case on behalf of the Settlement Class, Class Counsel were precluded from working on certain other class action cases including certain other data breach class action cases.

13. Class Counsel have spent significant time and expenses pursuing this matter on behalf of the Class. From the initiation of the first filed action in this Court to roughly the present, Class Counsel have spent more than 2,642 hours directly related to this litigation. As of June 30, 2024, Class Counsel have incurred expenses of $85,839.56.

14. Class Counsel reviewed their billing and expense records before drafting this Declaration and attest that all time and expenses comprising the 2,642 hours were actually incurred, relate to this litigation, and were necessary for the quality of result achieved. These expense records are held in the ordinary course of business and audited to ensure they relate to this matter and are not duplicative.

15. The only firms authorized to perform work on this matter are those appointed by the Court in the Court's Order regarding leadership (ECF No. 111) and those law firms to whom Interim Co-Lead Class Counsel assigned work.

16. Class Counsel have endeavored to limit expenses wherever possible. Class Counsel's litigation expenses to date are relatively minimal and reasonable. Class Counsel's total expenses of $87,009.30 primarily include expert consultations, filing fees, paid mediation fees for the full-day mediations in Atlanta and New York, travel to and from mediations, prior court hearings in Atlanta after the case was consolidated and transferred, the Multidistrict Litigation Panel hearing in Miami, and the upcoming Final Approval Hearing.

17. Class Counsel will continue to expend substantial additional time and other minimal expenses continuing to protect the Class's interest through the Final Approval Hearing and throughout settlement administration.

18. Class Counsel hold the informed opinion that the fee request of $2,000,000 with reimbursement of their litigation expenses not to exceed $150,000 (subject to being updated before the Final Approval Hearing) are reasonable and justified in this case.

We declare signed under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed on September 6, 2024.

/s/ MaryBeth V. Gibson
MaryBeth V. Gibson
GIBSON CONSUMER LAW GROUP, LLC

/s/ M. Anderson Berry
M. Anderson Berry
CLAYEO C. ARNOLD, A PROFESSIONAL CORPORATION

Interim Co-Lead Class Counsel

CERTIFICATE OF SERVICE AND
LOCAL RULE 7.1(D) CERTIFICATION

I hereby certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing and effectuate service to all counsel of record in this matter, pursuant to Local Rule 5.1.

I further certify that this Motion has been prepared with one of the fonts and point selections approved by the Court in Local Rule 5.1(C).

/s/ MaryBeth V. Gibson
MaryBeth V. Gibson
GIBSON CONSUMER LAW GROUP, LLC

Interim Co-Lead Class Counsel