IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOSHUA SAYLOR,

Plaintiff,

v.

REALPAGE, INC.,

Defendant.

Case No. 1:22-cv-00053-AJT-IDD

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS & NAMED PLAINTIFF SERVICE AWARD

Plaintiff Joshua Saylor ("Plaintiff") and Class Counsel respectfully move the Court for an award of attorneys' fees, costs, and a Named Plaintiff Service Award in connection with the class action settlement in the above-captioned matter. For the reasons discussed in the accompanying memorandum, Plaintiff respectfully moves this Court to approve with the Final Approval Order:

a) Awarding Class Counsel one-third of the Settlement Fund as attorneys' fees;

b) Reimbursement of Class Counsel's out-of-pocket costs; and

c) A Service Award of $7,500 to the Named Plaintiff.

For good cause shown, Plaintiff's Motion should be granted.

Date: July 18, 2022

By: */s/ Kristi C. Kelly*

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Joshua Saylor, *individually and on behalf of all others similarly situated,*	:	
Plaintiff,	:	
v.	:	Civil Action No. 1:22-cv-00053-AJT-IDD
RealPage, Inc.	:	
Defendant.	:	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND NAMED PLAINTIFF SERVICE AWARD

Plaintiff Joshua Saylor ("Plaintiff") and Class Counsel have diligently litigated this action for three years, entirely on a contingent fee basis, with their efforts resulting in a settlement that establishes a common fund of $9,731,570 from which approximately 10,180 Settlement Class Members will automatically receive a payment. On a per Settlement Class Member basis, the gross amount of the Settlement is $955. This is nearly the maximum amount available in statutory damages under the Fair Credit Reporting Act ("FCRA"), which provides for statutory damages from $100-$1,000 per violation. This per person amount is also at the highest end of FCRA settlements in similar circumstances. The settlement also provides for significant practice changes by Defendant RealPage, Inc. ("Defendant") to address the flawed procedures which led to the litigation. The excellent result achieved and the benefits to the Settlement Class could not have been attained absent Class Counsel's time, effort, and skill, as well as Plaintiff's active participation in the case.

The requested attorneys' fees of one-third of the Settlement Fund, or $3,243,856, are reasonable in light of the recovery and the time put into the case, and recognizes the substantial

efforts undertaken in both litigation, through extensive discovery work, and in the settlement process to identify and verify the Settlement Class Members, by Class Counsel. Additionally, Class Counsel seeks reimbursement of their out-of-pocket costs, $97,483.90.[1] Fees and costs were negotiated only after relief for the Class was agreed upon. Class Counsel have received no payment or reimbursement to date for their efforts. Further, the requested service award of $7,500 for Plaintiff is appropriate in light of his investment of time and energy in this litigation.

The amount of fees and expenses Class Counsel intended to seek was included in the Class Notice. While the objections deadline has not yet passed, as of the date of this filing, no Settlement Class Member has objected to the requested attorneys' fees, costs, or Class Representative Award.

BACKGROUND

The litigation history, history of settlement negotiations, and terms of the settlement are set forth in detail in the Memorandum in Support of Plaintiff's Motion for Preliminary Settlement Approval (ECF No. 88) and are incorporated by reference here. This Memorandum will focus on the efforts of Class Counsel and Plaintiff to achieve the significant result in this case, and Class Counsel's work post-preliminary approval in preparing the Class List and responding to inquiries from Settlement Class Members.

I. Class Counsel's Work to Secure Benefits for the Class.

Class Counsel are highly experienced FCRA practitioners who have years of experience in litigating complex FCRA matters like this case. To date, Class Counsel have devoted over 2,900 hours to this matter, resulting in over $1,200,000 in lodestar. (Declaration of John G. Albanese ("Albanese Decl.") ¶ 6.) Class Counsel have incurred $95,483.90 in out-of-pocket

[1] This amount includes an estimated $2,000 cost for travel to attend the final approval hearing. Class Counsel will provide an updated amount of that cost prior to the final approval hearing.

costs and will incur further costs to attend the final approval hearing. (*Id.* ¶ 7.) The requested attorneys' fees and the request for reimbursement of out-of-pocket costs were identified in the notice, and there have been no objections to date from Settlement Class Members.

A. Class Counsel's Work During Litigation and Settlement.

This case is about Defendant, a consumer reporting agency, matching consumers to sex offender records based on incomplete dates of birth, and without regard to the consumers' residential history. Defendant's practices resulted in people being labeled as sex offenders based on "matches" to individuals born in different years, who lived in states where the consumers had never resided. There are a number of states that do not list full dates of birth on their publicly available online sex offender registries, but instead disclose an age or a year of birth. In those jurisdictions where full dates of birth were not available, Defendant matched consumers to records using date of birth ranges, either one year or two years depending on whether year of birth or age was provided. Defendant, for many sex offender searches, also did not limit any searches based on geography. Thus, if a consumer anywhere in the country shared the same name as a registered sex offender in certain jurisdictions and happened to be born around the same time, Defendant may have erroneously reported a potential match to a sex offender record. Defendant engaged in this reporting despite the fact that full date of birth information for the sex offenders may have been available in the underlying criminal records that triggered the requirement to register on the sex offender registry.

These flaws in Defendant's procedures were not immediately obvious and unraveling the issues with Defendant's processes took significant time, effort, and intimate knowledge of the consumer reporting industry, including how background check data is gathered and reported. This litigation did not settle until the completion of fact discovery, which involved production and review of thousands of pages of documents, depositions of four of Defendant's employees,

Plaintiff's deposition, and the deposition of Plaintiff's landlord. Significantly, during discovery, Class Counsel obtained a data sample from Defendant consisting of over 1,000 records of consumers who Defendant identified as being sex offenders based on incomplete date of birth information. Class Counsel audited that data sample, collecting other public records related to the sex offenders, comparing the sex offender records reported to other records containing additional personally identifying information about the sex offenders with whom the consumers were matched, and using that information to identify inaccurate matches, such as matches where the sex offender's underlying criminal record contained personally identifying information that was inconsistent with the consumer. This analysis involved extensive searching of online records (and meticulously documenting such searches and the results) along with issuing subpoenas to a number of jurisdictions for further records. Class Counsel's extensive data collection and robust analysis played a vital role in mediation and settlement of the matter.

Based on Class Counsel's demonstrated record of success at using public records to identify individuals who were improperly matched to sex offender records, as part of the Settlement Agreement, Class Counsel agreed to apply the same audit procedures used on the initial sample to the entire relevant set of records in order to identify people who should be on the Class List. (ECF No. 88-1, pp. 24-27.) To that end, on January 19, 2022, Defendant provided an "Initial Class List" to Class Counsel. This "Initial Class List" included data from 11,779 consumer reports. The subject of each report was a *potential* class member. The Initial Class List included personally identifying information (including dates of birth) for the consumers who were the subjects of the reports, housing application information from the consumer supplied during the application process, and the sex offender registry and criminal record information Defendant had included on the reports. (Albanese Decl. ¶ 8.) Class Counsel then used a combination of records requests, subpoenas, and online research to retrieve additional data

relating to both the sex offender registry record reported and, because criminal records sometimes contain more personally identifying information than sex offender registries, records relating to the underlying criminal offenses that caused the sex offender to be placed on the registry in the first instance. (*Id.* ¶ 9) In addition to searching and documenting those searches of thousands of records from state online sex offender registries, the national sex offender registry, state repositories of criminal record information (including court records, department of correction records, and state police records), Class Counsel sent out over 26 subpoenas related to records from 13 states. (*Id.* ¶ 10.) Counsel also obtained over 1,300 criminal history checks from the Georgia Bureau of Investigation and over 100 from the Indiana State Police. (*Id.*) This record gathering process was time-consuming, and in some instances, required significant negotiation from subpoenaed entities to require the necessary information.

Class Counsel also assembled a team of experienced attorneys (Albanese Decl. ¶¶ 11-12), who assisted in gathering records and compared the consumer records on the Initial Class List with the additional public record information gathered. For each consumer, the team catalogued and compared date of birth information for the consumer-applicant against date of birth information for the individual on the sex offender registry with whom Defendant had matched the consumer-applicant. (*Id.*) The team of reviewers audited one another's findings to ensure accuracy. (*Id.*) Class Counsel then de-duplicated the Initial Class List (some individuals were the subject of more than one report) using unique record identifiers. Once the review and deduplication processes were complete, Class Counsel created the "Responsive Class List." The Responsive Class List contained only those consumer-applicants who Class Counsel determined were *not* the sex offender to whom Defendant had matched them based on partial date of birth information. (*Id.*)

With the Initial Class List, Defendant had included a notation of whether a given consumer-applicant had disputed information on their report and had a record suppressed in response to the dispute. (*Id.* ¶ 13.) In the Responsive Class List, those notations were carried over as the indicator that the given consumer-applicant was in the "Settlement Class Member Who Disputed" category of the Settlement Class. (*Id.*) Class Counsel reviewed produced dispute records to ensure those individuals were included in the Responsive Class List with appropriate indicator as applicable. (*Id.*) On April 12, 2022, Class Counsel produced the Responsive Class List to Defendant. After deduplication, that list consisted of 10,180 individuals. Class Counsel also produced to Defendant all of the underlying public record documentation Class Counsel had relied upon in determining who from the Initial Class List should be included on the Responsive Class List. (*Id.* ¶ 14.) Defendant agreed to Class Counsel's Responsive Class List without objection.

ii. Class Member Inquiries.

All forms of notice to the Settlement Class Members contained a toll-free phone number and email address that went directly to Class Counsel. To date, Class Counsel have received and responded to over 215 inquiries from Settlement Class Members. (Albanese Decl. ¶ 15.) Class Counsel will continue to maintain the phone number and email address through post-final approval distribution and check negotiation deadlines and will respond to all inquiries received. (*Id.*)

II. Plaintiff Joshua Saylor's Role in the Case.

Plaintiff Joshua Saylor played a valuable and active role in this litigation, devoting significant time and attention to the case, and has remained actively involved in the case throughout the three years that it has taken to litigate this matter. Plaintiff responded to written discovery requests, produced and reviewed documents, and thoroughly prepared and sat for his

deposition which took most of a day. Additionally, he consulted with Class Counsel throughout litigation and during settlement negotiations, and reviewed and approved the Settlement Agreement. (Albanese Decl. ¶ 16.) Throughout the case, Plaintiff has taken his duties as a Class Representative seriously and has been devoted to achieving the best result possible for the Settlement Class. The Settlement Agreement's provision for a request of up to $7,500 reflects Plaintiff's initiative in pursuing the action and the time and resources he has invested in this litigation. In Class Counsel's experience, it can be difficult to have people step forward to challenge erroneous reporting in court, especially with sex offender records. Given the gravity of the label, many individuals would shy away from publicly disclosing that they had ever been labeled as a sex offender, even erroneously. Absent Plaintiff's willingness to come forward as someone who was victimized by this practice, the Class would not have achieved any recovery, monetary or otherwise. The requested amount was listed in the notice, and no objections have been received to date from Settlement Class Members.

ARGUMENT

I. The Requested Attorneys' Fees and Costs are Appropriate and Should be Awarded.

The Settlement Agreement allows Class Counsel to seek an award of attorneys' fees of up to one-third of the Settlement Fund, $3,243,856, and reimbursement of out-of-pocket costs.

A. The Percentage Method for Determining Class Counsel's Fees is Reasonable.

Fed. R. Civ. P. 23(h) grants the Court authority to "award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement" in class actions. When a class action leads to a common fund for the class, the Court may award fees as a percentage of that common fund. This doctrine originates from equitable principles and serves to shift the expense of the litigation from named plaintiffs, whose efforts obtained the benefit of the fund, to the absent class members, who will benefit from the fund, but who made no active contribution

to the creation of the fund. *Brundle ex rel. Constellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 785 (4th Cir. 2019), *as amended* (Mar. 22, 2019). As the Fourth Circuit has explained, awarding fees as a percentage of the common fund "hold[s] the beneficiaries of a judgment or settlement responsible for compensating the counsel who obtained the judgment or settlement for them." *Id.* at 786.[2]

The preference of courts for the percentage method is understandable. It is easily administered, saves valuable court and party resources, and supports the Supreme Court mandate that "request[s] for attorney's fees . . . not result in a second major litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The percentage method aligns the interests of counsel and the class, as it motivates counsel to generate the largest possible recovery for the class and rewards efficient litigation. As the class recovery increases, so does counsel's fee. The percentage-based fee method encourages efficient litigation, as class counsel will not receive more money for unnecessary motions or discovery, but is incentivized to engage only in litigation that strategically advances the interest of the class. *See*, *e.g.*, *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 (D. Md. 2013) ("An attractive aspect of the percentage of recovery method is its results-driven nature which ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys.") (quotation and citation omitted). Unsurprisingly, the common fund method "has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases." *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758 (S. D. W. Va. 2009).

[2] Most Circuits either permit or require the percentage method. 5 NEWBERG ON CLASS ACTIONS § 15:66 (5th Ed. Dec. 2020 Update). For example, the Eleventh Circuit and the District of Columbia Circuit require the use of the percentage method. *Id.* at n.6 (citing cases). The Third Circuit prefers the percentage method, *id.* at n.7, and the First, Second, Fifth, Sixth, Eighth, Ninth, and Tenth allow district courts to use their discretion to use either the percentage of fund method or the lodestar method. *Id.* at n. 5 (citing cases).

By contrast, the lodestar method is time consuming and requires the preparation by counsel, and review and analysis by the courts, of potentially voluminous line item fee entries. A lodestar-based fee encourages class counsel to increase the number of hours they spend on a case to maximize their fees, even if that time does nothing to advance the case or the class's interests. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) ("[T]he lodestar method has been criticized as giving class counsel the incentive to delay settlement in order to run up fees while still failing to align the interests of the class."). Indeed, the lodestar method is used in only a fraction of class action cases, often those where the settlement provides injunctive relief the value of which cannot be reliably calculated. *See*, *e.g.*, Theodore Eisenberg et al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017) (finding that the lodestar method used less than 7% of the time from 2009-2013); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, 832 (2010) (finding that the lodestar method was used in only 12% of settlements).

While the Fourth Circuit has not explicitly required its use in class actions, the percentage method is overwhelmingly preferred by the district courts in this Circuit. *Galloway v. Williams*, No. 19-470, 2020 WL 7482191, *5 (E.D. Va. Dec. 18, 2020) ("[I]n the Fourth Circuit and across the country; for example, the favored method for calculating attorneys' fees in common fund cases is the percentage of the fund method."); *Thomas v. FTS USA, LLC*, No.13-825, 2017 WL 1148283, at *3 (E.D. VA. Jan. 9, 2017), *report and recommend. adopted*, 2017 WL 1147460 (E.D. Va. Mar. 27, 2017) ("District Courts within this Circuit have also favored the percentage of the fund method.") (citations omitted); *see also Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, *2 (D. Md. Jan. 28, 2020); *Seaman v. Duke Univ.*, No. 15-462, 2019 WL 4674758, *2 (M.D.N.C. Sept. 25, 2019); *Cox v. Branch Banking & Trust Co.*, No. 16-10501, 2019 WL

164814, *5 (S.D. W. Va. Jan. 10, 2019) (collecting cases and stating, "[i]n sum, there is a clear consensus among the federal and state courts, consistent with Supreme Court precedent, that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery. This consensus derives from the recognition that the percentage of fund approach is the better-reasoned and more equitable method of determining attorneys' fees in such cases."); *Krakauer v. Dish Network, L.L.C.*, No. 14-333, 2018 WL 6305785, *2 (M.D.N.C. Dec. 3, 2018); *Phillips v. Triad Guar. Inc.*, No. 09-71, 2016 WL 2636289, *2 (M.D.N.C. May 9, 2016).

Although the Fourth Circuit has not designated factors for courts to apply under the percentage method, district courts in this Circuit typically use these seven factors: (1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the settlement terms or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy. *Fangman v. Genuine Title, LLC*, No. 14-0081, 2017 WL 86010, at *3-4 (D. Md. Jan. 10, 2017). Here, these factors all support an award of the requested fee.

i. Results Obtained.

In the Fourth Circuit, "the most critical factor in calculating a reasonable fee award is the degree of success obtained." *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) (citation and internal quotation omitted). Here, the settlement provides an excellent result for the Settlement Class. Under the FCRA, if the case were to go to trial, class members would only be able to recover statutory damages between $100 and $1,000 and potentially punitive damages. *See* 15 U.S.C. § 1681n. On a gross basis, the relief per class member here is $955. This monetary relief alone compares very favorably against other FCRA settlements. *See*, *e.g.*, *Brown v. On-Site*, No. 20-cv-482, ECF No. 82 (E.D. Va.) (case alleging similar §1681e(b) claims against a related entity of Defendant's where net automatic payments were approximately $473); *Patel v.*

Trans Union, LLC, No. 14-522, 2018 WL 1258194, *1 (N.D. Cal. Mar. 11, 2018) (settlement of inaccurate reporting claims, similar class size, provided for automatic payments of $400); *Feliciano v. CoreLogic SafeRent, LLC*, No. 17-5507 (S.D.N.Y.) (settlement of inaccurate reporting claims, providing $450 each for 1,921 class members); *Brown v. Corelogic*, No. 3:20-cv-363 (E.D. Va.) (settlement of $8,250,000 for approximately 8,250 class members).

Each Settlement Class Member will receive an automatic payment. Settlement Class Members who disputed a record, or who attest on a sworn claim form that the report caused them a delay in obtaining housing, will also receive an additional amount. After the Claims Period passes and final approval, the net settlement fund will be divided up so that those Class Members who disputed or made claims will receive twice as much as those entitled to just the automatic payment. The automatic payment amount will then be distributed to everyone. The settlement payments will have a check cashing deadline of 60 days. Any uncashed checks waterfall into the claims payment fund which will then be distributed evenly to those Class Members who made claims or disputed. Of the 10,180 Settlement Class Members, it is currently estimated that 5,742 will be entitled to the enhanced payments (this number is an estimate as the claims period does not close until August 1, 2022 and there may be people who made claims who were already identified as having disputed a record). Assuming that the requested attorneys' fees, costs, Plaintiff's service award are granted, after the costs of administration are subtracted,[3] and based on the current number of claims, it is estimated the net automatic payment amount will be approximately $390. Thus, assuming all checks are cashed, all Settlement Class Members will receive $390 and those that disputed or made a claim will receive $780. This is a significant and meaningful recovery in a FCRA class action.

[3] Plaintiff will provide an updated estimate for costs of administration in his forthcoming motion for final approval of the settlement.

In addition, the settlement provides injunctive relief directly related to the claims at issue, which will prevent the Class from suffering future harm. Most courts have held that injunctive relief is not available under the FCRA to private litigants, and therefore this relief likely could have *only* been obtained in the settlement context. *See Alston v. Equifax Info. Servs., LLC*, No. 13-1230, 2014 WL 6388169, at *3 (D. Md. Nov. 13, 2014) (noting that "vast majority of district courts, including in this district and within the Fourth Circuit" have held that injunctive relief is unavailable for private litigants). Given the gravity of telling someone's potential landlord that they are a sex offender, many class members are likely to value the protection from future harm afforded by the injunctive relief at least as much as the checks they will receive as a result of the settlement's monetary component. Further, there is no reversion to Defendant at any point, with any remaining balance at the end of all distributions to be contributed to the *cy pres* recipients.

ii. Quality, Skill, & Efficiency of Attorneys.

Class Counsel here have extensive experience in consumer class action litigation, and FCRA litigation in particular. (*See generally* ECF No. 88-1.) E. Michelle Drake is the chair of Berger Montague's Background Checks and Credit Reporting Department, which currently consists of seven lawyers who devote a significant portion, if not all, of their practice to class action and individual FCRA cases. E. Michelle Drake and John Albanese devote a significant amount of their practices to FCRA class actions in particular and have been involved in dozens of FCRA class actions, securing some of the largest and most notable FCRA settlements in the past decade all around the country. *See, e.g., Gambles v. Sterling Infosystems, Inc.*, No. 15-cv-9746 (S.D.N.Y.) (FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of $15 million, one of the largest FCRA settlements to date); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va.) (FCRA class action, alleging violations by credit bureau, providing a nationwide resolution of class action claims asserted by

32 plaintiffs in 16 jurisdictions, including injunctive relief and an uncapped mediation program, for millions of consumers); *Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va.) (FCRA consolidated class action, alleging violations by credit bureau, providing groundbreaking injunctive relief, and an opportunity to recover monetary relief, for millions of consumers); *Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066 (S.D. Ohio) (FCRA class action, alleging violations by employer, resulting in a $15 million settlement); *Howell v. Checkr, Inc.*, No. 17-cv-4305 (N.D. Cal.) (FCRA class action, alleging violations by consumer reporting agency, resulting in a $4.46 million settlement); *Halvorson v. TalentBin, Inc.*, No. 15-cv-5166 (N.D. Cal.) (FCRA class action, alleging violations by online data aggregator, resulting in a $1.15 million settlement). (ECF No. 88-1.)

Ms. Drake is a long-time member, and former board member, of the National Association of Consumer Advocates, and presents frequently at national and local conferences on class actions, consumer protection, and Fair Credit Reporting Act-related topics, and co-authored a book chapter on background checks and related issues, "Financial and Criminal Background Checks," Job Applicant Screening: A Practice Guide, Minnesota Continuing Legal Education Publication, May 2014, and the forthcoming 2d. ed. (*Id.*) Mr. Albanese speaks frequently at consumer law conferences, is an editor of the National Consumer Law Center's Fair Credit Reporting Act Manual, and frequently represents consumer groups as *amici curiae* in appellate courts (including the Supreme Court) on cases involving consumer reporting issues. (*Id.*)

Class Counsel's substantial experience in this practice area allowed Counsel to conduct targeted and detailed discovery, which led to significant leverage for negotiating a favorable settlement for the Class Members. Class Counsel's intimate knowledge of the FCRA and familiarity with the operations of consumer reporting agencies and the availability of public records allowed Class Counsel to reach this result efficiently, without the extensive delay that

would result from litigating the case through class certification, summary judgment, trial, and the inevitable appeals from those phases of the case. The settlement provides benefits to the Class now, and that is due in large part to the skill of Class Counsel. Class Counsel's high level of skill and experience, coupled with the reputable opposing defense counsel on the other side, supports this factor. *See*, *e.g.*, *In re Royal Ahold N.V. Securities & ERISA Litig.*, 461 F. Supp. 2d 383, 387 (D. Md. 2006).

iii. Risk of Nonpayment.

Since this case was filed on June 14, 2019 in the District of New Jersey, Class Counsel have litigated this matter on a contingent fee basis, without payment or reimbursement to date, or a guarantee of any future payment for their efforts. The contingency nature favors the requested fee award. *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 482 (D. Md. 2014) ("public policy favors the requested award" when risk of nonpayment exists as "the relevant public policy considerations involve the balancing of the policy goals of encouraging counsel to pursue meritorious . . . litigation.") (citation and internal quotations omitted).

There was further risk of non-payment when the litigation risks are considered. Both issues of class certification and willfulness of Defendant's conduct would have been fought hard by Defendant should the case have moved further. While Plaintiff is confident in his position on these issues, they are serious obstacles. In particular, because the inaccuracy was not evident from the face of the background check alone, Plaintiff would have had to show that the class could be certified and identified without mini trials as to accuracy. This is a real risk and Defendant has prevailed in other cases on class certification that challenged its background check procedures. *See*, *e.g.*, *Kelly v. RealPage, Inc.*, No. 19-1706, 2020 WL 7479620, at *1 (E.D. Pa. Dec. 18, 2020) (class certification denied in case with same Defendant); *Jones v.*

Realpage, Inc., No. 3:19-CV-2087-B, 2021 WL 852218 (N.D. Tex. Jan. 27, 2021) (same). A loss on certification would have meant the Settlement Class Members would receive nothing.

Further, FCRA cases are not slam dunks. Unlike some other consumer protection statutes, the FCRA is not a strict liability statute. *Dalton v. Capital Associated Indus.*, 257 F.3d 409, 417 (4th Cir. 2001). Further, the FCRA only permits recovery of statutory damages when a plaintiff proves a willful violation. *Compare* 15 U.S.C. § 1681n with § 1681o. Plaintiff would have had to show that Defendant's violations were "willful" in order to recover statutory damages on behalf of the Settlement Class. 15 U.S.C. § 1681n. This can be a high bar and presents a real risk to recovery. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69 (2007) ("a company subject to FCRA does not act in reckless disregard . . . unless the [challenged] action is not only a violation under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless). Indeed, FCRA plaintiffs can lose on this standard even after a successful verdict at trial. *See Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 611 (6th Cir. 2016) (reversing jury verdict, holding that consumer reporting agency's conduct did not constitute a willful violation of the FCRA); *see also Domonoske v. Bank of America, N.A.*, 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) ("[G]iven the difficulties of proving willfulness or even negligence with actual damages [under the FCRA], there was a substantial risk of nonpayment.").

Class Counsel thus took on this complex case with a very real chance of non-payment. In light of the uncertainty presented by the remaining litigation of the case – proving willfulness, winning class certification, surviving summary judgment, inevitable appeals – Class Counsel's taking on of this case, on a contingency basis no less, supports their fee request now.

iv. Objections

To date, no Settlement Class Members have objected to the settlement, or the requested attorneys' fees. If any objections are received after this motion is filed, Class Counsel will address them in the motion for final approval.

v. Awards in Similar Cases

The Fourth Circuit does not have a set benchmark for fee awards in common fund cases, but courts in the Circuit have held fees in the range of 25 to 40 percent to be appropriate in the past.[4] Here, Class Counsel is requesting one-third of the Settlement Fund, which is well within that range.

This Court and other judges in this District have also approved similar percentage awards in other consumer protection cases. *Brown v. On-Site*, No. 20-cv-00482-AJT, ECF No. 84 (E.D. Va. Nov. 3, 2021) (awarding 33% of common fund to class counsel); *Heath v. Trans Union*, No. 18-cv-720, ECF No. 65 (E.D. Va. Dec. 3, 2019) (approving a 33% fee request in FCRA case); *Ridenour v. Sterling Info. Inc.*, No. 15-41, ECF No. 204 (E.D. Va. July 26, 2017) (approving 32% fee request in FCRA case); *Gibbs v. TCV V, LP*, No. 19-789 (E.D. Va.) (approving one-third of common fund fee request); *Gibbs v. Rees*, No. 20-717 (E.D. Va.) (same); *Liggio v. Apple Fed. Credit Union*, No. 19-103 (E.D. Va.) (same).

[4] "[E]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in the class actions average around one-third of the recovery." 4 Newberg on Class Actions § 14:6 (4th ed.); *see also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 class action settlements shows "average attorney's fees percentage [of] 31.31%" with a median value that "turns out to be one-third."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Studies 27, 31, 33 (2004) (noting "a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount."). Empirical evidence can provide guidance to courts in determining whether a fee is reasonable. Reagan W. Silber & Frank E. Goodrick, *Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 545-6 (1998).

In consumer class actions generally, there is a substantial amount of necessary post-final approval work for Class Counsel, beyond the already-incurred lodestar. Here, Class Counsel will continue to review and respond to class member inquiries received via the phone number and email address on the notices, assist with the allocation determinations for the Settlement Class Members Who Disputed and those who return Claim Forms, and work with the Settlement Administrator to complete administration through payment, check negotiation deadlines, subsequent distributions, and potential *cy pres* distribution of residuals. This additional expected work on the case further supports the requested one-third. *See*, *e.g.*, *Turner v. ZestFinance, Inc.*, No. 19-cv-293, ECF No. 116 at 16:1-5 (E.D. Va. Aug. 4, 2020) (judge noting that while the current multiplier for a 33 percent fee was around 3.86, it was expected to "fall for the reasons you just said about the continuing work" and approving fee).

vi. Duration and Complexity of the Case

As noted previously, this case has been vigorously litigated, with extensive fact discovery conducted and completed, expert discovery about to begin in earnest, and extensive review undertaken to compile the membership of the Settlement Class. As a result, the claims and defenses were thoroughly explored and the parties came to the negotiation table fully informed as to their strengths and weaknesses. Also as noted above, the case presents complex issues and risks related to willfulness, all of which would require a successful outcome for class members to receive recovery at trial. While Class Counsel are confident in Plaintiff's case, it was not a guaranteed outcome, and any trial would have led to an appeal. As seen even in the methods used to prepare the Settlement Class List, the complexity of the case was evident and supports the requested fee award.

vii. Public Policy

When assessing the reasonableness of a class action fee award, the court "must strike the appropriate balance between promoting the important public policy that attorneys continue litigating class action cases that 'vindicate rights that might otherwise go unprotected,' and perpetuating the public perception that 'class action plaintiffs' lawyers are overcompensated for the work that they do.'" *Fangman*, 2017 WL 86010, *6 (quoting *Singleton*, 976 F. Supp. 2d at 687).

Because recoveries under the FCRA are generally low, it is often not worth it for individual consumers to bring claims. *See Yohay v. City of Alexandria Employees Credit Union, Inc*., 827 F.2d 967, 974 (4th Cir. 1987) ("[T]here will rarely be extensive damages in an FCRA action."); *Stillmock v. Weis Markets, Inc*., 385 F. App'x 267, 274 (4th Cir. 2010) ("[The] low amount of statutory damages available means no big punitive damages . . . making an individual action unattractive," such that the FCRA will not be enforced "by individual actions o[n] a scale comparable to the potential enforcement by way of class action."). To ensure attorneys continue take on these important cases, courts should compensate them appropriately for the numerous risks involved.

In sum, the factors the Fourth Circuit uses to assess reasonableness of a fee award all support the requested award here. Here, Class Counsel vigorously pursued the best outcome for the Settlement Class, litigated efficiently and effectively, and fully bore the risk of litigation, advancing funds and time to move the case forward and to achieve the significant settlement. The requested one-third of the Settlement Fund is reasonable.

B. A Lodestar Cross-Check Further Supports the Requested Fee.

A cross-check is not required to determine the fairness of a fee under the percentage method, but courts have, at times, used a lodestar estimate cross-check when assessing a requested award. *Manual for Complex Litigation (Fourth)* § 21.724. As this Court has

recognized, "where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Galloway v. Williams*, No. 19-cv-470, 2020 WL 7482191, *11 (E.D. Va. Dec. 18, 2020).

Here, Class Counsel's lodestar to date is $1,225,178.30.[5] (Albanese Decl. ¶ 6.) Notably, this lodestar does not yet include the expected work to come in preparing the final approval motion papers, appearing at the final approval hearing, and the post-approval work noted above. This lodestar represents a 2.65 multiplier for Class Counsel. In light of the substantial monetary and injunctive benefits Class Counsel achieved for the Settlement Class, and the fact that Class Counsel have litigated this case for over three years without any compensation, all while shouldering litigation expenses and the risk of complete non-payment, this multiplier is reasonable. *Berry v. Schulman*, 807 F.3d 600, 617 n.9 (4th Cir. 2015) (noting that using the lodestar method, "the district court multiplies the number of hours worked by a reasonable

[5] Class Counsel's hourly rates are reasonable in light of their national class action practice and substantial experience and skill brought to this matter. The rates are in line with those approved in this Circuit for similar national class action attorneys. *See*, *e.g.*, *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201, at *4 (M.D.N.C. June 24, 2019) (in class action for attorneys with nationwide practice, approving hourly rates of $1,060 per hour for attorneys with over 25 years of experience, $900 per hour for attorneys with 15 to 24 years of experience, $650 per hour for attorneys with 5 to 14 years of experience, $490 per hour for attorneys with 2–4 years of experience, and $330 per hour for attorneys with less than 2 years of experience, law clerks, and paralegals); *Phillips v. Triad Guar. Inc.*, No. 09CV71, 2016 WL 2636289, at *7 (M.D.N.C. May 9, 2016) (approving hourly rates up to $880 per hour); *In re Mercedes-Benz Tele Aid Contract Litig.*, No. 07-2720, 2011 WL 4020862, at *7 (D.N.J. Sept. 9, 2011) (finding reasonable, in consumer class action settlement, hourly rates up to $855 for partners and up to $560 for associates); *Flores v. Express Servs., Inc.*, No. 14-3298, 2017 WL 1177098, at *4 (E.D. Pa. Mar. 30, 2017) (finding hourly rates for attorneys ranging from $725 to $225 reasonable in consumer class settlement); *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 216–17 (E.D. Pa. 2011) (finding hourly rates up to $700 for partners and $175 for paralegals are reasonable for experienced class counsel in a consumer class action); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 576 (E.D. Va. 2016) (collecting authority on reasonable hourly rates); *see also* Laffey Matrix, http://www.laffeymatrix.com/see.html (setting forth rates between $343 and $826 for attorneys of similar experience levels); *In re Allura Fiber Cement Siding Litig.*, 2021 WL 2043531, *6 ("Courts in the Fourth Circuit have previously determined that using Laffey and Adjusted Laffey rates is appropriate when reviewing lodestar in approving fee petitions.") (collecting cases).

hourly rate. And it can then adjust the lodestar figure using a 'multiplier' derived from a number of factors, such as the benefit achieved for the class and the complexity of the case."). This multiplier is well-within the range approved in other settlements both in the Fourth Circuit and nationally.[6] Thus, the cross-check here further supports the requested fee.

C. Class Counsel's Out-of-Pocket Costs Should be Approved to be Paid from the Fund.

"Reimbursement of reasonable costs and expenses to counsel who create a common fund [] is both necessary and routine." *Berry v. Wells Fargo & Co.*, No. 17-304, 2020 WL 9311859, *5 (D.S.C. July 29, 2020) (quoting *Savani v. URS Prof. Sols. LLC*, 121 F. Supp. 3d 564, 576 (D.S.C. 2015)). "The prevailing view is that expenses are awarded in addition to the fee percentage." *Smith v. Krispy Kreme Doughnut Corp.*, No. 05-187, 2007 WL 119157, *4 (M.D.N.C. Jan. 10, 2007). "Examples of costs that have been charged include necessary travel, depositions and transcripts, computer research, postage, court costs, and photocopying." *Singleton*, 976 F. Supp. 2d at 689. They should "reflect a reasonable amount of expenditures for a case of [its] magnitude," *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995), and also "bear a reasonable relationship to the time and effort expended and the result achieved," *In re Microstrategy*, 172 F. Supp. 2d 778, 791 (E.D. Va. 2001). Class Counsel have incurred $95,483.90 in out-of-pocket expenses to date and will incur a further costs to attend the

[6] *See, e.g.*, *Brown*, No. 20-cv-482, ECF No. 84 (fee request approved that represented a 1.98 multiplier); *Singleton*, 976 F. Supp. 2d at 689 ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee") (awarding a multiplier of 3 in FCRA case); *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (finding a 3.69 multiplier to be "within the range of reasonableness" and collecting cases); *Skochin v. Genworth Financial, Inc.,* No. 3:19-cv-49, 2020 WL 6708388 (E.D. Va. Nov. 13, 2020) (9.05 multiplier); *Spartanburg Reg'l Health Services District, Inc. v. Hillenbrand Industries, Inc.*, 7:03-2141-HFF, 2006 WL 8446464 (D.S.C. Aug. 15, 2016) (multiplier slightly above 6); *see also Stop & Shop Supermarket Co. v. SmithKline Beecham Corp*., No. 03-cv- 04578, 2005 WL 1213926 (E.D. Pa. May 19, 2005) (15.6 multiplier).

final approval hearing. These expenses include filing fees, postage, service and delivery fees, deposition and mediation costs, document management and hosting costs, subpoena-related service and record production costs, legal research, expert witness and consultant costs, and travel costs. Each expense was necessarily incurred to further this litigation and settlement. (Albanese Decl. ¶ 7.)

II. The Court Should Approve the Class Representative Service Award.

Plaintiff requests, and Defendant does not oppose, a service award of $7,500 for Plaintiff's work on behalf of the Class. Plaintiff played an active role in the litigation, responding to discovery, producing documents, preparing for and sitting for his deposition. (Albanese Decl. ¶ 16.) Plaintiff understands his role as Class Representative, remained responsive through litigation and settlement, participated actively in discovery, sat for his deposition, and reviewed and approved the Settlement Agreement. (*Id.*) Courts in this Circuit regularly recognize the value in awarding class representatives for their services on behalf of the class members, and the reward requested here is in line with those awarded in other cases. *See, e.g., Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14CV238(DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016) (awarding service payment of $10,000); *Deem v. Ames True Temper, Inc.*, No. 6:10–CV–01339, 2013 WL 2285972, at *6–7 (S.D.W. Va. May 23, 2013) (approving award of $7,500 per lead plaintiff).

Indeed, the purpose of class representative service awards is not to compensate the named plaintiffs for the harm caused by the defendant but, rather, to fairly reward them for the time and effort they invested in the case and spent on behalf of the class. *See Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, 807 F.3d 600, 613 (4th Cir. 2015) (instructing that service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize

their willingness to act as a private attorney general."). Further, the amount requested is less than the national average for similar awards - an empirical study published in 2006 suggests that the average award per class representative is about $16,000. 4 *Newberg on Class Actions* § 11:38 (4th ed.). Plaintiff properly earned the proposed service award through his efforts on behalf of the Settlement Class, and the modest amount requested further supports its approval.

CONCLUSION

Based on the foregoing, the Court should approve the requested attorneys' fees to Class Counsel in the amount of one-third of the Settlement Fund, as well as reimbursement of their out-of-pocket costs, and the Class Representative Service Award of $7,500 for Plaintiff, to be paid from the Settlement Fund.

Date: July 18, 2022

Respectfully submitted,
PLAINTIFF

By: */s/ Kristi C. Kelly*

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOSHUA SAYLOR,

Plaintiff,

v.

REALPAGE, INC.,

Defendant.

Case No. 1:22-cv-00053-AJT-IDD

DECLARATION OF JOHN G. ALBANESE

I, John G. Albanese, hereby declare as follows:

1. I am one of Plaintiff's Counsel in the above-captioned matter.

2. I submit this Declaration in support of Plaintiff's Motion for Attorneys' Fees, Costs, and Named Plaintiff Service Award.

3. Berger Montague PC's ("BMPC") time records are maintained in accordance with industry standards to ensure reliability and transparency. BMPC's formal policy requires all timekeepers—including attorneys and support staff—to keep records of time worked contemporaneously and to provide sufficient detail to convey the nature and merit of the work performed. To ensure each time entry contains sufficient detail, BMPC requires time entries to include both matter numbers (corresponding to the specific case) and task codes (corresponding to the type of work performed).

4. BMPC uses the widely-accepted ABA Litigation Code Set, which includes 29 task codes spread across 5 stages of litigation (e.g., Pre-Trial Pleadings and Motions, Discovery, etc.)

to allocate time to particular tasks. This model, endorsed by courts,[1] ensures that time is billed in a uniform and task-oriented manner.[2] Timekeepers are also required to provide narrative descriptions setting forth the case-specific tasks associated with each time entry. If requested, Class Counsel will provide their full billing records for in camera review.

5. This manner of time-keeping, with contemporaneous records and detailed descriptions broken down by task, provides a level of accountability that courts nationwide routinely recommend when scrutinizing applications for attorneys' fees. *Deary v. City of Gloucester*, 9 F.3d. 191, 197-98 (1st Cir. 1993); *Bode v. United States,* 919 F.2d 1044, 1047 (5th Cir. 1990) (collecting cases).

6. A chart of BMPC's timekeepers in this matter, with hourly rate information, is below:

Timekeeper	Position	Atty. & Paralegal Yrs. Of Exp.	Hourly Rate	Hours Worked	Lodestar
Albanese, John	Shareholder	10	$640.00	358.2	$229,248.00
Hibray, Jean	Paralegal	12	$370.00	325.3	$120,361.00
Gazallo, Tara	Record Review Counsel	12	$350.00	317.1	$110,985.00
Stone, Jill	Record Review Counsel	40	$350.00	292.1	$102,235.00
Dang, An	Record Review Counsel	8	$350.00	280	$98,000.00
Boese, Lindsay	Record Review Counsel	9	$350.00	261.4	$91,490.00
Kristen, Amy	Record Review Counsel	8	$350.00	245.8	$86,030.00

[1] *See Yahoo!, Inc. v. Net Games, Inc*., 329 F. Supp. 2d 1179, 1189 (N.D. Cal. 2004) ("The ABA template commends itself to parties applying for fee awards."); *Albion Pac. Prop. Res., LLC v. Seligman*, 329 F. Supp. 2d 1163, 1174 (N.D. Cal. 2004) (same).

[2] American Bar Association, Uniform Task-Based Management System, available at https://www.americanbar.org/groups/litigation/resources/uniform_task_based_management_system/ ("The Litigation Code Set has formed the basis for most, if not all, schemes to record and bill time on an hourly basis.").

Hebert IV, John E	Record Review Counsel	29	$340.00	206.8	$70,312.00
McClain, Michael	Record Review Counsel	6	$350.00	190	$66,500.00
Drake, Eleanor Michelle	Executive Shareholder	21	$920.00	136.5	$125,580.00
Albanese, Anthony	Legal Project Analyst		$175.00	108	$18,900.00
Johnson, KayLynn A	Counsel	2	$480.00	49.7	$23,856.00
Wehr, Christopher Thomas	Counsel	1	$475.00	46.1	$21,897.50
Kiener, Ariana	Associate	2	$490.00	44.4	$21,756.00
Xiong, Mai	Paralegal		$310.00	23.8	$7,378.00
Bly, Paul	Record Review Counsel	10+	$350.00	18.2	$6,370.00
Peterson, Elizabeth Woolford	Staff Attorney	5+	$400.00	16.6	$6,640.00
Fena, Jocelyn Cornell	Legal Assistant		$280.00	16	$4,480.00
Brooks, Rachel K	Legal Project Analyst		$280.00	15.9	$4,452.00
Polakoff, Jacob	Senior Counsel	16	$640.00	8.8	$5,632.00
McCollum, Sandy	Litigation Support		$57.50	4.5	$258.75
Gionnette, Julie	Legal Assistant		$240.00	4.4	$1,056.00
Spotts, Rebekah S	Document Review Counsel	10+	$400.00	4.1	$1,640.00
Rajendran, Arun	Litigation Support		$43.00	2.7	$116.10
Total				2970.4	$1,225,178.30

7. BMPC has additionally incurred $95,483.90 in out-of-pocket costs in this matter to date. These costs were related to investigating the claims in this matter, expert retainer and hourly fees, filing fees, fees for public records, mediation fees, access to Defendant's SecureReview virtual computer access and other document and data storage, service of process fees, and

deposition transcripts and court reporter fees. All of these costs were reasonably incurred in furtherance of this litigation and settlement. A break down of these costs by category is as follows:

Expense Type	**Expense Amount**
Computer Research	$3,021.82
Deposition Expenses	$6,303.00
Document and Data Hosting	$24,888.70
Electronic Signatures	$47.12
Expert Fees	$19,950.00
Filing & Misc. Fees	$1,917.09
Mediation Fees	$5,958.33
Postage and Shipping	$263.73
Printing/Copying/Scanning	$506.95
Process Server	$6,590.00
Records Fees	$24,735.24
Telephone	$24.67
Travel	$1,277.25
Total	$95,483.90

Class Counsel also anticipates incurring approximately $2,000 in costs to attend the final approval hearing.

8. On January 19, 2022, Defendant provided an "Initial Class List" to Class Counsel. This "Initial Class List" included data from 11,779 consumer reports. The subject of each report was a potential class member. The Initial Class List included personally identifying information (including dates of birth) for the consumers who were the subjects of the reports, housing application information from the consumer supplied during the application process, and the sex offender registry and criminal record information Defendant had included on the reports.

9. Class Counsel used a combination of records requests, subpoenas, and online research to retrieve additional data relating to both the sex offender registry records reported and, because criminal records sometimes contain more personally identifying information than sex

offender registries, records relating to the underlying criminal offenses that caused the sex offenders to be placed on the registries in the first instance.

10. In addition to searching and documenting those searches of thousands of records from state online sex offender registries, the national sex offender registry, state repositories of criminal record information (including court records, department of correction records, and state police records), Class Counsel sent out over 26 subpoenas related to records from 13 states. Counsel also obtained over 1,300 criminal history checks from the Georgia Bureau of Investigation and over 100 from the Indiana State Police.

11. Class Counsel then assembled a team of experienced attorneys who compared the consumer records on the Initial Class List with the additional public record information gathered by Class Counsel. For each consumer, the team researched, cataloged and compared date of birth information for the consumer-applicant against date of birth information for the individual on the sex offender registry with whom Defendant had matched the consumer-applicant. The team of reviewers audited one another's findings to ensure accuracy. Once the review processes were complete, Class Counsel created the "Responsive Class List." The Responsive Class List contained only those consumer-applicants who Class Counsel determined were not the sex offender to whom Defendant had matched them based on partial date of birth information.

12. This team of doc review attorneys included:

a. Stone, Jill. Jill Stone graduated from Ohio State University College of Law (Moritz College of Law) in December 1978. Jill has been licensed to practice in the State of Ohio since May 1979, and is also admitted to practice in the United States Court of Appeals for the Sixth Circuit (1983) and the United States Supreme Court (1990). Jill previously worked for the Office of the Ohio Public Defender as an

Assistant Public Defender, and as a solo practitioner. In Jill's contract work, she has completed many review projects, most often analyzing loan agreements and banking compliance. Jill also has experience working on the county level in administration, evaluating and analyzing public systems.

b. Gazallo, Tara. Tara Gazallo graduated from University of the Pacific, McGeorge School of Law in May 2009. Tara has been licensed to practice law in California since March 2010. Tara has previously worked at numerous firms locating and reviewing various court records, data and filings.

c. Hebert, John. John Hebert graduated from the University of Akron School of Law in 1992 (J.D.) and in 2009 (LL.M. in Intellectual Property Law), and the University of Florida Levin College of Law in 1993 (LL.M. in Taxation). John has been licensed to practice law in the State of Ohio since May of 1993. John was licensed in New York and Florida but let those bar admissions lapse as he no longer practices law in those jurisdictions. John previously worked at Levin Papantonio Rafferty, HaystackID, Cadence Council, Consilio, Hire Council, Lumen Legal and other entities, collectively, for over six years performing document review on large scale litigation and government investigation matters. John also previously worked at Blitman & King, BakerHostetler, Jones Day, and Ward, Rovell & Van Eepeul practicing employee benefits and tax law.

d. McClain, Michael. Michael J. McClain graduated from Cleveland-Marshall College of Law in May, 2015. Mr. McClain has been licensed to practice law in Ohio since April, 2016. Mr. McClain currently works as part-time general counsel for a small company in Ohio, where he manages litigation and provides human

resources and employment advice to the company's management. His work includes reviewing records on the Ohio Bureau of Workers' Compensation's website for workers' compensation cases. While in law school, he was a law clerk with the Cuyahoga County Prosecutor's Office. There, he reviewed criminal records and court dockets on the county's website, mainly to write appellate motions and briefs.

e. Dang, An. An Dang graduated from Pepperdine Law School in 2013. An has been licensed to practice law in California since 2014. An previously worked with various law firms managing eDiscovery, gathering information on potential class members, conducting witness interviews, and drafting declarations.

f. Kristen, Amy. Amy Kristen graduated from Southern Illinois University law school in 2012. Amy has been licensed to practice law in Illinois since November 2014. Amy previously worked at Special Counsel, Consilio, KL Discovery, and Haystack ID. Amy has experience completing complex document review projects as a first reviewer and quality control reviewer.

g. Boese, Lindsay. Lindsay Boese graduated from Thomas M. Cooley Law School in Ann Arbor, MI. Lindsay has been licensed to practice law in the state of Ohio since 2013 and licensed in Colorado since 2020. Lindsay previously worked as a Medical Malpractice Attorney in the state of Ohio from June 2015 until November 2017. Lindsay has reviewed medical records for over 500 clients among other tasks as counsel. Lindsay has worked with multiple firms (Epiq Global, Consilio, Special Counsel, to name the most recent) performing E-Discovery work for a combined total of 2 years; and has approximately 4 years of familiarity with Discovery.

h. Wehr, Chris. Chris Wehr is a consumer protection attorney in BMPC's Minneapolis Office. Mr. Wehr focuses his practice on helping consumers who have been denied jobs or housing due to inaccurate criminal history information reporting in their employment/tenant background check reports. He also assists consumers who have been denied credit due to inaccurate information reporting in their credit reports and have suffered harm due to unlawful debt collection behavior. Mr. Wehr began his career as a paralegal in a high-volume consumer protection practice where he helped consumers assert their rights under the Fair Credit Reporting Act and Fair Debt Collection Practices Act. In law school Mr. Wehr clerked for various consumer protection law firms in the Twin Cities focused on inaccurate background and credit reporting. Mr. Wehr graduated magna cum laude from Mitchell Hamline School of Law. In addition to his studies and focus on consumer law, Mr. Wehr served as an associate member on the Mitchell Hamline Law Review, competed in the regional Philip C. Jessup International Moot Court, and tutored first-year law students in the subjects of Contracts and Torts.

i. Johnson, Kaylynn. Kaylynn Johnson graduated cum laude from Mitchell Hamline in January 2020. Kaylynn is currently admitted to practice in the State of Minnesota and United States District Court for the District of Minnesota. During her time at Mitchell Hamline, Kaylynn volunteered for Street Law, was a writing associate for the Journal of Public Policy and Practice, was a student representative for the Federal Bar Association, and served as the associate director of the Mitchell Hamline Self-Help Clinic. Kaylynn has practiced consumer rights law under the Fair Credit Reporting Act. More specifically, Kaylynn assisted consumers who

have been denied jobs or housing due to inaccurate criminal history reporting in their employment/tenant background check reports, as well as consumers who have been denied credit due to inaccurate reporting in their credit reports.

13. With the Initial Class List, Defendant had included a notation of whether a given consumer-applicant had disputed information on their report and had a record suppressed in response to the dispute. In the Responsive Class List, those notations were carried over as the indicator that the given consumer-applicant was in the "Settlement Class Member Who Disputed" category of the Settlement Class. Class Counsel reviewed produced dispute records to ensure those individuals were included in the Responsive Class List with appropriate indicator as applicable.

14. On April 12, 2022, Class Counsel produced the Responsive Class List to Defendant. After deduplication, that list consisted of 10,180 individuals. Class Counsel also produced to Defendant all of the underlying public record documentation Class Counsel had relied upon in determining who from the Initial Class List should be included on the Responsive Class List.

15. To date, Class Counsel have received and responded to over 215 inquiries from Settlement Class Members. Class Counsel will continue to maintain the phone number and email address through post-final approval distribution and check negotiation deadlines and will respond to all inquiries received.

16. Plaintiff Joshua Saylor played a valuable and active role in this litigation, devoting significant time and attention to the case, and has remained actively involved in the case throughout the three years that it has taken to litigate this matter. Plaintiff responded to written discovery requests, produced and reviewed documents, and thoroughly prepared and sat for his deposition which took most of a day. Additionally, he consulted with Class Counsel throughout litigation and during settlement negotiations, and reviewed and approved the Settlement Agreement. Throughout

the case, Plaintiff has taken his duties as a Class Representative seriously and has been devoted to achieving the best result possible for the Settlement Class. He has been an exemplary Class Representative and without his efforts, none of the relief to the Class would have been possible.

The foregoing statement is made under penalty of perjury, and is true and correct to the best of my knowledge and belief.

Date: July 18, 2022

/s/John G. Albanese
John G. Albanese