

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

**CHRISTINA CAIN, DARRON
DANNA, STEPHANIE
YOUNGBLOOD, JOSHUA WOLF,
KIM WHITE, BRANDON GUERRA,
and CHARLES WILLIAMS, on
behalf of themselves, and all others
similarly situated,**

Plaintiffs,

v.

CGM, L.L.C. d/b/a CGM, INC.,

Defendant.

Case No.: 1:23-cv-02604-SEG

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
ATTORNEYS' FEES AND EXPENSES**

Plaintiffs Christina Cain, Darron Danna, Stephanie Youngblood, Joshua Wolf, Kim White, Brandon Guerra, and Charles Williams, individually and on behalf of all others similarly situated (“Plaintiffs”) submit this motion for attorneys’ fees and expenses. Plaintiffs request attorneys’ fees and expenses of \$500,000. The fee request represents one-third of the Settlement Fund, which Defendant has agreed not to oppose.

I. Background

This case arises from a cyberattack on Defendant CGM, LLC’s (“CGM”) information systems (the “Data Breach”). Dkt. 29 (hereinafter “Am. Compl.”).

Plaintiffs alleged that the Data Breach occurred between December 15, 2022, and December 28, 2022, and that the cybercriminals who perpetrated the attack were able to spend enough time undetected in CGM's systems to be able to steal the names, drivers' license numbers, and social security numbers of approximately 279,063 individuals. Am. Compl. ¶ 1. Plaintiffs alleged that CGM failed to implement reasonable, industry standard cybersecurity measures designed to prevent the Data Breach. *Id.* ¶¶ 29–47.

On June 10, 2023, Plaintiff Christina Cain filed suit against Defendant in this Court. After another six class actions were filed challenging the same conduct, the Court consolidated the various class actions. Dkt. 25. Plaintiffs then filed their consolidated class complaint on September 27, 2023, asserting negligence, negligence per se, breach of an express or implied contract, third-party beneficiary, unjust enrichment, invasion of privacy, claims to declaratory and injunctive relief, and claims for violations of the California Consumer Protection Act and the California Consumer Records Act. Dkt. 29. The case was then stayed pending mediation. Dkt. 46.

The Parties then participated in mediation on December 19, 2023, before the Honorable Elizabeth McBath, Magistrate Judge. Though the mediation did not result in a settlement, the Parties continued the progress made during mediation and the Parties ultimately reached a Settlement Agreement. On April 26, 2024, the Court

preliminarily approved the Parties' Settlement Agreement. Dkt. 61.

II. Settlement Benefits

The Settlement provides significant benefits to the Class. Dkt. 56-2 (hereinafter "Settlement Agreement"). To remedy the harms Plaintiffs alleged, Class Counsel has negotiated a common fund settlement of \$1,500,000. *Id.* at 5. The fund will be used to pay for various types of claims, as well as attorneys' fees and expenses, and the cost of settlement administration. *Id.* at 5, §3.1.

First, Class Members may sign up for three years of credit monitoring and theft protection services from all three credit bureaus, which includes at least \$1,000,000 of identity theft and fraud insurance. *Id.* § 3.1.2. Class Members may also claim payment for the lost time they spent reasonably related to the Data Breach, for example, to mitigate the harms of the Breach. Class Members may claim up to four hours at twenty dollars per hour. *Id.* § 3.1.3. Class Members may also claim up to \$400 in ordinary losses, which includes expenses like bank fees, long distance charges, postage fees, mileage, fees for credit reports and monitoring, and other similar expenses. *Id.* § 3.1.4. Next, Class Members may claim reimbursement for extraordinary expenses, which includes unreimbursed costs and expenses resulting from actual identity theft and fraud, such as falsified tax returns. *Id.* § 3.1.5. In alternative to these reimbursements, Class Members may choose to receive a cash payment that will be increased or decreased depending on the amount claimed by

other Class Members. *Id.* § 3.1.6. To ensure the Settlement fund is completely disbursed without reversion, the Settlement Agreement provides that any remaining funds (e.g., any funds from uncashed checks) will be disbursed in a *cy pres* payment. *Id.* § 3.1.7. Thus, the Settlement provides for a \$1,500,000 common fund with no possibility of reversion to CGM. Class Counsel requests one-third of the common fund in attorneys' fees and expenses.

III. Legal Standard

Federal Rule of Civil Procedure 23(h) requires Court approval of any award of attorneys' fees and expenses in a class action settlement:

- (1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
- (2) A class member, or a party from whom payment is sought, may object to the motion.
- (3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).
- (4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Fed. R. Civ. P. 23(h). Still, the Supreme Court “has endorsed the consensual resolution of the amount of attorneys' fees to be paid to plaintiffs' counsel in representative litigation” and noted that a request for fees “should not result in a second major litigation.” *In re S. Co. Shareholder Derivative Litig.*, No. 1:17-cv-

725-MHC, 2022 WL 4545614, at *9 (N.D. Ga. June 9, 2022) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). “Where there is no evidence of collusion, courts accord substantial deference to fee and expense amounts determined by the parties.” *Id.*

To determine whether a fee request is reasonable under Rule 23, courts in the Eleventh Circuit choose “one of two methods: the percentage method or the lodestar method.” *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019). The lodestar method looks to the number of hours spent on the case and the reasonable hourly rate, which sometimes includes a multiplier to upward adjust the total amount of fees to reward class counsel on top of their hourly rates. *Id.* (citing 5 William B. Rubenstein, *Newberg on Class Actions* § 15.91, at 353 (5 ed. 2015)). The percentage method provides class counsel with a percentage of the class benefit obtained. *Id.* “The percentage method . . . remains the proper method to apply when awarding attorney’s fees in common fund settlement cases.” *In re Equifax Inc. Cust. Data Sec. Breach Litig.*, 999 F.3d 1247, 1279 (11th Cir. 2021). Courts typically award at least between 20 and 30 percent of the fund, and more in complex cases. *In re Blue Cross Blue Shield Antitrust Litig.*, 85 F.4th 1070, 1100 (11th Cir. 2023). If the requested percentage is higher than twenty-five percent, then the district court applies the twelve factors detailed in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974). *Id.* Though the district court must articulate its basis for the award

of fees and expenses, the court has “ample discretion” in awarding such fees and expenses. *In re Home Depot*, 931 F.3d at 1088–89.

IV. Argument

In determining the reasonableness of a fee request under Rule 23(h), the Court should first determine whether the settlement created a common fund or is merely an exercise in fee shifting. This is the first step because if the settlement created a common fund, then courts award a reasonable percentage of the total fund value to class counsel for their reasonable attorneys’ fees and expenses. *Drazen v. Pinto*, 101 F.4th 1223, 1265 (11th Cir. 2024) (noting that district courts are “directed” to use the percentage method in common-fund class settlements); *Camden I Condo Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991). Here, the Settlement undoubtedly created a common fund of \$1,500,000 because none of that money can revert back to Defendant and instead can only benefit the class. Any remaining funds will be used to increase payments made to Class Members. If any funds remain (e.g., from uncashed checks), such funds will be disbursed in a *cy pres* payment to a charitable organization. Settlement Agreement, §§ 3.1.6–3.1.7. Thus, the Court must use the percentage method in determining the reasonableness of Class Counsel’s fees.

In determining whether a fee award is reasonable, courts in the Eleventh Circuit analyze the *Johnson* factors. *In re Blue Cross Blue Shield Antitrust Litig.*, 85 F.4th 1070, 1100 (11th Cir. 2023) (quoting *Johnson v. Ga. Highway Express, Inc.*,

488 F.2d 714, 717–19 (5th Cir. 1974)). The *Johnson* court articulated twelve factors that district courts consider when determining whether the requested fee award is reasonable, though some overlap: (1) the time and labor required to litigate the case; (2) the novelty and difficulty of the questions presented; (3) the skill required; (4) the preclusion of other employment by taking the case; (5) the customary fee awarded for similar work; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount of benefits involved and the results obtained; (9) the experience, ability, and reputation of counsel; (10) whether the case was undesirable such that counsel may face hardships in the community by taking the case; (11) the nature and length of the professional relationship with the client; and (12) whether other awards made in similar litigation within the Circuit are in line with the requested fee. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974).¹

Though the *Johnson* court illuminated twelve factors, courts need not analyze every factor in every case. *In re S. Co. Shareholder Derivative Litig.*, 2022 WL 4545614, at *10 (explaining further that the degree of success obtained for the class is the most important factor). Plaintiffs will analyze the relevant factors in turn.

¹ Although *Johnson* was a Fifth Circuit opinion, the Eleventh Circuit adopted its factors in *Camden I Condominium Association, Inc. v. Dunkle*, 946 F.2d 768, 772 (11th Cir. 1991). See also *In re Home Depot Inc.*, 931 F.3d 1065, 1090 (11th Cir. 2019) (explaining that courts in the Eleventh Circuit apply the *Johnson* factors when analyzing the percentage method).

1. The Time, Labor, and Skill Required, and the Novelty the Issues

The time, labor, and skill required to litigate data breach class actions is significant, particularly because of the novelty of the issues presented. *Stoll v. Musculoskeletal Inst.*, No. 8:20-cv-1798, 2022 WL 16927150, at *3 (M.D. Fla. July 27, 2022) (noting that data breach matters are inherently complex because of the technical questions involved); *Cotter v. Checker’s Drive-In Rests. Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *9 (M.D. Fla. Aug. 25, 2021) (explaining that data breach cases are complex and “the law surrounding data-breach litigation cases is new and evolving”). The time and labor required to navigate this complex area of law is further enhanced because states often disagree as to the results of the complex questions presented, which leads to inconsistent, disparate opinions. *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-mi-55555, 2019 WL 2720818, at *3 (N.D. Ga. June 6, 2019) (explaining that “data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits”).

And though Class Counsel strongly believe in the strength of the claims presented are in this case, data breach matters are inherently risky, which increases the time and labor required to respond to significant challenges presented by defendants. *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2023 WL 4420348, at *8 (S.D. Fla. July 8, 2023) (collecting cases and accepting the contention “that data breach cases, such as this one, can be especially risky,

expensive, and complex”). Thus, these factors weigh heavily in favor of approving Class Counsel’s fee request.²

2. Customary Fees Awarded³

Class Counsel’s fee request of one-third the common fund is in line with other similar class actions. *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5–6 (S.D. Fla. Sept. 26, 2012) (collecting cases and noting that fee awards of 33% are common in class actions); *Tweedie v. Waste Pro of Florida, Inc.*, No. 8:19-cv-1827, 2021 WL 5843111, at *8 (M.D. Fla. Dec. 9, 2021) (approving a fee request of one-third the fund and noting that the percentage fell within the range generally considered reasonable); *Roubert v. Capital One Fin. Corp.*, No. 8:21-cv-2852, 2023 WL 5916714, at *10 (M.D. Fla. July 10, 2023), *report & recommendation adopted by* 2023 WL 5320195 (M.D. Fla. Aug. 18, 2023) (same and collecting cases). Indeed, in Class Counsel’s experience, a one-third fee is common for small to medium sized class actions. Decl. of Lynn A. Toops, ¶ 9; *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, 2019 WL 2720818, at *4 (“Awards of up to 33% of the common fund are not uncommon in the Eleventh Circuit, and especially in cases where Class Counsel assumed substantial risk by taking complex cases on a contingency basis.”); *Cotter*,

² The risks to counsel associated with data breach cases, such as this one, are enhanced because counsel takes these matters on a contingency basis.

³ The analysis here includes both factors 5 and 12.

2021 WL 3773414, at *12. Thus, Class Counsel's request of one-third the common fund is reasonable because it is in line with typical data breach class actions.

3. The Benefits Involved and the Results Obtained

The Settlement Agreement provides significant benefits to Class Members. As noted above, the Settlement created a nonreversionary common fund of \$1,500,000. Class Members can choose between a cash payment or an itemized claim for ordinary and extraordinary expenses, lost time spent responding to the Data Breach, and credit monitoring services. To exhaust the common fund, the cash payments will be increased on a *pro rata* basis. To further ensure that all funds are exhausted without any reversion to Defendant, any unclaimed, uncashed checks—that cause residual monies to be left in the fund—will be disbursed in a *cy pres* payment. Settlement Agreement, §§ 3.1.2–3.1.7. Moreover, the \$500,000 in attorneys' fees includes the expenses that Class Counsel paid without requesting reimbursement from Plaintiffs. Class Counsel paid \$3,092.26 in unreimbursed costs associated with filing fees, service of process, access to court documents, and *pro hac vice* motions. Decl. of Lynn A. Toops, ¶ 11. *Pinon v. Daimler AG*, No. 1:18-cv-3984, 2021 WL 6285941, at *17 (N.D. Ga. Nov. 30, 2021) (including unreimbursed attorneys' expenses in the calculation of the settlement benefits).

Thus, the Settlement Agreement provides significant benefits to the Class that offer a range of options and flexibility, including increased cash payments if fewer

Class Members claim itemized expenses. Most critically, the entirety of the recovery achieved will benefit the Class.

These benefits provide immediate and flexible relief. Without the Settlement Agreement, Class Members would be forced to wait potentially years for this case to wind its way through the trial and appellate process. And the ultimate result of those years of waiting is unknown. Instead of waiting, these benefits are tailored to address the harm caused by Class Members' sensitive PII being in the hands of cybercriminals while offering the flexibility to choose either the specific relief or the cash payment. Decl. of Lynn A. Toops, ¶ 5. Thus, given the uncertainty of complex data breach litigation, Class Counsel has successfully negotiated a significantly favorable recovery that will provide Class Members with the tools and compensation necessary to make them whole.

4. The Experience, Ability, and Reputation of Counsel

Class Counsel in this matter offer a wealth of experience, ability, and reputation. Decl. of Lynn A. Toops, ¶ 4. Class Counsel have been litigating complex class actions for years and are currently litigating dozens of data breach class actions across the country in both state and federal court. *Id.* These matters include several data breach class actions from this year in which Class Counsel have achieved settlements. *Molinari v. Welfare & Pension Admin. Servs., Inc.*, No. 22-2-04023-8 SEA (Super. Ct. King Cty., Washington); *In re Goodman Campbell Brain & Spine*

Data Inc. Litig., No. 49D01-2207-PL-024807 (Super. Ct. Marion Cty., Indiana); *Castaneda v. Ardagh Glass, Inc.*, No. 1:23-cv-02214 (S.D. Ind.); *Covington v. Gifted Nurses, LLC*, No. 1:22-cv-04000 (N.D. Ga.); *In re CorrectCare Data Breach Litig.*, No. 5:22-cv-319 (E.D. Ky.); *Lytle v. Revance Therapeutics*, No. 23C1897 (Cir. Ct. Davidson Cty., Tennessee); *Weigand v. Group 1001 Ins. Holding, LLC*, No. 1:23-cv-01452 (S.D. Ind.); *Arend v. Newcourse Comms.*, No. 23C303 (Cir. Ct. Davidson Cty., Tennessee); *Cain v. CGM, LLC*, No. 1:23-cv-02604 (N.D. Ga.); *Grissett v. Tallahassee Mem. Healthcare*, No. 2023 CA 001430 (Dist. Ct. Leon Cty., Florida). For more information regarding Class Counsel's experience, see the Firm Resumes attached to the Declaration of Lynn A. Toops. Class Counsel's experience weigh in favor of Class Counsel's fee request.

5. Negotiations Were Hard Fought at Arms'-Length

In addition to the above factors, the Court should furthermore approve Class Counsel's requested fees because the amount was vigorously negotiated between the Parties. Decl. of Lynn A. Toops, ¶ 10. Indeed, "courts accord substantial deference to fee and expense amounts" that are negotiated and agreed upon between the parties and where there is no evidence of collusion. *Id.*; *In re S. Co. Shareholder Derivative Litig.*, No. 1:17-cv-725-MHC, 2022 WL 4545614, at *9 (N.D. Ga. June 9, 2022) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). Here, the negotiations were performed at arms-length in front of a neutral and experienced mediator, and

there is no evidence of any collusion between the Parties or their counsel. Decl. of Lynn A. Toops, ¶ 10. This factor further supports the reasonableness of Plaintiffs' fee request.

V. Conclusion

Plaintiffs' requested fee award of \$500,000 is reasonable and in line with similar data breach class actions. Moreover, the *Johnson* factors support the fee request. Thus, the Court should grant Plaintiffs' request and award Class Counsel's fees in the amount of \$500,000.

Dated: June 12, 2024

Respectfully Submitted,

/s/ Joseph B. Alonso

Joseph B. Alonso (GA Bar # 013627)

ALONSO WIRTH

1708 Peachtree Street NE, Suite 207

Atlanta, GA 30309

Tel: (678) 928-4479

jalonso@alonsowirth.com

Lynn A. Toops

Amina A. Thomas

Cohen & Malad LLP

One Indiana Square, Suite 1400

Indianapolis, Indiana 46204

Ph: (317) 636-6481

Email: ltoops@cohenandmalad.com

Email: athomas@cohenandmalad.com

J. Gerard Stranch, IV

Stranch, Jennings & Garvey, PLLC

223 Rosa L. Parks Ave., Suite 200

Nashville, Tennessee 37203
Telephone: 615-254-8801
gstranch@stranchlaw.com

Brandon M. Wise – IL Bar # 6319580*
**Peiffer Wolf Carr Kane Conway & Wise,
LLP**
One US Bank Plaza, Suite 1950
St. Louis, MO 63101
Tel: 314-833-4825
bwise@peifferwolf.com

Andrew R. Tate – GA Bar # 518068
**Peiffer Wolf Carr Kane Conway & Wise,
LLP**
235 Peachtree Street NE, Suite 400
Atlanta, GA 30303
Tel: (404) 282-4806
Email: atate@peifferwolf.com

Counsel for Plaintiffs and the Class

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document has been prepared with one of the font and point selections approved by the Court in Civil Local Rule of Practice 5.1B.

ALONSO WIRTH

By: /s/ Joseph B. Alonso

Joseph B. Alonso (GA Bar # 013627)

Counsel for Plaintiffs and the Class