AlaFile E-Notice

01-CV-2022-900851.00

Judge: MONICA Y. AGEE

To: JONATHAN S. MANN
jonm@pittmandutton.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

KATHY L LIMBAUGH V. NORWOOD CLINIC, INC.
01-CV-2022-900851.00

The following matter was FILED on 2/5/2024 4:40:01 PM

C001 LIMBAUGH KATHY L

C002 GRATTON KRISTIAN

C003 WADE MARK

PLAINTIFFS' MOTION & MEMORANDUM FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

[Filer: MANN JONATHAN STEPHEN]

Notice Date: 2/5/2024 4:40:01 PM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
716 N. RICHARD ARRINGTON BLVD.
BIRMINGHAM, AL, 35203

205-325-5355
jackie.smith@alacourt.gov

STATE OF ALABAMA Revised 3/5/08
Unified Judicial System
01-JEFFERSON ☐ **District Court** ☑ **Circuit Court**

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CV2(

KATHY L LIMBAUGH V. NORWOOD CLINIC, INC.

CIVIL MOTION COVER SHEET

Name of Filing Party: C001 - LIMBAUGH KATHY L
C002 - GRATTON KRISTIAN
C003 - WADE MARK

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

JONATHAN S. MANN
2001 PARK PLACE N., STE. 1100
BIRMINGHAM, AL 35203
Attorney Bar No.: MAN057

☐ Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

- ☐ Default Judgment ($50.00)
- ☐ Joinder in Other Party's Dispositive Motion (i.e.Summary Judgment, Judgment on the Pleadings, orother Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
- ☐ Judgment on the Pleadings ($50.00)
- ☐ Motion to Dismiss, or in the Alternative SummaryJudgment($50.00)
- ☐ Renewed Dispositive Motion(Summary Judgment,Judgment on the Pleadings, or other DispositiveMotion not pursuant to Rule 12(b)) ($50.00)
- ☐ Summary Judgment pursuant to Rule 56($50.00)
- ☐ Motion to Intervene ($297.00)
- ☐ Other _____

pursuant to Rule _____ ($50.00)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Costs $ 0

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☑ Other PLAINTIFFS' MOTION & MEMORANDUM FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

pursuant to Rule N/A (Subject to Filing Fee)

Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐	Date: 2/5/2024 4:38:38 PM	Signature of Attorney or Party /s/ JONATHAN S. MANN

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

ELECTRONICALLY FILED
2/5/2024 4:40 PM
01-CV-2022-900851.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

KATHY L. LIMBAUGH, KRISTIAN GRATTON, and MARK WADE, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No.: 01-CV-2022-900851.00**
v.	)	
NORWOOD CLINIC, INC.,	)	
Defendant.	)	

SUZANNE MADDOX, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	**Case No.: 01-CV-2022-901037.00**
v.	)	
NORWOOD CLINIC, INC.,	)	
Defendant.	)	

PLAINTIFFS' MOTION & MEMORANDUM FOR APPROVAL OF
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

I. INTRODUCTION

The Parties in this putative class action brought under Alabama law have reached a Settlement Agreement that provides significant and valuable relief for Class Members.[1] The Settlement provides all persons within the Settlement Class with the ability to receive cash payments for lost time and out-of-pocket expenses, as well as future credit monitoring services to protect against identity theft or financial fraud. The Settlement Agreement establishes a Settlement Fund in the maximum amount of $2,300,000, from which Class Members who file valid and timely claims will be compensated.

With this Motion, Class Counsel asks the Court to approve (1) a reasonable attorney's fee award of $700,000, which amounts to roughly 30% of the total Settlement Fund, (2) reimbursement of Class Counsel's expenses totaling $18,701, and (3) Service Awards of $4,500 to each of the Class Representatives. As explained in detail below and supported by the attached Declaration of Jonathan S. Mann ("Mann Decl.") (attached hereto as Exhibit A), Class Counsel's requests for attorneys' fees and costs, as well as the reasonable Service Awards, are justified in light of the investment, risks, and exceptional monetary and non-monetary relief provided under the Settlement Agreement and are consistent with Alabama law and other awards in similar cases.

Both Class Counsel and the Class Representatives devoted significant money, time, and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an extraordinary benefit for thousands of consumers nationwide. The requested attorneys' fees and costs and Service Awards are justified in light of the excellent results obtained for the Settlement

[1] Capitalized terms not herein defined shall have the meaning ascribed to them in Settlement Agreement, which was previously filed as "Exhibit 1" to the Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 81).

Class Members. Thus, Plaintiffs and Class Counsel respectfully move the Court to approve the awards requested herein.

II. BACKGROUND

A. The Cyber Incident

On or around September 20, 2021, an unauthorized third-party gained access to Norwood's computer network system, which contained vast amounts of personal identifying information ("PII") and private health information ("PHI") (collectively "Private Information") of Norwood's patients (the "Cyber Incident"). Norwood allegedly discovered the Cyber Incident on October 22, 2021. The Private Information potentially exposed in the Cyber Incident included names, addresses, phone numbers, email addresses, date of birth, Social Security numbers, driver's license numbers, health information, and health insurance information. In or about February of 2022, Norwood began to notify its patients of the Cyber Incident. In total, Norwood sent notice to approximately 228,000 individuals that their Private Information was potentially accessed and/or stolen during the Cyber Incident.

B. The Litigation

Two class action cases were filed relating to Norwood's Cyber Incident: (1) the present Limbaugh Action—filed March 23, 2022, and amended on August 1, 2022, and (2) the Maddox Action, 01-CV-2022-901037—filed April 8, 2022. The two cases were filed in this Court and involve a common question of law or fact, arising from the same Cyber Incident. On July 19, 2022, Defendant filed its *Unopposed Motion to Consolidate Pretrial Class Action Procedures Pursuant to Ala. Code § 6-5-641 and Ala. R. Civ. P. 23* proposing consolidation of the Limbaugh and Maddox Actions (the "Consolidation Motion") for discovery purposes. The Consolidation Motion was heard on August 26, 2022, and granted by Order. After the cases were consolidated, the Parties

began to discuss potential for early resolution. Ultimately, the Parties agreed to stay the case for purposes of mediation. (Mann Decl. ¶ 11.)

After careful consideration, the Parties chose Rodney A. Max, Esq. from Upchurch Watson White & Max as mediator for this matter. Mr. Max is a respected complex litigation/class action mediator and is well-versed in data breach class actions and privacy litigation. After exchanging pre-mediation discovery, the Parties submitted extensive mediation briefs. The Parties participated in extensive mediation sessions with Mr. Max on November 14, 2022, December 5, 2022, and May 18, 2023. Each of these mediation sessions was intense and extremely hard fought, with each aspect of the settlement being vigorously negotiated. In addition to these in-person mediation sessions, the Parties also conducted multiple telephone conferences in furtherance of their efforts to mediate and resolve this matter. Mr. Max continued to assist and provide ongoing oversight in all aspects of the settlement negotiations. (Mann Decl. ¶ 12.)

After the Parties ultimately reached an agreement in principle on all material terms of substantive relief for the Settlement Class, they began negotiating the amounts of attorneys' fees and costs that would be paid to Class Counsel (subject to Court approval), as well as the amount of service awards that would be paid to the Class Representatives (also subject to Court approval) as part of the settlement. At all times, the issues of attorneys' fees, costs, and class representative service awards were negotiated separately from the settlement relief to class members. Like the other negotiations, these negotiations were conducted at arm's length and mediated by an experienced neutral, Mr. Max. (Mann Decl. ¶ 16.)

Following negotiations, the Parties ultimately reached an agreement in principle on all issues related to the settlement and began drafting, exchanging, and editing the detailed Settlement Agreement, including its accompanying exhibits, notices, and claim form. The Parties sought bids

from claims administrators, and ultimately agreed on one, A.B. Data, Ltd., after an extensive bidding process. Eventually, these discussions culminated in the Settlement Agreement that this Court previously preliminarily approved on November 21, 2023. The Settlement Agreement resulted from hard fought and adversarial negotiations over an eight-month period with the assistance, input, and oversight of Mr. Max. The time and effort spent by all parties to this litigation – under the auspices of Mr. Max – demonstrate the rigor, intensity, and thoroughness of the mediation efforts, as well as the parties' commitment to working constructively toward a resolution for the benefit of the Class Members.

III. THE SETTLEMENT

A. Settlement Benefits to the Class

The Settlement negotiated on behalf of the Class provides for monetary relief to be paid by Norwood to eligible claimants of a Settlement Class that includes approximately 228,000 persons whose Private Information was potentially compromised as a result of the Cyber Incident and who were provided notice thereof. Defendant will fund the Settlement Fund, up to a maximum amount of $2,300,000.00, which will provide payment for: (1) compensation for Lost Time; (2), reimbursement for Out-of-Pocket Losses; (3) Credit Monitoring Services; (4) notice and administration costs; and (5) Plaintiffs' service awards and attorneys' fees and costs awarded by the Court. (Doc. 81, §§ 1.42, 2.2, 2.3).

Each Settlement Class Member who submits a valid, complete, and timely Claim using the Claim Form is eligible to receive a cash payment from the Settlement Fund, up to $1,625.00, after paying for payment of court approved attorneys' fees and costs, service awards and payment of costs for Notice and Claims Administration. (Doc. 81, §§ 2.1, 2.2). Specifically, each Settlement Class Member can make a claim for compensation for up to twenty (20) hours of lost time,

compensable at a rate of $25.00 per hour ($500.00 total) for time spent to mitigate the potential effects of or to deal with the effects of the Cyber Incident. (Doc. 81, §§ 2.1, 2.6). In addition, each Class Member can make a claim for recovery of out-of-pocket costs or expenditures incurred that are fairly traceable to the Cyber Incident, up to $1,125.00. (Doc. 81, §§ 2.1, 2.6).

The Settlement also provides each Class Member with up to two years of robust credit monitoring services, including: dark web scanning with immediate user notification if potentially unauthorized use of a Class Member's personal information is detected; identity theft insurance; real-time credit monitoring with all three credit bureaus (Equifax, Experian, and TransUnion); and access to fraud resolution agents. (Doc. 81, § 2.7). In addition, the Settlement also provides significant non-monetary relief of an injunctive nature to the Settlement Class and the public. Norwood has agreed to adopt and implement significant data security measures and enhancements following the Cyber Incident in order to minimize, if not effectively eliminate, any future cyber incidents. (Doc. 81, § 2.8). Furthermore, effective January 14, 2023, Norwood entered into an asset purchase agreement to which it sold its assets and is now closing its business and no longer seeing patients. (Doc. 81, § 2.8).

In the event the amount of Approved Claims for Cash Payments under paragraphs 2.4 and 2.5 exceeds $2,300,000.00 after paying costs for credit monitoring services, court approved attorneys' fees and costs, service awards and payment of costs for Notice and Claims Administration, the amount paid to valid claimants will be reduced on a *pro rata* basis. (Doc. 81, § 2.3, 2.9).

B. Notice Has Been Sent to the Settlement Class Pursuant to the Notice Plan

Under the Settlement Agreement's Notice Plan, which has already gone into effect, Notice has been provided to every individual who may be eligible to file a claim. Specifically, Notice has been provided to each Settlement Class Member by postcard via United States Mail Service to the

postal address that were previously used by Norwood to provide notice to the Class Members of the Cyber Incident in or about October 2021. (Doc. 81, § 3.2).

IV. ARGUMENT

A. The Court Should Award Class Counsel's Requested Attorneys' Fees.

Pursuant to the Settlement Agreement, Class Counsel seeks attorneys' fees, inclusive of costs, in the amount of $700,000.00, which constitutes 30.4% of the Settlement Fund. (Doc. 81, at § 1.42). The requested fee is well within the range of approved fees in other class actions and is fair and reasonable in light of the significant recovery secured on behalf of the Settlement Class Members by Class Counsel's efforts. It is well established that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable fees and costs based on the common benefit achieved. *Edelman & Combs v. Law*, 663 So.2d 957, 959 (Ala. 1995) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.")).

In cases where, as here, a class action settlement results in the creation of a settlement fund, "[the Alabama Supreme] Court, like the federal courts, has long recognized that a lawyer who recovers an award for the benefit of a class of clients is entitled to a reasonable fee from the amount recovered." *Edelman*, 663 So. 2d at 959 (citing *Ex parte Brown*, 562 So. 2d 485, 495 (Ala. 1990)). This rule is "an equitable principle designed to compensate the attorney whose services on behalf of his client created a fund to which others may have a claim." *City of Ozark Trawick,* 604 So. 2d 360, 364 (Ala. 1992) (citing *Maryland Casualty Co. v. Tiffin*, 537 So. 2d 469 (Ala.1988)).

State and federal courts throughout Alabama consistently apply the "percentage-of-the-fund" approach for cases, such as this one, where a common monetary fund is established for the

benefit of a class of individuals. See *Union Fid. Life Ins. Co. v. McCurdy*, 781 So. 2d 186, 189 (Ala. 2000) ("the common-fund approach is the preferred method for calculating attorney fees in class actions"); see also *Blum v. Stenson*, 465 U.S. 886, 900 (1984) ("under the 'common fund doctrine' . . . a reasonable fee is based on a percentage of the fund bestowed on the class"). Further, the United States Supreme Court has held that negotiated, agreed-upon attorneys' fee provisions are ideal toward which parties should strive. See *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorneys' fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount for a fee.").

Although fee awards based on the percentage of the fund may vary, and 25% has been referred to as a "benchmark," fee awards can be as much as 50% of the fund. *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991) ("The majority of common fund fee awards fall between 20% and 30% of the fund . . . an upper limit of 50% may be stated as a general rule, although even larger percentages have been awarded"); see also *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019) ("courts typically award between 20–30%, known as the benchmark range."); *Waters v. Cook's Pest Control, Inc.*, No. 2:07-CV-00394, 2012 WL 2923542, *18 (N.D. Ala. July 17, 2012) ("[A]n award of 35% of the Settlement Fund is well within the range of 20% to 50%, which has been generally established in this circuit.").[2] The Supreme Court of Alabama has similarly concurred, finding that "[i]n some cases, 20% may be reasonable, based upon the amount of the award and other factors. In other cases 40%, or even 50% may be justified." *Edelman*, 663 So.2d at 960. As a result, there is a presumption of

[2] Alabama courts routinely rely on federal court case law when analyzing issues in class action cases. See *Union Fid.*, 781 So. 2d at 189 (*"*As we have said before, Alabama will look to federal law in interpreting this most complex area of litigation.") (citing *Adams v. Robertson,* 676 So.2d 1265, 1268 (Ala.1995)).

reasonableness to the requested 30% fee award that is fully supported based on the consideration of the relevant factors discussed below.

B. Class Counsel's Requested Attorneys' Fee is Reasonable and Supported.

The Supreme Court of Alabama and the Eleventh Circuit have established some general guidelines for courts to consider in determining a reasonable attorney fee award: (1) the time expended; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly, including the experience, reputation and ability of the attorneys; (4) the customary fee: whether the fee is fixed or contingent; (5) the time limitation imposed by client or the circumstances; (6) the amount involved and the results obtained; (7) the undesirability of the case; (8) the nature and length of relationship with client; (9) the awards in similar cases; and (10) administration of settlement. See *Camden I*, 946 F.2d at 775; *Edelman*, 663 So.2d at 960.

Importantly, "not all of these criteria are applicable in every case" and "a trial court may consider those that are [applicable], along with other pertinent facts, in approving attorney fees." *Id*. In addition, other factors may also be pertinent, including, for example, "whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Camden I,* 946 F.2d at 775. Here, the analysis of the factors below demonstrates that the requested fee award is amply justified.

As to the first factor, the *Edelman* Court emphasized that "the 'expended time' factor has limited significance in a common fund case" and quoted an analogy stating that "[a] surgeon who skillfully performs an appendectomy in seven minutes is entitled to no smaller fee than one who takes an hour; many a patient would think he is entitled to more." *Edelman*, 663 So. 2d at 960. Here, Class Counsel investigated and litigated this case rigorously and thoroughly, which included

pre-suit investigation, consultations with cybersecurity experts, the preparation of the pleadings, the extensive negotiations (including the time spent mediating) that gave rise to the Settlement, and the preparation and implementation of the Settlement and related documents. In addition, the Settlement Agreement was negotiated at arms-length in an adversarial manner, requiring counsel to expend a considerable amount of effort in coordinating various litigation and settlement strategies. Had this case not settled in the timely manner that it did, it is certain that the expense, duration, and complexity of the protracted litigation that would have resulted would be substantial. Furthermore, the Class would likely not have achieved any result for several years, while also running the risk of obtaining a less favorable result than the Settlement achieved here or obtaining no result whatsoever. Class Counsel also discovered early on that the Defendant had limited insurance coverage for this matter under an "eroding coverage" policy—meaning the costs of litigation defense directly reduced the amount of insurance money available to recover for the Class Members. (Mann Decl. ¶ 11.) Given the quality and quantity of work expended by Class Counsel, the risk of substantially more time and money having to be expended had the litigation not settled, and the results achieved as a direct result of those efforts, the requested fee award is justified.

The second and third factors each support the fee request here. It is well recognized that class actions are complex actions to prosecute due to their inherently complicated legal and factual issues. Courts consistently suggest that cases that are "more complex, involve the lives and fortunes of larger numbers of people, and have a greater public value," such as "class action cases," warrant higher fees. See *Edelman*, 663 So. 2d at 960–61 ("Class actions are designed to provide a vehicle for redress where wrongful conduct has resulted in harm to a great number of people . . . in such cases, fee awards of as high as 50% of the recovery may be justified . . . taking into account

the management responsibilities inherent in a class action"). Defendant has denied, and continues to deny, all allegations of wrongdoing and liability arising out of the Cyber Incident. And, Defendant has denied, and continues to deny, that Plaintiffs suffered damage or that they were harmed by the Cyber Incident. Further, this specific class action involved complex issues in the fields of cybersecurity and consumer identity theft, which required Class Counsel to study the field be able to understand Defendant's alleged liability and Plaintiffs' damages. Class Counsel were also required to retain and communicate with experts in these specialized fields to identify the issues and effectively prosecute the case. (Mann Decl. ¶ 9.)

Fourth, Class Counsel each took these cases on an entirely contingency-fee basis and invested significant amounts of resources and more than $18,700 of their law firms' money into prosecuting the cases with no guarantee of recovery. (Mann Decl. ¶¶ 7, 20) Class Counsel have regularly engaged in major complex litigation and have extensive experience in consumer class action lawsuits involving data breaches, as well as other similar complex litigations. In fact, Class Counsel and their firms have been appointed as class counsel in dozens of complex consumer class actions, including similar data breach cases. (Mann Decl. ¶¶ 2-5.) Accordingly, the requested fee award is reasonable in light of the quality of representation and the type of complex consumer class action at issue here, where such a fee is necessary to continue to attract competent and dedicated counsel given the time, costs, and significant risk of nonpayment involved.

Fifth, there were practical time limitations that favored early resolution in this case. After the Cyber Incident occurred, Defendant still possessed and maintained the Personal Information of the Class Members. The injunctive relief demanded in Plaintiffs' lawsuits and agreed to in the Settlement required the Defendant to bolster its cybersecurity to ensure that the Class Members' information would not be compromised again. Further, as mentioned *supra*, the circumstances

surrounding the limited insurance coverage for this matter under an "eroding coverage" policy also favored early resolution to maximize the funds that could ultimately be made available to the Class. (Mann Decl. ¶ 11.)

Sixth, the Settlement obtained by Class Counsel for the Class Members includes valuable injunctive relief to protect them from future harm, and also creates a $2,300,000 fund for Class Members to make claims against, which Class Counsel believes will be adequate to reimburse each Class member for the full amount of all out-of-pocket losses and lost time caused by the Cyber Incident. The amount of the fund represents all of the insurance coverage money available to Defendant for this matter. Despite the difficulties in prosecuting data breach cases, especially ones such as this in which the question of damages is difficult to prove, a result such as this is outstanding and weighs in favor of the requested fee.

Seventh, in the context of this case, "undesirable" simply means that Class Counsel had to commit an unknown, but substantial, number of hours and expense dollars to a case, the outcome of which was deeply uncertain, but which was certain to take years to complete. The chances of prevailing on the claims, on a class-wide basis, were unknown at the outset. Thus, for purposes of assessing a fair attorneys' fee percentage, this case should be viewed as highly "risky," weighing on the side of approving a higher-than otherwise percentage. Along those lines, the fact that Class Counsel secured a favorable settlement in the end is not relevant to assessing the risks attendant to the case which Class Counsel assumed at the case's inception. *Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988) ("The point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them"); *Lindsey Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 540 F.2d

102, 112 (3rd Cir. 1976). The fact that Class Counsel took such a substantial risk favors approval of the requested fees.

Eighth, Class Counsel have represented each of the Plaintiffs for more than two years now on a purely contingency-fee basis with no guarantee of success. (Mann Decl. ¶ 7.)This factor supports the requested fee amount here, as this case is a class action brought on a contingency basis with single action representation, and there is no "repeat business" to be gained from such representation.

Ninth, looking at awards in similar cases shows that Class Counsels' fee request here is reasonable and supported. As set forth above, attorneys' fees awarded in common fund cases in Alabama have ranged from 20% to 50%, and 30% has been considered fair and reasonable by the Alabama Supreme Court. See *Edelman*, 663 So.2d at 960 ("Several factors, including the number of lawyers who were actively engaged for over four years in the handling of the claims, the complexity of the litigation, as well as the management responsibilities inherent in a class action, and the result obtained, would justify an award of an amount between 20% and 33 ⅓% of the amount of the settlement."); see also See *City of Bessemer v. McClain*, 957 So. 2d 1061, 1078 (Ala. 2006) (upholding a fee award of one-third of the common fund); *City of Ozark*, 604 So. 2d at 364–65 (Ala. 1992) (finding reasonable a fee award of one-third of the class action common fund). In the Eleventh Circuit, percentage-based fee awards have averaged around 33% of the class benefit. *See, e.g., Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (noting that fees in this Circuit are "roughly one-third"); T. Eisenberg, et al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Rev. 937, 951 (2017) (median fee from 2009-2013 was 33%). The requested fee award here of $700,000, inclusive of costs, constitutes 30.4% of the

Settlement Fund and is, thus, well-within the range of attorneys' fee awards routinely found reasonable in similar cases by courts in this state and by multiple federal courts.

Tenth, the Settlement is being efficiently and effectively administered. The Settlement Administrator mailed direct notice to the address on file for every one of the 228,000+ Class Members on the Notice Date, and recently informed Class Counsel that 6,500 individuals have already responded to the Settlement as of the date of this filing. Class Counsel expects additional responses to be submitted prior to the Claims Deadline as well, and, to date, there have been no objections filed as to any of the terms of the Settlement, including the requests for fees, expenses, and service awards. (Mann Decl. ¶ 14).

Each of the relevant factors support Class Counsels' request here for an award of attorney's fees.

C. The Court Should Approve Class Counsel's Requested Reimbursable Litigation Expenses.

Class Counsel have expended $18,701.26 in reimbursable expenses related to filing fees, expert investigative and consulting services, travel expenditures, copying, professional fees, and case administration, with the potential of more expenses yet to come. (Mann Decl. ¶20.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. See *Waters v. Int'l Precious Metals Corp.,* 190 F.3d 1291, 1298 (11th Cir. 1999) ("plaintiffs' attorney are entitled to reimbursement of those reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class") (citing *In re "Agent Orange" Prod. Liab. Litig.*, 611 F.Supp. 1296, 1314 (E.D.N.Y. 1985)); *Youngman v. A&B Ins. & Fin., Inc.,* No. 16-cv-01478, Dkt. No. 70 (M.D. Fla. July 31, 2018) (approving plaintiffs' counsel's request for reimbursement of their costs in the amount of $32,758.50 in TCPA class action). Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, a request which Defendant

does not oppose.

D. The Agreed-Upon Service Award Amount For Plaintiffs Is Reasonable And Should Be Approved.

The requested $4,500 Service Award for each of the Class Representatives is reasonable and very modest compared to other incentive awards granted to class representatives in similar class actions. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca–Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *Youngman*, No. 16-cv-01478, Dkt. No. 70 (finding that incentive awards of $10,000 for *each* plaintiff was "reasonable"); *Parsons v. Brighthouse Networks, LLC*, No. 09-cv-267, 2015 WL 13629647, at *16 (N.D. Ala. Feb. 5, 2015) (approving $5,000 incentive award for class representative); *Martin v. Dun & Bradstreet, Inc.*, No. 12-cv-215, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (awarding incentive award of $20,000 in TCPA class action); *Allapattah Servs., Inc. v. Exxon Corp.,* 454 F. Supp. 2d 1185, 1218–19 (S.D. Fla. 2006) (noting that "incentive awards are not uncommon in class action litigation where, as here, a common fund has been created for the benefit of the class").

Here, Plaintiffs' efforts and participation in prosecuting this case justify the $4,500 Service Award sought for each Plaintiff. Even though no award of any sort or special treatment was promised to Plaintiffs prior to the commencement of the litigation or at any time thereafter, Plaintiffs nonetheless contributed their time and effort in pursuing their own claims, as well as in serving as the representatives on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Mann Decl. ¶ 21.)

Plaintiffs participated in the initial investigation of their claims and provided their sensitive personal information and records to Class Counsel to aid in preparing the initial pleadings and

issuing discovery, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, and provided feedback on the settlement negotiations and a number of other filings including, most importantly, the Settlement Agreement.

Further, agreeing to serve as the Class Representatives meant that Plaintiffs publicly placed their names on this suit and opened themselves to significant risks which, in and of itself, is certainly worthy of some type of remuneration. *Columbus Drywall & Insulation, Inc. v. Masco Corp.,* No. 04-cv-3066, 2008 WL 11319972, at *2 (N.D. Ga. Mar. 4, 2008) (citing *Ingram*, 200 F.R.D. at 685). Were it not for Plaintiffs' willingness to bring this action on a class-wide basis, their efforts and contributions to the litigation by assisting Class Counsel with their investigation and filing of this suit, and their continued participation and monitoring of the case through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist.

The $4,500 Service Award requested for each Plaintiff amounts to roughly 0.196% of the total Settlement Fund, which is well in line with the average service award granted in class actions. *See, e.g., Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, U.S. Dist. LEXIS 35421, at *19 (N.D. Ill. Mar. 23, 2015) ("a study on incentive awards for class action plaintiffs (also conducted by Eisenberg and Miller) . . . found that the mean incentive fee granted in class actions overall is .161% [of the total recovery]") (citing *Eisenberg & Miller*, *Incentive Award to Class Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L. Rev. 1303, 1339 (2006)). Indeed, numerous courts that have granted final approval in similar settlements have awarded significantly larger incentive awards than the one sought here. *See, e.g., Schwyhart v. AmSher Collection Services, Inc.*, 182 F. Supp. 3d 1239 (N.D. Ala. 2016) (awarding $10,000 service award in a class action case); *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d

1245 (11th Cir. 2015) (awarding $10,000 service award in a class action case); *Markos v. Wells Fargo Bank, N.A.*, No. 15-cv-01156, 2017 WL 416425, at *3 (N.D. Ga. Jan. 30, 2017) (approving service awards of $20,000 to each class representative in a class action).

Compensating Plaintiffs for the risks and efforts they undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the exceptional results obtained. As shown above, courts have regularly approved service awards in similar class action litigation consistent with and greater than the agreed-upon $4,500 Service Award sought here. Moreover, no objection to the Service Award has been raised to date. A Service Award of $4,500 to each Plaintiff is reasonable, justified, and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys' fees of $700,000; (ii) reimbursement of $18,701 for expenses; and (ii) a Service Award in the amount of $4,500.00 to each Plaintiff in recognition of their significant efforts on behalf of the Settlement Class Members.[3]

Dated: February 5, 2024

Respectfully submitted,

/s/ Jon Mann

Jonathan S. Mann (MAN057)
Chris T. Hellums (HEL012)
Michael C. Bradley (BRA094)
Austin B. Whitten (WHI165)
PITTMAN, DUTTON, HELLUMS, BRADLEY & MANN, P.C.
2001 Park Place North, Suite 1100
Birmingham, AL 35203
Tel: (205) 322-8880
Email: jonm@pittmandutton.com
Email: chrish@pittmandutton.com
Email: mikeb@pittmandutton.com

[3] Class Counsel intend to include the relief requested herein in a proposed order in support of final approval of the Settlement.

Email: austinw@pittmandutton.com

Hirlye R. “Ryan” Lutz, III (LUT005)
F. Jerome Tapley (TAP006)
CORY WATSON, PC
2131 Magnolia Avenue South
Birmingham, AL 35205
Tel: (205) 328-2200
Email: rlutz@corywatson.com
Email: jtapley@corywatson.com

Nicholas A. Migliaccio (pro hac vice)
Jason Rathod (pro hac vice)
MIGLIACCIO & RATHOD, LLP
412 H Street NE
Washington, D.C. 20002
202.470.3520
nmigliaccio@classlawdc.com

Attorneys for Plaintiffs Kathy L. Limbaugh, Kristian Gratton, Mark Wade, Suzzane Maddox and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2024, I filed the foregoing with the Clerk of the Court using the Court's AlaFile system, which will send notice to all counsel of record.

/s/ Jon Mann
Of Counsel

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01-CV-2022-900851.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

EXHIBIT A

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BIRMINGHAM DIVISION

KATHY L. LIMBAUGH, KRISTIAN GRATTON, and MARK WADE, individually and on behalf of all others similarly situated, **Plaintiffs,** **v.** **NORWOOD CLINIC, INC.,** **Defendant.**	)	**Case No.: 01-CV-2022-900851.00**
SUZANNE MADDOX, individually and on behalf of all others similarly situated, **Plaintiff,** **v.** **NORWOOD CLINIC, INC.,** **Defendant.**	)	**Case No.: 01-CV-2022-901037.00**

DECLARATION OF JONATHAN S. MANN IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS

I, Jon Mann, being competent to testify, make the following declaration based on my personal knowledge and, where stated, upon information and belief. I declare:

Counsel Qualifications

1. I am counsel for the Plaintiffs in this action and have personal knowledge of the facts and matters stated herein.

2. I am a shareholder with the law firm of Pittman, Dutton, Hellums, Bradley & Mann, P.C. ("PDHBM"). My practice includes complex litigation, including class actions, mass torts, and products liability matters. I have litigated complex actions since 2011, with an emphasis on consumer claims and defective products. PDHBM represents plaintiffs in complex litigation, including class actions, in federal and state courts. While our firm is located in Birmingham, Alabama, our firm routinely litigates cases nationwide.

3. I am admitted to practice before courts of the State of Alabama. I have also been admitted to practice before the United States Court of Appeals for the Eleventh Circuit, the United States District Court for the Northern District of Alabama, the United States District Court for the Middle District of Alabama, the United States District Court for the Southern District of Alabama, the United States District Court for the Northern District of Florida, the United States District Court for the Northern District of Georgia, the United States District Court for the Northern District of Indiana, the United States District Court for the Southern District of Indiana, the United States District Court for the Eastern District of Louisiana, the United States District Court for the District of Maryland, the United States District Court for District of Massachusetts, the United States District Court for the District of Minnesota, the United States District Court for the District of New Jersey, the United States District Court for the Eastern District of New York, the United States District Court for the Western District of Pennsylvania, and the Los Angeles County Superior Court.

4. I and other PDHBM lawyers have been appointed to leadership positions in the following class actions and multidistrict litigations (MDLs) over the past ten years, including MDL 2406, *In re Blue Cross Blue Shield Antitrust Litigation* (Local Facilitating Counsel for Subscriber Plaintiffs); MDL 2441, *In re Stryker Rejuvenate and ABG II Hip Implant Products*

Liability Litigation (Plaintiffs' Steering Committee); MDL 2595, *In re Community Health Systems, Inc., Customer Data Security Breach Litigation* (Local Liaison Counsel); MDL 2734, *In re Abilify (Aripiprazole) Products Liability Litigation* (Plaintiffs' Steering Committee); *In re: Arby's Restaurant Group, Inc. Data Security Litigation* (Financial Institution Plaintiffs' Steering Committee); MDL 2846, *In re Davol, Inc./C.R. Bard, Inc. Polypropylene Hernia Mesh Products Liability Litigation* (Plaintiffs' Steering Committee); MDL 2875, *In re Valsartan Products Liability Litigation* (Plaintiffs' Steering Committee); MDL 2885*, In re 3M Combat Arms Earplug Products Liability Litigation* (Common Benefit Fund Committee), MDL 2974, *In re Paragard IUD Products Liability Litigation* (Plaintiffs' Steering Committee), *Williams v. Gulf Coast Pain Consultants, LLC d/b/a Clearway Pain Solutions Institute*, 3:19-cv-01659 (N.D. Fla.) (Settlement Class Counsel), *Pirani v. Medical Properties Trust, Inc.*, 2:23-cv-00486 (N.D. Ala.) (Liaison Counsel), and MDL 2885*, In re 3M Combat Arms Earplug Products Liability Litigation* (Settlement Implementation and Administration Committee).

5. I and other PDHBM attorneys have also been appointed as settlement class counsel in the health data breach class action *case Williams v. Gulf Coast Pain Consultants, LLC d/b/a Clearway Pain Solutions Institute*, 3:19-cv-01659 (N.D. Fla.). PDHBM lawyers have been involved in other class actions in the past several years which have resolved favorably to their clients, including *Winsouth Credit Union v. MAPCO Express, Inc. and Delek US Holdings, Inc.,* 3:14-cv-1753 (M.D. Tn.), *Bach Enterprises, Inc. v. Advanced Disposal Services South, Inc.,* Circuit Court, Barbour County, Alabama, Case No. 69-cv-2013-9000090, *In re Arby's Restaurant Group, Inc. Data Security Litigation*, 1:17-cv-514 (N.D. Ga.) , and *In re Blue Cross Blue Shield Antitrust Litigation,* MDL 2406, 2:13-cv-20000-RDP (N.D. Ala.). I and other PDHBM attorneys

are currently putative class counsel in several pending actions involving antitrust, consumer protection, privacy, and securities claims.

Initial Investigation and Communications

6. This is a putative class action brought by Plaintiffs Limbaugh, Gratton, Wade, and Maddox ("Plaintiffs" or "Class Representatives"), individually and on behalf of all others similarly situated (the "Settlement Class"), arising out of an attempt in or around March 2022 by cybercriminals to access Norwood's network, resulting in the cybercriminals' potential access and exfiltration of highly sensitive patient Personal Information[1] stored within Defendant Norwood Clinic Inc's ("Norwood") network (the "Data Breach").

7. After receiving notice on or around April 7, 2022, that their Personal Information may have been impacted by the Data Breach, Plaintiffs Limbaugh, Wade, and Gratton retained my firm on a purely contingency-fee basis (with my law firm advancing all costs of the litigation).

8. I and my team vigorously and aggressively gathered all information available regarding Norwood and the alleged Data Breach, including publicly-available documents concerning announcements of the Data Breach and Notice of the Data Incident that were sent to Norwood's current and former patients.

9. Our initial investigation into the facts and circumstances of the alleged Data Breach revealed that the attack against Norwood likely involved highly sensitive personal information belonging to its current and former patients, which information was stored in

[1] Unless otherwise indicated, the defined terms herein shall have the same definitions as set forth in the Settlement Agreement, which was previously filed as "Exhibit 1" to the Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 81).

Norwood's computer network. My law firm engaged experts in the field of cybersecurity to assist with our investigation.

Procedural Posture

10. After an initial investigation, I (along with other members of my team and our co-counsel) filed a Class Action Complaint (the "Complaint") in the Circuit Court of Jefferson County, Alabama on behalf of Plaintiffs Limbaugh, Wade, and Gratton, individually and on behalf of all others similarly situated. The Complaint was filed on March 23, 2022 alleging causes of action for: (1) Negligence; (2) Breach of Implied Contract; (3) Unjust Enrichment/Quasi-Contract; (4) Breach of Fiduciary Duty; (5) Breach of Confidence; (6) Bailment (7) Invasion of Privacy (8) Violations of Alabama's Data Breach Security Notification Law Ala. Code § 8-38-1; (10) Declaratory Relief.

11. The Maddox case, 01-CV-2022-901037, was filed April 8, 2022, and after the two cases were consolidated, the Parties began to discuss potential for early resolution. Ultimately, the Parties agreed to stay the consolidated case for purposes of mediation. Class Counsel also discovered early on that the Defendant had limited insurance coverage for this matter under an "eroding coverage" policy—meaning the costs of litigation defense directly reduced the amount of insurance money available to recover for the Class Members.

12. After exchanging pre-mediation discovery, the Parties submitted extensive mediation briefs. The Parties participated in extensive mediation sessions with Mr. Max on November 14, 2022, December 5, 2022, and May 18, 2023. The Parties thereafter completed mediation with Rodney Max, Esq. and agreed to settle the matter on a class-wide basis.

13. The Court has preliminarily approved the terms of the settlement as being fair and adequate, the notice plan has now been completed by the settlement administrator, and class

members are now in the process of filing claims. The Court's order also appointed PDHBM, Cory Watson, P.C., and Migliaccio and Rathod LLP as Settlement Class Counsel ("Counsel").

14. The settlement administrator recently informed Class Counsel that 6,500 individuals have already responded to the settlement as of the date of this filing. I expect additional responses will be submitted prior to the Claims Deadline as well, and, to date, there have been no objections filed as to any of the terms of the settlement, including the requests for fees, expenses, and service awards.

Fees, Costs, and Service Awards

15. The Settlement allows Counsel to make an application to the Court for an award of reasonable attorneys' fees, costs, and expenses to be paid by Norwood out of the Settlement Fund.

16. The Parties did not discuss payment of attorneys' fees, costs, expenses, and service award until after the substantive terms of the settlement had been agreed upon, other than that Norwood would not object to a request for reasonable attorneys' fees, costs, expenses, and service awards as may be ordered by the Court. All negotiations were conducted at arm's length and mediated by a neutral party, Mr. Max.

17. We, as Counsel, are now applying for a reasonable attorneys' fee award of $700,000.00 for our work in achieving this substantial settlement for the Class Members.

18. Counsel thoroughly investigated each of the Plaintiffs' claims, evaluated the Plaintiffs' claims and Norwood's defenses, filed the complaints, coordinated and cooperated with each other to consolidate the cases, engaged in extensive informal discovery, coordinated document collections and reviewing productions, retained experienced cybersecurity experts to aid in their investigation, engaged in months-long negotiations at arm's length culminating in

multiple mediation sessions, continued negotiations for weeks with the ongoing assistance of the mediator, and spent an exorbitant amount of time working through the settlement process with the defendant and individual Class Members. Additionally, Counsel have been contacted and answered questions from Class Members about the terms of the Settlement and process for filing a claim after Notice was sent.

19. Numerous PDHBM attorneys and staff members have committed extensive amounts of time and resources to investigate and prosecute this case over the last two (2) years and will be required to continue doing so until the settlement is fully effectuated pursuant to the terms of the Settlement Agreement.

20. We are also now applying for reimbursement of our reasonable costs and expenses of the Litigation totaling $18,701.26, which is the total amount of money that Counsel advanced to prosecute this case with no guarantee of recoupment. Specifically, PDHBM advanced $17,635.18, Cory Watson P.C. advanced $914.82, and Migliaccio and Rathod LLP advanced $151.26. Detailed documentation supporting these expense amounts are available for inspection at the Court's request.

21. Norwood has also agreed to pay each Class Representative a Service Award in the amount of $4,500.00 for their services rendered on behalf of the Settlement Class, subject to Court approval. I and the other Counsel believe this is a reasonable amount to award based on the efforts of the Class Representatives and is in line with awards granted in similar cases.

22. The Service Awards requested are meant to recognize the Class Representatives for their efforts on behalf of the Settlement Class, including providing information for pleadings and settlement discussions, informal discovery responses, engaging with Counsel regarding the

litigation, participating in the settlement negotiations, and reviewing and approving the proposed Settlement terms.

23. Plaintiffs' support for the Settlement as fair, reasonable, and adequate is not conditioned upon the Court's award of the requested Service Award. The Parties did not discuss or agree upon the amount of Service Awards for which Plaintiffs as Class Representatives could apply until after the substantive terms of the Settlement had been agreed upon.

24. In my opinion, I believe the fees, costs, and service awards Counsel are requesting are reasonable, appropriate, and warranted based on the significant benefits that have been recovered by Counsel and Plaintiffs for the benefit of the Settlement Class Members.

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

Executed this 5th day of February 2024 in Birmingham, Alabama.

Jonathan S. Mann
PITTMAN, DUTTON, HELLUMS,
BRADLEY & MANN P.C.
2001 Park Place North, Suite 1100
Birmingham, AL 35203
jonm@pittmandutton.com

Attorney for the Plaintiffs and the Settlement Class