

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

GREGORY PULL AND PAUL GREENE, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

BAER'S FURNITURE CO., INC.

Defendant.

Case No. 2024-CA-003418-O

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

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Plaintiffs, Gregory Pull and Paul Greene (“Plaintiff” or “Settlement Class Representatives”), respectfully moves for approval of his request for attorney fees of \$100,000, costs and expenses of \$1,594.74, and Service Awards of \$3,500.00 for each Class Representative in this preliminarily approved class action settlement with Defendant, Baer’s Furniture Co., Inc. (“Defendant” or “Baer’s”). Defendant does not oppose the relief sought in this motion.

I. INTRODUCTION

In August 2022, Defendant Baer’s Furniture Co., Inc. discovered that criminals had bypassed its security systems and may have compromised employee Personal Information in a data breach (the “Security Incident”). *See* Declaration of Brittany Resch (“Resch Decl.”), ¶2, attached hereto as **Exhibit 1**. Plaintiffs alleged that this Security Incident exposed Personal Information including full names, addresses, Social Security numbers, and “potentially medical information.” Defendant’s breach exposed the Personal Information belonging to over 4,175 employees, including Plaintiffs. *Id.* ¶3. Before filing suit, Settlement Class Counsel engaged in substantial research regarding the facts of the Security Incident, the potential claims, possible defenses, and the overall viability of a class action. *Id.* ¶4.

In May 2024, Mr. Pull and Mr. Greene sued Defendant to remediate the harm its breach caused—asserting six counts and demanding that Defendant reimburse the Class’s losses. *Id.* ¶5. During the pendency of Mr. Greene’s prior and related case in the 17th Judicial Circuit Court, the parties began discussing early resolution and exchanging information necessary to explore the strengths and weaknesses of their claims and defenses and size of the putative class. *Id.* ¶6. By November 27, 2023, the parties had negotiated a term sheet. *Id.* ¶7. Settlement Class Counsel was subsequently retained by Mr. Pull. And in April 2024, Mr. Pull also sued Defendant for the same harms. *Id.* ¶8.

After additional weeks of negotiations between counsel with significant experience in data breach class actions, the Settlement Agreement was finalized and signed on June 6, 2024 (the “Settlement Agreement” or “S.A.”). *Id.* ¶9. At all times, the parties negotiated at “arm’s length,” argued their positions, and evaluated the strengths and weaknesses underlying their claims and defenses. *Id.* ¶10. From the start, the parties agreed that they would not negotiate the proposed Class Counsel’s attorney fees or Settlement Class Representatives’ service awards until they agreed on the Settlement Agreement’s core terms, thus avoiding conflict between the Settlement Class Representatives and the Class. *Id.* ¶11.

On June 13, 2024, Plaintiffs moved the Court for preliminary approval of the class action settlement. *Id.* ¶12. On July 30, 2024, the Court held a hearing on the preliminary approval of the Settlement and on August 2, 2024, issued its order granting preliminary approval. *Id.* ¶13. Since the Court granted preliminary approval, Settlement Class Counsel has diligently worked to ensure notice is provided to the class in accordance with the Settlement Agreement and the Court’s order. *Id.* ¶14.

Counsel has maintained regular communication with the Settlement Administrator regarding the procedures and logistics for administering the Class Notice. *Id.* ¶15. Additionally, Counsel has overseen the settlement process, assisting and supervising the Administrator’s implementation of the Class Notice to ensure proper and timely notification to all Class Members. *Id.* ¶16. Significantly, as of October 21, 2024, zero Class Members have objected to the Settlement, and zero Class Members have opted out of the Settlement. *Id.* ¶48. Now, Plaintiffs respectfully request attorney fees, costs, expenses, and Service Awards as contemplated by the Settlement Agreement.

II. ARGUMENT

A. Attorney Fees, Costs, and Expenses

Pursuant to the Settlement Agreement and the notice of class action settlement, and consistent with recognized class action practice and procedure, Plaintiffs respectfully request an award of attorney fees of \$100,000. Plaintiffs and Baer’s negotiated and reached agreement regarding attorney fees, costs, and expenses only after reaching agreement on all other material Settlement terms. Resch Decl. ¶11. The requested fee is within the range of reasonableness under established Florida law. For the reasons detailed herein, Plaintiffs submit that the requested fee is appropriate, fair, and reasonable, and respectfully request that it be approved by the Court.

Under Florida law, in a class action case, “the trial court should have broad discretion to determine whether the fees requested ... are fair and reasonable in order to protect the interests of the class members.” *Nelson v. Wakulla Cnty.*, 985 So. 2d 564 (Fla. 5th DCA 2008). This analysis involves two key steps. *First*, the court determines a reasonable lodestar. *Second*, the court determines whether a fee multiplier should apply (and if so, what the fee multiplier should be).

i. Settlement Class Counsel incurred a reasonable lodestar of \$60,634.00.

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

- 1) the time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- 2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

- 3) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
- 4) the significance of, or amount involved in, the subject matter of the representation, and the responsibility involved in the representation;
- 5) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
- 6) the nature and length of the professional relationship with the client;
- 7) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and
- 8) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation

See Rule 4–1.5 of the Rules Regulating the Florida Bar. Here, the application of these factors affirms the reasonableness of the requested fee award. To date, Settlement Class Counsel incurred a lodestar of \$60,634.00 by investing 106.5 hours of work. Resch Decl. ¶19. Additionally, Settlement Class Counsel incurred reasonable and necessary costs of \$1,594.74 for, *inter alia*, filing fees and *pro hac vice* fees. *Id.* ¶20.

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Strauss Borrelli PLLC				
Raina Borrelli	Managing Partner	\$700	25.5	\$17,850.00
Sam Strauss	Managing Partner	\$700	17.0	\$11,900.00
Brittany Resch	Partner	\$575	27.0	\$15,525.00
Michael Oellerich	Associate	\$500	2.1	\$1,050.00

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Alex Phillips	Associate (formerly)	\$450	0.5	\$225.00
Zog Begolli	Associate	\$425	0.4	\$170.00
Andrew Gunem	Associate	\$400	9.1	\$3,640.00
Sarah Soleiman	Associate	\$400	3.0	\$1,200.00
Rachel Pollack	Paralegal	\$225	0.7	\$157.50
Megan Wang	Paralegal	\$200	0.4	\$80.00
Jack Rader	Legal Assistant	\$150	1.0	\$150.00
Rudis Requeno	Legal Assistant	\$150	0.5	\$75.00
		Total:	87.2	\$52,022.50
Jacobson Phillips PLLC				
Joshua R. Jacobson	Managing Partner	\$650	6.7	\$4,355.00
Joey Phillips	Legal Assistant	\$150	3	\$450.00
		Total:	9.7	\$4,805.00
Normand PLLC				
Edmund Normand	Managing Partner	\$900	1.8	\$1,620.00
Alex Couch	Attorney	\$600	1.1	\$660.00
Joshua R. Jacobson	Attorney (formerly)	\$500	0.8	\$400.00
Kaitlyn Thompson	Paralegal	\$155	0.60	\$93.00
Michelle Montecalvo	Paralegal	\$195	5.30	\$1,033.50

<u>Billor</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
		Total:	9.60	\$3,806.50
		Global Total:	106.5	\$60,634.00

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

This factor weighs toward approval because this case required a significant investment of time and labor, and the case involved novel, complex, and difficult legal questions which required substantial expertise in data breach law and class action litigation. *Id.* ¶23. Settlement Class Counsel invested time and labor by:

- investigating the Security Incident;
- interviewing potential clients;
- researching viable claims under Florida law;
- drafting the complaint;
- reviewing the complaint with the client;
- drafting and serving informal discovery;
- reviewing informal discovery from Baer’s;
- negotiating and preparing the Settlement Agreement, notice forms, and the claims form;
- drafting the motion for preliminary approval and exhibits;
- overseeing the settlement process; and
- preparing this motion for attorney fees, costs, expenses, and Service Awards.

Id. ¶24.

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

4677954 (E.D. Pa. Sep. 24, 2019) (“This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.”). The Court in *In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 (N.D. Cal. Sep. 13, 2011), has noted that “many [data breach class actions] have been dismissed at the pleading stage.”

Data breach class actions, such as this one, present novel, complex, and difficult legal questions which require substantial expertise. *Id.* ¶25; *see e.g., Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023) (explaining that “data breach cases . . . can be especially risky, expensive, and complex”); *Gilbert v. Bioplus Specialty Pharmacy Servs., LLC*, No. 6:21-cv-2158, 2024 U.S. Dist. LEXIS 138439, at *9 (M.D. Fla. Aug. 5, 2024) (explaining that “[c]ourts have recognized that the novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award” and that “data breach class actions present ‘serious risks’ due, in part, to ‘the ever- developing law surrounding data breach cases’”) (collecting cases); *Farmer v. Humana Inc.*, No. 8:21-cv-1478, 2022 U.S. Dist. LEXIS 232541, at *11 (M.D. Fla. Dec. 28, 2022) (“The instant action is complex in that the law surrounding data breach cases is new and evolving.”).

As a result of Settlement Class Counsel’s expertise, Plaintiffs and Class Members received significant and timely relief that was tailored to the types of harm caused by the Security Incident. Resch Decl. ¶26. Similarly, Baer’s was defended by highly skilled and experienced counsel—which further evidences the effectiveness of Settlement Class Counsel. *Id.* ¶27; *see also Walco Inv., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (explaining that “[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results”); *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992) (“Moreover, in assessing quality, the Court has considered the quality of the

opposition as well as the standing of Plaintiffs' counsel."); *Torres v. Bank of Am.*, 830 F. Supp. 2d 1330, 1363 (S.D. Fla. 2011) (same).

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

This factor weighs in favor of approval because Settlement Class Counsel was precluded from representing other clients during the 106.5 hours that Settlement Class Counsel invested in this case. Resch Decl. ¶28.

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

This factor weighs toward approval because Settlement Class Counsel's hourly rates are customary in the industry and reasonable in the complex class action context. *Id.* ¶18; *see also Kuhnlein*, 662 So. 2d at 315 (approving hourly rates where "evidence was submitted as to the usual hourly rates charged by class counsel's firms for those hours" and "no evidence [was presented] upon which it could be concluded that the hours expended were not reasonably necessary or that the hourly rates were not usual and customary for the services rendered"); *In re Lincare Holdings Inc. Data Breach Litig.*, No. 8:22-cv-01472, 2024 U.S. Dist. LEXIS 110789, at *12 (M.D. Fla. June 24, 2024) (awarding \$2,416,666.67.00 in attorney fees and \$41,455.42 in litigation costs in a data breach settlement where Strauss Borrelli PLLC was co-Class Counsel); *Durant v. Big Lots, Inc.*, No. 5:23-cv-561, 2024 U.S. Dist. LEXIS 173423, at *15 (M.D. Fla. Sep. 25, 2024) (approving hourly rates of \$950 for a partner and \$725 for an associate).

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

The subject matter of the representation was an alleged Security Incident that impacted approximately 4,175 current and former employees of Defendant. Resch Decl. ¶29. Settlement Class Counsel successfully secured monetary relief, credit monitoring, identity theft insurance,

and remedial measures, including improvements to Defendant's cybersecurity protocols to reduce the risk of future data breaches. *Id.* ¶30. Such relief is attributable to the representation provided by Settlement Class Counsel. *Id.* Thus, this factor also weighs in support of approval.

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

Settlement Class Counsel dedicated significant time keeping the Class Representatives informed throughout the litigation. *Id.* ¶31. This included obtaining information from and securing approval for the filing of the complaint, keeping the Class Representatives apprised of and involved in key decisions, litigation strategies, and ultimately, the Settlement reached in this case. *Id.* Moreover, given the immediacy of the injuries and risks created by data breaches (such as the risk of future identity theft and fraud), Settlement Class Members benefited from the efficient prosecution of this case because Settlement Class Members can obtain timely and tailored relief now. *Id.* ¶38. Thus, this factor also weighs in favor of approval.

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

Settlement Class Counsel have maintained a professional relationship with Settlement Class Representatives since the initial case was filed on August 16, 2023. *Id.* ¶32. Throughout the course of this case the relationship has remained professional and cordial. *Id.* Thus, this factor also weighs toward approval.

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

This factor weighs toward approval because Settlement Class Counsel have substantial experience in complex class action litigation, with a particular expertise in data breach litigation.

Id. ¶33. Settlement Class Counsel have successfully litigated and settled similar cases across the country and, in this case, have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant’s behalf. *Id.* ¶34. Thus, this factor also weighs toward approval.

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

This factor weighs toward approval because the proposed fee award in this case falls within the acceptable range of multipliers. *Id.* ¶35. “Under *Kuhnlein*, a court must review the ‘contingency risk’ factors and the ‘results obtained for the benefit of the class’ as required by rule 4–1.5 of the Rules Regulating the Florida Bar to establish whether the multiplier is proper.” *Ramos v. Philip Morris Companies, Inc.*, 743 So. 2d 24, 32 (Fla. 3d DCA 1999). Notably, a “multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and . . . produc[e] a fee which remains within the bounds of reasonableness.” *Kuhnlein*, 662 So. 2d at 315. A maximum multiplier of 5 is permissible even when a class action settlement is not a common fund. *Ramos*, 743 So. 2d at 33 (Fla. 3d DCA 1999) (citing *Kuhnlein*, 662 So. 2d at 311, *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990), and *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1146 (Fla. 1985)).

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

Here, the proposed fee award is presently a modest multiplier of approximately 1.65,¹ and Settlement Class Counsel will endure additional hours preparing the motion for final approval, attending the hearing, responding to any inquiries from class members, and overseeing the administration of benefits to completion. Resch Decl. ¶21. Thus, the *Kuhnlein* factors counsel in favor of awarding the full fee and costs award of \$100,000 to Settlement Class Counsel.

1. The contingency risk factors.

a. The claims entailed serious risk.

This factor weighs in favor of approval because this case, as a data breach class action, posed significant risks. *Id.* ¶36. As explained above, and in Plaintiffs’ motion for preliminary approval, data breach cases are especially risky, expensive, and complex. *See also id.* ¶¶23, 36. “The simple fact is that there were a larger than usual number of ways that Plaintiffs could have lost this case, and he still managed to achieve a successful settlement. A significant amount of the credit for this must be given to Class Counsel’s strategy choices, effort, and legal acumen.” *In re Checking*, 830 F. Supp. 2d at 1364. “A court’s consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk.” *In re Sunbeam*, 176 F. Supp. 2d at 1336. Further, “[t]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them.” *Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988).

Moreover, Settlement Class Counsel anticipates that Defendant would likely raise substantial and potentially meritorious defenses. *Id.* ¶37. This is significant because in the data breach context, few cases have gone through the certification stage, and none have been tried. *Id.*

Through this Settlement, Plaintiffs and Class Members receive substantial relief that is

¹ This multiplier is calculated by dividing \$100,000 by the total lodestar of \$60,634.00—which equals a multiplier of 1.6492397005 which thereafter rounds to 1.65. *Id.* ¶ 22.

timely and tailored to the injuries and risks imposed by the Security Incident. *Id.* ¶38. The value of this Settlement is underscored by the complexity of the litigation and the significant risks and barriers that loomed in the absence of settlement. *Id.* ¶39. Any of these risks could easily have impeded, if not prevented, Plaintiffs and Settlement Class Members from receiving any relief from their alleged injuries. *Id.* As such, the recovery provided by this Settlement must be judged in reference to the reality that recovery through continued litigation could only have been achieved if Plaintiffs succeeded in certifying a class, defeating a motion for summary judgment, establishing liability and damages at trial, and defending against any appeal. *Id.* ¶40. Thus, the Settlement here is a fair and reasonable recovery for the Settlement Class in light of Defendant’s defenses, and the challenging and unpredictable path of protracted litigation. *Id.* ¶41. Thus, this factor also weighs towards approval.

b. Settlement Class Counsel assumed considerable risk in pursuing this matter on a pure contingency basis.

This factor weighs toward approval because Settlement Class Counsel assumed considerable risk to pursue this matter on a pure contingency basis. *Id.* ¶42. Indeed, Settlement Class Counsel assumed a significant risk of underpayment (or even nonpayment). *Id.*; *see also Martin v. Lake Cty.*, 2016 Fla. Cir. LEXIS 2272, *23-24 (Fla. Cir. Ct., Feb. 4, 2016) (explaining that “a maximum multiplier of 5 [places] a greater emphasis on the results achieved” and “alleviate[s] the contingency risk factor involved and attract[s] high level counsel”) (citing *Kuhnlein*, 662 So. 2d at 315 (Fla. 1995)).

Indeed, “without the contingency risk multiplier, attorneys . . . would not take on class actions given the extreme contingency risk involved[.]” *Id.* Thus, “[a] contingency fee arrangement often justifies an increase in the award of attorneys’ fees” because “the main thrust behind the idea of a contingency fee arrangement . . . is that the outcome is unsure in the beginning, and the

attorneys assume a fairly great risk of ultimately getting nothing.” *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1335 (S.D. Fla. 2001). As Judge King observed:

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

Behrens v. Wometco Enters., Inc., 118 F.R.D. 534, 548 (S.D. Fla. 1988) (citing *Jones v. Central Soya Co., Inc.*, 748 F.2d 586, 591 (11th Cir. 1986)). Likewise, Settlement Class Counsel assumed a considerable risk by pursuing this matter on a pure contingency basis. Resch Decl. ¶42. Thus, this factor also weighs towards approval.

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

Settlement Class Counsel obtained substantial benefits for the Settlement Class (i.e., the 4,175 current and former employees of Defendant who were impacted by the Security Incident). *Id.* ¶¶29, 43. Indeed, Settlement Class Counsel was responsible for securing monetary relief of up to \$5,000.00 for unreimbursed losses, up to 4 hours of lost time at \$25 per hour, or an alternative cash payment of \$50 in lieu of claiming other losses. *Id.* ¶44. Additionally, Settlement Class Counsel was responsible for securing two years of credit monitoring with one bureau with at least \$1,000,000 in identity theft insurance, and remedial measures (whereby Defendant improved its cybersecurity to decrease the likelihood of a future Security Incident). *Id.* ¶45.

These results compare favorably to other approved data breach class action settlements. *See, e.g., Desue*, 2023 U.S. Dist. LEXIS 117355, at *8 (S.D. Fla. July 8, 2023) (granting final approval when settlement provided up to \$2,500 for ordinary losses, lost time at a rate of \$25 per hour, identity monitoring services, and up to \$5,000 per person for extraordinary losses); *Jackson*

et al. v. Wendy's International, LLC, No. 6:16-cv-21 (M.D. Fla.) (Doc. 157) (Feb. 26, 2019) (approving settlement that provides class members reimbursement of documented losses of up to \$5,000); *Albert v. School Bd. of Manatee Cty., Fla.*, No. 12-CA-004113 (Doc. 53) (Fla. 12th Cir. Ct. Nov. 19, 2018) (approving settlement that provides for reimbursement of identity theft protection, out-of-pocket expenses for tax fraud for up to \$250 and other incidents of identity theft or expenses for up to \$500, and also helps Settlement Class Members protect against future harm through extended identify theft protection). Thus, this factor also weighs towards approval.

B. Costs.

Settlement Class Counsel incurred reasonable out-of-pocket costs of \$1,594.74 through the date of this filing. Resch Decl. ¶20. These costs were for, *inter alia*, filing fees and *pro hac vice* fees. *Id.* Such costs are reasonable and align with those approved in similar cases. *See e.g., Desue*, 2023 U.S. Dist. LEXIS 117355, at *11 (S.D. Fla. July 8, 2023) (approving costs and expenses in the amount of \$10,754.15); *In re Lincare Holdings Inc. Data Breach Litig.*, No. 8:22-cv-01472, 2024 U.S. Dist. LEXIS 110789, at *12 (M.D. Fla. June 24, 2024) (approving costs of \$41,455.42); *Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 U.S. Dist. LEXIS 160592, at *35 (M.D. Fla. Aug. 25, 2021) (awarding the requested costs and expenses); *Colston v. Envision Credit Union*, 2023 Fla. Cir. LEXIS 2851, *5 (Fla. Leon County Ct., April 14, 2023) (same); *Mayer v. Perfect Pizza Pie*, 2022 Fla. Cir. LEXIS 3548, *4 (Fla. Flagler County Ct., July 13, 2022) (same); *Dargoltz v. Fashion Mktg. & Merch. Group*, 2021 Fla. Cir. LEXIS 2724, *9 (Fla. Miami-Dade County Ct., Oct. 26, 2021) (same); *Martinez v. Nch Healthcare Sys.*, 2021 Fla. Cir. LEXIS 4364, *4 (Fla. Collier County Ct., Oct. 6, 2021) (same). Thus, Plaintiffs respectfully request reimbursement of these costs as contemplated by the Settlement Agreement.

C. Service Awards.

Settlement Class Counsel respectfully request modest Service Awards of \$3,500 per Class Representative (\$7,000 in total for both Gregory Pull and Paul Greene) for their dedication to the prosecution of this case and their service to their fellow Class Members. Resch Decl. ¶46; Declaration of Plaintiff Gregory Pull (“Pull Decl.”), ¶¶4–10, attached hereto as **Exhibit 2**; Declaration of Plaintiff Paul Greene (“Greene Decl.”), ¶¶4–10, attached hereto as **Exhibit 3**. Notably, “there is ample precedent for awarding incentive compensation to class Representatives at the conclusion of a successful class action.” *Dasher v. RBC Bank United States*, No. 1:09-MD-02036, 2020 U.S. Dist. LEXIS 142012, at *47-48 (S.D. Fla. Aug. 10, 2020). And “[c]ourts have consistently found Service Awards to be an efficient and productive way to encourage members of a class to become class Representatives.” *Id.* (collecting cases). Here, the award is justified because the Class Representatives spent considerable time and effort in pursuit of this litigation by, *inter alia*, consulting with Settlement Class Counsel throughout the entire case, reviewing documents, approving pleadings, discussing the Security Incident, and answering Settlement Class Counsel’s many questions. Resch Decl. ¶47; Pull Decl. ¶¶4–10; Greene Decl. ¶¶4–10.

Such Service Awards are appropriate and align with those in similar cases—indeed, courts frequently award *far higher* Service Awards. *See, e.g., Dargoltz v. Fashion Mktg. & Merch. Group*, 2021 Fla. Cir. LEXIS 2724, *9 (Fla. Miami-Dade County Ct., Oct. 26, 2021) (granting final approval and approving Service Awards of \$5,000 per class Representatives); *Colston v. Envision Credit Union*, 2023 Fla. Cir. LEXIS 2851, *5 (Fla. Leon County Ct, April 14, 2023) (granting final approval and approving Service Awards of \$2,500 per class Representatives); *Dasher*, 2020 U.S. Dist. LEXIS 142012, at *47-48 (S.D. Fla. Aug. 10, 2020) (approving Service Awards of \$10,000 for one class Representatives). Thus, the requested Service Awards are modest, appropriate, and should be granted.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the requested award of attorney fees, costs, and the requested Service Awards.

Dated: October 31, 2024

Respectfully submitted,

By: /s/ Joshua R. Jacobson

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Attorneys for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 31, 2024, the foregoing document was filed via the Florida E-Portal system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

By: /s/ Joshua R. Jacobson
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EXHIBIT 1

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

GREGORY PULL AND PAUL GREENE, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

BAER'S FURNITURE CO., INC.

Defendant.

Case No. 2024-CA-003418-O

**DECLARATION OF BRITTANY RESCH IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEY FEES, COSTS, AND SERVICE AWARDS**

1. I, Brittany Resch, am counsel for Plaintiffs Gregory Pull and Paul Greene in the above-captioned case. This declaration supports Plaintiffs' Motion for Attorney Fees, Costs, and Service Awards. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

LITIGATION BACKGROUND

2. In August 2022, Defendant Baer's Furniture Co., Inc. discovered that criminals had bypassed its security systems and may have compromised employee Personal Information in a data breach (the "Security Incident").

3. Plaintiffs alleged that this Security Incident exposed Personal Information including full names, addresses, Social Security numbers, and "potentially medical information." Defendant's breach exposed the Personal Information belonging to over 4,175 employees, including Plaintiffs.

4. Before filing suit, Settlement Class Counsel engaged in substantial research regarding the facts of the Security Incident, the potential claims, possible defenses, and the overall viability of a class action.

5. In May 2024, Mr. Pull and Mr. Greene sued Defendant to remediate the harm its breach caused—asserting six counts and demanding that Defendant reimburse the Class’s losses.

SETTLEMENT

6. During the pendency of Mr. Greene’s prior and related case in the 17th Judicial Circuit Court, the parties began discussing early resolution and exchanging information necessary to explore the strengths and weaknesses of their claims and defenses and size of the putative class.

7. By November 27, 2023, the parties had negotiated a term sheet.

8. Settlement Class Counsel was subsequently retained by Mr. Pull. And in April 2024, Mr. Pull also sued Defendant for the same harms.

9. After additional weeks of negotiations between counsel with significant experience in data breach class actions, the Settlement Agreement was finalized and signed on June 6, 2024. (the “Settlement Agreement” or “S.A.”).

10. At all times, the parties negotiated at “arm’s length,” argued their positions, and evaluated the strengths and weaknesses underlying their claims and defenses.

11. From the start, the parties agreed that they would not negotiate the proposed Class Counsel’s attorney fees or Settlement Class Representatives’ service awards until they agreed on the Settlement Agreement’s core terms, thus avoiding conflict between the Settlement Class Representatives and the Class.

12. On June 13, 2024, Plaintiffs moved the Court for preliminary approval of the class action settlement.

13. On July 30, 2024, the Court granted preliminary approval of the Settlement from the bench. And on August 2, 2024, the Court issued its order granting preliminary approval.

14. Since the Court granted preliminary approval, Settlement Class Counsel has diligently worked to ensure notice is provided to the class in accordance with the Settlement Agreement and the Court’s order.

15. Counsel has maintained regular communication with the Settlement Administrator regarding the procedures and logistics for administering the Class Notice.

16. Additionally, Counsel has overseen the settlement process, assisting and supervising the Administrator’s implementation of the Class Notice to ensure proper and timely notification to all Class Members.

LODESTAR & COSTS

17. The requested fee is appropriate, fair, and reasonable under Florida law.

18. The following chart details the hours, rates, and lodestar incurred by Settlement Class Counsel.

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Strauss Borrelli PLLC				
Raina Borrelli	Managing Partner	\$700	25.5	\$17,850.00
Sam Strauss	Managing Partner	\$700	17.0	\$11,900.00
Brittany Resch	Partner	\$575	27.0	\$15,525.00
Michael Oellerich	Associate	\$500	2.1	\$1,050.00
Alex Phillips	Associate (formerly)	\$450	0.5	\$225.00
Zog Begolli	Associate	\$425	0.4	\$170.00

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Andrew Gunem	Associate	\$400	9.1	\$3,640.00
Sarah Soleiman	Associate	\$400	3.0	\$1,200.00
Rachel Pollack	Paralegal	\$225	0.7	\$157.50
Megan Wang	Paralegal	\$200	0.4	\$80.00
Jack Rader	Legal Assistant	\$150	1.0	\$150.00
Rudis Requeno	Legal Assistant	\$150	0.5	\$75.00
		Total:	87.2	\$52,022.50
Jacobson Phillips PLLC				
Joshua R. Jacobson	Managing Partner	\$650	6.7	\$4,355.00
Joey Phillips	Legal Assistant	\$150	3	\$450.00
		Total:	9.7	\$4,805.00
Normand PLLC				
Edmund Normand	Managing Partner	\$900	1.8	\$1,620.00
Alex Couch	Attorney	\$600	1.1	\$660.00
Joshua R. Jacobson	Attorney (formerly)	\$500	0.8	\$400.00
Kaitlyn Thompson	Paralegal	\$155	0.60	\$93.00
Michelle Montecalvo	Paralegal	\$195	5.30	\$1,033.50
		Total:	9.60	\$3,806.50
		Global Total:	106.5	\$60,634.00

19. Taken together, Settlement Class Counsel incurred a lodestar of \$60,634.00 by investing 106.5 hours of work.

20. Additionally, Settlement Class Counsel incurred reasonable and necessary costs including filing fees and *pro hac vice* fees. The total value of these costs is \$1,594.74.

<u>Expenses</u>	<u>Costs</u>
Strauss Borrelli PLLC's <i>pro hac vice</i> fees	\$500.00
Jacobson Phillips PLLC's fees (from second action, <i>Pull v. Baer's</i>)	\$517.50
Normand PLLC's fees (from initial action, <i>Greene v. Baer's</i>)	\$577.24
Total:	\$1,594.74

21. Thus, the proposed fee award is presently a modest multiplier of approximately 1.65, and Settlement Class Counsel will endure additional hours preparing the motion for final approval, attending the hearing, responding to any inquiries from class members, and overseeing the administration of benefits to completion.

22. This multiplier is calculated by dividing \$100,000 by the total lodestar of \$60,634.00—which equals a multiplier of 1.6492397005 which thereafter rounds to 1.65.

MISCELLANEOUS

23. This case required a significant investment of time and labor—and the case involved novel, complex, and difficult legal questions which required substantial expertise in data breach law and class action litigation.

24. Settlement Class Counsel invested time and labor by: investigating the Security Incident; interviewing potential clients; researching viable claims under Florida law; drafting the complaint; reviewing the complaint with the client; drafting and serving informal discovery; reviewing informal discovery from Baer's; negotiating and preparing the Settlement Agreement,

notice forms, and the claims form; drafting the motion for preliminary approval and exhibits; overseeing the settlement process; and preparing this motion for attorney fees, costs, expenses, and Service Awards.

25. As a data breach class action, this case presented novel, complex, and difficult legal questions which required substantial expertise.

26. As a result of Settlement Class Counsel's expertise, Plaintiffs and Class Members received significant and timely relief that was tailored to the types of harms caused by the Security Incident.

27. Baer's was defended by highly skilled and experienced counsel—which further evidences the effectiveness of Settlement Class Counsel.

28. Settlement Class Counsel was precluded from representing other clients during the 106.5 hours that Settlement Class Counsel invested in this case.

29. The subject matter of the representation was an alleged Security Incident that impacted approximately 4,175 current and former employees of Defendant.

30. Settlement Class Counsel was responsible for securing monetary relief, credit monitoring, identity theft services, and remedial measures (whereby Defendant improved its cybersecurity to decrease the likelihood of a future Security Incident). Such relief is attributable to the representation provided by Settlement Class Counsel.

31. Settlement Class Counsel dedicated significant time keeping the Class Representatives informed throughout the litigation. This included obtaining information from and securing approval for the filing of the complaint, keeping the Class Representatives apprised of and involved in key decisions, litigation strategies, and ultimately, the Settlement reached in this case.

32. Settlement Class Counsel have maintained a professional relationship with Settlement Class Representatives since the initial case was filed on August 16, 2023. Throughout the course of this case the relationship has remained professional and cordial.

33. Settlement Class Counsel have substantial experience in complex class action litigation—with a particular expertise in data breach litigation.

34. Settlement Class Counsel have successfully litigated and settled similar cases across the country and, in this case, have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf.

35. The proposed fee award in this case falls within the acceptable range of multipliers.

36. This case, as a data breach class action, posed significant risks. Data breach cases are especially risky, expensive, and complex.

37. Settlement Class Counsel anticipates that Defendant would likely raise substantial and potentially meritorious defenses. This is significant because in the data breach context, few cases have gone through the certification stage, and none have been tried.

38. Through this Settlement, Plaintiffs and Class Members receive substantial relief that is timely and tailored to the injuries and risks imposed by the Security Incident.

39. The value of this Settlement is underscored by the complexity of the litigation and the significant risks and barriers that loomed in the absence of Settlement. Any of these risks could easily have impeded, if not prevented, Plaintiffs and Settlement Class Members from receiving any relief from their alleged injuries.

40. As such, the recovery provided by this Settlement must be judged in reference to the reality that recovery through continued litigation could only have been achieved if Plaintiffs

succeed in certifying a class, defeating a motion for summary judgment, establishing liability and damages at trial, and defending against any appeal.

41. It is of my sound legal opinion that the Settlement here is a fair and reasonable recovery for the Settlement Class in light of Defendant's defenses, and the challenging and unpredictable path of protracted litigation.

42. Settlement Class Counsel assumed considerable risk to pursue this matter on a pure contingency basis. Indeed, Settlement Class Counsel assumed a significant risk of underpayment (or even nonpayment). Settlement Class Counsel assumed a considerable risk by pursuing this matter on a pure contingency basis.

43. Settlement Class Counsel obtained substantial benefits for the Settlement Class (i.e., the 4,175 current and former employees of Defendant who were impacted by the Security Incident).

44. Indeed, Settlement Class Counsel was responsible for securing monetary relief of up to \$5,000.00 for unreimbursed losses, up to 4 hours of lost time at \$25 per hour, or an alternative cash payment of \$50 in lieu of claiming other losses.

45. Additionally, Settlement Class Counsel was responsible for securing two years of credit monitoring with one bureau with at least \$1,000,000 in identity theft insurance, and remedial measures (whereby Defendant improved its cybersecurity to decrease the likelihood of a future Security Incident).

46. The requested Service Awards is to compensate the Class Representatives for his dedication to the prosecution of this case and his service to his fellow Class Members.

47. The award is justified because the Class Representatives spent considerable time and effort in pursuit of this litigation by, *inter alia*, consulting with Settlement Class Counsel

throughout the entire case, reviewing documents, approving pleadings, discussing the Security Incident, and answering Settlement Class Counsel's many questions.

48. As of October 21, 2024, zero Class Members have objected to the Settlement, and zero Class Members have opted out of the Settlement.

Pursuant to 28 U.S.C. § 1746, I declare and sign under penalty of perjury of the United States of America that the foregoing is true and correct.

Dated: October 31, 2024

Respectfully submitted,

By: /s/ Brittany Resch
Brittany Resch (*pro hac vice*)
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Attorneys for Plaintiffs and the Proposed Class

EXHIBIT 2

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

Gregory Pull and Paul Greene, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

Baer's Furniture Co., Inc.,

Defendant.

Case No. 2024-CA-003418-O

**DECLARATION OF PLAINTIFF GREGORY PULL IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Gregory Pull, declare under penalty of perjury the following:

1. I am a named Plaintiff in the above-captioned litigation. I reside in Orlando, Florida. And I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards.

2. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

3. On or around March 13, 2023, I received notice of the Security Incident concerning Baer's Furniture Co., Inc. ("Defendant" or "Baer's"). After I received notice, I conducted some research concerning the Security Incident and ultimately sought out and spoke with experienced attorneys to determine if I would retain them to handle my case. My attorneys spent significant time communicating with me about the facts of this case and the law, including what was involved in being a class representative. In the end, I decided to vindicate not only my own rights, but also those of others affected by the Security Incident—by serving as a Plaintiff and proposed class

representative in this class action lawsuit. Instrumental in my decision to be a class representative was my own desire to provide recourse to a proposed Class of other individuals whose personal information was compromised in the Security Incident. Since agreeing to serve as a Plaintiff, I have diligently and faithfully fulfilled my obligation, and I was instrumental in achieving the relief obtained for the Class.

4. I have participated in this litigation from its inception through settlement discussions. I have been in regular contact with my attorneys during the course of this matter.

5. Among other things, I have spent time researching the facts of the Security Incident, my rights and those of the Class in bringing this lawsuit, speaking with and communicating with my attorneys, gathering documents and/or information requested by my attorneys, and reviewing documents filed in this action.

6. I am familiar with the work involved in prosecuting this action and have worked with my attorneys to obtain the relief provided by the settlement. Throughout this litigation, I made myself available to discuss developments in the case as part of my duty as a Class Representative. All in all, I have devoted much time and attention to this case.

7. I have fairly represented the absent Class Members and herein request that the Court approve this settlement. I have maintained the best interests of the Class while performing my class representative duties and I am unaware of any conflicts that would prevent me from serving as a class representative.

8. Class Counsel have fairly and adequately represented the interests of the Class and have demonstrated their valuable experience and qualifications in conducting the pending litigation. They are experienced in prosecuting class actions such as this and have successfully prosecuted numerous class actions in recent years, recovering hundreds of millions of dollars for

Class Members across the country. They have continued to provide fair and vigorous representation for the Class in this matter.

9. By serving as a Class Representative in this action, I bore a certain amount of risk that other Class Members did not bear. In addition to the time I spent participating in the prosecution of this case, I took a risk by coming forward and filing this class action, putting my personal information into the public sphere. I was willing to participate in this case through the discovery process, depositions, and through trial if there had not been a settlement. As a result of my stepping forward and conducting a pre-suit investigation, Class Members will receive the benefits of the settlement to compensate them for the injuries directly and proximately caused by Defendant's failure to implement or maintain adequate data security measures to safeguard sensitive personal information from unauthorized access and disclosure.

10. Based on the foregoing, I respectfully request that this Court award me a Service Award of \$3,500.

Pursuant to 28 U.S.C. § 1746, I declare and sign under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed on October 29, 2024 in Orlando, Florida.
CITY STATE

/s/ Gregory Pull

NAME

EXHIBIT 3

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

Gregory Pull and Paul Greene, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

Baer's Furniture Co., Inc.,

Defendant.

Case No. 2024-CA-003418-O

**DECLARATION OF PLAINTIFF PAUL GREENE IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Paul Greene, declare under penalty of perjury the following:

1. I am a named Plaintiff in the above-captioned litigation. I reside in Winter Park, Florida. And I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards.

2. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

3. On or around March 13, 2023, I received notice of the Security Incident concerning Baer's Furniture Co., Inc. ("Defendant" or "Baer's"). After I received notice, I conducted some research concerning the Security Incident and ultimately sought out and spoke with experienced attorneys to determine if I would retain them to handle my case. My attorneys spent significant time communicating with me about the facts of this case and the law, including what was involved in being a class representative. In the end, I decided to vindicate not only my own rights, but also those of others affected by the Security Incident—by serving as a Plaintiff and proposed class

representative in this class action lawsuit. Instrumental in my decision to be a class representative was my own desire to provide recourse to a proposed Class of other individuals whose personal information was compromised in the Security Incident. Since agreeing to serve as a Plaintiff, I have diligently and faithfully fulfilled my obligation, and I was instrumental in achieving the relief obtained for the Class.

4. I have participated in this litigation from its inception through settlement discussions. I have been in regular contact with my attorneys during the course of this matter.

5. Among other things, I have spent time researching the facts of the Security Incident, my rights and those of the Class in bringing this lawsuit, speaking with and communicating with my attorneys, gathering documents and/or information requested by my attorneys, and reviewing documents filed in this action.

6. I am familiar with the work involved in prosecuting this action and have worked with my attorneys to obtain the relief provided by the settlement. Throughout this litigation, I made myself available to discuss developments in the case as part of my duty as a Class Representative. All in all, I have devoted much time and attention to this case.

7. I have fairly represented the absent Class Members and herein request that the Court approve this settlement. I have maintained the best interests of the Class while performing my class representative duties and I am unaware of any conflicts that would prevent me from serving as a class representative.

8. Class Counsel have fairly and adequately represented the interests of the Class and have demonstrated their valuable experience and qualifications in conducting the pending litigation. They are experienced in prosecuting class actions such as this and have successfully prosecuted numerous class actions in recent years, recovering hundreds of millions of dollars for

Class Members across the country. They have continued to provide fair and vigorous representation for the Class in this matter.

9. By serving as a Class Representative in this action, I bore a certain amount of risk that other Class Members did not bear. In addition to the time I spent participating in the prosecution of this case, I took a risk by coming forward and filing this class action, putting my personal information into the public sphere. I was willing to participate in this case through the discovery process, depositions, and through trial if there had not been a settlement. As a result of my stepping forward and conducting a pre-suit investigation, Class Members will receive the benefits of the settlement to compensate them for the injuries directly and proximately caused by Defendant's failure to implement or maintain adequate data security measures to safeguard sensitive personal information from unauthorized access and disclosure.

10. Based on the foregoing, I respectfully request that this Court award me a Service Award of \$3,500.

Pursuant to 28 U.S.C. § 1746, I declare and sign under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed on October 30, 2024 in Winter park, FL.
CITY STATE

/s/ 

NAME