

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

SAUL HYMES, ILANA HARWAYNE-
GIDANSKY, EDGAR FIERRO, and JOAN
LEWIS individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

EARL ENTERPRISES HOLDINGS, INC.

Defendant.

Case No. 2021-CA-007617-O

CLASS REPRESENTATION

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

Plaintiffs, Saul Hymes, Ilana Harwayne-Gidansky, Edgar Fierro, and Joan Lewis, (“Plaintiffs” or “Settlement Class Representatives”), respectfully move for approval of their request for attorneys’ fees, costs, and expenses of \$195,000.00 and service awards of \$2,500.00 for each Settlement Class Representative in this preliminarily approved class action settlement with Defendant Earl Enterprises Holdings, Inc. (“Defendant” or “Earl Enterprises”).¹

I. INTRODUCTION

On March 29, 2019, Defendant announced that it had “become aware of a data security incident potentially affecting payment card information of a limited number of guests that dined at certain of Earl Enterprises’ restaurants.” Defendant included a list of approximately 100 affected restaurants (largely its chain Buca di Beppo, but also other restaurants including Planet Hollywood and Earl of Sandwich) and stated that the breach involved transactions at restaurants between May

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement (“S.A.”), which is attached to the Motion for Preliminary Approval.

23, 2018, through March 18, 2019.² The Data Breach Incident involved an estimated 2.15 million cards that were located and for sale on the dark web through a site called “Joker’s Stash” beginning as early as February 20, 2019, according to blogger Brian Krebs.

Plaintiffs allege that Defendant failed to ensure that access to the affected data systems was reasonably safeguarded, failed to acknowledge and act upon industry warnings, failed to use proper security systems and protocols to detect and deter the type of attack that occurred, and failed to provide timely and adequate notice to Plaintiffs and other proposed Class Members that their PII had been stolen, putting Plaintiffs and the proposed Class Members at a substantially increased risk of identity theft. Defendant disputes those allegations.

Following briefing a motion to dismiss and Plaintiffs’ responses thereto, the Parties agreed to and did retain Rodney A. Max, *Esq.*, a highly experienced mediator, to assist the Parties in settlement negotiations. Declaration of John A. Yanchunis filed concurrently herewith (“Yanchunis Decl.”), ¶ 14, attached hereto as **Exhibit 1**. Prior to the mediation, the Parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. *Id.* ¶ 15. The Parties also submitted a draft settlement term sheet prepared by Plaintiffs, which was then used as the foundation for the ensuing negotiations. *Id.*

On February 19, 2020, the Parties, through their respective counsel, engaged in a full-day mediation session before Mr. Max. The negotiations were hard-fought throughout and the settlement process was conducted at arm’s length. *Id.* ¶ 14. With the assistance of Mr. Max, the Parties were able to reach an initial resolution to the Litigation on a class-wide basis that provides both injunctive and monetary relief to Settlement Class Members. *Id.* ¶ 14. On February 20, 2020, the Parties had reached a term sheet outlining the substance of settlement. During the ensuing

² *Id.*

months, the Parties continued the exchange of information and negotiations as to the final details of the Settlement Agreement. Based on Plaintiffs' counsel's independent investigation of the relevant facts and applicable law, experience with other data breach cases, the information provided by Defendant, and the strengths and weaknesses of the Parties' respective positions (including the defenses articulated in Defendant's Motion to Dismiss and Reply to Plaintiffs' Opposition thereto), Plaintiffs' counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. Yanchunis Decl., ¶¶ 12, 19.

Most of this litigation occurred while the Parties were in federal court. Following briefing with the United States District Court for the Middle District of Florida, the parties re-filed this matter in this Court, and continued to pursue settlement negotiations. On October 26, 2022, Plaintiffs moved for preliminary approval of the settlement they had initially negotiated with Earl Enterprises. The Court preliminarily approved that nationwide class action settlement on September 7, 2023, after holding a hearing. Plaintiffs now respectfully request an award of attorneys' fees and litigation costs of \$500,000 consistent with the Settlement Agreement.

II. ARGUMENT

a. Attorney's 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 attorneys' fee and litigation costs award of \$195,000.00, consisting of a \$555,152.55 lodestar figure, resulting in a negative multiplier of 0.35.³ *See generally*, Yanchunis Decl. Plaintiffs and Defendant negotiated and reached agreement regarding attorneys' fees, costs and expenses only

³ The requested \$195,000.00 includes approximately \$15,000.00 in costs and expenses, which chiefly includes mediation-related expenses. Yanchunis Decl. ¶ 19.

after reaching agreement on all other material Settlement terms. Yanchunis Decl. ¶ 15. The requested fee is within the range of reason 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.

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). First, the court must determine an appropriate lodestar figure. Second, the court must determine whether a fee multiplier is appropriate and, if so, what such multiplier should be.

i. Class Counsel’s request is reasonable in light of the lodestar expended.

A lodestar figure should be 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; and

- 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.

See Rule 4–1.5 of the Rules Regulating the Florida Bar (modified to remove the contingency risk factor and the results obtained for the benefit of the class). To date, Class Counsel’s lodestar figure is \$555,152.55 for more than 700 hours of work, comprised as follows:

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Morgan & Morgan				
Ryan J. McGee	Associate	\$800	188.0	\$150,400.00
John A. Yanchunis	Partner	\$1,450	17.9	\$25,955.00
Patrick A. Barthle	Associate	\$800	1.8	\$1,440.00
Ra Amen	Associate	\$650	30.55	\$22,457.50
Christina Romero	Associate	\$381	26.5	\$10,096.50
Jennifer Cabezas	Paralegal	\$225	6.9	\$1,552.50
Andrea Carbone	Paralegal	\$202	5.1	\$1,030.20
Lorraine Carreiro	Paralegal	\$202	2.8	565.60
		Total:	279.55	\$213,497.30
Wolf Haldenstein Adler Freeman & Herz, LLP				
Carl V. Malmstrom	Partner	\$560	26.2	\$14,084.00
Matthew M. Guiney	Partner	\$605	7.3	\$4,426.50
Jeffrey G. Smith	Partner	\$910	1.2	\$1,092.00
James A. Cirigliano	Paralegal	\$325	2.4	\$780.00
		Total:	37.1	\$20,382.50

Levi & Korsinsky, LLP				
Mark Reich	Partner	\$1,000.00	5.10	\$5,100.00
Rosemary Rivas	Partner	\$975.00	145.80	\$142,155.00
Courtney Maccarone	Counsel	\$675	37.80	\$25,515.00
Rosanne Mah	Associate	\$700.00	109.80	\$76,860.00
Amanda Herda	Paralegal	\$225	1.25	\$281.25
		Total:	299.75	\$249,911.25
Casey Gerry Schenk Fancavilla Blatt & Penfield, LLP				
Gayle M. Blatt	Partner	\$995	61.90	\$61,590.50
Jeremy Robinson	Partner	\$950	1.90	\$1,805.00
P. Camille Guerra	Partner	\$815	2.20	\$1,793.00
David Casey III	Associate	\$340	2.30	\$782.00
Seth Barron	Associate	\$340	10.80	\$3,672.00
Catherine McBain	Associate	\$505	2.20	\$1,111.00
Ajit Narasimhan	Paralegal	\$215	2.50	\$537.50
Vicki Ratajesak	Paralegal	\$235	0.30	\$70.50
		Total:	84.10	\$71,361.50

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

Prosecuting and settling these claims demanded considerable time and labor. Yanchunis

Decl. ¶ 19. The work performed included the following:

- Investigating the data breach and discussing it with potential clients;
- Drafting the various complaints and discussing them with clients;
- Analyzing and responding to Defendant’s motion to dismiss the complaint;

- Preparing for oral argument on Defendant’s motion to dismiss the complaint;
- Preparing the mediation statement and attending the mediation;
- Preparing the settlement agreement and exhibits thereto, including the notice and claim forms, and negotiating with opposing counsel;
- Preparing the motion for preliminary approval and exhibits thereto, including the proposed order, and negotiating with opposing counsel;
- Communicating with class members re: the settlement; and
- Preparing this motion for attorney’s fees, costs, expenses, and service awards.

Id.

“[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 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 23, 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.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at *36 (N.D. Cal. Sep. 12, 2011) has noted that “many [data breach class actions] have been dismissed at the pleading stage.”

While the protracted litigation history evidence the complex issues as outlined above, so does the caliber of lawyers representing the parties. *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”); *see also Camden I*, 946 F.2d at 772 n.3 (in assessing the quality of representation by Class Counsel, the court should also consider the quality of their opposing counsel); *see also Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992) (same). “[T]hat this level of legal talent was available to the Settlement Class is another compelling reason in support

of the fee requested In the private marketplace, as pointed out by several of Plaintiff’s experts, counsel of exceptional skill commands a significant premium.” *In re Checking*, 830 F. Supp. 2d at 1363.

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

Class Counsel are well known in the data breach and class action realm. Class Counsel submit that while they do have extensive resources to pursue various cases, the acceptance of this case did impact the ability to deploy those resources elsewhere. Nevertheless, Class Counsel pursued this matter and has brought the resolution for class members closer to finality, even where the attorneys’ fees and costs recovery is roughly 1/3 of the resources expended.

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

Class Counsel has submitted evidence that the above hourly rates are the usual and customary reasonable hourly rates that Class Counsel charge for similar work, Yanchunis Decl. ¶¶ 16, and no evidence has been submitted to the contrary. *See 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”).

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 data breach that impacted approximately 2.15 million individuals. Class Counsel was responsible for securing reimbursement of out-of-pocket expenses for all of these individuals and for securing equitable relief to decrease the likelihood of a future data breach.

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.

The Settlement Class Representatives were at all times apprised of the status of the litigation, approving complaints, litigation strategy, and ultimately the Settlement that was reached in this case.

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

Class Counsel have maintained a professional relationship with Settlement Class Representatives since this case was filed in 2019. Through the COVID pandemic and navigating this case between federal and state courts, the relationship has remained professional and cordial.

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.

Here, Class Counsel have a strong reputation in the area of complex, and in particular privacy and data breach class action litigation. *See generally* Motion for Preliminary Approval. 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. Yanchunis Decl. ¶¶ 14–19.

ii. The fee award in this case will endure a negative multiplier.

“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).

A “multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing 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; *Quanstrom*, 555 So.2d at 828; *Rowe*, 472 So.2d at 1146).

In *Ramos*, the Third DCA 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, however, Class Counsel’s lodestar is *negative*, evidencing Class Counsel’s commitment to litigating and securing settlement on behalf of the class despite a recovery that results in a negative multiplier for the fee award. Nevertheless, the *Kuhnlein* factors counsel in favor of awarding the full fee award of \$195,000 to Class Counsel.

1. The contingency risk factors.

a. The Claims Entailed Serious Risk.

Given the context of this case—a data breach class action—the risks incurred in pursuing it were significant. “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).

The Settlement is particularly noteworthy given the combined litigation risks. Defendant would likely raise substantial and potentially meritorious defenses. Indeed, prosecuting this matter was risky from the outset. *See, e.g., In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010) (approving data breach settlement, in part, because “proceeding through the litigation process in this case is unlikely to produce the plaintiffs’ desired results”). Few cases in this area have gone through the certification stage, and none have yet been tried.

Through this Settlement, however, Plaintiffs and Class Members gain significant benefits without having to face further risk. The benefits obtained here are substantial, given 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 the Settlement Class’ successful prosecution of these claims.

As explained in Plaintiffs’ motion for preliminary approval, data breach cases are especially risky, expensive, and complex. *See, e.g., In re Sonic*, 2019 WL 3773737, at *7 (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”). Although data breach law is continuously developing, data breach cases are still relatively new, and courts around the country are still grappling with what legal principles apply to the claims. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”). Since the “legal issues involved [in data breach litigation] are

cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015).

The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs and Settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiffs were able to certify a class; (ii) Plaintiffs were able to defeat summary judgment; (iii) Plaintiffs were able to establish liability and damages at trial; and (iv) the final judgment was affirmed on appeal. 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 likely protracted litigation Plaintiffs and the certified class would have faced absent the Settlement. *See generally* Yanchunis Decl.

b. Class Counsel Assumed Considerable Risk to Pursue This Matter on a Pure Contingency Basis.

In undertaking to prosecute this case on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants an appropriate fee. Indeed, “[a] contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (1988)); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs’ counsel must be compensated adequately for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 (“Numerous cases recognize that the attorney’s contingent fee risk is an important factor in determining the fee award”); *Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga. 1985), *modified*, 803 F.2d 1135 (11th Cir. 1986); *York v. Alabama Senate Bd. of Ed.*, 631 F. Supp. 78, 86 (M.D. Ala. 1986). 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... A contingency fee arrangement often justifies an increase in the award of attorney's 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, 118 F.R.D. at 548.

The progress of this case to date shows the inherent risk faced by Class Counsel in accepting and prosecuting this matter on a contingency fee basis. Despite Class Counsel's effort in litigating this case, Class Counsel remain uncompensated for the time invested, in addition to the expenses they advanced. There can be no dispute that this case entailed substantial risk of nonpayment for Class Counsel.

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

Given the significant litigation risks Class Counsel faced, the Settlement represents a successful result. Rather than facing years of costly and uncertain litigation, each Settlement Class Member (approximately 2.15 million) is eligible to receive (i) up to \$5,000 for reimbursement of documented out-of-pocket expenses incurred as a result of the incident; (ii) two \$10 promotional cards for dining at either Planet Hollywood or Buca di Beppo based upon attestation that they used a payment card at an affected location during the Relevant Period; and (iii) remedial measures that will benefit all Settlement Class Members regardless of whether or not they submit a Claim, as well as consumers in general who may dine at Earl Enterprises restaurants in the future.

With regard to the monetary benefits provided to Settlement Class Members alone, this settlement compares favorably to other data breach class action settlements. *See Jackson et al. v. Wendy's International, LLC*, No. 6:16-cv-21-PGB-DCI (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); *see also Hapka v. CareCentrix, Inc.*, No. 2:16-CV-02372-KGG, 2018 WL 1879845, at *3 (D. Kan. Feb. 15, 2018) (“The Settlement addresses past harms through reimbursement of Out-of-Pocket Losses or the alternative minimum \$200 payment for tax fraud and also helps Settlement Class Members protect against future harm through the Credit Monitoring Services.”).

Here, the two \$10.00 promotional cards with an attestation of use of a payment card at an affected restaurant during the Data Breach Incident’s Relevant Period is a novel benefit requiring minimal effort for those Settlement Class Members who spent material time dealing with the Data Breach Incident but did not have any out-of-pocket expenses. SA ¶ 3.02. Additionally, the reimbursement for documented out-of-pocket losses due to fraud of up to \$5,000.00 with compensation for time spent investigating and remediating fraud of up to \$80.00 (\$20.00/hour) compares favorably to past data breach settlements. SA ¶ 3.03.

Furthermore, the injunctive relief provided for in this Settlement is significant and ensures the rights of the Settlement Class because it swiftly commits Earl Enterprises to certain security measures and protection of personal information. These remedial measures are attributable to the Settlement and are squarely consistent with the claims on which Plaintiffs have focused in the Litigation. SA ¶ 4.01. These commitments will ensure the adequacy of Defendant’s data security practices, and will provide ongoing protection for any consumers’ information, as well as providing protection for consumers in the future. Without this Settlement, there is little Settlement

Class Members could do individually to achieve similar promises from Earl Enterprises regarding data security going forward. The Settlement is calculated to ensure that Earl Enterprises not only employs the necessary, immediate resources to address existing data security vulnerabilities, but also employs the consistent best practices and accountabilities needed for long-term, proactive data security. This injunctive relief will remain in effect for three (3) years. SA ¶ 4.02. The Settlement benefits present a substantial recovery, especially considering the litigation risks described above.

Finally, the Settlement treats all Settlement Class Members equitably relative to one another because all who have been damaged are eligible to receive reimbursement based on expenses incurred, not on any unequitable basis, and the remainder of Settlement Class Members who do not have demonstrable out-of-pocket expenses are all eligible for the two \$10 promotional vouchers. SA ¶¶ 3.01–3.04. Class Counsel do not expect to encounter a high degree of opposition to the settlement considering the variety of benefits provided by the Settlement Class. The proposed Settlement would provide Settlement Class members with an excellent recovery at the level of what Plaintiffs might recover if they were to prevail at trial, but with immediate recovery and without continued litigation risk and cost. Given the hurdles Plaintiffs would have to overcome if they were to litigate this case to verdict and the benefits provided by the Settlement, the parties submit that the proposed Settlement is in the best interest of the Class and represents a fair, reasonable and adequate recovery.

b. Service awards.

“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided during the course of class action litigation. Such awards are justified when the class representatives expend considerable time and effort on the case, especially by advising counsel, or

when they risk retaliation as a result of their participation. In addition, the magnitude of the relief the named plaintiffs obtain on behalf of the class may warrant a substantial incentive award.” *Dreidame v. Village Center Community Development Dist.*, No. 2007-CA-3177, 2008 WL 7079074 (Fla. 5th Jud. Cir. (Lake County) Mar. 29, 2008); *see Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier*, No. 98-3763, 2008 WL 6161610 (Fla. 2d Jud. Cir. (Leon County) Mar. 26, 2008) (“Courts have approved incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.”).

Florida courts have approved service awards far greater than the \$2,500 per Settlement Class Representative sought here. *See, e.g., Hands on Chiropractic PL v. Infinity Indem. Ins. Co.*, No. 2017-CA-011237-O, 2020 WL 5640827 (Fla. 9th Jud. Cir. (Orange County) Aug. 21, 2020) (approving \$5,000 service award); *Lewis v. PGT Industries, Inc.*, No. 502013CA011785XXXXMB, 2020 WL 10817495 (Fla. 15th Jud. Cir. (Palm Beach County) Apr. 29, 2020) (approving service awards ranging from \$7,500 to \$15,000); *Broward Psychology, P.A. v. Singlecare Services, LLC*, No. CACE-18-022689, 2019 WL 3715043 (Fla. 17th Jud. Cir. (Broward County) June 04, 2019) (approving \$5,000 service award).

Here, Settlement Class Representatives consulted with Class Counsel throughout the course of this case, including the settlement process, and provided facts and documentation to Class Counsel. Yanchunis Decl. ¶ 22. Given their time and effort, the risks inherent in this litigation, and the magnitude of the relief obtained on behalf of the class, service awards of \$2,500 for each Settlement Class Representative are justified and appropriate.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the requested award of attorneys' fees, costs, and expenses of \$195,000.00 and the requested service awards of \$2,500.00 per Settlement Class Representative.

Dated: November 10, 2023

Respectfully submitted,

/s/ John A. Yanchunis

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** pro hac vice forthcoming*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 10, 2023 I electronically filed a true and correct copy of the foregoing unopposed motion with the Clerk of the Court using the court's electronic filing system, which will send notification to all attorneys of record in this matter.

/s/ John A. Yanchunis
John A. Yanchunis

Exhibit 1

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

SAUL HYMES, ILANA HARWAYNE-
GIDANSKY, EDGAR FIERRO, and JOAN
LEWIS individually and on behalf of all others
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EARL ENTERPRISES HOLDINGS, INC.

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Case No. 2021-CA-007617-O

CLASS REPRESENTATION

**DECLARATION OF JOHN A. YANCHUNIS, ESQ. IN SUPPORT OF PLAINTIFFS’
ATTORNEY’S FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

I, John Yanchunis, declare as follows:

1. I have been licensed to practice law in the state of Florida since 1981. I was first licensed in Texas and I remain a member of the Bar of that state.

2. I am one of the attorneys for Plaintiffs and the proposed Settlement Class in this case. I submit this declaration in support of the Motion for Attorneys’ Fees and Costs.¹ The facts herein stated are true of my own personal knowledge, and if called to testify to such facts, I could and would do so competently.

3. I lead the Class Action Department at Morgan & Morgan. Morgan & Morgan is the largest Plaintiff’s, contingency-only law firm in the country, with over 950 lawyers in more than 50 offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country.

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release, which is attached the Motion for Preliminary Approval.

4. My practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., (now deceased) Southern District of Texas, Houston Division—has concentrated on complex litigation and spans over 40 years, including consumer class actions for more than two-thirds of that time. I have represented consumers in numerous successful class actions involving a wide variety of claims and topics from anti-trust, securities, civil rights, defective products, deceptive and unfair trade practices, common law fraud, and the protection of the privacy rights of consumers.

5. I was appointed co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM, and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Southern District of Florida). These cases were filed against the world’s largest data and information brokers—Experian, R.L. Polk, Acxiom, Reed Elsevier (which owns Lexis-Nexis) and others—to protect the important privacy rights of consumers.

6. I presently serve, or have served in the past, as lead, co-lead, or class counsel in numerous multi-district litigations across the country in a wide variety of areas affecting consumers. For example and to name only a few cases in which I have served in leadership, I presently serve as co-lead counsel in the case of *In re: Capital One Consumer Data Sec. Breach Litig.*, No. 1:19-md-02915 (E.D. Va.) (settlement of \$190 million preliminarily approved) I have also served as co-lead of the *Home Depot Data Breach*, a member of the five-member overall Executive Committee in the *Target Data Breach*, No. 0:14-md-02522-PAM (Dist. Minn.) (\$13 million settlement approved) a member of the five-member Plaintiffs’ Steering Committee in *In re: U.S. Office Personnel Mgmt Data Security Breach Litig.*, 1:15-cv-01321-ABJ (D.D.C.) (\$60 million settlement preliminarily approved) and a member of the Plaintiffs’ Steering Committee in

In re Equifax, Inc. Customer Data Security Breach Litigation, 1:17-md-2800-TWT (N.D. Ga.) (\$465 million settlement affirmed by the 11th Circuit) I also served as lead counsel in *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK (N.D. Cal.), a case involving a data breach of over 2.9 billion users of Yahoo's email service. The final approval of a settlement of \$117.5 million was affirmed by the 9th Circuit to pay the claims of a class of consumers in the United States and Israel.

7. As a result of my experience in litigation against the insurance industry, including class litigation, I served as lead counsel for the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers of allegations of price fixing, bidding rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers who were the subject of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance is sold in Florida and throughout the United States.

8. During my career, I have tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, I served as lead counsel for several insurance companies regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. I was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of my clients.

9. As result of my experience in the area of class litigation and ethics, I have served as an expert for The Florida Bar on ethical issues arising in class action litigation.

10. I am currently a member in good standing of The Florida Bar, and of all the bars to which I have been admitted, including the United States Supreme Court, the United States Court of Appeals for the Third, Fifth, Ninth, and Eleventh Circuits, and the United States District Courts of the Southern District of Texas, Northern District of Texas, Western District of Texas, Eastern District of Wisconsin, Middle District of Florida, Southern District of Florida, Northern District of Florida, Eastern District of Michigan, Central District of Illinois and Northern District of Illinois.

11. We initiated this litigation in 2019 accusing Defendant of failing to securely maintain Plaintiffs' and Class Members' personally identifiable information.

12. Thereafter, the parties engaged in motion practice, including Defendant's Motion to Dismiss, where the federal district court had set a hearing and this matter settled on the eve of that hearing.

13. In the meantime, the parties began exploring the potential for resolution of Plaintiffs' claims on a class-wide basis. These discussions were prompted by the parties' desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of action that have been, or could have been, asserted against Defendant.

14. After preparing a mediation statement, the parties engaged in a mediation with Rodney A. Max. At all times, the parties' negotiations were adversarial, non-collusive, and conducted at arm's length. During this session, the parties set forth and discussed their respective positions on the merits of the putative class claims and the potential for a settlement that would involve class-wide relief. The parties exchanged offers and counteroffers and negotiated the points of each vigorously. Ultimately, this session resulted in settlement.

15. Throughout the settlement process, proposed Class Counsel carefully weighed: (1) the benefits to the Class Representatives and the Class under the terms of this Settlement, which

provides significant relief to the Class; (2) the attendant risks and uncertainty of litigation, an assessment I felt confident I could make based on my trial experience, as well as the difficulties and delays inherent in such litigation, including the challenges to certification of a class, both at the trial court level and at the appellate level if we were successful in obtaining an order certifying the class; (3) the desirability of consummating the present Settlement to ensure that the Class receives a fair and reasonable Settlement; and (4) providing the proposed Class Representatives and Class Members prompt relief. The matter of attorneys' fees, costs, and expenses were only negotiated after the parties reached agreement on all other material Settlement terms.

16. The hourly rates of the professionals in my firm, including my own, reflect experience and accomplishments in the area of class litigation. The rate of \$1,450 per hour which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including those rates charged by lawyers with my level of experience who practice in the area of class litigation across the nation. Prior to submitting the motion for attorneys' fees, costs and expenses, I compared and confirmed the hourly rate of the professionals in my firm with lawyers at other law firms whose practice is focused on class litigation. Moreover, as I have been retained as an expert on attorneys' fees in other class cases, and as part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education, opinions rendered by courts on attorneys' fee requests.

17. The lawyers and other professional staff of my firm maintain and record their respective time and the specific services they perform contemporaneously in a computerized system. Based upon the records in this system, my firm's lodestar is in excess of 279 hours as of

this filing, amounts to \$213,497.30 in lodestar; along with the other firms with whom we worked the lodestar is in excess of 700 hours amounting to a grand total of \$555,152.55 in lodestar.

18. Additional time will be spent to prepare the motion for final approval and respond to any objections, to prepare for and attend the fairness hearing and obtain final approval, to defend any appeals taken from the final judgment approving settlement, and ensure that the distribution of settlement proceeds to class members is done in a timely manner in accordance with the terms of the settlement. I assert that the attorneys’ fees sought in the motion for attorneys’ fee is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for the proposed Class Representatives and the Class. Throughout this action, we have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant’s behalf.

19. The chart below reflects the amount of time spent by attorneys in this case:

<u>Biller</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Time Spent</u>	<u>Lodestar</u>
Morgan & Morgan				
Ryan J. McGee	Associate	\$800	188.0	\$150,400.00
John A. Yanchunis	Partner	\$1,450	17.9	\$25,955.00
Patrick A. Barthle	Associate	\$800	1.8	\$1,440.00
Ra Amen	Associate	\$650	30.55	\$22,457.50
Christina Romero	Associate	\$381	26.5	\$10,096.50
Jennifer Cabezas	Paralegal	\$225	6.9	\$1,552.50
Andrea Carbone	Paralegal	\$202	5.1	\$1,030.20
Lorraine Carreiro	Paralegal	\$202	2.8	565.60
		Total:	279.55	\$213,497.30

Wolf Haldenstein Adler Freeman & Herz, LLP				
Carl V. Malmstrom	Partner	\$560	26.2	\$14,084.00
Matthew M. Guiney	Partner	\$605	7.3	\$4,426.50
Jeffrey G. Smith	Partner	\$910	1.2	\$1,092.00
James A. Cirigliano	Paralegal	\$325	2.4	\$780.00
		Total:	37.1	\$20,382.50
Levi & Korsinsky, LLP				
Mark Reich	Partner	\$1,000.00	5.10	\$5,100.00
Rosemary Rivas	Partner	\$975.00	145.80	\$142,155.00
Courtney Maccarone	Counsel	\$675	37.80	\$25,515.00
Rosanne Mah	Associate	\$700.00	109.80	\$76,860.00
Amanda Herda	Paralegal	\$225	1.25	\$281.25
		Total:	299.75	\$249,911.25
Casey Gerry Schenk Fancavilla Blatt & Penfield, LLP				
Gayle M. Blatt	Partner	\$995	61.90	\$61,590.50
Jeremy Robinson	Partner	\$950	1.90	\$1,805.00
P. Camille Guerra	Partner	\$815	2.20	\$1,793.00
David Casey III	Associate	\$340	2.30	\$782.00
Seth Barron	Associate	\$340	10.80	\$3,672.00
Catherine McBain	Associate	\$505	2.20	\$1,111.00
Ajit Narasimhan	Paralegal	\$215	2.50	\$537.50
Vicki Ratajesak	Paralegal	\$235	0.30	\$70.50
		Total:	84.10	\$71,361.50

The work performed included the following:

- Investigating the data breach and discussing it with potential clients
- Drafting the complaint and discussing it with clients
- Analyzing and responding to Defendant’s motion to dismiss the complaint
- Preparing for oral argument on Defendant’s motion to dismiss the complaint
- Preparing the mediation statement and attending the mediation
- Preparing the settlement agreement and exhibits thereto, including the notice and claim forms, and negotiating with opposing counsel
- Preparing the motion for preliminary approval and exhibits thereto, including the proposed order, and negotiating with opposing counsel
- Communicating with class members re: the settlement
- Preparing this motion for attorney’s fees, costs, expenses, and service awards

20. A breakdown of my firm’s and our co-counsel’s costs and expenses, again which I assert are reasonable, are pulled from a computerized database maintained by individuals in the accounting office of my firm and which were checked for accuracy, exceed \$15,000.00, which includes mediation-related expenses.

21. As stated above, a number of tasks will be required of my firm to conclude the litigation. In my experience leading class actions of this type and magnitude, I reasonable estimate that the future number of hours required to bring this Settlement to finality would be:

Additional Work Required of Class Counsel	Projected Hours
Work reviewing and responding to objections	100
Continued work preparing and finalizing the Motion for Final Approval, and preparing for and attending the final hearing	75
Responding to and litigating any appeals taken	300
Overseeing the administration of the Settlement	100
Total	575

22. Although the present case was resolved before trial, we invested significant time and resources investigating and litigating this action. Specifically, among other work, we: (1) consulted with the Class Representative throughout the course of this case, including the settlement process, and reviewed the facts and documentation that they had provided concerning identity theft and other forms of fraud; (2) investigated his claims throughout; (3) researched claims that could be and eventually were pursued in the Complaint; (4) drafted the Complaint; (5) reviewed, responded to, and briefed the motion to dismiss; (6) prepared a mediation statement; (7) attended mediation, where we negotiated a comprehensive class action settlement; (8) drafted and filed a motion for preliminary approval of the settlement and supporting memorandum and exhibits; and (9) drafted and filed this motion for attorneys' fees, costs and expenses.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 10, 2023 at Tampa, Florida.

By: John A. Yanchunis
John A. Yanchunis, Esq.