

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

KEVIN WEBER, on behalf of himself  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

NATIONAL ADVISORS TRUST  
COMPANY, NATIONAL ADVISORS  
TRUST OF SOUTH DAKOTA INC., and  
NAH SIDECAR I, LLC d/b/a NATIONAL  
ADVISORS CONCIERGE SERVICES, all  
d/b/a NATIONAL ADVISORS TRUST

Defendants.

Case No. 4:24-cv-00162-FJG

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR  
ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF'S SERVICE AWARD**

Plaintiff Kevin Weber, by and through undersigned counsel, respectfully submits this memorandum in support of his Motion for Attorneys' Fees and Expenses as well as his Service Award. For the reasons that follow, the Court should grant the motion.

**BACKGROUND**

This putative class action arises out of the exposure of highly sensitive personal information ("Private Information")<sup>1</sup> of approximately 14,328 individuals during a data breach of Defendants National Advisors Trust Company, National Advisors Trust of South Dakota, Inc., and NAH Sidecar I, LLC d/b/a National Advisors Concierge Services, all d/b/a National Advisors Trust's (collectively "National Advisors" or Defendants") systems that occurred between February

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<sup>1</sup> "Private Information" means "information that identifies an individual or in combination with other information can be used to identify, locate, or contact an individual. The term 'Private Information' and 'PII' is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or source of law beyond this Agreement." Settlement Agreement, ¶ 32.

2023 and April 2023 (the “Data Incident”).<sup>2</sup> In the Class Action Complaint (“Complaint”), Plaintiff alleged that cybercriminals were able to breach Defendants’ systems and access Settlement Class Representative and the Class’s Private Information because Defendants did not maintain reasonable security safeguards, allegedly leaving it an unguarded target for theft and misuse. Defendant denies these allegations but nonetheless believes the Settlement here is appropriate.

Plaintiff filed this action on March 6, 2024, on behalf of himself and the proposed Class of all individuals within the United States of America whose Private Information was exposed to unauthorized third parties as a result of the Data Incident with Defendants which was disclosed by Defendants in a written notice in February 2024 (the “Action”). Settlement Agreement ¶¶ 1–2. Plaintiff’s Complaint asserted claims against Defendants relating to the Data Incident for (1) Negligence; (2) Negligence Per Se; (3) Breach of Contract; (4) Unjust Enrichment; and (5) Breach of Fiduciary Duty. Defendants deny the allegations and all liability.

On July 19, 2024, counsel for the parties mediated this matter before the Honorable Charles Atwell (Ret.) of Jay Daugherty Mediation & Arbitration. Although the parties did not reach a resolution at the mediation, they continued settlement negotiations for over two months. This hard-fought negotiation ultimately resulted in the present compromise. Decl. of J. Gerard Stranch, IV (“Stranch Decl.”), ¶ 6. Thus, after extensive negotiations, the Parties were able to come to an agreement for substantive relief to the Settlement Class, culminating in the Settlement Agreement, which was ultimately executed on January 9, 2025.

As set forth in more detail below, the Settlement Agreement, and the efforts of Class Counsel, created exceptional relief for the Settlement Class: it will make available \$650,000 for monetary claims, credit monitoring services, attorneys’ fees and costs, the costs of the settlement

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<sup>2</sup> Settlement Agreement, ¶ 12. The Settlement Agreement was attached to Plaintiff’s Unopposed Motion for Preliminary Approval and is incorporate herein and referred to as “Settlement Agreement”).

administration, and Plaintiff's service award. Separate and apart from and in addition to the \$650,000 made available, Defendants will also implement business practices changes and data security enhancements designed to safeguard the Private Information of Class Members. Defendant estimates the value of those business practices changes at \$250,000. Stranch Decl. ¶ 13.

## **I. The Settlement Agreement**

After lengthy negotiations, the Parties agreed to settle this matter on behalf of a Class defined as: "all individuals within the United States of America whose PII was exposed to unauthorized third parties as a result of Defendants' data security incident that occurred between February 2023 and April 2023." Settlement Agreement ¶ 49. The Settlement provides significant and timely benefits to the Settlement Class, targeted to remedy the harms caused by the Data Incident, including retrospective reimbursement of monetary losses and lost time, cash payments, as well as prospective credit monitoring protection. Stranch Decl. ¶ 7. As detailed hereinafter, under the Settlement, Defendants will pay \$650,000 into a non-reversionary Settlement Fund. Settlement Agreement ¶¶ 41, 51. Any remaining funds in the Settlement Fund after completion of the claims administration process will be sent to a third-party *cy pres* recipient (agreed upon by the Parties and approved by the Court) as a *cy pres* distribution.

The Settlement Class Members are all treated equally and are all eligible to apply for the benefits detailed below.

### ***A. Reimbursement of Documented Monetary Losses and Lost Time***

Under the terms of the Settlement Agreement, Class Members may submit a claim form for reimbursement of documented monetary losses up to \$5,000 per individual. Settlement Agreement ¶ 59.i. Documented monetary losses include losses relating to fraud or identity theft; professional fees including accountants' fees and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that

were incurred on or after the Data Incident; and miscellaneous expenses such as mileage, postage, and other charges. *Id.* Class Members can submit documentation supporting their claims electronically via the Settlement Website or by U.S. Mail.

### ***B. Three Years of Credit Monitoring Services***

Next, Class Members are eligible to enroll in three years of credit monitoring to help them protect against the future threat of identity theft and fraud stemming from the dissemination of their Private Information to cybercriminals. Settlement Agreement ¶ 59.ii. This benefit is provided regardless of whether the Class Members submit a claim for reimbursement of Document Monetary Losses or Lost Time. *Id.* Class Members will receive an enrollment code via electronic mail from the Settlement Administrator that can be used to activate credit monitoring services for the full term of three years. *Id.*

### ***C. Cash Payments***

Further, Class Members are eligible to receive a cash payment, and all Class Members who submit a claim reimbursement of documented monetary losses or credit monitoring will be automatically deemed to have also claimed the cash payment. Settlement Agreement ¶ 59.iii. Class Members may also forgo the other benefits and submit only a claim for the cash payment. *Id.* The amount of the cash payment will be determined by the amount remaining in the Settlement Fund after the Settlement Administrator deducts all other payments that will be made from the Fund. *Id.* Importantly, the cash payment will be increased or decreased on a *pro rata* basis to ensure the Settlement Fund is exhausted. *Id.*

### ***D. Business Practice Enhancements***

In addition to these direct monetary benefits, Defendants has undertaken certain changes to its information security practices to further secure its systems and environments. Defendant has

made the specific details available to Class Counsel via a confidential declaration, which includes a confirmation that value of the business practices changes are approximately \$250,000. Settlement Agreement ¶¶ 59.iv, 75; Stranch Decl. ¶ 13. Defendants agree that such enhancements to its cybersecurity program will be paid separate and apart from the above benefits. *Id.* Given that Defendants still maintain Plaintiff's and the Class Members' Private Information in their systems, these enhancements are critically valuable to mitigate the risk of future similar data breaches—thus providing significant value to Plaintiff and the Class. Finally, Defendants will pay \$42,000 from the Settlement Fund to an Escrow Account to defray the actual expenses for the cost of Settlement Administration. Settlement Agreement, ¶ 51.

#### ***E. Attorneys' Fees, Expenses, and Service Award***

After negotiating the above benefits, the Parties agreed that Defendants will not object to Plaintiff's request for attorneys' fees up to one-third of the Settlement Fund (or \$216,666.67), in addition to any litigation expenses that have not been reimbursed. Settlement Agreement ¶ 99. The Parties also agreed that Defendant will not object to a Service Award for Plaintiff of \$2,500 in recognition of his efforts in this case that have resulted in a benefit to thousands of others. *Id.* ¶ 97.

## **II. Preliminary Approval and Notice**

On February 11, 2025, the Court granted Preliminary Approval of the Class Action Settlement. *See* Doc. 32, Preliminary Approval Order. The Court found that the proposed Class Action Settlement was fair, reasonable and adequate, in part, because “it distributes the settlement funds to provide relief both for Class Members who have suffered monetary loss from the Data Incident as well as those who have not.” *Id.* at 5. The Court also appointed Plaintiff Kevin Weber as the Class Representative and appointed Lynn Toops, J. Gerard Stranch, IV, and Samuel J. Strauss as Class Counsel. *Id.* at 8-9. Further, the Court approved the forms of notice, which state the amount

of fees and service awards that will be requested and approved the plan for disseminating notice to the Settlement Class. *Id.* at 9.

Plaintiff now moves for an Order granting Class Counsel's combined attorneys' fee and expenses in the amount of \$216,666.67 in attorneys' fees, \$4,321.37 in expenses, and Plaintiff's Service Award of \$2,500.

## **LAW AND DISCUSSION**

### **I. The Court should award Class Counsel attorneys' fees from the Settlement Fund in the amount of one-third of the value of the settlement.**

Courts in the Eighth Circuit commonly award attorneys' fees of one-third of the total value of a settlement. *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming one-third fee); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (same); *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-cv-4321, 2015 WL 3460346, at \*4 (W.D. Mo. June 1, 2015) (awarding one-third fee and collecting cases awarding one-third fees). Under Rule 23(h) and "the 'common fund' doctrine, Class Counsel is entitled to an award of reasonable attorneys' fees from the settlement proceeds" in a class action. *Tussey v. ABB, Inc.*, No. 06-cv-040305, 2019 WL 3859763, at \*2 (W. D. Mo. Aug. 16, 2019) (citing Fed. R. Civ. P. 23(h); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (holding that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole")). The common fund doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense." *Boeing*, 444 U.S. at 478.

"In the Eighth Circuit, use of the percentage of the fund method when awarding attorneys' fees in a common fund case is not only approved, but also 'well-established.'" *In re NuvaRing Prod. Liab. Litig.*, No. 4:08-md-1964, 2014 WL 7271959, \*2 (E.D. Mo. Dec. 18, 2014). Indeed,

in common fund cases, the percentage of the benefit approach is “recommended.” *Tussey*, 2019 WL 3859763, at \*2; *see also Johnston*, 83 F.3d at 246 (approving percentage method of awarding fees); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir 1999) (same); *In re U.S. Bancorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (same). The value of the settlement for purposes of determining the fee is the value that is made available to class members. *See Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480 (1980) (“Their right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.”)).

Here, the Court should award Class Counsel attorneys’ fees in the amount of \$216,666.67, or one-third of the total settlement fund (\$650,000.00), which is the fee amount the Settlement Agreement contemplates. Settlement Agreement, ¶ 99. Moreover, when considering the value of Defendant’s business practice changes, Class Counsel’s fee request is only 24.1% of the total value of the Settlement. Stranch Decl. ¶ 17. Not only is this amount common in the Eighth Circuit, but it meets the fee-evaluation factors assessed by the Eighth Circuit in determining a reasonable fee. *See Caligiuri*, 855 F.3d at 866. Specifically, in *Caligiuri*, the Eighth Circuit held that it was appropriate in evaluating the fee to look at various factors, including: (1) the benefit conferred on the class; (2) the risk to which plaintiffs’ counsel was exposed (i.e., whether their fee was fixed or contingent); (3) the difficulty and novelty of the legal and factual issues of the case; (4) the skill of the lawyers, both plaintiffs’ and defendants’; (5) the reaction of the class; and (6) the comparison between the requested attorney fee percentage and percentages awarded in similar cases. *Caligiuri*, 855 F.3d at 866.

First, the benefit conferred by the Settlement is substantial and valued at over \$650,000. Class Members are eligible to receive documented monetary losses at \$5,000 per Member, as well

as three years of credit monitoring services and additional cash payments. Defendants have also agreed to implement security enhancement protocols to guarantee that Plaintiff's and Class Members' Private Information will be better safeguarded in the future.

Second, the risks of litigation for Class Counsel were high. Class Counsel took this case on a purely contingent basis. Stranch Decl. ¶ 2. As such, they assumed significant risk of nonpayment or underpayment. This risk of non-payment was quite real, as evidenced by the motion to dismiss filed by Defendants. Class Counsel took on these risks knowing full well their efforts may not bear fruit. Fees were not guaranteed—the retainer agreements Counsel have with Plaintiff does not provide for fees apart from those earned on a contingent basis, and in the case of class settlement, approved by the Court. *Id.* Class Counsel labored and advanced their own funds to prosecute the case all at the risk of never being paid for their work or reimbursed for their expenses. Class Counsel devoted their time and energy to this matter, instead of pursuing other income, all at the risk of never getting paid, and at best, being paid at some point potentially many years down the road. Had Defendants prevailed on the merits, on class certification, or on appeal, Class Counsel might have recovered nothing for the time and expense they invested in representing the Class. “Unquestionably, with high-risk and high-cost cases such as this, contingency fee arrangements are the key to the courthouse for individuals taking on a large corporation.” *Tussey*, 2019 WL 3859763, at \*4. This factor supports granting the requested fee. *Caligiuri*, 855 F.3d at 866; *see, e.g., Huyer*, 849 F.3d at 399 (approving requested fees of 33% of the settlement fund where all attorneys worked on a contingent basis).

Third, this case involved complexities of data breach that are novel and evolving. Counsel Decl. ¶ 5. Although Plaintiff is confident that the claims here would prevail, Plaintiff faces several strong legal defenses and difficulties in demonstrating causation and injury. Such defenses, if



successful, could drastically decrease or eliminate any recovery for Plaintiff and the putative class members. The general risks of litigation are further heightened in the data breach arena. Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles—even just to make it past the pleading stage. Class certification is another hurdle that would have to be met. Stranch Decl. ¶ 5.

Fourth, the complexity of the case is further shown by the skill of the lawyers involved on both sides of the case. Class Counsel have national class action practices involving many years of complex litigation, but particularly data breach cases of this very type. Stranch Decl. ¶ 4 & Ex. 1 (Firm Resume). Class Counsel has been recognized by courts across the country for their skill. *Id.* On the other side of the case, Defendants are represented by a global data privacy and security law firm dedicated exclusively to representing clients facing information security incidents and are formidable opponents.

Fifth, the requested fee is commensurate with the amount that Class Counsel has been awarded in similar data breach litigation and in class action litigation in general in courts across the country. Counsel Decl. ¶ 18. The fee requested here falls well within, or below, the 25% to 36% of common fund fees regularly approved by the Eighth Circuit Courts. *Del Torto v. Centene Mgmt. Co., LLC*, No. 4:19-cv-02635-JAR, 2021 WL 1784368, at \*3 (E.D. Mo. May 5, 2021) (noting that the 35% fee sought by Plaintiffs’ counsel approved as “in line with other awards in the Eighth Circuit”); *Tussey*, 2019 WL 3859763, at \*4 (explaining that the 33% fee awarded where there was no objection to the fee request by the Class).

Thus, all these factors support the Court’s discretion in approving the requested attorneys’ fee amount of one-third of the value of the settlement, which is an amount routinely awarded in

the Eighth Circuit. *See id.*; *Barfield*, 2015 WL 3460346, at \*4 (collecting cases awarding one-third fees).

**II. The Court should award Class Counsel reimbursement from the Settlement Fund of expenses incurred in litigating this case to settlement.**

The Court should likewise award Class Counsel reimbursement of the expenses they advanced in litigation in this case, which are reasonable. In addition to fees, “[a]n attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved.” *Tussey*, 2019 WL 3859763, at \*5 quoting *Alba Conte*, 1 Attorney Fee Awards § 2:19 (3d ed.); *see also Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court’s equity power to award costs from a common fund)). “Counsel in common fund cases may recover those expenses that would normally be charged to a fee-paying client.” *Tussey*, 2019 WL 3859763, at \*5. “Reimbursable expenses include many litigation expenses beyond those narrowly defined ‘costs’ recoverable from an opposing party under Rule 54(d) and includes: expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research.” *Id.* (collecting cases).

Here, Class Counsel has advanced \$4,321.37 in expenses for necessary litigation expenses such as filing fees and the costs of mediation. Stranch Decl. ¶ 8. As repayment of these expenses was contingent on judgment or settlement, Class Counsel’s incentive was to incur only those expenses necessary to resolve the case. *See Tulley*, 2019 WL 3859763, at \*5 (noting in general, courts approve requested expense reimbursements because class counsel bring the case on contingent basis, “so they had a strong incentive to keep costs to a reasonable level.”). Defendants agreed not to object to a request for up to \$10,000 in litigation expenses as contemplated in the Settlement Agreement. Ex. A, ¶ 99. Because the requested expenses in the amount of \$4,321.37 are reasonable, less than half the maximum expenses Class Counsel is able to request without

opposition from Defendants, and so the Court should award Class Counsel reimbursement from the Settlement Fund of these expenses incurred in litigating this case to settlement.

**III. The Court should award the Class Representative a Service Award from the Settlement Fund of \$2,500.**

Apart from Class Counsel, “[a]t the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class.” 5 *Newberg on Class Actions* § 17:1 (5th ed. 2015). “Courts often grant service awards to named plaintiffs in class action suits to ‘promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.’” *Caligiuri*, 855 F.3d at 867 (quoting *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1086 (D. Minn. 2010)). Otherwise, most people could not afford to spend the time and effort to pursue what would provide only a modest individual recovery for the effort involved but would also benefit thousands of other people who do not have time to expend any time or resources. *See id.* Relevant considerations in determining whether to grant an incentive award include actions plaintiffs took to protect the interest of the class; the degree to which the class has benefitted from those actions; and the amount of time and effort plaintiffs expended in pursuing the litigation. *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002).

Here, the Court should grant the Class Representative a service award of \$2,500 in recognition of his time and effort spent and the results he obtained on behalf of the absent Class Members who will receive compensation without ever having to do anything. The Class Representative regularly consulted with Class Counsel, provided documents and information, reviewed pleadings, and participated in the settlement process. Stranch Decl. ¶ 10. Without the Class Representative’s efforts, the more than \$650,000 in settlement value and benefits for the Class would never have been achieved. Now that the case has achieved a significant recovery the Class Representative should be rewarded for having obtained this benefit for thousands of other

Class Members. The Court is well within its discretion to award the requested \$2,500 service award, which is less than the amount “regularly” awarded in the Eighth Circuit. *Caligiuri*, 855 F.3d at 867 (explaining that “courts in this circuit regularly grant service awards of \$10,000 or greater”).

## CONCLUSION

Upon granting final approval to the Settlement, the Court should enter an order awarding from the Settlement Fund the payments of: (1) attorneys’ fees to Class Counsel in the amount of \$216,666.67; (2) unreimbursed litigation expenses to Class Counsel of \$4,321.37, and (3) a Service Award of \$2,500 to Plaintiff Kevin Weber, the Class Representative.

Dated: April 28, 2025

Respectfully submitted,

/s/ John F. Garvey

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's CM/ECF electronic filing system this 28th day of April 2025.

/s/ John F. Garvey  
John F. Garvey