**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT**
**DUPAGE COUNTY, ILLINOIS**

| TERRELL CLINE and EDWARD JEPSON, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>INLINE NETWORK INTEGRATION, LLC,<br><br>Defendant. | Case No. 2023LA000402 |
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Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD**

In this putative class action, Plaintiffs Terrell Cline, Edward Jepson ("Plaintiffs") and together with Kyle Compton[1] ("Representative Plaintiffs") allege that Defendant Inline Network Integration, LLC ("Defendant" or "Inline" and together with Representative Plaintiffs the "Parties") failed to properly secure and safeguard the Private Information of Representative Plaintiffs and Settlement Class Members.

After months of hard-fought, arm's-length negotiations, including an all day mediation on April 13, 2023, the Plaintiffs and Defendant reached a proposed settlement. The Settlement, preliminarily approved on September 7, 2023, includes robust non-monetary relief and allows Settlement Class Members to claim two years of credit monitoring and identity theft protection, and up to $5,000 in unreimbursed losses and lost time, providing Settlement Class Members with meaningful compensation, which meets and exceeds the applicable standards of fairness. Defendant has also agreed to implement certain data security measures, the costs of which shall be paid by Defendant separate and apart from other settlement benefits.

Representative Plaintiffs and Class Counsel respectfully request that the Court approve a Service Award of $2,500 to each Representative Plaintiff, and attorneys' fees and costs of $250,000 to Class Counsel. As detailed below, the requested awards are appropriate under governing Illinois law, consistent with the amounts awarded in prior similar settlements, and fairly compensate Class Counsel and Representative Plaintiffs for the work they performed and commendable result they achieved in this high-risk litigation.

[1] Mr. Compton was the named plaintiff in an action style *Compton v. Heritage Life Insurance Company,* Case No. 1:23-cv-03827 (N.D. Ill.), arising from the same Data Security Incident. The Parties agreed that Mr. Compton and his claims would be included in the Settlement and this Court approved him as a Class Representative along with Plaintiffs in the September 7, 2023 order granting preliminary approval to the Settlement.

## FACTUAL AND PROCEDURAL BACKGROUND

On August 8, 2022 Plaintiffs Terrell Cline and Edward Jepsen Filed a class action in the United States District Court for the Northern District of Texas, Dallas Division, alleging that Defendant failed to properly secure and safeguard the Private Information of Plaintiffs and Settlement Class Members.[2] On April 19, 2023 Plaintiffs Cline and Jepson voluntarily dismissed that action and refiled the substantially similar above-captioned case in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

Prior to the voluntary dismissal, Inline filed, and Plaintiffs Cline and Jepson responded to, a motion to dismiss (which was not yet decided at the time of dismissal). And the Parties began discovery, with Plaintiffs issuing written discovery requests, Inline responding to those requests, and Inline producing documents. However, before engaging in additional fact and expert discovery, Plaintiffs and Defendant agreed to explore resolution. On April 13, 2023 the Parties engaged in a full-day mediation with Mr. Bruce A. Friedman of JAMS. There, the Parties agreed to the material terms of a Settlement, desiring to resolve any claims related to the Data Security Incident rather than continue litigating the matter. If approved, the Settlement will bring, certainty, closure, and significant relief to Settlement Class Members. Absent approval of the Settlement, the Parties face extended and costly litigation, and there is a substantial risk that Class Members would ultimately receive no relied whatsoever. *See* Declaration of Gary M. Klinger in Support of Plaintiffs' Motion for Preliminary Approval ("Klinger MPA Decl.") at ¶ 37.

On or about August 18, 2023, the Parties finalized and executed the Settlement. Plaintiffs moved thereafter for preliminary approval of the Settlement, which this Court granted on

[2] Unless otherwise noted, all capitalized terms have the definition given to them in the Class Action Settlement Agreement (the "Agreement") attached to Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

September 7, 2023. Plaintiffs now submit their Motion for Attorneys' Fees, Costs, and Service Awards, which they respectfully request to be heard at the final approval hearing, scheduled to take place on December 13, 2023.

## SUMMARY OF THE SETTLEMENT

The Settlement is comprised of a monetary component and a non-monetary component. The monetary component of the Settlement allows all Settlement Class Members the opportunity submit claims for unreimbursed losses, up to a total of $5,000 per Settlement Class Member, for expenses incurred as a result of the Data Security Incident. ¶ 3.1.[3] Settlement Class Members are also eligible to receive compensation for up to three hours of lost time spent dealing with the effects of the Data Security Incident (up to a total of $60 per Settlement Class Member). ¶ 3.1(a). Finally, all Settlement Class Members are eligible to receive two years of single-bureau identity protection and credit monitoring services with $1 million in insurance. ¶ 3.3.

Defendant has also implemented or agreed to implement certain data security measures. Due to the confidential nature of the new security measure, they are not disclosed here. The costs associated with these measures (aka injunctive relief) shall be paid by Defendant separate and apart from other settlement benefits.

## ARGUMENT

### I. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

"Illinois follows the 'American Rule,' which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs." *McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 405 (4th Dist. 2008) (quoting *Negro Nest, L.L.C. v. Mid-Northern Mgmt., Inc.*, 362 Ill. App. 3d 640, 641 – 2 (4th Dist. 2005)) (quotations omitted). "If a

[3] Unless otherwise noted, all "¶" citations are to the Class Action Settlement Agreement.

statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees 'so long as they are reasonable.'" *Id.* (citing and quoting *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 405 (1st Dist. 2007)). Here, the Parties have entered into a contractual agreement – the Settlement Agreement – expressly stating that Defendant will not object to an award of attorney fees, costs, and expenses up to $250,000.[4] ¶ 8.2. The Parties did not discuss attorneys' fees until after they had agreed on the benefits for the Settlement Class.

In the instant matter, Defendant has agreed to pay up to $750,000 for monetary relief to the class, credit monitoring for the class, attorneys' fees, costs, and expenses, and the costs of Settlement Administration, combined with the amounts which Defendant will pay to fund the

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[4] *See* William B. Rubenstein, 5 NEWBERG ON CLASS ACTIONS § 15:12 (5th ed. 2019) (parties to suit may have private agreements concerning fees which may include agreement between class counsel and defendant whereby defendant agrees to pay a certain fee requested by class counsel); *see also Evans v. Jeff D.*, 475 U.S. 717, 738 n.30 (1986) (parties may simultaneously negotiate a "defendant's liability on the merits and his liability for his opponents' attorney's fees"); *In re Nutella Mktg. & Sales Practices Litig.*, 589 F. App'x 53, 60 (3d Cir. 2014) (awarding $500,000 in fees for injunctive class settlement where defendant agreed to change its misleading labels); *Wing v. Asacro Inc.*, 114 F.3d 986, 988 (9th Cir. 1997) ("At the outset, we note that the fee dispute in this case arises [not from a statute or common fund, but] out of a contract: in the Settlement Agreement, Asacro agreed to pay the reasonable attorney fees and expenses as determined and awarded by the court."); *Weinberger v. Great Northern Nekoosa Corp.*, 925 F.2d 518, 523 (1st Cir. 1991) (holding that when parties to class actions have reached a "clear sailing" fee-shifting agreement as part of settlement, trial court may determine and award reasonable fees "even where no fee-shifting statute of common law exception thrives"); *Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750 (C.D. Cal. Oct. 10, 2010) ("A settlement agreement is a binding contract" and "contractual provisions providing for the payment of attorneys' fees . . . provide a basis for awarding fees."); *In re TJX Cos. Retail Secs. Breach Litig.*, 584 F. Supp. 2d 395, 399 (D. Mass. 2008) (noting that basis for awarding fees was "part of the Agreement, [in which Defendant] agreed to pay court-approved attorneys' fees not to exceed $6,500,000"); *Deloach v. Philip Morris Cos.*, 2003 WL 2304907, at *4 n.2 (M.D.N.C. Dec. 19, 2003) ("the present petition [for attorney fees] was brought pursuant to a private [settlement] agreement among the parties") (citation omitted); *Neel v. Strong*, 114 S.W.3d 272, 273 (Mo. Ct. App. 2003) ("As part of the settlement, the Attorney General and the tobacco companies agreed that the tobacco companies would pay the fees of the outside counsel.").

enhanced data security practices implemented brings the total settlement value to well over $750,000.

**A. The Court Should Apply The Percentage-of-the-Benefit Method In This Case**

"When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 244 (1995). "The decision to award fees based on the lodestar or percentage method is a matter within the sound discretion of the trial court, considering the particular facts and circumstances of each case." *Id.* However, the Court is not required to perform a lodestar cross-check on Class Counsel's fees. *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 24 (rejecting an objector's argument that failure to perform lodestar cross-check rendered class counsel's fee unreasonable and awarding class counsel fees totaling 35% of the common fund, or $15,7000,00); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.,* 2016 IL App (2d) 150236, ¶ 58, 52 N.E.3d 427, 441 (citing *Brundidge,* 168 Ill.2d at 246) (rejecting an objector's argument that the trial court was required to perform a lodestar cross-check on class counsel's fees and awarding class counsel fees totaling 33% of the common fund, or $7,600,000); *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *18 (N.D. Cal. Apr. 17, 2020) ("Generally, a district court is 'not required' to conduct a lodestar cross-check to assess the reasonableness of a fee award."). Indeed, the "[p]ercentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources." *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924–25 (1st Dist. 1995). "Accordingly, most federal circuits…have abandoned the lodestar in favor of a percentage fee in common fund cases." *Id.*

In "choosing between the percentage and lodestar approaches," courts "look to the calculation method most commonly used in the marketplace at the time such a negotiation would

have occurred." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500-01 (N.D. Ill. 2015) (citing *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998)); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 814-15 (E.D. Wis. 2009). In class action litigation, where "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery," *Kolinek*, 311 F.R.D. at 500-01, state and federal courts in Illinois and throughout the country are in near unanimous agreement that "the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case." *McCormick*, 2022 IL App (1st) 201197-U, ¶ 26; *see also Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 2006) ("When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the 'market rate.'"); *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citation omitted); *In re Continental Illinois Securities Litig*., 962 F.2d 566, 572 (7th Cir. 1992) (market for legal services paid on a contingency basis shows the proper percentage to apply in a class action that creates a common fund for the benefit of the class)); *Williams v. Gen. Elec. Capital Auto Lease*, 94 C 7410, 1995 WL 765266, *9 (N.D. Ill. Dec. 26, 1995) (noting that "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class"); *see also, e.g., Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (explaining that where "a class suit produces a fund for the class," as is the case here, "it is commonplace to award the lawyers for the class a percentage of the fund," and affirming fee award of 38% of $20 million recovery to class) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)); *Sutton v. Bernard*, 504 F.3d 688, 693 (7th Cir. 2007) (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered); *In re Capital One Tel.*

*Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D. Ill. 2015) ("[T]he court agrees with Class Counsel that the fee award . . . should be calculated as a percentage of the money recovered for the class.").

The value of injunctive relief should also be included in this calculation. *See, e.g.*, *Meyenburg v. Exxon Mobil Corp.*, Case No. 3:05-cv-15-DGW, 2006 WL 5062697, at *8 (S.D. Ill. June 5, 2006) (considering value of injunctive relief and finding that "business practices relief inures a benefit to all class members" such that its value should be considered in the calculation of the total settlement value); *Meyenburg*, 2006 WL 2191422 at *2 (granting motion for attorneys' fees based on percentage of the total benefits conferred on the class, including cash, coupons, and equitable relief); *see also Principles of the Law of Aggregate Litigation, § 3.13(b) (American Law Institute, 2010)* ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and the nonmonetary value of the judgment or settlement."); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991) (instructing that courts should consider, among other factors, "any non-monetary benefits conferred upon the class by the settlement" in determining reasonable attorneys' fees to be paid from common fund recovery); *Ferron v. Kraft Heinz Foods Co.,* Case No. 20-cv-62136-RAR, 2021 WL 2940240, at *19 (S.D. Fla. July 13, 2021) (In determining the value of the settlement fund, courts consider the value of any nonmonetary relief in addition to the monetary relief); *Lee v. Ocwen Loan Servicing, LLC*, Case No. 14-cv-60649-Goodman, 2015 WL 5449813, at *17 (S.D. Fla. Sept. 14, 2015) (considering value of injunctive relief when approving class counsel's fee request, even though no specific dollar amount was attributed to injunctive change and noting "courts consider the value of injunctive relief and monetary relief together in assessing whether a class action settlement provides sufficient relief to the class."); *Miller v.*

*Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015) ("courts consider both the monetary and nonmonetary benefits that the settlement confers"); *In re Netflix Privacy Litig.*, Case No. 5:11-cv-00379-EJD, 2013 WL 1120801, at *7 (N.D. Cal. Mar. 18, 2013) (settlement value "includes the size of the cash distribution, the *cy pres* method of distribution, and the injunctive relief").

This Court should likewise apply the percentage-of-the-benefit method, taking into account the valuable injunctive relief obtained for the Class. The percentage-of-the-benefit method best replicates the *ex ante* market value of the services that Class Counsel provided to the Settlement Class. It is not just the typical method used in contingency-fee cases generally, *see Gaskill*, 160 F.3d at 363, but it is also the means by which an informed Settlement Class and Class Counsel would have established counsel's fee *ex ante*, at the outset of the litigation. *See Kolinek*, 311 F.R.D. at 500-01 ("[T]he normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery"). The percentage-of-the-benefit method also better aligns Class Counsel's interests with those of the Settlement Class because it bases the fee on the results the lawyers achieve for their clients rather than on the number of motions they file, documents they review, or hours they work, and it avoids some of the problems the lodestar-times-multiplier method can foster (such as encouraging counsel to delay resolution of the case when an early resolution may be in their clients' best interests). *Brundidge*, 168 Ill.2d at 242; *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *In re Synthroid Mktg. Litig.*, 264 F.3d 712 at 720-21 (7th Cir. 2001).[5] And it is also simpler to apply. *Id.*; *see also, e.g., Kolinek*, 311 F.R.D. at 501 (percentage of the ultimate recovery method appropriate for awarding fees in

[5] In this case for example, a lodestar approach would have created a perverse incentive for Class Counsel to reject or delay entering into early settlement discussions, merely to bill more hours through more unnecessary, wasteful, and inefficient litigation.

TCPA class action "because fee arrangements based on the lodestar method require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis, something a class of nine million lightly-injured plaintiffs likely would not be interested in doing"). Accordingly, the Court should apply the percentage-of-the-benefit method in evaluating attorneys' fees in this Settlement.

### B. The Requested Attorneys' Fees, Costs, And Expenses Are Reasonable As A Percentage Of The Class Benefit

In class action settlements, courts typically award attorneys' fees based on a percentage of the total settlement, which includes any litigation expenses incurred. *Brundidge*, 168 Ill. at 238. "[T]he percentage of the fund method…reflects the results achieved." *Id.* at 244; *see Taubenfeld v. AON Corp.,* 415 F.3d 597, 600 (7th Cir. 2005) (approving fees of 33% of total settlement, noting "thirteen cases in the Northern District of Illinois where counsel was awarded fees amounting to 30-39% of the settlement fund").

Here, Inline has agreed to pay up to $750,000 to cover the costs of Notice, Settlement Administration, Attorneys Fees and Costs, Service Awards to Class Representative, payments to Settlement Class Members who submit Valid Claims under the Settlement Agreement and the cost of Credit Monitoring. This is all in addition to the amounts paid by Defendant for Injunctive Relief, which will be paid separate and apart from this amount. An award to Class Counsel of 33% of the monetary value of the Settlement, without taking into account the value of the injunctive relief. is well within the range of fees typically awarded to class counsel by Illinois courts in comparable class action settlements.[6] *See, e.g., Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, U.S. Dist.

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[6] Although typically awarded in addition to the requested fee award, in this case Class Counsel do not seek reimbursement of these expenses on top of the requested Fee Award. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12-cv-5134, U.S. Dist. LEXIS 83936, at *12 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Spicer v.*

LEXIS 20397, at *10 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) (same); *Meyenburg v. Exxon Mobil Corp.*, U.S. Dist. LEXIS 52962, at *5 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); *see also, e.g., Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding an attorneys' fees award of one-third of a reversionary fund recovered in light of the "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted").

### ***1. The Total Value Of The Settlement Is Over $750,000***

To calculate attorneys' fees based on the percentage of the benefit, the Court must first determine the value of the Settlement. In doing so, the Court must include the value of the benefits conferred to the Class, including any attorneys' fee, expenses, service award and notice and claims administration payments to be made. *See*, *e.g.*, *Brundidge*, 168 Ill.2d at 238. Thus, the Court should consider the *entire benefit* conferred by the Settlement, including the benefit fund, injunctive relief, agreed on attorneys' fees, costs, and expenses, cost of notice and claims administration, and the Plaintiffs' Service Award, amounting to a total settlement value of over $750,000 in this Litigation.

### ***2. The Requested 33% Of The Settlement Value Is Reasonable***

Here, the requested $250,000 fee, inclusive of costs and expenses, is less than 33% of the total settlement value generated on behalf of the Settlement Class, which falls within the range

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*Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation).

awarded in class actions by courts throughout the country. Courts have recognized that fee awards as high as 50% of the gross settlement fund are reasonable. *See* NEWBERG ON CLASS ACTIONS, *supra*, §15:83 (5th ed. Dec. 2016 update) ("Usually, 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, . . . though somewhat larger percentages are not unprecedented."); *Wells v. Allstate Ins. Co.,* 557 F. Supp. 3d 1, 7-8 (D.D.C 2008) (noting that fee awards may range up to 45%, and approving fee request of 45% of the total gross recovery); *In re Ampicillin Antitrust Litig.,* 526 F. Supp. 494, 499 (D.D.C. 1981) (awarding 45% of $7.3 million gross settlement fund as attorneys' fees); *see also Martin v. AmeriPride Servs, Inc.,* 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) ("Other case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in cases in which the common fund is relatively small."). The requested fee of less than 33% of the total value of the Settlement is reasonable in light of the substantial monetary relief obtained by Class Counsel here – despite significant risk – and should be awarded.

"When assessing the reasonableness of fees, a trial court may consider a variety of factors, including the nature of the case, the case's novelty and difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged." *McNiff,* 384 Ill. App. 3d at 407 (quoting *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314 – 5 (1st Dist. 2007)) (quotations omitted). Here, each of these factors shows the requested fee is reasonable.

*a)* *Plaintiffs' Claims Carried Substantial Litigation Risk*

This case presented substantial litigation risk. Nonetheless, despite knowing the risks, Class Counsel took on the case, worked on the case, and even undertook a significant financial risk, with no upfront payment, and no guarantee of payment absent a successful outcome. In addition to attorney time spent on the case, Class Counsel also advanced all litigation costs, again

with no guarantee of repayment. *See* Declaration of Gary M. Klinger in Support of Plaintiffs' Motion for Attorneys' Fees Costs, Expenses, and Service Award attached hereto as **Exhibit 1** ("Klinger Decl.") ¶¶ 7-9. If the case had advanced through class certification, these expenses would have increased many-fold, and Class Counsel would need to advance these expenses potentially for several years to litigate this action through judgment and appeals.

Had the Parties not reached the Settlement, Inline certainly would have renewed its motion to dismiss and later contested class certification, and Representative Plaintiffs and Settlement Class Members would have faced serious risks. Inline certainly would launch a number of potentially case dispositive defenses, and, had the Court agreed with any of their positions, Class members would not have recovered *at all*. Further, Inline would have engaged in extensive and protracted discovery. Despite these risks, the Settlement Agreement provides every Settlement Class Member with the opportunity to be made whole for losses they have already suffered and the opportunity to be insured against potential future fraud. This is an excellent result, particularly in comparison with other approved settlements. *See, e.g., Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty., Ill. June 25, 2018) (settlement resulted in each class member being eligible to enroll in credit and identity monitoring services free of charge without further monetary relief.). *See also, e.g.*, *Marshall v. Lifetime Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cnty, Ill. 2019) (paying claimants $270 each in addition to credit monitoring); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cnty., Ill. 2020) (paying claimants approximately $260 each); *Miracle-Pond v. Shutterfly*, 2019-CH-07050 (Cir. Ct. Cook Cnty. Sept. 9, 2021) ($6.75 million fund for potentially millions of class members).

*b)* *The Skill And Standing Of The Attorneys Supports The Requested Fee*

The attorneys handling this case are in good standing in their respective jurisdictions. Class

Counsel is well-respected with significant experience litigating similar class action cases in federal and state courts across the country, including other data privacy cases, and has been recognized by courts across the country. Klinger MPA Dec. ¶¶ 3-25.

Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Here, Inline was represented by a prominent and well-respected law firm. Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel. *See Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement").

#### *c) The Settlement Was The Result Of Arms'-Length Negotiations Between The Parties After A Significant Exchange Of Information*

This action required considerable skill and experience to bring it to such a successful conclusion. The work required included the investigation of factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. Class Counsel also undertook the large responsibility of funding this case, without any assurance that they would recover those costs. Class Counsel not only took on the obligation to act on behalf of Plaintiffs, but also the entire Settlement Class.

Class Counsel worked with defense to gather critical information, including the size of the putative class, and approximate time-period of the Data Incident. Through the undertaking of a thorough investigation, informal discovery, and substantial arm's-length negotiations, Class Counsel obtained a settlement that provides a real and significant monetary benefit to the Class. Importantly, they did not negotiate an attorneys' fee and expense payment until *after* the parties agreed upon the benefits that would be available to the Settlement Class. Since that time, Class

Counsel has drafted and negotiated the Settlement Agreement and related notice documents, moved for and obtained preliminary approval, and diligently monitored the successful notice program and claims administration process.

Inline is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case and oppose class certification. Even assuming a class was certified and summary judgment defeated, the case would then have moved on to pretrial briefing, a pretrial conference, and then a jury trial, which would have been costly, time-consuming, and very risky for Class Members and for counsel. Class Counsel undertook this representation understanding that the risk of losing on class certification, or summary judgment, or at trial were significant. But for this settlement, this case would face a significant risk of dismissal or substantial delay.

*d)* *<u>The Usual And Customary Charges For Similar Work</u>*

When Class Counsel undertake major litigation such as this, it necessarily limits their ability to undertake other complex litigation cases. During the course of this litigation, Class Counsel devoted significant time and resources to succeed in this case. To date, Class Counsel has incurred out-of-pocket costs and necessary and reasonable expenses to bring this case to a successful conclusion, and they reflect market rates for various categories of expenses incurred. Klinger Decl. ¶ 8. Class Counsel had to make this commitment at the outset of this case without knowing how long the case would take to resolve, if ever. Therefore, Class Counsel's willingness to prosecute this action on a contingent fee basis and to advance costs diverted the time and resources expended on this action from other cases. *See id.* ¶ 7. Further, as detailed above, the requested fees, costs, and expenses of 33% of the settlement fund is well within the market range.

## II. THE REQUESTED SERVICE AWARD IS REASONABLE AND SHOULD BE APPROVED

An incentive award of $2,500.00 for each Representative Plaintiff ($7,500 total) is appropriate here. "In some cases, the amount requested as an incentive award, given the court's knowledge about the advanced stage of the case or other procedural facts, will be so obviously reasonable that only minimal scrutiny will be required for approval, at least in the absence of any objection from class member." 299 F.R.D. 160 at NACA Guideline 5. Defendant has agreed not to object to a $2,500 service award. ¶ 8.1. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See* 299 F.R.D. 160, NACA Guideline 5 (West 2014) ("Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest."); *see also Cookt,* 142 F.3d 1004 (value of settlement was $14 million; incentive award to class representative of $25,000); *see also In re Remeron End-Payor Antitrust Litig*., No. Civ. 02-2007 FSH, 2005 WL 2230314 (D.N.J. Sept. 13, 2005) (value of settlement was $36 million; incentive payments totaling $75,000 for six named plaintiffs). "Many cases note the public policy reasons for encouraging individuals with small personal stakes to serve as class plaintiffs in meritorious cases." 299 F.R.D. 160, Guideline 5 Discussion (citing cases).

This case is no different. Representative Plaintiffs' participation has been instrumental in the prosecution and ultimate settlement of this action. Here, Representative Plaintiffs spent substantial time on this action, including by: (i) assisting with the investigation of this action and the drafting of their respective complaints, (ii) being in contact with counsel frequently, (iii) and staying informed of the status of the action, including settlement. *See* Klinger Decl. ¶¶ 11-12,

## CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court approve an incentive award of $2,500 to each Representative Plaintiffs and approve an award of attorneys' fees, costs, and expenses in the amount of $250,000 to Class Counsel. The requested awards would both adequately reward and reasonably compensate Class Counsel and Representative Plaintiffs for assuming the significant risks that this case presented at the outset and nonetheless expending a substantial amount of time and other resources investigating, litigating, and negotiating a resolution to the case for the benefit of the Settlement Class.

Dated: November 21, 2023

Respectfully submitted,

/s/ *Gary M. Klinger*
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