

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TIFFANY ROPER and HEIDI  
EMMERLING, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

RISE INTERACTIVE MEDIA &  
ANALYTICS, LLC,

Defendant.

Case No. 1:23-cv-1836

Judge: Hon. Lindsay Jenkins

**PLAINTIFF’S UNOPPOSED MOTION FOR  
ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS**

**I. INTRODUCTION**

Plaintiffs Tiffany Roper and Heidi Emmerling (“Plaintiffs”) through their undersigned counsel, respectfully move this Court for entry of an Order approving: (1) Class Counsel’s requested attorneys’ fees award of \$131,612.83 which is 33.33 percent of the Settlement Fund after claims administration costs, expenses in the amount of \$10,092.47, and service awards to each Plaintiff of \$5,000. (or \$10,000 total)<sup>1</sup>

This data breach class action arises out of the alleged negligence by Rise Interactive & Media Analytics, LLC (“Rise” or “Defendant”) in failing to safeguard and protect individuals’ Sensitive Personal Information (“SPI”) from unauthorized access and disclosure. As a result, Rise experienced a security incident whereby unauthorized third parties may have accessed, via

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<sup>1</sup> Unless otherwise indicated, the defined terms herein shall have the same definition as set forth in the Class Settlement Agreement and Release dated October 16, 2024 (the “Settlement Agreement” or “SA”), filed on October 18, 2024. ECF No. 51-1.

it's website, certain SPI for individuals who were customers of RGH Enterprises, Inc. d/b/a Edgepark Medical Supplies ("Edgepark"), on or around November 14, 2022 (the "Data Incident"). *See* Class Settlement Agreement and Release (hereinafter, "SA"), §1 (ECF No. 51-1). Plaintiffs allege that the unauthorized third parties exfiltrated SPI which included patients' names, email addresses, phone numbers, provider information, diagnoses, expected delivery dates and health insurance information. *See* Third Amended Class Action Complaint ("3AC"), ECF No. 39, at ¶3.

Following a day-long mediation session on July 22, 2024 before mediator Bruce Friedman, Esq. the Parties reached a resolution that—if accepted—resolves the litigation and provides substantive relief to the approximately 54,509 Settlement Class Members ("Class Members"). *See* Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 51 ("Mem.") at pp. 3-4.

The Settlement is an excellent resolution of this high-risk, complex litigation and provides substantial monetary benefit to Class Members: all Class Members who make a claim will receive a monetary award estimated at a minimum of \$50, with additional amounts being available for reimbursement of out-of-pocket expenses up to \$250. SA at §2.

Through Class Counsel's efforts, a Settlement Fund of \$427,500 has been created which shall pay for: (1) all payments of valid claims from Class Members and all award payments; (2) the costs of claims administration, estimated to be \$32,622.00<sup>2</sup>, (3) attorneys' fees and costs to be

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<sup>2</sup> In Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 51 at p. 6), Plaintiffs noted that the claims administration costs would be capped at \$26,648.00. However, since that time, the Parties discovered a miscommunication during the mediation process regarding the availability of email addresses for much of the class. Ultimately, after a public e-mail search, postcard notice was still required for approximately 19% of the class, increasing the total claims administration cost to \$38,596.00. Plaintiffs and Defendant agreed to equally split the additional cost of claims administration, with Plaintiffs' additional portion coming from the settlement fund.

determined by the Court; and (4) a Class Representative service award (the “Settlement”). SA at §§2, 7. All Class Members who make a claim will receive a Residual Share of the Settlement Fund estimated at \$50.00, but subject to *pro rata* increase or decrease based on the number of claims. SA at §§2.2, 2.3, 2.6. In addition, Class Members who make a claim for valid out-of-pocket losses tied to the Data Incident may be reimbursed from the Settlement Fund for up to \$250.00. SA at 2.4. If any funds remain in the Settlement Fund after distribution to Class Members, the balance will be distributed to a *cy pres* recipient to be selected by the Parties and approved by the Court. SA at §2.6.

For their efforts in achieving these results, Class Counsel seek an award of \$131,612.83 in attorneys’ fees, which is 33.33 percent of the total Settlement Fund after administration expenses, which will be \$394,878.00. Class Counsel also seek expenses of \$10,092.47<sup>3</sup>. Additionally, Class Counsel also seek a service award of \$5,000 for each Representative Plaintiff in recognition of the time and effort they incurred and the risks they undertook in pursuing claims that benefited the Settlement Class. *See* SA, §7.

As discussed below, the fee request is reasonable when considered under the applicable Seventh Circuit standards, and is well within the normal range of awards in contingent-fee class actions in this Circuit. Moreover, the requested \$5,000 per class representative service award for the Representative Plaintiff is reasonable, as well as standard, for this type of action, and should be approved.

## II. FACTUAL AND PROCEDURAL HISTORY

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<sup>3</sup> Class Counsel’s expenses are as follows:

Complaint filing fee:	\$402.00
Service of process:	\$125.00
Mediation:	\$9,500.00
Travel (including estimated travel for final approval hearing):	\$65.47

Rise is a digital marketing firm that provides marketing services to various companies, including Edgepark. *See* 3AC ¶ 1.

On or about February 3, 2023, Rise began notifying individuals and state attorneys general about the Data Incident whereby hackers stole customers' SPI, including patients' names, email addresses, phone numbers, provider information, diagnoses, expected delivery dates and health insurance information. *See id.*, ¶ 2-3.

Plaintiff Tiffany Roper filed her initial complaint on March 23, 2023 (ECF No. 1), and Plaintiffs Tiffany Roper and Heidi Emmerling filed a joint amended complaint on June 22, 2023 (ECF No. 14) alleging claims for relief for negligence, unjust enrichment, invasion of privacy, and (on behalf of Plaintiff Tiffany Roper), violation of the South Carolina Data Breach Notification Act. *See* First Amended Class Action Complaint (ECF No. 14), generally.

The Parties briefed two motions to dismiss, which were decided by this Court on November 9, 2023, and April 10, 2024. *See* ECF Nos. 16-23, 24-29, and 31-37. Plaintiffs' negligence and South Carolina Data Breach Notification Act claims survived. *See* ECF No. 36.

The Parties agreed to participate in mediation and, prior to doing so, informally exchanged discovery on a variety of topics including details of Plaintiff' injuries as well as the class allegations. The Parties also drafted and exchanged mediation briefs prior to mediation. At an all-day mediation with Bruce Friedman, Esq. of JAMS on July 22, 2024, the Parties agreed in principle to the terms of a Settlement, and spent the next few weeks negotiating the details of the Settlement Agreement and its exhibits.

The Parties subsequently executed the Settlement Agreement on October 16, 2024, and Plaintiffs moved for preliminary approval on October 18, 2024. This Court granted preliminary approval on October 23, 2024. ECF No. 54.

The Class Notice advised Class Members that Class Counsel “will request the Court’s approval of an award for attorneys’ fees and costs up to 33.33 percent of the Settlement Fund after claims administration, costs, which shall be paid from the Settlement Fund. SA, §7. The objection deadline is January 20, 2025. ECF No. 54.

Though the objection deadline is not yet past, as of the date of this filing, Class Counsel is not aware of any objections by Class Members to any aspect of the Settlement, including the request for attorneys’ fees, reimbursement of expenses or service awards for the Plaintiffs.

### III. ARGUMENT

#### A. The Requested Attorneys’ Fee Award is Reasonable and Appropriate

Under the “common fund” or “common benefit” doctrine, “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also* Fed. R. Civ. P. 23(h) (“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or the parties’ agreement.”). This rule is equitable in nature and “rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s expense.” *Boeing Co.*, 444 U.S. at 478. *See also In re Sw. Airlines Voucher Litig.*, 898 F.3d 740, 745–46 (7th Cir. 2018) (“Fee awards for class counsel are part of a constructive common fund because they are a benefit to the class”); *Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014) (“value of the settlement” is “defined as the sum of the awards to the class and to its lawyers.”).

“In assessing the reasonableness of an attorney fee award for a class action settlement, district courts should ‘do their best to award counsel the market price for legal services, in light of the risk of non-payment and the normal rate of compensation in the market at the time.’” *Sutton v.*

*Bernard*, 504 F.3d 688, 692 (7th Cir. 2007) (quoting *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001)). Relevant factors include the risk of non-payment, the quality of the attorney’s performance, the amount of work necessary to resolve the litigation, and the stakes of the case. *Id.* at 693.

The Seventh Circuit has held that “[w]hen a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund, in recognition of the fact that most suits for damages in this country are handled on the plaintiff’s side on a contingent-fee basis. The typical contingent fee is between 33 and 40 percent.” *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (upholding the award of 38 percent of a \$20 million settlement). District Courts within the Seventh Circuit “regularly award percentages of 33.33% or higher to counsel in class action litigation.” *Hale v. State Farm Mut. Auto. Ins. Co.*, No. No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368 at \*35 (S.D. Ill. Dec. 13, 2018). *See also, Behrens v. Landmark Credit Union*, No. 17-cv-101-jdp, 2018 U.S. Dist. LEXIS 106358 at \*16 (W.D. Wis. June 26, 2018) (“And generally, a 33 to 40 percent contingency fee is considered consistent with the market rate and reasonable.”); *Martin v. Caterpillar Inc.*, No. 07-CV- 1009, 2010 U.S. Dist. LEXIS 145111, 2010 WL 11614985, at \*2 (C.D. Ill. Sept. 10, 2010) (“[C]ourts in the Seventh Circuit award attorney fees ‘equal to approximately one-third or more of the recovery.’ . . . The Seventh Circuit itself has specifically noted that ‘the typical contingent fee is between 33 and 40 percent.’”) (citation omitted)<sup>4</sup>.

Class Counsel’s requested attorneys’ fee award of \$131,612.83 represents 33.33 percent of the total Settlement Fund after administration costs (or 394,878.00). Class Counsel’s request is

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<sup>4</sup> Plaintiffs note that the use of a lodestar cross-check in the Seventh Circuit “is no longer recommended.” *See Bell v. Pension Comm. of Ath Holding Co. LLC*, 2019 U.S. Dist. LEXIS 150302 at \*14 (S.D. Ind. Sep. 4, 2019) (citing *In re Synthroid Marketing Litig.*, 325 F.3d 974, 979-80 (7th Cir. 2003))

within the range of 33 to 40 percent commonly awarded by courts in the Seventh Circuit in common fund cases and is therefore reasonable.

### **1. Counsel Assumed the Risk of Non-Payment**

Courts emphasize the severity of the financial risk class counsel assumed in taking on a class action when determining the reasonableness of a fee request. *In re Dairy Farmers of Am., Inc.*, 80 F.Supp.3d 838, 847 (N.D. Ill. 2015); *see also Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (“Contingent fees compensate lawyers for the risk of non-payment. The greater risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.”); *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 746 (7th Cir. 2011) (“[I]f the market-determined fee for a sure winner were \$1 million the market determined fee for handling a similar suit with only a 50% chance of a favorable outcome should be \$2 million.”).

Class Counsel initiated the lawsuit knowing that it would require expenditure of significant time, effort, and money in order to achieve a successful resolution to the matter. There was uncertainty in the outcome of the case as Class Counsel had already responded to two motions to dismiss and discovery was underway. Class Counsel would have to prevail over a motion for class certification, a motion for summary judgment, trial, and potentially an appeal. Class certification in a data breach case is never guaranteed and could have presented a significant hurdle for Plaintiff in this matter. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at \*13-14 (W.D. Wis. Mar. 4, 2021) (“breach cases . . . are particularly risky, expensive, and complex.”) (quoting *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-CV-01415-CMA-SKC, 2019 WL 6972701, at \*1 (D. Colo. Dec. 16, 2019)). As such, the significant risk that Class Counsel accepted by taking on this matter on a contingency basis

weighs in favor of approval of this motion.

## 2. The Quality of Counsel's Performance

Class Counsel achieved an automatic benefit for every class member who files a claim and an easy to claim benefit available to those class members who experienced out-of-pocket losses as a result of the Data Incident. The Settlement is a fair, reasonable, and adequate remedy for Class Members when compared to the facts and law at issue in this matter. Class Counsel represented the Class at various stages of litigation including: (1) drafted the initial complaint and the amended complaints; (2) engaged in discovery and investigation of the Data Incident; (3) briefed responses to two separate motions to dismiss; and (4) engaged in comprehensive arm's-length settlement negotiations with Defendant at an all-day mediation with a mediator.

These efforts resulted in a Settlement with benefits to the Class that they would not otherwise have. The benefits an estimated payment of \$50 available to every class member and options to claim out-of-pocket reimbursements that will allow eligible Class Members to claim up to \$250 for costs related to the Data Incident, such as (1) unreimbursed or unauthorized charges, (2) credit monitoring purchased following the Data Incident, and (3) out of pocket expenses.

Class Counsel negotiated these terms with, and obtained the results for the Class from, Rise who mounted a strong defense with experienced data breach attorneys. The Settlement provides real benefits that will be available to Settlement Class Members in the very near future, rather than years from now, because of the efficient settlement of the case. This is a further enhancement to the value of the Settlement to the Class Members. *See Donovan v. Estate of Frank E. Fitzsimmons*, 778 F.2d 298, 309 n.3 (7th Cir. 1985) (recognizing that at a prime interest rate of 12.5 percent of a \$2 million settlement sum today is worth the same as a \$3.6 million recovery five years from now). As such, this factor weighs in favor of approval of this motion.



### **3. The Complexity, Length, and Expense of the Litigation**

Data breach class action lawsuits are complex, risky, and expensive to litigate. Class Counsel were aware that pursuing this case beyond settlement would be lengthy and expensive – it would require discovery, briefing, argument, trial, and potential appeals. All of this would require hundreds, or perhaps thousands, of hours, which would result in significant costs. Interim Class Counsel coordinated to avoid duplicating hours. There is still work to be done in the case as well. For example, Class Counsel will spend additional time drafting and filing Plaintiff’s motion for final approval of the Settlement, preparing for and appearing at the final fairness hearing, overseeing claims administration, and resolving any appeals. As such, this factor weighs in favor of approval of Plaintiff’s attorneys’ fees request.

### **4. The Stakes of the Litigation**

Class action lawsuits are high stakes litigation and data breach class action lawsuits come with their own set of uncertainties. The Class Members’ claims could have faced a number of defenses such as the possibility that the court would dismiss some or all of the claims, decline to certify the Class, or that Plaintiff would not prevail at trial. This factor weighs in favor of granting this motion because there was an uncertain nature of the lawsuit at the beginning of the case, yet Class Members are receiving the benefits of the Settlement.

## **VI. THE REQUESTED SERVICE AWARDS ARE REASONABLE AND APPROPRIATE**

Representative plaintiff service awards encourage members of a class to become class representatives and reward individual efforts taken on behalf of a class. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (awarding \$25,000). “In deciding whether such an award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the

degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” *Id.*

The requested award of \$5,000 to each Representative Plaintiff is reasonable, justified, and accords with common practice. The Representative Plaintiffs stepped up and volunteered to take on the responsibilities, risks, and scrutiny of bringing a class action lawsuit. Each Representative Plaintiff engaged in discovery and was involved in the mediation process, authorizing the settlement for the entire Class. This benefited the entire Class as without the Representative Plaintiffs there would not have been a class action lawsuit. All Representatives were willing to sit for depositions and to perform duties as the Court may have required if the case continued. Further, plaintiffs in data breach cases risk further losses of privacy by stepping forward and being named, which justifies a reasonable service award.

Courts regularly award service awards in excess of \$5,000. *See, e.g., Crawford Lumber Co. v. Interline Brands, Inc.*, No. 11-CV-4462, 2015 WL 1399367, at \*6 (N.D. Ill. Mar. 23, 2015) (approving an award of \$25,000); *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07-CV-2898, 09-CV-2026, 2012 WL 651727 at 16 (N.D. Ill. Feb. 28, 2012) (awarding a \$25,000 award to each of seven plaintiffs); *Cook*, 142 F.3d at 1016 (awarding award of \$25,000); *see also Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding \$5,000 where the case did not proceed past the earliest stages of discovery).

Furthermore, the total of both service awards is \$10,000, which represents merely 2.3% of the entire settlement fund of \$427,500. As such, the requested service award of \$5,000 each is reasonable and warranted considering Representative Plaintiffs’ participation and willingness to undertake the responsibilities and risks attendant with bringing this class action lawsuit.

## VII. CONCLUSION

The requested attorneys' fees, costs and expenses, and service award are reasonable and appropriate and should be approved by this Court. Plaintiffs, individually and on behalf of the Class Members, by and through Interim Class Counsel, pray that this Court enter an order: (a) granting Plaintiff's request for attorneys' fees in the amount of \$131,612.83; attorneys' costs of \$10,092.47, service awards for each Representative Plaintiff in the amount of \$5,000 (or \$10,000 total); and (b) granting such other and additional relief that this Court may deem just and appropriate.

Dated: January 6, 2025

Respectfully Submitted,

/s/ Carl V. Malmstrom

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