

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY,  
STATE OF TENNESSEE, TWENTIETH JUDICIAL DISTRICT

KAREN LYTLE, on behalf of herself	)	
and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 23C1897
REVANCE THERAPEUTICS, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

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

Plaintiff Karen Lytle respectfully moves the Court for an Order approving Class Counsel’s attorneys’ fees of \$145,000 and Class Representatives’ Service Awards of \$2,000 each. Because these requests are reasonable, and for the reasons set forth below, the Court should grant this motion.

**I. Background**

Between March 15 and April 10, 2023, an unauthorized cybercriminal gained access to Defendant Revance Therapeutics’ information systems and allegedly stole the personally identifiable information (“PII”) and protected health information (“PHI”)<sup>1</sup> of Plaintiff and Class Members’, who are Defendant’s current and former employees. Notwithstanding that the attack began at least by March 15, 2023, Plaintiff Karen Lytle did not receive a data breach notification letter until July 10, 2023. Settlement Agreement, § I.<sup>2</sup> Soon thereafter, on August 15, 2023,

<sup>1</sup> The categories of data allegedly affected include Class Members’ social security number, health insurance information, and payment card information, security codes, and expiration dates. Settlement Agreement, § I; Compl. ¶ 2.

<sup>2</sup> The Class Settlement Agreement was filed along with the motion for preliminary approval.

Plaintiff Karen Lytle filed the present suit. On August 24, 2023, Plaintiff Cameron Crisler filed a related suit in Davidson County Chancery Court. *Crisler v. Revance Therapeutics, Inc.*, No. 23-1146-II (Davidson Cty. Tenn. Cir. Ct.). On May 6, 2024, the *Crisler* case was stayed pending the Court's settlement approval process here. The crux of Plaintiffs' claims is that Defendant failed to uphold its duty under the law to implement reasonable, industry standard cybersecurity safeguards.<sup>3</sup> *E.g.*, Compl. ¶ 1, 5. Plaintiffs' claims include negligence, negligence per se, invasion of privacy—public disclosure of private facts, breach of implied contract, and unjust enrichment. Settlement Agreement, § I.

Though Defendant continues to deny wrongdoing, the Parties reached a Class Settlement, which was signed on December 1, 2023. On April 15, 2024, this Court granted preliminary approval of the Class Settlement and ordered the Settlement Administrator to provide notice to Class Members. After deduplication, the Settlement Administrator sent notice to 2,636 Class Members. Decl. of J. Gerard Stranch, IV, ¶ 5. To date, no Class Members have objected and only one has requested exclusion. *Id.* Though the Parties believe in their respective cases, they recognize the value in settling now so that the Class can receive the benefit of the Settlement without waiting for prolonged litigation to unfold, including through the appellate process. *Id.* ¶ 6; Settlement Agreement, § II.

## II. Benefits of the Settlement

The Settlement obtained by Settlement Class Counsel represents an excellent result for the Settlement Class. Persons who choose not to opt-out from the Settlement Agreement will be eligible to enroll in credit monitoring services as a Class benefit. Under the terms of the Settlement

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<sup>3</sup> Though the Plaintiff in this case is Karen Lytle, Counsel uses the term Plaintiffs or Class Representatives to refer to both Karen Lytle and Cameron Crisler, the plaintiff in the Davidson County Chancery Court case, which was stayed in favor of this Settlement approval process. If the Settlement is granted final approval, Counsel will voluntarily dismiss the Chancery Court case.

Agreement, each participating Class Member may claim a one-year membership in credit monitoring and identity theft protection services that includes at least \$1 million in identity theft insurance. Settlement Agreement, ¶ 2.3. Class Members may also claim reimbursement for time spent remedying the effects of the Data Breach—up to three hours at twenty-five dollars per hour. *Id.* § 2.1.1(b). Class Members may also claim reimbursement for documented out-of-pocket expense up to a cap of \$1,000 per Class Member. *Id.* § 2.1.1(a). Because Defendant still has possession and control over Class Members’ sensitive data, the Settlement Agreement also provides for enhanced cybersecurity controls in addition to the other benefits to help ensure Defendant does not experience another data breach. *Id.* § 2.4.

This relief represents a substantial benefit for the Settlement Class. Defendant’s delay in informing employees of the Data Breach has created the potential for years-long credit, identity, and financial monitoring requirements for each Settlement Class Member. The Settlement allows Settlement Class Members the ability to protect themselves while also providing an avenue for them to seek reimbursement for time and expenses.

### **III. Plaintiffs’ Request for Attorneys’ Fees and Expenses is Reasonable and Should be Approved**

After a class action settles, Tennessee Rule of Civil Procedure 23.05 requires that “a motion for fees must be filed and served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.” Tenn. R. Civ. P. 23.05.<sup>4</sup> Though not provided for in the Tennessee Rules of Civil Procedure, courts often require that Class Counsel file their motion for attorneys’ fees before the deadline for Class Members to object to the Class Settlement.<sup>5</sup> William

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<sup>4</sup> Pursuant to Rule 23.05, Class Counsel notified Class Members of the fees it intended to request. This was included in the notice provided to Class Members and in the Settlement. All such documents are publicly available on the Settlement Website. <https://www.revancesettlement.com/documents>.

<sup>5</sup> Here, the deadline for Class Members to object to the settlement or request exclusion is July 29, 2024. <https://www.revancesettlement.com>.

B. Rubenstein, *Newberg on Class Actions*, § 15.13 (6th ed.). The fee amount ultimately awarded is left to the discretion of the trial court. *Kline v. Eyrich*, 69 S.W.3d 197, 203 (Tenn. 2002). Pursuant to this, and the Preliminary Approval Order issued by this Court on April 15, 2024, Plaintiffs now bring their Motion for Attorneys' Fees, Costs, and Service Awards, two weeks in advance of the deadline for Settlement Class Members to opt-out of, or object to, the Settlement Agreement.

Although the Tennessee Rules of Civil Procedure do not specify a method of determining an appropriate award of attorneys' fees, relying on a percentage of the benefit made available to the Class is the ideal approach because the lodestar method of calculating time and a reasonable hourly rate is disfavored in Tennessee. *See Wright ex. Rel. Wright v. Wright*, 337 S.W.3d 166, 180 (Tenn. 2011) (calling the lodestar approach "problematic" in part because of the potential to reward "inexperience, inefficiency, and incompetence" over "skillful and expeditious disposition of litigation") (quoting *Adams v. Unterkircher*, 714 P.2d 193, 197 (Okla. 1985)).

Ultimately, reasonableness is the standard for determining the appropriate fee award. The award of attorneys' fees in common fund cases need only "be reasonable under the circumstances." *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *Moulton v. US. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009). When awarding fees, a court must make sure that counsel is fairly compensated for the results achieved. *Rawlings*, 9 F.3d at 516. The Tennessee Supreme Court has illuminated several factors that may be relevant in determining the reasonableness of a fee award: (1) the time and labor required, the novelty and difficult of the litigation, and the skill required; (2) whether taking the case would reasonably appear to preclude other employment; (3) fees customarily charged in similar cases; (4) the amount involved and the results obtained; (5) any time limitations imposed by client or the circumstances; (6) the nature and length of the

professional relationship; (7) the experience, reputation, and ability of counsel; (8) whether the fee is contingent or fixed; (9) prior advertisements, if any, by the counsel with respect to the fees the attorney charges; and (10) whether the fee agreement is in writing. *Smith v. All Nations Church of God*, No. W2019-02184-COA-R3-CV, 2020 WL 6940703, at \*5 (Tenn. Ct. App. Nov. 25, 2020) (quoting Tenn. Sup. Ct. R. 8; Rules of Prof. Cond. 1.5(a)).

Credit monitoring and identity theft protection services are offered at a range of prices, but the likely minimum a Class Member could expect to pay is \$8.95 per month, which is \$107.40 per year. Decl. of J. Gerard Stranch, IV, ¶ 8. Given the class size of 2,636 individuals, that is a value provided to the Class of \$283,106.40. *Id.* With a cap of \$1,000 per Class Members, the Settlement makes another \$2,636,000 available in reimbursement for documented out-of-pocket expenses that Class Members can claim. *Id.* ¶ 13. The requested Service Awards add another \$4,000. *Id.* ¶ 10. The costs to administer the Class Settlement add at least another \$46,137. *Id.* ¶ 11. And the requested attorneys' fees and expenses are \$145,000. *Id.* ¶ 10. All are included in the calculation of the benefit to the Class. *Rikos v. Proctor & Gamble Co.*, No. 1:11-cv-226, 2018 WL 2009681, at \*9 (S.D. Ohio April 30, 2018) (including all such fees and costs in the total benefit to the class); *Dick v. Sprint Comms. Co., L.P.*, 297 F.R.D. 283, 299–300 (W.D. Ky. 2014) (noting the same because such costs and fees “do not diminish class recovery”). Moreover, when calculating the reasonableness of a fee award, the Court can include the value of the benefits that Class Counsel's efforts have made available, regardless of whether Class Members ultimately exercise the rights created under the Agreement. *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 285–85 (6th Cir. 2016) (noting the value of the work by class counsel to provide a fund from which Class Members could claim their benefits, work that is not undone by individual decisions to not file

claims forms). So, the value of the Settlement to Class Members is \$3,114,243.40.<sup>6</sup> Decl. of J. Gerard Stranch, IV, ¶ 16. Thus, the requested amount is only 4.66% of the benefit made available to the Class and is reasonable pursuant to the factors outlined by the Supreme Court, as discussed in more detail below.

As to the first factor, the time, labor, and skill required to litigate data breach class actions is significant because of the novelty and skill required. *Corra v. ACTS Ret. Servs., Inc.*, No. 22-2917, 2024 WL 22075, at \*14 (E.D. Pa. Jan. 2, 2024) (noting that “[d]ata breach litigation is inherently complex”); *Hashemi v. Bosley, Inc.*, No. 21-cv-946, 2022 WL 18278431, at \*4 (C.D. Cal. 2022) (noting that standing issues have magnified uncertainty in data breach litigation); *Cotter v. Checker’s Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at \*9 (M.D. Fla. 2021) (explaining that the issues raised “were complex, and the law surrounding data-breach cases is new and evolving”). Here, rather than wait for the end to prolonged litigation which could ultimately result in no recovery whatsoever for the Settlement Class, Class Counsel negotiated the Settlement so that Class Members could obtain credit monitoring and identity theft protections now. As discussed in more detail below, and in the Declaration of J. Gerard Stranch, IV in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Class Counsel in this matter are highly skilled and experienced in data breach litigation. It is only by using their unique skill set that Class Counsel was able to obtain this result for the Settlement Class so early in the litigation process against prominent defense counsel.

As to the second and third factors, Class Counsel has expended significant labor and effort in prosecuting this action, which otherwise could have been dedicated to other, fee generating matters. Decl. of J. Gerard Stranch, IV, ¶ 17. Before even filing a complaint in this matter, Class

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<sup>6</sup> \$283,106.40 + \$4,000 + \$2,636,000 + \$145,000 + \$46,137 = \$3,114,243.40.

Counsel spent significant time and effort investigating the potential claims and causes of action arising from the Data Incident, including reviewing pertinent documentation such as the notification of the Data Incident Defendant provided to the Settlement Class. *Id.* ¶ 2. Class Counsel's fee request here is commensurate with and is in fact much lower than amounts awarded in other data breach cases in the Sixth Circuit and around the country. *In re Se. Milk Antitrust Litig.*, No. 2:08-md-208, 2013 WL 2155387, at \*3 (E.D. Tenn. May 17, 2013) (awarding one-third of common fund); *see also Bessey v. Packerland Plainwell, Inc.*, No. 4:06-cv-95, 2007 WL 3173972, at \*4 (W.D. Mich. Oct. 26, 2007) (awarding one-third of common fund and noting that “[e]mpirical studies show that . . . fee awards in class actions average around one-third of recovery”); *In Re Prandin Direct Purchaser Antitrust Litig.*, No. 10-cv-12141, 2015 WL 1396473, at \*4 (E.D. Mich. Jan. 20, 2015) (awarding one-third of the common fund); *see also Denver Area Meat Cutters & Emps. Pension Plan v. Clayton*, 209 S.W.3d 584, 592–93 (Tenn. Ct. App. 2006) (affirming trial court award of one-third of settlement fund in common fund case).

Next, considering the amount involved and the results obtained warrants approval of Class Counsel's fee request. Indeed, the fee request, at just 4.66%, pales in comparison to the benefit obtained for the Class and the typical fees sought by class counsel, who would have been justified in seeking significantly higher fees here, up to 33% of the benefit conferred upon the class. *See Robles v. Comtrak Logistics, Inc.*, No. 15-cv-22228, 2022 WL 17672639, at \*10 (W.D. Tenn. Dec. 14, 2022) (“Courts in this Circuit have held that a one-third contingency fee is within the range of fees often award in common fund cases, both nationwide and in the Sixth Circuit.”).

Moreover, the experience and reputation of Class Counsel weighs in favor of the reasonableness of the fee request. Decl. of J. Gerard Stranch, IV, ¶ 4. Class Counsel have a wealth of experience and knowledge in data breach matters and have litigated numerous such cases across

the country. *Id.* In addition, Class Counsel litigated this case on a contingent basis, facing the risk of receiving no recovery whatsoever for their considerable efforts in this matter. *Id.* ¶ 2. This fact weighs further in favor of the reasonableness of Class Counsel’s fee request. *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 329–30 (W.D. Tex. 2007).

In addition to the factors discussed above, which were outlined in *Smith v. All Nations Church of God*, because the negotiations were hard fought and at arms’ length, *id.* ¶ 15, the Court should presume the reasonableness of the Parties agreement regarding attorneys’ fees and expenses. *Senne*, 2023 WL 2699972, at \*7 (“Class Settlements are presumed fair when they are reached following sufficient discovery and genuine arms-length negotiation.”) (quoting *Foster v. Adams & Assocs., Inc.*, No 18-cv-02723, 2022 WL 425559, at \*6 (N.D. Cal. Feb. 11, 2022)).

Because all relevant factors weigh in favor of the reasonableness of the fee request, the Court should grant Plaintiffs’ motion and award Class Counsel \$145,000 inclusive of attorneys’ fees and expenses.

#### **IV. The Court Should Approve Class Representatives’ Service Awards**

In the Class Settlement Agreement, Defendant’s agreed not to challenge a request for Class Representatives’ Service Awards up to \$2,000 each, which was not conditioned on or tied to the Court’s final approval of the Class Settlement. Settlement Agreement, § 7.2. Service Awards, which are sometimes referred to as Incentive Awards, “aim to compensate class representatives for their service to the class,” “are paid in most class suits,” and “average between \$10,000 to \$15,000 per class representative.” William B. Rubenstein, *Newberg on Class Action*, § 17.1 (6th ed.); *see also In re Family Dollar Stores, Inc. Pest Infestation Litig.*, No. 2:22-cv-3032, 2024 WL 2000059, at \*6 (W.D. Tenn. May 6, 2024) (awarding \$5,000 for each class representative); *Fusion Elite All Stars v. Varsity Brands, LLC*, No. 2:20-cv-02600, 2023 WL 6466398, at \*8 (W.D. Tenn.



Oct. 4, 2023) (awarding between \$5,000 and \$20,000 in Service Awards); *O'Bryant v. ABC Phones of North Carolina, Inc.*, No. 19-cv-02378, 2021 WL 5016872, at \*7 (W.D. Tenn. Oct. 28, 2021). "Such awards 'encourage individuals to undertake the responsibilities and risks of representing the class and recognize the time and effort spent in the case.'" *Carter v. Vivendi Ticketing US LLC*, No. 22-cv-01981, 2023 WL 8153712, at \*11 (C.D. Cal. Oct. 30, 2023) (quoting *In re Anthem, Inc. Data Breach Litig.*, No. 15-md-02617, 2018 WL 3960068, at \*30 (N.D. Cal. Aug. 17, 2018)).

The Court should award Class Representatives the requested \$2,000 each in Service Awards, for a total of \$4,000. These awards are reasonable given the average amount of such awards in class actions and are in line with service awards in other data breach class actions. Decl. of J. Gerard Stranch, IV, ¶ 10; *see also, e.g., Morrison v. Entrust Corp.*, No. 23-cv-415, 2024 WL 2207563, at \*7 (D. Minn. May 14, 2024) (approving a \$3,000 Service Award); *Jackson v. Nationwide Ret. Sols., Inc.*, No. 2:22-cv-3499, 2024 WL 958726, at \*7 (S.D. Ohio Mar. 5, 2024) (approving Service Awards of \$5,000); *Beasley v. TTEC Servs. Corp.*, No. 22-cv-00347, 2024 WL 710411, at \*7 (D. Colo. Feb. 21, 2024) (approving Service Awards of \$2,500); *Carter*, 2023 WL 8153712, at \*11 (same).

Here, Class Representatives have actively engaged in this litigation, including assisting in Class Counsel's investigation, providing documents and other information, and answering questions. Decl. of J. Gerard Stranch, IV, ¶ 9. Because Plaintiffs have served the Class well and have been willing participants in this action, and because the requested Service Awards are imminently reasonable in comparison to similar cases, the Court should grant Plaintiffs' motion for Service Awards of \$2,000 for each Class Representative for a total of \$4,000.

## V. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court approve Class Counsel's fees of \$145,000 and Plaintiffs' Service Awards of \$2,000 each.

Dated: July 15, 2024

Respectfully submitted,

/s/ Grayson Wells

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of July 2024, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system and/or U.S. Mail to:

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