

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ANDREA BENNETT on behalf of herself
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BALANCE AUTISM,

Defendant.

Case No. CVCV069538

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

Plaintiff Andrea Bennett, individually and on behalf of the Settlement Class submits this Memorandum in Support of Plaintiff's Motion for Attorneys' Fees, Costs, and Plaintiff's Service Award.

I. BACKGROUND

Defendant Balance Autism is an autism service organization providing therapy and care. Class Action Pet. ("Pet.") ¶ 11. In the ordinary course of business, Balance Autism maintained certain Private Information belonging to its current and former employees. *Id.* ¶ 18.

Between March 11, 2025, and March 17, 2025, Balance Autism servers were accessed by unauthorized attackers, unbeknownst to it. *Id.* ¶ 27. The types of information affected by the Data Incident included at least first and last names as well as Social Security numbers. *Id.* ¶ 2. On or around May 16, 2025, Defendant sent notice of the Data Incident via mail to Plaintiff and the Settlement Class, informing them that their Personal Information may be at risk as a result of the Data Incident. *Id.* ¶ 31.

On July 16, 2025, Plaintiff Andrea Bennett filed this lawsuit against Balance Autism in the District Court for Polk County, State of Iowa, asserting several causes of action related to the Data Incident and seeking to represent a class of persons affected by the Data Incident. *Andrea Bennett v. Balance Autism*, No. 05771 CVCV 069538, Dist. Ct. Polk. Cnty., July 16, 2025).

Prior to filing, proposed Class Counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the cause, scope, and result of the Data Incident—as well as about the damages suffered by Plaintiff and the Class. *See Declaration in Support of Unopposed Motion for Preliminary Approval* ("MPA Decl."), ¶ 3.

Shortly thereafter, to conserve resources and recognizing the benefits of early resolution, the Parties agreed to explore the possibility of early resolution. *Id.* ¶ 4. Thus, the Parties scheduled

mediation with Judge John A. Jarvey (ret.) of Goodman/Keller P.C., a former federal judge and mediator with significant experience in class action cases. *Id.* ¶ 5.

In preparation for mediation, Plaintiff requested, and Balance Autism produced, key information to inform the settlement negotiations, including, without limitation, the size of the Settlement Class, facts concerning the named Plaintiff, and other pertinent facts. *Id.* ¶ 4.

On October 2, 2025, the Parties engaged in a mediation session with Judge Jarvey, who has extensive experience in mediating data breach class actions. *Id.* ¶ 5. Under his guidance, the Parties engaged in “arm’s length” negotiations—communicating their positions through the mediator while evaluating the strengths and weaknesses underlying the claims and defenses. *Id.* From the start, the Parties agreed they would not negotiate attorney fees or service awards until they agreed on the core terms of the Settlement—thereby avoiding conflict between Plaintiff and Class Members. *Id.* ¶ 6.

The Parties zealously negotiated on behalf of their clients and ultimately reached an agreement over the core terms of the Settlement during this mediation. *Id.* ¶ 7. Over the following weeks, the Parties negotiated and drafted the Short Form Notice, the Long Form Notice, the Claim Form, the Proposed Preliminary Approval Order, the Proposed Final Approval Order, and agreed upon a Settlement Administrator. *Id.* Then, on December 9, 2025, the Parties executed the Settlement Agreement. *Id.* ¶ 8.

A. Settlement Benefits.

The Settlement Agreement provides meaningful relief in the form of significant monetary compensation and non-monetary benefits to Settlement Class Members who choose to take advantage of the Settlement:

- a) *Monetary Class Member Benefits.*

Under the Settlement Agreement, Balance Autism will make up to \$290,00.00 available to Settlement Class Members (the “Aggregate Cap”) for monetary settlement benefit payments. *Id.* ¶ 43. Settlement Payments may be subject to a *pro rata* decrease, depending on the aggregate amount of valid claims received. *Id.*

All Settlement Class Members may submit a claim for up to Four Hundred Dollars and Zero Cents (\$400.00) for reimbursement of documented Ordinary Losses. *Id.* ¶ 43(a). To receive reimbursement for Ordinary Losses, Settlement Class Members need only submit a valid Claim Form that includes third-party documentation supporting the loss (such as receipts). *Id.*

Settlement Class Members may also submit a claim for Lost Time spent on the Data Security Incident for up to four (4) hours at Twenty Dollars and Zero Cents (\$20.00) per hour (for a maximum amount of \$80.00). *Id.* ¶¶ 17, 43(b). Settlement Class Members may receive reimbursement for Time Spent with an attestation that they spent the claimed time responding to issues raised by the Data Incident. *Id.* A claim for Time Spent may be combined with a claim for reimbursement for Out-of-Pocket Losses but is subject to the Four Hundred Dollar (\$400.00) cap for Ordinary Losses. *Id.*

Next, all Settlement Class Members may submit a claim for up to Four Thousand Dollars and Zero Cents (\$4,000.00) for reimbursement of documented fraud or identity theft. *Id.* ¶ 43(c). To receive reimbursement for Extraordinary Losses, Settlement Class Members need only submit a valid Claim Form that includes third-party documentation supporting the fraud or identity theft. *Id.*

Lastly, in lieu of receiving a reimbursement for Ordinary Losses, reimbursement for Time Spent, and Extraordinary Losses, all Settlement Class Members may elect to submit a claim for an Alternative Cash Payment in the amount of Fifty Dollars and Zero Cents (\$50.00). *Id.* ¶ 43(d).

b) Credit Monitoring Services.

In addition to the monetary benefits described above, all Settlement Class Members are also eligible to enroll in two (2) years of credit monitoring and identity theft protection services, regardless of whether the Settlement Class Member submits a claim for monetary compensation. *Id.* ¶ 42. This benefit is outside the Aggregate Cap, and all claims for credit monitoring will be paid by Defendant.

B. Service Award, Attorneys' Fees, Costs, and Expenses.

In recognition of the Class Representative's service to the Class, Plaintiff's Counsel now requests that the Court grants a Service Award to the Class Representative of \$2,500.00 as well as award Class Counsel attorneys' fees and costs of One Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00), both of which are to be paid by Defendant, subject to Court approval, pursuant to the terms of the Settlement Agreement.

C. Preliminary Approval and Notice

On January 30, 2026, the Court granted Preliminary Approval of the Class Action Settlement. The Court found that the proposed Class Action Settlement was fair, reasonable and adequate and warrants preliminary approval. *See* Preliminary Approval Order at 3. The Court also appointed Plaintiff as the Class Representative and appointed Raina Borrelli of Strauss Borrelli PLLC as Class Counsel. *Id.* at 2. 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 attorneys' fees and costs in the amount of \$125,000.00 as well as Class Representative's Service Award in the amount of \$2,500.00.

II. ARGUMENT AND AUTHORITIES

A. Legal Standard

Iowa Rule of Civil Procedure provides that the Court award attorneys' fees to Class Counsel where the class has made a recovery. *Wright v. Veridian Credit Union*, 2021 Iowa Dist. LEXIS 4 (Iowa Dist. Ct., Polk County, 2021). In determining whether the requested fee is reasonable, the Court must consider the following factors:

- a) The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered;
- b) Results achieved and benefits conferred upon the class;
- c) The magnitude, complexity, and uniqueness of the litigation;
- d) The contingent nature of success; and...
- f) the appropriate criteria in the Iowa Rules of Professional Conduct.

Iowa Rule of Civil Procedure 1.275(5).

These factors are substantially similar to those used by federal courts in the Eighth Circuit when determining the same. Indeed, the rules are so similar that Iowa courts are permitted to rely on federal authorities construing the federal class action rules when interpreting local Iowa class action rules. *Bankr. Estate of Vangilder*, 822 N.W.2d 745 (Iowa Ct. App. 2012) (interpretation of class action law in Iowa is scant and for that reason federal authorities may be consulted if necessary).

While Iowa Courts have discretion to use the percentage-of-the-benefit method or the lodestar method in determining a fee's reasonableness, the percentage-of-the-benefit preferred for common fund settlements. *Thut v. Life Time Fitness, Inc.* (In re Life Time Fitness, Inc., Tel. Consumer Prot. Act Litig.), 847 F.3d 619, 622 (8th Cir. 2017). Here, however, the lodestar method should be utilized because Class Counsel's proposed fees will not come from a "common fund recovery" and will not dilute or diminish the benefits available to the Class. *See Declaration of Plaintiff's Counsel in Support of Plaintiff's Motion for Attorney's Fees, Costs, Expenses, and Plaintiff's Service Award ("Fee Decl.")* ¶ 13.

Counsel's request for fees here is reasonable. Thus far, Class Counsel have devoted

significant time and resources to this case, including 97 hours and incurred a lodestar of \$63,415.00 Fee Decl. ¶ 14. Class Counsel expects to spend approximately 20 additional hours before closure of the case, due to the time required to carry out Settlement Administration and to prepare for and attend the Final Approval Hearing. *Id.* Class Counsel also accrued approximately \$1,500 in reasonable litigation expenses, for which they seek reimbursement as provided for under the Settlement. *Id.* ¶ 7. The requested fee of \$125,000.00 should be approved, as it currently represents a modest 1.97 multiplier of the lodestar, which is well within the range awarded by Eighth Circuit courts. *Id.* ¶ 15; *see also Swinton*, 454 F. Supp. 3d at 888 (citing *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017)) (“[L]odestar multipliers under two are commonly approved in the Eighth Circuit.”); *Nelson v. Wal-Mart Stores, Inc.*, No. 05-cv-000134, 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009) (approving multiplier of 2.5 and citing cases within the Eighth Circuit approving multipliers of up to 5.6). The requested fee is also reasonable under the factors outlined below.

B. The Iowa Rule of Civil Procedure 1.275(5) Factors Support Approval of Class Counsel’s Request for Attorney’s Fees

a) The requested Attorney’s Fees are reasonable given the time and effort expended by the attorney

Despite the early stage of litigation at which this case settled, Class Counsel expended significant effort before ultimately negotiating and finalizing the Settlement Agreement on behalf of the Settlement Class, including: conducting an investigation into the facts regarding Plaintiff’s claims and class members’ claims; researching law relevant to, and preparing, Plaintiff’s class action complaint; researching law relevant to Defendant’s defenses to Plaintiff’s claims; exchanging informal discovery; engaging in months of arms-length negotiations; attended a mediation session; negotiating and preparing the Parties’ Settlement Agreement, along with the

proposed class notice and claim form; preparing the instant motion for attorneys' fees, costs, expenses, and a service award; and conferring with Plaintiff throughout the case. Counsel also anticipate completing additional work throughout settlement administration, and in preparing and arguing Plaintiff's motion for final approval of the Settlement. Fee Decl. ¶ 14. Thus, given the time and labor required of Class Counsel, the fee request should be granted.

b) The requested Attorney's Fees are reasonable given the results achieved.

As stated above, the Settlement Agreement provides meaningful relief in the form of significant monetary compensation and non-monetary benefits to Settlement Class Members who choose to take advantage of the Settlement. First, it guaranteed Settlement Class members two years of credit monitoring at no cost, reducing their risk for identity theft and fraud. Second, Settlement Class members can claim documented losses they claim to have suffered from the Data Incident. Third, in the alternative to documented losses, Settlement Class members can elect to simply receive a cash payment. These two monetary compensation options have a high aggregate cap of \$290,00.00. Fourth, Defendant agreed to pay the costs to administer the Settlement, the Settlement Class's attorney's fees, costs, and expenses, as well as Plaintiff's service award. Thus, given the significant results achieved through the efforts of Plaintiff and Class Counsel, the fee request should be granted.

c) The requested Attorney's Fees are reasonable given the magnitude, complexity, and uniqueness of the litigation.

Data breach law is rapidly evolving, as courts and legislatures are regularly expanding their expertise and understanding of acceptable and appropriate data security protocols implemented to protect the PII of individuals like the Settlement Class Members here. See, e.g., *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019) (“[D]ata breach litigation is complex and largely

undeveloped.”); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 23, 2019) (“This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.”). Indeed, “many [data breach cases] have been dismissed at the pleading stage.” *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at *36 (N.D. Cal. Sep. 12, 2011). Further, a successful outcome could only ensue, if at all, after prolonged and arduous litigation with an attendant risk of drawn-out appeals. As such, these cases are particularly risky for plaintiffs’ attorneys and supports Plaintiff’s request for fees here.

d) The requested Attorney’s Fees are reasonable in light of Class Counsel taking this litigation on a contingency basis.

Class Counsel took this case on a purely contingent basis. Fee Decl. ¶ 11. This matter has required Class Counsel to spend significant time on this litigation that could have been spent on other fee-generating matters. *Id.* Because Class Counsel undertook representation of this matter on a contingency-fee basis, they shouldered the risk of expending substantial resources with the possibility of no monetary gain in the event of an adverse judgment. Given the risk Class Counsel took in this matter, and the time dedicated to the exclusion of other matters, these factors weigh in favor of finding the requested fee—and modest multiplier—reasonable and appropriate. Moreover, the rates used by Class Counsel in their fee calculations are consistent with those charged for legal services in contingency fee data breach class actions and those regularly approved by Courts across the country for attorneys with similar experience, skills, and practice areas. *Id.* ¶ 14.

While court’s may award a multiplier in their discretion, when representation is taken on a contingency basis, courts regularly award enhancements. As the *Swinton* court explained “In cases, such as here, where an individual’s damages may be relatively modest, plaintiffs may be

unwilling (or unable) to pay attorney's fees and costs in advance. Thus, were it not for statutory provisions allowing for awards of attorney's fees and costs to prevailing parties, and attorneys willing to assume representation on a contingent fee basis because of those provisions, it would be difficult for a plaintiff to obtain legal representation in such matters. Consequently, public policy favors adequate fee awards in cases involving fee-shifting statutes so as to encourage aggrieved plaintiffs to bring such actions and to provide incentives for counsel to take them on a contingent fee basis.” *Swinton*, 454 F. Supp. 3d at 887.

e) The requested Attorney’s Fees are reasonable under the applicable Iowa Rules of Professional Conduct.

Iowa courts also look to the Iowa Rule of Professional Conduct when determining the reasonableness of attorney’s fees, and consider: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. *Kragnes v. City of Des Moines*, 862 N.W.2d 413 (Iowa Ct. App. 2015) (citing Iowa Rule of Professional Conduct 32:1.5(a))

As explained above, given the time and labor required to successfully litigate this case, the novelty of evolving questions at issue, the skill and expertise of Class Counsel, the significant benefits achieved, and Class Counsel having worked on this case on a contingent basis, this request for Attorney fees request should be granted. Moreover, the rates used by Class Counsel

in their fee calculations are consistent with those charged for similar legal services. Counsel Decl. ¶ 14. In 2020, the National Association of Legal Fee Analysis issued the results of its 2020 Class Action Hourly Rate Survey, finding that hourly rates for Associates ranged from \$201-500/hour for associate attorneys, depending on years of experience, and \$501-\$900/hour for partner level attorneys, depending on years of experience.¹

A. The Court should award Class Counsel reimbursement of costs and expenses incurred in litigating this case to settlement.

The Court should similarly award Class Counsel reimbursement of the costs and 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 v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 U.S. Dist. LEXIS 138880, at *14-15 (W.D. Mo. Aug. 16, 2019); see also *Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court’s equity power to award costs). “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.” *Tussey*, 2019 U.S. Dist. LEXIS 138880 at *15 (collecting cases).

Here, Class Counsel has advanced \$1,500.00 in expenses for necessary litigation expenses such as the costs of mediation. Fee Decl. ¶ 7. 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 *Tussey*, 2019 U.S. Dist. LEXIS 138880 at *16 (noting in general, courts approve requested expense reimbursements because class counsel bring the case on contingent

¹ <https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/> (last visited Sept. 18, 2023).

basis, “so they had a strong incentive to keep costs to a reasonable level.”). Defendant agreed not to object to a request for up to \$125,000 in attorneys’ fees and litigation expenses as contemplated in the Settlement Agreement. Because the requested expenses in the amount of \$1,500.00 are reasonable, and pursuant to the Settlement Agreement, is encompassed in the request to award \$125,000, this Honorable Court should award Class Counsel reimbursement from the Settlement Fund of these costs and expenses incurred in litigating this case to settlement.

B. The Court should award the Class Representative a Service Award 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, this Honorable Court should grant the Class Representative a service award of \$2,500 in recognition of her time and effort spent and the results she obtained on behalf of the absent Settlement 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. Fee Decl. ¶ 10. Without the Class Representatives' efforts, the significant benefits for the Class provided through the Settlement Agreement 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 Settlement Class Members. This Honorable 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").

III. 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 and costs to Class Counsel in the amount of \$125,000.00 and (2) a Service Award of \$2,500 to Plaintiff, the Class Representative.

Dated: April 17, 2026

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