

STATE OF NORTH CAROLINA
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 1776

JEFFREY MCMANUS and LAURA
MCMANUS, individually and on
behalf of themselves and all other
similarly situated,

Plaintiffs,

v.

GERALD O. DRY, P.A.,

Defendant.

**ORDER ON PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS**

1. **THIS MATTER** is before the Court on Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, (the "Motion"), (ECF No. 29), filed 20 January 2023 in the above-captioned action. The Motion seeks approximately \$110,000 in attorneys' fees and expenses incurred in the resolution of Plaintiffs' class action suit against Defendant.¹ Defendant does not oppose the Motion and has not submitted a response.²

2. The Court held a hearing on both the settlement of the underlying class action and on the Motion, as originally filed, on 29 March 2023 (the "Hearing"). At the Hearing and in a subsequent order, the Court approved the settlement of the underlying action (the "Agreement") and the payment of service awards to the named

¹ (*See Mot. Atty's' Fees, Expenses, Service Awards 1* [hereinafter "Fee Mot."], ECF No. 29.)

² (*See Fee Mot. 1.*)

class representatives,³ but ordered Plaintiffs to submit supplemental briefing in support of its request for fees and expenses.⁴

3. On 28 April, Plaintiffs submitted supplemental materials in support of the Motion.⁵ The Motion is now ripe for review and determination.

4. Under North Carolina law, courts generally may not award attorneys' fees without statutory authority. *Ehrenhaus v. Baker (Ehrenhaus II)*, 243 N.C. App. 17, 27 (2015). But notwithstanding this general rule, parties may decide through a settlement agreement to provide for the payment of fees. *See id.* at 28. This exception also applies to class action settlements, although in this context the Court must evaluate the settlement as a whole, and the fee allocation provision in particular, to ensure that they are fair and reasonable. *See id.* at 30; *In re Krispy Kreme Doughnuts, Inc. S'holder Litig.*, 2018 NCBC LEXIS 61, at *11–12 (N.C. Super. Ct. June 20, 2018). The Court has already approved the rest of the Agreement, so only the portion of the settlement that provides for the payment of attorneys' fees and expenses remains for the Court's determination.

³ (*See* Order Granting Unopposed Mot. Final Approval Class Settlement Agreement 6–7 [hereinafter “Final Approval Order”], ECF No. 37.)

⁴ (Sua Sponte Order Requesting Suppl. Submissions on Pls.' Mot. Att'ys' Fees Expenses, ECF No. 38.)

⁵ (Decl. David Lietz Regarding Suppl. Submission Supp. Pls.' Mot. Att'ys' Fees Expenses [hereinafter “Lietz Decl.”], ECF No. 40; Decl. John A. Yanchunis Supp. Mot. Att'ys' Fees, Expenses, Service Awards [hereinafter “Yanchunis Decl.”], ECF No. 41; Aff. Edward H. Maginnis Supp. Mot. Att'ys' Fees, Expenses, Service Awards [hereinafter “Maginnis Aff.”], ECF No. 42.)

5. Plaintiffs seek fees of \$89,908.50 for 95.1 hours of work by David Lietz (“Lietz”), a partner with 32 years of experience, at hourly rates of \$919 (for time incurred in 2022) and \$979 (for time incurred in 2023);⁶ \$7,867.50 for 10 hours of work by Scott Harris (“Harris”), a partner with 17 years of experience, at hourly rates of \$764 (2022) and \$829 (2023);⁷ \$3,740.00 for 4.4 hours of work by Gary Klinger (“Klinger”), a partner with 13 years of experience, at an hourly rate of \$850;⁸ \$4,305.00 for 12.3 hours of work by Blake Yagman (“Yagman”), an associate with 6 years of experience, at an hourly rate of \$350; \$2,280.00 for 10.8 hours of work by Scott Heldman (“Heldman”), a paralegal, at hourly rates of \$208 (2022) and \$225 (2023);⁹ \$2,081.30 for 9.9 hours of work by Sandra Passanisi (“Passanisi”), a paralegal, at hourly rates of \$208 (2022) and \$225 (2023);¹⁰ \$416.00 for 2 hours of work by Jordan Crowe (“Crowe”), a paralegal, at an hourly rate of \$208;¹¹ and \$312.00 for 1.5 hours of work by Tiffany Kuiper (“Kuiper”), a paralegal, at an hourly rate of \$208.¹²

⁶ (Lietz Decl. 2, 12.) Lietz, Harris, Heldman, and Passanisi increased their hourly rates at the end of 2022. (See Lietz Decl. 2.) References to different hourly rates for the same attorney or paralegal therefore reflect and refer to this change.

⁷ (Lietz Decl. 8, 9.)

⁸ (Lietz Decl. 5, 9.)

⁹ (Lietz Decl. 9.)

¹⁰ (Lietz Decl. 9.)

¹¹ (Lietz Decl. 9.)

¹² (Lietz Decl. 9.)

6. The reasonableness of a fee award is governed by Rule 1.5 of the Revised Rules of Professional Conduct of the North Carolina State Bar. *Ehrenhaus v. Baker (Ehrenhaus I)*, 216 N.C. App. 59, 96 (2011). Rule 1.5 establishes eight factors through which to evaluate reasonableness: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required 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. N.C. Rev. R. Prof. Conduct 1.5(a).

7. The trial court may take judicial notice of the rates customarily charged by local attorneys for the same tasks, *Simpson v. Simpson*, 209 N.C. App. 320, 328 (2011), and may consider the services rendered by paralegals, *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 195 (1993).

8. Under the first factor, and as a threshold matter, the Court has reviewed Plaintiffs' counsel's billing records submitted in support of the Motion, and concludes that the time expended and hours billed by each attorney and paralegal are reasonable and not duplicative or excessive.¹³

¹³ (See Lietz Decl. 11–13.)

9. Furthermore, the Court concludes that this action involved complex and novel questions which required high legal skill to satisfactorily resolve. This case revolves around rapidly evolving legal questions of digital security, data breaches, and digital privacy, which are at the cutting edge of the interplay between new technology and the law. *See, e.g., Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019) (describing data breach cases as “particularly risky, expensive, and complex”); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *14 (N.D. Ohio Aug. 12, 2019) (describing data breach cases as “complex and risky[,]” and as presenting “novel questions for courts”). Pursuing these actions is therefore complicated, difficult, and fraught with risk, for both clients and attorneys, and such was the case here. The Court therefore concludes that this factor weighs in favor of Plaintiffs’ requested fee award.

10. The second factor, the likelihood that the acceptance of employment will preclude other work by the lawyer, weighs against Plaintiffs. Lietz states that he has served as class counsel in more than 30 data breach or data privacy cases in the last 3 years alone.¹⁴ Similarly, Klinger is serving as lead counsel in 30 pending class actions.¹⁵ There is no evidence that Plaintiffs’ counsel declined other cases or work as a result of their involvement in this action. The Court concludes therefore that Plaintiffs’ counsel’s work on this case has not precluded other work.

¹⁴ (Lietz Decl. 3.)

¹⁵ (Lietz Decl. 6.)

11. Third, the Court reviews the fee charged in the locality for similar services. The relevant locality is North Carolina. Plaintiffs attempt to define a second, inchoate locality of the national plaintiffs' data breach bar,¹⁶ but the Court finds this argument unpersuasive. There is no evidence before the Court demonstrating that North Carolina-based counsel could not have effectively handled the work involved in this case, and Plaintiffs' argument defies the ordinary meaning of "locality" as a geographically defined location or region. *See, e.g., Locality*, Black's Law Dictionary (11th ed. 2019). The Court therefore declines to consider hourly rates approved as reasonable in other jurisdictions.¹⁷

12. The North Carolina state courts have generally not approved hourly rates as high as those sought by Lietz, Harris, and Klinger (together, the "Partners"). *See, e.g., Bradshaw v. Maiden*, 2018 NCBC LEXIS 98, at *12 (N.C. Super. Ct. Sept. 20, 2018) (concluding that hourly rates between \$250 and \$475 were reasonable); *Elliott v. KB Home N.C., Inc.*, 2017 NCBC LEXIS 38, at *23–25 (N.C. Super. Ct. Apr. 17, 2017) (awarding attorneys' fees of \$500/hour for partners, \$250/hour for associates and \$125/hour for paralegals); *In re Newbridge Bancorp S'holder Litig.*, 2016 NCBC

¹⁶ (Yanchunis Decl. 10–11.)

¹⁷ Plaintiffs cite to several federal court decisions from around the country approving rates similar to those that Plaintiffs seek here. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752, 2020 U.S. Dist. LEXIS 129939, at *104 (N.D. Cal. July 22, 2020) (approving hourly rates of \$450 to \$900 for partners in a data breach class action); *Fulton-Green v. Accolade, Inc.*, No. 18-274, 2019 U.S. Dist. LEXIS 164375, at *32 (E.D. Pa. Sept. 23, 2019) (approving hourly rates of up to \$975 in a data breach class action); *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509, 2015 U.S. Dist. LEXIS 118052, at *33–34 (N.D. Cal. Sept. 2, 2015) (approving hourly rates of up to \$975).

LEXIS 91, at *46–47 (N.C. Super. Ct. Nov. 22, 2016) (noting that reasonable rates charged in North Carolina for complex civil litigation range from \$250 to \$475); *In re Pike S'holder Litig.*, 2015 NCBC LEXIS 95, at *22–23 (N.C. Super. Ct. Oct. 5, 2015) (recognizing an hourly rate range from \$250 to \$550 as reasonable).

13. The Court nonetheless recognizes that hourly rates have risen since many of the North Carolina state cases that speak to reasonable rates were decided. For example, in one fee motion to this Court decided in 2022, the party seeking fees presented statistical evidence to the Court that in the first half of 2021, most hourly rates for North Carolina-based partners in large law firms ranged from \$531 to \$694, with an average rate of \$567 per hour.¹⁸ In another recently decided case, this Court approved hourly rates of \$600 and \$550 for partners, and \$375 and \$325 for associates. *Woodcock v. Cumberland Cnty. Hosp. Sys.*, 2023 NCBC LEXIS 54, at *11, *14 (N.C. Super. Ct. Apr. 3, 2023). And in an October 2022 decision, this Court observed that “numerous recent decisions have determined that typical fees charged in North Carolina for handling complex commercial litigation exceed \$250 and often range as high as \$550 per hour.” *Chambers v. Moses H. Cone Mem. Hosp.*, 2022 NCBC LEXIS 122, at *14 (N.C. Super. Ct. Oct. 19, 2022).

14. Plaintiffs’ evidence is consistent with these recent decisions. First, John A. Yanchunis, a lawyer proffered by Plaintiffs as “an expert witness on reasonable hourly rates for representation in this data breach class action lawsuit in the State

¹⁸ Aff. Adam P.M. Tarleton, Esq. Supp. Pls.’ Petition Costs in re Pls.’ Mot. Sanctions Ex. A, *Ford v. Jurgens*, 2022 NCBC LEXIS 59 (N.C. Super. Ct. June 15, 2022) (20 CVS 4896).

of North Carolina,”¹⁹ opines that hourly rates “in a range from \$290 to \$638 . . . are commensurate with [his] personal knowledge of hourly rates charged by practitioners in North Carolina in 2023.”²⁰ Similarly, Plaintiffs’ other third-party affiant, North Carolina attorney Edward H. Maginnis, avers that “rates of \$600 per hour for partners and \$400 for associates are rates that my firm has recently been approved for in several class actions in North Carolina.”²¹

15. In addition, the Court recognizes that data breach class action litigation is a complex and novel area of the law and that Lietz and his law firm are national leaders in this field. Considering Lietz’s specialized expertise and experience, the evidence submitted concerning the current hourly rates charged by North Carolina attorneys in complex business litigation, and the recent decisions of the North Carolina courts, the Court concludes, in the exercise of its discretion, that a \$700 hourly rate is reasonable and should be approved for Lietz and a \$575 hourly rate is reasonable and should be approved for Klinger and Harris.

16. For the same reasons, and again noting the effect of the passage of time upon reasonable hourly rates, the Court approves the \$350 hourly rate sought for

¹⁹ (Yanchunis Decl. 15.)

²⁰ (Yanchunis Decl. 24.)

²¹ (Maginnis Aff. 8.) Citing to North Carolina federal district court decisions, Maginnis nonetheless avers that current customary hourly rates in complex class actions in North Carolina are approximately \$600 to \$750 for partners, \$400 to \$500 for associates, and \$150 to \$200 for paralegals. (Maginnis Aff. 7.) *See, e.g., Linnins v. HAECO Ams., Inc.*, No. 1:16CV486, 2018 U.S. Dist. LEXIS 183839, at *6–7 (M.D.N.C. Oct. 26, 2018) (approving hourly rates of \$650 to \$700); *Phillips v. Triad Guar., Inc.*, 1:09CV71, 2016 U.S. Dist. LEXIS 60950, at *23–25 (M.D.N.C. May 9, 2016) (approving hourly rates of \$640 to \$880 for partners in a complex, specialized case).

Yagman as reasonable.²² *Woodcock*, 2023 NCBC LEXIS 54, at *11, *14 (approving a \$375 hourly rate for a fourth-year associate); *In re Pike Corp. S'holder Litig.*, 2015 NCBC LEXIS 90, at *23 (approving a rate of \$250 per hour for an associate); *Se. Air Charter, Inc. v. Stroud*, 2015 NCBC LEXIS 82, at *6–7 (N.C. Super. Ct. Aug. 17, 2015) (approving as reasonable hourly rates of \$225 to \$250 for associates); *Out of the Box Developers, LLC v. Doan Law, LLP*, 2014 NCBC LEXIS 39, at *31 (N.C. Super. Ct. Aug. 29, 2014) (approving hourly rates of \$260 to \$180 for associates).

17. Finally, the Court concludes that the hourly rates of \$208 and \$225 billed by Plaintiffs' counsel's four paralegals are also reasonable.²³ *See Miriam Equities, LLC v. LB-UBS 2007-C Millstream Rd., LLC*, 2022 NCBC LEXIS 115, at *7–10 (N.C. Super. Ct. July 8, 2022) (approving a paralegal rate of \$250 per hour); *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2018 NCBC LEXIS 69, at *21–23 (N.C. Super. Ct. July 6, 2018) (approving paralegal rates of \$150 to \$250 per hour).

18. Fourth, Plaintiffs' counsel achieved a settlement that addressed the purported class members' grievances against Defendant, and which requires Defendant to compensate the purported class members directly and to provide identity theft protection to the purported class.²⁴ A favorable settlement for the

²² (Lietz Decl. 9.)

²³ (Lietz Decl. 9.)

²⁴ (*See generally* Mem. Supp. Unopposed Mot. Final Approval Class Action Settlement, ECF No. 35 (summarizing the terms of the settlement agreement).)

purported class weighs in favor of Plaintiffs' requested fee award. *See, e.g., In re Senergy*, 2000 NCBC LEXIS 9, at *19–20 (N.C. Super. Ct. May 17, 2000) (finding that a “very favorable” settlement weighed in favor of the requested fee award); *Lester v. Mechel Bluestone, Inc.*, No. 5:17-cv-00740, 2019 U.S. Dist. LEXIS 63882, at *11–13 (S.D.W. Va. Mar. 7, 2019) (stating that a favorable settlement was “a significant and valuable benefit for the class that weighs in favor of the proposed fee”); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1255–56 (S.D. Fla. 2016) (stating that a settlement was an “excellent result” in light of the risks of litigation, which weighed in favor of the proposed fee award). This factor therefore weighs in favor of Plaintiffs' requested fee award.

19. There is no evidence before the Court that speaks to the fifth, sixth, or eighth Rule 1.5 factors: the time limitations imposed by the client, the nature of the professional relationship with the client, and the nature of the attorney's fee arrangement with the client. *Ehrenhaus I*, 216 N.C. App. at 96–97. These factors therefore weigh neither in favor nor against the Motion.

20. The seventh factor, the reputation and experience of the attorneys, weighs in Plaintiffs' favor. Each Partner is a seasoned litigator with at least a decade of experience, and each has extensive experience litigating class action cases.²⁵ Lietz in particular has over three decades of experience, has achieved laudable results for his clients in the past, and has attained national prominence as a leading plaintiffs-

²⁵ (*See generally* Lietz Decl. 2–9.)

side data breach class action practitioner.²⁶ The ability prong of this factor also weighs in the Partners' favor, for the reasons recounted in the Court's discussion of the first Rule 1.5 factor above. Similarly, Yagman had five years of litigation experience at the time of his work in this case and has received recognition from a trial lawyers organization.²⁷

21. Finally, the Court notes that the notice provided to the settlement class contained information about Plaintiffs' request for fees and expenses, and no member of the purported class filed an objection to the fee request or appeared at the fairness hearing to oppose the requested fee. This, too, weighs in favor of the requested fees and expenses.

22. Based on the above, the Court concludes that, on balance, the Rule 1.5 factors counsel in favor of granting the Motion in substantial part. The complexity, results, and experience factors all weigh in Plaintiffs' favor, the preclusion of other employment factor weighs against, the local customary rate factor is mixed, and the time limitations, nature of the relationship, and fee basis factors do not affect the Court's conclusion. The Court is persuaded that overall, the Motion seeks reasonable fees as sought, with modified hourly rates of \$700 for Lietz and \$575 for Harris and Klinger.

²⁶ (*See generally* Lietz Decl.)

²⁷ (Lietz Decl. 9.)

23. Finally, Plaintiffs request \$455 in expenses for filing fees, service fees, and pro hac vice admission fees,²⁸ plus \$553.60 in out-of-pocket costs Lietz incurred travelling to Charlotte for the Hearing. The Court approves as reasonable Plaintiffs' request for payment of these expenses.

24. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **GRANTS** the Motion in part and **AWARDS** Plaintiffs their attorneys' fees and expenses in the total amount of \$85,252.60, as follows:

- a. 95.1 hours at \$700 per hour for Lietz for a total of \$66,570;
- b. 10 hours at \$575 per hour for Harris for a total of \$5,750;
- c. 4.4 hours at \$575 per hour for Klinger for a total of \$2,530;
- d. 12.3 hours at \$350 per hour for Yagman for a total of \$4,305;
- e. 10.8 hours at rates of \$208 and \$225 per hour for Heldman for a total of \$2,280;
- f. 9.9 hours at rates of \$208 and \$225 per hour for Passanisi for a total of \$2,081;
- g. 2 hours at a rate of \$208 per hour for Crowe for a total of \$416;
- h. 1.5 hours at a rate of \$208 per hour for Kuiper for a total of \$312; and
- i. \$1,008.60 in expenses and costs.

²⁸ (Mem. Supp. Mot. Att'ys' Fees, Expenses, Service Awards 19, ECF No. 30.)

- j. The fees and expenses awarded hereunder shall be paid according to the procedures set forth in paragraph 7 of this Court's order approving the Agreement.²⁹

SO ORDERED, this the 5th day of May, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge

²⁹ (See Final Approval Order 4.)