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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

JANICE TEETER, individually, and
on behalf of all others similarly
situated,

Plaintiff,

vs.

EASTERSEALS-GOODWILL
NORTHERN
ROCKY MOUNTAIN, INC.,

Defendant.

Case No. 4:22-cv-00096-BMM

CLASS ACTION

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
ATTORNEYS' FEES AND COSTS**

Plaintiff Janice Teeter (collectively, “Plaintiff”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, respectfully submit this memorandum of law in support of their Motion for Attorneys’ Fees and Costs (“Motion”).

I. INTRODUCTION

Easterseals-Goodwill Northern Rocky Mountain, Inc (“ESGW” or “Defendant” and, together with Plaintiff, the “Parties”), is a private, nonprofit organization serving children and adults with disabilities, along with disadvantaged families in Idaho, Montana, Utah and Wyoming. In connection with providing services to its clients, ESGW collects a host of personally identifiable information (“PII”) and protected health information (“PHI”) from its clients. ESGW stores this information on its own servers and networks.

This case arises from an October 2021 data breach that impacted Plaintiff’s and Class Members’ PII/PHI. Plaintiff, individually and on behalf of the Settlement Class, filed suit against ESGW, alleging ESGW failed to adequately protect their personal and private information. ESGW has denied allegations of wrongdoing and liability and asserted defenses to the individual and representative claims throughout the pendency of the litigation.

Recognizing the risks of protracted litigation, the Parties engaged in settlement negotiations over the course of several weeks. Through extensive arms’-

length negotiations, the Parties reached an agreement that provides for significant monetary and equitable relief for the Settlement Class.

In exchange for a claims made fund and injunctive relief on behalf of the Settlement Class, the years of hard work spent securing it, and the work that will persist throughout the compliance period, Cole & Van Note and Rasmusson Law Offices, PLLC (collectively, “Class Counsel”) reasonably request \$215,000 for their fees and costs, which is a 1.02 multiplier. Particularly given this is a very modest amount for making a sizable fund available to class members who could elect (or not) to participate, Class Counsel respectfully request the Court grant their Motion.

II. CASE SUMMARY

A. The Data Breach

Between October 12, 2021 and November 11, 2021 an unauthorized third-party accessed ESGW’s network, gaining access to the protected personal information of more than 7,551 individuals stored and maintained by Defendant (the “Data Breach”). For almost a month, the unauthorized third party had access to files and information on the Defendant’s network, allegedly operating undetected. Defendant did not discover the Data Incident until at least July 20, 2022. ESGW determined the personal information of individuals impacted by the Data Breach included: first and last names, driver’s license numbers, and medical treatment

information. On September 16, 2022, ESGW reported to the Montana Attorney General's Office that the Data Breach impacted 7,551 individuals.

B. Procedural Posture

On October 11, 2022, Plaintiff Janice Teeter filed a lawsuit against ESGW captioned, *Teeter V. Easterseals-Goodwill Northern Rocky Mountain, Inc*, No. 4:22-cv-00096-BMM. Plaintiff alleged seven causes of action: (1) Negligence, (2) Negligence *Per Se*, (3) Invasion of Privacy, (4) Breach of Confidence, (5) Beach of Implied Contract, (6) Breach of the Implied Covenant of Good Faith and Fair Dealing and (7) Unjust Enrichment.

On December 14, 2022, ESGW filed a Motion to Dismiss for failure to state a claim and lack of standing. On March 2, 2023 the motion was granted in part and denied in part, leaving Plaintiff's Negligence claim. Counsel for the Plaintiff then began serving discovery and communicating and coordinating with ESGW to explore the possibility of resolving this action.

C. History of Negotiations

Recognizing the risks of protracted litigation, the Parties began negotiating settlement as early as March 2023. Class Counsel and Defendant's Counsel engaged in multiple telephone and email correspondences. The Parties were engaged in an offer and counteroffer process which took months to complete. In anticipation of continued litigation and formal mediation, ESGW began to prepare initial

discoveries related to the merits of Plaintiffs' claims, potential defenses thereto, and class certification, and the Parties discussed their respective positions on the merits of the claims and class certification. These negotiations culminated in a Settlement Agreement, which the Court approved on December 22, 2023.

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class.

The Settlement Agreement provides for significant monetary and equitable relief for settlement class members. Settlement Agreement § III. The Settlement provides relief for a nationwide Settlement Class as defined as:

“All persons residing in the United States to whom Defendant sent Notice of a Data Security Incident that was discovered on or about July 20, 2022, and involved an unauthorized person gaining access to certain email account that contained personal identifying information and/or personal health information (the “Data Incident”).” S.A. ¶ 41.

B. The Settlement Benefits.

The Settlement provides for both monetary and equitable relief. ESGW will make monetary relief described below available to Settlement Class Members through a claims process. The costs of providing equitable relief, the costs of notice, claims administration and court-approved attorneys' fees, costs and service awards are to be paid by Defendant separate and apart from the Plaintiff's and the Class's monetary relief.

1. Monetary Relief.

All Settlement Class Members who submit a valid Claim Form are eligible to receive up to \$1,500 in expense reimbursements and lost time; and up to \$5,000 in extraordinary expense reimbursements. Claimable expense reimbursements include: (i) unreimbursed bank fees, (ii) long distance telephone charges, (iii) cell minutes (if charged by minute), and Internet usage charges (if charged by the minute or by the amount of data usage and incurred solely as a result of the Data Incident), (iv) postage, (v) gasoline for local travel, (vi) costs of credit report(s) purchased by Settlement Class Members between July 20, 2022 and December 22, 2023, (vii) costs of credit monitoring purchased by Settlement Class Members between July 20, 2022 and December 22, 2023 and (ix) reimbursement for attested time spent remedying issues related to the Data Breach (calculated at the rate of \$20 per hour with a cap of three hours). *S.A.* ¶ 48.

2. Equitable Relief.

In addition to the monetary benefits described above, the Settlement Agreement provides for equitable relief in the form of changes to ESGW's data security practices. *Id.* ¶ 59. ESGW will file a description of their data security enhancements which will be filed under seal so as not to undermine their effectiveness. Plaintiff's counsel ensured that ESGW's security enhancements are

sufficient and will greatly decrease the risk of another Data Breach happening to ESGW in the future.

C. Notice and Claims Process

1. Notice.

ESGW shall also pay all the costs associated with the Settlement Administrator for providing notice to the Settlement Class in accordance with the Preliminary Approval Order. S.A. ¶ 69. The Notice program was approved by the Court on December 22, 2023.

2. Claims, Objections, and Requests for Exclusion.

As the Court previously found, the duration of the claims period provides Settlement Class Members with adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to participate, opt-out or object.

III. APPLICABLE LEGAL STANDARDS

Under Rule 23(h), courts may award reasonable attorneys' fees which are "authorized by law or by the parties' agreement." F.R.C.P. Rule 23(h). However, in doing so, The Ninth Circuit applies the *Hensley* formula, commonly referred to as the "lodestar." *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987). In calculating the lodestar, courts should consider the factors listed in *Kerr v. Screen Extras Guild Inc.*, 526 F.2d 67 (9th Cir. 1975). To determine whether the

amount of time expended is reasonable, the Court must review time records to determine whether the time claimed is adequately documented and whether any time was unnecessary, duplicative or excessive. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). To determine a reasonable rate for each attorney, the Court must look to the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. *Id.* at 1210-11. The lodestar method also permits the Court to award a “risk multiplier,” which awards counsel an increased fee to account for “the importance and difficulty of the litigation; the novelty of the issues involved; the risk of nonpayment for the attorney's services; the skill of the attorney in presenting the case; and the magnitude of the results obtained” *Indep. Living Ctr. of S. Cal., Inc. v. Figueroa*, 856 F. App'x 97, 101 (9th Cir. 2021).

Moreover, as part of the Settlement, ESGW has agreed to not oppose an application by Settlement Class Counsel for an award of attorneys’ fees and litigation costs in the amount of up to \$215,000. S.A. ¶ 81. The parties intended that any award of Attorneys' Fees, Litigation Costs and Expenses, and the Service Award Payments to the Settlement Class Representative, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. S.A. ¶ 83. Montana courts have discretion to approve

fee and cost awards which are reasonable. *See Cochran v. State*, 80 P.3d 423, 425 (Mont. 2003).

IV. THE REQUESTED ATTORNEYS' FEE IS REASONABLE

On December 22, 2023, the Court granted preliminary approval of the Settlement and the Notice of Settlement, which informed Settlement Class Members that Class Counsel would seek fees and costs of up to \$215,000. Although the objection deadline has not passed and Plaintiffs will respond to any objections to their fee request in their reply brief, thus far, zero objections to the requested fees or expenses have been filed.

A. The Lodestar Method Supports the Fee

The reasonableness of the fee request is supported by the lodestar method. The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Under Montana law, the Court may award the full amount of agreed upon fees as a reasonable attorney fee but should use the lodestar calculation as a cross-check. *Hoffman v. Geico Ins. Co.*, No. CV 06-83-M-DWM, 2008 U.S. Dist. LEXIS 145596, at *7 (D. Mont. June 25, 2008). Under the lodestar method, the district court "multiplies the number of hours the prevailing party reasonably spent on litigation by a reasonable hourly rate to determine a presumptively reasonable fee award"—the lodestar. *Named Plaintiffs*

& Settlement Class Members v. Feldman (In re Apple Inc. Device Performance Litig.), 50 F.4th 769, 784 (9th Cir. 2022).

Here, the lodestar method demonstrates that the requested fee is reasonable. Class Counsel have collectively spent 477.2 hours prosecuting and resolving the Lawsuit from its inception in October 2022 through February 21, 2024. Based on Class Counsel's standard and approved rates, this amounts to a lodestar of \$210,615.00. This does not include time that will be spent preparing for and attending the final approval hearing, overseeing the claims review and distribution process and the work associated with addressing Class Member concerns thereafter, work which is common in such situations. Class Counsel drew on their collective experience litigating hundreds of complex class actions against defendants much like this one to minimize wasted effort.

Indeed, the Ninth Circuit and Montana courts recognize the appropriateness of an upward multiplier in considering factors such as "the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.". *Id.*; *See Strickland v. Truckers Express, Inc.*, No. CV 95-62-M-JCL, 2007 U.S. Dist. LEXIS 10008, at *7 (D. Mont. Feb. 12, 2007). Here, a 1.02 multiplier is reasonable.

B. This Litigation was Risky and Presented Complex Issues of Law and Fact

Courts also consider the risk and complexity of the issues of law and fact as a relevant factor in evaluating the reasonableness of fee requests under the lodestar method. *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 946 (9th Cir. 2011). Here, Class Counsel have litigated Plaintiffs' claims for over a year despite facing numerous litigation risks. Although Plaintiffs and Class Counsel believe in the merits of their claims, they are also cognizant of the time and expense that would have been required to prosecute this action through summary judgment, trial, potential appeals, etc., as well as the difficulties and delays inherent in all litigation.

Class Counsel achieved an impressive result here, making available a simple claims process for otherwise unrepresented individuals. The Lawsuits raised complex issues of law and fact that required skill to maneuver. Regardless of the number of Settlement Class Members who ultimately made a claim, Class Counsel made an extraordinary amount of recovery available to otherwise underrepresented individuals with no guarantee of repayment, even of their litigation costs. Their work and risk should be rewarded.

C. Service Award for Representative Plaintiff

The Settlement Agreement calls for a reasonable service award to Representative Plaintiff in the amount of \$2,500, to be paid separate and apart from any other benefits available to the Settlement Class and subject to Court approval. SA ¶ 79. The service award therefore does not prejudice any member of the class and has the Courts approval or disapproval of the service award has no effect on the rest of the settlement agreement. SA ¶ 80. The service award is meant to compensate Representative Plaintiff for her efforts, which include maintaining contact with counsel, reviewing and approving pleadings, assisting in the investigation of the case, remaining available for consultation throughout mediation, reviewing the Settlement documents and for answering counsel's many questions. An award of \$2,500 is reasonable in light of the work performed by Representative Plaintiff.

V. CONCLUSION

Plaintiffs respectfully request the Court award Class Counsel attorneys' fees and costs in the amount of \$215,000 to be paid to Class Counsel.

DATED: February 21, 2024

By: /s/ Scott Edward Cole

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DATED: February 21, 2024

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CERTIFICATE OF COMPLIANCE WITH LOCAL REQUIREMENTS

1. This brief complies with the word count limit of Local Rule 7.1(d)(2)(A) and (E). The brief contains 2270 words, determined by Microsoft Word.

CERTIFICATE OF SERVICE

I hereby certify that, on February 21, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served today on all counsel of record in this case via transmission of Notice of Electronic Filing generated by CM/ECF and on counsel in the related cases to their respective emails per the below service list.

/s/ Scott Edward Cole
Scott Edward Cole, Esq.