IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTAL BRAY and SAMUEL COOK, on behalf of themselves and all others similarly situated,	)	CASE NO. 1:17-cv-01365-JEJ
Plaintiffs,	)	
v.	)	CLASS ACTION
GAMESTOP CORPORATION,	)	JURY TRIAL DEMANDED
Defendant.	)	

PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS

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PLEASE TAKE NOTICE that at the Final Approval Hearing scheduled for 9:30 a.m. on December 19, 2018, Plaintiffs will move to have the Court enter the proposed order submitted herewith granting their unopposed motion seeking (1) the payment of $557,500 to Plaintiffs' Counsel for the payment of their attorneys' fees and reimbursement of expenses, and (2) the payment of incentive awards in the amount of $3,750 each for Plaintiffs Crystal Bray and Samuel Cook.

PLEASE FURTHER NOTE that Plaintiffs will rely on the Memorandum of Law, Declarations of Counsel and other related materials in support of this motion.

PLEASE FURTHER NOTE that Defendant does not oppose this motion.

Dated: November 26, 2018

Respectfully submitted,

By: */s/ Robert J. Kriner, Jr.*

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[PROPOSED] ORDER GRANTING FINAL APPROVAL
OF THE CLASS ACTION SETTLEMENT

Before the Court is Plaintiffs' unopposed application requesting that the Court enter an Order granting Final Approval of the Class Action Settlement involving Plaintiffs Crystal Bray and Samuel Cook (hereinafter "Plaintiffs") and Defendant GameStop Corporation (hereinafter "Defendant"), as fair, reasonable and adequate, awarding attorneys' fees and costs to Class Counsel as outlined herein, and awarding an incentive payment to Plaintiffs as detailed below.

Having reviewed and considered the Settlement Agreement and the application for final approval of the settlement, an award of attorneys' fees and costs, and an incentive award to the Plaintiffs, and having conducted a final approval hearing, the Court makes the findings and grants the relief set forth below approving the settlement upon the terms and conditions set forth in this Order.

WHEREAS, the Court not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

WHEREAS, the Court being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining

whether the settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

IT IS ORDERED that:

1. The settlement involves allegations in Plaintiffs' Class Action Complaint and Jury Demand against Defendant for failure to implement or maintain adequate data security measures for customer information, including Card Information, directly and proximately caused injuries to Plaintiffs and the Class.

2. The settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On August 1, 2018, the Court entered a Preliminary Approval Order which among other things: (a) conditionally certified this matter as a class action, including defining the class and class claims, appointing Plaintiffs as Class Representatives, and appointing Co-Lead Counsel as Class Counsel; (b) preliminarily approved the Settlement Agreement; (c) approved the form and manner of Notice to the Settlement Class; (d) set deadlines for opt-outs and objections; (e) approved and appointed the claims administrator; and (f) set the date for the Final Fairness Hearing.

5. In the Preliminary Approval Order, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), for settlement purposes only, the Court certified the Settlement Class, defined as follows:

> All persons residing in the United States who used a credit, debit, or other payment card to make (or attempt to make) a purchase on www.gamestop.com between June 6, 2016 and February 9, 2017.

Excluded from the Settlement Class are Defendant and its officers, directors, management, employees, predecessors-in-interest, successors-in-interest, assignees or affiliates, and subsidiaries, and the Judge(s) assigned to this case.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties pursuant to Federal Rule of Civil Procedure 23(e)(2), grants final approval of the Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable and adequate and meets the requirements of Federal Rule of Civil Procedure 23.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in that Agreement, for:

A. Defendant to institute a Settlement Claims Process as outlined in the Settlement Agreement whereby Class Members can submit claims that will be evaluated by a Claims Administrator mutually agreed upon by Class Counsel and Defendant.

B. Defendant to pay all costs of Claims Administration and Settlement Administration, including the cost of Claims Administrator, emailing and mailing notice, and preparing and mailing checks.

C. Defendant to pay the reasonable attorneys' fees of Class Counsel.

D. Class Counsel to pay incentive awards of $3,750 per Class Representative.

8. The terms of the Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. The parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the settlement in accordance with this Order and the terms of the Settlement Agreement.

9. Notice of the Final Approval Hearing, the application for counsel fees and costs, and the proposed payments to the Class Representative have been provided to Settlement Class Members as directed by this Court's Orders, and proof of Notice has been filed with the Court by Defendant.

10. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

11. As of the Opt-Out deadline, ____ potential settlement class members have requested to be excluded from the Settlement. Their names are set forth in Exhibit A to this Order. Those persons are not bound by this Order, as set forth in the Settlement Order.

12. The Court has considered all the documents filed in support of the settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the final hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. Pursuant to the Settlement Agreement, Defendant, the Claims Administrator, and Class Counsel shall implement the settlement in the manner and time frame as set forth therein.

14. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class Members release claims as follows:

> any and all claims and causes of action including, without limitation, any causes of action under 18 U.S.C. §§ 2701 *et seq.*, and all similar statutes in effect in any states in the United States as defined herein; violations of the Indiana, North Carolina and similar state consumer protection statutes; negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Security Incident and alleged theft of payment card data or other personal information or the allegations, facts, or circumstances described in the Litigation.

Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

15. Pursuant to the Settlement Agreement, and in recognition of their efforts on behalf of the Settlement Class, the Court approves payments to Plaintiffs in the total amount of $3,750 each as an incentive payment for their efforts on behalf of the Settlement Class. Class Counsel shall make such payment in accordance with the terms of the Settlement Agreement.

16. The Court has appointed Benjamin Johns of Chimicles & Tikellis LLP and Cornelius P. Dukelow of Abington Cole + Ellery as Class Counsel.

17. The Court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees and costs in the amount of $557,500. Payment shall be made pursuant to the terms of the Settlement Agreement.

18. This Order resolves all claims against all parties in this action and is a final order.

19. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the settlement.

_____ day of _____, 2018

_____

Honorable John E. Jones III
United States District Judge

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Plaintiffs,	)	
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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS

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Dated: November 26, 2018

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I. INTRODUCTION

Plaintiffs Crystal Bray and Samuel Cook ("Plaintiffs") submit this Memorandum of Law in support of their Motion for Court Approval of their Attorneys' Fees, Litigation Expenses and Incentive Awards. The relief sought in this motion is unopposed by Defendant GameStop Corporation ("Defendant" or "GameStop"). In accordance with the preliminary approval order, Plaintiffs will separately be moving for final approval of the settlement and for certification of a settlement class by December 3, 2018. *See* Docket Entry No. 43.

As detailed below, the Court should grant Plaintiffs' instant motion because the attorneys' fees sought are reasonable under the circumstances and pursuant to Third Circuit case law; the litigation expenses incurred were reasonable and necessary to the prosecution of the case; and the incentive awards are also reasonable and appropriate to compensate the two named Plaintiffs for their work on this matter. Moreover, the total amount earmarked for Plaintiffs' attorneys' fees and expenses – $557,500 – is a figure that the mediator proposed to both sides after all of the other material terms of the settlement had been agreed upon, but at a time when the parties were at an impasse with respect to this remaining point. This separate payment will not decrease the relief being made available to the class under the settlement agreement. For the reasons set forth below, Plaintiffs respectfully request that their motion be granted.

II. RELEVANT FACTUAL BACKGROUND

A. Plaintiffs' Claims

Plaintiffs are consumers whose personal and non-public information, including their credit card and debit card numbers, expiration dates, and other information was compromised in a massive security breach of Defendant's computer servers beginning on or around August 10, 2016 and lasting until February 9, 2017 (the "Data Breach"). Plaintiffs asserted claims for negligence,

negligence *per se*, breach of express and implied contracts, violations of the Indiana and North Carolina state consumer protection statutes, and for unjust enrichment.

B. History of the Litigation

1. The Complaint

Plaintiffs filed this case on September 29, 2017. *See* Docket Entry No. 1. The Complaint alleged that GameStop failed to implement adequate security measures to protect the confidential payment card data entrusted to it by its online customers. It alleged that by GameStop's failure to do so, the victims of the Data Breach have had their payment card information compromised, were exposed to fraud and identity theft, were subjected to the increased risk of fraud, lost control over their personal information, and spent multiple hours attempting to address and mitigate the fallout of resulting fraud.

Plaintiffs also alleged that in the wake of the breach, GameStop failed to make meaningful assistance available to its customers, such as fraud insurance or credit monitoring. The Complaint sought to represent a class consisting of all GameStop customers who used a credit or debit card to place (or attempt to place) a purchase on www.gamestop.com between August 10, 2016 and February 9, 2017.

2. Defendant's Motion to Dismiss and the Court's Opinion

On December 15, 2017, GameStop responded to the Complaint by filing a motion that sought to dismiss the case in its entirety. *See* Docket Entry Nos. 24-25. After the motion was fully briefed by the parties, the Court issued a Memorandum & Order on March 16, 2018 that granted in part and denied in part GameStop's motion to dismiss. *See* Docket Entry No. 36. Specifically, the Court dismissed Plaintiffs' negligence-based claims and breach of express contract claim. However, the Court rejected GameStop's argument that Plaintiffs had failed to allege any

cognizable injury or damages sufficient to support their common law claims. Notably, the Court concluded that the Complaint stated a claim under the FED. R. CIV. P. 9(b) heightened pleading standard and allowed for a fair inference that GameStop's omissions and representations were unfair, abusive, or deceptive. Accordingly, the Court sustained Plaintiffs' claims under the Indiana and North Carolina consumer protection statutes. *Id.* The Court also denied GameStop's Motion to Dismiss Plaintiffs' claims for breach of implied contract and unjust enrichment. *Id.*

GameStop filed an Answer on March 30, 2018. *See* Docket Entry No. 39.

C. Settlement Negotiations.

Beginning before the issuance of the Court's March 16 decision, the parties commenced discussions regarding the possibility of reaching a negotiated settlement on behalf of Plaintiffs and the Class. Plaintiffs' counsel sent a written settlement demand to GameStop on January 9, 2018. On February 23, 2018, defense counsel sent a settlement counterproposal. Thereafter, the parties agreed to seek the aid of a private mediator to continue settlement negotiations.

On May 2, 2018, the parties engaged in a full-day mediation session with private mediator Bennett G. Picker of Stradley Ronon Stevens & Young LLP in Philadelphia. *See* Declaration of Benjamin F. Johns submitted herewith as Exhibit 1 ("Johns Decl.") at ¶ 4. With the assistance of Mr. Picker, the parties reached agreement on the material terms of the settlement. *Id.* At the end of the day, the parties were unable to reach agreement as to the amount of Plaintiffs' attorneys' fees and expenses that would be sought. *Id.* Mr. Picker then submitted a double-blind mediator's proposal for this term, which was ultimately accepted by both sides a few days later. *Id.*

The parties did not discuss the payment of attorneys' fees and expenses until after the substantive terms of the settlement had been agreed upon.[1] Johns Decl. at ¶ 4. Settlement Agreement at ¶ 7.1. Only after reaching agreement on all substantive terms did GameStop and Plaintiffs' counsel reach agreement, via the mutual acceptance of the mediator's proposal, that Defendant would pay (subject to Court approval) Plaintiffs' attorneys' fees and costs in the amount of $557,500. *See* Settlement Agreement ("SA") at ¶¶ 7.2, 7.4. As noted above, the payment of Plaintiffs' attorneys' fees (and the incentive awards) – if approved by the Court – is to be separate from the class-wide compensation Class Members are entitled to under the Settlement Agreement and will not diminish or alter the benefits Class Members are entitled to in any way. *Id.* at ¶¶ 7.2-7.4.

Following the mediation, the parties memorialized their agreement into the Settlement Agreement. Plaintiffs then filed a motion for Preliminary Approval on July 16, 2018. *See* Docket Entry No. 40. As discussed in that motion, the Settlement provides for cash payments to Class Members for a variety of inconveniences and expenses incurred due to the Data Breach. *See* SA at ¶¶ 2.1-2.2. In addition, as part of settlement negotiations, GameStop made certain representations to Plaintiffs' counsel regarding the measures taken following the breach to increase GameStop's data security measures and consumer information protection procedures. *Id.* at ¶ 2.3; Johns Decl. at ¶ 3. Plaintiffs' counsel performed confirmatory discovery via a telephonic

[1] This timing is important because it alleviates any concern of there being a conflict of interest between the relief to the class and class counsel's attorneys' fees. *See In re Google Inc.*, No. 12-MD-2358 (SLR), 2014 U.S. Dist. LEXIS 196444, at *9-10 (D. Del. Apr. 1, 2014) ("The negotiations which led to the agreement that was reached between the parties regarding the amount that represents reasonable fees and expenses . . . were only begun after the other terms of the settlement were agreed to. Thus, there is no concern like that found in some settlements that the manner in which attorney fees are negotiated might create a conflict of interest on the part of class counsel.").

interview of a GameStop's Chief Information Security Officer Brian Owens to verify that these measures were appropriately undertaken. SA at ¶ 2.3; Johns Decl. at ¶ 3.

On August 1, 2018, the Court issued an Amended Order granting preliminary approval of the settlement, authorizing the dissemination of class notice, and scheduling a final approval hearing for December 19, 2018 in Harrisburg. *See* Docket Entry No. 43.

III. ARGUMENT

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement[.]" *Foltz v. Del. State Univ.*, 70 F. Supp. 3d 699, 701-02 (D. Del. 2014) (quoting FED. R. CIV. P. 23(h)). "The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous." *In re Philips/Magnavox TV Litig.*, No. 09-3072 (CCC), 2012 U.S. Dist. LEXIS 67287, at *42 (D.N.J. May 14, 2012) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001)). As courts recognize, in addition to providing just compensation, awards of fair attorneys' fees ensure that "competent counsel continue[s] to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (citations omitted).

Pursuant to that rule and the Settlement Agreement, Plaintiffs now apply for a total fee and expense award of $557,500, which accounts for both the attorneys' fees for all of the law firms representing Plaintiffs (who, as discussed below, have amassed a collective lodestar of $410,425 through the end of October), and the reimbursement of $5,641.54 in their cumulative litigation expenses. Plaintiffs also request – and GameStop has agreed to pay, subject to Court approval – an additional $7,500 to be split evenly by the two Class Representatives.

These requests are reasonable considering the work performed and the results achieved, and are consistent with similar awards recently approved by this Court, as well as others that have presided over data breach class action settlements. The settlement achieved here is the product of strenuous and efficient efforts by Plaintiffs' Counsel through investigation, discovery, and adversarial litigation, in a case involving complex issues of fact and law. And as noted above, these fees and costs will be paid separately from – and in addition to – the benefits made available to the Settlement Class. For these reasons and those that follow, these requests should be approved.

A. The Fee Request Should Be Evaluated Under the Lodestar Method.

Preliminarily, there are two methods typically employed to award fees in class action settlements: "the percentage-of-recovery method [and] the lodestar method." *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)). Under the lodestar method, the district court "determines an attorney's lodestar by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer." *Gunter v. Ridgewood Energy Corp*., 223 F.3d 190, 195 n.1 (3d Cir. 2000).[2] In undertaking this approach, the Court "is not required to engage in this analysis with mathematical precision or 'bean-counting'" and "may rely on summaries submitted by the attorneys" without "scrutinize[ing] every billing record." *Henderson v. Volvo Cars of N. Am., LLC,* No. 09-4146 (CCC), 2013 U.S. Dist. LEXIS 46291, at *43-44 (D.N.J. Mar. 22, 2013) (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07).

[2] The percentage-of-recovery methodology, on the other hand, "is favored in common fund cases," and is calculated by applying "a certain percentage to the settlement fund." *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011). The settlement in this case is not a common fund.

The lodestar method is "preferable where 'the nature of the settlement evades the precise evaluation needed for the percentage of recovery method.'" *Haught v. Summit Res., LLC*, No. 1:15-cv-0069, 2016 U.S. Dist. LEXIS 45054, at *22 (M.D. Pa. Apr. 4, 2016) (quoting *In re Gen. Motors*, 55 F.3d at 821); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300. It is "designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 732 (3d Cir. 2001) (quoting *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998)). Which one of these two methodologies should be used "will rest within the district court's sound discretion." *Charles v. Goodyear Tire & Rubber Co*., 976 F. Supp. 321, 324 (D.N.J. 1997).

While either methodology will confirm the reasonableness of the fee requested here, Plaintiffs respectfully submit that the Court should use the lodestar method in this case. This is consistent with how courts have analyzed fee requests in similar cases. *See In re Google Inc.*, 2014 U.S. Dist. LEXIS 196444, at *8 (applying the lodestar method in non-common fund settlement where "[t]he recovery for the class involves both the dismantlement of the acts complained of by the plaintiffs in the Consolidated Complaint but also injunctive relief going forward in the future," and where "[t]hese important settlement provisions provide for a settlement which does not allow and easy determination of monetary value."); *see also, Dewey v. Volkswagen of Am.*,728 F. Supp. 2d 546, 593 (D.N.J. 2010) ("[I]f the settlement's value is certain, the Court can use the percentage-of-recovery method to calculate attorneys' fees, but if the value is too uncertain, then the Court must use the lodestar method."); *cf. Tavares v. S-L Distribution Co.*, No. 1:13-cv-1313, 2016 U.S. Dist. LEXIS 57689, at *40 (M.D. Pa. May 2,

2016) (electing to use the percentage-of-recovery method in a case with a "clearly delineated common fund which lends itself well to valuation.").

B. Class Counsel's Lodestar Figure is Reasonable.

The lodestar analysis involves two steps. The first step is to determine the appropriate hourly rate, based on the attorneys' usual billing rate and the "prevailing market rates" in the relevant community. *See In re Schering-Plough/Merck Merger Litig.*, No. 09-cv-1099 (DMC), 2010 U.S. Dist. LEXIS 29121, at *54 (D.N.J. Mar. 26, 2010) (citations omitted). The second step is to assess whether the billable time was reasonably expended. *Id.* "Time expended is considered 'reasonable' if the work performed was 'useful and of a type ordinarily necessary to secure the final result obtained from the litigation.'" *Id*. at *54-55 (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985)). The lodestar figure is "presumptively reasonable" where it arises from a reasonable hourly rate and a reasonable number of hours. *Planned Parenthood of Cent. New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).

There are two declarations filed by counsel in support of this fee petition, submitted by each of the firms working on this matter. Plaintiffs' Counsel billed their time at their current billing rates charged to their clients, and all of the billable time was necessary to secure the results obtained. The following represents Plaintiffs' Counsel's fees and costs in this matter from inception until October 31, 2018:[3]

[3] Because this reported time does not include any of the billable time after October 31, 2018, it does not account for the work performed by Plaintiffs' counsel subsequent to that date, such as future work that will be associated with the final approval hearing and claims and settlement administration. *See In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *47 (observing, in analyzing a fee request, that the submitted figures did not include time and expenses incurred by counsel subsequent to the submission of that motion); *Henderson,* 2013 U.S. Dist. LEXIS 46291, at *44, n.11 (same).

The law firm of Chimicles & Tikellis LLP ("C&T") billed 642.40 hours at a total lodestar of $300,657.50. The firm's total expenses are $5,641.54. *See* Johns Decl. at ¶¶ 4, 6. As described in the Johns Declaration, the work performed by C&T in this case included the following:

- Investigated the data breach, spoke with multiple clients and other intakes, drafted and then filed the complaint on September 29, 2017.
- Maintained ongoing communications with clients to keep them apprised of litigation developments and secure their approval and insight where necessary.
- Prepared and filed the motion to appoint lead counsel pursuant to FED. R. CIV. P. 23(g), which was granted by the Court on November 7, 2017.
- Drafted a Joint Status Report pursuant to FED. R. CIV. P. 16 and D. Del. LR 16.2, which was filed on January 16, 2018.
- Research, wrote, and filed an opposition to GameStop's motion to dismiss the complaint on January 17, 2018.
- Submitted a supplemental authority letter on March 6, 2018.
- Prepared and served Plaintiffs' Initial Disclosures and discovery requests.
- Analyzed the Answer filed by GameStop after the issuance of the Court's order on the motion to dismiss.
- Prepared for the mediation session with GameStop. This included selecting a mediator, participating in a pre-mediation session in-person on April 30, speaking with the mediator several times over the telephone, researching relevant data breach settlements, speaking with our various intakes to gather facts, and submitting a mediation statement.
- Reviewed and analyzed documents produced by GameStop in discovery, including without limitation the post-data breach internal PFI Report.
- Participated in an all-day mediation session with Bennett G. Picker at the Stradley Ronon law firm in Philadelphia on May 2, 2018.
- Preparing the Settlement Agreement and preliminary approval brief, drafting the claim form and class notice, working with the claims/notice administrator, fielding questions from class members, among other tasks.

- Engaged in confirmatory discovery to verify that the terms of the settlement were fair, reasonable and adequate to Plaintiffs and class members. This included preparing for and conducting a lengthy telephone interview with a GameStop IT employee on June 28, 2018.

- Performed necessary factual and legal research throughout the course of the case.

See Johns Decl. at ¶ 3.

Many courts across the country have approved the hourly rates of C&T attorneys and paralegals, even in cases where the rates were contested. *See, e.g., Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 889 (C.D. Cal. 2016) (approving rates in contested fee petition over defendants' objections); *In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *47 ("The Court finds the billing rates [of C&T and other firms] to be appropriate and the billable time to have been reasonably expended."); *In re Elk Cross Timbers Decking Marketing, Sales Practices and Prods. Liab. Litig.*, No. 15-0018 (JLL) (JAD) (D.N.J. Feb 27, 2017), Dkt. No. 126 at 2 (reviewed Class Counsel's "time summaries and hourly rates," and found that "the hourly rates of each of Plaintiffs' Steering Committee firm are . . . reasonable and appropriate in a case of this complexity."); *Alessandro Demarco v. Avalon Bay Communities, Inc.*, No. 2:15-628-JLL-JAD (D.N.J. July 11, 2017), Dkt. No. 223 at ¶18 ("The Court, after careful review of the time entries and rates requested by Class Counsel [including C&T] and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees . . . .").

The law firm of Abington Cole + Ellery billed 109.9 hours at a total lodestar of $109,767.50. *See* Cornelius P. Dukelow Declaration submitted herewith as Exhibit 2. The firm did not have any expenses. Mr. Dukelow assisted with litigating this matter, including communicating with clients, briefing a motion to dismiss, and attending a day-long mediation session. *See id*.

Together, the combined cumulative lodestar for those two firms is $410,425. They have collectively incurred $5,641.54 in unreimbursed expenses, and have billed over 752 contingency fee hours on this case. All of these fees and expenses will be paid from the $557,500 amount requested. *See* SA § 7.2.

The Court should apply a modest multiplier to these amounts. The lodestar multiplier is obtained by dividing the proposed fee award by the lodestar amount. *See Larson v. Sprint Nextel Corp.*, Civil Action No. 07-5325 (JLL), 2010 U.S. Dist. LEXIS 3270, at *89-90 (D.N.J. Jan. 15, 2010) (citing *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136 n.6 (E.D. Pa. 2000)). Based on these figures, in this case the requested amount of fees and expenses ($557,550) is approximately 135% of Plaintiffs' counsel's actual lodestar ($410,425). In other words, Plaintiffs are seeking a 1.35 multiplier.

Courts in the Third Circuit routinely find in complex class action cases that a multiplier of one to four of counsel's lodestar is fair and reasonable. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009); *accord In re Prudential*, 148 F.3d at 341 (quoting 3 Herbert Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS, Section 14.03 at 14-5 (3d ed. 1992)). The Third Circuit has "approved a multiplier of 2.99 in a relatively simple case." *Milliron*, 423 Fed. Appx. at 135 (citing *Cendant PRIDES*, 243 F.3d at 742); *see also, In re Schering-Plough Corp.*, No, 08-1432 (DMC)(JAD), 2012 U.S. Dist. LEXIS 75213, at *22 (D.N.J. May 31, 2012) (noting that a 1.6 multiple "is an amount commonly approved by courts of this Circuit," and approving it as reasonable*); Tavares*, 2016 U.S. Dist. LEXIS 57689, at *54-55 ("Given the risks inherent in contingent work generally, the high quality of the attorneys' work in this case, and the comparative reasonableness of the lodestar multiplier requested here, the Court sees no reason to determine that a multiplier of 2.29 is too high."); *In re Warfarin Sodium Antitrust Litig.*, 212

F.R.D. 231, 263 (D. Del. 2002) (approving a lodestar multiplier of 1.33) The relatively modest 1.35 multiplier sought here is at the low end of this range, is reasonable, and should be approved.

C. The *Gunter* Factors Confirm the Reasonableness of the Fee Request.

Some courts that have decided to use the lodestar method will nonetheless "perform a percentage-of-recovery analysis to cross-check the lodestar analysis and ensure the reasonableness of the fee." *In re Philips/Magnavox TV Litig.,* 2012 U.S. Dist. LEXIS 67287, at *44. The purpose of doing a lodestar cross-check is "to insure that plaintiffs' lawyers are not receiving an excessive fee at their clients' expense." *Gunter,* 223 F.3d at 199.

In *Gunter,* the Third Circuit provided a series of non-exhaustive factors for district courts to consider in this regard:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

223 F.3d at 195 n.1. In addition to these factors, the Third Circuit has listed three other factors that may be relevant: "(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any 'innovative' terms of settlement." *In re AT&T Corp. Secs. Litig*., 455 F.3d 160, 165 (3d Cir. 2006) (internal citations omitted).

These factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *In re Ins. Brokerage Antitrust Litig*., 579 F.3d 241, 280 (3d Cir. 2009). District courts are to engage in "robust assessments of the fee award reasonableness factors when

evaluating a fee request." *Id.* (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 302). As set forth below, each of the *Gunter* factors support the fee request here.

1. The Size of the Fund Created and the Number of Persons Benefitted.

The settlement in this case makes available substantial relief, including monetary compensation for lost time spent dealing with replacement card issues or in reversing fraudulent charges, a flat $22 payment for each card on which documented fraudulent charges were incurred, even if they were later reimbursed, and reimbursement for credit reports, identity theft protection, miscellaneous other specified expenses incurred as a result of the data breach. As noted in Plaintiffs' preliminary approval brief, there were approximately 1.3 million debit and credit cards compromised in the Data Breach. All Class Members will have the opportunity to participate in the settlement. *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *49-50 ("'. . . Class Counsel obtained a settlement that substantially benefits "[a]ll current and former owners and lessees of model years 2003-2005 Volvo XC90 T6 vehicles that were sold or leased in the United States.' . . . Given the potential combined value of the reimbursements, and the number of Class Members potentially entitled to benefits, this factor weighs in favor of approval.").

2. The Presence or Absence of Substantial Objections by Members of the Class.

As discussed above, the deadline by which class members may object to the SA – including Plaintiffs' request for attorneys' fees – is December 13, 2018. While this fee petition is being filed *before* the expiration of the objection period, as of the date of this filing there have been no objections filed with the Court.[4] This factor supports approval of the requested fee. *See*

[4] Plaintiffs reserve the right to address any objections that may be filed in their motion seeking

Reinhart v. Lucent Techs., Inc. (In re Lucent Techs., Inc. Sec. Litig.), 327 F. Supp. 2d 426, 435 (D.N.J. 2004) ("[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable."); *Sanders v. City of Phila. & First Judicial Dist. of Pa.*, No. 15-0868, 2016 U.S. Dist. LEXIS 35388, at *6 (E.D. Pa. Mar. 17, 2016) ("The absence of objections to the settlement itself and to the requested award of attorneys' fees and expenses, and the small number of persons opting out of the settlement demonstrate support for the approval of this settlement as fair and reasonable.").

3. The Skill and Efficiency of the Attorneys Involved.

The result obtained in this case is in large measure a reflection of the tenacity with which Plaintiffs' Counsel attended to this litigation. Plaintiffs' Counsel have achieved highly valuable benefits for Settlement Class Members, which speaks volumes for Plaintiffs' Counsel's abilities. They secured a Settlement in a case that was defended by able counsel for GameStop, which had filed a motion to have the case dismissed in its entirety with prejudice. *Henderson,* 2013 U.S. Dist. LEXIS 46291, at *51-52 ("Class Counsel obtained substantial benefits for the Class Members—despite vigorous defense by Volvo's counsel—a consideration that further evidences Class Counsels' competence."). And Plaintiffs' Counsel respectfully submit that their submissions to the Court in this case were of high quality. As such, this factor supports the fee request. *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009) ("The submissions made in this case were thorough and of high quality. Finally, class counsel worked effectively and efficiently to bring this action to settlement. The skill and efficiency brought to this action by class counsel support the fee request.").

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final approval of the settlement, and will also be prepared to address any questions the Court may have about any such objections at the Final Approval Hearing on December 19, 2018.

4. The Complexity and Duration of the Litigation.

This complex class action litigation has lasted over a year, and required extensive work by Plaintiffs' Counsel (including motion practice and extensive briefing, a full-day mediation session and associated preparation, as well as formal and confirmatory discovery) to result in a successful conclusion. Several courts have recognized that "any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources." *Stalcup v. Schlage Lock Co*., 505 F. Supp. 2d 704, 707 (D. Colo. 2007); *see also, McCoy*, 569 F. Supp. 2d at 477. The amount of compensation sought by the Class Counsel is reasonable when assessed in light of these factors. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305 (court did not abuse discretion in concluding that—in light of legal issues, duration of case, discovery, and necessity of resorting to mediation to reach a final settlement—the matter was complex).

5. The Risk of Nonpayment.

Plaintiffs fronted all of the litigation costs and took this matter on a contingency fee basis. *See* Johns Decl. at ¶ 6. The risks of non-recovery, which were faced by Class Counsel from the outset of this litigation, are thus sufficiently substantial to justify the fee request. *See O'Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 309 (E.D. Pa. 2003) (the risk of non-payment in such a case "is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case."); *see also In re Ins. Brokerage Antitrust Litig.*, No. 04-5184 (CCC), 2012 U.S. Dist. LEXIS 46496, at *135 (D.N.J. Mar. 30, 2012) ("Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.") (citations omitted); *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *52 ("Class Counsel undertook this action on a contingent fee basis, assuming a substantial risk that they might not be compensated

for their efforts. Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.").

Plaintiffs faced considerable risk in this case. While Plaintiffs largely prevailed on the motion to dismiss, there are cases from within the Third Circuit and elsewhere that have dismissed data breach cases. *See Allison v. Aetna, Inc.,* No. 09-2560, 2010 U.S. Dist. LEXIS 22373, at *25 (E.D. Pa. Mar. 9, 2010) (finding that the plaintiffs lacked Article III standing in a data breach case); *Hammond v. Bank of N.Y. Mellon Corp.,* 2010 U.S. Dist. LEXIS 71996, at *4 (S.D.N.Y. June 25, 2010) ("While there is a split in authority as to how to analyze [certain data breach] cases, every court to do so has ultimately dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure . . . or under Rule 56 following the submission of a motion for summary judgment.").

Even if Plaintiffs had subsequently prevailed on the merits at summary judgment, there is authority from other courts denying class certification in these cases. *See In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.,* 293 F.R.D. 21 (D. Me. 2013) (denying class certification after determining that Rule 23(b)(3)'s predominance requirement was not satisfied); *In re Anthem, Inc. Data Breach Litig.,* No. 15-MD-02617-LHK, 2018 U.S. Dist. LEXIS 140137, at *107 (N.D. Cal. Aug. 17, 2018) ("Other risks remained for the litigation moving forward. For example, class certification was not guaranteed, in part because Plaintiffs had a scarcity of precedent to draw on. The parties represent that only one non-settlement data-breach class has been certified in federal court to date, and that case post-dates Plaintiffs' filing of their motion for class certification.").

While Plaintiffs believe that they have grounds to distinguish these cases, they do recognize the risk inherent in any litigation. As such, this factor supports approving the fee

request. *See McCoy*, 569 F. Supp. 2d at 477 ("Given the nature of this litigation and the difficulty of the issues presented, Plaintiffs faced a substantial risk that they would recoup nothing. These risks counsel in favor of a substantial fee award.").

6. The Amount of Time Devoted to the Case by Class Counsel.

In terms of the sheer amount of genuine labor involved on the part of the Plaintiffs, there were, as noted above, over 752 billable hours devoted by Class Counsel in litigating this matter. All of this time and expense was advanced without any guarantee of recoupment, and necessarily prevented Class Counsel from devoting those resources to other matters. This commitment of time and effort clearly supports Class Counsel's fee request.

7. The Awards in Similar Cases.

A review of similar data breach settlements demonstrates that the fee request here is reasonable and appropriate. *See, e.g.*, *In re Home Depot, Inc. Customer Data Sec. Breach Litig.*, MDL No. 14-2522 (PAM/JJK), 2015 U.S. Dist. LEXIS 155137, 2015 WL 7253765 (N.D. Ga. Nov. 17, 2015), ECF No. 261 ($7,536,497.80 in fees plus $166,925.19 in expenses in a retail store data breach), ECF No. 334 ($493,976 in supplemental fees plus $21,401.98 in supplemental expenses awarded, paid separately by defendant, for additional work in securing final judgment, litigating objector appeal, and administering settlement); *In re Ashley Madison Customer Data Security Breach,* Case No. 4:15-MD-02669-JAR (E.D. Mo. Nov. 20, 2017), ECF. No. 383 ($3,733,333.33 in fees plus $78,032.38 in expenses in a website breach); *T.A.N. v. PNI Digital Media, Inc.*, No. 2:16-CV-00132 (S.D. Ga. Dec. 1, 2017), ECF No. 46 ($650,000 in fees plus $3,735.70 in expenses in a data breach involving debit and credit cards); *In re Schnuck Markets, Inc. Consumer Data Security Breach Litigation*, No. 4:13-MD-02470-JAR (E.D. Mo. Jan. 23, 2015), ECF No. 41 ($635,000 in fees plus $10,061 costs/expenses in a data breach involving

debit and credit cards). Plaintiffs' requested award of $557,500 is less than the amounts approved in these cases, and is appropriate here.

D. Plaintiffs' Counsel's Expenses Should Be Approved.

There is little question that "[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *Careccio v. BMW of N. Am. LLC*, Case No. 08-2619, 2010 U.S. Dist. LEXIS 42063, at *22 (D.N.J. Apr. 29, 2010) (quoting *In re Safety Components Int'l Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)); *accord, In re Ins. Brokerage Antitrust Litig*., No. 04-5184 (CCC), 2012 U.S. Dist. LEXIS 46496, at *144-45 (recognizing the same principle, and approving an expense request of $394,192.76).

In this case, Plaintiffs' Counsel have incurred $5,641.54 in properly documented expenses for the common benefit of Class Members. These expenses included the filing fee, mediation expenses, travel, and costs for performing legal research on Lexis. *See* Johns Dec. ¶ 7. The requested expenses will be paid from the total $557,500 fee and expense request. The requested amount is reasonable and should be approved. *See Roxberry v. Snyders-Lance, Inc*., No. 1:16-cv-02009-JEJ, 2017 U.S. Dist. LEXIS 193573, at *6 (M.D. Pa. Nov. 15, 2017) (approving the requested $33,670.00 in litigation expenses where class counsel was able to demonstrate that they "were reasonable and necessary to the pursuit of this litigation and the administration of the settlement."); *Haught v. Summit Res., LLC,* No. 1:15-cv-0069, 2016 U.S. Dist. LEXIS 45054, at *37-38 (M.D. Pa. Apr. 4, 2016) ("We find that the $7,575.67 in expenses were adequately documented and were reasonably and appropriately incurred through the course of litigation in this case.").

E. The Requested Incentive Awards Should be Approved.

The service provided by the Class Representatives in this action should not go without financial recognition. While service as a representative plaintiff is not a profit-making position, the law recognizes that it is appropriate to make modest payment in recognition of the services that such plaintiffs perform in successful class litigation. "Incentive awards are 'fairly typical' in class actions." *In re Google Inc.*, No. 12-MD-2358 (SLR), 2014 U.S. Dist. LEXIS 196444, at *11 (D. Del. Apr. 1, 2014) (citations omitted). Indeed, "[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Haught v. Summit Res., LLC,* No. 1:15-cv-0069, 2016 U.S. Dist. LEXIS 45054, at *19-20 (M.D. Pa. Apr. 4, 2016) (quoting *Hegab v. Family Dollar Stores, Inc.*, Civ. A. No. 11-1206(CC), 2015 U.S. Dist. LEXIS 28570, at *16 (D.N.J. Mar. 9, 2015)).

The SA here recognizes this principle by providing incentive award payments of $3,750 to each of the two Class Representatives. *See* SA § 7.4. These Class Representatives were the principal catalysts to achieving this result for the Class. They participated in numerous conferences and meetings with their attorneys, and stayed abreast of significant developments in the case. And like Plaintiffs' fee and expense request, these incentive awards will be paid separately from the consideration in the SA, and will not reduce the recovery to any Class Member. *See In re LG/Zenith Rear Projection TV Class Action Litig.*, No. 06-5609 (JLL), 2009 U.S. Dist. LEXIS 13568, at *25 (D.N.J. Feb. 18, 2009) (approving incentive award that "will not decrease the recovery of other class members."). *See also, Roxberry v. Snyders-Lance, Inc*., No. 1:16-cv-02009-JEJ, 2017 U.S. Dist. LEXIS 193573, at *5 (M.D. Pa. Nov. 15, 2017) (approving $19,000 service awards to each of the plaintiffs in a wage and hour class action). These amounts

are also comparable with those approved in other data breach settlements. *See In re Ashley Madison Customer Data Security Breach,* No. 4:15-md-02669 (E.D. Mo.) ($5,000 incentive awards); *T.A.N. v. PNI Digital Media, Inc.* No. 2:16-CV-00132 (S.D. Ga.) ($3,750); *In re Home Depot, Inc. Customer Data Sec. Breach Litig.* No. 1:14-md-02583-TWT (N.D. Ga.) ($1,000). Consistent with the law and the terms of the Settlement Agreement, it is appropriate to make these payments to these class representatives. Plaintiffs respectfully request that the Court likewise approve the requested incentive awards here.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court award Plaintiffs' counsel the payment of $557,500 in attorneys' fees and expenses, and approve the payment of $3,750 in incentive awards to each of the two Class Representatives. A proposed order granting this requested relief is submitted herewith.

Dated: November 26, 2018

Respectfully submitted,

By: */s/ Robert J. Kriner, Jr.*

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Attorneys for Plaintiffs
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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTAL BRAY and SAMUEL COOK, on behalf of themselves and all others similarly situated,	)	CASE NO. 1:17-cv-01365-JEJ
Plaintiffs,	)	
v.	)	CLASS ACTION
GAMESTOP CORPORATION,	)	JURY TRIAL DEMANDED
Defendant.	)	

DECLARATION OF BENJAMIN F. JOHNS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS

I, Benjamin F. Johns, declare as follows:

1. I am a partner at the law firm of Chimicles & Tikellis LLP ("C&T"). I am admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, and was admitted *pro hac vice* in this case on October 10, 2017. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses and Incentive Awards. I have personal knowledge of the matters discussed herein, and if called as a witness could testify competently thereto.

2. On July 23, 2018, the Court issued and Order Conditionally Certifying a Settlement Class, Granting Preliminary Approval of the Class Action Settlement, Approving the Form and Manner of Notice, and Scheduling Final Approval Hearing. *See* Docket Entry No. 42. The Preliminary Approval Order was subsequently amended on August 1, 2018. *See* Docket Entry No. 43.

3. During the course of this litigation, my law firm has been involved in the following types of activities:

- Investigated the data breach, spoke with several clients and other intakes, drafted and then filed the complaint on September 29, 2017.
- Prepared and filed the motion to appoint lead counsel pursuant to FED. R. CIV. P. 23(g), which was granted by the Court on November 7, 2017.
- Drafted a Joint Status Report pursuant to FED. R. CIV. P. 16 and D. Del. LR 16.2, which was filed on January 16, 2018.
- Researched, wrote and filed an opposition to GameStop's motion to dismiss the complaint on January 17, 2018.
- Submitted a supplemental authority letter on March 6, 2018.
- Prepared and served Plaintiffs' Initial Disclosures and discovery requests.
- Analyzed the Answer filed by GameStop after the issuance of the order on the motion to dismiss.
- Prepared for the mediation session with GameStop. This included selecting a mediator, participating in a pre-mediation session in-person on April 30, speaking with the mediator several times over the telephone, researching relevant data breach settlements, speaking with our various intakes to gather facts, and submitting a mediation statement.
- Reviewed and analyzed documents produced by GameStop in discovery, including without limitation the post-data breach internal PFI Report.
- Participated in an all-day mediation session with Bennett G. Picker at the Stradley Ronon law firm in Philadelphia on May 2, 2018.
- Subsequent to the settlement, preparing the settlement agreement and preliminary approval brief, drafting the claim form and class notice, working with the claims/notice administrator, fielding questions from class members, among other tasks.
- Engaged in confirmatory discovery to verify that the terms of the settlement were fair, reasonable and adequate to Plaintiffs and class members. This included preparing for and conducting a lengthy telephone interview with a GameStop IT employee on June 28, 2018.

4. As noted above, on May 2, 2018 the parties engaged in a full-day mediation session with Mr. Picker in Philadelphia. With the assistance of Mr. Picker, the parties reached agreement on the material terms of the settlement. Thereafter, the parties were unable to reach agreement as to the amount of Plaintiffs' attorneys' fees and expenses that would be sought. Mr. Picker then submitted a double-blind mediator's proposal for this term, which was ultimately accepted by both sides a few days later. The parties did not discuss or negotiate Plaintiffs' requested attorneys' fees and expenses until after all of the substantive terms of the settlement had been agreed upon.

5. From the inception of this case through October 31, 2018, my firm performed a total of 642.40 billable hours on this case. This total excludes certain time that I have excised from this application or otherwise reduced, based on the exercise of billing judgment, including all time billed by any person at my firm who billed fewer than five hours to this matter. Based upon hourly rates currently charged to my firm's clients, the total lodestar value of this billable time is $300,657.50. Attached as Exhibit A to this Declaration is a chart that identifies the attorneys and paralegals who worked on this litigation, the number of hours billed by each, their respective positions, and their respective billable rates. Current personnel are billed at their current rates, which are our standard rates, while former personnel are billed at their most recent billable rate before they departed from the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.[1]

6. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis; my firm has not been compensated for any of its work on this matter to date.

[1] My firm's detailed time records are available to the Court for inspection upon request.

7. As detailed in Exhibit B attached to this Declaration, my firm has incurred a total of $5,641.54 in unreimbursed expenses in connection with the prosecution of this litigation through October 31, 2018. These expenses were also reasonable and necessary in the prosecution of this case.

8. The expenses incurred in this action are reflected on my firm's the books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 26, 2018

/s/ Benjamin F. Johns
Benjamin F. Johns

EXHIBIT A

BRAY, et al. v. GAMESTOP CORPORATION

LODESTAR CHART

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception to October 31, 2018

NAME	STATUS	HOURLY RATE	HOURS	LODESTAR
Kriner, Robert J.	P	$750.00	5.20	$3,900.00
Johns, Benjamin F.	P	$625.00	174.80	$109,250.00
McDonald, Beena M.	SA	$475.00	29.80	$14,155.00
Belger, Vera G.	A	$475.00	30.20	$14,345.00
Ferich, Andrew W.	A	$450.00	169.60	$76,320.00
Titler-Lingle, Jessica	FA	$400.00	130.9	$52,360.00
Beatty, Zachary P.	A	$350.00	66.3	$23,205.00
Mastraghin, Corneliu P.	PL	$250.00	11.90	$2,975.00
Boyer, Justin P.	PL	$175.00	23.70	$4,147.50
TOTALS			**642.40**	**$300,657.50**

P = Partner, A = Associate, FA = Former Associate, SA = Staff Attorney, PL = Paralegal

EXHIBIT B

BRAY, et al. v. GAMESTOP CORPORATION

EXPENSE CHART

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception through October 31, 2018

DESCRIPTION	TOTAL EXPENSES
Mediation Fees	$3,500.00
Computer Research	$1,034.80
Photocopies - Firm	$475.25
Filing Fees	$475.00
Adwords/Facebook	$121.88
Postage/Courier	$34.61
TOTAL	**$5,641.54**

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTAL BRAY and SAMUEL COOK, on behalf of themselves and all others similarly situated, Plaintiffs, v. GAMESTOP CORPORATION, Defendant.	)	CASE NO. 1:17-cv-01365-JEJ CLASS ACTION JURY TRIAL DEMANDED

DECLARATION OF CORNELIUS P. DUKELOW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS

I, Cornelius P. Dukelow, declare as follows:

1. I am a partner at and owner of the law firm of Abington Cole + Ellery. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses and Incentive Awards. I have personal knowledge of the matters discussed herein, and if called as a witness could testify competently thereto.

2. During the course of this litigation, I have been involved in the following types of activities:

- Investigated the data breach, spoke with several clients and other intakes.
- Investigated case facts and researched potential claims.
- Assisted in drafting the complaint filed against GameStop on September 29, 2017.
- Assisted in drafting an opposition to GameStop's motion to dismiss the complaint filed on January 17, 2018.
- Participated in an all-day mediation session with Bennett G. Picker at the Stradley Ronon law firm in Philadelphia on May 2, 2018.

3. From the inception of this case through October 31, 2018, I performed a total of 190.9 billable hours on this case. This total excludes certain time that I have excised from this application or otherwise reduced, based on the exercise of billing judgment. Based upon an hourly rate of $575, the total lodestar value of this billable time is $109,767.50. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by me.[1]

4. Federal courts have approved fee requests for me based on similar rates in similar data breach cases. *See, e.g., In re: Home Depot, Inc., Cust. Data Security Breach Litig.*, No. 1:14-md-02583, Dkt. 261 at 2-3 (N.D. Ga. Aug. 23, 2016); *id*., Dkt. 227-1 at 29 (June 27, 2016) (identifying standardized hourly rates, including $600 for a partner or counsel with between 10 and 20 years of experience). In *Home Depot*, I billed at $600 per hour, and the Court approved the fee request.; *In re: Target Corp. Cust. Data Sec. Breach Litig.*, No. 0:14-md-02522, Dkt. 645 at 8 (D. Minn. Nov. 17, 2015). The harmonized rate applicable to my experience level (between 11 and 20 years) was $550. *Id.*, 0:14-md-02522, Dkt. 482 at 26. In *Target*, I billed at $550 per hour, and the Court approved the fee request. *Id*., Dkt. 483-3 at 2 (July 10, 2015); *id*., Dkt. 645 at 8.

5. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 26, 2018

/s/ Cornelius P. Dukelow
Cornelius P. Dukelow

[1] My detailed time records are available to the Court for inspection upon request.