UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ALEXIS SANCHEZ, on behalf of himself and all others similarly situated, Plaintiff, v. CAVENDER STORES, LTD., Defendant.	Case No. 4:22-cv-01016-ALM Judge Amos L. Mazzant, III

PLAINTIFF'S MOTION TO APPROVE FEES, COSTS, AND SERVICE AWARD

INTRODUCTION

Plaintiff Alexis Sanchez moves the Court to approve his request for attorney fees, costs, and service award as "reasonable." The Court should grant Mr. Sanchez's motion because he accomplished what he set out to achieve with this lawsuit, reaching a resolution that offers significant benefits to victims of the data breach affecting Cavender Stores Ltd.'s current and former employees and their families. As a result, Plaintiff earned the fees, costs, and service award he requests here. Mr. Sanchez did so despite the challenges his case faced—namely, the risk that comes with litigating data breach cases through trial. And the results he achieved beat those found in data breach settlements across the country. Indeed, with a class size just over 27,000 members, the settlement agreement secures relief exceeding what class members received in data breach cases like *Equifax* (N.D. Ga., 147 million class members), *Capital One* (E.D. Va., 98 million members), and *Dickey's* (N.D. Tex., 725,000 members), proving that litigants can deliver relief even in "small" cases.

The relief the Agreement achieves will address the harms Cavender's breach caused. In April 2022, cybercriminals breached Cavender's systems and stole the "sensitive information" belonging to Mr. Sanchez and 27,237 breach victims, taking information like their Social Security numbers and "medical information." Worse, the hackers then posted that data online, exposing the class to identity theft and fraud. In fact, Mr. Sanchez suffered identity theft following the breach, as criminals opened a business in this name and changed his mailing address with the U.S.P.S. As a result, Mr. Sanchez sued Cavender's, demanding it pay for the class's losses and improve its data security. After litigating and mediating the matter, Mr. Sanchez's settlement accomplishes just that—securing four benefits for the class.

First, the Agreement covers the class's losses, compensating them for the money and time they lost following the breach. That includes up to $75 for lost time and $2,500 for losses stemming from the breach. And the Agreement achieves this relief without capping what Cavender's must pay in total, meaning Cavender's will pay *every* approved claim in full.

Second, Cavender's must offer class members credit and identity monitoring to mitigate their chances for suffering identity theft and fraud.

Third, Cavender's agreed to improve its cybersecurity, addressing the problems that led to its breach and improving its systems to prevent breaches.

And ***fourth***, Cavender's will pay to administer the Agreement, Mr. Sanchez's fee request, and his service award—all without diminishing the benefits to the class.

This relief exceeds what victims recover in data breach cases across the country despite the obstacles data breach claims pose, earning Mr. Sanchez the "reasonable" fees, costs, and award he requests. That includes his request for $162,500 for fees, $8,475.00 in costs, and a $2,500 service award. As a result, the Court should grant Mr. Sanchez's motion.

BACKGROUND FACTS

A. The Litigation

Cavender's is a "Western clothing store" with 94 stores concentrated in the South and Southwest, including Las Vegas, Nevada, and Orlando. Doc. 1 ("Compl.") ¶2. To run its business, Cavender's must collect "personally identifiable information" ("PII") and "protected health information" ("PHI") from its employees, including information like their "Social Security numbers, financial account numbers, credit card numbers, debit card numbers, medical information, health insurance information, and the names of employees' children[.]" *Id*. ¶19. In collecting this data, Mr. Sanchez alleges Cavender's accepted a duty to protect it under Texas law and store policy. *Id*. ¶15. But despite acknowledging its duty, Mr. Sanchez alleged Cavender's breached it by failing to implement the security safeguards needed to fulfill it. *Id*. ¶17.

In April 2022, criminals bypassed Cavender's systems and accessed the PII and PHI belonging to its "current and former" employees and their children. *Id*. ¶22. Media outlets reported that a "particularly notorious ransomware group," Black Basta, carried out the hack and leaked "100% of the stolen files" online. *Id*. ¶25 (quotations omitted). That breach and leak exposed Mr. Sanchez and the class to harm, including identity theft and fraud. In fact, following the breach, the I.R.S. and U.S.P.S. notified Mr. Sanchez that someone had started a business in his name and changed his mailing address. *Id*. ¶37.

For those reasons, Mr. Sanchez sued Cavender's claiming that it failed to protect his PII and PHI using "reasonable security measures." *Id*. ¶28. His claims alleged that Cavender's violated its duties to protect his data under tort, contract, and statutory principles, entitling him to his losses and an order requiring Cavender's to improve its data security. *See generally id.* Mr. Sanchez

alleged those claims under a nationwide class, seeking to represent all victims impacted by the breach. *Id*. ¶72.

B. Mediation and Settlement

Given the risks that litigating this matter posed to both sides, the parties agreed to mediate Mr. Sanchez's claims. Doc. 13-3 ¶8. In March 2023, the parties engaged Bruce Friedman from JAMS to mediate their case, exchanging terms through Mr. Friedman at "arm's length." *Id*. ¶7. Under his guidance, the parties brokered a framework for settling the case, agreeing to a term sheet that the parties developed into the Agreement. *Id*. ¶¶8-9. In May 2023, the parties finalized terms, including the Agreement's notices and the administrator that would notify the class and process claims. *See generally id.*

The Settlement secures four benefits for the class, achieving the relief Mr. Sanchez sought in his complaint. One, the Agreement compensates class members for their losses, including lost money and time. Class members can claim up to three hours for "attested" lost time at $25 per hour. Doc. 13-1 ("Agreement"), ¶2.1.1(c). To recover this benefit, a class member need only affirm the time they spent dealing with the breach, without proving it through documents. For "economic" losses, class members can claim up to $500 "documented ordinary losses," like money spent on "unreimbursed bank fees." *Id*. ¶¶2.1.1(a), 2.1.3. For "extraordinary" losses like identity theft and fraud, the class can claim up to $2,500. *Id*. ¶2.1.2. In other words, these terms address the "tangible" losses stemming from the breach. These monetary benefits are uncapped, meaning Cavender's will pay for all approved claims by the Class.

Two, Cavender's promises to provide the class "credit monitoring services." This term will ensure class members can mitigate their chances for suffering identity theft and fraud. *Id*. ¶2.3. All class members who enrolled in Cavender's monitoring program following the breach will have

their terms extended by one year, while those who did not enroll will have a chance to enroll again for up to two years. *Id*. And the value this term delivers will not affect any other term under the Agreement, as Cavender's agreed to provide it "separate and apart" from other benefit. *Id*.

Three, Cavender's promises to improve and maintain the security safeguards it implemented following the breach, ensuring that it will protect the PII and PHI it still possesses. *Id*. ¶2.4.

And last, Cavender's will cover the costs to administer the Agreement and Mr. Sanchez's approved fees, costs, and service award. *Id*. ¶7. As with credit monitoring, Cavender's guaranteed these terms "separate and apart" from any other class benefit and thus payment will not affect the monetary benefits the Class can claim. *Id*.

While the parties also negotiated Cavender's responsibility to pay Mr. Sanchez's attorney fees, costs, and service award, they did not negotiate those terms until *after* agreeing on the terms that benefit the class. Doc. 13-3 ¶8. What's more, how the Court rules on Mr. Sanchez's request for fees, costs, and an award will not impact the class's recovery, meaning the class can claim the benefits above in any event. Agreement ¶7.5.

C. Preliminary Approval and Notice

In May 2023, Mr. Sanchez moved the Court to "preliminarily" approve the Agreement and implement its terms. Doc. 13. After considering the merits underlying the proposal, the Court granted Mr. Sanchez's motion, allowing the parties to hire an administrator and notify the class. Doc. 14. Since then, the parties have carried out the Agreement's terms, serving settlement notices on class members and collecting their claims.

LEGAL STANDARD

After a court certifies a class under Rule 23, the court may award fees "authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In the Fifth Circuit, courts "encourage counsel" to "arrive at a settlement as to attorney's fees." *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974). "An agreed upon award of attorneys' fees and expenses is proper in a class action settlement, so long as the amount of the fee is reasonable under the circumstance… In fact, courts have encouraged litigants to resolve fee issues by agreement, if possible." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007) (citing Fed. R. Civ. P. 23(h) and collecting cases). "Accordingly, courts are authorized to award attorney fees and expenses where all parties have agreed to the amount, subject to court approval." *Id.*

When considering fee requests, courts apply differing methods, including the lodestar and "percentage of the common fund" analyses. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642 (5th Cir. 2012). But courts also recognize that data breach settlements are "difficult" to value given the benefits they provide, such as improved data security and credit monitoring. *Bowdle v. King's Seafood Co., No*. SACV 21-01784-CJC (JDEx), 2022 U.S. Dist. LEXIS 240383, at *19 (C.D. Cal. Oct. 19, 2022). For this reason, "the main inquiry is whether the end result is reasonable." *Gaston v. Fabfitfun, Inc.*, No. 2:20-cv-09534-RGK-E, 2021 U.S. Dist. LEXIS 250695, at *5 (C.D. Cal. Dec. 9, 2021). Thus, courts adapt their analyses to consider the "aggregate value of monetary relief made available to the class"—no matter whether class members claim that value. *Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386-VMC-CPT, 2021 U.S. Dist. LEXIS 160592, at *33 (M.D. Fla. Aug. 25, 2021).

A court evaluates a requested fee's "reasonableness" under the *Johnson* factors. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). Those include:

(i) the work required to reach settlement; (ii) the "novelty and difficulty of the issues;" (iii) the skill required to litigate the case; (iv) whether the attorney was precluded from working on other cases; (v) the "customary fee" for services; (vi) whether the fee is fixed or contingent; (vii) the time limits imposed by the client or circumstances; (viii) the amount at stake and the results; (ix) the attorneys' experience and reputation; (x) whether the case was "undesirable;" (xi) counsel's relationship with their client; and (xii) awards in "similar cases." *Id*.

ARGUMENT

A. The Court Should Approve Mr. Sanchez's Request for Reasonable Fees and Costs

Mr. Sanchez requests "reasonable" fees considering the value the Settlement delivers to the Class. In fact, the Settlement Class would not have recovered the relief realized even if Mr. Sanchez had tried the case. No law entitles breach victims to relief like credit monitoring, nor could Mr. Sanchez have requested it as a remedy. But the Agreement not only achieves that benefit, it requires Cavender's to improve its security and compensates Class members for their losses. Moreover, Cavender's has not capped what it must pay for approved claims, meaning *every* claimant will be paid. Altogether, these results justify counsel's reasonable request for fees and costs.

Where, as here, the defendant in a class settlement agrees to separately pay attorneys' fees and expenses on top of the monetary relief provided to the class (as opposed to paying both the class and class counsel from a traditional "common settlement fund"), it is proper to consider the attorneys' fees and expenses as part of the total settlement consideration used to apply the percentage-of-the fund method. *See* Federal Judicial Center, Manual for Complex Litigation, § 21.7, p. 335 (4th ed. 2004) ("If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses…the sum of the two amounts ordinarily should be

treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel."); *In re Heartland*, 851 F. Supp. 2d at 1072 (where settlement provides for separate payment by defendant of attorneys' fees on top of the class payments, proper to treat the combination of the class payments and attorneys' fees as a "constructive common fund" and apply the percentage method); *Deepwater Horizon*, 2016 U.S. Dist. LEXIS 147378, at *63 ("[W]hen, as here, the settlement calls for the defendant to fund the payment of attorneys' fees to class counsel, it relieves the class of the burden of paying those fees from the recovery otherwise available to class members. As such… that amount is properly included in the value of the settlement for fee award purposes.").

Because there is no cap on what Cavender's will pay to Settlement Class members who make claims pursuant to the Agreement, Cavender's has committed to covering up to $81 million in claims,[1] plus credit monitoring for approved claimants. Although not all class members will claim benefits, the Court may consider the amount "made available" to them under the percentage method. *Cotter*, No. 8:19-cv-1386-VMC-CPT, 2021 U.S. Dist. LEXIS 160592, at *33 (measuring a $575,000 fee request against the $20 million "made available"—but not paid—to the class). Texas district courts have endorsed this approach, applying it to "common fund" cases that revert "unclaimed" funds to the defendant. *Izzio v. Century Golf Partners Mgmt., L.P.*, Civil Action No. 3:14-cv-03194-M, 2019 U.S. Dist. LEXIS 226946, at *11 (N.D. Tex. Feb. 13, 2019) (awarding counsel 25% from a "common fund" that returned "unclaimed awards" to the defendant); *see also Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942, 985 (E.D. Tex. 2000) (holding that the Fifth Circuit has "specifically approved" reverting "unclaimed funds" to defendants). In other words, the Agreement functions like a common fund settlement with reverter because the class can claim

[1] 27,237 class members may claim up to $3,000 in benefits, excluding credit monitoring.

up to $81 million in benefits, but Cavender's need only pay claims made. As a result, the Court can apply the percentage method to calculate Mr. Sanchez's fees.

Under that reasoning, counsel's fees are 0.2% of what the Agreement "makes available" to the class. *Cotter*, 2021 U.S. Dist. LEXIS 160592, at *33 (awarding fees that were "3% of the aggregate value."). And this does not incorporate the value that credit monitoring provides, a benefit courts recognize as "substantial" when approving fees. *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *4 (N.D. Ga. Aug. 23, 2016) (recognizing that credit monitoring "confers a substantial benefit"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 319 (N.D. Cal. 2018) (noting that credit monitoring was the settlement's "main form of relief" when awarding attorney fees). Indeed, if class members claim just 1% of what the Agreement "makes available," Plaintiff's fee request is still only one-fifth that amount, which is well-within (if not below) the range of percentage fees awarded in this Circuit in comparable cases. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 U.S. Dist. LEXIS 69143, at *34 (N.D. Tex. Apr. 25, 2018) (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("[B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards . . . attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions. Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Kemp v. Unum Life Ins. Co. of Am.*, 2015 U.S. Dist. LEXIS 166164, at *23 (E.D. La. Dec. 11, 2015) ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010) (approving 30% fee as within

range of reasonableness and noting that "[i]f the request is relatively close to the average awards in cases with similar characteristics, the court may feel a degree of confidence in approving the award"). Thus, counsel's fee request qualifies under the percentage method.

i. Mr. Sanchez's fee request satisfies the *Johnson* factors

Counsel's request is also "reasonable" under the *Johnson* factors.[2] First, counsel devoted "significant time and effort pursuing this case," including by investigating the breach, detailing Mr. Sanchez's claims in his complaint, preparing his case for litigation, engaging in informal discovery in advance of mediation to ensure Class Counsel had sufficient facts and information to make an informed decision about resolution, mediating the dispute, reviewing "confirmatory" discovery, drafting the settlement agreement and exhibits, preparing and submitting the Motion for Preliminary approval (which was ultimately granted), and implementing the parties' settlement by working with defendant and the claims administrator to effectuate notice. Borrelli Dec. ¶5. And although the case settled before conducting formal discovery, counsel's efforts maximized the Agreement's value by redirecting resources from litigation to settlement. *Id*. ¶12.[3]

Second, the "novelty and difficulty of the issues" at stake warrant awarding counsel's fee request. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019) ("[D]ata breach litigation is complex and largely undeveloped."); *Fulton-Green v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 164375, at *21 (E.D. Pa. Sep. 23, 2019) ("This is a complex case in a risky field of litigation because data

[2] Because not all factors apply, counsel evaluates only those that do.

[3] A party need not submit "documentation of the hours charged" when applying the *Johnson* factors under the "percentage method." *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1082 (S.D. Tex. 2012) (The percentage method[…] does not account for billing judgment.").

breach class actions are uncertain and class certification is rare."). Indeed, "many [data breach cases] have been dismissed at the pleading stage." *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at *36 (N.D. Cal. Sep. 12, 2011). Data breach class actions are still new and can present novel and complex issues, making a successful outcome difficult to predict. Borrelli Decl. ¶13. Further, a successful outcome could only ensue, if at all, after prolonged and arduous litigation with an attendant risk of drawn-out appeals. *Id.* Among national consumer protection class action litigation, data breach cases are some of the most complex and involve a rapidly evolving area of law. *Id.* As such, these cases are particularly risky for plaintiffs' attorneys. *Id.* Class Counsel took on this case and zealously advocated on behalf of Settlement Class in spite of the risks and challenges posed and devoted a substantial amount of time and money to the prosecution of this case, which ultimately resulted in a Settlement this is highly beneficial to the Class , weighing in favor of awarding the requested fee.

Third, Mr. Sanchez would not have settled this case without his counsel's skill and aptitude, qualities they detail by declaration. *See* Docs. 13-3 and 13-4. Counsel exemplifies this factor where they "performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution." *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010) (citing *DiGiacomo v. Plains All Am. Pipeline*, 2001 U.S. Dist. LEXIS 25532, at *36 (S.D. Tex. Dec. 18, 2001)). As detailed above, data breach cases are "novel and complex," and no two breaches are the same. To settle Mr. Sanchez's claims, his counsel evaluated the class's makeup, the breach's size, and the information it exposed—all to address the harm the breach may cause. Borrelli Dec. ¶5. Were it not for counsel's experience in this area, Mr. Sanchez would not have settled on the terms he did at the time he did. Indeed, this factor overlaps with the

factor considering his attorneys' "experience and reputation," both attributes that contributed to resolving this case at this stage. For these reasons, counsel satisfies the third and ninth *Johnson* factors.

Fourth, counsel took this case on "contingency," risking that they may recover no fees at all. Even so, they committed to litigating this case through discovery, hiring experts, moving to certify the class, and trying the case—all without knowing whether they would even recover those costs. Borrelli Decl. ¶15. So too at settlement. Counsel agreed to settle this matter without tying their consent to whether the Court approves their fee request, meaning they ensured the Class would recover the Agreement's benefits no matter how the Court rules on this petition. As a result, counsel have satisfied this factor.

Fifth, the amount at stake and the results realized warrant Mr. Sanchez's fee request. Almost "all class actions involve a high level of risk, expense, and complexity[.]" *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023). And this is not only a "complex" case—"it lies within an especially risky field of litigation: data breach." *Id*. This is why courts favor settling breach cases, as "proceeding through the litigation process[…] is unlikely to produce the plaintiffs' desired results." *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 U.S. Dist. LEXIS 87409, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010). For that reason, these cases are not always "desirable" given the risk that counsel will recover nothing. As counsel explains in her declaration, firms often swarm to represent plaintiffs in breaches like *Equifax* and *Capital One*, but a 27,000-member breach like this will not attract the same attention, if any. Borrelli Dec. ¶16. Even so, counsel accepted the risk that comes with litigating a "small" case in this area—and

attained significant relief for the Class, as detailed above. As a result, the Court should find counsel satisfies the eighth and tenth *Johnson* factors.

And sixth, the fee requested tracks with data breach settlements across the country. For example, the district court in *Fox v. Iowa Health Sys.* approved a settlement with around the same benefits achieved here, but with ten times the requested fees. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *12 (W.D. Wis. Mar. 4, 2021). In *Fox*, the district court awarded $1.575 million in fees for a settlement that entitled members to claim up to $1,000 for lost money and time, and up to $6,000 when responding to "actual identity theft," one year for credit monitoring, and "improved security measures" from defendant. *Id*. And like the Agreement here, the *Fox* settlement did "not cap the total amount of monetary benefits available to the Class, meaning that all Class members who submit valid claims will be reimbursed for the full amount of their expenses up to the stated limits[.]" *Id*. When approving the settlement, the Court described it as "particularly adequate given the costs, risks, and delay of trial and appeal." *Id*. So too here. And despite attaining the benefits relief as the members in *Fox* received, counsel's fee request here is 10% what the court awarded in *Fox*. *See also* Schwartz, 2005 U.S. Dist. LEXIS 28453, at *14 ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method") (compiling cases); *Erica P. John*, 2018 U.S. Dist. LEXIS 69143, at *34 (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range."); *Shaw*, 91 F. Supp. 2d at 972 ("attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions"); *Kemp*, 2015 U.S. Dist. LEXIS 166164 at *23 ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Rodriguez v. Stage 3 Separation, LLC*, No. 14-cv-00603-RP, 2015

U.S. Dist. LEXIS 186251 at *15 (W.D. Tex. Dec. 23, 2015) (finding that a 30% benchmark fee is common in the Fifth Circuit); *Klein*, 705 F. Supp. 2d at 675 (approving 30% fee); *Al's Pals Pet Care v. Woodforest Nat'l Bank*, No. 17-cv-3852, 2019 U.S. Dist. LEXIS 17652 (S.D. Tex. Jan. 30, 2019) (awarding 33% fee).

Counsel's request is fee request is "reasonable" and the Court should approve it along with Mr. Sanchez's costs, totaling $8,475.00. Borrelli Dec. ¶21.

B. The Court Should Approve Mr. Sanchez's Service Award

Last, Mr. Sanchez's $2,500 service award is "fair and reasonable." *Lee v. Metrocare Servs.*, Civil Action No. 3:13-cv-2349-O, 2015 U.S. Dist. LEXIS 194001, at *9 (N.D. Tex. July 1, 2015). Courts use differing factors when approving service awards, but they all consider the "risk" accepted by the representative, whether they protected the class, how they benefited from the settlement, and their effort. *Id*. (explaining five- and three-factor tests). Awarding a plaintiff for serving as a representative encourages them to participate in the action despite the work and risks involved. *Id*. For that reason, courts find that $3,000 awards do not exceed "typical service awards." *Del Carmen v. R.A. Rogers, Inc.*, No. SA-16-CA-971-FB (HJB), 2018 U.S. Dist. LEXIS 224754, at *6 n.2 (W.D. Tex. Oct. 18, 2018).

The Court should approve Mr. Sanchez's $2,500 service award. That award compensates him for the time he invested in this case, from investigating his claims to cooperating with counsel and suing Cavender's. Counsel could not have pursued this case without the facts he provided, including that he suffered from identity theft and fraud—facts critical to surviving motions to dismiss challenges to standing. A $2,500 service award recognizes these efforts and tracks with services awards in other data breach cases. As a result, the Court should approve it.

CONCLUSION

For the reasons above, Mr. Sanchez requests that the Court grant his Motion to approve attorneys' fees, costs, and Plaintiff' service award.

Dated: September 7, 2023

Respectfully Submitted,

/s/ Joe Kendall

Joe Kendall
KENDALL LAW GROUP PLLC
3811 Turtle Creek Blvd., Suite 1450
Dallas, TX 75219
Telephone: (214) 744-3000
Facsimile: (214) 744-3015
jkendall@kendalllawgroup.com

Raina C. Borrelli (admitted *pro hac vice*)
TURKE & STRAUSS LLP
613 Williamson Street, Suite 201
Madison, WI 53703
Telephone: (608) 237-1775
Facsimile: (608) 509-4423
raina@turkestrauss.com

Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), I hereby certify that on September 7, 2023, I conferred with counsel for Defendant Cavender Stores, Ltd. regarding the above-referenced motion to approve fees, costs and service award. Defendant takes no position on this motion.

/s/ Raina C. Borrelli
Raina C. Borrelli

CERTIFICATE OF SERVICE

I hereby certify that on the 7th of September, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record via the ECF system.

/s/ Joe Kendall
Joe Kendall