2nd DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202 **KRISTEN SNYDER and DIONA LOPEZ, individually and on behalf of all others similarly situated,** **Plaintiffs,** **v.** **THE UROLOGY CENTER OF COLORADO, P.C., a Colorado corporation,** **Defendant.**	▲ **COURT USE ONLY** ▲
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PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD AND MEMORANDUM IN SUPPORT

Plaintiffs Kristen Snyder and Diona Lopez, submit this Unopposed Motion for Attorneys' Fees, Expenses, and Memorandum in Support.

I. INTRODUCTION

On July 10, 2022, this Court preliminarily approved a proposed class action settlement between Plaintiffs Kristen Snyder and Diona Lopez ("Plaintiffs") and Defendant The Urology Center of Colorado, P.C. ("Defendant" or "TUCC"). The Settlement negotiated on behalf of the Class provides for three separate forms of monetary relief: (1) reimbursement of ordinary expenses and lost time up to $500 per Class Member; (2) reimbursement of extraordinary expenses up to $2,500 per Class Member, and; (3) $50 per Settlement Class member with a California address at the time of the Data Incident in recognition of the superior statutory rights afforded under California law. S.A. ¶¶ 2.1-2.3.

In addition to the potential monetary benefits, Plaintiffs here negotiated for significant additional identity theft protection for the Settlement Class. Settlement Class Members who previously enrolled in the IDX identity protection services offered by TUCC in the incident response will be automatically provided two (2) years of additional identity theft protection services without the need to make an affirmative claim. SA ¶ 2.3. Settlement Class Members who did not previously enroll in the identity protection services offered by TUCC during the incident response will be eligible to submit a claim for two (2) years of identity protection services through IDX. *Id*. The retail value of two years of this service is $238.80 per class member.

Settlement Class Counsel has zealously prosecuted Plaintiff's claims, achieving the Settlement Agreement only after an extensive investigation and prolonged arms'-length negotiations, including a mediation conducted by Bennett Picker, Esq., an extremely well-regarded

private mediator well-versed in data security incident litigation. The arm's-length nature of the settlement negotiations and the involvement of an experienced mediator like Mr. Picker supports the conclusion that the Settlement was achieved free of collusion, Even after coming to an agreement to settle, Settlement Class Counsel worked for weeks to finalize the Settlement Agreement and associated exhibits pertaining to notice, preliminary approval, and final approval.

As compensation for the substantial benefit conferred upon the Settlement Class, Settlement Class Counsel respectfully moves the Court for a combined award of attorneys' fees and costs totaling $215,000.00, which represents no more than 19.37 percent of the guaranteed Settlement benefit created by Settlement Class Counsel, and possibly as little as 6%-7%. Colorado state and federal courts and other courts in the federal Tenth Circuit courts have expressly and repeatedly approved fees based on the potential recovery to the class that equal 20% to 50% of the benefit provided as "presumptively reasonable." Plaintiffs' motion should be granted because: (1) the request is reasonable and appropriate in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case; (2) the requested fees and costs were clearly delineated in notice to the class, and no class member has objected; and (3) the costs incurred were reasonable and necessary for the litigation. Plaintiffs also respectfully move the Court for an award of $2000.00 to each Plaintiff for their work on behalf of the Settlement Class.[1]

[1] While Plaintiffs here move for attorneys' fees, costs, and service awards, they will move for final approval of the settlement by separate motion, which will be filed prior to the final fairness hearing.

II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to and hereby incorporate Plaintiffs' Motion for Preliminary Approval of Class Action Settlement filed on June 30, 2022 and the accompanying Exhibits, including the proposed Settlement Agreement, filed in conjunction therewith.

III. SUMMARY OF SETTLEMENT

A. Settlement Benefits

The Settlement negotiated on behalf of the Class provides for three separate forms of monetary relief: (1) reimbursement of ordinary expenses and lost time up to $500 per Class Member; (2) reimbursement of extraordinary expenses up to $2,500 per Class Member, and; (3) $50 per Settlement Class member with a California address at the time of the Data Incident in recognition of the superior statutory rights afforded under California law. S.A. ¶¶ 2.1-2.3. In addition to the potential monetary benefits, Plaintiffs here negotiated for significant additional identity theft protection for the Settlement Class. Settlement Class Members who previously enrolled in the IDX identity protection services offered by TUCC in the incident response will be automatically provided two (2) years of additional identity theft protection services without the need to make an affirmative claim. SA ¶ 2.3. Settlement Class Members who did not previously enroll in the identity protection services offered by TUCC during the incident response will be eligible to submit a claim for two (2) years of identity protection services through IDX. *Id*.

In addition to the foregoing settlement benefits, TUCC agreed to implement and/or maintain certain reasonable steps to adequately secure its systems and environments. TUCC also agreed to pay for the costs of notice and claims administration, which the Claims Administrator

has estimated will total approximately $140,000. Epiq. Decl., ¶ 31. This is also a significant benefit to the Settlement Class.

B. Fees, Costs, and Service Awards

The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or a service award to Plaintiff until after the substantive terms of the Settlement Agreement had been agreed upon. After reaching agreement on all material terms of Class relief, the Parties agreed that Plaintiffs may seek, and TUCC would not oppose, a combined attorneys' fee and expense award of $215,000. *See* Supporting Declaration of David Lietz, ¶ 34, attached hereto.

If the only value of the proposed settlement is the automatic 2-year extension of the IDX credit monitoring to those 4,646 Settlement Class Members who previously enrolled ($1,109,464.80), the combined fees and expenses is approximately 19.37 percent of the settlement value provided to the Class. However, the value of this settlement is far more than that, even assessing it on an extremely conservative basis. If only 2% of the remaining 133,000 class members signs up for the 2-years of identity theft protection, that is another $636,039. If only 2% of the Settlement Class makes claims for ordinary reimbursements of $500, that is another $1.378 million. Settlement Administration costs are estimated to be $140,000. And the attorneys' fees themselves are deemed a benefit to the Settlement Class as well. While the claims period remains open, the attorneys' fees and expenses will be well below 10% of the value of this settlement, and probably in the 6-7% range when all is said and done. Class Counsel's fee request is well within the range of reasonableness for settlements of this nature and size.

The Settlement Agreement calls for a reasonable service award to be sought for Plaintiffs in the amount of $2,000 each. The Service Awards are meant to compensate Plaintiffs for their efforts on behalf of the Settlement Class. In addition to lending their names to this matter, and thus

subjecting themselves to public attention, Plaintiffs were actively engaged in this action, which included, among other things, maintaining contact with counsel, assisting in the investigation of the case, producing relevant documents, reviewing and approving pleadings, remaining available for consultation throughout the mediation, reviewing the Settlement documents, and answering counsel's many questions.

Settlement Class Counsel's fees were not guaranteed. The purely contingent basis upon which Settlement Class Counsel took the case meant that Settlement Class Counsel assumed significant risk. Settlement Class Counsel spent time on this matter that could have otherwise been spent on other, fee-generating matters, and shouldered the risk of expending substantial costs and time without any monetary gain in the case of adverse judgment.

Due to the early stage of litigation at which Plaintiffs were able to reach settlement, costs incurred by Plaintiffs are relatively low. Plaintiff's current costs are $1080.11, which include filing fees, expert fees, service fees and mediation fees. *Id*. These costs are reasonable and were necessary for the litigation.

IV. LEGAL STANDARD

Colorado courts historically utilize two main approaches to analyzing a request for attorneys' fees: the lodestar method and the percentage-of-fund (or percent-of-benefit or percent-of-recovery) method. *See Brody v. Hellman,* 167 P.3d 192, 200 (Colo. App. 2007);.*Brown v. Phillips*, 838 F.2d 451, 454 (10th Cir. 1988); *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 853 (10th Cir. 1993); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994).[2] Under the lodestar method, the number of hours reasonably expended by an attorney are multiplied by a

[2] "Because C.R.C.P. 23 is virtually identical to Fed.R.Civ.P. 23, cases applying the federal rule are instructive." *Bruce W. Higley, D.D.S., M.S., P.A. Defined Ben. Annuity Plan v. Kidder, Peabody & Co*., 920 P.2d 884, 889 (Colo. App. 1996)

reasonable rate, which is adjusted given the characteristics of a particular action. *See Blum v. Stenson*, 465 U.S. 886, 888 (1984). Under the percentage-of-fund method, an award of fees is equal to some percentage of the common economic benefit that the attorneys were successful in procuring during the litigation. *See Brown*, 838 F.2d at 454; *Uselton*, 9 F.3d at 853; *Gottlieb*, 43 F.3d at 482. Colorado courts concur with these federal courts that "the more recent trend has been toward using the percentage method in common fund cases." *Brody,* 167 P.3d at 201.

While the use of the lodestar method is sometimes used to crosscheck the result of the percentage-of-fund method, it is not required in the Tenth Circuit. *See Peace Officers' Annuity & Benefit Fund of Georgia v. DaVita Inc.*, No. 17-cv-0304-WJM-NRN, 2021 WL 2981970, at *3 (D. Colo. July 15, 2021) (slip copy) (stating lodestar crosscheck not required in Tenth Circuit; court performed lodestar crosscheck in any event). Tenth Circuit courts have routinely decided attorneys' fee awards in percentage-of-fund cases without performing lodestar crosschecks. *See, e.g., Droegemueller v. Petroleum Dev. Corp.*, Nos. 07–cv–1362–JLK–CBS, 07–cv–2508, 2009 WL 961539 (D. Colo. April 7, 2009) (awarding 33⅓% without a lodestar cross-check); *Robertson*, 2021 WL 4947349, at *5 (awarding 40% of gross settlement amount plus costs without a lodestar crosscheck); *Johnson*, 2021 WL 2550165, at *2 (awarding 40% of gross settlement value without lodestar crosscheck); *Farley v. Family Dollar Stores, Inc.*, 2014 WL 5488897 (D. Colo. Oct. 30, 2014) (awarding 33% attorneys' fees and costs without performing lodestar crosscheck).

V. LEGAL ARGUMENT

A. Plaintiff's Request for Combined Fees and Expenses is Reasonable and Should be Approved.

1. *This Court Should Apply the Percentage-of-Fund Method for Determining Fees*

Colorado courts and courts in the Tenth Circuit favors the percentage approach, as opposed to the lodestar method, because a percentage of the common fund 'is less subjective than the lodestar plus multiplier approach,' matches the marketplace more closely, and is the better suited approach when class counsel … is retained on a contingency fee basis." *Luken Family Ltd. P'ship, LLP v. Ultra Resources, Inc.*, 2010 WL 5387559, at *2-3 (D. Colo. December 22, 2010) (quoting *Brown*, 838 F.2d at 454); *Breckenridge Brewery of Colorado, LLC v. Xcel Energy, Inc.*, No. 06-cv-01110-REB-MEH, 2021 WL 4060386, at *3 (D. Colo. July 23, 2021) (slip copy) (same); *see also Brody*, 167 P.3d at 201. Accordingly, this Court should utilize the percentage-of-fund method in assessing the fee request submitted by Plaintiff.

2. *Settlement Class Counsel's Request for Attorneys' Fees is Reasonable*

Settlement Class Counsel here seeks $215,000 n combined fees and costs, or no more than 19.37%.of the guaranteed economic benefit of the Settlement. It is well established that counsel who create a common benefit are entitled to reimbursement of litigation costs and expenses. *See* Fed. R. Civ. P. 23; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Here, the requested one-third of the Settlement Fund in attorney's fees is well within the 20% to 50% "presumptively reasonable" range applied Colorado and the Tenth Circuit. In Colorado, courts regularly award fees between 20% and 30% of the economic benefit bestowed upon the class as "presumptively reasonable." *See, e.g., Brody,* 167 P.3d at 203 *("*the consensus seems to be that 20% to 30% (or 19% to 33%) is normally reasonable*"; Vaszlavik v. Storage Corp.*, No. 95-B-2525, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000) ("A 30% common fund fee award … [was] in the middle of the ordinary 20%-50% range [for class actions] and … [was considered] presumptively reasonable.").[3] 19.37%, which is the most conservative valuation of the

[3] *Shaw v. Interthinx*, No. 13-cv-01229-REB-NYW, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (citing cases holding that fees within the 20%-50% range are "presumptively reasonable"); *Robertson v. Whitman Consulting Org.,*

fee percentage requested (only relying upon one guaranteed component of the Settlement's benefits) is presumptively reasonable.

3. *Other Factors Weigh in Favor of Approving the Modest Requested Fee*

Whether the Court uses the percentage-of-fund method or the lodestar method, the fee must be reasonable, and the Court "must articulate the specific reasons" for fee awards. *Brown*, 838 F.3d at 454 (quoting *Ramos v. Lamm*, 713 F.2d 546, 552 (10th Cir. 1983)). To determine the "reasonableness" of the fee, Colorado courts also consider the well-settled factors articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *Brody*, 167 P.3d at 200 (" The *Johnson* factors are substantially similar to those found in Rule 1.5 of the Colorado Rules of Professional Conduct, which provide a basis for a court's evaluation of whether attorney fees are reasonable, and may also be considered when determining the reasonable value of an attorney's services for recovery based on *quantum meruit*.") A court does not need to specifically address each *Johnson* factor in a case. *See Blanco v. Xtreme Drilling & Coil Services, Inc.*, No. 16-cv-00249-PAB-SKC, 2020 WL 4041456, at *4 (D. Colo. July 7, 2020). Plaintiffs address the relevant *Johnson* factors below:

a. The amount involved and the results obtained support approval of Settlement Class Counsel's fee request

Inc., No. 19-cv-2508-RM-KLM, 2021 WL 4947349, at *5 (D. Colo. Oct. 22, 2021) (slip copy) (awarding 40% of gross settlement amount plus costs); *Johnson v. Camino Nat'l Resources, LLC*, No. 19-cv-02742-CMA-SKC, 2021 WL 2550165, at *2 (D. Colo. June 22, 2021) (slip copy) (awarding 40% of gross settlement value); *Whittington v. Taco Bell of America, Inc.*, No. 10–cv–01884–KMT–MEH, 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (awarding fees and costs amounting to approximately 39% of the fund as a whole as "within the normal range" in a common fund case); *Davis v. Crilly*, 292 F. Supp. 3d 1167, 1174 (D. Colo. 2018) (awarding 37% of the gross settlement award); *Cimarron Pipeline Constr., Inc. v. National Council on Comp. Ins.*, Nos. CIV 89–822–T, CIV 89–1186–T, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993) (stating that fees in the range of "30% to 40% of any amount recovered are common in complex and other cases taken on a contingent fee basis"); *but see Anderson v. Merit Energy Co.*, No. 07-cv-00916-LTB-BNB, 2009 WL 3378526, at *3 (D. Colo. Oct. 20, 2009) (stating that the customary fee in a common fund settlement is approximately one-third of the economic benefit bestowed upon the class); *Rothe v. Battelle Mem'l Inst.*, No. 1:18-cv-03179-RBJ, 2021 WL 2588873, at *9 (D. Colo. June 24, 2021) (slip opinion) (same).

The most important inquiry pertains to the results obtained for the class. *Hensley v. Eckerhart,* 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *Luken Family Ltd. P'ship, LLP*, 2010 WL 5387559, at *3 ("In a common fund case, the greatest weight should be given to the monetary results achieved for the benefit of the class—this factor is often 'decisive.'") (internal quotations omitted). As shown above, the Settlement provides a significant benefit to Settlement Class Members. These are real, tangible benefits—that without the efforts of Plaintiffs and Settlement Class Counsel, and their willingness to take on the attendant risks of litigation, would not have been available to Settlement Class Members. Thus, this factor weighs heavily in favor of granting this fee request.

b. The contingent nature of the case, the risks of litigation, preclusion of other employment by Settlement Class Counsel, and undesirability of the case all weigh in favor of Settlement Class Counsel's fee request

Settlement Class Counsel took this case on a purely contingent basis. Lietz Fee Dec. ¶¶ 39-40. The retainer agreement Settlement Class Counsel has with Plaintiffs does not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, attorneys' fees would only be awarded to Settlement Class Counsel, if approved by the Court. *Id.* As such, attorneys' fees were not guaranteed in this case. *Id.* ¶ 42. Settlement Class Counsel assumed significant risk of nonpayment or underpayment of attorneys' fees. *Id*. ¶¶ 39, 42. Thus, Settlement Class Counsel took on these significant risks knowing full well his efforts may not bear fruit. *Id.*

Here, Settlement Class Counsel took on significant risks. While Plaintiffs believed they could prevail on their claims against TUCC, they also were aware that they would likely face several strong legal defenses and difficulties in demonstrating causation and injury. *Id*. ¶ 29. Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiffs and putative class members. *Id*. Further, given the complexity of the issues and the amount in

controversy, the defeated party would likely appeal any decision on either certification or merits. The general risks of litigation are further heightened in the data breach arena. 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*. At present, courts have certified only five classes in this area.[4] Moreover, the theories of damages remain untested at trial and appeal. As another court recently observed:

> Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.,* No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex.").

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). These cases are particularly risky for plaintiffs' attorneys. Consequently, the requested fee award appropriately compensates for the risk undertaken by Plaintiffs' counsel here.

Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp*., No. 08 Civ. 6060 (RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

[4] *See, e.g., In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, No. 19-MD-2879, 2022 WL 1396522, at *1 (D. Md. May 3, 2022)*; In re Equifax, Inc. Customer Data Security Breach Litigation*, Case No. 1:17-md-2800-TWT (N.D. Ga. 2019); *In re Brinker Data Incident Litig*., No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508, at *14 (M.D. Fla. Apr. 14, 2021)*; In re Target*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litig*., 851 F.Supp.2d 1040 (S.D. Tex. 2012).

Another significant risk faced by Plaintiffs here are the risks of maintaining class action status through trial. The class has not yet been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiffs "necessarily risk[s] losing class action status." *Grimm v. American Eagle Airlines, Inc*., No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). Class certification in contested consumer data breach cases is not common—first occurring in *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 U.S. Dist. LEXIS 38574, at *45-46 (M.D. Ala. Mar. 17, 2017). In one of the few significant data breach class actions that have been certified on a national basis, this risk is very real. *In re Brinker, supra*, is currently on appeal to the United States Court of Appeals for the Eleventh Circuit, and it is currently an open question whether the *Brinker* plaintiffs will maintain class certification. This over-arching risk simply puts a point on what is true in all class actions – class certification through trial is never a settled issue, and is always a risk for the Plaintiffs and their Counsel.

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (citing *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986)). Tenth Circuit courts "have consistently found that this type of fee arrangement, under which counsel runs a significant risk of nonpayment, weighs in favor of the reasonableness of a requested fee award." *Blanco*, 2020 WL 4041456, at *5-6 (approving requested 38% of settlement amount where attorneys worked on a contingent basis) (internal citations omitted); *see Shaw*, 2015 WL 1867861, at *8 (approving requested $2 million dollar attorneys' fee request, which represented one-third of the $6 million maximum value of the common fund, where attorneys worked on a contingent basis). Accordingly, these factors weigh in favor of approval of the attorneys' fees request here.

c. The skill required to litigate this matter and Settlement Class Counsel's extensive experience in class action data breach litigation support the request for attorney's fees

As discussed above, the skill required to litigate data breach cases is great, in part due to the quickly evolving nature of data breach and privacy law. Here, as the supporting declaration abundantly shows, the lawyers representing Plaintiffs are some of the most experienced in this area of the practice. Lietz Decl. ¶¶ 2-13. Settlement Class Counsel brought this established track record and experience to work in litigating Plaintiffs' and Class Members' claims. The significant experience and qualifications of counsel easily justify the attorneys' fee award.

Finally, the result achieved in this Settlement is notable because the parties were able, through capable and experienced counsel, to reach a negotiated Settlement without involvement of the Court in discovery disputes. *Id*., ¶ 36. Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement. *Id.* The Settlement reached here is notable for the simplicity of the claims process; the relief which addresses the type of injury and repercussions sustained by consumers in the wake of a Data Incident of the type here; the speed with which counsel was able to secure a favorable settlement; and the cooperation of Plaintiffs' counsel which aided in the ability to resolve this matter efficiently. *Id*.

d. The requested fee falls well within the range of attorneys' fees granted in similar cases

Finally, as discussed at length above, Plaintiff is seeking a request of $215,000.00 in attorneys' fees and expenses, which represents no more than 19.375 of the Settlement benefit created, subject to Court approval. This fee request falls well within the 20% to 30% range of

attorneys' fee awards found "presumptively reasonable" in Colorado. *See, e.g., Brody,* 167 P.3d at 203.

e. A Summary Lodestar Crosscheck Confirms the Reasonableness of the Fees Requested.

Although no lodestar crosscheck is required, a summary lodestar crosscheck confirms the reasonableness of the fees requested here. Settlement Class Counsel has expended 107.3 hours of work on this matter to date, and will expend another 40-50 hours of time consummating this Settlement. Lietz Fee Decl. ¶ 26. At the normal billing rates that have been approved by courts across the country, this equates to a lodestar of $115,128.50, and the fees requested represent a lodestar multiplier of 1.86 (without including local and co-counsel's time). Colorado courts have found that lodestar multipliers of 2.3 are "well within the range of fees customarily awarded in complex litigation." *Brody*, 167 P.3d at 203.

B. Plaintiff's Requested Costs are Reasonable and Necessary to Litigation.

"Expenses are compensable in a common fund case if the particular costs are the type typically billed by attorneys to paying clients in the marketplace." *Brody*, 167 P.3d at 205. Due to Settlement Class Counsel's ability to reach an early and excellent settlement for Plaintiffs and the Settlement Class Members, costs are very modest and include only filing fees in the amount of $1,080.11, all of which is included in Plaintiffs' request for attorneys' fees and costs in the amount of $215,000.00. Lietz Fee Dec., ¶ 33. Such costs were necessary and reasonable to litigation and are typically charged to fee-paying clients. *Id.* Plaintiffs' request for expenses should be approved.

C. Plaintiff's Request for Service Awards is Reasonable and Should be Granted.

The Tenth Circuit has held that courts "regularly give incentive awards to compensate plaintiffs for the work they perform[]—their time and effort invested in the case." *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2017).

Service Awards are an "efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class." *Luken Family P'ship*, 2010 WL 5387559, at *8; *see also Shaw*, 2015 WL 1867861, at *8 (same). The three factors to determine whether a service award is reasonable are: "(1) the actions that the class representative took to protect the interests of the class; (2) the degree to which the class has benefitted from those actions; and (3) the amount of time and effort the class representative expended in pursuing the litigation." *Luken Family P'ship*, 2010 WL 5387559, at *8.

For their efforts on the case, Plaintiffs seek a Service Award in the amount of $2,000 each. Lietz Fee Dec. ¶¶ 46-47. The Service Award is meant to compensate Plaintiffs for their efforts (outlined above) on behalf of the Settlement Class. *Id*. Plaintiffs' actions protected the interests of the Settlement Class and helped achieve an outstanding settlement of this matter for Plaintiff and the Settlement Class Members. Additionally, the modest requested Service Award is reasonable and falls well below the range of service awards that have been approved by courts in this Circuit. *See, e.g., Blanco*, 2020 WL 40414456, at *7 (awarding $7,000.00 service award); *Luken Family P'ship*, 2010 WL 5387559, at *6 (awarding $10,000.00 service award); *Shaw*, 2015 WL 1867861, at *8-9 (same); *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1010 (D. Colo. May 19, 2014) (awarding $15,000.00 service award).

VI. CONCLUSION

Settlement Class Counsel, with the help of Plaintiffs, has made significant benefits available to Settlement Class Members. In return, Plaintiffs seek attorneys' fees, expenses, and service awards commensurate with those regularly approved by Colorado courts and courts sitting in Tenth Circuit. The attorneys' fees, costs, and service awards are reasonable, and Plaintiffs respectfully request their approval.

Dated: September 30, 2022

Respectfully submitted,
Duly signed original on file at the offices of the respective signatories below

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via CCE this 30th day of September, 2022, to the following counsel of record:

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