

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

DARNELL CRAWFORD and MICHAEL )  
DEW, on behalf of themselves )  
and others similarly situated, )  
 ) Case No.: 2122-CC00411  
 )  
 ) *Class Representatives,* )  
 )  
v. )  
 )  
THYSSENKRUPP MATERIALS NA, )  
INC. and THYSSENKRUPP SUPPLY )  
CHAIN SERVICES NA, INC., )  
 )  
 ) *Defendants.* )  
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**PLAINTIFFS’ MOTION FOR APPROVAL OF CLASS COUNSEL’S  
ATTORNEYS’ FEES, AND FOR AWARD OF CLASS REPRESENTATIVE  
INCENTIVE AWARDS**

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**COME NOW** Class Representatives Darnell Crawford and Michael Dew (collectively, “Class Representatives”), individually and on behalf of the Settlement Class, by counsel, and respectfully submit their motion for approval of class counsel’s attorneys’ fees, and for award of class representative incentive awards and submit concurrently their integrated memorandum of law in support.

**I. INTRODUCTION**

Pursuant to §§ 3.5 & 7.4 of the Settlement Agreement that was preliminarily approved by the Court on November 8, 2022, and in conjunction with the final approval hearing set for February 27, 2023, Plaintiffs Darnell Crawford and Michael Dew (the “Class Representatives”) respectfully move the Court to approve the agreed

payment of attorneys' fees in the amount of \$435,000.00 to the law firms of Branstetter, Stranch & Jennings, PLLC; Cohen & Malad, LLP; and Muchnick Haber Margolis, LC ("Class Counsel") and award incentive awards of \$3,500.00 to each of the two Class Representatives. Defendant has agreed to pay this amount in addition to all the benefits provided to the Settlement Class, and this payment does not reduce any of those benefits. The requested payments are fair and reasonable under Missouri law and should be approved by the Court.

## II. STATEMENT OF FACTS

### A. **Class Counsel vigorously advocated for the Class and invested significant time and resources into the representation.**

Class Counsel have diligently worked to advance the interests of the Class in this litigation and settlement since February 2021 when Plaintiffs originally filed their complaint against Defendants Thyssenkrupp Materials NA, Inc., and Thyssenkrupp Supply Chain Services NA, Inc. (collectively "Thyssenkrupp"). Declaration of J. Gerard Stranch, IV ("Stranch Decl.") ¶ 6. Before initiating this action, Class Counsel investigated the facts of the Thyssenkrupp Data Breach, the impact of the breach on Thyssenkrupp employees, and the potential legal claims and defenses that may be raised in the case. *Id.* ¶ 7.

The information gleaned from investigation and research into the facts of the case and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with Thyssenkrupp's

Counsel about mediating and later settling the matter. *Id.* ¶ 8. Class Counsel's diligence in preparing for mediation, including obtaining information necessary to analyze all claims and defenses, allowed them to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan. *Ibid.*

Class Counsel has performed significant work during the pendency of this matter, including significant time researching and drafting Plaintiffs' Motion to Remand, or Alternatively, for Jurisdictional Discovery, which was ultimately granted. *Id.* ¶ 10. While Plaintiff's Motion to Remand was pending, Thyssenkrupp moved to dismiss Plaintiff's Petition, which Class Counsel researched and responded to prior to remand. *Ibid.*

Class Counsel also served discovery requests on Thyssenkrupp and received certain information from Thyssenkrupp in advance of engaging in settlement discussions. *Id.* ¶ 11. This information helped counsel to better understand their position in the litigation and informed their settlement strategy. *Ibid.* Class Counsel also completed other work relating to the litigation, including meetings, emails, and phone calls between co-counsel and with counsel for Thyssenkrupp. *Id.* ¶ 12. Class Counsel will continue to diligently and efficiently litigate this matter through the Final Approval Hearing and processing of the settlement. *Ibid.*

Prior to the mediation session, the Parties exchanged information to prepare for and facilitate a productive mediation session, communicating their respective positions regarding this litigation with each other and with the mediator. *Id.* ¶ 14.

Class Counsel also zealously advocated for the Class throughout the settlement negotiation process, including a day-long mediation with the Hon. Wayne R. Andersen (ret.) of JAMS on January 11, 2022. *Id.* ¶ 13. Class Counsel and counsel for Thyssenkrupp aggressively advocated for their side’s position during the mediation. *Ibid.* The Parties did not reach an agreement during the mediation, but continued to negotiate. *Ibid.*

Class Counsel worked diligently after the mediation to reach a settlement. *Id.* ¶ 15. This process involved the review of confirmatory discovery. *Ibid.* Once the parties reached a settlement in principle, they went through many more rounds of negotiations to finalize the details of each aspect of the Settlement Agreement and exchanged numerous drafts of the Settlement Agreement. *Ibid.*

Class Counsel has also worked with the Settlement Administrator to implement the robust Notice Plan and remains in close touch with the Settlement Administrator to ensure the smooth implementation of the Notice Plan. *Id.* ¶ 14. This included reviewing and drafting the Settlement Website’s language and format, the script for the automated response of the toll- free number, and the language and format of the Notice forms, monitoring exclusion requests, and ensuring prompt responses to each and every Settlement Class Member inquiry regarding the Settlement. *Ibid.*

**B. Class Counsel achieved significant and valuable benefits for the Class through their efforts in achieving the settlement.**

The Settlement achieved by Class Counsel provides Settlement Class members with timely benefits targeted at remediating the specific harms they have suffered

because of the Security Incident involved in this litigation. The benefits of the Settlement are available to all Settlement Class members. The Value of the Settlement, is estimated at \$1,771,325.00, which is comprised of the estimated costs to Defendants to provide the benefits set forth in the Settlement Agreement, including: costs of Identity Theft Protection Services; the maximum amounts payable by Defendants for Lost Time, Ordinary Loss and Extraordinary Loss; the service awards to the Class Representatives and attorneys' fees to Class Counsel. Settlement Agreement ("SA") § 2.26. The \$442,000.00 figure Class Counsel requests herein—which includes both the service awards and the requested attorneys' fee—constitutes just under 25% of the Value of the Settlement, which is well below that which is customarily approved in class action litigation.

Under the Settlement, Settlement Class members are eligible to recover compensation for up to \$200.00 of Ordinary Loss, up to \$150.00 for Lost Time, up to \$8,000.00 in Extraordinary Loss, and two (2) years<sup>1</sup> of Identity Theft Protection Services, as explained in detail herein:

### **1. Ordinary Expense Reimbursement**

Settlement Class members are eligible to receive compensation for up to \$200.00 of their Ordinary Loss as a result of the Data Incident through submission of a valid claim. SA ¶4.2. These ordinary out-of-pocket expenses include: (i) bank fees; (ii) long distance phone charges; (iii) cell phone and data charges (if charged by

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<sup>1</sup> For those Settlement Class members who did not sign up for the two years of Identity Theft Protection Services originally offered by Defendants. For those who did sign up, their coverage will automatically be extended for an additional year.

usage); (iv) postage expenses; (v) fuel expenses; (vi) parking expenses; (vii) fees to replace a card or identification (e.g., a driver's license); (viii) fees for additional credit reports; and (ix) costs of credit monitoring or identity theft insurance products purchased between December 28, 2020, and the date of entry of the annexed Order of Preliminary Approval. SA Exhibit A at 3.

Settlement Class members are also eligible for self-certified time spent related to addressing the effects or potential effects of the Data Incident. Each Settlement Class Member may claim up to 6 hours of time by simply attesting to the fact that they expended such time and describing how the time was spent. Lost Time will be compensated at a rate of \$25.00/hour, up to six (6) hours, with an individual cap of \$150.00 per Class Member. *Ibid.*

## **2. Extraordinary Expense Reimbursement**

Settlement Class members who submit a valid claim are also eligible to recover compensation for up to \$8,000.00 of their documented Extraordinary Losses. SA ¶4.2. Extraordinary Losses include monetary losses arising from financial fraud or identity theft if all of the following criteria are met: 1) the loss is an actual, documented, and unreimbursed monetary loss that has not been compensated by a third party (such as a bank or credit card company); 2) the loss is attributable to the Data Incident (i.e., it occurred after December 28, 2020), and involved data elements potentially exposed as part of the Data Incident; 3) the loss is not already covered as an Ordinary Loss or Lost Time, above; and 4) the Settlement Class member made reasonable efforts to avoid, mitigate, or seek reimbursement for, the loss. SA Exhibit A at 4.

### **3. Identity Theft Protection Services**

Thyssenkrupp will also offer, at no cost to Settlement Class members: (a) two (2) years of three-bureau credit monitoring and identity theft insurance through *myTrueIdentity* to Settlement Class members who did not sign up for Identity Theft Protection Services originally offered by Thyssenkrupp and who request credit monitoring by indicating such request on a valid claim form; and (b) one (1) additional year for those Settlement Class members who did sign up for the Identity Theft Protection Services originally offered by Thyssenkrupp, automatically. SA ¶¶1.2, 4.1.

### **4. Costs of Notice and Settlement Administration, Attorneys' Fees, and Expenses, and Incentive Awards**

Thyssenkrupp will pay the costs of Notice and Settlement Administration separate from the \$750,000.00 aggregate cap for Lost Time, Ordinary Loss and Extraordinary Loss reimbursement, and separate from the Identity Theft Protection Services offering. *Id.* ¶4.3. Thyssenkrupp will also separately pay Attorneys' Fees and Expenses, as approved by the Court, up to \$435,000.00, for Class Counsel. *Id.* ¶4.4. Class Counsel will petition the Court for fees within 14 days after the Deadline to Send Notice. *Id.* ¶3.5. Thyssenkrupp will also not contest a request for Service Awards of up to \$3,500.00 per Class Representative (up to \$7,000.00 in the aggregate). *Id.* ¶4.4. The Parties did not discuss or agree upon payment of Attorneys' Fees, Expenses, and Service Awards until after they agreed on all material terms of relief to the Settlement Class.

### **III. LEGAL STANDARD**

A trial court has substantial discretion in determining the appropriate amount

of reasonable attorneys' fees to approve in a class action. *See, e.g., Berry v. Volkswagen Grp. Of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. banc 2013). "The trial court is deemed an expert at fashioning an award of attorneys' fees," and the court's determination will be affirmed unless it is "so arbitrary and unreasonable as to shock one's sense of justice." *Id.* at 430–31 (internal citations omitted).

As to the amount of a reasonable fee, courts in Missouri routinely employ, *inter alia*<sup>2</sup>, what is called the percentage-of-the-benefit approach, which is particularly apt for a contingency fee case, such as this one. *See Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. Ct. App. 2011) (using percentage-of-the-benefit approach and noting that a "one-third contingent fee award is not unreasonable").

Indeed, the most common method of awarding attorneys' fees in a class action is as a percentage of the benefit. *See Paulson v. Dynamic Pet Prod., LLC*, 560 S.W.3d 583, 593 (Mo. Ct. App. 2018) (affirming award of attorneys' fees and expenses and a service award from a fund created by a class action settlement); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at \*2 (W.D. Mo. Aug. 16, 2019) (holding that "Class Counsel is entitled to an award of reasonable attorneys' fees from the settlement proceeds" in a class action).<sup>3</sup>

The percentage-of-the-benefit method of calculating fees encourages counsel to obtain the largest possible settlement for the class, and "use of the percentage of the

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<sup>2</sup> Missouri courts also employ an alternate method called the lodestar multiplier method, but that method is more appropriate in cases where a fee-shifting statute is involved. *See, e.g., Berry*, 397 S.W.3d at 430-33 (employing lodestar method with multiplier in MMPA class action).

<sup>3</sup> Cases on Federal Rule of Civil Procedure 23 are persuasive in interpreting Missouri Rule of Civil Procedure 52.08. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 166 (Mo. Ct. App. 2006).



fund method when awarding attorneys' fees . . . is not only approved, but also 'well established.'" *In re NuvaRing Prod. Liab. Litig.*, 2014 WL 7271959, \*2 (E.D. Mo. Dec. 18, 2014) (citation omitted); *see also Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (percentage of benefit is "a method of more closely aligning the lawyer's interests with those of his client by giving him a stake in a successful outcome").

As for the appropriate percentage to award, "courts have frequently awarded attorney fees between 25 and 36 percent..." *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming one-third fee) (quoting *Khoday v. Symantec Corp.*, No. 11-cv-180, 2016 WL 1637039, at \*9-11 (D. Minn. Apr. 5, 2016) (one-third fee)); *see also In re U.S. Bancorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming 36% fee). Within this range, the most common fee awarded is one-third of the value of the settlement. *See, e.g., Caligiuri*, 855 F.3d at 865–66 (one-third); *Huyer v. Buckley*, 849 F.3d 395, 399–400 (8th Cir. 2017) (same); *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-CV-4321NKL, 2015 WL 3460346, at \*4 (W.D. Mo. June 1, 2015) (same and collecting cases).

#### **IV. DISCUSSION**

##### **A. The Court should approve payment of the requested fee award as reasonable.**

Here, the requested attorneys' fee is well within the range of reasonability. Under the percentage-of-the-benefit approach, the requested fee here is less than 25% of the estimated Value of the Settlement—\$1,771,325.00—and that percentage is well below the usual one-third that courts in Missouri customarily award. *See, e.g., Bachman*, 344 S.W.3d at 267 (noting that a one-third contingent fee award is common

and not unreasonable). Taking into account the valuable benefits of the Settlement that will inure to the Class (Identity Theft Protection Services; reimbursement for Lost Time, Ordinary Loss and Extraordinary Loss), the requested fee is clearly justified under Missouri's prevailing percentage-of-the-benefit analysis.

Moreover, additional factors favor approval of the fee. First, there is the inherent risk of taking on a complex matter on a contingent basis with no guarantee of being paid at all. *See, e.g., Berry*, 397 S.W.3d at 432–33 (considering the fact that “[t]he fee to be received by class counsel was always contingent, unlike the fees received by counsel for Defendant...” as a relevant factor). Second, Class Counsel served the Class in a professional and zealous manner, all at Class Counsel's own expense and risk. Third, class action data breach litigation is inherently complex and specialized, required skills peculiar to Class Counsel and only a handful of other practitioners across the country. Fourth, the nature and importance of the litigation is significant as it involves the safety, security, and privacy of important personal information.

Fifth, the highly valuable benefits achieved by the settlement support the fee, particularly in the face of vigorous opposition from highly skilled defense counsel. Finally, the fee is even more reasonable here because, unlike in a common fund case, here the fee is being paid by the Defendant on top of the benefits to the Class, and therefore approving the requested fee has no negative effect on the benefits that the Class will receive. In short, the requested fee is reasonable under Missouri law, and all of the relevant factors support approving the requested fee.

**B. The Court should award incentive awards to the Class Representatives.**

The Court should grant the Incentive Awards of \$3,500 requested per Plaintiff to compensate the Class Representatives for the effort and risk entailed in pursuing this litigation, which has triggered important and positive changes in Thyssenkrupp's business practices and has secured significant compensation for Class Members. Service awards, which are discretionary, "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9<sup>th</sup> Cir. 2009); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995).

The requested Incentive Awards are squarely in line with incentive awards that are routinely approved by courts in class actions. *See Fellows v. Am. Campus Cmtys. Servs.*, No. 4:16-cv- 01611-JAR, 2018 WL 3056046, at \*5–6 (E.D. Mo. June 20, 2018) (approving service award of \$5,000); *Martin v. Safe Haven Sec. Servs.*, No. 19-CV-00063-ODS, 2020 WL 4816418, at \*6 (W.D. Mo. Aug. 19, 2020) (approving service awards of \$10,000 and \$5,000). Plaintiffs have been actively engaged in this Action and were essential to the success achieved. Among other things, they provided information to Class Counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. Stranch Decl. ¶ 21.

The Settlement would not have been possible without the effort and commitment of the Plaintiffs, who sacrificed their time and put their name on the

line for the sake of the Class. *Id.* ¶ 22. Their commitment is notable given the modest size of their personal financial stakes in the matter. *See Van Vranken*, 901 F. Supp. at 299 (“In exchange for his participation, [named plaintiff] will not receive great personal benefit. He owns a moderately sized truck stop and his claim makes up only a tiny fraction of the common fund.”).

## V. CONCLUSION

For all the foregoing reasons, the Court should approve the payment of attorneys’ fees to Class Counsel and award incentive awards to Class Representatives.

Respectfully submitted,

*/s/John F. Garvey*  
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### **Certificate of Service**

The undersigned hereby certifies that the foregoing Unopposed Motion for Preliminary Approval of Class Action Settlement has been filed by using the Court's electronic case filing system on this 22<sup>nd</sup> day of December, 2022, thereby serving all registered parties of record.

*/s/ John F. Garvey, Jr.*