UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JOHN DOE ONE; JOHN DOE TWO; JOHN DOE THREE; and JOHN DOE FOUR, on behalf of themselves and all similarly situated individuals, *Plaintiffs*, v. CAREMARK, L.L.C.; FISERV, INC.; FISERV SOLUTIONS, LLC; and DEFENDANTS DOES 1–10, *Defendants.*	No. 2:18-cv-00238-EAS-CMV No. 2:18-cv-00488-EAS-CMV (Consolidated for all purposes) CLASS ACTION

PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF AN AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE PAYMENTS

INTRODUCTION

Plaintiffs John Doe One through Four ("Plaintiffs" or "Class Representatives") filed this class action lawsuit on behalf of themselves and all individuals enrolled in the Ohio HIV AIDS Drug Assistance Program ("OhDAP") who were sent a mailing in August 2017 with the letters "HIV" in a program code displayed directly above their names and addresses, which could be viewed through a regular glassine envelope (the "OhDAP Mailing"). Plaintiffs' Consolidated Amended Class Action Complaint alleges that as a result of the OhDAP Mailing, Defendants Caremark, L.L.C. ("Caremark"), Fiserv, Inc. and Fiserv Solutions, LLC (collectively, "Fiserv," and with Caremark, the "Defendants") unlawfully disclosed Confidential HIV-related Information of Plaintiffs, and approximately 4,500 Class Members. That Complaint asserts claims for (1) the unauthorized, unprivileged disclosure to a third party of nonpublic medical information (a "*Biddle* claim"), (2) violation of Ohio Rev. Code § 3701.243, (3) violation of Ohio Rev. Code § 3904.01, and (4) declaratory relief.

Despite the complex and sensitive nature of the case, Plaintiffs and their counsel were able to steer this case to resolution in a reasonable amount of time, achieving an outstanding result for Class Members. Class Counsel thoroughly and efficiently investigated and prosecuted this case for the benefit of the Class Members. They successfully defended against three motions to dismiss on novel and complex legal and factual issues, and negotiated the significant settlement with the help of two nationally known mediators. They will continue to represent the interests of the Class Members even after the settlement is approved to ensure that the terms and conditions are fully and completely satisfied and anticipate spending additional time doing so to oversee the settlement and claims administration process.

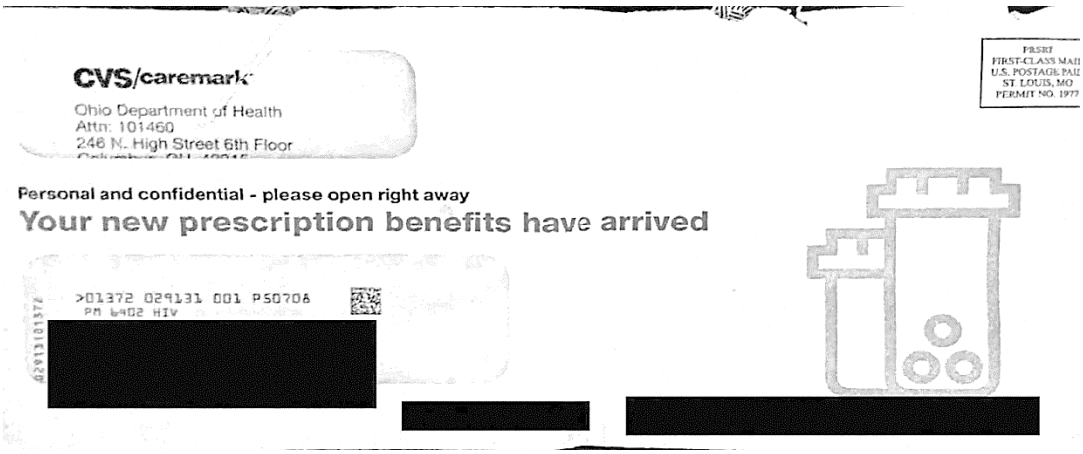
As compensation for their work and the results obtained in this case, Class Counsel respectfully request an award of attorneys' fees in the amount of one-third of the total common fund, or $1,466,666, in addition to reimbursement of their necessary and appropriate out-of-pocket litigation expenses in the amount of $50,289.72. As explained in more detail below, Class Counsel's requested award is consistent with orders from district courts within this District and Circuit, as well as with the attorney-client agreements between Plaintiffs and Class Counsel. The award sought will fairly and reasonably compensate Class Counsel for the results achieved in this case, taking into account the quality, nature, and extent of Class Counsel's efforts, the delay and risk of non-payment, and the benefits to the Class and the judicial system for achieving the result through settlement. Accordingly, Class Counsel respectfully requests that the Court award the requested attorneys' fees and costs. In addition, Plaintiffs request that the Court approve the parties' agreement to allocate the four Named Plaintiffs service payments of $3,500 each for their role in the litigation and settlement, from which each Class Member benefited, for a total of $14,000, also to be paid out of the common settlement fund.

I. FACTUAL BACKGROUND

The Ohio Department of Health ("ODH") administers OhDAP, which provides "medications to fight HIV and to treat HIV-related conditions" free of charge to Ohio residents who have a confirmed diagnosis of being HIV-positive. Dkt. # 74, ¶¶ 13–15. In 2017, ODH entered into an exclusive contract with Caremark for Caremark to provide pharmacy benefit management services for the provision of life-saving HIV medications to OhDAP participants. *Id*. ¶ 19.

In August 2017, as part of its administration, Caremark, via subcontract with Defendant

Fiserv, sent the following "welcome letter" envelope to program participants:



Id. ¶¶ 9, 21. The OhDAP Mailing contained information concerning Caremark's management of OhDAP and explained how participants would access their HIV-related prescriptions. *Id.* ¶ 20.

Plaintiffs allege that in issuing the OhDAP Mailing, Defendants violated Ohio's statutory and common-law medical privacy protections by: (1) unlawfully providing the names and addresses of approximately 4,505 OhDAP participants to Fiserv without ODH's or Settlement Class Members' prior approval; and (2) by disclosing Confidential HIV-related Information to third parties in the way the OhDAP Mailing was issued. More specifically, in the transparent window on the line above the recipient's name and address, "PM 6402 HIV" was displayed under the statement in red text that "Your new prescription benefits have arrived." Plaintiffs allege that the information in the top left window makes it clear that the OhDAP Mailing is from both CVS/Caremark and ODH. *Id.* Thus, Plaintiffs allege that anyone exposed to the letter (such as family members, roommates, neighbors, mail carriers, and others), without even opening it, would (1) know that the communication was at the behest of the ODH; (2) the communication related to "new prescription benefits" and (3) the communication referred to "HIV" directly above the patient's name and address. *Id.* ¶ 22. Plaintiffs allege that someone seeing this letter

would thus be able to reasonably infer the individual was part of a state-sponsored medication benefits program managed by Caremark to obtain HIV medications. *Id*.

On March 21, 2018, Plaintiffs John Does One through Three filed an action on behalf of a class of those who received the OhDAP Mailing against various Caremark entities, Fiserv, Inc., and Doe Defendants. Dkt. #1. On May 16, 2018, Plaintiff John Doe Four filed *John Doe v. CVS Health Corporation et al.*, No. 18-cv-488 (S.D. Ohio), alleging similar and additional claims on behalf of the same class. On June 13, 2018, the cases were designated as related. Dkt. #40.

Defendants moved to dismiss both cases pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. #29, 33. While the motions were pending, the Plaintiffs and Caremark participated in mediation on October 24, 2018 with the Honorable James R. Melinson (Ret.) of JAMS in Philadelphia. The participating Parties did not reach a settlement. The motions were fully briefed, and on December 21, 2018, the Court issued a consolidated ruling, permitting Plaintiffs to proceed on their Ohio-based statutory claims and their common-law *Biddle* medical privacy claim, and to seek declaratory relief. Dkt. #59. The two matters were formally consolidated on January 17, 2019, Dkt. #65, and thereafter, the Plaintiffs filed the Consolidated Complaint, Dkt. #74. Defendants filed their Answers to the operative Complaint on March 20 and April 5, 2019 Dkt. # 79, 80, asserting numerous affirmative defenses and maintaining that class certification would be inappropriate.

During and after the pleading motions and consolidation, the Parties engaged in thorough discovery, exchanged initial disclosures and written discovery requests and responses, and negotiated a comprehensive HIPAA-compliant protective order. (*See, e.g.* Exhibit A, Declaration of Matthew R. Wilson ("Wilson Dec."), at ¶¶ 8-14; Exhibit B, Declaration of Henry C. Quillen

("Quillen Dec."), at ¶¶ 10-14; Exhibit C, Declaration of Matthew B. George ("George Dec."), at ¶¶ 10-16.) Defendants ultimately produced over 1,200 pages of documents in response to Plaintiffs' requests, including: (1) documents identifying the size of the Settlement Class, and (2) documents regarding the OhDAP Mailing. The Parties also spent a significant amount of time negotiating a discovery protocol, a custodian list, and targeted electronic discovery search terms in order to obtain emails and other documents responsive to Plaintiffs' requests, during which Plaintiffs obtained valuable information on the roles the various Defendants and their employees played regarding the OhDAP Mailing and their interactions with ODH. *Id*.

Plaintiffs also conducted an intensive, independent factual investigation of the claims. *Id*. In addition to speaking with many Class Members regarding their experiences with the OhDAP Mailing, Plaintiffs subpoenaed ODH for the relevant information and reviewed documents they obtained under Ohio's Open Records Law. The resulting productions of more than 1,200 additional pages of documents provided additional, new information about the OhDAP Mailing. *Id*. Collectively, Defendants' and ODH's document productions provided Plaintiffs with more than a sufficient means to assess the strengths and weaknesses of their claims prior to the time the parties agreed to and participated in a second mediation. *Id*.

On May 9, 2019, Plaintiffs and Caremark participated in a second mediation with the Honorable Morton Denlow (Ret.) of JAMS in Chicago. The mediation included extensive negotiation as well as the informal exchange of further relevant information. At the end of that mediation session, the parties executed a detailed term sheet. The Parties then spent a few months working through the details of the Settlement Agreement itself, including the detailed exhibits, the proposed distribution of the settlement funds and the notice procedures set forth

below. The Parties also spent a significant amount of time working through the logistical challenges presented by the privacy issues implicated in this case to minimize the likelihood of any loss of or unauthorized access to Confidential HIV-related Information took place. On September 9, 2019, the parties executed the Settlement Agreement. (Wilson Dec. at ¶ 14; Quillen Dec. at ¶ 14; George Dec. at ¶ 16.)

All of this work took significant collective effort from counsel. As set forth in the accompanying Declarations, Plaintiffs' counsel collectively expended 4,295.85 hours of time to the above matters, with a collective lodestar of $2,336,736.88.

II. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES

A. The Court Should Apply the Percentage of Fund Method to Award Attorneys' Fees, As Is Consistently Applied in this Circuit

Because the settlement calls for the creation of a non-reversionary, $4.4 million common fund, the most straightforward and appropriate method for the Court to utilize to determine the amount of fees to award Plaintiffs' counsel is the percentage-of-the-fund method. "In the Southern District of Ohio, the preferred method is to award a reasonable percentage of the fund, with reference to the lodestar and the resulting multiplier." *Kimber Baldwin Designs, LLC v. Silv Communications, Inc.*, Case No. 1:16-cv-448, 2017 U.S. Dist. LEXIS 186830, at * 14 (S.D. Ohio Nov. 13, 2017) (internal quotation marks omitted); *see also Connectivity Sys. Inc. v. Nat'l City Bank*, 2011 WL 292008, at *12 (S.D. Ohio Jan. 26, 2011) (citations omitted) ("Where counsel's efforts create a substantial common fund for the benefit of the class, they are, therefore, entitled to payment from the fund based on a percentage of that fund … This allows a Court to prevent inequity by assessing attorneys' fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.") When conducting a percentage of the fund analysis,

"[a]ttorney's fees are the numerator and the denominator is the dollar amount of the Total Benefit to the class (which includes the 'benefit to class members,' the attorney's fees and may include costs of administration)." *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 282 (6th Cir. 2016).

The Sixth Circuit "requires only that awards of attorney's fees by federal courts in common fund cases be reasonable under the circumstances." *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 516 (6th Cir. 1993). In reviewing the reasonableness of a fee award, the Court must also consider the six *Ramey* factors:

> (1) the value of the benefits rendered to the class;
> (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others;
> (3) whether the services were undertaken on a contingent fee basis;
> (4) the value of the services on an hourly basis [the lodestar cross-check];
> (5) the complexity of the litigation; and
> (6) the professional skill and standing of counsel on both sides.

Johnson v. Midwest Logistics Sys., Ltd., Case No. 2:11-cv-1061, 2013 U.S. Dist. LEXIS 74201, at ** 15-16 (S.D. Ohio May 24, 2013), 2013 WL 2295880, at *6 (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir.1974)).

B. All Factors Weigh in Favor of Awarding the Requested Fees

Class Counsel requests that the Court award $1,466,666 in attorneys' fees, which represents one-third of the total settlement amount of $4,400,000. Class Counsel's request for one-third of the total settlement amount is well within the range of reasonableness and should be approved. As described below, the request is consistent with both Sixth Circuit authority, the Court-approved Class Notice and the fee agreement between the Named Plaintiffs and Class Counsel (to which no one has objected, to date). Importantly, the Court-approved Notice

disseminated to the Class Members stated that Class Counsel would seek this amount of fees. (Dkt. No. 89-2, at 75, ¶ 14.) .

1. The Value of the Benefits to the Class Support the Requested Fees

Class Counsel's work resulted in the total settlement of $4,400,000. Every penny of that fund will leave the Defendants' hands; there is no reversion. And as explained in Plaintiffs' Motion for Final Approval filed concurrently, every Class Member with a current valid address will receive at least $400 *without having to file a claim*. For those Class Members who have suffered particularized harm as a result of the OhDAP Mailing, they have been provided the opportunity to submit claims for up to $10,000 in financial harm and $2,500 in non-financial harm. After having paid those amounts out of the fund, if there are any additional funds in the settlement fund (up to a certain amount), they will be added to the base payment to Class members and distributed *pro rata.*

Accordingly, the value of the benefits to the Class Members, which will result in significant immediate financial benefits without the inherent risks of litigation weighs in favor of the requested fees.

2. Society's Stake in Rewarding Attorneys Who Produce the Benefits to the Class in Order to Maintain an Incentive to Others

"[T]here is a benefit to society in ensuring that small claimants may pool their claims and resources, and attorneys who take on class action cases enable this." *Kimber Baldwin,* 2017 U.S. Dist. LEXIS 186830, at * 15 (citing *Moore v. Aerotek, Inc.*, Case No. 2:15-cv-2701, 2:15-cv-1066, 2017 U.S. Dist. LEXIS 102621, at *26 (S.D. Ohio June 30, 2017)). Here, Class Counsel were able to obtain monetary relief for over 4,500 individuals who were members of the OhDAP program at the time of the OhDAP Mailing. Without this lawsuit, many of these individuals

would not have had the resources to pursue their claims, or even known that they had viable legal claims. *See Kimber Baldwin*, 2017 U.S. Dist. LEXIS 186830, at ** 15-16 ("Society has a stake in rewarding attorneys who achieve a result that the individual class members probably could not obtain on their own.") Accordingly, this factor supports the requested fees.

3. Class Counsel Undertook Considerable Risk and Delay in Litigating this Case on a Contingency Basis

Despite the risks associated with prosecuting this case, including issues related to certification and various liability defenses asserted by Defendants, Class Counsel took this case solely on a contingency fee basis and were prepared to make this investment with the very real possibility of an unsuccessful outcome and no fee of any kind. (Wilson Dec. at ¶ 17; Quillen Dec. at ¶ 15; George Dec. at ¶ 18; Exhibit D, Declaration of Terry Kilgore ("Kilgore Dec."), at ¶ 20). Importantly, at the time Plaintiffs filed their Complaints, there were no obvious indications that a settlement would be reached or that the litigation would be successful. (*See id.*) In addition, the initial investigation of this case started over two years ago. (*See* Quillen Dec. at ¶ 7). Thus, Class Counsel have incurred significant delay in receiving any payment, and as set forth in their Declarations incurred over $50,000 in direct litigation related expenses to achieve this result.

Collectively, Class Counsel devoted 4,295.85 hours to litigating and resolving this case. (Wilson Dec., at ¶ 21; Quillen Dec., at ¶ 19; George Dec., at ¶ 21; Kilgore Dec., at ¶ 24; Exhibit E, Declaration of Gerald S. Flanagan ("Flanagan Dec."), at ¶ 14). Specifically, Class Counsel spent these 4,295.85 hours performing tasks that were integral to the successful prosecution and resolution of this matter, and include the following: (1) initially investigated potential claims; (2) drafted the Complaints; (3) interviewed potential named plaintiffs regarding their claims; (4)

responded to Defendant Caremark's and Fiserv's motions to dismiss and a consolidated amended Complaint; (5) prepared and served Initial Disclosures; (6) drafted and served discovery requests and a separate subpoena served on ODH; (7) reviewed significant discovery produced by Defendant Caremark and by ODH, and also negotiated an ESI protocol, protective order and ESI search parameters; (8) prepared two detailed mediation briefs analyzing the facts, law, and damages in this case based on that information; (9) traveled to attended two full-day mediations; (10) worked with potential settlement administrators, and with the Court-appointed settlement administrator The Heffler Group, on the unusual and complex settlement processes necessary to protect Class Members' privacy; (11) drafted, edited, and filed the Settlement Agreement with exhibits and settlement approval papers; and (12) communicated with Class Members during the settlement notice period to answer questions about the settlement. (Wilson Dec., at ¶¶ 8-16; Quillen Dec., at ¶¶ 7-14; George Dec., at ¶¶ 8-16; Kilgore Dec., at ¶¶ 6-19; Flanagan Dec., at ¶¶ 5-13).

Further, to date no class member has objected to this fee request in particular, or to the settlement in general. *See Lowther v. AK Steel Corp.*, 2012 WL 6676131, at *4 (S.D. Ohio, Dec. 21, 2012) ("The lack of objections is strong evidence of the acceptability of a fee request.").

Finally, Class Counsel have not been compensated for any time or expense since the litigation began, consistent with the fee agreements entered into between Plaintiffs and Class Counsel. (*See* Quillen Dec., at ¶ 15; George Dec., at ¶ 18; Kilgore Dec., at ¶ 20). This factor thus weighs in favor of awarding the requested fee. *See Gentrup v. Renovo Servs., LLC*, Case No. 1:07-cv-430, 2011 U.S. Dist. LEXIS 67887, at *14 (S.D. Ohio June 24, 2011) (finding that plaintiffs' counsel had made "significant investments of time and [had] advanced costs but [had]

received no compensation in this matter" weighed in favor of the requested fee).

4. The Lodestar Cross-check Supports Approval of the Requested Fees

Although performing a cross-check on the percentage method using Class Counsel's lodestar[1] is optional, Class Counsel's request for attorneys' fees is also reasonable under that analysis, if the Court chooses to employ it. Due to the efforts outlined above, they will not receive full lodestar reimbursement, and the lodestar cross check amount indicates a negative multiplier for their services.

After reducing the overall lodestar incurred based on the exercise of billing judgment to eliminate redundancies, Class Counsel's work has resulted in a lodestar amount of approximately $2,336,736.88 based on 4,295.85 hours dedicated to litigating and resolving Plaintiffs' and class members' claims through mid-November 2019, with more time to be incurred up to, and even after, the final approval hearing in January. (*See* Wilson Dec., at ¶ 21; Quillen Dec., at ¶ 19; George Dec., at ¶ 21; Kilgore Dec., at ¶ 24; Flanagan Dec., at ¶ 14). Notably, the lodestar does not include time that Class Counsel will spend preparing for, traveling to, and attending the Fairness Hearing, additional time they will spend during the administration of the settlement, or much of the time expended in preparing and filing this motion and the motion for final approval any replies. Thus, even this lodestar figure does not fully capture all the time Class Counsel will have spent in successfully resolving this action.

Based on their extensive experience litigating collective and class actions, Class Counsel were able to litigate and settle the claims more efficiently than counsel with less experience.

First, the amount of time each law firm spent on the case is reasonable. This is a complex

[1] The lodestar is the "number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Lowther*, 2012 WL 6676131, at *4.

case involving multiple areas of law and novel complex factual and legal questions. While this case was originally filed as separate actions, the matters were consolidated for efficiency and resolved as a whole on behalf of the entire class. Class Counsel on both cases worked cooperatively for the benefit of the Class throughout the pendency of the case, despite the fact that early in the case, the firms prosecuting the two cases vied to be lead class counsel. The work performed by Class Counsel in both cases was instrumental in reaching a global settlement. In sum, the $4,400,000 common fund settlement out of which this award is to be paid is a result of the collective work performed by each law firm serving as Class Counsel. The declarations submitted by Class Counsel summarize the efforts each firm made to this successful outcome. (Wilson Dec., at ¶¶ 8-16; Quillen Dec., at ¶¶ 7-14; George Dec., at ¶¶ 8-16; Kilgore Dec., at ¶¶ 6-19; Flanagan Dec., at ¶¶ 5-13.)

Second, the billing rates used to calculate the lodestar are reasonable as well. Courts look to the prevailing market rates in the relevant community to determine the reasonableness of the rates. *Lowther*, 2012 WL 6676131, at *4. In ascertaining the proper "community," district courts may "look to national markets, an area of specialization, or any other market they believe is appropriate to fairly compensate attorneys in individual cases." *Id*. (quoting *McHugh v. Olympia Entm't, Inc.*, 37 F. App'x 730, 740 (6th Cir. 2002)). Further, determining the "prevailing market rates in the relevant community …involves consideration of experience, specialization, effort, and performance, and setting rates sufficient to ensure that class counsel are fairly compensated for the amount of work done and the results achieved." *Id*. (citation omitted).

Class Counsel's rates should be approved considering the complexity of class action

litigation, Class Counsel's extensive experience in this particular area, awards by other courts, the fact such rates are used by several of the firms' non-contingent hourly rate paying clients, and the excellent recovery for the participating class members that resulted from such expertise. Most of the firms here are experienced and specialized class action lawyers throughout the United States with significant experience in medical and data privacy cases, and district courts throughout the country have approved their rates. (Wilson Dec., at ¶ 20; Quillen Dec., at ¶ 18; George Dec., at ¶ 19; Kilgore Dec., at ¶ 22; Flanagan Dec., at ¶ 18).

Third, Class Counsel's cumulative lodestar of $2,336,736.88 compared to its requested fee of $1,466,666 yields a lodestar multiplier of 0.63, which is far lower than other risk multipliers approved in complex class actions in this Circuit. *See, e.g., Lowther*, 2012 WL 6676131, at *5-6 (awarding $1,275,000 in fees with a lodestar cross-check of $416,669.48 (3.06 multiplier)); *Bailey v. AK Steel Corp.*, 2008 WL 553764 (S.D. Ohio Feb. 28, 2008) ("[M]ultiplier [of 3.04] is fully warranted given the complexity of the case, the attendant risks, the size of the settlement recovered, and class counsels' continuing obligations to the class, and it is well within the range of multipliers awarded in similar litigation."); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (lodestar multiplier of 6.0, noting that the typical lodestar multiplier in large class actions "ranges from 1.3 to 4.5") (Marbley, J.).

Class Counsel's total lodestar is considerably *more than* the fees they request here. This is, therefore, a so-called "negative multipler"[2] situation. In such cases, and given the limited nature of the lodestar crosscheck when fees are sought on a percentage-of-the-fund basis, the Court need not engage in a detailed inquiry into rate charged or the time expended. That is

[2] Although cases have often referred to it as a negative multiplier, it is more accurately deemed a *fractional* multiplier, because the fees sought by Class Counsel are a fraction of their lodestar.

especially so here, where the rates are supported by the market and are consistent with other fee awards both in this District and nationally. *See, e.g., Linneman v. Vita-Mix Corp.*, 2019 WL 2603567 (S.D. Ohio, June 25, 2019) (in a recent class action that involved no true common fund, nevertheless still approving rates of $550 for senior attorneys and $489 for attorneys with 11-20 years of experience); *Lowther*, 2012 WL 6676131, at *5 (applying a lodestar cross-check analysis for class action and concluding that $500 was a reasonable rate for two senior attorneys); *U.S. ex rel. Ellison v. Visiting Physicians Ass'n, P.C.*, 2010 WL 2854137, at *2-3 (S.D. Ohio July 19, 2010) (approving fees over objections in 2010 complex qui tam case of $425-$498 per hour); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 794 (N.D. Ohio 2010) (in another ten-year-old case, approving attorney rates ranging from $325-$650 and paralegal rates of $90, $150-$215 in complex class action because "the requested rates are reasonable for this case considering the experience and expertise these particular lawyers have in this particular area of law.")

Thus, the lodestar analysis confirms the percentage requested is reasonable. Given the significant recovery to the Class Members, substantial risks and delays in payment in litigating this case, the complexity of the issues involved, Class Counsel's continued obligations to the Class Members, and the fact that the fee requested asks for no multiplier at all, the lodestar cross-check supports the requested fee award.

5. <u>The Litigation and Settlement are Complex</u>

This case sits at the intersection of two complex and evolving bodies of law—privacy (more specifically, medical privacy) and class actions. Defendants aggressively defended this case, requiring Class Counsel to put significant effort into this matter. Defendant Caremark

moved to dismiss the entire case on several grounds. *See* Dkt. No. 18. Class Counsel engaged in briefing of this motion, and the Court upheld the most significant of Plaintiffs' common law and statutory-based claims. *See* Dkt. No. 42. Once a settlement was reached, Class Counsel engaged in extensive discussion with opposing counsel and potential settlement administrators regarding the administration of the settlement. This settlement has required an extraordinarily high level of attention to detail in comparison even to "normal" class settlements, because Class Counsel have kept protecting the privacy of Class Members the overriding goal during the course of the settlement's execution and implementation of the class notice program, which took considerable time. This enhanced level of complexity provides additional justification for the fee award requested.

6. Counsels' Skill Supports Approval

The professional skill and standing of Class Counsel on both sides is substantial. Class Counsel in this matter is Whatley Kallas LLP, Meyer Wilson Co., LPA, Kaplan Fox & Kilsheimer LLP, Lambert Law Firm, LLC, the Law Office of Terry L. Kilgore, and Consumer Watchdog. As discussed in the declarations attached to this motion, all Class Counsel are qualified and experienced. Most have substantial credentials in federal courts and class and collective action litigation. (Wilson Dec., at ¶¶ 2-7; Quillen Dec., at ¶¶ 2-6; George Dec., at ¶¶ 2-7; Kilgore Dec., at ¶¶ 2-5; Flanagan Dec., at ¶¶ 2-4).) Notably, Defendants were represented by experienced and skilled local counsel at Kegler Brown Hill + Ritter Co. LPA and Murray Murphy Moul & Basil, LLP, as well as national counsel at Alston & Bird LLP and Jenner & Block, which have national privacy and class action practices. These lawyers representing Defendants have extensive experience in this area. Accordingly, this factor also supports

approval of the requested fee award.

7. The Requested Fees are Comparable to Fees Awarded in Similar Cases

Lastly, comparing the fees requested here to fees awarded in similar cases further supports the reasonableness of Class Counsels' request. An award of one-third of the total settlement fund is well within the range of fees typically requested and awarded in class and collective actions in Ohio federal district courts. *See, e.g.*, *Kimber Baldwin*, 2017 U.S. Dist. LEXIS 186830, at **17-18 (awarding attorney fees and expenses to Class Counsel in an amount of one-third of the settlement funds in class action case); *Johnson*, 2013 U.S. Dist. LEXIS 74201, at ** 15-18 (same); *Kritzer v. Safelite Solutions, LLC*, Case No. 2:10-cv-729, 2012 U.S. Dist. LEXIS 74994, at * 31 (S.D. Ohio May 30, 2012) (hybrid FLSA collective and Ohio class action for unpaid overtime awarding attorney's fees and costs up to $235,000 in a settlement of $455,000 (52% of total recovery)); *In re S. Ohio Corr. Facility*, 173 F.R.D. 205, 218 (S.D. Ohio 1997), *rev'd on other grounds*, 24 Fed. App'x 520 (6th Cir. 2001) (approving an award of $1.4 million in fees, representing 34% of the total amount of the common fund, and noting that it is within the 20 to 50 percent range of reasonableness); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913 (S.D. Ohio 2001) (noting that attorneys' fees awards typically range from 20 to 50 percent of the common fund); *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1046 *decision clarified*, 148 F. Supp. 2d 936 (S.D. Ohio 2001) (same).

II. THE COURT SHOULD AWARD THE REQUESTED COSTS

The settlement agreement provides that Class Counsel may seek approval of reasonable litigation expenses and costs from the Court. (Dkt. No. 89-2, Settlement Agreement at ¶ 8.1.) Class Counsel request reimbursement for out-of-pockets costs of $50,289.72 incurred in

litigation from the $4,400,000 settlement amount, all of which they advanced with the risk of no recovery. (Wilson Dec., at ¶ 26; Quillen Dec., at ¶ 24; George Dec., at ¶ 22; Kilgore Dec., at ¶ 25).

These expenses include costs related to court filing fees, legal research, mediation, photocopies, postage, process server fees, and travel and accommodations for hearings and mediation. All of these costs were reasonable and necessary in connection with litigating and resolving this case and are reimbursable, and are less than the costs each of the firms incurred in connection with this litigation. *See Kimber Baldwin,* 2017 U.S. Dist. LEXIS 186830, at * 18 (approving litigation expenses); *Rikos v. P&G*, Case No. 1:11-cv-226, 2018 U.S. Dist. LEXIS 72722, at ** 27-28 (S.D.Ohio Apr. 30, 2018) (approving over $360,000 in expenses for "filing fees, travel to depositions and hearings, expert costs, electronic discovery, deposition transcripts, videography and court reporter fees, mediator fees, research, postage, and telephone charges."); *In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1066 (E.D. Mo. 2002) (awarding approximately $1.7 million to plaintiffs' counsel as reimbursement for out-of-pocket expenses advanced during the litigation including "expert witnesses; computerized research; court reporting services; travel expenses; copy, telephone and facsimile expenses; mediation; and class notification."). The requested costs are reasonable, were necessary to achieve the settlement, and should be approved.

III. THE SERVICE AWARDS ARE REASONABLE

Plaintiffs request that the Court award $3,500 to each of the four named Plaintiffs ($14,000 in total). Named Class Representatives had to step forward without even knowing in advance if they would be protected by the ability to proceed pseudonymously. As recent cases

involving discrimination in the legal workplace have found, this is not a guarantee.[3] They provided assistance and information to Class Counsel about sensitive and personal information. (*See* Wilson Dec., at ¶ 27; Quillen Dec., at ¶ 25; George Dec., at ¶ 23; Kilgore Dec., at ¶ 27; Flanagan Dec., at ¶ 22).

The Settlement Notices informed Class Members that Class Counsel would request awards in these amounts for the Plaintiffs, and not one Class Member has so far objected to the request. (ECF No. 89-2 at 76, Notice of Settlement) Likewise, Defendants do not oppose the award of the requested service awards.

Courts in this District have approved such awards for class representatives after consideration of several factors, including their actions to protect the rights of the class members and whether those actions resulted in a substantial benefit to the class members, whether the class representative assumed any direct or indirect financial risk, and the amount of time and effort spent pursuing the litigation. *Johnson*, 2013 U.S. Dist. LEXIS 74201, at *13 (citing *Hainey v. Parrott*, 617 F. Supp. 2d 668, 677 (S.D. Ohio 2007)).

Additionally, given the amount of the total settlement and the modest size of the awards, the awards do not significantly reduce the amount of settlement funds available to the Class Members. These payments also advance public policy by encouraging individuals to come forward and protect the rights of others in representative actions such as this one. Finally, the requested awards are in line with those previously approved in similar cases. *See e.g.*, *Kimber Baldwin*, 2017 U.S. Dist. LEXIS 186830, at ** 18-19 (approving an award of $5,000 to the named plaintiff in a $450,000 settlement fund); *Johnson*, 2013 U.S. Dist. LEXIS 74201, at *5

[3] *See Tolton v. Jones Day*, 2019 WL 4305789 (D.D.C. Sept. 11, 2019) (denying a motion to proceed under a pseudonym).

(approving $12,500 award to the named plaintiff from a $452,380 settlement). As such, the requested awards should be approved.

CONCLUSION

For all the foregoing reasons, Class Counsel respectfully request that the Court grant the Unopposed Motion for Attorneys' Fees, Costs, and Service Awards.

Respectfully submitted,

DATED: December 6, 2019

/s/ Matthew R. Wilson
MEYER WILSON CO., LPA
David P. Meyer (0065205)
Matthew R. Wilson (0072925)
Michael J. Boyle, Jr. (0091162)
1320 Dublin Road, Ste. 100
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 819-8230
dmeyer@meyerwilson.com
mwilson@meyerwilson.com

/s/ Henry C. Quillen
WHATLEY KALLAS LLP
Henry C. Quillen (admitted *pro hac vice*)
159 Middle St., Suite 2C
Portsmouth, NH 03801
Telephone: (603) 294-1591
Facsimile: (800) 922-4851
hquillen@whatleykallas.com

KAPLAN FOX & KILSHEIMER LLP
Laurence D. King (admitted *pro hac vice*)
Matthew B. George (admitted *pro hac vice*)
350 Sansome Street, Suite 400
San Francisco, CA 94104
Telephone: 415-772-4700
Facsimile: 415-772-4707
Email: lking@kaplanfox.com
Email: mgeorge@kaplanfox.com

TERRY L. KILGORE (0014692)
1113 Northridge Oval, Bldg.13
Brooklyn, OH 44144-3262
Telephone: (614) 648-6009
Facsimile: (216) 600-5494
tksquire13@gmail.com

Joel B. Strauss (admitted *pro hac vice*)
850 Third Avenue
New York, NY 10022
Telephone: 212-687-1980
Facsimile: 212-687-7714
Email: jstrauss@kaplanfox.com

WHATLEY KALLAS LLP
Joe R. Whatley (admitted *pro hac vice*)
Edith M. Kallas (admitted *pro hac vice*)
152 West 57th St., 41st Floor
New York, NY 10019
Telephone: (212) 447-7060

Facsimile: (800) 922-4851
jwhatley@whatleykallas.com
ekallas@whatleykallas.com

LAMBERT LAW FIRM, LLC
Marnie C. Lambert (0073054)
4889 Sawmill Road, Suite 125
Columbus, OH 43235
Telephone: (888) 203-7833
Facsimile: (888) 386-3098

WHATLEY KALLAS LLP
Alan M. Mansfield (admitted *pro hac vice*)
16870 W. Bernardo Drive, Suite 400
San Diego, CA 92127
Telephone: (858) 674-6641
Facsimile: (855) 274-1888
amansfield@whatleykallas.com

CONSUMER WATCHDOG
Jerry Flanagan (admitted *pro hac vice*)
6330 San Vicente Blvd. Suite 250
Los Angeles, CA 90048
Telephone: (310) 392-0522
Facsimile: (310) 392-8874
jerry@consumerwatchdog.org

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed via the Court's ECF system and was thereby served on all parties.

By: /s/

One of the Attorneys for Plaintiffs