Exhibit 2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)))	MDL No. 1:19md2915 (AJT/JFA) JURY TRIAL DEMANDED

This Document Relates to the Consumer Cases

DECLARATION OF CRAIG C. REILLY

CRAIG C. REILLY, being duly sworn, deposes and states as follows:

1. I am over 21 years of age and competent to make this declaration. I have personal knowledge of the statements contained herein. The statements herein are true and correct to the best of my knowledge, information, and belief.

2. I have been asked by the Class Counsel for the Consumer Plaintiffs to submit this expert declaration in support of their motion for an award of attorneys' fees, costs, and expenses.[1]

3. I am being compensated for the time I have spent preparing this declaration. My compensation is $400.00 per hour. My compensation is not contingent in any way upon the Court's decision.

QUALIFICATIONS

4. My qualifications to offer opinions on the reasonableness of attorneys' fees for civil litigation in Northern Virginia are based primarily upon my experiences as an attorney at law. I have been a member in good standing of the Virginia State Bar since 1981 (VSB

[1] Expert evidence may be received in support of a fee application. *See McAfee v. Boczar*, 738 F.3d 81, 91 (4th Cir. 2013); *see also* AWARDING ATTORNEYS' FEES AND MANAGING FEE LITIGATION, at 115 (Fed. Jud. Cntr. 2005) (expert analysis may be useful).

20942). I have been admitted to practice before this Court since 1982. My resume is submitted herewith as **Attachment A**, outlining my legal training and experience.

5. Most of my legal work over the last forty-one years has been civil litigation, most of that being in the United States District Court for the Eastern District of Virginia, Alexandria Division. During my practice, I have appeared as counsel of record in a wide variety of complex litigation in this Division (such as patent infringement and antitrust litigation) as well as several class actions, including: *Orman et al. v. America Online, Inc., et al.*, No. 1:97-cv-264-CMH (securities fraud class action); *In Re MicroStrategy, Inc.*, No. 1:00-cv-473-TSE (securities fraud class action); and *Knurr v. Orbital ATK, Inc., et al.*, No. 1:16-cv-01031-TSE-MSN (securities fraud class action). Based on this experience, I am well-aware of the hourly rates charged by attorneys for similar complex and class action litigation as well as the nature and extent of work that is reasonably necessary to successfully litigate a class action in this Division.

6. Moreover, I often have worked with co-counsel from national, regional, and local firms in a wide variety of complex civil litigation matters in this Division. In the course of my work, therefore, I have become familiar with the prevailing hourly rates charged by other law firms for complex civil litigation in this Division as well as the nature and extent of the work necessary to litigate such cases.

7. Furthermore, in my litigation practice, I have applied for, or opposed, numerous fee applications under fee-shifting statutes, rules, and contractual provisions. Pertinent to this motion, as class counsel, I have successfully applied for fees, costs, and expenses in several complex class action cases in this Division. *See, e.g.,* Order, *Orman et al. v. America Online, Inc., et al.*, No. 1:97-cv-264, Doc. 246 (E.D. Va. Dec. 14, 1998) (securities fraud class action award of $10.5 million in fees and $1,558,079.21 in expenses) (common fund percentage-of-

recovery fee award of 30%); *In Re MicroStrategy, Inc.*, 172 F. Supp. 2d 778 (E.D. Va. 2001) (securities fraud class action award of $27.6 million in fees and $2.5 million in expenses) (common fund percentage-of-recovery fee award of 18% and lodestar-plus-multiplier [2.6] cross-check); Order, *Knurr v. Orbital ATK, Inc., et al.*, No. 1:16-cv-01031-TSE-MSN, Doc. 462 (E.D. Va. June 7, 2019) (securities fraud class action award of $30.5 million in fees and $1.1 million in expenses) (common fund percentage-of-recovery fee award of 30% with lodestar-plus-multiplier [1.8] cross-check). Through that fee litigation in this Division, I also have become familiar with the factors to be applied in determining the reasonableness of attorneys' fees awarded as a percentage of a common fund that is then cross-checked by and lodestar-plus-multiplier analysis.[2]

8. In addition to my experience as a practitioner, I have analyzed the local legal market as an expert witness. In support of my expert declaration in another case, I conducted a survey of attorneys' fees charged in the Northern Virginia market for complex civil litigation. *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10cv502 (GBL) (E.D. Va. June 6, 2011) (Doc. 210) (declaration describing fee survey and setting forth hourly rate matrix). My survey results were adopted by the Court as the basis for the award of fees in that action. *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10cv502 (GBL) (E.D. Va. Aug. 24, 2011) (Doc. 263) (fee award). That rate matrix ("*Vienna Metro* Matrix") has been applied in various other cases in this Division. *E.g.*, *Tech Systems, Inc. v. Pyles*, No. 1:12cv374 (GBL/JFA), 2013 U.S. Dist. LEXIS 110636, *19-20 & n.4 (E.D. Va. Aug. 6, 2013); *Taylor v. Republic Services, Inc.*, No. 1:12cv523

[2] In a common fund case, the "so-called 'lodestar cross-check' is the comparison of (1) a calculation of attorney's fees using the percentage-of-recovery method to (2) a rough or imprecise lodestar calculation. As its name suggests, the lodestar cross-check is used to ensure that an attorney's fees award calculated under the percentage-of-recovery method is reasonable." *Cantu-Guerrero v. Lumber Liquidators, Inc.*, 952 F.3d 471, 482 n.7 (4th Cir. 2022) (citation omitted).

(GBL/IDD), 2014 U.S. Dist. LEXIS 11086, *14-15 (E.D. Va. Jan. 29, 2014); *BMG Rights Management (US) v. Cox Communications*, 234 F. Supp. 3d 760, 770-73 (E.D. Va. 2017) (O'Grady, J.). The *Vienna Metro* Matrix also has been applied by this Court in complex class action litigation. *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg.*, MDL No. 1:15-md-2627 (AJT/TRJ); 2020 U.S. Dist. LEXIS 181103, *74-75; 2020 WL 5757504 (E.D. Va. Sept. 4, 2020) (adopting *Vienna Metro* Matrix when calculating lodestar fee award for class counsel in CAFA "coupon" settlement), *aff'd sub nom. Cantu-Guerrero v. Lumber Liquidators, Inc.*, 27 F.4th 291 (4th Cir. 2022). Numerous other decisions in this Division also have used the *Vienna Metro* Matrix as a benchmark for reasonable hourly rates applicable in complex civil litigation.

9. The *Vienna Metro* Matrix also has been accepted and applied in two state court cases in which I gave testimony as an expert witness on reasonable attorneys' fees. *See, e.g., Mantech Int'l Corp. v. Analex Corp.*, No. 2008-5845 (Fairfax Cir. June 10, 2011) (order); *Tureson v. Open Sys. Sciences of Va., Inc.*, No. CL-2012-323 (Fairfax Cir. May 31, 2013) (letter opinion). Other state courts also have relied on the *Vienna Metro* Matrix in complex civil litigation.

10. I have been found qualified to testify (or to present written opinions) as an expert on hourly rates and reasonable attorneys' fees in the Northern Virginia market in the *Vienna Metro*, *Taylor*, *Mantech*, and *Tureson* cases, as well as several others.

11. I have presented evidence by oral testimony or declaration as an expert witness on attorneys' fees in numerous other cases, including recent cases in this Division and other Northern Virginia courts, which are identified in **Attachment B**. Pertinent to this motion, I have submitted an expert declaration in support of a common fund fee application in an FLSA

"collective action" in state court. *See* Order, *Arin Brown et al. v. Frontpoint Security Solutions, Inc.*, Case No. 2017-14845 (Fairfax Cir. Dec. 8, 2017) (awarding common fund percentage-of-recovery fee of 33%). I also have submitted an expert declaration on hourly rates in support of the fee application made by the lead counsel for the plaintiff class. *Biber v. Pioneer Credit Recovery, Inc.*, No. 1:16-cv-804-TSE-IDD (E.D. Va. Dec. 21, 2017) (Doc. 126-8). Although the fee award was sought under the common fund theory in *Biber*, the Court required a "lodestar cross-check," which included an analysis of hour rates, which I supported. The Court awarded about $750,000 in fees to lead counsel. *Id.* (Doc. 138). Through these experiences as an expert witness on attorney's fee awards, I have become familiar with the factors to be applied in determining the reasonableness of attorneys' fees in a wide variety of cases, including common fund fee awards.

12. Finally, since preparing the *Vienna Metro* Matrix data for 2010-2011, I have continued to monitor hourly rates generally, and in Northern Virginia particularly, to keep myself informed of current information. My analysis considers and applies ***current*** prevailing market rates, which have risen in the 11 years since the *Vienna Metro* decision.

II. MATERIALS AND INFORMATION CONSIDERED

13. During my analysis, I reviewed the following materials:

- The Docket Sheet;
- Class Counsels' biographies (including Doc. 135, 136 and 140);
- The Second Amended Representative Consumer Class Action Complaint (Doc. 971);
- The Consumer Plaintiffs' brief and associated papers in support of their motion for preliminary approval of the settlement (Doc. 2219);

- Memorandum of Law in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses and Service Awards (filed herewith) (cited herein as "*Memorandum*"); and
- Class Counsel's Consolidated Declaration in support of Motion for Attorneys' Fees, Costs, Expenses and Service Awards (filed herewith) (cited herein as "*Consolidated Declaration*").

In addition, I interviewed Class Counsel for background information regarding the litigation.

III. SUMMARY OF THE CASE

14. On July 29, 2019, Capital One announced that the sensitive personal information of approximately 98 million Americans who had applied for Capital One credit cards had been stolen by a malicious criminal hacker from Amazon's AWS cloud where Capital One stored this information. More than 60 lawsuits were filed, which the Judicial Panel on Multidistrict Litigation consolidated and transferred to this Court in October 2019. Co-Lead Plaintiffs' Counsel were appointed (Doc. 210), Representative Plaintiffs were selected, and an operative pleading, as corrected and amended was filed (Doc. 332, 354, 971). After more than two years of vigorous and extensive litigation (*Consolidated Declaration*, ¶¶ 7-18), a settlement between the class and Defendants was reached (Doc. 2218 & 2219) and preliminarily approved (Doc. 2220). Through the efforts of Class Counsel, a $190,000,000.00 Settlement Fund was secured for the 98 million members of the Settlement Class.

15. I understand that Class Counsel seeks a fee award of 33.3% of the Settlement Fund—that is, $63,270,000.00. As I explain herein, in my opinion, 33.3% is a reasonable fee.

IV. ANALYSIS UNDER THE COMMON FUND DOCTRINE

16. The common fund doctrine, as developed under federal law, is a common law exception to the American Rule, and is grounded in the equitable doctrines of *quantum meruit*

and unjust enrichment. *See Trustees v. Greenough*, 105 U.S. 527, 536 (1882). It applies where the efforts of the plaintiff's lawyer have created a common fund that confers a potential, proportionate benefit on other claimants.

17. Under the common fund doctrine, the attorneys are paid a percentage of the total recovery. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 479-81 (1980); *Brewer v. School Board*, 456 F.2d 943, 948-49 (4th Cir. 1972); *Virginia Hospital Ass'n v. Kenley*, 74 F.R.D. 417 (E.D. Va. 1977). In this way, each claimant upon whom a proportionate benefit has been conferred would bear a proportionate share the fees incurred. *See Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-97 (1970) (applying common fund doctrine to shareholder litigation). This method "is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation in common fund cases." *See Strang v. JHM Mortg. Sec. L.P.*, 890 F. Supp. 499, 502-03 (E.D. Va. 1995). The application of the common fund method to this class action is analyzed below.

18. The amount of an award under the common fund doctrine is committed to the Court's discretion. *Cf. Griffin v. County School Board*, 363 F.2d 206, 212 (4th Cir.), *cert. denied*, 385 U.S. 960 (1966) (common benefit). The factors used to determine a "reasonable percentage" include such things as the amount of the recovery, the skill and efficiency of counsel, the complexity and duration of the litigation, the risk of nonpayment, the amount of time devoted, and awards in similar cases. Frederic Bellamy, ANNOT. MANUAL FOR COMPLEX LITIGATION § 14.121 at 201-02 (4th ed. 2022) (hereafter, "MANUAL"); *accord Virginia Hospital Ass'n*, 74 F.R.D. at 421. This methodology encourages cost-effective settlements, and does not penalize "efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation." MANUAL § 14.121 at 202. Unlike fee-shifting,

in which the Court decides the amount of a reasonable fee to award to prevailing party's that will be paid by the losing party, in a common fund case, the Court determines a reasonable amount (usually a percentage) of the common fund secured by the lawyers to award to them as the fee.

19. As applied to common fund cases litigated in this District, the following factors are analyzed to determine a reasonable fee: "(1) the result obtained for the class; (2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by the plaintiffs' counsel; and (7) awards in similar cases." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016). The Court also may consider public policy considerations. *See, e.g.*, *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-CV-00361; 2018 WL 2382091, *4 (E.D. Va. Apr. 18, 2018). In my opinion, the 33.3% fee requested is a "reasonable percentage" under these principles. I analyze each factor below to justify my opinion.

20. ***Results Obtained:*** The $190,000,000.00 Settlement Fund settlement represents an excellent recovery in both absolute and relative terms. In absolute terms, it is the second largest data breach settlement to date. In relative terms, the settlement proceeds confer a direct and quantifiable benefit that is available for immediate distribution to qualified claimants. Moreover, Capital One has also agreed to entry of a consent order requiring at least two years of Business Practice Changes and commitments to improve its cybersecurity through the implementation of a Cyber Event Action Plan. Furthermore, this action has served a public function of raising the awareness of institutions of the need for data protection for their customers. Thus, the results obtained include public, as well as private, benefits. Accordingly, this factor strongly supports a 33.3% fee award.

21. ***Lack of Objections:*** I understand that, to date, there has been one purported objection to the proposed settlement from a class member that previously opted out of the settlement. No specific objection has been made to the award of fees (stated in the notice as up to 35% of the Settlement Fund). To be sure, even in the absence of objections, the Court must analyze whether the requested fees are fair and proper. Rule 23, 2003 Adv. Com. Notes, reprinted in FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES, at 119 (Thom. Reuters 2022 ed.). Nonetheless, the absence of objections to the fee strongly supports a 33.3% fee award.

22. ***Skill of Counsel:*** In this dispute, Capital One has been represented by highly skilled defense counsel, many of whom I know and have litigated against.[3] It took lawyers of equal skill and experience in data breach class action cases to represent the Plaintiff Class. And given the complexity of the case, the numerous motions, the extensive discovery, and the vigorous defense, no less than highly skilled lawyers could have successfully represented Plaintiff Class. Accordingly, this factor strongly weighs in favor of a 33.3% fee award, reflecting the skill the lawyers needed to possess to succeed.

23. ***Complexity:*** To be sure, "the term 'complex litigation' is not susceptible to any bright-line definition." MANUAL, at 1. In federal litigation, complexity arises from such things as: the amount in controversy; the number of parties, claims, and defenses; whether there are third-party claims; and the subject matter (securities fraud class actions, antitrust, intellectual property litigation, etc.). *Id*. at 1-2; *see also Brundle v. Wilmington Trust, N.A.*, 258 F. Supp. 3d 647, 665 (E.D. Va. 2017) (Brinkema, J.) (ERISA class action "unquestionably constitutes

[3] For example, I appeared as co-counsel for plaintiffs in a complex patent infringement and patent-antitrust action between the plaintiff-patentees and Capital One, which was represented by the same litigation team from Troutman Pepper Hamilton Sanders LLP. *See Intellectual Ventures I LLC et al. v. Capital One Financial Corp. et al.*, No. 1:13-cv-00740-AJT-TCB (E.D. Va. filed June 19, 2013).

'complex civil litigation' involving multiple expert witnesses, hundreds of complicated financial exhibits, and intricate theories of corporate structure and valuation," as well as "novel" legal issues). Under that definition, it cannot be doubted that this case was complex: the case (arising from 60 actions) was procedurally complex Multi-District Litigation; the dispute was legally and factually complex, involving novel issues of law (determining wrongful acts, causation, and damages under various legal theories); the subject matter (computer data security) was technologically complex; the sheer number of potential claimants (98 million) engendered complex dynamics for determining fair remedies for each category; and the sheer magnitude of the potential liability ensured that the bank would vigorously defend these claims and zealously assert all reasonably available defenses. Given the number of claimants, the amount in controversy, and the complexity and difficulty of the legal and factual issues, this factor strongly supports a 33.3% fee award.

24. ***Duration:*** Class counsel took this matter as a contingency fee case, which became active Multi-District Litigation in this Court on October 2, 2019, and continues to this day. That is ***33 months*** of work without periodic compensation for fees and costs, during which time Class Counsel was advancing ***over $2 million*** in litigation expenses for fact discovery (including ESI discovery) and expert discovery. The long duration of this enormously complex and vigorously defended case also strongly supports a 33.3% fee award to Class Counsel.

25. ***Risk of not Recovering:*** The lawyers for the Class took this case on a contingency-fee basis. To compensate the lawyers for the risk of not recovering in a contingency-fee action warrants a fee greater than an hourly-fee. *See Blum v. Stenson*, 465 U.S. 886, 903 & n.* (1984) (Brennan, J., concurring) (upwards contingency adjustment reflects risk of no fee); *accord McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967) (fee award "must take

account of the lawyer's risk of receiving nothing"); *see also Deposit Guaranty Nat. Bank v. Roper,* 445 U.S. 326, 338 & n.9 (1980) (contingent-type fee arrangements play a vital role of giving an incentive to skilled attorneys to serve as counsel in common fund cases). Here, the lawyers bore the risk of earning no fee. Thus, this factor strongly supports a 33.3% fee award.

26. ***Time devoted to the Case:*** When the fee is awarded on a percentage basis, "the size of the fund created" should be given "the greatest emphasis," while the total number of hours may be given "little weight." MANUAL § 14.121 at 202. The percentage method is intended "to encourage early settlements by not penalizing efficient counsel" and "ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Id*. Thus, the time factor should not be over-emphasized. Nonetheless, as shown in Class Counsels' declaration in support of an award of fees, Class Counsel, and the team of lawyers recruited to assist them, have collectively devoted 64,739.3 hours to date to the case amounting to about $37,640,583.50 in (as yet) uncompensated fees (*Consolidated Declaration*, ¶¶ 30, 34-41). Class Counsel will also devote additional time and effort to the case going forward, including finalizing and filing the approval motion, preparing for and attending the motion hearing, overseeing the claims administration period, responding to inquiries from collective members when the notice and checks are mailed, answering questions from the claims administrator, and negotiating and potentially litigating disagreements with Defendant about administering the settlement and distributing the fund. This factor, therefore, strongly supports a 33.3% fee award.

27. ***Awards in Similar Cases:*** As shown in Plaintiffs' brief in support of an award of fees, in other consumer class action cases, an award of 33% of the recovery has been made (*Memorandum* at 23-26). Therefore, this factor also supports a 33.3% fee award in this case.

28. ***Public Policy Considerations:*** Generally, "the class-action procedure for litigation of individual claims may offer substantial advantages," including "vindicating the rights of individuals who otherwise might not consider it worth the candle to embark on litigation in which the optimum result might be more than consumed by the cost." *Deposit Guaranty,* 445 U.S. at 338. Protection of consumer data through class action litigation not only serves to vindicate the individual rights of class members, but it also performs a valuable public service of incentivizing banks and other businesses to improve their own security measures in light of the outcome in this case. That factor bears on the fee award because "a central factor in fixing the amount of attorneys' fees is to ensure that competent, experienced counsel will be encouraged to undertake the often risky and arduous task of representing a class …." *Mills*, 265 F.R.D. at 260. Therefore, the fee award should provide an incentive to class counsel to undertake risky and expensive class action litigation for these public purposes. This consideration also supports a fee award of 33.3% of the Settlement Fund.

V. LODESTAR-PLUS-MULTIPLIER CROSS-CHECK

29. When the common fund method is used, it has been customary for the court to do a comparative "lodestar check" of the percentage fee award. *See Strang*, 890 F. Supp. at 503 & nn.5 & 6 (comparing lodestar enhanced by multiplier with percentage); MANUAL § 14.121 at 200 (lodestar "cross-check" may be used to ensure reasonableness). Under the lodestar cross-check, a modified lodestar analysis is employed, to calculate the "multiplier"—that is, the proposed percentage-fee is divided by the lodestar fee to calculate the multiplier. The resulting multiplier is then compared to the multipliers in similar cases and analyzed to determine if it meets the goals of a reasonable fee award. *See In Re MicroStrategy*, 172 F. Supp. 2d at 786-90 (multiplier of "2.6 times the lodestar figure reported by lead counsel and is ample to serve the three goals of

a fair and reasonable PSLRA fee: It compensates lead counsel for their time and effort, rewards them for the result achieved, and provides an adequate incentive for competent counsel to pursue similar cases in the future.") The multiplier essentially represents the premium awarded on top of the lodestar amount to compensate the lawyers for risk, efficiency, effectiveness, results obtained, and skill. A too-small multiplier will under-compensate counsel for risk and efficiency and not provide an adequate incentive for future cases. A too-big multiplier would be an undeserved windfall. In this case, however, the lodestar cross-check and resulting multiplier confirm the fairness of a 33.3% fee in this action.

30. Under a strict lodestar calculation, the fee is calculated primarily as the product of the reasonable number of hours times the applicable hourly rate, without multipliers for contingency-risk, skill of counsel, or results obtained. *See Blum*, 465 U.S. at 897-901; *Pennsylvania v. Delaware Valley Citizens, etc.*, 478 U.S. 546, 561-66 (1986). That contrasts sharply with the common fund model which must account for such things as risk and results. *See Blum*, 465 U.S. at 900 & n.16 (comparing methods); *Burlington v. Dague*, 505 U.S. 557, 561-66 (1992) (comparing lodestar with contingency fees). Thus, strict application of the lodestar method would be, by definition, under-compensatory. *See, e.g., McKittrick*, 378 F.2d at 875 (awards based only "on the basis of a minimal hourly rate are inappropriate for a lawyer who has performed creditably when payment of any fee is so uncertain"). Accordingly, when the lodestar check is done in a common fund case, a multiplier to compensate for risk, skill, and results also must be used.

A. CALCULATING THE LODESTAR

1. Reasonable Number of Hours

31. The principal determinants in the lodestar calculation are the number of reasonable hours expended and the reasonable hourly rates. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). To determine the lodestar, the Court uses the Fourth Circuit's three-step procedure:

> First, the court must determine the lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate. To ascertain what is reasonable in terms of hours expended and the rate charged, the court is bound to apply the factors set forth in *Johnson v. Georgia Highway Express Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). [Second], the court must subtract fees for hours spent on unsuccessful claims unrelated to successful ones. [Third], the court should award some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff.

McAfee v. Boczar, 738 F.3d 81, 88 (4th Cir. 2013) (citations and quotation marks omitted). The *Johnson* factors include:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Id. at 88 n.5. While these factors must guide the analysis, there is no strict formula that the Court is required to follow. *In re Lumber Liquidators*, 2020 U.S. Dist. LEXIS 181103, *72-74 (citations and quotation marks omitted). The *Johnson* factors need not be considered and analyzed individually, nor are all factors relevant in every case, because "such considerations are usually subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate." *Hensley*, 461 U.S.at 434 n.9. This is the analysis I use below.

32. To determine the reasonable number of hours, I examined the declaration of Class Counsel (*Consolidated Declaration*, ¶¶ 30, 34-41). Keeping in mind that the fee application should not become a "second major litigation," *Hensley*, 461 U.S. at 437, and because the invoices, commensurate with the nature of the dispute and amount in controversy, are both voluminous and complex, I have not attempted a line-item justification of the fee application. Instead, I have relied on the lodestar amount reported by Class Counsel in their sworn declarations, which is properly relied upon in these circumstances. *See In Re MicroStrategy, Inc.*, 172 F. Supp. 2d at 788 & n.30 (relying on the lodestar figure reported by lead counsel). I submit that this approach is proper because the district courts "need not, and indeed should not, become green-eyeshade accountants" to calculate the lodestar; rather, the "essential goal" is to "do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011). The reported lodestar amount also appears consistent with other intensely litigated class actions in which I have participated. For example, in *Orbital ATK*, which was intensely litigated but not nearly as extensively litigated as this matter, the total hours were over 29,000 and the lodestar was about $17 million. *Knurr v. Orbital ATK, Inc., et al.*, No. 1:16-cv-01031-TSE-MSN, Doc. 453, ¶ 5 (E.D. Va. Apr. 16, 2019) (Lead Counsel's declaration). As the result of my review, as well as my own experiences litigating class actions in this Division, it is my opinion, the work was reasonably and diligently pursued by skilled and experienced attorneys and staff, who worked efficiently in coordination with each other. Thus, the total number hours, 64,739.3, appears reasonable.

2. Reasonable Hourly Rates

33. Because the law firms were not paid on an ongoing basis, the lodestar should be calculated using their current (*i.e.*, 2022) hourly rates to partially compensate them for the delay

in recovery. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989). I understand, however, that Class Counsel has applied their 2021 rates, reflecting a conservative approach. Determining "a market rate in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable." *Grissom v. The Mills Corp.*, 549 F.3d 313, 321 (4th Cir. 2008). I reviewed and analyzed the rates charged by Class Counsel as reported in their declaration. Based on my analysis, it is my opinion that the rates charged by Class Counsel are appropriate and reasonable considering the skills and experience of the attorneys. This is so for two reasons: *First*, Class Counsel specialize in bringing consumer class actions, including data breach class actions (*see* Doc. 135, 136 & 140). This is an important factor because an attorney (even if from out-of-town) possessed of specialized skills and experience in a narrow area of the law, may command a higher hourly rate than locally prevailing general civil litigation rates. *Sun Pub. Co. v. Mecklenburg News, Inc.*, 594 F. Supp. 1512, 1518-19 (E.D. Va. 1984) (awarding fees using hourly rates of "out-of-town specialists" with skills "in a narrow area of law," who charge more than local lawyers, because they provided "exceptional performance"); *accord Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) ("In circumstances where it is reasonable to retain attorneys from other communities, however, the rates in those communities may also be considered."); *National Wildlife Federation v. Hanson,* 859 F.2d 313, 317 (4th Cir. 1988) ("[t]he complexity and specialized nature of a case may mean that no attorney, with the required skills, is available locally," in which case the question is whether the fee applicant acted reasonably in using an out-of-town specialist who charges higher rates). In my opinion, based on my experience litigating class actions in this Division, the use of lawyers with class action experience in consumer data breach cases was reasonable. Second, the proposed rates, while in some instances higher than

the historical *Vienna Metro* Matrix rates, are not inconsistent with current market rates for specialized complex civil litigation in Northern Virginia. Thus, the current rates of Class Counsel and the team of lawyers working with them, who are experienced in this specialized and unusual area of the law, should be used in the lodestar calculation.

34. When the current hourly rates of the lawyers and staff are multiplied by the reasonable number of hours each devoted to the case, the result is $37,640,583.50, which, I submit, is the proper lodestar number to use in the lodestar-plus-multiplier cross-check.

3. Consideration of Other *Johnson* Factors

35. Many of the *Johnson* factors are subsumed in the lodestar calculation itself and do not warrant further consideration to adjust the lodestar; nonetheless, I analyze each next:

36. ***(1) The time and labor expended:*** Consideration of this factor is largely subsumed in the lodestar calculation (¶ 32, *supra*). The nature and extent of the work required to successfully litigate this case justify the number of hours involved. The litigation encompassed: numerous discovery motions and countless sealing motions; voluminous document discovery and numerous depositions; there were several substantive motions for class certification, summary judgment, and *Daubert* review of experts. This factor fully justifies the total number of hours worked but does not indicate that any further adjustment to the lodestar is needed.

37. ***(2) The novelty and difficulty of the questions raised:*** Consideration of this factor is largely subsumed in the lodestar calculation, reflecting both the rates of specialist lawyers and the number of hours (¶¶ 32 & 33, *supra*). Litigation of data breach cases as Multi-District Litigation encompassing a nationwide class entails such novel and difficult issues as choice of law, assertion of claims that will withstand dismissal, causation, and remedies. This factor strongly supports the selection of highly skilled counsel (who charge higher hourly rates)

and the vast litigation time and resources committed to this case. Thus, no further adjustment to the lodestar is required based on this factor.

38. ***(3) The skill required to properly perform the legal services rendered:*** Consideration of this factor is subsumed above regarding hourly rates (¶ 33, *supra*), and no further adjustment to the lodestar is required.

39. ***(4) The attorney's opportunity costs in pressing the instant litigation:*** This litigation consumed an enormous amount of time and sustained legal work over a two-year period, which necessarily limited counsel's ability to undertake other cases. To be sure, understanding that those time-demands would be experienced, Class Counsel sought selection as lead counsel for this case. But the time demands were extraordinary, and far exceeded even what is normally experienced or had been expected. Therefore, consideration of this factor would justify an upwards adjustment to the lodestar but is accounted for in the multiplier analysis for appropriately enhancing the lodestar amount (¶ 51, *infra*).

40. ***(5) The customary fee for like work:*** Consideration of this factor is subsumed in the analysis of hourly rates (¶ 33, *supra*). This factor warrants no adjustment to the lodestar.

41. ***(6) The attorney's expectations at the outset of the litigation:*** Class Counsel sought, and voluntarily undertook, this litigation on a contingency fee basis, which included the responsibility of advancing costs and the risk of not recovering. They also understood that a lodestar cross-check would be made. Awarding fees as a percentage of the recovery, which amount exceeds the lodestar (¶ 51, *infra*), will compensate counsel for theses costs and risks, and no further adjustment to the lodestar is warranted under this factor.

42. ***(7) The time limitations imposed by the client or circumstances:*** The Court's efficient docket schedule imposes time limitations that lawyers find difficult. However, having

litigated numerous complex cases under the Court's "Rocket Docket" schedule, it is my opinion that the swift schedule was predictable at the outset. Class Counsel, including the local lawyers involved, sought, and voluntarily undertook, this case knowing of these time limitations. Therefore, no adjustment to the lodestar is required under this factor.

43. ***(8) The amount in controversy and the results obtained:*** The nature and extent of the work justified by the amount in controversy and the results of obtained are subsumed in the lodestar analysis (¶ 32, *supra*). Obtaining an excellent result in a big case ordinarily warrants as "fully compensatory" fee award: "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." *Hensley*, 461 U.S. at 435. This factor would not, in and of itself, justify an adjustment to the lodestar, however, because the enhancement is accounted for in the multiplier analysis (*see* ¶ 51, *infra*).

44. ***(9) The experience, reputation, and ability of the attorney:*** Consideration of this factor is subsumed above in determining the reasonable hourly rates (¶ 33, *supra*). This factor warrants no adjustment to the lodestar.

45. ***(10) The undesirability of the case within the legal community in which the suit arose:*** Over two dozen other firms sought appointment as Class Counsel, negating any inference that this case was "undesirable." Thus, this factor requires no adjustment to the lodestar.

46. ***(11) The nature and length of the professional relationship between attorney and client:*** This factor does not appear to figure in analysis of the lodestar in a class action generally—especially one involving 98 million class members.

47. ***(12) Attorneys' fee awards in similar cases:*** A comparison of the fee award in similar cases is subsumed in the lodestar analysis and elsewhere in this declaration. Accordingly, no adjustment to the lodestar is warranted under this factor.

48. In sum, consideration of the *Johnson* factors does not warrant any adjustment to the lodestar amount.

B. STEP TWO: ALLOCATION FOR UNSUCCESSFUL, UNRELATED CLAIMS

49. The claims asserted in the Second Amended Representative Consumer Class Action Complaint are all related and arise under a "common core of facts," which means that even if certain claims were dismissed prior to settlement, no reduction would be required. *See Hensley*, 461 U.S. at 435 (when all claims arise under "a common core of facts," all of counsel's time devoted to the case may be included in the lodestar); *accord Brodziak v. Runyon*, 145 F.3d 194, 197 (4th Cir. 1998) (same). Therefore, no Step Two reduction is required.

C. STEP THREE: DEGREE OF SUCCESS

50. As noted above (¶ 20, *supra*), the settlement of this action resulted in a Settlement Fund that is extraordinarily successful in absolute and relative terms. Therefore, no Step Three reduction is appropriate.

D. EVALUATING THE MULTIPLIER

51. Here, 33.3% of $190,000,000.00 equals $63,270,000.00. The lodestar amount is $37,640,583.50. Thus, the multiplier is roughly 1.68. This multiplier is comparable to those used in other common fund actions in which I have been involved in this District (*Orbital ATK*, 1.8; *Microstrategy*, 2.6). In other consumer class action cases in the Fourth Circuit multipliers of 2 to 4.5 have been used (*Memorandum* at 28-29). Thus, in my opinion, the 1.68 multiplier

proposed here is reasonable. Therefore, the lodestar-plus-multiplier cross-check further confirms that a 33.3% fee award is reasonable.

VI. AWARDS IN SIMILAR CASES

52. Finally, a comparison of awards in similar cases is routinely undertaken in common fund cases. MANUAL § 14.121 at 202. As shown in Plaintiffs' brief in support, 33% fee awards have been awarded in comparable consumer class action cases (*Memorandum* at 23-26). Therefore, this factor also strongly supports the reasonableness of a 33.3% fee award in this action.

VII. CONCLUSION

53. Accordingly, based on the foregoing analysis of the common fund doctrine factors, it is my opinion that the proposed fee award of $63,270,000.00, being 33.3% of the Settlement Fund ($190,000,000.00), is fair and reasonable.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 16, 2022

Craig C. Reilly

CRAIG C. REILLY, ESQ.
209 Madison Street, Suite 501
Alexandria, Virginia 22314
TEL (703) 549-5354 FAX (703) 549-5355
craig.reilly@ccreillylaw.com
www.ccreillylaw.com

ADMITTED: State and Federal Courts: Virginia (1981)
District of Columbia (1984)

EDUCATION: University of Virginia School of Law: J.D., 1981
Amherst College: B.A., 1976 (English)

EMPLOYMENT:

2008-	Solo Practitioner Alexandria, Virginia
1983-08	Richards McGettigan Reilly & West, P.C. (Shareholder 1987-08) Alexandria, Virginia
1982-83	Law Clerk, Supreme Court of Virginia Richmond, Virginia
1981-82	Associate, Craig T. Redinger, P.C. Charlottesville, Virginia

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS:

American Bar Association (1981-)
Virginia State Bar (1981-)
Virginia Bar Association (1981-)
District of Columbia Bar (1984-)
Federal Bar Association, No. Virginia Chapter (Member, 1994- ; Board of Directors, 2008-14)
Alexandria Bar Association (1983-)
Virginia State Bar Harry L. Carrico Professionalism Course Faculty (2016-19)

LITIGATION EXPERIENCE:

General Civil Litigation: Forty years of experience in a wide variety of civil litigation in state and federal court, including contracts, business torts, products liability and personal injury, trade secret and employment disputes, landlord-tenant and real estate, and commercial law.

Intellectual Property: Numerous patent litigation matters involving such diverse arts as artificial intraocular lenses, catheter guide wires, metal alloys, flexible flashlights, chemical catalysts, antiperspirant chemicals, data terminals, tape storage systems, tape drive assemblies, gas detectors, modems, computer encryption, telecommunications, and florescent lights. Five jury trials and one bench trial in patent cases, plus numerous dispositive motions. Trademark litigation and domain name cases, including preliminary injunction motions. Complex civil and criminal copyright cases.

Complex Federal Litigation: Civil and criminal cases involving RICO, bribery, and government procurement fraud; antitrust; securities fraud class actions (plaintiff and defense); ERISA class action and ERISA fraud, securities fraud, bribery, and breach of fiduciary duty.

EXPERT WITNESS EXPERIENCE:

Attorneys' Fees: Served as expert witness in numerous cases in state and federal court concerning reasonable attorneys' fees sought as damages or awardable under a statute, rule, contract, or other basis.

ATTACHMENT A

LECTURES:

A Practical Guide to Federal Court Rules & Procedures in Virginia
(NBI, Dec. 7, 1995)

Intellectual Property Litigation: Patent Litigation in the "Rocket Docket"
(Alexandria Bar, Feb. 13, 1996)

Federal Court Litigation: Motions Practice in Federal Court
(Alexandria Bar, May 8, 1996)

Intellectual Property Litigation: Injunctions and Protective Orders
(Alexandria Bar, Feb. 11, 1997)

Federal Court Litigation: Winning without Trial: Summary Judgment and Settlement (Alexandria Bar, May 21, 1997)

Intellectual Property Litigation: Markman Hearings, Spoliation, Computer Discovery
(Alexandria Bar, Feb. 10, 1998)

Federal Court Litigation: The Law and Procedures of Privileges During Civil Discovery (Alexandria Bar, May 19, 1998)

Intellectual Property Litigation: Fighting Back: Patent Misuse and Antitrust Counterclaims
(Alexandria Bar, Feb. 11, 1999)

Federal Court Litigation: Personal Jurisdiction-Beyond the Basics
(Alexandria Bar, May 18, 1999)

Intellectual Property Litigation: Trademark Litigation in the "Rocket Docket"
(Alexandria Bar, Feb. 15, 2000)

Federal Court Litigation: Jurisdiction, Removal, and Remand
(Virginia Trial Lawyers Assoc., Mar. 31, 2000)

Federal Court: Navigating the "Rocket Docket"
(Fairfax Bar Assoc., May 11, 2000)

Federal Court Litigation: Protective Orders
(Alexandria Bar, May 16, 2000)

Intellectual Property Litigation: Trade Secret Litigation in State and Federal Courts
(Alexandria Bar, Feb. 15, 2001)

Federal Court Litigation: New Discovery Rules
(Alexandria Bar, May 8, 2001)

Federal Court Litigation: Practice Before United States Magistrate Judges and Civil Discovery
(Alexandria Bar, Sept. 23, 2003)

Federal Court Litigation: Expert Witness Practice
(Alexandria Bar, Sept. 28, 2004)

Federal Court Litigation: Protective Order Practice and Sealing of Court Records
(Alexandria Bar, Oct. 26, 2005)

Federal Court Bench-Bar: Federal Civil Discovery Practices (FBA-No.Va., May 2008)

Federal Court Bench-Bar: Federal Civil Motions Practice
(FBA-No.Va., May 2009)

Difficult Depositions
(Alexandria Bar, Oct. 2009)

Federal Court Bench-Bar: Federal and State Court Injunction Practices
(FBA-No.Va., Jan. 2010)

Federal Law of Sanctions: Rules 16, 26, 30, 37, and 45
(FBA-No.Va., Mar. 2010)

Federal Court Bench-Bar: Federal Protective Order Practice (FBA-No.Va., May 2010)

Federal Law of Sanctions: Rules 11 & 56, 28 U.S.C. § 1927, and Inherent Authority
(FBA-No.Va., Feb. 2011)

Federal Court Bench-Bar: Ten Timely Topics (FBA-No.Va., May 2012)

Federal Court Bench-Bar: Ten More Timely Topics (FBA-No.Va., May 2013)

Federal Court Bench-Bar: New Rules and Old Rules (FBA-No.Va., May 2014)

Federal Court Bench-Bar: Ten Unusual and Timely Topics
(FBA-No.Va., May 2015)

Federal Court Bench-Bar: Ten Timely Topics (FBA-No.Va., June 2016)

Federal Court Bench-Bar: Experts and Mediation (FBA-No.Va., May 2017)

Federal Court Bench-Bar: Five Timely Topics (FBA-No.Va., May 2018)

Federal Court Bench-Bar: Ten Timely Topics (FBA-No.Va., June 2019)

Successfully Litigating Attorneys' Fees in Employment Cases (VSB, Sept. 2019)

Successfully Litigating Attorneys' Fees in Federal Court
(FBA-No.Va., Dec. 2020)

Federal Court Bench-Bar: Ten Timely Topics (FBA-No.Va., May 2021)

PUBLICATIONS:

Flight Training for Patent Litigation in the "Rocket Docket"
INTELLECTUAL PROPERTY LITIGATION, Vol. VII, No.3 (ABA Fall 1995)

Interlocutory Orders: Getting it Right the Second Time
LITIGATION, Vol. 22, No.2 at 43 (ABA Winter 1996)

Forum Non Conveniens: You Can Get There From Here
LITIGATION, Vol. 24, No.1 at 36 (ABA Fall 1997)

The Eastern District of Virginia - Alexandria Division
THE JOURNAL (VTLA Fall 1999)

The Truth About Lying
LITIGATION, Vol. 29, No.4 at 40 (ABA Summer 2003)
(reprinted in THE LITIGATION MANUAL (ABA 1st Supp. 2007))

Ashcraft v. Conoco, Inc. and Local Civil Rule 5(C): Ten Years Later
THE ROCKET DOCKET NEWS (FBA-No.Va. June 2010)

Civil Case Management Practices of Eastern District of Virginia, Alexandria Division: Report to the Judicial Conference Advisory Committee on Civil Rules (2011)

CASES IN WHICH EXPERT EVIDENCE ON ATTORNEYS' FEES HAS BEEN GIVEN BY CRAIG C. REILLY, ESQ. (REPRESENTATIVE CASES AS OF JUNE 1, 2022)

1. ***Mantech:*** I appeared in Fairfax County Circuit Court as an expert on legal fees and hourly rates charged in Northern Virginia and was found qualified as an expert on legal fees in Northern Virginia. *See Mantech Int'l Corp. v. Analex Corp.*, No. 2008-5845 (Fairfax Cir. June 10, 2011) (evidentiary hearing and final order). In that case, the defendant (by whom I was retained) sought fees and expenses as a sanction against the plaintiff, who abruptly took a nonsuit in the middle of a two-week theft of trade secrets trial. After both a direct examination about my qualifications and *voir dire* by plaintiff's counsel, the trial judge (Hon. Bruce D. White, Circuit Judge) ruled that I was qualified as an expert. Based on my testimony and opinions, the Court then specifically ruled that the legal fees sought by the defendant (exceeding $1.5 million) and the hourly rates applied (*e.g.*, 25-year partner: $625; third-year associate: $325) were, in their entirety, "reasonable." My analysis of the reasonable hourly rates was based on my work in the *Vienna Metro* case, which is described next. However, the Court ultimately ruled that the imposition of sanctions was not appropriate.

2. ***Vienna Metro:*** In 2011, I provided expert evidence in two sworn declarations on behalf of the prevailing plaintiff in the case of *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10cv502, 2011 U.S. Dist. LEXIS 158648 (E.D. Va. Aug. 24, 2011) (fee award). In that case, I focused primarily on the reasonable hourly rates in my opening declaration, and both hourly rates and the overall reasonableness of the fees in my second declaration. *Id.* (Doc. 210 & 251) (declarations). The order awarding fees to the prevailing party under a contractual fee-shifting provision, governed by Virginia law, which had been sealed, was later unsealed. *Id.* (Doc. 263). The trial judge awarded over $4.1 million in fees to the prevailing plaintiff, which was the full

ATTACHMENT B

amount sought, using graduated Northern Virginia hourly rates, based on the attorney's years of experience at the bar, ranging as high as $689/hour for a partner with 25 years experience.

3. ***Vienna Metro Matrix:*** In support of my expert declaration in the *Vienna Metro* case, I conducted a survey of attorneys' fees charged in the Northern Virginia market for complex civil litigation. *Vienna Metro LLC v. Pulte Home Corp*., No. 1:10cv502 (GBL) (E.D. Va. June 6, 2011) (Doc. 210) (declaration describing fee survey and setting forth hourly rate matrix). My survey results were adopted by the Court as the basis for the award of fees in that action. *Id.*, 2011 U.S. Dist. LEXIS 158648 (fee award). That rate matrix (now known as the "*Vienna Metro* Matrix") has been applied in numerous other cases, including other cases in the federal court. *E.g*., *Tech Systems, Inc. v. Pyles*, No. 1:12cv374 (GBL/JFA), 2013 U.S. Dist. LEXIS 110636, *19-20 & n.4 (E.D. Va. Aug. 6, 2013) (business torts); *Taylor v. Republic Services, Inc*., No. 1:12cv523 (GBL/IDD), 2014 U.S. Dist. LEXIS 11086, *14-15 (E.D. Va. Jan. 29, 2014) (sex discrimination and employment law); *Zoroastrian Cntr. and Darb-E-Mehr of Metro. Wash., D.C. v. Rustam Guiv Fndn*., No. 1:13cv980 (LO/TRJ), 2017 U.S. Dist. LEXIS 43754, *32-33 (E.D. Va. Mar. 24, 2017) (real estate litigation). I also was plaintiff's legal fee expert in the *Taylor* case, which is described below.

4. ***Tureson:*** I submitted a declaration and gave testimony as an expert on legal fees on behalf of the Defendants in the case of *Larry A. Tureson v. David L. Pierce, et al*., No. CL-2012-323; 86 Va. Cir. 473; 2013 Va. Cir. LEXIS 38; 2013 WL 8036380 (Fairfax Cir. May 31, 2013) (Maxfield, J.) (letter opinion). Defendants sought fees as the prevailing party under a contract governed by Virginia law. In framing my opinions, I relied on the *Vienna Metro* Matrix. Based on my testimony, the Court rejected Plaintiff's objections to the "reasonableness" of the hourly rates and fees being awarded to the prevailing party under a contract. Judge

ATTACHMENT B

Maxfield, however, limited the fee award because the case had been nonsuited, and only awarded fees for the case as re-filed.

5. ***Carlucci:*** I submitted a declaration as an expert on legal fees in support of the plaintiff's fee application in the case of *Frank C. Carlucci III v. Michael S. Han, et al.*, No. 1:12-cv-451-JCC-TCB (E.D. Va. Mar. 26, 2013) (Doc. 141-2). The fee award was sought under the Virginia Securities Act. The case settled without the fee application being ruled upon.

6. ***Lewis:*** I provided an expert declaration in an ERISA action opposing the prevailing plaintiff's fee application. *Hsieh Lewis v. Kratos Def. & Sec. Solutions, Inc.*, No. 1:12cv1012 (TSE-TCB) (E.D. Va. June 25, 2013) (Doc. 195-3). That case was resolved without a ruling on the fee award.

7. ***Taylor:*** I provided an expert declaration (Doc. 296-21) in support of the prevailing plaintiff's fee application in a Title VII employment case of *Taylor v. Republic Services, Inc.*, No. 1:12cv523 (GBL/IDD), 2014 U.S. Dist. LEXIS 11086 (E.D. Va. Jan. 29, 2014) (fee award). Based on my analysis of the Northern Virginia legal market, the Court applied the *Vienna Metro* Matrix to determine the fee award, instead of using the general hourly rates previously approved by the Fourth Circuit in *Grissom v. Mills Corp.*, 549 F.3d 313 (4th Cir. 2008). The *Grissom* hourly rates were substantially lower than actual market rates.

8. ***Reynolds:*** I submitted an expert declaration regarding reasonable hourly rates in support of the fee application made by the prevailing plaintiff a complex trademark infringement action involving a famous brand. *Reynolds Consumer Prods. Inc. v. Handi-Foil Corp.*, No.1:13cv214-LO-TRJ (E.D. Va. Apr. 30, 2014) (Doc. 276-3). Finding that the case was not "exceptional," however, the District Judge made no award of fees to the prevailing plaintiff in the final judgment (Doc. 292 & 293).

ATTACHMENT B

9. ***Lessard:*** I was retained as an expert on hourly rates and legal fees in Northern Virginia and prepared an expert report under Federal Civil Rule 26(a)(2)(B) for the plaintiff-insured, who sued his insurer for breach of the duty to defend and breach of the duty to indemnify. *Christian J. Lessard v. Continental Cas. Co.*, No. 1:14-cv-00063-AJT-TRJ (E.D. Va.). Summary judgment was entered for the insurer without reaching the issue of fees.

10. ***Hosch:*** I was retained by plaintiff and plaintiff's lawyers as an expert on hourly rates and legal fees in Northern Virginia to prepare a declaration in opposition to fee applications filed by defendant in the case of *Cornelius V. Hosch v. BAE Sys. Inf. Solutions Inc.*, No. 1:13cv00825 (AJT-TCB) (E.D. Va. June 16, 2014) (filed as Doc. 104-2, 105-2 & 107-5). Defendant sought an award of about $628,000 in attorneys' fees as sanctions under Rule 37 for discovery violations. The gravamen of my opinion was that the fee award sought was unreasonable and excessive. The District Judge found that the fees sought were unreasonable and "grossly excessive," and awarded only about $56,000. *Id*. (Doc. 116). In this case, however, the parties agreed, and the Court ruled, that the *Vienna Metro* Matrix would be applied to determine the reasonable hourly rates.

11. ***SustainedMed:*** I submitted a declaration and live testimony as an expert on legal fees on behalf of the prevailing plaintiff in the case of *SustainedMed LLC v. Marilyn Erhardt, et al*., Case No. 2011-00516 (Fairfax Cir. June 12, 2014) (declaration submitted). In that action, the plaintiff sought various remedies arising from a Stock Purchase Agreement, including an award of attorneys' fees. A substantial fee award has been made, but the proceedings are ongoing.

12. ***National Organization for Marriage:*** I submitted an expert declaration regarding reasonable hourly rates in support of the fee application made by the prevailing plaintiff (a nonprofit advocacy entity) in a statutory action against the government (Internal Revenue

ATTACHMENT B

Service) for wrongful disclosure of tax information. *National Organization for Marriage, Inc. v. United States*, No. 1:13cv1225 (JCC-IDD) (E.D. Va. July 25, 2014, 2014) (Doc. 91-7). The Court decided that the plaintiff was not entitled to an award of fees, without reaching the reasonableness factors.

13. ***ACI Worldwide, Inc.:*** I submitted an expert declaration regarding reasonable hourly rates in support of the fee application made by the prevailing defendant in a case brought for copyright infringement. *Princeton Payment Solutions LLC v. ACI Worldwide, Inc.*, No. 1:13cv00852 (TSE-IDD) (E.D. Va. Aug. 29, 2014) (Doc. 63-5). The ruling on fees had been deferred while the case was appealed, and then later the case was resolved without an adjudication of fees.

14. ***Total Hockey:*** I submitted an expert declaration regarding reasonable hourly rates in support of the fee application made by the prevailing defendant in a case brought for breach of lease under Virginia law. *Route Triple Seven L.P. v. Total Hockey, Inc.*, No. 1:14cv00030 (E.D. Va. Sept 22, 2014) (Doc. 38-3). The court distinguished *Vienna Metro* and made an award using reduced hourly rates.

15. ***Leach Travell:*** In *Leach Travell Britt pc v. Losorea Packaging, Inc.*, No. 1:15cv51-AJT-TCB (E.D. Va.), I was retained by a law firm suing to recover its fees for legal work performed in a litigation matter. I prepared an opening expert report under Federal Civil Rule 26(a)(2)(B), but the case was resolved before trial, and so I did not submit a reply report, nor did I give any deposition or trial testimony.

16. ***JK Moving:*** In *JK Moving & Storage v. Pesta, et al.*, No. CL 82821 (Loudoun Co. Cir. Ct.), I provided an expert disclosure (as supplemented) and expert trial testimony in support of plaintiff's motion for an award of fees. I am not privy to the outcome.

17. ***Salim:*** In *Salim v. Dahlberg*, No. 1:15cv468 (LMB / IDD) (E.D. Va.), a civil rights case, I submitted an expert declaration in support of the prevailing plaintiff's fee application under a fee-shifting statute. The principal focus of my declaration was hourly rates and the overall total, not a line-item review. The district judge reduced the fee award because plaintiff was unsuccessful on certain claims. The district judge also used lower hourly rates for certain timekeepers than I had advocated but used a $500 hourly rate for the lead lawyer, which was higher than the then-default rate of $380, as set in *Grissom* Table 3 for a senior litigator with over 20 years of experience.

18. ***Doe:*** I submitted a declaration in support of the prevailing plaintiff's fee application in the civil rights case *Doe v. Rector and Visitors of George Mason Univ., et al.*, No. 15-cv-209 (E.D. Va.). Based on my opinions, the Court made a substantial fee award to the plaintiff, using the hourly rates I had advocated. *Doe v. Rector and Visitors of George Mason Univ., et al.*, No. 15-cv-209 (E.D. Va. June 26, 2016) (Doc. 112).

19. ***SecTek:*** I submitted a Federal Civil Rule 26(a)(2)(B) expert report, and subsequently a declaration, in support of an award of reasonable attorneys' fees in the action *SecTek, Inc. v. Diamond*, Case No. 1:15-cv-1631-GBL/MSN (E.D. Va.). The fees were being sought as damages under the indemnification provision of a contract for the acquisition of a company. The issue of fees had been bifurcated from the liability issues, and after the merits bench trial, the case settled without an adjudication of fees.

20. ***One Loudoun:*** I submitted an expert declaration in support of the plaintiff's motion for an award of fees as sanctions. *One Loudoun Holdings, LLC v. Virginia Inv. Partnership, LLC*, Case No. 89383 (Loudoun Co. Cir. Ct.). To my knowledge no ruling has been rendered.

ATTACHMENT B

21. ***Bogle Industries, Inc.:*** In an arbitration proceeding, I served as an expert for defendants who were accused of mismanagement of a family business trust, including by incurring unnecessary and unreasonable attorneys' fees in connection with the business operations. Defendants prevailed on that issue and all other aspects of the case. After the panel ruled for defendants, I submitted lengthy and detailed declarations in support of the defendants' fee applications. Based on my testimony, a substantial fee award was made to the lead defendant, which was upheld on judicial review in Circuit Court and again on appeal. *Meuse v. Henry*, 819 S.E.2d 220, 233-34 (Va. 2018).

22. ***General Security:*** I served as the plaintiff's expert in a legal malpractice action, in which I prepared a Federal Civil Rule 26(a)(2)(B) report, but I was not deposed. *General Security Ins. Co. v. Jordan Coyne & Savits, L.L.P.*, No. 1:04cv1436 (E.D. Va.). The case was decided on summary judgment against the plaintiff prior to trial.

24. ***Mastec:*** I served as the defendant's expert in a suit brought by a law firm against a former client for unpaid legal fees. *Katz & Stone LLP v. Mastec, Inc.*, No. 1:05cv1390 (E.D. Va.). I prepared and submitted Federal Civil Rule 26(a)(2)(B) report regarding the attorneys' entitlement to recover fees as damages and the reasonableness of the fees they sought. I also was deposed, but the case was resolved before trial.

25. ***AWP, Inc.:*** I submitted a Federal Civil Rule 26(a)(2)(B) expert report in support of an award of reasonable attorneys' fees in the action *AWP, Inc. v. SJK Services, LLC*, Case No. 1:16-cv-332-TSE-MSN. That case was voluntarily dismissed before fees were adjudicated.

26. ***Rustam:*** I submitted a declaration in support of the prevailing party's fee application in the case *Zoroastrian Cntr. and Darb-E-Mehr of Metro. Wash., D.C. v. Rustam Guiv Fndn.*, No. 1:13cv980 (LO/TRJ). My opinions about hourly rates based on the *Vienna*

ATTACHMENT B

Metro Matrix were adopted by the Court. *Id*., 2017 U.S. Dist. LEXIS 43754, *32-33 (E.D. Va. Mar. 24, 2017).

27. ***Roberts et al.***: I have submitted two declarations in support of fee applications filed by certain defendants in a civil rights action. *Thomas v. Roberts*, No. 1:16cv1581-AJT-MSN (E.D. Va. filed Dec. 20, 2016) (Doc. 75-2, 97-2). My declarations focus on prevailing hourly rates, and I used the *Vienna Metro* Matrix as a comparable. The Court adopted my opinions when awarding fees for a discovery motion. *Id.* (Doc. 80). As I understand, the case later settled with each side bearing its own fees and costs.

28. ***Cody:*** I submitted a declaration in support of the prevailing plaintiffs' fee application in *Cody v. Mantech Int'l Corp*., No. 1:16cv132 (E.D. Va. June 19, 2017) (Doc. 164-1). The Court made an award of fees, but applied hourly rates stated in the original retainer agreement rather than prevailing market rates.

29. ***DCT Communications:*** I submitted a declaration in support of the prevailing defendant's fee application in *Parsons Govt. Services Inc. v. DTC Comm., Inc.*, No. 1:16cv1079 (E.D. Va. July 10, 2017) (Doc. 46-2). My declaration focuses on prevailing hourly rates, and I used the *Vienna Metro* Matrix as a comparable. The Court, however, declined to award fees.

30. ***Brucker:*** I submitted a declaration in support of the prevailing plaintiff's fee application in *Brucker v. Taylor*, No. 1:16-cv-01414-GBL-JFA (E.D. Va. July 17, 2017) (Doc.73-1). The Court awarded the full amount I recommended. *Id*. (Doc. 79) (fee award).

31. ***Sandy Spring Bank:*** I submitted a declaration in support of the prevailing plaintiff's fee application in *Sandy Spring Bank v. Top Flight Airpark Office L.P.*, No. 1:18-cv-521-TSE-IDD (E.D. Va. July 30, 2018) (Doc. 30-2). The Court awarded the full amount I recommended. *Id*. (Doc. 36) (fee award).

ATTACHMENT B

32. ***United Supreme Council:*** I submitted a declaration in support of the prevailing defendants' fee application in *United Supreme Council, etc., et al. v. United Supreme Counsel, etc, et al.*, No. 1:16-cv-1103-LO-IDD (E.D. Va. Jan. 31, 2019) (Doc. 384-1). I recommended a fee award of about $257,000, and the Court made an award of about $245,000 in fees to the prevailing defendants. *Id*. (Doc. 414) (fee award).

33. ***FCI Enterprises:*** I submitted an expert declaration in support of an employer opposing the prevailing plaintiffs' fee application in an FSLA and WARN Act case. *See Schmidt, et al. v. FCI Enterpr., LLC, et al.*, No. 1:18-cv-1472-RDA-JFA (E.D. Va. Dec. 4, 2019) (Doc. 152-8). Plaintiffs sought about $460,000.00 in fees; I recommended that the fees be reduced to about $275,000.00. The Court awarded about $320,000.00 in fees. *Id*. (Doc. 163).

34. ***William Ellis:*** After the jury verdict, I submitted an expert declaration in support of the prevailing defendant-counterclaimant William Ellis, who sought an award of fees under two Virginia statutes. *See Northern Virginia Kitchen, Bath & Basement v. Coffey, et al.*, Civil Action No. CL 111018 (Loudoun Co. Cir. Ct.). I offered the opinion that Mr. Ellis should be awarded over $100,000.00 in fees. The Court awarded $113,000.00 in fees.

35. ***Dr. Richard B. Grundy:*** In a case involving the break-up of a dental practice, I gave expert opinion testimony during a jury trial in support of the plaintiff's case-in-chief. *Richard B. Grundy v. Robert H. Brown, III*, No. 2018-18098 (Fairfax. Cir. Ct.). The jury trial was suspended in March 2020 due to the pandemic, and only resumed in April 2022. The jury rendered a verdict in favor of Dr. Grundy but not on the fee-shifting claim.

36. ***Heitech:*** I submitted an expert declaration in support of the prevailing plaintiff's fee application in a breach of contract action. *Heitech Services, Inc. v. Front Rowe, Inc., et al*., No. 1:14-cv-739-JCC-TCB (E.D. Va. filed June 16, 2014). Citing my declaration repeatedly, the

ATTACHMENT B

Court found that the hourly rates were reasonable and awarded the plaintiff the entire amount of fees requested, $134,640.00. *Id*. (Doc. 66).

37. ***Attila Biber, et al.:*** I submitted an expert declaration on hourly rates in support of the fee application made by the plaintiff class' lead counsel. *Biber v. Pioneer Credit Recovery, Inc.*, No. 1:16-cv-804-TSE-IDD (E.D. Va. Dec. 21, 2017) (Doc. 126-8). Although the fee award was sought under the common fund theory, the Court required a "lodestar cross-check," which included an analysis of hour rates, which I supported. The Court awarded about $750,000 in fees to lead counsel. *Id.* (Doc. 138).

38. ***Brown, et al.:*** I submitted an expert declaration in support of a common fund fee application in an FLSA "collective action" in Fairfax County Circuit Court. The Court awarded the full fee requested. *See* Order, *Arin Brown et al. v. Frontpoint Security Solutions, Inc.*, Case No. 2017-14845 (Fairfax Cir. Dec. 8, 2017) (awarding common fund percentage-of-recovery fee of 33%).

In addition, I have consulted in other fee matters that did not involve the submission of a formal report or the giving of expert testimony, I have submitted declarations in other matters that are still ongoing, and I have submitted non-expert declarations regarding local hourly rates in support of other firm's fee applications.

ATTACHMENT B