UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

THOMAS DWYER **Individually and on behalf of all others similarly situated** **Plaintiff,** **vs.** **SNAP FITNESS, INC.** **Defendant.**	:	**Case No. 1:17-cv-00455-MRB** **Judge Michael R. Barrett** **UNOPPOSED AMENDED MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS**

Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), Section V of the Parties' Settlement Agreement and Release dated February 1, 2019 ("Settlement Agreement") [Doc. 28, Ex. 2], and the Court's Order dated March 20, 2019 [Doc. 29], Class Counsel,[1] and Named Plaintiff Thomas Dwyer ("Plaintiff" "Dwyer" or "Class Representative"), on behalf of themselves and the Settlement Class, respectfully move this Court for an Order approving the following payments in connection with the Settlement: (1) attorneys' fees in the amount of $338,352.55; (2) out of pocket expenses and costs to Class Counsel in the amount of $8,147.45 and (3) a service award of $3,500 to Plaintiff. Defendant Snap Fitness, Inc. does not oppose this Motion. A Memorandum in Support follows.

Respectfully submitted,

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[1] Capitalized terms not defined herein are as stated in the Settlement Agreement.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiff Thomas Dwyer and Class Counsel have litigated this action for nearly two years, engaged in discovery, attended a lengthy mediation, conducted many months of negotiation with Defendant Snap Fitness, Inc. ("Defendant" or "Snap Fitness"), and ultimately achieved an exceptional settlement in the amount of $2,920,0000 for the benefit of a Settlement Class ("Class") in excess of 141,000 members. Under the Settlement, class members are provided an opportunity to recover nearly 65% of their Club Enhancement Fees ("CEF") paid in 2017 and 2018, and members of the PECA Sub-Class are additionally entitled to $5. But the hard-struck bargain did not come easily. Rather, it took considerable time, effort and skill from Class Counsel.

Dwyer respectfully requests that the Court award pursuant to the Settlement Agreement (1) attorneys' fees, out of pocket expenses and costs to Class Counsel in the amount of $346,500; and (2) a service award of $3,500 to Dwyer. Dwyer's requested attorneys' fee award is less than 12% percent of the total value of the Settlement in this case, and is fully supported under a lodestar analysis. Because the requested fees, expenses, and service awards are reasonable, the Court should grant this motion.

II. FACTUAL BACKGROUND

A. The Litigation

On May 25, 2017, Dwyer filed his Class Action Complaint in the Court of Common Pleas, Hamilton County, Ohio. Dwyer's Class Action Complaint sought remedies for a nationwide class under theories of breach of contract, unjust enrichment for the allegedly improper charge of a "Club Enhancement Fee" in 2017 to Snap Fitness club members nationally.

The Complaint also sought remedies for an Ohio subclass under the Ohio Consumer Sales Practices Act ("CSPA") and Prepaid Entertainment Contracts Act (R.C. 1345.41 to R.C. 1345.50) for an alleged failure to attach or otherwise provide a duplicate, detachable "notice of cancellation" form to contracts of Ohio Snap Fitness club members. On June 30, 2017, Snap Fitness removed the matter to this Court.

On October 26, 2017, Dwyer served interrogatories, requests for production of documents, and requests for admission upon Snap Fitness. While Snap Fitness responded to the written discovery on December 1, 2017, it produced documents on a rolling basis lasting for months, and ultimately produced over 1,000 documents. Class Counsel reviewed and analyzed the documents produced by Snap Fitness and those obtained through its own investigation. Based upon the documents produced by Snap Fitness, on July 12, 2018, Dwyer moved for leave to file an amended complaint to bring class claims under the consumer protection laws in the 40 states in which members were charged a Club Enhancement Fee and claims for fraud. Snap Fitness opposed the motion.

B. Negotiation of the Proposed Settlement and Execution of the Settlement Agreement

With the motion for leave to amend pending, and the parties recognizing their respective risks in the prosecution and defense of this case, the parties agreed to enter settlement negotiations in order to seek a mutually acceptable resolution to the dispute. Towards this goal, the parties mediated the matter on September 26, 2019 with Bill Hawkins of Baker Hostetler. Although substantial progress was made, no settlement was reached. However, the parties agreed to follow-up mediation sessions with Mr. Hawkins. Over the course of several months and many conferences with Mr. Hawkins, the parties ultimately came to terms on a settlement on November 20, 2018.

Thereafter, for over two months the Parties painstakingly negotiated the detailed Settlement Agreement [Doc. 28, Ex. 2], which exceeds 27 pages in length. Pursuant to the Settlement Agreement, Snap Fitness will pay a non-reversionary cash sum in the amount of $2,920,000, and each Settlement Class Member will be entitled to receive a Cash Award on the following terms:

(a) Each Settlement Class Member in the PECA Sub-Class will receive a Cash Award of $5.00.

(b) Each Settlement Class Member in the CEF Sub-Class will receive a Cash Award in a designated percentage of the Club Enhancement Fees that he or she paid. The Cash Award will be determined for each Settlement Class Member in the CEF Sub-Class as follows:

(i) first, the total amounts accounted for under Section 4.04(a) will be deducted from the Settlement Fund to calculate the "CEF Net Settlement Fund";

(ii) next, the CEF Net Settlement Fund will be divided by the total of all Club Enhancement Fees paid by Settlement Class Members to calculate the percentage of recovery to be applied class-wide (the "Percentage of Recovery"). The total of all Club Enhancement Fees cumulatively paid by Settlement Class Members will be derived from Defendant's business records.

(iii) next, the Percentage of Recovery will be applied to the Amount Paid to calculate the Cash Award for each Settlement Class Member.

(c) A Settlement Class Member who is a member of both the PECA Sub-Class and the CEF Sub-Class will receive a Cash Award consisting of a combined payment under Section 4.04(a) and Section 4.04(b).

In exchange for this valuable consideration, Dwyer and the Class Members who do not timely exclude themselves will release their claims against Snap Fitness.

Pursuant to Section V of the Settlement Agreement, Dwyer would apply to the Court for an award of reasonable attorney fees, litigation expenses and a class service award (per the Settlement Agreement, the "Fee and Expense Application"). [Settlement Agreement, ¶5.01] The Fee and Expense Application would be paid separately from the $2,920,000 award to the Class. *Id*. at ¶4.05, 5.01. Dwyer represented that the Fee and Expense Application would not exceed $350,000, and Snap Fitness agreed not oppose such a request so long as the application did not exceed this amount. ¶5.02. Paragraph 5.03 states that the payments that comprise the Fee and Expense Application are subject to and dependent upon the Court's determination that such amounts are fair, reasonable, adequate, and in the best interest of the Settlement Class Members.

C. Preliminary Approval and Class Notice

On October 31, 2017, the Court granted preliminary approval to the proposed class action settlement, finding its terms to be "fair, reasonable, and adequate" [Doc. 29, ¶4]. The Court's Order directed Class Counsel to disseminate notice in accordance with the Notice Plan, which the Court found met the requirements of due process and was the "best notice practicable under the circumstances. *Id*. at ¶ 8. Under the approved notice program, the Settlement Administrator provided Notice as follows: (i) the Email Notice was sent via electronic mail to the most recent email address as reflected in Snap Fitness' reasonably available computerized account records, to all persons in the Settlement Class for whom such records exist; or (ii) the Postcard Notice was sent via first class mail to the most recent mailing address as reflected in Snap Fitness' computerized account records, for those persons in the Settlement Class for whom Snap Fitness does not have an email address (as reflected in reasonably available computerized

account records), and to those persons in the Settlement Class whose emails are undeliverable, as determined by the Claims Administrator. In addition, a Long-Form Notice was posted on the Settlement website operated by the Claims Administrator. A specific toll-free phone number for Class Members to call the Settlement Administrator regarding any questions about this Settlement was also established. Any objections to the Settlement or requests for exclusion from the Settlement were to be postmarked by July 16, 2019 [Doc. 29].

D. Class Counsel's Substantial Efforts for the Benefit of the Class

Although the Parties settled this case in the pre-trial stage, Class Counsel have invested a substantial amount of time and resources investigating and litigating this action. Lenox Decl., ¶¶4. Tasks performed by Class Counsel thus far include: (1) investigating the claims; (2) meeting and communicating regularly with Dwyer; (3) researching and drafting the Complaint and Amended Complaint; (4) reviewing Dwyer's documents and preparing them for production; (5) drafting responses to written discovery; (6) drafting discovery requests and a protective order; (7) negotiating the production of Electronically-Stored Information ("ESI") and hard copy documents by Snap Fitness; (8) reviewing more than 1,000 pages of documents from Snap Fitness; (9) researching and responding to Snap Fitness' opposition to Dwyer's Motion for Leave to Amend the Complaint; (10) drafting a mediation statements and hours of subsequent communications with Bill Hawkins; (11) drafting the Settlement Agreement; (12) researching and drafting the preliminary approval brief; Preliminary Approval Order, Proposed Final Order and review of class notices; (13) attending the preliminary approval teleconference; (14) drafting and execution of the Amendment to the Settlement Agreement; (15) drafting the motion to amend the Court's preliminary approval order; (16) working with the claims administrator and Snap Fitness to develop the settlement website; (17) overseeing administration of the Settlement;

and (18) working with defense counsel to address issues arising in the Settlement. *Id*.

Class Counsel have performed this work without compensation for their time and paid substantial out-of-pocket expenses in order to position this case for settlement. *Id.* ¶5. Before taking on this case, Dwyer and Class Counsel negotiated a customary contingency fee, with the understanding that this amount was an appropriate incentive for Class Counsel to take on the financial risks involved in the representation. *Id*. Class Counsel also agreed to advance all costs of this litigation. *Id*. In the event that Class Counsel did not successfully resolve this matter or prevail at trial and any related appeals, Class Counsel would have been paid nothing.

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure expressly authorizes a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Here, Snap Fitness has agreed to pay Dwyer's reasonable attorneys' fees, costs expenses, and a service award as part of the relief afforded under the Settlement Agreement. Snap Fitness agreed not to object to the request so long as it did not cumulatively exceed $350,000 [Doc. 28, Exhibit 2, Section V]. "When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Moreover, "[n]egotiated and agreed-upon attorneys fees as part of a class action settlement are encouraged as an 'ideal' toward which parties should strive." *Adams v. Eagle Financial Services*, No. 1:14cv656, (S.D. Ohio December 18, 2015) (Beckwith, J.) (citing *Bailey v. AK Steel Corp.*, No. 1:06-CV-468, 2008 WL 553764, at *1 (S.D. Ohio Feb. 28, 2008).

When assessing the reasonableness of a fee petition, district courts engage in a two-part analysis. *Dillow v. Home Care Network*, No. 1:16cv612, 2018 WL 4776977, at *4 (S.D. Ohio

October 3, 2018) (Black, J.) (citing *In re Cardinal Health Inc. Sec. Litig*., 528 F.Supp.2d 752, 760 (S.D. Ohio 2007). First, the district court determines the method for calculating fees: either the percentage of the fund approach or the lodestar approach. *Id*. (citation omitted). Second, the court must analyze the six factors set forth by the Sixth Circuit in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974). *Id*. When Plaintiff's request for attorneys' fees and expenses is evaluated under this standard, it clearly passes muster.

A. Attorney's Fees Are Appropriate Under The Percentage of Fund Method

"In the Sixth Circuit, district courts have the discretion to 'determine the appropriate method for calculating attorneys' fees in light of the unique characteristics of class actions in general, and the particular circumstances of the actual cases pending before the Court' using either the percentage or lodestar approach." *Norcal Tea Party Patriots v. IRS*, No. 1:13cv341, 2018 WL 3957364, at*1 (S.D. Ohio Aug. 17, 2018) (Barrett, J.) (quoting *In re Cardinal Health Inc. Sec. Litig*., 528 F.Supp.2d 752, 761 (S.D. Ohio 2007)). "In this district, 'the preferred method is to award a reasonable percentage of the fund, with reference to the lodestar and the resulting multiplier.'" *Id*. (quoting *Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *5 (S.D. Ohio July 11, 2014).

In this case, attorneys' fees and costs are being paid separately from the $2,920,000 settlement fund, and therefore the requested fees are not precisely a "percentage of the fund." However Judge Black encountered this exact same situation in *Dillow v. Home Care Network*, No. 1:16cv612, 2018 WL 4776977, at *4-5 (S.D. Ohio October 3, 2018), and ultimately adopted the percentage of the fund analysis as the appropriate measure for the reasonableness of fees where the fees are paid separately outside of the fund.

To determine the amount of the "fund" for purposes of this analysis, courts include all

amounts benefitting the class, including those amounts typically born by the class, such as attorneys' fees and notice and administration costs. *Id.* at *5. As the Sixth Circuit explained, 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). To determine the amount of the benefit conferred, courts look to the total amount made available to the class, rather than the amount ultimately claimed by class members. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480-81, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980).

In the Southern District of Ohio, "[a]ttorneys fees awards typically range from 20 to 50 percent." *See In re Broadwing, Inc. ERISA Litigation*, 252 F.R.D. 369, 380 (S.D. Ohio 2006). Citing *Broadwing*, this Court has held that 44 % and 50% of a settlement fund, "fall[] within the range of reasonable fees as a percentage of the settlement." *See Ranney v. American Airlines*, No. 1:08cv137, 2016 WL 471220, at *2 (S.D. Ohio Feb. 8, 2016) (Barrett, J.); *Norcal Tea Party Patriots v. IRS*, No. 1:13cv341, 2018 WL 3957364, at*1 (S.D. Ohio Aug. 17, 2018) (Barrett, J.) Other court in this district have similarly found fees within this range reasonable. See, e.g. *Palombaro v. Emery Federal Credit Union*, No. 1:15cv792, 2018 WL 5312687 at *4 (S.D. Ohio October 25, 2018) (Dlott, J.) (30% of settlement fund).[2]

Here, the requested fee of $338,352.55 is 11.5% of the $2,920,000 million settlement

[2] *Wright v. Premiere Courier*, No. 2:16cv420, 2018 WL 3966253, at *6 (S.D. Ohio August 17, 2018) (Watson, J.) (33% of settlement fund); *Arledge v. Dominoes Pizza*, No. 3:16-cv-386, 2018 WL 5023950, at *4 (S.D. Ohio October 17, 2018) (Rice, J.) (22.6% of total benefit, or 29.4% of amount paid directly to the class); *Dillow v. Home Care Network*, No. 1:16cv612, 2018 WL 4776977, at *5 (S.D. Ohio October 3, 2018) (Black, J.) (24% of total benefit, or 33% of amount paid directly to the class); *Rikos v. Proctor & Gamble*, No. 1:11-cv-226, 2018 WL 2009681, at *9 (S.D. Ohio Apr. 30, 2018) (Black, J.) (20.4% of settlement fund); *Kimber Baldwin Designs v. Silv Communications*, No. 1:16cv448, 2017 WL 5247538, at *5 (S.D. Ohio November 13, 2017) (Black, J.) ((33% of settlement fund).

pool for the Class. If attorneys' fees were included as part of the total benefit to the Class, then the percentage would be 10.3%. This does not even take into account the costs associated with claims administration, which would increase the denominator of the equation, thereby decreasing the percentage even further. The award in this case is well below the "benchmark" percentage of 25% that is commonly awarded, well below the 20-50% range identified in *Broadwing,* and well below actual awards in the Southern District. *In re Polyurethane Foam Antitrust Litig*., 178 F. Supp. 3d 635, 641 (N.D. Ohio 2016) (noting benchmark of 25% with normal range of 20-30%). By any measure, Class Counsel's fees are reasonable under this method.

B. The Award of Attorneys' Fees Is Reasonable Under the *Ramey* Factors

In reviewing the reasonableness of a fee award, this Court considers six 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. *Norcal Tea Party Patriots v. IRS*, No. 1:13cv341, 2018 WL 3957364, at*1 (S.D. Ohio Aug. 17, 2018) (Barrett, J.) (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974).

1. The Benefits Received Were Significant

After two years of hard-fought litigation, Plaintiff ultimately achieved an exceptional settlement in the amount of $2,920,0000 for the benefit of the Settlement Class. Under the Settlement, class members are provided an opportunity to recover nearly 65% of their CEFs paid in 2017 and 2018, and members of the PECA Sub-Class are additionally entitled to $5.[3] The

[3] Class Members can expect to receive between $.01 (some class members were reimbursed by the franchisee) and $115.

settlement provides tangible relief to Class Members now and eliminates the risk and uncertainty parties would otherwise incur if this litigation were to continue. Without Class Counsel's vigorous prosecution of these claims, including the careful analysis of authorities, review of documents, and vigorous prosecution of the claims, this exceptional outcome could not have been achieved. Settlement Class Members would have never pursued individual claims because they were unaware of the law and/or the relatively small individual damage claims rendered such action impractical. Absent settlement, the parties would have engaged in extensive discovery (including written discovery and multiple depositions), and contested class certification, and dispositive motions on merits and damages issues. *See, e.g. Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *6 (S.D. Ohio July 11, 2014) (Black, J.) (acknowledging risks if case not settled).

2. Society Should Award Fees to Incentivize Attorneys

"Reasonable attorneys' fees provide an important incentive in attracting competent counsel and deterring abusive conduct." *Palombaro v. Emery Federal Credit Union,* 1:15cv792, 2018 WL 5312687 at *9 (S.D. Ohio October 25, 2018) (Dlott, J.). As the Court stated in *Arledge v. Dominoes Pizza*, No. 3:16-cv-386, 2018 WL 5023950, at *4 (S.D. Ohio October 17, 2018) (Rice, J.)

> "the Court finds that there is a benefit to society in ensuring that claimants with smaller claims may pool their claims and resources, and attorneys who take on class action cases enable this. . . Many of the class members would not have been able or willing to pursue their claim individually, and many would likely not even be aware they had a claim against Defendant. Society has a stake in rewarding attorneys who achieve a result that the individual class members probably could not obtain on their own."

(citations omitted).[4] Moreover, "[t]here is a strong public interest in encouraging settlement of

[4] See also, *Kritzer v. Safelite Solutions, LLC*, No. 2:10-CV-0729, 2012 WL 1945144, at *9 (S.D. Ohio May 30,

complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *City of Plantation Police Officers Employees Retirement System v. Jeffries*, No. 2:14–cv–1380, 2014 WL 7404000, at *11 (S.D. Ohio Dec. 30, 2014) (King, J.)

Class Counsel furthered the public interest by challenging Defendant's practices both in charging the CEF to consumers across the country and in signing up new members in Ohio; by issuing class notice for the benefit of Settlement Class Members; and by providing a significant remedy. See *Aarons v. BMW of N. America, LLC*, No. CV 11-7667 PSG, 2014 WL 4090564, at *14 (C.D. Cal., Apr. 29, 2014) (noting that "Class Counsel advanced the public interest by enforcing consumer protection laws…."). While Defendant denies liability for these practices, it ultimately revised its template membership agreements both nationally and in Ohio, providing a further benefit to the public interest. And, as demonstrated by Snap Fitness' engagement of premier and highly skilled defense counsel, Snap Fitness had ample resources to vigorously oppose this litigation. This factor supports the reasonableness of the requested fee award.

3. The Services Were Rendered on a Contingent Fee Basis

"The fact is that, despite the most zealous and competent of efforts, success is never guaranteed. Class Counsel face serious risk since judicial review is unpredictable." *Lavin v. Husted*, No. 1:10CV1986, 2015 WL 5124793, at *1 (N.D. Ohio Aug. 31, 2015). Class Counsel agreed to accept this case on a completely contingent basis, and therefore, in the years that this case has been litigated, Class Counsel have not been paid for the work they have performed or reimbursed for the expenses they have incurred. Attorneys may be entitled to a larger fee when

2012) (citing *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 765–66 (S.D. Ohio 2007)); *Moore v. Aerotek, Inc.*, Case No. 2:15-cv-2701, 2:15-cv-1066, 2017 WL 2838148, at *8 (S.D. Ohio June 30, 2017)

their compensation is contingent in nature. *See Hamlin v. Charter Twp. of Flint*, 165 F.3d 426, 438 (6th Cir. 1999) ("In other words, the reasonable hourly rate may be adjusted *upward* to account for the risk of non-payment inherent in a contingency fee arrangement.") (Emphasis in original); *Vizcaino v. Microsoft*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

Class Counsel's request for the application of a fee enhancement (discussed below) for purposes of a cross-check stems from the "established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases." *Int'l Bd. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc*. No. 3:09-CV-00419-MMD, 2012 WL 5199742, at *4 (D. Nev. Oct. 19, 2012) (quoting *In re Washington Pub. Power Supply Sys. Sec. Litig*., 19 F.3d 1291, 1299 (9th Cir. 1994)). Indeed, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingency basis, expended thousands of hours, yet received no remuneration whatsoever despite their diligence and expertise. *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990) ("Class counsel undertook a substantial risk of absolute non-payment in prosecuting this action, for which they should be adequately compensated" when "[c]lass counsel undertook their representation upon a fully contingent basis, entailing a risk of over a million dollars of attorney time, and over one hundred thousand dollars in costs."). Therefore, any fee award has always been at risk and completely contingent on the result achieved and on this Court's discretion in awarding fees and expenses.

At the time Class Counsel took on this case, the outcome was uncertain. There were risks that a class would not be certified, or that Snap Fitness as the franchisor could not be held liable for the acts of its franchisees. Class Counsel invested 315.5 hours with a significant risk of non-recovery, which supports the requested fee award. *See* Lenox Decl., Ex. 1; Giles Decl., Ex. 1.

See, *Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *5 (S.D. Ohio July 11, 2014) (Black, J.) ("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.").

4. The Lodestar Cross-Check Supports the Fee Award

A percentage of the fund cross-check is optional, and the Sixth Circuit has repeatedly upheld a district court's determination that a fee award is reasonable based solely on a lodestar analysis. *Gascho v. Global Fitness Holdings*, LLC, 22 F.3d 269, 281 (6th Cir. 2016). Nevertheless, a lodestar review also supports Class Counsel's fee request. The lodestar method accounts for the amount of work performed by counsel and ensures that counsel is fairly compensated for the results achieved. *See Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515–16 (6th Cir. 1993). In determining an appropriate "lodestar" figure, a court multiplies the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Bldg. Serv. Local 47 Cleaning Contractors Pension Plan v. GrandRaceway*, 46 F.3d 1392, 1401 (6th Cir. 1995) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The court may then adjust the "lodestar" to reflect relevant considerations peculiar to the subject litigation. *Adcock–Ladd v. Sec'y of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000).

a. Class Counsel Reasonably Expended Over 315 Hours

This litigation has been handled in an efficient, streamlined manner by all involved on Plaintiff's side. During the course of the litigation, Class Counsel maintained contemporaneous and detailed time records, which include a detailed description of all expenses incurred and work performed. As reflected in the attached summaries,[5] the total hours reasonably expended by the

[5] Because of the large volume of bills generated over the course of the litigation, and because the billing records contain significant and repeated discussions of attorney work product that would need to be aggressively redacted to

Class Counsel during the two years that this litigation has been pending is 315.5. *See* Lenox Decl., Ex. 1; Giles Decl., ¶ Ex. 1. In addition, Class Counsel will conduct significant additional work following this filing. In addition to responding to possible objectors and preparing for and presenting at the fairness hearing and addressing any appeals, Class Counsel will be required to oversee the administration of the Settlement, and respond to questions or issues raised by their Class Members.

b. Class Counsel's Hourly Rates are Reasonable

Class Counsel's requested rates are also reasonable. In determining a reasonable hourly rate, courts may look at "national markets, an area of specialization, or any other market they believe is appropriate to fairly compensate attorneys." *McHugh v. Olympia Ent., Inc.*, 37 F. App'x 730, 740 (6th Cir. 2002) (citing *Louisville Black Police Officers Org. v. City of Louisville*, 700 F.2d 268, 278 (6th Cir. 1983)). Class Counsel's rates of $475 per hour reflect rates that are normally charged by Class Counsel for work of this nature and that have been approved by prior courts both within the Sixth Circuit and the Southern District of Ohio. *See* Lenox Decl., ¶ 8; Giles Decl., ¶8; *see also Palombaro v. Emery Federal Credit Union*, 1:15cv792, 2018 WL 5312687 at *11 (S.D. Ohio October 25, 2018) (Dlott, J.) (holding rates as high as $540 per hour reasonable); *Merkner v. AK Steel Corp.*, No. 1:09-CV-423-TSB, 2011 WL 13202629, at *4–6 (S.D. Ohio Jan. 10, 2011) (Black, J.) (holding rate of $475 per hour for senior attorneys was

account for the possibility that the Court declines to grant final approval to the Settlement and the case returns to active litigation, Plaintiff has not publicly filed their detailed time and expense entries. Notably, courts do not require counsel to submit detailed time records in support of a lodestar fee application. *See City of Plantation Police Officers' Employees' Ret. Sys. v. Jeffries*, No. 2:14-CV-1380, 2014 WL 7404000, at *13 (S.D. Ohio Dec. 30, 2014) (concluding that the number of hours expended on the litigation were reasonable based on summary charts provided by plaintiffs' counsel and the court's knowledge of "the complexity of the case, the use of experts, the nature and quality of the filings, the time constraints…, and the results ultimately achieved"); *In re Ford Motor Co. Spark Plug & Three Valve Engine Products Liab. Litig.*, No. 1:12-MD-2316, 2016 WL 6909078, at *10 (N.D. Ohio Jan. 1, 2016) (approving fee based upon summaries). However, in case the Court believes review of these records would be useful, Plaintiff will provide them to the Court for in camera review. Charts including each of Class Counsel's lodestar and expenses were attached to the Lenox and Giles Declarations as Exhibit 1.

reasonable)[6]; *Kimber Baldwin Designs v. Silv Comms.*, No. 1:16cv448, 2017 WL 5247538, at *6 (S.D. Ohio Nov. 13, 2017) (Black, J.) (average rate of $435 for purposes of calculating lodestar); *Thorn v. Bob Evans Farms*, No. 2:12-cv-00768, 2016 WL 8140448 at *3 (S.D. Ohio Feb. 26, 2016) (King, J.) (average rate of $472 per hour for purposes of calculating lodestar); *City of Plantation Police Officers Employees Retirement System v. Jeffries*, No. 2:14–cv–1380, 2014 WL 7404000, at *11 (S.D. Ohio Dec. 30, 2014) (King, J.) (capping plaintiff's counsel's hourly rates at $625 per hour).

Some Courts in the Southern District of Ohio have applied the "Rubin Committee Rate" for purposes of determining whether rates are reasonable. If the Rubin Rate were used, then both Bryce Lenox's and Brian Giles' rate would be $477 in 2019. In sum, regardless of what method is chosen, Class Counsel's rate of $475 per hour is inherently reasonable, particularly given that this was a nationwide class action, Class Counsel's combined 40 years of experience litigating class actions and complex litigation, and the national scope of Class Counsel's practices. Lenox Decl., ¶2; Giles Decl. ¶2.

c. A Lodestar Multiplier of 2.2 is Appropriate

The total lodestar for Class Counsel's past time in this case is $149,862.50. Lenox Decl., Ex. 1; Giles Decl., Ex. 1. However, the Court may enhance the lodestar with a separate multiplier that can serve as a means to account for the risk an attorney assumes in undertaking a case, the quality of the attorney's work product, and the public benefit achieved. *Gascho v. Global Fitness*

[6] In *Merkner*, the Court noted that under the "Laffey Matrix," which is a noted authority for fee-setting, the current hourly rates [in 2011] could be as high as $709/hour depending on which version of the matrix was used. See generally *Laffey v. Northwest Airlines, Inc*., 572 F.Supp. 354 (D.D.C. 1983), rev'd in part on other grounds, 746 F.2d (D.C. Cir. 1984), cert, denied, 472 U.S. 1021 (1985); *Jordan v. Michigan Conf. of Teamsters Welfare Fund*, 2000 WL 33321350, *6 (E.D. Mich. Sept. 28, 2000) (noting Laffey Matrix). If this Court used the USAO Attorney Fee Rate, which is based upon a modified Laffley Matrix, the rate for both Bryce Lenox and Brian Giles would be $549 per hour. See https://www.justice.gov/usao-dc/file/796471/download ; *Owner Operator Independent Driving Assn. v. Arctic Express, No. 97cv-750*, 2016 WL 5122565 at *7 (S.D. Ohio Sept. 21, 2016) (Marbley, J.) (using Laffley Matrix).

Holdings, LLC, 22 F.3d 279, 280 (6th Cir. 2016). Courts recognize that class counsel "should not be 'punished' for efficiently litigating this action." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig*., No. 2672 CRB (JSC), 2017 WL 1352859, at *6 (N.D. Cal. Apr. 12, 2017). "A positive multiplier rewards … Class Counsel for its efforts in achieving a swift settlement, while recognizing that counsel's efficiency actually reduced its lodestar." *Id*. *See also the Bowling v. Pfizer, Inc*., 922 F. Supp. 1261, 1282 (S.D. Ohio 1996) (weighing fact that "Counsel settled this case in swift and efficient fashion" in awarding fees).

Here, the $338,352.55 in fees requests, when compared to the $149,862.50 lodestar amount, yields a 2.2 multiplier. This figure is well within the range of multipliers awarded by the Southern District of Ohio. See *Merkner v. AK Steel Corp.*, No. 1:09-CV-423-TSB, 2011 WL 13202629, at *4–6 (S.D. Ohio Jan. 10, 2011) (holding 5.3 multiplier reasonable where $9.1 million in fees sought with lodestar of $1,699,467); *In re Cardinal Health Inc. Sec. Litig.*, 528 F.Supp.2d 752, 767 (S.D.Ohio 2007) (lodestar multiplier of six); *Arledge v. Dominoes Pizza*, No. 3:16-cv-386, 2018 WL 5023950, at *5 (S.D. Ohio October 17, 2018) (Rice, J.) (2.57 multiplier reasonable); *Dillow v. Home Care Network*, No. 1:16cv612, 2018 WL 4776977, at * 7 (S.D. Ohio October 3, 2018) (Black, J.) (2.9 multiplier).[7]

A 2.2 multiplier is imminently reasonable in this case based upon the excellent result Dwyer and Class Counsel obtained for the Class. Under the Settlement, class members are provided an opportunity to recover nearly 65% of their Club Enhancement Fees paid in 2017 and 2018, and members of the PECA Sub-Class are additionally entitled to $5. Indeed, to not

[7] See also, *Thorn v. Bob Evans Farms*, No. 2:12-cv-00768, 2016 WL 8140448 at *3 (S.D. Ohio Feb. 26, 2016) (King, J.) (multiplier of 2.01); *Castillo v. Morales, Inc.*, No. 2:12- cv-650, 2015 WL 13021899, at *7 (S.D. Ohio Dec. 22, 2015) (Marbley, J.) (2.5 multiplier); *City of Plantation Police Officers Employees Retirement System v. Jeffries*, No. 2:14–cv–1380, 2014 WL 7404000, at *19 (S.D. Ohio Dec. 30, 2014) (King, J.) (3.0 multiplier); *Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *6 (S.D. Ohio July 11, 2014) (Black, J.) (2.57 multiplier).

recognize a multiplier in this case would penalize Class Counsel for achieving a great result with maximum efficiency. See *Rivera v. Agreserves, Inc*., No. 1:15-CV-00613-JLT, 2017 WL 445710, at *13 (E.D. Cal. Feb. 1, 2017) (applying 2.69 multiplier based in part on argument that "[a]warding Plaintiff a lesser amount of fees based on a lower multiplier would penalize Plaintiff's counsel for achieving a stellar result with maximum efficiency").

5. The Complexity of the Litigation

This was a complex consumer class action that involved complicated issues of fact and law. This case also involved difficult issues involving consumer protection statues, tort and contract law in multiple states, which were further complicated by the fact that Snap Fitness was a franchisor, while the CEFs were charged by its franchisees. See Lenox Decl., ¶10. Thus, complex issue of law and fact surrounded Snap Fitness' liability for actions of its franchisees. Moreover, Snap Fitness challenged personal jurisdiction of all non-Ohio claims based upon recent United States Supreme Court precedent *Bristol–Myers Squibb Co. v. Sup. Ct. of Cal.*, 137 S.Ct. 1773, 1781–82, 198 L.Ed.2d 395 (2017), the applicability of which this Court has not yet addressed. As such, this case, like all class actions, was complex.

6. The Skill and Standing of Counsel On Both Sides Is Superior

Courts recognize that the "prosecution and management of a complex national class action requires unique legal skills and abilities." *In re Omnivision Techs., Inc. Sec. Litig*., No. 5:11-CV-05235-RMW, 2015 WL 3542413, at *2 (N.D. Cal. June 5, 2015) (citation omitted). The reputation, experience and skill of Class Counsel were essential to the success in this litigation. Had the Parties not reached a settlement, they would have continued to debate complex legal questions before this Court and possibly the Sixth Circuit. At no time has Snap Fitness ever conceded the appropriateness of class certification (other than for settlement

purposes), or the existence of damages. Given the significant risks and uncertainty associated with this complex class action, it is a testament to Class Counsel's skill, creativity, and determination that they were able to negotiate an excellent settlement providing substantial relief.

The quality and vigor of opposing counsel is also important in evaluating the services rendered by Class Counsel. This case was vigorously defended by counsel experienced at defending national franchise class actions. During this litigation, Snap Fitness was primarily represented by the firm of Faegre Baker Daniels, with 750 legal and consulting professionals in 13 cities. Snap Fitness was represented locally by Taft Stettinius & Hollister, a well-known, deeply rooted Cincinnati firm with offices in nine cities. That Class Counsel achieved the Settlement for the Class in the face of formidable and talented legal opposition further evidences the quality of their work.

Class Counsel's qualifications are set forth in their firm resumes and declarations attached to the Memorandum in Support of Preliminary Approval [Doc. 28], which are incorporated herein. As these qualifications demonstrate, Class Counsel is highly skilled in handling major complex litigation and has extensive experience litigating class actions. Class Counsel have achieved a number of favorable decisions in complex class actions. These results not only demonstrate that Class Counsel's skill level supports the requested fee, but also positioned the Class for a strong Settlement in this case.

C. Plaintiffs' Requested Expenses Are Reasonable and Should Be Granted.

The Settlement Agreement provides that Defendants will pay Plaintiffs' reasonable costs and expenses separate and apart from the settlement award. Class Counsel represented that it would not apply for attorneys' fees and costs that would exceed $350,000 [Doc. 28, Ex. 2,

Section V]. To date, Class Counsel has incurred, and seeks reimbursement of, $8,147.45 in costs and expenses, which represent the filing fee in this case ($400) and the mediation fee of Bill Hawkins ($7,747.45). Lenox Decl., ¶9. These expenses are recoverable because they are the type of expenses typically billed by attorneys to paying clients in the marketplace and include normal costs incurred in connection with litigation. These expenses were reasonable and necessary to prosecute this litigation, critical in resolving the dispute, and Class Counsel advanced these expenses without assurance that they would be recouped. Accordingly, Class Counsel are entitled to this expense reimbursement.

D. The Court Should Approve the Requested Class Representative Service Awards

Dwyer seeks a $3,500 service award as compensation for his time and effort associated with his participation in this Lawsuit, as contemplated by the Settlement Agreement. In determining the propriety of incentive awards, the Court should consider: "(1) the extent to which actions taken by the class representative protect the interests of the entire class and whether those actions resulted in a substantial benefit to the entire class; (2) whether the class representatives assumed substantial and indirect financial risk; and (3) the amount of time and effort expenses by the class representatives in pursuit of the litigation." *Norcal Tea Party Patriots v. IRS*, No. 1:13cv341, 2018 WL 3957364, at *2 (S.D. Ohio Aug. 17, 2018) (Barrett, J.) (quoting *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991)). "[A]n incentive award is an effective tool to encourage a class member to become a class member and to reward their individual efforts taken on behalf of the class." *Id*. (quoting *Estep v. Blackwell*, 2006 WL 3469569, at *6 (S.D. Ohio Nov. 29, 2006)).

"Incentive awards, where appropriate, generally range from a few thousand dollars to $85,000." *Id*. (quoting *Liberte Capital Group v. Capwill*, No. 5:99 CV 818, 2007 WL 2492461

(N.D. Ohio Aug. 29, 2007) (citing collection of supporting authority). This Court has approved incentive awards of $10,000, and other Courts in this District have awarded similar amounts. *Thorn v. Bob Evans Farms, Inc.*, 2016 WL 8140448 (S.D. Ohio Feb. 26, 2016) (King, J.) (awarding $7,500 incentive award); *Heibel v. U.S. Bank N.A.*, No. 2:11–cv–593, ECF No. 164 (S.D. Ohio May 21, 2014) (approving incentive payments of $5,000 to original named plaintiffs); *Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *6 (S.D. Ohio July 11, 2014) (approving $10,000 incentive payment).

Among other things, Plaintiffs: (1) met with Class Counsel at the outset of the case; (2) assisted with investigation of the facts; (3) reviewed the complaint prior to filing; (4) worked with Class Counsel to respond to written discovery; (5) prepared for and attended the all-day mediation; (6) consulted with Class Counsel during the course of settlement negotiations; and (7) regularly communicated with Class Counsel and provided input and answers to questions whenever needed. Lenox Decl., ¶11 ; Declaration of Thomas Dwyer ("Dwyer Decl."), ¶¶3-6, attached as Exhibit 3. His continuous efforts made settlement possible, which not only served to protect the rights and interests of more than 141,000 class members, but also allows for distribution of over $2.9 million in relief to the Class. Accordingly, the Court should approve the requested services awards as commensurate with Dwyer's role in the case.

IV. CONCLUSION

Plaintiff respectfully requests that the Court grant Class Counsel and Plaintiff's request for an attorney fee award of $338,352.55, expenses reimbursement of $8,147.45, and a service awards to the Class Representative of $3,500.

Respectfully submitted,

/s/ Bryce Lenox
Bryce A. Lenox (0069936)
THE LAW OFFICE OF BRYCE A. LENOX, ESQ. LLC
3825 Edwards Road, Suite 103
Cincinnati, Ohio 45208
(513) 520-9829
bryce@brycelenoxlaw.com

/s/ Brian T. Giles
Brian T. Giles (0072806)
THE LAW OFFICE OF BRIAN T. GILES LLC
1470 Apple Hill Rd.
Cincinnati, Ohio 45230
(513) 379-2715
Brian@GilesFirm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on July 2, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record in this matter who are registered on CM/ECF.

/s/ Bryce A. Lenox
Bryce A. Lenox

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

THOMAS DWYER **Individually and on behalf of all others similarly situated** **Plaintiff,** **vs.** **SNAP FITNESS, INC.** **Defendant.**	**Case No. 1:17-cv-00455-MRB** **Judge Michael R. Barrett** **DECLARATION OF BRYCE A. LENOX IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARD**

I, Bryce A. Lenox, declare as follows:

1. I am founder of The Law Offices of Bryce A. Lenox, Esq., LLC. Previously, I was a partner in the law firm of Giles & Lenox LLC ("Giles Lenox"). In both capacities, I have represented and continue to represent Plaintiff Thomas Dwyer ("Named Plaintiff" or "Dwyer") and the Class (collectively, "Plaintiffs").

2. I received my Juris Doctorate degree from University of Dayton School of Law in 1998 and have practiced in the areas of complex civil litigation, including class action litigation, for over 20 years. I am a member of good standing with the Ohio Supreme Court and the Kentucky Supreme Court and have never been the subject of any disciplinary proceedings. I am admitted, or have been admitted in the past, to the following federal courts:

- Sixth Circuit Court of Appeal
- Seventh Circuit Court of Appeals
- United States District Court for Southern District of Ohio
- United States District Court for Northern District of Ohio
- United States District Court for the Eastern District of Kentucky
- United States District Court for Western District of Kentucky
- United States District Court for the Northern District of Illinois

3. I have served as lead or co-lead counsel on numerous nationwide class actions and have substantial experience litigating class actions and complex civil litigation.

4. As Class Counsel in this matter, I along with Brian Giles, oversaw daily work on this case and am intimately aware of my firm's representation of the Plaintiff in this matter. I have worked on this case since it was initiated in 2017 and have expended considerable time and expense in pursuit of this case, including (1) investigating the claims; (2) meeting and communicating regularly with Dwyer; (3) researching and drafting the Complaint and Amended Complaint; (4) reviewing Dwyer's documents and preparing them for production; (5) drafting responses to written discovery; (6) drafting discovery requests and a protective order; (7) negotiating the production of Electronically-Stored Information ("ESI") and hard copy documents by Snap Fitness; (8) reviewing more than 1,000 pages of documents from Snap Fitness; (9) researching and responding to Snap Fitness' opposition to Dwyer's Motion for Leave to Amend the Complaint; (10) drafting a mediation statements and hours of subsequent communications with Bill Hawkins; (11) drafting the Settlement Agreement; (12) researching and drafting the preliminary approval brief; Preliminary Approval Order, Proposed Final Order and review of class notices; (13) attending the preliminary approval teleconference; (14) drafting and execution of the Amendment to the Settlement Agreement; (15) drafting the motion to amend the Court's preliminary approval order; (16) working with the claims administrator and Snap Fitness to develop the settlement website; (17) overseeing administration of the Settlement; and (18) working with defense counsel to address issues arising in connection with the Settlement. Class Counsel has expended substantial resources to litigate this case at the opportunity cost of working on other matters.

5. At all times, Class Counsel have pursued this matter on a contingency fee basis and has not been paid any fees to date nor has it been reimbursed for any litigation costs as of completing this Declaration. Class Counsel understood the risk of pursuing this case without any guarantee of compensation. Before taking on this case, Dwyer and Class Counsel negotiated a customary contingency fee, with the understanding that this amount was an appropriate incentive for Class Counsel to take on the financial risks involved in the representation. Class Counsel also agreed to advance all costs of this litigation.

6. Attached as Exhibit 1 to this Declaration is a summary chart of the legal work performed on this case by me through July 2, 2019. Exhibit 1 was prepared from the daily time records routinely prepared and maintained by my firm, along with my former firm. I exercised billing judgment when preparing Exhibit 1 and included only that legal work which was essential to the case; I omitted all duplicative time entries and used my discretion to reduce some time entries that appeared excessive relative to work performed. Therefore, I believe that the amount of time spent prosecuting this case, as reflected in Exhibit 1, was necessary, reasonable, and non- duplicative.

7. Subject to the reductions in time described above, I can verify that the information set forth in Exhibit 1 is a true and accurate statement of the time and work performed in this case by me, both with my current firm and while at Giles Lenox, through July 2, 2019.

8. The rate I seek in this litigation is $475 an hour. I am familiar with hourly rates charged by attorneys in Cincinnati. It is my opinion that the hourly rates charged by my firm are consistent with the rates charged by attorneys of comparable experience and expertise in the Cincinnati area, for comparable work in complex class action litigation, involving nationwide

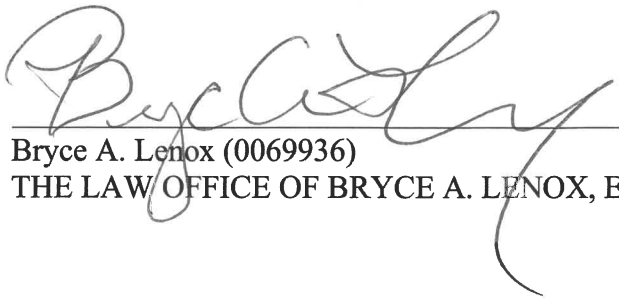
claims. Moreover, the hourly rates sought by my firm and former firm in this case are equal to rates that have recently been approved by Ohio federal district courts.

9. Giles Lenox incurred out-of-pocket expenses on behalf of the Class. Those expense records demonstrate that Giles Lenox incurred $8,147.45 in costs and expenses, which represent the filing fee in this case ($400) and the mediation fee of Bill Hawkins ($7,747.45). I reviewed these expense records for this litigation, and I believe that these expenses were necessary, reasonable, and directly related to this litigation. The expenses include those items for which the firm ordinarily bills its clients.

10. Based upon my experience in other class actions, including consumer class actions, I believe that this litigation (undertaken on a completely contingent basis) was complex from both a legal and technical perspective. I also believe that the skill and diligence displayed by Class Counsel was largely responsible for the outstanding result achieved. As such, I believe that this Settlement is fair, adequate, reasonable, and is in the best interests of, and will provide significant benefits to, the Class Members.

11. The Named Plaintiff in this matter, Thomas Dwyer, was actively involved in this litigation. Among other things, he (1) met with Class Counsel at the outset of the case; (2) assisted with investigation of the facts; (3) reviewed the complaint prior to filing; (4) worked with Class Counsel to respond to written discovery; (5) prepared for and attended the all-day mediation; (6) consulted with Class Counsel during the course of settlement negotiations; and (7) regularly communicated with Class Counsel and provided input and answers to questions whenever needed. Because of his attention to this matter and participation as an exemplary Class Representative, Class Counsel recommends that Mr. Dwyer be awarded $3,500 as a Service Award.

Executed on this 2nd day of July, 2019 in Cincinnati, Ohio.



Bryce A. Lenox (0069936)
THE LAW OFFICE OF BRYCE A. LENOX, ESQ. LLC

EXHIBIT 1

Dwyer v. Snap Fitness, Inc.

Time and Expenses as of July 2, 2019 for
The Law Office of Bryce A. Lenox, Esq. LLC and
Giles & Lenox LLC

Time:

Law Office of Bryce A. Lenox, Esq.	**Hourly Rate**	**Total Hours**	**Lodestar**
Bryce A. Lenox (A)	$475	**81.2**	**$38,570.00**

Giles & Lenox, LLC	**Hourly Rate**	**Total Hours**	**Lodestar**
Bryce A. Lenox (A)	$475	183.5	$87,162.50
Brian T. Giles (A)	$475	34.0	$16,150.00
TOTAL		**217.5**	**$103,312.50**

TOTAL LODESTAR **$141,882.50**

Giles & Lenox Expenses:

Filing Fee	**Mediator Fee**	**TOTAL**
$400.00	$7,745.45	**$8,147.45**

TOTAL LODESTAR & EXPENSES: **$150,029.95**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

THOMAS DWYER	**Case No. 1:17-cv-00455-MRB**
Individually and on behalf of all others similarly situated	**Judge Michael R. Barrett**
Plaintiff,	**DECLARATION OF BRIAN T. GILES IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARD**
vs.	
SNAP FITNESS, INC.	
Defendant.	

I, Brian T. Giles, declare as follows:

1. I am founder of The Law Offices of Brian T. Giles, LLC. Previously, I was a partner in the law firm of Giles & Lenox LLC ("Giles Lenox"). In both capacities, I have represented and continue to represent Plaintiff Thomas Dwyer ("Named Plaintiff" or "Dwyer") and the Class (collectively, "Plaintiffs").

2. I received my Juris Doctorate degree from University of Kentucky School of Law in 2000 and have practiced in the areas of complex civil litigation, including class action litigation, for approximately 20 years. I am a member of good standing with the Ohio Supreme Court and the Florida Supreme Court. I am admitted, or have been admitted in the past, to the following federal courts:

- Sixth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- United States District Court for Southern District of Ohio
- United States District Court for Northern District of Ohio
- United States District Court for the Middle District of Florida
- United States District Court for the Southern District of Florida
- United States District Court for the Northern District of Florida

3. I have served as lead or co-lead counsel on numerous nationwide class actions and have substantial experience litigating class actions and complex civil litigation, including multiple cases that have resulted in payouts to class members in the United States District Court for the Southern District of Ohio.

4. As Class Counsel in this matter, I along with Bryce Lenox, worked on this case and am intimately aware of my firm's representation of the Plaintiff in this matter. I have worked on this case since it was initiated in 2017 and have expended time and expense in pursuit of this case, including extensively investigating the case, preparing and filing pleadings, negotiating with Snap Fitness's counsel in informal and formal settlement discussions and participating in a mediation to resolve the dispute. Class Counsel has expended substantial resources to litigate this case at the opportunity cost of working on other matters.

5. At all times, Class Counsel have pursued this matter on a contingency fee basis and has not been paid any fees to date nor has it been reimbursed for any litigation costs as of completing this Declaration. Class Counsel understood the risk of pursuing this case without any guarantee of compensation.

6. Attached as Exhibit 1 to this Declaration is a summary chart of the legal work performed on this case by me through July 2, 2019. Exhibit 1 was prepared from the daily time records routinely prepared and maintained by my firm, along with my former firm. I exercised billing judgment when preparing Exhibit 1 and included only that legal work which was essential to the case; I omitted all duplicative time entries and used my discretion to reduce some time entries that appeared excessive relative to work performed. Therefore, I believe that the amount of time spent prosecuting this case, as reflected in Exhibit 1, was necessary, reasonable, and non-duplicative.

7. Subject to the reductions in time described above, I can verify that the information set forth in Exhibit 1 is a true and accurate statement of the time and work performed in this case by me, both with my current firm and while at Giles Lenox, through July 2, 2019.

8. The rate I seek in this litigation is $475 an hour. I am familiar with hourly rates charged by attorneys in Cincinnati. It is my opinion that the hourly rates charged by my firm are consistent with the rates charged by attorneys of comparable experience and expertise in the Cincinnati area, for comparable work in complex class action litigation, involving nationwide claims. Moreover, the hourly rates sought by my firm and former firm in this case are equal to rates that have recently been approved by Ohio federal district courts.

10. Based upon my experience in other class actions, including consumer class actions, I believe that this litigation (undertaken on a completely contingent basis) was complex from both a legal and technical perspective. I also believe that the skill and diligence displayed by Class Counsel was largely responsible for the outstanding result achieved. As such, I believe that this Settlement is fair, adequate, reasonable, and is in the best interests of, and will provide significant benefits to, the Class Members.

Executed on this 2nd day of July, 2019 in Cincinnati, Ohio.

Brian T. Giles (0072806)
THE LAW OFFICE OF BRIAN T. GILES, LLC

Exhibit 1
Dwyer v. Snap Fitness, Inc.
Time and Expenses as of July 2, 2019 for
The Law Office of Brian T. Giles, LLC

Time:

Law Office of Brian T. Giles, LLC		**Hourly Rate**	**Total Hours**	**Lodestar**
Brian T. Giles	(A)	$475	16.8	**$7,980**

TOTAL LODESTAR **$7,980**

UNITED STATES DISTRICTCOURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS DWYER	:	**Case No. 1:17-cv-00455-MRB**
Individually and on behalf of all others similarly situated	:	**Judge Michael R. Barrett**
Plaintiff,	:	**DECLARATION OF THOMAS DWYER IN SUPPORT OF PLAINTIFF'S FOR ATTORNEYS' FEES, COSTS AND CLASS RESPRESENTATIVE SERVICE AWARDS**
vs.	:	
SNAP FITNESS, INC.	:	
Defendant.	:	

I, Thomas Dwyer, declare under penalty of perjury and pursuant to 28 U.S.C. 1746:

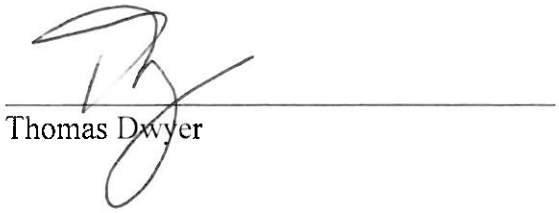
1. My name is Thomas Dwyer. I am over the age of 18 years old and competent to give this declaration.

2. I am a Plaintiff and Class Representative in the above captioned matter. Since this case was filed, I have at all times acted in the best interest of the Class members and vigorously prosecuted this litigation through my attorneys.

3. As the Class Representative, I vigorously prosecuted this action to maximize recovery for the Class. I have remained in close contact with my attorneys in order to fully execute my responsibilities. I met with and consulted with my attorneys prior to the filing of this case, carefully reviewed court filings including the complaint, participated in calls and communications with my attorneys, participated and assisted in responding to interrogatory and document request questions and responses, participated in mediation, and reviewed and approved the settlement proposals with my attorneys.

4. In all instances, I approved the actions taken by my attorneys after ensuring

Executed on June 27, 2019



Thomas Dwyer