

**IN THE COURT OF COMMON PLEAS OF  
ALLEGHENY COUNTY, PENNSYLVANIA**

IN RE: GATEWAY REHABILITATION  
CENTER, DATA BREACH LITIGATION

CIVIL DIVISION – CLASS ACTION  
Hon. Alan D. Hertzberg

This Document Relates To: All Cases

No. GD-22-014713

**JOINT DECLARATION OF GARY  
F. LYNCH AND BENJAMIN F.  
JOHNS IN SUPPORT OF  
PLAINTIFFS' APPLICATION FOR  
ATTORNEYS' FEES, COSTS, AND  
EXPENSES AND SERVICE  
AWARDS TO REPRESENTATIVE  
PLAINTIFFS**

Filed on behalf of Plaintiffs: MELISSA  
MASTERS, CANDACE COAST,  
MARK ASEL, JOE KENNEDY, JOHN  
LUCARELLI, DYLAN MORRIS, and  
CHRISTOPHER CICCOZZI

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SUPPORT OF PLAINTIFFS’ APPLICATION FOR ATTORNEYS’ FEES, COSTS, AND  
EXPENSES AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS**

We, Gary F. Lynch and Benjamin F. Johns, pursuant to 18 Pa. C.S.A. § 4904, hereby declare as follows:

1. We are partners at our respective law firms, Lynch Carpenter, LLP (“Lynch Carpenter”) and Shub Johns & Holbrook LLC (formerly Shub & Johns LLC) (“Shub”) and are Co-Lead Class Counsel<sup>1</sup> for the Plaintiffs and the conditionally-certified Settlement Class in the above-captioned consolidated matter against Defendant Gateway Rehabilitation Center d/b/a Gateway Rehab (“Gateway” or “Defendant”).

2. The statements herein are true to the best of our personal knowledge, information, and belief, based on Lynch Carpenter’s and Shub’s books and records, information received from its attorneys and staff, and our review of documents submitted by the other Class Counsel firms.

3. We served as Co-Lead Class Counsel for Plaintiffs and participated in the prosecution of this action. Plaintiffs’ counsel undertook this action on a contingent fee basis, meaning that to date we have received no payment for our services. We also advanced all litigation expenses, and to date have not received reimbursement for these from any source. Further, our

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<sup>1</sup> The capitalized terms used in this motion shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.

agreements with our clients provided that we would not charge them for fees or expenses in the event of an unsuccessful outcome.

4. We submit this affirmation in support of Plaintiffs' Application for Attorneys' Fees, Costs, and Expenses, and Service Awards to the Representative Plaintiffs in connection with the services rendered in the above-captioned consolidated action and the proposed class action settlement with Gateway.

#### **Summary of Plaintiffs' Allegations**

5. This case arises from a data security incident (the "Data Security Incident") experienced by Gateway Rehabilitation Center d/b/a Gateway Rehab ("Gateway") on or about June 13, 2022 and involved the potentially unauthorized access of personally identifiable information ("PII") and personal health information ("PHI") (collectively, "Personal Information").

6. On or around November 28, 2022, Dylan Morris filed the first of several putative class actions related to the Data Security Incident in the U.S. District Court for the Western District of Pennsylvania. *See Dylan Morris v. Gateway Rehabilitation Center, Inc.*, Case No. 22-cv-1678 (W.D. Pa.) ("*Morris*"). The *Masters* Action was subsequently filed on December 2, 2022, in this Court. *See Melissa Masters v. Gateway Rehabilitation Center, Inc.*, Case No. GD-22-014713 ("*Masters*").

7. Plaintiffs Lucarelli, Ciccozzi, Coast, and Kennedy thereafter filed class action complaints in the Western District of Pennsylvania on December 5, 2022; December 14, 2022; December 23, 2022; and January 18, 2023, respectively. The matters were docketed at *Lucarelli v. Gateway Rehabilitation Center*, Case No. 2:22-cv-01729-RJC (W.D. Pa.); *Ciccozzi v. Gateway Rehabilitation Center*, Case No. 2:22-cv-01797-WSH (W.D. Pa.); *Coast v. Gateway*

*Rehabilitation Center*, Case No. 2:22-cv-01861-LPL (W.D. Pa.); and *Doe v. Gateway Rehabilitation Center*, Case No. 2:23-cv-00093-WSH (W.D. Pa.).

8. Prior to commencing litigation, Counsel conducted a thorough investigation into the Class Members' claims, their damages, and the likelihood of obtaining class certification. Counsel also conducted interviews with prospective plaintiffs concerning their experiences with Gateway, obtained and reviewed documents from potential class representatives, and extensively researched the pertinent case law and facts in other consumer fraud class actions that informed the present case.

9. Counsel for Plaintiffs Morris and Masters conferred with counsel for Defendant on whether the six related actions should be litigated in federal or state court. The Parties agreed that the matters were more properly suited for litigation in this Court given the apparent lack of federal court jurisdiction under the Class Action Fairness Act. Plaintiffs Morris, Ciccozzi, Coast, and Kennedy thereafter voluntarily dismissed their federal court actions for lack of federal court subject matter jurisdiction.<sup>2</sup> Plaintiff Morris then filed a praecipe to transfer his federal court complaint to this Court pursuant to 42 Pa. C.S.A. § 5103(b) on February 8, 2023. The Clerk accepted Plaintiff Morris's praecipe that same day.

10. Counsel for all Plaintiffs subsequently moved to consolidate the actions before this Court into a single consolidated action, which this Court granted on March 17, 2023.

11. Thereafter, on December 15, 2023, Plaintiffs filed their First Consolidated Amended Class Action Complaint on April 18, 2023, and their Second Consolidated Amended Class Action Complaint on September 30, 2024.

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<sup>2</sup> Plaintiff Lucarelli independently filed a notice of voluntary dismissal of his federal court action and then refiled his action in this Court on February 7, 2023.

### **Settlement Negotiations and Mediation**

12. After the filing of the First Consolidated Amended Class Action Complaint, Counsel for Plaintiffs and Counsel for Defendant began discussing a possible early resolution of this Action. The Parties engaged in arm's-length negotiations, including series of offers and counteroffers. After reaching an impasse during their direct arm's-length settlement negotiations, the Parties thereafter agreed to engage in a mediation session overseen by respected data breach mediator Bennett G. Picker of the Stradley Ronon Stevens & Young law firm.

13. On February 15, 2024, the Parties participated in a day-long mediation session with Bennett G. Picker of the Stradley Ronon law firm, a well-regarded mediator with substantial experience in handling complex litigation and class action mediations.

14. The Parties prepared for mediation by serving pre-mediation requests and laying out their respective positions in mediation statements that were exchanged. The mediation was productive and resulted in a settlement in principle.

15. Throughout the mediation, we zealously advanced the Plaintiffs' and Class Members' positions. We were fully prepared to proceed with the litigation rather than accept a settlement that was not in the best interests of the Class. At all times, the negotiations were at arm's-length and, while courteous and professional, were intense and hard-fought on all sides.

16. Following the mediation, the Parties worked towards drafting and finalizing the Settlement Agreement. After soliciting claims administration bids, they further agreed that Epiq Global ("Epiq") would serve as the Settlement Administration. The Parties continued drafting and finalizing the Settlement Agreement and proposed exhibits. After reaching a final set of documents, the Settlement Agreement was fully executed by all parties as of September 25, 2024.

### **The Preliminarily Approved Settlement**

17. On October 3, 2024, Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification and for Authorization of Class Notice. Following a hearing held on November 4, 2024, the Court granted Plaintiffs' Motion and directed that the Notice Plan be implemented.

18. The preliminarily approved Settlement Class is defined as:

All natural persons who are residents of the United States whose Personal Information was involved in the Data Security Incident, including all who were sent notice of the Data Security Incident. The Settlement Class specifically excludes: (1) the Judges presiding over the Action and members of their immediate families and their staff; (2) Gateway, its subsidiaries, parent companies, successors, predecessors, and any entity in which Gateway or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

19. The Settlement Agreement provides for the payment of \$775,000.00 into a non-reversionary Settlement Fund for the benefit of Plaintiffs and Settlement Class Members. As set forth in the Settlement Agreement, the Settlement Fund will be used to pay for Administrative Expenses, Attorneys' Fees, Costs, and Expenses, Service Award, taxes, Credit Monitoring, Documented Loss Payments, and Cash Fund Payments.

20. All Settlement Class Members will be entitled to file claims credit bureau monitoring services and \$1 million in identity theft insurance.

21. Settlement Class Members are also eligible to make claims for one of two types of claims for a monetary payment. Settlement Class Members can file a claim for a Documented Loss Payment of up to \$2,500.00 per person if they incurred actual out of pocket losses that are more likely than not related to the Data Security Incident (and time spent dealing with it). Alternatively, Settlement Class Members can submit a claim to receive a Cash Fund Payment.

### **Notice and Administration**

22. In its Preliminary Approval Order, the Court appointed Epiq Class Actions & Claims Solutions, Inc. (“Epiq”) to serve as the Settlement Administrator. *See* Docket No. 17. Epiq was selected by Plaintiffs’ and Class Counsel following a bidding process among various settlement administrators.

23. As of January 14, 2024, Epiq has received several hundred Claim Form submissions. The deadline for filing claim forms is March 10, 2025, so this number is likely to increase. Epiq has also reported that it received no exclusions (or “opt-outs”) from or objections to the Settlement. The deadline to file objections and exclusions is February 7, 2025.

### **Fee Award and Costs Request**

24. Co-Lead Class Counsel have significant experience in consumer class-action litigation, including data breach class actions such as this one. Co-Lead Class Counsel Gary F. Lynch has significant complex litigation experience, obtaining leadership positions in numerous large class action cases including *In re MOVEit Customer Data Security Breach Litigation*, No. 1:23-md-3083 (D. Mass.) (co-lead class counsel); *In re Equifax, Inc. Customer Data Security Breach Litigation*, MDL No. 2800 (N.D. Ga.) (co-lead counsel); *First Choice Federal Credit Union v. The Wendy’s Company*, No. 2:16-cv-0506 (W.D. Pa.) (co-lead counsel); *In re: The Home Depot, Inc. Customer Data Security Breach Litigation*, MDL No. 2583 (N.D. Ga.) (co-lead counsel); *In re: Wawa, Inc. Data Security Litigation*, No. 2:19-cv-06019-GEKP (E.D. Pa.) (co-lead counsel).

25. Similarly, Co-Lead Class Counsel Mr. Johns has significant experienced in handling data privacy class action cases. *See e.g. Meyers v. Onix Grp., LLC*, No. CV 23-2288-KSM, 2023 WL 4630674, at \*2 (E.D. Pa. July 19, 2023) (“Mr. Johns ... has almost 20 years of

experience with complex class action cases and has been appointed Lead Counsel in data breach cases over a dozen times in various jurisdictions across the country; he has been appointed Lead Counsel in the Eastern District of Pennsylvania no less than three times.”) (citations omitted).

26. The attorneys at Lewis Brisbois Bisgaard & Smith LLP, counsel for Gateway also have significant experience defending class actions and are highly regarded in the legal community. Plaintiffs’ Counsel utilized and relied upon their experience in handling data breach class action cases to assist the Class in recovering the \$775,000.00 non-reversionary common fund in this case.

27. The work done in this case includes: researching the cause of the breach and Defendant’s public statements and media commentary regarding the events surrounding the breach; investigating the relevant law and appropriate causes of action; drafting the various complaints; conducting research into subject matter jurisdiction issues and coordinating between the federal and state cases; drafting and preparing the amended consolidated complaints; engaging in arms’-length settlement discussions with Defendant’s counsel; drafting pre-mediation discovery requests; communicating with Plaintiffs; participating in mediation with an experienced mediator; negotiating an excellent settlement for the class; drafting the Settlement Agreement, exhibits, and preparing the notices and claim form; attending (virtually) the preliminary approval hearing; and drafting the Preliminary Approval Motion.

28. Considering Plaintiffs’ Counsel’s vast experience in data security litigation, Plaintiffs’ Counsel understands the urgency related to the unauthorized disclosure of Plaintiffs’ sensitive personal information, and that time is of the essence. Plaintiffs’ Counsel recognized the necessity for an immediate, robust fraud protection program for Class Members. Co-Lead Class Counsel took tremendous risks in litigating this matter, under a complete contingency

arrangement. There was no guarantee of any recovery whatsoever, and there was a substantial risk of no recovery at all given the threshold issues raised by Gateway during the mediation process. If Plaintiffs did not reach this Settlement and the case was dismissed, lost on summary judgment, lost at trial or on appeal, Co-Lead Class Counsel would have lost all the time, effort and costs they had put into this matter.

29. Class actions are inherently complex vehicles for relief that require a large commitment of time and resources. Several law firms collaborated to bring and prosecute this action. Each firm invested substantial hours of both attorney and paralegal time. The Plaintiffs' Counsel involved in bringing and prosecuting this case includes some of the leading counsel in data breach class action litigation nationwide.

30. When Plaintiffs consolidated the various cases that were filed in the litigation, Plaintiffs' Counsel coordinated their work to avoid duplication of efforts and to keep costs low and reasonable.

31. The time Plaintiffs' Counsel spent litigating this matter reflects the reasonable and necessary effort required to achieve a satisfactory result. Plaintiffs' Counsel collectively worked hundreds of hours in this litigation and will work more hours to see the Settlement through disbursement to Class Members.

32. We assert that based on our judgment and decades of combined experience in class action litigation and other litigation, the fee award sought in the Motion for Fee Award and Costs are reasonable and that Settlement Plaintiffs' Counsel seek fair and reasonable compensation for undertaking this case on a contingency basis and for obtaining the relief for Plaintiffs and the Settlement Class.

33. Our law firms, and all Class Counsel, kept detailed records regarding the amount of time our attorneys and professional staff spent on this litigation. All billable time was recorded contemporaneously in 6-minute increments.

34. The information below was prepared from daily time records regularly prepared and maintained by Class Counsel.

<b>FIRM NAME</b>	<b>HOURS</b>	<b>LODESTAR</b>
Lynch Carpenter LLC	178.7	\$129,430.00
Shub Johns & Holbrook LLP	156.18	\$124,381.00
Cole & Van Note	171.9	\$89,069.80
Levin Sedran Berman, LLP	72.8	\$66,095.00
Milberg Coleman Bryson Phillips Grossman, PLLC	71.8	\$52,991.40
Mason, LLP	54.3	\$36,727.50
Goldenberg Schneider, LPA	37.7	\$27,150.00
Zimmerman Reed, LLP	18.9	\$15,495.00
<b>TOTALS:</b>	<b>762.28</b>	<b>\$541,340.00</b>

35. The above chart does not include any billable time incurred after today’s date, such as time spent working on final approval and overseeing the settlement. We estimate that we will spend an additional 40-50 hours working on this matter through completion.

36. We have general familiarity with the range of hourly rates typically charged by plaintiffs’ class action counsel in data breach and complex consumer class actions throughout the United States, both on a current and historical basis. From that basis, we can conclude that the rates charged by the law firms involved in this litigation are within the range of market rates charged by attorneys and professional staff of equivalent experience, skill and expertise for legal services furnished in complex contingency class action litigation such as this.

37. The billable time described above does not include charges for cost items. Cost items are billed separately, and such charges are not duplicated in billing rates. These costs were

necessary to the investigation, prosecution, and settlement of this Action. Plaintiffs' Counsel made every effort to keep litigation-related costs low and reasonable.

38. Class Counsel also seeks reimbursement for costs incurred in litigating this action. These costs include court and filing fees, legal research, and mediation expenses. The total amount of the costs incurred by all firms serving as Class Counsel in this matter is \$15,665.33.

39. The costs incurred in this action are reflected on the books and records of Class Counsel's respective law firms. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the costs incurred. Expenses reports can be provided upon the request of Court.

#### **Service Awards**

40. The Settlement Class Representatives performed valuable services for members of the Settlement Class and were active participants in all aspects of the case, including bringing their claims to Class counsel for investigation and partaking in fact-finding interviews, agreeing to serve as representative plaintiffs, reviewing the complaints and amended complaints, remaining available to consult with Class Counsel when necessary regarding the progress of the litigation, and reviewing and approving the Settlement Agreement. The Settlement Class Representatives were ready and willing to participate in all stages of the litigation.

41. These Plaintiffs put their names and reputations on the line for the sake of the Class, particularly given that doing so would publicly reveal their affiliation with the Defendant (a rehabilitation center).


42. Plaintiffs' Counsel kept in close contact with Plaintiffs during the litigation through numerous emails and personal telephone calls. Plaintiffs here have been vital in litigating this matter, have been personally involved in the case, and support the Settlement.

43. Plaintiffs' Counsel therefore request that the Court approve the payment of a \$2,500.00 service award to each Class Representative in recognition of the time, effort, and costs they incurred in pursuing claims benefiting the Settlement Class.


**Conclusion**

44. We verify that the statements made in this declaration are true and correct to the best of our knowledge, information, and belief. We understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Executed on January 24, 2025  
In Pittsburgh, Pennsylvania

  
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Gary F. Lynch

Executed on January 24, 2024  
In Upper Darby, Pennsylvania

  
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Benjamin F. Johns