

**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

**BRIEF 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 CICOZZI

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Plaintiffs Melissa Masters, Candace Coast, Mark Asel, Joe Kennedy, John Lucarelli, Dylan Morris, and Christopher Ciccozzi (collectively, “Plaintiffs” or “Class Representatives”) respectfully apply for: (1) approval of an award of attorneys’ fees in the amount of \$271,250.00 (35% of the \$775,000.00 Settlement Fund); (2) reimbursement of reasonable and necessary litigation costs in the amount of \$15,665.33; and (3) approval of Service Awards of \$2,500.00 to each of the Class Representatives.

I. BACKGROUND

A. Factual And Procedural Overview of the Litigation.

This matter is a consolidated putative class action arising from a Data Security Incident that temporarily disrupted Defendant Gateway Rehabilitation Center d/b/a Gateway Rehab’s (“Gateway” or “Defendant”) computer systems on or about June 13, 2022, resulting in the potential exfiltration and compromise of individuals’ Personal Information stored therein. SAC ¶¶ 5, 49-52.¹ The Personal Information compromised in the Data Security Incident includes individuals’ names, Social Security numbers, clinical information, and other medical or personal health information. SAC ¶ 53. The Data Security Incident impacted approximately 130,000 individuals’ Private Information. SAC ¶ 63.

¹ Citations to “SAC” are citations to Plaintiffs’ Second Consolidated Amended Complaint, Docket No. 13.

On November 28, 2022, Plaintiff Morris initiated litigation against Gateway for its alleged failure to adequately protect his and other individuals' Private Information by way of a class action complaint in the United States District Court for the Western District of Pennsylvania. *See Morris v. Gateway Rehabilitation Center*, Case No. 2:22-cv-01678-WSH (W.D. Pa.). The *Masters* Action was subsequently filed on December 2, 2022, in this Court. Plaintiffs Lucarelli, Ciccozzi, Coast, and Doe 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. *See 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.).

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. Plaintiffs Morris, Ciccozzi, Coast, and Doe thereafter voluntarily dismissed their federal actions for lack of federal court subject matter jurisdiction. 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.

Following the transfer of Plaintiff Morris's action to this Court, counsel for Plaintiff Morris filed a First Amended Class Action Complaint on March 2, 2023, adding Plaintiffs Ciccozzi, Coast, and Doe. 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. Docket Nos. 4 & 5. Plaintiffs thereafter filed their First Amended Consolidated Class Action Complaint on April 18, 2023 and their Second Amended Consolidated Class Action Complaint concurrently with their motion for

preliminary approval. Dock Nos. No. 6 & 13. Plaintiffs asserted eight causes of action against Gateway, including negligence, negligence per se, invasion of privacy / intrusion upon seclusion, breach of fiduciary duty, breach of confidences, breach of implied contract, unjust enrichment, and declaratory judgment. Dock No. No. 6. Plaintiffs asserted these claims on behalf of a putative class comprising all individuals in the United States whose PII and/or PHI was compromised in the Gateway Data Breach which was announced on or about November 18, 2022. *Id.*

After the filing of the First Amended Complaint Class Action Complaint (“Complaint”), Counsel for Plaintiffs and Counsel for Defendants began discussing a possible early resolution of this Action. The Parties engaged in arms’-length negotiations, including a series of offers and counteroffers. The Parties agreed to engage in a mediation session overseen by Bennet Picker to further facilitate these discussions. The Parties agreed to extend Gateway’s time to answer the First Amended Complaint until after mediation in order to conserve party resources in the hopes of resolving the litigation. In preparation for mediation, the Parties engaged in pre-mediation discovery. The information Gateway produced via informal discovery provided Plaintiffs with information to objectively evaluate the strengths and weaknesses of Plaintiffs’ and Settlement Class Members’ claims.

B. Negotiation of the Proposed Settlement Agreement.

On February 15, 2024, the Parties engaged in a day-long mediation session overseen by the esteemed class action mediator, Bennett G. Picker of Stradley Ronon Stevens & Young, LLP. The mediation session resulted in a settlement in principle, with the Parties reaching an agreement on the core terms of their proposed Settlement. The Parties then worked towards drafting and finalizing the Settlement Agreement. They further agreed that Epiq Global (“Epiq”) would serve as the Settlement Administrator. The Parties continued drafting and finalizing the Settlement Agreement and proposed exhibits, the Settlement Agreement was fully executed by all parties as of September 25, 2024.

After execution of the Settlement, Class Counsel began drafting a motion for preliminary approval, and on October 3, 2024, Class Counsel moved this Court for preliminary approval of the Settlement. Docket No. 14. The Settlement was preliminarily approved by this court on November 4, 2024. Docket No. 17. In its preliminary approval order, the Court conditionally certified the following Settlement Class:

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.

Id. Excluded from the Settlement Class are: (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. *Id.*

C. Pertinent Terms of the Settlement.

1. Settlement Consideration.

The Settlement provides the Settlement Class with significant monetary relief. Under the Settlement, Gateway will pay \$775,000.00 into a non-reversionary Settlement Fund to settle the claims of Plaintiffs and Settlement Class Members. SA ¶ 2.1. The Settlement will be used to pay for:

- Direct monetary relief to Plaintiffs and Class Members;
- The Administrative Expenses associated with the costs of settlement administration and notice;
- Court-approved attorneys' fees, costs, and expenses; and
- Court-approved Service Awards to Plaintiffs.

SA ¶ 2.7. After the Settlement Fund has been used to pay for the Administrative Expenses, taxes,

Court-approved Service Awards, and Court-approved attorneys' fees, costs, and expenses, the remaining amount (the Net Settlement Fund) will be used to pay for Approved Claims submitted by Settlement Class Members for Settlement Benefits. SA ¶ 2.6. Settlement Class Members may submit a claim for one of the following Settlement Benefits:

Documented Loss Payments. Settlement Class Members may submit a Documented Loss Payment claim seeking up to \$2,500.00 per person for the reimbursement of Documented Losses with Reasonable Documentation. SA ¶¶ 1.16, 1.34, 2.2(a). Documented Losses must be supported sufficiently to show that the claimed loss is more likely than not a result of the Data Breach. SA ¶¶ 1.16, 2.2(a). Any Settlement Class Member who previously paid out-of-pocket for credit monitoring as a result of the Data Breach will be eligible to be reimbursed under this category. The Settlement Administrator will review these claims for compliance with the requirements of the Settlement Agreement. Any claim for a Documented Loss Payment that is rejected, if not timely cured, will instead be considered for a Cash Fund Payment. SA ¶ 2.2(a).

Credit Monitoring Services (“CMIS”). Settlement Class Members are also entitled to claim twelve (12) months of three bureau credit monitoring and \$1,000,000 in identity theft insurance. SA ¶ 2.2(b). CMIS benefits will be available to Settlement Class Members irrespective of whether they took advantage of any previous offering of credit monitoring from Gateway. SA ¶ 2.2(b). Individuals who elected to utilize previous offerings of CMIS from Gateway, or who obtained CMIS services from another provider as a result of the Data Breach, will be permitted to postpone activation of their CMIS settlement benefit for up to 12 months. SA ¶ 2.2(b).

Cash Fund Payments. In the alternative to a claim for a Documented Loss Payment or CMIS, Settlement Class Members may submit a claim for a *pro rata* cash payment without documentary support. SA ¶ 2.2(c). The amount of money each Settlement Class Member who submits an Approved Claim will receive will be calculated as follows:

The Settlement Fund shall be used to make payments for the following: (i) Administrative Expenses, (ii) Fee Award and Costs, (iii) Service Award, and (iv) taxes. The remaining amount is the Net Settlement Fund. The Settlement Administrator will first apply the Net Settlement Fund to pay for CMIS claimed by Class Members. If Net Settlement Funds remain after paying for the CMIS, the Settlement Administrator will next use it to pay valid claims for Documented Loss Payments (up to the \$80,000 aggregate cap on Documented Loss Payments). The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied and the payments for the CMIS are made shall be referred to as the “Post CM/DL Net Settlement Fund.” The Settlement Administrator shall then utilize the Post CM/DL Net Settlement Fund to make all Cash Fund Payments pursuant to Section 2.2(c) herein.

SA ¶ 2.7. Cash Fund Payments will be distributed as follows:

The amount of each Cash Fund Payment shall be calculated by dividing the Post CM/DL Net Settlement Fund by the number of valid claims submitted for Cash Fund Payments.

Id.

2. Service Awards and Attorneys’ Fees and Expenses of Litigation.

Class Counsel seek attorneys’ fees in the amount of \$271,250.00 (35% of the \$775,000 Settlement Fund), and reimbursement of \$15,665.33 in reasonable litigation costs and expenses. SA ¶ 8.1. Class Counsel also seek Service Awards for Plaintiffs in the amount of \$2,500.00 per Plaintiff. S.A. ¶ 7.1.

II. ARGUMENT

A. The Percentage of the Recovery Approach Is the Proper Standard to Apply in Awarding Attorneys’ Fees in Common Fund Cases.

It is well settled that attorneys who represent a class and whose efforts achieve a benefit for class members are “entitled to a reasonable attorney’s fee from the fund as a whole” as compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Pa. R. Civ. P. 1717 empowers the court to award attorneys’ fees under applicable law. As courts recognize, in addition to providing just compensation, awards of fair attorneys’ fees from a common fund “ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (internal citations omitted).

In awarding attorneys' fees, courts are permitted to award a reasonable fee pursuant to a lodestar, a percentage of the common fund, or, if necessary, a hybrid approach.” *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 979 (Pa. Super. 2011), *aff'd*, 106 A.3d 656 (Pa. 2014). The percentage of the recovery method, which considers whether the fee requested is an appropriate percentage of the total recovery achieved, is used in common fund cases on the theory that the class would be unjustly enriched if it did not adequately compensate its counsel for achieving a substantial monetary result. *Id.* The percentage of the recovery method is generally favored in cases involving a common fund and is designed to allow courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.” *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001).² The ultimate determination of the proper amount of attorneys' fees rests within the sound discretion of the court based on the facts of the case. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009).

Here, because the Settlement creates a common fund that provides both for benefits to Settlement Class Members and a percentage of the fund for the payment of Class Counsel's attorneys' fees, and reimbursement of reasonable litigation expenses, Plaintiffs respectfully request that the appropriate method for the Court to apply when analyzing Class Counsel's fee application is the percentage of the recovery method.

² “In the absence of binding case rule or case law, ... the procedure used for proposed settlements in federal class action suits brought under Federal Rule of Civil Procedure 23 ... is instructive.” *Milkman v. Am. Travelers Life Ins. Co.*, 2001 WL 1807376, at *4 (Pa. Ct. Com. Pleas Nov. 26, 2001). Indeed, “[w]hile not binding, federal cases interpreting the federal class action rules, as well as the rules themselves, ... have persuasive value in Pennsylvania courts.” *Id.*, at *4 n.10 (quoting *McMonagle v. Allstate Ins. Co.*, 331 A.2d 468, 471-72 (Pa. 1975)). “Looking to [Fed. R. Civ. P.] ... 23 is especially justified ... [because Pa. R. Civ. P. No.] 1714 ‘incorporates the provisions of present Federal Rule 23(e),’ which governs the dismissal of federal class actions.” *Id.* (quoting Rule 1714 Explanatory Note-197)); *see also* Fed. R. Civ. P. 23; Pa. R. Civ. P. 1714.

B. The Requested Attorneys' Fees Are Reasonable under the Percentage-of-Recovery Method.

The requested attorneys' fees in the amount of 35% of the Settlement Fund is reasonable under the percentage-of-the-recovery method. While no general rule exists, courts in Pennsylvania have found reasonable "fee awards generally range from 19% to 45% of the settlement fund." *Rose v. Travelers Home & Marine Ins. Co.*, No. CV 19-977, 2020 WL 4059613, at *11 (E.D. Pa. July 20, 2020) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 736 (3d Cir. 2001)); *see also In re Gen. Motors*, 55 F.3d at 822 (same); *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d 483, 498 (E.D. Pa. 2018) ("fee awards ranging from 30% to 43% have been awarded in cases with funds ranging from \$400,000 to \$6.5 million"). Class Counsel's fee request thus falls squarely within the range of awards that courts have granted in prior class cases, including other data breach cases. *See e.g., In re Onix Grp., LLC Data Breach Litig.*, No. CV 23-2288-KSM, 2024 WL 5107594, at *13 (E.D. Pa. Dec. 13, 2024) (awarding fee award of 33% in a data breach class action settlement that settled before Defendant filed a motion to dismiss); *Thomsen v. Morley Companies, Inc.*, No. 1:22-CV-10271, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (awarding fee award of 33% in a data breach class action settlement that was "presumptively reasonable").

C. The Requested Fee is Fair and Reasonable in Light of the Factors to be Considered Under Rule 1717 Factors.

In addition to calculating Class Counsel's reasonable fee request under the percentage of the recovery method, a court must also consider the factors set forth in Pa. R. Civ. P. 1717:

- (1) the time and effort reasonably expended by the attorney in the litigation;
- (2) the quality of the services rendered;
- (3) the results achieved and benefits conferred upon the class or upon the public;
- (4) the magnitude, complexity and uniqueness of the litigation; and

(5) whether the receipt of a fee was contingent on success.

Id. A review of each of these factors weighs in favor of Class Counsel's requested fee.

1. Time and Effort Reasonably Expended.

Class Counsel devoted substantial time, labor, and resources to achieve the Settlement. Since the start of this litigation, Class Counsel and the attorneys working for Class Counsel at their respective law firms have documented 762.28 hours spent litigating this case, generating a lodestar value of \$541,340.00 when applying counsel's customary rates. Joint Declaration of Gary G. Lynch and Benjamin F. Johns ("Fee Decl."), ¶¶ 34, 36. These efforts include: 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; drafting the Preliminary Approval Motion; and attending (virtually) the preliminary approval hearing. *Id.*, ¶ 27.

The time expended does not include the additional time that will be spent preparing Plaintiffs' motion for final approval, preparing for the final fairness hearing, or responding to Class Member inquiries about the Settlement's benefits, all of which will require Class Counsel to accrue additional fees. *Id.*, ¶ 35. Although Class Counsel have consistently sought to keep costs and fees to a minimum, the litigation required a significant amount of work and time, and was levied against a Defendant represented by a national law firm with extensive data breach litigation experience. *Id.*, ¶¶ 26, 30. As such, the time and effort Class Counsel have expended weigh in favor of the requested fee.

2. Quality of the Services Class Counsel Rendered.

Settlement Class Counsel in this case have extensive experience in class action litigation, and in data breach litigation. Fee Decl. ¶¶ 24-25.

To determine the quality of services rendered, courts are to consider: (1) the results obtained for the plaintiffs in comparison with the best possible recovery; (2) the overall benefit conferred on the plaintiffs; and (3) counsel's professional methods. *Hooven v. Exxon Mobil Corp.*, CIV.A. 00-5071, 2005 WL 417416, at *3 (E.D. Pa. Feb. 14, 2005), *vacated on other grounds*, 465 F.3d 566 (3d Cir. 2006). The results obtained by Class Counsel substantially benefited the Settlement Class in that a considerable financial recovery was obtained.

The Settlement's terms and value (as outlined above) are consistent with, and/or exceed, agreements approved by courts in other, similar data breach cases. *See, e.g., In re Onix Grp., LLC Data Breach Litig.*, No. CV 23-2288-KSM, 2024 WL 5107594, at *2 (E.D. Pa. Dec. 13, 2024) (granting final approval to data breach settlement of \$1.25 million on behalf of a class of 308,000 individuals); *Breneman v. Keystone Health*, No. 1:22-cv-01643 (Pa. Com. Pl. Aug. 15, 2023) (order granting final approval where the per class member award was approximately \$3.83); *Mowery v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SPC (E.D. Mo. Dec. 22, 2020) (data breach settlement providing up to \$280 in value to Settlement Class Members in the form of: reimbursement up to \$180 of out-of-pocket expenses and time spent dealing with the data breach; credit monitoring services valued at \$100; and equitable relief in the form of data security enhancements); *Baksh v. IvyRehab Network, Inc.*, No. 7:20-cv-01845 (S.D.N.Y. Jan. 27, 2021) (providing up to \$75 per class member out-of-pocket expenses incurred related to the data breach and \$20 reimbursement for lost time, with payments capped at \$75,000 in aggregate; credit monitoring for claimants; and equitable relief in the form of data security enhancements); *Rutledge, et al. v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SPC (E.D. Mo.) (data breach settlement providing up to \$280 in value to

Settlement Class Members in the form of: reimbursement up to \$180 of out-of-pocket expenses and time spent dealing with the data breach; credit monitoring services valued at \$100; and equitable relief in the form of data security enhancements). As such, this factor supports the reasonableness of Settlement Class Counsel's fee request.

3. Results Achieved and Benefits Conferred Upon the Class.

As explained in detail above, the Settlement provides substantial benefits to Settlement Class Members. Each and every Settlement Class Member, without exception, can submit a claim for CMIS and Documented Loss Payments, or in lieu of those benefits, may claim a *pro rata* Cash Fund Payment. These are real, significant benefits that without the efforts of Plaintiffs and Class Counsel, and their willingness to take on the attendant risks of litigation, would not have been made available to Settlement Class Members.

As one federal district court observed in finally approving a settlement with similar class relief: "Data breach litigation is evolving; there is no guarantee of the ultimate result." *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021); *see also Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019). As for now, cybersecurity incident cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course of action when a reasonable one can be reached. While Plaintiffs are confident in the strength of their claims, they are also pragmatic in their awareness of the various defenses available to Gateway, as well as the risks inherent to continued litigation. Through the Settlement, Plaintiffs and Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all. Thus, this factor weighs heavily in favor of granting this fee request.

4. The Magnitude, Complexity, and Uniqueness of the Litigation.

This matter affects the rights Settlement Class Members whose data was impacted in the Data

Security Incident, and is a complex piece of litigation with potential pitfalls. This case involved complex issues of the novel and evolving area of data breach litigation. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases ... are particularly risky, expensive, and complex.”). Further, Gateway has consistently denied the allegations raised by Plaintiffs and made clear at the outset that it would vigorously defend the case. While Plaintiffs strongly believe in the merits of the case, the number of issues in this case, which center on a developing area of the law—data breach litigation—creates uncertainty.

Due at least in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one face potential case dispositive hurdles. For example, Plaintiffs faced the risk of obtaining class certification. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (denying class certification in data breach class action). Plaintiffs’ also faced risks in establish causation and damages *See, e.g., Southern Independent Bank v. Fred’s, Inc.*, No. 2:15-CV-799-WKW, 2019 WL 1179396, at *8 (M.D. Ala. Mar. 13, 2019) (holding under *Daubert* motion that causation was not met for class certification purposes in data security breach case); *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOX), 2022 WL 2155117, at *7 (C.D. Cal. Feb. 22, 2022) (recognizing risk the plaintiffs face in establishing causation and injuries). Continued litigation further would have required briefing on Defendant’s likely forthcoming preliminary objections, formal discovery, depositions, expert reports, obtaining class certification throughout trial, and prevailing summary judgment, as well as possible appeals (interlocutory and/or after the merits), which would require additional rounds of briefing and the possibility of no recovery at all. As such, this factor weighs in favor of Class Counsel’s fee request.

5. Whether Fee Was Contingent Upon Success.

The receipt of a fee in this litigation was entirely contingent on the success of the litigation.

Fee Decl. ¶¶ 3, 28. Given the reasonable defenses Gateway raised to Plaintiffs' claims, there was a significant risk that Class Counsel would recover no fee if Plaintiffs lost on the merits, either through preliminary objections, at summary judgment, at trial, or on any potential appeal. Had Settlement Class Counsel failed to overcome even one of these challenges, the result would have been no compensation for the Class and a list of expenses that accrued during the course of prosecuting the Settlement Class's claims. As such, this factor weighs in favor of Settlement Class Counsel's fee request.

In short, all the Rule 1717 factors weigh support the reasonableness of Class Counsel's requested attorneys' fees.

D. The Lodestar Cross-Check Confirms the Fee Request is Reasonable.

The reasonableness of Class Counsel's fee request is further demonstrated by a comparison of the value of time counsel spent on the limitation, known as the lodestar cross-check. "The purpose of the cross-check is to ensure that the percentage approach does not result in an 'extraordinary' lodestar multiple or windfall." *Whiteley v. Zynerva Pharms., Inc.*, Civil Action No. 19-4959 2021 WL 4206696, at *13 (E.D. Pa. Sept. 16, 2021) (quoting *In re Cendant*, 264 F.3d at 285). The lodestar cross-check . . . should not displace a district court's primary reliance on the percentage-of-recovery method." *Frederick v. Range Res.-Appalachia, LLC*, No. 08-288, 2011 WL 1045665, at *13 (W.D. Pa. March 17, 2011) (quoting *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 165 (3d Cir. 2006)). Further, the lodestar cross-check entails an abridged lodestar analysis that requires neither "mathematical precision nor bean counting." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The court need not receive or review actual billing records when conducting this analysis. *Id.* at 307.

Under the lodestar method, a court begins the process of determining the reasonable fee by calculating the "lodestar," i.e., the "number of hours reasonably expended on the litigation multiplied

by a reasonable hourly rate.” *McKenna v. City of Phila.*, 582 F.3d 447, 455 (3d Cir. 2009). Once the lodestar is determined, the court must then decide whether additional adjustments are appropriate. *Id.* A reasonable hourly rate in the lodestar calculation is “[g]enerally . . . calculated according to the prevailing market rates in the relevant community,” taking into account “the experience and skill of the . . . attorney and compar[ing] their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). The prevailing market rate is usually deemed reasonable. *Pub. Interest Research Grp. v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995).

Here, Class Counsel spent 762.80 hours litigating this action, producing a lodestar amount of \$541,340 based on standard, current hourly rates. Fee Decl., ¶¶34, 36. The reasonableness of Class Counsel’s rates is supported by the declaration, which establishes that the rates are the same as their standard hourly rates charged to paying clients on non-contingent matters and are in accord with the prevailing rates for class action and complex commercial litigation in the relevant legal markets (i.e. the national market for data breach litigation). Fee Decl., ¶ 36. *See New Berry, Inc. v. Smith*, No. CV 18-1024, 2021 WL 5332165, at *2 (W.D. Pa. Nov. 15, 2021) (“The best evidence of a prevailing market rate is counsel’s customary billing rate.”); *Animal Legal Def. Fund v. Lucas*, No. CV 2:19-40, 2021 WL 4479483, at *1 (W.D. Pa. Sept. 30, 2021) (“[T]he attorney’s normal billing rate is an appropriate baseline for assessing the reasonableness of the rate requested.”). These rates have been approved in other class action cases. Fee Decl. ¶ 32; *see also Engel v. Gannon University*, 1:23-cv-00244 (W.D. Pa.) (ECF No. 39) (Judge Baxter-Paradise approved Lynch Carpenter’s hourly rates).

When the lodestar amount is measured against the total fee requested here, the ratio yields a multiplier of 0.50. A multiplier of less than one is strongly indicative that the requested percentage of the recovery is reasonable. *See McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 657 (E.D. Pa. 2015); *In re Fasteners Antitrust Litig.*, Civil Action No. 08-md-1912. 2014 WL 296954, at *8 (E.D.

Pa. Jan. 27, 2014) (“Since the multiplier here is less than one, which means that the requested fee is less than the amount that would be awarded using the lodestar method, we are satisfied that a lodestar cross-check confirms the reasonableness of Co-Lead Counsel’s request for attorney’s fees.”). “Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 14.03 (3d ed. 1992) *Dickerson v. York Int’l Corp.*, No. 15-cv-01105, 2017 WL 3601948, at *11 (M.D. Pa. Aug. 22, 2017) (“Multipliers between one and four are routinely approved in the Third Circuit.”). Given the quality of Class Counsel’s work and results achieved in these circumstances, the lodestar cross-check supports the reasonableness of the requested fee.

E. Class Counsel’s Request for Reimbursement of Expenses is Reasonable.

“Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.” *O’Hern v. Vida Longevity Fund, LP*, No. CV 21-402-SRF, 2023 WL 3204044, at *10 (D. Del. May 2, 2023). In addition to the requested fees, Class Counsel seeks reimbursement of \$15,665.33 for the reasonable expenses incurred to advance this litigation. A detailed accounting of the expenses can be provided at the Court’s Request. Fee Decl., ¶ 38-39. These expenses are typical in litigation, were necessary for the successful prosecution and resolution of the claims against Gateway and should be approved. Fee Decl., ¶ 37.

F. The Requested Service Awards are Reasonable.

Settlement Class Counsel seeks modest service awards (also referred to as incentive awards) for each of the Plaintiffs. “Incentive awards are not uncommon in class action litigation.” *Alexander v. Coast Professional Inc.*, No. 12-1461, 2016 WL 861329, at *8 (E.D. Pa. Mar. 7, 2016) (citation omitted). “The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the

public service of contributing to the enforcement of mandatory laws.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (citations and quotations omitted). Indeed, “[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Vasco v. Power Home Remodeling Grp. LLC*, No. CV 15-4623, 2016 WL 5930876, at *14 (E.D. Pa. Oct. 12, 2016); *see also Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 575 (Pa. Com. Pl. Ct. 2002).

The requested service awards of \$2,500 per Plaintiff are well within the range found reasonable by courts within the Commonwealth and the corresponding federal circuit. *See Rodriguez v. Riley*, No. 190200198, 2020 WL 13687608, at *2 (Pa. Com. Pl. Ct. Feb. 10, 2020) (approving \$5,000 service award); *Nuñez v. Moses Const., Inc.*, No. 180800610, 2020 WL 13580918, at *2 (Pa. Com. Pl. Ct. Sep. 17, 2020) (approving \$2,000 service award); *Alexander*, 2016 WL 861329, at *8 (approving \$2,000 incentive award).

Here, the excellent result in this action could not have been achieved without the substantial efforts of Plaintiffs. Plaintiffs assisted Settlement Class Counsel with the prosecution of their claims and those claims of the Settlement Class by assisting in the investigation of the case, agreeing to serve as class representatives, reviewing and approving pleadings, reviewing the Settlement documents, and answering counsel’s many questions. Fee Decl. ¶¶ 40-42. They devoted time and effort to the action, and as a result of their efforts, a substantial benefit was conferred to the Settlement Class.

Accordingly, and in recognition of the substantial benefit they conferred on the Settlement Class and their efforts generally, modest Service Awards of \$2,500.00 to each of the Plaintiffs are entirely appropriate.

VI. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that this Court grant their motion (in conjunction with final approval of the Settlement) and enter Plaintiffs’ proposed order awarding

(1) attorneys' fees in the amount of \$271,250.00; (2) reimbursement of reasonable and necessary litigation costs in the amount of \$15,665.33; and (3) approval of service awards of \$2,500.00 to each of the Plaintiffs.

DATED: January 24, 2025

Respectfully submitted,



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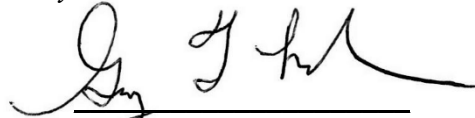
*Co-Lead Class Counsel for Plaintiffs and the
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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2025, the foregoing was served by email on the following:

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