

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SCOTT BALFOUR, DON LEE,
KULDEEP SINGH, MATTHEW
TEMPLON, and SHELIA VORHEIS,

Case No. 23-cv-67-CFC

Plaintiffs,

v.

iFIT HEALTH AND FITNESS INC, a
Delaware Corporation,

Defendant.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

Dated: August 20, 2024

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I. INTRODUCTION

Class Counsel began investigating this case in November of 2022 and commenced this Action in January of 2023. Following 13 months of litigation, as well as informal discovery and settlement negotiations conducted with the assistance of one of the nation’s foremost mediators, Plaintiffs successfully negotiated a settlement that creates substantial benefits for a class of owners of approximately 2.7 million Class Devices. Plaintiffs now seek an order that provides for Defendant iFIT Health and Fitness, Inc. (“iFIT”) to pay (a) \$975,000 to Class Counsel for payment of their attorneys’ fees and reimbursement of expenses, and (b) service awards of \$3,000 each to five Plaintiffs as Service Awards.¹ Pursuant to Section VIII(B) of the Settlement Agreement (“SA”), these amounts will be paid by iFIT separate and apart from the considerable relief the Settlement makes available to Class Members.

The Parties negotiated at arms’ length and reached agreement regarding these provisions, with the assistance of a nationally recognized mediator, former U.S. District Judge Layn R. Phillips. Those negotiations commenced only after the Parties agreed upon all other material terms of the SA. These payments – if approved – will not reduce the consideration the Settlement makes available to the Class.

¹ The definitions of the capitalized term used herein are defined in Section II of the Settlement Agreement (“SA”). *See* D.I. 28-1.

Moreover, although Plaintiffs' anticipated request for attorneys' fees, costs and service awards was identified in the notice disseminated to Class Members, *not one* Class Member has objected to Plaintiffs' requests.

As discussed below, given the amount of work performed by Class Counsel, the future work associated with monitoring the claims process, final approval, and settlement administration, and the outstanding results achieved and other applicable factors, Plaintiffs submit that the fee and expense request is reasonable and should be approved. The service awards requested by Plaintiffs are also well within the range of those awards approved by this Court in class action cases and are warranted here to recognize the time and effort Plaintiffs committed to this case, which were integral to its successful resolution. Plaintiffs respectfully request that the Court enter the proposed order submitted herewith granting each of these requests.

II. FACTUAL BACKGROUND

Plaintiffs' Motion for Preliminary Approval provided an extensive overview of Class Counsel's pre-suit investigation, the history of the litigation, settlement negotiations, the terms and benefits of the Settlement Agreement, the Notice plan, and the Release, D.I. 27, at 1-12, which Plaintiffs incorporate by reference. The Notice plan was implemented as described in the Settlement Agreement. Plaintiffs will provide additional details on the Notice plan in their forthcoming Motion for Final Approval.

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure states that in a class action, “the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous. *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001).

Plaintiffs now apply for a total fee and expense award of \$975,000.00, which accounts for both the attorneys’ fees for Class Counsel (who have amassed a collective lodestar of \$478,084.00 as of August 16, 2024), and the reimbursement of \$28,763.84 in their cumulative litigation expenses. Plaintiffs also request Court approval of an additional \$3,000.00 to be distributed as service awards to each of the Plaintiffs (\$15,000.00 total). Plaintiffs’ requests are reasonable in light of the work performed, the work yet to be performed, and the results achieved as reflected in the Settlement, and the requests are consistent with similar awards recently approved by this Court. This case involves complex issues of fact and law and the SA is the product of efforts by Class Counsel through various phases of investigation and adversarial litigation. In addition, these fees, costs and service awards will be paid

separately from (and in addition to) the benefits made available to the Class. For the reasons that follow, these requests should be approved.

A. The Court Should Use the Lodestar Method

Two calculation methods can be used to determine whether a requested attorneys' fee award in a class action is reasonable: the lodestar method and the percentage of recovery method. *In re Impinj, Inc. Derivative Litig.*, No. CV 18-1686-RGA, 2021 WL 7209525, at *10 (D. Del. Nov. 22, 2021); *O'Hern v. Vida Longevity Fund, LP*, No. CV 21-402-SRF, 2023 WL 3204044, at *8 (D. Del. May 2, 2023). The percentage of recovery method calculates the total recovery the settlement would allocate to the attorneys by dividing the amount of the requested fee by the total amount paid out by the defendant, and is appropriate where the value of the settlement can be readily calculated, such as when a common fund is created. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998) ("The percentage-of-recovery method is generally favored in cases involving a common fund.").

The lodestar method uses the number of hours reasonably expended to determine an adequate fee, irrespective of the monetary value of the ultimate relief achieved for the class. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820-21 (3d Cir. 1995). The lodestar amount is calculated by multiplying the number of hours reasonably worked by a reasonable hourly

billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The Court “is not required to engage in this analysis with mathematical precision or ‘bean-counting’” and “may rely on summaries submitted by the attorneys.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07.

Because there is no common fund created through the Settlement, Plaintiffs respectfully submit that the Court should use the lodestar method. *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (finding that the percentage method is “generally favored” in common fund cases because “it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure”); *In re Gen. Motors*, 55 F.3d at 821 (“Courts generally regard the lodestar method, which uses the number of hours reasonably expended as its starting point, as the appropriate method in statutory fee shifting cases. Because the lodestar award is de-coupled from the class recovery, the lodestar assures counsel undertaking socially beneficial litigation (as legislatively identified by the statutory fee shifting provision) an adequate fee irrespective of the monetary value of the final relief achieved for the class.”).

B. Class Counsel's Lodestar is Reasonable

The lodestar method can be boiled down to two steps. The first step is to determine the appropriate hourly rate, based on the attorneys' usual billing rate and the prevailing market rates in the relevant community. *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 263 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004). The second step assesses whether the billable time was reasonably expended in furtherance of the litigation. *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 177 (3d Cir. 2001). Time expended is considered "reasonable" if the work performed was useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985). The lodestar figure is "presumptively reasonable" when it is arrived at from a reasonable hourly rate and a reasonable number of hours expended. *Planned Parenthood of Cent. New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).² Here, the fact that the cap on attorneys' fees were vigorously negotiated between the Parties, with the assistance of a mediator, also supports approval of Plaintiffs' request. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

² The final step in the lodestar analysis, discussed *infra*, is to determine whether to increase or decrease the lodestar amount by applying a lodestar multiple.

The Joint Declaration of Joseph G. Sauder and Daniel O. Herrera recounts the time and expenses incurred by Class Counsel. Class Counsel billed their time at their current billing rates,³ and all the billable time was necessary to secure the results obtained. From inception through August 16, 2024, Class Counsel's lodestar is \$478,084.00. Class Counsel has also incurred \$28,763.84 in unreimbursed expenses. All of these fees and expenses will be paid from the requested \$975,000.00 fee and expense award.

C. The *Gunter* Factors Support the Fee Request

In addition to determining the method of calculating the fee award, district courts are also directed to ensure that the fee awarded is reasonable. *In re Cendant Corp. Litig.*, 264 F.3d 201, 283 (3d Cir. 2001). In *Gunter v. Ridgewood Energy Corp.*, the Third Circuit provided a series of non-exhaustive factors for district courts to consider:

³ The hourly billable rates of Class Counsel used to calculate these lodestar values are consistent with the hourly rates routinely approved in complex class action litigation. The court orders granting final approval in both *Yaeger*, 2016 WL 4547126, and *Salcedo v. Subaru of Am., Inc.*, No. 1:17-cv-8173-JHR-AMD, D.I. 48 (D.N.J. June 5, 2019) approved the billing rates of Sauder Schelkopf attorneys and found the hours billed to be reasonable. *See also McMahan v. Generac Power Sys., Inc.*, No. 2:21-cv-05660-GJP, D.I. 31 (Sept. 27, 2023) (finding Sauder Schelkopf's firm rates reasonable). Courts likewise have approved the rates and hours billed by CCMS attorneys and staff in a variety of contexts. *See, e.g., In re TikTok Consumer Privacy Litig.*, No. 20-cv-4699 (N.D. Ill.), D.I. 261, pp. 71-72 (finding CCMS rates reasonable); *In re Subaru Battery Drain Prod. Liab. Litig.*, No. 20-cv-03095, D.I. 111, pp. 2-3 (same).

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d 190, 195 n.1. In addition to these factors, the Third Circuit has identified three other factors that may be relevant: “(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any ‘innovative’ terms of settlement.”⁴ *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 165 (3d Cir. 2006) (internal citations omitted). The *Girsh* factors do not need to be applied in a “formulaic way” and some factors may outweigh the rest. *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 261 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004) (citing *Gunter*, 223 F.3d at 195 n.1).

As explained below, the *Gunter* factors weigh in favor of granting their fee request.

⁴ Plaintiffs submit that these additional factors are neutral here. No government agencies or other groups have been involved, there is no common fund created and thus no percentage fee, and while the Settlement provides substantial benefits, there are not any “innovative” terms.

1. The number of persons benefitted

The Settlement in this case makes substantial relief available to the Settlement Class. There are approximately 2.7 million Class Devices. Both current and former owners of the Class Devices are eligible to participate in the benefits provided by the Settlement. Class Counsel have already been contacted by Settlement Class Members who have submitted claims for reimbursement as well as Settlement Class members who submitted claims for free repairs under the warranty offered by the Settlement. *See Teh Shou Kao v. CardConnect Corp.*, No. 16-cv-5707, 2021 WL 698173, at *9 (E.D. Pa. Feb. 23, 2021) (holding “Class counsel adequately prioritized the benefit to the settlement class by negotiating a settlement that provides benefits to many individuals who would most likely have received no benefit otherwise” and stating the “settlement confers a significant benefit considering the size of the settlement class”).

2. The absence of objections

As discussed above, the deadline by which Settlement Class Members may object to the Settlement – including the motion for attorneys’ fees, costs, and service awards – is September 3, 2024. While this fee petition is being filed before the expiration of the objection period, no objections to Class Counsel’s request for fees

and service awards has been received.⁵ And because Class Counsel’s anticipated fee request was referenced in Notice documents, there is no reason to suspect that any such objections are forthcoming.

The dearth of objections support approval of the requested fee. *McDermid v. Inovio Pharmaceuticals, Inc.*, No. 20-01402, 2023 WL 227355, *11 (E.D. Pa. Jan. 18, 2023) (finding “there were no objections to the requested fee award” which “favor[ed] approval”); *Teh Shou Kao*, 2021 WL 698173, at *10 (“The second favor favors approval because no one objected to the fee request after dissemination of the Court-approved notices, which advised settlement class members that the Court would be asked to consider whether the lawyers for the class should be paid ‘up to one-third of the \$7.65 million settlement amount’ and reimbursed for their expenses.”); *Whiteley v. Zynerva Pharms., Inc.*, No. CV 19-4959, 2021 WL 4206696, at *11 (E.D. Pa. Sept. 16, 2021) (“The lack of any objections is strongly indicative of approval by the Class.”)

3. The skill and efficiency of the attorneys involved

Regarding the third factor, “Class Counsel’s skill and efficiency is ‘measured by the quality of the result achieved, the difficulties faced, the speed and efficiency

⁵ Plaintiffs reserve the right to address any objection(s) that may be filed in their motion seeking final approval of the settlement, and will also be prepared to address any questions or concerns the Court may have about any such objection at the Final Approval Hearing.

of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *Whiteley*, 2021 WL 4206696, at *12 (quoting *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016)). The purpose and goal of this *Gunter* factor is to ensure “that competent counsel continue to undertake risky, complex and novel litigation” for the benefit of large numbers of class members who might otherwise lack reasonable access to justice. *Gunter*, 223 F.3d at 198.

The results obtained in this case, described fully in Section II(E), reflect the vigor and persistence with which Class Counsel prosecuted this litigation against highly skilled defense counsel. *See, e.g., Whiteley*, 2021 WL 42006696, at *12 (finding a “favorable outcome negotiated with equally experienced opposing counsel” weighed in favor of approval). Class Counsel is experienced in consumer protection litigation and achieved significant benefits for Settlement Class Members. *See* D.I. 28, Exs. B, C. (firm resumes of Class Counsel). As such, this factor supports the fee request.

4. The complexity and duration of the litigation

This complex class action litigation has lasted nearly two years and has required extensive work by Class Counsel. This work includes pre-complaint factual investigation, discovery, and extensive months’ long settlement discussions,

including a full-day in-person mediation with the Hon. Layn R. Phillips (Ret.), an experienced and respected neutral mediator who has successfully mediated numerous class actions and complex disputes. Several courts have recognized that “any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources.” *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. 2007); *Granillo v. FCA US LLC*, 2019 WL 4052432, at *10 (D.N.J. Aug. 27, 2019).

Here, Plaintiffs allege claims for breach of express and implied warranties as well as fraud-based claims. D.I. 1, pp. 49-76. As courts have previously held, litigation regarding “complex questions including whether a claim centered on the breach of an implied contract can be certified” satisfied this *Gunter* factor. *Teh Shou Kao*, 2021 WL 698173, at *10. The amount of compensation sought by the Class Counsel is reasonable when assessed in light of these factors. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (finding district court did not abuse its discretion in holding the matter was complex due to legal issues involved, duration of the case, discovery, and the necessity of resorting to mediation to reach a proposed settlement).

5. The risk of nonpayment

Class Counsel has prosecuted this litigation on a purely contingent basis since its inception; risk of non-recovery was sufficiently substantial to justify the instant

fee request. *See O’Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 309 (E.D. Pa. 2003) (“Any contingency fee includes a risk of non-payment. That is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case.”); *Teh Shou Kao*, 2021 WL 698173, at *10 (“Class counsel undertook representation of Plaintiffs on a contingency basis and . . . had they not achieved a recovery, they would have received no compensation for their efforts”). In addition, Defendant is financially stable and able to pay claims made under the settlement. *See O’Keefe*, 214 F.R.D. at 309 (observing that “[t]his factor more properly addresses the concern that class counsel risks non-payment after securing class recovery because of the precarious financial position of the defendant” and stating “[Mercedes] is financially stable and no one has questioned its ability to pay. This factor is not relevant in this case.”).

6. The amount of time devoted by Class Counsel

As of August 16, 2024, Plaintiffs have spent over 625 hours of contingent work litigating this matter. A summary of the work performed to date is identified in the section addressing the fourth *Gunter* factor. *See supra*. In addition, this reported time does not include the future work that will be associated with monitoring the claims process, final approval, and settlement administration. *See Yaeger v. Subaru of Am., Inc.*, 2016 WL 4547126, at *2 (D.N.J. Aug. 31, 2016) (“This does not include fees for services to be rendered to the class in the future,

such as monitoring and enforcement of the administration of Settlement Agreement.”); *Henderson*, 2013 WL 1192479, at *15, n.11 (same). Yet, Class Counsel anticipates they will spend a significant amount of additional time answering questions from Settlement Class Members, assisting Settlement Class Members with the claims process, auditing denied claims for reimbursement, and shepherding this Settlement through Final Approval. This commitment of time and effort supports the fee request.

7. Awards in similar cases

A review of district court cases within the Third Circuit demonstrates that the fee request here is reasonable and appropriate, and on the lower end of similar consumer protection class action settlements. *See, e.g., O’Keefe v. Mercedes-Benz USA*, 214 F.R.D. 266, 304 (E.D. Pa. 2003) (\$4,896,783.00 in fees awarded in class action involving alleged automotive defect); *Rochester Drug Co-Operative, Inc. v. Braintree Lab’ys, Inc.*, No. CV 07-142-SLR, 2012 WL 13224508, at *4 (D. Del. May 31, 2012) (awarding \$5,750,000.00 in attorneys’ fees in antitrust settlement); *In re Bancorp Inc. Sec. Litig.*, No. 14-CV-0952 (SLR), 2016 WL 7741727, at *1 (D. Del. Dec. 16, 2016) (awarding \$4,000,000 in attorneys’ fees in securities case); *Flores v. Express Servs., Inc.*, No. CV 14-3298, 2017 WL 1177098, at *4 (E.D. Pa. Mar. 30, 2017) (awarding \$1,914,750 fee and expense request in case involving

alleged violations of Fair Credit Reporting Act). Accordingly, this and the other *Gunter* factors strongly support granting the requested fee.

D. The Requested Multiplier is Reasonable

A lodestar multiplier “attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys’ work.” *In re Diet Drugs*, 582 F.3d 524, 540 n. 33 (3rd Cir. 2009). First, the Court multiplies the applicable hours by the attorneys’ hourly rates to get a lodestar amount. The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount. *O’Hern*, 2023 WL 3204044, at *8 (explaining lodestar calculation “is performed by “multiplying the number of hours reasonably worked on a client’s case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys”).

In this case, the lodestar multiplier sought is reasonable. Class Counsel are reporting their lodestar using a method by which hours expended by each attorney are multiplied by the attorney’s hourly rate. Courts routinely find in complex class action cases that a multiplier of one to four of counsel’s lodestar is fair and reasonable. *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 263 (D. Del. 2002), *aff’d*, 391 F.3d 516 (3d Cir. 2004). The Third Circuit has observed that it has “approved a multiplier of 2.99 in a relatively simple case.” *Milliron v. T-Mobile*

United States, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742).

Class Counsel's requested fee and expense award (\$975,000) yields a 1.98 multiplier of Class Counsel's actual lodestar (\$478,084.00), after subtracting out Class Counsel's expenses of \$28,763.84 (\$946,236.16 divided by \$478,084.00). The 1.98 multiplier sought here is well within this range, is reasonable, and Plaintiffs respectfully request that the Court approve it. *See Whiteley*, 2021 WL 42006696, at *12 (approving 2.69 lodestar multiplier "well within the range of reasonableness recognized by courts"); *Jackson v. Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 718 (W.D. Pa. 2015) (approving 2.83 multiplier and granting \$1,500,000 fee request); *Merino v. Wells Fargo & Co.*, No. 16-cv-07840, D.I. 137-1, 144 (D.N.J. Jan. 15, 2020) (3.66 multiplier); *Schuler v. Medicines Co.*, No. 14-1149 (CCC), 2016 WL 3457218, at *10 (D.N.J. June 23, 2016) (awarding 3.57 multiplier as reasonable under Third Circuit precedent); *Martin v. Foster Wheeler Energy Corp.*, No. 3:06-cv-0878, 2008 WL 906472, at *8 (M.D. Pa. Mar. 31, 2008) ("Lodestar multiples of less than four (4) are well within the range awarded by district courts in the Third Circuit.").

Moreover, Class Counsel's lodestar multiplier will be further reduced over time. Consumer class actions involve a significant amount of work assisting class members with the claims process to ensure it functions as intended. The claims

period does not close until May 6, 2025. Even after the claims period closes, Class Counsel anticipates communicating with class members regarding the status of their claims, how to cure any alleged deficiencies, and other settlement related issues. *See, e.g., Whiteley v. Zynerva Pharms., Inc.*, No. CV 19-4959, 2021 WL 4206696, at *14 (E.D. Pa. Sept. 16, 2021) (“Moreover, Class Counsel is expected to perform additional work in connection with this case following this Court’s approval. As such, the multiplier will likely be lower by the time this matter is closed and Class Counsel’s work is completed.”).

E. Class Counsel’s Expenses are Reasonable

Courts within the Third Circuit have found that “[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *Schuler v. Medicines Co.*, No. 14-1149(CCC), 2016 WL 3457218, at *11 (D.N.J. June 24, 2016); *O’Hern*, 2023 WL 3204044, at *10 (approving the reimbursement of \$15,837.60 in expenses).

In this case, Class Counsel have incurred \$28,763.84 in properly documented expenses for the common benefit of the Settlement Class Members. *See* Joint Declaration, ¶¶ 13, 22. The requested expenses will be paid from the total \$975,000 fee and expense request. Class Counsel put forward these necessary out-of-pocket costs without assurance that they would ever be repaid. The requested amount is

therefore reasonable, and Plaintiffs respectfully request that the Court approve it. *In re Suboxone Antitrust Litig.*, No. 13-md-2445, 2023 WL 8437034, at *18 (E.D. Pa. Dec. 4, 2023) (finding class counsel “is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action”).

F. Plaintiffs’ Modest Service Awards Should Be Approved

The service provided by the Plaintiffs in this action should not go without financial recognition. As the Third Circuit explained:

Incentive awards are not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class. 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, 667 F.3d 273, 333, n.65 (3d Cir. 2011).

The Settlement recognizes the valuable contributions made by the Plaintiffs by providing them with service award payments of \$3,000 each. The Plaintiffs were integral to the resolution of this litigation, and were catalysts to achieving this result for the Class. They participated in numerous conferences and meetings with their attorneys, searched for and produced documents to their attorneys that were relevant to their claims in the litigation, and stayed involved in the numerous and significant developments in the case. And like Class Counsel’s fee and expense request, these

service awards will be paid separate from the consideration in the settlement, and will not reduce the recovery to any Settlement Class Member. *See In re LG/Zenith Rear Projection TV Class Action Litig.*, No. 06-5609, 2009 WL 455513, at *9 (D.N.J. Feb. 18, 2009) (approving service award and noting that the service awards “will not decrease the recovery of other class members.”).

Consistent with the law and the terms of the SA, it is appropriate to make these service payments to the class representatives. *O’Hern*, 2023 WL 3204044, at *10 (approving incentive awards of \$10,000 each to the three plaintiffs where they “devoted substantial time and effort to prosecuting and settling the case, including frequently communicating with Class Counsel about the status of the case, reviewing pleadings and motions, discussing mediation strategy and evaluating settlement proposals, and participating directly in the mediation session”); *See Teh Shou Kao v. CardConnect Corp.*, No. 16-CV-5707, 2021 WL 698173, at *11 (E.D. Pa. Feb. 23, 2021) (approving \$15,000 service award payments to the three plaintiffs and stating “[a]bsent the class representatives’ participation, there would have been no case, and settlement class members would have had to pursue their claims alone”); *In re Google Inc.*, No. 12-MD-2358 (SLR), 2014 WL 12618338, at *3 (D. Del. Apr. 1, 2014) (awarding \$500 to each plaintiff due to their “willingness to serve as representative, not only to compensate for time actually spent, but for the willingness

to come forward on behalf of other”). Plaintiffs respectfully request that the Court approve the requested service awards here.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court award Class Counsel the payment of \$975,000.00 in attorneys’ fees and expenses, and approve the payment of \$3,000 in service awards to each of the five Plaintiffs (\$15,000 total). A proposed order granting this requested relief is submitted herewith.

Dated: August 20, 2024

Respectfully submitted,

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WORD COUNT CERTIFICATION

The foregoing document complies with the type-volume limitation of this Court's Standing Order. The text of this brief, including footnotes, was prepared in Times New Roman, 14 point. According to the word processing system used to prepare it, the brief contains 4,553 words, excluding the case caption, signature block, table of contents and table of authorities.

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