

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

ALEX GOLDBLUM and BRIAN K. BOBAK,
individually and on behalf of all others similarly
situated;

Plaintiffs,

v.

101 KAPPA DRIVE ASSOCIATES # 1; 101
KAPPA DRIVE ASSOCIATES #1 GP, LLC;
PENNSYLVANIA CVS PHARMACY, LLC;
and BRIAN HAENZE d/b/a AUTO GALLERY
& ACCESSORIES and as TAG TOWING
AND COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. GD-18-012108

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

ANNETTE MORAN, ANTHONY IRA
BENTLEY, SR., ARIANA BRAZIER,
FRANK KAMARA, ARTHUR LOGAN,
GERALDINE WILSON, JANET LUKAC,
MATTIE GRIFFIN, JUDE CARPENTER and
LYNN ANDERSON, individually and on
behalf of all others similarly situated;

Plaintiffs,

v.

LOFTUS GROUP, LLC; PENNSYLVANIA
CVS PHARMACY, LLC; and BRIAN
HAENZE d/b/a AUTO GALLERY &
ACCESSORIES and as TAG TOWING AND
COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. GD-18-012128

Filed on behalf of Plaintiffs

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ALEX GOLDBLUM and BRIAN K. BOBAK, CIVIL DIVISION – CLASS ACTION
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KAPPA DRIVE ASSOCIATES #1 GP, LLC;
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ANNETTE MORAN, ANTHONY IRA CIVIL DIVISION – CLASS ACTION
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GERALDINE WILSON, JANET LUKAC,
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HAENZE d/b/a AUTO GALLERY &
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Defendants.

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

Plaintiffs Annette Moran, Anthony Ira Bentley, Sr., Ariana Brazier, Frank Kamara, Arthur Logan, Geraldine Wilson, Janet Luka, Mattie Griffin, Jude Carpenter, Lynn Anderson, and Alex Goldblum (collectively, “Plaintiffs” or “Settlement Class Representatives”) respectfully apply for: (1) approval of an award of attorneys’ fees, costs, and expenses to Settlement Class Counsel¹ in the combined amount of \$93,500 and (2) approval of service awards of \$1,500 to each of the Settlement Class Representatives.

I. BACKGROUND

A. Factual and Procedural Overview.

Plaintiffs’ claims in these putative class actions arose out of alleged overcharges for nonconsensual towing services in the City of Pittsburgh, Pennsylvania. It was alleged that from September 18, 2012 through September 18, 2018, Defendant Pennsylvania CVS Pharmacy, L.L.C. (“CVS” or “Defendant”) engaged Brian Haenze d/b/a Auto Gallery & Accessories and as Tag Towing and Collision (“Tag Towing”) to tow unauthorized vehicles parked in the Parking Lots. It was further alleged, that when conducting nonconsensual tows from the Parking Lots, Tag Towing and CVS charged vehicle owners/operators towing fees above the maximum fee for a nonconsensual tow from a private parking area as then provided by Pittsburgh’s City Ordinances, at 5 Pittsburgh Code § 525.02 and § 525.05. (Doc. 9 ¶¶ 38-43; Doc. 11 ¶¶ 31-34, 36). The Amended Complaints alleged that Plaintiffs and Settlement Class Members all had their vehicles towed or hooked up to one of Tag Towing’s tow trucks and those vehicles were held (and not released) until they paid tow fees greater than the maximum set by the City of Pittsburgh. (Doc. 9 ¶¶ 50-93; Doc. 11 ¶¶ 43-52). At the time CVS engage Tag Towing to conduct these nonconsensual tows, the statutory maximum for a tow fee was between \$110 and \$135, yet Tag Towing routinely charged

¹ The capitalized terms used in Plaintiffs’ Brief shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.

approximately \$220-\$250 per non-consensual tow. (Doc. 9 ¶¶ 38-43, 50-93; Doc. 11 ¶¶ 36-37, 43-52).

Plaintiffs initiated these cases against 101 Kappa Drive Associates #1; Loftus Group, LLC; and Tag Towing on September 18 and September 29, 2018 by way of Class Action Complaints. (Doc. 1 & 1). Plaintiffs then filed the operative Amended Complaints on February 5, 2019, naming CVS and Defendant 101 Kappa Drive Associates #1 GP, LLC as additional defendants, and alleging violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat. §§ 202-1, *et seq.*, the Pennsylvania Fair Credit Extension Uniformity Act (“PaFCEUA”), 73 Pa. Stat. §§ 2270.1, *et seq.*, and various common law causes of action. (Doc. 11 & 9). Defendants thereafter filed Preliminary Objections to the Amended Complaints, which were subsequently fully briefed and argued by the Parties, and later overruled by the Court. (Doc. 15, 18–20 & 11–12, 16). Following the Court’s rulings on the Preliminary Objections, on December 16 and December 17, 2019, CVS answered the Amended Complaints, denying the asserted claims and asserting cross-claims against Tag Towing. (Doc. 27 & 18). On January 8 and May 14, 2020, the Parties agreed to a voluntary discontinuance as to less than all defendants, dismissing the Settlement Class Representatives’ claims against Loftus Group, LLC; 101 Kappa Drive Associates #1; and 101 Kappa Drive Associates #1 GP, LLC without prejudice. (Doc. 32 & 21).

The Parties then engaged in written and oral discovery, and on March 22, 2021, the Court consolidated seven other related cases for discovery purposes in advance of Settlement Class Members filing their Motion for Class Certification. (Doc. 43 & 26). During discovery, the Parties proceeded to engage in a possible resolution of this litigation, ultimately reaching the proposed Settlement.

B. Negotiation of the Proposed Settlement.

During discovery the Parties commenced settlement discussions and after a series of series of arms'-length negotiations, including multiple offers and counteroffers, the Parties reached an agreement regarding the material terms of a settlement on December 29, 2022, which, if approved by the Court will resolve all claims that were raised, or could have been raised against CVS relating to non-consensual tows from the Parking Lots. After reaching an agreement on the material terms of a settlement, the Parties continued drafting and finalizing the Settlement and proposed exhibits, reaching a final set of documents, after which the proposed Settlement was subsequently executed by all Parties.

After the execution of the agreement, Settlement Class Counsel began drafting a motion for preliminary approval of the Settlement and on April 11, 2024, Settlement Class Counsel moved this Court for preliminary approval of the Settlement. (Doc. 63 & 40). On April 12, 2024, the Court entered an order granting preliminary approval, conditionally certifying the Settlement Class, and authorizing notice to the Settlement Class. (Doc. 64 & 42).

In its preliminary approval order, the Court conditionally certified the following Settlement Class:

All owners or operators whose passenger cars, light trucks, or motorcycles, and scooters were non-consensually towed from the Parking Lots by Tag Towing within the Relevant Period, and who, as a result were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code § 525.05.

(Doc. 64 & 42). By that same Order, the Court deemed Plaintiffs proper representatives of the Settlement Class and appointed Patrick D. Donathen of Lynch Carpenter, LLP and Joshua Ward of J.P. Ward and Associates, LLC as Settlement Class Counsel. (Doc. 64 & 42).

C. Pertinent Terms of the Proposed Settlement.

Under the Settlement, CVS will pay up to a total of \$143,065.00.00 in monetary consideration. (SA ¶¶1.35 & 3.1). CVS's monetary obligations are as follows:

- A payment of \$38,065.00 to establish a Settlement Fund for direct monetary relief to Settlement Class Members, from which the Costs of Settlement Administration will also be paid (SA ¶¶ 1.29, 3.1(ii), & 3.1(iv));
- A payment of up to \$93,500.00 for Settlement Class Counsel's attorneys' fees, costs, and expenses, to the extent approved by the Court (SA ¶ 3.2(i)); and
- A payment of up to \$1,500.00 to each Settlement Class Representative as a Service Award (not to exceed a total of \$16,500.00), to the extent approved by the Court. (SA ¶ 3.3(i)).

1. Direct Monetary Relief to Settlement Class Members.

CVS will pay 38,065.00 into a Settlement Fund within thirty (30) days of the Effective Date. (SA ¶ 3.2(ii)). The Settlement Fund will be used by the Settlement Administrator to pay for the following:

- The Costs of Settlement Administration; and
- Distribution of all money remaining in the Settlement Fund (after the Costs of Settlement Administration are deducted), in equal *pro rata* shares to all Participating Settlement Class Members.

(SA ¶ 3.1(iv)).

Automatic Distributors. The Settlement Administrator will distribute the balance of the Settlement Fund (after Costs of Settlement Administration are deducted) in equal *pro rata* shares to all Participating Settlement Class Members (those who do not opt out of the Settlement). (SA

¶¶ 1.17 & 3.4(iii)). The final amount Participating Settlement Class Members' Settlement Checks will depend on numerous variables.

Payment Timing and Provisions for Residual Funds. The Settlement Administrator will make all payments to Participating Class Members required under the Settlement within thirty (30) calendar days of the Effective Date of the Settlement. (SA ¶ 3.1(v)). Participating Settlement Class Members receiving a Settlement Check will have the duration of the Check Cashing Period to negotiate their Settlement Checks. (SA ¶ 3.4(vi)). The Parties propose that the Check Cashing Period begin the day the Settlement Administrator issues the Settlement Checks and run for the next 120 days. (SA ¶ 1.2). The Settlement Administrator is authorized to reissue an expired, unredeemed, lost, destroyed, or never received Settlement Check upon the request of a Settlement Class Member if said request is made within 180 days from the start of the Check Cashing Period. (SA ¶ 3.4(vi)). If unclaimed or uncashed payments remain in the Settlement Fund 180 days after the Check Cashing Period begins, the parties will instruct the Settlement Administrator to disburse 50% of the residual funds to the Pennsylvania Interest on Lawyers Trust Account Board and to disburse the other 50% of the remaining funds to a *cy pres* recipient, 412 Food Rescue. (SA ¶ 3.5).

2. Attorneys' Fees, Costs, and Expenses of Litigation, and Service Awards.

Separate from the monetary consideration directly available to Settlement Class Members through the Settlement Fund, CVS will pay up to \$93,500.00 in attorneys' fees, costs, and expenses, subject to Court-approval. (SA ¶¶ 3.2(i)). CVS will also pay Service Awards (to the extent approved by the Court) to the Settlement Class Representatives in the amount of \$1,500.00 each. CVS shall make the Service Award payments separate and apart from the Settlement Fund. (SA ¶ 3.3(i)). CVS shall pay the Court-approved attorneys' fees, costs, and expenses, as well as Service Awards within thirty (30) days of the Effective Date. (SA ¶¶ 3.2(i) & 3.3(i)).

3. Injunctive Relief.

As part of the Settlement, CVS agrees to take reasonable steps to ensure no more than that permitted by the Pittsburgh City Ordinance is charged for a statutory lien for a non-consensual tow from the parking lot located at 4610 Centre Avenue, Pittsburgh, PA 15213 in the event that CVS permits towing in the future.² (SA ¶ 3.6). These reasonable steps include: (1) advising any tow company that CVS permits to tow from its parking lot of the tow company's obligation to comply with all Pittsburgh Code requirements governing tow fees and (2) providing signage in the parking lot that advises potential parkers that they may be towed if they are not patronizing CVS's property and further advises that the Pittsburgh Code specifies the maximum amount a tow truck operator may charge for a tow. (*Id.*).

II. SETTLEMENT CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE

A. Legal Standard.

"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. Ct. 2011), *aff'd*, 106 A.3d 656 (Pa. 2014). "The lodestar method is more commonly applied in statutory fee-shifting cases, and is designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998). Given that Plaintiffs brought claims under the UTPCPL and the UTPCPL contains a fee-shifting provision permitting the Court to award Plaintiffs reasonable costs and attorneys' fees (73 P.S. §

² CVS currently does not permit towing from its Centre Avenue Store and the CVS store located at 6100 Penn Avenue, Pittsburgh, PA 15206 has closed.

201.9.2), Plaintiffs respectfully submit that the lodestar method is the most appropriate method by which to determine reasonable attorneys' fees and expenses. *See Saunders v. Berks Credit & Collections, Inc.*, No. CIV. 00-3477, 2002 WL 1497374, at *14 (E.D. Pa. July 11, 2002) (applying the lodestar method when analyzing a fee application in a class action settlement where claims were brought, in part, under the UTPCPL); *Alexander v. Coast Pro. Inc.*, No. CV 12-1461, 2016 WL 861329, at *7 (E.D. Pa. Mar. 7, 2016) (analyzing request for attorney's fees under the lodestar method where the plaintiff brought a claim under a fee shifting statute); *In re All-Clad Metalcrafters, LLC, Cookware Mktg. & Sales Pracs. Litig.*, No. 21-MC-491-NR, 2023 WL 2071481, at *11 (W.D. Pa. Feb. 17, 2023) ("Because the complaints at issue have statutory claims that provide for fee shifting, a lodestar calculation is appropriate.").

The award of attorneys' fees and costs under the UTPCPL is within the sound discretion of the trial court. 73 P.S. § 201.9.2. The UTPCPL allows for the recovery of "reasonable" attorneys' fees and "was not intended to provide a claimant, or his attorney, with a windfall or bonanza should he or she be successful." *Boehm v. Riversource Life*, 117 A.3d 308, 336 (Pa. Super. Ct. 2015) (citations omitted). Therefore, Pennsylvania courts have recognized that there should be "a sense of proportionality between an award of damages and an award of attorney's fees [under the UTPCPL]." *Richards v. Amerprise Fin., Inc.*, 217 A.3d 854, 868–71 (Pa. Super. Ct. 2019) (citing *McCauslin v. Reliance Fin. Co.*, 751 A.2d 683, 686 (Pa. Super. Ct. 2000)). At the same time, however, "the fee-shifting statutory provision of the UTPCPL is designed to promote its purpose of punishing and deterring unfair and deceptive business practices and to encourage experienced attorneys to litigate such cases, even where recovery is uncertain." *Id.* (citations omitted).

B. Settlement Class Counsel's Fee Request Is Reasonable Under the Lodestar Method.

A “lodestar” is “the product of reasonable hours times a reasonable rate.” *Braun*, 24 A.3d at 975 (quoting *City of Burlington v. Dague*, 505 U.S. 557, 559 (1992)). “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.’” *Alexander*, 2016 WL 861329, at *7 (quoting *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001)). “The prevailing market rate is usually deemed reasonable.” *Id.* (citing *Public Interest Research Group v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995)). “In calculating the second part of the lodestar determination, the *time* reasonably expended,” a district court should “review the time charged, decide whether the hours set out were reasonably expended for each of the particular purposes described and then exclude those that are excessive, redundant, or otherwise unnecessary.” *Pa. Env'tl. Def. Found. v. Canon-McMillan School Dist.*, 152 F.3d 228, 232 (3d Cir. 1998).

Settlement Class Counsel spent 153.5 hours litigating this action, producing a lodestar amount of \$110,550 based on standard hourly rates that range from \$250 to \$950. (Declaration of Patrick D. Donathen (“Donathen Decl.”), ¶¶ 8, 13-14). Summaries of the number of hours expended by attorneys and staff are provided in the Donathen Declaration. (Donathen Decl., ¶¶ 8, 13). The hours billed in this matter were spent drafting the pleadings and briefs, engaging in discovery, including depositions, and negotiating the Settlement. (Donathen Decl., ¶ 7). These tasks are typical in litigation and were necessary to the successful prosecution and resolution of the claims against CVS. (Donathen Decl., ¶ 4). In prosecuting this action, Settlement Class Counsel billed at their standard hourly rates that have been accepted by courts in other cases. (Donathen

Decl., ¶ 10); *see also 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.”).

Here, Settlement Class Counsel’s fee request of \$93,500 represents approximately 85% of their lodestar. Given that the fees requested by Settlement Class Counsel are less than the total market value of services they rendered on behalf of the Settlement Class, Settlement Class Counsel’s requested fees are extremely reasonable in light of their higher lodestar. *See Alexander*, 2016 WL 861329, at *8 (granting fee request equivalent of 61% of Class Counsel’s lodestar); *Saunders*, 2002 WL 1497374, at *16 (granting Class Counsel’s fee requests that were 61% and 75% of the respective attorneys’ lodestar).

C. Settlement Class Counsel’s Fee Request Is Reasonable in Light of the Factors to be Considered Under Rule 1717.

In addition to calculating Settlement Class Counsel’s reasonable rate and reasonable hours in determining lodestar, 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 Settlement Class Counsel’s combined fee request.

1. The Time and Effort Reasonably Expended by Settlement Class Counsel in the Litigation.

Settlement Class Counsel—Patrick D. Donathen of Lynch Carpenter (previously Carlson Lynch, LLP) and Joshua Ward of J.P Ward & Associates (previously The Law Firm of Fenters Ward)—have expended considerable time and expenses on this litigation. Since this litigation began in 2018, Settlement Class Counsel and the attorneys working for Settlement Class Counsel at their respective law firms worked at least 153.5 hours. (Donathen Decl., ¶¶ 8, 13-14). Although Settlement Class Counsel consistently sought to keep costs and fees to a minimum, the action required a significant amount of time and work.

These efforts included: consulting with the representative plaintiffs, investigating the claims and editing the initial and amended complaint; responding to preliminary objections and appearing at oral argument before the trial court; drafting and serving discovery requests on CVS; drafting and serving discovery responses on behalf of Plaintiffs; deposing Brian Haenze; reviewing documents produced by CVS; negotiating the proposed settlement; drafting and finalizing the proposed class action settlement agreement and release and related exhibits; soliciting bids from settlement administration firms and working with the chosen administrator (Analytics) to implement the notice program; and drafting and filing the motion for preliminary approval. (Donathen Decl., ¶ 7).

No time for drafting this fee petition has been included in Settlement Class Counsel's lodestar. As such, the time and effort Settlement Class Counsel have expended weigh in favor of the requested fee.

2. The Quality of the Services Settlement Class Counsel Rendered.

Settlement Class Counsel in this case have extensive experience in class action litigation. (See Donathen Decl., at ¶¶ 16-17).

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 Settlement Class Counsel substantially benefited the Settlement Class in that a considerable financial recovery was obtained. Specifically, the monies CVS has agreed pay into the Settlement Fund are intended to compensate all Settlement Class Members, without the need of filing a claim, by reimbursing Settlement Class Members for the amount of the tow fee overcharges they paid. The professional methods used by Settlement Class Counsel are consistent with best practices and reflect Settlement Class Counsel's extensive experience. As such, this factor supports the reasonableness of Settlement Class Counsel's fee request.

3. The Results Achieved and Benefits Conferred Upon the Settlement Class or the Public.

The Settlement Class in this action is receiving substantial monetary compensation that reimburses them for the tow-fee charges they paid to Tag Towing, as engaged by CVS, a recovery they would not have obtained absent this action. Here, it is estimated that the Settlement Fund will provide a *per capita* recovery of approximately \$115 for the roughly 331 Settlement Class Members, excluding the additional settlement benefits provided directly by CVS in the form attorneys' fees, costs, and expenses along with the agreed upon injunctive relief. Indeed, the Settlement will approximately pay each Class Member the maximum amount of statutory damages available under the UTPCPL, a near full recovery of the alleged overcharges paid. *See* Pa. Stat. § 201-9.2 (a) ("any person . . . may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater."). This is far superior to the per-capita cash recoveries in

other approved unfair trade practices settlements. *Oslan v. L. Offs. Of Mitchell N. Kay*, 232 F. Supp. 2d 436, 442 (E.D. Pa. 2002) (approving unfair trade practices settlement where the class award was \$20,000 for 3,413 class members); *Saunders*, 2002 WL 1497374, at *6 (approving unfair trade practices settlement where the class awards were \$12,300 and \$37,500 for classes that respectively contained 1,474 and 1,579 members). As such, this factor weighs in favor of Settlement Class Counsel's fee request.

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

This case has been pending for more than five years and has helped eliminate a range of predatory towing practices across the city of Pittsburgh—namely the practice of charging more than permitted under the Pittsburgh's City Ordinances for nonconsensual tows. Given the relatively small amount each Settlement Class Member was overcharged for the return of their nonconsensually towed vehicle, it is unlikely that the overcharges could or would have been prosecuted or adjudicated economically on an individual basis, making it very likely the practices alleged in this action would have continued indefinitely had Settlement Class Counsel not being willing to pursue this action. Further, without Settlement Class Counsel's diligent litigation efforts, Settlement Class Members would be without any financial recovery at all. Indeed, Settlement Class Counsel's efforts have ensured Settlement Class Members will be provided with a substantial and direct benefit in the form of reimbursements for the tow fee overcharges they paid. As such, this factor weighs in favor of Settlement Class Counsel's fee request.

5. Whether Receipt of a Fee was Contingent on the Success of the Litigation.

The receipt of a fee in this litigation was entirely contingent on the success of the litigation. (Donathen Decl., ¶ 4). Given the reasonable defenses CVS raised to Plaintiffs' claims, there was a significant risk that Settlement 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. Indeed, CVS raised reasonable defenses and objections to Plaintiffs' claims that Tag Towing, as engaged by CVS, overcharged for tow fees, engaged in unfair or deceptive practices, breached a contract, or was otherwise unjustly enriched. Those defenses include but are not limited to: CVS did not conspire with Tag Towing to charge excess fees for non-consensual tows; Plaintiffs and Settlement Class Members did not pay any money to CVS; Tag Towing was an independent contractor; Plaintiffs and Settlement Class Members were trespassers; and CVS received no tangible benefits from Plaintiffs and Settlement Class Members. 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.

III. SERVICE AWARDS TO THE SETTLEMENT CLASS REPRESENTATIVES 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*, 2016 WL 861329, at *8 (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 \$1,500 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); *Saunders*, 2002 WL 1497374, at *13 (approving \$1,300 service award in a Fair Debt Collection Act and UTPCPL class settlement); *Oslan*, 232 F. Supp. 2d at 446 (approving \$1,000 service award in a Fair Debt Collection Act and UTPCPL class settlement).

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 retaining counsel, agreeing to serve as representative plaintiffs and verifying the complaints and amended complaints, communicating with Settlement Class Counsel when required regarding various steps during the litigation, participating in discovery, and reviewing and signing the proposed Settlement. (Donathen Decl., ¶ 15). 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 \$1,500 to the Plaintiffs are entirely appropriate.

IV. 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 a combined total of \$93,500 towards attorneys' fees and reimbursement of litigation expenses, and approving Service Awards of \$1,500 to each of the Plaintiffs.

Dated: July 8, 2024

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, the foregoing was served by email and/or mail on the following:

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