IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOEL HOOD, ELIAS NEMIRI, GIDEON BAUER, ELIZABETH GOLEC, and ALEXYS TAYLOR, *individually and on behalf of all others similarly situated*, Plaintiffs, v. EDUCATIONAL COMPUTER SYSTEMS, INC., Defendant.	Case No. 2:24-cv-00666-CCW

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS

TABLE OF CONTENTS

INTRODUCTION 1

SUMMARY OF CLASS COUNSEL'S WORK 3

LEGAL STANDARD 4

ARGUMENT 5

I. The Court Should Award a Reasonable Percentage of the Common Fund. 5

II. The Requested Award is Reasonable under the Percentage-of-Recovery Method. 5

III. The Requested Fee Is Fair and Reasonable Under the Third Circuit's *Gunter/Prudential* Factors. 7

A. The Size and Nature of the Fund Created and Number of Persons Benefited. 8

B. The Absence of Objections to the Settlement and Requested Fee 9

C. The Skill and Efficiency of Attorneys Involved. 10

D. The Complexity and Duration of the Litigation. 11

E. The Risk of Non-Payment. 12

F. The Time Devoted to the Litigation by Class Counsel. 12

G. The Request Is Comparable to Awards in Similar Cases. 13

H. The Settlement Benefits are Attributable Solely to the Efforts of Class Counsel. 14

I. The Percentage of the Fee Approximates the Fee that Would Have Been Negotiated in the Private Market. 14

J. Innovative Terms of the Settlement. 14

IV. The Lodestar Cross-Check Confirms the Fee Request Is Reasonable. 15

V. Class Counsel's Request for Reimbursement of Expenses Is Reasonable. 18

VI. The Requested Service Awards Are Reasonable. 18

CONCLUSION 19

TABLE OF AUTHORITIES

Cases

Acevedo v. Brightview Landscapes, LLC,
No. CV 3:13-2529, 2017 WL 4354809 (M.D. Pa. Oct. 2, 2017) 18

Anaya v. Cencora, Inc. et al.,
No. 2:24-cv-02961 (E.D. Pa. Feb. 11, 2026) 13

Animal Legal Def. Fund v. Lucas,
No. CV 2:19-40, 2021 WL 4479483 (W.D. Pa. Sept. 30, 2021) 16

Balfour v. iFIT Health & Fitness, Inc.,
No. 1:23-cv-00067-CFC (D. Del. Dec. 2, 2024) 16

Bianucci v. Rite Aid Corp.,
No. 2:24-cv-03356-HB (E.D. Pa. July 30, 2025) 6, 13, 17, 18

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980) 5

Boone v. City of Philadelphia,
668 F. Supp. 2d 693 (E.D. Pa. 2009) 14

Bray v. GameStop Corp.,
No. 17-cv-01365-JEJ (D. Del. July 16, 2018) 9

Corra v. ACTS Ret. Servs., Inc.,
No. CV 22-2917, 2024 WL 22075 (E.D. Pa. Jan. 2, 2024) 11

Cullen v. Whitman Med. Corp.,
197 F.R.D. 136 (E.D. Pa. 2000) 18

Enslin v. Coca-Cola Co.,
No. 2:14-CV-06476, 2017 WL 1190979 (E.D. Pa. Mar. 31, 2017) 11

First Choice Fed. Credit Union v. Slim CD, Inc.,
No. 2:25-cv-01088-MRH (W.D. Pa. Sept. 22, 2026) 5, 6

Fulton-Green v. Accolade, Inc.,
No. CV 18-274, 2019 WL 4677954 (E.D. Pa. Sept. 24, 2019) 19

Galt v. Eagleville Hosp.,
310 F. Supp. 3d 483 (E.D. Pa. 2018) 5, 13

Glaberson v. Comcast Corp.,
No. 03-6604, 2015 WL 5582251 (E.D. Pa. Sept. 22, 2015) 4

Gunter v. Ridgewood Energy Corp.,
223 F.3d 190 (3d Cir. 2000) 7, 15

Harshbarger v. Penn Mut. Life Ins. Co.,
No. CV 12-6172, 2017 WL 6525783 (E.D. Pa. Dec. 20, 2017) 14, 15

Hensley v. Eckerhart,
461 U.S. 424 (1983) 8

High St. Rehab., LLC v. Am. Specialty Health Inc.,
Case No. 2:12-cv-07243-NIQA, 2019 WL 4140784 (E.D. Pa. Aug. 29, 2019) 9

Holden v. Guardian Analytics, Inc.,
No. 2:23-CV-2115, 2024 WL 2845392 (D.N.J. June 5, 2024) 6

Howard v. Arconic Inc. et al,
No. 2:17-cv-1057-MRH (W.D. Pa. Aug. 9, 2023) 16

In re Anthem, Inc. Data Breach Litig.,
327 F.R.D. 299 (N.D. Cal. 2018) 11

In re AT&T Corp., Sec. Litig.,
455 F.3d 160 (3d Cir. 2006) 4, 7, 14

In re Blackbaud, Inc. Customer Data Breach Litig.,
No. 3:20-mn-2972, 2024 WL 2155221 (D.S.C. May 14, 2024) 11

In re Cendant Corp. Litig.,
264 F.3d 201 (3d Cir. 2001) 15

In re Cendant Corp. PRIDES Litig.,
243 F.3d 722 (3d Cir. 2001) 5

In re Diet Drugs Prods. Liab. Litig.,
582 F.3d 524 (3d Cir. 2009) 7

In re Equifax Inc. Customer Data Sec. Breach Litig.,
999 F.3d 1247 (11th Cir. 2021) 6, 7

In re Equifax Inc. Customer Data Sec. Breach Litig.,
No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) 13

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995) 5

In re Ins. Brokerage Antitrust Litig.,
297 F.R.D. 136 (D.N.J. 2013) 14

In re Ins. Brokerage Antitrust Litig.,
579 F.3d 241 (3d Cir. 2009) 4

In re Lincoln Nat'l COI Litig.,
No. 2:16-cv-06605-GJP (E.D. Pa. Oct. 5, 2023) 16

In re NCB Mgmt. Servs., Inc. Data Breach Litig.,
No. 2:23-cv-01236-KNS (E.D. Pa. Sept. 29, 2025) 8, 9

In re Onix Grp., LLC Data Breach Litig.,
No. 2:23-cv-02288-KSM (E.D. Pa. Dec. 13, 2024) 6, 16

In re Phila. Inquirer Data Sec. Litig.,
No. 2:24-cv-02106-KSM (E.D. Pa. Mar. 18, 2025) 6

In re Prudential Fin., Inc. Data Breach Litig.,
No. 2:24-cv-06818-SRC-AME (D.N.J. Dec. 3, 2025) 8

In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions,
148 F.3d 283 (3d Cir. 1998) 7, 14, 17

In re Remicade Antitrust Litig.,
No. 17-CV-04326, 2023 WL 2530418 (E.D. Pa. Mar. 15, 2023) 8, 10, 17

In re Rite Aid Corp. Sec. Litig.,
396 F.3d 294 (3d Cir. 2005) 9, 14, 15

In re Schering-Plough Corp. Enhance Sec. Litig.,
No. CIV.A. 08-2177 DMC, 2013 WL 5505744 (D.N.J. Oct. 1, 2013) 16

In re Sonic Corp. Customer Data Breach Litig.,
No. 1:17-md-02807-JSG (N.D. Ohio Dec. 14, 2018)..... 9

In re Sonic Corp. Customer Data Sec. Breach Litig.,
No. 1:17-MD-2807, 2019 WL 3773737 (N.D. Ohio Aug. 12, 2019)..... 11

In re TikTok, Inc. Consumer Privacy Litig.,
No. 1:20-cv-04699 (N.D. Ill. July 28, 2022) 16, 17

In re Viropharma Inc. Sec. Litig.,
No. 12-2714, 2016 WL 312108 (E.D. Pa. Jan. 25, 2016) 8, 10

Krimes v. JPMorgan Chase Bank, N.A.,
No. CV 15-5087, 2017 WL 2262998 (E.D. Pa. May 24, 2017) 19

Maldonado v. Houstoun,
256 F.3d 181 (3d Cir. 2001) 15

McDonough v. Toys R Us, Inc.,
80 F. Supp. 3d 626 (E.D. Pa. 2015) 14, 18

McGee v. Ann's Choice, Inc.,
No. 12-2664, 2014 WL 2514582 (E.D. Pa. June 4, 2014) 19

McKenna v. City of Phila.,
582 F.3d 447 (3d Cir. 2009) 15

Medina v. Albertsons Companies, Inc.,
No. 1:23-cv-00480-MN (D. Del. April 26, 2024) 6

Missouri v. Jenkins by Agyei,
491 U.S. 274 (1989) 16

New Berry, Inc. v. Smith,
No. CV 18-1024, 2021 WL 5332165 (W.D. Pa. Nov. 15, 2021) 15

O'Hern v. Vida Longevity Fund, LP,
No. CV 21-402-SRF, 2023 WL 3204044 (D. Del. May 2, 2023) 18

Pub. Int. Rsch. Grp. v. Windall,
51 F.3d 1179 (3d Cir. 1995) 15

Ramey v. The Pennsylvania State Univ.,
No. 2:20-cv-753-RJC (W.D. Pa. Feb. 28, 2025) 16

Rose v. Travelers Home & Marine Ins. Co.,
No. 19-cv-977, 2020 WL 4059613 (E.D. Pa. July 20, 2020) 5

Tjahjono v. Westinghouse Air Brake Tech. Corp.,
No. 2:23-cv-531-WSS (W.D. Pa. Jan. 21, 2025) 6

Vista Healthplan, Inc. v. Cephalon, Inc.,
No. 2:06-CV-1833, 2020 WL 1922902 (E.D. Pa. Apr. 21, 2020) 19

Whiteley v. Zynerba Pharms., Inc.,
No. 19-4959, 2021 WL 4206696 (E.D. Pa. Sept. 16, 2021) 12, 15

Wood v. Saroj & Manju Invs. Philadelphia LLC,
No. CV 19-2820-KSM, 2021 WL 1945809 (E.D. Pa. May 14, 2021) 19

Rules

Fed. R. Civ. P. 23(h) 4

INTRODUCTION

Plaintiffs Joel Hood, Elias Nemiri, Gideon Bauer, Elizabeth Golec, and Alexys Taylor ("Plaintiffs") and their counsel ("Class Counsel") respectfully request an award of attorneys' fees, litigation expenses, and Service Awards for securing a $6.5 million non-reversionary settlement for more than 2.5 million people whose personal information was potentially accessed in a criminal cyberattack on the guest tax search functionality of Defendant Educational Computer Systems, Inc. ("ECSI"). That result was not inevitable. It came after more than two years of contested litigation, a motion to dismiss, discovery, and three mediation sessions. Each step required skill, persistence, and a willingness to bear the full risk of a contingent case.

Class Counsel began work immediately after the data security incident was announced by various colleges and universities. Class Counsel investigated the public statements concerning the security incident and compromised data, researched ECSI's privacy practices, and analyzed the governing law and potential claims. *See* Joint Declaration of Class Counsel ("Joint Decl.") ¶ 7. The Consolidated Amended Class Action Complaint ("CAC") asserted claims for negligence, breach of implied contract, unjust enrichment, invasion of privacy, and declaratory judgment. ECF 30. ECSI moved to dismiss the CAC. ECF 33. Class Counsel researched and briefed Plaintiffs' opposition. ECF 36. On May 2, 2025, the Court rejected ECSI's facial challenge to Article III standing, dismissed two claims, and allowed the remaining claims to proceed. ECF 38.

Following formal and informal discovery and multiple mediation sessions before Jill Sperber of Judicate West, the parties agreed to a mediator's proposal that provided for meaningful class-wide relief. Over the subsequent months, the parties worked on a formal fulsome settlement agreement setting forth the details of the Settlement. Through the Settlement, ECSI will fund a $6.5 million non-reversionary settlement fund (the "Settlement Fund"). SA §§ IV.1.39, IV.2.1; *see*

Part IV.A, *infra*. Settlement Class Members who submit a valid Claim Form may recover documented, unreimbursed Out-of-Pocket Losses of up to $5,000 that are more likely than not caused by the security incident, or an estimated $100 Alternative Cash Payment, subject to *pro rata* adjustment. SA §§ IV.3.1–IV.3.4; ECF 64 ¶ 12. Plaintiffs moved for preliminary approval on January 16, 2026, and the Court granted it on August 5, 2026. ECF 59, 63, 64. Class Counsel then worked with the settlement administrator to implement the notice program and responded to numerous inquiries from Settlement Class Members. Joint Decl. ¶ 19.

Plaintiffs also made this result possible, collecting documents, assisting with discovery responses, and consulting with counsel throughout the litigation to get the best possible recovery for the Settlement Class. Each Class Representative stepped forward on behalf of the Settlement Class and accepted risks of serving as a named plaintiff in a complex class action.

Class Counsel request the Court award (a) attorneys' fees, costs, and expenses of $2,166,666.66, which is one-third of the Settlement Fund;[1] and (b) Service Awards of $2,500 each, totaling $12,500, for the Class Representatives.

The request is reasonable and should be approved. As set forth below, the requested one-third fee and expense reimbursement falls within the range this Circuit has approved and is consistent with recent data breach awards in this District and other federal courts throughout Pennsylvania, and the relevant *Gunter*/*Prudential* factors weigh in favor of the request. The Settlement Class has received substantial benefits, and to date ***no*** objections and only ***one*** request for exclusion. Counsel's skill, the complexity of the case, the risk of nonpayment on a fully contingent basis, and the hours invested all support the fee. A lodestar cross-check further confirms

[1] While the law permits, and courts in this District often grant, expenses to be reimbursed in addition to a one-third recovery of attorneys' fees, Class Counsel is seeking one-third of the Settlement Fund to cover both fees and expenses.

the request is reasonable. The requested Service Awards are also modest, supported by the history of the case, and reasonable. Plaintiffs therefore respectfully request that the Court grant their Motion.

SUMMARY OF CLASS COUNSEL'S WORK

This putative class action arises from a criminal cyberattack on ECSI's guest tax search functionality between October 29, 2023 and February 12, 2024 (the "Security Incident"). Plaintiffs allege that unauthorized actors accessed personally identifying and financial information ("PII") contained in Forms 1098-E and 1098-T, including names, Social Security numbers, and financial information. CAC ¶¶ 1, 5–9, 34–43. The action asserts claims based on ECSI's allegedly inadequate data security practices. ECSI denies wrongdoing and liability. SA § III. Class Counsel investigated potential claims against ECSI, including gathering information about the compromised data, researching ECSI, and reviewing legal authority. The Joint Declaration is submitted herewith and describes this work in detail.

Following consolidation of the related actions, ECF 17; SA § I, at 2, Plaintiffs filed the operative CAC on September 13, 2024. ECF 30. ECSI moved to dismiss the CAC under Rules 12(b)(1) and 12(b)(6) on September 27, 2024. ECF 32, 33; SA § I, at 3. On May 2, 2025, the Court rejected ECSI's facial challenge to Article III standing, dismissing the breach of implied contract and invasion of privacy claims, while sustaining the remaining claims. ECF 38, 39; ECF 64 ¶ 9. On May 23, 2025, ECSI answered the CAC. ECF 42.

The parties then engaged in formal and informal discovery, including multiple sets of interrogatories and requests for production issued by Plaintiffs and interrogatories and requests for production served by ECSI. SA § I, at 3. The parties also exchanged detailed mediation statements, as well as supplemental briefing on certain legal issues. The parties participated in three mediation

sessions with Ms. Sperber: August 19, September 22, and September 26, 2025. Ms. Sperber eventually made a mediator's proposal, which the parties accepted on October 1, 2025. The parties subsequently executed a settlement term sheet on October 9, 2025. ECF 64 ¶¶ 10–11.

Over the following months, the parties prepared and executed a detailed formal agreement setting forth the terms of the Settlement. Plaintiffs moved for preliminary approval on January 16, 2026. ECF 59. On August 5, 2026, the Court granted preliminary approval and appointed Angeion Group, LLC ("Angeion") as Settlement Administrator. ECF 63, 64; SA § IV.1.46; ECF 64, ¶ 29. Class Counsel worked with Angeion to implement the notice program and responded to questions from Settlement Class Members. Joint Decl. ¶ 19. The Settlement Website and Long Form Notice states that the fee, expense, and Service Award application will be filed no later than November 5, 2026. Long Form Notice, Question 16, at 8. The deadline for Settlement Class Members to opt out of or object to the Settlement is November 20, 2026, and the claim deadline is December 21, 2026.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 23(h), 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 Third Circuit has approved two methods for calculating attorneys' fees in class action settlements: the lodestar method and the percentage-of-recovery method. *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006). 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). As explained below, the Third Circuit favors the percentage-of-recovery method when a settlement creates a common fund, as this Settlement does. *See Glaberson v. Comcast Corp.*, No. 03-6604, 2015 WL 5582251, at *11

(E.D. Pa. Sept. 22, 2015) ("The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases . . . .").

ARGUMENT

I. The Court Should Award a Reasonable Percentage of the Common Fund.

The Supreme Court has long recognized that a lawyer who obtains a recovery "for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed on the class." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

II. The Requested Award is Reasonable under the Percentage-of-Recovery Method.

The requested fee and expense award of one-third of the Settlement Fund is reasonable under the percentage-of-recovery method. No general rule exists, but in the Third Circuit "fee awards generally range from 19% to 45% of the settlement fund." *Rose v. Travelers Home & Marine Ins. Co.*, No. 19-cv-977, 2020 WL 4059613, at *11 (E.D. Pa. July 20, 2020) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 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 request of one-third of the Settlement Fund is consistent with awards approved in other data breach cases within this Circuit. *See, e.g.*, *First Choice Fed. Credit Union v. Slim CD, Inc.*, No. 2:25-cv-01088-MRH, Final Approval Order and Judgment at 6, ¶ 17 (W.D.

Pa. Sept. 22, 2026), ECF 55 (awarding $666,666.67 in attorneys' fees, one-third of a $2 million settlement fund, plus $21,082.76 in costs and expenses); *Tjahjono v. Westinghouse Air Brake Tech. Corp.*, No. 2:23-cv-531-WSS, ECF 64 (awarding one-third in attorneys' fees, plus an additional $9,505 in expenses); *In re Onix Grp., LLC Data Breach Litig.*, No. 2:23-cv-02288-KSM, Order at 2 ¶ 6 (E.D. Pa. Dec. 13, 2024), ECF 58 (awarding $416,666.66 in attorneys' fees, one-third of a $1.25 million settlement fund, plus $12,032 in litigation expenses); *In re Phila. Inquirer Data Sec. Litig.*, No. 2:24-cv-02106-KSM, Order at 2 ¶ 5 (E.D. Pa. Mar. 18, 2025), ECF 37 (awarding $175,000 in attorneys' fees, one-third of a $525,000 settlement fund, plus $13,765.32 in litigation expenses); *Bianucci v. Rite Aid Corp.*, No. 2:24-cv-03356-HB, Order at 7 ¶ 14 (E.D. Pa. July 30, 2025), ECF 65 (approving $2,380,000 in attorneys' fees, 35% of a $6.8 million settlement fund, plus $40,697.43 in litigation costs and expenses); *Medina v. Albertsons Companies, Inc.*, No. 1:23-cv-00480-MN (D. Del. April 26, 2024), ECF 34 (final approval order in data breach class action awarding attorneys' fees of $250,000, 33.33% of $750,000 non-reversionary common fund, plus reasonable litigation costs of $12,287.54). The court in *Holden v. Guardian Analytics, Inc.*, No. 2:23-CV-2115, 2024 WL 2845392, at *11-12 (D.N.J. June 5, 2024), a data breach case that had "limited motion practice, only informal discovery, and little more than 2 months between the filing of the Amended Complaint and the request for preliminary approval of the settlement agreement," and where the court specifically noted that 33.33% was "on the higher end for data breach cases," the court found 33.33% to be "reasonable under the percentage-of-recovery analysis." This case was litigated much more vigorously than *Holden*, with a substantial motion to dismiss and full briefing, formal discovery, two years of litigation, and three mediations.[2] Accordingly, and as

[2] Also, at least some of the data breach cases cited in *Holden* where percentages in the 20-25% range were awarded were "mega fund" cases, with common funds as high as $380.5 million, and where a one-third percentage would have resulted in an inequitably large fee award. *See In re*

further demonstrated by the *Gunter/Prudential* factors below, Class Counsel's fee and expense request is reasonable under the percentage-of-recovery method.

III. The Requested Fee Is Fair and Reasonable Under the Third Circuit's *Gunter/Prudential* Factors.

In assessing the reasonableness of a request for attorneys' fees under the percentage-of-recovery method, courts consider:

> (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 the 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 counsel; and (7) awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000).

Courts also generally consider three additional factors: (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and (10) any innovative terms of the settlement. *In re Diet Drugs Prods. Liab. Litig.*, 582 F.3d 524, 541 (3d Cir. 2009) (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 338 (3d Cir. 1998)). "The fee award reasonableness factors need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest." *In re AT&T*, 455 F.3d at 166 (internal quotations and citations omitted). A review of these factors confirms that Class Counsel's requested fee is reasonable.

Equifax Inc. Customer Data Sec. Breach Litig., 999 F.3d 1247, 1281 (11th Cir. 2021) (affirming attorney's fees award of 20.36%, which was $77.5 million of $380.5 million settlement fund). While the $6.5 million common fund here is substantial, it is not a "mega fund."

A. The Size and Nature of the Fund Created and Number of Persons Benefited.

In awarding fees, the "most critical factor" is "the degree of success obtained." *In re Viropharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). To assess this factor, courts consider "the fee request in comparison to the size of the fund created and the number of class members to be benefited." *In re Remicade Antitrust Litig.*, No. 17-CV-04326, 2023 WL 2530418, at *24 (E.D. Pa. Mar. 15, 2023) (citation omitted).

Here, the Settlement provides a $6,500,000 non-reversionary fund for a Settlement Class comprising all Persons whose Personal Information was potentially accessed in the Security Incident, totaling approximately 2,565,981 persons. SA § IV.1.47; Joint Decl. ¶ 6. Settlement Class Members may submit claims for reimbursement of documented Out-of-Pocket Losses of up to $5,000 or an estimated $100 cash payment, subject to *pro rata* adjustment. SA §§ IV.3.1–IV.3.4. If sufficient funds remain more than 180 days after the initial distribution, they will be distributed equally to Settlement Class Members who redeemed or cashed their initial payments. Otherwise, the remaining funds will be paid to a *cy pres* recipient mutually agreed upon by the parties and approved by the Court. SA § IV.3.6; ECF 64 ¶ 13.

The Settlement compares favorably with settlements approved in other data breach actions within this Circuit. The $6.5 million Settlement Fund for 2,565,981 Settlement Class Members represents approximately $2.53 per member on a gross basis, which exceeds the corresponding per-member recoveries in other approved settlements. *See, e.g.*, *In re Prudential Fin., Inc. Data Breach Litig.*, No. 2:24-cv-06818-SRC-AME, Final Approval Order ¶ 11 (D.N.J. Dec. 3, 2025), ECF 63 (approving a $4.75 million settlement, approximately $1.81 per member based on 2,617,374 unique class records); *In re NCB Mgmt. Servs., Inc. Data Breach Litig.*, No. 2:23-cv-

01236-KNS, Final Approval Order ¶ 7 (E.D. Pa. Sept. 29, 2025), ECF 141 (approving a $2.625 million settlement, approximately $1.78 per member based on 1,471,019 identified Settlement Class Members). These comparisons use gross settlement funds before deductions for attorneys' fees, expenses, administration costs, and Service Awards.

The Settlement's non-reversionary fund and cash-payment structure also compare favorably with numerous other recent data breach settlements, many of which are "claims made" settlements that require class members to submit claims or additional documentation before any proceeds are made available. *Compare, e.g.*, *In re Sonic Corp. Customer Data Breach Litig*., No. 1:17-md-02807-JSG, ECF 144-2 (N.D. Ohio Dec. 14, 2018) ($10 payment with proof of purchase or $40 payment with proof of fraudulent charges); *Bray v. GameStop Corp*., No. 17-cv-01365-JEJ, ECF 40-1 (D. Del. July 16, 2018) ($15 per hour, up to three hours, for documented time and effort, and $22 with proof of fraudulent charges)

B. The Absence of Objections to the Settlement and Requested Fee.

The deadline for Settlement Class Members to object to or opt out of the Settlement is November 20, 2026. As of October 29, 2026, ***no*** Settlement Class Member has objected and only ***one*** requested exclusion. Joint Decl. ¶ 19.

Thus, to date, this factor favors Class Counsel's fee request. *See In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 305 (3d Cir. 2005) (holding that 2 objections from class of 300,000 was a "rare phenomenon" and "low level of objection" that weighed in favor of the settlement); *High St. Rehab., LLC v. Am. Specialty Health Inc.*, Case No. 2:12-cv-07243-NIQA, 2019 WL 4140784, at *4 (E.D. Pa. Aug. 29, 2019) ("A low number of objectors or opt-outs is persuasive evidence of the proposed settlement's fairness and adequacy.").

C. The Skill and Efficiency of Attorneys Involved.

The third *Gunter* factor is measured by the "quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *In re Viropharma*, 2016 WL 312108, at *16 (citation omitted). These considerations support the reasonableness of the requested fee.

Class Counsel have extensive experience in class action litigation and significant experience in data breach class actions such as this one. As set forth in the Joint Declaration and in the firm resumes attached as Exhibit A (Lynch Carpenter) and Exhibit B (Cafferty Clobes Meriwether & Sprengel LLP), Class Counsel are highly experienced in this type of litigation and have a strong track record of favorable resolutions in similar cases. Joint Decl. ¶¶ 36-38; Exs. A, B. The favorable Settlement is attributable in large part to the diligence, determination, hard work, and skill of Class Counsel. Recognizing the time and expense required to litigate this case through summary judgment and class certification, and the inherent risks those stages presented, Class Counsel worked diligently to resolve the litigation while providing an immediate benefit to Settlement Class Members.

The quality and vigor of opposing counsel also bear on the quality of Class Counsel's services. *See In re Remicade*, 2023 WL 2530418, at *25. Here, ECSI was represented by King & Spalding LLP. SA § IV.1.18. Class Counsel's ability to obtain a favorable outcome in the face of formidable opposition confirms the quality of their representation and supports the reasonableness of the requested fee.

D. The Complexity and Duration of the Litigation.

Plaintiffs faced, and Class Counsel resisted, numerous defenses to liability and damages. Although Plaintiffs prevailed in part at the motion to dismiss stage, ECSI continues to vehemently deny liability, and there is no assurance that Plaintiffs would have overcome further jurisdictional challenges or prevailed at summary judgment or class certification. *See Enslin v. Coca-Cola Co*., No. 2:14-CV-06476, 2017 WL 1190979, at *17 (E.D. Pa. Mar. 31, 2017), *aff'd*, 739 F. App'x 91 (3d Cir. 2018) (granting summary judgment for the defendant in data breach case involving unauthorized access to employees' private information). Data breach and privacy cases have been found to be complex and to involve novel issues of law. *See, e.g.*, *Corra v. ACTS Ret. Servs., Inc.*, No. CV 22-2917, 2024 WL 22075, at *14 (E.D. Pa. Jan. 2, 2024) (recognizing that data breach litigation "is inherently complex" given "the difficulty of proving class wide damages" as well as "issues about the duty of care"); *In re Sonic Corp. Customer Data Sec. Breach Litig*., No. 1:17-MD-2807, 2019 WL 3773737, at *6 (N.D. Ohio Aug. 12, 2019) ("The realm of data breach litigation is complex and largely undeveloped"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 317 (N.D. Cal. 2018) (similar). Many data breach class actions have been dismissed at the Rule 12 stage or later for reasons including lack of standing, lack of duty, failure to demonstrate causation, or failure to prove damages, and many cases that survived those hurdles nonetheless failed to proceed on a class basis. *See, e.g.*, *In re Blackbaud, Inc. Customer Data Breach Litig.*, No. 3:20-mn-2972, 2024 WL 2155221 (D.S.C. May 14, 2024).

In short, this was not a simple case with a clear path to liability and judgment, and the litigation could have continued for several years, including through appeals, had it not settled. Class Counsel nonetheless worked diligently to achieve a significant result for the Settlement Class in the face of real litigation risks. This factor supports the requested fee.

E. The Risk of Non-Payment.

"Courts routinely recognize the risk created by undertaking an action on a contingency fee basis militates in favor of approval." *Whiteley v. Zynerba Pharms., Inc.*, No. 19-4959, 2021 WL 4206696, at *12 (E.D. Pa. Sept. 16, 2021). Class Counsel undertook this litigation entirely on a contingent basis, bearing the risk that it would yield no recovery and leave them uncompensated for their time and out-of-pocket expenses. Joint Decl. ¶ 4. To date, Class Counsel have not been paid anything for their efforts. A dispositive ruling at any stage could have meant a zero recovery for the Settlement Class and no payment for Class Counsel, because ECSI asserted several substantive defenses that could have eliminated any possibility of recovery. This factor favors the requested fee.

F. The Time Devoted to the Litigation by Class Counsel.

Class Counsel have advanced $24,608.91 in out-of-pocket expenses and have worked 656.1 hours on this Litigation, knowing that if their efforts were unsuccessful, no fee would be paid. Joint Decl. ¶¶ 4, 34.

Class Counsel vigorously litigated this action. Their work included consulting the Plaintiffs; investigating the claims; drafting and editing the initial and amended complaints; researching, drafting, and filing Plaintiffs' opposition to ECSI's motion to dismiss; working with ECSI's counsel to prepare the parties' Report of Rule 26(f) planning meeting; appearing telephonically at the Initial Case Management Conference; drafting and serving discovery requests on ECSI; preparing extensively for mediation and participating in three mediation sessions before Ms. Sperber; negotiating, drafting, and finalizing the proposed Settlement Agreement and Release and related exhibits; soliciting bids from settlement administration firms and working with the selected administrator to implement the notice program; drafting and filing the motion for

preliminary approval; and responding to Settlement Class Member inquiries about the Settlement. Joint Decl. ¶ 21. Throughout, Class Counsel conducted their work with skill and efficiency, conserving resources and avoiding duplication of effort. Joint Decl. ¶¶ 4–5.

Class Counsel's work is also not finished. They will spend many more hours working with Angeion on claims, briefing the motion for final approval, and preparing for and participating in the final approval hearing. That time is not reflected in this motion. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *32 (N.D. Ga. Mar. 17, 2020), *rev'd in part on other grounds*, 999 F.3d 1247 (11th Cir. 2021) (finding that "the work that class counsel . . . estimate they will do" with respect to "managing the claims process and administering the settlement" "weighs in favor of approval of the requested fee").

The foregoing reflects a substantial commitment of time, personnel, and out-of-pocket expenses, undertaken with a substantial risk of recovering nothing. This factor supports the requested fee.

G. The Request Is Comparable to Awards in Similar Cases.

As shown in Section II above, a request of one-third of the Settlement Fund for attorneys' fees and expenses is within the range of fees awarded in this Circuit and in comparable data breach cases. *See, e.g.*, *Galt*, 310 F. Supp. 3d at 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"); *Anaya v. Cencora, Inc. et al*., No. 2:24-cv-02961, Doc. 140 (E.D. Pa. Feb. 11, 2026) (awarding one-third of settlement fund); *Bianucci*, Order at 7 ¶ 14 (E.D. Pa. July 30, 2025), ECF 65 (approving fees of 35% of a $6.8 million settlement fund, plus $40,697.43 in litigation costs and expenses). Accordingly, this factor supports the requested fee.

H. The Settlement Benefits are Attributable Solely to the Efforts of Class Counsel.

The Third Circuit has advised district courts to examine whether counsel has benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing, which may bear on whether counsel should receive full credit for the value of the settlement fund. *See Prudential*, 148 F.3d at 338. Here, Class Counsel initiated this action and have litigated it without assistance from any government agency or third party, supporting the requested fee. *See Rite Aid*, 396 F.3d at 304-305 (weighing this factor in favor of fee approval where class counsel—not government investigators—drove the recovery); *Harshbarger v. Penn Mut. Life Ins. Co.*, No. CV 12-6172, 2017 WL 6525783, at *5 (E.D. Pa. Dec. 20, 2017) (similar).

I. The Percentage of the Fee Approximates the Fee that Would Have Been Negotiated in the Private Market.

The Third Circuit has advised that the requested fee should also be compared to "the percentage fee that would have been negotiated had the case been subject to a private [non-class] contingent fee agreement." *In re AT&T*, 455 F.3d at 165. Class Counsel's requested fee and expense award of one-third of the Settlement Fund is commensurate with, or even more modest than, customary percentages in private contingent fee agreements. *See Boone v. City of Philadelphia*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009) (explaining that the median attorneys' fee award in class actions is one-third, or 33%); *see also In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 156 (D.N.J. 2013) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation.").

J. Innovative Terms of the Settlement.

The Settlement does not contain any particularly novel or "innovative" terms. This factor is therefore neutral. *See McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 655 (E.D. Pa. 2015)

("In the absence of any innovative terms, this factor neither weighs in favor or against the proposed fee request."); *Harshbarger*, 2017 WL 6525783, at *5 (same).

On balance, the *Gunter/Prudential* factors demonstrate that Class Counsel's requested fee and expense award is reasonable and should be approved.

IV. The Lodestar Cross-Check Confirms the Fee Request Is Reasonable.

The Third Circuit has recommended that courts cross-check the reasonableness of a percentage-based fee using the lodestar method. *Gunter*, 223 F.3d at 195 n.1. "The purpose of the cross-check is to ensure that the percentage approach does not result in an 'extraordinary' lodestar multiple or windfall." *Whiteley*, 2021 WL 4206696, at *13 (quoting *In re Cendant Corp. Litig*., 264 F.3d 201, 285 (3d Cir. 2001)). A lodestar cross-check is an abridged analysis that requires neither "mathematical precision nor bean counting." *Rite Aid*, 396 F.3d at 305. The Court need not review actual billing records for this analysis. *Id.* at 307.

Under the lodestar method, the court first calculates the "lodestar," *i.e.*, the "number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," and then decides whether any adjustments are appropriate. *McKenna v. City of Phila*., 582 F.3d 447, 455 (3d Cir. 2009). A reasonable hourly rate 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. Int. Rsch. Grp. v. Windall,* 51 F.3d 1179, 1185 (3d Cir. 1995). The best evidence of a prevailing market rate is counsel's customary billing rate. *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."); *see also 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.").[3]

The submitted schedules for counsel report 656.1 hours and a lodestar subtotal of $592,322.60. Joint Decl. ¶¶ 22-23, 25-26, 28-29, 31-32, 34. The hourly rates in the firms' schedules range from $277 to $1,400 per hour, with attorney rates of $350 to $1,400 and paralegal rates of $277 to $600.

These rates have been approved in other class action cases. *See Howard v. Arconic Inc. et al*, No. 2:17-cv-1057-MRH (W.D. Pa. Aug. 9, 2023) (Judge Hornak approving attorney rates from $325 to $1,375 and a lodestar multiplier of 3.54); *Ramey v. The Pennsylvania State Univ.*, No. 2:20-cv-753-RJC (W.D. Pa. Feb. 28, 2025) (Judge Colville approving Lynch Carpenter's rates and a lodestar multiplier of 8.95); *Balfour v. iFIT Health & Fitness, Inc*., No. 1:23-cv-00067-CFC, Order at 2 ¶ 1 (D. Del. Dec. 2, 2024), ECF 53 (finding the hourly rates of class counsel, including Cafferty Clobes' rates of $650 to $950, to be reasonable and consistent with prevailing rates for complex class litigation); *In re Onix Grp., LLC Data Breach Litig*., No. 2:23-cv-02288-KSM, Mem. at 30–32 (E.D. Pa. Dec. 13, 2024), ECF 57 (approving fees after a lodestar cross-check that included Milberg's billing and finding counsel's hourly rates reasonable, including a rate of $1,057 for David Lietz); *In re Lincoln Nat'l COI Litig*., No. 2:16-cv-06605-GJP, Order at 1 n.1, 2 ¶ 1 (E.D. Pa. Oct. 5, 2023), ECF 262 (awarding fees of 33% of the settlement fund and finding the award reasonable under a lodestar cross-check that included BRB's billing); *In re TikTok, Inc.*

[3] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283–84 (1989); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. CIV.A. 08-2177 DMC, 2013 WL 5505744, at *33 n.28 (D.N.J. Oct. 1, 2013) (citing *Jenkins*, 491 U.S. at 283–88).

Consumer Privacy Litig., No. 1:20-cv-04699, Mem. Op. & Order at 68, 71–72 (N.D. Ill. July 28, 2022), ECF 261 (awarding Lynch Carpenter $8,117,302.50, reflecting a 3.0 lodestar multiplier, and Cafferty Clobes $286,825, representing its full lodestar).

Counsel's rates are also consistent with the ranges approved in this Circuit in class settlements. *See Bianucci*, Mem. at 24 n.6, ECF 64 (court expressly found reasonable partner rates of $850 to $1,300, associate rates of $520 to $800); *In re Remicade*, 2023 WL 2530418, at *27–*28 (approving hourly rates between $115 to $1,325). Given Class Counsel's experience and work, as well as the complex and relatively specialized nature of this litigation, the rates are reasonable.

Class Counsel have submitted summaries of the hours expended by attorneys and staff and descriptions of the type of work each firm performed. Joint Decl. ¶¶ 21, 22-23, 25-26, 28-29, 31-32. The hours billed were spent on the tasks that are typical in litigation and were necessary to the successful prosecution and resolution of the claims against ECSI.

The requested fee represents a multiplier of 3.62 when compared to counsel's verified lodestar, exclusive of expenses. Joint Decl. ¶ 34. The multiplier is calculated by dividing the requested fee (minus the expenses) by the total verified lodestar. Courts within the Third Circuit often approve fees in class actions that correspond to multipliers of one to four times the lodestar. *See, e.g.*, *Prudential*, 148 F.3d at 341 ("Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied . . . .") (internal citation omitted); *Bianucci*, Order at 7 ¶ 14, ECF 65, and Mem. at 23–24 & n.6, ECF 64 (approving a $2,380,000 fee on an $890,284.25 lodestar, yielding an approximate 2.67 multiplier, and finding that the lodestar cross-check did not require a different award). Given the quality of Class Counsel's work and the results achieved, the lodestar cross-check supports the reasonableness of the requested fee.

V. 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); *see also Bianucci*, Order at 7 ¶ 14, ECF 65 (approving $40,697.43 in litigation costs and expenses in addition to a 35% attorneys' fee award).

Here, Class Counsel seek reimbursement of $24,608.91 in expenses reasonably incurred to advance this Litigation, which is to be ***included*** in, not on top of, the requested one-third fee and expense award. These expenses exclude costs of notice and settlement administration, which will be paid from the Settlement Fund. The expenses are described in the Joint Declaration submitted concurrently and consist of court and filing fees, mediation fees, process-server and service fees, computer and other research, and electronic agreements. Joint Decl. ¶¶ 24, 27, 30, 33, 34. *See Acevedo v. Brightview Landscapes, LLC*, No. CV 3:13-2529, 2017 WL 4354809, at *20 (M.D. Pa. Oct. 2, 2017) (approving class counsel's request for reimbursement of, among other items, filing fees, mediation fees, and legal research costs).

Class Counsel request reimbursement only for expenses reasonably and necessarily incurred in prosecuting this action and supported by the firms' records.

VI. The Requested Service Awards Are Reasonable.

In the Third Circuit, "[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." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (citation omitted). Such awards are "not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class." *Toys R Us, Inc.*, 80 F. Supp.

3d at 665 (quotations omitted). Relevant factors in approving such awards include "the risk to the plaintiff in commencing litigation, both financially and otherwise; the notoriety and/or personal difficulties encountered by the representative plaintiff; the extent of the plaintiff's personal involvement in the lawsuit in terms of discovery responsibilities and/or testimony at depositions or trial; the duration of the litigation; and the plaintiff's personal benefit (or lack thereof) purely in her capacity as a member of the class." *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-CV-1833, 2020 WL 1922902, at *33 (E.D. Pa. Apr. 21, 2020) (quoting *McGee v. Ann's Choice, Inc.*, No. 12-2664, 2014 WL 2514582, at *3 (E.D. Pa. June 4, 2014)). Importantly, district courts in the Third Circuit routinely approve service awards of $1,000 to $5,000.[4]

Pursuant to the Settlement Agreement, and in recognition of their time and effort advancing the action and the risks they assumed in prosecuting it against ECSI on behalf of the Settlement Class, Class Counsel request Service Awards of $2,500 each, totaling $12,500. SA § IV.8.2; Joint Decl. ¶ 35. Because they are reasonably tailored to reflect the Class Representatives' service to the Settlement Class and are modest in size, Class Counsel respectfully request that the Court approve the requested Service Awards.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant their motion and approve (a) attorneys' fees and expenses of $2,166,666.66, one-third of the $6.5 million Settlement Fund; and (b) Service Awards totaling $12,500, with $2,500 each for the Class Representatives.

[4] *See, e.g.*, *Wood v. Saroj & Manju Invs. Philadelphia LLC*, No. CV 19-2820-KSM, 2021 WL 1945809, at *10 (E.D. Pa. May 14, 2021) (awarding a service award of $2,500 to the settlement class representative); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *13 (E.D. Pa. Sept. 24, 2019) (awarding service awards of $1,000 to each settlement class representative); *Krimes v. JPMorgan Chase Bank, N.A.*, No. CV 15-5087, 2017 WL 2262998, at *11 (E.D. Pa. May 24, 2017) (awarding service award of $5,000 to the settlement class representative).

Dated: November 3, 2026

Respectfully submitted,

/s/ Nicholas A. Colella
Nicholas A. Colella (PA 332699)
LYNCH CARPENTER, LLP
1133 Penn Ave., 5th Floor
Pittsburgh, Pennsylvania 15222
Telephone: (412) 322-9243
Facsimile: (412) 231-0246
nickc@lcllp.com

/s/ Nickolas J. Hagman (pro hac vice)
CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP
135 S. LaSalle, Suite 3210
Chicago, Illinois 60603
Telephone: (312) 782-4880
Facsimile: (312) 782-4485
nhagman@caffertyclobes.com

Counsel for Plaintiffs and the Proposed Settlement Class