

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

RAFAEL FIGUEROA, KAHLIL CABBLE,  
TY'ANTHONY SCOTT, and RYAN PETTY,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

POINT PARK UNIVERSITY,

Defendant.

Case No.: 2:20-cv-01484-LPL

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR  
AWARD OF ATTORNEYS' FEES, COSTS, AND CASE CONTRIBUTION AWARDS  
TO REPRESENTATIVE PLAINTIFFS**

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## INTRODUCTION

Named Plaintiffs<sup>1</sup> Rafael Figueroa, Kahlil Cabble, Ty'Anthony Scott, and Ryan Petty, move under Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure for an award of attorneys' fees, costs, and expenses, and approval of a Case Contribution Award for each Settlement Class Representative in connection with the proposed Class Action Settlement entered into with Defendant Point Park University ("Defendant" or "PPU"). The Court preliminarily approved the settlement on July 25, 2023. (ECF No. 85).

Class Counsel vigorously and efficiently prosecuted this action and was able to achieve an excellent result for the Settlement Class without expending unnecessary time or resources. Class Counsel prevailed in part on the motion to dismiss, where this Court issued its decision denying PPU's motion as to Plaintiffs' claims for breach of contract and unjust enrichment, but dismissing Plaintiffs' claims for conversion. (ECF Nos. 36-37). Class Counsel subsequently prevailed on PPU's Motion to Amend Order to include for certification of interlocutory appeal pursuant to 28 U.S.C. § 1292(b). (ECF Nos. 52-53). Throughout the course of this litigation, Class Counsel engaged in substantial discovery, including the review of voluminous documents produced by PPU and preparing and responding to written discovery. The Parties engaged in hard-fought settlement negotiations, including two separate mediation sessions to reach a successful resolution. Under the Settlement Agreement, Defendant will pay \$1,250,000.00 into a common fund in exchange for a release of all claims against Defendant arising from the transition to online, remote-only education and services caused by the COVID-19 pandemic in the Spring 2020 academic semester.

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Settlement Agreement ("Settlement Agreement," "Settlement," or "SA") (ECF No. 77-2).

If approved, the Settlement will resolve all pending claims in this action and provide monetary relief to a class of students enrolled during the Spring 2020 semester. The Settlement is an excellent result in a complex, high-risk, hard-fought case that provides a substantial financial recovery for all such students. Thus, Class Counsel respectfully request that the Court approve an award of 35% of the Settlement Fund (including any interest earned thereon), or approximately \$437,500.00 in attorneys' fees, \$8,353.39 as reimbursement of litigation expenses, and \$5,000.00 to each Named Plaintiff as Case Contribution Awards. Class Counsel's lodestar is approximately \$254,155.00, so the requested fee represents a 1.72 multiplier, which supports the reasonableness of the requested attorneys' fee award.

As discussed below and in the Declaration of Gary F. Lynch ("Lynch Dec.") it is respectfully submitted that the requested fee is reasonable when considered under the Third Circuit applicable standards, particularly in view of the substantial risks of pursuing this litigation, considerable litigation efforts, and the results achieved for the Settlement Class. Moreover, the expenses requested are reasonable in amount and were necessarily incurred for the successful prosecution of this litigation. Finally, the requested Case Contribution Awards for each Settlement Class Representative are within the customary range and are warranted to compensate the Named Plaintiffs for their participation in this litigation on behalf of the Settlement Class. Thus, Class Counsel respectfully requests that the Court award 35% of the Settlement Fund (including interest earned thereon) as attorneys' fees, \$8,353.39 as reimbursement of litigation expenses, and \$5,000.00 as Case Contribution Awards for each Plaintiff.

## ARGUMENT

### **I. The Percentage of the Recovery Approach Is the Proper Standard to Apply in Awarding Attorneys' Fees in Common Fund Cases**

It is well settled that attorneys who represent a class and whose efforts achieve a benefit for class members are “entitled to a reasonable attorney’s fee from the fund as a whole” as compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Rule 23 also permits a court to award “reasonable attorney’s fees . . . that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). As courts recognize, in addition to providing just compensation, awards of fair attorneys’ fees from a common fund “ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000).<sup>2</sup>

In awarding attorneys’ fees, the Third Circuit has held that such requests are “generally assessed under one of two methods: the percentage-of-recovery [ ] approach or the lodestar scheme.” *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 330 (3d Cir. 2011). The percentage-of-recovery approach “‘applies a certain percentage to the settlement fund,’” while the lodestar method “‘multiplies the number of hours class counsel worked on a case by a reasonable hourly billing rate for such services.’” *Id.* (quoting *In re Diet Drugs*, 582 F.3d 524, 540 (3d Cir. 2009)). The percentage-of-recovery approach is more appropriate where, as here, there is a common fund. *In re AT & T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (stating 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” (internal quotations omitted)); *see also Harshbarger v. Penn Mut. Life Ins. Co.*, No. 12-6172, 2017 WL 6525783, at \*2 (E.D. Pa. Dec. 20, 2017) (“The reasonableness of attorneys’ fee

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<sup>2</sup> Unless otherwise indicated, internal citations are omitted.



awards in common fund cases . . . is generally evaluated using a [percentage of recovery] approach followed by a lodestar cross-check.”). The ultimate determination of the proper amount of attorneys’ fees, of course, rests within the sound discretion of the district court. *See Gunter*, 223 F.3d at 195; *AT & T*, 455 F.3d at 168-69.

Regardless of which of the two methods is selected, the Third Circuit has noted that it is sensible to use the other method in order to cross-check the initial fee calculation. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 (3d Cir. 1995); *see also Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App’x 191, 197 (3d Cir. 2014). Class Counsel respectfully submit that their requested fee is fair and reasonable under the percentage-of-the-fund method, as supported by the lodestar cross check, as discussed below.

## **II. The Requested Fee is Fair and Reasonable under the Third Circuit’s *Gunter/Prudential* Factors.**

The Third Circuit requires district courts to consider the following ten factors, commonly referred to as the *Gunter/Prudential* factors, when evaluating whether a fee request is fair and reasonable:

(1) the size of the fund created and the number of beneficiaries, (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, (7) the awards in similar cases, (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 settlement[.]

*Diet Drugs*, 582 F.3d at 541. These fee award factors “need not be applied in a formulaic way[,] . . . and in certain cases, one factor may outweigh the rest.” *Gunter*, 223 F.3d at 195 n.1. Each of these factors supports the requested fee.

**A. The Size and Nature of the Fund Created and Number of Persons Benefitted by the Settlement.**

Courts have consistently recognized that the result achieved is a major factor to be considered in awarding fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“the most critical factor is the degree of success obtained”); *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 2:18-CV-1370, 2020 WL 3481458 at \*18 (W.D. Pa. June 26, 2020). If approved, the Settlement will provide substantial monetary relief to a nationwide class of harmed students. The Settlement exceeds the per-student amounts obtained for class members in approved settlements in a majority of similar cases. Based on \$1,250,000 common fund and 2,800 Potential Settlement Class Members, the gross recovery per student is approximately \$446 per student. This relief compares favorably to other settlements negotiated by plaintiffs in similar actions. *See Martin v. Lindenwood University*, No. 4:20-cv-01128-RLW (E.D. Mo.) (\$1.65 million settlement with a per student recovery of \$283.36); *Wright v. Southern New Hampshire University*, No. 1:20-cv-00609-LM (D.N.H.) (\$1.25 million settlement with a per student recovery of \$346.55); *Rosado v. Barry Univ., Inc.*, Case No. 1:20-cv-21813 (S.D. Fla.) (\$2.4 million settlement with a per student recovery of \$394.93); *Smith et al v. University of Pennsylvania*, Case No. 2:20-cv-02086-TJS (E.D. Pa.) (\$4.5 million settlement with a per student recovery of \$173.08); *Choi et al v. Brown University*, Case No. 1:20-cv-001914-JJM-LDA (D.R.I.) (\$1.5 million settlement with a per student recovery of \$155.44); *Fittipaldi v. Monmouth University*, Case No. 3:20-cv-05526-RLS (D.N.J.) (\$1.3 million settlement with a per student recovery of \$206.50); *Porter v. Emerson College*, Case No. 1:20-cv-11897-RWZ (D. Mass.) (\$2.06 million settlement with a per student recovery of \$429.17); *In re Columbia University Tuition Refund Action*, Case No. 1:20-cv-03208 (S.D.N.Y.) (\$12.5 million settlement with a per student recovery of \$445.17); *D’Amario et al v. University of Tampa*, Case No. 7:20-cv-03744-CS (S.D.N.Y.) (\$3.4 million with a per student recovery of \$377.78); *Rocchio*

*v. Rutgers, The State University of New Jersey*, No. MID-L-003039-20 (N.J. Super. Ct.) (\$5 million settlement with a per student recovery of \$77.48); *Metzner et al v. Quinnipiac University*, Case No. 3:20-cv-00784-KAD (D. Conn.) (\$2.5 million settlement with a per student recovery of \$274.09); *Espejo et al v. Cornell University*, Case No. 3:20-cv-00467-MAD-ML (N.D.N.Y.) (\$3 million settlement with a per student recovery of \$115); *Carpey v. Board of Regents of the University of Colorado*, No.: 2020cv31409 (\$5 million settlement with a per student recovery of \$83.33).

In light of the aforementioned settlements, this Settlement is an excellent result and exceeds the per-class member recovery in a majority of the settlements to date in similar litigation. As such, the proposed Settlement should be approved.

**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 October 23, 2023. ECF No. 85 at ¶ 19. The Settlement Administrator fully implemented the Court-approved Notice Program, sending Notice directly to approximately 2,800 Potential Settlement Class Members and creating the Settlement Website and toll-free assistance number. The Notice apprised Potential Settlement Class Members that Class Counsel would seek an award “of not more than thirty-five percent of the Settlement Fund” as well as reimbursement for all expenses. ECF No. 77-5 at 17. The Notice also advised Settlement Class Members how and when to object to or opt out of the Settlement. *Id.* at 10-15.

As the Third Circuit has noted, “[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement[.]” *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001). As of the date of this motion, no objections have been filed. Plaintiffs

will respond to any objection received by the objection deadline, and the Court will then be able to fully evaluate this factor by the time of the final fairness hearing.

**C. The Skill and Efficiency of Attorneys Involved.**

Class Counsel's skill and efficiency 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.'" *Viropharma*, 2016 WL 312108, at \*16.

Class Counsel has extensive and significant experience in the field of class action litigation, and has significant experience in Covid-19 litigation analogous to this action. The favorable Settlement is attributable, in large part, to the diligence, determination, hard work, and skill of Class Counsel, who developed, litigated, and successfully settled this litigation. As set forth in the Lynch Declaration, Class Counsel is highly experienced in this type of litigation and have a strong track record of leading these relatively unique cases and obtaining favorable results for plaintiffs. Lynch Dec. ¶¶ 18-19. These skills were put to the test in this litigation, as it involved novel issues and a defense team led by equally skilled and experienced attorneys.

In all phases of the case, Class Counsel performed with a high level of skill. Though this litigation never reached the class certification stage, Class Counsel's work on motions practice and discovery led the parties to engage in two mediation sessions to reach the final Settlement. Class Counsel's skill and experience in the areas of complex Covid-19 matters, as well as in large-scale class actions, were directly responsible for the favorable Settlement. Class Counsel developed a productive relationship with opposing counsel and worked collaboratively with them to streamline and appropriately sequence discovery, motions practice and mediation efforts. Class Counsel also worked efficiently among themselves, coordinating the work to avoid duplication or overlap, and

their lodestar reflects the intensity with which this litigation was handled, as expected in a novel, highly complex, class action.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Class Counsel. *See, e.g., In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Here, PPU was represented by undeniably experienced and skilled attorneys at a prominent, nationally recognized law firm, Reed Smith LLP. The ability of Class Counsel to obtain a favorable outcome for the Settlement Class in the face of formidable legal opposition further confirms the quality of Class Counsel's representation and supports the reasonableness of the requested attorneys' fee award.

#### **D. The Complexity and Duration of the Litigation.**

There is no question that during the two years of litigation, Plaintiffs faced, and Class Counsel resisted, vociferous defenses to liability and damages. Although Plaintiffs prevailed in part at the motion to dismiss stage, PPU continues to vehemently deny liability, and there is no assurance that Plaintiffs would have prevailed at class certification or summary judgment if contested litigation continued. Covid-19 tuition and fee litigation faces significant legal hurdles related to, *inter alia*, causation and damages. In short, this was not a simple, familiar type of case with a clear path to liability and judgment, and this litigation could have continued for several years had it not settled.

Recent precedents in similar cases have had mixed outcomes for plaintiff students. Some similar cases have ended in settlements, *supra* Section II.A., but others have had class certification denied, *e.g., Evans v. Brigham Young Univ.*, No. 1:20-cv-100, 2022 WL 596862 (D. Utah Feb. 28, 2022), *aff'd*, No. 22-4050, 2023 WL 3262012 (10th Cir. May 5, 2023), or have had summary judgment granted in favor of defendant, *e.g., In re Univ. of Miami COVID-19 Tuition & Fee Refund*

*Litig.*, No. 20-22207-CIV, 2022 WL 18034457 (S.D. Fla. Dec. 30, 2022), *aff'd sub nom. Dixon v. Univ. of Miami*, 75 F.4th 1204 (11th Cir. 2023).

Class Counsel worked diligently to achieve a significant result for the Settlement Class in the face of very real litigation risks. Accordingly, this factor supports the reasonableness of the requested attorneys' fee award.

#### **E. The Risk of Non-Payment.**

“Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-1432 (DMC)(JAD), 2012 WL 1964451, at \*7 (D.N.J. May 31, 2012). Class Counsel undertook this action on an entirely contingent fee basis, shouldering the risk that this litigation would yield no recovery and leave them wholly uncompensated for their time, as well as for their out-of-pocket expenses. A dispositive ruling at any stage of this prolonged litigation could mean a zero recovery for the Settlement Class. PPU asserted several substantial defenses that could have eliminated any possibility of recovery for the Settlement Class, as well as non-payment for Class Counsel. Courts within this Circuit have accordingly recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See In re Ocean Power Techs., Inc., Sec. Litig.*, No. 3:14-CV-3799, 2016 WL 6778218, at \*28 (D.N.J. Nov. 15, 2016).

#### **F. The Amount of Time Devoted to the Litigation by Counsel.**

Class Counsel have received no compensation for their efforts during the course of this litigation that commenced three years ago. They risked non-payment of \$8,353.39 in out-of-pocket expenses and for the nearly 350 hours they worked on this litigation, knowing that if their efforts were not successful, no fee would be paid. Lynch Dec. ¶ 4. Class Counsel vigorously litigated and prosecuted this litigation. This includes, *inter alia*, the time spent in the initial investigation of the case; researching complex issues of law; preparing and filing the complaint; researching and

briefing the issues in connection with PPU's motion to dismiss and motion to amend order; drafting and responding to discovery; working with experts; reviewing and analyzing documents produced by PPU; preparing for and participating in mediations; and drafting and revising the ultimate settlement agreement. *Id.* at ¶ 7. At all times, Class Counsel conducted their work with skill and efficiency, conserving resources and avoiding duplication of effort. The foregoing unquestionably represents a substantial commitment of time, personnel, and out-of-pocket expenses by Class Counsel, while taking on the substantial risk of recovering nothing for their efforts. The financial risk to Class Counsel was significant. This factor thus supports the requested attorneys' fee award.

#### **G. The Request as Compared to Awards in Similar Cases.**

The Third Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund when the percentage-of-the-fund method is used. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995); *McDonough v. Toys "R" Us, Inc.*, 80 F. Supp. 3d 626, 653 (E.D. Pa. 2015). The percentage requested here, 35%, is well within that range and comparable percentages often have been awarded in the Third Circuit. *See, e.g., In re Cigna-Am. Specialty Health Admin. Fee Litig.*, No. 2:16-cv-03967-NIQA, 2019 WL 4082946, at \*15 (E.D. Pa. Aug. 29, 2019) (approving fee award of one-third of settlement fund); *Huffman v. Prudential Ins. Co. of Am.*, No. 2:10-CV-05135, 2019 WL 1499475, at \*7 (E.D. Pa. Apr. 5, 2019) (explaining that the award of one-third of the fund for attorneys' fees is consistent with fee awards in a number of recent decisions in the district); *Brown v. Progressions Behavioral Health Servs., Inc.*, No. 16-6054, 2017 WL 2986300, at \*6 (E.D. Pa. July 13, 2017) (approving common fund fee of 33%); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, No. 08-CV-285 (DMC), 2010 WL 547613, at \*9 (D.N.J. Feb. 9, 2010) (approving common fund fee of 33 1/3%).

In addition to the cases listed above, directly analogous cases have had similar attorneys' fees approved. *See, Lindenwood Univ.*, No. 4:20-cv-01128-RLW (E.D. Mo.) (ECF No. 48)

(approving attorneys' fees of 1/3 fund); *Southern New Hampshire Univ.*, No. 1:20-cv-00609-LM (D.N.H.) (ECF No. 37) (same); *Barry Univ.*, Case No. 1:20-cv-21813 (S.D. Fla.) (ECF No. 84) (same); *Monmouth Univ.*, Case No. 3:20-cv-05526-RLS (D.N.J.) (ECF No. 80) (same).

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

Class Counsel were the only ones investigating and pursuing the claims at issue in this Litigation on behalf of students, and they alone actively litigated the proceedings—as opposed to benefitting from the efforts of governmental/regulatory action or other civil litigation regarding the same or similar issues. This factor thus supports the fee request. *See Harshbarger*, 2017 WL 6525783, at \*5 (“Because Class Counsel were the only ones pursuing the claims at issue in this case, this factor weighs in favor of approval.”).

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

Private contingency fee agreements customarily range between 30% and 40% of the recovery. *See Ocean Power*, 2016 WL 6778218, at \*29 (“If this were an individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery.”); *Wallace v. Powell*, 288 F.R.D. 347, 375 (M.D. Pa. 2012) (same); *Ikon*, 194 F.R.D. at 194 (same). Here, Class Counsel’s requested percentage of 35% is commensurate with customary percentages in private contingent fee agreements. Consequently, this factor also supports the requested fee.

**J. Innovative Terms of the Settlement.**

The Settlement does not contain any particularly “innovative” terms – beyond being a quality part of an initial wave of settlements of a unique type of university/student breach of contract action. This factor is thus neutral as it neither weighs in favor of nor against approval.



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

### **III. The Lodestar Cross-Check Confirms the Fee Request is Reasonable**

The Third Circuit has suggested that fees awarded under the percentage method be cross-checked against the lodestar. *See, e.g., Gunter*, 223 F.3d at 195 n.1. The purpose of that cross-check is to ensure that the percentage approach does not result in an “extraordinary” lodestar multiplier or a windfall. *See Cendant*, 264 F.3d at 285. The Third Circuit has stated that a lodestar cross-check entails an abridged lodestar analysis that requires neither “mathematical precision nor bean-counting.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005). The Court “need not” receive or “review actual billing records” when conducting this analysis. *Id.* at 307.

Under the lodestar method, a court begins the process of determining the reasonable fee by calculating the “lodestar”; *i.e.*, “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433; *see also McKenna v. City of Phila.*, 582 F.3d 447, 455 (3d Cir. 2009). Once the lodestar is determined, the court must then determine whether additional adjustments are appropriate. *McKenna*, 582 F.3d at 455. 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 . . . attorneys 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).

Class Counsel’s combined “lodestar” is approximately \$254,155.00 for work throughout the litigation, meaning that the requested fee, if awarded, would represent a “multiplier” of 1.72 of Class Counsel’s combined lodestar. Lynch Dec. ¶¶ 10-11. Class Counsel’s lodestar represents

nearly 350 hours of work at their current hourly rates.<sup>3</sup> *Id.* Class Counsel’s rates range from \$800 to \$1,000 for partners and \$250 to \$600 for other attorneys and support staff. *Id.* ¶ 10. The reasonableness of Class Counsel’s rates is supported by the Lynch Declaration, which establishes that the rates are the same as their standard hourly rates charged to paying clients on non-contingent matters and are in accord with the prevailing rates for class action and complex commercial litigation in the relevant legal markets, where the principal attorneys are respectively located, and in consideration of the fact that Class Counsel maintains a national complex litigation practice. *Id.* ¶ 15. These rates have been approved in other class action cases. Lynch Dec. ¶ 16; *see also Opris, et al. v. Sincera Reproductive Medicine*, No. 2:21-cv-03072, ECF Nos. 62-64 (E.D. Pa.) (approving Lynch Carpenter’s rates); *Morrow v. Ann, Inc.*, No. 1:16-cv-03340, ECF Nos. 70-71, 94 (S.D.N.Y.) (approving Lynch Carpenter’s rates); *In re Vizio, Inc. Consumer Privacy Litig.*, No. 8:16-ml-02693, ECF Nos. 308-11, 308-16, 308-18, 308-19, 337 (C.D. Cal. Apr. 12, 2019) (approving Lynch Carpenter’s rates). Further, Class Counsel’s rates are within the ranges that have been approved by other district courts in this Circuit overseeing class settlements. *See Cigna-Am. Specialty*, 2019 WL 4082946, at \*15 (approving hourly rates between \$175 and \$995); *In re Remicade Antitrust Litig.*, No. 17-CV-04326, 2023 WL 2530418, at \*27 (E.D. Pa. Mar. 15, 2023) (approving hourly rates ranging from \$150 to \$1,325); *Whiteley v. Zynherba Pharms., Inc.*, No. CV 19-4959, 2021 WL 4206696, at \*14 (E.D. Pa. Sept. 16, 2021) (approving hourly rates ranging from \$110 to \$1,110); *In re Cigna-Am. Specialty Health Admin. Fee Litig.*, Case No. 2:16-cv-03967-NIQA, 2019 WL

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<sup>3</sup> 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 Mo. 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); *Ikon*, 194 F.R.D. at 195 (“attorney’s hourly rates were appropriately calculated by reference to current rather than historic rates”).

4082946, at \*15 (E.D. Pa. Aug. 29, 2019) (approving hourly rates between \$175 and \$995); *Krimes v. JPMorgan Chase Bank, N.A.*, No. 15-5087, 2017 WL 2262998, at \*10 (E.D. Pa. May 24, 2017) (approving hourly rates ranging from \$125 (for a paralegal) to \$750 (for a senior partner)); *Viropharma*, 2016 WL 312108, at \*18 (approving hourly rates ranging from \$350 to \$925); *Moore v. GMAC Mortg.*, No. 07-4296, 2014 WL 12538188, at \*2 (E.D. Pa. Sept. 19, 2014) (approving hourly rates ranging from \$325 to \$860); *Merck & Co.*, 2010 WL 547613, at \*13 (approving hourly rates ranging from \$320 to \$835). Given Class Counsel's experience, work, and the complex and relatively specialized nature of this Litigation, their rates are reasonable.

Class Counsel in this litigation has kept detailed records of the number of hours expended by attorneys and staff and descriptions of the type of work each person performed. Lynch Dec. ¶ 10. The hours billed were spent drafting pleadings and briefs, researching, analyzing, and litigating numerous legal issues, drafting and responding to discovery requests, producing documents, reviewing document productions, working with experts, and negotiating the Settlement. *Id.* ¶¶ 7, 10.<sup>4</sup> The tasks performed are typical in litigation and were necessary to the successful prosecution and resolution of the claims against PPU.

The requested attorneys' fee of \$437,500.00 represents a multiplier of 1.72 of Class Counsel's lodestar. Courts often approve fees in class actions that correspond to multiples of one to four times lodestar. *See, e.g., 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

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<sup>4</sup> Moreover, additional work will be required of Class Counsel on an ongoing basis, including: correspondence with Settlement Class Members; preparation for, and participation in, the Final Approval Hearing; supervision of the Claims Administration process conducted by the Settlement Administrator; and supervision of the distribution of the Settlement Fund to Settlement Class Members. However, Class Counsel will not seek additional payment for this additional work. Class Counsel are able to provide itemized billing records setting forth time spent on particular tasks if the Court so requests.

within the range awarded by district courts in the Third Circuit.”); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) (“[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied” (alteration in original)). Given the quality of Class Counsel’s work and results achieved in these circumstances, the lodestar comparison supports the reasonableness of the requested fee award.

#### **A. 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.” *Ocean Power*, 2016 WL 6778218, at \*29. Class Counsel seek reimbursement of \$8,353.39 for the reasonable expenses incurred to advance this litigation. Lynch Dec. ¶ 13. Class Counsel has scrupulously documented their expenses, by category, in the accompanying declaration. *Id.* The schedule of expenses shows that Class Counsel litigated the case efficiently, with no unreasonable or unjustified expenditures. *Id.* ¶¶ 13-14. Moreover, the expenditures were of the type typically charged to hourly paying clients. *Id.* ¶ 14.

As explained in the Lynch Declaration, a vast amount of expenses incurred (95.5%) were the result of mediations and associated costs. *Id.* ¶ 13. The remainder of the expenses include filing fees and expenses incurred for service of process. *Id.* Such categories of expenses are commonly reimbursed in common fund cases. *See In re Wilmington Tr. Sec. Litig.*, No. 10-cv-0990-ER, 2018 WL 6046452, at \*10 (D. Del. Nov. 19, 2018) (approving expenses related to management of documents, expert fees, computerized research, photocopying, transcripts, postage, travel, and discovery expenses); *Ocean Power*, 2016 WL 6778218, at \*29 (approving expenses for costs of plaintiff’s private investigator, photocopying, postage, messengers, filing fees, travel, long distance telephone, telecopier, mediation fees, and the fees and expenses of plaintiff’s damages expert). In sum, all of Class Counsel’s expenses, in an aggregate amount of

\$8,353.39, are typical in litigation, were necessary to the successful prosecution and resolution of the claims against PPU, and should be approved.

**B. The Requested Case Contribution Awards Are Reasonable**

The purpose of service awards is to compensate named plaintiffs for the services they provided, risks they incurred during the course of a class action, and to reward their public service for contributing to the enforcement of the law. *See Sullivan*, 667 F.3d at 333 n.65; *see also* Annotated Manual for Complex Litigation §21.62 n.971 (4th ed. 2019) (incentive awards may be “merited for time spent meeting with class members, monitoring cases, or responding to discovery”).

The Agreement permits Settlement Class Representatives to seek Case Contribution Awards of \$5,000.00 each, or a total of \$20,000.00, to compensate them their efforts in this litigation and commitment on behalf of the Settlement Class. SA ¶ 51. Any Case Contribution Awards approved by the Court will be paid from the Settlement Fund. *Id.* Settlement Class Representatives responded to numerous document requests and interrogatories, reviewed the complaints and certain briefs, prepared for depositions, and participated in the settlement discussions that resulted in the excellent recovery to the Settlement Class. Lynch Dec. ¶ 17. Plaintiffs were highly cooperative in making themselves available for document production and/or responding to interrogatories. *Id.* Additionally, Named Plaintiffs actively communicated with Class Counsel for purposes of advising and consulting about their experiences with the transition to online remote-only education and services and their resulting damages. *Id.* These communications were crucial to the development of a workable damage model to facilitate the mediation process. *Id.* Courts in this Circuit have routinely approved service awards in amounts similar to those requested for each Named Plaintiff here. *See Wilmington*, 2018 WL 6046452, at \*10 (approving service awards of greater than \$7,500 to plaintiffs whose employees were active

in the litigation); *Brown*, 2017 WL 2986300, at \*7 (awarding \$10,000 to each named plaintiff because they “were actively involved in the litigation since before it was commenced, they provided the information and documents that formed the basis for the lawsuit, . . . and because the service award payments represent a small fraction of the \$542,586 Settlement Fund”); *Barel v. Bank of Am.*, 255 F.R.D. 393, 403 (E.D. Pa. 2009) (\$10,000 award to each class representative); *Bredbenner v. Liberty Travel, Inc.*, No. 09-905 (MF), 2011 WL 1344745, at \*24 (D.N.J. Apr. 8, 2011) (same).

Thus, the requested Case Contribution Awards should be approved.

### **CONCLUSION**

Named Plaintiffs respectfully request that the Court grant Plaintiffs’ motion for an award of 35% of the Settlement Fund (including interest earned thereon) as attorneys’ fees, \$8,353.39 as reimbursement of litigation expenses, and \$5,000.00 as Case Contribution Awards for each of the Named Plaintiffs.

Dated: October 6, 2023

Respectfully Submitted,

/s/ Gary F. Lynch

Gary F. Lynch

Nicholas A. Colella

**LYNCH CARPENTER, LLP**

1133 Penn Avenue, 5th Floor

Pittsburgh, PA 15222

Phone: (412) 322-9243

Gary@lcllp.com

NickC@lcllp.com

*Attorneys for Plaintiffs*