IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

P.I.T. RETRIEVALS, LLC,

Plaintiff,

vs.

HEALTHPORT TECHNOLOGIES, LLC,

Defendant.

CIVIL DIVISION

CASE NO. GD-13-023729

MEMORANDUM OF LAW IN SUPPORT OF CONSENT MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS AND APPROVAL OF SERVICE AWARD TO REPRESENTATIVE PLAINTIFF

Filed on Behalf of: Plaintiff

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JURY TRIAL DEMANDED

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Plaintiff, No. GD-13-023729

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I. INTRODUCTION

Plaintiffs' Counsel respectfully requests that the Court approve attorneys' fees and costs in the amount of $65,906.80, as this amount is eminently reasonable under the factors set forth in Pa. R. Civ. P. 1717. An examination of the work accomplished, the results achieved, and the benefits conferred demonstrates the appropriateness of the award. The Plaintiffs' Counsel's attorney fee represents approximately 33⅓% of the amount of monetary benefits conferred upon the Settlement Class. This amount is well within the range of percentages typically found to be reasonable in common fund cases. It is less than the 40% amount that Judge Wettick found was a reasonable fee recovery in Haluska v. Forbes Hosp. The class action settlement achieves much of the relief that a reasonable jury award were this matter to go to trial. Very few, if any, other law firms would have undertaken the risk of nonpayment and other risks presented by this class action given the myriad legal and factual questions of first impression that were presented and the expertise that would be required. Plaintiff's Counsel worked on a contingent basis for the last 13 years, assuming the risk of losing and ultimately succeeded in achieving the settlement before the Court. As set forth below, an application of Pa. R. Civ. P. 1717 demonstrates that the claimed fees and costs are reasonable. It is respectfully requested that the Court grant Plaintiffs' Motion for Award of Fees and Costs, and also approve the modest

$2,500 service award to the Representative Plaintiff.

II. FACTUAL BACKGROUND

Paragraphs 8.1.1 and 8.1.3 of the Settlement Agreement sets forth the Parties' agreement with respect to the payment of attorneys' fees and costs providing, *inter alia*:

> 8.1. Attorneys' Fees and Expenses
>
> 8.1.1. The Parties agreed on the amount of attorneys' fees and costs, subject to the Court's approval. HealthPort/Datavant shall pay, subject to Court approval, $65,906.80 to Settlement Class Counsel for reasonable attorneys' fees and costs. This payment will be independent from, and not part of, the Settlement Claims Amount used to pay Settlement Benefits. For the purposes of clarity, should the Court approve only a lesser amount of attorneys' fees, HealthPort/Datavant shall only be responsible for the lesser amount of attorneys' fees awarded by the Court. In no event shall HealthPort/Datavant be liable to pay an amount for attorneys' fees more than $65,906.80.
>
> 8.1.2. Awarded Attorneys' Fees and Expenses will be paid by HealthPort/Datavant within (14) fourteen days of the Effective Date.
>
> 8.1.3. The application or applications for Attorneys' Fees and Expenses, and any and all matters related thereto, shall be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Plaintiff and Settlement Class Counsel agree that this Settlement Agreement is not conditioned on the Court's approval of Attorneys' Fees and Expenses in the requested amount or in any amount whatsoever. The Court's ruling on the application or applications for such Attorneys' Fees and Expenses shall not operate to terminate or cancel the Settlement. No order of the Court, or modification, reversal, or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, or expenses, ordered by the Court to be paid to Settlement Class Counsel, shall affect whether the Final Judgment is final, or constitute grounds for cancellation or termination of the Settlement.

As detailed in the Memorandum in Support of Final Approval of the Settlement, the Parties negotiated and agreed to all material provisions of the Settlement before turning to the negotiation of attorneys' fees. After extensive negotiation, the Parties reached agreement that the amount of reasonable attorneys' fees and costs within the meaning of Paragraph 8.1.1 would be no more than $65,906.80.

In addition, the Parties negotiated Paragraphs 8.2 and 8.3 of the Settlement Agreement which provides for the payment of a service awards to the Representative Plaintiff as follows:

> 8.2 Class Service Award to Named Plaintiff
>
> 8.3 Subject to Court approval, Defendant agrees to pay Named Plaintiff a Class Service Award of $2,500.00. This payment of the Class Service Award will be independent from, and not part of, the Settlement Claims Amount. Named Plaintiff agrees that this Settlement Agreement is not conditioned on the Court's approval of the Class Service Award in the requested amount or in any amount whatsoever. The Court's ruling on the application for such Class Service Award shall not operate to terminate or cancel the Settlement. No order of the Court, or modification, reversal, or appeal of any order of the Court, concerning the amount(s) of any service award, costs, or expenses, ordered by the Court to be paid to Plaintiff, shall affect whether the Final Judgment is final, or constitute grounds for cancellation or termination of the Settlement.

III. LEGAL ARGUMENT

A. The Applicable 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. 2011) *aff'd* 106 A.3d 656, 658 (Pa. 2014). As part of this analysis, courts are directed to consider applicable factors set forth in Pa. R. Civ. P. 1717. See Braun, *supra* at 981. Rule 1717 provides:

> In all cases where the court is authorized under applicable law to fix the amount of counsel fees it shall consider, among other things, the following factors:
>
> **(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.
>
> *Note:* The rule does not determine when fees may be awarded. That is a matter of substantive law.
>
> The order in which the factors are listed is not intended to indicate the

priority or weight to be accorded them respectively.[1]

Id. It is respectfully suggested that this Court apply the "percentage of the common fund approach" in determining the reasonableness of the Plaintiffs' fees and costs. The percentage-of-recovery method is generally applicable where a defendant agrees to pay a maximum agreed amount to a class subject to a claims process. Boeing Co. v. Van Gemert, 444 U.S. 472, 479 (1980); Masters v. Wilhelmina Model Agency, Inc., 473 F.3d 423, 437 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not. We side with the circuits that take this approach."). By contrast, "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 Cendant Corp. Prides Litig., 243 F.3d 722, 732 (3d Cir. 2001).

The common fund approach applies because the settlement agreement creates a payment process for compensating class members and a payment for paying attorneys' fees. Dewey v. Volkswagen Aktiengesellschaft, 558 F. App'x 191, 197 (3d Cir. 2014) ("where the reality is that

[1] Pennsylvania Rule of Professional Conduct 1.5(a) also sets out factors that apply to consideration of the propriety of an attorneys' fee. Rule 1.5(a) provides:

> The factors to be considered in determining the propriety of a fee include the following:
>
> (1) whether the fee is fixed or contingent;
> (2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (4) the fee customarily charged in the locality for similar legal services;
> (5) the amount involved and the results obtained;
> (6) the time limitations imposed by the client or by the circumstances;
> (7) the nature and length of the professional relationship with the client; and
> (8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

the fund and the fee are paid from the same source – in this case, Volkswagen – the arrangement 'is, for practical purposes, a constructive common fund'….").

B. Plaintiffs' Counsel's Fees And Costs Are Reasonable

Under the common fund approach, the request for approval of fees and costs is eminently reasonable. First, the request is fair and reasonable considering the results achieved and the benefits conferred. Plaintiffs' demand represents approximately 33⅓% of the amounts to be paid to the Settlement Class Members. In a class action case in this court, Haluska v. Forbes Regional Hospital, GD-05-009134, the Court (Wettick, J.) authorized plaintiffs' counsel to recover 40% of the total amount recovered by each class member plus an additional *pro rata* amount for costs and expenses. The 33⅓% requested here is substantially less than that, and is within the range of 19% to 45% that is typically viewed as being reasonable. In re Cendant Corp., *supra* at 736 ("we observed that 'one court has noted that the fee awards have ranged from nineteen percent to forty-five percent of the settlement fund.'").[2]

Second, the magnitude, complexity, and uniqueness of this litigation support the fee request. One object of a fee award is to ensure "that competent counsel continue to undertake risky, complex, and novel litigation." Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 198 (3d Cir. 2000). This class action presented unique, cutting edge issues that required competent counsel with both trial and appellate experience. Here, Plaintiffs' Counsel with his background and experience in trial and class action litigation was uniquely qualified to undertake the litigation of this nature.

[2] The appropriate approach in this context is pursuant to a percentage of the common fund approach rather than a lodestar approach. Braun, *supra* at 979. Accordingly, under Braun, Plaintiffs' Counsel does not believe that examining the lodestar is necessary. To the extent that the Court deems it necessary, Plaintiffs will supplement their motion to address this factor. Nonetheless, the record reflects that substantial amount of attorney time was expended over a thirteen year period in this litigation.

Third, the receipt of a fee was contingent on success. "Courts consider the risk of non-payment in light of the Defendant's ability to satisfy an adverse judgment, or the risk of establishing liability at trial." Chakejian v. Equifax Info. Servs., LLC, 275 F.R.D. 201, 219 (E.D. Pa. 2011). The risk of nonpayment should be assessed as of the inception of the case and not through "the rosy lens of hindsight." Sullivan v. DB Invs., Inc., 667 F.3d 273, 332 (3d Cir. 2011). Here, the risk of non-payment was real and ongoing. There could be no guarantee that Plaintiffs could achieve class certification. Plaintiffs faced a risk that summary judgment could be entered against them based upon the voluntary payment defense. Here, Defendant never conceded liability or admitted any wrongdoing. Given the ongoing risk of nonpayment throughout the litigation, the requested fees and costs are justified.

Fourth, the quality of services rendered leans in favor of Plaintiffs' Counsel's request. In assessing the quality of services rendered, the Court examines (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. Jurinko v. Med. Protective Co., 2006 U.S. Dist. LEXIS 42923, at *29 (E.D. Pa. 2006), *aff'd in part, rev'd in part* 305 F. App'x 13 (3d Cir. 2008) (citing Lindy Bros. Builders v. American Radiator & Standard Sanitary Corp., 540 F.2d 102, 117-18 (3d Cir. 1976)). As demonstrated in the Motion to Approve the Settlement, the results obtained were in line with the best possible recovery that each class member could obtain. The overall benefit conferred was substantial. Nor can Plaintiff's Counsel's professional methods be questioned.

C. The Service Award to the Representative Plaintiff is Reasonable

"Incentive awards are not uncommon in class action litigation and particularly where…a common fund has been created for the benefit of the entire class." Sullivan v. DB Invs., Inc., 667

F.3d 273, 333 n.65 (3d Cir. 2011). "The purpose of [incentive awards] is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation…." Id.; see also In re Auto. Refinishing Paint Antitrust Litig., 2008 U.S. Dist LEXIS 569 at *21 ("Incentive awards are typically awarded to class representatives for their often extensive involvement with a lawsuit and courts in [the Third] Circuit have traditionally granted requests for these awards."); In re Plastic Tableware Antitrust Litig., 1995 U.S. Dist. LEXIS 18166, at *5-6 (E.D. Pa. 1995) ("Payments to class representatives may be considered a form of restitutionary relief within the discretion of the trial court. They may also be treated as a reward for public service and for the conferring of a benefit on the entire class.") (citations omitted). In this case, the class representative not only provided a benefit to the class as a whole, but also was willing to expose its own confidential and personal experience as a basis for obtaining class relief.

The award proposed here is well within the range of payments awarded by other courts in this area. In re Polyurethane Foam Antitrust Litig., 168 F. Supp. 3d 985, 1000 (N.D. Ohio 2016) ("The incentive awards of $10,000 each for the individuals and $35,000 each for the companies are well within an appropriate range."); McCurley v. Flowers Foods, Inc., 2018 U.S. Dist. LEXIS 228496, at *22 (D.S.C. 2018) ("Plaintiff requests an amount of $25,000.00, which is well within the range of reasonable incentive awards approved by the courts.").

IV. CONCLUSION

Accordingly, the Plaintiff, with Defendant's consent, moves the Court for an Order finally approving the Settlement and awarding the Plaintiff's Counsel $65,906.80 in attorneys' fees and costs and approving a modest service award of $2,500 to the Representative Plaintiff.

Dated: October 16, 2026

By: _____
Edward I. Levicoff, Esquire

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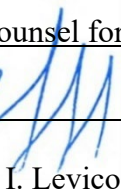
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the *Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel for Plaintiff

Signature: 

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Attorney No.: 200108

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ***Memorandum Of Law In Support Of Consent Motion For Approval Of Attorneys' Fees And Costs And Approval Of Service Award To Representative Plaintiff*** has been served upon the following counsel via email only:

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