

PHILADELPHIA COURT OF COMMON PLEAS  
**PETITION/MOTION COVER SHEET**

<b>CONTROL NUMBER:</b> 23085792
<b>(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)</b>

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: 09/18/2023
<i>Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at <a href="http://courts.phila.gov">http://courts.phila.gov</a></i>	

April Term, 2021  
 Month Year  
 No. 00093

REESE ETAL VS TEEN CHALLENGE TRAINING  
CENTER, INC.

Name of Filing Party:  
KRIS REESE-PLF  
TODD SAYLOR-PLF

**INDICATE NATURE OF DOCUMENT FILED:**  
 Petition (*Attach Rule to Show Cause*)  Motion  
 Answer to Petition  Response to Motion

Has another petition/motion been decided in this case?  Yes  No  
 Is another petition/motion pending?  Yes  No  
 If the answer to either question is yes, you must identify the judge(s):  
LEON TUCKER

TYPE OF PETITION/MOTION (see list on reverse side) MISCELLANEOUS MOTION/PETITION	PETITION/MOTION CODE (see list on reverse side) MTMIS
ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):	
<b>I. CASE PROGRAM</b>  OTHER PROGRAM  Court Type: <u>CLASS ACTION</u> Case Type: <u>CLASS ACTION</u>	<b>II. PARTIES</b> ( <i>required for proof of service</i> ) (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)  ROBERT J MONGELUZZI ONE LIBERTY PLACE 52ND FLOOR 1650 MARKET ST. , PHILADELPHIA PA 19103 DAVID J SHANNON MARSHALL DENNEHY WARNER COLEMAN & GOGGIN 2000 MARKET STREET, SUITE 2300 , PHILADELPHIA PA 19103
<b>III. OTHER</b>	

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

August 29, 2023                      DAVID L. KWASS  
 (Attorney Signature/Unrepresented Party)                      (Date)                      (Print Name)                      (Attorney I.D. No.)

**The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.  
 No extension of the Answer/Response Date will be granted even if the parties so stipulate.**

**FILED**

29 AUG 2023 12:35 pm

**Civil Administration**

D. KIM

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

KRIS REESE and TODD SAYLOR, on	)	
behalf of themselves and others similarly	)	CIVIL DIVISION
situated,	)	
	)	
	)	Case No. 210400093
	)	
Plaintiffs,	)	
VS.	)	
	)	
	)	
TEEN CHALLENGE TRAINING CENTER,	)	
INC., d/b/a PENNSYLVANIA ADULT &	)	
TEEN CHALLENGE,	)	
	)	
Defendant.	)	

**ORDER GRANTING PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

This matter is before the Court on Plaintiff's Motion for Approval of Attorneys' Fees, Expenses, and Service Awards, and the Court, being duly advised, now finds that the motion should be and hereby is GRANTED.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. By separate order, the Court has granted final approval to the class action settlement of this matter (the "Settlement").
2. Pursuant to the Settlement, in addition to the benefits of the Settlement to the Class Members, Defendant does not oppose payment of \$250,000 to Class Counsel as attorneys' fees and expenses and payment of \$1,500 to each of the named Plaintiffs as a service award.
3. The Court approves those payments and orders Defendant to pay \$250,000 to Class Counsel as attorneys' fees and expenses and to pay \$1,500 to each of the named Plaintiffs, Kris Reese and Todd Saylor, as a service award pursuant to and in accordance with the terms of the Settlement.

4. The Court finds that the attorneys' fee payment is reasonable considering: (1) the time and effort reasonably expended by the attorneys 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) the contingent basis on which Class Counsel took on the litigation. The Court likewise finds that the amount is within the range typically awarded. Likewise, the Court finds that the requested service award is reasonable given the actions of the named Plaintiff and the benefits achieved and is well within amount typically awarded.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY.

**By The Court,**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Leon W. Tucker, J.**

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

**SALTZ MONGELUZZI BENDESKY PC**  
BY: ROBERT J. MONGELUZZI/DAVID L.  
KWASS  
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1650 MARKET STREET, 52ND FLOOR  
PHILADELPHIA, PA 19103  
(215) 496-8282

*Attorneys for Plaintiff*

KRIS REESE AND TODD SAYLOR, on behalf  
of themselves and others similarly situated,

Plaintiffs,

v.

TEEN CHALLENGE TRAINING CENTER,  
INC., d/b/a PENNSYLVANIA ADULT &  
TEEN CHALLENGE,

Defendant.

PHILADELPHIA COUNTY  
COURT OF COMMON PLEAS

APRIL TERM, 2021  
NO. 00093

**PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND  
SERVICE AWARDS AND SUPPORTING MEMORANDUM OF LAW**

## INTRODUCTION

On May 31, 2023, the Court granted preliminary approval to the class action settlement of this case, which provides significant benefits to the Class of over 7,000 potential data breach victims, including:

- 3-years of credit monitoring with all three major credit bureaus and Identity Theft Restoration Services with \$1 million in identity theft protection insurance per Class Member at an estimated retail value of no less than \$226,800 (\$9/month x 36 months x 7,000 Class Members)—aimed at protecting Class Members from future harm caused by the breach.
- Up to \$400,000 in cash payments for economic losses (such as bank fees and actual fraud) that Class Members have already incurred, up to \$1,500 per Class Member, plus payment for lost time spent dealing with the data breach at \$25 per hour up to a maximum of 6 hours or \$150 per Class Member.
- Payment by Defendant of attorneys' fees and expenses of \$250,000 to Class Counsel and a service award of \$1,500 to each the two named Plaintiffs, both in addition to all of the other relief provided to the Class Members.
- Defendant to pay the costs of notice and settlement administration, which is likely to be tens of thousands of dollars.

Court-approved notice of the proposed Settlement has been sent to the Class and a final approval hearing is scheduled for November 14, 2023. In conjunction with final approval, Plaintiff respectfully requests that the Court approve the attorneys' fees, expenses, and service awards contemplated by the Settlement (\$250,000 in attorneys' fees and expenses and a \$1,500 service award to each named Plaintiff). The requested fees, expenses, and service awards are all reasonable, are similar to those awarded in similar litigation, are to be paid by Defendant on top of the other benefits (and Defendant does not object to making the payments), and recognize the efforts of Class Counsel and the Plaintiff in achieving a benefit for thousands of other people, all at their own risk.

## BACKGROUND FACTS & PROCEDURAL HISTORY

### A. The Data Breach, Plaintiffs' Claims, and Teen Challenge's Response

Teen Challenge is a “faith-based addiction-treatment center” in Rehersburg, Pennsylvania. Plaintiff’s Complaint “Compl.” ¶1. To run its business, Teen Challenge collects PHI and PII from its patients. *Id.* ¶¶23-24. That information includes patients’ “full names, Social Security Number, driver’s license number, financial account information, credit-card information, date of birth, prescription information, diagnosis information, treatment information, treatment provider, health insurance information, medical information, Medicare/Medicaid ID number, employer identification number, electronic signature, and username and password[.]” *Id.* In so doing, Teen Challenge promises to protect patients’ data, disclosing that it has “reasonable security measures in place to secure [their] PII/PHI from inappropriate access or otherwise being lost or stolen. Additionally, we limit access to [patient] data, based on industry best practice, to those with legitimate business need to know.” *Id.* ¶26. Even so, Plaintiffs alleged that Teen Challenge never implemented the safeguards needed to fulfill that promise. *Id.* ¶32. As a result, they alleged that Teen Challenge’s “negligent conduct caused the Data Breach.”

In July 2020, criminals bypassed Teen Challenge’s cybersecurity through Teen Challenge email accounts, allowing them to pilfer patient PHI and PII. *Id.* ¶31. Teen Challenge did not detect the hack when it happened, nor did it stop hackers from stealing patients’ information over a three-day span. *Id.* ¶31. As a result, Teen Challenge’s Data Breach exposed the PHI and PII belonging to over 7,000 patients, including Plaintiffs. *Id.* ¶38.

Plaintiffs are Teen Challenge patients and breach victims. *Id.* ¶¶56-68. In April 2021, Plaintiffs sued Teen Challenge to remediate the harm its breach had caused them, asserting six counts and demanding that Teen Challenge reimburse their losses. *Id.* ¶¶74-147. In response, Teen

Challenge moved to strike Plaintiffs' complaint and dismiss two claims, denying liability for any harm its breach caused. "Defendant's Preliminary Objections" ¶¶7-20. After briefing the motion, the Court overruled the objections and permitted Plaintiffs to proceed in discovery. Order Overruling Defendant's Objections.

## **B. Discovery**

In discovery, the parties exchanged interrogatory and document requests, probing Plaintiffs' claims and Teen Challenge's defenses. Joint Declaration of Plaintiffs' Counsel Supporting Their Motion for Preliminary Approval of Class Action Settlement ("1st Joint Decl.") ¶3, previously filed on March 27, 2023. Teen Challenge responded to 14 interrogatories targeting evidence on how the breach happened, its cybersecurity, and the information compromised in its hack. *Id.* It also produced documents, responding to 23 requests and producing over 900 pages of information on its systems and the Data Breach. *Id.* Plaintiffs also responded to discovery requests, detailing how the breach has harmed them and the measures they took to mitigate that harm. *Id.*

That exchange revealed risks for both sides in litigating the case. *Id.* ¶4. Plaintiffs learned that Teen Challenge disputed whether any PHI and PII was stolen, as Teen Challenge asserted "Information was not accessed by unauthorized parties." *Id.* If true, that could eliminate Plaintiffs' claims, as there would be no risk to the class. *Id.* But Plaintiffs also learned facts supporting their claims, including gaps in Teen Challenge's cybersecurity allowing the breach to happen, bettering Plaintiffs' odds in proving liability under Pennsylvania law. *Id.*

Armed with this information, Plaintiffs understood the landscape affecting their claims and Teen Challenge's defenses, including the risks and expenses at play in litigating the case. *Id.* ¶5. As a result, they agreed to mediate the case to avoid those risks and expenses. *Id.*

### **C. Mediation**

In April 2022, the parties mediated with Edward Gray from ADROptions, a mediator experienced in resolving data breach cases. *Id.* ¶6. Under his guidance, the parties negotiated at “arm’s length,” communicating their positions through him and evaluating the strengths and weaknesses underlying their claims and defenses. *Id.* From the start, the parties agreed they would not negotiate proposed Class Counsel’s attorney fees or Plaintiffs’ service awards until they agreed on the settlement agreement’s core terms, thus avoiding conflict between Plaintiffs and the Settlement Class. *Id.*

Although the parties did not settle the matter at mediation, they succeeded in developing a framework for settlement. *Id.* ¶7. Those efforts paid off. By June 2022, the parties agreed on the terms for settlement, as Plaintiffs describe below.

### **SETTLEMENT OUTLINE**

The Settlement Agreement specifies how to implement the parties’ settlement from start to finish, including how to define the Settlement Class, the benefits they will receive, how to handle claims, and how Plaintiffs may petition for fees and service awards.

#### **A. Class Definition**

The Settlement Agreement defines the Settlement Class as “All persons whose personally identifiable information or protected health information was exposed in Defendant’s Data Breach (the ‘Incident’).” Settlement Agreement § 1. The agreement, in turn, defines “personally identifiable information or protected health information” as “a person’s full name, Social Security Number, driver’s license number, financial account information, payment card information, date of birth, prescription information, diagnosis information, treatment information, treatment provider, health insurance information, medical information, Medicare/Medicaid ID number,



employer identification number, electronic signature, and username and password.” *Id.* And the parties exclude from the class: “(i) Teen Challenge’s officers, directors, and employees; (ii) any entity in which Teen Challenge has a controlling interest; (iii) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Teen Challenge, and (iv) all persons who make a timely election to be excluded from the Settlement Class. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff.”

### **B. Settlement Benefits**

The settlement secures four benefits for the Settlement Class, remediating and mitigating the harms Teen Challenge’s data breach has caused and will continue to cause.

First, Settlement Class members will receive credit monitoring at no cost if they elect to enroll. *Id.* § 3. The monitoring will last for three years under three bureaus, adding “identity restoration services” as a service. *Id.* § 3(a)i. To apply, Settlement Class members need only submit a claim form and register for the service. *Id.* Those services will come with fraud insurance, covering up to \$1 million in losses for members who enroll. *Id.* What’s more, Teen Challenge will offer these services without reducing any other benefits to the Settlement Class, including claims to reimburse losses. *Id.*

Second, the settlement offers Settlement Class members a chance to claim losses from the breach, including lost money or time. *Id.* § 3(a)i-ii. Members may claim “economic losses” up to \$1,500 for losses resulting from the breach, including identity theft, fraud, and costs spent mitigating those risks. *Id.* To support their claim, a class member need only supply receipts or “documentation” evidencing the loss, also certifying their claim by describing how the loss happened and whether they have exhausted alternatives to pay for their losses. *Id.*

Settlement Class members can also claim time they spent dealing with the Data Breach, no matter whether they have claimed lost money. *Id.* That includes up to six hours in time spent dealing with the breach at \$25 per hour, capping their claim at \$150. *Id.* Members claiming lost time must document the time they spent on the breach, their reasons for spending that time, the dates, and how it related to the Data Breach. *Id.*

Altogether, the amount Teen Challenge must pay for lost money and time will not exceed \$400,000. *Id.* § 3(a). Between lost money and time, members may claim up to \$1,650 in benefits, not including their credit monitoring. *Id.* If claims should reach the cap, they will be paid “pro rata.” *Id.*

Third, Teen Challenge will pay the cost of claims administration, including the payment of the Claims Administrator and notice to Class Members. *Id.* § 6(e). And as with credit monitoring and Plaintiffs’ claims for attorneys’ fees and service awards, this benefit will not reduce any other benefits afforded to the Settlement Class. *Id.* (“The cost of claims administration will not affect any benefit provided to Class Members, including Plaintiffs”).

And fourth, Teen Challenge has confirmed it implemented “New Practices” since its data breach, detailing those security enhancements in the agreement. *Id.* § 5. They include transition to a “Sigmund platform” that is “password protected and encrypted with a valid SSL certificate.” *Id.* As the Settlement Agreement describes, “[i]n short, Teen Challenge uses the technical safeguards within Sigmund to limit access to ePHI and ensure that only those individuals authorized to access the ePHI are able to do so.” *Id.* Altogether, these improvements will better safeguard the PII and PHI Teen Challenge still possesses, including data belonging to Settlement Class members.

### **C. Attorneys' Fees and Service Awards**

As detailed in the Settlement Agreement, the parties did not discuss or negotiate the fee or service awards until they agreed on the terms benefiting the class. 1st Joint Dec. ¶6. As a result, the parties avoided conflict with the Settlement Class's interests, thus fulfilling their responsibilities to the Settlement Class first. Teen Challenge has agreed to pay Plaintiffs' attorney fees up to \$250,000, subject to Court approval. That amount covers all aspects stemming from Plaintiffs counsel's representation, including their time and expenses. *Id.* As a service award, subject to Court approval, Teen Challenge will pay Plaintiffs \$1,500 each, totaling \$3,000 for their service to the Settlement Class. *Id.* And as with the settlement's provisions for credit monitoring and settlement administration, these payments "will not affect any benefits provided to Class Members," meaning the Class will receive its benefits no matter how the Court decides Plaintiffs' fee and award petition. *Id.*

## **ARGUMENT**

### **A. Legal Standards**

Pennsylvania law requires courts to approve class action settlements. Pa. R. Civ. P. 1714(a). In so doing, the Pennsylvania Supreme Court has recognized that "settlements are favored in class action lawsuits." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 556 Pa. 190, 197, 727 A.2d 1076, 1080 (1999); *see also* Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992) ("The compromise of complex litigation is encouraged by the courts and favored by public policy. By their very nature, because of the uncertainties of outcome, difficulties of proof, and length of litigation, class action suits lend themselves readily to compromise"). As part of approval of a class action settlement, the Court must also approve payment of attorneys' fees and expenses to class counsel and any service award to the Plaintiff. Courts presume a

settlement should be approved if plaintiffs show the parties settled at “arm’s length,” after “sufficient discovery” by counsel experienced in the case’s issues. *Milkman v. Am. Travellers Life Ins. Co.*, No. 011925, 2002 WL 778272, at \*5 (Pa. Com. Pl. Apr. 1, 2002).

In approving a requested fee, Courts evaluate numerous factors, including:

- (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.

231 Pa. Code § 1717. “[T]he order in which these factors are listed in the Rule is not in any way intended to suggest an order of priority on comparative importance in the determination of the fee.” Explanatory Comment.

In addition, courts often evaluate requested fees under either the percentage-of-the-benefit approach or the lodestar approach. *See, e.g., Pennsylvania Orthopaedic Soc. v. Indep. Blue Cross*, No. 0002 DEC. TERM 2002, 2004 WL 2445370, at \*2 (Pa. Com. Pl. Sept. 7, 2004) (awarding \$5,000,000 in fees and noting that “under the lodestar method and the percentage of recovery method the fees requested are similarly appropriate.”). Under the percentage-of-the-benefit approach, a court evaluates the fee as a percentage of the overall benefit provided by the settlement, and courts typically award between 25% to one-third of the total benefit as a reasonable fee. *See, e.g., id.* at \*2 (awarding fee of one-third of \$35 million benefit); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005), *as amended* (Feb. 25, 2005) (noting that three different studies of class actions found typical fees awarded between 25% at 31% of the benefit). The percentage-

of-the-benefit approach is the preferred method. *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 442, 466 (E.D. Pa. 2008).

Under the lodestar method, courts take the lodestar incurred by counsel in prosecuting the case and increase the amount by an appropriate multiplier to account for the risk of non-payment and the results achieved, with a typical multiplier being between 2.4 and 4.5. *See In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. at 486–87 (awarding a multiplier of 2.6 and charting nine similar settlements with multipliers ranging from 2.4 to 4.5). The lodestar “calculation need entail neither mathematical precision nor bean-counting. The [trial] courts may rely on summaries submitted by the attorneys and need not review actual billing records.” *In re Rite-Aid*, 396 F.3d at 306–07.

Regardless of the method or factors considered, a trial court’s award of attorneys’ fees is subject to an abuse-of-discretion standard of review. *In re Bridgeport Fire Litig.*, 2010 PA Super 213, 8 A.3d 1270, 1289 (2010) (citation omitted) (affirming award of \$11.67 million, which represented one-third of the benefits recovered). *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, 75 Cal. Rptr. 3d 413, 433 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”) (quoting *Shaw v. Toshiba America Information Systems, Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000)).

In addition, “[a]s a matter of practice, courts routinely approve incentive awards [otherwise known as service awards] to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 665 (E.D. Pa. 2015) (quotation and citation omitted) (approving \$2,500 service award). Studies show that the average service award is over \$15,000. Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L.

Rev. 1303, 1308 (2006) (finding that the average incentive award was \$15,992). And amounts from \$2,500 to \$20,000 are common. *See McDonough*, 80 F. Supp. 3d at 665 (\$2,500 award); *Pennsylvania Orthopaedic Soc.*, 2004 WL 2445370, at \*2 (\$20,000 awards).

Here, the Court should approve both the requested fees and expenses award and the service award because the amounts are reasonable, agreed, and in line with amounts normally awarded.

**B. The Court should approve the requested attorneys' fees and expenses payment.**

First, all of the relevant factors favor approval of the requested attorneys' fees and expenses award of \$250,000. From this amount, Class Counsel has already advanced \$4,473.32 in normal litigation expenses, and there will be additional expense as the case moves to final approval. Second Joint Declaration of Plaintiffs' Counsel ("2d Joint Decl.") ¶2. This reduces the actual fee amount of this award from \$250,000 to something less than \$245,526.68. This represents a fee that is approximately less than 9% of the benefits provided by the Settlement and represents a lodestar multiplier of less than 2.0, both metrics that are well below the amounts routinely approved by courts. *Id.* ¶3. In addition, all of the statutory factors favor approval.

The time and effort reasonably expended by the attorney in the litigation.

First, Class Counsel has expended hundreds of hours in this litigation, incurred expenses, and will continue to incur additional expenses and expend additional time through final approval and settlement administration. *See* 2d Joint Decl. Moreover, because the matter was contingent Class Counsel was incentivized to only incur the expenses necessary (because their repayment was not guaranteed) but also to spend the time needed to make the litigation a success for the Class. This factor favors approval of the fee.

The quality of the services rendered.

Second, Class Counsel are experienced in class actions, having settled hundreds among them, including numerous data breach matters. Indeed, Class Counsel have developed a practice devoted to data breach matters and are experienced in assessing the issues affecting them. And as the First Joint Plaintiff's Counsel Declaration shows, the parties' settlement tracks with data breach settlements across the country. 1st Joint Decl. Class Counsel were able to utilize their skills to defeat Defendant's objections and to obtain a highly valuable settlement.

The results achieved and benefits conferred upon the class or upon the public.

Third, the results achieved and benefit conferred are exceptional, with benefits aimed at both remedying harm that has already occurred and insulating Class Members from potential future identity theft, including:

- 3-years of 3-credit-bureau credit monitoring with \$1 million in identity theft protection insurance at an estimated retail value of no less than \$226,800 (\$9/month x 36 months x 7,000 Class Members)—aimed at protecting Class Members from future harm caused by the breach.
- Up to \$400,000 in cash payments for economic losses (such as bank fees and actual fraud) that Class Members have already incurred, up to \$1,500 per Class Member, plus payment for lost time spent dealing with the data breach at \$25 per hour up to a maximum of 6 hours or \$150 per Class Member.

These benefits will *not* be reduced by Class Counsel's fees and expenses, which are paid by Defendant in addition to the fees and expenses to counsel. Indeed, the parties and the mediator avoided any conflict between Plaintiff and the Settlement Class by bifurcating negotiations; first addressing the terms affecting the benefits to the Settlement Class and then negotiating the terms affecting Class Counsel's attorneys' fees and the service award.

The magnitude, complexity and uniqueness of the litigation.

Fourth, as with all data breach cases, this is a “complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.” *Fulton-Green*, No. CV 18-274, 2019 WL 4677954, at \*8. Litigating the case “would be a time consuming and expensive process that would delay relief for class members.” *Id.* And in this type of case “[t]here will always be a ‘risk’ or possibility of decertification.” *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 321 (3d Cir. 1998). Moreover, data breach cases are “particularly risky given challenges relating to causation and damages, among other issues.” *In re Wawa, Inc. Data Sec. Litig.*, No. CV 19-6019, 2022 WL 1173179, at \*6 (E.D. Pa. Apr. 20, 2022); *see also Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at \*8 (E.D. Pa. Sept. 24, 2019) (“This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare”). And to proposed Class Counsel’s knowledge, “no data breach case has gone to trial.” Max Meglio, Note, *Embracing Insecurity: Harm Reduction Through a No-Fault Approach to Consumer Data Breach Litigation*, 61 B.C. L. REV. 1223, 1235 (2020). These factors all favor awarding the requested fee.

Whether the receipt of a fee was contingent on success.

Fifth, the final factor further supports the reasonableness of the requested fee. Class Counsel took this litigation on a 100% contingent basis. That means that Class Counsel invested their time in prosecuting the case and their money in advancing the necessary litigation expenses, all with no guarantee that they would receive any payment. Had the case not resulted in a verdict or settlement in favor of the Class, Class Counsel would have expended hundreds of thousands of dollars in attorney time in litigation but received no compensation, and Class Counsel would be out the significant litigation expenses they advanced. This further supports the reasonableness of



the requested fee, which, again, represents a small percentage of the overall benefits obtained and a reasonable multiplier. The Court should therefore approve the requested fees at the final approval hearing.

**C. The Court should approve the requested service award.**

Likewise, the Court should approve the requested service award of \$1,500 to each of the named Plaintiffs. The named Plaintiffs were a key part of the lawsuit, without whom there would be no recovery for the thousands of other Class Members. 2d Joint Decl. ¶4. The Plaintiffs communicated with Class Counsel in bringing the lawsuit and providing relevant facts and with evaluating the Settlement. Now that the lawsuit has resulted in benefit for the Class, the Court should recognize the efforts of Plaintiffs with a \$1,500 service award, which is well below amounts awarded in other litigation, and is highly reasonable. Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1308 (2006) (finding that the average incentive award was \$15,992).

**CONCLUSION**

For the reasons above, Plaintiff requests that as part of final approval of the Settlement the Court enter the proposed Order Approving Attorneys' Fees, Expenses, and Service Award, which grants the requested relief.

Respectfully submitted,

Dated: August 29, 2023

**SALTZ MONGELUZZI & BENDESKY, P.C.**

By: /s/ David L. Kwass  
DAVID L. KWASS, ESQ.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

KRIS REESE and TODD SAYLOR, on behalf of themselves and others similarly situated,	)	
	)	CIVIL DIVISION
	)	
	)	Case No. 210400093
Plaintiffs,	)	
VS.	)	
	)	
	)	
TEEN CHALLENGE TRAINING CENTER, INC., d/b/a PENNSYLVANIA ADULT & TEEN CHALLENGE,	)	
	)	
Defendant.	)	

**SECOND JOINT DECLARATION OF PLAINTIFFS' COUNSEL**

1. We are counsel for plaintiffs in the above-captioned case. We have personal knowledge of the facts in this declaration and could testify to them if called on to do so.

2. In the course of litigating this action, Class Counsel has recorded the following litigation expenses:

Expense	Cost
Filing/PHV/Court Fees	\$ 2,220.49
Mediation	\$ 2,000.00
Postage/Copy/Fedex	\$ 125.53
Travel	\$ 127.30
<b>Grand Total</b>	<b>\$4,473.32</b>

In addition, Class Counsel reasonably anticipates incurring additional expenses as part of final approval and dealing with administration of the settlement.

3. In the course of litigating this action, Class Counsel has recorded a total lodestar among all firms combined of over \$127,000 at their normal hourly rates. This reflects several hundred hours of attorney time. In addition, Class Counsel expects that this lodestar will increase meaningfully for the time that must yet be expended: (1) briefing final approval; (2) arguing final

approval; and (3) completing settlement administration and the claims process, including overseeing the settlement administrator. Thus, the current lodestar multiplier, with expenses deducted, is currently less than 2.0 and will only decrease as the case continues. In addition, the requested fee as a percentage of the overall benefits made available under the Settlement is small. Estimating the retail costs of credit monitoring at \$9/month, the 3 years of credit monitoring benefit made available to the roughly 7,000 Class Members is a retail value of approximately \$226,800 ( $\$9/\text{month}^1 \times 36 \text{ months} \times 7,000 \text{ Class Members}$ ). In addition, there is up to \$400,000 available for cash payments for economic losses, Defendant will pay \$250,000 in fees and a \$3,000 total in service awards, and Defendant will pay the costs of notice and administration, which in our experience is likely to be tens of thousands of dollars for a class of this size. All told, the requested fee is approximately less than 9% of the available benefits of the settlement.

4. In addition to Class Counsel, the named Plaintiffs were an integral part of achieving the Settlement. Without the Class Representatives the thousands of other Class Members would not have received the benefits now available.

We affirm, under the penalties for perjury, that the foregoing representations are true.

Dated: August 29, 2023

/s/Raina C. Borrelli

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<sup>1</sup> See U.S. News, Best Identity Theft Protection Services of 2023, available at <https://www.usnews.com/360-reviews/privacy/identity-theft-protection> (last visited July 31, 2023)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within will be served upon all counsel and unrepresented parties by the electronic filing system, or by regular mail if counsel or the unrepresented party does not participate in E-filing, on the date of the E-Filing acceptance of the document.

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Date: August 29, 2023