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YVONNE AYALA, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

COMMONWEALTH HEALTH PHYSICIAN  
NETWORK, et. al,

*Defendants.*

**LACKAWANNA COUNTY COURT  
OF COMMON PLEAS**

**No. 23-CV-3008**

**PLAINTIFF'S MOTION AND  
INCORPORATED MEMORANDUM OF  
LAW IN SUPPORT OF APPROVAL OF  
ATTORNEYS' FEES, EXPENSES, AND  
SERVICE AWARDS**

## INTRODUCTION

On May 7, 2024, the Court granted preliminary approval to the class action settlement of this case, which provides significant benefits to the Class of over 181,000 data breach victims from a \$2,000,000 non-reversionary common fund, including:

- 2-years of credit monitoring and insurance services with \$1 million in identity theft protection insurance per Class Member at an estimated retail value of no less than \$39 million (\$9/month x 24 months x 181,000 Class Members)—aimed at protecting Class Members from future harm caused by the breach.

- Up to \$5,000 per Class Member for Documented Loss Payments, including lost time at \$25/hr up to 6 hours. In the alternative to the Documented Loss Payment, Class members may receive a *pro rata* settlement payment in an amount calculated in accordance with Section 3.7 of the Settlement Agreement.
- *Pro rata* cash payments in the alternative to Documented Loss Payments
- Payment by Defendant of attorneys' fees of up to \$666,666.67 (one third of the \$2,000,000 settlement fund) and separately of litigation expenses to Class Counsel and a service award of \$1,500 to each of the following Class Representatives: Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabell. This will be in addition to all of the other relief provided to the Class Members.
- Defendant to pay the costs of notice and settlement administration from the Settlement Fund.
- Defendant to make business changes in the form of security enhancements, annual penetration testing, 24/7 SOC monitoring, annual security risk assessments, multi-factor authentication for employee email accounts, and updated policies and procedures designed to protect PII and PHI. These changes will be made at Defendant's own expense and separate from the Settlement Fund.

Court-approved notice of the proposed Settlement has been sent to the Class and a final approval hearing is scheduled for October 29, 2024. In conjunction with final approval, Plaintiff respectfully requests that the Court approve the attorneys' fees, expenses, and service awards contemplated by the Settlement (\$666,666.67 in attorneys' fees and \$7,462.74 in litigation costs and expenses and a \$1,500 service award to each Class Representative). The requested fees, expenses, and service awards are all reasonable, are similar to those awarded in similar litigation, are to be paid by Defendant from the Settlement Fund and recognize the efforts of Class Counsel and the Class Representatives in achieving a benefit for thousands of other people, all at their own risk.

## BACKGROUND FACTS & PROCEDURAL HISTORY

### A. The Data Breach, Plaintiff's Claims, and GVC's Response

GVC is a multi-specialty group healthcare provider with locations throughout northeastern Pennsylvania. Plaintiff's Complaint ("Compl.") ¶2. To run its business and provide medical care, GVC regularly collects PHI and PII from its patients. *Id.* ¶16. That information includes patients' "names, addresses, demographic information such as dates of birth, Social Security numbers, drivers' license numbers, passport numbers, credit card and debit card information, bank account information, health insurance information and health insurance claims information, dates of service, diagnoses, medications, lab results, and other treatment information." *Id.* ¶1. Plaintiff alleges that GVC never implemented the safeguards and systems needed to fulfill its promises to keep this information safe and confidential. *Id.* ¶5. As a result, Plaintiff alleges that GVC suffered a data breach. *Id.* GVC's breach exposed the PHI and PII belonging to over 181,000 patients, including Plaintiff. *Id.* ¶3.

Plaintiff is a GVC patient and breach victim. *Id.* ¶53. On July 17, 2023, Plaintiff sued GVC to remediate the harm its breach had caused her and the class. Declaration of Jean S. Martin Supporting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Martin Decl.") ¶14 (filed April 22, 2024). The Parties agreed to mediate this matter and in preparation for mediation, they conducted informal discovery. *Id.* ¶14. Settlement discussions began in September 2023 and included informal and formal negotiations. *Id.* ¶15.

### B. Mediation

On November 6, 2023, the parties mediated with Honorable Thomas M. Blewitt (Ret.) of Judicial Arbitration and Mediation Services ("JAMS"). Martin Decl. ¶19. Under his guidance, the parties negotiated at arm's length, communicating their positions through her 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 the Class Representatives’ service awards until they agreed on the settlement agreement’s core terms, thus avoiding conflict between the Class Representatives and the Settlement Class. *Id.* ¶40. As a result of the mediation, the parties agreed on the terms for settlement, as summarized above and as detailed in the Settlement Agreement on file with the Court. *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 or 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). “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.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, 75 Cal. Rptr. 3d 413, 433 n.11 (2008) (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 awards 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' fee award of \$666,666.67, and the Court should use the percentage-of-the-benefit method here, where the Settlement creates a non-reversionary common fund.

Even if the Court were to evaluate the requested fees under the lodestar method, they are reasonable. The fee request represents a lodestar multiplier of 2.68 (which will continue to decrease through final approval and claims distribution) for all plaintiffs' counsel in the Related Actions that are being resolved through this Settlement. This multiplier is well below the amounts routinely approved by courts. *See In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. at 486–87 (noting multipliers ranging from 2.4 to 4.5).

Additionally, counsel for plaintiffs in all Related Actions have advanced \$7,462.74 in normal litigation expenses, and there will be additional expenses as the case moves to final approval. Declaration of Jean S. Martin in Support of Plaintiff's Motion for Attorney's Fees ("Class Counsel Fee Decl.") ¶8. These expenses included filing and court fees, postage and copying charges, and mediation expenses. *Id.*

In sum, all of the statutory factors favor approval:

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

First, Class Counsel has expended significant time in this litigation, incurred expenses, and will continue to incur additional expenses and expend additional time through final approval and settlement administration. *See generally* Class Counsel Fee 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 fees requested.

The quality of the services rendered.

Second, Class Counsel are experienced in class actions, having settled hundreds, including numerous data breach matters. Indeed, Class Counsel have served as lead counsel in many large data privacy cases and are experienced in assessing the issues affecting them. And the parties' settlement tracks with data breach settlements across the country, and even exceeds the benefits offered in many cases. Martin Decl. ¶47. Class Counsel were able to utilize their skills to defeat Defendant's objections and to obtain a highly valuable settlement.

In order to confer such substantial benefits on Class Members, Class Counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the cause, scope, and result of the data breach, as well as about the damages suffered by the Plaintiffs and the Class. Class Counsel Fee Decl. ¶ 2. Thereafter, Class Counsel analyzed and developed the various legal theories and causes of action. *Id.* ¶3. Through this extensive work and diligent negotiation, Class Counsel was able to evaluate the strengths and weaknesses of various claims and arrive at a hard-fought but fair resolution of this matter and all Related Actions. *Id.* ¶ 3. All told, Class Counsel demonstrated skill and dedication in zealously litigating the case. *Id.* ¶ 4.

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:

- 2-years of credit monitoring services with \$1 million in identity theft protection insurance per Class Member at an estimated retail value of no less than \$39,000,000 (\$9/month x 24 months x 181,000 Class Members)—aimed at protecting Class Members from future harm caused by the breach.
- Up to \$5,000 per Class Member for Documented Loss Payments, including lost time at \$25/hr up to 6 hours.

- Pro rata Cash Fund Payments in the alternative to Documented Loss Payments.
- Defendant to make business changes in the form of security enhancements, annual penetration testing, 24/7 SOC monitoring, annual security risk assessments, multi-factor authentication for employee email accounts, and updated policies and procedures designed to protect PII and PHI.

These benefits reflect an enormous success given the circumstances, and directly address the damages claimed by Plaintiff and the Class in this action by reimbursing them for out-of-pocket losses and lost time stemming from the breach, providing the opportunity to protect their identity in the future, and offering cash payments without any direct proof of loss. The size of the fund and the number of persons benefitting from the Settlement also weigh in favor of the reasonableness of the fees requested. The result here is all the more extraordinary in light of the very real litigation risks faced by Plaintiff in this matter, given that class actions in general are inherently risky and the continuously developing law on data breaches. Further, the Settlement benefits are available to Class Members immediately, rather than years from now which would be the case absent settlement. The amount at issue and the results justifies the requested 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.

The Court should therefore approve the requested fees and litigation expenses 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 the twelve Class Representatives. The Class Representatives were a key part of the lawsuit, without whom there would be no recovery for the thousands of other Class Members. Class Counsel Fee Decl. ¶10. The Class Representatives communicated with Class Counsel in bringing the lawsuit, providing relevant facts, and evaluating the Settlement. Now that the lawsuit has resulted in benefit for the Class, the Court should recognize the efforts of Class Representatives with \$1,500 service

awards, 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 Awards, which grants the requested relief.

Respectfully submitted,

Dated: July 24, 2024

By: */s/ Jean Sutton Martin*  
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**CERTIFICATE OF CONCURRENCE**

Pursuant to Local Rule 208.2(d), Plaintiff sought concurrence in this Motion from Defendants. Defendants have indicated that they do not oppose Plaintiff's Motion and Incorporated Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, and Service Awards.

/s/ Jean Sutton Martin  
Jean Sutton Martin

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