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

FIRST CHOICE FEDERAL CREDIT UNION and FINANCIAL HORIZONS CREDIT UNION, individually and on behalf of all others similarly situated, Plaintiffs, v. SLIM CD, INC., Defendant.	Case No. 2:25-cv-01088-MRH

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

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INTRODUCTION

Plaintiffs First Choice Federal Credit Union and Financial Horizons Credit Union ("Plaintiffs" or "Settlement Class Representatives"), respectfully move under Rule 23(h) of the Federal Rules of Civil Procedure for an award of attorneys' fees, costs, and expenses, and approval of Service Awards[1] in connection with the proposed Settlement Agreement entered into with Defendant Slim CD, Inc. ("Slim CD" or "Defendant"). The Court preliminarily approved the Settlement on June 3, 2026 (ECF No. 39).

Class Counsel efficiently prosecuted this action and was able to achieve an excellent result for the Settlement Class without expending unnecessary time or resources. Throughout the course of this litigation, Class Counsel engaged in extensive research into the claims, participated in informal discovery through the settlement process, including the review and analysis of documents and information produced by Slim CD. The Parties further engaged in hard-fought settlement negotiations, including a full-day mediation session with experienced data breach mediator Steven R. Jaffe of Upchurch Watson White & Max Mediation Group which resulted in an agreement in principle to resolve the claims asserted in the litigation. Under the Settlement Agreement, Slim CD will pay $2,000,000.00 in cash into a common fund in exchange for a release of the Settlement Class's claims against Defendant arising from Data Security Incident that compromised the payment card data of approximately 1.5 million payment cards issued by Plaintiffs and the Settlement Class.

If approved, the Settlement will resolve all pending claims in this action and provide monetary relief arising out of the Data Security Incident to Settlement Class Members who submit

[1] Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Settlement Agreement ("Settlement" or "SA") located at ECF No. 32-3.

valid claims. The Settlement is an excellent result in a complex, high-risk case that provides a substantial recovery for all Settlement Class Members. Thus, Class Counsel respectfully request that the Court approve an award of 33.33% of the Settlement Fund or $666,666.67 in attorneys' fees, $21,082.76 as reimbursement of litigation expenses, and $2,500.00 to each of the Settlement Class Representatives as a Service Awards. Class Counsel's lodestar is approximately $406,864.00, so the requested fee represents a 1.6 multiplier, which supports the reasonableness of the requested attorneys' fee award.

As discussed below, in the Joint Declaration of Gary F. Lynch and Joseph P. Guglielmo ("Joint Decl."), and in the Declaration of Daryl F. Scott ("Scott Decl.") filed concurrently herewith, 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 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 Service Awards for the Settlement Class Representatives are within the customary range and are warranted to compensate the Settlement Class Representatives for their participation in this litigation on behalf of the Settlement Class. Thus, Class Counsel respectfully requests that the Court award one-third (33.33%) of the Settlement Fund (including interest earned thereon) as attorneys' fees, $21,082.76 as reimbursement of litigation expenses, and $2,500.00 to each of the Plaintiffs as Service Awards.[2]

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[2] For purposes of conciseness, Plaintiffs incorporate the description of the Factual Background and Terms of the proposed Settlement Agreement as set forth in Plaintiffs' concurrently filed Memorandum of Law in Support of Motion for Final Approval.

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).[3]

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 when, 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

[3] Unless otherwise indicated, internal citations are omitted.

6525783, at *2 (E.D. Pa. Dec. 20, 2017) ("The reasonableness of attorneys' fee 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 Percentage-of-Recovery Method.

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*, 55 F.3d at 822; *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 653 (E.D. Pa. 2015). The percentage requested here, 33.33%, 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, other data breach cases have had similar attorneys' fees approved. *See, e.g.*, *Bianucci v. Rite Aid Corp.*, No. CV 24-3356, 2025 WL 2166015, at *9 (E.D. Pa. July 30, 2025) (approving an award of 35% of settlement fund as attorneys' fees in a consumer data breach action); *In re Onix Grp., LLC Data Breach Litig.*, No. CV 23-2288-KSM, 2024 WL 5107594, at *13 (E.D. Pa. Dec. 13, 2024) (approving an award of 1/3 of settlement fund as attorneys' fees in consumer data breach action); *Anaya v. Cencora, Inc.*, No. 2:24-cv-02691 (E.D. Pa) (approving an award of 1/3 of settlement fund as attorneys' fees in consumer data breach action); *First Choice Federal Credit Union v The Wendy's Co*., No. 2:16-cv-00506 (W.D. Pa.) (ECF No. 191) (financial institution case, granting 30% of $50 million settlement fund and an additional $347,000 in attorneys' fees).

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

III. 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 relief to a nationwide class of impacted Financial Institutions. The Settlement exceeds the per-Alerted-on Card amounts obtained for class members in approved settlements in similar cases. Based on the $2,000,000.00 common fund and approximately 1.5 million Alerted-on Cards issued by members of the Settlement Class, the gross estimated recovery per impacted card is approximately $1.33 per card assuming every Settlement Class Member files a claim. This relief compares favorably with other settlements negotiated by plaintiffs in similar actions for similar claims. *See*, *e.g.*, *In re Wawa, Inc. Data Sec. Litig.*, No. 2:19-cv-06019 (E.D. Pa.) (the court granted final approval to a claims-made settlement valued at up to $37.5 million for over 30 million compromised payment cards ($1.25 per card)); *In re: Sonic Corp. Customer Data Breach Litig.*, No. 1:17-md-02807-JSG (N.D. Ohio) (another court approved a $5.73 million common fund settlement for nearly 8.9 million compromised payment cards ($0.64 per card)).

In light of the aforementioned settlements, this Settlement is an excellent result and exceeds the per-class member recovery of other court-approved settlements to date in similar data breach litigation. As such, this factor supports the reasonableness of Class Counsel's fee request.

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 September 4, 2026. ECF No. 39 at p. 11. The Settlement Administrator fully implemented the Court-approved Notice Program, sending Notice directly to the 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 attorneys' fees "of up to one-third (33.33%) of the Settlement Fund" as well as reimbursement for all expenses. ECF No. 32-3, Ex. B. The Notice also advised Settlement Class Members how and when to object to or opt out of the Settlement. *Id.*

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). To date, no Settlement Class Member has filed an objection to the Settlement. 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.'" *In re Viropharma Inc. Sec. Litig.*, No. CV 12-2714, 2016 WL 312108, *16 (E.D. Pa. Jan. 25, 2016).

Class Counsel have extensive and significant experience in the field of class action litigation and has significant experience in representing financial institutions in data breach actions. Joint Decl. ¶¶ 5, 8. 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 action. As set forth in the Joint Declaration, Class Counsel is experienced in this type of litigation and have a strong track record of leading these relatively unique cases and obtaining favorable results for plaintiffs—and is uniquely aware of the risks associated with pursuing these cases. *Id*. Given the risks associated with this litigation, as it involved novel issues and a defense team led by equally skilled and experienced attorneys, Class Counsel recommended this Settlement to avoid the risk associated with pursuing these claims through motion practice, likely appeals, and potentially trial.

Class Counsel's proficiency and knowledge of the applicable law—and the scope and results of similar cases across the country with varied outcomes—led the parties to engage in early settlement discussions to reach the final Settlement. Between the firms of Lynch Carpenter and Scott+Scott, the two firms have significant experience in consumer class action litigation, including payment card breaches such as this one, and are acutely aware of the risks of these types of cases, including in establishing class certification and damages. Class Counsel's skill and experience in payment card and data breach class actions, as well as in large-scale class actions, were directly responsible for the favorable Settlement. While still advocating for their clients and the putative class, Class Counsel developed a productive relationship with opposing counsel and worked collaboratively with them to streamline and appropriately sequence settlement efforts, before entering into both expensive and time-consuming discovery and motions practice. Class Counsel also worked efficiently among themselves, coordinating the work to avoid duplication or overlap, and their lodestar reflects the intensity with which this settlement was negotiated, 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, Slim CD was represented by undeniably experienced and skilled attorneys at Mullen Coughlin LLC. 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.

The immediate and certain relief the Settlement provides stands in stark contrast to the complexity and delay of continued litigation. Data-breach litigation is a complex and rapidly evolving area of law in which recovery is far from certain. *See Fulton-Green v. Accolade, Inc.,* 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."); *In re Wawa, Inc. Data Sec. Litig.*, No. CV 19-6019, 2023 WL 6690705, at *7 (E.D. Pa. Oct. 12, 2023) ("This is a complex class action lawsuit regarding damages from a data breach, an area of law that has not yet been fully developed."). Absent the Settlement, Plaintiffs would have to defeat a forthcoming motion to dismiss, obtain and maintain class certification, survive summary judgment, prevail in a battle of experts, and succeed at trial and on any appeal, with each step presenting a genuine risk of reduced or no recovery. Class certification in particular is not assured in data-breach cases. *See Theus v. Brinker Int'l, Inc.*, No. 3:18-CV-686-TJC-MCR, 2025 WL

1786346, at *2 (M.D. Fla. June 27, 2025) (denying certification in a data-breach case); *Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123, 138 (4th Cir. 2025) (reversing certification in data-breach litigation). "[C]ontinued litigation would entail a lengthy and expensive legal battle that may result in no relief or substantially delayed relief to the Settlement Class[]." *Fulton-Green*, 2019 WL 4677954, at *10; *see In re Wawa, Inc. Data Sec. Litig.*, 2023 WL 6690705, at *7, *9 (recognizing the risks financial-institution plaintiffs faced in data-breach litigation).

Given the highly technical nature of the claims, continued litigation would require substantial expert work and expense. *See In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *8 (N.D. Cal. July 22, 2020) ("Litigation costs would be quite high, given that the case involves complex technical issues and requires substantial expert testimony."); *Cendant*, 264 F.3d at 233. Weighed against those risks, the $2 million non-reversionary Fund, delivering prompt, certain cash relief, is a strong result. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (elimination of delay and expense and the provision of immediate benefit favors approval).

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. Joint Decl. ¶ 4. A dispositive ruling at any stage of this litigation could mean zero recovery for the Settlement Class. Slim CD would have 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). Therefore, this factor supports the requested attorneys' fee award.

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. They risked non-payment of $21,082.76 in out-of-pocket expenses and for the 409.9 hours they expended to date on this litigation, knowing that if their efforts were not successful, no fee would be paid. Joint Decl. ¶¶ 4, 11-14, 16-17; Scott Decl. ¶¶ 5, 10. Class Counsel was prepared to vigorously litigate and prosecute this case, including through trial and any appeals. Class Counsel spent significant time in the initial investigation of the case; talking with putative class members; researching issues of law; preparing and filing the complaint; reviewing and analyzing documents and information produced or disseminated by Slim CD via informal discovery; preparing for and participating in numerous settlement conversations and mediation; and drafting and revising the ultimate settlement agreement and notices. Joint Decl. ¶ 8. At all times, Class Counsel conducted their work with skill and efficiency, conserving resources and avoiding duplication of effort. *Id.* ¶ 7. 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.

As demonstrated above in Argument, *supra* § II, the request of one-third of the total Settlement Fund to cover the time of Class Counsel is well within the range of fees awarded in this Circuit and in comparable data breach cases. Accordingly, this factor supports the reasonableness of the requested fee.

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

The Third Circuit has advised district courts to examine whether counsel has benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing, because this can indicate whether or not counsel should be given full credit for obtaining the value of the settlement fund for the class. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 338 (3d Cir. 1998). Class Counsel alone initiated this action and have been actively litigating this action themselves without assistance from the government or any third parties. Thus, this factor supports the requested fee. *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 33.33% 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 settlement in the novel area of data breach litigation. 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.

IV. 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 $406,864 for work throughout the litigation, meaning that the requested fee, if awarded, would represent a "multiplier" of 1.6 of Class Counsel's combined lodestar. Joint Decl. ¶¶ 11-14; Scott Decl. ¶ 5. Class Counsel's lodestar represents nearly 409.9 hours of work to date at their current hourly rates.[4] *Id*. Based on a lodestar of $406,864 and a total of 409.9 hours committed to this case, the blended billing rate is $992 per hour.[5] The reasonableness of Class Counsel's rates is supported by the Joint Declaration and Scott Declaration, which establishes that the rates 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. Joint Decl. ¶¶ 19-21; Scott Decl. ¶¶ 8-9.

These rates have been approved in other class action cases and are similar to other rates in similar actions resolved across the country. *Id*. Further, Class Counsel's rates are within the ranges that have been approved by this Court and other district courts in this Circuit overseeing class settlements. *See Anaya v. Cencora, Inc.*, Case No. 2:24-cv-02691 (E.D. Pa) (Judge Rufe approving

[4] 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").

[5] The Third Circuit has indicated that the relevant hourly rate analysis for a lodestar cross-check is the blended billing rates that approximate the fee structure of individuals who work on a matter, not each individual's hourly rate. *See In re Rite Aid*, 396 F.3d at 306; *see also* The Manual for Complex Litigation (Fourth) § 21.724 (2004).

Scott+Scott rates up to $1,420); *Sparacino v. Widener Univ.*, Case No. 2:24-cv-01001 (E.D. Pa.) (Judge Costello approving Lynch Carpenter rates up to $1,100); *Ramey v. The Pennsylvania State Univ.*, Case No. 2:20-cv-00753 (W.D. Pa.) (Judge Coville approving rates up to $1,100); *In re: Railway Industry Employee No-Poach Antitrust Litig.*, No. 2:18-MC-00798 (W.D. Pa.) (ECF No. 313 & 272–300) (Judge Conti approved rates for attorneys ranging from $275 to $1,100); *Howard v. Arconic Inc. et al*, Case No. 2:17-cv-1057-MRH (W.D. Pa.) (this Court approved attorney rates from $325 to $1,375 and a lodestar multiplier of 3.54). 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. Joint Decl. ¶¶ 11-14; Scott Decl. ¶ 5. The hours billed were spent drafting pleadings, researching, analyzing numerous legal issues, reviewing documents and information produced, preparing for and participating in hard-fought settlement negotiations and mediation, negotiating the Settlement Agreement, effectuating the terms of the Settlement, and ensuring notice was distributed to putative Settlement Class Members such that they could make an informed decision. Joint Decl. ¶ 8.[6] The tasks performed are typical in litigation and were necessary to the successful prosecution and resolution of the claims against Slim CD.

The requested attorneys' fee of $666,666.67 represents a multiplier of 1.6 of Class Counsel's lodestar. Courts often approve fees in class actions that correspond to multiples of one

[6] 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 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.

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 within the range awarded by district courts in the Third Circuit."); *Prudential*, 148 F.3d at 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.

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

'"Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.'" *Ocean Power*, 2016 WL 6778218, at *29. Class Counsel seek reimbursement of $21,082.76 for the reasonable expenses incurred to advance this litigation. Joint Decl. ¶¶ 16-17; Scott Decl. ¶ 10. Class Counsel has documented their expenses, by category, in the accompanying declarations. *Id*. The schedule of expenses shows that Class Counsel litigated the case efficiently, with no unreasonable or unjustified expenditures. *Id*. Moreover, the expenditures were of the type typically charged to hourly paying clients.

As explained in the Declarations, a significant percentage of expenses incurred were the result of mediation and related travel. Joint Decl. ¶¶ 16-17; Scott Decl. ¶ 10. The remainder of the expenses include court fees. *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 $21,082.76, are typical in litigation, were necessary to the successful prosecution and resolution of the claims against Slim CD, and Plaintiffs' request for Class Counsel's expenses should be approved.

VI. The Requested Service 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.) (incentive awards may be "merited for time spent meeting with class members, monitoring cases, or responding to discovery").

The Agreement permits the Settlement Class Representatives to seek modest Service Awards of $2,500.00 to compensate them for their efforts in this litigation and commitment on behalf of the Settlement Class. SA ¶ 9.2. Any Service Award approved by the Court will be paid from the Settlement Fund. *Id*. Here, the Settlement Class Representatives reviewed the complaint, were prepared to produce documents and testimony, and participated in the settlement discussions that resulted in the excellent recovery to the Settlement Class. Joint Decl. ¶ 22. Additionally, the Settlement Class Representatives actively communicated with Class Counsel for purposes of advising and consulting about the impacted of the Data Security Incident and their resulting damages. *Id.* These communications were crucial to the development of a workable damage model to facilitate the settlement process. *Id.* Courts in this Circuit have routinely approved service awards in amounts higher than that requested for the Settlement Class Representative 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); *In re Wawa, Inc. Data Security Litig.*, Case No. 2:19-cv-06019 (E.D. Pa.) (ECF No. 493) (awarding financial institution plaintiffs service awards of $5,000 in payment card data breach).

Thus, the requested Service Awards should be approved.

CONCLUSION

For the reasons discussed above, the Settlement Class Representatives respectfully request that the Court grant Plaintiffs' motion for an award of 33.33% of the Settlement Fund as attorneys' fees, $21,082.76 as reimbursement of litigation expenses, and $2,500.00 as Service Awards for each of the Settlement Class Representatives.

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Respectfully submitted:

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