

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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Benjamin McKey, individually and as a  
representative of the Class,

Case No. 2:22-cv-01908-GJP

Plaintiff,

v.

TenantReports.com, LLC,

Defendant.

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**MOTION FOR ATTORNEYS' FEES,  
COSTS & SERVICE AWARD**

Plaintiff Benjamin McKey ("Plaintiff"), together with Class Counsel, respectfully moves the Court to approve for distribution from the Settlement Fund (1) the requested attorneys' fees of one-third of the fund, or \$292,600, (2) reimbursement of Counsel's out-of-pocket costs, \$19,954, (3) the requested Class Representative Service Award of \$7,500, and (4) reimbursement of the Settlement Administrator's expenses. Defendant TenantReports.com, LLC does not oppose the relief sought in this Motion.

Dated: November 20, 2023

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**MEMORANDUM IN SUPPORT OF**  
**MOTION FOR ATTORNEYS' FEES, COSTS, & SERVICE AWARD**

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Plaintiff Benjamin McKey (“Plaintiff” or “Class Representative”) and Class Counsel have diligently litigated this Fair Credit Reporting Act (“FCRA”) action for over a year and a half, entirely on a contingent fee basis, with their efforts resulting in an excellent settlement that establishes a common fund of \$877,800 from which Settlement Class Members will automatically receive a payment. The settlement also provides for practice changes by Defendant TenantReports.com, LLC (“Defendant”) to implement procedures to avoid reporting outdated adverse information in the future. The excellent result achieved and the benefits to the Settlement Class could not have been attained absent Class Counsel’s time, effort, and skill, as well as Plaintiff’s active participation in the case.

The requested attorneys’ fee of one-third of the common fund, or \$292,600, is reasonable in light of the recovery obtained and the time put into the case, and recognizes the substantial efforts undertaken in litigation, discovery, and settlement negotiations. Additionally, Class Counsel seek reimbursement of their out-of-pocket costs, \$19,954. Fees and costs were negotiated only after relief for the Class was agreed upon. Class Counsel have received no payment or reimbursement to date for their work. Further, the requested service award of \$7,500 for Plaintiff is appropriate in light of his investment of time and energy in the litigation.

The amount of fees and costs and service award that Plaintiff and Class Counsel intended to seek were included in the Notice to the Settlement Class. While the objections deadline has not yet passed, as of the date of this filing, no Settlement Class Member has objected to the requested attorneys’ fees, costs, or service award – or to the settlement generally.

## **I. BACKGROUND**

The litigation history, history of settlement negotiations, and terms of the settlement are set forth in detail in the Memorandum in Support of Plaintiff’s Motion for Preliminary Settlement

Approval (ECF No. 33) and are incorporated by reference here. This Memorandum will focus on the efforts of Class Counsel and Plaintiff to achieve the result in this case.

**A. Class Counsel’s Work to Secure Benefits for the Class.**

Class Counsel are highly experienced FCRA practitioners who have years of experience in litigating complex FCRA class actions such as this case. (*See, e.g.*, ECF Nos. 33-2, 33-3.) As a result of their expertise in this area, Class Counsel were able to efficiently and effectively litigate this action and had the credibility necessary to negotiate an excellent settlement on behalf of the Settlement Class. As noted above, Class Counsel have worked without compensation or reimbursement for their time and out-of-pocket expenses incurred in furtherance of this litigation and settlement. (Declaration of Joseph C. Hashmall (“Hashmall Decl.”) ¶ 3.) Before taking the case, Class Counsel negotiated a customary contingency fee agreement with the Plaintiff, with the understanding that the amount would be an appropriate incentive for Class Counsel to take on the financial risks involved in the representation. (*Id.*) Class Counsel also agreed to advance all costs. (*Id.*) In the event that Class Counsel did not successfully resolve this matter, they would have been paid nothing.

Although the parties settled this case pre-trial, Class Counsel have invested a substantial amount of resources in investigation, discovery, litigation, and settlement of the matter. Many of the tasks performed by Class Counsel are not evident based solely on a review of the docket, as much of the litigation took place outside of the courtroom.

Prior to reaching the settlement in this matter, Class Counsel had undertaken, among other things, (1) investigating the claims, drafting and filing the initial class action complaint, and the same for the First Amended Complaint, (2) propounding and responding to written discovery requests, (3) taking the deposition of Defendant’s 30(b)(6) representative, (4) reviewing and



analyzing document and data productions from Defendant, including retaining an expert to assist and ultimately prepare a report, (5) pursuing third party discovery with Defendant's data vendor, (6) preparing for and defending Plaintiff's deposition, (7) working to depose a former employee of Defendant, including filing a motion with the Court regarding service, (8) preparing for mediation with Steven Jaffe of Upchurch Watson White & Max, (9) continuing arms-length negotiations, working to finalize the Terms Sheet, and ultimately drafting the Settlement Agreement, (10) preparing the draft class notice plan, and working to vet settlement administration proposals, and (11) drafting the motion for preliminary settlement approval. (Hashmall Decl. ¶¶ 4-5.) Class Counsel will continue efforts in responding to settlement-related inquiries and monitoring the settlement administration process, and draft and prepare to argue the motion for final approval of the settlement, as well. (*Id.* ¶ 6.)

To date, Class Counsel have devoted over 285 hours to this matter, resulting in \$172,368 in lodestar. (*Id.* ¶ 7.) This does not include the time that will be spent on the continuing efforts referenced above in continuing to oversee settlement administration, preparing for final approval, and responding to inquiries from class members. To date, Class Counsel have incurred \$19,954.78 in out-of-pocket costs as well. (*Id.* ¶ 9.) All of these costs, the bulk of which were for Plaintiff's expert, mediation, and depositions, were necessarily incurred and are of the type typically reimbursed by paying clients.

Notice was distributed to the Settlement Class on October 6, 2023, and the objections deadline is December 5, 2023. As of today, zero objections have been received. (*Id.* ¶ 10.)

#### **B. The Class Representative's Participation**

Plaintiff has played a valuable role in bringing this action to a successful resolution. Among other things, the Class Representative (1) provided information for the complaint and First

Amended Complaint and reviewed the same prior to filing, (2) responded to written discovery requests and provided documents for production, (3) prepared and sat for his deposition, (4) consulted with Counsel during settlement negotiations, and (5) reviewed and approved the Settlement Agreement. (*Id.* ¶ 11.)

In sum, Plaintiff played an active role in discovery and settlement and has regularly communicated with Class Counsel to stay abreast of developments in the case. The settlement's allowance of a service award of \$7,500 reflects his initiative in pursuing this action, the risks associated with attaching his name to litigation that involves his offense history, and his time invested in the litigation.

### **C. Settlement Administrator's Expenses**

The parties have agreed that the Settlement Administrator's expenses for its work in preparing and distributing notice to the Settlement Class, securing and maintaining the Settlement Website and phone support, eventual preparation and mailing of payments, and other administrative tasks should be deducted from the common fund as well, subject to Court approval. (ECF No. 33-3 ¶ 5.3.1.) These expenses are currently estimated to be \$73,208, through payment distributions. The contemplated deduction of these expenses from the fund was included in the Notice to the Settlement Class, and no objections have been received.

## **II. LEGAL STANDARD**

Fed. R. Civ. P. 23(h) provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."

Awards of attorneys' fees are calculated using one of two methods, the percentage-of-the-fund method, or the lodestar method. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3d Cir.

2011). The percentage-of-the-fund method 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 Prod. Liab. Litig.*, 582 F.3d 524, 540 (3d Cir. 2009)) (internal citations and quotations omitted). In this Circuit, courts have the discretion to award fees in common fund cases based on either method. *In re Diet Drugs*, 582 F.3d at 540; *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006). However, “the percentage-of-recovery method is generally favored,” *In re Diet Drugs*, 582 F.3d at 540, particularly in common fund settlements such as this. *Kirsch v. Delta Dental of N.J.*, 534 Fed. App’x 113, 115 (3d Cir. 2013); *Milliron v. T-Mobile USA, Inc.*, 423 Fed. App’x 131, 135 (3d Cir. 2011). The percentage-of-the-fund method allows the court to award fees in a manner that aligns the fees with the amount counsel realized for the class. *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The lodestar method can then be used to cross-check the reasonableness of the percentage-of-the-fund method fee award. *Sullivan*, 667 F.3d at 330; *In re Rite Aid*, 396 F.3d at 300; *In re AT&T Corp.*, 455 F.3d at 164.

This method is appropriate even if the underlying claims that are settled were brought under a fee-shifting statute, such as the FCRA. *Brytus v. Spang & Co.*, 203 F.3d 238, 246 (3d Cir. 2000); *see also Flores v. Express Services, Inc.*, No. 14-3298, 2017 WL 1177098, \*\*2-3 (E.D. Pa. March 30, 2017).

### **III. ARGUMENT**

#### **A. Analysis of the Relevant Factors Supports the Requested Fees**

In this Circuit, several factors are to be used by the courts in reviewing attorneys’ fees in percentage-of-the-fund cases, including:

- (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.

*In re Diet Drugs*, 582 F.3d at 541 (internal citations omitted); *see also In re AT&T Corp.*, 455 F.3d at 165; *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n. 1 (3d Cir. 2000). The Third Circuit has acknowledged that this list is not exhaustive, nor formulaic, as “each case is different, and in certain cases, one factor may outweigh the rest,” *In re AT&T Corp.*, 455 F.3d at 166 (internal quotations omitted), and that “[w]hat is important is that the district court evaluate what class counsel actually did and how it benefitted the class.” *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998).

Several factors are interrelated and are thus best discussed together, but as laid out below, once all are considered, they support the reasonableness of Class Counsel's requested fee amount.<sup>1</sup>

*i. The Value of the Fund Created, and a Comparison to Other Cases, Support the Requested Fees.*

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<sup>1</sup> Some of these factors are not applicable at this time or in this case. For the second factor, objections by class members are better addressed in Plaintiff's forthcoming final approval motion. Plaintiff and Class Counsel file this motion for fees prior to the objection deadline to ensure that class members have all the key information they need to decide whether to object or not. At this time, there are no objections from class members. The eighth factor—the value attributed to Counsel's efforts versus the efforts of some other group—is not applicable here, as no outside group has conducted investigations of Defendant's conduct that contributed in any way to this settlement.

Further, while not discussed in detail, factors nine and ten weigh in favor of approval. Factor nine weighs in favor of approval as one-third is a standard term for a contingent fee agreement. Factor ten weighs in favor of approval because the settlement achieves substantial injunctive relief, which is not normally available in FCRA litigation. *See* ECF No. 33-1 at 12-13, citing *McIntyre v. RealPage, Inc.*, No. 18-3934, 2023 WL 2643201, \*2 n.4 (E.D. Pa. March 24, 2023) (collecting cases, finding this to weigh in favor of approving settlement that provides injunctive relief).

Class Counsel's efforts in this matter resulted in a total settlement fund of \$877,800 for approximately 4,614 Settlement Class Members. The settlement provides for automatic payments to all class members who do not exclude themselves. It also provides the opportunity to all class members to file a claim for a higher settlement payment if they attest to additional harm. Depending on how many class members file claims, and the final awards of attorneys' fees, costs, service award, and administration expenses, the net amount for automatic payments per class member is estimated to be between \$75-\$87 and \$225-262 for the claimant class members.<sup>2</sup> These payouts compare favorably to other settlements involving similar claims. *See, e.g., Bankhead v. First Adv.*, No. 17-cv-2910 (N.D. Ga. Sept. 19, 2019) (approving § 1681c settlement that provided class members approximately \$60); *Haley v. TalentWise, Inc.*, No. 13-cv-1915 (W.D. Wash. June 16, 2015) (approving settlement that provided class members approximately \$50 each for their claims under § 1681c); *King v. General Info. Servs.*, No. 10-cv-6850 (E.D. Pa. Nov. 4, 2014) (approving settlement that provided class members approximately \$50 each for their claims under § 1681c).

The amount Class Counsel are requesting from the fund, one-third, also compares favorably to similar settlements, and more generally to other common fund fee awards in this Circuit. *See, e.g., Flores*, 2017 WL 1177098, \*3-4 (fee award of 32.96% of total fund in FCRA case); *Johnson v. Midwest Logistics Sys., Ltd.*, No. 11-1061, 2013 WL 2295880, at \*6 (S.D. Ohio May 24, 2013) (fee award of one-third of fund in FCRA case); *Smith v. Res-Care, Inc.*, No. 13-5211, 2015 WL 6479658, at \*8 (S.D. W.Va. Oct. 27, 2015) (same); *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 421 (E.D. Pa. 2010) (same); *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009) (finding average attorneys' fees percentage in class actions in Third

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<sup>2</sup> These ranges are for 10-20% claims rate estimates.

Circuit to be 31.71%, with median percentage to be 33.3%); *In re Rite Aid*, 396 F.3d at 303 (study of class action settlements found median percentage range of 27-30%); *In re Greenwich Pharm. Sec. Litig.*, No. 92-3071, 1995 WL 251293, at \*6 (E.D. Pa. April 26, 1995) (“fee award of 33.3 percent is in line with the fee awards approved by other courts”); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) (an “award of one-third of the fund for attorneys’ fees is consistent with fee awards” by courts in this District).

*ii. Class Counsel’s Skill and Time Spent on the Action Support the Fees*

The quality of representation by counsel 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 the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) (quotation omitted). Class Counsel are highly skilled in handling major complex litigation and have extensive experience litigating FCRA class actions. (ECF Nos. 33-2, 33-5.) Class Counsel have litigated numerous class action cases involving claims under the FCRA, speak nationally on the FCRA and class action litigation, and routinely track FCRA litigation nationwide. Class Counsel’s skill and expertise allowed them to litigate efficiently, settling this case pre-trial, and before class certification and dispositive motion practices, all of which would be time-consuming, costly, and impose risks to any class recovery.

This is even more noteworthy given that Defendant raised substantial defenses and was represented by skilled counsel from Troutman Pepper Hamilton Sanders LLP. Class Counsel undertook substantial efforts to advocate for the Class and support the claims in the case in the face of such opposition. (See Hashmall Decl. ¶¶ 4-5.)

In sum, the skill and efficiency of the attorneys involved, as well as the amount of time devoted to the case by Counsel, weigh in favor of Counsel's requested fee award.

*iii. This Complex Action was Substantively Litigated and Involved Considerable Risk*

Class actions are inherently risky to undertake, and FCRA class actions are particularly so. Unlike other consumer statutes, in order to recover statutory damages under the FCRA, Plaintiff must prove not only that Defendant violated the FCRA, but also that its violations were willful. This is a high standard, and one on which FCRA plaintiffs can lose, even after a successful verdict at trial. *See Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 611 (6th Cir. 2016) (reversing jury verdict, holding that consumer reporting agency's conduct did not constitute a willful violation of the FCRA); *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) (“[G]iven the difficulties of proving willfulness or even negligence with actual damages [under the FCRA], there was a substantial risk of nonpayment.”). Throughout the litigation, Defendant maintained that any FCRA violations were not willful. While Class Counsel were confident in the strength of the Plaintiff's claims, there was no guarantee of success, and at the time of settlement, substantial obstacles remained, including class certification, summary judgment, trial, and appeals. All of these remaining phases would create delay and introduce new risks. The settlement provides certain relief for the Class now.

Further, Class Counsel took this case on a contingent basis, and faced the additional risks of non-payment for their expended resources. As the courts have recognized, “there are inherent, substantial risks entailed in undertaking any contingency fee action.” *In re Ikon*, 194 F.R.D. at 194. As stated previously, Class Counsel and Plaintiff negotiated a contingency fee arrangement at the inception of Plaintiff's representation by Counsel. This is consistent with private arrangements in this District, and with the amount Class Counsel are seeking here. *Bradburn*

*Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 340 (E.D. Pa. 2007) (35% of recovery was comparable to likely private contingency fees); *In re Ikon*, 194 F.R.D. at 194 (negotiated agreements routinely provide for 30-40% of recovery). Importantly, at the time the complaint was filed, there were no obvious indications that a settlement would be reached or that litigation would be successful. Class Counsel have not been compensated for any time or expense since the litigation began, yet have expended considerable resources.

The complexity and duration of the litigation, the risk of nonpayment, and the contingent fee arrangement, all weigh strongly in favor of Class Counsel's fee request.

**B. The Lodestar Cross-Check Further Supports the Fee Award**

The Third Circuit recommends that district courts perform a "cross-check" of a percentage-of-the-fund award. *Gunter*, 223 F.3d at 199. The purpose is to ensure that "plaintiffs' lawyers are not receiving an excessive fee at their clients' expense." *Id.*

Under the lodestar method, the court "determines the lodestar by multiplying the number of hours counsel reasonably worked on a client's case by a reasonable hourly billing rate for such services in a given geographical area," the nature of the services provided, and the experience of the lawyers. *Id.* at 195 n.1. The court "may rely on summaries submitted by the attorneys" without reviewing every billing record. *In re Rite Aid*, 396 F.3d at 306-7. The lodestar figure is "presumptively reasonable" where it arises from a reasonable hourly rate and a reasonable number of hours. *Planned Parenthood of Cent. New Jersey v. Attorney General of the State of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002). "Time expended is considered reasonable if the work performed was useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *In re Schering-Plough/Merck Merger Litig.*, No. 09-1099, 2010 WL 1257722, \*17 (D.N.J. March 26, 2010) (internal quotations omitted).



Class Counsel have expended 285 hours to date, and using current billing rates,<sup>3</sup> have thus incurred \$172,368 in lodestar. (Hashmall Decl. ¶ 7.) All of the time expended was in furtherance of the litigation and settlement here and was necessary to the results obtained. Further, the hours do not include time spent on future work by Class Counsel, such as preparation for final approval, and overseeing the remaining administration of the settlement.

Class Counsel's lodestar results in a modest 1.7 multiplier against the requested one-third, which is consistent with multipliers awarded in this Circuit. In *In re Prudential*, the Third Circuit recognized, based on a review of common fund cases, that “[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” *In re Prudential*, 148 F.3d at 341 (quoting 3 NEWBERG & CONTE, NEWBERG ON CLASS ACTIONS, §14.03 at 14-5 (3d ed. 1992)). This reasoning has not diminished over time and has been repeatedly recognized by courts in the Third Circuit. *See, e.g., Alexander v. Wash. Mutual, Inc.*, No.07-4426, 2012 WL 6021103, \*4 (E.D. Pa. Dec. 4, 2012) (citing *In re Prudential*, 148 F.3d at 283); *In re Diet Drugs*, 582 F.3d at 545 n.42 (same); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742

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<sup>3</sup> As reflected in the accompanying Hashmall Declaration, the hourly rates of Class Counsel include rates from \$260-425 for support staff and paralegals, \$500-645 for attorneys, and \$720-980 for shareholders, which are comparable with hourly rates approved in the Third Circuit for class action litigation. *See, e.g., Devlin v. Ferrandino & Son, Inc.*, No. 15-4976, 2016 WL 7178338, \*10 (E.D. Pa. Dec. 9, 2016) (“[T]he hourly rates for Class Counsel [Berger Montague PC and co-counsel] are well within the range of what is reasonable and appropriate in this market. That is, the hourly charged rates for the attorneys are the same as the regular current rates charged for their services in standard non-class matters, including contingent and non-contingent matters.”); *In re: Domestic Drywall Antitrust Litigation*, No. 2:13-md-2437-MMB, ECF No. 767 (E.D. Pa. July 17, 2018) (finding “the rates claimed [by Berger Montague PC among others] are well within the range of rates charged by counsel in this district in complex cases”); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106, 112 (E.D. Pa. 2013) (approving hourly rates of \$275-\$750); *Moore v. GMAC Mortg.*, No. 07-4296, 2014 WL 12538188, \*2 (E.D. Pa. Sept. 19, 2014) (attorney rates “reasonably range[d]” from \$325-\$860); *In re Merck & Co. Vytorin ERISA Litig.*, No. 08-cv-285, 2010 WL 547613, \*13 (D.N.J. 2010) (approving hourly rates from \$105 to \$835); *McGee v. Con’t Tire N. Am., Inc.*, No. 06-6234, 2009 WL 539893, \*18 (D.N.J. March 4, 2009) (finding attorney rates of \$495 and \$600 to be reasonable).

(3d Cir. 2001) (limiting the award to a multiplier of three where liability was conceded by the defendant and was “consistent with the principle that multiples ranging from one to four are frequently awarded”); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 104 (D.N.J. 2001) (multiplier of one to four is the norm); *In re Am. Investors Life Ins. Co. Ann. Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 244 (E.D. Pa. 2009) (noting that within the Third Circuit multiples ranging from one to four are frequently awarded and approving a multiplier of 2.3); *Nichols v. Smithkline Beecham Corp.*, No. 00-6222, 2005 WL 950616, \*24 (E.D. Pa. Apr. 22, 2005) (recognizing that the Third Circuit awarded multipliers ranging from 1 to 4 and approving a multiplier of 3.15); *In re Genta Sec. Litig.*, No. 04-2123-JAG, 2008 WL 2229843, at \*11 (D.N.J. May 28, 2008) (approving multiplier of 3.72 since it is well within the range identified in *In re Prudential*).

The requested multiplier of 1.7 with respect to only the time currently expended by Class Counsel before even considering expected future time to be incurred, is well within the range identified in *In re Prudential*. To award a lower multiplier would serve only to encourage parties from reaching expeditious and fair settlements and increase incentives to needlessly litigate in order to increase the time spent on a case. The lodestar cross-check in this case fully supports the requested fee.

### **C. Expenses Should be Approved to be Reimbursed from the Fund**

There is little question that “[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *In re Safety Components*, 166 F. Supp. 2d at 108. In this case, Class Counsel have incurred \$19,954.78 in out-of-pocket, documented expenses, for the common benefit of the class members. (Hashmall Decl. ¶ 9.) These costs primarily include the cost of

mediation, Plaintiff's expert, and depositions. (*Id.*) Additionally, the costs include legal research, filing fees, postage, process servers, and document hosting for the Defendant's productions. (*Id.*) These types of costs are routinely approved. *See, e.g., In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 226 (E.D. Pa. 2014); *In re Datatec Sys. Sec. Litig.*, No. 04-525, 2007 WL 4225828, \*9 (D.N.J. Nov. 28, 2007); *Yong Soon Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004).

Further, the Settlement Administrator's expenses, currently estimated to be \$73,208 through the remainder of administration, are reasonably incurred, are in accordance with the Settlement Agreement, and should be approved for reimbursement from the common fund. *In re CertainTeed*, 303 F.R.D. at 225.

**D. The Class Representative Service Award is Appropriate and Should be Approved**

"[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Cullen*, 197 F.R.D. at 145 (internal quotation omitted); *see also In re CertainTeed*, 303 F.R.D. at 225 (stating similar). "It is particularly appropriate to compensate named representative plaintiffs with incentive awards where they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of a class." *Fleisher v. Fiber Comp., LLC*, No. 12-1326, 2014 WL 866441, \*15 (E.D. Pa. March 5, 2014).

Here, Plaintiff played an integral role to the case, providing information and documents, preparing and sitting for his deposition, corresponding with Counsel, and even more noteworthy, putting his name on the public complaint that acknowledges a prior offense history. The amount requested in recognition of his efforts is modest, \$7,500, and in line with those granted in this Circuit. *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 125 (D.N.J. 2012) (approving \$5,000

incentive awards for each class representative); *In re Am. Inv. Ins. Co. Annuity Mktg. & Sales Prac. Litig.*, 263 F.R.D. at 245 (approving awards of \$5,000-\$10,500); *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011) (approving \$15,000 per class representative in incentive awards in FCRA case).

### III. CONCLUSION

Based on the foregoing, the Court should approve the requested payments to be deducted from the settlement's common fund, specifically: (1) attorneys' fees to Class Counsel in the amount of one-third of the fund (\$292,600); (2) reimbursement of Class Counsel's out-of-pocket costs in the amount of \$19,954.78; (3) reimbursement of the Settlement Administrator's expenses; and (4) a Class Representative Service Award of \$7,500 to Plaintiff.

Dated: November 20, 2023

/s/Joseph C. Hashmall  
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*Counsel for Plaintiff*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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Benjamin McKey, individually and as a  
representative of the Class,

Case No. 2:22-cv-01908-GJP

Plaintiff,

**DECLARATION OF JOSEPH C.  
HASHMALL**

v.

TenantReports.com, LLC,

Defendant.

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I, Joseph C. Hashmall, hereby declare as follows:

1. I am one of Class Counsel in the above-captioned matter.
2. I submit this Declaration in support of the Motion for Attorneys' Fees, Costs, and Service Award.
3. Before taking the case, Class Counsel negotiated a customary contingency fee agreement with the Plaintiff, with the understanding that the amount would be an appropriate incentive for Class Counsel to take on the financial risks involved in the representation. Class Counsel also agreed to advance all costs. Class Counsel have worked without compensation or reimbursement for their time and out-of-pocket expenses incurred in furtherance of this litigation and settlement.
4. Prior to reaching the settlement in this matter, Class Counsel had undertaken, among other things, (1) investigating the claims, drafting and filing the initial class action complaint, and the same for the First Amended Complaint, (2) propounding and responding to written discovery requests, (3) taking the deposition of Defendant's 30(b)(6) representative, (4) reviewing and analyzing document and data productions from Defendant, including retaining an expert to assist

and ultimately prepare a report, (5) pursuing third party discovery with Defendant's data vendor, (6) preparing for and defending Plaintiff's deposition, and (7) working to depose a former employee of Defendant, including filing a motion with the Court regarding service.

5. Additionally, in terms of resolving the case, Class Counsel worked on (1) preparing for mediation with Steven Jaffe of Upchurch Watson White & Max, (2) continuing arms-length negotiations, working to finalize the Terms Sheet, and ultimately drafting the Settlement Agreement, (3) preparing the draft class notice plan, and working to vet settlement administration proposals, and (4) drafting the motion for preliminary settlement approval.

6. Class Counsel will continue efforts in responding to settlement-related inquiries and monitoring the settlement administration process, and draft and prepare to argue the motion for final approval of the settlement.

7. To date, Class Counsel have devoted over 285 hours to this matter, resulting in \$172,368 in lodestar.

8. Below is a table of timekeepers and their hourly rates:

Timekeeper	Position	Hourly Rate	Hours Worked	Lodestar
Hashmall, Joseph	Senior Counsel	\$645	179.2	\$115,584
Hibray, Jean	Paralegal	\$425	55.8	\$23,715
Drake, Eleanor Michelle	Executive Shareholder	\$980	24.3	\$23,814
Gionnette, Julie	Legal Assistant	\$260	5.4	\$1,404
Brandy, Max	Paralegal	\$390	5	\$1,950
Brooks, Rachel K	Legal Project Analyst	\$295	4.7	\$1,386.5
York, Mary	Paralegal	\$420	3.2	\$1,344
Filbert, David	Paralegal	\$420	2.9	\$1,218
Ginis, Haroula	Paralegal	\$405	2.3	\$931.5
Magnus, Eleanor	Legal Assistant	\$260	1.2	\$312
Albanese, John	Shareholder	\$720	0.7	\$504
Kiener, Ariana	Associate	\$525	0.2	\$105
Marsnik, Ivy Leigh	Counsel	\$500	0.2	\$100
Total			285.1	\$172,368

9. To date, Class Counsel have incurred \$19,954.78 in out-of-pocket costs as well. A summary table is below.

Category	Amount
Expert Fees	\$7,491
Mediation Fees	\$4,737.5
Transcripts	\$3,166.05
Advertising	\$1,339.63
Filing & Misc. Fees	\$720.14
Process Server	\$565
Ricoh Practice Manager	\$560.29
Ricoh - Data Hosting & Maint	\$555.53
Computer Research	\$388.05
Practice Support Manager	\$240.69
Service Fees	\$135
Delivery & freight	\$38.71
Reproduction Prints	\$9.75
DocuSign	\$4.96
Commercial Copying & Printing	\$2.48
Total	\$19,954.78

10. Notice was distributed to the Settlement Class on October 6, 2023, and the objections deadline is December 5, 2023. As of today, zero objections from Class Members have been received.

11. Plaintiff has played a valuable role in bringing this action to a successful resolution. Among other things, the Class Representative (1) provided information for the complaint and First Amended Complaint and reviewed the same prior to filing, (2) responded to written discovery requests and provided documents for production, (3) prepared and sat for his deposition, (4) consulted with Counsel during settlement negotiations, and (5) reviewed and approved the Settlement Agreement.

The foregoing statement is made under penalty of perjury, and is true and correct to the best of my knowledge and belief.

Date: November 20, 2023

/s/Joseph C. Hashmall  
Joseph C. Hashmall