

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEVEN GRAVLEY, SR., TYRONE BANKS,
BARBARA WELZENBACH, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

FRESENIUS VASCULAR CARE, INC. d/b/a
AZURA VASCULAR CARE,

Defendant.

Master File No. 2:24-cv-01148-MMB

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS
AND EXPENSES, AND SERVICE AWARDS**

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I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(h), sections 8.1 and 9.1 of the Class Action Settlement Agreement and Release¹ (the “Settlement Agreement” or “SA”), and the February 24, 2025 Preliminary Approval Order (ECF No. 34), Plaintiffs seek an order approving payment from the Settlement Fund of (a) \$1,102,500 in attorneys’ fees; (b) \$14,062.32 in litigation expenses and costs; and (c) Service Awards of \$2,500 to each of the three Class Representatives (\$7,500 total).

The \$3,150,000 non-reversionary Settlement Fund is an extraordinary result considering the significant litigation risks faced by Plaintiffs. Class Counsel expended extensive efforts and resources to arrive at this result, which compares favorably and is superior to settlements in similar data breach litigation. Their investigations of and efforts in this matter began approximately 15 months ago, in February 2024, following the news of the Data Breach becoming public. After filing two separate complaints, working cooperatively to consolidate the two related matters, and obtaining this Court’s approval to lead the litigation pursuant to Fed. R. Civ. P. 23(g), Class Counsel, on behalf of Plaintiffs, filed an omnibus consolidated complaint and engaged in extensive motion to dismiss briefing with Azura. This entailed Plaintiffs’ filing of a 34-page brief opposing Azura’s motion to dismiss seeking to dispose of the case in its entirety.

When the Parties finally agreed to attempt to resolve this matter, they spent many weeks preparing for mediation. The Parties exchanged detailed mediation statements and engaged in significant pre-mediation discovery to support their respective positions in the mediation. The Parties then participated in an in-person mediation session in Florida with Bennett G. Picker of Stradley Ronon Stevens & Young LLP.

¹ The Parties filed the Class Action Settlement Agreement and Release on February 14, 2025. *See* ECF No. 33-2. Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement.

The mediation was a success, and after reaching a settlement in principle, Class Counsel worked tirelessly to round out the details of the Settlement and memorialize them in the Settlement Agreement and its supporting documents (e.g., claim form, notices, orders, and declarations). After selecting a Settlement Administrator through a competitive bidding process, Class Counsel prepared a detailed motion for preliminary approval, which this Court granted.

Although the deadlines to object to the settlement and file claims (May 30, 2025 and June 30, 2025, respectively) have not yet passed, the reaction by Class Members to the Settlement to date has been overwhelmingly positive. As of this filing, 7,626 claims have been submitted and no objections have been filed. Class Counsel expect many additional claims will be filed by the deadline, and that their efforts will remain extensive for months to come as Class Members continue to participate in the Settlement process through final settlement approval.

As discussed below, the amounts requested for attorneys' fees, litigation expenses and costs, and Service Awards were fully disclosed in the Settlement Notice, satisfy the applicable *Gunter/Prudential* factors, are supported by both a percentage-of-the-fund and lodestar analysis, and are consistent with amounts approved by this Court and other courts in similar data breach settlements. They are further supported by Class Counsel's efforts in this litigation and the extraordinary outcome attained for the Settlement Class. For these reasons, and those outlined below, Plaintiffs respectfully submit that this motion should be granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Court is aware of the facts and circumstances underlying this litigation.² This case arises from a Data Breach experienced by Azura between September 27, 2023 and October 9,

² Plaintiffs' motion for preliminary approval (ECF No. 33) sets forth a detailed recitation of the procedural and factual background of this case. Plaintiffs repeat that here only insofar as it is relevant to the instant motion.

2023. During the Data Breach, an unauthorized third party gained access to an Azura computer system and deployed ransomware. The impacted information included the data of approximately 334,000 individuals.

In March of 2024, two class actions were filed in this Court on behalf of persons whose information was compromised as part of the Data Breach. The Court entered an order on April 30, 2024 consolidating the cases in this matter, *Gravley, Sr. v. Fresenius Vascular Care, Inc. d/b/a Azura Vascular Care, Inc.* ECF No. 10. The Court also appointed Andrew W. Ferich of Ahdoot & Wolfson, PC and Benjamin F. Johns of Shub Johns & Holbrook LLP as interim co-lead counsel pursuant to Fed. R. Civ. P. 23(g). *Id.*

Plaintiffs filed the operative Consolidated Complaint on May 30, 2024, and Azura filed a motion to dismiss on July 15, 2024. ECF Nos. 16-17. Plaintiffs filed a 34-page brief in opposition to Azura's motion on August 28, 2024. ECF No. 23. While working in parallel with the litigation, the Parties opened a dialogue about potential resolution of the case, exchanged lists of potential mediators, and ultimately agreed to schedule a mediation with Mr. Picker. ECF No. 28; Joint Counsel Declaration at ¶ 7 ("Counsel Dec."). In anticipation of the mediation, Plaintiffs served Azura with numerous requests for documents and information relevant to the Data Breach. *Id.* Plaintiffs also provided Azura with an opening settlement demand and structural proposal. *Id.* The Parties exchanged their detailed mediation statements and other relevant information prior to the mediation. *Id.*

Counsel for the Parties traveled to and attended an all-day mediation on December 12, 2024, in West Palm Beach, Florida. *Id.* ¶ 7. The mediation session was hard-fought and productive. With Mr. Picker's assistance, the Parties reached an agreement in principle to settle the case. In the many weeks following the mediation, the Parties drafted a comprehensive Settlement

Agreement, solicited and analyzed bids from multiple settlement administration companies, prepared the Claim Form and Notice documents, and filed a motion for preliminary approval. *Id.*

¶¶ 9-10; ECF No. 33.

The Court granted that motion on February 24, 2025. ECF No. 34. The following Class was certified for settlement purposes:

All natural persons whose Personal Information may have been compromised in the Data Breach disclosed by Azura, including all persons who were sent notice of the Data Breach. Excluded from the Settlement Class are: (1) the Judge(s) presiding over the Action and members of their immediate families and their staff; (2) Azura, its subsidiaries, parent companies, successors, predecessors, and any entity in which Azura or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

Id. at ¶ 12. The Court also approved the Notice Plan, finding that “the Notice contains all essential elements required to satisfy federal statutory requirements and due process.” *Id.* at ¶ 18. Notice was subsequently disseminated in accordance with the Preliminary Approval Order, and a Final Approval Hearing is scheduled for June 16, 2025. ECF No. 34.

The Settlement provides excellent relief to the Class. It gives Class Members the option of submitting a claim for one of two types of cash payments from the Settlement Fund: (1) a “Documented Loss Payment” claim of up to \$10,000 per person for the reimbursement of documented losses that are more likely than not related to the Data Breach; or (2) a “Cash Fund Payment,” the amounts of which will be divided equally (pro rata) among Settlement Class Members who elect this option. SA at ¶¶ 3.4, 3.9. The Settlement is designed to exhaust the entirety of the \$3.15 million Settlement Fund, and no portion of it will ever revert to Azura. *Id.* at ¶ 3.9.

In addition to the foregoing monetary Settlement Benefits, Azura also has agreed to make changes and enhancements to its data and information security posture, which are designed to strengthen its data and information security. *Id.* ¶ 2.1.

As relevant to the instant motion, the Settlement Agreement provides that Class Counsel may file a motion seeking up to 35% of the Settlement Fund in attorneys’ fees. SA ¶ 9.1. Class Counsel may also seek Court approval to recover their reasonably incurred litigation expenses and costs. *Id.* The Settlement Agreement further provides that Class Counsel may move for Court approval of \$2,500 in Service Awards to each of the three Class Representatives. *Id.* ¶ 8.1. There is no “clear sailing” clause in the Settlement Agreement; while Azura agrees that the Settlement Administrator will pay any fees or expenses ultimately awarded by the Court (*Id.* ¶ 9.1), Azura “reserves the right to oppose or challenge Plaintiffs’ request for Class Counsel’s Fee Award and Costs, and Class Representative Service Awards” (*Id.* ¶ 9.3).

The deadlines to object to the settlement and file claims are May 30, 2025 and June 30, 2025, respectively. Counsel Dec. ¶ 11. As of this filing, 7,626 claims have been submitted, and no objections have been filed. *Id.*

III. ARGUMENT

A. The Court Should Approve the Requested Attorneys’ Fees

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Traditionally, there are two methods of evaluating requests for attorneys’ fees: the percent-of-recovery method and the lodestar method.” *In re Philips Recalled CPAP, Bi-Level PAP, & Mech. Ventilator Prod. Litig.*, No. MC 21-1230, 2024 WL 1810190, at *10 (W.D. Pa. Apr. 25, 2024) (“*In re Philips*”) (citing *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998)) (“*In re Prudential*”). “Courts generally apply the percentage-of-recovery method in class

actions involving a common fund.” *Cantave v. Saint Joseph's Univ.*, No. CV 23-3181, 2024 WL 4829718, at *5 (E.D. Pa. Nov. 19, 2024) (citing *Serano v. Sterling Testing Sys., Inc.*, 711 F.Supp.2d 402, 418 (E.D. Pa. 2010)); accord *Ahrendsen v. Prudent Fiduciary Servs., LLC*, No. 21-cv-2157, 2023 WL 4139151, at *6 (E.D. Pa. June 22, 2023) (Where, as here, the settlement has created a common fund, “[t]he preferred method for calculating attorneys’ fees [is] the percentage-of-recovery approach, [which] involves applying a certain percentage to the total settlement fund to calculate attorney’s fees.”) (citing *Stevens v. SEI Invs. Co.*, No. 18-cv-4205, 2020 WL 996418, at *10 (E.D. Pa. Feb. 28, 2020)).

Courts in the Third Circuit use the seven-factor *Gunter* analysis to evaluate the reasonableness of a fee award under the percentage-of-recovery method. *In re Onix Grp., LLC Data Breach Litig.*, No. CV 23-2288-KSM, 2024 WL 5107594, at *13 (E.D. Pa. Dec. 13, 2024).

The *Gunter* factors are:

- (1) the size of the fund created and the number of persons benefitted;
- (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;
- and (7) the awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195, n.1 (3d Cir. 2000). Additional factors—derived from *In re Prudential*—for the Court to consider are:

- (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations;
- (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained;
- and (3) any “innovative” terms of settlement.

In re Philips, 2024 WL 1810190, at *10 (citing *In re Prudential*, 148 F.3d at 333). “These factors “‘need not be applied in a formulaic way’ because each case is different, ‘and in certain cases, one factor may outweigh the rest.’” *In re Philips*, 2024 WL 1810190, at *10 (quoting *In re Diet Drugs*

(*Phentermine/Fenfluramine/Dexfenfluramine*) *Prod. Liab. Litig.*, 582 F.3d 524, 545 (3d Cir. 2009)); *see also In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-MD-2445, 2024 WL 815503, at *13 (E.D. Pa. Feb. 27, 2024) (“*In re Suboxone*”) (“This list was not intended to be exhaustive.”) (citing *Gunter*, 223 F.3d 195, n.1).

As applied here, the relevant factors demonstrate the reasonableness of the requested fee.

1. The Attorneys’ Fees Are Reasonable Under the *Gunter/Prudential* Factors

Gunter Factor 1: The Size of the Fund Created and Number of Persons Benefitted

The \$3.15 million non-reversionary Settlement Fund provides a substantial benefit to Class Members. Class Members who file a timely and valid claim can receive a cash payment, and all Class Members—irrespective of whether they file a Claim Form—will benefit from the security enhancements being undertaken by Azura. This *Gunter* factor is satisfied. *See Barletti v. Connexin Software, Inc.*, No. 22-cv-04676-JDW, 2024 WL 1096531, at *7 (E.D. Pa. Mar. 13, 2024) (recognizing that “class members are the direct beneficiaries” of a similar non-reversionary settlement, which means that “class members will reap the full benefit of the settlement regardless of how many make claims”); *Johnson v. Community Bank, N.A.*, No. 12-cv-01405, 2013 WL 6185607, at *7 (M.D. Pa. Nov. 25, 2013) (first *Gunter* factor met because the “settlement confers certain nonmonetary [injunctive] benefits on . . . class members”).

The \$9.43 per capita recovery³—often used as a benchmark for comparing data breach settlements—achieved in this Settlement presents an extraordinary result when compared to other data breach settlements approved in this District and elsewhere. This is reflected in the chart below:

³ The \$3,150,000 Settlement Fund divided by 334,000 Settlement Class Members is a gross recovery per person (or “per capita”) of \$9.43.

Case Title	No. of Class Members	Settlement Fund	Gross Recovery Per Class Member
<i>Proposed Azura Settlement</i>	334,000	\$3.15M	\$9.43
<i>Barletti v. Connexin Software, Inc.</i> , No. 22-cv-04676 (E.D. Pa.)	2.8M	\$4M	\$1.43
<i>In re Forefront Dermatology Data Breach Litig.</i> , No. 21-cv-887 (E.D. Wis.)	2.4M	\$3.75M	\$1.56
<i>In re: NCB Management Services, Inc. Data Breach Litig.</i> , No. 23-cv-01236 (E.D. Pa.)	1.63M	\$2.625M	\$1.61
<i>In re Enzo Biochem Data Security Litigation</i> , No. 23-cv-04282 (E.D.N.Y.)	2,500,000	\$7.5M	\$3.00
<i>In re. Wright & Fillipis LLC Data Breach</i> , No. 22-cv-12908-SF (E.D. Mich.)	877,584	\$2.9M	\$3.30
<i>Breneman, et al. v. Keystone Health</i> , No. 23-618 (C.P. Franklin Cty., Pa.)	235,237	\$900,000	\$3.83
<i>In re Onix Group, LLC Data Breach Litig.</i> , No. 23-cv-2288 (E.D. Pa.)	308,942	\$1.25M	\$4.05
<i>Harbour, et el. v California Health & Wellness Plan, et al.</i> , No. 21-cv-03322-EJD (N.D. Cal.)	1.51M	\$10M	\$6.62

The settlements in the above data breach class action settlements have received either preliminary or final approval, and the Court in each of these cases granted class counsel's request for attorneys' fees and expenses. The amount recovered as part of this Settlement (\$3.15 million non-reversionary Settlement Fund, at \$9.43 per capita) is superior to the settlements identified in the above chart and, in general, many other data breach settlements.

Recently approved common fund data breach settlements in this Court demonstrate the excellence and extraordinary nature of the result obtained in this particular case. For example, in *In re Onix*, Judge Marston granted final settlement approval of a settlement that equated to a roughly \$4.05 gross recovery per class member from a \$1,250,000 settlement fund. Judge Wolson granted final approval to a settlement that equated to a gross recovery of \$1.43 per person out of a \$4,000,000 settlement fund in *Barletti v. Connexin Software, Inc.*, No. 22-cv-04676-JDW, 2024

WL 3564556, at *1 (E.D. Pa. July 24, 2024). And just this week, in *In re NCB*, Judge Scott granted preliminary approval of a settlement that provided a \$2,625,000 settlement fund to a class of 1.63 million class members, or roughly \$1.61 per capita. No. 23-cv-1236, 2025 WL 1397414, at *1 (E.D. Pa. May 13, 2025).

The result obtained here, coupled with the extensive efforts and resources expended by Class Counsel to attain it, merits the requested fee award. *See, e.g., Rouse v. Comcast Corp.*, No. 14-cv-1115, 2015 WL 1725721, at *12 (E.D. Pa. Apr. 15, 2015) (allowing percentage-of-recovery for attorneys' fees at roughly 35%); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322 (E.D. Pa. 2007) (awarding 35% because of the excellent results achieved). The first *Gunter* factor favors Plaintiffs' request.

Gunter Factor 2: Presence or Absence of Substantial Objections by Class Members

As noted above, the deadline for submitting objections is May 30, 2025, and no objections have been filed to date.⁴ On the other hand, as of the date of this filing, 7,626 Class Members have decided to participate in the Settlement, reflecting the quality of the Settlement Benefits obtained on behalf of the Class. This *Gunter* factor weighs in Plaintiffs' favor. *See Stechert v. Travelers Home & Marine Ins. Co.*, No. 17-cv-0784-KSM, 2022 WL 2304306, at *12 (E.D. Pa. June 27, 2022) ("No one has objected to any part of the Settlement, including to the \$1,210,000 carveout for attorneys' fees. The lack of objection from the Settlement Class weighs in favor of approval.").

Gunter Factor 3: The Skill and Efficiency of the Attorneys

Class Counsel and their respective firms have substantial experience in complex class actions, with specific expertise in data breach and other data privacy litigation. The Court analyzed

⁴ Plaintiffs reserve the right to respond to any objections that may be filed.

Class Counsel’s collective experience when approving their initial leadership application,⁵ and again at the preliminary approval stage,⁶ and the Court found that Mr. Ferich and Mr. Johns, and their respective firms, are qualified to serve as lead counsel. Nothing has changed that would alter the Court’s prior determinations.

Class Counsel obtained an objectively outstanding result—one that is extraordinary—for their clients and the Class, while handling this case professionally and efficiently. This *Gunter* factor is satisfied.

Gunter Factor 4: The Complexity and Duration of the Litigation

Class Counsel investigated and then have litigated and managed this case on a fully contingent fee basis for approximately 15 months. Counsel Dec. ¶ 4; *see also In re Onix Grp., LLC Data Breach Litig.*, 2024 WL 5107594, at *14 (observing that “class counsel have litigated this case for well over a year” in finding this *Gunter* factor to be satisfied). Class Counsel conducted extensive pre-suit investigations that included factual research and lengthy interviews of Plaintiffs and other class members, reviewed Plaintiffs’ documentation and all documents produced by Azura related to the data breach, analyzed applicable state laws regarding breaches of consumer information, briefed Azura’s motion to dismiss, exchanged pre-mediation discovery, participated in a mediation with Mr. Picker, and spent many weeks memorializing the Settlement to submit it for preliminary approval. Counsel Dec. ¶¶ 6-7. Thereafter, Class Counsel dedicated their efforts toward notice, effecting the administration of the settlement, and preparing to submit this motion and the motion for final approval. *Id.* ¶ 10. Class Counsel’s efforts no doubt will continue to be

⁵ See ECF Nos. 9-1 (leadership motion), 9-3 (Mr. Ferich resume), 9-4 (Mr. Johns resume), 10 at ¶ 5 (order appointing counsel).

⁶ See ECF Nos. 33 (motion for preliminary approval), 33-3 (counsel declaration and Class Counsel firm resumes), 34 at ¶ 15 (preliminary approval order).

extensive and will be ongoing through final approval (and beyond). *See In re Suboxone*, 2024 WL 815503, at *17 (“In addition [to the billable time already expended], Class Counsel will undoubtedly need to spend additional hours in order to monitor and administer the Settlement and final closing of this case.”). This *Gunter* factor is satisfied.

Gunter Factor 5: The Risk of Nonpayment

Plaintiffs and the Class faced the risk of receiving no recovery at all if the litigation was unsuccessful. This risk was real, because, as has been recognized by this Court, data breach litigation is inherently complex:

The complexity and duration of this data breach class action requires experienced counsel. This type of case presents issues on the duty of care . . . in storing their personal information, Article III standing . . . types of damages available at trial, and whether the plaintiffs can obtain and maintain class certification. This [*Gunter*] factor . . . weighs in favor of finding the fee reasonable.

Fulton-Green v. Accolade, Inc., No. CV 18-274, 2019 WL 4677954, at *13 (E.D. Pa. Sept. 23, 2019) (Pratter, J.). Courts across the country also have recognized that data breach class actions are risky and expensive. *See, e.g., Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case are particularly risky, expensive, and complex . . . and they present significant challenges to plaintiffs at the class certification stage.”) (internal citations omitted; collecting cases).

Notwithstanding these risks, Class Counsel devoted hundreds of hours of time over a 15-month (and counting) period, and advanced significant out-of-pocket costs, to advance this case. Counsel Dec. ¶¶ 14-16. “Taking such a risk on behalf of the class lends credence to the fee request . . . and thus this factor supports approval.” *Corra v. ACTS Ret. Servs., Inc.*, No. 22-cv-2917, 2024 WL 22075, at *14 (E.D. Pa. Jan. 2, 2024) (citing *Fulton-Green*, 2019 WL 4677954, at *13).

Gunter Factor 6: The Amount of Time Devoted by Plaintiffs' Counsel

The number of hours incurred by Class Counsel has been extensive but was reasonable and necessary for a case of this type and size. Counsel Dec. ¶ 16. As discussed in more detail below, beginning with their pre-suit investigations through May 15, 2025, Class Counsel collectively have expended 1,079.79 hours in litigating this case. *Id.* ¶ 14. Among other tasks, Class Counsel organized the case and leadership through their private ordering; conducted independent and in-depth pre-suit case investigations; stayed abreast of news and publications concerning the Data Breach; communicated with and vetted numerous Class Members from different states; made determinations about which individuals are best suited to serve as lead Plaintiffs; filed separate complaints in the first place followed by a comprehensive consolidated complaint; undertook detailed and lengthy motion practice in response to Azura's motion to dismiss; engaged in pre-mediation exchanges with Azura; mediated with Mr. Picker; negotiated an exemplary Settlement for the Class; negotiated the terms of the Settlement Administrator's retention and the Notice Plan; and memorialized the various settlement documents. *Id.* ¶¶ 6-7, 10; ECF No. 33-3 at 8. This *Gunter* factor is readily satisfied.

Gunter Factor 7: Awards in Similar Cases

While there is no benchmark for the percentage of fees to be awarded in common fund cases, courts within this District have recognized that "fee awards ranging from 30% to 43% have been awarded in cases with funds ranging from \$400,000 to \$6.5 million." *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d 483, 497-98 (E.D. Pa. 2018). The 35% fee that Class Counsel requests is well within this range, justified by the efforts expended and the excellent result obtained, and has been approved by other Pennsylvania courts in data breach class action settlements. *See, e.g. In re Gateway Rehabilitation Center, Data Breach Litig.*, No. GD-22-014713 (Pa. Ct. Com. Pl. Mar.

10, 2025) (35% fee approved); *Breneman v. Keystone Rural Health Center d/b/a Keystone Health*, No. 23-618 (C.P. Franklin Cty., Pa. Aug. 15, 2023) (same); *see also In re Onix Grp., LLC Data Breach Litig.*, 2024 WL 5107594, at *14 (approving a 33% fee in a case where no motion to dismiss had been filed or briefed and recognizing that “courts regularly approve fee awards around this size”); *Gravelly v. PetroChoice LLC*, No. 19-cv-5409, 2022 WL 2316174, at *2 (E.D. Pa. June 28, 2022) (35% fee “in line with fee awards approved by courts in the Third Circuit”).

Prudential Factor 1: Value of Class Benefits Attributable to the Work of Class Counsel as Opposed to from the Efforts of Others

This factor supports the fee request because “[t]here is no indication that any other groups, such as government agencies conducting investigations, have contributed to this case and Settlement.” *Corra v. ACTS Ret. Servs., Inc.*, No. 22-cv-2917, 2024 WL 22075, at *15 (E.D. Pa. Jan. 2, 2024).

Prudential Factor 2: Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Agreement

The court in *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prod. Liab. Litig.*, 553 F. Supp. 2d 442, 482 (E.D. Pa. 2008), held that “[i]n making a common benefit award, we must try to ascertain what the market would pay for the attorneys’ efforts. That is, we must consider ‘the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained.’” *Id.* (quoting *In re AT & T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006)).

Courts have recognized in this context that “[a]ttorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation.” *In re Philips*, 2024 WL 1810190, at *12 (quoting *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 156 (D.N.J. 2013)). The 35% amount sought here is within this range.

Prudential Factor 3: Any “Innovative” Terms of the Settlement

In addition to the monetary Settlement Benefits made available as part of the Settlement, Plaintiffs have negotiated a commitment that Azura will adopt reasonable data and information security measures, at its expense, which are designed to strengthen Azura’s data and information security. *Id.* ¶ 2.1. This additional relief is meaningful, substantial, and benefits all Class Members, including those who do not submit a Claim Form for a monetary payment. This likewise supports the fee request. *Corra*, 2024 WL 22075, at *13 (finding that non-monetary data security improvements included as a term in the settlement “is likely of great value to the class members in that it ensures that their information is better protected from data security incidents”); *see also McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D.N.J. 2008) (“The value of the injunctive relief here is a highly relevant circumstance in determining what percentage of the common fund class counsel should receive as attorneys’ fees.”).

* * * *

In sum, application of the applicable *Gunter/Prudential* factors indicate that the fee request is reasonable under the percentage-of-the-fund methodology, and should be approved.

2. The Requested Fee Is Reasonable Under a Lodestar Cross-Check

Courts assessing fees under the percentage-of-recovery method often look to “the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award.” *In re AT & T Corp.*, 455 F.3d at 164. “The purpose of the cross-check is to ensure that the percentage approach does not result in an ‘extraordinary’ lodestar multiple or windfall.” *In re Onix Grp., LLC Data Breach Litig.*, 2024 WL 5107594, at *15 (quoting *Whiteley v. Zynerba Pharms., Inc.*, No. CV 19-4959, 2021 WL 4206696, at *13 (E.D. Pa. Sept. 16, 2021)). The lodestar is calculated “by multiplying a reasonable hourly rate by the number of hours reasonably expended on the case.”

Meigs v. Care Providers Ins. Servs., LLC, No. 21-cv-867, 2024 WL 21792, at *3 (E.D. Pa. Jan. 2, 2024) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

Here, Class Counsel and their firms' collective lodestar of \$890,805.00 is based on 1,079.79 billable hours (through May 15, 2025). *See* Counsel Dec. at ¶¶ 14-15. And as work continues on behalf of the Class through final approval, these numbers will increase.⁷ Counsel Dec. ¶ 10.

The amount of time worked and the billable rates here are reasonable. *Id.* ¶ 16; *see Fulton-Green*, 2019 WL 4677954, at *12 (approving class counsel's rates that ranged from \$202 to \$975 per hour); *In re Suboxone*, 2024 WL 815503, at *17 (approving a senior partner's \$1,550 billing rate); *In re Imprelis Herbicide Mktg., Sales Pracs. & Prod. Liab. Litig.*, 296 F.R.D. 351, 370 (E.D. Pa. 2013) (approving fee request where hourly rates peaked at \$1,200 and several attorneys' rates were at or above \$900); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-md-2002, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012) (approving fee request where hourly rates peaked at \$1,100 and several attorneys' rates were at or above \$900; "the Court finds that the stated hourly rates of these attorneys and staff . . . are reasonable"); *Se. Pennsylvania Transportation Auth. v. Orrstown Fin. Servs., Inc., et al.*, No. 12-cv-00993 (M.D. Pa. May 19, 2023) (ECF No. 309) (granting final approval and award of attorneys' fees, approving hourly rates of up to \$1,100, where several attorneys' rates were at or above \$875); *McCullough v. True Health New Mexico, Inc.*, No. D-202-CV-2021-06816 (N.M. 2nd Judicial Dist.) (granting full fee request and approving Ahdoon

⁷ As noted above, the current figures do not account for any billable time incurred after May 15, 2025, such as drafting, refining, and finalizing the motion for final settlement approval, continued communications with Class Members about the Settlement, coordination with Azura and the Settlement Administrator regarding settlement administration (e.g., responding to inquiries by Class Members, reviewing Claim Forms, etc.), and preparing for the June 16, 2025 final approval hearing or overseeing the claims administration process. *See, e.g. In re Suboxone*, 2024 WL 815503, at *17.

Wolfson's then-current rates); *In re Zoom Video Commc'ns, Inc. Priv. Litig.*, No. 20-cv-02155-LB, 2022 WL 1593389, at *11 (N.D. Cal. Apr. 21, 2022) (granting final approval, and approving AW's then-current hourly rates); *In re Forefront Data Breach Litig.*, No. 21-cv-00887-LA (E.D. Wis. Mar. 22, 2023) (ECF No. 81) (awarding attorneys' fees and reimbursement of costs and expenses at AW's then-current hourly rates); *In re Onix Grp., LLC Data Breach Litig.*, 2024 WL 5107594, at *16 (finding a \$1,057 hourly rate to be reasonable in a data breach settlement); *In re Philadelphia Inquirer Data Sec. Litig.*, No. CV 24-2106-KSM, 2025 WL 845118, at *15 (E.D. Pa. Mar. 18, 2025) (approving Mr. Johns' hourly rate in a data breach settlement).

Because the actual lodestar (\$890,805) is less than the requested fee (\$1,102,500), the cross-check yields a modest multiplier of 1.24. This Court has recognized that "[w]here there has been a class settlement, this lodestar 'is usually multiplied by a factor to reflect the degree of success, the risk of non-payment the attorneys faced and perhaps the delay in payment that they encountered.'" *In re Suboxone*, 2024 WL 815503, at *18 (quoting *Brown v. Esmor Corr. Servs.*, No. 98-cv-1282, 2005 WL 1917869, at *13 (D.N.J. Aug. 10, 2005)).

The Third Circuit "has recognized that multipliers 'ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'" *Katz v. DNC Servs. Corp.*, No. CV 16-5800, 2024 WL 454942, at *14 (E.D. Pa. Feb. 6, 2024) (quoting *In re Prudential*, 148 F.3d at 341); *see also Sorace v. Wells Fargo Bank, N.A.*, No. CV 20-4318, 2024 WL 643229, at *13 (E.D. Pa. Feb. 15, 2024) (approving a lodestar multiplier of three), *aff'd*, No. 24-1498, 2024 WL 5116797 (3d Cir. Dec. 16, 2024); *Katz v. DNC Servs. Corp.*, 2024 WL 454942, at *15 (approving a 2.08 lodestar multiplier); *Moore v. Indep. Blue Cross, LLC*, No. CV 23-0566, 2024 WL 4756903, at *3 (E.D. Pa. Nov. 12, 2024) (approving multiplier of 1.60); *In re Suboxone*, 2024 WL 815503, at *18 (approving a lodestar multiple of 1.5); *cf.*, *Cantave*, 2024 WL 4829718, at *5-

7 (reducing a requested 3.07 multiplier in a case that resolved where “there was no motion to dismiss filed by Defendant,” the case “resolved itself at an early stage,” and where counsel had only billed a total of 205.3 hours).

The modest multiplier of 1.24 sought here is reasonable under the circumstances. And it will only continue to decrease as Class Counsel’s efforts continue beyond the Final Approval Hearing through case close-out (and Class Counsel expects that by that point there may even be a negative multiplier). It should be approved.

B. The Expense Reimbursement Request Is Reasonable

Class Counsel also request reimbursement of \$14,062.32 in litigation expenses and costs. Reimbursement of expenses and costs incurred in litigating a class action are ordinarily recovered as part of settlement approval. *See Sweda v. Univ. of Pennsylvania*, 2021 WL 5907947, at *7 (“Attorneys who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation expenses from the fund.”) (quoting *In re Aetna Inc.*, No. MDL-1219, 2001 WL 20928, at *13 (E.D. Pa. Jan. 4, 2001)).

A chart summarizing the expense categories and amounts incurred by each firm is set forth in the accompanying counsel declaration. Counsel Dec. ¶ 18.⁸ The expense categories are consistent with the types of expenses commonly approved by courts. *See Acevedo v. Brightview Landscapes, LLC*, No. 13-cv-2529, 2017 WL 4354809, at *20 (M.D. Pa. Oct. 2, 2017) (approving class counsel’s request for reimbursement of, e.g., filing fees, mediation fees, and legal research costs); *Glaberson v. Comcast Corp.*, No. 03-cv-6604, 2015 WL 5582251, at *16 (E.D. Pa. Sept.

⁸ Class Counsel incurred significant expenses for travel, lodging, and *meals* in this case. Counsel Decl. ¶ 19. This was due, in large part, to the fact that Class Counsel had to travel to Palm Beach around the holidays (i.e., peak season) for an in-person mediation. *Id.* For the benefit of the Class, Class Counsel have decided not to seek reimbursement for *any* travel, lodging, or meal expenses in this case. *Id.*

22, 2015) (approving class counsel’s request for reimbursement of, e.g., expert witness fees and legal research costs); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) (approving class counsel’s request for reimbursement of, e.g., “expert witness fees; mediation fees; . . . legal research; . . . and service of process”).

C. The Requested Service Awards Are Reasonable

Finally, Plaintiffs request approval of \$2,500 Service Awards to each of the three Class Representatives (totaling \$7,500) for their time and effort pursuing the litigation on behalf of the Class.⁹ Each Plaintiff actively participated in the litigation and settlement of this matter—they participated in Class Counsel’s lengthy interviews and provided relevant documents to counsel. Counsel Dec. ¶ 20. They were available at each stage of the litigation, and the Settlement would not have been possible without their efforts. *Id.* The \$2,500 Service Award amount is consistent with service awards commonly approved within the Third Circuit and by this Court. *Cantave*, 2024 WL 4829718, at *5 (approving a \$2,500 Contribution Award for named Plaintiff); *Barletti v. Connexin Software, Inc.*, 2024 WL 3564556, at *1 (approving \$2,500 incentive awards to plaintiffs in a data breach case). The requested amounts are also comparable to service awards approved in other consumer data breach class actions. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *43 (N.D. Cal. July 22, 2020), *aff’d*, No. 20-16633, 2022 WL 2304236 (9th Cir. June 27, 2022) (approving “\$2,500 for the five Settlement Class Representatives who participated in the instant case without being deposed”); *Chipotle*, 2019 WL 6972701, at *2 (\$2,500 service awards for each of six plaintiffs in case that settled prior to depositions).

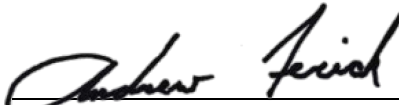
⁹ As with the attorneys’ fees and expenses, any service award amounts approved by the Court will be paid from the Settlement Fund. ECF No. 33-2 at ¶ 8.2.

IV. CONCLUSION

Plaintiffs respectfully request that the Court grant Plaintiffs' motion and approve the requested attorneys' fees, reimbursement of litigation costs and expenses, and the requested Service Awards to the Class Representatives.¹⁰

Dated: May 16, 2025

Respectfully submitted,



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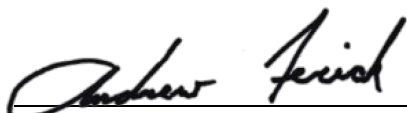
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Interim Co-Lead Class Counsel for Plaintiffs

¹⁰ A proposed order addressing the motion for attorneys' fees, litigation costs and expenses, and Service Awards will be submitted with Plaintiffs' motion for final approval of class action settlement.

CERTIFICATE OF SERVICE

I, Andrew W. Ferich, hereby certify that on this 16th day of May, 2025, I caused the foregoing Memorandum of Law and accompanying Joint Declaration of Counsel, to be filed using the Court's CM/ECF system, thereby causing it to be electronically served upon all counsel of record. I further certify that on the same day, I sent a copy of the foregoing to the claims administrator to be posted on the settlement website devoted to this case: <https://azuradatasettlement.com>.

A handwritten signature in black ink, reading "Andrew Ferich", written over a horizontal line.

Andrew W. Ferich (PA Bar No. 313696)