IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DAVID M. LANDAY,

Representative Plaintiff,

v.

DATAVANT, LLC formerly known as Health Port Technologies LLC,

Defendant.

CIVIL DIVISION

CLASS ACTION

GD-09-012923

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR APPROVAL OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARD TO REPRESENTATIVE PLAINTIFF

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	)	
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v.	)	
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DATAVANT formerly known as Health Port Technologies LLC,	)))	
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Defendant.	)	
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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR APPROVAL OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARD TO REPRESENTATIVE PLAINTIFF

I. Introduction

Plaintiffs' Counsel requests that this Court approve attorneys' fees and costs in the amount of $1,620,678 and $ 32,500 in costs. This amount is eminently reasonable under the factors that apply to approval of reasonable attorneys' fees under Pennsylvania law. An examination of the work accomplished, the results achieved and the benefits conferred demonstrates that Plaintiffs' Counsel's attorneys' fees request represents approximately 29% of the amount of the $5,588,547 monetary benefits conferred upon the Settlement Class. This amount is well within the range of percentages typically found to be reasonable in common fund cases. The class action settlement provides for the recovery of damages for the overcharge for copies of medical records in the range of what a jury might award were this matter to go to trial and given the risks of continued litigation. Very few, if any, other law firms would have undertaken the risk of nonpayment and other risks presented by this class action given a myriad of legal and factual questions of first impression that were presented and the expertise that would be required. Plaintiffs' Counsel litigated this case before this Court, the Federal Court in Pittsburgh, the Superior Court and the Pennsylvania Supreme Court. Plaintiffs' Counsel worked on a contingent basis over many years, assuming the risk of losing and ultimately achieving success as evidenced by the proposed class action settlement before the Court. Moreover, the requested attorneys' fees represent a substantial reduction to what Plaintiffs' Counsel might reasonably have requested under a statutory fee-shifting lodestar analysis.

The Plaintiffs respectfully suggest that the requested attorneys' fees would be reasonable under Pennsylvania legal standards applicable to the approval of attorneys' fees and costs for the following reasons:

First, the size of the fund made available is substantial in that it entitles approximately 45,000 individuals, law firms or commercial enterprises across the state to recover for alleged overcharges for copies of medical records. The request is based upon 29% of the $ 5,588,547 in monetary benefits made available which is in the middle of the range of the percentages considered reasonable for settlement amounts of this size.

Second, to date there have been no objections filed.

Third, the skill, dedication and persistence of the attorneys involved cannot be questioned. This matter involved legal issues of first impression that necessitated interlocutory appeal to the Pennsylvania Superior Court and then the Pennsylvania Supreme Court where Plaintiffs' Counsel obtained important clarification of the rights of persons to obtain copies of their medical records under the Pennsylvania Medical Records Act. 42 Pa.C.S.A. § 6152 ("MRA") Then, upon remand, Plaintiffs' Counsel expended further extensive effort to counter more legal defenses interposed by Defendant and to overcome numerous discovery objections.

Fourth, this matter has involved numerous complex proceedings and has lasted for many years. This action involved a series of coordinated class actions against medical record copying companies or hospital systems alleging overcharges for copies of medical records. The action entailed extensive trial court proceedings with respect to preliminary objections, judgment on the pleadings or motions for summary judgment in each of the cases, appellate proceedings in the Superior Court and Supreme Court. Upon remand, the action further involved coordinated proceedings relating to motions for judgment on the pleadings and then with extensive discovery proceedings relating to class certification and the merits of the action.

Fifth, Plaintiffs' Counsel undertook this novel, trend-setting litigation wholly based upon a risk of nonpayment. At one point, the Pennsylvania Superior Court rejected Plaintiffs' construction of the Pennsylvania Medical Records and ordered dismissal of the claims. Plaintiffs' Counsel obtained Pennsylvania Supreme Court review and ultimately that court ruled in Plaintiffs' favor. The risk though did not abate. Defendants had yet to have significant defenses addressed. Plaintiffs still had to prove their case, conduct discovery, and address further avenues where the case may be resolved unfavorably to Plaintiffs, including an adversarial class certification process and later motions for summary judgment. Despite the serious risks that Class Plaintiffs' claims might not prevail, Plaintiffs' Counsel remained steadfast and pursued this litigation for many years to obtain the substantial benefits conferred by the settlement.

Sixth, Plaintiffs' Counsel expended thousands of hours of attorney time devoted to the litigation over a period of many years. Indeed, the amount of fees requested is well below what might be recovered under a lodestar approach.

Seventh, the awards in similar cases demonstrate the reasonableness of Plaintiffs' Counsel's request.

It is respectfully requested that the Court grant Representative Plaintiff's Motion For Award of Fees and Costs and approve the service award to Representative Plaintiff.

II. The Applicable Legal Standards

Courts are permitted to award a reasonable fee pursuant to a lodestar, a percentage of the common fund, **or**, if necessary, a hybrid approach. *Braun v. Wal-Mart Stores, Inc.*, 2011 PA Super 121, 24 A.3d 875, 979 (2011) *affirmed* 106 A.3d 656, 658 (Pa. 2014) (emphasis added). The percentage-of-recovery method is generally applicable in cases substantially like the settlement here. *In re Wawa, Inc.*, 141 F.3d 456, 474 (3d Cir. 2025).

Under the common fund approach, the court awards a percentage of the fund as a reasonable fee. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) and *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995) (Noting that attorney fee awards have ranged from nineteen percent to forty-five percent of the fund.) Pennsylvania courts have adopted and apply the Third Circuit legal standard for determining a reasonable percentage attorney fee award based upon the following factors:

> "(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."

In re Wawa, Inc., 141 F.3d at 466 citing *Gunter v. Ridgewood Energy,* 223 F.3d 190, 195 n.l. (3d Cir. 2000). Additionally, three additional so-called *Prudential* factors are considered including: (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, *Krell v. Prudential Ins. Co. of Am. (In Re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions),* 148 F.3d 283, 338 (3d Cir.1998); (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, *id.* at 340; and (3) any "innovative" terms of settlement, *id.* at 339. *In re AT&T Corp. Sec. Litig.,* 455 F.3d 160, 165 (3d Cir. 2006)

Pennsylvania courts follow and apply the *Gunter* factors. *Milkman v. Am. Travellers Life Ins. Co.,* 61 Pa.D.&C.4th 502, 569 (C.P. Philadelphia 2002). As part of this analysis, courts are also directed to consider applicable factors set forth in Pa.R.Civ.P. 1717. *See Braun,* 24 A.3d at 981. Rule 1717 provides:

> In all cases where the court is authorized under applicable law to fix the amount of counsel fees it shall consider, among other things, the following factors:
>
> 1. the time and effort reasonably expended by the attorney in the litigation;
>
> 2. the quality of the services rendered;
>
> 3. the results achieved and benefits conferred upon the class or upon the public;
>
> 4. the magnitude, complexity and uniqueness of the litigation; and
>
> 5. whether the receipt of a fee was contingent on success.

The order of these factors does not indicate the weight accorded them. *Id.* [1] As can be seen the Rule 1717 factors are largely subsumed within the *Gunter* factors.

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[1] Pennsylvania Rule of Professional Responsibility 1.5(a) also sets out factors to consider. Rule 1.5(a) provides:

> The factors to be considered in determining the propriety of a fee include the following:
>
> 1. whether the fee is fixed or contingent;
> 2. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> 3. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> 4. the fee customarily charged in the locality for similar legal services;
> 5. the amount involved and the results obtained;
> 6. the time limitations imposed by the client or by the circumstances;

III. The Material Terms of The Settlement Agreement

In March 2025, the Parties initiated mediation proceedings to reach agreement on the terms of a proposed class action settlement. Over a period of three months the Parties ultimately reached the terms of a partial tentative settlement only with respect to the settlement benefits to be made available to the proposed class. As the Settlement Agreement ("SA") indicates, the Parties agreed on a Settlement Class:

> 1.1. "Settlement Class" shall mean those persons/entities identified as follows:
>
> All patients, patient representatives, patient designees, including insurance companies and attorneys (including but not limited to, prosecuting, defense, or plaintiffs' attorneys) designated by a patient or patients' agents and representatives to obtain a patient's medical records, who made a request or others who served a subpoena without being designated by a patient ("Record Requests") to a Pennsylvania healthcare provider or facility to obtain copies of medical records and who were charged and paid to HealthPort/Datavant Technologies LLC and or its subsidiaries the maximum basic, search and retrieval, and/or reproduction fees as set forth in 42 Pa.C.S. § 6152(a)(2)(i) of the Pennsylvania Medical Records Act as was effective between July 15, 2005 and September 3, 2012 with payment of the charges made between July 15, 2005 through September 3, 2012 and that was sent Mail Notice. This definition does not include medical record copying requests that did not require a patient authorization or where the maximum basic, search and retrieval, and reproduction fees as set forth in 42 Pa.C.S. § 6152(a)(2)(i) Pennsylvania Medical Records Act as was effective between July 15, 2005 and September 3, 2012 were **not** charged and paid, including the following examples (a) requests for radiological images; (b) insurance companies performing auditing functions pursuant to a written contract; (c) healthcare providers or facilities; and (d) governmental entities. Excluded from the class are also (a) any present or former counsel for Defendant in this Litigation; (b) the Court, the Courts immediate family, and the Court staff; and (c) Class Counsel.

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7. the nature and length of the professional relationship with the client; and
8. the experience, reputation, and ability of the lawyer or lawyers performing the services.

The Parties further agreed that any Settlement Class Member was entitled to receive a Settlement Benefit for each Record Request made in an amount equal to 35% of the amounts paid to HealthPort/Datavant between July 15, 2005 and September 3, 2012 for invoiced amounts for basic fees, search and retrieval fees, and/or per page copying fees, as defined by the MRA, regardless of the characterization of such fees on any invoice or data evincing the charges identified on an invoice. SA ¶3.1.1. The Parties agreed that HealthPort/Datavant will make available $5,588,547.30 for the purpose of paying Settlement Benefits for Valid Claims. SA ¶ 1.40. The SA recognizes that that there are approximately 45,000 persons/entities within the Settlement Class who have, collectively, made 306,866 Record Requests. SA ¶ 5.1.2. The SA also provides that Defendant shall pay the cost of settlement administration estimated at $133,453. SA at ¶ 8.4.

Once these terms were finalized, the Parties then turned to mediation beginning on July 10, 2025, on the issue of attorneys' fees, costs and class representative service award, again with the assistance of Judge Lenihan. Ultimately, the Parties reach agreement on the amount of attorneys' fees and costs to be paid under the proposed settlement.

The Settlement Agreement provides that attorneys' fees and costs will be paid by Defendant. *See* SA § 8.1. Section 8.1.1 of the SA provides that:

> With the assistance of Mediator Honorable Judge (ret.) Lisa Pupo Lenihan, the Parties engaged in mediation on the amount of attorneys' fees and costs. Based upon this mediation, HealthPort/Datavant/Datavant has agreed, subject to Court approval, to pay $1,620,678 to Settlement Class Counsel for reasonable attorneys'

> fees and litigation costs and expenses of no more than $32,500. This payment will be independent from, and not part of, the Settlement Claims Amount used to pay Settlement Benefits.

The Settlement is not contingent on Court approval of these payments. *See* SA § 8.1.3. The SA further provides as follows for the payment of a class service award to Representative Plaintiff in the amount of $25,000. SA § 8.3.

IV. The Requested Amount For Attorneys' Fees Is Eminently Reasonable Based Upon The Applicable Factors

Plaintiffs' Counsel respectfully suggest that the requested fees and costs are reasonable under a common fund approach or as confirmed by a lodestar approach as fully demonstrated below.

A. The Requested Attorneys' Fees Are Reasonable Under The *Gunter* Common Fund Factors

1. The Size of The Fund And the Number of Persons Benefitted

This factor examines the size of the fund to ensure that any percentage awarded as a fee is commensurate with the efforts of plaintiffs' counsel. It is recognized that percentage awards of attorneys' fees generally decrease as the amount of the recovery increases. *In Re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions),* 148 F.3d at 339. The basis for this inverse relationship is the belief that "in many instances the increase [in recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel." *Id. citing In re First Fidelity Bancorporation Securities Litigation*, 750 F. Supp. 160, 164 n.1 (D.N.J. 1990). Accordingly, in so-called mega-fund cases, the percentage award as attorneys' fees is comparatively lower. *Cf Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.),* 243 F.3d 722, 736 (3d Cir. 2001).

The Third Circuit in *In Re Wawa,* affirms that the fund may be measured by the value of the benefits made available to the class, recognizing that "What is important is that the district court evaluate what class counsel actually did and how it benefitted the class." 141 F.4th 456, 474 *citing In Re Prudential,* 148 F.3d 283, 342. Here, the size of the fund is approximately $5,588,547 and the size of the class consists of 45,000 persons, law firms, or commercial enterprises and well over 306,866 unique medical record requests.

In this case, the size of the fund represents a very substantial recovery for the Class, but it is not a "mega-fund". It would justify an award in the medium-to-higher range of the sliding scale. *See, e.g., Lan v. Ludrof,* No. 1:06cv114-SJM, 2008 U.S. Dist. LEXIS 22574, at *55-56 (W.D. Pa. Mar. 21, 2008) *citing Erie County Retirees Ass'n v. Erie County,*192 F. Supp. 2d 369, 381 (W.D. Pa. 2002)("Fee awards ranging from thirty to forty-three percent have been awarded in cases with funds ranging from $ 400,000 to $ 6.5 million, funds which are comparatively smaller than many.") *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 148 (E.D. Pa. 2000) and *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 2:18-cv-1370, 2020 U.S. Dist. LEXIS 113242, at *54 (W.D. Pa. June 26, 2020).

Here, Plaintiffs' Counsel requests approval of attorneys' fees based upon 29% of the settlement benefits. This amount is below the ranges recognized as reasonable under Pennsylvania law.

2. The Skill And Efficiency of The Attorneys

A goal of the percentage fee-award device is to ensure that competent counsel continue to undertake risky, complex, and novel litigation. *Gunter,* 223 F.3d at 198. In evaluating the skill and efficiency of the attorneys involved, courts consider "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." *Vasco v. Power Home Remodeling Grp. LLC,* No. 15-4623, 2016 U.S. Dist. LEXIS 141044, at *37-38 (E.D. Pa. Oct. 12, 2016).

Here, the quality of the result achieved is substantial. The proposed settlement provides a right for class members to recover damage amounts that could be recovered at trial. Plaintiffs' Counsel faced significant difficulties including the need to overcome legal challenges to their claims and to establish the meaning of the MRA in the trial court, Superior Court and Supreme Court. Supplemental Declaration of James M. Pietz at para. 4-49. ("hereinafter Pietz Decl. _____.") The skill and dedication of Plaintiffs' Counsel cannot reasonably be questioned. Plaintiffs' Counsel undertook novel, trending setting litigation against the largest medical record reproduction companies in the United States. These companies were represented by the biggest, best and most expensive defense firms in the country, including K & L Gates (representing HealthPort/Datavant), Kirkland & Ellis (representing HealthPort/Datavant and IOD after 2015), Schnader, Harrison, Segal, Lewis, LLP (representing MRO), Klehr, Harrison, Harvey Branzburg & Ellers, LLP and Offit Kurman (representing IOD until June of 2019 via attorney Don P. Foster). These cases regarding the various defendants were coordinated, although each defendant chose its own litigation path and strategy, sometimes piggybacking off one another and at other times often presenting distinct specific legal issues specific to a particular defendant. An example was HealthPort/Datavant's attempt to remove this matter to Federal Court.

These defendants, through their counsel, separately asserted numerous defenses and procedural devices seeking to avoid the claims in the class action complaints. Even though defendant HealthPort/Datavant did not prevail on the initial dispositive motions in the trial court, defendant MRO, as a representative defendant in the coordinated actions, successfully sought interlocutory appeal which was granted. Thereafter, the Superior Court agreed with MRO and reversed the trial court's ruling upholding Plaintiffs' claims. Despite this setback, Plaintiffs successfully persevered, obtaining review by the Pennsylvania Supreme Court. Plaintiffs' Counsel then successfully obtained a definitive ruling from the Pennsylvania Supreme Court, after the defendants lobbied the Pennsylvania Legislature and changed the governing statute, with a determination fully supporting the veracity of the claims not only overturning the Superior Court's ruling, but doing so in light of the statutory change. *Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 626 Pa. 303, 306, 97 A.3d 275, 276 (2014).

Prevailing at the Pennsylvania Supreme Court was not the end of the road. Defendants again sought dismissal of Plaintiffs' class claims by filing and pursuing dispositive motions for judgment on the pleadings arguing that certain affirmative defenses precluded the claims. Again the defense did not prevail. Discovery opened for Plaintiffs, who were precluded from engaging in discovery earlier in the matter, in September of 2022.

Once discovery proceedings commenced, Defendants engaged in an oppressive "Stalingrad Defense", refusing to produce critical documents or producing thousands of irrelevant documents having nothing to do with Plaintiffs' claims. Suppl. Worgul Decl. 41-50. Despite the document dump, Plaintiffs persevered, reviewing all documents, but many documents or information was not forthcoming. *See id*. Many hours of meet and confer and documenting the discovery abuses were required, and this was all being done by a party that did not exist, that no judgment could be collected against, and which the defense was actively avoiding the disclosure of such circumstances. *See id*.

During the discovery process, it became apparent the defendants HealthPort/Datavant and HealthPort/IOD no longer existed. Supplemental Declaration of John Worgul Decl. 46. ("Worgul Decl. __"). In fact, the defendants had been litigating both cases knowing both entities ceased to be in existence since early 2016, yet each entity was litigating the matters and alleged employees of such non-existent entities were verifying the discovery. When exposed, the defense forced Plaintiffs to file motions to strike the answers for lack of verification, which verification could not possibly be done because the complaint answered by the defendants was one that was amended after HealthPort/Datavant and

HealthPort/IOD ceased to exist. *See id*. After fully briefing the motion, and confirming a discovery process that essentially invalidated all prior discovery, only then did Defendant begin to participate in the case. *See id*

It was only after Plaintiffs' Counsel successfully asserted motions to compel discovery against HealthPort/Datavant, that the Parties began discussing resolution via mediation proceedings. Suppl. Worgul Decl. 49.

3. The Complexity And Duration of the Litigation

This litigation is highly complex because it combines the procedures and mechanisms by which medical records are requested by patients, attorneys and insurance companies and the methods that are used by medical record reproduction companies. The litigation is also complex because it entails the use of the class action procedural device to recoup money for persons or commercial enterprises affected by alleged overcharges for the copies. Further, the litigation involved the complexity associated with undertaking appellate proceedings, including the difficulty in obtaining review in the Pennsylvania Supreme Court. The duration of the litigation has been extensive given the necessity for seeking appellate review and the multiple dispositive motions sought by the defendants.

This class action was initially assigned to the Commerce and Complex Center of the Court of Common Pleas of Allegheny County ("Trial Court") with other cases. By order of the Trial Court, (ret. Wettick, J.), these related cases ("Coordinated Actions") were coordinated for pre-trial management. Exhibit 1, Order of

Coordination.[2] Each of the Coordinated Actions arises from the same wrong, namely, the failure of various medical record reproduction companies or health care providers to comply with the 1998 version of the Pennsylvania Medical Records Act, 42 Pa.C.S.A. § 6152 ("MRA"). The 1998 version of the MRA, which was amended in 2012 during these actions, is attached hereto as Exhibit 2.

A complete history of the course of proceedings in this matter is set forth in the Supplemental Declaration of James M. Pietz and the Supplemental Declaration of John P. Worgul that was filed in support of this motion. Suppl. Pietz Decl. at para. 4-49 and Suppl. Worgul Decl., at para 39-51. A synopsis of this history shows that initially, the Trial Court granted in part and denied in part Defendants' preliminary objections to the Complaints in the Coordinated Actions and then certified for interlocutory appeal its ruling that the MRA[3] limits medical records retrieval and reproduction charges to the actual and reasonable expenses incurred by the records reproducer. Exhibit 7, June 17, 2010 ruling. The Superior Court allowed the interlocutory appeal, and on August 11, 2011, rejected the Trial Court's interpretation of the MRA. *Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 2011 PA Super 169, 27 A.3d 1272 (2011). Exhibit 12.

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2 Exhibits referenced herein are contained in the previously filed Plaintiffs' Separate Appendix in Support of the Motion For Preliminary Approval of Class Action Settlement.

3 All references in this Brief to the "MRA" unless otherwise indicated are references to the 1998 version of this statute.

On February 22, 2012, the Pennsylvania Supreme Court accepted the case for review. *Wayne M. Chiurazzi Law, Inc. v. MRO Corp.*, 614 Pa. 572, 39 A.3d 267 (2012). On July 5, 2012, while the MRO case was pending at the Supreme Court, the MRA was amended. The new law eliminated the right of medical records requesters to obtain copies of medical records based on the estimated actual and reasonable cost of reproducing the records. Under this new 2012 version of the MRA – the version that continues in force to this day – MRRCs may charge the MRA's statutory maximum amounts without regard to their estimated actual and reasonable expenses incurred in reproducing the records. MRO sought to have the appeal dismissed by the Supreme Court because of the amendment, but the Court overruled that motion.

Thereafter, on June 14, 2014, the Pennsylvania Supreme Court reversed the Superior Court's decision in the *Wayne M. Chiurazzi Law Inc. v. MRO Corp.* case. *See Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 626 Pa. 303, 97 A.3d 275 (2014). Exhibit 17. After remand, the Parties continued extensive pre-trial proceedings including the filing of respective motions for judgment on the pleadings with respect to Defendant's affirmative defenses and extensive, contentious discovery proceedings. Ultimately, the Parties agreed to mediation conducted by (ret.) Magistrate Judge Lisa Pupo Lenihan.

4. The Risk Of Nonpayment

The fifth *Gunter* factor, "the risk of nonpayment" for hours expended, is significant in class action cases in which a contingent fee is involved. *Calhoun v. Invention Submission Corp.*, Civil Action No. 18-1022, 2023 U.S. Dist. LEXIS 41172, at *14 (W.D. Pa. Mar. 8, 2023). The contingent fee risk faced by class counsel is an important factor in determining the fee award. *See, In re Datatec Sys. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428, at *20-21 (D.N.J. Nov. 28, 2007) *quoting In re Prudential-Bache Energy Income P'ships Sec. Litig.,* No. 888, 1994 U.S. Dist. LEXIS 6621, at *16 (E.D. La. May 18, 1994) ("Success is never guaranteed and counsel faced serious risks since both trial and judicial review are unpredictable.") The risk of nonpayment factor is to be considered at the inception of the case and throughout the litigation. *Sullivan v. DB Invs., Inc.,* 667 F.3d 273, 332 (3d Cir. 2011).

Here, Plaintiffs' Counsel, working on a fully contingent basis, faced a huge risk of nonpayment. At the inception of the case, they recognized that the MRA's plain language appeared to require that copies of a person's medical records must be provided on an at cost basis. To Plaintiffs' Counsel's reasoning this right to "at cost" copies of medical records constituted an important privacy protection that was made part of the MRA. It was believed that commercial entities were prohibited from profiting from the copying a person's own medical records. However, this construction of the MRA was not the subject of any court interpretation. Nonetheless, Plaintiffs' Counsel undertook very risky class action claims seeking to enforce the privacy protections of the MRA.

This risk of nonpayment increased exponentially during the litigation when the Pennsylvania Superior Court overruled the Trial Court's (and Plaintiffs') construction of the MRA, finding that the medical records copying industry could charge the statutory maximum rates. Plaintiffs' Counsel overcame this obstacle in the road by obtaining a reversal at the Pennsylvania Supreme Court. Nonetheless, the risk of nonpayment remained extremely high. After remand, Plaintiffs faced the risk of a defense judgment based upon the voluntary payment and prior approval defenses. Plaintiffs continued to face a risk of class certification denial or that they could not prove their claims at summary judgment at trial. Here, Plaintiffs' Counsel have been prosecuting this case for over a decade on a fully contingent basis.

5. The Amount of Time Devoted To the Case

Courts look to the number of hours of attorney and paralegal time to determine the significance of the time devoted to a case. *Maher v. AMAG Pharm., Inc.*, Civil Action No. 20-152 (JXN)(JBC), 2026 LX 69835, at *16 (D.N.J. Jan. 27, 2026); *Flynn-Murphy v. Jaguar Land Rover N. Am., LLC*, Civil Action No. 20-14464, 2025 LX 620673, at *72 (D.N.J. Dec. 31, 2025) ("Class Counsel also devoted significant time to this case—more than 3,600 hours across their two firms—at that risk of nonpayment."); *Brumley v. Camin Cargo Control, Inc.,* Civil Action No. 08-1798 (JLL), 2012 U.S. Dist. LEXIS 40599, at *35 (D.N.J. Mar. 26, 2012) (Plaintiffs' counsel spent over 5,200 hours over the course of the four years of litigation.); *Rossini v. PNC Fin. Servs. Grp., Inc.,* No. 2:18-cv-1370, 2020 U.S. Dist. LEXIS 113242, at *57-58 (W.D. Pa. June 26, 2020)("Plaintiffs' counsel's records suggest that they have devoted 970.6 attorney and paralegal hours to work associated with this action over a period of three years. This is a substantial expenditure of time and effort that weighs in favor of a significant fee award . . .")

Here, to determine the amount of time devoted to the case, it is necessary to include time spent litigating against Defendant ***and*** against the other defendants in the coordinated cases. A court may allow for the recovery of fees for work done on other cases if the fees "incurred in the other litigation resulted in work product that was actually utilized in the instant litigation, that the time spent on [the] other litigation was 'inextricably linked' to the issues raised in the present litigation, and that the [party] has not previously been compensated for those fees." *Gulfstream III Assocs., Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 420 (3d Cir. 1993) citing and relying on *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air* (*Delaware Valley I*), 478 U.S. 546, 561, (1986) (Time spent in other litigation could properly be included in the calculation of a reasonable attorneys' fee, if the work was "useful and of a type ordinarily necessary to secure the final result obtained from the litigation.")

Under the rationale of *Gulfstream,* Plaintiffs' Counsel work in the coordinated cases is properly included as part of their lodestar. This case was one of 6 related class action cases that Judge Wettick ordered be coordinated. Thus, although the cases were prosecuted and defended separately, the Court held consolidated hearings primarily on issues related to dispositive motions filed by each of the defendants in the separate actions. Plaintiffs, in these cases, were thus faced with the potential that any defense raised in one of the cases could be used to dispose of claims in any of the other cases. Accordingly, from Class Counsel's perspective each of the coordinated cases were "inextricably linked" because each defense raised by anyone of the defendants had to be treated like a defense raised in all the cases. Moreover, Judge Wettick selected a test case, the case of *Chiurazzi Law Inc. v. MRO Corp.,* 626 Pa. 303, 306, 97 A.3d 275, 276. As the Pennsylvania Supreme Court noted, its decision had broad importance because of the coordinated litigation. 626 Pa. 303, 308, 97 A.3d 275, 277 ("As a number of similar actions remain pending, however, resolution of the issues before us remain of broad importance")

Accordingly, under application of *Gulfstream,* Plaintiffs' Counsel have allocated approximately 3475 attorney hours from the coordinated litigation to this action. Suppl. Pietz Decl. at ¶ 50-51; Suppl. Worgul Decl., at ¶ 60 and Lagnese Declaration. This amount of time is not unusual in complex class actions of this nature. *In re Wawa, Inc.,* 141. F.4th at 466, (6000 hours). *James v. Glob. Tel*Link Corp.*, No. 2:13-cv-04989-WJM-MF, 2020 U.S. Dist. LEXIS 196916, at *28-29 (D.N.J. Oct. 20, 2020) ("In total, class counsel afforded 3,899.84 hours to this litigation. The time class counsel devoted to this case represents a substantial commitment to this litigation."); *Cullen v. Whitman Med. Corp.,* 197 F.R.D. 136, 150 (E.D. Pa. 2000)(3,267 hours); *Fuentes v. Jiffy Lube Int'l, Inc.,* No. 2:18-CV-5174, 2024 U.S. Dist. LEXIS 94102, at *48-49 (E.D. Pa. May 28, 2024)("Over the course of seven years of complex litigation, Class Counsel devoted a combined 7,627.9 hours to this case. Class Counsel devoted substantial time litigating multiple motions to dismiss, motions for summary judgment, a motion to compel arbitration, a motion for class certification, appeals to the Third Circuit, multiple rounds of mediation, extensive discovery, and substantial pre-trial preparation."); *Shop-Vac Mktg. & Sales Practices Litig.*, No. 2380, 2016 U.S. Dist. LEXIS 170841, at *39 (M.D. Pa. Dec. 9, 2016)(8043 hours).

The efforts of Plaintiffs' Counsel in prosecuting this class action over many years in the trial court and on appeal to the Pennsylvania Supreme Court are detailed in the Supplemental Declarations of James Pietz and John Worgul. In the coordinated actions, Plaintiffs' Counsel's time expended can be broken down into 11 separate phases (Pietz Decl. at para. 50) that affected all coordinated actions:

Phase 1	• Draft and research class action complaints involving novel questions of class representative standing, statutory construction of MRA and applicable causes of action;
Phase 2	• Respond to defendants' over length preliminary objections briefing in each of the coordinated actions;
Phase 3	• Respond to defendant's HealthPort's Notice of Removal and motion to dismiss in federal court; • Prepare motion and brief in support of motion to remand in the HealthPort action; • Respond to HealthPort's preliminary objections
Phase 4	• Respond to defendants' request for interlocutory appeal in the Superior Court;
Phase 5	• Respond to defendants' motion for judgment on the pleadings in each of the coordinated cases in the trial court while the MRO case was on appeal;

Phase 6	• Appellate proceedings in Superior Court against MRO and *amicus curiae*;
Phase 7	• Research and draft Petition for Allowance of Appeal to Pa. Supreme Court in MRO case; • Respond to defendant's MRO motion to dismiss appeal in Supreme Court after revision to Medical Records Act; • Appellate proceedings in Pennsylvania Supreme Court in the MRO case and *amicus curiae*;
Phase 8	• Draft Motion and Brief In Support of Motion For Partial Summary Judgment for the coordinated cases; • Draft Amended Class Action Complaints in the coordinated cases; • Respond to and Prepare Briefs Re: second round of motions for judgment on the pleadings in the coordinated cases;
Phase 9	• Engage in drafting and responding to discovery; meet and confer letters and meetings; drafting multiple motions to compel in the IOD and HealthPort cases; • Engaging in private investigations of information produced in discovery and of witnesses to the information disclosed. • Prepare and file Motions to expose the non-existence of the defendants resulting in Ciox substituting into this action as

	successor in interest after Ciox's refusal to substitute parties.
Phase 10	• Engage in multiple mediation proceedings • Engaging in private investigations of information produced by the Defense outside of discovery.
Phase 11	• Negotiate settlement agreement and notice process

6. The Awards In Similar Cases

It is generally recognized that a reasonable percentage of a fund is in the range of 19% to 45%. *See e.g. Holden v. Guardian Analytics, Inc.*, No. 2:23-cv-2115, 2024 U.S. Dist. LEXIS 100349, at *33-34 (D.N.J. June 5, 2024) ("In common fund cases such as this one in which the percentage-of-recovery methodology is used, fee awards have ranged between 19% to 45% of the settlement fund."). However, where the fund is similar to the amount here of $5,588,547, the range has been recognized to be higher in the range of 43% to 30%. *Erie Cty. Retirees Ass'n*, 192 F. Supp. 2d at 381; *In re PAR Pharm. Sec. Litig.,* Civil Action No. 06-3226 (ES), 2013 U.S. Dist. LEXIS 106150, at *30 (D.N.J. July 29, 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery.")[4]

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4 To the extent the three additional *Prudential* factors are relevant under Pennsylvania law, Plaintiffs submit that they support the *Gunter* analysis because: (1) the value of benefits accruing to class members are fully attributable to the efforts of class counsel. *Prudential*, 148 F.3d at 338; (2) the percentage fee is one

B. Plaintiffs' Proposal Would Also Be Reasonable Based Upon A Lodestar Analysis

As explained above, a court need only use one of the methods to determine reasonable attorneys' fees, the common fund or common benefit method, a lodestar approach or a hybrid of the two.[5] As demonstrated, Plaintiffs' Counsel respectfully submit that the appropriate approach in this context is pursuant to a percentage of the common fund approach rather than a lodestar approach. *Braun v. Wal-Mart Stores, Inc.*, 2011 PA Super 121, 24 A.3d at 979.

Nonetheless, Plaintiffs address the lodestar approach to further demonstrate the reasonableness of the requested fee. *Braun* is itself a seminal case on the lodestar analysis under Pennsylvania law. 2011 PA Super 121, 24 A.3d 875, 975. As the *Braun* court explained:

> A "lodestar" is "the product of reasonable hours times a reasonable rate." *City of Burlington v. Dague*, 505 U.S. 557, 559, 112 S. Ct. 2638, 2640, 120 L. Ed. 2d 449, 454-55 (1992) (citation omitted)*Krebs v. United Ref. Co. of Pa.*, 2006 PA Super 31, 893 A.2d 776, 790 (Pa. Super. 2006). The court must consider the factors set forth in Pa.R.C.P. 1716 in calculating the lodestar. *Birth Ctr.*, 727 A.2d at 1160. The lodestar "should be reduced in proportion to time spent on distinct claims which do

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that might have been negotiated had the case been subject to a private contingent fee agreement., *id.* at 340; and (3) the terms of settlement include innovative provisions, including the ability of class members to access their medical record transaction history. *id.* at 339.

[5] Accordingly, under *Braun,* Plaintiffs' Counsel do not believe that examining the lodestar is necessary. Nonetheless, the record reflects sufficient information by which a lodestar cross-check can be performed including that substantial amount of attorney time that was expended over a period of many years in this litigation and the approved rates of class action lawyers in the Pittsburgh market. To the extent that the Court would request additional information, Plaintiffs' Counsel can supplement their motion to address this factor.

> not produce finding of liability." *Logan v. Marks*, 704 A.2d 671, 674 (Pa. Super. 1997); *accord Hensley v. Eckerhart*, 461 U.S. 424, 440, 103 S. Ct. 1933, 1943, 76 L. Ed. 2d 40, 55 (1984). After finalizing the lodestar, the court may then apply a multiplier, *i.e.*, enhancement. *Logan*, 704 A.2d at 674.

The court then identified the factors to consider in whether to apply an enhancement multiplier to the lodestar amount:

> In considering whether to apply an enhancement to the lodestar, the court shall evaluate the degree of success, the deterrent effect of the verdict or decision, the potential public benefit, and the potential inadequacy of a private fee agreement. *Logan*, 704 A.2d at 674; *accord Krebs*, 893 A.2d at 790. "[T]he degree of success is the critical consideration . . . ." *Logan*, 704 A.2d at 674. The court shall consider "whether an award of fees and costs would promote the purposes of the" statute(s) in question.

Id. 24 A.3d 875, 979. In *Signora v. Liberty Travel, Inc.,* 2005 PA Super 366, ¶ 13, 886 A.2d 284, 293, the court found that a 1.5 multiplier was reasonable. As noted by the trial court in *Braun v. Wal-Mart Stores, Inc.*, Nos. 3127, 3757, 2007 Phila. Ct. Com. Pl. LEXIS 305, at *27 (C.P. Philadelphia Nov. 14, 2007), "Courts have frequently found a multiplier of three or greater to be reasonable in contingency class action litigation."

The hourly rates of class action attorneys of the Plaintiffs' Counsel's stature as lawyers handling class action litigation in the Pittsburgh market are in the range of $600 to $900. *Wintjen v. Denny's, Inc.,* No. 2:19-CV-00069-CCW, 2025 U.S. Dist. LEXIS 64603, at *20 (W.D. Pa. Apr. 4, 2025). Given the hours expended by Plaintiffs' Counsel and these approved rates, it is obvious that Plaintiffs' Counsel's lodestar would be substantially higher than the amount of fees requested, even without application of a risk multiplier.[6]

Moreover, the attorney time expended is reasonable. Indeed, most of the time expended by Plaintiffs' Counsel was necessitated by the defendants' repeated dispositive motions and obstreperous discovery conduct. Nonetheless, Plaintiffs' proposal is based upon a reduction of the lodestar. This is more than reasonable, given that Plaintiffs' Counsel would be entirely justified in receiving an enhanced multiplier of 3 where this case a statutory fee-shifting case.

V. The Requested Service Award For Mr. Landay Is Reasonable

An appropriate Service Award to the Named Plaintiff is common, if not ubiquitous, in class action settlements. *See e.g. Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 at n. 65 (3d Cir. 2011). "The purpose of [service awards] is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation and to reward the public service of contributing to the enforcement of mandatory laws." *Id.* Courts consider five factors in deciding whether to allow a service award: "(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Milkman*, 61

6 Plaintiff's costs are also reasonable in light of the amount of hours worked and because they consist of amounts related to copying, expert fees and mediation costs. Pietz Decl. ¶ 53.

Pa. D & C 4th at 571–72. The payment is to be akin to restitution. *In re Plastic Tableware Antitrust Litig.,* No. 94–3564, 1995 U.S. Dist. LEXIS 18166, at *5–6 (E.D.Pa. Dec. 4, 1995) ("Payments to class representatives may be considered a form of restitutionary relief within the discretion of the trial court. They may also be treated as a reward for public service and for the conferring of a benefit on the entire class."). In this case, the class representative not only provided a benefit to the class as a whole, but also was willing to expose his own confidential and personal experience as a basis for obtaining class relief.

The Settlement Agreement calls for Plaintiff to receive an incentive amount of $25,000 for acting as Representative Plaintiff. SA ¶ 8.3. The Class Notice informed the Class of the proposed Service Award, and that it would be paid by Defendant. No Class Member, as yet, has voiced opposition to that award, or any aspect of the Settlement. Mr. Landay has expended at least 57.5 hours in participating in this lawsuit. Mr. Landay has met with and been in close contact often with counsel, engaged in many phone conversations about the status of the case, kept abreast of litigation and discovery, and reviewed documents related to the case. Mr. Landay was available by phone during the Parties' day-long mediation, and was actively involved in vetting the Settlement and its terms. Plaintiff has actively and zealously represented the interests of Class Members, at his own risk and personal expense of time, effort, and energy. (*See* Pietz Decl. ¶ 53-54.) The requested award is appropriate under the circumstances, particularly given the absence of Class Member opposition as yet. *See In re Suboxone*, No. 2445, 2023 U.S. Dist. LEXIS 215754, at *55 (E.D. Pa.

Dec. 4, 2023) identifying the following cases: *King Drug Co. of Florence Inc. v. Cephalon, Inc.*, No. 06-cv-1797, 2015 U.S. Dist. LEXIS 197311, 2015 WL 12843830, at *6 (E.D. Pa. Oct. 15, 2015) (approving $100,000 incentive award for four class representatives, and $50,000 incentive awards for two other class representatives); *In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437, 2018 U.S. Dist. LEXIS 118758, 2018 WL 3439454, at *20 (E.D. July 17, 2018) (approving incentive awards to the four named Plaintiffs in the amount of $50,000); *Marchbanks Truck Serv. v. Comdata Network, Inc.,* No. 07-cv-1078, 2014 U.S. Dist. LEXIS 184691, 2014 WL 12738907, at *3-4 (E.D. Pa. July 14, 2014) (awarding incentives in the amount of $150,000 to one class representative, $75,000 each to two others, and $15,000 to the fourth). *Enterprise Energy v. Columbia Gas Transmission*, 137 F.R.D. 240, 250-51 (S.D. Ohio 1991) (approving $50,000 in incentive payments to each of six class representatives) As stated in *In re Flonase Antitrust Litig*., 951 F. Supp. 2d 739, 757 (E.D. Pa. 2013):

> Class representative American Sales is hereby awarded $50,000 from the Settlement Fund. Class representative Meijer is hereby awarded $40,000 from the Settlement Fund. These payments are in recognition of the work these plaintiffs undertook in representing the Class, which amount is in addition to whatever monies these plaintiffs will receive from the settlement fund pursuant to the plan of distribution. The Court finds these awards to be fair and reasonable. . .

The award proposed here is well within the range of payments awarded by other courts in this area. It is respectfully requested that the incentive award be approved.

CONCLUSION

WHEREFORE, it is respectfully submitted that this Honorable Court grant approval of Plaintiffs' Counsel's Motion For Approval of Attorneys' Fees and Costs and Class Representative Service Award. A proposed order of court will be submitted with the Motion For Final Approval of Class Action Settlement.

Respectfully submitted,

Dated: September 1, 2026

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 1, 2026

s/James M. Pietz
James M. Pietz

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon counsel of record by Electronic Mail this 1st Day of September 2026 addressed as follows:

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