

DAVID CERICOLA, RYAN GINSBERG, GINA ANGELOTTI, RICHARD KOSAK, TYLER RISSLER, ROBERT SZOSTKIEWICZ, and PICKERING MEADOWS COMMUNITY ASSOCIATION, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

A.J. BLOSENSKI, INC., a Pennsylvania Corporation,

Defendant

**COURT OF COMMON PLEAS
CHESTER COUNTY**

No. 2023-10303-CT

MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Plaintiffs, by and through their counsel, Sauder Schelkopf LLC, hereby move before the Honorable Anthony T. Verwey, of the Pennsylvania Court of Common Pleas for Chester County, for the entry of an order granting their motion for attorneys' fees, costs, and service awards. In support of this motion, Plaintiffs rely upon the accompanying brief, Declaration Matthew D. Schelkopf, and the enclosed proposed Order. Plaintiffs respectfully request that the Court hear this motion at the final approval hearing currently scheduled for 1:30 p.m. on November 25, 2024.

Dated: October 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS* was filed via the Court's CM/ECF system, thereby electronically serving it on all counsel of record.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

DAVID CERICOLA, RYAN GINSBERG, GINA ANGELOTTI, RICHARD KOSAK, TYLER RISSLER, ROBERT SZOSTKIEWICZ, and PICKERING MEADOWS COMMUNITY ASSOCIATION, individually and on behalf of all others similarly situated,

Plaintiffs,

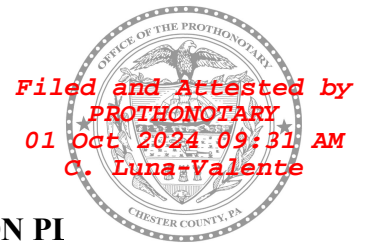
v.

A.J. BLOSENSKI, INC., a Pennsylvania Corporation,

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COURT OF COMMON PI
CHESTER COUNTY

No. 2023-10303-CT



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

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I. INTRODUCTION

Plaintiffs first began investigating the practices at issue in this litigation approximately one year ago. After litigating the case on a wholly contingent basis and negotiating a settlement that creates substantial benefits for approximately 109,000 Settlement Class Members, Plaintiffs now seek an Order that provides for Defendant A.J. Blosenski, Inc. (“Defendant” or “AJB”) to pay: (a) one-third of the Settlement Fund (\$125,000) to Class Counsel for payment of their attorneys’ fees and reimbursement of expenses, and (b) a total of \$4,500 to the Plaintiffs as service awards (\$750 to each household), both pursuant to Section IV.3 of the Settlement Agreement (“SA”).¹ The parties negotiated at arms’ length regarding these provisions only after they had agreed upon all other material terms of the SA. Class Counsel’s intent to seek these payments was described in the Notice of Settlement. While the time period to object or opt-out as not yet expired, no objections to either the Settlement or Class Counsel’s fees and expenses, or the Plaintiffs’ service awards, have been received.

As discussed below, given the amount of work performed by Class Counsel, the amount of work still to be performed assisting with the claims process, the outstanding results achieved and other applicable factors, Plaintiffs submit that the fee and expense request is reasonable and should be approved. The modest service awards requested by Plaintiffs are reasonable, and are warranted here to recognize the time and effort Plaintiffs committed to this case, which were integral to its successful resolution. Plaintiffs respectfully request that the Court enter the proposed order submitted herewith granting each of these requests.

II. FACTUAL BACKGROUND

¹ Plaintiffs Gina Angelotti and Ryan Ginsberg are a couple, and thus will only be receiving one incentive award.

A. Plaintiffs' Allegations and Pre-Litigation Investigation

Before filing the Action, Plaintiffs' counsel conducted an extensive investigation into the alleged service disruptions. This investigation included interviewing members of the putative class and reviewing their documents, researching consumer reporting on various websites, reviewing local Township's meeting minutes related to service issues with AJB, researching potential causes of action, drafting pre-litigation demand letters to AJB, and drafting a detailed Complaint and Amended Complaint.

The named Plaintiffs are current or former customers of AJB. Amended Compl., ECF No. 21, at ¶¶ 6, 16, 25, 37. Plaintiffs all entered into agreements with AJB for trash and/or recycling services. ¶¶ 7, 9, 28, 39-40, 56, 65. Each experienced a combination of Missed Pickups, reductions in service frequency, and paid Fuel Surcharges. ¶¶ 8-9, 18-20, 29-32, 41-45, 51, 56-58, 66-68. Plaintiffs' Amended Complaint seeks certification of the following class: All current and former customers of AJB and/or Eagle Disposal, including HOAs. The Class also includes all residents of households where a current or former AJB or Eagle Disposal customer or party received trash and recycling services, notwithstanding the identity of the person who actually contracted and/or paid for services (¶ 99), and alleges claims for breaches of contract (¶¶ 106-25), fraud (¶¶ 126-33), negligent misrepresentation (¶¶ 134-40), violations of the Pennsylvania Unfair Trade and Deceptive Practices Law (¶¶ 141-54), promissory estoppel (¶¶ 155-59), and unjust enrichment (¶¶ 160-65).

B. Procedural History of the Litigation

Plaintiffs filed the initial Complaint in this Action on December 26, 2023. ECF No. 1. The parties jointly agreed to six extensions to A.J. Blosenski's deadline to respond to Plaintiffs' Complaint. On August 9, 2024, Plaintiffs filed an Amended Complaint. ECF No. 21. Plaintiffs

filed their Motion for Preliminary Approval of Class Action Settlement on August 15, 2024. On August 19, 2024, the Court granted preliminary approval to the Settlement, provisionally certified the Settlement Class, directed notice to the Settlement Class, and scheduled the Final Approval Hearing for November 25, 2024. The Court entered an amended preliminary approval order on September 16, which is described below in Section II(I), *infra*.

C. The Parties' Settlement Negotiations

The Parties engaged in extensive, complex, and arm's-length negotiations regarding the resolution of the claims alleged in this lawsuit, which began in November of 2023. The Parties continued negotiations over the following eight months. In connection with the settlement negotiations, the Parties exchanged confirmatory discovery subject to Rule 408 of the Pennsylvania Rules of Evidence. 225 Pa. Code § 408. After confirmatory discovery and the Parties' protracted negotiations, the Parties executed the Settlement Agreement on August 14, 2024. The terms of the Settlement Agreement are the result of arm's-length negotiations between experienced counsel for both sides.

D. The Settlement Class

The Settlement Agreement provides substantial benefits to the following Settlement Class: All current and former customers of AJB and/or Eagle Disposal, including HOAs. This includes all residents of households where a current or former AJB or Eagle Disposal customer or party received trash and recycling services, notwithstanding the identity of the person who actually contracted and/or paid for services. SA § II.36. Excluded from the Settlement Class are: (i) AJB, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which AJB has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; (iii) local, municipal, state, and federal

governmental entities; (iv) individuals who receive(d) services pursuant to agreements between AJB and municipalities or governmental agencies; and (v) Temporary Roll-Off Customers. *Id.*

E. Relief Benefiting the Settlement Class

The consideration to the Settlement Class consists primarily of three types of claims: (1) reimbursements for Missed Pickups; (2) reimbursements for A.J. Blosenski's unilateral reduction in services provided; and (3) reimbursements for Fuel Surcharges. SA § III. To receive relief, Settlement Class Members need only submit a simple, three-page Claim Form. *See* Exhibit 1 to Settlement Agreement. SA § D.1. The Claim Form requests supporting documentation, but Settlement Class Members can also submit a declaration attesting to the facts to support their Claim. SA § V.4. Claim Forms can be submitted both through the Settlement Website and the mail. *Id.*

First, Settlement Class Members who paid for trash and/or recycling and experienced a Missed Pickup can file a claim for their unreimbursed, out-of-pocket expenses for the Missed Pickups. SA § III.2. The value of an unreimbursed Missed Pickup is determined by calculating the Settlement Class Members' price per pickup using the applicable service rate and multiplying the price per pickup by the number of confirmed Missed Pickups. *Id.* The refund or credits for missed pick-ups is not paid out of the Settlement Fund, and instead are paid separately by AJB. The maximum number of Missed Pickups that Settlement Class Members can submit Claims for is 30. SA III.2.

Second, Settlement Class Members who experienced a unilateral decrease in the number of trash and/or recycling pickups are eligible to submit a Claim for a reimbursement for the reduction in service. SA § IV.2. The reduced pickup value is calculated similarly to Missed Pickups, and utilizes the standard price per pickup for each pickup not made, as a result of the

reduction in recycling service frequency, for the time period running from the initial reduction of service through the end of the Settlement Class Member's respective contract period. *Id.* Valid Reduced Service Frequency Claims will be paid from the Settlement Fund and subject to a *pro rata* reduction if insufficient funds exist to pay all in full. SA § IV.2.

Third, Settlement Class Members who paid a Fuel Surcharge are eligible to submit a Fuel Surcharge Claim. SA § IV.1. Each Claimant is eligible to receive reimbursement for one Fuel Surcharge Claim made during the Claim Period. *Id.* Similar to Reduced Service Frequency Claims, Fuel Surcharge Claims will be paid from the Settlement Fund and subject to a *pro rata* reduction if insufficient funds exist to pay all Claims in full.

Fourth, the Settlement also provides for the expiration of all residential service contracts (excluding HOA contracts) at the end of their respective contract terms rather than auto-renew for additional terms. SA § III.3. The expiration of these contract terms will supersede any language to the contrary in any contract between AJB and a Settlement Class Member, and no further action is required to effectuate the expiration. *Id.*

F. Attorneys' Fees, Costs, and Service Awards

Plaintiffs seek attorneys' fees of one-third of the total Settlement Funds. SA § IV.3; *see also* 231 Pa. Code Rule 1717. Plaintiffs also seek service awards of \$750 for each of the seven Plaintiffs, not to exceed \$750 per household (\$4,500 total) in recognition of their time, costs, and effort in the Lawsuit. *Id.* Plaintiffs' Attorneys' Fees, Cost and Service Awards will be deducted from the maximum value of the Settlement Fund. SA § IX.5. Plaintiffs' intention to seek these one-third of the total Settlement Funds as attorneys' fees and AJB also reserved its right to oppose any request for attorneys' fees or service awards that it considers unreasonable. SA § IX.4.

G. Notice to Settlement Class Members

The Settlement Agreement includes a comprehensive notice plan, which was paid for by AJB and overseen by Epiq Class Action & Claims Solutions, Inc., an experienced Settlement Administrator. SA § II.35. Specifically, for Settlement Class Members that AJB had an email address for, they received notice by email or first class mail. SA § VI.1(a). For Settlement Class Members that AJB did not have an email address for, the Settlement Administrator sent the Notice of Settlement through first class mail. SA § VI.1(b). Prior to mailing the Notice of Settlement, their addresses were run through the National Change-of-Address Database. SA § VI.1(c). If the notice was returned undeliverable, the Settlement Administrator performed an advanced address search and re-mailed the undeliverable notice if a new address was located. *Id.*

In addition, the Settlement Administrator established a Settlement Website (<https://www.ajbclassactionsettlement.com/>) that provides: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the toll-free phone number to contact the Settlement Administrator; (iii) copies of the Settlement Agreement, the Notice of Settlement, the Claim Form, Court Orders regarding this Settlement, and other relevant Court documents (which will include Class Counsel's motion for attorneys' fees, costs, and service awards once filed); and (iv) information concerning the submission of Claim Forms, including the electronic submission of Claim Forms. SA § V.3.

A.J. Blosenski, through the Settlement Administrator, also mailed all notices required by 231 Pa. Code 1712. SA § VI.1(c)-(d). Further, A.J. Blosenski posted information on its website regarding the Settlement. SA § VI.2. The Settlement Administrator will also provide the parties with a declaration detailing all its efforts regarding the Notice Plan and its reach to the Settlement Class, which will be filed as an exhibit to Plaintiffs' motion for final approval of the settlement. SA § D.9.

H. The Release

In exchange for the foregoing relief, and subject to final approval by the Court, Plaintiffs and Settlement Class Members who do not timely exclude themselves will be bound by a release of all claims arising out of or relating to the claims that were asserted in the Complaint (the “Released Claims”). The Released Claims extend to A.J. Blosenski and its related entities and persons. The Released Claims will not apply to any claims for death, personal injury, property damage, or subrogation. SA § II.30.

I. The Preliminary Approval Order

On August 19, 2024, the Court entered an order granting preliminary approval to the Class Action Settlement and authorized the proposed notice plan to the Settlement Class. On September 16, 2024, the Court entered an amended preliminary approval order granting approval to an amended settlement agreement that clarified certain definitions and conflicting provisions in the August 12, 2024 settlement agreement to better reflect the intention of the parties. The amended settlement agreement did not change substantive terms and provisions of the agreement. The amendments primarily clarified certain exclusions to the Settlement Class, and permitted the use of postcard notice for Settlement Class Members that will receive notice by U.S. mail.

While the date for opt-outs and objections as not yet passed, Class Counsel is aware of two (2) opt outs and there have been no objections to the Settlement.

III. ARGUMENT

A. Plaintiffs are Entitled to an Award of Attorneys’ Fees

Under Pennsylvania law, a litigant can recover attorneys’ fees from an adverse party where “there is express statutory authorization, a clear agreement of the parties, or some other established exception.” *Gall v. Crawford*, 982 A.2d 541 (Pa. Super. 2009) (citing *Trizechahn Gateway LLC v.*

Titus, 601 Pa. 637, 976 A.2d 474, 482 (2009)). The party moving for an award of attorneys' fees has the burden. *Id.* Here, Plaintiffs request for attorneys' fees is supported by both express statutory authorization as well as the clear agreement of the parties.

First, Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL") provides for an award of attorneys' fees. 73 P.S. § 201-9.2. The UTPCPL is a fee-shifting statute, which shifts the burden of paying plaintiffs' attorneys' fees from the plaintiffs to the defendants.

The statute provides:

The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, ***costs and reasonable attorney fees***.

Id. at § 201-9.2(a) (emphasis added).

Pennsylvania law favors fully compensating parties that incur attorneys' fees where a statute permits fee-shifting. *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 453-54, 34 A.3d 1, 50 (2011) (citing *Solebury Twp. v. Dep't of Env'tl. Prot.*, 593 Pa. 146, 928 A.2d 990, 1004 (2007)). Courts have approved reasonable attorneys' fees in class action settlements where the lawsuit alleged violations of the UTPCPL. *See, e.g., Oslan v. L. Offs. Of Mitchell N. Kay*, 232 F. Supp. 2d 436, 444 (E.D. Pa. 2002). In *Oslan*, the plaintiff brought claims for, *inter alia*, violations of the UTPCPL individually and on behalf of a class. *Id.* at 437-38. The parties agreed to a settlement, which included attorneys' fees. *Id.* at 438. In analyzing attorneys' fees, the court held that the provision of attorneys' fees was consistent with the fee-shifting principles of the UTPCPL and found the requested attorneys' fees were reasonable. *Id.* at 444. Here, Plaintiffs' Amended Complaint alleges a UTPCPL claim. ECF No. 21.

Second, Pennsylvania's common fund doctrine permits the recovery of attorney's fees when a common fund is created. *See Petow v. Warehime*, 2010 PA Super 95, 996 A.2d 1083, 1087 (2010). The common fund doctrine is codified at 42 Pa. Stat. and Cons. Stat. Ann. § 2503(8) and states:

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter: . . . (8) Any participant who is awarded counsel fees out of a fund within the jurisdiction of the court pursuant to any general rule relating to an award of counsel fees from a fund within the jurisdiction of the court.

See also Jones v. Muir, 511 Pa. 535, 515 A.2d 855 (1986). Under the “common fund” doctrine, where a plaintiff creates a fund from which one or more other parties benefit, those parties should contribute proportionally to the expense of creating the fund. *Shearer v. Moore*, 277 Pa. Super. 70, 78, 419 A.2d 665, 669 (1980) (citing *Hempstead v. Meadville Theological School*, 286 Pa. 493, 495-96 (1926)). The Pennsylvania Supreme Court has held that the doctrine applies where an attorney’s services are to protect a common fund for administration or distribution under the direction of the court, or where such fund has been raised for like purpose, it [the fund] is liable for costs and expenses, including counsel fees incurred. *Hempstead*, 286 Pa. at 495-96. Further, § 2503(8) authorizes the award of attorneys’ fees to “[a]ny participant who is awarded counsel fees out of a fund within the jurisdiction of the court pursuant to any general rule relating to an award of counsel fees from a fund within the jurisdiction of the court.” *Petow*, 996 A.2d at 1087-88. “This authorization has been taken to mean that the common fund exception applies not only when the fund is before the court prior to litigation, but where the successful litigation of the underlying suit resulted in a substantial benefit to a ‘group of others in the same manner as plaintiff.’” *Id.* (quoting *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392, 90 S.Ct. 616, 625, 24 L.Ed.2d 593 (1970)). Here, the parties’ Settlement Agreement creates a common fund from which both the Plaintiffs and the Settlement Class benefit.

Third, attorneys’ fees can be awarded subject to the clear agreement of the parties. *See Trizechahn Gateway LLC*, 601 Pa. at 654. Here, the Settlement Agreement is a “clear agreement of the parties” as it contemplates the award of an attorneys’ fees. *See* SA §§ IX, IV. The attorneys’ fees award will also be paid out of the Settlement Funds. *Id.* at § IX.3 (“Class Counsel will apply for attorneys’ fees in an amount not to exceed one-third of the value of the total Settlement Funds, net of costs, for their efforts on behalf of the Class.”).

Because Plaintiffs' request for attorneys' fees and costs is supported by express statutory authorization and by the agreement of the parties, the court may properly award Class Counsel attorneys' fees, subject to the analysis in Section III.B, *infra*.

B. The Statutory Factors Support the Attorneys' Fees Request

After establishing that Plaintiffs request for attorneys' fees is supported under Pennsylvania law, the Court then must analyze certain statutory factors to determine whether the fee request is reasonable. This determination is left to the Court's discretion, and it is guided by the following five 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.

Pa. R. Civ. P. 1717; *see also In re Bridgeport Fire Litig.*, 2010 PA Super 213, 8 A.3d 1270, 1289 (2010). As stated in the Official Note, "[t]he order in which the factors are listed is not intended to indicate the priority or weight to be accorded them respectively." Plaintiffs' request for attorneys' fees is supported by both each individual factor, as well as all of the factors considered together.

1. The Time and Effort Reasonably Expended by the Attorney in the Litigation

The first factor is the time and effort reasonably expended by the attorneys requesting the fee award. *Samuel-Bassett*, 613 Pa. at 457 (citing *City of Burlington v. Dague*, 505 U.S. 557, 559 (1992); *Signora v. Liberty Travel, Inc.*, 2005 PA Super 366, 886 A.2d 284 (2005); *Pennsylvania Orthopaedic Soc. v. Indep. Blue Cross*, No. 0002 DEC. TERM 2002, 2004 WL 2445370, at *2

(Pa. Com. Pl. Sept. 7, 2004) (finding the efforts of class counsel in achieving a class settlement supported that fee request was “fair and reasonable”).

Here, the time and effort supports Plaintiffs’ request for attorneys’ fees. As of September 27, 2024, Class Counsel’s attorney time already exceeds the request fee and expense award. The lodestar calculation “provides an objective basis on which to make an initial estimate of the value of the lawyer’s services.” *Richards v. Ameriprise Fin., Inc.*, 2019 PA Super 254, 217 A.3d 854, 866 (2019) As detailed in the accompanying Declaration of Matthew D. Schelkopf, Class Counsel has already incurred \$145,055.00 in lodestar. Thus, Class Counsel’s requested fee amount of \$125,000 yields a negative multiplier of Class Counsel’s actual lodestar. Further, Class Counsel’s lodestar will continue to increase as they assist Settlement Class Members with the claims process and answer questions regarding the Settlement. Thus, the 0.86 multiplier sought here is thus reasonable, and Plaintiffs respectfully request that the Court approve it. *See, e.g., Milkman v. Am. Travellers Life Ins. Co.*, No. 011925, 2002 WL 778272, at *28 (Pa. Com. Pl. Apr. 1, 2002) (stating “courts have often found a multiplier of three or higher to be reasonable in a class action setting” and award class counsel a \$4.5 million fee award which represented a 3 multiplier) (citing cases).

2. The Quality of the Services Rendered and the Results Achieved

The second factor assesses the quality of services rendered. *Pennsylvania Orthopaedic*, 2004 WL 2445370, at *2, n.3 (observing settlement was “outstanding work” and that the court was “impressed by [class counsel’s] efforts). The third factor assess the results achieved and benefits conferred upon the class. Both of these factors support Plaintiffs’ request for attorney’s fees.

First, Class Counsel is highly experienced in complex class action litigation. Class Counsel conducted an extensive investigation into the alleged service disruptions by interviewing members of the putative class and reviewing their documents, researching consumer reporting on various

websites, reviewing local Township’s meeting minutes related to service issues with AJB, researching potential causes of action, drafting pre-litigation demand letters to AJB, and drafting a detailed Complaint and Amended Complaint. After filing suit, Class Counsel and Counsel for AJB engaged in extensive, complex, and arm’s-length negotiations regarding the resolution of the claims alleged in this lawsuit, which began in November of 2023. The Parties continued negotiations over the following eight months. In connection with the settlement negotiations, the Parties exchanged confirmatory discovery subject to Rule 408 of the Pennsylvania Rules of Evidence. After confirmatory discovery and the Parties’ protracted negotiations, the parties agreed to the settlement before the Court. As such, the Settlement itself is demonstrative of the quality of services rendered by Class Counsel.

Second, the Settlement makes substantial relief available to approximately 100,000 Settlement Class Members. The Settlement benefits are described in detail in Section II.E, *supra*, and these benefits are reflective of the vigor and persistence with which Class Counsel prosecuted this litigation. Further, Class Counsel have already been contacted by Settlement Class Members who have submitted Claim Forms for benefits under the Settlement, indicating their satisfaction with the benefits offered. The Settlement is an excellent result for the Settlement Class Members, which supports Plaintiffs’ request for attorneys’ fees and expenses.

3. The Magnitude, Complexity and Uniqueness of the Litigation

The next factor assesses the complexity of the litigation had it gone forward to trial instead of settling. Courts have recognized that “any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources.” *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. 2007). Indeed, questions of classwide liability are complex. *In re Bridgeport Fire Litig.*, 2010 PA Super 213, 8 A.3d 1270, 1289 (2010). Here, although Plaintiffs

are confident they could prevail if the litigation were to proceed, the road to a trial would be fraught with risk. AJB would undoubtedly file motions to dismiss, motions for summary judgment, the parties would enter discovery and file discovery motions, and eventually arrive at class certification years from now. The litigation involves complex factual issues such that expert testimony would be necessary, and both sides would likely file motions to exclude the other party's experts. At trial, Plaintiffs would need to establish the elements of their claims, and the court and/or jury would need to review AJB's conduct and make a determination. *See, e.g., Gregg v. Indep. Blue Cross*, 2004 WL 869063, at *37 (Pa. Com. Pl. Apr. 22, 2004). Thus, while Plaintiffs are confident in the merits of their claims, there is risk in establishing both liability and damages. In contrast to the risk of litigation, the Settlement offers prompt and substantial benefits to the Settlement Class.

In addition, the magnitude of the case supports Plaintiffs' request. As the Court is well aware, class action litigation is time-consuming and expensive. If no class action settlement was reached, or no class was eventually certified, individual class members would bear the costs of separate litigation, including filing fees, the retention of counsel, discovery, and trial. It would be cost-prohibitive for the Settlement Class to effectively redress the wrongs done to them. *See Milkman I*, 2001 WL 1807376, at *8 (approving class action settlement where potential recovery was approximately \$13). The Settlement, however, avoids these issues and provides the Settlement class with prompt, uniform, and substantial relief without the time or expense of individually prosecuting their claims.

4. Whether the Receipt of a Fee was Contingent on Success

The final factor assesses whether the representation was contingent in nature. Class Counsel has prosecuted this litigation on a purely contingent basis and the risk of non-recovery

was sufficiently substantial to justify the instant fee request. Declaration of Matthew D. Schelkopf, ¶ 19. *O’Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 309 (E.D. Pa. 2003) (“Any contingency fee includes a risk of non-payment. That is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case.”); *Milkman*, 2002 WL 778272, at *25 (granting attorneys’ fees in class action settlement and recognizing risk to class counsel great where attorneys’ fees contingent on successful outcome of litigation). Indeed, in *In re Ins. Brokerage Antitrust Litig.*, this Court observed that “Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.” No. 04-5184, 282 F.R.D. 92, 122 (D.N.J. 2012) (citations omitted).

5. One-Third of the Settlement Fund is Reasonable

Class Counsel’s request for one-third of the Settlement Fund is also reasonable. Fee awards of between twenty and thirty percent are “quite common.” *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 567 (Com. Pl. 2002). As stated in *Newberg on Class Actions*, “[u]sually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented.” § 14.03 (3d ed. 1992). The percentage of the common fund “would often be higher on a proportional basis for modest recoveries because of the larger ratio of hours to recovery amount that would likely be involved” and also would be “significantly more modest as the common fund recovery begins to reach recoveries approaching or exceeding \$100 million, based on the notion that the effort necessary to achieve recovery dollars at the high end was less onerous.” *Id.*

Numerous courts have found one-third of a common fund to be a reasonable fee award. *Myers v. Jani-King of Philadelphia, Inc.*, No. 09-cv-1738, 2019 WL 4034736, at *11 (E.D. Pa.

Aug. 26, 2019) (citing cases and noting that “the requested fee of one-third (1/3) of the settlement amount is reasonable in comparison to awards in other cases.”); *Stagi v. Nat’l R.R. Passenger Corp.*, 880 F. Supp. 2d 564, 571 (E.D. Pa. 2012) (noting that fee awards generally range between nineteen and forty-five percent of the common fund); *In re Merck & Co., Inc. Vytarin Erisa Litig.*, No. 08-cv-285, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (stating “review of 289 settlements demonstrates “average attorney’s fee percentage [of] 31.71% with a median value that turns out to be one-third”). As such, Plaintiffs’ respectfully request that the Court award them one-third of the Settlement Fund.

C. The Modest Incentive Awards Should be Approved

Pennsylvania law supports the award of incentive fees to plaintiffs in class action settlements. As explained in *Milkman*:

The plaintiff’s role in [class action] cases is to protect the interests of the class and foot the bill for litigation. However, the public policy favoring private civil litigation as a means to promote certain important social values often fails to provide adequate compensation or incentive for plaintiffs to take on this burden simply on principle. The representative assumes substantial risk, not just of losing time and costs of litigation, but also of retaliation or collateral notoriety . . . In general, class representatives are entitled to reimbursement of expenses if the suit is successful, but not compensation for their services. In addition, the named plaintiff is a party to the litigation and not a witness, and so cannot be compensated for witness fees or travel expenses incurred in giving a deposition during discovery. In part for these reasons, incentive awards are not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class.

Milkman, 2002 WL 778272, at 570. (internal citations and quotation marks omitted).

In determining whether to grant incentive awards, courts have commonly relied on five factors: (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. *In*

re Bridgeport Fire Litig., 2010 PA Super 181, 5 A.3d 1250, 1257-58 (2010). These factors support the modest awards requested by the Plaintiffs. Each Plaintiff searched for and produced documents related to their claims, stayed abreast of developments in the litigation, participated in conferences with their attorneys, and attached their names to this litigation. Had the case not settled, each Plaintiff was prepared to go forward to trial. As such, Plaintiffs respectfully the Court award them \$6,000 in incentive awards.

IV. CONCLUSION

Plaintiffs respectfully request that this Court enter an Order: (1) finding that this case is likely to be certified as a class action pursuant to Pa. R. Civ. P. 1702; (2) preliminarily approving the settlement; and (3) directing notice to the Settlement Class Members.

Dated: October 1, 2024

Respectfully submitted,

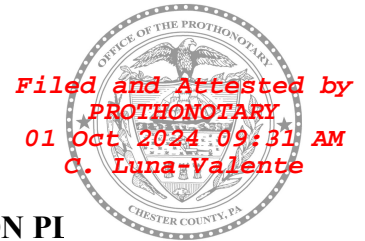
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*Counsel for Plaintiffs and the
Proposed Settlement Class*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS* was filed via the Court's CM/ECF system, thereby electronically serving it on all counsel of record.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf



DAVID CERICOLA, RYAN GINSBERG, GINA ANGELOTTI, RICHARD KOSAK, TYLER RISSLER, ROBERT SZOSTKIEWICZ, and PICKERING MEADOWS COMMUNITY ASSOCIATION, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

A.J. BLOSENSKI, INC., a Pennsylvania Corporation,

Defendant

COURT OF COMMON PI
CHESTER COUNTY

No. 2023-10303-CT

**DECLARATION OF MATTHEW D. SCHELKOPF IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

I, Matthew D. Schelkopf, under penalty of perjury, declare as follows:

1. I am a partner at the law firm of Sauder Schelkopf LLC in Berwyn, Pennsylvania.

I respectfully submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. My declaration is based upon my knowledge of the facts set forth herein, and if called to do so, I could and would testify competently thereto.

BACKGROUND ABOUT MY FIRM

2. Sauder Schelkopf is a national boutique class action and personal injury law firm located in Berwyn, Pennsylvania. Our firm was named in the Litigation Departments of the Year, an award that honors the best litigation practice in a small or mid-sized firm in Pennsylvania, by *The Legal Intelligencer* in 2022. In addition, the 2023 edition of U.S. News & World Report, Best Lawyers® recognized our firm as a Best Law Firm, as nominated by our peers based on our experience, service, success, and performance. In 2024, the firm was awarded the Products

Liability Practice Group of the Year and also won the Diversity Initiative award by the National Law Journal's Elite Trial Lawyers. The National Law Journal also named Sauder Schelkopf as a finalist for the Civil Rights and Consumer Protection categories.

3. I was selected to serve for two terms as President of the Class Action Trial Lawyers Association Top 25 (2022-2023 and 2023-2024 terms), an invitation-only elite group limited to the Top 25 lawyers in each state. I have also been honored as a Best Lawyer® in America (Mass Tort/Class Action) in 2022, 2023 and 2024. In 2022 and 2024, LawDragon recognized Mr. Schelkopf in its list of the "500 Leading Plaintiff Consumer Lawyers". The LawDragon consumer law guide offers the publication's take on the best of the U.S. plaintiff bar specializing in representing consumers. The publication notes "these are the lawyers who stand on the front line in individual lawsuits and class actions seeking justice. They relish their role of underdog, taking on the toughest cases" In 2021, 2022 and 2023, he was selected as a Top 25 Products Liability Trial Lawyer, an invitation-only professional organization composed of and limited to the Top 25 attorneys from each state or region who serve individuals and families who need attorneys to represent them in the American legal system regarding Product Liability claims. Since 2010, I have been selected by Pennsylvania Super Lawyers as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania Super Lawyer, as chosen by their peers and through the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of The Legal Intelligencer and the Pennsylvania Law Weekly, named me as one of the "Lawyers on the Fast Track" a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. I was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015. In 2020, I was selected to America's Top 100 High Stakes Litigators® in

Pennsylvania, comprised of the nation's most exceptional trial lawyers for high stakes legal matters. In 2021, I was selected as a Top 25 Products Liability Trial Lawyer and then as a Best Lawyer[®] in America (Mass Tort/Class Action) in 2022.

4. I obtained my J.D. from Widener University in 2002 and my LL.M. from Villanova University School of Law in 2008.

5. I am currently serving or have served as lead or co-lead counsel in class actions in courts across the country. *See, e.g., Fiscina v. Volkswagen Group of Am., Inc.*, No. 2:22-cv-05875 (D.N.J.) (appointed class counsel in class action against Volkswagen related to an alleged defect in engine water pumps) *In re: Hyundai and Kia Engine Litigation II*, No. 8:18-cv-02223 (C.D. Cal.) (appointed co-lead counsel in class action against Hyundai and Kia and negotiated a settlement valued at approximately \$934 million related to an alleged engine defect); *In re: Hyundai and Kia Engine Litig.*, 8:17-cv-02208-JLS-JDE (C.D. Cal.) (appointed co-lead counsel in class action against Hyundai and Kia and negotiated a class settlement valued at approximately \$892 million related to alleged engine defect); *In re: Subaru Battery Drain Prod. Liab. Litig.*, No. 1:20-cv-03095-JHR-MJS (D.N.J.) (class action settlement related to allegedly defective vehicle batteries); *Zhao v. Volkswagen Group of Am., Inc.*, No. 2:21-cv-11251 (D.N.J.) (class action settlement related to allegedly defective vehicle water pumps); *In re: General Motors Air Conditioning Marketing and Sales Pracs. Litig.*, No. 18-md-02818 (E.D. Mich.) (class action related to allegedly defective vehicle air conditioning systems); *Salcedo v. Subaru of America, Inc.*, No. 1:17-cv-08173(JHR)(AMD) (D.N.J.) (appointed as lead counsel in class action against Subaru and negotiated a class settlement related to an alleged engine defect); *Bang v. BMW of North America, LLC*, No. 2:15-cv-69450(MCA)(LDW) (D.N.J.) (appointed as co-lead counsel in class action against BMW and negotiated a class settlement related to an alleged oil consumption

defect); *Yaeger v. Subaru of America, Inc.*, No. 1:14-cv-04490(JBS) (KMW) (D.N.J.) (appointed as co-lead counsel in class action against Subaru and negotiated a class settlement related to an alleged oil consumption defect); *Davitt v. Honda North America, Inc.*, No. 2:13-cv-00381-MCA-JBC (D.N.J.) (appointed lead counsel in class action against Honda and negotiated a class settlement related to alleged door lock actuator defect); *Fath v. American Honda Motor Co.*, No. 18-cv-01549-WMW (D. Minn.) (appointed lead counsel in class action against Honda and negotiated a class settlement related to an alleged oil dilution defect); and *Tolmasoff v General Motors, LLC*, No. 2:16-cv-11747 (E.D. Mich.) (class action settlement related to GM vehicles with overstated fuel economy).

6. In addition, Sauder Schelkopf attorneys have been appointed to leadership positions in numerous class action cases throughout the United States, including: *McMahon v. Generac Power Systems, Inc.*, No. 2:21-cv-05660 (E.D. Pa.) (class action related to allegedly defective fuel plenums on certain home standby generators); *Jackson v. Viking Group, Inc.*, No. 8:18-cv-02356-PJM, ECF No. 46 (D. Md.) (class action settlement valued between \$30.45 million and \$50.75 million that provided a free replacement program to replace the allegedly defective sprinklers with non-defective sprinklers, and a claims program to reimburse those who experienced non-fire activations); *Bromley v. SXSX LLC*, No. 1:20-cv-439-LY (W.D. Tex.) (class action settlement related to ticket purchases for festival canceled by COVID-19 pandemic); *Cole v. NIBCO, Inc.*, No. 13-7871, ECF No. 227 (D.N.J.) (\$43.5 million settlement related to allegedly defective plumbing products); *In re Checking Account Overdraft Litig.*, MDL No. 2036 (S.D. Fla.) (\$55 million class action settlement with US Bank and \$14.5 million class action settlement with Comerica); *Traxler v. PPG Indus., Inc.*, No. 1:15-cv-00912-DAP (N.D. Ohio); (\$6.5 million class action settlement on behalf of homeowners who purchased and used defective deck resurfacer);

Klug v. Watts Regulator Co., No. 8:15-cv-61 (D. Neb.) and *Ponzo v. Watts Regulator Co.*, No. 8:16-200 (D. Neb.) (achieved \$14 million joint settlement related to defective toilet connectors and water heater connectors).

BACKGROUND ON THE ACTION

7. Before filing this Action, Plaintiffs' counsel conducted an extensive investigation into the alleged service issues. This investigation included interviewing members of the putative class and reviewing their documents, researching consumer reporting on various websites, reviewing local township meeting minutes related to service issues with AJB, researching potential causes of action, drafting pre-litigation demand letters, and drafting a detailed Complaint and Amended Complaint.

8. Settlement negotiations were protracted and conducted at arm's-length. My firm sent pre-litigation demand letters to AJB on behalf of certain Plaintiffs on October 10, 2023, October 26, 2023, November 3, 2023, and January 5, 2024, to which AJB provided responses on October 18, 2023 and November 6, 2023. The parties began potential settlement negotiations in November of 2023. The parties continued negotiations over the following eight months. The parties participated in dozens of meet and confers and often met every week for months to negotiate the proposed settlement and to discuss the strengths and weaknesses of the case.

9. Throughout negotiations, the parties exchanged confirmatory discovery regarding Plaintiffs' claims and AJB's defenses, which allowed the parties to candidly assess the strengths and weaknesses of the parties' positions. The confirmatory discovery included complex financial data, route routes, and various disclaimers and communications from AJB to the Settlement Class Members.

10. The parties did not discuss attorneys' fees, expenses, or service awards until after they had reached agreement on the relief for the Settlement Class.

LODESTAR

11. As of September 27, 2024, my firm has spent over 308.70 hours working on this case, for a total lodestar amount of \$145,055.00.

Name	Role	Rate	Hours	Lodestar
Joseph G. Sauder	Partner	\$875	19.20	\$16,800.00
Matthew D. Schelkopf	Partner	\$825	22.70	\$18,727.50
Joseph B. Kenney	Partner	\$625	84.10	\$52,562.50
Juliette T. Mogenson	Associate	\$350	162.60	\$53,950.00
Rachel Thomas	Paralegal	\$150	17.3	\$2,595.00
Archita D. Rutkowski	Paralegal	\$150	2.8	\$420.00
<u>Totals</u>			<u>308.70</u>	<u>\$145,055.00</u>

12. The hourly rates of Sauder Schelkopf attorneys ranged from \$350 per hour for associate work, to \$875 per hour for partner work.

13. Due to the amount of privileged information contained in the hourly billing records, those detailed records are not attached here, but can be provided in camera should this Court wish to review them.

14. The work performed in this case was reasonable and necessary to the prosecution and settlement of this case. Class Counsel conducted a significant factual investigation during the prosecution of this action. Because of their comprehensive evaluation of the facts and law, Class Counsel was able to settle this case for a very substantial sum and provide significant benefits to Settlement Class Members. Class Counsel provided Settlement Class Members with substantive and certain relief much sooner than if litigation of this matter had continued.

15. As settlement administration is ongoing, and based on my experience in previous consumer protection class actions, the lodestar figures reported herein will meaningfully increase by the time the settlement is completely and finally administered.

EXPENSES

16. This litigation required Class Counsel to advance costs. Where corporate defendants and their attorneys are well funded, as was true here and in most national consumer protection cases, this type of litigation can prove to be expensive and risky. Because the risk of advancing costs in this type of litigation is significant, doing so is often cost prohibitive to many attorneys.

17. As of September 27, 2024, my firm has expended costs of \$164.00. These expenses are reflected in the books and records of my firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. All of the expenses incurred were reasonable and necessary to the prosecution of this case.

18. Specifically, the costs incurred include: \$138.32 for service of the complaint and \$25.68 in mailing costs.

19. My firm has prosecuted this case on a purely contingent basis since the inception of the case.

20. On behalf of Plaintiffs, I respectfully request that the Court award the requested attorneys' fees and costs.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: October 1, 2024

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf