IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

BARIS ARIN, SKYLAR LESKO, and KIM LONG, individually and on behalf of all others similarly situated;

Plaintiffs,

v.

RIVERSET CREDIT UNION; AND BRIAN HAENZE d/b/a AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION
The Honorable Philip A. Ignelzi

No. GD-18-12065

BRIEF IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Filed on behalf of Plaintiffs

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Plaintiffs Baris Arin, Skylar Lesko, and Kim Long (collectively, "Plaintiffs" or "Settlement Class Representatives") respectfully submit this brief in support of their Unopposed Motion for Final Approval of Class Action Settlement, requesting this Court to enter an order: (1) granting final approval of the proposed Class Action Settlement Agreement and Release ("Settlement" or "SA")[1] between themselves and Riverset Credit Union ("Riverset"); (2) finally certifying a class action for purposes of settlement; and (3) entering final judgment as to the claims raised in this action. For the reasons described below, Plaintiffs respectfully request that their motion be granted.

I. BACKGROUND

A. Factual and Procedural Overview of the Litigation.

Plaintiffs' claims in this putative class action arose out of alleged overcharges for nonconsensual towing services in the City of Pittsburgh, Pennsylvania. It was alleged that between

[1] Attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification, and for Authorization of Class Notice (Doc. 49) as Exhibit A.

June 1, 2017, and November 5, 2018, Defendant Riverset Credit Union ("Riverset") engaged Brian Haenze d/b/a Auto Gallery & Accessories and as Tag Towing and Collision ("Tag Towing") (collectively, "Defendants") to tow unauthorized vehicles parked in the Parking Lot. It was further alleged that when conducting nonconsensual tows from the Parking Lot, Tag Towing, hired by Riverset, charged vehicle owners/operators towing fees above the maximum fee for a nonconsensual tow from a private parking area as then provided by Pittsburgh's City Ordinances, 5 Pittsburgh Code § 525.02 and § 525.05. (AC ¶¶ 35–36, 41).[2] The Amended Complaint alleged that Plaintiffs and Settlement Class Members all had their vehicles towed or hooked up to one of Tag Towing's tow trucks and those vehicles were held (and not released) until they paid a tow fee greater than the maximum set by the City of Pittsburgh. (AC ¶¶ 42–56). At the time Defendants engaged in these nonconsensual tows, the statutory maximum for a tow fee was $135, yet Tag Towing routinely charged approximately $220-$250 per non-consensual tow. (AC ¶¶ 35–36, 42–56).

Plaintiffs initiated this case against Riverset and Tag Towing by way of class action complaint on September 18, 2018. (Doc. 1). Riverset thereafter filed preliminary objections to the complaint, and Plaintiffs filed the operative Amended Complaint on February 5, 2019, alleging violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat § 202-1, *et seq.*, the Pennsylvania Fair Credit Extension Uniformity Act ("PaFCEUA"), 73 Pa. Stat. § 2270.1, *et seq.*, and various common law causes of action. (Doc. 5 & 12). Riverset thereafter filed preliminary objections to the Amended Complaint, which were subsequently fully briefed and argued by the Parties, and later overruled by the Court. (Doc. 18). Riverset answered the Amended Complaint on December 12, 2019, denying Plaintiffs' asserted claims. (Doc. 23).

[2] Citations to "AC" are citations to the Amended Complaint, Doc. 12.

The Parties then engaged in written and oral discovery, and on March 22, 2021, the Court consolidated seven other related cases for discovery purposes in advance of Settlement Class Members filing their Motion for Class Certification. (Doc. 37).

During discovery, the Parties proceeded to engage in a possible resolution of this litigation, and the case was subsequently stayed on March 30, 2022, for the Parties to finalize a settlement agreement. (Doc. 42 & 43).

B. Negotiation of the Proposed Settlement Agreement.

On or about August 2021, counsel for Plaintiffs and Counsel for Riverset commenced settlement discussions. After a series of arms'-length settlement discussions, including multiple offers and counteroffers, the Parties reached an agreement regarding the material terms of a settlement on March 14, 2022, which if approved by the Court, will resolve all claims in the litigation against Riverset. The Parties continued drafting and finalizing the Settlement and proposed notices, reaching a final set of documents on or about December 13, 2022, and the Settlement Agreement was subsequently executed by all Parties. On April 10, 2023, Plaintiffs moved the Court for preliminary approval of the proposed Settlement, which the Court granted on May 1, 2023. (Doc. 48, 48, & 52).

C. Terms of the Proposed Settlement Agreement.

1. The Settlement Class Definition.

For settlement purpose only, Plaintiffs propose final certification of the following Settlement Class pursuant to Pa. R. Civ. P. 1710 and 1714:

> all owners or operators whose passenger cars, light trucks, or motorcycles, and scooters were non-consensually towed from the Parking Lot by Tag Towing within the Relevant Period, and who, as a result were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code§ 525.05.

(SA ¶ 1.30).

2. Settlement Consideration.

Under the Settlement, Riverset will pay up to a total of $90,000.00 in monetary consideration. (SA ¶ 3.1). Riverset's monetary obligations are as follows:

- A payment of $17,000.00 to establish a Settlement Fund for direct monetary relief to Settlement Class Members, from which up to $3,750.00 in Service Awards will be paid to the Settlement Class Representatives, to the extent approved by the Court (SA ¶¶ 1.31, 3.1(ii), & 3.4(i)); and
- A payment of up to $73,000.00 for Settlement Class Counsel's attorneys' fees, expenses, and costs, including the Costs of Settlement Administration, to the extent approved by the Court. (SA ¶ 3.3(i)).

a. Direct Monetary Relief to the Class Members.

Riverset will pay the Settlement Class Payment Amount of $17,000.00 into a Settlement Fund within 30 days of the Effective Date, which will be used by the Settlement Administrator to pay for the following:

- Service Awards up to $1,250.00 per Settlement Class Representative, not to exceed a total of $3,750.00, to the extent approved by the Court; and
- Distribution of all money remaining in the Settlement Fund (after the Service Awards are deducted), in equal *pro rata* shares to all Participating Settlement Class Members.

(SA ¶3.1(iv)).

Claims. Settlement Class Members were permitted to submit attested claims for a *pro rata* share of the remaining Settlement Fund (after Service Awards are deducted) if they were non-consensually towed from the parking lot located at 53 South 10th Street, Pittsburgh, PA 15203 by

Brian Haenze d/b/a Auto Gallery & Accessories and as Tag Towing and Collision between June 1, 2017 and November 5, 2018, and, as a result, were charged and paid a fee in excess of the limits then set by Pittsburgh, PA Code of Ordinances §§ 525.05 and 525.02. (SA ¶ 3.5; SA Ex. 1). Settlement Class Members who filed Approved Claims will be deemed Participating Settlement Class Members and will receive Settlement Checks. (SA ¶¶ 3.5(i) & 1.19). The final amount Participating Settlement Class Members' Settlement Checks will depend on numerous variables, including the total number of Approved Claims.

Payment Timing and Provisions for Residual Funds. After the Effective Date, the Settlement Administrator will process valid claims of Settlement Class Members' and mail their Settlement Checks. (SA ¶ 3.5(b)(3)). Participating Settlement Class Members receiving a Settlement Check will have the duration of the Check Cashing Period to negotiate their Settlement Checks. (SA ¶ 3.5(vi)). The Parties propose that the Check Cashing Period begin the day the Settlement Administrator issues the Settlement Checks and run for the next 120 days. (SA ¶ 1.3). The Settlement Administrator is authorized to reissue an expired, unredeemed, lost, destroyed, or never received Settlement Check upon the request of a Settlement Class Member if said request is made within 180 days from the start of the Check Cashing Period. (SA ¶ 3.5(vi)). If unclaimed or uncashed payments remain in the Settlement Fund 180 days after the Check Cashing Period begins, the parties will instruct the Settlement Administrator to disburse 50% of the residual funds to the Pennsylvania Interest on Lawyers Trust Account Board and to disburse the other 50% of the remaining funds to a *cy pres* recipient, 412 Food Rescue. (SA ¶ 3.6).

b. Service Awards, Attorneys' Fees, Costs, and Expenses, Including Costs of Settlement Administration.

Separate from the monetary consideration directly available to Settlement Class Members through the Settlement Fund, Riverset will also pay up to $73,000.00 in attorneys' fees, costs, and

expenses, including the Cost of Settlement Administration, subject to Court approval. (SA ¶ 3.3(i)). As described above, Riverset will also pay Service Awards up to $1,250.00 per Settlement Class Representative, not to exceed a total of $3,750.00, to the extent approved by the Court. (SA ¶3.1(iv)). The court-approved service awards are to be paid out of the Settlement Fund. (SA ¶3.1(iv)).

Settlement Class Counsel separately submitted requests for approval of the Service Awards, attorneys' fees, costs, and expenses, including Costs of Settlement Administration on July 26, 2023. (Doc. 53 & 56). Riverset shall pay the court-approved attorneys' fees, costs, and expenses, including Costs of Settlement Administration within thirty (30) days of the Effective Date and the Settlement Administrator shall pay the court-approved Service Awards from the Settlement Fund within thirty (30) days of the Effective Date. (SA ¶¶ 3.3 & 3.4).

c. Injunctive Relief.

As part of the Settlement, Riverset also agrees to take reasonable steps to ensure no more than that permitted by the Pittsburgh City Ordinance is charged for a statutory lien for a non-consensual tow from the Parking lot. (SA ¶ 3.7). These reasonable steps include placing signage in the Parking Lot that advises potential parkers that they may be towed if they are not patronizing Riverset's property and further advises that the tow fee charged will not exceed the amount permitted by Pittsburgh, PA Code of Ordinances §§ 525.05 and 525.02. (*Id.*).

d. Releases.

In exchange for the consideration provided by Riverset under the Settlement, the Settlement Class Representatives and their related persons, will fully and finally release Riverset and its related parties and/or entities from, including but not limited to, claims alleged in the Litigation, compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the UTPCPL, 73 P.S. § 201-1 *et seq.*, and all other state and local consumer protection or

fair credit laws and common law theories in contract or tort or arising or accruing during the time Riverset engaged Tag Towing to conduct non-consensual tows from Parking Lot. (SA ¶¶ 4.1 & 1.32).

Likewise, Participating Settlement Class Members, in exchange for the consideration provided by Riverset under the Settlement, will fully and finally release Riverset from claims alleged in the Litigation and for all associated compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the UTPCPL, 73 P.S. § 201-1 *et seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort accruing during the time Riverset engaged Tag Towing to conduct non-consensual tows from Parking Lot and arising from the same facts set forth in the Amended Complaint. (SA ¶¶ 4.3 & 1.2).

The Parties further agree that by entering into this Settlement, Riverset does not release any rights to pursue Tag Towing for a claim of indemnification or contribution related to this Settlement. (SA ¶ 4.4). However, Riverset shall not pursue Tag Towing for such a claim until after it has paid the Total Settlement Consideration pursuant to the Settlement. (*Id.*).

D. Report of the Results of the Notice Program.

Following the Court's issuance of the preliminary approval order and approval of the proposed notice program on May 1, 2023, Settlement Class Counsel provided the partial Class List identifying some potential Settlement Class Members to Analytics Consulting, LLC ("Analytics"). (SA Decl. ¶ 5).[3] The partial Class List included some or all of the following information on potential Settlement Class Members: names, make and model of vehicle, color of vehicle, the vehicle's state license plate (if it the license plate was not marked as Pennsylvania), and the date

[3] References to "SA Decl." are references to the Declaration of Settlement Administrator in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement.

of tow. (SA Decl. ¶ 5). The information contained in the partial Class List permitted Analytics to provide notice to 32 Settlement Class Members. (SA Decl. ¶¶ 6–8). Using information contained in the partial Class List, contracting with one mail append service, and assuming the location of Pittsburgh, Pennsylvania, Analytics determined the mailing address of 32 individuals. (SA Decl. ¶¶ 7–8). Settlement Class Counsel also provided Analytics with the mailing addresses of the three named Plaintiffs. (SA Decl. ¶ 9). As such, Analytics was able to determine the mailing addresses of 35 Settlement Class Members. (SA Decl. ¶ 9).

On June 13, 2023, Analytics mailed via first-class USPS mail 35 copies of the postcard notices to individuals. (SA Decl. ¶ 9). Of those 35 Settlement Class Members, 12 Settlement Notices were returned to Analytics by the U.S. Postal Service without a forwarding address. (SA Decl. ¶ 15). After conducting a skip trace in an attempt to ascertain valid mailing addresses for the 12 affected Settlement Class Members, Analytics was able to identify mailing addresses for 6 of those individuals. (SA Decl. ¶ 15). Analytics also discovered that 2 of those 12 individuals were deceased. (SA Decl. ¶ 15). Analytics subsequently updated the Class List with the new addresses and processed a re-mailing of the Settlement Notice to each of the affected Settlement Class Members. (SA Decl. ¶ 15). On July 10, 2023, Analytics mailed reminder postcards to the 33 Settlement Class Members who had yet to submit a claim before the August 9, 2023 deadline. (SA Decl. ¶ 16).

In addition to the direct notice program described above, Analytics also provided publication notice to Settlement Class Members as well. On June 11, 2023 and June 15, 2023, publication notice consistent with a copy of Exhibit A was published in the Pittsburgh Post-Gazette's print edition and also published in the Pittsburgh Post-Gazette's online edition between June 11 and June 17, 2023. (SA Decl. ¶ 12; SA Decl., Ex. A). Similarly on June 14, 2023,

publication notice consistent with a copy of Exhibit B was published in the Pittsburgh City Paper's print edition and also published on the Pittsburgh City Paper's website between June 14 and June 20, 2023. (SA Decl. ¶ 13; SA Decl., Ex. B).

Finally, in combination with the direct notice and publication notice described above, Analytics established and maintained a settlement website and email address throughout the notice, objection, and opt-out period. (SA Decl. ¶ 11).

As of the August 9, 2023 deadline for Settlement Class Members to submit a claim form, request exclusion from the Settlement, or file an objection to the Settlement, Analytics received 0 timely requests for exclusion. (SA Decl. ¶ 18). Analytics received zero (0) objections. (SA Decl. ¶ 19). Analytics received five (5) Claim Forms from Settlement Class Members. (SA Decl. ¶ 17).

II. ARGUMENT

A. The Requirements for a Class Action are Satisfied and the Court Should Grant Final Class Certification to the Settlement Class.

Under the Pennsylvania Rules of Civil Procedure, the proponent of class certification must demonstrate that the prerequisites under Rule 1702 are met. Pa. R. Civ. P. 1702; *see also see also Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 16 (Pa. 2011).[4] Pursuant to Pa. R. Civ. P. 1710(d), the Court conditionally certified the proposed Settlement Class on May 1, 2023.

In deciding whether to certify a class action, the court is vested with broad discretion. *Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635 (Pa. Super. Ct. 1985) ("Pennsylvania Rules of Civil Procedure . . . grant the court extensive powers to manage the class action."). Decisions in favor of maintaining a class action should be liberally made. *D'Amelio v. Blue Cross of Lehigh Valley*, 500 A.2d 1137, 1141 (Pa. Super. Ct. 1985). As explained below, the Settlement Class

[4] Additionally, Rules 1708 and 1709 specify the factors considered in determining the last two requirements of Rule 1702 (adequacy of representation and fairness and efficiency). *Id.*

satisfies the class certification requirements of the Pennsylvania Rules of Civil Procedure, and this Court should finally certify this class action for settlement purposes.

1. The Settlement Class is so Numerous that Joinder of All Members is Impracticable.

Rule 1702(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Pa. R. Civ. P. 1702(1). While there is no specific minimum number needed for a class to be certified, there is a general presumption that numerosity is satisfied where the potential number of plaintiffs exceeds 40. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). Ultimately, whether a class is sufficiently numerous is based on the circumstances surrounding each individual case. *Janicik v. Prudential Ins. Co. of Am.*, 451 A.2d 451, 456 (Pa. Super. Ct. 1982). And the Court should inquire "whether the number of potential individual plaintiffs would pose a grave imposition on the resources of the Court and an unnecessary drain on the energies and resources of the litigants should such potential plaintiffs sue individually." *Temple Univ. v. Pa. Dept. of Public Welfare*, 374 A.2d 911, 996 (Pa. Commw. Ct. 1977).

Here, the Settlement Class is sufficiently numerous. During discovery, Riverset produced lists of vehicles towed from the Parking Lot by Tag Towing. While the lists are ultimately incomplete, they demonstrate that at least 58 individuals were non-consensually towed from the Parking Lot by Tag Towing.

2. There are Questions of Law or Fact Common to the Settlement Class.

Rule 1702(2) requires common questions of law and fact to exist. Where the "class members' legal grievances arise out of the same practice or course of conduct" undertaken by the defendants, Rule 1702(2) is satisfied. *Janicik*, 451 A.2d at 456; *see also Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 664 (Pa. 2009) (finding commonality where a claim alleged that a company charged more for records than permitted under the Medical Records Act).

Numerous other fee overcharge cases, similar to this one, have had classes certified by this Court. *See Patterson v. Fid. Nat. Title Ins. Co.*, No. GD-03-021176 (Pa. Com. Pl. Ct. Dec. 29, 2015) (Wettick, J.) (Doc. 178); *Farneth v. Wal-mart Stores, Inc.*, No. GD-13-011472 (Pa. Com. Pl. Ct. Mar. 21, 2017) (Colville, J.) (Doc. 52); *Toth v. Nw. Sav. Bank*, No. GD-12-008014, 2013 WL 8538695, at *4 (Pa. Com. Pl. Ct. Mar. 1, 2013) (Wettick, J.).

Here, the Settlement Class meets the commonality standard because the Settlement Class is limited to those individuals who allegedly had their vehicle non-consensually towed from the Parking Lot and were charged more that the statutory maximum fee then set by the Pittsburgh City Ordinance for the return of their vehicle. As such, Plaintiffs' and Settlement Class Members' alleged injuries all stem from the same allegedly unlawful conduct by Riverset. These factual commonalities give rise to common legal issues such as whether Riverset was allegedly a creditor and/or debt collector under the PaFCEUA; whether Riverset allegedly employed Tag Towing to tow Plaintiffs' and the Settlement Class Members' vehicles; whether the state legislature granted Riverset a lien against Plaintiffs and Settlement Class Members for the towing cost; and whether Tag Towing, hired by Riverset, allegedly charged fees and collected sums of money from Settlement Class Members in excess of 5 Pittsburgh Code § 525.02. For these reasons, Rule 1702(2)'s commonality requirement is satisfied.

3. The Claims of the Representative Plaintiffs are Typical of the Claims of the Settlement Class.

Rule 1702(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Pa. R. Civ. P. 1702(3). This requirement is intended to ensure that "the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members." *Samuel-Bassett*, 34 A.3d at 30–31 (quoting *D'Amelio*, 500

A.2d at 1146). The typicality requirement is satisfied where the plaintiffs' and class members' claims arise "out of the same course of conduct and involve the same legal theories." *Samuel-Bassett*, 34 A.3d at 30–31 (citing *Dunn v. Allegheny County Prop. Assessment Appeals & Review,* 794 A.2d 416, 425 (Pa. Commw. Ct. 2002)). This does not mean that the plaintiffs' and class members' claims must be identical; only that the claims are similar enough to determine that the representative party will adequately represent the interests of the class. *Klusman v. Bucks Cty. Court of Common Pleas*, 564 A.2d 526, 531 (Pa. Commw. Ct. 1989), *aff'd*, 574 A.2d 604 (Pa. 1990). A finding that a named plaintiff is atypical must be supported by a clear conflict and be such that the conflict places the Class members' interests in significant jeopardy. *Id.*

Similar to commonality, typicality is established because Plaintiffs' claims arise out of the same practice as the claims of each Settlement Class Member—Tag Towing's, as hired by Riverset, alleged overcharging of vehicle owners/operators for tow fees above the maximum fee for a nonconsensual tow from the Parking Lot as then provided by Pittsburgh's City Ordinances. Because this case is challenging the same alleged conduct which affects both the named Plaintiffs and the Settlement Class, there are no differences between Plaintiffs' overall position on the claims and those of the Settlement Class Members. Thus, typicality is satisfied.

4. The Representative Plaintiffs Will Fairly and Adequately Represent the Interests of the Settlement Class.

Rule 1702(4) requires that the "representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). In turn, Rule 1709 lists three requirements:

> (1) whether the attorney for the representative parties will adequately represent the interests of the class,
> (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
> (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709. The Settlement Class meets these requirements.

a. Counsel for Plaintiffs have Adequately Represented the Interests of the Settlement Class.

Plaintiffs here have retained competent counsel experienced in consumer class action litigation. Unless proven otherwise, courts will generally assume that members of the bar are adequately skilled in the legal profession. *Janicik*, 451 A.2d at 458; *see also Haft v. U.S. Steel Corp.*, 451 A.2d 445, 448 (Pa. Super. Ct. 1982) (explaining that the Court is also permitted to presume counsel's adequacy in the absence of any demonstration to the contrary). "Courts may also infer the attorney's adequacy from the pleadings, briefs, and other material presented to the court, or may determine these warrant further inquiry." *Janicik*, 451 A.2d at 458. Settlement Class Counsel has demonstrated their adequacy and commitment to this litigation through their pursuit of these claims through years-long litigation, culminating in the proposed Settlement that provides substantial relief to members of the Settlement Class. For these reasons, the Court should find this factor is met here.

b. There are no Conflicts of Interest Between Representative Plaintiffs and the Settlement Class.

As with the adequacy of counsel requirement, the Court "'may generally presume that no conflict of interest exists unless otherwise demonstrated.'" *Id.* (quoting *Janicik*, 451 A. 2d at 459). Plaintiffs are not aware of any "hidden collusive circumstances," *Haft*, 451 A.2d at 448, that could pose conflicts of interest between Plaintiffs and members of the Settlement Class. Plaintiffs and the Settlement Class have aligned interests: they were all subject to Tag Towing's, as hired by Riverset, alleged uniform overcharging for non-consensual tows from the Parking Lot. If Plaintiffs succeed in obtaining final approval of the proposed Settlement, the benefits will inure to Plaintiffs

and all Settlement Class Members in a manner calculated to equitably correspond to the amount of monetary harm suffered by each individual.

c. The Interests of the Settlement Class Members Have Not Been Harmed by lack of Adequate Resources.

The requirement that the representative plaintiff demonstrate access to adequate financial resources to ensure that interests of the class are not harmed may be met if "the attorney for the class representatives is ethically advancing costs." *Haft*, 451 A.2d at 448; *see also Janicik*, 451 A.2d at 459–60. That is the case here: Plaintiffs' counsel undertook this litigation pursuant to a standard contingent fee agreement, and up through this point in the litigation, counsel have advanced all costs required to maintain the litigation. Under the terms of the Settlement, Settlement Class Counsel is ethically seeking reimbursement of its costs and payment of its fees as described in Plaintiffs' Application for Attorneys' Fees, Costs, and the Costs of Settlement Administration, and Service Awards to Representative Plaintiffs, which was filed on July 26, 2023, and was published in full on the Settlement Website shortly thereafter. (Doc. 53 & 54).

5. A Class Action is a Fair and Efficient Method of Adjudicating the Controversy.

Rule 1702(5) requires that the court determine whether a class action provides a "fair and efficient method of adjudicating the controversy," with reference to additional factors in Rule 1708. Pa. R. Civ. P. 1702(5). In turn, Rule 1708 lists the following factors for courts to consider:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth in subdivisions (a), (b) and (c).
>
> (a) Where monetary recovery alone is sought, the court shall consider
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;

(3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudication;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

(b) Where equitable or declaratory relief alone is sought, the court shall consider (1) the criteria set forth in subsections (1) through (5) of subdivision (a), and (2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

(c) Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

Pa. R. Civ. P. 1708.

a. Common Questions of Law and Fact Predominate.

The predominance inquiry under Rule 1708(a)(1), while "more demanding" than the commonality standard, requires "merely" that the "common questions of fact and law . . . predominate over individual questions." *Samuel-Bassett*, 34 A.3d at 23. "[A] class consisting of members for whom *most* essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals from whom resolution of such elements does not advance the interests of the entire class." *Id.* Where class members can demonstrate they were subjected to the same harm and they

identify a "common source of liability," individualized issues such as varying amounts of damages will not preclude class certification. *See id.* at 28 (citations and quotation marks omitted).

As explained above, the key issues in this case shared by Plaintiffs and Settlement Class Members involve Tag Towing's, as hired by Riverset, alleged overcharging of vehicle owners/operators for tow fees above the maximum fee for a nonconsensual tow from the Parking Lot as then provided by Pittsburgh's City Ordinances. Questions relating to Tag Towing's, as hired by Riverset, alleged overcharging for tow fees for the return of Plaintiffs' and Settlement Class Members' vehicles would be the primary focus of the continued litigation, and those questions would be resolved with answers uniform to Plaintiffs and the Settlement Class. These legal and factual issues predominate over individualized questions, which would at most involve questions regarding the nature and amount of damages suffered by Plaintiffs and Settlement Class Members stemming from the alleged fee overcharges.

b. The Size of the Settlement Class and Manageability of the Case Weigh in Favor of Class Certification.

Rule 1708(a)(2) requires the Court to consider "the size of the class and the difficulties likely to be encountered in the management of the action as a class action." Pa. R. Civ. P. 1708(a)(2). There are at least 58 Settlement Class Members—and most likely more as the towing lists provided to Riverset by Tag Towing are incomplete—and proceeding as a class action here for settlement purposes is fully manageable. Settlement Class Members have been, in part, identified from the partial Class List, and the Parties have agreed to a settlement structure and claims process designed to permit the Settlement Administrator to make a straightforward and simple determination of the amount each Settlement Class Member will receive under the Settlement. In these circumstances, there are no potential manageability problems weighing against class certification.

c. Prosecution of Separate Individual Actions Creates a Risk of Inconsistent Rulings.

Rule 1708(a)(3) requires the Court to consider whether prosecution of separate individual actions, as opposed to a class action, would create risks of inconsistent or varying rulings which would confront the defendant with incompatible standards of conduct, and whether adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of others or impair their ability to protect their interests. Pa. R. Civ. P. 1708(a)(3). Where, as here, the Plaintiffs and Settlement Class Members share an identical claim stemming from the same conduct on the part of the defendant, a class action "affords the speedier and more comprehensive statewide determination of the claim," and is "the better means to ensure recovery if the claim proves meritorious or to spare [defendant] repetitive piecemeal litigation if it does not." *Janicik*, 451 A.2d at 462–63. Indeed, because Plaintiffs sought to establish Riverset's liability under a theory that Tag Towing's, as hired by Riverset, alleged uniform tow fee overcharging to discharge Riverset's lien on Plaintiffs' and Settlement Class Members' vehicles impacted all members of the Settlement Class, there is a substantial risk that individual actions would lead to varying outcomes. *Id.* at 462 ("Courts may, and often do, differ in resolving similar questions."). Therefore, this factor weighs in favor of class certification.

d. The Extent and Nature of Litigation by Other Settlement Class Members Weighs in Favor of Class Certification and this Court is an Appropriate Forum.

Rule 1708(a)(4) requires the Court to consider "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues." Pa. R. Civ. P. 1708(a)(4). This factor weighs in favor of certification because there are no other actions against Riverset related to its engagement of Tag Towing to conduct non-consensual tows from the

Parking Lot, so there is no risk that class certification would impair the rights of other litigants in other actions.

Additionally, this Court is an appropriate forum because this county is the location of Riverset's principal place of business, where the acts and omissions relevant to the claims took place, and is the place of residence of the named Plaintiffs and likely a substantial number of members of the Settlement Class. As a result, there is "no one common pleas court which would be better to hear the action." *Baldassari*, 808 A.2d at 195 (quoting *Cambanis*, 501 A.3d at 641 n.19).

e. The Amounts at Issue, Complexities of the Issues, and Expenses of Litigation Justify a Class Action Rather Than Individual Actions.

Rule 1708(a)(6) requires the Court to consider whether, in light of the complexity of the issues and expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Relatedly, Rule 1708(a)(7) requires the Court to consider whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Here, both factors support class certification. Plaintiffs and Settlement Class Members were all allegedly charged over $200 for the discharge of the lien and release of their towed vehicles—making the amount of the overcharge for the Settlement Class at least $85. Further, each alleged individual overcharge is relatively modest in size, making it unlikely that the overcharges could be prosecuted or adjudicated economically on an individual basis. As such, were the litigation to continue as individual actions rather than a class action, Settlement Class Members may not have the financial incentive to pursue litigation to vindicate their rights.

Importantly, the Settlement provides a reasonable compromise, that if finally approved, will accomplish a desirable outcome in one proceeding—those individuals who were subject to Riverset's alleged conduct have been provided an opportunity to submit claims to recover for the alleged overcharges without having to bring their own lawsuit. As a result, Settlement Class Members will be entitled to compensation if this action is certified, and the Settlement finally approved. When weighed against the prospects of individual litigation, the proposed Settlement here offers all the potential advantages of class certification—eliminating the possibility of numerous duplicative claims and redundant work for counsel and the courts, while providing a recovery for a large group without requiring each individual Settlement Class Member to shoulder the burden of litigation expenses despite potentially small recovery.

For these reasons, the factors described in Rule 1708(a)(6) & (7) both support certification.

B. The Court Should Finally Approve the Proposed Settlement.

Plaintiffs request that the Court finally approve the proposed Settlement on the grounds that it falls within the range of reasonableness. The reaction of the Settlement Class has been favorable, and approval on these terms will secure an adequate recovery in exchange for the releases of the claims raised in this action.

The approval of a class action comes in two stages. First, the proposal is submitted to the Court for a preliminary fairness evaluation. *Brophy v. Phila. Gas Works and Phila. Facilities Mgmt. Corp.*, 921 A.3d 80, 88 (Pa. Commw. Ct. 2007). If approval is granted, notice is given to the class members and a formal fairness hearing is scheduled where the Court can receive arguments and evidence in support of or in opposition to the proposal. *Id.* The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an "'adequate' (and not necessarily best possible) advantage for the class in exchange for the surrender of the members'

litigation rights." *Dauphin Deposit Bank and Trust Co. v. Hess*, 727 A.2d 1076, 1079 (Pa. 1999). Factors relevant to the ultimate approval of the settlement (after the final fairness hearing) include:

1. the risks of establishing liability and damages;
2. the range of reasonableness of the settlement in light of the best possible recovery;
3. the range of reasonableness of the settlement in light of all the attendant risks of litigation;
4. the complexity, expense and likely duration of the litigation;
5. The State of the Proceedings and the Amount of Discovery Completed;
6. the recommendations of competent counsel; and;
7. the reaction of the class to the settlement.

Id. at 1079–80. A final review of these factors demonstrates that the Settlement is within the range of reasonableness and should be finally approved. As explained above, the Settlement obtains monetary benefits for the Settlement Class of $17,000 plus payment of the Settlement Class's attorneys' fees, costs, and expenses, including the Costs of Settlement Administration, and provides non-monetary benefits in the form of agreed-upon injunctive relief. Such monetary relief is on par with similar towing fee overcharge cases that this Court has granted final approval to. *See Jones et al. v. Alder Highland Associates, LLC et al.*, GD-18-012298 (Pa. Com. Pl. Ct. Aug. 4, 2023) (Ignelzi, J.) (Doc. No. 66); *Horsely v. Shakespeare Street Associates et al.*, GD-18-012027 (Pa. Com. Pl. Ct. Aug. 4, 2023) (Ignelzi, J.) (Doc. No. 61).

1. The Risks of Establishing Liability and Damages.

"In evaluating the likelihood of success, a court should not attempt to resolve unsettled issues or legal principles but should attempt to estimate the reasonable probability of success." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 698 A.2d 1305, 1309 (Pa. Super. Ct. 1997*), aff'd*, 556 727 A.2d 1076 (1999). While Plaintiffs are confident of the strength of their claims, Plaintiffs and Settlement Class Members face significant risks to establishing liability and ultimately recovering. Here, Riverset has raised reasonable defenses and objections to Plaintiffs' claims that Tag Towing, hired by Riverset, overcharged for tow fees, engaged in unfair or deceptive practices, breached a

contract, or was otherwise unjustly enriched. Those defenses include but are not limited to: Plaintiffs' damages should be reduced or barred by their failure to mitigate damages that they suffered; Plaintiffs' damages were caused by intervening and/or superseding acts of another which Riverset had no control over; no acts or omissions attributable to Riverset were substantial or casual factors in Plaintiffs' damages; and Plaintiffs' damages were the result of their own contributory and/or comparative negligence. As such, this factor weighs in favor of final approval.

2. The Range of Reasonableness in Light of the Best Possible Recovery and in Light of the Attendant Risks of Litigation.

The next two factors require the court to analyze the range of reasonableness of the settlement. "In deciding whether the settlement falls within a 'range of reasonableness,'" a court needs "to examine whether the proposed settlement secures an 'adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank*, 727 A.2d at 1079. "In this light, a court need not inquire into whether the 'best possible' recovery has been achieved. Rather, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the court is to decide whether the settlement is reasonable." *Id.*

As explained above, the Settlement and distribution process is structured so that Settlement Class Members who filed an Approved Claim will receive a *pro rata* share of the Settlement Fund. Here, the $17,000 Settlement Fund provided the opportunity to collect a *per capita* recovery for more than 58 Settlement Class Members, excluding the additional settlement benefits provided directly by Riverset in the form of attorneys' fees, cost, and expenses, including the Costs of Settlement Administration. This is far superior to the *per capita* cash recoveries in other approved unfair trade practices settlements. *Oslan v. L. Offs. Of Mitchell N. Kay*, 232 F. Supp. 2d 436, 442 (E.D. Pa. 2002) (approving unfair trade practices settlement where the class award was $20,000

for 3,413 class members); *Saunders v. Berks Credit & Collections, Inc.*, No. CIV. 00-3477, 2002 WL 1497374, at *6 (E.D. Pa. July 11, 2002) (approving unfair trade practices settlements where the class awards were $12,300 and $37,500 for classes that respectively contained 1,474 and 1,579 members). The recovery for Settlement Class Members is also on par with similar tow fee overcharge class settlements this Court has recently granted final approval to. *See Jones*, GD-18-012298 (Doc. No. 66) (approving tow fee overcharge settlement where the class award was $20,000 for 56 class members); *Horsely*, GD-18-012027 (Doc. No. 61) (approving tow fee overcharge settlement where the class award was $53,000 for 509 class members).

This Settlement is particularly strong in light of the risks and delay-related downsides of continued litigation. But as discussed above, the risks of continuing litigation are substantial because Plaintiffs have no assurance of establishing liability or any entitlement to monetary relief. As such, these factors weigh in favor of final approval of the Settlement.

3. The Complexity, Expense, and Likely Duration of the Litigation.

The complexity, expense, and duration factor "captures the probable costs, in both time and money, of continued litigation." *In re Cedant Corp. Litigation*, 264 F.3d 201, 233 (3d Cir. 2001). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 543 (Pa. Com. Pl. Ct. 2002) (citing *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("[C]lass actions have a well deserved reputation as being most complex.")).

By settling this matter now, Settlement Class Counsel and Riverset avoid the further expenses of motions for class certification and summary judgment, preparation for trial, uncertainty of the trial outcome, and likely appeals from the judgment, all while providing substantial and direct benefits to Settlement Class Members now as opposed to some uncertain

amount at some point in the future. Thus, this factor weighs in favor of final approval of the Settlement.

4. The State of the Proceedings and Amount of Discovery Completed.

"The purpose of the state of the proceedings and discovery completion factor is to ascertain the 'degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Milkman*, 61 Pa. D. & C. 4th at 544 (quoting *In Re General Motors Corp. Pick Up Truck Fuel Tank Product Liability Litig.*, 55 F.3d 768, 813 (3d Cir. 1995)). This ensures that "a proposed settlement is the product of informed negotiations" by providing for "an inquiry into the type and amount of discovery the parties have undertaken." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998).

Here, the Parties have been litigating this case for almost five years. During that time, the Parties have briefed and argued multiple rounds of preliminary objections, engaged in extensive discovery, including written discovery as well as multiple depositions of Brian Haenze of Tag Towing. Further, the Parties ultimately reached an agreement after nearly a year of arms'-length negotiations and multiple rounds of offers and counteroffers. As such, the Parties adequately appreciated the merits of the case when reaching the Settlement. Thus, this factor weighs in favor final approval of the Settlement.

5. The Reccomendations of Competent Counsel.

"The opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super. Ct. 1984). Here, Settlement Class Counsel and Riverset's Counsel negotiated this Settlement at arms'-length for nearly a year, and all Settlement Class Counsel is satisfied that this Settlement provides a more than adequate benefit to the Settlement Class and is in the best interest of the Settlement Class as it provided them with an opportunity to

submit claims for monetary relief that would reimburse them for the alleged tow fee overcharges. As such, this factor weighs in favor of final approval.

6. The Reaction of the Settlement Class to the Settlement.

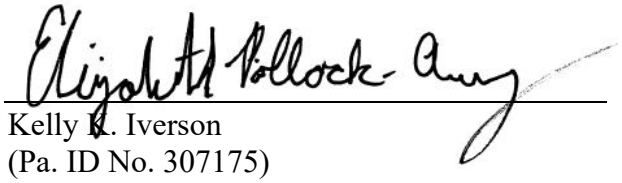
After a robust notice program in which Analytics successfully delivered direct notice to 35 Settlement Class Members and supplemented direct notice with publication notice in both the Pittsburgh Post-Gazette and the Pittsburgh City Paper, the reaction of the Settlement Class has been overwhelmingly favorable. As of today's date, which is 37 days after the claims deadline, objection deadline, and opt out date, 5 Settlement Class Members have filed claims, 0 settlement Class Members filed objections to the Settlement, and 0 individuals have requested exclusion from the Settlement Class. The nonexistence of objections and opt-out requests weigh heavily in favor of final approval. *See High St. Rehab., LLC v. Am. Specialty Health Inc.*, Case No. 2:12-cv-07243-NIQA, 2019 WL 4140784, at *4 (E.D. Pa. Aug. 29, 2019) ("A low number of objectors or opt-outs is persuasive evidence of the proposed settlement's fairness and adequacy.").

III. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that upon completion of the fairness hearing, the Court enter that proposed Final Approval Order and Judgment, which is attached as Exhibit 2 to the Settlement.

Dated: September 15, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, the foregoing was served by email and/or mail on the following:

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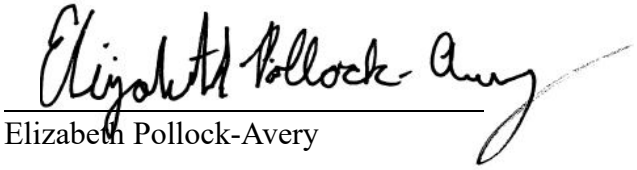

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