

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

ALAN JONES and RICHARD GROSS,
individually and on behalf of all others
similarly situated;

Plaintiffs,

v.

ALDER HIGHLAND ASSOCIATES, LLC;
ALDER HIGHLANDS ASSOCIATES, L.P.;
RICHARD BROURMAN; ARHAUS, LLC;
HOWARD'S TOWING AND RECOVERY,
LLC; and HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION
The Honorable Philip A. Ignelzi

No. GD-18-012298

**BRIEF IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND FOR
AUTHORIZATION OF CLASS
NOTICE**

Filed on behalf of Plaintiffs

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**BRIEF IN SUPPORT OF PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND FOR AUTHORIZATION OF
CLASS NOTICE**

Plaintiffs Alan Jones and Richard Gross respectfully submit this brief in support of their Unopposed Motion for Preliminary Approval of Class Action Settlement and for Authorization of Class Notice, asking this Court for an order granting preliminary approval of the proposed Class Action Settlement Agreement and Release (“Settlement” or “SA”) and authorizing the dissemination of notice to Class Members.¹

I. BACKGROUND

A. Factual and Procedural Overview of the Litigation.

Plaintiffs’ claims in this class action arose out of alleged overcharges for nonconsensual towing services in the City of Pittsburgh, Pennsylvania. It was alleged that between October 9, 2017, and July 7, 2018, Defendant Arhaus, LLC (“Arhaus”) and Defendants Howard’s Towing

¹ The capitalized terms used in Plaintiffs’ Brief shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.

and Recovery, LLC; and Howard Szuminsky (collectively “Howard’s Towing”) (and together with Arhaus, “Defendants”) towed unauthorized vehicles parked in the Parking Lot. (SA ¶ 1.1). It was further alleged, when conducting nonconsensual tows from the Parking Lot, Defendants 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, at 5 Pittsburgh Code § 525.02 and § 525.05. (AC ¶¶ 44-46).² The Amended Complaint alleged that Plaintiffs and Class Members all had their vehicle towed or hooked up to one of Howard’s 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 ¶¶ 53-64). At the time Defendants engaged in these nonconsensual tows, the statutory maximum for a tow fee was \$135 between October 9, 2017, and July 7, 2018, but Howard’s routinely charged approximately \$200 per non-consensual tow. (AC ¶¶ 37-39, 44-46).

Plaintiffs initiated this case against Defendants Alder Highland Associates, L.P., Howard’s Towing and Recovery, LLC, and Howard Szuminsky by way of class action complaint on September 21, 2018. (Doc. 1). Plaintiffs then filed the operative Amended Complaint on February 5, 2019, adding Alder Highlands Associates, LLC, Richard Brouman, and Arhaus as new defendants, 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.11). Defendants thereafter filed preliminary objections which were subsequently fully briefed and argued by the Parties, and later overruled by the Court. (Doc. 15, 19, and 25). Defendants Answered the Amended Complaint on October 23 and November 18, 2019, denying

² Citations to “AC” are citations to the operative Amended Complaint, Doc. 11.

Plaintiffs' asserted claims. (Doc. 26 and 30). On March 18, 2020, all parties to the Litigation stipulated to the dismissal of Alder Highland Associates, LLC, Alder Highlands Associates L.P., and Richard Brouman, based on the information then known to those parties concerning the towing services provided by Howard's Towing, with respect to the Parking Lot. (Doc. 36).

The Parties engaged in extensive discovery related to Class Certification, including written discovery and depositions of representatives of Defendants.

On May 11, 2020, Plaintiffs filed their Motion for Class Certification and on June 16, 2020, by Motion of Defendants, the Court entered an Order permitting the Parties to conduct discovery in advance of the class certification hearing. (Doc. 37 and 39). Following class certification discovery, Plaintiffs later filed their Renewed Motion for Class Certification on December 21, 2020. (Doc. 47). After Plaintiffs' Motion for Class Certification was briefed and argued by the parties, the Court granted Plaintiffs' Motion for Class Certification on June 29, 2021, directing the matter to proceed as a class action. (Doc 50). The Court defined the Class and Subclass as:

Class:

All individuals who were nonconsensually towed from the Parking Lot by Howard's Towing within the applicable statutes of limitation.

Subclass:

All individuals who were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code §§ 525.05 for release or return of any passenger cars, light trucks, motorcycles, and scooters that were nonconsensually towed from the Parking Lot by Howard's Towing within the applicable statutes of limitation.

Id. By the same Order, the Court deemed Plaintiffs proper representatives of the Class and appointed Kelly K. Iverson of Lynch Carpenter, LLP and Joshua Ward of J.P. Ward and Associates, LLC as Class Counsel. *Id.*

The Parties thereafter proceeded to conciliation with this Court and successfully reached a settlement.

B. Negotiation of the Proposed Settlement Agreement.

1. The Parties participated in a conciliation session on February 8, 2022, before the Honorable Philip A. Ignelzi. (SA ¶ 1.11). The session resulted in a settlement in principle, with the Parties reaching an agreement on the core terms of their proposed settlement, which if approved by the Court, will resolve all claims in the litigation. (SA ¶ 1.12). The Parties continued drafting and finalizing the Settlement Agreement and proposed notices, reaching a final set of documents on or about December 28, 2022, and the Settlement Agreement was subsequently fully executed by all Parties.

C. Terms of the Proposed Settlement Agreement.

1. Consideration.

Under the Settlement, Defendants will pay substantial monetary consideration in exchange for the release of Plaintiffs' and Class Members' claims.

Arhaus' monetary obligations are as follows:

- A payment of \$20,000.00 for direct monetary relief to Class Members into a Settlement Fund, from which the Costs of Settlement Administration will also be paid (SA ¶ 3.3);
- Payments of up to \$1,500.00 as Service Award payments to each of the Class Representatives, to the extent approved by the Court (SA ¶ 3.11(1)); and
- A payment of pp to \$52,000.00 for Class Counsel's fees, costs, and expenses, to the extent approved by the Court. (SA ¶ 3.11(2)(a)).

Howard's Towing's monetary obligations are as follows:

- A payment of up to \$5,000.00 for Class Counsel’s fees and costs, to the extent approved by the Court. (SA ¶ 3.11(2)(b)).

a. Direct Monetary Relief to the Class Members.

Defendants will pay \$20,000.00 into a Settlement Fund within 30 days of the Effective Date, which Settlement Fund will be used by the Settlement Administrator to pay direct and automatic monetary distributions to Class Members after the Costs of Settlement Administration are deducted. (SA ¶¶ 3.3 & 3.5).

Automatic Distributions. After the Costs of Settlement Administration are deducted from the Settlement Fund, the Settlement Administrator will distribute the remaining balance of the Settlement Fund to Class Members who have not opted out of the Settlement. (SA ¶ 3.5). Class Members’ automatic distribution will be equal to the actual amount paid by Class Members to Howard’s Towing following the nonconsensual tow of his or her vehicle from the Parking Lot, and if any, additional *pro rata* shares of any remainder of the Settlement Fund. (SA ¶ 3.7; SA, Ex. E). The final amount of these payments will depend on variables such as the number of Class Members who opt out of the Settlement and the amount each Class Member paid to Howard’s Towing, but the Parties estimate that the payments will be roughly \$178 per Class Member.

Payment Timing and Provisions for Residual Funds. The Settlement Administrator will make all payments to Class Members required under the Settlement within 7 calendar days of receipt of the settlement funds. (SA ¶ 3.8). Class Members who have not opted out of the Settlement will have 90 days to cash their Settlement Checks. (*Id.*). If unclaimed and uncashed payments remain in the Settlement Fund 180 days after the initial issuance of Settlement Checks, the Parties will instruct the Settlement Administrator to disburse 50% of the residual funds to the

Pennsylvania Interest on Lawyers Trust Account Board and the other 50% of the residual funds to 412 Food Rescue. (SA ¶ 3.10).

b. Attorneys' Fees, Costs, and Expenses of Litigation.

Separate from the monetary consideration directly available to Class Members through the Settlement Fund, the Defendants will also pay up to \$57,000.00 in attorneys' fees, costs, and expenses, subject to Court-approval. (SA ¶ 3.11(2)). Specifically, Arhaus shall be responsible for up to \$52,00.00 and Howard's Towing shall be responsible for \$5,000.00. (SA ¶¶ 3.11(2)(a) & (b)).

Class Counsel will submit requests for approval of the Service Award and attorneys' fees and expenses in advance of the end of the Opt-Out Deadline. The Defendants shall pay the Court-approved attorneys' fees, costs, and expenses and Service Awards within 30 days of the Effective Date. (SA ¶¶ 3.11(2)(a) & (b)).

c. Non-Monetary Relief.

Under the Settlement, Arhaus agrees take reasonable steps to ensure that any towing company that it engages for towing services for the Parking Lot does not charge more for towing than permitted by the then-applicable City of Pittsburgh ordinances, including not charging any additional fees in conjunction with said towing charges, except as permitted by the ordinance. (SA ¶ 3.14(a)). Arhaus also agrees to provide written consent to any tow that occurs from the Parking Lot by any towing company that it engages for towing services, and further agree that it will retain a copy of said written consent in its files. (SA ¶ 3.14(b)).

d. Releases.

In exchange for the consideration provided by Defendants under the Settlement, the Class Representatives and their related persons, will fully and finally released Defendants and their

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, common law or tort or arising or accruing during the time Arhaus engaged Howard's Towing to conduct nonconsensual tows from Parking Lot. (SA ¶ 8.1).

Likewise, Class Members who do not opt out of the Settlement, in exchange for the consideration provided by Defendants under the Settlement, will fully and finally release Arhaus and Howard's Towing 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 common law accruing during the time Arhaus employed Howard's Towing to conduct non-consensual tows from Parking Lot and arising from the same facts set forth in the Amended Complaint. (SA ¶ 8.2).

Finally, in exchange to end their claims against each other, Arhaus and Howard's Towing will fully and finally release all claims, causes of action, demands, complaints, grievances, damages, debts, suits, and sums of money they have alleged against each other in the Litigation or that may have arisen out of their cross-claim allegations or the Amended Complaint. (SA ¶¶ 2.8 & 8.4).

2. The Proposed Notice and Distribution Program.

Subject to the Court's approval the Parties propose to individually notify each Class Member of the Settlement and their rights under it through email or U.S. mail. (SA ¶ 6.2(a)). Within 10 days of preliminary approval, Class Counsel will provide available contact information

for all Class Members to the Settlement Administrator. (*Id.*). Class Members identified by the Settlement Administrator for whom the Settlement Administrator has an email address will be sent a Settlement Notice in the form attached to the Settlement as Exhibit B via email. (*Id.*; *see also* SA, Ex. B). Class Members for whom the Settlement Administrator cannot determine an email address will receive postcard notice consistent with the Settlement Notice set forth as Exhibit C of the Settlement, which will be sent by U.S. mail. (SA ¶ 6.2(a); *see also* SA Ex. C). The Settlement Administrator will update addresses and re-mail any notices marked as undeliverable. (SA ¶ 6.2(b)). The Settlement Administrator will also create a Settlement Website that contains copies of the detailed Notice (SA, Ex. B) and other relevant case documents and information. (SA ¶¶ 2.33 & 6.2(a)).

The proposed Notice includes a description of the material terms of the Settlement and the forms of relief available to Class Members; Class Members' estimated distribution; a date by which Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Class Members can access the Settlement Agreement and other related documents and information. (*See* SA ¶¶ 6.3 & 6.5; SA, Ex. B & C).

The Notices clearly inform Class Members that they do not have to take any action to receive a Settlement Check as the Settlement provides an automatic distribution to all Class Members who do not exclude themselves from the Settlement. (*See id.*).

Further, the Notices advise Class Members of their rights to exclude themselves or object to the Settlement and provide the deadline to do so, which the Parties propose will be 60 days from the date by which the Settlement Administrator first mails Settlement Notices to Class Members.

(SA ¶¶ 2.20; 2.21 & 2.22; SA Ex. B & C). The Notice explains the full procedures for Class Members to exclude themselves or to object to any aspect of the Settlement. (*See* SA, Ex. B).

Finally, payments to Class Members who do not otherwise exclude themselves or object to the Settlement will be made pursuant to the following formula. First, after subtracting the Costs of Settlement Administration from the Settlement Fund, the Settlement Administrator will review Howard's Towing's Towbook Records related to tows from the Parking Lot to determine the amount each Class Member paid to Howard's Towing following the nonconsensual tow of his or her vehicle from the Parking Lot, if any. (SA ¶ 3.7; SA Ex. E). Upon calculation of the aggregate value of all the payments made to Howard's Towing, the Settlement Administrator will then calculate the *pro rata* share of the remainder of the Settlement Fund owed to each Class Member. (SA ¶ 3.7; SA Ex. E). The Settlement Administrator will then distribute to each Class Member the combined total of his or her payments made to Howard's Towing and his or her *pro rata* share of the remainder of the Settlement Fund. (SA ¶ 3.7; SA Ex. E).

II. ARGUMENT

A. The Court Should Preliminarily Approve the Settlement.

Plaintiffs request that the Court preliminarily approve the proposed Agreement on the grounds that the proposal falls within the range of reasonableness and that approval on these terms will secure an adequate recovery in exchange for the releases of the claims raised in the 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 preliminary review of these factors demonstrates that the Settlement is within the range of reasonableness and should be approved. As explained above, the Settlement will obtain monetary benefits for the Settlement Class of \$20,000.00 plus payment of the Settlement Class’s attorneys’ fees, costs, and expenses, the Class Representatives’ Service Awards, and provides non-monetary benefits in the form of the agreed-upon injunctive relief.

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 Class Members face significant risks to establishing liability and ultimately recovering. Defendants have raised reasonable defenses and objections to Plaintiffs’ claims that Defendants overcharged for tow fees, engaged in unfair or deceptive practices, breached a contract, or were otherwise unjustly enriched. Those defenses include, but are not limited to: Arhaus never asserted

a lien against Plaintiffs' or Class Members' vehicles; Arhaus did not tow or take possession of Plaintiffs' or Class Members' vehicles; Arhaus did not exercise any control over Howard's towing; Plaintiffs and Class Members never paid any money to Arhaus; Plaintiffs were trespassers on the property when they parked their vehicles in the Parking Lot; Plaintiffs did not rely on any of the Defendants' misrepresentations when they paid tow fees in return for the release of their vehicles; and the Defendants did not conspire together to charge excessive fees for non-consensual tows. As such, this factor weighs in favor of preliminary 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 Class Members will automatically receive a direct payment of the amount they paid to Howard's Towing, subject to a potential *pro rata* increase, without having to submit a claim. (SA ¶ 3.6; SA Ex. E). Here, it is estimated that the Settlement Fund will provide a per capita recovery of approximately \$178 for the roughly 56 Class Members, excluding the additional settlement benefits provided directly by the Defendants in the form of settlement administration and notice costs, Service Awards, and attorneys' fees, costs, and expenses. Indeed, the Settlement will likely

pay each Class Member the full amount they were overcharged and more than the maximum amount of statutory damages available under Pennsylvania's Unfair Trade Practices Act, adequately compensating them for the amount Class Members were overcharged for a nonconsensual tow. *See* P.S. § 201-9.2 (a) ("any person . . . may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater."). 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).

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 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, Class Counsel and Defendants avoid the further expenses of motions for summary judgment, preparation for trial, uncertainty of the trial outcome, and likely appeals from the judgment, all while providing a substantial direct benefit to Class Members now as opposed to some uncertain amount at some point in the future. Thus, this factor strongly weighs in favor of 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 four years. During that time, the Parties have engaged in extensive discovery, including written discovery and depositions of Arhaus’ Corporate Representative and Howard Szuminsky. Plaintiffs further moved for and received certification of a class against Defendants. The Parties ultimately reached an agreement after a day-long conciliation session overseen by the Honorable Philip A. Ignelzi. As such, the Parties adequately appreciated the merits of the case when reaching the Settlement. Thus, this factor weighs in favor of settlement.

5. The Recommendations 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, Class Counsel and Defendants’ Counsel have negotiated this Settlement at arms-length for months, and all Class Counsel is satisfied that this Settlement provides a more than adequate benefit to the Class and is in the best interest of the Class as it provides them with monetary relief that will reimburse them for the alleged tow fee overcharges. Thus, this factor weighs in favor of settlement.

6. The Reaction of the Class to the Settlement.

A court will inquire into the reaction of the Settlement Class in its determination of the reasonableness of the settlement. *Dauphin Deposit Bank*, 727 A.2d at 1080. This is a factor more properly addressed at final approval, after notice and an opportunity for the Class to be heard. While notice of settlement has yet to be sent out, Class Counsel is confident there will be few Class Members who will opt out or object to the Settlement as the relief provided is close in amount to both Class Members’ actual damages and the minimum statutory damage amount recoverable under the UTPCPL. As such, this factor weighs in favor of preliminary approval.

In the end, the issues of law and fact have been thoroughly investigated, and continued litigation would further delay relief to the Class and consume substantial resources of both the Parties and the Court. The relief afforded by the Settlement is excellent, when balanced against the risk faced by Plaintiffs on the merits of the case, and the time, risks, and expenses of further litigation. Nothing in the course of the settlement negotiations or the substance of the Settlement itself suggests any grounds to doubt its fairness. To the contrary, the arms-length nature of the negotiations, the participation of experienced lawyers and an able and attentive Court, as well as

the value of aggregate relief support a finding that the Settlement is fair, reasonable, and more than adequate to justify notice to the Class and a hearing on final approval.

B. The Court Should Approve Notice to the Class.

Finally, as previously described, the proposed Notice Program should be approved. Rule 1714(c) provides that after a class has been certified, notice of any proposed settlement “shall be given to all members of the class in such manner as the court may direct.” Pa. R. Civ. P. 1714(c). “Notice in a class suit must present a fair recital of the subject matter and proposed terms and inform the class members of an opportunity to be heard.” *Tesauro v. Quigly Corp.*, 2002 WL 1897538, *3–4 (Pa. Com. Pl. Ct. Aug 14, 2002) (citing *Madway*, 485 A.2d at 811). The Notice Program in this case is robust, designed to individually reach all Class Members and therefore comports with the requirements of Pa. R. Civ. P. 1712 and 1714.

As described above, the Notice will be sent to all Class Members identified in Howard’s Towbook System and the Settlement Administrator is to take reasonable steps to identify Class Members’ current addresses. As such, nearly all Class Members will be provided with direct email or mail notice of the Settlement. Further, the Settlement includes a description of the material terms of the Settlement and the forms of relief available to Class Members; Class Members’ estimated distribution; a date by which Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Class Members can access the Settlement Agreement and other related documents and information. (SA ¶ 6.2; *see also* SA Ex. B & C). This Notice Program meets or exceeds all requirements under Pennsylvania law and satisfies all constitutional considerations of fairness and due process. *See Wong v. First Union Nat. Bank*, 69 Pa. D. & C.4th 516 (Pa. Com. Pl. Ct. 2004) (quoting *Phillips Petroleum Co. v. Shutts*, 712 U.S. 797, 812 (1985)) (“the procedure . . . where

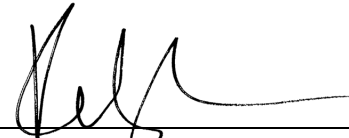
a fully descriptive notice is sent . . . to each class member, with an explanation of the right to ‘opt out’, satisfies due process.”).

III. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court grant their motion and enter the proposed order preliminarily approving the Settlement, authorizing Settlement Notice to be sent to Class Members, and establishing a date for a final fairness hearing.

Dated: February 21, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE


I hereby certify that on February 21, 2023, the foregoing was served by email on the following:

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