

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

MALINDA S. SMIDGA, ASHLEY POPA,
MATILDA DAHLIN, CHRISTINA
CALCAGNO, and BRIAN CALVERT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BATH & BODY WORKS LLC, and
VICTORIA'S SECRET STORES, LLC,

Defendants.

CIVIL DIVISION – CLASS ACTION
The Honorable Philip A. Ignelzi

No. GD-21-009142

**BRIEF IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS TO
REPRESENTATIVE PLAINTIFFS**

Filed on behalf of Plaintiffs

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Plaintiffs Malinda Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvery (collectively "Plaintiffs" or "Class Representatives") respectfully apply for: (1) approval of an award of attorneys' fees and costs to Class Counsel's in the combined amount of \$3,000,000; and (2) approval of service awards of \$5,000 to each of the Class Representatives.

I. BACKGROUND

A. Factual and Procedural Overview of the Litigation.

Plaintiffs' claims in this class action arose out of alleged violations of the Fair and Accurate Credit Transaction Act ("FACTA") arising from transactions made at Defendant's retail locations around the nation. It was alleged that Defendant, in violation of FACTA, printed more than the statutorily allowed number of digits of the Class Members credit cards and debit cards on the receipts for their transactions. (AC ¶ 7). The Amended Complaint alleged that Plaintiffs and Class Members conducted business with the Defendants by buying products at their retail

locations and, after each transaction, the receipts returned to the Class Members with first six digits and the last four digits. (AC ¶ 7).

Plaintiffs Smidga and Popa initiated a putative class action against BBW on August 3, 2021, in the Court of Common Pleas of Allegheny County, Pennsylvania, alleging claims for violations of FACTA. BBW sought to dismiss for lack of standing and failure to state a claim and filed Preliminary Objections, which the Court subsequently overruled. (Docs. 15, 17).

Plaintiff Dahlin initiated a putative class action against BBW on September 8, 2021, in the Superior Court of Santa Barbara, California, alleging claims for violations of FACTA. BBW filed a Demurrer to the *Dahlin* Complaint on November 23, 2021, seeking to dismiss Plaintiff Dahlin's claims for lack of standing and failure to state a claim. On July 11, 2022, the Superior Court overruled BBW's Demurrer. BBW filed a Renewed Demurrer or Motion to Reconsider ("Renewed Demurrer") on December 12, 2022, based on the California Court of Appeal for the Fifth District's decision in *Limon v. Circle K Stores Inc.*, 300 Cal. Rptr. 3d 572 (Cal. App. Ct. 2022), which was fully briefed. The parties agreed to stay any ruling on Plaintiff Dahlin's class certification motion or on BBW's renewed demurrer in order to mediate.

Plaintiff Calcagno initiated a putative class action against VS on September 20, 2022, in the Superior Court of California, County of San Diego, alleging claims for violations of FACTA. On December 21, 2022, VS filed a Motion to Stay or Dismiss Case based on the broader action filed in Pennsylvania. The parties agreed to stay the action pending mediation.

Plaintiff Calvert initiated a putative class action against VS on September 20, 2022, in the Court of Common Pleas of Allegheny County, Pennsylvania, alleging claims for violations of FACTA. The parties agreed to a stay of the *Calvert* action pending the Pennsylvania Superior Court's decision in *Country Fair/Kirkland*, in light of the stay of the *Smidga* action.

In the litigation of each of the Named Actions above, the parties conducted substantial formal discovery and informal investigation in connection with the claims asserted in the Named Actions. The parties also engaged in substantial motions' practice.

On June 6, 2022, Plaintiffs Smidga and Popa filed a Motion for Class Certification, which was fully briefed by the parties. (Doc. 27). On June 22, 2022, BBW filed a Motion to Stay Proceedings and Hold Case in Abeyance based on *Budai et al. v. Kirkland Inc.*, 461 WDA 2022 and *Gennock v. Country Fair*, 462 WDA 2022. (Doc. 30). On November 28, 2022, Plaintiff Dahlin filed a Motion for Class Certification, which was fully briefed. Moreover, Plaintiff retained experts to address certain of the class certification issues raised by Defendants in their opposition.

Plaintiffs Smidga, Popa, and Dahlin engaged in day-long mediation session with BBW before the Honorable Morton Denlow (Ret.) on April 25, 2022. That mediation was ultimately unsuccessful. On March 8, 2023, the Parties engaged in another mediation session before the Honorable Diane M. Welsh (Ret.), which resulted in an agreement in principle to resolve this action and the other actions brought against Defendants. (collectively, the "Named Actions").

The parties executed a proposed Settlement Agreement Settlement Agreement ("Settlement" or "SA"), a copy of which is attached to Plaintiffs' Motion for Preliminary Approval (Doc. 46 & 47) as Exhibit A. On March 24, 2024, Plaintiffs filed a Motion for Preliminary Approval and a Brief in Support of that Motion. (Doc. 46 & 47). On April 3, 2024, Plaintiffs filed an unopposed motion to file an amended complaint to include the parties in the other Named Actions. (Doc. 49). On April 9, 2024, this Court granted Preliminary Approval and Provisional Class Certification of the Class Settlement. (Doc. 51). The Court defined the class as:

[A] class of all consumers who made a purchase at a Victoria's Secret, PINK, or Bath & Body Works store during the Relevant Time Period and were provided a

printed receipt at the point of sale that displayed more than the last five digits of their credit card or debit card number.

Id. By the same Order, the Court deemed Plaintiffs proper representatives of the Class and conditionally appointed the law firm of Lynch Carpenter, LLP as Settlement Class Counsel. *Id.*

B. Pertinent Terms of the Settlement.

1. Consideration.

Under the Settlement, Defendants will provide monetary relief in exchange for a release from the Settlement Class's claims. Defendants' obligations are as follows, to the extent approved by the Court:

- Monetary relief of up to \$15,000,000 via the issuance of Vouchers¹ with a value of either \$5 or \$15 to Settlement Class Members, usable for up to six months following the Activation Date (SA § II.A);
- Separate and apart from the monetary consideration directly available to Settlement Class Members, payments of \$5,000 as Service Awards to each Named Plaintiff (SA § IV.B.1);
- Separate and apart from the monetary consideration directly available to Settlement Class Members, up to \$3,000,000 as Attorneys' Fees and Costs (SA § IV.A.1); and
- Separate and apart from the monetary consideration directly available to Settlement Class Members, all costs of Settlement Administration and Notice (SA § II.D).

Specifically, Settlement Class Members that make a claim will receive a Voucher up to \$15 in value,² and any BBW Loyalty Members or VS Cardholders that do not make a claim will automatically receive a Voucher worth up to \$5 in value. (SA § II.A). Defendants will issue up to

¹ The limitations on use of the Vouchers are set forth in Section II.A.2 of the SA.

² Settlement Class Members may make one claim per Defendant, so long as they made a purchase at both a BBW store and a VS store during the Relevant Time Period. Otherwise, they are eligible to make a claim for a Voucher based on the brand at which they had a qualifying purchase. (SA § II.A.1.b).

\$15,000,000 in Vouchers in connection with the Settlement. (SA § II.A). If the Vouchers exceed \$15,000,000, the Vouchers will be reduced *pro rata*. (SA § II.A). There are approximately 1.8 million BBW Loyalty Members and VS Cardholders who are part of the Settlement Class—meaning Defendants will be required to distribute at least \$9,000,000 in benefits to Settlement Class Members.

2. Service Awards and Attorneys' Fees, Costs and Expenses of Litigation.

Separate and apart from the monetary consideration to fund the Vouchers for the Settlement Class, Defendants have agreed to pay up to \$3,000,000.00 in attorneys' fees, costs, and expenses, subject to Court-approval. SA ¶ VI(A)(1). Separate and apart from the monetary consideration, which is to fund the Vouchers, Defendants have also agreed to pay Service Awards of up to \$5,000 to each Class Representative, subject to Court-approval. SA ¶ VI(B)(1).

II. ARGUMENT

A. Legal Standard.

The court may fix the amount of counsel fees in all class cases where authorized under applicable law and, in doing, so shall consider the following factors:

- (1) the time and effort reasonably expended by the attorney in the litigation;
- (2) the quality of the services rendered;
- (3) the results achieved and benefits conferred upon the class or upon the public;
- (4) the magnitude, complexity and uniqueness of the litigation; and
- (5) whether the receipt of a fee was contingent on success.

Pa. R. Civ. P. 1717.

Where litigation results in a substantial benefit to a group of individuals in the same manner as the plaintiff—such as a class settlement—the courts may award counsel fees under the

common fund doctrine based on the principle that persons who obtained the benefit of a lawsuit should share in the costs of recovery, including any attorneys' fees. *See Couy v. Nardei Enterprises*, 587 A.2d 345, 346 (Pa. Super. Ct. 1991); *see also* 42 Pa. Stat. and Cons. Stat. Ann. § 2503 (authorizing the award of 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.”); *Gregory v. Harleysville Mut. Ins. Co.*, 542 A.2d 133, 136 (Pa. Super. Ct. 1988) (“where a plaintiff creates a fund from which one or more other parties benefit, those parties should contribute proportionally to the expenses of creating the fund”).

In class actions, “courts are permitted to award a reasonable fee pursuant to a lodestar, a percentage of the common fund, or, if necessary, a hybrid approach.” *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 979 (Pa. Super. Ct. 2011), *aff'd*, 106 A.3d 656 (Pa. 2014). The percentage-of-recovery method, which considers whether the fee requested is an appropriate percentage of the total recovery achieved, is favored in common fund or constructive common fund cases. *Id.*; *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001) (fee awards as a percentage of the recovery allows courts to award fees in a manner that rewards counsel for successes and penalizes counsel for failures); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (explaining that the percentage-of-recovery method is appropriate in constructive common fund cases). Additionally, it is “sensible for a court to use a second method of fee approval to cross check its conclusion under the first method.” *Erie County Retirees Ass’n v. County of Erie, Pennsylvania*, 192 F. Supp. 2d 369, 377 (W.D. Pa. 2002). However, a lodestar cross-check of a percentage award “need entail neither mathematical precision nor bean-counting.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005),

as amended (Feb. 25, 2005) (explaining that because the purpose of the lodestar cross-check is merely to confirm that the multiplier between the methods is reasonable, and it may be performed on summary records).

B. Class Counsel’s Fee Request is Reasonable Under the Percent-of-Recovery Method.

“Under the percentage of recovery method, a court must first make a reasonable estimate the value of recovery made, *including proposed fees*, from which it can determine the relationship between the recovery and the attorneys’ fees.” *Milkman v. Am. Travellers Life Ins. Co.*, No. 011925, 2002 WL 778272, at *28 (Pa. Com. Pl. Apr. 1, 2002) (emphasis added). Where the fund and fees are paid separately, but come from the same source—here, Defendants—then “the arrangement ‘is, for practical purposes, a constructive common fund,’ and courts may still apply the percent-of-fund analysis in calculating attorney’s fees.” *Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App’x 191, 197 (3d Cir. 2014) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820–21 (3d Cir.1995)); *In re Philips Recalled CPAP, Bi-Level PAP, & Mech. Ventilator Prod. Litig.*, No. MC 21-1230, 2024 WL 1810190, at *10 (W.D. Pa. Apr. 25, 2024) (constructive common fund was determined by adding the monetary relief made available to the class, to the amounts paid separately by Defendants for the claim administrator and the attorneys’ fees and costs; the total requested fees was then divided by the constructive common fund total to determine the percent-of-recovery method).

Here, Defendants agreed to make a minimum of \$9,063,280³ and a maximum of \$15,000,000 in relief available to the class, Defendants agreed to also pay the costs of notice and

³ This is the total value of the guaranteed minimum consideration that will be paid to all BBW Loyalty Members or VS Cardholders based on the agreement that, even if the 1,812,656 BBW Loyalty Members and VS Cardholders class members do not make claims, they will automatically receive a Voucher worth up to \$5 in value. (SA § II.A). To date, some of those

administration, attorneys' fees and expenses, and service awards in addition to the class relief. KCC provided an estimated total for claims administration and cost of notice in this case of \$306,177. Based on the total amounts Defendants have agreed to pay under the Settlement Agreement, the constructive common fund ranges from \$12,394,457⁴ to \$18,331,177.⁵

As discussed in more detail below, counsel's total lodestar for the four Named Actions that have been consolidated herein is \$1,026,930 and counsel's total expenses for the cases is \$40,814.83.

Under the percent of recovery methodology, Counsel's request for fees in the amount of \$2,959,185.17,⁶ equals a mere 16.14% of the \$18,331,177 in total relief made available to the class.⁷ However, even if this Court looks only to the relief actually provided to the class, the request for fees is only 23.88% of the *minimum* relief guaranteed to the class under the Settlement Agreement.⁸

BBW Loyalty Members or VS Cardholders have already made a claim to receive the higher \$15 Voucher available by making a claim.

⁴ The minimum constructive common fund was determined by adding the minimum class consideration (\$9,063,280) *plus* the total fees and expenses sought herein (\$3,000,000) *plus* the estimated cost of administration and notice (\$306,177) *plus* the total service awards sought herein (\$25,000).

⁵ The maximum constructive common fund was determined by adding the maximum class consideration (\$15,000,000) *plus* the total fees and expenses sought herein (\$3,000,000) *plus* the estimated cost of administration and notice (\$306,177) *plus* the total service awards sought herein (\$25,000).

⁶ Based on counsel's total expenses, the breakdown of the \$3,000,000 is \$40,814.83 for reimbursement of expenses and the balance of \$2,959,185.17 in fees.

⁷ Indeed, if the Court were to only consider the guaranteed minimum common fund relief to the class (\$9,063,280), rather than the constructive common fund, the fees—just shy of 1/3rd of that fund—are reasonable under Pennsylvania law. *See, e.g.,*

⁸ Based on the most recent claims report, the relief paid to the class will be higher than the minimum guaranteed consideration. More details on the claims to be paid will be available at the Final Approval hearing after the claims period and claim validation process are complete.

These percentages are well within the range of percentage-of-recovery fees awarded in Pennsylvania state and federal courts. *See, e.g., Dittman v. UPMC*, GD-14-00285 (awarding fees in the amount of 28.4% of the common fund); *Farneth v. Walmart Stores, Inc.*, GD-13-11472 (awarding class counsel 35% of the monetary benefits made available to the class); *Erie County Retirees Ass’n*, 192 F. Supp. 2d at 381 (“Fee awards ranging from 30-43% have been awarded in cases with funds ranging from \$400,000 to \$6.5 million, funds which are comparatively smaller than many”); *Leap v. Yoshida*, No. 14-3650, 2016 WL 1730693, at *10 (E.D. Pa. May 2, 2016) (“[F]ee awards in common fund cases within this district generally range between 19% and 45% of the fund. Consequently, the 30% requested by Class Counsel in this case is reasonable. . . .”) (internal citation omitted); *In re Suboxone*, 2023 WL 8437034, at *16 (E.D. Pa. Dec. 4, 2023) (“While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund”); *Altnor v. Preferred Freezer Servs. Inc.*, No. 14-7043 2016 WL 3878161, at *16 (E.D. Pa. July 18, 2016) (one-third); *Graudins v. Kop Kilt, LLC*, CV 14-2589, 2017 WL 736684, at *11 (E.D. Pa. Feb. 24, 2017) (one-third); *see also Milkman*, 2002 WL 778272 at *28 (citing Herbert B. Newberg and Albert Conte, *Newberg on Class Actions* §14.03 (3d ed. 1992) (“No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund.”)).

Here, Plaintiffs’ request for a fee award of between 16.14%–23.88% of the constructive common fund is well within the range of reasonableness.

C. Class Counsel's Fee Request is Also Reasonable Under a Lodestar Crosscheck.

The reasonableness of Class Counsel's fee request is further demonstrated by a comparison to the value of the time counsel spent on the litigation, known as the lodestar cross-check. "The lodestar cross-check does not trump the primary reliance on the percentage of common fund method." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3rd Cir. 2005). Rather, the purpose of a lodestar crosscheck is to determine whether a proposed fee award is within some reasonable multiple of the lodestar. *Id.* at 309. "The lodestar cross-check . . . should not displace a district court's primary reliance on the percentage-of-recovery method." *Frederick v. Range Res.-Appalachia, LLC*, No. 08-288, 2011 WL 1045665, at *13 (W.D. Pa. March 17, 2011) (quoting *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 165 (3d Cir. 2006)). Here, Plaintiffs' counsel spent 1,222.2 hours on the litigation, worth \$1,026,930 when multiplied by counsel's standard hourly rates for complex consumer cases. (Iverson Decl., ¶ 4). When the lodestar amount is measured against the total fee request here, the ratio yields a multiplier of less than 2.88. "Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 14.03 (3d ed. 1992); *Jackson v. Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 716-717 (W.D. Pa. 2015) (noting that a lodestar multiplier of 2.83 fell "within the acceptable range identified" by the Third Circuit); *Braun*, 24 A.3 at 979-80 (lodestar "enhancement in typical contingency cases ranging between 20-35% of the lodestar.") (internal citations omitted); *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("Multipliers ranging from one to four are frequently awarded in common fund cases.").

Based on the foregoing, the lodestar crosscheck supports Plaintiffs' fee request.

D. Class Counsel's Fee Request is Reasonable In Light of the Factors to Be Considered Under Rule 1717.

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

Class Counsel has expended considerable time and expense prosecuting this litigation. Since this litigation began in 2021, Class Counsel, and the attorneys working for Class Counsel at their respective law firms, worked at least 1222.22 hours. (Iverson Decl., ¶ 4). Although Class Counsel consistently sought to keep costs and fees to a minimum, the action required a significant amount of time and work, including on unique and complex legal issues, including those related to standing and Defendants' constitutional claims. Additionally, substantial time was expended on discovery and class certification briefing in these cases.

Throughout this litigation, Plaintiffs' counsel engaged in: consulting with the representative plaintiffs, investigating the claims and editing the initial complaints; responding to preliminary objections and appearing at oral argument before the trial court; investigating Defendants' alleged counterclaims; drafting and serving discovery requests on Defendants; drafting and serving discovery responses on behalf of Plaintiffs; deposing Defendants' corporate representatives; defending Plaintiffs' deposition; reviewing documents produced by Defendants; drafting and moving for class certification; engaging and working with experts on class certification issues; mediating, negotiating, drafting, and finalizing the proposed class action settlement agreement and release and related exhibits; soliciting bids from settlement administration firms and working with the chosen administrator (KCC) to implement the notice program; and drafting and filing the motion for preliminary approval. Class counsel will also draft and file their motion for final approval at the appropriate time.

Based upon the above, the time and effort Class Counsel have expended weigh in favor of the requested fee.

2. The Quality of the Services Class Counsel Rendered.

Class Counsel in this case have extensive experience in class action litigation. (*See* Iverson Decl., ¶ 6; Exhibit A (Lynch Carpenter Firm Resume). To determine the quality of services rendered, courts are to consider: (1) the results obtained for the plaintiff in comparison with the best possible recovery; (2) the overall benefit conferred on the plaintiff; and (3) counsel's professional methods. *Hooven v. Exxon Mobil Corp.*, CIV.A. 00-5071, 2005 WL 417416, at *3 (E.D. Pa. Feb. 14, 2005), *vacated on other grounds*, 465 F.3d 566 (3d Cir. 2006). The results obtained by Class Counsel substantially benefited the Class in that a considerable financial recovery was obtained that will compensate all Class Members by distributing Vouchers to all qualifying Class Members. The professional methods used by Class Counsel are consistent with best practices and reflect Class Counsel's extensive experience. Indeed, the issues that arose in this action required counsel to be skilled in complex litigation. As such, this factor supports the reasonableness of Class Counsel's fee request.

3. The Results Achieved and Benefits Conferred Upon the Class or the Public.

The Class in this action is receiving substantial monetary compensation that reimburses them for the FACTA violations perpetuated by Defendants, a recovery they would not have obtained absent this action. Here, it is estimated that the Settlement Fund will provide a Voucher for up to either \$15 or \$5, depending on the circumstances of each transaction, for the Class Members. This is comparable to relief granted in other FACTA violation cases in Pennsylvania Courts, as well as Federal Courts applying Pennsylvania Law. *Smith v. Grayling Corp.*, No. 07-cv-1905, 2008 WL 3861286, at *1 (E.D. Pa. Aug. 20, 2008) (approving a settlement which

provided \$7.00 vouchers for Class Members); *Ehrheart v. Pfaltzgraff Factory Stores, Inc.*, No. 07-cv-1433 (E.D. Pa. June 5, 2024) (approving a settlement providing for an item worth \$8.00 or a coupon for \$10.00 off a \$25.00 purchase); *Curiale v. Hershey Entm't & Resorts Co.*, No. 07-cv-0651 (M.D. Pa. May 21, 2008) (approving a settlement providing for a voucher worth \$8.33 or a coupon for \$8.00); *Curiale v. Lenox Group, Inc.*, Civ. A. No. 07-1432, 2008 WL 4899474, at *2 (E.D. Pa. Nov. 14, 2008) (approving a settlement which provided: (1) a \$5.00 coupon, (2) a free bud vase with a retail value of \$10.00, or (3) a coupon for \$25.00 of a purchase of \$150.00 or more).

4. The Magnitude, Complexity, and Uniqueness of the Litigation.

This case has been pending for approximately four years and has helped eliminate a range of FACTA violations across the country—namely the practice printing more than the statutorily allowed number of digits of a consumer's credit or debit card on their transaction's receipt. Given the relatively small amount each Class Member would be entitled to for their individual FACTA violations, it is unlikely that the violations could or would have been prosecuted or adjudicated economically on an individual basis, making it very likely the practices alleged in this action would have continued indefinitely had Class Counsel not being willing to prosecute this action. Further, without Class Counsel's diligent litigation efforts, Class Members would be without any financial recovery at all. Indeed, after the class settlement was reached, the Superior Court of Pennsylvania released an adverse standing decision in a FACTA case, making it likely that no Class Member could have recovered from Defendants absent this Settlement. *See Budai v. Country Fair, Inc.*, 2023 PA Super 85, 296 A.3d 20, 24, *appeal denied*, 307 A.3d 1198 (Pa. 2023).

5. The Receipt of a Fee was Contingent on Success.

The receipt of a fee in this litigation was entirely contingent on the success of the litigation. Given the reasonable defenses Defendants raised to Plaintiffs' claims, there was a significant risk that Class Counsel would recover no fee if Plaintiffs lost on the merits, either at summary judgment, at trial, or on any potential appeal. Indeed, Defendants raised numerous defenses that include but are not limited to: Plaintiffs had no standing under which to bring their claims, that Plaintiffs failed to state a legally sufficient claim, that certain Class Members might have been bound by arbitration agreements, that there was no private right of action under FACTA, and constitutional claims related to FACTA. Failing to overcome even one of these challenges, the result would have been no compensation for the Class. Additionally, Class Counsel expended over \$40,000 in expenses to litigate this case. Accordingly, this factor weighs in favor of Class Counsel's fee request.

III. SERVICE AWARDS TO THE CLASS REPRESENTATIVES ARE REASONABLE.

Class Counsel seeks modest service awards (also referred to as incentive awards) for the Class Representatives. "Incentive awards are not uncommon in class action litigation." *Alexander v. Coast Pro. Inc.*, No. CV 12-1461, 2016 WL 861329, at *8 (E.D. Pa. Mar. 7, 2016) (citation omitted). "The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (citations and quotations omitted). Indeed, "[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Vasco v. Power Home Remodeling Grp. LLC*, No. CV 15-4623, 2016 WL 5930876, at *14 (E.D. Pa. Oct.

12, 2016); *see also Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 575 (Pa. Com. Pl. Ct. 2002).

The requested service awards of \$5,000 for each of the Class Representatives is well within the range found reasonable by courts within this state and corresponding federal jurisdiction. *See Rodriguez v. Riley*, No. 190200198, 2020 WL 13687608, at *2 (Pa. Com. Pl. Ct. Feb. 10, 2020) (approving \$5,000 service award); *In re SmithKline Beckman Corp. Sec. Litig.*, 751 F.Supp. 525 (E.D. Pa. 1990) (approving incentive awards of \$5,000 for class representatives).

Here, the excellent result in this action could not have been achieved without the substantial efforts of Plaintiffs. Plaintiffs assisted Class Counsel with the prosecution of their claims and those claims of the Class by retaining counsel, agreeing to serve as representative plaintiffs, verifying the complaints, communicating with Class Counsel when required regarding various steps during litigation, participating in discovery, sitting for depositions, and reviewing and signing the proposed Settlement. They devoted time and effort to the action, and as a result of their efforts, a substantial benefit was conferred to the Class.

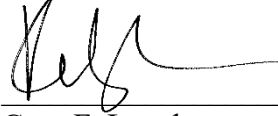
Accordingly, and in recognition of the substantial benefit Plaintiffs conferred on the Class and their efforts generally, modest service awards of \$5,000 to each of the Class Representatives is entirely appropriate.

IV. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that this Court grant their motion (in conjunction with final approval of the Settlement) and enter Plaintiffs' proposed final approval order awarding a combined total of \$3,000,000.00 in attorneys' fees and reimbursement of litigation expenses, and approving Service Awards of \$5,000 to each of the five named Class Representatives.

Dated: June 17, 2024

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2024, the foregoing was served by email on the following:

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