UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

AMAZING FISHSTORE LLC d/b/a KRMS FARMS and WILDER MEDIA CT, on behalf of themselves and all others similarly situated, Plaintiffs, v. TD BANK, N.A., Defendant.	No. 1:22-CV-00958-KMW-AMD

MOTION FOR FEES, EXPENSES, AND SERVICE AWARDS

Class Representatives Amazing Fishstore LLC d/b/a KRMS Farms and Wilder Media CT ("Class Representatives") hereby submit this request for fees, expenses, and service awards pursuant to the Court's Order Granting Preliminary Approval (ECF No. 94) ("PA Order") and Federal Rule of Civil Procedure 23(b)(3) and (e).

INTRODUCTION

As explained in Plaintiffs' Motion for Preliminary Approval, this robust settlement provides a total of $15.5 million in immediate relief to Class Members, plus an agreement by TD to stop assessing the "APPSN" fees and the NSF fees at the center of this lawsuit – an important change that will save Class Members and other business account holders tens of millions of dollars in the next several years. *See* Joint Declaration of E. Adam Webb and Jeff Kaliel, ¶ 11 ("Joint Decl.") (Exhibit 1 hereto). This relief was won with the hard work, creativity, and efficient prosecution of this Action by Class Counsel. Court-appointed Class Counsel Webb, Klase & Lemond, LLC and Kaliel Gold, PLLC (collectively, "Class Counsel"), on behalf of the Class and the Class Representatives, now respectfully move this Court for an award of attorneys'

fees of $4,650,000.00, reimbursement of the $45,884.25 in out-of-pocket litigation costs and expenses that Plaintiffs' counsel incurred in prosecuting this action, and Service Awards for the Class Representatives in the total amount of $10,000.

The attorneys' fees sought amount to thirty percent (30%) of the Value of the Settlement. *See* Joint Decl., ¶ 22. Since even before the Complaint was filed, Class Counsel has been working diligently on this case, devoting extensive resources to this action. *See* ECF No. 89-2, ¶¶ 5-27. Class Counsel worked to incorporate and consolidate another pending action into this matter, ensuring efficiency for the Court system and the parties. Class Counsel then proceeded to prevail on a motion to dismiss after extensive oral argument, then vigorously pursue discovery needed to certify a class. Only after this significant work had been done – and on the verge of numerous depositions leading into a motion for class certification – did the parties settle. Further, that settlement was the result of months-long negotiations supervised by Magistrate Judge Joel Schneider (ret.) of Montgomery McCracken Walker & Rhoads LLP. In light of the excellent results achieved and significant work performed, the requested fee is fair and reasonable. To date, not a single Class Member has objected to this fee and expense request. *See* Declaration of Edward Dattilo, ¶ 24 ("Notice Decl.") (Exhibit 2 hereto).

Class Counsel have spent a total of $45,884.25 in reimbursable litigation-related costs and expenses. *See* Joint Decl., ¶ 35. This amount includes Class Counsel's total out-of-pocket expenses, including, *inter alia*, case fees, legal research expenses, expert fees, and travel expenses. *Id.* at ¶ 36. Class Counsel request the Court order reimbursement of this amount.

Finally, Class Counsel seeks Service Awards on behalf of the Class Representatives in the amount of $5,000 each, for a total of $10,000 to be paid in accordance with the Settlement Agreement. *Id.* at ¶ 41.

Class Counsel's efforts to date have been without compensation of any kind, and the fee has been wholly contingent upon the result achieved. *Id.* at ¶ 26. For the reasons set forth below, Class Counsel respectfully submit that the requested fees and Service Awards, and the cost and expense reimbursements, are fair and reasonable under the applicable legal standards, and, in light of the contingency risk undertaken and the result achieved, should be awarded by the Court.

CASE HISTORY

On February 23, 2022, after an extensive investigation and performance of legal research, Plaintiffs Amazing Fishstore and Wilder Media filed a putative Class Action Complaint in this Court seeking monetary damages, restitution, and injunctive and declaratory relief from Defendant and alleging that Defendant improperly assessed and collected certain Overdraft Fees and NSF Fees not authorized by Defendant's business account agreement ("Complaint"). *See* ECF No. 1. TD Bank filed a motion to dismiss on April 6, 2022. *See* ECF No. 22. On May 2, 2022, Plaintiffs filed their opposition to Defendant's motion. *See* ECF No. 28. On May 9, 2022, TD Bank filed its reply brief. *See* ECF No. 31. Plaintiffs also filed several notices of subsequent authority with the Court in opposition to TD Bank's request for dismissal. *See* ECF Nos. 32, 35, 37, 38, 41.

On December 16, 2022, the Court held oral argument on Defendant's motion to dismiss. *See* ECF No. 55. The Court issued a written Order (ECF No. 56) dismissing Plaintiffs' claim for breach of the covenant of good faith and fair dealing, but denying TD Bank's motion to dismiss in all other respects. *Id.* at 1. On January 13, 2023, TD Bank filed its Answer. *See* ECF No. 59.

On March 9, 2023, the Court conducted an initial scheduling conference and issued its Scheduling Order. *See* ECF Nos. 64, 65. The Court also consolidated this matter, for discovery purposes only, with *Burns v. TD Bank, N.A.*, Case No. 1:21-cv-18194-KMW-AMD (D.N.J.).

Thereafter, the Parties negotiated a confidentiality order (ECF No. 68) and an ESI protocol. *See* ECF No. 89-2, ¶ 15. Plaintiffs reviewed tens of thousands of pages of documents produced by TD, identifying important documents and documents necessary for planned depositions. *See* Joint Decl., ¶ 4. In addition, TD produced a huge amount of transactional data that needed to be processed and analyzed by Counsel and its expert to identify damages and class members. *Id*. Plaintiffs prepared to take numerous depositions, including rule 30(b)(6) depositions that were scheduled at the time of settlement. *Id*.

MEDIATION AND SETTLEMENT NEGOTIATIONS

On December 4, 2023, after the Parties had engaged in substantial discovery and reviewed detailed data analysis concerning the revenue generated by the practices challenged in this case, they participated in mediation with Magistrate Judge Joel Schneider (ret.) of Montgomery McCracken Walker & Rhoads LLP. *See* ECF No. 89-2, ¶ 19. While the initial mediation was unsuccessful, the Parties continued arms-length settlement discussions that lasted over two months. *Id.* at ¶ 20. Those discussions ultimately resulted in an agreement in principle. *Id.* at ¶ 21. On January 4, 2024, the Parties executed a Term Sheet and filed a Letter with the Court, confirming their agreement in principle and requesting that the Court stay all deadlines in the Action. *See* ECF No. 84.

Further negotiations by the Parties resulted in the Settlement reflected in this Agreement. *See* ECF No. 89-2, ¶ 23. The Parties negotiated and reached agreement regarding attorneys' fees, costs, and expenses, and Service Awards only after reaching agreement on all other material terms of this Settlement. *Id.* at ¶ 32.

PRELIMINARY APPROVAL AND EFFORTS SINCE PRELIMINARY APPROVAL

On May 17, 2024, the Court granted Class Counsel's request for preliminary approval.

See ECF No. 94. Since preliminary approval, Class Counsel has worked with defense counsel and the Administrator to finalize Notices to Class Members; review, edit, and approve the Settlement website and phone script; establish an escrow account for the Settlement Fund; ensure the appropriate data is transferred to the Administrator; and to provide clear and detailed instructions to the Administrator regarding the requirements of the Notice plan. *See* Joint Decl., ¶ 30.

CLASS NOTICE

Notice was sent on or before July 16, 2024 as required by the Court's Preliminary Approval Order. *See* Joint Decl., ¶ 21. The Notice informed the Class Members that Class Counsel intended to request a fee of up to one third of the Value of the Settlement, which is defined as Fifteen Million Five Hundred Thousand Dollars ($15,500,000.00) comprised of the Settlement Payment Amount plus the Overdraft Forgiveness Amount. *Id.* at ¶ 22. As noted in the Settlement, Defendant has discontinued its practices of assessing Overdraft Fees for debit card transactions that were authorized at a time when the account's Available Balance was positive and of assessing NSF Fees (overdraft-return fees) for business checking accounts. Class Counsel has not requested a fee on the savings customers enjoy as a result of this practice change, or on the "hidden" Settlement benefits such as the use of direct deposit for current customers (which saves thousands of dollars in printing and sending paper checks) and the data analysis work Defendant agreed to conduct that saved the Class tens of thousands in expert costs. Id. at ¶¶ 23, 11.

The Notice also informs the Class Members that the fees would be paid from the $10,500,000 Settlement Payment Amount, that a $5,000 service award was being sought for each Class Representative, and that litigation expenses and costs of notice would be deducted from the

Settlement Payment Amount before determining payments to Class Members. *Id.* at ¶ 24. This motion will be posted to the settlement website so that Class Members can review all materials supporting the requested fee, expenses, and service awards and make objections if they wish. *Id.* at ¶ 25.

BENEFITS OF THE PRELIMINARILY APPROVED SETTLEMENT

The benefits provided by the proposed Settlement Agreement (the "Settlement") are substantial and multi-faceted. They include both stated monetary benefits as well as "hidden" benefits that are not readily apparent from the face of the Settlement. The first monetary benefit of the Settlement is the payment by TD Bank, N.A (the "Bank") of $10,500,000.00 in cash into the Settlement Fund. *See* Joint Decl., ¶ 8. This payment was made on May 29, 2024, and will earn interest that accrues to the benefit of the Settlement Class. *Id.*

The second monetary benefit is that the Bank will forgive $5,000,000.00 of debt that Participating Settlement Class Members owe the Bank for Overdraft Fees and overdrafts Defendant paid but for which the Bank was not reimbursed. *Id.* at ¶ 9. Additional monetary benefits are not as apparent from the face of the Settlement itself but are nonetheless highly valuable. For example, the Bank agreed to make direct deposits of Settlement proceeds to Current Account Holders. *Id.* at ¶ 10. Had the Bank not agreed to use its own systems to directly deposit funds, the cost to mail checks to the Current accountholder Class Account Holders would have substantially increased the costs of notice and administration. Instead, those funds will be distributed to the Class. *Id.*

Additionally, as noted in the Settlement, Defendant has discontinued its practices of assessing Overdraft Fees for debit card transactions that were authorized at a time when the account's Available Balance was positive and has discontinued charging NSF Fees (overdraft-

return fees) for business checking accounts. *Id.* at ¶ 11. These practice changes have resulted in annual savings to holders of business checking accounts of approximately $16 million. *Id.* The benefits provided by the Settlement are a phenomenal and timely result for the Class.

ARGUMENT

I. Class Counsel's Request for Attorneys' Fees Is Reasonable and Authorized by the Settlement Agreement.

At the conclusion of a successful class action, class counsel may apply to a court for an award of attorneys' fees. *See* Fed. R. Civ. P. 23(h). The amount of a fee award "is within the district court's discretion so long as it employs correct standards and procedures and makes finding of fact not clearly erroneous." *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 329 (3d Cir. 2011) (*en banc*) (internal quotations and citation omitted); *see also Ursic v. Bethlehem Mines*, 719 F.2d 670, 675 (3d Cir. 1983) ("the district court has discretion in determining the amount of a fee award . . . in view of [its] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters").

As indicated in the Court-approved notice disseminated to the Settlement Class, Class Counsel intended to request a fee of up to one third of the Value of the Settlement, which is defined as both the Settlement Payment Amount ($10,500,000.00) and the Overdraft Forgiveness Amount ($5,000,000.00) for a total of $15,500,000.00. *See* Settlement Agreement ¶ 114; Long Form Notice, ¶ 15. While Class Counsel believe that such a request would be consistent with precedent in the United States District Court for the District of New Jersey, the United States Court of Appeals for the Third Circuit, and other bank fee cases, Class Counsel have decided to only request thirty percent (30%) of the Value of the Settlement, which is $4,650,000.00. In making this fee request, Class Counsel are ***not*** requesting to be compensated for the $16,000,000 in annual savings that has resulted from TD Bank abandoning its practices of assessing Overdraft

Fees for debit card transactions that were authorized at a time when the account's Available Balance was positive and charging NSF Fees (overdraft-return fees) for business checking accounts even though there is case law to support such a request. Taking into account this additional benefit that the Class is receiving, however, makes Class Counsel's fee request a much smaller percentage of the true benefit provided to Class Members by this Settlement. Clearly Class Counsel's requested fees fall beneath the acceptable range of fees routinely approved by this Court and within this Circuit and should be approved here.

A. Application of the Percentage-of-Recovery Method Is Proper When Awarding Fees in a Common Fund Case.

"Attorneys' fees requests are generally assessed under one of two methods: the percentage-of-recovery ('POR') approach or the lodestar scheme." *Sullivan*, 667 F.3d at 330. The POR approach is appropriate in cases involving a common settlement fund, i.e., when a settlement contemplates one fund from which class member payments and attorneys' fees will be paid. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

In consumer class cases with settlement funds like this one, courts in this Circuit prefer to award fees as a percentage-of-recovery. *See Sullivan,* 667 F.3d at 330 (stating that percentage-of-recovery method "is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure'"); *In re Rite Aid Corp. Sec. Litig.,* 396 F.3d 294, 300 (3rd Cir. 2005) (same); *In re Prudential Ins. Co. of Am. Sales Practices Litig.,* 148 F.3d 283, 333 (3rd Cir. 1998) (same); *In re AT&T Corp.,* 455 F.3d 160, 164 (3d. Cir. 2006) (indicating that the percentage-of-recovery

method has long been used by Third Circuit in common fund cases).[1]

The percentage-of-recovery method, rather than the lodestar method, is favored because lodestar looks only at the value of the time counsel spent working on the case. The percentage method provides "appropriate financial incentives" necessary to "attract well-qualified plaintiffs' counsel who are able to take a case to trial," and "directly aligns the interests of the class and its counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355, 359 (S.D.N.Y. 2005). Further, the POR method "prevent[s] . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980); *see also In re Ikon Office Solutions, Inc. Sec. Litig.,* 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("there is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members"); *Fickinger v. C.I. Planing Corp.,* 646 F. Supp. 622, 632 (E.D. Pa. 1986) (awarding attorney fees from a common fund avoids "the unjust enrichment of those who otherwise would be benefitted by the fund without sharing in the expenses incurred by the successful litigant").

Additional reasons exist to apply the percentage-of-recovery method. First, it incentivizes attorneys to create the largest common fund out of which payments to the class can be made, so counsel's interests are aligned with the interests of the class. *Lachance v. Harrington*, 965 F. Supp. 630, 647 (E.D. Pa. 1997) ("under the POR method, the more the

[1] Other circuits have approved and favor the percentage method in common fund cases as well. *See*, *e.g.*, *Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002), ("there is a strong consensus – both in this Circuit and across the country – in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery"); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993) ("we join the Third Circuit Task Force and the Eleventh Circuit, among others, in concluding that a percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees award in common fund cases").

attorney succeeds in recovering money for the client, and the fewer legal hours expended to reach that result, the higher dollar amount of fees the lawyer earns"). Second, it is consistent with market practices, because it mimics the compensation system used by clients to compensate their attorneys. *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Third, the percentage method promotes early case resolution, which is favored. *See In re First Fid. Bancorporation Sec. Litig.*, 750 F. Supp. 160, 162 (D.N.J. 1990) (compared to the percentage-of-recovery method, the lodestar method "penalizes rather than rewards counsel for an early resolution and distribution to class members"). Fourth, the percentage method preserves judicial resources because courts do not need to spend time scrutinizing counsel's billing entries. *Id*. ("Requiring the court to calculate the number of hours devoted by counsel and evaluate the services rendered is unrealistically burdensome and time-consuming"); *see also infra* Section II(B)(1).

B. Precedent Establishes Class Counsel Are Entitled to a Fee of Thirty Percent of the Value of the Settlement.

The United States Supreme Court has recognized the principle that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing*, 444 U.S. at 478; *see also Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 393 (1970). Thus, an award of attorneys' fees is appropriate where a plaintiff's successful litigation confers substantial benefit on members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread costs proportionately among them. *Hall v. Cole,* 412 U.S. 1, 5 (1973).

Here, Class Counsel are entitled to reasonable attorneys' fees to compensate them for their work in recovering real dollars for the Class. The Settlement Agreement preliminarily

approved by the Court provides that:

> Class Counsel shall make a request for attorneys' fees and costs consistent with established precedent in the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit. Defendant reserves the right to oppose a request for attorneys' fees that is inconsistent with said precedent. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Payment Amount.

Settlement Agreement ¶ 114. In addition, the Court-approved Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing ("Long-Form Notice") that was provided to Class Members stated the following:

> **15. How will the lawyers be paid?**
>
> Class Counsel intend to request up to 33% of the Value of the Settlement for their Fee & Expense Award in connection with this case. The attorneys' Fee & Expense Award—awarded by the Court—will be paid out of the Settlement Fund Account. Class Counsel will file their Motion for Award of Fees, Costs, and Service Award by August 15, 2024. That motion will be available at TDBankBusinessAccountClassAction.com. The Court will review Class Counsel's request and determine the amount of fees and expenses to award.

Long-Form Notice, ¶ 15.

The parties and their counsel did not discuss the provisions regarding attorneys' fees until after they had already agreed upon the terms of the Settlement in principle, further minimizing the risk of a conflict between the interests of the attorneys and those of the Class. *See* ECF No. 89-2, ¶ 32; *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 542-43 (D.N.J. 1997) (finding the attorney fees negotiations to be proper where parties "did not negotiate attorneys' fees until after they had agreed on the appropriate relief"); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 803 (3d Cir. 1995) ("recogniz[ing] the potential for attorney-class conflicts" where terms of settlement and fees are negotiated simultaneously).

1. Thirty Percent of the Value of the Settlement Is Reasonable.

In terms of the percentage sought, there is no standardized rule regarding what percentage of the common fund should be awarded as attorneys' fees. *See In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent"). However, courts in New Jersey and within the Third Circuit routinely award one-third of the fund for attorneys' fees in class action settlements similar to this one. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004) (finding an approximately 33% fee award of a $44.5 million settlement fund to be reasonable when compared with recovery percentages in other class actions); *Hall v. AT&T Mobility LLC*, 2010 WL 4053547, at *22 (D.N.J. Oct. 13, 2010) (multiple factors, including "the fact that several courts in similar matters have awarded fees in this amount" warranted approval of one-third fee).

Indeed, this Court has recently granted one-third of the settlement amount in other bank fee cases. *E.g.*, *Galgano v. TD Bank*, Case No. 1:20-cv-05623-KMW-SAK (D.N.J.) (awarding 33% of $11.9 million settlement). This is consistent with numerous cases in this District. For example, in *Chaudhri v. Osram Sylvania Inc.* this Court granted the fee request of the plaintiff's counsel of one-third of a $30 million settlement fund in a consumer class action case involving falsely marketed automobile headlights. *See* Final Approval Order and Judgment, ECF No. 100, in Case No. 2:11-cv-05504 (D.N.J. Jan. 9, 2015). In that matter, the plaintiff's counsel retained Professor Brian T. Fitzpatrick, an expert on attorney fee applications in class action litigations, who opined that "the most common percentages awarded by all federal courts . . . were 25%, 30% and 33%, with nearly two-thirds of awards between 25% and 35%." *See* ECF No. 88-4 (Fitzpatrick Declaration) at ¶¶ 14, 16 ("where the percentage-of-the-fund method was used,

nearly fifty percent of awards [are] between 30% and 35%"). Accordingly and as set forth herein, Class Counsel's request for 30 percent (30%) is reasonable and well within the range approved by courts in similar litigations.

2. No Lodestar Analysis Is Required.

In cases involving settlement funds utilizing a percentage-of-recovery method to compute requested attorney fees, no court within the Third Circuit mandates the use of a detailed lodestar analysis to cross check the amount. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) *(*citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998)); *Bodnar v. Bank of Am., N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016); *In re AT&T,* 455 F.3d at 164 (lodestar analysis does not displace a district court's primary reliance on the POR method); *In re Rite Aid Corp.*, 396 F.3d at 305; *In re Suprema Specialties, Inc. Sec. Litig.,* 2008 WL 906254, at *8 (D.N.J. Mar. 31, 2008).[2]

In fact, not mandating a lodestar cross check preserves judicial resources because it relieves the court of the "cumbersome, enervating, and often surrealistic process" of evaluating fee petitions. *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (noting that opting against performing a cross check "conserves scarce judicial time"); *see also Savoie v. Merchants Bank*, 166 F.3d 456, 461 n.4 (2d Cir. 1999); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000) (the "primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits").

[2] Other circuits also do not require a lodestar cross check. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1363 (S.D. Fla. 2011) ("courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all"); *Feiertag v. DDP Holdings, LLC*, 2016 WL 4721208, at *7 (S.D. Ohio Sept. 9, 2016) ("Performing a cross-check of the attorney-fee request using Class Counsel's lodestar is optional").

It would be a burdensome task to review the billing records of four law firms over more than three years of litigation. This would not be a good use of judicial resources.[3] As set forth in the attached declaration, the lawyers representing the Class Representatives and the Class here have logged in excess of 1,300 attorney hours on this case. *See* Joint Decl., ¶ 29. This includes only time through mid-August 2024. Non-attorney staffs have also performed substantial work for Plaintiffs' counsel in this matter. *Id.* Plaintiffs' counsel will continue to spend time on the case in 2024 in preparation for the final approval hearing in October 2024 and in 2025 overseeing the distribution of the funds to Class Members if the Settlement is approved. *Id.*

Based on the additional work to be done and the work of other lawyers and professionals, there is no doubt that if a lodestar analysis were to be performed for all of the lawyers that have spent time representing the Class Representatives in this case, our lodestar would easily exceed $1,250,000 by the time the settlement administration is finally concluded. *Id.* Thus Class Counsel's fee request is less than 4 times their lodestar, which is well within the range recognized by courts in the Third Circuit. *See, e.g.*, *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *15 (D.N.J. June 15, 2020), *report and recommendation adopted*, 2021 WL 358611 (D.N.J. Feb. 1, 2021), *aff'd in part, appeal dismissed in part sub nom. TIAA v. Valeant Pharms. Int'l, Inc.*, 2021 WL 6881210 (3d Cir. Dec. 20, 2021); *Stevens v. SEI Investments Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16 and stating "multiples ranging from 1 to 8 are often used in common fund cases" to "compensate

[3] If the Court disagrees and requires that such an analysis be undertaken, Plaintiffs' counsel will provide their lodestar before the Final Approval hearing set for February 23, 2023. *See, e.g., In re Rite Aid Corp Sec. Litig.,* 396 F.3d at 306-07 ("cross-check calculation need entail neither mathematical precision nor bean-counting. . . . courts may rely on summaries submitted by the attorneys and need not review actual billing records"); *In re Ins. Brokerage Antitrust Litig.,* 2007 WL 1652303, at *9 (D.N.J. June 5, 2007) ("court may rely on summaries submitted by the attorneys, and is not required to scrutinize every billing record"), *aff'd,* 579 F.3d 241 (3d Cir. 2009).

counsel for the risk of assuming the representation on a contingency fee basis"); *Bodnar v. Bank of Am., N.A.*, 2016 WL 4582084, at *5-*6 (E.D. Pa. Aug. 4, 2016) (approving 33% fee where counsel was able to negotiate the settlement "at the early stages" of the litigation and finding 4.69 multiplier was "appropriate and reasonable"); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (approving fee award "with a 6.96 multiplier"). Moreover, as appropriate in the Third Circuit, the lodestar rates are based on a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided and the experience of the lawyer. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000).

Creating a detailed lodestar analysis here, and performing a review of such an analysis, would be a very time-consuming and extensive process, especially given the fact that it would likely result in confirmation of the requested fee. Accordingly, Class Counsel do not include a detailed lodestar analysis herewith given the obvious and extensive amount of work performed.

3. Calculating the Fee Based on the Value of the Settlement is Appropriate.

As for the appropriate settlement value against which to apply the percentage, in "calculating the overall settlement value for purposes of the 'percentage of the recovery' approach," courts "include the value of both the monetary and non-monetary benefits conferred on the Class." *E.g.*, *Fleisher v. Phoenix Life Ins. Co.*, 2014 WL 10847814, at *15 (S.D.N.Y. Sept. 9, 2015) (citation omitted); *Coleman v. Alaska USA Fed. Credit Union*, No. 3:19-cv-0229-HRH, slip op. at 17–18 (D. Alaska Nov. 17, 2021), ECF No. 93 ("The Court considers both cash and cash equivalents, such as debt forgiveness of the Uncollected Retry Fees, when determining the denominator," i.e., the value of the settlement). Here, the Value of the Settlement is $15,500,000.00 , *plus* the "hidden" benefits of the settlement including significant contributions

by TD to the administration of the Settlement, *plus* the estimated $16,000,000.00 in annual savings that the Class received based on TD Bank's practice changes.

Class Counsel is only seeking a percentage of the monetary benefits (the cash and debt forgiveness) – both of which are routinely and equally considered part of a settlement's value. *See Moukengeshcaie v. Eltman, Eltman & Cooper, P.C.*, 2020 WL 5995978, at *2-*4 (E.D.N.Y. Apr. 21, 2020), *report and recommendation adopted sub nom.*, 2020 WL 5995650 (E.D.N.Y. Oct. 8, 2020) (awarding percentage of overall value of settlement that included debt forgiveness); *In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *7, *28 (S.D.N.Y. Nov. 26, 2002), *aff'd sub nom. Adams v. Rose*, 2003 WL 21982207 (2d Cir. Aug. 20, 2003) (awarding fees at 28% of the settlement value, which included cash and credit notes); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *4, *18 (S.D.N.Y. Nov. 30, 2010) (awarding fees on value of settlement, including monetary and nonmonetary relief); *Hash v. First Fin. Bancorp*, No. 1:20-cv-01321-RLM-MJD, ECF No. 91 at 7 (S.D. Ind. Nov. 22, 2021) ("In bank fee litigation, forgiveness of debts owed is routinely included in the value of the settlement") (collecting cases).

Such an approach is routinely followed in bank fee cases. *E.g.*, *Thompson v. Community Bank, N.A.*, 2021 WL 4084148, at *2, *10 (N.D.N.Y. Sept. 8, 2021) (awarding 33.33% of value of bank fee settlement that included cash and debt forgiveness); *Holt*, slip op. at 2–3 (same); *In re TD Bank Debit Card Overdraft Fee Litig.*, No. 6:15-MN-02613, ECF No. 233 (D.S.C. Jan. 9, 2020) (30% of settlement value that included cash and debt forgiveness); *Hash*, slip op. at 8–10 (awarding 25% of settlement value that included cash and debt forgiveness); *Coleman*, slip op. at 17–18 (same); *In re: Checking Account Overdraft Litig. (Commerce Bank)*, No. 1:09-MD-02036-JLK, 2013 WL 11319243, *5-*6 (S.D. Fla. Aug. 2, 2013) (including settlement value

$18.3 million in cash and a change in practice with value of $4.9 million); *In re: Checking Account Overdraft Litig. (JP Morgan Chase Bank)*, No. 09-MD-02036-JLK, ECF No. 3134, at 12 (S.D. Fla. Dec. 19, 2012) (including in settlement value $110 million in cash and change in policy with value of $52 million). Class Counsel's request for a percentage of the Value of the Settlement is consistent with numerous prior settlements and should be approved here.

C. Other Factors Used to Determine the Reasonableness of Fees Support the Requested Fee Award.

Other factors established to determine the reasonableness of fee awards under the percentage-of-recovery method similarly support Plaintiffs' requested fee award. These factors include: (1) the size of the fund created and number of persons benefiting from the settlement; (2) the presence/absence of substantial objections to the fee; (3) the skill of plaintiffs' counsel; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the litigation; and (7) awards in similar cases. *Gunter v. Ridgewood Energy Corp.,* 223 F.3d 190, 195, n.1 (3rd Cir. 2000). The Third Circuit has also suggested three other factors that may be relevant to a court's inquiry: (1) "the value of benefits accruing to class members attributable to the efforts of counsel as opposed to the efforts of other groups, such as government agencies conducting investigations;" (2) "the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained;" and (3) "any 'innovative' terms of settlement." *In re AT&T*, 455 F.3d at 165 (citation omitted); *Public Interest Research Group v. Windall*, 51 F.3d 1179, 1185 n.8 (3d Cir. 1995) (discussing the "*Johnson* factors" set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-18 (5th Cir. 1974), and cited in *Hensley v. Eckerhart*, 461 U.S. 424, 434 n.9 (1983)).

These factors "need not be applied in a formulaic way, and their weight may vary on a

case-by-case basis." *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, 2009 WL 2137224, at *14 (E.D. Pa. July 16, 2009) (quoting *Oh v. AT&T Corp.*, 225 F.R.D. 142, 146 (D.N.J. 2004)); *In re AT&T Corp.,* 455 F.3d at 165-6 ("What is important is that the district court evaluate what class counsel actually did and how it benefitted the class"); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *6 (D.N.J. Nov. 28, 2007); *also Hensley,* 461 U.S. at 436 (the "most critical factor is the degree of success obtained").

> The most significant factor in this case is the quality of representation, as measured by 'the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel'.

In re Ikon Office Solutions, Inc., Sec. Litig., 194 F.R.D. 166, 194 (E.D. Pa. 2000) (internal citations omitted); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998) ("the *Gunter/Prudential* factors are not exhaustive. 'In reviewing an attorneys' fee award in a class action settlement, a district court should consider [those] factors . . . and any other factors that are useful and relevant with respect to the particular facts of the case.'") (quoting *In re AT&T Corp.*, 455 F.3d at 166).

As discussed *infra*, if this Court elects to consider these factors here, they also clearly support the reasonableness of Class Counsel's fee request.

1. Whether the Fee Was Fixed or Contingent.

Class Counsel undertook this action on an entirely contingent fee basis, and in doing so assumed a substantial risk that counsel would have to devote a significant amount of time and incur expenses in prosecuting this action without any assurance of being compensated for their efforts. *See* Joint Decl., ¶ 26. In effect, Class Counsel has advanced their legal services to the Settlement Class since that time. *See Lindy Bros. Builders of Philadelphia v. Am. Radiator &*

Standard Sanitary Corp., 540 F.2d 102, 116-17 (3d Cir. 1976).

Further, taking on this large and complex case served to preclude counsel from other employment due to time and budget restrictions based on the acceptance of this matter. *See* Joint Decl., ¶ 31. Class Counsel are relatively small law firms with busy practices. *Id.* Class Counsel were required to forego other opportunities to properly prosecute this case. *Id.* Briefing and discovery in this case was significant, which meant that the firms involved on behalf of the Plaintiffs expended a great deal of time and effort on this matter at the expense of other potentially lucrative matters. *Id.*

Courts have consistently recognized that the risk of receiving no recovery is a factor in considering an award of attorneys' fees. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 219 (E.D. Pa. 2011) (risk at trial and contingency basis "indicates that substantial attorney's fees should be awarded").

> Counsel's contingent fee risk is an important factor in determining the fee award. Success is never guaranteed and counsel faced serious risks since both trial and judicial review is unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.

In re Prudential-Bache Income Partnerships Sec. Litig., 1994 WL 202394, at *6 (E.D. La. May 18, 1994).

Here, Class Counsel expended significant time and costs to prosecute this case. *See* Joint Decl., ¶¶ 29-30. Meanwhile, Class Counsel aggressively advanced this case despite substantial risk of non-payment. *Id.* at ¶ 13-16. Despite the risks and difficulties presented throughout this litigation, Class Counsel forged a significant resolution that provides substantial relief to the Class. Accordingly, Class Counsel undertook a significant risk of non-payment, which now favors approval of the requested fee.

2. The Time and Labor Required, the Size of the Fund Created, the Number of Persons Benefiting from the Settlement, the Novelty and Difficulty of the Questions Involved, and the Skill, Experience, Reputation, and Ability of Counsel Required to Perform the Service Properly.

Throughout this the three plus year history of this case, the parties engaged in significant and highly-contested adversarial litigation. The prosecution of the many complex and unique issues in this litigation required the participation of highly skilled and dedicated attorneys.

Class Counsel undertook a number of important tasks associated with this litigation, requiring a significant amount of Class Counsel's time and labor to develop the legal theories and arguments presented in the pleadings and crafted through discovery. *See* ECF No. 89-2, ¶¶ 5-27. These tasks include: initial investigation of the case; researching complex issues of law, client vetting and meetings; drafting numerous class action complaints; conducting substantial written discovery; opposing various motions filed by Defendant; preparing for and participating in hearings; and negotiating the settlement and drafting the settlement papers. *Id.*[4] In light of this case's robust litigation, discovery, and motions practice history, this factor supports Class Counsel's fee request. *E.g.*, *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 197 (3d Cir. 2000) ("The complexity and duration of the litigation is the first factor a district court can and should consider in awarding fees").

The skill required of Class Counsel to accomplish this excellent Settlement warrants the requested fee. The "single clearest factor reflecting the quality of Class Counsels' services to the Class are the results obtained." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors include "the difficulties faced, the speed and efficiency of the

[4] Moreover, Class Counsel's work is not yet done. Class Counsel will be required to, among other things, continue to monitor the claims administration process and communicate with the administrator, prepare for and attend the Final Approval Hearing, monitor distribution of benefits to the Class, and potentially handle any post-judgment appeals. Joint Decl., ¶ 30.

recovery, the standing, experience, and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008). *Gunter* factors are considered to ensure "that competent counsel continue to undertake risky, complex and novel litigation" for the benefit of large numbers of Class Members who might otherwise lack reasonable access to justice. *Gunter*, 223 F.3d at 198. Here, Class Counsel obtained monetary relief for over 200,000 TD Bank business account holders.

Class Counsel have unique legal skills and abilities, as well as experience litigating consumer class actions. *See* Joint Decl., ¶ 32. Those unique skills are called upon in order to litigate and successfully settle a complex class action. *Sullivan*, 667 F.3d at 303. Without Class Counsel's skill, the Class would have received no benefits at all. Joint Decl., ¶ 16. In addition, "[t]he quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsel's work." *Hall v. AT&T Mobility LLC,* 2010 WL 4053547, at *19 (D.N.J. Oct. 13, 2010); *In re OSB Antitrust Litig.*, 2008 U.S. Dist. LEXIS 125173, at *13-14 (E.D. Pa. Dec. 9, 2008) (in assessing quality of representation, courts also look to "the performance and quality of opposing counsel") (internal quotations and citation omitted). Class Counsel was opposed in this litigation by highly experienced class action defense counsel at two elite law firms. *See* Joint Decl., ¶ 33. There is little doubt that Defendant's law firms possess the resources, reputation, and experience to vigorously and effectively advocate for the Defendant's interests were this matter to be litigated further. *Id.* Despite Defendant's staunch resistance, Class Counsel's efforts resulted in a fair, adequate, and reasonable Settlement for the Class.

3. The Current Absence of Objections to the Attorneys' Fees Favors Approval.

The absence or minimal number of objections to a fee request is significant evidence that

the request is fair and reasonable. *See, e.g., In re Rite Aid*, 396 F.3d at 305; *In re AT&T Corp.*, 455 F.3d at 170 (awarding fee despite eight objections); *In re Datatec Sys., Inc. Sec. Litig.,* 2007 WL 4225828 at *7 (no objections weighs "strongly in favor" of approval); *In re Genta Sec. Litig.,* 2008 WL 2229843, at *9 (D.N.J. May 28, 2008) (awarding fees despite one objection).

To date, there have been no objections to the Settlement and no Class Member has filed a valid request to be excluded. By comparison, over 200,000 Class Members were notified of the Settlement and are entitled to receive a payment from the Settlement Amount. *See* Notice Decl., ¶¶ 7-18. The lack of objections to the Settlement, including the proposed fees and Service Awards, weighs strongly in favor of approval.

4. The Requested Attorneys' Fees Are Reasonable When Compared to Awards in Similar Cases and What Would Have Been Contracted in a Private Contingency Matter.

Attorney fee awards in similar consumer class action cases have resulted in similar awards. *See infra* Section II(B).

Additionally, the requested fee here is entirely consistent with the private marketplace where attorneys negotiate contingency fee agreements. Courts in this circuit have reasoned that the percentage-of-recovery method of awarding attorneys' fees in class actions should approximate the fee which would be negotiated if the lawyer were offering his or her services in the private marketplace. *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005) ("attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation"); *see also Fanning v. Acromed Corp.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct. 23, 2000) (noting that plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery); *Phemister v. Harcourt Brace Jovanovich, Inc.*, 1984 WL 21981, at *15 (N.D. Ill.

Sept. 14, 1984) ("the percentages agreed on [in contingent fee arrangements in non-class action damage lawsuits] vary, with one-third being particularly common"). If this case was not class action litigation, the customary contingency fee would range from 30% to 40% of the recovery. *See In re Ikon Solutions*, 194 F.R.D. at 194 ("In private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery"). Certainly a 30% fee for contingency litigation is not high for New Jersey or the Third Circuit.

II. Plaintiffs' Counsel Should Be Awarded Reimbursement of Litigation Costs and Expenses.

Class Counsel requests reimbursement for a total of $45,884.25 in litigation costs and expenses, which has essentially been advanced to the Class. *See* Joint Decl., ¶¶ 35-36; *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970); *Oh v. AT&T Corp.,* 225 F.R.D. 142, 154 (D.N.J. 2004) ("counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case"). Indeed, reimbursement for costs expended by counsel in prosecuting the action is "routinely permitted." *In re Remeron Direct Purchaser Antitrust Litig.,* 2005 WL 3008808 at *17.

The costs and expenses are sought directly out of the Settlement Amount. *See* Settlement Agreement, ¶ 114. Further, the amount sought corresponds to certain actual out-of-pocket costs and expenses that Plaintiffs' law firms necessarily incurred and paid in connection with the prosecution of this litigation and the Settlement. *See* Joint Decl., ¶¶ 35-36. These costs have been carefully reviewed and audited by Class Counsel. *Id.*

The costs and expenses sought are compensable in a class action. *See* Fed. R. Civ. P. 23(h) (permitting award of "nontaxable costs that are authorized by law or by the parties'

agreement"). The categories of expenses for which Class Counsel seek reimbursement here are the type of expenses routinely charged to paying clients in the marketplace and, therefore, the full requested amount should be reimbursed. *See* Joint Decl., ¶ 36. These expenses are reasonable and justified. *See, e.g., In re Certainteed Fiber Cement Siding Litig.*, 303 F.R.D. 199 (E.D. Pa. 2014) (approving $304,996.65 in costs that included similar categories as those requested here); *Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004).

III. The Proposed Service Awards to the Class Representative and Plaintiffs Are Reasonable.

The purpose of service awards to the named plaintiffs in a class action is "to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *In re Philips/Magnavox*, 2012 WL 1677244, at *20; *McLennan*, 2012 WL 686020, at *11 ("Courts have ample authority to award incentive or 'service' payments to particular class members where the individual provided a benefit to the class or incurred risks during the course of litigation"); *see also Huguley v. General Motors Corp.,* 128 F.R.D. 81, 85 (E.D. Mich. 1989), *aff'd* 925 F.2d 1464 (6th Cir. 1989) ("Named plaintiffs and witnesses are entitled to more consideration than class members generally because of the onerous burden of litigation they have borne").

Indeed, numerous courts have approved service awards to class representatives that are similar to the service awards sought here. *See, e.g., Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *24 (D.N.J. Apr. 8, 2011) ($10,000 per class representative); *In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314, at *32-33 (D.N.J. Sept.13, 2005) (awards of $30,000 for two class representatives and $5,000 for three others); *Hanrahan v. Britt,* 174 F.R.D. 356, 369 (E.D. Pa. 1997) (awarding a total of $25,000 to two named plaintiffs); *see also* 5 *Newberg on Class Actions* § 17.8 (citing empirical studies on award size and noting in part "[t]he two

studies show that the average award per plaintiff ranged from $9,355 (in 2002 dollars) in one study to $15,992 (in 2002 dollars) in the other"). Class Counsel request that the Court grant a Service Award to Class Representatives Amazing Fishstore LLC d/b/a KRMS Farms and Wilder Media CT in the amount of $5,000 each. The proposed Service Awards are appropriate given the circumstances. Without the Class Representatives there would have been no litigation and no recovery for the Settlement Class. The Class Representatives assisted counsel with the investigation of this matter, the preparation of the Complaint, provided information to support their claims, responded to discovery requests, stayed abreast of – and to varying degrees, actively participated in – the settlement negotiations, and reviewed and approved the settlement terms. *See* Joint Decl., ¶¶ 40-44.

The requested award will help compensate the Class Representatives for expending such time and effort, as well as recognize that each helped to obtain a benefit for thousands of their fellow Settlement Class members. Accordingly, the requested service awards of $5,000 for each Class Representative are reasonable and should be approved.

IV. Reasonable Notice of the Requested Fees, Litigation Expenses, and Service Awards Has Been Given to the Class and the Absence of Objections to Date Supports Approval.

Rule 23(h)(1) provides "[n]otice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." F.R.C.P. 23(h)(1). In preliminarily approving the Settlement, the Court ordered that "[a]ny Participating Settlement Class Member who does not timely and validly request exclusion from the Settlement may object to the Settlement by filing an objection with the Court with copy to Class Counsel and TD Bank's counsel" and that such objection must be must be "postmarked no later than sixty (60) days after the Notice Deadline." *See* ECF No. 94, at ¶ 15. The Notice Deadline was July 14,

2024, and set the final deadline for objections as September 14, 2024.

Notice of the Settlement was sent via email and regular mail, as necessary, to all potential members of the Settlement Class. *See* Notice Decl., ¶¶ 7-18. This notice included a disclosure of the amount of the requested award of attorneys' fees, expenses, and Service Awards. *Id.* at ¶¶ 7, 12; Exhs. A-B thereto. Although the deadline for objections has not yet passed, as of this filing it has been 30 days since the Notice Deadline passed, and no objections have been filed. The absence of any objections to the requested amounts suggests they are reasonable.

CONCLUSION

For the foregoing reasons, Class Representatives and Class Counsel respectfully request that the Court grant this application for fees, expenses, and Service Awards.

DATED this 15th day August, 2024.

Respectfully submitted,

BY: */s/ Richard M. Golomb*

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to all counsel of record.

/s/ Richard M. Golomb
Richard M. Golomb

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

AMAZING FISHSTORE LLC d/b/a KRMS FARMS and WILDER MEDIA CT, on behalf of themselves and all others similarly situated, Plaintiffs, v. TD BANK, N.A., Defendant.	No. 1:22-CV-00958-KMW-AMD

JOINT DECLARATION OF E. ADAM WEBB AND JEFFREY D. KALIEL

E. Adam Webb and Jeffrey D. Kaliel, under penalty of perjury, submit this Declaration in support of Plaintiffs' Unopposed Motion for Fees, Expenses, and Service Awards, and declare as follows:

1. E. Adam Webb is the founder and partner at Webb, Klase & Lemond, LLC, and is one of the attorneys of record for Plaintiffs.

2. Jeffrey D. Kaliel is the founder and partner at Kaliel Gold PLLC and is one of the attorneys of record for Plaintiffs.

3. We submit this Declaration in support of Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Service Awards ("Fee Motion").

4. On March 21, 2024, we also submitted a Joint Declaration in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan ("Preliminary Approval Declaration"). *See* ECF No. 89-2. Many of the facts stated in the Preliminary Approval Declaration also support granting the Fee Motion, and we expressly incorporate the Preliminary

Approval Declaration into this Declaration. In addition to the efforts outlined therein, Class Counsel reviewed tens of thousands of pages of documents produced by TD, identifying important documents and documents necessary for planned depositions, reviewed an extensive amount of transactional data that needed to be processed and analyzed by Counsel and their expert to identify damages and class members, and were prepared to take numerous depositions, including rule 30(b)(6) depositions that were requested at the time of settlement.

5. Collectively, we are counsel to Class Representatives Amazing Fishstore LLC d/b/a KRMS Farms and Wilder Media CT. We also represent the following classes:

> All holders of a TD Bank business checking account, who from February 23, 2016 to and including September 30, 2022, incurred one or more overdraft fees for a debit card transaction that was authorized at a time when the account's available balance was positive, but later paid by the Bank when the account's available balance was insufficient to cover the transaction ("APSN Fee Class").
>
> and
>
> All holders of a TD Bank business checking account, who from February 23, 2016 to and including September 30, 2022, incurred more than one overdraft fee or NSF fee on a debit transaction that was returned unpaid by the Bank due to insufficient funds and subsequently re-submitted by a merchant or other third party for payment and returned unpaid or paid into overdraft ("Retry Fee Class")..

Settlement Agreement, ¶ 58; ECF No. 94, ¶ 3.

6. We have personal knowledge of the matters set forth below based on our active participation in all aspects of the prosecution of this litigation.

7. The benefits provided by the proposed Settlement Agreement and Releases (the "Settlement") are substantial and multi-faceted. They include both stated monetary benefits as well as "hidden" benefits that are not readily apparent from the face of the Settlement itself.

8. The first monetary benefit of the Settlement is the payment by TD Bank, N.A (the "Bank") of $10,500,000.00 in cash into the Settlement Payment Amount. This payment was made on May 29, 2024, and will earn interest that accrues to the benefit of the Settlement Class.

9. The second monetary benefit is that the Bank will forgive $5,000,000.00 of debt that Participating Settlement Class Members owe the Bank for Overdraft and NSF Fees and/or overdrafts and NSFs Defendant paid but for which the Bank was not reimbursed. The debt forgiveness benefit is significant.

10. Additional monetary benefits are not as apparent from the face of the Settlement itself but are nonetheless highly valuable. The Bank agreed to make direct deposits of Settlement proceeds to Current Account Holders. Had the Bank not agreed to use its own systems to directly deposit funds, the cost to mail checks to the Current accountholder Class Account Holders would have substantially increased the costs of notice and administration. Instead, those funds will be distributed to the Class.

11. As noted in the Settlement, Defendant has discontinued its practices of assessing Overdraft Fees for debit card transactions that were authorized at a time when the account's Available Balance was positive and charging NSF Fees (overdraft-return fees) for business checking accounts. These practice changes have resulted in annual savings to TD Bank business account customers of approximately $16 million ($13 million/year for the Available Balance fees and $3 million/year for the NSF fees). Class Counsel estimates the practice change will continue to result in tens of millions of dollars of savings for business account holders over the next several years

12. The benefits provided by the Settlement are a phenomenal and timely result for the Class Members and was obtained against a well-funded defense by TD Bank, N.A.

13. This case was risky and complex. The Bank adamantly denied liability and expressed an intention to defend itself through trial. And, even though this Court agreed with the theory in part, not all Courts have done so, and some courts have dismissed similar claims.

14. This case also presented significant hurdles because it implicated banking data that is difficult to access and use. The claims involve intricacies of banking practices and transactional data, and the case faced risks at each litigation stage.

15. The Court could have ruled for the Bank on summary judgment or a jury could have done so at trial.

16. Plaintiffs faced the hurdle of having the Court certify the proposed classes adversarially and having that ruling immediately appealed under Rule 23(f). Without certified classes, no Class Member would receive any recovery.

17. Even with certified classes, trial and appeal present significant risks – and substantial delays and costs – in any complex case.

18. Against these risks and hurdles, it was through the skill and hard work of Class Counsel and the Class Representatives that the Settlement was achieved.

19. This Settlement is likely to be viewed favorably by the Class Members, who will appreciate receiving compensation without taking any action. And the Class Members will receive that recovery now instead of years later after trial and appeal, which is important because the Class consists of individuals who did not have enough money in their bank account to pay for transactions.

20. Since preliminary approval, Class Counsel has worked with defense counsel and the Administrator to finalize Notices to Class Members; review, edit, and approve the Settlement website and phone script; establish an escrow account for the Settlement Payment Amount; ensure the appropriate data is transferred to the Administrator; and to provide clear and detailed instructions to the Administrator regarding the requirements of the Notice plan.

21. Notice was sent on or before July 16, 2024 as required by the Court's Preliminary Approval Order.

22. The Notice informed the Class Members that Class Counsel intended to request a fee of up to one third of the Value of the Settlement, which is defined as Fifteen Million Five Hundred Thousand Dollars ($15,500,000.00) comprised of the Settlement Payment Amount plus the Overdraft Forgiveness Amount. However, Class Counsel have decided to only request thirty percent (30%) of the Value of the Settlement, which is $4,650,000.00.

23. Class Counsel has not requested a fee on the "hidden" Settlement benefits such as the overdraft and NSF fees that are no longer being assessed based on the Bank's practice changes and the administration cost savings.

24. The Notice also informs the Class Members that the fees would be paid from the $10,500,000 Settlement Payment Amount, that a $5,000 service award is sought for each Class Representative, and that litigation expenses and costs of notice would be deducted from the Settlement Payment Amount before determining payments to Class Members.

25. This motion will be posted to the settlement website so that Class Members can review all materials supporting the requested fee, expenses, and service awards and make objections if they wish.

26. To date, Class Counsel have not been paid anything for efforts undertaken. Based on a review of applicable factors, Class Counsel believe the requested fee is reasonable and merits approval. Class Counsel accepted this case on a contingency fee basis, and thus assumed significant risk in prosecuting this matter. Class Counsel have not been paid for the work performed in this matter, nor have they been reimbursed for money paid out in the course of the

litigation. Given the obligations of prosecuting this case, along with the financial risk, we were compelled to forego opportunities to get involved in other cases during the pendency of this case.

27. Since the inception of this case over two years ago, Class Counsel have spent significant time and effort in prosecuting the class claims against Defendant.

28. While Class Counsel have reviewed the total number of hours spent in this action, precedent does not require us to do so. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure'"). The case has been actively litigated for over two years and involves four separate law firms and their legal support staff participating in the case.

29. The lawyers for Plaintiffs have spent a large amount of total time on this case. We have looked closely at the billable time for Plaintiffs' counsel in this matter. To date we have logged in excess of 1,300 attorney hours on this case. This includes only time through mid-August 2024. Non-attorney staffs have also performed substantial work for Plaintiffs' counsel in this matter.

30. Plaintiffs' counsel will continue to spend time on the case in 2024 in preparation for the final approval hearing in October 2024 and in 2025 overseeing the distribution of the funds to Class Members if the Settlement is approved. Based on the additional work to be done and the work of other lawyers and professionals, there is no doubt that if a lodestar analysis were to be performed for all of the lawyers that have spent time representing the Class Representatives in this case, our lodestar would easily exceed $1,250,000 by the time the settlement administration is finally concluded. Thus our fee request is less than 4 times our lodestar, which is well within the range recognized in the Third Circuit. *See, e.g.*, *In re Valeant Pharms. Int'l,*

Inc. Sec. Litig., 2020 WL 3166456, at *15 (D.N.J. June 15, 2020), *report and recommendation adopted*, 2021 WL 358611 (D.N.J. Feb. 1, 2021), *aff'd in part, appeal dismissed in part sub nom. TIAA v. Valeant Pharms. Int'l, Inc.*, 2021 WL 6881210 (3d Cir. Dec. 20, 2021); *Stevens v. SEI Investments Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16 and stating "multiples ranging from 1 to 8 are often used in common fund cases" to "compensate counsel for the risk of assuming the representation on a contingency fee basis"); *Bodnar v. Bank of Am., N.A.*, 2016 WL 4582084, at *5-*6 (E.D. Pa. Aug. 4, 2016) (approving 33% fee where counsel was able to negotiate the settlement "at the early stages" of the litigation and finding 4.69 multiplier was "appropriate and reasonable"); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (approving fee award "with a 6.96 multiplier").[1]

31. Class Counsel are four small law firms with very busy practices, and each uses a discrete team of attorneys and staff in order to minimize the duplication of efforts and maximize billing judgment. All tasks were performed by attorneys and staff with knowledge of the case to avoid duplication and perform work as efficiently as possible. Based on the small size of the firms and limited resources available to them, we were required to forego other opportunities to properly prosecute this sizable undertaking.

32. Class Counsel are skilled litigators with collective experience in complex litigation and with specific experience in class actions and consumer cases against financial institutions and this Defendant specifically. All four firms are highly qualified, with each firm having a proven track record of successful prosecution of significant complex litigation and class actions.

[1] As set forth in the Plaintiffs' brief, Plaintiffs' counsel will compile and produce a lodestar analysis if the Court requires.

33. Class Counsel's adversaries in this case are also experienced, skilled litigators. Defendant and its counsel vigorously advocated for their client and had the skill and resources to continue the litigation for many years into the future.

34. In sum, and as more fully set forth in Plaintiffs' Memorandum of Law in Support, Class Counsel believe that the fee request here is reasonable given the benefit obtained for the Class, the risks and complexity of the litigation, and the significant effort expended by Class Counsel.

35. Class Counsel also seek reimbursement of out-of-pocket litigation costs and expenses of $45,884.25.

36. The costs and expenses incurred are reflected on the books and records maintained by Class Counsel and are prepared from check records, credit card statements, and other source materials, and are an accurate record of the costs and expenses incurred or to be incurred for the upcoming Final Approval hearing. The out-of-pocket costs and expenses submitted herein were advanced by Plaintiffs' counsel with no guarantee of reimbursement, are reasonable in amount, and were necessarily incurred for the successful prosecution of this case and for the benefit of the Class.

37. Further, these are the types of costs normally charged to and paid by clients generally, and approved by courts.

38. The costs and expenses incurred are minimal given the recovery obtained for the Class, amounting to four-tenths of one percent (0.00437%) of the $10,500,000.00 million Settlement Payment Amount.

39. Class Counsel request that the combined, un-reimbursed out-of-pocket litigation expenses of $45,884.25 be approved by the Court.

40. On behalf of the Class Representative and Plaintiffs in this case, Class Counsel seek Service Awards based on their efforts in zealously prosecuting the case. The parties and their counsel did not discuss the provisions regarding Service Awards until after the parties had already agreed upon the terms of the Settlement in principle.

41. Class Counsel seek Service Awards in the amount of $5,000 each for Amazing Fishstore LLC d/b/a KRMS Farms and Wilder Media CT. It is likely this case would not have been filed without their initiative.

42. The amount of the Service Awards sought is reasonable on both a cumulative and an individual basis. In total, the $10,000 requested amounts to less than one-tenth of one percent (0.000915238% to be exact) of the Settlement Payment Amount, which is well within reasonable bounds. *See Demaria v. Horizon Healthcare Servs., Inc.*, 2016 WL 6089713, at *1 (D.N.J. Oct. 18, 2016) (court awarded total service awards in the requested amount of $135,000, equal to 1.2% of the settlement amount).

43. The Service Awards requested here are appropriate because the Class Representatives undertook the following time-consuming and challenging tasks to assist Class Counsel and absent Class Members and ultimately achieved significant benefits for the Class:

- Discussing with Class Counsel what happened to them, the facts of the case, and how they were impacted in order to formulate theories of law in the case;
- Agreeing to have their name used in the caption of this case;
- Conferring regarding the language and claims made in the Complaint and amendments thereto;
- Meeting with Class Counsel on the phone to meet discovery demands, formulate discovery responses, and compile and produce responsive documents; and

- Reviewing and executing the lengthy Settlement Agreement.

Their diligent efforts assisted Class Counsel in reaching a favorable resolution to this litigation for the benefit of the Class.

44. Based on the above efforts, Service Awards in the amounts sought are reasonable.

I declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge, information, and belief. Executed this 15th day of August, 2024, at Atlanta, Georgia.

/s/ E. Adam Webb
E. Adam Webb

I declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge, information, and belief. Executed this 15th day of August, 2024, at Washington, D.C.

/s/ Jeffrey D. Kaliel
Jeffrey D. Kaliel

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to all counsel of record.

/s/ Richard M. Golomb
Richard M. Golomb

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

AMAZING FISHSTORE LLC d/b/a KRMS FARMS and WILDER MEDIA CT, on behalf of themselves and all others similarly situated, Plaintiff, v. TD BANK, N.A., Defendant.	HONORABLE KAREN M. WILLIAMS Civil Action No. 22-958 (KMW-AMD)

DECLARATION OF EDWARD DATTILO REGARDING IMPLEMENTATION OF NOTICE AND SETTLEMENT ADMINISTRATION

I, Edward Dattilo, hereby declare and state as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"). I have 6 years of experience handling all aspects of settlement administrations. The statements of fact in this declaration are based on my personal knowledge and information provided to me by my colleagues in the ordinary course of business, and if called on to do so, I could and would testify competently thereto.

2. Epiq was retained by the Parties to be the Settlement Administrator pursuant to the Court's Preliminary Approval Order (the "Order") dated May 17, 2024, and in accordance with the Settlement Agreement dated March 14, 2024 (the "Agreement").[1] I submit this Declaration in order to advise the Parties and the Court regarding the implementation of the Court-approved Class Notice Program, and to report on Epiq's handling to date of the Settlement administration, in accordance with the Order and the Agreement.

[1] All capitalized terms not otherwise defined in this document shall have the same meanings ascribed to them in the Agreement.

3. Epiq was established in 1968 as a client services and data processing company. Epiq has administered bankruptcies since 1985 and settlements since 1993. Epiq has routinely developed and executed notice programs and administrations in a wide variety of mass action contexts including settlements of consumer, antitrust, products liability, and labor and employment class actions, settlements of mass tort litigation, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered more than 4,500 settlements, including some of the largest and most complex cases ever settled. Epiq's class action case administration services include administering notice requirements, designing direct-mail notices, implementing notice fulfillment services, coordinating with the United States Postal Service ("USPS"), developing and maintaining notice websites and dedicated telephone numbers with recorded information and/or live operators, processing exclusion requests, objections, claim forms and correspondence, maintaining class member databases, adjudicating claims, managing settlement funds, and calculating claim payments and distributions. As an experienced neutral third-party administrator working with settling parties, courts, and mass action participants, Epiq has handled hundreds of millions of notices, disseminated hundreds of millions of emails, handled millions of phone calls, processed tens of millions of claims, and distributed hundreds of billions in payments.

OVERVIEW OF ADMINISTRATION

4. Pursuant to the Agreement and Order Epiq was retained to provide, and did provide, the following administrative services for the benefit of Settlement Class Members, as they are defined in the Agreement:

- As appropriate, email a Notice to Class Members;

- As appropriate, mail a Mail Notice to Class Members;
- Establish and maintain an official Settlement Website containing information about the Amazing Fishstore v TD Bank Settlement
- Establish and maintain an official toll-free number that Settlement Class Members may contact for additional information about the Settlement;
- Review and process request for exclusion sent to or received by Epiq;
- Review and track objections sent to or received by Epiq.

DATA TRANSFER

5. On June 19, 2024, Counsel for Defendant provided Epiq with one electronic file containing potential Class Member records. After review of the file, Epiq found that the Class Member data was incomplete, resulting in Counsel for Defendant providing Epiq with an updated electronic file on June 28, 2024. The file contained 241,812 records of names, addresses, and email addresses for potential Class Members ("Class Data").

6. Epiq loaded the information provided by Counsel into a database created for the purpose of administration of the proposed Settlement. Epiq assigned unique identifiers to all the records it received in order to maintain the ability to track them throughout the Settlement administration process. Epiq combined the data and removed exact duplicate records, which resulted in 230,244 of Class Member records (the "Class List").

DISSEMINATION OF INDIVIDUAL CLASS NOTICE VIA EMAIL

7. Pursuant to Section V (par. 70) of the Agreement and Section 11 of the Order, Epiq was to cause the Court-approved short form Notice to be formatted for electronic distribution by email to Class Members for whom an email address was included in the Class Data. Attached hereto as **Exhibit A** is a template of the Court-approved short form Notice that Epiq electronically

disseminated to Class Members for whom an email address was provided in the Class Data ("Email Notice"). The Notice contained substantial, albeit easy to read, information that made potential Class Members aware of their rights under the Settlement and provided instructions on how to obtain more information by visiting the Settlement website or calling the toll-free number.

8. The Email Notice, which was formatted for distribution using imbedded html text, provided Class Members with a link to the Settlement website. The Email Notice was formatted with easy-to-read text without graphics, tables, images, and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers and/or SPAM filters. Epiq also followed standard email protocols, including utilizing "unsubscribe" links and Epiq's contact information in the Email Notice.

9. Epiq commenced the Email Notice to 142,636 potentially valid email addresses on July 10, 2024, and Email Notice efforts were completed on July 16, 2024. Each Email Notice was transmitted with a unique message identifier. If the receiving email server could not deliver the message, a "bounce code" was returned along with the unique message identifier.

10. For all Class Members with potentially valid email addresses in the Class Data, Epiq closely monitored all deliverability attempts of the Email Notice throughout the Email Notice campaign. A total of 111,307 Email Notices were delivered. Of the 31,329 Email Notices that could not be delivered, 4,559 of them were undeliverable because the email address no longer existed, the email account was closed, or the email address had a bad domain name or address error (collectively, "Hard Bouncebacks"). After three attempts, the remaining 26,770 Email Notices could not be delivered due to an inactive or disabled account, the recipient's mailbox was full, technical auto-replies, or the recipient server was busy or unable to deliver (collectively, "Soft

Bouncebacks"). Ultimately, Epiq was able to deliver direct Email Notice to 78.03% of the email addresses provided in the Class Data.

11. Pursuant to Section VI (par. 76) of the Agreement, if an E-mail Notice is returned as undeliverable, Epiq will send the Mail Notice to that Notice Recipient. On August 7, 2024, the Mailed Notice was sent to 31,309 Class Members whose email address "bounced" back as undeliverable in the email campaign effort and for whom Epiq had a valid physical mailing address on file.

DISSEMINATION OF THE INDIVIDUAL CLASS NOTICE BY POSTAL MAIL

12. Pursuant to Section VI (par. 76) of the Agreement and Section 11 of the Order, Epiq was responsible for sending the short form Notice to all potential Class Members via First Class US Mail ("Postcard Notice") for whom no email address appears on the Class List. Attached hereto as **Exhibit B** is the Postcard Notice that Epiq disseminated by mail.

13. Prior to mailing the Postcard Notice to the Class List, all mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS").[2] In addition, the addresses were processed via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. To the extent that any Class Member had filed a USPS change of address request, and the address was certified and verified, the current address listed in the NCOA database was used in connection with the Postcard Notice mailing. This address updating process is standard for the industry and for the majority of promotional mailings that occur today. A total of 230,244 records in the Class List were sent

[2] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

through the USPS NCOA, CASS, and DPV process and 6,262 records were updated with new addresses.

14. Prior to commencing any mailings for this matter, Epiq established a dedicated post office box to mail notice from and to allow Class Members to contact the Settlement Administrator or submit documents by mail. Epiq has and will continue to maintain the P.O. Box throughout the administration process.

15. On July 16, 2024, Epiq mailed 85,526 Postcard Notices via First Class US Mail to potential Class Members on the Class List with a valid mailing address for whom no valid email address was available. In addition, a Long Form Notice has been mailed via First Class US Mail to all persons who submitted a request for one. As of August 13, 2024, 17 Long Form Notices have been mailed.

16. The return address on the Postcard Notices is the case post office box maintained by Epiq. As of August 13, 2024, 356 Postcard Notices have been returned by USPS with forwarding information.

17. As of August 13, 2024, a total of 12,060 Postcard Notices have been returned to Epiq without forwarding address information. As a result of skip trace searches performed by a third-party lookup service, Epiq is preparing to remail 7,873 Postcard Notices to Class Members whose address was updated via the skip trace process.

18. As of August 13, 2024, Epiq has mailed or emailed Notice to 228,132 of 230,244 unique Class Members, with Notice to 4,187 unique Class Members currently undeliverable, which yields a 97.26% deliverable rate to the Class overall.

SETTLEMENT WEBSITE

19. Pursuant to Section VI (par. 79) of the Agreement, on June 7, 2024, Epiq launched a website, www.tdbankbusinessaccountclassaction.com, that potential Class Members could visit to obtain additional information about the proposed Settlement, as well as important documents, including the Long Form Notice, Settlement Agreement, and Preliminary Approval Order ("Website"). The Website contains a summary of options available to Class Members, deadlines to act, and provides answers to frequently asked questions. References to the Website were prominently displayed in the Email Notice, Postcard Notice and Long Form Notice.

20. As of August 13, 2024, the Website has been visited by 1,086 unique visitors and 1,582 website pages have been viewed. Epiq has maintained and will continue to maintain and update the Website throughout the administration of the proposed Settlement.

TOLL-FREE INFORMATION LINE

21. On June 7, 2024, Epiq established and is maintaining a toll-free interactive Voice Response Unit ("VRU"), 888-861,9530, to provide information and accommodate inquiries from Class Members. Callers hear an introductory message and then are provided with scripted information about the Settlement in the form of recorded answers to frequently asked questions. Callers also have the options of requesting a Long Form Notice by mail. The toll-free number was included in the Notices sent to Class Members and the automated telephone system is available 24 hours per day, 7 days per week.

22. As of August 13, 2024, the toll-free number has received 118 calls representing 267 total minutes.

REQUESTS FOR EXCLUSION

23. Pursuant to Section VII of the Agreement and Paragraph 12 of the Order, Class Members who wished to be excluded from the Settlement were required to mail a written Requests for Exclusion to Epiq postmarked on or before September 14, 2024. As of August 13, 2024, Epiq has not received any Requests for Exclusion.

OBJECTIONS RECIEVED

24. Pursuant to Section VII of the Agreement and Paragraph 14 of the Order, Class Members who wished to object to the Settlement were required to submit written objections to the Clerk of the Court and Epiq, such that they were postmarked on or before the objection deadline of September 14, 2024. As of August 13, 2024, Epiq has not received any written objections to the Settlement.

I declare under penalty of perjury under the laws of the United States and the State of New Jersey that the foregoing is true and correct and that this declaration was executed on August 15, 2024, in Louisville, Kentucky.

Edward Dattilo
Signer ID: O3OV7Q4E10...

Edward Dattilo
Project Manager
Epiq Class Action & Claims Solutions, Inc.

EXHIBIT A

From: Amazing Fishstore v TD Bank Settlement Administrator <noreply@tdbankbusinessaccountclassaction.com> Subject: Important Information About a Class A…

Click here to view this message in a browser window.

LEGAL NOTICE OF CLASS ACTION SETTLEMENT

IF YOU HAVE OR HAD A BUSINESS CHECKING ACCOUNT WITH TD BANK, N.A. AND YOU WERE CHARGED APSN OVERDRAFT FEES AND/OR RETRY FEES BETWEEN FEBRUARY 23, 2016, AND SEPTEMBER 30, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a Court-authorized notice of a proposed class action settlement. This is not a solicitation from an attorney, and you are not being sued.

PLEASE READ THIS NOTICE CAREFULLY, AS IT EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.

For more information, including a more detailed description of your rights and options, please visit TDBankBusinessAccountClassAction.com.

What is the Settlement about? A Settlement has been reached in a class action lawsuit challenging TD Bank, N.A.'s ("TD Bank") practice of assessing (1) Overdraft Fees on transactions that were authorized at a time when the Account's Available Balance was positive but later paid by TD Bank when the Account's Available Balance was insufficient to cover the transaction ("APSN Fee"); and (2) assessing Overdraft Fees or NSF Fees on a debit transaction that was returned unpaid by the Bank due to insufficient funds and subsequently re-submitted by a merchant or other third party for payment and returned unpaid or paid into overdraft ("Retry Fee"). The lawsuit contends, among other things, that TD Bank's assessment of such fees in these circumstances was not authorized by the terms of the Business Deposit Account Agreement. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right.

Why am I being contacted? TD Bank's records show that the person or entity to whom this notice is addressed is a member of one or both of the Settlement Classes. The Settlement Classes include all current and former holders of a TD Bank business checking account who, between February 23, 2016 and September 30, 2022 ("Class Period"), were assessed an APSN Fee or Retry Fee by the Bank.

What are the Settlement terms? TD Bank agreed to provide $10,500,000.00 to the Settlement Classes, which includes money for (a) payments to Settlement Class Members, (b) attorneys' fees and expenses, (c) settlement administration costs, and (d) service awards to the named plaintiffs. TD Bank has also agreed to provide an additional $5,000,000.00 in the form of reductions to the outstanding balances of Participating Settlement Class Members who were charged APSN Fees

or Retry Fees and whose accounts were closed with amounts owed to TD Bank.

How do I get my Settlement payout? Once the Court approves the Settlement, if you are a current customer of TD Bank you will automatically receive an account credit. If you are a former customer, you will be paid via check.

Your other options. If you do not want to be bound by the Settlement, you may exclude yourself by **September 14, 2024**. If you do not exclude yourself, you will release your claims against TD Bank. Alternatively, you may object to the Settlement by **September 14, 2024**. The Long-Form Notice available at the Settlement Website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on **October 10, 2024**, to consider whether to approve the Settlement and to consider a request by Class Counsel for attorneys' fees and expenses and service awards of up to $5,000 for each of the named Plaintiffs who brought this case on behalf of the Settlement Classes. Details about the hearing are in the Long-Form Notice. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear for you at the hearing.

Questions? If you have questions, please visit TDBankBusinessAccountClassAction.com. You may also write with questions to Amazing Fishstore Settlement Administrator, P.O. Box 5657, Portland, OR 97228-5657, or call the toll-free number at 1-888-861-9530. **Please do not contact TD Bank or the Court for information.**

AK263v.01

EXHIBIT B

Amazing Fishstore v. TD Bank, N.A.
Settlement Administrator
P.O. Box 5657
Portland, OR 97228-5657

BARCODE NO-PRINT ZONE

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Portland, OR
PERMIT NO. 2882

Important Notice About Class Action Settlement

You are receiving this Notice because you may be entitled to benefits from a proposed class action Settlement. This Notice explains what the class action is about, what the Settlement will be, and how your rights may be affected. More information about the Settlement and the Agreement are available at TDBankBusinessAccountClassAction.com.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

<<MAIL ID>>
<<NAME 1>>
<<NAME 2>>
<<ADDRESS LINE 1>>
<<ADDRESS LINE 2>>
<<ADDRESS LINE 3>>
<<ADDRESS LINE 4>>
<<ADDRESS LINE 5>>
<<CITY, STATE ZIP>>
<<COUNTRY>>

Barcode No-Print Zone

Document ID:

What is the Settlement about? A Settlement has been reached in a class action lawsuit challenging TD Bank, N.A.'s ("TD Bank" or the "Bank") practice of assessing (1) Overdraft Fees on transactions that were authorized at a time when the Account's Available Balance was positive but later paid by TD Bank when the Account's Available Balance was insufficient to cover the transaction ("APSN Fee"); and (2) Overdraft Fees or NSF Fees on debit transactions that were returned unpaid by the Bank due to insufficient funds and subsequently resubmitted by a merchant or other third party for payment and returned unpaid or paid into overdraft ("Retry Fee"). The lawsuit contends, among other things, that TD Bank's assessment of such fees in these circumstances was not authorized by the terms of the Business Deposit Account Agreement. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right.

Why am I being contacted? TD Bank's records show that the person or entity to whom this Notice is addressed is a member of one or both of the Settlement Classes. The Settlement Classes include all Current and Past Account Holders of a TD Bank business checking account ("Account") who, between February 23, 2016, and September 30, 2022 (the "Class Period"), were assessed an APSN Fee or Retry Fee by the Bank.

What are the Settlement terms? TD Bank agreed to provide a Settlement Payment amount of $10,500,000, which includes money for (a) payments to Settlement Class Members, (b) attorneys' fees and expenses, (c) settlement administration costs, and (d) Service Awards to the Plaintiffs. TD Bank has also agreed to provide an additional $5,000,000 in the form of reductions to the outstanding balances of Participating Settlement Class Members who were charged APSN Fees or Retry Fees and whose Accounts were closed with amounts owed to TD Bank.

How do I get my Settlement payout? Once the Court approves the Settlement, you will automatically receive an account credit if you are a current customer of TD Bank. If you are a former customer, you will be paid via check.

What are my other options? If you do not want to be bound by the Settlement, you may exclude yourself by **September 14, 2024**. If you do not exclude yourself, you will release your claims against TD Bank. Alternatively, you may object to the Settlement by **September 14, 2024**. The Long-Form Notice, available at the Settlement Website listed below, explains how to exclude yourself or object. The Court will hold a hearing on **October 10, 2024**, to consider whether to approve the Settlement and to consider a request by Class Counsel for attorneys' fees and expenses and Service Awards of up to $5,000 for each of the Plaintiffs who brought this case on behalf of the Settlement Classes. Details about the hearing are in the Long-Form Notice. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear for you at the hearing.

What if I have more questions? If you have questions, please visit TDBankBusinessAccountClassAction.com. You may also write with questions to Amazing Fishstore Settlement Administrator, P.O. Box 5657, Portland, OR 97228-5657, or call the toll-free number at 888-861-9530. **Please do not contact TD Bank or the Court for information.**