IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JESSE KRIMES, on Behalf of Himself and All Others Similarly Situated,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A., and DOES 1-10,

Defendants.

No. 2:15-cv-05087

PLAINTIFF'S NOTICE, MOTION AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

PLEASE TAKE NOTICE that on April 12, 2017 at 10:00 a.m., or on such date as may be specified by the Court, in the courtroom of the Honorable Eduardo C. Robreno, United States District Court for the Eastern District of Pennsylvania, James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, PA, Plaintiff Jesse Krimes, on behalf of himself and the Settlement Class, will and hereby does move for an entry of an order, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), granting the following relief:

1) An award to Class Counsel of $230,312.89 in attorneys' fees;

2) An award to Class Counsel of $14,687.11 in costs and other litigation expenses; and

3) A service award to the Class Representative in the amount of $5,000.00.

This motion will be heard concurrently with Plaintiff's Unopposed Motion for Final Approval of Class Action, which is separately briefed.

This motion is based on this notice; the incorporated Memorandum of Law; the Joint Declaration in Support of Plaintiff's Unopposed Motion for Attorneys' Fees and Costs (Ex. A hereto); the Settlement Agreement (ECF 31-1); the Unopposed Motion for Final Approval and accompanying documentation (filed concurrently herewith); the declaration of the Class Notice and Settlement Administrator's personnel on the implementation of the Class Notice plan and the Claims administration process; the records in this Action; and on such further oral and documentary evidence as may be submitted, and any further evidence as the Court may receive. Pursuant to Fed. R. Civ. P. 23(h), any objection hereto may be filed pursuant to paragraph 8 of the Court's Preliminary Approval Order on or before March 6, 2017. Upon filing, a copy of this Motion will be posted to the settlement website, www.KrimesDebitCardSettlement.com, where it can easily be accessed by Settlement Class Members.

/s/ DJS8892

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I. INTRODUCTION

Plaintiff has negotiated the Settlement Agreement (ECF 31-1) (the "Settlement" or "Agreement") with Defendant JPMorgan Chase Bank, N.A. ("Chase"). Under the Settlement, each Settlement Class Member can receive a settlement payment in the amount of all fees imposed by Chase in connection with the use of the Bureau of Prisons ("BOP") Debit Card issued by Chase to each Settlement Class Member. In addition, Settlement Class Members' settlement payments will also include all third-party ATM surcharges that the Settlement Class Member incurred on his or her BOP Debit Card. That is, each Settlement Class Member stands to recover all Chase-related fees or third-party ATM surcharges which he or she paid in connection with his or her BOP Debit Card up to the date of preliminary approval. Settlement Class Members may also ask to have all funds on their BOP Debit Card returned by check. This is an excellent result for the Settlement Class. *See* Declaration of Ruben Honik, Esq. ("Honik Decl.") at ¶ 6 (Ex. A hereto). The Settlement is fair, adequate, and reasonable. *Id.*

Plaintiff and Class Counsel have separately moved for Final Approval of the Settlement. Concurrently therewith, and pursuant to the Settlement Agreement, Plaintiff and Class Counsel respectfully move for (i) attorneys' fees in the amount of $230,312.89 to compensate Class Counsel for their work in achieving the Settlement, (ii) $14,687.11 in costs and expenses incurred in prosecuting this Action, and (iii) a service award for the named plaintiff in the amount of $5,000. Chase does not oppose this motion.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Case Overview

In September 2008, the United States Department of the Treasury ("Treasury") entered into a Financial Agency Agreement ("FAA") with Chase. *See generally* Honik Dec. ¶¶ 7-10. The FAA requires Chase to act as Treasury's financial agent and operate the U.S. Debit Card

Program, which "provide[s] debit card services to cardholders within and outside of the United States as necessary to facilitate the use of debit cards by Federal agencies and cardholders anywhere in the world." *See* ECF 14-4, FAA ¶ 3(c). In July 2011, Treasury and the Federal Bureau of Prisons ("BOP") executed an interagency agreement permitting BOP to participate in the U.S. Debit Card Program. The same month, Treasury executed a "Direction to Agent" obligating Chase to "provide U.S. Debit Card program products and services to the BOP." *See* ECF 14-6, Direction to Agent No. 30, ¶ 2. Under the U.S. Debit Card program operated by Chase for BOP (the "BOP Debit Card Program"), federal prison inmates receive prepaid debit cards upon release, containing and permitting access to funds BOP held in trust for them during their incarceration (the "BOP Debit Card"). *See* ECF 1, Compl. ¶¶ 15-17.

Plaintiff Jesse Krimes was an inmate at a federal prison in Fairton, New Jersey. He received a BOP Debit Card upon his release in September 2013. *See id.* ¶ 27. On September 11, 2015, Plaintiff filed his complaint ("Complaint") asserting claims against Chase on behalf of a putative class of all released federal prison inmates in the United States who received BOP Debit Cards pursuant to the BOP Debit Card Program. Plaintiff alleged unjust enrichment, conversion, unfair and deceptive practices, and other claims and seeks monetary damages and other relief in connection with fees charged to federal correctional facility releasees in connection with BOP Debit Cards; Chase's disclosures to cardholders concerning those fees; and Chase's possession of, and releasees' access to, monies deposited onto BOP Debit Cards.

On November 20, 2015, Chase filed a motion to dismiss. *See* ECF 14. Plaintiff opposed the motion. *See* ECF 16. On March 4, 2016, the Court held a hearing on the motion to dismiss. Following the hearing, the Court issued an order denying Chase's motion in part, taking other issues under advisement, and ordering further briefing on, and (if necessary) targeted discovery

concerning, Chase's immunity defenses. *See* ECF 22. The parties subsequently sought an extension of pertinent deadlines so they could engage an experienced mediator to aid in settlement negotiations, described below. *See* ECF 27. The Court granted this request on April 20, 2016. *See* ECF 28; *see also* ECF 29-30.

B. Settlement Negotiations and Preliminary Approval

The parties engaged in informal discussions about potential resolution of the case shortly after the hearing on Chase's motion to dismiss in March 2016. During those discussions, the parties discussed information provided by Chase that related to the scope of the putative class, the nature of the BOP Debit Card Program and Chase's role thereunder, and the fees at issue in this matter. After much back-and-forth between the parties' counsel, during which additional facts were learned and discussed, the parties concluded that it would be worthwhile to engage an experienced, neutral mediator to facilitate a potential resolution of this matter.

To that end, the parties jointly engaged an experienced mediator, Mr. Jonathan Marks. *See* Honik Decl. ¶ 12. The mediation process was conducted at arms' length between the parties with divergent views as to the risks of litigation, and the ultimate value of any judgment, under the supervision of Mr. Marks. *See id.* ¶¶ 12-14. Prior to the mediation, Chase supplied plaintiff's counsel with certain information pertinent to the case. *Id.* ¶ 12. The parties also provided Mr. Marks with case materials and information. *Id.* ¶ 13. The parties also had multiple joint and *ex parte* telephone conversations with Mr. Marks. *Id.* These conversations culminated in an all-day, in-person mediation session before Mr. Marks on May 12, 2016. *Id.* ¶ 13. This mediation session resulted in a settlement. *Id.*

On May 31, 2016, the parties informed this Court of their having reached an agreement. *Id.* ¶ 14 The parties requested and this Court granted a stay so the parties could finalize the anticipated settlement papers. *Id.* The parties executed the Settlement Agreement on August 1,

2016, memorializing the parties' agreement, subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23. *Id.*

This Court granted Plaintiff's unopposed motion for preliminary approval of the settlement on October 26, 2016, and set deadlines for settlement proceedings and a date for the Fairness Hearing. ECF 43-44. In so ruling, the Court also overruled the objection of a putative class member, Brett Sheib, who challenged the scope of the Settlement Agreement's release at the preliminary approval stage. *Id.*

II. SUMMARY OF THE SETTLEMENT

For purposes of this Motion, Plaintiff reiterates here that the Settlement Agreement provides for payment by Chase of up to $446,822 to the Settlement Class, to be distributed to eligible Settlement Class Members. *See* Agreement ¶¶ 45, 71.

Apart from the money allocated to the Settlement Class, Chase is obligated to pay reasonable notice and settlement administration costs associated with the Settlement. Agreement at ¶ 47. In addition, Chase has agreed not to oppose Plaintiff's Class Counsel's request for attorneys' fees, costs, and a service award in the aggregate amount of $250,000. *Id.* ¶¶ 46-47. The service award will compensate the class representative for the time, effort, and risks he undertook in prosecuting the Action. *Id.*

Further details regarding the Settlement are found in Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, filed concurrently herewith.

III. CLASS COUNSEL'S UNOPPOSED 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 an attorneys' 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 Investments, Inc.*, 667 F.3d 273, 329 (3d Cir. 2011) (en banc) (internal quotations and citation omitted). As indicated in the Court-approved Notice disseminated to the Settlement Class, and consistent with standard class action practice and procedure, Plaintiff's Class Counsel requests attorneys' fees in the amount of $230,312.89, to be paid exclusively by Chase and apart from the settlement payments to be made to Settlement Class Members. *See* Agreement ¶¶ 46-47. Not only does the Settlement provide for reasonable attorneys' fees to be paid by Chase, but Plaintiff's Class Counsel's requested attorneys' fees fall within the acceptable range of fees routinely approved in this Circuit.

A. Application of the Lodestar Method is Proper

"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). This is not a common fund case; therefore, the POR approach is inapplicable.

The lodestar method is appropriate in cases, such as this one, that do not involve a common settlement fund. "The lodestar method is 'designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." *In re Diet Drugs*, 582 F.3d 524, 540 (3d Cir. 2009) (quoting *In re Prudential Ins. Co Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3d Cir. 1998)). Once calculated, the lodestar is appropriately subjected to a multiplier. *See infra*. Class Counsel's fee request of $230,312.89 is reasonable under the lodestar method.

B. Class Counsel's Lodestar is Properly Calculated

"The lodestar award is calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The lodestar is then subject to a multiplier (sometimes called the "lodestar multiplier"). *See, e.g.*, *id.*; *Lindy Bros. Builders, Inc. v. Am. Radiator & Std. Sanitary Corp.*, 540 F.2d 102, 117 (3d Cir. 1976). Class Counsel's hours and rates, and the lodestar multiplier, in this action are reasonable.

i. The Number of Hours Worked is Reasonable

Class Counsel seeks compensation for over 460 hours spent in this action. Honik Decl. ¶ 24. The number of hours is reasonable given the breadth of this litigation. Since this Action's inception, Class Counsel has spent significant time and effort in prosecuting the class claims against Chase, including:

- Extensive pre-filing investigation of the claims against Chase, including multiple interviews with the class representative concerning his experiences with Chase;[1]
- Conducting legal research regarding various procedural and substantive issues;
- Researching, drafting, and amending the complaint;
- Opposing Chase's motion to dismiss;
- Reviewing and negotiating data and other information requests to Chase;
- Preparing for and participating in an all-day, in-person mediation session with a neutral third-party mediator, and multiple joint and *ex parte*

[1] "[T]he Third Circuit has construed compensable activities to include pre-litigation services in preparation of filing the lawsuit, background research and reading complex cases, and productive attorney discussions." *Posa v. City of East Orange*, Civ. No. 03-233, 2005 U.S. Dist. LEXIS 20060, at *15 (D.N.J. Sept. 8, 2005) (collecting Third Circuit cases).

communications with the mediator leading up to the all-day in-person mediation session; and

- Drafting and negotiating settlement documents, including the lengthy settlement agreement, class notice, and notice and settlement administration plan, which included a cutting-edge electronic claims module that made it easier for Settlement Class Members to submit claims; and

- Preparing the preliminary and final approval pleadings, including attending a preliminary approval hearing at which the "objection" of a putative settlement class member was heard (and ultimately overruled) by the Court.

Honik Decl. ¶ 36.

In addition, negotiations and the exchange of information ramped up quickly and took place on a relatively compressed timeframe over the course of just a few months, which meant that the significant time and effort expended by Plaintiff's Class Counsel on this matter was at the expense of other matters. *Id.* ¶ 42.

Plaintiff's Class Counsel also took steps to ensure that work was distributed efficiently by, for instance, assigning designated tasks to attorneys and staff with lower biller rates when appropriate, and sought to avoid duplication of effort among timekeepers. *Id.* ¶ 39. The total number of hours of 478.3 is reasonable given the duration, progression, nature, and complexity of this litigation, and reflects the efficient management of this litigation. *Id.* at¶ 33.

ii. Class Counsel's Hourly Rates Are Reasonable

At the hourly rates currently charged by Plaintiff's Class Counsel, Plaintiff's Class Counsel's pre-multiplier lodestar would be $232,355.00. Honik Decl. at ¶ 33. Calculating the lodestar using Plaintiff's current billing rates is appropriate given that the same rates were in effect throughout this litigation, and the deferred nature of counsel's compensation. *Id.*[2]

[2] Even if Plaintiff's Class Counsel's rates had varied, the Third Circuit has held that "the lodestar ought to be adjusted to account for the incurred costs of the delay plaintiffs' counsel has

In making the lodestar calculation, Plaintiff's Class Counsel employed reasonable hourly rates. Billing rates "should be reasonable in light of the given geographical area, the nature of the services provided, and the experience of the attorneys." *In re AT&T Corp. Secs. Litig*, 455 F.3d 160, 164 (3d Cir. 2006) (internal quotations and citations omitted). "In assessing whether rates are reasonable, courts assess the experience and skill of the attorneys and look at the market rates in the relevant community." *Cosgrove v. Citizens Auto Fin, Inc.*, Civ. A. No. 09-1095, 2011 U.S. Dist. LEXIS 95656, at *25 (E.D. Pa. Aug. 25, 2011). Here, the hourly rates billed by Plaintiff's Class Counsel range between $400 and $750 for attorneys, and $125 for non-attorney staff. Honik Decl. at ¶ 33. These rates are consistent with rates charged by attorneys in comparable law practices in this Circuit, and in this District in particular. *See, e.g., Moore v. GMAC Mortg.*, Civ. A. No. 07-4296, 2014 U.S. Dist. LEXIS 181432, at *8 (E.D. Pa. Sept. 19, 2014) (finding hourly rates used in the lodestar calculation "reasonably ranged between" $325 and $860 per hour); *In re Merck & Co. Vytorin ERISA Litig.*, Civ. A. No. 08-cv-285, 2010 U.S. Dist. LEXIS 12344, at *44-45 (D.N.J. Feb. 9, 2010) (approving rates up to $835 per hour); *see also In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013).

Also, very recently, another district court in this District approved these same rates in another class action settlement in which Golomb & Honik, P.C. also serves as class counsel. *See Moore v. Angie's List, Inc.*, No. 2:15-cv-01243 (E.D. Pa. 2015) at ECF 48 (Unopposed Motion for Attorney's Fees, filed November 14, 2016, using same hourly rates requested here); *id.* at ECF 55 (order granting the foregoing). Similarly, another district court also recently approved these same rates as well. *See Barba, et al. v. Shire US, Inc., et al.*, No. 1:11-cv-21158 (S.D. Fla.)

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undergone in receiving payment." *Keenan v. City of Phila.*, 983 F.2d 459, 476 (3d Cir. 1992). To adjust for delay in payment of attorneys' fees, a court may "bas[e] the fee award on the current rates or adjust[] the fee based on historical rates to reflect its present value." *Id.* at 476 & n.18.

at ECF 430 (Unopposed Motion for Attorneys' Fees, filed Sept. 23, 2016, using same hourly rates requested here); *id.* at ECF 436 (minute entry for final approval hearing held on Nov. 10, 2016; granting request for attorneys fees; court "found attorneys fees reasonable"). Finally, a 2014 Survey of Hourly Billing Rates conducted by the National Law Journal shows that – two years ago – senior partner billing rates among larger Philadelphia law firms were in the range of $760-$1000 per hour – all of which are above the highest hourly rate here.[3] The NLJ survey has been cited with approval in this district. *See, e.g.*, *Harlan v. NRA Group, LLC*, No. 10-0324, 2011 U.S. Dist. LEXIS 26841, at *1 n.1 (E.D. Pa. Mar. 2, 2011). The hourly rates claimed by the attorneys in this litigation are reasonable.

A. The Requested *Negative* Multiplier Further Underscores the Reasonableness of the Sought Fee Award

"The multiplier is a device that attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work." *In re Rite Aid*, 396 F.3d at 305-306; *see Lindy*, 540 F.2d at 117 (contingency multiplier reflects "the contingent nature of [the lawsuit's] success" and the "delay in the receipt of payment for services rendered."). Here, Plaintiff's Class Counsel's fee request results in a *negative* multiplier. Pre-multiplier, Plaintiff's Class Counsel fees total $236,355.00, which is slightly more than the $230,312.89 fee requested here. This further demonstrates the reasonable (if not overly conservative) nature of the requested fee award. *See, e.g.*, *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) ("[m]ultipliers ranging from one to four are frequently awarded") (internal quotations and citation omitted). Indeed, courts in this Circuit routinely approve greater (positive) multipliers. *See, e.g.*, *Tavares v. S-L Distrib. Co.*, No. 1:13-cv-1313, 2016 U.S. Dist. LEIS 57689, at *55 (M.D. Pa. May 2, 2016) (approving multiplier of 2.29); *Keller v. TD Bank, N.A.*, Civ. A. No. 12-

[3] *See* http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country (last accessed Feb. 15, 2017).

5054, 2014 U.S. Dist LEXIS 155889, at *43 (E.D. Pa. Nov. 14, 2014) (approving "multiplier of slightly above 3"); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *16 n.9 (E.D. Pa. June 2, 2004) (3.67 multiplier); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, Civ. A. No. 03-4587, 2005 U.S. Dist. LEXIS 9705, at *55 (E.D. Pa. May 20, 2005) ("The 2003 Class Action Reporter survey found that the average lodestar multiplier was 4.5 . . . ").

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

Although a fee award properly calculated under the lodestar method is presumptively reasonable, courts in this Circuit sometimes consider other factors that bear on the reasonableness of a fee award. *See, e.g.*, *Public Interest Research Grp. v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995). These factors are:

> (1) time spent and labor required; (2) novelty and difficulty of the questions; (3) skill requisite to perform the legal services properly; (4) preclusion of other employment by the attorney due to acceptance of the case: (5) customary fee in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount of time involved and the results obtained; (9) experience, reputation, and ability of the attorney; (10) undesirability of the case; (11) nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. at 1185 n.8 (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)). The Third Circuit has cautioned against reducing a properly calculated lodestar amount based on these factors. *See Washington v. Phila. Cty. Ct. of Comm. Pleas*, 89 F.3d 1031, 1042 (3d Cir. 1996) (reversing district court's reduction of properly calculated lodestar "to maintain some ratio between the fees and the damages awarded"). The appellate court has also observed that "[a] number of these factors, however, are subsumed in the lodestar calculation."

Id. at 1041-42. Nonetheless, were this Court to consider these factors here, they also support the reasonableness of Class Counsel's fee request.

i. Class Counsel Devoted a Substantial Amount of Time and Effort to This Case on a Purely Contingent Basis, and Were Precluded From Other Employment as a Result

The first, sixth, seventh, and eighth *Johnson* factors – the time and labor involved, the preclusion of other employment, whether the fee was contingent and the time limitations imposed, and the amount of time involved and results obtained – are interrelated inquires, each supporting the reasonableness of Plaintiff's Class Counsel's fee request.

In total, Plaintiff's Class Counsel has billed over 478.3 hours, totaling $236,355.00 in pre-multiplier lodestar. Honik Decl. ¶ 33. As noted above, the hourly rates of Plaintiff's Class Counsel in this action are comparable to those awarded in other cases in this District. *See supra* Part IV.B.2. Moreover, the hours billed by Class Counsel in this action are reasonable given the work involved. Honik Decl. ¶¶ 36-37, 40.

This Action demanded Plaintiff's Class Counsel to research, understand, and brief various topics. Discovery and litigation strategy required a significant amount of Plaintiff's Class Counsel's time and labor to develop the legal theories and arguments presented in the pleadings, including abstruse theories and arguments concerning Chase's defenses based on government contractor immunity and derivative sovereign immunity. *Id.* ¶ 50. Further, the mediation and settlement process itself also required substantial time and labor, as Plaintiff's Class Counsel prepared for and participated in an all-day, in-person mediation (besides informal lead-up or post-mediation discussions), and worked for many weeks with defense counsel to finalize the Settlement. *Id.* ¶¶ 50-51.

Plaintiff's Class Counsel's labors were not for naught. The Settlement represents a significant benefit to the Settlement Class. Moreover, Plaintiff's Class Counsel's work is not yet

done. Plaintiffs' Class Counsel will be required to, among other things: (1) continue to monitor the claims administration process and communicate with the Settlement Administrator, including overseeing the Claim review process, (2) respond to class member inquiries now and for years to come; (3) prepare for and attend the Final Approval Hearing; (4) continue to oversee the Claims administration process, including addressing any Claim review issues; (5) monitor distribution of benefits to the Settlement Class; (6) and potentially handle post-judgment appeals. Honik Decl. ¶41. Notably, Plaintiff's Class Counsel's fee request does not seek any additional funds for future work on behalf of the Settlement Class. *Id.* ¶ 38.

Furthermore, the time spent on the Action was time that could not be spent on litigating other matters. Honik Decl. ¶ 42. Plaintiff's firm is a relatively small firm with a very busy practice. Plaintiff's Class Counsel were required to forego other opportunities to properly prosecute this Action. *Id.* The motion to dismiss briefing and argument, and subsequent mediation and settlement, ramped up quickly and took place on a relatively compressed timeframe over the course of just a few months, which meant that the significant time and effort expended by Plaintiff's Class Counsel on this matter was at the expense of other matters. *Id.*

Finally, Plaintiff's Class Counsel litigated this case wholly on a contingency fee basis, and did so at great risk of never receiving any compensation. *Id.* In effect, Plaintiff's Class Counsel has advanced their legal services to the Settlement Class since that time. *See, e.g.*, *Lindy*, 540 F.2d at 116-17.

These three factors strongly militate in favor of the requested fee.

ii. This Action Involved Difficult Issues and Plaintiff's Claims Entailed Considerable Risk

The second and tenth *Johnson* factors – the novelty or difficulty of the issues raised in the litigation and the "undesirability" of the case, respectively – are also interrelated and support the requested fee award.

Although Plaintiff's Class Counsel were able to achieve fair, adequate and reasonable relief for the Settlement Class in this case, the relief obtained cannot be viewed in a vacuum. Plaintiffs' Class Counsel's litigation of the class claims has been fraught with risk since inception of this matter, as evidenced by Chase's motion to dismiss. While Plaintiff's Class Counsel are confident in the strength of the Plaintiffs' claims, they are also pragmatic that there is no guarantee of success and that substantial obstacles exist at the class certification, summary judgment, and trial phases. Honik Decl. ¶¶43-44. This includes, in particular, Chase's defenses based on government contract immunity and derivative sovereign immunity. *Id.* ¶ 50. Finally, even if Plaintiff obtained a favorable jury verdict, an appeal would be likely, which would create new risks and years of delay. *See id.* ¶ 49.

iii. The Requested Fee is Consistent with Attorneys' Fees Awarded in Similar Cases

The fifth and twelfth *Johnson* factors – the customary fee and awards in similar cases, respectively – also support a finding that the agreed-upon fee request is reasonable.

As noted *supra*, the requested fee, based on a presumptively reasonable lodestar calculation with a *negative* multiplier, falls squarely within the range of awards made in numerous cases brought in this Circuit and District.

iv. A High Level of Skill Was Necessary to Perform the Legal Services Properly

The remaining *Johnson* factors – the skill required to perform the legal services properly (factor three) and the experience, reputation, and ability of the attorneys (factor nine) – confirm that the requested fee is reasonable.

Plaintiff's Class Counsel are seasoned attorneys with considerable experience litigating and settling class actions of similar size, scope and complexity. Honik Decl. ¶ 5, 28. Plaintiff's Class Counsel regularly engage in major complex litigation involving consumer class actions, and have been appointed class counsel by courts throughout the country. *Id.* ¶ 28. Plaintiff's Class Counsel's skill came into play in developing and litigating the application of traditional legal theories in the context of the BOP Debit Card, and the interrelationship between the BOP, Chase, and Settlement Class Members; and opposing Chase's Rule 12(b)(6) motion to dismiss. *Id.* ¶ 51.

Moreover, Plaintiff's Class Counsel thoroughly investigated Plaintiff's claims and made skillful use of documents and information to assess Chase's potential exposure as to the claims at issue. *Id.* With this information, Plaintiff's Class Counsel developed theories of liability and damages that ultimately led to a very successful result – the return of all Chase-imposed fees, as well as all third-party ATM surcharges. *Id.*

Also, the skill and competence of Chase's lawyers should be considered and cannot be doubted. *See, e.g.*, *In re OSB Antitrust Litig.*, Master File No. 06-826, 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). Chase is represented by WilmerHale, a global, full-service law firm with more than 1,000 legal professionals operating out of 12 offices throughout the world. *See*

https://www.wilmerhale.com/about/overview/. There is little doubt that Chase's law firm possesses the resources, reputation, and experience to vigorously and effectively advocate Chase's interests were this matter to be litigated further. Honik Decl. ¶ 52.

IV. CLASS COUNSEL'S COSTS ARE REASONABLE AND WERE NECESSARILY INCURRED

Plaintiff's Class Counsel also request reimbursement for a total of $14,687.11 in certain litigation costs and expenses. Honik Decl. ¶ 35; *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). This sum corresponds to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution of this litigation and the Settlement. Honik Decl. ¶ 35. Such costs 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"). In addition to being compensable under Rule 23, these costs are also compensable under the consumer protection statute alleged in the complaint. *See Neal v. Bavarian Motors, Inc.*, 882 A.2d 1022, 1029-30 (Pa. Super. Ct. 2005).

The categories of expenses for which Plaintiff's 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* Honik Decl. ¶ 35. These expenses include but are not limited to: filing and service fees; photocopies; mediation fees; travel expenses, and research fees. *Id.* These expenses are reasonable and justified. *See, e.g., In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 226 (E.D. Pa. 2014) (approving $304,996.65 in costs that included same categories as those requested here); *Yong Soon Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004) (approving $98,553.95 in costs that included same categories as those requested here).

V. THE REQUESTED SERVICE AWARD IS REASONABLE AND SHOULD BE APPROVED

Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Sullivan*, 667 F.3d at 333 n.65 (internal quotations and citation omitted). "Courts 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." *Fleisher v. Fiber Composites, LLC*, Civ. A. No. 12-1326, 2014 U.S. Dist. LEXIS 29151, at *43 (E.D. Pa. Mar. 5, 2014) (internal quotations and citation omitted). "It is particularly appropriate to compensate named representative plaintiffs with incentive awards where they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of a class." *Id.*

The service awards requested for Plaintiff Jesse Krimes, the sole class representative in this case, is reasonable and appropriate. Mr. Krimes committed time and effort to this Action, and bore the risks involved in prosecuting this Action. *See* Honik Decl. ¶¶ 53-56.

The service award requested is $5,000.00. The Notice informed Settlement Class Members about this. Not a single Settlement Class Member has objected to the service award (or to any other aspect of the Settlement for that matter, including attorneys' fees and costs).

The service award requested falls well within the range approved in other cases. Although the service award is to be paid separately from the monetary relief available to the Settlement Class, the service award represents less than .012% of the monetary relief available to the Settlement Class. The service award requested here is reasonable. *See, e.g.*, *Haught v. Summit Res., LLC*, No, 1:15-cv-0069, 2016 U.S. Dist. LEXIS 45054, at *19-20 (M.D. Pa. Apr. 2016) (approving $15,000 in service awards for class representatives, noting that service awards typically range "from $1,000 to $50,000" each); *In re Am. Investors Life Ins. Co. Annuity Mktg.*

& Sales Practices Litig., 263 F.R.D. 226, 245 (E.D. Pa. 2009) (approving awards between $5,000 and $10,000 to each class representative); *Godshall v. The Franklin Mint Co.*, No. 01-cv-6539, 2004 U.S. Dist. LEXIS 23976, at *20-21 (E.D. Pa. Dec. 1, 2004) (approving award of $20,000 each to each class representative).

VI. CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that the Court grant this Unopposed Motion for Attorneys' Fees, Costs, and Service Award.

Dated: February 20, 2017

BY: */s/ DJS8892*

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CERTIFICATE OF SERVICE

I, David J. Stanoch, Esquire, hereby certify that on this **20th** day of **February 2017**, a copy of the foregoing **Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and Service Awards** was filed and served upon all counsel via operation of the Court's CM/ECF system.

/s/ DJS8892
David J. Stanoch, Esquire