

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

NATALIE CAMPAGNA, GLORIA DEVAULT,  
AMANDA FARMER, PHILIP PAGLIARO, and  
YAAKOV ROZINER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

TD BANK, N.A.,

Defendant.

Case No. 1:20-cv-18533-KMW-SAK

**MOTION FOR FEES, EXPENSES, AND SERVICE AWARDS**

Plaintiffs Natalie Campagna, Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner (collectively, “Class Representatives”) hereby submit this request for fees, expenses, and service awards pursuant to the Court’s Order granting Preliminary Approval (ECF No. 72) (“PA Order”) and Federal Rule of Civil Procedure 23(b)(3) and (e).

**INTRODUCTION**

Court-appointed Class Counsel Webb, Klase & Lemond, LLC and Golomb Sprit Grunfeld, PC (collectively, “Class Counsel”), on behalf of the Class and the Class Representatives, respectfully move this Court for an award of attorneys’ fees of \$750,000, reimbursement of the \$13,526.93 in out-of-pocket litigation costs and expenses that Plaintiffs’ counsel incurred in successfully prosecuting this action, and Service Awards for the Class Representatives in the total amount of \$27,500.

The attorneys’ fees sought amount to one-third of the Settlement Fund. *See* Declaration of E. Adam Webb, ¶ 5 (“Webb Decl.”) (Exhibit 1 hereto). 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. 71, ¶¶ 6-10. In light of the results achieved, the requested fee is fair and reasonable.

Class Counsel have spent a total of \$13,526.93 in reimbursable litigation-related costs and expenses. *See* Webb Decl., ¶ 5. 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 ¶ 22. Class Counsel request the Court order reimbursement of this amount.

Finally, Class Counsel seeks Service Awards on behalf of the five Class Representative individuals in the amount of \$7,500.00 for Natalie Campagna and \$5,000 for Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner, with a total of \$27,500 to be paid in accordance with the Settlement Agreement. *Id.* at ¶ 27.

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 ¶ 13. 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**

A full recitation of the history of the case is set forth in Plaintiffs’ previous brief and the declaration. *See* Plaintiffs’ Motion and Memorandum of Law for Preliminary Approval, pp. 2-4 (“Litigation History”), p. 5 (“Settlement Negotiations”) (ECF No. 70-1); *see also* Joint Declaration in Support (ECF No. 71). Details of the case as it relates to the request set forth in this motion, including the efforts of counsel for Plaintiffs and the Class Representatives, and the costs and expenses incurred as a result of the litigation, are set forth herein and within the attached

declaration at paragraphs 6-30.

## **ARGUMENT**

### **I. 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 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 Investments, 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 Classes, and consistent with standard class action practice and procedure, Class Counsel requests attorneys’ fees in the amount of \$750,000 to be paid from the \$2.25 million Class Settlement Fund. *See* Settlement Agreement ¶ 109. Not only has the Defendant agreed not to oppose this amount, but Class Counsel’s requested fees fall within the acceptable range of fees routinely approved by this Court and within this Circuit.

#### **A. Application of the Percentage-of-Recovery Method Is Proper When Awarding Attorneys’ 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. Actions*, 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).<sup>1</sup>

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

---

<sup>1</sup> 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”).

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 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. Class Counsel Are Entitled to a Fee of One-Third of the Settlement Fund.**

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:

TD Bank agrees not to oppose Class Counsel’s request for attorneys’ fees of up to one-third of the \$2.25 million Settlement Payment Amount, and not to oppose Class Counsel’s request for reimbursement of costs and expenses. Class Counsel agree not to make a request for attorneys’ fees that exceeds one-third of the \$2.25 million Settlement Payment Amount. Any award of attorneys’ fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund.

Settlement Agreement ¶ 109. 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 \$750,000.00 for their attorneys’ fees and reasonable costs and expenses in connection with this case. The attorneys’ fees and expenses awarded by the Court will be paid out of the Settlement Payment Amount. Class Counsel will file their motion seeking attorneys’ fees and expenses by December 28, 2022. That motion will be available at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.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. Grunfeld Dec. at ¶ 29; *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. One-Third of the Settlement Fund 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 33 1/3% fee).

In *Chaudhri v. Osram Sylvania Inc. et al.*, 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 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. While the use of lodestar has been deemed "sensible," courts in this Circuit are not required to consider lodestar analysis in making attorney fee determinations. *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. March 31, 2008).<sup>2</sup>

---

<sup>2</sup> 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*

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. Merchs. 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”).

It would be a burdensome task to review the billing records of two law firms over more than two years of litigation. This would not be a good use of judicial resources.<sup>3</sup> As set forth in the attached declaration, the lawyers representing the Plaintiffs here have spent far more than \$750,000 in lodestar time litigating this case. *See, e.g.*, Webb Decl., ¶¶ 15-17. 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 a lodestar higher than the fee requested. *Id.* Accordingly, Class Counsel do not include a detailed lodestar analysis, nor need to do so, given the obvious and extensive amount of work performed.

---

*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”).

<sup>3</sup> If the Court disagrees and requires that such an analysis be undertaken, Plaintiffs’ counsel will provide a 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).

**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. Jul. 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 Systems, Inc. Sec. Litig.*, 2007 WL 4225828, at \*6 (D.N.J. Nov. 28, 2007); also *Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) (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* Webb Decl., ¶ 13. 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* Webb Decl., ¶ 13. Class Counsel are two small law firms with busy practices. *Id.* at ¶ 17. Class Counsel were required to forego other opportunities to properly prosecute this case. *Id.* at ¶¶ 13-15. 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.* at ¶¶ 13-16.

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 Webb Decl.*, ¶¶ 14, 16. Meanwhile, Class Counsel aggressively advanced this case despite substantial risk of non-payment. *Id.* at ¶ 13. 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 two 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. 71, ¶¶ 6-32. 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.*<sup>4</sup> 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. Securities Litig.*, 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors include “the difficulties faced, the speed and efficiency of the 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. New York 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 consumers holding

---

<sup>4</sup> 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. Webb Decl., ¶ 16.

over 100,000 secured credit cards.

Class Counsel have unique legal skills and abilities, as well as experience litigating consumer class actions and actions against this Defendant. *See* Webb Decl., ¶ 18. 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. Webb Decl., ¶ 11. 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* Webb Decl., ¶ 19. 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 only one Class Member has filed a valid request to be excluded. By comparison, over 100,000 Class Members were notified

of the Settlement and are eligible to receive a payment from the Settlement Amount. *See* Declaration of Elizabeth Enlund, ¶¶ 19, 25-26 (Exhibit 2 hereto). 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 attorneys' 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”).

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

Class Counsel requests reimbursement for a total of \$13,526.93 in litigation costs and expenses, which has essentially been advanced to the Class. *Id.* at ¶ 39; *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, ¶ 109. 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* Webb Decl., ¶¶ 22-23. 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”). In addition to being compensable under Rule 23, these costs are also compensable under the consumer protection statutes alleged in the operative Complaint. *See* Second Amended Complaint, ¶¶ 182, 197, 206, 215 (ECF No. 64); *Sema v. Automall 46, Inc.*, 894 A.2d 77, 81 (N.J. Sup. Ct. App. Div. 2005).

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* Webb Decl., ¶ 23. These expenses are reasonable and justified. *See, e.g., In re Certaineed 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 Representatives 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 the original Class Representative, Natalie Campagna, in the amount of \$7,500 and Service Awards to

each of the four remaining Class Representatives in the amount of \$5,000 each.<sup>5</sup> 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, Amended Complaint, and Second Amended 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* Webb Decl., ¶¶ 26-29.

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. Class Counsel request a slightly higher Service Award for Ms. Campagna because she was the original named Plaintiff, who performed services for a longer time than the others. It is likely this case would not have been filed without her initiative. Accordingly, the requested service awards of \$7,500 to Ms. Campagna and \$5,000 each for Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner 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

---

<sup>5</sup> Class Counsel request a slightly higher Service Award for Ms. Campagna since she was the original named plaintiff and this case would not have been filed without her initiative.

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. 72, at ¶ 17. The Notice Deadline was November 28, 2022, and set the final deadline for objections as January 27, 2023.

Notice of the Settlement was sent via email and regular mail, as necessary, to all potential members of the Settlement Class. See Enlund Decl., ¶¶ 2-4. This notice included a disclosure of the amount of the requested award of attorneys' fees, expenses, and Service Awards. *Id.* at Exhibits 1-2. 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, Plaintiffs and Class Counsel respectfully request that the Court grant this application for fees, expenses, and Service Awards.

DATED this 28th day December, 2022.

Respectfully submitted,

BY: GOLOMB SPIRT GRUNFELD, P.C.

/s/ 

Kenneth J. Grunfeld, Esquire  
New Jersey Bar No.: 026091999  
1835 Market Street  
Suite 2900  
Philadelphia, PA 19103  
(215) 985-9177  
[kgrunfeld@golomblegal.com](mailto:kgrunfeld@golomblegal.com)

E. Adam Webb  
WEBB, KLASE & LEMON, LLC  
1900 The Exchange, S.E.  
Suite 480  
Atlanta, Georgia 30339  
(770) 444-0773  
[Adam@WebbLLC.com](mailto:Adam@WebbLLC.com)

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2022, 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/ [Handwritten Signature]*  
\_\_\_\_\_  
Kenneth J. Grunfeld

# **Exhibit 1**

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

NATALIE CAMPAGNA, GLORIA DEVAULT,  
AMANDA FARMER, PHILIP PAGLIARO, and  
YAAKOV ROZINER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

TD BANK, N.A.,

Defendant.

Case No. 1:20-cv-18533-KMW-SAK

**DECLARATION OF E. ADAM WEBB**

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

1. I am a partner at Webb, Klase & Lemond, LLC.
2. My firm and Golomb Spirt Grunfeld, P.C. were named Class Counsel in the Court's Preliminary Approval Order. *See* ECF No. 72, ¶ 7(d).
3. Collectively, we are counsel to the following individuals ("Plaintiffs" or "Class Representatives"): Natalie Campagna, Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner. We also represent the following class:

All current and former holders of a TD Bank, N.A. Cash Secured Credit Card (a) who opened their TD Cash Secured Credit Card after May 19, 2015 and before January 18, 2022, and (b) who, through the date of Preliminary Approval, (i) maintained their account for seven consecutive billing cycles without committing an act of default, and (ii) were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

Settlement Agreement, ¶ 44; ECF No. 72, ¶ 5.

4. I have personal knowledge of the matters set forth below based on our active

participation in all aspects of the prosecution of this litigation.

5. Class Counsel seek attorneys' fees in the amount of \$750,000, which is one-third of the Settlement Amount, reimbursement of \$13,526.93 in litigation costs and expenses, and Service Awards totaling \$27,500 to the Class Representatives set forth above.

6. As further detailed herein and in the accompanying memorandum, from the outset of the investigation and filing of the case through the negotiation and drafting of the Settlement now before the Court, Class Counsel have vigorously represented the interests of the Class to obtain the best possible resolution and have achieved a high level of success. As a result of Class Counsel's efforts, Plaintiffs were able to obtain a Settlement that provides significant benefit to the Class.

7. The Joint Declaration of E. Adam Webb and G. Franklin Lemond, Jr. (ECF No. 71), contains the background of the litigation, Class Counsel's investigation, the course of proceedings, settlement negotiations, and the terms of the Settlement.

8. In its Order preliminarily approving the Settlement (the "Preliminary Approval Order") (ECF No. 72), the Court, among other things, conditionally certified the Class for settlement purposes and directed that notice be disseminated to the Class.

9. Counsel for Plaintiffs achieved excellent results for the Class. These results would not have materialized but for the efforts of Plaintiffs' Counsel and the Class Representatives.

10. After Plaintiffs filed this action, Defendant changed its "Personal Credit Card Agreement – TD Cash Secured" with customers to more adequately disclose how a cardholder becomes eligible for an unsecured credit card. While this change in disclosures was not a negotiated part of the Settlement, it resulted, at least in part, from this litigation.

11. The parties entered into a Settlement providing a \$2.25 million Settlement Amount, which includes cash recovery for the Settlement Class and the payment of all fees, costs, and expenses associated with providing notice to the Settlement Class and the administration of the Settlement. Under the Settlement, each Participating Settlement Class Member shall be entitled, to the extent that the Net Settlement Fund is sufficient in amount, to a base award of Ten and 00/100 dollars (\$10.00) from the Net Settlement Fund, as well as an Additional Component as specified in the Agreement. Without the efforts of Plaintiffs' Counsel and the Class Representatives, the members of this Class would have received nothing. The recovery, which avoids any further litigation risks or delays, is an outstanding result for Settlement Class Members in light of the existing defenses and the challenging and unpredictable path of litigation that would have been faced absent the Settlement. The Settlement Amount is non-reversionary, and thus will not be returned to Defendant or diminished based on the participation rate of Class Members.

12. Class Counsel seek attorneys' fees of one-third of the Settlement Amount, amounting to \$750,000. After reaching an agreement on all other material terms of the Settlement, the parties agreed that Defendant would not oppose this request.

13. 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.

14. 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.

15. 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, 305 (3d Cir. 2005). The case has been actively litigated for over two years and involves two separate law firms and their legal support staff participating in the case.

16. The lawyers for Plaintiffs have spent a large amount of total time on this case. Class Counsel are confident that the lawyers that have litigated this case on behalf of the Plaintiffs have incurred far more than \$750,000 in lodestar time. By way of example, I have looked closely at just the billable time for my firm in this matter. We have logged over 900 attorney hours on this case. This includes only time from March 2020 through mid-December 2022. Using a blended rate of \$700 per hour, my firm's lodestar alone for this time period equals approximately \$630,000. My firm will continue to spend time on the case in 2023 in preparation for the final approval hearing and in overseeing the distribution of the funds to Class Members if the Settlement is approved. Golomb Spirt Grunfeld, PC has also billed hours on this case. Non-attorney staff have also performed work at both firms. 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 Plaintiffs in this case, the result would be higher than the amount requested.<sup>1</sup>

17. Class Counsel are two 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

---

<sup>1</sup> As set forth in the Plaintiffs' brief, Plaintiffs' counsel will compile and produce a lodestar analysis if the Court requires.

avoid duplication and perform work as efficiently as possible. Based on the small size of the firms and limited resources available to them, these firms were required to forego other opportunities to properly prosecute this sizable undertaking.

18. 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. *See* Joint Decl., ¶¶ 55-56. They are highly qualified, with each firm having a proven track record of successful prosecution of significant complex litigation and class actions.

19. 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.

20. 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.

21. Class Counsel also seek reimbursement of out-of-pocket litigation costs and expenses of \$13,526.93.

22. 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.

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

24. The costs and expenses incurred are minimal given the recovery obtained for the Class, amounting to less than one percent (1%) of the \$2.25 million Settlement Amount.

25. Class Counsel request that the combined, un-reimbursed out-of-pocket litigation expenses of \$13,526.93 be approved by the Court.

26. On behalf of the Class Representatives 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.

27. There are a total of five Class Representatives. Class Counsel seek Service Awards in the amount of \$7,500.00 for Natalie Campagna and \$5,000 for Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner. Class Counsel request a slightly higher Service Award for Ms. Campagna because she was the original named Plaintiff who performed services for a longer time than the others. It is likely this case would not have been filed without her initiative.

28. The amount of the Service Awards sought is reasonable on both a cumulative and an individual basis. In total, the \$27,500 requested amounts to just over one percent (1.22% to be exact) of the Settlement 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).

29. 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 on captions in 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.

30. 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 my knowledge, information, and belief. Executed this 28th day of December, 2022, at Atlanta, Georgia.

/s/ E. Adam Webb  
E. Adam Webb

# **Exhibit 2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

NATALIE CAMPAGNA, GLORIA  
DEVAULT, AMANDA FARMER, PHILIP  
PAGLIARO, and YAAKOV ROZINER, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

TD BANK, N.A.,

Defendant.

Case No. 1:20-cv-18533-KMW-SAK

**DECLARATION OF ELIZABETH ENLUND REGARDING  
IMPLEMENTATION OF NOTICE AND ADMINISTRATION**

I, Elizabeth Enlund, hereby declare and state as follows

1. I am a Senior Settlement Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). I am a certified Project Management Professional (PMP)<sup>®</sup> and hold a Bachelor of Science degree from Portland State University. Prior to joining Epiq in 2019, I managed a variety of complex projects in highly regulated environments through the government and private sectors. 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 Order Granting Plaintiffs’ Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, and Approval of Notice Plan (Dkt. 72) (the “Order”) dated August 29, 2022, and in accordance with the Settlement Agreement and Release (Dkt. 71-2) dated

July 25, 2022, (the “Agreement”).<sup>1</sup> I submit this Declaration in order to advise the Parties and the Court regarding the implementation of the Court-approved Notice Program, and to report on Epiq’s handling to date of the Settlement administration, in accordance with the Order and 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.

---

<sup>1</sup> All capitalized terms not otherwise defined in this document shall have the same meanings ascribed to them in the Agreement.

### **OVERVIEW OF ADMINISTRATION**

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

- As appropriate, send an E-Mail Notice to Settlement Class Members for whom TD Bank has provided an e-mail address;
- As appropriate, send a Mail Notice to Settlement Class Members for whom TD Bank has not provided an e-mail address but has provided a valid mailing address. Also, send a Mail Notice to Settlement Class Members whose E-Mail Notice is returned as undeliverable;
- Establish and maintain a mailing address for receiving written notifications of exclusion (“Opt Outs”) from the Settlement, objections to the Settlement, or inquiries from the Settlement Class;
- Establish and maintain an official Settlement Website containing information about the Settlement;
- Establish and maintain an official toll-free number that Settlement Class Members may contact for additional information about the Settlement;
- Review and process Opt Outs and objections sent to or received by Epiq; and
- Process and transmit payments to Participating Settlement Class Members.

### **DATA TRANSFER**

5. On October 28, 2022, the Defendant provided Epiq with one text file containing potential Settlement Class Member records. On October 31, 2022, the Defendant provided Epiq with one Excel file, which contained identical records to the previously provided text file. The file

contained 124,674 rows of names, last known mailing addresses, last known e-mail addresses, phone numbers, and data sufficient to calculate and implement the allocation of the Net Settlement Fund for potential Settlement Class Members (“Class Data”).

6. Epiq loaded the information provided by the Defendant 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 analyzed the data and combined exact duplicate records, matched by name and address or name and e-mail address, which resulted in 124,465 unique Settlement Class Member records (the “Class List”).

#### **DISSEMINATION OF E-MAIL NOTICE**

7. Pursuant to Section VII of the Agreement and Paragraph 12 of the Order, Epiq was to cause the Court-approved E-mail Notice to be formatted for electronic distribution by e-mail to Settlement Class Members for whom an e-mail address was included in the Class Data. Attached hereto as **Attachment 1** is a template of the Court-approved E-Mail Notice that Epiq electronically disseminated to Settlement Class Members for whom an e-mail address was provided in the Class Data. The E-Mail Notice contained substantial, albeit easy to read, information that made potential Settlement Class Members aware of their rights under the Settlement; a hyperlink to the Settlement Website with the Long-Form Notice; and instructions on how to obtain more information by visiting the Settlement Website or calling a toll-free number. The E-Mail 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 (“ISPs”) and/or SPAM filters. Epiq also followed standard e-mail protocols, including utilizing “unsubscribe” links and including Epiq’s contact information in the E-Mail Notice.

8. Before sending the E-Mail Notice, Epiq received 87,685 potential Settlement Class Member e-mail addresses in the Class Data, including duplicates. Epiq contacted the ISPs associated with each e-mail address to confirm whether the e-mail address still existed and was valid. Upon reaching out and completing the validation process with each of the ISPs, Epiq was informed that 76,083 e-mail addresses in the Class Data were potentially valid and received confirmation that 11,602 e-mail addresses in the Class Data were invalid or no longer existed.

9. Epiq sent the E-Mail Notice to the 76,083 potentially valid e-mail addresses on November 28, 2022. Each E-Mail Notice was transmitted with a unique message identifier. If the receiving e-mail server could not deliver the message, a “bounce code” was returned along with the unique message identifier.

10. For all Settlement Class Members with potentially valid e-mail addresses in the Class Data, Epiq closely monitored all deliverability attempts of the E-Mail Notice throughout the E-Mail Notice campaign. 13,966 e-mails were successfully delivered with the initial delivery of the E-Mail Notices on November 28, 2022. After three additional delivery attempts, 61,904 E-Mail Notices could not be delivered due to an inactive or disabled account, the recipient’s mailbox being full, technical auto-replies, the recipient server being busy or unable to complete delivery, or spam filters (collectively, “Soft Bouncebacks”). Due to the high volume of Soft Bouncebacks, Epiq re-attempted sending e-mails using smaller batches to accommodate recipient server restrictions. This re-attempt resulted in 59,242 e-mails being successfully delivered, with a remaining 2,662 that continued to be undeliverable due to Soft Bouncebacks. 213 e-mails were undeliverable because the e-mail address no longer existed, the e-mail account was closed, the e-mail address had a bad domain name or address error, or the e-mail account reported back as being on a “do not contact” list (collectively, “Hard Bouncebacks”). Accordingly, as of December 22,

2022, a total of 73,208 E-Mail Notices were successfully delivered, with a total of 2,875 E-Mail Notices that could not be delivered. Ultimately, Epiq was able to deliver direct E-Mail Notice to 96.22% of the facially valid e-mail addresses provided in the Class Data, and 83.49% of the overall e-mail address population provided in the Class Data.

11. On December 16, 2022, Epiq sent the Mail Notice to each of the 14,469 unique Settlement Class Members whose e-mail address “bounced” back as undeliverable in the E-Mail Notice campaign, and who did not have a valid e-mail address on file, and who had a valid physical mailing address on file.

### **DISSEMINATION OF THE MAIL NOTICE**

12. Pursuant to Section VII of the Agreement and Paragraph 12 of the Order, Epiq was responsible for sending the Mail Notice via U.S. First Class Mail to all potential Settlement Class Members for whom TD Bank had not provided an email address. Attached hereto as **Attachment 2** is a template of the Court-approved Mail Notice that Epiq disseminated by mail to Settlement Class Members.

13. Prior to mailing the Mail Notice to the potential Settlement Class Members for whom TD Bank had not provided an e-mail address, all eligible Settlement Class Members’ mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by USPS.<sup>2</sup> In addition, the addresses were processed via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip codes, and verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. To the extent that any Settlement Class Member had filed a USPS change of address request, and the address was certified and

---

<sup>2</sup> The NCOA database contains records of all permanent change of address submissions received by USPS for the last four years. 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.

verified, Epiq used the current address listed in the NCOA database in connection with the Mail Notice mailing. This address updating process is standard for the industry and for the majority of promotional mailings that occur today. A total of 124,555 records in the Class List were updated with new addresses after going through the USPS NCOA, CASS, and DPV verification processes.

14. Prior to commencing any mailings for this matter, Epiq established a dedicated post office (“P.O.”) box to mail notices from and to allow Settlement 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 Settlement administration process.

15. On November 28, 2022, Epiq mailed 36,796 Mail Notices via USPS First-Class Mail to potential Settlement Class Members on the Class List for whom TD Bank did not have and thus had not provided an e-mail address and who had a facially valid mailing address.

16. In addition, a Long-Form Notice has been mailed via USPS First-Class Mail to all persons who submitted a request for one. As of December 22, 2022, 32 Long-Form Notices have been mailed as a result of such requests.

17. The return address on the Mail Notices is the P.O. box maintained by Epiq. As of December 22, 2022, 64 Mail Notices have been reported by USPS as undeliverable with forwarding address information. As of December 22, 2022, 57 have been promptly re-mailed to the forwarding address, with the remaining 7 set to be re-mailed along with additional mailings that are reported as undeliverable with forwarding address information. Epiq will continue to resend postal forward Mail Notices every two weeks as updated addresses are located through January 27, 2023.

18. As of December 22, 2022, a total of 1,046 Mail Notices have been returned to Epiq without forwarding address information. As a result of skip trace searches performed by Epiq

using a third-party lookup service, a total of 1,021 addresses were updated and 266 Mail Notices were re-mailed to the updated addresses, with the remaining 755 set to be re-mailed along with additional mailings that are reported as undeliverable, if updated addresses are located. Address updating and re-mailing for undeliverable Notices is ongoing and will continue every two weeks as updated addresses are located through January 27, 2023.

19. As of December 22, 2022, Epiq has emailed or mailed Notice to 124,465 Settlement Class Members, with Notice to 1,834 unique Settlement Class Members currently known to be undeliverable, which is a 98.53% deliverable rate to the Class.

#### **SETTLEMENT WEBSITE**

20. Pursuant to Section VII of the Agreement, on September 28, 2022, Epiq launched a website, [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com), that potential Settlement Class Members can visit to obtain additional information about the proposed Settlement, as well as important documents, including the Second Amended Complaint, the Agreement, the Long-Form Notice, the Order, and any other documents that Class Counsel and TD Bank agree, or that the Court orders, to post. The Settlement Website contains a summary of options available to Settlement Class Members, deadlines to act, and answers to frequently asked questions. On November 23, 2022, Epiq launched a dynamic module on the Settlement Website for Settlement Class Members to confirm their mailing address for delivery of their check and to supply an e-mail address for confirmation of submitted address updates. References to the Settlement Website were prominently displayed in the E-Mail Notice, Mail Notice, and Long-Form Notice.

21. As of December 22, 2022, the Settlement Website has received 2,662 unique visitors and 5,575 website pages have been viewed. Epiq has maintained and will continue to

maintain and update the Settlement Website throughout the administration of the proposed Settlement.

### **TOLL-FREE INFORMATION LINE**

22. Pursuant to Section VII of the Agreement, on September 28, 2022, Epiq established and is maintaining a toll-free interactive Voice Response Unit (“VRU”) telephone number to provide information and accommodate inquiries from Settlement 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 option of requesting that a Long-Form Notice be sent to them via USPS First-Class Mail. The toll-free number was included in the E-Mail Notice and Mail Notice sent to Settlement Class Members, and the automated telephone system is available 24 hours per day, seven days per week.

23. As of December 22, 2022, the toll-free number has received 468 calls, representing 1,917 total minutes. Epiq has and will continue to maintain and update the VRU throughout the Settlement administration process.

### **E-MAIL INBOX**

24. Epiq established and maintains an e-mail inbox, Info@TDBankSecuredCardClassAction.com, for Settlement Class Members to ask questions regarding the Settlement. As of December 22, 2022, Epiq has received a total of 80 incoming e-mails and has responded to 67 e-mails. The remaining e-mails were either junk mail or did not require a response. Epiq will continue to maintain this inbox throughout the Settlement administration.

### **REQUESTS FOR EXCLUSION**

25. Pursuant to Section VIII of the Agreement, Settlement Class Members who wish to be excluded from the Settlement are required to mail or submit by private courier a written Opt-Out statement to Epiq, with a postmark date or courier shipping label date of on or before January 27, 2023. As of December 22, 2022, Epiq has received one timely and potentially valid opt-out request.

**OBJECTIONS RECEIVED**

26. Pursuant to Section IX of the Agreement, Settlement Class Members who wish to object to the Settlement are required to submit written objections to the Clerk of the Court, Class Counsel, and TD Bank’s Counsel, such that they are postmarked on or before the objection deadline of January 27, 2023. As of December 22, 2022, Epiq is not aware of or nor has received any timely written objections to the Settlement.

I declare under penalty of perjury under the laws of the United States and the State of Arizona that the foregoing is true and correct and that this declaration was executed on December 23, 2022, in Tucson, Arizona.



---

Elizabeth Enlund, PMP  
Senior Project Manager  
Epiq Class Action & Claims Solutions, Inc. (“Epiq”)

# Attachment 1



**From:** Campagna v TD Bank, N.A. <noreply@tdbanksecuredcardclassaction.com>  
**Sent:** Friday, November 18, 2022 11:31 AM  
**To:** [Redacted]  
**Subject:** Legal Notice of Class Action Settlement

**CAUTION:** This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe. Report phishing by using the "Phish Alert Report" button above.

ATTENTION: [Redacted]  
Unique ID: [Redacted]

PIN: [Redacted]

**LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

**If you opened a TD Cash Secured Credit Card on or after May 20, 2015, but before January 18, 2022, you may be entitled to benefits from a proposed 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 [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**What is the Settlement about?** A settlement has been reached in a class action lawsuit challenging the review by TD Bank, N.A. ("TD Bank") of TD Cash Secured Credit Card holders for graduation to an unsecured TD Bank credit card. The lawsuit that TD Bank acted improperly by not automatically graduating TD Cash Secured Credit Card holders who used their accounts for seven consecutive billing cycles without a default. The lawsuit contends, among other things, that TD Bank promised in its credit card agreement to graduate cardholders in these circumstances. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right. Full information regarding the Settlement can be found at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**Why am I being contacted?** TD Bank's records show that the person to whom this notice is addressed is a member of the Settlement Class. The Settlement Class includes all current and former holders of a TD Cash Secured Credit Card who opened their card on or after May 20, 2015, but before January 18, 2022 ("Class Period"), and who, through August 29, 2022, maintained their account for seven consecutive billing cycles without committing an act of default, and were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

**What are the Settlement terms?** TD Bank agreed to provide \$2,250,000 to the Settlement Class, which includes money for (a) payments to Class Members, (b) attorneys' fees and expenses, (c) settlement administration costs, and (d) Service Awards to the named Plaintiffs.

**How do I get my Settlement payout?** Once the Court approves the Settlement, you will automatically receive a check. The amount you receive will include a base amount and, if there are sufficient funds, an additional amount that will depend on how long you held your secured card after the seven consecutive billing cycles without a default. To confirm your mailing address for delivery of your check and for information about how the awards will be calculated, please visit

[www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**What are my other options?** If you do not want to be bound by the Settlement, you may exclude yourself by **January 27, 2023**. If you do not exclude yourself, you will release your claims against TD Bank. Alternatively, you may object to the Settlement by **January 27, 2023**. 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 **February 23, 2023**, to consider whether to approve the Settlement and to consider a request by counsel for the Settlement Class for attorneys' fees and expenses of up to \$750,000 and Service Awards of up to \$7,500 for one of the named Plaintiffs and up to \$5,000 for each of the other four named Plaintiffs who brought this case on behalf of the Settlement Class. 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 questions?** If you have questions, please visit the Settlement Website at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

You may also contact the Settlement Administrator by emailing [Info@TDBankSecuredCardClassAction.com](mailto:Info@TDBankSecuredCardClassAction.com), calling the toll-free number 1-844-808-4836, or writing with questions to Campagna v TD Bank, N.A., Settlement Administrator, P.O. Box 6877, Portland, OR 97228-6877.

**Please do not contact TD Bank or the Court for information.**

Please note: This email message was sent from a notification-only address that cannot accept incoming email. Please do not reply to this email.

AH669\_v02

You are subscribed to this email as [REDACTED]

Click here to modify your [preferences](#) or [unsubscribe](#).



# Attachment 2

Campagna v TD Bank, N.A.  
Settlement Administrator  
P.O. Box 6877  
Portland, OR 97228-6877

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

Unique ID: <<Unique ID>>      PIN: <<4 Digit Pin>>

**Important Notice About a 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 Settlement Agreement are available at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.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>>

**What is the Settlement about?** A Settlement has been reached in a class action lawsuit challenging the review by TD Bank, N.A. (“TD Bank”) of TD Cash Secured Credit Card holders for graduation to an unsecured TD Bank credit card. The lawsuit contends that TD Bank acted improperly by not automatically graduating TD Cash Secured Credit Card holders who used their accounts for seven consecutive billing cycles without a default. The lawsuit contends, among other things, that TD Bank promised in its credit card agreement to graduate cardholders in these circumstances. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right. More information regarding the Settlement can be found at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**Why am I being contacted?** TD Bank’s records show that the person to whom this notice is addressed is a member of the Settlement Class. The Settlement Class includes all current and former holders of a TD Cash Secured Credit Card who opened their card on or after May 20, 2015, but before January 18, 2022 (“Class Period”), and who, through August 29, 2022, maintained their account for seven consecutive billing cycles without committing an act of default but were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

**What are the Settlement terms?** TD Bank agreed to provide \$2,250,000 to the Settlement Class, 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.

**How do I get my Settlement payout?** Once the Court approves the Settlement, you will automatically receive a check. The amount you receive will include a base amount and, if there are sufficient funds, an additional amount that

will depend on how long you held your secured card after the seven consecutive billing cycles without a default. To confirm your mailing address for delivery of your check and for information about how the awards will be calculated, please visit [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**What are my other options?** If you do not want to be bound by the Settlement, you may exclude yourself by **January 27, 2023**. If you do not exclude yourself, you will release your claims against TD Bank. Alternatively, you may object to the Settlement by **January 27, 2023**. 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 **February 23, 2023**, to consider whether to approve the Settlement and to consider a request by counsel for the Settlement Class for attorneys’ fees and expenses of up to \$750,000 and Service Awards of up to \$7,500 for one of the named Plaintiffs and up to \$5,000 for each of the other four named Plaintiffs who brought this case on behalf of the Settlement Class. 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 questions?** If you have questions, please visit the Settlement Website at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

You may also contact the Settlement Administrator by emailing [Info@TDBankSecuredCardClassAction.com](mailto:Info@TDBankSecuredCardClassAction.com), calling the toll-free number 1-844-808-4836, or writing to Campagna v TD Bank, N.A., Settlement Administrator, P.O. Box 6877, Portland, OR 97228-6877.

**Please do not contact TD Bank or the Court for information.**