UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DORIS JEFFRIES, on behalf of herself and all other similarly situated,

Plaintiff,

v.

VOLUME SERVICES AMERICA, INC. (d/b/a Centerplate and Centerplate/NBSE); and DOES 1 THROUGH 10,

Defendants.

Case No. 1:17-cv-01788 (CKK)

Hon. Colleen Kollar-Kotelly

PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD

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PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD

Pursuant to Federal Rules of Civil Procedure 23 and 54(d)(2), Plaintiff Doris Jeffries, on behalf of herself and all others similarly situated ("Plaintiff"), hereby moves the Court for an Order granting Plaintiff's Unopposed Motion For Award Of Attorneys' Fees, Costs, And Class Representative Service Award. Specifically, Plaintiff moves the Court for an Order:

1. Awarding $397, 071.20 in reasonable attorneys' fees to Class Counsel to be paid from the Gross Settlement Funds as set forth in the Amended Class Action Settlement Agreement and Release ("Agreement" or "Settlement")[1]; To the extent additional valid claims are received between the filing date of this motion and the claims deadline of September 29, 2022, Class Counsel have agreed to further reduce their requested fee award by the same amount that constitutes any additional claims.

2. Awarding reasonable costs of $9,847.80 to Class Counsel, to be paid from the Gross Settlement Funds as set forth in the Agreement,

3. Awarding $12,081.00 to the Claims Administrator, Atticus Administration, LLC, to be paid from the Gross Settlement Funds as set forth in the Agreement, and

4. Awarding $5,000.00 to the Class Representative Doris Jeffries as a Service Award, which is to be paid from the Gross Settlement Funds as set forth in the Agreement to compensate her for her service as the representative of the Class.

This Unopposed Motion is based upon the Statement of Points of Law and Authority, *infra*, the Declarations, Exhibits, and other documents filed concurrently in support thereof, the papers and pleadings on file in this action, and upon such other and further evidence as the Court may adduce in ruling on this Motion.

STATEMENT OF POINTS OF LAW AND AUTHORITY

I. SETTLEMENT OVERVIEW

Plaintiff's Unopposed Motion For Final Approval Of Class Action Settlement [Dkt. 48]

[1] Capitalized terms shall have the same meanings as in the Agreement unless indicated otherwise.

and the Declaration of Chant Yedalian [Dkt. 48-1] provide detailed descriptions of the facts regarding the Settlement. Thus, Plaintiff states here only the facts relevant to the present motion for attorneys' fees, costs, and the service award.

On September 1, 2017, Plaintiff filed her Complaint which alleges that Defendant Volume Services America, Inc. (d/b/a Centerplate and Centerplate/NBSE) ("Defendant" or "Centerplate") violated the Fair and Accurate Credit Transactions Act ("FACTA"), 15 U.S.C. § 1681(c)(g). Dkt. 2-1. After extensive litigation and arm's-length negotiations, Class Counsel secured the Settlement, which includes $450,000 in cash and important non-pecuniary benefits. Dkt. 47-1, Agreement ¶¶ 2.1 and 2.7. For Class Members with eligible claims, the Agreement provides for full recovery of their statutory damages ($1000). *Id.* at ¶ 5.2.

Of particular relevance here, Class Counsel's requested attorneys' and costs do not lessen the Class' recovery. *See Cohen v. Warner Chilcott Pub. Ltd. Co.*, 522 F. Supp. 2d 105, 122 (D.D.C. 2007) (citing *In re Vitamins Antitrust Litig.*, No. 99-197 (TFH), MDL No. 1285, 2001 U.S. Dist. LEXIS 25067, at *65 (D.D.C. July 16, 2001) (citing *Duhaime v. John Hancock Mutual Life Ins. Co.*, 989 F. Supp. 375, 379 (D. Mass. 1997)). Further, Class Counsel included in the class notice [Dkt. 45-1, Exs. 2-4] a detailed description of the manner in which Class Counsel would petition the Court for fees and costs. As of September 1, 2022, no one has objected. Dkt. 48-2, Bridley Decl. ¶ 12.

In addition to achieving a full recovery of statutory damages for Class Members, Class Counsel procured non-pecuniary benefits as well. Defendant agreed to (1) certify that its existing point of sale equipment is FACTA compliant; and (2) amend its standard operating procedures for employees who operate point of sale terminals to: (a) emphasize compliance with FACTA; and (b) include a written company FACTA policy which states that, with respect to any receipt

provided to any customer that uses a credit or debit card to transact business with Centerplate, Centerplate will not print more than the last five digits of a customer's credit or debit card number, or the credit or debit card expiration date. Dkt. 47-1, Agreement ¶ 2.7. On June 2, 2022, Defendant's Vice-President of Emerging Technology certified that Defendant has enacted the compliance procedures and policies contained in the Agreement. A copy of Mr. Porter's certification is attached as Exhibit 1. This FACTA compliance policy ensures that Defendant will not continue to violate the law, willfully, inadvertently, or otherwise.

Courts consider such non-pecuniary benefits in considering attorneys' fee requests. *See, e.g.*, *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue and explaining, "Attorneys' fees [in class action cases] may be awarded even though the benefit conferred is purely non-pecuniary in nature.").

This is especially true with a consumer protection statute such as FACTA, which serves both a compensatory and "deterrent purpose." *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 718 (9th Cir. 2010). "In fashioning FACTA, Congress aimed to 'restrict the amount of information available to identity thieves.'" *Id.* Thus, in addition to obtaining pecuniary relief for the Class, the Class Representative and Class Counsel have also effectuated substantial change of conduct and policy, thereby accomplishing the "deterrent" objectives of FACTA.

II. CLASS COUNSEL'S UNOPPOSED MOTION FOR ATTORNEYS' FEES IS REASONABLE AND AUTHORIZED BY APPLICABLE LAW AND THE AGREEMENT.

A. Applicable Law

Federal Rule of Civil Procedure 23(h) provides, "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized *by law or by the parties' agreement*." (Emphasis added.) Here, the law and the Parties' Agreement authorize an

award of attorneys' fees and costs to Class Counsel.

In her Complaint [Dkt. 2-1], Plaintiff asserted a single cause of action: violation of the Fair and Accurate Credit Transactions Act ("FACTA"), 15 U.S.C. § 1681(c)(g)(1). Congress passed FACTA as an amendment to the Fair Credit Reporting Act ("FCRA"). As such, FACTA and other provisions of the FCRA share the same remedy provisions, which are embodied in 15 U.S.C. § 1681n. *Bateman*, 623 F.3d at 715.

Specifically, Section 1681n(a)(3) expressly provides for costs and reasonable attorneys' fees "in the case of any successful action to enforce any liability under this section." *See Baez v. United States Dep't of Justice*, No. 79-1881, 1981 U.S. App. LEXIS 13535, at *127 n.232 (D.C. Cir. May 7, 1981) (finding that Sec. 1681n specifically authorizes attorneys' fees and costs).

Section 1681n(a)(3) constitutes a fee-shifting statute or provision because it allows a prevailing party to recover attorneys' fees and costs from the opposing side. *See Bumpus v. Nat'l Credit Sys.*, No. 1:16-CV-1209-TWT, 2019 U.S. Dist. LEXIS 238814, at *1-2 (N.D. Ga. Mar. 7, 2019) (finding that Sec. 1681n(a)(3) is a fee-shifting statute). Congress includes fee-shifting provisions in consumer protection statutes, like FACTA, "to encourage private enforcement of the law." *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

Indeed, courts have found that Sec. 1681n(a)(3) mandates an award of attorneys' fees and costs to a prevailing party. *See Haddad v. Charles Riley & Assocs.*, No. 09-12597, 2011 U.S. Dist. LEXIS 66267, at *4 (E.D. Mich. June 21, 2011) ("The award of reasonable attorney's fees is mandatory under [Sec. 1681n(a)(3)].") and *Tilley v. Glob. Payments*, No. 06-2304-JPO, 2009 U.S. Dist. LEXIS 150325, at *3 (D. Kan. Dec. 21, 2009) (same).

While Sec. 1681n(a)(3) alone provides a basis for granting an award of attorneys' fees and costs to Class Counsel, the Agreement provides another. The Agreement requires Defendant

to establish a fund for payment of, among other things, attorneys' fees, and costs. Dkt. 47-1, Agreement ¶¶ 2.2-2.3.

III. COURTS EMPLOY THE LODESTAR METHOD TO DETERMINE A REASONABLE FEE IN FEE-SHIFTING CASES.

Though a statute and/or an agreement may require the payment of attorneys' fees and costs, a court determines the reasonableness of the fees and costs. As this Court stated, "Courts have a duty to ensure that claims for attorneys' fees are reasonable" and "the fact that the attorney's fees are structured into the Agreement does not excuse the Court from examining whether the attorneys' fees agreed upon as a part of the settlement are fair, reasonable, and adequate." *Prince v. Aramark Corp.*, 257 F.Supp.3d 20, 26 (D.D.C. 2017) (citations omitted).

Generally, courts determine reasonable attorneys' fee amounts using either the percentage-of-recovery approach or the lodestar method. In fee shifting cases, like the present case, a court employs "the lodestar method to calculate the appropriate attorneys' fees to be awarded to Class Counsel." *Morin v. JPMorgan Chase Bank, N.A.*, No. 17-cv-00249 (APM), 2018 U.S. Dist. LEXIS 245803, at *3 (D.D.C. Aug. 17, 2018) (citing *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067, at *29 ("In statutory fee shifting cases, courts frequently employ the lodestar method.")). *See also*, *Perdue v. Kenny A. ex. rel. Winn*, 559 U.S. 542, 551-52 (2010) (endorsing the lodestar method for determining attorney's fees under a fee-shifting statute)). The percentage-of-recovery approach, which is often used in common fund cases, is inapplicable. *Morin*, 2018 U.S. Dist. LEXIS 245803, at *3.

The lodestar method is particularly suited for consumer law class actions, like the present case, in which an individual's damages are relatively small. In *Perdue*, the Supreme Court explained that the aim of the lodestar method is to induce a capable attorney to undertake representation based on the statutory assurance that he will be paid a reasonable fee: "[I]f

plaintiffs . . . find it possible to engage a lawyer based on the statutory assurance that he will be paid a 'reasonable fee,' the purpose behind the fee-shifting statute has been satisfied." *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). *See also Perdue*, 559 U.S. at 552 ("[T]he lodestar method yields a fee that is presumptively sufficient to achieve this objective."). *See also Lloyd v. Ingenuity Prep Pub. Charter Sch.*, No. 18-cv-00801 (TNM-GMH), 2019 U.S. Dist. LEXIS 44890, at *20 (D.D.C. Jan. 7, 2019) (purpose of fee-shifting statutes is to "promote citizen enforcement of important federal policies.") (quoting *Bd. of Trustees of Hotel & Rest. Emps. Local 25 v. JPR, Inc.*, 136 F.3d 794, 801 (D.C. Cir. 1998) (quoting *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 560, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986)).

Courts in this jurisdiction are in accord with *Pennsylvania* and *Perdue*. "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 Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067, at *30 (quoting *In re Prudential Ins. Co Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3d Cir. 1998)).

IV. CLASS COUNSEL HAS PROPERLY CALCULATED THEIR LODESTAR.

Courts calculate an appropriate lodestar award by "multiplying 'the hours reasonably expended in the litigation by a reasonable hourly fee.'" *12 Percent Logistics, Inc. v. Unified Carrier Registration Plan Bd.*, No. 17-cv-02000 (APM), 2020 U.S. Dist. LEXIS 232406, at *3 (D.D.C. Dec. 9, 2020) (quoting *Bd. of Trs. of Hotel & Rest. Emps. Local 25 v. JPR, Inc.*, 136 F.3d 794, 801 (D.C. Cir. 1998)). "The lodestar might then be increased or decreased by a 'multiplier' based upon consideration of the risks or contingencies of the particular case, as well as the quality of the attorneys' work.'" *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS

25067, at *30 (internal quotations and citations omitted).

A strong presumption exists that the lodestar figure represents a reasonable fee. *See, e.g.*, *West v. Potter*, 717 F.3d 1030, 1034 (D.C. Cir. 2013) ("The Supreme Court has held that there is a strong presumption that the fee yielded by the now-ubiquitous 'lodestar' method, which bases fees on the prevailing market rates in the relevant community, is reasonable."). As the Ninth Circuit Court of Appeals stated:

> It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee…. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker."

Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008).

A. Class Counsel Expended A Reasonable Number Of Hours.

Class Counsel seeks compensation for 699 hours spent in this action as of September 1, 2022. Dkt. 48-3, Herrington Decl. ¶ 6. The number of hours is reasonable given the complex nature of this litigation. Class Counsel has spent significant time and effort prosecuting this class action including but not limited to:

- Extensive pre-filing investigation of Plaintiff's claim against Defendant, including conversations with Plaintiff concerning her facts and experiences with Defendant;[2]

[2] Compensable activities include pre-litigation services in preparation of filing the lawsuit, background research and reading complex cases, and productive attorney discussions. *See, e.g.*, *Medford v. District of Columbia*, 691 F.Supp.1473, 1480 (D.D.C. 1988) (stating that it is "established law that work done prior to the formal inception of a proceeding is subject to a fee award," including "attorney-client interviews, investigation of the facts of the case, research on the viability of potential legal claims, drafting of the complaint and accompanying documents, and preparation for dealing with expected preliminary motions and discovery requests" (quoting *Webb v. Bd. of Educ. of Dyer Cty., Tenn.*, 471 U.S. 234, 250 (1985) (Brennan, J., concurring in part and dissenting in part)).

- Conducting legal research regarding various procedural and substantive issues;
- Researching and drafting the Complaint;
- Drafting and filing an opposition to Defendant's Motion to Dismiss;
- Drafting and filing Class Counsel's appeal of the Court's August 3, 2018 Order granting Defendant's Motion to Dismiss;
- Researching, drafting, and filing numerous documents with the D.C. Circuit Court of Appeals, including Plaintiff's appellant brief, appendix, and reply brief;
- Researching and preparing for oral argument of the appeal (including traveling to/from Washington, D.C.);
- Researching, drafting, and filing oppositions to Defendant's (1) motion for *en banc* review and (2) motion to stay the mandate (both filed in the appeal);
- Conducting settlement negotiations with Defendant, which included in-person discussions and negotiations in Washington, D.C. with Defendant to discuss, *inter alia*, Defendant's relevant computer systems and records regarding potentially relevant card transaction from the date at issue;
- Reviewing and negotiating data and other confirmatory information from Defendant;
- Drafting and negotiating settlement documents, the lengthy settlement agreement, class notices, and class settlement administration plan;
- Preparing and filing the Unopposed Motion to Lift Stay to Conduct Limited Discovery Related to the Settlement and, per the Court's June 18, 2020 Order, preparing and filing the Joint Status Report Regarding Settlement Related Discovery Plan;
- Drafting and serving third-party subpoenas to (1) Heartland Payment Systems, Inc., (2) American Express Company Inc. and American Express Travel Related Services Company Inc., (3) Discover Financial Services, and (4) the Library of Congress;
- Conducting numerous telephonic meetings with the attorneys for the subpoenaed parties; reviewing data from each party, and negotiating and securing declarations from each party;
- Drafting and filing case status reports;
- Researching, drafting, and filing the motions for preliminary approval and final approval of the Settlement and related documents; and

- Working with the Class Administrator on the implementation of the notice plan.

Class Counsel maintains contemporaneous, itemized time records that show the tasks Class Counsel performed and the amount of time expended on each task.[3] Each and every task concerns the FACTA cause of action prosecuted, and ultimately settled, in this case. The hours worked were therefore plainly reasonable to accomplish these tasks and could and would certainly have been billed to a private client who hired counsel to pursue such litigation. *See Moreno*, 534 F.3d at 1111 ("The number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client.")

Moreover, Class Counsel's work is not yet done. Class Counsel will be required to, among other things: (1) continue to monitor the notice administration process; (2) prepare for and attend the Final Approval Hearing; (3) monitor distribution of benefits to the Class; and (4) potentially handle post-judgment appeals. Dkt. 48-1, Yedalian Decl. ¶ 49.

When determining attorneys' fees requests, courts consider *all* steps that contribute to the ultimately successful resolution of the case (even if, along the way, the district court does not adopt each contention raised). *Cabrales v. County of Los Angeles*, 935 F.2d 1050, 1053 (9th Cir. 1991). Accordingly, and consistent with this approach, Class Counsel's work related to the present motion is likewise time that is reasonably incurred:

> [F]ederal courts, including our own, have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable.' *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-660 (9th Cir. 1985). This is so because it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to the fee."

[3] If the Court requires Class Counsel to submit their detailed time records, Class Counsel requests submission *in camera* because the time records are unredacted and contain sensitive and privileged information as well as information protected by the work product doctrine.

Camacho v. Bridgeport Financial, Inc., 523 F.3d 973, 981 (9th Cir. 2008).

Class Counsel's hours were worked by skilled class action attorneys who have the necessary skill and experience to litigate the nuances of a class action FACTA case. Dkt. 48-1, Yedalian Decl. ¶¶ 23-43; Dkt. 48-3, Herrington Decl. ¶ 2-4; Dkt. 48-4; LaDuca Decl. ¶ 2-4.

B. Class Counsel's Hourly Rates Are Reasonable.

Class Counsel's hourly rates are reasonable and were calculated using the LSI *Laffey* Matrix.[4] "The *Laffey* Matrix is the most commonly used fee matrix in determining fees for complex federal litigation in the D.C. Circuit." *Texas v. United States*, 247 F.Supp.3d 44, 50 (D.D.C. 2017). *See also Smith v. District of Columbia*, Civil Action No. 17-02020 (JEB/RMM), 2018 U.S. Dist. LEXIS 146247, at *10 (D.D.C. Aug. 8, 2018) ("The '*Laffey* Matrix' is the most commonly used fee matrix for complex civil litigation.") (citing *Eley v. District of Columbia*, 793 F.3d 97, 100 (D.C. Cir. 2015)); *Stephens v. Farmers Rest. Grp.*, Civil Action No. 17-1087 (TJK), 2019 U.S. Dist. LEXIS 103031, at *28 (D.D.C. June 20, 2019) (approving hourly rates based on the LSI *Laffey* Matrix).

Class Counsel's hourly rates are reasonable given Class Counsel's experience in litigating complex federal cases of similar size, scope, and complexity to the present case. Indeed, their practices primarily involve complex issues of federal law, *e.g.*, statutory construction and interpretation, Article III standing principles (like here). Further, Class Counsel practice in courts across the country, which requires researching and applying potential variations in the law from one jurisdiction to the next. Courts recognize this experience and skill and have appointed Class Counsel to various leadership positions, including as class counsel, in major complex litigation. Dkt. 48-1, Yedalian Decl. ¶¶ 23-43; Dkt. 48-3, Herrington Decl. ¶¶ 2-

[4] http://www.laffeymatrix.com/see.html (last visited on September 12, 2022).

4; Dkt. 48-4, LaDuca Decl. ¶¶ 2-4.

V. OTHER FACTORS ALSO ESTABLISH THE REASONABLENESS OF THE REQUESTED FEE AWARD.

A. The Relief Obtained For Class Members Warrants The Requested Award.

In addition to obtaining pecuniary relief for Class Members – the full amount of their statutory damages ($1,000) – the Class Representative and Class Counsel have also effectuated substantial change of Defendant's conduct and policy, thereby accomplishing the "deterrent" objectives of FACTA. These non-pecuniary benefits further support the fee request. *In re Pacific Enterprises Securities Litigation*, 47 F.3d at 379; *Craft*, 624 F.Supp.2d 1113 at 1121 ("Attorneys' fees [in class action cases] may be awarded even though the benefit conferred is purely non-pecuniary in nature.").

B. Class Counsel Litigated The Case On A Contingency Fee Basis And At Great Risk.

Class Counsel litigated this case wholly on a contingency fee basis, and did so at great risk of never receiving any compensation. Dkt. 48-1, Yedalian Decl. ¶ 46. *See, e.g.*, *Ceccone v. Equifax Info. Servs.*, No. 13-CV-1314, 2016 WL 5107202, at *13 (D.D.C. Aug. 29, 2016) (awarding a multiplier "to reflect the risk of loss that the attorneys assume"); *Bynum v. District of Columbia*, 412 F. Supp. 2d 73, 84-85 (D.D.C. 2006) (taking "contingent risk" into account in awarding attorneys' fees and recognizing "the market expectation in the legal market for an enhancement in contingent fee cases to compensate for litigation risk"); *accord Williams v. First Gov't Mortg. & Inv'rs Corp.*, 225 F.3d 738, 745 (2000) (finding that purpose of applicable fee-shifting statute is to encourage private bar to pursue such cases).

Class Counsel have advanced their legal services to the Class since the inception of this litigation. Class Counsel's contingency fee model means that their law firms do not get paid in every case. Sometimes, they get nothing or are awarded fees equal to only a small percentage of

the amount worked. Dkt. 48-3, Herrington Decl. ¶ 5. Class Counsel thus bore considerable risk in litigating this case on a contingent basis and advancing all costs. (*Id.*)

C. The Case's Circumstances Warrant The Requested Fee Award.

Class Counsel's fee request is reasonable given the complexity, risk, duration, and progression of this litigation.

1. This case is considered complex litigation.

In *Spokeo*, the Supreme Court analyzed the Constitution's Article III standing requirements in the context of a procedural violation of the FCRA. *Spokeo v. Robins*, 136 S.Ct. 1540, 1545 (2016). Subsequently, in cases involving various consumer statutes, including FACTA, courts have grappled with the applicability of *Spokeo*, *i.e.*, whether a statutory violation creates harm sufficient to establish a plaintiff's Article III standing to bring suit in federal court. Understandably, different courts have reached differing conclusions.

Here, Defendant filed a Motion to Dismiss on this precise issue. The Court granted the motion and Plaintiff appealed. The D.C. Circuit Court of Appeals reversed the Court's decision finding that Plaintiff had alleged harm sufficient to establish Article III standing. To date, Plaintiff is the first and only plaintiff to win on this issue at the circuit court level. Irrespective of the Article III standing issue, Plaintiff pursued this litigation as a class action, which raises many difficult issues of its own. In short, this case is not a simple, run-of-the-mill lawsuit.

2. Class Counsel litigated the case at great risk.

Litigating a high-stakes and time-consuming class action case against a corporate defendant, with litigation potentially lasting for several years, is not appealing to most lawyers. Class Counsel undertook this lawsuit without any guarantee of any payment, and with any fees that Class Counsel may recover entirely contingent on obtaining recovery. Thus, Class Counsel has borne, and continue to bear, the entire risk of obtaining a fee recovery in this case. Yedalian

Decl. ¶ 47.

Further, Plaintiff filed her complaint five years ago. The time spent on the case was time that could not be spent litigating other matters. Dkt. 48-1, Yedalian Decl. ¶ 46. During the pendency of the litigation, Class Counsel thus turned away other work. *Id.*

3. Class Counsel efficiently managed the litigation.

Despite its complexities, Class Counsel efficiently managed this litigation. Class Counsel sought to avoid duplication of effort by maintaining frequent communication and ensuring work was distributed efficiently among the firms. Class Counsel commenced settlement negotiations with Defendant immediately following the D.C. Circuit's remand of the case. Dkt. 48-1, Yedalian Decl. ¶ 4.

Class Counsel's efficiency (and the concomitant savings to the judicial system) supports the reasonableness of Class Counsel's lodestar request. *See Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 199 (D.D.C. 2011) (stating that "[a]s a general matter, early settlement is encouraged"). In fact, numerous courts have recognized the *disincentive* to settle promptly inherent in the lodestar methodology. *See, e.g.*, *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1267 (D.C. Cir. 1993) (recognizing that the lodestar processes "creates a disincentive for the early settlement of cases"). Class Counsel's hours establish that they did not unnecessarily expend time on this case.

4. Class Counsel's requested fee award is less than their lodestar.

Class Counsel requests a fee award that is less than their lodestar, which further bolsters the reasonableness of the request. Put another way, granting Class Counsel's fee request results in a *negative* multiplier – or a discount on their lodestar, notwithstanding that there are other factors that would support application of a *positive* multiplier. *See Osher v. SCA Realty I, Inc.*, 945 F. Supp. 298, 308 (D.D.C. 1996) (stating that factors warranting the application of a

multiplier include (1) the complexity and magnitude of the case; (2) the quality of counsel's representation; (3) the results achieved by counsel; and (4) public policy considerations.).

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

Federal Rule of Civil Procedure 23(h) permits awards of "nontaxable costs that are authorized by law or by the parties' agreement." The specific remedial provision at issue here, 15 U.S.C. § 1681n(a)(3), also authorizes an award of all non-taxable costs "when it is 'the prevailing practice in a given community' for lawyers to bill those costs separate from their hourly rates." *Grove v. Wells Fargo Financial California, Inc.*, 606 F.3d 577, 580-581 (9th Cir. 2010).

Specifically, Class Counsel seeks reimbursement of certain litigation costs and expenses in the amount of $9,847.80. Dkt. 48-3, Herrington Decl. ¶ 8. 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. Each firm's costs and expenses (which added together equal the requested reimbursement) are itemized in the firm's respective declarations. Dkt. 48-1, Yedalian Decl. ¶ 53; Dkt. 48-3, Herrington Decl. ¶ 13; Dkt. 48-1, LaDuca Decl. ¶ 9.

The categories of expenses for which Class Counsel seek reimbursement are the type of expenses routinely charged to paying clients in the marketplace and, therefore, the full requested amount should be reimbursed. These expenses include, but are not limited to: filing and service fees; photocopies; travel expenses, and research fees. *Id.* These expenses are reasonable and justified, and class counsel is typically entitled to reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement. *See, e.g.*, *Daniels v. District of Columbia*, No. 14-665DAR, 2017 WL 1154948, at *6 (D.D.C. Mar. 27, 2017)

(approving costs that included the same categories as those requested here); *Copeland v. District of Columbia*, No. 13-837 CRC/DAR, 2016 WL 5342702, at *6 (D.D.C. Aug. 29, 2016) (same); *Campbell v. District of Columbia*, 202 F. Supp. 3d 121, 137-38 (D.D.C. 2016) (same).

Per the Agreement, Defendant will pay these costs separately from the monies paid to Class Members. Dkt. 47-1, Agreement ¶¶ 2.2-2.3. This relatively modest amount of expenses should thus be reimbursed.

VII. THE SERVICE AWARD REQUESTED FOR THE CLASS REPRESENTATIVE IS REASONABLE AND CONSISTENT WITH AWARDS IN OTHER FACTA CASES

Courts routinely approve service awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. As this Court concisely put it, "The propriety of allowing modest compensation to class representatives seems obvious." *In re Lorazepam & Clorazepate Antitrust Litig.*, Nos. 99ms276 (TFH), 99-0790 (TFH), 2003 U.S. Dist. LEXIS 12344, at *35 (D.D.C. June 16, 2003) (quoting *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 32 (E.D. Pa. 1985)). "In deciding whether to grant incentive awards and the amounts of such awards, courts consider factors such as the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Id.* (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998)). Class Counsel respectfully requests that the named Plaintiff and only Class representative, Doris Jeffries, receive a reasonable and modest service award of $5,000.00 for her efforts in this case.

Plaintiff has done all things reasonably expected of her in her capacity as Class Representative. Dkt. 48-1, Yedalian Decl. ¶ 56. Plaintiff was subjected to liability for defense costs in the event the litigation was unsuccessful. *Id.* By stepping forward to shoulder this action on behalf of the class, Plaintiff also took on other risks, including the risk of subjecting herself to

intrusive discovery. *Id.* Plaintiff also regularly and consistently communicated with Class Counsel throughout the time this lawsuit (including appeal) was pending. *Id.* She also reviewed relevant documents, provided her input, and otherwise kept apprised of litigation related events and developments. *Id.* She also provided her ideas and input to Class Counsel in the various rounds of settlement negotiations and exchanges. *Id.* In sum, Plaintiff contributed as much of her valuable time as this litigation demanded to ensure a vigilant prosecution of and favorable outcome for the best interests of the Class. *Id.*

Were it not for the Class Representative stepping forward and shouldering the duties of protecting and prosecuting the interests of other Class Members, it is likely the interests of the Class would not have been prosecuted or benefited. Dkt 48-1, Yedalian Decl. ¶ 55. Indeed, the parties have acknowledged that, to their knowledge, there is no other litigation, either pending or otherwise, on a class or individual basis, concerning the claims in this lawsuit. *Id.*

The Class Representative's action have benefited the Class. But for the Class Representative's actions, there would be no resulting benefit – full compensation for statutory damages – to individual Class members or *cy pres* benefits. Dkt. 48-1, Yedalian Decl. ¶ 57. Moreover, it is only as a result of the Class Representative's actions that Defendant agreed to certify that its existing point of sale equipment is FACTA compliant, amend its standard operating procedures for employees who operate point of sale terminals, and include a written company FACTA compliance policy as described in the settlement. *Id.* Thus, Plaintiff effectuated substantial change of conduct, thereby accomplishing the "deterrent" objectives of FACTA. She was also willing and stepped forward to act as a private attorney general where no other plaintiff has done so. *Id. See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009) (service awards are typically given in class actions and they are intended "to

compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

The fact that the Court has already made a preliminary finding that the settlement is fair, adequate, and reasonable, also supports the significance of the benefits achieved through the Class Representative's initiative and perseverance. *Id.* at ¶ 58. Further, by definition, the time she devoted to this litigation was time spent away from work and/or leisure in an effort to advance the interests of the Class.

The requested award appropriately recognizes the Class Representative's efforts and contributions and are well within the range of the service awards granted in other cases in this Circuit. *See, e.g., Trombley*, 826 F. Supp. 2d at 207-208 (Bates, J.) ($5,000 incentive award); *Wells v. Allstate Ins. Co.*, 557 F. Supp. 2d 1, 9 (D.D.C. 2008) ($10,000 incentive award to each named plaintiff); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1333 (2006) (an empirical study of incentive awards to class action plaintiffs has determined that the average aggregate incentive award within a consumer class action case is $29,055.20, and that the average individual award is $6,358.80). The Notice informed Class Members about this anticipated service award request, and no objection has been made to date (or to any other aspect of the Settlement for that matter).

In sum, the requested service award of $5,000.00 to Plaintiff, the only Class Representative in this case, for the valuable time and resources she contributed to advance this litigation is fair and reasonable, and it is respectfully requested that the Court approve and award this amount as her service award.

VIII. PER THE AGREEMENT, CLASS COUNSEL REQUESTS AN AWARD TO THE SETTLEMENT ADMINISTRATOR AS PART OF THE REQUESTED COSTS.

The Agreement provides that Defendant will pay for the costs of administering the Settlement. Dkt. 47-1, Agreement ¶ 2-.1. Therefore, Plaintiff respectfully requests that the Court-approved Claims Administrator, Atticus Administration, LLC, be awarded $12,081.00, to be paid from the Gross Settlement Funds, for its work in administering the settlement as set forth in in its Declaration. Dkt. 48-2, Bridley Decl. ¶ 16.

IX. CONCLUSION

For all of the foregoing reasons, Plaintiff requests that the Court grant the Unopposed Motion For Award Of Attorneys' Fees, Costs, And Class Representative Service Award.

Respectfully submitted, this the 16th day of September 2022.

PLAINTIFF DORIS JEFFRIES, on behalf of herself and all others similarly situated,

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