IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL JETTE, on behalf of himself and all others similarly situated, Plaintiffs, v. BANK OF AMERICA, N.A. Defendant.	Civ. A. No. 2:20-cv-06791-LDW The Honorable Leda D. Wettre,

PLAINTIFF'S NOTICE OF MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF'S INCENTIVE AWARD

PLEASE TAKE NOTICE that on November 17, 2021 at 10:00 a.m., or as soon as the matter may be heard by the Honorable Magistrate Judge Leda D. Wettre of the United States District Court for the District of New Jersey, located at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, Plaintiff Michael Jette will and hereby does move for entry of the proposed Order Granting Plaintiff's Motion for Award of Attorneys' Fees and Expenses and Plaintiff's Incentive Award submitted herewith.

This Motion is based on this Notice of Motion and the Memorandum of Law and Declarations filed by Plaintiff herewith, the record in this action, the argument of counsel, and any other matters the Court may consider.

DATED: August 27, 2021

Respectfully submitted,

/s/James C. Shah
James C. Shah
Natalie Finkelman Bennett
MILLER SHAH LLP
2 Hudson Place, Suite 100
Hoboken, NJ 07030
Telephone: (866) 540-5505
Facsimile: (866) 300-7367
nfinkelman@millershah.com
jcshah@millershah.com

Hassan A. Zavareei (*pro hac vice*)
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
hzavareei@tzlegal.com

Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I certify that on this 27th day August 2021, I caused the foregoing to be filed using the Court's CM/ECF system, thereby causing it to be served upon all registered ECF users in this case.

/s/James C. Shah
James C. Shah

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL JETTE, on behalf of himself and all others similarly situated, Plaintiff, v. BANK OF AMERICA, N.A., Defendant.	Civ. A. No. 2:20-cv-06791-LDW The Honorable Leda D. Wettre, U.S.M.J.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES AND SERVICE AWARD

Hassan A. Zavareei (*pro hac vice*)
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
hzavareei@tzlegal.com

James C. Shah
Natalie Finkelman Bennett
MILLER SHAH LLP
2 Hudson Place, Suite 100
Hoboken, NJ 07030
Telephone: (866) 540-5505
Facsimile: (866) 300-7367
jcshah@millershah.com
nfinkelman@millershah.com

Counsel for Plaintiff and the Settlement Class

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Plaintiff, Michael Jette ("Plaintiff" or "Mr. Jette"), respectfully submits this Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees, Expenses and Service Award.[1]

INTRODUCTION

Class Counsel achieved a $5,950,000 common fund settlement to be distributed *pro rata* and without the need to file a claim form to Settlement Class members, defined as: all persons in the United States who currently or formerly had (1) a Bank of America credit card; (2) enrolled in Bank of America's eBill AutoPay for their credit card; (3) selected the "Amount Due" payment option before March 7, 2021; and (4) switched their payment option from "Amount Due" to "Account Balance" after making an "Amount Due" payment and being assessed interest between June 5, 2014 and May 21, 2021. This excellent result was achieved after nearly a year of litigation by Class Counsel, and a full-day mediation session with the Honorable Layn. R. Phillips (Ret.). Class Counsel obtained favorable results on the initial motion to dismiss and motion to strike filed by Defendant, Bank of America, N.A. ("BANA" or "Defendant") (collectively with Plaintiff, the "Parties"), and engaged in discovery and the exchange of information regarding damages in order to achieving a result that amounts to a recovery of approximately fifty-four

[1] Plaintiff will also file his memorandum in support of the settlement relief on October 20, 2021, as contemplated by the Preliminary Approval Order.

(54%) of the total damages.[2] On June 28, 2021, this Court entered a Preliminary Approval Order finding that the terms of the Settlement are sufficiently fair, reasonable and adequate to allow dissemination of Notice. (ECF 40.) As compensation for their efforts, Class Counsel seek an award of attorneys' fees of 33% of the Settlement Fund, or $1,983,135; expenses of $21,877.44; and a service award of $7,500 for Mr. Jette in recognition of his significant efforts undertaken as the Class Representative to assist Class Counsel and the Settlement Class.

The requested fee is fair and reasonable because: (1) it will compensate Class Counsel for their investment of time, resources, and lost opportunity to work on other matters; (2) the fee is paid out of the common Settlement fund created solely by efforts of Class Counsel; (3) of the risks presented by this case, the quality and amount of work performed, as well as the stakes presented; and (4) the requested award is in line with other awards in this District and Circuit, which employs the percentage-of-the-fund method to determine attorneys' fee awards to class counsel in class action settlements involving a common fund. Should the Court perform an

[2] The Settlement details are summarized in Plaintiff's Unopposed Motion for Preliminary Approval of the Class Settlement (ECF 36-1), the May 24, 2021 Declaration of James C. Shah in support thereof (ECF 36-2), and Exhibit 1 thereto (ECF 36-3) (Settlement Agreement), and the Settlement Agreement is incorporated herein by reference. To the extent any capitalized terms in this Memorandum are not defined herein, these terms will have the meaning ascribed to them in the Settlement Agreement.

optional cross-check by examining Class Counsel's lodestar in this Action, the lodestar multiplier of 8.2 is reasonable and consistent with fee awards in this Third Circuit.

The requested fee was disclosed in the Court-approved Notice, which was sent directly to Class Members and also published on the Settlement website beginning in July 2021. The Notice and website inform Class Members that Class Counsel will apply for fees not to exceed 33.33% of the total amount of the Settlement, reasonable expenses, and that Plaintiff will seek a service award in the amount of $7,500. (ECF 36-3 (Settlement Agreement) at Exhibit A.)

I. FACTUAL AND PROCEDURAL BACKGROUND

Class Counsel have zealously pursued this Litigation on behalf of the Settlement Class. Class Counsel's litigation efforts are detailed in the Declaration of James C. Shah submitted herewith (the "Shah Decl.") and the Declaration of Hassan Zavareei ("Zavareei Decl.") and are briefly described below.

A. Nature of the Case

Plaintiff's Action arises from interest charges that BANA customers did not intend to incur when they enrolled in eBill AutoPay and opted to pay the "Amount Due"—which, Plaintiff alleges, was functionally equivalent to the "Minimum Amount Due" automatic payment option.

BANA allowed cardholders to set up automatic monthly payments online and provided the following payment options (1) "Minimum Amount Due"; (2) "Account Balance"; (3) "Fixed Amount"; and (4) "Amount Due." The "Minimum Amount Due" option allowed cardholders to pay the minimum amount owed on their most recent credit card statement, which would leave a balance that carries over to the following month and incurs interest. First Amended Class Action Complaint (ECF 22) ("FAC") ¶ 35. Plaintiff alleges that the "Amount Due" option was misleading since customers who selected it likely intended to pay the total "amount due" each month, leaving no balance to carry over and incur interest, but instead found themselves paying only the minimum amount due, thereby leaving a balance that was subject to interest charges. *Id.* ¶ 30. In other words, Plaintiff alleges that "Amount Due" was duplicative of "Minimum Amount Due" and was potentially confusing to customers who intended to pay off their entire monthly credit card balance and instead ended up paying the minimum amount and accruing the interest they were trying to avoid. *Id.* ¶ 13. (Shah Decl. ¶ 2.)

Mr. Jette opened a BANA credit card in December 2019 for personal use. FAC ¶ 44. Prior to making his first payment on his BANA credit card, Mr. Jette set up automatic payments through BANA's website, authorizing it to withdraw monthly payments from his deposit account at Chase Bank. Mr. Jette selected "Amount Due." *Id.* ¶ 48. He did so with the understanding that BANA would

withdraw the entire balance reflected on his last monthly statement by the due date, thus ensuring that he would avoid being charged interest. *Id*. However, the "Amount Due" option only caused Defendant to withdraw the minimum amount due from Mr. Jette's deposit account, leaving a balance that accrued interest. *Id.* ¶ 39. Mr. Jette further alleges that he and thousands of other similarly situated individuals were harmed by this practice. *Id.* ¶¶ 61, 66.

B. Class Counsel Performed High-Quality Work for the Benefit of the Settlement Class

This Action was commenced by Mr. Jette on June 3, 2020. *See* Complaint, ECF 1. Prior to initiating the action, Class Counsel spent considerable time investigating the issues, as well as researching the various laws potentially applicable to the claims. Shah Decl., ¶¶ 3, 6, 8.

BANA filed both a Motion to Dismiss the initial Complaint and a Motion to Strike Class Allegations on August 10, 2020. (*See* ECF 9.) Mr. Jette filed an Opposition, (ECF 15), and BANA filed a Reply (ECF 19). Following the briefings on the motions filed by BANA, the Court entered an Opinion on October 10, 2020, granting in part and denying in part BANA's motions. (ECF 20.) *See* Shah Decl. ¶¶14-15. The Court denied outright the motion to strike Mr. Jette's class claims, observing that "'in most cases,' it is premature to strike class allegations prior to discovery." *See* ECF 20, at 7-8. As for the Motion to Dismiss, the Court concluded only that New Jersey law, not North Carolina law, should apply to Mr. Jette's

consumer protection claims. On this basis, the Court dismissed his claims without prejudice. *Id*. at 4-6. The Court observed that "the fact that the 'Amount Due' and 'Minimum Amount Due' options both result in the minimum payment being made on an account suggests that there is no difference between the two alternatives and could mislead consumers." *Id*. at 6 n.3.

Mr. Jette filed the FAC on November 9, 2020, (ECF 22), asserting claims for violation of the New Jersey Consumer Fraud Act ("NJCFA"), breach of contract, breach of the covenant of good faith and fair dealing, and unjust enrichment. Shortly after the FAC was filed and before Defendant's response came due, the Parties agreed to stay the case pending mediation. *See* Shah Decl. ¶¶15-16.

C. History of Settlement Negotiations

The Parties commenced a dialogue to determine whether a framework could possibly be developed to resolve the matter. Ultimately, the Parties agreed to utilize the services of Judge Layn R. Phillips (Ret.). At that time, BANA provided Plaintiff confidential data reflecting the amounts paid by Class Members in interest fees and damages. The Parties participated in a mediation session with Judge Phillips on March 17, 2021. In connection with that mediation session, the Parties submitted detailed mediation briefs to Judge Phillips, setting forth their respective views on the strengths of their cases and, during the mediation session, the Parties discussed their relative views of the law and the facts and potential relief for the proposed Class.

Ultimately, the Parties' prolonged efforts resulted in the Settlement. Shah Decl., ¶¶ 15-16.

The Settlement was achieved only after extensive analysis of the legal issues and issuance of the Court's Opinion on the Motion to Dismiss and Motion to Strike Class Allegations, the provision of information and data that allowed Class Counsel to adequately evaluate the possibility of settlement. Thus, the Settlement was reached after considerable investigation and careful consideration and discussions. As is evident from the procedural history, the negotiations, which ultimately resulted in the Settlement being presented to the Court, were adversarial, non-collusive, and conducted at arm's length. *See* Shah Decl., ¶¶ 19-23.

D. The Settlement

As set forth in the Preliminary Approval filings and as will be fully discussed in Plaintiff's brief in support of Final Approval of the Settlement, the Settlement calls for the creation of a $5,950,000 common fund which will be utilized to pay all valid Class claims, administration costs, approved attorneys' fees and expenses, and the service award. In short, Class Counsel's persistence, hard work, and investment of resources resulted in Settlement Class Members recovering a significant portion of the interest that was allegedly improperly paid (and which BANA vigorously disputes was improperly paid) namely fifty-four (54%) of the total potential damages. Shah Decl., ¶¶ 18-19. As a result of Class Counsel's work, Settlement

Class Members will enjoy the benefit of a real, immediate, and certain compensation.

Under the Settlement, (1) BANA will pay $5,950,000 to establish a common fund for the benefit of the Settlement Class (the "Settlement Fund") to be distributed automatically to Settlement Class Members identified by BANA's records, who will receive a *pro rata* share of the Settlement Fund; (2) the remaining monies in the Settlement Fund due to uncashed checks will be paid in a second *pro rata* distribution to Settlement Class Members who received and cashed the first check if the funds are sufficient to send a check in an amount greater than $5.00 per Settlement Class Member; (3) the remaining monies left in the Settlement Fund due to uncashed checks following the second distribution will be paid to the Center for Responsible Lending in a *cy pres* distribution. The relief is available to Class Members without any need to submit a claim. In addition, during this Litigation, BANA ceased using the "Amount Due" payment option that is the basis of the claims. Shah Decl., ¶2.

All material terms of the Settlement were negotiated and agreed to at the in-person mediation with Judge Phillips. There was no discussion or agreement on attorneys' fees and Plaintiff's incentive award until the other material terms of the Settlement were agreed upon. Shah Decl., ¶41.

Since reaching agreement to the terms of the Settlement on March 17, 2021, the Parties drafted the formal Settlement Agreement with attachments, including details of Notice and administration. Class Counsel solicited bids for and worked with Defendant to reach agreement on a Settlement Administrator and then spent time working with the Settlement Administrator to prepare and facilitate the Notice documents, as well as to prepare the website and frequently asked questions for the website. Shah Decl., ¶¶17, 24.

On June 22, 2021, the Court held a conference, during which the Parties were instructed to make changes to the notices and the proposed preliminary approval order to include specific dates for key Settlement administration deadlines. On June 28, 2021, the Court preliminarily approved the Settlement as likely to be fair, reasonable, and adequate, including Class Counsel's requested fee, and ordered that Notice should be issued to the Class. (ECF 40.)

E. Class Counsel's Fee Request

By any measure, the relief Plaintiff and Class Counsel recovered on behalf of the nationwide Settlement Class of BANA customers is outstanding: it provides automatic relief without the need for filing a claim form and based on the amount of interest improperly paid by the Settlement Class Members from a Settlement Fund of $5,950,000. Here, the total the amount of interest collected by BANA from the Settlement Class is approximately $11,000,000. Shah Decl. ¶18. Thus, the

Settlement amounts to a recovery of approximately fifty-four (54%) of the total damages.

Subject to Court approval, Class Counsel seek an award of attorneys' fees of 33.33% of the Settlement Fund, or $1,983,135, plus reasonable expenses of $21,877.44. Shah Decl., ¶ 40,55. Also subject to Court approval, Class Counsel will seek a service award of $7,500 for Plaintiff, who served as the Class Representative. Shah Decl., ¶57. Class Counsel's request is reasonable based on the benefits achieved for the Class and applicable legal principles.

Like the Settlement itself, the Parties negotiated the attorneys' fee amount under the auspices and with the assistance of Judge Phillips and only after all other terms of the Settlement were fully agreed upon. *See* Shah Decl. ¶ 41.

The requested fee is fair given the relief secured for the Settlement Class, and the work that counsel did to achieve it. The requested fee is also consistent with percentage fee awards in other class action cases in this Circuit and elsewhere. Further, although the deadline remains open, no objection has been received (as of August 25, 2021) to the requested fee following extensive notice to the putative Settlement Class of approximately 106,284 Class Members or in response to the CAFA notice. Shah Decl., ¶¶26-27.

Here, Class Counsel assumed substantial contingent risk in litigating this case. There was a real and distinct possibility of no recovery at all, and that no class would

be certified. Given the many risks assumed, the complexity and amount of work involved, the skill and expertise required, and the excellent relief secured, the Court should approve the requested fee, reimbursement of expenses, and payment of the service award in full.

II. ARGUMENT

It is well-settled that plaintiffs' attorneys in a class action lawsuit may petition the court for compensation for any benefits to the class that result from the attorneys' efforts. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Rule 23 expressly states that "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the Parties' agreement." Fed. R. Civ. P. 23(h). Further, the common-fund doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense." *Boeing*, 444 U.S. at 478. In class actions, the Supreme Court has recognized a preference that the settling parties privately negotiate fees. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). And the fee "request should not result in a second major litigation." *Id*. Nevertheless, where the parties have privately negotiated and agreed upon a fee amount, the Court must still review the fee petition and ensure there was no collusion between defendant and class counsel. *See In re NFL Players' Concussion Injury Litig*., 821 F.3d 410, 447 (3d Cir. 2016). This concern, however, is nullified where, like here, the fee is

negotiated with the assistance of a neutral, third-party mediator, only after all material terms of the Settlement were agreed upon, and the fee payment will not diminish recovery to the Class. *See id.*; *see also Shapiro v. All. MMA, Inc.*, No. CV 17-2583 (RBK/AMD), 2018 WL 3158812, at *2 (D.N.J. June 28, 2018) (citation omitted) ("The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties.").

At its core, the Court's focus in evaluating a fee request is to ensure that it is reasonable. *See, e.g., In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). When considering an award of fees in a class case, the court should reward success. *See, e.g., In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001); *In re Elec. Carbon Prod. Antitrust Litig.,* 447 F. Supp. 2d 389, 405 (D.N.J. 2006). "[W]hat is important is that the district court evaluate what class counsel actually did and how it benefitted the class." *AT&T*, 455 F.3d at 165-66. *See also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the "most critical factor is the degree of success obtained"); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("[t]he 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' ").

There are two methods to determine whether a fee award is appropriate. To determine a reasonable fee, "the percentage-of-recovery method is favored in cases involving a common fund." *S.S. Body Armor I., Inc. v. Carter Ledyard & Milburn LLP*, 927 F.3d 763, 773 (3d Cir. 2019); *see also Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 197 (3d Cir. 2014) ("The percentage-of-recovery method is generally favored in cases involving a common fund") (quoting *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001)). The percentage-of-recovery method is used in cases like this one, involving a common fund, because it rewards counsel for success and penalizes counsel for waste or failure. *In re AT&T*, 455 F.3d at 164 (citation omitted). *See also* REPORT OF THE THIRD CIRCUIT TASK FORCE, COURT AWARDED ATTORNEY FEES, 15 (Oct. 8, 1985), 108 F.R.D. 237, 255 (1986) ("recommend[ing] that in the traditional common-fund situation … the district court … should attempt to establish a percentage fee arrangement"); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

Here, therefore, it is appropriate to judge the reasonableness of the requested fee award using the percentage of the fund method. In fact, courts at all levels of the federal system, including the Supreme Court and at least nine circuits (including the

Third Circuit), have approved the use of the percentage method. *See, e.g.*, *Boeing*, 444 U.S. at 478-79; *In re Gen. Motors Corp.*, 55 F.3d at 821; *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 249 (D.N.J. 2005); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 128 (D.N.J. 2002); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation*, 56 F.3d 295, 307 (1st Cir. 1995); *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010); *Union Asset Management Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644, Fed. Sec. L. Rep. (CCH) P 96726 (5th Cir. 2012); *Rawlings v. Prudential-Bache Properties*, Inc., 9 F.3d 513, 517 (6th Cir. 1993); *Travelers Property Cas. Ins. Co. of America v. National Union Ins. Co. of Pittsburgh, Pa.*, 735 F.3d 993, 1002 (8th Cir. 2013); *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 768 Fed. Appx. 651, 653, 366 Ed. Law Rep. 658 (9th Cir. 2019); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774, 21 Fed. R. Serv. 3d 819 (11th Cir. 1991). Using that method reveals that the fee award request here is fair and reasonable and should be approved.

The lodestar method is applied in statutory fee-shifting cases. *E.g.*, *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 323 (D.N.J. 1997). The Court may also conduct an optional cross-check, whereby it determines the lodestar multiplier that would result from applying the percentage of the fund. Such an analysis in this

case results in a lodestar multiple of 8.2, Shah Decl., ¶56, which is also reasonable under the applicable precedent and the facts of this case.

A. The Fee Request is Reasonable Under the Percentage of the Fund Method and Consistent With Those in Common Fund Cases

The value of the Settlement here is $5,950,000, with no possibility that any portion will revert to Defendant. In other words, if there are funds left over in the Settlement Fund, claiming Class Members' shares will increase on a *pro rata* basis. Pursuant to the terms of the Settlement Agreement, Class Counsel seek an award of attorneys' fees of 33.33% of the Settlement Fund or $1,983,135, plus reasonable expenses in the sum of $21,877.44. When evaluating a fee award request in a common fund class case, the primary factors to be considered are:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

See AT&T, 455 F.3d at 165; *Cendant PRIDES*, 243 F.3d at 733; *Elec. Carbon*, 447 F. Supp. 2d at 405. These factors, enunciated in *Gunter v. Ridgewood Energy Corp.,* 223 F.3d 190, 195 n.1 (3d Cir. 2000), are frequently referred to as the *Gunter* factors. The Court may also consider:

> (1) the value of benefits accruing to class members attributable to the efforts of class 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.

AT&T, 455 F.3d at 165; *Elec. Carbon*, 447 F. Supp. 2d at 405-06. Because the facts of each case are different, the factors "need not be applied in a formulaic way" and some factors may be afforded greater weight than others. *Rite Aid*, 396 F.3d at 301; *Gunter*, 223 F.3d at 195 n. 1. All applicable factors support approval of the requested 33% fee in this case.

The Third Circuit has not established a benchmark for fee awards in common fund cases but has held that fee awards generally range from 19% to 45% of the settlement fund. *In re Gen.Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig*, 55 F.3d 768, 822 (3d Cir. 1995); *see also Ikon*, 194 F.R.D at 194 ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent"); *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 322-23 (D.N.J. 1998) ("There is no set standard, however, on how to determine reasonable percentage. Awards utilizing the percentage-of-recovery method can reasonably range from nineteen percent to forty-five percent of a settlement fund . . . [T]he percentage awarded, should, and generally does, increase commensurate with increased quality of representation."). *See also* William Rubenstein, Alba Conte, Herbert B. Newberg, NEWBERG ON CLASS ACTIONS, §14.06 at 550 (4th ed. 2002) ("Usually 50 percent of the fund is the upper limit of a reasonable fee award from a common fund . . . .").

As a court in this District found recently, "[a]ttorneys' fees in the 30% range are not uncommonly awarded in the Third Circuit, and courts in this Circuit have awarded fees of more than 30%." *Mirakay v. Dakota Growers Pasta Co*., No. 13-CV-4429 JAP, 2014 WL 5358987, at *12 (D.N.J. Oct. 20, 2014), *appeal dismissed* (Dec. 11, 2014) (emphasis added) (approving a fee request that "would be approximately 36.8% of the mere cash value of the fund, and considering non-monetary, injunctive relief as well); *Bodnar v. Bank of America N.A*., No. 14-3224 (E.D. Pa., Aug 4, 2016) (ECF 90) (order awarding 33% of settlement fund of $27.5 million). The requested 33.33% fee is also consistent with percentage fee awards by courts in common fund cases within this District as well as the Third Circuit. *See, e.g., In re: Caterpillar, Inc. C13 and C15Engine Products Liability* Litig., MDL No. 2540 (D.N.J.) [Dkt. No. 54] (finding in final approval order that fee of 33% and plaintiffs' counsels' fees and then-current hourly rates of up to $750.00 for partners were reasonable); *Q+Food v. Mitsubishi Fuso Truck of America, Inc*., 3:14-cv-06046 (D.N.J., March 27, 2017) [Dkt. 70]; *Henderson v. Volvo Cars of North America, LLC*, 2013 WL 1192479 (D.N.J. March 22, 2013); *Trewin v. Church and Dwight, Inc*., Case No. 3:12-cv-01475-MAS-DEA (D.N.J. 2015) [Dkt. 68]; *Castro v. Sanofi Pasteur Inc.*, C.A. No. 11-7178 (JMV) (MAH), 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) (awarding fee of 33⅓% and stating that "[t]he one-third fee is within the range of fees typically awarded within the Third Circuit through the

percentage-of-recovery method"); *In re Gen. Motors Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995) (review of 289 class action settlements demonstrates "average attorney's fee percentage [of] 31.71%" with a median value that "turns out to be one-third"); *Williams v. Aramark Sports, LLC*, No. 10-cv-1044, 2011 WL 4018205, at *10 (E.D. Pa. Sept. 9, 2011) (accord); *In re Ravisent Techs., Inc. Sec. Litig.*, No. 00-1014, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) (citing cases; "courts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses"); *In re Fasteners Antitrust Litig.*, C.A. No. 08-MD-1912, 2014 WL 296954, at *7 (E.D. Pa. Jan. 27, 2014) (a one-third fee is "consistent with attorney's fees awards generally granted in this Circuit."); *In re Corel Corp.,* 293 F. Supp. 2d at 497-98 (awarding fee of 33⅓%).

1. The Size of the Fund and the Number Of Persons Benefitting Supports the Requested Award

The first *Gunter* factor, the size of the fund created, and the number of persons benefitted, plainly weighs in favor of approving the requested fee award. The Manual for Complex Litigation provides that "[g]enerally, the factor given the greatest emphasis [in awarding a percentage of the recovery] is the size of the [recovery] created, because [the recovery] 'is itself the measure of success … [and] represents the benchmark from which a reasonable fee will be awarded.'" Manual for Complex Litigation § 14.121 (4th ed. 2004) (quoting 4 Alba Conte & Herbert B.

Newberg, Newberg on Class Actions, § 14:6, at 547, 550 (4th ed. 2002)). As discussed above, the $5,950,000 common fund will benefit the approximately 100,000 Class Members based on their *pro rata* share of the amount of interest improperly paid by the Settlement Class Members. Here, where the total amount of interest collected by BANA from the Settlement Class is approximately $11,000,000, the Settlement amounts to a recovery of approximately fifty-four percent (54%) of the total damages, which, by any measure, is an exceptional result. Class Counsel negotiated a Settlement for the Class, which is a certain return for the Class, without the necessity of the completion of a claim form. Further, during this Litigation, Defendant stopped the challenged conduct. Given the inherent litigation risks in this putative nationwide class action, the benefits are substantial and provide tangible benefits without the risks and delays of continued litigation.

2. The Reaction of the Class to the Settlement

The second *Gunter* factor analysis is the presence or absence of objections by members of the Settlement Class to the terms of the Settlement. As set forth above, although the deadline for objecting is not until September 11, 2021, to date, no Class Member has objected to, or opted out of, the Settlement. Further, the Notices advised that Plaintiff's Counsel seek up to a 33⅓% fee award. (ECF 36-3 (Settlement Agreement) at Exhibit A.) Also, no objections have been filed by any state or federal officials following the CAFA notice. *See* Shah Decl. ¶ 27.

3. Class Counsel Prosecuted This Action With Skill and Efficiency

The third *Gunter* factor—the skill and efficiency of the attorneys involved—also weighs in favor of the requested fees and expenses. Class Counsel's success in bringing this Litigation to a successful conclusion is perhaps the best indicator of the experience and ability of the attorneys involved. *In re AremisSoft Corp. Sec. Litig.,* 210 F.R.D. 109, 132 (D.N.J. 2002) ("the single clearest factor reflecting the quality of the class counsels' services to the class are the results obtained"). As noted above, Class Counsel prevailed against BANA's Motion to Strike and Counsel largely prevailed on the Motion to Dismiss with leave to amend. Employing their experience and skill, Class Counsel aggressively and swiftly worked to resolve this case in an efficient manner. Class Counsel were able to utilize their pre-existing and specialized knowledge of the legal and factual issues developed in connection with Defendant's Motion to Dismiss and Motion to Strike and further researched and analyzed claims in anticipation of a renewed motion to dismiss Mr. Jette's FAC. Class Counsel were, therefore, able to efficiently assess the risks associated with this case and the potential damages at issue. The quality of the work which has been presented to the Court, the undersigned believe, speaks for itself. Facing the substantial risk of further litigation, Class Counsel's results are beneficial for the Class.

The fact that a case settles as opposed to proceeding to trial "in and of itself, is never a factor that the district court should rely upon to reduce a fee award. To utilize such a factor would penalize efficient counsel, encourage costly litigation, and potentially discourage able lawyers from taking such cases." *Gunter*, 223 F 3d at 198. Further, in achieving the Settlement before the Court, Class Counsel invested significant time and worked for a year to arrive at this Settlement. And because Class Counsel were able to secure a settlement shortly after filing the First Amended Complaint, the benefit to Class Members was achieved efficiently, without the need for Class Counsel to spend hundreds of hours in discovery or litigating contested motions. *See Blofstein v. Michael's Fam. Rest., Inc.*, No. CV 17-5578, 2019 WL 3288048, at *11 (E.D. Pa. July 19, 2019) (finding that "requested attorneys' fees and costs are justified by counsel's successful and efficient resolution"); *Kapolka v. Anchor Drilling Fluids USA, LLC*, C.A. No. 2:18-01007-NR, 2019 WL 5394751, at *9 (W.D. Pa. Oct. 22, 2019) (Class counsel's work secured the monetary and non-monetary benefits for the Settlement Class efficiently, and thereby helped conserve judicial resources, which also supports the fee requested).

Plaintiffs' Counsel are skilled class action litigators with experience in complex class action cases. *See* Shah Decl. ¶¶ 31-39; Zavareei Decl. ¶¶ 29-30. The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Class Counsel. *See*, *e.g., Ikon*, 194 F.R.D. at 194; *In re Warner*

Commc'ns Sec. Litig., 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 941, 970 (E.D. Tex. 2000). Defense counsel in this case is a highly respected national law firm, O'Melveny & Myers LLP, with extensive experience in defending complex class actions. Class Counsel's ability to obtain such a favorable Settlement for the Class in the face of a formidable opponent further confirms the high quality of Class Counsel's representation.

Class Counsel assumed a significant risk in undertaking this case on a pure contingency basis; invested time, effort, and money over more than a year of litigation with no guarantee of recovery; and were prepared to continue prosecuting the litigation until conclusion. Here, in sum, the quality of representation is reflected in the exemplary Settlement before this Court. Class counsel's skill, tenacity, and efficiency in navigating the many legal and factual challenges in this case also favor the requested fee. Accordingly, Class Counsel respectfully submit that the third *Gunter* factor, the skill and efficiency of the attorneys involved, strongly supports their application.

4. Without This Settlement, the Class Would Encounter Time-Consuming and Lengthy Litigation

Absent Settlement, Plaintiff would have faced hard-fought and lengthy litigation. To prevail, Plaintiff would have had to survive a motion to dismiss the

FAC, obtain class certification, survive a likely motion for summary judgment, and prevail at trial and any subsequent appeal. Formal class and merits discovery, as well as additional non-party discovery would be sought, requiring time-consuming review and analysis. As a putative class action, complex legal and factual issues would be the subject of additional pretrial motions, including for class certification. Defendant would likely challenge all facets of the Rule 23 analysis. The class certification decision likely would lead to the inevitable Rule 23(f) interlocutory appeal, potentially delaying prosecution of the case should a stay pending appeal be granted. Given the prospect of protracted litigation, engendering enormous time and monetary expenditure, this factor weighs in favor of Class Counsel's application. *In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) (awarding fees in matter where "in the absence of a settlement, this matter will likely extend for months or even years longer with significant financial expenditures by both" parties).

5. Class Counsel Undertook the Risk of Nonpayment

Class Counsel undertook this Action on an entirely contingent fee basis, assuming a substantial risk that the Litigation would yield no, or very little, recovery and leave them uncompensated for their time, as well as for their out-of-pocket expenses. Shah Decl., ¶¶ 42-43; Zavareei Decl. ¶¶ 8, 26, 32. Courts across the country have consistently recognized that the risk of receiving little or no recovery

is a major factor in considering an award of attorneys' fees. *See, e.g., In re Merck & Co., Inc. Vytorin ERISA Litig.*, C.A. No. 08-285 (DMC), 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (holding that "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees"); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 104 (E.D. Pa. 2013) ("[A]s a contingent fee case, counsel faced a risk of nonpayment …. This factor supports approval of the requested fee."); *Kapolka*, 2019 WL 5394751, at *9 (representation "on a contingent basis … favors approving the fee award"); *Warner Commc'ns*, 618 F. Supp. at 747-49 (citing cases). As one court in this District stated:

> Counsel undertook this Action on a purely contingent fee basis, assuming an enormous risk that the litigation would yield potentially little, or no, recovery and leave them uncompensated for their significant investment of time and very substantial expenses. This Court and other have consistently recognized that this risk is an important factor favoring an award of attorneys' fees.

In re Schering-Plough Corp. Enhance Sec. Litig., No. CIV.A. 08-2177 DMC, 2013 WL 5505744, at *28 (D.N.J. Oct. 1, 2013). If this Action had proceeded through litigation, it would have been vigorously contested. Counsel faced risk in establishing liability through trial, judgment, and any appeal, as well as maintaining certification of a litigation class. *In re Rite Aid*, 396 F.3d at 304. Defendant had significant defenses to both liability and class certification and would have certainly opposed certification of a class for litigation purposes in this Action. These risks are highly relevant to the requested award because Class Counsel handled the case on a

contingent fee basis, without any guarantee that they would be compensated for their extensive time investment or reimbursed for their expenses. It is only because Class Counsel agreed to accept these risks that they were able to represent Plaintiff and achieve a favorable and substantial Class Settlement in this case. Accordingly, this factor also weighs in favor of the requested award. *See, e.g., Hegab v. Family Dollar Stores, Inc.*, 2015 WL 1021130, at *13 (D.N.J. Mar. 9, 2015) (risk of non-payment supported requested fee where "[c]lass counsel undertook this action on a contingent fee basis, assuming a substantial risk that they might not be compensated for their efforts"); *Brumley v. Camin Cargo Control, Inc.,* C.A. Nos. 08-1798 (JLL), 10-2451 (JLL), 09-6128 (JLL), 2012 WL 1019337, at *11 (D.N.J. Mar. 26, 2012) (approving fee award of 33⅓%; "Plaintiffs' counsel risked non-payment during the period of their representation since they represented Plaintiff entirely on a contingency basis, with no retainer fees or expenses paid at the beginning of the litigation."); *Lenahan v. Sears Roebuck And Co.*, 2006 WL 2085282, at *21 (D.N.J. July 24, 2006) ("Plaintiffs still faced significant risks at trial … the risk of non-payment weighs in favor of approving the fee request.").

6. Class Counsel Devoted Significant Time to This Case

The sixth *Gunter* factor also supports the requested award, as Class Counsel have invested significant time and effort in this Action. Specifically, since its inception, Class Counsel have expended more than 356.40 hours and incurred

$240,026.90 in attorneys' fees and $21,877.44 in out-of-pocket expenses on this Litigation. *See* Shah Decl. ¶¶ 40, 45-46, 51-55; Zavareei Decl. ¶¶ 31-36. This includes, *inter alia*: the time spent in the initial investigation of the researching complex issues of law; preparing and filing the initial and amended complaints; negotiating and entering into a stay pending mediation; preparing a lengthy mediation statement; attending an all-day mediation session with Judge Phillips and follow-up calls regarding the mediation; hard-fought Settlement negotiations; confirmatory discovery regarding damages; negotiating the details of a comprehensive Settlement Agreement; preparing the exhibits to the Settlement Agreement including the Notices and proposed Preliminary Approval Order); preparing a motion for preliminary approval of the Settlement; regularly communicating with the Settlement Administrator to ensure a smooth Notice process following the Court's Preliminary Approval Order; reviewing the language and content of the Settlement website; reviewing and editing scripts for the automated telephone hotline; responding to Class Members who contacted Class Counsel directly or who were forwarded to Class Counsel by the Settlement Administrator; communicating with the Plaintiff throughout the Litigation; and preparing the present motion and motion for final approval of the settlement. Shah Decl., ¶¶ 3, 8, 11-17, 24-25, 28, 46; Zavareei Decl. ¶¶ 7-9.

In addition, Class Counsel will devote further time and effort to preparing the materials in support of Final Approval, appearing at the Final Approval Hearing, responding to ongoing inquiries from Class Members going forward, and monitoring the distribution of Settlement payments by the Settlement Administrator. Counsel should be compensated for the time spent preparing for and participating in the final settlement hearing. *Granillo v. FCS USA LLC*, No. 16-153 (FLW)(DEA), 2019 WL 4052432, * 6 (D.N.J., August 27, 2019). These combined efforts amply support the requested award in this Action and demonstrate that the fees which will be paid to Class Counsel under the Settlement have been well earned.

7. The Fee is Well Within the Standard Range for Fees Approved in Common Fund Case

Here, the Settlement provides for a $5,950,000 common fund. Class Counsel request a fee of 33.33 percent of this total, a percentage that falls well within established Third Circuit precedent and is manifestly reasonable considering the facts and circumstances of the case, including, among other things, the results achieved, the skill and quality of work, the contingent nature of the fee, and awards made in similar cases. *See, e.g., In re Caterpillar, Inc., C13 and C15 Engine Products Liability Litigation*, Master Docket No. 14-3722 (JBS)(JS), MDL No. 2540 (D.N.J. September 20, 2016) (ECF 80) (awarding attorneys' fees of 33% in litigation involving alleged emission failures in diesel engines); *Hall v. AT&T Mobility LLC*, Civ No. 07-05325, 2010 WL 4053547, at *21 (D.N.J. Oct. 13, 2010) ("The requested

fee of 33 1/3 % is also consistent with a privately negotiated contingent fee in the marketplace."); *In re Tricor Direct Purchaser Antitrust Litig.*, Civ. A. No. 05-340, slip op. at 9-10 (ECF No. 543) (D. Del. Apr. 23, 2009) (awarding one-third fee on settlement of $250 million); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (awarding one-third fee on settlement of $150 million); *Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 FSH, 2005 WL 3008808, at *17 (D.N.J. Nov. 9, 2005) (awarding one-third fee on settlement of $75 million); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 147 (E.D. Pa. 2000) (approving attorneys' fees equating approximately 33% of a $7.3 million settlement fund); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 512-19 (W.D. Pa. 2003) (approving a $25 million settlement and awarding $6.25 million in attorneys' fees, which was approximately 25% of the settlement); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d. 484, 495-98 (E.D. Pa. 2003) (approving a $7 million settlement and awarding attorneys' fees of $2.3 million, which was nearly 33%); *In re EquiMed, Inc. Sec. Litig.*, No. 98-cv-5374, 2003 WL 735099, at *4 (E.D. Pa. Mar. 3, 2003) (awarding 33⅓%); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 439 (E.D. Pa. 2001) (awarding 33⅓%); *In re Safety Components*, *Inc. Securities Litigation*,166 F. Supp. 2d 72, 93, 107-108 (D.N.J. 2001) (awarding 33⅓%); *AremisSoft*, 210 F.R.D. at 134-35 (awarding 33⅓ %); *In re Unisys Corp. Sec. Litig.*, No. 99-5333, 2001 WL 1563721, at *3 (E.D. Pa. Dec. 6, 2001) (awarding 33⅓%); *Blackman v. O'Brien Envtl. Energy, Inc.*, No. Civ.

A. 94-5686, 1999 WL 397389, at *2 (E.D. Pa. May 2, 1999) (awarding 35%); *In re ValueVision Int'l Inc. Sec. Litig.*, 957 F. Supp. 699, 700-1 (E.D. Pa. 1997) (awarding 34.27%); *Ratner v. Bennett*, No. Civ. A. 92- 4701, 1996 WL 243645, at *9 (E.D. Pa. May 8, 1996) (awarding 35%); *In re Greenwich Pharm. Sec. Litig.*, Civ. A. No. 92-3071, 1995 WL 251293, at *6 (E.D. Pa. Apr. 25, 1995) (awarding 33⅓%). In sum, the *Gunter* factors weigh in favor of granting Class Counsel's application for attorneys' fees.[3]

[3] In addition to the *Gunter* factors discussed above, courts in the Third Circuit may also consider the factors articulated in *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 148 F.3d 340 (3rd Cir. 1998). These factors are (1) whether the benefits accruing to the class are attributable to the efforts of class counsel or other groups, such as government agencies; (2) whether the fee is comparable to the fee that would have been negotiated had the case been subject to a contingent fee agreement; and (3) whether the settlement agreement contains innovative terms and conditions. 148 F.3d at 337-40. These factors further support the requested award in this case. With respect to the first *Prudential* factor, the results obtained are solely the result of Class Counsel's efforts. Class Counsel are not aware of any other litigation by any other litigants or government agencies against Defendant alleging the same or similar allegations. Shah Decl., ¶ 29. Further, as to the second factor, the requested award is in line with a typical contingent fee arrangement. *See, e.g.*, *Bredbenner v. Liberty Travel, Inc.*, C.A. No. 09-1248, 2011 WL 1344745, at *21 (D.N.J. Apr. 8, 2011) (stating that, in private, non-class action litigation, "the customary contingent fee would likely range between 30% and 40% of the recovery"); *In re Remeron Direct Purchaser Antirust Litig.*, C.A. No. 03-0085 (FSH), 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."); *Halley v. Honeywell Int'l Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (accord); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 340 (E.D. Pa. 2007) ("'[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.'"). Finally, the third *Prudential* factor also supports

C. The Lodestar Cross-Check Supports That the Requested Fees and Expenses are Fair and Reasonable

The Third Circuit recommends, but does not require, that district courts using the percentage of the fund method conduct a lodestar cross-check on the reasonableness of the fee award. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 183 n.4 (3d Cir. 2005) (affirming district court's percentage of the fund fee award, even though district court did not conduct lodestar cross-check); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 310 (E.D. Pa. 2003) (holding that *Gunter* recommends but does not require lodestar cross-check). Where district courts do conduct a lodestar cross-check, the Third Circuit has cautioned that this crosscheck "*does not trump the primary reliance* on the percentage of the common fund method." *In re Rite Aid Corp. Sec. Litig*., 396 F.3d at 307 (emphasis added). Moreover, the lodestar crosscheck "need entail neither mathematical precision nor bean counting," and the "resulting multiplier need not fall within any pre-defined range, provided that the District Court's analysis justifies the award." *Id*. (emphasis added). "The district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *In re Rite Aid Corp. Sec. Litig.,* 396 F.3d at 306–07. *Accord Schuler v. Medicines*, C.A. No. 14-1149 (CCC), 2016 WL 3457218,

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the requested award, as the Settlement in this case provides excellent relief for the Settlement Class.

at *10 (D.N.J. June 24, 2016). As one court emphasized, in determining the lodestar for crosscheck purposes, the Court need not engage in a "full-blown lodestar inquiry." *AT&T*, 455 F.3d at 169 n.6. Indeed, where there have been no objections to the lodestar calculations, "a fullblown lodestar analysis is an unnecessary and inefficient use of judicial resources." *Dewey v. Volkswagen of America*, 728 F. Supp. 2d 546, 592 (D.N.J. 2010).

To calculate the lodestar amount, counsels' reasonable hours expended on the litigation are multiplied by their reasonable rates. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). Here, the lodestar method confirms the reasonableness of the percentage fee being sought. As reflected in the accompanying declarations and set forth above, Class Counsel have spent more than 356.40 hours on this case. *See* Shah Decl., ¶54 and Exhibit 1; Zavareei Decl. ¶ 31. Moreover, the lodestar amount does not include time to prepare all of the filing for and attend the Final Fairness Hearing, and to continue to supervise the distribution of the Settlement fund (including working with the Settlement Administrator, corresponding with Settlement Class Members, and working with opposing counsel, activities which will necessarily result in additional lodestar. *See* Shah Decl., ¶ 46.

Moreover, the hourly rates vary appropriately between attorneys and between paralegals, depending on the position, experience level, and locale of the attorney. *See* Shah Decl., ¶ 47-50 and Exhibit 1. The rates for each individual attorney and

paralegal are set forth in the declarations and in the charts and exhibits to the declarations. The rates are based on a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided and the experience of the lawyer. *Gunter*, 223 F.3d at 195.

Considering the several factors discussed above, including the economic benefits of the Settlement, the complexity and risk of the Litigation and the skill and experience of counsel, Class Counsel's rates are reasonable in this case. As set forth in the accompanying Declarations, this calculation yields a lodestar based solely on the time for Class Counsel, before application of a reasonable multiplier, of $240,026.90. This results in a multiplier of 8.2.

In the Third Circuit, multipliers are used to account for the risks of non-recovery, as an incentive for counsel to undertake socially beneficial litigation, or as an award for an extraordinary result. "By nature they are discretionary and not susceptible to objective calculation." *Prudential II,* 148 F.3d at 340. The court in *Prudential II*, 148 F.3d at 341, also found that "[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." *Accord In re Cendant Corp. Derivative Action Litig.*, 232F. Supp. 2d 327, 341-42 (D.N.J. 2002). Where, as here, the results so warrant, courts routinely award fees with substantially higher multipliers than 4. *See*, *e.g.*, *Weiss v. Mercedes-Benz of North America, Inc.*, 899 F. Supp. 1297, 1304 (D.N.J. 1995) (awarding fee that

resulted in a multiplier of 9.3 times hourly rate); *Muchnick v. First Fed. Savings & Loan Ass'n*, No. 86-1104,1986 WL 10791 (E.D. Pa. Sept. 29, 1986) (awarding fee equal to multiplier of 8.4); *Perera v. Chiron Corp.*, Civil No. 95-20725-SW (N.D. Cal. Feb. 17, 1999, and Feb. 29, 2000) (multiplier of 9.14); *Cosgrove v. Sullivan*, 759 F. Supp.166 (S.D.N.Y. 1991) (awarding fee equal to a multiplier of 8.84).

The multiplier in this case reflects the fact that Class Counsel were highly efficient in litigating and resolving this potentially drawn-out Litigation. That is why the percentage of the fund approach is the key measure—so that Class Counsel is incentivized to obtain excellent results efficiently, and not to run up a big bill with meager results. As the Third Circuit stated in *Gunter*, one purpose of the percentage of the fund approach is "to encourage early settlements by not punishing efficient counsel . . ." *Gunter*, 223 F.3d at 198 (quoting Manual for Complex Litigation, § 24.121, at 207). Applying this principle, the Third Circuit held that "[p]rocuring a settlement, in and of itself, is never a factor that the district court should rely upon to reduce a fee award." *Id*. Moreover, "[t]o utilize such a factor would penalize efficient counsel, encourage costly litigation, and potentially discourage able lawyers from taking such cases." *Id*. Accordingly, the lodestar cross-check, should the Court choose to engage in such an exercise, supports Class Counsel's request and should be approved.

D. The Litigation Expense Request is Reasonable

Litigation expenses are properly recovered if they are adequately documented and reasonable in nature. *Safety Components, Inc.*, 166 F. Supp. 2d at 108 ("Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.") (Citing *Abrams v. Lightolier, Inc*., 50 F.3d 1204, 1225 (3d Cir. 1995)). Courts have generally approved expenses arising from photocopying, use of the telephone and fax, postage, witness, and deposition fees, and hiring of consultants. *Abrams*, 50 F.3d at 1225; *Cullen*, 197 F.R.D. at 151. Here, Class Counsel incurred total expenses in the amount of $21,877.44, which includes fees and costs relating to filing and service, mediation, photocopying, phone, postage, and legal research. *See* Shah Decl., ¶¶ 51, 52, and Exhibit 2; Zavareei Decl. ¶ 36. These expenses are reasonable and should be awarded. *See, e.g., In re Cendant Corp. PRIDES Litig*., 243 F.3d 722, 732 n.12 (3d Cir. 2001) (quoting the 1985 Task Force Report for the conclusion that the "common-fund doctrine . . . allows a person who maintains a lawsuit that results in the creation, preservation, or increase of a fund in which others have a common interest, to be reimbursed from that fund for litigation expenses incurred"); *see also In re AT&T Corp., Sec. Litig*., 455 F.3d 160, 172 n.8 (3d Cir. 2006) ("[e]xpenses are generally considered and reimbursed separately from attorneys' fees"); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 263 (D.

Del. 2002) (approving costs and expenses reimbursements out of litigation fund as reasonable).

E. The Requested Incentive Award is Reasonable

Service awards for class representatives promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. "The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws." *Sullivan v. DB Invs., Inc*., 667 F.3d 273, 333 n.65 (3d Cir. 2011) (citation and quotations omitted); *Bernhard v. TD Bank, N.A*., 2009 WL 3233541, at *2 (D.N.J. 2009) ("[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.") (*Quoting Cullen*, 197 F.R.D. at 145); *McGee v Continental Tire North America*, 2009 WL 539893 at *18 (E.D. Pa. Mar. 4, 2009) (*quoting In re Lorazepam & Clorazepate Antitrust Litig*., 205 F.R.D. 369, 400 (D.D.C. 2002)) ("Incentive awards are 'not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class.'").

The efforts of Plaintiff in his position as Class Representative was instrumental in achieving the Settlement on behalf of the Class and justify the award requested here. The Class Representative came forward to prosecute this Litigation

for the benefit of the Class as a whole. Mr. Jette sought successfully to remedy a widespread wrong and has conferred valuable benefits upon his fellow Class Members. In addition, Mr. Jette is a professional who put his name on a public complaint at risk to his professional reputation. He also put his private financial records and practices into the public domain to right this wrong. The Class Representative provided a valuable service to the Class by providing information and input in connection with the drafting of the original and subsequent complaint; maintaining and storing his financial records and making them available for inspections; consulting with Class Counsel; and communicating with counsel throughout the Settlement negotiations. Like the attorneys' fees, the incentive awards were negotiated with the assistance of Judge Phillips only after the Parties agreed on all material terms of the Settlement.

Here, Class Counsel requests a modest incentive award of $7,500 to Plaintiff for his role in prosecuting this case. In this District, incentive awards between $1,000 and $10,000 are common. The requested award is warranted under the circumstances, and well in line with awards approved by federal courts in New Jersey and elsewhere. *See, e.g.*, *In re Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, Master Docket No. 14-3722 (JBS)(JS), MDL No. 2540 (D.N.J., September 20, 2016) (ECF 80) (approving $20,000 incentive awards); *Fitzgerald v. Gann Law Books*, No. CIV. 2: 11-04287 KM, 2014 WL 8773315, at *3 (D.N.J. Dec.

17, 2014) (approving $5,000 award in a TCPA case and noting plaintiffs' duties with respect to this case were not "particularly onerous"); *Mayer v. Driver Solutions, Inc.*, Civ. A. No. 10-1939, 2012 WL 3578856, at *5 (E.D. Pa. Aug. 17, 2012) (approving $15,000 service award for class representative); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *19 (E.D. Pa. June 2, 2004) (approving awards of $25,000 for each of five class representatives); *In re Residential Doors Antitrust Litig.*, Civ A. Nos. 94-3744, 96-2125, MDL 1039, 1998 WL 151804, at *9 (E.D. Pa. Apr. 2, 1998) (approving awards of $10,000 each to four class representatives). The $7,500 incentive award is well-deserved and should be awarded.

CONCLUSION

Plaintiff respectfully requests that, pursuant to the Parties' Settlement Agreement, the Court grant his motion and award (1) attorneys' fees of $1,983,135, expenses in the amount of $21,877.44, and (2) a $7,500 incentive award to Plaintiff.

DATED: August 27, 2021

Respectfully submitted,

/s/James C. Shah

James C. Shah
Natalie Finkelman Bennett
MILLER SHAH LLP
2 Hudson Place, Suite 100
Hoboken, NJ 07030
Telephone: (866) 540-5505
Facsimile: (866) 300-7367
nfinkelman@millershah.com
jcshah@millershah.com

Hassan A. Zavareei (*pro hac vice*)
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
hzavareei@tzlegal.com

CERTIFICATE OF SERVICE

I, Natalie Finkelman Bennett, certify that on this 27th day August 2021, I caused the foregoing to be filed using the Court's CM/ECF system, thereby causing it to be served upon all registered ECF users in this case.

/s/ James C. Shah
James C. Shah

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL JETTE, Individually and on behalf of all others similarly situated, Plaintiff, v. BANK OF AMERICA, N.A., Defendant.	Civ. No. 2:20-cv-06791-SDW-LDW ***Document electronically filed.***

DECLARATION OF JAMES C. SHAH IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARD

I, James C. Shah, hereby state as follows:

1. I am a named partner at the law firm of Miller Shah LLP. I am admitted to practice in California, New Jersey, New York, Pennsylvania, and Wisconsin, as well as multiple circuit and federal courts. I have personal knowledge of the matters discussed herein, and, if called as a witness, could testify competently thereto. I am submitting this Declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses and Service Award.

2. Plaintiff, Michael Jette ("Plaintiff"), alleges that Defendant, Bank of America, N.A. ("BANA" or "Defendant"), allowed cardholders to set up automatic monthly payments online and provided cardholders with the following payment options: (1) "Minimum Amount Due"; (2) "Account Balance"; (3) "Fixed Amount";

and (4) "Amount Due."[1] First Amended Class Action Complaint (Dkt. 22) ("FAC") ¶¶ 28-29. The "Minimum Amount Due" option allowed cardholders to pay the minimum amount owed on their most recent credit card statement, which would leave a balance that carries over to the following month and incurs interest. *Id.* ¶ 35. Plaintiff alleges that the "Amount Due" option was misleading, since customers who selected it likely intended to pay the total "amount due" each month, leaving no balance to carry over and incur interest, but instead found themselves paying only the minimum amount due, thereby leaving a balance that was subject to interest charges. *Id.* ¶ 30. In other words, the FAC alleges that "Amount Due" was duplicative of "Minimum Amount Due" and was likely confusing to customers who intended to pay off their entire monthly credit card balance and instead ended up paying the minimum amount and accruing the interest they were trying to avoid. Plaintiff opened a BANA credit card in December 2019 for personal use. *Id.* ¶ 44. Prior to making his first payment on his BANA credit card, he set up automatic payments through Defendant's website, authorizing it to withdraw monthly payments from his deposit account at Chase Bank, and selected the "Amount Due" option. *Id.* ¶ 48. He did so with the understanding that BANA would withdraw the balance reflected on his last monthly statement by the due date, thus ensuring that

[1] During this litigation ("Litigation"), BANA ceased using the "Amount Due" payment option upon which Plaintiff's claims are based.

he would avoid being charged interest. *Id*. However, the "Amount Due" option only caused BANA to withdraw the minimum amount due from Plaintiff's deposit account (and the accounts of thousands of other similarly situated individuals), leaving a balance that accrued interest. *Id.* ¶ 39.

3. Since its inception, I have actively participated in all aspects of this Litigation, including, but not limited to: (1) case investigation; (2) drafting of the pleadings; (3) discovery; (4) case strategy; (5) court appearances; (6) communications with Plaintiff and Class members; (7) communications with defense counsel; and (8) mediation and (9) negotiation of the settlement ("Settlement"). Thus, I am fully familiar with the proceedings. If called upon, I am competent to testify that the following facts are true and correct to the best of my knowledge, information, and belief.

4. I believe that Plaintiff achieved an excellent result in the Settlement. A broad and complex range of both legal and factual issues was presented during the course of prosecuting this litigation. We analyzed these issues and concluded that, while the Litigation possessed merit, there were risks involved with proving Defendant's liability and ultimately prevailing in the Litigation.

5. As set forth below, through the diligent prosecution of this case by Plaintiff, Plaintiff and BANA (the "Parties") reached a Settlement. Class Counsel

respectfully submit that the Settlement is fair, reasonable, adequate, and in the best interests of all Class members, and, therefore, should be approved by the Court.

6. This Declaration generally summarizes the work performed by Miller Shah LLP (together with Tycko & Zavareei LLP) ("Class Counsel") for Plaintiff and the Class in this Litigation. As demonstrated below, Class Counsel have worked diligently to perform and coordinate all manner of tasks related to this matter at each phase of the Litigation, including initial case investigation, filing of the initial and FAC Complaint, discovery, settlement negotiations, motions for preliminary and final Settlement approval and assistance with Settlement administration for the Class members.

7. Class Counsel have dedicated significant time and resources to litigating this case on behalf of the Settlement Class. The firms' legal services were performed on a wholly contingent fee basis; therefore, Class Counsel have assumed the risk of non-payment in litigating and prosecuting this action and have, at all times, ensured that sufficient resources were made available.

8. Among other things, to achieve this Settlement, Class Counsel took the following actions: (a) conducted an extensive pre-suit factual and legal investigation that laid the groundwork for the Complaint; (b) drafted the Complaint and FAC and worked with Plaintiff to develop the asserted factual and legal claims; (c) reviewed and analyzed Plaintiff's documents; (d) reviewed and analyzed documents produced

by Defendant; (e) analyzed the information underlying the claims and consulted experts; (f) participated in lengthy, arm's-length Settlement negotiation conferences and telephone conferences with defense counsel and a respected mediator; (g) drafted and negotiated the Settlement Agreement with defense counsel, as well as the ancillary Notice documents and Notice Plan and proposed orders; (h) worked with the Settlement Administrator in connection with the effectuation of the Settlement; (i) drafted the briefing for preliminary approval of the Settlement; (j) communicated with Settlement Class members concerning the Settlement; and (k) monitored (and will continue to monitor) the Claims Administrator to assure that the Notice Plan and claims administration process are being implemented properly. During the Litigation, each attorney or paralegal was careful to minimize or avoid the duplication of any work.

9. As set forth herein, Plaintiffs' diligent prosecution of this case led to a significant Settlement with Defendant, and Defendant has agreed to create a Settlement Fund ("Settlement Fund") in the amount of $5,950,000 to resolve Plaintiff's claims. The Settlement Fund will be used to pay the following: (1) the Settlement payments; (2) the Class Representative Service Award; (3) attorneys' fees; (4) reasonable expenses; and (4) the Settlement administration costs.

10. There are approximately 106,284 Settlement Class members who will automatically receive checks from the Settlement Fund that reflect their *pro rata*

share, based on the total number of Settlement Class members and the total amount of interest paid by the Settlement Class members from when their initial selection of the payment option "Amount Due" became effective, to when their switch of payment options from "Amount Due" to "Account Balance" became effective.

A. OVERVIEW OF THE LITIGATION

1. Plaintiff's Counsel Conducted Significant Research, Filed the Complaint and FAC, Conducted an Extensive Investigation and Informal Discovery, and Mediated the Action

11. Class Counsel have performed a great deal of work investigating the facts underlying the Litigation and have otherwise litigated the case and negotiated the Agreement.

12. This action was commenced by Plaintiff on June 3, 2020. (Dkt. 1.)

13. Class Counsel conducted substantial investigation and researched the various laws potentially applicable to the claims, including applicable state law.

14. Defendant filed a Motion to Dismiss the initial Complaint and Motion to Strike Class Allegations on August 25, 2020. (*Id.* at 15.)

15. Following extensive briefing, the Court entered an Opinion on October 10, 2020, (*id.* at 22), granting in party and denying in part Defendant's motions. (*Id.*). Plaintiff filed his FAC on November 9, 2020, (*id.* at 22), asserting claims for violation of the New Jersey Consumer Fraud Act, breach of contract, breach of the covenant of good faith and fair dealing, and unjust enrichment. Thereafter, the

parties commenced a dialogue to determine whether a framework could be developed to resolve the Litigation.

16. Ultimately, the parties agreed to utilize the services of the Honorable Layn R. Phillips (Ret.), a well-respected neutral. Prior to the mediation, the parties exchanged certain data and information about the potential damages, and extensive mediation submissions. Additionally, the parties participated in an all-day mediation session with Judge Phillips on March 17, 2021, during which session they were able to reach agreement on the terms of the Settlement which is the subject of this motion. There was no discussion or agreement on attorneys' fees and Plaintiff's incentive award until the other material terms of the Settlement were agreed upon.

17. Following the mediation, the parties spent almost two months drafting the formal Settlement Agreement with attachments, including details of notice and the administration process, which required substantial additional negotiations. The parties fully executed the Agreement on May 21, 2021.

18. Plaintiff's alleged damages include interest collected by BANA as a result of the misleading payment options. The potential damages in this action are approximately $11,000,000.

19. BANA has always denied and continues to deny that it violated any laws, and disputes all of Plaintiff's material allegations.

20. The Settlement Agreement represents the culmination of extensive and

intensive arm's-length negotiations over the course of several months. The Settlement negotiations were contested and conducted in the utmost of good faith.

21. Plaintiff was represented in the Settlement negotiations by a team of attorneys who have considerable experience in banking and consumer class action litigation, and who are, therefore, well-versed in the issues.

22. Defendant was similarly represented by counsel with extensive experience defending similar class actions, as well as complex litigation matters.

23. At all times, the negotiations, and extensive efforts, which ultimately resulted in the Settlement being presented to this Court, were adversarial, non-collusive, and at arm's length.

24. Class Counsel worked with the Settlement Administrator to prepare the Notice documents and facilitate the provision of Notice.

25. Class Counsel prepared and presented to the Court a Motion for Entry of a Preliminary Approval Order, which, after a conference with the Court, was entered on June 28, 2021.

26. I am informed by the Claims Administrator that there were more than 106,284 Notices sent directly to Class members. Further, the Settlement website, www.CreditCardAutoPaySettlement.com, contains important Court documents, the Notice, and answers to frequently asked questions.

27. The objection and opt out deadlines are September 11, 2021 and, I am

informed by the Claims Administrator that as of August 25, 2021, there have been no opt outs and no objections to the Settlement.

28. Class Counsel have spoken with Settlement Class members to answer their questions and will continue to do so.

29. If not for this Settlement, the Litigation would have continued to have been vigorously contested and the expense of proceeding with this lawsuit through trial would have been substantial. Significant pre-trial work, including extensive fact and expert discovery, class certification, summary judgment and motion practice, was imminent. If the claims ultimately survived summary judgment, significant amounts of time would have been expended in preparing for trial. If Plaintiff achieved a victory at trial, post-trial motions and appeals would almost certainly have delayed any recovery for years. Further, Class Counsel are not aware of any other litigation by any other litigants or government agencies against Defendant alleging the same or similar allegations.

30. Although Plaintiff has thoroughly investigated the factual and legal bases for the claims, he faced a number of difficult challenges if the Litigation were to continue, including: (a) the risk that the Class would not be certified; (b) the risk from Defendant's inevitable and likely vigorous challenges to predominance; (c) the risks based on Defendant's probable argument that damages were not susceptible to class-wide proof, which argument could have engendered an expensive battle of

experts; (d) the risk of summary judgment against Plaintiff's claims; and (e) risks from other defenses. All of these issues would have needed analysis and been subject to briefing and expert opinions.

B. THE REQUESTED FEE SHOULD BE APPROVED

1. Plaintiff's Counsel are Experienced Class Action Practitioners

31. Miller Shah LLP maintains offices in New Jersey, California (San Diego, San Francisco, and Newport Beach), Connecticut, Florida, New York, and Pennsylvania.

32. Miller Shah LLP has extensive experience in complex class action, qui tam, and commercial litigation matters and has a track record of taking on powerful corporations from the banking, pharmaceutical, automobile, consumer goods, banking and insurance sectors, among others.

33. I have extensive experience litigating complex matters and have played a key role in numerous consumer fraud and other class actions.

34. I am regularly asked to present at conferences and seminars regarding class actions and have served on the steering committee of the Plaintiffs' Class Action Forum. In addition, I have recently made presentations about class actions at the New Jersey Institute for Continuing Legal Education, PLI Seminars, the Florida Bar Association and the International Conference on the Resolution of Consumer Mass Disputes, Collective Redress, Class Actions and ADR held at the

University of Haifa in Israel.

35. In the consumer context, my firm and I have been class counsel in numerous large, multi-district complex cases against sophisticated defendants and achieved numerous settlements.

36. Miller Shah LLP's attorneys have a history of vigorously representing the interests of its clients in all matters, including trials of class actions. Indeed, its attorneys have tried, as lead or co-lead, three class action cases in the past several years, including trials in the Northern District of California (*Bowerman, et al. v. Field Asset Services, LLC*, Case No. C13-00057 WHO (N.D. Ca. 2017)), as well as the District of Massachusetts (*Healthcare Strategies, Inc., et al. v. ING Life Insurance and Annuity Company*, Case No. 3:11-cv-00282 (WGY) (D. Conn. 2013) (a Connecticut case that was tried in the District of Massachusetts)), and the District of Colorado (*CGC Holding Company, LLC, et al. v. Sandy Hutchens, et al*. (Civil Action No. 11-cv-01012-RBJ (D. Col. 2017)).

37. In *In re: Caterpillar, Inc., C13 and C15 Engine Products Liability Litigation,* MDL No. 2540 (D.N.J.), I represented the plaintiffs who initiated the action and served as co-lead class counsel against Caterpillar, Inc. arising out of its use of faulty emissions control technology. There, I actively managed all facets of the case, from briefing to discovery, ultimately reaching a $60 million common fund settlement with the defendant, which Judge Simandle approved in 2016. Similarly,

I served as co-lead counsel in an action against Mitsubishi Fuso Truck of America, Inc., *Q+Food v. Mitsubishi Fuso Truck of America, Inc*. (D.N.J.), 3:14-cv-06046 (Hon. Douglas E. Arpert), involving claims that the diesel engines on approximately 10,000 of its trucks were equipped with defective emissions control technology. I handled all major aspects of that litigation, which was resolved with the Court approving a common fund settlement of $17.5 million.

38. The following are additional representative examples of class action cases where our attorneys achieved nationwide settlements:

a. Co-Lead Counsel: *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation* (N.D. Oh.), 1:12-md-02316 (Hon. Benita Y. Pearson) (nationwide settlement of engine defect claims);

b. Co-Lead Counsel: *In re Land Rover LR3 Tire Wear Products Liability Litig.*, MDL No. 2008 (C.D. Cal.) (Hon. Andrew J. Guilford) (nationwide settlement of alignment defect claims);

c. Co-Lead Counsel: *In re: Michelin North America, Inc. PAX System Marketing and Sales Practices Litigation*, MDL No. 1911 (D. Md.) (Hon. Robert W. Titus) (nationwide settlement of vehicle defect claims);

d. Co-Lead Counsel: *Chandran v. BMW of North America, LLC, et al.*,

Case No. 2:08-CV-02619 (D.N.J.) (Hon. Katharine S. Hayden) (nationwide settlement of tire defect claims);

e. Plaintiffs' Steering Committee: *In re Whirlpool Corp. Front Loading Washer Products Liability Litigation*, MDL No. 2001 (N.D. Oh.) (Hon. Christopher A. Boyko) (nationwide settlement of washing machine defect claims);

f. Co-Lead Counsel: *Henderson, et al. v. Volvo Cars of N.A., LLC*, 2:09-cv-04146 (D.N.J.) (Hon. Claire C. Cecchi) (nationwide settlement of defective transmission claims);

g. Co-Lead Counsel: *In re: LG Front Load Washing Machine Class Action Litig*., 2:08-cv-00051 (D.N.J.) (Hon. Madeline Cox Arleo) (nationwide settlement of washing machine defect claims);

h. Plaintiffs' Steering Committee: *In re: MI Windows and Doors Inc. Products Liability Litigation*, MDL 2333 (D.S.C.) (Hon. David C. Norton) (nationwide settlement of window defect claims);

i. Co-Lead Counsel: *D'Andrea v. K. Hovnanian*, et al., L-734-06 (Sup. Ct. NJ) (Hon. Jean B. McMaster) ($21 million common fund settlement of claims involving defective HVAC systems);

j. Co-Lead Counsel: *Koertge, et al. v. LG Electronics USA,* Inc., No. 2:12-cv-6204 (D.N.J.) (Hon. Jose L. Linares) (nationwide

settlement of stereo defect claims);

k. Co-Lead Counsel: *Leiner v. Johnson & Johnson Consumer Companies, Inc.*, 15-cv-5876 (N.D. Il.) (Hon. Elaine E. Bucklo) (nationwide settlement of false advertising claims);

l. Co-Lead Counsel: *Gay v. Tom's of Maine, Inc*., 14-cv-60604 (S.D. Fl.) (Hon. Chief Judge K. Michael Moore) (nationwide settlement of false advertising claims);

m. Co-Lead Counsel: *Trewin v. Church & Dwight Co., Inc.*, 3:12-cv-01475 (D.N.J.) (Hon. Michael A. Shipp) (nationwide settlement of false advertising claims); and

n. Lead Counsel: *Shorewest Realtors, Inc. v. Journal Sentinel, Inc*. (Milwaukee County Cir. Ct.) (Hon. Richard J. Sankovitz) (nationwide settlement of circulation overstatement claims against newspaper).

39. The following full-time employees, including attorneys, and legal assistants, have assisted Miller Shah LLP in performing its work in this case:

a. Natalie Finkelman Bennett is a Partner with the firm. Ms. Finkelman is admitted to practice law in the state of New Jersey and in the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for the Eastern District

of Pennsylvania and District of New Jersey the United States Court of Appeal for the Third Circuit. In addition to these courts and jurisdictions, Ms. Finkelman has worked on cases with local and co-counsel throughout the country and worldwide. Ms. Finkelman is a graduate of Temple University School of Law (J.D. 1989) and the Pennsylvania State University (B.A. 1986), and has more than 30 years of experience serving as legal counsel in complex business litigation matters, antitrust and consumer class actions, *qui tam* and wage and hour cases. Ms. Finkelman's work in this case centered on negotiating and documenting the Settlement, dealing with the Claims administrator and communicating with Class members.

b. Nathan C. Zipperian is currently a Partner in the firm. Mr. Zipperian is admitted to practice law in the states of Arizona, Florida, New Jersey and Oregon, as well as in the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for the Southern and Middle Districts of Florida, the District of Arizona and the United States Court of Appeal for the Second Circuit. In addition to these courts and jurisdictions, Mr. Zipperian has worked on cases with local and co-counsel throughout the country and worldwide. Mr. Zipperian

concentrates his practice on antitrust, consumer and insurance litigation, as well as complex commercial and employment matters. Mr. Zipperian earned his undergraduate degree in Political Science from the University of Oregon in 1995 and his law degree from Temple University School of Law in 1998. Mr. Zipperian assisted the firm in this case regarding pleading issues.

c. Paralegals: Betsy Ferling (24.5 years' legal experience), Christine Mon (33 years' legal experience), Sue Moss (36 years' legal experience), Elena DiBattista (40 years' legal experience). Each of these paralegals have been active in this Litigation.

40. Class Counsel seek a total award of attorneys' fees and expenses of $1,983,135. As set forth in detail in Exhibits 1 through 2 below, and in the Declaration of Hassan Zavareei, Class Counsel have accumulated a total lodestar of $240,026.90 and incurred total expenses of $21,877.44.

41. Like the Settlement itself, the Parties negotiated the fee amount under the auspices and with the assistance of the mediator. Further, attorneys' fees were not negotiated or discussed until after agreement was reached between the Parties on all other terms of the Settlement.

42. Had the Litigation not settled, the Class faced numerous risks to obtaining judgments or any relief. The risks of non-payment included the merits of

the claims, the challenge of attaining and maintaining class certification, and the risk of summary judgment, a defense verdict at trial, or a reversal of a favorable outcome on appeal.

43. Class Counsel undertook this action on an entirely contingent fee basis, assuming a substantial risk that the Litigation would yield no, or very little, recovery and leave them uncompensated for their time, as well as their out-of-pocket expenses.

44. As an award of attorneys' fees, Class Counsel is requesting that this Court award 33.3% of the total fund of $5,950,000, or $1,983,135. Considering the results achieved for the Settlement Class, the efforts of Class Counsel and the risk of non-recovery, the requested fee is reasonable.

45. Miller Shah LLP maintained detailed time records regarding the work performed in connection with the prosecution of the Litigation. Attached hereto as Exhibit 1 is a time summary chart relating to the Litigation. This chart was completed based upon the records created by the firm during the pendency of this Litigation.

46. The total number of hours spent through August 26, 2021 by the attorneys and paralegals working on behalf of Miller Shah LLP in the Litigation is 184.70. As reflected in Exhibit 1, through August 26, 2021, Miller Shah has accumulated a lodestar totaling $130,472.50. This total does not include the hours

necessary for briefing of Plaintiff's request for final approval of the Settlement, this request for attorneys' fees and expenses, and additional time speaking to Class members about the Settlement and working with the Settlement Administrator, as well as potential objectors. I conservatively estimate that Miller Shah LLP will spend at least 50 additional hours on these necessary activities.

47. Based on my knowledge and experience, the hourly rates charged by Miller Shah LLP are well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise in state and local courts in this area.

48. Miller Shah LLP's rates have been approved in this District as well as in courts the country. *See In re: Caterpillar, Inc. C13 and C15Engine Products Liability Litig.*, MDL No. 2540 (D.N.J.) [Dkt. No. 54]; *Q+Food v. Mitsubishi Fuso Truck of America, Inc.*, 3:14-cv-06046 (D.N.J., March 27, 2017) [Dkt. 70]; and *Trewin v. Church and Dwight, Inc.*, Case No. 3:12-cv-01475-MAS-DEA (D.N.J. 2015) [Dkt. 68]. *See also In re Merck & Co. Vytorin ERISA Litig.*, No. 08-285 (DMC), 2010 WL 547613 (D.N.J. Feb. 9, 2010) (approving rates between $250 and $850 per hour); These combined efforts amply support the requested award in this Action and demonstrate that the fees which will be paid to Class Counsel under the Settlement have been well earned.

49. Additional information about Miller Shah LLP can be found at www.millershah.com and in the firm resume (ECF 36-4).

50. My partners and I, along with my firm's legal staff, made a concerted effort to perform all work in a thorough and efficient manner. Further, the amount of time we billed is reasonable for the additional reason that more senior counsel in small firms must not only coordinate all of the work in a case to ensure it is geared to effective advocacy at trial but must also bear the laboring oar on many aspects of the Litigation.

51. Miller Shah LLP, to date, has also expended a total of $10,551.36 in unreimbursed expenses in connection with the prosecution of the Litigation. These expenses, as reflected on Exhibit 2, primarily consist of filing, service and mediation fees.

52. These expenses are reflected in the books and records of Miller Shah LLP, have been prepared from expense vouchers, receipts, statements and other records, and are a true and accurate summary of the expenses incurred in the Litigation. The expenses for which reimbursement is sought all were necessarily incurred and are reasonable in amount.

53. The Declaration of Hassan Zavareei of Tycko & Zavareei, LLP, which is based upon the records created during the pendency of this Litigation as described above, states that Tyco & Zavareei has, to date, accumulated a lodestar totaling $109,554.40

54. The total hours expended by all Class Counsel during the years that this

Litigation has been pending is 356.40.

55. As reflected in Exhibits 1 through 2 and the Declaration of Hassan Zavareei, Class Counsel have accumulated a lodestar totaling $240,026.90 and incurred total expenses of $21,877.44.

56. Cross-checking the lodestar against the 33.3% requested fee of $1,983,135 results in a multiplier of 8.2, which falls within the accepted range in this District and Circuit and is reasonable.

57. Class Counsel also requests that the Court approve a $7,500 service award for Plaintiff. Plaintiff's participation was essential to obtaining the recovery on behalf of the Settlement Class and included working with Class Counsel to investigate the case, reviewing and commenting on the Complaint, and providing documents. Plaintiff remained apprised of the case developments throughout the Litigation and Settlement process and reviewed and approved of the proposed Settlement.

58. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2021

/s/ James C. Shah
James C. Shah

EXHIBIT 1

MILLER SHAH LLP

***Jette v. Bank of America, N.A.* - Lodestar Summary**

Timekeeper	Title	Rate	Time	Amount
Elena DiBattista	Paralegal	$215.00	6.80	$1,462.00
Betsy A. Ferling	Paralegal	$225.00	8.80	$1,980.000
Christine Mom	Paralegal	$215.00	15.70	$3,375.50
Jaclyn Reinhart	Associate	$400.00	3.00	$1,200.00
James C. Shah	Partner	$925.00	64.30	$59,477.50
Natalie Finkelman Bennett	Partner	$900.00	63.80	$57,420.00
Nathan C. Zipperian	Partner	$900.00	.80	$720.00
Sue Moss	Paralegal	$225.00	21.50	$4,837.50
TOTAL			**184.70**	**$130,472.50**

EXHIBIT 2

MILLER SHAH LLP

***Jette v. Bank of America, N.A.*, - Expenses**

Description	Amount
Copies	$8.50
Process Services/Couriers	$85.00
Computer Research	$55.86
Mediation Fees	$10,000.00
Filing Fees	$402.00
TOTAL	**$10,551.36**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL JETTE, Individually and on behalf of all others similarly situated, Plaintiff, v. BANK OF AMERICA, N.A., Defendant.	Civ. No. 2:20-cv-06791-SDW-LDW ***Document electronically filed.***

DECLARATION OF HASSAN A. ZAVAREEI IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARD

I, Hassan A. Zavareei, hereby state as follows:

1. I am an attorney admitted to practice before this Court, a named partner at the law firm of Tycko & Zavareei ("TZ"), and counsel of record of Plaintiff and the Class in this case. I have personal knowledge of the matters discussed herein, and, if called as a witness, could testify competently thereto. I am submitting this Declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses and Service Award.

2. I make this Declaration in support of Plaintiff's application for attorneys' fees and costs and incentive awards. In that regard, I discuss, in the following order: (a) the history of this litigation, which includes a summary of the legal services provided by TZ in this litigation; (b) the risks borne by TZ and the

Plaintiff; (c) TZ's experience; and (d) the time, rate, expenses, and other data underlying the application for attorneys' fees and costs.

A. HISTORY OF THE LITIGATION

3. Plaintiff, Michael Jette ("Plaintiff"), alleges that Defendant, Bank of America, N.A. ("BANA" or "Defendant"), allowed cardholders to set up automatic monthly payments online and provided cardholders with the following payment options: (1) "Minimum Amount Due"; (2) "Account Balance"; (3) "Fixed Amount"; and (4) "Amount Due."[1] First Amended Class Action Complaint (Dkt. 22) ("FAC") ¶¶ 28-29. The "Minimum Amount Due" option allowed cardholders to pay the minimum amount owed on their most recent credit card statement, which would leave a balance that carries over to the following month and incurs interest. *Id.* ¶ 35. Plaintiff alleges that the "Amount Due" option was misleading, since customers who selected it likely intended to pay the total "amount due" each month, leaving no balance to carry over and incur interest, but instead found themselves paying only the minimum amount due, thereby leaving a balance that was subject to interest charges. *Id.* ¶ 30. In other words, the FAC alleges that "Amount Due" was duplicative of "Minimum Amount Due" and was likely confusing to customers who intended to pay off their entire monthly credit card balance and instead ended up

[1] During the course of this litigation ("Litigation"), BANA ceased using the "Amount Due" payment option upon which Plaintiff's claims are based.

paying the minimum amount and accruing the interest they were trying to avoid. Plaintiff opened a BANA credit card in December 2019 for personal use. *Id.* ¶ 44. Prior to making his first payment on his BANA credit card, he set up automatic payments through Defendant's website, authorizing it to withdraw monthly payments from his deposit account at Chase Bank, and selected the "Amount Due" option. *Id.* ¶ 48. He did so with the understanding that BANA would withdraw the balance reflected on his last monthly statement by the due date, thus ensuring that he would avoid being charged interest. *Id*. However, the "Amount Due" option only caused BANA to withdraw the minimum amount due from Plaintiff's deposit account (and the accounts of thousands of other similarly situated individuals), leaving a balance that accrued interest. *Id.* ¶ 39.

4. Since its inception, I have actively participated in all aspects of this Litigation, including, but not limited to: (1) case investigation; (2) drafting of the pleadings; (3) discovery; (4) case strategy; (5) court appearances; (6) communications with Plaintiff and Class members; (7) communications with defense counsel; and (8) negotiation of the settlement ("Settlement"). Thus, I am fully familiar with the proceedings. If called upon, I am competent to testify that the following facts are true and correct to the best of my knowledge, information, and belief.

5. I believe that Plaintiff achieved an excellent result in the Settlement. A broad and complex range of both legal and factual issues was presented during the course of prosecuting this litigation. We analyzed these issues and concluded that, while the Litigation possessed merit, there were risks involved with proving Defendant's liability and ultimately prevailing in the Litigation.

6. As set forth below, through the diligent prosecution of this case by Plaintiff, the parties ("Parties") reached a Settlement with BANA. Class Counsel respectfully submit that the Settlement is fair, reasonable, adequate, and in the best interests of all Class members, and, therefore, should be approved by the Court.

7. This Declaration generally summarizes the work performed by Tycko & Zavareei LLP (together with Miller Shah LLP) for Plaintiff and the Class in this Litigation. As demonstrated below, Class Counsel have worked diligently to perform and coordinate all manner of tasks related to this matter at each phase of the Litigation, including initial case investigation, filing of the initial and FAC Complaint, discovery, Settlement negotiations, motions for Settlement approval and assistance with Settlement administration for the Class members.

8. Class Counsel have dedicated significant time and resources to litigating this case on behalf of the Settlement Class. The firms' legal services were performed on a wholly contingent fee basis; therefore, Class Counsel have assumed

the risk of non-payment in litigating and prosecuting this action and have, at all times, ensured that sufficient resources were made available.

9. Among other things, to achieve this Settlement, Class Counsel took the following actions: (a) conducted an extensive pre-suit factual and legal investigation that laid the groundwork for the Complaint; (b) drafted the Complaint and FAC and worked with Plaintiff to develop the asserted factual and legal claims; (c) reviewed and analyzed Plaintiff's documents; (d) reviewed and analyzed documents produced by Defendant; (e) analyzed the information underlying the claims; (f) participated in lengthy, arm's-length Settlement negotiation conferences and telephone conferences with defense counsel and a respected mediator; (g) drafted and negotiated the Settlement Agreement with defense counsel, as well as the ancillary Notice documents and Notice Plan and proposed orders; (h) worked with the Settlement Administrator in connection with the effectuation of the Settlement; (i) drafted the briefing for preliminary approval of the Settlement; (j) communicated with Settlement Class members concerning the Settlement; and (k) monitored (and will continue to monitor) the Claims Administrator to assure that the Notice Plan and claims administration process are being implemented properly. During the Litigation, each attorney or paralegal was careful to minimize or avoid the duplication of any work.

10. As set forth herein, Plaintiff's diligent prosecution of this case led to a significant Settlement with Defendant, and Defendant has agreed to create a Settlement Fund ("Settlement Fund") in the amount of $5,950,000 to resolve Plaintiff's claims. The Settlement Fund will be used to pay the following: (1) the Settlement payments; (2) the Class Representative Service Award; (3) attorneys' fees; (4) reasonable expenses incurred by the Class Counsel; and (4) the Settlement administration costs.

11. There are 106,284 Settlement Class members who will automatically receive checks from the Settlement Fund that reflect their *pro rata* share based on the total number of Settlement Class members and the total amount of interest paid by the Settlement Class members from when their initial selection of the payment option "Amount Due" became effective, to when their switch of payment options from "Amount Due" to "Account Balance" became effective.

12. Class Counsel have performed a great deal of work investigating the facts underlying the Litigation and have otherwise litigated the case and negotiated the Agreement.

13. This action was commenced by Plaintiff on June 3, 2020. (Dkt. 1.)

14. Class Counsel conducted substantial investigation and researched the various laws potentially applicable to the claims, including applicable state law.

15. Defendant filed a Motion to Dismiss the initial Complaint and Motion

to Strike Class Allegations on August 25, 2020. (*Id.* at 15.)

16. Following extensive briefing, the Court entered an Opinion on October 10, 2020, (*id.* at 22), granting in party and denying in part Defendant's motions. (*Id.*). Plaintiff filed his FAC on November 9, 2020, (*id.* at 22), asserting claims for violation of the New Jersey Consumer Fraud Act, breach of contract, breach of the covenant of good faith and fair dealing, and unjust enrichment. Thereafter, the parties commenced a dialogue to determine whether a framework could be developed to resolve the Litigation.

17. Ultimately, the parties agreed to utilize the services of the Honorable Layn R. Phillips (Ret.), a well-respected neutral. Prior to the mediation, the parties exchanged certain data and information about the potential damages, and extensive mediation submissions (explain with more detail what was submitted or not necessary?). Additionally, the parties participated in an all-day mediation session with Judge Phillips on March 17, 2021, during which session they were able to reach agreement on the terms of the Settlement which is the subject of this motion.

18. Following the mediation, the parties spent almost two months drafting the formal Settlement Agreement with attachments, including details of notice and the administration process, which required substantial additional negotiations. The parties fully executed the Agreement on May 21, 2021.

19. The Settlement Agreement represents the culmination of extensive and

intensive arm's-length negotiations over the course of many months. The Settlement negotiations were contested and conducted in the utmost of good faith.

20. Plaintiff was represented in the Settlement negotiations by a team of attorneys who have considerable experience in banking and consumer class action litigation, and who are, therefore, well-versed in the issues.

21. Defendant was similarly represented by counsel with extensive experience defending similar class actions, as well as complex litigation matters.

22. At all times, the months'-long negotiations and extensive efforts, which ultimately resulted in the Settlement being presented to this Court, were adversarial, non-collusive, and at arm's length.

23. Class Counsel worked with the Settlement Administrator to prepare the Notice documents and facilitate the provision of Notice.

24. Class Counsel prepared and presented to the Court a Motion for Entry of a Preliminary Approval Order, which, after a conference with the Court, was entered on June 28, 2021.

25. Class Counsel have spoken with Settlement Class members to answer their questions, and will continue to do so.

B. RISKS BORNE BY TZ

26. In accepting this case, TZ bore considerable risk. TZ took this case on a fully contingent basis, meaning that were not paid for any of our time, and that we

paid all costs and out of pocket expenses without any reimbursement to date. From the outset, TZ recognized that it would be contributing a substantial amount of time and advancing significant costs in prosecuting this class action, with no guarantee of compensation or recovery, in the hopes of prevailing against a well-funded defense. During the pendency of the litigation, TZ turned away other work.

27. If not for this Settlement, the Litigation would have continued to have been vigorously contested and the expense of proceeding with this lawsuit through trial would have been substantial. Significant pre-trial work, including extensive fact and expert discovery, Class certification, summary judgment and motion practice, was imminent. If the claims ultimately survived summary judgment, significant amounts of time would have been expended in preparing for trial. If Plaintiff achieved a victory at trial, post-trial motions and appeals would almost certainly have delayed any recovery for years.

28. Although Plaintiff has thoroughly investigated the factual and legal bases for the claims, he faced a number of difficult challenges if the Litigation were to continue, including: (a) the risk that the Class would not be certified; (b) the risk from Defendant's inevitable and likely vigorous challenges to predominance; (c) the risks based on Defendant's probable argument that damages were not susceptible to Class-wide proof, which argument could have engendered an expensive battle of experts; (d) the risk of summary judgment against Plaintiff's claims; and (e) risks

from other defenses. All of these issues would have needed analysis and been subject to briefing and expert opinions.

C. TZ'S EXPERIENCE

29. A true and correct copy of the firm resume of TZ was to the Declaration of James C. Shah in Support of Plaintiff's Motion for Preliminary Approval, filed May 24, 2021 at Dkt. No. 36-5.

30. TZ was also named Class Counsel, Lead Counsel, or Settlement Class Counsel in the following consumer class actions: *Shannon Schulte, et al. v. Fifth Third Bank*, No. 1:09-cv-06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick Allen, et al. v. UMB Bank*, N.A., et al., No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.); *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Jonathan Jones, et al. v. United Bank and United Bankshares,*

Inc., No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Jane Simpson, et al. v. Citizens Bank, et al.*, No. 2:12-cv-10267 (E.D. Mich.); *Alfonse Forgione, et al. v. Webster Bank*, N.A., No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Sherry Bodnar v. Bank of America, N.A.*, No. 5:14-cv-03224-EGS (E.D. Pa.); *Wong v. TrueBeginnings LLC d/b/a True.com*, No. 3-07 Civ. 1244-N (N.D. Tex.); *Geis v. Airborne Health, et. al.*, Civil Action No. 2:07 Civ. 4238-KSH-PS (D. N.J.); *Dennings, et al. v. Clearwire Corporation*, No. 2:10-cv-01859 (W.D. Wash.); *In Re: Higher One Oneaccount Marketing And Sales Practices Litigation*, No. 3:12-md-02407 (VLB) (D. Conn.); *Galdamez v. I.Q. Data International, Inc.*, No. 15-cv-1605 (E.D. Va.); *Brown v. Transurban USA*, No. 15-cv-494 (E.D. Va.), *Gatinella et al. v. Michael Kors (USA)*, 14-cv-5731 (S.D.N.Y); *Grayson, et al. v. General Electric Company*, 3:13-cv-1799 (D. Conn.); *Farrell, et al. v. Bank of America, N.A.*, No. 3:16-00492 (S.D. Cal.); *In re: APA Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.); *Griffith v. ContextMedia Health, LLC d/b/a Outcome Health*, No. 1:16-cv-02900 (N.D. Ill.); *Scott, et al. v. JPMorgan Chase & Co.*, No. 17-cv-249 (D.D.C.); *In re Think Finance, LLC*, et al., No. 17-bk-33964 (Bankr. N.D. Tex.); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495 (E.D. Va.); and *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio). Each of these actions

has resulted in a settlement that has been finally approved.

D. LODESTAR AND EXPENSES FOR TZ

31. Based on the time records of TZ, TZ has spent 171.70 hours prosecuting this lawsuit through August 18, 2021. The total number of hours, as well as the lodestar computed at our 2021 rates, is shown in the following table:

Name	**Title**	**Hours**	**Rate**	**Lodestar**
Hassan Zavareei	Partner	79.80	$914	$72,937.20
Katherine Aizpuru	Associate	55.80	$465	$25,947.00
Mallory Morales	Associate	18.80	$378	$7,106.40
Nicole Porzenheim	Paralegal	6.60	$206	$1,359.60
James Morrison	Paralegal	3.30	$206	$679.80
Aaron McReynolds	Paralegal	0.40	$206	$82.40
Maura Dunn	Paralegal	7.00	$206	$1,442.00
Total Hours / Lodestar		**171.70**		**$109,554.40**

32. I reviewed the time entries, and believe the hours expended were reasonable and necessary to securing the result in this case. The above chart was prepared from contemporaneous detailed daily time records regularly prepared and maintained by TZ utilizing timekeeping software to which all employees have access. In my opinion, the time spent by attorneys and staff of TZ was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis and not being paid by the hour, TZ attorneys and staff worked efficiently and avoided

unnecessary work. The hourly rates are based on the typical hourly rates for lawyers of similar experience in the communities in which Class Counsel practice.

33. The hourly rates shown for the attorneys at Tycko & Zavareei are our 2021 rates charged as delineated by the Adjusted Laffey Matrix (http://www.laffeymatrix.com/), which provides market rates for attorneys working in the Washington, D.C. area. *See, e.g.*, *DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (discussing the history and basis of the Laffey matrix). Although the Adjusted Laffey Matrix is updated annually, courts have awarded attorneys' fees consistent with the Adjusted Laffey Matrix to my firm in a number of cases. *See*, *e.g.*, *Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017); *Stathakos v. Columbia Sportswear Co*., No. 15-CV-04543-YGR, 2018 WL 1710075, at *6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al*., No. 14-cv-0832 (N.D. Ohio Aug. 7, 2018), Dkt. 179; *In re Think Finance, LLC*, et al., No. 17-bk-33964 (Bankr. N.D. Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014); *see also Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009); *Harris et al. v. Farmers Insurance Exchange et al.,* BC579498 (Cal. Super. Ct., L.A.

Cty. Aug. 30, 2020) (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by Washington, D.C. attorneys).

34. The total number of hours is based only on the hours reasonably expended to achieve an excellent result for the Settlement Class. Our firm coordinated our efforts in the litigation of this case with our co-counsel to ensure that there was no duplicative or unnecessary work. Because our firm is experienced in litigating actions of this type, we were able to efficiently divide tasks based on expertise.

35. This total does not include the hours necessary for briefing of Plaintiff's request for final approval of the Settlement, this request for attorneys' fees and expenses, and additional time speaking to Class members about the Settlement and working with the Settlement Administrator, as well as potential objectors. I conservatively estimate that TZ will spend at least 50 additional hours on these necessary activities.

36. TZ also carried some of the costs in this litigation—taking on this risk for the putative class members. Specifically, TZ incurred $11,326.08 in unreimbursed case-related expenses, including expenses related to filing, travel, copying, and case administration. Expenses are accounted for and billed separately and are not duplicated in my firm's professional billing rate. TZ has not received reimbursement for expenses incurred in connection with this litigation. The actual

expenses incurred in the prosecution of this case is reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all actual expenses incurred. These expenses were necessary to prosecuting litigation of this complexity on behalf of the Settlement Class, and they are typical of expenses regularly awarded in class actions. Indeed, because TZ was responsible for advancing all expenses incurred, TZ had a strong incentive not to spend any funds unnecessarily. An itemized list of TZ's expenses is attached hereto as **Exhibit A.**

37. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2021

/s/ Hassan A. Zavareei
Hassan A. Zavareei

EXHIBIT A

TYCKO & ZAVAREEI LLP

***Jette v. Bank of America, N.A.*, - Expenses**

Description	Amount
Copies	$17.00
Process Services/Couriers	$38.99
Computer Research	$745.49
Mediation Fees	$10,000.00
Filing Fees	$518.36
Conference Call Service	$6.24
TOTAL	**$11,326.08**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL JETTE, on behalf of himself and all others similarly situated, Plaintiffs, v. BANK OF AMERICA, N.A. Defendant.	Civ. A. No. 2:20-cv-06791-LDW The Honorable Leda D. Wettre, **[PROPOSED] ORDER**

AND NOW, this _____ day of _____, 2021, upon consideration of Plaintiff's Motion for Award of Attorneys' Fees and Expenses and Incentive Award, Memorandum of Law and the Declarations in support thereof, it is hereby ORDERED that Plaintiff's motion is GRANTED.

_____
The Honorable Leda D. Wettre,
United States District Judge