IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

VIRGINIA IS FOR MOVERS, LLC, and ABIGAIL MCALLISTER, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

APPLE FEDERAL CREDIT UNION,

Defendant.

Case No. 1:23-cv-00576-DJN-IDD

PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Introduction

The Court should grant final approval to the class action Settlement Agreement and Release (the "Settlement") because the Settlement meets all of the requirements for final approval under Federal Rule of Civil Procedure 23(e)(2)—and no Class Member objects to the Settlement.[1] The Settlement is a fundamentally fair, reasonable, and adequate compromise that creates a $2.5 million non-reversionary Settlement Fund (over 40% of damages) that will be distributed automatically without the need for a claims process. The Settlement is the result of hard-fought, arms'-length negotiations between experienced counsel after multiple mediation sessions and after meaningful motion practice and discovery, including expert damages calculations. The Settlement is an excellent recovery, particularly in light of the continued litigation risks and delays faced by Plaintiffs and the Settlement Class. As the Court previously found on a preliminary basis, the Settlement terms are fair, reasonable, and adequate. Now that notice of the Settlement has been provided to the Settlement Class Members, their response has confirmed the Court's preliminary fairness determination, as not a single Settlement Class Member has chosen to object to the Settlement or any part of it, and only one person has requested exclusion. The Court should, therefore, grant final approval at the final approval hearing scheduled for June 17, 2025, so the Class Members can receive the benefits of the Settlement and this matter can be resolved.

[1] The Settlement is attached to the accompanying Unopposed Motion for Final Approval of Class Action Settlement. Capitalized terms in this memorandum have the same meaning as the capitalized terms in the Settlement.

Facts

I. Plaintiffs sue Apple FCU in a class action for charging overdraft fees that Plaintiffs allege violate Regulation E and Apple FCU's contracts.

On April 28, 2023, Named Plaintiff Virginia is for Movers filed a putative class action complaint that alleged two claims for breach of contract and violations of Regulation E of the Electronic Fund Transfers Act, 12 C.F.R. §§ 1005 *et seq.*, based on Defendant Apple Federal Credit Union's ("Apple FCU") assessment of overdraft fees for debit card payments that were approved on a positive balance but purportedly settled days later on a negative balance. ECF No. 1.

On July 10, 2023, Apple FCU filed a motion to dismiss the Complaint. ECF No. 10. On July 24, 2023, before responding to Defendant's motion to dismiss the Complaint, Virginia is for Movers, LLC, filed an amended complaint alleging the same two claims for relief as were alleged in the original complaint. ECF No. 14.

On August 10, 2023, after the Court granted Virginia is for Movers, LLC, leave to amend to add a second named plaintiff, Virginia is for Movers, LLC, and Abigail McAllister filed a second amended complaint alleging the same claims—breach of contract and violations of Regulation E—as were alleged in the two prior complaints. ECF Nos. 14–17.

On August 31, 2023, Defendant filed a motion to dismiss the second amended complaint. ECF No. 18. After briefing, and after additional briefing ordered by the Court, on March 13, 2024, the Court denied that motion. ECF Nos. 25, 26, 30–34, 36.

On August 27, 2024, the Parties participated in a settlement conference in the chambers of Magistrate Judge Ivan D. Davis. *See* ECF No. 44. That mediation did not result in a settlement. *See* ECF No. 50.

II. After denial of Apple FCU's motion to dismiss and a failed attempt at mediation, the parties engage in substantial discovery.

The parties then engaged in discovery. Both Plaintiffs and Apple FCU answered interrogatories and produced documents. The two owners of Plaintiff Virginia is for Movers, LLC, were deposed, along with Plaintiff McAllister. Plaintiffs' counsel took a Rule 30(b)(6) deposition of Apple FCU, through multiple witnesses over multiple days. Apple FCU and Plaintiffs each produced expert reports, and each side deposed the others' experts. On January 10, 2025, Apple FCU filed a motion in limine to exclude Plaintiffs' expert's opinions regarding the identity of class members and damages incurred by those class members. ECF No. 66.

III. A subsequent mediation results in the parties' agreement to settle.

On January 14, 2025, the parties participated in a second mediation, this time with the Honorable Gerald R. Rosen (ret.) as mediator. The mediation resulted in the Settlement. That same day, the parties notified the Court that they had reached a settlement. ECF No. 67. The Court scheduled a preliminary approval hearing for February 19, 2025, at 11:00 a.m. The parties then negotiated the final terms of the detailed Settlement and included exhibits.

Settlement Terms

On February 5, 2025, the parties executed the Settlement, which provides the following:

I. Settlement Classes

The Settlement will resolve the claims of the Settlement Classes, defined as:

APSN Fee Class: Members of Defendant who were assessed APSN Fees.

Regulation E Class: Members of Defendant who were assessed Regulation E Fees.

Settlement ¶¶ 1(c), (w).

"APSN Fees" means overdraft fees that Defendant charged and did not refund on signature Point of Sale debit card transactions that posted to Class Member accounts from January 7, 2021

to March 31, 2024, where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was paid. *Id.* ¶ 1(b).

"Regulation E Fees" means overdraft fees that Defendant assessed and did not refund from April 28, 2022 to March 31, 2024 for debit card payments and ATM withdrawals or transfers. *Id.* ¶ 1(v)

II. Settlement benefits

The Settlement provides meaningful immediate relief to Settlement Class Members in the form of direct cash payments and debt forgiveness.

A. $2.5 million non-reversionary cash Settlement Fund

Apple FCU has agreed to pay $2,500,000 cash into a non-reversionary Settlement Fund for the benefit of the Settlement Classes. *Id.* ¶¶ 1(y), 8. The Settlement Fund will be used to pay Settlement Class Member Payments, any attorneys' fees and expenses that the Court may award to Class Counsel, any service awards, and the costs of administration. *Id.* ¶ 8.

Settlement Class Members do not need to submit a claim form to receive a payment. *Id.* ¶ 8(d)(iv). If the Settlement becomes effective, current members of Apple FCU automatically will receive payment by account credit, and former members automatically will be sent payment by check sent to the last known address. *Id.* ¶ 8(d)(iv)(5). The Settlement Fund will be distributed to Settlement Class Members according to the distribution plan set out in the Settlement, which is to provide *pro rata* payments to each Settlement Class Member based on the number of fees incurred. *Id.* ¶ 8(d)(iv). Because damages for Regulation E claims are capped at $500,000 in a class action and APSN Fees make up the bulk of the damages, 92.5% of the Net Settlement Fund is allocated for APSN Fees and 7.5% is allocated to pay in relation to Regulation E Fees. *Id.*

If any amounts remain in the Net Settlement Fund due to uncashed or returned checks, those funds will not revert to Apple FCU. *Id.* ¶ 8(d)(v). Instead, if a second round of distribution to those Class Members who were successfully paid in the first distribution would result in an average payment amount of $5.00 or more then there will be a second distribution to Class Members. After a second distribution, or if no second distribution is indicated, any remaining funds will be paid on a *cy pres* basis 50% to the United Way of the National Capital Area for programs benefitting persons in the Alexandria, Arlington, Fairfax/Falls Church, Loudon County, and Prince William County regions and 50% to Mobile Hope, or to one or more other *cy pres* organizations chosen by the Court. *Id.* ¶ 10.

B. Forgiveness of Uncollected Fees

In addition to the Settlement Fund, Apple FCU will forgive approximately $35,530 in APSN Fees and Regulation E Fees that were assessed but were not paid. *Id.* ¶¶ 1(z), 3.

III. Release

The Settlement Class Member Release is narrowly tailored. As of the Effective Date of the Settlement, Plaintiff and each Settlement Class Member will be deemed to have released claims relating to the facts and claims alleged in this case. *Id.* ¶ 13. The release specifically excludes claims relating to non-sufficient funds fees, which were not part of the case. *Id.*

IV. Attorneys' fees, expenses, and service awards

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs and expenses incurred. Class Counsel has separately applied for a reimbursement of expenses and for attorneys' fees of one-third of the Value of the Settlement. ECF Nos. 76–77. The Settlement is not contingent on the Court awarding any particular amount. Likewise, Class Counsel has also asked the Court to approve service awards of $15,000.00 for each of the Plaintiffs in recognition

of their extensive service as Class Representatives in being deposed and attending multiple mediations, as set forth by separate motion. *Id.* Again, the Settlement is not contingent on the Court awarding any particular amount.

Preliminary Approval and Notice to the Class

I. Preliminary Approval

On February 19, 2025, the Court granted preliminary approval to the Settlement. ECF No. 74. As part of that Order, the Court certified the Settlement Classes, approved the forms and manner of notice to the Classes, and found that the terms of the Settlement were "within the range of a fair, reasonable, and adequate compromise under the circumstances of this case." *Id*. ¶¶ 1–14. The Court set a final approval hearing for June 17, 2025, to consider final approval after receiving feedback, in the form of opt-outs or objections, from Class Members. *Id.* ¶ 7.

II. After Notice, No Class Members Object or Opt Out.

On March 5, 2025, the Settlement Administrator sent the Court-approved notice by mail and email to the 21,179 persons on the Class List (some receiving both forms of notice). Declaration of Karen Rogan Re: Notice Procedures ("Rogan Decl.") ¶¶ 5–12. Bounced emails and returned postcards were subsequently researched and additional notices sent where contact information could be located, resulting in a high rate of delivered notices. *See id.* The Settlement Administrator also established a Settlement Website on which the long-form notice was posted, as well as applicable Court documents, including Plaintiff's motion for attorneys' fees, expenses, and service award. *Id.* ¶ 13. A telephone number and email address were also established for Class Members to obtain information. *Id.* ¶¶ 14–15.

The deadline for Class Members to object to, or opt out of, the Settlement expired on April 20, 2025. *Id.* ¶¶ 16–17. Not a single Class Member chose to object, and only one Class Member

opted out. *Id.* If any objections or additional opt-outs are received before the final approval hearing, Class Counsel will file them with the Court.

The Settlement Administrator also delivered the Class Action Fairness Act notice required under 28 U.S.C. § 1715 to the appropriate officials on March 3, 2025. As of the date of this filing, no official has objected. The final approval hearing is also scheduled to occur 106 days after the CAFA notice was sent, complying with the requirement that final approval not be entered until 90 days have elapsed. 28 U.S.C. § 1715(d).

Argument

The Court should grant final approval to the Settlement because it represents a fair, reasonable, and adequate compromise to which no party or Class Member objects.

I. The Court should grant final approval to the Settlement.

Federal Rule of Civil Procedure 23 requires court approval of class action settlements. Fed. R. Civ. P. 23(e).[2] "The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). Accordingly, the Court may approve a settlement only upon finding that the settlement is fair, reasonable, and adequate. *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 839 (E.D. Va. 2016).

The relevant factors in determining "fairness" are "that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted,

[2] The Court previously certified the Settlement Classes and found that all of the requirements for class certification under Rules 23(a) and 23(b)(3) were met. No facts have changed since the Court's initial certification, so continued certification of the Settlement Classes for purposes of final approval remains appropriate.

(3) the circumstances surrounding the negotiations, and (4) the experience of counsel." *Jiffy Lube*, 927 F.2d at 159; *see also Solomon v. Am. Web Loan, Inc.*, No. 4:17cv145, 2020 WL 3490606, at *4 (E.D. Va. June 26, 2020).

Adequacy is assessed through "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter of the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Jiffy Lube*, 927 F.2d at 159.[3]

Each of these relevant factors supports final approval of the Settlement in this case.

A. The Settlement is fair.

Each of the fairness factors supports granting final approval. *Jiffy Lube,* 927 F.2d at 159.

Posture of the case. The Settlement was reached only after significant work was conducted. *See Jiffy Lube*, 927 F.2d at 159; *accord* Fed. R. Civ. P. 23(e)(2)(C)(i). Plaintiffs had prevailed on a motion to dismiss and had proceeded deep into discovery, including depositions and expert discovery. Class Counsel expended significant resources researching and developing the

[3] The 2018 amendments to Rule 23 also provide specific guidance to federal courts considering whether to approve a class settlement. *See* Fed. R. Civ. P. 23(e), Committee Notes. The factors that the Rule contemplates include whether: (A) the class representative and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. See Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has held that the *Jiffy Lube* standards "almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same." *See Herrera v. Charlotte Sch. of Law, LLC,* 818 Fed. App'x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.,* 952 F.3d 471, 474 n.8 (4th Cir. 2020)).

legal claims at issue. Class Counsel is familiar with the claims as they have litigated and resolved cases with similar factual and legal issues.[4] Class Counsel has experience in understanding the remedies and damages at issue, as well as what information is critical in determining class membership.[5]

The parties also engaged in extensive, good-faith, arms'-length negotiations via multiple mediation sessions. These "adversarial encounters dispel any apprehension of collusion between the parties." *In re Neustar*, 2015 WL 5674798, at *10 (finding that where plaintiff "filed an amended complaint, argued at the motion to dismiss stage, noticed an appeal, and engaged Defendants in settlement mediation," the posture of the case supported preliminary approval). This action has been vigorously litigated by the parties, and both sides have obtained sufficient information to assess the relative strengths and weaknesses of their respective claims and defenses.

[4] *See, e.g.*, *Hash v. First Fin. Bancorp*, No. 1:20-cv-01321-RLM-MJD, slip op. at 5 (S.D. Ind. Nov. 22, 2021), ECF No. 92 (granting final approval to $6.68 million settlement negotiated by Plaintiff's counsel on similar bank fee claims); *Holt v. CommunityAmerica Credit Union*, No. 4:19-CV-00629-FJG, slip op. at 2 (W.D. Mo. Sept. 4, 2020), ECF No. 51 (same, granting final approval to $3.08 million settlement); *Perks v. TD Bank, N.A.*, No. 1:18-cv-11176-VEC, slip op. at 1 (S.D.N.Y. Sept. 7, 2021), ECF No. 103 (same, granting preliminary approval to over $40 million settlement); *Hill v. Indiana Members Credit Union*, No. 49D02-1804-PL-016174, slip op. at 5 (Ind. Super. Ct. Jan. 21, 2020) (same, granting final approval to $3 million settlement); *Terrell v. Fort Knox Credit Union*, No. 19-CI-01281, slip op. at 4 (Ky. Cir. Ct. Sept. 22, 2020) (same, granting final approval to $4.5 million settlement); *Ingram v. Teachers Credit Union*, No. 49D01-1908-PL-035431 (Ind. Super. Ct. July 7, 2021) (same, granting final approval to $9.55 million settlement); *Graves v. Old Hickory Credit Union*, No. 19-475- II (Tenn. Ch. Ct. Aug. 9, 2019) (same, 75% of damages); *Tisdale v. Wilson Bank & Trust*, No. 19-400-BC (Davidson Cnty. Tenn. Bus. Ct.) (same, settlement for 80% of damages); *Howell v. Eastman Credit Union*, No, C42517, slip op. at 1 (Tenn. Cir. Ct. July 16, 2021) (same, granting preliminary approval of $3.25 million settlement); *Bowen v. Commonwealth Credit Union*, No. 19-CI-00416, slip op. at 1 (Ky. Cir. Ct. July 7, 2021) (same, granting preliminary approval of $2.4 million settlement); *Pryor v. Eastern Bank*, No. 1984CV03467 (Mass. Super. Ct. 2022) (same, granting final approval of $4.325 million settlement). *See also Hinton v. Atl. Union Bank,* No. 3:20-cv-00651-JAG (E.D. Va. Mar. 30, 2022), ECF No. 29.

[5] *See supra*, n.4.

Extent of discovery. Second, as discussed, discovery had reached an advanced stage with depositions and expert discovery in addition to written discovery.

Circumstances surrounding negotiations. The circumstances surrounding the parties' negotiations demonstrate that the Settlement was reached through arms'-length negotiations. *See Jiffy Lube*, 927 F.2d at 159; *accord* Fed. R. Civ. P. 23(e)(2)(B). The parties participated in two mediations with different mediators (a magistrate and a former federal district judge) at different points in the litigation. These arms'-length negotiations led to a fair Settlement. *See, e.g., Bicking v. Mitchell Rubenstein & Assocs., P.C.*, No. 3:11CV78-HEH, 2011 WL 5325674, at *5 (E.D. Va. 2011) (finding settlement fair where it was reached "under the supervision and direction" of a neutral judge).

The terms of the proposed award of attorneys' fees and service award are also fair and demonstrate that the Settlement is the product of arms'-length negotiations. *See* Fed. R. Civ. P. 23(e)(2)(c)(iii). The parties did not discuss attorneys' fees or service awards until after agreeing upon the Settlement's material terms. The amounts sought for attorneys' fees and expenses and service awards for Plaintiffs are also reasonable and fair. Class Counsel has sought an award of one-third of the value of the Settlement, an amount that is well within the range of approval. *See, e.g.*, *Thomas v. FTS USA, LLC*, No. 3:13cv825 (REP), 2017 WL 1148283, at *5 (E.D. Va. Jan. 9, 2017), *report and recommendation approved in* 2017 WL 1147460 (E.D. Va. Mar. 27, 2017) (awarding fees of 33.33% and noting that "any discussion of percentage awards should acknowledge the age-old assumption that a lawyer receives a third of his client's recovery under most contingency agreements."); *see also Newberg on Class Actions* § 15:73 (5th ed.); *Sanchez v. Lasership, Inc.*, No. 1:12-cv-246 (GBL-TRJ), 2014 WL 12780145, at *1 (E.D. Va. Aug. 8, 2014) (approving fee award "representing one-third of the common settlement fund"); *Deem v. Ames*

True Temper, Inc., No. 6:10-cv-01339, 2013 WL 2285972, at *5 (S.D.W. Va. May 23, 2013) (recognizing the "presumptive reasonableness" of a fee award of one-third of the common fund); *In re Titanium Dioxide Antitrust Litig.*, No. RDB-10-0318, 2013 WL 5182093, at *5 n.9 (D. Md. Sept. 12, 2013) ("[A] one-third contingent fee arrangement is a standard practice in this country, and Class Counsel's intention to request that portion of the settlement fund as attorneys' fees does not shock the Court."). Plaintiffs seek service awards of $15,000.00, which are also well within the range of what courts approve, particularly where, as here, Plaintiffs participated in significant discovery and were deposed, in addition to participating in mediations. *See, e.g.*, *Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019 WL 2579201, at *5 (M.D.N.C. June 24, 2019) (collecting cases awarding $25,000 service awards).

Experience of counsel. Class Counsel is highly experienced in consumer class action litigation and has brought that significant experience to bear in litigating and settling this case. *See supra* n.4. *See also* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled dozens of class actions involving overdraft fees, non-sufficient fund fees, and other bank fees. *See supra* n.4. Counsel "may be evaluated by their affiliation with well-regarded law firms with strong experience in the relative field," and by any measure, Class Counsel satisfies this prong. *See In re Neustar*, 2015 WL 5674798, at *11 (quoting *In re Am. Cap. S'holder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at *4 (D. Md. June 28, 2013)). Based on their experience, Class Counsel has endorsed the Settlement as fair, reasonable, and adequate by signing on and agreeing to it. Courts afford substantial consideration to the view of Class Counsel in considering whether a class settlement is fair. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D.

246, 255 (E.D. Va. 2009) (stating that it is "entirely warranted" for the court to "pay heed to" the judgment of experienced class counsel).

B. The Settlement is reasonable and adequate.

Each of the factors relating to reasonableness and adequacy also support granting final approval. *Jiffy Lube,* 927 F.2d at 159.

Relative strength of the claims / Difficulties of proof. The first and second factors, which are generally considered together, evaluate "how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one." *In re The Mills*, 265 F.R.D. at 256. Plaintiffs are confident in their claims, but Apple FCU has raised numerous defenses, including moving to exclude Plaintiffs' expert, who would be needed for class certification and trial. Apple FCU will continue to dispute the factual and legal bases for the suit. The existence of numerous disputed issues creates uncertainty and risk for all parties, while the Settlement secures a meaningful guaranteed recovery, warranting approval.

Duration and expense of continued litigation. The likely duration and expense of continued litigation would be substantial. The parties would need to complete discovery, and brief class certification and potentially summary judgment. And, of course, the expense and burden of trial would be substantial. This case would potentially continue for several more years should it not settle now, at continued expense to the classes—without any guarantee of additional or any benefit. On the other hand, "a settlement avoids returning the case to this Court for class and merits discovery, class certification, summary judgment, trial, and further appeals," a factor that weighs in favor of approval. *Solomon*, 2020 WL 3490606, at *5; *see also In re Neustar*, 2015 WL 5674798, at *12 (granting preliminary approval where "if plaintiffs succeed on appeal, the case must proceed to the costly procedures of class certification, discovery, summary judgment, and trial before any

putative class members may recover"). *Accord* Fed. R. Civ. P. 23(e)(2)(C)(i). This factor, thus, favors approval.

Solvency of the Defendant. There is no indication that Apple FCU will be unable to satisfy a judgment, but the fourth factor is "largely considered beside the point given the other factors weighing in favor of preliminary approval." *Solomon*, 2020 WL 3490606, at *5 (quoting *Henley v. FMC Corp.*, 207 F. Supp. 2d 489, 494 (S.D.W. Va. 2002)).

Degree of Opposition to the Settlement. The deadline for Class Members to object to the Settlement passed without any Class Member objection and with only a single opt-out. Rogan Decl. ¶¶ 15–16. "Those figures provide further support for the settlement's adequacy." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 952 F.3d 471, 485 (4th Cir. 2020) (finding that 94 opt-outs and 12 objections in a class of over 175,000 people supported a finding of adequacy). Indeed, this Court has held that "an absence of objections and a small number of opt-outs weighs significantly in favor of the settlement's adequacy." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 257 (E.D. Va. 2009) (emphasis added).

C. The Settlement is an outstanding recovery for the Settlement Classes.

The Settlement provides an excellent result for the Settlement Classes and treats the Class Members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(C)-(D). The $2,500,000 common fund will provide cash payments directly to Settlement Class Members, without any claims process. This amount represents over 40% of the estimated damages to the Classes. In light of the ligation risks described above, any of which could mean Settlement Class Members would get nothing, this is an outstanding result.

Indeed, courts in this Circuit routinely grant final approval of settlements providing between as low as 5-15% of maximum potential damages. *See In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 660 (E.D. Va. 2001) (order approving settlement amounting to approximately 13.9% of the maximum recovery at the time of judicial approval in securities fraud class action); *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d at 842 n.3 (order approving settlement amounting to approximately 15% of the possible recovery in securities fraud class action); *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 833 (E.D.N.C. 1994) (order approving settlement amounting to 5% of plaintiffs' estimated loss in securities class action); *see also Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) ("And because the cash settlement 'may only amount to a fraction of the potential recovery' will not per se render the settlement inadequate or unfair." (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n. 2 (2d Cir. 1974) ("In fact, there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.")). Where, as here, Plaintiff faced significant litigation risk, the Settlement will provide meaningful tangible benefits to Settlement Class Members.

The allocation of the Settlement is also fair and reasonable, and the manner of administering relief will be effective. Settlement Class Members will receive payments directly via check or account deposit. The Settlement Fund will be allocated 92.5% to the APSN Fees Class and 7.5% to the Regulation E Fees Class because the APSN Fees make up the overwhelming bulk of potential damages while Regulation E Fee damages are capped. Payments will be allocated *pro rata* to the Class Members in each class based on the total number of fees charged in each class. Thus, the amount that each Settlement Class Member receives is based on objective criteria that apply to each Settlement Class Member equally.

In sum, the Settlement benefits are excellent, especially considering the procedural posture of this case and the hurdles the Classes faced.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that in conjunction with the final approval hearing scheduled for June 17, 2025, the Court enter the tendered agreed Final Approval Order.

Respectfully submitted,

Dated: April 21, 2025

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CERTIFICATE OF SERVICE

I certify that on April 21, 2025, I filed a copy of the foregoing document with this Court's Electronic Case Filing (ECF) system, to be served electronically on all counsel of record.

/s/Devon J. Munro
Devon J. Munro