

**IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS**

ANGELA SYKES, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BANTERRA BANK,

Defendant.

Case No.: 2022 LA 14

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

RICK A. CAMPBELL and STEPHANIE
CAMPBELL, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BANTERRA BANK,

Defendant.

Case No.: 2022 LA 33

INTRODUCTION

Plaintiffs Angela Sykes, Rick A. Campbell, and Stephanie Campbell (“Named Plaintiffs”) respectfully request that the Court approve an award of \$306,636.00 in attorneys’ fees for Class Counsel, \$16,771.39 for reimbursement of litigation costs, \$50,665 in Settlement Administrator’s fees and costs, and \$5,000.00 service awards for each of the Named Plaintiffs. These awards are to be paid from the \$920,000.00 Settlement Fund established by Defendant Banterra Bank (“Defendant” or “Banterra”) in connection with the class action Settlement Agreement and

Release¹ entered into between the Parties, and which was preliminarily approved by the Court on July 12, 2023. Defendant has agreed not to oppose these awards as requested herein.

Class Counsel is entitled to reasonable compensation for the work performed and the costs incurred in prosecuting this case. After litigating the case for over a year, the Parties—with the assistance of a highly respected retired judge serving as a mediator—reached an agreement to settle the matter on a class-wide basis. Defendant agreed to automatically return to Class Members their share of the \$920,000.00 Settlement Fund that they incurred in improper Retry Fees and APPSN Fees based upon a plan of allocation that fairly and adequately accounts for the value of each Class Member’s individual claim. Plainly, this Settlement provides a significant financial benefit for the Settlement Classes without absent Class Members having to expend any time or effort to participate.

This extraordinary result, however, could not have been achieved without Named Plaintiffs’ efforts. In prosecuting this action, Named Plaintiffs expended their time and effort and took significant financial and reputational risks for the benefit of the Settlement Classes, thus, imposing a financial burden on Named Plaintiffs out of proportion to their individual stakes in the matter. As such, each of the Named Plaintiffs should be awarded service awards to compensate them for their work in bringing the cases and facing the attendant risks associated with serving as class representatives.

Based on the work that Class Counsel did in order to obtain these significant benefits for the Settlement Classes, the requested attorney fee award represents just one-third of the value of the settlement. The amount of this award is reasonable and routinely approved by Illinois courts

¹ All capitalized terms used throughout this Motion have the same meanings as those found in the Settlement Agreement and Release (the “Agreement”).

and across the nation in similar complex banking fee class action settlements. Respectfully, Named Plaintiffs' unopposed motion for attorneys' fees, costs, and service awards (the "Motion") should be granted.

BACKGROUND

A. Overview of the Litigation

Prior to commencing litigation, Class Counsel spent many hours investigating the claims of several potential plaintiffs against Defendant, including interviewing a number of Banterra customers to gather information about Defendant's conduct and its impact on consumers, which was essential to Class Counsel's ability to understand the nature of Defendant's conduct, the language of the relevant account agreements and other documents at issue, and potential remedies.

Through its independent investigation, Class Counsel expended significant resources researching and developing the legal claims at issue. Indeed, Class Counsel is particularly familiar with the instant claims through their extensive history of litigating and resolving other banking fee claims with similar factual and legal issues to the case at bar. Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Class Member's respective damages. Class Counsel, along with its expert, spent a significant amount of time analyzing preliminary data regarding Banterra's fee revenue related to the assessment of APPSN Fees and Retry Fees at issue. Defendant similarly retained its own expert who conducted a review and analyzed data accordingly. This data and analysis evaluating potential damages at issue was used in preparation for the Parties' mediation and to further drive the viability of resolution.

On January 24, 2022, Plaintiff Angela Sykes filed her putative class action complaint in the Circuit Court of the First Judicial Circuit, Williamson County, State of Illinois, entitled *Angela*

Sykes v. Banterra Bank, Case No. 2022-LA-14, alleging claims on behalf of a putative class of consumers for breach of contract, including breach of the implied covenant of good faith and fair dealing, and for violation of Illinois' Consumer Fraud and Deceptive Business Practice Act (the "ICFA"). On March 31, 2022, Defendant moved to dismiss the *Sykes* Complaint. On May 17, 2022, Plaintiff Sykes filed an amended complaint. On June 16, 2022, Defendant moved to dismiss the amended complaint, which the Court denied on August 31, 2022.

On March 10, 2022, Plaintiffs Rick A. Campbell and Stephanie Campbell filed their putative class action complaint in the Circuit Court of the First Judicial Circuit, Williamson County, State of Illinois, entitled *Rick A. Campbell and Stephanie Campbell*, Case No. 2022-LA-33, alleging claims on behalf of a putative class of consumers for breach of contract, including breach of the implied covenant of good faith and fair dealing, and for violation of the ICFA. On April 25, 2022, Defendant moved to dismiss the *Campbell* Complaint. On May 24, 2022, the Campbell Plaintiffs filed an amended complaint. On June 21, 2022, Defendant moved to dismiss the amended complaint, which the Court denied on August 31, 2022.

As a result of the denial of both motions to dismiss, the Parties agreed attend mediation in attempt to settle both actions.

On February 23, 2023, the Parties participated in a mediation before the Honorable Morton Denlow (Ret.). The mediation resulted in an agreement to settle all of the claims alleged in both the *Sykes* Complaint and *Campbell* Complaint. The Parties further agree to judicially consolidate both cases to enable a more efficient settlement process.

On July 12, 2023, after the Court thoroughly examined the Settlement in its entirety to ensure the Settlement was provisionally fair, adequate, and reasonable, this Court entered its

Preliminary Approval Order, preliminarily approving the Settlement and conditionally certifying the Settlement Classes for purposes of settlement only.

On September 11, 2023, the Settlement Administrator commenced the Notice Program and disseminated notice to the Settlement Classes by Email Notice, Postcard Notice, and by posting the Long Form Notice on the settlement website. To date, there have been zero objections to and zero requests for exclusion from the Settlement.

B. Summary of the Settlement

Defendant has agreed to establish a Settlement Fund of \$920,000.00 for the Settlement Classes, as well as for attorneys' fees of up to one-third (33.33%) of the value of the settlement plus reimbursement of reasonable litigation costs, the costs of notice and settlement administration incurred by the Settlement Administrator, and \$5,000.00 as service awards for each of the Named Plaintiffs. Agreement, ¶¶ 1(u); 7.

Individual Payments to Class Members shall be calculated by the Settlement Administrator based upon information provided by Banterra's expert pursuant to the following formula:

$$\text{(Net Settlement Fund / Total number of APPSN Fees and Retry Fees) x (the number of fees charged to and paid by each Class Member) = Individual Payment}$$

Id., ¶ 7(d)(iv)(a).

Individual Payments shall automatically issue to Class Members sixty (60) days after the Effective Date. *Id.*, ¶ 7(d). Class Members who are current accountholders at the time of distribution of the Net Settlement Fund, and who then own the checking account maintained at Banterra that was assessed a Retry Fee or an APPSN Fee, will receive a credit to their account in the amount of the Individual Payment. *Id.*, ¶ 7(d)(iv)(b)(i). For those Class Members who are not able to receive an account credit in the manner described above, the Settlement Administrator will send a check in the amount of the Individual Payment to the address used to provide the Notice,

or at such other address as designated by the Class Member. *Id.*, ¶ 7(d)(iv)(b)(ii). Class Members will have one-hundred eighty (180) days to negotiate the checks. *Id.*

In no event shall any portion of the Settlement Fund revert to Banterra. *Id.*, ¶ 7(d)(iv)(c). To the extent any residual funds remain after the distribution of Class Members' Individual Payments, then those funds will be distributed to a *cy pres* recipient agreed to by the Parties and approved by the Court. *Id.*, ¶ 10.

ARGUMENT

I. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES IN THE AMOUNT OF ONE-THIRD OF THE VALUE OF THE SETTLEMENT ARE REASONABLE UNDER THE PERCENTAGE-OF-THE-RECOVERY METHOD AND SHOULD BE APPROVED

The Illinois Supreme Court grants the circuit court with the discretion to award attorneys' fees in common fund class actions based on a "percentage of the recovery." *Brundidge v. Glendale Fed. Bank FSB*, 168 Ill.2d 235, 244-45 (1995). The Supreme Court has long recognized that under the "common fund doctrine," a lawyer who achieves a settlement for the benefit of a class is entitled to be compensated for his or her efforts from the common fund created by the settlement. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Illinois has similarly adopted the "common fund doctrine" as a source of awarding attorneys' fees in class action cases. *See Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011); *see also Brundidge*, 168 Ill. 2d at 238 (noting the common fund doctrine "finds its source in the court's inherent equitable powers and is founded on the rationale that successful litigants would be unjustly enriched if their attorneys were not compensated from the common fund created for the litigants' benefit").

Under the percentage-of-the-recovery method, attorneys' fees are awarded "based upon a percentage of the amount recovered on behalf of the plaintiff class," whereas, the lodestar method calculates attorneys' fees by multiplying the hourly rates by the reasonable hours expended on the

litigation, with the potential enhancement of a “multiplier” based on “the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members.” *Brundidge*, 168 Ill.2d at 238-240.

Although the court has the discretion in which method it applies, “numerous criticisms have been lodged against the lodestar method” since its origination. *McCormick v. Adtalem Global Educ., Inc.*, No. 1-20-1197, 2022 IL App (1st) 201197-U, ¶ 26; *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1995) (“the lodestar approach has been subjected to increased scrutiny as its deficiencies began to offset or exceed its benefits”). Illinois courts have recognized the many disadvantages of using the lodestar method to award attorneys’ fees:

(1) it increases the workload of an already overtaxed judicial system, (2) it is insufficiently objective and produces results that are far from homogenous, (3) it creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) it is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or an overall dollar amount, (5) it has led to abuses such as lawyers billing excessive hours, (6) it creates a disincentive for the early settlement of cases, (7) it does not provide the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered, . . . [and] (9) it is confusing and unpredictable in its administration.

Ryan, 274 Ill. App. 3d at 923 (citing *Court Awarded Attorney Fees, Report of the Third Circuit*, 108 F.R.D. 237, 246-47 (1985)); *see also Brundidge*, 168 Ill.2d at 242-43 (noting the lodestar method is concerning because “[e]valuating the hours actually expended is a laborious, burdensome, and time-consuming task that may be biased by hindsight[,]” “may generate protracted satellite litigation involving the attorney fees award[,]” and “[t]he risk multiplier is little short of a wild card in the already uncertain game of assessing fees under the lodestar calculation”).

Conversely, the percentage-of-the recovery method is “a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with represented the plaintiff class.” *Brundidge*, 168 Ill.2d at 244. “Furthermore,

in addition to being efficient and fair, the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case.” *McCormick*, 2022 IL App (1st) 201197-U at ¶ 26 (citing *In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015) (indicating that the “normal practice” in consumer class actions is to negotiate compensation based upon a percentage of the recovery)).

Accordingly, the Court should apply the percentage-of-the-recovery method here.

A. Class Counsel’s Requested One-Third Percentage is Reasonable and Commonly Awarded by Illinois Courts in Common Fund Class Actions

Illinois courts routinely use the percentage-of-the-recovery method to calculate reasonable attorney fee awards in common fund cases and commonly award percentages of one-third or higher. *See e.g., McCormick*, 2022 IL App (1st) 201197-U at ¶¶ 27-29 (affirming fee award representing 35% of settlement fund in consumer fraud settlement and noting “[t]he supporting memo included Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range”); *Chambers v. Together Credit Union*, No. 19-cv-842-SPM, 2021 WL 1948452 at *2 (S.D. Ill. May 14, 2021) (awarding 33.33% of the common fund in overdraft fee class action as “appropriate and reasonable” as an “amount being commonly awarded as the market rate”); *Charvat v. Valente*, No. 12-cv-05746, 2019 WL 5576932 at *11-12 (N.D. Ill. Oct. 28, 2019) (awarding 33.99% of net settlement fund in TCPA class action as it “reflects the market rate and takes into account the risk of nonpayment”); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2nd) 150236, ¶ 24, 52 N.E.3d 427, 436 (affirming one-third attorney fee award in TCPA class action); *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Ill. Cir. Ct. Cook Cnty. Dec. 1, 2016) (awarding 40% of \$1.5 million common fund in Illinois Biometric Information Privacy Act class action); *Coleman v. Sentry Insurance a Mutual Company*, No. 15-CV-1411-SMY-SCW, 2016 WL 6277593 at *3 (S.D. Ill. Oct. 27, 2016) (awarding one-third of common fund

in breach of insurance contract settlement where “Class Counsel have provided the Court with numerous decisions in this District and this Circuit in which a contingent 33 1/3% fee was awarded to class counsel”); *Koszyk v. Country Financial a/k/a CC Services, Inc.*, No. 16 Civ. 3571, 2016 WL 5109196 at *4 (N.D. Ill. Sept. 16, 2016) (awarding one-third of \$2.8 million common fund in wage and hour settlement and stating “Plaintiffs’ request for one-third of the settlement in attorneys’ fees is consistent with the market in the Northern District of Illinois”); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 502-03 (N.D. Ill. 2015) (awarding 36% of \$11 million settlement fund in TCPA class action and recognizing that “courts in this circuit regularly allow attorneys to recoup one-third of the first \$10 million of the class action settlement fund); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 597-98 (N.D. Ill. 2011) (approving one-third fee of \$9.5 million settlement fund in overdraft fee class action settlement as being “within the reasonable range”); *Ryan*, 274 Ill. App. 3d at 925 (upholding circuit court’s attorney fee award of 33.33% of common fund and noting the “[p]ercentage analysis eliminates the need for additional major litigation and further taxing of scarce judicial resources”).²

As such, the Court should award Class Counsel’s requested attorneys’ fees of 33.33% of the value of the settlement because it is well-within the range of reasonable attorney fees awarded in Illinois in common fund class action settlements. Not only is this amount customary, it is also supported by additional considerations, such as the risks Class Counsel undertook in pursuing these complex actions on a contingency basis, the significant results achieved for the Settlement Classes, the time and effort expended by Class Counsel, and the standard one-third amount that is

² The Court is not required to perform a lodestar cross-check on the requested attorneys’ fees. *See Shaun Fauley*, 2016 IL App (2nd) 150236 at ¶ 59 (citing *Brundidge*, 168 Ill.2d at 246) (rejecting objectors’ argument that trial court abused discretion by failing to use a lodestar cross-check on class counsel’s fees as “unpersuasive” in \$7.6 million fee award representing one-third of the common fund).

routinely awarded in this type of banking fee litigation across the country, including by Class Counsel.³ *See Ryan*, 274 Ill. App. 3d at 924 (affirming attorney fee award “due to the extreme contingency risk” and the “hard cash benefit [secured] from a tenacious adversary”); *see also McNiff v. Mazda Motor of America, Inc.*, 384 Ill. App. 3d 401, 407 (4th Dist. 2008) (listing “a variety of factors” that courts may consider when assessing the reasonableness of requested attorneys’ fees, such as “the case’s novelty and difficulty level, the skill and standing of the attorney” and “the usual and customary charges for similar work”).

1. The Risks of Continued Litigation and the Novelty and Complexity Level of the Actions

First, the risk of continued litigation was high. This case faced potential obstacles at all junctures that could have resulted in no recovery at all for the Settlement Classes, including losing the motions to dismiss; losing class certification; losing summary judgment; losing at trial; or losing on appeal at either class certification or after a successful trial. Additionally, the risk of protracted litigation would likely reduce the amount of the benefit ultimately obtained due to years of delay and increased cost of litigation. Notwithstanding these hurdles, Class Counsel endeavored to take these cases on a pure contingency fee basis, devoted significant time and resources, and chose to forego pursuing other cases as sources of income in the face of assuming the significant risk of nonpayment. Gold Decl., ¶ 10. Class Counsel’s commitment to prosecute the action notwithstanding the real financial risk presented warrants reasonable compensation.

Further, this case involved complexities of bank processing law that are novel, difficult, and ever evolving. To illustrate, to Class Counsel’s knowledge, no similar APPSN Fee or Retry Fee claims have proceeded to trial. This means that there is no model for Named Plaintiffs’ case

³ *See* Declaration of Sophia G. Gold in Support of Plaintiff’s Motion for Award of Attorneys’ Fees, Costs, and Service Awards, attached as Exhibit 1 to the Motion (“Gold Decl.”), ¶ 9.

and therefore, unforeseen pitfalls could easily derail the Settlement Class's claims should they proceed through the rigors of litigation. To even be able to identify the alleged inappropriate fees requires specialized knowledge by both experts and experienced complex litigation attorneys, as do the theories surrounding the alleged fees, not to mention the specialized knowledge of the class action procedure required to achieve certification, let alone settlement. These considerations support granting the requested fee.

2. The Significant Benefit Conferred by the Settlement

Second, the benefit conferred by the Settlement—amounting to \$920,000.00 in guaranteed monetary relief—is substantial. Banterra has agreed to make a significant settlement payment by establishing a Settlement Fund of \$920,000.00. From this Fund, Settlement Class Members will receive a direct settlement benefit in the form of either a credit to current Banterra accountholders' accounts or a check to former accountholders. This benefit is automatic, as Settlement Class Members need not submit a claim, nor provide proof of damages or any supporting documentation. The benefit conferred represents a substantial percentage of the Settlement Class's estimated potential damages. Additionally, after receiving notice, no Settlement Class Member has objected to the Settlement. Thus, the results achieved weigh in favor of granting the requested fee award.

3. The Settlement Was the Result of Arms'-Length Negotiations Made in Good Faith by Experienced Class Counsel and After Exchanging Key Information

Third, Class Counsel expended significant time and effort in achieving the Settlement for the Settlement Classes. The Settlement was reached only after several arm's-length negotiations conducted in good faith by experienced counsel and facilitated by a third-party neutral mediator. The Parties participated in a sufficient amount of informal discovery to drive the Parties' settlement discussions and consulted experts to analyze Banterra's transactional data.

Specifically, hundreds of hours have been expended by Class Counsel thus far in the prosecution of the Actions, from investigating Banterra's fee practices and gathering evidence in support of the claims resolved by the Settlement; interviewing potential clients; drafting the Complaints; litigating contentious motion practice; drafting written discovery requests; preparing for and attending mediation, including researching and drafting a mediation statement; engaging an expert to review Defendant's account-level transaction data and analyze potential damages; negotiating and drafting the Agreement with Defendant's counsel; moving for and obtaining preliminary approval; consulting and overseeing the Settlement Administrator's efforts to provide notice to the Settlement Classes; and preparing the motions for final approval and for attorneys' fees, costs, and service awards. Gold Decl., ¶ 11. It is anticipated that Class Counsel will expend additional time and resources in securing final approval, final judgment, and ensuring the successful administration of the Settlement by working with the Settlement Administrator after final approval. *See id.*, ¶ 12.

Further, as illustrated by the Gold Declaration, Class Counsel have national reputations for their acquired skill in complex class action litigation, and particularly, in the context of banking fee litigation. Gold Decl., ¶ 13. Thus, the time and effort expended in the litigation along with the professional skill of Class Counsel similarly supports granting the requested fee.

4. The Requested One-Third Fee is Routinely Awarded in Similar Bank Fee Litigation Across the Country

Fourth, the requested one-third fee is routinely awarded in similar bank fee litigation and class action litigation across the country. *See e.g., Chambers*, 2021 WL 1948452 at *2 (one-third fee award); *Edwards v. Mid-Hudson Valley Fed. Credit Union*, No. 1:22-cv-562-TJM-CFH, 2023 WL 5806409 (N.D.N.Y. Sept. 7, 2023) (same); *Lowe v. NBT Bank, N.A.*, No. 3:19-CV-1400 (MAD/ML), 2022 WL 4621433 (N.D.N.Y. Sept. 30, 2022) (same); *Richard v. Glen Falls Nat.*

Bank, No. 1:20-cv-734 (BKS/DJS), 2022 WL 3286551 (N.D.N.Y. July 22, 2022) (same); *Thompson v. Community Bank, N.A.*, No. 8:19-CV-919 (MAD/CFH), 2021 WL 4084148 (N.D.N.Y. Sept. 8, 2021) (same); *Holt v. Community America Credit Union*, No. 4:19-cv-00629-FJG, 2020 WL 12604384 (W.D. Mo. Dec. 8, 2020) (same); *Norwood v. The Camden Nat'l Bank*, No. BCD-CV-2020-13 (Me. Bus. Ct. Dec. 11, 2020) (same); *Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Hardin Cnty., Ky.) (same); *L&N Fed. Credit Union*, No. 19-CI-002873 (Jefferson Cnty., Ky.) (same); *Old Hickory Credit Union*, No. 19-475-II (Davidson Cnty., Tenn.) (same); *Wilson Bank & Trust*, No. 19-400-BC (Tenn. Bus. Ct.) (same); *Ind. Members Credit Union*, No. 49D02-1804-PL-016174 (Marion Cnty., Ind.) (same); *ORNL Fed. Credit Union*, No. B9LA0107 (Anderson Cnty., Tenn.) (same); *Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.) (same); *Johnson v. Elements Fin. Credit Union*, No. 49D01-2001-PL-004706 (Marion Cnty. Ind. Super. Ct. Oct. 29, 2020) (same); *Plummer v. Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Cnty. Ind. Super. Ct. Oct. 2, 2020) (same); *Simpson v. Citizens Bank*, 2014 WL 12738263 (E.D. Mich. Jan. 31, 2014) (same); *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291 (S.D. Miss. 2014) (same).

Additionally, Class Counsel regularly receives a one-third or higher fee from common fund settlements involving similar banking fee claims in state and federal courts throughout the nation. *See Gold Decl.*, ¶ 14. This factor further weighs in favor of granting the requested fee.

In sum, this Court should grant Class Counsel's requested one-third of the value of the settlement in the total amount of \$306,636.00.

II. THE COURT SHOULD ALSO AWARD CLASS COUNSEL'S REQUESTED LITIGATION COSTS

Next, it's "well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness

costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.” *Beesley v. Int’l Paper Co.*, No. 3:06-cv-703-DRH-CJP, 2014 WL 375432 at *3 (S.D. Ill. Jan. 31, 2014); *see e.g., Chambers*, 2021 WL 1948452 at *2 (reimbursing \$2,322.37 in “ordinary litigation expenses, such as filing fees and deposition transcripts” as “reasonable”).

In this case, Class Counsel advanced various expenses, totaling \$16,771.39. Gold Decl., ¶ 15. Each of these costs were reasonable and necessary in prosecuting the Actions and should therefore be approved.

In addition, the Court should approve the payment of the costs of notice and administration to the Settlement Administrator for the reasonable costs of mailing notice and administering the Settlement Fund. These costs were also necessary because of the notice requirements needed to notify Class Members of the Settlement and ultimately distribute the class recovery by account credit or check. The Settlement Administrator has provided an estimate of its cost to administer the settlement, which totals \$50,665, which is in line with Class Counsel’s experience for this type of settlement. Gold Decl., ¶ 16.

III. THE COURT SHOULD ALSO AWARD NAMED PLAINTIFFS’ SERVICE AWARDS

Lastly, service awards are warranted for each of the Named Plaintiffs in recognition of their contributions in this case. “Incentive awards are justified when necessary to induce individuals to become named representatives.” *In re Synthroid Marketing Litig.*, 264 F.3d 712, 722 (7th Cir. 2001). Indeed, service awards “are not atypical in class action cases . . . and serve to encourage the filing of class action suits.” *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992).

For this reason, Illinois courts routinely approve \$5,000 class representative service awards in recognition that the class representatives brought a lawsuit that provided a significant benefit to

absent class members. *See e.g., Kolinek*, 311 F.R.D. at 503 (\$5,000 service award in TCPA common fund settlement was “justified” even where the “case did not proceed past the earliest phases of formal discovery before it was settled” because of the plaintiff’s “role working with class counsel, approving the settlement agreement and fee application, and volunteering to play an active role if the parties continued litigating through trial”); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011) (although “the Class Representatives’ roles were largely prospective in that they were committed to go through discovery as necessary, to be part of any trial that would follow[.]. . . their role in reviewing, considering, and approving the Settlement Agreement and fee application, and especially their willingness to take a more-active role if necessary, warrants a \$5,000 award”); *Wright v. Nationstar Mortgage LLC*, No. 14 C 10457, 2016 WL 4505169, at *17 (N.D. Ill. Aug. 29, 2016) (approving \$5,000 for each of the eight class representatives who “participated in the litigation by reviewing the complaint, responding to requests for information, and participating in the settlement process”).

The Court should similarly grant the Named Plaintiffs Service Awards of \$5,000 each in recognition of the time and effort they spent serving as class representatives of the Settlement Classes and the significant result they obtained on behalf of the absent Class Members who will receive compensation without even having to submit a claim. The Named Plaintiffs’ efforts and involvement have benefitted the Settlement Classes as a whole, as they have regularly consulted with Class Counsel, provided documents and information, reviewed pleadings, and participated in the settlement process. Gold Decl., ¶ 17. Without the Named Plaintiffs’ efforts and willingness to attach their names to this litigation for the benefit of absent Class members, the \$920,000.00 in benefits for the Classes would have never been achieved. These factors supporting granting the requested Service Awards.

CONCLUSION

For the foregoing reasons, Named Plaintiffs respectfully request that the Court grant Class Counsel's request for an attorney fees' award in the amount of one-third of the value of the Settlement, reimbursement of reasonable litigation costs, fees and costs to the Settlement Administrator, and a service award to each of the Named Plaintiffs.

Dated: September 25, 2023

Respectfully submitted,

/s/ David Cates

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PROOF OF SERVICE

I hereby certify that on September 25, 2023, I electronically filed the foregoing with the Clerk of the Court using the e-filing system and sent an electronic PDF copy of the foregoing document to the attorneys of record below by serving same via email.

/s/Robin Matney _____

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