UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:

Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.

S.D. Fla. Case No. 1:10-CV-22190-JLK

PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, AND APPLICATION FOR SERVICE AWARD, ATTORNEYS' FEES AND EXPENSES, AND INCORPORATED MEMORANDUM OF LAW

After more than eight years of litigation, Settlement Class Counsel negotiated the Settlement Agreement and Release attached as Exhibit A ("Agreement" or "Settlement") with Defendant PNC Bank, N.A. ("PNC"), successor in interest to RBC Bank (USA) ("RBC") ("PNC" or the "Bank").[1] The Settlement – which consists of the Bank's payment of $7,500,000.00, inclusive of attorneys' fees, costs and expenses to be awarded to Class Counsel and a Service Award to the Class Representative, plus PNC's payment of all fees, costs, charges and expenses of the Notice Administrator and Settlement Administrator in connection with the Settlement – is

[1] All capitalized defined terms used herein have the same meanings ascribed in the Agreement. References to the party to this Agreement will be to PNC, as RBC no longer exists as a corporate entity. References to historical facts alleged in the litigation will be to the particular entity (PNC or RBC) involved. References to proceedings in the litigation will be to RBC, even after it was merged into PNC, because RBC was the named party throughout the litigation and the litigation involved RBC's overdraft fee policies.

an outstanding result for the Settlement Class. *See* Joint Declaration of Aaron Podhurst, Bruce S. Rogow and Robert C. Gilbert ¶¶ 5, 56 attached as Exhibit B ("Joint Decl."). The Settlement is fair, adequate and reasonable, and represents a "very impressive" result in the opinion of one nationally recognized expert. *See* Declaration of Professor Brian T. Fitzpatrick ¶ 17 attached as Exhibit C ("Fitzpatrick Decl.").

Plaintiffs and Class Counsel now seek Final Approval of the Settlement. Based on the controlling legal standards and supporting facts, Final Approval is clearly warranted. In addition, Class Counsel respectfully request that the Court award a Service Award to the Class Representative, whose willingness to represent the Settlement Class and participation in the Action helped make the Settlement possible. Finally, Class Counsel respectfully request that the Court award attorneys' fees equal to thirty-five percent (35%) of the Settlement Fund to compensate us for our work in achieving the Settlement and approve reimbursements of certain expenses incurred in prosecuting the Action and in connection with the Settlement.

I. INTRODUCTION

The Action involved sharply opposed positions on several fundamental legal and factual questions. Plaintiffs sued on behalf of themselves and all others similarly situated who incurred Overdraft Fees as a result of RBC's High-to-Low Posting of Debit Card Transactions. Plaintiffs alleged that RBC systemically engaged in High-to-Low Posting of Debit Card Transactions to maximize the Bank's Overdraft Fee revenues. According to Plaintiffs, RBC's practices violated the Bank's contractual and good faith duties, were substantively and procedurally unconscionable, resulted in conversion and unjust enrichment, and violated the North Carolina consumer protection statute. RBC, on the other hand, consistently argued that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that the claims brought in the Action

were subject to mandatory individual arbitration, and that Plaintiffs' state law claims for relief were preempted. Joint Decl. ¶ 3.

Preliminary Settlement discussions began in 2018. Settlement Class Counsel and PNC participated in a settlement conference in late January 2019. On that date, they reached an agreement in principle concerning the material terms of the Settlement. On February 5, 2019, Settlement Class Counsel and PNC executed a Summary Agreement that memorialized the material terms of the Settlement. Soon thereafter, they filed a Joint Notice of Settlement and requested suspension of all pretrial deadlines pending the drafting and execution of the Agreement. Further discussions followed to address, *inter alia*, various issues relating to the Settlement. Once those issues were resolved, the Agreement was finalized and executed in October 2019.[2] Joint Decl. ¶¶ 25-28.

Under the Settlement, all eligible Settlement Class Members who sustained a Positive Differential Overdraft Fee and do not opt-out will automatically receive their *pro rata* share of the Net Settlement Fund. There are no claims forms to fill out, and Settlement Class Members will not be asked to prove that they were damaged as a result of the Bank's High-to-Low Posting. Instead, Settlement Class Counsel and their expert used RBC's available electronic customer data to determine which RBC Account Holders were adversely affected by High-to-Low Posting, and applied the formula detailed in paragraph 85 of the Agreement to calculate each Settlement Class Member's damages under the Settlement. Joint Decl. ¶¶ 30-31.

A testament to the reasonableness and fairness of the Settlement is the magnitude of the

[2] Plaintiff Stephanie Avery, who filed her own action and was named as a Plaintiff in the Consolidated Amended Complaint, declined to participate in the Agreement and, therefore, is not one of the Parties to the Agreement, but is a member of the Settlement Class. *See* Agreement at ¶ 41 n.2.

Settlement Fund. Settlement Class Counsel negotiated a $7,500,000 Settlement, which is remarkable given that RBC asserted – and would continue to assert in the absence of this Settlement – that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that the claims brought in the Action were subject to mandatory individual arbitration, and that state law claims for relief were preempted. In the face of those risks, the $7,500,000 recovery secured through this Settlement clearly merits Final Approval. In addition to the $7,500,000 Settlement Fund, PNC agreed to pay all fees and costs incurred in connection with the Notice Program and Settlement administration, further increasing the recovery for the Settlement Class. Joint Decl. ¶¶ 2-5.

Plaintiffs and Class Counsel respectfully request that the Court: (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3) appoint as Class Representative the Plaintiff listed in paragraph 24 of the Agreement; (4) appoint as Class Counsel and Settlement Class Counsel the law firms and attorneys listed in paragraphs 22 and 51 of the Agreement, respectively; (5) approve a Service Award to the Class Representative; (6) award Class Counsel attorneys' fees and reimbursement of certain expenses pursuant to Rule 23(h) of the Federal Rules of Civil Procedure; and (7) enter Final Judgment dismissing the Action with prejudice.

II. MOTION FOR FINAL APPROVAL

A. Procedural History

On July 2, 2010, Plaintiff Michael Dasher filed *Dasher v. RBC Bank USA*, Case No. 1:10-CV-22190-JLK (S.D. Fla.) ("*Dasher*"), a class action complaint, in the United States District Court for the South District of Florida, alleging RBC's improper assessment and collection of Overdraft Fees due to High-to-Low Posting and seeking, *inter alia*, monetary damages, restitution, and equitable relief. (*See* Compl., Case No. 10-22190 (S.D. Fla.), ECF No. 1). Joint Decl. ¶ 9.

On July 22, 2010, RBC moved to compel arbitration in *Dasher*. (*See* Mot. to Compel Arbitration, Case No. 10-22190, ECF No. 5). On July 28, 2010, *Dasher* was transferred to MDL 2036 and thereafter assigned to the "Second Tranche" of cases. (*See* MDL Transfer Receipt, ECF No. 730; Joint Report re List of Cases in Second Tranche, ECF No. 1494 (May 18, 2011)). On August 23, 2010, the Court denied RBC's motion to compel arbitration and stay litigation in *Dasher* on the ground that "the arbitration provision has the effect of deterring Plaintiff from bringing his claim and vindicating his rights." (Order Den. Mot. to Compel Arbitration, ECF No. 763, at 7; *In re Checking Account Overdraft Litig.*, 2010 WL 3361127, at *2 (S.D. Fla. Aug. 23, 2010). RBC timely appealed to the Eleventh Circuit. (*See* Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 797). Joint Decl. ¶ 10.

While the *Dasher* appeal was pending, the U.S. Supreme Court issued *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011). The parties in *Dasher* jointly moved the Eleventh Circuit to vacate the Court's order denying arbitration and remand the case for reconsideration in light of *Concepcion*. The Eleventh Circuit granted the joint motion and *Dasher* returned to the Court on June 28, 2011. (*See* Order Granting Joint Mot. to Vacate and Remand, ECF No. 1670). Joint Decl. ¶ 11.

On July 9, 2010, Plaintiff Stephanie Avery filed *Avery v. RBC Bank USA*, Case No. 10-CVS-11527, ("*Avery*"), a class action complaint, in the General Court of Justice, Superior Court Division, Wake County, North Carolina, alleging RBC's improper assessment and collection of Overdraft Fees due to High-to-Low Posting and seeking, *inter alia*, monetary damages, restitution and equitable relief. On August 12, 2010, *Avery*, the second-filed action, was removed to the Eastern District of North Carolina under Case No. 5:10-cv-329. (*See* Notice of Removal, Case No. 10-24382 (S.D. Fla.), ECF No. 1). Avery amended her complaint on August 26, 2010. (*See* Am.

Compl., Case No. 10-24382, ECF No. 8). Joint Decl. ¶ 12.

On September 16, 2010, RBC filed its motion to compel arbitration in *Avery*. (Mot. to Compel Arbitration & Mem. in Support, Case No. 10-24382, ECF Nos. 16-17). Further proceedings in *Avery* were stayed pending a ruling by the Judicial Panel on Multidistrict Litigation on whether the action would be become part of MDL 2036. (Order Granting Mot. to Stay, Case No. 10-24382, ECF No. 21 (Oct. 4, 2010)). On March 3, 2011, *Avery* was transferred to this Court and made part of MDL 2036. (MDL Transfer Receipt, ECF No. 1232). Joint Decl. ¶ 13.

On June 20, 2011, the Court issued an Omnibus Order that included *Avery* within its ambit. (*See* Omnibus Order Administratively Closing Member Cases, ECF No. 1640, at 4). That order denied as moot all motions filed under the original case numbers (*see id.* at 5), which terminated RBC's motion to compel arbitration in *Avery*. On September 12, 2011, the Court issued its *Interim Scheduling Order re Fifth Tranche Actions*, which assigned *Avery* to the Fifth Tranche. (*See* Interim Scheduling Order re Fifth Tranche Actions, ECF No. 1861, at 2). The Scheduling Order set a deadline for banks defending actions in the Fifth Tranche to file motions to compel arbitration. (*See id.* at 3). Joint Decl. ¶ 14.

RBC's counsel and Plaintiffs' Coordinating Counsel in MDL 2036 agreed that RBC would file a coordinated motion to compel arbitration in *Dasher* and *Avery*. Thus, when the Court issued its *Interim Scheduling Order re Fifth Tranche Actions* and set the deadline for motions to compel arbitration, counsel agreed that RBC would file a motion to compel arbitration encompassing both *Dasher* and *Avery*, thereby putting both actions on the same procedural track. Joint Decl. ¶ 15.

On October 3, 2011, RBC renewed its motion to compel arbitration and stay litigation in *Dasher* and *Avery*. (Renewed Mot. to Compel Arbitration, ECF No. 1929). Following discovery on arbitrability requested by Plaintiffs' counsel and permitted by the Court (*see* Order Deferring

Ruling on Mot. to Compel Arbitration, ECF No. 2191 (Dec. 5, 2011)), Plaintiffs opposed RBC's renewed motion to compel arbitration. Joint Decl. ¶ 16.

On January 11, 2013, the Court denied RBC's renewed motion to compel arbitration in *Dasher* and *Avery*. (Order Den. Mot. to Compel Arbitration, ECF No. 3162); *In re Checking Account Overdraft Litig.*, No. 09-2036, 2013 WL 151179 (S.D. Fla. Jan. 11, 2013). RBC appealed that order. (Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 3164). Joint Decl. ¶ 17.

On February 10, 2014, the Eleventh Circuit affirmed the Court's denial of RBC's renewed motion to compel arbitration pursuant to the RBC Agreement. *See Dasher v. RBC Bank (USA)*, 745 F.3d 1111 (11th Cir. 2014). The Eleventh Circuit denied RBC's motion for rehearing. The Eleventh Circuit granted RBC's motion to stay its mandate pending the filing of a petition for certiorari. On June 20, 2014, RBC filed a petition for writ of certiorari with the U.S. Supreme Court, arguing that arbitration should have been compelled pursuant to the RBC arbitration clause. The Supreme Court denied certiorari on October 6, 2014. On October 20, 2014, the Eleventh Circuit remanded the case to the Court. Joint Decl. ¶ 18.

On November 10, 2014, the Consolidated Amended Complaint ("CAC") was filed. (Consolidated Am. Class Action Compl., ECF No. 4007). On December 5, 2014, RBC moved to compel arbitration of Plaintiff Dasher's amended claims in the CAC pursuant to the arbitration clause in PNC's 2013 amended account agreement. (Mot. to Compel Arbitration of Pl. Dasher's Individual Claims, ECF No. 4017). The Court denied that motion on August 21, 2015. (Order Den. Def's Mot. to Compel Arbitration, ECF No. 4210). RBC appealed that order. (Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 4213). Joint Decl. ¶ 19.

On February 5, 2016, while the appeal was pending, the Court denied RBC's motion to dismiss Plaintiff Avery's individual claims. (Def. Mot. to Dismiss Pl. Avery's Individ. Claims,

ECF No. 4018; Order Den. Def's Mot. to Dismiss, ECF No. 4284). RBC was not required to file its answer to Plaintiff Avery's individual claims until the Court resolved RBC's motion to dismiss or strike Plaintiff Avery's national class claims for lack of subject matter jurisdiction. (Order Grant. Jt. Mot. to Mod. Deadline to Ans. Pl. Avery's Claims, ECF No. 4286). Joint Decl. ¶ 20.

On July 5, 2016, while the appeal was still pending, the Court denied RBC's motion to dismiss or strike Plaintiff Avery's putative national class claims for lack of subject matter jurisdiction. (Def. Mot. to Dismiss or Strike Pl.'s Nat'l Class Claims for Lack of Subj. Matter Juris., ECF No. 4019; Order Den. Mot. to Dismiss or Strike Pl.'s Nat'l Class Claims for Lack of Subj. Matter Juris., ECF No. 4302). That order denied RBC's motion without prejudice to it raising the arguments again at the class certification stage. (ECF No. 4302 at 9). On July 25, 2016, RBC answered Plaintiff Avery's claims and asserted affirmative defenses. (Ans. and Aff. Def. of Def. to Pl. Avery's Claims in CAC, ECF No. 4307). Joint Decl. ¶ 21.

On February 13, 2018, the Eleventh Circuit affirmed the Court's denial of arbitration on the ground that Plaintiff Dasher did not agree to arbitrate. *See Dasher v. RBC Bank (USA)*, 882 F.3d, 1017 (11th Cir. 2018). *Dasher* returned to the Court on March 14, 2018 and thereafter proceeded pursuant to the Court's existing scheduling orders. (*See* Am. Scheduling Order, ECF No. 4223 (Sept. 22, 2015); Order Cancelling Pretrial Conf. and Modifying Deadlines, ECF No. 4334 (Mar. 22, 2017)). On April 3, 2018, RBC answered Plaintiff Dasher's claims and asserted affirmative defenses. (Ans. and Aff. Def. of Def. to Pl. Michael Dasher's Claims in CAC, ECF No. 4348). Joint Decl. ¶ 22.

On August 31, 2018, after substantial discovery, Plaintiffs moved for class certification. (ECF No. 4364). On October 10, 2018, RBC filed its opposition to class certification. (ECF No. 4370). On November 9, 2018, Plaintiffs filed their reply in support of class certification. (ECF

No. 4371). Joint Decl. ¶ 23.

On December 12, 2018, the Court heard oral argument on the motion for class certification and reserved ruling. The Court directed both sides to submit proposed orders following receipt of the hearing transcript. Joint Decl. ¶ 24.

B. Settlement Negotiations.

Beginning in 2018, PNC and Settlement Class Counsel initiated preliminary settlement discussions. The settlement discussions resulted in the production of certain confidential overdraft data of RBC to Settlement Class Counsel. The overdraft data was analyzed by Settlement Class Counsel's expert for the purpose of identifying the number of affected Accounts and the amount of damages sustained as a result of High-to-Law Posting. Joint Decl. ¶ 25.

On January 22, 2019, Settlement Class Counsel and PNC participated in a settlement conference. On that date, Settlement Class Counsel and PNC reached an agreement in principle concerning the material provisions of the Settlement. Joint Decl. ¶ 26.

On February 5, 2019, Settlement Class Counsel and PNC executed a Summary Agreement that memorialized the material terms of the Settlement. On February 8, 2019, Settlement Class Counsel and PNC filed a Joint Notice of Settlement with the Court and requested suspension of all pretrial deadlines pending the drafting and execution of a final settlement agreement; the Court granted the request on February 14, 2019. (ECF Nos. 4381, 4382). Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in the Agreement. Joint Decl. ¶ 27.

On November 6, 2019, Plaintiffs and Class Counsel filed their motion for preliminary approval. (DE # 4423). On November 13, 2019, the Court entered an Order Preliminarily Approving Class Settlement and Certifying Settlement Class. (DE # 4425). Pursuant to the

Preliminary Approval Order, notice was disseminated to members of the Settlement Class that provided, *inter alia*, a summary of the Settlement and advised them of their rights to object to or opt-out of the Settlement. Joint Decl. ¶ 28.

C. Summary of the Settlement Terms

The Settlement terms are detailed in the Agreement attached as Exhibit A. The following is a summary of the material terms of the Settlement.

1. The Settlement Class

The Settlement Class is an opt-out class under Rule 23(b)(3) of the Federal Rule of Civil Procedure. The Settlement Class is defined as:

> All holders of a RBC Account who, from October 10, 2007 through and including March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting.
>
> Excluded from the Class are all former RBC and current PNC employees, officers and directors, and the judge presiding over this Action.

Agreement ¶ 56.

2. Monetary Relief

The Settlement required PNC to deposit $7,500,000.00 into the Escrow Account following entry of the Preliminary Approval Order. Agreement ¶ 58. The Bank deposited that sum, thereby creating the Settlement Fund. Joint Decl. ¶ 29.

The Settlement Fund will be used to: (i) pay all payments to Settlement Class Members; (ii) pay all Court-ordered awards of attorneys' fees, costs and expenses of Class Counsel; (iii) pay the Court-ordered Service Award to the Class Representative; (iv) distribute any residual funds; (v) pay all Taxes; (vi) pay any costs of Notice Administrator and Settlement administration other than those required to be paid by PNC; and (vii) pay any additional fees, costs and expenses not specifically enumerated in paragraph 82 of the Agreement, subject to approval of Settlement Class

Counsel and PNC. Agreement ¶ 82. In addition to the $7,500,000.00 Settlement Fund, PNC is responsible for paying all costs and fees of the Settlement Administrator and Notice Administrator incurred in connection with the administration of the Notice Program and Settlement administration. *Id.* at ¶ 59.

All identifiable members of the Settlement Class who experienced a Positive Differential Overdraft Fee will receive *pro rata* distributions from the Net Settlement Fund, provided they do not opt-out of the Settlement.[3] Agreement ¶¶ 85, 87. The Positive Differential Overdraft Fee analysis determines, among other things, which RBC Account holders were assessed additional Overdraft Fees that would not have been assessed if the Bank had used a chronological posting sequence or method for posting Debit Card Transactions instead of High-to-Low Posting, and how much in additional Overdraft Fees those Account holders paid as a result. The calculation involves a multi-step process described in detail in the Agreement. *Id*. at ¶ 85.

Members of the Settlement Class do not have to submit claims or take any other affirmative step to receive relief under the Settlement. The amount of their damages has been determined by Settlement Class Counsel's expert through analysis of RBC's electronic data. Agreement Section XI. As soon as practicable after Final Approval, but no later than 150 days from the Effective Date (Agreement ¶¶ 87-95), the Settlement Administrator will calculate and distribute the Net Settlement Fund, on a pro rata basis, to all Settlement Class Members who had a Positive Differential Overdraft Fee and did not timely opt out of the Settlement. Agreement Section XII.

[3] The Net Settlement Fund is equal to the Settlement Fund, plus interest earned (if any), less the amount of Court-awarded attorneys' fees and costs to Class Counsel, the amount of the Court-awarded Service Award to the Class Representative, a reservation of a reasonable amount of funds for prospective costs of Settlement administration that are not PNC's responsibility pursuant to paragraph 82 of the Agreement, and any other costs and/or expenses incurred in connection with the Settlement that are not specifically enumerated in paragraph 82 that are provided for in the Agreement and have been approved by Settlement Class Counsel and PNC. Agreement ¶ 82.

Payments to Settlement Class Members who are Current Account Holders will be made by crediting such Settlement Class Members' Accounts and notifying them of the credit. Agreement ¶ 92. PNC will then be entitled to a reimbursement for such credits from the Net Settlement Fund. *Id.* at ¶ 93. Past Account Holders (and any Current Account Holders whose Accounts cannot feasibly be automatically credited) will receive their payments by checks mailed by the Settlement Administrator. *Id.* at ¶ 94.

Any uncashed or returned checks will remain in the Settlement Fund for one year from the date the first distribution check is mailed, during which time the Settlement Administrator will make reasonable efforts to effectuate delivery of the Settlement Fund Payments. Agreement ¶ 95. Any residual funds remaining in the Settlement Fund one year after the first Settlement Fund Payments are mailed will be distributed pursuant to Section XIII of the Agreement. *Id*. at ¶ 96.

3. Class Release

In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will be deemed to have released PNC from claims related to the subject matter of the Action. The detailed release language is found in Section XIV of the Agreement. Agreement ¶¶ 97-100.

4. Settlement Notice

The Notice Program (Agreement, Section VIII) was designed to provide the best notice practicable and was tailored to take advantage of the information PNC has available about Settlement Class Members. Agreement ¶¶ 65-76. PNC is obligated to pay all fees and costs of the Notice Program. *Id.* at ¶¶ 59, 75. The Notice Program was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Action, the terms of the Settlement, Class Counsel's fee application and request for Service Award for the Class Representative, and their rights to opt-out of the Settlement Class or object to the Settlement. *See*

Declaration of Cameron Azari ¶¶ 7-9, 13-30, 32-41 attached as Exhibit D ("Azari Decl."); Joint Decl. ¶¶ 36-44. The Notices and Notice Program constituted sufficient notice to all persons entitled to notice, and satisfied all applicable requirements of law including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process. Azari Decl. ¶ 41; Joint Decl. ¶ 37.

5. Settlement Termination

Either Party may terminate the Settlement if it is rejected or materially modified by the Court or an appellate court. Agreement ¶ 106. PNC also has the right to terminate the Settlement if the number of Settlement Class Members who timely opt out of the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with the Agreement by the Bank's counsel and Settlement Class Counsel. *Id.* at ¶ 107. The number or percentage will be confidential except to the Court, who upon request will be provided with a copy of the letter agreement for *in camera* review. *Id.*

6. Service Award

Class Counsel are entitled to request, and PNC will not oppose, a Service Award of Ten Thousand and 00/100 Dollars ($10,000.00) for the Class Representative. Agreement ¶ 104. If the Court approves it, the Service Award will be paid from the Settlement Fund and will be in addition to any other relief to which the Class Representative is entitled as a Settlement Class Member. *Id.* The Service Award will compensate the Class Representative for his time and effort in the Action, and for the risks he undertook in prosecuting the Action. Joint Decl. ¶ 46.

7. Attorneys' Fees and Costs

Class Counsel are entitled to request, and PNC will not oppose, attorneys' fees of up to thirty-five percent (35%) of the Settlement Fund, plus reimbursement of litigation costs and expenses. Agreement ¶ 101. The Parties negotiated and reached agreement regarding attorneys'

fees and costs only after reaching agreement on all other material terms of the Settlement. Agreement ¶ 105; Joint Decl. ¶ 47.

D. Argument.

Court approval is required for settlement of a class action. Fed. R. Civ. P. 23(e). The federal courts have long recognized a strong policy and presumption in favor of class settlements. The Rule 23(e) analysis should be "informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. Unit B 1982). In evaluating a proposed class settlement, the Court "will not substitute its business judgment for that of the parties; 'the only question . . . is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.'" *Rankin v. Rots*, 2006 WL 1876538, at *3 (E.D. Mich. June 28, 2006) (quoting *Zerkle v. Cleveland-Cliffs Iron Co*., 52 F.R.D. 151, 159 (S.D.N.Y. 1971)). Indeed, "[s]ettlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." *In re Nissan Motor Corp. Antitrust Litig*., 552 F.2d 1088, 1105 (5th Cir. 1977). Class settlements minimize the litigation expenses of the parties and reduce the strain that litigation imposes upon already scarce judicial resources. Therefore, "federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996).

The Settlement here is more than sufficient under Rule 23(e) and Final Approval is clearly warranted.

1. The Court Has Personal Jurisdiction Over the Settlement Class Because Settlement Class Members Received Adequate Notice and an Opportunity to Be Heard.

In addition to having personal jurisdiction over Plaintiffs, who is a party to this Action, the

Court also has personal jurisdiction over all members of the Settlement Class because they received the requisite notice and due process. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (citing *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314-15 (1950)); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig*., 148 F.3d 283, 306 (3d Cir. 1998).

a. The Best Notice Practicable Was Furnished.

The Notice Program was comprised of three parts: (1) Mailed Notice consisting of direct mail postcards sent to all identifiable members of the Settlement Class; (2) Published Notice designed to reach those members of the Settlement Class for whom direct mail notice was not possible; and (3) a Long-Form Notice with more detail than the direct mail or publication notices, that has been available on the Settlement Website and via mail upon request. Agreement, 69-73; Azari Decl. ¶¶ 13-29.

Each facet of the Notice Program was timely and properly accomplished. Azari Decl. ¶¶ 13-29, 32-37. The Notice Administrator received data files from PNC that identified 152,138 Accounts included in the Settlement Class, which represented 148,437 unique Settlement Class member records, ran the associated names and addresses through the National Change of Address Database and mailed postcards to 130,424 unique addresses assigned to members of the Settlement Class. *Id*. at ¶¶ 13-18. The Notice Administrator performed follow up research and attempted to re-mail postcards to those members of the Settlement Class whose initial postcard notices were returned by the postal service. *Id*. at ¶ 20. The Notice Administrator also mailed the Long-Form Notice in response to requests from members of the Settlement Class. *Id*. at ¶ 19.

The Notice Administrator also performed and timely completed the Published Notice Program through Local Online Banners, Local Sponsored Search Listings and a National Press Release. Azari Decl. ¶¶ 21-27.

The Notice Administrator also established the Settlement Website, including the Long-Form Notice, to enable members of the Settlement Class to obtain detailed information about the Action and the Settlement. Azari Decl. ¶¶ 28-29. As of February 21, 2020, the Settlement Website had over 18,135 unique visitor sessions. *Id*. at ¶ 29. In addition, a toll-free number was established and has been operational since January 3, 2020. *Id*. at ¶ 30. By calling this number, members of the Settlement Class can listen to answers to frequently asked questions and request a copy of the Long-Form Notice. *Id*. As of February 21, 2020, the toll-free number had handled over 1,882 calls. *Id*.

b. The Notice and Notice Program Were Reasonably Calculated to Inform Settlement Class Members of Their Rights.

The Court-approved Notice and Notice Program satisfied due process requirements because they described "the substantive claims . . . [and] contain[ed] information reasonably necessary to make a decision to remain a class member and be bound by the final judgment." *In re Nissan Motor Corp. Antitrust Litig*., 552 F.2d at 1104-05. The Notice, among other things, defined the Settlement Class, described the release provided to PNC under the Settlement, as well as the amount and proposed distribution of the Settlement proceeds, and informed members of the Settlement Class of their right to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. It also notified members of the Settlement Class that a class judgment would bind them unless they opted out and told them where they could get more information – for example, at the Settlement Website that posts a copy of the Agreement, as well as other important documents. Further, the Notice described Class Counsel's intention to seek attorneys' fees of up to thirty-five percent (35%) of the $7,500,000.00 Settlement Fund, plus expenses, and a Service Award for the Class Representative. Hence, the members of the Settlement Class were provided with the best practicable notice that was "reasonably calculated,

under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15); *see* Azari Decl. ¶¶ 32-41.

As of February 21, 2020, the Notice Administrator had received no requests for exclusion (opt-outs). Azari Decl. ¶ 31. As of that same date, no objections to the Settlement had been received. *Id.*; Joint Decl. ¶ 67.

2. The Settlement Should Be Approved as Fair, Adequate and Reasonable.

In deciding whether to approve the Settlement, the Court will analyze whether it is "fair, adequate, reasonable, and not the product of collusion." *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *see also Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984). A settlement is fair, reasonable and adequate when "the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *In re Lorazepam & Clorazepate Antitrust Litig*., MDL No. 1290, 2003 WL 22037741, at *2 (D.D.C. June 16, 2003) (quoting *Manual for Complex Litigation (Third)* § 30.42 (1995)). Importantly, the Court is "not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial." *In re Mexico Money Transfer Litig*., 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted).

The Eleventh Circuit has identified six factors to be considered in analyzing the fairness, reasonableness and adequacy of a class settlement under Rule 23(e):

(1) the existence of fraud or collusion behind the settlement;

(2) the complexity, expense, and likely duration of the litigation;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the probability of the plaintiffs' success on the merits;

(5) the range of possible recovery; and

(6) the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Leverso, 18 F.3d at 1530 n.6; *see also Bennett*, 737 F.2d at 986. Additionally, effective December 1, 2018, Rule 23(e) was amended to add a mandatory, but not exhaustive, list of similar final approval factors:

(A) the class representatives 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.

Fed. R. Civ. P. 23(e)(2). The analysis set forth below shows this Settlement to be eminently fair, adequate and reasonable.

a. There Was No Fraud or Collusion and the Settlement Was Negotiated at Arm's Length.

This Court well knows the vigor with which the Parties litigated until they reached the

Settlement. The sharply contested nature of the proceedings in this Action demonstrates the absence of fraud or collusion behind the Settlement. *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1329 n.3 (S.D. Fla. 2001); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (court had "no doubt that this case has been adversarial, featuring a high level of contention between the parties"); *In re Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1338 (N.D. Ga. 2000) ("This was not a quick settlement, and there is no suggestion of collusion"); *Warren v. City of Tampa*, 693 F. Supp. 1051, 1055 (M.D. Fla. 1988) (record disclosed no evidence of collusion, but to the contrary showed "that the parties conducted discovery and negotiated the terms of settlement for an extended period of time"), *aff'd*, 893 F.2d 347 (11th Cir. 1989).

Settlement Class Counsel negotiated the Settlement with similar vigor. Plaintiffs and the Settlement Class were represented by experienced counsel throughout the negotiations. Settlement Class Counsel and PNC engaged in arm's-length negotiations. Joint Decl. ¶¶ 25-27. *Cotton v. Hinton*, 559 F. 2d 1326, 1330 (5th Cir. 1977) (a class action settlement should be approved so long as the Court finds that it is "fair, adequate and reasonable and is not the product of collusion between the parties."). *See also Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1318-19 (S.D. Fla. 2005) (approving class settlement where the "benefits conferred on the Class are substantial, and are the result of informed, arms-length negotiations by experienced Class Counsel"). Thus, Rule 23(e)(2)(B) is satisfied.

b. The Settlement Will Avert Years of Highly Complex and Expensive Litigation.

The claims and defenses are complex; litigating them is both difficult and time-consuming. Joint Decl. ¶¶ 58, 66; Fitzpatrick Decl. ¶¶ 12-15. Although this Action was litigated for over eight years before the Parties resolved it, recovery by any means other than settlement would require

additional years of litigation. *Id.*; *see United States v. Glens Falls Newspapers, Inc.*, 160 F. 3d 853, 856 (2d Cir. 1998) (noting that "a principal function of a trial judge is to foster an atmosphere of open discussion among the parties' attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial."); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 317, 325-26 & n.32 (N.D. Ga. 1993) ("[A]djudication of the claims of two million claimants could last half a millennium").

In contrast, the Settlement provides immediate and substantial benefits to approximately 150,000 members of the Settlement Class, all of whom were RBC customers. Joint Decl. ¶ 58. As stated in *In re Shell Oil Refinery*, 155 F.R.D. 552 (E.D. La. 1993):

> The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush."

Id. at 560 (alterations in original) (quoting *Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 624 (D. Colo. 1974)); *see also In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (noting that complex litigation "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive"). Particularly because the "demand for time on the existing judicial system must be evaluated in determining the reasonableness of the settlement," *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (citation omitted), there can be no doubt about the adequacy of the present Settlement under Rule 23(e)(2)(C), which provides reasonable benefits to the Settlement Class.

c. The Factual Record Is Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment.

Courts also consider "the degree of case development that class counsel have accomplished prior to settlement" to ensure that "counsel had an adequate appreciation of the merits of the case

before negotiating." *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995). At the same time, "[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations." *Ressler*, 822 F. Supp. at 1555.

Settlement Class Counsel negotiated the Settlement with the benefit of significant litigation before this Court and the Eleventh Circuit involving RBC (and other banks in MDL 2036), including a damage analysis by Settlement Class Counsel's expert based on RBC customer data. Joint Decl. ¶¶ 25, 31, 59; Declaration of Arthur Olsen ¶¶ 11-28 attached as Exhibit E ("Olsen Decl."). Settlement Class Counsel's analysis and understanding of the various legal obstacles, as well as the damage analysis, positioned them to evaluate with confidence the strengths and weaknesses of Plaintiffs' claims and defenses through the conclusion of the litigation, as well as the range and amount of damages that were potentially recoverable if the Action successfully proceeded to judgment on a class-wide basis. Joint Decl. ¶¶ 59-66; Fitzpatrick Decl. ¶¶ 12-15. "Information obtained from other cases may be used to assist in evaluating the merits of a proposed settlement of a different case." *Lipuma*, 406 F. Supp. 2d at 1325.

d. Plaintiffs Faced Significant Obstacles to Prevailing.

The "likelihood and extent of any recovery from the defendants absent . . . settlement" is another important factor in assessing the reasonableness of a settlement. *Domestic Air*, 148 F.R.D. at 314; *see also Ressler*, 822 F. Supp. at 1555 ("A Court is to consider the likelihood of the plaintiff's success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise."). According to Professor Fitzpatrick: "[I]t was not at all clear that the plaintiffs would have won their cases on the merits." Fitzpatrick Decl. ¶¶ 12-15.

Settlement Class Counsel believe that Plaintiffs had a solid case against RBC. Joint Decl.

¶ 60. Even so, we are mindful that RBC advanced significant defenses that would have been required to overcome in the absence of the Settlement. *Id*. at ¶¶ 60-61; Fitzpatrick Decl. ¶¶ 12-15. This Action involved several major litigation risks. Joint Decl. ¶ 60; Fitzpatrick Decl. ¶¶ 12-13. As this Court recognized in granting final approval to the settlement with Bank of America: "The combined risks here were real and potentially catastrophic . . . [B]ut for the Settlement, Plaintiffs and the class faced a multitude of potentially serious, substantive defenses, any one of which could have precluded or drastically reduced the prospects of recovery." *In re Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330, 1347-48 (S.D. Fla. 2011).

Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. Joint Decl. ¶ 61; Fitzpatrick Decl. ¶ 14. The uncertainties and delays from this process would have been significant. *Id.*

Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the Settlement cannot be seen as anything except a fair compromise. *See, e.g.*, *Bennett v. Behring Corp*., 96 F.R.D. 343, 349-50 (S.D. Fla. 1982), *aff'd*, 737 F.2d 982 (11th Cir. 1984) (plaintiffs faced a "myriad of factual and legal problems" creating "great uncertainty as to the fact and amount of damage," making it "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial"). All of this evidences that Rule 23(e)(2)(C)(i) is satisfied.

e. The Benefits Provided by the Settlement Are Fair, Adequate and Reasonable Compared to the Range of Possible Recovery.

In determining whether a settlement is fair given the potential range of recovery, the Court should be guided by "the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *Behrens v. Wometco Enters., Inc*., 118 F.R.D. 534, 542 (S.D. Fla. 1988) (King, J.), *aff'd*, 899 F.2d 21 (11th Cir. 1990). Indeed, "[a]

settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Id*. This is because a settlement must be evaluated "in light of the attendant risks with litigation." *Thompson v. Metropolitan Life Ins. Co*., 216 F.R.D. 55, 64 (S.D.N.Y. 2003); *see also Bennett*, 737 F.2d at 986 ("[C]ompromise is the essence of settlement."). Thus, courts regularly find settlements to be fair where "[p]laintiffs have not received the optimal relief." *Warren*, 693 F. Supp. at 1059; *see, e.g., Great Neck Capital Appreciation Investment P'ship, L.P. v. PriceWaterHouseCoopers, L.L.P*., 212 F.R.D. 400, 409-10 (E.D. Wis. 2002) ("The mere possibility that the class might receive more if the case were fully litigated is not a good reason for disapproving the settlement.").

Settlement Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them, as a result of their litigation and settlement of similar claims reached within MDL 2036. Joint Decl. ¶ 50. Settlement Class Counsel also gained further insight into the practical and legal issues they would have continued to face litigating these claims against RBC based, in part, on similar claims challenging Wells Fargo's high-to-low posting practices prosecuted in *Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (N.D. Cal. 2010)[4] Joint Decl. ¶ 51.

Settlement Class Counsel's damage expert's analysis of RBC's available electronic transactional data showed that the most favorable outcome Plaintiffs and the Settlement Class could have anticipated recovering at trial was $33,153,673.91 during the Class Period, although alternative sort orders could have resulted in a recovery of a much lower amount. Olsen Decl. ¶¶

[4] On remand, the District Court again entered judgment for $203 million in favor of the class based on provisions of the California consumer fraud statute – a claim not available here since the Bank did not operate branches in California. In 2014, in an unpublished opinion, the Ninth Circuit affirmed the reinstated judgment.

27, 33. Through this Settlement, Plaintiffs and the Settlement Class have achieved a recovery of approximately twenty-three percent (23%) of the most favorable damage recovery, without further risks or delays. Joint Decl. ¶ 55; Fitzpatrick Decl. ¶ 11. This Settlement provides an extremely fair and reasonable recovery to the Settlement Class in light of RBC's defenses, as well as the challenging, unpredictable path of litigation that Plaintiffs would otherwise have continued to face in the trial and appellate courts. Joint Decl. ¶ 63; Fitzpatrick Decl. ¶¶ 12-13. The automatic *pro rata* distribution process further supports Final Approval; eligible Settlement Class Members will receive their cash benefits automatically, without needing to fill out any claim forms – or indeed to take any affirmative steps whatsoever. Joint Decl. ¶ 64; Fitzpatrick Decl. ¶ 16. This satisfies Rule 23(e)(2)(C)(ii) and Rule 23(e)(2)(D).

The $7,500,000 cash recovery is fair and reasonable given the obstacles confronted and the complexity of the Action, and the significant barriers that stood between the pre-settlement status of the Action and final judgment, including rulings on class certification, summary judgment, trial, and post-trial appeals. Joint Decl. ¶¶ 63; Fitzpatrick Decl. ¶¶ 12-15. Taking these risks into account, the Settlement "is not only fair, adequate and reasonable, but, frankly, very impressive as well." Fitzpatrick Decl. ¶ 17. RBC's agreement to pay the fees, costs and expenses of the Notice Administrator and Settlement Administrator further enhances the recovery. Joint Decl. ¶ 56; Fitzpatrick Decl. ¶ 21 n. 28. Given the extraordinary obstacles that Plaintiffs faced in the litigation, this recovery is an excellent achievement by any objective measure. Thus, Rule 23(e)(2)(C) is met.

f. The Opinions of Settlement Class Counsel and Absent Class Members Favor Approval of the Settlement.

Settlement Class Counsel fully endorse the Settlement with RBC. Joint Decl. ¶¶ 65-66. The Court should give "great weight to the recommendations of counsel for the parties, given their

considerable experience in this type of litigation." *Warren*, 693 F. Supp. at 1060; *see also Domestic Air*, 148 F.R.D. at 312-13 ("In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties' experienced counsel. '[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'") (citations omitted).

To date, there has been virtually no opposition to the Settlement. As of February 21, 2020, no members of the Settlement Class had requested to be excluded from the Settlement Class. Azari Decl. ¶ 31; Joint Decl. ¶ 67. Moreover, as of that date, no objections to the Settlement had been received. Azari Decl. ¶ 31; Joint Decl. ¶ 67. This is another indication that the Settlement Class is satisfied with the Settlement. It is settled that "[a] small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement's fairness and reasonableness." *Association for Disabled Americans v. Amoco Oil Co*., 211 F.R.D. 457, 467 (S.D. Fla. 2002); *also Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) ("In evaluating the fairness of a class action settlement, such overwhelming support by class members is strong circumstantial evidence supporting the fairness of the Settlement."); *Austin v. Pennsylvania Dept. of Corrections*, 876 F. Supp. 1437, 1458 (E.D. Pa. 1995) ("Because class members are presumed to know what is in their best interest, the reaction of the class to the Settlement Agreement is an important factor for the court to consider.").

3. The Court Should Certify the Settlement Class.

This Court found the requirements of Rule 23(a) and 23(b)(3) satisfied in this Action in granting Preliminary Approval to the Settlement (DE # 4425), and in granting final approval to settlements reached in numerous other actions in MDL 2036. *See, e.g.*, DE # 2150 (Bank of America); DE # 3134 (JPMorgan Chase Bank); DE # 3331 (Citizens Financial); DE # 3580 (PNC

Bank); DE # 3753 (U.S. Bank); and DE # 4168 (Capital One). The Court should make the same class certification findings in granting Final Approval.

Based on the foregoing, the Settlement is fair, adequate and reasonable, and merits Final Approval.

III. APPLICATION FOR SERVICE AWARDS

Pursuant to the Settlement, Class Counsel request, and PNC does not oppose, a Service Award in the amount of $10,000.00 for the Class Representative identified in paragraph 24 of the Agreement. Agreement ¶ 104; Joint Decl. ¶ 69. Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." *David v. American Suzuki Motor Corp.*, 2010 WL 1628362, at *6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *See, e.g., Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding class representatives $300,000 each, explaining that "the magnitude of the relief the Class Representatives obtained on behalf of the class warrants a substantial incentive award."); *Spicer v. Chicago Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from $5,000 to $100,000, and awarding $10,000 to each named plaintiff).

The relevant factors include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation. *See, e.g.*,

Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998).

The above factors, as applied to this Action, demonstrate the reasonableness of the requested Service Award to the Class Representative. Joint Decl. ¶ 72; *see, e.g., Checking Account Overdraft*, 830 F. Supp. 2d at 1357-58 ("The Court notes that the class representatives expended time and effort in meeting their fiduciary obligations to the Class, and deserve to be compensated for it."). The Class Representative's substantial assistance enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including (1) submitting to interviews with Class Counsel, (2) locating and forwarding responsive documents and information (i.e., monthly account statements and account agreements), and (3) preparing for and testifying at a deposition taken by RBC's counsel. In so doing, the Class Representative was integral to forming the theory of the case. Joint Decl. ¶ 72. He remained committed to the prosecution of the Action notwithstanding multiple interlocutory appeals.

The Class Representative not only devoted time and effort to the litigation, but the end result of his efforts, coupled with those of Class Counsel, provided a substantial benefit to the Settlement Class. Joint Decl. ¶ 72. If the Court approves it, the total Service Award will be $10,000. This amount is less than 0.0013% of the Settlement Fund, a ratio that falls well below the range of what has been deemed to be reasonable. *Id.* at ¶ 73; s*ee, e.g*., *Enter. Energy Corp. v. Columbia Gas Transmission*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving service awards totaling $300,000, or 0.56% of a $56.6 million settlement). The Service Awards requested here are reasonable and should be approved.

IV. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

As indicated in the Agreement and the Notice, and consistent with standard class action practice and procedure, Class Counsel respectfully request attorneys' fees equal to thirty-five

percent (35%) of the $7,500,000 Settlement Fund created through our efforts. Agreement ¶ 101; Joint Decl. ¶ 74. Class Counsel also request reimbursement of limited out-of-pocket costs and expenses totaling $92,899.19 incurred in connection with the prosecution of the Action and in connection with the Settlement. *Id*. Settlement Class Counsel and PNC negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement. Agreement ¶ 104; Joint Decl. ¶ 74. The thirty-five percent (35%) fee request is within the range of reason under the factors listed by the Eleventh Circuit in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). Fitzpatrick Decl. ¶ 21. For the reasons detailed herein, the requested fee is appropriate, fair and reasonable and should be approved in accordance with Rule 23(e)(2)(C)(iii).

A. The Law Awards Class Counsel Fees From the Common Fund Created Through Their Efforts.

It is well established that when a representative party has conferred a substantial benefit upon a class, counsel is entitled to attorneys' fees based upon the benefit obtained. *Camden I*, 946 F.2d at 771; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The common benefit doctrine is an exception to the general rule that each party must bear its own litigation costs. The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig*., 727 F. Supp. 1201, 1202 (N.D. Ill. 1989) (citation omitted). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478. As a result, the Supreme Court, the Eleventh Circuit, and courts in this District have all recognized that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable

attorney's fee from the fund as whole." *Sunbeam*, 176 F. Supp. 2d at 1333 (citing *Van Gemert*, 444 U.S. at 478); *see also Camden I*, 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval."). Courts have also recognized that appropriate fee awards in cases such as this encourage redress for wrongs caused to entire classes of persons and deter future misconduct of a similar nature. *See, e.g.*, *Mashburn*, 684 F. Supp. at 687; *see also Deposit Guar. Nat'l Bank v. Rope*, 445 U.S. 326, 338-39 (1980). Adequate compensation promotes the availability of counsel for aggrieved persons:

> If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear . . . . We as members of the judiciary must be ever watchful to avoid being isolated from the experience of those who are actively engaged in the practice of law. It is difficult to evaluate the effort it takes to successfully and ethically prosecute a large plaintiffs' class action suit. It is an experience in which few of us have participated. The dimensions of the undertaking are awesome.

Muehler v. Land O'Lakes, Inc., 617 F. Supp. 1370, 1375-76 (D. Minn. 1985).

In the Eleventh Circuit, class counsel receives a percentage of the funds obtained through a settlement. In *Camden I* – the controlling authority regarding attorneys' fees in common-fund class actions – the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774. This Court has applied the percentage of the fund approach in MDL 2036, holding:

> The Eleventh Circuit made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions. *Camden I*, 946 F.2d at 774. Even before *Camden I*, courts in this Circuit recognized that "a percentage of the gross recovery is the only sensible method of awarding fees in common fund cases." *Mashburn v. Nat'l Healthcare, Inc*., 684 F. Supp. 660, 670 (M.D. Ala. 1988). More importantly, the Court observed first-hand the

> monumental effort exerted by Class Counsel in this case, and does not need to see timesheets to know how much work Class Counsel have put in to reach this point.

Checking Account Overdraft, 830 F. Supp. 2d at 1362.

The Court has substantial discretion in determining the appropriate fee percentage. "There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774). Nonetheless, "[t]he majority of common fund fee awards fall between 20 percent to 30 percent of the fund" – though "an upper limit of 50 percent of the fund may be stated as a general rule." *Id*. (quoting *Camden I*, 946 F.2d at 774-75); *see also Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999), *cert. denied*, 530 U.S. 1289 (2000) (approving fee award where the district court determined that the benchmark should be 30 percent and then adjusted the fee award higher in view of the circumstances of the case).

Class Counsel's fee request falls within this accepted range and, as Professor Fitzpatrick points out, over 40% of the Eleventh Circuit percentage method fee awards analyzed in his study included fee awards between 30% and 35%. Fitzpatrick Decl. ¶ 25. As Professor Fitzpatrick opines, analysis of the relevant factors and circumstances justify fee request in this case. *Id*. at ¶¶ 22-32.

B. Application of the *Camden I* Factors Supports the Requested Fee.

The Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award as an attorney's fee to class counsel in class actions:

(1) the time and labor required;

(2) the novelty and difficulty of the relevant questions;

(3) the skill required to properly carry out the legal services;

(4) the preclusion of other employment by the attorney as a result of his acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) time limitations imposed by the clients or the circumstances;

(8) the results obtained, including the amount recovered for the clients;

(9) the experience, reputation, and ability of the attorneys;

(10) the "undesirability" of the case;

(11) the nature and the length of the professional relationship with the clients; and

(12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

These twelve factors are guidelines and are not exclusive. "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). In addition, the Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Camden I*, 946 F.2d at 775. As applied here, the *Camden I* factors demonstrate that the Court should approve the requested fee. Fitzpatrick Decl. ¶¶ 20-25.

1. The Claims Against RBC Required Substantial Time and Labor.

Prosecuting and settling these claims demanded considerable time and labor, making this fee request reasonable. Joint Decl. ¶¶ 76-81; Fitzpatrick Decl. ¶ 26.

Throughout the pendency of the Action, the organization of Class Counsel ensured that we were engaged in coordinated, productive work to maximize efficiency and minimize duplication of effort. Joint Decl. ¶ 76. Class Counsel devoted substantial time to investigating the claims against RBC. *Id.* at ¶ 77. Class Counsel interviewed numerous RBC customers and potential plaintiffs to gather information about the Bank's conduct, at the time the lawsuit was filed and in the past, to determine the effect that its conduct had on consumers. *Id.* This information was essential to Class Counsel's ability to understand the nature of RBC's conduct, the language of the Account agreements at issue, and potential remedies. *Id.* Class Counsel also expended significant resources researching and developing the legal claims at issue. *Id.*

Class Counsel expended significant resources researching and developing the legal theories and arguments presented in our pleadings and motions, and in opposition to RBC's motions and briefs, before this Court and the Eleventh Circuit. Joint Decl. ¶ 78. Substantial time and resources were also dedicated to conducting formal discovery, that included review of over 145,000 pages of documents and electronic data as well as taking and defending eight depositions and preparing and arguing the motion for class certification, as well as three appeals before the Eleventh Circuit. *Id*. at ¶ 79.

Settlement negotiations consumed additional time and resources. Joint Decl. ¶ 80. As noted previously, initial settlement discussions began in 2018 and Settlement Class Counsel and PNC participated in a settlement conference in late January 2019. *Id.* On that date, they reached an agreement in principle concerning the material provisions of the Settlement. *Id*. Ultimately, on February 5, 2019, Settlement Class Counsel and PNC reached an agreement in principle and executed a Summary Agreement that memorialized the material terms of the Settlement. Soon thereafter, they filed a joint notice of settlement requesting a suspension of all deadlines pending

the drafting and execution of the Agreement. *Id.* Months of detailed discussions and negotiations ensued, ultimately resulting in the drafting and execution of the Agreement. *Id.*

All told, Class Counsel's coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement before the Court. Joint Decl. ¶ 81. The time and resources Class Counsel devoted to prosecuting and settling this Action readily justify the fee that we now request. "For all these reasons, I believe the fee award requested here is well within the range of reason. Class counsel undertook an incredibly risky and undesirable case, and through their diligence, perseverance, and skill, obtained an outstanding result for the settlement class. Class counsel should be commended for such an excellent result and should be compensated in accord with their request because it is warranted and reasonable given similar fee awards." *See* Fitzpatrick Decl. ¶ 32.

As Professor Fitzpatrick notes, this particular case was litigated longer than almost any other case in MDL 2036 (over 8 years), well beyond the average time to resolve a consumer class action. *See* Fitzpatrick Decl. ¶ 26. These factors support the increased fee request. *Id*.

2. The Issues Involved Were Novel and Difficult, and Required the Skill of Highly Talented Attorneys.

The Court regularly witnessed and commented upon the high quality of our legal work, which conferred a substantial benefit on the Settlement Class in the face of significant litigation obstacles. Joint Decl. ¶¶ 82-85. Our work required the acquisition and analysis of a substantial amount of factual and legal information. *Id*. The management of this very large MDL, including the Action against RBC, also presented challenges most law firms are simply not able to meet. *Id*.

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel highly trained in class action law and procedure as well as the specialized issues

presented here, including the impact of evolving arbitration jurisprudence on consumer class actions. Class Counsel possess these attributes, and their participation added value to the representation of this large Settlement Class. Joint Decl. ¶ 83. The record demonstrates that the Action involved a broad range of complex and novel challenges, which Class Counsel met at every juncture. *Id.* at ¶ 84.

Consideration of the novelty and difficulty of the questions involved and the 'undesirability" of the case factors further support the increased fee request in this case. *See* Fitzpatrick Decl. ¶ 27. "To put it succinctly, this was no ordinary class action. Indeed, I believe this case was more risky and less desirable than most class actions, including many in this MDL." *Id*.

In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel. *See Camden I*, 946 F.2d at 772 n.3; *Ressler*, 149 F.R.D. at 654. Throughout the litigation, PNC was represented by extremely capable counsel. They were worthy, highly competent adversaries. Joint Decl. ¶ 85; *see also Checking Account Overdraft*, 830 F. Supp. 2d at 1348 (finding "Class Counsel confronted not merely a single large bank, but the combined forces of a substantial portion of the entire American banking industry, and with them a large contingent of some of the largest and most sophisticated law firms in the country.") (internal quotation marks and citation omitted); *Walco Invs. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (stating that "[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results").

3. Class Counsel Achieved a Successful Result.

Given the significant litigation risks we faced, the Settlement represents a successful result. Fitzpatrick Decl. ¶¶ 17, 27. Rather than facing more years of costly and uncertain litigation, the

overwhelming majority of Settlement Class Members will receive an immediate cash benefit. Joint Decl. ¶ 86. The Settlement Fund will not be reduced by the substantial fees and costs of Notice or Settlement administration; such fees and expenses have been and will continue to be borne separately by PNC. *Id*. Moreover, payments to eligible Settlement Class Members will be forthcoming automatically, through direct deposit for Current Account Holders and checks for Past Account Holders. *Id*.

4. The Claims Presented Serious Risk.

The Settlement is particularly noteworthy given the combined litigation risks. Joint Decl. ¶¶ 87-88; Fitzpatrick Decl. ¶ 24. RBC raised substantial defenses. Success under these circumstances represents a genuine milestone.

Consideration of the "litigation risks" factor under *Camden I* "recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'" *Sunbeam*, 176 F. Supp. 2d at 1336.

Further, "[t]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them." *Skelton v. General Motors Corp*., 860 F.2d 250, 258 (7th Cir. 1988). "Undesirability" and relevant risks must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit – not retroactively, with the benefit of hindsight. *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp*., 540 F.2d 102, 112 (3d Cir. 1976); *Walco*, 975 F. Supp. at 1473.

Prosecuting the Action was risky from the outset. Joint Decl. ¶ 87; Fitzpatrick Decl. ¶ 27 ("[T]his case was more risky and less desirable than most class actions."). Given these risks, the

$7,500,000 cash recovery obtained through the Settlement is outstanding, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of Settlement. These risks could easily have impeded, if not altogether derailed, Plaintiffs' and the Settlement Class's successful prosecution of these claims at trial and in an eventual appeal.

The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs and the Settlement Class through continued litigation could only have been achieved if: (i) the Court granted Plaintiffs' pending motion for class certification and the Eleventh Circuit did not reverse it; (ii) Plaintiffs and the certified class defeated summary judgment; (iii) Plaintiffs and the certified class established liability and recovered damages at trial; and (iv) the final judgment was affirmed on appeal. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of RBC's merits defenses, and the challenging and unpredictable path of litigation Plaintiffs would have faced absent the Settlement. Joint Decl. ¶¶ 57, 66; Fitzpatrick Decl. ¶¶ 12-14.

5. Class Counsel Assumed Considerable Risk to Pursue This Action on a Pure Contingency Basis.

In undertaking to prosecute this complex case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. Joint Decl. ¶ 89; Fitzpatrick Decl. ¶ 27. That risk warrants an appropriate fee. Indeed, "[a] contingency fee arrangement often justifies an increase in the award of attorney's fees." *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens*, 118 F.R.D. at 548); *see also In re Continental Ill. Sec. Litig*., 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent-fee basis, plaintiffs' counsel must be adequately compensated for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 ("Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award.").

Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee. Joint Decl. ¶ 90. In the Court's words:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer. . . . A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548.

The progress of the Action shows the inherent risk faced by Class Counsel in accepting and prosecuting the Action on a contingency fee basis. Despite Class Counsel's effort in litigating this Action for more than eight years, we remain completely uncompensated for the time invested in the Action, in addition to the substantial expenses we advanced. Joint Decl. ¶ 91. There can be no dispute that this case entailed substantial risk of nonpayment for Class Counsel. Fitzpatrick Decl. ¶ 27.

6. The Requested Fee Comports With Fee Awards in Similar Cases.

The fee sought here is within the range of fees typically awarded in similar cases. Joint Decl. ¶ 92; Fitzpatrick Decl. ¶¶ 21, 32. Numerous decisions within and outside of the Eleventh Circuit have found that a 35% fee is within the range of reason under the factors listed by the *Camden I*. *See* Fitzpatrick Decl. ¶ 21.

As another member of this Court observed: "[F]ederal district courts across the country have, in the class action settlement context, *routinely* awarded class counsel fees in excess of the

25 percent 'benchmark,' even in so-called 'mega-fund' cases."[5] *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (emphasis added) (awarding fees equaling 31⅓ percent of settlement fund); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999) (35.1 percent)); *see also Gaskill v. Gordon*, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998) (finding that 33 percent is the norm, and awarding 38 percent of settlement fund); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (36 percent); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (33.8 percent); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (45 percent); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480 F. Supp. 1195, 1199 (S.D.N.Y. 1979), *aff'd*, 622 F.2d 1106 (2d Cir. 1980) (approximately 53 percent); *Zinman v. Avemco Corp.*, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (Higginbotham, J.) (50 percent).

Class Counsel's fee request falls within the range of the private marketplace, where contingency fee arrangements often approach or equal forty percent of any recovery. *See Continental*, 962 F.2d at 572 ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."); *RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94, 268 (S.D.N.Y. 1992) ("[W]hat should govern [fee] awards is . . . what the market pays in similar cases"). And, "[i]n tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery." *Blum v. Stenson*, 465 U.S. 886, 904 (1984) (Brennan, J., concurring); *see also Kirchoff v. Flynn*, 786 F.2d 320, 323, 325 n.5 (7th Cir. 1986) (noting "40 percent is the customary fee in tort litigation"); *In re Public Serv. Co. of*

[5] *See also* 1 *Court Awarded Attorney Fees*, ¶ 2.06[3], at 2-88 (Matthew Bender 2010) (noting that, "when appropriate circumstances have been identified, a court may award a percentage significantly higher" than 25 percent); 4 *Newberg on Class Actions*, § 14:6, at 551 (4th ed. 2002) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

N.M., 1992 WL 278452, at *7 (S.D. Cal. July 28, 1992) ("If this were a non-representative litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery.").

The record here leaves no doubt that Class Counsel's fee request is appropriate and comports with attorneys' fee awards in similar cases. *See* Fitzpatrick Decl. ¶¶ 24-25. Professor Fitzpatrick distilled several major empirical studies of attorneys' fees, including his own, awarded in connection with class action settlements. *Id*. at ¶ 25. He concluded that the empirical data from those studies supports the reasonableness of a 35% fee award in this case. *Id.*

Class Counsel's fee request also falls within the range of awards in numerous other cases within this Circuit and elsewhere. *See* Fitzpatrick Decl. ¶ 21; *see also, e.g.*, *Waters*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33⅓ percent on settlement of $40 million even though most of the fund ultimately reverted to the defendant); *Swift v. BancorpSouth Bank*, No. 1:10-cv-00090-GRJ, 2016 U.S. Dist. LEXIS 196328, at *41 (N.D. Fla. July 15, 2016) (35% of $24 million settlement of high-to-low overdraft fee claims following remand from MDL 2036); *Gutter v. E.I. Dupont De Nemours & Co*., 95-2152-CIV-Gold (S.D. Fla. May 30, 2003) (33⅓ percent of $77.5 million settlement); *Sands Point Partners, LP v. Pediatrix Med. Group, Inc*., 2002 U.S. Dist. LEXIS 25721 (S.D. Fla. 2002) (30 percent of $12 million settlement); *In re CHS Elecs., Inc. Sec. Litig*., 99-8186-CIV-Gold (S.D. Fla. 2002) (30 percent on settlement of over $11 million); *Ehrenreich v. Sensormatic Elecs. Corp*., 95-6637-CIV-Zloch (S.D. Fla. 1998) (30 percent on settlement of over $44 million); *Tapken v. Brown*, 90-0691-CIV-Marcus (S.D. Fla. 1995) (33 percent of $10 million settlement).[6]

[6] *See also In re Friedman's, Inc. Sec. Litig*., 2009 WL 1456698 (N.D. Ga. May 22, 2009) (30 percent); *Francisco v. Numismatic Guar. Corp. of Am*., 2008 WL 649124 (S.D. Fla. 2008) (30 percent); *Pinto v. Princess Cruise Lines, Ltd*., 513 F. Supp. 2d 1334 (S.D. Fla. 2007) (30 percent);

7. The Remaining *Camden I* Factors Counsel in Favor of the Requested Fee.

The remaining *Camden I* factors likewise support granting Class Counsel's fee request. "[C]lass counsel count among their number some of the most experienced and highly regarded lawyers in the United States. These are not mere 'benchmark' lawyers. Indeed, had class counsel not been so talented, I doubt the class would have received the compensation that is provided in this settlement." *See* Fitzpatrick Decl. ¶ 28. Moreover, without adequate compensation and financial reward, cases such as this simply could not be pursued. The Court previously held that, "given the positive societal benefits to be gained from lawyers' willingness to undertake difficult and risky, yet important, work like this, such decisions must be properly incentivized." *Checking Account Overdraft*, 830 F. Supp. 2d at 1364.

In sum, the record before the Court amply justifies the increased fee request in his case. *See* Fitzpatrick Decl. ¶¶ 21-32.

8. The Expense Request Is Appropriate.

Class Counsel also request reimbursement for a total of $92,899.19 in limited litigation costs and expenses. Joint Decl. ¶ 94; *see Mills v. Electric Auto-Lite Co*., 396 U.S. 375, 391-92 (1970). This sum corresponds to certain limited actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution of the Action and the Settlement. Joint Decl. ¶ 94. Specifically, these costs and expenses consist of: (1) $83,800.00 in fees and expenses incurred for experts, principally Arthur Olsen, whose services were critical in

---

In re BellSouth Corp. Sec. Litig., Civil Action No. 1:02-cv-2142-WSD (N.D. Ga. Apr. 9, 2007) (30 percent); *In re Cryolife, Inc. Sec. Litig*., Civil Action No. 1:02-cv-1868-BBM (N.D. Ga. Nov. 9, 2005) (30 percent); *In re Profit Recovery Group Int'l, Inc. Sec. Litig*., Civil Action No. 1:00-cv-1416-CC (N.D. Ga. May 26, 2005) (33⅓ percent plus interest and expenses); *In re Clarus Corp. Sec. Litig*., Civil Action No. 1:00-CV-2841-CAP (N.D. Ga. Jan. 6, 2005) (33⅓ percent); *In re Pediatric Servs. of Am., Inc. Sec. Litig*., Civil Action No. 1:99-CV-0670-RLV (N.D. Ga. Mar. 15, 2002) (33⅓ percent); *Ressler v. Jacobson*, 149 F.R.D. 651 (M.D. Fla. 1992) (30 percent).

determining the damages for the Settlement Class, in identifying members of the Settlement Class, and in allocating the Settlement Fund; (2) $8,229.69 in court reporter fees and transcripts associated with depositions and hearings in the Action; and (3) $869.50 associated with the printing of briefs for the United States Supreme Court.[7] *Id.* These out-of-pocket expenses were reasonably and necessarily incurred and paid in furtherance of the prosecution of this Action. *Id.*

V. CONCLUSION

The Settlement with PNC securing $7,500,000 in cash compensation for the benefit of the Settlement Class represents an excellent result given the obstacles confronted in this Action. The Settlement more than satisfies the fairness, reasonableness and adequacy standard of Rule 23(e)(2), as well as the class certification requirements of Rules 23(a) and (b)(3). Further, Class Counsel's application for fees and expenses is reasonable under all the circumstances. The request satisfies the guidelines of *Camden I* given the results achieved, the notable litigation risks, the extremely complicated nature of the factual and legal issues, and the time, effort and skill required to litigate claims of this nature to a satisfactory conclusion.

Accordingly, Plaintiffs and Class Counsel respectfully request that this Court (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the Settlement Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e); (3) appoint as Class Representative the Plaintiff listed in paragraph 24 of the Agreement; (4) appoint as Class Counsel and Settlement Class Counsel the law firms and attorneys listed in paragraphs 22 and 51 of the Agreement, respectively; (5) approve the requested Service Award for the Class Representative; (6) award Class Counsel attorneys' fees and expenses; and (7) enter Final Judgment dismissing the Action

[7] Class Counsel have limited the categories of expenses for which reimbursement is being sought to those enumerated above and are not seeking reimbursement for thousands of dollars in other expenses that are routinely sought and recovered in common fund class actions. Joint Decl. ¶ 95.

with prejudice.

Dated: February 25, 2020.

Respectfully submitted,

/s/ *Aaron S. Podhurst*
Aaron S. Podhurst, Esquire
Florida Bar No. 063606
apodhurst@podhurst.com
PODHURST ORSECK, P.A.
One Southeast Third Avenue
Suite 2700
Miami, FL 33131
Tel: 305-358-2800

/s/ *Bruce S. Rogow*
Bruce S. Rogow, Esquire
Florida Bar No. 067999
brogow@rogowlaw.com
Bruce S. Rogow, P.A.
100 Northeast Third Avenue
Suite 1000
Fort Lauderdale, FL 33301
Tel: 954-767-8909

/s/ Robert C. Gilbert
Robert C. Gilbert, Esquire
Florida Bar No. 561861
rcg@grossmanroth.com
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Boulevard
Suite 1150
Coral Gables, FL 33134
Tel: 305-384-7269

Settlement Class Counsel

E. Adam Webb, Esquire
Georgia Bar No. 743910
Adam@WebbLLC.com
G. Franklin Lemond, Jr., Esquire
Georgia Bar No. 141315
FLemond@WebbLLC.com
WEBB, KLASE & LEMOND, L.L.C.
1900 The Exchange, S.E., Suite 480
Atlanta, GA 30339
Tel: 770-444-9325

Michael W. Sobol, Esquire
California Bar No. 194857
msobol@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN L.L.P.
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111
Tel: 415-956-1000

Russell W. Budd, Esquire
Texas Bar No. 03312400
rbudd@baronbudd.com
BARON & BUDD, P.C.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219
Tel: 214-521-3605

David S. Stellings, Esquire
New York Bar No. 2635282
dstellings@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN L.L.P.
250 Hudson Street, 8th Floor
New York, NY 10013
Tel: 212-355-9500

Richard Golomb, Esquire
Pennsylvania Bar No. 42845
rgolomb@golombhonik.com
GOLOMB & HONIK, P.C.
1515 Market Street, Suite 1100
Philadelphia, PA 19102
Tel: 215-985-9177

Ted E. Trief, Esquire
New York Bar No. 1476662
ttrief@triefandolk.com
TRIEF & OLK
150 E. 58th Street, 34th Floor
New York, NY 10155
Tel: 212-486-6060

Jeffrey M. Ostrow, Esq.
Florida Bar No. 121452
ostrow@kolawyers.com
Jonathan M. Streisfeld, Esq.
Florida Bar No. 117447
streisfeld@kolawyers.com
KOPELOWITZ OSTROW FERGUSON WEISELBERG GILBERT
One West Las Olas Boulevard, Suite 500
Fort Lauderdale, FL 33301
Tel: 954-525-4100

Darren Kaplan, Esq.
New York Bar No. 2447381
dkaplan@darrenkaplanlaw.com
DARREN KAPLAN LAW FIRM, P.C.
1359 Broadway
Suite 2001
New York, NY 10018
Tel: 212-999-7982

Class Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ *Robert C. Gilbert*
Robert C. Gilbert, Esquire
Florida Bar No. 561861
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Boulevard
Suite 1150
Coral Gables, FL 33134
Tel: 305-384-7269

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into this ____ day of October, 2019, by and among (1) Settlement Class Counsel and Plaintiffs, on behalf of the Settlement Class and (2) PNC Bank, N.A. (" PNC"), successor in interest to RBC Bank (USA) ("RBC"), subject to preliminary and final approval as required by Federal Rule of Civil Procedure 23.[1] As provided herein, PNC, Settlement Class Counsel and Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against RBC in *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK, shall be settled and compromised upon the terms and conditions contained herein.

I. Recitals

1. On July 2, 2010, Plaintiff Michael Dasher filed *Dasher v. RBC Bank USA*, Case No. 1:10-CV-22190-JLK (S.D. Fla.) ("*Dasher*"), a class action complaint, in the United States District Court for the South District of Florida, alleging RBC's improper assessment and collection of overdraft fees and seeking, *inter alia*, monetary damages, restitution, and equitable relief. (*See* Compl., Case No. 10-22190 (S.D. Fla.), ECF No. 1).

2. On July 22, 2010, RBC moved to compel arbitration in *Dasher*. (*See* Mot. to Compel Arbitration, Case No. 10-22190, ECF No. 5). On July 28, 2010, *Dasher* was transferred to MDL 2036 and thereafter assigned to the "Second Tranche" of cases. (*See* MDL Transfer Receipt, ECF

[1] References to the party to this Settlement Agreement will be to PNC, as RBC no longer exists as a corporate entity. References to historical facts alleged in the litigation will be to the particular entity (PNC or RBC) involved. References to proceedings in the litigation will be to RBC, even after it was merged into PNC, because RBC was the named party throughout the litigation and the litigation involved RBC's overdraft fee policies.

No. 730; Joint Report re List of Cases in Second Tranche, ECF No. 1494 (May 18, 2011)). On August 23, 2010, the Court denied RBC's motion to compel arbitration and stay litigation in *Dasher* on the ground that "the arbitration provision has the effect of deterring Plaintiff from bringing his claim and vindicating his rights." (Order Den. Mot. to Compel Arbitration, ECF No. 763, at 7; *In re Checking Account Overdraft Litig.*, 2010 WL 3361127, at *2 (S.D. Fla. Aug. 23, 2010). RBC timely appealed to the Eleventh Circuit. (*See* Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 797).

3. While the *Dasher* appeal was pending, the U.S. Supreme Court issued *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011). The Parties in *Dasher* jointly moved the Eleventh Circuit to vacate the Court's order denying arbitration and remand the case for reconsideration in light of *Concepcion*. The Eleventh Circuit granted the Parties' joint motion and *Dasher* returned to the Court on June 28, 2011. (*See* Order Granting Joint Mot. to Vacate and Remand, ECF No. 1670).

4. On July 9, 2010, Plaintiff Stephanie Avery filed *Avery v. RBC Bank USA*, Case No.10-CVS-11527, ("*Avery*"), a class action complaint, in the General Court of Justice, Superior Court Division, Wake County, North Carolina, alleging RBC's improper assessment and collection of overdraft fees and seeking, *inter alia*, monetary damages, restitution, and equitable relief. On August 12, 2010, *Avery* was removed to the Eastern District of North Carolina under Case No. 5:10-cv-329, and then transferred to the Court. (*See* Notice of Removal, Case No. 10-24382 (S.D. Fla.), ECF No. 1). Avery amended her complaint on August 26, 2010. (*See* Am. Compl., Case No. 10-24382, ECF No. 8). On September 16, 2010, RBC filed its motion to compel arbitration in *Avery*. (Mot. to Compel Arbitration & Mem. in Support, Case No. 10-24382, ECF Nos. 16-17). Further proceedings in *Avery* were stayed pending a ruling by the Judicial Panel on Multidistrict Litigation

on whether the action would be become part of MDL 2036. (Order Granting Mot. to Stay, Case No. 10-24382, ECF No. 21 (Oct. 4, 2010)). On March 3, 2011, *Avery* was transferred to and made part of MDL 2036. (MDL Transfer Receipt, ECF No. 1232).

5. On June 20, 2011, the Court issued an *Omnibus Order* that included *Avery* within its ambit. (*See* Omnibus Order Administratively Closing Member Cases, ECF No. 1640, at 4). That order denied as moot all motions filed under the original case numbers (*see id.* at 5), which terminated RBC's motion to compel arbitration in *Avery*. On September 12, 2011, the Court issued its *Interim Scheduling Order Re Fifth Tranche Actions*, which assigned *Avery* to the Fifth Tranche. (*See* Interim Scheduling Order re Fifth Tranche Actions, ECF No. 1861, at 2). The Scheduling Order set a deadline for banks with actions in the Fifth Tranche to file motions to compel arbitration. (*See id.* at 3).

6. RBC's counsel and Plaintiffs' Coordinating Counsel in MDL 2036 agreed that RBC would file a coordinated motion to compel arbitration in *Dasher* and *Avery*. Thus, when the Court issued its *Interim Scheduling Order re Fifth Tranche Actions* and set the deadline for motions to compel arbitration, counsel agreed that RBC would file a motion to compel arbitration encompassing both *Dasher* and *Avery*, thereby putting both actions on the same procedural track.

7. On October 3, 2011, RBC renewed its motion to compel arbitration and stay litigation in *Dasher* and *Avery*. (Renewed Mot. to Compel Arbitration, ECF No. 1929). Following discovery on arbitrability requested by Plaintiffs' counsel and permitted by the Court (*see* Order Deferring Ruling on Mot. to Compel Arbitration, ECF No. 2191 (Dec. 5, 2011)), Plaintiffs opposed RBC's renewed motion to compel arbitration.

8. On January 11, 2013, the Court issued an order denying RBC's renewed motion to compel arbitration in *Dasher* and *Avery*. (Order Den. Mot. to Compel Arbitration, ECF No. 3162;

In re Checking Account Overdraft Litig., No. 09-2036, 2013 WL 151179 (S.D. Fla. Jan. 11, 2013)). RBC timely appealed that order. (Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 3164).

9. On February 10, 2014, the Eleventh Circuit affirmed the Court's denial of RBC's renewed motion to compel arbitration pursuant to the RBC Agreement. *See Dasher v. RBC Bank (USA)*, 745 F.3d 1111 (11th Cir. 2014). The Eleventh Circuit denied RBC's motion for rehearing. The Eleventh Circuit granted RBC's motion to stay its mandate, pending the filing of a petition for certiorari. On June 20, 2014, RBC filed a petition for writ of certiorari with the U.S. Supreme Court, arguing that arbitration should have been compelled pursuant to the RBC arbitration clause. The Supreme Court denied certiorari on October 6, 2014. On October 20, 2014, the Eleventh Circuit remanded the case to the Court.

10. On November 10, 2014, Plaintiffs filed a Consolidated Amended Complaint ("CAC"). (Consolidated Am. Class Action Compl., ECF No. 4007). On December 5, 2014, RBC moved to compel arbitration of Plaintiff Dasher's amended claims in the CAC pursuant to the arbitration clause in PNC's 2013 amended account agreement. (Mot. to Compel Arbitration of Pl. Dasher's Individual Claims, ECF No. 4017). The Court denied that motion on August 21, 2015. (Order Den. Def's Mot. to Compel Arbitration, ECF No. 4210). RBC timely appealed that order. (Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 4213).

11. On February 5, 2016, while the appeal was pending, the Court denied RBC's motion to dismiss Plaintiff Avery's individual claims. (Def. Mot. to Dismiss Pl. Avery's Individ. Claims, ECF No. 4018; Order Den. Def's Mot. to Dismiss, ECF No. 4284). RBC was not required to file its answer to Plaintiff Avery's individual claims until the Court resolved RBC's motion to dismiss or strike Plaintiff Avery's national class claims for lack of subject matter jurisdiction. (Order Grant. Jt. Mot. to Mod. Deadline to Ans. Pl. Avery's Claims, ECF No. 4286).

12. On July 5, 2016, while the appeal was pending, the Court denied RBC's motion to dismiss or strike Plaintiff Avery's putative national class claims for lack of subject matter jurisdiction. (Def. Mot. to Dismiss or Strike Pl.'s Nat'l Class Claims for Lack of Subj. Matter Juris., ECF No. 4019; Order Den. Mot. to Dismiss or Strike Pl.'s Nat'l Class Claims for Lack of Subj. Matter Juris., ECF No. 4302). That order denied RBC's motion without prejudice to it raising the arguments again at the class certification stage. (ECF No. 4302 at 9). On July 25, 2016, RBC answered Plaintiff Avery's claims and asserted affirmative defenses. (Ans. and Aff. Def. of Def. to Pl. Avery's Claims in CAC, ECF No. 4307).

13. On February 13, 2018, the Eleventh Circuit affirmed the Court's denial of arbitration on the ground that Dasher did not agree to arbitrate. *See Dasher*, 882 F.3d at 1023-24. *Dasher* returned to the Court on March 14, 2018 and thereafter proceeded with *Avery* pursuant to the Court's scheduling orders. (*See* Am. Scheduling Order, ECF No. 4223 (Sept. 22, 2015); Order Cancelling Pretrial Conf. and Modifying Deadlines, ECF No. 4334 (Mar. 22, 2017)). On April 3, 2018, RBC answered Plaintiff Dasher's claims and asserted affirmative defenses. (Ans. and Aff. Def. of Def. to Pl. Michael Dasher's Claims in CAC, ECF No. 4348).

14. On August 31, 2018, Plaintiffs moved for class certification. (ECF No. 4364). On October 10, 2018, RBC filed its opposition to class certification. (ECF No. 4370). On November 9, 2018, Plaintiffs filed their reply in support of class certification. (ECF No. 4371).

15. On December 12, 2018, the Court heard oral argument on the motion for class certification and reserved ruling. The Court directed both sides to submit proposed orders within 30 days following receipt of the hearing transcript.

16. Beginning in 2018, RBC and Settlement Class Counsel initiated preliminary settlement discussions. The settlement discussions resulted in the production of certain

confidential overdraft data by RBC to Settlement Class Counsel.

17. On January 22, 2019, Settlement Class Counsel and RBC participated in a settlement conference. On that date, Settlement Class Counsel and RBC reached an agreement in principle concerning the material provisions of a settlement. On February 5, 2019, Settlement Class Counsel and RBC executed a Summary Agreement memorializing the material terms of the Settlement. On February 8, 2019, Settlement Class Counsel and RBC filed a Joint Notice of Settlement with the Court and requested a suspension of deadlines pending the drafting and execution of a final settlement agreement; the Court granted the request on February 14, 2019. (ECF Nos. 4381, 4382). Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in this Agreement.

18. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class. The Parties intend this Agreement to bind PNC, Plaintiffs and all members of the Settlement Class who do not timely request to be excluded from the Settlement.

NOW, THEREFORE, based on the foregoing recitals and for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

19. "Account" means any consumer checking, demand deposit or savings account maintained by RBC in the United States accessible by a Debit Card, including Accounts which became PNC accounts as a result of RBC's merger with PNC.

20. "Account Holder" means a holder of an Account during the Class Period.

21. "Action" means *In Re: Checking Account Overdraft Litigation*, MDL Case No. 1:09-md-02036-JLK; *Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.*, S.D. Fla. Case No. 1:10-CV-22190-JLK; and any and all other cases pending in MDL 2036 as of the date of Preliminary Approval to the extent they assert claims against RBC or any of its affiliates.

22. "Class Counsel" means:

BARON & BUDD, P.C.
Russell Budd, Esq.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219

GOLOMB & HONIK, P.C.
Richard Golomb, Esq.
1515 Market Street
Suite 1100
Philadelphia, PA 19102

GROSSMAN ROTH YAFFA COHEN, P.A.
Robert C. Gilbert, Esq.
2525 Ponce de Leon
Suite 1150
Miami, FL 33134

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
Michael W. Sobol, Esq.
Embarcadero Center West
275 Battery Street
29th Floor San Francisco, CA 94111-3339

David S. Stellings, Esq.
250 Hudson Street, 8th Floor
New York, NY 10013

PODHURST ORSECK, P.A.
Aaron S. Podhurst, Esq.
One Southeast Third Avenue
Suite 2700
Miami, FL 33131

BRUCE S. ROGOW, P.A.
Bruce S. Rogow, Esq.
100 Northeast Third Avenue
Suite 1000
Fort Lauderdale, FL 33301

TRIEF & OLK
Ted E. Trief, Esq.
150 East 58th Street
34th Floor
New York, NY 10155

WEBB, KLASE & LEMOND, L.L.C.
Edward Adam Webb, Esq.
Franklin G. Lemond, Esq.
1900 The Exchange SE
Suite 480
Atlanta, GA 30339

KOPELOWITZ OSTROW FERGUSON WEISELBERG GILBERT
Jeff Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
One West Las Olas Boulevard
Suite 500
Fort Lauderdale, FL 33301

DARREN KAPLAN LAW FIRM, PC
Darren Kaplan, Esq.
1359 Broadway
New York, NY 10018

and such other counsel as are identified in Class Counsel's request for attorneys' fees, costs, and expenses.

23. "Class Period" means the period from October 10, 2007 through and including March 1, 2012.

24. "Class Representative" means Michael Dasher.

25. "Court" means the United States District Court for the Southern District of Florida, Miami Division.

26. "Current Account Holder" means the holder of an Account, individually or jointly, at any time during the Class Period, who continues to hold an Account, individually or jointly, as of the date that the Net Settlement Fund (as defined in paragraph 88 below) is distributed to Settlement Class Members pursuant to this Agreement.

27. "Debit Card" means a card or similar device issued or provided by RBC, including a debit card, check card, or automated teller machine ("ATM") card, that can be used to debit funds from an Account by Point of Sale and/or ATM transactions.

28. "Debit Card Transaction" means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether by PIN or signature/PIN-less) and ATM transactions. For avoidance of doubt, Debit Card Transaction does not include a debit transaction effectuated by check, by preauthorized transaction, by wire transfer or Automated Clearing House ("ACH") transaction, or a transfer to another account such as a credit card account or line of credit.

29. "Effective Date" means the fifth business day after which all of the following events have occurred:

a. All Parties, PNC's counsel, and Settlement Class Counsel have executed this Agreement;

b. The Court has entered without material change the Final Approval Order; and

c. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

30. "Escrow Account" means the account to be established consistent with the terms

and conditions described in Section X hereof.

31. "Escrow Agent" means Epiq Class Action & Claims Solutions. Settlement Class Counsel and PNC may, by agreement, substitute a different organization as Escrow Agent, subject to approval by the Court if the Court has previously approved the Settlement, preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or PNC may move the Court to substitute a different organization as Escrow Agent, upon a showing that the responsibilities of Escrow Agent have not been adequately executed by the incumbent. The Escrow Agent shall administer the Escrow Account.

32. "Final Approval" means the date that the Court enters an order and judgment granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to the Class Representative. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and PNC. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

33. "Final Approval Order" means the order and final judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

34. "High-to-Low Posting" means RBC's practice of posting an Account's Debit Card Transactions from highest to lowest dollar amount each business day, which is alleged to have resulted in the assessment of Overdraft Fees that would not have been assessed if RBC had used an alternative posting method, *e.g.*, one that posted transactions from lowest to highest.

35. "Notice" means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

"Notice Program" means the methods provided for in this Agreement for giving the Notice and consists of Mailed Notice, Published Notice and Long-Form Notice. The form of the Mailed Notice, Published Notice and Long-Form Notice shall be agreed upon by Settlement Class Counsel and PNC. Additional description of the contemplated Notice Program is provided in Section VIII hereof.

36. "Notice Administrator" means Epiq Class Action & Claims Solutions. Settlement Class Counsel and PNC may, by agreement, substitute a different organization as Notice Administrator, subject to approval by the Court if the Court has previously preliminarily or finally approved the Settlement. In the absence of agreement, either Settlement Class Counsel or PNC may move the Court to substitute a different organization as Notice Administrator, upon a showing that the responsibilities of Notice Administrator have not been adequately executed by the incumbent.

37. "Opt-Out Period" means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 35 days prior to the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice.

38. "Overdraft Fee" means any fee assessed to an Account for items paid when the Account has insufficient funds to cover the item. Fees charged to transfer funds from other accounts are excluded.

39. "Parties" means Plaintiffs and PNC.

40. "Past Account Holder" means the holder of an Account, individually or jointly, who held that Account at some time during the Class Period but no longer holds that Account as of the date that the Net Settlement Fund (as defined in paragraph 88 below) is distributed to Settlement Class Members pursuant to this Agreement.

41. "Plaintiffs" mean Michael Dasher and Stephanie Avery.[2]

42. "Point of Sale" or "POS" transaction means a transaction in which an Account holder uses his or her Debit Card to purchase a product or service.

43. "Preliminary Approval" means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.

44. "PNC" means PNC Bank, National Association, successor in interest to RBC Bank (USA), as a result of a merger transaction that occurred during the Class Period through which PNC Bank, N.A. assumed the pre-merger liabilities of RBC in connection with the Action. PNC is party to this agreement solely in its capacity as successor to RBC. All Debit Card Transactions that underlie the subject matter of this Action occurred pre-merger.

45. "Released Claims" means all claims to be released as specified in Section XIV hereof. The "Releases" means all of the releases contained in Section XIV hereof.

46. "Released Parties" means those persons released as specified in Section XIV hereof.

47. "Releasing Parties" means all Plaintiffs and all Settlement Class Members who do not timely and properly opt out of the Settlement, and each of their respective, executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entireties, agents, attorneys, and all those who claim through them or on their behalf.

[2] "Plaintiffs" expressly excludes Stephanie Avery who, while named as a Plaintiff in the CAC, declined to participate in this Agreement. Ms. Avery is therefore not one of the "Parties" as defined above, but is a member of the "Settlement Class" as defined below.

48. "Settlement" means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.

49. "Settlement Administrator" means Epiq Class Action & Claims Solutions. Settlement Class Counsel and PNC may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously preliminarily or finally approved the Settlement. In the absence of agreement, either Settlement Class Counsel or PNC, may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

50. "Settlement Class" is defined in paragraph 56 hereof.

51. "Settlement Class Counsel" means Aaron S. Podhurst of Podhurst Orseck, P.A.; Bruce S. Rogow of Bruce S. Rogow, P.A.; and Robert C. Gilbert of Grossman Roth Yaffa Cohen, P.A. Settlement Class Counsel are a subset of Class Counsel. Settlement Class Counsel are responsible for handling all Settlement-related matters on behalf of Plaintiffs.

52. "Settlement Class Member" means any person included in the Settlement Class, who does not exclude himself or herself from the Settlement in accordance with the terms of this Agreement and the Preliminary Approval Order.

53. "Settlement Fund" means the fund established under Section X hereof.

54. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for members of the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the order preliminarily approving this Settlement, and such other documents as

Settlement Class Counsel and PNC agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.RBCBankOverdraftSettlement.com or such other URL as Settlement Class Counsel and PNC agree to in writing. The Settlement Website shall not include any advertising and shall not bear or include the PNC or RBC logo or PNC or RBC trademarks. Ownership of the Settlement Website URL shall be transferred to PNC within 10 days of the date on which operation of the Settlement Website ceases.

55. "Tax Administrator" means Epiq Class Action & Claims Solutions. Settlement Class Counsel and PNC may, by agreement, substitute a different organization as Tax Administrator, subject to approval by the Court if the Court has previously preliminarily or finally approved the Settlement. In the absence of agreement, either Settlement Class Counsel or PNC may move the Court to substitute a different organization as Tax Administrator, upon a showing that the responsibilities of Tax Administrator have not been adequately executed by the incumbent. The Tax Administrator will perform all tax-related services for the Escrow Account as provided in this Agreement.

III. Certification of the Settlement Class

56. For settlement purposes only, the Plaintiff agrees to ask the Court to certify the following "Settlement Class" under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

> All holders of a RBC Account who, from October 10, 2007 through and including March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting.
>
> Excluded from the Class are all former RBC and current PNC employees, officers and directors, and the judge presiding over this Action.

57. This Settlement may be terminated as specified in Section XVI hereof.

IV. Settlement Consideration

58. Subject to approval by the Court, and except as provided in paragraph 59 hereafter, the total cash consideration to be provided by PNC to the Settlement Class pursuant to the Settlement shall be Seven Million Five Hundred Thousand and 00/100 Dollars ($7,500,000.00), inclusive of all attorneys' fees, costs, and expenses awarded to Class Counsel and Service Award to the Class Representative.

59. In addition to the cash consideration specified in paragraph 58 above, PNC will pay all fees, costs, charges, and expenses of the Settlement Administrator and Notice Administrator reasonably incurred in connection with the administration of the Notice Program as set forth in Section VIII hereof, and the payment of distributions from the Settlement Fund to Settlement Class Members as set forth in Section XII hereof. For avoidance of doubt, PNC shall not bear any other fees, costs, charges, or expenses incurred by Plaintiff or by Settlement Class Counsel including, but not limited to, those of any experts retained by Plaintiff or by Settlement Class Counsel. The monetary payments to be made by PNC shall be strictly limited to those specified in this paragraph and paragraph 58.

V. Settlement Approval

60. Upon execution of this Agreement by all Parties, Settlement Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement ("Preliminary Approval Order"). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed to by Settlement Class Counsel and PNC. The motion for Preliminary Approval shall request that the Court: (a) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (b) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (c) approve the

Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (d) approve the procedures set forth in Section VIII hereof for members of the Settlement Class to exclude themselves from the Settlement Class or to object to the Settlement; (e) stay the Action pending Final Approval of the Settlement; and (f) schedule a Final Approval hearing for a time and date mutually convenient for the Court, Settlement Class Counsel and counsel for PNC, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards to Class Representatives ("Final Approval Hearing").

61. PNC, at its own expense, shall serve or cause to be served a notice of the proposed Settlement in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b).

VI. Discovery

62. Class Counsel and PNC already have engaged in significant formal and informal discovery, including depositions and the production of voluminous paper and electronic discovery. In addition, and consistent with its contractual, statutory and regulatory obligations to protect its customers' private financial information, PNC will continue to cooperate informally with Settlement Class Counsel by making pertinent and reasonably accessible data available for review by Settlement Class Counsel and their experts in connection with the allocation analysis as contemplated by Section XI hereof.

VII. Settlement Administrator

63. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing

Mailed Notice to members of the Settlement Class; working with the Notice Administrator to effectuate the Published Notice Program; distributing the Settlement Fund as provided herein; repaying PNC from the Settlement Fund the amount of account credits PNC provides to Current Account Holder Settlement Class Members pursuant to paragraph 93 hereof; and repaying the Settlement Fund to PNC in the event of a termination of the Settlement pursuant to Section XVI hereof.

64. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

a. Obtain from Settlement Class Counsel and PNC name and address information for members of the Settlement Class (to the extent it is available), and verify and update the addresses received through the National Change of Address database, for the purpose of mailing the Mailed Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for PNC to make the payment by a credit to those Settlement Class Members' Accounts;

b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;

c. Establish and maintain the Settlement Website;

d. Establish and maintain an automated and live operator toll-free telephone line for members of the Settlement Class to call with Settlement-related inquiries, and answer the questions of members of the Settlement Class who call with or otherwise communicate such inquiries;

e. Respond to any mailed inquiries from members of the Settlement Class;

f. Process all requests for exclusion from the Settlement Class;

g. Provide weekly reports and, no later than five days after the end of the Opt-Out

Period, a final report to Settlement Class Counsel and PNC, that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;

h. Interface with the Tax Administrator;

i. At Settlement Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each member of the Settlement Class who timely and properly requested exclusion from the Settlement Class;

j. Process and transmit distributions to Past Account Holder Settlement Class Members from the Settlement Fund; instruct PNC as to the direct payments to be made to Current Account Holder Settlement Class Members (to the extent feasible); and repay PNC from the Settlement Fund the aggregate amount of account credits PNC provides to Current Account Holder Settlement Class Members;

k. Provide at least bi-weekly reports and a final report to Settlement Class Counsel and PNC that summarize the activity since the prior reporting period, including but not limited to the number and dollar amount of all distributions, undeliverable mailed checks, efforts to re-issue and re-mail checks, and other pertinent information;

l. Pay invoices, expenses and costs upon approval by Settlement Class Counsel and PNC, as provided in this Agreement; and

m. Perform the duties of Escrow Agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Settlement Class Counsel and PNC, including, but not limited to, verifying that Settlement Funds have been distributed as required by Section XII hereof.

VIII. Notice to Settlement Class Members

65. Upon Preliminary Approval of the Settlement, at the direction of Settlement Class Counsel, the Notice Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or "opt-out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which members of the Settlement Class may access this Agreement and other related documents and information. Settlement Class Counsel and PNC shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the PNC or RBC logo or trademarks or the return address of PNC, or otherwise be styled to appear to originate from PNC. Ownership of the Settlement Website URL shall be transferred to PNC within 10 days of the date on which operation of the Settlement Website ceases, which shall be the date on which distribution of the Net Settlement Fund (as defined in paragraph 88 below) has been made to Settlement Class Members as provided in paragraph 87, or such other date as Settlement Class Counsel and PNC may agree upon in writing.

66. The Notice also shall include a procedure for Settlement Class Members to opt-out of the Settlement Class. A Settlement Class Member may opt-out of the Settlement Class at any time during the Opt-Out Period. Any members of the Settlement Class who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

67. The Notice also shall include a procedure for Settlement Class Members to object

to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and expenses and/or Service Award to the Class Representative. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Award must be mailed to the Clerk of the Court, Settlement Class Counsel, and PNC's counsel. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

68. For an objection to be considered by the Court, in accordance with Federal Rule of Civil Procedure 23(e)(5), the objection must also set forth:

a. the name of the Action;

b. the objector's full name, address and telephone number;

c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;

d. state with specificity the grounds for the objection, and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, accompanied by any legal support for the objection known to the objector or his counsel;

e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed

case;

f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

g. a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five (5) years;

h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

l. the objector's signature (an attorney's signature is not sufficient).

69. Notice shall be provided to members of the Settlement Class in three different ways: Mailed Notice; Published Notice; and Long-Form Notice on the Settlement Website. Not all members of the Settlement Class will receive all three forms of Notice, as detailed herein. Notice shall be provided in a form to be agreed upon by Settlement Class Counsel and PNC.

70. Within 28 days from the date that the Settlement Administrator receives from Settlement Class Counsel and PNC the data files that identify, subject to the availability of

information in reasonably accessible electronic form, the names and last known addresses of the identifiable Settlement Class Members who held Accounts during the Class Period, the Settlement Administrator shall run the addresses through the National Change of Address Database, and shall mail to all such Settlement Class Members postcards that contain the Mailed Notice (the "Initial Mailed Notice"). To coordinate the Mailed Notice Program with the Published Notice Program, within one business day of the Settlement Administrator's receipt of the data files described herein, the Settlement Administrator shall inform the Notice Administrator by email that it has received the data files.

71. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 70 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Mailed Notice postcards to those Settlement Class Members whose new addresses were identified as of that time through address traces (the "Notice Re-mailing Process"). Because the United States Postal Service sometimes returns undeliverable items beyond the typical time for returning such items, the Settlement Administrator may, at its discretion, perform the Notice Re-mailing Process up to 14 days before the Opt-Out Deadline. The Settlement Administrator's continued efforts in connection with the Notice Re-mailing Process shall not affect or extend any Settlement Class Member's deadlines for objecting or opting out.

72. The Mailed Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 70 days before the Final Approval Hearing. Within seven days after the date the Settlement Administrator completes the

Notice Re-mailing Process, the Settlement Administrator shall provide Settlement Class Counsel and PNC a declaration that confirms that the Mailed Notice Program was completed in a timely manner. Settlement Class Counsel shall file that declaration with the Court as an exhibit to or in conjunction with Plaintiffs' motion for Final Approval of the Settlement.

73. The Notice Administrator shall administer the Published Notice Program, which shall be composed of: (i) Local Online Banners; (ii) Local Sponsored Search Listings; and (iii) a National Press Release. The Published Notice Program shall be completed no later than 70 days before the Final Approval Hearing.

74. Within seven days after the date the Notice Administrator completes the Published Notice Program, the Notice Administrator shall provide Settlement Class Counsel and PNC with one or more declarations that confirm that Published Notice was given in accordance with the Published Notice Program. Settlement Class Counsel shall file that declaration with the Court as an exhibit to or in conjunction with Plaintiffs' motion for final approval of the Settlement.

75. All reasonable costs of the Notice Program shall be borne by PNC.

76. Within the parameters set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Settlement Class Counsel and PNC.

IX. Final Approval Order and Judgment

77. Plaintiffs' and Class Counsel's motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs and Class Counsel shall file their motion for Final Approval of the Settlement, and their application for attorneys' fees, costs, and expenses and for Service Award for the Class Representative, no later than 56 days prior to the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' and Class Counsel's motion for Final Approval

of the Settlement, and on Class Counsel's application for attorneys' fees, costs and expenses and for Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in paragraphs 67 and 68 hereof.

78. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Award. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and RBC. Such proposed Final Approval Order shall, among other things:

a. Determine that the Settlement is fair, adequate and reasonable;

b. Finally certify the Settlement Class for settlement purposes only;

c. Determine that the Notice provided satisfies Due Process requirements;

d. Enter judgment dismissing the Action with prejudice and without costs;

e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, as set forth in Section XIV hereof, including during any appeal from the Final Approval Order;

f. Release RBC and the other Released Parties from the Released Claims, as set forth in Section XIV hereof; and

g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including PNC, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

X. Settlement Fund

79. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XIV hereof and the dismissal of the Action upon Final Approval, within 14 calendar days of Preliminary Approval, PNC shall deposit the sum of Seven Million Five Hundred Thousand and 00/100 Dollars ($7,500,000.00) into the Escrow Account to create the Settlement Fund as set forth herein.

80. Upon the establishment of the Escrow Account, the Escrow Agent may, but shall not be required to, cause the funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts—to be agreed upon by Settlement Class Counsel and PNC—that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the "Instruments"). Settlement Class Counsel and PNC shall agree on the FDIC-insured financial institution at which the Escrow Account shall be established, which shall not be PNC. The Escrow Agent may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs and expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund that the Settlement Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. The Escrow Agent shall communicate with Settlement Class Counsel and counsel for PNC on at least a monthly basis to discuss potential cash needs for the following month. All costs or fees

incurred in connection with investment of the Settlement Fund in the Instruments shall not constitute a cost of Settlement administration to be paid by PNC but shall instead be payable out of the Settlement Fund.

81. The Settlement Fund at all times shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-l. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon PNC or its counsel, or Plaintiffs or Class Counsel, with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund. Plaintiffs and Class Counsel, and PNC and its counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiffs and Class Counsel, and PNC and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

82. The Settlement Fund shall be used for the following purposes:

a. Distribution of payments to the Settlement Class pursuant to Sections XI and XII hereof, including, without limitation, the repayment to PNC of all amounts automatically distributed by it through credits to Current Account Holder Settlement Class Members;

b. Payment of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses pursuant to paragraphs 101-103 hereof;

c. Payment of the Court-ordered Service Awards to the Class Representatives pursuant to paragraph 104 hereof;

d. Payment of any residual distribution as set forth in paragraph 96 hereof, together

with any administrative costs associated therewith;

e. Payment of all Taxes pursuant to paragraph 81 hereof, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, in a timely manner consistent with the recommendation of the Tax Administrator, subject to approval by Settlement Class Counsel and PNC;

f. Payment of any costs of Settlement administration other than those to be paid by PNC as set forth in paragraph 59 hereof; and

g. Payment of additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (f) of this paragraph, subject to approval of Settlement Class Counsel and PNC.

XI. Calculation of Distributions from Settlement Fund

83. PNC, in consultation with Settlement Class Counsel and their expert, shall identify data—to the extent it exists in reasonably accessible electronic form—sufficient to calculate and implement the allocation of Settlement Funds as provided in Sections XI and XII hereof. The calculation and implementation of allocations contemplated by Sections XI and XII shall be undertaken by Settlement Class Counsel and their expert. The methodology provided for in paragraph 85 hereof will be applied to the data as consistently, sensibly and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation. Consistent with its contractual, statutory and regulatory obligations to maintain bank security and protect its customers' private financial information, PNC shall make available to Settlement Class Counsel and its expert data and information (masked as to individuals' identities as PNC may deem appropriate) sufficient to allow Settlement Class Counsel and its expert to determine and confirm the calculations and allocations contemplated by this

Agreement and PNC's implementation of such allocations.

84. The Parties acknowledge that the information available in reasonably accessible electronic form from PNC's databases may be incomplete for limited portions of the Class Period and, therefore, it may not be possible to identify all members of the Settlement Class and/or to calculate and make automatic distribution of all amounts that Settlement Class members may be due from the Settlement Fund for the entire Class Period. To the extent that the Parties, consistent with the foregoing data constraints and limitations, can reasonably identify Settlement Class Members and calculate the amount such Settlement Class Members are due from the Settlement Fund, an automatic distribution will be provided to them based upon the terms of the allocation set forth in this Section XI.

85. The amount of the automatic distribution from the Settlement Fund to which each identifiable Settlement Class Member is entitled for the Class Period (subject to the availability of data) shall be determined using the following methodology, or such other methodology as would have an equivalent result:

a. All Accounts will be identified in which, on one or more calendar days during the Class Period, RBC assessed two or more Overdraft Fees on such day or days during which the account was subject to High-to-Low Posting. If Settlement Class Counsel and its expert and PNC cannot conclusively determine from its records whether the account was subject to High-to-Low Posting on a particular calendar day, it may be assumed for purposes of this paragraph that the account was subject to High-to-Low Posting.

b. For each such calendar day on which RBC assessed two or more Overdraft Fees, all transactions posted in such Accounts on that day will be ordered in the following posting order:

i. All credits;

ii. All bank-initiated debits, fees assessed on previous day transactions, and other high-priority debits, in the order originally posted by the bank;

iii. All ATM and POS debit card transactions with date and time of authorization ordered chronologically;

iv. All ATM and POS debit card transactions without date and time of authorization ordered from lowest to highest dollar amount; and

v. All other customer-initiated debits, including checks, cash withdrawals, and ACH transactions, ordered from highest to lowest dollar amount.

c. After ordering the transactions as set forth in subparagraph (b) of this paragraph, each Account—on a daily basis for such calendar days—will be identified in which the number of Overdraft Fees RBC actually assessed exceeds the number of Overdraft Fees that would have been assessed if the Account had been ordered as set forth in subparagraph (b) ("Additional Overdrafts").

d. The dollar amount of the Additional Overdrafts will be calculated ("Additional Overdrafts Amount").

e. For each Account in which one or more Additional Overdrafts have been identified, it will be determined how many (if any) Overdraft Fees RBC refunded during the 30-day period following each calendar day on which any Additional Overdraft occurred ("Refunded Additional Overdrafts").

f. The dollar amount of the Refunded Additional Overdrafts will be calculated ("Refunded Additional Overdrafts Amount").

g. All Accounts will be identified in which on any such calendar day the Additional Overdrafts Amount exceeds the Refunded Additional Overdrafts Amount. The Refunded Additional Overdrafts Amount will be subtracted from the Additional Overdrafts Amount to

determine the "Differential Overdraft Fee."

h. All accounts that experienced a Differential Overdraft Fee will be checked against a list of Accounts that RBC closed with negative balances after writing them off as uncollectible ("Uncollectible Accounts").

i. For all Uncollectible Accounts that experienced a Differential Overdraft Fee, the Differential Overdraft Fee will be reduced dollar-for-dollar by the dollar amount of the negative closing Account balance. When the dollar amount of the negative closing Account balance equals or exceeds the Differential Overdraft Fee for the Account, the Differential Overdraft Fee shall be reduced to zero for purposes of calculating that Account Holder's distribution, and the Account Holder will not receive a distribution from the Settlement Fund for such Account;

j. The foregoing allocation formula will yield the identification of all Account Holders whose Accounts experienced a Differential Overdraft Fee greater than zero dollars ("Positive Differential Overdraft Fee") as well as the amounts of their respective Positive Differential Overdraft Fees.

86. The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the amount of Positive Differential Overdraft Fees each identifiable Settlement Class Member paid to RBC for the Class Period as a result of High-to-Low Posting and the amount of any automatic distribution each Settlement Class Member should receive from the Settlement Fund. The fact that this allocation formula is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

XII. Distribution of Net Settlement Fund

87. As soon as practicable but no later than 150 days from the Effective Date, PNC and the Settlement Administrator shall distribute the Net Settlement Fund (as defined in paragraph 88

below) as set forth in this Section. Each Settlement Class Member who had a Positive Differential Overdraft Fee and has not opted out as provided herein shall receive a distribution in the amount of a pro rata share of the Net Settlement Fund.

88. The Net Settlement Fund is equal to the Settlement Fund plus any interest earned from the Instruments, and less the following:

a. the amount of the Court-awarded attorneys' fees, costs, and expenses to Class Counsel;

b. the amount of the Court-awarded Service Award to the Class Representative;

c. a reservation of a reasonable amount of funds for prospective costs of Settlement administration (if any) that are not PNC's responsibility pursuant to paragraph 59 hereof, including tax administration as agreed upon by Settlement Class Counsel and PNC; and

d. all other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (c) of this paragraph that are expressly provided for in this Agreement or have been approved by Settlement Class Counsel and PNC.

89. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Positive Differential Overdraft Fees calculated pursuant to Section XI hereof. This calculation shall yield the "Pro Rata Percentage."

90. The Settlement Administrator shall multiply each Settlement Class Member's total Positive Differential Overdraft Fees by the Pro Rata Percentage. This calculation shall yield each Settlement Class Member's "Differential Overdraft Payment Amount." The Settlement Administrator shall communicate to Settlement Class Counsel and PNC's Counsel the Differential Overdraft Payment Amount to be paid to Settlement Class Members pursuant to paragraph 92.

91. Every Settlement Class Member shall be paid from the Net Settlement Fund the

total Differential Overdraft Payment Amount to which he or she is entitled as set forth herein ("Settlement Fund Payments"). In no event, however, shall PNC ever be required to pay more than a total of Seven Million Five Hundred Thousand and 00/100 Dollars ($7,500,000.00) to the Settlement Class, inclusive of all attorneys' fees, costs, and expenses and Service Award (exclusive of costs of Notice and Administration as provided in this Agreement).

92. Settlement Fund Payments to Settlement Class Members who are Current Account Holders shall be made either by a credit to those Account Holders' Accounts or by mailed check in those circumstances where it is not feasible or reasonable to make the payment by a credit. PNC shall notify Settlement Class Members who are Current Account Holders of any such credit and provide a brief explanation that the credit has been made as a payment in connection with the Settlement. PNC shall provide the notice of account credit described in this paragraph in or with the account statement on which the credit is reflected. PNC will bear any costs associated with implementing the account credits and notification discussed in this paragraph. Settlement Fund Payments made to those Settlement Class Members who are Current Account Holders by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Settlement Class Counsel and PNC, to indicate that it is from the Settlement, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) and will re-mail it once to the updated address. All costs associated with the process of printing and mailing the checks

and any accompanying communication to Settlement Class Members who are Current Account Holders shall be borne by PNC as provided in paragraph 59 hereof.

93. PNC shall be entitled to a payment from the Net Settlement Fund equal to the amount of account credits paid pursuant to paragraph 92 hereof. Such payment shall be made within two business days after PNC provides written verification to Settlement Class Counsel and the Escrow Agent of the aggregate amount of account credits that were given and that such Settlement Fund Payments were given to the Settlement Class Members who are Current Account Holder Settlement Class Members.

94. Settlement Fund Payments to Settlement Class Members who are Past Account Holder will be made by check with an appropriate legend, in a form approved by Settlement Class Counsel and PNC, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail it once to the updated address, or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Account Holder other than the one listed first. All costs associated with the process of printing and mailing the checks and any accompanying communication to Settlement Class Members who are Past Account Holders shall be borne by PNC as provided in paragraph 59 hereof.

95. The amount of the Net Settlement Fund attributable to uncashed or returned checks

sent by the Settlement Administrator shall remain in the Settlement Fund for one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of Settlement Funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

XIII. Disposition of Residual Funds

96. Within one year plus 30 days after the date the Settlement Administrator mails the first Settlement Fund Payments, any funds remaining in the Settlement Fund shall be distributed as follows:

a. First, the funds shall be distributed on a pro rata basis to participating Settlement Class Members who received Settlement Fund Payments pursuant to Section XII of the Agreement, to the extent feasible and practical in light of the costs of administering such subsequent payments unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair;

b. Second, in the event the costs of preparing, transmitting and administering such subsequent payments pursuant to subparagraph (a) above are not feasible and practical to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair, Settlement Class Counsel and counsel for PNC shall jointly file a proposed plan for distribution of the residual funds consistent with the American Law Institute, *Principles of Aggregate Litigation* § 3.07(c), together with supporting materials, for

consideration by the Court. After consultation with the Parties, the Court shall have the discretion to approve, deny, amend or modify, in whole or in part, the proposed plan for distribution of the residual funds in a manner consistent with the American Law Institute, *Principles of Aggregate Litigation* § 3.07(c). The residual funds shall not be used for any litigation purpose or to disparage any Party. The Parties agree that the Court's approval, denial, amendment or modification, in whole or in part, of the proposed plan for distribution of the residual funds pursuant to this paragraph shall not constitute grounds for termination of the Settlement pursuant to Section XVI hereof; and

c. All costs associated with the disposition of residual funds – whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court – shall be borne solely by the Settlement Fund. Under no circumstances shall PNC have responsibility for any costs associated with the disposition of residual funds whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court.

XIV. Releases

97. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged PNC and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors (including but not limited to RBC), successors and assigns, and the present and former directors, officers, employees, agents, insurers, reinsurers. shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or

equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters up to and including March 1, 2012 that were or could have been alleged in the Action including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of (a) RBC's assessment of one or multiple Overdraft Fees on Settlement Class Members' Accounts, (b) the amount of one or more RBC Overdraft Fees assessed on Settlement Class Members' Accounts, or (c) High-to-Low Posting or any other posting order used by RBC on Settlement Class Members' Accounts.[3] The foregoing release includes, by way of example but not limitation, any and all of the following to the extent they involve, relate to, result in, or seek recovery or relief for Overdraft Fees, High-to-Low Posting, or any posting order: (1) RBC's authorization, approval or handling of any Debit Card Transaction, (2) any failure by RBC to notify or to obtain advance approval when a Debit Card Transaction would or might cause a Settlement Class Member's Accounts to become overdrawn or further overdrawn or an Overdraft Fee to be assessed; (3) any failure by RBC to require Settlement Class Members to opt in, or to allow Settlement Class Members to opt-out, of overdrafts, or to publicize or disclose the ability of the holder of any RBC account to opt-out of overdrafts between October 10, 2007 through March 1, 2012; (4) any failure by RBC to adequately or clearly disclose, in one or more agreements, posting order, High-to-Low Posting, overdrafts, Overdraft Fees, or the manner in which Debit Card Transactions are or would be approved, processed, or posted to Settlement Class Members' Accounts, and any effect that could have on the number of Overdraft Fees; (5) any conduct or statements by RBC encouraging the use of RBC Debit Cards; (6) the use of High-to-

[3] PNC acknowledges that the scope of this release is strictly limited to the Releasing Parties' consumer banking relationships with RBC and, if they remained customers following the merger, with PNC.

Low Posting on Settlement Class Members' Accounts and the assessment of Overdraft Fees as a result of High-to-Low Posting; and (7) any RBC advertisements or marketing materials relating to any of the foregoing.

98. AS OF THE EFFECTIVE DATE, PLAINTIFFS AND EACH SETTLEMENT CLASS MEMBER SHALL FURTHER AUTOMATICALLY BE DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE OR SIMILAR LAWS OF ANY OTHER STATE OR JURISDICTION. SECTION 1542 OF THE CALIFORNIA CIVIL CODE READS: "§1542. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

99. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 97 and 98 hereof, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this paragraph and paragraphs 97 and 98 hereof. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this paragraph and in paragraphs 97 and 98 hereof, and that all of their claims

in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

100. Nothing in this Agreement shall operate or be construed to release any claims or rights PNC has to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with RBC, pursuant to the terms and conditions of such accounts, loans, or any other debts other than Overdraft Fees incurred during the Class Period. Nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that any Plaintiffs or Settlement Class Members may have in the event PNC (or its assigns) seeks to recover any Overdraft Fees incurred during the Class Period.

XV. Payment of Attorneys' Fees, Costs, Expenses, and Service Award

101. PNC agrees not to oppose Class Counsel's request for attorneys' fees of up to thirty-five percent (35%) of the Settlement Fund specified in paragraph 79 and not to oppose Class Counsel's request for reimbursement of costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The determination of Class Counsel's request for attorneys' fees, costs, and expenses shall be based on controlling Eleventh Circuit precedent involving the award of fees in common fund class actions and not based on state law. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination.

102. Within three business days of the Effective Date, the Escrow Agent shall pay from the Settlement Fund to Settlement Class Counsel all Court-approved attorneys' fees, costs, and

expenses of Class Counsel, including interest accrued thereon. In the event the award of attorneys' fees, costs, and expenses of Class Counsel is reduced on appeal, the Escrow Agent shall only pay to Settlement Class Counsel from the Settlement Fund the reduced amount of such award, including interest accrued thereon. Settlement Class Counsel shall timely furnish to the Escrow Agent any required tax information or forms before the payment is made.

103. The payment of attorneys' fees, costs, and expenses of Class Counsel pursuant to paragraph 102 hereof shall be made through a deposit by the Escrow Agent into an Attorney Client Trust Account jointly controlled by Settlement Class Counsel. After the fees, costs and expenses have been deposited into this account, Settlement Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs and expenses to that firm. PNC shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed.

104. Settlement Class Counsel will ask the Court to approve a service award of Ten Thousand and 00/100 Dollars ($10,000.00) per Class Representative, or Five Thousand and 00/100 Dollars ($5,000.00) per Class Representative for married couples in which both spouses are Class Representatives ("Service Awards"). All Service Awards are to be paid from the Settlement Fund. The Service Award shall be paid to the Class Representative in addition to such Class Representative's Settlement Fund Payments. PNC agrees not to oppose Settlement Class Counsel's request for the Service Award.

105. The Parties negotiated and reached agreement regarding attorneys' fees, costs, and expenses and Service Award only after reaching agreement on all other material terms of this Settlement.

XVI. Termination of Settlement

106. This Settlement may be terminated by either Settlement Class Counsel or PNC by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 45 days (or such longer time as may be agreed between Settlement Class Counsel and PNC) after any of the following occurrences:

a. Settlement Class Counsel and PNC agree to termination;

b. the Court fails to grant Preliminary Approval of the Settlement within 180 days after filing of the motion for Preliminary Approval, or fails to finally approve the Settlement within 360 days of Preliminary Approval by the Court;

c. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;

d. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days of such reversal;

e. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Settlement Class Counsel or PNC seeking to terminate the Settlement reasonably considers material;

f. the Effective Date does not occur; or

g. any other ground for termination provided for elsewhere in this Agreement.

107. PNC also shall have the right to terminate the Settlement by serving on Settlement Class Counsel and filing with the Court a notice of termination within 14 days of its receipt from the Settlement Administrator of the final report specified in paragraph 64(g) hereof, if the number of

Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Settlement Class Counsel and PNC. The number or percentage shall be confidential except to the Court, who shall upon request be provided with a copy of the letter for *in camera* review.

108. In the event of a termination of the Settlement, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, to the extent any such fees or expenses have been incurred given PNC's obligation in paragraph 59 hereof to pay settlement expenses directly, the balance of the Settlement Fund shall be refunded and remitted to PNC as provided in paragraph 111 hereof. For any funds paid directly by PNC in connection with the Notice in Section VIII hereof or paid directly from the Escrow Account pursuant to this Agreement, PNC shall have no right to seek reimbursement from Plaintiffs, Settlement Class Counsel, or Class Counsel in the event of termination of this Agreement.

109. In the event of a termination of the Settlement pursuant to this Section XVI the Parties retain all of their pre-Settlement litigation rights and defenses.

XVII. Effect of a Termination

110. The grounds upon which this Agreement may be terminated are set forth in paragraphs 106 and 107 hereof. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of PNC's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Settlement Fund shall be returned to PNC in accordance with paragraph 111 hereof; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved. In the

event the litigation was to resume, PNC, as successor in interest, would move to substitute its name for RBC's.

111. In the event of a termination as provided in paragraph 106 and/or 107 and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, to the extent any such fees or expenses have been incurred given PNC's obligation in paragraph 59 hereof to pay settlement expenses directly, the Escrow Agent shall return the balance of the Settlement Fund to PNC within seven calendar days of termination. For any funds paid directly by PNC in connection with the Notice in Section VIII hereof or paid directly from the Escrow Account pursuant to this Agreement, PNC shall have no right to seek reimbursement from Plaintiffs, Settlement Class Counsel, or Class Counsel in the event of termination of this Agreement.

112. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraphs 106 and/or 107 hereof.

113. In the event the Settlement is terminated in accordance with the provisions of paragraphs 106 and/or 107 hereof, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. Plaintiffs shall be entitled to continue to seek class certification, and PNC shall be entitled to continue to oppose class certification, without reference to the Settlement or the discussions, offers or negotiations leading thereto. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XVIII. No Admission of Liability

114. PNC disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. PNC has agreed to enter into this

Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

115. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have fully investigated the facts and law relevant to the merits of the claims, have conducted extensive formal and informal discovery, and have conducted independent investigation of the challenged practices. Class Counsel have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

116. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

117. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

118. In addition to any other defenses PNC may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

XIX. Miscellaneous Provisions

119. References to RBC in Third-Party Materials. In the course of pursuing claims against defendant banks other than RBC in MDL 2036, Class Counsel have and/or are serving subpoenas and seeking discovery from third-party consultants to the banking industry. PNC has requested and Plaintiffs agree to provide PNC promptly with copies of all materials received by Class Counsel through such subpoenas and discovery that Class Counsel reasonably determine, refer, or pertain to RBC.

120. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

121. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

122. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur, or court decisions that may be issued in MDL 2036 or in any other case in any court.

123. Obligation To Meet And Confer. Before filing any motion in the Court raising a

dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

124. Integration. This Agreement (along with the letter referenced in paragraph 107 hereof) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

125. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

126. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Florida, without regard to the principles thereof regarding choice of law.

127. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

128. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program, the Settlement Administrator, the Notice

Administrator, and the Tax Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator, the Notice Administrator, the Escrow Agent, and the Tax Administrator shall consent to the jurisdiction of the Court for this purpose.

129. Notices. All notices to Settlement Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Aaron S. Podhurst, Esq.
PODHURST ORSECK, P.A.
One Southeast Third Avenue, Suite 2700
Miami, FL 33131
Email: apodhurst@podhurst.com

Bruce S. Rogow, Esq.
BRUCE S. ROGOW, P.A.
100 Northeast Third Avenue, Suite 1000
Fort Lauderdale, FL 33301
Email: brogow@rogowlaw.com

Robert C. Gilbert, Esq.
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Boulevard, 11th Floor
Coral Gables, FL 33134
Email: rcg@grossmanroth.com

All notices to RBC, provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Mark J. Levin, Esq.
Philip N. Yannella, Esq.
BALLARD SPAHR LLP
1735 Market St., 51st Floor
Philadelphia, PA 19103
Email: levinmj@ballardspahr.com

Darryl May, Esq.
PNC Bank, N.A.
1600 Market Street, 8th Floor
Mail Stop F2-F070-08-7
Philadelphia, PA 19103
Email: Darryl.May@pnc.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

130. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for PNC and Settlement Class Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

131. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

132. Authority. Settlement Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for PNC (for PNC), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiffs and PNC to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all the terms and provisions of this Agreement.

133. Agreement Mutually Prepared. Neither PNC nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

134. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts

in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. PNC has provided and is providing information that Plaintiffs reasonably request to identify Settlement Class Members and the alleged damages they incurred. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

135. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Releases contained in Section XIV hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated: 10/17/19

Michael Dasher
Plaintiff

Dated: _____

Aaron S. Podhurst, Esq.
PODHURST ORSECK, P.A.
Settlement Class Counsel

Dated: _____

Bruce S. Rogow, Esq.
BRUCE S. ROGOW, P.A.
Settlement Class Counsel

in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. PNC has provided and is providing information that Plaintiffs reasonably request to identify Settlement Class Members and the alleged damages they incurred. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

135. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Releases contained in Section XIV hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated:_____

Michael Dasher
Plaintiff

Dated: 10/21/19

Aaron S. Podhurst, Esq.
PODHURST ORSECK, P.A.
Settlement Class Counsel

Dated: October 17, 2019

Bruce S. Rogow, Esq.
BRUCE S. ROGOW, P.A.
Settlement Class Counsel

Dated: 10/31/19

Robert C. Gilbert, Esq.
GROSSMAN ROTH YAFFA COHEN, P.A.
Settlement Class Counsel

Dated: 10/31/19

REPRESENTATIVE OF PNC Bank, N.A.
Defendant

Dated: 10/31/19

Philip N. Yannella, Esq.
BALLARD SPAHR LLP
Counsel for Defendant RBC Bank, N.A.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:

Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.

S.D. Fla. Case No. 1:10-CV-22190-JLK

JOINT DECLARATION OF AARON S. PODHURST, BRUCE S. ROGOW AND ROBERT C. GILBERT IN SUPPORT OF PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND APPLICATION FOR SERVICE AWARD, ATTORNEYS' FEES AND EXPENSES

Aaron S. Podhurst, Bruce S. Rogow and Robert C. Gilbert declare as follows:

1. We are Settlement Class Counsel and Class Counsel for Plaintiffs and the Settlement Class under the Settlement Agreement and Release with Defendant PNC Bank, N.A. ("PNC"), successor in interest to RBC Bank (USA) ("RBC") ("PNC" or the "Bank") ("Settlement" or "Agreement") that was preliminarily approved by this Court on November 13, 2019.[1] (ECF NO. 4425). We submit this declaration in support of Plaintiffs' and Class Counsel's Motion for Final Approval of Class Settlement, and Application for Service Award, Attorneys' Fees and Expenses. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

[1] All capitalized defined terms have the same meaning as defined in the Agreement attached as Exhibit A to the Motion for Final Approval.

2. After more than eight years of litigation and settlement negotiations, Plaintiffs, Settlement Class Counsel and PNC entered into the Settlement under which PNC will pay (i) $7,500,000 in cash to create a common fund for the benefit of the Settlement Class, plus (ii) the fees and costs of providing Notice to Settlement Class Members and associated fees and costs incurred in connection with administration of the Settlement. Under the Settlement, all identifiable members of the Settlement Class who sustained a Positive Differential Overdraft Fee will automatically receive *pro rata* distributions from the Net Settlement Fund in proportion to the actual harm that each of them sustained.

3. The Action involved sharply opposed positions on several fundamental legal and factual issues. According to Plaintiffs, RBC's practices violated the Bank's contractual and good faith duties, were substantively and procedurally unconscionable, resulted in conversion and unjust enrichment, and violated the North Carolina consumer protection statute. On the other hand, RBC consistently argued that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that the claims brought in the Action were subject to mandatory individual arbitration, and that Plaintiffs' state law claims for relief were preempted.

4. Plaintiffs and Class Counsel maintain that the claims asserted in the Action are meritorious; that Plaintiffs and the proposed certified class would establish liability and recover substantial damages if the Action proceeded to trial; and that the final judgment would be affirmed on appeal. Conversely, RBC argued that Plaintiffs' claims are unfounded and could not be maintained as a class action, denied liability, and demonstrated that it will litigate its defenses vigorously. Plaintiffs' ultimate success required them to prevail, in whole or in part, at *all* of these junctures, while RBC's success at any one of these junctures could have spelled defeat for Plaintiffs and the Settlement Class. Thus, continued litigation posed significant risks and

countless uncertainties, as well as the time, expense, and delays associated with trial and appellate proceedings, particularly in the context of complex multi-district litigation.

5. In light of the risks, uncertainties and delays associated with continued litigation, we believe the Settlement represents an outstanding achievement by providing guaranteed benefits to the Settlement Class in the form of direct cash compensation without further risks, delays or costs.

A. Background of the Litigation.

6. Plaintiffs sought monetary damages, restitution and declaratory relief from RBC, on behalf of themselves and all others similarly situated, who incurred Overdraft Fees as a result of RBC's practice of High-to-Low Posting of Debit Card Transactions. Plaintiffs alleged that RBC systemically engaged in High-to-Low Posting of Debit Card Transactions to maximize the Bank's Overdraft Fee revenues. According to Plaintiffs, RBC's practices violated the Bank's contractual and good faith duties, were substantively and procedurally unconscionable, resulted in conversion and unjust enrichment, and violated the North Carolina consumer protection statute.

7. RBC denied all of Plaintiffs' allegations of wrongdoing. The Bank consistently defended its conduct by, *inter alia*, highlighting language in the relevant Account agreements that it contended expressly advised its customers of and permitted the very High-to-Low Posting practices at issue. The Bank advanced additional defenses, including preemption, and that the claims brought against it in the Action were subject to mandatory individual arbitration.

B. Class Counsel's Investigation.

8. Class Counsel devoted substantial time to investigating the potential claims against RBC. Class Counsel interviewed customers and potential plaintiffs to gather information

about the Bank's conduct and its impact upon customers. This information was essential to Class Counsel's ability to understand the nature of RBC's conduct, the language of the Account agreements, and potential remedies.

C. The Course of Proceedings.

9. On July 2, 2010, Plaintiff Michael Dasher filed *Dasher v. RBC Bank USA*, Case No. 1:10-CV-22190-JLK (S.D. Fla.) ("*Dasher*"), a class action complaint, in the United States District Court for the South District of Florida, alleging RBC's improper assessment and collection of Overdraft Fees due to High-to-Low Posting and seeking, *inter alia*, monetary damages, restitution and equitable relief. (*See* Compl., Case No. 10-22190 (S.D. Fla.), ECF No. 1).

10. On July 22, 2010, RBC moved to compel arbitration in *Dasher*. (*See* Mot. to Compel Arbitration, Case No. 10-22190, ECF No. 5). On July 28, 2010, *Dasher* was transferred to MDL 2036 and thereafter assigned to the "Second Tranche" of cases. (*See* MDL Transfer Receipt, ECF No. 730; Joint Report re List of Cases in Second Tranche, ECF No. 1494 (May 18, 2011)). On August 23, 2010, the Court denied RBC's motion to compel arbitration and stay litigation in *Dasher* on the ground that "the arbitration provision has the effect of deterring Plaintiff from bringing his claim and vindicating his rights." (Order Den. Mot. to Compel Arbitration, ECF No. 763, at 7; *In re Checking Account Overdraft Litig.*, 2010 WL 3361127, at *2 (S.D. Fla. Aug. 23, 2010). RBC timely appealed to the Eleventh Circuit. (*See* Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 797).

11. While the *Dasher* appeal was pending, the U.S. Supreme Court issued *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011). The Parties in *Dasher* jointly moved the Eleventh Circuit to vacate the Court's order denying arbitration and remand the case for

reconsideration in light of *Concepcion*. The Eleventh Circuit granted the Parties' joint motion and *Dasher* returned to the Court on June 28, 2011. (*See* Order Granting Joint Mot. to Vacate and Remand, ECF No. 1670).

12. On July 9, 2010, Plaintiff Stephanie Avery filed *Avery v. RBC Bank USA*, Case No. 10-CVS-11527, ("*Avery*"), a class action complaint, in the General Court of Justice, Superior Court Division, Wake County, North Carolina, alleging RBC's improper assessment and collection of Overdraft Fees due to High-to-Low Posting and seeking, *inter alia*, monetary damages, restitution and equitable relief. On August 12, 2010, *Avery*, the second-filed action, was removed to the Eastern District of North Carolina under Case No. 5:10-cv-329. (*See* Notice of Removal, Case No. 10-24382 (S.D. Fla.), ECF No. 1). Avery amended her complaint on August 26, 2010. (*See* Am. Compl., Case No. 10-24382, ECF No. 8).

13. On September 16, 2010, RBC filed its motion to compel arbitration in *Avery*. (Mot. to Compel Arbitration & Mem. in Support, Case No. 10-24382, ECF Nos. 16-17). Further proceedings in *Avery* were stayed pending a ruling by the Judicial Panel on Multidistrict Litigation on whether the action would be become part of MDL 2036. (Order Granting Mot. to Stay, Case No. 10-24382, ECF No. 21 (Oct. 4, 2010)). On March 3, 2011, *Avery* was transferred to this Court and made part of MDL 2036. (MDL Transfer Receipt, ECF No. 1232).

14. On June 20, 2011, the Court issued an Omnibus Order that included *Avery* within its ambit. (*See* Omnibus Order Administratively Closing Member Cases, ECF No. 1640, at 4). That order denied as moot all motions filed under the original case numbers (*see id.* at 5), which terminated RBC's motion to compel arbitration in *Avery*. On September 12, 2011, the Court issued its *Interim Scheduling Order re Fifth Tranche Actions*, which assigned *Avery* to the Fifth Tranche. (*See* Interim Scheduling Order re Fifth Tranche Actions, ECF No. 1861, at 2). The

Scheduling Order set a deadline for banks with actions in the Fifth Tranche to file motions to compel arbitration. (*See id.* at 3).

15. RBC's counsel and Plaintiffs' Coordinating Counsel in MDL 2036 agreed that RBC would file a coordinated motion to compel arbitration in *Dasher* and *Avery*. Thus, when the Court issued its *Interim Scheduling Order re Fifth Tranche Actions* and set the deadline for motions to compel arbitration, counsel agreed that RBC would file a motion to compel arbitration encompassing both *Dasher* and *Avery*, thereby putting both actions on the same procedural track.

16. On October 3, 2011, RBC renewed its motion to compel arbitration and stay litigation in *Dasher* and *Avery*. (Renewed Mot. to Compel Arbitration, ECF No. 1929). Following discovery on arbitrability requested by Plaintiffs' counsel and permitted by the Court (*see* Order Deferring Ruling on Mot. to Compel Arbitration, ECF No. 2191 (Dec. 5, 2011)), Plaintiffs opposed RBC's renewed motion to compel arbitration.

17. On January 11, 2013, the Court issued an order denying RBC's renewed motion to compel arbitration in *Dasher* and *Avery*. (Order Den. Mot. to Compel Arbitration, ECF No. 3162); *In re Checking Account Overdraft Litig.*, No. 09-2036, 2013 WL 151179 (S.D. Fla. Jan. 11, 2013). RBC appealed that order. (Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 3164).

18. On February 10, 2014, the Eleventh Circuit affirmed the Court's denial of RBC's renewed motion to compel arbitration pursuant to the RBC Agreement. *See Dasher v. RBC Bank (USA)*, 745 F.3d 1111 (11th Cir. 2014). The Eleventh Circuit denied RBC's motion for rehearing. The Eleventh Circuit granted RBC's motion to stay its mandate pending the filing of a petition for certiorari. On June 20, 2014, RBC filed a petition for writ of certiorari with the

U.S. Supreme Court, arguing that arbitration should have been compelled pursuant to the RBC arbitration clause. The Supreme Court denied certiorari on October 6, 2014. On October 20, 2014, the Eleventh Circuit remanded the case to the Court.

19. On November 10, 2014, the Consolidated Amended Complaint ("CAC") was filed. (Consolidated Am. Class Action Compl., ECF No. 4007). On December 5, 2014, RBC moved to compel arbitration of Plaintiff Dasher's amended claims in the CAC pursuant to the arbitration clause in PNC's 2013 amended account agreement. (Mot. to Compel Arbitration of Pl. Dasher's Individual Claims, ECF No. 4017). The Court denied that motion on August 21, 2015. (Order Den. Def's Mot. to Compel Arbitration, ECF No. 4210). RBC appealed that order. (Def. RBC Bank (USA)'s Notice of Appeal, ECF No. 4213).

20. On February 5, 2016, while the appeal was pending, the Court denied RBC's motion to dismiss Plaintiff Avery's individual claims. (Def. Mot. to Dismiss Pl. Avery's Individ. Claims, ECF No. 4018; Order Den. Def's Mot. to Dismiss, ECF No. 4284). RBC was not required to file its answer to Plaintiff Avery's individual claims until the Court resolved RBC's motion to dismiss or strike Plaintiff Avery's national class claims for lack of subject matter jurisdiction. (Order Grant. Jt. Mot. to Mod. Deadline to Ans. Pl. Avery's Claims, ECF No. 4286).

21. On July 5, 2016, while the appeal was still pending, the Court denied RBC's motion to dismiss or strike Plaintiff Avery's putative national class claims for lack of subject matter jurisdiction. (Def. Mot. to Dismiss or Strike Pl.'s Nat'l Class Claims for Lack of Subj. Matter Juris., ECF No. 4019; Order Den. Mot. to Dismiss or Strike Pl.'s Nat'l Class Claims for Lack of Subj. Matter Juris., ECF No. 4302). That order denied RBC's motion without prejudice to it raising the arguments again at the class certification stage. (ECF No. 4302 at 9). On July 25,

2016, RBC answered Plaintiff Avery's claims and asserted affirmative defenses. (Ans. and Aff. Def. of Def. to Pl. Avery's Claims in CAC, ECF No. 4307).

22. On February 13, 2018, the Eleventh Circuit affirmed the Court's denial of arbitration on the ground that Plaintiff Dasher did not agree to arbitrate. *See Dasher v. RBC Bank (USA)*, 882 F.3d, 1017 (11th Cir. 2018). *Dasher* returned to the Court on March 14, 2018 and thereafter proceeded pursuant to the Court's existing scheduling orders. (*See* Am. Scheduling Order, ECF No. 4223 (Sept. 22, 2015); Order Cancelling Pretrial Conf. and Modifying Deadlines, ECF No. 4334 (Mar. 22, 2017)). On April 3, 2018, RBC answered Plaintiff Dasher's claims and asserted affirmative defenses. (Ans. and Aff. Def. of Def. to Pl. Michael Dasher's Claims in CAC, ECF No. 4348).

23. On August 31, 2018, Plaintiffs moved for class certification. (ECF No. 4364). On October 10, 2018, RBC filed its opposition to class certification. (ECF No. 4370). On November 9, 2018, Plaintiffs filed their reply in support of class certification. (ECF No. 4371).

24. On December 12, 2018, the Court heard oral argument on the motion for class certification and reserved ruling. The Court directed both sides to submit proposed orders following receipt of the hearing transcript.

D. <u>Settlement Negotiations.</u>

25. Beginning in 2018, PNC and Settlement Class Counsel initiated preliminary settlement discussions. The settlement discussions resulted in the production of certain confidential overdraft data of RBC to Settlement Class Counsel. The overdraft data was analyzed by Settlement Class Counsel's expert for the purpose of identifying the number of affected Accounts and the amount of damages sustained as a result of High-to-Law Posting.

26. On January 22, 2019, Settlement Class Counsel and PNC participated in a settlement conference. On that date, Settlement Class Counsel and PNC reached an agreement in principle concerning the material terms of the Settlement.

27. On February 5, 2019, Settlement Class Counsel and PNC executed a Summary Agreement that memorialized the material terms of the Settlement. On February 8, 2019, Settlement Class Counsel and PNC filed a Joint Notice of Settlement and requested suspension of all pretrial deadlines pending the drafting and execution of a final settlement agreement; the Court granted the request on February 14, 2019. (ECF Nos. 4381, 4382). Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in the Agreement.

28. On November 6, 2019, Plaintiffs and Class Counsel filed their motion for preliminary approval. (ECF No. 4423). On November 13, 2019, the Court entered an Order Preliminarily Approving Class Settlement and Certifying Settlement Class. (ECF No. 4425). Pursuant to the Preliminary Approval Order, Court-approved notice was disseminated to the Settlement Class providing, *inter alia*, a summary of the Settlement and the rights of members of the Settlement Class to object to or opt-out of the Settlement.

E. Settlement Recovery.

29. The Settlement required PNC to deposit $7,500,000.00 into the Escrow Account following entry of the Preliminary Approval Order. Agreement ¶ 58. The Bank deposited that sum, thereby creating the Settlement Fund. The Settlement Fund will be used to: (i) pay all payments to Settlement Class Members; (ii) pay all Court-ordered awards of attorneys' fees, costs and expenses of Class Counsel; (iii) pay the Court-ordered Service Award to the Class Representative; (iv) distribute any residual funds; (v) pay all Taxes; (vi) pay any costs of Notice

Administrator and Settlement Administration other than those required to be paid by PNC; and (vii) pay any additional fees, costs and expenses not specifically enumerated in paragraph 82 of the Agreement, subject to approval of Settlement Class Counsel and PNC. Agreement ¶ 82. In addition to the $7,500,000.00 Settlement Fund, PNC is responsible for paying all costs and fees of the Settlement Administrator and Notice Administrator incurred in connection with the administration of the Notice Program and Settlement administration. *Id.* at ¶ 59.

30. All identifiable members of the Settlement Class who experienced a Positive Differential Overdraft Fee will receive *pro rata* distributions from the Net Settlement Fund, provided they do not opt-out of the Settlement.[2] Agreement ¶¶ 85, 87. The Positive Differential Overdraft Fee analysis determines, among other things, which RBC Account holders were assessed additional Overdraft Fees that would not have been assessed if the Bank had used a chronological posting sequence or method for posting Debit Card Transactions instead of High-to-Low Posting, and how much in additional Overdraft Fees those Account holders paid as a result. The calculation involves a multi-step process described in detail in the Agreement. *Id*. at ¶ 85.

31. Members of the Settlement Class do not have to submit claims or take any other affirmative step to receive relief under the Settlement. The amount of their damages has been determined by Settlement Class Counsel's expert through analysis of RBC's electronic data.

[2] The Net Settlement Fund is equal to the Settlement Fund, plus interest earned (if any), less the amount of Court-awarded attorneys' fees and costs to Class Counsel, the amount of the Court-awarded Service Award to the Class Representative, a reservation of a reasonable amount of funds for prospective costs of Settlement administration that are not PNC's responsibility pursuant to paragraph 82 of the Agreement, and any other costs and/or expenses incurred in connection with the Settlement that are not specifically enumerated in paragraph 82 that are provided for in the Agreement and have been approved by Settlement Class Counsel and PNC. Agreement ¶ 82.

Agreement Section XI. As soon as practicable after Final Approval, but no later than 150 days from the Effective Date (Agreement ¶¶ 87-95), the Settlement Administrator will calculate and distribute the Net Settlement Fund, on a pro rata basis, to all Settlement Class Members who had a Positive Differential Overdraft Fee and did not timely opt out of the Settlement. Agreement Section XII.

32. Payments to Settlement Class Members who are Current Account Holders will be made by crediting such Settlement Class Members' Accounts and notifying them of the credit. Agreement ¶ 92. PNC will then be entitled to a reimbursement for such credits from the Net Settlement Fund. *Id.* at ¶ 93. Past Account Holders (and any Current Account Holders whose Accounts cannot feasibly be automatically credited) will receive their payments by checks mailed by the Settlement Administrator. *Id.* at ¶ 94.

33. Any uncashed or returned checks will remain in the Settlement Fund for one year from the date the first distribution check is mailed, during which time the Settlement Administrator will make reasonable efforts to effectuate delivery of the Settlement Fund Payments. Agreement ¶ 95.

34. Any residual funds remaining in the Settlement Fund one year after the first Settlement Fund Payments are mailed will be distributed pursuant to Section XIII of the Agreement. Agreement ¶ 96.

F. Class Release.

35. In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will be deemed to have released PNC from claims related to the subject matter of the Action. The detailed release language is found in Section XIV of the Agreement. Agreement ¶¶ 97-100.

G. Settlement Notice.

36. The Notice Program (Agreement Section VIII) was designed to provide the best notice practicable and was tailored to take advantage of the information PNC has available about Settlement Class Members. Agreement ¶¶ 65-76. PNC will pay all fees and costs of the Notice Program. *Id.* at ¶¶ 59, 75.

37. The Notice Program was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Action, the terms of the Settlement, Class Counsel's Fee Application and request for Service Award for the Class Representative, and their rights to opt-out of the Settlement Class or object to the Settlement. The Notices and Notice Program constituted sufficient notice to all persons entitled to notice. The Notices and Notice Program satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

38. The Notice Program was comprised of three parts: (1) Mailed Notice consisting of direct mail postcards sent to all identifiable members of the Settlement Class; (2) Published Notice designed to reach those members of the Settlement Class for whom direct mail notice was not possible; and (3) a Long-Form Notice with more detail than the direct mail or publication notices, that has been available on the Settlement Website and via mail upon request. Agreement, 69-73.

39. All forms of Notice to the Settlement Class included, among other information: a description of the Settlement; a date by which members of the Settlement Class may exclude themselves from or "opt out" of the Settlement Class; a date by which members of the Settlement Class may object to the Settlement; the date on which the Final Approval Hearing will occur; and

the address of the Settlement Website at which members of the Settlement Class may access the Agreement and other related documents and information. Agreement ¶¶ 69-73.

40. In addition to the information described above, the Long-Form notice also described the procedure members of the Settlement Class must use to opt out of the Settlement or to object to the Settlement, and/or to Class Counsel's Fee Application and/or request for a Service Award for the Class Representative. All opt-outs and objections must be postmarked by the Opt-Out Deadline. Agreement ¶¶ 65-68.

a. The Mailed Notice Program

41. The Mailed Notice Program was administered and timely completed by the Notice Administrator in accord with paragraphs 69-73 of the Agreement.

b. The Published Notice Program

42. The Published Notice Program was administered and timely completed by the Notice Administrator in accord with paragraphs 73-74 of the Agreement.

c. The Settlement Website and the Toll-Free Settlement Line

43. The Notice Administrator timely established and has maintained the Settlement Website as a means for members of the Settlement Class to obtain notice of, and information about, the Settlement. Agreement ¶¶ 69-73. The Settlement Website includes hyperlinks to the Settlement, the Long-Form notice, the Preliminary Approval Order, and such other documents as Settlement Class Counsel and counsel for PNC agreed to post on the Settlement Website. *Id.* These documents will remain on the Settlement Website at least until Final Approval. *Id.*

44. The Notice Administrator also timely established and has maintained an automated toll-free telephone line for members of the Settlement Class to call with Settlement-

related inquiries and answer the questions of members of the Settlement Class who call with or otherwise communicate such inquiries. Agreement ¶ 64(d).

H. Settlement Termination

45. Either Party may terminate the Settlement if it is rejected or materially modified by the Court or an appellate court. Agreement ¶ 106. PNC also has the right to terminate the Settlement if the number of Settlement Class Members who timely opt out of the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with the Agreement by the Bank's counsel and Settlement Class Counsel. *Id.* at ¶ 107. The number or percentage will be confidential except to the Court, who upon request will be provided with a copy of the letter agreement for *in camera* review. *Id.*

I. Service Awards, Attorneys' Fees and Costs

46. Class Counsel are entitled to request, and PNC will not oppose, a Service Award of $10,000 for the Class Representative. Agreement ¶ 104. If the Court approves it, the Service Award will be paid from the Settlement Fund and will be in addition to any other relief to which the Class Representative is entitled as a Settlement Class Member. *Id.* The Service Award will compensate the Class Representative for his time and effort in the Action, and for the risks he undertook in prosecuting the Action.

47. Class Counsel are entitled to request, and PNC will not oppose, attorneys' fees up to thirty-five percent (35%) of the $7,500,000 Settlement Fund, plus reimbursement of litigation costs and expenses. Agreement ¶ 101. The Parties negotiated and reached this agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of the Settlement. *Id*. at ¶ 105.

J. Considerations Supporting Settlement.

1. The Settlement is the Product of Good Faith, Informed and Arm's Length Negotiations.

48. Settlement negotiations were informed by the experience of counsel in the litigation, certification, trial and settlement of nationwide class action cases. In particular, Class Counsel had the benefit of years of experience and a familiarity with the facts of this Action, as well as numerous other cases involving similar claims.

49. As detailed above, Class Counsel conducted substantial discovery and litigation relating to the Plaintiffs' claims and the Bank's anticipated defenses. Class Counsel's analysis enabled them to gain an understanding of the legal and factual issues in the Action and prepared them for well-informed settlement negotiations.

50. Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them, as a result of the litigation and settlement of similar cases reached within and outside of MDL 2036.

51. Class Counsel also gained a thorough understanding of the practical and legal issues they would continue to face litigating these claims based, in part, on similar claims challenging Wells Fargo's high-to-low posting practices prosecuted in *Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (N.D. Cal. 2010). Wells Fargo appealed the final judgment in *Gutierrez* to the United States Court of Appeals for the Ninth Circuit, which affirmed in part and reversed in part and remanded for further proceedings. *See Gutierrez v Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012).

2. Risks Associated with Trial Favor Settlement.

52. While Class Counsel are confident in the strength of Plaintiffs' case, we are also pragmatic in our awareness of the various defenses available to RBC, and the risks inherent in

continued litigation. While Plaintiffs avoided dismissal on various theories advanced at the motion to dismiss stage and, to date, have avoided being forced into individual arbitration, the ultimate success of Plaintiffs' claims would turn on these and other questions that were certain to arise in the context of class certification, summary judgment, trial, and post-judgment appellate review.

53. Protracted litigation carries inherent risks and inevitable delay. Under the circumstances, Class Counsel determined that the Settlement outweighs the risks of continued litigation.

3. The Settlement Amount is Reasonable Given the Range of Possible Recovery.

54. In reaching the Settlement, Settlement Class Counsel were forced to consider the potential impact of RBC's various defenses, in addition to all of the other litigation risks created in this complex multidistrict proceeding.

55. The $7,500,000 cash recovery obtained through the Settlement represents approximately twenty-three percent (23%) of Plaintiffs' and Settlement Class Members' most favorable damages recovery, *if* Plaintiffs and a certified class were successful in all respects through trial and on plenary appeal. There are alternative damage calculations that could have resulted in the recovery of a far lower amount at trial and there is no guaranty that Plaintiffs and a certified class would have recovered any damages at all.

56. Given these risks, the $7,500,000 cash recovery obtained through the Settlement is outstanding. PNC's agreement to pay the fees, costs and expenses associated with the Notice Program and administration of the Settlement – which are quite substantial – further enhances the recovery, as such amounts will not reduce the amount available for distribution to eligible members of the Settlement Class.

57. The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs' and members of the Settlement Class through continued litigation could only have been achieved if: (i) the Court granted Plaintiffs' pending motion for class certification and the Eleventh Circuit did not reverse it; (ii) Plaintiffs and the certified class defeated summary judgment; (iii) Plaintiffs and the certified class established liability and recovered damages at trial; and (iv) the final judgment was affirmed on appeal. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of RBC's merits defenses, and the challenging and unpredictable path of litigation that Plaintiffs would have faced absent the Settlement.

4. The Complexity, Expense, and Duration of Ongoing Litigation Favors Settlement.

58. The Settlement is the best vehicle for approximately 150,000 members of the Settlement Class to receive the relief to which they are entitled in a prompt and efficient manner. Ongoing litigation would involve additional pretrial proceedings in this Court, trial before the transferor court upon remand, and ultimately, a plenary appeal to the United States Court of Appeal for the Fifth Circuit. Absent the Settlement, the Action would likely continue for two or three more years.

5. The Factual Record Is Sufficiently Developed to Enable Plaintiffs and Settlement Class Counsel to Make a Reasoned Judgment Concerning This Settlement.

59. The Action was settled with the benefit of extensive briefing and decisions from this Court and the Eleventh Circuit involving RBC and other banks involved in MDL 2036. Class Counsel also had the benefit of 145,000 pages produced by RBC, as well as taking and defending eight depositions and preparing and arguing the motion for class certification, as well as three appeals before the Eleventh Circuit. Review of those documents and deposition

testimony positioned Settlement Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiffs' and the certified class' claims and the prospects for success at summary judgment, at trial, and on appeal. Settlement Class Counsel, with the benefit of their experience in MDL No. 2036, were well positioned to evaluate with confidence the strengths and weaknesses of Plaintiffs' claims and RBC's defenses.

6. Plaintiffs Faced Significant Obstacles to Prevailing.

60. Protracted litigation involves risks, delay and expenses; this case is no exception. While Class Counsel believe that Plaintiffs had a solid case against RBC, we are mindful that RBC advanced significant defenses that we would have been required to overcome in the absence of the Settlement. This Action involved several major litigation risks.

61. Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. Plaintiffs still faced class certification, summary judgment, a trial on the merits, and a post-judgment appeal. The uncertainties and delays from this process would have been significant. Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the Settlement cannot be seen as anything except a fair compromise.

7. The Benefits Provided by the Settlement Are Fair, Adequate and Reasonable Compared to the Range of Possible Recovery.

62. This Settlement provides reasonable benefits to the Settlement Class. Class Counsel's expert's analysis of RBC's transactional data showed that the most favorable damage recovery that Plaintiffs and the Settlement Class could reasonably have achieved at a trial was $33,153,673.91. Through the Settlement, Plaintiffs and the Settlement Class have achieved a recovery of approximately twenty-three percent (23%) of those damages without further risks or delays.

63. The $7,500,000 cash recovery obtained through this Settlement is an extremely fair and reasonable recovery to the Settlement Class in light of RBC's defenses, as well as the challenging, unpredictable path of litigation that Plaintiffs would otherwise have continued to face in the trial and appellate courts.

64. The automatic distribution process further supports Final Approval. All eligible Settlement Class Members who experienced a Positive Differential Overdraft Fee will receive their cash benefits automatically, without needing to fill out any claim forms – or indeed to take any affirmative steps whatsoever.

8. The Opinions of Settlement Class Counsel, Plaintiffs, and Absent Class Members Favor Approval of the Settlement.

65. Settlement Class Counsel believe this Settlement represents an excellent result in the face of extraordinary risks and represents the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

66. The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs and Settlement Class Members through continued litigation could only have been achieved if (i) the Court granted Plaintiffs' pending motion for class certification and the Eleventh Circuit did not reverse it; (ii) Plaintiffs and the certified class defeated summary judgment; (iii) Plaintiffs and the certified class established liability and recovered damages at trial; and (iv) the final judgment was affirmed on appeal. Given the extraordinary obstacles that Plaintiffs faced in the litigation, this recovery is a significant achievement by any objective measure.

67. To date, there has been virtually no opposition to the Settlement. As of February 21, 2020, no members of the Settlement Class had requested to be excluded from the Settlement Class. Moreover, as of that same date, no objections to the Settlement had been received.

68. Based on these and other reasons, we are of the opinion that the Settlement is deserving of Final Approval.

K. Service Award.

69. Pursuant to the Settlement, Class Counsel request, and PNC does not oppose, a Service Award in the amount of $10,000 for the Class Representative. Agreement ¶ 104. If the Court approves it, the Service Award will be paid from the Settlement Fund and will be in addition to any relief to which the Class Representative is entitled under the terms of the Settlement. *Id.* This award will compensate the Class Representative for his time and effort and the risk he undertook in prosecuting the Action.

70. Service awards compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. Courts, including this Court, have found service awards to be an efficient and productive way to encourage members of a class to become class representatives.

71. The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.

72. The above factors, as applied to this Action, demonstrate the reasonableness of a Service Award to the Class Representative. The Class Representative provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including (1) submitting to interviews with Class Counsel, (2) locating and forwarding responsive documents and information (i.e., monthly account statements and account agreements), and (3) preparing for and testifying at a deposition taken by RBC's counsel. In so doing, the Class

Representative was integral to forming the theory of the case. The Class Representative not only devoted time and effort to the litigation, but the end result of his efforts, and those of Class Counsel, conferred a substantial benefit on the Settlement Class.

73. If the Court approves it, the total Service Award will be $10,000. This amount represents less than 0.0013% of the Settlement Fund, a ratio that falls well below the range of reasonable service awards.

L. Attorneys' Fees and Expenses.

74. Pursuant to the Settlement, Class Counsel request that the Court award attorneys' fees of thirty-five percent (35%) of the $7,500,000 Settlement Fund, plus reimbursement of $92,899.19 representing limited out-of-pocket costs and expenses incurred in the prosecution and settlement of the Action. PNC agreed not to oppose our request for such fees and expenses. We negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of this Settlement.

75. The Court-approved Notice disseminated to the Settlement Class indicated that Class Counsel intended to request a fee of up to thirty-five percent (35%) of the $7,500,000.00 common fund created through our efforts, plus reimbursement of litigation costs and expenses.

1. The Claims Against RBC Required Substantial Time and Labor.

76. Prosecuting and settling the claims in the Action demanded considerable time and labor, making this fee request reasonable. Throughout the pendency of the Action, the organization of Class Counsel ensured that we were engaged in coordinated, productive work to maximize efficiency and minimize duplication of effort.

77. Class Counsel devoted substantial time to investigating the claims against RBC. We interviewed RBC customers and potential plaintiffs to gather information about RBC's

conduct and its effect on consumers. This information was essential to our ability to understand the nature of RBC's conduct, the language of the account agreements at issue, and potential remedies.

78. Class Counsel also expended significant resources researching and developing the legal theories and arguments presented in our pleadings and motions, and in opposition to RBC's motions, before this Court and the Eleventh Circuit.

79. Substantial time and resources were also dedicated to conducting discovery, that included review of over 145,000 pages of documents and electronic data as well as taking and defending eight depositions and preparing and arguing the motion for class certification, as well as three appeals before the Eleventh Circuit.

80. Settlement negotiations consumed further time and resources. Initial settlement discussions began in 2018 and Settlement Class Counsel and PNC participated in a settlement conference in late January 2019. On that date, they reached an agreement in principle concerning the material provisions of the Settlement. Ultimately, on February 5, 2019, Settlement Class Counsel and PNC reached an agreement in principle and executed a Summary Agreement that memorialized the material terms of the Settlement. Soon thereafter, they filed a joint notice of settlement requesting a suspension of all deadlines pending the drafting and execution of the Agreement. Months of detailed discussions and negotiations ensued, ultimately resulting in the drafting and execution of the Agreement. This work consumed a significant amount of time.

81. This case was litigated longer than any other settlement reached to date in MDL 2036 (over 8 years). Class Counsel participated in protracted pretrial proceedings, including serial motions to compel arbitration, three appeals before the Eleventh Circuit, briefing and

argument on motions to dismiss, extensive discovery, as well as briefing and argument on class certification. All told, Class Counsel's steadfast and coordinated work paid dividends for the Settlement Class. Taken together, the time and resources Class Counsel devoted to prosecuting and settling this Action support the fee we are now seeking.

2. The Issues Involved Were Novel and Difficult, and Required the Exceptional Skill of a Talented Group of Attorneys.

82. The Court has regularly witnessed and commented upon the high quality of Class Counsel's legal work, which conferred a significant benefit on the Settlement Class in the face of numerous litigation obstacles. It required the acquisition and analysis of substantial factual information and complex legal issues. Moreover, the management of this very large MDL, including the Action against RBC, among others, presented challenges that many law firms are simply not able to meet.

83. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. Class Counsel possess these attributes, and their participation on the team added value to the representation of this Settlement Class of approximately 150,000 Account holders.

84. The record before the Court shows that the Action involved a wide array of complex and novel challenges. We met every challenge, at every juncture.

85. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of PNC's counsel. RBC was represented by extremely able and diligent attorneys who were worthy, highly competent adversaries.

3. Class Counsel Achieved a Successful Result.

86. The Settlement we achieved is excellent in light of the hurdles we faced. Instead of facing additional years of costly and uncertain litigation, the overwhelming majority of

Settlement Class Members will receive an immediate cash benefit. Moreover, the Settlement Fund will not be diminished by the substantial fees and costs associated with the Notice Program and Settlement administration; all such fees and expenses have been and will continue to be borne separately by PNC. Furthermore, payments to eligible Settlement Class Members will be forthcoming automatically, through direct deposit for Current Account Holders and checks for Past Account Holders. The Settlement represents an excellent result by any measure.

4. The Claims Against RBC Entailed Considerable Risk.

87. Prosecuting the Action was risky from the outset. RBC asserted that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that the claims brought against it in the Action were subject to mandatory individual arbitration and that Plaintiffs' state law claims for relief were preempted. If the Bank were successful in its defense against the Plaintiffs and putative class members, this litigation would have ground to a halt and this Settlement would never have been achieved.

88. Each of these risks, by itself, could have impeded Plaintiffs' and the putative class's successful prosecution of these claims at trial and on appeal. Together, they clearly demonstrate that Plaintiffs' claims against RBC were entailed considerable risk and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

5. Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis.

89. Class Counsel prosecuted the Action on a contingent fee basis. In undertaking to prosecute this complex action on that basis, we assumed a significant risk of nonpayment or underpayment. That risk favors awarding the requested attorneys' fees.

90. Public policy concerns – especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication – further support the requested attorneys' fees.

91. The progress of the Action to date shows the inherent risk we assumed in taking this case on a contingency fee basis. Despite our ongoing effort in litigating the Action for more than eight years, we remain completely uncompensated for the substantial time and expenses incurred in this Action. There can be no dispute that the Action entailed substantial risk of nonpayment.

6. The Requested Fee Comports with Customary Fees Awarded in Similar Cases.

92. Although the requested fee is slightly higher than the fee awards in prior settlements approved by this Court in MDL 2036, the 35% fee request is within the range of reason under the factors listed by the Eleventh Circuit in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), and is supported by similar fee awards in many other cases. Numerous decisions have recognized that a fee award of thirty-five percent (35%) of a common fund is well within the range of a customary fee. Moreover, the requested fee is also nearly the same percentage awarded as fees in other MDL 2036 settlements approved by this Court, as well as many other cases brought in this Circuit and District.

7. Other Factors Support Approving Class Counsel's Fee Request.

93. Other factors also support granting our fee request. As noted above, the time and expense demands on us were considerable. Moreover, our fee request is firmly rooted in the economics involved in prosecuting a class action. Without adequate compensation and financial reward, cases such as this simply could not be pursued.

8. Reimbursement of Certain Costs and Expenses.

94. Class Counsel also respectfully request reimbursement of $92,899.19, representing limited out-of-pocket costs and expenses we necessarily incurred in connection with the prosecution of the Action and the Settlement. These costs and expenses are comprised of: (1) $83,800.00 in fees and expenses incurred for experts, principally Arthur Olsen, whose services were critical in determining the damages for the Settlement Class, in identifying members of the Settlement Class, and in allocating the Settlement Fund; (2) $8,229.69 in court reporter fees and transcripts; and (3) $869.50 associated with the printing of briefs for the United States Supreme Court. These costs and expenses are recorded in the books and records maintained by Plaintiffs' Coordinating Counsel and were reasonably and necessarily incurred in furtherance of our prosecution of the Action and the Settlement.

95. We have limited the categories of expenses for which we are seeking reimbursement to those enumerated above. We are not seeking reimbursement for many thousands of dollars in other expenses, including (but not limited to) travel expenses.

* * *

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami, Florida, on February 25, 2020.

/s/ Aaron S. Podhurst
Aarorn S. Podhurst

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Coral Gables, Florida, on February 25, 2020.

/s/ Bruce S. Rogow
Bruce S. Rogow

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Coral Gables, Florida on February 25, 2020.

/s/ Robert C. Gilbert
Robert C. Gilbert

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Michael Dasher v. RBC Bank (USA)

Case No. 1:10-cv-22190-JLK

DECLARATION OF BRIAN T. FITZPATRICK

I. Background and qualifications

1. I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Appendix 1.

2. My teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia and other events about class action litigation, such as the ABA National Institute on Class Actions in 2011, 2015, 2016, 2017, and 2019; the ABA Annual Meeting in 2012; and the ABA Section on Litigation

Annual Meeting in 2020. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to membership in the American Law Institute.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "Empirical Study"). This article is still the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id*. at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 54 from the Eleventh Circuit alone. *See id*. at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts, scholars, and testifying experts.[1]

[1] *See*, *e.g.*, *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *34 (N.D. Ga. Jan. 13, 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, 2019 WL 6327363, at *4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*, 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same);

4. I have been asked by class counsel to opine on (1) whether the settlement they have asked the court to approve is fair, adequate, and reasonable, and (2) whether the attorneys' fees they have requested are reasonable. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents (and noted how I refer to these documents herein) in Appendix 2. As I explain, based on my study of settlements across the country and in the Eleventh Circuit in particular—including those in this very multidistrict litigation—I believe both the settlement agreement and fee request here are well within the range of reason.

II. Case background

5. This lawsuit alleges that RBC Bank (USA) ("RBC")—now owned by PNC Bank ("PNC")—breached the covenant of good faith and fair dealing and other state laws of general

---

Hillson v. Kelly Servs. Inc., 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litigation*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. Erisa Litig.*, 36 F.Supp.3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F.Supp.2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, 4 F.Supp.3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litigation*, 953 F.Supp.2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

application through its practice of sequencing customers' debit-card transactions from the largest amount to the smallest amount instead of chronological order in order to maximize the number of overdraft fees it could charge. The first complaint in this lawsuit was filed on July 2, 2010, in the United States District Court for the South District of Florida and shortly thereafter transferred into the *In Re: Checking Account Overdraft Litigation* MDL 2036 ("*Overdraft Litigation MDL*"). RBC moved to compel arbitration on four separate occasions, twice in 2010, and once each in 2011 and 2014. These motions were denied, only to be appealed to the Eleventh Circuit. RBC also filed motions to dismiss the individual claims of the representative plaintiff and the putative claims of the national class. The Court denied these motions in two separate orders, one dated February 5, 2016, and the other dated July 5, 2016. On August 31, 2018, the plaintiff moved for class certification, which RBC opposed.

6. While the plaintiff's motion for class certification was pending, the parties reached a class-wide settlement. This court granted preliminary approval to the settlement and certified a settlement class on November 13, 2019. The parties have now moved the court for final approval and class counsel have moved for an award of fees and expenses.

7. The class includes, with minor exceptions, "all holders of a RBC Account who, from October 10, 2007 through and including March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting." RBC Settlement Agreement ¶ 56. Pursuant to the settlement agreement, the class will release PNC from any and all claims pertaining to matters during the class period that "were or could have been alleged" in this lawsuit, including any claims arising out of "the assessment of one or multiple Overdraft Fees," "the amount of one or more Overdraft Fees," and "the High-to-Low Posting or any other posting order . . . ." *Id.* at ¶ 97. In exchange, PNC will pay the class $7.5 million, to be distributed *pro rata* (after deducting attorneys'

fees, expenses, and any service awards to the named plaintiff) based on the amount of each class member's damages, and with no amount reverting to PNC. *See id*. at ¶¶ 82, 87-88, 90. All settlement class members will receive their cash distributions automatically, without the need to file claim forms. *See id*. at ¶ 85. In addition to this cash compensation, PNC has agreed to pay all costs associated with administering and notifying the class of the settlement. *See id.* at ¶ 59.

8. Plaintiff and class counsel are now moving for final approval of the settlement and class counsel are moving for an award of fees equal to $2,625,000 plus expenses.

III. Assessment of the reasonableness of the settlement

9. Under Federal Rule of Civil Procedure 23, class actions can be settled "only with the court's approval," Fed. R. Civ. P. 23(e), and only if the settlement is "fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(2). The court is given this responsibility because the interests of class counsel, the class representative, and the defendant can diverge from the interests of absent class members, and the court must ensure that the absent class members are treated fairly before they are bound to the agreement. *See, e.g.,* Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1630 (2009) (hereinafter "Objector Blackmail").

10. Courts usually examine a number of factors in discharging this duty. In the Eleventh Circuit, courts have been instructed to consider at least six factors: "(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved." *Faught v. Amer. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2012); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Although it is not

possible to fully assess the fifth factor yet because the deadline for objections to the settlement has not yet passed,[2] as I explain below, all of the other factors clearly counsel in favor of approving the settlement.

11. Consider first the factors "(1) the likelihood of success at trial," "(2) the range of possible recovery," and "(3) the range of possible recovery at which a settlement is fair, adequate, and reasonable." These factors together ask the court to assess whether the settlement is a fair value in light of the risks presented by the litigation. That is, these factors ask the court to compare the relief called for in the settlement with the relief the class might have recovered had the case gone forward, discounted by the risks of no or reduced recovery. According to class counsel's expert, the $7.5 million settlement fund constitutes approximately 23% of the wrongful overdraft fees the settlement class members were charged (compared to chronological ordering). *See* Olsen RBC Declaration ¶ 27. This is much better than most other recoveries in class action litigation for which we have data.[3] As I explain below, it is also quite successful when compared to the other settlements from the *Overdraft Litigation MDL*, especially in light of the history and risks presented by this case in particular.

12. First, it was not at all clear that the plaintiff would have won its case on the merits. Like many other banks in the *Overdraft Litigation MDL*, PNC asserted a number of defenses

[2] It is important to note that, even if there is opposition to the settlement from class members, not all opposition is created equal. Although some class members file objections because they sincerely believe there is something amiss in the settlement, many others do so only to try to delay final resolution of the case and to use that delay to extract side payments from class counsel. This phenomenon is known as objector blackmail, and courts are wise to stand guard against it. *See generally* Fitzpatrick, *Objector Blackmail, supra.*

[3] The best studies of class member recoveries come from securities fraud cases and price-fixing cases. *See, e.g.*, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review*, *available at* https://www.nera.com/content/dam/nera/publications/2020/PUB_Year_End_Trends_012120_Final.pdf at 20 (finding that the median securities fraud class action between 2010 and 2019 settled for between 1.3% and 2.6% of a measure of investor losses, depending on the year); John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 2010 (2015) (finding the weighted average of recoveries—the authors' preferred measure—to be 19% of single damages for cartel cases between 1990 to 2014).

including that the High-to-Low Posting was authorized by agreements with customers, the claims were subject to mandatory individual arbitration, and that the plaintiff's state law claims for relief were preempted. Although the plaintiff was successful in avoiding arbitration and dismissal, there were many uncertainties outstanding at the time of settlement. Even if the plaintiff were to prevail on class certification and defeat the bank's inevitable motion for summary judgment, it is not at all clear how a jury would see these defenses as a matter of fact were this case to proceed to trial. Moreover, any judgment would be subject to appeal, introducing even more uncertainty. The recovery of 23% of possible damages here is, in my opinion, an excellent one when compared to the possibilities that the class could have recovered much less or nothing at all at trial or as a result of a post-judgment appeal.[4]

13. Second, it is even more apparent that the recovery here is excellent in light of the risks when the settlement is compared to the others from the *Overdraft Litigation MDL*. In Table 1, I set forth each of these settlements, the sum of the cash (and any valued policy changes called for in the settlement) as a percentage of the class's damages (using chronological ordering as the baseline), whether the defendant had invoked arbitration with a class action waiver (as in this case), the approximate number of states comprising the plaintiff classes in each case,[5] and any other obvious considerations relevant to the risk and recovery in these suits. As this table shows, the settlements to date in the *Overdraft Litigation MDL* recovered between roughly 5% and 65% of the damages estimated by class counsel's expert, with the variation largely dependent on (i)

[4] For example, according to class counsel's expert, if the jury or court adopted a slightly different damage model, the damage recovery would have decreased from approximately $33.2 million to approximately $22.5 million. *See* Olsen RBC Declaration ¶ 33.

[5] These numbers were provided to me by class counsel. This factor is important because the lawsuits in the *Overdraft Litigation MDL* are based on state law claims and the laws of the states vary to some extent. This is a risk factor because the greater the number of states comprising the class, the greater the risk posed by the predominance requirement under Fed. R. Civ. P. 23(b)(3).

whether the defendant bank had invoked arbitration and (ii) whether the settlement was reached before or after class certification in light of the prospects of surviving an appeal under Fed. R. Civ. P. 23(f) to review class certification. The settlement here is in a case where the bank invoked arbitration multiple times and that issue (and others) would be subject to post-judgment review. Nonetheless, the settlement will result in the recovery of a percentage of the class's damages that is at the high end of other cases where arbitration was invoked. In short, the risk-recovery tradeoff here is equal to or better than the other comparable settlements approved in the *Overdraft Litigation MDL*.

Table 1: Settlements from *In re: Checking Account Overdraft Litigation*, MDL No. 2036

Defendant	Final approval	Recovery as % of damages	Arbitration invoked?	No. of states	Other factors
RBC[6]	Pending	23%	Yes	6	
BancorpSouth[7]	7/15/16	57%	No	8	Certified, 23(f) denied
Capital One[8]	5/22/15	35%	No	6	Certified, 23(f) denied, abbr. statute of limit. pd.
Synovus Bank[9]	4/2/15	36%	Yes	4	
M&T Bank[10]	3/13/15	5%	Yes	10	
Comerica[11]	6/10/14	35%	No	5	Certified, 23(f) denied, abbr. contractual limit. pd.
Susquehanna[12]	4/1/14	40%	No	4	
U.S. Bank[13]	1/6/14	13%	Yes	24	
Compass[14]	8/7/13	16%	Yes	7	
PNC[15]	8/5/13	45+%	No	14	Certified, recon. pending
Harris[16]	8/5/13	65+%	No	10	
M & I[17]	8/2/13	25+%	Yes	10	
Great Western[18]	8/2/13	50+%	No	7	
Commerce[19]	8/2/13	57%	No	6	
Associated[20]	8/2/13	50+%	No	4	
TD[21]	3/18/13	42%	No	14	Certified, 23(f) pending
Citizens[22]	3/12/13	42%	No	13	
Chase[23]	12/19/12	21%	Yes	25	
Bank of the West[24]	12/18/12	52%	No	19	
Union[25]	10/4/12	63%	No	3	Certified, 23(f) denied
Bank of OK[26]	9/13/12	46%	No	9	
Bank of America[27]	11/22/11	9-45%	No	50	Prior settlement

[6] *See* Olsen RBC Declaration ¶ 27.
[7] *See* BancorpSouth Joint Declaration ¶ 53.
[8] *See* Capital One Joint Declaration ¶ 61.
[9] *See* Synovus Bank Joint Declaration ¶ 46.
[10] *See* M&T Bank Joint Declaration ¶ 61.
[11] *See* Comerica Joint Declaration ¶ 49.
[12] *See* Susquehanna Joint Declaration ¶ 43.
[13] *See* U.S. Bank Joint Declaration ¶ 73.
[14] *See* Compass Joint Declaration ¶ 65.
[15] *See* PNC Joint Declaration ¶ 62. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.
[16] *See* Harris Bank Joint Declaration ¶ 38. The percentage number listed in the table is based solely on the cash portion

14. Consider next the factor "(4) the anticipated complexity, expense, and duration of litigation." This factor asks the court to assess whether the risk-recovery trade-off identified by the above factors might be further justified by the savings in time and expense that the settlement brings. At the time of settlement, the parties were awaiting the Court's decision on class certification. Had the parties not settled, they would have had to brief summary judgment motions, complete preparations for trial, present trial and all that goes with it, litigate post-trial motions, and then litigate any appeals on the merits before the Eleventh Circuit. Even at this advanced stage of litigation, all of this would have probably consumed millions of dollars of class counsel's time and delay any payments to class members for several years. As such, this factor further supports the settlement in this case.

15. Consider next the factor "(6) the stage of proceedings at which the settlement was achieved." This factor asks the court to satisfy itself that class counsel have dug far enough into the case to know what the case is worth and to enable the court to assess what the case is worth

---

of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.

[17] *See* M&I Joint Declaration ¶¶ 9, 39. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.

[18] *See* Great Western Joint Declaration ¶ 50. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.

[19] *See* Commerce Bank Joint Declaration ¶¶ 21, 45. The $18.3 million cash portion of the settlement constituted 45% of the class's estimated damages; the valuation of the defendant's changed practices constituted the remainder.

[20] *See* Associated Bank Joint Declaration ¶ 50. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.

[21] *See* TD Bank Joint Declaration ¶¶ 25-27, 54.

[22] *See* Citizens Financial Joint Declaration ¶ 65.

[23] *See* Chase Joint Declaration ¶ 29. The $110 million cash portion of the settlement constituted 14% of the class's estimated damages; the valuation of the defendant's changed practices constituted the remainder.

[24] *See* Bank of the West Joint Declaration ¶ 46.

[25] *See* Union Bank Joint Declaration ¶¶ 15, 49.

[26] *See* Bank of Oklahoma Joint Declaration ¶25.

[27] *See* Bank of America Joint Declaration ¶¶ 24-30, 68.

using the factors discussed above; it is largely a procedural consideration rather than a substantive one. There is no doubt that this case has been litigated long enough to assess its value. As I noted, this case settled after over eight years of litigation—indeed, it has gone on longer than any other case thus far resolved in the *Overdraft Litigation MDL*. The parties reviewed hundreds of thousands of pages of discovery, voluminous electronically-stored information, and took a number of depositions. *See* RBC Joint Declaration ¶ 79. Moreover, the parties have had the benefit of decisions by this court in years of related litigation. In other words, the lawsuits from the *Overdraft Litigation MDL*—especially this one—are at a mature stage; they have not been rushed to settlement for a quick fee award.

16. Consider finally one other factor that I believe should be examined in order to complete a thorough assessment of the fairness of this settlement: the care with which class counsel have taken to maximize class member participation in the settlement. In particular, *all* settlement class members will *automatically* receive their pro rata share of the settlement; they will not have to submit claim forms. *See* RBC Settlement Agreement ¶ 85. This feature of the settlement is very unusual in my experience (although, it has been common in class counsel's other settlements from the *Overdraft Litigation MDL*), and it is additional reason to look favorably on the settlement.

17. For all these reasons, I believe this settlement is not only fair, adequate, and reasonable, but, frankly, very impressive as well.

IV. Assessment of the reasonableness of the request for attorneys' fees

18. This is a so-called "common fund" settlement, where the efforts by attorneys for the plaintiff have created a common fund for the benefit of class members, but, because this is a class action and there is no fee-shifting statute applicable, the attorneys can be compensated only

from the fund they have created. At one time, courts that awarded fees in common fund class actions did so using the familiar lodestar approach. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043, 2051 (2010) (hereinafter "Class Action Lawyers"). Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class actions because it was difficult to calculate the lodestar (courts had to review voluminous time records and the like) and the method did not align the interests of class counsel with the interests of the class (because class counsel's recovery did not depend on how much the class recovered). *See id.* at 2051-52; *Camden I Condominium Ass'n v. Dukle*, 946 F.2d 768, 771-74 (11th Cir. 1991). According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases. *See* Fitzpatrick, *Empirical Study*, *supra*, at 832 (finding the lodestar method used in only 12% of settlements). The other large-scale study of class action fee awards found much the same. *See, e.g.,* Theodore Eisenberg et al., *Attorneys' Fees in Class Actions 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017) (hereinafter "Eisenberg-Miller 2017") (finding the lodestar method used only 6.29% of the time from 2009-2013, down from 13.6% from 1993-2002 and 9.6% from 2003-2008).

19. Reflecting this trend, the Eleventh Circuit held in 1991 that courts should no longer use the lodestar method in common fund cases, and, instead, should use what is known as the percentage method. *See Camden I*, 946 F.2d at 774 ("Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund . . . ."). Under this approach, courts select a percentage that they believe is fair to class counsel, multiply

the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach has the advantages of being easy to calculate (because courts need not review voluminous time records and the like) and of aligning the interests of class counsel with the interests of the class (because the more the class recovers, the more class counsel recovers). *See* Fitzpatrick, *Class Action Lawyers, supra,* at 2052.

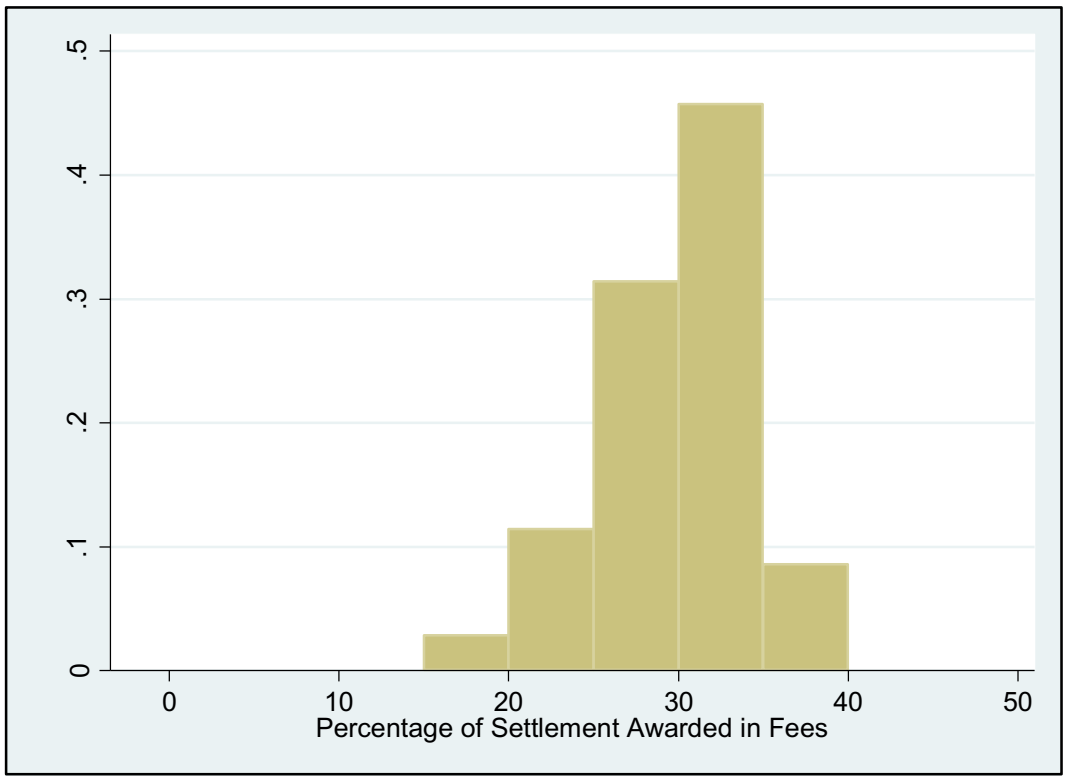
20. Courts usually examine a number of factors when deciding what percentage to award class counsel under the percentage approach. *See* Fitzpatrick, *Empirical Study, supra*, at 832. In the Eleventh Circuit, courts use 25% as the "'bench mark' percentage fee award" and then adjust it upward or downward "in accordance with the individual circumstances of each case." *Camden I*, 946 F.2d at 775. Although "[t]he factors which will impact upon the appropriate percentage . . . in any particular case will undoubtedly vary," the Eleventh Circuit has identified sixteen factors that it has said may be "appropriate[]" or "pertinent" to consider. *Camden I*, 946 F.2d at 775. These factors include "[1] the time required to reach a settlement, [2] whether there are any substantial objections . . ., [3] any non-monetary benefits conferred upon the class . . ., and [4] the economics involved in prosecuting a class action," *id*., as well as the twelve factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): "[5] the time and labor required; [6] the novelty and difficulty of the questions involved; [7] the skill requisite to perform the legal service properly; [8] the preclusion of other employment by the attorney due to acceptance of the case; [9] the customary fee; [10] whether the fee is fixed or contingent; [11] time limitations imposed by the client or the circumstances; [12] the amount involved and the results obtained; [13] the experience, reputation, and ability of the attorneys; [14] the 'undesirability' of the case; [15] the nature and length of the professional relationship with the client; [and] [16] awards in similar cases." *Camden I*, 946 F.2d at 772 n.3.

21. In this case, class counsel are seeking an award of fees equal to $2,625,000. This is less than thirty-five percent (35%) of the $7.5+ million settlement fund.[28] In my opinion, the award requested here is within the range of reason in light of the factors listed by the Eleventh Circuit in *Camden I*.

22. Consider first the factors that go to the fee awards in other cases: "[9] the customary fee" and "[16] awards in similar cases." In my empirical study, there were 35 class action cases in which district courts in the Eleventh Circuit used the percentage method to award attorneys' fees. *See* Fitzpatrick, *Empirical Study, supra*, at 836. The average fee awarded in these cases was 28.1% and the median fee awarded was 30%. *See id.* This is broadly consistent with the other large-scale study of class action fees. *See Eisenberg-Miller 2017*, *supra*, at 951 (finding mean and median of 30% and 33% in the Eleventh Circuit since 2009); Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010) (hereinafter "Eisenberg-Miller 2010") (finding mean and median in the Eleventh Circuit of 21% and 22% before 2009). Although the award requested here is higher than average, it is by no means unprecedented. This can be seen from Figure 1, which shows the distribution of all of the Eleventh Circuit percentage-method fee awards in my study. In particular, the figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis). As the figure shows, *over 40%* (i.e., .4) of all settlements included fee awards between 30% (inclusive) and 35%. In other words, the fee award requested here is in the meatiest portion of the Eleventh Circuit's fee distribution.

[28] The $7.5 million figure understates the total amount of the settlement fund because it does not include PNC's agreement to pay the unquantified costs to administer the settlement and to notify absent class members.

Figure 1: Percentage-method fee awards in the Eleventh Circuit, 2006-2007



23. Indeed, there are plenty of cases in the Eleventh Circuit where courts have awarded fees of 35% *or more* when the other factors and circumstances justify it, including in one of the cases remanded from this very MDL. *See Swift v. BancorpSouth Bank*, No. 10-cv-00090-GRJ (N.D. Fla., July 15, 2016) (awarding $8.4 million in fees—35%—of $24 million class settlement); *see also Johns Manville v. Tennessee Valley Auth.*, No. 99-2294 (N.D. Ala. Aug. 20, 2007) (awarding $6.3 million in fees—35%—of $18 million class settlement); *Neal v. Chase Manhattan Bank, U.S.A., N.A.*, No. 06-00049 (S.D. Ala. May 30, 2006) (awarding $1 million in fees and expenses—37%—of $2.7 million class settlement).

24. The request here is also consistent with the other fee awards from this MDL, where this court awarded 30% or 31% in cases that settled much earlier than this one. *See In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330, 1358-68 (S.D. Fla. 2011) (30%); *Case v. Bank of Oklahoma, N.A.*, No. 11-cv-20815-JLK (S.D. Fla., Sep. 13, 2012) (same); *Larsen et al. v.*

Union Bank, N.A., No. 09-cv-23235-JLK (S.D. Fla., Oct. 4, 2012) (same); *Dee v. Bank of the West, N.A.*, No. 10-cv-22985-JLK (S.D. Fla., Dec. 18, 2012) (same); *Lopez v. JPMorgan Chase Bank, N.A.*, No. 09-cv-23127-JLK (S.D. Fla., Dec. 19, 2012) (same); *Duval v. Citizens Financial Group, Inc.,* No. 10-cv-21080-JLK (S.D. Fla., Mar. 12, 2013) (same); *Mosser v. TD Bank, N.A.,* No. 10-cv-21386-JLK (S.D. Fla., Mar. 18, 2013) (same); *Harris v. Associated Bank, N.A.*, No. 10-cv-22948-JLK (S.D. Fla., Aug., 2, 2013) (same); *Wolfgeher v. Commerce Bank, N.A.*, No. 10-cv-22017-JLK (S.D. Fla., Aug. 2, 2013) (same); *McKinley v. Great Western Bank*, No. 10-cv-22770-JLK (S.D. Fla., Aug. 2, 2013) (same); *Eno v. M & I Marshall & Illsley Bank*, No. 10-cv-22730-JLK (S.D. Fla., Aug. 2, 2013) (same); *Blahut v. Harris Bank, N.A.*, No. 10-cv-21821-JLK (S.D. Fla., Aug. 5, 2013) (same); *Casayuran, et al. v. PNC Bank, N.A.*, No. 10-cv-20496-JLK (S.D. Fla., Aug. 5, 2013) (same); *Anderson v. Compass Bank*, No. 11-cv-20436-JLK (S.D. Fla., Aug. 7, 2013) (same); *Waters et al. v. U.S. Bank, N.A.*, 09-cv-23034-JLK (S.D. Fla., Jan. 6, 2014) (same); *Mello v. Susquehanna Bank*, No. 11-cv-23250-JLK (S.D. Fla., Apr. 1, 2014) (same); *Simmons v. Comerica Bank*, No. 10-cv-22958-JLK (S.D. Fla., Jun. 10, 2014) (same); *Given v. M&T Bank*, No. 10-cv-20478-JLK (S.D. Fla., Mar. 13, 2015) (same); *Childs v. Synovus Bank*, No. 10-cv-23938-JLK (S.D. Fla., Apr. 2, 2015) (same); *Steen v. Capital One, N.A.*, No. 10-cv-22058-JLK (S.D. Fla., May 22, 2015) (31%).

25. Indeed, even when compared to fee awards outside the Eleventh Circuit, the fee requested in this case is hardly unprecedented. According to my empirical study, the mean and median nationwide using the percentage method was 25.4% and 25%, respectively, with over thirty percent of awards between 30% and 35%. *See* Fitzpatrick, *Empirical Study,* at 833-34, 838. The other large-scale study of class action fees found much the same. *See Eisenberg-Miller 2017*, *supra*, at 951 (finding mean and median of 27% and 29% nationwide since 2009); *Eisenberg-*

Miller 2010, *supra*, at 260 (finding mean and median of 24% and 25% nationwide before 2009). Indeed, as in the Eleventh Circuit, courts outside the Eleventh Circuit are not afraid to award fees at or above 35% when the other factors and circumstances justify it. *See* Stuart J. Logan et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 169 (Mar.-Apr. 2003) (listing numerous fee awards above 35% between 1973 and 2003). As I explain below, it is my opinion that these other factors and circumstances justify the request here as well.

26. Consider next the factors that go to the time it took to litigate and resolve these lawsuits: "[1] the time required to reach a settlement" and "[5] the time and labor required." These factors distinguish this case from most others, including the others from the *Overdraft Litigation MDL*. This case has been litigated longer than any other concluded case in the *Overdraft Litigation MDL* (over 8 years)—and well beyond the average time to resolve a consumer class action (less than 3 years), *see* Fitzpatrick, *Empirical Study, supra*, at 820. Indeed, as I noted, the parties settled this case after several contentious motions to compel arbitration that resulted in three trips to the Eleventh Circuit. Additionally, the parties have engaged in substantial discovery and have fully briefed and argued the motion for class certification, which was pending at the time the parties reached settlement. As such, these factors counsel in favor of an increase not only from the Eleventh Circuit's benchmark, but from past awards in the *Overdraft Litigation MDL* as well.

27. Consider next some of the factors that go to the results obtained by class counsel in light of the risks they faced: "[4] the economics involved in prosecuting a class action," "[6] the novelty and difficulty of the questions involved," "[10] whether the fee is fixed or contingent," "[12] the amount involved and the results obtained," and "[14] the 'undesirability' of the case." As I explained above, the recovery here is very impressive in light of the risks the class faced, even when compared to the other settlements from the *Overdraft Litigation MDL*. Yet, like virtually all

consumer class actions, this litigation was undertaken on a contingency basis. That is, class counsel devoted a significant amount of time over eight years without receiving any compensation. To put it succinctly, this was no ordinary class action. Indeed, I believe this case was more risky and less desirable than most class actions, including many in this MDL. Given their work and the results achieved, they should now be compensated appropriately. As such, these factors, too, weigh in favor of a deviation both from the Eleventh Circuit's benchmark as well as past awards in the *Overdraft Litigation MDL*.

28. Consider next the other *Camden* factors. Two of these factors are inapplicable here (at least as of yet)—"[2] whether there are any substantial objections" and "[3] any non-monetary benefits conferred upon the class"—but the other remaining factors look favorably on the fee award requested here. The other factors go to the skills of class counsel and their relationship with the plaintiffs: "[7] the skill requisite to perform the legal service properly," "[8] the preclusion of other employment by the attorney due to acceptance of the case," "[11] time limitations imposed by the client or the circumstances," "[13] the experience, reputation, and ability of the attorneys," and "[15] the nature and length of the professional relationship with the client." Although I was not privy to the attorney-client relationships here, I can say that class counsel count among their number some of the most experienced and highly regarded lawyers in the United States. These are not mere "benchmark" lawyers. Indeed, had class counsel not been so talented, I doubt the class would have recovered the compensation that is provided in this settlement.

29. Finally, some courts (about half in my empirical study) "crosscheck" the percentage method with class counsel's lodestar for the purpose of capping the percentage at some multiple of the lodestar in order to prevent class counsel from reaping a so-called "windfall." *See* Fitzpatrick, *Empirical Study*, *supra*, at 832. In my opinion, the court should *not* use what has

become known as the "lodestar crosscheck." As scholars have pointed out, the lodestar crosscheck reintroduces the very same undesirable effects of the lodestar method that the percentage method was supposed to correct in the first place. *See, e.g.*, Myriam Gilles & Gary Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. Pa. L. Rev. 103, 140-45 (2006). In particular, the lodestar crosscheck blunts class counsel's incentive to achieve the largest possible award for the class and instead incentivizes them to multiply filings and drag along proceedings to increase their lodestar.

30. Consider the following examples. Suppose a class action lawyer worked on a case for one year and accrued a lodestar of $1 million. If the lawyer believed that a court would award it a fee of 25% or 5 times his lodestar, whichever was lesser, then he would be completely indifferent between accepting a settlement offer at this point of $20 million and $200 million; either way, the lawyer would earn $5 million. Needless to say, the incentive to be indifferent as to the size of the settlement is good neither for the class, which is interested in maximizing its compensation, nor for society, which is interested in fully deterring misconduct. Suppose instead the lawyer had been offered $40 million after one year of work. If the lawyer again believed the court would not award a fee of 25% unless it was no more than 5 times his lodestar, then the lawyer would want to delay accepting the settlement until he could generate another $1 million in lodestar and thereby reap the maximum fee. Again, this is good neither for the class nor for society, both of which have interests in compensating and deterring in the most timely and efficient manner.

31. For these reasons, many courts have rejected the lodestar crosscheck, *see Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) ("[I]n awarding attorneys' fees in a common fund case, the 'time and labor involved' factor need not be evaluated using the lodestar formulation."), and so far this court refused to undertake it in *all* of the related cases in the

Overdraft Litigation MDL. *See, e.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 ("The lodestar approach should not be imposed through the back door via a 'cross-check.'"). In my opinion, the court here should continue this practice.

32. For all these reasons, I believe the fee award requested here is well within the range of reason. Class counsel undertook an incredibly risky and undesirable case, and through their diligence, perseverance, and skill, obtained an outstanding result for the settlement class. Class counsel should be commended for such an excellent result, and should be compensated in accord with their request because it is warranted and reasonable given similar fee awards.

33. My compensation in this matter was a flat fee in no way dependent on the outcome of this motion.

Nashville, TN

February 24, 2020

Brian T. Fitzpatrick

Appendix 1

BRIAN T. FITZPATRICK

Vanderbilt University Law School
131 21st Avenue South
Nashville, TN 37203
(615) 322-4032
brian.fitzpatrick@law.vanderbilt.edu

ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012 to present
- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018
- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010
- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000
- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997
- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CAMBRIDGE INTERNATIONAL HANDBOOK OF CLASS ACTIONS (Cambridge University Press, forthcoming 2021) (ed., with Randall Thomas)

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press 2019)

ACADEMIC ARTICLES

Can the Class Action be Made Business Friendly?, 24 N.Z. BUS. L. & Q. 169 (2018)

Can and Should the New Third-Party Litigation Financing Come to Class Actions?, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

Scalia in the Casebooks, 84 U. CHI. L. REV. 2231 (2017)

The Ideological Consequences of Judicial Selection, 70 VAND. L. REV. 1729 (2017)

Judicial Selection and Ideology, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

Justice Scalia and Class Actions: A Loving Critique, 92 NOTRE DAME L. REV. 1977 (2017)

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly *and* Iqbal *Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Do Class Actions Deter Wrongdoing? in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

Judicial Selection in Illinois in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

The Future of Class Actions, National Consumer Law Center Class Action Symposium, Boston, MA (Nov. 16, 2019) (panelist)

The Conservative Case for Class Actions, Center for Civil Justice, NYU Law School, New York, NY (Nov.11, 2019)

Deregulation and Private Enforcement, Class Actions, Mass Torts, and MDLs: The Next 50 Years, Pound Institute Academic Symposium, Lewis & Clark Law School, Portland, OR (Nov. 2, 2019)

Class Actions and Accountability in Finance, Investors and the Rule of Law Conference, Institute for Investor Protection, Loyola University Chicago Law School, Chicago, IL (Oct. 25, 2019) (panelist)

Incentivizing Lawyers as Teams, University of Texas at Austin Law School, Austin, TX (Oct. 22, 2019)

"Dueling Pianos": A Debate on the Continuing Need for Class Actions, Twenty Third Annual National Institute on Class Actions, American Bar Association, Nashville, TN (Oct. 18, 2019) (panelist)

A Debate on the Utility of Class Actions, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Oct.16, 2019) (panelist)

Litigation Funding, Forty Seventh Annual Meeting, Intellectual Property Owners Association, Washington, DC (Sep. 26, 2019) (panelist)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, International Class Actions Conference, Vanderbilt Law School, Nashville, TN (Aug. 24, 2019)

A New Source of Class Action Data, Corporate Accountability Conference, Institute for Law and Economic Policy, San Juan, Puerto Rico (April 12, 2019)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

MDL: Uniform Rules v. Best Practices, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, Florida (Dec. 7, 2018) (panelist)

Third Party Finance of Attorneys in Traditional and Complex Litigation, George Washington Law School, Washington, D.C. (Nov. 2, 2018) (panelist)

MDL at 50 - The 50th Anniversary of Multidistrict Litigation, New York University Law School, New York, New York (Oct. 10, 2018) (panelist)

The Discovery Tax, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (Sep. 11, 2018)

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins*: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners*, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability*,* Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly *and* Iqbal *Reconsidered,* Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

The Conservative Case for Class Actions?, NATIONAL REVIEW (Nov. 13, 2019)

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation "Kabuki" Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee's Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia's Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Does the Way We Choose our Judges Affect Case Outcomes?, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, Louisiana (August 10, 2018) (panelist)

Oversight of the Structure of the Federal Courts, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies
Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet, 2011-2017 & 2019-present; Board of Directors, Beacon Center, 2018-present; Nashville Talking Library for the Blind, 2008-2009

Appendix 2

Documents Reviewed:

- Omnibus Motion to Dismiss and/or For Judgment On the Pleadings and Incorporated Memorandum of Law in *In Re: Checking Account Overdraft Litigation*, No. 1:09-MD-02036-JLK (S.D.Fla.) (document 217, entered 12/22/09)
- Plaintiffs' Memorandum in Opposition to Defendants' Omnibus Motion to Dismiss and/or For Judgments on the Pleadings in *In Re: Checking Account Overdraft Litigation* (document 265, entered 2/5/10)
- Order Ruling on Omnibus Motion to Dismiss in *In Re: Checking Account Overdraft Litigation* (document 305, entered 3/11/10)
- Motion to Clarify Court's March 11, 2010 Order Ruling on Omnibus Motion to Dismiss and/or For Judgment on the Pleadings and Incorporated Memorandum of Law in *In Re: Checking Account Overdraft Litigation* (document 325, entered 4/5/10)
- Omnibus Order Denying Defendants' Motions for Reconsideration in *In Re: Checking Account Overdraft Litigation* (document 1725, entered 7/13/11)
- Joint Declaration of Robert C. Gilbert and Michael W. Sobol in Support of Plaintiffs' Motion for Final Approval of Settlement, Application for Service Awards, and Class Counsel's Application for Attorney's Fees in *Tornes, et al., v. Bank of America* and related cases ("Bank of America Joint Declaration") (document 1885-3, entered 9/16/11)
- Joint Declaration of Robert C. Gilbert, Michael W. Sobol, Jeffrey M. Ostrow, and Elaine Ryan in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Dee v. Bank of the West* and

related cases ("Bank of the West Joint Declaration") (document 2823-2, entered 7/11/12)

- Joint Declaration of Robert C. Gilbert, Hassan Zavareei, Jeffrey M. Ostrow, and Burton Finkelstein in *Terry Case v. Bank of Oklahoma* ("Bank of Oklahoma Joint Declaration") (document 2843-2, entered 7/16/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Harris v. Associated Bank, N.A.* ("Associated Bank Joint Declaration") (document 2852-2, entered 7/24/12)
- Joint Declaration of Robert C. Gilbert and Michael W. Sobol in Support of Plaintiffs' Motion for Final Approval of Settlement, Application for Service Awards, and Class Counsel's Application for Attorney's Fees and Expenses in *Larsen v. Union Bank, N.A.* ("Union Bank Joint Declaration") (document 2859-2, entered 7/30/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and For Certification of Settlement Class in *Wolfgeher v. Commerce Bank, N.A.* ("Commerce Bank Joint Declaration") (document 2879-2, entered 8/14/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *McKinley v. Great Western Bank* ("Great Western Joint Declaration") (document 2912-2, entered 8/27/12)
- Joint Declaration of Aaron S. Podhurst, Robert C. Gilbert, and Ted Trief in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and For

Certification of Settlement Class in *Duval v. Citizens Financial Group, Inc.* and related cases ("Citizens Financial Joint Declaration") (document 2955-2, entered 9/18/12)

- Joint Declaration of Robert C. Gilbert and Peter Prieto in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Mosser v. TD Bank, N.A.* and related cases ("TD Bank Joint Declaration") (document 2956-2, entered 9/18/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Blahut v. Harris Bank, N.A.* ("Harris Bank Joint Declaration") (document 2979-2, entered 10/1/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Eno v. M&I Marshall & Ilsley Bank* ("M&I Joint Declaration") (document 2981-2, entered 10/1/12)
- Joint Declaration of Aaron S. Podhurst, Bruce S. Rogow, Robert C. Gilbert, Russell Budd, and Richard Golomb in Support of Plaintiffs' and Class Counsel's Motion for Final Approval of Settlement, and Application for Service Awards, Attorneys' Fees and Expenses in *Luquetta v. JPMorgan Chase Bank, N.A.*, and related cases ("Chase Joint Declaration") (document 3010-2, entered 10/15/12)
- Joint Declaration of Aaron S. Podhurst, Robert C. Gilbert and E. Adam Webb in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Casayuran, et*

al. v. PNC Bank, N.A., and related cases ("PNC Joint Declaration") (document 3150-2, entered 1/3/13)

- Joint Declaration of Robert C. Gilbert, G. Franklin Lemond, Jr., and Lawrence D. Goodman in Support of Plaintiff's and Class Counsel's Motion for Final Approval of Class Settlement and Application for Service Award, Attorneys' Fees and Expenses in *Anderson v. Compass Bank* ("Compass Joint Declaration") (document 3469-3, entered 5/16/13)
- Joint Declaration of Aaron S. Podhurst, Bruce S. Rogow, and Robert C. Gilbert in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Waters, et al. v. U.S. Bank, N.A.,* and related cases ("U.S. Bank Joint Declaration") (document 3543-2, entered 7/24/13)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Mello v. Susquehanna Bank* ("Susquehanna Joint Declaration") (document 3690-2, entered 11/7/13)
- Joint Declaration of Robert C. Gilbert, Russell W. Budd and Joseph G. Sauder in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Simmons v. Comerica* ("Comerica Joint Declaration") (document 3703-2, entered 11/14/13)
- Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class and Incorporated Memorandum of Law in *Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank*,

including the Settlement Agreement and Release attached as Exhibit A thereto ("M&T Bank Settlement Agreement") (document 3992, entered 10/17/14)

- Joint Declaration of Robert C. Gilbert and E. Adam Webb in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Childs, et al. v. Synovus Bank, et al.* ("Synovus Bank Joint Declaration") (document 4014-2, entered 11/24/14)
- Joint Declaration of Aaron S. Podhurst, Robert C. Gilbert, and Richard M. Golomb in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Steen v. Capital One* ("Capital One Joint Declaration") (document 4045-2, entered 1/13/15)
- Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class, and Incorporated Memorandum of Law in *Swift v. BancorpSouth Bank*, including the Settlement Agreement and Release attached as Exhibit A thereto ("BancorpSouth Settlement Agreement") (document 89, entered 2/24/16)
- Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class, and Incorporated Memorandum of Law in *Dasher v. RBC Bank (USA)*, including the Settlement Agreement and Release attached as Exhibit A thereto ("RBC Settlement Agreement") (document 4423, entered 11/6/19)
- Joint Declaration of Aaron S. Podhurst, Bruce S. Rogow, and Robert C. Gilbert in Support of Plaintiff's and Class Counsel's Unopposed Motion for Preliminary

Approval of Class Settlement and Certification of Settlement Class in *Dasher* ("RBC Joint Declaration") (document 4423-2, entered 11/6/19)

- Order Preliminarily Approving Class Settlement and Certifying Settlement Class in *Dasher* (document 4425, entered 11/13/19)
- Declaration of Arthur Olsen in Support of Final Approval of Class Action Settlement with RBC Bank in *Dasher* ("Olsen RBC Declaration") (filed herewith)

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:

Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.

S.D. Fla Case Nos. 1:10-CV-22190-JLK

DECLARATION OF CAMERON R. AZARI, ESQ., ON IMPLEMENTATION AND ADEQUACY OF SETTLEMENT NOTICE PROGRAM

I, CAMERON R. AZARI, ESQ., hereby declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Notice for Hilsoft Notifications; a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Systems Class Action & Claims Solutions ("Epiq").

3. Hilsoft has been involved with some of the most complex and significant notices and notice programs in recent history. We have been recognized by courts for our testimony as to which method of notification is appropriate for a given case, and we have

provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. Hilsoft's CV is included as **Attachment 1**. For example:

a. *In re: Checking Account Overdraft Litigation (Comerica Bank)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached[1] approximately 93% of class members; granted final approval);

b. *In re: Checking Account Overdraft Litigation (Susquehanna Bank)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 88% of class members; granted final approval);

c. *In re: Checking Account Overdraft Litigation (M&I Bank)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97.5% of class members; granted final approval);

d. *In re: Checking Account Overdraft Litigation (Compass Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 88.7% of class members; granted final approval);

e. *In re: Checking Account Overdraft Litigation (Associated Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 95% of class members; granted final approval);

f. *In re: Checking Account Overdraft Litigation (Harris Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97% of class members; granted final approval);

g. *In re: Checking Account Overdraft Litigation (Commerce Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 99% of class members; granted final approval);

[1] Reach is defined as the percentage of a class exposed to a notice, net of any duplication among people who may have been exposed more than once. Notice "exposure" is defined as the opportunity to view a notice. The average "frequency" of notice exposure is the average number of times that those reached by a notice would be exposed to a notice.

h. *In re: Checking Account Overdraft Litigation (PNC Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97% of class members; granted final approval);

i. *In re: Checking Account Overdraft Litigation (TD Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 90.5% of class members; granted final approval);

j. *Costello v. NBT Bank, N.A.,* No. 2011 1037, Sup. Ct., Ny. (overdraft litigation settlement; individual notification reached approximately 94% of class members; granted final approval);

k. *In re: Checking Account Overdraft Litigation (RBS Citizens Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 86% of class members; granted final approval);

l. *In re: Checking Account Overdraft Litigation (Bank of Oklahoma, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 89% of class members; granted final approval);

m. *In re: Checking Account Overdraft Litigation (IBERIABANK)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97% of class members; granted final approval);

n. *Schulte v. Fifth Third Bank*, No. 09-CV-06655, N.D. Ill. (overdraft litigation settlement; individual notification reached approximately 89.7% of class members; granted final approval);

o. *Trombley v. National City Bank*, No. 1:10-CV-00232, D.D.C. (overdraft litigation settlement; individual notification reached approximately 93.3% of class members; granted final approval);

p. *Mathena v. Webster Bank, N.A.*, No. 3:10-cv-01448, D. Conn. (overdraft litigation settlement; individual notification reached approximately 97.6% of class members; granted final approval);

q. *Simpson v. Citizens Bank*; No. 2:12-cv-10267, E.D. Mich. and *Liddell v. Citizens Bank, et al.*; No. 2:12-cv-11604, E.D. Mich. (overdraft litigation settlement; individual notification reached approximately 87% of class members; granted final approval);

r. *Swift v. BancorpSouth Bank*, No. 1:10-cv-00090, N.D. Fla. (overdraft litigation settlement; individual notification reached approximately 93% of class members; granted final approval);

s. *Forgione v. Webster Bank N.A.*, No. X10-UWY-CV-12-6015956-S, Sup. Ct. Conn. (overdraft litigation settlement; individual notification reached approximately 99.5% of class members; granted final approval);

t. *In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation,* No. 650562/2011, Sup. Ct. N.Y. (overdraft litigation settlement; individual notification reached approximately 88.7% of class members; granted final approval);

u. *Hawkins v. First Tennessee Bank, N.A., et al.*, No. CT-004085-11, 13th Jud. Cir. Tenn. (overdraft litigation settlement; individual notification reached approximately 96% of class members; granted final approval);

v. *Ratzlaff v. BOKF, NA d/b/a Bank of Oklahoma, et. al.*, No. CJ-2015-00859, Dist. Ct. Okla., (overdraft litigation settlement; individual notification reached approximately 98.6% of class members; granted final approval);

w. *Jacobs, et al. v. Huntington Bancshares Inc. et al. (FirstMerit)*, No. 11CV000090, Ohio C.P., (overdraft litigation settlement; individual notification reached approximately 99.7% of class members; granted final approval);

x. *Glaske v. Independent Bank Corporation*, No. No. 13-009983-CZ, Cir. Ct. Mich., (overdraft litigation settlement, individual notification reached approximately 97% of identified settlement class members; granted final approval);

y. *Morton v. Greenbank,* No. 11-135-IV, 20th Jud. Dist. Tenn. (overdraft litigation settlement; individual notification reached approximately 94.7% of class members; granted final approval);

z. *Stahl v. Bank of the West*, No. BC673397, Sup. Ct., Cal., (overdraft litigation; individual notification reached approximately 96% of the class members; granted final approval);

aa. *Robinson v. First Hawaiian Bank,* 17-1-0167-01, Cir. Ct. of First Cir. Haw., (overdraft litigation; individual notification reached approximately 95% of the class members; granted final approval);

bb. *In re: Takata Airbag Products Liability Litigation (Settlements with – BMW, Mazda, Subaru, Toyota, Honda, Nissan* and *Ford)*, MDL No. 2599 (S.D. Fla.) ($1.49 billion in settlements regarding Takata airbags. The monumental Notice Plans included individual mailed notice to more than 59.6 million potential Class Members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle an average of 4.0 times each);

cc. *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,* MDL No. 1720 E.D.N.Y. ($6.05 billion settlement reached by Visa and MasterCard. The extensive notice program involved over 19.8 million direct mail notices, insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications and language & ethnic targeted publications, as well as a case website in eight languages and banner notices, which generated more than 770 million adult impressions; granted final approval); and

dd. *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010,* MDL 2179 E.D. La. (Dual landmark settlement notice programs to separate "Economic and Property Damages" and "Medical Benefits" settlement classes. Notice effort included over 7,900 television spots, over 5,200 radio spots and over 5,400 print insertions and reached over 95% of Gulf Coast residents; granted final approval).

4. The case resolved by this settlement, *Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.,* S.D. Fla Case Nos. 1:10-CV-22190-JLK, is part of *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK. My

colleagues and I were asked to review the design of the Notices (or "Notice") and implement the Notice Program (or "Notice Plan") to inform members of the Settlement Class about their rights under the Settlement.[2]

5. On November 13, 2019, the Court appointed Epiq as the Notice Administrator and Settlement Administrator. The Court also approved the Notice Plan and the proposed forms of Notice. With the Court's approval, and according to the timeline laid out in the Order Preliminarily Approving Class Settlement and Certifying Settlement Class ("Preliminary Approval Order"), Epiq and Hilsoft began to implement each element of the Notice Plan.

6. This declaration will detail the successful implementation of the Notice Program and document the completion of all of the notice activities. The declaration will also discuss the administration activity to date, with a more complete statistical report to be provided in advance of the April 22, 2020 Final Approval Hearing. The facts in this report are based on information provided to me by colleagues from Hilsoft and Epiq.

SUMMARY OF CONCLUSIONS

7. The Notice Program we designed and implemented achieved each of the planned objectives:

a. Names and direct contact information for members of the Settlement Class were identified from PNC Bank's records. Individual Notice was sent to all identifiable members of the Settlement Class with a valid mailing address.

[2] All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

b. Locally targeted Banner Notices reached those for whom the Individual Notice was ultimately undeliverable, and reached potential Settlement Class members who could not be identified from PNC Bank's records – giving them an opportunity to decide whether to object or opt-out.

c. Each person reached had an opportunity to view a Notice, with plenty of time prior to the Final Approval Hearing to make appropriate decisions such as whether to object or opt out.

d. The individual Notice and Banner Notices combined reached more than 87% of the Settlement Class.

e. The Notices were designed to be noticeable, clear, simple, substantive, and informative. No significant or required information was missing.

f. The program was consistent with other notice programs we have designed and implemented for similar settlements that have received final approval.

g. The Notice Plan was developed with the active participation of both Settlement Class Counsel and counsel for PNC Bank.

8. In my view, the Notice Plan was the best notice practicable under the circumstances of this case, and satisfied due process, including its "desire to actually inform" requirement.[3]

[3] "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . ." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950).

9. This declaration will detail the notice activities undertaken and explain how and why the Notice Plan was comprehensive, well suited to the Settlement Class, and more than adequate to satisfy federal rules and due process obligations.

CAFA NOTICE

10. As described in the attached *Declaration of Stephanie J. Fiereck, Esq. on Implementation of CAFA Notice,"* dated January 21, 2020 ("*Fiereck Declaration*"*)*, on November 15, 2019, as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, Epiq sent a CAFA notice packet (or "CAFA Notice") to two federal officials at the Office of the Comptroller of the Currency. The two CAFA Notice was sent by United Parcel Service ("UPS"). The *Fiereck Declaration* is included as **Attachment 2**.

NOTICE PLAN IMPLEMENTATION

11. The Preliminary Approval Order defines the provisionally certified "Settlement Class" as, "All holders of an RBC Account who, from October 10, 2007 through March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting. Excluded from the Settlement Class are all former RBC and current PNC officers and directors, and the judge presiding over this Action."

12. I have reviewed the Preliminary Approval Order and Agreement and fully understand the defined terms used in the definition of the Settlement Class and subsequent defined terms. "Account" means "any consumer checking, demand deposit or savings account maintained by RBC in the United States accessible by a Debit Card, including Accounts which became PNC accounts as a result of RBC's merger with

PNC." "Overdraft Fee" means "any fee assessed to an Account for items paid when the Account has insufficient funds to cover the item. Fees charged to transfer balances from other accounts are excluded." "Debit Card" means "a card or similar device issued or provided by RBC, including a debit card, check card, or automated teller machine ("ATM") card, that can be used to debit funds from an Account by Point of Sale and ATM transactions." "Debit Card Transaction" means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether by PIN or signature/Pin-less) and ATM transactions. For avoidance of doubt, Debit Card Transaction does not include a debit transaction effectuated by check, by preauthorized transaction, by wire transfer or Automated Clearing House ("ACH") transaction, or a transfer to another account such as a credit card account or line of credit." "High-to-Low Posting" means "RBC's practice of posting an Account's Debit Card Transactions from highest to lowest dollar amount each business day, which is alleged to have resulted in the assessment of Overdraft Fees that would not have been assessed if RBC had used an alterative posting method, *e.g.*, one that posted transactions from lowest to highest).

Individual Notice

13. PNC Bank researched the names, direct contact and account information for all reasonably identifiable members of the Settlement Class and provided the data to Epiq.

14. On December 13, 2020, Epiq received from PNC Bank one initial data file, which contained information relating to Settlement Class members' Accounts. The file contained information for 152,138 Accounts. Epiq also received three subsequent files, which included supplemental address and co-account holder information. Epiq combined

the records where the same Settlement Class member had more than one Account, which resulted in 148,437 unique Settlement Class member records.

15. Epiq confirms that prior to the initial mailing efforts of the Postcard Notice, postal mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS"), which contains records of all reported permanent moves for the past four years. Any addresses that were returned by NCOA as invalid were updated through a third-party address search service prior to mailing. In addition, the addresses were certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through the Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

16. Additionally, for Settlement Class members whose Accounts were closed more than three years ago, or the Account closed date was unknown, addresses were updated prior to mailing using other third-party address search services.

17. The initial notice efforts included four separate dates for mailing to Settlement Class members (due to the timing of when Epiq received updated Settlement Class member data). On January 6, 2020, Epiq sent 123,715 Postcard Notices by USPS First Class Mail to members of the Settlement Class. Each notice was a two image 4.25" x 5.5" Postcard Notice. On January 15, 2020, Epiq sent an additional 1,337 Postcard Notices by USPS First Class Mail to Settlement Class members whose addresses were provided by PNC subsequent to the December 13 initial data file. On January 21, 2020,

Epiq sent an additional 5,372 Postcard Notices by USPS First Class Mail to Settlement Class members whose addresses were provided by PNC subsequent to the December 13 initial data file.

18. In total, Epiq received information for 152,138 accounts, which represented 148,437 unique members of the Settlement Class, and mailed Postcard Notices to 130,424 unique addresses assigned to members of the Settlement Class (meaning that after address updating was complete, there were 18,013 records with missing or incomplete addresses in the data). A copy of the Postcard Notice is included as **Attachment 3**.

19. In addition, as of February 21, 2020, Epiq has received and fulfilled 331 requests for a copy of the Long Form Notice via the toll-free number established for the case. A copy of the Long Form Notice is included as **Attachment 4**.

20. The return address on the Postcard Notice is a post office box maintained by Epiq. The USPS automatically forwards Postcard Notices with an available forwarding address order that has not expired ("Postal Forwards"). For Postcard Notices returned as undeliverable, Epiq re-mails the Notice to any new address available through postal service information (for example, to the address provided by USPS on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the USPS returns the piece with the address indicated). Epiq also obtains better addresses by using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices are promptly re-mailed. As of February 21, 2020, USPS has sent 640 Postal Forwards. As of February 21, 2020, Epiq has received 26,153

undeliverable Postcard Notices and re-mailed 21,836 Postcard Notices for those addresses where a forwarding address was provided or address research identified a new address. Address updating and re-mailing for undeliverable Postcard Notices is ongoing and will continue through the Final Approval Hearing. As of February 21, 2020, 7,196 mailings remain un-delivered.

Banner Notices

21. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target and provide measurable reach of persons covered by a settlement. According to GfK MRI syndicated research, approximately 90.4% of adults 18+ are online. To notify Settlement Class members of the Settlement, Settlement Class Counsel identified an exclusive geographic area, which included six states. Banner Notice ads ran on selected websites and social media that Settlement Class members may visit regularly.

22. Banner Notice ads are image-based graphic displays available on desktops and mobile devices. These ads are used in legal noticing to notify people of a settlement relevant to them. The text of the Banner Notices allowed users to identify themselves as potential Settlement Class members and directly link them to the case website for more information.

23. Banner Notices ran across the *Google Display Network* and *Facebook*. *Facebook* is the leading social networking site with over 220 million users in the U.S. The Banner Notices ran from January 6, 2020 through February 6, 2020. Combined, approximately, 37.3 million impressions were generated by the Banner Notices.

Online Banners	Run Dates	Impressions Delivered	Distribution	Ad Unit
Facebook	1/6/20 – 2/6/20	1,534,457	Alabama	Right Hand Col.
Facebook: Interests include "Royal Bank of Canada"	1/6/20 – 2/6/20	5,030	Alabama	Right Hand Col.
Google Display Network	1/6/20 – 2/6/20	1,525,984	Alabama	300x250, 728x90
Facebook	1/6/20 – 2/6/20	5,142,790	Florida	Right Hand Col.
Facebook: Interests include "Royal Bank of Canada"	1/6/20 – 2/6/20	60,114	Florida	Right Hand Col.
Google Display Network	1/6/20 – 2/6/20	5,345,177	Florida	300x250, 728x90
Facebook	1/6/20 – 2/6/20	3,550,390	Georgia	Right Hand Col.
Facebook: Interests include "Royal Bank of Canada"	1/6/20 – 2/6/20	5,261	Georgia	Right Hand Col.
Google Display Network	1/6/20 – 2/6/20	4,049,683	Georgia	300x250, 728x90
Facebook	1/6/20 – 2/6/20	3,647,823	North Carolina	Right Hand Col.
Facebook: Interests include "Royal Bank of Canada"	1/6/20 – 2/6/20	5,214	North Carolina	Right Hand Col.
Google Display Network	1/6/20 – 2/6/20	4,031,441	North Carolina	300x250, 728x90
Facebook	1/6/20 – 2/6/20	1,552,001	South Carolina	Right Hand Col.
Facebook: Interests include "Royal Bank of Canada"	1/6/20 – 2/6/20	5,675	South Carolina	Right Hand Col.
Google Display Network	1/6/20 – 2/6/20	1,537,040	South Carolina	300x250, 728x90
Facebook	1/6/20 – 2/6/20	2,533,544	Virginia	Right Hand Col.
Facebook: Interests include "Royal Bank of Canada"	1/6/20 – 2/6/20	8,758	Virginia	Right Hand Col.
Google Display Network	1/6/20 – 2/6/20	2,799,426	Virginia	300x250, 728x90

24. A copy of the Banner Notice is included as **Attachment 5**.

Internet Sponsored Search Listings

25. To facilitate locating the case website sponsored search listings are being acquired on the three most highly-visited internet search engines: *Google*, *Yahoo!*, and *Bing*. When search engine visitors search on common keyword combinations to identify the Settlement, the sponsored search listing generally are displayed at the top of the page prior to the search results or in the upper right-hand column of the web-browser screen. The sponsored search listings are geo-targeted to Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia.

26. As of February 21, 2020, the sponsored listings have been displayed 1,661 times, resulting in 347 clicks that displayed the case website. A complete list of the sponsored search keyword combinations is included as **Attachment 6**. Examples of the sponsored search listing as displayed on each search engine are included as **Attachment 7**.

Informational Release

27. To build additional reach and extend exposures, a party-neutral Informational Release was issued on January 6, 2020, to approximately 5,000 general media (print and broadcast) outlets across the United States and 4,500 online databases and websites (including websites for large news outlets, local affiliate news stations, business journals and trade organizations). The Informational Release served a valuable role by providing additional notice exposures beyond those already provided by the paid media. A copy of the Informational Release is included as **Attachment 8**.

Case Website

28. The case website, www.RBCBankOverdraftSettlement.com, went live on January 3, 2020. The website address was displayed prominently in all notice documents. By visiting this website, Settlement Class members can view additional information about the settlement, including: the Complaint, Settlement Agreement, Preliminary Approval Order, Long Form Notice and a list of Frequently Asked Questions with answers.

29. As of February 21, 2020, there have been 18,135 website visitor sessions in which 23,515 website pages were viewed. The website was made secure using a Secure Socket Layer (SSL) Certificate through Network Solutions, LLC.

Toll Free Number

30. On January 3, 2020, the toll free number (1-855-958-0544), set up and hosted by Epiq, became operational. By calling this number, Settlement Class members can listen to answers to frequently asked questions and request a copy of the Long Form Notice. This automated system is available 24 hours per day, 7 days per week. As of February 21, 2020, the toll free number has handled 1,882 calls representing 5,009 minutes of use.

Exclusions and Objections

31. As of February 21, 2020, Epiq has not received any requests for exclusion from members of the Settlement Class. I am also unaware of any objections received or filed to date. After the March 18, 2020, deadline for exclusion requests and objections

passes, Epiq will prepare a complete report of all exclusion requests and objections received in advance of the April 22, 2020 Final Approval Hearing.

PERFORMANCE AND DESIGN OF NOTICE PROGRAM

32. ***Objectives were met.*** The primary objective of this settlement notice effort was to effectively reach the greatest practicable number of Settlement Class members with a "noticeable" Notice of the settlement, and provide them with every reasonable opportunity to understand that their legal rights were affected, including the right to be heard, to object or to exclude themselves. These efforts were successful.

33. ***The Notice reached members of the Settlement Class effectively.*** Our calculations indicate that the Postcard Notice and Banner Notices combined reached more than 87% of the Settlement Class. In my experience, this reach percentage met that achieved in many other court-approved settlement notice programs. I can confidently state that the Settlement Class was adequately reached.

34. ***Plenty of time and opportunity to react to Notices.*** The initial mailing of notices was completed on or about January 17, 2020, which allowed an adequate amount of time for Settlement Class members to see the Notice and respond accordingly before the March 18, 2020 exclusion and objection deadlines. With approximately 61 days from the completion of the initial Notice mailing until the exclusion and objection deadlines, Settlement Class members were allotted more than enough time to act on their rights.

35. ***Notices were designed to increase noticeability and comprehension.*** Because mailing recipients are accustomed to receiving junk mail that they may be inclined to discard unread, the program called for steps to bring the Notice to the

attention of Settlement Class members. Once people "noticed" the Notices, it was critical that they could understand them. As such, the Notices, as produced, were clearly worded with simple, plain language text to encourage readership and comprehension. The design of the Notices followed the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov.

36. The Postcard Notice featured a prominent headline ("**If You Paid Overdraft Fees to RBC Bank, You May Be Eligible for a Payment from a Class Action Settlement.**") in bold text. The headline alerts recipients that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice.

37. We reviewed the design of the Long Form Notice that provided more information to Settlement Class members. The Long Form Notice began with a summary page providing a concise overview of the important information and Settlement Class members' key options. It contained a prominent focus on the options that Settlement Class members have, using a straightforward table design, and included details about the settlement, such as who is affected, and their rights. A table of contents, categorized into logical sections, helped to organize the information, while a question and answer format made it easy to find answers to common questions by breaking the information into simple headings and brief paragraphs.

CONCLUSIONS

38. The notice effort reached more than 87% of the Settlement Class through the individual Postcard Notice and Banner Notice efforts combined. Many courts have

accepted and understood, based on evidence we provided, that a 75 or 80 percent reach is more than adequate under the circumstances of analogous cases. Here we were able to exceed that. This "reach" indicates that the mailed notice effort was highly successful in providing direct notice to Settlement Class members.

39. In preparing the Notices, we employed communication methods that are well established in our field, and eschewed the idea of producing old-fashioned, case-captioned, lengthy, legalistic notice documents.

40. We have provided evidence that the notice effort sufficiently reached the vast majority of Settlement Class members, and we have prepared notice documents that adequately informed them of the class action, properly described their rights, and clearly conformed to the high standards for modern notice programs. In designing our notice programs, we truly desire to adequately inform the class, and my colleagues and I designed and implemented a program that effectively accomplished this.

41. In my expert opinion, the Notice Program comported with Federal Rule of Civil Procedure 23, and also the guidance for effective notice articulated in the FJC's *Manual for Complex Litigation, 4th Edition.*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated, February 24, 2020.

Cameron R. Azari, Esq.

Attachment 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. Hilsoft Notifications ("Hilsoft") has been retained by defendants and/or plaintiffs for more than 400 cases, including more than 35 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. For more than 24 years, Hilsoft's notice plans have been approved and upheld by courts. Case examples include:

- Hilsoft designed and implemented monumental notice campaigns to notify current or former owners or lessees of certain BMW, Mazda, Subaru, Toyota, Honda, Nissan, and Ford vehicles as part of $1.49 billion in settlements regarding Takata airbags. The Notice Plans included individual mailed notice to more than 59.6 million potential Class Members and notice via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times each. ***In re: Takata Airbag Products Liability Litigation (OEMS – BMW, Mazda, Subaru, Toyota, Honda, Nissan and Ford)***, MDL No. 2599 (S.D. Fla.).
- For a $250 million settlement with approximately 4.7 million class members, Hilsoft designed and implemented a Notice Program with individual notice via postcard or email to approximately 1.43 million class members and a robust publication program, which combined, reached approximately 80% of all U.S. Adults Aged 35+ approximately 2.4 times each. ***Hale v. State Farm Mutual Automobile Insurance Company, et al.,*** 12-cv-00660 (S.D. Ill.)
- Hilsoft designed a Notice Program that included extensive data acquisition and mailed notice to notify owners and lessees of specific models of Mercedes-Benz vehicles. The Notice Program designed and implemented by Hilsoft reached approximately 96.5% of all Class Members. ***Callaway v. Mercedes-Benz USA, LLC***, No. 8:14-cv-02011–JVS-DFM (C.D. Cal.).
- For a $20 million TCPA settlement that involved Uber, Hilsoft created a Notice Program, which resulted in notice via mail or email to more than 6.9 million identifiable class members. The combined measurable effort reached approximately 90.6% of the Settlement Class with direct mail and email, measured newspaper and internet banner ads. ***Vergara, et al., v. Uber Technologies, Inc.*** No. 1:15-CV-06972 (N.D. Ill.).
- A comprehensive notice program within the *Volkswagen Emissions Litigation* that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort. ***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)***, MDL No. 2672 (N.D. Cal.).
- Hilsoft designed and implemented an extensive settlement Notice Plan for a class period spanning more than 40 years for smokers of light cigarettes. The Notice Plan delivered a measured reach of approximately 87.8% of Arkansas Adults 25+ with a frequency of 8.9 times and approximately 91.1% of Arkansas Adults 55+ with a frequency of 10.8 times. Hispanic newspaper notice, an informational release, radio PSAs, sponsored search listings and a case website further enhanced reach. ***Miner v. Philip Morris USA, Inc.***, No. 60CV03-4661 (Ark. Cir.).
- One of the largest claim deadline notice campaigns ever implemented, for BP's $7.8 billion settlement claim deadline relating to the Deepwater Horizon oil spill. Hilsoft Notifications designed and implemented the claim deadline notice program, which resulted in a combined measurable paid print, television, radio and Internet effort that reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010,*** MDL No. 2179 (E.D. La.).

- Large asbestos bar date notice effort, which included individual notice, national consumer publications, hundreds of local and national newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience. ***In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Date Notice)***, 14-10979(CSS) (Bankr. D. Del.).

- Landmark $6.05 billion settlement reached by Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a case website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,*** MDL No. 1720 (E.D.N.Y.).

- BP's $7.8 billion settlement of claims related to the Deepwater Horizon oil spill emerged from possibly the most complex class action in U.S. history. Hilsoft Notifications drafted and opined on all forms of notice. The 2012 notice program designed by Hilsoft reached at least 95% Gulf Coast region adults via television, radio, newspapers, consumer publications, trade journals, digital media and individual notice. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010,*** MDL No. 2179 (E.D. La.).

- Momentous injunctive settlement reached by American Express regarding merchant payment card processing. The notice program provided extensive individual notice to more than 3.8 million merchants as well as coverage in national and local business publications, retail trade publications and placement in the largest circulation newspapers in each of the U.S. territories and possessions. ***In re American Express Anti-Steering Rules Antitrust Litigation (II)***, MDL No. 2221 (E.D.N.Y.) ("Italian Colors").

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements, Hilsoft Notifications has developed programs that integrate individual notice and paid media efforts. Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M& I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank and Synovus are among the more than 20 banks that have retained Hilsoft. ***In re Checking Account Overdraft Litigation,*** MDL No. 2036 (S.D. Fla.).

- One of the largest data breach in U.S. history with approximately 130 million credit and debit card numbers stolen. ***In re Heartland Data Security Breach Litigation,*** MDL No. 2046 (S.D. Tex.)

- One of the largest and most complex class action in Canadian history. Designed and implemented groundbreaking notice to disparate, remote aboriginal people in the multi-billion dollar settlement. ***In re Residential Schools Class Action Litigation,*** 00-CV-192059 CPA (Ont. Super. Ct.).

- Extensive point of sale notice program of a settlement providing payments up to $100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers,*** SU10-CV-2267B (Ga. Super. Ct.).

- One of the largest discretionary class action notice campaign involving virtually every adult in the U.S. for the settlement. ***In re Trans Union Corp. Privacy Litigation,*** MDL No. 1350 (N.D. Ill.).

- One of the most complex national data theft class action settlement involving millions of class members. ***Lockwood v. Certegy Check Services, Inc.,*** 8:07-cv-1434-T-23TGW (M.D. Fla.).

- Large combined U.S. and Canadian retail consumer security breach notice program. ***In re TJX Companies, Inc., Customer Data Security Breach Litigation***, MDL No. 1838 (D. Mass.).

- A comprehensive notice effort in a securities class action for the $1.1 billion settlement of ***In re Royal Ahold Securities and ERISA Litigation,*** MDL No. 1539 (D. Md.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Director of Legal Notice

Cameron Azari, Esq. has more than 18 years of experience in the design and implementation of legal notice and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re: Takata Airbag Products Liability Litigation, In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement), In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, In re: Checking Account Overdraft Litigation,* and *In re Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from amendments to FRCP Rule 23 to email noticing, response rates and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Epiq Managing Director

Lauran Schultz consults with Hilsoft clients on complex noticing issues. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration since 2005. High profile actions he has been involved in include companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

Kyle Bingham, Manager of Strategic Communications

Kyle Bingham has 14 years of experience in the advertising industry. At Hilsoft and Epiq, Kyle is responsible for overseeing the research, planning, and execution of advertising campaigns for legal notice programs including class action, bankruptcy and other legal cases.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Moderator, "Prepare for the Future of Automotive Class Actions." Bloomberg Next, Webinar-CLE, November 6, 2018.
- **Cameron Azari** Speaker, "The Battleground for Class Certification: Plaintiff and Defense Burdens, Commonality Requirements and Ascertainability." 30th National Forum on Consumer Finance Class Actions and Government Enforcement, Chicago, IL, July 17, 2018.
- **Cameron Azari** Speaker, "Recent Developments in Class Action Notice and Claims Administration." PLI's Class Action Litigation 2018 Conference, New York, NY, June 21, 2018.
- **Cameron Azari** Speaker, "One Class Action or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements." 5th Annual Western Regional CLE Program on Class Actions and Mass Torts. Clyde & Co LLP, San Francisco, CA, June 22, 2018.
- **Cameron Azari** Co-Author, *A Practical Guide to Chapter 11 Bankruptcy Publication Notice*. E-book, published, May 2017.
- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates," DC Consumer Class Action Lawyers Luncheon, December 6, 2016.
- **Cameron Azari** Speaker, "Recent Developments in Consumer Class Action Notice and Claims Administration." Berman DeValerio Litigation Group, San Francisco, CA, June 8, 2016.

- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, April 25, 2016.

- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, February 10, 2015.

- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.

- **Cameron Azari** Co-Author, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.

- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, April 7-8, 2014 and Chicago, IL, April 28-29, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.

- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.

- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.

- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.

- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.

- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 2011.

- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.

- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.

- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.

- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.

- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives litigation group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan Litigation Group, Los Angeles, CA, 2005.
- **Cameron Azari** Author, "Twice the Notice or No Settlement." Current Developments – Issue II, August 2003.
- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal litigation group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Alison J. Nathan, *Pantelyat v. Bank of America, N.A., et al.* (January 31, 2019) 16-cv-8964 (S.D.N.Y.):

> *The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules.*

Kenneth M. Hoyt, *Al's Pals Pet Card, LLC, et al v. Woodforest National Bank, N.A., et al.* (January 30, 2019) 4:17-cv-3852 (S.D. Tex):

> *[T]he Court finds that the class has been notified of the Settlement pursuant to the plan approved by the Court. The Court further finds that the notice program constituted the best practicable notice to the class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1) and 28 U.S.C. § 1715.*

Judge Robert M. Dow, Jr., *In re: Dealer Management Systems Antitrust Litigation* (January 23, 2019) MDL No. 2817 (N.D. Ill.):

> *The Court finds that the Settlement Administrator fully complied with the Preliminary Approval Order and that the form and manner of providing notice to the Dealership Class of the proposed Settlement with Reynolds was the best notice practicable under the circumstances, including individual notice to all members of the Dealership Class who could be identified through the exercise of reasonable effort. The Court further finds that the notice program provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715(b), and constitutional due process.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation (Ford)* (December 20, 2018) MDL No. 2599 (S.D. Fla.):

> *The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: .(i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

Judge Herndon, *Hale v. State Farm Mutual Automobile Insurance Company, et al.* (December 16, 2018) 3:12-cv-00660-DRH-SCW (S.D. Ill.):

> *The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.*

Judge Jesse M. Furman, *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.* (November 13, 2018) 14-cv-7126 (S.D.N.Y.):

> *The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice efforts described in the Motion for Final Approval, as provided for in the Court's June 26, 2018 Preliminary Approval Order, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.*

Judge William L. Campbell, Jr., *Ajose v. Interline Brands, Inc.* (October 23, 2018) 3:14-cv-01707 (M.D. Tenn.):

> *The Court finds that the Notice Plan, as approved by the Preliminary Approval Order: (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was reasonable and the best practicable notice under the circumstances; (iii) reasonably apprised the Settlement Class of the pendency of the action, the terms of the Agreement, their right to object to the proposed settlement or opt out of the Settlement Class, the right to appear at the Final Fairness Hearing, and the Claims Process; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice.*

Judge Joseph C. Spero, *Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN* (October 15, 2018) 3:16-cv-05486 (N.D. Cal.):

> *[T]the Court finds that notice to the class of the settlement complied with Rule 23(c)(3) and (e) and due process. Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B)…The notice program included notice sent by first class mail to 1,750,564 class members and reached approximately 95.2% of the class.*

Judge Marcia G. Cooke, *Dipuglia v. US Coachways, Inc.* (*September 28, 2018)* 1:17-cv-23006-MGC (S.D. Fla):

> *The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the Case 1:17-cv-23006-MGC Document 66 Entered on FLSD Docket 09/28/2018 Page 3 of 7 4 proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.*

Judge Beth Labson Freeman, *Gergetz v. Telenav, Inc.* (September 27, 2018) 5:16-cv-04261-BLF (N.D. Cal.):

> *The Court finds that the Notice and Notice Plan implemented pursuant to the Settlement Agreement, which consists of individual notice sent via first-class U.S. Mail postcard, notice provided via email, and the posting of relevant Settlement documents on the Settlement Website, has been successfully implemented and was the best notice practicable under the circumstances and: (1) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Rules of this Court.*

Judge M. James Lorenz, *Farrell v. Bank of America, N.A.* (August 31, 2018) 3:16-cv-00492-L-WVG (S.D. Cal.):

> *The Court therefore finds that the Class Notices given to Settlement Class Case 3:16-cv-00492-L-WVG Document 133 Filed 08/31/18 PageID.2484 Page 10 of 17 11 3:16-cv-00492-L-WVG 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 members adequately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members. The Court further finds that the Notice Program satisfies due process and has been fully implemented.*

Judge Dean D. Pregerson, *Falco et al. v. Nissan North America, Inc. et al.* (July 16, 2018) 2:13-cv-00686 DDP (MANx) (C.D. Cal.):

> *Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such Notice by first-class mail was given in an adequate and sufficient manner, and constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.*

Judge Lynn Adelman, *In re: Windsor Wood Clad Window Product Liability Litigation* (July 16, 2018) MDL No. 16-MD-02688 (E.D. Wis.):

> *The Court finds that the Notice Program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process. The Notice Program, constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and is based on the Federal Judicial Center's illustrative class action notices.*

Judge Stephen K. Bushong, *Surrett et al. v. Western Culinary Institute, et al.* (June 18, 2018) No. 0803-03530 (Ore. Cir., County of Multnomah)

> *This Court finds that the distribution of the Notice of Settlement was effected in accordance with the Preliminary Approval/Notice Order, dated February 9, 2018, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.*

Judge Jesse M. Furman, *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.* (June 1, 2018) No. 14-cv-7126 (JMF) (S.D.N.Y.):

> *The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval, as provided for in the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.*

Judge Brad Seligman, *Larson v. John Hancock Life Insurance Company (U.S.A.)* (May 8, 2018) No. RG16813803 (Cal. Sup. Ct., County of Alameda):

> *The Court finds that the Class Notice and dissemination of the Class Notice as carried out by the Settlement Administrator complied with the Court's order granting preliminary approval and all applicable requirements of law, including, but not limited to California Rules of Court, rule 3.769(f) and the Constitutional requirements of due process, and constituted the best notice practicable under the circumstances and sufficient notice to all persons entitled to notice of the Settlement.*
>
> *[T]he dissemination of the Class Notice constituted the best notice practicable because it included mailing individual notice to all Settlement Class Members who are reasonably identifiable using the same method used to inform class members of certification of the class, following a National Change of Address search and run through the LexisNexis Deceased Database.*

Judge Federico A. Moreno, *Masson v. Tallahassee Dodge Chrysler Jeep, LLC* (May 8, 2018), No. 17-cv-22967 (S.D. Fla.):

> *The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.*

Chancellor Russell T. Perkins, *Morton v. GreenBank* (April 18, 2018) 11-135-IV (20th Jud. Dist. Tenn.):

> *The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure 23.03, due process and any other applicable law.*

Judge James V. Selna, *Callaway v. Mercedes-Benz USA, LLC* (March 8, 2018) 8:14-cv-02011-JVS-DFM (C.D. Cal.):

> *The Court finds that the notice given to the Class was the best notice practicable under the circumstances of this case, and that the notice complied with the requirements of Federal Rule of Civil Procedure 23 and due process.*
>
> *The notice given by the Class Administrator constituted due and sufficient notice to the Settlement Class, and adequately informed members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement and how to object to the Settlement.*
>
> *The Court has considered and rejected the objection . . . [regarding] the adequacy of the notice plan. The notice given provided ample information regarding the case. Class members also had the ability to seek additional information from the settlement website, from Class Counsel or from the Class Administrator*

Judge Thomas M. Durkin, *Vergara, et al., v. Uber Technologies, Inc.* (March 1, 2018) 1:15-CV-06972 (N.D. Ill.):

> *The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the*

United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.

Judge Federico A. Moreno, ***In re: Takata Airbag Products Liability Litigation (Honda & Nissan)*** (February 28, 2018) MDL No. 2599 (S.D. Fla.):

The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED R. CIV. R. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Susan O. Hickey, ***Larey v. Allstate Property and Casualty Insurance Company*** (February 9, 2018) 4:14-cv-04008-SOF (W.D. Kan.):

Based on the Court's review of the evidence submitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Publication Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Lawsuit, this Stipulation, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

Judge Muriel D. Hughes, ***Glaske v. Independent Bank Corporation*** (January 11, 2018) 13-009983-CZ:

The Court-approved Notice Plan satisfied due process requirements . . . The notice, among other things, was calculated to reach Settlement Class Members because it was sent to their last known email or mail address in the Bank's files.

Judge Naomi Reice Buchwald, ***Orlander v. Staples, Inc.*** (December 13, 2017) 13-CV-0703-NRB (S.D.N.Y.):

The Notice of Class Action Settlement ("Notice") was given to all Class Members who could be identified with reasonable effort in accordance with the terms of the Settlement Agreement and Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23 and the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Judge Lisa Godbey Wood, ***T.A.N. v. PNI Digital Media, Inc.*** (December 1, 2017) 2:16-cv-132 LGW-RSB (S.D. GA.):

Notice to the Settlement Class Members required by Rule 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of Rule 23 and due process, and all other applicable laws.

Judge Robin L. Rosenberg, ***Gottlieb v. Citgo Petroleum Corporation*** (November 29, 2017) 9:16-cv-81911-RLR (S.D. Fla):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Donald M. Middlebrooks, *Mahoney v TT of Pine Ridge, Inc.* (November 20, 2017) 9:17-cv-80029-DMM (S.D. Fla.):

> *Based on the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement Agreement, and upon the Declaration of Cameron Azari, Esq. (DE 61-1), the Court finds that Class Notice provided to the Settlement Class was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Federal Rule of Civil Procedure 23(e)(1).*

Judge Gerald Austin McHugh, *Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric, et al.* (November 8, 2017) 2:14-cv-04464-GAM (E.D. Penn.):

> *Notice has been provided to the Settlement Class of the pendency of this Action, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that the notice provided was the best notice practicable under the circumstances to all persons entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation (BMW, Mazda, Toyota, & Subaru)* (November 1, 2017) MDL No. 2599 (S.D. Fla.):

> *[T]he Court finds that the Class Notice has been given to the Class in the manner approved in the Preliminary Approval Order. The Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

Judge Charles R. Breyer, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)*

Judge Rebecca Brett Nightingale, *Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al.* (May 15, 2017) No. CJ-2015-00859 (Dist. Ct. Okla.):

> *The Court-approved Notice Plan satisfies Oklahoma law because it is "reasonable" (12 O.S. § 2023(E)(I)) and it satisfies due process requirements because it was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15).*

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (April 13, 2017) No. 8:15-cv-00061-JFB-FG3 (D. Neb.):

> *The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.*

Judge Yvonne Gonzalez Rogers, *Bias v. Wells Fargo & Company, et al.* (April 13, 2017) No. 4:12-cv-00664-YGR (N.D. Cal.):

> *The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.*
>
> *Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.*
>
> *Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).*

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc., et al* (December 14, 2016) No. 2:12-cv-02247 (D. Kan.) and ***Gary, LLC v. Deffenbaugh Industries, Inc., et al*** (December 14, 2016) No. 2:13-cv-2634 (D. Kan.):

> *The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.*

Judge Yvette Kane, *In re: Shop-Vac Marketing and Sales Practices Litigation* (December 9, 2016) MDL No. 2380 (M.D. Pa.):

> *The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.*

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (November 21, 2016) No. 60CV03-4661 (Ark. Cir.):

> *The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.*

Judge Eileen Bransten, *In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation* (October 13, 2016) No. 650562/2011 (Sup. Ct. N.Y.):

> *This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.*

Judge Jerome B. Simandle, *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* (September 20, 2016) MDL No. 2540 (D. N.J.):

> *The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (April 11, 2016) No. 14-23120 (S.D. Fla.):

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and*

conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.

Judge Yvonne Gonzalez Rogers, *In Re: Lithium Ion Batteries Antitrust Litigation* (March 22, 2016) No. 4:13-MD-02420-YGR (N.D. Cal.):

From what I could tell, I liked your approach and the way you did it. I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.

Judge Christopher S. Sontchi, *In re: Energy Future Holdings Corp, et al.,* (July 30, 2015) 14-10979(CSS) (Bankr. D. Del.):

Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

Judge David C. Norton, *In re: MI Windows and Doors Inc. Products Liability Litigation* (July 22, 2015) MDL No. 2333, No. 2:12-mn-00001 (D. S.C.):

The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.

The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

Judge Robert W. Gettleman, *Adkins v. Nestle Purina PetCare Company, et al.,* (June 23, 2015) No. 12-cv-2871 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) No. 2:10-cv-01505-JCZ-KWR (E.D. La.) and No. 1:10-cv-22058-JLK (S.D. Fla.) as part of ***In Re: Checking Account Overdraft Litigation***, MDL 2036 (S.D. Fla.)

The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.,* (December 29, 2014) No. 1:10-cv-10392-RWZ (D. Mass.):

> *This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.*

Judge Edward J. Davila, *Rose v. Bank of America Corporation, and FIA Card Services, N.A.,* (August 29, 2014) No. 5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.):

> *The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

Judge James A. Robertson, II, *Wong et al. v. Alacer Corp.* (June 27, 2014) No. CGC-12-519221 (Cal. Super. Ct.):

> *Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.*

Judge John Gleeson, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, (December 13, 2013) No. 1:05-cv-03800 (E.D. NY.):

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

Judge Lance M. Africk, *Evans, et al. v. TIN, Inc., et al,* (July 7, 2013) No. 2:11-cv-02067 (E.D. La.):

> *The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Judge Edward M. Chen, *Marolda v. Symantec Corporation,* (April 5, 2013) No. 08-cv-05701 (N.D. Cal.):

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

Judge Ann D. Montgomery, *In re Zurn Pex Plumbing Products Liability Litigation*, (February 27, 2013) No. 0:08cv01958 (D. Minn.):

> *The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.*
>
> *The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.*, (January 28, 2013) No. 3:10-cv-960 (D. Or.):

> *Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.*

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Medical Benefits Settlement)*, (January 11, 2013) MDL No. 2179 (E.D. La.):

> *Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)*
>
> *The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.*

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)*, (December 21, 2012) MDL No. 2179 (E.D. La.):

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*
>
> *The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The*

Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc., (August 17, 2012) No. 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, In re Checking Account Overdraft Litigation (IBERIABANK), (April 26, 2012) MDL No. 2036 (S.D. Fla):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, *Vereen v. Lowe's Home Centers,* (April 13, 2012) SU10-CV-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation,* (March 2, 2012) MDL No. 2046 (S.D. Tex.):

> *The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank,* (December 1, 2011) No. 1:10-CV-00232 (D.D.C.) as part of ***In Re: Checking Account Overdraft Litigation***, MDL 2036 (S.D. Fla.):

> *The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.*

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank*, (July 29, 2011) No. 1:09-cv-6655 (N.D. Ill.):

> *The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.*

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc*., (June 30, 2011) No. 11-C-3187-B (27th Jud. D. Ct. La.):

> *Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.*, (March 24, 2011) No. 3:10-cv-1448 (D. Conn.) as part of ***In Re: Checking Account Overdraft Litigation***, MDL 2036 (S.D. Fla.):

> *The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.*

Judge Ted Stewart, *Miller v. Basic Research, LLC*, (September 2, 2010) No. 2:07-cv-871 (D. Utah):

> *Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a*

neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, *Pavlov v. Continental Casualty Co.*, (October 7, 2009) No. 5:07cv2580 (N.D. Ohio):

As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litigation*, (September 23, 2009) MDL No. 1796 (D.D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

Judge Lisa F. Chrystal, *Little v. Kia Motors America, Inc.*, (August 27, 2009) No. UNN-L-0800-01 (N.J. Super. Ct.):

The Court finds that the manner and content of the notices for direct mailing and for publication notice, as specified in the Notice Plan (Exhibit 2 to the Affidavit of Lauran R. Schultz), provides the best practicable notice of judgment to members of the Plaintiff Class.

Judge Barbara Crowder, *Dolen v. ABN AMRO Bank N.V.,* (March 23, 2009) No. 01-L-454, 01-L-493 (3rd Jud. Cir. Ill.):

The Court finds that the Notice Plan is the best notice practicable under the circumstances and provides the Eligible Members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this Litigation and the effect of the Settlement on their rights. The Notice Plan further satisfies the requirements of due process and 735 ILCS 5/2-803. That Notice Plan is approved and accepted. This Court further finds that the Notice of Settlement and Claim Form comply with 735 ILCS 5/2-803 and are appropriate as part of the Notice Plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Notice Plan is reasonably necessary in this Litigation.

Judge Robert W. Gettleman, *In re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law… Accordingly, all objections are hereby OVERRULED.

Judge Steven D. Merryday, *Lockwood v. Certegy Check Services, Inc*., (September 3, 2008) No. 8:07-cv-1434-T-23TGW (M.D. Fla.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable and constituted the best notice practicable in the circumstances. The notice as given provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions of the Settlement Agreement, and these proceedings to all persons entitled to such notice, and the notice satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in

the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

Judge Philip S. Gutierrez, *Shaffer v. Continental Casualty Co.,* (June 11, 2008) SACV-06-2235-PSG (PJWx) (C.D. Cal.):

…was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.

Judge Robert L. Wyatt, *Gunderson v. AIG Claim Services, Inc.,* (May 29, 2008) No. 2004-002417 (14th Jud. D. Ct. La.):

Notices given to Settlement Class members…were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Mary Anne Mason, *Palace v. DaimlerChrysler Corp.,* (May 29, 2008) No. 01-CH-13168 (Ill. Cir. Ct.):

The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process and complied with 735 ILCS §§5/2-803 and 5/2-806.

Judge David De Alba, *Ford Explorer Cases,* (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved—submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.

Judge Kirk D. Johnson, ***Webb v. Liberty Mutual Ins. Co.,*** (March 3, 2008) No. CV-2007-418-3 (Ark. Cir. Ct.):

The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.

Judge Carol Crafton Anthony, *Johnson v. Progressive Casualty Ins. Co.*, (December 6, 2007) No. CV-2003-513 (Ark. Cir. Ct.):

Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable…The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.

Judge Kirk D. Johnson, *Sweeten v. American Empire Insurance Co*., (August 20, 2007) No. CV-2007-154-3 (Ark. Cir. Ct.):

The Court does find that all notices required by the Court to be given to class members was done within the time allowed and the manner best calculated to give notice and apprise all the interested parties of the litigation. It was done through individual notice, first class mail, through internet website and the toll-free telephone call center…The Court does find that these methods were the best possible methods to advise the class members of the pendency of the action and opportunity to present their objections and finds that these notices do comply with all the provisions of Rule 23 and the Arkansas and United States Constitutions.

Judge Robert Wyatt, ***Gunderson v. F.A. Richard & Associates, Inc.,*** (July 19, 2007) No. 2004-2417-D (14th Jud. D. Ct. La.):

> *This is the final Order and Judgment regarding the fairness, reasonableness and adequacy. And I am satisfied in all respects regarding the presentation that's been made to the Court this morning in the Class memberships, the representation, the notice, and all other aspects and I'm signing that Order at this time.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation*, (July 19, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology…met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, et seq.) (the "PSLRA"), the Rules of the Court, and any other applicable law.*

Judge Joe Griffin, *Beasley v. The Reliable Life Insurance Co.,* (March 29, 2007) No. CV-2005-58-1 (Ark. Cir. Ct.):

> *[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process…So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation,* (March 1, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order…meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

Judge Anna J. Brown, *Reynolds v. The Hartford Financial Services Group, Inc.,* (February 27, 2007) No. CV-01-1529-BR (D. Or):

> *[T]he court finds that the Notice Program fairly, fully, accurately, and adequately advised members of the Settlement Class and each Settlement Subclass of all relevant and material information concerning the proposed settlement of this action, their rights under Rule 23 of the Federal Rules of Civil Procedure, and related matters, and afforded the Settlement Class with adequate time and an opportunity to file objections to the Settlement or request exclusion from the Settlement Class. The court finds that the Notice Program constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 23 and due process.*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Ark. Cir. Ct.):

> *Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Class Notice and Claim Form as disseminated are finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions.*

Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litigation,* 2007 WL 1490466, at *34 (S.D.N.Y.):

> *In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. According to this…the*

Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.

Judge Samuel Conti, *Ciabattari v. Toyota Motor Sales, U.S.A., Inc.,* (November 17, 2006) No. C-05-04289-SC (N.D. Cal.):

After reviewing the evidence and arguments presented by the parties…the Court finds as follows…The class members were given the best notice practicable under the circumstances, and that such notice meets the requirements of the Due Process Clause of the U.S. Constitution, and all applicable statutes and rules of court.

Judge Ivan L.R. Lemelle, ***In re High Sulfur Content Gasoline Prods. Liability Litigation,*** (November 8, 2006) MDL No. 1632 (E.D. La.):

This Court approved a carefully-worded Notice Plan, which was developed with the assistance of a nationally-recognized notice expert, Hilsoft Notifications…The Notice Plan for this Class Settlement was consistent with the best practices developed for modern-style "plain English" class notices; the Court and Settling Parties invested substantial effort to ensure notice to persons displaced by the Hurricanes of 2005; and as this Court has already determined, the Notice Plan met the requirements of Rule 23 and constitutional due process.

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (November 2, 2006) MDL No. 1539 (D. Md.):

The global aspect of the case raised additional practical and legal complexities, as did the parallel criminal proceedings in another district. The settlement obtained is among the largest cash settlements ever in a securities class action case and represents an estimated 40% recovery of possible provable damages. The notice process appears to have been very successful not only in reaching but also in eliciting claims from a substantial percentage of those eligible for recovery.

Judge Elaine E. Bucklo, *Carnegie v. Household International,* (August 28, 2006) No. 98 C 2178 (N.D. Ill.):

[T]he Notice was disseminated pursuant to a plan consisting of first class mail and publication developed by Plaintiff's notice consultant, Hilsoft Notification[s]…who the Court recognized as experts in the design of notice plans in class actions. The Notice by first-class mail and publication was provided in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23(e) and due process.

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Ark. Cir. Ct.):

Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances…and the requirements of due process under the Arkansas and United States Constitutions.

Judge Norma L. Shapiro, *First State Orthopedics et al. v. Concentra, Inc., et al.,* (May 1, 2006) No. 2:05-CV-04951-NS (E.D. Pa.):

The Court finds that dissemination of the Mailed Notice, Published Notice and Full Notice in the manner set forth here and in the Settlement Agreement meets the requirements of due process and Pennsylvania law. The Court further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.

Judge Thomas M. Hart, *Froeber v. Liberty Mutual Fire Ins. Co.,* (April 19, 2006) No. 00C15234 (Or. Cir. Ct.):

> *The court has found and now reaffirms that dissemination and publication of the Class Notice in accordance with the terms of the Third Amended Order constitutes the best notice practicable under the circumstances.*

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (January 6, 2006) MDL No. 1539 (D. Md.):

> *I think it's remarkable, as I indicated briefly before, given the breadth and scope of the proposed Class, the global nature of the Class, frankly, that again, at least on a preliminary basis, and I will be getting a final report on this, that the Notice Plan that has been proposed seems very well, very well suited, both in terms of its plain language and in terms of its international reach, to do what I hope will be a very thorough and broad-ranging job of reaching as many of the shareholders, whether individual or institutional, as possibly can be done to participate in what I also preliminarily believe to be a fair, adequate and reasonable settlement.*

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litigation,* 437 F.Supp.2d 467, 472 (D. Md. 2006):

> *The court hereby finds that the Notice and Notice Plan described herein and in the Order dated January 9, 2006 provided Class Members with the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.*

Judge Robert H. Wyatt, Jr., *Gray v. New Hampshire Indemnity Co., Inc*., (December 19, 2005) No. CV-2002-952-2-3 (Ark. Cir. Ct.):

> *Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process, including the Settlement Class definition, the identities of the Parties and of their counsel, a summary of the terms of the proposed settlement, Class Counsel's intent to apply for fees, information regarding the manner in which objections could be submitted, and requests for exclusions could be filed. The Notice properly informed Class members of the formula for the distribution of benefits under the settlement…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice was also effected by publication in many newspapers and magazines throughout the nation, reaching a large majority of the Class members multiple times. The Court finds that such notice constitutes the best notice practicable.*

Judge Michael J. O'Malley, *Defrates v. Hollywood Entm't Corp.*, (June 24, 2005) No. 02 L 707 (Ill. Cir. Ct.):

> *[T]his Court hereby finds that the notice program described in the Preliminary Approval Order and completed by HEC complied fully with the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.*

Judge Wilford D. Carter, *Thibodeaux v. Conoco Phillips Co.,* (May 26, 2005) No. 2003-481 F (14th J.D. Ct. La.):

> *Notice given to Class Members…were reasonably calculated under all the circumstances and have been sufficient, both as to the form and content…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due process and sufficient notice to all potential members of the Class as Defined.*

Judge Michael Canaday, *Morrow v. Conoco Inc*., (May 25, 2005) No. 2002-3860 G (14th J.D. Ct. La.):

> *The objections, if any, made to due process, constitutionality, procedures, and compliance with law, including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement, lack merit and are hereby overruled.*

Judge John R. Padova, *Nichols v. SmithKline Beecham Corp*., (April 22, 2005) No. 00-6222 (E.D. Pa.):

> *Pursuant to the Order dated October 18, 2004, End-Payor Plaintiffs employed Hilsoft Notifications to design*

and oversee Notice to the End-Payor Class. Hilsoft Notifications has extensive experience in class action notice situations relating to prescription drugs and cases in which unknown class members need to receive notice…After reviewing the individual mailed Notice, the publication Notices, the PSAs and the informational release, the Court concludes that the substance of the Notice provided to members of the End-Payor Class in this case was adequate to satisfy the concerns of due process and the Federal Rules.

Judge Douglas Combs, *Morris v. Liberty Mutual Fire Ins. Co.,* (February 22, 2005) No. CJ-03-714 (D. Okla.):

I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.

Judge Joseph R. Goodwin, *In re Serzone Products Liability Litigation*, 231 F.R.D. 221, 231 (S.D. W. Va. 2005):

The Notice Plan was drafted by Hilsoft Notifications, a Pennsylvania firm specializing in designing, developing, analyzing and implementing large-scale, unbiased legal notification plans. Hilsoft has disseminated class action notices in more than 150 cases, and it designed the model notices currently displayed on the Federal Judicial Center's website as a template for others to follow…To enhance consumer exposure, Hilsoft studied the demographics and readership of publications among adults who used a prescription drug for depression in the last twelve months. Consequently, Hilsoft chose to utilize media particularly targeting women due to their greater incidence of depression and heavy usage of the medication.

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation*, (November 24, 2004) MDL No. 1430 (D. Mass.):

After review of the proposed Notice Plan designed by Hilsoft Notifications…is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 the Federal Rules of Civil Procedure and due process.

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation*, (November 23, 2004) MDL No. 1430 (D. Mass.):

I actually find the [notice] plan as proposed to be comprehensive and extremely sophisticated and very likely be as comprehensive as any plan of its kind could be in reaching those most directly affected.

Judge James S. Moody, Jr., *Mantzouris v. Scarritt Motor Group Inc.,* (August 10, 2004) No. 8:03 CV- 0015-T-30 MSS (M.D. Fla.):

Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the members of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement, it is hereby determined that all members of the Class, except for Ms. Gwendolyn Thompson, who was the sole person opting out of the Settlement Agreement, are bound by this Order and Final Judgment entered herein.

Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co*., (July 1, 2004) No. 3:02CV431 (E.D. Va.)**:**

The record here shows that the class members have been fully and fairly notified of the existence of the class action, of the issues in it, of the approaches taken by each side in it in such a way as to inform meaningfully those whose rights are affected and to thereby enable them to exercise their rights intelligently…The success rate in notifying the class is, I believe, at least in my experience, I share Ms. Kauffman's experience, it is as great as I have ever seen in practicing or serving in this job…So I don't believe we could have had any more effective notice.

Judge John Kraetzer, *Baiz v. Mountain View Cemetery*, (April 14, 2004) No. 809869-2 (Cal. Super. Ct.):

The notice program was timely completed, complied with California Government Code section 6064, and

provided the best practicable notice to all members of the Settlement Class under the circumstances. The Court finds that the notice program provided class members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to class members and all other persons wishing to be heard…The Court has determined that the Notice given to potential members of the Settlement Class fully and accurately informed potential Members of the Settlement Class of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to all potential members of the Settlement Class, and that it constituted the best practicable notice under the circumstances.

Hospitality Mgmt. Assoc., Inc. v. Shell Oil Co., 356 S.C. 644, 663, 591 S.E.2d 611, 621 (Sup. Ct. S.C. 2004):

Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.

Judge Joseph R. Goodwin, *In re Serzone Prods. Liability Litigation,* 2004 U.S. Dist. LEXIS 28297, at *10 (S.D. W. Va.):

The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and Fed.R.Civ.P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.

Judge James D. Arnold, *Cotten v. Ferman Mgmt. Servs. Corp.,* (November 26, 2003) No. 02-08115 (Fla. Cir. Ct.):

Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the member of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement…

Judge Judith K. Fitzgerald, *In re Pittsburgh Corning Corp.,* (November 26, 2003) No. 00-22876-JKF (Bankr.W.D. Pa.):

The procedures and form of notice for notifying the holders of Asbestos PI Trust Claims, as described in the Motion, adequately protect the interests of the holders of Asbestos PI Trust Claims in a manner consistent with the principles of due process, and satisfy the applicable requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Judge Carter Holly, *Richison v. American Cemwood Corp.,* (November 18, 2003) No. 005532 (Cal. Super. Ct.):

As to the forms of Notice, the Court finds and concludes that they fully apprised the Class members of the pendency of the litigation, the terms of the Phase 2 Settlement, and Class members' rights and options…Not a single Class member—out of an estimated 30,000—objected to the terms of the Phase 2 Settlement Agreement, notwithstanding a comprehensive national Notice campaign, via direct mail and publication Notice…The notice was reasonable and the best notice practicable under the circumstances, was due, adequate, and sufficient notice to all Class members, and complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and California Rules of Court 1859 and 1860.

Judge Thomas A. Higgins, *In re Columbia/HCA Healthcare Corp.,* (June 13, 2003) MDL No. 1227 (M.D. Tenn.):

Notice of the settlement has been given in an adequate and sufficient manner. The notice provided by mailing the settlement notice to certain class members and publishing notice in the manner described in the settlement was the best practicable notice, complying in all respects with the requirements of due process.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* 216 F.R.D. 55, 68 (S.D.N.Y. 2003):

In view of the extensive notice campaign waged by the defendant, the extremely small number of class members objecting or requesting exclusion from the settlement is a clear sign of strong support for the settlement…The notice provides, in language easily understandable to a lay person, the essential terms of the settlement, including the claims asserted…who would be covered by the settlement…[T]he notice campaign that defendant agreed to undertake was extensive…I am satisfied, having reviewed the contents of the notice package, and the extensive steps taken to disseminate notice of the settlement, that the class

notice complies with the requirements of Rule 23 (c)(2) and 23(e). In summary, I have reviewed all of the objections, and none persuade me to conclude that the proposed settlement is unfair, inadequate or unreasonable.

Judge Edgar E. Bayley, *Dimitrios v. CVS, Inc.,* (November 27, 2002) No. 99-6209; ***Walker v. Rite Aid Corp.,*** No. 99-6210; and ***Myers v. Rite Aid Corp.*,** No. 01-2771 (Pa. Ct. C.P.):

The Court specifically finds that: fair and adequate notice has been given to the class, which comports with due process of law.

Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.,* (November 22, 2002) No. 13007 (Tenn. Ch.):

The content of the class notice also satisfied all due process standards and state law requirements…The content of the notice was more than adequate to enable class members to make an informed and intelligent choice about remaining in the class or opting out of the class.

Judge James R. Williamson, *Kline v. The Progressive Corp*., (November 14, 2002) No. 01-L-6 (Ill. Cir. Ct.):

Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The notice contained the essential elements necessary to satisfy due process…

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (September 13, 2002) No. L-008830.00 (N.J. Super. Ct.):

Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed…throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* (September 3, 2002) No. 00 Civ. 5071-HB (S.D.N.Y.):

The Court further finds that the Class Notice and Publication Notice provided in the Settlement Agreement are written in plain English and are readily understandable by Class Members. In sum, the Court finds that the proposed notice texts and methodology are reasonable, that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.,* (January 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct.) ultimately withstood challenge to Court of Appeals of Texas. *Peters v. Blockbuster* 65 S.W.3d 295, 307 (Tex. App.-Beaumont, 2001):

In order to maximize the efficiency of the notice, a professional concern, Hilsoft Notifications, was retained. This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections…The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct.):

The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process…The form of the notice is reasonably calculated to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 29, 2001) No. L-8830-00-MT (N.J. Super. Ct.):

> *I saw the various bar graphs for the different publications and the different media dissemination, and I think that was actually the clearest bar graph I've ever seen in my life…it was very clear of the time periods that you were doing as to each publication and which media you were doing over what market time, so I think that was very clear.*

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (April 1, 2001) J.C.C.P. No. CJC-00-004106 (Cal. Super. Ct.):

> *[C]oncerning dissemination of class notice; and I have reviewed the materials that have been submitted on that subject and basically I'm satisfied. I think it's amazing if you're really getting 80 percent coverage. That's very reassuring. And the papers that you submitted responded to a couple things that had been mentioned before and I am satisfied with all that.*

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (March 30, 2001) J.C.C.P. No. 4106 (Cal. Super. Ct.):

> *Plaintiffs and Defendant Microsoft Corporation have submitted a joint statement in support of their request that the Court approve the plan for dissemination of class action notice and proposed forms of notice, and amend the class definition. The Court finds that the forms of notice to Class members attached hereto as Exhibits A and B fairly and adequately inform the Class members of their rights concerning this litigation. The Court further finds that the methods for dissemination of notice are the fairest and best practicable under the circumstances, and comport with due process requirements.*

LEGAL NOTICE CASES

Hilsoft Notifications has served as a notice expert for planning, implementation and/or analysis in the following partial listing of cases:

Andrews v. MCI (900 Number Litigation)	S.D. Ga., No. CV 191-175
Harper v. MCI (900 Number Litigation)	S.D. Ga., No. CV 192-134
In re Bausch & Lomb Contact Lens Litigation	N.D. Ala., No. 94-C-1144-WW
In re Ford Motor Co. Vehicle Paint Litigation	E.D. La., MDL No. 1063
Castano v. Am. Tobacco	E.D. La., No. CV 94-1044
Cox v. Shell Oil (Polybutylene Pipe Litigation)	Tenn. Ch., No. 18,844
In re Amino Acid Lysine Antitrust Litigation	N.D. Ill., MDL No. 1083
In re Dow Corning Corp. (Breast Implant Bankruptcy)	E.D. Mich., No. 95-20512-11-AJS
Kunhel v. CNA Ins. Companies	N.J. Super. Ct., No. ATL-C-0184-94
In re Factor Concentrate Blood Prods. Litigation (Hemophiliac HIV)	N.D. Ill., MDL No. 986
In re Ford Ignition Switch Prods. Liability Litigation	D. N.J., No. 96-CV-3125
Jordan v. A.A. Friedman (Non-Filing Ins. Litigation)	M.D. Ga., No. 95-52-COL
Kalhammer v. First USA (Credit Card Litigation)	Cal. Cir. Ct., No. C96-45632010-CAL
Navarro-Rice v. First USA (Credit Card Litigation)	Ore. Cir. Ct., No. 9709-06901

Spitzfaden v. Dow Corning (Breast Implant Litigation)	La. D. Ct., No. 92-2589
Robinson v. Marine Midland (Finance Charge Litigation)	N.D. Ill., No. 95 C 5635
McCurdy v. Norwest Fin. Alabama	Ala. Cir. Ct., No. CV-95-2601
Johnson v. Norwest Fin. Alabama	Ala. Cir. Ct., No. CV-93-PT-962-S
In re Residential Doors Antitrust Litigation	E.D. Pa., MDL No. 1039
Barnes v. Am. Tobacco Co. Inc.	E.D. Pa., No. 96-5903
Small v. Lorillard Tobacco Co. Inc.	N.Y. Super. Ct., No. 110949/96
Naef v. Masonite Corp (Hardboard Siding Litigation)	Ala. Cir. Ct., No. CV-94-4033
In re Synthroid Mktg. Litigation	N.D. Ill., MDL No. 1182
Raysick v. Quaker State Slick 50 Inc.	D. Tex., No. 96-12610
Castillo v. Mike Tyson (Tyson v. Holyfield Bout)	N.Y. Super. Ct., No. 114044/97
Avery v. State Farm Auto. Ins. (Non-OEM Auto Parts)	Ill. Cir. Ct., No. 97-L-114
Walls v. The Am. Tobacco Co. Inc.	N.D. Okla., No. 97-CV-218-H
Tempest v. Rainforest Café (Securities Litigation)	D. Minn., No. 98-CV-608
Stewart v. Avon Prods. (Securities Litigation)	E.D. Pa., No. 98-CV-4135
Goldenberg v. Marriott PLC Corp (Securities Litigation)	D. Md., No. PJM 95-3461
Delay v. Hurd Millwork (Building Products Litigation)	Wash. Super. Ct., No. 97-2-07371-0
Gutterman v. Am. Airlines (Frequent Flyer Litigation)	Ill. Cir. Ct., No. 95CH982
Hoeffner v. The Estate of Alan Kenneth Vieira (Un-scattered Cremated Remains Litigation)	Cal. Super. Ct., No. 97-AS 02993
In re Graphite Electrodes Antitrust Litigation	E.D. Pa., MDL No. 1244
In re Silicone Gel Breast Implant Prods. Liability Litigation, Altrichter v. INAMED	N.D. Ala., MDL No. 926
St. John v. Am. Home Prods. Corp. (Fen/Phen Litigation)	Wash. Super. Ct., No. 97-2-06368
Crane v. Hackett Assocs. (Securities Litigation)	E.D. Pa., No. 98-5504
In re Holocaust Victims Assets Litigation (Swiss Banks)	E.D.N.Y., No. CV-96-4849
McCall v. John Hancock (Settlement Death Benefits)	N.M. Cir. Ct., No. CV-2000-2818
Williams v. Weyerhaeuser Co. (Hardboard Siding Litigation)	Cal. Super. Ct., No. CV-995787
Kapustin v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., No. 98-CV-6599
Leff v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., No. 95-CV-89

In re PRK/LASIK Consumer Litigation	Cal. Super. Ct., No. CV-772894
Hill v. Galaxy Cablevision	N.D. Miss., No. 1:98CV51-D-D
Scott v. Am. Tobacco Co. Inc.	La. D. Ct., No. 96-8461
Jacobs v. Winthrop Financial Associates (Securities Litigation)	D. Mass., No. 99-CV-11363
Int'l Comm'n on Holocaust Era Ins. Claims – Worldwide Outreach Program	Former Secretary of State Lawrence Eagleburger Commission
Bownes v. First USA Bank (Credit Card Litigation)	Ala. Cir. Ct., No. CV-99-2479-PR
Whetman v. IKON (ERISA Litigation)	E.D. Pa., No. 00-87
Mangone v. First USA Bank (Credit Card Litigation)	Ill. Cir. Ct., No. 99AR672a
In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)	E.D. La., No. 00-10992
Barbanti v. W.R. Grace and Co. (Zonolite / Asbestos Litigation)	Wash. Super. Ct., No. 00201756-6
Brown v. Am. Tobacco	Cal. Super. Ct., No. J.C.C.P. 4042, 711400
Wilson v. Servier Canada Inc. (Canadian Fen/Phen Litigation)	Ont. Super. Ct., No. 98-CV-158832
In re Texaco Inc. (Bankruptcy)	S.D.N.Y. No. 87 B 20142, No. 87 B 20143, No. 87 B 20144
Olinde v. Texaco (Bankruptcy, Oil Lease Litigation)	M.D. La., No. 96-390
Gustafson v. Bridgestone/Firestone, Inc. (Recall Related Litigation)	S.D. Ill., No. 00-612-DRH
In re Bridgestone/Firestone Tires Prods. Liability Litigation	S.D. Ind., MDL No. 1373
Gaynoe v. First Union Corp. (Credit Card Litigation)	N.C. Super. Ct., No. 97-CVS-16536
Carson v. Daimler Chrysler Corp. (Fuel O-Rings Litigation)	W.D. Tenn., No. 99-2896 TU A
Providian Credit Card Cases	Cal. Super. Ct., No. J.C.C.P. 4085
Fields v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., No. 302774
Sanders v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., No. 303549
Sims v. Allstate Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., No. 99-L-393A
Peterson v. State Farm Mutual Auto. Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., No. 99-L-394A
Microsoft I-V Cases (Antitrust Litigation Mirroring Justice Dept.)	Cal. Super. Ct., No. J.C.C.P. 4106
Westman v. Rogers Family Funeral Home, Inc. (Remains Handling Litigation)	Cal. Super. Ct., No. C-98-03165

Rogers v. Clark Equipment Co.	Ill. Cir. Ct., No. 97-L-20
Garrett v. Hurley State Bank (Credit Card Litigation)	Miss. Cir. Ct., No. 99-0337
Ragoonanan v. Imperial Tobacco Ltd. (Firesafe Cigarette Litigation)	Ont. Super. Ct., No. 00-CV-183165 CP
Dietschi v. Am. Home Prods. Corp. (PPA Litigation)	W.D. Wash., No. C01-0306L
Dimitrios v. CVS, Inc. (PA Act 6 Litigation)	Pa. C.P., No. 99-6209
Jones v. Hewlett-Packard Co. (Inkjet Cartridge Litigation)	Cal. Super. Ct., No. 302887
In re Tobacco Cases II (California Tobacco Litigation)	Cal. Super. Ct., No. J.C.C.P. 4042
Scott v. Blockbuster, Inc. (Extended Viewing Fees Litigation)	136th Tex. Jud. Dist., No. D 162-535
Anesthesia Care Assocs. v. Blue Cross of Cal.	Cal. Super. Ct., No. 986677
Ting v. AT&T (Mandatory Arbitration Litigation)	N.D. Cal., No. C-01-2969-BZ
In re W.R. Grace & Co. (Asbestos Related Bankruptcy)	Bankr. D. Del., No. 01-01139-JJF
Talalai v. Cooper Tire & Rubber Co. (Tire Layer Adhesion Litigation)	N.J. Super. Ct.,, No. MID-L-8839-00 MT
Kent v. Daimler Chrysler Corp. (Jeep Grand Cherokee Park-to-Reverse Litigation)	N.D. Cal., No. C01-3293-JCS
Int'l Org. of Migration – German Forced Labour Compensation Programme	Geneva, Switzerland
Madsen v. Prudential Federal Savings & Loan (Homeowner's Loan Account Litigation)	3rd Jud. Dist. Ct. Utah, No. C79-8404
Bryant v. Wyndham Int'l., Inc. (Energy Surcharge Litigation)	Cal. Super. Ct., No. GIC 765441, No. GIC 777547
In re USG Corp. (Asbestos Related Bankruptcy)	Bankr. D. Del., No. 01-02094-RJN
Thompson v. Metropolitan Life Ins. Co. (Race Related Sales Practices Litigation)	S.D.N.Y., No. 00-CIV-5071 HB
Ervin v. Movie Gallery Inc. (Extended Viewing Fees)	Tenn. Ch., No. CV-13007
Peters v. First Union Direct Bank (Credit Card Litigation)	M.D. Fla., No. 8:01-CV-958-T-26 TBM
National Socialist Era Compensation Fund	Republic of Austria
In re Baycol Litigation	D. Minn., MDL No. 1431
Claims Conference–Jewish Slave Labour Outreach Program	German Government Initiative
Wells v. Chevy Chase Bank (Credit Card Litigation)	Md. Cir. Ct., No. C-99-000202
Walker v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., No. 99-6210
Myers v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., No. 01-2771
In re PA Diet Drugs Litigation	C.P. Pa., No. 9709-3162

Harp v. Qwest Communications (Mandatory Arbitration Lit.)	Ore. Circ. Ct., No. 0110-10986
Tuck v. Whirlpool Corp. & Sears, Roebuck & Co. (Microwave Recall Litigation)	Ind. Cir. Ct., No. 49C01-0111-CP-002701
Allison v. AT&T Corp. (Mandatory Arbitration Litigation)	1st Jud. D.C. N.M., No. D-0101-CV-20020041
Kline v. The Progressive Corp.	Ill. Cir. Ct., No. 01-L-6
Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc. (Milk Price Fixing)	Ill. Cir. Ct., No. 00-L-9664
In re Columbia/HCA Healthcare Corp. (Billing Practices Litigation)	M.D. Tenn., MDL No. 1227
Foultz v. Erie Ins. Exchange (Auto Parts Litigation)	C.P. Pa., No. 000203053
Soders v. General Motors Corp. (Marketing Initiative Litigation)	C.P. Pa., No. CI-00-04255
Nature Guard Cement Roofing Shingles Cases	Cal. Super. Ct., No. J.C.C.P. 4215
Curtis v. Hollywood Entm't Corp. (Additional Rental Charges)	Wash. Super. Ct., No. 01-2-36007-8 SEA
Defrates v. Hollywood Entm't Corp.	Ill. Cir. Ct., No. 02L707
Pease v. Jasper Wyman & Son, Merrill Blueberry Farms Inc., Allen's Blueberry Freezer Inc. & Cherryfield Foods Inc.	Me. Super. Ct., No. CV-00-015
West v. G&H Seed Co. (Crawfish Farmers Litigation)	27th Jud. D. Ct. La., No. 99-C-4984-A
Linn v. Roto-Rooter Inc. (Miscellaneous Supplies Charge)	C.P. Ohio, No. CV-467403
McManus v. Fleetwood Enter., Inc. (RV Brake Litigation)	D. Ct. Tex., No. SA-99-CA-464-FB
Baiz v. Mountain View Cemetery (Burial Practices)	Cal. Super. Ct., No. 809869-2
Stetser v. TAP Pharm. Prods, Inc. & Abbott Laboratories (Lupron Price Litigation)	N.C. Super. Ct., No. 01-CVS-5268
Richison v. Am. Cemwood Corp. (Roofing Durability Settlement)	Cal. Super. Ct., No. 005532
Cotten v. Ferman Mgmt. Servs. Corp.	13th Jud. Cir. Fla., No. 02-08115
In re Pittsburgh Corning Corp. (Asbestos Related Bankruptcy)	Bankr. W.D. Pa., No. 00-22876-JKF
Mostajo v. Coast Nat'l Ins. Co.	Cal. Super. Ct., No. 00 CC 15165
Friedman v. Microsoft Corp. (Antitrust Litigation)	Ariz. Super. Ct., No. CV 2000-000722
Multinational Outreach - East Germany Property Claims	Claims Conference
Davis v. Am. Home Prods. Corp. (Norplant Contraceptive Litigation)	D. La., No. 94-11684
Walker v. Tap Pharmaceutical Prods., Inc. (Lupron Price Litigation)	N.J. Super. Ct., No. CV CPM-L-682-01
Munsey v. Cox Communications (Late Fee Litigation)	Civ. D. La., No. Sec. 9, 97 19571

Gordon v. Microsoft Corp. (Antitrust Litigation)	4th Jud. D. Ct. Minn., No. 00-5994
Clark v. Tap Pharmaceutical Prods., Inc.	5th Dist. App. Ct. Ill., No. 5-02-0316
Fisher v. Virginia Electric & Power Co.	E.D. Va., No. 3:02-CV-431
Mantzouris v. Scarritt Motor Group, Inc.	M.D. Fla., No. 8:03-CV-0015-T-30-MSS
Johnson v. Ethicon, Inc. (Product Liability Litigation)	W. Va. Cir. Ct., No. 01-C-1530, 1531, 1533, No. 01-C-2491 to 2500
Schlink v. Edina Realty Title	4th Jud. D. Ct. Minn., No. 02-018380
Tawney v. Columbia Natural Res. (Oil & Gas Lease Litigation)	W. Va. Cir. Ct., No. 03-C-10E
White v. Washington Mutual, Inc. (Pre-Payment Penalty Litigation)	4th Jud. D. Ct. Minn., No. CT 03-1282
Acacia Media Techs. Corp. v. Cybernet Ventures Inc., (Patent Infringement Litigation)	C.D. Cal., No. SACV03-1803 GLT (Anx)
Bardessono v. Ford Motor Co. (15 Passenger Vans)	Wash. Super. Ct., No. 32494
Gardner v. Stimson Lumber Co. (Forestex Siding Litigation)	Wash. Super. Ct., No. 00-2-17633-3SEA
Poor v. Sprint Corp. (Fiber Optic Cable Litigation)	Ill. Cir. Ct., No. 99-L-421
Thibodeau v. Comcast Corp.	E.D. Pa., No. 04-CV-1777
Cazenave v. Sheriff Charles C. Foti (Strip Search Litigation)	E.D. La., No. 00-CV-1246
National Assoc. of Police Orgs., Inc. v. Second Chance Body Armor, Inc. (Bullet Proof Vest Litigation)	Mich. Cir. Ct., No. 04-8018-NP
Nichols v. SmithKline Beecham Corp. (Paxil)	E.D. Pa., No. 00-6222
Yacout v. Federal Pacific Electric Co. (Circuit Breaker)	N.J. Super. Ct., No. MID-L-2904-97
Lewis v. Bayer AG (Baycol)	1st Jud. Dist. Ct. Pa., No. 002353
In re Educ. Testing Serv. PLT 7-12 Test Scoring Litigation	E.D. La., MDL No. 1643
Stefanyshyn v. Consol. Indus. Corp. (Heat Exchanger)	Ind. Super. Ct., No. 79 D 01-9712-CT-59
Barnett v. Wal-Mart Stores, Inc.	Wash. Super. Ct., No. 01-2-24553-8 SEA
In re Serzone Prods. Liability Litigation	S.D. W. Va., MDL No. 1477
Ford Explorer Cases	Cal. Super. Ct., No. J.C.C.P. 4226 & 4270
In re Solutia Inc. (Bankruptcy)	S.D.N.Y., No. 03-17949-PCB
In re Lupron Marketing & Sales Practices Litigation	D. Mass., MDL No. 1430
Morris v. Liberty Mutual Fire Ins. Co.	D. Okla., No. CJ-03-714
Bowling, et al. v. Pfizer Inc. (Bjork-Shiley Convexo-Concave Heart Valve)	S.D. Ohio, No. C-1-91-256

Thibodeaux v. Conoco Philips Co.	D. La., No. 2003-481
Morrow v. Conoco Inc.	D. La., No. 2002-3860
Tobacco Farmer Transition Program	U.S. Dept. of Agric.
Perry v. Mastercard Int'l Inc.	Ariz. Super. Ct., No. CV2003-007154
Brown v. Credit Suisse First Boston Corp.	C.D. La., No. 02-13738
In re Unum Provident Corp.	D. Tenn., No. 1:03-CV-1000
In re Ephedra Prods. Liability Litigation	D.N.Y., MDL No. 1598
Chesnut v. Progressive Casualty Ins. Co.	Ohio C.P., No. 460971
Froeber v. Liberty Mutual Fire Ins. Co.	Ore. Cir. Ct., No. 00C15234
Luikart v. Wyeth Am. Home Prods. (Hormone Replacement)	W. Va. Cir. Ct., No. 04-C-127
Salkin v. MasterCard Int'l Inc. (Pennsylvania)	Pa. C.P., No. 2648
Rolnik v. AT&T Wireless Servs., Inc.	N.J. Super. Ct., No. L-180-04
Singleton v. Hornell Brewing Co. Inc. (Arizona Ice Tea)	Cal. Super. Ct., BC No. 288 754
Becherer v. Qwest Commc'ns Int'l, Inc.	Ill. Cir. Ct., No. 02-L140
Clearview Imaging v. Progressive Consumers Ins. Co.	Fla. Cir. Ct., No. 03-4174
Mehl v. Canadian Pacific Railway, Ltd	D.N.D., No. A4-02-009
Murray v. IndyMac Bank. F.S.B	N.D. Ill., No. 04 C 7669
Gray v. New Hampshire Indemnity Co., Inc.	Ark. Cir. Ct., No. CV-2002-952-2-3
George v. Ford Motor Co.	M.D. Tenn., No. 3:04-0783
Allen v. Monsanto Co.	W. Va. Cir. Ct., No. 041465
Carter v. Monsanto Co.	W. Va. Cir. Ct., No. 00-C-300
Carnegie v. Household Int'l, Inc.	N. D. Ill., No. 98-C-2178
Daniel v. AON Corp.	Ill. Cir. Ct., No. 99 CH 11893
In re Royal Ahold Securities and "ERISA" Litigation	D. Md., MDL No. 1539
In re Pharmaceutical Industry Average Wholesale Price Litigation	D. Mass., MDL No. 1456
Meckstroth v. Toyota Motor Sales, U.S.A., Inc.	24th Jud. D. Ct. La., No. 583-318
Walton v. Ford Motor Co.	Cal. Super. Ct., No. SCVSS 126737
Hill v. State Farm Mutual Auto Ins. Co.	Cal. Super. Ct., BC No. 194491

First State Orthopaedics et al. v. Concentra, Inc., et al.	E.D. Pa. No. 2:05-CV-04951-AB
Sauro v. Murphy Oil USA, Inc.	E.D. La., No. 05-4427
In re High Sulfur Content Gasoline Prods. Liability Litigation	E.D. La., MDL No. 1632
Homeless Shelter Compensation Program	City of New York
Rosenberg v. Academy Collection Service, Inc.	E.D. Pa., No. 04-CV-5585
Chapman v. Butler & Hosch, P.A.	2nd Jud. Cir. Fla., No. 2000-2879
In re Vivendi Universal, S.A. Securities Litigation	S.D.N.Y., No. 02-CIV-5571 RJH
Desportes v. American General Assurance Co.	Ga. Super. Ct., No. SU-04-CV-3637
In re: Propulsid Products Liability Litigation	E.D. La., MDL No. 1355
Baxter v. The Attorney General of Canada (In re Residential Schools Class Action Litigation)	Ont. Super. Ct., No. 00-CV-192059 CP
McNall v. Mastercard Int'l, Inc. (Currency Conversion Fees)	13th Tenn. Jud. Dist. Ct., No. CT-002506-03
Lee v. Allstate	Ill. Cir. Ct., No. 03 LK 127
Turner v. Murphy Oil USA, Inc.	E.D. La., No. 2:05-CV-04206-EEF-JCW
Carter v. North Central Life Ins. Co.	Ga. Super. Ct., No. SU-2006-CV-3764-6
Harper v. Equifax	E.D. Pa., No. 2:04-CV-03584-TON
Beasley v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., No. CV-2005-58-1
Springer v. Biomedical Tissue Services, LTD (Human Tissue Litigation)	Ind. Cir. Ct., No. 1:06-CV-00332-SEB-VSS
Spence v. Microsoft Corp. (Antitrust Litigation)	Wis. Cir. Ct., No. 00-CV-003042
Pennington v. The Coca Cola Co. (Diet Coke)	Mo. Cir. Ct., No. 04-CV-208580
Sunderman v. Regeneration Technologies, Inc. (Human Tissue Litigation)	S.D. Ohio, No. 1:06-CV-075-MHW
Splater v. Thermal Ease Hydronic Systems, Inc.	Wash. Super. Ct., No. 03-2-33553-3-SEA
Peyroux v. The United States of America (New Orleans Levee Breech)	E.D. La., No. 06-2317
Chambers v. DaimlerChrysler Corp. (Neon Head Gaskets)	N.C. Super. Ct., No. 01:CVS-1555
Ciabattari v. Toyota Motor Sales, U.S.A., Inc. (Sienna Run Flat Tires)	N.D. Cal., No. C-05-04289-BZ
In re Bridgestone Securities Litigation	M.D. Tenn., No. 3:01-CV-0017
In re Mutual Funds Investment Litigation (Market Timing)	D. Md., MDL No. 1586
Accounting Outsourcing v. Verizon Wireless	M.D. La., No. 03-CV-161

Hensley v. Computer Sciences Corp.	Ark. Cir. Ct., No. CV-2005-59-3
Peek v. Microsoft Corporation	Ark. Cir. Ct., No. CV-2006-2612
Reynolds v. The Hartford Financial Services Group, Inc.	D. Or., No. CV-01-1529 BR
Schwab v. Philip Morris USA, Inc.	E.D.N.Y., No. CV-04-1945
Zarebski v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., No. CV-2006-409-3
In re Parmalat Securities Litigation	S.D.N.Y., MDL No. 1653 (LAK)
Beasley v. The Reliable Life Insurance Co.	Ark. Cir. Ct., No. CV-2005-58-1
Sweeten v. American Empire Insurance Company	Ark. Cir. Ct., No. 2007-154-3
Govt. Employees Hospital Assoc. v. Serono Int., S.A.	D. Mass., No. 06-CA-10613-PBS
Gunderson v. Focus Healthcare Management, Inc.	14th Jud. D. Ct. La., No. 2004-2417-D
Gunderson v. F.A. Richard & Associates, Inc., et al.	14th Jud. D. Ct. La., No. 2004-2417-D
Perez v. Manor Care of Carrollwood	13th Jud. Cir. Fla., No. 06-00574-E
Pope v. Manor Care of Carrollwood	13th Jud. Cir. Fla., No. 06-01451-B
West v. Carfax, Inc.	Ohio C.P., No. 04-CV-1898 (ADL)
Hunsucker v. American Standard Ins. Co. of Wisconsin	Ark. Cir. Ct., No. CV-2007-155-3
In re Conagra Peanut Butter Products Liability Litigation	N.D. Ga., MDL No. 1845 (TWT)
The People of the State of CA v. Universal Life Resources (Cal DOI v. CIGNA)	Cal. Super. Ct., No. GIC838913
Burgess v. Farmers Insurance Co., Inc.	D. Okla., No. CJ-2001-292
Grays Harbor v. Carrier Corporation	W.D. Wash., No. 05-05437-RBL
Perrine v. E.I. Du Pont De Nemours & Co.	W. Va. Cir. Ct., No. 04-C-296-2
In re Alstom SA Securities Litigation	S.D.N.Y., No. 03-CV-6595 VM
Brookshire Bros. v. Chiquita (Antitrust)	S.D. Fla., No. 05-CIV-21962
Hoorman v. SmithKline Beecham	Ill. Cir. Ct., No. 04-L-715
Santos v. Government of Guam (Earned Income Tax Credit)	D. Guam, No. 04-00049
Johnson v. Progressive	Ark. Cir. Ct., No. CV-2003-513
Bond v. American Family Insurance Co.	D. Ariz., No. CV06-01249-PXH-DGC
In re SCOR Holding (Switzerland) AG Litigation (Securities)	S.D.N.Y., No. 04-cv-7897
Shoukry v. Fisher-Price, Inc. (Toy Safety)	S.D.N.Y., No. 07-cv-7182

In re: Guidant Corp. Plantable Defibrillators Prod's Liab. Litigation	D. Minn., MDL No. 1708
Clark v. Pfizer, Inc. (Neurontin)	C.P. Pa., No. 9709-3162
Angel v. U.S. Tire Recovery (Tire Fire)	W. Va. Cir. Ct., No. 06-C-855
In re TJX Companies Retail Security Breach Litigation	D. Mass., MDL No. 1838
Webb v. Liberty Mutual Insurance Co.	Ark. Cir. Ct., No. CV-2007-418-3
Shaffer v. Continental Casualty Co. (Long Term Care Ins.)	C.D. Cal., No. SACV06-2235-PSG
Palace v. DaimlerChrysler (Defective Neon Head Gaskets)	Ill. Cir. Ct., No. 01-CH-13168
Lockwood v. Certegy Check Services, Inc. (Stolen Financial Data)	M.D. Fla., No. 8:07-cv-1434-T-23TGW
Sherrill v. Progressive Northwestern Ins. Co.	18th D. Ct. Mont., No. DV-03-220
Gunderson v. F.A. Richard & Assocs., Inc. (AIG)	14th Jud. D. Ct. La., No. 2004-2417-D
Jones v. Dominion Resources Services, Inc.	S.D. W. Va., No. 2:06-cv-00671
Gunderson v. F.A. Richard & Assocs., Inc. (Wal-Mart)	14th Jud. D. Ct. La., No. 2004-2417-D
In re Trans Union Corp. Privacy Litigation	N.D. Ill., MDL No. 1350
Gudo v. The Administrator of the Tulane Ed. Fund	La. D. Ct., No. 2007-C-1959
Guidry v. American Public Life Insurance Co.	14th Jud. D. Ct. La., No. 2008-3465
McGee v. Continental Tire North America	D.N.J., No. 2:06-CV-06234 (GEB)
Sims v. Rosedale Cemetery Co.	W. Va. Cir. Ct., No. 03-C-506
Gunderson v. F.A. Richard & Assocs., Inc. (Amerisafe)	14th Jud. D. Ct. La., No. 2004-002417
In re Katrina Canal Breaches Consolidated Litigation	E.D. La., No. 05-4182
In re Department of Veterans Affairs (VA) Data Theft Litigation	D.D.C., MDL No. 1796
Dolen v. ABN AMRO Bank N.V. (Callable CD's)	Ill. Cir. Ct., No. 01-L-454 and No. 01-L-493
Pavlov v. CNA (Long Term Care Insurance)	N.D. Ohio, No. 5:07cv2580
Steele v. Pergo(Flooring Products)	D. Or., No. 07-CV-01493-BR
Opelousas Trust Authority v. Summit Consulting	27th Jud. D. Ct. La., No. 07-C-3737-B
Little v. Kia Motors America, Inc. (Braking Systems)	N.J. Super. Ct., No. UNN-L-0800-01
Boone v. City of Philadelphia (Prisoner Strip Search)	E.D. Pa., No. 05-CV-1851
In re Countrywide Customer Data Breach Litigation	W.D. Ky., MDL No.1998

Miller v. Basic Research (Weight-loss Supplement)	D. Utah, No. 2:07-cv-00871-TS
Gunderson v. F.A. Richard & Assocs., Inc. (Cambridge)	14th Jud. D. Ct. La., No. 2004-002417
Weiner v. Snapple Beverage Corporation	S.D.N.Y., No. 07-CV-08742
Holk v. Snapple Beverage Corporation	D.N.J., No. 3:07-CV-03018-MJC-JJH
Coyle v. Hornell Brewing Co. (Arizona Iced Tea)	D.N.J., No. 08-CV-2797-JBS-JS
In re Heartland Data Security Breach Litigation	S.D. Tex., MDL No. 2046
Satterfield v. Simon & Schuster, Inc. (Text Messaging)	N.D. Cal., No. 06-CV-2893 CW
Schulte v. Fifth Third Bank (Overdraft Fees)	N.D. Ill., No. 1:09-CV-06655
Trombley v. National City Bank (Overdraft Fees)	D.D.C., No. 1:10-CV-00232 as part of MDL 2036 (S.D. Fla.)
Vereen v. Lowe's Home Centers (Defective Drywall)	Ga. Super. Ct., No. SU10-CV-2267B
Mathena v. Webster Bank, N.A. (Overdraft Fees)	D. Conn, No. 3:10-cv-01448 as part MDL 2036 (S.D. Fla.)
Delandro v. County of Allegheny (Prisoner Strip Search)	W.D. Pa., No. 2:06-cv-00927
Gunderson v. F.A. Richard & Assocs., Inc. (First Health)	14th Jud. D. Ct. La., No. 2004-002417
Williams v. Hammerman & Gainer, Inc. (Hammerman)	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. (Risk Management)	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. (SIF Consultants)	27th Jud. D. Ct. La., No. 11-C-3187-B
Gwiazdowski v. County of Chester (Prisoner Strip Search)	E.D. Pa., No. 2:08cv4463
Williams v. S.I.F. Consultants (CorVel Corporation)	27th Jud. D. Ct. La., No. 09-C-5244-C
Sachar v. Iberiabank Corporation (Overdraft Fees)	S.D. Fla., MDL No. 2036
LaCour v. Whitney Bank (Overdraft Fees)	M.D. Fla., No. 8:11cv1896
Lawson v. BancorpSouth (Overdraft Fees)	W.D. Ark., No. 1:12cv1016
McKinley v. Great Western Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Wolfgeher v. Commerce Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Harris v. Associated Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Case v. Bank of Oklahoma (Overdraft Fees)	S.D. Fla., MDL No. 2036
Nelson v. Rabobank, N.A. (Overdraft Fees)	Cal. Super. Ct., No. RIC 1101391
Fontaine v. Attorney General of Canada (Stirland Lake and Cristal Lake Residential Schools)	Ont. Super. Ct., No. 00-CV-192059 CP
Opelousas General Hospital Authority v. FairPay Solutions	27th Jud. D. Ct. La., No. 12-C-1599-C

Marolda v. Symantec Corporation (Software Upgrades)	N.D. Cal., No. 3:08-cv-05701
In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement	E.D. La., MDL No. 2179
In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Medical Benefits Settlement	E.D. La., MDL No. 2179
Vodanovich v. Boh Brothers Construction (Hurricane Katrina Levee Breaches)	E.D. La., No. 05-cv-4191
Gessele et al. v. Jack in the Box, Inc.	D. Or., No. 3:10-cv-960
RBS v. Citizens Financial Group, Inc. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Mosser v. TD Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (Mastercard & Visa) – 2013 & 2019 Notice Programs	E.D.N.Y., MDL No. 1720
Saltzman v. Pella Corporation (Building Products)	N.D. Ill., No. 06-cv-4481
In re Zurn Pex Plumbing, Products Liability Litigation	D. Minn., MDL No. 1958
Blahut v. Harris, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Eno v. M & I Marshall & Ilsley Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Casayuran v. PNC Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Anderson v. Compass Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Evans, et al. v. TIN, Inc. (Environmental)	E.D. La. No. 2:11-cv-02067
Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.	27th Jud. D. Ct. La., No. 12-C-1599-C
Williams v. SIF Consultants of Louisiana, Inc. et al.	27th Jud. D. Ct. La., No. 09-C-5244-C
Miner v. Philip Morris Companies, Inc. et al.	Ark. Cir. Ct., No. 60CV03-4661
Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056 (Hull)
Glube et al. v. Pella Corporation et al. (Building Products)	Ont. Super. Ct., No. CV-11-4322294-00CP
Yarger v. ING Bank	D. Del., No. 11-154-LPS
Price v. BP Products North America	N.D. Ill, No. 12-cv-06799
National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.	E.D. Ark., No. 4:13-cv-00250-JMM
Johnson v. Community Bank, N.A. et al. (Overdraft Fees)	M.D. Pa., No. 3:12-cv-01405-RDM
Rose v. Bank of America Corporation, et al. (TCPA)	N.D. Cal., No. 11-cv-02390-EJD
McGann, et al., v. Schnuck Markets, Inc. (Data Breach)	Mo. Cir. Ct., No. 1322-CC00800

Simmons v. Comerica Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.	27th Jud. D. Ct. La., No. 09-C-5242-B
***Simpson v. Citizens Bank* (Overdraft Fees)**	E.D. Mich, No. 2:12-cv-10267
In re Plasma-Derivative Protein Therapies Antitrust Litigation	N.D. Ill, No. 09-CV-7666
In re Dow Corning Corporation (Breast Implants)	E.D. Mich., No. 00-X-0005
Mello et al v. Susquehanna Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Wong et al. v. Alacer Corp. (Emergen-C)	Cal. Super. Ct., No. CGC-12-519221
***In re American Express Anti-Steering Rules Antitrust Litigation (II)* (Italian Colors Restaurant)**	E.D.N.Y., 11-MD-2221, MDL No. 2221
Costello v. NBT Bank (Overdraft Fees)	Sup. Ct. Del Cnty., N.Y., No. 2011-1037
Gulbankian et al. v. MW Manufacturers, Inc.	D. Mass., No. 10-CV-10392
Hawthorne v. Umpqua Bank (Overdraft Fees)	N.D. Cal., No. 11-cv-06700-JST
Smith v. City of New Orleans	Civil D. Ct., Parish of Orleans, La., No. 2005-05453
Adkins et al. v. Nestlé Purina PetCare Company et al.	N.D. Ill., No. 1:12-cv-02871
Scharfstein v. BP West Coast Products, LLC	Ore. Cir., County of Multnomah, No. 1112-17046
Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
In re MI Windows and Doors Products Liability Litigation (Building Products)	D. S.C., MDL No. 2333
Childs et al. v. Synovus Bank, et al. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Steen v. Capital One, N.A. (Overdraft Fees)	E.D. La., No. 2:10-cv-01505-JCZ-KWR as part of S.D. Fla., MDL No. 2036
Kota of Sarasota, Inc. v. Waste Management Inc. of Florida	12th Jud. Cir. Ct., Sarasota Cnty, Fla., No. 2011-CA-008020NC
In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement (Claim Deadline Notice)	E.D. La., MDL No. 2179
Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.	Cir. Ct., Lawrence Cnty, Ala., No. 42-cv-2012- 900001.00
In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Notice)	Bankr. D. Del., No. 14-10979(CSS)
Gattinella v. Michael Kors (USA), Inc., et al.	S.D.N.Y., No. 14-civ-5731 (WHP)
Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.	27th Jud. D. Ct. La., No. 13-C-3212

Russell Minoru Ono v. Head Racquet Sports USA	C.D.Cal., No. 2:13-cv-04222-FMO(AGRx)
Opelousas General Hospital Authority v. PPO Plus, L.L.C., et al.	27th Jud. D. Ct. La., No. 13-C-5380
In re: Shop-Vac Marketing and Sales Practices Litigation	M.D. Pa., MDL No. 2380
In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation	D. N.J., MDL No. 2540
In Re: Citrus Canker Litigation	11th Jud. Cir., Fla., No. 03-8255 CA 13
Whitton v. Deffenbaugh Industries, Inc., et al. ***Gary, LLC v. Deffenbaugh Industries, Inc., et al.***	D. Kan., No. 2:12-cv-02247 D. Kan., No. 2:13-cv-2634
Swift v. BancorpSouth Bank (Overdraft Fees)	N.D. Fla., No. 1:10-cv-00090 as part of MDL 2036 (S.D. Fla.)
Forgione v. Webster Bank N.A. (Overdraft Fees)	Sup. Ct. Conn., No. X10-UWY-CV-12-6015956-S
Small v. BOKF, N.A.	D. Col., No. 13-cv-01125
Anamaria Chimeno-Buzzi & Lakedrick Reed v. Hollister Co. & Abercrombie & Fitch Co.	S.D. Fla., No. 14-cv-23120-MGC
In Re: Lithium Ion Batteries Antitrust Litigation	N.D. Cal., MDL No. 2420, 4:13-MD-02420-YGR
MSPA Claims 1, LLC v. IDS Property Casualty Insurance Company	11th Jud. Cir. Fla, No. 15-27940-CA-21
Glaske v. Independent Bank Corporation (Overdraft Fees)	Cir. Ct. Mich., No. 13-009983-CZ
In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation	Sup. Ct. N.Y., No. 650562/11
In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch)	N.D. Cal., MDL No. 2672
Hawkins v. First Tennessee Bank, N.A., et al. (Overdraft Fees)	13th Jud. Cir. Tenn., No. CT-004085-11
Greater Chautauqua Federal Credit Union v. Kmart Corp., et al. (Data Breach)	N.D. Ill., No. 1:15-cv-02228
Bias v. Wells Fargo & Company, et al. (Broker's Price Opinions)	N.D. Cal., No 4:12-cv-00664-YGR
Klug v. Watts Regulator Company (Product Liability)	D. Neb., No. 8:15-cv-00061-JFB-FG3
Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma, et al. (Overdraft Fees)	Dist. Ct. Okla., No. CJ-2015-00859
Morton v. Greenbank (Overdraft Fees)	20th Jud. Dist. Tenn., No. 11-135-IV
Jacobs, et al. v. Huntington Bancshares Inc., et al. (FirstMerit Overdraft Fees)	Ohio C.P., No. 11CV000090
Farnham v. Caribou Coffee Company, Inc. (TCPA)	W.D. Wis., No. 16-cv-00295-WMC

Gottlieb v. Citgo Petroleum Corporation (TCPA)	S.D. Fla., No. 9:16-cv-81911
McKnight et al. v. Uber Technologies, Inc. et al.	N.D. Cal., No 3:14-cv-05615-JST
Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)	N.C. Gen. Ct of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
T.A.N. v. PNI Digital Media, Inc.	S.D. GA., No. 2:16-cv-132-LGW-RSB.
In re: Syngenta Litigation	4th Jud. Dist. Minn., No. 27-CV-15-3785
The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)	D. Puerto Rico, No. 17-04780(LTS)
Reilly v. Chipotle Mexican Grill, Inc.	S.D. Fla., No. 1:15-cv-23425-MGC
Ma et al. v. Harmless Harvest Inc. (Coconut Water)	E.D.N.Y., No. 2:16-cv-07102-JMA-SIL
Mahoney v TT of Pine Ridge, Inc.	S.D. Fla., No. 9:17-cv-80029-DMM
Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric, et al.	E.D. Penn., No. 2:14-cv-04464-GAM
Alexander M. Rattner v. Tribe App., Inc.**, and** ***Kenneth Horsley v. Tribe App., Inc.*****,**	S.D. Fla., No. 1:17-cv-21344-UU and No. 1:17-cv-23111-JLK
Gordon, et al. v. Amadeus IT Group, S.A., et al.	S.D.N.Y. No. 1:15-cv-05457-KPF
Masson v. Tallahassee Dodge Chrysler Jeep, LLC (TCPA)	S.D. Fla., No. 1:17-cv-22967-FAM
Orlander v. Staples, Inc.	S.D. NY, No. 13-CV-0703
Larey v. Allstate Property and Casualty Insurance Company	W.D. Kan., No. 4:14-cv-04008-SOF
Larson v. John Hancock Life Insurance Company (U.S.A.)	Cal. Sup. Court, County of Alameda, No. RG16 813803
Alaska Electrical Pension Fund, et al. v. Bank of America N.A et al. **(ISDAfix Instruments)**	S.D.N.Y., No. 14-cv-7126 (JMF)
Falco et al. v. Nissan North America, Inc. et al. (Engine – CA & WA)	C.D. Cal., No. 2:13-cv-00686 DDP (MANx)
Pantelyat, et al v. Bank of America, N.A. et al. (Overdraft/Uber)	S.D.N.Y., No. 16-cv-08964-AJN
In re: Parking Heaters Antitrust Litigation	E.D.N.Y., No. 15-MC-0940-DLI-JO
Wallace, et al, v. Monier Lifetile LLC, et al.	Sup. Ct. Cal., No. SCV-16410
In re: Windsor Wood Clad Window Products Liability Litigation	E.D. Wis., MDL No. 16-MD-02688
Farrell v. Bank of America, N.A. (Overdraft)	S.D. Cal., No. 3:16-cv-00492-L-WVG
Hale v. State Farm Mutual Automobile Insurance Company, et al.	S.D. Ill., No. 12-cv-0660-DRH

Callaway v. Mercedes-Benz USA, LLC (Seat Heaters)	C.D. Cal., No. 8:14-cv-02011–JVS-DFM
Poseidon Concepts Corp. et al. (Canadian Securities Litigation)	Ct. of QB of Alberta, No. 1301-04364
In re: Takata Airbag Products Liability Litigation (OEMs – BMW, Mazda, Subaru, Toyota, Honda, and Nissan)	S.D. Fla, MDL No. 2599
Watson v. Bank of America Corporation et al.; Bancroft-Snell et al. v. Visa Canada Corporation et al.; Bakopanos v. Visa Canada Corporation et al.; Macaronies Hair Club and Laser Center Inc. operating as Fuze Salon v. BofA Canada Bank et al.; Hello Baby Equipment Inc. v. BofA Canada Bank and others (Visa and Mastercard Canadian Interchange Fees)	Sup. Ct. of B.C., No. VLC-S-S-112003; Ontario Sup. Ct., No. CV-11-426591; Sup. Ct. of Quebec, No. 500-06-00549-101; Ct. of QB of Alberta, No. 1203-18531; Ct. of QB of Saskatchewan, No. 133 of 2013
Vergara, et al., v. Uber Technologies, Inc. (TCPA)	N.D. Ill., No. 1:15-CV-06972
Surrett et al. v. Western Culinary Institute, et al.	Ore. Cir., County of Multnomah, No. 0803-03530
Kohl's - Underwood v. Kohl's Department Stores, Inc., et al. (Cert. Notice)	E.D. Penn., No. 2:15-cv-00730
Ajose et al. v. Interline Brands Inc. (Plumbing Fixtures)	M.D. Tenn., No. 3:14-cv-01707
Gergetz v. Telenav (TCPA)	N.D. Cal., No. 5:16-cv-4261
Raffin v. Medicredit, Inc., et al.	C.D. Cal., No 15-cv-4912
First Impressions Salon, Inc. v. National Milk Producers Federation, et al.	S.D. Ill., No. 3:13-cv-00454
Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN) (TCPA)	N.D. Cal., No. 3:16-cv-05486
Dipuglia v. US Coachways, Inc. (TCPA)	S.D. Fla., No. 1:17-cv-23006-MGC
Knapper v. Cox Communications	D. Ariz., No. 2:17-cv-00913
Martin v. Trott (MI - Foreclosure)	E.D. Mich., No. 2:15-cv-12838
Cowen v. Lenny & Larry's Inc.	N.D. Ill., No. 1:17-cv-01530
Al's Pals Pet Card, LLC, et al v. Woodforest National Bank, N.A., et al.	S.D. Tex., No. 4:17-cv-3852
In Re: Community Health Systems, Inc. Customer Data Security Breach Litigation	N.D. Ala., MDL No. 2595, 2:15-CV-222
Tashica Fulton-Green et al. v. Accolade, Inc.	E.D. Penn., No. 2:18-cv-00274
37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)	S.D.N.Y., No. 15-cv-9924
Stahl v. Bank of the West	Sup. Ct. Cal., No. BC673397
Parsons v. Kimpton Hotel & Restaurant Group, LLC (Data Breach)	N.D. Cal., No. 3:16-cv-05387
Waldrup v. Countrywide	C.D. Cal., No. 2:13-cv-08833
In re: Valley Anesthesiology Consultants, Inc. Data Breach Litigation	Sup. Ct. Cal., No. CV2016-013446

Naiman v. Total Merchant Services, Inc., et al. (TCPA)	N.D. Cal., No. 4:17-cv-03806
In re Dealer Management Systems Antitrust Litigation	N.D. Ill., MDL No. 2817, No. 18-cv-00864
In re HP Printer Firmware Update Litigation	N.D. Cal., No. 5:16-cv-05820
Zaklit, et al. v. Nationstar Mortgage LLC, et al. (TCPA)	C.D. Cal., No. 5:15-CV-02190
Luib v. Henkel Consumer Goods Inc.	E.D.N.Y., No. 1:17-cv-03021
Lloyd, et al. v. Navy Federal Credit Union	S.D. Cal., No. 17-cv-1280-BAS-RBB
Waldrup v. Countrywide Financial Corporation, et al.	C.D. Cal., No. 2:13-cv-08833
Adlouni v. UCLA Health Systems Auxiliary, et al.	Sup. Ct. Cal., No. BC589243
Di Filippo v. The Bank of Nova Scotia, et al. (Gold Market Instrument)	Ontario Sup. Ct., No. CV-15-543005-00CP & No. CV-16-551067-00CP
McIntosh v. Takata Corporation, et al.; Vitoratos, et al. v. Takata Corporation, et al.; and Hall v. Takata Corporation, et al.	Ontario Sup Ct., No. CV-16-543833-00CP; Quebec Sup. Ct of Justice, No. 500-06-000723-144; & Court of Queen's Bench for Saskatchewan, No. QBG. 1284 or 2015
Rabin v. HP Canada Co., et al.	Quebec Ct., Dist. of Montreal, No. 500-06-000813-168
Lightsey, et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, et al.	Ct. of Com. Pleas., S.C., No. 2017-CP-25-335
In re: Comcast Corp. Set-Top Cable Television Box Antitrust Litigation	E.D. Penn., No. 2:09-md-02034
Henrikson v. Samsung Electronics Canada Inc.	Ontario Sup. Ct., No. 2762-16cp
Burrow, et al. v. Forjas Taurus S.A., et al.	S.D. Fla., No. 1:16-cv-21606-EGT

Hilsoft-cv-143

Attachment 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:

Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.

S.D. Fla Case Nos. 1:10-CV-22190-JLK

DECLARATION OF STEPHANIE J. FIERECK, ESQ. ON IMPLEMENTATION OF CAFA NOTICE

I, STEPHANIE J. FIERECK, ESQ., hereby declare and state as follows:

1. My name is Stephanie J. Fiereck, Esq. I am over the age of 21 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Legal Notice Manager for Epiq Class Action & Claims Solutions, Inc. ("Epiq"), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans.

3. Epiq is a firm with more than 20 years of experience in claims processing and settlement administration. Epiq's class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service, claims database management, claim adjudication, funds management and distribution services.

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for the Defendant RBC Bank (USA), ("RBC") predecessor in interest to PNC Bank, N.A. ("PNC"), two federal officials at the Office of the Comptroller of the Currency were identified to receive the CAFA notice.

6. Epiq maintains a list of these federal officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").[1]

7. On November 15, 2019, Epiq sent two CAFA Notice Packages ("Notice"). The Notice was sent by United Parcel Service ("UPS") to two federal officials at the Office of the Comptroller of the Currency. The CAFA Notice Service List is included hereto as **Attachment 1**.

8. The materials sent to the two federal officials included a cover letter, which provided notice of the proposed settlement of the above-captioned case. The cover letter is included hereto as **Attachment 2**.

9. The cover letter was accompanied by a CD, which included the following:

- Class Action Complaint, filed on July 2, 2010 (Exhibit A on the enclosed CD).
- Consolidated Amended Class Action Complaint, filed on November 10, 2014, (Exhibit B on the enclosed CD).
- Settlement Agreement and Release (Attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval

[1] CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD).

- Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law (Exhibit C on the enclosed CD). In addition, Plaintiffs' Motion for Class Certification and Incorporated Memorandum of Law previously filed (Exhibit D on the enclosed CD).

- Proposed Postcard Settlement Class Notice, Proposed Long Form Settlement Class Notice, and Proposed Banner Notices (Attached as Exhibits C, D and E, respectively, to the Settlement Agreement and Release, which is attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD).

- [Proposed] Order Preliminarily Approving Class Settlement and Certifying Settlement Class Attached as Exhibit F, respectively, to the Settlement Agreement and Release, which is attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD).

- Order Preliminarily Approving Class Settlement and Certifying Settlement Class (Exhibit E on the enclosed CD).

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 21, 2020.

Stephanie J. Fiereck, Esq.

Attachment 1

CAFA Notice Service List

UPS

Company	FullName	Address1	Address2	City	State	Zip
Office of the Comptroller of the Currency	Ronald A. Pasch	Two PNC Plaza 620 Liberty Plaza	Mail Stop P2-PTPP-20-3	Pittsburgh	PA	15222
Office of the Comptroller of the Currency	Greg Taylor	400 7th Street SW		Washington	DC	20219

Attachment 2

NOTICE ADMINISTRATOR FOR UNITED STATES DISTRICT COURT

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

November 15, 2019

By UPS Overnight Delivery

Mr. Ronald A. Pasch
Examiner in Charge
PNC Bank, N. A.
Office of the Comptroller of Currency
Two PNC Plaza
620 Liberty Plaza
Mail Stop P2-PTPP-20-3
Pittsburgh, PA 15222-2719

Greg Taylor, Esquire
Director, Litigation Division
Office of the Comptroller of Currency
400 7th Street, SW
Washington, DC 20219

Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear Mssrs. Pasch and Taylor:

This notice is sent pursuant to 28 U.S.C. § 1715 of the Class Action Fairness Act ("CAFA") on behalf of Defendant RBC Bank (USA), ("RBC") predecessor in interest to PNC Bank, N.A. ("PNC") relating to the class action (the "Action") styled *Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.* The Action is one of a number of similar lawsuits previously consolidated in proceedings known as *In Re: Checking Account Overdraft Litigation*, 1:09-MD-02036-JLK, MDL No. 2036, pending in the United States District Court for Southern District of Florida, Miami Division ("the Court"). The parties to the Action entered into a Settlement Agreement on November 6, 2019. In addition, on November 6, 2019, Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law ("the Motion"), with the Settlement Agreement and Release appended, was filed with the Court. On November 13, 2019, the Court granted the Order Preliminarily Approving Class Settlement and Certifying Settlement Class.

The Action involves allegations from Plaintiffs that RBC systemically engaged in High-to-Low Posting of Debit Card Transactions to maximize the Bank's Overdraft Fee revenues. According to Plaintiffs, RBC's practices violated the Bank's contractual and good faith duties and the North Carolina consumer protection statute, were substantively and procedurally unconscionable, and resulted in conversion and unjust enrichment.

Defendants deny any wrongdoing or liability, but in order to avoid the further expense, inconvenience and distraction of protracted complex litigation, Defendants have decided to resolve the Action pursuant to the terms of the proposed settlement.

Specific Elements of 28 U.S.C. § 1715

Section 1715 lists eight categories of information to be provided in connection with applicable settlements. They are:

1. Sections 1715(b)(l)-(8). The enclosed CD contains PDF files of the following materials relating to the lawsuit and the proposed settlement thereof (we will provide a paper copy of these materials upon your request):

NOTICE ADMINISTRATOR FOR UNITED STATES DISTRICT COURT

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

- Class Action Complaint, filed on July 2, 2010 (Exhibit A on the enclosed CD)
- Consolidated Amended Class Action Complaint, filed on November 10, 2014, (Exhibit B on the enclosed CD)
- Settlement Agreement and Release (Attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD)
- Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law (Exhibit C on the enclosed CD). In addition, Plaintiffs' Motion for Class Certification and Incorporated Memorandum of Law previously filed (Exhibit D on the enclosed CD).
- Proposed Postcard Settlement Class Notice, Proposed Long Form Settlement Class Notice, and Proposed Banner Notices (Attached as Exhibits C, D and E, respectively, to the Settlement Agreement and Release, which is attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD)
- [Proposed] Order Preliminarily Approving Class Settlement and Certifying Settlement Class Attached as Exhibit F, respectively, to the Settlement Agreement and Release, which is attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD)
- Order Preliminarily Approving Class Settlement and Certifying Settlement Class (Exhibit E on the enclosed CD).

These and other related materials also are electronically available through the Court's PACER service at https://www.pacer.gov/.

2. Section 1715(b)(2). The Court has scheduled the Final Approval hearing for April 22, 2020, at 10:30 a.m. at the James Lawrence King Federal Justice Building and United States Courthouse, 99 NE 4th Street, Eleventh Floor, Courtroom 2, Miami, Florida, with respect to the proposed settlement.

3. Section 1715(b)(3). The enclosed CD includes the proposed notification to potential class members. That notification is attached as Exhibits C, D and E, respectively, to the Settlement Agreement and Release, which is attached as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD). The proposed notification explains the proposed settlement relief and notifies potential class members, among other things, of their rights to exclude themselves from the settlement class. Potential class members will be provided notice and an opportunity to exclude themselves from the class.

4. Section 1715(b)(4). As noted above, the Settlement Agreement and Release is included as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD.

NOTICE ADMINISTRATOR FOR UNITED STATES DISTRICT COURT

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

5. Section 1715(b)(5). Submitted on the enclosed CD as Exhibit F is a copy of the parties' Confidential Letter Agreement executed by the parties on October 31, 2019. This Confidential Letter Agreement specifies the number of opt-outs that would trigger PNC's right to withdraw pursuant to Paragraph 107 of the Settlement Agreement. The existence of this Confidential Letter Agreement is publically disclosed in Paragraph 107 of the Settlement Agreement. PNC requests that the recipients of this notification maintain the confidential nature of this Letter Agreement, and not disclose it to any third party. In the event that you consider disclosing it to any party, PNC requests advance notice and an opportunity to be heard.

As noted above, the Settlement Agreement and Release is included as Exhibit A, respectively, to Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class, and Incorporated Memorandum of Law, which is Exhibit C on the enclosed CD.

6. Section 1715(b)(6). No final judgment or notice of dismissal has been entered.

7. Section 1715(b)(7)(A and B). 28 U.S.C. § 1715(b)(7)(A) provides that a notification must include "if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement .... " 28 U.S.C. § 1715(b)(7)(B) provides that a notification must include, "if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement."

It is not feasible within the timeframe allotted to identify the names of all class members who reside in each State, nor is it feasible to determine precisely the amount of settlement relief that will be provided by the proposed settlement to the class, to individual class members, or the potential distribution of such settlement relief, because such amounts depend upon factors which cannot be reliably predicted. Under the Settlement, all eligible members of the Settlement Class who do not opt-out will automatically receive their pro rata share of the $7.5 million Settlement Fund inclusive of all attorneys' fees, costs, and expense awards to Class Counsel and Service Award to the Class Representatives. In addition to the $7.5 million fund, PNC will pay all fees and costs incurred in connection with the Notice Program and administration of the Settlement. Nonetheless, pursuant to 28 U.S.C. § 1715(b)(7)(B), in accordance with information available at this time, a chart is enclosed with this letter, which shows the approximate number of class membership by state (Exhibit G on the enclosed CD).

8. Section 1715(b)(8). As noted above, the Order Preliminarily Approving Class Settlement and Certifying Settlement Class was issued by the Court (Exhibit E on the enclosed CD).

The foregoing information is provided based on data currently available, and on the status of the Action at the time of the submission of this notification. Please contact us if you have any questions or require any additional information.

Sincerely,

Notice Administrator for United States District Court

Enclosures

Attachment 3

Dasher v. RBC Settlement Administrator
P.O. Box 4109
Portland, OR 97208-4109

PRESORTED
FIRST-CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

Important Notice About a Class Action Settlement

1
1

If You Paid Overdraft Fees to RBC Bank, You May Be Eligible for a Payment from a Class Action Settlement.

A Settlement has been reached in a class action lawsuit claiming that RBC Bank (USA) ("RBC") improperly posted Debit Card Transactions from highest to lowest dollar amount to increase the number of Overdraft Fees charged to Account Holders ("High-to-Low Posting"). The Settlement was reached with PNC Bank, N.A. ("PNC"), successor in interest to RBC after the two banks merged. PNC maintains that there was nothing wrong about the posting process used by RBC and that no laws were violated. The Court has not decided which side is right.

Who's Included? Bank records show you are a member of the Settlement Class. The Settlement Class includes all holders of an RBC Account who, from October 10, 2007 through and including March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting.

What Are the Settlement Terms? PNC has agreed to establish a Settlement Fund of $7.5 million. If you remain in the Settlement Class and the Court approves the Settlement, all Settlement Class Members whose Overdraft Fees were not paid due to a negative account balance at closing or were not refunded by the bank will *automatically* receive a payment or Account credit for your *pro rata* portion of eligible Overdraft Fees you paid during the period covered by the Settlement.

What Are My Other Options? If you do not want to remain in the Settlement Class and be bound by the Settlement, you must exclude yourself by **March 18, 2020**. If you do not exclude yourself from the Settlement Class, you will release your claims against PNC and RBC. Alternatively, you may object to the Settlement by **March 18, 2020**. The Detailed Notice available at the website explains further details about the Settlement, including how to exclude yourself from or object to the Settlement. The Court will hold a hearing on **April 22, 2020** to consider whether to approve the Settlement and a request for attorneys' fees up to 35% of the Settlement Fund and a $10,000 Service Award. You may appear at the hearing, but you don't have to. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing. For Detailed information visit the website below or call the toll-free number.

www.RBCBankOverdraftSettlement.com • 1-855-958-0544

Z3542 v.03

Attachment 4

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

If You Paid Overdraft Fees to RBC Bank, You May Be Eligible for a Payment from a Class Action Settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A $7.5 million Settlement has been reached in a class action about the order in which RBC Bank (USA) ("RBC"), posted Debit Card Transactions to customer Accounts, and the alleged effect the posting order had on the number of Overdraft Fees charged to Account Holders. The Settlement was reached with PNC Bank, N.A. ("PNC"), successor in interest to RBC after the two banks merged. PNC maintains that there was nothing wrong about the posting process used by RBC and that no laws were violated.
- Current holders of PNC consumer checking accounts that were formerly RBC accounts and former holders of RBC consumer checking accounts may be eligible for a payment or Account credit from the Settlement Fund.
- Your legal rights are affected whether you act or don't act. Read this notice carefully.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Receive a Payment or Account Credit	If you are entitled under the Settlement to a payment or Account credit, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, all Settlement Class Members whose Overdraft Fees were not paid due to a negative account balance at closing or were not refunded by the Bank will automatically receive a payment or Account credit.
Exclude Yourself from the Settlement	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against PNC about the claims in this case.
Object	Write to the Court if you do not like the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	You will receive any payment or Account credit to which you are entitled and will give up your right to bring your own lawsuit against PNC about the claims in this case.

- These rights and options — **and the deadlines to exercise them** — are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments and Account credits will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

Questions? Call 1-855-958-0544 or visit www.RBCBankOverdraftSettlement.com

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give Final Approval to the Settlement. This notice explains the lawsuit, the Settlement and your legal rights.

Senior Judge James Lawrence King, of the U.S. District Court for the Southern District of Florida, is overseeing this case. The case is known as *In Re: Checking Account Overdraft Litigation*, 1:09-MD-02036-JLK. The person who sued is called the "Plaintiff." The Defendant is PNC Bank, successor in interest to RBC Bank when the two banks merged.

2. What is this lawsuit about?

The lawsuit claims that RBC posted Debit Card Transactions in the order of highest to lowest dollar amount, which Plaintiff argues results in an increased number of Overdraft Fees assessed to customers. The complaint in this Action is posted on this website and contains all of the allegations and claims asserted against RBC. PNC maintains that there was nothing wrong about the posting process RBC used and that no laws were violated.

3. What do Overdraft Fee, Account, High-to-Low Posting, Debit Card Transaction and Positive Differential Overdraft Fees mean?

An "Overdraft Fee" is any fee assessed to an Account for items paid when the Account has insufficient funds to cover the item. Fees charged to transfer funds from other accounts are excluded. "Account" means any consumer checking, demand deposit or savings account maintained by RBC in the United States accessible by a Debit Card, including Accounts which became PNC accounts as a result of RBC's merger with PNC. "High-to-Low Posting" means RBC's practice of posting an Account's Debit Card Transactions from highest to lowest dollar amount each business day, which is alleged to have resulted in the assessment of Overdraft Fees that would not have been assessed if RBC had used an alternative posting method, e.g., one that posted transactions from lowest to highest. "Debit Card Transaction" means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether by PIN or signature/PIN-less) and ATM transactions. For avoidance of doubt, Debit Card Transaction does not include a debit transaction effectuated by check, by preauthorized transaction, by wire transfer or Automated Clearing House ("ACH") transaction, or a transfer to another account such as a credit card account or line of credit. "Positive Differential Overdraft Fee" means all eligible Overdraft Fees minus any Overdraft Fees that were not paid due to a negative account balance at closing or were not refunded by RBC.

4. Why is this a class action?

In a class action, one or more people called named plaintiffs (in this case, Michael Dasher) sue on behalf of people who have similar claims.

All of the people who have claims similar to the named plaintiff are members of the Settlement Class, except for those who timely exclude themselves from the class.

5. Why is there a Settlement?

The Court has not decided in favor of either Plaintiffs or PNC. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The class representative and their attorneys think the Settlement is best for everyone who is affected.

WHO IS IN THE SETTLEMENT?

If you received notice of the Settlement from a postcard addressed to you, then you are in the Settlement Class. But even if you did not receive a postcard with Settlement notice, you may still be in the Settlement Class, as described below.

6. Who is included in the Settlement?

The Settlement Class includes:

> All holders of a RBC Account who, from October 10, 2007 through and including March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting.
>
> Excluded from the Class are all former RBC and current PNC employees, officers and directors, and the judge presiding over this Action.

You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

THE SETTLEMENT'S BENEFITS

7. What does the Settlement provide?

PNC has agreed to establish a Settlement Fund of $7.5 million from which Settlement Class Members may receive payments or Account credits. The amount of such payments or Account credits cannot be determined at this time. However, it will be based on the number of Settlement Class Members and the amount of Additional Overdraft Fees each Settlement Class Member paid as a result of RBC's High-to-Low Posting practice. PNC will separately pay for Settlement administration and related costs; such amounts will not come out of the $7.5 million Settlement Fund.

8. How do I receive a payment or Account credit?

If you are in the Settlement Class and entitled to receive a cash benefit, you do not need to do anything to receive a payment or Account credit. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, all Settlement Class Members whose Overdraft Fees were not paid due to a negative account balance at closing or were not refunded by the bank will automatically receive a payment or Account credit for your *pro rata* portion of eligible Overdraft Fees you paid during the time period covered by the Settlement.

9. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you cannot sue, continue to sue or be part of any other lawsuit against PNC about the legal issues in this case. It also means that all of the decisions by the Court will bind you. The "Release of Claims" included in the Settlement Agreement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at www.RBCBankOverdraftSettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue PNC on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself — or it is sometimes referred to as "opting-out" of the Settlement Class.

10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter that includes the following:

- Your name, address and telephone number;
- A statement that you want to be excluded from the RBC Settlement in *In Re: Checking Account Overdraft Litigation*, 1:09-MD-02036-JLK; and
- Your signature.

You must mail your exclusion request, postmarked no later than **March 18, 2020**, to:

Checking Account Overdraft Litigation Exclusions
P.O. Box 4109
Portland, OR 97208-4109

11. If I do not exclude myself, can I sue PNC for the same thing later?

No. Unless you exclude yourself, you give up the right to sue PNC for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

12. If I exclude myself from the Settlement, can I still receive a payment?

No. You will not receive a payment or Account credit if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed a number of lawyers as "Class Counsel" and "Settlement Class Counsel" to represent you and others in the Settlement Class. Aaron S. Podhurst of Podhurst Orseck, P.A., Bruce S. Rogow of Bruce S. Rogow, P.A. and Robert C. Gilbert of Grossman Roth Yaffa Cohen, P.A. have been appointed as Settlement Class Counsel, and they are responsible for handling all Settlement-related matters on behalf of Plaintiffs.

Settlement Class Counsel will represent you and others in the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel intend to request up to 35% of the money in the Settlement Fund for attorneys' fees, plus reimbursement of their litigation costs and expenses incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that up to $10,000.00 be paid from the Settlement Fund to the one Class Representative for his service to the entire Settlement Class.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

15. How do I tell the Court that I don't like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's request for attorneys' fees and expenses and/or the request for a Service Award for the Class Representative. To object, you must submit a letter that includes the following:

- The name of this case, which is *In Re: Checking Account Overdraft Litigation*, 1:09-MD-02036-JLK;
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be a member of the Settlement Class;
- A statement with specificity of the grounds for your objection, and whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class, accompanied by any legal support for your objection known to you or your counsel;
- The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders related to or ruling upon your prior such objections that were issued by the trial and appellate courts in each listed case;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to your objection to the Settlement or fee application;
- A copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case in which your counsel and/or counsel's law firm have objected to a class action settlement within the preceding five (5) years;
- Any and all agreements that relate to your objection or the process of objecting— whether written or oral—between you or your counsel and any other person or entity;
- The identity of all counsel (if any) representing you who will appear at the Final Approval Hearing;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of your objection;

- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

You must submit your objection to all the people listed below, postmarked no later than **March 18, 2020**.

Clerk of the Court U.S. District Court for the Southern District of Florida James Lawrence King Federal Justice Building 99 Northeast Fourth Street Miami, FL 33132	Checking Account Overdraft Litigation P.O. Box 4109 Portland, OR 97208-4109
Robert C. Gilbert Grossman Roth Yaffa & Cohen P.O. Box 140420 Coral Gables, FL 33114	Mark J. Levin, Esq. BALLARD SPAHR LLP 1735 Market St., 51st Floor Philadelphia, PA 19103

16. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys' fees, expenses and Service Award. You may attend and you may ask to speak, but you don't have to do so.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 10:30 a.m. on **April 22, 2020**, at the United States District Court for Southern District of Florida, Miami Division, located at James Lawrence King Federal Justice Building, 99 Northeast Fourth Street, Miami, FL 33132. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.RBCBankOverdraftSettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider the request by Class Counsel for attorneys' fees and expenses and for the Service Award for the Class Representative. If there are objections, the Court will consider them at the hearing. The Court will decide whether to approve the Settlement at or following the hearing. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Settlement Class Counsel will answer any questions the Court may have. But, you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against PNC or RBC relating to the issues in this case.

GETTING MORE INFORMATION

20. How do I get more information?

This Detailed Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.RBCBankOverdraftSettlement.com. You may also write with questions to Checking Account Overdraft Litigation, P.O. Box 4109, Portland, OR 97208-4109, or call the toll-free number, 1-855-958-0544. Do not contact PNC or the Court for information.

Attachment 5

RBC Bank

Banner Advertisement

728x90 Online Banner for *Google Display Network* –

Frame 1: Visible for 6 seconds.

Frame 2: Visible for 5 seconds.

Frame 2: Visible for 4 seconds.

Desktop Right Column Banner for *Facebook* –

Static Ad

Class Action Settlement
www.RBCBankOverdraftSettlement.com
If you incurred an overdraft fee from 10/10/07-3/1/12, you may be eligible for a payment.

Attachment 6

RBC Bank - Sponsored Search Keywords

RBC Class Action
RBC Settlement
RBC Class Action Settlement
RBC Litigation
RBC Lawsuit
RBC Claim
RBC Overdraft Class Action
RBC Overdraft Settlement
RBC Overdraft Class Action Settlement
RBC Overdraft Litigation
RBC Overdraft Lawsuit
RBC Overdraft Claim
RBC Fee Class Action
RBC Fee Settlement
RBC Fee Class Action Settlement
RBC Fee Litigation
RBC Fee Lawsuit
RBC Fee Claim
RBC Overdraft Fee Class Action
RBC Overdraft Fee Settlement
RBC Overdraft Fee Class Action Settlement
RBC Overdraft Fee Litigation
RBC Overdraft Fee Lawsuit
RBC Overdraft Fee Claim
Overdraft Fee Class Action
Overdraft Fee Settlement
Overdraft Fee Class Action Settlement
Overdraft Fee Litigation
Overdraft Fee Lawsuit
Overdraft Fee Claim
PNC Class Action
PNC Settlement
PNC Class Action Settlement
PNC Litigation
PNC Lawsuit
PNC Claim
PNC Overdraft Class Action
PNC Overdraft Settlement
PNC Overdraft Class Action Settlement
PNC Overdraft Litigation
PNC Overdraft Lawsuit
PNC Overdraft Claim
PNC Fee Class Action
PNC Fee Settlement
PNC Fee Class Action Settlement

PNC Fee Litigation
PNC Fee Lawsuit
PNC Fee Claim
PNC Overdraft Fee Class Action
PNC Overdraft Fee Settlement
PNC Overdraft Fee Class Action Settlement
PNC Overdraft Fee Litigation
PNC Overdraft Fee Lawsuit
PNC Overdraft Fee Claim

Attachment 7

Google rbc class action

All News Maps Shopping Images More Settings Tools

About 7,280,000 results (0.41 seconds)

Ad · www.rbcbankoverdraftsettlement.com/

Class Action Settlement | Overdraft Litigation

Individuals who incurred an overdraft fee between 2007-2012 may be eligible for a payment. Request More Information.

Important Documents · Read The FAQs · Contact Us

topclassactions.com › lawsuit-settlements › money › rbc-bank-overdra...

RBC Bank Overdraft Fees Class Action Settlement | Top Class ...

Jan 9, 2020 - **RBC** Bank customers have secured a $7.5 million settlement ending claims that accuse the financial institution of driving up overdraft fees with deceptive posting of transactions. ... Lead plaintiff Michael Dasher alleged in the **RBC** Bank overdraft **class action lawsuit** that he and other ...

www.reddit.com › PersonalFinanceCanada › comments › eekseq › inv...

"Investors seek court approval to launch class-action lawsuit ...

Investors are seeking court approval for a **class-action** lawsuit against a mutual-fund division of **Royal Bank** of Canada, arguing that the fund company did not ...

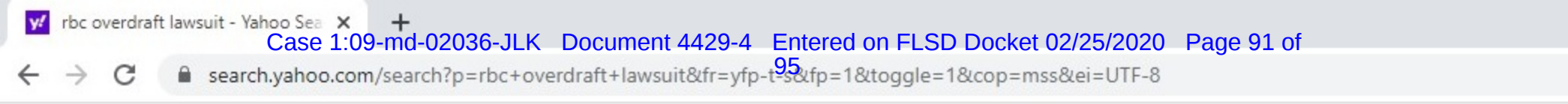
www.theglobeandmail.com › business › article-investors-seek-court-a...

Investors seek court approval to launch class-action lawsuit ...

Dec 22, 2019 - Investors are seeking court approval for a **class-action** lawsuit against a mutual-fund division of **Royal Bank** of Canada, arguing that the fund ...

investigationcounsel.com › class-actions-2 › rbc-and-td-canadian-equi...

RBC AND TD CANADIAN EQUITY FUND CLASS ACTIONS ...



rbc overdraft lawsuit

Web Images Video News More Anytime

Ad related to: rbc overdraft lawsuit

Class Action Settlement - RBC Bank
www.RBCBankOverdraftSettlement.com
Individuals who incurred an **overdraft** fee between 2007-2012 may be eligible for a payment.
If You Paid Overdraft Fees to RBC Bank, You May Be Eligible for a Payment from a ...

RBC Bank Overdraft Fee Settlement | Class Actions Reporter
www.classactionsreporter.com/settlements/rbc...
A class action against **RBC Bank** (USA) is being settled by PNC Bank, NA, its successor-in-interest after the two banks merged. The complaint contended that **RBC** posted **debit card** transactions in the order of the highest amount to the lowest, and that this resulted in customers being charged more **overdraft fees**.

Individuals who Paid Overdraft Fees to RBC Bank May Be ...
news.yahoo.com/individuals-paid-overdraft-fees...
Jan 06, 2020 · MIAMI, Jan. 6, 2020 /PRNewswire/ -- A Settlement has been reached in a class action **lawsuit** claiming that **RBC Bank** (USA) ("**RBC**") improperly posted Debit Card Transactions from highest to lowest dollar amount to increase the number of **Overdraft Fees charged** to Account holders ("High-to-Low Posting"). The Settlement was reached with PNC Bank, N.A. ("PNC"), successor in interest to RBC when the two banks merged.

Dasher v. RBC Bank - Home
www.rbcbankoverdraftsettlement.com
If You Paid **Overdraft** Fees to **RBC** Bank, You May Be Eligible for a Payment from a Class Action Settlement. A $7.5 million Settlement has been reached in a class action about the order in which **RBC** Bank (USA) ("**RBC**"), posted Debit Card Transactions to customer Accounts, and the alleged effect the posting order had on the number of **Overdraft** Fees ...

RBC Bank Overdraft Fees Class Action Lawsuit
www.hustlermoneyblog.com/rbc-bank-overdraft-fees...
Jan 22, 2020 · **RBC Bank Overdraft Fees** Class Action **Lawsuit**. Claim Form Deadline: March 18, 2020; Who's Eligible: Class Members include "All holders of a **RBC Account** who, from October 10, 2007 through and including March 1, 2012, incurred one or more **Overdraft Fees** as a result of **RBC's** High-to-Low Posting."

rbc overdraft lawsuit

ALL IMAGES VIDEOS MAPS NEWS SHOPPING

Also try: rbc overdraft protection · rbc overdraft fee · bank overdraft lawsuit

80,400 Results Any time

RBC Bank - Class Action Settlement

http://www.rbcbankoverdraftsettlement.com

Ad Individuals who incurred an **overdraft** fee from 10/10/07-3/1/12 may be eligible for payment
If You Paid Overdraft Fees to RBC Bank, You May Be Eligible for a Payment from a ...
You have visited rbcbankoverdraftsettlement.com once in last 7 days.

RBC Bank Overdraft Fee Settlement | Class Actions Reporter

https://www.classactionsreporter.com/settlements/rbc-bank-overdraft-fee-settlement

A class action against **RBC Bank** (USA) is being settled by PNC Bank, NA, its successor-in-interest after the two banks merged. The complaint contended that **RBC** posted **debit card** transactions in the order of the highest amount to the lowest, and that this resulted in customers being charged more **overdraft fees**.

Individuals who Paid Overdraft Fees to RBC Bank May Be ...

https://news.yahoo.com/individuals-paid-overdraft-fees-rbc-130000042.html

Jan 06, 2020 · MIAMI, Jan. 6, 2020 /PRNewswire/ -- A Settlement has been reached in a class action **lawsuit** claiming that **RBC Bank** (USA) ("**RBC**") improperly posted Debit Card Transactions from highest to lowest dollar amount to increase the number of **Overdraft Fees charged** to Account holders ("High-to-Low Posting"). The Settlement was reached with PNC Bank, N.A. ("PNC"), successor in interest to RBC when ...

RBC Bank Overdraft Fees Class Action Lawsuit

https://www.hustlermoneyblog.com/rbc-bank-overdraft-fees-class-action-lawsuit

Jan 22, 2020 · **RBC Bank Overdraft Fees** Class Action **Lawsuit**. Claim Form Deadline: March 18, 2020; Who's Eligible: Class Members include "All holders of a **RBC Account** who, from October 10, 2007 through and including March 1, 2012, incurred one or more **Overdraft Fees** as a result of **RBC's** ...

4/4 ★★★★

Related searches

rbc overdraft **protection**
rbc overdraft **fee**
bank overdraft lawsuit
rbc overdraft **interest rate**
bank of america overdraft lawsuit
overdraft **fee** lawsuits
class action lawsuits overdraft
td bank overdraft lawsuit

Attachment 8

Individuals who Paid Overdraft Fees to RBC Bank May Be Eligible for a Payment from a Class Action Settlement

NEWS PROVIDED BY
United States District Court for Southern District of Florida, Miami Division →
Jan 06, 2020, 08:00 ET

MIAMI, Jan. 6, 2020 /PRNewswire/ -- A Settlement has been reached in a class action lawsuit claiming that RBC Bank (USA) ("RBC") improperly posted Debit Card Transactions from highest to lowest dollar amount to increase the number of Overdraft Fees charged to Account holders ("High-to-Low Posting"). The Settlement was reached with PNC Bank, N.A. ("PNC"), successor in interest to RBC when the two banks merged. PNC maintains that there was nothing wrong about the posting process used by RBC and that no laws were violated. The Court has not decided which side is right.

Who's Included?

The Settlement Class includes all holders of an RBC Account who, from October 10, 2007 through and including March 1, 2012, incurred one or more Overdraft Fees as a result of RBC's High-to-Low Posting.

What Are the Settlement Terms?

PNC has agreed to establish a Settlement Fund of $7.5 million. Individuals who remain in the Settlement Class, and if the Court approves the Settlement, will *automatically* receive a payment or Account credit for their *pro rata* portion of eligible Overdraft Fees they paid during the period covered by the Settlement.

What Are My Other Options?

Members of the Settlement Class who do not want to remain in the Settlement Class and be bound by the Settlement, must exclude themselves by **March 18, 2020**. Members of the Settlement Class who do not timely exclude themselves from the Settlement Class will release their claims against PNC and RBC. Alternatively, members of the Settlement Class may object to the Settlement by **March 18, 2020**. The Detailed Notice available at www.RBCBankOverdraftSettlement.com explains how to exclude yourself from or object to the Settlement. The Court will hold a hearing on **April 22, 2020** to consider whether to approve the Settlement and a request for attorneys' fees up to 35% of the Settlement Fund and a $10,000 Service Award. Settlement Class Members may appear at the hearing, but are not required to do so. Settlement Class Members are not required to hire a lawyer to appear or speak for them at the hearing, but may do so if they choose, at their own expense. For Detailed information visit www.RBCBankOverdraftSettlement.com or call toll-free 1-855-958-0544.

SOURCE United States District Court for Southern District of Florida, Miami Division

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:

Michael Dasher v. RBC Bank (USA), predecessor in interest to PNC Bank, N.A.

S.D. Fla. Case No. 1:10-CV-22190-JLK

DECLARATION OF ARTHUR OLSEN IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH RBC BANK

I, Arthur Olsen, declare as follows:

Summary of My General Qualifications

1. I have over 20 years of professional information technology experience, specializing in the areas of data analysis, database development, and database administration and support. I have received extensive training related to Oracle Corporation ("Oracle") database software in the areas of relational database design, architecture and administration, as well as SQL and PL/SQL, application tuning, database tuning and advanced database concepts. I was also trained by Microsoft Corporation ("Microsoft") in database architecture and administration, database tuning and TSQL.

2. For three years, I worked as a database engineer for Microsoft where my responsibilities primarily involved database design and administration. Among other duties at Microsoft, I participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division, and managed and supported numerous databases throughout the company. I received Microsoft's award for operational excellence for my database-related work at the company.

3. In addition to my experience working for Microsoft, I worked for six years at Hewlett-Packard Company ("Hewlett-Packard") as a database engineer. Among other responsibilities at Hewlett-Packard, I served as the primary database administrator for both Oracle and SQL Server systems that supported multiple divisions. My responsibilities at Hewlett-Packard also included serving as lead analyst in charge of compiling, analyzing and processing data from various internal database systems throughout the company for use in litigation support.

4. In addition to my work for Microsoft and Hewlett-Packard, I have provided database services to a number of other large corporations, including, among others, Cisco Systems, Inc., Marvel Technologies, Inc., and Tessera Corporation. My responsibilities in that regard have included utilizing database systems for financial reporting services. I have also managed the development of data integration solutions for small to mid-size companies, and developed a solution for integrating an automated process for the calculation of inventory reserves with Oracle Financials.

5. My qualifications and background are set forth in more detail in my consultant profile, which is attached hereto as **Exhibit A**.

6. In addition to my general qualifications set forth above and in the attached consultant profile, I have specific experience that is directly relevant to my assignments in this litigation. In September 2008, I was retained by plaintiffs as a consultant and expert in the case *Gutierrez v. Wells Fargo Bank, N.A.*, Case No. 07-05923WHA (N.D. Cal.) ("*Gutierrez*"), a class action brought on behalf of Wells Fargo California customers challenging Wells Fargo's high-to-low re-sequencing practices. Similar to my assignment here, in *Gutierrez* I was asked to review and analyze the historical transactional data maintained by Wells Fargo, and to provide my opinion regarding the feasibility of using such data to recreate alternative posting orders for the customers' transactions (*i.e.*, where the same transactions are sequenced in a different order than the order in which the bank actually posted them) for the purpose of comparing the number of overdraft fees Wells Fargo assessed each customer pursuant to its actual posting order with the number of overdraft fees Wells Fargo would have assessed had the alternative posting order been used. Having determined that it was, in fact, feasible to do so on an automated basis using the available data, I was ultimately asked to perform calculations using class-wide data to: (a) identify the Wells Fargo California customers who were assessed additional overdraft fees due to Wells Fargo's high-to-low posting order (as compared with certain alternative posting orders) during the class period in that case (November 15, 2004 through June 30, 2008); and (b) calculate the amount of the additional overdraft fees that each such customer was charged during that time period.

7. After I completed my comprehensive analysis and it was provided to Wells Fargo in advance of trial, Wells Fargo sought to exclude my analysis from trial, submitting competing expert testimony and raising various challenges to my qualifications and the

methodology that I used to perform my analysis. U.S. District Judge William H. Alsup, who presided over *Gutierrez*, rejected Wells Fargo's attacks on my methodology and found that, given my background and experience, I was "clearly qualified to perform" the tasks I was asked to perform.

8. I presented my comprehensive analysis at the *Gutierrez* bench trial on April 29, 2010. I was subjected to cross-examination by Wells Fargo's counsel during the trial. Moreover, Wells Fargo presented competing testimony from its own experts who attempted to challenge my methodology and the reliability of my results. After trial, both sides submitted proposed findings to the Court. In its proposed findings, Wells Fargo again sought to discredit my analysis and the methodology I used.

9. On August 10, 2010, Judge Alsup issued his findings in *Gutierrez*. Judge Alsup found that I did "a professional and careful job in laying out the impacts of various alternative posting protocols," and adopted one of my analyses as the basis for his $203 million class restitution award. After multiple appeals, these findings were upheld and the matter was finally concluded on April 4, 2016, when the U.S. Supreme Court declined Wells Fargo's request to review its loss at trial.

10. In addition to my work in *Gutierrez*, I have performed similar work in other related cases in this multidistrict litigation *In re Checking Account Overdraft Litigation*, MDL 2036. Among other things, I analyzed the historical transactional data maintained by a number of banks named as defendants in MDL 2036, including but not limited to, Associated Bank, Bank of America, Bank of the West, Capital One, Citizens Bank, Comerica, Commerce Bank, Compass Bank, Great Western Bank, Harris Bank, JPMorgan Chase, M&T Bank, PNC Bank, TD Bank, Union Bank, US Bank, Wachovia, and Wells

Fargo, to determine the feasibility of identifying the customers affected by those banks' debit card sequencing practices and the amount of such harm, have conducted damages analyses, and submitted numerous declarations in those cases supporting motions for class certification and/or settlements.

Scope of My Assignments in This Litigation

11. Class counsel retained me to perform data extraction, data analysis and damage calculations in connection with the litigation, settlement negotiations and effectuation of the class action settlement ("Settlement") with defendant PNC Bank, N.A. ("PNC"), successor in interest to RBC Bank (USA) ("RBC").

12. The scope of my assignment was to: (1) determine whether it was possible, using historical RBC customer data maintained by PNC, to identify on a class-wide basis RBC accounts affected by high-to-low debit card sequencing and to calculate each such account's corresponding impact; and (2) review and analyze historical RBC customer transactional data that PNC has maintained for the Settlement class period in order to effectuate the Settlement by: (a) identifying those RBC accounts that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low in dollar amount instead of in chronological order, and (b) calculating the amount of additional overdraft fees each such account incurred as a result of such practice.

Analysis of Data for Purposes of the Litigation

13. In April 2018, I embarked on the assignment described above (*i.e.*, identify RBC accounts that paid additional overdraft fees as a result of high-to-low debit-card transaction sequencing and calculate each such account's corresponding harm). After

conferring with class counsel, I received and reviewed several documents that were produced by PNC.

14. On April 27, 2018, I received and reviewed class-wide transactional data for RBC accounts produced by PNC. In addition, I received and reviewed documents provided by PNC that identified and described the various RBC transaction codes, (*i.e.*, the type of transactions that are described by each transaction code), included in the data sources provided.

15. As detailed below, between April 27, 2018 and August 30, 2018, I performed the class-wide analysis of the RBC historical data. Through that analysis, I was able to determine that the RBC data maintained by PNC was sufficient to make the required calculations and, thereafter, I performed the full analysis in order to identify the accounts that were charged additional overdraft fees as a result of high-to-low debit card sequencing, as well as the corresponding amount of that harm.

16. The RBC demand deposit accounting system was an online system designed for day-to-day processing, and not for the storage of large amounts of data. As a result, historical data that RBC considered relevant was periodically copied into their data archival systems prior to being purged from the online system. So even though the data used in this analysis originated in the online system, it was all extracted from the data archival systems.

17. The following data sets were produced:

a. The Transaction Journal data set contained all of the transactions for all customer accounts.

b. The Trial Balance data set contained daily balance information, both ledger balance and available balance, for all customer accounts.

c. The Cardholder Activity data set contained a record of all authorization requests made to the bank by a customer attempting to initiate a transaction utilizing a debit card.

d. The Chargeoff data set contained a record of amounts that were written off as uncollectable by the bank for each account.

18. RBC's historical data included the following relevant information for all of the customer transactions, including the overdraft transactions:

a. The posting date of the transaction;

b. The dollar amount of the transaction;

c. A "transaction code," which identified the type of transaction; and

d. The date and time of authorization for a majority of ATM and debit card transactions.

19. In addition, the data included the daily account balances, both ledger balance and available balance.

20. With the available data from these sources, I was able to: (a) identify the specific customers who were affected by RBC's high-to-low debit card posting practice during the class period, as compared to an alternative posting order; and (b) calculate the amount of harm to each such customer.

21. In general, my analysis consisted of the following steps:

a. The transaction detail was reviewed, and based upon the transaction code, overdraft fees were identified. This allowed me to identify all instances where a customer was assessed multiple overdraft fees on a given day;

b. For each instance where a customer was assessed multiple overdraft fees on a given day, using software code that I developed, I programmatically re-sorted the transactions to match the alternative posting order that I was provided, and calculated the number of overdraft fees that would have been assessed under the alternative posting order;

c. Specifically, transactions were re-sorted in the following order:

i. All credits;

ii. All bank-initiated debits, fees assessed on previous day transactions, and other high-priority debits, in the order originally posted by the bank;

iii. All ATM and POS debit card transactions with date and time of authorization ordered chronologically;

iv. All ATM and POS debit card transactions without date and time of authorization ordered from lowest to highest dollar amount; and

v. All other customer-initiated debits, including checks, cash withdrawals, and ACH transactions, ordered from highest to lowest dollar amount.

d. Next, I calculated the differential between the overdraft fees that would have been assessed to each customer under the alternative posting order and the overdraft fees that RBC actually assessed

under its actual posting order. I then added up the differentials for all of the customers to calculate the gross damages.

22. Through this analysis, I was able to identify the customers who would have had fewer overdrafts under the alternative posting order, and the corresponding amount of harm during the class period.

23. To measure accurately the damages for each customer, I applied methodologies to adjust the gross amount to account for "reversals" (where RBC had reversed the assessed overdraft fee); and (b) "uncollectables" (where the customer closed the account with a negative balance and the assessed overdraft fee was not collected).

24. For reversals, the data that I was provided contained the amount and reversal posting date (*i.e.*, when the reversed amount was credited to the account) for overdraft fee reversals. The RBC data did not indicate which overdraft fee reversals were tied to which assessed overdraft fees, making it impossible to determine precisely the impact of reversals on the additional fees charged as a result of RBC's posting order. I thus used the "30-day" method to adjust for fee reversals.

25. Under the 30-day method, all overdraft fee reversals that occurred in the 30 days after any "differential" (*i.e.*, after any instance where the customer would have had fewer overdraft charges under the alternative posting order) were used to offset such "differential." If the overdraft fee reversals equaled or exceeded the "differential," then the customer was not considered to have been affected by high-to-low posting of debit card transactions. If the overdraft fee reversals were less than the "differential," then the "differential" was reduced by the amount of the reversals.

26. For uncollectables, I was told to assume that if an account was closed after a write-off for a negative balance, it was to be considered uncollectable. In such instances, I reduced the customer's total damages by the amount of such negative balance. If the remaining damage after this adjustment was less than or equal to zero, then the customer's damages were reported as zero.

27. Based on my analysis of the RBC historical data produced by PNC, I identified a total of 152,138 accounts that were affected by RBC's high-to-low debit card sequencing, of which 112,185 accounts had damages after accounting for reversals and after deducting uncollectable amounts charged off or written off during the class period of October 10, 2007 through March 1, 2012. I determined that the 112,185 accounts sustained damages totaling $33,153,673.91 after accounting for reversals and after deducting uncollectable amounts.

28. I memorialized the foregoing analysis and findings in my declaration in support of class certification dated August 30, 2018, and in my supplemental declaration in support of class certification dated November 8, 2018 (collectively "Declaration").

Confirmation of Analysis of Data to Effectuate the Settlement

29. Several months following the completion of my analysis and Declaration, I was advised that the parties had reached an agreement to resolve the litigation through the Settlement. At that time, I was asked to confirm that my prior analysis for purposes of the litigation class period of (a) identifying RBC accounts that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low in dollar amount instead of in chronological order, and (b) calculating the amount of corresponding harm each such account incurred as a result of such practice, is the same for purposes of effectuating the Settlement.

30. To provide such confirmation, I compared the class period and the formula detailed in paragraphs 23 and 85 of the Settlement Agreement, respectively, to my Declaration to be sure they are the same as those used in conducting my analysis for purposes of the litigation. I confirmed that the (a) RBC accounts I previously identified that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low in dollar amount instead of in chronological order, and (b) the amounts I previously calculated of corresponding harm that each such account incurred as a result of such practice, are the same.

31. Accordingly, for purposes of effectuating the Settlement, I confirmed that a total of 152,138 accounts were affected by RBC's high-to-low debit card sequencing, of which 112,185 accounts had damages after accounting for reversals and after deducting uncollectable amounts charged off or written off, pursuant to paragraph 85 of the Settlement Agreement. I also confirmed that, during the class period set forth in paragraph 23 of the Settlement Agreement, the 112,185 accounts sustained damages totaling $33,153,673.91 after accounting for reversals and after deducting uncollectable amounts, pursuant to paragraph 85 of the Settlement Agreement.

32. I understand that the Settlement Administrator mailed individual class notice to substantially all of the persons named on the 152,138 accounts that I identified. I also understand that if the Settlement is approved and becomes effective, payments will be made to the 112,185 eligible account holders pursuant to the Settlement Agreement.

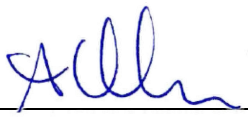
Alternative Analysis

33. Based on my extensive experience in overdraft fee litigation and the analysis I performed in this case (*see* paragraphs 13 – 26), the results reported in paragraph

27 likely represent the most favorable outcome for plaintiffs had the case proceeded to trial. However, there are less favorable sort orders that a jury or court might have chosen as the basis for restitution if this case proceeded to trial. For example, I performed the exact same analysis as described above, but instead of sorting all ATM and POS debit card transactions without date and time of authorization from lowest to highest dollar amount, I left them in the order originally posted by the bank, namely from highest to lowest dollar amount. Under this alternative sort order analysis, I identified a total of 86,388 accounts that had damages – after accounting for reversals and after deducting uncollectable amounts charged off or written off during the class period of October 10, 2007 through March 1, 2012 – totaling $22,475,249.32.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21st day of February, 2020, at Seattle, WA.



ARTHUR OLSEN

EXHIBIT A

IT CONSULTANT PROFILE: ARTHUR OLSEN

BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has nearly 20 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

SKILLS

- Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.
- Extensive training and experience creating functional designs and logical data models.
- Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.
- Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.
- Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

AWARDS

- Award for Operational Excellence | Microsoft
  Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

CERTIFICATIONS

- Oracle Certified Professional
- Certified Oracle Database Administrator

EXPERIENCE

Data Expert: Litigation Specialist | retained by various law firms

- Data expert supporting massive multi-district class action litigation, (MDL No. 2036 – *In Re: Checking Account Overdraft Litigation*).
- Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America, N.A.*, D. Or. Case No. 3:11-CV-01372).
- Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.*, N.D. Cal. Case No. CV-10-1313 WHA).
- Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a $203 million class restitution award.

Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.
- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.
- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.
- Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.
- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

Database Engineer | Microsoft Licensing, Inc., Reno, NV

- Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.
- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.
- Created and documented plans for database maintenance, backup and recovery, and high availability.

Database Engineer | under contract at Microsoft Corporation, Redmond, WA

- Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.
- Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.
- Designed replication model using Oracle replication to satisfy extensive reporting requirements.
- Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.
- Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

EDUCATION

- Microsoft Internal Training – Redmond, WA | March 2000
  Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL
- ARIS Education Center – Bellevue, WA | June 1996
  Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts
- University of Washington – Seattle, WA | June 1989
  BA in Business Administration with a concentration in Finance.