UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: CAPITAL ONE 360 SAVINGS ACCOUNT INTEREST RATE LITIGATION	Case No. 1:24-md-03111-DJN-WBP

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

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INTRODUCTION

Plaintiffs, by and through their undersigned counsel ("Plaintiffs' Counsel"),[1] respectfully seek final approval of the Settlement of this matter on a class-wide basis. The Settlement provides over $1 billion in value to Settlement Class Members, representing an "incredible recovery" that easily meets the standards for approval under Fed. R. Civ. P. 23(e).

In addition, Plaintiffs' Counsel respectfully request an attorneys' fee award of 15% of the $425 million Settlement Fund, which is reasonable under any frame of analysis: it is significantly below the median and mean percentage award for common fund settlements of this size; it represents only 5.8% of the total maximum value of the Settlement; and it represents a reasonable multiplier on Plaintiffs' Counsel's lodestar under the circumstances of this case. Likewise, Plaintiffs' Counsel's requested reimbursement of litigation expenses, and the Service Awards of $10,000 for each Plaintiff, are also fair, reasonable, and well supported by the record.

RELEVANT BACKGROUND

I. Procedural History

The procedural history of this action through preliminary approval of the Settlement is largely set forth in Plaintiffs' motion for preliminary approval (ECF 283) and the Ninth Report of the Special Master (ECF 308). Additional matters bearing on final approval of the Settlement are as follows:

[1] All capitalized terms herein are defined within the Settlement Agreement. All citations to "PA Ex. __" are to Exhibits attached to the Declaration of Chet B. Waldman in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement dated December 23, 2025 (ECF 284, the "Waldman New PA Decl."). All citations to "FA Ex." are to the Exhibits attached to the Declaration of Chet B. Waldman in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement dated March 9, 2026 (the "Waldman New FA Decl."). Unless otherwise specified, all citations to "ECF __" are to docket entries in the above-captioned matter and refer to the ECF-generated pagination therein.

A. The Seventh Report of the Special Master (Regarding the Position of the *Amici Curiae* Attorneys General)

The New York Attorney General, which brought its own case against Capital One and led the opposition to the Previous Agreement, "does not object to this new settlement, and as a result of the new settlement, has agreed via a separate stipulation to dismiss its own claims against Capital One if and when the new settlement becomes effective." *See* Declaration of Cameron R. Azari Regarding Implementation and Adequacy of New Notice Plan dated March 9, 2026 ("Azari New Implementation Decl."), Attachment 4 (New Long Form Notice) at 6. After consultation with the other attorneys general who opposed the Previous Agreement, "all seventeen States represented [to the Special Master] that they do not intend to object to or oppose th[is] New Settlement." Seventh Report of the Special Master (ECF 289, the "Seventh Report") at 1. Numerous attorneys general commented that this new Settlement would be "positive" or "beneficial" to the consumers in their respective states or nationwide, and two attorneys general stated that they "support" the Settlement. *See generally* Seventh Report and Exs. 1-10 thereto (ECF 289-1).[2]

B. Preliminary Approval and Notice

On January 12, 2026, the Court held a hearing and granted preliminary approval of the Settlement, finding it to be fair, reasonable, and adequate. *See generally* ECF 296. The Court further found that the Notice Plan "is reasonably calculated to provide notice to the Settlement Class of the pendency of the action, certification of the Settlement Class, the terms of the

[2] Other state attorneys general, along with New York, will stipulate to release civil claims against Capital One concerning the allegations at issue in this class action. *See* Seventh Report at 2-3 (California, Maryland, Massachusetts, Minnesota, Nevada, Ohio, and Rhode Island, along with New York). State attorneys general commenting that the Settlement is "positive" or "beneficial" are those from Arizona (ECF 289-1 at 2); Colorado (*id.* at 6); Connecticut (*id.* at 10); Hawaii (*id.* at 13); Illinois (*id.* at 18); Michigan (*id.* at 20); New Jersey (*id.* at 23); and Louisiana (*id.* at 37). State attorneys general expressing their "support" of the Settlement are those from Washington (ECF 289-1 at 28) and Oregon (*id.* at 33).

Agreement, Plaintiffs' counsel's anticipated application for an award of attorneys' fees and reimbursement of expenses, and the Final Approval Hearing, and complies fully with all applicable law." *Id.* ¶ 12. The Settlement Administrator thereafter successfully executed the Notice Plan. *See* Azari New Implementation Decl. In all, the Settlement Administrator sent 3,985,134 New Email Notices and 673,676 New Postcard Notices. *Id.* ¶¶ 6, 8. These "individual notice efforts reached approximately 97.1% of the identified Settlement Class." *Id.* ¶ 11.

C. The Eighth Report of the Special Master (Regarding the Settlement's Value)

On January 23, 2026, the Special Master submitted a report assessing "(1) . . . the historical loss amounts resulting from the alleged misconduct by [Capital One], (2) what percentage of those loss amounts would stand addressed by the $425 million [S]ettlement [F]und, and (3) an estimate of the value provided to the Settlement Class over two years by treating 360 Savings accountholders in the same manner as 360 Performance Savings accountholders." ECF 300 (the "Eighth Report") at 1. The report was informed by the Special Master's "thirty years of experience litigating and utilizing [similar] damages models" as well as his "presence and active role in multiple days of mediation with the parties, where damages analyses were discussed at length," and his "thorough review of the filings submitted in this case." *Id.* at 1 n.1.

The Eighth Report found that the $425 million Settlement Fund represents between 38% and 57% of what Settlement Class Members could reasonably have obtained for their historical losses had Plaintiffs prevailed at trial and appeal, and thus represents a "robust recovery" given the "significant defenses of Capital One." Eighth Report at 2. And with the $772.6–$877.5 million in additional interest provided under the Settlement by matching the 360 Savings rate to the 360 Performance Savings rate going forward for at least two years, the Special Master concluded the overall Settlement value exceeds $1 billion and is a "remarkable recovery" for the Class. *Id.* at 2.

As to the historical loss assessment, the Special Master elaborated that a "reasonable jury could reject the assumptions underlying [Plaintiffs'] $2.9 billion class-wide damages estimate—namely, that all Settlement Class Members, had they been properly informed that the 360 Savings account and the 360 Performance Savings account were different products, would have immediately transferred their entire 360 Savings account balances to a 360 Performance Savings account, and that Settlement Class Members who did not close their 360 Savings accounts remained unaware of the differences between the two products throughout the relevant period." *Id.* at 8. Rejecting these assumptions could result in "a corresponding and significant downward adjustment to [Plaintiffs'] damages estimate" caused by the exclusion of categories of class members and associated 360 Savings account balances with certain characteristics. *Id.* at 8. Applying these exclusions results in a reasonable damages estimate of between $742 million and $1.098 billion. *Id.* at 12.

The Special Master further noted that Plaintiffs faced further risks to the Class recovering any damages. *Id.* at 13. For instance, the Special Master determined that there were risks to Plaintiffs obtaining class certification, including that the record in certain respects "potentially undermines a showing of class-wide reliance and casts doubt on whether Capital One's alleged conduct caused uniform injury." *Id.* at 14. On the merits, "Plaintiffs face the risk of Capital One prevailing on a number of issues," including "certain exemptions under state consumer protection statutes applying to Capital One's alleged conduct, and that the Court would not find that Plaintiffs reasonably relied on Capital One's representations regarding 360 Savings account interest rates." *Id.* Finally, "[a]t trial, as is true in any case, Plaintiffs also face the risk of a jury finding in Capital One's favor. And even if Plaintiffs obtained a favorable verdict, they would likely face appellate risk for any number of reasons, including those mentioned above." *Id.* at 15. The Special Master remarked that, "[b]ecause of these risks, it would be improper and unwise to assume that the

Plaintiffs could have fully recovered their damages estimate and therefore it is unfair to compare the value of the settlement to the $2.9 billion in damages sought by Plaintiffs. Plaintiffs faced many significant hurdles when the case settled, and any evaluation of their model and their likelihood of recovery must take into account these risks." *Id.* at 16. The Special Master concluded that, "[i]n light of these risks, the $425 million settlement fund, which accounts for between 38 and 57 percent of the Special Master's estimate of loss, is a ***robust recovery*** for the Settlement Class," and a ***very strong recovery***" in the context of "consumer MDL class action settlements." *Id.* (emphases added).

The Special Master also assessed the value of "Capital One's prospective obligation to apply the 360 Performance Savings interest rate to 360 Savings account balances for a period of at least two years," which he calculated as "fall[ing] between approximately $722.6 million and $877.5 million" depending on the comparison rate used. *Id.* at 17-18. Thus, "the total benefit to the class is in excess of $1 billion," reflecting "substantial and meaningful relief to the Settlement Class." *Id.* at 17-18.

D. The Ninth Report of the Special Master (Regarding Plaintiffs' Counsel's Lodestar)

On February 18, 2026, the Special Master filed a report concerning Plaintiffs' Counsel's lodestar. ECF 308 (the "Ninth Report"). The Special Master concluded, after a "comprehensive review" of Plaintiffs' Counsel's timesheets and materials supporting their hourly rates, that Plaintiffs' Counsel had incurred a lodestar figure of $11,651,770. *Id.* at 1-2.

In his assessment, the Special Master summarized the work Plaintiffs' Counsel have done on this case, noting that:

> Prior to settlement, the parties submitted over 750 pages of combined briefing on numerous contested legal issues, including Capital One's motion to dismiss the Savett Action; Capital One's motion to dismiss the consolidated amended complaint (which Plaintiffs opposed and the Court denied in substantial part (*see*

> ECF No. 49)); Capital One's motion to strike Plaintiffs' jury demand (which Plaintiffs opposed and the Court denied (*see* ECF No. 51)); Capital One's motion to certify a question to the Supreme Court of Virginia (which Plaintiffs opposed and the Court denied (*see* ECF No. 58)); discovery disputes (which were decided in Plaintiffs' favor (*see* ECF Nos. 62, 76)); Plaintiffs' motion for class certification (which Capital One opposed and was fully briefed); and six Daubert motions (three by Plaintiffs, three by Capital One, all fully briefed). Plaintiffs' counsel also undertook substantial discovery, including drafting and serving discovery requests, responding to Capital One's discovery requests for each of the twenty-six Plaintiffs, reviewing voluminous documents produced by Capital One and third parties, resolving numerous discovery disputes, preparing for and defending the depositions of all twenty-six Plaintiffs, preparing for the depositions of twenty of Capital One's current and former employees and taking seven of those depositions, and completing expert discovery.

Id. at 2-3.

The Special Master concluded that Plaintiffs' Counsel's requested rates were in line with prevailing rates for similar work in the Eastern District of Virginia, Alexandria Division and warranted no adjustment. *Id.* at 14. His conclusion was based in part upon the declaration of Craig Reilly, a respected Virginia litigator who originated the *Vienna Metro* fee matrix and has continued to monitor and gather reliable data about attorney rates ever since (*see* ECF 308-1, the "Reilly Decl."), as well as the recent Fourth Circuit opinion in *De Paredes v. Zen Nails Studio LLC*, 134 F.4th 750, 753-754 (4th Cir. 2025). *See* Ninth Report at 14. The Special Master also applied the *Barber* factors[3] to confirm that Plaintiffs' Counsel's hourly rates were reasonable. *Id.* at 15-16. In so doing, the Special Master observed that "[i]n terms of the difficulty of the questions raised, this

[3] The *Barber* factors are "(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases." *Barber v. Kimbrell's*, 577 F.2d 216, 226 n.28 (4th Cir. 1978) (adopting factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)).

case presented numerous legal and factual issues far beyond the 'straightforward' disputes that warrant lower fees." *Id.* at 15. "Given this substantial complexity, the case required an exceptionally high level of legal skill." *Id.*; *see also* Reilly Decl. ¶ 16 ("While every case is different and comparisons sometimes are difficult, this is not a routine case . . . . [T]he mode of litigation (class action) and the amount in controversy (more than a billion dollars) justified the use of highly skilled litigators having vast experience with class action litigation."). "Plaintiffs' counsel—many of whom have practiced for decades . . . more than met this demanding standard and effectively developed and litigated the claims." Ninth Report at 15. The Special Master also credited Plaintiffs' Counsel's handling of the Rocket Docket, stating that he "personally observed the substantial effort by both sides during discovery and in moving this case towards its resolution." *Id.* at 16.

LEGAL STANDARD

Class action settlements require the Court's approval after the class has received notice of the settlement and are given an opportunity to be heard. *See In re Zetia (Ezetimibe) Antitrust Litig.*, 699 F. Supp. 3d 448, 456 (E.D. Va. 2023). Whether to approve a class action settlement is left to the trial court's discretion, considering the requirements of Fed. R. Civ. P. 23(e). *See id.* "The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991).[4]

[4] "Rule 23(e)(2) provides factors for courts to consider when determining the fairness, reasonableness, and adequacy of the Settlement Agreement. These factors include whether: '(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;

ARGUMENT

I. The Settlement is Fair, Reasonable, and Adequate

Each of the factors enumerated in Fed. R. Civ. P. 23(e)(2)(C)[5] supports final approval of the Settlement.

First, and most importantly, the Settlement provides a superlative recovery, particularly in light of the risks Plaintiffs faced in continuing litigation. As set forth above, "Plaintiffs faced many significant hurdles when the case settled . . . . In light of these risks, the $425 million settlement fund, which accounts for between 38 and 57 percent of the Special Master's estimate of loss, is a robust recovery for the Settlement Class . . . ." Eighth Report at 16. Again, these risks included both class certification risk and various forms of potentially fatal merits risk, including National Bank Act preemption.[6] *See generally* Eighth Report; *see also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1347, 1350 (S.D. Fla. 2011) (granting final approval to a class action

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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.'" *In re Zetia (Ezetimibe) Antitrust Litig.*, 699 F. Supp. 3d at 456 (quoting Fed. R. Civ. P. 23(e)(2)). The Fourth Circuit has observed that the *Jiffy Lube* standards "almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same." *See Herrera v. Charlotte School of Law, LLC*, 818 Fed. App'x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 474 n.8 (4th Cir. 2020)).

[5] Here, the corresponding *Jiffy Lube* factors are: "(1) the relative strength of the plaintiff's case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *In re Jiffy Lube*, 927 F.2d at 159. Plaintiffs will discuss the fifth factor in their reply brief in support of final approval.

[6] *Solomon v. Am. Web Loan*, No. 4:17cv145, 2020 U.S. Dist. LEXIS 112782, at *16 (E.D. Va. June 26, 2020) ("Here, the Defendants have continually asserted that they are immune to suit . . . . This Court has repeatedly disagreed with the Defendants' positions on these issues. . . . However, it is possible that the Fourth Circuit could render a decision adverse to the Plaintiffs . . . . Accordingly, these facts point to the uncertainty of the Plaintiffs' case and, thus, weigh in favor of settlement approval.").

settlement of $410 million, amounting to 9% of maximum recoverable damages, justified based on risks including National Bank Act preemption).

Second, the method of distributing relief is highly effective. The Class Cash Payments will be sent via check or electronic payment with no proof of claim required, and any unclaimed funds (i.e., from checks that would be for less than $5, or checks or electronic payments that are undeliverable or not deposited) will be redistributed to Settlement Class Members before any *cy pres* relief is considered, further enhancing their recovery. Settlement Agreement ¶ 5.

Finally, the Settlement treats Settlement Class Members equitably because the Class Cash Payments will be paid on a *pro rata* basis, calculated using the historical balance of each 360 Savings account prior to the Preliminary Approval date and the contemporaneous discrepancy in interest rates between 360 Performance Savings and 360 Savings. *See* Settlement Agreement ¶ 5.2; *In re Zetia (Ezetimibe) Antitrust Litig.*, 699 F. Supp. 3d at 460 ("the *pro rata* distribution of the Settlement Fund provided in the Plan of Allocation satisfies this requirement").[7]

These features and circumstances strongly support final approval of the Settlement, which provides a "remarkable recovery" (Eighth Report at 2) now, without the risk and delay of further proceedings. *See, e.g.*, *1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513, 526 (4th Cir. 2022) (noting "the potential costs of litigating the case—even if successful" supported settlement approval because it "'avoids protracted litigation costs'" and "'provides [class members] with immediate recovery'" (quotation omitted)).

[7] The proposed service awards to the Plaintiffs do not affect this conclusion. *See In re Peanut Farmers Antitrust Litig.*, No. 2:19-cv-00463, 2021 U.S. Dist. LEXIS 140427, at *16 (E.D. Va. July 26, 2021) ("Should the Court grant a service award to the class representatives, the reward will be fair and reasonable in accordance with the requirements under Rule 23(e)(2). Therefore, the proposed . . . class settlement treats class members equitably relative to one another.").

II. The Court Should Finally Certify the Settlement Class

The Court's preliminary approval order analyzed the Rule 23(a) and (b)(3) requirements and found them satisfied for the purposes of Settlement. ECF No. 296 at 6. Nothing has changed that would alter the Court's analysis, and for the reasons explained in Plaintiffs' Motion for Preliminary Approval and stated in the Court's Preliminary Approval Order, the Court should finally certify the Class for settlement purposes.

III. The Notice Plan Satisfied Due Process and Complied With Fed. R. Civ. P. 23(e)

After Preliminary Approval, the Settlement Administrator faithfully executed the Notice Plan, and provided direct Email Notice and Postcard Notice to all Settlement Class members via the contact information contained in Capital One's records.[8] The robust combination of direct Email Notice and Postcard Notice, plus the Informational Release and the Settlement Website,[9] reached at least 97.1% of the Settlement Class. *See* Azari New Implementation Decl. ¶ 11. This reach exceeds the Federal Judicial Center standard. *See id.* (citing FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010) (70% reach is a "high percentage")). The notice provided here was robust and fully satisfied Rule 23 and due process. *See, e.g., McAdams v. Robinson,* 26 F.4th 149, 158-59 (4th Cir. 2022) (affirming similar notice plan providing for email, postcard, and long form notice posted on settlement website or available through telephone).

[8] Notice was also provided to the pertinent federal regulators as required by the Class Action Fairness Act. *See* Waldman New FA Decl. ¶ 25.

[9] The documents available on the Settlement Website are the New Long Form Notice, New Postcard Notice, New Email Notice, New Settlement Agreement, Complaint, New Preliminary Approval Order, Seventh Report, Eighth Report, and Ninth Report. *See* https://www.capitalone360savingsaccountlitigation.com/Home/Documents; *see also* Azari New Implementation Decl. ¶ 14.

IV. The Court Should Grant the Requested Attorneys' Fees

Plaintiffs' Counsel respectfully request an attorneys' fee award of 15% of the $425 million Settlement Fund ($63.75 million). Such an award represents a below-average percentage of the Settlement Fund, and results in a reasonable multiplier (5.47x) on Plaintiffs' Counsel's lodestar as adjusted by the Special Master.

A. The Fee Request Represents a Reasonable Percentage of the Common Fund

"The Supreme Court has long held that an attorney who recovers a common fund can assess his fee against the entire fund." *Manuel v. Wells Fargo Bank, N.A.*, No. 3:14cv238 (DJN), 2016 U.S. Dist. LEXIS 33708, at *13-14 (E.D. Va. Mar. 15, 2016) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). In awarding fees where a common fund has been recovered, "District Courts within this Circuit . . . favor[] the percentage method." *Id.* (citing *Jones v. Dominion Resources Services, Inc.*, 601 F. Supp. 2d 756, 759 (S.D. W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases."). "The percentage-of-the-fund approach to awarding attorneys' fees in class action cases 'better aligns the interests of class counsel and class members . . . [by] t[ying] the attorneys' award to the overall result achieved rather than the hours expended by the attorneys.'" *Kirven v. Cent. States Health & Life Co. of Omaha*, No. 3:11-2149-MBS, 2015 U.S. Dist. LEXIS 36393, at *29-30 (D.S.C. Mar. 23, 2015) (quotation omitted); *accord Adkins v. Midland Credit Mgmt.*, No. 5:17-cv-04107, 2022 U.S. Dist. LEXIS 19733, at *8 (S.D. W. Va. Feb. 3, 2022) ("Awarding attorneys' fees as a percentage of the benefit to the class is the preferable and prevailing method of determining fee awards in class actions that establish common funds for the benefit of the class."); *Muhammad v. Nat'l City Mortg., Inc.*, No. 2:07-0423, 2008 U.S. Dist. LEXIS 103534, at *19 (S.D. W. Va. Dec. 19, 2008) ("The percentage method is designed to allow courts to award fees from

the fund in a manner that rewards counsel for success and penalizes it for failure." (quotation omitted)).

"The Fourth Circuit has neither announced a preferred method for determining the reasonableness of attorneys' fees in common fund class actions nor identified factors for district courts to apply when using the percentage method." *McAdams*, 26 F.4th at 162 (quotation omitted). That said, district courts in the Fourth Circuit generally apply the *Barber* factors. *Barber*, 577 F.2d at 226 n.28; *see, e.g.*, *Manuel*, 2016 U.S. Dist. LEXIS 33708, at *14 n.1. Here, these factors all support the requested fee.

1. The Market for Contingent Services and Awards in Other Similar Cases Support the Requested Percentage[10]

"[A]ny discussion of percentage awards should acknowledge the age-old assumption that a lawyer receives a third of his client's recovery under most contingency agreements." *Thomas v. FTS USA, LLC*, No. 3:13cv825 (REP), 2017 U.S. Dist. LEXIS 45217, at *14 (E.D. Va. Jan. 9, 2017) (Novak, M.J.), *report and recommendation approved* 2017 U.S. Dist. LEXIS 44946, at *1 (E.D. Va. Mar. 27, 2017) (citing Newberg on Class Actions § 15:73 (5th ed.)); *accord* Declaration of Brian T. Fitzpatrick (ECF 200, the "Fitzpatrick Decl."[11]) ¶ 13 ("[J]udges as good fiduciaries should ask what class members would have paid class counsel to take the case to begin with." (citing William B. Rubenstein, *Newberg on Class Actions* § 13.40 (5th ed. 2020)). The instant fee request is less than half of a typical market contingency fee, which is a strong initial indication of reasonableness. *See Thomas*, 2017 U.S. Dist. LEXIS 45217, at *14.

[10] This analysis corresponds to the following *Barber* factors: (5) the customary fee for legal work, (6) the attorney's expectations at the outset of litigation, and (12) attorneys' fees awards in similar cases.

[11] This brief incorporates the reasoning and authorities cited in the Declaration of Brian T. Fitzpatrick, previously submitted at ECF 200 in support of Plaintiffs' Counsel's prior motion for an award of attorneys' fees.

Furthermore, the requested fee is "below the vast majority of class action fee awards in the federal judiciary." Fitzpatrick Decl. ¶¶ 21-22.[12] It is on the lowest end of typical awards for common-fund class action settlements in this Circuit. *See id.*; *see also In re Altria Grp. Derivative Litig.*, Lead Case No. 3:20cv772 (DJN), 2023 U.S. Dist. LEXIS 27959, at *21 (E.D. Va. Feb. 20, 2023) ("[F]ee awards between fifteen and thirty-three percent of the settlement's value prove typical in complex actions"); *Manuel*, 2016 U.S. Dist. LEXIS 33708, at *15-16 ("class action percentage awards for attorneys' fees generally fall between twenty and thirty percent" and "[i]n the Fourth Circuit, the most recent data demonstrates an average fee award of 27.7 percent"). And, although the percentage awarded in megafund cases such as this one generally decreases as the amount of the settlement increases, "the average and median fee percentages" for "recoveries of this size" are "17.8% and 19.5%, respectively." Fitzpatrick Decl. ¶¶ 23-25 (citation and emphasis omitted)). The percentage requested here (15%) is therefore low by any measure, confirming its reasonableness.

2. The Significant Results Obtained for the Class Support the Requested Percentage[13]

"The first and most important factor for a court to consider when making a fee award is the result achieved." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016); *accord McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) ("[T]he most critical factor in

[12] A comprehensive study of attorney's fees in all class action cases, irrespective of their size, notes "a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount." Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. of Empirical Legal Studies 27, 31, 33 (2004).

[13] This analysis corresponds to the following *Barber* factors: (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (8) the amount in controversy and the results obtained, and (9) the experience, reputation, and ability of the attorney.

calculating a reasonable fee award is the degree of success obtained." (citation and internal quotation omitted)).

Here, the $425 million Settlement Fund is an outstanding result, which the Special Master described as a "robust" and "very strong" recovery (Eighth Report at 2, 16), and which the Court recognized was the result of Plaintiffs' Counsel's "really outstanding work" (FA Ex. 1, Transcript of Jan. 12, 2026 Preliminary Settlement Approval Hearing ("PA Tr.") at 20:9-17). *See also id.* at 13:2-8 (finding that "both the effort that the plaintiffs' counsel has undertaken thus far and plaintiffs' counsel's experience in class actions of this nature demonstrate their ability to represent the interests of the class fairly and adequately. In fact, I just think they've done a great job here."). As the Special Master noted in analyzing Plaintiffs' Counsel's hourly rates, under these circumstances, "*Barber* factors two, three, and nine weigh strongly in favor" of the reasonableness of the requested fee, as does factor eight. Ninth Report at 15-16.

Combined with the forward-looking relief, the total Settlement value is over $1 billion, such that "the recovery of the class is equal to the Special Master's reasonable damages estimate and is a remarkable recovery for the Settlement Class." Eighth Report at 2; *see also* PA Tr. at 20:9-17 (crediting Plaintiffs' Counsel with helping to obtain "an incredible recovery" of "over a billion dollars," making this "one of the highest recoveries ever"). The requested fee percentage is only 5.8% when compared to the total maximum value of the Settlement of $1.098 billion. To be sure, Plaintiffs' Counsel do not claim credit for the entire Settlement value; the leverage applied by the NYAG and the Court made possible the additional recovery above the $425 million initially recovered by Plaintiffs and their counsel under the Previous Agreement. But as the Special Master recognized, it was this litigation, spearheaded successfully through pleadings and discovery by Plaintiffs' Counsel, that "contributed to heightened consumer awareness by spurring subsequent

actions [by the CFPB and NYAG] addressing the same alleged conduct and generating national media attention." Ninth Report at 16 & n.9.

3. The Risk of Non-Payment Supports the Requested Percentage[14]

Plaintiffs' Counsel litigated this matter on a contingent fee basis, advancing their own time and resources (over $1.8 million in out-of-pocket expenses) with no guarantee of recovery, which further weighs in favor of the requested fee. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 245-46 (4th Cir. 2010) (noting the "significance" of contingency arrangements when determining a reasonable fee, because "contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation," and "transfer a significant portion of the risk of loss to the attorneys taking a case"); *see also Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 482 (D. Md. 2014) (where "Class counsel took this case on a contingent fee basis and fronted the costs of litigation" and "defendants vigorously contested their liability," the resulting "high risk of nonpayment also indicates that public policy favors the requested award . . . because the relevant public policy considerations involve the balancing of the policy goals of encouraging counsel to pursue meritorious consumer litigation") (citation and internal quotations omitted); *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009) ("The risk of nonpayment incurred by Lead Counsel is evident in the fact that they undertook this action on an entirely contingent fee basis . . . The cost and difficulty [of bringing meritorious class action cases] naturally stands as a deterrent from doing so, and one object of an award of attorneys' fees should be to counteract this deterrence and incentivize competent attorneys to pursue these cases when necessary.").

[14] This analysis corresponds to the following *Barber* factors: (1) the time and labor expended by counsel; (4) the attorney's opportunity costs in pressing the instant litigation; (7) the time limitations imposed by the client or circumstances; (10) the undesirability of the case within the legal community in which the suit arose; and (11) the nature and length of the professional relationship between attorney and client.

As the Court recognized, Plaintiffs' Counsel undertook this case "at significant risk." PA Tr. at 20:9-17. The Eighth Report of the Special Master, discussed in detail above, also confirms that the risks here were substantial. *See* Eighth Report at 13-18. Importantly, the "relevant risks of a case must be evaluated from the standpoint of plaintiff's counsel as of the time they ***commenced*** the suit, not retroactively, with the benefit of hindsight." *Williams v. Old HB, Inc.*, No. 7:13-CV-464, 2014 U.S. Dist. LEXIS 179677, at *24 (W.D. Va. Dec. 31, 2014) (emphasis added). Here, the circumstances show that this case was viewed as quite risky, because despite the great amount in controversy and the obvious solvency of the Defendants, no law firm or regulator took action before Plaintiffs and their counsel initiated this action and prosecuted it substantially. Thus, this is not a case where the risk to Plaintiffs' Counsel was reduced by regulatory enforcement preceding the suit. Instead, this is the opposite situation, where Plaintiffs' Counsel's efforts encouraged the CFPB and NYAG to pursue their own actions and, in the NYAG's case, ultimately apply leverage that increased the value of the Settlement. *See* Ninth Report at 16 & n.9.

B. A Lodestar "Cross-Check" Confirms the Reasonableness of the Fee Request

While the Court need not conduct a lodestar cross-check,[15] the requested fee award represents a lodestar multiplier of 5.47, which is reasonable under the circumstances of this case.

It is true that, while the requested fee is below average as a percentage of the Settlement Fund (*see supra* IV.A.1), the resulting lodestar multiplier is, by some measures, above average. "[C]ourts in [the Fourth Circuit] have consistently held" that "lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys fee." *McCune v. Faneuil Inc.*, No. 4:23cv41, 2024

[15] *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362-63 ("The lodestar approach should not be imposed through the back door via a cross-check. Lodestar creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation. . . . A common fund is itself the measure of success and represents the benchmark on which a reasonable fee will be awarded. . . . In this context, monetary results achieved predominate over all other criteria." (internal quotations, formatting, and citations omitted)).

U.S. Dist. LEXIS 144184, at *19-20 (E.D. Va. Aug. 13, 2024) (quoting *Jones*, 601 F. Supp. 2d at 766); *accord In re Altria Grp., Inc. Derivative Litig.*, 2023 U.S. Dist. LEXIS 27959, at *26 (also quoting *Jones*, 601 F. Supp. 2d at 766).

But a lodestar multiplier "need not fall within any pre-defined range," and should instead be based on "the unique facts and circumstances" of the case, because a "singular focus on the multiplier applied in other cases does not comport with lodestar cross-check principles." *Health Republic Ins. Co. v. United States*, 173 Fed. Cl. 508, 516, 521, 524 (2024) (citations omitted)). Indeed, the Fourth Circuit has held that a reasonable lodestar multiplier "may be derived from a number of factors, such as the benefit achieved for the class and the complexity of the case." *In re Lumber Liquidators*, 27 F.4th at 300 n.6. Such factors are generally viewed as being coextensive with the *Barber* factors already discussed above. *See In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d at 843 ("When analyzing the reasonableness of the multiplier, courts should consider" the *Barber* factors); *Fiallos v. Hamzah Slaughter House*, No. 1:20-cv-03577-JMC, 2022 U.S. Dist. LEXIS 207066, at *3 (D. Md. Nov. 14, 2022) ("the Fourth Circuit [has] noted with approval that determination of the lodestar multipliers often subsumes consideration of many of the [*Barber*] factors" (citing *McAfee v. Boczar*, 738 F.3d 81, 89-90 (4th Cir. 2013)). Applying these factors, there are cases where "[a] multiplier of 4.5 would, in the circumstances of th[e] case, be inappropriately too low," such as where an "outstanding settlement" results from "the noticeable skill of counsel." *Nieman v. Duke Energy Corp.*, No. 3:12-cv-00456-MOC-DSC, 2015 U.S. Dist. LEXIS 148260, at *4-5 (W.D.N.C. Nov. 2, 2015) (quotation omitted).

Here, the *Barber* factors further support the requested fee under a lodestar cross-check. Again, as to the results obtained (*Barber* factors 2, 3, 8, and 9), the Court has credited Plaintiffs' Counsel with "really outstanding work." PA Tr. at 20:9-17. The Special Master recounted Plaintiffs' Counsel's success throughout the litigation, against a formidable adversary and under

the intense pressure of the Rocket Docket (*see* Ninth Report at 2-3 and 15), finding that "the case required an exceptionally high level of legal skill" and that Plaintiffs' Counsel "more than met this demanding standard and effectively developed and litigated the claims" (*id.* at 14-15). And as a result of Plaintiffs' Counsel's initiative and hard work, they helped obtain a "remarkable" and "incredible" recovery. Eighth Report at 2; PA Tr. at 20:9-17.

In comparing the multiplier here to those awarded in other cases (*Barber* factors 5, 6, and 12), the Court should not simply benchmark against the general range of multipliers awarded in the run of cases; instead, the Court should consider multipliers awarded in other "megafund cases . . . which involved a high percentage recovery for the class, complex and/or novel legal issues, high risk of nonpayment for the attorneys, and relatively streamlined litigation." *Health Republic Ins. Co.*, 173 Fed. Cl. at 522 (citations omitted)). The court in *Health Republic* conducted just such a comparison, and in so doing found that "a reasonable multiplier in a case involving [such] circumstances ranges from ***6.96 to 9.05***." *Id.* at 522-24 (emphasis added) (analyzing *Elec. Welfare Tr. Fund v. United States*, 171 Fed. Cl. 362 (2024) (6.63 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (6.96 multiplier); *Santos v. Camacho*, Nos. 04-00006, 04-00038, 04-00049, 2008 U.S. Dist. LEXIS 35991 (D. Guam Apr. 23, 2008) (11.2 multiplier); and *Skochin v. Genworth Fin., Inc.*, Civil Action No. 3:19-cv-49, 2020 U.S. Dist. LEXIS 207926 (E.D. Va. Nov. 5, 2020) (9.05 multiplier)).

Thus, comparing apples to apples shows that a 5.47 multiple here would be reasonable given the circumstances of this case. *See, e.g.*, *id.* at 526 ("based on the tremendous results obtained for the classes, the complexity of the litigation, and the very real risk of nonpayment, a 9.56 multiplier is justified"); *see also Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (affirming fee award corresponding to a lodestar multiplier of 5.3 where "[t]he district court decided that a generous award was warranted based on the novelty and uncertainty of the claims,

the skill required by counsel to perform the work properly, especially on a nationwide basis, [the] time limits imposed . . . , the experience and ability of the attorneys, and significantly, the large amount involved and excellent result achieved" (quotations and citation omitted)); *In re Facebook Biometric Info. Privacy Litig.*, No. 21-15553, 2022 U.S. App. LEXIS 6935, at *4 (9th Cir. Mar. 17, 2022) (affirming fee award of 15% of $650 million settlement, corresponding to lodestar multiplier of 4.71, and noting that "[l]odestar multipliers tend to increase as the size of the class's fund increases and are reasonable based on the risks trial would have presented"); *Herrera v. Cnty. of L.A.*, No. CV 22-1013-HDV-PDx, 2026 U.S. Dist. LEXIS 38001, at *6 (C.D. Cal. Feb. 23, 2026) (multiplier of 4.74 "is justified by the circumstances of this case, including the exceptional results achieved for the class, the very substantial risk of loss, and the complexity of the issues"); *Perez v. Rash Curtis & Assocs.*, No. 4:16-cv-03396-YGR, 2020 U.S. Dist. LEXIS 68161, at *62 (N.D. Cal. Apr. 17, 2020) (awarding 33.33% of $267 million common fund, amounting to lodestar multiplier of at least 13.42, because, *inter alia*, "[t]he benefit obtained for the class is an extraordinary result" and "the general quality of the representation and the complexity and novelty of the issues presented weigh in favor of a higher lodestar multiplier"); *Pantelyat v. Bank of Am., N.A.*, No. 16-cv-8964 (AJN), 2019 U.S. Dist. LEXIS 15714, at *27-30 (S.D.N.Y. Jan. 31, 2019) ("Standing alone, a multiplier of 4.89 falls within the realm of reasonableness," particularly "in light of the significant and rapid recovery achieved on behalf of the class"); *In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (awarding 18% of common fund corresponding to lodestar multiplier of 6.0, which was "reasonable under the circumstances," namely due to "the outstanding settlement in this case and the noticeable skill of counsel").[16]

[16] Conducting a lodestar cross-check is "a minority practice" in class action litigation (Fitzpatrick Decl. ¶ 26), and so the actual effective multiplier across all awards may differ from those in which a cross-check is done and reported. That said, available data indicates that the average

This multiplier is also appropriate given the "significant risk" assumed by Plaintiffs' Counsel and the contingent nature of the fee award (*Barber* factors 1, 4, 7, 10, and 11). *See* PA Tr. at 20:9-17. Attorneys prosecuting cases on a contingency basis should receive significant positive multipliers when they are successful (and in relation to their degree of success); otherwise "plaintiffs may find it difficult to obtain representation if attorneys know their reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever." *In re Abrams & Abrams, P.A.*, 605 F.3d at 246. Plaintiffs' Counsel's risk of nonrecovery is not hypothetical—for every case that results in a recovery after years of litigation, others along the way result in a total loss of time and expenses. *See In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) ("Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy."). Again, this was a very risky case and any recovery, let alone one exceeding $425 million, was highly uncertain *ex ante* given "the significant defenses of Capital One." Eighth Report at 2; *see also Williams*, 2014 U.S. Dist. LEXIS 179677, at *24.

Finally, the Special Master's rigorous lodestar analysis can give the Court further comfort that a 5.47 multiplier is not excessive. "Courts generally do not apply the same scrutiny in a lodestar cross-check as they do when using the lodestar method to calculate the fee" (*Thomas*, 2017 U.S. Dist. LEXIS 45217, at *17), and ordinarily will "accept[] [an] unchallenged figure as a

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lodestar multiplier well exceeds 3.0x across the run of cases irrespective of qualitative factors. *See In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d at 767 (citing study showing "courts' effective multipliers averaged . . . 3.89 across all [surveyed] cases" and "4.50 across the 64 cases where the recovery exceeded $100 million"); Fitzpatrick Decl. ¶ 27 (citing Theodore Eisenberg & Geoffrey P. Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 J. Empirical L. Stud. 248, 274 (2010) (finding a mean multiplier of 3.18 for fee awards in recoveries in the top decile, *i.e.* above $175.5 million)).

reasonable reflection of the time necessary to prosecute a complex aggregate action for multiple years" (*In re Altria Grp., Inc. Derivative Litig.*, 2023 U.S. Dist. LEXIS 27959, at *25).[17] Here, though, the Special Master has conducted a "comprehensive" and "in-depth review" of Plaintiffs' Counsel's lodestar (Ninth Report at 1, 20), akin to a straight lodestar analysis and not a mere cross-check. Thus, because courts in this circuit generally accept that a multiplier of 4.5 "demonstrate[s] a reasonable attorneys' fee" even when counsel's lodestar is not necessarily highly scrutinized (*cf. In re Altria Grp., Inc. Derivative Litig.*, 2023 U.S. Dist. LEXIS 27959, at *25 (quotation omitted)), the Court should not view a moderately higher multiplier of 5.47 with skepticism here, because the record fully demonstrates that Plaintiffs' Counsel's underlying rates and hours as determined by the Special Master are reasonable and justified. *See* Ninth Report at 13 n.7 (finding that Plaintiffs' Counsel's hourly rates are "are well below prevailing New York rates"); *see also id.* at 20 (finding that "the vast majority of Plaintiffs' counsel's time entries appear well-documented, related to the litigation, and reasonable" and recommending only a 3% reduction of hours).[18]

V. Plaintiffs' Litigation Expenses Are Reasonable and Should Be Reimbursed

Counsel who recover a common fund for the benefit of a class are entitled to be reimbursed for out-of-pocket expenses reasonably incurred in doing so. *Kelly v. Johns Hopkins Univ.*, No.

[17] *See also Jones*, 601 F. Supp. 2d at 765-66 (in conducting cross-check, the court "need not apply the 'exhaustive scrutiny' normally required by that method"); *Mills*, 265 F.R.D. at 264 ("When using lodestar as a 'cross-check,' the Court need not apply the 'exhaustive scrutiny' typically mandated, and the Court may accept the hours estimates provided by Lead Counsel." (formatting omitted)).

[18] Relatedly, since the time of the Special Master's Ninth Report, Plaintiffs' Counsel have put in many more hours in connection with this litigation, including addressing Class Member inquiries and concerns (*see, e.g.*, ECF 309) and preparing this brief and supporting declarations; they will incur additional work responding to any objections/opt-outs in their upcoming reply brief in further support of the Settlement and preparing for the Final Approval Hearing. Expended hours have, and will, drive down the multiplier further.

1:16-cv-2835-GLR, 2020 U.S. Dist. LEXIS 14772, at *20 (D. Md. Jan. 28, 2020). Here, Plaintiffs' Counsel's unreimbursed expenses of $1,809,988.29 were reasonably incurred and necessary for the litigation of the case. Waldman New FA Decl. ¶¶ 50-58. Plaintiffs' Counsel advanced these expenses interest free with no assurance of reimbursement. *Id.* ¶ 55. Expert witnesses constitute the largest expenditures, approximately $1.2 million, or about two-thirds of all expenses, which were critical to the case's prosecution. *Id.* ¶¶ 52, 56. Plaintiffs' Counsel respectfully request they be reimbursed in full.

VI. The Court Should Grant the Requested Service Awards for the Named Plaintiffs

Service awards of $10,000 are appropriate given the efforts that the Named Plaintiffs expended to achieve this recovery for the Settlement Class. Each Named Plaintiff reviewed pleadings, consulted with counsel regularly, searched exhaustively for responsive documents and information in response to Capital One's discovery requests, and prepared for and sat for depositions, most of which exceeded three hours in length. *See* Waldman New FA Decl. ¶¶ 10, 60 and Exhibits 7-32 (Named Plaintiff declarations). Individual awards of $10,000 are more than reasonable under these circumstances. *See, e.g.*, *Manuel*, 2016 U.S. Dist. LEXIS 33708, at *18 (awarding $10,000 to a plaintiff out of $12 million settlement; plaintiff "took an active role by participating in discovery and testifying in a deposition. He pushed the case and refrained from settling his individual claim for the duration of the litigation."); *Hill-Green v. Experian Info. Sols., Inc.*, No. 3:19cv708, 2023 U.S. Dist. LEXIS 101354, at *15 (E.D. Va. Mar. 2, 2023) (award of $10,000 to a plaintiff out of $22 million fund; award was "justified by the time and effort expended by Plaintiff on behalf of the Rule 23(b)(3) Settlement Class Members and the risk she assumed in bringing this action"); *Skochin*, 2020 U.S. Dist. LEXIS 207926, at *30 (awarding $25,000 per plaintiff and $50,000 total out of variable settlement, justified because, as here, the plaintiffs "help[ed] Class Counsel draft the complaint; work[ed] with Class Counsel to respond to

interrogatories-including responding to questions regarding Named Plaintiffs' financial . . . circumstances; prepar[ed] for depositions; and s[at] for depositions"); *Casa de Md., Inc. v. Arbor Realty Tr., Inc.*, No. DKC 21-1778, 2024 U.S. Dist. LEXIS 41935, at *33 (D. Md. Mar. 11, 2024) (collecting cases; awarding $7,500 per plaintiff and noting that "[t]he total of the requested incentive payments is $52,500, which represents 1.75% of the total fund. This figure is well within the range approved by other courts.").[19]

CONCLUSION

For the foregoing reasons, the Court should finally approve the Settlement; finally certify the Settlement Class; and grant Plaintiffs' request for Attorneys' Fees, Expenses, and Service Awards, as set forth in the proposed Final Approval Order and Judgment, filed herewith.

Dated: March 9, 2026

Respectfully submitted,

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[19] *See also Speaks v. U.S. Tobacco Coop.*, No. 5:12-CV-729-D, 2018 U.S. Dist. LEXIS 26597, at *8-9 (E.D.N.C. Feb. 20, 2018) (awarding $10,000 per plaintiff and $100,000 total out of $24 million settlement); *Adkins.* 2022 U.S. Dist. LEXIS 19733, at *16 (awarding $10,000 per plaintiff and $20,000 total out of $1 million settlement); *Carroll v. Northampton Rests., Inc.*, No. 2:21-cv-115, 2024 U.S. Dist. LEXIS 51220, at *18 (E.D. Va. Mar. 21, 2024) (awarding $9,000 to single plaintiff out of $160,000 settlement); *Amaya v. DGS Constr., LLC*, No. TDC-16-3350, 2023 U.S. Dist. LEXIS 210689, at *9 (D. Md. Nov. 27, 2023) (awarding $20,000 per plaintiff and $40,000 total out of $1.2 million fund); *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 774-75 (D. Md. 2022) (awarding $10,000-$15,000 to each of eleven plaintiffs and $127,500 total out of $13.6 million settlement where, among other things, "'[t]he Class Representatives [] spent considerable time representing the Class, including producing documents, answering interrogatories, traveling to and sitting for lengthy depositions taken by aggressive defense counsel . . .'").

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