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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GINNINE FRIED, on behalf of herself and all others similarly situated, Plaintiff, v. JPMORGAN CHASE & CO., and JPMORGAN CHASE BANK, N.A. d/b/a CHASE, Defendants.	Civil Action No.: 15-2512(MCA)(MAH) **NOTICE OF MOTION**

To: All Counsel on ECF Service List

PLEASE TAKE NOTICE, that on July 25, 2019 at 2:00 p.m., the undersigned counsel for Plaintiff Ginnine Fried will respectfully move before Hon. Madeline Cox Arleo, U.S.D.J. at the Martin Luther King Federal Building, 50 Walnut Street, Newark, New Jersey 07102, for entry of an Order certifying the Settlement Class; granting final approval of the Settlement; awarding incentive payments to Plaintiff; and granting Plaintiff's request for attorneys' fees and reimbursement of expenses.

PLEASE TAKE FURTHER NOTICE that, in support of motion, Plaintiff will rely upon the accompanying Brief and the Declaration of Antonio Vozzolo, with accompanying exhibits.

The undersigned hereby requests oral argument.

Date: June 17, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2019, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's electronic filing system (CM/ECF) upon all counsel of record.

/s/ James E. Cecchi____________
James E. Cecchi

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GINNINE FRIED, on behalf of herself and all others similarly situated, Plaintiff, v. JPMORGAN CHASE & CO., and JPMORGAN CHASE BANK, N.A. d/b/a CHASE, Defendants.	Civil Action No.: 15-2512(MCA)(MAH)

BRIEF IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES, AND INCENTIVE AWARD

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PRELIMINARY STATEMENT

The Home Affordable Modification Program ("HAMP") "was designed to help families who are struggling to remain in their homes."[1] Defendant JPMorgan Chase Bank, N.A. d/b/a Chase ("Defendant" or "Chase")[2] forced this vulnerable segment of consumers with mortgages modified under HAMP to continue paying Private Mortgage Insurance ("PMI")[3] often times for years beyond the automatic "termination date" under the plain wording of the Homeowners Protection Act of 1998, 12 U.S.C. § 4901 *et seq.* ("HPA").

Plaintiff commenced this class action lawsuit against Chase on behalf of herself and all other similarly situated consumers for violation of the HPA. At a time when the Consumer Finance Protection Bureau's ("CFPB") enforcement of mortgage lending violations has declined by 99%,[4] Plaintiff and Class Counsel have secured a Settlement providing monetary benefits with a total value of $19.5 million for consumers nationwide. First, this Settlement creates a $3 million common fund ("Settlement Fund"), which will be utilized to pay Settlement Class Members, and all approved attorneys' fees and expenses. Second, as a direct result of this Action, Defendant ceased the collection of improper PMI charges and will comply with the United States Court of Appeals for the Third Circuit ruling in *Fried v. JP Morgan Chase & Co.*, 850 F.3d 590 (3d Cir. 2017)) (the "Third Circuit Order"). Plaintiff's counsel calculates that these practice changes are significant in that they have already saved the Class millions of dollars and will ultimately save

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[1] https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Pages/hamp.aspx

[2] Defendant JPMorgan Chase & Co. was dismissed from the case pursuant to the Court's November 30, 2017 order. *See* Docket Entries 57, 58.

[3] PMI is extra insurance that lenders require from most homebuyers who obtain loans that are more than 80 percent of their new home's value.

[4] https://consumerfed.org/wp-content/uploads/2019/03/CFPB-Enforcement-in-Decline.pdf

class members a total of approximately $16.5 million in PMI overpayments from the date when the changes were made. In addition, due to the Third Circuit Order, Defendant has ceased the collection of improper PMI charges from non-Class Members as well. Consequently, the total benefit generated by the efforts of Plaintiff and Class Counsel well exceeds $19.5 million.

Class Counsel undertook the litigation of this Action on a wholly contingent basis. This excellent result on behalf of a vulnerable class of consumers was only obtained after four years of hard-fought litigation, including a successful appeal which compelled Chase to change its business practices. In accordance with the Settlement Agreement, Plaintiff and Class Counsel respectfully submit this motion for attorneys' fees of one-third (33-1/3%) of the $3,000,000 monetary Settlement Fund, or $999,999, representing a modest 5% of the total benefits conferred on Class Members.

The percentage of the Settlement Fund requested for attorneys' fees and the Incentive Award are well within the parameters that the Third Circuit approves in contingent class action cases. Moreover, the recommended lodestar cross-check confirms the appropriateness of the fee sought. Class Counsel's lodestar standing alone, totals $1,023,149.90, as reflected in the accompanying Declaration of Antonio Vozzolo in Support of Motion for an Award of Attorneys' Fees, Costs and Expenses, and an Incentive Award for Plaintiff ("Vozzolo Decl."). Accordingly, the requested fee represents a negative multiplier of .97 to the combined lodestar of Plaintiff's Counsel. That multiplier will decrease as Class Counsel necessarily perform further substantial work in achieving final Settlement approval and monitoring and overseeing the claims administration process.

This success could not have been achieved without Plaintiff's active participation in the Action. Plaintiff investigated the facts underlying the Action long before it was filed. She

participated extensively in Class Counsel's investigation, providing documents, submitting to interviews by her counsel, and responding to innumerable questions. Plaintiff stayed in close contact with Class Counsel throughout the case and carefully evaluated the pleadings, motions, declarations and the Settlement before approving it. Most importantly, Plaintiff was willing to undertake the risk and notoriety of pursuing claims for consumers, who due to financial difficulties were forced to seek modification of the home mortgages. Accordingly, Plaintiff also asks for an Incentive Award of $40,000 for undertaking the notoriety and risk to her reputation.

The requested attorneys' fees and expenses, and the Incentive Award, all conform to Third Circuit precedent and are justified by the extensive and high-quality work that Class Counsel performed, on pure contingency, and over vigorous opposition, to reach a substantial settlement. This Court should approve those awards.[5]

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On April 8, 2015, Class Representative commenced this putative class action in the United States District Court for the District of New Jersey against Chase and JPMorgan Chase & Co. ("JPMC") challenging the calculation methodology for the Termination Date for PMI under Section 4902(d) of the Homeowners Protection Act of 1998, 12 U.S.C. § 4901 et seq. ("HPA"). Plaintiff also asserted claims for breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment claims, negligent misrepresentation, as well as violations of the New Jersey Consumer Fraud Act ("NJCFA") and New Jersey Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"). (Dkt. Entry 1.)

[5] This Motion is being filed during the objection period to ensure that all Settlement Class Members have the opportunity to review and comment on the basis for Class Counsels' claim for attorneys' fees and costs.

Before filing the initial Complaint, Class Counsel, with the active participation of Plaintiff, conducted extensive investigations into the merits of the case, including reviewing numerous documents maintained by Plaintiff, public information records regarding the claims at issue and researching and analyzing potential claims.[6] *See* Vozzolo Decl. ¶40.

On June 17, 2015, Chase and JPMC filed a motion to dismiss Plaintiff's Complaint claiming that the PMI automatic termination date should be based solely upon the purported value of Plaintiff's home at the time of the modification. Chase and JPMC further argued that Plaintiff's HPA claim was barred by the statute's two-year limitations period, 12 U.S.C. § 4907(b) and that Plaintiff's state law claims were preempted by the HPA. (Dkt. Entry 10.) Class Counsel undertook extensive legal research, intense investigation of the legislative history of the HPA, as well as the policies of the CFPB with respect to mortgage transactions, and a further review of Plaintiff's documents and multiple interviews with Plaintiff with respect to the statute of limitations argument. Based upon these extensive efforts, Class Counsel submitted an opposition to Chase's motion to dismiss. (Dkt. Entry 17.)

By Order dated January 28, 2016, this Court dismissed the state law claims and otherwise denied the motion to dismiss, holding the "plain, unambiguous" language of the HPA provides "the basic formula for determining the automatic termination date of PMI requires utilizing the 'principal balance of the mortgage' and the 'original value' of the property." *Fried v. JPMorgan Chase & Co.*, 2016 U.S. Dist. LEXIS 9874, *8 (D.N.J. Jan. 28, 2016) (the "MTD Order").

On February 24, 2016, Chase and JPMC filed an Answer denying the various allegations in this Action. (Dkt. Entry 29.)

[6] On May 19, 2014, Plaintiff also served Defendants with a detailed pre-suit notice and demand for corrective action related to the improper practices. Vozzolo Decl. ¶22. Fn. 2.

On February 25, 2016, Chase and JPMC moved to certify the Court's MTD Order for interlocutory review pursuant to 28 U.S.C. § 1292(b). (Dkt. Entry 31.) Plaintiff consented to the motion.

On April 7, 2016, this Court granted Chase and JPMC's motion for an order certifying the Court's January 28, 2016 Order for interlocutory appeal. (Dkt. Entry 42.)

On April 18, 2016, Chase and JPMC filed a Petition for Leave to Appeal with the United States Court of Appeals for the Third Circuit.

On May 26, 2016, the Third Circuit granted the Petition for Leave to Appeal. (Dkt. Entry 44.)

On March 31, 2017, after briefing and oral argument, the Third Circuit affirmed the District Court's January 28, 2016 MTD Order and remanded the matter for further proceedings. *Fried v. JP Morgan Chase & Co.*, 850 F.3d 590 (3d Cir. 2017) (the "Third Circuit Order"). As a direct result of the success of Plaintiff and Class Counsel in obtaining the Third Circuit Order, Chase ceased the collection of improper PMI charges in compliance with the Order, not only from Class Members, but from all consumers nationwide. Vozzolo Decl. ¶9.

Next, on April 18, 2017, Chase and JPMC filed a motion for partial summary judgment arguing (1) that defendant JPMC should be dismissed from the case because the Complaint alleged no wrongdoing by it, and (2) that section 4907(a)(2)(B)(i) of the HPA limits the potential total recovery in the matter to the lesser of $500,000 or 1 percent of the net worth of the liable party, as determined by the Court. (Dkt. Entry 49-1.) Once again, Class Counsel undertook extensive legal research, and further scrutiny of the legislative history of the HPA and analogous provisions of the Truth In Lending Act, as well as the policies of the CFPB with respect to

mortgage transactions. Based upon these extensive efforts, Class Counsel submitted an opposition to Chase's motion for summary judgment. (Dkt. Entry 53)

On November 30, 2017, the Court granted in part and denied in part Chase and JPMC's partial summary judgment motion and dismissed JPMC from the case ("Summary Judgment Order"). (Dkt. Entries 57, 58.) Notably, the Court rejected Defendant's argument that there was a $500,000 cap on actual damages in class actions brought under the HPA. The success on the summary judgment motion enabled Plaintiff and Class Counsel to effectively begin negotiating the Settlement which included a monetary Settlement Fund six times greater than the cap on recovery Chase sought to impose by way of summary judgment.

Following the Summary Judgement Order, the Parties initiated discussions about the prospect of opening settlement discussions to resolve this Action. *See* Vozzolo Decl. ¶35.

Thereafter, over the course of several months, the Parties engaged in extensive arm's-length negotiations, and Chase provided Plaintiff's counsel with an anonymized spreadsheet indicating, for each member of the proposed Settlement Class, (i) the number of months of PMI Overpayments, (ii) the total PMI Overpayments, and (iii) a PMI Automatic Termination Date, calculated using an at-modification property value. *Id.* ¶10. Moreover, on July 25, 2018, the Parties participated in an in-person status/settlement conference with the Court. (Dkt. Entry 70.) In the subsequent months, Chase provide certain additional information and the Parties continued to work diligently to finalize the terms of the Settlement. With respect to the attorneys' fees, payment was negotiated only after the parties had agreed to all other salient aspects of the Settlement. Plaintiff also engaged in confirmatory discovery, conducting an interview of a Vice President and Operations Manager at Chase, calculating the value of Chase's change in practices, certain material portions of which were memorialized in a declaration under oath. *See* Vozzolo

Decl. ¶38. Following these efforts, the parties agreed upon and executed the Stipulation of Settlement which was executed on March 14, 2019. *Id.* ¶39.

Thereafter, the parties drafted and filed the Motion for Preliminary Approval of the Settlement (Dkt. Entry 76.1) on March 14, 2019. On March 28, 2019, this Court preliminarily approved the Settlement, conditionally certified the Settlement Class, authorized notice to Settlement Class Members and set a date and time for final approval hearing. (Dkt. Entry 78). The Court further appointed Plaintiff as the Class Representative and Carella, Byrne, and Vozzolo LLC as Class Counsel. *Id.* ¶5. Additionally, the Court appointed KCC Class Action Services, LLC ("KCC") as the claims administrator. *Id.* ¶11.

In accordance with the Preliminary Approval Order, Notice was mailed by United States Postal Service via first class mail to Defendant's last known or available address for each Class Member. Moreover, a dedicated case specific Settlement website (www.pmisettlement.com) was established, which maintained copies the Settlement Agreement; this Court's Preliminary Approval Order; the Notice; and information concerning filing deadlines and the date and location of the Fairness Hearing. *See* Vozzolo Decl. ¶46. Finally, a toll-free number was be established to field inquiries and to allow Class members to request additional information. Plaintiff will submit a Declaration from KCC concerning notice in connection with Plaintiff's motion for final settlement approval.

SUMMARY OF THE SETTLEMENT

The Parties reached agreement on the terms of the proposed settlement through a vigorous debate of legal and factual theories by counsel and extensive arm's length negotiations.

The Settlement provides real and valuable monetary benefits to the Settlement Class[7], as well as the alterations to Defendant's practices, squarely addressing the issues raised in this litigation. Specifically, the Parties have agreed to the following basic terms:

- Monetary Relief: The Settlement Agreement requires Defendant to pay $3,000,000.00 into a common Settlement Fund, which will be used to pay any Fee and Expense Awards to Class Counsel, Class Representative Incentive Award, and payments to Settlement Class Members. *See* Stipulation of Settlement § 3. Payments will be made to Class Members automatically by the Settlement Administrator via check.

- Prospective Relief: Notably, following the entry of the Third Circuit Order, and as a direct result of Plaintiff and Class Counsel's success on that appeal, Chase has modified its practices to conform to the Third Circuit's Order, and the Settlement provides that Chase will comply with the construction of the HPA in the Third Circuit Order, unless and until the Third Circuit Order is limited, altered or overruled by further judicial, regulatory, or legislative action. *Id.* § 5.

With respect to the Prospective Relief, Class Counsel has calculated that this change in business practices will prevent Chase from collecting approximately $16.5 million in unearned PMI premiums in violation of the express provisions of the HPA. *See* Vozzolo Decl. ¶10.

In addition to the Settlement Fund, Defendant will pay all reasonable costs and expenses for providing administration of the Settlement and notice to the Class in accordance with the Settlement Agreement.[8] *See* Stipulation of Settlement § 8.

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[7] The Settlement Class consists of all customers of Chase-serviced mortgage loans for which the customers (i) entered into a loan modification, (ii) had a PMI Automatic Termination Date on or after April 1, 2013, and (iii) made one or more payments for PMI after their Automatic Termination Date and before the date, if any, that Defendant ceased servicing their loan, which payments were not fully refunded to the customer by the private mortgage insurer. Excluded from the Class are: (i) the Settlement Administrator; (ii) any officers, directors, or employees of Defendant as of the date of filing of the Action; (iii) any judge presiding over the Action and his or her immediate family members; and (iv) Persons who properly and timely opt out of the Settlement Class by submitting a Request for Exclusion. Stipulation of Settlement § 2.

[8] Notice costs also include notification of the Attorney General of the United States, and the attorneys general of each state or territory in which a Settlement Class Member resides in accordance with the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715(b).

LEGAL ARGUMENT

I. THE COURT SHOULD APPROVE CLASS COUNSELS' REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND SHOULD APPROVE SERVICE AWARDS FOR THE PLAINTIFF

A. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES

Class Counsel are entitled to an award of attorneys' fees by statute and under the common fund doctrine. First, the HPA provides that in addition to actual damages, statutory damages and costs "[a]ny servicer, mortgagee, or mortgage insurer that violates a provision of this Act ***shall*** be liable to each mortgagor to whom the violation relates for-- . . . (4) reasonable attorney fees, as determined by the court." 12 U.S.C. 4907(a). These attorneys' fees under the HPA are mandatory – not merely discretionary. *See, e.g. Gulfstream III Assocs., Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 418 (3d Cir. 1993) (the use of the word "shall" in a statutory provision for attorneys' fees makes the award mandatory, not discretionary).

Second, where counsel have created benefits for a class, they are entitled to seek an award of attorneys' fees and reimbursement of litigation expenses. *See*, *e.g*., *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Traditionally, courts have applied the lodestar multiple approach to the calculation of attorneys' fees in statutory fee shifting cases because damages are often limited and the value of relief obtained is hard to quantify. *City of Burlington v. Dague*, 505 U.S. 557, 559, (1992) (requiring the application of the lodestar approach in pure statutory fee shifting cases); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998) ("[t]he lodestar method is more commonly applied in statutory fee-shifting cases, and is designed to reward counsel for undertaking socially beneficial litigation in cases ***where the expected relief has a small enough monetary value that a percentage-of-recovery method***

would provide inadequate compensation.") (emphasis added); *In Re GM Trucks*, 55 F.3d 768 (3d Cir. 1995) (same).

Nevertheless, the Third Circuit has held that where a settlement has been reached the settlement "extinguished any liability defendants might have had under the statutes for plaintiffs' attorneys' fees, the settlement converted the . . . litigation into a common fund case, notwithstanding the fact that the causes of action arose under fee-shifting statutes." *McLendon v. Continental Group*, 872 F. Supp. 142, 152 (D.N.J. 1994); *see also In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 583 (3d Cir. 1984). Thus, "[t]he fact that this case was brought under . . . a fee-shifting statute, does not preclude recovery of attorneys' fees from the common fund that arose from settlement. Fee-shifting statutes should not circumscribe the operation of the common fund doctrine unless that operation conflicts with an intended purpose of the statute." *In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 886 F. Supp. 445, 456 (E.D. Pa. 1995))citing *County of Suffolk v. Long Island Lighting*, 907 F.2d 1295, 1327 (2d Cir. 1990)).

Indeed, the special Task Force established by the Third Circuit to evaluate court awarded attorneys' fees noted:

> [This] Task force concluded that the traditional common-fund case ***and those statutory fee cases that are likely to result in a settlement fund from which adequate counsel fees can be paid, should be treated differently than the more typical statutory fee case involving the declaration or enforcement of rights or relatively modest sums of money***. The application of [the lodestar-multiplier] was thought necessary in the straight-forward statutory fee case, because it is reasonably objective, neutral, and does not require making monetary assessments of intangible rights that are not easily equated with dollars and cents. But these protections were not believed to be needed in the traditional fund case or in those statutory fee cases likely to produce a sizeable fund from which counsel fees could be paid.

Court Awarded Atty. Fees, 108 F.R.D. 237, 255 (1985). In cases, such as the present case, which results in a sizeable fund from which counsel fees could be paid, the Task Force recommended

the use of the percentage of the recovery as the proper method for the calculation of attorneys' fees. *Id.* 255-56; *see also In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 886 F. Supp. 445, 458 (E.D. Pa. 1995).

B. THE REQUESTED PERCENTAGE IS FAIR AND REASONABLE UNDER THIRD CIRCUIT LAW

Where counsel have created benefits for a class, they are entitled to seek an award of attorneys' fees and reimbursement of litigation expenses. *See*, *e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Class Counsel respectfully submit that their requested fee is appropriate, given the nature and extent of their efforts in creating a settlement beneficial to Settlement Class Members in this hard-fought litigation and the risks assumed by Class Counsel in handling this complex matter on a fully contingent basis with no guarantee of any recovery.

1. The Value of the Settlement Includes the Total Recovery

In awarding attorneys' fees, the Court has discretion to apply either the percentage of the fund method or the lodestar method. *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329-30 (3d Cir. 2011); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006). The percentage of the fund method is more appropriate where, as here, there is a common fund. *See AT&T*, 455 F.3d at 164 (stating that the percentage method is "generally favored" in common fund cases because "it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure"); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 249 (D.N.J. 2005); *see also Boeing*, 444 U.S. at 479 ("Although the full value of the benefit to each absentee member cannot be determined until he presents his claim, a fee awarded against the entire judgment fund will shift the costs of litigation to each absentee in the exact proportion that the value of his claim bears to the total recovery.").

To apply the percentage of the recovery analysis, the Court must first value the Settlement and then decide what percentage of the Settlement should be awarded as attorneys' fees. *See GM Trucks* 55 F.3d at 822. Any award of fees must be based upon "a percentage recovery of the approximate valuation of the ***total*** relief provided. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 194 n.1 (3d Cir. 2000); *GM Pickup Truck,* 55 F.3d at 821 n.40; *Ciccarone v. B.J. Marchese, Inc.*, 2004 U.S. Dist. LEXIS 25747, *27, 2004 WL 2966932 (E.D. Pa. Dec. 22, 2004) ("***a fair assessment of the total relief must also include the value of the equitable relief.***") (emphasis added); *accord Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 250 (D.N.J. 2005) (value of recovery must also include "the value of injunctive relief and Part VIII ADR Relief as well as legal fees, expenses and administrative costs."); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d at 336 n.116 (discussing that the "relevant inquiry . . . focuses a court's attention on the benefits actually received and caused by plaintiffs, [and] will determine not only the often evident threshold question of eligibility for fees, but it will also be critical in determining the amount of a reasonable fee award, in that the final award must depend on a full assessment of the extent of the benefits received by plaintiffs"); *see also McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D.N.J. 2008) (discussing the appropriate method of valuing injunctive relief for purposes of determining class counsel's fee with regard to a common fund).

Since Chase ceased collecting unearned PMI from Class Members only after the Third Circuit Order was entered, this benefit must be included to determine the total value of the Settlement. *Templin v. Independence Blue Cross*, 785 F.3d 861, 867 (3d Cir. 2015) (where "the pressure of the lawsuit caused Appellees to change their position" the value of this change must be included in valuing settlement); *see also Boyle v. Int'l Bhd. of Teamsters Local 863 Welfare*

Fund, 579 Fed. Appx. 72, 78 (3d Cir. 2014) (party need only show "some degree of success on the merits"). These practice changes will save class members $16.5 million in PMI overpayments from the date when the changes were made. This calculation is quantifiable and mathematically ascertained based on information obtained from Defendant in confirmatory discovery. *See* Vozzolo Decl. ¶10. Accordingly, the total value of the benefit conferred upon Class Members is $19.5 million ($3 Million common settlement fund + $16.5 million). *Id.* at ¶11.

2. The Requested Percentage of the Recovery Is Warranted

Once the value of the Settlement has been determined, the Court must then determine the percentage to be applied to the total benefit to determine the appropriate attorneys' fee award. "[T]he Third Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund" when the percentage of the fund method is used. *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, *22 (D.N.J. Nov. 10, 2016) (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Litig.*, 55 F.3d 768, 822 (3d Cir. 1995)). The percentage requested here, 33% of the monetary Settlement Fund, but just **5%** of the total monetary benefits conferred upon the Class, is well within that range, and comparable percentages have often been awarded in the Third Circuit and in this District. *E.g.*, *City of Sterling Heights Gen. Emples. Ret. Sys. v. Prudential Fin., Inc.*, 2016 U.S. Dist. LEXIS 138469, *1-2 (D.N.J. Sept. 29, 2016) (awarding 30% of the common fund, plus nearly $1,000,000 in expenses); *MTB Inv. Partners, LP v. Siemens Hearing Instruments, Inc.*, 2014 U.S. Dist. LEXIS 194773, *3 (D.N.J. Dec. 9, 2014) (awarding 27.78% of the common fund plus an award of expenses); *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 499-500 (3d Cir. 2017) (affirming award of 28% of common fund);

Yedlowski, 2016 WL 6661336, at *22 (approving 30% award despite "the early stage at which this litigation was resolved").

3. The Lodestar Cross-Check Supports the Percentage of the Recovery Requested

The Third Circuit has "suggested" that fees awarded under the percentage method be cross-checked against the lodestar. *Gunter v. Ridgewood Energy Corp*., 223 F.3d 190, 195 n.1 (3d Cir. 2000). The purpose of that cross-check is to ensure that the percentage approach does not result in an "extraordinary" lodestar multiple or a windfall. *See In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 285 (3d Cir. 2001). The Third Circuit has stated that a lodestar cross-check entails an abridged lodestar analysis that requires neither "mathematical precision nor bean counting." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). Moreover, the court "may rely on summaries submitted by the attorneys" without "scrutinize[ing] every billing record." *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *43-44 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07). Under the lodestar method, the district court "determines an attorney's lodestar by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The lodestar figure is "presumptively reasonable" where it arises from a reasonable hourly rate and a reasonable number of hours. *Planned Parenthood of Cent. New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted.)

"Time expended is considered 'reasonable' if the work performed was 'useful and of a type ordinarily necessary to secure the final result obtained from the litigation.'" *See In re Schering Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *54-55 (D.N.J. March

26, 2010) (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985)). Moreover, the hourly billing rate to be applied is the hourly rate that is normally charged in the community where the counsel practices, *i.e.*, the "market rate." *See Blum*, 465 U.S. at 895; *see also In re ScheringPlough/Merck Merger Litig.,* 2010 U.S. Dist. LEXIS 29121, at *54 (citations omitted). In most circumstances, the State of New Jersey is considered a single market for purposes of determining a reasonable prevailing rate in the community. *See Public Interest Research Group of New Jersey v. Windall,* 51 F.3d 1179, 1186-88 (3rd Cir. 1995).

Here, the hourly rates used by Class Counsel are comparable to rates charged by attorneys with similar experience, skill, and reputation, for similar services in the New Jersey legal market. *See* Vozzolo Decl. ¶¶59-60.[9] And they are the rates paid by hourly-paying clients of Class Counsel in non-contingent representations. [10] *See id.* ¶59.

The hours worked, lodestar fee, and expenses for each of the firms representing the Class are set forth in the declarations of Mr. Cecchi and Mr. Vozzolo, submitted herewith. The total attorneys' fees, costs, and expenses provided for by the Parties' agreement is $999,999. After

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[9] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (recognizing "an appropriate adjustment for delay in payment—whether by the application of current rather than historic hourly rates or otherwise"); *LeBlanc-Sternberg v. Fletcher,* 143 F. 3d 748, 764 (2d Cir. 1998) ("The lodestar should be based on 'prevailing market rates' … and current rates, rather than historical rates, should be applied in order to compensate for the delay in payment") (citation omitted).

[10] An attorney's actual billing rate for similar work is presumptively appropriate. *See In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *17 (D.N.J. May 14, 2012) ("The Court finds the billing rates to be appropriate and the billable time to have been reasonably expended. The lodestar is thus presumptively reasonable."). "Typically, courts calculate a reasonable hourly rate according to the prevailing market rates in the relevant community," *Hilburn v. New Jersey Dept. of Corrections*, 2012 WL 3864951, at *2 (D.N.J. Sept. 5, 2012); *see also Saint v. BMW of N.A., LLC*, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) ("The first step in calculating the lodestar amount is determining the appropriate hourly rate, based on the attorneys' usual billing rate and the 'prevailing market rates' in the relevant community.").

reimbursement for the $11,385.97 of litigation costs and expenses, *see* Vozzolo Decl. ¶65; Ex.'s G, H and I, the remainder for the attorneys' fees is $988,613.03. Therefore, the requested fee award reflects a negative multiplier of .97 to Plaintiff's Counsels' combined lodestar.[11] This multiplier is well within the accepted range in this Circuit. *See, e.g. In re Cendant Corp. PRIDES Litig*., 243 F.3d at 734, 742 (3d Cir. 2001) (approving a suggested multiplier of 3 and stating that multipliers "ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *Nichols*, 2005 U.S. Dist. LEXIS 7061 (approving a multiplier of 3.15); *Varacallo*, 226 F.R.D. at 256 (cross-check produced 2.83 multiplier); *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *26 (D.N.J. Nov. 15, 2016)(cross-check produced 2.51 multiplier); *Mirakay v. Dakota Growers Pasta Co*., 2014 WL 5358987, at *14 (D.N.J. Oct. 20, 2014) (cross-check resulted in 2.45 multiplier).

Moreover, because this reported time does not include any of the billable time after June 16, 2019, it does not account for the work performed by Class Counsel subsequent to that date, such as future work that will be associated with final approval briefing, settlement administration and the fairness hearing. *See In re Philips/Magnavox TV Litig*., 2012 U.S. Dist. LEXIS 67287, at *47 (D.N.J. May 14, 2012) (observing, in analyzing a fee request, that the submitted figures did not include time and expenses incurred by counsel subsequent to the submission of that motion); *Henderson,* 2013 U.S. Dist. LEXIS 46291, at *44, n.11 (same); *see also* Vozzolo Decl. ¶64.

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[11] *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (explaining that a negative multiplier suggests a percentage-based award is fair and reasonable based on the time and effort expended by class counsel).

C. THE *GUNTER* FACTORS CONFIRM THE REASONABLENESS OF THE FEE REQUEST

The appropriateness of the percentage award sought, and the results of the recommended lodestar cross-check, though favorable in all respects, do not end the fee inquiry. In *Gunter v. Ridgewood Energy Corp*., 223 F.3d 190, 195 n.1 (3d Cir. 2000), the Third Circuit set out a number of factors for District Courts to consider in evaluating fee requests in class actions. Those factors are:

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

Each of these factors supports the requested fee.

1. Size of Fund and Number of Persons Benefitted

The $3,000,000 Settlement Fund is substantial. It is anticipated to benefit 3,700 Class Members nationwide. Not only will these Class Members receive a pro rata share of the Settlement Fund, but the change in Chase's business practices, as set forth above, has conferred an additional $16.5 million financial benefit upon Class Members as well. Therefore, the total value of the Settlement to Class Members, i.e., $19.5 million represents a very substantial recovery for the Class, warranting the requested fee award. *See Gunter*, 223 F.3d at 194 n.1 (must consider total benefit). This criterion favors approval of the fee request.

2. The Presence Or Absence Of Substantial Objections By Members Of The Class

Notice, which has been served on each Class Member via First Class Mail, has provided each Class Member with the information necessary to object to or opt out of the Settlement, along with the dates by which this must be done. While this fee petition is being filed before the

expiration of the objection period, as of the date of this filing there have been no objections filed with the Court.[12] This factor supports approval of the requested fee. *See Reinhart v. Lucent Techs., Inc.* (*In re Lucent Techs., Inc. Sec. Litig.*), 327 F. Supp. 2d 426, 435 (D.N.J. 2004) ("[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable."); *see also Weber v. Gov't Emples. Ins. Co*., 262 F.R.D. 431, 451 (D.N.J. 2009) ("The Court relies upon the representations of Class Counsel, the lack of objection to the reasonableness of the lodestar calculation, and its own experience in fee applications in other class actions of similar duration, scope, and complexity, to conclude that these claimed hours and rates are correct and reasonable.").

3. The Skill and Efficiency of Class Counsel

The "single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." *In re Safety Components Sec. Litig.,* 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors also include "'the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" *McCoy v. Health Net, Inc*., 569 F. Supp. 2d 448, 476 (D.N.J. 2008) (quoting *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008)). The goal of this *Gunter* factor is to ensure "that competent counsel continue to undertake risky, complex and novel litigation" for the benefit of large numbers of class members who might otherwise lack reasonable access to justice. *Gunter*, 223 F.3d at 198.

[12] Plaintiff reserves the right to address any objections that may be filed in their motion seeking final approval of the settlement, and will also be prepared to address any questions or concerns the Court may have about any such objection at the Final Approval Hearing on July 25, 2019.

Class Counsel demonstrated tremendous skill in prosecuting this matter. Chase vigorously opposed Plaintiff at every turn, and all interactions between Plaintiff and Chase have been at arms'-length. Among other things, Class Counsel (a) extensively researched and investigated Plaintiff's claims, the legislative history of the HPA and the policies and guidelines of the CFPB; (b) overcame Defendant's motion to dismiss the claims under the HPA; (c) successfully opposed Chase's appeal before the Third Circuit; (d) successfully opposed Chase's motion for summary judgment; (e) engaged in contentious settlement negotiations; and (e) pursued meaningful confirmatory discovery. As such, this factor supports the fee request.[13]

4. The Complexity and Duration of the Litigation

This *Gunter* criterion strongly counsels in favor of the requested fee. This action has been pending for over four years. This Action was very complex and asserted novel legal theories and issues which survived a motion to dismiss, a motion for summary judgment and an appeal to the Third Circuit.

This Court's rulings on the motions to dismiss and summary judgment, along with the Third Circuit Order demonstrated the layers of complexity attendant to the law governing these cases. Ultimately, the Court issued an intricate decision to dismiss Plaintiff's claims under state law, but sustained Plaintiff's claims under the HPA. Moreover, as a direct result of Class Counsel's success in overcoming Chase's argument with regard to the statutory cap on HPA damages, Plaintiff and Class Counsel were able to obtain six times that amount for the benefit of the Class. The length and complexity of this case justifies the fee request.

[13] Moreover, Defendant was represented by highly skilled attorneys from a prominent firm with experience in complex consumer class actions. *In re Warner Communications Sec. Litig.*, 618 F.Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsel's work.").

5. The Risk of Non-Payment

The risks of non-recovery, which were faced by Class Counsel from the outset of this litigation, are sufficiently substantial to justify the fee request. *See O'Keefe v. Mercedes-Benz United States*, LLC, 214 F.R.D. 266, 309 (E.D. Pa. 2003) (the risk of non-payment in such a case "is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case."). Indeed, in *In re Ins. Brokerage Antitrust Litig.*, this Court observed that "Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees," 2012 U.S. Dist. LEXIS 46496, at *135 (D.N.J. Mar. 30, 2012) (citations omitted). Class Counsel handled these matters on a wholly contingent basis. At all times, they faced tremendous risk that they would receive no payment at all. More so, as Class Counsel presented a novel legal theory which had never been thoroughly litigated. Consequently, throughout the litigation, Class Counsel faced a very substantial risk of non-payment. Moreover, the risk of non-payment in this action was exacerbated by Chase's contention that the HPA contained a statutory cap of $500,000 on actual damages for the class. Until Plaintiff prevailed on this issue at summary judgment, Chase had no incentive to negotiate a settlement and every motivation to oppose Plaintiff at every turn. This factor, like all the others, strongly supports Class Counsel's fee request.

6. The Amount of Time Devoted to the Case by Class Counsel

As reflected in the accompanying Vozzolo Declaration, Class Counsel devoted an significant amount of time and energy to this Action, totaling over 1,387.20 hours. The lengthy and extensive procedural history of these matters, discussed *supra*, their nationwide scope, and the high stakes involved (as reflected in the $19.5 million settlement) all justifiably contributed

to the need for that sort of expenditure of time. Once again, this *Gunter* factor weighs in favor of approving Class Counsel's fee request.

7. Awards in Similar Cases

The fee, which amounts to 5% of the total monetary benefits conferred upon the Class, "is appropriate and comfortably within the range of fees typically awarded." *City of Sterling Heights*, 2016 U.S. Dist. LEXIS 138469, *1-2 (awarding 30% of the common fund, plus nearly $1,000,000 in expenses); *MTB Inv. Partners, LP*, 2014 U.S. Dist. LEXIS 194773, *3; (awarding 27.78% of the common fund plus an award of expenses); *Yedlowski*, 2016 WL 6661336, *22 (awarding 30% fee). As discussed above, *Yedlowski* recognized that fee awards have ranged from 19% to 45%. *Id*. at *66 -*67.

In *Rite Aid*, the Third Circuit found no abuse of discretion in a District Court's reliance on three studies of percentage awards in various types of class action settlements that had found the average for such awards to be 31%, 27-30%, and 25-30%, respectively. 396 F.3d at 303; *see also Sullivan*, 667 F.3d at 333 (noting those same studies and citing *Rite Aid*). The requested percentage here is in keeping with awards in similar cases.

D. THE DISCRETIONARY *PRUDENTIAL* FACTORS ALSO SUPPORT THE FEE REQUEST

In *Prudential*, 148 F.3d at 338-40, the Third Circuit identified three other considerations that <u>may</u> bear on the appropriateness of a fee award. Those factors are "(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any "innovative" terms of settlement." *AT&T*, 455 F.3d at

165 (quoting *Prudential*, 148 F.3d at 338-40) (citations omitted)). Like the *Gunter* criteria, each of the *Prudential* factors weighs in favor of approval of the requested fee.

1. The Settlement Benefits All Resulted From Class Counsel's Efforts

The HPA was enacted to address the apparent problem of continued but unnecessary PMI coverage in consumer mortgages and to provide consumers with a remedy in the form of restitution of PMI overpayments. *See Fried v. JPMorgan Chase & Co.*, 2017 U.S. Dist. LEXIS 196839, *15, (D.N.J. Nov. 30, 2017). In turn, the CFPB was created to "implement and, where applicable, enforce Federal consumer financial law consistently" including the laws with respect to consumer mortgages, such as the HPA. 12 U.S.C. § 5511. According to "Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline", by Christopher L. Peterson, a study released by the Consumer Federation of America on March 12, 2019, however:

> Law enforcement policing the home mortgage market has declined sharply under the Trump Administration's leadership. Under Director Cordray, the CFPB announced 61 mortgage lending cases that returned nearly $3 billion in restitution to consumers at a pace of over $10 million per week. Under Acting Director Mulvaney, consumer relief in mortgage lending declined by over 99% to less than $5,000 per week for the entire nation. Under Director Kraninger, the Bureau has not announced a single mortgage-related case, nor any restitution for consumers.[14]

Consequently, no government agency took any enforcement action or filed any suit against Chase. Moreover, even if the CFPB had taken action, the total recovery by Plaintiff in this Action far exceeds the total recovery by the CFPB in all enforcement proceedings in mortgage lending for the entire nation. Consequently, had Plaintiff and Class Counsel not filed and diligently prosecuted this action, Class Members would still be paying $16.5 million in unearned PMI premiums, in contravention of the HPA's required automatic "termination date."

[14] https://consumerfed.org/wp-content/uploads/2019/03/CFPB-Enforcement-in-Decline.pdf

Consequently, all the benefits of this Settlement are solely the result of the efforts of Class Counsel in this Action. The first *Prudential* factor thus supports the fee request.

2. The Percentage Fee Approximates, or is Less Than, the Fee That Would Have Been Negotiated in the Private Market

Private contingent fee agreements routinely provide for percentage fees of at least 30%. *See*, *e.g.*, *Venegas v. Mitchell*, 495 U.S. 82, 90 (1990) (approving private contingent fee agreement for 40% in civil rights case); *Ocean Power*, 2016 U.S. Dist. LEXIS 158222, *91, 2016 WL 6778218, at *29 ("If this were an individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery."). Class Counsel's requested percentage of 33% of the monetary Settlement Fund, but just 5% of the total monetary benefit conferred upon the Class is commensurate with customary percentages in private contingent fee agreements. Consequently, this factor also supports the requested fee.

3. The Settlement Includes Innovative Terms

The pleadings in this action presented an analysis of automatic "termination date" under the HPA which had never been addressed by any Court. Based upon this innovative application of the HPA, Class Counsel was able to obtain a Settlement which not only provided for a $3 million Settlement Fund, but also compelled Chase to change its business practices. This final factor provides yet more support for Class Counsel's fee request.

The percentage fee sought by Class Counsel is reasonable and in keeping with Third Circuit precedent. The lodestar cross-check confirms that. The *Gunter* and *Prudential* factors only reaffirm the appropriateness of Class Counsel's requested fee for their contingent work in this risky matter. The Court should approve the requested fee.

II. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF THEIR EXPENSES SHOULD BE GRANTED

"Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *Careccio v. BMW of N. Am. LLC*, 2010 U.S. Dist. LEXIS 42063, at *22 (D.N.J. April 29, 2010) (quoting *In re Safety Components Int'l Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)). Class Counsel have documented their expenses, by category, in their respective accompanying Declarations. *See Ocean Power*, 2016 U.S. Dist. LEXIS 158222, *92, 2016 WL 6778218, at *29 (approving class counsel's expenses where they were "summarized by category" and were "the type of expenses routinely charged to hourly paying clients and, therefore, should be reimbursed out of the common fund"). Those expenses were all reasonably necessary to the proper litigation of these vigorously contested cases. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *58 (approving expenses that were "adequately documented and reasonably and appropriately incurred in the prosecution of the case."); *In re Datatec Sys. Sec. Litig.*, 2007 U.S. Dist. LEXIS 87428, at *27 (D.N.J. Nov. 28, 2007) (approving "costs associated with experts, consultants, investigators, legal research, mediation, meals, hotels, transportation, word processing, court fees, mailing, postage, telephone, telephone, and the costs of giving notice.") Moreover, Class Counsel has agreed not to request a separate award of costs and expenses. Therefore, the costs and expenses of $11,385.97 incurred by Class Counsel only serve to reduce the percentage of the recovery sought through the award of attorneys' fees.

III. THE COURT SHOULD APPROVE THE INCENTIVE AWARD SOUGHT

The Settlement permits Plaintiff to apply for Incentive Award of $40,000 for Plaintiff. "Incentive awards are not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class. The purpose of these payments

is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws." *Benelli v. BCA Fin. Servs., Inc*., 324 F.R.D. 89, 111 (D.N.J. 2018) (quoting *Sullivan*, 667 F.3d at 333, n.65); *see also Varacallo*, 226 F.R.D. at 257 (stating that incentive awards are appropriate to compensate for "any personal risk incurred by the individual and or any additional effort expended by the individual for the benefit of the lawsuit"). Whether to authorize an incentive payment to a class representative is a matter within the court's discretion. *In re Plastic Tableware Antitrust Litig*., 1995 WL 723175, at *2 (E.D. Pa. Dec. 4, 1995).

Incentive awards are particularly appropriate where, as here, representatives have assisted in the creation of a significant common fund for the benefit of the class. *Lorazepam*, 205 F.R.D. at 400 (in approving a total of $105,000 in incentive awards the Court noted class representative awards are commonly approved, "particularly where a common fund has been created for the benefit of the entire class"); *see also Varacallo*, 226 F.R.D. at 257 (in approving a total of $70,000 in incentive awards the Court noted service awards are appropriate to compensate for "any personal risk incurred by the individual and or any additional effort expended by the individual for the benefit of the lawsuit").

Other cases in this District have approved incentive awards within the range of $40,000, or even more. *E.g*., *Haas v. Burlington Cty.*, 2019 U.S. Dist. LEXIS 16071, *20 and *27 n. 14 (D.N.J. Jan. 31, 2019) (awarding class representatives incentive awards of $50,000 to one plaintiff and $30,000 to another, and collecting cases awarding incentive awards of up to $50,000 at *25-*26); *McCoy v. Health Net, Inc.*, No. 03-CV-1801 (FSH) (PS), Order at p.5 (D.N.J. July 24, 2008) (Vozzolo Dec., Ex. P) (Awarding each class representative $60,000

incentive award paid from the common fund); *Desantis v. Snap-On Tools Co., LLC*, 2006 U.S. Dist. LEXIS 78362, at *9-10, 36 (D.N.J. Oct. 27, 2006) (approving $50,000 class representative incentive award); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *50-52 (D.N.J. Nov. 9, 2005) (approving $30,000 class representative incentive award and discussing District case law concerning incentive awards approved in similar amounts).

In *Haas*, the Court evaluated five factors to determine the reasonableness of the requested $50,000 incentive award:

> 1) the risk to the class representative in commencing suit, both financial and otherwise;
> 2) the notoriety and personal difficulties encountered by the class representative;
> 3) the amount of time and effort spent by the class representative;
> 4) the duration of the litigation; and
> 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

2019 U.S. Dist. LEXIS 16071, at *25; *see also Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011).

Analysis of these five factors in this case demonstrate the requested $40,000 incentive award is reasonable. Here, Named Plaintiff Ginnine Fried served as the representative in the prosecution of this lawsuit for over four years. Named Plaintiff lent her name to this case and thus subjected herself to public attention. This was particularly concerning as Plaintiff is a practicing attorney who had to publicly acknowledge participation in the Home Affordable Modification Program ("HAMP"), the goal of which is to help or provide relief "struggling homeowners" who are at "risk of foreclosure" or who have a "documented financial hardship. [15]

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[15] https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/SD%2019-01%20FINAL%202.5.19.pdf

[16] Declaration of Ginnine Fried ¶16. As such, Plaintiff risked her reputation and a certain modicum of notoriety by admitting she encountered financial difficulties which were sufficient to warrant a home mortgage modification under HAMP. Courts within this District have recognized that incentive awards are particularly appropriate where the Plaintiff must "risk their good will and job security in the industry for the benefit of the class as a whole." *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745 (D.N.J. Apr. 8, 2011).

Moreover, Plaintiff has been subjected to media attention as a result of her involvement in this case. For example, Mrs. Fried (and her lawsuit) has been the focus of no less than 14 articles and/or "client alerts", including among other publications, *Lexis Legal News* and the *New Jersey Law Journal*: [17]

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[16] https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Pages/hamp.aspx

[17] These articles include: (1) https://www.tuckerlaw.com/2017/03/13/homeowners-mortgage-insurance-obligation-not-modified-mortgage-modification/;
(2) https://consumerfsblog.com/2017/03/3rd-cir-holds-hpas-auto-term-date-pmi-uses-original-value-not-modification-value/;
(3) https://www.realestateclassactions.com/2016/02/hamp-loans-dont-forget-about-federal-pmi-law/;
(4) http://www.mortgagecompliancemagazine.com/regulatory/mortgage-insurance-federal-homeowners-protection-act-hamp-modification-not-like-refinancing/;
(5) http://riker.com/blog/banking-title-insurance-real-estate-litigation/third-circuit-holds-mortgage-servicer-may-not-recalculate-mortgage-insurance-termination-date-based-on-updated-home-value-after-loan-modification;
(6)http://www.njfederalcourtlawyers.com/2017-03-18-third-circuit-deals-blow-to-jp-morgan-chase-in-loan-modification-case
(7) https://www.mcneeslaw.com/mortgage-insurance-federal-homeowners-protection-act-hamp-modification-not-like-refinancing/;
(8)https://www.law.com/njlawjournal/almID/1202781916070/?slreturn=20190512153804;
(9) https://www.jdsupra.com/legalnews/mortgage-insurance-and-the-federal-74406/;
(10) https://www.insidemortgagefinance.com/articles/207292-court-rules-against-lender-in-mi-cancellation-dispute-says-federal-law-overrides-gse-servicing-guidelines?v=preview
(11)https://lawofbanking.com/2017/03/27/third-circuit-ruling-reduce-value-modified-loans-serviced-fannie-mae-freddie-mac-guidelines/;

This notoriety and attention caused Plaintiff to initially question her pursuit of the matter. *Id.* ¶¶16-21. For example the "Law of Banking" article noted that "[t]he value of modified home loans serviced under Fannie Mae and Freddie Mac guidelines could be diminished by [the Third Circuit Order] …, which "could prevent some investors from entering the secondary mortgage market—and therefore could reduce mortgage credit availability for middle and lower-income buyers."[18] This sentiment was also echoed by several non-profit entities, including The American Bankers Association, Consumer Bankers Association, Consumer Mortgage Coalition, Housing Policy Council, Independent Community Bankers of America, and Mortgage Bankers Association, who submitted a brief of *Amici Curai* in support of Defendant's before this Court arguing: [19]

> As a consequence of the Court's order, the entities securitizing and selling these mortgages on the secondary market may inadvertently default on sales contracts for these mortgage-backed securities. This disruption—combined with the additional risk borne by primary mortgage lenders, who must ultimately bear the risk of eventual noninsurance—will significantly impede the mortgage lending market, ultimately harming middle- and lower-income borrowers seeking to purchase homes.

As a result, Plaintiff will live her entire life with the notoriety of numerous articles and three reported court opinions bearing her name and the fact that she was required to seek a modification of her mortgage. As explained by *Haas*, "[w]hile these risks were not financial, they are no less substantial or seriously felt. Without an incentive award, putative class

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(12) https://www.lexology.com/library/detail.aspx?g=90e4b147-0a47-4923-af3b-702f8e6fdf1e;
(13) https://www.lexislegalnews.com/articles/15534/3rd-circuit-finds-chase-improperly-calculated-insurance-termination-date-; and
(14) https://www.lexislegalnews.com/articles/22445/judge-finds-borrower-s-claims-are-not-capped-by-homeowners-protection-act.

[18] https://lawofbanking.com/2017/03/27/third-circuit-ruling-reduce-value-modified-loans-serviced-fannie-mae-freddie-mac-guidelines/.

[19] Dkt. Entry 35-2, at 4-5.

representatives may be discouraged to come forward in cases involving alleged violations of constitutional rights that ***open them to public judgment of private facts.***" *Id.* at *25-26. Additionally, this litigation spanned four years, during which Plaintiff was actively involved in the litigation. Class Representatives spent approximately 200 hours protecting the interest of the Class through their involvement in this case. Fried Decl. ¶13. The Class Representative assisted Class Counsel in investigating her claims, by detailing her participation in the Home Affordable Modification Agreement with Chase and aiding in drafting the complaint. *Id.* ¶¶11-13. During the course of this litigation, the Class Representatives kept in regular contact with her attorneys to receive updates on the progress of the case and to discuss strategy. *Id.* ¶14. Further, the Class Representatives preserved and produced hundreds of pages of documents to Class Counsel to assist the matter. *Id.* ¶10. Finally, the Class Representative were actively consulted during the settlement process. *Id.* ¶14. While Plaintiff is entitled to the same monetary recovery under the Settlement as other Class Members, each of the other factors support her request for an Incentive Award. Without Plaintiff's willingness to make private facts public, all Class Members would still be paying useless and unearned PMI premiums long after the automatic "termination date" established by the HPA. On these facts, the requested incentive payments is fair and reasonable.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Court should grant Plaintiff's motion for an award of attorneys' fees and reimbursement of expenses to Class Counsel, and for Incentive Award to Plaintiff in accordance with the Settlement Agreement.

[SIGNATURE ON FOLLOWING PAGE]

Dated: June 17, 2019

Respectfully submitted,

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