

2. Results achieved by settlement for individual Class Members versus the results achieved – or likely to be achieved – for other claimants

This factor weighs in favor of approval since no one opted out and, as stated, the proposed class action settlement agreement obtains an amount approximating the maximum statutory damage award available to the Class.

3. Whether Class or Subclass Members are afforded the right to opt out of the settlement

As part of the Class notice process approved by this Court, by notice sent out on November 6, 2015, Class members were given the opportunity to opt out by January 18, 2016. No member of the Settlement Class opted out by the date of the fairness hearing. Therefore, this factor weighs in favor of approval.

4. Whether any provisions for attorneys' fees are reasonable

As part of the Class notice process approved by this Court, Class members were advised that Plaintiff would seek an award of attorneys' fees of no more than \$245,000.00, separate and apart from the settlement fund. No potential member of the Class objected to such an award. Moreover, for the reasons discussed in greater length below, the attorneys' fees and expenses sought and agreed to in this case are reasonable. Thus, this factor weighs in favor of approval.

5. Whether the procedure for processing individual claims under the class action settlement is fair and reasonable

Class Counsel has retained, and this Court has approved, Dahl Administration ("Dahl") as the claims administrator. Dahl, a nationally-recognized firm that has provided notice and claims administration services for various class actions, has experience administering class action settlements such as this and will be supervised by Class Counsel. Dahl will evaluate all claims received to determine whether they are reasonable, valid, and payable from the Settlement

Fund. The claims processing procedures in place are fair and reasonable. This factor supports approval of the settlement.

In summary, in light of the presumption of fairness that attaches to the settlement, *see In re Warfarin*, 391 F.3d at 539, and upon consideration of each of the *Girsh* factors and the relevant *Prudential* factors, this Court finds that the proposed class action settlement is fair and reasonable.

Request for Attorneys' Fees and Expenses

As compensation for their legal services and efforts, Class Counsel have requested this Court to approve the portion of the settlement which provides for reimbursement of attorneys' fees and expenses in the amount of \$245,000.00. This is an amount contemplated and agreed to in the settlement agreement, and disclosed to Class members. As noted above, the notice provided to potential Class members expressly informed them that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed \$245,000.00. To date, no Class member has objected to the settlement or to the requested fee, which evidences both a satisfactory result and a reasonable fee. In support of their request for fees and reimbursement of costs and expenses, counsel rely upon two declarations of counsel summarizing their time and the expenses incurred on behalf of the Class. (*See* Decls. of David A. Searles and Carlo Sabatini).

Federal Rule of Civil Procedure 23(h) provides "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Plaintiff and Class Counsel, as the prevailing party, seek approval of an award of attorneys' fees and reimbursement of litigation expenses in accordance with the terms of the Class Action Settlement Agreement and the fee shifting provision of the FDCPA, 15

U.S.C. §1692k(a)(3). The Third Circuit Court of Appeals has held that fees are mandated under the FDCPA and that the district court should determine what constitutes reasonable attorneys' fees in accordance with Supreme Court precedent for such fees. *See Graziano v. Harrison*, 950 F.2d 107, 113-14 (3d Cir. 1991) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-37 (1983)).

There are two methods of calculating attorneys' fees in class actions – the lodestar method and the percentage of recovery method. *In re Prudential*, 148 F.3d at 332-33. The lodestar method is more commonly applied in statutory fee-shifting cases. *Id.* Because the FDCPA is a fee-shifting statute, which the Third Circuit has interpreted as requiring an award of attorneys' fees to the prevailing party, *see Graziano*, 950 F.2d at 113-14, this Court will apply the lodestar method in determining the reasonableness of the requested award of attorneys' fees.

Under the lodestar method, a court begins the process of determining the reasonable fee by calculating the “lodestar;” *i.e.*, the “number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433; *see also McKenna v. City of Phila.*, 582 F.3d 447, 455 (3d Cir. 2009). Once the lodestar is determined, the court must then determine whether additional adjustments are appropriate. *McKenna*, 582 F.3d at 455.

A reasonable hourly rate in the lodestar calculation is “[g]enerally . . . calculated according to the prevailing market rates in the relevant community,” taking into account “the experience and skill of the . . . attorney and compar[ing] their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). The prevailing market rate is usually deemed reasonable. *Pub. Interest Research Grp. v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995).

As revealed by the Declarations of counsel submitted with Plaintiff's attorneys' fee request, the hourly rates for the firms of Class Counsel are well within the range of what is reasonable and appropriate in this market. That is, the hourly charged rates for the attorneys in the firm are the same as the regular current rates charged for their services in standard non-class matters, including contingent and non-contingent matters. There has not been any alteration or deviation from the firm's hourly rates to account for the added complexity or increased risk factors of this action. The attorneys concentrate their practice in the area of consumer class action litigation, and their hourly rates are also within the range charged by attorneys with comparable experience levels for consumer class action litigation of a similar nature. *See, e.g., Barel v. Bank of Am.*, 255 F.R.D. 393, 403-04 (E.D. Pa. 2009).

"In calculating the second part of the lodestar determination, the *time* reasonably expended," a district court should "review the time charged, decide whether the hours set out were reasonably expended for each of the particular purposes described and then exclude those that are excessive, redundant, or otherwise unnecessary." *Pa. Env'tl. Def. Found. v. Canon-McMillan Sch. Dist.*, 152 F.3d 228, 232 (3d Cir. 1998). As noted in *Hensley*, lawyers are required to use judgment when billing their clients so as not to bill clients for "excessive, redundant, or otherwise unnecessary" hours. *Id.* at 434. Likewise, "[h]ours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority." *Id.* at 434 (citations omitted). Ultimately, district courts have "substantial discretion in determining what constitutes . . . reasonable hours." *Lanni v. New Jersey*, 259 F.3d 146, 149 (3d Cir. 2001).

In the two Declarations of counsel, each Class Counsel included a detailed summary of the hours worked by the partners, associates, and professional support staff involved in this

litigation. These summaries were prepared from contemporaneous, daily time records regularly prepared and maintained by the respective firms. After reviewing the Declarations and the attached supporting documentation, it appears that neither counsel is requesting compensation for any time that was “excessive, redundant, or otherwise unnecessary.” *Hensley*, 461 U.S. at 434.

Having found the hourly rates and hours expended reasonable, the lodestar for Plaintiff’s attorneys is \$321,340.00, reflecting 743.2 hours of attorney and paralegal time. Counsel have also submitted documentation showing reasonable expenses in the amount of \$10,715.22. Class Counsel are requesting a sum of \$245,000.00 in attorneys’ fees and costs, an amount substantially less than the calculated reasonable lodestar amount. Further, this Court has also considered the fact that Class Counsel took this matter on a contingency basis, *see Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), there were no objections to the amounts requested by any potential or actual Class Members, *see Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 124 (E.D. Pa. 2005), and that through the settlement, Class Counsel has obtained for the Class members an amount approximating the maximum statutory damage award permitted. Further, Defendants have agreed to pay this amount in attorneys’ fees and costs, separate and apart from the settlement fund. Therefore, under the circumstances noted, this Court approves the request for attorneys’ fees and costs.

Individual Settlement Award

Class Counsel also seek approval of a \$5,000.00 individual settlement award for Plaintiff Violet P. Blandina, for her willingness to undertake the risks and the burden of this litigation. “Incentive awards are not uncommon in class action litigation. . . .” *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000). These payments “compensate named plaintiffs for

‘the services they provided and the risks they incurred during the course of class action litigation.’” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *22 (D.N.J. Apr. 8, 2011). Incentive awards also “‘reward the public service’ of contributing to the enforcement of mandatory laws.” *Id.* (quoting *In re Cendant*, 232 F. Supp. 2d at 344).

This Court recognizes that there would be no benefit to Class members if the Class representative had not stepped forward and prosecuted this matter to the current resolution. In doing so, Ms. Blandina devoted time and energy to the litigation, including reviewing documents, sitting for a deposition and consulting with counsel, as needed. The requested \$5,000.00 is well within the range of awards made in similar cases. *See Barel*, 255 F.R.D. at 402-03 (awarding \$10,000.00 individual award); *McGee v. Continental Tire North Am., Inc.*, 2009 WL 539893, at *18 (D.N.J. Mar. 4, 2009) (awarding \$3,500.00 individual award). Class Members were notified that Class counsel would request an award for Ms. Blandina in this amount and no Class member objected. Accordingly, the Court approves the individual award of \$5,000.00 to Ms. Blandina.

CONCLUSION

For the reasons stated herein, this Court grants final approval of the proposed class action settlement, awards Class Counsel reasonable attorneys’ fees and the reimbursement of expenses in the total amount of \$245,000.00, and awards the sum of \$5,000.00 to the Class Representative, Violet P. Blandina. An Order consistent with this Memorandum Opinion follows.

NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court