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similarly situated

MAJOR NON-JURY CASE

MATTHEW L. CHIPEGO, CHARLENE K.
MOWREY, KIMBERLY CATALANO-
PIKE, EXECUTRIX OF THE ESTATE OF
CONSTANCE C. CHURCHILL,
DECEASED, JORDAN EWING,
ADMINISTRATOR OF THE ESTATE OF
JOSEPH W. EWING, DECEASED,
individually and on behalf of themselves and
all other similarly situated

Plaintiffs

v.

FIVE STAR BANK and
FINANCIAL INSTITUTIONS, INC.

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

MAY TERM, 2017

NO. 002466

Final Approval Hearing: Nov. 4, 2015

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT (UNCONTESTED)**

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I. MATTER BEFORE THE COURT¹

This is a certified, two-state consumer class action alleging that Defendants—a bank and its holding company—failed to provide proper notice to over 6,300 consumer borrowers following the repossession of their vehicles, in violation of the Uniform Commercial Code (“UCC” or “Code”) of Pennsylvania and New York. Trial was scheduled for May 2025.

However, following eight years of hotly contested litigation, which included an interlocutory appeal to the Superior Court, countless motions—both substantive and procedural—including two rounds of dispositive motion practice, and three separate efforts at mediation, the parties reached a class-wide settlement.

The Settlement Agreement, attached as Exhibit 1 (the “Settlement” or “Agreement”), reflects an excellent result. The comprehensive Settlement includes a cash fund of **\$29.5 million**, resulting in an average payment of approximately \$3,253, elimination of approximately **\$55.3 million** in disputed post-repossession Deficiencies claimed due by the Bank under auto finance agreements, and satisfaction of some 1,294 deficiency judgments against Class Members. The aggregate monetary relief alone exceeds **\$84.8 million**. Some of the Settlement benefits have already commenced, with the Bank having already ceased the commencement of new enforcement actions to collect Class Member Deficiencies. Ex. 1, Agreement ¶ 2.10.

All the approximately 6,358 Class Members will receive these benefits automatically, without the need to even submit a claim form. The above relief afforded by the Settlement accounts for the costs of administration and Plaintiffs’ request for reimbursement of litigation expenses and attorney fees at 40% of the cash component of the proceeds.

¹ The relief sought in this Motion is uncontested by Defendants Five Star Bank and Financial Institutions, Inc. (collectively, “Five Star” or the “Bank”).

As discussed below, the Settlement is eminently fair and in the best interests of the Class, especially when considering the considerable risks of litigating this matter through trial and appeal. The Settlement is in line with class settlements approved throughout the Commonwealth involving similar yet less novel claims of improper repossession practices. The proposed Settlement satisfies all the criteria for approval of class action settlements and for the award of Class Counsel fees and litigation expenses from a common fund.

II. QUESTION PRESENTED

Where all of the elements for approval of a class action settlement under Rule 1714 are met, where only one Class Member out of over 6,300 has objected (on generic grounds lacking merit), and where Class Counsel fees and expenses are demonstrated to be reasonable, should the Court approve the proposed settlement and enter final judgment?

Suggested Answer: YES.

III. NATURE OF THE CASE

A. The UCC's Notice Requirements

This case is brought pursuant to Pennsylvania's and New York's substantially identical UCC provisions, 13 Pa. C.S. § 9601 *et seq.* and NY UCC § 9-601 *et seq.*, which provide certain protections for consumer borrowers when their vehicles are repossessed by a secured party like the Bank. Generally, as in the case of mortgage foreclosure for example, the law prohibits a creditor from seizing property of a debtor without prior notice or a court order. Article 9 of the UCC provides an exception to this general rule in the context of secured transactions in goods, such as when a consumer borrower agrees to have a vehicle serve as collateral for a loan or finance agreement. Under UCC Article 9, upon the consumer's default, a secured creditor may seize the

consumer's vehicle without prior notice or court approval—*i.e.*, conduct an *ex parte* repossession. *See* 13 Pa. C.S. § 9609, NY UCC § 9-609.

However, secured creditors who elect the UCC's extra-judicial post-default remedies submit themselves to the UCC's strict regulatory regime, which affords additional protections to consumer borrowers to ensure that every aspect of the repossession and disposition of collateral is commercially reasonable. *See* 13 Pa. C.S. § 9610(b); NY UCC § 9-610(b). After the repossession, the secured party must promptly send a very specific notice to the consumer borrower advising them of their rights. *See* 13 Pa. C.S. §§ 9611(b), 9614; NY UCC §§ 9-611(b), 9-614. The secured party must sell the collateral in a commercially reasonable manner. 13 Pa. C.S. § 9610(a); NY UCC § 9-610(a). The proceeds of the sale are then applied to the consumer borrower's outstanding obligation, sometimes leaving a deficiency balance claimed due. *See* 13 Pa. C.S. § 9615(d); NY UCC § 9-615(d).

This class action concerns the Bank's post-repossession notice practices. Specifically, the Bank sent its auto finance customers—the Class Members instantly—template notices after repossession that Plaintiffs assert fail to comply in one of three ways:

(1) failing to state whether the disposition will be by public or private sale, and if a public sale, where and when the collateral will be sold; *see* 13 Pa. C.S. § 9613(a)(1)(iii), (v) (emphasis added); NY UCC § 9-613(a)(3), (5); *Cubler v. TruMark Fin. Credit Union*, 83 A.3d 235, 236 n.1 (Pa. Super. 2013);

(2) failing to “state[] that the debtor is entitled to an accounting of the unpaid indebtedness and . . . the charge, if any, for an accounting,” *see* 13 Pa. C.S. § 9613(a)(1)(iv) (emphasis added); NY UCC § 9-613(a)(4); *Cubler* 83 A.3d at 236 n.1; and,

(3) failing to inform the borrower of the accurate amount necessary to redeem and get their vehicle back, *see* 12 Pa. C.S. § 6254(c)(2) (requiring an “itemized statement of the total amount required to redeem” in the notice); NY Gen. Oblig. Law § 7-401(2) (buyer’s right of redemption, requiring “the dollar amount necessary to redeem” be stated in the notice).

B. Minimum Statutory Damages in Consumer-Goods Transactions.

For consumer goods transactions, the UCC provides statutory damages for violations of Article 9’s requirements, such as the post-repossession notice obligation. *See Cubler*, 83 A.3d at 237; 13 Pa. C.S. § 9625(c)(2); NY UCC § 9-625(c)(2). This damage provision “is designed to ensure that every noncompliance with the requirements of Part 6 in a consumer-goods transaction results in liability, regardless of any injury that may have resulted.” UCC § 9-625, Comment 4; *see also Five Star Bank v. Chipego*, 312 A.3d 910, 921 (Pa. Super. 2024).

All the figures necessary to calculate Class Members’ potential statutory damages have been produced in discovery by the Bank. If Plaintiffs and the Class were to prevail on each theory, statutory damages sum to \$49.8 million before interest.

IV. HISTORY OF THE LITIGATION AND THE LEAD-UP TO SETTLEMENT²

On May 16, 2017, Plaintiff Matthew L. Chipego and former plaintiff Douglas Beachel of Pennsylvania, together with the late Plaintiffs Joseph Ewing and Constance Churchill of New York, filed the instant suit.³ On June 22, 2017, Defendants removed the action to the United States

² The facts set forth in Section IV and the remainder of this Brief are attested to in the Certification of Cary L. Flitter (“Flitter Cert.”) ¶ 30, Ex. 3 hereto.

³ The late Joseph Ewing of Buffalo, New York departed this earth on July 18, 2025, after the Settlement had been executed and submitted for preliminary approval. His daughter, Jordan Ewing, has been appointed Administrator of the estate by the Surrogate’s Court of Erie County, New York. A substitution of plaintiff was filed on October 7, 2025. The instant caption reflects the substituted plaintiff, Jordan Ewing, administrator.

District Court for the Eastern District of Pennsylvania. Defendants asked the federal court for a substantive dismissal based upon, *inter alia*, the New York statute of limitations, and asserted other defenses. Plaintiffs moved to remand the case to this Court for want of federal court jurisdiction and remand was granted on August 22, 2017. *Chipego v. Fin. Insts., Inc.*, No. 17-2834, 2017 U.S. Dist. LEXIS 239977 (E.D. Pa. Aug. 22, 2017).

The Bank then filed preliminary objections in this Court claiming lack of personal jurisdiction and improper venue. The Court overruled the preliminary objections on June 5, 2018.

After motion practice on discovery and multiple depositions, Plaintiffs sought permission to amend their Complaint. In August 2019, with the Court's permission, Plaintiffs Chipego, Churchill, and Ewing, together with new Plaintiff Charlene K. Mowrey, filed an Amended Class Action Complaint that substituted Mowrey in place of Beachel as a plaintiff and asserted certain additional claims under the UCC. An answer with new matter and individual counterclaims against Churchill, Ewing, and Mowrey (but not against any absent Class Members) was filed, and the pleadings closed.

In May 2021, before class certification, the parties attempted to settle this matter on a class-wide basis through mediation before Michael D. Young, Esq. of JAMS. This attempt was unsuccessful.

Thereafter, Plaintiffs moved for class certification, which the Bank opposed. After full briefing and a half-day hearing (by Zoom during COVID), the Court issued an Order and Opinion on September 30, 2021, certifying Pennsylvania and New York Classes.⁴ The classes certified included Pennsylvania and New York borrowers who were sent improper post-repossession notice,

⁴ The Bank moved this Court unsuccessfully to amend the Class certification order to certify the Order for interlocutory appeal to the Superior Court.

as well as two subclasses of Pennsylvania and New York borrowers who were sent improper notice following the sale of their repossessed vehicle at auction.⁵ After certification, a form of notice to the Class was approved by the Court, and notice of class certification was mailed to the class of over 6,300 consumers.

On October 28, 2021, the Bank filed a Motion to Dismiss asserting lack of standing. That motion was denied by order dated December 7, 2021. The Bank moved the Court to certify that order for interlocutory appeal, but that request was denied.

On February 8, 2022, Plaintiffs moved for Partial Summary Judgment seeking a ruling on liability and damages in favor of the Repossession Notice Classes. On March 21, 2022, the Bank cross-filed on the legality of one notice and for recoupment. On September 27, 2022, this Court denied both motions. With respect to Plaintiffs' motion, the Court found a triable issue of fact as to whether the financed vehicles were "consumer goods" (as opposed to commercial goods). On Defendants' cross-motion, the Court held that the Bank had failed to establish that the New York notice upon which the Bank moved was compliant, and that the Bank's request for recoupment was premature. *Chipego v. Five Star Bank*, No. 170502466, 2022 WL 19076350 (C.C.P. Phila. Sep. 26, 2022).

On February 9, 2022, the Bank petitioned the Superior Court for permission to appeal the trial court's order denying the Bank's motion to dismiss the New York branch of the case for lack of standing. The parties thereafter agreed to mediate for a second time, and on October 5, 2022, a consent order was entered staying trial court proceedings pending that mediation. Two days later, the Superior Court entered an order granting the Bank's Petition for interlocutory appeal, and asking the parties to brief not only the issue appealed (standing), but also subject matter

⁵ For ease of reference, Plaintiffs refer to the certified Classes as the "Class."

jurisdiction. In February 2024, following full briefing and argument, the Superior Court ruled in Plaintiffs' favor on all issues, affirming Plaintiffs' standing to sue. On March 14, 2024, the Superior Court's opinion was published as precedential. *Five Star Bank*, 312 A.3d 910.

In December 2022, after the Superior Court had accepted interlocutory appeal, the parties engaged in a two-day mediation before John P. Lavelle, Jr., Esq., of Morgan Lewis & Bockius LLP. This second mediation was again unsuccessful, and the parties proceeded to litigate the Bank's appeal discussed above.

On remand from the Superior Court, this Court set a pretrial conference for July 11, 2024. However, before the conference, the Bank filed two motions: a motion to compel absent class member discovery and a motion for reconsideration of the Court's 2018 order overruling the Bank's preliminary objection as to personal jurisdiction. Plaintiffs opposed both. On May 22, 2024, after holding oral argument, the Court (per Judge Fletman) denied the Bank's motion to compel absent class member discovery. Thereafter, on July 12, 2024, the Court denied the Bank's motion for reconsideration.⁶

On October 8, 2024, Plaintiffs filed a second Motion for Partial Summary Judgment, seeking an order finding that: (a) New York does not permit the recovery of interest on time-barred debts such as the deficiency balances claimed by the Bank as against New York Class Members; and (b) those claimed deficiency balances may not be asserted via the equitable defense of recoupment to reduce Plaintiffs' statutory claim. The Bank filed a Cross-Motion for Summary

⁶ Judge Wright-Padilla presided over this case from its inception in 2017 until her elevation to President Judge in 2023, at which time Judge Fletman became the assigned judge. Judge Wright-Padilla nonetheless ruled upon the motion for reconsideration of Her Honor's 2018 Order denying objection to personal jurisdiction.

Judgment. Both motions were briefed and under advisement when the parties opted to try a third effort at mediation.

On February 28, 2025, the parties entered a third mediation, this time before Hon. Mark I. Bernstein (Ret.), formerly of this Court. There, they reached an agreement in principle. The parties promptly executed a formal Class Action Settlement Agreement on March 7, 2025, which was presented to this Court for preliminary approval later that month.

On July 30, 2025, this Court entered an Order preliminarily approving the Settlement. Pursuant to the Court's Order, notice of the Settlement was sent to the Class, advising them of their right to exclude themselves from the Settlement or to object to any aspect of it by October 13, 2025. Of the approximately 6,300 Class Members noticed, only one has lodged an objection, and only four Class Members have requested exclusion. Ex. 2, Declaration of Class Administrator American Legal Claims Services ("ALCS Decl.") ¶¶ 7–8.

V. THE TERMS OF THE SETTLEMENT

The significant terms of the class-wide settlement are as follows:

1. The Bank agreed to pay \$29.5 million in cash into a fund. This Settlement Fund has already been deposited into an account at PNC Bank, *pendente lite*, and has been accruing interest for the benefit of the Class. Ex. 2, ALCS Decl. ¶ 11. The Settlement Fund will be used to pay Class Members, the costs of the Settlement Administrator, approved Class Counsel fees and expenses, and service awards to the four named Plaintiffs. Ex. 1, Agreement ¶ 2.06.
2. Approximately \$55.3 million in (disputed) Deficiency balance claims arising from Class Members' finance agreements with Five Star will be eliminated. *Id.* ¶ 2.11.

3. Pursuant to the Agreement, the Bank has already ceased initiating any new enforcement actions, including garnishments, levies, and other similar litigation collection activity, to collect any of these Deficiencies. *Id.* ¶ 2.10.

4. Approximately 1,294 judgments that had previously been entered against Class Members on auto Deficiency claims will be satisfied. *Id.* ¶ 2.12.

5. The Bank will advise all consumer reporting agencies to whom it reports to delete entirely the applicable tradeline from the Class Members' credit reports. *Id.* ¶ 2.09.

If this Settlement is approved and the Court awards Class Counsel fees and expenses in the requested sum of \$11,800,000 and \$150,000, respectively, administrator costs of up to \$100,000, and service awards of \$40,000 to each named Plaintiff, then there will be approximately \$17,290,000 net cash available to distribute to the Class. *Id.* ¶ 2.06(c). This distribution would yield—on average—a generous cash payment of **\$3,253** for each of the approximately 5,300 Secured Obligations in the Class.

Per the statutory damages formula set forth in 13 Pa. C.S. § 9625(c)(2) and NY UCC § 9-625(c)(2), payments are calculated based on the stated amount financed and finance charge on each Class Members' contract. Though the amounts to Class Members will vary, each will receive their *pro rata* share of the Settlement Fund, with coborrowers on a contract sharing the proceeds equally. Ex. 1, Agreement ¶ 2.06(b).⁷ The cash payments are expected to be 34.7% of the total possible statutory damages ($\$17,290,000 / \$49,800,000 = 34.7\%$).

⁷ Coborrower sharing of payments is consistent with the UCC's statutory scheme, which tethers recovery to the number of "secured obligations" (approximately 5,300 instantly). *See* 13 Pa. C.S. § 9628(e) ("A secured party is not liable under section 9625(c)(2) more than once with respect to any one secured obligation."). There are just over 6,300 total Class Members, owing to the presence of coborrowers on some of these finance agreements.

To illustrate the distribution of the Settlement proceeds, for a hypothetical Class Member who financed \$25,000 towards the purchase of an automobile with a stated finance charge of \$5,000, their statutory damages under the Uniform Commercial Code would be \$7,500 (\$5,000 finance charge plus 10% of the \$25,000 amount financed, *i.e.* \$2,500). That Class Member's proportionate recovery of 34.7% of the potential \$7,500 in statutory damages is \$2,602.50, net. The amounts, as noted, will be paid without any proof of harm and without the need for even a simple claim form.

As set forth more fully below, Class Counsel believe the terms of the Settlement to be excellent. In several respects, this Settlement provides benefits that could not have been achieved through completely successful litigation: in addition to the substantial cash component, there is the elimination of \$55.3 million in Deficiencies, the cessation of new collection actions, the satisfaction of nearly 1,300 judgments, and prospective credit reporting relief.

VI. LEGAL ARGUMENT FOR FINAL APPROVAL

A. Standard for Final Approval of the Class Settlement.

Our Supreme Court has noted that “settlements are favored in class action lawsuits.” *Dauphin Deposit Bank and Trust Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999); *accord Buchanan v. Century Federal Savings and Loan Assoc.*, 393 A.2d 704 (Pa. Super. 1978); *Milkman v. Am. Travellers Ins. Co.*, 61 Pa. D. & C. 4th 502, 513, 2002 WL 32170095 (C.C.P. Phila. Mar. 28, 2002) (“The law favors settlement, particularly in class actions and other complex cases, to conserve judicial resources and reduce parties’ costs.”).

Under our class action rules, “no class action shall be compromised, settled, or discontinued without the approval of the court after hearing.” Pa. R. Civ. P. 1714(a). Procedurally, approval of a class action settlement is a three-step process. First, the court must preliminarily

review the settlement, and if it appears fair and reasonable *prima facie*, grant preliminary approval. Second, notice of the proposed settlement must be given to the class.⁸ Third, the court holds a final approval hearing, which is primarily intended to hear any objections. See MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.634 (2004); *Brophy v. Philadelphia Gas Works & Philadelphia Facilities Mgmt. Corp.*, 921 A.2d 80, 88 (Pa. Commw. 2007) (describing the accepted procedure from proposed class settlement to preliminary approval to notice then final approval).

Judges “should analyze a settlement in terms of a ‘range of reasonableness’” using a seven-part test, which considers:

- 1) the risks of establishing liability and damage;
- 2) the range of reasonableness of the settlement in light of the best possible recovery;
- 3) the range of reasonableness of the settlement in light of all of the attendant risks of litigation;
- 4) the complexity, expense, and likely duration of the litigation;
- 5) the state of proceedings and the amount of discovery completed;
- 6) the recommendation of competent counsel; and,
- 7) the reaction of the class to the settlement.

Dauphin Deposit, 727 A.2d at 1078; *Milkman*, 61 Pa. D. & C. 4th at 513. Each of these factors favors final approval of the settlement here, as attested to below and in the Flitter Certification at ¶ 30 attached as Ex. 3 hereto.

i. The Risks of Establishing Liability and Damages

⁸ The Administrator successfully disseminated notice. See generally Ex. 3, ALCS Decl.

“The risks surrounding a trial on the merits are always considerable.” *Milkman*, 61 Pa. D. & C. 4th at 533.⁹ A reviewing court “must recognize the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Id.* (internal citations omitted).

Here, Plaintiffs believe there was a risk, albeit small, that they would not be able to establish liability for each notice. Plaintiffs believe the Bank’s alleged violations of the notice requirements are patent when comparing the notices in question to the statutory requirements. However, Plaintiffs acknowledge there is a dearth of appellate authority in Pennsylvania and New York addressing liability in the consumer setting addressing post-repossession notice, leaving an open question as to how some of the notice requirements would be interpreted.

Moreover, the Bank raised defenses that could negate or reduce its liability. Specifically, the Bank has contested whether the Class Members’ vehicles were in fact “consumer goods” as required for Plaintiffs to establish their claim. The Bank has testified that although it designates the Class Members’ obligations as consumer transactions, it does not know the *actual* use of each vehicle. Plaintiffs believe they have the better argument, but this nonetheless posed a risk at trial.

Additionally, the Bank has argued that the New York Class Members lack standing. Although the Superior Court ultimately disagreed,¹⁰ the Bank has suggested it would seek review of this issue before the Supreme Court of Pennsylvania. While the risk of reversal is small, such a ruling could bar over 5,500 New York Class Members from recovering.

⁹ The Court’s cogent opinion on class certification in *Milkman* is frequently cited and indeed was relied upon by the Commonwealth Court in *Brophy*, 921 A.2d at 88.

¹⁰ *Five Star Bank*, 312 A.3d 910.

There was motion practice over the applicable Article 9 statute of limitations for the New York repossessions. The Bank asserted a three-year limitation applied, while Plaintiffs believe a six-year period governs. While this Court ruled in Plaintiffs' favor,¹¹ there is no controlling authority, and the damages for a three-year class would have been only about 46% of the statutory damages for a six-year class.

The Bank, as noted, contested whether this Pennsylvania Court has personal jurisdiction over the New York branch of this case for repossessions in New York from New York borrowers. The Bank also contested whether this Court should certify the New York branch of this action when New York law does not permit class actions in New York state court for statutory damages such as those pursued here. *See* NY CPLR § 901(b). Ultimately, this Court agreed with Plaintiffs' view that class certification is a procedural matter to which Pennsylvania law, not New York class action law, should apply. But this was a vigorously contested point that the Bank could have sought to press on any ultimate appeal; it is especially relevant to the settlement fairness analysis as the New York branch accounted for over 90% of the aggregate class size and concomitant damages. *Chipego v. Five Star Bank*, No. 170502466, 2021 WL 12318100 (C.C.P. Phila. Sept. 30, 2021; opinion granting class certification).

There was also a risk of maintaining a net damages recovery. Statutory damages are available under the Code. 13 Pa. C.S. § 9625(c)(2); NY UCC § 9-625(c)(2). However, the Bank has argued that it is entitled to an aggregate recoupment of some \$55.3 million in post-auction Deficiency balances allegedly owed to the Bank. Plaintiffs disagreed on both substantive and

¹¹ *Chipego v. Five Star Bank*, No. 170502466, 2020 WL 9456256, at *1 (C.C.P. Phila. Oct. 19, 2020).

procedural grounds. If recoupment were allowed as requested by the Bank, it could have significantly reduced the Class Members' claimed \$49.8 million in statutory damages.

The Bank also asserted that Class Members who filed bankruptcy and failed to disclose their claim would be unable to recover. The Bank argued that this affirmative defense could completely negate those Class Members' right to recover.

These risks, and other risks not bearing directly on liability and damages, discussed below, support the wisdom of settlement generally and the instant settlement specifically.

ii. The Range of Reasonableness in Light of the Best Possible Recovery.

In comparing a proposed settlement's value with the best possible recovery, the Court "should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes." *Milkman*, 61 Pa. D. & C. 4th at 540. The focus should be on "the economic valuation of the proposed settlement." *Id.*

Here, the aggregate monetary relief to the Class includes a cash fund of \$29.5 million and the elimination of approximately \$55.3 million in disputed auto loan deficiency balances claimed by Five Star.¹² These two monetary components sum to over \$84.8 million. The elimination of

¹² The Deficiency claims arose during the class period of 2011 through 2017. Those not reduced to judgment have become timebarred during the pendency of this litigation. In New York, however, "the expiration of the . . . statute of limitations does not extinguish the underlying [debt], but merely bars the remedy." *Tanges v. Heidelberg North Am., Inc.*, 93 N.Y.2d 48, 55 (1999) (cleaned up). As such, absent this Agreement, the Class Members' Deficiencies would remain. Indeed, they were asserted as recoupment in reduction of Plaintiffs' damages, even though timebarred.

Deficiencies includes the satisfaction of nearly 1,300 judgments (averaging \$16,749 per judgment for an aggregate of \$16.7 million in judgments).¹³

This monetary relief of \$29.5 million in cash and \$55.3 million in eliminated Deficiencies favorably compares with the best possible recovery of about \$49.8 million (before interest) that Plaintiffs could hope to achieve at trial for the Bank's alleged violations. But \$49.8 million is the *maximum* possible statutory damages available under UCC § 9-625(c)(2) for two six-year classes of consumers, assuming Plaintiffs' legal theories are accepted and the Bank's multiple defenses are rejected through trial and through the appellate process.

The certainty of immediate relief to the consumer Class Members also supports approval. This suit was filed in May 2017 for class periods dating back to 2011. The named Plaintiffs and the Class Members have already waited over eight years for some relief. Assuming final approval is granted shortly after the final approval hearing, the relief provided in this Settlement will be available to these consumers in January 2026. Preexisting wage garnishments will cease; debts will be canceled; judgments will be satisfied; and *substantial* checks will be issued. The possibility of more relief after trial—and after additional appeals—pales in comparison to the immediate relief the Settlement affords to Class Members now.

Further, even a \$49.8 million judgment would not provide the significant equitable-type relief obtained here—the satisfaction of judgments, Ex. 1, Agreement ¶ 2.12, and removal of the

¹³ Because the Bank's claimed Deficiencies are subject to a bona fide dispute in this case, the parties agreed that the Deficiencies would be resolved by accord and satisfaction under the settlement and that the Bank would not issue a 1099-C for cancellation of indebtedness. Ex. 1, Agreement ¶ 7.10. This may ameliorate unwarranted tax consequences for Class Members with respect to any cancellation of indebtedness.

entire applicable negative tradeline from Class Members' credit reports. *Id.* ¶ 2.09.¹⁴ This automatic relief may allow some Class Members to refinance their home, improve job opportunities, or just increase their credit score. Other courts have recognized in repossession class actions the “valuable equitable relief of credit report correction.” *Cosgrove v. Citizens Auto Fin.*, No. 09-1095, 2011 WL 3740716 (E.D. Pa. Aug. 25, 2011) (approving similar UCC repo notice class settlement). The benefits of this credit repair relief are attested to in the attached expert report of Thomas Tarter (Ex. 4 hereto), a former banker with decades of experience and knowledge acquired in connection with consumer credit reporting matters.

This factor supports the reasonableness of the proposed Settlement.

iii. The Range of Reasonableness in Light of the Attendant Risks of Litigation.

There are practical risks present in all class litigation that apply here. For example, since the 2017 filing of this case, Plaintiffs Constance Churchill and Joseph Ewing passed away—the former before the parties agreed to this Settlement, and the latter after the Agreement was executed. If this case were to be litigated and appealed for years to come, how many more Class Members will not live to reap the benefit?

With renewed cross-motions for summary judgment pending, there remained a fair probability that the May 5, 2025 trial date could be continued, further delaying any relief to the Class. Payment now, rather than years in the future, is a valid consideration, and the certainty of prompt payment is one of several reasons why settlements are favored in class action lawsuits. *See*

¹⁴ Federal law provides that after seven years, negative credit reporting should cease, 15 U.S.C. § 1681c, and it appears that this has already occurred with respect to a plurality of the Settlement Class. However, negative information may be improperly reinserted into Class Members' credit reports, and Class Members would have been required to dispute the negative entry to have it removed. Further, the Bank has represented that for accounts that are being actively reported, the Bank will instruct the credit reporting agencies to stop reporting any delinquency.

Dauphin Deposit, 727 A.2d at 1079.

The Bank, through the three law firms that served as its able counsel during this litigation, threw defense after defense at Plaintiffs and their case, as discussed above. Though Plaintiffs were able to successfully navigate these defenses, trial and appeals carry significant risk.

iv. The Complexity, Expense, and Likely Duration of the Litigation.

Class action litigation is generally complex, time-consuming, and expensive. This case is no different. Liability is disputed and certain issues would have to be resolved by the second round of summary judgment, then trial. A favorable result at trial for Plaintiffs would almost certainly be followed by appeals. One thorny issue, among others, was whether the Bank could assert as a recoupment a Deficiency claimed due that is otherwise time-barred. This potential for delay weighs in favor of settlement. *See In re Bridgeport Fire Litig.*, 8 A.3d 1270, 1285–86 (Pa. Super. 2010) (complexity of class case and prospect for appeals weigh in favor of approving settlement).

The Court also benefits from the resource savings discussed here. It would not have to resolve the parties' second set of cross-motions for summary judgment, oversee a several-day-long class action trial, issue findings of fact and conclusions of law, or rule upon post-trial motions. In this respect, Settlement serves the interests of judicial economy as well as the interests of the Class by resolving all Class Members' claims once and for all. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 310 (3d Cir. 2011) (class settlement "serves the important policy interest of judicial economy").

v. The Stage of Proceedings and the Amount of Discovery Completed.

This prong addresses whether the case has progressed to a point where the parties have sufficient knowledge to reasonably determine that settlement is in the parties' best interest.

“Through this lens, the court can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *Milkman*, 61 Pa. D. & C. 4th at 544.

Plaintiffs and Class Counsel believe that they have engaged in more than sufficient discovery to evaluate fully the merits and value of the claims, and the relative risks to seeking a greater recovery through further litigation or trial. The Bank responded to written class discovery in waves. Plaintiffs took over half a dozen depositions covering three Bank designees, including its Vice President and Collections Operations Manager (four times), a Supervisor in Recovery Collections (twice), and its Chief Lending Executive, confirming details about the form notices used, the consumer nature of the subject accounts, the maintenance of files, and the Bank’s practices with respect to onboarding new customers. In July 2024, all Class Counsel spent days onsite in the basement of the Bank’s offices in Rochester, New York reviewing and scanning thousands of pages of newly produced loan files. This discovery allowed Plaintiffs to gauge the viability of the Bank’s defenses and setoffs. Class Counsel does not believe that further discovery would have provided any additional data or leverage to obtain a larger recovery.

vi. The Recommendations of Class Counsel.

In evaluating the fairness of a proposed settlement, the “opinion of experienced counsel is entitled to considerable weight.” *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super. 1984); *Gregg v. Independence Blue Cross*, 2004 WL 869063, at *41 (C.C.P. Phila. Apr. 22, 2004). Here, the settlement process involved arm’s-length negotiations by experienced counsel with adequate information to represent the Class effectively. Class Counsel did not recommend acceptance of the Bank’s settlement offers at either of the 2020 or 2022 mediations. Class Counsel has concluded that *this* Settlement is in the best interests of the Class.

Class Counsel (and no doubt this Court) has seen many class settlements where, for a

variety of reasons, the Class Members receive \$10.00 or \$2.00, or less. For this population of borrowers who had their cars repossessed generally for default of payments but were sent inadequate notice by the Bank, the range of payments is \$250 to \$11,163 with an average of \$3,253 (net, assuming fees, costs, and expenses are approved as requested). This payment, along with the other relief, is excellent, and Class Counsel is proud to recommend the Settlement for approval. See Ex. 3, Flitter Cert. ¶ 31.

vii. Reaction of the Class.

Reaction of the Class is a key factor in weighing approval and reasonableness of the settlement. *See Dauphin Deposit*, 727 A.2d at 1080; *Buchanan*, 393 A.2d at 709. As noted, out of the over 6,300 Class Members noticed, only one Class Member has objected to the Settlement, and only four have requested exclusion. Ex. 2, ALCS Decl. ¶¶ 7–8. That is a 0.0159% objection rate. The near absence of objections speaks volumes and is “entitled to substantial weight.” *See Treasurer v. Ballard Spahr Andrews & Ingersoll LLP*, 866 A.2d 479, 486 (Pa. Commw. 2005) (derivative action); *Gregg*, 2004 WL 869063, at *42 (“the class’s reaction is perhaps the most significant factor to be weighed in considering [a settlement’s] adequacy”).

Substantively, the sole objection lacks merit. In general, the objector argues that the relief is inadequate and inequitable given the “serious harm I incurred as a direct result of Five Star Bank’s actions of repossession and sale of my vehicle.”¹⁵ But in claiming damages based on the “repossession” and “sale” of the vehicle she pledged as collateral, the objector apparently misunderstands the nature of the Class claims at issue, which are not based on the wrongful repossession of the vehicles. Rather, the Class complains that the Bank failed to provide proper post-repossession *notice*. If the objector believed that she should recover (and could prove

¹⁵ The objection is attached as Ex. C to the ALCS Declaration attached as Ex. 2.

entitlement to) more damages because of a wrongful *repossession*, she “could always opt out of the class and bring [her] own action” when she was afforded that opportunity. *See Dauphin Deposit*, 727 A.2d at 1080. Moreover, notwithstanding her protest, if Settlement is approved as presented, the objector stands to receive a net cash payment of **\$4,069.15** plus Deficiency cancellation of **\$21,875.75**.

Even assuming *arguendo* that the relief obtained for this objector is inadequate for her situation, it appears that perhaps the objector “do[es] not sufficiently appreciate the fact that this is a *settlement*, not an award that will necessarily make all of the claimants whole for any damages incurred.” *In re Imprelis Herbicide Mktg., Sales Pracs. & Prods. Liab. Litig.*, 296 F.R.D. 351, 365 (E.D. Pa. 2013) (emphasis in original). “[T]he very nature of a ‘settlement’ is that it represents a compromise, not full compensation for all potential damages that could be awarded in a successful lawsuit.” *Id.* Courts routinely overrule objections that are based solely on the amount of the class members’ payment. *See Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146, 2013 WL 1192479, at *9 (D.N.J. Mar. 22, 2013) (collecting cases). The objection here primarily takes issue with the adequacy of the Settlement relief even though the cash amount is robust at \$29.5 million plus Deficiency cancellation of some \$55.3 million for about 6,300 Class Members. This Court can and should overrule the singular objection as lacking merit.

At bottom, the absence of meritorious objections demonstrates the Settlement has been embraced by the Class, weighing heavily in favor of approval.

* * * * *

In short, the issues of law and fact have been thoroughly investigated, and continued litigation would only delay relief to the Class and consume resources of the parties and the Court. The relief afforded under the Settlement is excellent, especially when balanced against the risks

faced by Plaintiffs on both the procedural and substantive aspects of the case, as well as the time, risks, and expenses associated with further litigation and appeals. Nothing in the course of the negotiations or the substance of the Settlement discloses grounds to doubt its fairness. *See* MANUAL § 21.61, at 310–11. To the contrary, the arm’s-length nature of the negotiations over the course of three separate mediation sessions, the recommendation of highly experienced class counsel, and the substantial value of the aggregate relief, all support a finding that the Settlement is fair, reasonable, and more than adequate. *See Dauphin Deposit*, 727 A.2d at 1080; *Brophy*, 921 A.2d at 88.

B. Representative Plaintiffs’ Service Awards should be Approved.

A service award to the named Plaintiff is common in consumer class action settlements. *See, e.g., Sullivan*, 667 F.3d at 333 n.65. The purpose “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.” *Id.* (cleaned up); *In re Bridgeport Fire Litigation*, 5 A.3d 1250, 1257–58 (Pa. Super. 2010) (same). Courts in Pennsylvania have approved service awards of \$50,000 to the named plaintiff. *See, e.g., Norman v. Trans Union, LLC*, 2:18-cv-05225, ¶ 15 (E.D. Pa. July 22, 2025) (Final Approval Order attached as Ex. 7).¹⁶

Unlike in some class actions where the named plaintiffs’ role is more passive, each Plaintiff here (or their decedent representative) spent dozens of hours with Class Counsel over the years reviewing the facts and documents, preparing for deposition, evaluating settlement, and being on standby during mediation. Each Class Representative, or their decedent/substitute representative,

¹⁶ Undersigned class counsel Flitter Milz, P.C. was also class co-counsel in the *Norman v. Trans Union* litigation, which likewise settled only weeks before the scheduled trial date.

prepared for and *sat for two depositions* in this case – one originally noticed and a second after the class complaint was amended to develop further claims. Mr. Chipeco and Ms. Mowery drove a considerable distance from their homes upstate to Scranton, PA to be deposed. The late Connie Churchill, then in her 70s, drove from her home in Derby, NY to Buffalo, NY for her deposition. The late Joseph Ewing traveled from his home in Buffalo, NY to defense counsel’s downtown Buffalo law office twice, sick from COPD, his oxygen tank in tow, to testify at deposition for the benefit of the case and the Class.

The Settlement calls for the four Class Representatives to each receive a service award in the amount of \$40,000 for their services to the Class. Ex. 1, Agreement ¶ 2.14. The requested service awards account for the excellent outcome achieved—\$29.5 million in cash plus other valuable relief for a Class of some 6,300—resulting in average payments of \$3,253 and average Deficiency cancellation of \$16,343. They reached these favorable terms after eight years of heavily contested litigation—with trial only two months away. Throughout the litigation, all Plaintiffs remained dedicated to securing the best result possible for the Class.

The proposed service awards were described in the Class Notice at ¶ 15 and drew no objection from any Class Member. Ex. 2, ALCS Decl. at Ex. A thereto (Class Notice). In light of Plaintiffs’ service to the Class over eight years of litigation, the lack of any objection, and the excellent results obtained, the requested service awards are entirely appropriate.

C. Class Counsel Fees and Litigation Expenses should be Approved.

It has long been the law that one who successfully maintains a lawsuit that creates a common fund is entitled to reasonable compensation from the fund as a whole. *Trustees v. Greenough*, 105 U.S. 527, 533–34 (1882); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This principle was adopted by Pennsylvania’s Supreme Court over 100 years ago:

Distribution of a fund is to be governed by equitable considerations. The right to charge a fund with costs and expenses depends on whether the litigation in which the costs and expenses were incurred was in promotion of the interests of those eventually found to be entitled to the fund. . . . Money paid for such purposes was paid to promote the interests of all who are entitled to share in the fund, and should be borne by the fund.

Schwartz v. Keystone Oil Co., 30 A. 297, 298 (Pa. 1894). The common fund doctrine has since been codified at 42 Pa. C.S. § 2503(8), which allows an award of reasonable counsel fees “out of a fund within the jurisdiction of the court.”

In common fund cases, the preferred method of awarding fees is the “percentage of recovery” method. *See Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 464 (E.D. Pa. 2008) (the “percentage of recovery 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”). “In common fund cases, fee awards generally range from 19% to 45% of the settlement fund.” *Sorace v. Wells Fargo Bank, N.A.*, No. 20-4318, 2024 WL 643229, at *13 (E.D. Pa. Feb. 15, 2024) (UCC repo notice class settlement), *aff’d*, No. 24-1498, 2024 WL 5116797 (3d Cir. Dec. 16, 2024) (affirming approval of settlement and fee award of 40% of cash component).

The \$11,800,000 in attorney fees sought here amounts to 40% of the \$29.5 million cash component of the settlement. When also accounting for the \$55.3 million in cancellation of Deficiencies, the total cash and debt relief exceeds **\$84.8 million**, and the attorney fees sought amount to only **13.91%** of that combined monetary relief. This request is entirely within the accepted mainstream of prior approvals, and below the 19% to 45% of common fund range generally held reasonable. *Sorace*, 2024 WL 643229, at *13; *see also Milkman*, 61 D&C 4th at 568 (recognizing 20% to 50% is typical in class actions).

The Court is also to evaluate reasonableness of fees based on the seven factors articulated

in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 201 (3d Cir. 2000), cited with approval in *Milkman*. Additionally, Pennsylvania Rule of Civil Procedure 1717 sets forth five factors to be considered “among other . . . factors” when awarding attorneys’ fees in a class action. Pa. R. Civ. P. 1717. The overlapping *Gunter* and Rule 1717 factors are addressed below, respectively.

i. The Size and Nature of the Common Fund Created, and the Number of Persons Benefited, Supports Approval.¹⁷

The Settlement creates a common fund of \$29,500,000. After deduction of the requested Class Counsel fees and expenses, administrative costs, and service awards, a net fund of at least \$17,290,000 becomes available for distribution to the over 6,300 consumer Class Members in proportion with their statutory damages under the formula set forth in 13 Pa. C.S. § 9625(c)(2), with coborrowers sharing in the recovery. Ex. 1, Agreement ¶ 2.06(b). Based on that formula, the average per capita payment issued with respect to each Class Member Secured Obligation would be slightly over \$3,250. The Settlement also includes over \$55.3 million in cancellation of Deficiencies.

In addition to this tangible monetary relief, the Bank will also request the removal of the Class Members’ tradelines from their credit reports. *See* Ex. 1, Agreement ¶ 2.09. This deletion will cause the removal of any notation of a “repossession” or history of late payments. This substantial relief will benefit every affected Class Member in obtaining better employment opportunities, housing opportunities, credit terms, insurance rates—improving their quality of life, as explained in the expert report of Thomas Tarter (Ex. 4 hereto). These are substantial benefits that support the fee award sought.

¹⁷ This *Gunter* factor also speaks to “the results achieved and benefits conferred upon the class[.]” Pa. R. Civ. P. 1717(3).

ii. The Class’s Lack of Objection Supports the Fee Request.

The Settlement Notice approved by this Court was mailed to the Class Members advising them that Plaintiffs would apply for an award of attorney fees of \$11,800,000 and expenses of up to \$150,000. *See* Ex. 2, ALCS Decl. at Ex. A thereto, Class Notice ¶ 15. Of the over 6,300 Class Members noticed, only one has objected. Ex. 2, ALCS. Decl. ¶ 8 & Ex. C thereto.

The sole objector does not acknowledge the body of caselaw, as exemplified in *Milkman*, 61 D&C 4th at 568, finding that a reasonable fee in a class action typically falls in the range of 20 to 50% of the common fund. Nor does the objector provide any substantive reason to depart from the typical range of fee awards in class cases. Instead, the objector’s opposition is based on a strict comparison between the fee award sought to only the *cash* component of the common fund, without giving any consideration to the other benefits of the Settlement, including the substantial \$55.3 million in cancellation of Deficiencies.

The objector cites *In re Baby Prods. Antitrust Litig.* (“*Baby Products*”), 708 F.3d 163, 174 (3d Cir. 2013), for the uncontroversial proposition that courts must “ensure class recovery is meaningful.” Ex. 2, ALCS Decl. ¶ 8 & Ex. C thereto at p. 2. Plaintiffs agree with this principle and believe it is fully satisfied here given the substantial aggregate relief the Settlement affords to the Class. Indeed, the objector herself will enjoy a greater recovery than the average Settlement Class Member if the Settlement is approved, as she stands to receive a net check for **\$4,069.15** plus debt cancellation of **\$21,875.75**. The objector fails to explain why the meaningful monetary relief she and the other Class Members would be due under the Settlement somehow falls short of justifying a fee award amounting to 13.91% of the combined monetary relief.¹⁸

¹⁸ It bears note that the objector’s purported quotation from *Baby Products*—*i.e.* that courts should not “approve settlements where ‘the amount actually distributed to the class is too low in

The objector's reliance on *In re Bluetooth Headset Prods. Liab. Litig.* ("Bluetooth"), 654 F.3d 935, 947 (9th Cir. 2011) is misplaced. In *Bluetooth*, the settlement afforded no monetary relief *at all* to class members but nonetheless permitted the plaintiff to seek a fee award of up to \$800,000 without objection by the defendant. *Id.* The proposed settlement also provided that if the court awarded less in fees, any funds would revert to the defendant instead of benefiting the class. *Id.* *Bluetooth* has no analog here, as the Settlement is well into the eight figures, and no funds will ever revert to the Bank if the Settlement is approved. *See* Ex. 1, Agreement ¶ 3.06 ("Under no circumstances (other than termination of this Agreement for want of Court approval) shall any of the money in the Settlement Fund revert to Defendants."). Instead, the Settlement calls for two distributions to the Class assuming more than \$100,000 remains after the first distribution, with any residual funds directed 50% to the Pennsylvania Interest on Lawyers Trust Account Board to the Pennsylvania Interest on Lawyers Trust Account Board, as required by Pa. R. Civ. P. 1718, and the remaining 50% split equally between Philadelphia Legal Assistance and the New York Center for Elder Law and Justice "to support activities and programs which promote the delivery of civil legal assistance, including consumer credit education and counseling," to the indigent in Pennsylvania and New York, respectively. Ex. 1, Agreement ¶ 3.06.¹⁹

At bottom, the sole objector fails to identify any valid basis that would undermine the reasonableness of the attorney fees sought, and the lack of any objection from the thousands of other Class Members underscores the reasonableness of the requested fee.

relation to the settlement fund," appears to be an AI hallucination, as no such quotation appears in that case.

¹⁹ Both Philadelphia Legal Assistance and the Center for Elder Law and Justice have provided cy pres letters agreeing to use the funds for the purposes set forth in the Settlement. Ex. 11, Cy Pres Letters.

iii. The Skill and Efficiency of Class Counsel Supports Approval.²⁰

Class Counsel here consisted of three small but capable firms—Flitter Milz, P.C., Sabatini Law Firm, LLC, and Western New York Law Center. Notwithstanding the highly resourced Bank—with over \$6 billion in assets—and the three top-drawer law firms that represented the Bank over the course of this litigation, Class Counsel have successfully prosecuted this case with the quantum of skill and efficiency that speaks to their collective skill and experience in consumer protection litigation. Indeed, courts have recognized that Class Counsel at Flitter Milz are recognized as having experience and expertise in the field. *See Nelson v. Bank of America, N.A.*, No. 23-cv-00255-JS (E.D. Pa. Oct. 4, 2024) (preliminary approval of class settlement; “Flitter Milz PC, including Cary L. Flitter, Andrew M. Milz, and Jody Thomas López-Jacobs, has extensive experience and expertise in prosecuting auto repossession consumer class actions.”); *see also Cosgrove v. Citizens Auto. Fin., Inc.*, No. 09-1095, 2011 WL 3740809, at *9 (E.D. Pa. Aug. 25, 2011) (stating class counsel is “highly experienced, having successfully litigated numerous consumer class actions”).

It is fair to also measure the skill of Class Counsel by the results obtained. Class Counsel successfully shepherded this case through a battery of challenges and countless motions, both procedural and substantive, some based upon New York law. These motions included:

1. The Bank’s Preliminary Objections to venue and personal jurisdiction over the New York branch of case (denied);
2. Plaintiffs’ motion to remand the matter from federal court back to the Court of Common Pleas (granted on contest);

²⁰ This *Gunter* factor also speaks to “the quality of the services rendered[.]” Pa. R. Civ. P. 1717(2).

3. Plaintiffs' motion for judgment on the pleadings to determine that the limitations period for the New York class is six years, not three as asserted by Bank (granted on contest);
4. The Bank's motion to certify the statute-of-limitations ruling for interlocutory appeal (denied);
5. Discovery motions by Plaintiffs (granted on contest);
6. Plaintiffs' motion for class certification (granted on contest for both Pennsylvania and New York classes, as requested);
7. Plaintiffs' motion to permit class notice (granted on contest);
8. The Bank's motion to certify for interlocutory appeal the Order Certifying Classes (denied);
9. The Bank's motion to dismiss for lack of standing (denied);
10. The Bank's motion to certify for interlocutory appeal the order denying the Bank's motion to dismiss (denied);
11. Interlocutory appeal to the Superior Court, by permission, to review standing and subject matter jurisdiction (affirmed favorably to Plaintiffs on all points);
12. After remand from the Superior Court, the Bank's motion to allow it to seek discovery of absent Class Members (denied);
13. The Bank's motion to reconsider the denial of its objection to personal jurisdiction over the New York branch of the case (denied);
14. The Bank's motion for summary judgment as to liability and damages issues (denied, along with Plaintiffs' cross-motion for summary judgment, finding material facts in dispute).

It is also fair to say that Plaintiffs' and their counsel's success in these many complex

motions was an important driver in putting the case in a position for a successful class action trial after seven years of litigation. This posture, in turn, led—on the third mediation effort—to a class settlement of \$29.5 million in cash and, as noted, over \$55 million in debt forgiveness, plus other relief. All for a relatively small size class of some 6,300 consumers.²¹

Awarding the attorney fees sought serves important salutary social purposes inherent in class litigation. Class Counsel is incentivized to 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; Pa. R. Civ. P. 1714(4). This factor supports approval.

iv. The Complexity and Duration of the Litigation Supports Approval.²²

This case was of intermediate complexity, raising nuanced and arcane issues of consumer finance law and secured transactions—areas in which most capable general practitioners have limited experience. Litigation of these UCC claims required a thorough understanding of the interplay between Article 9 of the UCC and the overlapping requirements of both Pennsylvania and New York law relating to the obligations of secured parties and the duties of assignees of Installment Sale Contracts.

The Bank’s claimed defenses implicated novel and complex issues bearing on personal jurisdiction, subject matter jurisdiction, standing, secured transactions and UCC Article 9, class certification of a two-state class (where one of the states—New York—does not permit class

²¹ Plaintiffs proffer this abbreviated recitation of the various motions, positions, and outcomes in this prolonged litigation as relevant to meet the considerations of time, effort, quality of services rendered, results achieved, complexity, and uniqueness of the litigation to be considered when evaluating a class counsel fee request under Pa. R. Civ. P. 1717.

²² This *Gunter* factor also speaks to “the magnitude, complexity and uniqueness of the litigation[.]” Pa. R. Civ. P. 1717(4).

actions such as this under its procedural rules), set-off, recoupment, and other matters.

The eight-year duration of the litigation is a testament to the sheer amount of discovery that had to be completed, as well as to the complexity and novelty of the issues involved. This years' long endeavor was necessary to enable Class Counsel to conduct full discovery into the claims and defenses raised by the Bank. The demonstrated efforts of Class Counsel during the eight-year saga of this class litigation supports final approval.

v. Class Counsel Undertook the Risk of Nonpayment.

The contingent nature of this representation is to be taken into consideration by the Court. *See* Pa. R. Civ. P. 1717(5); *Milkman*, 61 Pa. D. & C. 4th at 561–62. Here, Class Counsel undertook and has handled this action on an entirely contingent fee basis. Class Counsel collectively has devoted over 4,079 hours of professional time and advanced nearly \$150,000 in costs and litigation expenses in prosecuting this action since 2017—without any assurance of being compensated.²³

The risk of no recovery in class cases of this type is all too real. There are many class actions in which counsel have expended thousands of hours, incurred considerable expenses, and yet received no remuneration despite their diligence and expertise. Even obtaining a favorable jury verdict is not a guarantee of success. *See, e.g., Debbs v. Chrysler*, 810 A.2d 137 (Pa. Super. 2002) (\$50 million consumer product class verdict vacated). And, while Plaintiffs are not suggesting that the Bank is in any financial distress, even large financial institutions sometimes fail, leaving their creditors stuck.²⁴

²³ Ex. 3, Flitter Cert. ¶ 34 (3,540 hours and \$129,691 in expenses); Ex. 5, Certification of Carlo Sabatini (“Sabatini Cert.”) ¶ 15 (232 hours and \$4,733 in expenses); Ex. 6, Certification of Matthew A. Parham (“Parham Cert.”) ¶ 27 (307 hours and \$301 in expenses).

²⁴ *See, e.g.,* FDIC, *Bank Failures in Brief – Summary 2001 through 2025*, <https://www.fdic.gov/bank/historical/bank/index.html> (last visited Oct. 10, 2025; listing 570 bank failures since 2001).

While Plaintiffs were confident in the strength of their claims, there was a risk that they would be unable to secure any class relief whatsoever. *See Milkman*, 61 D. & C. 4th at 561–62. This risk was particularly high here as class counsel pursued representation of (and certification of) a class of New York borrowers in addition to Pennsylvania borrowers. The Bank waged what may now politely be called a most vigorous advocacy, hotly contesting at every turn the propriety of certifying and pursuing relief for the New York consumers in this Pennsylvania proceeding. Indeed, New York Civil Practice Law and Rule 901(b) does not permit a class action proceeding to recover a “minimum measure of recovery created or imposed by statute[.]” *See, e.g., Rudgayzer & Gratt v. Cape Canaveral Tour and Travel, Inc.*, 799 N.Y.S. 2d 795 (App. Div. 2d Dept. 2005) (statutory minimum damages provided under Telephone Consumer Protection Act not permitted to be pursued in class action in New York state court).

In what may have been a matter of first impression in this Court, Plaintiffs successfully argued that NY CPLR § 901(b) is a *procedural* rule that applies only in the state courts of New York, and that the Pennsylvania Rules of Civil Procedure govern actions—including class actions—in Pennsylvania courts. While the Court here accepted Plaintiffs’ position in its 2021 ruling certifying the two-state class, this was just one of several novel issues that had to be navigated to achieve a successful result. The exceptionally high risk of nonpayment in this case weighs in favor of approving the requested fee of \$11,800,000 from the substantial recovery secured.

vi. Substantial Time and Resources were Devoted to the Litigation.²⁵

As noted, Class Counsel have collectively expended over 4,079 hours in aggregate time thus far prosecuting this case on behalf of the Class. Ex. 3, Flitter Cert. ¶ 34 (3,540 hours); Ex. 5, Sabatini Cert. ¶ 15 (232 hours); Ex. 6, Parham Cert. ¶ 27 (307 hours). The history of this eight-year litigation, as set forth in Section IV, *supra*, is a testament to the time expended by Class Counsel to achieve this successful result. What's more, based upon previous cases, Class Counsel expects anywhere from 20 to 40 hours of post-motion time to be spent on the final approval hearing and Class Member issues post-approval, as the Settlement provides for non-monetary relief such as adjustments to credit reporting, satisfaction of Deficiency judgments, and cessation of collections and garnishments. Class Counsel will continue to address all these important matters affecting these consumer Class Members long after final approval.

vii. Awards in Similar Cases Support Approval.

As mentioned, “[i]n common fund cases, fee awards generally range from 19% to 45% of the settlement fund.” *Sorace*, 2024 WL 643229, at *13 (awarding 40% of fund). Plaintiffs’ request here represents 40% of the cash and only 13.91% of the combined value of the cash and debt relief. And even that 13.91% figure fails to account for the substantial value of the non-monetary relief. Plaintiffs’ request is entirely in the accepted mainstream of prior approvals.

Indeed, courts in UCC cases such as this have approved similar requests for 40% of the common fund. *See Sorace v. Wells Fargo Bank, N.A.*, No. 24-1498, 2024 WL 5116797, at *1 (3d Cir. Dec. 16, 2024) (UCC notice class action; affirming award of \$6 million fee equating to 40% of the \$15 million common fund with debt forgiveness providing additional \$65 million in value);

²⁵ This *Gunter* factor speaks to “the time and effort reasonably expended by the attorney in the litigation[.]” Pa. R. Civ. P. 1717(1).

Ex. 8, Feb. 18, 2025 Order granting Final Approval in *Nelson v. Bank of America, N.A.*, No. 23-cv-00255-JS (UCC notice class action; approving fees amounting to 40% of the cash fund); Ex. 9, Oct. 15, 2021 Order granting Final Approval in *Mwangi v. Service 1st Fed. Credit Union*, No. 2019-792 (C.C.P. Luzerne; same); Ex. 10, Nov. 29, 2023 Order in *Lane v. Ardent Credit Union*, No. 200200450 (C.C.P. Phila. same). As such, the fee award sought falls within the mainstream of UCC notice class action settlements in this courthouse and elsewhere in Pennsylvania. This factor supports approval.

viii. The Fee Request is Supported by all of the Rule 1717 Factors.

The fee request readily satisfies the factors set forth in Pa. R. Civ. P. 1717, which overlap substantially with the *Gunter* factors.²⁶ Settlement was obtained efficiently through skillful litigating and negotiation. The quality of the services rendered is reflected by the excellent recovery. *See* Pa. R. Civ. P. 1717(2)-(3). This case for statutory damages under Article 9 of the UCC raised nuanced questions about auto finance law, as described *supra*. *See* Pa. R. Civ. P. 1717(4). Finally, as discussed, Class Counsel’s receipt of a fee was entirely contingent on success. Pa. R. Civ. P. 1717(5). All these factors, coupled with the virtual absence of objection, support final approval.

D. Reimbursement of Litigation Expenses is Warranted.

Plaintiffs seek reimbursement of expenses incurred by Class Counsel to prosecute this case to a successful conclusion. In *Gregory v. Harleysville Mut. Ins. Co.*, 542 A.2d 133, 136 (Pa. Super. 1988), the Superior Court held that under the “common fund doctrine,” class counsel is entitled to

²⁶ These factors include (1) the time and effort reasonably expended by the attorney in the litigation; (2) the quality of the services rendered; (3) the results achieved and benefits conferred upon the class or upon the public; (4) the magnitude, complexity and uniqueness of the litigation; and (5) whether the receipt of a fee was contingent on success. Pa. R. Civ. P. 1717; *see also Milkman*, 61 Pa. D. & C. 4th at 558.

reimbursement of expenses from the settlement fund created.

Here, the litigation expenses that have been advanced since 2017, and for which reimbursement is sought is \$134,727. Ex. 3, Flitter Cert. ¶ 35 (\$129,691 in expenses); Ex. 5, Sabatini Cert. ¶ 15 (\$4,733 in expenses); Ex. 6, Parham Cert. ¶ 27 (\$301 in expenses). This amount is less than the \$150,000 estimate provided in the Settlement and Settlement Notice. A summary of Class Counsel's expenses is set forth below:

Category	Amount (all firms)
Court Reporting Fees	\$7,618
Court Filing and Process Service Fees, etc.	\$1,804
Class Administration (initial class notice, website, etc.)	\$15,928
Expert and Other Professional Fees	\$27,358
Mediation Fees and Expenses	\$40,762
Research/Investigation Fees	\$2,526
Travel Expenses (Lodging, Airfare, Meals, Transportation, etc.)	\$32,234
Bulk Copy, Bulk Postage, Binding, FedEx, Courier Costs	\$4,280
Miscellaneous (document storage, supplies, etc.)	\$2,216
TOTAL CLASS COUNSEL EXPENSES	\$134,727

Ex. 3, Flitter Cert. ¶ 35. Line-item expenses can be made available if requested by the Court. These expenses were reasonable and necessary to prosecute the case and to Class Counsel's success in achieving the settlement. *Id.* Reimbursement of these expenses should be allowed.

VII. RELIEF

The proposed Settlement provides tens of millions of dollars in cash and debt relief that, in some ways, goes beyond what Plaintiffs could obtain through ongoing litigation. The Settlement falls well within the range of a fair, reasonable, and adequate resolution. More than 99.9% of the Settlement Class had no objection. Final Approval should be granted. An agreed-upon form of Order of Final Approval is submitted herewith.

Respectfully submitted:

Date: October 30, 2025

s/Cary L. Flitter

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Plaintiffs' Motion for Final Approval of Class Action Settlement, Memorandum of Law, Exhibits, and Certifications to be filed and served upon all counsel of record via ECF transmission and via email.

Date: October 30, 2025

s/Cary L. Flitter _____

CARY L. FLITTER

Counsel for Plaintiffs
and the Settlement Class

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Date: October 30, 2025

s/Cary L. Flitter _____

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