

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

KIMBERLY DENNIE and KIRK LAYNE,
individually, and on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:24-cv-00454-MOC-DCK

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD**

I. INTRODUCTION

Plaintiff Kirk Layne (“Plaintiff”), by and through Class Counsel, respectfully submits this Memorandum in Support of Plaintiff’s Unopposed Motion for Attorneys’ Fees, Costs, and Class Representative Service Award (the “Motion”).

After over two years of litigation, Plaintiff and Class Counsel successfully secured a class-wide resolution with Defendant Bank of America, N.A. (“BANA” or “Defendant”) that achieves meaningful monetary and injunctive relief for Settlement Class Members. BANA agreed to establish a Settlement Fund of \$2,000,000 in monetary relief, which represents **400%** of the maximum statutory damages available had Plaintiff prevailed at trial, given the EFTA’s statutory cap on class actions. *See* 15 U.S.C. § 1693m(a)(2)(B). Importantly, the Settlement does not release Settlement Class Members’ actual damages based on BANA’s denial of claims for unauthorized fund transfers. In addition to the Settlement Fund, BANA has separately agreed to pay Plaintiff \$1,774.43 in exchange for a general release of his claims for actual damages.

As another important Settlement benefit, BANA has agreed to provide meaningful prospective relief to the Settlement Class and all future BANA customers in that it has agreed to implement changes to the written explanation sent to Accountholders whose claims of unauthorized electronic fund transfers related to debit card and ATM transactions are denied.

Class Counsel obtained these benefits for the Settlement Class with hard work and persistence, investing hundreds of hours of time in this matter with no guarantee that Class Counsel would ever recover their costs or attorneys’ fees. And this case presented significant risk given the novelty of these specific EFTA claims, the limitations on statutory damages, and class certification challenges for claims for actual damages. Given the significant risk, the Settlement benefits described above are an outstanding result for the Settlement Class.

Consistent with standard class action practice and procedure, Class Counsel now respectfully move for an award of attorneys' fees in the amount of \$666,666.67 (33.33% of the Settlement Fund), reimbursement of reasonable litigation costs and expenses in the amount of \$22,976.07, payment of Settlement Administration Costs (estimated at \$93,486.64), and a Service Award of \$5,000 to Plaintiff in recognition of his efforts in serving as Class Representative. District courts in the Fourth Circuit prefer the percentage-of-the-fund method and routinely award fees of 33% of the common fund or higher.

Here, Class Counsel has litigated this case since May 2024, surviving a motion to dismiss that allowed Plaintiff's EFTA, breach of contract, breach of the implied covenant, and consumer protection claims to proceed, performing much of the discovery needed to prevail at class certification and trial, engaging in meet-and-confer conferences regarding the same, and ultimately settling at mediation with the assistance of a well-respected neutral, Judge Diane M. Welsh (Ret.).

Without Class Counsel's hard work, and that of the Class Representative, BANA's alleged practices would have likely gone without recompense. But because of Class Counsel's efforts, the Settlement Class will enjoy the benefit of meaningful retrospective monetary relief, and all current and future BANA accountholders will enjoy the benefits of the prospective relief provided by the Settlement. The requested fee will fairly compensate Class Counsel for their diligence, investment of resources, and most importantly, for the excellent results they achieved for the Settlement Class despite the risks and uncertainty of their claims.

Though not required under Fourth Circuit precedent, a lodestar cross-check confirms the reasonableness of Class Counsel's fee request. Class Counsel spent 592.4 hours in this case. When multiplied by their reasonable hourly rates, the lodestar is \$474,643.00. The requested fee, then, yields a multiplier of 1.4 on this lodestar, which is well within the acceptable range of multipliers

in this Circuit. In addition, Class Counsel also requests a Service Award for the Class Representative's efforts. For each of the reasons identified below, the instant Motion should be granted.

II. FACTUAL BACKGROUND

A. Litigation History

On May 6, 2024, Plaintiff Dennie filed a Class Action Complaint ("Complaint") in this Court against BANA arising from its handling of electronic fund transfers disputed by Accountholders as unauthorized and/or fraudulent. ECF No. 1. The Complaint alleged claims on behalf of a nationwide class and a California subclass and alleged breach of contract, breach of the implied covenant of good faith and fair dealing, violations of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.* (the "EFTA"), violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75.1-1 *et seq.*, and violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. *Id.*

Plaintiffs Dennie and Layne filed the operative Amended Complaint on July 19, 2024. ECF No. 14. On August 19, 2024, Defendant filed a motion to dismiss under Federal Rule 12(b)(6), arguing, *inter alia*, that Plaintiffs failed to state a claim upon which relief could be granted. ECF No. 21. The Court denied Defendant's motion to dismiss. ECF No. 29. Defendant answered the Amended Complaint on January 17, 2025. ECF No. 32.

The Parties then began written discovery, which included the exchange of Rule 26(a)(1) initial disclosures, requests for production and interrogatories, engaging in meet-and-confer conferences regarding the same, and the negotiation and entry of an ESI protocol and protective order. *See* Joint Declaration of Class Counsel, ("Joint Decl.") ¶ 3. After discussing the possibility of mediation, the Parties moved to stay the case and extend deadlines pending mediation, and the

Court granted that motion on October 20, 2025. ECF Nos. 45, 46; Joint Decl. ¶ 5.

On November 18, 2025, the Parties engaged in an in-person mediation with a JAMS neutral, Judge Diane M. Welsh (Ret.), a respected mediator experienced in mediating class actions alleging EFTA claims. Joint Decl. ¶ 6. Judge Welsh presided over an arm's-length mediation between capable and experienced class action counsel on both sides. *Id.* With Judge Welsh's assistance, the Parties agreed to the material terms of Settlement at the conclusion of their mediation session. *Id.* On December 2, 2025, the Parties filed a Notice of Settlement with the Court. ECF No. 47; Joint Decl. ¶ 7.

Following mediation, a settlement agreement was agreed to and sent to all Parties for execution. Joint Decl. ¶ 7. Although Plaintiff Layne signed that initial agreement, Plaintiff Dennie did not. *Id.* Due to Plaintiff Dennie's failure to review and execute the agreement, despite repeated promises to do so, Plaintiffs' Counsel moved to withdraw as her counsel and the Parties agreed to settle this case between Plaintiff Layne, as the sole class representative, and Defendant. *Id.*

Thereafter, the Parties finalized the Agreement, which was signed on June 17, 2026. Joint Decl. ¶ 8.

After finalizing the Agreement, Class Counsel drafted and filed an Unopposed Motion for Preliminary Approval of Class Action Settlement and Release on June 19, 2026. ECF No. 59. On July 14, 2026, after the Court thoroughly examined the Settlement in its entirety to ensure the Settlement was provisionally fair, adequate, and reasonable, this Court entered its Preliminary Approval Order conditionally approving the Settlement and provisionally certifying the Settlement Class for purposes of notice and settlement only. ECF No. 60; Joint Decl. ¶ 8.

Since that time, Class Counsel worked extensively with the Settlement Administrator to make sure Notice was disseminated properly. Joint Decl. ¶ 9. The outcome of the Notice Program

is detailed in Plaintiff's Motion for Final Approval to be filed in accordance with the Court's deadline.

B. The Preliminarily-Approved Settlement Terms

The key terms of the Settlement are briefly reiterated and summarized below:

- Agreed certification of the Settlement Class defined as all persons who submitted a claim or dispute to Bank of America concerning an electronic fund transfer related to a debit card or automated teller machine (ATM) transaction that the person claimed was unauthorized, which Bank of America denied from May 6, 2023, to the date of Preliminary Approval. Agreement § 1.42;
- Notice of the Settlement, and Notice Re-Mailing, to be sent directly to the Settlement Class Members by the Settlement Administrator via Email or Postcard, advising them of the terms of the Settlement, how to submit a Claim Form, and their right to object to or exclude themselves from the Settlement, and the establishment of a Settlement Website, which will include the Long Form Notice and the Claim Form. *Id.* at § 4.1;
- Payment by Defendant of a Settlement Fund in the amount of \$2,000,000. *Id.* at § 2.1(a);
- Payment to Settlement Class Members who file a valid and timely Claim Form a *pro rata* portion of the Net Settlement Fund in the form of either an account credit or check. *Id.* at § 2.1(f);
- Prospective relief to the Settlement Class by implementing changes to the written explanation sent to Accountholders whose claims of unauthorized electronic fund transfers related to debit card and ATM transactions are denied. *Id.* at § 2.2;
- Payment of Settlement Administration Costs. *Id.* at § 2.1(a);
- Payment of any Residual Funds to a *cy pres* recipient proposed by Plaintiff and subject to Court approval. *Id.* at § 2.1(o);
- Separate payment of \$1,774.43 to Plaintiff in exchange for Plaintiff's General Release. *Id.* at § 2.1(b);
- Payment of a Service Award to Plaintiff to compensate him for his role in serving as Class Representative. *Id.* at § 9.4;
- Payment by Defendant of Class Counsel's attorneys' fees of up to one-third (33.33%) of the Settlement Fund and reimbursement of expenses. *Id.* at § 9.1; and

- Agreement by Plaintiff and each of the Settlement Class Members to release and forever discharge the Released Parties of the Released Claims, exclusive of any claims for actual damages, that reasonably arise out of or relate to the claims alleged in the Action regarding BANA's alleged improper denial of a claim for reimbursement of unauthorized electronic fund transfers. *Id.* at §§ 1.36, 3.1.

III. ARGUMENT

Federal Rule of Civil Procedure 23(h) permits courts to award “reasonable attorneys’ fees and nontaxable costs that are authorized by law or the parties’ agreement.” In the Fourth Circuit, courts generally use two main methods to determine a reasonable attorney fee award in a class action: “the lodestar method and the percentage-of-recovery method.” *McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022). “The lodestar method calculates reasonable fees ‘by multiplying the number of reasonable hours expended times a reasonable rate[,]’” whereas, “[t]he percentage of-recovery method considers the portion of the total settlement fund that will go to attorneys’ fees.” *Id.*¹ Although the Fourth Circuit has not expressly adopted either method, district courts prefer the percentage method in common-fund cases. *Kelly v. Johns Hopkins Univ.*, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020) (collecting cases and finding that the percentage-of-the-fund method is “overwhelmingly preferred”); *see also Galloway v. Williams*, 2020 WL 7482191, at *5 (E.D. Va. Dec. 18, 2020) (“the favored method for calculating attorneys’ fees in common fund cases is the percentage of the fund method”); *Savani v. URS Prof'l Solutions LLC*, 121 F. Supp. 3d 564, 568 (D.S.C. 2015) (“the percentage-of-recovery approach...is the *preferred* approach to determine attorney’s fees.”).

And for good reason, as the percentage-of-the-fund method “better aligns the interests of class counsel and class members because it ties the attorneys’ award to the overall result achieved rather than the hours expended by the attorneys.” *In re Zetia (Ezetimibe) Antitrust Litig.*, 699 F.

¹ All internal citations, quotation marks, and alterations are omitted unless otherwise stated herein.

Supp. 3d 448, 461 (E.D. Va. 2023). Typically, “courts in this Circuit ‘will review the lodestar method to serve as a ‘cross-check’ to ensure that the percentage award is fair and reasonable.’” *Lamie v. LendingTree, LLC*, 2024 WL 811519, at *2 (W.D.N.C. Feb. 27, 2024). Ultimately, whatever method is used, the ultimate “goal” is to ensure “counsel is fairly compensated.” *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 575 (E.D. Va. 2016).

Here, the percentage-of-the-fund is the more appropriate method for calculating Class Counsel’s fees because, besides being onerous and difficult to perform, the lodestar method does not align the interests of Class Counsel with those of the Settlement Class. Rewarding results is the primary function of the percentage-of-the-fund approach, and this method aligns Class Counsel’s interest in being paid a fair fee with the interest of the Settlement Class and achieves a maximum recovery in the shortest amount of time required under the circumstances. Using the percentage method in this case will recognize Class Counsel’s efficiency and their efforts to achieve the highest possible recovery for the Settlement Class, and thus, is undoubtedly the favored method here.

While Plaintiff believes the Court should use the percentage-of-the-fund method, Plaintiff also demonstrates below that the requested fee award is reasonable under both approaches.

A. The Fee Request is Reasonable Under the Percentage-of-the-Fund Method

It is well-established that Class Counsel may petition the court for compensation relating to any benefits to the class that result from the attorneys’ efforts. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 480 (1980) (“[Settlement class members’] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.”). No doubt, “courts in the Fourth Circuit have frequently found that a percentage award of one-third of the Settlement Fund is within

the range of reasonable percentage of recovery[.]” *In re Zetia*, 699 F. Supp. 3d at 462; *see also Earls v. Forga Contracting, Inc.*, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020) (“Within the Fourth Circuit, contingent fees of roughly 33% are common.”); *Seaman v. Duke Univ.*, 2019 WL 4674758, at *3 (M.D.N.C. Sept. 25, 2019) (“Contingent fees of one-third are common in this circuit in cases of similar complexity.”); *Kelly*, 2020 WL 434473, at *3 (“Contingent fees of up to one-third are common in [the Fourth] circuit.”); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 465 (D. Md. 2014) (acknowledging “[f]ees awarded under ‘the percentage-of-recovery’ method in settlements under \$100 million have ranged from 15% to 40%.”).

As such, courts in this Circuit routinely award 33% or higher from a common fund as attorneys’ fees. *See, e.g., McAdams*, 26 F.4th at 162 (affirming 43% of common fund although “it approaches the upper limit of a permissible recovery...it isn’t unheard of.”); *Scott v. Family Dollar Stores, Inc.*, 2018 WL 1321048, at *5 (W.D.N.C. Mar. 14, 2018) (Cogburn Jr., J.) (awarding one-third fee of \$45 million common fund in employment class action); *Lamie*, 2024 WL 811519, at *2 (one-third of settlement fund in data breach class action was a “reasonable” attorney fee award); *Morris v. Bank of Am., N.A.*, 2022 WL 214130, at *3 (W.D.N.C. Jan. 24, 2022) (approving 33.33% of \$75 million settlement in class case against BANA); *Myers v. Loomis Armored US, LLC*, 2020 WL 1815902, at *6 (W.D.N.C. Apr. 9, 2020) (“Class Counsel’s request for one-third of the Gross Maximum Settlement Amount is reasonable.”); *Lambert v. Navy Federal Credit Union*, Case No. 1:19-cv-00103-LO-MSN, Dkt. No. 61 (E.D. Va. Apr. 8, 2021) (granting 33.33% of \$16 million settlement fund because “Class Counsel’s [which included some of same firms representing the Class here] expertise, perseverance, and skill allowed them to obtain an excellent result for the Settlement Class.”); *In re Celebrex (Celecoxib) Antitrust Litig.*, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018) (awarding 33% of \$94 million settlement in class action case); *In re Titanium*

Dioxide Antitrust Litig., 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding attorneys’ fees of 33% of \$163.5 million settlement).

When using the “percentage of the fund method,” district courts in this Circuit determine the reasonableness of the fee by analyzing the following seven factors:

(1) the results obtained for the Class; (2) objections by members of the Class to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases.

Rodriguez v. Riverstone Communities, LLC, 2024 WL 407483, at *1 (E.D.N.C. Feb. 2, 2024).

Each consideration supports Class Counsel’s requested fee.

1. Results Obtained for the Settlement Class.

In the Fourth Circuit, “the most critical factor in calculating a reasonable fee award is the degree of success obtained.” *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998). The benefits achieved in this Settlement are significant. BANA has agreed to a \$2,000,000 Settlement Fund. In the class action context, the EFTA caps statutory damages at \$500,000. 15 U.S.C. § 1693m(a)(2)(B). Thus, even if Plaintiff prevailed through trial, the Settlement Class would be entitled to, at most, \$500,000 in statutory damages. Therefore, the \$2,000,000 Settlement Fund delivers **400%** of the maximum statutory recovery available at trial—an exceptional result by any measure. Joint Decl. ¶ 10.

In addition to securing this significant monetary relief, the Settlement provides important forward-looking benefits. BANA has also agreed to implement meaningful reforms to its policies governing the handling of unauthorized transfer claims. Agreement, § 2.2. Specifically, BANA has agreed to revise its written communications sent to Accountholders whose claims of unauthorized EFTs related to debit card and ATM transactions are denied. *Id.* These reforms will

benefit Settlement Class Members (and many other BANA customers) for years to come. Courts recognize that such non-monetary benefits are properly considered when evaluating the reasonableness of a fee request. *See, e.g., Kruger v. Novant Health*, 2016 WL 6769066, at *3 (M.D.N.C. Sept. 29, 2016) (“Considering the non-monetary benefits and relief created by counsel’s efforts is important because it encourages attorneys to obtain meaningful affirmative relief” and finding defendant’s practice change “will result in participants and retirees receiving significant savings in the” future).

What’s more, no part of the Settlement Fund will revert to Defendant because, to the extent there are any residual funds remaining after the Settlement Administrator makes the final additional attempt to re-mail or re-issue a distribution check for updated addresses, the *cy pres* recipient proposed by Plaintiff will receive the final distribution. Agreement, § 2.1(n); (o).

Taken together, these benefits are particularly impressive given the legal hurdles Plaintiff faced. *See* Joint Decl. ¶¶ 12, 24. In sum, the Settlement provides immediate and certain relief, substantial monetary recovery, and systemic practice changes, all while avoiding the very real risk of protracted litigation yielding nothing. This first factor weighs heavily in favor of approving the requested fee award.

2. Objections by Settlement Class Members.

No objections to the Settlement have been filed to date, let alone to Class Counsel’s request for an attorneys’ fee and costs award or Plaintiff’s Service Award. Should any timely objections be received after the filing of this Motion, Class Counsel will file a separate response.

3. Quality, Skill, and Efficiency of Counsel.

As the Joint Declaration illustrates, Class Counsel has national reputations for their acquired skill in complex class action litigation, particularly in litigation involving the financial-

services industry. Joint Decl. ¶ 14. Class Counsel has successfully litigated and resolved many other consumer class actions against financial institutions, including class actions involving the handling of electronic fund transfers disputed by members as unauthorized and/or fraudulent, as well as overdraft fees, non-sufficient fund fees, and other types of wrongful fees, and has recovered hundreds of millions of dollars for those classes. *Id.* ¶ 15. Class Counsel’s experience, resources, and knowledge—especially in the specialized area of banking litigation—is extensive and formidable. *Id.* ¶¶ 14–19. Indeed, there are few if any firms in the nation with this expertise.

Here, Class Counsel leveraged that expertise to litigate this case and negotiate a favorable settlement for the Settlement Class. *Id.* ¶ 14. Because Class Counsel has litigated many complex consumer cases involving financial services, they were able to successfully litigate and settle this matter. *Id.* Moreover, Class Counsel litigated this action efficiently. Based in no small part on their skill and expertise, Class Counsel was able to negotiate a Settlement prior to a ruling on (and potential appeals related to) class certification, allowing Settlement Class Members to receive their settlement benefits now—without the risks, uncertainties, and delays associated with continued litigation of this case through judgment and potential appeals. The swift resolution of the case benefits the Settlement Class and emphasizes the skill and efficiency of Class Counsel. This factor also weighs in favor of the requested fee.

4. Complexity and Duration of the Litigation.

Next, this case was vigorously litigated for over two years and involved numerous complex issues of law and fact. Joint Decl. ¶¶ 1–8, 13. Although Plaintiff is confident in the merits of his claims in light of a few court decisions denying summary judgment on claims, like those at issue

here, challenging financial institutions' error resolution procedures,² the universe of favorable decisions on these claims is small as these claims are still relatively new.

Absent settlement, Plaintiff would still face significant obstacles to class certification and damages if successful at trial. To illustrate, Plaintiff would need to succeed in certifying a class despite BANA's arguments that an actual damages class could never be certified due to a lack of predominance on the elements of breach and damages. Joint Decl. ¶ 13. Completing discovery, briefing class certification, pre-trial proceedings, and summary judgment practice would require significant additional time and expense for both the Parties and the Court. *Id.* ¶ 13. Any rulings on class certification, summary judgment, or a trial verdict could also be subject to appellate review, could take years to resolve, and carry the real possibility of reversal. *Id.* Plainly, litigation "would likely continue for many years, especially given that EFTA law is not well settled." *Granados v. OnPoint Community Credit Union*, 2025 WL 1640204, at *7 (D. Or. June 10, 2025).

Accordingly, the substantial litigation risks and the inevitable delay in prosecuting this class action through trial strongly support approval of the requested fee award.

5. Risk of Nonpayment.

In this case, Class Counsel bore a significant risk of nonpayment as "eviden[ced] in the fact that they undertook this action on an entirely contingent fee basis." *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009). By doing so, Class Counsel assumed the significant

² See, e.g., *Williams v. Patelco Credit Union*, No. 24-cv-03464-LJC, 2026 WL 1097755, at *15 (N.D. Cal. Apr. 22, 2026) (denying defendant's motion for summary judgment as to whether defendant complied with the EFTA's reasonable investigation provision); *Garcia v. Navy Federal Credit Union*, No. 23-cv-2017-MMA-BLM, 2025 WL 1100898, at *19 (S.D. Cal. Apr. 14, 2025) (holding similarly); *Nguyen v. Wescom Central Credit Union*, No. SACV 22-01520-CJC (JDEx), 2023 WL 9019022, at *4 (C.D. Cal. Nov. 15, 2023) ("Summary judgment is inappropriate on Plaintiff's EFTA claim because a reasonable jury could determine that Defendant's investigation of Plaintiff's claim was not reasonable.").

risks involved with surviving dispositive motions, obtaining class certification, proving liability, causation, and damages, prevailing with experts, and litigating through trial and possible appeals, without any assurance of recompense for their labor or even reimbursement for their out-of-pocket expenses. Joint Decl. ¶¶ 20, 24.

Transferring the risk to Class Counsel affords access to the courts for some plaintiffs who might otherwise face difficulties, and it justifies awarding a “greater return than an hourly fee offers to induce lawyers to take on representation for which they might never be paid, and it makes sense to arrange these fees as a percentage of any recovery.” *Pellegrin v. Nat’l Union Fire Ins. (In re Abrams & Abrams, P.A.)*, 605 F.3d 238, 246 (4th Cir. 2010). Absent this Settlement, the Settlement Class and Class Counsel risked obtaining no recovery at all. The contingent nature of the case and risk borne by Class Counsel therefore supports their fee request.

6. Public Policy.

When assessing the reasonableness of a fee award in a class action settlement, the “court must strike the appropriate balance between promoting the important public policy that attorneys continue litigating class action cases that ‘vindicate rights that might otherwise go unprotected,’ and perpetuating the public perception that ‘class action plaintiffs’ lawyers are overcompensated for the work that they do.’” *Fangman v. Genuine Title, LLC*, 2017 WL 86010, at *6 (D. Md. Jan. 10, 2017). Attorneys should be incentivized to bring common fund cases like this Action where the alternative—thousands of individual small-dollar claims—would not justify the expense of separate litigation. See *In re Capital One Consumer Data Security Breach Litig.*, 2022 WL 17176495, at *5 (E.D. Va. Nov. 17, 2022) (“The class action device, when not abused, serves an important public interest in securing remedies for consumers who, for economic and practical reasons, would be unable to recover on an individual basis.”).

The settlement of this case and the attorneys’ fees requested do not raise serious public policy concerns, and no Settlement Class Members have presently objected to the requested fee. On balance, public policy also supports approval of the requested award.

7. Awards in Similar Cases.

Claims challenging financial institutions’ error resolution procedures like BANA’s are relatively limited in number. Nevertheless, in *Almon v. Conduent Business Services, LLC*, a case concerning various violations of the EFTA’s error resolution provisions, the Western District of Texas awarded class counsel **38%** of the total value of the settlement, which included a \$1.2 million cash fund, as “reasonable and consistent with awards in similar cases[.]” *See* No. 5:19-cv-01075-XR, 2024 WL 6998761 (W.D. Tex. Nov. 1, 2024); *see also* *Stephenson, et al. v. Navy Federal Credit Union*, No. 23-cv-1851-WQH-KSC, Dkt. 72 (S.D. Cal. Feb. 9, 2026) (awarding **33.33%** of \$1.7 million settlement fund combined with \$174,423 settlement administration costs in case alleging similar EFTA violations concerning financial institutions’ wrongful denials of reimbursements for unauthorized transactions).

Courts approving fee requests in other settlements concerning financial institutions’ challenged practices have approved fee awards similar to the one requested here. Indeed, the requested fee of 33.33% is in line with what has been routinely approved by judges who have ruled on the fairness of settlements in other cases concerning disputed banking practices. Courts regularly award fees in excess of 30% when awarding attorneys’ fees in similar financial services class action settlements. The following depicts such settlements nationwide, all of which resulted in fee awards either roughly at or significantly above the 33.33% that Class Counsel requests here:

Bank Fee Case Name	Percentage of the Fund Awarded
<i>Lopez v. JPMorgan Chase Bank, N.A.</i> , No.	44% of value of settlement, which includes

1:09-MD-02036-JLK (S.D. Fla.)	30% of \$110 million cash fund and 30% of value of practice changes
<i>Jacobs v. Huntington Bancshares Inc.</i> , No. 11-cv-000090 (Lake County Ohio)	40% of value of settlement, which includes 40% of \$8.975 million and 40% of \$7 million in debt forgiveness
<i>Farrell v. Bank of Am., N.A.</i> , 327 F.R.D. 422 (S.D. Cal. 2018), <i>aff'd sub nom. Farrell v. Bank of Am. Corp., N.A.</i> , 827 F. App'x 628 (9th Cir. 2020)	40% of \$37.5 million common fund
<i>Wolfgeher v. Commerce Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.) (Dkt. 3574)	38% of \$18.3 million common fund
<i>Nelson v. Rabobank, N.A.</i> , No. RIC 1101391 (Cal. Super. Ct.)	35.2% (\$750k fee includes % of practice changes)
<i>In re Checking Account Overdraft Litig.</i> , No. 1:09-MD-02036-JLK, 2020 WL 4586398 (S.D. Fla. Aug. 10, 2020)	35% of \$7.5 million
<i>Hawkins et al v. First Tenn. Bank, N.A.</i> (Cir. Ct. Tenn.)	35% of \$16.75 million
<i>Swift v. BancorpSouth</i> , No. 1:10-cv-00090-GRJ (N.D. Fla.)	35% of \$24 million
<i>Molina v. Intrust Bank, N.A.</i> , No. 10-CV-3686 (D. Kan.)	33% of \$2.7 million
<i>Morris v. Bank of Am., N.A.</i> , No. 3:18-CV-157-RJC-DSC, 2022 WL 214130 (W.D.N.C. Jan. 24, 2022)	33.33% of \$75 million
<i>Casto v. City National Bank, N.A.</i> , No. 10-C-1089 (Cir. Ct. W. Va.)	33.33% of \$3 million
<i>Schulte v. Fifth Third Bank</i> , No. 09-cv-6655 (N.D. Ill.)	33.33% of \$9.5 million
<i>Johnson v. Community Bank, N.A.</i> , No. 12-cv-01405-RDM (M.D. Pa.)	33.33% of \$2.5 million
<i>Bodnar v. Bank of America</i> , No. 5:14-cv-03224-EGS (E.D. Pa.)	33.33% of \$27 million
<i>Holt v. Community America Credit Union</i> , No. 4:19-CV-00629-FJG (W.D. Mo.)	33.33% of \$3 million
<i>White v. Members 1st Federal Credit Union</i> , Case No. 1:19-cv-00556-JEJ (M.D. Pa.)	33.33% of \$910,000
<i>Figueroa v. Capital One</i> , Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.)	33.33% of \$13 million

<i>Liggio v. Apple Federal Credit Union</i> , No. 1:18-cv-01059-LO-MSN (E.D. Va.)	33.33% of \$2.7 million
<i>Lambert v. Navy Federal Credit Union</i> , No. 1:19-cv-00103-LO-MSN (E.D. Va.)	33.33% of \$16 million
<i>Soto Melendez v. Banco Popular de Puerto Rico</i> , No. 3:20-cv-01057 (D.P.R.)	33.33% of \$5.5 million

As demonstrated above, the requested fee award is consistent with the fee awards approved in other bank fee class action cases.

In sum, the seven factors applied in the Fourth Circuit to assess the reasonableness of a fee award all weigh in favor of approving the requested award here.

B. The Fee Award Is Reasonable Based on the Lodestar Method

Although a lodestar cross-check is not required to confirm the fairness of an attorneys’ fee award, Class Counsel’s requested fees are also reasonable under that metric. Where the lodestar method is used as a mere cross-check, “the court need not exhaustively scrutinize counsels’ documented hours as it would if the lodestar method were used as the primary determiner of reasonableness.” *In re Zetia*, 699 F. Supp. 3d at 462. After examining the time and labor required, the Court may apply a multiplier to the lodestar. *Berry v. Schulman*, 807 F.3d 600, 617 n.9 (4th Cir. 2015) (noting that in using the lodestar method, “the district court multiplies the number of hours worked by a reasonable hourly rate. And it can then ‘adjust the lodestar figure using a “multiplier” derived from a number of factors, such as the benefit achieved for the class and the complexity of the case.’”).

Under the lodestar method, the Court’s analysis begins by calculating counsel’s lodestar—reasonable hourly rates multiplied by hours reasonably expended in the litigation. *Grissom v. The Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008). In the Fourth Circuit, twelve factors guide the Court’s “reasonableness” analysis when evaluating fee awards on a lodestar basis:

(1) the time and labor expended; (2) the novelty and difficulty of the questions

raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 n.28 (4th Cir. 1978) (the “*Barber* factors”).

The Court does not need to address all twelve factors independently “because such considerations are usually subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate.” *MTU Am. Inc. v. Swiftships Shipbuilders LLC*, 2015 WL 4139176, at *3 (E.D. Va. July 8, 2015). Of the factors, “the results obtained” is typically considered the most important. *Nigh v. Koons Buick Pontiac GMC, Inc.*, 478 F.3d 183, 190 (4th Cir. 2007). Here, all relevant factors support Class Counsel's requested fee award.

1. Class Counsel's Lodestar Reflects the Time, Labor, and Skill Reasonably Required to Prosecute this Complex Action.

Here, Class Counsel reasonably expended 592.4 total hours litigating this Action, including a reasonable amount of estimated time that will be spent from the date of this Motion forward, including to respond to class member inquiries, research and draft the final approval motion, prepare for and attend the final approval hearing, and supervise the calculation and distribution of settlement proceeds to hundreds of thousands of class members. Joint Decl. ¶¶ 21, 30–31, 38–39, 44–45, 50–51. Cognizant of the need to work efficiently, Class Counsel coordinated their work to avoid duplication of effort and assigned work to associates and paralegal personnel whenever possible and prudent to keep costs low. These hours were reasonably expended over the course of this litigation, which has been going on for over two years. Prior to filing, Class Counsel spent many hours researching and investigating the nature of any potential claims arising from BANA's investigation and handling of electronic fund transfers disputed by Accountholders as unauthorized

and/or fraudulent, banking regulations, the existence of consumer and regulatory complaints on the issue, interviewing numerous BANA accountholders who had their fraud claims denied, reviewing bank statements, denial letters, and subsequent appeals, BANA's disclosures, and researching legal precedent that could influence the result. *See* Joint Decl. ¶ 24

After filing the initial Complaint and the Amended Complaint, Class Counsel then spent many more hours engaged in thoroughly researching and briefing an opposition to Defendant's Motion to Dismiss, which the Court denied. Following this Court's decision on the Motion to Dismiss, discovery began in earnest. The Parties have exchanged numerous sets of written discovery in the form of interrogatories and requests for production of documents. The Parties also negotiated, and the Court entered, a stipulated protective order and ESI protocol. BANA produced substantial discovery—including thousands of pages of internal documents—which Class Counsel reviewed and analyzed in evaluating Plaintiff's claims and the strengths of BANA's defenses. Joint Decl. ¶¶ 2–4.

In addition to formal discovery, Class Counsel put substantial effort into gathering all necessary information to negotiate a settlement. Class Counsel met face-to-face for an in-person mediation with Judge Diane M. Welsh (Ret.) on November 18, 2025, which ultimately resulted in the Parties reaching a settlement in principle. *Id.* ¶ 6. Following the mediation and an agreement in principle, the Parties proceeded with limited confirmatory discovery related to class damages and spent several more months negotiating and finalizing the Agreement. *Id.* ¶ 8. Class Counsel then worked diligently with the Settlement Administrator to prepare Notice for the Settlement Class; moved for and obtained Preliminary Approval; consulted with and oversaw the Settlement Administrator's efforts to provide Notice to the Settlement Class and facilitate the Claims Process; and prepared this Motion. *Id.* ¶¶ 8–9.

In short, the hours Class Counsel spent litigating this Action reflect the efforts required to achieve such an excellent result.

2. Class Counsel's Hourly Rates are Reasonable.

In the attached Joint Declaration, Class Counsel provide their full lodestar calculations. Joint Decl. ¶¶ 21–23, 26–52.

An “attorney’s actual billing rate provides a starting point for purposes of establishing a prevailing market rate.” *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175, 178–79 (4th Cir. 1994). Here, Class Counsel include leading class action attorneys, especially in financial services litigation. *See* Joint Decl. ¶¶ 14–19. Each firm’s billing rate is explained in detail in the Joint Declaration attached hereto. Joint Decl. ¶¶ 27–28, 34–36, 42–43, 48–49. Class Counsel’s hourly rates are reasonable and customary complex litigation rates, and have routinely been approved by courts in banking litigation cases throughout the country. *See* Joint Decl. ¶ 28; Ex. 1–4 (firm resumes).

Further, “[c]ourts often recognize national market rates when deciding reasonable billing rates for complex class action litigation.” *In re Novant Health, Inc.*, 2024 WL 3028443, at *11 (M.D.N.C. June 17, 2024). Class Counsel’s rates used here are also in line with the rates charged by attorneys with similar experience and commonly awarded in complex class action litigation. *See, e.g., id.*, at *12 (recognizing customary billing rates of attorneys and professional staff ranging from \$200 to \$1,000 “are on par with rates previously approved in this circuit in complex class action litigation” in data privacy class action); *Brown*, 318 F.R.D. at 575-76 (in consumer class action, approving counsel’s hourly rates ranging from \$150-\$270 for paralegals and law clerks, \$300-\$520 for associates, and \$400-\$980 for partners as being “within the range of reasonable rates approved in the Fourth Circuit”); *In re Neustar, Inc. Sec. Litig.*, 2015 WL 8484438, at *10

(E.D. Va. Dec. 8, 2015) (approving rates of \$260-\$310 for paralegal services, \$420-\$700 for associates, and \$800-\$975 for partners); *Ciarciello v. Bioventus Inc.*, 760 F. Supp. 3d 377, 401-02 (M.D.N.C. 2024) (finding attorneys and professional staff’s customary rates from \$395 to \$1,250 were similar to those approved nationally in securities class action); *Phillips v. Triad Guar. Inc.*, 2016 WL 2636289, at *8 (M.D.N.C. May 9, 2016) (finding that partner billing rates of \$640 - \$880 per hour and associate billing rates of \$375 - \$550 per hour were “within the range of reasonableness” especially given that “the market for class action attorneys is nationwide and populated by very experienced attorneys with excellent credentials”).

3. The Requested Fee is Reasonable in Light of Class Counsel’s Lodestar.

Plaintiff seeks an award of \$666,666.67 in attorneys’ fees. Multiplying the hours reasonably expended by Class Counsel by their reasonable hourly rates, Class Counsel’s lodestar is approximately \$474,643.00. Joint Decl. ¶ 21. And when measured against Class Counsel’s requested fee, the current lodestar multiplier is 1.4. *Id.* ¶ 22. This multiplier is in line with multipliers approved in other class action settlements within the Fourth Circuit. *See, e.g., Kruger*, 2016 WL 6769066, at *5 (awarding requested fee representing “3.69 times the lodestar” was “within the range of reasonableness, as ‘courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney’s fee.’”); *Myers*, 2020 WL 1815902, at *7 (recognizing “[l]odestar multipliers of less than 2...have been found to be ‘modest’ in the Fourth Circuit” and further “support[ed] Class Counsel’s requested award”); *Halcom v. Genworth Life Ins. Co.*, 2022 WL 2317435, at *13 (E.D. Va. June 28, 2022) (holding class counsel’s “8.4x multiplier is acceptable and the requested attorney fees are reasonable”); *Skochin v. Genworth Financial, Inc.*, 2020 WL 6708388, at *10 (E.D. Va. Nov. 13, 2020) (finding 9.05 multiplier not unreasonable in lodestar cross-check analysis); *In re Peanut Farmers Antitrust Litig.*, 2021 WL

9494033, at *7 (E.D. Va. Aug. 10, 2021) (finding 2.92 multiplier was reasonable); *Spartanburg Regional Health Services District Inc. v. Hillenbrand Industries, Inc.*, 2006 WL 8446464, at *5 (D.S.C. Aug. 15, 2006) (approving fee award which resulted in multiplier above 6). Where, as here, Class Counsel, despite long odds, obtained an excellent result for the Settlement Class, which included meaningful and valuable prospective relief, it is appropriate to apply the requested reasonable multiplier.

Giving due consideration to all of the foregoing, should the Court decide to conduct a lodestar cross-check, such a cross-check supports the requested fee award.

4. The Remaining *Barber* Factors Support the Fee Award.

Class Counsel's requested fee is further reasonable when viewed under the remaining relevant *Barber* factors. Particularly salient here is the eighth factor—the amount in controversy and the results obtained. *See Jahagirdar v. Computer Haus NC, Inc.*, 2025 WL 1202543, at *5 (W.D.N.C. Mar. 31, 2025) (Cogburn Jr., J.) (“In the Fourth Circuit, ‘the most critical factor in calculating a reasonable fee award is the degree of success obtained.’”). As previously addressed, Class Counsel has achieved relief that provides substantial benefits for hundreds of thousands of accountholders, making the requested fee more than reasonable. Because many of the *Barber* factors were already discussed above, Class Counsel will not repeat that analysis here. Suffice it to say, each factor supports the requested fee award here.

Regarding the fourth factor, Class Counsel's opportunity in pressing the instant litigation was the lost opportunity to pursue other matters while pursuing this Action. Joint Decl. ¶ 24. *See Reynolds v. Fidelity Investments Inst. Op. Co., Inc.*, 2020 WL 92092, at *3 (M.D.N.C. Jan. 8, 2020) (“Class Counsel's law firms are small enough that the choice to take one case over another affects the firm's ability to accept other paying work, and the work involved in this case was extensive.”).

With respect to the tenth factor, while the Action may not be considered undesirable in the legal community, there are few attorneys with the level of expertise as Class Counsel in similar litigation challenging the EFTA practices of financial institutions. Joint Decl. ¶¶ 14–19.

Lastly, factor eleven supports the fee’s reasonableness because Class Counsel has had a professional relationship with Plaintiff Layne since 2024. Joint Decl. ¶ 24. Class Counsel has thus dedicated their efforts and expenses on behalf of Plaintiff in pursuit of the Action against BANA for over two years, which further supports the requested fee. *Cf. Jahagirdar*, 2025 WL 1202543, at *5 (“[A] first-time, one-time, and/or contingency relationship may render this factor irrelevant from the attorneys’ fee analysis, and therefore inconsequential.”).

Accordingly, the Court should conclude that a lodestar cross-check also supports Class Counsel’s requested fee award.

C. Class Counsel’s Costs and Expenses Incurred are Reasonable and Should Be Reimbursed from the Common Fund.

The requested fee award also includes Class Counsel’s reasonably incurred costs and expenses. As discussed above and in the accompanying declaration, Counsel has incurred **\$22,976.07** in costs litigating this case. Joint Decl. ¶ 23. “Costs that are ‘reasonable in nature and amount, may be reimbursed from the common fund.’” *Scott*, 2018 WL 1321048, at *5. Here, Class Counsel’s unreimbursed costs were reasonably and necessarily incurred in the prosecution and settlement of the Action, which include filing fees and service of process costs, e-discovery hosting fees, travel expenses, mediation fees, court fees, pro hac vice admissions, legal research costs, and reporting services. Joint Decl. ¶¶ 23, 32, 40, 46, 52. Each of these costs is deemed “reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.” *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988); *see, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *12 (approving litigation-related expenses

including “plaintiffs’ share of the mediator’s fee[,]” “filing fees, costs of service of process, attorneys’ court admissions,” and “necessary travel and expenses associated with the final settlement hearing” as “fair and reasonable”); *Kabore v. Anchor Staffing, Inc.*, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012) (“It is well-established that plaintiffs who are entitled to recover attorneys’ fees are also entitled to recover reasonable litigation-related expenses as part of their overall award.”). Class Counsel’s costs here all fall into these categories and were all reasonably incurred in pursuing the litigation. Joint Decl. ¶¶ 32, 40, 46, 52. As such, this Court should reimburse Class Counsel’s litigation costs in addition to their attorneys’ fee award.

In addition, the Court should approve the payment of the costs of notice and administration to the Settlement Administrator, Angeion Group, for the reasonable costs of mailing and e-mailing notice and administering the Settlement and the Settlement Fund. Courts routinely reimburse settlement administrator costs in class action settlements. *See, e.g., Singleton v. Domino’s Pizza, LLC*, 976 F. Supp. 2d 665, 690 (D. Md. 2013) (finding settlement administration costs incurred in disseminating notice to the class, facilitating the claims and opt-out process, and reviewing claims were “fair and reasonable”). These costs are necessary because of the notice requirements needed to notify Settlement Class Members of the Settlement, hold settlement funds in escrow, oversee the claims-submission process, and ultimately distribute the class recovery to Current and Former Accountholders of BANA.

D. The Requested Service Award is Reasonable.

Service awards are routinely granted “to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general.” *Galloway*, 2020 WL 7482191, at *6 (quoting *Berry*, 807 F.3d at 613). Plaintiff requests, and

BANA does not oppose, a Service Award of \$5,000.00 for his work litigating the Action and securing benefits for the Settlement Class, undertaken despite the financial and reputational risks at stake. Courts in this Circuit routinely award service awards in consumer class actions in similar amounts or higher. *See, e.g., Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 477 (W.D. Va. 2011) (finding \$5,000 to each class representative in consumer class action “reasonable” “[g]iven the active role each played in the litigation”); *Scott*, 2018 WL 1321048, at *5 (approving \$10,000 service awards for each of the nine class representatives in employment class action).

Here, the Court should similarly approve a \$5,000 Service Award in recognition of the Class Representative’s time and effort spent, and the results obtained for the absent Settlement Class Members. Plaintiff actively participated in the Action by gathering and producing key account documents, reviewing the Complaint, assisting in written discovery, regularly communicating with Class Counsel, and reviewing and approving the Settlement Agreement. Joint Decl. ¶ 54. He also assumed reputational risk by putting his name on a public complaint against his own bank, and bore a financial burden out of proportion to his individual stake in the matter. *Id.* ¶ 53. As such, Plaintiff should be commended for taking the initiative to protect the interests of BANA Accountholders—without his efforts, the Settlement Class would receive nothing.

IV. CONCLUSION

Plaintiff respectfully requests that the Court award attorneys’ fees to Class Counsel in the amount of \$666,666.67, award costs and expenses to Class Counsel in the amount of **\$22,976.07**, and award a Service Award in the amount of \$5,000.00 to the Class Representative, as agreed to by the Parties in the Settlement Agreement.

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Respectfully submitted,

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