



practices associated with reopening consumer checking accounts that had previously been closed. *See* ECF No. 1.

3. Following the commencement of this action, TD Bank's deadline to respond to the Complaint was extended so that the parties could engage in good faith negotiations aimed at resolving this matter. *See* ECF Nos. 12, 20, 22.

4. After these efforts were unsuccessful, the parties entered into a stipulation allowing Plaintiff to file an amended complaint and establishing a briefing schedule on TD Bank's motion to dismiss. *See* ECF No. 24. The stipulation was approved by the Court on December 22, 2020. *See* ECF No. 25.

5. On January 22, 2021, Plaintiff filed an Amended Complaint, adding Kathy Fogel and Stephanie Vil as additional plaintiffs and adding additional claims against TD Bank, including claims under the Fair Credit Reporting Act and the Electronic Fund Transfer Act. *See* ECF No. 28.

6. In response, on February 19, 2021, TD Bank filed a motion to dismiss. *See* ECF No. 32.

7. On September 27, 2021, after briefing on TD Bank's motion was complete, this Court issued a written Opinion (ECF No. 44) and entered an Order (ECF No. 45) denying in part, and granting in part, TD Bank's motion to dismiss. The Court also granted Plaintiffs leave to file a further amended pleading.

8. On October 11, 2021, Plaintiffs filed their Second Amended Complaint. *See* ECF No. 50.

9. In response, on November 24, 2021, TD Bank filed a motion to partially dismiss the Second Amended Complaint, attacking the new allegations contained in the Second

Amended Complaint. *See* ECF No. 56. Plaintiff filed their opposition to the request for partial dismissal on December 20, 2021 (ECF No. 63) and Defendant filed a reply brief on January 10, 2022 (ECF No. 65).

10. At the same time the parties were briefing TD Bank's request for partial dismissal, the parties participated in a telephonic scheduling conference with the Court, and negotiated and filed a confidentiality agreement and ESI protocol that were adopted by the Court. *See* ECF Nos. 55, 57, 58, 59, 60.

11. Thereafter, the parties engaged in substantial and meaningful discovery. Written discovery was served and responded to; a substantial number of documents were collected and produced; and the parties reviewed the responsive documents that were produced.

12. On July 8, 2022, the Court entered an Amended Scheduling Order at the parties' request. *See* ECF No. 79.

13. On December 19, 2022, after the parties had engaged in substantial discovery and reviewed detailed data concerning the re-opening of previously closed consumer checking accounts, they participated in mediation with Magistrate Judge Joel Schneider (ret.) of Montgomery McCracken Walker & Rhoads LLP. That mediation succeeded, with the parties reaching an agreement in principle to resolve this matter on a class-wide basis.

14. The terms were subsequently reduced to a Settlement Agreement and Release for which the parties sought preliminary approval.

15. On April 25, 2023, the Court issued preliminary approval of the proposed Settlement and instructed that notice of the Settlement be distributed to the potential members of the Settlement Class (ECF No. 96).

16. Notice was thereafter distributed to the 92,225 Notice Recipients in accordance with the Preliminary Approval Order and the Settlement.

17. Plaintiffs and Class Counsel filed their motion for final approval of class action settlement (ECF No. 100) on October 24, 2023, and their motion for attorneys' fees, expenses, and service awards (ECF No. 97) on August 23, 2023. No objections to the Settlement or to the fee motion were filed before the September 22, 2023 deadline set by the Court.

### **Settlement Terms**

18. Pursuant to the Settlement, TD Bank will pay \$4,900,000 to establish a fund which will provide cash benefits to the Settlement Class Members and also cover attorneys' fees and expenses, service awards, and notice and administration costs. All Settlement Class Members who have not opted out are eligible to file a claim to receive a cash payment under the Settlement.

19. The amount of each Settlement Class Member's payment will be calculated pursuant to the allocation method set forth in Paragraph 106 of the Settlement.

20. In conjunction with the Settlement, the Class will release TD Bank from all claims that were or could have been raised in this litigation, as set forth in Section XIV of the Settlement.

21. After this action was filed, TD Bank changed its "Personal Deposit Account Agreement" to disclose that after an account is closed, the Bank may in its sole discretion re-open an account to debit a transaction, recover a loss, reverse a provisional credit, or for any other reason.

### **Class Notice**

22. Based on the declarations of Elizabeth Enlund of Epiq Systems, Inc. (the appointed Settlement Administrator) (ECF No. 97-2 and ECF No. 100), the Court finds that the Settlement Class Members have been individually notified of the Settlement pursuant to the plan approved and directed by the Court's Preliminary Approval Order, with more than 94% of these notices being successfully delivered. The Court further finds that the Notice Program constituted the best practicable notice of the Settlement to the Settlement Class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1), Fed. R. Civ. P. 23(c)(2)(B), and 28 U.S.C. § 1715. Accordingly, the Court has jurisdiction over all Settlement Class Members for purposes of the Settlement.

### **Merit of Settlement**

23. The Court has reviewed the terms of the Settlement and noted the lack of any objections from Settlement Class Members. After consideration of all of the criteria set forth in Fed. R. Civ. P. 23(e)(2), as well as those set forth in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975), the Court finds that the Settlement is fair, reasonable, and adequate under the circumstances of this case and in the best interests of the Settlement Class. The Court specifically finds:

(a). Treatment of this litigation as a class action for settlement purposes is appropriate and the Settlement Class, as defined below, is appropriate, proper, and satisfies the criteria set forth in Federal Rule of Civil Procedure 23(e);

(b). There has been extensive discovery conducted in this litigation, and the parties and their counsel were thus well-informed about the relative strengths and weaknesses of their positions and were sufficiently prepared to determine the reasonableness of the Settlement;

(c). The terms of the Settlement provide substantial, direct, and prompt cash payments to the Settlement Class via a methodology that is simple and straightforward;

(d). The appointed Class Representative and Plaintiffs have provided outstanding representation to the Class;

(e). Class Counsel have zealously represented the Class, are experienced practitioners with significant experience in class action litigation, and have recommended approval of the Settlement;

(f). The future expense and likely duration of the litigation, its uncertainty of outcome, and the range of recovery if the litigation were to proceed support approval of the Settlement;

(g). The risks of establishing liability, establishing damages, and maintaining the class action through the trial, and appeal were great;

(h). Nothing indicates an absence of good faith or independence by Plaintiffs, Class Counsel, or TD Bank in negotiating the Settlement and indeed the Settlement was reached without collusion or fraud and at arm's length with the assistance of an experienced mediator;

(i). No Settlement Class member has objected to the Settlement;

(j). The Settlement treats Settlement Class Members equitably relative to each other; and

(k). The Cash Settlement Amount is well within the range of reasonableness in light of the best possible recovery.

24. The Court thus hereby finally approves in all respects the Settlement and finds that the Settlement's terms for allocating and distributing the Settlement Fund are in all respects fair, reasonable, and adequate, and are in the best interests of the Settlement Class.

### Certification of Class

25. The Court reaffirms its prior certification of the Settlement Class, consisting of:

All current and former holders of an Eligible Account that, between June 24, 2014 and the date of Preliminary Approval, was reopened by TD Bank without customer authorization after the Eligible Account's closure and had a debit, credit, or fee post to the Eligible Account after that reopening.<sup>1</sup>

26. Excluded from the Settlement Class are TD Bank, TD Bank's officers and directors at all relevant times, as well as members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which TD has or had a controlling interest. Also excluded from the Settlement Class are federal, state, and local governments and all agencies and subdivisions thereunder and any judge to whom this action is or has been assigned and any member of his immediate family. Finally, those Settlement Class Members who properly excluded themselves from the Settlement Class are also excluded. A list of those who properly excluded themselves is attached as Exhibit A.

27. The Court reaffirms that the Settlement Class meets all the requirements of Federal Rule of Procedure Rule 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; for purposes of settlement only, that the claims of the Class Representative are typical of absent Settlement Class Members; that the Class Representative and Class Counsel have and will fairly and adequately protect the interests of the Class; for purposes of settlement only, that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

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<sup>1</sup> For clarity, current and former holders of Eligible Accounts who consented to or requested the Eligible Account reopening are not members of the Settlement Class. Any current or former holders of jointly-held Eligible Accounts also are not members of the Settlement Class if one of the joint holders consented to or requested the reopening.

28. Plaintiff Judith Jimenez has adequately represented the Settlement Class and is appointed as Class Representative.

29. Golomb Spirt, P.C. and Webb, Klase & Lemond, LLC have adequately represented the Settlement Class and are appointed as Class Counsel.

**ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

30. Attorneys' Fees: The Court hereby grants to Class Counsel a fee in the amount of \$1,633,333.00, which the Court finds to be fully supported by the facts, record, and applicable law. This amount shall be paid from the Cash Settlement Amount.

31. The Court finds that TD Bank's agreement not to oppose Class Counsel's request for attorneys' fees and for reimbursement of costs and expenses was not negotiated while the parties were negotiating the other terms of the Settlement and that the agreement was not the product of collusion or fraud. The amount of attorneys' fees to be paid was negotiated only after the other terms of the Settlement had been agreed upon. The agreed-upon fee is warranted as it is reasonable under the applicable facts and law.

32. The requested fee is justified under the percentage-of-the-recovery method, which the Third Circuit has recommended be applied to common fund cases such as this matter. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 (3d Cir. 2011) (*en banc*); *Beltran v. SOS Ltd.*, 2023 WL 319895, at \*7-8 (D.N.J. Jan. 3, 2023), *report and recommendation adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023).

33. The fee represents one-third (33.33%) of the \$4,900,000 in cash made available to the Settlement Class, which the Court finds to be reasonable and consistent with awards in similar cases in this Circuit. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004) (finding an approximately 33% fee award of a \$44.5 million settlement fund to be



reasonable when compared with recovery percentages in other class actions); *Hall v. AT&T Mobility LLC*, 2010 WL 4053547, at \*22 (D.N.J. Oct. 13, 2010) (multiple factors, including “the fact that several courts in similar matters have awarded fees in this amount” warranted approval of one-third fee).

34. In approving the requested fee, the Court has carefully considered the factors listed in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000), and *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 339 (3d Cir. 1998), namely:

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

and

(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any “innovative” terms of settlement,

*See In re AT&T Corp.*, 455 F.3d 160, 165-66 (3d Cir. 2006) (citing the *Gunter* and *Prudential* factors). The record shows that these directly support the requested fee.

35. Expenses. The Court hereby grants to Class Counsel the requested reimbursement of \$15,455.64 in litigation expenses they have incurred during the prosecution of this case. This expense award is fully supported by the Settlement, the facts, the record, and the applicable law. *E.g.*, *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970); *Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004).

36. Administrative Costs. The court hereby approves of the payment of administrative costs from the Cash Settlement Amount, not to exceed \$375,000. The Court is satisfied that this amount is reasonable under the circumstances.

37. Service Awards. The Settlement allows, and Class Counsel requests, a Service Award to the Class Representative, Judith Jimenez, of \$8,000 and Service Awards to each of the other Plaintiffs, Kathy Fogel and Stephanie Vil, of \$5,000 each for their service. Courts often grant service awards “to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at \*20 (D.N.J. May 14, 2012); *McLennan v. LG Elecs. USA, Inc.*, 2012 WL 686020, at \*1 (D.N.J. Mar. 2, 2012). The Court finds that payment of these service awards is warranted and approved in this case in light of the Class Representative’s and Plaintiffs’ substantial work on behalf of the Settlement Class and the risks they took in bringing suit.

38. The awarded fees and expenses shall be paid to Class Counsel and the service awards shall be paid to the Class Representative and Plaintiffs in accordance with the terms of the Settlement.

#### **Releases**

39. Pursuant to, and as more fully described in Section XIV of the Settlement, as of the Effective Date of the Settlement Agreement, the releasing parties shall be deemed to have and, by operation of this final order and judgment shall have, fully and irrevocably released and forever discharged the released parties from the claims identified in paragraphs 116 and 117 of the Settlement.

**Cy Pres**

40. In the event that there are any residual funds in the Settlement Fund Account after the distributions required by Section XII of the Agreement, such funds shall be distributed to Settlement Class Members who have not opted out and who previously cashed their checks through a secondary, pro-rata distribution of the residual less the cost of the secondary distribution. If the residual amount less the cost of the secondary distribution is less than \$100,000, the funds may be distributed to a *cy pres* program as agreed on by the parties and submitted to the Court for approval in accordance with Section XIII of the Settlement.

**Dismissal and Final Judgment**

41. The Court hereby DISMISSES this action WITH PREJUDICE as to the named Plaintiffs, all Settlement Class Members who have not opted out, and TD Bank, and the parties are directed to take the necessary steps to effectuate the terms of the Settlement. The parties shall bear their own costs except as provided by the Settlement.

42. No Class Representative or Settlement Class Member who has not opted out, either directly, representatively, or in any other capacity, shall commence, continue, or prosecute any action or proceeding in any court or tribunal asserting any of the claims that have been released under the Settlement, and they are hereby permanently enjoined from so proceeding, including during the pendency of any appeal from this Final Approval Order.

43. Pursuant to the Settlement, and there being no just reason for delay, the Court hereby ENTERS FINAL JUDGMENT, which the Clerk of Court is DIRECTED to immediately enter.

44. Without affecting the finality of this judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation,

enforcement, and interpretation of the Settlement and of this final order and judgment, to protect and effectuate this final order and judgment, and for any other necessary purpose for a period of fifteen (15) months from this Order. The Class Representative, Plaintiffs, Defendant, and each Settlement Class member who has not opted out (including any objectors, though there are none) are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding, or dispute arising out of or relating to the Settlement, including the exhibits thereto, and only for such purposes. Without limiting the generality of the foregoing, and without affecting the finality of this final order and judgment, the Court retains exclusive jurisdiction over any such suit, action, or proceeding. Solely for purposes of such suit, action, or proceeding, to the fullest extent they may effectively do so under applicable law, the parties hereto are deemed to have irrecoverably waived and agreed not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

#### **Use of this Order**

45. That the parties have reached a Settlement and participated in proceedings related to the Settlement should not be (a) offered or received as evidence of a presumption, concession, or an admission by any party, (b) offered or received as evidence of a presumption, concession, or any admission of any liability, fault, or wrongdoing; provided, however, that reference may be made to the Settlement as may be necessary to effectuate or enforce its provisions.

46. In the event that the Settlement does not become effective according to its terms, this order and final judgment shall be rendered null and void as provided by the Settlement, shall

be vacated, and all orders entered and releases delivered in connection with the Settlement shall be null and void to the extent provided by and in accordance with the Settlement.

**Conclusion**

47. For the reasons set forth herein, the Court hereby (a) GRANTS final approval of the Settlement; (b) AFFIRMS its prior certification of the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3) and (e); (c) finds the notice satisfied the requirements of Rule 23, due process, and all other legal requirements; (d) approves Class Counsel's requests for attorneys' fees of \$1,633,333.00, expenses of \$15,455.64, and service awards of \$8,000 to Judith Jimenez and \$5,000 each to Kathy Fogel and Stephanie Vil; (e) DISMISSES this action WITH PREJUDICE as to all parties and Settlement Class Members who have not opted out; and (f) ENTERS FINAL JUDGMENT. The Parties and the Settlement Administrator are directed to carry out the Settlement according to its terms.

**IT IS SO ORDERED**, this the 9th day of November, 2023.

s/ Noel L. Hillman  
Hon. Noel L. Hillman  
United States District Judge

**Exhibit A**

**List of Excluded Class Members**

1. MELISSA K. CASIMIR
2. ROSA MARTINEZ