IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CASE NO. 6:15-MN-02613-BHH
ALL CASES

IN RE: TD BANK, N.A. DEBIT CARD OVERDRAFT FEE LITIGATION

MDL No. 2613

FINAL ORDER AND JUDGMENT

This matter is before the Court on Plaintiffs' motion for final approval of class action settlement (ECF No. 220) and Plaintiffs' application for attorneys' fees, reimbursement of expenses, and service awards (ECF No. 221). Having considered the written submissions and after oral argument at hearing on January 8, 2020, the Court hereby grants both motions for the reasons set forth below.[1]

BACKGROUND

On August 21, 2013, Plaintiffs James King, Jr. and Jan Kasmir filed *King v. TD Bank, N.A.*, Case No. 6:13-cv-02264-BHH ("*King*"), the first of several putative class action lawsuits against TD Bank alleging improper assessment and collection of overdraft fees. *King* also asserted claims concerning the overdraft practices of Carolina First Bank and Mercantile Bank, which TD Bank acquired in 2010. On February 24, 2014, *Padilla v. TD Bank, N.A.*, No. 2:14-cv-1276 ("*Padilla*"), was filed in the United States District Court for the Eastern District of Pennsylvania. Several other cases followed: *Hurel v. TD Bank, N.A.*, No. 1:14-cv-07621 ("*Hurel*") (District of New Jersey); *Koshgarian v. TD Bank, N.A.*,

[1] Unless specifically modified, all capitalized terms used herein shall have the meaning set forth in the Settlement Agreement and Release between the Parties. (ECF No. 217-1.)

No. 14-cv-10250 ("*Koshgarian*") (Southern District of New York); *Goodall v. TD Bank, N.A.*, No. 15-cv-00023 ("*Goodall*") (Middle District of Florida); *Klein v. TD Bank, N.A.*, No. 15-cv-00179 ("*Klein*") (District of New Jersey); *Ucciferri v. TD Bank, N.A.*, No. 15-cv-00424 ("*Ucciferri*") (District of New Jersey); *Austin v. TD Bank, N.A.*, No. 15-cv-00088 ("*Austin*") (District of Connecticut); *Robinson v. TD Bank, N.A.*, No. 15-cv-60469 ("*Robinson*") (Southern District of Florida); and *Robinson v. TD Bank, N.A.,* No. 15-cv-60476 ("*Robinson II*") (Southern District of Florida).

In April 2015, pursuant to an order of the Judicial Panel for Multi-District Litigation ("JPML"), the majority of the cases referenced above were transferred to this Court and joined with *King* under the MDL caption *In Re: TD Bank, N.A. Debit Card Overdraft Fee Litigation*, No. 6:15-mn-02613-BHH ("MDL 2613"). (ECF No. 6.) Eventually, all of the cases were made a part of MDL 2613. The following month, the Court appointed E. Adam Webb and Richard McCune as Plaintiffs' Co-Lead Counsel; Richard Golomb, Hassan Zavereei, Joseph Kohn, Francis Flynn, and John Hargrove as Plaintiffs' Executive Committee; and Mark Tanenbaum and William Hopkins as Plaintiffs' Liaison Counsel. (ECF No. 28.)

On June 19, 2015, Plaintiffs filed a Consolidated Amended Class Action Complaint alleging improper assessment and collection of overdraft fees and seeking monetary damages, restitution, and equitable relief. (ECF No. 37.) In August 2015, TD Bank filed a motion to dismiss the Consolidated Amended Class Action Complaint, which Plaintiffs opposed. The Court issued an order granting in part and denying in part TD Bank's motion to dismiss. (ECF No. 68.)

Following that ruling, the parties aggressively pursued discovery. TD Bank

ultimately produced over one million pages of documents, in addition to voluminous data files and spreadsheets. Dozens of depositions were taken, including of the named Plaintiffs and TD Bank executives, witnesses, and four experts. The depositions required national and international travel because the Plaintiffs are spread out across the United States and TD Bank's executives are located in the northeast and Canada.

After a grueling discovery schedule over nine months, Plaintiffs moved for class certification on September 22, 2016, which TD Bank opposed. In May 2017, the Court heard oral argument on class certification and subsequently issued an order granting in part and denying in part Plaintiffs' motion for class certification. (ECF No. 169.) The Court certified two classes: (1) the TD Sufficient Funds Class; and (2) the South Financial Class. The Court also certified seventeen (17) subclasses of the TD Sufficient Funds Class and nine subclasses of the South Financial Class.[2] (ECF No. 169.) The Court also eventually certified the Electronic Funds Transfer Act ("EFTA") Class, to the extent that class asserted a claim for statutory damages, following two revisions of the EFTA Class definition. (*See* ECF Nos. 174, 184.) Concerning the scope of the certified classes, the parties filed respective statements with the Court, with Plaintiffs contending that the TD Sufficient Funds Class includes business accounts. (*See* ECF Nos. 204-05.) The Court then issued an order limiting the certified classes in this case to consumer checking accounts only. (ECF No. 206.)

Two additional cases were transferred into MDL 2613. On May 31, 2017, the JMPL transferred *Dorsey v. TD Bank, N.A.*, No. 1:17-cv-00074 (D.N.J.), and approximately one

[2] TD Bank filed a petition for leave to appeal the Court's class certification order pursuant to Federal Rule of Civil Procedure 23(f). The United States Court of Appeals for the Fourth Circuit denied TD Bank's petition. (ECF No. 181.)

year later, it also transferred *Lawrence v. TD Bank, N.A.,* No. 1:17-cv-12583 (D.N.J.).

Dorsey, like the *Robinson II* case that was already included in MDL 2613, alleged that TD's sustained overdraft fee was usurious. TD filed a motion to dismiss *Dorsey* which the Court granted in February 2018. (ECF No. 171.) That order is on appeal to the Fourth Circuit, which has stayed the matter pending this Court's consideration of the settlement.

While *Lawrence* also deals with overdraft fees, it focuses exclusively on TD's practice of charging overdraft fees on ride-share transactions (Uber and Lyft) when a customer has not opted-in to TD's overdraft program (TD Debit Card Advance). Plaintiff Lawrence alleged that such fees violate the plain language of the account agreements and state law. TD moved to dismiss *Lawrence* on various grounds. The motion was denied as moot following the announcement of the settlement. *Lawrence*, No. 6:18-cv-00982-BHH, ECF No. 27.

Over the long course of this litigation, the parties participated in four separate mediations. Leading up to each of the mediations, voluminous data was provided by TD Bank which was analyzed by experts for both sides. This work was updated for subsequent mediations.

The first mediation occurred after the ruling on the motion to dismiss but prior to class certification, on May 10, 2016, before Professor Eric Green of Resolutions LLC—an experienced mediator who is particularly knowledgeable regarding overdraft fee litigation—at his offices in Boston. The mediation was unsuccessful.

After all briefs were submitted on class certification, but prior to the Court's ruling, the parties participated in a two-day mediation with Magistrate Judge Mary Gordon Baker on March 8 and 9, 2017. The mediation adjourned without a resolution.

After class certification was granted and TD Bank's Rule 23(f) petition to appeal the class certification order was denied, the parties participated in another mediation with Magistrate Judge Baker on October 10, 2018. This mediation was also adjourned without resolution.

The parties initiated renewed settlement discussions in late 2018, which resulted in the scheduling of the fourth and final mediation. The final mediation occurred on January 23, 2019, again mediated by Professor Green. As a result, on February 1, 2019, the parties executed a Settlement Term Sheet memorializing the material terms of the settlement and filed a Joint Notice of Settlement with the Court. On June 13, 2019, Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement and Incorporated Memorandum of Law. On June 26, 2019, this Court granted Plaintiffs' motion and directed that the Notice Program be implemented. (*See* ECF No. 218.)

Pursuant to the plan previously approved by the Court, notice has been disseminated to the Classes. (*See* ECF No. 220-1.) Out of the millions of class members who were given notice, only one objected to the proposed settlement. (*See* ECF No. 224.) Eleven class members timely sought to opt out of the proposed settlement, with nine submitting complete forms and two submitting incomplete forms. (*See* ECF No. 225-1.) The Court is informed that the parties have agreed to consider all eleven exclusion requests to be effective. One additional class account (held by joint account holders) requested opt-out after the applicable deadline.

SETTLEMENT TERMS

Under the terms and conditions of the settlement, Plaintiffs and the six proposed Settlement Classes fully, finally, and forever resolve, discharge, and release their claims

against TD Bank in exchange for $70,000,000 of total relief for the Settlement Classes. TD Bank will pay $43,000,000 as monetary compensation to the six Settlement Classes (the "Settlement Payment Amount" defined in the Settlement Agreement). (Settlement Agreement ¶ 102, ECF No. 217-1.) The monetary compensation will be allocated to the six Settlement Classes as set forth in the Settlement Agreement. (*Id.* ¶ 137.) The Settlement Payment Amount is inclusive of all monetary payments to the Settlement Classes; all fees, costs, charges, and expenses of Notice and administration of the settlement; all attorneys' fees, costs, and expenses awarded to Class Counsel; and all Service Awards to the Class Representatives (as identified and appointed herein) for their work on behalf of the Settlement Classes. (*Id.* ¶ 111.) The Settlement Payment Amount was deposited by TD Bank into an escrow account to create the Settlement Fund. (*Id.* ¶ 136.) No settlement proceeds will revert to TD Bank.

In addition to the Settlement Payment Amount, TD Bank will also provide $27,000,000 in the form of reductions to the outstanding balances of those members of the Settlement Classes whose Accounts were closed with amounts owed to TD Bank (the "Overdraft Forgiveness Amount" defined in the Settlement Agreement). (*Id.* ¶ 82.) The Overdraft Forgiveness Amount will be allocated to three of the six Settlement Classes as set forth in the Settlement Agreement. (*Id.* at ¶ 141.) The Overdraft Forgiveness Amount shall serve to reduce the amounts that members of the Settlement Classes owe TD Bank for overdraft fees, sustained overdraft fees, other TD Bank fees, and overdrafts the Bank charged but for which the Bank was not reimbursed. The Overdraft Forgiveness Amount allocated to each Class will be distributed in such a manner as to reduce the amount owed to TD Bank to below $75.00, which is the threshold TD uses for reporting delinquent

accounts to ChexSystems. As part of the settlement, TD Bank will inform ChexSystems to remove reporting for each Account that has its amount owed to TD Bank reduced to below $75 as a result of applying the Overdraft Forgiveness Amount. (*Id.* ¶ 112.)

APPROVAL OF CLASS NOTICE

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari (ECF No. 225-1), the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23. The Court also finds that the requirements of 28 U.S.C. § 1715 have been satisfied.

APPROVAL OF THE SETTLEMENT

The Court finds that the parties' settlement is fair, reasonable, and adequate in accordance with Rule 23, was reached without collusion or fraud, and satisfies all of the requirements for final approval. In so doing, the Court has considered each of the following criteria in Rule 23(e) and hereby finds that (1) the Class Representatives and Class Counsel have adequately represented the Settlement Classes; (2) the settlement was negotiated at arm's length; (3) the relief provided for the Settlement Classes is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of the proposed methods of distributing relief to the Settlement Classes, the terms of the proposed award of attorneys' fees, and any agreement required to be identified under Rule 23(e)(3); and (4) the proposal treats Settlement Class Members equitably relative to each other.

The Court also finds, based on the well-developed record, that Class Counsel were well prepared, understood the merits of the case, and had sufficient information to evaluate the proposed settlement. While the percentage of potential recovery varies depending on which of the Settlement Classes is at issue, the Court finds that Class Counsel settled for a fair, reasonable, and adequate percentage of the overdraft fees that likely could be recovered for each class if the case went to trial. Therefore, the settlement is a good result for the Settlement Classes considering the significant risks and substantial expense of continued litigation, particularly since the Settlement Classes will receive the benefits of the settlement promptly.

In making these findings, the Court has relied upon: (1) its knowledge of the litigation and the risks faced by Plaintiffs; (2) the terms of the Settlement Agreement and the benefits it makes available to the Settlement Classes; (3) the motions and supporting papers submitted by Plaintiffs; (4) the opinions of Class Counsel and the Class Representatives; and (5) the opinion of Professor Brian T. Fitzpatrick, who, after studying Class Counsel's fee request, concluded it is well within the mainstream of fee awards in overdraft fee cases.

Accordingly, pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves, in all respects, the proposed settlement and finds that the Settlement Agreement and the allocation plan for distributing the settlement funds are in all respects fair, reasonable, and adequate, and are in the best interests of the Settlement Classes.

CERTIFICATION OF THE SETTLEMENT CLASSES

The Court hereby certifies, for settlement purposes only, the following Settlement Classes:

TD Available Balance Consumer Class
All holders of a TD Bank Personal Account, who, from August 16, 2010 to and including April 22, 2016, incurred one or more Overdraft Fees as a result of TD Bank's practice of assessing Overdraft Fees based on the Account's Available Balance rather than its Ledger Balance;

South Financial Class
All holders of a Carolina First Bank/Mercantile Bank Account, who, from December 1, 2007 to and including June 20, 2011, incurred one or more Overdraft Fees as a result of Carolina First Bank's and/or Mercantile Bank's practices of (1) High-to-Low Posting, or (2) assessing Overdraft Fees based on the Account's Available Balance rather than its Ledger Balance;

Regulation E Class
All holders of a TD Bank Personal Account who were assessed one or more Overdraft Fees for an ATM or One-Time Debit Card Transaction from August 16, 2010 to and including June 26, 2019;

Usury Class
All holders of a TD Bank Personal or Business Account who, from March 8, 2013 to and including June 26, 2019, incurred one or more Sustained Overdraft Fees;

Uber/Lyft Class
All holders of a TD Bank Personal Account who, from December 5, 2011 to and including June 26, 2019, incurred one or more Overdraft Fees on Uber or Lyft ride-sharing transactions while not enrolled in TD Debit Card Advance;

and

TD Available Balance Business Class
All holders of a TD Bank Business Account who, from August 16, 2010 to and including June 26, 2019, incurred one or more Overdraft Fees as a result of TD Bank's practice of assessing Overdraft Fees based on the Account's Available Balance rather than its Ledger Balance.

Excluded from the Settlement Classes are all current TD Bank employees, officers, and directors and all TD Bank account holders who were members in the Settlement Class in *In re Checking Account Overdraft Litigation*, No. 09-MD-2036 (S.D. Fla.), who did not incur one or more Overdraft Fees after September 20, 2012. Also excluded are the eleven class members who successfully excluded themselves by opting out in accordance with

the provisions set forth in the Notice.[3]

The Court finds that all the prerequisites of Rule 23(a) and (b)(3) have been satisfied for certification of the Settlement Classes for settlement purposes only. The Settlement Classes, which collectively include millions of current and former customers, are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Settlement Classes; the claims of the Class Representatives are typical of the claims of the members of the Settlement Classes; the Class Representatives and Settlement Class Counsel have and will adequately and fairly protect the interests of the Settlement Classes; and the common questions of law and fact predominate over questions affecting only individual members of the Settlement Classes, rendering the Settlement Classes sufficiently cohesive to warrant a class settlement.

In making all of the foregoing findings, the Court has exercised its discretion in certifying the Settlement Classes. Defendant TD Bank has preserved all its defenses and objections against and rights to oppose certification of a litigation class if the settlement does not become final and effective in accordance with the terms of the Settlement Agreement. Neither this Order, nor the Settlement Agreement, shall constitute any evidence or admission of fault, liability, or wrongdoing of any kind whatsoever by Defendant, or an admission regarding the propriety of certification of any particular class for litigation purposes, nor shall this Order be offered or received in evidence in any proceeding relating to the certification of a class.

Jan Kasmir, James King, Jr., Joanne McLain, Michael McLain, Geoffrey Grant, Keith Irwin, Shawn Balensiefen, Elizabeth Goodall, Kendall Robinson, Ronald Ryan,

[3] The names of the eleven class members who timely excluded themselves from the settlement are attached to this Order as Exhibit A.

Tashina Drakeford, John Koshgarian, John Hurel, Frederick Klein, Dawn Ucciferri, Caroline Austin, Brittney Lawrence, Emilio Padilla, Sheila Padilla, Jennifer Bond, John Laflamme, Jonathan Young, Brittney Brooker, Marilyn Vailati, and Shaina Dorsey are hereby appointed as Class Representatives of the Settlement Classes. Co-Lead Counsel E. Adam Webb and Richard D. McCune have adequately represented the Settlement Classes and are hereby appointed as Settlement Class Counsel.

OBJECTION OF AMOS JONES

Amos Jones, one of the named Plaintiffs in this case, filed an objection to the settlement. (*See* ECF No. 224.) The fact that one of the named Plaintiffs filed an objection is not a valid basis to reject an otherwise acceptable class action settlement. *Charron v. Wiener*, 731 F.3d 241, 253 (2d Cir. 2013) ("[T]he assent of class representatives is not essential to the settlement, as long as the Rule 23 requirements are met."); *Elliot v. Sperry Rand Corp.*, 680 F.2d 1225, 1226, 1228 (8th Cir. 1982); *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 508 (5th Cir. 1981); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 (4th Cir. 1975). "Class counsel is supposed to represent the class, not the named parties: that the named parties objected does not prove the settlement was unfair or that the class counsel acted improperly." *Laskey v. Int'l Union*, 638 F.2d 954, 956 (6th Cir. 1981).

At the outset, the Court notes that, based upon the information provided in Mr. Jones' objection, he is a member of the TD Available Balance Business Class only. (*See* ECF No. 224 at 10.) Therefore, Mr. Jones has standing to challenge only the portion of the settlement that was allocated to that class. *See, e.g.*, *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 151–52 (E.D. La. 2013) (noting that objectors must be members of specific class to raise a valid objection). Because Mr. Jones' standing is

limited to the TD Available Balance Business Class, his complaints regarding the other five Settlement Classes are dismissed for lack of standing.

Beyond Mr. Jones' limited standing, none of the objections he raises support rejecting the proposed Settlement Agreement with respect to the TD Available Balance Business Class. First, based on the materials submitted by the parties it is clear that Mr. Jones' objection is driven, at least in part, by a misapprehension of the scope of claims at issue in this multidistrict litigation. Mr. Jones contends that the $70,000,000 settlement amount is insufficient because it does not account for the way in which TD Bank's overdraft practices have disproportionately impacted poor people and racial minorities. (*See* ECF No. 224 at 6–7.) While Mr. Jones' motive to advocate for disadvantaged groups is admirable—particularly in light of his apparent professional aspirations and record representing disadvantaged clients in unrelated legal matters (*see generally* Reply in Supp. of Objection & Attachs., ECF Nos. 227–30)—the fact that Mr. Jones personally believes that TD Bank "need[s] to be made to pay considerably more" (ECF No. 224 at 7) is not a proper basis for overturning the settlement. The Court has concluded that the Settlement Agreement is fair and reasonable given the scope of the allegations in this case, the potential defenses, and the risks for all parties attendant to proceeding with a trial. Mr. Jones' desire to see TD Bank "pay considerably more" is not a valid basis for an objection. Further, there is no mechanism to punish TD Bank through a settlement.

Second, Mr. Jones references TD Bank's denial of his application for a small business loan to help expand his law practice. (*See id.* at 6.) This settlement deals with TD Bank's assessment of overdraft fees, not the processing and approval of small business loans. Mr. Jones' discussion of the small business loan denial is irrelevant to

this matter and provides no basis to set aside the settlement.

Third, the fact that Mr. Jones was the only representative from the District of Columbia does not persuade the Court that claims relating to residents of the District should be severed and excluded from the settlement. It is not necessary, for purposes of this settlement, that there be a representative from each jurisdiction. *See, e.g.*, *In re M3 Power Razor Sys. Mktg. & Sales Practice Litig.*, 270 F.R.D. 45, 55 (D. Mass. 2010) (approving settlement class even though the representative plaintiffs were not residents of each of the covered states).

Accordingly, Mr. Jones' objection is overruled.

ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

The Court hereby grants to Class Counsel a fee in the amount of $21,000,000, which the Court finds to be fully supported by the facts, the record, and the applicable law. This amount shall be paid from the Settlement Fund.[4]

The requested fee is justified under the percentage of the common fund methodology described in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978). The fee represents 30 percent of the $70 million total settlement value, a percentage which is less than percentages often awarded in common fund class action settlements in this Circuit. *E.g.*, *Anselmo v. W. Paces Hotel Grp., LLC*, No. 9:09-CV-02466-DCN, 2012 WL 5868887, at *3 (D.S.C. Nov. 19, 2012) ("The approximate 33% for fees provided here is reasonable in light of all pertinent factors, including precedent and beneficial results obtained."); *George v. Duke Energy Ret. Cash Balance Plan*, No. 8:06-CV-00373-JMC,

[4] The Court notes that Mr. Jones' objection explicitly stated that he was not objecting to Class Counsel's request for attorneys' fees under the Settlement Agreement. (*See* ECF No. 224 at 2.) Therefore, there is no objection to Class Counsel's fee request.

2011 WL 13218031, at *10 (D.S.C. May 16, 2011) (approving request for 30% of the settlement fund as "fair and reasonable given the results achieved in light of the risks, difficulty, complexity and magnitude of the litigation, and the highly specialized expertise, time and substantial resources required to prosecute it successfully"); (*see also* Decl. of B. Fitzpatrick ¶ 9, ECF No. 223 (opining that a 30% fee award in an overdraft case would be "well within the mainstream").)

The Court also finds the Class Counsel's request for a percentage of both the cash and non-cash component of the total settlement is justified and consistent with precedent in similar overdraft fee cases. *See, e.g.*, *Fry v. MidFlorida Credit Union*, No. 8:15-cv-2743 (M.D. Fla. 2015), ECF Nos. 47 & 51 (approving fee award constituting 31.9% of cash settlement plus the estimated value of change in overdraft practice over one year); *In re Checking Account Overdraft Litig.*, 2013 WL 11319243, at *12 (S.D. Fla. Aug. 2, 2013) (approving fee award amounting to 30% of total value of $23 million settlement, including cash component and estimated value of change in overdraft policy over a minimum of two years); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (approving fee award constituting 30% of $410 million settlement fund net of expenses).

The Court has confirmed the reasonableness of the requested fee through an analysis of "the *Barber* factors." *Alexander S. By & Through Bowers v. Boyd*, 929 F. Supp. 925, 932 (D.S.C. 1995), *aff'd sub nom., Burnside v. Boyd*, 89 F.3d 827 (4th Cir. 1996). Specifically, the Court has considered: (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 opportunity costs in pressing the instant litigation;

(5) the customary fee for like work; (6) the attorneys' 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 attorneys; (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) fee awards in similar cases.

The record also shows that the parties' agreement with regard to fees was not negotiated until after the other terms of the settlement had been negotiated and was not the product of collusion or fraud. As a result, TD Bank's agreement as to the appropriate fee is entitled to some weight.

Although Courts in the Fourth Circuit are not required to do so, they may choose to "cross-check" the results of a percentage-fee award against the attorneys' "lodestar." *See, e.g.*, *The Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 463–64 (S.D. W. Va. 2010) (applying "the lodestar cross-check as an element of objectivity in [the attorneys' fee] analysis"). To apply the lodestar method, the Court determines the fee award by multiplying the number of hours reasonably worked by a reasonable billing rate, then the Court considers a multiplier to add or subtract from the lodestar. *See, e.g.*, *Robinson v. Carolina First Bank N.A.*, 2019 WL 2591153, at *15 (D.S.C. June 21, 2019). Using the lodestar method in this case results in a multiplier of between 1.89 and 2.33 for the requested $21 million fee. (*See* Joint Decl. of A. Webb and R. McCune ¶ 114, ECF No. 222.) Such a multiplier is well within the acceptable range of multipliers in common fund cases. *See Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 766 (S.D. W. Va. 2009) ("Courts have generally held that lodestar multipliers falling between 2 and 4.5

demonstrate a reasonable attorneys' fee."); *Anselmo v. W. Paces Hotel Grp., LLC*, No. 9:09-CV-02466-DCN, 2012 WL 5868887, at *5 (D.S.C. Nov. 19, 2012).

The Court hereby grants to Class Counsel the requested partial expense reimbursement of $675,000, which the Court finds to be fully supported by the settlement, the facts, the record, and the applicable law. (*See* Joint Decl. of A. Webb and R. McCune ¶ 149–52); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970) (stating that an established exception to the American rule is "to award expenses where a plaintiff has successfully maintained a suit, usually on behalf of a class, that benefits a group of others in the same manner as himself"). This amount shall be paid from the Settlement Fund.

The settlement provides that each of the Class Representatives is to receive $10,000 for their service on behalf of the Settlement Classes, or $7,500 per Plaintiff for married couples in which both spouses are named Plaintiffs. There are 21 individual Class Representatives and four married Class Representatives, totaling $240,000.00 in Service Awards. The Court finds that payment of these service awards is warranted and approved in this case in light of the Class Representatives' work on behalf of the classes and the risks they took pursuing this case. *See, e.g.*, *Robinson v. Carolina First Bank N.A.*, 2019 WL 2591153, at *18 (D.S.C. June 21, 2019).

RELEASES

Pursuant to, and as more fully described in Section XIV of the Settlement Agreement, on the Effective Date, 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 Paragraph

156 of the Settlement Agreement.

DISMISSAL AND FINAL JUDGMENT

The Court hereby DISMISSES this Action, inclusive of any and all cases and claims consolidated or otherwise included in this MDL 2613, WITH PREJUDICE as against the named Plaintiffs, all members of the Settlement Classes, and Defendant. The parties shall bear their own costs except as provided by the Settlement Agreement.

No Class Representative or member of the Settlement Classes (other than those listed in Exhibit A hereto), 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 Agreement, and they are hereby permanently enjoined from so proceeding.

The Consent Confidentiality Order entered in *King v. TD Bank, N.A.*, No. 13-cv-02264 (D.S.C.), ECF No. 62, and made applicable in this Action (*see* ECF No. 29), as well as the Consent Order on Production of Customer Transactional Data (ECF No. 187), shall survive the termination of this Action and continue in full force and effect after entry of this Final Order and Judgment.

By reason of the Settlement Agreement, and there being no just reason for delay, the Court hereby ENTERS FINAL JUDGMENT in this matter, which the clerk of Court is directed to immediately enter.

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 Agreement and of this Final Order and Judgment, to protect and effectuate this Final Order and Judgment, and for any

other necessary purpose. The Class Representatives, TD Bank, and each member of the Settlement Classes 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.

CONCLUSION

For the reasons set forth herein, the Court hereby (a) **GRANTS** final approval of the Settlement Agreement (ECF No. 220); (b) **CERTIFIES** the Settlement Classes pursuant to Fed. R. Civ. P. 23(b)(3) and (e) for settlement purposes only; (c) finds the class notice satisfied the requirements of Rule 23, due process, and all other legal requirements; (d) approves the requests for attorneys' fees of $21,000,000, expense reimbursement of $675,000, and service awards of $10,000 for each Class Representative, or $15,000 for married couples where each spouse was a Class Representative (ECF No. 221); (e) **DISMISSES** this Action **WITH PREJUDICE** as to all parties and the members of the Settlement Classes; and (f) **ENTERS FINAL JUDGMENT**. The parties and the Settlement Administrator are directed to carry out the

terms of settlement according to the Settlement Agreement.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

January 9, 2020
Charleston, South Carolina