IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(SOUTHERN DIVISION)

TIFFANY JOHNSON, Plaintiff, v. CONTINENTAL FINANCE COMPANY, LLC, *et al.*, Defendants.	*	Civil Action No. 8:22-cv-02001-PX (lead)
TRACEY CRIDER, Plaintiff, v. CONTINENTAL FINANCE COMPANY, LLC, et al., Defendants.	*	Civil Action No. 8:23-cv-00854-PX (member)

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Plaintiff's Memorandum in Support of
Motion for Final Approval of Class Action Settlement

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Plaintiffs Tiffany Johnson and Tracey Crider, acting individually and on behalf of the Class defined below ("Representative Plaintiffs"), respectfully submit this Memorandum in Support of the Motion for Final Approval of Class Action Settlement (the "Final Approval Motion").

I. Introduction

This lawsuit concerns Representative Plaintiffs' allegations that Continental made consumer loans to the Representative Plaintiffs (as well as each Class member) of less than $25,000, or assisted Plaintiffs and Class members to obtain such loans, when the borrower was a resident of Maryland and the application for the loan originated in Maryland, when Continental did not have a license Plaintiffs allege it was required to have under the Maryland Consumer Loan Law, Md. Code Ann., Com. Law, § 12-314 ("MCLL") and the Maryland Credit Services Businesses Act, Md. Code Ann., Com. Law § 14-1901 ("MCSBA").

Representative Plaintiffs secured Continental's agreement to resolve this case for a $5.75 million common settlement fund, but only after litigating this case through this Court and the Fourth Circuit, and after Continental filed a petition for *certiorari* to the U.S. Supreme Court (which is still pending, and which will be dismissed if the settlement is approved).

Continental has vigorously defended this lawsuit. Among other things, Continental filed and fully briefed a Motion to Compel Arbitration and Stay Proceedings and to Strike Class Allegations ("Motion to Compel Arbitration"). ECF 13. That motion argued, *inter alia*, that the Cardholder Agreement in Plaintiffs' transactions contained an arbitration provision which required Plaintiffs to arbitrate the claims asserted in this lawsuit in individual, non-class arbitrations. The Court, on September 7, 2023, denied that arbitration motion, holding that due to a unilateral change-in-terms clause, "the arbitration agreement lacks consideration, it is illusory, and no legal basis exists to compel arbitration. Thus, Continental's motions to compel must be denied." ECF 22 at 14.

Continental appealed the Court's September 7, 2023 decision. *See* ECF 33. The parties fully briefed the appeal, and the Fourth Circuit held oral argument. On March 11, 2025 the Fourth Circuit affirmed this Court's decision denying Continental's motion to compel arbitration in a published opinion. *See* ECF 42-2. Continental asked for reconsideration of that decision in a motion for rehearing or rehearing *en banc*, which was denied. See ECF 43 & 48.

Thereafter, Continental petitioned the U.S. Supreme Court for certiorari, requesting review of the Fourth Circuit's affirmance of this Court's decision. *See Continental Finance Company, LLC, et al., Petitioners, v. Tiffany Johnson, et al., Respondents*, No. 25-34 (U.S.).

Furthermore, following the Fourth Circuit's decision, Continental issued a so-called Change in Terms Notice (the "CIT Notice") to the proposed Class members in this case, purporting to change Continental's Cardholder Agreement so that persons who did not opt out of those changes would supposedly not be able to participate in this litigation. *See* ECF 51-2.

Plaintiffs responded to the CIT Notice by filing an Emergency Motion for Class Certification (ECF 51), asking the Court to certify the proposed Class and to send curative notice to proposed Class members. Among other things, Plaintiffs argued that the Fourth Circuit's decision presented the common question of whether any Cardholder Agreements existed between Continental and Class members which could be changed, or whether the Fourth Circuit's decision in this litigation meant that the Cardholder Agreements were illusory and not agreements. The parties fully briefed the class certification motion, and the Court scheduled an in-person hearing for July 18, 2025, and later re-scheduled for July 25, 2025. *See* ECF 63 & 65.

On July 14, 2025, the week preceding the originally scheduled hearing on class certification, the parties undertook a full day of in-person mediation supervised and facilitated by the Hon. Paul W. Grimm (Ret.). With Judge Grimm's invaluable assistance, and under his Honor's supervision, the parties reached the arms-length

settlement proposed here. As part of this settlement, Continental has agreed to pay $5.75 million into a Common Fund and has also agreed to pay incentive payments to the Representative Plaintiffs separate from and in addition to the Common Fund, subject to Court approval. In return, Plaintiffs and Class members agree to a release, which is limited to claims with the identical factual predicate of claims raised in this litigation, and includes waiving their argument that no Cardholder Agreements exist.

The settlement proposed here is very similar to a settlement in a similar case, *Bailey v. Mercury Financial, LLC*, Case No. DKC-23-827. See ECF 22 (noting the similarity between Bailey and this case). In *Bailey*, the settlement fund was $5.75 million for 57,392 confirmed Settlement Class members. Here, the settlement fund is also $5.75 million, and the Settlement Class includes 72,438 confirmed Settlement Class members,[1] but the Class Members' average receivables account balance is approximately half of the average balance of the accounts at issue in the *Bailey* case. *See* Settlement Agreement ¶ 17(b). So, considering the Class members' relative account balances, this settlement would recover proportionally more for Class members than the *Bailey* settlement, which Judge Chasanow approved. *See Bailey v. Mercury Fin., LLC*, No. CV DKC 23-0827, 2025 WL 3211015, at *1 (D. Md. Nov. 18, 2025).

On August 28, 2025, the Parties submitted the Settlement Agreement to the Court and jointly moved for the Court to preliminarily approve it pursuant to Fed. R. Civ. P. 23. *See* ECF No. 73, Joint Motion for Preliminary Approval of Class Action Settlement, and for Approval of the Form, Manner and Administration of Notice (the "Preliminary Approval Motion").

On December 9, 2025, the Court entered the Parties' proposed order and preliminarily approved the proposed settlement pursuant to Fed. R. Civ. P. 23(e)(1),

[1] *See* **Exhibit 1**, Declaration of Cornelia Vieira Concerning the Mailing of the CAFA Notice, Postcard Notice, E-mail Notice, Website, and Requests for Exclusion Received, and Objections Submitted (the "Mailing Declaration") at ¶ 5 (confirming 72,438 Settlement Class Members).

which permits notice to a class where the proposed settlement class is "likely" to meet the class certification requirements of Rule 23 and the proposed settlement is "likely" to meet the "fair, reasonable and adequate" requirements of Fed. R. Civ. P. 23(e)(2). *See* ECF No. 76, Preliminary Approval Order. Indeed, "the standard, and the factors to be considered, at the final approval stage are exactly the same" and "the court is guided by exactly the same analysis" as at the preliminary approval stage. *Erny on behalf of India Globalization Cap., Inc. v. MuKunda*, No. CV DKC 18-3698, 2020 WL 3639978, at *2 (D. Md. July 6, 2020) (*citing In re Mid-Atl. Toyota Antitrust Litig.*, 605 F.Supp. 440, 442 (D. Md. 1984)); *see also Robinson v. Nationstar Mortg. LLC*, No. 8:14-CV-03667-TJS, 2020 WL 8256177, at *3 (D. Md. Dec. 11, 2020), *aff'd sub nom. McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022) ("[n]othing has changed since the Court granted preliminary approval, and thus the Court maintains its approval.")

Consistent with the Preliminary Approval Order and the requirements of the Settlement Agreement, on December 23, 2025, Continental produced to the Settlement Administrator ("SCS") and Class Counsel data indicating that there are 72,438 Class Members entitled to notice of the Settlement. *See* **Exhibit 1**, Mailing Declaration ¶ 5. For this group, Continental provided 61,802 valid email addresses, and the Class Members associated with those accounts received E-mailed notice provided by SCS. Id. In addition, SCS provided mailed notice to the 10,636 remaining Class members. Thus, successful information for virtually all of the potential Settlement Class Members – including their last known address and email address – was obtained prior to the notice process. *Id.*

Accordingly, on January 8, 2026, SCS distributed the Court approved Postcard Notice to the 72,438 Class Members consistent with the Preliminary Approval Order. *See* Mailing Declaration ¶ 5. Among other things, the notices directed Settlement Class Members to the website www.MarylandContinentalSettlement.com, where the Settlement Agreement, a long-form notice, and other documents concerning the

Settlement may be viewed and downloaded. Following that notice campaign, only ten persons opted to exclude themselves from the settlement, and no objections have been filed. *See* **Exhibit 2**, Supplemental Declaration of Cornelia Viera Concerning the Mailing of the Postcard Notice, E-mail Notice, Website, and Requests for Exclusion Received, and Objections Submitted ("Supplemental Mailing Declaration") at ¶¶ 6-7.

Now, pursuant to Fed. R. Civ. P. 23(e)(2), Representative Plaintiffs submit this Memorandum in Support of Final Approval of the Proposed Class Settlement.

The Settlement Agreement should be granted final approval, so that the Settlement Class may take advantage of the substantial benefits it offers to them.

II. Allegations of the Complaint

The Fourth Circuit's recent decision describes the underlying facts of this case:

> Continental is a high-interest lender that markets and services credit card accounts for consumers with poor credit. Appellees are Tiffany Johnson and Tracy Crider, two Maryland residents who obtained credit card accounts marketed, underwritten, and serviced by Continental.
>
> This dispute began when Johnson and Crider brought separate class-action lawsuits against Continental in Maryland state court. The complaints alleged that Continental engages in widespread violations of Maryland usury laws by extending credit without a license and charging interest rates far above statutory limits. According to Johnson and Crider, Continental attempts to evade usury laws through what is commonly referred to as a "rent-a-bank" scheme. In a "rent-a-bank" scheme, a high-interest lender channels its loans through a federally chartered bank in an effort to take advantage of the bank's exemption from state usury laws. The lender handles the marketing and underwriting, the bank issues the loan, then the lender immediately acquires the loan from the bank. Because the credit is initially extended by the exempt bank, the subprime lender claims that the exemption from usury laws travels with the loan.
>
> The complaints claimed that, under Maryland law, a company acquiring a loan through a "rent-a-bank" scheme is the "*de facto* lender" and must abide by state usury laws. *CashCall, Inc. v. Md. Comm'r of Fin. Regul.*, 448 Md. 412, 139 A.3d 990, 1005 (2016). Because Continental did not do so, Johnson and Crider requested statutory damages and declaratory judgments establishing that their loans were void and unenforceable.

Johnson v. Contl. Fin. Co., LLC, 131 F.4th 169, 173 (4th Cir. 2025).

Due to these alleged facts, Representative Plaintiffs asked in the lawsuit that Continental return all monies paid by the Class in connection with their loans from Continental. *See* ECF 24, First Amended Complaint, *e.g.*, *ad damnum* clause.

III. Continental's Defenses

Continental denied liability in this case, arguing that it was not required to obtain a license under the MCLL or MCSBA. Moreover, Continental also argued vigorously that Representative Plaintiffs were not even permitted to file this action in Court in the first place. Thus, following removal, Continental pursued its Motion to Compel Arbitration, contending that the Cardmember Agreement in Plaintiff's transaction contained an arbitration provision which required Plaintiff to arbitrate the claims asserted in this lawsuit in an individual, non-class arbitration. Even after losing that Motion in this Court, *Johnson v. Contl. Fin. Co., LLC*, 690 F. Supp. 3d 520 (D. Md. 2023), Continental forced this case into a years long, though unsuccessful, journey to the Fourth Circuit and ultimately the U.S. Supreme Court.

Now, nearly four years into the litigation, Representative Plaintiffs' class certification motion has been fully briefed, and the Court was poised to hear arguments on it. Nevertheless, Continental has continued to vigorously defend this case, including contesting certification under Rule 23, and attempting to newly secure enforceable arbitration agreements with Class members. Continental also would have raised additional dispositive arguments at the summary judgment stage and at trial. Any of those defenses could conceivably have been resolved in Continental's favor and undermined Representative Plaintiffs' claims.

IV. The Settlement

A. Settlement Negotiations

The Parties began discussing the potential for a negotiated resolution in late 2023, following Continental's notice of appeal of the Court's issuance of its decision on arbitration (*see* ECF 20 & 21), but before the parties briefed the appeal. At that time, the Parties agreed to engage the Hon. William G. Connelly (Ret.), a former Chief Magistrate Judge for this Court. *See* **Exhibit 3**, Declaration of Benjamin H. Carney ("Carney Decl.") ¶ 11. Judge Connelly conducted an in-person mediation on February

20, 2024. *Id*. Despite the significant effort by the Parties at that time, the initial efforts at mediation were unsuccessful and Continental determined to continue its appeal.

Ultimately, following briefing and argument, the Fourth Circuit resolved the appeal in Plaintiff's favor, and, after the case had returned to this Court and after class certification was briefed the Parties agreed to mediate again. As Judge Connelly was unavailable on the Parties' schedule, Plaintiff and Defendant engaged Judge Paul W. Grimm (Ret.). The Parties met with Judge Grimm for a more than eight-hour mediation on July 14, 2025. *See* Carney Decl. ¶ 14. At the end of the July 14 mediation, the parties began drafting a Term Sheet memorializing the basic terms of settlement, which was ultimately completed and signed on July 18, 2025. *Id*.

It is safe to say that the Parties' efforts to resolve this case were lengthy, intensive, and arms-length. *Id*. ¶ 15. The negotiations between the parties were characterized by substantial compromise on both sides, mutual give-and-take, and the absence of collusion. *Id*. These extended efforts to reach compromise, supervised by Judge Grimm, resulted in the Settlement Agreement. *Id*.

Prior to mediation, the Parties each conducted extensive discovery in addition to research into the applicable facts and law relating to the practices challenged by Representative Plaintiffs in this case. For example, Representative Plaintiffs' counsel ("Class Counsel") engaged in extensive research of the facts and applicable statutory and case law in the course of drafting the Complaint and litigating the case. *See id*. Class Counsel also interviewed absent Class members and reviewed substantial documentation and potential witnesses to confirm that the uniformity and consistency of the allegations in the Complaint. *Id*.

B. The Preliminarily Approved Settlement Class

The Preliminary Approval Order certified the following settlement Class for settlement purposes:

> All Maryland residents with credit card accounts for credit cards issued by the Bank of Missouri or Celtic Bank and serviced by Continental on or

> after March 2014, where the borrower made one or more payments on the loan (each, a "Class Member" and each such account, an "Account).

ECF 76 ¶ 3 (the "Settlement Class").

Based on the extensive and detailed data and other information provided by Continental pursuant to the Settlement Agreement, SCS has confirmed that the Settlement Class includes 72,438 individuals. Mailing Declaration ¶ 5. And SCS has provided the Court-approved notice to these Class Members, with a 99% success rate. *See* **Exhibit 2**, Supplemental Mailing Declaration ¶ 4.

C. The Proposed Settlement Benefits

The settlement provides real cash relief to Settlement Class Members now, instead of after risky and lengthy litigation and appeals. Continental has agreed to pay $5.75 million into a Common Fund for the benefit of Settlement Class Members. *See* Settlement Agreement ¶ 24. The Common Fund will be used to make payments to all Settlement Class Members without the need for a claim. *Id.* ¶ 24(b)(ii).

As the notices describe, each person who meets the Class definition should expect to receive approximately $30^{00} to $50^{00}. However, the Settlement Administrator recently determined that the payment is anticipated to be approximately $49. *See* Carney Decl. ¶ 29. This payment, in compromise of the Class' claims asserting that Continental lacked the required lending license, is a fair, adequate and reasonable compromise.

Furthermore, Continental has agreed to pay the two Representative Plaintiffs each an incentive payment of $25,000, separate from the Common Fund, subject to Court approval – an award which compensates the Representative Plaintiffs for their years of participation in this case; and, an award that is being paid directly by Continental, so it will not affect or diminish relief to other Settlement Class members, at all. *See* Settlement Agreement at ¶ 25.

In exchange for the benefits to Settlement Class members, the proposed settlement will result in a release of claims of Settlement Class members which is limited

to claims which share the "factual predicate" of this litigation. Settlement Agreement at ¶16(c).[2] Under that release, Class members will waive any defense that the cardholder agreements as a whole do not exist under Maryland law and, expressly accept and agree that the cardmember agreements governing the Accounts are valid and enforceable and that Releasees may collect, continue to collect, and pursue legal action on any outstanding balances on the Accounts; and that Plaintiff and Class Members expressly waive, and agree not to assert, any defenses or claims related to the claims released in this lawsuit in response to any such collection actions. *Id.* at ¶ 29. That release is appropriate in the context of this case, where Plaintiffs argued (perhaps for the first time in any credit card case) that the underlying cardholder agreements were unformed.

D. Administration of Settlement Benefits

The Settlement provides for a streamlined process to provide relief to the Class. In fact, it does not even require Class members to submit a claim form. All Class Members who do not opt out from the settlement and who can be found will automatically receive a cash payment.

Although the Settlement provides that the all costs of administration of the Settlement shall be paid from the Common Fund, Settlement Agreement at ¶ 14, because the administration of the settlement is straightforward and does not require the Settlement Administrator to make any determinations as to Class membership (*i.e.*, it does not include a claims process), the overall estimated costs of administration for this settlement are modest and contained. The claims administration company recommended to serve as the Settlement Administrator here is Strategic Claims Services of Media, Pennsylvania ("SCS"). *See* Settlement Agreement ¶ 10. For all of its proposed and expected work in this case, SCS estimates that the total cost of administration will be approximately $250,000. Carney Decl. at ¶ 29. This will include all costs incurred to

[2] A release in a class settlement limited to claims sharing the "factual predicate" of the complaint is consistent with Fourth Circuit authority. *See McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022).

identify the Class, update their addresses, mailing notice to the Class, designing and establishing the website (*www.MarylandContinentalSettlement.com*), performing skip tracing and reissuing notice, paying bank fees, mailing of settlement checks to the Class, reconciling the Settlement bank account, and preparing and filing of all required tax forms.

Moreover, the proposed settlement does not include any reverter – so none of the money paid by Continental into the Common Fund will be returned. Instead, in the event that amounts remain in the Common Fund after distribution to Settlement Class Members, the Settlement Agreement mandates that those funds, subject to Court approval, be distributed to a number *cy pres* recipient as follows: a) the first $20,000.00 shall be donated to the Maryland Volunteer Lawyers Service; b) the next $20,000.00, if any, shall be donated to the CASH Campaign of Maryland; c) the next $20,000.00, if any, shall be donated to the National Association for Consumer Advocates; and, d) following these distributions, should any additional residual funds remain, they shall be donated to the University of Maryland Francis King Carey School of Law (the "*Cy Pres* Recipient(s)"). *See* Settlement Agreement ¶ 24(b)(v).

Considering that the settlement recovers a non-reversionary $5.75 million Common Fund from Continental for a settlement class of consumers challenging Continental's licensing status, this settlement represents a remarkable recovery for the Class.

E. Attorney's Fees and Costs

The Settlement Agreement also provides for the payment of Class Counsel. Subject to the approval of the Court, Class Counsel are requesting one-third of the Common Fund as attorney's fees in this matter plus litigation expenses. Settlement Agreement at ¶20(b)(i). Class Members are expressly notified of the attorney's fees and expenses to be requested by Class Counsel in the Class notices. *See* **Exhibit 1**, Mailing Decl. Exhs. B & C.

Contemporaneous with the filing of this Motion, Class Counsel is filing a separate motion for approval of Plaintiffs' attorney's fees and litigation expenses. *Id*.

F. The Notice Plan

The plan for disseminating notice of the Settlement to potential Settlement Class Members was designed to accord with Fed. R. Civ. P. 23(e). The Court approved the Parties' proposed notice plan in the Preliminary Approval Order. Notices were disseminated by the Settlement Administrator pursuant to the Preliminary Approval Order, with a 99% success rate. *See* **Exhibit 2**, Supplemental Mailing Decl. ¶ 4. Only ten persons opted out, and no objections were filed.

V. Legal Standard

Federal Rule of Civil Procedure Rule 23(e) sets forth the protocol for the Court's consideration of class action settlements. Final approval of a class-action settlement is appropriate on a finding that the settlement "is fair, reasonable, and adequate after considering whether":

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The same factors guiding preliminary approval of class action settlements apply to final approval. *See Erny on behalf of India Globalization Cap., Inc.*, 2020 WL 3639978, at *2; *Robinson*, 2020 WL 8256177, at *3.

VI. Final Settlement Approval Is Appropriate

In the Fourth Circuit, the inquiry into whether a class settlement satisfies Fed. R. Civ. P. 23(e)(2) and should be approved is guided by the fairness and adequacy factors enumerated in *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020) ("*Lumber Liquidators*"). In doing so, the court's "primary concern … is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *CASA de Maryland, Inc. v. Arbor Realty Trust, Inc.*, Civil Action No. DKC 21-1778, 2024 WL 1051120 at *4 (D. Md. March 11, 2024) *quoting In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991).

As discussed below, consideration of these fairness and adequacy factors demonstrates that settlement here should be approved and shows that Settlement Class Members are treated equitably.

In addition, a proposed settlement class must meet the class certification requirements of Fed. R. Civ. P. 23 "for purposes of judgment on the proposal." *See* Fed. R. Civ. P. 23(e)(1)(B)(ii). As also discussed below, each of the class certification requirements is met.

A. The Settlement Is Fair and Adequate

1. Settlement Fairness

The four "fairness" factors are "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation." *Lumber Liquidators*, 952 F.3d at 484. Each factor supports the fairness of this settlement.

a) The Posture of the Case at the Time Settlement Was Proposed and the Extent of Discovery Conducted

The substantial and lengthy litigation in this case supports settlement approval. Nearly four years ago, Representative Plaintiff Tiffany Johnson filed the lead case in this

litigation, *Johnson v. Continental Finance Company, LLC, et al.,* on June 15, 2022 (the "Action") in the Circuit Court for Montgomery County, Maryland (Case No. C-15-CV-22-002254). Continental removed the Action to the United States District Court for the District of Maryland on or about August 10, 2022.

The Original Complaint alleges, *inter alia*, that Continental made consumer loans to Representative Plaintiffs and each Class member of less than $25,000, when the borrower was a resident of Maryland and the application for the loan originated in Maryland, when it did not have a license which Representative Plaintiff alleges it was required to have under the MCLL, Md. Code Ann., Com. Law, §§ 12-301 *et seq*. *See* ECF 4 ¶¶ 12-24. The Original Complaint alleges that, as a result, Continental's loans to Representative Plaintiff and Class members are void and unenforceable, and no person may receive or retain amounts in connection with those loans. *Id*. Accordingly, the Original Complaint asserted counts for Declaratory Relief, Md. Code Ann., Cts & Jud Pro. § 3-406, and violation of the MCLL licensing provisions. *Id*. at ¶¶ 141-162.

In response to the Original Complaint, Continental filed an Answer and Affirmative Defenses on September 16, 2022, denying all allegations of wrongdoing and liability and maintaining that it conducted its dealings with the Representative Plaintiffs and Class Members in a lawful manner in all respects. ECF 12 ("Answer"). Continental further asserted a number of defenses to the Representative Plaintiff's claims.

Continental also filed a Motion to Compel Arbitration and Stay Proceedings on September 17, 2022. ECF 13. That motion argued, *inter alia*, that the Cardholder Agreement in Ms. Johnson's transaction contained an arbitration provision which required her to arbitrate the claims asserted in the Action in an individual, non-class arbitration. ECF 13-1.

On February 3, 2023, Ms. Johnson filed a motion to file a First Amended Class Action Complaint (the "Complaint", which is filed at ECF 24) to add claims under the Maryland Credit Services Businesses Act. ECF 16.

Then, on February 16, 2023, Representative Plaintiff Tracey Crider filed a

separate action, *Crider v. Continental Finance Company, LLC, et al.*, in the Circuit Court for Montgomery County, Maryland (Case No. C-15-CV-23-000545). Continental noticed the removal of *Crider* to federal court on or about March 29, 2023 (Case No. 8:23-cv-854 (D. Md.) ("*Crider*") ECF 1),[3] and filed a motion to compel arbitration and stay proceedings and strike class allegations on April 5, 2023. *Crider* ECF 8.

On the same day, Continental moved to consolidate *Johnson* and *Crider* on the grounds that both cases were "based on the same false premise that Defendants offer 'credit services' and are therefore required to hold certain Maryland licenses." ECF 17-1 at 1. The motion to consolidate was granted on May 8, 2023. ECF 19.

The Court, on September 7, 2023, denied the arbitration motions in both *Johnson* and *Crider*, holding that the "arbitration agreement lacks consideration, it is illusory, and no legal basis exists to compel arbitration," and granted the motion to amend the Complaint. *Johnson v. Cont'l Fin. Co., LLC*, 690 F. Supp. 3d 520, 530 (D. Md. 2023).

On appeal, after oral argument, the U.S. Court of Appeals for the Fourth Circuit affirmed. *Johnson v. Cont'l Fin. Co., LLC*, 131 F.4th 169 (4th Cir. 2025). On April 11, 2025, just days after the Fourth Circuit denied Continental's motion for a rehearing or rehearing *en banc*, Continental disseminated a notice to "all cardholders" purporting to unilaterally change the cardholder agreement and the arbitration provision within it. In response, Representative Plaintiffs filed a thoroughly briefed Emergency Motion for Class Certification. *See* ECF 51. Continental vigorously opposed that motion, Representative Plaintiffs replied, the parties briefed a surreply motion, and the Court set an in-person hearing. *See* ECF 54, 58, 59, 61, 63, 65.

Also, on July 7, 2025, Continental filed with the U.S. Supreme Court a petition

[3] For ease of reference, citations to the *Crider v. Continental Finance Company, LLC* docket will be referenced as "*Crider* ECF," whereas references to the lead case (*Johnson v. Continental Finance Company, LLC*) will be referenced as simply "ECF."

for *certiorari*, seeking review of the Fourth Circuit's decision. *See Continental Finance Company, LLC, et al. v. Tiffany Johnson, et al.*, Pet. No. 25-34 (U.S. 2025). That petition currently remains pending and will be dismissed following the Effective Date of the proposed settlement here. *See* Settlement Agreement ¶ 28.

The posture of the case at the time settlement was proposed thus supports settlement approval. *See*, *e.g.*, *Boger v. Citrix Sys., Inc.*, No. 19-CV-01234-LKG, 2023 WL 3763974, at *9 (D. Md. June 1, 2023) ("the parties … litigated this matter for three years before they reached the proposed Settlement… the parties have had sufficient opportunity to understand the issues and the evidence in this case, and to reach a well-informed settlement.") The parties here have had ample opportunity to understand and ventilate the issues presented by this case; the settlement is a product of litigation and well-informed negotiations.

Given the scope of the informal discovery undertaken in this case, Plaintiffs are also confident that Continental has provided the necessary information to assess the settlement. Continental has provided a Class List, confirmed by the Settlement Administrator, of 72,438 Settlement Class Members, which includes detailed information and data allowing Settlement Class Members to receive notices of the settlement and settlement benefits. Settlement Agreement at ¶17(d). Furthermore, as confirmed by the Settlement Agreement itself, the Settlement Class Members' average receivables account balance is approximately half of the average balance of the accounts at issue in the settlement agreement associated with *Bailey v. Mercury Financial, Inc.*, Case No. 8:23-cv-827 DKC (D. Md.), which this Court approved. As a result, the checks to Settlement Class Members in this case will represent on average a larger percentage of their account balances than in the *Bailey* case (in *Bailey*, with average balances twice the size of those here, the checks to Settlement Class Members totaled approximately $66.45). *See Bailey v. Mercury Fin., LLC*, No. CV DKC 23-0827, 2025 WL 3211015, at *5 (D. Md. Nov. 18, 2025). Accordingly, the "fairness" factor supports settlement approval.

b) Circumstances Surrounding the Negotiations and the Experience of Class Counsel

Lumber Liquidators and Fed. R. Civ. P. 23(e)(2)(B) require consideration of whether the proposed settlement is a product of arms-length negotiations. *Id*. The settlement in this case is the product of more than two (2) years of arms-length negotiations including two (2) intensive mediation sessions, each supervised by a neutral retired Judge – the Hon. William Connelly (Ret.) for the first mediation in February 2023, and the Hon. Paul W. Grimm (Ret.). for the second mediation in July 2025. *See* Settlement Agreement ¶ 5; *see also Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 475 (D. Md. 2014) (the parties engaged in "nine months of arms-length negotiations and mediation overseen by Magistrate Judge Susan K. Gauvey.") Here, as in *Decohen*, "[t]here is no indication in the record of bad faith or collusion in the settlement negotiations" and the parties "represent that the settlement negotiations were at arms-length." *Decohen*, 299 F.R.D. at 480; *see also* Settlement Agreement ¶ 11 (representing that the parties' negotiations were at "arms-length"); *see also* Carney Decl. ¶ 15.

Class Counsel are also "experience[d]… in the area of [the] class action litigation." *Lumber Liquidators*, 952 F.3d at 484. After all, *Decohen* held that class counsel in that case – led by Benjamin H. Carney and Richard S. Gordon, the same Class Counsel here – were adequate in part due to "significant litigation and appellate experience" and "recogni[tion] in various national publications for excellence in their field." *Decohen*, 299 F.R.D. at 480. Class Counsel's experience has only increased in the years since *Decohen* was decided. Class Counsel have been approved as class counsel in scores of other class action settlements in state and federal courts. *See* Carney Decl. ¶¶ 3, 7. And in this case, Class Counsel pursued this case from the Maryland Circuit Court, where both *Johnson* and *Crider* were filed, to this Court, to the Fourth Circuit on an appeal and back again to this Court; obtained significant supporting information in the course of the settlement discussions; and, as a result of those efforts, obtained a substantial settlement for the Settlement Class.

2. Settlement Adequacy

Whether the relief provided for the Class is adequate under Fed. R. Civ. P. 23 is guided by five factors in the Fourth Circuit: "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[ ] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *Lumber Liquidators*, 952 F.3d at 484 (citation omitted). Each of these factors supports the settlement's adequacy.

a) The Relative Strength of Plaintiff's Case on the Merits and the Existence of Any Difficulties of Proof or Strong Defenses the Plaintiffs are Likely to Encounter if the Case Goes to Trial

Class Counsel believe that, at trial, Representative Plaintiffs and the Class would prevail on their claims against Continental and, through evidence, be able to prove that Continental violated the law and damaged Representative Plaintiffs and Class Members. Despite Class Counsel's belief as to the strength of the case on the merits, many significant hurdles and a long passage of time would need to be overcome before the Representative Plaintiffs and the Class could establish their entitlement to relief on a class-wide basis. Continental contests liability in this case and has repeatedly asserted its position that the Representative Plaintiffs and Class members have no claim. Although Representative Plaintiffs believe that they and the Class would have prevailed, Continental opposed Representative Plaintiffs' motion for class certification, would have likely filed dispositive motions, and would have vigorously defended itself at trial. Moreover, to the extent Continental would not be successful at trial, it would almost certainly appeal any unfavorable judgment. Accordingly, as a practical matter, Representative Plaintiffs and the Class faced substantial challenges to obtain a litigated judgment in their favor. Achieving a litigated resolution would have taken several more years in addition to the two and a half years already invested. The Settlement Agreement in this case avoids these issues, provides a real monetary recovery now, and

accomplishes an exemplary result without the need for further litigation or a full trial.

Representative Plaintiffs have no guarantee of winning at trial. There is no certainty in litigation and any success in this case depends almost entirely upon the Court's interpretation of the controlling statutory language and the jury's determination of fact. "It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced." *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir.), *cert. denied*, 404 U.S. 871 (1971) ("*Pfizer*"). In *Pfizer*, another consumer class action, Judge Wyatt offered the following example:

> In *Upson v. Otis*, 155 F.2d 606, 612 (2d Cir. 1946), approval of a settlement was reversed, the Court saying (at 612): "on the facts presented to the district judge, the liability of the individual defendants was indubitable and the amount of recovery beyond doubt greater than that offered in the settlement. Accordingly, it was an abuse of discretion to approve the settlement." The action was then tried and plaintiffs obtained a judgment, twice considered by the Court of Appeals (168 F.2d 649, 169 F.2d 148 (1948)). We are told, however, that "the ultimate recovery . . . turned out to be substantially less than the amount of the rejected compromise."

Id. at 743-44.

In another example demonstrating the enormous risks of litigation, a class action against the manufacturer of the drug Bendectin was originally settled. The Sixth Circuit reversed approval of that settlement. *In re Bendectin Productions Liability Litigation*, 749 F.2d 300 (6th Cir. 1984). Thereupon, as reported in *The Wall Street Journal* (March 13, 1985), the plaintiffs tried the case and, by jury verdict, lost the millions of dollars for which they had originally bargained.

Litigation risk, moreover, does not end with the trial. In this case, post-trial motions and appeals would be almost a certainty. History records numerous instances where favorable jury verdicts have been overturned by the trial court, a court of appeals, or the Supreme Court. As Judge Friendly noted of the vagaries of appellate review: "Platus warned long ago 'what a ticklish thing it is to go to law,' and the ticklishness does not diminish as the pinnacle is reached." *Newman v. Stein*, 464 F.2d 689, 695 (2d Cir.

1972).

Experienced counsel in this case, who negotiated at arm's length and possess all relevant information, strongly recommend the settlement to the Court. *See* Carney Decl. ¶ 18. Class Counsel believe that Representative Plaintiffs and the Class have a strong case against Continental. As evident from the above discussion, however, it is by no means certain that Representative Plaintiffs and the Settlement Class Members would have obtained a result better than that achieved through this settlement – a settlement which recovers $5.75 million for a licensing challenge.

Indeed, the benefits provided in the proposed settlement are adequate even if the Representative Plaintiffs' case on the merits is strong. It is perhaps possible but certainly not clear that Plaintiffs and the Settlement Class could have obtained and recovered more after a trial. Or judgment could have been entered in favor of Continental after dispositive motions or a trial, leaving Representative Plaintiff and the Class with nothing.

Accordingly, the strength of Plaintiff's case relative to the challenges presented by further litigation supports the adequacy of the settlement.

b) The Anticipated Duration and Expense of Litigation

The anticipated duration and expense of additional litigation factor also supports the adequacy of the settlement. *See Lumber Liquidators,* 952 F.3d at 484. Although Class Counsel believe the trial of this case would be manageable and superior to other means of adjudicating the controversy, the issue here is the extent to which the anticipated complexity and costs of proceeding to trial favor settlement.

Before any trial, the parties would have engaged in substantial additional litigation – including litigating dispositive motions, discovery matters, and the motion concerning class certification. Had this matter proceeded to trial, Continental would have attempted to present evidence to demonstrate that their actions complied with the law and did not damage Representative Plaintiffs or Class members. Although Class Counsel is confident Representative Plaintiffs' position on the applicable law is correct,

there is no guarantee the Court or jury would agree.

Moreover, the expense of taking this case through trial would have been considerable. A substantial amount of formal discovery (including many important depositions) and extensive motion practice would have to be completed. Trial preparation would require great effort and expense. Both the Class and Continental would have incurred substantial expenses, which would have detracted from any eventual recovery. Class Counsel anticipates that a class trial of this case would take approximately two weeks and would involve considerable expense. Carney Decl. ¶ 19.

Avoiding the delay, risk and expense of protracted litigation is a primary reason for counsel to recommend and the court to approve a settlement. *Protective Committee for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424 (1968) (court must consider "the complexity, expense, and likely duration" of the litigation). Here, that delay, risk and expense would be substantial. Accordingly, this factor weighs in favor of settlement approval.

c) The Solvency of the Defendant

The next *Lumber Liquidators* "adequacy" factor, the "solvency of the defendant and the likelihood of recovery on a litigated judgment," also supports settlement approval. *See* 952 F.3d at 484. Even though Class Counsel believes that Representative Plaintiffs would prevail at trial, such a litigated judgment would not be available to the Class until this complex case was fully litigated and all appeals exhausted. The availability of a real monetary recovery now, as opposed to at some point in the far-off future, supports settlement approval.

Moreover, while Class Counsel do not have reason to believe that this settlement substantially taxes Continental's net worth, there is no question that the settlement payment is considerable. The fact that the amount that Continental is paying is not an insubstantial amount weighs in favor of settlement approval.

Thus, for purposes of this settlement, the inquiry does not turn on whether Continental could survive a greater judgment. *See also Decohen*, 299 F.R.D. at 480

("Although Capital One could likely afford to pay a much larger judgment, because the other factors favor adequacy, this factor [solvency] may be given less weight. Accordingly, the Court will find that the settlement is adequate.") (citations omitted).

d) The Degree of Opposition to the Settlement

The final *Lumber Liquidators* "adequacy" factor, the "degree of opposition to the settlement," also favors settlement approval. *See* 952 F.3d at 484. After a successful dissemination of notice to 72,438 Settlement Class Members, with a 99% success rate, only eight persons opted-out, and no objections were filed. This is compelling evidence that the Settlement Class Members support the settlement.

e) The Effectiveness of Any Proposed Method of Distributing Relief to the Class

Fed. R. Civ. P. 23(e)(2)(C)(ii) requires consideration of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." That factor supports settlement approval here.

The Settlement Agreement contemplates a straightforward method of distributing relief to the Class. Each Settlement Class Member, without the necessity and burden of submitting a claim, will receive the same *net* payment, projected by the notices to Settlement Class members to be in 30^{\underline{00}}$ to 50^{\underline{00}}$ range – *see* Mailing Declaration Exhs. B & C – and now that the number of Settlement Class Members has been confirmed, the payment is anticipated to be approximately $49. *See* Carney Decl. ¶ 29. This payment is significant, on the high side of what Settlement Class Members were told to expect, and Settlement Class Members have shown by their favorable reaction to the notice which was sent that they want their settlement benefits.

Moreover, under the Agreement, Settlement Class Members are not required to file any claim form, or provide any additional information, to receive a settlement payment. This will ease Class members' recovery of their settlement benefits. This simple protocol for distribution of settlement payments supports adequacy.

f) The Terms of Any Proposed Award of Attorney's Fees

Fed. R. Civ. P. 23(e)(2)(C)(iii) requires consideration of the "terms of any proposed award of attorney's fees, including timing of payment." *Id*. This factor supports settlement approval. As discussed in the memorandum in support of Plaintiffs' contemporaneously filed Petition for Award of Attorneys' Fees, the requested attorney's fees are in line with the Settlement Agreement, as well as typical awards in similar cases. *See* Settlement Agreement ¶ 24(b)(1).

For example, this Court in *Decohen* awarded 1/3 of the common fund fee to the same Class Counsel in this case, in similar circumstances. 299 F.R.D. 469. That decision has been cited approvingly by numerous courts, including a decision from this Court holding that "a one-third fee is the market rate" in similar class action cases, and citing *Decohen* as support for its award of attorney's fees of $4,666,667, which represented one-third of the common fund in that case. *Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020); *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at *5 (M.D.N.C. Dec. 3, 2018) (citing *Decohen* as support for its award of an attorney's fee of $20,447,600, which represented one-third of the common fund); *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *5 (M.D.N.C. Sept. 25, 2019) (citing *Decohen* as support for its award of an attorney's fee of $18,166,666.67, which represented one-third of the common fund).

Indeed, this Court recently held that "[A] request for one-third of a settlement fund [in attorney's fees] is common in this circuit and generally considered reasonable." *Boger*, 2023 WL 1415625, at *9 (citations omitted); *see also Earls v. Forga Contracting, Inc.,* No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020) ("Within the Fourth Circuit, contingent fees of roughly 33% are common.")(*citing Kirkpatrick v. Cardinal Innovations Healthcare Sols.,* 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018) (33.39%)*; Kirven v. Cent. States Health & Life Co. of Omaha,* No. CA 3:11-2149-MBS, 2015 WL 1314086, at *13 (D.S.C. Mar. 23, 2015) (33%)*; Reynolds v. Fid. Investments Institutional Operations Co., Inc.,* No. 1:18-CV-423, 2020 WL 92092, at *3 (M.D.N.C. Jan. 8, 2020) (33%)).

This Court has applied the typical one-third of a common fund attorney fees award even in the mega-fund scenario, where the common fund exceeds $100 million. *See, e.g., In re Titanium Dioxide Antitrust Litig*.,No. 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding attorney's fee of $54.5 million, one-third of the $163.5 million common fund).

Indeed, this Court has repeatedly approved attorney's fees amounting to 1/3 of the common fund in other consumer class action cases brought by these same Class Counsel. *See, e.g., Hall, et al. v. HWS LLC dba Henry's Wrecker Service*, Case No. 8:22-cv-996-BAH (D.Md. June 5, 2025) (approving attorney's fee of 1/3 of the common fund); *Edge v. Stillman Law Office, LLC, et al.*, Case No. 8:21-cv-02813-TDC (D.Md. June 2, 2023) (ECF No. 87 ¶13) (approving attorney's fee of 1/3 of the common fund); *Thomas v. Cameron Mericle, P.A.*, Case No. 8:18-cv-03645-CBD (D.Md. Dec. 4, 2020) (ECF No. 82 ¶ 10) (same); *Smith v. Ace Motor Acceptance Corp.*, Case No. 1:12-cv-02149-JKS (D. Md. Oct. 7, 2013) (ECF # 37 at ¶ 10) (same); *Benway v. Resource Real Estate Services, LLC, et al.*, Civil Action No. 1:05-cv-3250-WMN (D. Md. Oct. 12, 2011) (ECF No. 191 at ¶ 11) (same); *Robinson v. Fountainhead Title Group Corp.*, Civil Action No. 03-cv-03106-WMN (D. Md. Oct. 7, 2010) (ECF No. 198 at ¶ 9) (same); *Brittingham v. Prosperity Mortgage Company*, Case No. 1:09-cv-00826-WMN (D. Md. Apr. 14, 2010) (ECF No. 74 at ¶ 10) (same); *Watts v. Capital One Auto Finance, Inc.*, Civil No. 1:07-cv-03477-CCB (D. Md. Jan 15, 2010) (ECF No. 67 at ¶ 9) (same); *Shelton v. Crescent Bank & Trust*, Case No. 1:08-cv-01799-RDB (D.Md. May 28, 2009) (ECF No. 39 at ¶ 9) (same).

In this diversity case, filed in state court and predicated on state consumer protection law, attorney's fees awarded in state court are also instructive. Numerous Maryland state Circuit Court decisions have awarded Class Counsel one-third of the common fund in attorney's fees in consumer class action settlements. *See, e.g., Stokes v. NovelPay, LLC*, Case No. C-16-CV-24-001546 *Headen v. Conservice, Inc.*, Case No. CAL2019314 (Cir. Ct. Pr. George's Co., Dec. 9, 2022) (Snoddy, J.) (awarding Class

Counsel attorney's fees of one-third of common fund, in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action brought by Class Counsel); *Cottom v. North State Acceptance, LLC,* Case No. 24-C-19005874 (Cir. Ct. Balt. City 2020) (Brown, J.) (same); *Hale v. Mariner Finance, LLC,* Case No. 24-C-18-00053 (Cir Ct. Balt. City 2018) (Brown, J.) (same); *Lendmark Financial Services, LLC v. Cruz,* Case No. 24C17000109 (Cir. Ct. Balt. City 2018) (Brown, J.) (same); *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2019) (Rubin, J.) (same); *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2018) (Rubin, J.) (same); *Chalk v. Tower Federal Credit Union,* Case No. 03-C-15-006873 (Cir. Ct. Balt. Co. 2016) (Ensor, J.) (same); *Clinton v. Money One Federal Credit Union,* Case No. 408053V (Cir. Ct. Mont. Co. 2016) (Greenberg, J.) (same); *Sekuler v. Financial Freedom Acquisition, LLC,* Case No. 360327-V (Cir. Ct. Mont. Co. 2013) (Mason, J.) (same); *Schmidt v. Redwood Capital, Inc.,* Case No. 03-C-11-010442 (Cir. Ct. Balt. Co. 2012) (Nagle, J.) (same); *Wuerstlin v. Sandy Spring Bank,* Case No. 335030V (Cir. Ct. Mont. Co. 2011) (Rubin, J.) (same); *Ferrell v. JK III,* Case No. 13-C-03-56836 (Cir. Ct. How. Co. 2011) (Leasure, J.) (same); *Cooper v. United Auto Credit Corp.,* Case No. 03-C-09000477 (Cir. Ct. Balt. Co. 2011) (Cahill, J.) (same); *Butler v. C&F Finance Co.,* Case No. 03-C-09002127 (Cir. Ct. Balt. Co. 2010) (Stringer, J.) (same); *Taylor v. Wells Fargo Home Mortgage,* Case No. 24-C-02-001635 (Cir. Ct. Balt. City 2010) (Glynn, J.) (same).

In sum, one-third of the common fund is a "market rate" attorney's fee in class action litigation like this case, with these Class Counsel. Accordingly, the amount of requested attorney's fees is in line with the Settlement Agreement and standard percentage awards in many other cases – all of which supports adequacy.

The timing of the payment of attorney's fees also supports adequacy. Class Counsel only are paid after the Settlement is finally approved, the time for appeal has passed, and Settlement Class members are guaranteed to be paid also. *See* Settlement Agreement ¶¶ 24(b)(1). Thus, the Settlement Agreement does not include a so-called "quick pay clause" which "allows class counsel to be paid in short order, even if an

appeal is taken." *In re: Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *20 (N.D. Ohio Sept. 23, 2016). Although most courts have held that "quick pay" clauses do not impair the adequacy of a settlement because "they serve the socially-useful purpose of deterring serial objectors," such terms have invited some judicial scrutiny. *Id.*

For all these reasons, as well as the reasons discussed in the contemporaneously-filed Petition for Award of Attorney's Fees and accompanying memorandum, the requested attorney's fees are reasonable, which supports the adequacy of the settlement. *See Kelly*, 2020 WL 434473, at *2.

g) Any Agreement Required to be Identified

Fed. R. Civ. P. 23(e)(2)(C)(iv) requires "a statement identifying any agreement made in connection with the propos[ed settlement]."*Id.* The parties have submitted and identified the Settlement Agreement, which is the only agreement of which Class Counsel is aware in connection with the proposed settlement. *See* Carney Decl. ¶ 21.

3. The Proposal Treats Class Members Equitably

The final Fed. R. Civ. P. 23(e)(2) factor is whether the settlement proposal "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

Here, as described above, the amount of Settlement Class Members' monetary recovery under the proposed settlement will be based upon the net amount in the Common Fund divided by the number of Class Members who can be located and have not opted-out. *See* Settlement Agreement ¶¶ 24(b)(ii) & (iii). Such distributions of "a proportionate share of the common fund" are appropriate. *See, e.g.*, *Fangman v. Genuine Title, LLC*, No. CV RDB-14-0081, 2017 WL 2591525, at *2 (D. Md. June 15, 2017) (approving settlement under which each class member "shall receive a proportionate share of the Common Fund remaining after deduction of any awards of attorneys' costs, expenses, and fees and service awards"); *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 470 (W.D. Va. 2011) (approving settlement under which "each class member who submits a claim will receive a proportionate share of the

common fund up to $100, but not less than $2").

Settlement Class members will be treated equitably by the distribution protocol proposed here, so this final adequacy factor also weighs in favor of settlement approval.

B. The Proposed Settlement Class Is Certifiable

In addition to the fairness and adequacy considerations discussed above, a proposed settlement class must meet the class certification requirements of Fed. R. Civ. P. 23 "for purposes of judgment on the proposal." *See* Fed. R. Civ. P. 23(e)(1)(B)(ii). As discussed below, each of the class certification requirements is met here.

1. The Class Is Identifiable and Ascertainable

"A class cannot be certified unless a court can readily identify the class members in reference to objective criteria." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014); *see also Career Counseling, Inc. v. AmeriFactors Fin. Grp., LLC*, 91 F.4th 202, 206 (4th Cir. 2024) (same). This "implicit" requirement of Rule 23 is that a proposed class be "definite," in other words, "ascertainable with reference to objective criteria."1 Newberg on Class Actions § 3:1 (5th ed.)

Here, the proposed Settlement Class is ascertainable. For example, Continental has compiled and provided to the Settlement Administrator a Class List following preliminary approval. *See* Settlement Agreement ¶ 17(d). Furthermore, the Settlement Administrator has confirmed that the Settlement Class consists of 72,438 persons. *See* **Exhibit 2,** Supplemental Mailing Declaration ¶ 3. And the elements of membership in the Settlement Class can be evaluated based entirely upon objective criteria. Each Class member is a Maryland resident who has or had a credit card accounts for credit cards issued by the Bank of Missouri or Celtic Bank and serviced by Continental on or after March 2014, where the borrower made one or more payments on the loan. *See* Settlement Agreement ¶17(a). Thus, the composition of the Settlement Class is not only ascertainable but has been ascertained.

2. The Criteria of Fed. R. Civ. P. 23(a) Are Satisfied

Each of the explicit Fed. R. Civ. P. 23(a) requirements are also met.

a) Fed. R. Civ. P. 23(a)(1) – Numerosity

The proposed Settlement Class meets the numerosity requirement of Fed. R. Civ. P. 23(a)(1), as it consists of thousands of persons. *See* Settlement Agreement at ¶ 17(b). A class of that size is so numerous that joinder of all members is presumptively impracticable. *See, e.g., Decohen*, 299 F.R.D. at 477 ("classes with as few as 25 to 30 members 'have been found to raise the presumption that joinder would be impracticable.'") (citation omitted); *see also* W. Rubenstein, *Newberg on Class Actions* § 3:12 (5th ed.) ("a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone") (citing numerous cases). The Settlement Class here consists of thousands of persons. Numerosity is satisfied.

b) Fed.R.Civ.P. 23(a)(2) – Commonality

The commonality, typicality, and adequacy inquiries "are similar and overlapping." *Decohen*, 299 F.R.D. at 477 (citation omitted). "To establish commonality, the class members must 'have suffered the same injury,' and 'their claims must depend upon a common contention.'" *Id.* (*quoting Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (internal quotations omitted)).

Here, the Settlement Agreement identifies the "common and predominating class issue of whether any cardholder agreement exists under Maryland law. " Settlement Agreement ¶ 29. That common issue concerns Continental's Change Clause, and whether that Change Clause undermines not only Continental's arbitration provision but also the broader cardmember agreement and renders it "illusory." The proposed settlement compromises that disputed issue.

Furthermore, Settlement Class Members all suffered the same alleged injury resulting from the allegation that Continental charged interest and fees even though it was not licensed to make loans in Maryland. Those injuries resulted from the same allegedly unlawful practice – Continental's unlicensed status. This "common contention" binds all of the Settlement Class members' claims together. *See Wal-Mart*, 564 U.S. at 350; *Decohen*, 299 F.R.D. at 477.

Whether Continental's actions did, in fact, violate the law also is subject to a common answer. *See EQT Prod. Co.*, 764 F.3d at 360 ("what matters to class certification … [is] the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.") (*quoting Wal–Mart*, 131 S.Ct. at 2551 (emphasis in original, internal quotation marks omitted)). Either Continental violated the law and damaged Settlement Class Members as a result, or it did not.

The commonality requirement is, therefore, satisfied.

c) Fed.R.Civ.P. 23(a)(3) – Typicality

The same facts which support commonality support the "similar and overlapping" requirement of typicality. *Decohen*, 299 F.R.D. at 477 (citation omitted). Representative Plaintiffs' claims are typical of Settlement Class Members' claims because each claim arises from the same practice and course of conduct by the same defendant. *See Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 498 (D. Md. 1998) ("[t]he test for determining typicality is whether the claim or defense arises from the same course of conduct leading to the class claims, and whether the same legal theory underlies the claims or defenses."). Typicality is satisfied if, by pursuing their claims, the Representative Plaintiffs "simultaneously tend[s] to advance the interests of the absent class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466–67 (4th Cir. 2006).

Here, Representative Plaintiffs faced the same allegedly unlawful practice which affected the entire Settlement Class – Continental, without a license, lent them money or helped them obtained loans. The same legal theory underlies every Settlement Class Member's claims. As a result, the typicality requirement is satisfied.

d) Fed.R.Civ.P. 23(a)(4) – Adequacy

The same facts which support commonality and typicality support the "similar and overlapping" adequacy requirement. *Decohen*, 299 F.R.D. at 477 (citation omitted).

The requirement of adequate representation assures that absent class members, who will be bound by the result, are protected by a vigorous, competent prosecution of the case by someone sharing their interests. *See* 1 Newberg, *supra*, § 3.21; *see also*

George v. Baltimore City Public Schools, 117 F.R.D. 368, 371 (D. Md. 1987). This ensures "that the relationship of the representative parties' interest to those of the class are such that there is not likely to be divergence in viewpoint or goals in the conduct of the suit." *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 449 (3d Cir. 1977). Representative Plaintiffs do not have any conflict with the proposed Settlement Class and exhibited a dedication to this case. *See* Carney Decl. ¶ 27.

Furthermore, Class Counsel are experienced in handling consumer class actions and complex consumer litigation and have served as certified class counsel in dozens of consumer class actions. *See* Carney Decl. ¶¶ 3, 7. And the contingent-fee nature of Class Counsel's representation aligns their interests with those of the Settlement Class. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010) ("an attorney compensated on a contingency basis has a strong economic motivation to achieve results for his client, precisely because of the risk accepted. As the Seventh Circuit has explained, '[t]he contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client.'") The adequacy requirement is satisfied.

C. The Criteria of Fed. R. Civ. P. 23(b)(3) Are Satisfied.

After finding that all four requirements of Fed. R. Civ. P. 23(a) are met, class certification is appropriate if any one of three criteria in part (b) of the Rule is satisfied. Certification here is appropriate under Fed. R. Civ. P. 23(b)(3), which permits class certification where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.*

The requirements of Fed. R. Civ. P. 23(b)(3) are "met where all class members' claims 'depend upon a common contention,' and establishing 'its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Baugh v. Fed. Sav. Bank*, 337 F.R.D. 100, 110 (D. Md. 2020) (*quoting Wal-Mart*, 564 U.S. at 350). Here, the contention common to all Settlement Class members is that

Maryland law did not permit Continental to make loans of under $25,000 to the Class Members or to assist Class Members to obtain such loans.

Moreover, absent class certification and settlement, class members would be effectively foreclosed from relief. Continental's practices involved small loans, and individual litigation over such small loans is impracticable. *See* ECF 24, ¶¶ 123-129.

Continental's practices vis-à-vis individual Class members were substantial to the individuals, but absent a class action, it would be absurd to file or pursue an individual lawsuit – let alone a federal case – over those small loan accounts in light of the great expense and cost of litigation. Settlement Class Members have no reason to pursue their claims individually. These circumstances show that the "interest of members of the class in individually controlling the prosecution of separate actions," Fed. R. Civ. P. 23(b)(3)(A), is low, and class certification would serve Settlement Class Members.

Furthermore, (b)(3) certification is supported because Class Counsel is unaware of any other "litigation concerning the controversy already commenced by members of the class." Fed. R. Civ. P. 23(b)(3)(B); *see also* Carney Decl. ¶ 20.

Finally, under Fed. R. Civ. P. 23(b)(3)(C) & (D), the fact that this case is the subject of a class action Settlement Agreement means that concentration of claims in this forum is particularly desirable for the purposes of settlement, and few difficulties are likely to be encountered in the management of a settlement class action.

VII. The Notice to the Class Comports with Fed. R. Civ. P. 23

The Preliminary Approval Order approved the Parties' proposed plan for distributing notice to Settlement Class Members. Pursuant to the Settlement Agreement, the Settlement Administrator has already provided a declaration concerning its compliance with the Court-ordered notice plan. *See* ECF No. 41.

VIII. Conclusion

For the reasons set forth above, Representative Plaintiff respectfully requests that the Court grant final approval to the Settlement Agreement and enter the comprehensive attached Final Settlement Approval Order.

Respectfully submitted,

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