IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM MARK SCOTT and RONALD MORIN, individually and on behalf of all others similarly situated, *Plaintiffs*, JPMORGAN CHASE BANK, N.A., *Defendant.*	Civil Action No. 1:17-CV-00249 Honorable Amit P. Mehta

PLAINTIFFS' UNOPPOSED MOTION AND INCORPORATED STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND SETTING OF A FINAL APPROVAL HEARING

Plaintiffs William Mark Scott and Ronald Morin ("Plaintiffs" or "Class Representatives") individually and on behalf of the proposed Settlement Class (defined in the Settlement Agreement, attached hereto as Exhibit A), respectfully submit their unopposed motion for and incorporated statement of points and authorities in support of their motion for preliminary approval of class action settlement, certification of settlement class, and setting of a final approval hearing. This motion is accompanied by the Settlement Agreement ("Agreement"), the Declaration of Anna Haac ("Haac Decl."), the Declaration of Stephanie Thurin ("Epiq Decl.") and exhibits thereto, and a proposed order. In addition, Plaintiffs are concurrently filing an Amended Consolidated Complaint substituting JPMorgan Chase Bank, N.A. as the defendant in this Action.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Treatises

Regulations

I. INTRODUCTION

Plaintiffs have reached a Settlement that provides meaningful relief to the Settlement Class in the form of a full reimbursement of any fees paid by Settlement Class Members in connection with their use of certain juror and fact witness debit cards issued by JPMorgan Chase Bank, N.A. ("Chase") and issuance of checks in the amount of all remaining balances, with an agreement by Chase not to charge any further fees on these debit cards. Plaintiffs obtained what they set out to do when they filed the case in early 2017. They now respectfully move the Court to enter the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted with this motion, which provides for:

(1) Preliminary approval of the Settlement as set forth in the Settlement Agreement;

(2) Certification of the Settlement Class, for settlement purposes only;

(3) Appointment of Plaintiffs as Class Representatives;

(4) Appointment of Tycko & Zavareei LLP and Levi & Korsinsky LLP as Settlement Class Counsel;

(5) Appointment of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Settlement Administrator responsible for Class Notice and Administration;

(6) The scheduling of a Final Approval Hearing in this matter.

As Plaintiffs explain in further detail below, the proposed settlement is fair, adequate, and reasonable, and should be preliminarily approved by the Court concurrent with certification of the requested Settlement Class.

II. FACTUAL BACKGROUND

A. Case Background

In September 2008, the United States Department of the Treasury ("Treasury") entered into a Financial Agency Agreement ("FAA") with Chase. Pursuant to the FAA, Chase operated the U.S.

Debit Card program, which "provide[s] debit card services to cardholders within and outside of the United States as necessary to facilitate the use of debit cards by Federal agencies and cardholders anywhere in the world." (Dkt. 18-2, FAA ¶ 3(c).) In April 2012, Treasury and the District of Columbia Courts ("D.C. Courts") executed an interagency agreement permitting D.C. Courts to participate in the U.S. Debit Card program. The same month, Treasury executed a "Direction to Agent" for Chase to "provide U.S. Debit Card program products and services to the DC Courts." (Dkt. 18-3, Direction to Agent No. 34 ¶ 2.)

Including but not exclusively pursuant to the U.S. Debit Card program, Chase issued debit cards for use by court systems in multiple jurisdictions to pay persons for their jury service ("Juror Debit Card"). Under the U.S. Debit Card program operated for D.C. Courts, Chase issued Juror Debit Cards to persons who served on juries in the D.C. Courts. (Agreement ¶ 3.) Chase also issued Juror Debit Cards to persons who served on juries in Gwinnett County, GA; Livingston County, MI; and Fort Bend County, TX. (*Id.*) Also under the U.S. Debit Card program operated for D.C. Courts, Chase provided debit cards for payment to persons for service as fact witnesses in Washington, D.C. ("Fact Witness Debit Card"). (*Id.* ¶ 4.) Plaintiff William Mark Scott is a resident of the District of Columbia and served on a jury in July 2016. (Dkt. 14-2, Consol. Compl. ¶ 24.) Plaintiff Morin is a resident of the District of Columbia and served on a jury in January 2017. (*Id.* ¶ 25.) Plaintiffs both received Juror Debit Cards upon completion of jury service. (*Id.* ¶¶ 24-25.)

On February 7, 2017, Plaintiff Scott filed a class action lawsuit in this Court against JPMorgan Chase & Co., the parent company of JPMorgan Chase Bank, N.A. alleging a deceptive and unlawful scheme to deprive jurors of their full payments for jury service in connection with the Juror Debit Cards (the "*Scott* Action"). (Dkt. 1.) Plaintiff Scott alleged that these Juror Debit Cards were loaded with excessive and unreasonable fees that made it nearly impossible for jurors to fully

consume the funds to which they were statutorily entitled. (*Id.*) Plaintiff Scott further alleged that the disclosures provided to cardholders were deceptive. (*Id.*) On March 3, 2017, Plaintiff Ronald Morin filed a similar class action (the "*Morin* Action"). *See Morin v. JP Morgan Chase & Co.*, Case No. 1:17-cv-00387-APM (D.D.C.).

On March 29, 2017, Plaintiffs filed an unopposed motion to consolidate the *Scott* and *Morin* Actions (the "Consolidated Action") and for appointment of Lead Counsel. (Dkt. 14.) On April 3, 2017, the Court granted the motion to consolidate, appointing Tycko & Zavareei LLP and Levi & Korsinsky LLP as Interim Co-Lead Counsel for the Plaintiffs in the Consolidated Action. (Dkt. 15). The Consolidated Action alleged causes of action for unjust enrichment, conversion, unfair and deceptive practices in violation of state consumer protection statutes, and violation of the Electronic Fund Transfer Act ("EFTA"), 12 C.F.R. § 205.10, relating to the alleged nonconsensual possession of jurors' funds, and the amounts and disclosure of fees in connection with using a Juror Debit Card. (*See* Consol. Compl. ¶¶ 117-76.) Chase has since ceased its participation in the U.S. Debit Card program and no longer issues debit cards in connection with juror or fact witness service in any U.S. jurisdiction.

On May 3, 2017, JPMorgan Chase & Co. filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. 18.) Plaintiffs opposed the motion. (Dkt. 21.) The Court held a hearing on that motion on September 29, 2017. At the conclusion of oral argument on the motion, the Court requested supplemental briefing on the meaning of the term "government benefit" in the EFTA. The Parties filed their supplemental briefs on October 6, 2017. (Dkt. 25, 26.) On October 31, 2017, the Court issued an order denying the motion with respect to its claim of derivative sovereign immunity, and deferred ruling on the remainder of the motion. (Dkt. 27.) The Court allowed the Parties to engage in limited discovery on the question of whether Defendant was

entitled to derivative sovereign immunity. (*Id*. at 14.) That limited discovery was initially scheduled to close on January 29, 2018. (*Id*. at 15.)

Although the Parties issued formal discovery requests directed to the limited issue identified by the Court, the Parties thereafter engaged in settlement negotiations and discovery in an attempt to reach a resolution of this matter and avoid costly and protracted litigation. (Haac Dec. ¶¶ 6-8, 10.) On January 19, 2018, the Parties reached an agreement in principle on a proposed settlement and thereafter requested and were granted additional time to memorialize their agreement and engage in further confirmatory discovery. (*Id.*; Dkt. 28, 30, 32-33.) The Parties executed the attached Settlement Agreement on April 19, 2018, subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23.

B. Summary of Settlement Terms

As set forth more fully below, Plaintiffs achieved the goals of the action in the Settlement. Settlement Class Members will automatically receive checks reflecting a full refund of any fees and surcharges paid in connection with their use of Juror or Fact Witness Debit Cards as well as 100% of their outstanding balances. (Agreement ¶¶ 44-45.) Chase has further agreed not to charge any additional fees on Settlement Class Members' Juror or Fact Witness Debit Cards and in fact, Chase no longer issues juror or fact witness payments via debit card in any U.S. jurisdiction. (*Id*. ¶ 46.)

In addition to the complete relief afforded Settlement Class Members, the Settlement's robust notice and administration plan will ensure the maximum number of Settlement Class Members receive the payments to which they are entitled. Chase has address information for 100% of Settlement Class Members and will automatically mail funds to Settlement Class Members via a check. (*Id*. ¶¶ 44-45, 69.) There is no claim form. The notice program and distribution of settlement payments will be overseen by Epiq, a reputable organization with deep

experience in the field. (*Id*. ¶ 35; Epiq Decl. ¶¶ 5-6.) Moreover, notice and administration costs will be paid by Chase separate and apart from any distributions to Settlement Class Members. (Agreement ¶ 48.)

Chase will also separately pay (pending Court approval) Plaintiffs' requested Service Awards and reimburse Class Counsel's attorneys' fees and costs. (*Id*.) The Parties did not agree on the amount of Class Counsel's attorneys' fees and costs or any potential Service Awards to Plaintiffs until after they agreed on all other Settlement terms. (Haac Dec. ¶ 10.)

In exchange for Chase's undertakings, Plaintiffs and the Settlement Class will provide Chase with a release of all claims that were or could have been alleged in the action. (Agreement ¶¶ 71-73.) Final approval of the Settlement Agreement will result in the dismissal with prejudice of Plaintiffs' individual and class claims against Chase.

1. The Settlement Class

The Settlement Agreement provides relief to all jurors in the U.S. who were paid for their jury service with a Chase debit card, as well as any fact witnesses paid for their service by the D.C. Courts with a Chase debit card. (*Id*. ¶¶ 42, 44-46) As discussed above, Chase issued Juror Debit Cards to persons who served on juries in the D.C. Courts, as well as in Gwinnett County, GA; Livingston County, MI; and Fort Bend County, TX. (*Id.* ¶ 3.) Chase also issued debit cards for payment to persons for service as fact witnesses in Washington, D.C. (*Id.* ¶ 4.) Accordingly, the Settlement Class is defined as follows:

> All persons who, up to and including the date of preliminary approval, were either (1) paid for jury service by means of a Juror Debit Card or for fact witness service by means of a Fact Witness Debit Card as part of the U.S. Debit Card program operated by JPMorgan Chase Bank, N.A. for the United States Department of the Treasury, in the jurisdiction of Washington, DC; or (2) paid for jury service by means of a Juror Debit Card as part of the programs operated by JPMorgan Chase Bank, N.A., in the jurisdictions of Gwinnett County, GA; Livingston County, MI; and Fort Bend County, TX.

(*Id.* ¶ 42.)

The total class numbers are approximately 169,000, equivalent to the number of Juror and Fact Witness Debit Cards issued by Chase since the implementation of the Juror and Fact Witness Debit Card Program.

2. Monetary Relief

Each Settlement Class Member will be entitled to receive a check reflecting a full refund of any Chase fees and third-party surcharges charged in connection with Chase's Juror and Fact Witness Debit Cards (a total of $97,819.31), as well as any outstanding balances that remain on Settlement Class Members' Juror or Fact Witness Debit Cards at the time of distribution (a total of $521,018.52) (together, $618,837.83). (*Id*. ¶ 44-46.)

3. Class Release

As consideration for the monetary relief under the Settlement Agreement, Chase will receive a Release from Settlement Class Members as more specifically delineated in the Settlement Agreement with respect to any claim that was alleged or could have been alleged in the Complaint, and that relates to: (a) Settlement Class Members' access to juror or fact witness payments, (b) Settlement Class Members' payment of fees or surcharges in relation to Juror Debit Cards or Fact Witness Debit Cards, or (c) any disclosures or other communication to Settlement Class Members concerning Juror Debit Cards or Fact Witness Debit Cards (the "Released Claims"). (*Id*. ¶¶ 71-73.) If the settlement receives final approval, this action will be dismissed with prejudice. (*Id*. ¶ 68.)

4. The Notice Program and Settlement Administration

Chase will advance and pay all notice program and settlement administration costs separately from the monetary relief paid to the Settlement Class. (*Id*. ¶ 48.) This is an added benefit to the class as these costs will be paid separately from Chase's initial payment of the

monetary relief discussed above, as well as any payment of a service award or reimbursement of attorneys' fees and costs.

Epiq will serve as the notice and settlement administrator for this Settlement. (*Id*. ¶ 35; Epiq Decl. ¶ 3.) The Settlement Administrator's duties and responsibilities include, among other things: (i) establishing and maintaining a Post Office box for requests for exclusion from the Settlement Class; (ii) establishing and maintaining the toll-free telephone line for Settlement-related inquiries; (iii) establishing and maintaining the Settlement Website; (iv) handling any mailed or e-mailed Class Member inquiries; (v) processing requests for exclusion; (vi) tracking and processing Claims Forms; and (vii) taking all other steps the parties deem appropriate to effectuate the Settlement. (Agreement ¶¶ 51-52.)

The Class Notice, which Epiq will disseminate, has been designed to give the best notice practicable, is tailored to reach members of the Settlement Class, and is reasonably calculated under the circumstances to apprise the Settlement Class of the Settlement and, specifically, each Settlement Class Member's rights to exclude themselves from the Settlement or object to the Settlement's terms, Class Counsel's anticipated fee application, and Plaintiffs' request for a service award. (*See* Epiq Decl., Exs. A-B.)

The Class Notice Program includes: (i) direct mail postcard notice; (ii) the creation of a Settlement Website; (iii) the creation of a toll-free telephone number; and (iv) a long-form notice with more detail than the direct mail or publication notices, which will be available on a Settlement Website, and/or upon written or telephonic request. (Agreement ¶ 52, 60; Epiq Decl. ¶¶ 8-15.) All forms of Notice will include, among other information, a context-appropriate description of the Settlement, the date by which Settlement Class Members may exclude themselves from the Settlement Class or object to the Settlement, the address of the Settlement

Website; and the number of the toll-free telephone line. (Agreement ¶¶ 54-57, 60; Epiq Decl., Exs. A-B.)

With respect to direct mail postcard notice, Chase has reasonably accessible mailing address information for all Settlement Class Members, which Chase will provide to the Settlement Administrator. (Agreement ¶¶ 53-54.) The Settlement Administrator will then verify these addresses by running them through the National Change of Address Database and disseminate mailed notice to Settlement Class Members. (*Id.* ¶¶ 61.) The mailed notice will further direct recipients to the Settlement Website or toll-free number for additional information, including the Long Form Notice or other papers if desired. (Epiq Decl., Ex. A.)

The Settlement Administrator will also establish a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. (Agreement ¶ 52(b).) The Settlement Website will include an electronic and printable copy of the Long Form Notice, information about the litigation and the Settlement, and important court documents. (*Id*. ¶¶ 60, 63.) The Settlement Website will be activated as soon as practicable following Preliminary Approval, and before commencement of the Notice Program. (*Id.* ¶ 38.)

Finally, the Settlement Administrator will also establish and maintain an automated toll-free telephone line for Settlement Class Members to obtain additional information about the Settlement. (*Id.* ¶¶ 52(b), 64.)

The Class Notice Program constitutes sufficient notice to persons entitled to receive it, and satisfies all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

Requests for exclusion must be sent to the Settlement Administrator and postmarked before the opt out deadline. (*Id*. ¶ 56.) Objections must be filed with the Court, with copies of the objections sent to the parties' counsel, by the objection deadline. (*Id.* ¶¶ 57-58.) The deadlines

for objections, requests for exclusion, and claims are all before the Final Approval Hearing (see chart at Section V, infra).

5. Reimbursement of Attorneys' Fees and Costs and Payment of Service Awards

Chase will not oppose Class Counsel's request for reimbursement of attorneys' fees and costs up to a total of $335,000. (Agreement ¶ 47.) In addition, Chase will not oppose Plaintiffs' request for a service award of $5,000 to each Plaintiff ($10,000 total). (*Id*.) The Service Awards will compensate Plaintiffs for their time and effort in this matter, for participation in the settlement process, and for the risks they undertook in prosecuting this action. Reimbursement of Class Counsels' attorneys' fees and costs, as well as payment of Plaintiffs' Service Awards, will be paid by Chase separately from the monetary relief available to the Settlement Class. (*Id.*)

III. PRELIMINARY APPROVAL IS WARRANTED

Rule 23(e) provides for judicial approval of any compromise of claims brought on a class basis if the proposed class action settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e); *see also United States v. District of Columbia*, 933 F. Supp. 42, 47 (D.D.C. 1996) ("'The trial court in approving a settlement need not inquire into the precise legal rights of the parties nor reach and resolve the merits of the claims or controversy, but need only determine that the settlement is fair, adequate, reasonable and appropriate under the particular facts and that there has been valid consent by the concerned parties.'") (quoting *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983)). Approval of class action settlements is committed to the sound discretion of the district court. *See* Fed. R. Civ. P. 23(e).

In exercising this discretion, district courts are mindful of the strong judicial policy favoring settlements. *Pigford v. Glickman*, 185 F.R.D. 82, 103 (D.D.C. 1999) (recognizing a "'principle of preference' that encourages settlements"). Indeed, "[t]he Rule 23 requirements are fully consistent with the long-standing judicial attitude favoring class action settlements." *In re*

Lorazepam & Clorazepate Antitrust Litig., 205 F.R.D. 369, 375 (D.D.C. 2002). "In the context of class actions, settlement is particularly appropriate given the litigation expenses and judicial resources required in many such suits." *Osher v. SCA Realty I, Inc.*, 945 F. Supp. 298, 304 (D.D.C. 1996) (internal citations omitted). Thus, while court approval is required in order to protect the interests of absent class members, courts assume a limited role when reviewing a proposed class action settlement. *In re Nat'l Student Marketing Litig.*, 68 F.R.D. 151, 155 (D.D.C. 1974).

Preliminary approval of a proposed settlement is warranted so long as the preliminary evaluation by the Court does not raise obvious doubts about the settlement and the settlement is with the range of possible approval:

> Generally, preliminary approval of a class action settlement will be granted if it appears to fall 'within the range of possible approval' and 'does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys.' *Newberg on Class Actions*, § 11:25 (4th ed. 2010) (quoting *Manual for Complex Litigation*, Third, § 30.41 (1999)); *In re Vitamins Antitrust Litig.*, No. 99–197, 1999 WL 1335318, at *5 (D.D.C. November 23, 1999).

Trombley v. Nat'l City Bank, 759 F. Supp. 2d 20, 23 (D.D.C. 2011). Courts recognize that "[t]hey should not substitute their judgment for that of counsel who negotiated the settlement. . . . Absent evidence of fraud or collusion, such settlements are not to be trifled with." *Osher*, 945 F. Supp. at 304.

At the preliminary approval stage, the court does not make a final determination of the merits of the proposed settlement.

> In evaluating a settlement for preliminary approval, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *See Detroit v. Grinnell Corp.*, 495 F.2d 448, 456 (2d Cir. 1974). The court determines whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies . . . and whether it appears to fall within the range of possible approval. *See In re Prudential Securities Incorporated Limited*

> *Partnerships Litigation*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (citing Manual for Complex Litigation § 30.41 at 237 (3d ed. 1995)).

Thomas v. NCO Financial Sys., No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002). "Once preliminary approval is bestowed, the second step of the process ensues; notice is given to the class members of a hearing, at which time class members and the settling parties may be heard with respect to final court approval." *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). Here, the facts establish that this is a fair, adequate and reasonable settlement deserving of preliminary approval.

A. The Settlement was the Result of Arms-length Negotiations Involving Formal and Informal Discovery

Typically, "[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm's-length by counsel for the class, is presented to the Court for approval." *Newberg on Class Actions* § 11.41 (4th ed. 2002). This presumption of fairness applies here as the Parties engaged in arms' length negotiations. (*See, e.g.*, Haac Decl. ¶¶ 7-8, 10.)

After the Court's ruling denying in part and deferring in part Defendant's Motion to Dismiss, Plaintiffs propounded discovery requesting, *inter alia*, the amount of fees incurred by jurors. (*Id*. ¶ 6.) Plaintiffs then made a demand to settle the case for complete relief to the Class—a full refund of any fees charged in connection with the use of Chase's Juror Debit Cards, no further fees charged by Chase, and issuance of checks in the amount of all remaining balances. (*Id*.) The Parties thereafter engaged in negotiations and information sharing that culminated in an agreement in principle. (*Id*. ¶¶ 6-8.)

When the litigation was filed, Plaintiffs already had copies of the disclosures they alleged were misleading and the fee schedule they alleged was unfair. To evaluate the case from a damages perspective, however, Class Counsel used informal discovery to gather information

pertaining to jurisdictions and programs for which Chase debit cards were issued, as well as the amount of fees and surcharges charged in connection with the use of these cards and any outstanding balances remaining. (*See id.* ¶ 7) Class Counsel had conferences with defense counsel to evaluate this information and requested additional information to ensure a complete picture of the proposed class and any damages sustained. (*Id.*) Class Counsel carefully studied and applied this information to the negotiation of the Settlement Agreement and ultimately concluded that under the circumstances, a settlement with complete relief to the Class was undoubtedly in the interests of Settlement Class Members. (*See id.*)

Based on this information and the legal issues raised in the motion to dismiss briefing, both Parties and their counsel had an informed view of the strengths and weaknesses of their respective positions, the risks of continued litigation, and an appreciation for the substantial value this settlement delivers to the Settlement Class. The Parties understood that each side carried risk moving forward with the litigation, and in light of the actual damages sustained by the Class, determined lengthy litigation was not economical for either side. The negotiations that led to the proposed settlement were serious, informed, and adversarial. (*See id.*)

This settlement was achieved after the parties had the benefit of informal discovery to evaluate the possibility of settlement. Courts in this District have repeatedly held that even swift settlements without any discovery should be approved. *Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 62 (D.D.C. 2010) ("In determining whether a proposed class action settlement is fair, adequate, and reasonable, courts consider whether counsel had sufficient information, through adequate discovery, to reasonably assess the risks of litigation vis-a-vis the probability of success and range of recovery."); *see also In re Vitamins Antitrust Litig.*, 1999-2 Trade Cas. ¶ 72, 726, 1999 WL 1335318, *4 (D.D.C. Nov. 23, 1999) ("The pursuit of early settlement is a

tactic that merits encouragement; it is entirely appropriate to reward expeditious and efficient resolution of disputes") (internal citations omitted); *In re Lorazepam Antitrust Litig.*, 205 F.R.D. at 369 ("[E]arly settlement of these types of cases is encouraged.").

Moreover, there are no obvious flaws in the Settlement. Rather, the Settlement fully refunds any fees and surcharges paid by Settlement Class Members, provides for issuance of checks in the amount of all remaining balances, and includes Chase's agreement not to charge additional fees that would further deplete these balances. As such, preliminary approval is warranted.

B. Class Counsel are Experienced in Similar Litigation

Both Parties' counsel are qualified and competent class action litigators, well-positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the Settlement. Class Counsel has successfully handled national, regional, and statewide class actions throughout the United States in both federal and state courts. (*See* Haac Decl. ¶ 19; Dkt. 14-3; 14-4; 15.)

C. The Settlement Provides Excellent Relief for Settlement Class Members and is Thus Plainly within the Range of Reasonableness

The relief the Settlement Agreement provides for Settlement Class Members is outstanding. Chase has agreed to refund 100 percent of the fees and surcharges Settlement Class Members incurred in connection with the use of their Juror and Fact Witness Debit Cards *and* issue checks in the amount of all outstanding balances remaining on their cards, as well as agreeing that no further fees will be charged to Settlement Class Members. (Agreement ¶¶ 44-46.) The Settlement is not claims-made, meaning Settlement Class Members will automatically receive a check with the full amount of their funds. (*Id*. ¶¶ 44-45, 69.) In addition, Chase has agreed to pay for notice and settlement administration costs, reimbursement of attorneys' fees

and costs, and Service Awards separate and apart from the monetary relief provided to Settlement Class Members. (*Id.* ¶ 48.)

Because the Notice costs, attorneys' fees, and Service Awards are in addition to the monetary relief provided to the Class, these costs will not in any way reduce the full relief Settlement Class Members will receive. The monetary relief provided by the Settlement is therefore extremely favorable to the Settlement Class Members. *See, e.g., In re Fed. Nat'l Mortg. Assoc. Sec., Derivative, & ERISA Litig.*, 4 F. Supp. 3d 94, 103-04 (D.D.C. 2013) (approving settlement that represented between four and eight percent of plaintiffs' estimated best recovery); *Trombley*, 759 F. Supp. 2d at 25-26 (finding settlement that represented between 17% and 24% of estimated trial recovery to be reasonable); *In re Baan Co. Sec. Litig.*, 284 F. Supp. 2d 62, 65-66 (D.D.C. 2003) (approving settlement that represented 16% of plaintiffs' best-case-scenario damages, and between 32.5 and 54% of defendants' damages estimate).

Moreover, the continued litigation of this matter will require (and has already required) substantial resources. (Haac Decl. ¶¶ 11-12.) Indeed, the Settlement was reached at a critical moment: after receipt of vital information from Chase, but before pivotal procedural and merits junctures after which the expense of litigating Plaintiffs' claims would have increased substantially. (*Id.* ¶ 13.) Continued litigation of this matter would necessitate further discovery on Chase's sovereign immunity defense, including depositions and the extraction, production, and analysis of various data from Chase. (*Id.* ¶¶ 11.) And this does not include work related to class certification, which likely would require expert disclosures and depositions. (*Id.*) Nor does it include discovery or briefing of other merits issues unrelated to Chase's sovereign immunity defense. (*Id.*) All of these matters would require significant time and expense, and while Plaintiffs and Interim Counsel remain committed to Plaintiffs' claims, they are also pragmatic

that there is no guarantee of success. (*Id.* ¶¶ 11.) Moreover, it would make no sense to continue to litigate given the full relief being afforded the Settlement Class.

D. The Settlement Class Satisfies Rule 23(a) And Rule 23(b)

Before granting preliminary approval of a class action settlement, it is appropriate for a Court to certify a class for settlement purposes. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The settling parties have stipulated, for settlement purposes only, to the following definition of the Settlement Class:

> All persons who, up to and including the date of preliminary approval, were either (1) paid for jury service by means of a Juror Debit Card or for fact witness service by means of a Fact Witness Debit Card as part of the U.S. Debit Card program operated by JPMorgan Chase Bank, N.A. for the United States Department of the Treasury, in the jurisdiction of Washington, DC; or (2) paid for jury service by means of a Juror Debit Card as part of the programs operated by JPMorgan Chase Bank, N.A., in the jurisdictions of Gwinnett County, GA; Livingston County, MI; and Fort Bend County, TX.

(Agreement ¶ 42.)

As explained herein, the proposed Settlement Agreement meets the requirements of Rule 23 for settlement purposes. Thus, respectfully, the Settlement Class should be certified.

E. The Settlement Class Meets All the Requirements for Class Certification Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure

Rule 23(a) sets forth the following prerequisites for certifying a class: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). These requirements are all satisfied in this matter.

1. The Class is Sufficiently Numerous Because Joinder of All Members of the Class is Impracticable

Rule 23(a)(1) requires a showing that "the class is so numerous that individual joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no specific threshold that must be surpassed in order to satisfy the numerosity requirement; rather, the determination "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 330 (1980). That said, courts in this jurisdiction have observed that a class of at least forty members is sufficiently large to meet this requirement. *See, e.g.*, *Thomas v. Christopher*, 169 F.R.D. 224, 237 (D.D.C. 1996), *aff'd in part and rev'd. in part*, 139 F.3d 227 (D.C. Cir. 1998). Here, the Settlement Class includes approximately 169,000 members according to Chase's records. Thus, the numerosity requirement is plainly satisfied.

2. Questions of Law and Fact Are Common to the Settlement Class

Rule 23(a)'s commonality requirement also is satisfied here. Commonality requires that the plaintiff raise claims which rest on "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2) . This rule does not require that "every issue of law or fact be the same for each class member." *Bynum v. District of Columbia*, 217 F.R.D. 43, 46 (D.D.C. 2003). Rather, "[t]he commonality test is met when there is at least one issue, the resolution of which will affect all or a significant number of the putative class members." *Coleman v. Pension Benefit Guar. Corp.*, 196 F.R.D. 193, 198 (D.D.C. 2000) (internal quotation marks omitted). Because the commonality requirement may be satisfied by a single common issue, courts have noted that it is "often easily met." *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 259 (D.D.C. 2002).

That is certainly the case here. Plaintiffs' and other Settlement Class Members' claims stem from a common course of conduct. Each Settlement Class Member received a Chase debit

card that was subject to similar fees charged by Chase and included similar disclosures that Plaintiffs allege were deceptive. Similarly, Chase's principal defenses, such as its government immunity defenses, are common to all Settlement Class Members. Thus, questions of law and fact common to all Settlement Class Members exist, and include, *inter alia*:

a. whether Chase automatically opens debit card accounts for jurors without their consent;
b. whether Chase's debit card fees are unreasonable and/or unconscionable;
c. whether Chase deceives jurors about, and does not adequately disclose, the debit card fees;
d. whether Chase forces jurors to forfeit unused balances on its debit cards;
e. whether and to what extent, if any, jurors are able to access any of their juror funds;
f. whether Chase is unjustly enriched through its policies and practices;
g. whether Chase violates D.C. and other state consumer protection acts through its policies and practices; and
h. whether Chase juror payments constitute government benefits as used in the EFTA.

(*See, e.g.*, Dkt. 14-2 at 8-10.)

3. Plaintiffs' Claims are Typical of the Settlement Class

Typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Rule 23's typicality and commonality requirements "tend to merge" because both serve as "guideposts" as to whether a particular class action is practical and whether the claims of the plaintiff and class are sufficiently interrelated to protect the class members in their absence. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982).

Because Plaintiffs' claims arise from the same course of conduct as the other Settlement Class Members' claims, Plaintiffs' claims are typical of the Class. As alleged in the Complaint, Plaintiffs, like all Settlement Class Members, were defaulted into receiving a Chase debit card and were subject to the same schedule of fees and disclosures as other Settlement Class

Members. (*See, e.g.*, Dkt. 14-2 at 8-9.) Additionally, Plaintiffs' and all other Settlement Class Members' claims are premised on the same legal theories. Accordingly, Rule 23's typicality requirement is satisfied here.

4. Rule 23(a)'s Adequacy Requirement is Satisfied

The fourth and final requirement of Rule 23(a) requires class representatives to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In making this determination, a court must be assured that (1) the proposed representative does not have any conflicts of interest with other class members; and (2) the representative will vigorously prosecute the interests of the class though qualified counsel. *McReynolds v. Sodexho Marriott Services, Inc*., 208 F.R.D. 428, 446 (D.D.C. 2002).

Plaintiffs do not have any claims antagonistic to or in conflict with those of the other Settlement Class Members. (*See, e.g.*, Dkt. 14-2 at 10.) As discussed above, Plaintiffs are pursuing the same legal theories as the rest of the Settlement Class relating to the same course of Chase's conduct. Plaintiffs and other Settlement Class Members' claims turn on the same alleged misrepresentations and omissions. In addition, Plaintiffs seek remedies equally applicable and beneficial to themselves and all other Settlement Class Members. Finally, Settlement Class Counsel have an extensive background in litigating complex litigation and consumer class actions, have been appointed class counsel in prior cases, and have the resources necessary to prosecute this action to its conclusion. (*See* Haac Decl. ¶ 19; Dkt. 14-3; 14-4; 15.)

Accordingly, the adequacy requirement of Rule 23(a)(4) is satisfied.

F. The Requirements of Rule 23(b)(3) are Satisfied

Rule 23(b)(3) authorizes class actions to proceed where "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fair and efficient

adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

"In adding 'predominance' and 'superiority' to the qualification-for-certification list, the Advisory Committee sought to cover cases 'in which a class action would achieve the economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615. Where, as here, a court is deciding on the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes do not have to be considered. *Id*. at 619. The remaining elements or Rule 23, however, continue to apply in settlement-only certification situations. *Id.*

The Rule 23(b)(3) predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Id*. at 623. "Rule 23(b)(3) does not require that *all* questions of law or fact be common; it only requires that the common questions *predominate* over individual questions." *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 93 (S.D.N.Y. 1981) (emphasis added); s*ee also* William B. Rubenstein, *Newberg on Class Actions*, § 4:51 (5th ed. 2017) (citing cases in accord). "[C]ourts are more inclined to find the predominance test met in the settlement context." *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 304 n.29 (3d Cir. 2011) (internal quotations and citation omitted).

Several issues of law or fact are common to all Settlement Class Members, as set forth in Section III.A.2. Specifically, Defendants issued Juror and Fact Witness Debit Cards pursuant to an agreement with the Treasury, which set forth standard fees that Chase charged to all Settlement Class Members. (Dkt. 18-2 at 35, 39.) Moreover, Defendants' disclosures were uniform. (*See generally* Dkt. 14-2 ¶¶ 73, 94-102, Dkt. 18-2 at Exs. 3-4.) Whether Defendants violated the EFTA, were unjustly enriched, or committed unfair business practices can be determined with common evidence. The common issues of law or fact further predominate over any potential individual issues which may arise, as they could be resolved through the presentment of proof common to all Settlement Class Members.

Thus, the predominance requirement of Rule 23(b)(3) is satisfied. Further, resolution of the claims of Settlement Class Members through the settlement of a class action is far superior to individual lawsuits because it promotes consistency and efficiency of adjudication and because of the relatively low dollar amount of actual damages sustained by the Settlement Class. *See* Fed. R. Civ. P. 23(b)(3). Absent certification, potential class members would lack incentive to pursue individual claims due to the relatively small individual amounts at issue.

For these reasons, the superiority requirement of Rule 23(b)(3) is also satisfied. Under this requirement, "maintaining the present action as a class action must be deemed by the court to be superior to other available methods of adjudication. A case will often meet this standard when 'common questions of law or fact permit the court to consolidate otherwise identical actions into a single efficient unit.'" *Bynum*, 217 F.R.D. at 49 (citations omitted); *see also Wells v. Allstate Ins. Co.*, 210 F.R.D. 1, 12 (D.D.C. 2002) ("Rule 23(b)(3) favors class actions where common questions of law or fact permit the court to 'consolidate otherwise identical actions into a single efficient unit.'").

A class action is not only the most desirable, efficient, and convenient mechanism to resolve the claims of the Settlement Class, but it is almost certainly the only fair and efficient means available to adjudicate these claims. Settlement Class Members have no incentive to individually shoulder the great expense of litigating the claims at issue against Chase given the comparatively small size of each individual Settlement Class Members' claims. *See, e.g.*, *Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("Class actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available.").

IV. THE NOTICE PROGRAM IS APPROPRIATE AND SHOULD BE APPRVOED

Pursuant to Rule 23(e)(1)(B),**Error! Bookmark not defined.** "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement." Rule 23(c)(2)(B) further instructs that "the court must direct to class members the best notice that is practicable under the circumstances." The purpose of notice is to "afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 173–74 (1974)). In addition, notice must fairly describe the litigation and the proposed settlement and its legal significance. *See, e.g.*, *Newberg on Class Actions* § 8:17.

The proposed Class Notice plan—direct mail notice and a dedicated Settlement Website, with a toll-free telephone line—satisfies the requirements of Rule 23 and all relevant due process concerns. Rule 23(c)(2) provides that "[i]ndividual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort." *Eisen*, 417 U.S. at

173. Here, Chase has address record information for 100% of Settlement Class Members, and the Settlement provides for such individual notice. (Agreement ¶ 61.)

Settlement Class Members will thus receive direct notice in the mail, which will inform Settlement Class Members that they will also receive settlement payments automatically and directly by mail via paper check. In addition to the individual notice discussed above, an informational website will be established and will contain documents and other information regarding the Settlement. (*Id*. ¶ 52(b), 60, 63.) The Class Notice will inform Settlement Class Members about their options for opting-out of or objecting to the Settlement, the time and location of the Final Approval Hearing, the pertinent terms of the Settlement, and how to obtain additional information. (*Id*. at 54-57) The language of the proposed Notice is plain and easy to understand and provides neutral and objective information about the nature of the Settlement. (*See generally* Epiq Decl., Exs. A-B.)

A. Contents of Notice

The proposed Class Notice is attached hereto at Exhibits A and B to the Epiq Declaration. The Notice includes a summary of the general terms of the settlement as set forth in the Settlement Agreement; instructions for how to opt-out of or object to the settlement; and the date, time, and place of the Final Approval Hearing. (*Id.*)

The content of the proposed notice is more than sufficient because it "fairly apprise[s] the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *See Maywalt v. Parker and Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) (internal quotations omitted). The Notice will provide class members with information on the class, the purpose and timing of the final approval hearing, and opt-out procedures and deadlines. (Epiq Decl., Exs. A-B.) In addition, it will

provide a telephone number that proposed Settlement Class Members may use to the extent they have any questions. (*Id*.)

1. Opting Out

The Class Notice clearly explains that any member of the Settlement Class who wishes to opt out of the Settlement Class must mail a notice of intention to opt out (in no particular format, but which contains the words "opt out," "exclusion," or words to that effect clearly indicating an intent not to participate in the Settlement and which sets forth the Settlement Class Member's name, address, and telephone number) to the Settlement Administrator. (*Id* at Ex. A.) To be effective, written notice must be postmarked within 90 days after the Preliminary Approval Date.

2. Objecting

The notice also clearly explains that any member of the Settlement Class who wishes to object to the settlement must timely file a written statement of objection with the Court and identifies the deadline for doing so, which will be within 90 days of the Preliminary Approval Date. (*Id*.) Thus, Proposed Settlement Class Members are provided with ample time to submit any objections.

B. Scope of Notice

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the United States Supreme Court described the due process standard for notice as "[n]otice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314; *see also Shutts*, 472 U.S. at 812. The proposed Class Notice is comprehensive and more than satisfies this standard, as it provides for direct notice by First Class U.S. mail to Settlement Class Members. It is beyond dispute that notice by first class mail—such as that contemplated in the Notice Plan—ordinarily satisfies

Rule 23(c)(2)'s requirement that class members receive "the best notice practicable under the circumstances." *See, e.g., Eisen,* 417 U.S. at 173-75.

V. THE PROPOSED SCHEDULE OF EVENTS

The proposed schedule of events depends on the date this Court may enter a Preliminary Approval Order and schedule a Final Approval Hearing. If a Preliminary Approval Order is entered on May 4, 2018 (for the sake of illustration), the Parties propose the following deadlines:

Event	Deadline
Notice Pursuant to Class Action Fairness Act	April 30, 2018
Deadline to Complete Dissemination of Class Notice	June 4, 2018
Deadline to File Application for Fees, Reimbursement of Expenses and Service Awards	July 20, 2018
Deadline to File Motion for Final Approval	July 20, 2018
Deadline for Class Members to Object or Opt-Out	August 3, 2018
Deadline to File Responses to Any Objections	August 17, 2018
Date for Final Approval Hearing	September 11, 2018

VI. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court enter an Order:

(1) Preliminarily approving the settlement as set forth in the Settlement Agreement;

(2) Certifying the Settlement Class;

(3) Appointing Plaintiffs as Class Representatives;

(4) Ordering Class Notice to the Settlement Class pursuant to the submitted Notice Plan;

(5) Appointing Tycko & Zavareei LLP and Levi & Korsinsky LLP as Settlement Class Counsel;

(6) Appointing Epiq as the Settlement Administrator responsible for Class Notice and Administration;

(7) Scheduling a Final Approval Hearing in this matter.

Dated: April 20, 2018

Respectfully submitted,

__/s/ Anna Haac_____

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Proposed Settlement Class Counsel

Certificate of Service

I, Anna Haac, one of the attorneys for Plaintiffs, hereby certify that the proceeding document was caused to be served electronically on April 20, 2018, pursuant to ECF as to Filing users, and that I shall comply with LR 5.5 as to any party who is not a filing user or represented by a filing user.

/s/ Anna Haac