PHILADELPHIA COURT OF COMMON PLEAS

PETITION/MOTION COVER SHEET

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ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: 11/05/2020
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CONTROL NUMBER: 20101385

(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

February (*Month*) Term, 2019 (*Year*)

No. 02806

GILLESPIE VS LOANCARE, LLC

Name of Filing Party:
JESSICA GILLESPIE-PLF

INDICATE NATURE OF DOCUMENT FILED:

☐ Petition *(Attach Rule to Show Cause)* ☒ Motion
☐ Answer to Petition ☐ Response to Motion

Has another petition/motion been decided in this case? ☒ Yes ☐ No
Is another petition/motion pending? ☐ Yes ☒ No

If the answer to either question is yes, you must identify the judge(s):
DJERASSI

TYPE OF PETITION/MOTION (see list on reverse side)	PETITION/MOTION CODE (see list on reverse side)
MOT/APPRVE CLASS STLMENT PEND	MTACS

ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

I. CASE PROGRAM

OTHER PROGRAM

Court Type: CLASS ACTION
Case Type: CLASS ACTION

II. PARTIES *(required for proof of service)*
(Name, address and **telephone number** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

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IRV ACKELSBERG
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III. OTHER

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

(Attorney Signature/Unrepresented Party)	October 16, 2020 *(Date)*	IRV ACKELSBERG *(Print Name)*	*(Attorney I.D. No.)*

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.
No extension of the Answer/Response Date will be granted even if the parties so stipulate.

LANGER GROGAN & DIVER, P.C
By : Irv Ackelsberg
Peter Leckman
1717 Arch Street, Ste. 4020
Philadelphia, PA 19103
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Class Counsel

JESSICA GILLESPIE, Plaintiff, on behalf of herself and all others similarly situated,	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY FEBRUARY TERM, 2019
v.	:	No. 02806
LOANCARE, LLC, Defendant.	:	CLASS ACTION

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND FOR A SERVICE AWARD TO THE NAMED PLAINTIFF

Pursuant to Rules 1702, 1708, 1709, 1710, 1712, and 1714, and 1717 of the Pennsylvania Rules of Civil Procedure, Plaintiff Jessica Gillespie on behalf of herself and the Class she represents, respectfully requests that the Court:

A. Grant Final Approval of the Settlement Agreement ("the Agreement");

B. Approve Class Counsel's request for Attorneys' Fees and Expenses; and

C. Approve Plaintiff's request for a $2,500 service award.

In support of this motion, Plaintiff and the Class aver as follows:

1. Plaintiff, on behalf of herself and the Class she represents, and Defendant LoanCare entered into a Settlement Agreement that provides complete relief for all class members. Langer, Grogan & Diver P.C. represented Plaintiff and the Class.

2. On June 9, 2020, the Court granted preliminary approval of the Settlement and ordered that notice of the settlement be disseminated to the Class. Notice has been completed as ordered, and Plaintiff now respectfully moves the Court for final approval of the Settlement.

3. The Court should grant final approval of the Settlement because it is an exceptional result for the Class. Class members will automatically receive – without having to submit claims – a complete and total reimbursement of the alleged overcharges to their accounts plus 2% interest per annum since the first possible moment they could have been overcharged. All inflated fees that have been assessed, but not yet paid, will be removed from class member accounts. For the vast majority of class members, which includes those whose mortgages are still being serviced by LoanCare, these payments and corrections will be automatically applied to their accounts. Any class member whose mortgage is no longer serviced by LoanCare will automatically receive a check in the amount they are entitled to under the settlement.

4. The reaction of the Class has been overwhelmingly positive. The settlement encompasses 7,410 loans and 10,169 class members. Direct notice was mailed to all class members and the deadline to object or be excluded from the settlement was October 6, 2020. Only 9 individuals have requested to be excluded from the settlement and no objections have been submitted.

5. As discussed in the accompanying Memorandum of Law, the Settlement readily satisfies the criteria for final approval.

6. Additionally, Class Counsel's request for Attorneys' Fee and Expenses and for a Service Award should be granted. Class Counsel is moving this Court for $230,000 in fees and expenses. This represents less than one-fifth of the total value of the settlement and is being paid on top of the benefits to the class.

7. This amount is reasonable and appropriate under applicable law and the circumstances of the case. Class counsel agreed to litigate the case on a pure contingency basis with no guarantee of ever being paid for their work, and Class Counsel was able to obtain complete relief for the Class. The Class was notified that Class Counsel would seek this amount in fees and expenses and no class member has objected to it.

8. Finally, Class Counsel asks the Court to award Plaintiff a service award of $2,500 to compensate her for her contributions to the litigation and her commitment and work on behalf of the Class.

WHEREFORE, Plaintiff and the Class hereby move this Court for an Order of Final Approval and an Order approving the requested attorney's fee, expenses, and a service award for the Plaintiff. A supporting brief and proposed Order of Final Approval has been filed along with this Motion.

Below-signed counsel certify that, prior to filing this Motion, the Motion and all the supporting documents included with it, were shared with counsel for Defendant LoanCare, LLC, who consents to this being filed without opposition.

Dated: October 16, 2020

/s/ Irv Ackelsberg

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JESSICA GILLESPIE,	:	COURT OF COMMON PLEAS
Plaintiff, on behalf of herself and all others similarly situated,	:	PHILADELPHIA COUNTY
	:	FEBRUARY TERM, 2019
v.	:	No. 02806
LOANCARE, LLC,	:	CLASS ACTION
Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT, AND FOR AWARD OF ATTORNEY'S FEES AND EXPENSES, AND FOR SERVICE AWARD FOR THE NAMED PLAINTIFF

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A. MATTER BEFORE THE COURT

Pursuant to Rules 1702, 1708, 1709, 1710, 1712, and 1714 of the Pennsylvania Rules of Civil Procedure, Plaintiff Jessica Gillespie respectfully submits this Memorandum of Law in support of the unopposed motion for (1) Final Approval of the Class Action Settlement, (2) an award of attorney's fees and expenses, and (3) a service award to the named plaintiff.

B. STATEMENT OF QUESTIONS INVOLVED

Whether the Settlement Agreement and Release comports with the standards set forth in *Buchanan v. Century Fed. Sav. & Loan Ass'n,* 393 A.2d 704, 709 (Pa. Super. Ct. 1978), and whether it falls within the range of reasonableness such that it should be finally approved?

Suggested Answer: Yes.

Whether an award of attorney's fees and expenses of $230,000 comports with Pennsylvania Rules of Civil Procedure 1717 when the settlement provides complete relief to the class, the amount requested represents less than 20% of the total value to the class, and the award is entirely separate from and can no way diminish the recovery to the class?

Suggested Answer: Yes.

Whether a service award of $2,500 is justified given the efforts of the Named Plaintiff in securing this settlement, including gathering discovery, sitting for a deposition, regularly communicating with counsel, and attending the successful mediation?

Suggested Answer: Yes.

C. INTRODUCTION

The Settlement Agreement in this case was made by Named Plaintiff, Jessica Gillespie, on behalf of herself and the Settlement Class, and Defendant LoanCare, LLC. Ms. Gillespie alleged that LoanCare, a mortgage subservicer, had incorrectly assessed late fees on certain borrowers by calculating those fees as a percentage of the amount of principal, interest, taxes

and insurance (PITI) due instead of just the amount of principal and interest (PI) due as required under the terms of the Class's mortgage notes. Under the settlement, LoanCare has agreed to stop the practice and completely reimburse all Class members for all incorrect late fees, plus interest, and to do so automatically to class member accounts if LoanCare is still managing those accounts. Any unpaid amounts will be corrected.

Any class members who no longer have an account with LoanCare, a significant minority of the class, cannot have their accounts automatically credited. Instead, these individuals will automatically receive a check providing the same complete relief as LoanCare's current account holders. There are no claim forms. Provisions are in place to ensure that these checks are cashed. In no event will any uncashed amounts revert to the Defendant. Instead, additional attempts will be made to encourage class members to deposit the funds and any amount remaining after these efforts will be allocated to a *cy pres* recipient.

Loan Care has also agreed to cover the cost of the notice program and has agreed to pay class counsel $230,000 and a service award of $2,500 to Ms. Gillespie, the Named Plaintiff. These amounts are on top of the complete recovery to the Class and do not affect the Class's recovery in any way.

On June 9, 2020, the Court granted preliminary approval of the Settlement Agreement, and ordered that notice of the settlement be disseminated to the Settlement Class. Notice has been completed as ordered, and Plaintiff now respectfully moves the Court for final approval of the Settlement.[1]

The Court should grant final approval of the Settlement because it is an exceptional result for the class, including 100% recovery, plus interest, and a cessation of challenged

[1] The Settlement was attached as Exhibit A to Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement.

miscalculation of late charges on class members' accounts. Given that there is nothing more that could have been accomplished through this litigation, it is unsurprising that the reaction of the Settlement Class has been overwhelmingly positive. Direct notice of the Settlement was mailed to all class members, representing 7,410 separate mortgages. The deadline to object or be excluded from the to the settlement was October 6, 2020. There have been just 9 requests to be excluded from the Settlement Class and no objections have been submitted.[2]

The Settlement easily satisfies the criteria for final approval. Class members will automatically receive—without having to submit claims—a complete and total reimbursement of the alleged overcharges to their accounts plus 2% interest per annum since the first possible moment they could have been overcharged. All inflated fees that have been assessed, but not yet paid, will be removed from class member accounts. For the vast majority of class members, which includes all those whose mortgages are still being serviced by LoanCare, these payments and corrections will be automatically applied to their accounts. Any class member whose mortgage is no longer serviced by LoanCare will automatically receive a check in the amount they are entitled to under the settlement. Given this exceptional result, the positive reaction of the class members, and the inability for continued litigation to improve the result, final approval of the settlement should be granted.

Additionally, Class Counsel's Motion for Attorneys' Fees and Expenses and for a Service Award should be granted. Class Counsel is moving this Court for an award of attorneys' fees and expenses in the amount of $230,000, which is separate from the recovery to the Class. This amount represents less than 20% of the value created by the settlement, amounts to a multiplier

[2] See Declaration of Jeffrey Pirrung ("Pirrung Decl."), ¶ 12. Given the limited release and complete relief provided under the settlement, these few exclusions may be the result of a misunderstanding. LoanCare has assured class counsel that, notwithstanding these individuals' refusal to enter the release, they will receive the same relief as the remaining class members.

of less than 1.1, and is reasonable and appropriate under applicable law and the circumstances of this case. Class Counsel agreed to litigate the cases on a pure contingency basis with no guarantee of ever being paid for their time or reimbursed for costs advanced on behalf of the Class and they have obtained a complete recovery for each class member. Class Counsel's time and activities included:

- conducting an extensive investigation into LoanCare's practices;
- drafting and filing the Class Complaint;
- engaging in significant discovery, including depositions of the relevant executives at LoanCare;
- analyzing data to derive at an understanding of the scope of the Class;
- mediating the case;
- negotiating the Settlement.

See Declaration of Irv Ackelsberg ("Ackelsberg Decl.") ¶¶ 26-27 (attached hereto as Exhibit B)

These efforts were time-consuming and required sophisticated legal acumen and experience. For these reasons, Class Counsel's request for attorneys' fees in the amount of $230,000 is warranted. This amount also includes reimbursement of class counsel's out-of-pocket expenses, which amounts to $7,863.69. These expenses were reasonably incurred and necessary to the prosecution and settlement of the case.

Finally, Class Counsel asks the Court to award Named Plaintiff a service award, in the amount of $2,500 to compensate her for her contributions to the litigation and her commitment and work on behalf of the Class.

As explained below, the amounts requested here are reasonable and appropriate and should be awarded under Rules 1702, 1708, 1709, 1710, 1712, 1714, and 1717 of the Pennsylvania Rules of Civil Procedure.

D. STATEMENT OF FACTS

On June 15, 2015, Plaintiff purchased a new-construction, single-family home, which was financed with an FHA mortgage loan made by PHH Home Loans, d/b/a Caldwell Banker Home Loans.[3] The mortgage note was a standardized "FHA Multistate Fixed Rate Note." It contained the following language regarding the imposition of late payment penalties:

> If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 4.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

This clause mirrors the late-charge rule applicable to all FHA single-family mortgages, as stated in the current Single Family Housing Policy Handbook 4001.1, Section III.A.2.d, available online at https://www.allregs.com/tpl/. Under this provision, with regard to any mortgages "assigned a case number on or after March 14, 2016, the Mortgagee may assess a Late Charge, not to exceed 4 percent of the overdue payment of Principal and Interest (P&I) and in accordance with applicable law."

[3] The FHA mortgage program (the acronym referring to the Federal Housing Administration) is the original Depression-era program for stimulating the housing market. Now administered by HUD, the Federal Government provides participating lenders a guaranty against default, in return for various program requirements. At the time of the Gillespie loan in 2015, FHA loans accounted for approximately 17.1% of the total purchase-money mortgage market, in contrast to the years before the 2008 financial collapse, for example, in 2005, when FHA mortgages were only 2.6% of the market. *See* U.S. Dept. of Housing and Urban Development, FHA Single Family Market Share, 2015 Q4, available online at https://www.hud.gov/sites/documents/FHA_SF_MARKETSHARE_2015Q4.PDF.

For mortgages signed before March 14, 2016, the mortgagee could "assess a Late Charge calculated based on overdue PITI [(Principal, Interest, Taxes, and Insurance)] *if permitted under the terms of the mortgage Note and under applicable law*." Single Family Housing Policy Handbook, Section III.A.2.d (emphasis added)

Although HUD made this rule change effective in March 2016, the Gillespie mortgage illustrates that some lenders elected to give borrowers the benefit of the change in advance of March 2016. With regard to Plaintiff's mortgage, her originating lender, PHH, also serviced the loan during the first year and a half of the mortgage. During this period, PHH imposed late charges calculated correctly as 4 percent of the late payment of principal and interest only.

In early 2017, PHH transferred the servicing of the mortgage to Defendant LoanCare. For reasons not clear to Gillespie at the time she filed this action, LoanCare incorrectly assessed late charges to her account in the amount of 4% of her total payment instead of just 4% of the PI portion of her payment.

On February 27, 2019, Plaintiff commenced this action on behalf of herself and all other individuals whose late payment penalty was calculated as a percentage of PITI when their mortgage notes required Defendant to calculate those late fees as a percentage of P&I only. Defendant answered the complaint in April 2019.

The parties have engaged in extensive discovery. Through that process, Class Counsel learned that both PHH and LoanCare used the same technology platform, called "MSP," to manage the servicing of their accounts, so there was nothing inherent to the servicing software itself that caused LoanCare to assess incorrect late charges. On the contrary, at the time the Gillespie account was "onboarded" onto LoanCare's system, the late charge formula was changed by LoanCare as a result of a code that LoanCare personnel had included in the

onboarding process. This code instructed the automated platform to charge the higher late-charge rate to all FHA mortgages originated before March 2016, regardless of the actual late-charge language in the underlying notes. This instruction, which applied across the board to all onboarded FHA mortgages, failed to take into account the express limitation within the FHA rule change that provided that a servicer could charge a percentage of PITI for older mortgages only "if permitted under the terms of the mortgage Note and under applicable law." Single Family Housing Policy Handbook, Section III.A.2.d. For Ms. Gillespie and each class member, the note limited late charges to a percentage of PI even though those loans were originated before March 2016.

Plaintiff further discovered that LoanCare applied this incorrect code when it onboarded twelve "bulk transfers" between March 2016 and February 2017. (A bulk transfer is the transfer of a large portfolio of mortgages from one prior servicer to another.) This meant that, with regard to any FHA mortgages included within these twelve mortgage pools, where, as in the Gillespie mortgage, the mortgage instrument provided for late charges as a percentage of P&I only, the LoanCare code would have produced late charge assessments at a higher rate than allowed.

Plaintiff then obtained class-wide data, which revealed the precise scope of the class and its damages, as follows:

- There were 7,410 individual mortgage accounts affected, encompassing 10,169 borrowers. See Declaration of Shelley Ward, ¶ 20 (attached to the motion for preliminary approval).

- As of February 7, 2020, these borrowers have overpaid $711,707.83 in late charges because Defendants calculated those charges as a percentage of PITI instead of PI as required by their mortgage notes. Ward Declaration, ¶ 19.

- In addition, as of February 7, 2020, $259,818.59 in incorrect late fee assessments remain on borrowers' accounts. Ward Declaration, ¶¶ 17-18.

On October 24, 2019, the Parties participated in a formal mediation before retired U.S. Magistrate Judge Diane M. Welsh. Ackelsberg Decl., ¶ 17. After an eight-hour mediation session, the Parties reached an agreement in principle, subject to the preparation and execution of a formal agreement and subject to Preliminary Approval and Final Approval by the Court as required by Rules 1702, 1708, 1709, 1710 and 1714 of the Pennsylvania Rules of Civil Procedure.

The parties then engaged in lengthy discussions and further discovery to determine whether it was feasible to credit class members' accounts to ensure that the greatest percentage of the settlement funds possible reached class members. The parties finalized those discussions and signed a formal agreement on February 7, 2020.

The following is a summary of the material terms of the Settlement.

E. SETTLEMENT TERMS

1. Settlement Class

The Settlement Class is defined as:

> all individuals who (1) had or have mortgage loans subserviced by LoanCare that were (2) governed by an FHA Note limiting late fees to a percentage of P&I; and (3) from whom LoanCare assessed and/or collected late fees based on a percentage of PITI.

Agreement ¶1.30.

In addition, there is a "Servicing-Released Subclass" for those class members whose accounts are no longer serviced or subserviced by Defendant. These individuals will receive the amounts they are owed under the settlement via check as opposed to the rest of the class which will receive automatic account credits and corrections. Agreement ¶7.2.

2. Monetary Relief for the Benefit of the Class

The Settlement requires Defendant to reimburse borrowers that overpaid late fees 100% of those overcharges and pay them 2% interest per annum from May 1, 2016, the earliest date LoanCare could have begun charging excess late charges. In total, Defendant will pay $711,707.83 plus interest to the borrowers that paid inflated late charges. The Settlement also requires Defendant to remove all incorrectly assessed late fees from class member accounts. The value of these corrections is $259,818.59. In addition, Defendant has agreed to pay $230,000 in attorneys' fees and costs if approved by the Court and pay a $2,500 Service Award to the Plaintiff if approved by the Court. These payments will not reduce the Class's recovery of 100% damages plus interest. Defendant will also separately pay the costs of Notice to the Settlement Class, and the Settlement Administrator's costs and fees. Agreement ¶7.5. In total, not including the cost of notice and settlement administration, the monetary value of the settlement is at least $1.25 million.

Settlement Class Members do not have to submit claims or take any other affirmative step to receive the benefits for which they are eligible under the Settlement. Instead, within 60 business days of the Effective Date of the Settlement, the Settlement Administrator will make payments to class members that have an active account with Defendant by depositing those funds directly into their mortgage accounts. The Settlement Administrator will mail checks to any class members that do not have a current account with Defendant. Defendant will also automatically correct existing accounts. Thus, all Settlement Class members who do not opt out of the Settlement will automatically receive the amounts due and most will not even need to deposit a check.

The settlement requires the Settlement Administrator to call all class members that have received a check greater than $50 which has remained undeposited after 40 days. If any check

remains undeposited after an additional 50 days (i.e., 90 days from the date of mailing) the check will be void and those amounts shall be made available for *cy pres* distribution. The parties have suggested Habit for Humanity as the eventual *cy pres* recipient. In no event shall any of funds made available through the settlement revert to the Defendant.

3. Class Release

In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will be deemed to have released Defendant from the "Released Claims," which "means any and all statutory or common law claims, including but not limited to claims for breach of contract and unjust enrichment, arising out of the calculation and assessment of late fees based on PITI rather than P&I for borrowers having FHA Notes." Agreement, ¶1.23. The release is limited to claims associated with the specific late charge miscalculation.

4. The Notice Plan

The Notice Plan was designed to provide the best notice practicable based on the information Defendant has available about the Settlement Class Members, and it is reasonably calculated to apprise the Settlement Class Members of the terms of the Settlement and their rights to opt out of or object to the Settlement, Class Counsel's anticipated fee application, and the anticipated request for a Service Award for the Plaintiff. *See* Agreement ¶4.

All forms of Notice to the Settlement Class included, among other information: a description of the material terms of the Settlement; a procedure and date by which Settlement Class members may exclude themselves from or "opt out" of the Settlement Class; a procedure and date by which Settlement Class members may object to the Settlement; the date of the Final Approval Hearing; and the address of the Settlement Website at which Settlement Class Members may access the Agreement and other related documents and information. Ackelsberg Decl. ¶ 25.

The Settlement Administrator administered the Mailed Notice Plan. Within 30 days from the date the preliminary approval order was entered, Defendant's Counsel provided the names and last known addresses of persons within the Settlement Class to the Settlement Administrator. Within 20 days of receiving the class list, the Settlement Administrator mailed notice to the class. The Settlement Administrator performed reasonable address traces and re-mailed the notice to the updated addresses for any notices returned as undeliverable. Ackelsberg Dec. ¶ 26.

The Settlement Administrator also established a Settlement website, as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. *See* gillespievloancare.com. The Settlement Website included hyperlinks to the Operative Complaint, the Settlement Agreement, the Notice, the Preliminary Approval Order, and will include the papers associated with the current motions. *Id.* These documents will remain on the Settlement Website at least until Final Approval is entered.

According to the Settlement Administrator, after remailing of notices to better addresses, only 316 out of 7,410 notices remain in "returned" status. This means that the notice program was 96% effective.

5. Settlement Administration

The Settlement Administrator is American Legal Services, one of the leading class action settlement administrators in the United States. The Administrator's responsibilities included, among other things, the following: (1) assisting in the creation of the Notices; (2) sending the Mailed Notice; (3) establishing and maintaining the Settlement Website and the automated, toll-free telephone line for Settlement Class Member inquiries; (4) receiving and processing inquiries and requests for exclusion from Settlement Class Members; (5) crediting class members' accountants; and (6) mailing settlement payment checks. All fees and expenses related to Settlement Administration will be paid by Defendant and will not affect the Class's recovery.

6. Class Representative Service Award

The settlement also provided for a Service Award of $2,500 for Jessica Gillespie, the named Plaintiff. *Id*. ¶ 9. If the Court approves the Service Award, it will be paid by the Defendant and will not affect the sums paid to any other class member. The Service Award will be in addition to the relief Ms. Gillespie will be entitled to under the terms of the Settlement. *Id*. Such an award is meant to compensate her for her time and effort in this Action, including sitting for her deposition. The Settlement Agreement is not contingent upon the Court awarding the Service Award, and the Parties negotiated the Service Award agreement only after reaching agreement on all other material terms of the Settlement.

7. Attorneys' Fees and Costs

Subject to Court approval, the Defendants have agreed to pay class counsel $230,000 in fees, which includes reimbursement of all litigation costs and expenses. *Id*. ¶ 8. This represents less than 20% of the total monetary value of the settlement. Any award of attorneys' fees and costs will be paid by the Defendants and will not affect the amounts to be paid to each class member. The Settlement Agreement is not contingent upon the Court awarding the attorneys' fees and costs. *Id*.

F. ARGUMENT

1. The court should grant final approval because the settlement was the result of an arms-length negotiation between experienced counsel, represents an exceptional result for the Class, avoids the risks of a long and complex litigation, and enjoys the widespread approval of the class members.

Rule 1714 of the Pennsylvania Rules of Civil Procedure requires judicial approval after a hearing for the compromise of claims brought on a class basis. The Court's decision to approve or disapprove a class settlement is discretionary. *Buchanan v. Century Fed. Sav. & Loan Ass'n*, 393 A.2d 704, 709 (Pa. Super. Ct. 1978) (*citing Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d

799 (3d Cir. 1974)). In exercising their discretion, courts are mindful of the public policy principle that "settlements are favored in class action lawsuits." *Dauphin Deposit Bank & Trust Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999). Class settlements conserve "substantial judicial resources . . . by avoiding formal litigation." *Krangel v. Golden Rule Res., Inc.*, 194 F.R.D. 501, 504 (E.D. Pa. 2000) *(quoting In re Gen. Motors Corp. Pick-up Truck Fuel Tank Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)). And "because of the uncertainties of outcome, difficulties of proof, and length of litigation, class action suits lend themselves readily to compromise." *Milkman v. Am. Travelers Life Ins. Co.*, 61 Pa. D. & C. 4th 502, 514 (Pa. County Ct. 2002) *(quoting* Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992)).

Seven factors should be considered when evaluating whether to grant *final* approval of a proposed class action settlement:

> (1) the risks of establishing liability and damages, (2) the range of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation, (4) the complexity, expense and likely duration of the litigation, (5) the stage of the proceedings and the amount of discovery completed, (6) the recommendations of competent counsel, and (7) the reaction of the class to the settlement.

Buchanan, 393 A.2d at 709, *accord Shaev v. Sidhu*, Nov. Term 2005, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *22-23 (Pa. C.P. 2009). "In considering these factors, there is no exact calculus or formula for the court to use: '[i]n effect the court should conclude that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights.'" *Milkman*, 61 Pa. D. & C. 4th at 532 (quoting *Buchanan*, 393 A.2d at 709). A preliminary evaluation of these factors shows that the Settlement meets all of the criteria relevant to approval, and thus the Settlement should be preliminarily approved.

i. The settlement is the product of informed negotiations conducted in good faith and at arm's length.

As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiff's claims and engaged in discovery with Defendant. Counsel's review of this discovery enabled them to conduct well-informed settlement negotiations. *See Klingensmith v. Max & Erma's Rests., Inc*., No. 07-0318, 2007 WL 3118505, at *4 (W.D. Pa. Oct. 23, 2007) (agreeing with plaintiff's statement "that time after sufficient discovery to put parties on firm notice of strengths and weaknesses of case, but before bulk of litigation discovery has been taken, is particularly appropriate to settlement"). Class Counsel here were also well positioned to evaluate the strengths and weaknesses of Plaintiff's claims, and the appropriate basis upon which to settle them, as a result of their experience settling similar class actions and their particular expertise in the mortgage industry.

Additionally, the Parties agreed to participate in formal mediation. On October 24, 2019, the Parties participated in an eight-hour-long mediation before an experienced and a respected mediator, retired U.S. Magistrate Judge Diane M. Welsh, and the parties reached an agreement in principle. After the mediation, the Parties continued negotiating a formal settlement agreement, which was signed on February 7, 2020.

These facts demonstrate that the Settlement is the result of intensive, arm's length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action. Courts properly consider the "tangible benefits derived from reaching a settlement through mediation" in determining whether to approve a settlement. *Treasurer of State v. Ballard Spahr Andrews & Ingersoll LLP*, 866 A.2d 479, 487 (Pa. Commw. Ct. 2005) (finding lower court's disapproval of a settlement to be an abuse of discretion because "the parties' submissions and the history of the pre-mediation investigations and of the

protracted mediation process serve to demonstrate that relevant considerations as to various litigation options had been fully investigated and evaluated by competent counsel"). Because "the settlement was arrived at by experienced, competent counsel after arm's length negotiations" and is not the product of collusion, it should be approved. *Id*. at 486.

ii. The risks of establishing liability and damages favor settlement, and the Settlement is within the range of reasonableness in light of all the attendant risks of litigation.

Plaintiff and Class Counsel are confident in the strength of their case. Nonetheless, Defendant has asserted defenses that it believes could preclude a class recovery. Plaintiff and Class Counsel are therefore mindful of the risks inherent in continued litigation and in their ability to establish class-wide damages and liability. Moreover, protracted litigation carries inherent risks that would necessarily delay and endanger Class Members' monetary recovery. Even if Plaintiffs did prevail at trial, recovery could be delayed for years by appeals. Under the circumstances, Plaintiff and Class Counsel appropriately determined that the Settlement reached with Defendant outweighs the gamble of continued litigation.

The Settlement should accordingly be approved because it provides *complete relief* to Settlement Class Members without further delay and without exposing Plaintiff and absent Settlement Class Members to the risks associated with continued litigation. The Settlement is well within the range of reasonableness in light of all the attendant risks of litigation.

> Weighing the risks of litigation [i.e., establishing breach of fiduciary duties and that the representative plaintiffs were adequate and typical class representatives] and benefits of the settlement [i.e., updates and improvements to the defendant's written policies and procedures and an award of monetary damages to the class], the Court believes that the settlement falls within the range of reasonableness.

Shaev v. Sidhu, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *24-28; *Ashley v. Atl. Richfield Co.*, 794 F.2d 128, 134 n.9 (3d Cir. Pa. 1986) ("Physical, psychological and monetary benefits inure to both sides of a settlement agreement. Indeed, the avoidance of litigation expense and delay is

precisely what settlement contemplates"); 4 William B. Rubenstein, Alba Conte, and Herbert B. Newberg, *Newberg on Class Actions* § 11:50 at 155 (4th ed. 2002) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results").

iii. The Settlement is within the range of reasonableness in light of the best possible recovery.

As stated above, the recovery to the class is excellent as it provides complete relief, plus interest, and there is no diminution to cover attorneys' fees and expenses. There is no claim form, no reversion to the Defendant for any unclaimed funds, and—for the vast majority of the class—the settlement funds will be automatically credited to their accounts. In addition, the settlement provides for the Class's attorneys' fees and costs to be paid *on top* of their 100% recovery – a result that would not be available even if the class were successful in proving their breach of contract claims at trial. Accordingly, the Settlement is well within any conceivable range of reasonableness.

iv. The complexity, expense, and likely duration of the litigation favor settlement.

Where, as here, Class Counsel and Defendant have reached a settlement regarding "a vigorously disputed matter, the Court need not inquire as to whether the best possible recovery has been achieved but whether, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the settlement is reasonable." *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 948 (Pa. 1986) (internal quotation omitted); *see also Gregg v. Independence Blue Cross*, Dec. Term 200, No. 3482, 2004 WL 869063, at *40 (Pa. C.P. April 22, 2004) (holding that "[t]he complex nature, the high expense and the likelihood of years' passing without final resolution weigh in favor of settlement.").

While relatively straightforward, this case did present some complexities. In particular, establishing class-wide damages at trial would have required expert testimony. In addition, Defendant believes it has individual and class-wide defenses that could bar recovery. Litigation and any appeals would likely take years before there could be a final resolution. Thus, the proposed Settlement is the best vehicle for Settlement Class Members to receive relief in a prompt and efficient manner.

But these typical factors are largely beside the point here because the best possible recovery to the class *was* achieved. The Class ultimately did not need to compromise in order to obtain complete relief prior to trial.

v. The stage of the proceedings and the amount of discovery completed favor settlement.

Plaintiff obtained the discovery necessary to determine the precise scope of the class and the amount of each class member's damages. Defendant then agreed to remedy the entire injury, plus interest. It was "particularly appropriate to settle[]" because there has been "sufficient discovery to put parties on firm notice of strengths and weaknesses of case," even though the "bulk of litigation discovery has [not yet] been taken." *See Klingensmith*, 2007 WL 3118505, at *4. With the necessary discovery in hand, Plaintiff and her counsel were in a good position to weigh the benefits of settlement against further litigation. Indeed, given the recovery achieved by the settlement, there is nothing more that further litigation could have accomplished.

vi. The recommendations of competent counsel favor settlement.

"The court must [] consider the recommendations of competent counsel in evaluating the reasonableness of the settlement, and those recommendations are given substantial weight." *Gregg*, 2004 WL 869063, at *41 (citing Milkman, 61 Pa. D. & C. 4th at 545). The weight attributed to the counsel's recommendation depends on factors such as competence, the length of

involvement in the case, experience in the particular type of litigation, and amount of discovery completed. *See Austin v. Pa. Dep't of Corrs.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). "Usually, however, an evaluation of all the criteria leads courts to conclude that the recommendation of counsel is entitled to great weight following 'arm's length negotiations' by counsel who have 'the experience and ability . . . necessary [for] effective representation of the class's interests.'" *Id*. (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982)). Class Counsel and Plaintiff strongly endorse this Settlement. As stated above, Class Counsel are competent and experienced in class action litigation, the Parties have completed adequate discovery, and the Settlement is a result of arm's length negotiations. Therefore, Class Counsel's recommendations in favor of the Settlement should be afforded great weight.

vii. The public interest favors settlement.

While the public interest is not one of the factors listed as a necessary consideration for Pennsylvania courts, it must be noted that the Settlement will further the public interest of providing a substantial recovery for a significant number of persons through the efficiency afforded by a class action settlement. Class Counsel and Plaintiff believe the Settlement provides an extremely fair and reasonable recovery to the Settlement Class, especially given that it provides complete relief. Moreover, Class Members will receive their cash benefits automatically, without needing to fill out any form or do anything at all, and LoanCare has agreed to end the practice going forward.

viii. The Reaction of the Class to the Settlement was Overwhelmingly Positive.

The reaction of the Settlement Class has been overwhelmingly positive. Direct notice of the Settlement was mailed to 7,410 Settlement Class Members. The deadline for Settlement Class Members to request exclusion or object was October 6, 2020. Only 9 of the Class Members have validly requested to be excluded from the Settlement Class and not one single objection has

been submitted. Class counsel had some concern that the opt outs may have had a mistaken belief that they needed to fill out a form to obtain the benefits of the settlement and accidentally filled out an exclusion form. After discussions with counsel for LoanCare, we have been assured that these individuals will still obtain the benefits from the settlement notwithstanding that they have not released any claims.

2. Class Counsel's fee request should be approved because counsel expended a great deal of time and effort litigating, on a contingent fee basis, a complex case and achieved a favorable result for the class.

Class Counsel is moving this Court for an award of attorneys' fees in the amount of $230,000, which represents less than one-fifth of the total value of the settlement and which does not affect the recovery of the class in any way. Pennsylvania Rule of Civil Procedure 1717 sets forth five factors that the Court should consider in determining the reasonableness of an attorneys' fees award: (l) the time and effort reasonably expended by the attorney in the litigation; (2) the quality of the services rendered; (3) the results achieved and benefits conferred upon the class or upon the public; (4) the magnitude, complexity and uniqueness of the litigation; and (5) whether the receipt of a fee was contingent on success. *See* Pa.R.C.P. No. 1717. These factors weigh heavily in favor of granting Class Counsel's motion for attorneys' fees.

i. Counsel expended a great deal of time and effort on this matter

Class Counsel expended significant time and effort to achieve complete relief to the class. At the outset, Class Counsel conducted a thorough investigation into the factual circumstances of the case. This included research into the causes of the alleged miscalculation of late fees and significant discovery into the scope of the problem and the composition of the Class. This included multiple days of depositions of the key executives at LoanCare to ensure that the settlement would encompass all affected individuals.

Additionally, on October 24, 2019, the Parties participated in a formal, eight-hour mediation session before retired U.S. Magistrate Judge Diane M. Welsh. In advance of the mediation, Plaintiffs and Defendants worked to finalize the size of the Class and scope of the problem. Class Counsel spent a great deal of time reviewing and evaluating this information in preparation for the mediation. *Id.*

After the mediation, the Parties reached an agreement in principle, subject to the preparation and execution of the settlement agreement and to preliminary approval and final approval by the Court. After the mediation, the parties continued to diligently negotiate a formal settlement agreement, and LoanCare continued to refine the data necessary to calculate each Settlement Class Member's damages. Given the substantial time and effort that Class Counsel expended in this case, the requested attorneys' fee award is reasonable.

Specifically, Class Counsel expended a total of 333 hours in the prosecution of this case and incurred a total aggregate lodestar of $210,537.50. Ackelsberg Decl. ¶32. The fee award thus represents a multiplier of 1.05. *Id.* ¶35. The fee request is reasonable, particularly given the excellent result reached on behalf of the Class.

ii. The quality of service rendered warrant approval of the attorneys' fee request.

Based on their years of experience litigating cases involving the mortgage industry and class actions more generally, Class Counsel had a substantial understanding of the issues presented in this case and were able to obtain a settlement that provides an outstanding result for the Class Members. The Settlement here is the direct product of the skill and hard work brought to bear by Class Counsel at every stage of the proceedings. Class Counsel's exemplary prosecution of this class action weighs strongly in favor of the proposed fee award.

Class Counsel's task was made all the more challenging by the fact that LoanCare was represented throughout by very skilled opposing counsel and the fact that LoanCare had significant resources to enable them to litigate the case vigorously. Courts have repeatedly recognized that the caliber of the opposition faced by the plaintiffs' counsel should be taken into consideration in assessing the quality of the performance of the plaintiff's counsel; and in this case, it supports approval of the requested fee. *See, e.g., In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, *19 (S.D.N.Y. 2009) (reasonableness of fee was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations.").

iii. The result achieved weigh in favor or granting the attorneys' fee request.

Class Counsel achieved an exceptional result in this case, including complete relief plus interest for the Class. Throughout the case, LoanCare insisted Plaintiff would be unable to certify the class. Continued litigation of this lawsuit presented Plaintiffs with substantial legal risks of certifying the class and defeating any resultant appeals.

Further, settlement class members do not have to do anything at all to receive the Settlement benefits. Settlement Class Members will automatically receive reimbursements and corrections to their accounts or, if the class member no longer has an account with LoanCare, they will automatically receive a check. LoanCare has also agreed to stop all miscalculations going forward. There are no claim forms and there is no reversion to the defendant. In sum, the settlement will benefit a large class of individuals and represents a very positive result. Therefore, this factor weighs in favor of granting Class Counsel's fee request.

iv. The complexity of the data further supports Class Counsel's fee request.

This case involved complex data analysis, further supporting Class Counsel's fee request. Even more than in a typical class action, which always involves complex issues and challenges,

this case presented additional complexities in order to determine whose accounts had been overcharged and the amounts of those overcharges.

v. The contingent nature of the fee also weighs in favor of granting Class Counsel's attorneys' fee request.

From the outset of the case to the present, prosecution of this action has involved significant financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. In bringing this action, Class Counsel faced several risks: the risk of not obtaining class certification (or having the class subsequently decertified); the risk of not prevailing on the merits; and the risk of not establishing damages on behalf of the Class. Class Counsel incurred substantial risk that they would never be paid for their time or reimbursed for the costs they advanced for the Class. This financial risk further justifies granting Class Counsel's fee request.

vi. Class Counsel's fee request is in line with attorneys' fee awards that have been made in similar cases.

Finally, the fee requested here, which represents less than one-fifth of the total value of the settlement, is well within the range generally approved in similar class actions. Pennsylvania courts "have observed that fee awards typically range between nineteen and forty-five percent of the common fund." *See In re Corel Corp. Inc. Securities Litigation*, 293 F. Supp. 2d 484 (E.D. Pa. 2003) (approving attorneys' fee award of 331/3%); *see also In re Sterling. Sec. Class Action*, MDL No. 1879, 2009 U.S. Dist. LEXIS 83224, at *8, (E.D. Pa. Sept. 10, 2009); *In re Ikon Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166 (E.D. Pa. 2000). Class Counsel's requested fee of approximately 18% is below the floor of this range and, as previously noted, does not in any way reduce the full and complete recovery obtained for all class members.

Therefore, class counsel's request should be granted.

3. The Court should award a service award to the Named Plaintiff

Class representative service awards, also called incentive awards, are common in class actions. *See In re Bridgeport Fire Litig.*, 5 A.3d 1250, 1257-58 (Pa. Super. Ct. 2010). The purpose of such awards is to compensate class representatives "for the additional risk and inconvenience [class representatives] take in joining the lawsuit as named parties." *In re Chambers Dev. Secs. Litig.*, 912 F. Supp. 852, 868 (W.D. Pa. 1995). In determining whether to grant service awards, courts have commonly relied on five factors: (l) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *In re Bridgeport Fire Litig.*, 5 A.3d at 1258.

Application of these factors here demonstrates that the requested $2,500 service award is warranted. Plaintiff assisted Class Counsel in prosecuting this case, including providing factual background, reviewing pleadings and discovery, having her deposition taken, participating in the mediation, and communicating with Class Counsel to remain informed of the progress of the case. Plaintiff's efforts and involvement have benefitted the class as a whole. Ackelsberg Decl. ¶¶ 36-37. A service award of $2,500 is well within the amount of awards in similar cases. *See Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 345 (W.D. Pa. 1997) (citing cases awarding service awards in the range of $1,000 to $5,000). Therefore, this Court should award Plaintiff a service award in the amount of $2,500.

E. RELIEF REQUESTED

This class action culminated in a very favorable result for a large class of individuals. The Settlement was the result of an arms-length negotiation between highly skilled and experienced

counsel. Further, it has enjoyed widespread approval from the class members. Plaintiff's counsel expended a significant amount of time and resources litigating this case. And by taking the case on a contingent basis, counsel risked a financial loss by prosecuting this matter. Moreover, Jessica Gillespie, the named plaintiff, spent significant time and efforts assisting counsel in litigating the case. Thanks in part to Ms. Gillespie's efforts, the class members will receive complete relief plus interest.

Therefore, the Court should grant the pending Motion for Final Approval and for an Award of Attorneys' Fees and Expenses and a Service Award.

Respectfully submitted,

Dated: October 16, 2020

/s/ Irv Ackelsberg

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JESSICA GILLESPIE, Plaintiff, on behalf of herself and all others similarly situated,	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
	:	FEBRUARY TERM, 2019
v.	:	No. 02806
LOANCARE, LLC, Defendant.	:	CLASS ACTION

DECLARATION OF IRV ACKELSBERG, ESQUIRE IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND A SERVICE AWARD FOR THE NAMED PLAINTIFF

Irv Ackelsberg hereby states and declares the following, subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities:

1. I am the lead counsel for the Class in this matter.

2. I am making this Declaration to support Plaintiff's Unopposed Motion for Final Approval of the Settlement, an Award of Attorneys' Fees and Expenses, and a Service Award for the Named Plaintiff. The Declaration will cover the following areas: (a) my professional background and experience; (b) my firm's experience in functioning as class counsel; (c) how this case was developed; (d) the discovery conducted and the mediation process that produced the settlement; and (e) the benefits of the Settlement Agreement.

A. My Professional Background and Experience

3. I am an attorney that has practiced as a civil litigator in Philadelphia for my entire career, from 1976 until the present.

4. Thirty of my forty-four years of practicing law were with Community Legal Services, Inc. ("CLS"), the well-known, publicly funded, civil legal aid organization. When I left CLS in September 2006, I was a Managing Attorney and led the program's consumer law work.

5. While at CLS, I was one of the early recipients of the Philadelphia Bar Association's annual award "for exemplary service in the public interest," presented by the late Judge Louis Pollak. In 2005, I received the National Consumer Law Center's Vern Countryman Award, the most prestigious national award given to a consumer law practitioner, presented to me in Minneapolis, MN.

6. I am a nationally recognized expert in the area of mortgages and mortgage servicing. I am the author of the Pennsylvania treatise on mortgage foreclosure: RESIDENTIAL MORTGAGE FORECLOSURE: PENNSYLVANIA LAW AND PRACTICE (Bisel Co., 2d ed. 2014).

7. Following my retirement from CLS, I joined Langer, Grogan & Diver P.C. ("LGD"), where I have practiced since that time.

8. Both at CLS and LGD, I have served as lead counsel on class actions in the consumer rights area. For example, I was lead counsel in a nationwide class action under the Fair Credit Reporting Act that resulted in the suspension of an employment background database named "Esteem" and substantial damages for retail workers who lost job opportunities as a result of being in that database. *Goode v. First Advantage LNS Screening Solutions*, No. 11-2950 (E.D.Pa.).

B. <u>My Firm's Experience as Class Counsel</u>

9. LGD is a small litigation boutique that focuses on complex litigation, particularly antitrust and consumer protection matters.

10. Among the class action matters handled by the firm are the following:

- *In re Linerboard Antitrust Litigation*, 305 F.3d 145 (3d Cir. 2002) – Obtained what was at the time the largest antitrust recovery ever within the Third Circuit—more than $202 million—in a case alleging a nationwide conspiracy to fix the prices of corrugated boxes.
- *Faloney v. Wachovia Bank* — In 2010, the firm recovered over $150 million dollars from Wachovia Bank on behalf of primarily elderly victims of telemarketing fraud. Checks were mailed to approximately eight hundred thousand victims in the full amounts taken from their accounts.
- *Reyes v. Netdeposit, LLC***,** 802 F.3d 469 (3d Cir. 2015) – In a landmark decision, the United States Court of Appeals for the Third Circuit reversed a denial of class certification and identified the proper standards courts must use when evaluating civil RICO class actions.
- *Laumann. v. National Hockey League*, 56 F. Supp. 3d 280 (S.D.N.Y. 2014) **–** The class action lawsuit, originally filed in 2012, challenged the broadcast practices of the National Hockey League and Major League Baseball. The ultimate settlements reached created more consumer choice and lower prices.

C. How This Case Was Developed

11. In the course of representing the Named Plaintiff, Jessica Gillespie, in an individual dispute regarding her mortgage account, I concluded, based on a review of her account history and of her promissory note from the original mortgage transaction, that her servicer, LoanCare, was assessing late charges based on a percentage of her total monthly payment ("PITI"), not as a percentage of her principal and interest portion only ("P&I"), as the note specified.

12. Based on my understanding of the automated processes used in the mortgage servicing business, I realized that this mistake in the formula for calculating late charges would not be unique to Ms. Gillespie, and instead, would likely be the result of an improper code in LoanCare's servicing platform. It was clear to me that the error would affect a class of borrowers serviced by LoanCare.

D. Discovery and Mediation

13. After filing the Class Complaint, the parties engaged in significant discovery, which revealed that, as suspected, the late charge miscalculation was due to an improper code in the servicing platform that has affected thousands of borrowers since June 2016.

14. The coding error was connected to an FHA rule change that HUD announced in 2015, to go into effect in March 2016. Under that change, HUD instructed that, going forward, late charges could not exceed four percent of P&I. For mortgages pre-dating the change, the rule allowed late charges to be calculated as a percentage of PITI, but only "if permitted under the terms of the mortgage Note and under applicable law."

15. Ms. Gillespie obtained her mortgage in June 2015, after the announcement of the rule change. Even though the mandated change was not yet in effect, her original mortgagee used a form FHA Note that already included the P&I-only limitation within the terms of the Note. We discovered that her original servicer had correctly incorporated this limitation into its handling of the account, but that when the servicing was transferred to LoanCare in 2017, the late-charge overcharges began.

16. We traced the source of the error to coding that LoanCare employed during the "onboarding" of a pool of loans that included the Gillespie loan onto the LoanCare platform. As part of the onboarding process, LoanCare changed the "late charge factor" associated with the loan based on the date the mortgage was originated, without reference to the actual late-charge language in the notes contained in the pool. This code instructed the automated platform to charge the higher late-charge rate to all FHA mortgages originated before March 2016. This instruction, applied across the board to all onboarded FHA mortgages, failed to take into account the express limitation within the FHA rule change that provided that a servicer could charge a

percentage of PITI for older mortgages only "if permitted under the terms of the mortgage Note and under applicable law." Single Family Housing Policy Handbook, Section III.A.2.d. For Ms. Gillespie and each class member, the note limited late charges to a percentage of PI even though those loans were originated before March 2016.

17. In order to probe further into the nature and scope of this error, Class Counsel directed written discovery requests to LoanCare and, on October 14-15, 2019, Class Counsel deposed three LoanCare executives in Virginia Beach. LoanCare also deposed the Plaintiff, Ms. Gillespie. Among other things, we learned that, during the period March 2016 and February 2017, LoanCare applied this coding error to 12 portfolios of mortgages transferred from a prior servicer to LoanCare.

18. Ultimately, we were able to determine that there were 7,410 individual mortgage accounts affected, encompassing 10,169 borrowers; that, as of January 28, 2020, these borrowers overpaid $675,721.26 in late charges because Defendants calculated those charges as a percentage of PITI instead of PI as required by their mortgage notes; and, that, as of that date, $295,805.16 in incorrect late fee assessments remained on borrowers' accounts.

19. On October 24, 2019, the parties participated in an all-day mediation at JAMS, before retired U.S. Magistrate Judge Diane M. Welsh, at the conclusion of which the parties signed a Term Sheet containing an outline of the Settlement Agreement.

20. Over the course of the parties' back-and-forth during the drafting of the Settlement Agreement, and in response to specific concerns raised by Class Counsel regarding the class data previously produced, LoanCare continued to fine-tune the data. The data analysis in this case was significant and required multiple rounds of back and forth among Class Counsel

and Defendant to ensure that the Class encompassed all individuals whose late fees had been incorrectly calculated.

21. On June 9, 2020, this Court granted preliminary approval of the Settlement and ordered that notice be provided to the Class. As summarized in the Claims Administrator's declaration, the settlement concerns 7,410 loans involving 10,169 class members. Direct notice was mailed to all. Of these, 9 have requested to be excluded from the settlement (0.0008%). No class members have objected to either the settlement or Class Counsel's fee request.

E. The Settlement Agreement

22. The Settlement Agreement will provide refunds and/or account corrections to 7,410 separate mortgage accounts. LoanCare will reimburse borrowers that overpaid late fees 100% of those overcharges and pay 2% interest per annum from May 1, 2016. In total, Defendant will pay $675,721.26 (plus interest) to the borrowers that paid inflated late charges. The Settlement also requires Defendant to remove all incorrectly assessed late fees from class member accounts. The value of these corrections is $295,805.16.

23. Separate from this relief, and subject to court approval, Defendant has agreed to pay $230,000 in attorneys' fees and costs and to pay a $2,500 Service Award to the Named Plaintiff. These payments will not affect the Class's recovery. Defendant will also pay the costs of Notice to the Settlement Class, and the Settlement Administrator's costs and fees. In total, and not including the cost of notice and administration, the monetary value of the settlement is approximately $1,250,000, meaning that the attorney fee represents less than 18 percent of the total value achieved.

24. Settlement Class Members do not have to submit claims or take any other affirmative step to receive the benefits for which they are eligible under the Settlement. Instead,

upon final approval, class members with existing LoanCare accounts will receive credits directly to their account, and those no longer with LoanCare will receive checks. Moreover, the release provided by class members will only relate to the calculation of late charges; any other claim class members may have regarding their respective mortgage accounts will be unaffected.

25. All forms of Notice to the Settlement Class included, among other information: a description of the material terms of the Settlement; a procedure and date by which Settlement Class members may exclude themselves from or "opt out" of the Settlement Class; a procedure and date by which Settlement Class members may object to the Settlement; the date of the Final Approval Hearing; and the address of the Settlement Website at which Settlement Class Members may access the Agreement and other related documents and information.

26. The Settlement Administrator administered the Mailed Notice Plan. Within 30 days from the date the preliminary approval order was entered, Defendant's Counsel provided the names and last known addresses of persons within the Settlement Class to the Settlement Administrator. Within 20 days of receiving the class list, the Settlement Administrator mailed notice to the class. The Settlement Administrator performed reasonable address traces and re-mailed the notice to the updated addresses for any notices returned as undeliverable.

27. I believe the settlement is fair, reasonable and adequate.

F. Class Counsel's Work to Obtain the Complete Relief Provided For in the Settlement

28. As further detailed herein and in the accompanying memoranda, from the outset of the investigation and filing of the Action through the negotiation and drafting of the settlement now before the Court, Class Counsel have vigorously represented the interests of the Class to obtain the best possible resolution. As a result of Class Counsel's efforts, the

Named Plaintiff was able to obtain a settlement that provides an exceptional result for the Class.

29. Class Counsel have done a significant amount of work on behalf of the Class, including but not limited to the following:

a. Conducting an extensive investigation into LoanCare's late fee practices;

b. Drafting and filing the complaint;

c. Negotiating a discovery protocol with defendants to ensure that all LoanCare customers affected by the late fee miscalculation would be encompassed in any settlement;

d. Deposing the most knowledgeable LoanCare executives over three days;

e. Preparing and defending the deposition of the Named Plaintiff;

f. Analyzing the data to determine the precise amounts of damages and ensuring that all affected individuals were encompassed in the Class;

g. Mediating the case;

h. Negotiating the Settlement; and

i. Ensuring that the notice program was faithfully followed.

30. After negotiating the benefits to the Class, which includes a cessation of the practices and complete relief plus interest to the Class, Class Counsel negotiated a fee amount that LoanCare would pay on top of the relief provided to the Class. That negotiation resulted in LoanCare agreeing to pay $230,000 in combined fees and expenses to Class Counsel. This represents less than one-fifth of the total value of the settlement and represents only a marginal premium above Class Counsel's lodestar. I anticipate that after all of the time is recorded for ensuring that the Settlement is approved, the $230,000 will not exceed Class Counsel's lodestar.

31. Class Counsel's fee request is reasonable under any circumstances, but it is particularly so here because if Class Counsel had refused to settle and instead proceeded to trial, the most they could have obtained was less than what they actually obtained through the settlement. This is because the Class's claims do not include a fee-shifting provision. Had Class Counsel succeeded at trial, a common fund would have been created which would undoubtedly have diminished the ultimate recovery to each class member. Instead, Class Counsel was able to negotiate complete and total relief for the Class and then, and only then, negotiate a reasonable fee.

32. Class Counsel has computed the total number of hours spent litigating this action. Class Counsel seeks compensation for 333 hours spent in this action. This information was compiled from contemporaneous time records maintained by each attorney and paralegal that worked on the matter. These hours were actually and necessarily incurred by Class Counsel and are entirely reasonable given the nature of the work performed to prosecute the action and the benefits achieved for the Class. To date, Class Counsel has incurred $210,537.50 in total lodestar.

33. The hourly rates billed by Class Counsel are consistent with the skill and experience of the attorneys in this case and the amounts charged by attorneys engaged in comparable complex litigation. *See, e.g., Loretz v. Regal Stone Ltd.*, 756 F. Supp. 2d 1203, 1211 (N.D. Cal. 2010) (in class actions, $775-$900 for partners, $350 for associates, and $225 for paralegals, was reasonable). Here, the hourly rate for myself was $800. The rate for my colleague Peter Leckman was $675. Mr. Leckman is a partner at the firm and has been a lawyer for over 15 years. The rate for the associate that worked on the case, David Nagdeman, was $250. Mr. Nagdeman is a recent graduate of Temple University, Beasley School of Law. The

paralegal rate was $175. These are the same rates normally paid by our firm's non-contingent clients.

34. In addition, Class Counsel has incurred $7,863.69 in expenses. This sum corresponds to the actual, out of pocket expenses that Class Counsel paid in connection with the prosecution of this action, including travel to Virginia Beach to depose LoanCare's executives over multiple days. The costs and expenses incurred are kept in the usual course of business and reflected on the books and records maintained by Class Counsel. They are an accurate record of the costs and expenses incurred and all were necessary to successfully prosecute this action.

35. Subtracting these expenses, the requested fee award represents a multiplier of 1.05. Undoubtedly, after the final approval hearing and the work required to ensure all class members have received their benefits, class counsel's multiplier will be under 1.0. Consequently, Class Counsel submits that the time and labor expended by counsel and the attendant lodestar/multiplier cross-check fully support the requested fee as fair and reasonable.

G. Ms. Gillespie Should Be Awarded A Service Award

36. Class Counsel seeks, and LoanCare does not oppose, a Service Award of $2,500 for Class Representative Jessica Gillespie. This award will compensate Ms. Gillespie for her courage for bringing this action and her time and effort in pursuing it. The parties and their counsel did not discuss the provisions regarding a potential service award until after the parties had agreed on the terms of the settlement in principle.

37. Ms. Gillespie deserves the Service Award requested here because, among other things, she assisted Class Counsel by providing factual background, reviewing pleadings and discovery, sitting for a deposition, participating in the mediation, reviewing the settlement, and

communicating with counsel to remain informed of the progress of the litigation. The amount of the service fee is reasonable as $2,500 represents a small fraction of the value of the settlement.

Dated: October 16, 2020

/s/ Irv Ackelsberg
Irv Ackelsberg

IN THE PENNSYLVANIA COURT OF COMMON PLEAS
FOR PHILADELPHIA COUNTY

JESSICA GILLESPIE, Plaintiff, on behalf of herself and all others similarly situated,	:	FEBRUARY TERM, 2019
v.	:	No. 02806
LOANCARE, LLC, Defendant.	:	CLASS ACTION

[PROPOSED] ORDER

The Court has reviewed Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and for Award of Attorneys' Fees and Expenses and for Service Award. For good cause shown, **IT IS ORDERED**:

1. This Final Order incorporates and makes a part hereof, the Settlement Agreement and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement Agreement and Preliminary Approval Order shall have the same meanings for purposes of this Final Order and the accompanying Final Judgment.

2. The Court has jurisdiction over this above-captioned case, and all Parties in the above-captioned Action, including but not limited to, all Settlement Class Members, for all matters relating to this Action and the Settlement Agreement, including, without limitation, the administration, interpretation, effectuation and/or enforcement of the Settlement Agreement, this Final Order, or the Final Judgment.

I. The Settlement Class

3. In the Preliminary Approval Order, the Court preliminarily certified the following settlement class:

> All individuals who (1) had or have mortgage loans subserviced by LoanCare that were (2) governed by an FHA Note limiting late fees to a percentage of P&I; and (3) from whom LoanCare assessed and/or collected late fees based on a percentage of PITI.

4. Excluded from the Class and Subclass is the Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which it has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

5. The Settlement Class is hereby certified pursuant to Pennsylvania Rules of Civil Procedure, 1702, 1708, 1709, and 1710.

6. The Court preliminarily determined that Plaintiff Jessica Gillespie met the typicality and adequacy requirements of Pennsylvania Rules of Civil Procedure 1704 and 1709, thus qualifying her to serve as class representatives of the Settlement Class. The Court hereby finally approves that appointment.

7. The Court also preliminarily determined that the following counsel for the Settlement Class met the competency requirement of Pennsylvania Rule of Civil Procedure 1709, thus qualifying them to serve as class counsel, and hereby finally approves the appointment of the following counsel as Class Counsel:

> Irv Ackelsberg
> Peter Leckman
> LANGER GROGAN & DIVER, P.C.
> 1717 Arch Street, Suite 4020
> Philadelphia, PA 19103

For purposes of these settlement approval proceedings, the Court finds that these attorneys are competent and capable of exercising their responsibilities as Plaintiffs' Class Counsel and have fairly and adequately represented the interests of the Settlement Class for settlement purposes.

II. Class Notice

8. The record shows, and the Court finds, that the Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and the due process requirements of the United States Constitution.

9. Due and adequate notice of the Fairness Hearing having been given to the Settlement Class and a full opportunity having been offered to Settlement Class Members to participate in the Fairness Hearing. It is hereby determined that all Settlement Class Members are bound by this Final Order and the Final Judgment save for the individuals listed in Exhibit A to this order who have decided to exclude themselves from the settlement.

III. Final Approval of the Settlement Agreement

10. Pursuant to Pennsylvania law, the Court finds that the Settlement is fair, reasonable and adequate, and in the best interest of the Settlement Class, as well as within a

range that responsible and experienced attorney could accept considering all the relevant risks and factors and the relative merit of Plaintiff's claims and LoanCare's defenses.

11. The Court finds that the Settlement is fair, reasonable and adequate in light of the following factors:

(a) the Settlement was reached in the absence of collusion. It was the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator, Judge Diane M. Welsh;

(b) the case was complex, expensive and time consuming and would have continued to be so through trial if the case had not settled;

(c) the Settlement Class would have faced risks in establishing class certification and/or damages if they decided to continue litigation rather than settle; and

(d) the Settlement amount is well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued.

12. The Court held a Fairness Hearing on October 27, 2020, and has considered any objections or comments, timely and proper or otherwise, to the Settlement and denies and overrules them as without merit.

IV. Dismissal of Claims and Release

13. This Action is hereby dismissed with prejudice and without costs to any party, except as otherwise provided herein or in the Settlement Agreement.

14. The Court approves the parties plan to correct and credit class member accounts and to reimburse by check all class members who no longer have an active account with LoanCare.

15. As provided for in the Settlement Agreement, as of the Effective Date, and in exchange for the relief described in the Settlement Agreement, Named Plaintiff and each Settlement Class Member who did not validly opt-out of the Settlement and each of their respective heirs, executors, trustees, guardians, wards, administrators, representatives, agents, attorneys, partners, successors, predecessors and assigns and all those acting or purporting to act on their behalf completely, finally and forever release and discharge the Released Parties of and from the Released Claims. The Released Claims are released regardless of whether the Released Claims are known or unknown, concealed or hidden, suspected or unsuspected, anticipated or unanticipated, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, fixed or contingent.

16. "Released Claims" means any and all statutory or common law claims, including but not limited to claims for breach of contract and unjust enrichment, arising out of the calculation and assessment of late fees based on PITI rather than P&I for borrowers having FHA Notes.

17. "Released Parties" means and refers to Defendant and each of its respective present, former and future affiliates, parents, subsidiaries, corporate family members, insurers, indemnitors, officers, directors, partners, employees, agents, attorneys, servants, heirs, administrators, executors, members, member entities, shareholders, predecessors, successors, representatives, trustees, principals, vendors, contractors, clients, and assigns, individually, jointly and severally.

V. Payment of Attorneys' Fees and Costs

18. The Court approves Class Counsel's request for Attorneys' Fees and Expenses in the amount of $230,000.00. The Court finds that this amount is reasonable and appropriate under applicable law and the circumstances of this case.

19. In accordance with the Settlement Agreement, Defendant shall pay this amount, by draft or wire, within thirty (30) days after the Effective Date. Class Counsel shall provide Defendant with payment instructions within seven (7) days of entry of this order.

VI. Class Representative Service Award.

20. The Court herby approves Class Counsel's request of a service award of $2,500.00 for the Class Representative, Jessica Gillespie. This service award shall be paid to Plaintiff in addition to Plaintiff's Recovery Under the Settlement. Defendant shall pay this amount to Ms. Gillespie within thirty (30) days after the Effective Date.

21. This Service Award is warranted to compensate the Plaintiff for her contributions to the litigation and her commitment and work on behalf of the Class.

VII. Other Provisions.

22. The Court has jurisdiction to enter this Final Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Order or the Final Judgment, this Court expressly retains jurisdiction over the Defendants and each Settlement Class Member (including objectors) regarding the implementation, enforcement, and performance of the Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Settlement Agreement and

shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator.

23. The Parties are hereby directed to implement and consummate the Settlement, as set forth in the terms and provisions of the Settlement Agreement.

24. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties may, without further order of the Court or notice to the Settlement Class, agree to and adopt such amendments to the Settlement Agreement as are consistent with this Final Order and the Final Judgment and that do not limit the rights of Settlement Class Members under the Settlement Agreement.

25. In the event that the Effective Date does not occur, certification of the Settlement Class shall be automatically vacated and the Final Order and Final Judgment, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

Dated: _____, 2020

_____
J.

LANGER GROGAN & DIVER, P.C
By : Irv Ackelsberg
Peter Leckman
1717 Arch Street, Ste. 4020
Philadelphia, PA 19103
Tel: (215) 320-5660

Attorneys for Plaintiffs

JESSICA GILLESPIE, Plaintiff, on behalf of herself and all others similarly situated,	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
	:	FEBRUARY TERM, 2019
v.	:	No. 02806
LOANCARE, LLC, Defendant.	:	CLASS ACTION

Certificate of Service

I, Irv Ackelsberg, certify that on this day I caused to be served on opposing counsel via this Court's ECF system the foregoing Unopposed Motion for Final Approval of the Class Action Settlement, an Award of Attorneys' Fees and Expenses, and for a Service Award to the Named Plaintiff, together with the Memorandum of Law, the Declaration of Irv Ackelsberg, and the Proposed Order.

Date: October 16, 2020

/s/ *Irv Ackelsberg*
Irv Ackelsberg