

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JANET ROLLAND and MICHAEL
HARTY, individually and on behalf all
others similarly situated,

Plaintiffs,

v.

SPARK ENERGY, LLC,

Defendant.

No. 3:17-cv-02680-MAS-LHG

**PLAINTIFFS' NOTICE OF UNCONTESTED MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD PAYMENTS**

PLEASE TAKE NOTICE that on December 1, 2022 at 9:00 a.m., or as soon thereafter as counsel may be heard, Plaintiffs Janet Rolland and Michael Harty ("Plaintiffs"), by and through their counsel, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, and Mazie Slater Katz & Freeman, LLC, will move before the Honorable Lois J. Goodman, U.S.M.J., of the United States District Court for the District of New Jersey, at the Clarkson S. Fisher Building & U.S. Courthouse, located at 402 East State Street, Trenton, New Jersey 08608, for the entry of an order granting Attorneys' Fees, Expenses, and Service Award Payments.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Plaintiffs shall rely upon the accompanying brief, the Declaration of D. Greg Blankinship, the Declaration of Matthew Mendelsohn, the attached exhibits, and the attached proposed Order.

Respectfully submitted,

Dated: October 27, 2022

/s/ Matthew R. Mendelsohn
Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower
Parkway Roseland, NJ 07068
(973) 228-9898
mrm@mazieslater.com

Greg Blankinship (admitted *pro hac vice*)
Todd S. Garber (admitted *pro hac vice*)
Chantal Khalil (admitted *pro hac vice*)
**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**
1 North Broadway, Suite 900
White Plains, NY 10601
(914) 298-3281
gblankinship@fbfglaw.com
tgarber@fbfglaw.com
ckhalil@fbfglaw.com

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JANET ROLLAND and MICHAEL
HARTY, individually and on behalf all
others similarly situated,

Plaintiffs,

v.

SPARK ENERGY, LLC,

Defendant.

No. 3:17-cv-02680-MAS-LHG

**MEMORANDUM OF LAW
IN SUPPORT OF UNCONTESTED MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD PAYMENTS**

Greg Blankinship
Todd S. Garber
Chantal Khalil
**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**
1 North Broadway, Suite 900
White Plains, NY 10601
(914) 298-3281
gblankinship@fbfglaw.com
tgarber@fbfglaw.com
ckhalil@fbfglaw.com

Matthew Mendelsohn
**MAZIE SLATER KATZ
& FREEMAN, LLC**
103 Eisenhower Pkwy
Roseland, NJ 07068
Tel: (973) 228-9898
Fax: (973) 328-0303
mrm@mazieslater.com

Attorneys for Plaintiffs and the Putative Class

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 4

I. THE COURT SHOULD APPROVE THE REQUESTED AWARD OF ATTORNEYS’ FEES AND EXPENSES. 4

 A. The Requested Attorneys’ Fees Are Reasonable Under the Percentage-of-Recovery Method..... 6

 B. Valuation of the Settlement..... 9

 C. The Requested Attorneys’ Fees Are Reasonable Under the Lodestar Method..... 10

 D. The Factors Governing Approval Of Attorneys’ Fees And Expenses Support The Requested Amount. 15

 1. The Size Of The Fund Created And The Number Of Beneficiaries. 15

 2. The Presence Or Absence Of Substantial Objections By Members Of The Class To The Settlement Terms And/Or Fees Requested By Counsel..... 16

 3. The Skill And Efficiency Of The Attorneys Involved..... 16

 4. The Complexity And Duration Of The Litigation..... 17

 5. The Risk Of Nonpayment. 18

 6. The Amount of Time Devoted To The Case By Class Counsel..... 19

 7. The Awards In Similar Cases..... 19

 8. The Value Of Benefits Attributable To The Efforts Of Class Counsel Relative To The Efforts Of Other Groups, Such As Government Agencies Conducting Investigations. 20

 9. The Percentage Fee That Would Have Been Negotiated Had The Case Been Subject To A Private Contingent Fee Arrangement At The Time Counsel Was Retained. 20

 10. Any Innovative Terms Of Settlement. 21

II. THE REQUEST FOR REIMBURSEMENT OF COSTS IS REASONABLE AND SHOULD BE GRANTED. 21

III. THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED.22
CONCLUSION.....23

TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<i>Aarons v. BMW of North America, LLC</i> , No. 11-7667, 2014 WL 4090564 (C.D.Cal. Apr. 29, 2014)	14
<i>Adam X. v. New Jersey Dep’t of Corrections</i> , No. 17-00188, 2022 WL 621089 (D.N.J. Mar. 3, 2022)	11
<i>Alin v. Honda Motor Co., Ltd.</i> , No. 08-4825, 2012 WL 8751045 (D.N.J. Apr. 13, 2012).....	6, 11
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	7
<i>Careccio v. BMW of North America LLC</i> , No. 08-2619, 2010 WL 1752347 (D.N.J. April 29, 2010).....	21
<i>Castro v. Sanofi Pasteur Inc.</i> , No. 11-7178, 2017 WL 4776626 (D.N.J. Oct. 23, 2017)	12, 13
<i>Chakejian v. Equifax Information Services, LLC</i> , 275 F.R.D. 201 (E.D. Pa. 2011)	20
<i>DeSantis v. Snap-on Tools Co.</i> , No. 06-2231, 2006 WL 3068584 (D.N.J. Oct. 27, 2006)	22
<i>Dewey v. Volkswagen Aktiengesellschaft</i> , 558 F. App’x 191 (3d Cir. 2014)	22
<i>Dungee v. Davison Design & Dev. Inc.</i> , 674 F. App’x 153 (3d Cir. 2017)	11
<i>Geis v. Walgreen Co.</i> , No. 07-4238, 2010 WL 11570447 (D.N.J. Sept. 30, 2010).....	9
<i>Granillo v. FCA US LLC</i> , No. 16-153, 2019 WL 4052432 (D.N.J. Aug. 27, 2019)	13, 16

Hahnemann Univ. Hosp. v. All Shore, Inc.,
514 F.3d 300 (3d Cir. 2008)..... 12

Hall v. AT&T Mobility LLC,
No. 07-5325, 2010 WL 4053547 (D.N.J. Oct. 13, 2010) 16

Henderson v. Volvo Cars of N. Am., LLC, No.,
No. 09-4146, 2013 WL 1192479 (D.N.J. Mar. 22, 2013) 22

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.,
55 F.3d 768 (3d Cir. 1995)..... 5, 10, 11, 19

In re Aetna Inc.,
No. 1219, 2001 WL 20928 (E.D. Pa. Jan. 4, 2001) 10, 19

In re AT&T Corp.,
455 F.3d 160 (3d Cir. 2006)..... 15, 20

In re Cendant Corp. PRIDES Litig.,
243 F.3d 722 (3d Cir. 2001)..... 6

In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.,
333 F.R.D. 364 (E.D. Pa. 2019)..... 16

In re Diet Drugs,
582 F.3d 524 (3d Cir. 2009)..... 11

In re Ikon Off. Sols., Inc., Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000) 20

In re Ins. Brokerage Antitrust Litig.,
282 F.R.D. 92 (D.N.J. 2012) 10, 19

In re Ins. Brokerage Antitrust Litig.,
579 F.3d 241 (3d Cir. 2009)..... 5

In re Merck & Co. Vytorin ERISA Litig.,
No. 08-285, 2010 WL 547613 (D.N.J. Feb. 9, 2010) 13

In re New Jersey Tax Sales Certificates Antitrust Litig.,
 No. 12-1893, 2016 WL 5844319 (D.N.J. Oct. 3, 2016) 12, 13

In re Pet Food Prods. Liab. Litig.,
 No. 1850, 2008 WL 4937632 (D.N.J. Nov. 18, 2008) 18

In re Prudential Ins. Co. Litig.,
 148 F.3d 283 (3d Cir. 1998).....*Passim*

In re Remeron Direct Purchaser Antitrust Litig.,
 No. 03-0085, 2005 WL 3008808 (D.N.J. Nov. 9, 2005) 10, 19

In re Rite Aid Corp. Sec. Litig.,
 146 F. Supp. 2d 706 (E.D. Pa. 2001) 19

In re Rite Aid Corp. Sec. Litig.,
 396 F.3d 294 (3d Cir. 2005)..... 5, 6, 16, 17

In re Schering-Plough Corp. Enhance Sec. Litig.,
 No. 08-2177, 2013 WL 5505744 (D.N.J. Oct. 1, 2013) 20

In re Schering-Plough/Merck Merger Litig.,
 No. 09-1099, 2010 WL 125772 (D.N.J. Mar. 26, 2010) 13

In re Valeant Pharmaceuticals Int’l, Inc. Third-Party Payor Litig.,
 No. 16-3087, 2022 WL 525807 (D.N.J. Feb. 22, 2022) 12

In re Warfarin Sodium Antitrust Litig.,
 391 F.3d 516 (3d Cir. 2004)..... 17

In re Wawa, Inc. Data Security Litig.,
 No. 19-6019, 2022 WL 1173179 (E.D. Pa. Apr. 20, 2022)..... 7

Landsman & Funk, P.C. v. Skinder-Strauss Assocs.,
 639 F. App’x 880 (3d Cir. 2016) 7

Landsman & Funk, P.C. v. Skinder-Strauss Assocs.,
 No. 08-3610, 2015 WL 2383358 (D.N.J. May 18, 2015)..... 8

Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd’s, London Members,
 No. 08-00235, 2019 WL 4877563 (D.N.J. Oct. 3, 2019) 12

Loughner v. Univ. of Pittsburgh,
 260 F.3d 173 (3d Cir. 2001)..... 13

Maldonado v. Houstoun,
 256 F.3d 181 (3d Cir. 2001)..... 13

McCoy v. Health Net, Inc.,
 569 F. Supp. 2d 448 (D.N.J. 2008) 7

O’Keeffe v. Mercedes-Benz USA, LLC,
 214 F.R.D. 266 (E.D. Pa. 2003)..... 6

Rose v. Travelers Home & Marine Ins. Co.,
 No. 19-977, 2020 WL 4059613 (E.D. Pa. July 20, 2020) 10

Rowe v. E.I. DuPont de Nemours & Co.,
 No. 06-1810, 2011 WL 3837106 (D.N.J. Aug. 26, 2011) 7, 18

Safety Components Int’l Sec. Litig.,
 166 F. Supp. 2d 72 (D.N.J. 2001) 21

Spark v. MBNA Corp.,
 157 F. Supp. 2d 330 (D. Del. 2001)..... 8

Statutes

815 ILCS 505/10a(c)..... 11

N.J.S.A. 56:8-19..... 11

Rules

Fed. R. Civ. P. 23..... 4

Plaintiffs Janet Rolland (“Ms. Rolland”), Michael Harty (“Mr. Harty”), IUE-CWA Local 901 (“Local 901”), and Becky Burger (“Ms. Burger”) (collectively, “Plaintiffs”) submit this Memorandum of Law in support of their motion for attorneys’ fees, expenses, and service award payments.

INTRODUCTION

This motion pertains to three related class actions (collectively, the “Actions”) against Defendants Spark Energy, LLC, and Spark Energy Gas, LLC (collectively, “Spark Energy” or “Defendants”).¹ After hard-fought litigation, which included extensive motion practice, discovery, and investigation, and after extensive arm’s length settlement negotiations taking place over multiple days before a highly regarded mediator, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to a settlement that will resolve the Actions.

This is an excellent settlement that makes \$11 million available for awards to class members and resolves three complex and time-consuming class actions that have been vigorously litigated for five years. Spark Energy will make the following benefit available to class members (the “Class”) for electricity and gas purchased from Spark Energy: \$0.003 per kilowatt hour for electricity customers

¹ *Rolland v. Spark Energy, LLC*, No. 17-02680 (D.N.J.); *IUE-CWA Local 901 v. Spark Energy Gas, LLC*, No. 19-00389 (N.D. Ind.); *Burger v. Spark Energy Gas, LLC*, No. 19-08231 (N.D. Ill.).

and \$0.0293 per therm for natural gas customers, resulting in an approximate award of \$38 per-Class member.

Filed contemporaneously with this motion is Plaintiffs' motion for final approval of the settlement. That brief includes background information, a detailed explanation of the settlement terms, and a procedural history (which will not be repeated here).

Plaintiffs also now ask the Court to approve their request for an award of attorneys' fees and expenses in the amount of \$2,860,000.00 and \$250,000.00, respectively. The attorneys' fees of \$2,860,000.00 represents 26% of the amount made available to the class and only 20.3% if the value of the fees is included in the total settlement value. Because counsel for Plaintiffs and the Class ("Class Counsel") has incurred a total lodestar of \$3,631,846, the requested amount represents a negative lodestar multiplier of 0.79. Plaintiffs respectfully request that the Court award the amount requested because it falls well below the range of awards commonly approved within this Circuit using either the percentage of fund or lodestar methodology. Moreover, the fee request was disclosed in advance to the Class pursuant to the notice program approved by the Court, and not a single person has objected to the proposed fee.

Class Counsel has earned this requested fee. For over five years, Class Counsel engaged in extensive motion and discovery practice in three federal class

actions before entering into the Settlement Agreement. *See* Declaration of D. Greg Blankinship, ECF No. 193-2 (“Blankinship Decl.”) ¶ 6. Defendants have agreed to pay the attorneys’ fee award separate and apart from the \$11 million made available to the Class. Class Counsel defeated five motions to dismiss and a motion to strike, amended the complaints on multiple occasions, propounded and responded to numerous written discovery requests, reviewed gigabytes of ESI corresponding to approximately 185,000 documents, filed numerous letters concerning discovery disputes, and participated in ten depositions. *Id.* ¶ 7. Class Counsel also retained an expert to measure and quantify damages for the Class. *Id.* ¶ 8. Class Counsel prepared for and engaged in arm’s length settlement negotiations with Spark Energy, including multiple mediations. *Id.* ¶ 9. All of this activity required significant efforts in terms of labor and financial resources.

Class Counsel also requests that the Court approve the payment of a Service Award in the amount of \$5,000 each to Ms. Rolland, Mr. Harty, and Ms. Burger, and \$10,000 for Local 901. As with Class Counsel’s fee request, the service award request was subject to arm’s length negotiations between parties, is comparable to other service award payments in other class actions, was adequately disclosed in advance to the Class, and no Class member has objected as of October 27, 2022. *Id.* ¶¶ 32-34. Spark Energy has agreed to pay the requested service award the Court approves up to this requested amount, which is separate and apart from the

benefit to be received by Class members and in no way diminishes their recovery. While Class Counsel were actively prosecuting this case, Plaintiffs participated throughout. Plaintiffs helped to prepare their pleadings, gathered and produced relevant materials, responded to extensive written discovery requests, sat for extensive depositions, conferred with their attorneys regarding settlement, and expressed their willingness to testify at trial. *See* Blankinship Decl., ¶ 5. Plaintiffs thus invested considerable amounts of their own time in prosecuting this case.

ARGUMENT

I. THE COURT SHOULD APPROVE THE REQUESTED AWARD OF ATTORNEYS' FEES AND EXPENSES.

Federal Rule of Civil Procedure 23(h) provides that, “[i]n a certified class action, the court may award reasonable attorney’s fees that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

The Third Circuit has established two methods for evaluating an award of attorneys’ fees: the percentage-of-recovery method, which involves giving attorneys a portion of the total damages awarded to the class, and the lodestar method, which involves multiplying the number of hours worked on a case by the attorneys’ billing rate. *In re Prudential Ins. Co. Litig.*, 148 F.3d 283, 333 (3d Cir. 1998). The percentage-of-recovery method is generally favored in cases involving a common fund, while the lodestar method “is more commonly applied in statutory

fee-shifting cases.” *Prudential*, 148 F.3d at 333. The lodestar method may be applied “in cases where the nature of the recovery does not allow the determination of the settlement’s value necessary for application of the percentage-of-recovery method.” *Id.* (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 821 (3d Cir. 1995)). The court should perform a “cross-check” by comparing the fee award calculated under the chosen method with the award calculated under the alternative method. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 302 (3d Cir. 2005)).

Class Counsel requests an award of fees in the amount of \$2,860,000. This amount is 26% of the \$11 million recovery available to Class members and 20.3% of the total Settlement value (when the value of attorneys’ fees, which is a benefit to the Class, is included). Class Counsel’s requested fees are substantially less than their lodestar of \$3,631,846.² *See* Blankinship Decl. ¶ 37, Exhibit 4 (Declaration of Lynn A. Toops), Exhibit 5 (“Declaration of Richard R. Gordon”); Declaration of Matthew Mendelsohn (“Mendelsohn Decl.”) ¶ 5.³ Class Counsel’s

² Contemporaneously with the filing of this motion, Class Counsel have mailed Class Counsel’s detailed time records to Your Honor’s Chambers for the Court’s *in camera* review to protect disclosure of Class Counsel’s work product.

³ Class Counsel’s request for attorneys’ fees encompasses the time expended by counsel in *Burger v. Spark Energy* and *IUE-CWA Local 901 v. Spark Energy*, who are not counsel in the *Rolland* action.

requested attorneys' fees are therefore reasonable under both the percentage-of-recovery method and the lodestar method and should be approved.

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-Recovery Method.

“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’” *In re Rite Aid*, 396 F.3d at 300 (quoting *In re Prudential*, 148 F.3d at 333). The common fund doctrine encompasses cases in which a “common benefit” is conferred on Class members. *See, e.g., Alin v. Honda Motor Co., Ltd.*, No. 08-4825, 2012 WL 8751045, at *17 (D.N.J. Apr. 13, 2012); *O’Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 304-07 (E.D. Pa. 2003).

Here, Class Counsel’s efforts have resulted in a settlement obligating Spark Energy to award claiming Class members for allegedly misleading variable market rate claims. Spark Energy’s payment of attorneys’ fees and costs is separate from the relief afforded to the Settlement Class members. In such a circumstance, the percentage-of-recovery method is appropriate, even when unclaimed funds revert to the defendant. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 734 (3d Cir. 2001) (“Though this is not a traditional common-fund case, because the unclaimed portion of the settlement fund is returned to Cendant and because the plaintiffs who recover may not be affected by the attorneys’ fee award

(depending on the number of plaintiffs who recover rights from the fund), use of the percentage-of-recovery method is appropriate in this case.”); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App’x 880, 884 (3d Cir. 2016) (“[T]he Magistrate Judge did not abuse her discretion by upholding the fee award. She appropriately determined that the reverter element of this settlement was fair and reasonable because there were no indicia of self-dealing by counsel and counsel has met its responsibility to seek an award that adequately prioritizes direct benefit to the class.”); *In re Wawa, Inc. Data Security Litig.*, No. 19-6019, 2022 WL 1173179, at *9-10 (E.D. Pa. Apr. 20, 2022) (finding the settlement fair and reasonable and granting the plaintiffs’ requested fee award where unclaimed funds reverted to the defendant); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 474 (D.N.J. 2008) (finding the settlement fair and reasonable and granting the plaintiffs’ requested fee award where the unclaimed funds reverted to the defendant); *Rowe v. E.I. DuPont de Nemours & Co.*, No. 06-1810, 2011 WL 3837106, at *17 (D.N.J. Aug. 26, 2011) (same).

Indeed, it is well settled that settlement valuation is based on the value to the class as a whole and is not reduced even if some class members may choose not to take advantage of settlement benefits. *See Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980) (“[Class members’] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by

the efforts of the class representatives and their counsel.”); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 08-3610, 2015 WL 2383358, at *8 (D.N.J. May 18, 2015), *aff’d*, 639 F. App’x 880 (3d Cir. 2016) (“[T]he reverter element of the settlement is fair and reasonable because, for all the reasons stated herein, the Court finds no indicia of self-dealing by counsel and finds that counsel has met its responsibility to seek an award that adequately prioritizes direct benefit to the class.”); *Spark v. MBNA Corp.*, 157 F. Supp. 2d 330, 341 (D. Del. 2001), *aff’d*, 48 F. App’x 385 (3d Cir. 2002) (awarding a triple multiplier and basing recovery on total amount made available to class, rather than the amount claimed).

Here, there is no question that Class Counsel did not engage in self-dealing or that they prioritized the benefit to be made available to the class. To the contrary, this litigation was hard fought, and the parties only began negotiating fees after they had agreed on the awards to be made available for the class. *See* Blankinship Decl., ¶ 22. The fact that Class Counsel agreed to a fee that is substantially less than their lodestar and that Class members will receive a benefit that compares favorably with other similar class settlements demonstrates a lack of self-dealing and that Class Counsel prioritized the class benefit over fees. *See Hamlen v. Gateway Energy Servs. Corp.*, No. 16-3526 (S.D.N.Y. July 17, 2019), ECF No. 130 (\$9.2 million settlement with an award of \$0.00333 per kilowatt-hour and \$0.02509 per therm); *Vitale v. U.S. Gas & Electric, Inc.*, No. 14-4464, (D.N.J.

May 25, 2017), ECF No. 53 (providing a \$1.8 million fund, resulting in an average award of \$4.60 per-class member); *Edwards v. N. Am. Power & Gas, LLC*, No. 14-1714 (D. Conn. Aug. 3, 2018), ECF No. 133 (providing for \$.00351 per kwh and \$.0195 per therm); *Claridge v. N. Am. Power & Gas, LLC*, No. 15-1261 (S.D.N.Y. June 29, 2018), ECF No. 143 (providing for \$.00351 per kwh); *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y. Sept. 17, 2013), ECF Nos. 74, 75 (providing an average award of approximately \$23 per-class member); *McLaughlin v. IDT Energy, Inc.*, No. 14-4107 (E.D.N.Y Oct. 10, 2018), ECF No. 137 (providing \$2.50-3.50 per month for electricity and \$0.75-1.00 per month for natural gas).

B. Valuation of the Settlement.

The individual elements that are encompassed in this valuation are as follows: (1) available reimbursements to Class members, (2) Class Counsel's fees, (3) Class Counsel's expenses, and (4) a service award.

The value of the available reimbursements to Class members is \$11 million. Class Counsel are requesting that the Court award fees in the amount of \$2,860,000 and costs in the amount of \$250,000.00. When the value of service awards to Plaintiffs are added, a reasonable estimate of the Settlement's value to the class is at least \$14,135,000.00. *See Geis v. Walgreen Co.*, No. 07-4238, 2010 WL 11570447, at *15-16 (D.N.J. Sept. 30, 2010) (analyzing the award of

attorneys' fees in comparison to the total value of settlement benefits made available by the defendant, including the benefit to the class and fees and expenses for the plaintiff's attorneys); *Rose v. Travelers Home & Marine Ins. Co.*, No. 19-977, 2020 WL 4059613, at *9 (E.D. Pa. July 20, 2020) (assessing a class action settlement value inclusive of the benefit to the class and the attorneys' fees and costs, despite the attorneys' fees being paid separate and apart from the class fund). This amount does not include expenses of the Settlement Administrator.

Thus, the requested fees constitute less than 20.3% of the total benefit being provided to the class. *See In re Gen. Motors Corp.*, 55 F.3d at 822 (stating that, in consumer class actions, "fee awards have ranged from nineteen percent to forty-five percent of the settlement fund"); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 122 (D.N.J. 2012) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery.") (quoting *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *15-16 (D.N.J. Nov. 9, 2005)); *In re Aetna Inc.*, MDL No. 1219, 2001 WL 20928, at *14 (E.D. Pa. Jan. 4, 2001) (finding an attorneys' fees award of 30 percent of the settlement value to be reasonable).

C. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method.

The lodestar method "is more commonly applied in statutory fee-shifting cases." *Prudential*, 148 F.3d at 333. While the Court dismissed Plaintiffs' New

Jersey and Illinois consumer fraud claims, that decision is subject to appeal and both statutes provide for attorneys' fees. *See* N.J.S.A. 56:8-19; S.H.A. 815 ILCS 505/10a(c). Moreover, Spark Energy has "voluntarily" agreed to pay the requested fees. *See In re Diet Drugs*, 582 F.3d 524, 540 (3d Cir. 2009); *see also Alin v. Honda Motor Co., Ltd.*, 2012 WL 8751045, at *19 (applying percentage-of-recovery method in case where defendant agreed to pay fees and relief provided to class included reimbursements and vehicle modifications). However, the lodestar method may also be applied "in cases where the nature of the recovery does not allow the determination of the settlement's value necessary for application of the percentage-of-recovery method." *Prudential*, 148 F.3d at 333 (citing *In re Gen. Motors. Corp.*, 55 F.3d at 821); *Dungee v. Davison Design & Dev. Inc.*, 674 F. App'x 153, 156 (3d Cir. 2017) (affirming district court's use of lodestar method for claims-made settlement and holding that a "district court has discretion to determine which type of case the settlement most closely resembles and which calculation method to apply."). While Plaintiffs have provided the Court with a reasonable estimate of the Settlement's value, if the Court disagrees, the lodestar method can be utilized.

A lodestar is calculated by "multiplying the number of hours reasonably spent litigating the matter by counsel's hourly rate. This yields the 'presumptively reasonable fee.'" *Adam X. v. New Jersey Dep't of Corrections*, No. 17-00188,

2022 WL 621089 (D.N.J. Mar. 3, 2022) (quoting *Hahnemann Univ. Hosp. v. All Shore, Inc.*, 514 F.3d 300, 310 (3d Cir. 2008)). This Court has held that a requested fee award is especially reasonable when it is less than counsel's lodestar and that a negative multiplier "furnish[es] strong evidence that the requested fees are reasonable." *In re Valeant Pharmaceuticals Int'l, Inc. Third-Party Payor Litig.*, No. 16-3087, 2022 WL 525807, at *7 (D.N.J. Feb. 22, 2022) (Shipp, J.); *see also Castro v. Sanofi Pasteur Inc.*, No. 11-7178, 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) (Vazquez, J.) ("Because the lodestar cross-check results in a negative multiplier, it provides strong evidence that the requested fee is reasonable."); *In re New Jersey Tax Sales Certificates Antitrust Litig.*, No. 12-1893, 2016 WL 5844319, at *11 (D.N.J. Oct. 3, 2016) (Shipp, J.) (finding a negative multiplier "confirms the reasonableness of the requested fee award."); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, No. 08-235, 2019 WL 4877563, at *8 (D.N.J. Oct. 3, 2019) (Cecchi, J.) (finding a negative multiplier to be fair and reasonable).

Here, Class Counsel's requested fee award results in a negative multiplier of 0.78. This is strong evidence that the fee request is reasonable.

In reviewing the reasonableness of counsel's hourly rate, the Court should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers

of reasonably comparable skill, experience, and reputation. *Granillo v. FCA US LLC*, No. 16-153, 2019 WL 4052432, at *4 (D.N.J. Aug. 27, 2019) (citing *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 180 (3d Cir. 2001)). An attorney's usual billing rate is a good starting point for assessing reasonableness. *Id.* (citing *Maldonado v. Houstoun*, 256 F.3d 181, 184–85 (3d Cir. 2001)).

Here, Class Counsel's current billing rates, which range from \$250 to \$975, are consistent with both the prevailing market rates in New Jersey for similar services and with the amounts awarded by other federal courts in this state, and are therefore reasonable. *See In re New Jersey Tax Sales Certificates Antitrust Litig.*, 2016 WL 5844319, at *11 (finding rates of \$275 to \$980 to be reasonable in a class action); *Castro*, 2017 WL 4776626 (finding rates of up to \$935 to be reasonable); *In re Merck & Co. Vytorin ERISA Litig.*, No. 08-285, 2010 WL 547613 (D.N.J. Feb. 9, 2010) (approving rates between \$250 and \$850 per hour); *In re Schering-Plough/Merck Merger Litig.*, No. 09-1099, 2010 WL 125772 (D.N.J. Mar. 26, 2010) (approving rates for senior partners between \$550 to \$915 per hour)

Not surprisingly, Class Counsel's hourly rates have been approved by courts in this state and courts across the country. *See, e.g., Linardi v. Astral Energy LLC*, No. 3724-18 (N.J. Sup. Ct. Bergen Cty. Oct. 22, 2021) (approving Finkelstein, Blankinship, Frei-Pearson & Garber's hourly rates for partners and associates); *Stanley v. Direct Energy Servs., LLC*, No. 19-03759 (S.D.N.Y. Apr. 5, 2022), ECF

No. 82 (same); *Reed v. Friendly's Ice Cream, LLC*, No. 15-298 (M.D. Pa. Jan. 31, 2017), ECF No. 105 (same); *Tardibuono-Quigley v. HSBC Mortgage Corp.*, No. 15-06940, ECF No. 177 (S.D.N.Y. May 21, 2020) (same); *Hamlen v. Gateway Energy Services Corp.*, No. 16-3526 (S.D.N.Y. Sept. 13, 2019), ECF No. 141 (same); *Majdipour v. Jaguar Land Rover N. Am., LLC*, 2:12-cv-07849 (D.N.J. Feb. 3, 2020) (approving Mazie Slater's hourly rates of \$425 for associates and \$595 to \$900 for partners); *Feldman v. BRP US, Inc.*, Civ. Ac. No. 17-cv-61150 (S.D. FL. Nov. 19, 2018) (same); *Gray v. BMW of N. Am., LLC*, Civ. Ac. No. 13-cv-3417 (D.N.J. Aug. 24, 2017) (same); *In re HIKO Energy, LLC Litigation*, Civ. Ac. No. 7:14-cv-1771-VB (S.D.N.Y. May 9, 2016) (same); *Overton v. sanofi-aventis US, LLC*, Civ. Ac. No. 3:13-cv-05535-PGS-DEA (D.N.J. Feb. 10, 2016) (same); *Aarons v. BMW of North America, LLC*, 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014) (same); *Mettekjistine v. AllConnect, Inc.*, No. 18-00359 (E.D. Ky. Dec. 2, 2019), ECF No. 56 (approving Cohen & Malad's hourly rates for associates and partners); *Howell v. Eastman Credit Union*, No. C42517 (Tenn. Cir. Ct. Sullivan Cty. Oct. 20, 2021) (same); *Zah v. N. Am. Power & Gas, LLC*, No. 14-08370 (Ill. Sup. Ct.) (approving Gordon Law Offices' hourly rates); *Keith v. Ferring Pharms., Inc.*, No. 15-10381 (N.D. Ill.) (same); *Mednick v. Precor, Inc.*, No. 14-03624 (N.D. Ill.).

D. The Factors Governing Approval Of Attorneys' Fees And Expenses Support The Requested Amount.

When determining the fees to award in a class action, “[w]hat is important is that the District Court evaluate what class counsel actually did and how it benefitted the class.” *In re AT&T Corp.*, 455 F.3d 160, 165-66 (3d Cir. 2006) (citing *In re Prudential*, 148 F.3d at 342). The Court considers several factors, including:

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

In re AT&T Corp., 455 F.3d at 165. These factors establish that the requested attorneys’ fee is appropriate.

1. The Size Of The Fund Created And The Number Of Beneficiaries.

This is a multi-state settlement encompassing 267,641 Class members. The fund created by the Settlement has a value of approximately \$11 million, which is comprised of hard dollars available for reimbursement. This Settlement, which results in an average award of \$38, provides significant and concrete relief to the class and compares favorably to other similar settlements. *Vitale v. U.S. Gas &*

Electric, Inc., No. 14-4464, (D.N.J. May 25, 2017), ECF No. 53 (providing a \$1.8 million fund, resulting in an average award of \$4.60 per-class member); *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y. Sept. 17, 2013), ECF Nos. 74, 75 (providing an average award of approximately \$23 per-class member).

Accordingly, this factor supports Class Counsel's application for fees and costs.

2. The Presence Or Absence Of Substantial Objections By Members Of The Class To The Settlement Terms And/Or Fees Requested By Counsel.

No objections to the Settlement have been submitted, which supports Class Counsel's request. *See, e.g., In re Comcast Corp.*, 333 F.R.D. at 381 ("The extremely low percentage of objectors and opt-outs is well within the percentage of opt-outs and objectors that this Circuit has previously held favors approval of a settlement under this factor."); *Rite Aid*, 396 F.3d at 305 ("District Court did not abuse its discretion in finding the absence of substantial objections by class members to the fee requests weighed in favor of approving the fee request.").

3. The Skill And Efficiency Of The Attorneys Involved.

The Court must evaluate the skill and efficiency of Class Counsel, which is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Granillo v. FCA US LLC*, No. 16-

153, 2019 WL 4052432, at *10 (D.N.J. Aug. 27, 2019) (quoting *Hall v. AT&T Mobility LLC*, No. 07-5325, 2010 WL 4053547, at *19 (D.N.J. Oct. 13, 2010)). Class Counsels' declarations describe their significant experience with complex class action litigation. See Blankinship Decl., ¶¶ 25-31, Exhibit 2; Mendelsohn Dec.1, ¶¶ 3-4, Exhibit 1. After years of investigation, motion practice, discovery, and multiple mediations, the Parties agreed to a Settlement which provides significant benefit to Class members. See Blankinship Decl., ¶¶ 19-21. See *In re Rite Aid*, 396 F.3d at 304 (determining that counsel was “extraordinarily deft and efficient in handling this most complex matter” because, among other things, he negotiated a favorable settlement). An outstanding result has been achieved for the class.

4. The Complexity And Duration Of The Litigation.

The Court must also consider the complexity and duration of the litigation. This factor “captures the probable costs, in both time and money, of continued litigation.” *In re Warfarin*, 391 F.3d at 535-36. The Parties spent considerable time, money, and effort in litigating these three Actions for five years. Class Counsel engaged in extensive motion and discovery practice in three federal class actions, including defeating five motions to dismiss and a motion to strike, amending the complaints on multiple occasions, propounding and responding to numerous written discovery requests, reviewing gigabytes of ESI corresponding to

approximately 185,000 documents, filing numerous letters concerning discovery disputes, and participating in ten depositions. *See* Blankinship Decl., ¶ 7. Class Counsel also retained an expert to measure and quantify damages for the Class. *Id.* ¶ 8. Class Counsel prepared for and engaged in arm's length settlement negotiations with Spark Energy, including multiple mediations.

The claims in this case raise difficult questions of law and fact (as evidenced by Spark Energy's motions to dismiss), and the complexity and duration of this litigation weigh strongly in favor of accepting counsel's fee request as reasonable.

5. The Risk Of Nonpayment.

Class Counsel undertook this class action on a contingency fee basis. Thus, for the past five years, counsel carried both the cost of litigation and considerable risk of not being paid for their services. *See Rowe v. E.I. DuPont de Nemours and Co.*, No. 06-1810, 2011 WL 3837106, at *21 (D.N.J. August 26, 2011) (that "counsel faced significant challenges in terms of establishing liability and a right to injunctive relief" created "risk of nonpayment" that weighed in favor of accepting fee request); *In re Pet Food Prods. Liab. Litig.*, No. 07-2867, 2008 WL 4937632, at *22 (D.N.J. Nov. 18, 2008) (noting that "[a]t the time that plaintiff's counsel undertook representation, they faced significant hurdles and the possibility of non-recovery. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees."). Despite

the risk that significant time and efforts could go uncompensated, Class Counsel diligently prosecuted the claims on behalf of the Class.

6. The Amount of Time Devoted To The Case By Class Counsel.

Class Counsel efficiently and reasonably devoted approximately 5,799 hours to this case as of October 27, 2022. Blankinship Decl. ¶ 37, Exhibit 4, Exhibit 5; Mendelsohn Decl. ¶ 5. Class Counsel's diligent efforts throughout the course of the Actions supports the requested award.

7. The Awards In Similar Cases.

The requested fee of 26% of the settlement's estimated value (which does not include attorneys' fees and costs) and less than 20.3% of the settlement's total value, which is well within the accepted range of percentage-of-recovery fee awards. *See In re Gen. Mot. Corp.*, 55 F.3d at 822 (noting that fee awards range between 19 and 45 percent of the settlement fund); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (noting expert's review of 289 settlements, which demonstrated that "average attorney's fees percentage is shown as 31.71%, and the median turns out to be one-third"); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 122 ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery.") (quoting *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *15-16); *In re Aetna Inc.*, 2001 WL 20928, at *14 (finding an attorneys' fees award of 30 percent of the settlement value to be

reasonable). The fees requested here are on the low end of the accepted range, so this factor weighs in favor of granting the fee request.

8. The Value Of Benefits Attributable To The Efforts Of Class Counsel Relative To The Efforts Of Other Groups, Such As Government Agencies Conducting Investigations.

The benefits in this case are solely due to the efforts of Class Counsel. *See In re AT&T*, 455 F.3d at 173 (“[C]lass counsel in this case was not aided by a government investigation.”); *Chakejian v. Equifax Information Services, LLC* 275 F.R.D. 201 (E.D. Pa. 2011) (“All of the benefits obtained for class members are due to the efforts of class counsel; there were no government agencies or other groups conducting investigations and contributing to this settlement. . . . this factor supports a substantial fee award for class counsel.”).

9. The Percentage Fee That Would Have Been Negotiated Had The Case Been Subject To A Private Contingent Fee Arrangement At The Time Counsel Was Retained.

Class Counsel undertook this matter entirely on a contingency basis and are requesting 26% of the recovery value to Class members and 20.3% of the settlement’s total value, significantly less than would have been sought in a private contingent fee agreement with the Class. “[I]n private contingency fee cases, particularly in tort matters, Class Counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.” *In re Ikon*, 194 F.R.D. at 194 (collecting cases); *see also In re Schering-Plough Corp. Enhance Sec. Litig.*,

No. 08-2177, 2013 WL 5505744, at *47 (D.N.J. Oct. 1, 2013) (“[A] number of courts within the Third Circuit have observed attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class commercial litigation.”).

10. Any Innovative Terms Of Settlement.

The terms of the Amended Settlement are similar to other class settlements involving consumer claims against alternative energy suppliers alleging misleading variable market rate claims. Accordingly, this factor neither weighs for nor against approval of the requested fees.

II. THE REQUEST FOR REIMBURSEMENT OF COSTS IS REASONABLE AND SHOULD BE GRANTED.

As part of the settlement agreement, Defendant has agreed to reimburse Class Counsel for their costs in this matter up to \$250,000. *See* Settlement Agreement, ¶ 7.1. This is less than the \$281,789.11 in expenses Class Counsel actually incurred. Blankinship Decl. ¶ 37, Exhibit 4, Exhibit 5; Mendelsohn Decl. ¶ 5. “Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *Careccio v. BMW of North America LLC*, No. 08-2619, 2010 WL 1752347, at *7 (D.N.J. April 29, 2010) (quoting *Safety Components Int’l Sec. Litig.* 166 F. Supp. 2d 72, 108 (D.N.J. 2001)).

The reasonable and necessary expenses incurred by Class Counsel in the prosecution of this case are set forth in the declarations of Class Counsel, totaling \$281,789.11. *See* Blankinship Decl. ¶ 39, Exhibit 4, Exhibit 5; Mendelsohn Decl. ¶ 7. Class Counsel respectfully requests the Court to award \$250,000 in costs. These expenses are largely attributable to Plaintiffs' retention of two energy industry experts. Thorough analysis of Spark Energy's data and comparative rates from its competitors required more than \$144,000 in expert fees due to the substantial time and effort necessary to examine the millions of records from Spark Energy.

III. THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED.

There is ample authority in this circuit for the approval of awards for named Plaintiffs to reimburse them for their time, effort, and contributions to the litigation. *See Dewey v. Volkswagen of Am.*, 909 F. Supp. 2d 373, 395 (D.N.J. 2012), *aff'd sub nom. Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191 (3d Cir. 2014) (approving \$10,000 service award to each named plaintiff); *Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146, 2013 WL 1192479, at *19 (D.N.J. Mar. 22, 2013) (approving service awards ranging from \$5,000 to \$6,000 for each class representative); *DeSantis v. Snap-on Tools Co.*, No. 06-2231, 2006 WL 3068584, at *11 (D.N.J. Oct. 27, 2006) (approving \$50,000 incentive awards)).

The Settlement calls for Spark Energy to pay Plaintiffs in the amount of \$5,000 each to Ms. Rolland, Mr. Harty, and Ms. Burger, and \$10,000 for Local 901. Settlement Agreement, ¶ 7.2. Plaintiffs expended significant time and effort assisting Class Counsel in their investigation, review of pleadings, producing documents, and participating in mediation discussions. Blankinship Decl. ¶ 5. The requested incentive awards to each of the Plaintiffs are appropriate, reasonable, and should be approved.

CONCLUSION

Plaintiffs respectfully request that the Court approve Class Counsel's request for fees, expenses, and a service award.

Dated: October 27, 2022

Respectfully submitted,

/s/ Matthew R. Mendelsohn

Matthew R. Mendelsohn

MAZIE SLATER KATZ & FREEMAN, LLC

103 Eisenhower

Parkway Roseland, NJ 07068

(973) 228-9898

mrm@mazieslater.com

Greg Blankinship (admitted *pro hac vice*)

Todd S. Garber (admitted *pro hac vice*)

Chantal Khalil (admitted *pro hac vice*)

FINKELSTEIN, BLANKINSHIP,

FREI-PEARSON & GARBER, LLP

1 North Broadway, Suite 900

White Plains, NY 10601

(914) 298-3281

gblankinship@fbglaw.com
tgarber@fbglaw.com
ckhalil@fbglaw.com

Counsel for Plaintiffs & The Class