

SAMUEL STOKES,
Plaintiff,

v.

NOVELPAY, LLC
Defendant.

* IN THE CIRCUIT COURT FOR
* PRINCE GEORGE’S COUNTY
* Case No. C-16-CV-24-001546

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MOTION FOR APPROVAL OF INCENTIVE AWARD TO THE REPRESENTATIVE PLAINTIFF

I. INTRODUCTION

Pursuant to ¶ 20 of the Settlement Agreement in this case, Representative Plaintiff Samuel Stokes (“Representative Plaintiff”) respectfully requests that this Court approve a single incentive award to him of \$15,000 – an award which compensates Mr. Stokes for the substantial time and effort he put into this case, and which will not diminish or affect the relief to other Settlement Class members. The requested award is warranted because Representative Plaintiff secured the \$3 million proposed Settlement in this case not only on behalf of himself, but instead insisted on behalf of a settlement class. His actions have benefitted tens of thousands of other similarly situated consumers in a tangible way. The requested award is both permissible and desirable where, as here, a class action has achieved a significant benefit for Settlement Class members.

There would not have been a recovery in this action without the participation of the Representative Plaintiff. The relief provided for in the Settlement Agreement benefitting each Class Member, is an excellent result – Representative Plaintiff recovered a common settlement fund of \$3 million for Marylanders who, like him, paid Service Fees to Defendant NovelPay, LLC.

The incentive award requested is modest in light of the substantial benefits Representative Plaintiff secured for Settlement Class members (it is 1/2 of 1% of the common settlement fund), and it will not diminish the common settlement fund or

otherwise affect Settlement Class members' recovery *at all*. Instead, NovelPay has agreed to pay the requested incentive award separate and apart from the Settlement Fund. *See* Settlement Agreement ¶ 20.

Unlike the absent Settlement Class members, the Representative Plaintiff actively cooperated with Class Counsel and expended substantial effort to see this case through to settlement. In particular, the Representative Plaintiff contacted Class Counsel about his experiences and initiated the litigation resulting in the settlement here. *See* Exhibit 4 to Plaintiff's Motion for Final Approval of Class Action Settlement ("Carney Aff.") ¶ 17. Representative Plaintiff consulted with Class Counsel about his experiences, provided detailed information and documents to Class Counsel about the issues presented in this case, and took the time to understand and approve litigation and settlement strategy. *Id.* Representative Plaintiff provided the information necessary to draft the Original Complaint and First Amended Complaint and reviewed and approved each of those pleadings. *Id.* Representative Plaintiff lent his individual and personal name and circumstances to the case, produced documents, and was prepared to testify at deposition and trial. *See id.* Moreover, Representative Plaintiff achieved this settlement not only for his own benefit, but for the benefit of other Settlement Class members. *Id.*

Settlement Class members are all being notified, in the settlement notice, of the amount of the incentive award requested. *See* Exhibits 1, 2 & 3 to Plaintiff's Motion for Final Approval of Class Action Settlement (each advising that Representative Plaintiff will seek a \$15,000 incentive award).

II. COURTS HAVE TRADITIONALLY AWARDED INCENTIVE PAYMENTS LIKE THE ONES REQUESTED HERE TO REWARD CLASS REPRESENTATIVES.

The award of incentive payments to named class representatives has been approved in a long line of cases. Two themes occur repeatedly in the many opinions approving incentive payments: first, it is important to encourage named representatives to bring class actions because of the benefits they confer; and second, it is just to reward named class representatives for their work and effort on behalf of the class. As the Hon.

William D. Quarles noted in *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483 n. 22 (D. Md. 2014), when approving a \$10,000 incentive payment nearly ten years ago, “[b]ecause a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.” (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998)).

Similar decisions, approving comparable incentive awards, abound:

Incentive or service awards reward representative plaintiffs’ work in support of the class, as well as their promotion of the public interest. *Adkins v. Midland Credit Mgmt., Inc.*, No. 5:17-cv-04107, 2022 WL 327739, at *6 (S.D. W. Va. Feb. 3, 2022), citing *Archbold*, 2015 WL 4276295, at *6. Courts around the country have allowed such awards to named plaintiffs or class representatives. *See, e.g., Adkins*, 2022 WL 327739, at *7 (awarding each class representative \$10,000 out of \$995,000 fund); *Dijkstra*, 2015 WL 12750449, at *6 (awarding \$10,000 to sole class representative); *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-CV-00361, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018) (awarding \$300,000 to class representatives out of \$94 million fund); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 480 (D.N.J. 2008) (awarding \$60,000 to each class representative out of \$215 million fund); *Worthington v. CDW Corp.*, No. C-1-03-649, 2006 WL 8411650, at *7 (S.D. Ohio May 22, 2006) (awarding \$70,000 to class representatives out of \$1.45 million fund); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F.Supp.2d 322, 342 (E.D. Pa. 2007) (awarding \$75,000 to class representative out of \$39.75 million fund); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357-58 (N.D. Ga. 1993) (awarding \$142,500 to class representatives out of \$50 million fund); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (awarding \$215,000 to several class representatives out of an \$18 million fund); *see also Irvine v. Destination Wild Dunes Mgmt., Inc.*, 204 F. Supp. 3d 846, 851 (D.S.C. 2016) (awarding \$30,000 to class representatives independent from \$179,000 fund). One district court has gone so far as to say that incentive awards are “routinely approve[d].” *Id.*, citing *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000)

Six v. LoanCare, LLC, No. 5:21-CV-00451, 2022 WL 16747291, at *8 (S.D.W. Va. Nov. 7, 2022); *see also McCurley v. Flowers Foods, Inc.*, No. 5:16-CV-00194-JMC, 2018 WL 6650138, at *8 (D.S.C. Sept. 10, 2018) (approving incentive award “of \$ 25,000.00, which is well within the range of reasonable incentive awards approved by the courts.”) (citing *Savani v. URS Profl Sols. LLC*, 121 F. Supp. 3d 564, 577 (D.S.C. 2015) (citing *In re Auto. Refinishing Paint Antitrust Litig.*, No. 1426, 2008 WL 63269, at *7-8, (E.D. Pa. Jan. 3, 2008) (approving a \$ 30,000 award for each class representative); *McBean v. City of New York*, 233 F.R.D. 377, 391–92 (S.D.N.Y. 2006) (stating incentive awards of

\$ 25,000–\$ 30,000 are “solidly in the middle of the range”); *In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 FSH, 2005 WL 3008808, at *18 (D.N.J. Nov. 9, 2005) (\$ 60,000); *In re Remeron End–Payor Antitrust Litig.*, No. Civ. 02-2007 FSH, Civ. 04-5126 FSH, 2005 WL 2230314, at *33 (D.N.J. Sept. 13, 2005) (\$ 30,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) (\$ 50,000); *Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 WL 34089697 (W.D. Wash. 2001) (\$ 7,500 to \$ 40,000) (parentheticals in *McCurley*).

Likewise, in *Meredith v. Mid-Atlantic Coca-Cola Bottling Co.*, Nos. 89-00302 and 89-00525, 13 Class Action Rep. 498 (E.D. Va. May 1 and June 18, 1990), the court approved an \$18,000 incentive bonus payment to the named representatives, from a \$4.6 million recovery, declaring that without the named representatives’ efforts, “no class member . . . would have recovered anything.” *Meredith* noted that “each worked closely with counsel” and that such awards have “been approved in a number of cases under circumstances similar to” those in *Meredith*. More significantly, the court explained that “[i]f we are going to break up conduct such as what was alleged in this case, somebody has got to do something about it,” and we must “encourage the little people to come forward[.]” *Id.*

The significant benefit conferred by class representatives was also stressed by the court in *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991), where the court approved incentive awards of \$50,000 to each of six class representatives as “fair, reasonable and warranted.” The court noted:

In this case, the Class Representatives have taken actions which have protected the interests of the Class Members and which have resulted in a Settlement that provides substantial economic and noneconomic benefits for the Class Members.

Id.

Likewise, in *In re Jackson Lockdown/MCO Cases*, the court stated:

[T]he Sixth Circuit has recognized the propriety of rewarding members of a class who protested and helped bring rights to a group who had been victims of discrimination. Active protesters were contrasted to protesters who were

merely passive and indicated no particular desire to bring an end to a discriminatory policy.

107 F.R.D. 703, 710 (E.D. Mich. 1985) (citations omitted). Accordingly, the court approved an incentive award, stating: “The Named Plaintiffs who stepped forward are responsible for the results achieved in the settlement of this litigation and are entitled in the proposed consent judgment to be preferred over the class as a whole.” *Id.*

As one court recently held, the \$15,000 incentive fee it approved was “reasonable” in light of the fact that “courts in the Fourth Circuit have approved incentive payments as high as \$25,000.” *Halcom v. Genworth Life Ins. Co.*, No. 3:21-CV-19, 2022 WL 2317435, at *10 (E.D. Va. June 28, 2022). *See also, e.g., FERNANDO AQUINO FLORES & RICARDO ISIDRO REYES, on behalf of themselves, FLSA Collective Plaintiffs & the Class, Plaintiffs, v. CGI INC., d/b/a BUS STOP DINER, et al., Defendants.*, No. 22-CV-350 (KHP), 2022 WL 13804077, at *11 (S.D.N.Y. Oct. 21, 2022) (awarding \$15,000 in incentive payments); *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-CV-815-PPS-MGG, 2020 WL 5627171, at *9 (N.D. Ind. Sept. 18, 2020) (awarding four \$15,000 incentive payments); *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 716 (7th Cir. 2015) (approving \$15,000 incentive award); *Jones v. I.Q. Data Int'l, Inc.*, No. 1:14-cv-00130-PJK-RHS, 2015 WL 5704016, at *2, 2015 U.S. Dist. LEXIS 137209, at *5 (D.N.M. 2015) (approving incentive award of \$20,000.00); *Willix v. Healthfirst, Inc.*, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (approving incentive payments of \$30,000, \$15,000, and \$7,500); *Ross v. U.S. Bank Nat. Ass'n*, No. C07-02951SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (awarding \$20,000.00 incentive payments for each of the four class representatives); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 768 (S.D. W. Va. 2009) (granting a \$15,000 incentive payment even where court had “no evidence of the class representatives' participation in th[e] case” and award was approved solely “to reward the class representatives ... for enabling the pursuit of th[e] matter on behalf of the class”); *Masters v. Wilhelmina Model Agency, Inc.*, 472 F.3d 423, 430 (2d Cir. 2007) (approving \$25,000 incentive

awards); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 WL 474936, at *7, 2007 U.S. Dist. LEXIS 8476, at *16-17 (N.D. Cal. 2007) (awarding incentive payments of \$25,000.00); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (approving a \$50,000 incentive payment); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (awarding \$50,000 incentive payment); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (S.D. Ohio 1991) (awarding \$50,000 incentive payments).

Representative Plaintiff's actions in bringing, pursuing, and settling on a class-wide basis have resulted in a \$3 million cash recovery for the Settlement Class. Without Representative Plaintiff's willingness to stand up, prosecute this lawsuit, and serve the rights of other Settlement Class members instead of only his own rights, this recovery would not be possible.

Accordingly, an incentive award of \$15,000 for Representative Plaintiff is appropriate and should be approved. The award will provide some compensation for the time and effort Representative Plaintiff expended.

It bears repeating that the requested incentive award will not diminish the recovery of any Settlement Class member – the award will be paid separate and apart from the common Settlement Fund. *See* Settlement Agreement ¶ 20. Approval of the requested award will not only reward Representative Plaintiff for protecting the rights of others but will encourage consumers to stand up for the rights of themselves and others in class action litigation in the future – all at no cost to the Settlement Class.

III. CONCLUSION

For the reasons set forth above, Representative Plaintiff respectfully requests that this Court approve an incentive payment to him in the amount of \$15,000 and enter the comprehensive proposed Final Order Approving Settlement and Certifying Settlement Class, which is attached.

Respectfully submitted,

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Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2025, that I served a copy of the foregoing document via the MDEC system on all persons entitled to service.

/s/ Benjamin H. Carney (ID # 0412140132)
Benjamin H. Carney

