SAMUEL STOKES,	*	IN THE CIRCUIT COURT FOR
Plaintiff,	*	PRINCE GEORGE'S COUNTY
v.	*	Case No. C-16-CV-24-001546
NOVELPAY, LLC	*	
Defendant.	*	

* * * * * * * * * * *

PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Benjamin H. Carney (ID # 0412140132)
bcarney@GWCfirm.com
Richard S. Gordon (ID # 8912180227)
rgordon@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, Maryland 21031
Telephone: (410) 825-2300
Facsimilie: (410) 825-0066

Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

TREATISES

Plaintiff Samuel Stokes, acting individually and on behalf of the Class defined below ("Mr. Stokes" or "Plaintiff" or "Representative Plaintiff") respectfully submits this Motion for Final Approval of Class Action Settlement.

I. INTRODUCTION

This proposed class action settlement recovers $3 million from Defendant, NovelPay, LLC ("NovelPay"), to compensate Plaintiff and roughly 63,200 other Marylanders who paid Service Fees to NovelPay when it allegedly was not licensed under the Maryland Collection Agency Licensing Act ("MCALA"), Md. Code Ann., Bus. Reg. §§ 7-101 *et seq*. and had also not posted a collection agency bond in its home state of New Jersey pursuant to N.J.S.A. § 45:18-1. *See* Settlement Agreement (Exhibit 1 to the parties' November 27, 2024 Joint Motion for Preliminary Approval of Settlement and Form, Manner and Administration of Notice).

This settlement is an excellent result. NovelPay denies that it did anything wrong. Among other things, it asserts that it was not acting as a collection agency and, therefore, was not obligated to maintain a collection agency license or post a bond. *See* Settlement Agreement ¶ 7. Nevertheless, NovelPay has agreed to obtain a Maryland collection agency license – which represents a real victory for the Settlement Class, as this case was all about NovelPay's alleged lack of the required licensing and bonding.

But NovelPay's agreement to get licensed and bonded is just the beginning. Under this proposed settlement, NovelPay has also agreed to pay $3 million into a common fund. That means that Settlement Class Members each stand to recover an average of more than $30.00 if every one of the 63,200 Settlement Class members files a claim. However, if the claims rate is more in line with typical class action claims rates (which are generally under 7%), then each Settlement Class Member who files a claim could stand to recover an average of $400 or more each.

In addition to this substantial cash relief, NovelPay has also agreed to pay the costs of settlement administration (subject to a right to recoup its out-of-pocket costs from

unclaimed settlement funds, after all distributions to Settlement Class members are complete) and a $15,000 incentive payment to the Representative Plaintiff – all in addition to the $3 million common fund, so that Settlement Class members' recoveries are not affected by these costs.

Class Members are presently being notified of the proposed settlement. *See* **Exhibits 1, 2 & 3** (Long Form Notice, Mailed Notice, and E-mailed Notice). In accordance with the Court's December 26, 2024 Preliminary Approval Order and Md. Rule 2-231(f), Class Notices are being disseminated to Class members contemporaneous with the filing of this Motion. Plaintiff will file an update following the completion of the notice program which will inform the Court of the success rate in getting notices to Class members, and the number of opt outs and objections.

Because the Settlement is fair, adequate, and reasonable to Settlement Class Members, Plaintiff respectfully requests that it be approved.

II. FACTUAL AND PROCEDURAL BACKGROUND

Representative Plaintiff filed this putative class action lawsuit in the Circuit Court for Prince George's County on March 29, 2024. *See* Complaint. In the Complaint, Plaintiff alleges that NovelPay contracted with residential property managers to collect charges from residents. Those charges that NovelPay allegedly collected include Service Fees for NovelPay's actions as a collection agency. However, Plaintiff alleges that NovelPay should not have collected residential real estate charges from him and should also not have collected additional Service Fees to pay itself for its collection activity, without a collection agency license under MCALA. *See id.*

The Complaint asserts four claims for relief: (1) Violation of the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law §§ 14-201 *et seq.*; (2) Violation of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 *et seq.*; (3) money had and received; and, (4) unjust enrichment. *See* Complaint.

The parties each conducted extensive research into the applicable facts and law relating to the practices challenged by Representative Plaintiff in this lawsuit and with

respect to class certification issues. Counsel for Representative Plaintiff subpoenaed relevant information, reviewed court files (and other documents) relevant to the issues raised in the Complaint, conducted extensive informal discovery, and interviewed consumers who had paid through NovelPay. *See* **Exhibit 4**, Affidavit of Benjamin H. Carney ("Carney Aff.") ¶ 3.

Following the filing of the Complaint, the parties jointly determined to explore settlement through arms-length mediation supervised by a retired federal Magistrate Judge – the Hon. William Connelly. The Parties' extensive mediation efforts took months to complete and included two full days of in-person, arms-length negotiations supervised by Judge Connelly. In addition to these full-day mediation sessions, the parties engaged in substantial additional negotiations. Judge Connelly supervised and facilitated the negotiations which led to the ultimate terms of the settlement memorialized in this Agreement. *See* Settlement Agreement ¶ 4.

The Parties recognize and acknowledge the benefits of settling this case. Class Counsel have taken into account the uncertain outcome and risk of the litigation, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appeals. Class Counsel have, therefore, determined that the settlement set forth in this Agreement is fair and reasonable and in the best interest of the Representative Plaintiff and the Class.

III. THE PROPOSED SETTLEMENT AND ITS BENEFITS TO THE PROPOSED CLASS AND NOVELPAY.

The Settlement Agreement contemplates certification of the following proposed settlement class (the "Settlement Class"):

> All persons who paid a Service Fee to NovelPay in connection with NovelPay's collection of charges arising from residential real property located in Maryland, including rent and community association dues, during the Class Period.
>
> Excluded from the Class are all employees, officers and directors of NovelPay, and all employees of the Court.

Settlement Agreement, ¶ 10(hh).

The Settlement Agreement includes monetary relief for the approximately 63,200 Settlement Class members[1] in the amount of a $3 million common fund. Under the Settlement Agreement, each Settlement Class member who files a claim will receive a *pro rata* share of the common fund, based on the amount of Service Fees they paid, in the form of a check or an electronic payment, at the Settlement Class member's option. Settlement Agreement ¶ 19(d)(1).

Under the Settlement Agreement, Settlement Class members will receive notice of the proposed Settlement via E-mail, if an E-mail address is available; and Settlement Class members for whom no E-mail address is available will receive notice via regular mail. *See* Settlement Agreement ¶ 14. All Settlement Class members have the option to exclude themselves from the settlement if they so desire, in which case the settlement will not affect them (and they will not participate in the settlement benefits). *See* Settlement Agreement ¶ 25.

For all the foregoing reasons, Class Counsel respectfully submits that the proposed settlement – a $3 million recovery of Service Fees paid by Settlement Class members - is an excellent result for the Class. This is particularly true given that the proposed resolution was achieved not only through the extensive arms-length negotiation of the parties, but also with the oversight of Judge Connelly. The central role Judge Connelly played in negotiating the settlement confirms that the resolution here was reached fairly.

Furthermore, a resolution of this lawsuit through litigation could take years, including any interlocutory and post-judgment appeals, which would be likely. The longer the litigation continues, the more difficulty the parties would have in resolving the claims, and in locating potential Class members who have moved or died. A resolution sooner than later is also financially beneficial to Class members, who will receive their financial benefits now instead of later (or not at all).

[1] The Settlement Agreement anticipated a slightly lower number of Settlement Class members (61,637), but since then the Settlement Administrator has confirmed that the Class List includes 63,227 persons. *See* Exhibit 4, Carney Aff. ¶ 22.

The settlement benefits NovelPay because Settlement Class members will release all claims based on the same factual predicate of the Complaint, *see* Settlement Agreement at ¶ 10(aa), and because the Settlement resolves uncertainty and risk and avoids the substantial cost of defending a putative class action through a certification hearing and a possible trial and appeal. Although NovelPay undoubtedly believes it would ultimately prevail in litigation, there is always risk that it would not, and it would cost a substantial sum for NovelPay to disprove Plaintiff's putative class claims and to pursue any necessary appeals.

IV. THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS OF MARYLAND RULE 2-231.

Maryland Rule 2-231(b) establishes four prerequisites for class certification. If all requirements of part (b) are met,[2] the Court looks to section (c) of the Rule to determine whether one of three additional criteria is present. Moreover, though review should be rigorous, the class action rule "grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the … prerequisites for class certification are satisfied." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). The proposed Settlement Class satisfies each class certification requirement under the Maryland Rules.

A. The Class Is Identifiable and Ascertainable

Some courts have identified an "implicit" requirement of the class action rule that a proposed class be "definite," in other words, "ascertainable with reference to objective criteria."1 Newberg on Class Actions § 3:1 (5th ed.) Ascertainability is satisfied where a court can "'readily identify the class members in reference to objective criteria. Although

[2] The four requirements of Md. Rule 2-231 part (b) are: (1) The class is so numerous that joinder of all members is impracticable; (2) There are questions of law or fact common to the class; (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) The representative parties will fairly and adequately protect the interests of the class.

the plaintiff need not be able to identify every class member at the time of certification, the plaintiff must demonstrate that class members will be identifiable without extensive and individualized fact-finding or mini-trials.'" *Clark v. Trans Union, LLC*, 2017 WL 814252, at *8 (E.D. Va. Mar. 1, 2017) (quoting *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 196 (E.D. Va. 2015)).

Accordingly, an ascertainable class "is readily identifiable in reference to objective criteria," and does not necessarily require presentation of "information that identifies specific members of the class." *Career Counseling, Inc. v. Amsterdam Printing & Litho., Inc.*, 2017 WL 279768, at *3 (D.S.C. Jan. 23, 2017).

The proposed Settlement Class consists only of individuals who meet objective criteria. Each Settlement Class member is a person 1) who paid a Service Fee to NovelPay 2) in connection with NovelPay's collection of charges arising from residential real property located in Maryland, including rent and community association dues, 3) during the Class Period. *See* Settlement Agreement at ¶ 10(hh).

The proposed Settlement Class thus represents "a particular group, [allegedly] harmed during a particular time frame, in a particular location, in a particular way," and thus avoids the problem of a vague class definition. *See Mullins v. Direct Digital, LLC*, 795 F.3d 654, 660 (7th Cir. 2015). These elements can be evaluated based entirely on objective criteria. The Settlement Class is therefore readily identifiable and ascertainable.

Indeed, the ascertainability of the Class has been proven, as NovelPay produced a Class List of 63,227 persons. *See* **Exhibit 4**, Carney Aff. ¶ 22.

B. The Criteria of Rule 2-231(b) Are Satisfied

As discussed below, each of the explicit Rule 2-231(b) requirements – numerosity, commonality, typicality, and adequacy – are also met in this case.

1. Rule 2-231(b)(1) - Numerosity

The proposed Settlement Class meets the requirements of Md. Rule 2-231(b)(1), as the Class List consists of 63,227 persons. *See* Settlement Agreement at ¶ 10(hh); *see also* **Exhibit 4**, Carney Aff. ¶ 22.

Accordingly, the proposed Settlement Class is so numerous that joinder of all members is presumptively impracticable. *See* Md. Rule 2-231(b)(1); *see also Decohen*, 299 F.R.D. at 477 (holding that "classes with as few as 25 to 30 members 'have been found to raise the presumption that joinder would be impracticable.'") (quoting *Stanley v. Cent. Garden & Pet Corp.*, 891 F.Supp.2d 757, 770 (D.Md.2012)). *See also Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 556 (D. Md. 2006) (class of 40 persons satisfies numerosity). W. Rubenstein, *Newberg on Class Actions* § 3:12 (5th ed.) ("a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone") (citing numerous cases). The numerosity requirement does not require that the Court determine that any specific number of persons are in the class proposed for certification – numerosity is satisfied based upon the practical judgment, and good-faith estimate, that joinder would be impracticable:

> Whether numerosity is met depends on a court's practical judgment, given the facts of a particular case. *See General Telephone Co. of the Northwest v. E.E.O.C.*, 446 U.S. 318, 330, 100 S.Ct. 1698, 1706, 64 L.Ed.2d 319 (1980) ("The numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations."); 1 Newberg, supra, § 3.05, at 3–26. Plaintiffs need not state a number with specificity; a good faith estimate is ordinarily sufficient. See id. at 3–18 to 3–19; 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil 2d § 1762, at 153 (2d ed.1986).

Philip Morris Inc. v. Angeletti, 358 Md. 689, 732 (2000).

Considering NovelPay's representation that the Class consists of tens of thousands of persons, and its production of a Class List confirming that representation, joinder is impracticable and the numerosity requirement is satisfied.

2. Rule 2-231(b)(2) - Commonality

As Judge Quarles held in *Decohen* in certifying a class for settlement purposes, the commonality, typicality, and adequacy inquiries "are similar and overlapping." *Decohen*, 299 F.R.D. at 477 (quoting *Stanley*, 891 F.Supp.2d at 770).

The commonality requirement of Rule 2-231 requires the existence of questions of law and fact which are common to each member of a proposed class – which promotes:

> "[c]onvenience, uniformity of decision, and judicial economy," because common issues are litigated "only once on behalf of all class members." 1 newberg, *supra,* § 3.01, at 3-4. The threshold of commonality is not a high one and is easily met in most cases. *See Jenkins v. Raymark Industries, Inc.,* 782 F.2d 468, 472 (5th Cir.1986); 1 newberg, *supra,* § 3.10, at 3-50. It "does not require that all, or even most issues be common, nor that common issues predominate, but only that common issues exist." *Central Wesleyan College v. W.R. Grace & Co.,* 143 F.R.D. 628, 636 (D.S.C.1992), *aff'd,* 6 F.3d 177 (4th Cir.1993); *see also Baby Neal v. Casey,* 43 F.3d 48, 56 (3rd Cir.1994) (requiring only that the named plaintiffs share at least one question of fact or law with the grievances of the prospective class).

Angeletti, 358 Md. at 734.

The central, common, and predominating question for the Settlement Class here is whether NovelPay lawfully collected Service Fees from Plaintiff and Class Members when it did not have a collection license under MCALA.

Because Representative Plaintiff and Settlement Class members all are similarly situated with respect to this central question, the commonality requirement is satisfied.

3. Rule 2-231(a)(3) - Typicality

The same facts which support commonality support the "similar and overlapping" requirement of typicality. *Decohen*, 299 F.R.D. at 477 (quoting *Stanley*, 891 F.Supp.2d at 770). Moreover, for the purposes of settlement, none of the Settlement Class members have unique situations with respect to the legal questions resolved in the proposed Settlement. Each Settlement Class member's claims are typical, as they arise from the same practice and course of conduct by the same Defendant. In *Angeletti*, the Supreme Court of Maryland described typicality as follows:

> [A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.

358 Md. at 737 (quoting 1 Newberg, *supra*, § 3.13, at 3-76 to 3-77). "Representative claims ***need not be identical*** to those of the rest of the class; instead, there must be similar legal and remedial theories underlying the representative claims and the claims of the class." *Id.* at 738 (emphasis added). Indeed, "even relatively pronounced factual

differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories." *Id.* (citing *Baby Neal v. Casey*, 43 F.3d 48, 58 (3rd Cir.1994)); *see also Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 498 (D. Md. 1998) ("[t]he test for determining typicality is whether the claim or defense arises from the same course of conduct leading to the class claims, and whether the same legal theory underlies the claims or defenses.").

For example, *Angeletti* held that the typicality requirement was met even in a tobacco injury case which involved "factually distinct" circumstances for each of the named plaintiffs – let alone other class members – simply because the class "alleged that 'the same unlawful conduct was directed at or affected both the named plaintiff[s] and the class[es] sought to be represented." *Id.* (citing 1 Newberg §3.13 at 3-77).

Here, Representative Plaintiff faced the same allegedly unlawful collection practice (the collection of Service Fees by NovelPay when it did not have a collection license) which affected every other Settlement Class member, and his transaction is governed by the same Maryland statutes which govern the transactions of every other Settlement Class member. As a result, the typicality requirement is satisfied.

4. Rule 2-231(a)(4) - Adequacy.

Once again, the same facts which support commonality and typicality support the "similar and overlapping" requirement of adequacy. *Decohen*, 299 F.R.D. at 477 (quoting *Stanley*, 891 F.Supp.2d at 770). A simple two-part test determines the adequacy of representation. *See Angeletti*, 358 Md. at 740 ("The adequacy of representation prerequisite actually addresses two related concerns, ensuring that both the class representatives as well as class counsel are adequate to represent the interests of all class members"). First, there can be no conflicts between the class representative's interest and the interest of the class; and second, counsel must be qualified. *Id.* at 741.

The requirement of adequate representation is not a search for a perfect class representative. The requirement merely assures that absent class members, who will be bound by the result, are protected by a vigorous, competent prosecution of the case by

someone sharing their interests. *See* 1 Newberg, *supra*, §3.21; *see also George v. Baltimore City Public Schools*, 117 F.R.D. 368, 371 (D. Md. 1987). This ensures "that the relationship of the representative parties' interest to those of the class are such that there is not likely to be divergence in viewpoint or goals in the conduct of the suit." *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 449 (3d Cir. 1977).

First, Representative Plaintiff does not have any claim or interest in conflict with other members of the proposed Settlement Class. Plaintiff has followed this case diligently, recognizes his role, and is eager to obtain relief for the Class and himself. He has actively cooperated with Class Counsel and expended substantial time and effort to support the litigation of this case and has successfully achieved a proposed settlement of the case, which will provide Settlement Class members with $3 million in relief. At the litigation stage of the proceeding, Plaintiff provided valuable documentation and information to Class Counsel relating to the legal violations in this case, has conferred with counsel, has lent his name and circumstances to the case, produced documents, and would have been prepared to testify at trial. *See* **Exhibit 4**, Carney Aff. ¶ 17.

Second, Class Counsel is adequate. *See Decohen*, 299 F.R.D. at 477 (the same attorneys who are Class Counsel here "are qualified, experienced, and able to conduct the [class action] litigation.") Indeed, Representative Plaintiff's counsel are experienced in handling consumer class actions and complex consumer litigation and have been certified as Class Counsel by this Court and many others in dozens of successful class actions involving consumer rights, including *Headen v. Conservice, LLC*, Case No. CAL20-19314 (Cir. Ct. Pr. George's Co.); *Sullivan v. YES Energy Management, Inc.*, 8:22-cv-00418-TDC (D.Md.); *Moore v. RealPage Utility Management, Inc.*, Case No. 8:20-cv-00927 (D. Md.); *Edge v. Stillman Law Office, LLC*, Case No. 8:21-cv-02813-TDC (D. Md.); *Cottom v. North State Finance, LLC*, Case No. 24C19005874 (Cir. Ct. Balt. City); *Yang v. G&C Gulf, Inc.*, Case No. 403885V (Cir. Ct. Mont. Co.); *Hale v. Mariner Finance, LLC*, Case No. 24C18000053 (Cir. Ct. Balt. City); *Lendmark Financial Services, LLC v. Cruz*, Case No. 24C17000109 (Cir. Ct. Balt. City); *Alewine v. Click Notices, Inc.*, Case No.

24C17005375 (Cir. Ct. Balt. City); *Guy v. Apartment Services, Inc.*, Case No. 03C17006385 (Cir. Ct. Balt. County); *Bogdan v. Rams Head at Baltimore, LLC,* Case No. 24-C-14-001369 (Cir. Ct. Balt. City); *Smith v. Ace Motor Acceptance Corp.,* Case No. 1:12-cv-02149-JKS (D. Md.); *Baker v. Antwerpen Motorcars Ltd., et al.*, Case No. 03-C-12-004806 (Cir. Ct. Baltimore Co.); *Rogers v. Criswell Chevrolet, Inc., et al.*, Case No. 356716V (Cir. Ct. Mont. Co.); *Schmidt, et al. v. Redwood Capital, Inc.*, Case No. 03-C-11010442 (Cir. Ct. Balt. Co.); *Ripple, et al. v. First United Bank & Trust*, Case No. 354631V (Cir. Ct. Mont. Co.); *Wuerstlin v. Sandy Spring Bank*, Case No. 335030V (Cir. Ct. Mont. Co.); *Jones v. Pohanka Auto North, Inc., et. al*, Case No. 316574V (Cir. Ct. Mont. Co.); *Butler v. C&F Finance Co.*, Case No. 03-C-09002127 (Cir. Ct. Balt. Co.); *Cooper v. United Auto Credit Corp.*, Case No. 03-C-09-000477 (Cir. Ct. Balt. Co.); *Brittingham v. Wells Fargo Home Mortgage*, Civil No. 1:09-cv-00826-WMN (D. Md.); *Watts v. Capital One Auto Finance, Inc.*, Civil Action No. 09-CV-826-WMN (D. Md.); *Shelton v. Crescent Bank & Trust*, Civil No. 1:08-cv-01799-RDB (D. Md.); *Hankins v. CarMax, Inc.*, Case No. 03-C-07-005893 (Cir. Ct. Balt. Co.); *Langley v. Triad Financial Corp.*, Case No. 24-C-06-007959 (Cir. Ct. Balt. City); *Triad Capital Corp. v. Madden*, Case No. 24-C-06006310 (Cir. Ct. Balt. City); *Crowder v. Americredit Financial Services, Inc.*, Civil No. 1:06-cv707-JFM (D. Md.); *Benway v. Resource Real Estate Services, LLC, et al.*, Civil Action No. 1:05-cv-3250-WMN (D. Md.); *Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. How. Co.); *Robinson v. Fountainhead Title Group Corp.*, Civil No. 03-cv-03106-WMN (D. Md.); *Taylor v. Wells Fargo Home Mortgage*, Case No. 24-C-02-001635 (Cir. Ct. Balt. City); *Riemer v. Columbia Medical Plan, Inc.*, Civil No. 13-C-96-31528 (Cir. Ct. How. Co.); *Singh v. Prudential Healthcare,* Civil No. AW-00-CV-2168 (D. Md.); *Balthrop v. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.*, Civil No. 211347 (Cir. Ct. Mont. Co.); *McKandes v. CareFirst Blue Cross/Blue Shield*, Civil No. AW-04-CV-743 (D. Md.); *Popoola v. Optimum Choice, Inc.,* Civil No. 03-CV-03653 (D. Md.); *Jones v. Equicredit,* Civil No. 24-C-02-00572 (Cir. Ct. Balt. City). *See* **Exhibit 4**, Carney Aff. ¶¶ 3, 7.

That experience has been put to work in this case. Although NovelPay maintains it did nothing wrong, Class Counsel obtained a settlement of $3 million which will put cash in Settlement Class Members' pockets – potentially hundreds of dollars or more on average for each Settlement Class Member who files a claim. The expertise of Class Counsel certainly factored into their ability to obtain such a substantial settlement. Accordingly, the adequacy of representation requirement of Rule 2-231(a)(4) is met.

C. The Criteria of Rule 2-231(c)(3) Are Satisfied.

After finding that all four requirements of Rule 2-231(b) are met, the Court should certify the case as a class action if any one of three criteria in part (c) of Rule is satisfied. Certification here is appropriate under Rule 2-231(c)(3).

There are two requirements for maintaining a part (c)(3) class action: "that 1) common questions of fact or law predominate and 2) a class action is superior to other methods of adjudications." *In re Kirschner Med. Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md. 1991). As the Maryland Court of Appeals has recognized, "[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Angeletti* 358 Md. at 757 (emphasis added). In fact, as noted above, the common questions of law and fact are the only issues in this case.

Settlement class certification is particularly appropriate under (c)(3) because the Settlement Class challenges the collection of specific Service Fees based upon similar facts and the same legal issue, and because, absent class certification and settlement, class members would be effectively foreclosed from relief in court due to the relatively small value of the Service Fees at issue for each individual. As Judge Quarles held in *Decohen*, where class members' claims all presented the same legal issue, and absent a settlement the class members would get no relief, settlement class certification was warranted:

> each class member's claim involves almost identical facts and the same legal issue, ... which indicates the predominance of common questions, ... Further, resolution of this case through class action settlement will achieve significant economies for the parties, the proposed class, and the court. If approval of the settlement is denied, the class members will have to individually litigate their claims against Capitol One, which—given the similarity of the class members' claims—will result in unnecessarily

> duplicative litigation and expense for both sides. Also, given the small amount of many of the class members' claims…denial of the settlement will effectively foreclose relief for most class members as the harm each individual suffered will likely not justify the high costs of individual suits. *See Serzone*, 231 F.R.D. at 240–41 (citing *Gunnells*, 348 F.3d at 426) ("Class actions are often the only means for assuring that defendants who have harmed consumers will not benefit from their unlawful conduct simply because of the magnitude of the misconduct and aggregated harm compared to the small magnitude of individual harm."). Finally, there is no indication that any of the class members are pursuing separate litigation on these claims.

Decohen, 299 F.R.D. at 478. Here, as in *Decohen*, if approval of the settlement is denied, the small value of individual claims seeking to recover the Service Fees charged by NovelPay would effectively foreclose relief for individual class members. That supports settlement class certification.

Furthermore, (c)(3) certification is supported because Settlement Class counsel is unaware of any other "litigation concerning the controversy already commenced by members of the class." Md. Rule 2-231(c)(3)(B); *see also* **Exhibit 4**, Carney Aff. ¶ 18.

Finally, under Md. Rule 2-231(c)(3)(C) & (D), the fact that this case is the subject of a class action Settlement Agreement means that concentration of claims in this forum is desirable for the purposes of settlement, and few difficulties are likely to be encountered in the management of a class action which is for settlement purposes only.

For all these reasons, and as further discussed in the Preliminary Approval Memo, Plaintiff respectfully submits that certification of the Settlement Class is appropriate under Md. Rule 2-231.

V. THE APPLICABLE LEGAL STANDARDS TO BE UTILIZED IN CONSIDERING THE APPROVAL OF CLASS ACTION SETTLEMENTS.

Maryland Rule 2-231 is similar to Federal Rule 23 and the courts in Maryland may take guidance in the implementation of the Rule from the many federal cases which

comment on the Federal rule. *Angeletti*, 358 Md. at 724 [3]; *see also Shenker v. Polage*, 226 Md. App. 670, 683 (2016) (same); *Creveling v. Government Employees Ins. Co.*, 376 Md. 72, 89 n. 4 (2003) (same); *Applestein v. Fairfield Resorts*, 2009 WL 5604429, at *10 (Md. App. July 08, 2009) (same); *Master Financial, Inc. v. Crowder*, 409 Md. 51, 81 (2009) (stating that Rule 2-231 is Maryland's "equivalent of F.R. Civ. Pr. 23").

Although approval of a proposed class action settlement by a court is discretionary,[4] "[t]here is a 'strong presumption in favor of finding a settlement fair.'" *Shenker*, 226 Md. App. at 684 (quoting *Decohen*, 299 F.R.D. at 479) *see also Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D. Mass. 2000); *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991). As one court held:

> A proposed class action settlement enjoys a strong presumption that it is fair, reasonable and adequate if, as is the case here, it was the product of arm's length negotiations conducted by capable counsel, well experienced in class action litigation. *See Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir.2005). In addition, "[i]n appraising the fairness of a proposed settlement, the view of experienced counsel favoring the settlement is 'entitled to [ ] great weight'.... [T]here is thus a strong initial presumption that the compromise as negotiated herein under the [c]ourt's supervision is fair and reasonable." *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 46, 54 (S.D.N.Y.1993) (internal citation omitted).

Chavarria v. New York Airport Serv., LLC, 875 F. Supp. 2d 164, 172 (E.D.N.Y. 2012).

The same reasons cited in *Chavarria* apply here, where Class Counsel is well experienced in class action litigation. *See* Carney Aff. ¶¶ 2-7. As a result, Class Counsel's judgment that the settlement is "fair, adequate, and reasonable" *id.* ¶ 14, is entitled to

---

[3] Specifically, the Court of Appeals in *Angeletti* observed,

> [t]here is a dearth of authority in Maryland analyzing the specific requirements of Maryland Rule 2-231. We need not consider the application of these requirements in a void, however, as there exists an abundance of cases from other jurisdictions, federal and state, that have analyzed class action rules either identical to or similar to Maryland's rule.

Id. at 724, citing *Jackson v. State*, 340 Md. 705, 716 (1995); *Garay v. Overholtzer*, 332 Md. 339, 355 (1993); *Beatty v. Trailmaster*, 330 Md. 726, 738 n. 8 (1993); *Pollokoff v. Maryland Nat'l Bank*, 44 Md.App. 188, 192 (1979), *aff'd*, 288 Md. 485, 418 A.2d 1201 (1980) [parentheticals omitted].

[4] *See Flinn v. FMC Corp.*, 528 F.2d 1169 (4th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976); *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975); *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3d Cir. 1971).

great weight. As stated by the court in *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977):

> In performing this balancing task, the trial court is entitled to rely upon the judgment of experienced counsel for the parties . . . [citation omitted]. Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.

See also Wyatt v. Sawyer, 105 F. Supp. 2d 1234, 1242 (M.D. Ala. 2000) ("Here, counsel for the plaintiffs argue strongly in favor of approval of the settlement agreement, and their views carry great weight with the court"); *Peterson v. Arvida/JMB Partners, L.P.-II*, 1994 U.S. Dist. LEXIS 2109, *38 (N.D. Ill. 1994) ("The court should be able to rely upon the judgment of experienced counsel in determining whether or not the settlement is fair. The attorneys should not be forced to support the settlement by staging the very trial on the merits which the settlement was made to avoid"); *In Re National Student Marketing Litigation*, 68 F.R.D. 151, 155 (D.D.C. 1974) ("The opinion and judgment of experienced counsel, whose labors produced the settlement, should also receive consideration").

A court should approve a settlement which is "fair, adequate, and reasonable" to the members of the class. *See Shenker*, 226 Md. App. at 682; *see also In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Decohen*, 299 F.R.D. at 479; *Troncelliti v. Minolta Corporation*, 666 F. Supp. 750 (D. Md. 1987). Courts therefore approve class settlements which are reasonable compared to the likely results of litigation, *Shlensky v. Dorsey*, 574 F.2d 131, 147 (3d Cir. 1978), and which result from good faith, arms-length negotiations. *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982), *cert. denied*, 464 U.S. 818 (1983). Settlements by their very nature involve the balancing of many uncertainties. In the final analysis, that is why litigation is settled. The "essence of a settlement is compromise. A just result is often no more than an arbitrary point between competing notions of reasonableness." *In Re Corrugated Container Antitrust Litigation*, 659 F.2d 1322, 1325 (5th Cir. 1981).

Recognizing that a settlement represents an exercise of informed judgment by the negotiating parties, courts have uniformly held that the function of the judge reviewing the settlement is not to resolve issues that the parties intentionally have left unresolved, or to turn the settlement hearing into a trial or a rehearsal of the trial. *See*, *e.g*, *Decohen*, 299 F.R.D. at 479 ("Because a settlement hearing is not a trial, the court's role is more 'balancing of likelihoods rather than an actual determination of the facts and law in passing upon ... the proposed settlement.'") (*citing Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 1:08CV1310(AJT/JFA), 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir.1975) (internal quotations omitted)). *Accord In Re A.H. Robins Company, Inc.*, 88 B.R. 755, 759 (E.D. Va. 1988), *aff'd*, 880 F.2d 709 (4th Cir. 1989), *cert. denied*, 110 S. Ct. 331 (1989) ("The Court shall not, however, change the fairness hearing into a trial. In addition, the Court need not conclusively decide unsettled issues at law"). This is because:

> [i]t is not necessary in order to determine whether an agreement of settlement and compromise shall be approved that the Court try the case which is before it for settlement. . . . Such procedure would emasculate the very purpose for which settlements are made. The court is only called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974) (quoting *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971)).

Courts in Maryland have considered several factors in determining whether a proposed class settlement is fair, reasonable, and adequate. *See Boyd v. Bell Atlantic-Maryland, Inc.*, 390 Md. 60, 70-71 (2005), *citing In Re Montgomery County Real Estate Antitrust Litigation*, 83 F.R.D. 305, 315-16 (D. Md. 1979) ("*Montgomery County*"). In *Boyd*, the Maryland Court of Appeals noted that although Rule 2-231 does not "articulate any standards for determining either the fairness or the adequacy of a [class action] settlement," the approach utilized by the U.S. District Court for the District of Maryland in *Montgomery County* had been used in Maryland Circuit Court.

Id. These same factors were also endorsed as the standard for evaluating class action settlements by the Maryland Court of Special Appeals in *Shenker*, 226 Md. App. at 687, and by the Fourth Circuit in *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 .

Shenker observed that "[t]he federal courts evaluate proposed class action settlements in two steps: *first,* by evaluating the procedural fairness of the settlement process, and *second,* by evaluating the settlement's substantive fairness and adequacy." 226 Md. App. at 683–84. *Shenker* held that to approve a class settlement as procedurally fair, "the court must ascertain that it was reached 'as a result of good faith bargaining at arm's length.'" 226 Md. App. at 687. It noted that "[t]o determine if the proposed terms are fair, the court should consider factors tending to show 'the presence or absence of collusion among the parties.'" *Id.* In considering these factors, the "court is obliged to ascertain that the settlement was reached as a result of good faith bargaining at arm's length." *Id.* This good faith, and the procedural "fairness" of a settlement, is reflected by the following:

> [1] the posture of the case at the time settlement is proposed, [2] the extent of discovery that has been conducted, [3] the circumstances surrounding the negotiations, and [4] the experience of counsel.

Id. See also Jiffy Lube, 927 F.2d at 159 (same); *Decohen*, 299 F.R.D. at 479 (same).

In turn, the substantive fairness and "adequacy" of a class action settlement is determined by weighing "the likelihood of the plaintiffs' recovery on the merits against the amount offered in settlement." *Shenker*, 226 Md. App. at 688 (quoting *Montgomery County*, 83 F.R.D. at 316). The five factors for determining the "adequacy" of a settlement are:

> (1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

Id. (citations omitted); *see also Jiffy Lube*, 927 F.2d at 159 (same); *Decohen*, 299 F.R.D. at 479 (same).

VI. THE SETTLEMENT IS PROCEDURALLY FAIR, AND SUBSTANTIVELY FAIR AND ADEQUATE.

Because this settlement is procedurally fair, and substantively fair and adequate, under the factors set out above, this Court should approve the settlement. Especially given the inherent dangers in proceeding with litigation, this settlement is amply justified as "fair and adequate" under the relevant factors. *See Shenker*, 226 Md. App. at 683–84; *Montgomery County*, 83 F.R.D. at 315-16; *Jiffy Lube*, 927 F.2d at 159, *Decohen*, 299 F.R.D. at 479.

A. The Procedural "Fairness" Factors All Support Approval of This Settlement.

1. The First and Second Procedural Fairness Factors – the Posture of the Case and the Amount of Discovery Completed – Support Settlement Approval.

The posture of this case and the information obtained by Class Counsel support the approval of the settlement. As discussed above, before filing the Complaint, Class Counsel thoroughly investigated the facts relating to the allegations and conducted extensive research into the applicable law. *See* **Exhibit 4**, Carney Aff., ¶¶ 8-9.

The parties also engaged in respectful but adversarial and lengthy arm's-length, non-collusive, negotiations, culminating in the Settlement Agreement, which provides substantial relief for the Class. *See id*. at ¶¶ 12-13. The fact that these negotiations were arms-length and non-collusive is bolstered by the involvement and supervision of a well-respected retired federal Chief Magistrate Judge – the Hon. William G. Connelly (Ret.) – in the settlement negotiations. *See id*.

Furthermore, the amount of discovery completed supports settlement approval. Plaintiff subpoenaed documents from third-parties and propounded interrogatories and requests for production on NovelPay, and although NovelPay did not formally respond to those discovery requests, it did provide substantial relevant information to facilitate

mediation, and has identified every one of the Settlement Class Members. *See* **Exhibit 4**, Carney Aff. ¶¶ 11, 22.

The posture of this case thus supports settlement — not only because the information obtained through investigation and discovery demonstrates the fairness of the settlement, but also because of the risks and expenses inherent to continued litigation. This case involves complicated issues and, in the absence of a settlement, a trial would be lengthy and costly to all parties. The trial of this matter likely would have taken at least two weeks. NovelPay likely would have attempted to require each Class Member to testify in order to prove his or her claim. These circumstances make the case complex and time-consuming and could make an eventual adversarial recovery more difficult and weigh strongly in favor of approval of the settlement. *See Decohen*, 299 F.R.D. at 480 (finding that even after the plaintiff had won an appeal on the merits, settlement approval was supported because "the road to recovery—particularly for the class as a whole—likely would be protracted and costly if the settlement were not approved").

Moreover, given the issues presented in this case and NovelPay's defenses (see part II, *supra*), an appeal by NovelPay following any favorable outcome at trial for the Class would have been a virtual certainty, had this case been litigated. Such an appeal could have resulted in a second trial and would result in a very long delay in any recovery by the Class. Indeed, by the time the case finally would be resolved through trial and appeal, even if resolved in favor of the Class, many consumers would have moved without a forwarding address and, as a result, derive little or no benefit from the substantial relief that has been obtained.

The present settlement, however, provides the opportunity for each Class member to receive a real, monetary recovery now.

In light of these efforts, the posture of this case after litigation, and the information that Class Counsel have reviewed through discovery and investigation,

Class Counsel are confident that the settlement, which allows every Settlement Class Member to claim their share of a $3 million common fund, is fair.

2. The Third Procedural Fairness Factor, the Circumstances Surrounding Settlement Negotiations, Weighs in Favor of Settlement Approval.

The third "fairness" factor, the circumstances surrounding the negotiations, weighs in favor of approval of the settlement. As noted above, the settlement was supervised by a retired federal Chief Magistrate Judge, involved two full days of mediation, and is unquestionably the result of diligent, arms-length, good faith, non-collusive negotiations between the parties both to reach a settlement and to craft the final settlement agreement document. **Exhibit 4**, Carney Aff. ¶¶ 12-13. Given the substantial financial relief provided by the settlement, it is clear that the settlement is not a result of collusion, but rather a result of intensive and arms-length negotiations. *Id.* *See*, *e.g.*, *Decohen*, 299 F.R.D. at 480 (finding circumstances of settlement negotiations supported its fairness where "[t]here is no indication in the record of bad faith or collusion in the settlement negotiations; the parties engaged in court-supervised mediation and represent that the settlement negotiations were at arms-length.") Accordingly, the circumstances surrounding the settlement negotiations in this case clearly support settlement approval.

3. The Fourth Procedural Fairness Factor, the Experience of Counsel, Weighs in Favor of Settlement Approval

The fourth "fairness" factor, the experience of counsel, similarly supports approval of this settlement. Class Counsel are well-experienced and have been appointed class counsel in dozens of consumer class actions in Maryland. *See* **Exhibit 4**, Carney Aff., ¶¶ 2-7. As a result, Class Counsel's judgment that the settlement is "fair, reasonable and adequate" is entitled to great weight. *See Decohen*, 299 F.R.D. at 480 ("because class counsel's experience—and the other *Jiffy Lube* factors – weigh in favor of fairness, the Court will find that the settlement is fair.") Notably, Class Counsel here also served as class counsel, and lead class counsel, in *Decohen*. Class Counsel's

"experience," which Judge Quarles recognized in *Decohen*, has only increased over the intervening years since that case was decided.

The fact that the Class Representative was competently represented undoubtedly played a role in bringing NovelPay to the settlement table and provides a further indication that the settlement is fair and adequate.

B. The Substantive "Adequacy" Factors Likewise Support Approval of This Settlement.

1. The First and Second Substantive Adequacy Factors, the Strength of Plaintiff's Case on the Merits, and Any Difficulties Plaintiff Is Likely to Encounter at Trial, Weigh in Favor of Settlement Approval.

The first and second substantive "adequacy" factors, the strength of Plaintiff's and the Class' case on the merits, and any difficulties they would be likely to encounter at trial, weigh strongly in favor of settlement approval.

Class Counsel believes that, at trial, Class Representative would prevail on his claim against NovelPay and, through evidence, be able to prove that NovelPay violated MCALA by acting as a collection agency without a license, and that NovelPay's violations of MCALA damaged Plaintiff and the Class in violation of the MCDCA and the MCPA and entitle Plaintiff to recover at common law as well.

Despite Class Counsel's belief as to the strength of the Plaintiff's case on the merits, many significant hurdles would need to be overcome before Plaintiff and the Class could establish their entitlement to relief on a class-wide basis. NovelPay contested liability and likely would have moved for judgment as a matter of law on Class Representative's claims. The Settlement Agreement in this case avoids these issues, provides a real monetary recovery now, and accomplishes an exemplary result without the need for further litigation or a full trial.

If the case were to continue, Plaintiff and the Class would still have to prevail on a contested motion for class certification and would need to overcome NovelPay's affirmative and other defenses to Class Representative's claims. Although Class Counsel believes that Plaintiff would prevail on all of these issues, the issues nonetheless either

were or would likely be raised by NovelPay, and Plaintiff has no guarantee of winning either in the trial or appellate courts.

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

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

Id. at 743-44.

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

Experienced counsel in this case, who negotiated at arm's length and possess all relevant information, strongly recommend the settlement to the Court. *See* **Exhibit 4**, Carney Aff. ¶ 14. Each side recognizes the risk of failure and the high costs attendant to continued litigation. The legal and factual difficulties that Class Counsel foresees with respect to liability and damages already have been described. Add to those predictable

difficulties the unpredictability of a complex jury trial—where witnesses or jurors could react in unforeseen ways—and the present settlement's tremendous benefit to the Class becomes even more apparent.

Litigation risk, moreover, does not end with the trial. In this case, post-trial motions and appeals would be almost a certainty. History records numerous instances where favorable jury verdicts have been overturned by the trial court, a court of appeals, or even the Supreme Court. As Judge Friendly noted of the vagaries of appellate review: "Platus warned long ago 'what a ticklish thing it is to go to law,' and the ticklishness does not diminish as the pinnacle is reached." *Newman v. Stein*, 464 F.2d 689, 695 (2d Cir. 1972).

Class Counsel believes that Plaintiff and the Class have a strong case against NovelPay. As evident from the above discussion, however, it is by no means certain that Plaintiff and the Class would have obtained a result better than that achieved through this $3 million settlement.

2. The Third Adequacy Factor, the Anticipated Duration and Expense of Additional Litigation, Weighs in Favor of Settlement Approval.

The third "adequacy" factor, the anticipated duration and expense of additional litigation, strongly supports a settlement of this action. Although Class Counsel believes the trial of this case would be manageable and superior to other means of adjudicating the controversy, the issue here is the extent to which the anticipated complexity and costs of proceeding to trial favor settlement. In this case, the anticipated complexity, costs, and time necessary to try this case greatly weigh in favor of settlement.

Had this matter proceeded to trial, NovelPay would have attempted to present evidence to demonstrate that its actions complied with Maryland law and did not damage Plaintiff or Settlement Class Members. Although Class Counsel is confident that Plaintiff's position on the applicable law is correct, there simply is no guarantee that the Court or the jury would have agreed. It is at least possible that the Court or a jury could interpret the facts or requirements of the law otherwise.

Moreover, the expense of taking this case through trial would have been considerable. A substantial amount of additional formal discovery (including many important depositions) and extensive motion practice would have to be completed. Trial preparation would require great effort and expense. Both the Class and NovelPay would have incurred substantial expenses – and the Class' expenses would have detracted from any eventual recovery. Class Counsel anticipates that a class trial of this case would take approximately two weeks. *See* **Exhibit 4**, Carney Aff. ¶ 15.

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

3. The Fourth Substantive Adequacy Factor, the Solvency of Defendant and Likelihood of Recovery of a Litigated Judgment, Weighs in Favor of Settlement Approval.

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

Class Counsel has no reason to believe that this settlement substantially taxes NovelPay's net worth. Yet even given the inherent risk of litigation, however, Plaintiff was able to secure substantial relief for the Class – including a $3 million common fund.

Thus, for purposes of this settlement, the inquiry does not turn on whether NovelPay could withstand a greater judgment. *See Decohen*, 299 F.R.D. at 480 ("Although Capital One could likely afford to pay a much larger judgment, because the other factors favor adequacy, this factor [solvency of the defendant] may be given less

weight. Accordingly, the Court will find that the settlement is adequate.") (citations omitted). Instead, the question is whether obstacles stood in the way of recovery of any amounts – and here, they did. NovelPay would have defended on a variety of grounds, both on the merits and procedurally. Any one of those defenses could have stood in the way of any recovery by Plaintiff and the Class.

As a result, NovelPay's solvency, and the likelihood of recovery, favors settlement approval.

4. The Fifth Adequacy Factor, the Degree of Opposition to the Settlement, Is Currently Unknown.

The fifth "adequacy" factor, the "degree of opposition to the settlement," is unknown at this time. Notice is being disseminated to Settlement Class Members contemporaneously with the filing of this Motion. *See* **Exhibit 4**, Carney Aff. ¶ 22. Plaintiff will update the Court as to the success of the notice program, and the degree of opposition to the settlement, prior to the Final Approval Hearing scheduled for April 28, 2025.

VII. MARYLAND COURTS HAVE APPROVED NUMEROUS SIMILAR CONSUMER CLASS ACTION SETTLEMENTS BROUGHT BY CLASS COUNSEL.

Class Counsel's judgment that the proposed settlement here is fair, adequate, and reasonable is further supported by the repeated determinations by Maryland state courts that consumer class action settlements brought by Class Counsel have been fair, adequate, and reasonable. *See*, *e.g.*, **Exhibit 5**, *Headen v. Conservice, LLC*, Case No. CAL20-19314 (Cir. Ct. Prince George's Co. 2023) (Snoddy, J.) (approving as fair, reasonable and adequate a class action settlement by Class Counsel in a similar consumer class action); **Exhibit 6**, *Cottom v. North State Acceptance, LLC*, Case No. 24-C-19005874 (Cir. Ct. Balt. City 2020) (Brown, J.) (same); **Exhibit 7**, *Hale v. Mariner Finance, LLC*, Case No. 24-C-18-00053 (Cir Ct. Balt. City 2018) (Brown, J.) (same); **Exhibit 8**, *Lendmark Financial Services, LLC v. Cruz*, Case No. 24C17000109 (Cir. Ct. Balt. City 2018) (Brown, J.) (same); **Exhibit 9**, *Yang v. G&C Gulf, Inc.,* Case

No. 403885V (Cir. Ct. Mont. Co. 2019) (Rubin, J.) (same); **Exhibit 10**, *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2018) (Rubin, J.) (same); **Exhibit 11**, *Chalk v. Tower Federal Credit Union*, Case No. 03-C-15-006873 (Cir. Ct. Balt. Co. 2016) (Ensor, J.) (same); **Exhibit 12**, *Clinton v. Money One Federal Credit Union*, Case No. 408053V (Cir. Ct. Mont. Co. 2016) (Greenberg, J.) (same); **Exhibit 13**, *Sekuler v. Financial Freedom Acquisition, LLC*, Case No. 360327-V (Cir. Ct. Mont. Co. 2013) (Mason, J.) (same); **Exhibit 14**, *Schmidt v. Redwood Capital, Inc.*, Case No. 03-C-11-010442 (Cir. Ct. Balt. Co. 2012) (Nagle, J.) (same); **Exhibit 15**, *Wuerstlin v. Sandy Spring Bank*, Case No. 335030V (Cir. Ct. Mont. Co. 2011) (Rubin, J.) (same); **Exhibit 16**, *Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. How. Co. 2011) (Leasure, J.) (same); **Exhibit 17**, *Cooper v. United Auto Credit Corp.,* Case No. 03-C-09000477 (Cir. Ct. Balt. Co. 2011) (Cahill, J.) (same); **Exhibit 18**, *Butler v. C&F Finance Co.*, Case No. 03-C-09002127 (Cir. Ct. Balt. Co. 2010) (Stringer, J.) (same); **Exhibit 19**, *Taylor v. Wells Fargo Home Mortgage*, Case No. 24-C-02-001635 (Cir. Ct. Balt. City 2010) (Glynn, J.) (same).

Maryland's federal court has likewise consistently and repeatedly approved class action settlements achieved by Class Counsel. *See*, *e.g.*, *Decohen*, 299 F.R.D. at 480-83 (approving as fair, reasonable and adequate a class action settlement by Class Counsel in a consumer class action); *see also* **Exhibit 20**, *Sullivan v. YES Energy Mgmt., Inc.*, Case No. 8:22-cv-00418-TDC (D.Md. Jan. 31, 2025) (same); **Exhibit 21**, *Edge v. Stillman Law Office, LLC*, Case No. 8:21-cv-02813-TDC (D.Md. June 2, 2023) (same); **Exhibit 22**, *Thomas v. Cameron Mericle, P.A.*, Case No. 8:18-cv-03645-CBD (D.Md. Dec. 4, 2020) (same); **Exhibit 23**, *Smith v. Ace Motor Acceptance Corp.*, Case No. 1:12-cv-02149-JKS (D. Md. Oct. 7, 2013) (same); **Exhibit 24**, *Benway v. Resource Real Estate Services, LLC, et al.*, Civil Action No. 1:05-cv-3250-WMN (D. Md. Oct. 12, 2011) (same); **Exhibit 25**, *Robinson v. Fountainhead Title Group Corp.*, Civil Action No. 03-cv-03106-WMN (D. Md. Oct. 7, 2010) (same); **Exhibit 26**, *Brittingham v. Prosperity Mortgage Company*, Case No. 1:09-cv-00826-WMN (D. Md. Apr. 14, 2010);

Exhibit 27, *Watts v. Capital One Auto Finance, Inc.*, Civil No. 1:07-cv-03477-CCB (D. Md. Jan 15, 2010) (same); **Exhibit 28**, *Shelton v. Crescent Bank & Trust*, Case No. 1:08-cv-01799-RDB (D.Md. May 28, 2009) (same).

The same result is appropriate here as in all the cases above – this settlement should be approved as fair, adequate, and reasonable.

VIII. CONCLUSION

For the reasons set forth in this Motion, Plaintiff respectfully requests that the Court approve the proposed settlement as fair, reasonable, and adequate, and enter the proposed Final Judgment Approving Settlement and Certifying Settlement Class.

Respectfully submitted,

/s/ Benjamin H. Carney (ID # 0412140132)
Benjamin H. Carney (ID # 0412140132)
bcarney@GWCfirm.com
Richard S. Gordon (ID # 8912180227)
rgordon@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, Maryland 21031
Telephone: (410) 825-2300
Facsimile: (410) 825-0066

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