

# **Exhibit 1**



**The 13-day Deadline Class:** All Direct Express customers who, between February 12, 2018 and September 28, 2022, were not sent the results of an investigation within 13 business days of submitting a notice of error in accordance with 15 U.S.C. § 1693f(a)(3) and 12 C.F.R. § 1005.11.

**The Provisional Credit Class:** All Direct Express customers who, between February 12, 2018 and September 28, 2022, were not given a provisional credit in the amount of the alleged error in accordance with 15 U.S.C. § 1693f(c) and 12 C.F.R. § 1005.11.

**The Investigative Documents Class:** All Direct Express customers who, between February 12, 2018 and September 28, 2022, were not timely provided a copy of the investigative documents upon request in accordance with 15 U.S.C. § 1693f(d) and its implementing regulations.

Doc. 97, ¶ 4.

4. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

5. Class Counsel seek attorneys' fees in the amount of \$872,425.50, reimbursement of \$29,157.78 in litigation costs and expenses, and Service Awards of \$2,000 to the Class Representatives and Plaintiff.

6. As further detailed herein and in the accompanying memorandum, from the outset of the investigation and filing of the case through the negotiation and drafting of the Settlement now before the Court, Class Counsel have vigorously represented the interests of the Classes to obtain the best possible resolution and have achieved a high level of success. As a result of Class Counsel's efforts, the Class Representatives and Plaintiff were able to obtain a Settlement that provides significant benefit to the Classes.

7. The previously filed Joint Declaration of E. Adam Webb and G. Franklin Lemond, Jr. (Doc. 92-1), contains the background of the litigation, Class Counsel's investigation, the course of proceedings, settlement negotiations, and the terms of the Settlement.

8. In its Order preliminarily approving the Settlement (the “Preliminary Approval Order”) (Doc. 97), the Court, among other things, conditionally certified the Classes for settlement purposes and directed that notice be disseminated to the Classes.

9. Class Counsel achieved excellent results for the Classes. These results would not have materialized but for the efforts of Class Counsel, the Class Representatives, and Plaintiff.

10. The parties entered into a Settlement providing a \$1.2 million Settlement Fund.

11. Additionally, the Settlement provides that Defendants will pay the costs of notice and administration up to \$250,000.00 and Class Counsel’s requested fees and costs, separate from, and in addition to, the \$1.2 million Settlement Fund.

12. Consistent with 15 U.S.C. § 1693m(a)(3), Defendants have agreed to pay Class Counsel’s fees and costs set forth herein and beyond \$1.2 million Settlement Fund that has been established in this case.

13. Without the efforts of Class Counsel, Plaintiff, and the Class Representatives, the members of these Classes would have received nothing. The recovery, which avoids any further litigation risks or delays, is an outstanding result for members of the Settlement Classes in light of the existing defenses and the challenging and unpredictable path of litigation that would have been faced absent the Settlement. The Settlement Amount is non-reversionary, and thus will not be returned to Defendants or diminished based on the participation rate of the members of the Settlement Classes.

14. Class Counsel and Defendants reached an agreement on all other material terms of the Settlement *after* reaching an agreement regarding the \$1.2 million Settlement Fund, which represents 80% of the possible recovery on behalf of the Settlement Classes.

15. To date, Class Counsel have not been paid anything for efforts undertaken. Based on a review of applicable factors, Class Counsel believe the requested fee is reasonable and merits approval. Class Counsel accepted this case on a contingency fee basis, and thus assumed significant risk in prosecuting this matter. Class Counsel have not been paid for the work performed in this matter, nor have they been reimbursed for money paid out in the course of the litigation. Given the obligations of prosecuting this case, along with the financial risk, we were compelled to forego opportunities to get involved in other cases during the pendency of this case.

16. Since the inception of this case over five years ago, Class Counsel have spent significant time and effort in prosecuting the class claims against Defendants.

17. While Class Counsel have reviewed the total number of hours spent in this action, precedent does not require us to do so. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012) (“we endorse the district courts’ continued use of the percentage method cross-checked with the *Johnson* factors”). The case has been actively litigated for over five years and involves two separate law firms and their support staff participating in the case.

18. The lawyers for Class Representatives and Plaintiff have spent a large amount of total time on this case. By way of example, we have looked closely at just the billable time for our firm in this matter. To date we have logged over 1,600 attorney hours on this case. This includes only time from January 2019 through mid-July 2024.

19. Our firm and The Vaught Firm, LLC will continue to spend time on the case in 2024 in preparation for the final approval hearing on September 5, 2024 and in 2025 overseeing the distribution of the funds to Class Members if the Settlement is approved.

20. Based on the additional work to be done and the work of other lawyers and professionals, there is no doubt that if a lodestar analysis were to be performed for all of the lawyers that have spent time representing the Class Representatives and Plaintiff in this case, the lodestar far exceeds the \$872,425.50 that Defendants have agreed to pay Class Counsel. Thus our fee request essentially applies a negative multiplier to our lodestar.<sup>1</sup>

21. But even if you evaluate the agreed upon attorneys' fees within the traditional "percentage of the common fund" framework, the fee request is thirty-eight percent (38%) of the total settlement value, which is within the acceptable range approved by Texas district courts. *See, e.g., Jasso v. HC Carriers, LLC*, 2022 WL 16927813, at \*6 (S.D. Tex. Oct. 19, 2022), *report and recommendation adopted sub nom.*, 2022 WL 16924117 (S.D. Tex. Nov. 14, 2022); *Singer v. Wells Fargo Bank, N.A.*, 2020 WL 10056302 at \*2 (W.D. Tex. July 14, 2020); *Sarabia v. Spitzer Indus., Inc.*, 2018 WL 6046327 at \*4 (S.D. Tex. Nov. 11, 2018) (collecting cases); *Matthews v. Priority Energy Servs., LLC*, 2018 WL 1939327, at \*1 (E.D. Tex. Apr. 20, 2018), *report and recommendation adopted*, 2018 WL 2193030 (E.D. Tex. May 11, 2018).

22. Additionally, the requested fee is within the range that we typically see for contingency fee litigation in non-class cases, which is, in our experience, between 35% and 45%.

23. Class Counsel are two small law firms with very busy practices, and each uses a discrete team of attorneys and staff in order to minimize the duplication of efforts and maximize billing judgment. All tasks were performed by attorneys and staff with knowledge of the case to avoid duplication and perform work as efficiently as possible. Based on the small size of the firms and limited resources available to them, we were required to forego other opportunities to properly prosecute this sizable undertaking.

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<sup>1</sup> As set forth in the Motion, Class Counsel will compile and produce a lodestar analysis if the Court requires.

24. Class Counsel are skilled litigators with collective experience in complex litigation and with specific experience in class actions and consumer cases against financial institutions and this Defendant specifically. *See* Doc. 92-1, ¶¶ 51-52. Both firms are highly qualified, with each firm having a proven track record of successful prosecution of significant complex litigation and class actions.

25. Class Counsel's adversaries in this case are also experienced, skilled litigators. Defendants and their counsel vigorously advocated for their clients and had the skill and resources to continue the litigation for many years into the future.

26. In sum, and as more fully set forth in Plaintiffs' Motion, Class Counsel believe that the fee request here is reasonable given the benefit obtained for the Classes, the risks and complexity of the litigation, and the significant effort expended by Class Counsel.

27. Class Counsel also seek reimbursement of out-of-pocket litigation costs and expenses of \$29,157.78.

28. The costs and expenses incurred are reflected on the books and records maintained by Class Counsel and are prepared from check records, credit card statements, and other source materials, and are an accurate record of the costs and expenses incurred or to be incurred for the upcoming Final Approval hearing. The out-of-pocket costs and expenses submitted herein were advanced by Class Counsel with no guarantee of reimbursement, are reasonable in amount, and were necessarily incurred for the successful prosecution of this case and for the benefit of the Classes.

29. Further, these are the types of costs normally charged to and paid by clients generally, and approved by courts.

30. The costs and expenses incurred are minimal given the recovery obtained for the Classes. Moreover, given Defendants' agreement to pay these expenses separately, approving these requested costs will not diminish the \$1.2 million Settlement Fund.

31. Class Counsel request that the un-reimbursed out-of-pocket litigation expenses of \$29,157.78 be approved by the Court.

32. On behalf of the Class Representatives and Plaintiff in this case, Class Counsel seek Service Awards based on their efforts in zealously prosecuting the case. The parties and their counsel did not discuss the provisions regarding Service Awards until after the parties had already agreed upon the terms of the Settlement Fund in principle.

33. Class Counsel seek Service Awards in the amount of \$2,000.00 for the Class Representatives and Plaintiff, for a total amount of \$16,000.00.

34. The amount of the Service Awards sought is reasonable on an individual basis. The \$2,000 Service Award amounts to less than two-tenths of a percent (0.16667% to be exact) of the \$1.2 million Settlement Fund, which is well within reasonable bounds. *See, e.g., Jones v. JGC Dallas LLC*, 2014 WL 7332551, at \*5, 7 (N.D. Tex. Nov. 12, 2014) (approving \$3,250 incentive awards to each of four class representatives out of a common fund of \$920,000 (0.35%)); *Quintanilla v. A & R Demolition Inc.*, 2008 WL 9410399, at \*3 (S.D. Tex. May 7, 2008) (approving \$1,000 incentive awards to named plaintiffs out of a \$180,000 settlement fund (0.55%)); *In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 449 (S.D. Tex. 1999) (approving awards of up to \$10,000 per class representative out of \$164.2 million settlement fund (0.006%).

35. The Service Awards requested here are appropriate because the Class Representatives and Plaintiff undertook the following time-consuming and challenging tasks to

assist Class Counsel and absent members of the Settlement Classes and ultimately achieved significant benefits for the Classes:

- Discussing with Class Counsel what happened to them, the facts of the case, and how they were impacted in order to formulate theories of law in the case;
- Agreeing to have their name used in the caption of this case;
- Confering regarding the language and claims made in the Complaint and amendments thereto;
- Meeting with Class Counsel on the phone to meet discovery demands, formulate discovery responses, and compile and produce responsive documents;
- Meet with Class Counsel to prepare for their depositions and attend the same;
- In the case so some named Plaintiffs attend depositions of Defendants' witnesses; and
- Reviewing and executing the lengthy Settlement Agreement.

Their diligent efforts over the past five years assisted Class Counsel in reaching a favorable resolution to this litigation for the benefit of the Classes.

36. Based on the above efforts, Service Awards in the amounts sought are reasonable.

We declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge, information, and belief.

Executed this 15th day of July, 2024, at Atlanta, Georgia.

/s/ E. Adam Webb  
E. Adam Webb

/s/ G. Franklin Lemond, Jr.  
G. Franklin Lemond, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of July, 2024, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system which automatically sends email notification of such filing to all attorneys of record. Additionally, I served the foregoing upon counsel of record for Defendants via electronic mail.

/s/ G. Franklin Lemond, Jr

G. Franklin Lemond, Jr.