IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCHBANKS TRUCK SERVICE, INC., *et al*., on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **COMDATA NETWORK, INC., *et al*.,** **Defendants.**	**Civil Action No. 07-1078-JKG** **Consolidated Case**

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF SERVICE AWARDS TO THE CLASS REPRESENTATIVES

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I. INTRODUCTION[1]

After more than seven years of vigorous litigation that was highly contested by Defendants and their ten-highly regarded law firms, Co-Lead Counsel for the Settlement Class ("Plaintiffs' Co-Lead Class Counsel")[2] achieved for the Settlement Class an extraordinary settlement, including: (a) $130 million in cash; (b) prospective relief—in the form of, among other things, meaningful and enforceable commitments by Comdata to modify or not to enforce those portions of Comdata's merchant services agreements that Plaintiffs had challenged in this case as being anticompetitive—that an expert economist has determined to be worth an additional $260 million to $491 million (bringing the total value of the settlement to between $390 and $621 million); and (c) an agreement by Comdata to engage in good faith negotiations relating to, *inter alia*, merchant transaction fees with certain Buying Groups of Independent Truck Stops that are, collectively, composed of hundreds of members of the Settlement Class (collectively, the "Settlement"). *See* Cramer Co-Lead Decl., ¶¶ 7-10, 27.

Plaintiffs' Co-Lead Class Counsel, who handled this matter on a purely contingent basis, and thus to date have received no payment for their services or reimbursement of the millions of dollars in expenses (including expert fees) that they have laid out on behalf of Plaintiffs and the Settlement Class,

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[1] Certain capitalized terms used in this brief are defined in Section I of the Settlement Agreement.

[2] Plaintiffs' Co-Lead Class Counsel are Berger & Montague, P.C., Lieff, Cabraser, Heimann & Bernstein, LLP and Quinn Emanuel Urquhart & Sullivan, LLP. *See* Preliminary Approval Order at ¶ 7 (Dkt. 705). The Court earlier had appointed these same three firms as interim Co-Lead Class Counsel, along with an Executive Committee composed of the interim Co-Leads plus the Law Offices of David Balto, Law Offices of Joshua P. Davis, and McCulley McCluer PLLC. *See* April 26, 2007 Order (Dkt. 12). The following firms also contributed to the prosecution of this case as counsel for the class, and are seeking attorneys' fees and reimbursement of expenses: Barrack Rodos & Bacine, Faruqi & Faruqi, LLP, Gustafson Gluek PLLC, Heins, Mills & Olson P.L.C., Kaplan, Fox & Kilsheimer LLP, NastLaw LLC, Reinhardt Wendorf & Blanchfield, Shepherd Finkelman Miller & Shah LLP, Spector Roseman Kodroff & Willis P.C., Taus Cebulash & Landau LLP, and Wolf Haldenstein Adler Freeman & Herz LLP. These firms and Plaintiffs' Co-Lead Class Counsel are collectively referred to as "Class Counsel." *See* Declaration of Co-Lead Counsel for the Class Eric L. Cramer, Esq. in Support of (1) Plaintiffs' Uncontested Motion for An Award of Attorneys' Fees, Reimbursement of Expenses and Payment of Service Awards to the Class Representatives and (2) Plaintiffs' Motion for Final Approval of Settlement ("Cramer Co-Lead Decl."), at ¶ 2, Exhibits 1-19 to Cramer Co-Lead Decl.

now respectfully submit this memorandum in support of their request for an order: (i) awarding attorneys' fees in the amount of one-third of the $130 million cash value of the Settlement only (plus accrued interest); (ii) reimbursing Class Counsel for reasonably incurred litigation expenses in the amount of $6,696,856.98; and (iii) approving service awards for the Class Representatives of $150,000 for Marchbanks Truck Service, Inc. d/b/a Bear Mountain Travel Stop ("Marchbanks Truck Service"), $75,000 for Gerald F. Krachey d/b/a Krachey's BP South ("Krachey"), $75,000 for Walt Whitman Truck Stop, Inc. ("Walt Whitman"), and $15,000 for Mahwah Fuel Stop ("Mahwah").[3]

Over the seven years of litigating this complex and multifaceted antitrust case (the "Action") against five sets of well-regarded law firms (ten total law firms) representing the five Defendant groups, Plaintiffs' Co-Lead Class Counsel committed their services and resources, collectively devoting 85,907.47 hours to this case, advancing $6,696,856.98 in out-of-pocket costs—including $4,055,986.61 to economic and industry experts and $680,890.35 to maintain a database of millions of pages of documents produced during the course of this litigation—and applying their skill and extensive antitrust experience to prosecuting this case on behalf of the Settlement Class.[4] *See* Cramer Co-Lead Decl., ¶¶ 35-43. As noted, all of Class Counsel's fees, and recovery of all out-of-pocket expenditures, have been fully contingent upon receiving a favorable resolution of the Action on behalf of their clients and the certified Settlement Class.

The settlement that has now been achieved will provide immediate, meaningful, and certain

[3] Marchbanks Truck Service, Krachey, Walt Whitman, and Mahwah are collectively referred to as "Plaintiffs" or the "Class Representatives."

[4] The Settlement Class is defined as "All owners and operators of truck stops or other retail fueling facilities with at least one physical location in the United States that paid Merchant Transaction Fees directly to Comdata on Comdata Proprietary Transactions and that were calculated based on a percentage of the face amount of the transaction during the Settlement Class Period with the exception of Mobile Fuelers, Wilco-Hess locations, the Pilot Defendants, the TA Defendants, and Love's and any of the parents, subsidiaries, affiliates, franchisees or employees of any of the Defendants." *See* Settlement Agreement, ¶ 2; *see also* Preliminary Approval Order at ¶ 4.

benefits to the Settlement Class. Specifically, and as noted above, Plaintiffs and all Defendants[5] have entered into a Definitive Master Settlement Agreement (the "Settlement Agreement") that provides for: (a) immediate payment of $130 million to Plaintiffs and the Settlement Class of over 6,000 independent Truck Stops and other Retail Fueling Facilities; (b) valuable prospective relief in the form of, among other things, meaningful and enforceable commitments by Comdata to modify or not enforce those portions of Comdata's merchant services agreements with Settlement Class Members and the Major Chains that Plaintiffs had challenged in this case as being anticompetitive; and (c) an agreement by Comdata to engage in a good faith negotiations relating to, *inter alia*, merchant transaction fees with certain Buying Groups that are, collectively, composed of hundreds of members of the Settlement Class. *See* Cramer Co-Lead Decl., ¶¶ 7-10, 27.

Class Counsel's request for an attorneys' fee award of one-third of the cash value of the Aggregate Settlement Fund (plus accrued interest)—*i.e.*, an award of $43.33 million (plus interest)—is reasonable and appropriate. First, courts in the Third Circuit frequently award fees to class counsel of one-third of the cash value of class action settlements, including cases involving settlements of well over $100 million.[6] Second, the request is particularly appropriate

[5] The "Defendants" are Comdata Network, Inc. d/b/a Comdata Corporation ("Comdata") n/k/a Comdata Inc., its parent Ceridian Corporation n/k/a Ceridian LLC ("Ceridian") and certain major chain truck stops, namely: (1) Pilot Travel Centers LLC and Pilot Corporation (collectively "Pilot Defendants"); (2) TravelCenters of America LLC and its wholly owned subsidiaries TA Operating LLC f/k/a TA Operating Corporation d/b/a TravelCenters of America, TravelCenters of America Holding Company LLC f/k/a TravelCenters of America, Inc., and Petro Stopping Centers, L.P. (collectively, "TA Defendants"); and (3) Love's Travel Stops & Country Stores, Inc. ("Love's") (collectively the "Major Chains").

[6] *See, e.g.*, *In re Tricor Direct Purchaser Antitrust Litig.*, C.A. No. 05-340-SLR (ECF No. 543) (D. Del. April 23, 2009) (awarding one-third fee on settlement of $250 million); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748 (E.D. Pa. 2013) (awarding one-third fee on settlement of $150 million); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 U.S. Dist. LEXIS 27013 (D.N.J. Nov. 9, 2005) ("*Remeron*") (awarding one-third fee on settlement of $75 million); *In re Wellbutrin SR Antitrust Litig.*, C.A. No. 04-5525 (ECF No. 413) (E.D. Pa. Nov. 21 2011) (awarding one-third fee on settlement of $49 million); *In re Wellbutrin XL Antitrust Litig.*, No. 2: 08-cv-2431 (ECF No. 485) (E.D. Pa. Nov. 7, 2012) (awarding one-third fee on settlement of $37.5 million); *In re Metoprolol Succinate Antitrust Litig.*, No. 06-52-MPT (ECF No. 193) (D. Del. Feb. 21, 2012) (awarding one-third fee on settlement of $20

here where Class Counsel are not seeking a fee of one-third of the actual total value of the Settlement. The Settlement includes prospective relief conservatively valued by economic expert, Dr. Hal J. Singer, at between $260 million and $491 million, bringing the total value of the Settlement to between $390 million and $621 million.[7] Accordingly, the fee Class Counsel are seeking is, at most, 11.1% of the total value of the Settlement—well below the typical fee for a case of this type.

Third, there is overwhelming support amongst members of the Settlement Class not only for the work Class Counsel did on their behalf, but also specifically for the fee Class Counsel are seeking. Leaders of four independent Truck Stop Buying Groups—on behalf of their respective membership, which includes hundreds of Settlement Class members—have each submitted declarations supporting the Settlement *and* the fees sought by Class Counsel.[8] Additionally, each of the Class Representatives has submitted a declaration supporting the settlement *and* Class Counsel's fee request.[9] Finally, the total lodestar for Class Counsel at current rates is $49,785,073.74, and thus the sought fee reflects a "multiplier" of only 0.87, and therefore

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million); *In re Fasteners Antitrust Litig.*, No. 08-md-1912, 2014 WL 296954, at *7 (E.D. Pa. Jan. 27, 2014) (awarding one-third fee on settlement of $17.55 million); and *Rochester Drug Co-Operative, Inc. v. Braintree Laboratories, Inc.*, C.A. No. 07-142-SLR (ECF No. 243) (D. Del. May 31, 2012) (awarding one-third fee on settlement of $17.5 million).

[7] Cramer Co-Lead Decl., ¶ 8 (citing Expert Declaration of Dr. Hal J. Singer, dated March 4, 2014, ¶ 3, 20-29 (the "Singer Decl."); *Id.* ¶ 10. A copy of the Singer Decl. is attached as Exhibit C to Memorandum in Support of Preliminary Approval. (Dkt. 700). The Singer Decl. is also available at www.truckstopantitrustsettlement.com.

[8] Declaration of Kelly Rhinehart of Roady's Truck Stops ("Roady's), dated April 21, 2014 ("Rhinehart Decl.") at ¶¶ 4, 8-9, Declaration of Steven Allen of AMBEST, dated April 21, 2014 ("Allen Decl.") at ¶¶ 4, 8-9, Declaration of Marsha Bird of North American Truck Stop Network ("NATSN"), dated April 15, 2014 ("Bird Decl.") at ¶¶ 4, 8-9, Declaration of Burton Newman, Sr. of Professional Transportation Partners, L.L.C. ("PTP"), dated April 19, 2014 ("Newman Decl.") at ¶¶ 4, 8-9, copies of which are attached as Exhibits 20-23 to the Cramer Co-Lead Decl., respectively.

[9] Declaration of William Patrick Marchbanks, dated April 22, 2014 ("Marchbanks Decl."); Declaration of Douglas Krachey, dated April 28, 2014 ("Krachey Decl."); Declaration of David Silverman, dated April 28, 2014 ("Silverman Decl."); Declaration of Alynne Rosenfarb, dated April 29, 2014 ("Rosenfarb Decl."), copies of which are attached as Exhibits 24-27 to the Cramer Co-Lead Decl., respectively.

includes a negative risk premium despite the wholly contingent nature of the engagement. Typically, courts in the Third Circuit approve multipliers well above 1, and thus well more than what Class Counsel are conservatively seeking here.[10]

Class Counsel's request for reimbursement of expenses is similarly appropriate. All expenses were necessarily incurred in the prosecution of the Action, which lasted seven years, required Class Counsel's retention of three prestigious economic experts, involved over 70 depositions throughout the country and required Class Counsel to store, organize, search, and access millions of pages of documents and huge amounts of data.

Finally, the requested service award for each Class Representative is appropriate. By filing complaints against Comdata the Class Representatives risked being cut off by the dominant supplier of over-the-road ("OTR") Fleet Cards used by their customers, and each significantly contributed to the prosecution of this litigation by, among other things, producing documents, responding to discovery requests, submitting to multiple depositions, providing information to prosecute the case, and overseeing Class Counsel. Cramer Co-Lead Decl., ¶¶ 44-54. These amounts are appropriate given the amount of risk and effort from the Class Representatives.[11] In addition to supporting Class Counsel's fees, the Buying Group

[10] *See, e.g.*, *Remeron*, 2005 U.S. Dist. LEXIS 27013 at * 47-48 (D.N.J. Nov. 9, 2005) (collecting cases awarding multipliers between 1.73 and 9.3 and noting that awarded multiplier of 1.86 is on the "low end of the spectrum"); *see also Infra* at n.64.

[11] *See, e.g.*, *In re: Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding service awards totaling $175,000, including $125,000 to one class representative as part of approving a $163.5 million settlement); *Sullivan v. DB Investments, Inc.*, Civ. Action No. 04-2819, 2008 WL 8747721, at *4, *37 (D.N.J. May 22, 2008) (approving $85,000 service awards for certain plaintiffs as part of approving $295 million settlement); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 338-39 (E.D. Pa. 2007) (approving service award of $75,000 as part of a $39.75 million settlement); *Beck v. The Boeing Company*, No. C00-0301P, at 4 (W.D. Wash. Oct. 8, 2004) (Dkt. 1067) (approving service awards of $100,000 as part of a maximum $72.5 million settlement); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 531 (E.D. Mich. 2003) ($75,000 awarded to two class representatives as part of a $80 million settlement); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, (N.D. Ga. 2001) (approving $300,000 service award as part of an approximately $157

representatives—speaking on behalf of hundreds of Settlement Class members—also support the requested service awards in recognition of the sacrifices and achievements of the Class Representatives on behalf of the Settlement Class.[12]

II. BACKGROUND

A. Plaintiffs' Claims[13]

This case is an antitrust action brought on behalf of a now certified class of independent Truck Stops and other Retail Fueling Facilities that accept Comdata's specialized payment cards (known as "Fleet Cards" or "OTR Fleet Cards") used by OTR, long-haul fleets ("Fleets") to purchase diesel fuel and other items. Comdata has been the leading OTR Fleet Card issuer for the period relevant to this case. Plaintiffs allege that the challenged conduct allowed Comdata and Ceridian (Comdata's parent) to restructure, and thereby artificially inflate, Comdata's Merchant Transaction Fees to members of the Settlement Class beginning in or about 2000-2001 (the "Fee Restructuring"). Plaintiffs alleged that, as a result of the claimed anticompetitive conduct, Settlement Class Members paid supracompetitive transaction fees to Comdata when processing Comdata Proprietary Transactions.

The challenged conduct here (the "Scheme") had two main facets. First, after acquiring several OTR Fleet Card competitors to obtain market dominance, Comdata (with Ceridian's involvement) entered into what Plaintiffs alleged were illegal agreements that restricted the Majors Chains—Comdata's customers *and* competitors—from competing with Comdata or supporting rival OTR Fleet Cards. Plaintiffs alleged that these Major Chain agreements reflected an overarching agreement

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million settlement); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 203-04 (S.D.N.Y. 1997) (awarding $85,000 to a named plaintiff as part of a $115 million settlement); *In re Revco Sec. Litig.*, 1992 WL 118800, at *7 (N.D. Ohio May 6, 1992) (awarding $200,000 service award as part of a $29.75 million settlement).

[12] Rhinehart Decl., ¶¶ 4, 8-9, Allen Decl., ¶¶ 4, 8-9, Bird Decl., ¶¶ 4, 8-9, Newman Decl., ¶¶ 4, 8-9.

[13] *See generally*, Plaintiffs' Memorandum of Law in Support of their Motion for Class Certification at 2-13. (Dkt. 553).

between Comdata and the Major Chains, in which Comdata agreed to offer the Major Chains low, flat transaction fees while impairing the Major Chains' competitors—the Independents—with much higher fees. Second, Comdata imposed what Plaintiffs alleged were anticompetitive anti-steering restrictions on Independents. Plaintiffs alleged that the agreements and restrictions that constituted the Scheme blocked competitive forces and enabled Comdata to impose artificially inflated fees on the Settlement Class.

B. Procedural Background

After an extensive pre-complaint investigation that included key contributions from the Class Representatives—particularly William Patrick "Pat" Marchbanks on behalf of Marchbanks Truck Service—the first complaints in this litigation were filed in March 2007. *See* Cramer Co-Lead Decl., ¶¶ 14, 45-46. With discovery ongoing (having begun on October 12, 2007), Plaintiffs filed their Second Consolidated Amended Complaint on March 31, 2010. *See* Cramer Co-Lead Decl., ¶ 17.

Each of the Defendants, having consistently denied Plaintiffs' allegations and raised multiple defenses to the merits of the claims, moved to dismiss Plaintiffs' Second Consolidated Amended Complaint, and most moved to dismiss Plaintiffs' Third Consolidated Complaint. Cramer Co-Lead Decl., ¶ 18. The Court mainly denied the first round of motions and entirely denied the second round.[14]

Before, during and after Defendants moved to dismiss, Class Counsel pursued extensive discovery from all five sets of Defendants and third parties from the moment discovery opened in October 2007 until discovery closed on May 24, 2013. *See* Cramer Co-Lead Decl., ¶ 19. During the course of the extended discovery period in this case, the parties took over 70

[14] *Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-cv-1078, 2012 U.S. Dist. LEXIS 189789, 2012 WL 10218913 (E.D. Pa. Mar. 29, 2012); *Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-cv-1078, 2011 U.S. Dist. LEXIS 158011, 2011 WL 11559549 (E.D. Pa. Mar. 24, 2011).

depositions of parties, non-parties, and expert witnesses, and reviewed millions of pages of documents produced by Plaintiffs, Defendants, and third parties. *Id.* ¶ 20. Further, Plaintiffs retained three economic experts, while Defendants retained four experts, all of whom issued reports and were deposed. *Id.* Plaintiffs and Defendants filed and argued motions to exclude or strike all or portions of the opposing experts' opinions. *Id.* ¶¶ 21, 23. The parties settled shortly before the Court's scheduled hearing on Plaintiffs' Class Certification Motion, which entailed extensive briefing detailing Plaintiffs' theories of the case and Defendants' defenses. *Id.* ¶¶ 22, 24. At the time of settlement, Ceridian had moved for summary judgment (which motion was fully brief) and the deadline for the remaining summary judgment motions, March 3, 2014, was fast approaching. *Id.* ¶ 24. Trial was scheduled for August 2014.

C. The Settlement

The protracted settlement negotiations between Plaintiffs' Co-Lead Class Counsel and attorneys for Defendants were hard fought, conducted at arm's length, and guided both by two separate, experienced, independent mediators, and the Court.

The case resolved only after several failed efforts at settlement over several years, including a Court-ordered in-person settlement conference with Magistrate Judge Perkin in 2011, and a July 2012 mediation between Plaintiffs and defendants Comdata and Ceridian with a private mediator. *See* Cramer Co-Lead Decl., ¶ 25. More recently, in late 2013, after the close of fact and expert discovery, with the Court's two-day hearing on the parties' *Daubert* motions having been held, and with a class certification hearing looming, the parties agreed to private mediation with Professor Eric Green, a nationally-recognized mediator experienced with complex and significant antitrust class actions. *Id.* ¶ 26. The parties held a full-day mediation with Professor Green on December 5, 2013 in New York, which initially proved unsuccessful. *Id*.

Following the mediation session, certain of the parties continued to negotiate throughout December 2013, culminating in an agreement under which Comdata and Ceridian would make a combined cash payment of $100 million to Plaintiffs and the Settlement Class, along with Comdata's agreement to certain prospective relief. *See* Cramer Co-Lead Decl., ¶ 26. On December 31, 2013, Plaintiffs, Comdata, and Ceridian entered into a memorandum of understanding ("MOU"), memorializing the settlement between Plaintiffs and the Settlement Class, on the one hand, and Comdata and Ceridian, on the other. *Id*. Contemporaneous with these negotiations, and with Professor Green's assistance, Plaintiffs and Love's negotiated an MOU, signed January 3, 2014, whereby Love's would pay the Settlement Class $10 million. *Id*.

On January 9, 2014, the Court held a settlement conference with Plaintiffs and the then-non-settling TA and Pilot Defendants. *See* Cramer Co-Lead Decl., ¶ 26. During that conference, the Court and counsel for the TA and Pilot Defendants engaged in further settlement discussions. Following that conference, Plaintiffs and the TA and Pilot Defendants entered into a MOU under which the TA and Pilot Defendants each agreed to pay $10 million to the Settlement Class (*i.e.*, $20 million combined). *Id*.

Throughout January and February of this year, Plaintiffs and Defendants exchanged several drafts of the Settlement Agreement—including numerous attachments such as the Long Form Notice, Publication Notice, Proposed Preliminary Approval Order and Claim Form—vigorously negotiating its terms and the wording of the various attachments. *See* Cramer Co-Lead Decl., ¶ 26. On March 3, 2014, all parties entered into the Definitive Master Settlement Agreement that provides for a collective $130 million cash payment to the Settlement Class in addition to valuable prospective relief from Comdata. Subsequent to the Court's certifying the Settlement Class and granting Preliminary Approval of the Settlement (Dkt. 705), Defendants

each deposited the agreed amounts into escrow accounts for the benefit of the Settlement Class, where the monies now sit, earning interest. *Id*. at ¶ 31. The Court-appointed escrow agent, Huntington National Bank, estimates that the interest earned on the escrow funds will amount to $60,616.45 by the July 14, 2014 final fairness hearing. *Id*.

The prospective relief portion of the Settlement includes a series of legally binding commitments from Comdata to refrain from including and enforcing certain provisions in its merchant services agreements. These commitments, which will be in place for five (5) years from certain specified trigger dates, are described in detail in the Settlement Agreement. They include Comdata's commitment:

- not to enforce or include any contractual provisions preventing the Major Chains from actively steering customers to non-Comdata OTR Fleet Cards, including in-house accounts;

- not to enforce or include any contractual provisions preventing Settlement Class Members from actively steering customers to non-Comdata OTR Fleet Cards, including in-house accounts;

- not to enforce or include any provision in any agreement with Settlement Class Members requiring Settlement Class Members to offer Comdata cardholders the same discount offered to customers using other payment methods. For instance, Settlement Class Members will not be precluded from offering across-the-board discounts to customers using non-Comdata OTR Fleet Cards that are not offered to Comdata cardholders;

- not to include or enforce any provision requiring any Major Chain to pay to Comdata a transaction fee that is equal to or greater than the highest transaction fee paid by that Major Chain to any other competing OTR Fleet Card company ("Transaction Fee MFN") in any of its agreements;

- not to include a Transaction Fee MFN provision requiring Settlement Class Members to pay to Comdata a transaction fee that is equal to or greater than the highest transaction fee paid by that merchant to any other competing OTR Fleet Card company in any of its agreements;

- not to prohibit Settlement Class Members from surcharging the portions of its Comdata proprietary transactions in which the fee is calculated on a percentage

basis, under certain conditions set forth in more detail in the Settlement Agreement; and

- to negotiate in good faith with several Buying Groups—NATSN, PTP, AMBEST, and Roady's—with regard to reaching a commercially reasonable agreement on the rates and commercial terms for the processing of Comdata OTR Fleet Cards by merchant members of those Buying Groups, subject to certain conditions detailed in the Settlement Agreement.[15]

Class Counsel asked Dr. Singer—one of Plaintiffs' economists in the case who was very familiar with the extensive record through his work on two reports submitted in the case—to conduct an economic valuation exercise on the portion of the prospective relief pertaining to Comdata's contractual changes. Relying upon the record evidence and standard economic methodologies, Dr. Singer has opined that the value to the Settlement Class of Comdata's contractual changes falls between $260 million and $491 million.[16]

The valuation is an estimate. The Settlement Agreement, which sets forth in full the obligations of the parties under the Settlement, does not require Comdata to lower its fees to Settlement Class Members. Nevertheless, Plaintiffs' Co-Lead Class Counsel believe—based on Dr. Singer's analysis and their own assessment of the importance of the changes Comdata has agreed to make to the competitive landscape—that the combined value of the Settlement to the Settlement Class (*i.e.*, the cash portion plus the prospective relief) is between $390 to $621 million. This sum exceeds the overcharges Plaintiffs' expert estimated that the Settlement Class suffered due to the conduct challenged in the case. *See* Cramer Co-Lead Decl., ¶ 8.

[15] Settlement Agreement, ¶¶ 14-29.

[16] *See* Singer Decl., ¶ 3.

III. THE COURT SHOULD APPROVE CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES

A. The Fee Request Satisfies the Legal Standards Governing Awards of Attorneys' Fees in Class Actions

Class Counsel's fee request satisfies all applicable legal requirements. The United States Supreme Court has "recognized consistently that . . . a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."[17] The common fund doctrine is based on the inherent powers of the federal court to "prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Boeing Co.*, 444 U.S. at 478.[18] The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases because it allows courts to reward litigation success and penalize failure. *See In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3d Cir. 1998)).[19] To that end, courts in the Third Circuit and elsewhere routinely

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[17] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also Boone v. City of Phila.*, 668 F. Supp. 2d 693, 713 (E.D. Pa. 2009); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

[18] Unlike in cases in which fees are assessed under a statute, fees in common fund cases "are not assessed against the unsuccessful litigant (fee shifting), but rather are taken from the fund or damage recovery (fee spreading), thereby avoiding the unjust enrichment of those who otherwise would be benefited by the fund without sharing in the expenses incurred by the successful litigant." *Fickinger v. C.I. Planning Corp.*, 646 F. Supp. 622, 632 (E.D. Pa. 1986).

[19] For a history of the Third Circuit's approach to awarding attorneys' fees, including a discussion of the Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 241 (1985) ("1985 Task Force Report") and the transition to the prevailing view that the percentage-of-the-fund method is preferred in common fund cases. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 255-57 (3d Cir. 2001). As noted in *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306 n.16, a second Task Force was convened and issued a follow-up report in 2002, further endorsing use of the percentage-of-the-fund method in common fund cases. *See* Report of the Third Circuit Task Force, *Selection of Class Counsel*, 208 F.R.D. 340 (2002).

employ the percentage-of-the-fund method in antitrust class actions.[20] The Third Circuit urges district courts to perform a lodestar cross-check to ensure that application of the percentage method results in a "sensible" recovery.[21]

Under these standards, Class Counsel's request for a fee of one-third of the $130 million Aggregate Settlement Fund (inclusive of interest)—and no fees for the value of the prospective relief—in light of the successful prosecution of this complex and demanding case is reasonable and appropriate. Class Counsel spent over 85,900 hours through March 31, 2014 on the case. If awarded, the requested fee would amount to a "negative" multiplier of 87% of the total lodestar. Indeed, even if the lowest conservative valuation of the prospective relief is used, the total value of the Settlement is $390 million, which means that the fee request is *not* one-third of the total settlement value, but rather 11.1%. The request, therefore, is conservative.

B. The Fee Requested By Class Counsel Is Fair and Reasonable

The Third Circuit has instructed courts to consider the following seven factors when evaluating the reasonableness of a fee request under the percentage-of-recovery method:

> (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.

[20] *See, e.g.*, *In re Fasteners Antitrust Litig.*, 2014 WL 296954, at *3 ("In practice, courts in the Third Circuit assess requests for attorney's fees in antitrust cases using the percentage-of-recovery method, and then cross-check the result with the lodestar method"); *Flonase*, 951 F. Supp. 2d at 746 ("The latter method [i.e., percentage-of-recovery], is 'generally favored in cases involving a common fund . . . .'") (quoting *In re Rite Aid Corp. Sec. Litig*, 396 F.3d at 300); *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *32 (("the percentage of fund method is the proper method for compensating Plaintiffs' Counsel in this common fund case").

[21] *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305-06.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000).[22] More recently, the Third Circuit has suggested that it also may be important to consider the following factors from *In re Prudential Ins. Co. of American Sales Practices Litig.*, 148 F.3d 283, 340 (3d Cir. 1998):

> (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any "innovative" terms of settlement.

In re AT&T Corp., 455 F.3d 160, 165-66 (3d Cir. 2006) ("In reviewing an attorneys' fees award in a class action settlement, a district court should consider the *Gunter* factors, the *Prudential* factors, and any other factors that are useful and relevant with respect to the particular facts of the case.") (citations omitted). All of the *Gunter* and *Prudential* factors overwhelming support the requested fee.

1. Application of the *Gunter* factors

(a) The complexity and duration of the litigation

The complexity and duration of the litigation is "the first factor a district court can and should consider in awarding fees."[23] An "antitrust class action [is] perhaps the most complex case[] to litigate."[24] Here, Class Counsel diligently and skillfully prosecuted this litigation for seven years in the face of intense opposition from five different Defendant groups each represented by at least two law firms. Those efforts required extensive briefing of complex legal and factual issues and exhaustive discovery efforts, often involving detailed meetings with Defendants' counsel, and requiring counsel to

[22] The Court need not find that all of the *Gunter* factors were satisfied in order to grant Plaintiffs' fee request; satisfaction of some of the factors often outweighs the possible non-satisfaction of other factors. *See, e.g.*, *Meijer, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at *21-22 (E.D. Pa. Aug. 14, 2006) (holding that although time devoted to the litigation was relatively low when case settled after one year, other *Gunter* considerations outweighed that fact).

[23] *Gunter*, 223 F.3d at 197.

[24] *Bradburn*, 513 F. Supp. 2d at 338-39; *see also In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003).

travel the country for depositions and to secure document productions from Defendants and third parties. Specifically, Class Counsel's extensive and diligent efforts included the following:

- reviewing, analyzing, summarizing and organizing millions of pages of documents produced by parties and third-parties during the course of this litigation and 2.3 terabytes of transaction data;
- taking and defending over 70 depositions, including nine (9) expert witness depositions, throughout the United States;
- issuing and serving third-party document subpoenas, which required extensive negotiations (particularly with Flying J, Inc., but also with many other third parties), resulting in the production of thousands of pages of documents;
- negotiating with Defendants concerning discovery, including regarding protective orders and the ESI protocol;
- preparing and serving 29 sets of document requests, seven sets of interrogatories and seven sets of requests for admissions on Defendants, many of which were followed by an extensive meet and confer process;
- responding to ten (10) sets for documents requests and four sets of interrogatories directed at the Class Representatives;
- briefing and arguing several discovery motions;
- investigating the underlying factual record and developing the legal theories of the case;
- researching the law pertinent to the claims against Defendants and potential defenses to those claims to, among other things, formulate a discovery strategy;
- drafting the initial complaints and three comprehensive consolidated amended complaints;
- working with three economic experts on eight expert reports and on deposing Defendants' experts and analyzing multiple Defense expert reports;
- opposing and defeating in substantial part two rounds of motions to dismiss;
- fully briefing a motion for class certification;
- preparing for the hearing on Plaintiffs' motion for class certification that had been scheduled for January 28-30, 2014 (fewer than thirty days from when the first MOU was executed in the case);

- briefing and arguing six *Daubert* motions and other related motions to strike;
- opposing Ceridian's summary judgment motion;
- conducting arm's-length settlement negotiations, over many years, with the Defendants collectively and individually with two separate private mediators;
- developing and drafting the Settlement Agreement, Long Form Notice, Publication Notice, and Claim Form and overseeing the notice process;
- communicating with Class Representatives regarding litigation strategy, updates on the litigation and settlement negotiations and the notice process;
- communicating with Settlement Class members throughout the litigation, including during the settlement and notice period; and
- communicating with representatives of the four major Buying Groups throughout the litigation, including during the settlement and notice period.[25]

Even now, the work on this case has not ended. Plaintiffs' Co-Lead Class Counsel will continue to expend many additional hours—which are not included in the lodestar cross-check calculations—in connection with the settlement administration process, responding to Settlement Class Member inquiries, working to secure final approval of the Settlement, preparing for the final approval hearing scheduled for July 14, 2014, and dealing with technical matters involving the Aggregate Settlement Fund and Settlement administration. *Id.* ¶ 32.

This factor weighs heavily in favor of granting Plaintiffs' motion. *Bradburn*, 513 F. Supp. 2d at 339 (four year old antitrust case involving litigation over class certification and collateral estoppel, expert testimony on both class certification and on the merits, and numerous depositions supported fee request).

As the Court is aware, this litigation has been followed closely by the truck stop industry generally and the Buying Groups specifically. As such, Class Counsel's extensive efforts have not gone unnoticed. A representative from each of the Buying Groups has affirmatively voiced

[25] *See* Cramer Co-Lead Decl., ¶¶ 19-24.

their support for Plaintiffs' fee request.[26] In fact, Kelly Rhinehart, the President of Roady's, stated that he believes "that the requested attorneys' fee award of one-third of the total cash settlement amount is appropriate in this case" because he is "well aware of the time and effort put into this case by Class Counsel for over seven years with no guarantee of ever getting compensated."[27] Further, Rhinehardt "recognize[s] and appreciate[s] the skill, persistence, and professionalism with which Class Counsel handled the matter on behalf of the class," concluding that "the case was expensive to litigate and thus that Class Counsel deserve to be reimbursed for their out of pocket expenses."[28] The support of Buying Groups representing hundreds of members of the Settlement Class "strongly supports approval of the requested fee." *Flonase*, 951 F. Supp. 2d at 747 (explaining that support of a settlement by members of the class, "strongly supports approval of the requested fee").[29]

(b) The size of the fund and the number of people that benefit

The size of the fund created by and the number of people who benefit from the Settlement weigh in favor of approving the fee request.[30] The Settlement is an outstanding result for the Settlement Class—a class consisting of over 6,000 entities, most of whom are independent businesses. Namely, the Settlement provides significant, immediate and certain payment of $130 million, plus accrued interest, less attorneys' fees, expenses, administration

[26] Rhinehart Decl., ¶¶ 4, 8-9, Allen Decl., ¶¶ 4, 8-9, Bird Decl., ¶¶ 4, 8-9, Newman Decl., ¶¶ 4, 8-9.

[27] Rhinehart Decl., ¶ 8.

[28] Rhinehart Decl., ¶ 8. *See also*, Allen Decl., ¶¶ 4, 8-9, Bird Decl., ¶¶ 4, 8-9, Newman Decl., ¶¶ 4, 8-9.

[29] *See also, In re Tricor Direct Purchaser Antitrust Litig.*, C.A. No. 05-340-SLR (ECF No. 543 at ¶¶ 6-7, 11) (D. Del. April 23, 2009) (citing approvingly to the explicit support of request for attorneys' fee and service awards by members of the class in awarding one-third fee on settlement of $250 million); *In re Wellbutrin SR Antitrust Litig.*, C.A. No. 04-5525 (ECF No. 413 at ¶¶ 6(b), 10(c)) (E.D. Pa. Nov. 21 2011) (citing approvingly to the support of request for attorneys' fee and service awards by class members in awarding one-third fee on settlement of $49 million); *In re Metoprolol Succinate Antitrust Litig.*, No. 06-52-MPT (ECF No. 193 at ¶¶ 6-7, 11) (D. Del. Feb. 21, 2012) (citing approvingly to the explicit support of request for attorneys' fee and service awards by several members of the class in awarding one-third fee on settlement of $20 million).

[30] *See Gunter*, 223 F.3d at 198 (identifying "[t]he size of the settlement fund created and the number of persons benefitted is another important factor in fee-award cases").

costs, and service awards ("Net Settlement Fund").[31] The Settlement also provides for prospective relief that Dr. Singer has valued at between $260 million and $491 million. As such, the Settlement will provide the Settlement Class with a total benefit of between $390 million and $621 million. This amount is above the range of overcharge damages suffered by the class computed by Dr. Jeffrey Leitzinger, one of Plaintiffs' economic experts.[32]

The significant cash and injunctive value delivered to the Settlement Class as a result of the Settlement weighs heavily in favor of granting Class Counsel's fee request.

(c) The skill and efficiency of counsel

Class Counsel are comprised of some of the preeminent plaintiffs class action and antitrust litigation firms in the country, with decades of experience prosecuting and trying complex antitrust actions.[33] Class Counsel applied their knowledge and experience to obtain a positive result for the Settlement Class.[34] Class Counsel also faced formidable opposition from five sets of defense counsel from nationally recognized law firms and including counsel with decades of antitrust and class action experience who vigorously defended this case. The high "quality of opposing counsel" supports Plaintiffs' attorneys' fee request.[35]

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[31] *Supra* at 1-4, 9-11.

[32] Cramer Co-Lead Decl., ¶ 8.

[33] The background, experience, and qualifications are included in the Cramer Co-Lead Decl. at Exhibits 1-19.

[34] *See Gunter*, 223 F.3d at 195 n.1 (identifying the skill and efficiency of the attorneys involved as one of the factors to consider in evaluating a fee request).

[35] *See In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Litig.*, 263 F.R.D. 226, 244 (E.D. Pa. 2009) (where class counsel were highly skilled in litigating class actions against insurance companies, the defendants were represented by a leading law firm, and the case was vigorously litigated by both sides, this supported class counsel's fee request); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003) (where counsel primarily practiced in the field of shareholder securities litigation, had considerable experience, and faced formidable legal opposition, this supported awarding the requested fees).

(d) The risk of non-payment was significant

"A determination of a fair fee must include consideration of the sometimes undesirable characteristics of a contingent antitrust action[], including the uncertain nature of the fee, the wholly contingent outlay of large out of pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in an antitrust case are extremely high."[36] One court observed in an antitrust action, "[i]t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced."[37] Indeed, the history of antitrust litigation is replete with cases in which plaintiffs succeeded at trial on liability but recovered no damages or very small damages at trial or after appeal.[38]

Even if Plaintiffs had brought their case to trial and succeeded, they still would have faced certain and lengthy appeals. As Judge Pratter observed, attorneys who undertake the representation of a class are "unable to mitigate any of the risk of nonpayment; instead, they [a]re required to spend or incur obligations to effectively litigate th[e] case."[39] And, as Judge Stengel explained in awarding a one-third fee to class counsel (including, *e.g.*, one of the Co-Lead Counsel here) in *Wellbutrin SR*:

> Class Counsel faced numerous risks in preparing and litigating this case, including the risks associated with the motion to dismiss, class certification, summary judgment, and – had the case continued – ultimately proving liability

[36] *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *39; *see also Gunter*, 223 F.3d at 195 n.1, 199 (explaining that the risk that counsel takes in prosecuting a client's case should also be considered when assessing a fee award).

[37] *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971); *see also Blum v. Stenson*, 465 U.S. 886, 902 (1984) (Brennan, J., concurring) ("the risk of not prevailing and therefore, the risk of not recovering any attorney's fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee").

[38] *See, e.g., U.S. Football League v. National Football League*, 644 F. Supp. 1040, 1042 (S.D.N.Y. 1986) ("the jury chose to award plaintiffs only nominal damages, concluding that the USFL had suffered only $1.00 in damages"); *MCI Comm. Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 116-67 (7th Cir. 1983) (antitrust judgment remanded for new trial and damages); *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005 (2d Cir. 1973) (after two trips to the Second Circuit and one to the Supreme Court, plaintiffs and the proposed class recovered nothing in an antitrust class case).

[39] *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 423 (E.D. Pa. 2010).

> and damages at trial and potentially surviving any appeals. Underlying all of these risks was the enormous one of handling this case for its entire duration on a contingent basis, doing everything necessary to honor Class Counsel's commitment and obligations to the class. . . . The substantial risk of nonpayment that Class Counsel faced throughout this litigation strongly supports their fee request.[40]

And so it is here, where the Plaintiffs' claims involve a complex set of factual and legal issues that significantly increased the odds of nonpayment. Class Counsel had to be prepared to front all of the costs and carry all of the risk that there might not be any recovery while the "the Class itself risked nothing out-of-pocket."[41] The risk faced by Class Counsel was multifaceted, as there was risk involved with: (a) building a case from the ground up without any federal government case for a foundation (in fact, industry efforts to encourage government action had largely failed); (b) defeating two rounds of motions to dismiss (nine total motions); (c) pursuing certification of a litigation class; (d) opposing summary judgment (Ceridian's summary judgment motion was fully briefed; absent settlement, Class Counsel expected four additional motions in March); (e) opposing several *Daubert* motions (which motions had been fully briefed and argued); and—if the case had continued, (f) preparing for trial, including opposing pretrial motions and motions *in limine*; (g) ultimately proving liability and damages at trial; and (h) surviving any appeals.

Having prevailed in the face of the multiple attendant risks, Class Counsel should be rewarded. The substantial "risk factor" of nonpayment strongly supports Class Counsel's fee request.

(e) The amount of time devoted to the litigation

As explained above, this case required a substantial investment of time by Class Counsel.[42] Class Counsel expended more than 85,900 hours over seven years preparing, litigating, and negotiating the settlement of this Action. And Class Counsel's commitment to

[40] *In re Wellbutrin SR Antitrust Litig.*, No. 04-5525, ECF No. 413 at 11-12 (citations omitted).

[41] *Serrano*, 711 F. Supp. 2d at 423.

[42] *Gunter*, 223 F.3d at 195 n.1.

this litigation is not over. Counsel will spend substantial additional time preparing for and participating in the final approval hearing and handling claims administration.[43] The copious amount of time that Class Counsel was required to devote to this action also supports approval of this fee request.[44]

Class Counsel's lodestar calculations (discussed below) do not include any amount for this anticipated future work. *See Remeron*, 2005 U.S. Dist. LEXIS 27013, at *42 (observing that class counsel would "likely incur hundreds of additional hours in connection with administering the settlement, without prospect for further fees"). That Class Counsel's fee request covers not only work that has been done to date, but also any such future work, makes the request that much more reasonable.

(f) Consistency with fee awards in comparable cases

The requested fee is consistent[45] with antitrust class actions in the Third Circuit, where attorneys' fee awards of one-third of the total settlement are commonplace, including cases where settlements exceed $100 million.[46] Other Circuits similarly support fees of one-third of the total value of settlements over $100 million.[47] Here, the fee request is even more reasonable because the request is actually far lower than one-third of the total value of the Settlement.

[43] *See* Cramer Co-Lead Decl., ¶ 32.

[44] *See*, *e.g.*, *Boone*, 668 F. Supp. 2d at 714 (class counsel's expenditure of roughly 2,858 hours of contingent work on the litigation justified their fee request); *Bradburn*, 513 F. Supp. 2d at 339 (class counsel's expenditure of more than four years, including more than 9,000 attorney hours and roughly 2,000 paralegal hours weighed in favor of awarding the requested fees).

[45] *Gunter*, 223 F.3d at 198 (identifying "comparing awards in similar cases" as an "important factor in fee-award cases").

[46] *Supra* at n.6.

[47] *See, e.g.*, *In re Titanium Dioxide Antitrust Litig.*, 2013 WL 6577029 at *1 (awarding one-third fee on settlement of $163.5 million); *In re Relafen Antitrust Litig.*, No. 01-12239-WHY Dkt. No. 511-10 (D. Mass April 9, 2004) (awarding one-third fee on settlement of $175 million); *In re Buspirone Antitrust Litig.*, MDL No. 1413, 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. April 11, 2003) (awarding one-third fee on settlement of $220 million).

Indeed, even using the lower end of Dr. Singer's estimate of the value of the prospective relief ($260 million), the total value of the Settlement is at least $390 million, and thus the sought fee of $43.33 million is a mere 11.1% of the settlement value—well below the typical fee in analogous cases.

Consistent with the long-line of Third Circuit precedent, and in light of the fact the Plaintiffs are only seeking fees on the cash component of the Settlement, the requested fee here of one-third of the cash value of the Settlement and only 11.1% of the total value of the Settlement is fair, exceedingly reasonable and should be approved.

(g) Presence or absence of objections

As the Third Circuit noted in *Gunter*, the lack of a substantial number of objections is an important consideration in evaluating a fee request because "client's views regarding her attorneys' performance and their request for fees should be considered when determining a fee award."[48] Here, pursuant to the Preliminary Approval Order, on April 14, 2014, the Settlement Administrator mailed the detailed Long Form Notice to each member of the Settlement Class. On April 14, 2014, the Settlement Administrator also posted the Long Form Notice and other pertinent information on a website devoted to this case (truckstopantitrustsettlement.com) and submitted a summary version of the Notice (the Publication Notice) to NACS (National Association for Convenience and Fuel Retailing) Magazine, for its May 2014 issue and to NATSO for its weekly e-newsletters, which will run from April 14 to May 5, 2014. The Class Notice notified all Settlement Class members of: (1) the terms of the Settlement; (2) where additional information could be obtained; (3) Class Counsel's intention to seek attorneys' fees of one-third of the cash value of the Settlement, litigation costs of up to $7.5 million and service

[48] *Gunter*, 223 F.3d at 199.

awards totaling $315,000; and (4) the means by which Settlement Class Members may object to any aspect of the Settlement, including the attorneys' fees motion and supporting papers. *See* Cramer Co-Lead Decl., ¶¶ 28-29. Although the May 27, 2014 deadline for objections has not yet passed, as of April 30, 2014, there have not been any objections, and no entity has opted out. *Id.* ¶ 30. Courts have found that a low number of objectors is particularly telling in cases—such as this one—that involve sophisticated class members.[49] Furthermore, as noted above, representatives of the Buying Groups counting hundreds of Settlement Class members among their membership, affirmatively support the Settlement and the requested fee.[50] This factor thus weighs in favor of Plaintiffs' fee request.

2. Application of the *Prudential* factors

(a) The value of benefits accruing to class members attributable to the efforts of Class Counsel, as opposed to the efforts of others[51]

The development of this case depended entirely on the investigation and efforts of Class Counsel and, unlike many antitrust cases, did not follow on the heels of a government lawsuit or investigation. To the contrary, the federal government rebuffed industry efforts to investigate Comdata's two-tiered pricing strategy following its Fee Restructuring. Notably, Class Counsel did not simply challenge Comdata's two-tiered pricing—which was the main focus of industry complaints. Instead, Class Counsel developed factual and economic evidence of the alleged anticompetitive scheme including agreements by the Major Chains not to compete with Comdata

[49] *See, e.g., Bradburn*, 513 F. Supp. 2d at 338 ("The absence of objections to the requested attorneys' fees in this case is particularly notable given the sophisticated nature of the absent Class Members."); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) ("While in some cases a lack of objections may reflect the absence of counsel or unfamiliarity with the legal system, in this case class members are represented by counsel . . . [and] include many of the largest corporations in America—entities that are hardly unfamiliar with civil litigation.").

[50] Rhinehart Decl., ¶¶4-9, Allen Decl., ¶¶4-9, Bird Decl., ¶¶4-9, Newman Decl., ¶¶4-9.

[51] *See Prudential*, 148 F.3d at 340.

and Comdata's imposition of anticompetitive anti-steering provisions on Settlement Class Members.[52] No government entity had prosecuted the claims Plaintiffs developed against Defendants in this matter.

That Plaintiffs survived two rounds of motions to dismiss and were positioned to oppose summary judgment based on a theory of liability developed by Class Counsel weighs heavily in favor of Class Counsel's fee request.[53]

(b) The percentage fee that would have been privately negotiated[54]

A one-third contingency fee is standard in individual litigation, could be more in an antitrust case, given the complexities and risks,[55] and represents the market rate for fee awards in large antitrust class actions,[56] thus would likely be the benchmark by which the parties would have privately negotiated a fee. This factor weighs in favor of granting Plaintiffs' motion—especially given that the sought fee is a mere 11.1% of the Settlement's value.

(c) Innovative terms[57]

Class Counsel expertly negotiated the details of an innovative Settlement Agreement, involving five years of prospective relief and Comdata's commitment to negotiate with each of the Buying Groups. As discussed above, a central aspect of Plaintiffs' claims included allegations that Comdata's agreements with both the Major Chains and members of the Settlement Class insulated Comdata from competition, allowing it to charge members of the Settlement Class supracompetitive transaction

[52] *Supra* at 6-7.

[53] *See AT&T Corp.*, 455 F.3d at 173 (where class counsel was not aided by the efforts of any governmental group, this strengthened the district court's conclusion that the fee award was fair and reasonable).

[54] *See Prudential*, 148 F.3d at 340.

[55] *See Remeron*, 2005 U.S. Dist. LEXIS 27013, at *46 ("[a]ttorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation").

[56] *Supra* at n.6, n.29, n.47.

[57] *See Prudential*, 148 F.3d at 340.

fees.[58] The prospective relief included as part of the Settlement creates a legally binding commitment by Comdata not to include or enforce the very provisions in Comdata's merchant services agreements with both the Major Chains and Settlement Class Members that Plaintiffs had challenged in this case.[59] As such, the prospective relief will better allow for competition to reduce merchant fees to Settlement Class Members by removing the contractual prohibitions on steering that Plaintiffs had alleged insulated Comdata from competition. Dr. Singer has valued that innovative relief at between $260 million and $491 million. Cramer Co-Lead Decl., ¶¶ 8 (citing Singer Decl., ¶ 3, 20-29); *Id.* ¶ 10.

C. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Request.

The Third Circuit has held that it is "sensible" for district courts to perform a lodestar cross-check to ensure that application of the percentage-of-recovery method does not result in a recovery that is too great.[60] Once the lodestar is calculated,[61] "[t]he total lodestar estimate is then divided into the proposed fee calculated under the percentage method. The resulting figure represents the lodestar multiplier to compare to multipliers in other cases."[62]

Using Class Counsel's current rates, the lodestar totals $49,785,073.74, which is greater than the $43,333,333 (plus interest) that Class Counsel seeks to recover here.[63] Thus, Plaintiffs are not requesting to receive ***any*** risk premium at all for their efforts in this contingent litigation as the lodestar multiplier is below 1. Typically, Class Counsel in cases of this type recover

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[58] *Supra* at 6-7.

[59] *Supra* at 10-11.

[60] *Rite Aid*, 396 F. 3d at 305-06; *see also In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 263 (D. Del. 2002) ("The Third Circuit suggests that the district court cross-check the percentage award against the "lodestar" award to help ensure the reasonableness of the fee.").

[61] The lodestar is determined by multiplying the number of hours counsel reasonably expended by a reasonable billing rate for such services. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001).

[62] MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.122.

[63] Cramer Co-Lead Decl., ¶ 35.

multipliers ranging from the 2-4, or higher.[64] That Class Counsel here would, if their request were granted, recover no multiplier at all despite the outstanding results for the Settlement Class, the length of the litigation, and the risks involved confirms and bolsters the reasonableness of the fee request.

IV. THE COURT SHOULD APPROVE CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF EXPENSES

Attorneys who create a common fund for the benefit of a class are entitled to reimbursement from that fund of the reasonable litigation expenses they advanced on behalf of the class.[65] Accordingly, Class Counsel request reimbursement of out-of-pocket expenses incurred litigating the case.

Class Counsel expended $6,696,856.98 in out-of-pocket expenses, without any assurance of repayment, in litigating this case on behalf of the Settlement Class. By far the largest component of such expenses comprised of substantial and necessary payments to economic experts, who were essential to the prosecution of this case. Other significant expenses included costs associated with the storage of millions of pages of documents on a secure database and

[64] *See Segen v. OptionsXpress Holdings Inc.*, 631 F. Supp. 2d 465 (D. Del. 2009) (multiplier of 2.06); *In re Tricor Direct Purchaser Antitrust Litig.*, C.A. No. 05-340-SLR (ECF No. 543 at 9) (D. Del. April 23, 2009) (multiplier of 3.93); *Warfarin*, 212 F.R.D. at 263 (multiplier of 1.33) *Remeron*, 2005 U.S. Dist. LEXIS 27013 at *47-48 (D.N.J. Nov. 9, 2005) (noting that awarded multiplier of 1.86 is on the "low end of the spectrum"); *Nichols v. SmithKline Beecham Corp.*, No. 00-6222, 2005 WL 950616, *24 (E.D. Pa. Apr. 22, 2005) (approving multiplier of 3.15); *Linerboard*, 2004 WL 1221350, *4 (approving a 2.66 multiplier); *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1304 (D. N.J. 1995), aff'd, 66 F.3d 314 (3d Cir. 1995) (approving a 9.3 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) (multiplier of over 6).

[65] *See In re: Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 n.12 (3d Cir. 2001) (quoting the 1985 Task Force Report for the conclusion that the "common-fund doctrine . . . allows a person who maintains a lawsuit that results in the creation, preservation, or increase of a fund in which others have a common interest, to be reimbursed from that fund for litigation expenses incurred."); *see also AT&T Corp.*, 455 F.3d at 172 n.8 ("[e]xpenses are generally considered and reimbursed separately from attorneys' fees"); *Warfarin*, 212 F.R.D. at 263 (approving costs and expenses reimbursements out of litigation fund as reasonable).

costs associated with travel to depositions, Court hearings and mediations around the country.[66] These expenses, as well as others routinely charged to hourly-fee-paying clients, such as court reporting expenses, photo and data copying charges, and computerized legal research costs, were reasonable and appropriate.[67]

Given that the expenses were incurred without guarantee of reimbursement, Class Counsel had strong incentive to keep them reasonable, and did so. Plaintiffs' request for reimbursement is supported by representatives of the four Buying Groups[68] and the Class Representatives.[69] Moreover, as of April 30, 2014, there had not been any objections filed by any Settlement Class Member.[70] Class Counsel should be reimbursed for their reasonably incurred expenses.[71]

V. THE REQUESTED SERVICE AWARD TO EACH CLASS REPRESENTATIVE IS REASONABLE

Plaintiffs request that the Court approve service awards to the Class Representative of $150,000 for Marchbanks Truck Service, $75,000 for Krachey, $75,000 for Walt Whitman and

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[66] *See* Cramer Co-Lead Decl., ¶ 35. Breakdowns of the litigation expenses paid directly by Class Counsel in support of the prosecution of this litigation as well as the expenses paid out of the litigation fund are included in the Cramer Co-Lead Decl. (¶¶ 40-42).

[67] *See, e.g.*, *Heekin v. Anthem, Inc.*, No. 05-cv-01908, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012) (approving expenses of over $6.2 million on $30 million settlement).

[68] Rhinehart Decl., ¶¶ 4, 8-9; Allen Decl., ¶¶ 4, 8-9; Bird Decl., ¶¶ 4, 8-9; Newman Decl., ¶¶ 4, 8-9.

[69] Marchbanks Decl., ¶¶3, 15-16; Krachey Decl., ¶¶ 3, 11-12, Silverman Decl., ¶¶ 3, 11-12, and Rosenfarb Decl., ¶¶ 4, 13-14.

[70] Cramer Co-Lead Decl., ¶ 30.

[71] *See In re OSB Antitrust Litig.*, No. 06-826, (E.D. Pa. 2006) (ECF No. 947) at 9 (approving class counsel's fee request because "[t]his complex lengthy matter involved some eighty depositions, the creation and maintenance of a huge case database, and the preparation and review of expert economic analysis and reports"); *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *49 (finding the following expenses to be reasonable: "(1) travel and lodging, (2) local meetings and transportation, (3) depositions, (4) photocopies, (5) messengers and express services, (6) telephone and fax, (7) Lexis/Westlaw legal research, (8) filing, court and witness fees, (9) overtime and temp work, (10) postage, (11) the cost of hiring a mediator, and (12) NJ Client Protection Fund-pro-hac vice")). A breakdown of the litigation expenses incurred, by category is provided. *See* Cramer Co-Lead Decl., ¶¶ 40-42.

$15,000 for Mahwah. In the Third Circuit, service awards may be paid to class representatives to reward efforts that benefit the class.[72] In evaluating the appropriateness of such awards, courts consider: (i) the financial, reputational and personal risks to the plaintiff; (ii) the degree of plaintiffs' litigation responsibilities; (iii) the length of litigation; and, (iv) the degree to which the plaintiffs benefited as class members.[73]

The awards requested here are well deserved. As described more fully below, each of the Class Representatives has performed a "public service of contributing to the enforcement of mandatory laws."[74] Without the efforts of the Class Representatives, the Settlement Class would have recovered nothing. Furthermore, the amounts requested, while on the higher end, are appropriate in light of the risks and sacrifices made by the Class Representatives during the seven years this litigation was prosecuted and in light of the Class Representatives receiving relatively modest *pro rata* recoveries under the plan of allocation.[75]

As of April 30, 2014, no Settlement Class Member has objected to the requested service awards, which further confirms their reasonableness. Indeed, far from giving rise to objections, the requested service awards have garnered the affirmative support of the Buying Groups, representing hundreds of Settlement Class members. A representative of each Buying Group,

[72] *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011); *Bradburn*, 513 F. Supp. 2d at 342 ("It is particularly appropriate to compensate named representative plaintiffs with service awards when they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of the class.").

[73] *See Chakejian*, 275 F.R.D. at 220; *see also Bradburn*, 513 F. Supp. 2d at 342.

[74] *Chakejian*, 275 F.R.D. at 220.

[75] Cramer Co-Lead Decl., ¶ 44, n.25 (listing the following estimated *pro rata* shares for the Class Representatives: $39,344.82 for Marchbanks Truck Service, $21,917.37 for Mahwah, $8,357.89 for Walt Whitman, and $5,138.15 for Krachey).

each of whom has first-hand knowledge of the long struggle against Defendants in this case, has praised the work of the Class Representatives and has supported the requested service awards.[76]

Marchbanks Truck Service,[77] located in Bakersfield, California, served as a named plaintiff since this case was initially filed in March 2007, and has been appointed by the Court to serve as a Class Representative in this litigation. (Dkt. 705). Marchbanks Truck Service not only served without any guarantee of payment or compensation, it risked being cut off by Comdata, the dominant OTR Fleet Card provider.[78] That, combined with Marchbanks Truck Service's significant discovery obligations over the course of this seven-year litigation, justifies a substantial service award. As discussed below, the contributions of Marchbanks Truck Service—primarily through its owner Pat Marchbanks—go above and beyond the typical contributions of class representatives, warranting a large service award.

Since 2001, Pat Marchbanks has spearheaded efforts to ameliorate what he saw as unfair conduct by Defendants that was harming Independent truck stop operators. Mr. Marchbanks' efforts over many years ultimately led to the retention of Class Counsel and the bringing of this lawsuit.

As Class Representative in this case, Mr. Marchbanks spent hundreds of hours, often for days at a time, away from running his business: (1) assisting Class Counsel in the investigation and development of the initial complaint; (2) discussing case strategy with Class Counsel; (3) overseeing Class Counsel's prosecution of this litigation and settlement negotiations; (4) traveling to and attending nearly all Court hearings in the case; (5) traveling to and attending

[76] Rhinehart Decl., ¶¶ 4, 8-9; Allen Decl., ¶¶ 4, 8-9; Bird Decl., ¶¶ 4, 8-9; Newman Decl., ¶¶ 4, 8-9.

[77] For a detailed recitation of Marchbanks Truck Service's efforts on behalf of the Settlement Class, *see* the Marchbanks Decl.

[78] Cramer Co-Lead Decl., ¶ 44.

multiple settlement conferences and mediations; (6) communicating with Settlement Class members about the status of the litigation and answering countless questions from Settlement Class members and representatives of the Buying Groups; (7) reviewing and producing thousands of pages of documents; and (8) diligently preparing for, traveling to, and sitting for two depositions of himself. Marchbanks Truck Service was actually deposed three times in the case, including two depositions of Mr. Marchbanks and one of employee Kathy Simmons. In addition to diverting his attention away from his business to participate actively in and oversee this litigation, Mr. Marchbanks incurred over $15,000 in out-of-pocket expenses (for traveling to Court hearings and settlement conferences, for instance) without any guarantee of reimbursement. Co-Lead Counsel, Eric L. Cramer, summed up Mr. Marchbanks's incredible contributions to this litigation in his declaration as follows:

> In my almost twenty years representing classes of antitrust direct purchasers, Pat Marchbanks stands out as a superlative class representative. Mr. Marchbanks has been intimately involved and provided invaluable insight into almost every aspect of this litigation from the pre-complaint investigation through the negotiation of the Settlement. Mr. Marchbanks' unwavering support of this litigation for over seven years, willingness to travel across the country and away from his business to attend Court hearings, two rounds of depositions and several settlement conferences/mediations along with the irreplaceable industry insight and knowledge he was willing and able to share with Class Counsel are unmatched amongst class representatives in typical antitrust class actions. Mr. Marchbanks' dedication to serving the Settlement Class is not limited to his time and effort, he also incurred over $15,000 in expenses serving as a Class Representative. Despite having only a modest recovery to gain, Mr. Marchbanks remained ever vigilant in overseeing the prosecution of this case. It is my opinion that Mr. Marchbanks is deserving of a service award of at least $150,000.[79]

The exemplary efforts of Pat Marchbanks on behalf of the Settlement Class without any promise of remuneration or repayment of his expenses, supports the $150,000 service award sought by Class Counsel.

[79] *See* Cramer Co-Lead Decl., ¶ 46.

Krachey,[80] located in Prairie do Chien, Wisconsin, served as a named plaintiff since April 2007, and has been appointed by the Court to serve as a Class Representative in this litigation. (Dkt. 705). In doing so without any guarantee of recovery, Krachey risked being cut off by Comdata, the dominant OTR Fleet Card provider. In addition to putting business at risk, Krachey, primarily through Douglas Krachey (Krachey's Manager), dedicated a significant amount of time, energy and resources to assisting counsel in the prosecution of this litigation. For instance, Mr. Krachey was (a) actively involved in reviewing and assisting in the development of the initial complaint filed by Krachey in this action, (b) spent several hours meeting with Class Counsel regarding the allegations in this litigation and the OTR Fleet Card and Truck Stop industries generally, (c) expended at least 40 hours reviewing pleadings and other documents, (d) worked for several hours responding to eight sets of document requests, including approximately 173 separate documents requests served over a period of four years, and (e) spent approximately 55 hours associated with gathering documents for production responsive to multiple rounds of Defendants' document requests. In addition to the many hours spent reviewing pleadings and participating in discovery, Mr. Krachey spent six days away from his business to prepare and sit for two rounds of depositions and was involved in several phone calls regarding the settlement negotiations and approving the terms of the Settlement Agreement.

Krachey's unwavering support of this litigation on behalf of the Settlement Class without any promise of compensation for seven years more than supports the $75,000 service award for Krachey sought by Class Counsel.

[80] For a detailed recitation of Krachey's efforts on behalf of the Settlement Class, *see* the Krachey Decl.

Walt Whitman,[81] formerly located in Philadelphia, Pennsylvania, served as a named plaintiff since July 2007, and has been appointed by the Court to serve as a Class Representative in this litigation. (Dkt. 705). Walt Whitman is unique among the Class Representatives in that it was forced out of business[82] before the first complaint was filed in this case due, in part, to the conduct challenged as anticompetitive in this Action. Walt Whitman's efforts on behalf of the Settlement Class were undertaken without any promise of compensation, and without regard for Walt Whitman's damages being capped at the overcharges paid before it ceased operation in 2006. David Silverman, Walt Whitman's President, diligently and doggedly fulfilled Walt Whitman's duties as a Class Representative at significant personal expense. For instance, Mr. Silverman spent (a) approximately ten hours of his own time—he was no longer in the truck stop business—meeting with Class Counsel in advance of filing a complaint in this litigation, and (b) several hours discussing the settlement negotiations and Settlement Agreement with Class Counsel. Mr. Silverman also took time away from his employment and other business ventures to prepare and sit for two rounds of depositions. Notably, Mr. Silverman did so even though Walt Whitman was not in business between his first and second depositions. Additionally, Mr. Silverman spent 35 hours reviewing pleadings and other relevant legal documents, including discovery requests; responded to eight sets of document requests, including approximately 173 separate documents requests served over a period of four years, and spent at least 15 hours gathering documents for production.

[81] For a detailed recitation of Walt Whitman's efforts on behalf of the Settlement Class, *see* the Silverman Decl.

[82] Walt Whitman, continues to exist as a corporate entity, but no longer operates as a truck stop. Silverman Decl., ¶ 2.

Walt Whitman's efforts on behalf of the Settlement Class—particularly David Silverman's dedication of time and effort long after he left the truck stop business—warrant the $75,000 service award requested by Class Counsel.

Mahwah,[83] located in Mahwah, New Jersey, served as a named plaintiff since April 2007, and has been appointed by the Court to serve as a Class Representative in this litigation. (Dkt. 705). Mahwah risked being cut off by Comdata, the dominant OTR Fleet Card provider. In addition to putting its business at risk, representatives of Mahwah sat for two depositions, and Mahwah has produced thousands of pages of documents pursuant to numerous document requests from Defendants. Similarly, Mahwah has responded to several sets of interrogatory requests propounded by Defendants. Mahwah did so without any guarantee of compensation or repayment for the time its employees spent preparing for and sitting a deposition, responding to discovery requests and meeting with Class Counsel regarding the claims in this litigation. Mahwah's efforts in this litigation support the relatively modest $15,000 service award that Class Counsel seek here on behalf of Mahwah.

VI. CONCLUSION

Plaintiffs' Co-Lead Class Counsel respectfully request that the Court approve the attorneys' fee and expense application and enter an order awarding counsel fees of $43,333,333 (plus a proportionate share of the interest thereon through the date of the award), and reimbursement of reasonably incurred expenses as they appear on the books and records of all of the firms acting as Class Counsel in this case in the amount of $6,696,856.98. Plaintiffs' Co-Lead Class Counsel also request the following service awards for the Class Representatives: $150,000 for Marchbanks Truck Service, $75,000 for Krachey, $75,000 for Walt Whitman and $15,000 for Mahwah.

[83] For a detailed recitation of Mahwah's efforts on behalf of the Settlement Class, *see* the Rosenfarb Decl.

Respectfully Submitted,

Dated: May 5, 2014

/s/ Eric L. Cramer

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Co-Lead Counsel for Plaintiffs and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that I am one of plaintiffs' attorneys, and that on this date I caused copies of the papers annexed hereto to be served on all counsel of record in this proceeding via CM/ECF filing.

/s/ Eric L. Cramer

Dated: May 5, 2014