

Claudine Hale,	*	In the Circuit Court
		of Maryland
Plaintiff,	*	for Baltimore City
v.	*	
Mariner Finance, LLC,	*	Case No. 24C18000053
Defendant.	*	

\* \* \* \* \*

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR APPROVAL OF AN AWARD OF AN INCENTIVE PAYMENT TO THE CLASS REPRESENTATIVE**

**I. Introduction**

Pursuant the ¶ 26 of the Settlement Agreement in this case, Plaintiff Claudine Hale (“Plaintiff” or “Ms. Hale”) respectfully requests that this Court approve an incentive award to her of \$3,500 to be paid by Defendant Mariner Finance, LLC (“Defendant” or “Mariner Finance”) - an award which *will not diminish* the benefits to Class Members. This type of award is both permissible and reasonable where, as here, a class action has achieved a significant benefit for a large number of people as the result of a lawsuit filed on their behalf by a class representative.

There would not have been a recovery in this action without the participation of Ms. Hale. The relief provided for in the Settlement Agreement benefitting each Class Member, is an excellent result. Mariner Finance has agreed to establish a Settlement Fund of \$1,500,000 from which Class Members will be paid up to three times the amount of the charges in their transactions which were challenged in this case.

As an added benefit, the proposed incentive award for Ms. Hale will not reduce or in any way diminish the amounts to be received by other Class Members in this case, because Tower FCU has agreed to pay the incentive award **in addition to** the Settlement Fund. *See* Settlement Agreement at ¶ 26. The Incentive Award is modest and warranted considering that, unlike the

absent Class members, the Plaintiff class representative actively cooperated with Class Counsel and expended substantial effort to see this case through to settlement. In particular, the Plaintiff conferred with counsel, lent her name and circumstances to the case, produced documents, and was prepared to testify at deposition and trial. *See* Affidavit of Benjamin H. Carney, Exhibit 1 to the Memorandum of Law in Support of the Motion for an Award of Attorney’s Fees and Expenses (the “Attorney’s Fee Memo”), at ¶ 11. Moreover, she negotiated this settlement not only for her own benefit, but for the benefit of other Class Members. An incentive award is therefore appropriate.

## **II. Argument**

### **A. Courts Have Traditionally Awarded Similar Incentive Payments in Class Actions.**

The award of incentive payments to named Class representatives has been approved in a long line of cases under circumstances similar to those in this case. Two themes occur repeatedly in the many opinions approving incentive payments: first, it is important to encourage named representatives to bring class actions because of the benefits they confer; and second, it is just to reward named class representatives for their work and effort on behalf of the class. As Judge Quarles noted in *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483 n. 22 (D. Md. 2014), “[b]ecause a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.” (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998)).

For example, in *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270 (S.D. Ohio 1997), the court approved a \$25,000 incentive payment to each of the class representatives from a recovery of \$4.1 million and noted that:

[I]ncentive awards are not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class.

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.

*Id.* at 272. The court continued:

[M]any of the reasons given for approving incentive awards relate to the services rendered and the risks incurred by the class representatives on behalf of the class during the course of the litigation and settlement. As long as the services rendered are reasonable and relevant to the furtherance of the class' interests in the litigation, such compensation given to named plaintiffs is not unlike the fee awards given to experts, consultants or investigators which are reimbursable as a litigation expense from common funds; both compensate non-lawyers for services rendered in aid of the litigation.

*Id.* at 275.

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

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

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

*Id.* See also *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (approving incentive award in excess of \$60,000 to be awarded to seven named plaintiffs and noting that “courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation”); *Roberts, et al. v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive awards of \$50,000 to \$85,000 to the named plaintiffs who initiated the lawsuit); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Calif. 1995) (awarding \$50,000 to class representatives, where there was a \$76 million settlement fund); *In re Domestic Air Transp. Antitrust Litigation*, 148 F.R.D. 297, 357-58 (N.D. Ga. 1993) (awarding \$142,500 to class representatives, where there was a \$50 million settlement fund); *In re Dun & Bradstreet Credit Serv. Customer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (approving incentive awards of \$35,000 to \$55,000 for class representatives).

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

[T]he Sixth Circuit has recognized the propriety of rewarding members of a class who protested and helped bring rights to a group who had been victims of discrimination. Active protesters were contrasted to protesters who were merely passive and indicated no particular desire to bring an end to a discriminatory policy.

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

**B. The Maryland Courts Are in Line with Other Jurisdictions in Awarding Incentive Payments to Class Representatives**

Maryland courts likewise have agreed with the sound policies underlying the award of incentive payments to named class representatives. Maryland courts have consistently awarded incentive payments to named plaintiffs in class litigation. See, e.g., *Decohen*, 299 F.R.D. 469 (approving \$10,000 incentive award to class representative); *Yang v. G&C Gulf, Inc.*, Case No.

403885V (Cir. Ct. Mont. Co. Jan. 16, 2018) (Exhibit 4 to the Attorney's Fee Memo) (approving \$5,000 incentive award to two named plaintiffs); *Montgomery v. Driftwood, Inc.*, Case No. 03-C-13-008147 (Cir. Ct. Balt. Co. Feb. 28, 2017) (Exhibit 5 to the Attorney's Fee Memo) (awarding \$5,000 incentive payments to each of four named plaintiffs); *Chalk v. Tower Federal Credit Union*, Case No. 03-C-15-006873 (Cir. Ct. Balt. Co. May 12, 2016) (Exhibit 6 to the Attorney's Fee Memo) (awarding \$4,000 incentive payment); *Clinton v. Money One Federal Credit Union*, Case No. 408053V (Cir. Ct. Mont. Co. July 15, 2016) (Exhibit 7 to the Attorney's Fee Memo) (awarding \$5,000 incentive payment); *Sekuler v. Financial Freedom Acquisition, LLC*, Case No. 360327-V (Cir. Ct. Mont. Co. Feb. 1, 2013) (Exhibit 8 to the Attorney's Fee Memo) (awarding \$2,500 incentive payment); *Schmidt v. Redwood Capital, Inc.*, Case No. 03C11010442 (Cir. Ct. Balt. Co. Oct. 22, 2012) (Exhibit 9 to the Attorney's Fee Memo) (awarding \$2,500 incentive payment); *Wuerstlin v. Sandy Spring Bank*, Case No. 335030-V (Cir. Ct. Mont. Co. Oct. 25, 2011) (Exhibit 10 to the Attorney's Fee Memo) (awarding \$2,500 incentive payment); *Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. How. Co. April 7, 2011) (Leasure, J.) (Exhibit 11 to the Attorney's Fee Memo) (approving total incentive awards of \$30,000 - \$7,500 to each of four class representatives); *Cooper v. United Auto Credit Corporation*, Case No. 03-C-09000477 (Cir. Ct. Balt. Co. Jan 11, 2011) (Exhibit 12 to the Attorney's Fee Memo) (awarding \$2,500 incentive payment); *Butler v. C&F Finance Company*, Case No. 03-C-09002127 (Cir. Ct. Balt. Co. July 6, 2010) (Exhibit 13 to the Attorney's Fee Memo) (awarding incentive payment of \$2,000 to each of two named plaintiffs); *Taylor v. Wells Fargo Home Mortgage*, Case No. 24-C-02-001635 (Cir. Ct. Balt. City April 14, 2010) (Exhibit 14 to the Attorney's Fee Memo) (awarding \$10,000 in incentive payments to two named plaintiffs); *Greer v. Crown Title Corporation*, Case No. 24-C-02001227 (Cir. Ct. Balt. Co. Aug. 26, 2005) (Exhibit 15 to the Attorney's Fee Memo) (awarding \$10,000 in incentive payments to two named plaintiffs); *Smith v. Ace Motor Acceptance Corporation*, Case No. 1:12-cv-02149 (D.Md. Oct. 7, 2013) (Exhibit 16 to the

Attorney's Fee Memo (awarding \$2,500 incentive payment); *Benway v. Resource Real Estate Services, LLC*, Case No. 1:05-cv-3250 (D.Md. Oct. 12, 2011) (Exhibit 17 to the Attorney's Fee Memo) (awarding \$10,000 in incentive payments to two named plaintiffs); *Robinson v. Fountainhead Title Group Corporation*, Case No. 1:03-cv-03106 (D.Md. Sept. 8, 2010) (Exhibit 18 to the Attorney's Fee Memo) (awarding \$10,000 incentive payment to named plaintiff); *Brittingham v. Prosperity Mortgage Co.*, Case No. WMN-09-cv-826 (D.Md. April 14, 2010) (Exhibit 19 to the Attorney's Fee Memo) (awarding \$15,000 incentive payment to three sets of named plaintiffs); *Watts v. Capital One Auto Finance, Inc.*, Case No. 1:07-cv-03477 (D.Md. Jan. 15, 2010) (Exhibit 20 to the Attorney's Fee Memo) (awarding \$5,000 incentive payment); *Shelton v. Crescent Bank & Trust*, Case No. 1:08-cv-01799-RDB (D.Md. May 28, 2009) (awarding \$2,500 incentive payment).

As stated in *Sheppard v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 20033206, \*6 (E.D.N.Y. 2002):

In awarding these payments as part of a settlement, a court must ensure that the named plaintiffs, as fiduciaries to the class, have not been tempted to receive high incentive awards in exchange for accepting suboptimal settlements for absent class members.

In this case, however, the settlement is anything but suboptimal for Class Members. It includes Mariner Finance's agreement to pay \$1,500,000 into a common fund from which Class Members may claim up to three times the total amount of the charges challenged in this case. The settlement is an outstanding result.

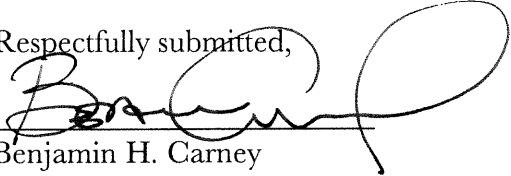
Absent Ms. Hale's willingness to serve as Class Representative and stand up for the rights of other Class Members, this recovery would not be possible. Mariner Finance's agreement to pay her a modest incentive fee of \$3,500, separate and apart from, and in addition to, the Settlement Fund, should be approved. This award will not reduce the benefits the Class and will encourage consumers to stand up for the rights of themselves and others in class action litigation.

**III. Conclusion**

For the reasons set forth above, Plaintiff respectfully requests that an incentive award of \$3,500 for Class Representative Claudine Hale be approved.

Date: August 29, 2018

Respectfully submitted,



Benjamin H. Carney

[bcarney@GWCfirm.com](mailto:bcarney@GWCfirm.com)

Martin E. Wolf

[mwolf@GWCfirm.com](mailto:mwolf@GWCfirm.com)

Kirsten S. Eckroad

[keckroad@GWCfirm.com](mailto:keckroad@GWCfirm.com)

GORDON, WOLF & CARNEY, CHTD.

100 W. Pennsylvania Avenue, Suite 100

Towson, Maryland 21204

Tel: (410) 825-2300

Fax: (410) 825-0066

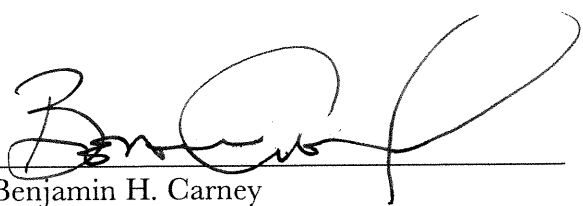
Attorneys for Class Representative and the  
Class

**Certificate of Service**

I hereby certify, this 29<sup>th</sup> day of August, 2018, that I served a copy of the foregoing, by E-mail and first-class mail, postage pre-paid, on:

Jerrold A. Thrope  
Robert A. Gaumont  
Gordon Feinblatt LLC  
The Garrett Building  
233 East Redwood Street  
Baltimore, Maryland 21202  
[jthrope@gfrlaw.com](mailto:jthrope@gfrlaw.com)  
[rgaumont@gfrlaw.com](mailto:rgaumont@gfrlaw.com)

Attorneys for Mariner Finance, LLC



Benjamin H. Carney