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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SHABANI STEWART, for herself and  
all others similarly situated,

Plaintiffs,

v.

EARLY WARNING SERVICES, LLC

Defendant.

Civil Case No. 2:18-cv-03277-CCC-SCM

**PLAINTIFF'S MOTION FOR  
CLASS ACTION ATTORNEY FEES  
AND COSTS AND INDIVIDUAL  
SERVICE AWARD TO NAMED  
PLAINTIFF**

**MOTION DATE: May 18, 2020**

PLEASE TAKE NOTICE, Plaintiff Shabani Stewart, for herself and on behalf of the classes of similarly situated persons provisionally certified herein [ECF 41], shall move the Court, as of the motion date set forth above:

- for an award of attorney fees to class counsel, Posner Law PLLC, in this matter of \$925,000, allocated as \$740,000 from the (b)(3) Settlement Fund, and \$185,000 from the (b)(2) Settlement Fund; and
- an individual service award to named Plaintiff, Shabani Stewart, in the amount of \$7,500, allocated as \$3,750 from the (b)(2) Settlement Fund and \$3,750 from the (b)(3) Settlement Fund; and

PLEASE TAKE FURTHER NOTICE submitted herewith, in support of the instant motion, is a Memorandum of Law and a Declaration of Counsel Gabriel Posner, Esq.; and

PLEASE TAKE FURTHER NOTICE, the awards requested herein are subject to a hearing scheduled by the Court for June 22, 2020, 10:00 a.m. [ECF 41 ¶9].

Dated: April 13, 2020

**POSNER LAW PLLC**

*s/ Gabriel Posner, Esq.*

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*Counsel for Plaintiff and  
Settlement Class Counsel*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SHABANI STEWART, for herself and all  
others similarly situated,

Plaintiffs,

v.

EARLY WARNING SERVICES, LLC

Defendant.

Civil Case No. 2:18-cv-03277-CCC-  
SCM

MOTION DATE: May 18, 2020

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF AWARD OF CLASS  
COUNSEL'S ATTORNEY'S FEES AND COSTS, AND INDIVIDUAL SERVICE  
AWARD TO NAMED PLAINTIFF**

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Plaintiff Shabani Stewart (“Plaintiff”), for herself and on behalf of the classes certified in this action, respectfully requests an award of \$925,000 to Posner Law PLLC in attorney’s fees and costs, and a service award of \$7,500.00 to the named Plaintiff in recognition for her services to the Settlement Classes. Amounts requested herein will be fully funded by Defendant Early Warning Services, LLC (“EWS”) pursuant to the Settlement Agreement reached in this matter, subject to Court approval as required by Fed. R. Civ. P. 23. Plaintiff, by this motion, now requests such Court approval.

## I. INTRODUCTION

Class counsel litigated this case for more than 2 years, devoting hundreds of hours in attorney time, and emerging with a \$4.25 million Settlement Agreement which provides – in addition to cash payments – significant benefits for consumers under the Fair Credit Reporting Act, 15 USC §§ 1681 *et seq.* (“FCRA”). EWS will disclose to consumers who request their file any record that the consumer allegedly committed “fraud” in connection with a bank account. Thus, consumers who wish to dispute a “fraud” record in their EWS file will have an informed basis for doing so. (b)(3) Class Members will also receive millions of dollars in cash payments, without having to fill out any “claim form.” For (b)(2) Class Members, EWS will no longer provide “Summary File” disclosures to consumers, which omit certain consumer data. This, too, is a meaningful benefit to consumers. These achievements, benefitting hundreds of thousands of consumers, could not have been accomplished without the competent and dedicated work of class counsel. To date, counsel has not been compensated.

The requested \$925,000 fee award is **21%** of the aggregate settlement of \$4.25 million – **well below** the 30% or 33% fee awards commonly awarded in class actions. Additionally, a fee award should be “cross checked” against Counsel’s lodestar, *i.e.*, the number of hours

counsel devoted to the case multiplied by counsel’s billable hourly rate. Here, the requested fee of \$925,000 is **2.5 times** Counsel’s lodestar, well below the limit of **four** set by the Third Circuit. *In re Prudential Co Sales Practices*, 148 F.3d 283, 341 (3d Cir. 1998) (“Multiples ranging from one to four are frequently awarded in common fund cases where the lodestar method is applied.”) The lodestar here is calculated as follows:

Number of hours:	644 hours
Requested billable rate:	\$575/hr.
<b><u>Total lodestar:</u></b>	<b><u>\$370,300.</u></b>

Thus, the requested fee is fair and reasonable whether analyzed as a percentage of the total recovery, or cross-checked against Counsel’s lodestar. Indeed, it is well within customary bounds for FCRA class action fee awards. *See, Fuller v. Avis Budget Car Rental, LLC*, 2:15-cv-03856(KM), (D.N.J. Dec. 15, 2017) (Docket 53) (awarding FCRA class action fee award of 33% of \$2.7 million settlement, multiplier of 2.5 counsel’s lodestar); *Henderson v. Axiom Risk Mitigation, Inc.*, No. 12-cv-0589 (E.D. Va. Aug. 4, 2015) (Doc. 116), (awarding FCRA class action fee award of 30% of the \$20.8 million settlement fund, multiplier of 3 times counsel’s lodestar); *Thomas v. Backgroundchecks.com*, No. 13-cv-29 (E.D. Va. Aug. 5, 2015) (Doc. 114) (awarding FCRA class action fee award of 28.9% of \$18 million fund, 3.47 multiplier of counsel’s lodestar); *Patel v. Trans Union LLC*, 14-cv-522(LB), 2018 WL 1258194 (March 11, 2018 N.D. Cal.) (awarding FCRA class action fee award 33% settlement fund of \$8 million, multiplier of slightly over 2.); *Rodriguez v. AllianceOne Receivables Management*, 2:15-cv-01224(RAJ) (Nov. 12, 2019 W.D. Wash.) (Docket 70) (awarding FCRA class action fee award 33% of \$2.2 million settlement).

By all relevant remaining criteria, the fee request is well-supported. The settlement was mediated through JAMS before the Hon. Diane Welsh (Ret.), a well-respected mediator.

Counsel is experienced in complex litigation and FCRA class action litigation, and previously litigated through successful class action settlement with EWS in *Muir v. Early Warning Services LLC*, D.N.J. 2:16-cv-521-SRC-CLW), which similarly pertained to claims under the FCRA. In significant ways, the present case is the culmination – on a much larger scale – of the issues first raised in *Muir*.

Finally, a service award of \$7,500 for named Plaintiff is requested, as provided in the Settlement Agreement. Ms. Stewart stepped forward to devote her time and attention to this matter, providing valuable information and documents – in many instances, of a personal nature – for the purpose of advancing this case on behalf of the class members. Courts routinely approve comparable awards for class representatives in class action settlements.

## II. PROCEDURAL BACKGROUND

- 1) On March 7, 2018, Plaintiff filed an action styled as *Shabani Stewart, et al. v. Early Warning Services, LLC* in the United States District Court for the District of New Jersey (Civil Action No. 2:18-cv-03277-CCC-SCM), alleging, among other things, that EWS failed to comply with the Fair Credit Reporting Act [ECF 1].
- 2) On May 29, 2018, EWS filed an Answer to Plaintiff's Complaint, denying it violated the FCRA or otherwise harmed Plaintiff [ECF 5].
- 3) On November 20, 2018, Plaintiff filed her First Amended Complaint, alleging EWS violated § 1681g of the FCRA, 15 U.S.C. § 1681g [ECF 20].
- 4) On December 17, 2018, EWS filed its Answer to the First Amended Complaint, denying it violated the FCRA or otherwise harmed Plaintiff [ECF 24].
- 5) Between August 2018 and April 2019, the parties completed substantial written discovery, including document productions and non-party discovery.

- 6) On June 4, 2019, the parties conducted an arms-length, contentious, lengthy, and complicated in-person mediation session with the Honorable Diane Welsh (Ret.) in Philadelphia, PA. Judge Welsh is a well-respected mediator with substantial experience in mediating disputes arising under the FCRA. At the conclusion of the mediation session, the parties reached an agreement in principle to settle the case. [ECF 32]
- 7) Thereafter, and until the time a final draft of the Settlement Agreement was agreed upon, the Parties engaged in ongoing negotiations as to numerous provisions in the Settlement Agreement, including, *inter alia*, with respect to the process changes at EWS under the Settlement Agreement, class members' release of claims under the Settlement Agreement, and the provisions for providing notice to class members of this action.
- 8) On December 19, 2019, Plaintiff filed an unopposed motion for Preliminary Approval of the Class Action Settlement Agreement, as required by Fed. R. Civ. P. 23. [ECF 39]. The Court granted Preliminary Approval of the Settlement Agreement on February 21, 2020. [ECF 41]

### III. THE SETTLEMENT VALUATION

As required by FRCP 23, the Settlement Agreement (“SA”) has been filed with the Court. ECF 39-4. The computation of the \$4.25 million settlement valuation is straightforward. A fund of **\$3.975 million** is established, which, subject to final approval, will be distributed to approximately 53,000 consumers – the (b)(3) Class Members – after amounts are deducted for attorney fees, settlement administration costs, and any individual service award to named Plaintiff. A separate fund of **\$275,000** is established to cover attorney fees and costs allocated to the (b)(2) Class. Pursuant to the Settlement Agreement, EWS shall make all



contribution to the two funds, totaling **\$4.25 million** (\$3.975 million *plus* \$275,000). *See*, Settlement Agreement, §5.1.1; §5.9.1; §5.9.2; §6.1.1; §6.9.1; §6.9.2.<sup>1</sup> There is no requirement that any (b)(3) Class Member submit any form to receive payment, and no amounts of the \$3,975,000 (b)(3) Fund revert to EWS. While (b)(2) Class members will not receive cash payment, EWS has agreed to meaningful process changes for the benefit of both the (b)(2) Class and the (b)(3) Class. [SA §§ 5.6, 6.6].

#### **IV. CLASS COUNSEL’S FEES OF \$925,000 SHOULD BE AWARDED AS FAIR AND REASONABLE**

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The Fair Credit Reporting Act (“FCRA”) is a fee shifting statute that mandates the award of costs and reasonable attorney’s fees to a prevailing Plaintiff. 15 U.S.C. § 1681n(a)(3), 1681o(a)(2). The Settlement Agreement reached in this matter allows fees *well in excess* of the requested \$925,000 fee to class counsel, to be fully funded by Defendants EWS. Specifically, the Settlement Agreement provides for attorney fees of up to one-third the (b)(3) Fund of \$3.975 million (SA §5.1.1; §5.9.1), plus attorney fees from the (b)(2) Fund to which EWS contributes an additional \$275,000 (SA §6.1.1; §6.9.1).

Third Circuit case law establishes two methods for evaluating the award of attorney’s fees: the percentage-of-the-recovery approach and the lodestar approach. *See In re Prudential Insurance Co. Sales Practices*, 148 F.3d 283, 332 (3d Cir. 1998). “In common fund cases... the

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<sup>1</sup> There is a possibility that the final valuation may come in *slightly* below \$4.25 million. While the (b)(3) Fund of \$3.975 million is non-reversionary, EWS is only obligated to contribute to the (b)(2) Fund the amount of costs and attorney fees attributable to the (b)(2) Class. The (b)(2) Fund amount of \$275,000 is intended to reflect our best estimate of EWS’s obligations in this connection; it seems highly unlikely this estimate will be off by a significant number, and essentially impossible the difference would materially alter the analysis herein.

attorneys' fees and the clients' award come from the same source and the fees are based on a percentage amount of the clients' settlement award.” *Gunter v. Ridgewood Energy Corporation*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). In common fund cases, “the percentage-of-recovery method is generally favored.” *In re Diet Drugs*, 582 F.3d at 540 citing *Prudential*, 148 F.3d at 333. *Cf. In re Cendant Corp. PRIDES Litig.*, 243 F.3d 772, 734, 737 n.20 (3d Cir. 2001) (percentage-of-recovery fees long recognized in common fund cases). However, the Third Circuit has, “suggested that district courts cross-check the percentage award at which they arrive against the ‘lodestar’ award method.” *Gunter*, 223 F.3d at 195 n.1.<sup>2</sup> “Multiples ranging from *one to four* are frequently awarded in common fund cases where the lodestar method is applied.” *In re Prudential Co Sales Practices*, 148 F.3d 283, 341 (3d Cir. 1998) (emphasis added). As set forth more fully below, the requested fee award satisfies all relevant factors under a percentage of recovery analysis, and a cross-check against Counsel’s lodestar.

**A. *The Requested Fee is Fair and Reasonable as a Percentage of the Settlement Value.***

The Third Circuit has established a multi-part test for reviewing class action attorney fee awards. District Courts should review:

(1) the size of the fund created and the number of beneficiaries, (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, (7) the awards in similar cases, (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

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<sup>2</sup> *Gunter* defined the lodestar as follows: “A court determines an attorney's lodestar award by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate.” *Id.*

*In re Diet Drugs*, 582 f.3d at 541 (citing *Gunter*, 223 F.3d at 195 n.1; *Prudential*, 148 f.3d at 336-40). (hereinafter, “*Gunter* Factors”). “The factors listed above need not be applied in a formulaic way. Each case is different, and in certain cases, one factor may outweigh the rest.” *Gunter*, 223 F.3d at 195 n.1. Each of the relevant factors is considered below.

**1. The Amount of Value Created and the Number of Persons Benefited**

The value of the Settlement Agreement is \$4.25 million. Accordingly, the requested fee of \$925,000 is 21% of the settlement value – at the *low* end of established guidelines in the Third Circuit. “The Third Circuit has noted that fee awards generally range from 19% to 45% of the settlement fund when the percentage-of-recovery method is utilized to assess the reasonableness of requested attorneys’ fees.” *Schuler v. The Medicines Co.*, D.N.J. 2:14-cv-01149(CCC) (Docket 72 at p. 20) (granting \$1.4 million fee award, one-third of common fund) (quotations and citations omitted). In the context of FCRA class action settlements, awards of 30% or 33% of a settlement value are routine. *See, supra* p. 2 (collecting FCRA class action fee awards ranging from 29% to 33% of recovery).

In addition to the measurable financial benefits, the Settlement Agreement provides equitable benefits to class members in the form of EWS’s improved processes and procedures under the FCRA. The Settlement Agreement benefits hundreds of thousands of people; there are approximately 175,000 consumers in the (b)(2) Class, and more than 53,000 consumers in the (b)(3) Class (most of whom are also (b)(2) Class members, *i.e.*, the classes overlap). *See*, Posner Decl. ¶¶ 6-7. In short, Class Counsel conferred a real benefit to a substantial number of consumers, satisfying the first *Gunter* factor.

**2. The Presence or Absence of Substantial Objections by Members of the Class to the Settlement Terms and/or Fees Requested by Counsel**

The second *Gunter* factor is whether there are any objections from class members regarding the settlement or requested fee amount. The deadline for objections and opt-outs remains open, as of the present writing. (Counsel will supplement this portion of the fee motion with Plaintiff's motion for final settlement approval, due 20 days before the June 22, 2020 final approval hearing, by which time any objections should be filed.)

### **3. The Skill and Efficiency of the Attorneys Involved**

The third *Gunter* factor measures the skill and efficiency of the attorneys involved. This criteria is satisfied. Class Counsel is an experienced attorney, both in complex litigation and class action practice. Counsel has been designated class counsel in other actions under the FCRA, and has litigated the FCRA extensively. *See*, Posner Decl. ¶¶ 12-13. Counsel was uniquely suited to litigating this matter. Undersigned counsel previously litigated to successful class action settlement with EWS, in *Muir v. Early Warning Services LLC*, D.N.J. 2:16-cv-521-SRC-CLW), which similarly pertained to claims under the FCRA. Indeed, *Muir* alleged EWS failed to disclose records of “fraud” in consumer files, similarly an alleged violation of 15 USC § 1681g(a), albeit for a significantly smaller class (211 consumers in all). In this case, Class Counsel advanced a substantially similar claim – EWS’s failure to disclose records of “fraud” – on behalf of a much larger group of consumers.

Finally, the, “single clearest factor reflecting the quality of class counsels’ service to the class are the results obtained.” *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000); *see also In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-cv-3202, 2009 WL 2137224, at \*14 (E.D. Pa. July 16, 2009) (noting “the quality of representation in a case can be measured by the quality of the result achieved.”); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at \*5 (E.D. Pa. June 2, 2004) (“The result achieved

is the clearest reflection of petitioners' skill and expertise.”). Here, Plaintiff prevailed upon one of the largest providers of background reports for purposes of screening bank account applicants to change its practices to benefit hundreds of thousands of consumers. Additionally, the \$4.25 million valuation speaks for itself. Simply put, these achievements could not have been realized without competent and dedicated Class Counsel.

Accordingly, the third factor also supports the requested fee award.

#### **4. The Complexity and Duration of the Litigation**

The fourth *Gunter* factor, which measures the complexity and duration of the litigation, also supports Class Counsel's fee request. While this case was not uniquely complex, neither was it overly simple. Counsel invested more than 600 hours over two years of litigation. “The FCRA, particularly in the class action context, is a complex and challenging area of law.” *Holman v. Experian Info. Solutions, Inc.*, No. 4:11-cv-00180(CW) (N.D. Cal. Dec. 24, 2014) (Docket 279) (citing *White v. Experian Info. Solutions*, 2014 WL 1716154 (C.D. Cal. May 1, 2014)). The case demanded detailed knowledge of the FCRA and FRCP 23, and called upon counsel to learn EWS's practices and procedures for maintaining and sharing consumer information. Counsel was faced with the challenging task of uncovering “fraud” records in consumers' files at EWS, and understanding how EWS used those records – all of which EWS generally did not disclose in publicly available sources, nor to consumers in the ordinary course of its business. Indeed, proving the existence of such “hidden” information was the crux of Plaintiff's case.

Therefore, the fourth *Gunther* factor is also satisfied.

#### **5. The Risk of Nonpayment**

The risk of non-payment weighs decisively in favor of the requested award. Class counsel is a small law office, which devoted two years and hundreds of hours to this case. To

prevail on a claim for damages under the FCRA, 15 USC §1681n, Plaintiff and class counsel would need to show EWS *willfully* violated the law – making this case, like any FCRA class action, inherently risky. EWS is a consortium of some of the largest banks in America. *See*, Corporate Disclosure Statement at ECF 6. That Plaintiff and Class Counsel undertook the case, facing litigation against a large and sophisticated defendant – and emerged with meaningful relief for class members – should be rewarded. Courts have long recognized an inherent of non-payment when counsel undertake any contingency or fee-shifting litigation. *See In re Philips/Magnavox Television Litig.*, No. 09-cv-3072, 2012 WL 1677244, at \*18 (D.N.J. May 14, 2012).

This *Gunter* factor is amply satisfied here and further justifies Plaintiff's fee request.

#### **6. The Amount of Time Devoted to the Litigation by Class Counsel**

Class Counsel has spent 644 hours prosecuting this Lawsuit on behalf of Plaintiff and the Settlement Class. Posner Decl. ¶¶ 8-10. Moreover, the hours expended by Class Counsel does not include the work Class Counsel will expend going forward. *See, e.g., In re Merck & Co., Inc. Vytarin ERISA Litig.*, No. 08-cv-285, 2010 WL 547613, at \*11 (noting “the time dedicated and expenditures incurred do not include costs that will arise immediately in the future, such as the settlement hearing conducted before this Court”).

Accordingly, the number of hours devoted by Class Counsel to this Lawsuit supports the requested fee award.

#### **7. Awards in Similar Cases**

The seventh *Gunter* factor compares the fee request with fee awards in similar cases. As noted above, Courts have routinely awarded similar fees in consumer class actions to those requested in this case. *See, supra*, p. 2, collecting cases.

**8. The Value of Class Counsel’s Work, as Opposed to other Groups or Government Agencies**

This factor weighs in favor of the requested award. No government agencies or outside groups provided assistance to counsel in the litigation of this case, and counsel did not rely on any such outside group or agency (for example, Counsel did not rely on any preexisting investigation into the subject matter of this case.)

**9. Whether the Fee is Consistent with a Fee that would have been Privately Negotiated.**

This factor is not applicable in this case, as the FCRA is a fee shifting statute and, generally, Plaintiff-side attorneys’ fees in FCRA litigation are generally paid by the Defendant in the context of litigation, not set by the private market.

**10. Innovative Terms to the Settlement**

The tenth and final factor evaluates whether the settlement agreement contains any innovative terms. Here, class counsel did not simply negotiate for money. Advancing the letter and purposes of the FCRA, counsel successfully prevailed upon EWS to change its practice, to provide more complete disclosure to consumers. Counsel should be rewarded for obtaining these benefits for the classes.

Based on the foregoing, this factor supports approval of Class Counsel’s fee request.

***B. A Cross-Check against Counsel’s Lodestar Further Supports the Requested Fee***

The Third Circuit has, “suggested that district courts cross-check the percentage award at which they arrive against the ‘lodestar’ award method.” *Gunter*, 223 F.3d at 195 n.1. “A court determines an attorney’s lodestar award by multiplying the number of hours he or she reasonably worked on a client’s case by a reasonable hourly billing rate.” *Id.* “Multiples

ranging from *one to four* are frequently awarded in common fund cases where the lodestar method is applied.” *In re Prudential Co Sales Practices*, 148 F.3d 283, 341 (3d Cir. 1998) (emphasis added).

Under the lodestar analysis, counsel fees are determined by multiplying the number of hours reasonably spent litigating the matter by counsel's hourly rate. This yields the presumptively reasonable fee. *See Hahnemann Univ. Hosp. v. All Shore, Inc.*, 514 F.3d 300, 310 (3d Cir. 2008); *Washington v. Philadelphia Court of Common Pleas*, 89 F.3d 1031, 1035 (3d Cir. 1996). Importantly:

The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records. Furthermore, the resulting multiplier need not fall within any pre-defined range, provided that the District Court’s analysis justifies the award.

*In re Rite Aid Sec. Litig.*, 396 F.3d 294, 306-07(3d. Cir. 2005) (citation and footnotes omitted).

*Cf. Gunter*, 223 F.3d at 200 (summaries of attorney work sufficient for purposes of lodestar cross-check; no requirement for, “actual time records”) (*citing In re Prudential*, 148 F.3d at 332 n. 107).

Here, Counsel’s lodestar is calculated as follows:

Number of hours:	644 hours
Requested billable rate:	\$575/hr.
<b><u>Total lodestar:</u></b>	<b><u>\$370,300.</u></b>

*See*, Posner Decl. ¶¶ 8, 11. The number of hours expended, the billable rate, and the aggregate lodestar is comparable to other class actions under the FCRA. For example, *Fuller*, *supra* p. 2, involved 682 hours of attorney time, with billable rates ranging from \$495/hr. to \$725/hr., for a lodestar of \$344,575.

Counsel’s billable rate is eminently reasonable, as an attorney in New York with nearly



15 years of legal experience. Counsel has extensive experience in complex litigation and class action litigation. *See*, Posner Decl. ¶¶ 8-13. Counsel's requested rate of \$575/hr. was specifically used for the lodestar cross-check in Counsel's fee application in *Rodriguez v. AllianceOne Receivables Management*, 2:15-cv-01224(RAJ) (Nov. 12, 2019 W.D. Wash.) (Docket 70), which awarded in full the requested fee of one-third the \$2.2 million settlement.

With respect to the number of hours devoted to the case, Class Counsel has conformed to the Third Circuit's guidance and provided summaries of the work performed. Posner Decl. ¶¶ 8-9. Class counsel handled all aspects of this case, from identifying the alleged FCRA violations, pursuing the claims in Court, and settling the case. Counsel researched the relevant law, worked with Ms. Stewart before filing this case, drafted the pleadings, drafted discovery demands, responded to discovery requests, reviewed documents and background facts supplied by Plaintiff, reviewed Defendant's discovery responses and document productions, engaged in discovery disputes with Defendant, appeared in Court, attended mediation, participated in drafting the Settlement Agreement and notice plan to the classes, and prepared Plaintiff's motion for preliminary approval and the instant motion. The case was filed more than two years ago, and Class counsel engaged in well over 500 communications for this case. Class Counsel first communicated with named Plaintiff Shabani Stewart more than four years ago, *in 2015*, regarding Plaintiff's file with EWS and its background reports on her, and worked with Plaintiff to obtain relevant information, and pursue her rights under the FCRA – ultimately, not only on Plaintiff's own behalf, but on behalf of similarly situated consumers as well.

***C. As Part of (and Not in Addition to) the Requested Fee, Reimbursement of \$4,775 in Expenses Should be Allowed***

Class Counsel outlayed \$4,775 in pursuing this case, consisting of filing fees and

mediation fees. As part of, and not in addition to, the requested fee award, the Court should not hesitate to approve reimbursement of these costs, all spent in good faith in the litigation of this case. *See*, Posner Decl. ¶ 14.

**V. PURSUANT TO THE SETTLEMENT AGREEMENT, THE COURT SHOULD ALLOCATE THE \$925,00 FEE AWARD BETWEEN THE SETTLEMENT FUNDS AS FOLLOWS: \$740,000 TO THE (B)(3) FUND, AND \$185,000 TO THE (B)(2) FUND**

The Settlement Agreement divides attorney fees into two portions, allocated between the (b)(3) Fund and the (b)(2) Fund. SA § 5.9.1 (providing attorney fees up to one-third the \$3.975 million (b)(3) Fund); SA §6.9.1 (providing additional attorney fees drawn from the \$275,000 (b)(2) Fund). Fed. R. Civ. P. 23(h) authorizes the Court to, “award reasonable attorney’s fees... authorized by... *the parties’ agreement*,” (emphasis added). Here, the Court should honor the provisions of the Settlement Agreement which divide attorney fees between the two classes.<sup>3</sup>

Clearly, the Settlement Agreement contemplates the bulk of attorney’s fees will be paid out of the (b)(3) Fund, authorizing one-third of the \$3.975 million fund in potential fees. In contrast, EWS contributes \$275,000 to the (b)(2) Fund, to cover attorney fees and administration costs allocated to the (b)(2) Class. As set forth above, Class Counsel’s lodestar was \$370,000. It would be fair to allocate one-half the lodestar – or \$185,000 – to the (b)(2) Class, to be paid out of the (b)(2) Fund. The remaining portion of counsel’s requested fee -- \$740,000 – can be allocated to the (b)(3) Class and paid out of the \$3.975 million (b)(3) Settlement Fund. The

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<sup>3</sup> While the Parties were not obligated to allocate the attorney fees in the Settlement Agreement, doing so provided an additional measure of fairness and transparency, in that EWS is covering attorney fees for work performed for two different classes of consumers. We are aware of no authority requiring settling Parties to allocate attorney fees among certified classes, much less any requirement that a Court scrutinize the same. *Cf. Gunter*, 223 F.3d at 195 (“great deal of deference to a district court’s decision to set fees”).

resulting total is \$925,000, *i.e.*, \$185,000 *plus* \$740,000, which is the full attorney fee award requested herein.

**VI. A SERVICE AWARD OF \$7,500 SHOULD BE GRANTED TO NAMED PLAINTIFF SHABANI STEWART**

The outcome of this case could not have been achieved without the efforts of Named Plaintiff, Shabani Stewart. Here, Ms. Stewart pursued her claims on behalf of similarly situated consumers in the certified classes. She was actively engaged during the litigation process and provided valuable assistance to Class Counsel, including providing information, documents, numerous communications with counsel, reviewing discovery response, and review and execution of the Settlement Agreement. Posner Decl. ¶ 15. In so doing, Plaintiff was integral in all phases of this Litigation. She devoted time and effort to the Lawsuit, and as a result of her efforts a substantial benefit was conferred to the certified classes.

Accordingly, and in recognition of the substantial benefit she conferred on the Settlement Class and her efforts generally, a Service Award of \$7,500 to Plaintiff is entirely appropriate, as set forth in the Settlement Agreement. SA §§ 5.9.2; 6.9.2. The Agreement allocates the requested service award evenly at \$3,750 for each of the certified classes. *Id.* This request is in-line with similar enhancement awards in analogous actions. *See, e.g., Smith v. First Union Mortgage Corp.*, No. 98-cv-5360, 1999 U.S. Dist. LEXIS 18299 (E.D. Pa. Dec. 1, 1999) (approving incentive award of \$7,500 to two class representatives in an FDCPA class Action settlement); *Bonett*, 2003 U.S. Dist. LEXIS 9757, \*23 (award of \$4,000 to class representative to compensate her for “her service to the Class”); *see also Barel v. Bank of Am.*, 255 F.R.D. 393, 404 (E.D. Pa. 2009) (awarding \$10,000 to named plaintiff in FCRA class litigation).

## VII. CONCLUSION

The Court should award class counsel attorney fees in the amount of \$925,000, allocated as \$740,000 to the (b)(3) Fund and \$185,000 to the (b)(2) Fund, and should award an individual service award to Named Plaintiff Shabani Stewart in the amount of \$7,500, allocated equally between the (b)(2) Fund and (b)(3) Fund.

Dated: April 13, 2020

**POSNER LAW PLLC**

*s/ Gabriel Posner, Esq.*

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*Counsel for Plaintiff and*

*Settlement Class Counsel*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SHABANI STEWART, for herself and all  
others similarly situated,

Plaintiffs,

v.

EARLY WARNING SERVICES, LLC

Defendant.

Civil Case No. 2:18-cv-03277-CCC-SCM

**DECLARATION OF GABRIEL  
POSNER, ESQ. IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
ATTORNEY FEES AND AN  
INDIVIDUAL SERVICE AWARD**

Gabriel Posner, Esq., of full age, declares under penalty of perjury as follows:

1. I am an attorney authorized to practice before this Court, and principal of Posner Law PLLC with offices at 270 Madison Avenue, suite 1203, New York, New York 10016.

2. I represent Plaintiff, Shabani Stewart individually and on behalf of all others similarly situated in this case. I have personal knowledge of the facts stated herein. I make this declaration in support of Plaintiff's Motion for Attorney Fees in the amount of \$925,000, and for an Individual Service Award to Named Plaintiff of \$7,500.

3. The awards requested herein are provided for in the Settlement Agreement ("SA") reached in this case with Defendant Early Warning Services, LLC ("EWS"), previously filed with the Court [*See*, ECF 39-4].

a. Pursuant to SA § 5.1, EWS shall create, and shall fully fund, a (b)(3) Settlement Fund in the amount of \$3.975 million. Pursuant to SA § 5.9.1, Class Counsel may request up to one-third the (b)(3) Settlement Fund (or \$1.3 million) in attorney fees, for work performed on behalf of the (b)(3) Class. Pursuant to SA

§5.9.2, named Plaintiff may seek a service award of up to \$3,750 for services performed on behalf of the (b)(3) Class.

- b. Pursuant to SA § 6.1, EWS shall create, and shall fully fund, a (b)(2) Settlement Fund in the amount of \$275,000. Pursuant to SA § 6.9.1, Class Counsel may request attorney fees allocated to the (b)(2) Class, not to exceed the (b)(2) Settlement Fund (with allowance for administration costs). Pursuant to SA §6.9.2, named Plaintiff may seek a service award of up to \$3,750 for services performed on behalf of the (b)(2) Class.

4. On the instant motion, request is respectfully made for an award of \$925,000 in attorneys' fees and costs to class counsel. This amount well within the limits set forth in the Settlement Agreement, as set forth above. The requested fee award is approximately 21% of the total settlement valuation.

5. Because the Settlement Agreement allocates attorney fees between the two classes, Plaintiff requests that the Court allocate attorney's fees as follows:

- a. \$740,000 in fees allocated to the (b)(3) Settlement Fund; plus
- b. \$185,000 allocated to the (b)(2) Settlement Fund.

The total fee award, accordingly, would be \$925,000.

6. The Settlement Agreement calls for EWS to change its practices and procedures to provide additional disclosure to consumers. Broadly, subject to the terms set forth more fully in the Settlement Agreement:

- a. Benefiting consumers generally, and (b)(3) Class Members in particular, EWS will disclose to consumers, upon their request, any record in the consumers' file that the consumer has a record of committing "fraud" in connection with a bank

account. I believe this is an extremely significant benefit under the Settlement Agreement, and meaningfully advances the letter and purposes of the FCRA. This process change will provide consumers information that will likely be helpful in disputing EWS's records that they committed "Fraud."

- b. Benefiting consumers generally, and (b)(2) Class Members in particular, EWS will cease its practice of providing consumers "Summary File" disclosures, and instead, provide to consumers who request the contents of their file, a complete file disclosure upon the first request. I believe this process change will assist consumers in understanding the information in their EWS file, and advances the purposes of the FCRA.

7. There are approximately 53,000 members of the (b)(3) Class, and 175,000 members of the (b)(2) Class. The classes overlap, in that most members of the (b)(3) Class are also members of the (b)(2) Class.

8. I have devoted approximately 644 hours of my time to this matter. I have handled all aspects of this case, including collecting background information and documents prior to filing the action; legal research on a range of issues under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* and Fed. R. Civ. P. 23; drafting the pleadings; drafting discovery requests; responding to discovery and collecting documents for production; reviewing documents produced by EWS; engaging in discovery disputes with EWS; appearing in Court; engaging in non-party discovery; preparing for and attending mediation; negotiation and drafting of the Settlement Agreement and notice plan; Plaintiff's motion for preliminary class action settlement approval; and the instant motion. I have maintained time records for this case which can be provided to the Court upon request.

9. I began discussions with named Plaintiff, Shabani Stewart, in late 2015, regarding her file and background reports maintained by EWS. I worked with Ms. Stewart to request and review relevant information from EWS, and to collect information from other available sources, and to understand how the information was being used in background reporting on her by and among consumer banks.

10. In 2018, I filed this action on behalf of Ms. Stewart, and a putative class of similarly situated consumers, alleging claims against EWS under the FCRA.

11. For purposes of calculating my lodestar, insofar as relevant to the instant motion, I request the Court use a billable rate of \$575 per hour.

12. I am experienced in handling complex litigation, and I have been plaintiff's counsel in numerous consumer related cases, including cases involving the Fair Credit Reporting Act. I was appointed class counsel, in a contested motion for class certification, in an action alleging violations of the FCRA for plaintiff and on behalf of a class of approximately 15,000 consumers. *See, Rodriguez v. AllianceOne Receivables Management*, W.D. Wa. Index 2:15-cv-01224(RAJ). I have detailed experience litigating EWS's disclosures under the FCRA. I was plaintiff's counsel in *Muir v. Early Warning Services, LLC*, D.N.J. 2:16-cv-00521(SRC)(CLW), which, like the present case, pertained to EWS's disclosures to consumers under the FCRA. *Muir* settled on a class-wide basis, in the context of which I was class counsel.

13. I have been licensed to practice law in New York since 2005 (except for a period between 2009 and 2013, when I did not maintain an active New York license because I resided overseas.) I have been licensed to practice law in New Jersey since 2016. In the five years following my graduation from law school, I was an associate at the law firm Cahill, Gordon & Reindel LLP, in New York, New York, where I worked almost exclusively on complex



litigation. A portion of my work at Cahill Gordon involved class action defense work, including, in at least one matter, where Plaintiffs claimed in excess of \$1 billion in damages.

14. I spent approximately \$4,775 litigating this case, for which I seek reimbursement as part of, and not in addition to, the fees requested in the instant motion. These costs reflect filing fees and mediation costs.

15. Finally, in support of a service award to Named Plaintiff as requested above, I attest Ms. Stewart personally participated in the litigation of this case, and worked closely with me to advance class claims. Ms. Stewart personally met with me in my office and engaged in numerous substantive communications concerning this matter. Ms. Stewart collected relevant documents for this case and provided them to me to evaluate and use to pursue the class claims. Ms. Stewart collected relevant documents and information to produce to EWS in response to EWS's requests for discovery. I worked with Ms. Stewart to prepare, review, and confirm the accuracy of Plaintiff's Responses to Defendant's Interrogatories – Plaintiff's papers for this one discovery response were fourteen pages single-spaced, and called upon Ms. Stewart to provide a wide range of information in response to EWS's discovery demands.

*I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.*

Dated: April 13, 2020

*s/ Gabriel Posner*  
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