

BRIGITTE HEADEN,
Plaintiff,

v.

CONSERVICE, LLC
Defendant.

* IN THE CIRCUIT COURT FOR
* PRINCE GEORGE'S COUNTY
* Case No. CAL20-19314

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**MOTION FOR APPROVAL OF AN INCENTIVE AWARD TO
THE CLASS REPRESENTATIVE**

I. Introduction

Pursuant to ¶ 18(b)(3) of the Settlement Agreement in this case (Exhibit 1 to Doc. No. 41), Class Representative Brigitte Headen (“Class Representative” or “Ms. Headen”) respectfully requests that this Court approve an incentive award to her of \$15,000, to reward her for securing the \$2.5 million common fund which was established by Conservice, LLC (“Conservice”), for the benefit of Class members in this case as a result of Ms. Headen’s efforts as the Class Representative. 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. Headen. The relief provided for in the Settlement Agreement benefitting each Class Member, is an excellent result – Ms. Headen has recovered millions of dollars for tenants who were charged “service fees” by Conservice, even though Conservice argued that the fees were agreed to in writing. *See* Conservice’s Motion to Dismiss (Doc. No. 11) at 13 n.6.

The incentive award requested is modest in light of the size of the settlement fund, is a fraction of a percent of the amount she recovered for Settlement Class Members, and is

warranted considering that, unlike the absent Class members, the Class Representative actively cooperated with Class Counsel and expended substantial effort to see this case through to settlement. In particular, the Class Representative contacted Class Counsel about her experiences with Conservice and initiated the litigation resulting in the settlement here. *See* Exhibit 1 to Motion for Final Class Certification and Settlement Approval, Affidavit of Benjamin H. Carney (“Carney Aff.”) at ¶ 12. Ms. Headen conferred with counsel, lent her name and circumstances to the case, produced documents, and was prepared to testify at trial. *See id.* Moreover, she achieved this settlement not only for her own benefit, but for the benefit of other Class Members. An incentive award is therefore appropriate.

Settlement Class Members are all being notified of the amount of the incentive award requested. *See* Carney Aff. ¶ 21.

II. Courts Have Traditionally Awarded Incentive Payments Like the One Requested Here to Reward Class Representatives.

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.*

Similar decisions awarding incentive awards far greater than the one requested here are legion. As one court recently held, the \$15,000 incentive fee it approved was “reasonable” in light of the fact that “courts in the Fourth Circuit have approved incentive payments as high as \$25,000.” *Halcom v. Genworth Life Ins. Co.*, No. 3:21-CV-19, 2022 WL 2317435, at *10 (E.D. Va. June 28, 2022). *See also, e.g., FERNANDO AQUINO FLORES & RICARDO ISIDRO REYES, on behalf of themselves, FLSA Collective Plaintiffs & the Class, Plaintiffs, v. CGI INC., d/b/a BUS STOP DINER, et al., Defendants.*, No. 22-CV-350 (KHP), 2022 WL 13804077, at *11 (S.D.N.Y. Oct. 21, 2022) (awarding \$15,000 in incentive payments); *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-CV-815-PPS-MGG, 2020 WL 5627171, at *9 (N.D. Ind. Sept. 18, 2020) (awarding four \$15,000 incentive payments); *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 716 (7th Cir. 2015) (approving \$15,000 incentive award); *Jones v. I.Q. Data Int'l, Inc.*, No. 1:14-cv-00130-PJK-RHS, 2015 WL 5704016, at *2, 2015 U.S. Dist. LEXIS 137209, at *5 (D.N.M. 2015) (approving incentive award of \$20,000.00); *Willix v. Healthfirst, Inc.*, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (approving incentive payments of \$30,000, \$15,000, and \$7,500); *Ross v. U.S. Bank Nat. Ass'n*, No. C07-02951SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (awarding \$20,000.00 incentive payments for each of the four class representatives); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 768 (S.D. W. Va. 2009) (granting a \$15,000 incentive payment even where court had “no evidence of the class representatives' participation in th[e] case” and award was approved solely “to reward the class representatives ... for enabling the pursuit of th[e] matter on behalf of the class”); *Masters v. Wilhelmina Model Agency, Inc.*, 472 F.3d 423, 430 (2d Cir. 2007) (approving \$25,000 incentive awards); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 WL 474936, at *7, 2007 U.S. Dist. LEXIS 8476, at *16-17 (N.D. Cal. 2007) (awarding incentive payments of \$25,000.00); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (approving a \$50,000 incentive payment); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294,

299-300 (N.D. Cal. 1995) (awarding \$50,000 incentive payment); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240 (S.D. Ohio 1991) (awarding \$50,000 incentive payments); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000).

Ms. Headen's actions have resulted in a multi-million dollar cash recovery for the Settlement Class. Absent Ms. Headen's willingness to serve as Class Representative and stand up for the rights of other Class Members, this recovery would not be possible. She not only lent her name and circumstances to this case, but undertook substantial independent acts to advance this litigation, not only on her behalf but on behalf of other Class members. In light of these actions and the \$2.5 million she has helped to secure, an incentive fee of \$15,000 is appropriate and should be approved. This award will provide some compensation for the time and effort Ms. Headen expended in order to stand up for the more than one-hundred thousand Class members who are benefitting from the settlement in this case and will encourage consumers to stand up for the rights of themselves and others in class action litigation in the future.

III. Conclusion

For the reasons set forth above, Plaintiff respectfully requests that an incentive award of \$15,000 for Class Representative Brigitte Headen be approved.

Respectfully submitted,

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Attorneys for Plaintiff and the Class

A handwritten signature in blue ink, appearing to read "Ben Carney", written in a cursive style.

By:

Benjamin H. Carney

Certificate of Service

I hereby certify, this 1st day of November, 2022, that I served a copy of the foregoing document via the MDEC system on all persons entitled to service.

A handwritten signature in blue ink, appearing to read "Benjamin H. Carney", written in a cursive style.

Benjamin H. Carney