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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MAUREEN HARROLD, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MUFG UNION BANK, N.A.,

Defendant.

Case No. BC680214

(Assigned for All Purposes to the Honorable Yvette M. Palazuelos, Dept. 9)

DECLARATION OF RICHARD D. MCCUNE IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD

Date: July 25, 2024
Time: 10:00 a.m.

Complaint Filed: October 19, 2017

Amended Complaint Filed: July 29, 2020
Trial Date: None Set

DECLARATION OF RICHARD D. MCCUNE IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD

I, Richard D. McCune, declare as follows:

1. I am an attorney admitted to practice in the State of California and a partner of McCune Law Group, APC, attorneys for Plaintiff and the class members. I submit this Declaration in support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and Incentive Award. I have personal knowledge of the following, except where stated upon information and belief, and if sworn as a witness, I could and would competently testify thereto.

2. McCune Law Group is a twenty-eight attorney firm headquartered in Ontario, California with offices in Edwardsville, Illinois; Irvine, California; Redlands, California; Palm Desert, California; Phoenix, Arizona; and Newark, New Jersey. McCune Law Group represents plaintiffs in consumer fraud class actions, product liability and other complex class action litigations in California and nationwide. I obtained my J.D. from the University of Southern California in June of 1987 and became a member of the California Bar in December of 1987. I have more than thirty years of litigation and trial experience and am AV-rated. For at least the last decade, I have focused my practice on representing consumers in class action litigation. Prior to that, I represented plaintiffs in a variety of complex litigation matters, with particular emphasis in product liability actions.

3. I have been appointed class counsel in numerous state and federal class actions. A significant part of my practice since 2004 has been litigating the overdraft practices of financial institutions. In 2007, I was class counsel against Bank of America in an overdraft class action case that settled for $35 million. In 2010, I served as co-class counsel and co-trial counsel in a consumer fraud class action case against Wells Fargo Bank, N.A., on behalf of over one million customers who had been improperly assessed overdraft fees. That trial resulted in a $203 million bench trial verdict, and a permanent injunction issued forbidding Wells Fargo Bank, N.A. from continuing to misrepresent its overdraft practices. From 2009 to 2012, I was heavily involved in litigation against over 33 banks in an overdraft MDL in the Southern District of Florida (*In re: Checking Account Overdraft Litigation*, MDL No. 2036), that has generated over $1 billion in settlements. I was appointed class counsel in a $5 million settlement with Citibank, N.A. relating

to its overdraft practices. I was also appointed co-lead counsel in an overdraft MDL against TD Bank, N.A. (*In re: TD Bank, N.A., Debit Card Overdraft Litigation,* MDL No. 2613), that settled for $70 million. In addition, I am currently litigating several additional active cases against state and national financial institutions related to their overdraft practices.

4. My firm and I have been appointed class counsel in certified class actions in a number of other consumer fraud cases, including cases against Correct Craft, Gateway Computers, Kaiser Steel Retirees Benefit Trust, Bank of America, N.A., Hewlett-Packard, American Honda Motor Co., Mazda Motors of America, Inc., and JP Morgan Chase Bank, N.A. In 2011, I was class and trial class counsel in a consumer class action trial that resulted in a plaintiffs' verdict on behalf of a class of California Correct Craft, Inc. boat owners.

5. I have been appointed co-lead counsel in one MDL, served on one MDL executive committee, and was appointed as one of two settlement class counsel in a third MDL. Judge James V. Selna, U.S. District Court for the Central District of California, appointed me to the Plaintiffs' Personal Injury and Wrongful Death Committee in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation* (MDL No. 2151). Central District of California Judge George H. Wu appointed me to serve as settlement class counsel in *In re: Hyundai and Kia Fuel Economy Litigation* (MDL No. 2424). Further, I was appointed by Judge Bruce H. Henricks, U.S. District Court for the District of South Carolina, as co-lead counsel in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (MDL No. 2613).

6. I have been appointed as class counsel or co-lead counsel in contested overdraft litigation class certification proceedings in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (MDL No. 2613), United States District Court for the District of South Carolina, Greenville Division, Case No. 6:15-MN-02613; *Gutierrez, et al. v. Wells Fargo Bank,* United States District Court for the Northern District of California, Case No. C 07-05923 WHA; *Gunter v. United Federal Credit Union,* United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC; *Hernandez v. Point Loma Credit Union,* Superior Court of the State of California, County of San Diego, Case No. 37-2013-00053519-CU-BT-CTL; and *Smith v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513-JMS-WRP.

7. I have also been appointed as settlement class counsel or co-lead class counsel in the following overdraft cases: *Fernandez v. Altura Credit Union,* Riverside County Superior Court, Case No. RIC1610873; *Behrens v. Landmark Credit Union,* United States District Court for the Western District of Wisconsin, Case No. 17-cv-101-JDP; *Hernandez v. Logix Federal Credit Union,* Los Angeles County Superior Court, Case No. BC628495; *Bowens v. Mazuma Federal Credit Union,* United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP; *Santiago v. Meriwest Credit Union,* Sacramento County Superior Court, Case No. 34-2015-00183730; *Fry v. MidFlorida Credit Union,* Case No. 8:15-CV-2743; *Ketner v. State Employees Credit Union of Maryland, Inc.,* Case No. 1:15-cv-03594; *Ramirez v. Baxter Credit Union,* 3:16-cv-03765; *Lynch v. San Diego County Credit Union,* San Diego County Superior Court, Case No. 37-2015-00008551; *Towner v. 1st MidAmerica Credit Union,* Case No. 3:15-cv-1162; *Lane v. Campus Federal Credit Union,* Case No. 3:16-cv-00037; *Gray v. Los Angeles Federal Credit Union,* Los Angeles County Superior Court, Case No. BC625500; *Moralez v. Kern Schools Federal Credit Union,* Kern County Superior Court, Case No. BCV-15-100538; *Manwaring v. Golden I Credit Union,* Sacramento County Superior Court, Case No. 34-2013-00142667; *Casey v. Orange County Credit Union,* Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC; *Gunter v. United Federal Credit Union,* United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC, *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC586014; *Salls v. Digital Federal Credit Union*, United States District Court for the District of Massachusetts, Case No. 18-cv-11262-TSH; *Pingston-Poling v. Advia Credit Union*, United States District Court for the Western District of Michigan, Case No. 1:15-CV-1208; *Smith v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513-JMS-WRP; *Bettencourt v. Jeanne D'Arc Credit Union*, United States District Court for the District of Massachusetts, Case No. 17-cv-12548-NMG; *Walker v. People's United Bank*, United States District Court for the District of Connecticut, Case No. 3:17-cv-00304-AVC; *Coleman-Weathersbee v. Michigan State University Federal Credit Union*, United States District Court for the Eastern District of Michigan, Case No. 5:19-cv-11674-JEL-DRG; *Story, et al. v. SEFCU*, United States District Court for the Northern District of New York, No. 18-cv-00764-MAD-DJS; *Barker v. BayPort Credit Union*, United States District Court for the

Eastern District of Virginia, No. 20-cv-195; *Sinks v. San Mateo Credit Union,* Superior Court of the State of California, County of San Mateo, Case No. 20-CIV-01789; *Carter v. The City National Bank and Trust Company of Lawton, Oklahoma,* Case No. 5:21-CV-29-PRW.

8. The $5,000,000.00 recovery is in my opinion an excellent and favorable result given the complexity of the litigation. Based on Plaintiff's expert data analysis, the Settlement Class's most likely recoverable damages at trial would have been approximately $13.3 million. The Settlement will afford Plaintiff and the Settlement Class a recovery of approximately 37% of their most probable damages, without the risk of further uncertain and prolonged litigation. This is on par with other account fee class actions challenging APSN Fees. Thus, the Settlement will provide Settlement Class Members with substantial relief that is well within the range of reasonable recovery in this Circuit in light of the many continued litigation risks.

9. My firm, as well as the Kick Law Firm, APC, and Jeffrey D. Kaliel (now with KalielGold PLLC) while with his former law firm and co-counsel in this matter, Tycko and Zavareei, were primarily responsible for the development of the case, pre-suit investigation, and the retention of the class representative who was substantial and pro-active throughout this litigation. My firm and the Kick Law Firm also were primarily involved in the drafting of this motion, as well as the soon to be filed Motion for Final Approval.

10. The successful prosecution of this action over its nearly seven-year duration required the participation of highly skilled and dedicated attorneys with extensive experience in banking law and overdraft fee litigation. This case involved numerous complex legal issues, including banking law, contract law, and class certification issues. In addition, Class Counsel's motion challenging the enforceability of arbitration based on the *McGill* rule and "poison pill" provision was based on complex and continually evolving case law, with other courts deciding *McGill* was inapplicable based on similar contract language.

11. Although I believe the liability in this case is strong, there is always risk. For example, this case presented novel questions of fact and law from the outset because the APSN liability theory had not been extensively litigated or tried before it was filed. This case was filed before the Second Circuit issued its seminal opinion regarding this theory in *Roberts v. Capital One, N.A.* (2d Cir. 2017) 719 Fed.Appx. 33. Further, Class Counsel's success in obtaining dismissal of

the arbitration depended on the nuanced argument that *McGill v. Citibank, N.A.* (2017) 2 Cal. 5th 945 rendered the entire arbitration agreement unenforceable on account of the "poison pill" provision in the contract. This argument was untested at the appellate level when Plaintiff first briefed it. More broadly, Defendant's arbitration defense raised difficult questions of contractual interpretation and California law at several stages of the litigation. This is in addition to all of the expected complexities of a class action involving the intersection of financial regulation laws and contract law. There was also the uncertainty of whether Defendant would prevail on its argument that the contractual language authorized the assessment of APSN fees, on its Motion for Judgment on the Pleadings, and/or that its arbitration defenses would pose a potential bar to class certification.

12. Further, because these types of cases deal with banking law and contract law and are legally complex, it is likely litigation could be prolonged, requiring more time and expense with no guarantee of recovery. The cost of attorneys' fees to both sides would be substantial, even in the millions of dollars if the matter progressed to verdict and appeal. Both parties would also expend hundreds of thousands in additional costs on expert witnesses and other litigation requirements if the matter proceeds to trial.

13. McCune Law Group, APC, undertook this case on a contingent basis, with the understanding that the firm would not be compensated for its efforts unless the case was successful. To date, McCune Law Group has not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other fee generating matters.

14. Class Counsel has agreed not to apply for attorneys' fees of more than one-third of the Settlement. Here, the Settlement is comprised of $5,000,000.00. Accordingly, Class Counsel's fee request amounts to $1,666,500.00.

15. Attorneys' fees of 30%-33 1/3% are the norm or market rate awarded in similar overdraft cases nationwide. For example, in *In re TD Bank, N.A. Debit Card Overdraft Litig.* (D.S.C. Jan. 9, 2020) Case No. 6:15-MN-02613-BHH, the Court awarded Class Counsel a fee in the amount of $21 million based on a settlement value of $70 million ($43 million of which was monetary compensation for the six settlement classes at issue). The fee represented 30% of the $70 million total value of the settlement. In *Walker v. People's United Bank, N.A.*, Case No. 17-cv-304

(AVC), Dkt. No. 119 (D. Conn. June 29, 2020), the Court found the attorneys' fee request of $2,466,666 to be a reasonable percentage of the settlement (33-1/3%). In *Smith v. Bank of Hawaii*, Case No. 1:16-CV-00513 JMS-WRP, Dkt. No. 233 (D. Haw. Dec. 22, 2020), the Court found the requested attorneys' fees of $3,719,255 to be reasonable as a percentage of the Value of the Settlement (30%). And in *Barker v. Bayport Credit Union,* Case No. 20-cv-195, 2020 WL 13095246 (E.D. Va. Apr. 17, 2020), the Court found the requested attorney's fees of $1,056,066.05 to be a reasonable percentage of the settlement (33-1/3%).

16. For a detailed overview of fee awards in other overdraft litigation, *see* Declaration of Professor Brian Fitzpatrick in Support of Plaintiffs' and Class Counsel's Request for Service Awards, Attorneys' Fees and Expenses, and Class Action Administrative Expenses ("Fitzpatrick Decl."), submitted in *In Re: TD Bank, N.A. Debit Card Overdraft Litig.,* No. 6:15-MN-02613-BHH, Dkt. No. 223 (D.S.C. Nov. 13, 2019), attached hereto as **Exhibit 1.** The orders in these cases are attached hereto as **Exhibit 2**.

17. The McCune Law Group has spent a total of **91.2** hours to date on this litigation, totaling **$64,531.80** in fees. To date, I have worked **10.3** hours on this case, and my Adjusted Laffey rate is $1,057.00 per hour. My full biography and experience are set forth above.

18. In addition to my work, another attorney at my firm, Emily J. Kirk, has contributed substantial time to this case. Ms. Kirk received her B.S. degree from Southeast Missouri State University, graduating *summa cum laude*, and her law degree from Washington University School of Law in St. Louis in 2001. Ms. Kirk began her legal career serving as Counsel to a U.S. Senate Subcommittee in Washington, D.C., after which she joined SimmonsCooper LLC (now Simmons Hanly Conroy, LLC) in Alton, IL where she represented plaintiffs in complex business litigation and class action matters. Ms. Kirk also worked in the business litigation department of Thompson Coburn, LLP in St. Louis, MO before joining McCuneWright, LLP (now McCune Law Group) in 2016. She has over 15 years of experience leading complex litigation and class actions on behalf of plaintiffs and has been involved in litigating a large number of consumer class actions against financial institutions regarding their overdraft fee assessment programs. These cases include *Salls v. Digital Federal Credit Union*, United States District Court for the District of Massachusetts, Case No. 18-cv-11262-TSH; *Pingston-Poling v. Advia Credit Union*, United States District Court

for the Western District of Michigan, Case No. 1:15-CV-1208; *Smith v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513-JMS-WRP; *Bettencourt v. Jeanne D'Arc Credit Union*, United States District Court for the District of Massachusetts, Case No. 17-cv-12548-NMG; *Walker v. People's United Bank*, United States District Court for the District of Connecticut, Case No. 3:17-cv-00304-AVC; *Coleman-Weathersbee v. Michigan State University Federal Credit Union*, United States District Court for the Eastern District of Michigan, Case No. 5:19-cv-11674-JEL-DRG; *Story, et al. v. SEFCU*, United States District Court for the Northern District of New York, No. 18-cv-00764-MAD-DJS; *Barker v. BayPort Credit Union*, United States District Court for the Eastern District of Virginia, Case No. 2:20-cv-195-RCY-LRL (E.D. Va. 2021); *Sinks v. San Mateo Credit Union,* Superior Court of the State of California, County of San Mateo, Case No. 20-CIV-01789; *Carter v. The City National Bank and Trust Company of Lawton, Oklahoma,* Case No. 5:21-CV-29-PRW; as well as other overdraft cases that are still in active litigation. To date, Ms. Kirk has worked **19.5** hours on this case, and her Adjusted Laffey rate is $1,057.00 per hour.

19. Another attorney who worked on this case is Valerie Savran. Ms. Savran received her undergraduate degree in 2015 from the University of Southern California and was a 2020 Pepperdine University Caruso School of Law graduate. Prior to joining McCune Law Group, she worked in a civil litigation firm in downtown Los Angeles representing low-income clients against landlords in matters of housing negligence. She later worked with two plaintiff-side employment law firms in West Los Angeles where she brought legal actions on behalf of those wronged by their employers. Since joining McCune Law Group, she has focused her practice on financial services and class actions. To date, Ms. Savran worked **61.4** hours on this case, and her Adjusted Laffey rate is $538.00 per hour.

20. The following is the summary listing of each employee for whom McCune Law Group is seeking compensation for legal services in connection with this litigation, the hours each individual worked on the case, and the lodestar based on the timekeepers' current hourly rate:

Timekeeper	Position	Hours	Rate	Lodestar
Richard McCune	Partner	10.3	$1,057.00	$10,887.10
Emily Kirk	Financial Services	19.5	$1,057.00	$20,611.50

	Practice Group Leader, Partner			
Valerie Savran	Associate	61.4	$538.00	$33,033.20
Total		**91.2**		**$64,531.80**

21. A more detailed breakdown of The McCune Law Group, APC's lodestar in this matter is as follows:

Category	Richard D. McCune/Attorney Hours	Emily J. Kirk/Attorney Hours	Valerie Savran/Attorney Hours	Total Hours
Finding Class Representative *Includes developing info to seek class rep, interviewing potential class reps; signing class rep, and review and assessment of class rep's specific information, etc.*	5.0			
Pleadings *Includes research, drafting, filing, etc.*	2.0			
Settlement *Includes drafting agreement, discussions between counsel related to settlement, tasks assigned by Court related to settlement, etc.*	1.0			
Fee Petition Preparation	2.3	19.5	61.4	
TOTAL	**10.3**	**19.5**	**61.4**	**91.2**

22. This does not include additional hours that I expect MLG will spend on the Final

Approval Motion, which could amount to approximately 20 additional hours, as well as additional hours spent through filing the present Motion. Should the Court require submission of MLG's detailed time records documenting the time that it has spent on this case, we are prepared to submit them.

23. Class Counsel's lodestar based on reasonable hours worked at the prevailing market rates amounts to **$64,531.80.** Pursuant to the fee sharing arrangement among Class Counsel, The McCune Law Group, APC is to receive one half of the agreed 25% of the amount to the firms of McCune Law Group and The Kick Law Firm, APC, or their relative lodestar, whichever is greater. Therefore, the firm would receive half of the 25% of $416,625, meaning $208,312.50, assuming the full fee award is granted. Accordingly, the lodestar multiplier here is around 3.2, which is well within the range of approval in this Circuit. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255) (multiplier between 1 and 4 is presumptively reasonable).

24. Class Counsel also seeks reimbursement of the reasonable expenses incurred in the prosecution of this action. The following is a breakdown of the expenses Class Counsel incurred to date, and for which they seek reimbursement in this matter:

Type	Amount
Mediation Related Expenses	$997.00
Total	**$997.00**

25. The foregoing expenses were incurred solely in connection with this litigation and are reflected in Class Counsel's books and records as maintained in the ordinary course of business. The claimed expenses were incurred to retain the services of a preeminent mediator who assisted the parties successfully settling the case. Through May 10, 2024, those expenses for MLG have amounted to **$997.00.** Class Counsel has agreed to cap costs at $60,458.10. (MPA Order). Because the costs and expenses are small relative to the common fund amount, and are facially reasonable and necessary, the Court should award the requested $60,458.10 in costs and expenses. Moreover, if final costs are lower than $60,458.10, any remaining funds will remain in the settlement fund for distribution to the Class Members.

26. The above expense numbers do not include significant internal and other costs that Class Counsel have incurred, but for which Class Counsel do not seek reimbursement, including costs for in-house copying, scanning and printing, telephone expenses and legal research program

subscription expenses.

27. In my opinion, the proposed class representative, Maureen Harrold, was critical to the success of this case. My firm along with the Kick Law Firm, APC, made the initial contact with Ms. Harrold to request information and review documents and investigate claims before the case was filed, and she was highly responsive and helpful throughout that process. Ms. Harrold provided essential information for the prosecution of this action, made herself available for multiple phone calls with Class Counsel at all stages of the litigation, reviewed the complaint and first amended complaint before each was filed, gathered and provided pertinent documents, and participated in discussions with Class Counsel regarding the settlement and reviewed and approved the settlement documents. She spent approximately 75 hours helping Class Counsel prosecute this case over the course of six years with no guarantee of any success or recovery. At no time did Plaintiff ever have a guarantee of any personal benefit as a result of this case. In addition, even if the success of the lawsuit could have been assumed, Plaintiff stood to recover only the amounts of her improperly assessed overdraft fees, which are minimal when considered against the time and effort Plaintiff devoted to the action on behalf of the class. A full recitation of Ms. Harrold's important, pro-active, and substantial role in this case is documented in her declaration filed concurrently with this motion.

28. I am informed by the Settlement Administrator, Kroll, that to date, there have been no objections to the Settlement or attorneys' fee request and no class members have filed requests to be excluded.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 3rd day of May 2024, at Irvine, California.

/s/ *Richard D. McCune*
Richard D. McCune

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CASE NO. 6:15-MN-02613-BHH
ALL CASES

IN RE: TD BANK, N.A. DEBIT CARD OVERDRAFT FEE LITIGATION

MDL No. 2613

DECLARATION OF BRIAN T. FITZPATRICK IN SUPPORT OF PLAINTIFFS' AND CLASS COUNSEL'S REQUEST FOR SERVICE AWARDS, ATTORNEYS' FEES AND EXPENSES, AND CLASS ACTION ADMINISTRATION EXPENSES

1. I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1.

2. My teaching and research have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses at Vanderbilt. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the University of Arizona Law Review, and the NYU Journal of Law & Business. My work has been cited by numerous courts, scholars, and popular media outlets, such as the New York Times, USA Today, and the Wall Street Journal. I am also frequently invited to speak at

symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017, and 2019, and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "Empirical Study"). This article is still the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id*. at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study: over this two-year period, I found 688 settlements. *See id*. at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts, scholars, and testifying experts.[1]

[1] *See, e.g.*, *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *James v. China Grill Mgmt., Inc.*, 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *2 (S.D.N.Y.

4. In order to assist the court with the fee award in this case, class counsel asked me to conduct a similar empirical study focused on class action cases against banks for illegal overdraft practices. To conduct this study, I followed a methodology like the one I used in my article described above. First, I started with a list of overdraft cases that I was already aware of from previous work as an expert in such cases. Second, I supplemented this list with overdraft cases known to class counsel. Third, my research assistant and I supplemented these lists with broad searches of 1) federal dockets on BloombergLaw (using the search "final approval" & ("overdraft fee" or "overdraft fees")); 2) trial court orders on Westlaw (((grant! /s final /s approval) ("overdraft fee" or "overdraft fees")) & TI(Bank "Credit Union")); 3) Google

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Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig*., 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litigation*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litigation*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

("overdraft" & "class action" & ("bank" or "credit union") and "approved"); and 4) topclassactions.com ("overdraft" "settlement" "final approval"). After examining all the "hits" from these searches, I generated a list of 69 fee awards in overdraft cases in both state and federal court since August 2010. I could not locate the court orders confirming the fee awards in two cases[2] and three of the awards were based on the "lodestar" method.[3] Because almost all the courts used the percentage method and the two methods are so different they are usually analyzed separately, *see* Fitzpatrick, *Empirical Study*, *supra*, at 832-39, my focus in this declaration will be on the 64 fee awards where I could locate the court orders and the court did not use the lodestar method.

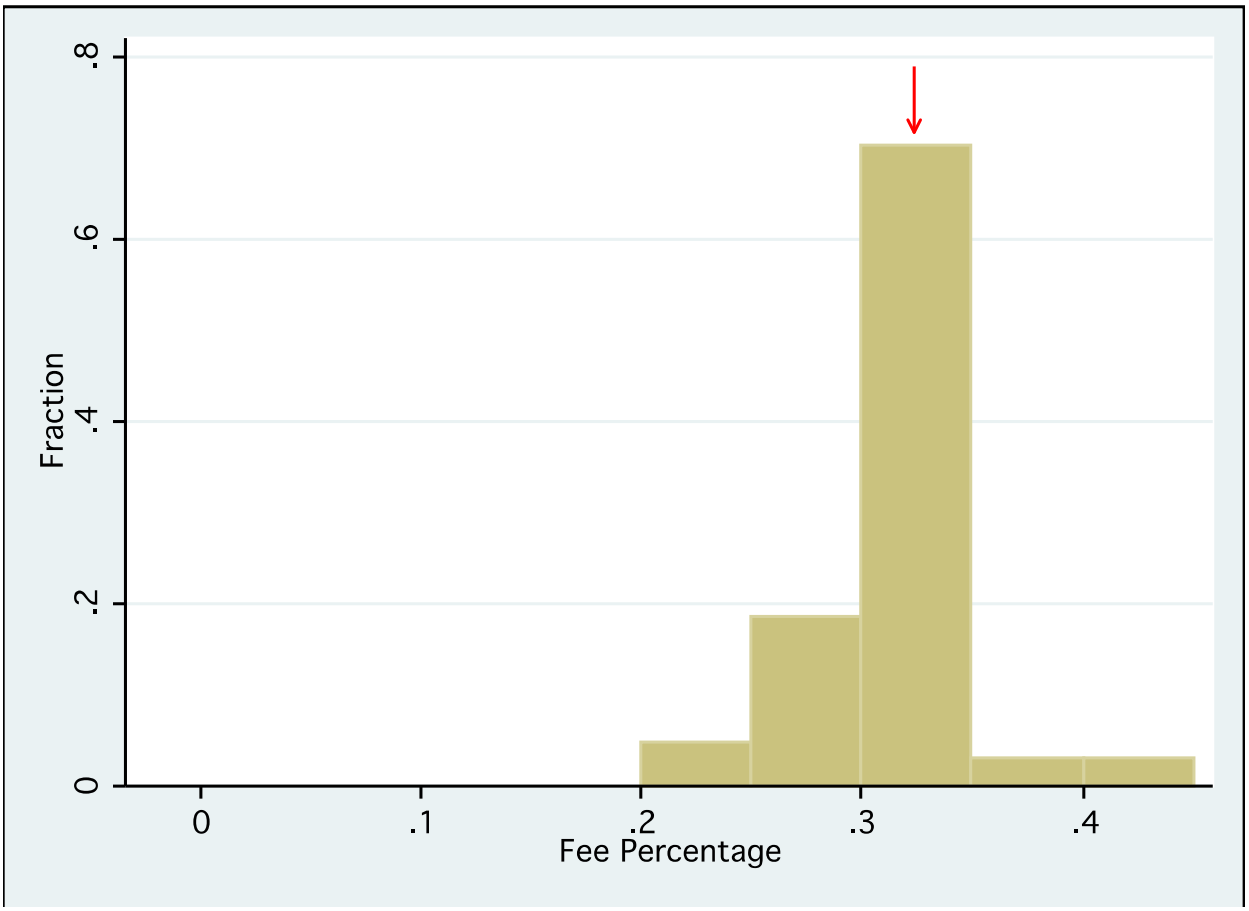
5. Table 1 appended to this declaration lists information about each of these 64 fee awards. The average fee was 30.5% with a standard deviation of 3.9%. The median was 30%, as was the mode (the most common fee percentage), with 19 awards equal to 30%.

6. In order to visualize this data, in Figure 1, below, I graph the distribution of fee awards in the 64 cases. The Figure shows what fraction of settlements (y-axis) fall into each five-point fee percentage range (x-axis). The bar that the 30% fee request in this case falls into—30% (inclusive) to 35%—is depicted with a red arrow. As the Figure shows, this is *by far* the most populous range, with *three fourths* of all settlements falling within this range.

[2] These two cases are *Casey v. Orange County Credit Union*, No. 30-2013-00658493 (Orange Cty Sup. Ct. (CA), May 5, 2015) and *Gregory v. Cent. Pacific Bank*, No. 11-1-0457-03 (Honolulu Cty Cir. Ct. (HI), Oct. 27, 2011).

[3] The three lodestar awards were in *Gunter v. United Federal Credit Union*, No. 15-00483 (D. Nev., June 4, 2019); *Hernandez v. Point Loma Credit Union*, No. 37-2013-00053519 (S.D. County Sup. Ct. (CA), Sep. 7, 2017); *Gutierrez v. Wells Fargo Bank*, No. 07-05923 (N.D. Cal., Aug. 1, 2010).

Figure 1: Overdraft Fee Awards in Federal and State Court since 2010



7. Another way to visualize the data is to plot each fee award as its own data point. In Figures 2 and 3, below, I do this, first plotting each fee award against the natural log of the size of the settlement in which the fee was awarded (I use the log transformation because the wide disparity in settlement amounts can otherwise obscure relationships between variables, *see* Fitzpatrick, *Empirical Study*, at 838), and second plotting each fee award against the date on which the award was entered. In each case, a red dot depicts the fee request here.

Figure 2: Overdraft Fee Awards in Federal and State Court since 2010 versus Settlement Size

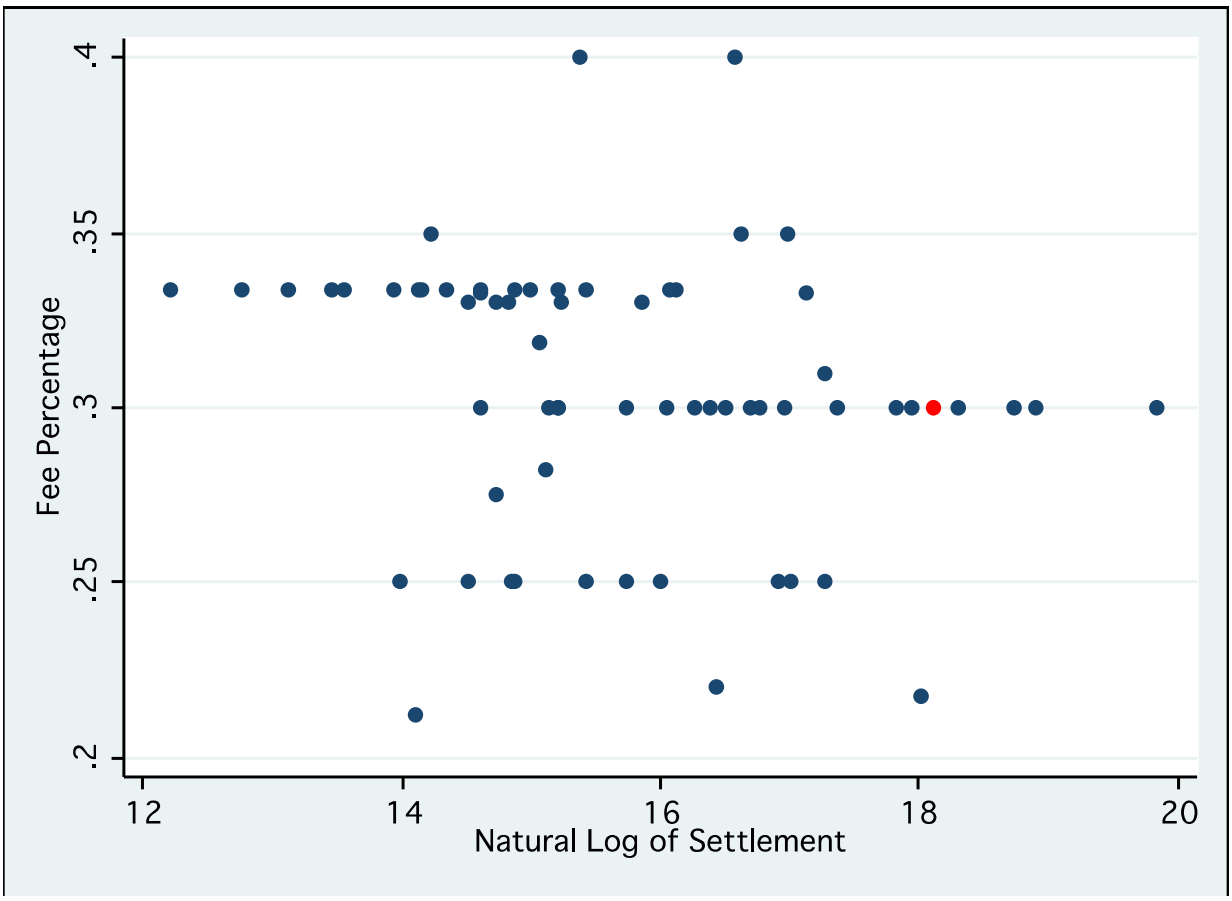
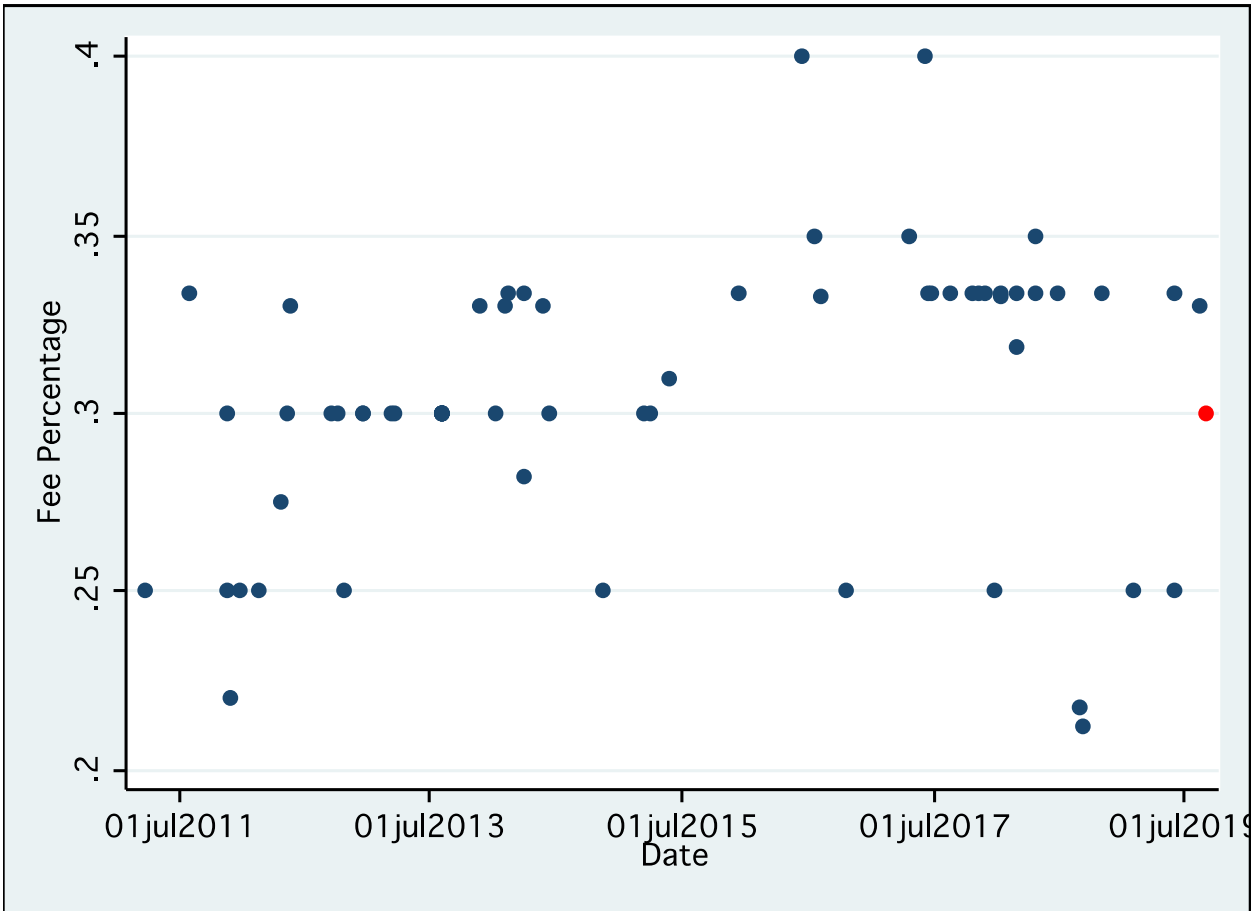


Figure 3: Overdraft Fee Awards in Federal and State Court since 2010 versus Date



8. Empirical scholars have often found that settlement size has a negative inverse effect on fee awards. *See* Fitzpatrick, *Empirical Study*, *supra*, at 837-38. In the 64 cases in the overdraft data, however, there is *no* statistically significant relationship between fee award and settlement size (p = .106). Figure 2 shows this graphically: fee awards do not appear to vary as settlement sizes increase.

9. Although, of course, every case has its own unique facts and circumstances, in my opinion, the data shows that a fee award equal to 30% in an overdraft case would be well within the mainstream of fee awards.

10. It should also be noted that a 30% fee award would be lower than the contingent fees usually agreed to in the market for individual litigation. It is well known that standard

contingency-fee percentages in individual litigation are *at least* 33%. *See, e.g.*, Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998) (reporting the results of a survey of Wisconsin lawyers, which found that "[o]f the cases with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for 92% of those cases"). Although the Kritzer study is based largely on unsophisticated clients, studies of sophisticated clients show much the same thing. The best of these studies comes from patent litigation. *See* David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335 (2012). Professor Schwartz reports that, "[o]f the agreements using a flat fee reviewed for this Article, the mean rate was 38.6% of the recovery" and, "[o]f the agreements reviewed for this Article that used graduated rates, the average percentage upon filing was 28% and the average through appeal was 40.2%." *Id*. at 360.

11. My compensation for this declaration was a flat fee in no way contingent on the success of class counsel's fee petition.

Executed on this 13th day of November, 2019, at New York, NY.

By: */s/ Brian T. Fitzpatrick*
Brian T. Fitzpatrick

Table 1: Overdraft Fee Awards in Federal and State Court since 2010

Case Name	Docket Number	Court	Final approval	Settlement Amount	Fee %	Notes
Robinson v. First Hawaiian Bank	17-1-0167-01	Hawaii Circuit Court	8/8/19	$4,125,000.00	33.00%	
Sewell v. Wescom Credit Union	BC586014	Los Angeles County Superior Court (CA)	5/31/19	$3,243,365.00	33.33%	1
Lloyd v. Navy Federal Credit Union	17-01280	S.D.Cal.	5/28/19	$24,500,000.00	25.00%	
Pantelyat v. Bank of America, N.A.	16-08964	S.D.N.Y.	1/31/19	$22,000,000.00	25.00%	
Bowens v. Mazuma Federal Credit Union	15-00758	W.D. Mo.	11/5/18	$1,360,000.00	33.33%	
Behrens v. Landmark Credit Union	17-00101	W.D. Wisc.	9/11/18	$1,324,562.02	21.2%	1, 2, 3
Farrell v. Bank of America, N.A.	16-00492	S.D.Cal.	8/31/18	$66,600,000.00	21.77%	1
Wodja v. Washington State Employees Credit Union	16-2-12148-4	Pierce County Superior Court (WA)	6/22/18	$2,900,000.00	33.33%	
Fernandez v. Altura Credit Union	RIC1610873	Riverside County Superior Court (CA)	4/23/18	$1,390,000.00	33.33%	
Morton v. GreenBank	11-135-IV	Davidson County Chancery Court (TN)	4/18/18	$1,500,000.00	35.00%	
Fry v. Midflorida Credit Union	15-02743	M.D. Fl.	2/23/18	$3,525,000.00	31.90%	2
Santiago v. Meriwest Credit Union	34-2015-00183730	Sacramento County Superior Court (CA)	2/22/18	$697,000	33.33%	
Ketner v. State Employees Credit Union of Maryland	15-03594	D. Md.	1/11/18	$1,700,000.00	33.33%	

Glaske v. Independent Bank Corporation	9983	Wayne County Circuit Court (MI)	1/11/18	$2,215,000.00	33.33%	
Ramirez v. Baxter Credit Union	16-03765	N.D. Ca.	12/22/17	$1,175,069.00	25.00%	1
Lynch v. San Diego County Credit Union	37-2015-00008551	San Diego County Superior Court (CA)	11/22/17	$2,200,000.00	33.33%	
Towner v. 1st Midamerica Credit Union	15-01162	S.D. Ill.	11/9/17	$500,000.00	33.33%	
Hernandez v. Logix Federal Credit Union	BC628495	Los Angeles County Superior Court (CA)	10/20/17	$1,123,118.00	33.33%	1
Lane v. Campus Federal Credit Union	16-00037	M.D. La.	8/21/17	$200,000.00	33.33%	
Gray v. Los Angeles Federal Credit Union	BC625500	Los Angeles County Superior Court (CA)	6/26/17	$350,000.00	33.33%	
Moralez v. Kern Schools Federal Credit Union	15-100538	Kern County Superior Court (CA)	6/13/17	$775,000.00	33.33%	
Jacobs v. Huntington Bancshares Incorporated.	11-00090	Lake County Court of Common Pleas (OH)	6/2/17	$15,975,000.00	40.00%	1
Hawkins v. First Tennessee Bank, N.A.	CT-004085-11	Shelby County Circuit Court (TN)	4/20/17	$16,750,000.00	35.00%	
In re: HSBC Bank USA, N.A.	650562/11	New York Supreme Court	10/17/16	$32,000,000.00	25.00%	
Bodnar v. Bank of America	14-03224	E.D. Pa.	8/4/16	$27,500,000.00	33.33%	
Swift v. BancorpSouth Bank	10-00090	N.D.Fla.	7/15/16	$24,000,000.00	35.00%	
Kelly v. Old National Bank	82C01-1012	Vanderburgh Circuit Court (IN)	6/13/16	$4,750,000.00	40.00%	
Manwaring v. Golden 1 Credit Union	34-2013-00142667	Sacramento County Superior Court (CA)	12/9/15	$5,000,000.00	33.33%	
Steen v. Capital	09-02036	S.D.Fla.	5/22/15	$31,767,200.00	31.00%	

One						
Childs v. Synovus Bank	09-02036	S.D.Fla.	4/2/15	$3,750,000.00	30.00%	
Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank	09-02036	S.D.Fla.	3/13/15	$4,000,000.00	30.00%	
Anrendas v. Citibank Inc.	11-06462	N.D. Ca.	11/14/14	$5,000,000.00	25.00%	
Simmons v. Comerica Bank	09-02036	S.D.Fla.	6/10/14	$14,580,000.00	30.00%	
Lunsford v. Woodforest National Bank	12-00103	N.D. Ga.	5/19/14	$7,750,000.00	33.00%	
Mello v. Susquehanna Bank	09-02036	S.D.Fla.	4/1/14	$3,680,000.00	28.26%	
Jenkins v. Trustmark National Bank	12-00380	S.D. Miss.	3/25/14	$4,000,000.00	33.33%	
Barlow v. Zions First National Bank	11-00929	D. Utah	2/14/14	$10,000,000.00	33.33%	
Simpson v. Citizens Bank	12-10267	E.D. Mi.	1/31/14	$2,000,000.00	33.00%	
Waters v. U.S. Bank, N.A.	09-02036	S.D.Fla.	1/6/14	$55,000,000.00	30.00%	
Johnson v. Community Bank, N.A.	12-01405	M.D. Pa.	11/25/13	$2,500,000.00	33.00%	
Anderson v. Compass Bank	09-02036	S.D.Fla.	8/7/13	$11,500,000.00	30.00%	
Blahut v. Harris Bank, N.A.	09-02036	S.D.Fla.	8/5/13	$9,400,000.00	30.00%	
Casayuran v. PNC Bank, N.A.	09-02036	S.D.Fla.	8/5/13	$90,000,000.00	30.00%	
Harris v. Associated Bank, N.A.	09-02036	S.D.Fla.	8/2/13	$13,000,000.00	30.00%	
Wolfgeher v. Commerce Bank, N.A.	09-02036	S.D.Fla.	8/2/13	$23,200,000.00	30.00%	2
McKinley v. Great Western Bank	09-02036	S.D.Fla.	8/2/13	$2,200,000.00	30.00%	
Eno v. M&I Marshall & Ilsley Bank	09-02036	S.D.Fla.	8/2/13	$4,000,000.00	30.00%	
Mosser v. TD	09-02036	S.D.Fla.	3/18/13	$62,000,000.00	30.00%	
Duval v. Citizens	09-02036	S.D.Fla.	3/12/13	$137,500,000.00	30.00%	

Lopez v. JPMorgan Chase Bank, N.A.	09-02036	S.D.Fla.	12/19/12	$162,000,000.00	30.00%	2
Orallo v. Bank of the West	09-02036	S.D.Fla.	12/18/12	$18,000,000.00	30.00%	
LaCour v. Whitney Bank	11-01896	M.D. Fl.	10/23/12	$6,800,000.00	25.00%	
Larsen v. Union	09-02036	S.D.Fla.	10/4/12	$35,000,000.00	30.00%	
Case v. Bank of OK	09-02036	S.D.Fla.	9/13/12	$19,000,000.00	30.00%	
Molina v. Intrust Bank	10-3686	Sedgewick County Dist. Ct. (KS)	5/21/12	$2,759,641.00	33.33%	
Casto v. City National Bank	10-1089	Cir. Ct. Kanawha County (WV)	5/10/12	$6,866,000.00	30.00%	4
Sachar v. IBERIABANK	09-02036	S.D.Fla.	4/26/12	$2,500,000.00	27.50%	
Tualava v. Bank of Hawaii	11-1-0337-02	Honolulu County Circuit Court (HI)	2/14/12	$9,000,000.00	25.00%	
Hawthorne v. Umpqua Bank	11-06700	N.D.Ca.	12/29/11	$2,900,000.00	25.00%	
Trombley v. National City Bank	10-00232	D. D.C.	12/1/11	$13,800,000.00	22.00%	
Tornes v. Bank of America, N.A.	09-02036	S.D.Fla.	11/22/11	$410,000,000.00	30.00%	
Trevino v. Westamerica	1003690	Marin County (CA)	11/16/11	$2,000,000.00	25.00%	
Schulte v. Fifth Third Bank	09-06655	N.D. Ill.	7/29/11	$9,500,000.00	33.33%	
Mathena v. Webster Bank NA	10-01448	D. Conn.	3/28/11	$2,800,000.00	25.00%	

Notes: some of the fee awards were inclusive of expenses and some were exclusive
1 = fee calculated from settlement amount that included debt forgiveness
2 = fee calculated from settlement amount that included future savings from changed practices
3 = fee calculated from settlement amount that excluded the fee award itself
4 = settlement amount included debt forgiveness but fee calculated from cash portion alone

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CASE NO. 6:15-MN-02613-BHH
ALL CASES

IN RE: TD BANK, N.A. DEBIT CARD OVERDRAFT FEE LITIGATION

MDL No. 2613

FINAL ORDER AND JUDGMENT

This matter is before the Court on Plaintiffs' motion for final approval of class action settlement (ECF No. 220) and Plaintiffs' application for attorneys' fees, reimbursement of expenses, and service awards (ECF No. 221). Having considered the written submissions and after oral argument at hearing on January 8, 2020, the Court hereby grants both motions for the reasons set forth below.[1]

BACKGROUND

On August 21, 2013, Plaintiffs James King, Jr. and Jan Kasmir filed *King v. TD Bank, N.A.*, Case No. 6:13-cv-02264-BHH ("*King*"), the first of several putative class action lawsuits against TD Bank alleging improper assessment and collection of overdraft fees. *King* also asserted claims concerning the overdraft practices of Carolina First Bank and Mercantile Bank, which TD Bank acquired in 2010. On February 24, 2014, *Padilla v. TD Bank, N.A.*, No. 2:14-cv-1276 ("*Padilla*"), was filed in the United States District Court for the Eastern District of Pennsylvania. Several other cases followed: *Hurel v. TD Bank, N.A.*, No. 1:14-cv-07621 ("*Hurel*") (District of New Jersey); *Koshgarian v. TD Bank, N.A.*,

[1] Unless specifically modified, all capitalized terms used herein shall have the meaning set forth in the Settlement Agreement and Release between the Parties. (ECF No. 217-1.)

No. 14-cv-10250 ("*Koshgarian*") (Southern District of New York); *Goodall v. TD Bank, N.A.*, No. 15-cv-00023 ("*Goodall*") (Middle District of Florida); *Klein v. TD Bank, N.A.*, No. 15-cv-00179 ("*Klein*") (District of New Jersey); *Ucciferri v. TD Bank, N.A.*, No. 15-cv-00424 ("*Ucciferri*") (District of New Jersey); *Austin v. TD Bank, N.A.*, No. 15-cv-00088 ("*Austin*") (District of Connecticut); *Robinson v. TD Bank, N.A.*, No. 15-cv-60469 ("*Robinson*") (Southern District of Florida); and *Robinson v. TD Bank, N.A.,* No. 15-cv-60476 ("*Robinson II*") (Southern District of Florida).

In April 2015, pursuant to an order of the Judicial Panel for Multi-District Litigation ("JPML"), the majority of the cases referenced above were transferred to this Court and joined with *King* under the MDL caption *In Re: TD Bank, N.A. Debit Card Overdraft Fee Litigation*, No. 6:15-mn-02613-BHH ("MDL 2613"). (ECF No. 6.) Eventually, all of the cases were made a part of MDL 2613. The following month, the Court appointed E. Adam Webb and Richard McCune as Plaintiffs' Co-Lead Counsel; Richard Golomb, Hassan Zavereei, Joseph Kohn, Francis Flynn, and John Hargrove as Plaintiffs' Executive Committee; and Mark Tanenbaum and William Hopkins as Plaintiffs' Liaison Counsel. (ECF No. 28.)

On June 19, 2015, Plaintiffs filed a Consolidated Amended Class Action Complaint alleging improper assessment and collection of overdraft fees and seeking monetary damages, restitution, and equitable relief. (ECF No. 37.) In August 2015, TD Bank filed a motion to dismiss the Consolidated Amended Class Action Complaint, which Plaintiffs opposed. The Court issued an order granting in part and denying in part TD Bank's motion to dismiss. (ECF No. 68.)

Following that ruling, the parties aggressively pursued discovery. TD Bank

ultimately produced over one million pages of documents, in addition to voluminous data files and spreadsheets. Dozens of depositions were taken, including of the named Plaintiffs and TD Bank executives, witnesses, and four experts. The depositions required national and international travel because the Plaintiffs are spread out across the United States and TD Bank's executives are located in the northeast and Canada.

After a grueling discovery schedule over nine months, Plaintiffs moved for class certification on September 22, 2016, which TD Bank opposed. In May 2017, the Court heard oral argument on class certification and subsequently issued an order granting in part and denying in part Plaintiffs' motion for class certification. (ECF No. 169.) The Court certified two classes: (1) the TD Sufficient Funds Class; and (2) the South Financial Class. The Court also certified seventeen (17) subclasses of the TD Sufficient Funds Class and nine subclasses of the South Financial Class.[2] (ECF No. 169.) The Court also eventually certified the Electronic Funds Transfer Act ("EFTA") Class, to the extent that class asserted a claim for statutory damages, following two revisions of the EFTA Class definition. (*See* ECF Nos. 174, 184.) Concerning the scope of the certified classes, the parties filed respective statements with the Court, with Plaintiffs contending that the TD Sufficient Funds Class includes business accounts. (*See* ECF Nos. 204-05.) The Court then issued an order limiting the certified classes in this case to consumer checking accounts only. (ECF No. 206.)

Two additional cases were transferred into MDL 2613. On May 31, 2017, the JMPL transferred *Dorsey v. TD Bank, N.A.*, No. 1:17-cv-00074 (D.N.J.), and approximately one

[2] TD Bank filed a petition for leave to appeal the Court's class certification order pursuant to Federal Rule of Civil Procedure 23(f). The United States Court of Appeals for the Fourth Circuit denied TD Bank's petition. (ECF No. 181.)

year later, it also transferred *Lawrence v. TD Bank, N.A.,* No. 1:17-cv-12583 (D.N.J.).

Dorsey, like the *Robinson II* case that was already included in MDL 2613, alleged that TD's sustained overdraft fee was usurious. TD filed a motion to dismiss *Dorsey* which the Court granted in February 2018. (ECF No. 171.) That order is on appeal to the Fourth Circuit, which has stayed the matter pending this Court's consideration of the settlement.

While *Lawrence* also deals with overdraft fees, it focuses exclusively on TD's practice of charging overdraft fees on ride-share transactions (Uber and Lyft) when a customer has not opted-in to TD's overdraft program (TD Debit Card Advance). Plaintiff Lawrence alleged that such fees violate the plain language of the account agreements and state law. TD moved to dismiss *Lawrence* on various grounds. The motion was denied as moot following the announcement of the settlement. *Lawrence*, No. 6:18-cv-00982-BHH, ECF No. 27.

Over the long course of this litigation, the parties participated in four separate mediations. Leading up to each of the mediations, voluminous data was provided by TD Bank which was analyzed by experts for both sides. This work was updated for subsequent mediations.

The first mediation occurred after the ruling on the motion to dismiss but prior to class certification, on May 10, 2016, before Professor Eric Green of Resolutions LLC—an experienced mediator who is particularly knowledgeable regarding overdraft fee litigation—at his offices in Boston. The mediation was unsuccessful.

After all briefs were submitted on class certification, but prior to the Court's ruling, the parties participated in a two-day mediation with Magistrate Judge Mary Gordon Baker on March 8 and 9, 2017. The mediation adjourned without a resolution.

After class certification was granted and TD Bank's Rule 23(f) petition to appeal the class certification order was denied, the parties participated in another mediation with Magistrate Judge Baker on October 10, 2018. This mediation was also adjourned without resolution.

The parties initiated renewed settlement discussions in late 2018, which resulted in the scheduling of the fourth and final mediation. The final mediation occurred on January 23, 2019, again mediated by Professor Green. As a result, on February 1, 2019, the parties executed a Settlement Term Sheet memorializing the material terms of the settlement and filed a Joint Notice of Settlement with the Court. On June 13, 2019, Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement and Incorporated Memorandum of Law. On June 26, 2019, this Court granted Plaintiffs' motion and directed that the Notice Program be implemented. (*See* ECF No. 218.)

Pursuant to the plan previously approved by the Court, notice has been disseminated to the Classes. (*See* ECF No. 220-1.) Out of the millions of class members who were given notice, only one objected to the proposed settlement. (*See* ECF No. 224.) Eleven class members timely sought to opt out of the proposed settlement, with nine submitting complete forms and two submitting incomplete forms. (*See* ECF No. 225-1.) The Court is informed that the parties have agreed to consider all eleven exclusion requests to be effective. One additional class account (held by joint account holders) requested opt-out after the applicable deadline.

SETTLEMENT TERMS

Under the terms and conditions of the settlement, Plaintiffs and the six proposed Settlement Classes fully, finally, and forever resolve, discharge, and release their claims

against TD Bank in exchange for $70,000,000 of total relief for the Settlement Classes. TD Bank will pay $43,000,000 as monetary compensation to the six Settlement Classes (the "Settlement Payment Amount" defined in the Settlement Agreement). (Settlement Agreement ¶ 102, ECF No. 217-1.) The monetary compensation will be allocated to the six Settlement Classes as set forth in the Settlement Agreement. (*Id.* ¶ 137.) The Settlement Payment Amount is inclusive of all monetary payments to the Settlement Classes; all fees, costs, charges, and expenses of Notice and administration of the settlement; all attorneys' fees, costs, and expenses awarded to Class Counsel; and all Service Awards to the Class Representatives (as identified and appointed herein) for their work on behalf of the Settlement Classes. (*Id.* ¶ 111.) The Settlement Payment Amount was deposited by TD Bank into an escrow account to create the Settlement Fund. (*Id.* ¶ 136.) No settlement proceeds will revert to TD Bank.

In addition to the Settlement Payment Amount, TD Bank will also provide $27,000,000 in the form of reductions to the outstanding balances of those members of the Settlement Classes whose Accounts were closed with amounts owed to TD Bank (the "Overdraft Forgiveness Amount" defined in the Settlement Agreement). (*Id.* ¶ 82.) The Overdraft Forgiveness Amount will be allocated to three of the six Settlement Classes as set forth in the Settlement Agreement. (*Id.* at ¶ 141.) The Overdraft Forgiveness Amount shall serve to reduce the amounts that members of the Settlement Classes owe TD Bank for overdraft fees, sustained overdraft fees, other TD Bank fees, and overdrafts the Bank charged but for which the Bank was not reimbursed. The Overdraft Forgiveness Amount allocated to each Class will be distributed in such a manner as to reduce the amount owed to TD Bank to below $75.00, which is the threshold TD uses for reporting delinquent

accounts to ChexSystems. As part of the settlement, TD Bank will inform ChexSystems to remove reporting for each Account that has its amount owed to TD Bank reduced to below $75 as a result of applying the Overdraft Forgiveness Amount. (*Id.* ¶ 112.)

APPROVAL OF CLASS NOTICE

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari (ECF No. 225-1), the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23. The Court also finds that the requirements of 28 U.S.C. § 1715 have been satisfied.

APPROVAL OF THE SETTLEMENT

The Court finds that the parties' settlement is fair, reasonable, and adequate in accordance with Rule 23, was reached without collusion or fraud, and satisfies all of the requirements for final approval. In so doing, the Court has considered each of the following criteria in Rule 23(e) and hereby finds that (1) the Class Representatives and Class Counsel have adequately represented the Settlement Classes; (2) the settlement was negotiated at arm's length; (3) the relief provided for the Settlement Classes is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of the proposed methods of distributing relief to the Settlement Classes, the terms of the proposed award of attorneys' fees, and any agreement required to be identified under Rule 23(e)(3); and (4) the proposal treats Settlement Class Members equitably relative to each other.

The Court also finds, based on the well-developed record, that Class Counsel were well prepared, understood the merits of the case, and had sufficient information to evaluate the proposed settlement. While the percentage of potential recovery varies depending on which of the Settlement Classes is at issue, the Court finds that Class Counsel settled for a fair, reasonable, and adequate percentage of the overdraft fees that likely could be recovered for each class if the case went to trial. Therefore, the settlement is a good result for the Settlement Classes considering the significant risks and substantial expense of continued litigation, particularly since the Settlement Classes will receive the benefits of the settlement promptly.

In making these findings, the Court has relied upon: (1) its knowledge of the litigation and the risks faced by Plaintiffs; (2) the terms of the Settlement Agreement and the benefits it makes available to the Settlement Classes; (3) the motions and supporting papers submitted by Plaintiffs; (4) the opinions of Class Counsel and the Class Representatives; and (5) the opinion of Professor Brian T. Fitzpatrick, who, after studying Class Counsel's fee request, concluded it is well within the mainstream of fee awards in overdraft fee cases.

Accordingly, pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves, in all respects, the proposed settlement and finds that the Settlement Agreement and the allocation plan for distributing the settlement funds are in all respects fair, reasonable, and adequate, and are in the best interests of the Settlement Classes.

CERTIFICATION OF THE SETTLEMENT CLASSES

The Court hereby certifies, for settlement purposes only, the following Settlement Classes:

TD Available Balance Consumer Class
All holders of a TD Bank Personal Account, who, from August 16, 2010 to and including April 22, 2016, incurred one or more Overdraft Fees as a result of TD Bank's practice of assessing Overdraft Fees based on the Account's Available Balance rather than its Ledger Balance;

South Financial Class
All holders of a Carolina First Bank/Mercantile Bank Account, who, from December 1, 2007 to and including June 20, 2011, incurred one or more Overdraft Fees as a result of Carolina First Bank's and/or Mercantile Bank's practices of (1) High-to-Low Posting, or (2) assessing Overdraft Fees based on the Account's Available Balance rather than its Ledger Balance;

Regulation E Class
All holders of a TD Bank Personal Account who were assessed one or more Overdraft Fees for an ATM or One-Time Debit Card Transaction from August 16, 2010 to and including June 26, 2019;

Usury Class
All holders of a TD Bank Personal or Business Account who, from March 8, 2013 to and including June 26, 2019, incurred one or more Sustained Overdraft Fees;

Uber/Lyft Class
All holders of a TD Bank Personal Account who, from December 5, 2011 to and including June 26, 2019, incurred one or more Overdraft Fees on Uber or Lyft ride-sharing transactions while not enrolled in TD Debit Card Advance;

and

TD Available Balance Business Class
All holders of a TD Bank Business Account who, from August 16, 2010 to and including June 26, 2019, incurred one or more Overdraft Fees as a result of TD Bank's practice of assessing Overdraft Fees based on the Account's Available Balance rather than its Ledger Balance.

Excluded from the Settlement Classes are all current TD Bank employees, officers, and directors and all TD Bank account holders who were members in the Settlement Class in *In re Checking Account Overdraft Litigation*, No. 09-MD-2036 (S.D. Fla.), who did not incur one or more Overdraft Fees after September 20, 2012. Also excluded are the eleven class members who successfully excluded themselves by opting out in accordance with

the provisions set forth in the Notice.[3]

The Court finds that all the prerequisites of Rule 23(a) and (b)(3) have been satisfied for certification of the Settlement Classes for settlement purposes only. The Settlement Classes, which collectively include millions of current and former customers, are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Settlement Classes; the claims of the Class Representatives are typical of the claims of the members of the Settlement Classes; the Class Representatives and Settlement Class Counsel have and will adequately and fairly protect the interests of the Settlement Classes; and the common questions of law and fact predominate over questions affecting only individual members of the Settlement Classes, rendering the Settlement Classes sufficiently cohesive to warrant a class settlement.

In making all of the foregoing findings, the Court has exercised its discretion in certifying the Settlement Classes. Defendant TD Bank has preserved all its defenses and objections against and rights to oppose certification of a litigation class if the settlement does not become final and effective in accordance with the terms of the Settlement Agreement. Neither this Order, nor the Settlement Agreement, shall constitute any evidence or admission of fault, liability, or wrongdoing of any kind whatsoever by Defendant, or an admission regarding the propriety of certification of any particular class for litigation purposes, nor shall this Order be offered or received in evidence in any proceeding relating to the certification of a class.

Jan Kasmir, James King, Jr., Joanne McLain, Michael McLain, Geoffrey Grant, Keith Irwin, Shawn Balensiefen, Elizabeth Goodall, Kendall Robinson, Ronald Ryan,

[3] The names of the eleven class members who timely excluded themselves from the settlement are attached to this Order as Exhibit A.

Tashina Drakeford, John Koshgarian, John Hurel, Frederick Klein, Dawn Ucciferri, Caroline Austin, Brittney Lawrence, Emilio Padilla, Sheila Padilla, Jennifer Bond, John Laflamme, Jonathan Young, Brittney Brooker, Marilyn Vailati, and Shaina Dorsey are hereby appointed as Class Representatives of the Settlement Classes. Co-Lead Counsel E. Adam Webb and Richard D. McCune have adequately represented the Settlement Classes and are hereby appointed as Settlement Class Counsel.

OBJECTION OF AMOS JONES

Amos Jones, one of the named Plaintiffs in this case, filed an objection to the settlement. (*See* ECF No. 224.) The fact that one of the named Plaintiffs filed an objection is not a valid basis to reject an otherwise acceptable class action settlement. *Charron v. Wiener*, 731 F.3d 241, 253 (2d Cir. 2013) ("[T]he assent of class representatives is not essential to the settlement, as long as the Rule 23 requirements are met."); *Elliot v. Sperry Rand Corp.*, 680 F.2d 1225, 1226, 1228 (8th Cir. 1982); *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 508 (5th Cir. 1981); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 (4th Cir. 1975). "Class counsel is supposed to represent the class, not the named parties: that the named parties objected does not prove the settlement was unfair or that the class counsel acted improperly." *Laskey v. Int'l Union*, 638 F.2d 954, 956 (6th Cir. 1981).

At the outset, the Court notes that, based upon the information provided in Mr. Jones' objection, he is a member of the TD Available Balance Business Class only. (*See* ECF No. 224 at 10.) Therefore, Mr. Jones has standing to challenge only the portion of the settlement that was allocated to that class. *See, e.g.*, *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 151–52 (E.D. La. 2013) (noting that objectors must be members of specific class to raise a valid objection). Because Mr. Jones' standing is

limited to the TD Available Balance Business Class, his complaints regarding the other five Settlement Classes are dismissed for lack of standing.

Beyond Mr. Jones' limited standing, none of the objections he raises support rejecting the proposed Settlement Agreement with respect to the TD Available Balance Business Class. First, based on the materials submitted by the parties it is clear that Mr. Jones' objection is driven, at least in part, by a misapprehension of the scope of claims at issue in this multidistrict litigation. Mr. Jones contends that the $70,000,000 settlement amount is insufficient because it does not account for the way in which TD Bank's overdraft practices have disproportionately impacted poor people and racial minorities. (*See* ECF No. 224 at 6–7.) While Mr. Jones' motive to advocate for disadvantaged groups is admirable—particularly in light of his apparent professional aspirations and record representing disadvantaged clients in unrelated legal matters (*see generally* Reply in Supp. of Objection & Attachs., ECF Nos. 227–30)—the fact that Mr. Jones personally believes that TD Bank "need[s] to be made to pay considerably more" (ECF No. 224 at 7) is not a proper basis for overturning the settlement. The Court has concluded that the Settlement Agreement is fair and reasonable given the scope of the allegations in this case, the potential defenses, and the risks for all parties attendant to proceeding with a trial. Mr. Jones' desire to see TD Bank "pay considerably more" is not a valid basis for an objection. Further, there is no mechanism to punish TD Bank through a settlement.

Second, Mr. Jones references TD Bank's denial of his application for a small business loan to help expand his law practice. (*See id.* at 6.) This settlement deals with TD Bank's assessment of overdraft fees, not the processing and approval of small business loans. Mr. Jones' discussion of the small business loan denial is irrelevant to

this matter and provides no basis to set aside the settlement.

Third, the fact that Mr. Jones was the only representative from the District of Columbia does not persuade the Court that claims relating to residents of the District should be severed and excluded from the settlement. It is not necessary, for purposes of this settlement, that there be a representative from each jurisdiction. *See, e.g.*, *In re M3 Power Razor Sys. Mktg. & Sales Practice Litig.*, 270 F.R.D. 45, 55 (D. Mass. 2010) (approving settlement class even though the representative plaintiffs were not residents of each of the covered states).

Accordingly, Mr. Jones' objection is overruled.

ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

The Court hereby grants to Class Counsel a fee in the amount of $21,000,000, which the Court finds to be fully supported by the facts, the record, and the applicable law. This amount shall be paid from the Settlement Fund.[4]

The requested fee is justified under the percentage of the common fund methodology described in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978). The fee represents 30 percent of the $70 million total settlement value, a percentage which is less than percentages often awarded in common fund class action settlements in this Circuit. *E.g.*, *Anselmo v. W. Paces Hotel Grp., LLC*, No. 9:09-CV-02466-DCN, 2012 WL 5868887, at *3 (D.S.C. Nov. 19, 2012) ("The approximate 33% for fees provided here is reasonable in light of all pertinent factors, including precedent and beneficial results obtained."); *George v. Duke Energy Ret. Cash Balance Plan*, No. 8:06-CV-00373-JMC,

[4] The Court notes that Mr. Jones' objection explicitly stated that he was not objecting to Class Counsel's request for attorneys' fees under the Settlement Agreement. (*See* ECF No. 224 at 2.) Therefore, there is no objection to Class Counsel's fee request.

2011 WL 13218031, at *10 (D.S.C. May 16, 2011) (approving request for 30% of the settlement fund as "fair and reasonable given the results achieved in light of the risks, difficulty, complexity and magnitude of the litigation, and the highly specialized expertise, time and substantial resources required to prosecute it successfully"); (*see also* Decl. of B. Fitzpatrick ¶ 9, ECF No. 223 (opining that a 30% fee award in an overdraft case would be "well within the mainstream").)

The Court also finds the Class Counsel's request for a percentage of both the cash and non-cash component of the total settlement is justified and consistent with precedent in similar overdraft fee cases. *See, e.g.*, *Fry v. MidFlorida Credit Union*, No. 8:15-cv-2743 (M.D. Fla. 2015), ECF Nos. 47 & 51 (approving fee award constituting 31.9% of cash settlement plus the estimated value of change in overdraft practice over one year); *In re Checking Account Overdraft Litig.*, 2013 WL 11319243, at *12 (S.D. Fla. Aug. 2, 2013) (approving fee award amounting to 30% of total value of $23 million settlement, including cash component and estimated value of change in overdraft policy over a minimum of two years); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (approving fee award constituting 30% of $410 million settlement fund net of expenses).

The Court has confirmed the reasonableness of the requested fee through an analysis of "the *Barber* factors." *Alexander S. By & Through Bowers v. Boyd*, 929 F. Supp. 925, 932 (D.S.C. 1995), *aff'd sub nom., Burnside v. Boyd*, 89 F.3d 827 (4th Cir. 1996). Specifically, the Court has considered: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the opportunity costs in pressing the instant litigation;

(5) the customary fee for like work; (6) the attorneys' expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) fee awards in similar cases.

The record also shows that the parties' agreement with regard to fees was not negotiated until after the other terms of the settlement had been negotiated and was not the product of collusion or fraud. As a result, TD Bank's agreement as to the appropriate fee is entitled to some weight.

Although Courts in the Fourth Circuit are not required to do so, they may choose to "cross-check" the results of a percentage-fee award against the attorneys' "lodestar." *See, e.g.*, *The Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 463–64 (S.D. W. Va. 2010) (applying "the lodestar cross-check as an element of objectivity in [the attorneys' fee] analysis"). To apply the lodestar method, the Court determines the fee award by multiplying the number of hours reasonably worked by a reasonable billing rate, then the Court considers a multiplier to add or subtract from the lodestar. *See, e.g.*, *Robinson v. Carolina First Bank N.A.*, 2019 WL 2591153, at *15 (D.S.C. June 21, 2019). Using the lodestar method in this case results in a multiplier of between 1.89 and 2.33 for the requested $21 million fee. (*See* Joint Decl. of A. Webb and R. McCune ¶ 114, ECF No. 222.) Such a multiplier is well within the acceptable range of multipliers in common fund cases. *See Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 766 (S.D. W. Va. 2009) ("Courts have generally held that lodestar multipliers falling between 2 and 4.5

demonstrate a reasonable attorneys' fee."); *Anselmo v. W. Paces Hotel Grp., LLC*, No. 9:09-CV-02466-DCN, 2012 WL 5868887, at *5 (D.S.C. Nov. 19, 2012).

The Court hereby grants to Class Counsel the requested partial expense reimbursement of $675,000, which the Court finds to be fully supported by the settlement, the facts, the record, and the applicable law. (*See* Joint Decl. of A. Webb and R. McCune ¶ 149–52); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970) (stating that an established exception to the American rule is "to award expenses where a plaintiff has successfully maintained a suit, usually on behalf of a class, that benefits a group of others in the same manner as himself"). This amount shall be paid from the Settlement Fund.

The settlement provides that each of the Class Representatives is to receive $10,000 for their service on behalf of the Settlement Classes, or $7,500 per Plaintiff for married couples in which both spouses are named Plaintiffs. There are 21 individual Class Representatives and four married Class Representatives, totaling $240,000.00 in Service Awards. The Court finds that payment of these service awards is warranted and approved in this case in light of the Class Representatives' work on behalf of the classes and the risks they took pursuing this case. *See, e.g.*, *Robinson v. Carolina First Bank N.A.*, 2019 WL 2591153, at *18 (D.S.C. June 21, 2019).

RELEASES

Pursuant to, and as more fully described in Section XIV of the Settlement Agreement, on the Effective Date, the Releasing Parties shall be deemed to have and, by operation of this Final Order and Judgment shall have, fully and irrevocably released and forever discharged the Released Parties from the claims identified in Paragraph

156 of the Settlement Agreement.

DISMISSAL AND FINAL JUDGMENT

The Court hereby DISMISSES this Action, inclusive of any and all cases and claims consolidated or otherwise included in this MDL 2613, WITH PREJUDICE as against the named Plaintiffs, all members of the Settlement Classes, and Defendant. The parties shall bear their own costs except as provided by the Settlement Agreement.

No Class Representative or member of the Settlement Classes (other than those listed in Exhibit A hereto), either directly, representatively, or in any other capacity, shall commence, continue, or prosecute any action or proceeding in any court or tribunal asserting any of the claims that have been released under the Settlement Agreement, and they are hereby permanently enjoined from so proceeding.

The Consent Confidentiality Order entered in *King v. TD Bank, N.A.*, No. 13-cv-02264 (D.S.C.), ECF No. 62, and made applicable in this Action (*see* ECF No. 29), as well as the Consent Order on Production of Customer Transactional Data (ECF No. 187), shall survive the termination of this Action and continue in full force and effect after entry of this Final Order and Judgment.

By reason of the Settlement Agreement, and there being no just reason for delay, the Court hereby ENTERS FINAL JUDGMENT in this matter, which the clerk of Court is directed to immediately enter.

Without affecting the finality of this judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, to protect and effectuate this Final Order and Judgment, and for any

other necessary purpose. The Class Representatives, TD Bank, and each member of the Settlement Classes are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding, or dispute arising out of or relating to the settlement, including the exhibits thereto, and only for such purposes. Without limiting the generality of the foregoing, and without affecting the finality of this Final Order and Judgment, the Court retains exclusive jurisdiction over any such suit, action, or proceeding. Solely for purposes of such suit, action, or proceeding, to the fullest extent they may effectively do so under applicable law, the parties hereto are deemed to have irrecoverably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

CONCLUSION

For the reasons set forth herein, the Court hereby (a) **GRANTS** final approval of the Settlement Agreement (ECF No. 220); (b) **CERTIFIES** the Settlement Classes pursuant to Fed. R. Civ. P. 23(b)(3) and (e) for settlement purposes only; (c) finds the class notice satisfied the requirements of Rule 23, due process, and all other legal requirements; (d) approves the requests for attorneys' fees of $21,000,000, expense reimbursement of $675,000, and service awards of $10,000 for each Class Representative, or $15,000 for married couples where each spouse was a Class Representative (ECF No. 221); (e) **DISMISSES** this Action **WITH PREJUDICE** as to all parties and the members of the Settlement Classes; and (f) **ENTERS FINAL JUDGMENT**. The parties and the Settlement Administrator are directed to carry out the

terms of settlement according to the Settlement Agreement.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

January 9, 2020
Charleston, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, plaintiff,	:	
v.	:	Civil No. 17cv304(AVC)
PEOPLE'S UNITED BANK, N.A. and DOES 1 through 100, defendants.	:	

ORDER

This court granted preliminary approval of the Settlement Agreement and Release ("Settlement") and certified a provisional settlement class. Due and adequate notice having been given to the class members, and the court having considered the settlement, all papers filed and proceedings had herein and all comments received regarding the settlement, and having reviewed the record in this litigation, and good cause appearing,

EFFECTIVE SEPTEMBER 26, 2020 [EFFECTIVE DATE] IT IS HEREBY ORDERED,

ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as provided in the settlement.

2. The court has jurisdiction over the subject matter of this litigation and over the parties to this litigation, including all class members.

3. The court finds that the members of the settlement class are so numerous that joinder of all members would be impracticable, that the litigation and proposed settlement raise issues of law and fact common to the claims of the class members and these common issues predominate over any issues affecting only individual members of the settlement class, that the claims of Teriann Walker (the "named plaintiff") are typical of the claims of the settlement class, that in prosecuting this action and negotiating and entering into the settlement agreement, the named plaintiff and her counsel have fairly and adequately protected the interests of the settlement class and will adequately represent the settlement class in connection with the settlement, and that a class action is superior to other methods available for adjudicating the controversy.

4. This court finds that the class meets all of the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. For settlement purposes, the court now finally certifies the settlement class, which is composed of the following two classes:

> The "Sufficient Funds Class," which is defined as, "those customers of Defendant who were assessed and who paid an overdraft fee between February 21, 2011 and October 31, 2016, on any type of payment transaction and at the time such fee was assessed the customer had sufficient money in his or her

ledger balance to cover the transaction that resulted in the fee."

The "Regulation E Class," which is defined as, "those customers of Defendant who were assessed and who paid an overdraft fee for a non-recurring debit card payment transaction between February 21, 2016 and October 31, 2016."

5. The court appoints Epiq Class Action & Claims Solutions, Inc., as the claims administrator under the terms of the settlement agreement. All costs incurred in connection with providing notice and settlement administration services to the class members shall be paid from the settlement fund. The administrator shall be subject to the jurisdiction of the court with respect to the administration of the settlement and shall comply with the terms of the settlement.

6. The court appoints named plaintiff Terriann Walker as the class representative of the settlement class.

7. The court further finds that counsel for the settlement class, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, are qualified, experienced, and skilled attorneys capable of adequately representing the settlement class, and they are approved as class counsel, and approves Richard Hayber as local counsel.

8. The court finds that the distribution of the notice of the settlement has been completed in conformity with the court's preliminary approval order. The court finds that the notice was

the best practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the settlement. The court finds that the notice fully satisfied the requirements of due process. The court also finds that all class members were given a full and fair opportunity to object, and all class members have had a full and fair opportunity to exclude themselves from the class.

9. The court finds, as set forth in the declaration of Brian Young of the claims administrator Epiq Class Action & Claims Solutions, Inc., dated April 1, 2020, no objections to the settlement have been filed and nine members of the class requested exclusion from the class. The nine class members who opted out of the proposed settlement are identified in exhibit C to the April 1, 2020, declaration of Brian Young and are excluded from this settlement.

10. The court finds that the reaction of the class to the settlement was overwhelmingly favorable.

11. The court hereby grants final approval of the terms set forth in the settlement and finds that the settlement is, in all respects, fair, adequate, and reasonable, and directs the parties to effectuate the settlement according to its terms. The court finds that the settlement has been reached as a result of informed and non-collusive arm's-length negotiations. The court further finds that the parties have conducted extensive

investigation and research, and their attorneys were able to reasonably evaluate their respective positions.

12. The court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

13. The settlement is not an admission by the defendant, nor is this order a finding of the validity of any allegations or of any wrongdoing by the defendant. Neither this order, the settlement, nor any document referred to herein, nor any action taken to carry out the settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against the defendant.

14. The court finds the requested attorneys' fees of $2,466,666 to be reasonable as a percentage of the settlement (33-1/3%), and also pursuant to a lodestar cross-check given the hourly rates and hours worked, and finds the requested fee is reasonable and therefore awards fees in this amount to be paid to class counsel from the settlement fund by the deadline specified in the settlement. The court further finds that the fee-sharing arrangement among class counsel was disclosed to and approved by the named plaintiff.

15. The court further finds that the request for reimbursement of litigation costs in the amount of $141,084.88 is reasonable based on the work necessary to achieve this favorable class settlement and is to be paid to class counsel from the settlement fund by the deadline specified in the settlement agreement.

16. The court finds that named plaintiff Terriann Walker assisted with the prosecution and litigation of the case, including producing documents, assisting class counsel, responding to formal discovery, personally appearing at the mediation, and having been willing to testify at trial. The court therefore awards a service award in the amount of $15,000 to be paid to named plaintiff Terriann Walker from the settlement fund by the deadline specified in the settlement agreement.

17. The court approves the Connecticut Bar Foundation, Inc. as the *cy pres* recipient in this matter, which is the default *cy pres* recipient under Local Rule 23 (D. Conn.).

18. Within 10 days of the EFFECTIVE DATE of this order, the defendant shall distribute the settlement fund to the claims administrator.

19. The court retains jurisdiction over the parties, class counsel, and the case to enforce the settlement and the terms of this judgment.

Good cause appearing therefore, IT IS SO ORDERED this 29th day of June 2020, at Hartford, Connecticut.

_____/s/_____
Honorable A1fred V. Covello
United States District Judge

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

RODNEY SMITH, individually and on behalf of all others similarly situated Plaintiff, v. BANK OF HAWAII and DOES 1 through 10 Defendants.	Civil No.: 1:16-CV-00513 JMS-WRP ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT **Trial Date: Vacated** **Judge: Hon. J. Michael Seabright**

ORDER GRANTING FINAL
APPROVAL OF THE CLASS ACTION SETTLEMENT

This Court granted preliminary approval of the Settlement Agreement and Release (the "Settlement Agreement") and certified provisional settlement classes. [Dkt. No. 214.] Due and adequate notice having been given to the Class Members, and the Court having considered the Settlement Agreement, all papers filed and proceedings had herein and all comments received regarding the Settlement Agreement, and having reviewed the record in this litigation, and good cause appearing,

1. Unless otherwise provided, all terms used herein shall have the same meaning provided in the Settlement Agreement.

2. The Court finds that the classes are so numerous that joinder of all members would be impracticable, that the litigation and proposed settlement raise issues of law and fact common to the claims of the Class Members and these

common issues predominate over any issues affecting only individual members of the settlement classes, that the claims of Rodney Smith (the "Named Plaintiff") are typical of the claims of the settlement classes, that in prosecuting this action and negotiating and entering into the Settlement Agreement, the Named Plaintiff and his counsel have fairly and adequately protected the interests of the settlement classes and will adequately represent the settlement classes in connection with the settlement, and that a class action is superior to other methods available for adjudicating the controversy.

3. The Court finds that the settlement classes meet all of the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. For settlement purposes, the Court now finally certifies the settlement classes, which are composed of the following Class Members:

> **The Sufficient Funds Class**: Those customers of Defendant who, between September 9, 2015 and August 1, 2017, paid a Sufficient Funds Overdraft Charge that was not refunded.
>
> **The Dismissed Sufficient Funds Class:** Those customers of Defendant who paid a Sufficient Funds Overdraft Charge from September 9, 2010, through September 8, 2015 that was not refunded.
>
> **The Regulation E Class:** Those customers of Defendant who opted in prior to March 1, 2017, and who from September 9, 2015, through September 30, 2017, paid an overdraft fee on a non-recurring debit card or ATM transaction that was not refunded.

4. The Court appoints Named Plaintiff Rodney Smith as the Class Representative of the three settlement classes.

5. The Court appoints Epiq Class Action & Claims Solutions, Inc. ("Epiq"), as the Claims Administrator under the terms of the Settlement Agreement. All costs incurred in connection with providing notice and settlement administration services to the Class Members shall be paid from the Settlement Fund. The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the settlement and shall comply with the terms of the Settlement Agreement.

6. The Court further finds that counsel for the Settlement Classes, Margery S. Bronster and Robert M. Hatch of Bronster Fujichaku Robbins, Richard D. McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, have and will adequately represent the settlement classes, and they are approved as Class Counsel.

7. The Court finds that the distribution of the notice of the settlement has been completed in conformity with the Court's preliminary approval order. The Court finds that the notice was the best practicable under the circumstances and provided due and adequate notice of the proceedings of the terms of the settlement. The Court finds that the notice fully satisfied the requirements of due process. The Court also finds that all Class Members were given a full and fair opportunity to object, and all Class Members have had a full and fair opportunity to exclude themselves from the settlement classes.

8. As set forth in the Declaration of Brian Young of Epiq, dated June 8, 2020, six members of the settlement classes requested exclusion. The six members who requested exclusion from the proposed settlement are identified in Exhibit A

to the June 8, 2020 Declaration of Brian Young and are excluded from this settlement.

9. Also, as set forth in the Declaration of Brian Young of Epiq, dated June 8, 2020, one Class Member, Ryan Canon, filed an objection to the settlement on or before the May 31, 2020 deadline. That objection is attached as Exhibit B to the June 8, 2020 Declaration of Brian Young. Mr. Canon addressed the Court on July 7, 2020, requested exclusion from the settlement, and withdrew his objection. A second potential objector, Francis Butires, appeared at the hearing and also addressed the Court on July 7, 2020, but clarified he was not objecting to the settlement. A final potential objector, Larry Bailey, did not attend the Court hearing, but subsequently indicated both to Class Counsel and to the Court his desire to opt-out of the class settlement. Accordingly, the Court excludes Ryan Canon and Larry Bailey from the settlement, as well as those who previously requested to opt-out as listed in Exhibit A to the Declaration of Brian Young of Epiq dated June 8, 2020.

10. The Court finds the reaction of the Class Members to the settlement was overwhelmingly favorable and supports approval of the settlement. Further, based on the declaration of counsel for Defendant, CAFA notice of the settlement has been provided to the appropriate federal and state officials, and after 90 days, those officials have not objected or otherwise responded to the notice of the proposed settlement.

11. The Court hereby grants final approval of the terms set forth in the Settlement Agreement and finds that the settlement is, in all respects, fair, adequate, and directs the parties to effectuate the Settlement Agreement according

to its terms. The Court finds that the Settlement Agreement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the parties have conducted appropriate discovery in order to allow their attorneys to reasonably evaluate their respective positions and make informed settlement decisions.

12. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in the settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

13. The settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement Agreement, or any document referred to herein, or any action taken to carry out the Settlement Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

14. The Court finds the requested attorneys' fees of $3,719,255 to be reasonable as a percentage of the Value of the Settlement (30%), and also pursuant to a lodestar cross-check given the hourly rates and hours worked, and finds the requested fee is reasonable and therefore awards fees in this amount to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement Agreement.

15. The Court further finds that the request for reimbursement of litigation costs in the amount of $175,000 is reasonable based on the work necessary to

achieve this favorable class settlement and is to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement Agreement.

16. The Court finds that Named Plaintiff Rodney Smith assisted with the prosecution and litigation of the case, including producing documents, assisting Class Counsel, responding to formal discovery, personally appearing for a deposition, and having been willing to testify at trial. The Court therefore awards a service fee in the amount of $15,000 to be paid to Named Plaintiff Rodney Smith from the Settlement Fund by the deadline specified in the Settlement Agreement.

17. The Court finds the Epiq's fees and costs, including estimate fees and costs to fully implement the terms of the Settlement Agreement, for serving as Claims Administrator shall be paid by the deadline specified in the Settlement Agreement.

18. The Court approves Hawaiian Community Assets as the *cy pres* recipient in this matter.

19. Defendant shall make all distributions as set forth Settlement Agreement.

20. The Court retains jurisdiction for one-year over the parties, Class Counsel, and the case to enforce the Settlement Agreement and terms of this Judgment.

It is so ordered this 22nd day of December 2020.

/s/ J. Michael Seabright
J. Michael Seabright
Chief United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BECKY PINGSTON-POLING, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

ADVIA CREDIT UNION,

Defendant.

Civil No.: 1:15-CV-1208

Honorable Gordon J. Quist

ORDER

This Court granted preliminary approval of the Settlement Agreement and Release ("Settlement") and certified a provisional settlement class. Due and adequate notice having been given to the Class Members, and the Court having considered the Settlement, all papers filed and proceedings had herein and all oral and written comments received regarding the Settlement, and having reviewed the record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as provided in the Settlement.

2. The Court has jurisdiction over the subject matter of this litigation and over the Parties to this litigation, including all Class Members.

3. The Court finds that the members of the Settlement Class are so numerous that joinder of all members would be impracticable, that the litigation and proposed settlement raise issues of law and fact common to the claims of the Class Members and these common issues

predominate over any issues affecting only individual members of the Settlement Class, that the claims of Becky Pingston-Poling (the "Named Plaintiff") are typical of the claims of the Settlement Class, that in prosecuting this Action and negotiating and entering into the Settlement Agreement, the Named Plaintiff and her counsel have fairly and adequately protected the interests of the Settlement Class and will adequately represent the Settlement Class in connection with the settlement, and that a class action is superior to other methods available for adjudicating the controversy.

4. This Court finds that the Class meet all of the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. For settlement purposes, the Court now finally certifies the Settlement Class, which is composed of the following two classes:

> The "Sufficient Funds Class" which is defined as "those members of Defendant who received an overdraft fee on a non-business account when at the time the transaction posted to the member's account the ledger balance was equal to or greater than the transaction causing the overdraft between November 19, 2009 and April 30, 2019; " and
>
> The "Regulation E Class" which is defined as "those members of Defendant who opted in to the overdraft program, and who were charged an overdraft fee on an ATM or debit card transaction on a non-business account between August 15, 2010 and April 30, 2019."

5. The Court appoints Epiq Class Action & Claims Solutions, Inc., as the Claims Administrator under the terms of the Settlement Agreement. All costs incurred in connection with providing notice and settlement administration services to the Class Members shall be paid from the Settlement Fund. The Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the Settlement and shall comply with the terms of the Settlement.

6. The Court appoints Named Plaintiff Becky Pingston-Poling as the Class

Representative of the Settlement Class.

7. The Court further finds that counsel for the Settlement Class, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, are qualified, experienced, and skilled attorneys capable of adequately representing the Settlement Class, and they are approved as Class Counsel, and approves Philip Goodman as local counsel.

8. The Court finds that the distribution of the notice of the Settlement has been completed in conformity with the Court's preliminary approval order. The Court finds that the notice was the best practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied the requirements of due process. The Court also finds that all Class Members were given a full and fair opportunity to participate in the Final Approval Hearing, all Class Members wishing to be heard have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Class.

9. The Court finds, as set forth in the Declaration of Amanda Sternberg Regarding Implementation of Notice and Claims Administration, dated October 18, 2019, that, as of October 18, 2019, five members of the Class requested exclusion from the class and that no objection to the settlement was filed. The five class members who opted out of the proposed settlement are identified in Exhibit E to the October 18, 2019, Declaration of Lindsey Marquez and are excluded from this settlement.

10. The Court finds that the reaction of the Class to the Settlement was favorable.

11. The Court hereby grants final approval of the terms set forth in the Settlement and finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been

reached as a result of informed and non-collusive arms-length negotiations. The Court further finds that the parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions.

12. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

13. The Settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

14. The Court finds the requested attorneys' fees of $1,200,000 to be reasonable as a percentage of the Settlement, and also pursuant to a lodestar cross-check given the hourly rates and hours worked, and finds the requested fee is reasonable and therefore awards fees in this amount to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement. The Court further finds that the fee-sharing arrangement among Class Counsel was disclosed to and approved by the Named Plaintiff.

15. The Court further finds that the request for reimbursement of litigation costs in the amount of $160,000 is reasonable based on the work necessary to achieve this favorable class settlement and is to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement Agreement.

16. The Court finds that Named Plaintiff Becky Pingston-Poling assisted with the prosecution and litigation of the case, including producing documents, assisting Class Counsel, responding to formal discovery, and having been willing to testify at trial. The Court therefore

awards a service award in the amount of $10,000 to be paid to Named Plaintiff Becky Pingston-Poling from the Settlement Fund by the deadline specified in the Settlement Agreement.

17. The Court approves Junior Achievement of Southwest Michigan to be the recipient of the cy pres funds in this case.

18. Within 10 days of the date of this order, Defendant shall distribute the Settlement Fund to the Claims Administrator, less the total amount directly credited by Defendant to the Class Members pursuant to Section 8(d)(v)(1) of the Settlement Agreement.

19. The Court retains jurisdiction over the Parties, Class Counsel, and the case to enforce the Settlement and the terms of this Judgment.

Good cause appearing therefore, IT IS SO ORDERED.

Dated: January 21, 2020

/s/ Gordon J. Quist

The Honorable Gordon J. Quist
United States District Court Judge

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Attorneys for Plaintiff
Tonya Gunter and the Certified Class

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

TONYA GUNTER, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

UNITED FEDERAL CREDIT UNION, DOES 1-5, inclusive, and ROE CORPORATIONS 6-10 inclusive,

Defendants.

Case No.: 3:15-cv-00483-MMD-WGC

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT

Assigned to Judge Miranda M. Du

Date: June 3, 2019
Time: 10:00 a.m.
Courtroom: 5

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

This Court granted preliminary approval of the Settlement Agreement and Release ("Settlement") on February 14, 2019. Due and adequate notice having been given to the Class Members, and the Court having considered the Settlement, all papers filed and proceedings had herein and all oral and written comments received regarding the Settlement, and having reviewed the record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as provided in the Settlement.

2. The Court has jurisdiction over the subject matter of this litigation and over the Parties to this litigation, including all Class Members.

3. This Court previously found on September 25, 2017, on a contested motion for class certification, that the Classes meet all of the requirements for certification under the Federal Rules of Civil Procedure and applicable case law and certified the following classes:

> The "Sufficient Funds" class, which is comprised of those members of Defendant whose accounts were on the Miser System, and who received an overdraft fee on a transaction which resulted in a positive ledger balance between October 3, 2011 and September 30, 2018.
>
> The "Regulation E" class, which is comprised of those members of Defendant who opted in to the overdraft program, whose accounts were on the Miser System, and who were charged an overdraft fee on a debit transaction between August 15, 2010 and September 30, 2018.

(Docket Entry 94)

However, for purposes of the proposed settlement and the release which Defendant is to receive from this settlement and for purposes of final approval, for the "Regulation E" class, the release and class definition are narrowed only to include October 3, 2011 through September 30, 2018. No Regulation E claims prior to October 3, 2011, are being released.

4. The Court appoints Named Plaintiff Tonya Gunter as the Class Representative.

5. The Court approves Richard McCune of McCune Wright Arevalo LLP and Taras Kick of The Kick Law Firm, APC, as Class Counsel.

6. The Court appoints Kurtzman Carson Consultants, LLC ("KCC") as the Claims Administrator. The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the Settlement and shall comply with the terms of the Settlement.

7. The Court finds that the distribution of the notice of the Settlement has been completed in conformity with the Court's preliminary approval order, as evidenced by the Declaration of Lana Lucchesi of the claims administrator KCC dated April 5, 2019. (Docket Entry 139.) The Court finds that the notice was the best practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied the requirements of due process. The Court also finds that all Class Members were given a full and fair opportunity to participate in the Final Approval Hearing, all Class Members wishing to be heard have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Class.

8. The Court finds, as set forth in the Supplemental Declaration of Lana Lucchesi of KCC of April 30, 2019 (Docket Entry 141), that only four members of the class have requested to be excluded from the proposed settlement, and only one member of the class has objected. The four members who have requested exclusion are excluded from the class. As listed in Exhibit A to the Supplemental Declaration of Lana Lucchesi of claims administrator KCC (Docket Entry 142-4) they are: Davenport, Jami L.; Rittmeyer, Beverly Reitz; Shrock, Delton E.; and, Zernia, Kristi. The Court finds that the reaction of the Class to the Settlement was overwhelmingly favorable.

9. The Court overrules the objection of the single objector Timothy Walker. Per the Declaration and the Supplemental Declaration of Lana Lucchesi of KCC (Docket Entries 139 and 141), 99.54% of the 17,515 class members successfully received the notice ordered by this Court, and only one class member has objected, meaning more than 99.99% of the class members have elected not to object to any aspect of the settlement being presented to this Court. The number of class members that object to a settlement may be considered in determining whether the settlement is fair, reasonable, and adequate. *Mandujano v. Basic Vegetable Prods. Inc.*, 541 F.2d 832, 837 (9th Cir. 1976). "(A)bsence of a large number of objections to a proposed class action raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.'" *Bentacourt v. Advantage Human*

Resourcing, Inc., 2016 U.S.Dist.LEXIS 10361, *10-11 (N.D. Cal. 2016). The objection itself does not specify any way in which the class relief is inadequate, and does not suggest a higher monetary number for which the case should have settled. This alone justifies overruling the objection: "[Objector] makes no showing of what [amount] would be sufficient or why. Such an unsupported objection cannot justify denial of approval." (*Smith v. CRST Van Expedited, Inc.* (S.D. Cal. 2012) 2012 U.S. Dist. Lexis 165913 *8.) Nonetheless, the Court addresses these issues. The monetary component of $1,750,000 of the proposed settlement represents approximately 91% of the recovery which Class Counsel believes would have been most likely in this case were Plaintiff to prevail in the case. This more than meets the range of proposed settlements for approval in the Ninth Circuit. Class Counsel also explain convincingly the issues in the Regulation E class which differ from the issues in the "sufficient funds" class. Additionally, there are improved disclosures as a result of this case which Defendant is required to keep in place for three years (Settlement Agreement, ¶2.) There were risks in continuing with the case, including a possible loss at trial which might have led to no recovery. Further, as pointed out by Defendant in its response to the sole objector (Docket Entry 140), the Defendant would argue the frequency of overdrafting by this sole objector would provide Defendant an additional defense against any recovery by this objector. This settlement being proposed was reached through arm's length negotiation in a mediation before the Honorable Morton Denlow (Ret.). The case was hard-fought by both sides, including a contested motion for class certification which this Court granted. (Docket Entry 94.) Finally, as discussed further in this Order, the fees sought are reasonable. The objection is overruled.

10. The Court hereby grants final approval of the terms set forth in the Settlement and finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions.

11. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the

expense, complexity, risk, and likely duration of further litigation.

12. The Settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

13. The Court finds the requested attorneys' fees of $833,000 to be reasonable. Class Counsel had a lodestar as of the time of the filing of the Motion for Class Certification of $911,335. The hourly rates of the attorneys are reasonable and in line with prevailing market rates, and the hours worked are also reasonable. Based on the contingent risk that counsel undertook in prosecuting this action with no guarantee of payment as well as the novelty and complexity of the action, as well as the excellent quality of Class Counsel's work and the result obtained for the class members, and the delay in getting paid, the attorneys' fee in this case to Class Counsel would warrant a positive multiplier be applied to the lodestar, yet the fee requested is actually approximately 9% less than the lodestar. The requested fees are approved and this amount to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement.

14. The Court further finds that the fee-sharing arrangement among class Counsel was disclosed to and approved by the Named Plaintiff.

15. The Court further finds that the request for reimbursement of litigation costs in the amount of $86,500, as set forth and detailed in the declarations of Class Counsel, is reasonable based on the work necessary to achieve this favorable class settlement, and is to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement Agreement.

16. The Court finds that Named Plaintiff Tonya Gunter assisted with the prosecution and litigation of the case, including producing documents, responding to written discovery, sitting for deposition, and having been willing to testify at trial. The Court therefore awards a service award in the amount of $10,000 to be paid to Named Plaintiff Tonya Gunter from the Settlement Fund by the deadline specified in the Settlement Agreement.

17. The Court approves Public Citizen as the *cy pres* recipient of any residue in the Settlement Fund.

18. The Court approves payment of the Claims Administrator's fees and costs of up to $70,000 to be paid to the Claims Administrator from the Settlement Fund by the deadline specified in the Settlement Agreement.

19. Within 10 days of the date of this order, Defendant United Federal Credit Union shall distribute the Settlement Fund to the Claims Administrator, less amounts advanced to the Claims Administrator and less the total amount that will be credited to the Class Members by Defendant as provided in the Settlement Agreement, Section 8(d)(v)(1).

20. The Court retains jurisdiction over the Parties, Class Counsel, and the case to enforce the Settlement and the terms of this Judgment.

IT IS SO ORDERED ADJUDGED AND DECREED.

Reno, Nevada, June, 4, 2019

Honorable Miranda M. Du
United States District Judge

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ALEXANDRA HERNANDEZ, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

POINT LOMA CREDIT UNION, and DOES 1-100,

Defendants.

Case No.: 37-2013-00053519-CU-BT-CTL

~~[PROPOSED]~~ ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: August 25, 2017
Time: 8:30 a.m.
Department: 62

FINAL APPROVAL ORDER AND JUDGMENT

This Court granted preliminary approval of the Settlement Agreement and Release ("Settlement") on June 16, 2017, and certified the class in this action on July 1, 2017 (the "Class"). Due and adequate notice having been given to the Class Members, and the Court having considered the Settlement, all papers filed and proceedings had herein and all oral and written comments received regarding the Settlement, and having reviewed the record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as provided in the Settlement.

2. The Court has jurisdiction over the subject matter of this litigation and over the Parties to this litigation, including all Class Members.

3. This Court finds that the Classes meet all of the requirements for certification of a settlement class under Section 382 of the Code of Civil Procedure and Rule 3.769 of the California Rules of Court and applicable case law. For settlement purposes, the Court now finally certifies the Class which is defined as follows:

> "'Class Member' shall mean any member of Defendant who, between August 10, 2010 and June 30, 2015, was assessed an overdraft fee on a debit card or ATM transaction."

4. The Court appoints Named Plaintiff Alexandra Hernandez as the Class Representative.

5. The Court approves Taras Kick of The Kick Law Firm, APC and Richard McCune of McCune Wright Arevalo LLP as Class Counsel.

6. The Court appoints Garden City Group, LLC, as the Claims Administrator. The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the Settlement and shall comply with the terms of the Settlement.

7. The Court finds that the distribution of the notice of the Settlement satisfies due process. The Court finds that the notice was the best practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement. The Court

finds that the notice fully satisfied the requirements of due process. The Court also finds that all Class Members were given a full and fair opportunity to participate in the Final Approval Hearing, all Class Members wishing to be heard have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Class.

8. The Court finds that no members of the Class objected to any aspect of the Settlement, and that no members of the Class opted-out of the Settlement, as is set forth in the Supplemental Declaration of Eric Kierkegaard Regarding Settlement Administration, filed on August 21, 2017.

9. The Court finds that the reaction of the Class to the Settlement was overwhelmingly favorable.

10. The Court hereby grants final approval of the terms set forth in the Settlement and finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions

11. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

12. The Settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

13. The Court finds the requested attorneys' fees of $745,000 to be reasonable, both as a percentage of the common fund and under the lodestar method, noting that the requested fees are a substantial reduction of Class Counsels' combined lodestar of $1,056,052.50, and awards fees in the

requested amount to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement. The requested amount is less than one-half of the common Settlement Fund, which is appropriate for this case given its history and facts, including that Class Counsel worked diligently on this matter to obtain a result far higher than originally offered, undertook risk, and Class Counsel's caliber of work led to prevailing in a contested motion for class certification, and is in line with market rates for contingency fees given this history and facts. Therefore, the requested fee is reasonable and approved under the percentage-of-the-benefit methodology as well. Further, the hourly rates of the attorneys are reasonable and in line with prevailing market rates, the hours worked are reasonable and, as noted, the requested fees are a reduction of Class Counsel's combined lodestar. The Court further finds that the fee-sharing arrangement among Class Counsel was disclosed to and approved by the Named Plaintiff.

14. The Court further finds that the request for reimbursement of litigation costs in the amount of $83,012.33 is reasonable based on the work necessary to achieve this favorable class settlement, and is to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement Agreement.

15. The Court finds that Named Plaintiff Alexandra Hernandez assisted with the prosecution and litigation of the case, including gathering documents and other information, making herself available to provide the attorneys further information when requested, sitting for deposition, and having been willing to testify at trial. The Court therefore awards a service award in the amount of $10,000 to be paid to Named Plaintiff Alexandra Hernandez from the Settlement Fund by the deadline specified in the Settlement Agreement.

16. The Court approves Public Citizen as the *cy pres* recipient of any residue in the Settlement Fund.

17. The Court approves payment of the Claims Administrator's fees and costs of up to $24,900, including those amounts if any previously paid to the Claims Administrator by Defendant, to be paid to the Claims Administrator from the Settlement Fund by the deadline specified in the Settlement Agreement.

18. Defendant Point Loma Credit Union shall distribute the Settlement Fund to the Claims Administrator less any funds credited to Class Members who remain existing members of Point Loma Credit Union as per the timing of the Settlement Agreement.

19. Pursuant to *California Rules of Court*, Rule 3.769(h), the Court retains jurisdiction over the Parties, Class Counsel, and the case to enforce the Settlement and the terms of this Judgment.

IT IS SO ORDERED ADJUDGED AND DECREED.

09/07/2017

Dated: ~~August _____, 2017~~

The Honorable Ronald L. Styn
Judge of the Superior Court