UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

LISA CARTER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE CITY NATIONAL BANK AND TRUST COMPANY OF LAWTON, OKLAHOMA, and DOES 1 through 5,

Defendant.

Case No. CIV-21-29-PRW

<u>DECLARATION OF ARTHUR OLSEN IN SUPPORT OF PLAINTIFF'S UNOPPOSED</u> <u>MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT</u>

I, Arthur Olsen, declare as follows:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, could and would competently testify thereto.

Scope of Work

2. Based on my experience in the information technology ("IT") field and my prior work as a data management expert in other overdraft cases, I have been retained by proposed Class Counsel to analyze the Class Data produced by City National Bank and Trust Co. of Lawton, Oklahoma ("City National") to determine the overdraft fees assessed to class members on Regulation E transactions (*i.e.*, one-time debit card and ATM transactions), and repeat NSF or overdraft fees assessed on the same transaction item.

Qualifications and Background

3. I am the principal of Cassis Technology, LLC, an IT consulting firm, and have over 25 years of professional experience in the IT field, specializing in the areas of data analysis,

database development, and database administration and support. My qualifications and background are set forth in my consultant profile ("Profile") attached as **Exhibit 1**. Attached as **Exhibit 2** is a list of the cases where I have provided trial or deposition testimony during the last four years.

- 4. Prior to starting my own firm, I worked as a database engineer for Microsoft Corporation ("Microsoft"), and also worked under contract as a database administrator, developer, and administration support specialist for Hewlett-Packard Company ("Hewlett-Packard"). At Microsoft, I participated in the design, implementation, and support of an extensive data warehousing solution for Microsoft's licensing division, managed and supported numerous databases throughout the company, and received Microsoft's award for operational excellence for my database-related work. At Hewlett-Packard, I served as the primary database administrator for both Oracle and SQL Server systems that supported multiple Hewlett-Packard divisions and served as the lead analyst in charge of compiling, analyzing, and processing data from various internal database systems throughout Hewlett-Packard for use in litigation support.
- 5. Since 2008, I have experience working on a large number of overdraft litigation consulting projects involving financial institutions. For example, I previously provided trial testimony and was qualified as an expert witness in a consumer lawsuit against Wells Fargo relating to its overdraft practices and fees, which ultimately resulted in a judgment of over \$200 million against Wells Fargo. *See Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (N.D. Cal. 2010). In its Order awarding restitution to the class members, the court found that I had done a "professional and careful job" in connection with this work:

This order finds that plaintiffs' expert Arthur Olsen has convincingly shown that it is entirely practical to re-run the computerized data in storage for each class member's account and determine how many overdrafts were added by the high-to-low practice for debit-card transactions during the class period. Indeed, he has

already done so, using various alternate posting sequences. This has been done by him on an account-by-account, day-by-day, and transaction-by-transaction basis, using the bank's own real-world data. Court orders were needed to provide him access to this data, but-after much work and time-this order finds that Expert Olsen has done a professional and careful job in laying out the impacts of various alternative posting protocols. This work has not only demonstrated the enormous impact of the high-to-low scheme, but it has demonstrated that it is possible, in considering relief and restitution, to add back to depositors' specific accounts the amounts that were wrongfully taken by Wells Fargo, using posting protocols that this order finds would have tracked the ordinary and reasonable expectations of depositors.

(*Id.* at 1138.)

- 6. In addition, I was the principal data and damages expert for Plaintiffs in the massive multi-district litigation *In re: Checking Account Overdraft Litigation*, MDL No. 2036 ("Overdraft MDL"). In connection with my work in the Overdraft MDL, I have analyzed historical transaction data from over thirty of the largest banks in the United States, including, but not limited to: BancorpSouth, Bank of America, Capital One, Chase, Comerica, Compass, Great Western, PNC, RBC Bank, RBS Citizens, TD Bank, Union Bank, US Bank, Wachovia, and Wells Fargo. In each of those cases, I analyzed the historical transaction data in order to advise the Court on the feasibility of using such data to ascertain damaged class members and to calculate individual damages for those class members. In each case, I was able to perform these tasks, and I have submitted numerous declarations in support of class certification motions describing my findings and conclusions. In each of those cases, using algorithms that I developed, I was able to programmatically ascertain class members and calculate damages using the bank's own data.
- 7. For example, in the *Larsen v. Union Bank* case, which was part of the Overdraft MDL, the Court specifically referenced my declaration in its class certification order, noting that Union Bank did not dispute my "ability to calculate damages on an account-by-account basis using

the bank's own computerized records, a method upon which Mr. Olsen previously relied, with court approval, in *Gutierrez v. Wells Fargo Bank, N.A.*" See 275 F.R.D. 666, 673 (S.D. Fla. 2011).

- 8. In addition to performing analyses relating to re-sequencing of transactions from high-to-low, over the last decade I have been retained on numerous occasions to perform analyses in cases where the claimed improper practice was charging overdraft fees based on available balance rather than ledger or collected balance, charging overdraft fees assessed on debit card transactions previously authorized to a positive available balance, charging fees on ATM and one-time debit card transactions, and/or charging multiple fees on ACH debits and checks submitted for payment multiple times. I have been able to successfully perform those analyses in the litigation and settlement context using full account holder data by writing code that ascertained each class member that was harmed by the practice and the total amount of harm caused by that practice.
- 9. My experience includes successfully providing damage calculations in both contested and settled cases. This includes performing damage calculations and/or providing opinions relied on by the Courts in contested class certification proceedings such as *In re: TD Bank, N.A. Debit Card Overdraft Litigation*, MDL No. 2613, Case No. 6:15-MN-02613-BHH (United States District Court for the District of South Carolina, Greenville Division); *Hernandez v. Point Loma Credit Union*, Case No.: 37-2013-00053519-CU-BT-CTL (Superior Court of the State of California, County of San Diego); *Gunter v. United Federal Credit Union*, Case No.: 3:15-cv-00483-MMD-WGC (United States District Court for the District of Nevada); and *Smith v. Bank of Hawaii*, Case No. 16-00513-JMS-WRP (United States District Court for the District of Hawaii).
- 10. In certifying the classes in *In re TD Bank*, the Court stated that I had "adequately demonstrated [I could] mine the Bank's customer transaction data, determine the number of fees

each customer did incur or would have incurred under differing accounting and posting scenarios defined by objective criteria, and adjust these calculations based upon data parameters established by the Court." *See* 325 F.R.D. 136, 173 (D.S.C. 2018).

- 11. And in *Hernandez*, in granting class certification, the Court cited my declaration stating it "[set] forth a methodology to identify all allegedly improper overdraft fees charged by PLCU to all putative class members."
- 12. Additionally, I have reviewed the computer systems utilized by a number of credit unions and banks, and have analyzed data originating from those systems for purposes of programmatically ascertaining class members and calculating damages for settlement distributions in the following cases: Fernandez v. Altura Credit Union, Case No.: RIC1610873 (Superior Court of the State of California, County of Riverside); Behrens v. Landmark Credit Union, Case No. 17cv-101-JDP (United States District Court for the Western District of Wisconsin); Hernandez v. Logix Federal Credit Union, Case No. BC628495 (Los Angeles County Superior Court); Ramirez v. Baxter Credit Union, Case No. 3:16-cv-03765-SI, (United States District Court for the Norther District of California); Bowens v. Mazuma Federal Credit Union, Case No. 15-00758-CV-W-BP (United States District Court for the Western District of Missouri); Santiago v. Meriwest Credit Union, Case No. 34-2015-00183730 (Sacramento County Superior Court); Lynch v. San Diego County Credit Union, Case No. 37-2015-00008551 (San Diego County Superior Court); Towner v. 1st MidAmerica Credit Union, Case No. 3:15-cv-1162 (United States District Court for the Southern District of Illinois); Lane v. Campus Federal Credit Union, Case No. 3:16-cv-00037 (United States District Court for the Middle District of Louisiana); Manwaring v. Golden 1 Credit Union, Case No.: 34-2013-00142667 (Superior Court of the State of California, County of Sacramento); Moralez v. Kern Schools Federal Credit Union, Case No. BCV-15-100538-SPC

(Superior Court of the State of California, County of Kern); Fry v. MidFlorida Credit Union, Case No. 8:15-CV-2743 RAL TGW (United States District Court for the Middle District of Florida, Tampa Division); Ketner v. State Employees Credit Union of Maryland, Inc., Case No. 1:15-CV-03594-CCB (United States District Court for the District of Maryland); Gunter v. United Federal Credit Union, Case No. 3:15-cv-00483-MMD-WGC (United States District Court for the District of Nevada); Sewell v. Wescom Credit Union, No. BC586014 (Los Angeles County Superior Court); Fleischmann v. Educators Credit Union, Case No. 2018CV000603 (State of Wisconsin Circuit Court, County of Milwaukee); Salls v. Digital Federal Credit Union, Case No. 18-cv-11262-TSH (United States District Court for the District of Massachusetts); *Pingston-Poling v.* Advia Credit Union, Case No. 1:15-CV-1208 (United States District Court for the Western District of Michigan); Smith v. Bank of Hawaii, Case No. 1:16-cv-00513-JMS-WRP (United States District Court for the District of Hawaii); Bettencourt v. Jeanne D'Arc Credit Union, Case No. 17cv-12548-NMG (United States District Court for the District of Massachusetts); Domann v. Summit Credit Union, Case No. 18-cv-167-wmc (United States District Court for the Western District of Wisconsin); Walker v. People's United Bank, Case No. 3:17-cv-00304-AVC (United States District Court for the District of Connecticut); Coleman-Weathersbee v. Michigan State University Federal Credit Union, Case No. 5:19-cv-11674-JEL-DRG (United States District Court for the Eastern District of Michigan); Barker v. BayPort Credit Union, Case No. 2:20-cv-195-RCY-LRL (United States District Court for the Eastern District of Virginia 2021); Grant, et al., v. CenterState Bank, 8:20-cv-1920-MSS-AAS (United States District Court, Middle District of Florida); Yarksi, et al., v. Knoxville TVA Emp. Credit Union, 3-220-19 (Circuit court of Knox County, Tennessee); and Howell, et al., v. Eastman Credit Union, C42517 (Circuit Court for Sullivan County, Tennessee).

13. Since 2008, I have analyzed the account holder transaction data originating from over 100 different financial institutions. In every one of those instances, the financial institution was able to produce the account holder transaction data in a usable format, and the data produced contained the information necessary to ascertain the class members and calculate individual damages for each of the class members, including under the theories being advanced by Plaintiff here.

Analysis

- 14. It is my understanding from proposed Class Counsel that Plaintiff is proposing two settlement classes. First is the "Repeat Fee Settlement Class" which is defined as "all customers of Defendant who have or have had accounts with Defendant who incurred more than one NSF fee or an NSF fee followed by an overdraft fee for the same item during the period beginning January 14, 2016 and ending on September 5, 2023." The second class is the "Regulation E Settlement Class" which includes "all customers of Defendant who have or had accounts with Defendant from January 14, 2020 through September 5, 2023, and who were assessed an overdraft fee on a one-time debit card or ATM transaction."
- 15. For the Repeat Fee Settlement Class, I have reviewed the class data produced by City National. The data contained information regarding all overdraft and NSF fees assessed by City National on ACH and check transactions between January 14, 2016, and September 5, 2023. The data included account numbers, the date of each fee, and the amount of each fee, the type of fee (*i.e.*, overdraft or NSF), the amount of each transaction that resulted in the fee, the type of each transaction that resulted in the fee (*i.e.*, ACH or check), merchant information (for ACH transactions), check numbers (for checks), and an indicator for each fee identifying the fees that were subsequently refunded by City National.

- 16. For the Regulation E Settlement Class, I have reviewed the class data produced by City National. The data contained information regarding all overdraft fees assessed by City National on one-time debit card and ATM transactions between January 14, 2020, and September 5, 2023 that were not subsequently refunded by City National. The data included account numbers, the date of each fee, and the amount of each fee.
- 17. For the Repeat Fee Settlement Class, based on the data provided, I have identified 39,288 City National accounts that were assessed at least one overdraft or NSF fee on an item that had been previously returned and resulted in an NSF fee between January 14, 2016, and September 5, 2023. There were 170,357 such fees totaling \$4,258,925.
- 18. For the Regulation E Settlement Class, based on the data provided, I have identified 39,909 City National accounts that were assessed at least one overdraft fee on a non-recurring debit card or ATM transaction between January 14, 2020, and September 5, 2023. There were 1,313,775 such fees totaling \$32,844,375.
- 19. The following chart shows the results for both classes, as well as the totals. However, since some City National accountholders are members of both classes, the total number of class members does not equal the number of Repeat Fee Settlement Class members plus the number of Regulation E Settlement Class members.

Class	Class Members	Number of Fees	Total of Fees
Repeat Fee Settlement Class	39,288	170,357	\$4,258,925
Regulation E Settlement Class	39,909	1,313,775	\$32,844,375
Total	68,001	1,484,132	\$37,103,300

20. Finally, the analysis detailed in this declaration revealed that Plaintiff Lisa Carter incurred an NSF fee, or an NSF fee followed by an overdraft fee, for the same item on one occasion, for a total of \$25. The analysis also revealed that Plaintiff Lisa Carter was charged 33 overdraft fees on a one-time debit card or ATM transactions for a total of \$825.

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

Executed this 6th day of November, 2023, in Seattle, Washington.

Arthur Olsen



IT CONSULTANT PROFILE: ARTHUR OLSEN

BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has nearly 20 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

SKILLS

- Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.
- Extensive training and experience creating functional designs and logical data models.
- ◆ Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.
- Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.
- Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

AWARDS

◆ Award for Operational Excellence | Microsoft Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

CERTIFICATIONS

- ◆ Oracle Certified Professional
- Certified Oracle Database Administrator

EXPERIENCE

Data Expert: Litigation Specialist | retained by various law firms

- ◆ Data expert supporting massive multi-district class action litigation, (MDL No. 2036 *In Re: Checking Account Overdraft Litigation*).
- ◆ Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America*, *N.A.*, D. Or. Case No. 3:11-CV-01372).
- ◆ Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.*, N.D. Cal. Case No. CV-10-1313 WHA).
- ◆ Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a \$203 million class restitution award.

Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.
- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.
- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- ◆ Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.
- ◆ Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.
- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

Database Engineer | Microsoft Licensing, Inc., Reno, NV

- ◆ Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.
- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.
- Created and documented plans for database maintenance, backup and recovery, and high availability.

Database Engineer | under contract at Microsoft Corporation, Redmond, WA

- ◆ Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.
- Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.
- Designed replication model using Oracle replication to satisfy extensive reporting requirements.
- ◆ Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.
- Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

EDUCATION

- ◆ Microsoft Internal Training Redmond, WA | March 2000 Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL
- ◆ ARIS Education Center Bellevue, WA | June 1996 Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts
- ◆ University of Washington Seattle, WA | June 1989 BA in Business Administration with a concentration in Finance.

CASE LIST: ARTHUR OLSEN

TESTIMONY GIVEN IN DEPOSITION OR AT TRIAL SINCE JANUARY 2016

Case Name	Filing Date	Case Number	Court
Bickerstaff v. SunTrust Bank	7/12/2010	10EV010485H	State Court of Fulton County, Georgia
Corvello v. Wells Fargo Home Mortgage	10/20/2010	4:10-CV-05072-VC	U.S. District Court, Northern District of California
Hawkins, et al. v. First Tennessee Bank	9/6/2011	CT-004085-11	Circuit Court of Shelby County, Tennessee
In re: Fifth Third Early Access Cash Advance Litigation	11/2/2012	1:12-cv-00851-MRB	U.S. District Court, Southern District of Ohio
Hernandez, et al. v. Point Loma Credit Union	6/18/2013	37-2013-00053519-CU- BT-CTL	Superior Court of San Diego County, California
Moss, et al., v. First Premier Bank	9/30/2013	2:13-CV-05438-JFB- GRB	U.S. District Court, Eastern District of New York
Lusnak, et al. v. Bank of America	3/12/2014	2:14-cv-01855-GW	U.S. District Court Central District of California
All-South Subcontractors v. Sunbelt Rentals	8/22/2014	1:14-cv-00124-WLS	U.S. District Court, Middle District of Georgia
Lynch, et al. v. San Diego County Credit Union	3/12/2015	37-2015-00008551-CU- BT-CTL	Superior Court of San Diego County, California
IN RE: TD Bank, N.A. Debit Card Overdraft Fee Litigation	Consolidated 4/15/2015	MDL No. 2613. Civil Action No. 6:15- MN-2613-BHH	U.S. District Court, District of South Carolina

Case Name	Filing Date	Case Number	Court
Hunters Run, et al. v. WCA Waste Corporation	6/17/2015	1:15-cv-151-MW-GRJ	U.S. District Court, Northern District of Florida
Gunter, et al. v. United Federal Credit Union	9/21/2015	3:15-cv-00483-MMD- WGC	U.S. District Court, District of Nevada
Stathakos, et al. v. Columbia Sportswear	10/2/2015	4:15-cv-04543-YGR	U.S. District Court Northern District of California
Morrow, et al. v. Carter's, Inc.	5/6/2016	1:16-cv-01485-ELR	U.S. District Court Northern District of Georgia
Childress, et al. v. JP Morgan Chase	5/31/2016	5:16-cv-00298-BO	U.S. District Court Eastern District of North Carolina
Roberts, et al. v. Capital One, N.A.	6/22/2016	1:16-cv-04841-LGS	U.S. District Court Southern District of New York
Kirkpatrick, et al. v. HomeAway.com	6/23/2016	1:16-cv-00733-LY	U.S. District Court Western District of Texas
Baker, et al., v. City of Florissant	10/31/2016	4:16-cv-1693	U.S. District Court, Eastern District of Missouri
Webb, et al., v. City of Maplewood	11/1/2016	4:16-cv-1703	U.S. District Court, Eastern District of Missouri
Liberty Salad, Inc., et al. v. Groundhog Enterprises	1/17/2017	2:17-cv-00226	U.S. District Court, Eastern District of Pennsylvania
Hoggard, et. al. v. Nationstar Mortgage	1/13/2017	1:17cv00099-TK	U.S. District Court, District of Columbia
Custom Hair Design, et al. v. Central Payment	8/21/2017	8:17-cv-00310	U.S. District Court, District of Nebraska

Case Name	Filing Date	Case Number	Court
Smith, et al. v. Flagstar Bank	8/22/2018	3:18-CV-05131-WHA	U.S. District Court, Northern District of California
Clark v. Bank of America, N.A.	11/29/2018	1:18-cv-3672-SAG	U.S. District Court, District of Maryland
Garcia, et al. v. UMB Bank	1/15/2019	1916-CV01874	Circuit Court of Jackson County, Missouri
Baker, et al. v. State Farm	2/7/2019	4:19-cv-00014-CDL	U.S. District Court, Middle District of Georgia
Blankenship, et al., v. HAPO Community Credit Union	2/20/2019	19-2-00922-03	Superior Court of Washington, County of Benton
Howell, et al., v. Eastman Credit Union	4/25/2019	C42517	Circuit Court for Sullivan County, Tennessee
Walkingstick, et al., v. Simmons Bank	5/22/2019	6:19-cv-03184-RK	U.S. District Court, Western District of Missouri
Garcia v. JSC Federal Credit Union	5/23/2019	2019-35818	District Court of Harris County, Texas
Yarski, et al., v. Knoxville TVA Emp Credit Union	6/13/2019	3-220-19	Circuit Court of Knox County, Tennessee
Carnley v. Conduent Business Services	9/5/2019	5:19-cv-01075-XR	U.S. District Court, Western District of Texas
Nguyen, et al., v. Raymond James & Associates, Inc.	1/14/2020	8:20-cv-195-CEH-AAS	U.S. District Court, Middle District of Florida
Precision Roofing, et al., v. Centerstate Bank	4/6/2020	3:20-cv-00352-BJD- JRK	U.S. District Court, Middle District of Florida

Case Name	Filing Date	Case Number	Court
Wilkins v. Simmons Bank	4/14/2020	3:20-cv-00116-DPM	U.S. District Court, Eastern District of Arkansas
Loguidice v. Gerber Life Insurance Co.	4/24/2020	7:20-CV-03254 (KMK)	U.S. District Court, Southern District of New York
Grant, et al., v. Centerstate Bank	8/18/2020	8:20-cv-1920-MSS- AAS	U.S. District Court, Middle District of Florida
Flores v. Intrust Bank, N.A.	6/1/2021	2021-CV-001724-OT	District Court, Sedgwick County, Kansas
Morrow v. Navy Federal Credit Union	6/15/2021	1:21-cv-722-MSN-LRV	U.S. District Court, Eastern District of Virginia
Perkins v. Vantage Credit Union	8/16/2021	21SL-CC03736	Circuit Court of St. Louis County, State of Missouri
Bulls v. USAA Federal Savings Bank	11/24/2021	5:21-cv-00488-BO	U.S. District Court, Eastern District of North Carolina
Polvay v. FCTI, Inc.	5/25/2022	1:22-cv-04315-JSR	U.S. District Court, Southern District of New York
Adams v. Max Credit Union	5/11/2023	46-cv-2020-900119	Circuit Court of Macon County, Alabama