

**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

**DECLARATION OF RICHARD MCCUNE IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Richard McCune, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California, have been admitted *pro hac vice* in this case, and am a shareholder with McCune Law Group, APC. I have personal knowledge of the matters set forth herein, and if called as a witness, 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.

8. Proposed co-lead class counsel, Emily Kirk, is also an experienced litigator at McCune Law Group with over fifteen years of experience representing plaintiffs in complex litigation and class actions. She has focused her practice since approximately 2018 on litigating consumer overdraft class actions, including many of the cases listed

above. She was recently appointed co-lead class counsel by the Court in *Barker v. BayPort Credit Union*, United States District Court for the Eastern District of Virginia, No. 20-cv-195 and *Sinks v. San Mateo Credit Union*, Superior Court of the State of California, County of San Mateo, Case No. 20-CIV-01789.

9. I've been personally involved in all aspects of the investigation, pleadings, law and motion practice, discovery, and settlement negotiations in this case, and it is my belief that this settlement is in the best interest of the class, taking into account both the risks and benefits of proceeding to trial and verdict in this case.

10. Prior to filing this lawsuit, I analyzed the proposed class representative, Lisa Carter's, account statements from City National and conferred with her. She reviewed the Complaint before it was filed.

11. Plaintiff filed the operative Complaint on January 14, 2021, which alleged two main claims. First, it alleged City National breached its standardized Account Agreement with customers by assessing multiple NSF fees (or an NSF fee followed by an overdraft fee) on a single transaction item. Second, the Complaint alleged City National violated Regulation E by failing to provide customers with an accurate Opt-in Agreement before charging them overdraft fees on one-time debit card and ATM transactions.

12. During discovery, Plaintiff learned that City National allegedly violated Regulation E through several other improper practices, which not only included using an inaccurate Opt-in Agreement, as described above, but also (1) failing to provide the Opt-in Agreement to customers opening their accounts through automated means, but opting them in anyway, (2) encouraging customers to opt in by charging non-opted in customers

a fee for declined one-time debit card or ATM transactions, (3) failing to confirm a signed Opt-in Agreement is on file for each customer City National alleges has opted-in, or failing to confirm a customer verbally verified their intent to be opted-in when they enroll over the phone or automated system and (4) advertising the overdraft program as equivalent to a short-term credit line. *Id.*

13. This litigation has been hard-fought from the beginning. The Parties have engaged in written discovery and taken depositions. City National has responded to Plaintiff's requests for production and interrogatories, including producing approximately 2,700 pages of documents and class-data, which Plaintiff's Counsel has reviewed. Plaintiff has taken three depositions from Jason Hensley, City National's Senior Vice President and Chief Operations Officer, who appeared as City National's Rule 30(b)(6) witness, and two City National employees Mr. Hensley identified as having additional knowledge of City National's overdraft practices: Constance Pletcher-Perez, Assistant Vice President and Call Center Manager, and Christina Foster, Vice President of Compliance. Plaintiff's data expert, Arthur Olsen, also conducted a detailed analysis of City National's data to determine damages.

14. After conducting discovery and briefing Plaintiff's class certification motion, the Parties filed a joint motion to stay the case for ninety days to pursue mediation. On August 16, 2022, the Parties mediated with Gary S. Chilton of Holladay, Chilton & Erwin, PLLC. After a full day, the Parties agreed on the proposed \$1,500,000.00 cash settlement (*i.e.*, Settlement Fund), plus certain changes of overdraft practice. The Parties subsequently executed the binding Settlement Agreement attached

hereto as **Exhibit 1**. On September 5, 2023, the Court preliminarily approved the Settlement.

15. Plaintiff and Class Counsel believe the settlement is fair, adequate, and reasonable, and therefore recommend it. Moreover, the Class has responded favorably to it.

16. Plaintiff's claims are typical of the settlement classes. Here, Plaintiff's claims are essentially identical to those of the Class. Plaintiff was charged overdraft fees on one-time debit card and ATM transactions pursuant to the same Opt-in Agreement as other Class Members. Likewise, she was also charged multiple NSF fees, or an NSF fee followed by an overdraft fee, for the same item, pursuant to City National's standardized Account Agreement and other disclosures.

17. Plaintiff also played a substantial and pro-active role in the case. She has actively participated in the litigation, assisted Class Counsel by gathering documents and other information, participated in the mediation, and was willing to sit for her deposition and testify at trial on behalf of the Class. She understands she is pursuing this case on behalf of all Class Members similarly situated and understands her duty to protect absent Class Members. Ms. Carter was, in my opinion, instrumental to the success of this case, and is deserving of a \$10,000 service award given the work she did to obtain the result for the Class. Notably, service awards between \$10,000 to \$15,000 have been approved in numerous overdraft fee class actions. *See, e.g., Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 WL 736962, at *10-11 (N.D.N.Y. Feb. 25, 2021) (awarding each of the three named plaintiffs a \$15,000 service award); *Coleman-Weathersbee v. Michigan*

State University Federal Credit Union, Case No. 5:19-cv-11674-JEL-DRG (U.S. District Court for the Eastern District of Michigan), Dkt. No. 33, Order Granting Final Approval of Class Action Settlement (awarding named plaintiff \$14,674 in loan forgiveness as a service award); *Walker v. People’s United Bank*, Civil No. 17cv304 (AVC) (U.S. District Court for the District of Connecticut), Dkt. No. 119, Order on Final Approval of Settlement (granting named plaintiff a \$15,000 service award); *Smith v. Bank of Hawaii*, Case No. 1:16-cv-00513 JMS WRP (U.S. District Court for the District of Hawaii), Dkt. No. 233, Order Granting Final Approval of Class Action Settlement (awarding named plaintiff a \$15,000 service award); *Salls v. Digital Federal Credit Union*, Case No. 18-cv-11262-TSH (U.S. District Court for the District of Massachusetts), Dkt. No. 62, Order Granting Final Approval of Class Action Settlement (awarding named plaintiff a \$10,000 service award).

18. In the Motion for Preliminary Approval (“MPA”), Plaintiff indicated it would elicit bids from two Claims Administrators, Epiq and KCC, and would select the lowest bidder. Epiq was unable to submit a bid. Thus, Plaintiff sought a bid from Simpluris, another qualified class administration firm. Simpluris provided the lower of the two bids between it and KCC. Accordingly, Simpluris was selected by Plaintiff, in consultation with Defendant, to administer this settlement. Simpluris has provided a declaration laying out the notice program and the services it has provided to date, including the success of the notice program.

19. On October 5, 2023, Class Counsel learned that a staff member responding to Class Member inquiries mistakenly told some callers that they did not have to do

anything to receive payment. This was inaccurate given “Regulation E Settlement Class” members must submit a claim in order to maximize their recovery. While this staff member spoke to a very small percentage of “Regulation E Settlement Class” members, out of an abundance of caution, Class Counsel directed a subsequent notice to be sent to all “Regulation E Settlement Class” members clarifying the process. True and correct copies of the mailed and emailed Reminder Letters are attached as **Exhibit B** to the Simpluris declaration. The cost of this additional notice will be paid by Class Counsel from its own funds, and will not in any way reduce the Settlement Fund for the Class.

20. Although I believe the liability in this case is strong, there is always risk. This case presents numerous complex factual and legal questions pertaining to banking contracts and federal banking law. If the Settlement is not approved, it would need to be determined whether City National violated the "opt-in" rule under Regulation E, which requires an examination of the balance it uses to assess overdraft fees, as well as violated Regulation E through its practices that encourage ongoing harm. Moreover, it would also need to be decided whether City National breached its contracts with customers by assessing multiple NSF fees on a single item. If the litigation were to proceed, Defendant would almost certainly file a motion for summary judgment, of which the outcome would be uncertain. Moreover, although the parties’ briefed class certification, they settled prior to the Court’s decision on the motion, leading to more uncertainty. Assuming the case went to trial, a favorable verdict for one party would lead to the other appealing, which could add years to the litigation, costing more time and expense with no guarantee of recovery. As such, the value of the Settlement must be considered in light of the strong

possibility of continued litigation, motion practice, a trial and lengthy appeals process that could very well span many years and involve great expense with only a small chance of a better recovery.

21. Regulation E provides for statutory damages up to \$500,000 per violation per person. *See* U.S. Code § 1693m(a). City National disputes that it is subject to any statutory damages or that Regulation E provides for additional statutory penalties based on the number of violations, but Plaintiff contends that there were at least five violations of \$500,000 each should the matter proceed to trial. For determining the value of potential damages, Plaintiff has assumed \$2,500,000 (five statutory violations and damage of \$500,000 each), which City National disputes. If this matter proceeded to trial, in addition to statutory damages, Plaintiff would request the full value of actual damages. City National further disputes whether such damages are available for a certified class, and contends that the maximum value for all Regulation E violations is \$500,000 per the statute. 15 U.S.C. §1693m(a)(2)(B).

22. Had the Class prevailed at trial, Class Counsel argues the total damages recoverable would have been \$39,406,000 million (total actual damages for both settlement classes, plus \$2,500,000 for five Regulation E violations). Not accounting for the value of the agreed-upon practice changes, this settlement constitutes 3.8% of the total and is within the range of recovery found to be reasonable in this Circuit.

23. However, it also possible that the Court could interpret Regulation E to not permit recovery of actual damages for a certified class due to the individualized nature of having to show detrimental reliance as did the courts in *Smith v. Bank of Hawaii*, No. CV

16-00513 JMS-WRP, 2019 WL 2712262, at *8 (D. Haw. June 28, 2019) and *In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 325 F.R.D. 136, 164 (D.S.C. 2018). This means the Class recovery would be limited to what is available per the monetary penalty provided by the statute. *See* 15 U.S.C. § 1693m(a). In that case, Class Counsel would argue total statutory damages is \$2,500,000 (\$500,000 multiplied by 5 violations). *See* 15 U.S.C. § 1693m(a). But the Court could also find that the maximum penalty available for all Regulation E violations is capped at \$500,000, thus making the maximum recoverable damages for the Class \$2,894,225 (\$2,394,225 (Repeat Fee Damages) plus \$500,000 (Regulation E Damages)). Using this calculation, Class Members are receiving 52% of the estimated value recoverable at trial (not accounting for the value of Defendant's agreed-upon practice changes), which far exceeds what is reasonable in the Tenth Circuit.

24. As such, based on the uncertainty and risk of future litigation, including award of damages, I believe the Settlement Fund of \$1,500,000 plus the extensive practice changes City National has agreed to is a very good result for the Class.

25. Over an almost three year period, the McCune Law Group has spent a total of **507.89 hours** to date on this litigation, totaling **\$286,938.50** in fees. To date, I have worked **50.3** hours on the case, and my work in this case was billed at \$900 per hour. This rate, along with my prior rates of \$825 per hour and \$850 per hour, have been approved by courts throughout the United States, including in the United States District Court, Southern District of Illinois (*Towner v. 1st MidAmerica Credit Union*, Case No. 3:15-cv-1162 - \$825); United States District Court, Northern District of California

(*Ramirez v. Baxter Credit Union*, Case No. 3:16-cv-03765 - \$825); United States District Court, Middle District of Louisiana (*Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 - \$825); United States District Court for the Western District of Wisconsin (*Behrens v. Landmark Credit Union*, Case No. 17-cv-101 - \$850); United States District Court, Middle District of Florida, Tampa Division (*Fry v. MidFlorida Credit Union*, Case No. 8:15-cv-2743 - \$825); United States District Court, District of Maryland (*Ketner v. State Employees Credit Union of Maryland*, 1:15-cv-03594 - \$825); United States District Court, District of Nevada (*Gunter v. United Federal Credit Union*, Case No. 3:15-cv-00483 - \$850); Superior Court of the State of Washington, County of Pierce (*Wodja v. Washington State Employees Credit Union*, Case No. 16-2-12148-4 - \$850); United States District Court for the Western District of Michigan (*Pingston-Poling v. Advia Credit Union*, Case No.: 1:15-CV-1208 - \$850); United States District Court for the Eastern District of Missouri (*Bowens v. Mazuma Credit Union*, Case No. 4:15-cv-00758 - \$850); United States District Court for the Eastern District of Michigan (*Coleman-Weathersbee v. Michigan State University Federal Credit Union*, Case No.5:19-cv-11674-JEL-DRG- \$850); United States District Court for the District of Massachusetts (*Salls v. Digital Federal Credit Union*, Case No.: 18-cv-11262-TSH - \$850); and the United States District Court for the Northern District of New York (*Story v. SEFCU*, 1:18-cv-00764-MAD-DJS - \$850). In *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) and in *Sinks v. San Mateo Credit Union*, Superior Court of the State of California, County of San Mateo, Case No. 20-CIV-01789, my hourly rate of \$900 was

approved.

26. In addition to my work, proposed Co-Lead Class Counsel, Emily 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; as well as a number of other overdraft cases that are still in active litigation. To date, Ms. Kirk has worked **189** hours on this case, and her usual hourly fee for lodestar contingency class action cases is \$650 per hour, which was recently approved by the court in *Barker v. BayPort Credit Union*.

27. In addition to myself and Ms. Kirk, a number of attorneys and staff from McCune Law Group have worked on this matter, including David Wright, Steve Haskins, Valerie Savran, Ann Smith, and Cynthia Soria.

28. David Wright obtained his J.D. from Pepperdine University School of Law in 1994 and was admitted to the California bar in 1994. Following law school, he clerked for the Honorable Stephen S. Trott, United States Court of Appeals for the Ninth Circuit. Following his clerkship, he became an associate at Morrison & Foerster, in Los Angeles, California. He left private practice in 1997 to become a prosecutor in United States Attorney's Office for the Central District of California. In 2001, he joined the firm of Welebir & McCune where he concentrated his practice in representing plaintiffs in product liability and complex litigation. He became a named partner of McCuneWright, LLP, in July 2007. Mr. Wright and I filed the first class action lawsuit in the United States against Toyota Motor Corporation for the sudden unintended acceleration of its

vehicles. Following the transfer of this action to the multi district litigation case of *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, I was subsequently appointed to the Plaintiffs' Personal Injury and Wrongful Death Committee and he assisted me in that litigation. Mr. Wright was appointed as class counsel by the Honorable Madeline Cox Arleo, United States District Judge for the District of New Jersey, in the class action lawsuit of *Bang v. BMW*, Case No. 2:15-cv-6945 (MCA)(LDW), which received Final Approval of Class Settlement on September 12, 2018. He was also involved in the class action lawsuit *Gutierrez v. Wells Fargo Bank, N.A.*, regarding the unfair assessment of overdraft fees, which resulted in a \$203 million judgment. Mr. Wright worked **5.8** hours on this case, and his usual hourly fee for lodestar contingency class action cases is \$900.

29. Steve Haskins earned his J.D. at Brigham Young University, where he graduated *magna cum laude* and joined the Order of the Coif. During his time there, he also served as a judicial extern to the Honorable Paul Cassell of the United States District Court for the District of Utah and the Honorable Jill Parrish of the Utah Supreme Court. Before joining McCune Law Group, Mr. Haskins represented entities and individuals in a multitude of industries including manufacturing, property development, health care, media and entertainment, and non-profit corporations. He also worked alongside McCune Law Group during its representation of the State of Arizona Attorney General's office in litigation against Volkswagen regarding its emissions scandal. Mr. Haskins specializes in class actions, complex litigation, and writs, motions, & appeals matters. His extensive legal background includes experience working on matters involving antitrust,

constitutional issues, contract and business disputes, labor and employment disputes, commercial and product-liability disputes, and probate matters. Over the course of his career, Mr. Haskins has prepared dozens of briefs for cases heard by the United States Supreme Court, the California Supreme Court, the Ninth Circuit of the United States Court of Appeals, and the California Court of Appeal. To date, Mr. Haskins worked **74** hours on this case, and his usual hourly fee for lodestar contingency class action cases is \$750 per hour.

30. 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 **49.45** hours on this case, and her usual hourly fee for lodestar contingency class action cases is \$400 per hour.

31. The case is staffed by Ann M. Smith and Cynthia Marin. Ms. Smith is a long-term experienced paralegal with McCune Law Group. To date, she has worked a total of **60.82** hours on the case and her usual and customary paralegal hourly rate for lodestar contingency class cases for McCune Law Group is \$275 per hour. Cynthia Marin is another experienced paralegal with McCune Law Group. She has worked a total of

78.52 hours on the case and her usual and customary hourly rate as a paralegal for lodestar contingency class cases is \$275 per hour.

32. With respect to assignments, appropriate attorneys and staff were assigned to specific tasks based on their respective experience levels and skills, and clear instruction was provided regarding who was responsible for each task. Moreover, where feasible, work was assigned to the lowest-billing timekeepers appropriate for the task in question.

33. During the time that this litigation has been pending, McCune Law Group has spent considerable time working on this litigation that could have been spent on other matters. Throughout the litigation, the active prosecution of this matter has consumed 507.89 hours in billable time that could otherwise have been spent on other fee-generating work.

34. The time that McCune Law Group has spent on this litigation has been completely contingent on the outcome. McCune Law Group has not been paid for any of the time spent on this litigation. No payment of attorneys' fees would occur in this case but for a fee award.

35. Information regarding work performed is derived directly from McCune Law Group's time records, which are prepared contemporaneously and maintained by McCune Law Group in the ordinary course of business. These records can be provided to the Court should it request to review them.

36. McCune Law Group sets its hourly rates according to prevailing market rates and has consistently been awarded fees according to those rates. McCune Law

Group exclusively represents clients on a contingent fee basis, both in class and individual cases. However, those rates are the minimum we would charge to accept employment on an hourly basis. The rates are also consistent with proposed Class Counsel's rates in other representative settlements that have been granted final approval.

37. 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	Shareholder	50.3	\$900	\$45,270.00
David Wright	Shareholder	5.8	\$900	\$5,220.00
Emily Kirk	Financial Services Practice Group Leader	189	\$650	\$122,850.00
Steve Haskins	Partner	74	\$750	\$55,500.00
Valerie Savran	Associate	49.45	\$400	\$19,780.00
Ann Smith	Paralegal	60.82	\$275	\$16,725.50
Cynthia Marin	Paralegal	78.52	\$275	\$21,593.00
Total		507.89		\$286,938.50

38. In addition, as laid out in the Declaration of Barrett T. Bowers of the Bowers Law Firm, Mr. Bowers seeks reimbursement for his attorney's fees. Mr. Bowers

spent a total of **11** hours on this case at his regular hourly rate of \$300, for a total lodestar of \$3,300. (*See* Declaration of Barrett T. Bowers, ¶¶ 6-8).

39. Based upon my experience with other class actions and complex matters, I believe the time expended by McCune Law Group and The Bowers Law Firm in connection with this litigation was reasonable in amount and contributed to the ultimate result achieved for the class.

40. Plaintiff requests attorneys' fees of 33 1/3% (one-third) of the Value of the Settlement. 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%).

41. 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 2**. The orders in these cases are attached hereto as **Exhibit 3**.

42. The following is a breakdown of the expenses McCune Law Group has incurred to date, and for which it seeks reimbursement in this matter:

Type	Amount
Deposition and Transcript Expenses	\$4,970.25
Expert Expenses	\$39,600.00
Court Filing Expenses	\$633.25
Shipping and Overnight Expenses	\$317.56
Mediation Related Expenses	\$3,357.50
Miscellaneous	\$11.71
Total	\$48,890.27

43. The foregoing expenses were incurred solely in connection with this litigation and are reflected in McCune Law Group’s books and records as maintained in the ordinary course of business. The claimed expenses were incurred to initiate the action, to allow experienced overdraft class action litigators to appear *pro hac vice*; to

retain the services of a preeminent mediator that has assisted the parties successfully settling the case; to retain a well-qualified banking data and liability expert to prepare for litigation and mediation; and to retain court reporters and videographers for depositions. Through November 6, 2023, those expenses have amounted to **\$48,890.27**. Class Counsel has agreed to cap costs at \$55,000 as set forth in the notice. (Dkt. No. 34, SA, Ex. 1-2). 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 \$55,000 in costs and expenses, which constitutes approximately 3.6% of the total settlement. Moreover, if final costs are lower than \$55,000, such amount will remain in the settlement fund.

44. The above expense numbers do not include significant internal and other costs that McCune Law Group has incurred, but for which McCune Law Group does not seek reimbursement, including costs for in-house copying, scanning and printing, telephone expenses and legal research program subscription expenses.

45. The parties are in agreement that Lawton Public School Foundation will be the recipient of any potential *cy pres* award. Per its website, located at <https://www.lawtonpsf.org/our-story/>, the Lawton Public School Foundation (LPSF), is a 501(c)(3) organization, and was founded in 1991 in an effort to address continuing cuts in the local educational budgets for Lawton Public Schools. Historically funded through memorial and other voluntary financial contributions from individuals and local companies, the LPS employee payroll deduction, and an annual fundraising breakfast, the LPSF administers funds aimed at providing local educators with scientific, educational, and charitable funding not available from the school district. Funded grants are used by

teachers in the LPS school district for in-class educational materials, technology, and other teaching aids that would not otherwise be available to them. Oklahoma requires financial literacy as part of the requirement for students to graduate. As such, the *cy pres* funds will be spent on or earmarked for Lawton Public Schools financial literacy grants or programs, in accordance with state guidelines. A true and correct copy of the letter confirming the allocation of the *cy pres* funds from Lisa Carson, Executive Director of Lawton Public School Foundation, is attached hereto as **Exhibit 4**. As such, Lawton Public School Foundation is an appropriate organization as a *cy pres* recipient in this case in order to further the goal of financial literacy.

46. Class Counsel's fee application is based on one-third (33 and 1/3%) of the Value of the Settlement as defined in the Settlement Agreement (*i.e.*, \$1,500,000 (Settlement Fund) + practice changes). Thus, a one-third fee equals \$500,000. The requested \$500,000 fee represents an enhancement lodestar multiplier of approximately 1.72, based on Class Counsel's total lodestar of \$290,238.50, which accounts for the lodestar of both McCune Law Group and the Bowers Law Firm, which is reasonable, and actually at the low end, of multipliers approved in this Circuit when the lodestar cross-check is used.

47. McCune Law Group will be compensating local counsel Barrett T. Bowers of The Bowers Law Firm 10% of the total attorney's fees awarded for an amount of \$50,000 for his substantial and significant contribution to the favorable settlement achieved in this case.

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 Irvine, California.

/s/Richard D. McCune
Richard McCune

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

Lisa Carter, et al. v. The City National Bank and Trust Company of Lawton, Oklahoma

United States District Court for the Western District of Oklahoma

Case No. 5:21-cv-29 (PRW)

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiff Lisa Carter (“Named Plaintiff”) and all those on whose behalf she is prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant The City National Bank and Trust Company of Lawton, Oklahoma (“Defendant” or “City National”), on the other hand, as of the date executed below. All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement.

RECITALS

A. On January 14, 2021, Named Plaintiff filed a putative class action complaint entitled *Lisa Carter, et al. v. The City National Bank and Trust Company of Lawton, Oklahoma*, in the United States District Court for the Western District of Oklahoma, Case No. 5:21-cv-29 (PRW) (the “Litigation”). Named Plaintiff alleges claims for breach of contract, including the covenant of good faith and fair dealing, unjust enrichment/restitution, money had and received, and violations of the Electronic Fund Transfer Act (“Regulation E”), 12 C.F.R. § 1005.1, *et seq.*

B. On April 16, 2021, Defendant answered the Complaint.

C. After initial discovery, the Named Plaintiff filed a Motion for Class Certification on March 14, 2022. City National filed its Response to the Motion for Class Certification on April 14, 2022, and Named Plaintiff filed her Reply in Support of the Motion for Class Certification on May 13, 2022.

D. After briefing on Named Plaintiff’s class certification motion was complete, on August 16, 2022, the parties participated in a mediation before Gary Chilton, Holladay & Chilton, PLLC, at which time the parties reached a settlement of the claims alleged in Named Plaintiff’s Complaint. The settlement described below is the result of the parties’ agreement reached at the August 16, 2022 mediation.

E. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint and all other claims alleged by Named Plaintiff, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Defendant nevertheless believes that this settlement is in its best interest and in the best interests of all of its customers. Nothing contained in this Agreement shall be used or construed as an admission of fault, wrongdoing, or liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of fault, liability, or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

F. Named Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) “Bar Date to Object” will be the date set by the Court as the deadline for Class Members to file an Objection, and shall be approximately fifteen (15) days after the filing of the Motion for Final Approval.

(b) “Bar Date to Opt Out” shall be the date set by the Court as the deadline for Class Members to opt out. The Bar Date to Opt Out shall be thirty (30) days after the date the Notice (defined below) must be sent to the Class Members.

(c) “Claims Administrator” shall mean the entity that will provide the notice and other administrative handling this Agreement. Class Counsel shall request bids from at least two separate claims administrators and the one providing the lowest bid shall be selected.

(d) “Class Counsel” shall mean Richard D. McCune and Emily J. Kirk of the McCune Law Group, APC and Barrett T. Bowers of The Bowers Law Firm.

(e) “Class Member” shall mean any customer of Defendant who is in either the Repeat Fee Settlement Class or the Regulation E Settlement Class.

(f) “Complaint” shall mean the Complaint filed on January 14, 2021.

(g) “Court” shall mean the District Court for the Western District of Oklahoma.

(h) “Defendant’s Counsel” shall mean Scott Meacham and John M. Thompson of Crowe & Dunlevy.

(i) “Effective Date” shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) thirty (30) days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(j) “Email Notice” shall mean a short form of the Notice that shall be sent by email to Class Members who have elected to receive notices from Defendant by email.

(k) “Exclusion Letter” shall mean a letter by a Class Member who elects to opt out of this Agreement.

(l) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(m) “Final Approval Order” shall mean the Order and Judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date.

(n) “Final Report” shall mean the report prepared by the Claims Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 10, below.

(o) “Motion for Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 7, below.

(p) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of court approved attorneys’ fees and costs, any court approved service award, the costs of Notice, and any fees paid to the Claims Administrator. The costs of Notice and administration shall include, but not be limited to, the costs of compiling the class list, sending the Notice, updating the class list, and the transmissions of settlement checks.

(q) “Notice” shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below) and shall refer to the form of Notices attached hereto as Exhibits 1 and 2 (E-mail version).

(r) “Plaintiff’s Expert” shall mean data/database expert, Arthur Olsen, who has been hired to analyze Defendant’s transactional data and perform the necessary calculations to determine Settlement Payments to Class Members.

(s) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 5 and 6, below.

(t) “Regulation E Settlement Class” shall mean all customers of Defendant who have or had accounts with Defendant from January 14, 2020 through the date on which the Court preliminarily approves this Agreement, and who were assessed an overdraft fee on a one-time debit card or ATM transaction.

(u) “Regulation E Overdraft Charges” shall mean overdraft fees that were paid by the certified Regulation E Settlement Class Members from January 14, 2020 through the date on which the Court preliminarily approves this Agreement.

(v) “Repeat Fee Settlement Class” shall mean all customers of Defendant who have or have had accounts with Defendant who incurred more than one non-sufficient funds (“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 the date on which the Court preliminarily approves this Agreement.

(w) “Repeat Fee Charges” shall mean NSF and overdraft fees that were paid by certified Repeat Fee Settlement Class Members from January 14, 2016 through the date on which the Court preliminarily approves this Agreement.

(x) “Settlement Fund” shall mean the one million five hundred thousand dollars (\$1,500,000.00), to be paid by Defendant under the terms of this Agreement.

(y) “Settlement Payment” shall mean the payments, individually and in the aggregate, to each Class Member as provided in Section 9(d)(iv), below.

(z) “Uncollected Account Debt” shall mean any remaining amount owed by a Regulation E Settlement Class Member or Repeat Fee Settlement Class Member who had their account closed with an uncollected negative balance between January 14, 2016, through the date on which the Court preliminarily approves this Settlement.

(aa) “Value of the Settlement” shall mean the Settlement Fund plus the value of the changes in practice described in Section 2 below.

2. CHANGE IN PRACTICES AND ACCOUNT DISCLOSURES. Defendant has certain overdraft, NSF, and Regulation E policies and disclosures which it has either changed since the filing of this lawsuit, or will change in connection with the resolution of the settlement including: 1) requiring signatures or recorded confirmation of every opt-in (other than opt-ins through Defendant’s Interactive Voice Response (“IVR”)); 2) for customers opting-in via IVR, once a customer pushes the button to opt-in, they will first be required to listen to a full Regulation E Opt-in disclosure recording, and only after listening will the customer have the opportunity to opt-in following which Defendant will promptly send a written confirmation letter to the customer; 3) adopt procedures to verify a customer has received the Opt-in disclosure agreement before they opt-in, or has been read the Regulation E Opt-in disclosure agreement before the customer opts-in; 4) send confirmation letters to every customer opting-in and keep a copy of those letters in the customers’ respective files; 5) remove all references to “available balance” and/or “collected balance” with respect to the calculation of overdraft fees in its advertising and account documentation, except as may otherwise be required by law; 6) limit the number of overdraft and NSF fees on a single item that has already been presented and incurred a fee to two retry overdraft or NSF fees regardless of the number of times the item is resubmitted for payment; and 7) make changes to the deposit agreement and fee schedule to make clear that returned items may be subject to an NSF fee and then up to two retry NSF/overdraft fees if the item is resubmitted for payment by a merchant.

3. REPAYMENT OF UNCOLLECTED ACCOUNT DEBT TO DEFENDANT. Class Members who are not customers of Defendant at the time of the distribution of the Net Settlement Fund (meaning they no longer have an active account), and whose accounts were closed with an uncollected negative balance between January 14, 2016 and the date on which the Court preliminarily approves this Settlement, will have their individual Settlement Payment reduced by the amount of Uncollected Account Debt owing on their account. These Class Members will receive a Settlement Payment by check only if the closed account has a positive balance after the Settlement Payment is credited to the account. If the Class Member’s closed account still has a negative balance after being credited with the Settlement Payment, such Class Member’s negative

balance will be reduced by the amount of the Settlement Payment but such Class Member will not receive a check from the Class Administrator. All adjusted balances of Class Members' accounts will be reported to Experian.

4. **CLASS ACTION SETTLEMENT.** Named Plaintiff shall propose and recommend to the Court that the two settlement classes be certified, which classes shall be comprised of the Class Members. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Named Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

5. **PRELIMINARY SETTLEMENT APPROVAL.** Class Counsel shall use reasonable efforts to file a motion seeking a Preliminary Approval/Notice Order by November 1, 2022. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of each class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified classes, and the requirement that the Notice be given to the Class Members as provided in Section 6, below (or as otherwise determined by the Court).

6. **NOTICE TO THE CLASSES.**

(a) The Claims Administrator shall send the Notice to all Class Members as specified by the Court in the Preliminary Approval/Notice Order.

(b) For those Class Members who are current customers of Defendant and have agreed to receive notices regarding their accounts from Defendant electronically, Defendant shall provide the Claims Administrator with the most recent email addresses it has for these Class Members. The Claims Administrator shall email an Email Notice (see Exhibit 2) to each such Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Claims Administrator shall use the best available databases to obtain current email address information, update its database with these emails, and resend the Notice by email and shall mail the Notice to Class Members at their last known mailing address. The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice.

(c) For those Class Members who are not current customers of Defendant or who have not agreed to receive electronic notices regarding their accounts from Defendant, the Notice shall be mailed to these Class Members by first class United States mail to the best available mailing addresses. Defendant shall provide the Claims Administrator with last known mailing addresses for these Class Members. The Claims Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, the Claims Administrator shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, the Claims Administrator shall use standard skip tracing devices to obtain forwarding address information

and, if the skip tracing yields a different forwarding address, the Claims Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(d) The Notice shall also be posted on a settlement website created by the Claims Administrator.

(e) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice and/or Email Notice was sent and any Notices and/or Email Notices that were not delivered by mail and/or email. A summary report of this information shall be provided to the parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

(f) The Notice and Email Notice shall be in a form approved by the Court and, substantially similar to the notice forms attached hereto as Exhibits 1 and 2. The parties may by mutual written consent make non-substantive changes to the Notice and Email Notice without Court approval.

(g) All costs associated with publishing, mailing, and administering the Notice as provided for in this Section, and all costs of administration including, but not limited to, the Claims Administrator's fees and costs, shall be paid out of the Settlement Fund.

7. **MOTION FOR FINAL APPROVAL.** Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 16, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

8. **ENTRY OF JUDGMENT.** The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

9. **THE SETTLEMENT FUND AND DISTRIBUTION.**

(a) **Payments to Class Members.** Within ten (10) days after entry of the Preliminary Approval/Notice Order, Defendant shall transfer the Settlement Fund to the Claims Administrator. If the total amount to be credited by Defendant to Class Members with open accounts or the total amount of Uncollected Account Debt is known at this time per Plaintiff's Expert's analysis and calculations, Defendant need only transfer to the Claims Administrator the Settlement Fund, less these amounts. If Plaintiff's Expert has not finalized these amounts by the date on which the Settlement Fund is to be transferred to the Claims Administrator, the entire Settlement Fund shall be transferred for later distribution by the Claims Administrator per the terms of this Section and the Claims Administrator shall remit to Defendant the total amount to be credited by Defendant to Class Members with open accounts or the total amount of Uncollected Account Debt if not previously withheld by Defendant as provided in this Section 9(a). The

Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs; (b) any service award payment to the Named Plaintiff; (c) costs associated with administering the Notice in accordance with Section 6, above; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 16, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator or due and owing to the Claims Administrator in connection with the settlement provided for herein, shall be refunded to Defendant within two (2) business days after the Final Approval Order is denied or this Agreement is terminated. Further, the parties agree that if such Final Approval Order is denied or this Agreement is terminated, any order certifying the class shall be vacated.

(b) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by the Claims Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

(d) Payments shall be made from the Settlement Fund as follows:

(i) Plaintiff's Counsel's Fees and Costs. Plaintiff's Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund ten (10) days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Value of the Settlement, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application up to one-third (33-1/3%) of the Value of the Settlement, but reserves the right to oppose an application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to Defendant; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

(ii) Service Award. Named Plaintiff may apply to the Court for a service award of up to ten thousand dollars (\$10,000). Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

(iii) Claims Administrator's Fees. The Claims Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid from the Settlement Fund within ten (10) days after the Effective Date.

(iv) Payments to Class Members. All payments made to Class Members from the Net Settlement Fund shall be based on Defendant’s transactional data and determined on a pro-rata automatic allocation by Plaintiff’s Expert, under direction of Class Counsel. Defendant’s expert and/or Counsel shall have the option to review the results of Plaintiff’s Expert prior to distribution and may provide substantive comment to Plaintiff’s Expert. Of the \$1,500,000.00 Settlement Fund, \$1,250,000.00 (83.33%) is allocated to the “Repeat Fee Settlement Class” and \$250,000.00 (16.67%) is allocated to the “Regulation E Settlement Class”(the “Class Allocations”). Plaintiff’s Expert shall initially determine the amount payable to each Class Member by applying the Class Allocations. After the determination of the Settlement Payment due to each Class Member, Plaintiff’s Expert shall determine which Class Members’ accounts have remaining Uncollected Account Debt. For each of these Class Members, Plaintiff’s Expert will deduct the amount of Uncollected Account Debt owed from the Settlement Payment each Class Member is to receive pursuant to this settlement. Class Members owing Uncollected Account Debt will receive a Settlement Payment only if the account has a positive balance after being credited with the Settlement Payment. Plaintiff’s Expert or Defendant shall report to Class Counsel the accounts owing Uncollected Account Debt, along with Settlement Payments due to these Class Members, and the adjusted balances for each account after repayment of the owed Uncollected Account Debt, which Defendant will be reporting to Experian as a result of this settlement.

Payments from the “Net Settlement Fund” shall be calculated as follows:

- (1) Members of the Repeat Fee Settlement Class shall be paid per incurred Repeat Fee Charge calculated as follows:

$$(0.8333 \text{ of the Net Settlement Fund/Total "Repeat Fee Charges"}) \times \text{Total "Repeat Fee Charges" paid by the member of the Repeat Fee Settlement Class} = \text{Individual Payment}$$

- (2) Members of the Regulation E Settlement Class who incurred “Regulation E Overdraft Charges” shall be entitled to make a claim for a refund of up to ten (10) such fees from that portion of the Net Settlement Fund allocated to the Regulation E Class (16.67%) and shall be provided a Claim Form with the Notice. The Claim Form shall indicate the number and amount of “Regulation E Overdraft Charges” assessed against each such member’s accounts. To the extent the 16.67% of the Net Settlement Fund allocated to pay “Regulation E Overdraft Charges” is not sufficient to make full payment for all such claims made, the money shall be distributed on a *pro rata* basis. If the total amount of “Regulation E Overdraft Charges” claimed through this claims process is less than the net amount allocated, the excess shall be paid to all members of the Regulation E Settlement Class, not just those who made a claim, on a *pro rata* basis using the following formula:

(0.1667 of the Net Settlement Fund/Total “Regulation E Overdraft Charges”) x Total “Regulation E Overdraft Charge” paid by the member of the Regulation E Class = Individual Payment

(3) Class Members who were not assessed a “Regulation E Overdraft Charge” shall not receive a Claim Form.

(4) Payments to individual Class Members ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows:

i) For those Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund (meaning they have an active account), any checking or savings account they are then maintaining at Defendant, held by them individually, shall be credited in the amount of the Individual Payment they are entitled to receive.

ii) For those Class Members who are not customers of Defendant at the time of the distribution of the Net Settlement Fund (meaning they no longer maintain an active account), they shall be mailed a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. Such Class Members will receive a check only if the closed account has a positive balance after the Settlement Payment is credited to the account. To the extent the Settlement Payment brings a charged off account positive or reduces the debt owed, Defendant will report this change to Experian. If the Class Member’s closed account still has a negative balance after being credited with the Settlement Payment, such Class Member’s negative balance will be reduced by the amount of the Settlement Payment but such Class Member will not receive a check from the Class Administrator. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks

uncashed after one-hundred eighty (180) days shall be distributed pursuant to Section 12.

(v) Subject to any Uncollected Account Debt repayments set forth in Section 3, in no event shall any portion of the Settlement Fund revert to Defendant.

10. FINAL REPORT TO THE COURT. Within two hundred (200) calendar days after the Effective Date (or such other date set by the Court), Class Counsel, in coordination with the Claims Administrator and Defendant, shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; and (d) the total amount of money unpaid to Class Members. Defendant shall provide a supporting declaration under penalty of perjury setting forth the amount of the credits issued to Class Members. Class Counsel shall be entitled to verify credits by confidential review of a reasonable sample of Class Member account statements.

11. THE CLAIMS ADMINISTRATOR.

(a) The Claims Administrator shall execute a retainer agreement that shall provide, among other things, that the Claims Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement and as ordered by the Court. The retainer agreement shall include provisions requiring that all Class Member data shall be strictly confidential and secured by the Claims Administrator by means of recognized data security measures, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

(b) The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

(c) The Claims Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Claims Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendant's Counsel, or either of them, at their own cost, shall receive a complete copy of the Claims Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies. To the extent Class Counsel receives a copy of the class list, it shall be subject to the protective order issued in this case and shall not be used for any purposes other than the implementation of this Agreement.

(d) The Claims Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement.

(e) The Claims Administrator shall be responsible for providing any notice as required under the Class Action Fairness Act, 28 U.S.C. § 1715. Defendant shall be responsible for costs associated with the notice provided for under this Section 11 (e).

(f) Claims Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other party when made. Such information shall be used only for purposes of the implementation of this Agreement.

(g) Within one hundred ninety (190) days after the Effective Date or such other date as required by the Court, the Claims Administrator shall prepare a declaration setting forth the total payments issued to Class Members by the Claims Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Claims Administrator.

12. CY PRES PAYMENT. Subject to Court approval, within thirty (30) days after the Final Report, the total amount of uncashed checks, and residual amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to a *cy pres* recipient as nominated by Plaintiff but agreed to by Defendant and consistent with the Western District of Oklahoma rules on *cy pres* funds.

13. OPT-OUTS.

(a) A Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Claims Administrator at the address listed in the Notice. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself from the Agreement, and shall be signed and dated. Persons who do not timely and validly opt out in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Settlement Agreement.

(b) The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Claims Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Claims Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel and/or the Court upon two (2) court days' written/email notice.

14. OBJECTIONS.

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and mailed to the Claims Administrator at the address listed in the Notice. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) The objector's name, address, telephone number, the last four digits of his or her account number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(ii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

(c) The Claims Administrator shall provide all objections to Class Counsel as received and Class Counsel shall file any objections and any responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

15. GENERAL RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of herself and each of the Class Members (collectively, the "Releasing Parties"), in consideration of the Payment and of the mutual covenants contained herein, hereby releases and forever discharges Defendant, and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the "Defendant Releasees") from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, from January 14, 2016 through the date on which preliminary approval of this settlement is granted by the Court, which Named Plaintiff and Class Members who do not opt out now have, could have made, own, or hold against any of the Defendant Releasees that were or could have been asserted in the Litigation (collectively, the "Released Claims"). The Named Plaintiff and Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Agreement, or the law applicable to such claims may change, but that it is their intention to finally and forever settle and release claims with respect to all of the matters described or subsumed herein, and that, notwithstanding the discovery or existence of any additional or different facts or claims, as to which the Named Plaintiff and Class Members expressly assume the risk, they freely and voluntarily give the release as set forth above. Except as to the rights and obligations provided for under the terms of this Agreement, the Releasing Parties covenant and agree that they will file no future lawsuit and make no future claim against the Defendant Releasees related to the Released Claims.

16. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 5 above;

(ii) The Court has entered the Final Approval Order as required by Sections 7 and 8 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 16(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five percent (5%) or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 16 within ten (10) calendar days after the Bar Date to Opt Out, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated, pursuant to Section 16(c) immediately above, or fails to become effective in accordance with Sections 16(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

17. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The parties have not relied on any representations, promises, or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiff, on behalf of the Class Members, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she, based on Class Counsel's advice, and her understanding of the case, believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiff represents that she has no knowledge of conflicts or other personal interests that would in any way impact her representation of the Class in connection with the execution of this Agreement.

(e) Defendant represents and warrants that it has obtained all corporate authority necessary to execute this Agreement.

18. **RETENTION OF JURISDICTION.** The Court shall retain jurisdiction to enforce the judgment, releases, and agreements contemplated by this Agreement.

19. **FURTHER ASSURANCES.** Each of the parties hereto agrees to execute and deliver all such further documents, data, and information needed to carry out this Agreement's terms, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members.

20. **PUBLICITY.** The terms and amount of the Settlement Fund shall not be advertised to the general public or the media, and shall be disclosed to the Court and Class Members only as required by the Federal Rules of Civil Procedure and/or Class Counsel's duties to the classes.

21. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of Oklahoma.

22. **NO ORAL WAIVER OR MODIFICATION.** No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

23. **ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitute the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

24. **BINDING ON SUCCESSORS.** This Agreement shall inure to the benefit of, and shall bind, each of the parties hereto and their successors.

25. **SEVERABILITY.** In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

26. **COUNTERPARTS AND FACSIMILE SIGNATURES.** This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

27. **NOTIFICATION.** Any notice to be given to Class Counsel and/or Named Plaintiff shall be sent by email as follows:

Richard D. McCune
Emily J. Kirk
McCune Law Group, APC
3281 E. Guasti Road, Ste. 100
Ontario, CA 91761
Telephone: (909) 557-1250
rdm@mccunewright.com
ejk@mccunewright.com

Barrett T. Bowers
The Bowers Law Firm
1611 N. Broadway Ave.
Second Floor
Oklahoma City, OK 73103
Telephone: (405) 768-2907
Barrett@bowerslawok.com

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email as follows:

Scott Meacham
John M. Thompson
Crowe & Dunlevy
Braniff Building
3248 N. Robinson, Ste. 100
Oklahoma City, OK 73102
Telephone: (405) 235-7747
scott.meacham@crowedunlevy.com
john.thompson@crowedunlevy.com

Any notice to the Claims Administrator shall be sent by email to the address of the Claims Administrator, which will be determined by the lowest bid for services.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: October 28, 2022


The City National Bank and Trust Company of Lawton,
Oklahoma

By: _____

Its: _____

Dated: October 25, 2022

Lisa Carter, an individual on behalf of
herself and those she represents

DocuSigned by:
By: 
BDB8569DB8374B8...
Lisa Carter _____

APPROVED AS TO FORM:

Dated: October 25, 2022

CROWE & DUNLEVY
Scott Meacham
John Thompson

By: Scott Meacham
Scott Meacham, OBA #13216
John M. Thompson, OBA #17532
CROWE & DUNLEVY
A Professional Corporation
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
(405) 235-7700 (Phone)
(405) 272-5924 (Facsimile)
scott.meacham@crowedunlevy.com
john.thompson@crowedunlevy.com

Attorneys for Defendant The City National Bank and Trust
Company of Lawton, Oklahoma

Dated: October 25, 2022

McCUNE LAW GROUP, APC
Richard D. McCune
Emily J. Kirk

By: 
Richard D. McCune
Attorneys for Named Plaintiff Lisa Carter

Exhibit 1

Lisa Carter, et al.

v.

The City National Bank and Trust Company of Lawton, Oklahoma

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH THE CITY NATIONAL BANK AND TRUST COMPANY OF LAWTON, OKLAHOMA (“DEFENDANT” OR “CITY NATIONAL”) AND YOU WERE CHARGED AN OVERDRAFT OR NON-SUFFICIENT FUNDS (“NSF”) FEE BETWEEN JANUARY 14, 2016, AND [REDACTED], THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The District Court for the Western District of Oklahoma has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
MAKE A CLAIM	You may make a claim for up to potentially as many as ten (10) overdraft fees which were paid by you on one-time debit card or ATM transactions between January 14, 2020 and X , assuming there was no prior refund of the overdraft fee. The number of such overdraft fees you may have incurred are shown on the Claim Form attached to this Notice. If you did not receive a Claim Form, then you have no eligible ATM or debit card fees of this type and therefore need not make a claim. However, you may still be entitled to payment for other NSF and Overdraft Fees which do not require a claim to be made. If you are eligible to make a claim for repayment of ATM and one-time debit card fees, you should fill out and submit the Claim Form within thirty (30) days after receipt of this notice, or you might not receive any funds for one-time debit card and ATM overdraft fees. If the claims do not exceed the amount allocated for these overdraft fees, you may receive a payment for these overdraft fees, but likely will receive more if you make a claim.

<p>DO NOTHING</p>	<p>Even if you do not make a claim (or you did not receive a Claim Form because you did not have an overdraft fee on a one-time debit card or ATM transaction within the relevant period), if you have incurred more than one NSF fee or an NSF fee followed by an overdraft fee for the same transaction item in the period beginning January 14, 2016 through X, you may receive a payment from the Settlement Fund if you do not opt out. However, you may receive more if you receive a Claim Form and make a claim.</p>
<p>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</p>	<p>You can choose to exclude yourself from the settlement or "opt out." This means you choose not to participate in the settlement. You will keep your individual claims against City National but you will not receive a payment. If you exclude yourself from the settlement but want to recover against City National, you will have to file a separate lawsuit or claim.</p>
<p>OBJECT TO THE SETTLEMENT</p>	<p>You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you will receive a payment and you will not be able to sue City National for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved and the case will go forward. If you opt-out, then you cannot file an objection.</p>

These rights and options – *and the deadlines to exercise them* – along with the material terms of the settlement are explained in this Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Lisa Carter, et al. v. The City National Bank and Trust Company of Lawton, Oklahoma* in the United States District Court for the Western District of Oklahoma, Case No. 5:21-cv-29 (PRW). The case is a “class action.” That means that the "Named Plaintiff," Lisa Carter, is an individual who is acting on behalf of two groups. The first is all customers of City National who have or had accounts with City National who were assessed an overdraft fee on a one-time debit card or ATM transaction between January 14, 2020 and **X**. The second group is all customers of City National who have or have had accounts with City National who incurred more than one NSF fee or an NSF fee followed by an overdraft fee for the same transaction item between January 14, 2016 and **X**. The persons in these groups are collectively called the "Class Members."

The Named Plaintiff claims City National charged customers overdraft fees on one-time debit card and ATM transactions even though it did not properly opt them into its overdraft program for debit card and ATM transactions as required by Regulation E of the Electronic Fund Transfer Act. Named Plaintiff also alleges City National improperly charged repeated fees (either NSF fees or an NSF fee followed by an overdraft fee) on a single transaction item even though City National’s contract with its customers states it will only charge a single fee per transaction item. The Complaint alleges claims for breach of contract, including the covenant of good faith and fair dealing, unjust

enrichment/restitution, money had and received, and violations of Regulation E. The Named Plaintiff is seeking a refund of alleged improper overdraft and NSF fees charged to Class Member accounts. City National does not deny it charged overdraft and NSF fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. City National maintains that its practices were and now are proper and properly disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member.

2. Why did I receive this Notice of this lawsuit?

You received this Notice because City National's records indicate that you are a Class Member because you were charged with one or more overdraft and/or NSF fees that are the subject of the claims alleged in this case. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

3. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiff's lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the class as a whole and, in this case, it is her belief, as well as Class Counsel's opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that City National improperly opted-in customers to its Regulation E overdraft program such that it was not entitled to charge customers overdraft fees on one-time debit card and ATM transactions. The same is true regarding whether City National was contractually and otherwise legally obligated not to assess more than one fee on a single transaction item. Additionally, there is uncertainty about whether the Named Plaintiff's claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

While City National disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am part of the settlement?

If you received this notice, then City National's records indicate that you are a Class Member who is entitled to receive a payment or credit to your account.

YOUR OPTIONS

5. What options do I have with respect to the settlement?

You have four options: (1) file a claim with the claims administrator on the Claim Form attached to this Notice to recover for the overdraft fees you were charged for ATM and one-time debit card transactions pertaining to the Claim Form (if you did not receive a Claim Form then you were not assessed any eligible ATM and debit card fees), (2) do nothing and you will receive a payment if you are entitled to one according to the terms of this settlement; (3) exclude yourself from the settlement ("opt out" of it); or (4) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

The deadline for sending a Claim Form to the Claims Administrator is [REDACTED]. If you do nothing, so long

as you do not opt out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you still maintain an account with City National or by mailing a check to you at the last address on file with City National (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is [REDACTED].

The deadline to file an objection with the Court (described in Questions 19 through 21, below) is also [REDACTED].

7. How do I decide which option to choose?

If you do not like the settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate and the Court should reject the settlement, you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

If you want to participate in the settlement, and the Claim Form attached to this Notice indicates you were assessed overdraft fees which are eligible to make a claim, then you should fill out the Claim Form and return it as this might mean more money to you than if you do not make a claim. See Question 25, below. If you did not receive a Claim Form with this notice, then City National's records indicate you were not assessed the type of overdraft fees for ATM withdrawals or one-time debit card payments that are reimbursable under the claims portion of the settlement. In that case, you need not do anything and you will still receive a payment for other overdraft and/or NSF fees assessed if you do not opt out.

8. What has to happen for the settlement to be approved?

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for [REDACTED].

THE SETTLEMENT PAYMENT

9. How much is the settlement?

City National has agreed to create a Settlement Fund of \$1,500,000.00. In addition, City National has agreed to change certain overdraft practices and disclosures. Together these constitute the Value of the Settlement. As discussed separately below, attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible overdraft and NSF fees they paid. The formula for distributing the settlement is described in the Settlement Agreement.

10. How much of the Settlement Fund will be used to pay for attorney fees and costs?

Class Counsel will request attorneys' fees be awarded by the Court of not more than one-third of the Value of the Settlement. Class Counsel has also requested that it be reimbursed approximately \$ [REDACTED] in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the Settlement Fund will be used to pay the Named Plaintiff a Service Award?

Class Counsel on behalf of the Named Plaintiff will request that the Court award her up to \$10,000 for her role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

12. How much of the Settlement Fund will be used to pay the Class Administrator’s expenses?

The Claims Administrator has agreed to cap its expenses as \$ [REDACTED].

13. How much will my payment be?

The balance of the Settlement Fund will be divided among all Class Members based on claims made or on a pro rata basis according to an allocation set out in the Settlement Agreement. Current City National customers will receive a credit to their accounts for the amount they are entitled to receive. Former customers shall receive a check from the Claims Administrator. If a former customer with a closed or charged-off account owes City National money related to that account, any payment which such customer is due from the Settlement Fund will be reduced by the amount owed to City National.

14. Do I have to do anything if I want to participate in the settlement?

No. But if you received a Claim Form with this Notice and fill out the Claim Form and send it to the Administrator as provided in Question 25, below, you may receive a greater payment than if you do not make a claim. If you received this Notice but there is no Claim Form attached, then you will still be entitled to receive a payment without having to make a claim. Any amount you are entitled to under the terms of the settlement will be distributed to you unless you choose to exclude yourself from the settlement, or “opt out.” Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against City National, but you will not receive a payment. In that case, if you choose to seek recovery against City National, then you will have to file your own separate lawsuit or claim.

15. When will I receive my payment?

The Court will hold a Final Approval/Fairness Hearing (explained below in Questions 22-24) on [REDACTED], 2022 at [REDACTED] to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I exclude myself from the settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue City National for the claims alleged in this lawsuit, then you must exclude yourself, or “opt out.”

To opt out, you **must** send a letter to the Claims Administrator stating that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Lisa Carter v. City National* class action. Be sure to include your name, the last four digits of your account number or former account number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by [REDACTED], and sent to:

Lisa Carter v. The City National Bank and Trust Company of Lawton, Oklahoma
Claims Administrator

Attn:

ADDRESS OF THE CLAIMS ADMINISTRATOR

17. What happens if I opt out of the settlement?

If you opt out of the settlement, you will preserve and not give up any of your rights to sue City National for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

18. If I exclude myself, can I obtain a payment?

No. If you exclude yourself, you will not be entitled to a payment.

OBJECTING TO THE SETTLEMENT

19. How do I notify the Court that I do not like the settlement?

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you **must** send a written document to the Claims Administrator at the address below. Your objection should say that you are a Class Member, that you object to the settlement, and the factual and legal reasons why you object, and whether you intend to appear at the Fairness Hearing. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature. If you have an attorney who will appear on your behalf, please indicate that person's name and contact information.

All objections must be post-marked no later than [redacted], and must be mailed to the Claims Administrator as follows:

CLAIMS ADMINSTRATOR
Lisa Carter v. The City National Bank and Trust Company of Lawton, Oklahoma Claims Administrator Attn: ADDRESS OF THE CLAIMS ADMINISTRATOR

20. What is the difference between objecting and requesting exclusion from the settlement?

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment if the settlement is approved, but you will release claims you might have against City National related to this lawsuit. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against City National for the claims alleged in this lawsuit.

21. What happens if I object to the settlement?

If the Court sustains your objection, or the objection of any other Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement.

THE COURT'S FAIRNESS HEARING

22. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval/Fairness Hearing at [redacted] on [redacted], 2022 at the District Court for the Western District of Oklahoma, William J. Holloway Jr. United States Courthouse located at 200 NW 4th Street, Oklahoma City, Oklahoma 73102. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If

there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a "Service Award" for acting as the class representative.

23. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you or your attorney may want to attend.

24. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval/Fairness Hearing. To do so, you must include with your objection, described in Question 19, above, the statement, "I hereby give notice that I intend to appear at the Final Approval/Fairness Hearing."

SUBMIT A CLAIM

25. How do I make a claim if I received a Claim Form?

If you received a Claim Form, then you should use it to make a claim. It should be filled out, signed, and sent to the Claims Administrator.

All claims must be post-marked no later than [REDACTED], and must be mailed as follows:

<p style="text-align: center;">CLAIMS ADMINSTRATOR</p> <p style="text-align: center;">Lisa Carter v. The City National Bank and Trust Company of Lawton, Oklahoma Claims Administrator Attn: ADDRESS OF THE CLAIMS ADMINISTRATOR</p>
--

IF YOU DO NOTHING

26. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you may receive a payment that represents your share of the Settlement Fund net of attorneys' fees and costs, Claims Administrator expenses, and the Named Plaintiff's Service Award. You will be considered a part of the class, and you will give up claims against City National for the conduct alleged in this lawsuit. You will not give up any other claims you might have against City National that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

27. Do I have a lawyer in this case?

The Court ordered that Richard D. McCune and Emily J. Kirk of the McCune Law Group, APC and Barrett T. Bowers of The Bowers Law Firm, along with their law firms (referred to in this notice as "Class Counsel"), will represent you and the other Class Members.

28. Do I have to pay the lawyer for accomplishing this result?

No. Class Counsel will be paid directly from the Settlement Fund.

29. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Final Approval/Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Claims Administrator.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [[WEBSITE](#)] or at the Office of the Clerk of the United States District Court for the Western District of Oklahoma, William J. Holloway Jr. United States Courthouse, 200 NW 4th Street, Oklahoma City, Oklahoma 73102, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the Settlement Agreement is attached to the motion).

For additional information about the settlement and/or to obtain copies of the Settlement Agreement, or to change your address for purposes of receiving a payment, you should contact the Claims Administrator as follows:

Lisa Carter v. The City National Bank and Trust Company of Lawton, Oklahoma
Claims Administrator
Attn:

For more information you also can contact the Class Counsel as follows:

Richard D. McCune
Emily J. Kirk
McCune Law Group, APC
3281 E. Guasti Road, Ste. 100
Ontario, CA 91761
Telephone: (909) 557-1250
rdm@mccunewright.com
ejk@mccunewright.com

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.

Exhibit 2

Subject of Email: Legal Notice of Class Action Settlement

(Body of email below, dynamic text is in purple and will appear black in final email)

ATTENTION:

<<FName1>><<MName1>><<LName1>>

<<FName2>><<MName2>><<LName2>>

<<Business>>

<<Rep>>

Lisa Carter, et al.

v.

The City National Bank and Trust Company of Lawton, Oklahoma

Case No. 5:21-cv-29 (PRW)

**NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT
READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT
MAY AFFECT YOUR RIGHTS!**

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH THE CITY NATIONAL BANK AND TRUST COMPANY OF LAWTON, OKLAHOMA (“DEFENDANT” OR “CITY NATIONAL”) AND YOU WERE CHARGED AN OVERDRAFT OR NON-SUFFICIENT FUNDS (“NSF”) FEE BETWEEN JANUARY 14, 2016 AND [], THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This email only summarizes the proposed settlement. The full Notice and Settlement Agreement can be viewed and downloaded from the settlement website at www. .com.

What is this lawsuit about, and who is included in the settlement?

The lawsuit that is being settled is entitled *Lisa Carter, et al. v. The City National Bank and Trust Company of Lawton, Oklahoma* in the United States District Court for the Western District of Oklahoma, Case No. 5:21-cv-29 (PRW). The case is a “class action.” That means that the “Named Plaintiff,” Lisa Carter, is an individual who is acting on behalf of two groups. The first is all customers of City National who have or had accounts with City National who were assessed an overdraft fee on a one-time debit card or ATM transaction between January 14, 2020 and X. The second group is all customers of City National who have or have had accounts with City National who incurred more than one NSF fee or an NSF fee followed by an overdraft fee for the same transaction item between January 14, 2016 and X. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims City National charged customers overdraft fees on one-time debit card and ATM transactions even though it did not properly opt them into its overdraft program for debit card and ATM transactions as required by Regulation E of the Electronic Fund Transfer Act.

Named Plaintiff also alleges City National improperly charged repeated fees (either NSF fees or an NSF fee followed by an overdraft fee) on a single transaction item even though City National's contract with its customers states it will only charge a single fee per transaction item. The Complaint alleges claims for breach of contract, including the covenant of good faith and fair dealing, unjust enrichment/restitution, money had and received, and violations of Regulation E. The Named Plaintiff is seeking a refund of alleged improper overdraft and NSF fees charged to Class Member accounts.

City National does not deny it charged overdraft and NSF fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. City National maintains that its practices were and now are proper and properly disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member.

The Court has not decided who is right.

Why did I receive this Notice of this lawsuit?

You received this Notice because City National's records indicate that you are a Class Member because you were charged one or more overdraft or NSF fees that are the subject of the claims alleged in this case. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

What does the settlement provide?

City National has agreed to create a Settlement Fund of \$1,500,000.00. City National has also agreed to change certain overdraft practices and disclosures. Together these constitute the Value of the Settlement.

Attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund first. The balance of the Settlement Fund will then be divided among all Class Members based on claims made or on a pro rata basis according to the allocation set out in the Settlement Agreement and the amount of eligible overdraft and/or NSF fees they paid. Current City National customers will receive a credit to their accounts for the amount they are entitled to receive. Former customers shall receive a check from the Claims Administrator. If a former customer with a closed or charged-off account owes City National money related to that account, any payment which such customer is due from the Settlement Fund will be reduced by the amount owed to City National.

Do I have to do anything if I want to participate in the settlement?

No. But if you received a Claim Form with this Notice and fill out the Claim Form and send it to the Claims Administrator, you may receive a greater payment than if you do not make a claim. All claims must be post-marked no later than [REDACTED], and must be mailed as follows:

Lisa Carter v. The City National Bank and Trust Company of Lawton, Oklahoma
Claims Administrator

Attn:

If you received this Notice but there is no Claim Form attached, then you will still be entitled to receive a payment without having to make a claim. Any amount you are entitled to under the terms of the settlement will be distributed to you unless you choose to exclude yourself from the settlement, or “opt out.” Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against City National, but you will not receive a payment. In that case, if you choose to seek recovery against City National, then you will have to file your own separate lawsuit or claim.

Do I have a lawyer in this case?

The Court ordered that the lawyers Richard D. McCune and Emily J. Kirk of the McCune Law Group, APC and Barrett T. Bowers of The Bowers Law Firm (“Class Counsel”) will represent you and the other Class Members. You do not have to pay for Class Counsel. They will apply for attorneys’ fees in the amount of one-third of the Value of the Settlement to be awarded by the Court. Complete contact information for Class Counsel can be found on the settlement website at www. .com.

When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval/Fairness Hearing at on , 2022 at the District Court for the Western District of Oklahoma, William J. Holloway Jr. United States Courthouse located at 200 NW 4th Street, Oklahoma City, Oklahoma 73102. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and expenses and how much the Named Plaintiff should get as a “Service Award” for acting as the class representative.

Other Options

If you do not want to receive a payment, or if you want to keep any right you may have to sue City National for the claims alleged in this lawsuit, then you must exclude yourself, or “opt out.” To opt out, you **must** send a letter to the Claims Administrator at the address below requesting to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the Lisa Carter v. City National class action.” Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. The deadline for sending a letter to exclude yourself from, or opt out of, the settlement is .

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you must

mail a written document to the Claims Administrator at the address below. Your objection should say that you are a Class Member in the Lisa Carter v. City National class action, that you object to the settlement, the factual and legal reasons why you object, whether you intend to appear at the hearing, and whether you are represented by counsel, and if so, the name of your attorney and contact information. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature. The deadline to file an objection with the Court is [REDACTED].

All requests for exclusion and objections must be postmarked no later than their Court-ordered deadlines and mailed to the Claims Administrator as follows:

Lisa Carter v. The City National Bank and Trust Company of Lawton, Oklahoma
Claims Administrator
[REDACTED]
[REDACTED]

You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

Questions?

Detailed information about the settlement, including complete details on how to make a claim, exclude yourself or object, is available at the settlement website at [www.\[REDACTED\].com](http://www.[REDACTED].com) or by calling toll-free on 1-855-XXX-XXXX.

Please do not contact the Court or any representative of Defendant about this Notice or settlement. They will not be able to provide legal advice or answer your questions.

Placeholder MailID Barcode
 Placeholder Human-Readable MailID

EXHIBIT 3

CLAIM FORM

In the matter of *Lisa Carter, et al. v. The City National Bank and Trust Company of Lawton, Oklahoma*, in the United States District Court for the Western District of Oklahoma, Case No. 5:21-cv-29 (PRW), Class Members of the Regulation E Settlement Class who incurred overdraft fees on one-time debit card and ATM transactions between January 14, 2020 through X are entitled to make a claim for a refund of up to ten (10) such fees from the portion of the Net Settlement Fund allocated to that class. If you do not fill out and timely submit this Claim Form to the Claims Administrator, you may not receive any money for the Regulation E portion of this Settlement.

As a member of the Regulation E Settlement Class, your account was determined to have accrued, and you are eligible to receive a refund of up to ten (10) overdraft fees assessed on one-time debit card or ATM transactions as defined in the Settlement Agreement. To the extent the portion of the Net Settlement Fund allocated to the Regulation E Settlement Class is not sufficient to make full payment for all such claims made, the money will be distributed on a *pro rata* basis as described in the Settlement Agreement.

To claim a refund of your eligible overdraft fees as a member of the Regulation E Settlement Class, or your *pro rata* share of them, from the Net Settlement Fund, complete this form, sign it, and mail it by the postmark deadline to the address below. Note, however, that your actual payment depends on the Court Order approving the Settlement Agreement.

All claims must be postmarked no later than X, and must be mailed as follows:

Lisa Carter, et al. v. The City National Bank and Trust Company of Lawton, Oklahoma
 Claims Administrator
[Add Address]

PROVIDE YOUR NAME, MAILING ADDRESS, AND EMAIL ADDRESS HERE:

First Name: MI: Last Name:

Business Name:

Street Address:

City: State: ZIP Code:

Email:

Signature

Date: --
 MM DD YYYY

By signing this Claim Form, you are affirming that you are eligible to receive the benefits of the Settlement.

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

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

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).

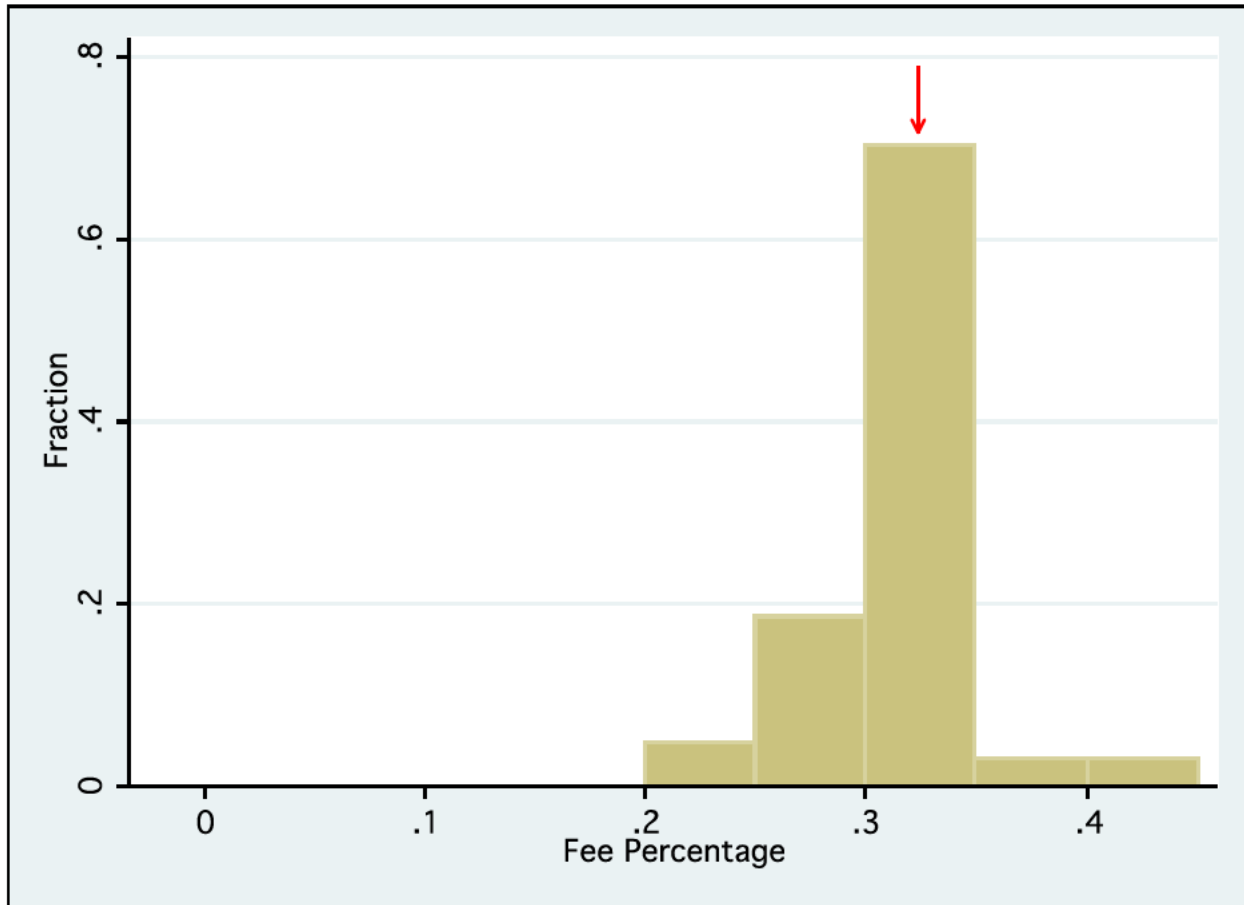
(“overdraft” & “class action” & (“bank” or “credit union”) and “approved”); and 4) topclassactions.com (“overdraft” “settlement” “final approval”). After examining all the “hits” from these searches, I generated a list of 69 fee awards in overdraft cases in both state and federal court since August 2010. I could not locate the court orders confirming the fee awards in two cases² 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

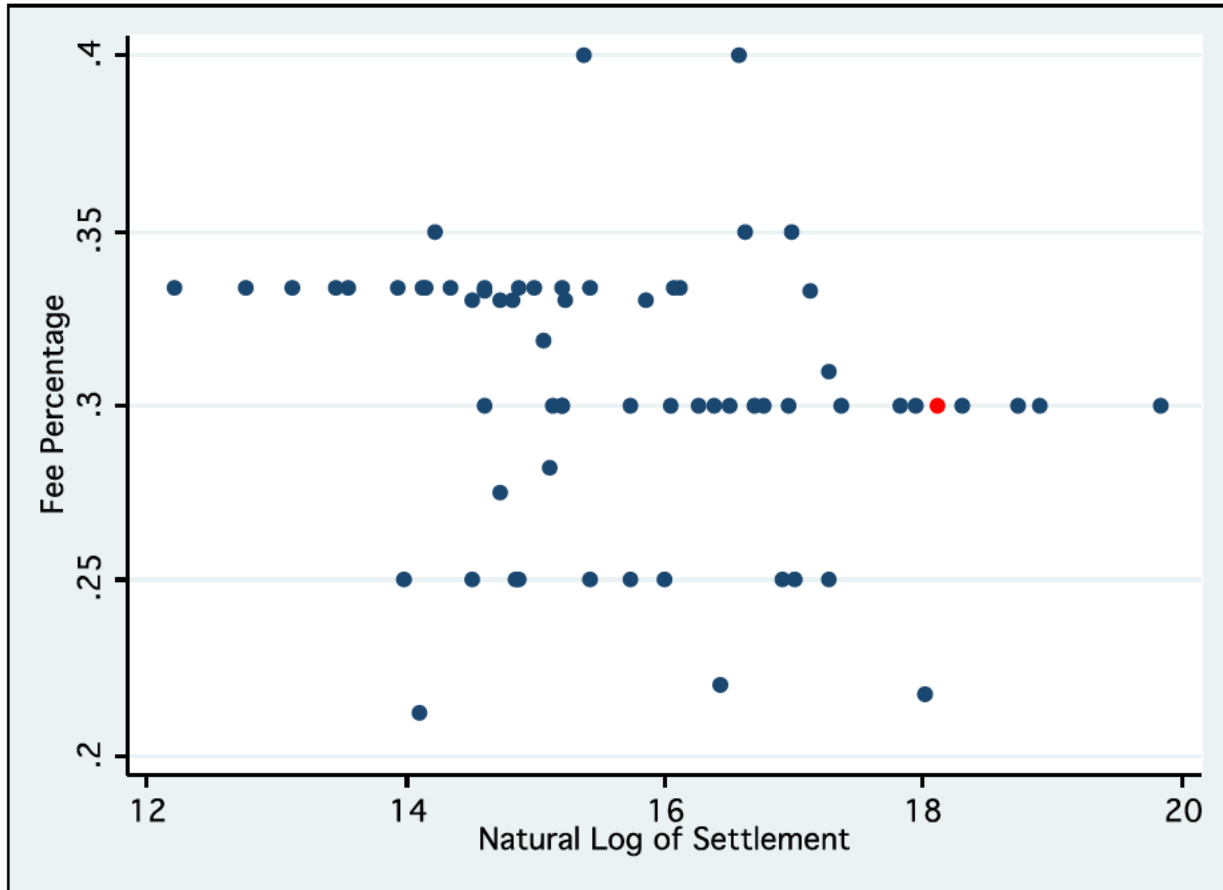
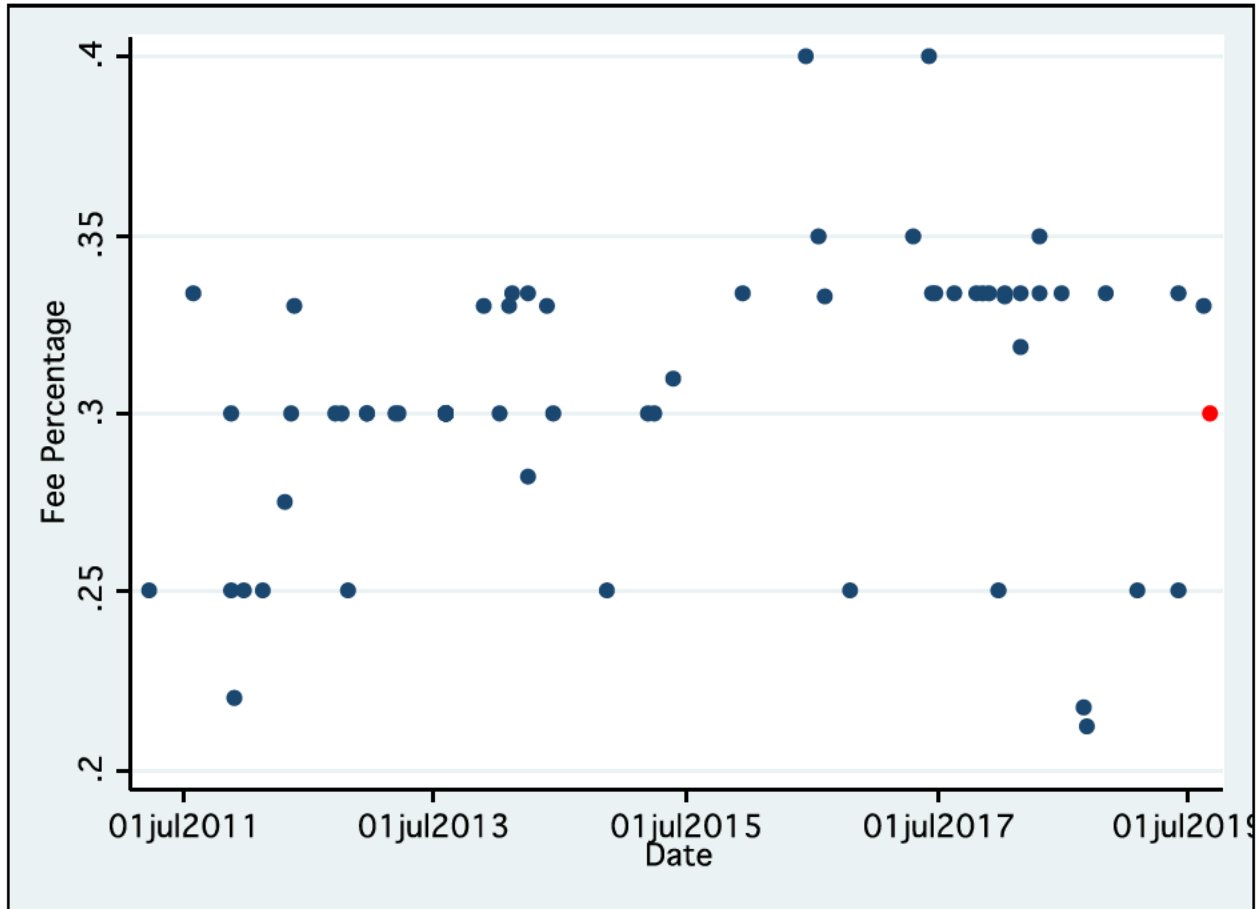


Figure 3: Overdraft Fee Awards in Federal and State Court since 2010 versus Date



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

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

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

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

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 *a/so* 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 Alfred V. Covello
United States District Judge

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Attorneys for Plaintiff

RODNEY SMITH and the Putative Class

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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13 Attorneys for Plaintiff
14 Tonya Gunter and the Certified Class

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF NEVADA**

17
18 TONYA GUNTER, individually, and on
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

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

24 Defendants.
25
26
27
28

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

1 **[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

2
3 This Court granted preliminary approval of the Settlement Agreement and Release
4 (“Settlement”) on February 14, 2019. Due and adequate notice having been given to the Class
5 Members, and the Court having considered the Settlement, all papers filed and proceedings had herein
6 and all oral and written comments received regarding the Settlement, and having reviewed the record in
7 this litigation, and good cause appearing,

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

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

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

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

16 The “Sufficient Funds” class, which is comprised of those members of Defendant whose
17 accounts were on the Miser System, and who received an overdraft fee on a transaction which
18 resulted in a positive ledger balance between October 3, 2011 and September 30, 2018.

19 The “Regulation E” class, which is comprised of those members of Defendant who opted in to
20 the overdraft program, whose accounts were on the Miser System, and who were charged an
21 overdraft fee on a debit transaction between August 15, 2010 and September 30, 2018.

(Docket Entry 94)

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

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

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

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

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

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

20 9. The Court overrules the objection of the single objector Timothy Walker. Per the
21 Declaration and the Supplemental Declaration of Lana Lucchesi of KCC (Docket Entries 139 and 141),
22 99.54% of the 17,515 class members successfully received the notice ordered by this Court, and only
23 one class member has objected, meaning more than 99.99% of the class members have elected not to
24 object to any aspect of the settlement being presented to this Court. The number of class members that
25 object to a settlement may be considered in determining whether the settlement is fair, reasonable, and
26 adequate. *Mandujano v. Basic Vegetable Prods. Inc.*, 541 F.2d 832, 837 (9th Cir. 1976). “(A)bsence of
27 a large number of objections to a proposed class action raises a strong presumption that the terms of a
28 proposed class action settlement are favorable to the class members.” *Bentacourt v. Advantage Human*

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

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

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

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

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

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

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

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

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

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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

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/07/2017 at 10:04:00 AM
Clerk of the Superior Court
By Jenitta Missimo, Deputy Clerk

**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

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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

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

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

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

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

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

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

25 13. The Court finds the requested attorneys' fees of \$745,000 to be reasonable, both as a
26 percentage of the common fund and under the lodestar method, noting that the requested fees are a
27 substantial reduction of Class Counsels' combined lodestar of \$1,056,052.50, and awards fees in the
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1 requested amount to be paid to Class Counsel from the Settlement Fund by the deadline specified in
2 the Settlement. The requested amount is less than one-half of the common Settlement Fund, which
3 is appropriate for this case given its history and facts, including that Class Counsel worked
4 diligently on this matter to obtain a result far higher than originally offered, undertook risk, and
5 Class Counsel's caliber of work led to prevailing in a contested motion for class certification, and is
6 in line with market rates for contingency fees given this history and facts. Therefore, the requested
7 fee is reasonable and approved under the percentage-of-the-benefit methodology as well. Further,
8 the hourly rates of the attorneys are reasonable and in line with prevailing market rates, the hours
9 worked are reasonable and, as noted, the requested fees are a reduction of Class Counsel's
10 combined lodestar. The Court further finds that the fee-sharing arrangement among Class Counsel
11 was disclosed to and approved by the Named Plaintiff.

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

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

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

24 17. The Court approves payment of the Claims Administrator's fees and costs of up to
25 \$24,900, including those amounts if any previously paid to the Claims Administrator by Defendant,
26 to be paid to the Claims Administrator from the Settlement Fund by the deadline specified in the
27 Settlement Agreement.
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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

EXHIBIT 4



November 6, 2023

To Whom It May Concern:

Lawton Public School Foundation agrees to accept Cy Pres funds related to *Lisa Carter, individually, and on behalf of others similarly situated, v. The City National Bank and Trust Company of Lawton, Oklahoma, et al.*, Case No. CIV-21-29-PRW in the United States District Court for the Western District of Oklahoma, and further agrees that such funds will be spent on or ear-marked for Lawton Public Schools financial literacy grants or programs.

Warmly,

A handwritten signature in blue ink that reads 'Lisa Carson'.

Lisa Carson

Executive Director

Lawton Public School Foundation