

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
THIRD DIVISION

JAMES SMILEY and TONI DAWN FOUTS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

FIRST NATIONAL BANK,

Defendant.

Cause No. 43CV-20-531

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
DIRECTING NOTICE, AND SETTING DATE FOR FAIRNESS HEARING**

Plaintiffs James Smiley and Toni Dawn Smiley (formerly Toni Dawn Fouts) (“Plaintiffs”), by counsel, having submitted a class action Settlement Agreement and Release (the “Settlement” or the “Settlement Agreement”) to the Court and having moved on an unopposed basis for preliminary approval of the Settlement under Arkansas Rule of Civil Procedure 23(e), and the Court, being duly advised, now finds that the motion should be, and hereby is, **GRANTED**.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.
2. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over Plaintiffs and Defendant in the above-captioned case (the “Parties”).
3. The Court finds that, solely for the purposes of settlement and notice, the requirements of Rule 23(a) and 23(b) of the Arkansas Rules of Civil Procedure have been met, specifically:

- a. The Class Members are so numerous that joinder of all members is impracticable, as there are thousands of Class Members;
- b. There are questions of law or fact common to the Class based upon the claims raised in the lawsuit relating to the charging of the bank fees at issue;
- c. Plaintiffs' claims are typical of the claims of the Class because they are based on the assessment of those same fees;
- d. Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Class as Plaintiffs have no interests antagonistic to the Class and Class Counsel is experienced in class action litigation and Plaintiffs have participated in the litigation;
- e. Questions of law and fact common to the class members predominate over any questions affecting only individual members, namely those relating to the bank fees at issue, and a class action is superior to other available methods for fairly and efficiently adjudicating this lawsuit, as it provides an efficient class-wide resolution.

4. The Court therefore **CERTIFIES** the following Class:

All persons who, between August 11, 2015 and February 4, 2022 (the "Class Period") were customers of Defendant First National Bank and were charged by Defendant during the Class Period an overdraft fee on a debit card transaction that was pre-authorized into a positive balance and settled into a negative balance. Excluded from the class are Defendant's current and former officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded are any judges who have presided over this matter and their immediate families and judicial staff, and any individuals who were not Arkansas citizens at the time this action was commenced. A person shall be deemed a citizen of Arkansas if the physical address of the primary owner of the account is located in Arkansas.

5. The Court finds that the terms of the Settlement are within the range of a fair, reasonable, and adequate settlement between Plaintiffs and the Class, on one hand, and Defendant, on the other hand, under the circumstances of this case. The Court therefore preliminarily approves the Settlement and directs the parties to the Settlement to perform and satisfy the terms and conditions of the Settlement that are triggered by such preliminary approval.

6. Defendant is directed to make the payments to create the Settlement Fund as set forth in the Settlement Agreement for the benefit of the Class.

7. The proposed notices in the form attached to the Settlement, and the manner of distribution of such Notice by email and/or direct mail, are hereby approved by this Court as the best notice practicable to the Class. The form and manner of notice proposed in the Settlement comply with Rule 23 of the Arkansas Rules of Civil Procedure and the requirements of Due Process.

8. KCC Class Action Services, LLC (the "Settlement Administrator") shall cause notice to be sent to each Class Member no later than thirty (30) days from the date of this Order. Notice shall be sent in the manner set forth in the Settlement.

9. Within 50 days of Notice being sent, Plaintiffs shall file a motion for approval of the attorneys' fees, expenses and costs, the Settlement Administrator's costs, and service awards to the Class Representatives, and shall file a motion for final approval of the Settlement.

10. Pursuant to Rule 23 of the Arkansas Rules of Civil Procedure, a final approval hearing (the "Final Approval Hearing") shall be held before the undersigned at 10 a.m. October, 20, 2022, at the Circuit Court of Lonoke County, Arkansas (or by remote appearance if circumstances permit and information relating to the hearing shall then be posted on the settlement website) for the purpose of: (a) determining whether the Settlement is fair, reasonable, and adequate and should be finally approved; (b) determining whether a Final Approval Order should be entered; and (c) considering Class Counsel's application for an award of attorneys' fees pursuant to Rule 23 of the Arkansas Rules of Civil Procedure. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Class, and the

Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Class.

11. Class Members shall be afforded an opportunity to request exclusion from the Class. 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 by name, shall include the last four digits of the Class Member's account number(s) or former account number(s), address, telephone number, and email address (if applicable), shall state that the Class Member wishes to exclude himself or herself from the Agreement, and shall be dated and signed by the Class Member. Class Members who submit a timely and valid request for exclusion from the Class shall not participate in and shall not be bound by the Settlement. Class Members who do not timely and validly opt out of the Class in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Settlement.

12. Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement. To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Settlement Administrator, and also be filed with the Court, with service upon Defendant's counsel and Class Counsel. The objection must be (1) mailed to the Settlement Administrator and received by or showing a postmark date on or before the Bar Date to Object (as defined in the Settlement Agreement) and (2) filed with the Court and served upon Defendant's counsel and Class Counsel on or before the Bar Date to Object. Class Counsel shall file responsive pleadings to any objections at least seven (7) days prior to the Final Approval Hearing Date. The content of the objection must include the following information and must be signed and dated by the Class Member:

- (i) The objector's name, address, telephone number, email address (if applicable), the last four digits of his or her account number(s) or former

account number(s), 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) 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.

13. Any member of the Class who does not make his or her objection known in the manner provided in the Settlement and Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement.

14. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement must meet the requirements set forth above, including the deadline for filing objections, and also must be accompanied by any evidence, briefs, motions or other materials the proposed intervenor intends to offer in support of the request for intervention, and must meet the requirements of the Arkansas Rules of Civil Procedure.

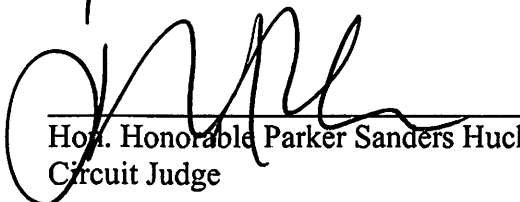
15. Any lawyer intending to appear at the Final Approval Hearing must be authorized to represent a Class Member, must be duly admitted to practice law before the Circuit Court of Lonoke County, and must file a written appearance. Copies of the appearance must be served on Class Counsel and counsel for Defendant in accordance with the Arkansas Rules of Civil Procedure.

16. If the Settlement does not become effective or is rescinded pursuant to the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be

without prejudice to the status quo ante rights of the Parties, and all Orders issued pursuant to the Settlement shall be vacated.

17. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this 12th day of July 2022.



Hon. Honorable Parker Sanders Huckabee
Circuit Judge