

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS

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

Plaintiff,

v.

FIRST NATIONAL BANK,

Defendant.

Cause No. 43CV-20-531

**ORDER ON ATTORNEYS' FEES AND EXPENSES, COSTS OF SETTLEMENT
ADMINISTRATION, AND CLASS REPRESENTATIVES' SERVICE AWARDS**

This matter is before the Court on Plaintiff's Unopposed Combined Motion for (1) Final Approval of Class Action Settlement and (2) for an Award of Attorneys' Fees and Expenses, Costs of Settlement Administration, and Class Representatives' Service Awards. The Court has considered all papers filed regarding the motion and conducted a hearing. With respect to the request for fees and expenses, costs of settlement administration, and service awards, the motion is hereby **GRANTED** and the Court **FINDS** as follows:

1. The proposed class action settlement of this case, which the Court is approving by separate order, creates a total settlement value of approximately \$4.25 million for the Class members, comprised of a \$1,250,000 Settlement Fund paid by Defendant plus forgiveness of approximately \$3 million in fees the Defendant had charged to Class members but had not yet collected from them.

2. As the Court has found in its separate order approving the settlement, the settlement is a fair, reasonable, and adequate compromise of the claims of the Class members.

3. The settlement, and the benefits it provides to the Class members, is the product of the work and skill of Class Counsel and the Class Representatives in prosecuting this action to a fair resolution.

4. Class Counsel is experienced in complex litigation and has prosecuted this case diligently and competently. They have done so on a contingent basis, meaning that they bore the risk of never being compensated for their efforts had the litigation been resolved in Defendant's favor. In addition, in prosecuting this action, Class Counsel advanced \$4,079.06 for the usual costs and expenses involved in litigation, including filing fees and expert fees, which again they risked never being reimbursed for had the litigation been resolved in favor of Defendant. This case was of a complex nature, involving novel issues relating to banking practices and processes along with specialized procedural issues such as class certification. Both Class Counsel and counsel for Defendant are skilled lawyers in their respective specialties, and the multi-million-dollar settlement is the result of arm's-length negotiations between skilled adversaries.

5. The Class Representatives were also a key component of the benefits achieved for the absent Class members, for without the Class Representatives there would be no case and therefore no settlement at all. The Class Representatives participated in the litigation and expended time to acquire the benefits of the settlement for thousands of other people who were not required to exert any efforts.

6. Before the Court now are the requests that from the Settlement Fund, and in recognition of the benefits provided by the settlement, Class Counsel be awarded attorneys' fees and reimbursement of litigation expenses (and that the administrator be compensated for notice and administration costs) and that the Class Representatives each be granted a service award.

7. The Court finds that under the common fund doctrine a fee award of \$625,000, which represents just under 15% of the total value of the settlement (\$4,250,000), is appropriate, fair, proper, and reasonable under the factors considered by courts. Specifically, as set forth above, the following factors all favor awarding the requested fee: (1) Class Counsel are highly experienced in complex and class action litigation, in general, and bank fee cases in particular; (2) the time and labor required to perform the legal service properly was substantial and additional work will be performed for settlement administration; (3) the amount involved in the case and the results obtained favor the fee because the recovery is an excellent result for the class, including direct payment and charge-offs; (4) the issues involved were novel and difficult involving the complexity of banking practice and complex litigation; (5) the fee is common and routinely awarded, including to Class Counsel in similar litigation; (6) the fee was contingent, meaning Class Counsel bore the risk of no recovery and of not recouping advanced litigation expenses; and (7) Class Counsel achieved this result expeditiously, and their employment on this matter necessarily precluded their work on other matters. *See Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990) (listing factors courts consider in determining an award of attorneys' fees); *see also Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (listing factors).

8. Likewise, the Court finds that reimbursement to Class Counsel of expenses, currently in the amount of \$4,079.06 is appropriate and that those expenses are reasonable and common litigation expenses, which include largely expert witness expenses and mediation and travel. *See, e.g., Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) (“An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved.”). The Court likewise approves payment from the Settlement Fund to KCC,

the Settlement Administrator, for its actual costs of notice and administration of the settlement, which involves mailing notice and checks, administering the fund, recordkeeping, and other necessary expenses to administer the Settlement.

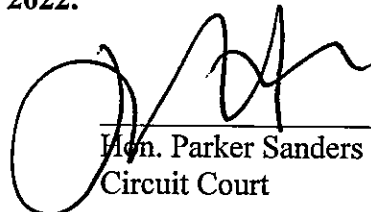
9. Finally, the Court finds that payment of a \$2,500 service award to each Class Representative is fair and reasonable and “promote[s] the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.” *Caligiuri*, 855 F.3d at 867. The Class Representatives participated in the litigation and achieved an excellent result for the Class. Courts “regularly grant service awards of \$10,000 or greater.” *Id.* The requested awards (totaling \$5,000) are therefore reasonable:

Therefore, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

- The Court hereby awards to Class Counsel attorneys’ fees to be paid from the Settlement Fund in the amount of **\$625,000**.
- The Court hereby awards to Class Counsel reimbursement of expenses to be paid from the Settlement Fund, currently in the amount of **\$4,079.06**, and authorizes payment to the Settlement Administrator from the Settlement Fund of the actual costs of notice and administration.
- The Court hereby awards to each Class Representative a service award to be paid from the Settlement Fund in the amount of **\$2,500 each (totaling \$5,000)**.
- All other payments from the Settlement Fund shall be made as set forth in the settlement agreement approved by the Court or by further order of the Court.

THERE BEING NO JUST REASON FOR DELAY LET JUDGMENT BE ENTERED ACCORDINGLY.

SO ORDERED this 20th day of October 2022.



Hon. Parker Sanders Huckabee
Circuit Court