

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARTHA TOWNER, individually, and)
on behalf of all others similarly situated,)

Plaintiff,)

vs.)

Case No. 3:15-CV-1162-NJR-SCW

1ST MIDAMERICA CREDIT UNION,)

Defendant.)

AMENDED FINAL APPROVAL ORDER AND JUDGMENT

ROSENSTENGEL, District Judge:

This Court preliminarily approved the parties’ Settlement Agreement on June 20, 2017. On October 27, 2017, the Court held a Final Fairness Hearing, at which all interested persons were given an opportunity to be heard. The Court has read and considered all submissions made in connection with the Settlement Agreement, including statements made in open court at the Final Fairness Hearing.

The Court hereby **ORDERS** and **ADJUDGES** 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 class as defined in the Settlement Agreement (“Settlement Class”) meets all of the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. Accordingly, for settlement purposes, the Court finally certifies the Class, which is composed of:

any member of Defendant who, between October 20, 2005 and October 31, 2016, was assessed an overdraft fee when the member had sufficient money in his or her ledger balance, but insufficient money in his or her available balance to complete the transaction that caused the fee.

4. The Court finds that the Class should be finally certified for settlement purposes, that the requirement of numerosity has been met, that the requirement of commonality has been met, since the case turns on a standard contract and a class-wide practice, that the class representative, Ms. Towner, is a typical class member, that class counsel and Ms. Towner are adequate and protected the class, that common issues of analyzing a standard contract and a class-wide practice predominate over any individual issues, and that a class action is the superior means of adjudicating this dispute.

5. The Court appoints Named Plaintiff Martha Towner as the Class Representative.

6. The Court approves The Kick Law Firm, APC and McCune Wright Arevalo LLP as Class Counsel.

7. The Court appoints Kurtzman Carson Consultants 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.

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 this notice was the best practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement, including that

attorney fees would be one-third of the settlement, that litigation costs would be capped at \$70,000, that the amount of net recovery per overdraft is \$2.32, and that the claims administrator's fee would be capped at \$42,000.

9. The Court further finds that the notice fully satisfied the requirements of due process. 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. Of the 10,404 class members, class notice was emailed to 6,304 individuals and mailed via U.S. mail to 10,391 individuals. Despite the class period spanning approximately ten years, only 762 mailed notices were returned, with new addresses found for 589 of them. Additionally, the claims administrator created a website containing the settlement agreement and other pertinent documents, as well as a Frequently Asked Questions section, and also employed a live operator to answer any questions the Class Members might have.

10. The Court finds, as set forth in the Second Supplemental Declaration of Andrew Perry (Doc. 86), that three members of the Class requested exclusion from the class and that no members objected to the Settlement. The three members of the Class who requested exclusion are excluded from the Class.

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

12. The Court hereby grants final approval of the terms set forth in the Settlement and finds 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 the

Settlement has been reached as a result of informed and non-collusive arm's-length negotiations, with the help and moderation of Magistrate Judge Stephen C. Williams. The Court further finds the parties have conducted an investigation and research, and their attorneys were able to reasonably evaluate their respective positions. The settlement was reached after Plaintiff evaluated the strength of the case by obtaining relevant documents, reviewing those documents, taking a 30(b)(6) witness deposition on overdraft fee issues, and after Plaintiff herself was deposed, all of which provided Plaintiff with substantial information as to the strengths and weaknesses of her case.

13. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks, relating both to the merits of the case, proof of damages, and class certification. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

14. 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.

15. The Court approves the payment of \$500,000 by Defendant into the Settlement Fund.

16. The Court finds the requested attorneys' fees of \$166,666.00 to be reasonable, both as a percentage of the common fund (one-third) and under the lodestar

method, 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 requested amount is one-third of the common Settlement Fund, which is appropriate for this case, and is in line with market rates for contingency fees in a case as such. Therefore, the requested fee is reasonable and approved under the percentage-of-the-benefit methodology. Further, the hourly rates of the attorneys are reasonable and in line with prevailing market rates, and the hours worked are also reasonable. Therefore, the requested fees amount is also separately and independently approved under a lodestar analysis.

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

18. The Court further finds that the request for reimbursement of litigation costs in the amount of \$70,000 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.

19. The Court approves an award of \$10,000 to the named Plaintiff for her services on behalf of the class, to be paid from unclaimed settlement funds.

20. The Court approves the Madison County, Illinois Department of Children and Family Services, based in Alton, Illinois, as the *cy pres* recipient of any residue in the Settlement Fund.

21. The Court approves payment of the Claims Administrator's fees and costs of up to \$42,000, including those amounts if any previously paid to the Claims Administrator by Defendant, to be paid to the Claims Administrator from the Settlement Fund by the deadline specified in the Settlement Agreement.

22. Within 10 days of the date of this order, Defendant 1st MidAmerica Credit Union shall distribute the Settlement Fund to the Claims Administrator, less amounts advanced to the Claims Administrator.

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

24. The Motion for Final Approval of the Settlement Agreement (Doc. 82) is **GRANTED**, and the settlement of the Class Action is **APPROVED** as fair, reasonable, and adequate to the Class. The operative complaint and all claims asserted therein are **DISMISSED with prejudice**.

IT IS SO ORDERED.

DATED: July 30, 2018



NANCY J. ROSENSTENGEL
United States District Judge