

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

DANNY L. WALKINGSTICK,)	
WHITNYE A. FORT, on behalf of the)	
themselves and all other similarly)	
situated,)	
)	Case No. 6:19-cv-03184-RK
Plaintiffs,)	
)	
v.)	Hon. Roseann A. Ketchmark
)	
SIMMONS BANK,)	
)	
Defendant.)	

**DECLARATION OF LYNN A. TOOPS IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

I, Lynn A. Toops, declare:

1. I am a partner at the law firm of Cohen & Malad, LLP. Along with my co-counsel, I represent the Plaintiffs in this case. Collectively, our firms have extensive experience in class action and complex litigation across the country, including bank fee litigation in particular. *See* ECF No. 155-1, at pp. 84–126.

I. Litigation

2. The parties have conducted extensive discovery in this case. Defendant has produced over 7,600 pages of documents, two expert reports, and millions of rows of account data. Plaintiffs have taken the depositions of Defendant's corporate representatives, Lisa Hunter and Marty Casteel, as well as Defendant's expert witnesses, Sonja Kwon and Bob Birmingham. Defendant has likewise taken the depositions of Plaintiffs Fort and Walkingstick, and of Plaintiffs' expert witness,

Arthur Olsen. The parties have briefed class certification, which has not yet been ruled upon.

II. Mediation

3. On April 19, 2021, the Parties participated in good faith in the scheduled mediation (the “Mediation”) before Judge Morton Denlow (ret.) (the “Mediator”). At the conclusion of the Mediation, the Parties arrived at a settlement in principle. For several weeks after the Mediation, the parties worked on memorializing the settlement in principle into a written term sheet. On July 26, 2021, the parties fully executed a written term sheet (“Term Sheet”), which memorialized the parties’ good-faith intention to resolve this litigation, subject to the parties executing a formal settlement agreement setting forth all of the details of settlement. The details turned out to be tricky. Eventually, the parties participated in additional mediation sessions and calls with the Mediator to try to bridge their differences on the final detailed terms of settlement. In addition, the parties engaged in exhaustive direct discussions and negotiations. Ultimately, the parties’ executed the Settlement Agreement and Release (the “Settlement”).

III. Settlement

4. As part of the Settlement, Defendant will pay \$3,250,000.00 in cash to resolve the claims and will forgive \$753,234.00 in fees assessed against Settlement Class members, for a total Value of the Settlement of \$4,003,234.00. The Settlement Fund will be used to pay the Court-approved costs of notice and administration fees (estimated to be \$78,000), attorneys’ fees approved by the Court (up to one-third of the Value of the Settlement, which is comprised of the cash payment and forgiven

charge offs), and service awards (up to \$10,000 to each Plaintiff), with the remaining Net Settlement Fund to be distributed to the Class Members directly. The Settlement represents a significant portion of the damages that would have been recoverable had the Class prevailed through trial and appeal. In my professional judgment as a class action litigator, the Settlement represents an excellent result for the Class. In counsel's experience, a settlement in this range is likely to be viewed favorably by the class members who will appreciate receiving compensation from this lawsuit without having to expend any resources of their own.

5. This result is even more remarkable because, although the Class Representatives believe in the merits of their claims, this litigation was inherently risky and complex. The claims involve intricacies of banking practices, and the Class Representatives faced risks at each stage of litigation. For instance, the Class Representatives faced the hurdle of having the Court certify a class adversarially and having that ruling potentially immediately appealed. Without a certified class, no class member would likely receive any recovery. And summary judgment, trial, and appeal present significant risks in any case. Class Counsel also took on this litigation on a 100% contingency basis, meaning that Class Counsel labored and advanced their own funds to prosecute the case all at the risk of never being paid for their work or reimbursed for their expenses

IV. Class Counsel's Fee Request

6. As part of final approval of the Settlement, Class Counsel are requesting a fee award in the amount of \$1,334,411.33, which is one-third of the

Value of the Settlement. In litigating this matter thus far, Class Counsel have incurred a lodestar at their normal hourly rates that slightly exceeds the requested fee award and that will continue to increase as the Settlement is administered.

7. Class Counsel maintain a national class action practice and have particularly specialized skill in bank fee class actions, in which Class Counsel are routinely awarded a fee of one-third of the value of bank fee class action settlements. *See, e.g., Holt v. CommunityAmerica Credit Union*, No. 4:19-CV-00629-FJG, 2020 WL 12604384, at *1 (W.D. Mo. Dec. 8, 2020) (awarding counsel one-third of the value of the settlement as attorneys' fees in bank fee class action settlement); *Chambers v. Together Credit Union*, No. 19-CV-00842-SPM, 2021 WL 1948452, at *2 (S.D. Ill. May 14, 2021) (same); *Hinton v. Atlantic Union Bank*, No. 3:20-cv-651-JAG, ECF No. 30 (E.D. Va. Mar. 31, 2022) (same); *Bodnar v. Bank of Am., N.A.*, No. CV 14-3224, 2016 WL 4582084, at *4 (E.D. Pa. Aug. 4, 2016) (same, 33% fee award); *Liggio v. Apple Fed. Credit Union*, No. 18-cv-01059, ECF No. 39 (E.D. Va. Dec. 6, 2019) (same, one-third fee award); *Thornton v. German Am. Bancorp*, No. 49D01-2007-PL-022667 (Ind. Comm'l Ct. July 15, 2022) (same); *Darty v. Scott Credit Union*, No. 19L0793 (Ill. Cir. Ct. July 13, 2022) (same); *James v. Georgia United Credit Union*, No. 19-A-09050-7 (Ga. Super. Ct. Mar. 10, 2022) (same); *Hall v. MidwestOne Bank*, No. LACV082148 (Iowa Dist. Ct. Feb. 21, 2022) (same); *Harris v. Centier Bank*, No. 45D01-2101-PL-000072 (Ind. Super. Ct. Jan 28, 2022) (same); *Pryor v. Eastern Bank*, No. 1984CV03467-BLS1 (Mass. Bus. Ct. Jan. 3, 2022) (same); *Howell v. Eastman Credit Union*, No. C42517 (Tenn. Cir. Ct. Oct. 20, 2021)

(same); *Yarski v. Knoxville TVA Employees Credit Union*, No. 3-220-19 (Tenn. Cir. Ct. July 21, 2021) (same); *Almon v. Independence Bank*, No. 19-CI-00817 (Ky. Cir. Ct. June 18, 2021) (same); *MJ Evans Beauty v. Bremer Bank, N.A.*, No. 27-cv-19-19390 (Minn. Dist. Ct. Apr. 15, 2021) (same); *Norwood v. The Camden Nat'l Bank*, No. BCD-CV-2020-13 (Me. Bus. Ct. Dec. 11, 2020) (same); *Johnson v. Elements Fin. Credit Union*, No. 49D01-2001-PL-004706 (Ind. Comm'l Ct. Oct. 29, 2020) (same); *Plummer v. Centra Credit Union*, No. 03D01-1804-PL-001903 (Ind. Super. Ct. Oct. 2, 2020) (same); *Terrell v. Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Ky. Cir. Ct. Oct. 2, 2020) (same); *Hawley v. ORNL Fed. Credit Union*, No. B9LA0107 (Tenn. Cir. Ct. Jun. 15, 2020) (same); *Martin v. L&N Fed. Credit Union*, No. 19-CI-002873 (Ky. Cir. Ct., Jun. 8, 2020); *Tisdale v. Wilson Bank & Trust*, No. 19-400-BC (Tenn. Bus. Ct. Mar. 18, 2020) (same); *Hill v. Ind. Members Credit Union*, No. 49D02-1804-PL-016174 (Ind. Super. Ct. Jan. 21, 2020) (same); *Graves v. Old Hickory Credit Union*, No. 19-475-II (Tenn. Chanc. Ct. Sept. 3, 2019) (same)).

V. Reimbursement of Expenses

8. In litigating this action, Class Counsel are also seeking reimbursement of litigation expenses in the amount of \$98,087.95. This figure is less than the total expenses incurred by Class Counsel because Class Counsel wrote off and absorbed certain expenses. The requested \$98,087.95 is comprised of the following categories:

Category	Sum of Amount
Expert	\$ 56,175.00
Mediation	\$ 17,876.14
Deposition	\$ 12,686.92
Travel	\$ 6,821.70
Litigation Support	\$ 2,340.45
Filing Fees	\$ 1,061.57
Service	\$ 598.00
Copies	\$ 412.71
Courier	\$ 107.97
Conference Calls	\$ 7.49
Grand Total	\$ 98,087.95

Further detail can be provided if requested. Class Counsel accepted this litigation on a 100% contingent fee basis and advanced all expenses, so our incentive was to not incur unnecessary expenses that might never be recovered. In addition, the currently billed lodestar of Class Counsel exceeds the requested fee amount.

VI. Service Award to the Class Representatives

9. The Class Representatives are requesting a service award of \$10,000 each for their service to the Class and the result achieved. The Class Representatives have regularly consulted with Class Counsel, provided documents and information, reviewed pleadings, and participated in the settlement process. Not only that, each was deposed, which involves significant stress for most people, in addition to the time to prepare. Without the Class Representative's efforts, the Settlement would never have been achieved.

VII. Verification

I affirm, under the penalties for perjury, that the foregoing representations are true.

Dated: September 14, 2022

/s/Lynn A. Toops

Lynn A. Toops