

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, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SIMMONS BANK, )  
 )  
Defendant. )

Case No. 6:19-cv-03184-RK

Hon. Roseann A. Ketchmark

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR AWARD OF  
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE  
AWARDS TO CLASS REPRESENTATIVES

This matter is before the Court on Plaintiff's Motion For Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards to Class Representatives, and the Court, having considered all papers filed regarding the motion and having conducted a hearing, now finds that the motion should be, and hereby is, **GRANTED**.

The Court hereby **FINDS**:

1. The proposed class action settlement of this case, which the Court is approving by separate order, creates a total settlement value of approximately \$4,033,234.00 for the Class members, comprised of a \$3,250,000.00 payment by Defendant into the Settlement Fund plus debt forgiveness to the Class members in the amount of approximately \$753,234.00.

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 no less than \$98,087.95 for the usual costs and expenses involved in litigation, including expert fees, mediation fees, deposition costs, filing fees, etc., 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, including by being deposed, 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 Class Representatives be granted a service awards.

7. The Court finds that a fee award of \$1,334,411.33, which represents one-third of the Value of the Settlement (\$4,033,234) is appropriate, fair, proper, and reasonable under the factors considered by courts in the Eighth Circuit. Specifically, as set forth above, the following factors all favor awarding the requested fee: (1) the benefit conferred on the class by the settlement; (2) the risk to which plaintiff's counsel was exposed (i.e., whether their fee was fixed or contingent); (3) the difficulty and novelty of the legal and factual issues of the case; (4) the skill of the lawyers, both plaintiffs' and defendants'; and (5) the comparison between the requested attorney fee percentage and percentages awarded in similar cases. *See Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (listing factors). The one-third fee amount is consistent with fees regularly awarded and affirmed in the Eighth Circuit and in this District, and it is appropriate in this case. *See id.* (affirming use of the "percentage-of-the-benefit" measure for attorneys' fees and affirming a one-third fee); *In re U.S. Bancorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (same and affirming 36% fee); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (same and affirming one-third fee); *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). *See also Chambers v. Together Credit Union*, No. 19-CV-00842-SPM, 2021 WL 1948452, at \*2 (S.D. Ill. May 14, 2021) (same).

8. Likewise, the Court finds that reimbursement to Class Counsel of expenses in the amount of \$98,087.95 is appropriate and that those expenses are reasonable and common litigation expenses. *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.”).

9. Finally, the Court finds that payment of a \$10,000 service award to the 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, and “courts in this circuit regularly grant service awards of \$10,000 or greater.” *Id.*

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

10. The Court hereby awards to Class Counsel attorneys' fees to be paid from the Settlement Fund in the amount of \$1,334,411.33.

11. The Court hereby awards to Class Counsel reimbursement of expenses to be paid from the Settlement Fund in the amount of \$98,087.95.

12. The Court hereby awards to the Class Representatives a service award to be paid from the Settlement Fund in the amount of \$10,000 each.

13. All other payments from the Settlement Fund shall be made as set forth in the settlement agreement approved by the Court.

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

Dated:

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Hon. Roseann A. Ketchmark  
United States District Judge  
Western District of Missouri