

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

TRACY AND DENNIS COX, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FIRST COMMUNITY BANK,

Defendant.

Case No. 5:23-cv-00392

Judge Frank W. Volk

**MOTION FOR APPROVAL OF
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

Plaintiffs Tracy and Dennis Cox, by counsel, under Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure and pursuant to section 10 of the Class Action Settlement Agreement, ECF No. 56-1, respectfully request that, in conjunction with the final approval hearing set for November 25, 2024, at 3:00 p.m., the Court award the following amounts from the \$4,800,000.00 Settlement Fund:

1. Attorneys' fees to Class Counsel in the amount of \$1,766,666.67 (one-third of the Value of the Settlement, which is comprised of the Settlement Fund plus \$500,000 in debt forgiveness);
2. Reimbursement of litigation expenses to Class Counsel in the amount of \$6,039.40; and
3. A service award to each of the Class Representatives in the amount of \$7,500.00, for a total of \$15,000.00.

Attached as Exhibit A is a declaration in support of this motion along with a Proposed Order attached as Exhibit B. A copy of these papers will be posted to the Settlement Website so that Class Members may review them.

Dated: November 1, 2024

Respectfully submitted,

/s/ Rodney Smith

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*Counsel for Plaintiffs and the Proposed
Settlement Class*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st of November, 2024, the foregoing was served via the Court's electronic filing system to all counsel of record.

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SECOND DECLARATION OF LYNN A. TOOPS

I, Lynn A. Toops, declare:

1. I am a partner in the law firm of Cohen & Malad, LLP. I am one of the Class Counsel appointed to represent Plaintiffs and the Settlement Class in this action.
2. Class Counsel have extensive experience litigating and settling bank fee class actions across the country. *See, e.g., Hash v. First Fin. Bancorp*, No. 1:20-cv-01321-RLM-MJD, slip op. at 5 (S.D. Ind. Nov. 22, 2021), ECF No. 92 (granting final approval to \$6.68 million settlement negotiated by Plaintiff's counsel on similar bank fee claims); *Holt v. CommunityAmerica Credit Union*, No. 4:19-CV-00629-FJG, slip op. at 2 (W.D. Mo. Sept. 4, 2020), ECF No. 51 (same, granting final approval to \$3.08 million settlement); *Perks v. TD Bank, N.A.*, No. 1:18-cv-11176-VEC, slip op. at 1 (S.D.N.Y. Sept. 7, 2021), ECF No. 103 (same, granting preliminary approval to over \$40 million settlement); *Hill v. Indiana Members Credit Union*, No. 49D02-1804-PL-016174, slip op. at 5 (Ind. Super. Ct. Jan. 21, 2020) (same, granting final approval to \$3 million settlement); *Terrell v. Fort Knox Credit Union*, No. 19-CI-01281, slip op. at 4 (Ky. Cir. Ct. Sept. 22, 2020) (same, granting final approval to \$4.5 million settlement); *Ingram v. Teachers Credit Union*, No. 49D01-1908-PL-035431 (Ind. Super. Ct. July 7, 2021) (same, granting



final approval to \$9.55 million settlement); *Graves v. Old Hickory Credit Union*, No. 19-475- II (Tenn. Ch. Ct. Aug. 9, 2019) (same, 75% of damages); *Tisdale v. Wilson Bank & Trust*, No. 19-400-BC (Davidson Cnty. Tenn. Bus. Ct.) (same, settlement for 80% of damages); *Howell v. Eastman Credit Union*, No. C42517, slip op. at 1 (Tenn. Cir. Ct. July 16, 2021) (same, granting preliminary approval of \$3.25 million settlement); *Bowen v. Commonwealth Credit Union*, No. 19-CI-00416, slip op. at 1 (Ky. Cir. Ct. July 7, 2021) (same, granting preliminary approval of \$2.4 million settlement); *Pryor v. Eastern Bank*, No. 1984CV03467 (Mass. Super. Ct. 2022) (same, granting final approval of \$4.325 million settlement). *See also Hinton v. Atl. Union Bank*, No. 3:20-cv-00651-JAG (E.D. Va. Mar. 30, 2022), ECF No. 29 (granting final approval to motion by Plaintiff's counsel in separate class action settlement against Atlantic Union over different fees.

3. Class Counsel are routinely awarded attorneys' fees of one-third of the value of a settlement in bank fee class actions in state and federal courts and across the country. *See, e.g., Mawyer v. Atl. Union Bank*, No. 3:21-cv-726, ECF No. 58 (E.D. Va. Mar. 16, 2023) (awarding Class Counsel a one-third fee in bank fee litigation); *Hinton v. Atl. Union Bank*, 3:20-cv-00651-JAG (E.D. Va. Mar. 30, 2022), ECF No. 29 (same); Order Gr'g Final Approval, *Holt v. CommunityAmerica Credit Union*, No. 4:19-cv-00629-FJG (W.D. Mo. Dec. 8, 2020), ECF No. 51 (same); Order Gr'g Final Approval to Class Action Settlement, *Johnson v. Elements Fin. Credit Union*, No. 49D01-2001-PL-004706 (Ind. Super. Ct. Oct. 29, 2020) (awarding Class Counsel a fee of one-third of the value of the settlement in bank fee litigation); *Terrell v. Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Ky. Cir. Ct. Oct. 2, 2020) (same); *Martin v. L&N Fed. Credit Union*, No. 19-CI-002873 (Ky. Cir. Ct. Jun. 8, 2020) (same); *Graves v. Old Hickory Credit Union*, No. 19-475-II (Tenn. Chanc. Ct. Sept. 3, 2019) (same); *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); *Hawley v. ORNL Fed. Credit Union*, No. B9LA0107 (Tenn. Cir. Ct. Jun. 15, 2020) (same).

4. In litigating this action, Class Counsel advanced no less than \$6,039.40 in litigation expenses for which they have not been reimbursed. The expenses by category are:

Expense	Amount
Mediation	\$ 3,485.50
Filing/PHV/Court Fees	\$ 2,007.00
Expert	\$ 350.00
Copies	\$ 171.40
PACER	\$ 25.50
Total	\$ 6,039.40

5. Apart from Class Counsel, the Class Representatives have amply fulfilled their duties as Class Representatives and are deserving of a service award. Plaintiffs put themselves forward in litigating this case, kept abreast of the case's status, reviewed documents, and discussed with counsel various aspects of the case, including the Settlement. Additionally, the nature of Plaintiffs' claims necessarily put their finances at issue and publicly disclosed financial difficulties, creating notoriety regardless of the success of their claims. They should be commended and rewarded for taking action to protect the interest of thousands of bank customers who were affected by the fee policies in this case.

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

Dated: November 1, 2024

/s/Lynn A. Toops
Lynn A. Toops

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ORDER GRANTING MOTION FOR APPROVAL OF ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS

WHEREAS, the Parties in the above-captioned class action entered into a Class Action Settlement Agreement (the "Settlement");

WHEREAS, by separate Order the Court has granted final approval to the Settlement;

WHEREAS, the Settlement creates a benefit of \$5,300,000.00 for the Class Members, comprised of a \$4,800,000.00 Settlement Fund and forgiveness of \$500,000.00 in debt;

WHEREAS, the Class Representatives have moved for approval of payments of attorneys' fees, expenses, and service awards from the Settlement Fund;

WHEREAS, on November 25, 2024, at 3:00 p.m., the undersigned held a final approval hearing at which the Court considered the request for attorneys' fees, expenses, and service awards; and



WHEREAS, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, and proceedings in the action, and being otherwise fully advised,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Class Counsel is awarded attorneys' fees in the amount of \$1,766,666.67 (one-third of the Value of the Settlement) and expenses in the amount of \$6,039.40, such amounts to be paid from the Settlement Fund in accordance with the terms of the Settlement. This award is justified given Class Counsel's expertise, perseverance, and skill; the usual rate of fees in contingent class action litigation; and by the degree of success attained by Class Counsel on behalf of the Settlement Class Members in this action. *Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 629 (4th Cir. 1995) (holding that the "most critical factor in determining the reasonableness of a fee award is the degree of success obtained"). In addition, Class Counsel's requested expenses are made up of "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services," and are therefore appropriately reimbursed. *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted).

2. The Class Representatives are awarded service awards in the amount of \$7,500.00 each (\$15,000.00 total) to be paid from the Settlement Fund in accordance with the terms of the Settlement. This award recognizes the efforts of the Class Representatives in achieving a benefit for the thousands of Settlement Class Members, and it is consistent with service awards in similar cases. *See, e.g., Hinton*

v. Atl. Union Bank, No. 3:20-cv-00651-JAG (E.D. Va. Mar. 30, 2022), ECF No. (\$7,500.00 service award); *Ryals v. HireRight Sols., Inc.*, No. 3:09cv625, ECF No. 127 (E.D. Va. Dec. 22, 2011) (\$10,000 service awards); *Manuel v. Wells Fargo Bank, N.A.*, No. 3:14CV238(DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016) (\$10,000 service award).

3. There being no just reason for delay, let judgment be entered.

SO ORDERED.

Dated:

Judge Frank W. Volk