UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

JOSEPH SELF AND MALINDA SELF, on behalf of themselves and all others similarly situated, **PLAINTIFFS**

v. **CASE NO. 4:24-cv-142-LPR**

CADENCE BANK **DEFENDANT**

JOINT DECLARATION OF RANDALL K. PULLIAM AND LYNN A. TOOPS IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

We, Randall K. Pulliam and Lynn A. Toops, jointly declare and state as follows:

1. Randall K. Pulliam is a partner with the law firm Carney Bates & Pulliam, PLLC ("CBP"). Lynn A. Toops is a partner with the law firm Cohen & Malad, LLP ("Cohen Malad"). CBP and Cohen Malad serve as Class Counsel for Plaintiffs Joseph Self and Malinda Self ("Plaintiffs") and the proposed Settlement Class in this action (the "Action").

2. Throughout this litigation, we and our respective law firms have been responsible for the prosecution of Plaintiffs' claims on behalf of the putative Class. On January 16, 2025, we and our respective law firms were appointed Class Counsel for the Settlement Class in the Court's Preliminary Approval Order. *See* ECF No. 30 at ¶ 4.

3. We make this Joint Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fee, Costs, and Service Awards (collectively referred to as "Plaintiffs' Motion for Attorneys' Fees"). Except where otherwise stated, we each have personal knowledge of the facts set forth in this Joint Declaration based on active participation in all aspects of the prosecution and resolution of the Action. If called upon to testify, we each could and would testify competently to the truth of the matters stated herein.

Overview of the Litigation, Mediation, and Settlement

4. On January 11, 2024, Plaintiffs, individually and on behalf of a putative Class, commenced this lawsuit in the Circuit Court of Pulaski County, Arkansas against Defendant.

5. The Complaint alleges that Defendant breached its contract with Plaintiffs and similarly situated consumer account holders through its assessment and collection of overdraft fees ("APSN Fees") on debit card transactions where the consumer had a sufficient available balance in his or her account at the time the bank authorized the transaction, but the account balance was insufficient at the time of settlement, i.e. "Authorize Positive, Settle Negative Transactions" or "APSN Transactions." Plaintiffs specifically allege that the moment debit card transactions are authorized on a consumer's account with positive funds to cover the transaction, Defendant immediately reduces the consumer's checking account for the amount of the purchase, sets aside funds in the checking account to cover that transaction, and adjusts the consumer's displayed "available balance" to reflect that subtracted amount. As a result, Plaintiffs allege that customers' accounts will always have sufficient funds available to cover these transactions because Defendant held the required funds. Nevertheless, Plaintiffs contend, despite Defendant putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, that Defendant later assessed APSN Fees on those same transactions when they settled days later into a negative balance. Plaintiffs allege that this practice of assessing APSN Fees on Authorize Positive, Settle Negative Transactions breaches contract promises made by Defendant in its customer account contracts with consumers.

6. The Complaint further alleges Defendant's practice of assessing APSN Fees on debit card transactions authorized on sufficient funds fundamentally misconstrues and misleads consumers about the true nature of Defendant's processes and practices and assert claims for unjust

enrichment and violation of the Arkansas Consumer Protection Act ("ADTPA"), specifically A.C.A § 4-88-107(a)(10).

7. On February 16, 2024, Defendant filed a Notice of Removal, removing this action to the United States District Court for the Eastern District of Arkansas (the "Court") pursuant to 28 U.S.C. § 1332(d). *See* ECF No. 1.

8. On March 6, 2024, Plaintiffs filed a Motion to Remand, with a supporting memorandum of law. *See* ECF Nos. 9 and 10.

9. On March 7, 2024, the Parties filed a Joint Motion to Stay All Proceedings or, in the alternative, to Extend Deadlines (ECF No. 11), wherein they jointly requested that the Court stay the Action for 120 days to allow them to satisfy contractual pre-dispute resolution procedures and pursue potential settlement of Plaintiffs' claims.

10. On March 11, 2024, this Court entered an order granting the Parties' Motion and staying this Action for 120 days. *See* ECF No. 15.

11. On May 30, 2024, the Parties attended a full day mediation session before JAMS Mediator Mr. Jed Melnick.

12. Prior to and during the mediation, the Parties prepared and reviewed detailed mediation statements and exchanged informal discovery outlining their respective legal positions regarding the merits of Plaintiffs' claims, Rule 23 considerations, and the scope of damages. Further, during mediation, counsel for the Parties vigorously defended their clients' positions and exchanged additional information related to the merits of the claims, as well as the size and nature of the Class. That information allowed Class Counsel—attorneys with considerable experience—to make an informed assessment of the strengths and risks of Plaintiffs' claims, and balance the benefits of settlement against the risks of further litigation.

13. At the end of the full-day mediation session, the Parties were able to reach an agreement in principle.

14. On July 3, 2024, the Parties filed a Notice of Settlement and Joint Motion to Extend Stay (ECF No. 19). Therein, the Parties notified the Court that they were in the process of memorializing their agreement in principle into a formal written Settlement Agreement and exhibits. The Parties explained that as part of that process, they were analyzing voluminous bank records to identify specific amounts payable to putative Settlement Class Members. As the 120-day stay was set to expire on July 9, 2024, the Parties requested the Court extend the stay for 180 days to allow them to finish their review and finalize and file a complete set of settlement papers along with a motion for preliminary approval, which request this Court granted on July 9, 2024 (ECF No. 19).

15. On September 26, 2025, Plaintiffs withdrew their Motion to Remand.

16. Through their continued negotiations, the Parties were able to finalize and execute a comprehensive set of settlement papers on October 10, 2024 (the "Settlement Agreement" or "Settlement"). *See* ECF No. 24-1.

17. On January 3, 2025, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class Action Settlement, a supporting memorandum of law, and the Joint Declaration of Randall K. Pulliam and Lynn A. Toops in Support of Preliminary Approval (the "Joint Declaration of Class Counsel I"). *See* ECF Nos. 23-25. The Settlement Agreement was attached as Exhibit A to the supporting memorandum. *See* ECF No. 24-1.

18. As further detailed in Plaintiffs' preliminary approval papers and the Joint Declaration of Class Counsel I, the Settlement secures an excellent recovery for the Settlement Class. Pursuant to the Settlement, Defendant will (i) establish a non-reversionary cash Settlement

Fund in the amount of $4.5 million, and (ii) waive and forgive Charged-Off Amounts up to $682,000. Thus, the total value of the Settlement is $5,182,000.00 (the "Settlement Value"), i.e. the Settlement Fund of $4,500,000 plus the Charged-Off Amounts of $682,000.

19. The cash portion of the Settlement provides a substantial recovery of the alleged compensatory damages as it represents approximately 40% of the sum of all APSN Fees paid by Settlement Class Members during the Class Period, or $11,290,068. *See* Joint Declaration of Class Counsel I at ¶ 8.

20. Moreover, as set forth in the Declaration of Brian Fitzpatrick, the debt relief component of the Settlement provides significant value to the Settlement as it translates into a monetary benefit by extinguishing money owed by the Settlement Class Member, which equates to cash in the hands of the Settlement Class Members. *See* Declaration of Brian Fitzpatrick ("Fitzpatrick Decl.") at ¶ 18 ("In my opinion, debt forgiveness is equivalent to cash because, if you no longer owe someone money, it is the same as someone giving you that same amount of money.").

21. Further, Settlement Class Members will receive the settlement benefits automatically, without the need to file a claim form. Settlement Class Members who do not exclude themselves will automatically receive a *pro rata* distribution from the Settlement Fund less any court-approved attorneys' fees and expenses, service awards, and costs of settlement notice and administration. Likewise, eligible Settlement Class Members who do not exclude themselves will automatically receive forgiveness of the Charged-Off Amounts. No portion of the Settlement Fund will revert to the Defendant.

22. On January 16, 2025, this Court entered its Preliminary Approval Order, finding that for the purposes of settlement and notice, the requirements of Federal Rules of Civil Procedure

23(a) and (b)(3) have been met; and the terms of the Settlement are within the range of a fair, reasonable, and adequate compromise. Accordingly, this Court preliminarily approved the Settlement.

Notice to the Settlement Class

23. Following entry of the Court's Preliminary Approval Order, the Settlement Administrator, Verita Global LLC ("Verita"), began implementation of the court-approved Notice Plan, and Class Counsel has worked with Verita to effectuate the court-ordered Notice Plan.

24. In accord with Section VIII of the Settlement Agreement and the Court's Preliminary Approval Order, the Notice Plan provided individual notice of the proposed Settlement to Settlement Class Members by (1) email (the "Email Notice") for Settlement Class Members who are Current Account Holders and for whom Defendant has an email address; and (2) postal mail (the "Postcard Notice") for (i) Settlement Class Members who are Current Account Holders and for whom Defendant does not have an email address, (ii) Settlement Class Members for whom email notice was returned or bounced back as undeliverable, and (iii) all Former Account Holders. *See* Declaration of Karen Rogan Concerning Class Action Notification and Administrative Services ("Rogan Declaration") at ¶¶ 6-12 and Exs. C and D.

25. More specifically, on February 14, 2025, Verita disseminated 55,921 Postcard Notices and 12,376 Email Notices to Settlement Class Members. *See id*. at ¶¶ 6 and 9.

26. On February 14, 2025, Verita established a dedicated website for the Settlement with the URL www.selfbankfeessettlement.com (the "Settlement Website") and established a toll-free telephone number (1-888-726-1319) for the Settlement. *See id*. at ¶¶ 13-14.

27. Through Verita's notice efforts, notice is estimated to have reached approximately 98.6% of the identified, potential Settlement Class Members. *See* Rogan Decl. at ¶ 12.

28. The content of the court-approved notices provided Settlement Class Members a detailed summary of the relevant information about the Settlement, including, among other things: (1) a plain and concise description of the nature of the Action and the proposed Settlement; (2) the right of Settlement Class Members to request exclusion from, or object to, the Settlement and the deadline for doing so; (3) specifics on the date, time and place of the Final Approval Hearing; and (4) information regarding Class Counsel's anticipated fee application and the anticipated request for the Class Representatives' Service Awards. *See id*. at Exs. C and D.

29. Currently, Verita has received no requests for exclusion and no objections to the Settlement. *See* Rogan Decl. at ¶¶ 16-17. The deadline for exclusions and objections is March 17, 2025. Thus, Class Counsel will provide the Court an update on whether any requests for exclusions were submitted and respond to any substantive objections after the deadline has expired.

Factors Supporting an Award of Attorneys' Fees, Litigation Costs, and Service Awards

30. Class Counsel's fee request represents one-third of the cash value of the Settlement Fund, i.e. $4.5 million, or 28.9% of the total Settlement Value, which includes both the monetary benefits and the debt relief benefits. As opined by Professor Fitzpatrick, inclusion of the value of the debt relief dollar for dollar in settlement valuations is appropriate because it equates to cash in the hands of the Settlement Class Members. *See* Fitzpatrick Decl. at ¶ 18 ("In my opinion, debt forgiveness is equivalent to cash because, if you no longer owe someone money, it is the same as someone giving you that same amount of money.").

31. The percentage of the fund method is an appropriate basis on which to award Class Counsel a fee in this case. As explained by Professor Fitzpatrick in his declaration, the percentage of the fund approach serves the realities of both economic models and market practices, and comports with "the consensus opinion of class action scholars." *See* Fitzpatrick Decl. at ¶ 14 (citing

American Law Institute, Principles of the Law of Aggregate Litigation § 3.13(b) (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases.")).

32. Moreover, a fee award of either 33.3% or 28.9% is well within approved norms of class ligation in both the Eighth Circuit and Arkansas. *See* Fitzpatrick Decl. at ¶ 19 (The percentage requested here—either 28.9% or 33.3%—is well within—and, indeed, on the low end of—the range of what litigants agree to pay other contingency fee lawyers."); *see also Bingollu v. One Source Tech., LLC*, No. 22-CV-77 (DTS), 2024 WL 4249549, at *4 (D. Minn. Sept. 20, 2024) (finding request for one-third of the settlement fund "reasonable"); *Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375, at *5 (W.D. Mo. Apr. 1, 2024) (granting attorneys' fees of one-third of $65,000,000 settlement); *Phillips v. Caliber Home Loans, Inc.*, No. 19-CV-2711 (WMW/LIB), 2022 WL 832085, at *7 (D. Minn. Mar. 21, 2022) (awarding Class Counsel (which included Carney Bates & Pulliam, PLLC) attorneys' fees of one third of the Settlement Fund); *Williams v. State Farm Mutual Automobile Ins. Co*., Case No. 4:11-cv-00749-KGB (E.D. Ark. June 1, 2018), slip opinion at p. 12 (awarding Class Counsel (which included Carney Bates & Pulliam, PLLC) fees of $6.57 million, or 30% of the settlement amount of $21.9 million); *see also Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (noting that courts within the Eighth Circuit frequently award attorneys' fees between 25% and 36% of a common fund); *Caligiuri v. Symantec Corp*., 855 F.3d 860, 865 (8th Cir. 2017) (affirming fee award of one-third of the gross settlement fund).

33. Additionally, consideration of all the applicable factors listed in *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714, 717–19 (5th Cir. 1974) strongly supports the requested fee award. *See In re Target Corp. Customer Data Security Breach Litig*., 892 F.3d 968, 977 (8th Cir.

2018); *In re Xcel Energy Inc. Securities Derivative and "ERISA" Litig*., 364 F. Supp. 2d 980, 993 (D. Minn. April 8, 2005); *see also* Fitzpatrick Decl. at ¶¶ 17, 21, 25, and 28-29.

34. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed Settlement Class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the assistance of a neutral mediator. As detailed in the Joint Declaration of Class Counsel I, Class Counsel have significant experience in litigating class actions of similar size, scope, and complexity to the instant action. Class Counsel regularly engage in major complex litigation involving consumer privacy, have the resources necessary to conduct litigation of this nature, and have frequently been appointed class counsel by courts throughout the country. *See* Joint Declaration of Class Counsel I at ¶¶ 3-6 and Exs. A and B.

35. Class Counsel have invested significant time and resources into this action. Class Counsel performed such tasks as: (i) conducting a thorough pre-suit investigation; (ii) drafting a detailed complaint; (iii) analyzing the legal arguments raised in Defendant's notice of removal and filing a motion to remand; (iv) gathering Plaintiffs' documents and relevant information; (v) drafting a mediation statement and participating in a full-day mediation session; (vi) engaging in post-mediation negotiations and holding numerous telephonic calls with defense counsel regarding settlement, (vii) engaging in informal discovery and extensive, independent confirmatory discovery; (viii) achieving a very favorable Settlement on behalf of the Settlement Class; (ix) negotiating comprehensive settlement papers; and (x) successfully moving for Preliminary Approval of the Class Action Settlement.

36. Class Counsel have devoted extensive hours to the prosecution of this Action. Moreover, Class Counsel's work in this litigation is far from over. Class Counsel will commit

significant ongoing time and resources to presenting the Settlement to the Court at the Final Approval Hearing, the continued administration of the Settlement, responding to Settlement Class Member's inquiries concerning the Settlement, and overseeing and coordinating distribution of the settlement funds to the Settlement Class Members. Based on Class Counsel's experience in other cases, this ongoing work will likely involve approximately 150 total additional hours until fully resolved.

37. From the outset of the case, Plaintiffs and Class Counsel recognized that the case presented substantial litigation risks. Indeed, the claims in this action involve complicated forensic, technical, and legal issues concerning Defendant's overdraft fee practices, requiring Class Counsel to develop an understanding of how Defendant sequences or re-sequences debit transactions, and the exact manner in which Defendant applied APSN Fees to Authorize Positive Settle Negative Transactions, class size, class damages, and more. Had the litigation continued, these issues would have required extensive and complex forensic expert testimony.

38. Additionally, Class Counsel faced significant risks related to certifying and maintaining a litigation class. Further, any order granting class certification would have likely led to Defendant's filing a petition for interlocutory review of the Court's ruling.

39. Despite the clear risks involved in pursing this litigation, Class Counsel undertook this matter on a contingency basis with no guarantee of recovery and have committed substantial resources of attorney and staff time, in addition to out-of-pocket costs, towards investigating, litigating, and settling the matter. In doing so, Class Counsel also assumed the risk of the significant delay associated with achieving a final resolution through trial or any appeals.

40. Cadence has presented a vigorous defense throughout the litigation and has been represented by highly experienced lawyers from DLA Piper LLP, a global law firm with more than

1,800 attorneys practicing in over 40 countries. *See* https://dlapiper.com. Notwithstanding this formidable opposition, Class Counsel developed a strong case and negotiated settlement terms that are highly favorable to Settlement Class Members.

41. Plaintiffs and Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain. Additionally, absent a settlement, the success of any of Defendant's defenses could deprive Plaintiffs and the Settlement Class Members of any potential relief whatsoever.

Class Counsel's Reasonably Incurred Litigation Costs.

42. Over the course of the litigation, Class Counsel kept records of all litigation expenses. The following table summarizes Class Counsel's reasonably incurred litigation expenses:

Expense Category	Amount
Mediation Services	$15,443.75
Forensic Investigation/Experts/Consultants	$4,550.00
Filing and Pro Hac Vice Fees	$287.50
Federal Express/Courier	$34.47
Legal Research	$46.25
Travel and Meals	$7,387.02
Printing/Postage/Document Retrieval	$17.65
Total	**$27,766.64**

43. With the assistance of attorneys and staff working under our direction and supervision, we conducted a comprehensive audit of all litigation expenses incurred by Class Counsel in the prosecution of this Action. In performing the audit of Class Counsel's litigation expenses, we exercised our discretion in removing any expenses we considered unnecessary or irrelevant.

44. We are prepared to provide the Court with any further documentation or explanation regarding Class Counsel's litigation expenses, including detailed invoice and payment records, upon request by the Court.

Class Representatives' Service Awards

45. Class Counsel is of the opinion that Plaintiffs' active involvement in this case was critical to its ultimate resolution. Without their willingness to assume the risks and responsibilities of serving as Class Representatives, we do not believe such a favorable result could have been achieved.

46. Plaintiffs took their role as Class Representatives seriously, devoting significant amounts of time and effort to protecting the interests of the Settlement Class. They provided information to Class Counsel that informed the class action complaint, and throughout the litigation, regularly communicated with Class Counsel about strategy and major case developments. Moreover, they carefully reviewed and considered the Settlement, and consulted with Class Counsel, before approving it. In light of their work, the requested service award of $5,000 for each Plaintiff is eminently reasonable. *See Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375, at *5 (W.D. Mo. Apr. 1, 2024) (approving service awards of $25,000); *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-CV-4001, 2020 WL 2892819, at *3 (W.D. Ark. June 2, 2020) (approving service awards of $9,500 each); *Braden v. Foremost Ins. Co. Grand Rapids, Michigan*, No. 4:15-CV-4114, 2018 WL 4903268, at *5 (W.D. Ark. Oct. 9, 2018) (approving service awards of $10,000 each); *Caligiuri*, 855 F.3d at 867 (affirming service awards of $10,000 each and noting "courts in this circuit regularly grant service awards of $10,000 or greater").

We declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 3rd day of March, 2025 at Little Rock, Arkansas and Indianapolis, Indiana.

By: */s/ Randall K. Pulliam*
Randall K. Pulliam

By: */s/ Lynn A. Toops*
Lynn A. Toops