

Declaration; and the papers and pleadings on file with the Court and on such other evidence, information, or material as may be presented to the Court.

Dated: June 17, 2025

Respectfully submitted,

/s/ James C. Vlahakis

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*Attorneys for Named Plaintiff and the Provisionally
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ERIC ROBERTS, on behalf of
himself and all others similarly situated,

V.

Defendant.

MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD

Class Counsel is entitled to reasonable compensation for the work performed and the costs incurred in prosecuting this case. After litigating the case since December 2021, the Parties—with the assistance of a highly respected retired judge serving as a mediator—reached an agreement to settle the matter on a class-wide basis. Defendant agreed to return to Class Members their share of the \$1,200,000.00 Settlement Fund that they incurred in improper APPSN Fees based upon a plan

1

of allocation that fairly and adequately accounts for the value of each Class Member's individual claim. This Settlement provides a significant financial benefit for the Settlement Class without absent Class Members having to expend any time or effort to participate.

This extraordinary result could not have been achieved without Named Plaintiff's efforts. In prosecuting this action, Named Plaintiff expended his time and effort and took significant financial and reputational risks for the benefit of the Settlement Class; this imposed a financial burden on Named Plaintiff out of proportion to his individual stake in the matter. As such, Named Plaintiff should be awarded a service award to compensate him for his work in bringing the case and facing the attendant risks associated with serving as class representative.

Based on the work that Class Counsel did in order to obtain the outcome for the Settlement Class, the requested attorney fee award represents just one-third of the value of the settlement. The amount of this award is reasonable and its percentage is routinely approved by Illinois courts and courts across the nation in similar complex banking fee class action settlements. Accordingly, Named Plaintiff respectfully requests that the Court grant the unopposed motion for attorneys' fees, costs, and service award.

BACKGROUND

I. CLASS COUNSEL'S INVESTIGATION

Prior to the filing of this lawsuit, Class Counsel spent many hours investigating the claims of several potential plaintiffs against Defendant, including interviewing Named Plaintiff to gather information about Defendant's conduct and its impact on consumers, which was essential to Class Counsel's ability to understand the nature of Defendant's conduct, the language of the relevant account agreements and other documents at issue, and potential remedies.

Through its independent investigation, Class Counsel expended significant resources researching and developing the legal claims at issue. Indeed, Class Counsel is particularly familiar with the instant claims through their extensive history of litigating and resolving other banking fee claims with similar factual and legal issues to the case at bar. Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Class Member's respective damages. Class Counsel, along with its expert, spent a significant amount of time analyzing preliminary data regarding Old Second's fee revenue related to the assessment of APPSN Fees at issue. Defendant similarly retained its own expert who conducted a review and analyzed data accordingly. This data and analysis evaluating potential damages at issue was used in preparation for the Parties' two mediations and to further drive the viability of resolution.

II. OVERVIEW OF THE LITIGATION

On December 13, 2021, Named Plaintiff Eric Roberts filed a class action complaint in the Circuit Court of the Sixteenth Judicial Circuit, Kane City, State of Illinois, captioned *Eric Roberts v. Old Second Bancorp, Inc. d/b/a Old Second National Bank*, Case No. 2021-MR-2148, alleging breach of contract, including breach of the implied covenant of good faith and fair dealing, and violation of Illinois' Consumer Fraud and Deceptive Business Practice Act ("ICFA"). Defendant moved to dismiss the case on March 22, 2022.

Thereafter, on May 3, 2022, Plaintiff filed the First Amended Complaint after the Court granted leave to amend the pleading. On June 7, 2022, Defendant moved to dismiss the First Amended Complaint. Plaintiff then filed the Second Amended Complaint with leave of the Court on July 14, 2022. On August 10, 2022, Defendant moved to dismiss the Second Amended Complaint.

On December 12, 2022, following two hours of oral argument, the Court dismissed Plaintiff's ICFA claim. Then, on February 6, 2023, the Court denied the motion to dismiss in relation to Plaintiff's breach of contract claim, including the covenant of good faith and fair dealing. Defendant filed its Answer to the Second Amended Complaint on March 3, 2023.

The Parties subsequently pursued written discovery and simultaneously agreed to mediate to try and reach a comprehensive settlement. On October 24, 2023, the Parties participated in mediation before the Honorable Hollis Webster (Ret.). The mediation did not result in settlement, but the Parties continued settlement discussions and agreed to attempt a second mediation. Therefore, on October 4, 2024, the Parties participated in a second mediation before the Honorable Hollis Webster (Ret.). This second mediation was successful.

After nearly three years of litigation, including motions practice, written discovery, and two mediations, Named Plaintiff and his Counsel achieved exceptional results for Class Members: Defendant agreed to provide \$1,200,000.00 in cash to a proposed Class comprised of all Illinois citizens who, between February 1, 2012, to December 31, 2021, were Old Second checking account holders that were charged APPSN Fees on transactions that were authorized into a positive available balance. The Parties memorialized the settlement in the Agreement, which will resolve all claims against Defendant in the above-titled action.

On January 23, 2025, Named Plaintiff filed an unopposed motion seeking preliminary approval of the class action settlement. In its April 7, 2025 Order, the Court granted such preliminary approval, finding that the terms of the proposed Settlement are fair, adequate, and reasonable under the law and that they provided substantial relief for the Class. That same order appointed Named Plaintiff as Class Representative, appointed Class Counsel for the provisionally certified Class, approved Verita as the Settlement Administrator, and approved the proposed Notice

plan. The Order also established the Bar Date to Opt Out of/Bar Date to Object to the Settlement and set forth the remainder of the case schedule, including the July 17, 2025 deadline for filing the instant motion and the August 1, 2025 Final Approval Hearing Date.

In sum, the pre-filing investigation and the procedural history of the litigation illustrates that Class Counsel spent significant time conferring with Named Plaintiff, investigating facts, researching the law, preparing multiple well-pleaded complaints, engaging in discovery and ongoing meet and confer efforts, working with expert witnesses, and reviewing important documents and data. Class Counsel's extensive efforts resulted in the provisionally approved Settlement.

III. SUMMARY OF KEY SETTLEMENT TERMS

The Agreement, which completely resolves all claims in the action, sets forth the following Class, which the Court has previously provisionally certified:

All Illinois citizens who, between February 1, 2012, to December 31, 2021, were Old Second checking accountholders that were charged APPSN Fees on transactions that were authorized into a positive available balance.

Agreement, ¶ 1(e). Note that "APPSN Fees" means overdraft fees that were charged and not refunded from February 1, 2012, to December 31, 2021, on debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to an accountholder's account. *Id.* ¶ 1(a).

Defendant has agreed to pay \$1,200,000.00 cash for the benefit of Class Members. Agreement ¶ 1(t); 7(d)(iv). This cash amount will be used to pay: (a) Class Members their respective Individual Payments; (b) any Court-awarded reasonable attorneys' fees and costs for Class Counsel; (c) any Court-awarded Service Award for Named Plaintiff for his role as class

representative; (d) costs associated with identifying the class members; (e) settlement administration costs, including any fees paid to the Settlement Administrator; and (f) if any residual funds remain after the distribution of Class Members' Individual Payments, then to be distributed to the *cy pres* recipient. *Id.* ¶¶ 7(a), 10.

Importantly, Class Members need not affirmatively do anything to receive relief under the Settlement. Rather, Individual Payments shall automatically issue to Class Members 60 days after the Effective Date. *Id.* ¶ 7(d)(iv)(b). Those Class Members who are current accountholders at the time of distribution of the Net Settlement Fund, and who then own the checking account maintained at Old Second that was assessed an APPSN Fee, will receive a credit to their account in the amount of the Individual Payment. *Id.* ¶ 7(d)(iv)(b)(i). Those Class Members who are not able to receive an account credit in the manner described above, the Settlement Administrator will send a check in the amount of the Individual Payment to the address used to provide the Notice, or at such other address as designated by the Class Member. *Id.* ¶ 7(d)(iv)(b)(ii). Class Members will have one-hundred eighty (180) days to negotiate the checks. *Id.* After this time, the total value of uncashed checks, if any, will be distributed to the Court-approved *cy pres* recipient. *Id.* ¶ 10.

ARGUMENT

Pursuant to the Agreement, Class Counsel is entitled to request, and Defendant will not oppose, attorneys' fees of up to one-third (33 1/3%) of the value of the Settlement, plus reimbursement of reasonable litigation costs incurred in connection with the action. Agreement ¶ 7(d)(i). Attorneys' fees and costs will be paid out of the Settlement Fund. The Parties reached an agreement regarding Defendant's non-opposition to Class Counsel's request for attorneys' fees and costs only after the Parties agreed to the material terms of the Settlement. Such an award is subject

to the Court's final approval and will serve to compensate the time, risk, and expense Class Counsel incurred in pursuing claims for the benefit of the Class.

In addition to attorneys' fees and costs, the Agreement provides that Class Counsel will seek a Service Award of up to \$7,500.00 for the Named Plaintiff for his role in the case as serving as class representative. Agreement, ¶ 7(d)(ii). The Service Award will be paid from the Settlement Fund and will be in addition to the Individual Payment that Named Plaintiff will be entitled to receive under the Settlement. Notably, Defendant also does not object to Class Counsel's request for the Service Award.

I. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES IN THE AMOUNT OF ONE-THIRD OF THE VALUE OF THE SETTLEMENT ARE REASONABLE AND SHOULD BE APPROVED

A. The Court Should Apply the Percentage-of-The-Recovery Method

The Illinois Supreme Court grants the circuit court the discretion to award attorneys' fees in common fund class actions based on a "percentage of the recovery." *Brundidge v. Glendale Fed. Bank FSB*, 168 Ill.2d 235, 244-45 (1995). The United States Supreme Court has long recognized that under the "common fund doctrine," a lawyer who achieves a settlement for the benefit of a class is entitled to be compensated for his or her efforts from the common fund created by the settlement. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Illinois has similarly adopted the "common fund doctrine" as a source of awarding attorneys' fees in class action cases. *See Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011); *see also Brundidge*, 168 Ill. 2d at 238 (noting the common fund doctrine "finds its source in the court's inherent equitable powers and is founded on the rationale that successful litigants would be unjustly enriched if their attorneys were not compensated from the common fund created for the litigants' benefit").

Under the percentage-of-the-recovery method, attorneys' fees are awarded "based upon a percentage of the amount recovered on behalf of the plaintiff class," whereas, the lodestar method calculates attorneys' fees by multiplying the hourly rates by the reasonable hours expended on the litigation, with the potential enhancement of a "multiplier" based on "the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Brundidge*, 168 Ill.2d at 238-240.

Although the court has the discretion in which method it applies, "numerous criticisms have been lodged against the lodestar method" since its origination. *McCormick v. Adtalem Global Educ., Inc.*, No. 1-20-1197, 2022 IL App (1st) 201197-U, ¶ 26; *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1995) ("the lodestar approach has been subjected to increased scrutiny as its deficiencies began to offset or exceed its benefits"). Illinois courts have recognized the many disadvantages of using the lodestar method to award attorneys' fees:

(1) it increases the workload of an already overtaxed judicial system, (2) it is insufficiently objective and produces results that are far from homogenous, (3) it creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) it is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or an overall dollar amount, (5) it has led to abuses such as lawyers billing excessive hours, (6) it creates a disincentive for the early settlement of cases, (7) it does not provide the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered, . . . [and] (9) it is confusing and unpredictable in its administration.

Ryan, 274 Ill. App. 3d at 923 (citing *Court Awarded Attorney Fees, Report of the Third Circuit*, 108 F.R.D. 237, 246-47 (1985)); see also *Brundidge*, 168 Ill.2d at 242-43 (noting the lodestar method is concerning because "[e]valuating the hours actually expended is a laborious, burdensome, and time-consuming task that may be biased by hindsight[,] "may generate protracted satellite litigation involving the attorney fees award[,] and "[t]he risk multiplier is little short of a wild card in the already uncertain game of assessing fees under the lodestar calculation").

Conversely, the percentage-of-the recovery method is “a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with represented the plaintiff class.” *Brundidge*, 168 Ill.2d at 244. “Furthermore, in addition to being efficient and fair, the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case.” *McCormick*, 2022 IL App (1st) 201197-U at ¶ 26 (citing *In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015) (indicating that the “normal practice” in consumer class actions is to negotiate compensation based upon a percentage of the recovery))).

B. Class Counsel’s Requested One-Third Percentage is Reasonable and Commonly Awarded by Illinois Courts in Common Fund Class Actions

Illinois courts routinely use the percentage-of-the-recovery method to calculate reasonable attorney fee awards in common fund cases and commonly award percentages of one-third or higher. *See e.g.*, *McCormick*, 2022 IL App (1st) 201197-U at ¶¶ 27-29 (affirming fee award representing 35% of settlement fund in consumer fraud settlement and noting “[t]he supporting memo included Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range”); *Chambers v. Together Credit Union*, No. 19-cv-842-SPM, 2021 WL 1948452 at *2, 2021 U.S. Dist. LEXIS 92151 at *4 (S.D. Ill. May 14, 2021) (awarding 33.33% of the common fund in overdraft fee class action as “appropriate and reasonable” as an “amount being commonly awarded as the market rate”); *Charvat v. Valente*, No. 12-cv-05746, 2019 WL 5576932 at *11-12 (N.D. Ill. Oct. 28, 2019) (awarding 33.99% of net settlement fund in TCPA class action as it “reflects the market rate and takes into account the risk of nonpayment”); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2nd) 150236, ¶ 24, 52 N.E.3d 427, 436 (affirming one-third attorney fee award in TCPA class action); *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Ill. Cir. Ct. Cook Cnty. Dec. 1, 2016) (awarding 40% of \$1.5 million common fund in

Illinois Biometric Information Privacy Act class action); *Coleman v. Sentry Insurance a Mutual Company*, No. 15-CV-1411 SMY-SCW, 2016 WL 6277593 at *3 (S.D. Ill. Oct. 27, 2016) (awarding one-third of common fund in breach of insurance contract settlement where “Class Counsel have provided the Court with numerous decisions in this District and this Circuit in which a contingent 33 1/3% fee was awarded to class counsel”); *Koszyk v. Country Financial a/k/a CC Services, Inc.*, No. 16 Civ. 3571, 2016 WL 5109196 at *4 (N.D. Ill. Sept. 16, 2016) (awarding one-third of \$2.8 million common fund in wage and hour settlement and stating “Plaintiffs’ request for one-third of the settlement in attorneys’ fees is consistent with the market in the Northern District of Illinois”); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 502-03 (N.D. Ill. 2015) (awarding 36% of \$11 million settlement fund in TCPA class action and recognizing that “courts in this circuit regularly allow attorneys to recoup one-third of the first \$10 million of the class action settlement fund”); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 597-98 (N.D. Ill. 2011) (approving one-third fee of \$9.5 million settlement fund in overdraft fee class action settlement as being “within the reasonable range”); *Ryan*, 274 Ill. App. 3d at 925 (upholding circuit court’s attorney fee award of 33.33% of common fund and noting the “[p]ercentage analysis eliminates the need for additional major litigation and further taxing of scarce judicial resources”).²

As such, the Court should award Class Counsel’s requested attorneys’ fees of 33.33% of the value of the settlement because it is well-within the range of reasonable attorney fees awarded in Illinois in common fund class action settlements. Not only is this amount customary, it is also

² The Court is not required to perform a lodestar cross-check on the requested attorneys’ fees. See *Shaun Fauley*, 2016 IL App (2nd) 150236 at ¶ 59 (citing *Brundidge*, 168 Ill.2d at 246) (rejecting objectors’ argument that trial court abused discretion by failing to use a lodestar cross-check on class counsel’s fees as “unpersuasive” in \$7.6 million fee award representing one-third of the common fund).

supported by additional considerations, such as the risks Class Counsel undertook in pursuing these complex actions on a contingency basis, the significant results achieved for the Settlement Class, the time and effort expended by Class Counsel, and the standard one-third amount that is routinely awarded in this type of banking fee litigation across the country, including by Class Counsel. *See Ryan*, 274 Ill. App. 3d at 924 (affirming attorney fee award “due to the extreme contingency risk” and the “hard cash benefit [secured] from a tenacious adversary”); *see also McNiff v. Mazda Motor of America, Inc.*, 384 Ill. App. 3d 401, 407 (4th Dist. 2008) (listing “a variety of factors” that courts may consider when assessing the reasonableness of requested attorneys’ fees, such as “the case’s novelty and difficulty level, the skill and standing of the attorney” and “the usual and customary charges for similar work”).

1. The Risks of Continued Litigation and the Novelty and Complexity Level of the Action

The risk of continued litigation was high. This case faced potential obstacles at all junctures that could have resulted in no recovery at all for the Settlement Class, including losing the motions to dismiss; losing class certification; losing summary judgment; losing at trial; or losing on appeal at either class certification or after a successful trial. Additionally, the risk of protracted litigation would likely reduce the amount of the benefit ultimately obtained due to years of delay and increased cost of litigation. Notwithstanding these hurdles, Class Counsel endeavored to take these cases on a pure contingency fee basis, devoted significant time and resources, and chose to forego pursuing other cases as sources of income in the face of assuming the significant risk of nonpayment. *See Declaration of Sophia Goren Gold in Support of Plaintiff’s Unopposed Motion for Award of Attorneys’ Fees, Costs, and Service Award (“Gold Decl.”)*, ¶ 10 (attached as Exhibit 1). Class Counsel’s commitment to prosecute the action notwithstanding the real financial risk presented warrants reasonable compensation.

Further, this case involved complexities of bank processing law that are novel, difficult, and ever evolving. To illustrate, to Class Counsel's knowledge, no similar APPSN Fee claims have proceeded to trial. This means that there is no model for Named Plaintiff's case and therefore, unforeseen pitfalls could easily derail the Settlement Class's claims should they proceed through the rigors of litigation. To even be able to identify the alleged inappropriate fees requires specialized knowledge by both experts and experienced complex litigation attorneys, as do the theories surrounding the alleged fees, not to mention the specialized knowledge of the class action procedure required to achieve certification, let alone settlement. These considerations support granting the requested fee.

2. The Significant Benefit Conferred by the Settlement

The benefit conferred by the Settlement—guaranteed monetary relief—is substantial. Defendant has agreed to make a significant settlement payment by establishing a Settlement Fund of \$1,200,000.00. From this Fund, Settlement Class Members will receive a direct settlement benefit in the form of either a credit to current Old Second accountholders' accounts or a check to former accountholders. This benefit is automatic, as Settlement Class Members neither need to submit a claim nor provide proof of damages or any supporting documentation. The benefit conferred represents a substantial percentage of the Settlement Class's estimated potential damages. Thus, the results achieved weigh in favor of granting the requested fee award.

3. The Settlement Was the Result of Arms'-Length Negotiations Made in Good Faith by Experienced Class Counsel and After Exchanging Key Information

Class Counsel expended significant time and effort in achieving the Settlement for the Settlement Class. The Settlement was reached only after multiple arm's-length negotiations conducted in good faith by experienced counsel and facilitated by a third-party neutral mediator

in two separate mediations. The Parties participated in a sufficient amount of written discovery to drive the Parties' settlement discussions and consulted experts to analyze Defendant's transactional data.

Specifically, hundreds of hours have been expended by Class Counsel thus far in the prosecution of this action, from investigating Defendant's fee practices and gathering evidence in support of the claims resolved by the Settlement; interviewing potential clients; drafting multiple complaints; litigating contentious motion practice; drafting written discovery requests; preparing for and attending multiple mediations, including researching and drafting mediation statements; engaging an expert to review Defendant's account-level transaction data and analyze potential damages; negotiating and drafting the Agreement with Defendant's counsel; moving for and obtaining preliminary approval; consulting and overseeing the Settlement Administrator's efforts to provide notice to the Settlement Class; and preparing the instant motion and its related papers. *See Gold Decl.*, ¶ 11. It is anticipated that Class Counsel will expend considerable additional time and resources in preparing the papers for final approval and in securing final approval, final judgment, and ensuring the successful administration of the Settlement by working with the Settlement Administrator after final approval. *See id.*, ¶ 12.

Further, as illustrated by the Gold Declaration, Class Counsel have national reputations for their acquired skill in complex class action litigation, and particularly, in the context of banking fee litigation. *See Gold Decl.*, ¶ 13. Thus, the time and effort expended in the litigation along with the professional skill of Class Counsel similarly supports granting the requested fee.

4. The Requested One-Third Fee is Routinely Awarded in Similar Bank Fee Litigation Across the Country

The requested one-third fee is routinely awarded in similar bank fee litigation and class action litigation across the country. *See e.g., Chambers*, 2021 WL 1948452 at *2, 2021 U.S. Dist.

LEXIS 92151 at *4 (one-third fee award); *Edwards v. Mid-Hudson Valley Fed. Credit Union*, No. 1:22-cv-562-TJM-CFH, 2023 WL 5806409 (N.D.N.Y. Sept. 7, 2023) (same); *Lowe v. NBT Bank, N.A.*, No. 3:19-CV-1400 (MAD/ML), 2022 WL 4621433 (N.D.N.Y. Sept. 30, 2022) (same); *Richard v. Glen Falls Nat. Bank*, No. 1:20-cv-734 (BKS/DJS), 2022 WL 3286551 (N.D.N.Y. July 22, 2022) (same); *Thompson v. Community Bank, N.A.*, No. 8:19-CV-919 (MAD/CFH), 2021 WL 4084148 (N.D.N.Y. Sept. 8, 2021) (same); *Holt v. Community America Credit Union*, No. 4:19-cv-00629 FJG, 2020 WL 12604384 (W.D. Mo. Dec. 8, 2020) (same); *Norwood v. The Camden Nat'l Bank*, No. BCD-CV-2020-13 (Me. Bus. Ct. Dec. 11, 2020) (same); *Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Hardin Cnty., Ky.) (same); *L&N Fed. Credit Union*, No. 19-CI-002873 (Jefferson Cnty., Ky.) (same); *Old Hickory Credit Union*, No. 19-475-II (Davidson Cnty., Tenn.) (same); *Wilson Bank & Trust*, No. 19-400-BC (Tenn. Bus. Ct.) (same); *Ind. Members Credit Union*, No. 49D02-1804-PL-016174 (Marion Cnty., Ind.) (same); ORNL Fed. Credit Union, No. B9LA0107 (Anderson Cnty., Tenn.) (same); *Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.) (same); *Johnson v. Elements Fin. Credit Union*, No. 49D01-2001-PL 004706 (Marion Cnty. Ind. Super. Ct. Oct. 29, 2020) (same); *Plummer v. Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Cnty. Ind. Super. Ct. Oct. 2, 2020) (same); *Simpson v. Citizens Bank*, 2014 WL 12738263 (E.D. Mich. Jan. 31, 2014) (same); *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291 (S.D. Miss. 2014) (same).

Additionally, Class Counsel regularly receives a one-third or higher fee from common fund settlements involving similar banking fee claims in state and federal courts throughout the nation. *See Gold Decl.*, ¶ 14. This factor further weighs in favor of granting the requested fee.

In sum, this Court should grant Class Counsel's requested one-third of the value of the settlement in the total amount of \$400,000.00.

II. THE COURT SHOULD ALSO AWARD CLASS COUNSEL’S REQUESTED LITIGATION COSTS

It is “well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.” *Beesley v. Int’l Paper Co.*, No. 3:06-cv-703-DRH-CJP, 2014 WL 375432 at *3 (S.D. Ill. Jan. 31, 2014); *see e.g., Chambers*, 2021 WL 1948452 at *2 (reimbursing \$2,322.37 in “ordinary litigation expenses, such as filing fees and deposition transcripts” as “reasonable”).

In this case, Class Counsel advanced various expenses, totaling \$33,720.65. *See* Gold Decl., ¶ 15. Each of these costs were reasonable and necessary in prosecuting the Action and should therefore be approved.

In addition, the Court should approve the payment of the costs of notice and administration to the Settlement Administrator for the reasonable costs of mailing notice and administering the Settlement Fund. These costs were also necessary because of the notice requirements needed to notify Class Members of the Settlement and ultimately distribute the class recovery by account credit or check. The Settlement Administrator has provided an estimate of its cost to administer the settlement, which totals \$55,891.00, which is in line with Class Counsel’s experience for this type of settlement. *See* Gold Decl., ¶ 17.

III. THE COURT SHOULD AWARD NAMED PLAINTIFF THE REQUESTED SERVICE AWARD

A service award is warranted for Named Plaintiff in recognition of his significant contributions in this case. “Incentive awards are justified when necessary to induce individuals to become named representatives.” *In re Synthroid Marketing Litig.*, 264 F.3d 712, 722 (7th Cir. 2001). Indeed, service awards “are not atypical in class action cases . . . and serve to encourage

the filing of class action suits.” *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992).

For this reason, Illinois courts routinely approve \$5,000 or more as class representative service awards in recognition that the class representatives brought a lawsuit that provided a significant benefit to absent class members. *See e.g., Kolinek*, 311 F.R.D. at 503 (\$5,000 service award in TCPA common fund settlement was “justified” even where the “case did not proceed past the earliest phases of formal discovery before it was settled” because of the plaintiff’s “role working with class counsel, approving the settlement agreement and fee application, and volunteering to play an active role if the parties continued litigating through trial”); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011) (although “the Class Representatives’ roles were largely prospective in that they were committed to go through discovery as necessary, to be part of any trial that would follow[.]. . . their role in reviewing, considering, and approving the Settlement Agreement and fee application, and especially their willingness to take a more-active role if necessary, warrants a \$5,000 award”); *Wright v. Nationstar Mortgage LLC*, No. 14 C 10457, 2016 WL 4505169, at *17 (N.D. Ill. Aug. 29, 2016) (approving \$5,000 for each of the eight class representatives who “participated in the litigation by reviewing the complaint, responding to requests for information, and participating in the settlement process”); *Kararo v. Old Dominion Freight Line Inc.*, 23-cv-2187, Dkt. 256 at ¶¶ 10, 24 (N.D. Ill. May 27, 2025) (approving \$10,000 for the six class representatives who participated in the prosecution of a BIPA/biometric class action); *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 205 (N.D. Ill. 2018) (awarding \$10,000 incentive award in a Telephone Consumer Protection Act class action); *Cothron v. White Castle System, Inc.*, No. 19-cv-000382 at Dkt. 200 and Dkt. 212 (N.D. Ill.) (approving a \$7,500 incentive award in a BIPA class action).

Based on the reasoning of the foregoing cases, the Court should grant the Named Plaintiff here the requested Service Award of \$7,500 in recognition of the time and effort he spent serving as class representative of the Settlement Class and the significant result he obtained on behalf of the absent Class Members who will receive compensation without even having to submit a claim. Named Plaintiff provided assistance that enabled Class Counsel to successfully prosecute the action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding documents and information to Class Counsel; (3) participating in conferences with Class Counsel; and (4) reviewing settlement documentation. *See* Gold Decl., ¶ 16. In doing so, Named Plaintiff was integral to the case. *See* Gold Decl., ¶ 2.

Without the Named Plaintiff's efforts and willingness to attach his name to this litigation for the benefit of absent Class members, the \$1,200,000.00 in benefits for the Settlement Class would have never been achieved. These factors support granting the requested Service Award, which will compensate Named Plaintiff for his time and effort and for the risks he assumed in prosecuting the action and serving as class representative.

CONCLUSION

For the foregoing reasons, this Court should award attorneys' fees in the amount of one-third of the value of the Settlement (\$400,000.00), reimbursement of the reasonable litigation costs (\$33,720.65), reimbursement of Settlement Administrator's costs (\$55,5891.00), and the requested Service Award to Named Plaintiff (\$7,500.00). A proposed order granting such relief has been submitted.

Dated: June 17, 2025

Respectfully submitted,

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*Attorneys for Named Plaintiff and the Provisionally
Certified Class*

PROOF OF SERVICE

I hereby certify that on June 17, 2025, I electronically filed the foregoing with the Clerk of the Court using the e-filing system and sent an electronic PDF copy of the foregoing document to the attorneys of record by serving same via email.

/s/ James C. Vlahakis
James C. Vlahakis

ERIC ROBERTS, on behalf of
himself and all others similarly situated,

V.

Defendant.

DECLARATION OF SOPHIA GOREN
GOLD IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR AWARD
OF ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD

3. Class Counsel have emerged as leaders in nationwide litigation against financial institutions over the assessment of improper fees. Class Counsel also have extensive experience in a wide range of consumer protection litigation in Illinois and around the country.

4. Specifically, Class Counsel has an extensive background in litigating complex litigation and consumer class actions (including numerous bank fee cases such as this one) and has been appointed class counsel in prior and similar cases.

6. Named Plaintiff and Class Counsel have adequately and vigorously represented the Settlement Class throughout the litigation, which involved significant written discovery and multiple settlement negotiations with the assistance of a third-party neutral mediator.

7. Further, this case involved a lengthy, independent investigation of the claims of Named Plaintiff, as well as the potential claims of other Settlement Class Members, in order to properly weigh the pros and cons of continued litigation versus the proposed settlement of all claims.

8. The entire settlement process was negotiated in good faith and at arm's-length by highly knowledgeable counsel experienced in complex class action litigation, including consumer disputes involving banking fee claims.

9. The Court should award Class Counsel's requested attorneys' fees of 33.33% of the value of the settlement because it is well within the range of reasonable attorney fees awarded in Illinois in common fund class action settlements. Not only is this percentage customary, it is also supported by additional considerations, such as the risks Class Counsel undertook in pursuing this complex action on a contingency basis, the significant result achieved for the Settlement Class, the time and effort expended by Class Counsel, and the standard one-third amount that is routinely awarded in this type of banking fee litigation across the country, including by Class Counsel.

10. This case faced potential obstacles at all junctures that could have resulted in no recovery at all for the Settlement Class, including losing the motions to dismiss; losing class certification; losing summary judgment; losing at trial; or losing on appeal at either class

certification or after a successful trial. Additionally, the risk of protracted litigation would likely reduce the amount of the benefit ultimately obtained due to years of delay and increased cost of litigation. Notwithstanding these hurdles, Class Counsel took this case on a pure contingency fee basis, devoted significant time and resources, and chose to forego pursuing other cases as sources of income in the face of assuming the significant risk of nonpayment.

11. Hundreds and hundreds of hours have been expended by Class Counsel thus far in the prosecution of this action, from investigating Defendant's fee practices and gathering evidence in support of the claims resolved by the Settlement; interviewing potential clients; drafting multiple complaints; litigating contentious motion practice; drafting written discovery requests; preparing for and attending multiple mediations, including researching and drafting mediation statements; engaging an expert to review Defendant's account-level transaction data and analyze potential damages; negotiating and drafting the Agreement with Defendant's counsel; moving for and obtaining preliminary approval; consulting and overseeing the Settlement Administrator's efforts to provide notice to the Settlement Class; and preparing the motion for attorneys' fees, costs, and service awards.

12. It is anticipated that Class Counsel will expend additional time and resources in moving for and securing final approval and final judgment, as well as ensuring the successful administration of the Settlement by working with the Settlement Administrator after final approval. Class Counsel endeavored to take this case on a pure contingency fee basis, devoted significant time and resources, and chose to forego pursuing other cases as sources of income in the face of assuming the significant risk of nonpayment.

13. Class Counsel have national reputations for their acquired skill in complex class action litigation, and particularly, in the context of banking fee litigation.

14. Class Counsel regularly receives a one-third or higher fee from common fund settlements involving similar banking fee claims in state and federal courts throughout the nation.

15. In this case, Class Counsel advanced various necessary expenses, totaling \$33,720.65. These expenses included filing fees, expert fees, and mediation fees.

16. Named Plaintiff's efforts and involvement have benefitted the Settlement Class as a whole, as he has regularly consulted with Class Counsel, provided documents and information, reviewed pleadings, and participated in the settlement process.

17. The Settlement Administrator has provided an estimate of its cost to administer the settlement, which totals \$55,891.00, which is in line with Class Counsel's experience for this type of settlement.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.
Executed in Berkeley, California this 17th day of June 2025.

/s/ Sophia Goren Gold
SOPHIA GOREN GOLD

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

ERIC ROBERTS, on behalf of)	No. 2021 MR 2148
himself and all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	<u>[PROPOSED] ORDER GRANTING</u>
)	<u>UNOPPOSED MOTION FOR</u>
)	<u>ATTORNEYS' FEES, COSTS, AND</u>
)	<u>SERVICE AWARD</u>
OLD SECOND BANCORP, INC. d/b/a)	
OLD SECOND NATIONAL BANK)	
)	
Defendant.)	

This matter is before the Court for consideration of Plaintiff's Unopposed Motion for Award of Attorneys' Fees, Costs, and Service Awards. The Court, being duly advised, now finds that the motion should be, and hereby is, **GRANTED**.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. The proposed class action Settlement of this case, which the Court is finally approving by separate order, creates a Settlement Fund of \$1,200,000.00 for the Settlement Class Members.
2. As the Court has found in its separate order preliminarily 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 Settlement Class, is the product of the work and skill of Class Counsel and Class Representative 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 the usual costs and expenses

involved in litigation, including filing fees and expert fees, 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 settlement is the result of arm's-length negotiations between skilled adversaries with the assistance of a third-party neutral mediator.

5. Class Representative, Named Plaintiff Eric Roberts, was also critical to attaining the benefits achieved for the absent Class Members, for without him, there would be no case and, therefore, no settlement. Class Representative participated in the litigation and expended time to acquire the benefits of the Settlement for thousands of other people who were not required to exert any efforts or stay apprised of the litigation.

6. Before the Court now are the requests that, from the Settlement Fund, and in recognition of the substantial benefits provided by the Settlement, Class Counsel be awarded attorneys' fees and costs and that the Class Representative be granted a service award.

7. The Court finds that under the percentage-of-the-recovery method under the common fund doctrine, a fee award of one-third of the value of the settlement is appropriate, fair, proper, and reasonable. This amount constitutes \$400,000.00.

8. As set forth in the Memorandum submitted in support of the unopposed motion, the following factors all favor awarding the requested fee: the risks of continued litigation, the novelty and complexity of the case, the significant benefit conferred, and the skill and experience of Class Counsel. The one-third fee amount is also consistent with fees customarily awarded to Class Counsel and in similar bank fee litigation across the country.

9. The Court also finds that reimbursement to Class Counsel of costs in the amount of \$33,720.65 is warranted, as those expenses are reasonable litigation expenses. Similarly, the Court finds that the Settlement Administrator has incurred costs and expenses in sending notice and administering the Settlement and is entitled to reimbursement of those expenses, currently estimated to be \$55,891.00.

10. Finally, the Court finds that payment of a service award in the amount of \$7,500.00 to Class Representative is fair and reasonable and promotes the public policy of encouraging individuals to undertake the responsibility of representative lawsuits for the benefit of the public. Class Representative participated in the litigation and achieved an exceptional result for the Class, which justifies the requested amount.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

11. The Court awards to Class Counsel attorneys' fees to be paid from the Settlement Fund in the amount of \$400,000.00.

12. The Court awards to Class Counsel reimbursement of reasonable and necessary litigation costs to be paid from the Settlement Fund in the amount of \$33,720.65. The Court also approves reimbursement of expenses to the Settlement Administrator for the costs of notice and administering the Settlement in the amount of \$55,891.00, to be paid from the Settlement Fund.

13. The Court approves and awards a Service Award to Named Plaintiff/Class Representative to be paid from the Settlement Fund in the amount of \$7,500.00.

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

IT IS SO ORDERED.

Hon. Judge Divya Sarang

This _____ day of _____ 2025.