

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

JAMES MERRELL, CASSIE MERRELL,
MONICA COUNTERMAN, and STEPHANIE
KNISLEY, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

EQUITY BANK,

Defendant.

CASE NO. 2216-CV02011

**MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE
AWARDS FROM SETTLEMENT FUND AND SUGGESTIONS IN SUPPORT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, James Merrell, Cassie Merrell, Monica Counterman, and Stephanie Knisley, by counsel, under Missouri Rule of Civil Procedure 52.08, hereby move the Court at the final approval hearing scheduled for June 29, 2026, for entry of an Order, substantially in the form of the proposed Order Approving Attorneys' Fees, Expenses, and Service Awards from Settlement Fund, attached hereto as Exhibit 1, approving the following payments from the Settlement Fund created by the class action settlement in this case:

1. Attorneys' fees to Class Counsel in the amount of \$500,000 (28% of the \$1,765,000 value of the settlement) and reimbursement of litigation expenses to Class Counsel in the amount of \$44,876.22; and

2. Service awards to each Class Representative in the amount of \$10,000 each.

This motion is made on the grounds that the requested fees, expenses, and service awards are all reasonable and in line with awards in similar cases. Defendant does not oppose this motion.

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INTRODUCTION

Across two states and in three separate class action cases, Plaintiffs and Class Counsel have for over four years challenged Defendant Equity Bank's fee assessment practices. Those efforts involved defeating two motions to dismiss, defeating a motion to compel arbitration and defending that victory at the Kansas Court of Appeals, and engaging in significant discovery, including document discovery and depositions. Those efforts led to a mediation that resulted in a consolidated settlement, which the Court has preliminarily approved, that provides a total value to Class Members of \$1,765,000, including a \$1,000,000 Settlement Fund, forgiveness of \$225,000 in debt, and cessation of the complained-of fee practices, which will save Class Members an estimated \$540,000 in the first year alone. The Settlement represents an excellent result for the Settlement Class and will be distributed without the need for Class Members to make a claim or take any action.

Courts recognize that counsel who recover a common fund and other benefits for a class are entitled to reasonable attorneys' fees and reimbursement of expenses from the common fund, and that plaintiffs who bring such suits are entitled to class representative service awards for their efforts. In conjunction with the final approval hearing scheduled for June 29, 2026, the Court should therefore also approve the requested payments from the Settlement Fund for attorneys' fees of \$500,000, which represents just over 28% of the Value of the Settlement and is lower than the lodestar recorded by Class Counsel, reimbursement of \$44,876.22 in litigation expenses, and class representative service awards of \$10,000 each to the Class Representatives. The requested amounts are reasonable and in line with amounts commonly awarded by courts across the country in similar litigation.

STATEMENT OF FACTS

I. The parties vigorously litigate Plaintiffs' claims that Defendant improperly charged thousands of customers improper bank fees.

In 2022 and 2023, Plaintiffs initiated separate class action suits in courts in Kansas and Missouri challenging Defendant's practices of assessing overdraft fees on transactions that did not overdraw accounts, charging overdraft fees on debit card transactions authorized on positive balances, and charging multiple overdraft or nonsufficient funds fees on the same item (the "Challenged Fees"). Declaration of Lynn A. Toops in Support of Motion for Approval of Attorneys' Fees, Expenses, and Service Awards from Settlement Fund ("Toops Decl.") ¶ 2. In the *Counterman* and *Merrell* actions, Defendant moved to dismiss the petitions, which the trial courts denied. In the *Knisley* action, Defendant moved to compel arbitration, which Plaintiff defeated and then ultimately prevailed upon in Defendant's appeal to the Kansas Court of Appeals. *Id.* Thereafter, the parties engaged in significant discovery including voluminous document production, Plaintiff Knisley's deposition, and a corporate representative deposition of Defendant. *Id.* In total, Class Counsel incurred a lodestar in litigating these three cases that exceeds the \$500,000 fee request, and Class Counsel advanced litigation expenses of \$44,876.22 for which they have not been reimbursed. *Id.* ¶ 3.

II. The parties mediate and reach a settlement valued at \$1,765,000.

After significant litigation, the parties retained retired federal judge Gerald Rosen to mediate their dispute. After mediation and continued negotiations, the parties agreed to settle the three actions in one consolidated case for: (1) Defendant's payment of \$1,000,000 into a non-reversionary cash Settlement Fund; (2) Defendant's forgiveness of \$225,000 in Class Member debt; and (3) Defendant ceasing charging the Challenged Fees, which is estimated to save Class Members \$540,000 in charges in the first year of implementation alone. The Court granted

preliminary approval to the settlement on March 20, 2026, and notice of the settlement, including the requested fees and service awards, was provided to the Class Members. The Court scheduled a final approval hearing on the settlement and the requested fees, expenses, and service awards for June 29, 2026.

SUGGESTIONS IN SUPPORT OF GRANTING THE MOTION

In conjunction with final approval of the Settlement, and in recognition of the efforts and benefits achieved by Class Counsel and the Class Representatives on behalf of the Settlement Class, the Court should award the requested payments from the Settlement Fund of reasonable attorneys' fees, expenses, and service awards.

ARGUMENT

I. The Court should approve attorneys' fees to Class Counsel in the requested amount, which is lower than the one-third contingent fee routinely awarded by courts.

In conjunction with final approval, the Court should approve payment of attorneys' fees to Class Counsel in the amount \$500,000, which corresponds to just over 28% of the \$1,765,000 Value of the Settlement and which is less than the 33.33% fee that Class Counsel is usually awarded. Under the common fund doctrine, when a plaintiff "takes the risk of litigation on himself and successfully creates, protects, or preserves a fund or brings about the creation, increase, or protection of a fund in which others are entitled to share, those others will be required to contribute their proportionate part of counsel fees and expenses, and the equitable way to apportion these fees and expenses is to allow them against the fund." *Jesser v. Mayfair Hotel, Inc.*, 360 S.W.2d 652, 661 (Mo. 1962). The most common method of awarding attorneys' fees from a common fund is as a percentage of the benefit obtained. *See Paulson v. Dynamic Pet Prod., LLC*, 560 S.W.3d 583, 593 (Mo.App. W.D. 2018) (affirming award of attorneys' fees and expenses and a service award from a common fund created by a class action settlement); *Tussey*

v. ABB, Inc., 06-CV-04305-NKL, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) (holding that under “the ‘common fund’ doctrine, Class Counsel is entitled to an award of reasonable attorneys’ fees from the settlement proceeds” in a class action.)¹; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (holding that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”).

Courts determine the total benefit to the class “based on both the monetary and the non-monetary value of the settlement.” *Tussey*, 2019 WL 3859763, at *2; *see also Principles of the Law of Aggregate Litigation*, A.L.I., § 3.13(b) (May 20, 2009) (“a percent-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and the nonmonetary value of the settlement.”). Thus, savings to class members, elimination of their debts, and cessation of practices that harm them are all appropriately considered as part of the total value of a settlement. *See, e.g., Tussey*, 2019 WL 3859763, at *2 (including tax avoidance and injunctive relief in addition to monetary relief as being the basis for the total value of the settlement for determining an appropriate common-fund fee); *Barfield v. Sho-Me Power Elec. Co-op.*, 2:11-CV-4321NKL, 2015 WL 3460346, at *4 (W.D. Mo. June 1, 2015) (including administrative costs paid separately by defendant as being part of the total value of the settlement); *Holt v. CommunityAmerica Credit Union*, 4:19-CV-00629-FJG, 2020 WL 12604384, at *1 (W.D. Mo. Dec. 8, 2020) (including both cash fund and debt forgiveness in the total value of bank fee settlement for purposes of awarding one-third fee).

¹ Missouri courts look to federal law on class actions and “federal court interpretations of Federal Rule 23 [the federal class action rule] are persuasive in interpreting Rule 52.08 [the corresponding Missouri rule].” *Ressler v. Clay Cnty.*, 375 S.W.3d 132, 136 (Mo.App. W.D. 2012).

Thus, “[i]n bank fee litigation, forgiveness of debts owed is routinely included in the value of the settlement.” *Hash v. First Fin. Bancorp*, 1:20-cv-01321-RLM-MJD, 2021 WL 12269064, at *3 (S.D. Ind. Nov. 22, 2021) (collecting cases).

The percentage-of-the-benefit method of calculating fees encourages counsel to obtain the largest possible settlement for the class, and “use of the percentage of the fund method when awarding attorneys’ fees in a common fund case is not only approved, but also ‘well established.’” *In re NuvaRing Prod. Liab. Litig.*, 4:08 MDL 1964 RWS, 2014 WL 7271959, at *2 (E.D. Mo. Dec. 18, 2014) (citation omitted); *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (percentage of fund is “a method of more closely aligning the lawyer’s interests with those of his client by giving him a stake in a successful outcome”). “[U]nder the percentage approach, the class members and the class counsel have the same interest—maximizing the recovery of the class.” Silber & Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 534 (Summer 1998). The percentage-of-the-benefit approach to awarding fees is particularly appropriate where, as here, none of the settlement funds will revert to the defendant. *Barfield*, 2015 WL 3460346, at *4 n.1.

As to the appropriate percentage to award to Class Counsel, the amount is within the discretion of the court, but “courts have frequently awarded attorney fees between 25 and 36 percent” of the benefit. *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming one-third fee) (quoting *Khoday v. Symantec Corp.*, 11-cv-180, 2016 WL 1637039, at *9 (D. Minn. Apr. 5, 2016)); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming 36% fee); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming one-third fee). Within this range, the most common fee awarded is one-third of the value of the settlement. *See, e.g.*, *Caligiuri*, 855 F.3d at 865–66 (affirming one-third fee); *Buckley*, 849 F.3d at 399–400 (same);

Barfield, 2015 WL 3460346, at *4 (awarding one-third fee and collecting cases awarding one-third fees).

In evaluating a requested fee, courts look at various factors, including: (1) the benefit conferred on the class; (2) the risk to which plaintiffs' 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'; (5) the reaction of the class; and (6) the comparison between the requested attorney fee percentage and percentages awarded in similar cases. *Caligiuri*, 855 F.3d at 866. Evaluation of these factors assists a court in determining a reasonable fee. *Id.*

Here, each of these factors favor awarding the requested fee. The \$1,765,000 Value of the Settlement is a substantial and direct benefit that will not revert to Defendant and that represents over 50% of the total estimated recovery that the class could have hoped to achieve. Class Counsel took this case on a contingent-fee basis and advanced expenses, meaning that Class Counsel had no guarantee of being paid for their work or recovering their expenses. Toops Decl. ¶ 3. The claims involve knowledge of complex banking practices, and Class Counsel have experience litigating such cases across the country. *Id.* ¶ 4. Class Members will have an opportunity to object to the request, but as of this filing, no Class Member objects. Finally, the requested 28% of the Value of the Settlement is lower than the one-third amount routinely awarded to Class Counsel by courts across the country, including in Missouri. *Id.* (collecting cases awarding Class Counsel a fee of one-third of the value of bank fee settlements). Indeed, the requested fee is less than the hourly lodestar that Class Counsel recorded in litigating these three actions over these many years. *Id.* ¶ 3. The Court should, therefore, approve the requested fee as a fair and reasonable amount to be paid from the Settlement Fund.

II. The Court should approve the requested reimbursement of litigation expenses.

In addition to fees, Class Counsel who recover a common fund are entitled to reimbursement of reasonable litigation expenses from the fund. *Jesser*, 360 S.W.2d at 661; *Tussey*, 2019 WL 3859763, at *5 (“[a]n 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.”) (quoting Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed.)); see also *Sprague v. Ticonic*, 307 U.S. 161, 166–67 (1939) (recognizing court’s power to award costs from a common fund). “Counsel in common fund cases may recover those expenses that would normally be charged to a fee-paying client.” *Tussey*, 2019 WL 3859763, at *5. “Reimbursable expenses include . . . expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research.” *Id.* (collecting cases). In general, courts approve requested expense reimbursements because class counsel bring the case on a contingent basis, “so they had a strong incentive to keep costs to a reasonable level” because, if the case does not result in a judgment or settlement, counsel will not be reimbursed at all. *Id.*

Here, the requested \$44,876.22 in expenses consist of normal litigation expenses made up of mediation fees (\$19,699), deposition and court reporter fees (\$11,578.71), filing, pro hac vice and Court fees (\$4,573.99), travel (\$4,477.09), expert fees (\$3,850.00), FedEx and courier fees (\$378.08), copying, scanning, and document fees (\$244.85), and service of process (\$74.50). Toops Decl. ¶ 3. These expenses do not include the additional expenses that Class Counsel will incur in connection with the final approval hearing or during settlement administration. *Id.* The requested expenses are reasonable, normal litigation expenses, and the Court should therefore approve reimbursement from the Settlement Fund.

III. The Court should approve the requested service awards to the Class Representatives.

Apart from Class Counsel, “[a]t the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class.” 5 Newberg on Class Actions § 17:1 (5th ed. 2015). “Courts often grant service awards to named plaintiffs in class action suits to ‘promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.’” *Caligiuri*, 855 F.3d at 867(citation omitted). Otherwise, most people could not afford to spend the time and effort to pursue what would provide only a modest individual recovery for the effort involved but would also benefit thousands of other people who do not have to expend any time or resources. *See id.*

As to amount, courts “regularly grant service awards of \$10,000 or greater.” *Caligiuri*, 855 F.3d at 867 (approving \$10,000 service award) (citing *Huyer v. Njema*, 847 F.3d 934, 941 (8th Cir. 2017) (affirming approval of settlement that included \$10,000 service awards to named plaintiffs); *Jones v. Casey’s Gen. Stores, Inc.*, 266 F.R.D. 222, 231 (S.D. Iowa 2009) (approving \$10,000 service awards to each of nine plaintiffs). And much higher service awards are not uncommon. *See, e.g., Zilhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (approving \$15,000 service awards to two representatives); *Tussey*, 2019 WL 3859763, at *6 (approving \$25,000 service awards to each of three representatives); *In re Charter Commc’ns, Inc., Sec. Litig.*, MDL 1506, 2005 WL 4045741, at *25 (E.D. Mo. June 30, 2005) (approving \$26,625 service award). The Missouri Court of Appeals has affirmed approval of a settlement that provided a \$15,000 service award. *Paulson*, 560 S.W.3d at 594.

Here, the requested service awards are \$10,000 each, which is well within the range routinely awarded by courts and well below many other service awards. The Class Representatives took time to communicate with counsel and litigate this case on behalf of all

Class Members. Toops Decl. ¶ 5. In addition, the Class Representative Knisley bore the burden of being deposed on behalf of the Class Members. *Id.* The requested award will compensate the Class Representatives for taking the time to bring this lawsuit and to work with Class Counsel to obtain a substantial benefit for the thousands of other Class Members who did not have to take the time to file individual suits but who will simply receive settlement payments automatically. The Court should therefore approve the requested \$10,000 service awards.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion for Approval of Attorneys' Fees, Expenses, and Service Awards from Settlement Fund by entering the tendered proposed order.

Dated: May 22, 2026

Respectfully submitted,

/s/Colleen Garvey

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Certificate of Service

The undersigned hereby certifies that the foregoing has been filed by using the Court's electronic case filing system, thereby serving all registered parties of record on May 22, 2026.

/s/Colleen Garvey

Colleen Garvey, #72809