

CARRIE MEIER, on behalf of herself and all persons similarly situated,

Plaintiff,

v.

PROSPERITY BANK,

Defendant.

IN THE DISTRICT COURT

BRAZORIA, TEXAS

239TH JUDICIAL DISTRICT

FILED
At 11:05 o'clock A M.
MAY 23 2023
Carmen A. Jiguen
Clerk of District Court Brazoria Co., Texas
BY _____ DEPUTY

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASSES, AND AWARDING ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

WHEREAS, Plaintiff, on behalf of herself and the Settlement Classes, has filed a Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Award ("Motion") seeking an order, pursuant to Texas Rule of Civil Procedure 42(e), finally approving the Settlement Agreement¹ and awarding attorneys' fees, costs, and a Service Award. The Court having reviewed the Agreement and the Final Approval Hearing having been held on May 23, 2023, at 10:00 a.m., before the Honorable Greg Hill of the 239th Judicial District Court in for Brazoria, Texas, located at 111 E. Locust Street, Angleton, Texas 77515, during which it considered whether: (a) the Settlement should be approved as fair, reasonable, and adequate to the Settlement Classes; (b) the Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by the Parties with the Motion for Final Approval; and (c) to approve Class Counsel's application for attorneys' fees and costs, and for a Service Award for the Class Representative, and Defendant's separate payment of Settlement

¹ All capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement, filed with this Court and attached to the Motion as *Exhibit A*.

Administration Costs.

WHEREAS, accordingly, pursuant to Texas Rule of Civil Procedure 42(e), the Court hereby finally approves, in all respects, the proposed Settlement and finds that the Agreement (including the Releases) and the plan for distributing the Settlement Fund are in all respects fair, reasonable, and adequate, and are in the best interests of the Settlement Classes. The Court therefore directs the Parties to implement all aspects of the Settlement triggered by such Final Approval.

WHEREAS, this Final Approval Order incorporates the Agreement and its exhibits.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Texas Rule of Civil Procedure 42's Criteria Final Approval Are All Met

The Court finds that the Agreement resulted from extensive arm's-length negotiations with the assistance of a neutral mediator after the Parties' counsel had investigated the claims, litigated them, and became familiar with the strengths and weaknesses of those claims. The Settlement appears not to be collusive, has no obvious defects, and is sufficiently fair, reasonable, and adequate for the members of the Settlement Classes.

Under Rule 42(e), the trial court is charged with the responsibility of determining that the settlement is fair, adequate, and reasonable. *Ball v. Farm Home Sav. Ass'n*, 747 S.W.2d 420, 423 (Tex.App. — Fort Worth 1988, writ denied). Court approval of class action settlements is guided by "the strong judicial policy favoring the resolution of disputes through settlement." *Hall v. Pedernales Elec. Co-op., Inc.*, 278 S.W.3d 536, 549 (Tex. App.—Austin 2009, no pet.).

Texas Rule of Civil Procedure 42 sets forth the prerequisites to class certification. "Because Rule 42 is patterned after Federal Rule of Civil Procedure 23, federal decisions and authorities interpreting current federal class action requirements are instructive." *Riemer v. State*, 392 S.W.3d 635, 639 (Tex. 2012); see Tex. R. Civ. P. 42. Approval of a settlement in a class action, including

the determination of whether it is fair and equitable, is left to the sound discretion of the trial court.” *Gen. Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996).

To guide a court’s decision on whether to finally approve a settlement, the Texas Supreme Court listed the following factors in *Bloyed*, known as the *Ball* factors, that trial courts should consider: (1) whether the settlement was negotiated at arm’s length or was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the plaintiffs from prevailing on the merits; (5) the possible range of recovery and the certainty of damages; (6) the respective opinions of the participants, including class counsel, Class Representative, and the absent class members. *Bloyed*, 916 S.W.2d at 955 (citing *Ball*).

This proposed Settlement meets all these criteria for Final Approval.

1. *Ball Factor 1: The Settlement Was Negotiated at Arm’s Length.*

Regarding *Ball* factor 1, whether the settlement was negotiated at arm’s length by experienced counsel, not only was it negotiated at arm’s length by experienced counsel and not the product of collusion, but it also is the result of an all-day arm’s length mediation with the Honorable Caroline Baker (Ret.), a well-respected mediator.

2. *Ball Factor 2: The Complexity, Expense, and Likely Duration of the Case*

Regarding *Ball* factor 2, the complexity, expense, and likely duration of the case, this is an extremely complex case, not only being a consumer class action, but one involving the intersection of class action law with the laws governing financial institutions as well as contract interpretation law. It is likely it could have lasted years, and possibly even longer with appeals, with one already having been filed because the Court granted summary judgment dismissing the claims for both APPSN Fees and Multiple Fees. If that appeal went forward and resulted, and the case proceeded

to a motion for class certification and trial, considerable time and resources would be expended, and the litigation costs alone would have been hundreds of thousands of dollars.

3. *Ball Factor 3: The Status of Proceedings and State of Discovery*

Regarding *Ball* factor 3, the stage of proceedings and status of discovery, prior to the mediation in this matter, there was significant written discovery which produced hundreds of pages of documents as well as the exchange of critical account information and data related to damages. Class Counsel retained Arthur Olsen, a well-respected data expert in bank fee litigation, to cooperatively work with Defendant to analyze the transaction data to determine damages. This allowed the Parties to analyze the damages exposure with high precision, identifying the actual transactions at issue. As such, the Settlement reached was highly informed, both through formal and informal discovery.

4. *Ball Factor 4: The Factual and Legal Obstacles*

Regarding *Ball* factor 4, the factual and legal obstacles that could prevent the Plaintiff from prevailing on the merits, the Court notes that it fully granted Defendant's motion for summary judgment, dismissing the Plaintiff's claims with prejudice. Therefore, Plaintiff faced a real and existential risk that the case would not proceed in any fashion if the Court of Appeals did not reverse the summary judgment order. Even if it did, the Court might not certify one or both of the Settlement Classes, and the trier of fact might conclude that the contract language allowed the Defendant to charge the challenged fees in the manner it charged them. All of these facts further support Final Approval.

5. *Ball Factor 5: The Possible Range of Recovery and Certainty of Damages*

Regarding *Ball* factor 5, the possible range of recovery and the certainty of damages, as stated, the Settlement being presented to the Court for Final Approval represents approximately

13% of the Relevant Fees at issue, an excellent result for the Settlement Classes, especially under the circumstances where summary judgment was granted against Plaintiff and that ruling is on appeal. Settlements are, of course, reasonable where plaintiffs recover only part of their actual losses. This factor looks at the range of possible damages that could be recovered at trial and evaluates the likelihood of success at trial to determine whether the settlement amount is a fair compromise within that range. Here, given this Court's summary judgment ruling against Plaintiff before the Settlement, there was a high risk that Plaintiff and absent Settlement Class members would not prevail, and a substantial percentage recovery will be achieved by the Settlement.

6. *Ball Factor 6: The Opinions of the Participants*

Finally, regarding *Ball* factor 6, the respective opinions of the participants, including Class Counsel, the Class Representative, and the absent Settlement Class members. Class Counsel, as well as the Class Representative, are in favor of the proposed Settlement. The reaction from Settlement Class members has been overwhelmingly positive. Specifically, the deadline to opt-out of the proposed Settlement already has passed, and with direct Notice having been given to nearly 100,000 Settlement Class members, only four members have elected to opt-out. Further, and even more tellingly, a sole Settlement Class Member objected to the Settlement.

The objection of this sole Settlement Class Member, Adrian Gonzalez, raised his desire to recover damages related to his medical condition, which are unrelated to the account fees that are the subject of the Settlement. Further, the objection raised factually incorrect and otherwise non-availing critiques of Class Counsel. As the Court-appointed Class Counsel, the fiduciary duty of Class Counsel is to the Settlement Class as a whole, not an individual Settle Class Member who may claim interests adverse to the Settlement Class. Accordingly, Mr. Gonzalez's objection is hereby overruled.

This all provides further reason for approval.

The Proposed Settlement Class Should Be Finally Certified

For purposes of the Settlement, this Court hereby finally certifies two classes, defined as follows:

APPSN Fee Class. Those current or former Accountholders of Defendant who were assessed APPSN Fees.

Multiple Fee Class. Those current or former Accountholders of Defendant who were assessed Multiple Fees.

Excluded from the Settlement Classes are Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

The APPSN Fee Class Period is from September 15, 2016, through and including September 30, 2022, and the Multiple Fee Class Period is from September 15, 2016, through and including September 30, 2022.

The Court finally finds that, that the Settlement Classes, including the APPSN Fee Class and Multiple Fee Class, satisfy the requirements of Texas Rule of Civil Procedure 42(a) and (b)(3), in that: (1) the number of members of the Settlement Classes are so numerous that joinder is impracticable; (2) there are questions of law and fact common to the members of the Settlement Classes; (3) Plaintiff's claims are typical of the claims of the members of both Settlement Classes; (4) Plaintiff is an adequate representative of both Settlement Classes and she has retained experienced and adequate Class Counsel; (5) the questions of law and fact common to the members of the Settlement Classes predominate over any questions affecting any individual members of the Settlement Classes; and (6) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

The Court further notes that its findings preliminarily approving the Settlement Classes, incorporated by reference, have been substantiated with further evidence. For purposes of

Settlement only, the Court finally finds and determines that Plaintiff will fairly and adequately represent the interests of the APPSN Fee Class and the Multiple Fee Class, in enforcing their rights in the Action, and appoints her as the Class Representative of both Settlement Classes.

For purposes of the Settlement only, the Court finally appoints as Class Counsel, Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A. and Jeffrey D. Kaliel of KalielGold PLLC.

Epiq Class Action & Claims Solutions, Inc. is appointed to continue as Settlement Administrator to complete the Settlement Administrator's obligations under the Settlement. The Settlement Administrator shall abide by the terms and conditions of the Agreement that pertain to the Settlement Administrator duties and obligations.

The Settlement, on the terms and conditions stated in the Agreement, is finally approved by this Court as being fair, reasonable, and adequate, free of collusion or indicia of unfairness, and within the range of possible final judicial approval.

The period under the Preliminary Approval for objections and opt-outs has expired, and only two class members have opted-out of the settlement. No timely objections were submitted.

The Court finds that Notice to the Settlement Class was the best notice practicable and complied with the requirements of Due Process, and that the Notice Program was completed in compliance with the Preliminary Approval Order and the Agreement.

Distribution of Net Settlement Fund

The Court hereby approves the distribution of the Settlement Fund as set forth in the Agreement. The Court orders the Parties and the Settlement Administrator to implement all payments as set forth in the Agreement.

Release

As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and

irrevocably released and forever discharged Defendant and the Released Parties from the Released Claims.

Upon the entry of this Order, the Class Representative and all members of the APPSN Fee Class and Multiple Fee Class shall be provisionally enjoined and barred from asserting any claims against Defendant and the Released Parties arising out of, relating to, or in connection with the Released Claims.

There are two Settlement Class members who timely opted-out of the Settlement and, as a result, are not Releasing Parties and therefore shall not be bound to the Release and the terms of the Settlement. Those two Settlement Class members are listed in the attached *Exhibit A*.

Other Provisions

This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be evidence of an admission or concession by Defendant of any liability or wrongdoing by Defendant or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the conduct alleged in the Action or that the case was properly brought as a class action. The Settlement shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to the conduct alleged in the Action. Defendant may file the Agreement in any action or proceeding that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

For the benefit of the Settlement Classes and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement finally approved herein and the related orders of this Court.

Each and every provision of the Agreement shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

Attorneys' Fees, Litigation Costs and Service Award

Supported by evidence of lodestar calculations and the opinion of an attorneys' fee expert, Class Counsel request an attorneys' fees award of \$533,280.00 (an amount equal to 33.33% of the Settlement Fund) and \$30,992.58 for litigation costs and a \$5,000.00 Service Award to the Class Representative, all to be paid from the Settlement Fund. The Court notes that Class Counsel's attorneys' fee application is supported by the expert opinions of Jeremy Doyle, Esq., an experienced Texas litigator who opines about the reasonableness of the hourly rates, lodestar amount, and lodestar multiplier supporting Class Counsel's attorneys' fees request.

Attorneys' Fees

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs incurred. Consequently, Class Counsel request that this Court grant attorneys' fees consistent with Texas Civil Practice and Remedies Code §26.003 and Tex. R. Civ. P. 42(h)-(i).

Class Counsel seeks attorneys' fees of \$533,280.00, and Defendant does not oppose this request. The application for this award is based on the lodestar method required by Tex. R. Civ. P. 42. The lodestar figure is \$292,573.95, based upon 396.85 hours. The requested multiplier of approximately 1.8 falls within Rule 42's parameters. The below analysis demonstrates why this amount is appropriate under the relevant factors and the requested attorneys' fees should be awarded.

The United States Supreme Court recognizes 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 whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This is a common fund case, as opposed to a fee-shifting case where the defendant pays attorneys' fees

in addition to the damages. The Texas Supreme Court recognized in *Southwestern Refining Co., Inc. v. Bernal*: “When properly applied the class action device is unquestionably a valuable tool in protecting the rights of our citizens.” 22 S.W.3d 425, 439 (Tex. 2000).

The rule on class action fees as adopted by the Texas Supreme Court, thus provides:

In awarding attorney fees, the court must first determine a lodestar figure by multiplying the number of hours reasonably worked times a reasonably hourly rate. The attorney fees award must be in the range of 25% to 400% of the lodestar figure. In making these determinations, the court must consider the factors specified in Rule 1.04 (b), Tex. Disciplinary R. Prof. Conduct.

Tex. R. Civ. P. 42 (i) (1) (amended by order of Oct. 9, 2003). Rule 42 (i) incorporates Texas Disciplinary Rules of Professional Conduct 1.04 (b):

(b) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

1. The Fee Was Contingent on Results Obtained

Class Counsel undertook this case on a contingent basis, with the understanding that Class Counsel would not be compensated unless the case was successful. Further, to date Class Counsel has not been paid for its time spent litigating this Action. Texas courts have consistently allowed the use of a multiplier based upon the contingent nature of a fee. *See, e.g., La Ventana Ranch Owners' Ass'n, Inc. v. Davis*, 363 S.W.3d 632, 650 (Tex. App.—Austin 2011, pet. denied); *Dillard Dep't Stores, Inc. v. Gonzales*, 72 S.W.3d 398, 412-413 (Tex. App.—El Paso 2002, pet. denied).

In taking on this representation, Class Counsel assumed significant risk. Rewarding risk

particularly makes sense in class actions, even relative to other contingent cases. A 2010 empirical study of attorneys' fees in class actions categorized class actions by risk level and found that "standards applied to attorney fees uniformly indicate that greater risk warrants an increased fee." Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 265 (2010). This study also found that courts systematically rewarded that incurrence of risk. *Id.*

Only one class certification has been acted upon favorably by the Texas Supreme Court. *Riemer v. State*, 392 S.W.3d 635 (Tex. 2013). In another case, one of three subclasses survived Supreme Court review. *Bowder v. Phillips Petroleum Co.*, 247 S.W.3d 690, 694 (Tex. 2008). In every other case where the Texas Supreme Court examined class certification, it decertified the class.

Further underscoring Class Counsel's risk in taking on this case is that similar class-action cases have been rejected by Texas state trial courts on the merits. Plaintiffs lost on the merits in three other account fee class actions, those being a summary judgment against the plaintiffs in *Walsh v. Randolph Brooks Federal Credit Union*, No. 16-2339-CV (25th Dist. Ct. Guadalupe County, Sept. 20, 2017); *Williams v. Happy State Bank*, No. 44794 (84th Dist. Ct. Hutchinson County, Nov. 30, 2021); *Coats v. City Nat'l Bank of Sulphur Springs*, No. CV-44926 (62nd Dist. Ct. Hopkins County, Apr. 18, 2022). Further, the federal district court in Corpus Christi recently granted a credit union defendant's motion to dismiss in another overdraft fee class action. *Ross v. NavyArmy Cmty. Credit Union*, No. 2:21-CV-168, 2022 WL 100110 (S.D. Tex. Jan. 11, 2022).

Therefore, not only was this case contingent on the results obtained, but the contingency was substantially riskier than in a non-class case.

2. *The Results Obtained*

In addition to the considerable risk, the result obtained was extremely fair in light of the

procedural posture at the time of settlement. The Settlement represents approximately 13% of Settlement Class members' possible damages and is within the range of what is considered reasonable for approval purposes. By comparison, a recent study found the median ratio of settlement to investor losses in securities class actions during a five year period ranged from 1.6% to 2.5%. NERA Economic Consulting, *Recent Trends in Securities Class Litigation: 2021 Full-Year Review* 24 (Jan. 25, 2022), available at <https://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation--2021-full-y.html>. As a further benefit to the Settlement Classes, the Settlement Administration Costs have been and shall be paid separately by the Defendant. Agreement ¶ 51(b).

Further, the Settlement is sensible because it avoids any appeals that could have prolonged this action for years, including Plaintiff's pending appeal of this Court's summary judgment ruling dismissing Plaintiffs claims. Additionally, the manner of distribution here is very consumer friendly: every Settlement Class Member will receive compensation, and no Settlement Class Member will need to file any claim forms. *Id.* ¶59. Current Accountholders will receive direct deposits, and Past Accountholder Settlement Class Members will have checks mailed to them. *Id.*

3. *The Preclusion of Employment.*

Preclusion of other employment is an additional factor that can be considered by the Court when arriving at an appropriate multiplier. Texas Disciplinary Rules of Professional Conduct 1.04 (b)(2). This applies here, as taking this case precluded Class Counsel from taking other work: "The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other billable matters. In other words, if Class Counsel had not taken this case, it could have taken other cases, including in jurisdictions perceived as more favorable to class actions, or commercial work with guaranteed hourly payments, and been paid for those cases.

4. *The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly*

The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly as factors which the Court may consider. Rule 1.04 (b)(1). The time and labor required on this case was substantial, and documents showing the attorneys who performed the work, the date the work was performed, the specific nature of each task performed, and the amount of time spent on each task, are verified, authenticated, and filed with this Court. Further, the Court notes Class Counsel's expertise in this highly specialized area. The result obtained in obtaining a recovery despite the hostility of Texas law to class actions and the challenge presented from the Court's summary judgment ruling in this Action also speaks to the skill that was required on behalf of Class Counsel to achieve the instant Settlement.

5. *The fee customarily charged in the locality for similar legal services*

Rule 1.04 (b)(3) allows the Court to consider the fee customarily charged in the locality for similar legal services. In *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757 (Tex. 2012) (Texas Commission on Human Rights Act), the Supreme Court made clear the information required by a trial court to properly evaluate a lodestar, and all of this information, and more is provided by the accompanying declaration of Class Counsel. Further, the fee application here is not contested, and an attorney's requested hourly rate is prima facie reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates, and the rate is not contested. *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087 (S.D. Tex. 2012) (quotation and citation omitted).

6. *Multipliers in Other Cases*

Examining multipliers in other cases demonstrates that the multiplier sought here is more than reasonable. While Rule 42 caps class-action multipliers in Texas at 4.0, courts in other

jurisdictions that are not similarly constrained have recently approved multipliers in consumer class actions involving alleged improper bank or credit union account fees in multipliers far exceeding that. Here, Class Counsel seeks only a multiplier of 1.8, which is reasonable under the circumstances and the governing law.

Accordingly, the Court awards Class Counsel \$533,280.00 for attorneys' fees, payable out of the Settlement Fund.

Litigation Costs and Settlement Administration Costs

Additionally, Class Counsel also seek \$30,992.58 litigation expenses incurred. The costs include expert costs, court costs, and mediation costs. An attorney may recover "those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Accordingly, the Court grants Class Counsel reimbursement in the amount of \$30,992.58, payable out of the Settlement Fund. The Court also approves the Settlement term that requires Defendant to separately pay the Settlement Administration Costs.

Service Award

Class Counsel also requests that the Court approve a Service Award to the Class Representative in the amount of \$5,000.00. Courts in Texas have approved much larger service awards, and the requested award is appropriate under the circumstances. *See, e.g., Sleezer v. Chase Bank USA, NA.*, Civ. No. 07-0961-HLH (approving \$25,000 service award).

Ms. Meier was very involved in the case, and a major benefit to its prosecution. She worked at all times with Class Counsel, including strategizing, obtaining documents as requested, engaging in discussions, including those related to the mediation, and reviewing the Agreement.

Accordingly, the Court grants Ms. Meier a \$5,000.00 Service Award, payable out of the Settlement Fund.

Final Judgment

This Final Approval Order resolves all issues in this Action as between all Parties and therefore shall also constitute a final judgment. The Court will enter Final Judgment dismissing the Action with prejudice in a separate document and direct the Clerk of this Court to close the case. The Final judgment shall dismiss this Action with prejudice as to all Parties and all Settlement Class Members, each side to bear its own attorneys' fees and costs except as otherwise provided in the Settlement Agreement and this Final Approval Order.

THEREFORE, THE COURT FINDS AND ORDERS AS FOLLOWS:

1. Pursuant to the Texas Rule of Civil Procedure 42(e), Final Approval of the Settlement is GRANTED.
2. The Court reaffirms certification of the Settlement Classes and the appointment of Class Counsel, the Class Representative, and the Settlement Administrator.
3. The Court approves and orders payment of \$533,280.00 in attorneys' fees from the Settlement Fund to Class Counsel.
4. The Court approves and orders reimbursement to Class Counsel of \$30,992.58 in litigation costs from the Settlement Fund.
5. The Court approves and orders payment of a Service Award of \$5,000.00 payable to the Class Representative from the Settlement Fund.
6. The Court approves Defendant's separate payment of the Settlement Administration Costs to the Settlement Administrator.
7. The Court approves the plan of distribution of the Settlement Fund to the Settlement Class Members and orders the Parties to proceed with distribution as set forth in the Settlement.
8. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant and the Released Parties from the

Released Claims.

9. Within 7 days after the deadline to cash checks sent to Settlement Class Members, any residual funds shall be distributed by check to all Settlement Class Members who either cashed their checks or received an Account credit, unless the amount of residual funds is so small that it would be economically infeasible or impracticable to perform a secondary distribution. All costs associated with a secondary distribution are considered Settlement Administration Costs and payable by the Defendant. If, consistent with the distribution plan set forth in the Agreement, the amount of residual funds is so small that it would be economically infeasible or impracticable to perform a secondary distribution, then within 14 days after the deadline to cash the checks sent to Settlement Class Members by the Settlement Administrator, Plaintiffs shall apply to the Court for a *cy pres* payment to the recipient agreed to by the Parties. Similarly, if there are residual funds remaining 90 days following a secondary distribution, then Plaintiffs shall apply to the Court for a *cy pres* payment to the recipient agreed to by the Parties.

10. The Court hereby retains and reserves jurisdiction over: (a) implementation of the Settlement and any distributions from the Settlement Fund; (b) the Action, until the Effective Date, and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Agreement; and (c) all Parties, for the purpose of enforcing and administering the Settlement.

11. In the event the Effective Date of the Agreement does not occur, the Settlement shall be rendered null and void to the extent provided by and in accordance with the Agreement, and this Final Approval Order shall be vacated. In such event, all orders entered and releases delivered in connection with the Settlement shall be null and void and the Action shall return to its status immediately prior to execution of the Agreement.

12. The Court adjudges that the Class Representative and all Settlement Class Members

shall be bound by this Final Approval Order. The four opt-outs identified in attached *Exhibit A* are not bound by this Agreement.

13. The objection of Adrian Gonzalez is overruled.

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

SO ORDERED this 23rd day of May, 2023.

A handwritten signature in black ink, appearing to read "G. Hill", written over a horizontal line.

JUDGE GREG HILL
County Court Judge

EXHIBIT A – OPT-OUT LIST
(To Be Completed Before Final Approval Hearing)

1. Britney N. Lamberson
2. Vincin Campise
3. Gayland R. Sells
4. Wesley C. Hodges Jr. & Katha Hodges (Joint Account Holders)