

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRANDI SALLS, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

DIGITAL FEDERAL CREDIT UNION and
DOES 1 through 100,

Defendants.

Case No.: 18-cv-11262-TSH

CLASS ACTION

FINAL APPROVAL ORDER AND JUDGMENT

This Court granted preliminary approval of the Settlement Agreement and Release (“Settlement”) and certified two provisional settlement classes on September 6, 2019 (the “Class”). Due and adequate notice having been given to the Class Members, and the Court having considered the Settlement, all papers filed and proceedings had herein and all oral and written comments received regarding the Settlement, and having reviewed the record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as provided in the Settlement.
2. The Court has jurisdiction over the subject matter of this litigation and over the Parties to this litigation, including all Class Members.
3. This Court finds that the Classes meet all the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. For

settlement purposes, the Court now finally certifies the two Classes which are defined as follows:

The “Sufficient Funds Class” is defined as, “those members of Defendant who became members of Defendant prior to March 1, 2018, and were assessed an overdraft fee between June 15, 2012 and June 15, 2019, on any type of payment transaction and at the time such fee was assessed the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee.”

The “Regulation E Class” is defined as, “those members of Defendant who became members of Defendant prior to March 1, 2018 and were assessed an overdraft fee for a non-recurring debit card payment transaction between June 15, 2017 and September 13, 2018.”

4. The Court appoints Named Plaintiff Brandi Salls as the Class Representative.

5. The Court approves The Kick Law Firm, APC, and McCune Wright Arevalo, LLP, as Class Counsel.

6. The Court appoints KCC Class Action Services, LLC (“KCC”), as the Settlement Administrator. The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the Settlement and shall comply with the terms of the Settlement.

7. The Court finds that the distribution of the notice of the Settlement has been completed in conformity with the Court’s preliminary approval order. The Court finds that the notice was the best practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied the requirements of due process. The Court also finds that all Class Members were given a full and fair opportunity to participate in the Final Approval Hearing, all Class Members wishing to be heard have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Class.

8. The Court finds, as set forth in the Supplemental Declaration of Robert Coomes of the Settlement Administrator KCC dated December 16, 2019 (Docket 59), that there are two class

members who have requested exclusion from the class. Their request for exclusion is granted and they are identified in Exhibit A attached to this Order. The Court further finds that there have been no objections whatsoever by any class member to any aspect of the proposed settlement.

9. The Court finds that the reaction of the Class to the Settlement has been overwhelmingly favorable.

10. The Court hereby grants final approval of the terms set forth in the Settlement and finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions.

11. The Court finds that the Settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

12. The Settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

13. The Court finds the requested attorneys' fees of \$600,000 to be reasonable, both as a percentage of the common fund and under the lodestar method, and therefore awards fees in this amount to be paid to Class Counsel from the Settlement Fund by the deadline specified in the Settlement.

14. The requested fee amount is one-third of the new money portion of the common Settlement Fund of \$1,800,000, which is appropriate for this case, and is in line with market rates for contingency fees in a case as such. Further, as a result of this lawsuit Defendant has agreed to change the manner in which it assesses overdraft fees for at least three years from the Effective Date of this proposed settlement, and this testified to by Plaintiff's expert as resulting in savings of more than \$1,400,000 in overdraft fees. (Settlement Agreement ¶ 2.) Additionally, Defendant also has agreed to waive Sufficient Funds and Regulation E overdraft fees in the class period in which they were assessed but which have not yet been collected, totaling \$740,891. (Settlement Agreement ¶ 9.) Together, these additional components of the Settlement bring the value of the Settlement to \$3,940,891, of which a \$600,000 fee award equals only 15.52%.

15. The lodestar of counsel in this matter exceeds \$464,442. The hourly rates of the attorneys are reasonable and in line with prevailing market rates, and the hours worked are also reasonable. Based on the contingent risk that counsel undertook in prosecuting this action with no guarantee of payment as well as the complexity of the action, the Court finds that the requested fees are reasonable. Therefore, the requested fees amount is also separately and independently approved under a lodestar analysis.

16. The Court further finds that the fee-sharing arrangement among Class Counsel was disclosed to and approved by the Named Plaintiff.

17. The Court further finds that the litigation costs incurred by Class Counsel of \$86,420.27 are reasonable based on the work necessary to achieve this favorable class settlement, but Class Counsel seek reimbursement only of \$75,000 as that is the amount of costs stated in the notice to Class Members which Class Counsel stated they would not exceed in seeking reimbursement. This \$75,000 is approved and to be paid to Class Counsel from the Settlement

Fund by the deadline specified in the Settlement Agreement.

18. The Court finds that Named Plaintiff Brandi Salls assisted with the prosecution and litigation of the case, including producing documents, responding to written discovery, preparing for deposition, sitting for deposition, and having been willing to testify at trial. The Court therefore awards a service award in the amount of \$10,000 to be paid to Named Plaintiff Brandi Salls from the Settlement Fund by the deadline specified in the Settlement Agreement.

19. The Court approves and orders that if there is any residue which remains in the Net Settlement Fund, rather than revert to Defendant, there instead be a *cy pres* distribution of 50% to Public Citizen, which is actively involved in protecting consumer rights, and 50% to Junior Achievement of Boston.


20. The Court approves payment of the Claims Administrator's fees and costs of up to \$73,000 to be paid to the Claims Administrator from the Settlement Fund by the deadline specified in the Settlement Agreement.

21. Within 10 days of the date of this order, Defendant shall distribute the Settlement Fund to the Claims Administrator, less amounts advanced to the Claims Administrator.

22. The Court retains jurisdiction over the Parties, Class Counsel, and the case to enforce the Settlement and the terms of this Judgment.

Good cause appearing therefore, IT IS SO ORDERED.

Dated: December 19, 2019



The Honorable Timothy S. Hillman
United States District Court Judge