

01/25/2024

David W. Slayton, Executive Officer / Clerk of Court

R. Arraiga Deputy

**FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Maureen Harrold v. MUFG Union Bank, N.A., Case No.: BC680214

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$5,000,000.
B. The Net Settlement Amount is the GSA minus the following:

Up to \$1,666,500 (33.33%) for attorney fees (¶116) [Fee split: McCune Law Group and The Kick Law Firm, APC - 25% of the total attorneys' fees or their relative lodestar, whichever is greater; Tycko and Zavareei LLP and Kopelowitz Ostrow P.A. - 40% of the remainder of the attorneys' fees; and KalielGold PLLC - 20% of the attorneys' fees. (Supp. Brief ISO MPA, ¶1.)

Up to \$60,458.10 for litigation costs [current estimate] (Joint Decl., ¶64.).

Up to \$10,000 for a Service Payment to the Named Plaintiff (¶121).

C. Defendants will separately pay Settlement Administration Costs estimated by the proposed Settlement Administrator to be \$93,816. (¶76; Joint Decl., ¶39)

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **July 25, 2024**. Plaintiff must call the Court prior to filing and serving to obtain a hearing date.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties **must** email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Non-Appearance Case Review is set for August 1, 2024, 8:30 a.m., Department 9.

I.
BACKGROUND

This is a bank overdraft fee class action. Defendant MUFG Union Bank, N.A. is headquartered in San Francisco, California, providing retail banking services to consumers, including debit card services used in conjunction with checking accounts.

Plaintiff filed her initial Complaint on October 19, 2017 and the First Amended Complaint on March 7, 2019. Plaintiff's First Amended Class Action Complaint alleges putative class claims that Defendant improperly charged Overdraft Fees on Debit Card Transactions that authorized against a positive balance but settled against a negative balance due to intervening charges. These challenged fees are also referred to as "authorize positive settle negative" or APSN Fees. She alleges claims of breach of contract including the covenant of good faith and fair dealing and violations of California consumer protection laws. Plaintiff sought relief including damages and/or restitution for all APSN Fees; an injunction against Defendant barring it from continuing to misrepresent its Overdraft Fee policies in its publicly available account documents, continuing to charge Overdraft Fees on transactions that do not actually overdraw accounts, and conducting business via the complained-of unlawful and unfair business practices; pre-judgment interest; attorney's fees and costs.

On March 2, 2018, Defendant filed a Motion to Compel Arbitration claiming the Account Agreement mandated individual arbitration of Plaintiff's claims. Arbitration-related discovery occurred with the production of several Account Agreements, fee schedules, change of terms notices, and policy documents. Plaintiff took Defendant's deposition regarding arbitration issues. On May 30, 2018, following a hearing, the Court ruled the Account Agreement delegated authority to determine the enforceability of the arbitration provision to the arbitrator.

On October 16, 2018, the Honorable Candace Cooper was appointed as the Arbitrator. On March 7, 2019, Plaintiff submitted her Amended Demand for Arbitration in the Arbitration, attaching her First Amended Class Action Complaint, and her Motion to Declare Arbitration Agreement Unenforceable. On May 21, 2019, Arbitrator Cooper heard that motion, the parties submitted supplemental authority, and on August 19, 2019, she denied it.

However, on September 4, 2019, during a status conference, Plaintiff sought permission to file a supplemental brief on the "poison pill" issue raised in her motion. With approval, both Parties submitted supplemental briefing. On December 15, 2019, Arbitrator Cooper issued her Supplemental Order re Arbitrability, ruling that because the waiver of public injunctive relief in the arbitration provision was unenforceable, the "poison pill" provision rendered the entire arbitration provision null and void. Arbitrator Cooper thus rescinded portions of her prior order and dismissed the arbitration. The Action then moved back to this Court.

Defendant filed a Motion to Vacate the Arbitration Award, which the Court denied on July 27, 2020. The Court lifted the stay of the proceedings and ordered Plaintiff's First Amended Complaint be filed and served, which Plaintiff filed and served on July 28, 2020.

On March 24, 2020, Defendant filed a Motion to Vacate the Arbitration Award, which the Court denied on July 27, 2020. The Court lifted the stay of the proceedings and ordered Plaintiff's First Amended Complaint be filed and served, which Plaintiff filed and served on July 28, 2020.

Defendant notified Plaintiff of its intent to move to reassign the case to a judicial referee under Civil Code § 638, which Plaintiff opposed. The Parties submitted briefing on Defendant's Motion to Compel Judicial Reference. On February 4, 2021, the Court issued its tentative ruling granting that motion, which became the Order of the Court on February 8, 2021. 14. On April 13, 2021, the Joint Status Report indicated agreement to proceed in judicial reference before the Honorable Rita "Sunny" Miller (Ret.), who was appointed on April 21, 2021.

On January 25, 2022, Defendant filed a Motion for Judgment on the Pleadings, arguing the Account Agreement permitted the challenged fee practice. On February 14, 2022, the Parties filed a stipulation to stay the case pending mediation, which Judicial Referee Miller granted on March 21, 2022.

Counsel represent that prior to the mediation, in addition to arbitration-related discovery resulting in production of all relevant Account agreements that allowed them to evaluate changes Defendant made to its contract promises regarding its overdraft fee practices and/or policies, the Parties engaged in informal discovery regarding an estimate of the aggregate

relevant APSN Fees assessed during the Class Period, as well as analyzed and estimated the most probable calculation of damages recoverable by Plaintiff and the Settlement Class.

Class Counsel also represent that they engaged in data analysis with the assistance of Plaintiff's expert, Arthur Olsen of Cassis Technology, a preeminent expert in evaluating and analyzing bank data necessary to identify APSN Fees. Class Counsel spent time analyzing data regarding Defendant's fee revenue related to the assessment of APSN Fees, with Mr. Olsen's assistance. Prior to mediation, Defendant supplied information concerning its estimate of most probable damages and provided aggregate Overdraft Fee information for the relevant time period from which Plaintiff's counsel have been able to work with the Mr. Olsen to scrutinize Defendant's estimate. Class Counsel and Plaintiff's expert used this data to analyze the damages at issue for mediation. After the Term Sheet was signed, Mr. Olsen spoke with Defendant's representatives to confirm availability of necessary data for a class wide analysis. Mr. Olsen completed the necessary work to identify the APSN Fees assessed to Accountholders in the Settlement Class, allowing the Parties to deliver a class list to the Settlement Administrator for the Notice Program and ultimate distribution of the Net Settlement Fund.

Following a full-day mediation on April 22, 2022, with mediator Robert Meyer, Esq. of JAMS, the Parties reached an agreement in principle to settle, with the material terms memorialized in a May 4, 2022 Term Sheet. A fully executed copy of the Settlement Agreement was filed with the Court on January 30, 2023 attached to the Plaintiff's Memorandum Of Points And Authorities In Support Of Unopposed Motion For Preliminary Approval Of Class Action Settlement ("Motion") as Exhibit A.

On April 26, 2023 and September 5, 2023, the Court continued preliminary approval for counsel file supplemental information and revisions. In response, on December 29, 2023, counsel filed a fully executed Amended Settlement Agreement.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

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II.
SETTLEMENT AGREEMENT

A. Definitions.

Settlement Class: all MUFU Union Bank, National Association consumer checking Accountholders in California who were assessed one or more APSN Fee during the Class Period.

Excluded from the Settlement Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Accountholders in the Settlement Class who make a timely election to be excluded by opting-out; and all judges and judicial referees assigned to these proceedings and their immediate family members. (Settlement, ¶69)

Class Period: October 19, 2013 through February 28, 2019. (¶37)

The parties stipulate to class certification for settlement purposes only. (¶75)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$5,000,000, reversionary. (¶76; ¶108)
- The Net Settlement Amount ("Net") (\$3,263,041.90) is the GSA minus the following:
 - Up to \$1,666,500 (33.33%) for attorney fees (¶116);
- The following law firms have an agreement to split attorneys' fees: McCune Law Group and The Kick Law Firm, APC will collectively receive 25% of the total attorneys' fees or their relative lodestar, whichever is greater; Tycko and Zavareei LLP and Kopelowitz Ostrow P.A. will each receive 40% of the remainder of the attorneys' fees; and KalielGold PLLC will receive the final 20% of the attorneys' fees. (Supp. Brief ISO MPA, ¶1.)
 - Up to \$60,458.10 for litigation costs [current estimate] (Joint Decl., ¶64.); and
 - Up to \$10,000 for a Service Payment to the Named Plaintiff (¶121);
- Defendants will separately pay Settlement Administration Costs estimated by the proposed Settlement Administrator to be \$93,816. (¶76; Joint Decl., ¶39)

- There is no claim form requirement. (Long Form Notice, pg. 1)
- Individual Settlement Payment Calculation: The Net Settlement Fund shall be paid pro rata to the Settlement Class Members using the following calculation: a.) The dollar amount of the Net Settlement Fund divided by the total number of APSN Fees paid by all members of the Settlement Class, which yields a per-fee amount; b.) Multiply the per-fee amount by the total number of APSN Fees for each Settlement Class Member. (Settlement, ¶102)
- Funding of Settlement: The Settlement Fund will be funded into an escrow account established by the Settlement Administrator within 10 days of the Courts entry of the Preliminary Approval Order. (¶72)
- Distribution: As soon as practicable but no later than 60 days from the Effective Date, Defendant and the Settlement Administrator shall distribute the Net Settlement Fund to Settlement Class Members, as follows: (¶106)
 - o Settlement Class Member Payments to Current Accountholders shall be made by a credit to those Accountholders Accounts maintained individually at the time of the credit. The Settlement Administrator shall transfer the funds necessary for Defendant to make these credits at least 10 days before Defendants deadline to make the credits. Defendant shall notify Current Accountholders of any such credit on the Account statement on which the credit is reflected by stating APSN Fee Refund or something similar. Defendant will bear any costs associated with implementing the credits and notification required by this paragraph. If by the deadline for Defendant to apply credits of Settlement Class Member Payments to Accounts Defendant is unable to complete certain credits, or it is not feasible or reasonable to make the payment by a credit, Defendant shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with subparagraph b. below. (¶106.a)
 - o Settlement Fund Payments to Past Accountholders will be made by check with an appropriate legend, in a form approved by Class Counsel and Defendant Counsel, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Accountholders, and will be mailed to the first Accountholder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose

check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail it once to the updated address, or, in the case of a jointly held Account, and in the Settlement Administrators discretion, to an Accountholder other than the one listed first. In the event of any complications arising in connection with the issuance or cashing of a check, the Settlement Administrator shall provide written notice to Class Counsel and Defendants Counsel. Absent specific instructions from Class Counsel and Defendants Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. All costs associated with the process of printing and mailing the checks and any accompanying communication to Past Accountholders shall be borne by Defendant. (§106.b)

- Response Deadline: Opt-Out Period means the period that begins the day after the earliest date on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice. (§55) An Accountholder in the Settlement Class may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last day of the Opt-Out Period. (§87) For a written objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. (§88) The Opt-Out Period shall be extended for a period of 15 days for any Accountholder in the Settlement Class that is sent a Postcard Notice as part of the Notice Re-mailing Process. (§94.)

- o Defendant also shall have the right to terminate the if the number of Accountholders in the Settlement Class who timely opt-out from the Settlement Class equals or exceeds 5% of the total Accountholders in the Settlement Class. (§124)

- Disposition of Residual Funds: Within one year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks (Residual Funds) shall be distributed as follows: (§108)

- o First, any Residual Funds shall be payable to Defendant for the amount that it paid for Settlement Administration Costs. (§108.a)

- o Second, any Residual Funds remaining after distribution shall be distributed on a pro rata basis to participating Settlement Class Members who received Settlement Class Member Payments, to the extent feasible and practical in light of the

costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair. Should such a second distribution be made, Current Accountholders shall receive an Account credit and Past Accountholders will receive a check. Any second distribution checks shall be valid for 90 days. (§108.b)

o Third, in the event the costs of preparing, transmitting and administering such subsequent payments to Settlement Class Members do not make individual distributions economically feasible or practical or other specific reasons exist that would make such further distributions impossible or unfair, or if such a second distribution is made and Residual Funds still remain, Class Counsel and Defendant shall seek the Courts approval to distribute the Residual Funds to a cy pres recipient in accordance with California Code of Civil Procedure Section 384. The Parties shall propose Jump\$Start Coalition (<https://cajumpstart.org/about-us>) as the cy pres recipient, an entity that is a nonprofit organization or foundation to support projects that will benefit the Settlement Class or similarly situated persons and works to promote financial literacy in California. The Parties counsel shall identify their lack of interest or involvement in the governance or work of the cy pres recipient in a declaration supporting the request to approve the cy pres recipient. (§108.c)

▪ The parties and their counsel represent that they do not have any interest or involvement in the governance or work of the California Jump\$Start Coalition. (Declaration of Nancy R. Thomas, ¶3; Supp. Joint Decl. ¶¶6-7.)

• The settlement administrator will be Kroll Settlement Administration LLC. (§67)

• Notice of Final Judgment will be posted on the Settlement Administrator's website. (§73)

• Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. Following a full-day mediation on April 22, 2022, with mediator Robert Meyer, Esq. of JAMS, the Parties reached an agreement in principle to settle, with the material

terms memorialized in a May 4, 2022 Term Sheet. (Joint Decl., ¶19.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represent that prior to the mediation, in addition to arbitration-related discovery resulting in production of all relevant Account agreements that allowed them to evaluate changes Defendant made to its contract promises regarding its overdraft fee practices and/or policies, the Parties engaged in informal discovery regarding an estimate of the aggregate relevant APSN Fees assessed during the Class Period, as well as analyzed and estimated the most probable calculation of damages recoverable by Plaintiff and the Settlement Class. (Id. at ¶18.)

Class Counsel also represent that they engaged in data analysis with the assistance of Plaintiff's expert, Arthur Olsen of Cassis Technology, a preeminent expert in evaluating and analyzing bank data necessary to identify APSN Fees. (Id. at ¶28.) Class Counsel spent a significant amount of time analyzing data regarding Defendant's fee revenue related to the assessment of APSN Fees, with Mr. Olsen's assistance. Prior to mediation, Defendant supplied information concerning its estimate of most probable damages and provided aggregate Overdraft Fee information for the relevant time period from which Plaintiff's counsel have been able to work with the Mr. Olsen to scrutinize Defendant's estimate. Class Counsel and Plaintiff's expert used this data to analyze the damages at issue for mediation. (Id. at ¶29.) After the Term Sheet was signed, Mr. Olsen spoke with Defendant's representatives to confirm availability of necessary data for a class wide analysis. Mr. Olsen has completed the necessary work to identify the APSN Fees assessed to Accountholders in the Settlement Class, allowing the Parties to deliver a class list to the Settlement Administrator for the Notice Program and ultimate distribution of the Net Settlement Fund. (Id. at ¶30.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (Id. at ¶¶ 58-64; See Firm Resumes of Class Counsel, attached thereto as Exhibits 1-2; See Firm Resumes of Co-Counsel, attached thereto as Exhibits 3-5.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive

objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff’s case. “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure
Overdraft Fees	\$13,300,000

(Joint Decl. ¶¶45-52.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).)

4. Amount offered in settlement. Plaintiff’s counsel obtained a \$5,000,000 non-reversionary settlement. The \$5,000,000 settlement amount constitutes approximately 37.59% of Defendant’s maximum exposure. Given the uncertain outcomes, the settlement appears to be within the “ballpark of reasonableness.”

The \$5,000,000 settlement amount, if reduced by the requested deductions, will leave \$3,263,041.90 to be divided among approximately 81,251 class members. The resulting payments

will average \$40.16 per class member. [$\$3,263,041.90 / 81,251 = \40.16].

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

C. Scope of the Release

As of the date Defendant completes an Account credit for a Settlement Class Member Payment or the date the Settlement Administrator sends a Settlement Class Member Payment by check, the Releasing Party the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action relating to the assessment of APSN Fees by Defendant (Released Claims).
(¶109)

Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims

against Defendant in any forum, action, or proceeding of any kind. (¶110)

Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, and contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement. (¶112)

Nothing in this Agreement shall operate or be construed to release any claims or rights that Defendant has to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans, or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiff or any Settlement Class Member has, other than with respect to the claims expressly released by this Agreement, in the event Defendant and/or its assigns seeks to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans, or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts. (¶114)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶111; ¶113)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review

each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are an estimated 81,251 class members. (Joint Decl., ¶54.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's account-level transaction records from which APSN Fees are identified. (Joint Decl., ¶54)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Counsel contend that the class claims arise from a common nucleus of facts. The Settlement Class members are Accountholders who maintained Accounts that were assessed APSN Fees based on uniform Account Agreements and promises. Common legal issues that unite the Settlement Class include (1) the elements of Plaintiff's claims and Defendant's defenses (including the arbitration defense), (2) whether Defendant breached its contracts and the covenant of good faith and fair dealing by assessing APSN Fees, (3) whether Defendant violated the UCL or CLRA or committed statutory fraud when assessing APSN Fees, (4) whether Plaintiff and the Settlement Class Members have sustained damages, and (5) the measure of damages or restitution. No legal issues affect only individual Accountholders in the Settlement Class. (Joint Decl., ¶55.)

Counsel contend such common questions predominate because liability questions common to all members of the Settlement

Class substantially outweigh any possible issues that are individual to each member of the Settlement Class. For example, each Accountholder's relationship with Defendant arises from an Account Agreement that is the same or substantially similar in all relevant respects to the other Accountholders in the Settlement Class and each was subjected to the same Overdraft Fee policy and APSN Fee assessment practice. (Id. at ¶56.)

As to typicality, Counsel contend that Plaintiff's claims are typical, because they are based on the same facts and underlying legal theories as other Accountholders in the Settlement Class. Like them, she was assessed APSN Fees. (Id. at ¶56.)

As to adequacy, Plaintiff represents that she was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (Id. at ¶56; Declaration of Plaintiff Maureen Harrold, passim.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

Notice will be provided in English and Spanish. (¶86)

2. Method of class notice. Notice shall be provided to Accountholders in the Settlement Class in three different ways: (a) Email Notice to Accountholders for whom Defendant has email addresses; (b) Postcard Notice to those Accountholders for whom Defendant does not have email addresses; and (c) Long Form Notice with greater detail than the Email Notice and Postcard Notice, which shall be available on the Settlement Website and/or via mail upon request by an Accountholder in the Settlement Class. Not all Accountholders in the Settlement Class will receive all three forms of Notice, as detailed herein. (¶90) The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court, and substantially similar to the notice forms attached hereto as Exhibits 1 and 2. (¶91)

Once the Settlement Administrator has the list for Accountholders in the Settlement Class, the Settlement Administrator shall send out Email Notice to all Accountholders in the Settlement Class receiving Notice by that method. For those Accountholders in the Settlement Class for whom Defendant does not have email addresses, the Settlement Administrator shall run the physical addresses provided by Defendant through the National Change of Address Database and shall mail to all such Accountholders in the Settlement Class Postcard Notice. The initial Mailed Postcard and Email Notice shall be referred to as Initial Mailed Notice. (¶93)

The Settlement Administrator shall perform reasonable address traces for Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Accountholders in the Settlement Class whose new addresses were identified as of that time through address traces (Notice Re-mailing Process). The Settlement Administrator shall also send Postcard Notice to all Accountholders in the Settlement Class whose emails were returned as undeliverable and complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-mailing Process. The Opt-Out Period shall be extended for a period of 15 days for any Accountholder in the Settlement Class that is sent a Postcard Notice as part of the Notice Re-mailing Process. (¶94) The Notice Program shall be completed no later than 60 days before the Final Approval Hearing. (¶95)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$93,816. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$1,666,500 (33 1/3%) in attorney fees and up to \$60,458.10 in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of \$10,000. (¶121)

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should

be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit'" (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$5,000,000.

B. The Net Settlement Amount is the GSA minus the following:

Up to \$1,666,500 (33.33%) for attorney fees (¶116) [Fee split: McCune Law Group and The Kick Law Firm, APC - 25% of the total attorneys' fees or their relative lodestar, whichever is greater; Tycko and Zavareei LLP and Kopelowitz Ostrow P.A. - 40% of the remainder of the attorneys' fees; and KalieGold PLLC - 20% of the attorneys' fees. (Supp. Brief ISO MPA, ¶1.)

Up to \$60,458.10 for litigation costs [current estimate] (Joint Decl., ¶64.).

Up to \$10,000 for a Service Payment to the Named Plaintiff (¶121).

C. Defendants will separately pay Settlement Administration Costs estimated by the proposed Settlement Administrator to be \$93,816. (¶76; Joint Decl., ¶39)

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by July 25, 2024. Plaintiff must call the Court prior to filing and serving to obtain a hearing date.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Non-Appearance Case Review is set for August 1, 2024, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: January 25, 2024



A handwritten signature in black ink that reads "Yvette M. Palazuelos".

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge