

Settlement (\$1,250,000); (b) litigation expenses of \$4,780.23, the majority of which were mediation fees (\$3,183.05), with the remainder being travel (\$849.30), court fees (\$454.31), transcript costs (\$242.72), and FedEx fees (\$50.85), and (c) service awards of \$5,000 to each of the named Plaintiffs. The requested amounts are reasonable, are in line with what is typically awarded by Indiana courts and courts across the country, and the Court should approve these payments in conjunction with final approval of the Settlement, which is scheduled for hearing on November 19, 2024.

FACTS

I. Plaintiffs sue STAR in a class action for overdraft fee practices.

On March 18, 2021, Plaintiffs Cliff and Wendy Decker filed a Class Action Complaint in this Court, alleging claims on behalf of a class of consumers for breach of contract, including breach of the covenant of good faith and fair dealing, unjust enrichment, and violations of the Indiana Deceptive Consumer Sales Act for STAR's alleged assessment of overdraft fees on transactions that authorized positive and settled negative.

II. STAR moves to compel arbitration, which the Indiana Supreme Court eventually rejects.

On April 12, 2021, STAR filed its Motion to Compel Arbitration and to Dismiss Plaintiffs' Complaint and its memorandum in support. After the parties fully briefed the motion, the Court heard argument and granted the motion on September 10, 2021.

Plaintiffs then appealed to the Indiana Court of Appeals, which reversed on April 20, 2022.

STAR then petitioned the Indiana Supreme Court for transfer, which was granted on September 1, 2022. On November 3, 2022, the Indiana Supreme Court conducted oral argument and on March 21, 2023, the Indiana Supreme Court entered its opinion reversing the order compelling arbitration and remanding the matter for further proceedings.

III. STAR moves to dismiss, which this Court denies, and the parties then engage in discovery.

On May 19, 2023, STAR filed its Motion to Dismiss Pursuant to Trial Rules 12(B)(6) and 9(B). After full briefing by the parties, on August 31, 2023, the Court conducted a hearing on the motion and on October 5, 2023, the Court entered its Order Denying Motion to

Dismiss. On October 27, 2023, STAR filed its Answer to Class Action Complaint.

The Parties also engaged in discovery including interrogatories served on STAR by Plaintiffs and interrogatories served on Plaintiffs by STAR. Plaintiffs also produced more than 600 pages of documents in response to STAR's requests for production, and STAR produced more than 2,400 pages of documents in response to Plaintiffs' requests for production.

IV. The parties mediate with a third-party neutral and ultimately reach the proposed Settlement.

On April 10, 2024, the parties attended mediation with John Trimble, Esq. of Lewis Wagner LLP. The parties did not reach an agreed resolution at the mediation but continued to work with Mr. Trimble in an effort to resolve this matter.

The parties ultimately reached an agreement in principle to settle the litigation on a class-wide basis. Under the terms of the Settlement, Defendant agreed to pay \$2,500,000 in cash into a Settlement Fund and to forgive 1,287,974.17 in debt. After Court-approved fees and expenses, the Net Settlement Fund will be distributed directly to the Class Members pro rata based on the amount of overdraft that each Class

Member was charged. Class Members with accounts at Defendant will receive a credit to their account, and Class Members who no longer have accounts will be mailed a check. Any uncollected funds will not revert to Defendant but will be paid on a *cy pres* basis under Trial Rule 23(F) to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and to Junior Achievement of Northern Indiana.

V. The Court grants preliminary approval to the Settlement.

On August 5, 2024, the Court granted preliminary approval to the Settlement, finding it to be within the range of a fair, reasonable, and adequate compromise. A final approval hearing is scheduled for November 19, 2024.

DISCUSSION

I. The Court should approve the requested attorneys' fees, expenses, and Class Representative service awards from the Settlement Fund.

In conjunction with final approval of the Settlement, and in recognition that Class Counsel and the Class Representatives have achieved a significant benefit for the Class after years of litigation, the Court should approve the requested attorneys' fees, expenses, and Class Representative services award to be paid from the Settlement Fund.

A. A 33% fee is reasonable and is slightly less than the amount routinely awarded to Class Counsel in contingent fee class action litigation.

Under Trial Rule 23(D), the Court must award “reasonable attorney’s fees and reasonable expenses incurred from a fund recovered for the benefit of a class.” If the Court grants final approval it should therefore award Class Counsel reasonable attorneys’ fees and expenses from the Settlement Fund.

Federal and state courts across the country, including Indiana courts, have routinely awarded Class Counsel one-third (33.33%) of the value of a settlement as a reasonable contingent attorney fee. *See, e.g.,* Order Granting Final Approval to Class Action Settlement, *Johnson v. Elements Financial Cred Union*, No. 49D01-2001-PL-004706 (Ind. Comm’l Ct. Oct. 29, 2020) (Welch, J.) (approving attorneys’ fees of one-third of the value of the settlement, which was comprised of both cash payments and debt forgiveness); Final Approval Order and Order Granting Requests for Fees, Costs and Expenses, Costs of Settlement Administration, and Class Representative’s Service Award, *Almon v. Independence Bank*, No. 19-CI-00817 (McCracken Cir. Ct. Ky. June 18, 2021) (same; awarding fee of one-third of the value of the settlement,

which was comprised of both cash payments and debt forgiveness); Order Awarding Attorneys' Fees and Expenses and Class Representative Service Award from Common Fund, *Hill v. Indiana Members Credit Union*, No. 49D02-1804-PL-016174 (Marion Super. Ct. Ind. Jan. 21, 2021) (Oakes, J.) (approving attorneys' fees of one-third of the value of the settlement); Order Granting Final Approval, *Holt v. CommunityAmerica Credit Union*, No. 4:19-CV-00629-FJG (W.D. Mo. Dec. 8, 2020), ECF No. 51 (same); Order Approving Attorneys' Fees, Expenses, and Service Award, *Louden v. Arvest Bank*, No. 60CV-19-5520 (Ark. Cir. Ct. June 8, 2021) (same); Order, *Wilmoth v. Celadon Trucking Servs., Inc.*, No. 49D01-1310-PL-036806 (Marion Super. Ct. Oct. 17, 2017) (Keele, J.) (awarding class counsel one-third of value of the settlement in class action); Order, *Todd v. The Nat'l Foundation for Special Needs Integrity, Inc.*, No. 29D01-1702-TR-000046 (Hamilton Super. Ct. Ind. June 20, 2017) (Nation, J.) (awarding one-third fee); Order Awarding Attorneys' Fees and Expenses and Class Representative Service Award from Common Fund, *Plummer v. Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Super. Ct. Ind. Oct. 2, 202) (same); *In re Ready Mixed Concrete Litig.*, 2010 WL 3282591 (S.D. Ind. Aug. 17, 2010) (same);

Burkholder v. City of Ft. Wayne, 750 F. Supp. 2d 990, 997 (N.D. Ind. 2010) (same); *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998) (noting that typical class action contingency fees are between 33% and 40%); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015) (recognizing that courts “regularly allow attorneys to recoup one-third of the first \$10 million of the class action settlement fund”). *See also* Preliminary Approval Order, *Perri v. Notre Dame Fed. Credit Union*, No. 71C01-1909-PL-000332 (St. Joseph Cnty. Ind. Cir. Ct. June 29, 2021) (granting preliminary approval to settlement that contemplates attorneys’ fees of one-third of value of settlement).

Here, Class Counsel litigated the case to the Indiana Supreme Court and back to achieve a hard-fought victory for the Class. Moreover, the requested fee of 33% is slightly less than the 33.33% fee that is routinely awarded. Thus, the requested fee is reasonable and should be approved.

B. The requested litigation expense reimbursements are normal litigation costs of experts, mediation, and filing fees that are routinely reimbursed.

In addition, Class Counsel has advanced no less than \$4,780.23 in litigation expenses, the majority of which were mediation fees

(\$3,183.05), with the remainder being travel (\$849.30), court fees (\$454.31), transcript costs (\$242.72), and FedEx fees (\$50.85). Miller Decl. ¶ 4. Class Counsel incurred these expenses with no guarantee of recovering them had the Class Representatives not prevailed or achieved a settlement, and therefore, Class Counsel had every incentive to keep the expenses reasonable. *Id.* These types of expenses are routinely reimbursed by Courts, and the Court should approve reimbursement here, as well. *See, e.g.,* Order Granting Final Approval to Class Action Settlement, *Johnson v. Elements Financial Cred Union*, No. 49D01-2001-PL-004706 (Ind. Comm'l Ct. Oct. 29, 2020) (Welch, J.) (awarding reimbursement of litigation expenses from class action settlement fund).

C. A \$5,000 service award to each of the named Plaintiffs is well-deserved and well within the range of service awards typically awarded by courts.

Finally, courts routinely recognize that a class representative who brings a class action and achieves a benefit for the class is entitled to a class representative service award for his or her role in achieving a benefit for others. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 2009). When deciding whether a class representative service award is reasonable, courts consider the actions the plaintiff has taken to protect

the interests of the class and the degree to which the class has benefited from those actions. *Id.*

The amount of a service award is within the discretion of the court, and courts have awarded \$100,000 or more based on the individual facts of a case. *Ingram v. Teachers Credit Union*, No. 49D01-1908-PL-035431 (Ind. Comm'l Ct. Aug. 26, 2021) (Welch, J.) (awarding \$100,000 service award); *In re Titanium Dioxide*, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding \$125,000 to lead class representative); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *4, *8, *28 (S.D.N.Y. Nov. 30, 2010) (awarding \$125,000 to named plaintiffs); *High-Tech*, 2015 WL 5158730, at *17 (awarding \$120,000 and \$80,000 to named plaintiffs); *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161, at *14-16 (N.D. Cal. June 5, 2017) (approving service awards of \$100,000 for each named plaintiff). Here, the requested amount of \$10,000 is well within the range of what is normally awarded. The Court should recognize that the Class Representatives initiated this lawsuit, which benefitted thousands of other people and that would not have been achieved without their

efforts. Therefore, it is fair and reasonable to award from the Class Settlement Fund the requested \$5,000 service awards.

CONCLUSION

For the foregoing reasons, in conjunction with final approval of the Settlement, the Court should enter an order approving the requested fees, expenses, and service awards.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of July, 2024, a true and correct copy of the foregoing Unopposed Motion for Preliminary Approval of Class Action Settlement was served to all counsel of record by the Indiana E-Filing System, or other acceptable means of service, as follows:

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