

STATE OF INDIANA)
) SS: VANDERBURGH CIRCUIT COURT
COUNTY OF VANDERBURGH) CAUSE NO. 82C01-1012-CT-627

STEVEN KELLY, *et al.*, individually and)
on behalf of all others similarly situated,)
)
Plaintiff,)

v.)

OLD NATIONAL BANK,)
)
Defendant.)

Hon. David D. Kiely

CLASS ACTION

FILED
VANDERBURGH CIRCUIT COURT
APR 14 2016

Debra H. Stuckler
CLERK

ORDER AUTHORIZING NOTICE

Before the Court is a joint petition by the named Plaintiffs and by the defendant Old National Bank (“Old National”), requesting that the Court enter an Order (i) preliminarily approving the proposed settlement set forth in the Settlement Agreement, and exhibits thereto, which was filed with the Court on APRIL 8, 2016; (ii) approving the Class Notice and Summary Settlement Notice attached as Exhibits 2 and 6, respectively to the Settlement Agreement; (iii) appointing Kurtzman Carson Consultants, LLC (“KCC”) as Notice Administrator and Class Action Settlement Administrator; and (vi) approving the Claim Form attached as Exhibit 1 to the Settlement Agreement.

Having reviewed and considered the Settlement Agreement, the Motion for an Order Authorizing Notice and the accompanying supporting brief as to the proposed settlement of this matter, and having heard and considered the argument of counsel, the Court makes the following findings and grants the relief set forth below, authorizing notice of the class settlement contained in the Settlement Agreement upon the terms and conditions set forth in this Order. Terms and phrases in this Order shall have the same meaning as defined in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court authorizes notice that the settlement set forth in the Settlement Agreement appears fair, reasonable, and adequate within the meaning of Rule 23 of the Indiana Rules of Trial Procedure, subject to final consideration at the Final Fairness Hearing provided for below.

2. A Fairness Hearing shall be held before this Court on JUNE 13, 2016, at 2:00pm in Courtroom 208 of the Vanderburgh County Circuit Court, 825 Sycamore Street, Evansville, Indiana, to determine (a) whether the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class; (b) whether a Judgment as provided in the Settlement Agreement should be entered granting final approval of the Settlement; (c) whether, and in what amount, attorneys' fees and expenses should be awarded to Plaintiffs' Counsel; and (d) whether, and in what amount, Service Awards should be made to Steven Kelly, Jonathan A. Cook and Rebecca F. Cook, each of whom has served as named plaintiff in substantially identical putative class actions. The Court may adjourn and/or continue the Fairness Hearing without further notice to Class Members.

3. The Court approves as to form and content the Class Notice, Summary Settlement Notice, and Postcard Notice in substantially the forms attached as Exhibits 2, 6, and 8 respectively, to the Settlement Agreement.

4. The Court approves and appoints Kurtzman Carson Consultants, LLC as Class Action Settlement Administrator and Notice Administrator, as set forth in the Settlement Agreement.

5. The Court approves as to form and content the Claim Form substantially in the form attached as Exhibit 1 to the Settlement Agreement.

6. Notice is authorized as follows:

A. Dissemination of the Mailed Class Notice

a. No later than three (3) business days after the entry of the Order Authorizing Notice, Lead Class Counsel, with the assistance and cooperation of Old National, shall provide Old National and the Notice Administrator with the name, mailing address, and e-mail address of each reasonably identifiable Class Member, subject to the existence and availability of such information as derived from the information produced by Old National to Lead Class Counsel in the Action.

b. Not later than twenty (20) days after entry of the Order Authorizing Notice, and subject to the requirements of the Order Authorizing Notice and the Settlement Agreement, the Notice Administrator shall send the Class Notice by Electronic Mail (“E-Mail”) to: (i) each reasonably identifiable Class Member’s last known E-Mail address, and (ii) each reasonably identifiable Class Member’s postal address if such person’s E-mail address is unknown, and shall otherwise comply with Trial Rule 23 and any other applicable statute, law, or rule, including but not limited to, the Due Process Clause of the United States Constitution.

c. No later than twenty (20) days after entry of the Order Authorizing Notice, the Notice Administrator shall commence the process of sending the Postcard Notice, substantially in the form of Exhibit 8 hereto, by First Class U.S. Mail, proper postage prepaid, to each Class Member whose E-mail address returned a message as undeliverable, subject to the existence of such information as provided pursuant to Section IV.B.1.a of the Settlement Agreement, notifying the Class Member of the Settlement and directing

them to the Settlement Website and/or the toll-free telephone number to obtain a Class Notice and Claim Form.

d. After entry of the Order Authorizing Notice, the Notice Administrator shall: (i) re-mail any Postcard Notice returned by the United States Postal Service with a forwarding address that are received by the Notice Administrator; (ii) by itself or using one or more address research firms, as soon as practicable following receipt of any returned Postcard Notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail the Postcard Notice to the better addresses so found.

B. Contents of Class Notice: The Claim Form and the Class Notice shall be in a form substantially similar to the documents attached to the Settlement Agreement as Exhibits 1 and 2, respectively, and shall advise Class Members of the following:

a. General Terms: The Class Notice shall contain a plain and concise description of the nature of the Action, the history of the litigation of the claims, the preliminary certification of the Class, and the proposed Settlement, including information on the identity of Class Members, how the proposed Settlement would provide relief to the Class and Class Members, what claims are released under the proposed Settlement and other relevant terms and conditions.

b. Opt-Out Rights: The Class Notice shall inform Class Members that they have the right to opt out of the Settlement. The Class Notice shall provide the deadlines and procedures for exercising this right.

c. **Objection to Settlement:** The Class Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

d. **Fees and Expenses:** The Class Notice shall inform Class Members of the Attorneys' Fees and Expenses and individual Service Awards to the Plaintiffs being sought, and shall explain that such fees and expenses awarded to Plaintiffs' Counsel and individual Service Awards to the Plaintiffs shall be paid from the Settlement Amount.

e. **Claim Form:** The Class Notice shall include the Claim Form, which shall inform the Class Member under what circumstances he or she must fully complete and timely return the Claim Form within the Claim Period to be eligible to obtain relief pursuant to the Settlement Agreement.

C. **The Summary Settlement Notice:** The Notice Administrator shall have the publication of the Summary Settlement Notice substantially completed no later than twenty (20) days after entry of this Order Authorizing Notice by publishing it, as a 1/8-page ad (2 insertions on 2 consecutive days), in the *Indianapolis Star News*, *South Bend Tribune*, *Evansville Courier Press* and the *Fort Wayne Journal Gazette/News-Sentinel*. The form of Summary Settlement Notice agreed upon by the Parties is in the form substantially similar to the one attached to the Settlement Agreement as Exhibit 6.

D. **Settlement Website:** Prior to the dissemination of the Class Notice, pursuant to Section IV.A through Section IV.C, the Notice Administrator shall establish an Internet website, www.oldnationaloverdraftfees.com, that will inform Class Members

of the terms of the Settlement Agreement, their rights, dates and deadlines and related information (the "Settlement Website"), which shall be activated no later than ten (10) business days after the entry of this Order Authorizing Notice. This Settlement Website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court, which shall include, at a minimum, orders Authorizing Notice and Final Approval, the Class Notice, the Claim Form, the Summary Settlement Notice and the Settlement Agreement.

E. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice, the Notice Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members.

12. The Court finds that the publication of the Summary Settlement Notice and the availability of the Notice in the manner set forth herein is the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Rule 23 of the Indiana Rules of Trial Procedure, applicable law, and due process.

13. No later than 10 calendar days before the Fairness Hearing, the Class Action Settlement Administrator shall file with the Court one or more declarations stating that, in accordance with the terms of this Order, the Summary Settlement Notice was published and that the Notice was posted at a dedicated settlement website.

14. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Notice Administrator at the address provided in the Class Notice, postmarked no later than fifty (50) days after entry of this Order Authorizing Notice, or as the Court otherwise may direct, and specifying that he or she wants to be excluded. The Notice

Administrator shall forward copies of any written requests for exclusion to Lead Class Counsel and Old National's Counsel. A list reflecting all requests for exclusion shall be filed with the Court by Old National no later than ten (10) days before the Fairness Hearing.

15. All those falling within the definition of the Class who do not request to be excluded from the Class shall be bound by the terms of the Settlement Agreement, the Final Judgment entered thereon, and all Orders entered by this Court in connection with the settlement set forth in the Settlement Agreement. All those who submit valid and timely notices of their intent to be excluded from the Class shall not share in the distribution of the Settlement Fund and shall neither receive any benefits nor be bound by the terms of the Settlement Agreement.

16. Only Class Members whose accounts are closed and who wish to participate in the settlement must submit a Claim in accordance with the instructions on the Claim Form. All such Class Members who fail to submit a Claim Form shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth in the Settlement Agreement but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, the releases contained therein, and the Final Judgment.

17. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or the Service Awards described above, must deliver to the Lead Class Counsel identified in the Class Notice and to Old National's Counsel, and file with the Court, no later than fifty (50) days after entry of this Order Authorizing Notice, or as the Court otherwise may direct, a written statement of the objections containing the objector's dated signature, as well as the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention, any evidence or other information the Class Member wishes to introduce in support of the

objections, a statement of whether the Class Member intends to appear and present their objections at the Fairness Hearing, and proof of the Class Member's payment of overdraft fees to Old National. Class Members may do so either on their own or through an attorney retained at their own expense. Any objections must include proof of payment of overdraft fees to Old National. Acceptable proof of payment of overdraft fees includes a mailed bank statement, a printed online bank statement or other verifiable information that sufficiently indicates the collection of overdraft fees by Old National. The objection must also contain the objector's name, address, telephone number and, if represented by counsel, the same information for his/her counsel (in any event, the objector's actual residential address must be included).

18. No later than fourteen (14) days from the deadline for filing objections to the Settlement Agreement as set forth in Section VI, Plaintiffs shall file an application for an award of Attorneys' Fees and Expenses in the Actions and a motion for final approval of the Settlement Agreement. Such application and motion shall be supplemented, if necessary, no later than 14 days before the Fairness Hearing.

19. No later than ten (10) business days after the entry of this Order Authorizing Notice, Old National's Counsel shall provide the Notice Administrator with a list of all counsel for anyone who has litigation pending against Old National that involves overdraft fees and Old National shall deposit the sum of Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) into Escrow to be held by the Escrow Agent.

20. All discovery and pretrial proceedings in this Litigation are stayed and suspended until further order of this Court.

21. Pending the final determination of the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, no Class Member, either directly, representatively, or in any other capacity, shall institute, commence, or prosecute against Old

National, its parents (including but not limited to Old National Bancorp), and any intermediary and/or ultimate parents, officers, directors, employees, stockholders, agents, attorneys, administrators, successors, reorganized successors, spin-offs, assigns, holding companies, subsidiaries, affiliates, joint-ventures, partners, members, divisions, predecessors and Old National-owned branches (the "Released Parties") any claim encompassed by the Release and Waiver set forth in the Settlement Agreement in any action or proceeding in any court or tribunal.

22. The Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall the Settlement Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Actions, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce the Settlement Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims or defenses.

23. In the event the Court does not grant final approval of the Settlement Agreement or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, the Parties shall be restored to their respective positions in the Actions, except that all scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any Party. In such

event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Actions or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

SO ORDERED.



DAVID D. KIELY, JUDGE

Distribution to Counsel of Record