

STATE OF INDIANA ) VANDERBURGH CIRCUIT COURT  
 ) SS:  
 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  
 JUN 13 2016  
 Debra H. Stucki  
 CLERK

**FINAL ORDER APPROVING CLASS ACTION SETTLEMENT**

The motion for Final Approval of a Class Action Settlement in the above-captioned action, having been brought before the Court jointly by the Parties pursuant to their Settlement Agreement, with its attached exhibits (collectively, the "Settlement Agreement"), signed and filed with this Court on April 8, 2016, to settle *Steven Kelly, et al., Steven Kelly, et al. v. Old National Bank*, Case No. 82C01-1012-CT-627 (Cir. Ct Vanderburgh Cty, Ind.) (the "Action");

The Court having entered an Order dated April 14, 2016 (the "Order Authorizing Notice"), preliminarily approving the proposed settlement, ordering individual and publication Notice to potential Class Members, scheduling a Fairness Hearing for June 13, 2016, providing potential Class Members with an opportunity either to exclude themselves from the settlement class or to object to the proposed settlement and issuing related Orders;

The Court having held a Fairness Hearing on June 13, 2016 to determine whether to grant final approval of the proposed settlement and issue related relief; and

The Court having considered the papers submitted by the Parties and by all other persons who timely submitted papers in accordance with the Order Authorizing Notice, and having heard oral presentations by the Parties and all persons who complied with the Order Authorizing

Notice, and based on all of the foregoing, together with this Court's familiarity with the Action, it is hereby

**ORDERED, ADJUDGED AND DECREED** as follows:

1. **Incorporation of Other Documents.** This Final Order Approving Class Action Settlement incorporates and makes a part hereof: (a) the Settlement Agreement, including all exhibits thereto, and definitions included therein, which was signed and filed with this Court on April 8, 2016; (b) the briefs, affidavits, declarations, and other materials filed in support of the settlement and Lead Class Counsel's request for an award of attorneys' fees and reimbursement of expenses on behalf of Plaintiffs' Counsel; (c) the record at the Fairness Hearing; (d) the documents listed on the docket or otherwise submitted to the Court; and (e) all prior proceedings in the Action.

2. **Jurisdiction.** Because due, adequate, and the best practicable Notice has been disseminated and all potential Class Members have been given the opportunity to exclude themselves from, or object to, this Class Action Settlement, the Court has personal jurisdiction over all Class Members (as defined below). The Court has subject matter jurisdiction over the claims asserted in the complaint and/or the Action pursuant to Ind. Code § 33-28-1-2, including, without limitation, jurisdiction to approve the proposed settlement and the Settlement Agreement and all exhibits attached thereto, grant final certification to the Class for settlement purposes only, dismiss the Action on the merits and with prejudice, and issue related orders.

The Court finds that venue is proper in this district pursuant to Trial Rule 75(A).

3. **Class Definition.** The Class previously certified by this Court consists of all Old National Bank customers in the State of Indiana who had one or more consumer accounts and who, during the Class Period (November 9, 2008, up to and including August 15, 2010)

incurred an overdraft fee as a result of Old National Bank's practice of sequencing debit card and ATM transactions from highest to lowest. Excluded from the Class are Old National and any of its officers, directors or employees, the presiding judge, Class counsel and members of their immediate families, and persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

4. **Requests for Exclusion.** The Court finds that only those people listed in the List of Requests for Exclusion from Class and filed with the Court have submitted timely and valid requests for exclusion from the Class and are therefore not bound by this Final Order and accompanying Final Judgment. Lead Class Counsel and Old National's Counsel may mutually agree to allow additional Class Members to exclude themselves or to withdraw their exclusion requests by filing an appropriate notice with the Court.

5. **Class Notice.** The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other Notice methods set forth in the Settlement Agreement the Notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Order Authorizing Notice, a copy of which is incorporated herein and made a part hereof:

- (a) constituted the best practicable notice to Class Members under the circumstances of the Action;
- (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of the Action; (ii) the terms of the proposed settlement; (iii) their rights under the proposed settlement; (iv) their right to exclude themselves from the

Class and the proposed settlement; (v) their right to object to any aspect of the proposed settlement (including, but not limited to, the fairness, reasonableness, or adequacy of the proposed settlement, the adequacy of the Class's representation by the Class Representative or Lead Class Counsel, and/or the award of attorneys' fees); (vi) their right to appear at the Fairness Hearing – either on their own or through counsel hired at their own expense – if they did not exclude themselves from the Class; and (vii) the binding effect of the Orders and Judgment in this action, whether favorable or unfavorable, on all persons who did not request exclusion from the Class;

- (c) constituted notice that was reasonable, due, adequate, and sufficient notice to all persons and entities entitled to be provided with notice; and
- (d) constituted notice that met all applicable requirements of the Indiana Rules of Trial Procedure, the Due Process Clause of the Constitution, and any other applicable law.

6. **Final Settlement Approval.** The terms and provisions of the proposed settlement and Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Class Members, and in full compliance with all applicable requirements of the Indiana Rules of Trial Procedure, the Due Process Clause of the Constitution, and any other applicable law.

The settlement is approved and all objections to the settlement are overruled as without merit. The Court concludes Edward R. Willis is not a member of the Class and declines to

address the matters raised in his correspondence to the Court received May 12, 2016. The Parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions. Old National shall take all steps necessary and appropriate to provide Class Members with the benefits to which they are entitled under the terms of the Settlement Agreement.

7. **Early Implementation.** Old National and Lead Class Counsel are hereby authorized, and without requiring further approval of this Court, to implement the settlement before the Final Settlement Date (as defined in the Settlement Agreement), in which case all provisions in the Settlement Agreement specifying actions to be taken on or after the Final Settlement Date shall, to the extent necessary, be deemed to provide that those actions shall be taken on or after the date Old National elects to implement the settlement.

8. **Binding Effect.** The terms of the Settlement Agreement and of this Final Order and the accompanying Final Judgment shall be forever binding on Plaintiffs, Old National, and all Class Members, as well as their heirs, executors, administrators, predecessors, successors, and assigns, and those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in the Action or are otherwise encompassed by the Release and Waiver of Claims.

9. **Release and Waiver of Claims.** The following Release and Waiver of Claims, which is also set forth in Section VII(B) of the Settlement Agreement, is expressly incorporated herein in all respects, including all defined terms used therein, is effective as of the date of this

Final Order and the accompanying Final Judgment, and forever discharges 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 venturers, partners, members, divisions predecessors, Old National-owned branches (collectively, "the Released Parties") from any claims or liabilities arising from or related to the Release and Waiver of Claims:

- (a) In consideration for the Settlement benefits described in the Settlement Agreement, Plaintiffs and the other members of the Class, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, will fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from – and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class or on behalf of any other person or entity – any and all manner of claims, actions, causes of action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever kind, type or nature and whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Class Members ever had, now have, may have, or

hereafter can, shall or may ever have against the Released Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to (a) the assessment of overdraft fees by the Released Parties during the Class Period, (b) the assessment of one or multiple overdraft fees and/or sustained overdraft fees on Class Members' accounts, (c) the amount of one or more overdraft fees and/or sustained overdraft fees assessed on Class Members' accounts, (c) debit re-sequencing or posting order on Class Members' accounts, and/or (d) the Overdraft Courtesy Policy, and the claims alleged in the complaint (amended and otherwise) in the Action, and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaint (amended and otherwise) in the Action, including, but not limited to, communications, disclosures, nondisclosures, representations, statements, claims and omissions, by the Released Parties; any claims for rescission, restitution or unjust enrichment for all damages of any kind relating to the assessment of overdraft fees by the Released Parties during the Class Period and the claims alleged in the complaint (amended and otherwise) in the Action; violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer

fraud and/or consumer protection statutes relating to the assessment of overdraft fees by the Released Parties during the Class Period and the claims alleged in the complaint (amended and otherwise) in the Action; any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Released Parties pertaining to or relating to the claims alleged in the complaint in the Action relating to the assessment of overdraft fees by the Released Parties during the Class Period and the claims alleged in the complaint (amended and otherwise) in the Action, notwithstanding that Plaintiffs and the Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release and Waiver of Claims herein.

- (b) Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without



limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

- (c) Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release and Waiver of Claims covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Plaintiffs' Counsel, or by Plaintiffs or the Class Members.
- (d) Plaintiffs expressly understand and acknowledge, and all Class Members will be deemed by the Final Order and Final Judgment to acknowledge, that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "a general

release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Parties have chosen Indiana law to govern the Settlement Agreement – Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and all Class Members.

- (e) Nothing in this Release and Waiver of Claims shall preclude any action by the Parties hereto to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.
- (f) Plaintiffs and Released Parties hereby agree and acknowledge that the provisions of this Release and Waiver of Claims together constitute an essential and material term of the Settlement Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

**10. Permanent Injunction.** All Class Members and/or their representatives who have not been timely excluded from the Class are hereby permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating in, continuing or receiving any benefits from, as Class Members or otherwise, any lawsuit (including putative class actions), arbitration, administrative, regulatory, or other proceeding in any jurisdiction that is covered by the Release. All Class Members are permanently barred and

enjoined from organizing or soliciting the participation of any Class Members, who did not timely exclude themselves from the Class into a separate class or group for purposes of pursuing a putative class action, any claim or lawsuit in any jurisdiction that is covered by the Release. Pursuant to Indiana Code § 34-26-1-5, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

11. **Enforcement of Settlement.** Nothing in this Final Order or in the accompanying Final Judgment shall preclude any action to enforce the terms of the Settlement Agreement; nor shall anything in this Final Order or in the accompanying Final Judgment preclude Plaintiffs or other Class Members from participating in the Claim Process described in the Settlement Agreement if they are entitled to do so under the terms of the Settlement Agreement.

12. **Attorneys' Fees and Expenses.** Lead Class Counsel, on behalf of Plaintiffs' Counsel, are hereby awarded attorneys' fees in the amount of \$1,900,000.00 and reimbursement of Plaintiffs' Counsel's disbursements and expenses in the amount of \$133,264.42, pursuant to T.R. 23(D) and in accordance with the terms of the Settlement Agreement. The Court finds that the above stated award of attorneys' fees is fair and reasonable in consideration of, among other things, the efforts of Lead Class Counsel and Plaintiffs' Counsel and the settlement they achieved for the Class. The Court finds that the amount of expenses is reasonable and that the expenses were reasonably incurred in the course of the litigation. Lead Class Counsel, in their discretion, shall allocate and distribute this award of attorneys' fees and expenses among Plaintiffs' Counsel. All objections to any request for an award of attorneys' fees and reimbursement of expenses are hereby overruled.

13. **Service Awards to Plaintiffs.** The Court hereby awards \$10,000.00 as a Service

Award to each of Steven Kelly, Jonathan A. Cook, and Rebecca F. Cook.

**14. No Other Payments.** The preceding two paragraphs of this Final Order cover, without limitation, any and all claims against the Released Parties for attorneys' fees and expenses, costs, or disbursements incurred by Lead Class Counsel or any other counsel representing Plaintiffs or Class Members, or incurred by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to the Action, the settlement of the Action, the administration of such settlement, and/or the Release and Waiver of Claims, except to the extent otherwise specified in this Final Order, and accompanying Final Judgment and the Settlement Agreement. Plaintiffs are not precluded from seeking attorneys' fees, expenses, costs, or disbursements from an objecting Class Member or his or her counsel (and not Old National or its counsel) in connection with an appeal filed by an objecting Class Member.

**15. Modification of Settlement Agreement.** The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Agreement, and all exhibits attached, as are consistent with this Final Order and the accompanying Final Judgment and do not limit the rights of Class Members under the Settlement Agreement.

**16. Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Order and/or the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Order and the accompanying Final Judgment, and for any other necessary purpose, including, without limitation:

- (a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Final Order or the accompanying Final Judgment (including, without limitation, whether a person or entity is or is not a Class Member; and whether claims or causes of action allegedly related to this case are or are not barred by this

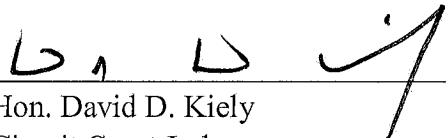
Final Order and the accompanying Final Judgment);

- (b) entering such additional Orders as may be necessary or appropriate to protect or effectuate this Final Order and the accompanying Final Judgment, dismissing all claims on the merits and with prejudice, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and
- (c) entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights under paragraphs 8 and 16 or as otherwise provided in the Settlement Agreement.

17. **No Admissions.** Neither this Final Order, nor the accompanying Final Judgment, nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to carry out this Final Order or the accompanying Final Judgment) is, may be construed as, or may be used as an admission or concession by or against Old National or any other of the

Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability whatsoever. Entering into, or carrying out, the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Old National's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order and the accompanying Final Judgment and the Settlement Agreement; provided, however, that this Final Order, the accompanying Final Judgment, and the Settlement Agreement may be filed in any action against or by Old National or any other of the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

18. **Dismissal of Action.** The Action (including all individual and Class claims presented therein) are hereby dismissed with prejudice, without fees or costs to any Party except as otherwise provided in this Order and the accompanying Final Judgment and the Settlement Agreement.

  
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Hon. David D. Kiely  
Circuit Court Judge

Distribution:  
Counsel of Record