

COMMONWEALTH OF KENTUCKY
MCCRACKEN COUNTY CIRCUIT COURT
CASE NO. 19-CI-00817

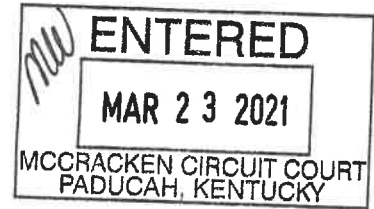
**JULIE ALMON, individually and on behalf
of all others similarly situated,**

Plaintiff,

vs.

INDEPENDENCE BANK,

Defendant.



**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
DIRECTING NOTICE, AND SETTING DATE FOR FINAL APPROVAL HEARING**

Plaintiff, Julie Almon, and Defendant, Independence Bank, have reached a proposed class action Settlement Agreement and Release (the "Settlement") to resolve the claims in this action, and Plaintiff has applied under Kentucky Civil Rule 23.05 for an order: (a) certifying the settlement Class for purposes of notice and settlement; (b) granting preliminary approval to the Settlement; (c) directing that notice of the proposed Settlement be given to the settlement Class; (d) establishing deadlines for Class members to object to or exclude themselves from the Settlement; and (e) scheduling a final approval hearing. The Court has given due consideration to the terms of the Settlement, the exhibits to the Settlement, the submissions in support of preliminary approval of the Settlement, and the record of proceedings, and now finds that the proposed Settlement should be preliminarily approved pending notice to Class Members and a final hearing on whether the Settlement is fair, reasonable, and adequate to the Class.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.

2. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over the Plaintiff and Defendant in the above-captioned case (the “Parties”).

3. The Court finds that for the purposes of settlement and notice the requirements of Kentucky Rules of Civil Procedure 23.01 and 23.02(c) have been met, specifically:

- a. The class is so numerous that joinder of all members is impracticable, as there are thousands of Class members;
- b. There are questions of law or fact common to the class based upon the claims raised in the lawsuit;
- c. The Plaintiff’s claims are typical of the claims of the Class;
- d. The Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class;
- e. Questions of law and fact common to the Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating this lawsuit.

The Court therefore **CERTIFIES** the following Plaintiff Class:

All current and former customers of Defendant who were assessed a Retry Fee.¹

¹ Under the Settlement: (1) “Retry Fee” means “Returned Item Fees that were charged and not refunded from September 15, 2005 to June 24, 2020, for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds.” (Settlement § 1(t).) “Returned Item Fee” means “any non-sufficient funds

4. The Court finds that the terms of the Settlement are within the range of a fair, reasonable, and adequate settlement between the Class and Defendant under the circumstances of this case. The Court therefore preliminarily approves the Settlement and directs the parties to the Settlement to perform and satisfy the terms and conditions of the Settlement that are triggered by such preliminary approval.

5. The proposed Notice of Class Action Settlement in the form attached to the Settlement as Exhibits "1" and "2," and the manner of distribution of such Notice by email and/or direct mail, are hereby approved by this Court as the best notice practicable to the Class. The form and manner of notice proposed in the Settlement comply with Kentucky Rule of Civil Procedure 23.03(4)(b) and the requirements of Due Process.

6. For purposes of the Settlement only, and pursuant to Kentucky Rule of Civil Procedure 23.07, the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Named Plaintiff with respect to the Settlement:

Lynn Toops
Vess Miller
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204

J. Gerard Stranch, IV
Martin F. Schubert
Branstetter, Stranch & Jennings, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203

David O'Brien Suetholz
Branstetter, Stranch & Jennings, PLLC
515 Park Avenue
Louisville, KY 40208

fee or fees assessed to a customer of Defendant for items returned when their account had insufficient funds." (Settlement § 1(u).)

Christopher D. Jennings
The Johnson Firm
610 President Clinton Avenue, Suite 300
Little Rock, AR 72201

7. KCC is appointed as Settlement Administrator and shall administer the Notice. The Settlement Administrator shall abide by the terms and conditions of the Settlement that pertain to the Settlement Administrator.

8. Pursuant to Rule 23.05 of the Kentucky Rules of Civil Procedure, a final approval hearing (the "Final Approval Hearing") shall be held before the undersigned at 8:45 a.m., on, June 18, 2021, at the McCracken County Circuit Court, for the purpose of: (a) determining whether the settlement is fair, reasonable, and adequate and should be finally approved; (b) determining whether a Final Approval Order should be entered; and (c) considering Class Counsel's application for an award of expenses and attorneys' fees pursuant to Rule 23 of the Kentucky Rules of Civil Procedure. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Class.

9. Class Counsel shall cause Notice to be sent to each Class Member (in accordance with the Settlement) no later than 30 days from the date of this Order. Notice shall be sent in the manner set forth in the Settlement.

10. Class Members shall be afforded an opportunity to request exclusion from the Class. A request for exclusion from the Class must: (i) state that the Class member wishes to "opt-out" or request "exclusion" from the Class; (ii) contain the full name, current address, and telephone number of the person requesting exclusion; (iii) contain the title of the Lawsuit: "*Almon v. Independence Bank*;" (iv) be signed by the person requesting exclusion; and (v) be sent to the

Settlement Administrator by U.S. mail with a postmark on or before the Bar Date to Opt Out as defined in the Settlement. Members of the Class who submit a timely and valid request for exclusion from the Class shall not participate in and shall not be bound by the Settlement. Members of the Class who do not timely and validly opt out of the Class in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Settlement.

11. Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement. Any objection must: (i) contain the full name, address, telephone number, and the last four digits of the current or former account number of the person objecting, along with the contact information for any attorney retained for the purposes of the objection; (ii) contain the title of the Lawsuit: "*Almon v. Independence Bank*" with the case number; (iii) state the reasons for the Class member's objection; (iv) be accompanied by any evidence, briefs, motions, or other materials the Class member intends to offer in support of the objection and state whether the objector intends to appear at the Final Approval Hearing; (v) be signed by the Class member; and (vi) be sent by U.S. mail, first class and postage prepaid, with a postmark no later than the Bar Date to Opt Out (as defined in the Settlement) to the Settlement Administrator.

12. Any member of the Settlement Class who does not make his or her objection known in the manner provided in the Settlement and Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement.

13. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement must meet the requirements set forth above, including the deadline for filing objections, and also must be accompanied by any evidence, briefs, motions, or other

materials the proposed intervenor intends to offer in support of the request for intervention, and must meet the requirements of the Kentucky Rules of Civil Procedure.

14. Any lawyer intending to appear at the Final Approval Hearing must be authorized to represent a Class Member, must be duly admitted to practice law before the Court, and must file a written appearance. Copies of the appearance must be served on Class Counsel and counsel for Defendant in accordance with the Kentucky Rules of Civil Procedure.

15. On or before the Bar Date to Opt Out, the Settlement Administrator shall provide Class Counsel with a listing of the names of all persons or entities who timely and validly excluded themselves from the Settlement, and Class Counsel shall promptly file the list with the Court.

16. Prior to the Final Approval Hearing, Class Counsel shall file a motion for approval of the attorneys' fees, expenses, and service awards to be paid from the Settlement Fund, along with any supporting materials.

17. If the Settlement does not become effective or is rescinded pursuant to the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Plaintiff and Defendant, and all Orders issued pursuant to the Settlement shall be vacated.

18. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

19. The Court hereby sets the following schedule of events:

Event	Deadline
Notice Mailing Date	_____, 2021 (30 days after this Order)
Motion for Final Approval, Application for Attorneys' Fees, Expenses and Costs, and for a Service Award	May 4, 2021 (15 days before Opt-Out Deadline)
Opt-Out Deadline	May 19, 2021 (30 days before Final Approval Hearing)
Deadline to Submit Objections	May 19, 2021 (30 days before Final Approval Hearing)
Deadline to Respond to Objections	June 11, 2021 (7 days before Final Approval Hearing)
Final Approval Hearing	June 18, 2021 at 8:45 a.m.

20. The Parties have reviewed and consented to the substance of this Order.

Dated: March 22, 2021

/s/ Lynn Toops (with permission)

Lynn Toops
Vess Miller
COHEN & MALAD, LLP
One Indiana Square, Suite 1400 Indianapolis, IN
46204

J. Gerard Stranch, IV
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Counsel for Plaintiff and the Proposed Class

Dated: March 22, 2021

/s/ Stephen E. Smith, Jr.


Stephen E. Smith, Jr.
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Paducah, KY 42002

Stuart M. Richter (*Pro Hac Vice*)
Andrew Demko (*Pro Hac Vice* to be filed)
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067

Counsel for Defendant

SO ORDERED.

Dated: 3-23-21



HONORABLE TIMOTHY KALTENBACH
MCCRACKEN CIRCUIT COURT, DIV. 1