

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

MARY LOU FALLIS and KYLA
DELORME, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GATE CITY BANK,

Defendant.

Civil No. 09-2019-CV-04007

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL
OF CLASS SETTLEMENT AND APPLICATION FOR ATTORNEYS' FEES AND
COSTS AND SERVICE AWARDS AND FINAL JUDGMENT**

[¶1] This Action¹ comes before the Court on the motion of Plaintiffs, Mary Lou Fallis and Kyla Delorme, on behalf of themselves and the Settlement Classes, and Class Counsel for an order granting Final Approval of the class action Settlement between Plaintiffs and Defendant, Gate City Bank, and for awards of attorneys' fees and costs to Class Counsel and Service Awards to the Plaintiffs as Class Representatives. The Court previously entered its Order granting Preliminary Approval of the Settlement and directing Notice be sent to members of the Settlement Classes.

[¶2] Having considered the Plaintiffs' Motion, the declarations filed in support thereof, and having heard argument of counsel or otherwise reviewed the record, with good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

¹ The definitions and capitalized terms in this order shall have the same meanings as those defined in the Settlement Agreement, attached to Plaintiffs' Motion for Preliminary Approval as *Exhibit A*.

FINAL APPROVAL

[¶3] The Parties have agreed to settle this Action upon the terms and conditions set forth in the Agreement, which has been filed with the Court. The Agreement, including all exhibits thereto, is finally approved as fair, reasonable, and adequate. Class Counsel has investigated the facts and law relating to the matters alleged in the Amended Complaint, including through the motion to dismiss, legal research as to the sufficiency of the claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal. The Settlement was reached as a result of arm's length negotiations between Class Counsel and counsel for Gate City. The Settlement confers substantial benefits upon the Settlement Classes, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable.

[¶4] The Court certifies, for settlement purposes only, the following Settlement Classes:

APPSN Fee Class

All current and former Gate City Account Holders who are North Dakota residents and were assessed APPSN Fees during the Class Period.

Multiple Fees Class

All current or former Gate City Account Holders who are North Dakota residents and were assessed Multiple Fees during the Class Period.

Excluded from the Settlement Classes are Gate City, its parents, subsidiaries, affiliates, officers, and directors; all members of the Settlement Classes who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

[¶5] The Class Period is November 20, 2013 through November 30, 2021 for both Settlement Classes.

[¶6] Plaintiffs are hereby confirmed as Class Representatives.

[¶7] Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow, P.A. and Jeffrey D. Kaliel of KalielGold PLLC are hereby confirmed as Class Counsel.

[¶8] The Court finds, for settlement purposes only, that the prerequisites for a class action under N.D. R. Civ. P. 23(a)-(c) have been satisfied in that: (a) the number of members of the Settlement Classes is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Classes; (c) a class action will allow for the fair and efficient adjudication of the controversy at hand; and (d) the representative parties, Plaintiffs as Class Representatives and their experienced Class Counsel, have fairly and adequately represented the interests of the Settlement Classes and will continue to do so. In making these findings, the Court has exercised its discretion in certifying the Settlement Classes.

[¶9] The Court finds that the distribution of the Notices and the Notice Program were properly implemented in accordance with N.D. R. Civ. P. 23, the terms of the Agreement, and the Preliminary Approval Order. The Court further finds that the Notice was simply written and readily understandable and that the Notice (a) constitutes the best notice practicable under the circumstances; (b) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of the Agreement and their right to exclude themselves or object to the Agreement and to appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of North Dakota law and any other applicable law and due process requirements.

[¶10] The Court finds that the terms and provisions of the Settlement as set forth in the Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Classes, and in full compliance with all applicable requirements of N.D. R. Civ. P. 23, and any other applicable law or due process requirements. The Parties are hereby directed to conclude the Agreement in accordance with the terms and provisions of the Agreement. Plaintiffs, all Settlement Class Members, and Gate City

are hereby bound by the terms of the Settlement as set forth in the Agreement.

[¶11] As of the Effective Date of the Agreement, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Gate City and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them (“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 APPSN Fees and Multiple Fees (“Released Claims”).

[¶12] 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 Gate City in any forum, action, or proceeding of any kind.

[¶13] With respect to all Released Claims, Plaintiffs and each of the other Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 9-13-02 of the North Dakota Century Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in the creditor's favor at the time of executing the release, which if known by the creditor, must have materially affected the creditor's settlement with the debtor.

[¶14] The Court approves the Agreement and dismisses, with prejudice, the Action, including all individual and class claims, on the merits, without attorneys' fees and costs of litigation, except as set forth herein.

RESIDUAL FUNDS

[¶15] If, consistent with the plan of distribution set forth in the Agreement, any Residual Funds exist after the first distribution, the residue shall be distributed pro rata to Settlement Class Members who received Settlement Class Member 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. All costs of any second distribution, including Gate City's internal costs of crediting Settlement Class Member Accounts, will come from the Residual Funds.

[¶16] In the event the costs of preparing, transmitting and administering such subsequent payments of the Residual Funds are not feasible and practical to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair, or if such a subsequent distribution is made and Residual Funds still remain, Gate City shall seek the Court's approval to distribute the Residual Funds to Gate City pursuant to N.D. R. Civ. P. 23(o)(E).

ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

[¶17] Notice of Class Counsel's intention to seek an attorneys' fee award of 33.33% of the Settlement Fund was given to all Settlement Class members in the Notices. No Settlement Class Member objected thereto, and no Settlement Class member opted out.

[¶18] Class Counsel are hereby awarded attorneys' fees in the amount of 33.33% of the Settlement Fund, or \$1,833,333.33, and the \$92,350.00 requested in reimbursement of Class Counsel's litigation costs, which fees and costs shall be payable from the Settlement Fund.

[¶19] The Court finds such award to be fair and reasonable.

[¶20] In making this award of attorneys' fees and costs, the Court has considered the factors set forth N.D. R. Civ. P. 23(p). The Court finds that consideration of these factors, individually and collectively, supports the Court's finding that its fee and cost award is fair and reasonable.

[¶21] Based on the work performed and commitment shown to protecting the interests of the Settlement Classes in this matter, the Court finds that Plaintiffs' requested Service Awards are fair, reasonable, consistent with awards in comparable cases, and otherwise supported by the facts and applicable law, and accordingly approves a Service Award of \$5,000.00 to each of the Plaintiffs.

GENERAL

[¶22] The Court hereby decrees that neither the Agreement, nor this Order, nor the fact of the Settlement, is an admission or concession by Gate City or the Released Parties of any fault, wrongdoing, or liability whatsoever, or as an admission of the appropriateness of class certification for trial or dispositive motion practice. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence as an admission, concession, presumption or inference against Gate City or the Released Parties in any proceeding, other than such proceedings as may be necessary to conclude or enforce the Agreement or to support a defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

[¶23] The Court hereby retains and reserves jurisdiction over: (a) implementation of this

Settlement and any distributions from the Settlement Fund; (b) the Action, until the Effective Date, and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement Agreement, including the exhibits appended thereto; and (c) all Parties, for the purpose of enforcing and administering the Settlement.

[¶24] If the Effective Date of the Agreement does not occur, the Settlement shall be rendered null and void to the extent provided by and in accordance with the Agreement, and this Order and Final Judgment shall be vacated. In such event, all orders entered, and releases delivered in connection with the Settlement, shall be null and void and the Action shall return to its status immediately prior to execution of the Settlement.

[¶25] The Court adjudges that the Class Representatives and all Settlement Class Members shall be bound by this Order.

[¶26] There being no just reason for delay, the Court hereby directs that this Order and Final Judgment be entered by the Clerk of the Court as the final order and judgment of the Court.

[¶27] IT IS SO ORDERED.

Dated this 9th day of September, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Steve McCullough', written over a horizontal line.

The Honorable Steven E. McCullough
Judge of the District Court